

**IN THE CIRCUIT COURT FOR
LAWRENCE COUNTY, TENNESSEE**

STATE OF TENNESSEE,)
)
Plaintiff,)
)
v.)
)
Arthur Hirsch,)
)
Accused, all rights reserved)
waiving none.)

Case No. 32518

JUDGE STELLA HARGROVE

February 11, 2016

PRE-SENTENCING ALLOCUTION STATEMENT
and
REQUEST FOR MANDATORY JUDICIAL NOTICE

STATEMENT

For the record, I, Arthur Jay Hirsch, the accused, have been wrongfully convicted as a criminal. I am to be punished for obeying God and exercising my right of conscience regarding my sincerely held religious belief concerning the non-use of a social security number as required by the state for a driver's license. I am to be punished for claiming and exercising my God-given, unalienable rights. My right to **liberty**/movement/locomotion/travel is violated by count 1 – driver license charge. My right to self preservation of my **life** is violated by count 2 – firearm charge. My right to the **pursuit of happiness** through absolute private property ownership is violated by count 3 – truck registration charge. My right to freely contract or **abstain from contracting** is violated by count 4 – involuntary compelled insurance . My right to privacy is violated by counts 1-4. And, my right to freedom of conscience and religious liberty is violated by counts 1, 2, 4. All these rights and more have been unlawfully violated by the indictment's administrative statutes, i.e., my unalienable rights have been converted by the state into coerced, taxable privileges against my will and consent. Yet, I'm considered the criminal for exercising my God-given rights.

I cannot comply with the department of safety's requirement of providing a social security number for conscientious religious reasons. Punishment against the dictates of my conscience is unlawful and will serve no useful purpose. Jail time and fines will not change my obedience to God.

I am forever duty-bound to love, serve, obey and worship God the Father and Jesus Christ, His Son.

For the court's information, I have a letter from the Virginia Department of Motor Vehicles stating that my status record is clean (copy). My Virginia license expired in 2003 and there is no suspension. I also have written a letter in good faith to Bill Gibbons, Commissioner, of the Department of Safety and Homeland Security explaining my SSN impasse, and asked him for a remedy to the situation. I am awaiting his reply. [read letter into the record]

REASONS FOR OVERTURNING CONVICTIONS

In addition to my sincerely held conscientious religious objection to the use of the SSN, other legal reasons justifying the overturning and nullifying of the convictions as follows:

1. **PRIVILEGES STATUTES ARE OUTSIDE THE CONSTITUTION.**

- 1.1. The sole legitimate purpose for civil government to exist is to secure and protect individual Creator-endowed, unalienable rights of life, liberty and pursuit of happiness / property. *Declaration of Independence, 1776*

REQUEST FOR MANDATORY JUDICIAL NOTICE (Rule 201(d), (f))

Please take mandatory judicial notice that the securing of the individual Creator-endowed, unalienable rights of life, liberty and the pursuit of happiness is the sole purpose of civil government, as stated in the Declaration of Independence.

REQUEST FOR MANDATORY JUDICIAL NOTICE (Rule 2021(d), (f))

Please take mandatory judicial notice that the U.S. Supreme Court has held that the only legitimate reason for the government to exist is to determine rights of persons or of property.

- "Individual rights protection is the **only legitimate reason for government to exist** . . . the duty of this court, as of every judicial tribunal, is limited to determining rights of persons or of property. . ." *Tyler v. Judges of Court of Registration*, 179 U.S. 405, 409 (1900)

REQUEST FOR MANDATORY JUDICIAL NOTICE (Rule 201(d), (f))

Please take mandatory judicial notice of the Tennessee Criminal Court of Appeals holding that

- "It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon. Their motto should be *obsta principiis*."

Williams v. State, 506 S.W.2d 193 (Tenn.Crim.App. 1973)

- 1.2. God's law, natural law, moral sense/conscience is higher than statutory law. God's law is eternal and is antecedent to all statutes. Statutes are invalid if contrary to God's supreme laws.
- 1.3. Organic laws, like the Declaration of Independence, state that government is to protect individual rights, not "peace" and "tranquility" of the amorphous, fictitious, phantom state as alleged in the indictment.
- 1.4. The conviction must be overturned because my constitutionally secured rights mentioned in my statement above have been abrogated by the state in the indictment's administrative law statutes, which are outside constitutional authority and wholly in commerce.

Declaration of Independence of 1776; Hale v. Hinkel

REQUESTED FOR MANDATORY JUDICIAL NOTICE (Rule 201(d), (f))

Please take mandatory judicial notice that the statutes cited in the indictment counts on their face do not secure and protect the accused's God-given, unalienable right to life, liberty and to the pursuit of happiness.

2. PLAINTIFF LACKS STANDING, CAUSE OF ACTION, CORPUS DELICTI, COURT LACKS JURISDICTION.

- 2.1. There is no evidence of a complaining party. If so, where, when, why and how was the evidence obtained and entered into the record? And by whom? (Personal knowledge?)

REQUESTED FOR MANDATORY JUDICIAL NOTICE (Rule 201(d), (f))

Please take mandatory judicial notice that there is no evidence of record of a complaining party.

- 2.2. Courts have held that standing to invoke a court's jurisdiction requires that the plaintiff allege (1) that a personal right has been violated, and (2) that "tangible," "concrete," "particularized," "distinct and palpable" injury-in-fact has been sustained therefrom, i.e., not presumed, conjectural or hypothetical injury.
- 2.3. Tennessee's three essential elements of standing are as follows:
 - TENNESSEE REQUIRED STANDING ELEMENTS: "In order to establish standing, a party must demonstrate three essential elements. *Metropolitan Air*

Research Testing Auth. Inc., v. Metropolitan Gov't of Nashville and Durston County, 842 S.W.2d 611, 615... **First**, the party must demonstrate that it has suffered an injury which is '**distinct and palpable, ...and not conjectural or Second**, the party must establish a causal connection between the injury and the conduct of which he complains... **Third**, it must be likely that a favorable decision will redress the injury...These elements are indispensable to the Plaintiff's case, and must be supported by the same degree of evidence at each stage of litigation as other matters on which Plaintiff bears the burden of proof. *Lujan* 504 U.S. at 560," *Petty v. Daimler/Chrysler Corp.*, 91 S.W.3d 765. (emphasis added)

REQUESTED FOR MANDATORY JUDICIAL NOTICE (Rule 201(d), (f))

Please take mandatory judicial notice that there are no exemptions from the elements of standing for government, and that the three Tennessee elements of standing apply in criminal cases as follows: [CRIMINAL CASE] "To establish one's standing to bring an action, "a party must demonstrate (1) that it has sustained a distinct and palpable injury, (2) that the injury was caused by the challenged conduct, and (3) that the injury is apt to be redressed by a remedy the court is prepared to give." *City of Chattanooga v. Davis*, 54 S.W.3d 248, 280 (Tenn. 2001).

REQUEST FOR MANDATORY JUDICIAL NOTICE (Rule 201(d), (f))

Please take mandatory judicial notice

- (1) that the plaintiff has failed to demonstrate by indictment or at trial that it has sustained a distinct and palpable injury;
- (2) that the plaintiff has failed to demonstrate by indictment or at trial that the injury was caused by the accused's challenged conduct; and
- (3) that the injury is not apt to be redressed by a remedy from the court since elements (1) and (2) have failed.

2.3. Court rulings on elements of standing:

- "Standing is a threshold jurisdictional question which must be addressed prior to and independent of the merits of a party's claims." *Bochese v. Town, of Ponce Inlet*, 405 F.3d 964, 974 (11th Cir. 2005).

●“The requirement of standing, however, has a core component derived directly from the Constitution. **A Plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct** and likely to be redressed by the requested relief.” *Allen v. Wright*, 468 U.S. 737, 751 (1984) (emphasis added) (see *United for Separation of Church and State, Inc.*, 454 U.S. 464, 471-476) (emphasis added)

●“In determining whether the Plaintiff has a personal stake sufficient to confer standing, the focus should be on whether the complaining party has alleged an **injury in fact**. . .” *Mayhew v. Wilder*, 46 S.W.3rd 760, 767.(emphasis added)

●“The requirement of “standing” is satisfied if it can be said that the Plaintiff has alleged a **legally protectible and tangible interest** at stake in the litigation. *Guidry v. Roberts*, La.App. 331 So.2d 44, 50. . . . and [“standing”] seeks to insure that the Plaintiff has alleged such a personal stake in the outcome of the controversy as to **assure concrete adverseness**. *Campaign Clean Water, Inc. v. Ruckleshaus*, D.C. Va., 361 F.Supp. 689, 692.” Black’s Law Dictionary, 6th Ed., p. 1405 (emphasis added)

2.4. Because the plaintiff has failed to demonstrate the three essential elements of standing this court lacks jurisdiction and the convictions are void. Without standing the plaintiff has no cause of action – no *corpus delicti* – and the case is void because there is no justiciable issue before the court.

REQUEST FOR MANDATORY JUDICIAL NOTICE (Rule 201(d), (f))

Please take mandatory judicial notice that because (1) the plaintiff has failed to demonstrate the requisite elements of standing, (2) there is no justiciable cause of action, and (3) the convictions are void.

2.5. Elements of **corpus delicti** – In order to have a *corpus delicti* a case requires a valid "cause of action." A valid cause of action requires three elements. The three elements are: (1) a violation of a legal right, (2) damage or injury, (3) redress-ability by the court.

2.6. There is no evidence of a violation of plaintiff’s legal right or of damages or injury. Therefore, there is no valid cause of action, the court has no jurisdiction and the

convictions are void.

REQUEST FOR MANDATORY JUDICIAL NOTICE (Rule 201(d), (f))

Please take mandatory judicial notice that there is no evidence of record of a violation of a legal right or of damages or injury. Therefore, there is no cause of action.

2.7. Void judgment case law:

- A void judgment is one which shows upon face of record a want of jurisdiction in court assuming to render the judgment.

Underwood v. Brown, 244 S.W. 2d 168 (Tenn. 1951). (Also see

Richardson v. Mitchell, 237 S.W. 2d 577, (Tenn.Ct. App. 1950)

- "Where the court is without jurisdiction, it has no authority to do anything other than to dismiss the case." *Fontenot v. State*, 932 S.W.2d 185 "Judicial action without jurisdiction is void."-Id (1996)

- "If the trial court is without subject matter jurisdiction of defendants case, **conviction and sentence would be void ab initio.**" *State v. Swiger*, 708 N.E.2d 1033, 125 Ohio.App.3d 456, dismissed, appeal not allowed, 694 N.E.2d 75, 82 Ohio St.3d 1411 (1998)

- "Without jurisdiction, criminal proceedings are a nullity." *State v. Inglin*, 592 N.W.2d 666, 274 Wis.2d 764 (1999)

3. **JURISDICTION LOST.** Even if a court (judge) has or appears to have subject matter jurisdiction, subject matter jurisdiction can be lost.

- Jurisdiction is lost when a judge does not follow statutory procedure,

Armstrong v Obucino, 300 Ill 140, 143 (1921),

- Jurisdiction is lost when there is a violation of due process, *Johnson v Zerbst*, 304 U.S. 458, 58 S.Ct. 1019 (1938); *Pure Oil Co. v City of Northlake*, 10 Ill.2d 241, 245, 140 N.E.2d 289 (1956); *Hallberg v Goldblatt Bros.*, 363 Ill 25 (1936).

- Jurisdiction is lost where no justiciable issue is presented to the court

through proper pleadings, Ligon v Williams, 264 Ill.App.3d 701, 637 N.E.2d 633 (1st Dist. 1994)

- Jurisdiction is lost where the statute is vague, People v Williams, 638 N.E.2d 207 (1st Dist. 1994)

- Jurisdiction is lost where an order/judgment is based on a void order/judgment, Austin v. Smith, 312 F.2d 337, 343 (1962); English v English, 72 Ill.App.3d 736, 393 N.E.2d 18 (1st Dist. 1979)

- "A court's authority to exercise its subject matter jurisdiction over a case may be restricted by failure to comply with statutory requirements [LIKE MANDATORY JUDICIAL NOTICES] that are mandatory in nature and, thus, are prerequisite to court's lawful exercise of that jurisdiction." Moore v. Com., 527 S.E.2d 406, 259 Va. 431 (2000)

3.1. This court lost any presumed jurisdiction it may have had at trial by denying me due process and equal protection of the laws. My amended motion to dismiss was denied without a hearing, and without the prosecutor bearing the burden of establishing jurisdiction.

3.2. Further, the court denied my constitutionally secured right (1) to call my witnesses, (2) denied my constitutionally secured right to know nature and cause of accusations, (3) denied my constitutionally secured right to inform the jury of its right of nullification, (4) denied my constitutionally secured right to use the Bible as my main source of defense

<p>REQUEST FOR MANDATORY JUDICIAL NOTICE (Rule 201(d), (f)) Please take mandatory judicial notice that the U.S. Supreme Court has held that jurisdiction can be lost when there is a denial or violation of due process at <u>Johnson v Zerbst</u>, 304 U.S. 458, 58 S.Ct. 1019 (1938)</p>

4. **CRIMINAL ELEMENTS NOT PROVEN.** The “*mens rae*” or guilty mind not proven.

- 4.1. The guilty mind, “*mens rae*,” is a necessary element of a crime. There is no evidence of me having a knowing or intentional criminal / culpable mind with respect to any of my charges. Therefore, the convictions are void.

REQUEST FOR MANDATORY JUDICIAL NOTICE (Rule 201(d), (f))
Please take mandatory judicial notice that there is no evidence to support that criminal intent, guilty mind or *mens rae* was proven at trial.

- 4.2. There is no evidence that *mala in se* was proven at trial, i.e., morally evil crime.

REQUEST FOR MANDATORY JUDICIAL NOTICE (Rule 201(d), (f))
Please take mandatory notice that there is no evidence that the accused’s charges were *mala in se* in nature.

5. **VOID FOR VAGUENESS.** Count 2 is void for vagueness since there is no definition of “carry” or “intent to go armed.” Therefore the conviction is void and must be overturned.
6. **UNCONSCIONABLE PUNISHMENT FOR EXERCISING FREEDOM OF CONSCIENCE.**
- 6.1. Freedom of conscience / right of conscience is a God-given right secured by Article 1, Sec. 3 of the Tennessee Declaration of Rights.
- 6.2. Penalizing me for exercising my right of freedom of conscience in regards to the non-use of the SSN is a violation of the Tennessee Constitution. Punishment for obeying my conscience is in violation of my constitutionally secured right of freedom of conscience and is unconstitutional and unconscionable.

REQUEST FOR MANDATORY JUDICIAL NOTICE (Rule 201(d), (f))
Please take mandatory judicial notice that Article 1, Sec. 3 of the Tennessee Declaration of Rights secures and protects the right/freedom of conscience from control or interference. “That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience; . . . **that no human authority can, in any case whatever, control or interfere with the rights of conscience; . . .**”

7. **UNCONSCIONABLE PUNISHMENT FOR NON-EXISTENT LAW.**

7.1. Penalizing me for the weapons crime (TCA 39-17-1307) that was repealed and doesn't exist any longer is unconstitutional and unconscionable.

REQUEST FOR MANDATORY JUDICIAL NOTICE (Rule 201(d), (f))
Please take mandatory judicial notice that TCA 39-17-1307 has been changed as of July 1, 2014 making the accused's charge void.

8. **NECESSITY.** Since the accused, for conscientious religious and other reasons stated in the letter to Mr. Bill Gibbons, had no remedy for obtaining a driver license without using a SSN, he therefore had no choice and was compelled to travel in his truck under the law of absolute necessity in order to live and care for himself and for his terminally ill 94 year mother whom he cared for 24/7 as her sole provider.

“Necessity knows no law.” (maxim of law)

8.1. Under the law of necessity, the accused should be excused from any vehicle code and weapons criminal charges because he acted under a duress of circumstances to protect and provide for his and his mother's life and health with no other acceptable choices.

8.2. Definition: Black's Law Dictionary, 6th Ed., p.1030

- **Necessity.** Controlling force; irresistible compulsion; a power or impulse so great that it admits no choice of conduct. That which makes the contrary of a thing impossible. The quality or state of being necessary, in its primary sense signifying that which **makes an act or event unavoidable.** Quality or state of fact of being in **difficulties or in need; a condition arising out of circumstances**

that compels a certain course of action. *Bykofsky v. Borough of Middletown*, D.C.Pa., 401 F.Supp. 1242, 1250. See Irresistible impulse. A person is excused from that it admits no choice of conduct. That which makes the contrary of a thing impossible. The quality or state of being necessary, in its primary sense signifying that which makes an act or event unavoidable. Quality or state of fact of being in difficulties or in need; **a condition arising out of circumstances that compels a certain course of action.** *Bykofsky v. Borough of Middletown*, D.C.Pa., 401 F.Supp. 1242, 1250. See

Irresistible impulse. A person is excused from criminal liability if he acts under a duress of circumstances to protect life or limb or health in a reasonable manner and with no other acceptable choice.

9. **CRIMINAL JUSTICE SYSTEM VIOLATES THE 10 COMMANDMENTS.** The Ten Commandments are violated as follows:

- 9.1. #1 - Thou shalt have no other Gods before me. Exodus 20:3 All judgments are to be for God and not for the fictitious “state” which has become a god. Deut. 1:16
- #3 - Thou shalt not take the name of the Lord thy God in vain. False swearing of the oath of office and not securing the peoples’ God-given rights as promised.
- #8 - Thou shalt not stealing. The law enforcement industry steals enormous productive time from people and considerable unearned money at the barrel of a gun.
- #9 - Thou shalt not bear false witness. Police and prosecutors falsely conceal the whole truth about the vehicle code and other laws from the people regarding victimless crimes.
- #10- Thou shalt not cover. The state covets the peoples’ money, land, property, etc. which they are not lawfully entitled to.

10. **SUMMARY – REASONS FOR OVERTURNING AND NULLIFYING CONVICTIONS**

Based on the mandatory judicial notices the convictions must be overturned as an operation of law, i.e., the plaintiff has no standing and no cause of action meaning there is no justiciable case.

- 10.1. Plaintiff failed to meet the three elements of standing and has no cause of action by operation of law. This Court has no jurisdiction over a non-justiciable issue and judgment is void. Convictions must be overturned.
- 10.2. There is no evidence of a legal right and damages and so there is no corpus delicti.
- 10.3. There are no elements of crime in evidence.
- 10.5. This court lost jurisdiction because of constitutional due process violations.
- 10.6. Unconscionable punishments for exercising constitutionally secured rights.
- 10.7. There is no evidence that the accused was engaged in commerce.

- 10.8. Numerous violations of God's divine law.
- 10.9. No evidence that statutes apply to accused.
- 10.10. State exceeds jurisdictional authority – jurisdiction ends at securing unalienable rights.

11. **SUMMARY – REASONS FOR NO JAIL PENALTY**

- 11.1. Jail would interfere with the accused's God-ordained ministry.
- 11.2. Unjust violence and cost for victimless crime – there is no injury or damages .
- 11.3. There is no evidence of a legal right being violated.
- 11.4. No purpose in punishment for exercising the right of conscience.
- 11.5. Lost jurisdiction, no due process.
- 11.6. The weapons statute has been repealed - there is no law.
- 11.7. Accused is not a repeat offender.
- 11.8. DMV record is clean. Awaiting Gibbon's reply letter.
- 11.9. Productive member of society loss of annual income.
- 11.10. Community service is a better choice.
- 11.11. Completely unscriptural.
- 11.12. Law of necessity overrode the vehicle code statutes.