

STATE OF TEXAS	§	IN THE COUNTY CRIMINAL
V.	§	COURT AT LAW NO. 11
DAVID ROBERT DALEIDEN	§	HARRIS COUNTY, TEXAS

ORDER DISMISSING CASE FOR WANT OF JURISDICTION

Defendant David Robert Daleiden’s motion to quash the indictment is pending before this Court. For reasons stated below, this Court cannot address the motion’s merits because it lacks jurisdiction to do so.

A. Background

On January 25, 2016, a Harris County grand jury returned an indictment charging Daleiden with committing a crime. The relevant substance follows:

IN THE NAME AND BY AUTHORITY OF THE STATE OF TEXAS:

The duly organized Grand Jury of Harris County, Texas, presents in the District Court of Harris County, Texas, that in Harris County, Texas, **DAVID ROBERT DALEIDEN**, hereafter styled the Defendant, heretofore on or about **JUNE 30, 2015**, did then and there unlawfully, intentionally and knowingly offer to buy human organs, namely, fetal tissue, for valuable consideration.

The indictment purports to charge Daleiden with a Class A misdemeanor offense pursuant to TEX. PENAL CODE ANN. § 48.02 (Vernon 2011) (“Prohibition of the Purchase and Sale of Human Organs”). Upon its return, the 338th District Court (a court with original jurisdiction over felony cases) properly transferred the indictment to this court (a court with original jurisdiction over misdemeanor cases). TEX. CODE CRIM. P. ANN. art. 21.26 (Vernon 2009).

B. Defective Indictment

A court is powerless without jurisdiction.

Since jurisdiction is fundamental and cannot be ignored, a court must consider it, even *sua sponte* if not requested by a party. *See, e.g., Black v. Jackson*, 82 S.W.3d 44, 50

(Tex. App.—Tyler 2002, reh. overruled, mandamus denied); *Lechuga v. Texas Employers' Ins. Ass'n*, 791 S.W.2d 182, 187 (Tex. App.—Amarillo 1990, writ denied) (op. on reh'g); *Lamka v. Townes*, 465 S.W.2d 386 (Tex. App.—Amarillo 1971, writ ref'd n. r. e.).

A charging instrument (an indictment here, since no complaint or information exist) must state every essential element of the offense. TEX. CONST. art. I, § 10; TEX. CODE CRIM. P. ANN. arts. 21.03, 21.04, 21.23 (Vernon 2009); *Studer v. State*, 799 S.W.2d 263, 289-90 (Tex. Crim. App. 1990) (Clinton, J., concurring). Failure to do so renders it void because it fails to confer jurisdiction to the court. TEX. CODE CRIM. P. ANN. arts. 21.03, 21.11 (2009); *Studer*, 799 S.W.2d at 289-90 (citing *American Plant Food Corporation v. State*, 508 S.W.2d 598, at 603 (Tex. Crim. App. 1974) (superseded by constitutional amendment on other grounds) and *Garcia v. Dial*, 596 S.W.2d 524, at 527 (Tex. Crim. App. 1980)); *Ex parte County*, 577 S.W.2d 260 (Tex. Crim. App. 1979).

Exceptions within the Penal Code are labeled by the phrase: "It is an exception to the application of..." TEX. PENAL CODE ANN. § 2.02 (Vernon 2011). The prosecuting attorney must negate the existence of an exception in the indictment and prove beyond a reasonable doubt that the defendant or defendant's conduct does not fall within the exception. See TEX. PENAL CODE ANN. § 2.02 (Vernon 2011). Only exceptions labeled in the manner suggested by § 2.02 must be negated. See *Lopez v. State*, 846 S.W.2d 90, 93-94 (Tex. App.—Corpus Christi 1992, pet ref'd); see also *Ex parte Davis*, 542 S.W.2d 192, 197 (Tex. Crim. App. 1976) (distinguishing between express exceptions appearing in the statute, which must be alleged, and implied exceptions, which do not); Practice Commentary to § 2.02. However, when a penal statute embraces an exception within its text, the State must negate it in the charging instrument. *McElroy v. State*, 720 S.W.2d 490, 493 (Tex. Crim. App. 1986); see also *Hicks v. State*, 18 S.W.3d 743, 744 (Tex. App.—San Antonio 2000, no pet.); *Rosamond v. State*, 730 S.W.2d 147, 148 (Tex. App.—Corpus Christi 1987, no pet.). An indictment's failure to negate an exception is the same as its failure to allege an essential element of the offense; it renders the

indictment void. *McElroy*, 720 S.W.2d at 492; *Rosamond*, 730 S.W.2d at 148; *Kirk v. State*, 643 S.W.2d 190, 194 n.8 (Tex. App.—Austin 1982, pet ref d).

This indictment relies on Penal Code Section 48.02. That section criminalizes certain conduct as follows:

- (a) “Human organ” means the human kidney, liver, heart, lung, pancreas, eye, bone, skin, fetal tissue, or any other human organ or tissue, but does not include hair or blood, blood components (including plasma), blood derivatives, or blood reagents.
- (b) A person commits an offense if he or she knowingly or intentionally offers to buy, offers to sell, acquires, receives, sells, or otherwise transfers any human organ for valuable consideration.
- (c) *It is an exception to the application of this section that the valuable consideration is: (1) a fee paid to a physician or to other medical personnel for services rendered in the usual course of medical practice or a fee paid for hospital or other clinical services; (2) reimbursement of legal or medical expenses incurred for the benefit of the ultimate receiver of the organ; or (3) reimbursement of expenses of travel, housing, and lost wages incurred by the donor of a human organ in connection with the donation of the organ.*
- (d) A violation of this section is a Class A misdemeanor.

TEX. PENAL CODE ANN. § 48.02 (Vernon 2011) (emphasis added). Subsection (c) clearly and explicitly states an exception as contemplated by Section 2.02. It is therefore treated as an element of the offense. The indictment does not reference this exception in any way.

The indictment’s failure to negate this exception renders it void.

A void indictment confers no jurisdiction to this court.

C. Remedy

In very limited circumstances a trial court can dismiss a case absent the State’s motion or consent. “[A] court has the power to dismiss a case without the State’s consent in certain circumstances, such as when...there is a defect in the charging instrument.... The power to dismiss in these circumstances is authorized by common

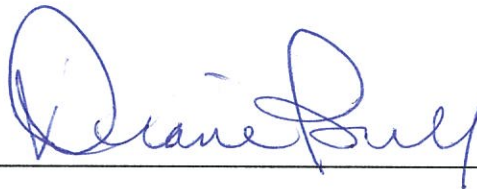
law or statute and does not give rise to a general right to dismiss in contravention of the general rule stated in [*State v. Anderson*, 119 Tex. 110, 26 S.W.2d 174 (Tex. Crim. App. 1930)].” *State v. Johnson*, 821 S.W.2d 609, 612 n.2 (Tex. Crim. App. 1992); *State v. Donihoo*, 926 S.W.2d 314, 315 (Tex. App.—Dallas 1994, no pet.); *State v. Frye*, 846 S.W.2d 443, 447-48 (Tex. App.—Houston [14th Dist.] 1992, pet. ref’d).

The instant case should therefore be dismissed.

D. Conclusion and Order

Cause No. 2071353 is **ORDERED DISMISSED** for want of jurisdiction.

Dated: 6-13-16



Hon. Diane Bull, Judge Presiding
County Criminal Court at Law No. 11
Harris County, Texas



FILED
Chris Daniel
District Clerk
Time: JUN 13 2016
By _____
Harris County, Texas
Deputy