No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

Robert Heximer — PETITIONER
(Your Name)

vs.

Michigan — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Michigan Supreme Court
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Robert Heximer
(Your Name)
Newberry Correctional Facility
13747 E County Road 428
(Address)

Newberry, Michigan 49868
(City, State, Zip Code)

_____
(Phone Number)

QUESTION(S) PRESENTED

(1) WHETHER THE EVIDENCE ACQUIRED DURING MR. HEXIMER'S ILLEGAL DETENTION IS/WAS INADMISSIBLE UNDER CLEARLY-ESTABLISHED LAW ?

(2) WHETHER THE 53RD DISTRICT MAGISTRATE HAD ABSOLUTELY NO ADMISSIBLE EVIDENCE, FACTS OR TESTIMONY -- LET ALONE A COMPETENT WITNESS -- BEFORE HIM TO: (A) CONFER JURISDICTION: (B) ESTABLISH THE REQUIRED FOURTH AMENDMENT FINDING OF PROBABLE CAUSE TO CHARGE ANY CRIME(S): OR (C) ISSUE CRIMINAL PROCESS AGAINST MR. HEXIMER ?

(3) WHETHER THE 53RD DISTRICT JUDGE HAD ABSOLUTELY NO ADMISSIBLE EVIDENCE, FACTS OR TESTIMONY AT THE PRELIMINARY EXAMINATION -- LET ALONE JURISDICTION -- TO FIND PROBABLE CAUSE THAT A CRIME WAS COMMITTED UNDER MCL § 750.157B2 OR THAT MR. HEXIMER HAD COMMITTED ANY CRIME(S) -- TO BIND THE MATTER OVER TO THE CIRCUIT COURT ?

(4) WHETHER A CONVICTION PRONOUNCED BY THE 44TH CIRCUIT COURT WITHOUT ANY ADMISSIBLE EVIDENCE, FACTS OR TESTIMONY -- AND THE WANT OF PERSONAM & SUBJECT-MATTER JURISDICTION -- IS UNCONSTITUTIONAL ?

(5) WHETHER THE PROSECUTOR COMMITTED FRAUD UPON THE COURTS, MR. HEXIMER AND PUBLIC -- WHERE THERE WAS ABSOLUTELY NO ADMISSIBLE EVIDENCE, FACTS OR TESTIMONY -- LET ALONE JURISDICTION -- TO PURSUE THE SOLICITATION CHARGE AGAINST MR HEXIMER (A DISABLED VETERAN) DUE TO HIS ILLEGAL DETENTION ?

(6) WHETHER THE PLAINTIFF'S FAILURE TO ANSWER OR MEET ITS BURDEN OF DEMONSTRATING SUBJECT-MATTER JURISDICTION IN ANY OF THE MICHIGAN COURTS (44TH CIRCUIT, COURT OF APPEALS, SUPREME COURT) CONSTITUTES FORFEITURE AND/OR WAIVER ?

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[X] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

[X] reported at 895 N.W.2d 513; 2017 Mich LEXIS 1018; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the Michigan Court of Appeals court appears at Appendix E to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[X] For cases from **state courts**:

The date on which the highest state court decided my case was Jan. 5, 2017. A copy of that decision appears at Appendix B.

[X] A timely petition for rehearing was thereafter denied on the following date: May 31, 2017, and a copy of the order denying rehearing appears at Appendix A.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This Constitution, and the Laws of the United States, which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme law of the land; and the Judges in every State shall be bound thereby any Thing in the Constitution or Laws of any State to the Contrary notwithstanding. U.S. Const., Art VI, § 2.

STATEMENT OF THE CASE

On April 3, 2006, at approximately 6:45 a.m., a lawless invasion of Mr. Heximer's home occurred. This lawless intrusion took place in the absence of any: consent; probable cause and exigent circumstances; or warrant. Mr. Heximer and his four minor children were peaceably occupying their home. Mr. Heximer's eleven-year-old daughter was awake and in the Kitchen preparing a bowl of cereal for breakfast. Mr. Heximer was still in bed, and the other three children were either still asleep or just waking up for school. Mr. Heximer's daughter called out to her father: "Dad, someone's at the front door!"

It shall be noted, that, each of the Heximer children were raised and taught from a very early age "**not to**" open the door to strangers !!!

Mr. Heximer climbed out of bed, got dressed (putting on pants and a shirt), and then proceeded to the front door in response to his daughter's call for help. As Mr. Heximer came around the corner of the hallway he was met by a large, unidentified male. The intruder was already inside the Heximer home -- having crossed the threshold by at least eight to ten feet, with the front door wide open. The intruder was armed when he assaulted Mr. Heximer; grabbing his arm and forcing Mr. Heximer outside the safety and sanctity of his own home.

In order to completely understand the sequence and severity of these "**illegal**" events, Mr. Heximer directs the Honorable Court's attention to his 'AFFIDAVIT OF PROOF IN SUPPORT ...', attached to his MOTION FOR AN EVIDENTIARY HEARING, filed in the U.S. District Court (Heximer v. Berghuis, No. 2:08-cv-14170, Dkt # 23). See APPENDIX C ('AFFIDAVIT ...').

As this Court knows, "physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed." Payton v. New York, 445 U.S. 573, 585 (1980). To "be arrested in the home involves not only the invasion attendant to all arrests but also an invasion of the sanctity of the home. This is simply too substantial an invasion to allow without a warrant [] even when probable cause is clearly present." Id., at 588-89 n. 28 (quoting United States v. Reed, 572 F.2d 412, 423 (Cir. 2 1978). Mr. Heximer was clearly "**seized**" inside his home due to some "physical touching of the person of [his] citizen" by the intruder. United States v. Mendenhall, 446 U.S. 544, 554 (1980).

On April 4, 2006, at 2:53 p.m., Mr. Heximer was arraigned by video monitor for the charges of MCL 750.82 and MCL 750.110A2. The WARRANT FELONY "**does not**" contain any judicial signature whatever. See APPENDIX D (unsigned WARRANT).

During Mr. Heximer's "**illegal detention**", a solicitation to commit murder plot (MCL 750.157B2) was initiated by Confidential Informant (CI) Stephen Edward Hunt (cellmate to Mr. Heximer in County Jail). The solicitation matter was then orchestrated by CI Hunt and Det. Gary Edward Childers (Livingston County Sheriff's Department (LCSD)) over the course of the next two weeks. However, **all** evidence acquired in the solicitation matter occurred during Mr. Heximer's "**illegal detention**" and, therefore, "shall not be used before the court but that it **shall not be used at all**." Silverthorne Lumber Co. v. United States, 251 U.S. 385, 392 (1920) (Emphasis added).

REASONS FOR GRANTING THE PETITION

ISSUE ONE

THE EVIDENCE ACQUIRED DURING MR. HEXIMER'S ILLEGAL DETENTION IS/WAS INADMISSIBLE UNDER CLEARLY-ESTABLISHED LAW.

Because the WARRANT FELONY lacks the requisite signature of Magistrate Brown, then, the warrant never "issued" as required by the Constitutionsl mandates (Federal & Michigan), and Mr. Heximer's detention was illegal. The Court Rules (MCR 6.102(C)(4) & Fed.R.Crim.P. 4(b)(1)(D)) and precedential decisions throughout the united States require that a warrant must be signed to be valid. See People v. Locklear, 177 Mich App 331, 334 (1989), citing Shadwick v. City of Tampa, 407 U.S. 345, 350 (1972); Starr v. United States, 164 U.S. 627 (1897). The Hentowski Court concluded "that a magistrate 'issues' a 'warrant' only when he signs an appropriate document and turns it over to the proper person." Locklear, 177 Mich App, at 334 (quoting People v. Hentowski, 154 Mich App 171, 177 (1986)). There is "'full compliance with requirement of Rule 4 that warrant 'shall issue' when warrant is signed by commissioner [magistrate].'" United States v. Schack, 165 F.Supp. 371, 374 (S.D.N.Y. 1958).

It is clearly established that the Fourth Amendment applies to arrest warrants as well as search warrants. Giordenello v. United States, 357 U.S. 480, 485 (1957); Aguilar v. Texas, 378 U.S. 108, 112 n. 3 (1964); Beck v. Ohio, 379 U.S. 89, 96 n. 6 (1964). See also Whiteley v. Warden, 401 U.S. 560 (1971). The "reliability and particularity requirements applicable where a search warrant is sought also govern the issuance of arrest warrants." People v. Dogans, 26 Mich App 411, 418 (1970) (collected U.S. Supreme Court cases).

A "'lawful signature on the search warrant by the person authorized to issue it [is] essential to its issuance[,]' such that an unsigned warrant is void under state law and confers no authority to act, despite existence of probable cause." United States v. Levin, 186 F.Supp.3d 26, 36 (D.Mass. 2016), quoting State v. Surowiecki, 184 Conn 95, 440 A.2d 798, 799 (MT 1981).

No "'lawful custody could be retained under a warrant which omitted any constitutional or statutory requirements. Schwartz v. Dutro, 298 S.W. 769. A lawful signature to a warrant for arrest is essential to its 'issuance.' If it is not signed by one with authority to do so, the mere involuntary custody of one held under it **will not** waive the defect or confer jurisdiction ... 22 C.J.S. 481, Sec. 327." State v. Fleming, 240 Mo. App. 1208, 1213 (MO 1950).

The "failure of the county judge to sign the search warrant was fatal to its validity." Divine v. Commonwealth, 236 Ky. 579, 580, 33 S.W.2d 627 (1930). The "unsigned warrant, however, is not a warrant within the meaning of the Fourth Amendment. An unsigned warrant is a blank paper and officers cannot reasonably rely on such ..." United States v. Evans, 469 F.Supp.2d 893, 895 (D.MT 2007). For example, "an unsigned warrant, being void ab initio, cannot be executed in good faith." State v. Williams, 2001-Ohio-1388 (citing State v. Williams, 57 Ohio St. 3d 24, 565 N.E.2d 563 (1991)). See State v. Carpenter, 2007 Ohio App LEXIS 5086 (Oct. 29, 2007) (Accordingly, we follow the Williams holding and find the unsigned search warrant void ab initio).

In State v. Almori, 3 Conn. Cir. Ct. 641, 644, 222 A.2d 820 (1966), the

Court heard an identical case and concluded that "'[t]he unsigned and undated search warrant is fatally defective, invalid, and void and conferred no authority to act thereunder.' [I]t is important in the use of all criminal forms of proceeding, the executing of which involves the liberty of the citizen, that the greatest practicable strictness and reliability should be observed . . . ." Perry v. Johnson, 37 Conn. 32, 35 (1870).

"Although there is no doubt that the judge in this case intended to sign the search warrant, we conclude that he did not issue the search warrant until he performed this act. The signing of the search warrant was to be the identifiable objective manifestation of his subjective intent to issue the search warrant. It is only when the former act has been completed that we are able to say that a search warrant was 'issued.' In other words, a lawful signature on the search warrant by the person authorized to issue it was essential to its issuance. (collecting cases)." Surowiecki, supra. The unsigned arrest warrant is fatally defective, invalid and void. Therefore, detention of Mr. Heximer was "**illegal**."

Under clearly-established law, **all** evidence acquired during Mr. Heximer's "**illegal detention**" in the solicitation matter is/was inadmissible. See United States v. Bosch, 209 F.Supp. 15, 21 (E.D.Mich. 1962) (Again, if the police have obtained a statement from an accused person during his illegal detention, such statement is inadmissible ...), (citing Mallory v. United States, 354 U.S. 449 (1957); Bynum v. United States, 262 F.2d 465 (D.C.Cir. 1958)). See also Bynum, 262 F.2d, at 466-67 (citing Upshaw v. United States, 335 U.S. 410 (1948); Mallory, supra); People v. Walker, 27 Mich App 609, 618 (1970) (Evidence has been excluded where it was derived from an illegal detention).

The legal landscape in Fourth Amendment jurisprudence is well-defined by our Supreme Court in that: "The Fourth Amendment prohibits 'unreasonable searches and seizures.' U.S. Const. amend IV. Evidence recovered from an illegal search [or seizure] is inadmissible. Weeks v. United States, 232 U.S. 383, 398 [] (1914). Further, evidence recovered indirectly from an illegal search or seizure is also inadmissible as 'fruit of the poisonous tree.' Segura v. United States, 468 U.S. 796, 804 [] (1984); Wong Sun v. United States, 371 U.S. 471 484-85 [] (1963); Silverthorne Lumber Co. v. United States, 251 U.S. 385, 392-93 [] (1920)." Northrop v. Trippett, 265 F.3d 372, 377-78 (6th Cir. 2001).

The Supreme Court succintly held: "The essence of a provision forbidding the acquisition of evidence in a certain way is that evidence so acquired shall not be used before th ecourt but that it shall not be used at." Silverthorne Lumber Co, 251 U.S., at 392. Therefore, absolutely none of the evidence acquired in the solicitation matter could be used in any court proceedings and "**it shall not be used at all**." Id.

Plainly stated, there is/was absolutely no admissible evidence, facts or testimony to commence/initiate any criminal proceedings -- let alone sustain a criminal conviction under MCL 750.157B2.

Because the solicitation conviction "cannot be shown to conform with the fundamental requirements of law, [Mr. Heximer] is entitled to his immediate release." Fay v. Noia, 372 U.S. 391, 402 (1963).

ISSUE TWO

THE 53RD DISTRICT MAGISTRATE HAD ABSOLUTELY NO ADMISSIBLE EVIDENCE, FACTS OR TESTIMONY -- LET ALONE A COMPETENT WITNESS -- BEFORE HIM TO: (A) CONFER JURISDICTION; (B) ESTABLISH THE REQUIRED FOURTH AMENDMENT FINDING OF PROBABLE CAUSE TO CHARGE ANY CRIME(S); OR (C) ISSUE CRIMINAL PROCESS AGAINST MR. HEXIMER.

As set forth above: absolutely all evidence, facts and testimony -- in the solicitation matter -- was acquired during Mr. Heximer's **illegal detention** and, therefore, is/was inadmissible.

The Complaining Witness (Det. Childers) had no admissible evidence or facts and, therefore, "**could not**" testify before Magistrate Brown at the swearing of the Complaint. Hence, Det. Childers was barred/estopped from providing any testimony whatever before Magistrate Brown or in any later proceedings.

The Court knows a "complaint [was] not based upon the complainant's [Det. Childers] personal knowledge, and unsupported by other proof, confers no jurisdiction upon the [magistrate] to issue a warrant." United States ex rel. King v. Gokey, 32 F. 793, 794 (N.D. N.Y. 1929). Cf. Worthington v. United States, 166 F.2d 557, 563 (6th Cir. 1948) (same). See United States v. Langston, 115 F.Supp. 489, 491 (W.D.MO 1953).

The Supreme Court, being fully cognizant of the law, knows that a: (1) "complaint not based upon the complainant's personal knowledge, and unsupported by other proof, confers no jurisdiction upon the court." Worthington, supra; (2) "barebones or conclusory affidavit [complaint] is not sufficient to establish probable cause." Butts v. City of Bowling Green, 374 F.Supp.2d 532, 543 (W.D.Ky. 2005). See Bosch, supra; and (3) "complaint to justify an information must show personal knowledge and probable cause." United States v. Baumert, 179 F. 735, 738 (N.D.N.Y. 1910). See United States v. Wells, 225 F. 320, 321 (W.D.Tenn. 1913); Gokey, supra. Because an affidavit and complaint are synonymous, then, the rules for an affidavit apply with equal force to complaints. Therefore, an affidavit and/or complaint not based on personal knowledge is "legally insufficient." 3 Am.Jur.2d: Affidavits, § 8.

The Honorable Court can readily glean that there simply was no admissible evidence, facts or testimony to: (1) confer jurisdiction upon the district court or Magistrate Brown; (2) establish the required Fourth Amendment finding of probable cause to charge any crime(s); or (3) issue criminal process against Mr. Heximer (a disabled veteran).

The Honorable Court is advised that the pleadings of this disabled veteran "discloses facts that amount to a loss of jurisdiction in the trial court, [and] jurisdiction could not be restored by any decision above. Fay, 372 U.S., at 423. See Heikkinen v. Hovinen, 7 Mich App 542, 545 (1967), quoting Jackson v. City Bank & Trust Co. v. Fredrick, 271 Mich 538, 545 (1935) (same).

Magistrate Brown proceeded in clear and complete absence of jurisdiction.

Because the solicitation conviction "cannot be shown to conform with the fundamental requirements of law, [Mr. Heximer] is entitled to his immediate release." Fay, 372 U.S., at 402.

ISSUE THREE

THE 53RD DISTRICT JUDGE HAD ABSOLUTELY NO ADMISSIBLE EVIDENCE, FACTS OR TESTIMONY AT THE PRELIMINARY EXAMINATION -- LET ALONE JURISDICTION -- TO FIND PROBABLE CAUSE THAT A CRIME WAS COMMITTED UNDER MCL § 750.157B2 OR THAT MR. HEXIMER HAD COMMITTED ANY CRIME(S) -- TO BIND THE MATTER OVER TO THE CIRCUIT COURT.

By this point, it should become crystal-clear that District Judge Pikkarainen had absolutely no admissible evidence, facts or testimony before him to conduct the Preliminary Examination.

Since Magistrate Brown never had authority, nor acquired jurisdiction, to proceed against Mr. Heximer, then, all further proceedings occurred in clear and complete absence of jurisdiction. Therefore District Judge Pikkarainen proceeded in clear absence of any authority or jurisdiction.

In Cohens v. Virginia, 19 U.S. 264, 403 (1821), the Court set forth: "We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the Constitution."

In Napier v. Jacobs 429 Mich 222, 244 (1987), the Michigan Supreme Court found that: "The United States Supreme Court has held that a conviction without sufficient evidence is violative of the Due Process Clause. The Court cites six U.S. Supreme Court precedents. See Napier, 429 Mich, at n. 16 (Thompson v. Louisville, 362 U.S. 199, 205-06 (1960); Vachon v. New Hampshire, 414 U.S. 478, 480-81 (1974); Harris v. United States 404 U.S. 1232, 1233-34 (1971); Johnson v Florida, 391 U.S. 596, 597-99 (1968); Adderley v. Florida, 385 U.S. 39, 44 45 (1966); Jackson v. Virginia, 443 U.S. 307, 322-24 (1979)).

The Honorable Court should easily recognize these errors reach the level of constitutional magnitude; errors that must be corrected as a matter of clearly-established law. Indeed, no reasonable Judge or jury could/would convict any defendant where there is absolutely no admissible evidence, facts or testimony.

In other words, District Judge Pikkarainen had any authority or jurisdiction whatsoever to conduct a preliminary examination; let alone bind the matter or Mr. Heximer over to the 44th circuit court. The bind over was fatally defective, invalid and, therefore, void.

Without a valid bind over, the circuit court never acquired personam and subject-matter jurisdiction. The Prosecutor "cannot" file an information without a valid bind over. Hence, the Prosecutor was ESTOPPED from filing an information in the solicitation matter. See People v. Glass, 464 Mich 266, 278 (2001). The district court itself was also ESTOPPED from filing a return; which is required for the circuit court to acquire personam and subject-matter jurisdiction. See People v. Goecke, 457 Mich 442, 459 (1998), citing People v. Evans, 72 Mich 367, 387-88 (1888) ("Had no return been filed, the circuit court would not have acquired jurisdiction over the case or the accused.").

Because the solicitation conviction "'cannot be shown to conform with the fundamental requirements of law, [Mr. Heximer] is entitled to his immediate release.'" Fay, 372 U.S., at 402.

ISSUE FOUR

A CONVICTION PRONOUNCED BY THE 44TH CIRCUIT COURT WITHOUT ANY ADMISSIBLE EVIDENCE, FACTS OR TESTIMONY -- AND THE WANT OF PERSONAM AND SUBJECT-MATTER JURISDICTION -- IS UNCONSTITUTIONAL.

By now, the Honorable Court -- being fully apprised in the premises -- shall recognize that the 44th circuit court never had authority nor acquired jurisdiction over the case or Mr. Heximer.

In fact, all proceedings which occurred in the 44th circuit court were accomplished in clear and complete absence of jurisdiction.

It is axiomatic and well-established, that, a court cannot proceed without jurisdiction.

By way of reminder, pursuant to Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 95 (1986): "When the lower court lacks jurisdiction, this Court has jurisdiction not of the merits but merely for the purpose of correcting the error of the lower court in" usurping jurisdiction in the first instance; which is "treason to the Constitution." Cohens, 19 U.S., at 403.

The Court is duly advised, that, each and every appeal throughout the Michigan courts and federal forum was taken in error -- due to the want of jurisdiction in the 53rd district and 44th circuit courts. An error which has cost the taxpayers an undisclosed sum of money. The error must be charged against the: (1) Defense attorneys (David E. Prine, Mark A. Gatesman & Mack T. Spickard); Judges (district & circuit); (3) Magistrate; (4) Prosecutor; and (5) State Appellate Defender's Office (Marla R. McGowan).

It appears that the 53rd district and 44th circuit courts became an accomplice in the wilfull transgression of the laws of the united States. See Lee v. State of Florida, 392 U.S. 378, 386 (1968) ("Under our Constitution no court, state or federal, may serve as an accomplice in the wilfull trangression of 'the laws of the United States,' laws by which 'the Judges in every State [are] bound * * *.'"), quoting U.S. Const., Art VI, § 2.

Circuit Judge Stanley J. Latreille had absolutely no admissible evidence, facts or testimony -- let aloneany authority or jurisdiction -- to proceed against this disabled veteran (Mr. Heximer). Absolutely every one of the Government witnesses were prohibited from providing any testimony whatsoever due to Mr. Heximer's illegal detention. See Silverthorne Lumber Co., 251 U.S., at 392 ("evidence so acquired shall not be used before the court but that it shall not be used at all.").

Plainly stated, the solicitation conviction pronounced by Circuit Judge Latreille is illegal, invalid and void !!!

Because the solicitation conviction "cannot be shown to conform with the fundamental requirements of law, [Mr. Heximer] is entitled to his immediate release." Fay, 372 U.S., at 402.

ISSUE FIVE

THE PROSECUTOR COMMITTED FRAUD UPON THE COURTS, MR. HEXIMER AND PUBLIC WHERE THERE WAS ABSOLUTELY NO ADMISSIBLE EVIDENCE, FACTS OR TESTIMONY -- LET ALONE JURISDICTION --TO PURSUE THE SOLICITATION CHARGE AGAINST MR. HEXIMER (A DISABLED VETERAN) DUE TO HIS ILLEGAL DETENTION.

The Prosecutor and his staff attorneys knew, or were charged with knowing, that: (1) the WARRANT FELONY "was not" signed by Magistrate Brown; (2) Mr. Heximer s detention was illegal; and (3) all evidence, facts and testimony acquired in the solicitation matter during "illegal detention" was inadmissible Absolutely none of the evidence, facts or testimony could be used before the court and "evidence so acquired shall not be used before the court but that it shall not be used at all." Silverthorne Lumber Co., 251 U.S., at 392 (Emphasis added).

"The important thing is that those administering the criminal law understand they [must follow the law]." Davis, 354 U.S., at 725 n. 4 (quoting Bynum, 262 F.2d at 468, 469) (Emphasis added).

Several decisions clearly demonstrate that the Prosecutor knew, or was charged with knowing, that the WARRANT FELONY "was not" signed by Magistrate Brown. A simple review of the WARRANT FELONY itself reveals the obvious fact that it lacks the required signature.

As set forth in Santobello v. New York, 404 U.S. 257, 262 (1971), "staff lawyers in a prosecutor's office have the burden of 'letting the left hand know what the right is doing' or has done." See People v. Peterson, 1997 Mich App LEXIS 3544 (Feb. 14, 1997), at * 7 (same). In United States v. Davila, 2003 U.S. Dist. LEXIS 20186 (E.D.Pa. Nov. 5, 2003), at * 21-22, the Court held: "Knowledge of relevant information by one prosecutor is imputed to all prosecutors in the same office. Giglio v. United States, 405 U.S. 150 [] (1972). The rule encompasses evidence not known to a prosecutor but known to police investigators working the case. Strickler v. Greene, 527 U.S. 263, 280-81 [] (1999); Kyles v. Whitley, 514 U.S. 419, 438 [] (1995)." See United States v. Payne, 63 F.3d 1200, 1208 (2d Cir. 1995) ("The individual prosecutor is presumed to have knowledge of all information gathered in connection with the government's investigation."); Longworth v. Ozmint, 302 F.Supp.2d 535, 556 (S.C. 2003) ("The police are also part of the prosecution, and the taint on the trial is no less if they, rather then the State's Attorney, were guilty of the nondisclosure. If the police allow the State's Attorney to provide evidence pointing to guilt without informing him of evidence which contradicts this inference, state officers are practicing deception not only on the State's Attorney but on the court and the defendant.") (Emphasis added).

Under Imbler v. Pachtman, 424 U.S. 409, 425 n. 25 (1997), "the prosecutor is bound by the ethics of his office to inform the appropriate authorit[ies] of after-acquired or other information that casts doubt upon the correctness of the conviction. Cf. ABA Code of Professional Responsibility § EC 7-13 (1969); ABA Standards, supra, § 3-11."

However, despite being notified on numerous occasions of the after-acquired information identified in this petition, both the Livingston County Prosecutor and Michigan Attorney General's Office **FAILED** to uphold the ethics of their offices and the rights of this disabled veteran. Several requests to commence a

suit ex rel. on behalf of this disabled veteran were made to both Government Offices, but those requests apparently fell upon deaf ears despite the ethics of their Office and clear legal duties. See Giglio v. United States, 405 U.S. 150, 154-55 (1972) ("Deliberate deception of the courts in presenting false evidence is incompatible with the rudimentary demands of justice" and requires reversal).

At this point, a precedential decision of the Supreme Court is instructive. In Ford v. Wainwright, 477 U.S. 399, 428-29 (1986), the Court held: "[R]egardless of the procedures the State deems adequate for determining the preconditions to adverse official action, **federal law** defines the kind of process a State **must** afford prior to depriving an individual of a protected liberty or property interest." (Emphasis **added**).

The Prosecutor and his staff lawyers circumvented the law (Federal & Michigan) and rights of this disabled veteran; thereby, practicing deception upon the courts in direct violation of their ethics, oaths and the Supremacy Clause (U.S. Const., Art VI, § 2). For the Prosecutor to commence and prosecute the charge of solicitation to commit murder (MCL 750.157B2) against this disabled veteran -- especially when there was absolutely no: (1) admissible evidence, facts or testimony; or (2) jurisdiction -- is clearly deception of the highest degree/magnitude which equates to fraud.

In the solicitation matter, the Complaining Witness (Det. Childers) **COULD NOT** bear any testimony during the swearing of the Complaint, or any other hearings/proceedings either, for the reasons set forth in this petition. See Graham v. Mohr, 2002 Tenn. App. LEXIS 175 (March 12, 2002) ("With no admissible evdience to offer, Officer Stack was excused."); United States v. Price, 1992 U.S. App. LEXIS 3466 (Feb. 27, 1992) ("Hence, there was no admissible evidence before the jury that any crack sales occurred.").

It is beyond question that competent testimony is necessary to bind over, e.g., People v. King, 412 Mich 145 (1981); People v. Stafford, 434 Mich 125, 133-34 (1989). Courts rely upon the integrity of prosecutors and police not to introduce untrustworthy evidence. Berger v. United States, 295 U.S. 78 (1935); Augurs v. United States, 427 U.S. 97 (1976). The "law presumes that prosecuting attorneys, in bringing and conducting such examinations, will act in good faith towards the people and the accused ..." Missaukee Prosecuting Attorney v. Missaukee Circuit Judge, 85 Mich 138, 139 (1891). However, the Court will find that is/was not the case with regards to Mr. Heximer since the Prosecutor clearly knew, or should have known, that there was absolutely no admissible evidence to commence -- let alone sustain -- a solicitation conviction.

Moreover, the Prosecutor knew that the police reports admitted into evidence before Circuit Judge Latreille were contrary to Supreme Court precedent. See Shepard v. United States, 544 U.S. 13, 15 (2005) (Sentencing Court not permitted to look to police reports.").

The Prosecutor knew, or was charged with knowing, that there was no: (a) admissible evidence, facts or testimony; and (b) competent witness -- to confer jurisdiction upon the district court or Magistrate Brown and establish the requisite Fourth Amendment finding of probable cause to charge any crime(s).

With **no** jurisdiction and probable cause to charge any crime(s), District Judge Pikkarainen and the Prosecutor were **ESTOPPED/PROHIBITED** from conducting a

preliminary examination. The bind over to circuit court was fatally defective, invalid and void.

The Prosecutor was **ESTOPPED** from filing an information without a valid bind over and preliminary examination. The 44th circuit court never acquired personam and subject-matter jurisdiction. The circuit court proceeded in clear and complete absence of jurisdiction. The solicitation conviction is void !!!

The Honorable Court is duly advised that the Prosecutor also withheld Brady evidence and destroyed (or failed to preserve) material evidence contrary to clearly-established law. See Brady v. Maryland, 373 U.S. 83 (1963); Arizona v. Youngblood, 488 U.S. 51 (1988); California v. Trombetta, 467 U.S. 479 (1984).

The United States District Court for the Eastern District of Michigan **FAILED** to address the numerous **Brady** claims raised despite the fact that **Brady** claims survive a guilty or nolo contendere plea. See Sanchez v. U.S., 50 F.3d 1448, 1453 (9th Cir. 1995) ("Three circuits have held that a defendant can argue that his guilty plea was not voluntary and intelligent because it was made in the absence of withheld **Brady** material."), citing White v. United States, 858 F.2d 416, 422 (8th Cir. 1988); Miller v Angliker, 848 F.2d 1312, 1319-20 (2d Cir. 1988); Campbell v. Marshall, 769 F.2d 314, 321 (6th Cir. 1985). See also McCann v. Mangialardi, 337 F.3d 782 (7th Cir. 2003). This fact clearly changes the entire legal landscape; thereby, establishing that the nolo- contendere "was not" intelligent and voluntary due to the: (1) Government's withholding of Brady material and destruction (or lack of preservation) of material exculpatory evidence thereof; and (2) ineffective assistance of counsel (trial & appellate).

In fact, the plea "cannot be truly voluntary unless the defendant possesses an understanding of the law in relation to the facts." McCarthy v. United States, 394 U.S. 459, 466 (1969). Had defense counsel correctly advised Mr. Heximer that the majority of, if not all, evidence "so acquired shall not be used before the court but that it shall not be used at all[,]" see Silverthorne Lumber Co., 251 U.S., at 392; then, Mr. Heximer "would not have pled no-contest but would have insisted on going to trial." Hill v. Lockhart, 474 U.S. 52, 59 (1985). Indeed, without any admissible evidence or testimony in the solicitation matter, the Prosecutor would not have chosen to initiate criminal process because it would have been impossible to prove their case without any evidence whatever.

All federal cases involving this disabled veteran (Mr. Heximer), pertaining to the solicitation matter, were commenced in clear and complete absence of jurisdiction and probable cause to charge any crime(s). The fraud committed by the Prosecutor and LCSD -- destroys and/or vitiates all: contracts (pleas); decrees; documents (i.e., Complaint, Judgment of Sentence, Plea, Warrant, etc.); and judgments. See Throckmorton, 98 U.S., at 64-65; Nudd, 91 U.S., at 440-41.

The Honorable Court shall take Judicial Notice that a "defect in the integrity of the federal habeas proceedings" exists, see Gonzales v. Crosby, 545 U.S. 524, 531 (2005), because: Magistrate Brown; District Judge Pikkarainen; and Circuit Judge Latreille -- proceeded in clear and complete absence of jurisdiction. Hence, no judgment coul dbe obtained without jurisdiction. This Court knows there could be no Michigan judgment issued without jurisdiction. According to Gillespie v. Warden, London Correctional Institution, 771 F.3d 323

328 (6th Cir. 2014): "For federal habeas jurisdiction to exist under § 2254, therefore, a state prisoner must be held pursuant to a judgment." In other words, numerous federal proceedings ensued in absence of jurisdiction due, in part, to the fraud committed by the Prosecutor and LCSD.

The Supreme Court's insistence that proper jurisdiction appear began as early as 1804. Steel Co., 523 U.S., at 95 (citing Capron v. Van Norden, 2 Cranch 126 (1804)). Once jurisdiction is challenged, it must be proven and all elements of jurisdiction placed on the record. Hagans v. Lavine, 415 U.S. 528, 534 (1974). No sanction can be imposed absent proof of jurisdiction. Standard v. Olesen, 74 S.Ct. 768, 771 (1954). If any court finds absnec of jurisdiction over the person or the subject matter, the case **must** be dismissed. Louisville & Nashville RR Co. v. Motley, 211 U.S. 129, 154 (1908) (Emphasis added).

Plainly stated, Mr. Heximer challenged subject-matter jurisdiction in all three Michigan courts (44th circuit, Court of Appeals, Supreme Court). However, the Prosecutor **never** met their burden of demonstrating subject-matter jurisdiction in any court, as required by law (Federal & Michigan). See p i, ¶ 5, ante.

The early quotes of Blackstone and our Supreme Court are relevant herein "The natural life, says Blackstone, cannot legally be disposed of or destroyed by any individual, neither by the person himself nor by any other of his fellow creatures merely upon their own authority. 1 Bl. Comm. 133. The public has an interest in his life and liberty, neither can be taken except in the mode prescribed by law." Hopt v. City of Utah, 110 U.S. 574, 579 (1884).

In Weeks, supra, the Court held: "In order to make effective the fundamental constitutional guarantees of sanctity of the home and inviolability of the person, Boyd v. United States, [116 U.S. 616 (1886)], this Court held nearly half a century ago that evidence seized during an unlawful search could not constitute proof against the victim of the search."

The clarity of Supreme Court's precedents unequivocally sets forth that absolutely none of the evidence, facts or testimony acquired in the solicitation matter during Mr. Heximer's illegal detention can be used before the court. In fact, it shall not be used at all. Tellingly, it becomes crystal-clear that the Prosecutor deliberately ignored the precedential decisions of this Honorable Court and trampled upon the constitutional rights of this disabled veteran.

It is abundantly clear that the Prosecutor's deception, fraud and withholding of Brady evidence resulted in an increased prison term. The solicitation matter **COULD NOT** be initiated or sustained without **any** admissible evidence (facts or testimony) or jurisdiction. In Glover v. United States, 531 U.S. 198, 200 (2001), the Court held: "that if an increased prison term did flow from an erro the petitioner has established Strickland [v. Washington, 466 U.S. 668 (1984)] prejudice."

Irreparable Harm & Injury

After more than a decade (eleven plus years) of an imprisonment obtained by; fraud; lack of any admisisble evidence, facts or testimony; and want of jurisdiction -- Mr. Heximer suffers "**irreparable harm & injury**." To constitute irreparable harm, an injury must be certain, great and actual. Williams v. Jason Michael Katz, P.C., 2013 U.S. Dist. LEXIS 155619 (E.D.Mich. Oct. 29, 2013).

ISSUE SIX

THE PLAINTIFF'S FAILURE TO ANSWER OR MEET ITS BURDEN OF DEMONSTRATING SUBJECT-MATTER JURISDICTION IN ANY OF THE MICHIGAN COURTS (44TH CIRCUIT, COURT OF APPEALS, SUPREME COURT) CONSTITUTES FORFEITURE AND/OR WAIVER.

The Honorable Court shall take Judicial Notice -- being respectfully reminded -- that the Prosecutor (Plaintiff's attorney of record) **never** met his burden of demonstrating subject-matter jurisdiction in **any** of the three Michigan courts (44th circuit, Court of Appeals, Supreme Court). As this Court knows, it is the Plaintiff wo bears the burden, see p i, ¶ 5, ante, because "once jurisdiction is challenged, it must be proven and **all** elements of jurisdiction placed on the record." Hagans, 415 U.S., at 534 (Emphasis **added**). See p 13, ¶¶ 2-3, ante.

However, the Plaintiff's attorney **FAILED** to meet his burden -- choosing instead to remain completely silent on the issue (want of personam and subject-matter jurisdiction); thereby, violating the: (a) ethics of his Office; (b) oaths (constitutional & statutory); and (c) Supremacy Clause (U.S. Const., Art VI, § 2). In other words, the Plaintiff deliberately chose to remain silent; failing to submit an answer or meet **their** burden.

In accordance with clearly-established law, by choosing not to submit an answer or meet **their** burden, "the Government has affirmatively [**WAIVED**] any defense[s] or procedural defense that might otherwise apply." Baskerville v. United States, 2013 U.S. Dist. LEXIS 104208 (July 2, 2013), at * 2-3. In **Baskerville**, the Supreme Court for the united States of America "construes this concession as a waiver of any waivable defenses that might otherwise apply, and the Court will proceed on the basis of that waiver. See Day v. McDonough, 547 U.S. 198, 202 [] (2006) (holding that it would be "an abuse of discretion to override a State's deliberate waiver of a [] defense."); Wood v. Milyard, 123 S.Ct. 1826, 1830 (2012) ("A court is not at liberty, we have cautioned, to bypass, override, or excuse a State's deliberate waiver of a [] defense."); see also Yeatts v. Angelone, 166 F.3d 255, 261 (4th Cir. 1999) ("'[T]he issue of procedural default is generally an affirmative defense that the state must plead in order to press the defense thereafter.")."

Because the Plaintiff and their attorney of record (Prosecutor) **FAILED** to meet **their** burden -- choosing to remain silent; then, respectfully, this Honorable Court shall apply the Doctrines of Forfeiture and/or Waiver.

When the opposing "party does not 'respond to the substance of the allegation' -- such allegation 'is admitted.'" Fed.R.Civ.P. 8(b)(2) & (6). The Plaintiff and their attorney of record (Prosecutor) have "failed to file any document that satisfies Rule 8(b)'s requirements." Ashley v. Jaipersaud, 544 Fed.Appx. 827, 829 (11th Cir. 2013), citing Williams v. Caulderon, 52 F.3d 1465 1483 (9th Cir. 1995) (noting that Rule 8(b) "require[s] fact- by-fact responses."). In failing to meet **their** burden of demonstrating subject-matter jurisdiction in **any** of the three Michigan Courts, Mr. Heximer's pleadings stand "judicially admitted."

In "the absence of a denial, the fact[s] as stated in the [pleadings] of [Mr. Heximer] is confessed [and] stands as an admission of the record, of its truth by the [Prosecutor]." Harshman v. Knox, 122 U.S. 306, 317 (1887). See

Walker v. Johnston, 312 U.S. 275 (1941).

In Guilmette v. Howes, 624 F.3d 286, 292-93 (6th Cir. 2010) (En Banc), the Court would not overlook state's forfeiture of its merit argument. See Scott v. Collins, 286 F.3d 923, 930 (6th Cir. 2002) (A Court commits error when it cures one party s waiver by ruling sua sponte); 6 Cir. I.O.P. 32.1. See also Rivera v. Dep't of Corr., 915 F.2d 280, 285 (7th Cir. 1990) (If the State waives its best arguments it must live with the consequences); Charter Oak Homes v. City of Detroit, 2011 Mich App LEXIS 1744 (Oct 2, 2011), at * 18 ("If it is not worth the [Prosecutor's] time to defend a challenge to [subject-matter jurisdiction], the Tribunal should not require a [Disabled Veteran - Mr. Heximer] to put forth a full blown case to prevail.").

Due to the Plaintiff's failure to meet **their** burden of demonstrating subject-matter jurisdiction in **any** of the three Michigan courts, or file/submit any document that satisfies Rule 8(b)'s requirements, the facts are deemed to be "judicially admitted"; thus placing no further burden upon Mr. Heximer (a disabled veteran) to prove his case factually. See Ashley, 544 Fed.Appx., at 829.

In Arbaugh v. Y & H Corp., 546 U.S. 500, 506 (2006), the Court held: "When it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject-matter, the court shall dismiss the action." Tellingly, **Arbaugh** is but one of a plethora of cases illuminating this well-established point of law. A "party cannot be estopped from rasing the issue." In re Contempt of Dorsey, supra.

Plainly stated, because "there was **no** jurisdiction, there was no [solicitation]." People v. St. John, 284 Mich 24, 34 (1938).

Because the solicitation conviction "cannot be shown to conform with the fundamental requirements of law [Mr. Heximer] is entitled to his immediate release." Fay, 372 U.S., at 402.

Declaration & Verification

I declare under the pains of perjury the foregoing is true and correct by personal knowledge. 28 USC § 1746; MCR 2.114(B)

Respectfully submitted,

Executed on: 8-27-2017 By: Robert Heximer

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CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Robert Sievan

Date: August 28, 2017