IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

STATE OF TENNESSEE,	)	
	)	
Plaintiff/Appellee,	)	
	)	
v.	)	Case No. M2016-CCA-R3-CD
	)	
Arthur Jay Hirsch, *pro se,*	)	**[Oral Argument Requested]**
	)	
Defendant/Appellant.	)	
	)	
_____/		

Rule 3 Appeal from the Final Judgment of the
Circuit Court for Lawrence County, Case No. 32518

BRIEF OF APPELLANT

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[1]Appellant, *pro se*, is not trained in law or skilled at writing briefs, and requests that this Court not hold this brief to the same stringent reading and high standards of perfection as one drafted by practicing lawyers. See *Puckett v. Cox*,(456 F2d 233 (1972 Sixth Circuit USCA); *Haines v. Kerner,* 92 Sct 594; *Conley v. Gibson*, 355 U.S. 41 at 48 (1957); *Power* 914 F2d 1459 (11th Cir1990); *Hulsey v. Ownes.* 63 F3d 354 (5th Cir 1995); *In Re: Hall v. Bellmon*, 935 F.2d 1106 (10th Cir. 1991).

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1985) (Section 455(a) "is directed against the appearance of partiality, whether or not the judge is actually biased.") ("Section 455(a) of the Judicial Code, 28 U.S.C. §455(a), is not intended to protect litigants from actual bias in their judge but rather to promote public confidence in the impartiality of the judicial process.")

Marbury v. Madison, 5 U.S. 137

Mayhew v. Wilder, 46 S.W.3rd 760, 767

McVeigh v. *United States*, 11 Wall. 259

Metropolitan Air Research Testing Auth. Inc., v. Metropolitan Gov't of Nashville and Durston County, 842 S.W.2d 611, 615

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Missouri Pac. R. Co. v. Mackey, 127 U.S. 205, 8 S.Ct. 1161, 32 L.Ed. 107; (See *Leeper v. State of Texas*, 139 U.S. 462, 11 S.Ct. 577, 35 L.Ed. 225; *Giozza v. Tiernan,*148 U.S. 657, 13 S.Ct. 721, 37 L.Ed. 599; *Duncan v. Mo.,* 152 U.S. 377, 14 S.Ct. 570, 38 L.Ed. 485)

Moore v. Com., 527 S.E.2d 406, 259 Va. 431 (2000)

Norton v. Shelby County, 118 U.S. 425

Olmstead v. United States. 277 U.S. 438, 478 (1928); see also *Washington v. Harper*, 494 U.S. 219 (1990)

People v Williams, 638 N.E.2d 207 (1st Dist. 1994)

Petty v. Daimler/Chrysler Corp., 91 S.W.3d 765

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Turner v. Fisher, 222 U.S. 204 (1911)

Tyler v. Judges of Court of Registration, 179 U.S. 405, 409 (1900)

Underwood v. Brown, 244 S.W. 2d 168 (Tenn. 1951). (Also see *Richardson v. Mitchell*, 237 S.W. 2d 577, (Tenn.Ct. App. 1950)

U.S. v. Giese, 597 F.2d 1170, 1199 (9th Cir.), Cert. Denied, 444 U.S. 979 (1979)

United States v. *Gradwell*, 243 U.S. 476, 485 (1917) *U.S. v. Smith*, 962 F.2d 923, 935 (9th Cir. 1992)

U.S.C.A. Const. Amed. 5, *Hays v. Louisiana Dock Co.*, 452 N.E.2D 1383 (Ill. App. 5 Dist. 1983)

Ward v. Village of Monroevill, 409 U.S. 57, 61-62

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

Windsor v. *McVeigh*, 93 U.S. 277

Wines v. Lake Havasu Boat Mfg., Inc., 846 F.2d 40, 42 (8th Cir. 1988)

Wong Yang Sung v. *McGrath*, 339 U.S. 33, 45-46 (1950)

Ziegler v. *R.R. Co.*, 58 Ala. 594; *Wilburn* v. *McCally*, 63 Ala. 436.

Tenn. Const. Art. 1, § 3

Tenn. Const. Art. 1, § 19

Tenn. Const. Art. 1, § 26

Tenn. Const. (1796) Art. 10 § 4

Tenn. Code Ann. § 39-17-1307(a)(1)
Tenn. Code Ann. § 55-1-103
Tenn. Code Ann. § 55-4-101
Tenn. Code Ann. § 55-12-139
Tenn. Code Ann. § 55-50-504
Tenn. R. Evid, Rule 611[c]

U.S. Const. 2nd Amendment
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The Declaration of Independence; Articles of Confederation;, Northwest Ordinance; U.S. Constitution

Maxims of Law

- Where the law is uncertain, there is no law. *Ubi jus incertum, ibi jus nullum*.
- A wrong is not presumed. *Injuria non praesumitur*. Co. Litt. 232.
- The court has nothing to do with what is not before it [e.g. vague statute]. *Nihil habet forum ex scen*
- It is a miserable state of things where the law is vague and uncertain. *Res est misera ubi jus est vagam et invertum*. 2 Salk. 512.
- Where the law is uncertain, there is no law. *Ubi jus incertum, ibi jus nullum*.
- A thing, to be brought to judgment, must be certain or definite. *Oportet quod certa res deducatur in judicium*. Jenk. Cent. 84.
- Things uncertain are held for nothing Dav. 33. *Incerta pro nullius habentur*.

Matthew 4:4

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

The main issues and questions are whether or not Appellant received a fair trial, and whether or not he was convicted under a vague/void statute (Tenn. Code Ann. § 39-17-1307(a)(1)), and whether or not the trial Court had or lost subject matter jurisdiction. The record shows that Appellant was injured in his substantial rights by the trial Court preventing him from being heard on his motion to dismiss for lack of jurisdiction, and by denying him of his constitutionally secured right to know the nature and cause of his accusations, to subpoena witnesses and examine them under oath, and to exercise his right of free speech and of conscience by depriving him the use of the Bible in his defense. The issue of the trial Court's possible loss of subject matter jurisdiction is also presented for review as well. Appellant, *pro se*, has organized these issues for the Court's review as follows:

(1) COUNT TWO CHARGING STATUTE Tenn. Code Ann. § 39-17-1307(a)(1) (**EXHIBIT A**)

Statute void for vagueness

Conflicts with U.S. Const., 2nd Amendment - infringement

Conflicts with Tenn. Const., Art. 1, § 26

(2) PLAIN ERRORS

U.S. Const., 14th Amendment - due process and equal protection of the laws violation

Tenn. Const., Art. 1, § 9 - right to know nature and cause of accusations denied

Tenn. Const., Art. 1, § 9 - right to call witnesses denied

Tenn. Const., Art. 1, § 3 - right of conscience (freedom of religion) denied

(3) JURISDICTION: LACK OR LOSS OF SUBJECT MATTER JURISDICTION

Lack of standing

Loss of jurisdiction because of due process violations

Lack of jurisdiction because of vague statute

Lack of jurisdiction because of judgment order issued on vague/void statute

ISSUE 1.0

COUNT TWO STATUTE: VOID FOR VAGUENESS AND CONTRARY TO FEDERAL AND STATE CONSTITUTIONS

1.1. Appellant asks whether or not Count Two statute Tenn. Code Ann. § 39-17-1307(a)(1) (pre-amended)

(a) is void for vagueness since the word "carries/carry" and the phrase "intent to go armed" is not defined in the statute leaving the meaning uncertain and speculative, and,

(b) is a violation of Appellant's constitutionally secured U.S. Const., 14th Amendment right to due process and equal protection under the laws due to vagueness.

1.2. Appellant asks whether or not Count Two statute Tenn. Code Ann. § 39-17-1307(a)(1), as a regulatory law and product of the state legislature, violates Appellant's non-statutory natural, unalienable right of self preservation, and his constitutionally secured right to keep and bear arms under the U.S. Const. 2nd Amendment without government infringement.

1.3. Appellant asks whether or not Count Two statute Tenn. Code Ann. § 39-17-1307(a)(1), if void for vagueness, is unconstitutional per Tenn. Const., Art. 1, § 26.

ISSUE 2.0

PLAIN ERRORS: VIOLATIONS OF 14TH AMENDMENT RIGHT OF DUE PROCESS AND EQUAL PROTECTION OF THE LAWS

2.1. Appellant asks whether or not the trial Court's judge, Judge Stella Hargrove ("Judge Hargrove") violated Appellant's substantial constitutionally secured 14th Amendment right to due process and equal protection of the laws, as well as other secured rights as follows: because of the following:

2.1.1. **INAPPROPRIATE BIASED STATEMENT TO JURY**. Judge Hargrove showed bias by informed the jury that Appellant's trial would last only one day (how did she

know that?) revealing her pre-determination of how the trial would proceed. By this she signaled to the jury that Appellant's case did not have much substance, and that she was putting the trial on a "fast track," seeing to it that "it will" be over that day. The length of Appellant's defense was unfairly limited by Judge Hargroves' biased time constraints and rushing to judgment.

JUDGE HARGROVE: "We have got a trial for you today that we will [not "may"] finish in one day. I cannot tell you how long that might take, but please know that each side of this case certainly be encouraged to **move the case along** as well as possible for you." (Tr. 1, 2)

JUDGE HARGROVE: "Now, let me encourage you to stay with us if you can. **We are going to finish this case today**, stay with us and be part of our last trial this year." (Tr. 4)

THE COURT: Will you stand for him and plea, Mr. Morrow, **we have got to get through that hurdles** [ONE DAY TRIAL PROMISE TO KEEP]? (Tr. 41)

THE COURT: Yes, sir, I'll enter a plea of not guilty after each of the four charges and **that will get us on the road to our trial** [BACK ON FAST TRACK]. (Tr. 42)

THE COURT: Mr. Hirsch, that has nothing to do historically with our case**. So let's move on now. Let's move on,** that's my ruling. (Tr. 132)

2.1.2. **HEARING DENIED**. Appellant's motion to dismiss for lack of jurisdiction was denied by Judge Hargrove without a hearing. (Tr. 40)

MR. HIRSCH: I have a motion to dismiss for lack of jurisdiction.
THE COURT: That's denied. Note your objection, denied. Will you do the order?
CLERK: Yes.
MR. HIRSCH: I object because the burden of proof for lack of jurisdiction as I understand it is to be borne by the prosecution."
THE COURT: Well, we'll see at the end of the trial. You can renew that motion. They have to prove jurisdiction or venue and they will.
MR. HIRSCH: But why go through the trial if it is shown here that there is no jurisdiction on the issues that I raise?
THE COURT: Overruled, sir. Sit down, please,
MR. HIRSCH: I object, Your Honor.

Jurisdiction was conclusively presumed by Judge Hargrove without it being

established by the prosecutor and the proceedings continued showing partiality. (See Tr. 40 above)

2.1.3. **RIGHT TO KNOW NATURE AND CAUSE DENIED**. Appellant's constitutionally secured right to know the nature and cause of the accusations against him before arraignment and trial was denied. (Tr. 41, 42)

> THE COURT: . . . My question to you as she reads the indictment, we need to get your plea of guilty or not guilty after each charge. I anticipate it will be not guilty.
> MR. HIRSCH: I have not been arraigned on that. I can't plead one way or the other until I have more understanding on the charges.
> THE COURT: Will you stand for him and plea, Mr. Morrow, **we have got to get through that hurdles** [FAST TRACK[?
> MR. HIRSCH: Well, I have questions about the charges that I would like answered.
> THE COURT: . . . so will you plead guilty or not guilty as you understand the charges to be right now? [BEING COERCED TO PLEAD WITHOUT KNOWLEDGE]
> MR. HIRSCH: Well, I don't understand the charges.
> THE COURT: Well, you have got to plead one way or the other, guilty or not guilty. If not, I'll plead for you of not guilty. Do you wish for the Court to do that?
> MR. HIRSCH: No, I wanted to have more information.
> THE COURT: Well, we are not going to have any more information, sir. Are you going to plead guilty or not guilty after each charge, sir?
> MR. HIRSCH: I would like the Court to enter a plea.
> THE COURT: All right, I will.
> MR. HIRSCH: I am not prepared to do that.
> THE COURT: Yes, sir, I'll enter a plea of not guilty after each of the four charges and **that will get us on the road to our trial** [RUSH TO KEEP THE PROMISE].

2.1.4. **RIGHT TO CALL WITNESSES DENIED**. Appellant's constitutionally secured right to subpoena witnesses to testify under oath, necessary to his defense, was denied.

> MR. HIRSCH: Yes, I had issued two subpoenas, one for Kim Helper, the other one for Tammy Rettig.
> THE COURT: I think she will be late but **we will be here**.
> MR. HIRSCH: Beg your pardon?
> THE COURT: **She is going to be here**. [SHE WAS TOLD BY JUDGE *NOT* TO APPEAR – SEE BELOW] Who else?
> MR. HIRSCH: Just those two, your Honor. Tammy Rettig.
> THE COURT: Well, **they are definitely here** [UNTRUE - KIM HELPER WAS NOT THERE - SEE BELOW]. Is the State ready if the jury is?

(Tr. 53, 54)

THE COURT: There is no difference than you and any other defendant, Mr. Hirsch. I don't see where Ms. — you want Ms. Helper to come here for some reason? [YES! TO BE APPELLANT'S WITNESS] [See Tr. 54 - JUDGE HARGROVE WAS UNTRUTHFUL AND SAID THAT KIM HELPER WAS "DEFINITELY HERE" WHICH SHE WAS NOT.]

MR. HIRSCH: I had a number of questions to ask.

THE COURT: What kind of questions? Just give me an example. [BADGERING APPELLANT - DID NOT DO THIS WITH PROSECUTOR - PROTECTING THE DISTRICT ATTORNEY FROM TESTIFYING UNDER OATH – SHOWING RESPECT OF PERSONS]

MR. HIRSCH: Nature and cause with - - - [JUDGE HARGROVE WOULDN'T LET APPELLANT FINISH GIVING EXAMPLES OF INTENDED QUESTIONS – SHOWED IRRITATION]

THE COURT: She just signed the indictment. [JUDGE HARGROVE PRESUMED TO KNOW APPELLANT'S QUESTIONS COME TO KIM HELPER'S DEFENSE – ACTING AS CO-PROSECUTOR – NOT NEUTRAL]]

MR. HIRSCH: Part of what she did – doesn't she represent the State of Tennessee?

THE COURT: Well, in that capacity of signing the indictment, the DA's office only. The grand jury returned the indictment, she didn't. [APPELLANT DIDN'T SAY SHE DID - JUDGE GOING ALL OUT TO PROTECT KIM HELPER FROM APPEARING AND WITNESSING]

MR. HIRSCH: How do you have an accuser that you can't see, you can't ask questions, they are not under oath?

THE COURT: She is not an accuser. [MORE UNTRUTH][2] She just signed the indictment that the grand jury returned. [SHOWING FAVORITISM BY KEEPING THE DISTRICT ATTORNEY FROM TESTIFYING UNDER OATH]

MR. HIRSCH: Who is my accuser?

THE COURT: The trooper here, he presented it to the grand jury.

MR. MORROW: The trooper probably testified at the grand jury.

MR. HIRSCH: He testified but the accuser says at the top [indictment] that it's the plaintiff is the State of Tennessee. That is no natural person.

THE COURT: **I am not going to require Ms. Helper to come so tell her just to stay put**. [**APPELLANT IS DENIED HIS WITNESS BY JUDGE HARGROVE'S COMMAND**]

MS. RETTIG: Yes, ma'am. (Tr. 113, 114, 115)

2.1.5. **RIGHT OF CONSCIENCE DENIED**. Appellant's constitutionally secured right of conscience (religious freedom) was denied by the trial Court refusing to allow

[2]**Accusser**. The person by whom an accusation is made (e.g. **State or United States in criminal proceedings**). **A person who signs and swears to charges, directs charges be brought**, or has interest other than official in prosecution of accused. *U.S. v. Orsic*, AFCMR, 8M.M. 657, 658. Black's Law Dictionary, 6th Ed., p. 23

him to use the Bible in his opening statement and in his main defense (Tr. 59, 60).

MR. HIRSCH: First, I would like to begin by saying I'm a servant of the Lord Jesus Christ, that I come in the name of the Lord here. Ms. Rettig comes in the name of the State. I come in the name of Jesus Christ, the Judge of all the earth. I believe the Holy Scriptures, the Bible, is the supreme law of the land. There are laws that men put on the books and try to enforce, have to be in harmony with God's law and his word.

We see many times where there is reference to the supreme being of God Almighty. Judge David Allen - - -

MS. RETTIG: Judge, I hate to interrupt bur I'm going to object to this. Opening statements is for what he anticipates the proof will be. [APPELLANT INTERRUPTED – COULD NOT FINISH HIS THOUGHT]

THE COURT: Mr. Hirsch, in Tennessee what we do is, we are going to give the jury an outline of what to expect the proof to be and that's what we are here about. [JUDGE PREJUDICIALLY ASSUMED APPELLANT'S INTENDED STATEMENTS WOULD BE IRRELEVANT WITHOUT HEARING HIM OUT – DUE PROCESS VIOLATION] Those four charges, and it is what you should be doing now, [THAT'S WHAT APPELLANT WAS TRYING TO DO BUT JUDGE AND PROSECUTOR DIDN'T WANT TO HEAR THE TRUTH] what they should anticipate the proof will be.

MR. HIRSCH: Your Honor, **this is the foundation for what I am going to say**.

THE COURT: **No, sir, we don't need a foundation.** [WE DON'T WANT TO HEAR YOUR MORAL DEFENSE - BIASED - SHOULD BE RECUSED]

MR. HIRSCH; So we can't use the word of God in the courtroom?

THE COURT: Well, **we have separation of church and state**.[WHAT? JUDGE SHOULD BE DISQUALIFIED FOR PREJUDICE. APPELLANT'S DEFENSE HAD NOTHING TO DO WITH SEPARATION OF CHURCH AND STATE. HER WAY OF SAYING "SHUT UP!"] What we are going to do is, you are allowed to tell the jury what you anticipate the case that is going to be about, what they are going to hear and what they should – how they should approach and determine the verdict. [EXACTLY WHAT APPELLANT WAS TRYING TO DO]

MR. HIRSCH: I understand. But I'm also pointing their attention to the **supreme law** - - -

THE COURT: I **think you've done that sufficiently**. [MORE BIAS. APPELLANT WASN'T GIVEN A CHANCE TO DEVELOP HIS STATEMENT AND DEFENSE] Thank you. You may proceed.

(Tr. 50, 60, 61, 62)

MR. HIRSCH: . . . Now, since the Judge will not allow me to use the scriptures, I have support for all the rights that we have. For the one to move and locomote and travel without having government restrictions . Now, that doesn't mean a person is reckless, injuring someone, damaging property, there is recourse for that.

Now, if a person owns a business where they are transporting things - - -

MS. RETTIG: Judge, opening should be what he anticipates the proof will be. This is purely argument. (Tr. 62)

Note: The Court also denied Appellant his right to free speech (relevant to the trial) to discuss the law with the jury contrary to their constitutionally secured right to decide both facts and law.

- Tenn. Const. Art. 1, § 19 ". . . the jury shall have a right to determine the law and the facts, under the direction of the court, as in other criminal cases."

- Tenn. Const. Art. 1 § 19 ". . . The free communication of thoughts and opinions, is one of the invaluable rights of man, and every citizen may **freely speak**, write, and print on any subject, being responsible for the abuse of that liberty."

> THE COURT: The Court, Mr. Hirsch, tells the jury the law, you don't tell them the law.
> MR. HIRSCH: I was only saying what I learned.
> THE COURT: **Well, you cannot do that.**
> MR. HIRSCH: I can't say what I learned?
> THE COURT: **It's not appropriate. They only follow the Court's law that I give them.** [IT'S CLEAR THAT THIS A **TRIAL BY JUDGE**, NOT TRIAL BY JURY]

ISSUE 3.0

JURISDICTION:
LACK OR LOSS OF SUBJECT MATTER JURISDICTION

3.1. Appellant asks whether or not the trial Court had subject matter jurisdiction, or lost subject matter jurisdiction in whole or in part because of the following:

3.1.1. LACK OF STANDING. Artificial/fictitious entity, Plaintiff/Appellee, THE STATE OF TENNESSEE, lacked the three Tennessee essential elements of standing; (*See Petty v. Daimler/Chrysler Corp.*, 91 S.W.3d 765 below)

3.1.2. LOST JURISDICTION BECAUSE DUE PROCESS DENIED. Appellant's constitutionally secured rights in Issue II above were denied by non-neutral, biased Judge Hargrove, and he was deprived of due process and equal protection of the laws (14th Amendment); (See *Klugh v. U.S.*, 620 F.Supp. 892 (D.S.C. 1985) below)

3.1.3. JUDGMENT ORDER ISSUED ON VAGUE STATUTE. Appellant asks whether or not Judge Hargrove's judgment order is void if Count Two statute Tenn. Code Ann. § 39-17-1307(a)(1) is deemed void for vagueness, and consequently, would be

a violation of fundamental due process as held by the U.S. Supreme Court; (See *Connally v. General Const. Co.*, 269 U.S. 385, 391 (1926) below)

3.1.4. INDICTMENT VEHICLE CODE STATUTES MISAPPLIED. Indictment statutes 1, 3, 4 are commercial in nature and not applicable to Appellant in his constitutional status and private capacity, i.e., the statutes cited in the indictment counts 1, 3, 4 are taxable commercial privilege statutes that were misapplied to Appellant as presumably engaged in regulated commercial activity, i.e. transporting people or goods for hire on the public highways.

STATEMENT OF THE CASE

BACKGROUND (Tr. 78-100)

Appellant was subjected to an investigative police encounter in the Lawrenceburg Kroger's grocery store parking lot at approximately 1:00 p.m. on December 10, 2013 with respect to a non-Tennessee, native American license tag on his pickup truck.

Said investigative encounter turned custodial and resulted in Appellant's warrantless arrest and him being jailed for having a loaded pistol inside his truck cab without a permit.

Appellant was cited for a weapons charge, suspended Virginia driver's license, and lack of registration and insurance.

Appellant was charged by indictment (**EXHIBIT C**) with four counts, i.e., weapons charge, suspended Virginia driver's license, and lack of registration and insurance.

INDICTMENT COUNT TWO

Appellant was convicted under Court Two of violating (pre-amended) statute Tenn. Code Ann. § 39-17-1307(a)(1) for "carries/carrying" a loaded .22 cal. pistol in his pickup truck with the "intent to go armed." The word "carries/carry" and the phrase "intent to go armed" is not defined in the statute leaving the meaning uncertain, vague and speculative. (See **Ex. A**) (The U.S. Supreme Court has held that a vague statute violates the first fundamental principle of due process. (See *Connally* and *Dunn* below.)

Said statute's vagueness gave opportunity for the assistant district attorney at trial to choose definitions of terms most favorable to the State and prejudiced the jury against Appellant resulting in his conviction. (Tr. 108, 152-154; 171, 172)

The regulatory nature of said statute conflicts with Appellant's 2nd Amendment unalienable right to keep and bear arms without government infringement, and because it is vague it is unknown whether it is or is not in accord with Tenn. Const., Article 1, § 26 "wearing of arms."

PLAIN ERRORS

At trial Judge Hargrove denied Appellant a number of his constitutionally secured rights, namely, the right to a hearing on his motion to dismiss for lack of jurisdiction (due process violation) (Tr. 40); the right to know the nature and cause of his accusations (Tenn. Const., Article 1, § 9 violation) (Tr. 41, 42); the right to call witnesses and examine them under oath (Tenn. Const., Article 1, § 9 violation) (Tr.53, 54, 113, 114, 115); the right of conscience to use the Bible for his opening statement and defense saying it was against the separation of church and state (Tenn. Constl, Article 1 § 3 violation) (Tr.50, 60, 61, 62). All of Said errors violated Appellant's constitutionally secured U.S. Const., 14th Amendment right to due process and equal protection of the laws.

JURISDICTION AFFECTED

Appellant's expectation of a fair trial was not realized because of the above mentioned errors. He was denied a neutral, impartial tribunal and due process and equal protection of the laws. (Was the trial Court's jurisdiction lost when the court acted contrary to due process?)

Judge Hargrove denied Appellant's jurisdictional challenge by motion without a hearing. She presumed jurisdiction without it being established by the state prosecutor and continued with the trial proceedings. (Tr. 40)

Judge Hargrove ruled on Count Two's uncertain, vague statute Tenn. Code Ann. § 39-17-1307(a)(1). Appellant questions whether she had the jurisdiction to issue a judgment order with respect to the vague Count Two statute.

The record shows that Plaintiff/Appellee, an artificial entity, failed to meet in the charging document, i.e., the indictment, the three Tennessee requisite elements of standing necessary to invoke the trial Court's jurisdiction, i.e., (1) that it [Plaintiff/Appellee] had sustained a distinct and palpable injury, (2) that the injury was caused by Appellant's challenged conduct, and (3) that the injury was apt to be redressed by a remedy the trial court was prepared to give. (See *Petty v. Daimler/Chrysler Corp*., 91 S.W.3d 765; *City of*

Chattanooga v. Davis, 54 S.W.3d 248, 280 (Tenn. 2001))

The indictment (See **Ex. C**) charged the Appellant with four counts. He was convicted on all four. The three statutes he was charged with violating which were misapplied follow below:

> *Count One.* Tenn. Code Ann. § 55-50-504. The Accused is charged with having a Virginia suspended driving privilege.
>
> *Count Three*. Tenn. Code Ann. § 55-4-101. Registration required before operation – Application -- Issuance of registration and license plates -- Rules and regulations -- Temporary permit -- Transfer of registration when changing vehicles -- Fees -- Safety rules for homemade trailers. The Accused is charged with driving an unregistered motor vehicle upon the highways.
>
> *Count Four*. Tenn. Code Ann. § 55-12-139. Compliance with financial responsibility law required -- Evidence of compliance -- Issuance of citations by police service technicians**.** The Accused is charged with violating the financial responsibility statute cited.

Indictment counts 1, 3 and 4 are statutes commercial in nature, i.e., statutes which regulate commercial activity of transporting people or goods for hire on the public highways by motor vehicle. Said indictment counts wrongly presume that Appellant is engaged in a privileged government regulated commercial activity but failed to allege that fact.

Judge Hargrove denied Appellant's motion in limine (**EXHIBIT D**) requesting that all key words used by the prosecutor in the charges be defined, and not leaving the jury to assume the meanings, (e.g. "motor vehicle," "driver," etc.). Had Appellant's motion in limine been granted it would have made it clear to the jurors that the charging statutes were misapplied, since there was no evidence by the state's witness that Appellant was engaged in commercial activity. Judge Hargrove would not allow Appellant to explain his understanding on this matter of compound (deceptive) definitions.

> THE COURT: Are you objecting to the definition of motor vehicle?
> MR. HIRSCH: Well, I did but you said you overruled it.
> THE COURT: What do you want to say a motor vehicle is?

MR. HIRSCH: Well, you have to start, as I said, it is a compound [definition] - - -
THE COURT: I am not going to do that. (Tr. 162)

The indictment is insufficient on Count Two for vagueness, and on counts 1, 3, 4 for misapplication of commercial law statutes to Appellant in his private capacity. in his status as a man acting privately and outside the stream of commerce and transportation.

STATEMENT OF FACTS

1. Appellant's motion to dismiss for lack of jurisdiction was denied by Judge Hargrove without a hearing. (Tr. 40)

2. Judge Hargrove presumed jurisdiction and relieved the state prosecutor from bearing the burden of proof establishing jurisdiction upon Appellant's challenge. (Tr. 40)

3. Appellant's constitutionally secured right to know the nature and cause of the accusations was denied by Judge Hargrove. (Tr. 41, 42)

4. Appellant's constitutionally secured right to subpoena witnesses was denied by Judge Hargrove. (Tr. 53, 54, 113, 114, 115)

5. Appellant's constitutionally secured right of conscience was denied when he was forbidden to use the Bible in his opening statement and for his defense. (Tr.50, 60, 61, 62)

6. The word "carries/carry" and the phrase "with the intent to go armed" are not defined in indictment Count Two charging statute Tenn. Code Ann. § 39-17-1307(a)(1). (Ex. A)

7 The U.S. Supreme Court has held that in the absence of clear definitions of words and phrases of a statute, it is considered vague and violates the first fundamental principle of due process of law. *Dunn v. United States*, 442 U.S. 100, 112, 113 (1979) ; *Connally v. General Const. Co.*, 269 U.S. 385, 391 (1926)

8. Count Two statute Tenn. Code Ann. § 39-17-1307(a)(1) is regulatory in nature and infringes on Appellant's U.S. Const. 2nd Amendment right. (See p. 25)

9. Count Two statute Tenn. Code Ann. § 39-17-1307(a)(1) was amended in its entirety under Public Chapter No. 870 and Senate Bill 1774, and was made effective July 1, 2014. (The current amended statute allows a person to have a loaded firearm in their vehicle without a permit.) (Ex. B)

10. Black's Law Dictionary, 6th Ed., p.214, defines "carries/carry" as "To have or bear upon or about one's person, as a watch or weapon." (See p. 18)

11. The record shows that Appellant was not "carries/carrying" (per Black's definition), "bearing," or "wearing" a weapon on on his person on December 10, 2013. (Tr. 108)

12. A court's jurisdiction is lost where the statute is vague. *People v Williams*, 638 N.E.2d 207 (1st Dist. 1994)

13. The Tenn. Const. Article 1, § 26,[3] authorizes the legislature to regulate only "the wearing of arms." (See p. 19 fn)

14. Our primary unalienable rights are Life, Liberty and the Pursuit of Happiness as stated in the Declaration of Independence. (See fn 9 - Declaration of Independence)

15. Self preservation is the first law of nations, as it is of individuals. (See fn 8)

16. The sole purpose of government is to secure the Peoples' unalienable rights. (See fn 9)

17. Maxim of Law: Where the law is uncertain, there is no law. *Ubi jus incertum, ibi jus nullum*. (See p. 24)

18. Judge Hargrove suggested that Appellant's motion to dismiss for lack of jurisdiction could be heard at the end of the trial. (Tr. 40)

19. A fundamental requirement of due process is the opportunity to be heard"at a meaningful time and in a meaningful manner. *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)

20. Once jurisdiction is challenged, it must be proven. *Hagans v. Lavine*, 415 U.S. 528, 533 (1974)

21. The Tennessee five points of determining plain error are present in each of the errors in issue.

22. District Attorney Kim Helper was subpoenaed and failed to appear in court at trial. (Her non-appearance was ordered by Judge Hargrove.) (Tr.53, 54, 113, 114, 115)

23. U.S. Congress declared the Bible to be the Word of God in 1982 by Joint Resolution Public Law 97-280. (See fn 19)

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[3]Tenn. Const. Art. 1 § 26. That the citizens of this State have a right to keep and to bear arms for their common defense; but the Legislature shall have power, by law, to regulate the **wearing of arms** with a view to prevent crime. (Emphasis added)

24. Plaintiff/Appellee failed to meet the three essential elements of standing .*City of Chattanooga v. Davis*, 54 S.W.3d 248, 280 (Tenn. 2001). See p. 37

25. The State is not exempt from the three necessary elements of standing, and the elements apply to criminal as well as to civil cases. *City of Chattanooga v. Davis*, 54 S.W.3d 248, 280 (Tenn. 2001).

26. There is no evidence of a complaining party in the indictment. (*See* indictment Ex. C)

27. 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). See p. 38

28. Jurisdiction is lost where the statute is vague. *People v Williams*, 638 N.E.2d 207 (1st Dist. 1994) See p. 38

29. Tennessee Motor Vehicle Code statutes used to charge Appellant in the indictment are commercial in nature.

ARGUMENT

ISSUE I

COUNT TWO STATUTE VOID AND UNCONSTITUTIONAL

Appellant was convicted in Count Two of "carries/carrying" a loaded weapon in his pickup truck without a permit with the "intent to go armed" under statute, Tenn. Code Ann. § 39-17-1307(a)(1). This statute was amended in its entirety under Public Chapter No. 870 and Senate Bill 1774 (**EXHIBIT B**), and was made effective July 1, 2014. The current amended statute allows a person to have a loaded firearm in their vehicle without a permit. Appellant wishes to make it clear that he is only arguing against the validity and constitutionality of the pre-amended statute under which he was convicted. He is he not challenging the constitutionality of Tenn. Const. Article 1, § 26. Appellant's reasons for requesting this Court to strike his Count Two conviction are argued as follows:

Reason 1. **STATUTE VOID FOR VAGUENESS; DUE PROCESS VIOLATION; UNCONSTITUTIONAL; VOID JUDGMENT**

The word "carries/carry" and the phrase "intent to go armed" are not defined in the statute (Ex. A), leaving the meanings vague , uncertain and subject to speculation. The U.S. Supreme Court has held that in the absence of clear definitions of words and phrases of a statute, it is considered vague and violates the first fundamental principle of due process of law. For this reason the pre-amended Tenn. Code Ann. § 39-17-1307(a)(1) should be deemed vague and a violation of due process (14th Amendment), and void as applied to Appellant's conviction.

- *Connally v. General Const. Co.*, 269 U.S. 385, 391 (1926) And a statute which either forbids or requires the doing of an act in terms so **vague** that men of common intelligence must necessarily guess at its meaning and differ as to its application **violates the first essential of due process of law**. *International Harvester Co.* v. *Kentucky*, 234 U.S. 216, 221; *Collins* v. *Kentucky*, 234 U.S. 634, 638. (Emphasis added)

- *Dunn v. United States*, 442 U.S. 100, 112, 113 (1979) This practice reflects not merely a convenient maxim of statutory construction. Rather, it is **rooted in fundamental principles of due process** which mandate that no individual be forced to speculate, at peril of indictment, whether his

> conduct is prohibited. *Grayned* v. *City of Rockford*, 408 U.S. 104, 108 (1972); *United States* v. *Harriss*, 347 U.S. 612, 617 (1954); *Lanzetta* v. *New Jersey*,306 U.S. 451, 453 (1939); *McBoyle* v. *United States*, 283 U.S. 25,27 (1931). Thus, to ensure that a legislature speaks with special clarity when marking the boundaries of criminal conduct, **courts must decline to impose punishment for actions that are not "`plainly and unmistakably'" proscribed**. *United States* v. *Gradwell*, 243 U.S. 476, 485 (1917). (Emphasis added)

Left undefined, the word "carries/carry" could have a number of possible meanings, e.g. (1) an individual wearing an attached or holstered weapon on his person, (2) the cradling or clutching of an unattached or holstered weapon by an individual, (3) having a weapon in the general vicinity of an individual, (4) an individual toting or transporting a weapon in a closed or open container in or on a vehicle, peddle car, bicycle basket, motor cycle saddlebag, etc.

Without a statutory definition of the word "carries/carry" Appellant turns to Black's Law Dictionary, 6th Ed., p.214, which defines "carries/carry" as "To have or bear upon or about one's person, as a watch or weapon."

The record shows that Appellant was not wearing or bearing a firearm on his person on December 10, 2013. (Tr 107)

Undefined, the phrase "intent to go armed" could also have various uncertain and controversial meanings, e.g., (1) intent to venture out into the public having the peace of mind and security of a weapon on one's person for personal protection, (2) intent to go forth into the public to frighten and/or threaten people ["affray"] for sadistic pleasure, (3) intent to go forth into the public to commit a crime with a weapon, etc.

Since Appellant was not "carries/carrying" (per Black's definition), "bearing," or "wearing" a weapon on December 10, 2013, it was frivolous to convict Appellant for "intending to go armed."

The state prosecutor took advantage of the undefined terms of the statute and chose meanings that prejudiced the Appellant by convincing the jury to presume that by Appellant merely having his .22 caliber pistol in his pickup truck (though stored in an enclosed cooler on the front seat on the passenger side he intended to or would use his firearm unlawfully under certain hypothetical conditions and was therefore guilty of "carries/carrying" a weapon with the "intent to go armed." (Tr. 108, 152-154; 171, 172)

- Maxim of law: A wrong is not presumed. *Injuria non praesumitur*. Co. Litt. 232.

It should be noted that Tenn. Const. Article 1, § 26,[4] authorizes the legislature to regulate only "**the wearing of arms**." Nothing more. Not the manner of toting or transporting arms that are not worn on a person as alleged by the prosecutor. Appellant can find no evidence that the common meaning of "wearing of arms" in § 26 has been constitutionally broadened by amendment to include transportation away from an individual's person. Instances of judicial expansion and creative interpretation of the legislature's statutory terms "carries/carry" and "wearing of arms" is not acceptable. Constitutional construction should not be allowed by this Court.

Further, if the Count Two statute is indeed found to be void for vagueness, and is therefore a violation of fundamental due process, it follows that it is also unconstitutional and that the trial Court lacked subject matter jurisdiction, at least in part, to rule on it (void judgment)[5]. **[C]ourts must decline to impose punishment for actions that are not "`plainly and unmistakably'" proscribed**. *United States* v. *Gradwell*, 243 U.S. 476, 485 (1917). (Emphasis added)

The question then arises, Can this Court review a void judgment? It appears from the case cited below that it is likely this Court cannot review this Count Two issue if the trial Court did not have jurisdiction to to rule on the vague/void statute. Guiding principles for consideration of this issue are found in the cases cited below:

- Judgment is a void judgment if court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, **or acted in a manner inconsistent with due process** [e.g. vague statutes – see *Collins* v. *Kentucky*, 234 U.S. 634, 638 and *Dunn v. United States*, 442 U.S. 100, 112, 113 (1979) above], Fed. Rules Civ. Proc., Rule 60(b)(4), 28 U.S.C.A., U.S.C.A. Const. Amend. 5 -

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[4]Tenn. Const. Art. 1 § 26. That the citizens of this State have a right to keep and to bear arms for their common defense; but the Legislature shall have power, by law, to regulate the **wearing of arms** with a view to prevent crime. (Emphasis added)

[5]Maxim of law: The court has nothing to do with what is not before it [e.g. vague statute]. *Nihil habet forum ex scen*.

Klugh v. U.S., 620 F.Supp. 892 (D.S.C. 1985) (Emphasis added)

● **A court's jurisdiction is lost where the statute is vague.** (Emphasis added)
People v Williams, 638 N.E.2d 207 (1st Dist. 1994)

● "A judgment of a court without jurisdiction is void. **An appeal will not lie from a void judgment**." *Harvey v. City of Oneonta* 715 So. 2d 779, 781 (Ala. 1998) (Emphasis added)

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

● Judgments entered where court lacked either subject matter or personal jurisdiction, or that were otherwise entered in **violation of due process of law, must be set aside** [e.g. vague statutes per *Collins* and *Dunn* above], *Jaffe and Asher v. Van Brunt*, S.D.N.Y.1994. 158 F.R.D. 278 (Emphasis added)

● A void judgment is a simulated judgment devoid of any potency because of jurisdictional defects only, in the court rendering it and defect of jurisdiction may relate to a party or parties, the subject matter, the cause of action, the question to be determined, or relief to be granted,
Davidson Chevrolet, Inc. v. City and County of Denver, 330 P.2d 1116, certiorari denied 79 S.Ct. 609, 359 U.S. 926, 3 L.Ed. 2d 629 (Colo. 1958)

● Void judgment under federal law is one in which rendering court lacked subject matter jurisdiction over dispute or jurisdiction over parties, or **acted in manner inconsistent with due process of law or otherwise acted unconstitutionally in entering judgment**.
U.S.C.A. Const. Amed. 5, *Hays v. Louisiana Dock Co.*, 452 N.E.2D 1383 (Ill. App. 5 Dist. 1983). (Emphasis added)

Below are universally accepted maxims of law[6] with respect to vagueness and uncertainty of the law.

● It is a miserable state of things where the law is vague and uncertain. *Res est misera ubi jus est vagam et invertum*. 2 Salk. 512.

● Where the law is uncertain, there is no law. *Ubi jus incertum, ibi jus nullum*.

● A thing, to be brought to judgment, must be certain or definite. *Oportet quod certa res deducatur in judicium*. Jenk. Cent. 84.

● Things uncertain are held for nothing Dav. 33. *Incerta pro nullius habentur*.

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[6]**Maxim of Law** (*Black's Law Dictionary, 3rd Edition, (1933), page 1171*): An established principle of proposition. A principle of law universally admitted as being a correct statement of the law, or as agreeable to reason. Coke defines a maxim to be "a conclusion of reason" *Coke on Littleton, 11a*. He says in another place, "A maxim is a proposition to be of all men confessed and granted without proof, argument, or discourse." *Coke on Littleton. 67a.*

WHEREFORE, for the foregoing reasons and argument which show Count Two pre-amended statute Tenn. Code Ann. § 39-17-1307(a)(1) is (1) vague, uncertain, and void, (2) a violation of fundamental due process (14th Amendment) as stated in *Connally* and *Dunn*, supra, and (3) unconstitutional, Appellant hereby requests this Court (a) to strike his Count Two conviction for Plaintiff/Appellee's failure to state a claim upon which relief can be granted, or, (b) in the alternative, refuse to rule on count two because it is void within the judgment order.

Reason 2. **SECOND AMENDMENT CONFLICT**

Appellant's second reason for requesting this Court to overturn his Count Two conviction is that pre-amended Tenn. Code Ann. § 39 -17-1307(a)(1) is statutory in nature (i.e., a product of the legislature) and is contrary to his superior non-statutory natural right of self preservation and the right to keep and bear arms which is constitutionally secured by the 2nd Amendment, namely,

> ● Bill of Rights
> Amendment II
> "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, **shall not be infringed**."[7] (Emphasis added)

"Self preservation is the first law of nations, as it is of individuals."[8] It is a Creator-endowed inherent right[9] under natural law,[10] which as such, has been recognized from antiquity and existed by the law of the

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[7] **Infringement**. A breaking into; a trespass or encroachment upon; a violation of a law, regulation, contract, or right. Used especially of invasions of the rights secured by patents, copyrights, and trademarks. See also Encroachment; Trespass. Black's Law Dictionary, 6th Ed., p. 780-81

[8] Law of Nations. (Vattel). "DECLARATION OF RIGHTS AND DUTIES OF NATIONS." I. Every nation has the right to exist, and to protect and conserve its existence. . ."

[9] The first American Organic Law Document, the Declaration of Independence of 1776, clearly states that government's purpose is to recognize and secure (i.e. protect) the unalienable rights of the People endowed (gifted) by their Creator.

> ● "WE hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their **Creator with certain unalienable Rights**, that among these are **Life, Liberty and the Pursuit of Happiness—That to secure these Rights, Governments are instituted among Men, deriving their just powers from the consent of the governed,** that whenever

land long antecedent to the organization of the State.[11] It is not a product of the state legislature, and is superior to all positive, prohibita-type manmade laws. Further, the 2nd Amendment is a safeguard to Americans which enables them to ensure their freedom from tyranny by protecting and maintaining all their other rights. State granted taxable privileges (e.g. licenses and permits) regulating the right to keep and bear arms is obviously infringement.

Statute Tenn. Code Ann. § 39-17-1307(a)(1) is a regulatory gun control statute. It is in direct conflict with Appellant's constitutionally secured, unalienable[12] right to keep and bear arms under the Bill of Rights (not the "Bill of Privileges!"). The Bill of Rights protects citizens from the government by making law a shield of the people rather than a weapon in the hands of the government. The 2nd Amendment contains plain, unambiguous language restricting government from infringement on said right. The regulatory nature of Tenn. Code Ann. § 39-17-1307(a)(1) is clearly an infringement on Appellant's superior, non-statutory, natural right to keep and bear arms for the preservation of his life, and for the state's protection from enemies. Mala prohibita statutory crimes are unlawful when in conflict with inherent, Creator-endowed, unalienable rights. Count Two's mala prohibita statute is in conflict with Appellant's unalienable rights and is therefore

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any Form of Government becomes destructive of these ends. . ." (Emphasis added)

[10]**Natural law**. A rule of conduct arising out of the natural relations of human beings, established by the **Creator,** and existing prior to any positive precept – Webster. The foundation of this law is placed by the best writers in the **will of God**, discovered by right reason, and **aided by divine revelation** ; and its principles, when applicable, apply with **equal obligation to individuals and to nations**. 1 Kent, Comm. 2, note; Id 4, note. Black's Law Dictionary, 2nd Edition. (Emphasis added)

[11]His rights are such as existed by the law of the land long antecedent to the organization of the State, and can only be taken from him by due process of law, and in accordance with the Constitution. . . *Hale v. Henkel*, 201 U.S. 43 (1906)

[12]**Unalienable**. The state of a thing or right which cannot be sold. Things which are not in commerce, as public roads, are in their nature unalienable. Some things are unalienable, in consequence of particular provisions in the law forbidding their sale or transfer, as pensions granted by the government. The natural rights of life and liberty are unalienable. *Bouvier's Law Dictionary*, 1856 Sixth Edition

unconstitutional and void (See *Marbury v. Madison* below).

Appellant has always reserved and claims each of his constitutionally secured rights and waives none. Count Two statute does not apply to him.

Authorities.

- "The Constitution of these United States is the supreme law of the land. Any law that is repugnant to the Constitution is null and void of law." *Marbury v. Madison*, 5 U.S. 137

- "Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them." *Miranda vs. Arizona*, 384 US 436, 491

- "The claim and exercise of a constitutional Right cannot be converted into a crime." *Miller vs. U.S.*, 230 F. 486, 489

- An unconstitutional act is not law; it confers no rights; it imposes no duties; affords no protection; it creates no office; it is in legal contemplation, as inoperative as though it had never been passed" *Norton v. Shelby County*, 118 U.S. 425

- "There can be no sanction or penalty imposed upon one because of this exercise of constitutional Rights." *Snerer vs. Cullen*, 481 F. 946

- "The state cannot diminish Rights of the people." *Hurtado vs. California*, 110 US 516

As stated above, Tenn. Code Ann. § 39-17-1307(a)(1) is a regulatory, man-made gun control statute produced by the state legislature. It is repugnant to the primary Creator-endowed, unalienable rights to life, liberty and the pursuit of happiness, and to the secondary supportive right of the U.S. Constitution's 2nd Amendment, i.e., to keep and bear arms without government infringement. This constitutionally secured right is for the preservation of Appellant's life, and for the defense of the nation against enemy aggression – (not for duck hunting). It provides the means of and is the last resort for Americans to ensure freedom from despotic tyrants.

WHEREFORE, for the aforesaid reason that said statute is an unconstitutional infringement, it therefore fails to state a claim upon which relief can be granted. Appellant requests that the judgment order pertaining to Count Two be stricken or reversed and that Court Two be remanded for further proceedings not inconsistent with the striking or reversal.

Reason 3. TENN. CONST. ARTICLE 1, § 26 RIGHT

Since the word "carries/carry" and the phrase "with the intent to go armed" is not defined in the Count Two statute Tenn. Code Ann. § 39-17-1307(a)(1) (see Reason 1 above), it is vague, uncertain and void. Therefore, the statute cannot be in accord with Tenn. Const. Article 1, § 26 phrase "the wearing of arms," and is constitutionally a nullity.

- Where the law is uncertain, there is no law. *Ubi jus incertum, ibi jus nullum*.

WHEREFORE, for the foregoing reason Appellant requests this Court to strike his Count Two conviction and remand and the case for further proceedings not inconsistent with the striking.

ISSUE II

PLAIN ERRORS – VIOLATION OF 14TH AMENDMENT DUE PROCESS & EQUAL PROTECTION OF THE LAWS

Appellant lists obvious plain errors below for review which he argues materially prejudiced his substantial constitutionally secured rights which prevented him from having a fair and impartial trial. (It should be noted that the elements of plain error are present in each of the errors in issue below.)

- **"A plain error is a highly prejudicial error affecting substantial rights."** *U.S. v. Giese*, 597 F.2d 1170, 1199 (9th Cir.), Cert. Denied, 444 U.S. 979 (1979).

- **Plain error is invoked to prevent a miscarriage of justice or to preserve the integrity and the reputation of the judicial process**. *U.S. v. Smith*, 962 F.2d 923, 935 (9th Cir. 1992).

ERROR: MOTION HEARING DENIED

Trial Court judge, Judge Stella Hargrove ("Judge Hargrove"), denied Appellant's amended motion to dismiss for lack of jurisdiction and refused to allow him to be heard before trial. (Tr. 40)

After denying Appellant's motion challenging the court's jurisdiction, Judge Hargrove suggested that a hearing might be held *after* the trial was over. (Tr. 40)

A fundamental element of due process is the opportunity to be heard at a "meaningful time and in a meaningful manner." (Conducting a hearing on challenged jurisdiction after the trial is over is not at a

"meaningful time.")

> ● A fundamental requirement of due process is "**the opportunity to be heard**." *Grannis v. Ordean*, 234 U.S. 385, 394 . It is an opportunity which must be granted at a **meaningful time and in a meaningful manner**. *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) (Emphasis added)

> ● "Undoubtedly, as contended by plaintiffs in error, the **essential element of due process of law is an opportunity to be heard**, and a necessary condition of such opportunity is notice."
>
> *Simon* v. *Craft*, 182 U.S. 427; *Jacob v. Roberts*, 223 U.S. 261 (1912) (Emphasis added)

> ●[W]here the tribunal has jurisdiction its action is **not due process of law** if it refuses the accused a right to put in his defense." (Emphasis added.) *Hovey* v. *Elliott*, 167 U.S. 414; *McVeigh* v. *United States*, 11 Wall. 259; *Windsor* v. *McVeigh*, 93 U.S. 277; *Dent* v. *West Virginia*, 129 U.S. 124. *Turner v. Fisher*, 222 U.S. 204 (1911)

Judge Hargrove breached her oath of office to support the federal and state constitutions, and the law by denying Appellant's 14th Amendment[13] constitutionally secured right to due process and equal protection of the laws.

> ● Due process of law, within the meaning of the Fourteenth Amendment, is secured only when the law operates on all alike, and does not subject the individual to an arbitrary exercise of the powers of government. *Missouri Pac. R. Co. v. Mackey*, 127 U.S. 205, 8 S.Ct. 1161, 32 L.Ed. 107; (See *Leeper v. State of Texas*, 139 U.S. 462, 11 S.Ct. 577, 35 L.Ed. 225; *Giozza v. Tiernan,*148 U.S. 657, 13 S.Ct. 721, 37 L.Ed. 599; *Duncan v. Mo.,* 152 U.S. 377, 14 S.Ct. 570, 38 L.Ed. 485).

Appellant's constitutionally secured 14th Amendment rights are substantial rights.

> ● An error which has affected the **substantial right** of a defendant may be noticed at any time in the discretion of the appellate court where necessary to do **substantial justice**. *State v. Taylor*, 992 S.W.2d 941, 944 (Tenn. 1999). "Plain error" or "fundamental error" is recognized under Tenn. R. Crim. P. 52(b). *State v. Adkisson*, 899 S.W.2d 626, 639 (Tenn. Crim. App. 1994). Some errors are so fundamental and pervasive that they require reversal without regard to the facts or circumstances

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[13]**Amendment XIV**

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; **nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.** (Emphasis added)

of the particular case. *Delaware v. Van Arsdall*, 475 U.S. 673, 681, 106 S. Ct. 1431, 1436, 89 L. Ed. 2d 674 (1986). (Emphasis added)

Appellant did not waive his right to a hearing on his motion for tactical reasons, but objected to Judge Hargrove's denial.

- "Due process of law guaranteed by the federal Constitution has been defined in terms of the equal protection of the laws, that is, as being secured by laws operating on all alike, and not subjecting the individual to the arbitrary exercise of the powers of government, unrestrained by the established principles of private right and distributive justice." *Caldwell v. Texas*, 137 U.S. 692, 11 S.Ct. 224, 34 L.Ed. 816; (See *Leeper v. Texas*, 139 U.S. 462, 11 S.Ct. 577, 35 L.Ed. 225.)

- Courts indulge every reasonable presumption against a waiver of fundamental constitutional rights, and do not acquiesce in their loss. **Right to due process of law cannot be waived**. *Johnson v. Zerbst*, 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed. 1461; *Ex parte Farley*, C.C.Ark., 40 F. 66; *Laundry License Case*, D.C.Or., 22 F. 701; In re *Lee Tong*, D.C.Or., 18 F. 253, 9 Sawy. 333; *In re Parrott*, C.C.Cal., 1 F. 481, 29 C.J. 29, note 11(a). (Emphasis added)

Judge Hargrove showed respect of persons (partiality; non-neutrality) by relieving the state prosecutor from the requisite burden of proof establishing jurisdiction on the record upon Appellant's challenge. (Tr. 40)

- Once jurisdiction is challenged, it must be proven."
Hagans v. Lavine, 415 U.S. 528, 533 (1974)

- "Once jurisdiction has been challenged, the plaintiff bears the burden of proving the existence of jurisdiction."
Wines v. Lake Havasu Boat Mfg., Inc., 846 F.2d 40, 42 (8th Cir. 1988)

- "Once a party challenges the trial court's jurisdiction. . . the burden of establishing jurisdiction is on the plaintiff." (citing *Menchaca v. Chrysler Credit Corp.*, 613 F.2d 507 (5th Cir. 1980) *Crutcher v. Williams, 1050893 (Ala. 3-14-2008) at p. 6, 7*

- "It is a **fundamental right** of a party to have a **neutral and detached judge** preside over the judicial proceedings." "Petitioner is entitled to a **neutral and detached judge in the first instance**." (Emphasis added.) *Ward v. Village of Monroevill*, 409 U.S. 57, 61-62

- "[A]n **impartial decision maker is essential**. Cf. *In re Murchison*, 349 U.S. 133 (1955); *Wong Yang Sung* v. *McGrath*, 339 U.S. 33, 45-46 (1950) (Emphasis added)

- "In every judicial proceeding a **fair trial** is an indispensable element of **due process of law**." *Davidson* v. *New Orleans*, 96 U.S. 97; *People* v. *Essex Co.*, 70 N.Y. 229.
(Emphasis added)

Judge Hargrove conclusively presumed that the Court had jurisdiction without it being established by the prosecutor and continued on with the trial proceedings.

> ● "If any question of fact or liability is **conclusively presumed** against the accused **it is not due process of law**." *Ziegler* v. *R.R. Co.*, 58 Ala. 594; *Wilburn* v. *McCally*, 63 Ala. 436. (Emphasis added)

Judge Hargrove pre-determined the length of the trial and told the jury more than once that the trial would be over by the end of the day, thus placing a time limit on the trial proceedings. (Tr. 1, 2, 4)

Consideration should be given to Appellant's hearing denial and 14th Amendment constitutional rights violation as necessary for substantial justice. (See *State v. Taylor*, 992 S.W.2d 941, 944 (Tenn. 1999) above.)

ERROR: RIGHT TO KNOW THE NATURE AND CAUSE OF THE ACCUSATIONS DENIED

Appellant has a constitutionally secured right to demand the nature and cause against him.

> ● Tenn. Const. Art. 1, § 9.
> That in all criminal prosecutions, the accused hath a right to be heard by himself and his counsel; **to demand the nature and cause of the accusation against him**, and to have a copy thereof. . ."

As the trial proceedings began Appellant reminded Judge Hargrove that he had not been arraigned. (Tr. 41) She said she would arraign him right then and would enter a plea of "not guilty." Appellant objected and exercised his Tenn. Const. Art. 1, § 9 right by requesting that Judge Hargrove explain to him the nature and cause of the accusations him. (Tr. 41, 42) (Appellant had questions about the exact body of law he was being charged under, etc.) Judge Hargrove refused and denied him his right to know the nature and cause of the accusations. (Tr. 41, 42)

Judge Hargrove did not protect Appellant's constitutionally secured rights in breach of her duty to do so.

> ● "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)

> ● "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) (Emphasis added)

- "It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon."*Boyd v. United States*, 116 U.S. 616 1886

The Tennessee five elements of plain error[14] are present in the trial Court's denial of Appellant's constitutionally secured Tenn. Const. Art. 1, § 9 right, and 14th Amendment right of due process and equal protection of the laws, to wit:

(1) **The record must clearly establish what occurred in the trial court**. The record shows that Judge Hargrove denied Appellant's request to know the nature and cause of the accusations against him before arraignment at trial. (Tr. 41, 42)

(2) **A clear and unequivocal rule of law must have been breached**. The trial Court denied Appellant's constitutionally secured right to know the nature and cause of the accusations against him under Tenn. Const. Art. 1, § 9, and U.S. Cont. 14th Amendment right to due process and equal protection of the laws.

(3) **A substantial right of Appellant must have been adversely affected**. Appellant's aforesaid constitutionally secured rights are substantial by their very nature, and their exercise was necessary for a fair trial.

(4) **Appellant did not waive the issue for tactical reasons**. The record does *not* show that Appellant waived his Tenn. Const. Art. 1, § 9 right for tactical reasons.

(5) **Consideration of the error is "necessary to do substantial justice."** Consideration of Judge Hargrove's wilfull biased error of denying Appellant's constitutionally secured nature and cause right, and due process and equal protection of the laws right is necessary for substantial justice to prevail.

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[14]*State v. Adkisson,* 2001 Tenn. Crim. App. LEXIS 832

- An error which has affected the **substantial right** of a defendant may be noticed at any time in the discretion of the appellate court where necessary to do **substantial justice**. *State v. Taylor*, 992 S.W.2d 941, 944 (Tenn. 1999). "Plain error" or "fundamental error" is recognized under Tenn. R. Crim. P. 52(b). *State v. Adkisson*, 899 S.W.2d 626, 639 (Tenn. Crim. App. 1994). Some errors are so fundamental and pervasive that they require reversal without regard to the facts or circumstances of the particular case. *Delaware v. Van Arsdall*, 475 U.S. 673, 681, 106 S. Ct. 1431, 1436, 89 L. Ed. 2d 674 (1986). (Emphasis added)

ERROR: RIGHT TO CALL WITNESSES DENIED

Appellant has a constitutionally secured right to have compulsory process for obtaining witnesses to testify at trial in his favor.

- Tenn. Const. Art 1, § 9
That in all criminal prosecutions, the accused hath a right . . . to have compulsory process for obtaining witnesses in his favor. . . ."

Appellant exercised this right by subpoenaing district attorney general, *pro tem*, Kim Helper, and her assistant district attorney general , Tammy Rettig, who were presumed to be hostile witnesses from the other side. (It should be noted that Tenn. Const. Art. 1, § 9 does not exclude public officers, e.g. district attorneys, from being subpoenaed, and Tenn. R. E., Rule 611[c], allows leading questions of hostile or adverse witnesses upon request and leave of court.) By Appellant subpoenaing the two district attorneys the trial proceedings could have continue uninterrupted, i.e., one of the witness could continue prosecuting the trial as planned, while the other witness could answer Appellant's leading questions, which he considered essential to building a strong defense.

Kim Helper did not appear in court in response to her subpoena, and Judge Hargrove commanded Tammy Rettig to call her and tell her to "stay put." Tammy Rettig was not allowed to testify, either.

THE COURT: **I am not going to require Ms. Helper to come so tell her just to stay put**.

(Tr. 113, 114, 115)

Thus, Appellant was denied another one of his constitutionally secured rights, i.e., the right to call witnesses to aid in his defense.

Kim Helper and Tammy Rettig are presumed biased employees of the artificial Plaintiff/Appellee,

i.e., THE STATE OF TENNESSEE, which cannot speak but by human representation. Therefore, Appellant felt it necessary to compel them as natural persons to testify for the State (albeit hostile), and answer leading questions by which Appellant hoped would get the truth to the jury and strengthen his defense. His line of leading questions and Appellee's answers were vitally important in informing the jury of the true nature of his charges. With the hostile witness rule Appellant would have had the freedom to force the state representative(s) into yes or no answers that would have clarified a number of trial issues quickly, which would have been advantageous for judge and jury as well as for himself.

Judge Hargrove, also an employee of the Plaintiff/Appellee, once again showed respect of persons (partiality; favoritism) by protecting the subpoenaed witnesses from Appellant's leading questions and denying him his constitutionally secured rights under Tenn. Const. Art. 1, § 9 and under the U.S. Const. 14th Amendment right of due process and equal protection of the laws.

Kim Helper did not appear in court per subpoena. Had Appellant not appeared when subpoenaed to court he would have been immediately subjected to arrest. Not so for favored state co-employee, Kim Helper. Judge Hargrove protected her as if she were co-prosecutor. The appearance of a fair and just trial vanished.

Appellant argues that his criminal case is build upon the edifice of evidence that is admissible in law. For that reason he has a constitutionally secured right to call witnesses, whether hostile or not. He submits to this Court that he has a right to expect fairness, justice and due process at trial, not only to be done, but also that it be seen to be done. Are not fair trials considered to be the very foundation of criminal Jurisprudence in America? There was reasonable apprehension in Appellant's mind that his trial would not be fair with the judge, prosecutor and state witness all being employed by the State government prosecuting the trial. An appearance of conflict of interest existed at trial with the Judge Hargrove acting in a biased, prejudiced and partial manner. His fears were born out.

Appellant did not waive his constitutionally secured right to call witnesses for tactical reasons. All five plain error elements are present in this issue for review.

WHEREFORE, Appellant requests that the judgment order be reversed, and the case remanded for further proceedings not inconsistent with the reversal.

ERROR: RIGHT OF CONSCIENCE (FREEDOM OF RELIGION) DENIED

Appellant has a constitutionally secured right of conscience / religious freedom.

- Tenn. Const. Art. 1, § 3

  That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience; that no man can of right be compelled to attend, erect, or support any place of worship, or to maintain any minister against his consentthat no human authority can, **in any case whatever, control or interfere with the rights of conscience**; and that no preference shall ever be given, by law, to any religious establishment or mode of worship. (Emphasis added)

Judge Hargrove denied Appellant his substantial right to the free exercise his sincerely held religious belief to use the eternal and authoritative Word of God, the Bible,[15] as the main source and principle part of his defense, saying that to use the Bible would be against the "separation of church and state." (Tr. 50, 60,

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[15] PUBLIC LAW 97-280 OCT. 4, 1982; 96 STAT. 1211; 97th Congress

Congress Declares the Bible the "Word of God – Joint Resolution

Authorizing and requesting the President to proclaim 1983 as The "Year of the Bible"

WHEREAS the Bible, the Word of God, has made a unique contribution in shaping the United States as a distinctive and blessed nation and people;

WHEREAS deeply held religious convictions springing from the Holy Scriptures led to the early settlement of our Nation;

WHEREAS Biblical teachings inspired concepts of civil government that are contained in our Declaration of Independence and the Constitution of the United States;

WHEREAS many of our great national leaders-among them Presidents Washington, Jackson, Lincoln, and Wilson-paid tribute to the surpassing influence of the Bible in our country's development, as in the words of President Jackson that the Bible is "the rock on which our Republic rests";

WHEREAS the history of our Nation clearly illustrates the value of voluntarily applying the teachings of the Scriptures in the lives of individuals, families, and societies;

WHEREAS this Nation now faces great challenges that will test this Nation as it has never been tested before; and

WHEREAS that renewing our knowledge of and faith in God through Holy Scripture can strengthen us as a nation and a people: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President is authorized and requested to designate 1983 as a national "Year of the Bible" in recognition of both the formative influence the Bible has been for our Nation, and our national need to study and apply the teachings of the Holy Scriptures.

Approved October 4, 1982

61, 62) Appellant's intention of putting on his defense from Holy Scripture had nothing to do, whatsoever, with the establishment of a state religion as implied by Judge Hargrove's comment. Her prejudicial denial violated due process and the principles of fair trial. She sabotaged the main portion of Appellant's defense, thus keeping him from presenting the truth from God's word (relevant to his case) to the jury.

This denial and violation of Appellant's exercise of his constitutionally secured right of conscience (religious freedom) under Tenn. Const. Art. 1, § 3 showed Judge Hargrove's prejudice and hostility toward the Word of God, and toward Appellant's religious faith and practice of living "by every word that proceedeth out of the mouth of God." (Matthew 4:4) Also, this is a violation of Appellant's substantial 14th Amendment right to due process and equal protection of the laws. This provides another example of judicial bias and the lack of fairness and justice throughout Appellant's trial. In fact, there was not even the "appearance" of justice.

> ● The Supreme Court has ruled and has reaffirmed the principle that "**justice must satisfy the appearance of justice**", *Levine v. United States*, 362 U.S. 610, 80 S.Ct. 1038 (1960), citing *Offutt v. United States*, 348 U.S. 11, 14, 75 S.Ct. 11, 13 (1954) (Emphasis added)
>
> ● Courts have repeatedly held that positive proof of the partiality of a judge is not a requirement, **only the appearance of partiality**. *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 108 S.Ct. 2194 (1988) (what matters is not the reality of bias or prejudice but its appearance); *United States v. Balistrieri*, 779 F.2d 1191 (7th Cir. 1985) (Section 455(a) "is directed **against the appearance of partiality**, whether or not the judge is actually biased.") ("Section 455(a) of the Judicial Code, 28 U.S.C. §455(a), is not intended to protect litigants from actual bias in their judge but rather to promote public confidence in the **impartiality of the judicial process**."). (Emphasis added)
>
> ● "It is a fundamental right of a party to have a neutral and detached judge preside over the judicial proceedings." "Petitioner is entitled to a neutral and detached judge in the first instance." *Ward v. Village of Monroevill*, 409 U.S. 57, 61-62

Appellant did not waive said right for tactical reasons.

The aforementioned five elements of plain error are present in this issue.

WHEREFORE, Appellant requests that the judgment order be reversed, and the case remanded for further proceedings not inconsistent with the reversal.

ISSUE III

JURISDICTION: LACK OR LOSS OF SUBJECT MATTER JURISDICTION

The trial Court lacked or lost subject matter jurisdiction for a number of reasons stated below.

NO STANDING – NO JURISDICTION.

"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 trial court lacked subject matter jurisdiction because the artificial/fictitious Plaintiff/Appellee lacked the three Tennessee elements of standing which can be seen upon examining the indictment. Appellant can find nowhere that the State is exempt from the three necessary elements of standing; and further, the elements apply to criminal as well as to civil cases. See *City of Chattanooga v. Davis*, 54 S.W.3d 248, 280 (Tenn. 2001)

The State's standing to invoke the trial Court's jurisdiction requires that the Plaintiff/Appellee allege in the indictment that a personal right has been violated, and that "tangible," "concrete," "particularized," "distinct and palpable" injury-in-fact has been sustained therefrom, i.e., <u>*not*</u> presumed, conjectural or hypothetical injury. This the State failed to do in the charging instrument, i.e., the indictment.

> ●"The requirement of standing, however, has a core component derived directly from the Constitution. **<u>A Plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct</u>** 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 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… **<u>First</u>**, the party must demonstrate that it has suffered an injury which is '**<u>distinct and palpable,'…and not conjectural or Second</u>**, the party must establish a causal connection between the injury and the conduct of which he complains… **<u>Third</u>**, 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)
>
> ● [CRIMINAL CASE] "To establish one's standing to bring an action, "a party must demonstrate (1) that it has sustained a **<u>distinct and palpable injury</u>**, (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). (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)

There is no evidence of a complaining party in the indictment.

The trial Court had no subject matter jurisdiction and the convictions are void because there is no evidence in the indictment that the Plaintiff/Appellee alleged the three Tennessee elements of standing. Without standing the Plaintiff/Appellee has no case, and the judgment order is void.

- 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)

LOST JURISDICTION

From Appellant's research he has learned that even if the trial court had or appeared to have subject matter jurisdiction, subject matter jurisdiction can be lost, and was lost.

The trial Court lost whatever jurisdiction it may have had in whole (a) by repeatedly showing bias and violating Appellant's constitutionally secured 14th Amendment right to due process and equal protection of the laws at trial as set out above under Issue II, plain errors, and (b)by issuing a judgment order for the

indictment's court two when the charging statute (pre-amended) Tenn. Code Ann. § 39-17-1307(a)(1) contains undefined words and phrases making it uncertain and vague. (See Issue I, section 1.)

Authorities on lost jurisdiction and due process violations follow:

- 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).
(Emphasis added)

- Jurisdiction is lost where no justiciable issue is presented to the court through proper pleadings [3 standing elements not alleged in indictment], *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) (Emphasis added)

- 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)

- *Dunn v. United States*, 442 U.S. 100, 112, 113 (1979) This practice reflects not merely a convenient maxim of statutory construction. Rather, it is **rooted in fundamental principles of due process** which mandate that no individual be forced to speculate, at peril of indictment, whether his conduct is prohibited. *Grayned* v. *City of Rockford*, 408 U.S. 104, 108 (1972); *United States* v. *Harriss*, 347 U.S. 612, 617 (1954); *Lanzetta* v. *New Jersey*,306 U.S. 451, 453 (1939); *McBoyle* v. *United States*, 283 U.S. 25,27 (1931). Thus, to ensure that a legislature speaks with special clarity when marking the boundaries of criminal conduct, **courts must decline to impose punishment for actions that are not "`plainly and unmistakably'" proscribed**. *United States* v. *Gradwell*, 243 U.S. 476, 485 (1917). (Emphasis added)

- *Connally v. General Const. Co.*, 269 U.S. 385, 391 (1926) And a statute which either forbids or requires the doing of an act in **terms so vague** that men of common intelligence must necessarily guess at its meaning and differ as to its application **violates the first essential of due process of law**. *International Harvester Co*. v. *Kentucky*, 234 U.S. 216, 221; *Collins* v. *Kentucky*, 234 U.S. 634, 638. (Emphasis added)

Examination of the record will show that Judge Hargrove refused to recognize Appellant's mandatory judicial notices which violates statutory Rule 201(d) and (f) and caused a loss of the trial Court's lawful subject matter jurisdiction.

- "A court's authority to exercise its subject matter jurisdiction over a case may be restricted by **failure to comply with statutory requirements** [e.g. 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) (Emphasis added)

INDICTMENT STATUTES MISAPPLIED – NO JURISDICTION

Appellant was charged by indictment and convicted for violating The Tennessee Motor Vehicle Code ("TMVC") in counts 1, 3, and 4. The TMVC is voluntary by application and commercial in nature and deals exclusively with state taxable privileges granted by application for a fee to those who are engaged in commerce, i.e., transporting people or goods by motor vehicle for hire on the public highways. It has nothing to do with individuals exercising and enjoying their non-statutory, inherent, unalienable rights (outside of commerce) which are secured by state and federal constitutions. (In fact, unalienable constitutionally secured rights of the people of Tennessee are not mentioned in the TMVC.) It should be noted that the TMVC of 1937 did not abolish the inherent, unalienable rights of Tennesseeans in their private, constitutional status which they had before the TMVC enactment into statutory/administrative law. Rather, the legislature instituted the TMVC to control those engaged in taxable privileged commercial activities (which the legislature has authority to do), i.e., those transporting goods and people for hire on the public highways, through licensure, rules and regulations enforced by police. The concept of a privilege license to engage in commerce is clearly expressed in the following definition:

> ● **License:** ***Streets and highways*****.** A permit to use street is a mere license revocable at pleasure. *Lanham v. Forney*, 196 Wash. 62, 81 P.2d 777, 779. **The privilege of using the streets and highways by the operation thereon of motor carriers for hire can be acquired only by permission or license from the state or its political subdivisions.** Black's Law Dictionary, 6th Ed., p. 919 (Emphasis added)

State granted privileges are fee-based favors from the government that regulate taxable, commercial activities and are by nature and definition discriminatory and show respect of persons, i.e., they discriminate against and oppress persons who are poor, homeless, elderly, handicapped, infirmed, ex-felons (non-violent, victimless crimes) who need to work and protect themselves and their families, the disenfranchised who live, work and travel in remote wilderness areas at risk from predatory animal attack, those who want their privacy and to be let alone, and people who chose to remain private and not engage in commerce Revenue

generating (taxable) state privileges are granted only to those who voluntarily apply and are approved, who can afford to "pay to play, " who promise to obey the ever changing rules and regulations, and who are willing to waive their superior, non-statutory, inherent, unalienable rights in exchange for state benefits. Statutes regulating taxable privileged activities are enforced by threat of violence and produce considerable revenue for the state through police action against rules violators. They are useful to the state as a means of population control outside of state and federal constitutional restraints.

On the other hand, the Peoples' Creator-endowed (unalienable) rights are superior and antecedent to legislative statutes, and are not subject to the legislature's regulation and control. They are free and universal to everyone as their birthright and change not. Privileges statutes are constantly changing, and can be amended, repealed , suspended, or revoked at any time. Taxable privileges are enforced by "law enforcement" offices. God-given rights are protected, not enforced, since there is no money involved.

Appellant has never waived or surrendered any of his unalienable rights.

Appellant has the right to be let alone and not be forced through threat of violence by the state to surrender his free unalienable rights for misapplied taxable state commercial privileges.

> ●"The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings and of his intellect. They knew that only a part of the pain, pleasure and satisfaction of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. **They conferred, as against the Government, the right to be let alone – the most comprehensive of rights and the right most valued by civilized men."** *Olmstead v. United States*. 277 U.S. 438, 478 (1928); see also *Washington v. Harper*, 494 U.S. 219 (1990) (Emphasis added)

By the indictment counts statutes and throughout the trial proceedings it was conclusively presumed that Appellant was engaged in commercial activity without any facts in support, and that he was subject to the indictment's charging commercial statutes. Said conclusive presumption without evidence against Appellant is a violation of due process and the judgment order is void.

> ● "If any question of fact or liability is **conclusively presumed** against the accused **it is not due process of law**." *Ziegler* v. *R.R. Co.*, 58 Ala. 594; *Wilburn* v. *McCally*, 63 Ala. 436. (Emphasis added)

● Judgment is a void judgment if court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, **or acted in a manner inconsistent with due process**, Fed. Rules Civ. Proc., Rule 60(b)(4), 28 U.S.C.A., U.S.C.A. Const. Amend. 5 - *Klugh v. U.S.*, 620 F.Supp. 892 (D.S.C. 1985) (Emphasis added)

Appellant's natural, inherent, unalienable[16] right of liberty to locomote/move/ travel freely on the public highways in the ordinary course of life and business, in his private capacity, in his private means of conveyance was ignored. A commercial statute regarding a "driver license" [commercial terms] was misapplied to him (count 1). Use of the public highways for non-commercial use is an unalienable liberty right (see fn 13) and secured under the U.S. Const. 9th Amendment and the four organic law documents, i.e., Declaration of Independence, Articles of Confederation, Northwest Ordinance, Constitution. Appellant's unalienable right to absolute private ownership of property (truck) and the right to contract or abstain from contracting (insurance) were ignored (counts 3 and 4) and commercial statutes were misapplied.

Governments are formed to protect the peoples' rights, not abrogate them (see fn 6).

● "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)

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[16] ● *Bouvier*s Law Dictionary (1856) defines unalienable: "Incapable of being transferred. **Things which are not in commerce, as, public roads, are in their nature unalienable**. Some things are unalienable in consequence of particular provisions of the law forbidding their sale or transfer; as, pensions granted by the government. **The natural rights of life and liberty are unalienable**." (Emphasis added)

● *Blacks Law Dictionary*, 2nd Edition, (1910) defines unalienable: Not subject to alienation; the characteristic of those things which cannot be bought or sold or transferred from one person to another such as rivers and **public highways and certain personal rights; e.g., liberty**." (Emphasis added)

● William Blackstone, 18th century Common Law English jurist and judge defined unalienable in his *Commentaries on the Laws of England*, 1:93:

"Those rights, then, which God and nature have established, and therefore called natural rights, such as life and liberty, need not the aid of human laws to be more effectually invested in every man than they are; neither do they receive any additional strength when declared by the municipal laws to be inviolable. On the contrary, no human legislature has power to abridge or destroy them, unless the owner shall himself commit some act that amounts to a forfeiture."

● ("[T]he Due Process Clause protects the unalienable liberty recognized in the Declaration of Independence rather than the particular rights or privileges conferred by specific laws or regulations." *Sandin v. Conner*, _ U.S. _(1995)

● Note: Essentially, unalienable rights are inherent to being human and exist forever outside of the world of commerce; they cannot be bought, sold or transferred…ever.

(Emphasis added)

Since Creator-endowed, unalienable, natural rights are not a product of human legislatures they are not subject to legislative control and abridgment. The original intent of the framers of Tennessee's first constitution of 1796 made it clear that the Peoples' rights were off limits to the legislature.

> ●*Tennessee Declaration of Rights, 1796 Constitution*
> **Article 10th**
> **Section 4th.** The Declaration of Rights hereto annexed is declared to be a part of the Constitution of this State and Shall never be violated on any pretence whatever. And to Guard against transgressions of the high Powers which we have delegated, **we declare that everything in the Bill of Rights contained and every other right not hereby delegated is excepted out of the General Powers of Government and shall for ever [i.e. forever] remain inviolate**. (Emphasis added)

Definitions and statutes revealing the commercial nature and basis for state-granted, regulated and controlled "motor vehicle" PRIVILEGES regulations and related terms which were misapplied to Appellant who is not in commerce.

> ● **TCA 55-1-103. "Autocycle," "motor bicycle," "motor vehicle," "motorcycle" and "vehicle" defined.**
> (3) "**Motor vehicle**" means every vehicle [VEHICLE SHARES THE SAME DEFINITION AS FREIGHT MOTOR VEHICLE/CARRIER BELOW] that is self-propelled, excluding motorized bicycles and every vehicle that is propelled by electric power obtained from overhead trolley wires. "Motor vehicle" means any low speed vehicle, or medium speed vehicle as defined in this section.
> (5) "**Vehicle**" and "**freight motor vehicle**" [VEHICLE IS THE SAME AS COMMERCIAL FREIGHT MOTOR VEHICLE] means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.
>
> ROUND ABOUT DEFINITION FOR MOTOR VEHICLE
>
> ● **Freight**. [COMMERCIAL DEFINITION] The price or compensation paid for the transportation of goods by a carrier. Name also applied to goods transported by such carriers. See also Freight rate. Black's Law Dictionary, 6th Ed.,p. 666
>
> ● **Carrier**. [COMMERCIAL DEFINITION] Individual or organization **engaged in transporting passengers or goods for hire**. "Carrier" means any person engaged in the **transportation of passengers or property** by land, as a common, contract, or private carrier, or freight forwarder as those terms are used in the Interstate Commerce Act, as amended, and officers, agents and employees of such carriers. 18 U.S.C.A. § 831. See also Certified carriers; Connecting carrier; Contract carrier. Black's Law Dictionary, 6th Ed., p.
> 214

● **Common carrier**. [COMMERCIAL TRANSPORTATION] Common carriers are those that hold themselves out or undertake to **carries/carry persons or goods** of all persons indifferently, or of all who choose to employ it. *Merchants Parcel Delivery v. Pennsylvania Public Utility Commission*, 150 Pa.Super. 120, 28 A.2d 340, 344. Those whose occupation or business is **transportation of persons or things for hire or reward**. [SEE COMMERCIAL DEFINITION OF TRANSPORTATION BELOW] Common carriers of passengers are those that undertake to carries/carry all persons indifferently who may apply for passage, so long as there is room, and there is no legal excuse for refusal. Private carrier. Private carriers are those who transport only in particular instances and only for those they choose to contract with. Black's Law Dictionary, 6th Ed., p. 214

● **Transportation**. [COMMERCIAL DEFINITION] The movement of goods or persons from one place to another, by a **carrier**. *Interstate Commerce Com'n v. Brimson*, 154 U.S. 447, 14 S.Ct. 1125, 38 L.Ed. 1047. Black's Law Dictionary, 6th Ed., p. 1499

● **55-4-101. Registration required before operation — Application — Issuance of registration and license plates — Rules and regulations — Temporary permit — Transfer of registration when changing vehicles — Fees — Safety rules for homemade trailers. **Update Notice: This section has been amended by CHAPTER NO. 553 OF THE PUBLIC ACTS OF 2014.**

(a)(1) As a condition precedent to the operation of any motor vehicle upon the streets or highways of this state, the motor vehicle shall be registered as provided in this chapter.

(2) The registration and the fees provided for registration shall constitute a **privilege tax upon the operation of motor vehicles** [PRIVILEGES ARE IN COMMERCE AND NOT UNALIENABLE RIGHTS AND ARE NOT COVERED UNDER THE DECLARATION OF INDEPENDENCE]]

● **18 U.S.C. § 31. Definitions** (a) Definitions — In this chapter, the following definitions apply:s). (6) **Motor vehicle** — The term "motor vehicle" means every description of carriage or other contrivance propelled or drawn by mechanical power and **used for commercial purposes on the highways in the transportation of passengers, passengers and property, or property or cargo.**

(10) **Used for commercial purposes** — The term "used for commercial purposes" means the carriage of persons or property for any **fare, fee, rate, charge or other consideration**, or directly or indirectly in connection with any business, or other undertaking intended for profit.

NOTE: All highways are considered federal channels of commerce and federal definitions apply when states accept federal highway grants/funds.

● **Highway**. **A free and public roadway, or street; one which every person has the right** [UNALIENABLE – NOT A PRIVILEGE] **to use**. Black's Law Dictionary, 6th Ed., p. 728

● **License**. A personal privilege [TRAVEL IS NOT A PRIVILEGE] to do some particular act or series of acts on land without possessing any estate or LICENSE interest therein, and is ordinarily **revocable at the will of the licensor and is not assignable**. [UNALIENABLE RIGHTS ARE NOT SUBJECT TO LEGISLATIVE CONTROL AND REGULATION] *Lehman v. Williamson*, 35 Co lo.App. 372, 533 P.2d 63, 65.

● **License fee or tax**. Charge imposed by governmental body for the **granting of a privilege**. [PRIVILEGES ARE IN COMMERCE NOT NATURAL LAW] *Pennsylvania Liquor Control Board v. Publicker Commercial Alcohot Co.*, 347 Pa. 555, 32 A.2d 914, 917.

● **Privilege**. A **particular and peculiar benefit or advantage** enjoyed by a person, company, or class, **beyond the common advantage of other citizens**. [FREE USE OF PUBLIC HIGHWAYS IS

A COMMON RIGHT – NOT A SPECIAL PRIVILEGE] An exceptional or extraordinary power of exemption. A right, power, franchise, or immunity held by a person or class against or **beyond the course of the law**. Black's Law Dictionary, First Edition, p. 941

● **Traveler**. One who passes from place to place, whether for pleasure, instruction, business or health. Black's Law Dictionary, 6th Ed., p. 1500 [NOT IN COMMERCE]

● **Passenger**. In general, a person who **gives compensation to another for transportation**. *Shapiro v. Bookspan*, 155 Cal.App.2d 353, 318 P.2d 123, 126.

● **DRIVER and related terms defined** showing commercial activity application.

– **DRIVER**. **One employed**...Bouvier's Law Dictionary, 1856

– **DRIVER**-- one **employed** in conducting a coach, carriage, wagon, or other vehicle..." *BOUVIER'S LAW DICTIONARY*, (1914) p. 940

– **DRIVER** - **One employed** in conducting or operating a coach, carriage, wagon, or other vehicle, with horses, mules, or other animals, or a bicycle, tricycle, or motor car, though not a street railroad car. See Davis v. Petrinovich, 112 Ala. 654, 21 So. 344, 36 L.R.A. 615; Isaacs v. Railroad Co., 7 Am. Rep. 418, 47 N.Y. 122.
Black's Law Dictionary, 3rd Ed
– **DRIVER**. **One employed**...
Black's Law Dictionary, 4th Ed, 1951

"The activity licensed by state DMVs and in connection with which individuals must submit personal information to the DMV - the operation of motor vehicles - is itself **integrally related to interstate commerce**".
Seth Waxman, Solicitor General
U.S. Department of Justice
BRIEF FOR THE PETITIONERS
Reno v. Condon, No. 98-1464, decided January 12, 2000
Supreme Court of the United States

● PURPOSE OF THE FEDERAL DEPARTMENT OF TRANSPORTATION WAS TO IMPROVE TRANSPORTATION (COMMERCIAL) MOVEMENT OF PEOPLE OR GOODS

49 U.S.C. § 101. Purpose (a) The national objectives of general welfare, economic growth and stability, and security of the United States require the development of **transportation policies** and programs that contribute to providing fast, safe, efficient, and convenient **transportation** at the lowest cost consistent with those and other national objectives, including the efficient use and conservation of the resources of the United States.

All the key words and phrases of the TMVC statutes are defined in commercial terms and are separate from non-statutory constitutionally secured rights of the People.

Indictment is invalid because commerce is presumed. There is no evidence of record that Appellant is engaged in privileged commercial activity. The trial Court had no jurisdiction over Appellant's case when

when he was acting in his constitutional status and private capacity. All the charging statutes are either void for vagueness (Count Two) or are misapplied.

CONCLUSION

Appellant was entitled to and expected a fair and impartial trial by a neutral judge. He did not receive a fair trial. He was repeatedly denied due process and equal protection of the laws when his substantial constitutionally secured rights were violated by partial Judge Hargrove as set forth above. With his witnesses disallowed and commanded not to to appear by the Court, and his primary source of defense, the Bible, forbidden to be used, he was prevented from putting on his intended defense. Count Two statute is vague and unconstitutional. Subject matter Jurisdiction, for reasons stated above, was lacking or lost.

> ● "It is a fundamental right of a party to have a neutral and detached judge preside over the judicial proceedings." "Petitioner is entitled to a neutral and detached judge in the first instance." *Ward v. Village of Monroevill*, 409 U.S. 57, 61-62

THEREFORE, for the foregoing reasons, the Appellant, Arthur Jay Hirsch, requests this Court to reverse the trial Court's judgment order with respect to Counts 1, 3 and 4, and to dismiss Count Two altogether as void for vagueness and/or unconstitutionality.

Respectfully submitted,

_____

Arthur Jay Hirsch, *pro se*
1029 West Gaines Street
Lawrenceburg, Tennessee 38464
(310) 948-1668

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Brief of Appellant has been served upon counsel for Appellee by U.S. Mail, postage prepaid, on this 10th day of November, 2016 addressed to:

Leslie Price, Senior Counsel
Office of Attorney Generall
P.O. Box 20207
Nashville, TN 37202-0207

_____

Arthur Jay Hirsch, *pro se*

EXHIBIT A

39-17-1307. Unlawful carries/carrying or possession of a weapon.

(a) (1) A person commits an offense who carries with the intent to go armed a firearm, a knife with a blade length exceeding four inches (4²), or a club.

(2) (A) The first violation of subdivision (a)(1) is a Class C misdemeanor, and, in addition to possible imprisonment as provided by law, may be punished by a fine not to exceed five hundred dollars ($500).

39-17-1307. Unlawful carries/carrying or possession of a weapon.
(a) (1) A person commits an offense who carries, with the intent to go armed, a firearm or a club.
https://www.lexisnexis.com/hottopics/tncode/

39-17-1301. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "Adjudication as a mental defective or adjudicated as a mental defective" means:

(A) A determination by a court in this state that a person, as a result of marked subnormal intelligence, mental illness, incompetency, condition or disease:

(i) Is a danger to such person or to others; or

(ii) Lacks the ability to contract or manage such person's own affairs due to mental defect;

(B) A finding of insanity by a court in a criminal proceeding; or

(C) A finding that a person is incompetent to stand trial or is found not guilty by reason of insanity pursuant to Article 50a and 76b of the Uniform Code of Military Justice, codified in 10 U.S.C. §§ 850a and 876b respectively;

(2) "Club" means any instrument that is specially designed, made or adapted for the purpose of inflicting serious bodily injury or death by striking a person with the instrument;

(3) "Crime of violence" includes any degree of murder, voluntary manslaughter, aggravated rape, rape, especially aggravated robbery, aggravated robbery, burglary, aggravated assault or aggravated kidnapping;

(4) (A) "Explosive weapon" means any explosive, incendiary or poisonous gas:

(i) Bomb;

(ii) Grenade;

(iii) Rocket;

(iv) Mine; or

(v) Shell, missile or projectile that is designed, made or adapted for the purpose of inflicting serious bodily injury, death or substantial property damage;

(B) "Explosive weapon" also means:

(i) Any breakable container which contains a flammable liquid with a flashpoint of one hundred fifty degrees Fahrenheit (150 degrees F) or less and has a wick or similar device capable of being ignited, other than a device which is commercially manufactured primarily for purposes of illumination; or

(ii) Any sealed device containing dry ice or other chemically reactive substances for the purposes of causing an explosion by a chemical reaction;

(5) "Firearm silencer" means any device designed, made or adapted to muffle the report of a firearm;

(6) "Hoax device" means any device that reasonably appears to be or is purported to be an explosive or incendiary device and is intended to cause alarm or reaction of any type by an official of a public safety agency or a volunteer agency organized to deal with emergencies;

(7) "Immediate vicinity" refers to the area within the person's immediate control within which the person has ready access to the ammunition;

(8) "Judicial commitment to a mental institution" means a judicially ordered involuntary admission to a private or state hospital or treatment resource in proceedings conducted pursuant to title 33, chapter 6 or 7;

(9) "Knife" means any bladed hand instrument that is capable of inflicting serious bodily injury or death by cutting or stabbing a person with the instrument;

(10) "Knuckles" means any instrument that consists of finger rings or guards made of a hard substance and that is designed, made or adapted for the purpose of inflicting serious bodily injury or death by striking a person with a fist enclosed in the knuckles;

(11) "Machine gun" means any firearm that is capable of shooting more than two (2) shots automatically, without manual reloading, by a single function of the trigger;

(12) "Mental institution" means a mental health facility, mental hospital, sanitarium, psychiatric facility and any other facility that provides diagnoses by a licensed professional of an intellectual disability or mental illness, including, but not limited to, a psychiatric ward in a general hospital;

(13) "Restricted firearm ammunition" means any cartridge containing a bullet coated with a plastic substance with other than a lead or lead alloy core or a jacketed bullet with other than a lead or lead alloy core or a cartridge of which the bullet itself is wholly composed of a metal or metal alloy other than lead. "Restricted firearm ammunition" does not include shotgun shells or solid plastic bullets;

(14) "Rifle" means any firearm designed, made or adapted to be fired from the shoulder and to use the energy of the explosive in a fixed metallic cartridge to fire a projectile through a rifled bore by a single function of

the trigger;

(15) "Short barrel" means a barrel length of less than sixteen inches (16") for a rifle and eighteen inches (18") for a shotgun, or an overall firearm length of less than twenty-six inches (26");

(16) "Shotgun" means any firearm designed, made or adapted to be fired from the shoulder and to use the energy of the explosive in a fixed shotgun shell to fire through a smooth-bore barrel either a number of ball shot or a single projectile by a single function of the trigger;

(17) "Switchblade knife" means any knife that has a blade which opens automatically by:

(A) Hand pressure applied to a button or other device in the handle; or

(B) Operation of gravity or inertia; and

(18) "Unloaded" means the rifle, shotgun or handgun does not have ammunition in the chamber, cylinder, clip or magazine, and no clip or magazine is in the immediate vicinity of the weapon.

HISTORY: Acts 1989, ch. 591, § 1; 1990, ch. 1029, § 1; 2001, ch. 375, §§ 1, 2; 2009, ch. 578, § 8; 2010, ch. 734, § 1.

EXHIBIT B

PUBLIC CHAPTER NO. 870
SENATE BILL NO. 1774
By Bell
Substituted for: House Bill No. 1480
By Faison, Roach, Powers, Ragan, Dennis, Dunn, Evans, Bailey, Matthew Hill, Hall, Harry Brooks, Todd, Lollar, Floyd, Mark White, Timothy Hill, Hawk, Littleton, Casada, Lynn, Ryan Williams, Sanderson, Travis, Moody, Sparks, Kane, McManus, Haynes, Holt

AN ACT to amend Tennessee Code Annotated, Title 39, Chapter 17, Part 13, relative to the carrying or possession of a firearm in a motor vehicle.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 39-17-1307, is amended by deleting subsection (e) in its entirety and substituting instead the following:

(e)(1) It is an exception to the application of subsection (a) that a person is carrying or possessing a firearm or firearm ammunition in a motor vehicle if the person:

(A) Is not prohibited from possessing or receiving a firearm by 18 U.S.C. § 922(g) or purchasing a firearm by§ 39-17-1316; and

(B) Is in lawful possession of the motor vehicle.

(2) As used in this subsection:

(A) "Motor vehicle" has the same meaning as defined in § 55-1-1 03.

(B) "Motor vehicle" does not include any motor vehicle that is:

(i) Owned or leased by a governmental or private entity that has adopted a written policy prohibiting firearms or ammunition not required for employment within such a motor vehicle; and
(ii) Provided by such entity to an employee for use during the course of employment.

SECTION 2. This act shall take effect July 1, 2014, the public welfare requiring it.
PASSED:
SENATE BILL NO. 1774

April14, 2014

RON RAMSEY,
SPEAKER OF THE SENATE
BETH HARWELL, *SPEAKER*
HOUSE OF REPRESENTATIVES

APPROVED this 1st day of May, 2014 BILL HASLAM, *GOVERNOR*

EXHIBIT C

EXHIBIT D