

**413TH DISTRICT COURT
JOHNSON COUNTY, TEXAS**

STATE OF TEXAS

v.

DARIO EMMANUEL SANCHEZ

CASE No. DC-F202600514

**BRIEF IN SUPPORT OF THIRD
MOTION TO QUASH/DISMISS INDICTMENT**

TO THE HONORABLE JUDGE BOSWORTH:

Defendant Dario Emmanuel Sanchez filed his Third Motion to Quash/Dismiss Indictment today. Neither the new indictment nor the State's Response to Defendant's Second Motion did anything to address the physical/digital evidence issue as applied to the Hindering statute and charges. Because the arguments below apply equally to the new indictment, Defendant files this Brief in Support.

DIGITAL EVIDENCE IS NOT PHYSICAL EVIDENCE

For centuries courts have strictly and narrowly construed penal statutes. *United States v. Wiltberger*, 18 U.S. 76, 95 (1820). After all, it is the Legislature's job to "identify the conduct it wishes to prohibit." *Percoco v. United States*, 598 U.S. 319, 337–38 (Gorsuch, J., concurring in judgment). This Court's job is only to interpret and apply what the Legislature drafted, debated, voted on, and sent to the Governor.

The Penal Code provision involved here—§ 76.04(a)(4)—centers on *physical evidence*. The indictment tries to stretch it to cover *digital data*, but the Court must reject that attempt because it strays from statutory text and betrays plain meaning.

The plain meaning of *physical evidence* excludes *digital evidence*

The Court must naturally begin with a statute’s text to discern its meaning. *Niz-Chavez v. Garland*, 593 U.S. 155, 160 (2021); *Abramski v. United States*, 573 U.S. 169, 196 (2014) (Scalia, J., dissenting); *Marx v. General Revenue Corp.*, 568 U.S. 371, 376 (2013). Principles of statutory interpretation correctly place great weight on the ordinary meaning of text and presume the Legislature chose its words deliberately. See *BankDirect Cap. Fin., LLC v. Plasma Fab, LLC*, 519 S.W.3d 76, 86 (Tex. 2017). “If the text is unambiguous, we must take the Legislature at its word.” *Id.* (quotation omitted). See *Niz-Chavez*, 573 U.S. at 196 (courts must “apply the law as we find it, not defer to some conflicting reading the government might advance.” (quotation omitted)).

The text at issue here makes this question an easy one. Section 76.04 says in relevant part:

- (a) A person commits an offense if, with intent to hinder the arrest or prosecution of another for an offense under Section 76.02, the person:
 - (4) tampers with any physical evidence that might aid in the discovery or apprehension of the other.

The Legislature’s intent is exceedingly clear from the plain language of this statute; it included the word *physical* in the operative text. This provision targets *physical*—as opposed to digital or electronic—evidence. As one federal court has put it, “common[]sense dictates that there is a fundamental difference between electronic transmissions and ‘material things.’” *ClearCorrect Operating, LLC v. Int’l Trade Comm’n*, 810 F.3d 1283, 1286 (Fed. Cir. 2015).

Dictionaries demonstrate *physical* excludes *digital*

Lay dictionaries and law dictionaries alike all point to Defendant’s interpretation. *Physical* means “having material existence: perceptible especially through the senses and subject to the laws of nature.” *Physical*, MERRIAM-WEBSTER.COM DICTIONARY, available at

<https://www.merriam-webster.com/dictionary/physical>. The word denotes touchable material or having tangible, bodily form—*i.e.*, “of or pertaining to matter; material.” *Physical*, BLACK’S LAW DICTIONARY 1431 (11th ed. 2019).

By contrast, no normal, rational reading of the word *physical* would include *digital*, which in this context means “composed of data in the form of especially binary digits.” *Digital*, MERRIAM-WEBSTER.COM DICTIONARY, available at <https://www.merriam-webster.com/dictionary/digital>. *Data*, in turn, is a non-physical “representation of information” that is or will be “stored or processed in a computer.” TEX. PENAL CODE § 33.01(11). Likewise, no ordinary English speaker would include *electronic* evidence in a definition of *physical* evidence. *Electronic*, MERRIAM-WEBSTER.COM DICTIONARY, available at <https://www.merriam-webster.com/dictionary/electronic> (“of, relating to, or being a medium (such as television) by which information is transmitted electronically”).

Ordinary and legal definitions equally confirm that physical evidence does not extend to electronic data.

Physical evidence, defined elsewhere, says the quiet part out loud

The Texas Legislature has even defined the phrase *physical evidence* consistent with this ordinary meaning, though in a different context. But the Code of Criminal Procedure definition provides direct support for an interpretation excluding digital or electronic data: “‘Physical evidence’ means any tangible object, thing, or substance relating to a criminal action.” TEX. CODE CRIM. PROC. art. 38.35(a)(5). The modifier *tangible* in the Legislature’s definition forecloses any broader reading; it means “capable of being perceived especially by the sense of touch.” *Tangible*, MERRIAM-WEBSTER.COM DICTIONARY, available at

<https://www.merriam-webster.com/dictionary/tangible>; *Tangible*, BLACK'S LAW DICTIONARY (Westlaw, 12th ed. 2024) (“1. Having or possessing physical form; corporeal.”). *See Robin Singh Educ. Servs., Inc. v. Test Masters Educ. Servs., Inc.*, 401 S.W.3d 95, 102 (Tex. App.—Houston [1st Dist.] 2011, no pet.) (“emails are intangible” (citation omitted)).

Not only does the Legislature’s definition *appear* to exclude digital evidence, but it explicitly states the obvious in a related definition. *Forensic analysis* is defined as a scientific “test performed on physical evidence” and which “does not include . . . digital evidence.” TEX. CODE CRIM. PROC. art. 38.35(a)(4)(C). Clearly, the Legislature knows that *physical* and *digital* are different evidentiary classes; and it knows how to specifically address *digital* evidence when it wants to. The drafters’ choice not to include tampering with digital evidence in § 76.04 must, therefore, be interpreted as a deliberate choice. *See BankDirect*, 519 S.W.3d at 86.

***Expressio unius maxim* also says to exclude digital evidence**

This traditional canon of construction demonstrates, again, that the Legislature chose not use this provision to address digital evidence. *Expressio unius est exclusio alterius* means that a law’s expression of one thing implies the exclusion of others. When a law enumerates specific items, any unlisted item of a similar nature is presumed to have been purposefully excluded. Here, the law specifically targets *physical evidence*, and at the same time neglects to list data, signals, and digital or electronic evidence. That omission naturally implies that the drafters did not intend the law to cover digital evidence. But the Court need not rely on mere implication; the Legislature *has*, in fact, devoted a portion of the Code specifically to computer crimes.

Computer Crimes statutes conclusively confirm that electronic data is not physical evidence

Unequivocally confirming the above interpretive clues is the existence of Penal Code Chapter 33, “Computer Crimes.” It contains a section titled “Electronic Data Tampering,” which makes it a crime to “alter[] data . . . through deception and without a legitimate business purpose[.]” § 33.023(b).

This statute—and the chapter as a whole—demonstrates beyond doubt that the Legislature knows how to target, single out, and criminalize electronic data tampering. That it has set aside an entire chapter of the Penal Code for computer crimes illustrates the Legislature’s judgment that technology problems are unique. It recognizes those problems and knows full well how, and with what words, to target them.

The Legislature’s savvy is further supported by Chapter 33’s aggregation provisions: “When . . . *property* is altered, appropriated, damaged, or deleted in violation of this section, [etc.]” § 33.023(e) (emphasis added); *see also* § 33.02(c) (same). Without a definition suggesting otherwise, the word *property* naturally suggests something physical, like land or chattel. By itself, the notion that *property* would include, for example, a person’s *use of an intangible network or data* would be highly improbable. But, for purposes of that chapter, the Legislature *did* explicitly provide an unusually expansive definition, in which *property* includes “(A) tangible *or intangible* personal property including a computer, computer system, computer network, computer software, *or data*; [and] (B) *the use of* a computer, computer system, computer network, computer software, or data.” § 33.01(16) (emphases added).

Like *property*, the phrase *physical evidence* as used in the Hindering statute also naturally brings to mind tangible objects. But contrast that statute with Chapter 33 and its explicit, expansive

definition. Here there is *no evidence* that the Legislature intended to inflate these words beyond their normal, everyday scope. See *Rotenberry v. State*, 245 S.W.3d 583, 588 (Tex. App.—Fort Worth 2007, pet. ref'd) (“When statutory words are not defined, we give words their plain meanings—unless the act clearly shows that they were used in some other sense.”).

The indictment does not charge a violation of Chapter 33; it instead tries to shoehorn intangible, electronic data into the disparate realm of physical evidence. Because it does not allege an offense, it must be quashed. *Rotenberry*, 245 S.W.3d at 589 (holding indictment failed to allege offense as matter of law).

Barring all else, the Rule of Lenity applies

As early as 1886, the Texas Court of Appeals adopted the Rule of Lenity by saying:

the doctrine is fundamental in English and American law that there can be no constructive offenses; that, before a man can be punished, his case must be plainly and unmistakably within the statute, *and, if there be any fair doubt whether the statute embraces it, that doubt is to be resolved in favor of the accused.*

Cuellar v. State, 70 S.W.3d 815, 822 (Tex. Crim. App. 2002) (Cochran, J., concurring) (quoting *Murray v. State*, 21 Tex. Ct. App. 620, 633, 2 S.W. 757, 761 (1886) (emphasis in original)).

Additionally, penal statutes must “be construed according to the *fair import of their terms*[.]” TEX. CODE CRIM. PROC. art. 1.05(a)

Here, the unmistakable and *fair import of physical evidence* excludes digital evidence, which the Legislature addressed in an entirely separate chapter of the penal code.

In short, *physical evidence* is probably the clearest, sharpest phrase to describe objects with tangible, material existence while excluding intangible data stored electronically with no mass, no form, and no substance. Each piece of interpretive evidence uniformly invites the same conclusion:

The Hindering Counts, which try but fail to charge tampering with physical evidence (“namely digital [evidence]”), must be quashed.

CONCLUSION & PRAYER

The Hindering Counts conflate physical and digital evidence. Because digital data has no material, corporeal existence, it cannot be *physical evidence* as used in the law’s operative text. TEX. PENAL CODE § 76.04(a)(4). Because the pleading fails to allege an offense, it must be quashed.

RESPECTFULLY SUBMITTED MAY 27, 2026:

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CERTIFICATE OF SERVICE

I certify that today, May 27, 2026, a copy of the foregoing was served upon the Johnson County District Attorney’s Office by efileing with efile.txcourts.gov.

/s/ Dustin G. Hoffman

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