

In the Supreme Court of the State of Idaho

In Re: Petition for Writ of Prohibition.

PETER A. HEARN,

Petitioner,

v.

ADA COUNTY DISTRICT COURT;
HONORABLE REGAN C. JAMESON,
Magistrate Judge,

Respondents.

Order Denying Petition for Writ of Prohibition

Supreme Court Docket No. 51048-2023

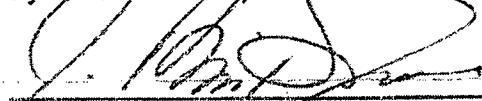
Ada County Magistrate Court No.
CR01-22-22577

A VERIFIED PETITION FOR WRIT OF PROHIBITION and VERIFIED BRIEF IN SUPPORT OF VERIFIED PETITION FOR WRIT OF PROHIBITION were filed by Petitioner Peter A. Hearn on August 16, 2023. Therefore, after due consideration,

IT IS ORDERED that Petitioner Peter A. Hearn's VERIFIED PETITION FOR WRIT OF PROHIBITION is DENIED.

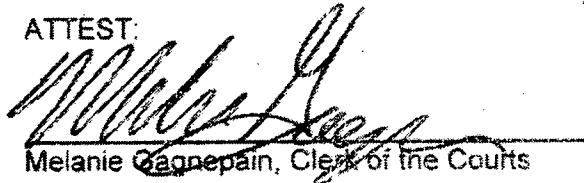
Dated September 22, 2023.

By Order of the Supreme Court



G. Richard Bevan, Chief Justice

ATTEST:


Melanie Gagnepain, Clerk of the Courts

cc: Peter A. Hearn
2602 East Nahuatl Drive
Boise, ID 83716

District Court Clerk
District Court Judge

APPENDIX [A]

In the Supreme Court of the State of Idaho

Re: Petition for Writ of Prohibition.

PETER ALAN HEARN,

Petitioner,

v.

FOURTH JUDICIAL DISTRICT
COURT; REGAN JAMESON,
Magistrate Judge,

Respondents.

Order Denying Petition for Writ of Prohibition

Supreme Court Docket No. 50573-2023

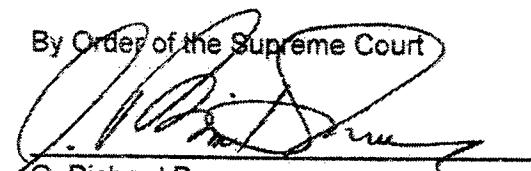
Ada County Magistrate Court No.
CR01-22-22577

A VERIFIED PETITION FOR WRIT OF PROHIBITION with attachments was filed by Petitioner Peter Alan Hearn on March 8, 2023. Therefore, after due consideration,

IT IS ORDERED that Petitioner Peter Alan Hearn's VERIFIED PETITION FOR WRIT OF PROHIBITION is DENIED.

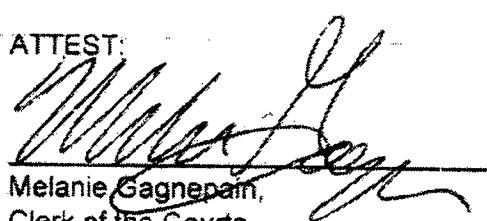
Dated April 11, 2023.

By Order of the Supreme Court



G. Richard Bevan,
Chief Justice

ATTEST:



Melanie Gagnepain,
Clerk of the Courts

cc: Peter Alan Hearn
2602 East Nahuatl Drive
Boise, ID 83716

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO, Plaintiff,	Case No. CR01-22-22577
vs.	ORDER DENYING DEFENDANT'S MOTION TO DISMISS
PETER HEARN, Defendant.	

On Nov. 30th, 2022, the Court addressed the Defendant's Motion to Dismiss and orally DENIED this motion. Neither party requested oral argument. The Court considered the Defendant's Motion to Dismiss, Affidavit in Support of Motion and Motion (Verified Brief, Memorandum of Law in Support of Motion to Dismiss with Prejudice), Response to State's Objection and comments made on the record at the Nov. 30th, 2022 hearing. The State filed an Objection in which the Court also considered, as well as comments on the record by the State.

Summary Analysis:

This Court considered Defendant's Motion pursuant to Idaho Criminal Rule 48. The Court Pursuant to Idaho Criminal Rule 48, on notice to all parties, may dismiss a criminal action on its own motion or on motion of any party if the Court concludes that dismissal will serve the ends of justice and effective administration of the Court's business.

This Court has determined that it has both personal jurisdiction over the defendant and subject matter jurisdiction over the case. The Court finds the Defendant's arguments are without merit and that there was reasonable suspicion for Officers to conduct a traffic stop and detain the Defendant. That during the interaction with the defendant probable cause to arrest on misdemeanor crimes of Resist and Obstruct and Failure to Carry Driver License was established when the defendant failed to provide any requested information in regard to his driver license, insurance and registration. The Defendant was given a citation with his name and other identifying information. A not guilty plea was entered on his behalf July 25, 2022. This defendant is not entitled to preliminary hearing because he is not charged with felony crimes.

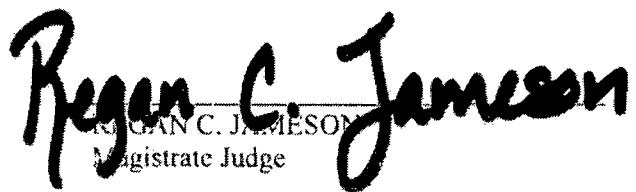
ORDER- PAGE 1

APPENDIX [C]

The defendant has not waived his right to speedy jury trial and the Court has properly set his case for jury trial.

Therefore, the Motion to Dismiss is Denied and the case will remain as set for further proceedings.

DATED: 12/9/2022 4:07:46 PM


MEGAN C. JAMESON
Magistrate Judge

Copies to:
P. Hearn & T. Herrera

12/12/2022 11:29:59 AM
Date: _____ Clerk: SJ

ISP4363000379

IDAHO STATE POLICE
IDAHO UNIFORM CITATION

In the court designated below the undersigned certifies that he/she has just and reasonable grounds to believe that on: 07/23/2022 09:50 PM
DR#: 2022-B22002059

IN THE DISTRICT COURT OF THE 4th JUDICIAL DISTRICT OF
THE STATE OF ID, IN AND FOR THE COUNTY OF ADA

STATE OF ID
VS.

Violator

Last Name: HEARN MI: A
First Name: PETER DOB: 11/14/1966
Hm. Address: 2602 E NAHUATL DR Phone: ()
City/State/Zip: BOISE, ID 83716 Class: D
Height: 5' 8" Weight: 185 lbs. Sex: M Eyes: BROWN Hair: BROWN
DL#: ZC204373J DL State: ID Lic. Expires: 11/14/2023

REGISTRATION

Yr. Veh: 2017 Plate#: NONE State: ID
Make: TOYOTA Model: 4RUNNER
Color: SILVER Style: SUV
VIN: JTEBU5JR1H5460437
IPUC: USDOT TK Cenctus
Hazmat: GVWR 26001+ 16+ Persons:

LOCATION

Upon a Public Street or Highway or Other Location Namely:
EB INTERSTATE 84 AT MILE MARKER 41

VIOLATIONS

Did unlawfully commit the following offense(s), in violation of State or Local Statute:
Infraction Citation: Misdemeanor Citation: Accident:

Date/Time: 07/23/2022 09:50 PM

Violation #1: 18 705 - ARRESTS & SEIZURES-RESISTING OR
OBSTRUCTING OFFICERS

Violation #2: 49 316 - DRIVERS LICENSE-FAIL TO CARRY ON
PERSON \$171.00

COURT INFORMATION

THE STATE OF ID TO THE ABOVE NAMED DEFENDANT:

You are hereby summoned to appear before the Clerk of the Magistrate's Court of the
District Court of ADA County,
located at 200 W FRONT ST. RM 1190
Boise, ID
208-287-6900

CITATION SERVICE

I hereby certify service upon the defendant personally on 07/23/2022

Signature of Officer:

Officer Name: K. TRUESDALE
Agency Name: IDAHO STATE POLICE

READ CAREFULLY
This is an MISDEMEANOR charge in which:

Note: If you fail to appear within the time allowed for your appearance, another charge for failure to appear may be filed and a warrant may be issued for your arrest.

1. You may be represented by a lawyer, which will be at your expense unless the judge finds you are indigent.
2. You are entitled to a trial by jury if requested by you.
3. PLEA OF NOT GUILTY: You may plead not guilty to the charge by appearing before the Clerk of the Magistrate's Court or the judge, within the time allowed for your appearance, at which time you will be given a trial date.
4. PLEA OF GUILTY: You may plead guilty to the charge by going to the Clerk Magistrate's Court, within the time allowed for your appearance, at which time it will be told if you can pay a fixed fine or whether it will be necessary for you to appear before the judge; OR you may have the fine determined by a judge at a time arranged with the Clerk of the Magistrate's Court, within the time allowed for your appearance.
6. You may call the clerk of the court to determine if you can sign a plea of guilty and pay the fine and costs by mail.

I plead guilty to the charges.

Defendant (if authorized by the Clerk of the Magistrate's Court)

MAIL TO: MAGISTRATE COURT
200 W FRONT ST. RM
1190
BOISE, ID 83702

You may call the clerk of the court at 208-287-6900 to determine if you can sign a plea of guilty and pay the fine and costs. Fines and costs for all citations can be paid in person at the courthouse, by mail (Ada County Court, 200 W FRONT ST. RM 1190, Boise, ID 83702) or online using at

<https://icourt.idaho.gov>

IF THIS IS A CITATION FOR FAILURE TO HAVE INSURANCE:

If you provide valid proof of insurance to the court, your citation will be dismissed. If you admit the charge or are found to have committed the offense, your driver's license will be suspended by the State Department of Transportation, Drivers Services Bureau. Once you've paid your fines and costs to the courts, you will then have to pay a reinstatement fee to the State Department of Transportation, Drivers Services Bureau to reinstate your driving privileges.

* ALWAYS BRING THIS COPY OF THE CITATION TO ALL COURT APPEARANCES

ISP436300

Peter Alan: Hearn
2602 East Nahuatl Drive
Boise, Idaho [83716]
(208) 867-8856
Sui Juris

NO. _____
A.M. _____ FILED P.M. _____

AUG 04 2022

PHIL McGRANE, Clerk
By CHYNAE HULL
DEPUTY

**IN THE DISTRICT COURT FOR THE FOURTH JUDICIAL DISTRICT
FOR THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

THE STATE OF IDAHO

Plaintiff, in err

vs.

PETER ALAN HEARN

Defendant, in err

Case No. CR01-22-22577
& CR01-22-22628

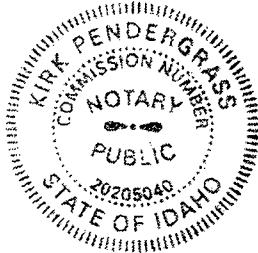
**NOTICE OF SPECIAL
APPEARANCE**

Comes now, the alleged Defendant PETER ALAN HEARN, in err, Peter Alan: Hearn, a living man, creation of God, one of the People of the territory of Idaho, appearing specially, not generally, objecting to the personal jurisdiction.

State of Idaho
County of Ada

Peter A. Hearn August 4, 2022

On this 4th day of August 2022, Peter Alan Hearn personally appeared before me and having been duly sworn did herein execute the above record for the purposes stated.



Kirk Pendergrass
Notary Signature

Kirk Pendergrass

My Commission Expires 12-17-2026

NOTICE OF SPECIAL APPEARANCE

Page 1 of 2

APPENDIX [E]

CERTIFICATE OF SERVICE

I certify that on 8-4-2022, I served a copy of the foregoing Notice of Special Appearance to:

Ada County Prosecutor
(Name)

By United States mail
 By personal delivery
 By fax ()

200 West Front Street
(Street or Post Office Address)

Boise, Idaho [83702]
(City, State, and Zip Code)

Clerk of the Court
(Name)

By United States mail
 By personal delivery
 By fax ()

200 West Front Street
(Street or Post Office Address)

Boise, Idaho [83702]
(City, State, and Zip Code)

Peter A. Hearn
Typed/printed Name

Peter A. Hearn
Signature

NO. _____
A.M. _____ FILED
P.M. _____

Peter Alan: Hearn
2602 East Nahuatl Drive
Boise, Idaho [83716]
(208) 867-8856
Sui Juris

AUG 16 2022

PHIL McGRANE, Clerk
By KERA GOEKE
DEPUTY

VERIFIED AFFIDAVIT
I AM NOT THE NAME

STATE OF IDAHO)
) ss. Case No. CR01-22-22577
)
County of Ada) Verified Affidavit

Comes now **Peter-Alan: Hearn**, the natural living flesh and blood man, creation of God, a peaceful American National on the land, under oath, who states that the following information is of his own personal knowledge, and belief.

I, who shall not be with PETER ALAN HEARN name, hereby proclaim to all with unclean hands;

Be it now known that all words/spellings upon/within this document shall be of my will and intent only, without assumption/presumption on/of/by/for any/all concerned where my free will choice shall never be trespassed where my intent is my intent and no one else's;

WHEREAS, a great fraud has been revealed and is laid bare where unclean hands are now in the light exposed for all to see where any/all with unclean hands must judge only self, *toto genere*;

WHEREAS, non-disclosure has intent to defraud in the act, any and all contracts of body, mind, and soul are null and void, *nunc pro tunc, praeterea, praeterea, ab initio, ad infinitum* in this willful intent to commit fraud by omission and/or commission where others and all are concerned, and;

WHEREAS, threat of force perceived or real is proof of intent inasmuch as aiding and abetting in this fraud and where assumption and presumption are concerned and thus destroyed, whereby one is known by their actions of their willful intent either knowingly or in ignorance of the Divine laws under which all stand, and;

WHEREAS, all signatures, contracts, assumptions, presumptions etc et al are rendered null and void ab initio inasmuch as all are in contempt and fraud where the CROWN owned and COPYRIGHTED name PETER ALAN HEARN is concerned, and;

WHEREAS, the intent to commit fraud via deceptions/deceptios and willful non-disclosure of truths where intent to enslave all humanity/mankind by church/state in this intent is exposed fully whereby one's actions make one known, and;

WHEREAS, all names registered are, in fact, property of the CROWN/VATICAN, all matters pertaining to such names registered and the use thereof render all parties fraudulent and in contempt via willful intent to deceive and/or ignorance of use where all matters of church/state remain matters of church/state where use of the name/s registered are concerned and where/when third party interloping is evident by my use or anyone's use of stated registered names, and;

WHEREAS, it is not my intent to commit fraud or *any contemptible/contemptable acts*, it is also my equal intent to never aid and abet any other living soul via willfully knowing or ignorance on/in their/my part and any use of or claim made using the aforementioned name/s will render such attempt an act of fraud by willful commission, and;

WHEREAS, any/all use of church/state identification based upon these/all CROWN COPYRIGHTED names or any variation/s thereof renders the user in fraud absolute via their ignorance and by omission of disclosure of/by church/state, and;

WHEREAS, any/all claims made by any/all parties/agents/living souls upon another willfully or in ignorance to do so is guilty of fraud in that action by commission and/or omission of bearing false witness and is in contempt of church/state/self and is willfully aiding and abetting fraudulent deception/deceptios where upon judgment is rendered upon any/all agents of church/state/self by the very action of claiming via CROWN COPYRIGHT fraud, and;

INASMUCH as intent (spirit) must be proven where all are concerned, it is now incumbent upon the church/state that the willful intent to commit fraud ab initio is without intent to do so. With prior knowledge, the agents/clergy/BAR members/all bound by oaths etc. et al to/of/for/by/with church/state did/do willfully deceive humanity and is, by the actions of all bound to church/state by oaths sworn/taken/given judged by/of/in all acts of harm upon any/all harmed, and;

WHEREAS, fraudulent intent of all bound to church/state entities/identities/living souls/principalities is visible via omission and/or commission by the actions of harm/intent to harm of/for/by all beings using a NAME in fraud ab initio, all claims made/coerced/assumed/presumed etc. et al are in fact fraudulent at source of/for/by all claiming any/all legal NAME(S)/fictional identities/titles etc. et al and/or thus any/all forms/aliases and are of/by/for the criminal intent to do so using the intellectual property of another living soul/spirit or dead fictional entity where I am toto genere, spirit, mind, body, and;

FURTHERMORE, to engage in such intently destructive acts of harm/deception/theft/coercion etc. et al against another via any/all means is shown by one's

actions and need never be judged whereby the act is the judge in/of itself, judge not lest ye be judged where assumption/presumption cannot/does not/will not exist after the act itself, and;

FURTHERMORE, any/all REGISTRATION/REGISTERING/REGISTER by omission and/or commission where full disclosure is not evident, the intent of church/state/any/all claiming such association/joinder by means of willful oaths, signatures (cursive), titles, etc. et al are, in fact, willful acts of predetermined fraud knowingly or unknowingly where wrongful obligation(s)/curse(s) has/is/was the intent where obligation(s) is/are replaced back upon those who knowingly and/or in ignorance of their fraud do so ab initio, ad infinitum, nunc, pro tunc, praeterea, praeterea, praeterea, and;

FURTHERMORE, it is/was never my intent to willfully use the property of another WHEREAS, any/all things REGISTERED are, in fact, claimed to be such intellectual property of another, namely church/state/CROWN where my Mother and Father (deceased), unknowingly were, in ignorance, aided and abetted of their consent into such church/state contracts, be they all forms physical/spiritual/mental, and;

FURTHERMORE, I place the onus (ownus) back upon/return to any/all beings by virtue of their oaths etc. et al and self-judged in their acts, any/all obligations created by any/all contracts where all contracts entered into based on this fraud/original sin/intent to defraud are nullified/null and void ab initio, ad infinitum nunc pro tunc, and;

FURTHERMORE, all obligations upon myself created via this fraud are void inasmuch as the perceived/assumed/presumed gift, without consideration of any all NAME(S) is concerned in that a BOND/DEBT was/is/has been created in the form of a BIRTH CERTIFICATE with an assigned DEBT, not value, where I was assumed/presumed to be that value without/void of my willful consent where it was/is/has been the willful intent of/by/for all parties initiating such acts of obligation upon this, their DEBT, and;

WHEREAS, intent is clearly visible by any/all who engage in acts of commerce (Whore of Babylon) using the NAME (mark of the beast) is/was/has been/will be acting in fraud and creating harm/cannibalism against their fellow humans/beings since all fiat currency is based upon aforementioned BONDS and is guilty of human being trafficking of the highest order and in defiance of creation where consumption ensues, and;

WHEREAS, the willful intent from any/all willful associated/members/oathed beings of church/state/CROWN is evidentiary proof of/by/ for any/all acts perpetrated against another where any/all REGISTERED NAMES are concerned inasmuch as nondisclosure by aforementioned was never given/offered where aiding and abetting in fraud is the intent and where any/all aforementioned have unclean hands accordingly, and;

WHEREAS, any/all REGISTERED "things/possessions" are, in fact, property of the church/court/state/CROWN (copyright) where any claim made by any/all not oathed to the aforementioned are matters of church/court/state/CROWN inasmuch as willful trespass and enticement into slavery via third party interloping into such matters that do not concern me, the

one who shall not be of NAME where my own customary calling is mine and shall never be given, and;

FURTHERMORE, by means of this BIRTH CERTIFICATE (long form/short form) deception/nondisclosure/willful act of fraud, the only DOCUMENT(S) ever willfully given as proof of intent to commit fraud/aid and abet fraud by/of/for church/court/state/CROWN etc. et al and all oathed/bonded to willfully to such titles/fictions/corporations where the claim is also made that the aforementioned take on the role of perceived *parens patria* (embodiment of state) and have/are, in fact, kidnapped/abused/harmed any/all who have been fraudulently claimed to be a "ward of admiralty" where the Mother is fiduciary, Father is beneficiary *ab initio* and; WHEREAS, the rites of both Mother/Father have been stolen via nondisclosure and willful intent as proofed by actions of those, by oath/willful application(s) any/all claiming to be of/for/by church/court/state/CROWN in the form of BIRTH CERTIFICATE(S)/license's/marriages/FAMILY NAME(S)/taxes/registrations etc. et al *ab initio* therefore;

Is it the/your willful intent of this/you of/for/by/in church/court/state/CROWN etc. et al beings living/dead fictions to coerce, by force or deceptive means, to have me incriminate myself where I am in full knowledge of this dual fraud where willful intent to do so makes me you guilty *ab initio* by claiming to be own/be something that is/was/has never been mine/yours to be/claimed?;

Is it your (by oath entity) intent to aid and abet the furtherance of this fraud/cannibalism/child kidnapping/human trafficking/theft etc. et al via fictitious ACTS/LEGISLATION etc. et al by/of/for dead entities by/for/of dead entities (dead carrying out the dead) where I am one of the living versus a fictional dead entity created by/for/of the church/court/state/CROWN by enticing me via force/coercion/deception to be a surety for the church/state/court/CROWN created debt(s)?;

WHEREAS, any/all fraud by virtue of its intent and creation remains as such, regardless of length of time taken for such any/all frauds to be exposed, all contracts are null and void upon its discovery where a fraud revealed is, in fact, null and void, *ab initio*, *nunc pro tunc* where all energies stolen in any/all forms shall be returned where the intent to commit fraud against me has been/is/will be with INTENT;

It is not/has never been/never will be my intent to willfully and knowingly commit fraud where mistakes in ignorance by commission and/or omission are present and where any/all acts of mine are not in contempt (with temptation) of anyone/anything where any being choosing willfully to contempt me is now with intent to do so. All contracts/documents/signatures/agreements etc. et al are now null and void where any/all DEBT created by church/court/state/CROWN is forgiven/returned from whence it was created (forgive us our debts as we forgive our debtors) where I am the noncontracting living with the debt BOND identity that is the property/responsibility (re-spawns-ability) of that/those which created it;

It is FURTHERMORE the obligation of any/all oathed beings of/by/for the church/state/court/ CROWN to return my energy/creations/life-force stolen via this original

sin/intent to defraud my Mother and Father where they aided and abetted in my own fraud by means of deception/nondisclosure where your unclean hands are/have been concerned. I seek no vengeance, I offer no judgments and return the obligations of debts/forgiveness to those who would/have deceived me where a crime against all humanity has been/is being perpetrated with willful intent in the light for all to see;

By one's actions one is known and instantly judged in/of/for/by such actions where the intent is laid bare for all to see in/of/by/for any/all such actions WHEREAS, all/any beings willfully by/for/of commission/omission are held and bound judged of themselves. Act accordingly, lest ye be judged in/of/for/by oneself/yourself fully toto genere.

All rights Reserved

(Signature)

Peter A. Hearn Aug. 15, 2022

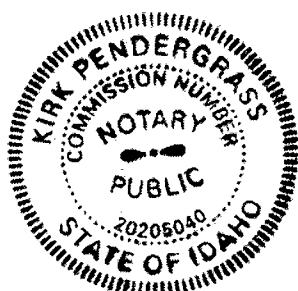
Peter Alan: Hearn © LS, Authorized
Representative/Attorney-In-Fact for:
PETER ALAN HEARN
c/o 2602 East Nahuatl Drive
Boise, Idaho [83716]

Subscribe To and Sworn To Before God [Titus1:2]
this (15) day (August) of (2022)

Acknowledgement by Publication

State of Idaho
County of Ada

On this 15th day of August, 2022, Peter-Alan: Hearn personally appeared before me and having been duly sworn did herein execute the above record for the purposes stated.



Kirk Pendergrass

Printed Name

Kirk Pendergrass

Signature of Notary Public

My Commission Expires: 12-17-2026

CERTIFICATE OF SERVICE

I certify that on 8-16-2022, I served a copy of the foregoing Affidavit of Truth to:

Ada County Prosecutor

(Name)

By United States mail

200 West Front Street

(Street or Post Office Address)

By personal delivery

By fax ()

Boise, Idaho [83702]

(City, State, and Zip Code)

Clerk of the Court

(Name)

By United States mail

200 West Front Street

(Street or Post Office Address)

By personal delivery

By fax ()

Boise, Idaho [83702]

(City, State, and Zip Code)

Peter A. Hearn

Typed/Printed Name

Peter A. Hearn

Signature

Peter-Alan: Hearn
2602 East Nahuatl Drive
Boise, Idaho 83716
(208)867-8856
Sui Juris

NO. _____
A.M. _____ P.M. _____

OCT 13 2022

PHIL McGRANE, Clerk
By LAURA LYON
DEPUTY

**IN THE DISTRICT COURT FOR THE FOURTH JUDICIAL DISTRICT
FOR THE STATE OF IDAHO IN AND FOR THE COUNTY OF ADA**

THE STATE OF IDAHO

KEVIN. TRUESDALE,

Plaintiff, in err

vs.

PETER ALAN HEARN,

Defendant, in err

Case No. CR01-22-22577

**MOTION TO DISMISS WITH
PREJUDICE**

Comes now, the alleged Defendant, PETER ALAN HEARN in err, Peter-Alan: Hearn, moves to dismiss this case with prejudice on the following grounds. No demand for oral argument. Demand for written response from Plaintiff, and Defendant intends to file a brief within 14 days after service of this motion.

1. Defects in the prior proceedings in the prosecution.
 - a. Lack of Probable Cause. On or about July 23, 2022 at approximately 21:00 hours, Kevin Truesdale, acting as Idaho State Police Officer, used his emergency lights to make an unlawful arrest of the man known as Peter and his personal liberty where there was no emergency. Not having License Plates on a non-commercial vehicle or personal property is not an emergency, nor is it an arrestable offense without a warrant as it would be at best a Traffic Infraction.
 - b. Kevin Truesdale, acting as Idaho State Police Officer, executed an unlawful search and seizure of the man known as Peter and his personal property to-wit: 2017 Toyota 4Runner, at night for an alleged misdemeanor without a warrant.

MOTION TO DISMISS WITH PREJUDICE

Page 1 of 6

APPENDIX [6]

- c. Kevin Truesdale, acting as Idaho State Police Officer, deprived the fundamental right of due process of law by failing to take the man known as Peter to the nearest and most accessible magistrate for an initial appearance pursuant to the unlawful arrest on I-84 and instead transported him to Ada County Jail, which is kidnapping.
- d. Furthermore, the Sheriff's Deputies at Ada County Jail inflicted Cruel and Unusual punishment upon the man known as Peter for approximately 11 hours by: forcefully taking his belt, shoes and socks, locking him in a very cold concrete cell with no windows, food, water, toilet paper, bed, blanket or pillow and denied the use of phone, in order to force him to comply with the booking process.
- e. On or about July 25, 2022, David Manweiler, acting as judge, denied Defendant's motion for continuance to allow Defendant to plead in the form of Demurer and entered a plea of not guilty for the Defendant, against Defendants will.
- f. Failed to get a grand jury indictment.
- g. Failed to have a timely preliminary hearing.

2. Defects in the complaint.

- a. The Uniform Traffic Citation issued July 23, 2022, is not in the proper form of a Criminal Summons and Complaint.
- b. The Parties names are not written in the English language. The alleged name of the Violator is written in all capital letters. The alleged name of the Defendant is written in all capital letters, as well as other parts of the document. One obvious limitation of the use of glosses from the spoken/written language to represent signs is that there is no one-to-one correspondence between the words or signs in any languages. Source, The Chicago Manual of Style 17th edition Page 665-666
- c. Kevin Truesdale, acting as Idaho State Police, cites the Idaho Code as Law, his choice of law is in error, whereas the "Idaho Code is not the

law", it is pretended acts of the Legislature and color of law. See Peterson vs Peterson 320 P.3d 1244 (Idaho 2014) Idaho Supreme Court and declaration of Independence July 4th, 1776.

- d. The complaint is not supported by Oath of Affirmation in proper form, in accordance with the Fourth Amendment and the Criminal Practice Act of 1864 sec. 20,103,104
- e. There is no signature on the Notice of Court Date issued July 25, 2022.
- f. Peter's date of birth and social security number are listed on the Notice of Court Date.
- g. There is no court seal on the Complaint.

3. For want of jurisdiction, lack of personal jurisdiction.

- a. Alleged Defendant was/is not at the time a Driver, Operating a Commercial motor vehicle transporting passengers or property for hire, compensation, or profit.
- b. Alleged Defendant was/is not at the time a Public servant or member of the Public and is not subject to any public offence Cr. Prac. 1864 Sec 1.
- b. Alleged Defendant Peter-Alan: Hearn was not at the time a Driver hired to operate a Commercial Motor Vehicle on the streets and highways.
- c. Furthermore, Alleged Defendant, creation of God, man, sovereign, in the private, is bound only by the American common law, and not by the Statutes, Codes, Rules of Procedure, regulations, ordinances, by laws etc., whereas the Idaho Code is not the law, but rather color of law. See Peterson vs Peterson, 320 P.3d 1244 (Idaho 2014) Idaho Supreme Court.

4. For want of jurisdiction over subject matter. Plaintiff lacks subject matter jurisdiction because alleged Violator and/or Defendant was not operating a Commercial Motor Vehicle on the Streets or Highway. Furthermore, Kevin Truesdale, acting as Idaho State Police failed to identify on the Idaho Uniform Traffic Citation IPUC; USDOT TK Census; Hazmat; GVWR 26001+; or 16+ Persons:.

5. For failure to state a cause of action. Kevin Truesdale, acting as Idaho State Police Officer
 - a. Kevin Truesdale, acting as Idaho State Police Officer, deprived the fundamental right of due process of law by failing to take the man known as Peter to the nearest and most accessible magistrate for an initial appearance pursuant to the unlawful arrest on I-84 and instead transported him to Ada County Jail, which is kidnapping.
 - a. Kevin Truesdale, citing Idaho Code, acted under color of law to willfully deprive Alleged Defendant of the fundamental rights of Liberty, Religion/Liberty of conscience, and to be free and equal. Therefore, the alleged complainant does not have clean hands and cannot claim a right to a cause of action against the Alleged Defendant.
 - b. The complainant did not suffer any damages.
6. For want of jurisdiction-defective service, Alleged Defendant Peter Alan: Hearn appearing specially and for the purpose of a motion only and to challenge the jurisdiction of the court, and move the court to dismiss said action for the following reasons, to-wit:
 - a. That no summons has been issued in said action, pursuant to the Common Law or as provided by law.
 - b. That the Complaint is defective in form and fraudulent.
7. For want of Venue. Alleged Defendant Peter Alan: Hearn moves the court to dismiss the complaint herein, because the DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA does not have venue to try this action because it is not a Lawfully created court and demand proof of the law of its creation.
8. That the action is sham and collusive. On the grounds that the same is a sham action, colorably instituted between the plaintiff and the defendant. Therefore, this was a scheme, scam, and a fraud perpetrated, organized, and executed by multiple Public servants conspiring together to deprive fundamental rights.

9. Facts alleged are insufficient basis to entitle complainant to relief sought.

Alleged Defendant Peter Alan: Hearn moves the court to dismiss the complaint upon the grounds that the facts do not entitle complainant to the relief prayed for.

Notice, you have 21 Days to respond in writing with your Objections to the Motion to Dismiss with Prejudice, prove all elements of jurisdiction in writing and Rebut all Affidavits in the Record or Defendant will move for Default Judgment.

PRAYER FOR RELIEF

Wherefore, the Defendant demands the following relief:

6. Dismiss with prejudice.
7. It is further prayed that Peter Alan: Hearn be reimbursed all reasonable costs and fees associated with defending this frivolous and fraudulent action in the amount of \$3,500.00 United States Dollars.

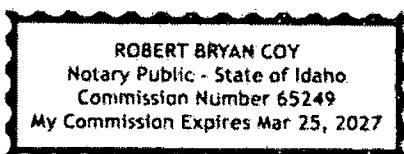
CERTIFICATION UNDER PENALTY OF PURJURY

I certify under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

By Peter - Alan: Hearn October 13, 2022

State of Idaho
County of Ada

On this 13 day of October, 2022, Peter Alan: Hearn personally appeared before me and having been duly sworn did herein execute the above record for the purposes stated.



Robert - Bryan : Coy
Signature of Notary Public

CERTIFICATE OF SERVICE

I certify that on 10-13-2022, I served a copy of the foregoing Motion to Dismiss with Prejudice to:

Ada County Prosecutor
(Name)

By United States mail
 By personal delivery
By fax ()

200 West Front Street
(Street or Post Office Address)

Boise, Idaho [83702]
(City, State, and Zip Code)

Clerk of the Court
(Name)

By United States mail
 By personal delivery
By fax ()

200 West Front Street
(Street or Post Office Address)

Boise, Idaho [83702]
(City, State, and Zip Code)

Peter-Alan Hearn

Typed/printed Name

Peter A. Hearn

Signature

Peter-Alan: Hearn
2602 East Nahuatl Drive
Boise, Idaho 83716
(208)867-8856
Sui Juris

PHIL McGRANE, Clerk
By LAURA LYON
DEPUTY

**IN THE DISTRICT COURT FOR THE FOURTH JUDICIAL DISTRICT
FOR THE STATE OF IDAHO IN AND FOR THE COUNTY OF ADA**

THE STATE OF IDAHO
KEVIN. TRUESDALE,
Plaintiff, in err
vs.
PETER ALAN HEARN.
Defendant, in err

Case No. CR01-22-22577

**VERIFIED AFFIDAVIT IN SUPPORT
OF MOTION TO DISMISS**

Statement of Facts

1. On or about July 23, 2022 at approximately 21:00 hours, Peter-Alan: Hearn was/is not acting as a Driver, Operating a Commercial motor vehicle transporting passengers or property for hire, compensation, or profit.
2. Peter-Alan: Hearn was not at the time acting as a Driver hired to operate a Commercial Motor Vehicle on the streets and highways.
3. Peter-Alan: Hearn: was not acting as a Public servant and therefore is not bound by the Statutes, Codes, Rules of Procedure, regulations, ordinances, by laws etc.
4. Peter-Alan: Hearn: was/is not acting as a Driver Operating a Commercial motor vehicle transporting passengers or property for hire, compensation, or profit therefore cannot/could not be lawfully entered into any of these type of Commercial Motor Vehicle category being operated by a Driver to-wit: IPUC:, USDOT TK Census:, Hazmat:, GVWR 26001+: or 16+ Persons: listed on the Uniform Traffic Citation by Kevin Truesdale.
5. During the traffic stop Kevin Truesdale refused to accept/inspect alleged Defendant's paperwork, which included Peter's name and other identifying information, and proceeded to make an unlawful arrest on grounds that Peter did not produce a Idaho State Drivers license.

6. Kevin Truesdale, acting as Idaho State Police Officer, executed an unlawful search and seizure of the man known as Peter and his personal property to-wit: 2017 Toyota 4Runner, at night for an alleged misdemeanor without a warrant.
7. Kevin Truesdale, acting as Idaho State Police Officer, deprived the fundamental right of due process of law by failing to take the man known as Peter to the nearest and most accessible magistrate for an initial appearance pursuant to the unlawful arrest on I-84 and instead transported him to Ada County Jail, which is kidnapping.
8. The Uniform Traffic Citation issued July 23, 2022, is not in the proper form of a Criminal Summons and Complaint.
9. Kevin Truesdale, acting as Idaho State Police, cites the Idaho Code as Law, his choice of law is in error, whereas the "Idaho Code is not the law", it is pretended acts of the Legislature and color of law. See Peterson vs Peterson 320 P.3d 1244 (Idaho 2014) Idaho Supreme Court and Declaration of Independence July 4th, 1776.
10. The complaint is not supported by Oath of Affirmation in proper form, in accordance with the Fourth Amendment, Article I section 17 of the Idaho Constitution, and the Criminal Practice Act of 1864 sec. 20,103,104 First Legislative Session for the Territory of Idaho.

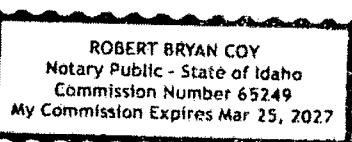
CERTIFICATION UNDER PENALTY OF PURJURY

I certify under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

By Peter - Alan : Hearn October 13, 2022

State of Idaho
County of Ada

On this 13 day of October, 2022, Peter-Alan: Hearn personally appeared before me and having been duly sworn did herein execute the above record for the purposes stated.



Robert - Bryan : Coy
Signature of Notary Public

CERTIFICATE OF SERVICE

I certify that on 10-13-2022, I served a copy of the foregoing Verified Affidavit in Support of Motion to Dismiss with Prejudice to:

Ada County Prosecutor
(Name)

By United States mail
 By personal delivery
By fax ()

200 West Front Street
(Street or Post Office Address)

Boise, Idaho [83702]
(City, State, and Zip Code)

Clerk of the Court
(Name)

By United States mail
 By personal delivery
By fax ()

200 West Front Street
(Street or Post Office Address)

Boise, Idaho [83702]
(City, State, and Zip Code)

Peter - Alan Hearn

Typed/printed Name

Peter A. Hearn

Signature

JAN M. BENNETTS
Ada County Prosecuting Attorney

Tatianna Herrera
Deputy Prosecuting Attorney
Idaho State Bar No. 11909
200 W. Front Street, Room 3191
Boise, ID 83702
Telephone: (208) 287-7700
Fax: (208) 287-7709
acpocourtdocs@adaweb.net

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,)	
)	
Plaintiff,)	Case No. CR01-22-22577
)	
vs.)	
)	
PETER A HEARN,)	STATE'S OBJECTION TO
)	DEFENDANT'S MOTION TO
)	DISMISS
Defendant.)	
)	

COMES NOW, Tatianna Herrera, Deputy Prosecuting Attorney for the County of Ada, State of Idaho, and objects to the Defendant's motion to dismiss this case with prejudice. Defendant's motion is not supported by factual or legal authority and thus cannot be granted. The State requests the Court DENY the Defendant's Motion without a hearing.

STATEMENT OF FACTS

On July 23, 2022, at approximately 9:16 p.m., Trooper Kevin Truesdale with the Idaho State Police observed a silver 2017 Toyota 4Runner driving eastbound on Interstate 84 in Ada County, State of Idaho. Trooper Truesdale observed a white paper displayed on the rear of the vehicle where the license plate should have been displayed, stating "Not For Hire", in violation of I.C. § 49-428.

Trooper Truesdale conducted a traffic stop and made contact with the driver and passengers. The driver, who was later identified as Defendant Peter Alan Hearn, claimed that Trooper Truesdale

STATE'S OBJECTION TO DEFENDANT'S MOTION TO DISMISS (HEARN) Page 1

APPENDIX [I]

had committed a felony by turning on his lights. Trooper Truesdale explained his reason for the stop and requested Defendant's license, insurance, and registration several times. Defendant refused to provide Trooper Truesdale any information and instead attempted to hand him a form to fill out. Trooper Truesdale informed Defendant that pursuant to Idaho Code he is required to provide his driver's license, to which Defendant responded, "Idaho Code is not the Law." Trooper Truesdale offered Defendant a pen to write his information down, which Defendant refused.

At this point Trooper Truesdale removed Defendant from the vehicle and Defendant was arrested in violation of I.C. § 18-705 Resisting and Obstructing Officers. A search of Defendant was conducted incident to arrest, and Defendant was then placed in the rear seat of Trooper Truesdale's vehicle. Trooper Truesdale went back to speak with the remaining passengers who identified Defendant as "Peter Hearn." Trooper Truesdale then confirmed Defendant's identify with a driver's license photo provided by the Regional Communications Center.

Defendant was cited for violating I.C. § 49-430, Failing to Register Annually; I.C. § 49-1232 Failing to Provide Proof of Insurance; and I.C. § 49-428(1) Failing to Display Two License Plates. Defendant was also cited for violating I.C. § 49-316 Failing to Carry Driver's License on Person and arrested for violating I.C. § 18-705 Resisting or Obstructing Officers (See case CR0-22-22577). Defendant filed a motion to dismiss this case on 10/13/2022.

ARGUMENT

Defendant's motion to dismiss contains numerous statements of beliefs and alleged facts; however, it fails to cite any statute, rule, or governing case law that supports such dismissal. I.C.R. 12(a) provides that "[p]ro se litigants are held to the same standards and rules as those represented by an attorney." *State v. Davis*, 165 Idaho 709, 713 (2019).

I. Response to Defendant's Alleged Defects in Prior Proceedings.

- A. Trooper Truesdale was justified in making a traffic stop because he had reasonable and articulable suspicion the vehicle was being driven contrary to I.C. § 49-428.

The Fourth Amendment to the United States Constitution and Article I, Section 17 of the Idaho Constitution, guarantee the right to the citizens of Idaho to be free from unreasonable searches and seizures.

Investigatory detentions are permissible when justified by an officer's reasonable articulable suspicion that a person has committed, or is about to commit, a crime. *State v. Morgan*, 154 Idaho 109, 112 (2013). "Reasonable suspicion must be based

on specific, articulable facts and the rational inferences that can be drawn from those facts. Reasonable suspicion requires more than a mere hunch or inchoate and unparticularized suspicion." *Id.* (citations omitted). The reasonableness of the suspicion must be evaluated upon the totality of the circumstances at the time of the stop. *State v. Ferreira*, 133 Idaho 474, 483, (1999). This standard requires less than probable cause but more than mere speculation or instinct on the part of the officer. *Id.* An officer may draw reasonable inferences from the facts in his or her possession, and those inferences may be drawn from the officer's experience and law enforcement training. *State v. Montague*, 114 Idaho 319, 320 (1988). "A determination that reasonable suspicion exists, however, need not rule out the possibility of innocent conduct." *United States v. Arvizu*, 534 U.S. 266, 277 (2002).

State v. Fairchild, 164 Idaho 336, 429 (2018).

"Idaho Code § 49-428 requires that a vehicle registered in Idaho display both front and rear license plates." *State v. Morgan*, 154 Idaho 109, 112 (2013). *See State v. Martin*, 148 Idaho 31, 38 (2009) (Finding reasonable suspicion for a license plate that was swinging and not securely fastened) and *State v. Tregeagle*, 161 Idaho 763, 766 (2017) (Finding reasonable suspicion for a trailer ball/hitch that partially obstructed a license plate).

In this case, Trooper Truesdale observed Defendant driving his Toyota 4Runner without a rear license plate and a white paper stating "Not For Hire" where the license plate should have been displayed. Therefore, Trooper Truesdale had reasonable suspicion to contact and to detain Defendant for violation of I.C. § 49-428. During the course of the initial investigative detention, Deputy Truesdale's observations, inquiries, and events succeeding the stop gave rise to legitimate expansion of the purpose of the stop when Defendant failed to provide Trooper Truesdale with his driver's license after several requests, in violation of Idaho's Resisting and Obstructing laws.

B. Trooper Truesdale was justified in conducting a search of Defendant's person incident to arrest.

An officer may, contemporaneously incident to a lawful custodial arrest, search the arrestee's person and area within the arrestee's immediate control, including any open or closed containers located therein. *Chimel v. California*, 395 U.S. 752, 755 (1969); *State v. Dycus*, 154 Idaho 456, 458 (2013). Further, Idaho Courts have held as follows: "So long as the search and arrest are substantially contemporaneous, and the fruits of the search are not required to establish cause for the arrest, the search need not precisely follow the arrest in Idaho to be incident to that arrest." *State v. Johnson*, 137 Idaho 656, 662 (2002).

Because Trooper Truesdale had probable cause to arrest Defendant upon violating I.C. § 18-705, Resisting or Obstructing Officers, the search incident to arrest was proper.

C. Defendant's argument regarding Trooper Truesdale's failure to take him to the nearest magistrate for initial appearance on the date of incident is contrary to I.C.R. 5.

I.C.R. 5 (b) provides:

A defendant arrested, whether or not pursuant to a warrant, must be taken before a magistrate in the judicial district of the arrest without unreasonable delay. In no event may the delay be more than 24 hours following the arrest, excluding Saturdays, Sundays, and holidays. The court may, however, delay the initial appearance if the defendant is hospitalized or otherwise in a condition that prevents the defendant being taken before the magistrate. The court may immediately, in that event, appoint counsel for the defendant. In the event it is not possible to take a defendant before a magistrate in the county where the alleged offense occurred within the time limit, then the defendant must be taken to any available magistrate in the judicial district without unnecessary delay within the time limit described above.

Here, Defendant was not entitled to appear before a magistrate immediately upon arrest. Further, Defendant was arrested on Saturday, July 23, 2022, thus, his appearance on Monday, July 25, 2022, before Judge Manweiler was within I.C.R. 5(b). Therefore, Defendant's allegations that he was "kidnapped" when taken to Ada County Jail upon arrest is without merit.

D. Cruel and Unusual Punishment

Article 1, § 6 of the Idaho Constitution prohibits cruel and unusual punishment. The Idaho Supreme Court explained:

Cruel and unusual punishments were originally regarded as referring to such barbarous impositions as pillory, burning at the stake, breaking on the wheel, drawing and quartering, and the like. But it is now generally recognized that imprisonment for such a length of time as to be out of all proportion to the gravity of the offense committed, and such as to shock the conscience of reasonable men, is cruel and unusual within the meaning of the constitution.

State v. Evans, 73 Idaho 50, 57-58 (1975).

Here Defendant was not imprisoned but was rather being booked for violating I.C. § 18-705. Furthermore, the taking of Defendant's socks, shoes, belt does not shock the conscience of reasonable men. Therefore, Defendant's argument fails here.

E. Defendant's argument that Judge Manweiler entered a plea of not guilty instead of in the form of Demurrer against his will is contrary to I.C.R. 11(a).

I.C.R. 11(a) provides, "A defendant may plead guilty or not guilty. If a defendant refuses to plead or if a defendant corporation fails to appear, the court must direct the entry of a plea of not guilty."

In this case, Defendant refused to plead guilty or not guilty when appearing before Judge Manweiler on July 25, 2022, and instead requested a demurer be entered. Thus, the Court was correct in entering the not guilty plea.

F. Defendant's argument regarding a right to a grand jury indictment is misplaced.

I.C.R. 6(b) provides:

On motion by the prosecuting attorney to summon a grand jury, a district judge assigned by the Administrative District Judge may order that a grand jury be impaneled within any county of the judicial district at such times as the public interest requires. Sixteen grand jurors must be selected as provided in the Uniform Jury Selection and Service Act, Chapter 2 of Title 2, Idaho Code. The selection of the grand jury must take place in a closed session with only a district judge, the prosecuting attorneys, the prospective jurors, the reporter or recorder, a clerk of the court, and any required interpreter present.

Thus, a grand jury can only be summoned upon motion of the prosecutor. Therefore, Defendant's argument fails here.

G. Defendant's argument regarding a preliminary hearing is misplaced.

I.C.R. 5.1(a) provides, "Unless indicted by a grand jury, a defendant charged in a complaint with any felony is entitled to a preliminary hearing." In this case, Defendant was charged with a misdemeanor, I.C. § 18-705 Resisting and Obstructing. Because Defendant was not charged with a felony Defendant was not entitled to a preliminary hearing.

II. Response to Defendant's Alleged Defects in the Complaint.

A. Defendant's arguments regarding the citation not being in the form of a proper complaint, not being supported by oath, not having a court seal, and having Defendant's date of birth and social security number is irrelevant.

I.C. § 19-3901 provides:

All proceedings and actions before the magistrates division of the district court for a public offense of which such court has jurisdiction, must be commenced by complaint setting forth the offense charged, with such particulars of time, place, person and property as to enable the defendant to understand distinctly the character of the offense complained of, and to answer the complaint. A complaint for a misdemeanor must be sworn to before a magistrate or judge. A complaint for an infraction may be an unsworn complaint signed by a law enforcement officer. Provided, however, as to any misdemeanor or infraction triable by a magistrate, a law enforcement officer may, in lieu of making a written complaint, issue to the defendant a uniform citation containing a complaint and a summons to appear in a form and in the manner prescribed by rule of the supreme court. The complaint in the uniform citation shall contain a certification by the law enforcement officer to the effect that he certifies that he has reasonable grounds to believe, and does believe, that the person cited committed the offense contrary to law. The citation shall be served upon the defendant by obtaining his written promise to appear in court at a time certain or by physically delivering the citation to the defendant. The citation shall be processed in the courts as prescribed by rule of the supreme court. If the defendant fails to appear on a misdemeanor citation at the time indicated in the summons, the defendant may be prosecuted for the misdemeanor offense of failure to appear under section 19-3901A, Idaho Code.

Here, Trooper Truesdale issued Defendant a citation for violating I.C. §18-705 Resisting or Obstructing Officers and I.C. § 49-316 Failing to Carry Driver's License. Trooper Truesdale certified as to the contents of the citation by signing the citation at the bottom and then serving the citation upon Defendant on July 23, 2022. Furthermore, the relevant statute does not provide that a court seal is required. In addition, the statute does not indicate that Defendant's date of birth should not appear on the citation nor is Defendant's social security number listed on the citation. Thus, Defendant's argument that the citation issued by Trooper Truesdale is not in the proper form of a Criminal Summons and Complaint is without merit.

B. Defendant's argument that Defendant's name is not English because it is written in all capital letters is irrelevant.

I.C.R. 2.3(b) states that pleadings must be in the English Language. Further, the rule explains that common abbreviations and numbers may be used. The rule does not prohibit words from being written in all capital letters. Thus, Defendant's argument that his name is not in English because it is written in all capital letters is irrelevant.

III. This Court has jurisdiction over Defendant.

I.C. § 19-301(1) provides:

Every person is liable to punishment by the laws of this state, for a public offense committed by him therein, except where it is by law cognizable exclusively in the courts of the United States. Evidence that a prosecutable act was committed within the state of Idaho is a jurisdictional requisite, and proof of such must be shown beyond a reasonable doubt.

Here, Trooper Truesdale observed Defendant driving eastbound on Interstate 84 in Ada County, State of Idaho. Furthermore, Trooper Truesdale conducted a traffic stop after observing Defendant's vehicle without a rear license plate in violation of I.C. § 49-428. Thus, the Court has jurisdiction over Defendant. Furthermore, venue is also proper.

CONCLUSION

Based on the foregoing, the State requests that the Court DENY Defendant's Motion to Dismiss.

DATED 10/24/2022

JAN M. BENNETTS
Ada County Prosecuting Attorney

Tatianna H.
By: Tatianna Herrera
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 10/24/2022, I caused to be served, a true and correct copy of the foregoing Objection upon the individual(s) named below in the manner noted

Peter A. Hearn, 2602 E Nahuatl Dr Boise, ID 83716

By depositing copies of the same in the United States mail, postage prepaid, first class.

By depositing copies of the same in the Interdepartmental Mail.

By informing the office of said individual(s) that said copies were available for pickup at the Office of the Ada County Prosecutor.

By faxing copies of the same to said attorney(s) at the facsimile number: _____

By e-mailing copies of the same to _____

By hand delivering copies of the same to defense counsel.

By serving copies of the same via iCourt e-File and Serve.

Emily Anglin
Legal Assistant

NO. _____
AM. _____ FILED
P.M. _____

Peter-Alan: Hearn
2602 East Nahuatl Drive
Boise, Idaho [83716]
(208) 867-8856
Sui Juris

OCT 27 2022

PHIL McGRANE, Clerk
By LAURA LYON
CLERK

**IN THE DISTRICT COURT FOR THE FOURTH JUDICIAL DISTRICT
FOR THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

<u>THE STATE OF IDAHO</u> Plaintiff, in err	Case No. CR01-22-22577
vs.	Verified Brief, Memorandum of Law in Support of Motion to Dismiss with Prejudice
<u>PETER ALAN HEARN</u> Defendant, in err	

Comes now, the alleged Defendant PETER ALAN HEARN, in err, Peter-Alan: Hearn, a living man, creation of God, one of the People of the Territory of Idaho who respectfully presents and submits this Verified Brief, Memorandum of Law in support of the Motion to Dismiss with Prejudice as evidence and proof of the prevailing and controlling law regarding the matter now before the Court.

Introduction

Kevin Truesdale, acting as Idaho State Police, claims that his arrest of Peter without warrant for the violation of two "traffic laws" was lawful per Idaho Code 18-705 and 49-316. Truesdale claims that he is authorized by statute to make arrests for any violation of laws of the state whether they are a misdemeanor or a felony when committed in his presence.

The facts of this case lead to the conclusion of law that Truesdale did not have any lawful authority to arrest Peter. Truesdale had no warrant for the arrest of Peter, and he alleges that he only saw Peter commit a Traffic Infraction and or misdemeanor, i.e., a traffic violation. There was no claim of a felony committed or of a breach of peace committed in his presence. At

common law, and under the provisions of Due Process of Law, such an arrest without a warrant can not be made. Since the arrest deprived Peter of his liberty by an act not pursuant to due process of law, the arrest is unlawful.

Therefore, Kevin Truesdale acted under color of law and color of authority, kidnapped/falsey imprisoned Peter, stole his Personal Property and subjected him to cruel and unusual punishment and now malicious prosecution.

ARGUMENT

If ever a judge understood the public's right to use the public roads, it was Justice Tolman of the Supreme Court of the State of Washington. Justice Tolman stated:

"Complete freedom of the highways is so old and well established a blessing that we have forgotten the days of the "Robber Barons" and toll roads, and yet, under an act like this, arbitrarily administered, the highways may be completely monopolized, if, through lack of interest, the people submit, then they may look to see the most sacred of their liberties taken from them one by one, by more or less rapid encroachment." *Robertson vs. Department of Public Works*, 180 Wash 133, 147.

The words of Justice Tolman ring most prophetically in the ears of citizens throughout the country today as the use of the public roads has been monopolized by the very entity which has been empowered to stand guard over our freedoms, i.e., that of state government.

RIGHTS

The "most sacred of liberties" of which Justice Tolman spoke was Personal Liberty. The definition of personal liberty is:

"Personal liberty, or the Right to enjoyment of life and liberty, is one of the fundamental or natural Rights, which has been protected by its inclusion as a guarantee in the various constitutions, which is not derived from, or dependent on, the U.S. Constitution, which may not be submitted to a vote and may not depend on the outcome of an election. It is one of the most sacred and valuable Rights, as sacred as the Right to private property...and is regarded as inalienable." 16 C.J.S., Constitutional Law, Sect.202, p.987.

This concept is further amplified by the definition of personal liberty:

"Personal liberty largely consists of the Right of locomotion to go where and when one pleases only so far restrained as the Rights of others may make it necessary for the welfare of all other citizens. The Right of the citizen to travel upon the public highways and to transport his

property thereon, by horsedrawn carriage, wagon, or automobile, is not a mere privilege which may be permitted or prohibited at will, but the common Right which he has under his Right to life, liberty, and the pursuit of happiness. Under this Constitutional guarantee one may, therefore, under normal conditions, travel at his inclination along the public highways or in public places, and while conducting himself in an orderly and decent manner, neither interfering with nor disturbing another's Rights, he will be protected, not only in his person, but in his safe conduct." [emphasis added] II Am.Jur. (1st) Constitutional Law, Sect.329, p.1135.

and further...

"Personal liberty consists of the power of locomotion, of changing situations, of removing one's person to whatever place one's inclination may direct, without imprisonment or restraint unless by due process of law." 1 *Blackstone's Commentary* 134; Hare, *Constitution* 777; *Bouvier's Law Dictionary*, 1914 ed., *Black's Law Dictionary*, 5th ed.

Justice Tolman was concerned about the State prohibiting the Citizen from the "most sacred of his liberties," the Right of movement, the Right of moving one's self from place to place without threat of imprisonment, the Right to use the public roads in the ordinary course of life.

When the State allows the formation of a corporation it may control its creation by establishing guidelines (statutes) for its operation (charters). Corporations who use the roads in the course of business do not use the roads in the ordinary course of life. There is a difference between a corporation and an individual. The "State" has Personal Jurisdiction over that which it creates, not mankind, individual or the People who do not yield their sovereignty to the agencies so created. The Supreme Court of The United States of America in *Hale v. Henkel* has stated:

"...We are of the opinion that there is a clear distinction in this particular between an individual and a corporation, and that the latter has no right to refuse to submit its books and papers for examination on the suit of the State. The individual may stand upon his Constitutional Rights as a Citizen. He is entitled to carry on his private business in his own way. His power to contract is unlimited. He owes no duty to the State or to his neighbors to divulge his business, or to open his doors to investigation, so far as it may tend to incriminate him.

He owes no such duty to the State, since he receives nothing therefrom, beyond the protection of his life, liberty, and property. His Rights are such as 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. Among his Rights are the refusal to incriminate himself, and the immunity of himself and his property from arrest or seizure except under warrant of law. He owes nothing to the public so long as he does not trespass upon their rights.

"Upon the other hand, the corporation is a creature of the state. It is presumed to be incorporated for the benefit of the public. It receives certain special privileges and franchises, and holds them subject to the laws of the state and the limitations of its charter. Its rights to act as a corporation are only preserved to it so long as it obeys the laws of its creation. There is a reserved right in the legislature to investigate its contracts and find out whether it has exceeded its powers. It would be a strange anomaly to hold that the State, having chartered a corporation to make use of certain franchises, could not in exercise of its sovereignty inquire how those franchises had been employed, and whether they had been abused, and demand the production of corporate books and papers for that purpose."
[emphasis added] *Hale vs. Henkel*, 201 US 43, 74-75

Corporations engaged in mercantile equity fall under the purview of the State's admiralty jurisdiction, and the general public at large must be protected from their activities, as they (the corporations) are engaged in business for profit.

".Based upon the fundamental ground that the sovereign state has the plenary control of the streets and highways in the exercise of its police power (see police power, infra.), may absolutely prohibit the use of the streets as a place for the prosecution of a private business for gain. They all recognize the fundamental distinction between the ordinary Right of the Citizen to use the streets in the usual way and the use of the streets as a place of business or a main instrumentality of business for private gain. The former is a common Right, the latter is an extraordinary use. As to the former the legislative power is confined to regulation, as to the latter it is plenary and extends even to absolute prohibition. Since the use of the streets by a common carrier in the prosecution of its business as such is not a right but a mere license of privilege." *Hadfield vs. Lundin*, 98 Wash 6571, 168, p.516.

It will be necessary to review early cases and legal authority in order to reach a lawfully correct theory dealing with this Right or "privilege." We will attempt to reach a sound conclusion as to what is a "Right to use the road" and what is a "privilege to use the road". Once reaching this determination, we shall then apply those positions to modern case decision.

"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.

and...

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

and...

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

Streets and highways are established and maintained for the purpose of travel and transportation by the public. Such travel may be for business or pleasure.

"The use of the highways for the purpose of travel and transportation *is not a mere privilege*, but a common and fundamental Right of which the public and the individual cannot be rightfully deprived." [emphasis added] *Chicago Motor Coach vs. Chicago*, 169 NE 22; *Ligare vs. Chicago*, 28 NE 934; *Boon vs. Clark*, 214 SSW 607; 25 Am.Jur. (1st) Highways Sect.163.

and...

"The Right of the citizen to travel upon the public highways and to transport his property thereon, either by horse drawn carriage or by automobile, *is not a mere privilege* which a city can prohibit or permit at will, but a common Right which he has under the right to life, liberty, and the pursuit of happiness." [emphasis added] *Thompson vs. Smith*, 154 SE 579.

So we can see that a citizen has a Right to travel upon the public highways by automobile and the Citizen cannot be rightfully deprived of his Liberty. So where does the misconception that the use of the public road is always and only a privilege come from?

"...For while a citizen has the Right to travel upon the public highways and to transport his property thereon, that Right does not extend to the use of the highways, either in whole or in part, as a place for private gain. For the latter purpose no person has a vested right to use the highways of the state, but is a privilege or a license which the legislature may grant or withhold at its discretion." *State vs. Johnson*, 243 P. 1073; *Hadfield, supra*; *Cummins vs. Homes*, 155 P. 171; *Packard vs. Banton*, 44 S.Ct. 256;

and other cases too numerous to mention.

Here the court held that a citizen has the Right to travel upon the public highways, but that he did not have the right to conduct business upon the highways. On this point of law all authorities are unanimous.

"Heretofore the court has held, and we think correctly, that while a Citizen has the Right to travel upon the public highways and to transport his property thereon, that Right does not extend to the use of the highways, either in whole or in part, as a place of business for private gain." *Barney vs. Board of Railroad Commissioners*, 17 P.2d 82; *Willis vs. Buck*, 263 P.1 982.

and...

"The right of the citizen to travel upon the highway and to transport his property thereon, in the ordinary course of life and business, differs radically and obviously from that of one who makes the highway his place of business for private gain in the running of a stagecoach or omnibus." *State vs. City of Spokane*, 186 P. 864.

What is this Right of the citizen which differs so "radically and obviously" from one who uses the highway as a place of business? Who better to enlighten us than Justice Tolman of the Supreme Court of Washington State? In *State vs. City of Spokane*, *supra*, the Court also noted a very "radical and obvious" difference, but went on to explain just what the difference is:

"The former is the usual and ordinary right of the citizen, a common right to all, while the latter is special, unusual, and extraordinary."

and...

"This distinction, elementary and fundamental in character, is recognized by all the authorities." *State vs. City of Spokane*, *supra*.

This position does not hang precariously upon only a few cases, but has been proclaimed by an impressive array of cases ranging from the state courts to the federal courts.

"the right of the citizen to travel upon the highway and to transport his property thereon in the ordinary course of life and business, differs radically and obviously from that of one who makes the highway his place of business and uses it for private gain in the running of a stagecoach or omnibus. The former is the usual and ordinary right of the Citizen, a right common to all, while the latter is special, unusual, and extraordinary." *Ex Parte Dickey*, (*Dickey vs. Davis*), 85 SE 781.

and...

"The right of the citizen to travel upon the public highways and to transport his property thereon, in the ordinary course of life and business, is a common right which he has under the right to enjoy life and liberty, to acquire and possess property, and to pursue happiness and safety. It includes the right, in so doing, to use the ordinary and usual conveyances of the day, and under the existing modes of travel, includes the right to drive a horse drawn carriage or wagon thereon or to operate an automobile thereon, for the usual and ordinary purpose of life and business." *Teche Lines vs. Danforth*, Miss., 12 S.2d 784; *Thompson vs. Smith*, *supra*.

There is no dissent among various authorities as to this position. (See Am.Jur. [1st] Const. Law, 329 and corresponding Am. Jur. [2nd].)

"Personal liberty or the right to enjoyment of life and liberty is one of the fundamental or natural rights, which has been protected by its inclusion as a guarantee in the various constitutions, which is not derived from nor dependent on the U.S. Constitution... It is one of the most sacred and valuable rights [remember the words of Justice Tolman, *supra*.] as sacred as the right to private property...and is regarded as inalienable." 16 C.J.S. Const. Law, Sect.202, p.987.

As we can see, the distinction between a "Right" to use the public roads and a "privilege" to use the public roads is drawn upon the line of "using the road as a place of business" and the various

state courts have held so. But what have the U.S. courts held on this point?

"First, it is well established law that the highways of the state are public property, and their primary and preferred use is for private purposes, and that their use for purposes of gain is special and extraordinary which, generally at least, the legislature may prohibit or condition as it sees fit." *Stephenson vs. Rinford*, 287 US 251; *Pachard vs Banton*, 264 US 140, and cases cited; *Frost and F. Trucking Co. vs. Railroad Commission*, 271 US 592; *Railroad commission vs. Inter-City Forwarding Co.*, 57 SW.2d 290; *Parlett Cooperative vs. Tidewater Lines*, 164 A. 313.

So what is a privilege to use the roads? By now it should be apparent even to the "learned" that an attempt to use the road as a place of business is a privilege. The distinction must be drawn between...

Travelling upon and transporting one's property upon the public roads, which is our Right;

and...

Using the public roads as a place of business or a main instrumentality of business, which is a privilege.

"[The roads]...are constructed and maintained at public expense, and no person therefore, can insist that he has, or may acquire, a vested right to their use in carrying on a commercial business." *Ex Parte Sterling*, 53 SW.2d 294; *Barney vs. Railroad Commissioners*, 17 P.2d 82; *Stephenson vs. Binford, supra*.

"When the public highways are made the place of business the state has a right to regulate their use in the interest of safety and convenience of the public as well as the preservation of the highways." *Barney vs. Railroad Commissioners, supra*.

"[The state's] right to regulate such use is based upon the nature of the business and the use of the highways in connection therewith." *Ibid.*

"We know of no inherent right in one to use the highways for commercial purposes. The highways are primarily for the use of the public, and in the interest of the public, the state may prohibit or regulate...the use of the highways for gain." *Robertson vs. Dept. of Public Works, supra*.

There should be considerable authority on a subject as important as this deprivation of the liberty of the individual "using the roads in the ordinary course of life and business." However, it should be noted that extensive research has not turned up one case or authority acknowledging the state's power to convert the individual's right to travel upon the public roads into a "privilege."

Therefore, it is concluded that the Citizen does have a "Right" to travel and transport his property upon the public highways and roads and the exercise of this Right is not a "privilege."

DEFINITIONS

In order to understand the correct application of the statute in question, we must first define the terms used in connection with this point of law. As will be shown, many terms used today do not, in their legal context, mean what we assume they mean, thus resulting in the misapplication of statutes in the instant case.

AUTOMOBILE AND MOTOR VEHICLE

There is a clear distinction between an **automobile** and a **motor vehicle**. An automobile has been defined as:

"The word 'automobile' connotes a pleasure vehicle designed for the transportation of persons on highways." *American Mutual Liability Ins. Co. vs. Chaput*, 60 A.2d 118, 120; 95 NH 200.

While the distinction is made clear between the two as the courts have stated:

"A motor vehicle or automobile for hire is a motor vehicle, other than an automobile stage, used for the transportation of persons for which remuneration is received." *International Motor Transit Co. vs. Seattle*, 251 P. 120.

The term 'motor vehicle' is different and broader than the word 'automobile.'"; *City of Dayton vs. DeBrosse*, 23 NE.2d 647, 650; 62 Ohio App. 232.

The distinction is made very clear in Title 18 USC 31:

"Motor vehicle" means every description or other contrivance propelled or drawn by mechanical power and **used for commercial purposes** on the highways in the transportation of passengers, or passengers and property.

"Used for commercial purposes" means the carriage of persons or property for any fare, fee, rate, charge or other considerations, or directly or indirectly in connection with any business, or other undertaking intended for profit.

Idaho Code Title 49 section 123 (d) Commercial vehicle or commercial motor vehicle. For the purposes of chapters 3 and 9 of this title, driver's licenses and vehicle equipment, a motor vehicle or combination of motor vehicles designed or used to transport passengers or property if the motor vehicle:

- (i) Has a manufacturer's gross combination weight rating (GCWR) in excess of twenty-

six thousand (26,000) pounds inclusive of a towed unit with a manufacturer's gross vehicle weight rating (GVWR) of more than ten thousand (10,000) pounds; or

(ii) Has a manufacturer's gross vehicle weight rating (GVWR) in excess of twenty-six thousand (26,000) pounds; or

(iii) Is designed to transport sixteen (16) or more people, including the driver; or

(iv) Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the hazardous material transportation act and which require the motor vehicle to be placarded under the hazardous materials regulations (49 CFR part 172, subpart F).

For the purposes of chapter 4, title 49, Idaho Code, motor vehicle registration, a vehicle or combination of vehicles of a type used or maintained for the transportation of persons **for hire, compensation or profit, or the transportation of property for the owner of the vehicle, or for hire, compensation, or profit**, and shall include fixed load specially constructed vehicles exceeding the limits imposed by chapter 10, title 49, Idaho Code, and including drilling rigs, construction, drilling and wrecker cranes, log jammers, log loaders, and similar vehicles which are normally operated in an overweight or oversize condition or both, but shall not include those vehicles registered pursuant to sections 49-402 and 49-402A, Idaho Code, or exempted by section 49-426, Idaho Code. A motor vehicle used in a ridesharing arrangement that has a seating capacity for not more than fifteen (15) persons, including the driver, shall not be a "commercial vehicle" under the provisions of this title relating to equipment requirements, rules of the road, or registration.

and;

(k) **Noncommercial vehicle.** For the purposes of chapter 4, title 49, Idaho Code, motor vehicle registration, a **noncommercial vehicle** shall not include those vehicles required to be registered under sections 49-402 and 49-402A, Idaho Code, and means all other vehicles or combinations of vehicles which are not commercial vehicles or farm vehicles, but shall include motor homes. A noncommercial vehicle shall include those vehicles having a combined gross weight not in excess of sixty thousand (60,000) pounds and not held **out for hire, used for purposes related to private use and not used in the furtherance of a business or occupation for compensation or profit or for transporting goods for other than the owner.**

Clearly, an automobile is private property in use for private purposes, while a motor vehicle is a machine which may be used upon the highways for trade, commerce, or hire for any fair or fee.

TRAVEL

The term "travel" is a significant term and is defined as:

"The term 'travel' and 'traveler' are usually construed in their broad and general sense...so as to include all those who rightfully use the highways viatically (when being reimbursed for

expenses) and who have occasion to pass over them for the purpose of business, convenience, or pleasure." [emphasis added] 25 Am.Jur. (1st) Highways, Sect.427, p.717.

"Traveler One who passes from place to place, whether for pleasure, instruction, business, or health." *Locket vs. State*, 47 Ala. 45; *Bovier's Law Dictionary*, 1914 ed., p. 3309.

"Travel: To journey or to pass through or over; as a country district, road, etc. To go from one place to another, whether on foot, or horseback, or in any conveyance as a train, an automobile, carriage, ship, or aircraft; Make a journey." *Century Dictionary*, p.2034.

Therefore, the term "travel" or "traveler" refers to one who uses a conveyance to go from one place to another, and included all those who use the highways as a matter of Right.

Notice that in all these definitions the phrase "for hire" never occurs. This term "travel" or "traveler" implies, by definition, one who uses the road as a means to move from one place to another.

Therefore, one who uses the road in the ordinary course of life and business for the purpose of travel and transportation is a traveler.

DRIVER

The term "driver" in contradistinction to "traveler" is defined as:

"Driver One employed in conducting a coach, carriage, wagon, or other vehicle..." *Bouvier's Law Dictionary*, 1914 ed., p. 940.

Notice that this definition includes one who is "employed" in conducting a vehicle. It should be self-evident that this person could not be "travelling" on a journey, but is using the road as a place of business.

OPERATOR

Today we assume that a "traveler" is a "driver," and a "driver" is an "operator." However, this is not the case.

"It will be observed from the language of the ordinance that a distinction is to be drawn between the terms 'operator' and 'driver'; the 'operator' of the service car being the person who is licensed to have the car on the streets in the business of carrying passengers for hire; while the 'driver' is the one who actually drives the car. However, in the actual prosecution of business, it was possible for the same person to be both 'operator' and 'driver.'" *Newbill vs. Union Indemnity Co.*, 60 SE.2d 658.

To further clarify the definition of an "operator" the court observed that this was a vehicle "for hire" and that it was in the business of carrying passengers.

This definition would seem to describe a person who is using the road as a place of business, or in other words, a person engaged in the "privilege" of using the road for gain.

This definition, then, is a further clarification of the distinction mentioned earlier, and therefore:

Travelling upon and transporting one's property upon the public roads as a matter of Right meets the definition of a traveler.

Using the road as a place of business as a matter of privilege meets the definition of a driver or an operator or both.

TRAFFIC

Having defined the terms "automobile," "motor vehicle," "traveler," "driver," and "operator," the next term to define is "traffic":

"...Traffic thereon is to some extent destructive, therefore, the prevention of unnecessary duplication of auto transportation service will lengthen the life of the highways or reduce the cost of maintenance, the revenue derived by the state...will also tend toward the public welfare by producing at the expense of those operating for private gain, some small part of the cost of repairing the wear..." *Northern Pacific R.R. Co. vs. Schoenfeldt*, 213 P. 26.

Note: In the above, Justice Tolman expounded upon the key of raising revenue by taxing the "privilege" to use the public roads "at the expense of those operating for gain."

In this case, the word "traffic" is used in conjunction with the unnecessary Auto Transportation Service, or in other words, "vehicles for hire." The word "traffic" is another word which is to be strictly construed to the conducting of business.

"Traffic Commerce, trade, sale or exchange of merchandise, bills, money, or the like. The passing of goods and commodities from one person to another for an equivalent in goods or money..."; *Bouvier's Law Dictionary*, 1914 ed., p. 3307.

Here again, notice that this definition refers to one "conducting business." No mention is made of one who is travelling in his automobile. This definition is of one who is engaged in the passing of a commodity or goods in exchange for money, i.e., vehicles for hire.

Furthermore, the word "traffic" and "travel" must have different meanings which the courts recognize. The difference is recognized in *Ex Parte Dickey*, supra:

"..in addition to this, cabs, hackney coaches, omnibuses, taxicabs, and hacks, when unnecessarily numerous, interfere with the ordinary traffic and travel and obstruct them."

The court, by using both terms, signified its recognition of a distinction between the two. But, what was the distinction? We have already defined both terms, but to clear up any doubt:

"The word 'traffic' is manifestly used here in secondary sense, and has reference to the business of transportation rather than to its primary meaning of interchange of commodities." *Allen vs. City of Bellingham*, 163 P. 18.

Here the Supreme Court of the State of Washington has defined the word "traffic" (in either its primary or secondary sense) in reference to business, and not to mere travel! So it is clear that the term "traffic" is business related and therefore, it is a "privilege." The net result being that "traffic" is brought under the (police) power of the legislature. The term has no application to one who is not using the roads as a place of business.

LICENSE

It seems only proper to define the word "license," as the definition of this word will be extremely important in understanding the statutes as they are properly applied:

"The permission, by competent authority to do an act which without permission, would be illegal, a trespass, or a tort." *People vs. Henderson*, 218 NW.2d 2, 4.

"Leave to do a thing which licensor could prevent." *Western Electric Co. vs. Pacent Reproducer Corp.*, 42 F.2d 116, 118.

In order for these two definitions to apply in this case, the state would have to take up the position that the exercise of a Constitutionally protected Right to use the public roads in the ordinary course of life and business is illegal, a trespass, or a tort, which the state could then regulate or prevent.

This position, however, would raise magnitudinous Constitutional questions as this position would be diametrically opposed to fundamental Constitutional Law. (See "Conversion of a Right to a Crime," *infra*.)

In the instant case, the proper definition of a "license" is:

"a permit, granted by an appropriate governmental body, generally for consideration, to a person, firm, or corporation, to pursue some occupation or to carry on some business which is subject to regulation under the police power." [emphasis added] *Rosenblatt vs. California State Board of Pharmacy*, 158 P.2d 199, 203.

This definition would fall more in line with the "privilege" of carrying on business on the streets.

Most people tend to think that "licensing" is imposed by the state for the purpose of raising revenue, yet there may well be more subtle reasons contemplated; for when one seeks permission from someone to do something he invokes the jurisdiction of the "licensor" which, in this case, is the state. In essence, the licensee may well be seeking to be regulated by the "licensor."

"A license fee is a charge made primarily for regulation, with the fee to cover costs and expenses of supervision or regulation." *State vs. Jackson*, 60 Wisc.2d 700; 211 NW.2d 480, 487.

The fee is the price; the regulation or control of the licensee is the real aim of the legislation.

Are these licenses really used to fund legitimate government, or are they nothing more than a subtle introduction of police power into every facet of our lives? Have our "enforcement agencies" been diverted from crime prevention, perhaps through no fault of their own, instead now busying themselves as they "check" our papers to see that all are properly endorsed by the state?

How much longer will it be before we are forced to get a license for our lawn mowers, or before our wives will need a license for her "blender" or "mixer?" They all have motors on them and the state can always use the revenue.

POLICE POWER

The confusion of the police power with the power of taxation usually arises in cases where the police power has affixed a penalty to a certain act, or where it requires licenses to be obtained and a certain sum be paid for certain occupations. The power used in the instant case cannot, however, be the power of taxation since an attempt to levy a tax upon a Right would be open to Constitutional objection. (See "taxing power," *infra*.)

Each law relating to the use of police power must ask three questions:

"1. Is there threatened danger? 2. Does a regulation involve a Constitutional Right? 3. Is this regulation reasonable?" *People vs. Smith*, 108 Am.St.Rep. 715; *Bouvier's Law Dictionary*, 1914 ed., under "Police Power."

When applying these three questions to the statute in question, some very important issues emerge.

First, "is there a threatened danger" in the individual using his automobile on the public highways, in the ordinary course of life and business?

The answer is No! There is nothing inherently dangerous in the use of an automobile when it is carefully managed. Their guidance, speed, and noise are subject to a quick and easy control, under a competent and considerate manager, it is as harmless on the road as a horse and buggy.

It is the manner of managing the automobile, and that alone, which threatens the safety of the public. The ability to stop quickly and to respond quickly to guidance would seem to make the automobile one of the least dangerous conveyances. (See *Yale Law Journal*, December, 1905.)

"The automobile is not inherently dangerous." *Cohens vs. Meadow*, 89 SE 876; *Blair vs.*

Broadmore, 93 SE 532.

To deprive all persons of the Right to use the road in the ordinary course of life and business, because one might, in the future, become dangerous, would be a deprivation not only of the Right to travel, but also the Right to due process. (See "Due Process," infra.)

Next, does the regulation involve a Constitutional Right?

This question has already been addressed and answered in this brief and need not be reinforced other than to remind this Court that this citizen does have the Right to travel upon the public highway by automobile in the ordinary course of life and business. It can therefore be concluded that this regulation does involve a Constitutionally protected Right.

The third question is the most important in this case. "Is this regulation reasonable?"

The answer is No! It will be shown later in "Regulation," infra., that this licensing statute is oppressive and could be effectively administered by less oppressive means.

Although the Fourteenth Amendment does not interfere with the proper exercise of the police power, in accordance with the general principle that the power must be exercised so as not to invade unreasonably the rights guaranteed by the United States Constitution, it is established beyond question that every state power, including the police power, is limited by the Fourteenth Amendment (and others) and by the inhibitions there imposed.

Moreover, the ultimate test of the propriety of police power regulations must be found in the Fourteenth Amendment, since it operates to limit the field of the police power to the extent of preventing the enforcement of statutes in denial of Rights that the Amendment protects.

(See *Parks vs. State*, 64 NE 682.)

"With regard particularly to the U.S. Constitution, it is elementary that a Right secured or protected by that document cannot be overthrown or impaired by any state police authority." *Connolly vs. Union Sewer Pipe Co.*, 184 US 540; *Lafarier vs. Grand Trunk R.R. Co.*, 24 A. 848; *O'Neil vs. Providence Amusement Co.*, 108 A. 887.

"The police power of the state must be exercised in subordination to the provisions of the U.S. Constitution." [emphasis added] *Panhandle Eastern Pipeline Co. vs. State Highway Commission*, 294 US 613; *Bacahanan vs. Wanley*, 245 US 60.

"It is well settled that the Constitutional Rights protected from invasion by the police power, include Rights safeguarded both by express and implied prohibitions in the Constitutions." *Tiche vs. Osborne*, 131 A. 60.

"As a rule, fundamental limitations of regulations under the police power are found in the spirit of the Constitutions, not in the letter, although they are just as efficient as if expressed in

the clearest language." *Mehlos vs. Milwaukee*, 146 NW 882.

As it applies in the instant case, the language of the Fifth Amendment is clear:

No person shall be...deprived of Life, Liberty, or Property without due process of law.

As has been shown, the courts at all levels have firmly established an absolute Right to travel.

In the instant case, the state, by applying commercial statutes to all entities, natural and artificial persons alike, has deprived this free man of the Right of Liberty, without cause and without due process of law.

DUE PROCESS

"The essential elements of due process of law are...Notice and The Opportunity to defend." *Simon vs. Craft*, 182 US 427.

Yet, not one individual has been given notice of the loss of his/her Right, let alone before signing the license (contract). Nor was the citizen given any opportunity to defend against the loss of his/her right of Personal Liberty or right to travel, by automobile, on the highways, in the ordinary course of life and business. This amounts to an arbitrary deprivation of Liberty.

"There should be no arbitrary deprivation of Life or Liberty..." *Barbour vs. Connolly*, 113 US 27, 31; *Yick Wo vs. Hopkins*, 118 US 356.

and...

"The right to travel is part of the Liberty of which a citizen cannot be deprived without due process of law under the Fifth Amendment. This Right was emerging as early as the Magna Carta." *Kent vs. Dulles*, 357 US 116 (1958).

The focal point of this question of police power and due process must balance upon the point of making the public highways a safe place for the public to travel. If a man travels in a manner that creates actual damage, an action would lie (civilly) for recovery of damages. The state could then also proceed against the individual to deprive him of his Right to use the public highways, for cause. This process would fulfill the due process requirements of the Fifth Amendment while at the same time ensuring that Rights guaranteed by the U.S. Constitution and the state constitutions would be protected.

But unless or until harm or damage (a crime) is committed, there is lack of standing for a cause of action by the State in the private affairs of man, individual, people or actions of a citizen.

One of the most famous and perhaps the most quoted definitions of due process of law, is that of Daniel Webster in his Dartmouth College Case (4 Wheat 518), in which he declared that by due process is meant "a law which hears before it condemns, which proceeds upon inquiry,

and renders judgment only after trial." (See also *State vs. Strasburg*, 110 P. 1020; *Dennis vs. Moses*, 52 P. 333.)

Somewhat similar is the statement that is a rule as old as the law that "no one shall be personally bound (restricted) until he has had his day in court," by which is meant, until he has been duly cited to appear and has been afforded an opportunity to be heard. Judgment without such citation and opportunity lacks all the attributes of a judicial determination; it is judicial usurpation and it is oppressive and can never be upheld where it is fairly administered. (12 Am.Jur. [1st] Const. Law, Sect.573, p.269.)

Note: This sounds like the process used to deprive one of the "privilege" of operating a "motor vehicle", "for hire." It should be kept in mind, however, that we are discussing the arbitrary deprivation of the Right to use the road that all mankind, people or citizens have "in common".

The futility of the state's position can be most easily observed in the 1959 Washington Attorney General's opinion on a similar issue:

"The distinction between the Right of the citizen to use the public highways for private, rather than commercial purposes is recognized..."

and...

"Under its power to regulate private uses of our highways, our legislature has required that motor vehicle operators be licensed (I.C. 49-301). Undoubtedly, the primary purpose of this requirement is to insure, as far as possible, that all motor vehicle operators will be competent and qualified, thereby reducing the potential hazard or risk of harm, to which other users of the highways might otherwise be subject. But once having complied with this regulatory provision, by obtaining the required license, a motorist enjoys the privilege of travelling freely upon the highways..."; Washington A.G.O. 59-60 No. 88, p. 11.

This alarming opinion appears to be saying that every person using an automobile as a matter of Right, must give up the Right and convert the Right into a privilege. This is accomplished under the guise of regulation. This statement is indicative of the insensitivity, even the ignorance, of the government to the limits placed upon governments by and through the several constitutions.

This legal theory may have been able to stand in 1959; however, as of 1966, in the United States Supreme Court decision in *Miranda*, even this weak defense of the state's actions must fall.

"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.

Thus the legislature does not have the power to abrogate the citizen's Right to travel upon the public roads, by passing legislation forcing the citizen to waive his Right and convert that Right into a privilege. Furthermore, we have previously established that this "privilege" has been

defined as applying only to those who are "conducting business in the streets" or "operating for-hire vehicles."

The legislature has attempted, by legislative fiat, to deprive the Citizen of his Right to use the roads in the ordinary course of life and business, without affording the Citizen the safeguard of "due process of law." This has been accomplished under supposed powers of regulation.

REGULATION

"In addition to the requirement that regulations governing the use of the highways must not be violative of constitutional guarantees, the prime essentials of such regulation are reasonableness, impartiality, and definiteness or certainty." 25 Am.Jur. (1st) Highways, Sect.260.

and...

"Moreover, a distinction must be observed between the regulation of an activity which may be engaged in as a matter of right and one carried on by government sufferance or permission." *Davis vs. Massachusetts*, 167 US 43; *Pachard vs. Banton*, supra.

One can say for certain that these regulations are impartial since they are being applied to all, even though they are clearly beyond the limits of the legislative powers. However, we must consider whether such regulations are reasonable and non-violative of constitutional guarantees.

First, let us consider the reasonableness of this statute requiring all persons to be licensed (presuming that we are applying this statute to all persons using the public roads). In determining the reasonableness of the statute we need only ask two questions:

1. Does the statute accomplish its stated goal?

The answer is No!

The attempted explanation for this regulation "to insure the safety of the public by insuring, as much as possible, that all are competent and qualified."

However, one can keep his license without retesting, from the time he/she is first licensed until the day he/she dies, without regard to the competency of the person, by merely renewing said license before it expires. It is therefore possible to completely skirt the goal of this attempted regulation, thus proving that this regulation does not accomplish its goal.

Furthermore, by testing and licensing, the state gives the appearance of underwriting the competence of the licensees, and could therefore be held liable for failures, accidents, etc. caused by licensees.

2. Is the statute reasonable?

The answer is No!

This statute cannot be determined to be reasonable since it requires the citizen to give up his or her natural Right of Personal Liberty and to travel unrestricted in order to accept the privilege. The purported goal of this statute could be met by much less oppressive regulations, i.e., competency tests and certificates of competency before using an automobile upon the public roads. (This is exactly the situation in the aviation sector.)

But isn't this what we have now?

The answer is No! The real purpose of this license is much more insidious. When one signs the license, he/she gives up his/her Constitutionally protected Right of Personal Liberty and to travel in order to accept and exercise a privilege. After signing the license, a quasi-contract, the citizen has to give the state his/her consent to be prosecuted for constructive crimes and quasi-criminal actions where there is no harm done and no damaged property.

These prosecutions take place without affording the citizen of their Constitutionally protected Rights and guarantees such as the Right to a trial by jury of twelve men and the Right to counsel, as well as the normal safeguards such as proof of intent and *corpus dilecti* and a grand jury indictment. These unconstitutional prosecutions take place because the citizen is exercising a privilege and has given his/her "implied consent" to legislative enactments designed to control foreign or interstate commerce, a regulatable enterprise under the police power pursuant to Article I, Section 8 clause 3 of the Constitution for the United States of America.

We must now conclude that the citizen is forced to give up Constitutional guarantees of "Right" in order to exercise his state "privilege" to travel upon the public highways in the ordinary course of life and business.

SURRENDER OF RIGHTS

A citizen cannot be forced to give up his/her Rights in the name of regulation.

"...the only limitations found restricting the right of the state to condition the use of the public highways as a means of vehicular transportation for compensation are (1) that the state must not exact of those it permits to use the highways for hauling for gain that they surrender any of their inherent U.S. Constitutional Rights as a condition precedent to obtaining permission for such use..."; [emphasis added] *Riley vs. Laeson*, 142 So. 619; *Stephenson vs. Binford*, *supra*.

If one cannot be placed in a position of being forced to surrender Rights in order to exercise a privilege, how much more must this maxim of law, then, apply when one is simply exercising a Right?

"To be that statute which would deprive a citizen of the rights of person or property, without a regular trial, according to the course and usage of the common law, would not be the

law of the land." *Hoke vs. Henderson*, 15 NC 15.

and...

"We find it intolerable that one Constitutional Right should have to be surrendered in order to assert another." *Simons vs. United States*, 390 US 389.

Since the state requires that one give up Rights in order to exercise the privilege of driving, the regulation cannot stand under the police power, due process, or regulation, but must be exposed as a statute which is oppressive and one which has been misapplied to deprive the citizen of Rights guaranteed by the United States Constitution and the state constitutions.

TAXING POWER

"Any claim that this statute is a taxing statute would be immediately open to severe Constitutional objections. If it could be said that the state had the power to tax a Right, this would enable the state to destroy Rights guaranteed by the constitution through the use of oppressive taxation. The question herein, is one of the state taxing the Right to travel by the ordinary modes of the day, and whether this is a legislative object of the state taxation. The views advanced herein are neither novel nor unsupported by authority. The question of taxing power of the states has been repeatedly considered by the Supreme Court. The Right of the state to impede or embarrass the Constitutional operation of the U.S. Government or the Rights which the citizen holds under it, has been uniformly denied." *McCulloch vs. Maryland*, 4 Wheat 316.

The power to tax is the power to destroy, and if the state is given the power to destroy Rights through taxation, the framers of the Constitution wrote that document in vain.

"...It may be said that a tax of one dollar for passing through the state cannot sensibly affect any function of government or deprive a Citizen of any valuable Right. But if a state can tax...a passenger of one dollar, it can tax him a thousand dollars." *Crandall vs. Nevada*, 6 Wall 35, 46.

and...

"If the Right of passing through a state by a citizen of the United States is one guaranteed by the Constitution, it must be sacred from state taxation." *Ibid.*, p.47.

Therefore, the Right of travel must be kept sacred from all forms of state taxation and if this argument is used by the state as a defense of the enforcement of this statute, then this argument also must fail.

CONVERSION OF A RIGHT TO A CRIME

As previously demonstrated, the citizen has the Right to travel and to transport his property upon

the public highways in the ordinary course of life and business. However, if one exercises this Right to travel (without first giving up the Right and converting that Right into a privilege) the citizen is by statute, guilty of a crime. This amounts to converting the exercise of a Constitutional Right into a crime.

Recall the *Miller vs. U.S.* and *Snerer vs. Cullen* quotes from p.4, and,

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

and...

"Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them." *Miranda*, supra.

Indeed, the very purpose for creating the state under the limitations of the constitution was to protect the rights of the people from intrusion, particularly by the forces of government.

So we can see that any attempt by the legislature to make the act of using the public highways as a matter of Right into a crime, is void upon its face.

Any person who claims his Right to travel upon the highways, and so exercises that Right, cannot be tried for a crime of doing so. And yet, this Freeman stands before this court today to answer charges for the "crime" of exercising his Right to Liberty.

As we have already shown, the term "drive" can only apply to those who are employed in the business of transportation for hire. It has been shown that freedom includes the Citizen's Right to use the public highways in the ordinary course of life and business without license or regulation by the police powers of the state.

It is the duty of the court to recognize the substance of things and not the mere form.

"The courts are not bound by mere form, nor are they to be misled by mere pretenses. They are at liberty indeed they are under a solemn duty to look at the substance of things, whenever they enter upon the inquiry whether the legislature has transcended the limits of its authority. If, therefore, a statute purported to have been enacted to protect...the public safety, has no real or substantial relation to those objects or is a palpable invasion of Rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution." *Mulger vs. Kansas*, 123 US 623, 661.

and...

"It is the duty of the courts to be watchful for the Constitutional rights of the citizen and against any stealthy encroachments thereon." *Boyd vs. United States*, 116 US 616.

The courts are "duty bound" to recognize and stop the "stealthy encroachments" which have been

made upon the citizen's Right to travel and to use the roads to transport his property in the "ordinary course of life and business." (*Hadfield*, *supra*.)

Further, the court must recognize that the Right to travel is part of the Liberty of which a citizen cannot be deprived without specific cause and without the "due process of law" guaranteed in the Fifth Amendment. (*Kent*, *supra*.)

The history of this "invasion" of the citizen's Right to use the public highways shows clearly that the legislature simply found a heretofore untapped source of revenue, got greedy, and attempted to enforce a statute in an unconstitutional manner upon those free men and natural individuals who have a Right to travel upon the highways.

This was not attempted in an outright action, but in a slow, meticulous, calculated encroachment upon the citizen's Right of Personal Liberty and travel.

This position must be accepted unless the prosecutor can show his authority for the position that the "use of the road in the ordinary course of life and business" is a privilege.

To rule in any other manner, without clear authority for an adverse ruling, will infringe upon fundamental and basic concepts of Constitutional law. This position, that a Right cannot be regulated under any guise, must be accepted without concern for the monetary loss of the state.

"Disobedience or evasion of a Constitutional Mandate cannot be tolerated, even though such disobedience may, at least temporarily, promote in some respects the best interests of the public." *Slote vs. Examination*, 112 ALR 660.

and...

"Economic necessity cannot justify a disregard of Constitutional guarantee." *Riley vs. Carter*, 79 ALR 1018; 16 Am.Jur. (2nd), Const. Law, Sect.81.

and...

"Constitutional Rights cannot be denied simply because of hostility to their assertions and exercise; vindication of conceded Constitutional Rights cannot be made dependent upon any theory that it is less expensive to deny them than to afford them." *Watson vs. Memphis*, 375 US 526.

Therefore, the Court's decision in the instant case must be made without the issue of cost to the state being taken into consideration, as that issue is irrelevant. The state cannot lose money that it never had a right to demand from the "Sovereign People."

Finally, we come to the issue of "public policy." It could be argued that the "licensing scheme" of all persons is a matter of "public policy." However, if this argument is used, it too must fail,

as:

"No public policy of a state can be allowed to override the positive guarantees of the U.S. Constitution." *16 Am.Jur. (2nd), Const. Law, Sect. 70.*

So even "public policy" cannot abrogate this citizen's Right to travel and to use the public highways in the ordinary course of life and business.

Therefore, it must be concluded that:

"We have repeatedly held that the legislature may regulate the use of the highways for carrying on business for private gain and that such regulation is a valid exercise of the police power." *Northern Pacific R.R. Co., supra.*

and...

"The act in question is a valid regulation, and as such is binding upon all who use the highway for the purpose of private gain." *Ibid.*

Any other construction of this statute would render it unconstitutional as applied to this citizen or any citizen. The Accused therefore moves this court to dismiss the charge against him, with prejudice.

In addition:

Since no notice is given to people applying for driver's (or other) licenses that they have a perfect right to use the roads without any permission, and that they surrender valuable rights by taking on the regulation system of licensure, the state has committed a massive construction fraud. This occurs when any person is told that they must have a license in order to use the public roads and highways.

The license, being a legal contract under which the state is empowered with policing powers is only valid when the licensee takes on the burdens of the contract and bargains away his or her rights knowingly, intentionally, and voluntarily.

Few know that the driver's license is a contract without which the police are powerless to regulate the people's actions or activities.

Few if any licensees intentionally surrender valuable rights. They are told that they must have the license. As we have seen, this is not the case.

No one in their right mind voluntarily surrenders complete liberty and accepts in its place a set of regulations.

Unconstitutional Official Acts

16 Am Jur 2d, Sec 177 late 2d, Sec 256:

The general misconception is that any statute passed by legislators bearing the appearance of law constitutes the law of the land. The U.S. Constitution is the supreme law of the land, and any statute, to be valid, must be in agreement. It is impossible for both the Constitution and a law violating it to be valid; one must prevail. This is succinctly stated as follows:

The General rule is that an unconstitutional statute, though having the form and name of law is in reality no law, but is wholly void, and ineffective for any purpose; since unconstitutionality dates from the time of its enactment and not merely from the date of the decision so branding it. An unconstitutional law, in legal contemplation, is as inoperative as if it had never been passed. Such a statute leaves the question that it purports to settle just as it would be had the statute not been enacted.

Since an unconstitutional law is void, the general principles follow that it imposes no duties, confers no rights, creates no office, bestows no power or authority on anyone, affords no protection, and justifies no acts performed under it.

A void act cannot be legally consistent with a valid one. An unconstitutional law cannot operate to supersede any existing valid law. Indeed, insofar as a statute runs counter to the fundamental law of the land, it is superseded thereby.

No one is bound to obey an unconstitutional law and no courts are bound to enforce it.

Jon Roland:

Strictly speaking, an unconstitutional statute is not a "law", and should not be called a "law", even if it is sustained by a court, for a finding that a statute or other official act is constitutional does not make it so, or confer any authority to anyone to enforce it.

All citizens and legal residents of the United States, by their presence on the territory of the United States, are subject to the militia duty, the duty of the social compact that creates the society, which requires that each, alone and in concert with others, not only obey the Constitution and constitutional official acts, but help enforce them, if necessary, at the risk of one's life.

Any unconstitutional act of an official will at least be a violation of the oath of that official to execute the duties of his office, and therefore grounds for his removal from office. No official immunity or privileges of rank or position survive the commission of unlawful acts. If it violates the rights of individuals, it is also likely to be a crime, and the militia duty obligates anyone aware of such a violation to investigate it, gather evidence for a prosecution, make an arrest, and if necessary, seek an indictment from a grand jury, and if one is obtained, prosecute the offender in a court of law.

CONCLUSION

There is a lack of Personal Jurisdiction when man is not acting or for hire as "Driver" and lack of Subject Matter Jurisdiction when man is not "operating a Motor Vehicle" and "used for commercial purposes". Therefore, Truesdale made an unlawful arrest, kidnapped Peter by taking him to jail and not to the nearest and most accessible Magistrate/Justice of the Peace and stole Peter's Personal Property.

Memorandum of Law

COMES NOW the alleged defendant in err, Peter-Alan: Hearn, a free citizen of the State of Idaho, who respectfully presents and submits this Memorandum of Law as evidence and proof of the prevailing and controlling law regarding the matter now before the Court.

The facts of this case lead to the conclusion of law that Kevin Trusedale, acting as Idaho State Police, did not have any lawful authority to arrest alleged Defendant Peter-Alan: Hearn. Trusedale had no warrant for the arrest of Peter, and he alleges that he only saw Peter commit an infraction, i.e., a traffic violation. There was no claim of a felony committed or of a breach of peace committed. At common law, and under the provisions of Due Process of Law, such an arrest without a warrant can not be made. Since the arrest deprived Peter of his liberty by an act not pursuant to due process of law, the arrest is unlawful. Due Process is not determined by the legislature.

STATEMENTS OF LAW

1. No official with an IQ greater than room temperature in Alaska could claim that he or she did not know that the conduct at the center of this case violated both state and federal law. The social workers in this case are alleged to have knowingly and maliciously violated the law in their attempt to sever Preslie's protected relationship with her mother. Perjury is a crime under both federal and California state law, as is the knowing submission of false evidence to a court. 18 U.S.C. § 1621; Cal. Penal Code § 118. Both crimes make no distinction between criminal and civil proceedings. This malicious criminal behavior is hardly conduct for which qualified immunity is either justified or appropriate. HARDWICK V. VREEKEN 14, Case: 15-55563, 01/03/2017
2. Jurisdiction: The power of a court to adjudicate a particular type of matter and provide the remedy demanded.

Overview

A court must have jurisdiction to enter a valid, enforceable judgment on a claim. Where jurisdiction is lacking, litigants, through various procedural mechanisms, may retroactively challenge the validity of a judgment.

Jurisdiction may be broken down into two categories: personal jurisdiction and subject matter jurisdiction. Personal jurisdiction is the requirement that a given court have power over the defendant, based on minimum contacts with the forum. Subject-matter jurisdiction is the requirement that a given court have power to hear the specific kind of claim that is brought to that court. While litigating parties may waive personal jurisdiction, they cannot waive subject-matter jurisdiction. In federal court, under the Federal Rules of Civil Procedure, a motion to dismiss for lack of subject-matter jurisdiction is considered a favored defense and may be raised at any point in the litigation process, even if the parties had previously argued that subject-matter jurisdiction existed. In fact, the court may dismiss a case *sua sponte* (on its own) for lack of subject-matter jurisdiction. See, e.g., Fed. R. Civ. Proc. 12(b)(1).

3. There is no "statute of limitations" on fraud except for "clerical errors and mistakes and fraud vitiates everything from its inception, *void ab initio*. *United States v. Throckmorton*, 98 U.S. 61 (1878). In *Bullock v. United States*, 763 F.2d 1115, 1121 (10th Cir. 1985), the court stated "Fraud upon the court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury. ... It is where the court or a member is corrupted or influenced or influence is attempted or where the judge has not performed his judicial function --- thus where the impartial functions of the court have been directly corrupted."
4. Jurisdiction, once challenged, is to be proven, not by the court, but by the party attempting to assert jurisdiction. The burden of proof of jurisdiction lies with the asserter. The court is only to rule on the sufficiency of the proof tendered. See, *McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178 (1936). The origins of this doctrine of law may be found in *MAXFIELD v. LEVY*, 4 U.S. 330 (1797), 4 U.S. 330 (Dall.) 2 Dall. 381 2 U.S. 381 1 L.Ed. 424
5. "The law requires proof of jurisdiction to appear on the record of the administrative agency and all administrative proceedings." *Hagans v. Lavine*, 415 U.S. 533
6. If any tribunal finds absence of proof of jurisdiction over person and subject matter, the case must be dismissed." *Louisville R.R. v. Motley*, 211 U.S. 149, 29 S. Ct. 42
7. Under the Federal Rules of Civil Procedure 12b 6, the prosecution has failed to provide adequate proof that the parties involved in this situation are actually corporate entities. There is ample proof that the prosecution and other agents are actually corporations.

8. Title 28 USC 3002 Section 15A states United States is a Federal Corporation and not a government, including the Judicial Procedural Section.
9. In numerous cases, SCOTUS has said in summary: that since governments chose to incorporate themselves, they must abide by the same rules as any other corporations. that governments are now de facto, as corporations; and that they pass no laws, but only corporate bylaws called rules, codes, statutes, executive orders, ordinances and policies. that all rules, codes, statutes, executive orders, ordinances and policies, are "colored/colorable" and governed only by the consent of the governed and through the fraudulent creation and unlawful conversion of man-kind into a legal Person, Citizen, Resident.
10. "No sanction can be imposed absent proof of jurisdiction" Stanard v. Olesen, 74 S. Ct.768
11. "Once challenged, jurisdiction cannot be 'assumed', it must be proved to exist." Stuck v. Medical Examiners, 94 Ca2d 751.211 P2s 389
12. "Jurisdiction, once challenged, cannot be assumed and must be **TIMELY PROVEN, AND EMPHATICALLY DECIDED.**". Maine v. Thiboutot, 100 S. Ct. 2502
13. "A court has no jurisdiction to determine its own jurisdiction, for a basic issue in any case before a tribunal is its power to act, and a court must have the authority to decide that question the first instance." Rescue Army v. Municipal Court of Los Angeles, 171 P2d 8: 331 US 549, 91 K, ed, 1666m 67 S, Ct, 1409
14. It is manifest it was not left to the legislative power to exact any process which might be devised. The [due process] article is a restraint on the legislative as well as on the executive and judicial powers of government, and cannot be so construed as to leave congress free to make any process "due process of law," by its mere will. *Murray's Lessee v. Hoboken Imp. Co.*, 18 How. (59 U.S.) 272,276 (1855).
15. The Constitution of Idaho declares that no person shall "be deprived of life, liberty or property without due process of law" (Idaho Constitution Article I, Section 13). The words "due process" do not mean anything which the legislature may see fit to declare to be "due process of law" *State ex rel. v. Billings*, 55 Minn. 466, 474 (1893). Due process was intended to preserve established fundamental rights by requiring that they can not be deprived except by the established modes of law as existing under the common law.
16. This guarantee that government shall follow a specified and pre-existing rule of conduct, process, or procedure is in itself a right the citizen held at common law, and was claimed

by the colonists in early America. Thus, "it is clear that the common law is the foundation of that which is designated as due process of law" (6 R.C.L. "Const. Law," § 435). The constitution guarantees these pre-existing rights and procedures in the due process provision.

17. What is due process of law may be ascertained by an examination of those settled usages and modes of proceedings existing in the common and statute law of England before the emigration of our ancestors. *Twining v. New Jersey*, 211 U.S. 78, 100 (1908).
18. The expressions 'due process of law' and 'law of the land' have the same meaning The 'law' intended by the constitution is the common law that had come down to us from our forefathers, as it existed and was understood and administered when that instrument was framed and adopted. *State v. Doheny*, 60 Maine 504 . 509 (1872).
19. In interpreting what due process of law is, it has been held that "none of our liberties are to be taken away except in accordance with established principles" *Ekern v. McGovern*, 154 Wis. 157, 142 N.W. 595, 620 (1913). Thus the mode of arrest by which one can be deprived of his liberty is to be determined by the pre-existing common law principles and modes of procedure. A properly constituted warrant of arrest is a process at common law by which persons could lawfully be deprived of their liberty. The common law on arrest without warrant recognized only certain specific and well defined cases whereby a citizen could be deprived of his liberty. This cannot be abrogated or changed by the legislature.
20. The common law drew a distinction between an arrest for misdemeanors, such as that which Truesdale arrested Peter upon, and arrests for felonies. When a felony was committed an arrest could be made without a warrant, but no arrest could be made for a misdemeanor without a warrant unless it constituted a "breach of the peace." The misdemeanor traffic violation was not a breach of peace and thus Truesdale needed a warrant to make an arrest for such offense.
21. In determining the law surrounding arrests, the Supreme Court of South Carolina, in the case of *State v. Byrd*, 72 S.C.104, 51 S.E. 542, 544 (1905), affirmed a prior decision of the Court holding that: At common law, as a general rule, an arrest could not be made without warrant for an offense less than felony, except for a breach of the peace. 3 Cye. 880; *State v. Sims*. 16 S.C. 486.
22. The fact that Truesdale believed that Peter committed a misdemeanor and had charged him with a violation of the traffic law, did not authorize him to arrest Peter. In a New York case, the State Supreme Court held that a city alderman or justice of the peace could not, at common law, arrest or cause an arrest for a misdemeanor not amounting to a breach of the peace, without warrant, though happening in his presence. The Supreme Court, in the case of *Butolph v. Blust*, 5 Lansing's Rep. 84, 86 (1871) stated: At common

law an arrest could not be made of a person charged with a misdemeanor except on warrant of a magistrate, unless it involved a breach of the peace, in which case the offender might be arrested by any person present at its commission. (1 Chitty, Criminal Law, 15; *Carpenter v. Mills*. 29 How. Pro R. 473).

23. In the very well reasoned and authoritative case of *Ex parte Rhodes*, 202 Ala. 68, 79 So. 462, 464 (1918), the Supreme Court of Alabama related the due process provision to the act of arrests. It asserted that, "any seizure or arrest of a citizen is not reasonable, or 'due process; merely because a Legislature has attempted to authorize it. These phrases are limitations upon the power of the Legislature, as well as upon that of the other departments of government, or their officers." In determining what was 'due process' regarding arrests the Court stated: It must not be forgotten that there can be no arrest without due process of law. An arrest without warrant has never been lawful, except in those cases where the public security requires it; and this has only been recognized in felony, and in breaches of the peace committed in the presence of the officer. *Ex parte Rhodes*. 202 Ala. 68, 79 So. 462, 465; citing, *Sarah Way's Case*, 41 Mich. 304, 1 N.W. 1023 (1879), et al. Also cited and affirmed in *Pinkerton v. Verberg*. 78 Mich. 573, 44 N.W. 579, 583 (1889); *State v. Williams*. 45 Ore. 314, 77 Pac. 965, 969, (1904); *Adair v. Williams*. 24 Ariz. 422, 210 Pac. 853, 856 (1922).
24. The Alabama Supreme Court in the *Rhodes* case went on to say that "the phrase 'due process' must be determined by what it meant at the common law, and when the Constitution was adopted" (p. 469). The Court then cites the case of *Tillman v. Beard*, 121 Mich. 475, 80 N.W. 248 (1899), in stating: Officers are justified in arresting without warrant only in cases of felony and breaches of the peace. This is elementary. It is needless to cite authorities.
25. At one time in the history of American law and jurisprudence, the concept that no one could be arrested for a misdemeanor except with a proper warrant was so basic and "elementary" that it was not necessary to give any authorities to prove it. Yet this basic concept was found to be too restrictive to the ever-growing oppressive government that has gained power in this country. Thus in order for it to control the liberty of citizens, and to enforce its oppressive laws, the corrupt, *de facto* government has gradually undermined a very basic principle of constitutional law.
26. In the *Pinkerton* case, *supra*, it was held that a police officer could not arrest a woman, without a warrant, upon mere suspicion that she was upon the street for the purpose of prostitution, even under provisions of the city ordinance allowing such arrests. The fact that she had a reputation of being a "street walker," and that the officer knew of her reputation and believed she was plying her vocation as such, plus the fact she did not give her name to the officer stating "it was none of his business," and that she dared the officer

to arrest her, did not give the officer grounds to arrest her. The Court said: If persons can be restrained of their liberty, and assaulted and imprisoned, under such circumstances, without complaint or warrant, then there is no limit to the power of a police officer. ... Any law which would place the keeping and safe conduct of another in the hands of even a conservator of the peace, unless for some breach of the peace committed in his presence, or upon suspicion of felony, would be most oppressive and unjust, and destroy all the rights which our constitution guarantees. These are rights which existed long before our constitution, and we have taken just pride in their maintenance, making them a part of the fundamental law of the land. *Pinkerton V. Verberg*, 78 Mich. 573.44 N.W. 579. 582-83 (1889); *Larson v. Feenry*. 196 Mich. I. 162 N.W. 275. 276-77 (1917).

27. Under the topic of "Arrest" as found in Vol. 2 of *Ruling Case Law*, we find the heading, "Constitutional Requirements as to Warrants," wherein it states: [T]he fundamental constitutional guaranties of personal liberty protect private individuals in the right of enjoyment of personal freedom without unlawful restraint, and it is universally recognized that no one may be arrested except by due process of law. (2 R.C.L. 463. § 21).
28. Here again we find that this principle of arrest only by due process of law was once universally recognized, yet Truesdale has ignored such process in his arrest of Peter. The law regarding warrantless arrests was also declared by the Supreme Court of Wisconsin in the case of *Radloff v. National Food Stores, Inc.*, 20 Wis.2d 224; 121 N.W.2d 865. 867 (1963) as follows: In *Stittgen v. Rundle*. (1898), 99 Wis. 78,80, 74 N.W. 536, this court established the principle that" An arrest without warrant has never been lawful except in those cases where the public security requires it; and this has only been recognized in felony, and in breaches of the peace committed in the presence of the officer." This rule was reaffirmed in *Gunderson V. Stuebing* (1905), 125 Wis. 173, 104 N. W. 149; 1 *American Law Reports. Annotated*, 585.

The *Radloff* case involved a Shoplifter who was stopped and arrested by store employees for taking two cartons of cigarettes. The State Supreme Court said that the employees had the right to stop the shoplifter and recover the goods he had stolen from their employer, and were not negligent per se in so doing. However, since the taking of the cigarettes constituted a misdemeanor, the store employees had no right to arrest the shoplifter when they had no warrant to arrest. In the *Gunderson* case, the court explained that arrests without warrants were allowed at common law "only where the ends of justice would be defeated without it," and that it "must be confined to cases of strict public necessity."

29. Where a person was arrested without warrant and charged with "public drunkenness," which resulted in charges of "resisting arrest," it was held by the Supreme Court of North

Carolina that the arrest was illegal as the state failed to make a *prima facie* case by showing that the defendant's conduct at the time of arrest amounted to either an actual or threatened breach of peace. The court said: "it is manifest that mere drunkenness unaccompanied by language or conduct which creates public disorder amounting to a breach of the peace, will not justify arrest without a warrant," and that "not every misdemeanor is a breach of the peace." In a very well-reasoned decision on the subject of arrests, the Court held the following: It has always been the general rule of the common law that ordinarily an arrest should not be made without warrant and that, subject to well-defined exceptions, an arrest without warrant is deemed unlawful. 4 Bl. Comm. 289 et seq.; 6 C.J.S., Arrest, §. 5. p. 579. This foundation principle of the common law, designed and intended to protect the people against the abuses of arbitrary arrests, is of ancient origin. It derives from assurances of *Magna Carta* and harmonizes with the spirit of our constitutional precepts that the people should be secure in their persons. Nevertheless, to this general rule that no man should be taken into custody of the law without the sanction of a warrant or other judicial authority, the processes of the early English common law, in deference to the requirements of public security, worked out a number of exceptions. These exceptions related in the main two cases involving felonies and suspected felonies and to breaches of the peace (authorities cited). *Slate v. Mobley*, 240 N.C. 476, 83 S.E.2d 100, 102 (1954).

30. The overall opinion of the court stressed the principle of the common law as controlling in arrests, thus characterizing as erroneous the view that any offense in the presence of an officer is arrestable without warrant.
31. In Texas it was held that an arrest without a warrant, for selling in the officer's presence a railroad ticket in violation of a city ordinance prohibiting the selling of such tickets, was unlawful, as the offense charged was not a felony, nor an offense "against the public peace." *M.K. & T. Ry. Co. v. Warner*, 19 Tex. Civ. App. 463 (1898).
32. Sheriffs, constables, and other officers under the executive branch of government had always been recognized as having authority to arrest for felonies committed and for misdemeanors amounting to a breach of peace. But this is the extent of their power to arrest without a warrant, and this constitutional principle is well-grounded in ancient common law safeguards of individual liberty: In England, under the common law, sheriffs, justices of the peace, coroners, constables, and watchmen were entrusted with special powers as conservators of the peace, with authority to arrest felons and persons reasonably suspected of being felons. * * * Conservators of the peace also had the authority to make arrests without warrants in case of a misdemeanor which involved a breach of the peace committed in the presence of the officer making the arrest. 2 *Ruling Case Law*, p. 446; *Orick v. State*, 105 So. 465, 469 (Miss., 1925); *Graham v. Stare*, 143 Ga. 440, 85 S.E. 328, 330 (1915); *Kennedy v. State*, 139 Miss. 579, 104 So. 449, 450

(1925); *Wilson v. Town of Mooresville*, 222 N.C. 283, 22 S.W.2d 907, 911 (1942); *People v. McGurn*, 341 Ill. 632, 173 N.E. 754, 756 (1930).

33. It has been held that constitutional provisions of rights are to be interpreted according to "the common and statute law of England prior to the emigration of our ancestors," and by the law established here before the Constitution was adopted. "Under the common law the powers of state agents were limited and the requirements for an arrest warrant was strictly enforced" *United States v. Tarlowski*, 305 F. Supp. 112, 116 (1969). This procedure for arrest is part of the "due process of law" provision of the constitution which protects citizens from the arbitrary infringement of their right to personal liberty. Thus, any specific authority for arrests must be based upon the common law procedures that allowed a deprivation of one's liberty. This was so held by the Supreme Court of Michigan as follows: It has already been decided that no arrest can be lawfully made without warrant, except in the cases existing at common law before our constitution was adopted. *People v. Swift*, 59 Mich. 529, 26 N.W. 694, 698 (1886).
34. Since liberty cannot be deprived except by the law of the land, or due process of law, no statute or ordinance can constitutionally be enacted which allows arrests without a warrant for any purpose the legislature decides. Due process is a limitation upon the legislature, and thus a legislative statute cannot be the due process by which one can be deprived of his liberty by arrests.
35. In a legal article titled, "Arrest With and Without a Warrant," written in the *University of Pennsylvania Law Review*, Vol. 75, No.6, April, 1927, p. 485, numerous authorities were cited in support of the following proposition: It is usually said that not even a peace officer is privileged to make an arrest without a warrant for a misdemeanor which does not amount to a breach of the peace, and there are many cases which expressly deny the privilege to arrest for such a misdemeanor (p. 486).
36. In the Annotation of the *American Law Reports*, vol. 1, p. 585, is found a legal study titled: "Constitutionality of statute or ordinance authorizing an arrest without a warrant," in which the following is stated: It has been stated that in cases less than a felony an arrest could only be made without warrant, where there was a breach of the peace in the presence of the person arresting (cases cited).

"The limits to the power of arrest by a constable, without process, was well defined at common law To prevent the escape of a felon, he had authority to arrest anyone whom he reasonably suspected to have been engaged in the perpetration of a felony. To prevent breaches of the peace, he had the right to arrest any person who was engaged in, or in his presence threatened to engage in, an affray or other breach of the peace. Beyond this, the law did not allow him to exercise the function of determining whether there was a sufficient case of the violation of a law to justify an affray or other breach of the peace.

Beyond this, the law did not allow him to exercise the function of determining whether there was a sufficient case of the violation of a law to justify an arrest." Reed. J., in Newark v. Murphy (1871) 40 N.J.L. 145. After this excerpt the law report stated that "the foregoing statement from Newark v. Murphy is in accord with the weight of American opinion." Those cases which seemed to deviate from this proposition are those which have upheld arrests for certain acts that were unlawful at common law, such as "streetwalkers,"

37. In Tiedeman's "*Treatise on the Limitations of Police Power*" (1886) § 33, is found the requirements for a lawful arrest and the exceptions to a warrantless arrest: 33. What constitutes a lawful arrest. - As a general proposition, no one can make a lawful arrest for a crime, except an officer who has a warrant issued by a court or magistrate having the competent authority. 33a. Arrests without a warrant.- Although it is the general rule of law that there can be no arrest without a warrant of the nature just described, yet there are cases in which the requirement of a warrant would so obstruct the effectual enforcement of the laws, that the ends of justice would be defeated. For public reasons, therefore, in a few cases the personal security of the citizen is subjected to the further liability of being arrested by a police officer or private individual without warrant. But the right thus to arrest without a warrant must be confined to the cases of strict public necessity. The cases are few in number, and may be stated as follows:

1. When a felony is being committed, an arrest may be made without warrant to prevent any further violation of the law.
2. When the felony has been committed, and the officer or private individual is justified, by the facts within his knowledge, in believing that the person arrested has committed the crime.
3. All breaches of the peace, in assaults and batteries, affrays, rims, etc., for the purpose of restoring order immediately.

The rule of the common law, that a peace officer or a private citizen may arrest a felon without a warrant, or on view a breach of the peace, has never been extended to any and all misdemeanors. While there have been some erroneous decisions that have recognized statutes authorizing arrests for misdemeanors that do not constitute a breach of the peace, none are based upon the meaning of due process of law. Thus arrests are not lawful where only a misdemeanor occurs unless it is of the nature of a 'breach of peace.'

38. At the common law an officer had no authority to make an arrest for a misdemeanor though committed in his presence unless it involved a breach of the peace . * • * The right of personal liberty is a very high prerogative right, and to deprive one of that right, without due process of law, we must find specific authority for doing so. It can not be left

to inference or some strained construction of statute or ordinance. *State v. Lutz*, 85 W.Va. 330; 101 S.E. 434, 43 (1919).

39. The specific authority for arrests is grounded in the ancient, settled maxims of law, which no statute can abrogate without violating the 'due process of law' provision of the constitution. Thus a warrant must be obtained for a misdemeanor that is not a 'breach of peace.' The supreme Court of Minnesota has stated on several occasions that even in the case of a felony an "arrest and search should not be made without a warrant unless there is a compelling necessity to do so." *State v. Mastrian*, 285 Minn. 51, 57 (1969).
40. The supreme Court of Rhode Island in declaring the requirements at common law for an arrest stated: That law permitted an officer to arrest without a warrant on reasonable suspicion based on his knowledge that a felony had been committed . . . In all other cases, except in the case of a misdemeanor amounting to a breach of the peace committed in his presence, an officer had no authority, at common law, to arrest without a warrant (authorities cited) *Kominsky v. Durand*. 64 R.J 387, 12 Atl.2d 652, 654 (1940).
41. In *American Jurisprudence*, 2d., Vol. 5, under the subject of "Arrest," sections 26 and 28, pp. 716, 718, it states: At common law, a peace officer cannot arrest without warrant for a misdemeanor, although committed in his presence, unless a breach of peace is involved. At common law, the right to arrest for a misdemeanor committed in the presence of the officer is limited to those offenses which amount to a breach of the peace. The basis for the rule is that arrest without warrant is permitted, in cases less than felony, not for the apprehension of the offender, but only for the immediate preservation of the public peace; and, accordingly, when the public peace is not menaced, a warrant is necessary. (authorities cited, see also section 22).
42. In *Corpus Juris Secundum*, Vol. 6A, under the subject of "Arrest," and under the heading of "Arrest or Detention Without Warrant" § 10, p. 17, it is written: At common law, however, it has always been the rule that, except in cases where the public security has demanded it, arrest without a warrant is deemed to be unlawful.
43. "Due process of law," which declares that no citizen shall be deprived of any of his rights of life, liberty or property, unless by the law of the land, or the judgment of his peers (Idaho Const., Art. I, Sec. 1, 7 & 13), is the controlling factor in the matter of the arrest made by Truesdale. An arrest is a deprivation of one's liberty and the due process that must be followed in an arrest is that process which existed at common law.
44. To prevent the exercise of arbitrary power at the discretion of government, it was deemed wise to secure the principles already settled in the common law upon this vital point of civil liberty in written constitutions (Cooley, *Const. Lim.* 364 and notes).

45. Where a Chicago policeman arrested a man for "vagrancy," the officer was found guilty by a jury of false imprisonment. The Supreme Court of Illinois upheld the conviction of the policeman and declared the rule of law regarding arrests without warrants.
46. Blackstone says: "The constable hath great original and inherent authority with regard to arrests. He may, without warrant, arrest anyone for a breach of the peace committed in his view, and carry him before a justice of the peace; and in case of felony actually committed, or a dangerous wounding whereby felony is likely to ensue, he may, upon probable suspicion, arrest the felon, and, for that purpose, is authorized (as upon a justice's warrant) to break open doors, and even to kill the felon, if he can not otherwise be taken." 4 Bl. Conun. 292.
47. In all other cases, however, the authorities are uniform, a constable or policeman has no authority to make an arrest without a warrant (authorities cited) *Shanley v. Wells*. 71 111. 78, 82 (1873).
48. In a case for false imprisonment, the Supreme Court of Maine examined the law regarding arrests and held: "The principles which, by the common law, regulate the right to arrest, or cause an arrest, without warrant, have been long settled both in this country and England; and, by these principles, the rights of these parties must be determined." After citing numerous cases involving the authority to arrest, the Court stated: In many of these cases it seems to have been held that the authority of an officer to arrest for misdemeanor, without warrant, is limited to breaches of the peace or affrays, committed in his presence. *Palmer v. Maine Cent. R. Co.*, 42 Atl. 800, 803, 92 Me. 399 (1899).
49. In a case involving a state liquor prohibition law, a man, while walking down along a public street, was accosted by a police officer, and asked if he had any liquor on his person. He replied that he did. Thereupon the officer searched him and found a pint bottle of liquor in his inside coat pocket. He was then taken to the police station. The State Supreme Court of Wisconsin said that when the police officer stopped the man he was illegally arrested and was illegally searched, as he had no warrant to do either. The Court said that "it is a serious thing to arrest a citizen, and it is a more serious thing to search his person" and it must be done "in conformity to the laws of the land." Regarding the law on arrests, it held: At common law arrests for misdemeanors were not permissible without a warrant except for acts committed in the presence of the officer causing a breach of the peace. *Allen v. State*, 183 Wis. 323, 197 N.W. 808, 810, 811 (1924).
50. Thus in order that the citizen's sacred right of liberty be secure and preserved, it has always been fundamental law that arrests without warrant were not deemed lawful, with only a few well-established exceptions of felonies and breaches of peace. The liberty of citizens would never be safe if such principles could be determined and thus abrogated by statute. Therefore these principles surrounding arrests are regarded as fundamental law

under our American system of government, as held by the Supreme Court of Michigan: Under our system we have repeatedly decided, in accordance with constitutional principles as construed everywhere, that no arrest can be made without warrant except in cases of felony, or in cases of breaches of the peace committed in the presence of the arresting officer. This exception, in cases of breaches of the peace, has only been allowed by reason of the immediate danger to the safety of the community against crimes of violence. *Yerkes v. Smith*, 157 Mich. 557. 122 N.W. 223, 224 (1909), citing : *Robison v. Miner*, 68 Mich. 549.557-58. 37 N.W. 21. 25 (1888).

51. In the *Yerkes* case, it was held that the playing of baseball on Sunday did not necessarily involve a breach of peace justifying an arrest, though it may cause a breach of peace. The Court said that before a summary arrest can be made for a breach of the peace, not only must overt acts be committed in the presence of the officer, but they must be violent and dangerous acts of some sort. In the *Robison* case, the Court held that a liquor law ordinance which allowed arrests without process was unconstitutional because it was not pursuant to due process of law.
52. Where a man was arrested for public drunkenness, the question arose whether this was an offense for which one could be arrested without a warrant. The Supreme Court of Appeals of Virginia declared the law on arrests: [The common law relating to arrest is the law on that subject in Virginia. At common law a peace officer may arrest without a warrant for a breach of the peace committed in his presence, but for no other misdemeanor. *Galligher v. Commonwealth*, 161 Va . 1014 . 170 S.E. 734. 736 (1933). authorities cited.
53. The common law on arrest is the same in every state, as due process of law has the same meaning throughout America. The security of the citizen's liberty in this country is to be more highly regarded than it was in England under the common law. To say it is less regarded is to make a mockery of the Revolution.
54. In a New Jersey case a man was arrested by two city police men on orders of their superior to do so, alleging that he was guilty of disorderly conduct, and was taken to a police station and held over night. This was done without any charge or complaint made against the man and without any warrant, the only authority for the arrest was that the officers were told to do so. In a suit for false imprisonment, it was held by the Supreme Court of New Jersey that the arrest was without authority and gave the following opinion: The legal principle underlying this case and the one to be applied to the facts is firmly embodied in the roots of the common law, which has been handed down to us from early times unimpaired, in its full vigor, for the protection of personal liberty, against illegal arrests. The liberty of the person is too important a matter to the state to be interfered with without the safeguards with which the law guards such invasions. This court has

said: The limits to the power of arrest by a constable, without process, was well defined at common law. The regard for liberty of the person was so great that the common law did not confer upon a mere conservator of the peace the power to touch the person of the subject, of his own volition, except in those cases when the interests of the public absolutely demanded it. *Collins v. Cody*, 95 N.1. Law 65, 113 Atl. 709, 710 (1920).

55. In a Pennsylvania case a woman was arrested for causing and procuring to be made, loud and annoying sounds and noises at late hours of the night, in a certain tent near a city street, by beating upon a drum. Upon indictment her counsel moved that the indictment be quashed as she was arrested without affidavit and warrant while she was in a tent upon private property. It was held that the arrest was unlawful as the act was such that summary arrest was not justified and due process required a warrant for such arrest.
56. It is the undoubted right of every person in this community not to be deprived of liberty without due process of law, and if the defendant has been arrested without due process of law, the indictment against her cannot be sustained. * * * It has long been recognized that arrests without warrant are justified in cases of treason, felony or breach of the peace, in which actual or threatened violence is an essential element: I Hale's P.C. • 589; 2 Hawkin's P.C., ch. 13, sec. 8; 1 Burns, 1., 287; 4 Blackstone, 292; 9 Bacon, Abrid., 468; 1 Chitty Cr. Law. 15; Clark's Criminal Procedure, 39; Russell, Crimes, vol. 3, page 83; 4 Amer. and Eng. Ency. of Law, 902. *Commonwealth v. Krubeck*, 8 Penn. Dist. Rep. 521, 522 (1899).
57. It must be remembered that, "Not every misdemeanor involves a breach of the peace." *Commonwealth v. Gorman*, 192 N.E. 618, 620. Under the common law, acts that were *malum in se*, that is wrong or unlawful by their nature, were often felonies or breaches of the peace, and subject to arrest without warrant. But that is not the law for an act that was only *malum prohibitum*, being made unlawful only by statute, and without such enactment were otherwise innocent acts. The law asserts that for such statutory misdemeanors, not amounting to a breach of the peace, there is no authority in an officer to arrest without a warrant.
58. 45. As a general principle, no person can be arrested or taken into custody without warrant. But if a felony, or a breach of the peace, has, in fact, been committed by the person arrested, the arrest may be justified. *Burns v. Erben*, 40 N. Y. 463, 466 (1869); see also *Cunningham v. Baker*, 104 Ala. 160, 16 So. 68, 70 (1894).
59. 46. While the "search and seizure" provision of the constitution regulates the manner in which warrants can be issued, it is the "due process" clause which protects citizens from unlawful arrests without warrant: "No person shall be deprived of life, liberty, or property without due process of law." And, under like restrictions in the constitution, it has been held in some states that arrests shall not be made without warrant, except for felonies, and

for breaches of the peace committed in the presence of the officer arresting. *North v. People*, 139 Ill. 81, 28 N.E. 966, 972 (1891).

60. 47. Thus, where an arrest is made without warrant, in a case not involving a felony or breach of peace, the arrest is unlawful. "Arrest without warrant where a warrant is required, is not due process of law, and arbitrary or despotic power no man possesses under our system of government." Thus when "a police officer exceeds his powers in making an arrest he becomes a trespasser" and he is liable for false imprisonment. *Muscoe v. Commonwealth*, 86 Va. 443, 10 S.E. 534, 536.

61. 48. For other authorities on this matter see: 1 Am. Law Rep., Anno., 585, et. seq.; *Com. v. Carey*, 12 Cusb. 246 (Mass., 1853); 6A C.J.S., 'Arrest' § 10, p. 17; Anderson, A *Treatise on the Law of Sheriffs*, Vol. I, § 166 (1941); *Hill v. Day*, 168 Kan. 604, 215 P.2d 219; *Lee v. State*, 45 Tex. Cr. R. 94, 74 S.W. 28 (1903); 22 Mich. Law Review 673, 703-707; *Ulvestad v. Dolphin*, 278 P. 681, 684 (WaSh. 1929); *In re Kellam*, 55 Kan. 700, 41 P. 960, 961 (1895); *Pavish v. Meyers*, 225 Pac. 633 (Wash., 1924); *Delafoile v. State*, 54 N.J.L. 381, 24 All. 557, 558 (1892); *Giroux v. The State*, 40 Tex. 99, 104 (1874); (1892); *Staker v. U.S.*, 2 F.2d 312, 314 (1925); *Poner v. State*, 52 S.E. 283, 285 (Ga. 1905); *Cave v Cooley*, 152 P.2d 886 (N.M.).

CONCLUSIONS.

It is a maxim of law that, "*Liberty is more favored than all things*" (Dig. 50, 17, 122). Thus the law favors liberty above all things and applies the most liberal interpretation to it. The common law rule regarding the procedure and process for arrest was established in this country. In *Allor v. Wayne Co.*, 43 Mich. 76, 97, 4 N. W. 492, 495-96 (1880), Mr. Justice Campbell says:

The constitution has also provided that no one shall be deprived of liberty without due process of law, and has provided that no warrant shall issue except upon oath or affirmation establishing probable cause. It has been settled for centuries, and the doctrine has been recognized here, that except in cases of reasonable belief of treason or felony, or breach of the peace committed in presence of an officer, there is no due process of law without a warrant issued by a court or magistrate upon a proper showing or finding.

It is thus fundamental that "the due process clause of the Constitution protects the citizen from unlawful arrests." *State v. Quinn*, 97 S.E. 62, 64, (S.C. 1918). By the common law, which is that law due process guarantees, a citizen cannot be summarily arrested when he is found violating a law that is only a misdemeanor. A warrant must first be acquired to arrest such a person pursuant to due process of law. If that which constitutes due process of law is made to depend upon the will of the legislature as expressed in a statute or charter, then no fundamental principles of law or rights are perpetuated or secured against abrogation.

An arrest is a deprivation of one's liberty. The State Constitution requires that, "No person shall . . . be deprived of life, liberty or property without due process of law" (Idaho Const. Art. I, Sec. 13). The procedure for arrest under the common law is what constitutes 'due process' today, as the Minnesota Supreme Court held:

What is due process of law is usually a traditional or historical question. Was it due process of law under the common law, and did it remain such up to the time of adopting the constitution. *C.N. Nelson Lumber Co. v. M'Kinnon*, 61 Minn. 219. 222.

The law is very jealous of the liberty of the citizen. Where the offense is less serious, the greater the formality prescribed for the exercise of the power which can deprive the citizen of his liberty. *Porter v. State*, 124 Ga. 297, 52 S.E. 283, 285 (1905). The citizen cannot be summarily deprived of his liberty because of his infraction of some ordinance or statute, unless at common law he was liable to arrest. The misdemeanor traffic statute involved in this case is such that it does not allow Kevin Truesdale to arrest Peter without the formality of a warrant. Therefore, Kevin Truesdale is guilty of false imprisonment for arresting and kidnapping Peter without authority of law.

The foregoing proves that the common law surrounding arrests was always recognized in this country and is thus a requirement for 'due process' in depriving Peter of his liberty. It is the "law of the land." As such, these principles are constitutional mandates and cannot be abrogated by mere statutes.

Respectfully submitted and stated, *Juris et de jure*,

by Peter - Alan : Hearn.

State of Idaho

County of Ada

On this 27 day of October, 2022, Peter Alan Hearn personally appeared before me and having been duly sworn did herein execute the above record for the purposes stated.

Robert - Bryan : Coy

Signature of Notary Public

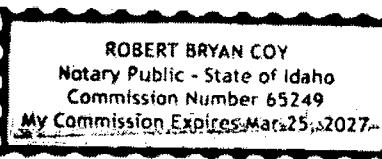
Robert - Bryan : Coy

Printed name of Notary Public

Mar 25, 2027

Commission Expiration Date

Seal



CERTIFICATE OF SERVICE

I certify that on October 27, 2022, I served a copy of the foregoing Verified Brief, Memorandum of Law in Support of Motion to Dismiss with Prejudice to:

Ada County Prosecutor
(Name)

By United States mail
 By personal delivery
 By fax ()

200 West Front Street
(Street or Post Office Address)

Boise, Idaho [83702]
(City, State, and Zip Code)

Clerk of the Court
(Name)

By United States mail
 By personal delivery
 By fax ()

200 West Front Street
(Street or Post Office Address)

Boise, Idaho [83702]
(City, State, and Zip Code)

Peter-A. Hearn
Typed/Printed Name

Peter-A. Hearn
Signature

Peter Alan: Hearn
2602 East Nahuatl Drive
Boise, Idaho 83716
Sui Juris

NO. _____
A.M. _____ FILED
P.M. _____

DEC 01 2022

PHIL McGRANE, Clerk
By KERA GOEKE
DEPUTY

**IN THE DISTRICT COURT FOR THE FOURTH JUDICIAL DISTRICT
FOR THE STATE OF IDAHO IN AND FOR THE COUNTY OF ADA**

THE STATE OF IDAHO

Plaintiff, in err
vs.

PETER ALAN HEARN.

Defendant, in err

Case No. CR01-22-22577

**RESPONSE TO STATE'S
OBJECTION TO DEFENDANT'S
MOTION TO DISMISS**

Comes now, the alleged Defendant, PETER ALAN HEARN in err, Peter Alan: Hearn, a living man, creation of God, one of the People of the territory of Idaho, appearing specially, not generally, and submits this Response to Plaintiff's/STATE'S OBJECTION TO DEFENDANT'S MOTION TO DISMISS. Plaintiff's/STATE'S OBJECTION is not supported by factual or lawful authority and can not be granted. Plaintiff claims Defendant's motion is not supported by factual or legal authority and thus cannot be granted. This is proof the Plaintiff did not read Alleged Defendant's Motion to Dismiss stating, "Defendant intends to file a Brief within 14 days after service of this motion". Plaintiff jumped the gun and filed his Objection to the motion before the 14 day mark. Alleged Defendant filed and served his Verified Brief, Memorandum of Law in Support of the Motion to Dismiss with Prejudice on October 27, 2022 within the 14 days but after

Plaintiff filed its Objection. Alleged Defendant request the Court deny the Plaintiff's objection. No demand for oral argument. Demand for written response from Plaintiff.

STATEMENT OF FACTS

On July 23, 2022, at approximately 9:16 p.m. Kevin Truesdale, acting as Idaho State Trooper observed a silver 2017 Toyota 4Runner traveling eastbound on Interstate 84 in Ada County. Truesdale observed a white paper displayed on the rear of the automobile stating "Not for Hire".

Truesdale pulled up beside the 4Runner, then moved behind, turned on his emergency lights, and made an unlawful arrest without probable cause or a warrant. Truesdale demanded that the owner of the 4Runner, alleged Defendant known as Peter, show him his Driver's License, registration, and insurance where Truesdale did not have Personal Jurisdiction over the man acting as "Driver", nor Subject Matter Jurisdiction under "Motor Vehicle" Title 18 USC 31: "Motor vehicle" means every description or other contrivance propelled or drawn by mechanical power and used for commercial purposes on the highways in the transportation of passengers, or passengers and property. "Used for commercial purposes" means the carriage of persons or property for any fare, fee, rate, charge or other considerations, or directly or indirectly in connection with any business, or other undertaking intended for profit.

Alleged Defendant informed Truesdale that alleged Defendant is not a Driver, for hire, operating a Motor Vehicle and offered Truesdale papers to prove this and Alleged Defendant's identity. Truesdale refused to look at the papers.

Truesdale, the man with the gun, threatened Alleged Defendant to turn off the engine of his property, under aggravated threat of violence and duress Peter turned off the engine. Facing no Resistance or Obstruction of a Lawful order from the Alleged Defendant, angry and excitable Kevin Truesdale then reached in across Peter, unbuckled his seat belt, grabbed, and twisted Peters left arm behind his back and forcefully jerked Peter out of his personal property by his arm, causing pain to Alleged Defendant. Truesdale then unlawfully searched Alleged Defendant and his automobile without a warrant. Truesdale then put Peter in the back of his patrol car, shoving and kicking Peter's legs into the car because his feet could not fit easily into the small door entry way, causing pain to Peter's legs and foot. Peter asked Truesdale please do not tow my automobile and let my friends take it. Truesdale told Peter, "I'm towing your vehicle"

ARGUMENT

Plaintiff's/STATE'S Objection to Defendant's Motion to Dismiss contains numerous statements of beliefs, alleged facts, color of law, false statements, and errors; and it only cites Idaho Code, rules or opinions of a court, which are not Law and do not support said Objection. Alleged Defendant's Motion to Dismiss does accurately cite; The Constitution for the United States of America, Idaho State Constitution, An Act to regulate proceedings in Criminal Cases in the Courts of Justice in the Territory of Idaho. (1864) -OR- Criminal Practice Act of 1864 for the Territory of Idaho (Cr. Prac. 1864) and U.S. Code all of which are Law or Regulations and what this court is bound by. Plaintiff cites I.C.R. 12(a) as providing that "[p]ro se litigants are held to the same standards and rules as those represented by an attorney, this is false, in fact I.C.R. 12(a) states "Pleadings and Motions. The only pleadings in criminal proceedings are the complaint, indictment or information, and the pleas of guilty and not guilty. Defenses and objections before trial must be raised by motion to dismiss or to grant appropriate relief as provided in these rules.. Furthermore, "That a Constitution should receive a liberal interpretation in favor of the citizen is especially true with respect to those provisions which were designed to safeguard the liberty and security of the citizen in regard to both person and property to safeguard the liberty and security of the citizen in regard to both person and property". 16 American Jurisprudence 2nd edition §97. So, pro se litigants are not to be held to the same standards and rules as those represented by an attorney. Additionally, the Alleged Defendant is appearing Sui Juris not pro se.

I. Rebuttal to Plaintiff's Response to Defendant's Alleged Defects in Prior Proceedings.

A. Trooper Truesdale was justified in making a traffic stop because he had reasonable and articulable suspicion the vehicle was being driven contrary to I.C. § 49-428. is false, in fact alleged Defendant was not acting in his proper person as "Driver", "operating a Motor Vehicle", and "used for commercial purposes", Therefore there was no cause of action to initiate a "Traffic stop", as well as there was no "Emergency" or "Traffic Accident" for which Truesdale could use his "Emergency Lights" for, which is still an arrest without a warrant and would be Administrative in nature and must be heard in a nisi prius court, not having the authority to impose fines or jail time or this would fall under Bills of Attainder/Bills of Pains and Penalties.

Further in fact, Plaintiff misconstrues "an officer's reasonable articulable suspicion that a person has committed, or is about to commit, a crime", of a crime, that is an arrestable offense without a warrant to include Traffic Infraction which is not a crime or Public Offense. Criminal

Practice Act 1864 Section 2. Public offenses are divided into---First. Felonies. Second. Misdemeanors. Section 4. Every Public offense is a misdemeanor. Section 6. Every public offense must be prosecuted by indictment, except---First. When proceedings are had for the removal of a civil officer of the territory. Second. Offenses arising in the militia when in actual service in time of war, or which this territory may keep, with the consent of congress, in time of peace. Third. Offenses tried in justices' courts. *malum prohibitum*. Criminal in Nature, *mens rea*, *malum in se*; Therefore the "Traffic stop" was in fact an unlawful arrest without a warrant.

Further in fact, Law of Nations Book I, Chapter III, section 34, "Here again a very important question presents itself. It essentially belongs to the society to make laws both in relation to the manner in which it desires to be governed, and to the conduct of the citizens:—this is called the *legislative power*: The nation may intrust the exercise of it to the prince, or to an assembly; or to that assembly and the prince jointly; who have then a right to make new laws and to repeal old ones. It is asked whether their power extends to the fundamental laws,—whether they may change the constitution of the state? The principles we have laid down lead us to decide with certainty, that the authority of these legislators does not extend so far, and that they ought to consider the fundamental laws as sacred, if the nation has not, in very express terms, given them power to change them. For the constitution of the state ought to possess stability: and since that was first established by the nation, which afterwards intrusted certain persons with the legislative power, the fundamental laws are excepted from their commission. It is visible that the society only intended to make provision for having the state constantly furnished with laws suited to particular conjunctures, and, for that purpose, gave the legislature the power of abrogating the ancient civil and political laws that were not fundamental, and of making new ones: but nothing leads us to think that it meant to submit the constitution itself to their will. In short, it is from the constitution that those legislators derive their power: how then can they change it, without destroying the foundation of their own authority?"

Further in fact, People no longer live their whole lives in the village in which they were born. They pass freely from place to place, and in transit go through innumerable towns and villages. The risk of being arrested on sight, because one's conduct contravenes some regulation which the wisdom of the local Solons deems necessary, is appalling to any thinking person. It would be impossible to know at what moment one might become amenable to arrest. University of Pennsylvania Law Review, vol. 75, p. 491, April, 1927.

Further in fact, Idaho Code 49-123 (k) "Noncommercial vehicle. For the purposes of chapter 4, title 49, Idaho Code, motor vehicle registration, a noncommercial vehicle shall not include those vehicles required to be registered---".

Further in fact, the Idaho Code is a fraud, made up by the BAR, pretended acts of legislation, color of law and Traffic Infractions are not Felonies or Misdemeanors and are not arrestable offenses with or without a warrant, but rather fall under Bills of Attainder/Bills of Pains and Penalties contrary to Article I section 16 of the Idaho Constitution and Article I section 9 clause 3 and Article I section 10 clause 1 of the Constitution for the United States of America 1791 with the Bill of Rights.

Further in fact, It is manifest it was not left to the legislative power to exact any process which might be devised. The [due process] article is a restraint on the legislative as well as on the executive and judicial powers of government, and cannot be so construed as to leave congress free to make any process "due process of law," by its mere will. *Murray's Lessee v. Hoboken Imp. Co.*, 18 How. (59 U.S.) 272,276 (1855).

Further in fact, The Constitution of Idaho declares that no person shall "be deprived of life, liberty or property without due process of law" Idaho Constitution Article I, Section 13. The words "due process" do not mean anything which the legislature may see fit to declare to be "due process of law" *State ex rel. v. Billings*, 55 Minn. 466, 474 (1893). Due process was intended to preserve established fundamental rights by requiring that they cannot be deprived except by the established modes of law as existing under the common law.

Further in fact, In determining the law surrounding arrests, the Supreme Court of South Carolina, in the case of *State v. Byrd*, 72 S.C.104, 51 S.E. 542, 544 (1905), affirmed a prior decision of the Court holding that: At common law, as a general rule, an arrest could not be made without warrant for an offense less than felony, except for a breach of the peace. 3 Cye. 880; *State v. Sims*. 16 S.C. 486.

Further in fact, In the very well reasoned and authoritative case of *Ex parte Rhodes*, 202 Ala. 68, 79 So. 462, 464 (1918), the Supreme Court of Alabama related the due process provision to the act of arrests. It asserted that, "'any seizure or arrest of a citizen is not reasonable, or 'due process; merely because a Legislature has attempted to authorize it. These phrases are limitations upon the power of the Legislature, as well as upon that of the other departments of government, or their officers.' In determining what was 'due process' regarding arrests the Court stated: It must not be forgotten that there can be no arrest without due process of law. An arrest without warrant has never been lawful, except in those cases where the public security requires it; and this has only been recognized in felony, and in breaches of the peace committed in the presence of the officer. *Ex parte Rhodes*. 202 Ala. 68, 79 So. 462,465; citing, *Sarah Way's Case*, 41 Mich. 304, I N.W. 1023 (1879), et al. Also cited and affirmed in *Pinkerton v. Verberg*. 78

Mich. 573, 44 N.W. 579, 583 (1889); *State v. Williams*. 45 Ore. 314, 77 Pac. 965, 969, (1904); *Adair v. Williams*. 24 Ariz . 422, 210 Pac . 853, 856 (1922).

Further in fact, the Plaintiff states that "Trooper Truesdale observed Defendant driving" and "driving" is not proper diction, whereas the proper diction is "operate" and "Motor Vehicle" under "used for commercial purposes" "for any fare or fee", versus at common law "personal liberty", "traveler", "personal property", "private property" and "in the private", "Not for Hire".

Further in fact, The claim and exercise of a constitutional right cannot be converted into a crime. *Miller v. United States*, 230 F.2nd 486 (5th Cir. 1956).

B. Trooper Truesdale was justified in conducting a search of Defendant's person incident to arrest is false, in fact Truesdale did not have a search warrant and the arrest was unlawful from its inception and therefore all subsequent actions are void for any effect for fraud, subsequently Article I section 17 Constitution of Idaho reads as follows "*The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue without probable cause shown by affidavit, particularly describing the place to be searched and the person or thing to be seized.*"

Further in fact, The specific authority for arrests is grounded in the ancient settled maxims of law, which no statute can abrogate without violating the 'due process of law' provision of the constitution. Thus a warrant must be obtained for a misdemeanor that is not a 'breach of peace.' The supreme Court of Minnesota has stated on several occasions that even in the case of a felony an "arrest and search should not be made without a warrant unless there is a compelling necessity to do so." *State v. Mastrian*, 285 Minn. 51, 57 (1969).

Further in fact, The supreme Court of Rhode Island in declaring the requirements at common law for an arrest stated: That law permitted an officer to arrest without a warrant on reasonable suspicion based on his knowledge that a felony had been committed . . . In all other cases, except in the case of a misdemeanor amounting to a breach of the peace committed in his presence, an officer had no authority, at common law, to arrest without a warrant (authorities cited) *Kominsky v. Durand*. 64 R.J 387, 12 Atl.2d 652, 654 (1940).

Plaintiff states "Because Trooper Truesdale had probable cause to arrest Defendant upon violating I.C. 18-705, Resisting or Obstructing Officers, the search incident to arrest was proper" is false, in fact Truesdale was not discharging any lawful duty of his office in violation of Peter's fundamental rights and Idaho Code 18-703 ILLEGAL ARRESTS AND SEIZURES. Every public officer, or person pretending to be a public officer, who, under the pretense or **color of any process or other legal authority**, arrests any person or detains him against his will, or seizes

or levies upon any property, or dispossesses any one of any lands or tenements, without a regular process or other lawful authority therefor, is guilty of a misdemeanor., nor did Truesdale have probable cause, an articulable, reasonable suspicion that Peter had committed a crime that was an arrestable offense without a warrant and was not supported by any affidavit from an accuser/Principal who had standing to claim a right to a (probable) cause of action for which any Agent could act upon.

Further in fact, Idaho Code 19-201 LAWFUL RESISTANCE. Lawful resistance to the commission of a public offense may be made: 1. By the party about to be injured. 2. By other parties. Peter did not identify as a "Driver" nor did Peter admit that he was "operating a Motor Vehicle", therefore Peter had the Right to resist the unlawful actions and Public Offense's made by Truesdale.

Further in fact, Cr. Prac. 1864 Sec. 12 states, "No person shall be compelled, in a criminal action, to be a witness against himself; nor shall a person charged with a public offence be subjected, before conviction, to any more restraint than is necessary for his detention to answer the charge".

Further in fact, Cr. Prac. 1864 Sec. 14 states, "Lawful resistance to the commission of a public offence may be made-first, By the party about to be injured. Second. By other parties".

C. Defendant's argument regarding Trooper Truesdale's failure to take him to the nearest magistrate for an initial appearance on the date of incident is contrary to I.C.R.5 (b) is false, in fact the common Law dictates due process of law and not the Legislature or any other Branch/part of Government. It is manifest it was not left to the legislative power to exact any process which might be devised. The [due process] article is a restraint on the legislative as well as on the executive and judicial powers of government, and cannot be so construed as to leave congress free to make any process "due process of law," by its mere will. *Murray's Lessee v. Hoboken Imp. Co.*, 18 How. (59 U.S.) 272,276 (1855).

Further in fact, Criminal Practice act 1864 Section 121. Arrest is the taking of a person into custody, that he may be held to answer for a public offense. Section 124. If the offense is charged be a felony, the arrest may be made on any day and at any time of the day or night. If it be a misdemeanor, the arrest shall not be made at night, unless upon the direction of the magistrate, endorsed upon the warrant. Section 131. A peace officer may, without a warrant, arrest a person: First. For a public offense, committed or attempted in his presence. Second.

Where the person arrested has committed a felony, although not in his presence. Third. Where a felony has in fact been committed, and he has reasonable cause for believing the person arrested to have committed it. Fourth. On a charge made upon a reasonable cause, of the commission of a felony by the party arrested.

Idaho Code Title 49-1406. WHEN PERSON MUST BE TAKEN IMMEDIATELY BEFORE A MAGISTRATE. Whenever any person is halted by a peace officer for any violation of the provisions of this title not amounting to a misdemeanor and demands an immediate appearance before a magistrate, he shall be taken without unnecessary delay before the proper magistrate as specified in section 49-1411, Idaho Code; Idaho Code 49-1411. **APPEARANCE BEFORE MAGISTRATE — PROCEDURE.** A person shall be taken before a magistrate or given a traffic citation and the charge subsequently processed, as provided by rule of the supreme court. Whereas this is very clear that the Officer has 2 choices and "shall" is mandatory language. It does not mention take them to jail, take pictures and fingerprints and leave them there until the next available time a Magistrate is available.

Further in fact, Rules of Procedure are not Law but, the rule specifically states "At or before the first appearance of a defendant who is arrested without a warrant or appears pursuant to a summons, the **magistrate must determine there is probable cause** as defined in Rule 4(a) **before the defendant is retained, ordered into custody or required to post bond.**", and as previously stated above and, in the Brief, Memorandum of Law that due process of law is derived from common law and cannot be altered by any branch of government. 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.

Further in fact "The essential elements of due process of law are...Notice and The Opportunity to defend." *Simon vs. Craft*, 182 US 427.

Further in fact "There should be no arbitrary deprivation of Life or Liberty..." *Barbour vs. Connolly*, 113 US 27, 31; *Yick Wo vs. Hopkins*, 118 US 356.

Further in fact One of the most famous and perhaps the most quoted definitions of due process of law, is that of Daniel Webster in his Dartmouth College Case (4 Wheat 518), in which he declared that by due process is meant "a law which hears before it condemns, which proceeds upon inquiry, and renders judgment only after trial." (See also *State vs. Strasburg*, 110 P. 1020; *Dennis vs. Moses*, 52 P. 333.)

Further in fact, Blackstone says: "The constable hath great original and inherent authority

with regard to arrests. He may, without warrant, arrest anyone for a breach of the peace committed in his view, and **carry him before a justice of the peace**; and in case of felony actually committed, or a dangerous wounding whereby felony is likely to ensue, he may, upon probable suspicion, arrest the felon, and, for that purpose, is authorized (as upon a justice's warrant) to break open doors, and even to kill the felon, if he can not otherwise be taken." 4 BI. Comm. 292.

Further in fact, Felony/Capital Offense, 18 U.S. Code § 241 - Conspiracy against rights, If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—They shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include **kidnapping or an attempt to kidnap**, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, they shall be fined under this title or imprisoned for any term of years or for life, or both, or may be **sentenced to death**.

Further in fact, Felony/Capital Offense 18 U.S. Code § 242 - Deprivation of rights under color of law, Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include **kidnapping or an attempt to kidnap**, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be **sentenced to death**.

Further in fact, Felony 18 U.S. Code § 4 - Misprision of felony Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States,

conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined under this title or imprisoned not more than three years, or both.

D. Cruel and Unusual Punishment Plaintiff argues that the deprivation of Alleged Defendant's rights was lawful because Peter "was not imprisoned but rather being booked for violating I.C. 18-705. Furthermore. The taking of Defendant's socks, shoes, belt does not shock the conscience of reasonable men." Is false, in fact Peter was unlawfully arrested, aggravated assault and battery, kidnapped and falsely imprisoned into a cold concrete cell with metal door after being stripped of his belongings and this did "shock the conscience of this reasonable man" and "is cruel and unusual within the meaning of the constitution"(Idaho Supreme Court) and is in violation of both Idaho and US Constitutions. At one time in the history of American law and jurisprudence, the concept that no one could be arrested for a misdemeanor except with a proper warrant was so basic and "elementary" that it was not necessary to give any authorities to prove it. Yet this basic concept was found to be too restrictive to the ever-growing oppressive government that has gained power in this country. Thus in order for it to control the liberty of citizens, and to enforce its oppressive laws, the corrupt, *de facto* government has gradually undermined a very basic principle of constitutional law.

Further in fact, In the Pinkerton case, *supra*, it was held that a police officer could not arrest a woman, without a warrant, upon mere suspicion that she was upon the street for the purpose of prostitution, even under provisions of the city ordinance allowing such arrests. The fact that she had a reputation of being a "street walker," and that the officer knew of her reputation and believed she was plying her vocation as such, plus the fact she did not give her name to the officer stating "it was none of his business," and that she dared the officer to arrest her, did not give the officer grounds to arrest her. The Court said: If persons can be restrained of their liberty, and assaulted and imprisoned, under such circumstances. without complaint or warrant, then there is no limit to the power of a police officer. *** Any law which would place the keeping and safe conduct of another in the hands of even a conservator of the peace, unless for some breach of the peace committed in his presence, or upon suspicion of felony, would be most oppressive and unjust, and destroy all the rights which our constitution guaranties. These are rights which existed long before our constitution, and we have taken just pride in their maintenance, making them a part of the fundamental law of the land. Pinkerton 'V. Verberg, 78 Mich. 573.44 N.W. 579. 582-83 (1889); Larson v. Feenry. 196 Mich. I. 162 N.W. 275. 276-77 (1917).

Further in fact, Under the topic of "Arrest" as found in Vol. 2 of *Ruling Case Law*, we find the heading, " Constitutional Requirements as to Warrants," wherein it states: [T]he fundamental constitutional guaranties of personal liberty protect private individuals in the right of enjoyment of personal freedom without unlawful restraint, and it is universally recognized that no one may be arrested except by due process of law. (2 R.C.L. 463. § 21).

Further in fact, False imprisonment consists of any type of unlawful restraint or interference with the personal liberty of an individual. It basically involves any unlawful violation of the liberty of another. The ancient English legal scholar, Henry de Bracton (1200-1268) tells us that false imprisonment is one of the oldest violation of rights known: Forcefully to deprive a man of freedom to go wheresoever he may is clearly a trespass. False imprisonment was indeed one of the first trespasses recognized by the Common Law. *Street's Foundation of Legal Liability*, vol. 1, p. 12, citing: *Bacton's Note Book*, vol. II, p. 314 (1229), pl. 465.

Further in fact, False imprisonment is classified as a tort under the common law, and also as a crime. It has been labeled as a tort, a trespass, an assault, a wrong, a damage, and an injury, giving one cause to bring suit against another for a remedy. Depriving a person of their liberty is legally no different than depriving a person of their property - a theft of liberty is a wrong by which remedy can be had, just as is the case with the theft of property. *Kroeger v. Passmore*, 36 Mont. 504, 93 Pac. 805, 807 (1908). *McBeath v. Campbell*, 12 S.W.2d 118, 122 (Tex. 1929).

Further in fact, False imprisonment is a great offense due to the high regard the law has for liberty. In Chitty's *Practice of the Law* it states: The infraction of personal liberty has ever been regarded as one of the greatest injuries. The injuries to liberty are principally termed "false imprisonment:., or malicious prosecutions. Joseph Chitty, Esq., *The Practice o/the Law*, vol. I, Chap. II , p. 47, London, 1837.

Further in fact, Unlawful detention or deprivation of liberty is the basis of an action for the tort of false imprisonment. Actual seizure or the laying on of hands is not necessary to constitute an unlawful detention(1). Thus the only essential elements of the action are: (1) Detention or restraint against one's will; and (2) The unlawfulness of such detention or restraint(2). 1. *Hanser v. Bieber*, 271 Mo. 326, 197 S.W. 68, 70 (1917). 2. *Sergeant v. Watson Bros. Transp. Co.*, 244 Iowa 185, 52 N.W.2d 86, 93 (1952); *Sinclair Refining Co. v. Meek*, 62 Ga.App. 850, 10 S.E.2d 76, 79 (1940); *Southern Ry. Co. in Kentucky v. Shirley*, 121 Ky. 863, 90 S.W. 597, 599 (1906).

Further in fact, In his Treatise on the Law of Torts, Judge Cooley states: False imprisonment is a wrong akin to the wrongs of assault and battery, and consists in imposing, by force or threats, an unlawful restraint upon a man's freedom of locomotion. Thomas Cooley, Treatise on the Law of Torts, vol.1,4th Ed. § 109, p.345; *Meints v. Huntington*, 276 F.245,248 (1921).

Further in fact, In describing false imprisonment as being the unlawful restraint of the liberty of the citizen, or of the primary right of freedom of locomotion, the Supreme Court of Idaho also stated: Imprisonment is any restraint of the personal liberty of another; and prevention of his movements from place to place, or his free action according to his own pleasure and will: *** it is false imprisonment when this is done without lawful authority. *Griffin v. Clark*, 55 Idaho 364, 42 P.(2d) 291, 301 (1935); citing, *Cordell v. Standard Oil Co.*, 131 Kan. 221, 289 P. 472, 473 (1930); *Johnson v. Tompkins*, 13 Fed. Cas. 840, 853, No. 7,416 (1833).

E. Defendant's argument that judge Manweiler entered a plea of not guilty instead of in the form of Demurrer against his will is contrary to I.C.R. 11(a) is false, in fact Plaintiff misconstrues I.C.R. 11 (a), initial appearance and arraignment to deny Alleged Defendant the right to plead demur. I.C.R. 11 (a): A defendant may plead guilty or not guilty. If a defendant refuses to plead or if a defendant corporation fails to appear, the court must direct the entry of a plea of not guilty. Alleged Defendant did not refuse and does not have a corporation, thus Rule I.C.R. 11 (a) is void for any effect.

Further in fact,Defendant may answer to the arraignment, and either move the court to set aside the indictment or may demur or plead thereto. Cr. Prac. Act. 1864 sec 273

Further in fact, Plaintiff argues Manweiler was correct in entering the not guilty plea against Alleged Defendant's will is false, in fact 1. Manweiler skipped a step in due process of law, which is an initial appearance, and informed Alleged Defendant that the initial appearance on July 23, 2022, is instead an arraignment. 2. In doing this Manweiler deprived Alleged Defendant the opportunity to plea in the form of demurrer.

F. Defendant's argument regarding a right to a grand jury indictment is misplaced.

The Plaintiff cites I.C.R 6 (b) which then refers/cites to the Idaho Code and thus, a grand jury can only be summoned upon motion of the prosecutor is false, in fact Rules of Procedure and the Idaho Code is not Law, or Law of the Land and is void for any effect.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The Fifth Amendment creates a number of rights relevant to both criminal and civil legal proceedings. In criminal cases, the Fifth Amendment guarantees the right to a grand jury, forbids "double jeopardy," and protects against self-incrimination. It also requires that "due process of law" be part of any proceeding that denies a citizen "life, liberty or property". The history of the grand jury is rooted in the common and civil law, extending back to Athens, pre-Norman England, and the Assize of Clarendon promulgated by Henry II.1 as well as the Magna Charta

1215 chapter 60. The right seems to have been first mentioned in the colonies in the Charter of Liberties and Privileges of 1683, which was passed by the first assembly permitted to be elected in the colony of New York. 2 Included from the first in Madison's introduced draft of the Bill of Rights, the provision elicited no recorded debate and no opposition. "The grand jury is an English institution, brought to this country by the early colonists and incorporated in the Constitution by the Founders. There is every reason to believe that our constitutional grand jury was intended to operate substantially like its English progenitor. The basic purpose of the English grand jury was to provide a fair method for instituting criminal proceedings against persons believed to have committed crimes. Grand jurors were selected from the body of the people and their work was not hampered by rigid procedural or evidential rules. In fact, grand jurors could act on their own knowledge and were free to make their presentments or indictments on such information as they deemed satisfactory. Despite its broad power to institute criminal proceedings the grand jury grew in popular favor with the years. It acquired an independence in England free from control by the Crown or judges. Its adoption in our Constitution as the sole method for preferring charges in serious criminal cases shows the high place it held as an instrument of justice. And in this country as in England of old the grand jury has convened as a body of laymen, free from technical rules, acting in secret, pledged to indict no one because of prejudice and to free no one because of special favor." 3

Footnotes

1 Morse, A Survey of the Grand Jury System, 10 Ore. L. Rev. 101 (1931).

2 1 Bernard Schwartz, The Bill of Rights: A Documentary History 162, 166 (1971). The provision read: "That in all Cases Capital or Criminal there shall be a grand Inquest who shall first present the offence. . . ."

3 Costello v. United States, 350 U.S. 359, 362 (1956). "The grand jury is an integral part of our constitutional heritage which was brought to this country with the common law. The Framers, most of them trained in the English law and traditions, accepted the grand jury as a basic guarantee of individual liberty; notwithstanding periodic criticism, much of which is superficial, overlooking relevant history, the grand jury continues to function as a barrier to reckless or unfounded charges Its historic office has been to provide a shield against arbitrary or oppressive action, by insuring that serious criminal accusations will be brought only upon the considered judgment of a representative body of citizens acting under oath and under judicial

instruction and guidance." *United States v. Mandujano*, 425 U.S. 564, 571 (1976) (plurality opinion). *See id.* at 589–91 (Justice Brennan concurring).

Further in fact, . Cr. Prac. 1864 Sec 6. **Every public offence must be prosecuted by indictment**, except-- First. Where proceedings are had for the removal of civil officer of the territory. Second. Offenses arising in the militia when in actual service in time of war, or which this territory may keep, with the consent of congress, in time of peace. Third. Offenses tried in justices' courts. Sec. 93. There shall be no limitation of time within which a prosecution for murder must be commenced. It may be commenced at any time after the death of the person killed.; Sec 94. An indictment for a felony other than murder must be found within three years after its commission.; Sec 95. An indictment for **any misdemeanor** must be found within one year after its commission.; Sec 97. An indictment is found, within the meaning of this title, when it is duly presented by the grand jury, in open court, and there received and filed.

Further in fact, 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, anything in the Constitution or laws of any State to the contrary notwithstanding. Article VI clause 2 Constitution for the United States of America 1791.

Further in fact, A constitution is usually a declaration of principles of the fundamental law, many of its provisions being only commands to the legislature to enact laws to carry out the purposes of the framers of the constitution or mere restrictions upon the power of the legislature to pass laws.¹ However, it is entirely within the power of those who establish and adopt the constitution to make any of its provisions self-executing,² that is, operative without any necessity for further legislation.³

Criteria which may be relevant in determining whether a constitutional provision is self-executing or not include a description of the right in detail such as the means for its enjoyment and protection; the absence of any directive to the legislature for further action; a particularly informative legislative history as to the provision's intended operation; and a consistency of self-execution with the scheme of rights established in the constitution as a whole.⁴

Observation:

Even without the benefit of a declaration that they are self-executing, constitutional provisions in Bills of Rights and those merely declaratory of the common law are usually considered self-executing, as are provisions which specifically prohibit particular conduct.⁵ 16 Am. Jur. 2d Constitutional Law § 100 Generally August 2017 Update

Footnotes

1 State ex rel. Stephan v. Finney, 254 Kan. 632, 867 P.2d 1034 (1994); Kraus v. City of Cleveland, 42 Ohio Op. 490, 58 Ohio L. Abs. 353, 94 N.E.2d 814 (C.P. 1950), decree aff'd by, 89 Ohio App. 504, 46 Ohio Op. 132, 58 Ohio L. Abs. 360, 96 N.E.2d 314 (8th Dist. Cuyahoga County 1950).

2 Birdsey v. Wesleyan College, 211 Ga. 583, 87 S.E.2d 378 (1955); State ex rel. Stephan v. Finney, 254 Kan. 632, 867 P.2d 1034 (1994); Kraus v. City of Cleveland, 155 Ohio St. 98, 44 Ohio Op. 103, 97 N.E.2d 549 (1951).

3 § 101.

4 Shields v. Gerhart, 163 Vt. 219, 658 A.2d 924 (1995).

5 Robb v. Shockoe Slip Foundation, 228 Va. 678, 324 S.E.2d 674 (1985).

G. Defendant's argument regarding a preliminary hearing is misplaced is false, in fact due process of law requires after an arrest by a private person or peace officer is made they must immediately, without unnecessary delay take them before the Justice of the Peace or magistrate, not to jail, nor be subjected to any further restraint such as handcuffs. *Infra*.

II. Rebuttal to Plaintiff's Response to Defendant's Alleged Defects in the Complaint.

A. Defendant's arguments regarding the citation not being in the form of a proper complaint, not being supported by oath, not having a court seal, and having Defendant's date of birth and social security number is irrelevant and cites I.C. § 19-3901 in support is false, in fact the Idaho Code is not the law, because the Code Commission has no legislative authority. Peterson v Peterson 320 P.3d 1244 (Idaho 2014) While it is said that it is "prima facia evidence of the law" when reading the Criminal Practice Act of 1864, which the Idaho Code cites as its source (the prima facia evidence of), the common law, Declarations of Rights or Bills of Rights throughout the English and American common Law history, we find that there has been a fight for the Rights we have

today, or are supposed to have and our public servants have fundamentally altered our form of government and are subjecting us to pretended acts of legislation (again), Declaration of Independence 1776, Bills of Attainder/Bills of Pains and Penalties.

Further in fact , the use of all capital letter NAME is a fraud, as well as the Birth Certificate and Social Security Number is all used to Human Traffic mankind. There is no "Real Party in Interest" or "injured party", the "accuser" as "Principal" having Standing to claim a Right to a Cause of Action for any damages for any "Agent" to act on behalf of. This is shame pleading and is riddled with fraud, maladministration, malfeasance, usurpation of power, subversion of Law, sedition and treason. This is in fact domestic Violence/internal insurrection, an attempt to overthrow our form of government and war against its own people that they are to be sworn under Oath or Affirmation to defend.

B. Defendant's argument that Defendant's name is not English because it is written in all capital letters is irrelevant is false, in fact , the use of all capital letter NAME is a fraud, as well as the Birth Certificate and Social Security Number is all used to Human Traffic mankind. There is no "Real Party in Interest" or "injured party", the "accuser" as "Principal" having Standing to claim a Right to a Cause of Action for any damages for any "Agent" to act on behalf of. This is sham pleading and is riddled with fraud, maladministration, malfeasance, usurpation of power, subversion of Law, sedition and treason. This is in fact domestic Violence/internal insurrection, an attempt to overthrow our form of government and war against its own people that they are to be sworn under Oath or Affirmation to defend.

Further in fact, Glosses in ASL. The written language transcription of a sign is called a gloss. Glosses are words from the spoken language written in small capital letters: WOMAN, SCHOOL, CAT. (Alternatively, regular capital letters may be used.) When two or more written words are used to gloss a single sign, the glosses are separated by hyphens. The translation is enclosed in double quotation marks.

The sign for "a car drove by" is written as VEHICLE-DRIVE-BY.

One obvious limitation of the use of glosses from the spoken/written language to represent signs is that there is no one-to-one correspondence between the words or signs in any languages. Source, The Chicago Manual of Style 17th edition Page 665-666

gloss 1 b. a false and often willfully misleading interpretation (as of a text). Source, Merriam Webster's Collegiate Dictionary 11th edition

GLOSS. An interpretation, consisting of one or more words, interlinear or marginal; an annotation, explanation, or comment on any passage in the text of a work, for purposes of elucidation or amplification. Particularly applied to the comments on the *Corpus Juris*.

Bouvier's Law Dictionary 1856

GLOSSA. Lat. A gloss, explanation, or interpretation. The *glossae* of the Roman law are brief illustrative comments or annotations on the text of Justinian's collections, made by the professors who taught or lectured on them about the twelfth century, (especially at the law school of Bologna,) and were hence called "glossators." These glosses were at first inserted in the text with the words to which they referred, and were called "glossae interlineares;" but afterwards they were placed in the margin, partly at the side, and partly under the text, and called "glossae marginales." A selection of them was made by Accursius, between A. D. 1220 and 1260, under the title of "glossa Ordinaria," which is of the greatest authority. Mackeld. Rom. Law, § 90.

Bouvier's Law Dictionary 1856

Maxim of Law. *GLOSSA VIPERINA EST QUIE CORRODIT VISCERA TEXTUS.* 11 Coke, 34. It is a poisonous gloss which corrupts the essence of the text. Bouvier's Law Dictionary 1856

III. Rebuttal to Plaintiff stating, This court has jurisdiction over Defendant.

Plaintiff cites I.C. §19-301(1) which is in reference to Locus Jurisdiction or Location and not Personal or Subject Matter Jurisdiction which are the grounds claimed as affirmative defenses in the Motion to Dismiss with Prejudice.

Personal Jurisdiction is *in propria persona*, in their proper person. Driver is the Person. Peter, the man acting in his proper person as Driver, one who is employed to operate a motor vehicle, for hire, which the Plaintiff has failed to submit any evidence of a contract of employment at the time to support Personal Jurisdiction.

Subject Matter Jurisdiction is Commerce under Article I sect 8 clause 3 of the Constitution for the United States of America 1791. To regulate foreign or interstate commerce and Congress is the legislative body that has Subject Matter Jurisdiction to create regulations that the States must adhere to and has no authority to alter that legislation. The Plaintiff fails to

submit any evidence of a contract of Peter, man, acting as Driver to operate a motor vehicle on the streets and highways and "used for commercial purposes" for any fare, fee, or compensation for the transportation of good or services.

Further in fact, Jurisdiction must be proved in writing, by the Plaintiff, the Court can not determine its own jurisdiction. See numerous cases cited in the Brief, Memorandum of Law in Support of the Motion to Dismiss

Conclusion

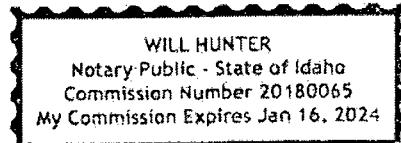
Based on the foregoing, the Alleged Defendant requests that the Court deny Plaintiff's/STATE'S OBJECTION TO DEFENDANT'S MOTION TO DISMISS.

By Peter-Alan: Hearn

State of Idaho
County of Ada

On this 30th day of November, 2022, Peter-Alan: Hearn personally appeared before me and having been duly sworn did herein execute the above record for the purposes stated.


Signature of Notary Public



CERTIFICATE OF SERVICE

I certify that on 12-1-2022, I served a copy of the foregoing Response To State's Objection To Defendant's Motion To Dismiss to:

Ada County Prosecutor

(Name)

By United States mail

By personal delivery

By fax ()

200 West Front Street

(Street or Post Office Address)

Boise, Idaho [83702]

(City, State, and Zip Code)

Clerk of the Court

(Name)

By United States mail

By personal delivery

By fax ()

200 West Front Street

(Street or Post Office Address)

Boise, Idaho [83702]

(City, State, and Zip Code)

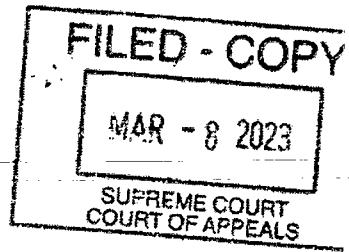
Peter-Alan: Hearn

Typed/printed Name

Peter-Alan: Hearn

Signature

Peter Alan: Hearn
2602 East Nahuatl Drive
Boise, Idaho [83716]
(208) 867-8856
peterhearnslaw@gmail.com
Sui Juris



Supreme Court of the State of Idaho

Peter-Alan: Hearn
Petitioner,

vs.

Verified Petition for Writ of Prohibition

Fourth Judicial District Court,
Judge Regan Jameson,
Respondents.

Comes now, Petitioner, moves this Honorable Court to issue a Writ of Prohibition to the Fourth Judicial District Court, Ada County, Idaho, to command Respondent to desist from any further proceedings and prevent the Court from running and conducting a trial without jurisdiction.

I

Petitioner is a citizen and resident of Ada County, Idaho, Respondent is the duly qualified and acting Judge of the Fourth Judicial District Court, Ada County, Idaho. There is pending on the docket of the said court an action entitled Criminal Complaint, Case No. CR01-22-22577. This petitioner is the defendant named in the said cause.

II

Petitioner states that the Fourth Judicial District Court, Ada County, Idaho, is without jurisdiction of the said cause and that by a motion duly filed therein on October 13, 2022, Petitioner, entering a Notice of Special Appearance therein and appearing solely for the purpose of objection to the jurisdiction of the court, directed the attention of the court to the want of Verified Writ of Prohibition

APPENDIX [U]

jurisdiction and that the cause be dismissed for want of jurisdiction. This motion was presented to the said Court on October 13, 2022, and taken under advisement by the court, on December 2, 2022, said motion was denied on December 12, 2022. (See Appendix A)

III

That the said judge, notwithstanding the said objection (and notwithstanding the said offer of the petitioner, to prove, etc.), did proceed to hear the said cause, and refused to dismiss the same and decided that she had jurisdiction thereof and set the same down for trial on November 2, 2022, and will as your petitioner is informed and believes, then proceed to try the same and render judgment by default against your petitioner unless this court by its writ of prohibition shall otherwise order.

IV

That this Petitioner has no speedy or adequate remedy by appeal or otherwise.

Prayer for Relief

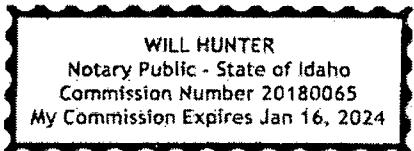
Wherefore Petitioner prays that this Court issue its Writ of Prohibition commanding said court to desist from any further proceedings in said following actions.

1. Case Number CR01-22-22577 and CR01-22-22628 are of the same Event.
2. Case Number CR01-22-39008

By Peter - Alan : Hearn

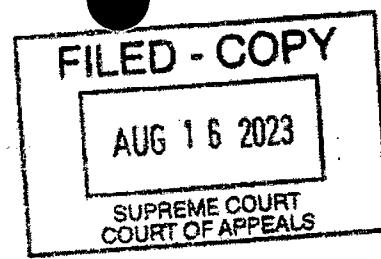
State of Idaho
County of Ada

On this 7th day of March, 2023, Peter-Alan: Hearn personally appeared before me and having been duly sworn did herein execute the above record for the purposes stated.

A handwritten signature of Will Hunter.

Signature of Notary Public

Peter Alan: Hearn
2602 East Nahuatl Drive
Boise, Idaho [83716]
(208) 867-8856
Sui Juris



IN THE SUPREME COURT OF THE STATE OF IDAHO

Peter-A: Hearn
Petitioner,

vs.

ADA COUNTY DISTRICT COURT;
HONORABLE REGAN C. JAMESON,
Magistrate Judge,
Respondent.

Docket No. _____

Citation No. ISP4363000379

Violation: IC 18-705 & 49-316

Ada County Case No. CR01-22-22577

Petitioner's
Verified Petition for Writ of Prohibition

Original Jurisdiction

APPENDIX [M]

Comes now, Petitioner, Peter-Alan: Hearn, moves this Honorable Court to issue a Writ of Prohibition to THE FOURTH JUDICIAL DISTRICT FOR THE STATE OF IDAHO IN AND FOR THE COUNTY OF ADA, to prevent and prohibit Honorable Magistrate Judge, Regan C. Jameson, from initiating and conducting a trial without constitutionally required jurisdiction to which she swore an oath to uphold and support.

This is a petition to grant a writ that would stop Ada County Court Honorable Magistrate Judge, Regan C. Jameson, from unlawfully/unconstitutionally assuming/taking jurisdiction where she has none. The STATE/prosecutor has not proven jurisdiction in this case nor has it entered any affidavits claiming a damaged party on the record, *see* IRCP rule 17(a). Jameson issued a warrant for the arrest of Peter who was arrested, forcing him under Threat, Duress and Coercion to cooperate with unlawful/unconstitutional, fraudulent court proceedings, imposed by Jameson hence violating due process and separation of powers. From the inception of this case Jameson, among other government employees acting as public servants, violated due process of law, the Ratified Constitution, Criminal Practice act of 1864, US Codes, Idaho Code and Peter's unalienable rights.

In this case it is clear that Jameson and all other conspiring public servants are acting under color of law (an assumed authority) that is in direct violation of

the Laws of God/Laws of Nature in the form of the Ratified/Organic Constitution for The United States of America 1789. Further in fact, said actions are clearly a violation of common law. Kevin Trusedale, acting as Idaho State Police Officer, made an unlawful arrest of the man known as Peter, without a verified warrant, for alleged probable cause of an infraction i.e. a traffic violation, further depriving Peter of his liberty.

Currently there is another warrant which has been issued for the arrest of Peter for failure to appear at the Ada County Court House within two designated dates, however the record shows that Peter did in fact appear at the Court House within the notified dates. Thus far there has been no accountability or check on the unlawful, untruthful, treasonous actions of public servants involved in this case.

Petitioner, Peter-Alan: Hearn prays this Honorable Court enter an order issuing a Writ of Prohibition restraining and/or prohibiting Ada County District Court Honorable Judge Regan C. Jameson from proceeding with the adjudication proceedings stated herein and in Peter's Verified Brief in Support of Verified Petition for Writ of Prohibition, along with such other and further relief as the court may deem reasonable and just under the circumstances.

Dated this 16th Day of August, 2023.

Peter-A: Hearn non-14th Amendment Federal Citizen being sworn deposes and says: I verify that the statements made in this Petition are true and correct to the best of my ability.

Respectfully submitted,

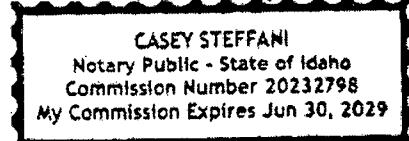
Peter A: Hearn August 16, 2023
Peter-A: Hearn

State of Idaho
County of Ada

On this 16th day of August, 2023, Peter Alan: Hearn personally appeared before me and having been duly sworn did herein execute the above record for the purposes stated.

 8-16-23

Signature of Notary Public



Affidavit/Certificate of Service List

This Verified Petition for Writ of Prohibition has been served by Hand
Delivery this 16th day of August, 2023 on the following:

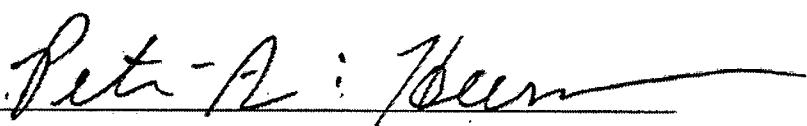
To: Idaho Supreme Court
451 W. State Street
Boise, Idaho 83702

To: Judge, Regan C. Jameson
200 W. Front Street
Boise, Idaho 83702

For the Record
To: Secretary of State, Phil McGrane
Capital Building, Room E205,
700 W. Jefferson Street
Boise, Idaho 83720

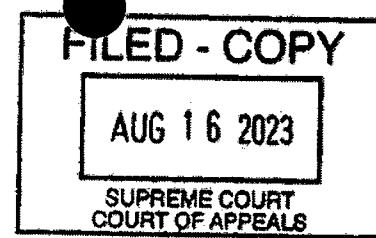
To: Attorney General, Raul Labrador
Capital Building, Room C210
700 W. Jefferson Street
Boise, Idaho 83720

Peter-A: Hearn



Proof of Service

Peter Alan: Hearn
2602 East Nahuatl Drive
Boise, Idaho [83716]
(208) 867-8856
Sui Juris



IN THE SUPREME COURT OF THE STATE OF IDAHO

<p>Peter-A: Hearn Petitioner,</p> <p>vs.</p> <p>ADA COUNTY DISTRICT COURT, HONORABLE REGAN C. JAMESON, Magistrate Judge, Respondent.</p>	<p>Docket No. _____</p> <p>Citation No. ISP4363000379</p> <p>Violation: IC 18-705 & 49-316</p> <p>Ada County Case No. CR01-22-22577</p>
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Petitioner's
Verified Brief in Support of Verified Petition for Writ of Prohibition

Original Jurisdiction

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Introduction and Nature of the Case

This is a petition to grant a writ that would stop Ada County Court Honorable Magistrate Judge, Regan C. Jameson, from unlawfully forcing court proceedings to a jury trial in this case as the STATE/prosecutor has not proven personal jurisdiction or subject matter jurisdiction. Despite the fact that Petitioner objected/challenged personal jurisdiction and subject matter jurisdiction from the very beginning of said case, (even before the initial traffic stop) the State/prosecutor has not proven or even attempted to prove that it has personal jurisdiction or subject matter jurisdiction in this case. The state/prosecutor has not entered any affidavits on the record in said case, to date. Further in fact, an enactment clause is required to verify jurisdiction. "The object of an enactment clause is to show that the act comes from a place pointed out by the Constitution as a source of power," *Ferrill v. Keel* 151 S. S.W. 269, 272, 105 ARK. 380 (1912). Additionally, "To be a law in compliance with the Constitution, the law must show its authority "ON IT'S FACE" which is mandatory, not directory. Quoting Justice Davis, "the Revised Code of Washington...is not law," *In re Self v. Rhay*, 61 win, 2d 261, 246 -265 (1963), according to the Ratified Constitution Article IV Sec. 1.

Furthermore, the facts of this case lead to the conclusion of law that Kevin Trusedale, acting as Idaho State Police Officer, did not have any lawful authority to arrest alleged Defendant Peter-Alan: Hearn. Trusedale had no warrant for the arrest of Peter, and he alleges that he only saw Peter commit an infraction, i.e., a traffic

violation. There was no claim of a felony committed or of a breach of peace committed. Truesdales actions were null and void. "Where there is absence of jurisdiction all administrative and judicial proceedings are a nullity, and confer no right, offer no justification, and may be rejected upon direct collateral attack" *Thompson v. Tolmie*, 17L.ED.381 (1829). At common law, and under the provisions of Due Process of Law, such an arrest without a warrant can not be made. Since the arrest deprived Peter of his liberty by an act not pursuant to due process of law, the arrest is unlawful. Truesdale's actions are an attempt to turn Peter's rights into crimes.

Statement of Facts and Course of Proceedings

On July 23, 2022, at or around 9:25pm at night, Peter-Alan: Hearn, alleged Defendant, was traveling Eastbound on I-84 in his private property automobile, with his two friends Keri-Ann: Sengsourinho and Julie Blacksfeld, when he was pulled over by Kevin Truesdale (Officer ID: 4363), acting as Idaho State Police Officer, using his emergency lights to do so.

Officer Truesdale told Dispatch by radio, "out with a silver 4 runner that in place where license plate goes is a sign that says "Not for Hire" in magic marker." Upon reading the words "Not for Hire" Truesdale should have known he did not have personal jurisdiction or subject matter jurisdiction over Peter.

Truesdale informed Peter that he pulled him over because he did not have truck tags or a license on his vehicle and demanded to see Peter's Driver's license.

Peter informed Truesdale he is not a "Driver for hire" and does not need a Driver's license to take his private property from point a to point b. Peter handed Truesdale his paperwork, which included: Peter's identification, Public Servant Questionnaire, Signature to Verify which United States Declaration (Title 28 § 1746), Peter's Notice/Affidavit to Idaho Transportation Department, U.S. Codes, word definitions, Supreme Court Cases and Articles from the Constitution for the United States of America, supporting his not needing a Driver's license to travel. Truesdale refused to look at the paper work.

Truesdale demanded from Julie Blacksfield, in the passenger seat, some ID., which she provided.

Peter instructed Truesdale to call his supervisor out here, which Truesdale refused to do.

Truesdale persisted to ask Peter for his name, date of birth and social security number.

Peter explained he is standing on his unalienable rights, and cited the 4th and 5th Amendment (Article), to be secure in his person, houses, papers and effects, to be silent and that he is not a Driver operating a motor vehicle for hire, therefore he is not required to have a Driver's license. Truesdale said per Idaho Code Peter must identify himself. Peter informed Truesdale that the Ratified Constitution stands on a higher plain than Idaho Code, which is not the law. Truesdale said "Idaho Code is

the law" and that "you are required to show me some sort of ID, you're not going to be on your way until I can identify you".

Truesdale told Peter to shut off the vehicle. Peter asked Truesdale if he is requiring him to shut off the automobile. Truesdale said "I am requiring you to shut off the vehicle". Peter said, "Ok since you're the man with the gun I will shut my engine off, under threat and duress". Peter turned off his engine. 1-3 additional patrol cars, with their sirens and emergency lights on, arrived. Truesdale walked around Peter's automobile, opened Peter's door, forcefully grabbed and twisted Peter's left arm behind his back, reached in and released Peter's seatbelt with his left hand and violently jerked Peter out of his automobile, dragged him back to the patrol car, handcuffed him and put him into the patrol car. As Peter was trying to get his size 12 boots inside the smaller than entry way of the patrol car, Truesdale violently pushed and kicked Peter's legs into the car, injuring Peter's left arm and both ankles. Peter did not resist or obstruct before, during or after Truesdale arrested/assaulted him.

While in the patrol car Peter could hear, over the patrol car radio, Dispatch reading all of Peter's personal information to the officers on scene according to the VIN number which Truesdale read to Dispatch, from Peter's 4runner.

Truesdale forcefully knocked on the rear passenger door of Keri-Ann: Sengsourinho then opened her door demanding to see her Drivers license. Keri

said, "are you going to drag me out of the car"? Truesdale said "No I need to see your I.D. though" Keri handed Truesdale her I.D.

Truesdale told John Doe Sheriff Deputy on scene, "he's just a Sovereign Citizen," in reference to Peter.

While both in the patrol car Peter asked and instructed Truesdale to let his friends (in his automobile) drive his car and please do not tow my automobile. Truesdale said "I'm towing your vehicle". Truesdale asked John Doe Sheriff Deputy "what should I charge him with, not showing ID or obstructing"?

Peter informed Truesdale that this is false arrest, aggravated battery and kidnapping and to take him directly to the judge or the nearest and most accessible magistrate. Truesdale drove away with Peter in the back of his car and had Peter's car towed, leaving Peter's two friends on the side of the Freeway. Before towing Peter's car, the remaining officers entered and unlawfully searched Peter's car without a warrant.

Truesdale took Peter to a place called Ada County Jail where Truesdale first question to Peter was "where were you born?" Peter told Truesdale "you are to take me to the nearest and most accessible magistrate without delay".

Peter told Truesdale and approximately 4 Sheriff Deputies that he does not consent to any questions or any of their booking process.

As soon as the 4 Deputies realized Peter did not consent, they searched him, took his boots and sox off his feet, and put him into a freezing cold concrete cell

with no food, water or toilet paper. Peter asked all the Deputies to see the arrest warrant and to take him to the nearest and most accessible magistrate with no further unnecessary delay. The Deputies told Peter he will stay in jail indefinitely and the judge will never see him, until he answers their questions and goes through the booking process and body scanner. After approximately 10 hours of cruel and unusual punishment being inflicted onto Peter by the Deputies on the night shift, Peter, under (TDC) Threat, Duress and Coercion went through the booking process with a Deputy on the day shift.

After booking, Peter was stripped of all his clothing and belongings, given jail clothes and put into a cell with other men.

Peter remained in that cell for two days until approximately 4pm Monday July 25, 2022. At that time Peter was taken to another cell then to a room where he talked to Honorable David Manweiler, acting as judge, who was seen in a TV monitor. Peter asked Manweiler if this is his initial appearance. Manweiler said this is Peter's arraignment. Peter told Manweiler he would like a continuance on the issue of assistance of counsel. Manweiler granted the continuance. Peter told Manweiler he would like to enter a plea in the form of demur. Manweiler said "you cannot enter in the form of demur so the court will enter a not guilty plea for you." Manweiler denied Peter's motion for continuance to allow him to plead in the form of Demur (Motion to Dismiss) by entering a plea of not guilty for Peter, against his will and under Threat, Duress and Coercion. Manweiler released Peter on his own

recognition. Peter was released from jail without ever being read his Miranda Rights.

On July 4, 2023 Peter was arrested by Joseph J. Gundacker, acting as Idaho State Police Officer 3956 (citation ISP3956001270), upon an unlawfully created fraudulent warrant by Jameson, with no proven jurisdiction, at approximately 1:30 am at night. Gundacker has failed to respond to Peter's Affidavit of rebuttal, which Peter served him under threat, duress and coercion during the process of the unlawful arrest. Gundacker, Truesdale, Jameson, Herrera, Bennetts and all other conspiring public officials/servants failed to fill out and subscribe the forms Peter filed at Ada County Court and Ada County Prosecutor's office with Notice of Special Appearance on July 24, 2023: *See* Public Servant's Questionnaire¹; and Signature to Verify which United States Declaration (Title 28 § 1746)².

Course of Proceedings

On August 4, 2022 Peter filed Notice of Special Appearance objecting to personal jurisdiction, at the Ada County Court and Ada County Prosecutor's office.

On August 16, 2022 Peter filed Verified Affidavit I am Not the Name.

On August 17, 2022 Honorable Judge Regan C. Jameson denied Peter his Right to Assistance of Council "Tr" p.5, L.9.

¹ Exhibit A - Public Servant's Questionnaire

² Exhibit B - Signature to Verify which United States Declaration (Title 28 § 1746)

On October 13, 2022 Peter filed, Motion to Dismiss with Prejudice and Verified Affidavit in Support of Motion to Dismiss and challenging jurisdiction, on the grounds that the STATE/prosecutor does not have personal jurisdiction over Peter as “Driver” and does not have subject matter jurisdiction because Peter was/is not “operating a motor vehicle/commercial motor vehicle”, at the Ada County Court and Ada County Prosecutor’s office. In the Motion to Dismiss Peter stated he intends to file a brief within 14 days after service of this motion.

On October 24, 2022 Jan M. Bennetts Ada County Prosecutor and Tatianna Herrera Deputy Prosecuting Attorney jumped the gun and filed (before the 14 day mark for Peter to file his Brief); STATE’S OBJECTION TO DEFENDANT’S MOTION TO DISMISS,³ wherein Herrera’s only failed attempt at proving jurisdiction was of Locus jurisdiction (“within the state of Idaho”) “R” p.7 L.1 (section III). Herrera/prosecutor has not, to date, proven or even attempted to prove personal jurisdiction or subject matter jurisdiction in said case.

On October 27, 2022 Peter filed Verified Brief, Memorandum of Law in Support of Motion to Dismiss with Prejudice, at the Ada County Court and Ada County Prosecutor’s office.

On December 1, 2022 Peter filed, Response to State’s Objection to Defendant’s Motion to Dismiss, at the Ada County Court and Ada County Prosecutor’s office.

³ Exhibit C -STATE’S OBJECTION TO DEFENDANT’S MOTION TO DISMISS

During the “Motion to Dismiss Hearing” on December 2, 2022, Jameson denied Peter’s Motion to Dismiss because as she stated “It’s a motion based in law” “Tr” p.20 L.12. At the conclusion of said hearing Jameson set the allegations for jury trial despite Peter’s verbal objection on the grounds that the STATE/prosecution has not proven personal jurisdiction or subject matter jurisdiction.

On December 12, 2022, with no proof of jurisdiction and no Affidavits entered on the record by the STATE/Ada County Prosecutor to date, Jameson denied Peter’s Motion to Dismiss in her “ORDER DENYING DEFENDANT’S MOTION TO DISMISS”⁴ stating; “This Court has determined that it has both personal jurisdiction over the defendant and subject matter jurisdiction over the case, The Court finds the Defendant’s arguments are without merit and that there was reasonable suspicion for Officers to conduct a traffic stop and detain the Defendant, That during the interaction with the Defendant probable cause to arrest on misdemeanor crimes... was established...A not guilty plea was entered on his behalf July 25, 2022” “R” p.1 L.12 (3rd paragraph). Honorable Judge Regan C. Jameson did not do her findings of facts and conclusions of law.

On January 9, 2023, 6 months after Truesdale arrested Peter, Jameson held a Probable Cause Hearing without inviting or having Peter present and on January 11, 2023 a complaint was filed, which has yet to be served to Peter, however

⁴ Exhibit D -ORDER DENYING DEFENDANT’S MOTION TO DISMISS

Probable Cause and Complaints shall come before an arrest (warrant) pursuant to Cr. Prac. 1864. Sec. 20-21, not 6 months after.

On January 26, 2023, Peter filed a Motion to Reconsider which has gone unanswered to date. And at the video pre-trial conference hearing that day, Jameson continued jury trial for April 4, 2023, in the Ada County Court, without proven jurisdiction. In his efforts to not conspire with bad actors in government, Peter did not attend the April 4th jury trial and Jameson issued a fraudulent arrest warrant for him on that day.

On July 4, 2023, when released from Ada County Jail, Peter was served NOTICE OF COURT DATE AND BOND RECEIPT notifying him to appear between 07/18/2023 and 07/25/2023 at Ada County Court House.

On July 24, 2023 Peter appeared and filed another Notice of Special Appearance in the Ada County Court Clerk and Ada County Prosecutor's office, objecting to the personal jurisdiction. Included was the Public Servant's Questionnaire and Signature to Verify which United States Government they serve (Title 28 § 1746), hence fulfilling their requirement to identify themselves.

On July 25 judicial officer Kira Lynn Dale issued another fraudulent arrest warrant for Peter, without lawful notice, for reasons unknown to date.

Issues Presented

I

Does Honorable Magistrate Judge Regan C. Jameson and the Ada County District Court, have lawful authority to take jurisdiction where she/it has none and push said case to jury trial, knowing that the STATE/prosecutor has not proven personal jurisdiction or subject matter jurisdiction?

II

Did Kevin Truesdale, acting as Idaho State Police Officer, have jurisdiction, probable cause of a crime that was an arrestable offence and lawful authority to: arrest Peter at night, without a warrant, for an alleged probable cause of an infraction, and therein convert Peter's rights into crimes?

The Court has Jurisdiction

The Idaho Constitution confers original jurisdiction on this Court to issue "writs of mandamus, certiorari, prohibition, and habeas corpus, and all writs necessary and proper to the complete exercise of its appellate authority." Idaho Const., art. V, § 9. "The writ of prohibition is the counterpart of the writ of mandate. It arrests the proceedings of any tribunal, corporation, board or person, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board or person." Idaho Code § 7-401. Idaho Code § 1-203, Idaho Code § 7-402.

"Any person may apply to the Supreme Court for the issuance of an extraordinary writ of other proceeding over which the Supreme Court has original

jurisdiction." Idaho. App. R. 5(a). Venue is proper because Respondent (Jameson) herein, in her official capacities, is a resident in Ada County Idaho and/or is otherwise functioning in her judicial capacity in Ada County, where the underlying case, CR01-22-22577 is pending.

Definitions

Driver: Driver means any person who operates any commercial motor vehicle.

49 CFR § 390.5T

Commercial motor vehicle: Commercial motor vehicle means any self-propelled or towed motor vehicle used on a highway in interstate commerce to transport passengers or property when the vehicle-... 49 CFR § 390.5T

Motor vehicle: Motor vehicle means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property, or any combination thereof determined by the Federal Motor Carrier Safety Administration, but does not include any vehicle, locomotive, or car operated exclusively on a rail or rails, or a trolley bus operated by electric power derived from a fixed overhead wire, furnishing local passenger transportation similar to street-railway service. 49 CFR § 390.5T

Person: Person means an individual, firm, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body, as well as a department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal Government. This definition includes railroads. 49 CFR 130.5

Noncommercial vehicle: Idaho Code 49-123 (k) "Noncommercial vehicle., a noncommercial vehicle shall not include those vehicles required to be registered ____".

Black's Law Dictionary

CORPUS DELICTI. A substantial or positive fact, as distinguished from what is equivocal and ambiguous. The *corpus delicti* (body of an offense) is the fact of its having been actually committed. Best, Pres. 269- 279.

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. A person actually doing driving, whether employed by owner to drive or driving his own vehicle. Wallace v. Woods, 340 Mo. 452, 102 S.W.2d 91, 97.

OPERATE. This word, when used with relation to automobiles, signifies a personal act in working the mechanism of the automobile; that is, the driver operates the automobile for the owner, but the owner does not operate the automobile unless he drives it himself. Beard v. Clark, Tex.Civ. App., 83 S.W.2d 1023, 1025.

VIOLATION. Injury; infringement; breach of right, duty or law; ravishment; seduction. The statute 25 Edw. III. St. 5, c. 2, enacts that any person who shall violate the king's companion shall be guilty of high treason.
VIOL. Fr. In French law. Rape. Barring. Ob. St. 139.

Bouvier Law Dictionary

CORPUS DELICTI. The body of the offence; the essence of the crime

MAN. A human being. This definition includes not only the adult male sex of the human species, but women and children; examples: "of offences against man, some are more immediately against the king, other's more immediately against the subject." Hawk. P. C. book 1, c. 2, s. 1. Offences against the life of man come under the general name of homicide, which in our law signifies the killing of a man by a man." Id. book 1, c. 8, s. 2.

2. In a more confined sense, man means a person of the male sex; and sometimes it signifies a male of the human species above the age of puberty. Vide Rape. It was considered in the civil or Roman law, that although man and person are synonymous in grammar, they had a different acceptation in law; all persons

were men, but all men, for example, slaves, were not persons, but things. Vide Barr. on the Stat. 216, note.

Argument I

The STATE/prosecutor has not proven personal jurisdiction or subject matter jurisdiction, however Honorable Judge Regan C. Jameson has taken jurisdiction where she has non, further violating due process of law, the constitution and Peter's rights. "Under the 'Fair Notice Doctrine' " to Prosecute any people for the conduct alleged under an invalid (color of) law, and by an information herein, would be denial of due process, *United States v. Mevers*, 7F. 3d 59 (5th Cir. 1993).

A. Introduction

Pursuant to Idaho Criminal Rule 12(b)(2), Peter may object/challenge jurisdiction at any time, hence Peter's case CR01-22-22577 is applicable.

It is beyond the comprehension of Peter and any logically thinking sane man or woman how, with no proof or attempt to prove personal jurisdiction or subject matter jurisdiction and no Affidavits entered on the record by the STATE/Ada County Prosecutor Tatianna Herrera to date, Judge Jameson came to the logical/lawful conclusion that, "This Court has determined that it has both personal jurisdiction over the defendant and subject matter jurisdiction over the case", with no findings of facts or conclusions of law to support her ruling (*see* STATE'S

OBJECTION TO DEFENDANT'S MOTION TO DISMISS, "R" p.7 L.1 (section III) and ORDER DENYING DEFENDANT'S MOTION TO DISMISS, "R" p.1 L.12 (3rd paragraph). Does Jameson not understand that the moving party must prove jurisdiction. Jameson's actions are clearly of a judge who has assumed/taken jurisdiction where she has none and is acting under color of law, practicing law from the bench. Further in fact, Jameson is conspiring with Idaho State Police Officer Kevin Truesdale, Ada County Prosecutor's Jan Bennetts, Tatianna Herrera and Idaho State Police Officer Joseph J. Gundacker to impose unlawful selective and vindictive prosecution which is a violation of the 5th and 6th Amendment (Article), due process of law and separation of powers. The relevancy of a case is determined in due process of law, not by a judges decree. In our Republic the judges primary purpose is to apply the law not legislate from the bench. "Inasmuch as every government is an artificial person, an abstraction, and a creature of the mind only, a government can interface only with other artificial persons. The imaginary, having neither actuality nor substance, is foreclosed from creating and attaining parity with the tangible. The legal manifestation of this is that no government, as well as any law, agency, aspect, court etc. can concern itself with anything other than corporate, artificial persons and the contracts between them." *Penhallow v. Doane's Administrators* 3 U.S. 54; 1 L.Ed. 57; 3 Dall. 54 (1795) See 11th Amendment (Article). "There is no presumption in favor of jurisdiction, and the basis for jurisdiction must be affirmatively shown." *Hartford v. Davis*. 13 U.S. 273,

16 S. CT. 1051. "Ignorance of the law does not excuse misconduct in anyone, least of all in a sworn officer of the law." *In re McCowan* (1917), 177 C. 93, 170 P. 1100.

B. The Ada County District Court lacks personal jurisdiction over Peter because he:

1. Was/is not at the time a Driver, (hired to operate) Operating a Motor Vehicle/Commercial motor vehicle transporting passengers or property for hire, compensation, or profit.

The first filing in this case by Peter-Alan: Hearn, a living man, creation of God, one of the People of the territory of Idaho, and appearing specially not generally, was Notice of Special Appearance, objecting to the personal jurisdiction. Peter was/is not acting as Driver in his proper person. FRCP 28§ 1604. Immunity of a foreign state from jurisdiction. "Subject to existing international agreements to which the United States is a party at the time of enactment of this Act a foreign state shall be immune from the jurisdiction of the courts of the United States and of the States except as provided in sections 1605 to 1607 of this chapter." Section 1605 to 1607 do not apply to Peter.

2. Was/is not at the time a Public servant or member of the Public and is not subject to any crime or public offence; Cr. Prac. 1864 Sec 1.; "A Crime or public offence is an act or omission forbidden by law, and to which is annexed, on conviction-First. Death. Second. Imprisonment. Third. Fine. Fourth. Removal from

office. Fifth. Disqualification to hold or enjoy any office of honor, trust or profit under this territory." How is Peter to be removed from office if he is not a public servant/official? Crimes or public offences apply to public servants/officials not Peter, man in the private.

3. Is a creation of God, man, sovereign, in the private, and is bound only by the American common law, and not by the Statutes, Codes, Rules of Procedure, regulations, ordinances, by laws etc., whereas the Idaho Code is not the law, but rather color of law. *See Peterson vs Peterson*, 320 P.3d 1244 (Idaho 2014) Idaho Supreme Court.

When the State allows the formation of a corporation it may control its creation by establishing guidelines (statutes) for its operation (charters). Corporations who use the roads in the course of business do not use the roads in the ordinary course of life. There is a difference between a corporation and an individual. The "State" has Personal Jurisdiction over that which it creates, not mankind, individual or the People who do not yield their sovereignty to the agencies so created. The Supreme Court of The United States of America in *Hale v. Henkel* has stated:

"...We are of the opinion that there is a clear distinction in this particular between an individual and a corporation, and that the latter has no right to refuse to submit its books and papers for examination on the suit of the State. The **individual** may stand upon his Constitutional Rights as a Citizen. He is entitled to

carry on his private business in his own way. His power to contract is unlimited.

He owes no duty to the State or to his neighbors to divulge his business, or to open his doors to investigation, so far as it may tend to incriminate him.

He owes no such duty to the State, since he receives nothing therefrom, beyond the protection of his life, liberty, and property. His Rights are such as 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. Among his Rights are the refusal to incriminate himself, and the immunity of himself and his property from arrest or seizure except under warrant of law. He owes nothing to the public so long as he does not trespass upon their rights.

"Upon the other hand, the corporation is a creature of the state. It is presumed to be incorporated for the benefit of the public. It receives certain special privileges and franchises, and holds them subject to the laws of the state and the limitations of its charter. Its rights to act as a corporation are only preserved to it so long as it obeys the laws of its creation. There is a reserved right in the legislature to investigate its contracts and find out whether it has exceeded its powers. It would be a strange anomaly to hold that the State, having chartered a corporation to make use of certain franchises, could not in exercise of its sovereignty inquire how those franchises had been employed, and whether they had been abused, and demand the production of corporate books and papers for that purpose." [emphasis added] *Hale*

vs. Henkel, 201 US 43, 74-75

C. The Ada County District Court and Judge Regan C. Jameson lack subject matter jurisdiction because alleged Violator and/or Defendant was not Operating a Motor Vehicle/Commercial Motor Vehicle on the Streets or Highway. Further in fact, Kevin Truesdale, acting as Idaho State Police, failed to identify/categorize Peter on the Idaho Uniform Traffic Citation IPUC:, USDOT TK Census:, Hazmat:, GVWR 26001+: or 16+ Persons:. Truesdale could not fill out this necessary part of the citation because Peter was not Operating a Motor Vehicle/Commercial Motor Vehicle on the Streets or Highway and thus Truesdale lacks subject matter jurisdiction.

Truesdale also failed to identify himself by refusing to fill out the Public Servants Questionnaire, which is required based on the Privacy Act 1974.

A court must have jurisdiction to enter a valid, enforceable judgment on a claim. Where jurisdiction is lacking, litigants, through various procedural mechanisms, may retroactively challenge the validity of a judgment. "Thus, where a judicial tribunal has no jurisdiction of the subject matter on which it assumes to act, its proceedings are absolutely void in the fullest sense of the term." *Dillon v. Dillon*, 187 P 27.

Jurisdiction may be broken down into two categories: personal jurisdiction and subject matter jurisdiction. Personal jurisdiction is the requirement that a given

court have power over the defendant, based on minimum contacts with the forum. Subject-matter jurisdiction is the requirement that a given court have power to hear the specific kind of claim that is brought to that court. While litigating parties may waive personal jurisdiction, they cannot waive subject-matter jurisdiction. In federal court, under the Federal Rules of Civil Procedure, a motion to dismiss for lack of subject-matter jurisdiction is considered a favored defense and may be raised at any point in the litigation process, even if the parties had previously argued that subject-matter jurisdiction existed. In fact, the court may dismiss a case *sua sponte* (on its own) for lack of subject-matter jurisdiction. See, e.g., Fed. R. Civ. Proc. 12(b)(1).

However, a motion to dismiss for lack of jurisdiction can only be valid if it is exercised before any proceedings. Furthermore, in order for the judge to dismiss the case for lack of jurisdiction the Defendant must (voluntarily) plea to the action and thereby submit to the jurisdiction, which Peter did not do. In this case Peter tried to plea in the form of demur, which was his attempt at motion to dismiss. Honorable judge Manwieler denied Peter that right and entered a plea of not guilty for him, against his will and under TDC (Threat, Duress and Coercion) on July 25, 2022 while Peter was being held in jail. Now Jameson is immobilized because she can neither lawfully proceed in, nor dismiss this case.

“Jurisdiction, once challenged, is to be proven, not by the court, but by the party attempting to assert jurisdiction. The burden of proof of jurisdiction lies with

the asserter. The court is only to rule on the sufficiency of the proof tendered." *See* *McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178 (1936). The origins of this doctrine of law may be found in *Maxfield V. Levy*, 4 U.S. 330 (1797), 4 U.S. 330 (Dall.) 2 Dall. 381 2 U.S. 381 1 L.Ed. 424.

"A distinction must be here observed between excess of jurisdiction and the clear absence of all jurisdiction over the subject-matter any authority exercised is a usurped authority and for the exercise of such authority, when the want of jurisdiction is known to the judge, no excuse is permissible." *Bradley v. Fisher*, 13 Wall 335,351, 352.

Under the Federal Rules of Civil Procedure 12b 6, the prosecution has failed to provide adequate proof that the parties involved in this situation are actually corporate entities. There is ample proof that the prosecution and other agents are actually corporations.

Title 28 USC 3002 Section 15A states; United States is a Federal Corporation and not a government, including the Judicial Procedural Section.

In numerous cases, SCOTUS has said in summary: that since governments chose to incorporate themselves, they must abide by the same rules as any other corporations, that governments are now de facto, as corporations; and that they pass no laws, but only corporate bylaws called rules, codes, statutes, executive orders, ordinances and policies. That all rules, codes, statutes, executive orders, ordinances and policies, are "colored/colorable" and governed only by the consent

of the governed and through the fraudulent creation and unlawful conversion of man-kind into a legal Person, Citizen, Resident.

Furthermore, “For a crime to exist, there must be an injured party (Corpus Delicti) There can be no sanction or penalty imposed on one because of this Constitutional right.” *Sherer v. Cullen* 481 F. 945: Supreme courts ruled “Without Corpus delicti there can be no crime” “In every prosecution for crime it is necessary to establish the “corpus delicti”, i.e., the body or elements of the crime.” *People v. Lopez*, 62 Ca. Rptr. 47, 254 C.A.2nd 185. Thus, without standing, there is no actual or justiciable controversy.

Further in fact, the accuser must be named. He/she may be an officer or a third party, but some positively identifiable person (human being) must accuse. Some certain person (man) must take responsibility for the making of the accusation, not an agency or an institution (STATE OF IDHAO/STATE/State/State of Idaho). This is the only valid means by which a citizen may begin to face his accuser, also, the injured party (corpus delicti) must make the accusation. Hearsay evidence may not be provided. Anyone else testifying that they heard that another party was injured does not qualify as direct evidence. Additionally, the damaged party must by law - Rule 17(a) FRCP., file an affidavit for damages with evidence as required under rules of (Common) Law. Peter has no contract with the STATE.

II.

Kevin Truesdale, acting as Idaho State Police Officer, did not have jurisdiction, probable cause of a crime that was an arrestable offence or lawful authority to: arrest Peter at night, without a warrant, for an alleged probable cause of an infraction of no plates, Idaho Code 49-428, and therein convert Peter's rights into crimes?

As soon as Truesdale saw the sign "Not for Hire" attached to Peter's private property 4runner/automobile, he should have known he did not have jurisdiction over Peter as "Driver". Ignorance of the law is no excuse. Truesdale proved his not having jurisdiction by not being able to categorize Peter into any of the Idaho Uniform Traffic Citation IPUC:, USDOT TK Census:, Hazmat:, GVWR 26001+: or 16+ Persons:, as Driver "Operating" a Motor Vehicle/Commercial Motor Vehicle. Also, Truesdale, was not acting within the lawful duty of his office and all actions subsequent to the initial stop violated **Idaho Code 49-123 (k)** "**Noncommercial vehicle., a noncommercial vehicle shall not include those vehicles required to be registered—**". (This means Peter's noncommercial vehicle (Private Property Toyota 4runner Automobile) shall not be required to be registered, thus, Truesdale had no jurisdiction, probable cause of action or lawful authority to proceed with his unlawful acts? Truesdale obviously needs remedial training on the Code in which he is enforcing and arresting people under. On this specific issue/code alone, Truesdale should not have taken the actions he did. It is a

clear violation of the Idaho Code, which does apply to Honorable Regan C. Jameson, Officer Kevin Truesdale, Deputy Prosecuting Attorney Tatianna Herrera and all other public servants who have conspired to deprive rights in said case.

Truesdale should have known Peter's unalienable rights and that he (Truesdale) is bound by the Constitutions. Truesdale should have known the Ratified Constitution is the Supreme law of the land and a restraint on him from depriving fundamental rights. However, Peter informed Truesdale he would stand on his 1st, 4th and 5th Amendment (Article) rights moments before Truesdale violated his rights and converted them into an alleged crime/public offence, which constitutes a violation of Idaho Constitution Article I Section 1, 2, 4, 6, 7, 8, 9, 12, 13, 16, 17, 21, 22 and the Bill of Rights 1791 Amendment (Article) 1, 3, 4, 5, 6, 7, 8 and 9. Howbeit, no State may convert a Right/Liberty into a privilege and issue a license and a fee for it and convert that Right into a Crime, *Murdock v. Pennsylvania*, 319 U.S. 105 (1943). Further in fact, Truesdale's treatment of Peter at time of arrest raises a fundamental 8th Amendment (Article) violation as battery and assault were committed while effecting a non combatant man in the course of an unlawful arrest.

By arresting Peter and later charging him with Idaho Code 18-705 Resisting and Obstructing Officers and 49-316 Driver's License to be Carried and Exhibited on Demand, Truesdale construed the actions of Peter exercising his unalienable rights, to be crimes. It is impossible to prove/conclude that a man's exclusive/

specific actions/non actions of exercising his rights, can be construed into being a crime. Especially an alleged crime with no injured party/injury in fact. Further in fact, willfulness must be proven by the Prosecution for a Criminal Violation, *see United States v. Bishop*, 412 U.S. 346 (1973).

Furthermore, in criminal law which Peter's case was under, there has to be 2 separate acts; the mensrea and actusrea. This means the prosecutor must prove beyond a reasonable doubt that Peter knew the specified act was unlawful and he ignored the fact or planned his act with knowledge of the mind, and, took some sort of physical action that resulted in the unlawful conduct specified.

In this case the facts lead to the conclusion that Truesdale arrested Peter because he did not tell him his name, however, there is no constitutionally valid requirement you must identify yourself, *see 4th Amendment (Article); also see Brown vs. Texas*, 443 US 47 and *Kolender v. Lawson* 461 US 354.

Truesdales actions were also in direct violation of *AN ACT to regulate Proceedings in Criminal Cases, in the Courts of Justice in the Territory of Idaho*, (Cr. Prac. 1864).

Truesdale violated due process of law and Cr. Prac. 1864 Sec. 21.; "If it appear from the depositions that there is just reason to fear the commission of the offence threatened by the person so complained of, the magistrate shall issue a warrant directed generally to the sheriff of the county, or any constable, marshal, or policeman in the territory, reciting the substance of the complaint, and

commanding the officer forthwith to arrest the person of, and bring him before the magistrate." First: Truesdale must lay the complaint before the magistrate. Second: he must obtain the warrant from the magistrate. Third: Only with a warrant can Truesdale make a lawful arrest, in that order. Truesdale must have dyslexia because he got the order of this process completely reversed. Furthermore, Truesdale is completely incompetent in performing the lawful duty of his office.

When Tuesdale arrested Peter at night for an alleged infraction/misdemeanor he violated Cr. Prac. 1864 Sec. 124.; "If the offence charged be a felony, the arrest may be made on any day and at any time of the day or night. If it be a misdemeanor, the arrest shall not be made at night, unless upon the direction of the magistrate, endorsed upon a warrant." Truesdale made the arrest at approximately 10:00pm at night without a warrant.

By taking Peter to jail and not to the magistrate Truesdale further violated the law and Cr. Prac. 1864 Sec. 116.; "The defendant must, in all cases, be taken before the magistrate without unnecessary delay."

After taking Peter to jail Truesdale broke the law and Idaho Code again when he stole Peters automobile. Truesdale violated Idaho Code 49-1418. AUTHORIZING SEIZURE OF VESSELS, MOTOR AND OTHER VEHICLES —. (1) Any peace officer or authorized transportation department employee, with or without a warrant, may seize and take possession of any vehicle, trailer, semitrailer, vessel, vessel motor or implement of husbandry, or

any part or parts thereof, which the peace officer or authorized employee has probable cause to believe is stolen, or on which any motor number, manufacturer's number, or identification number has been defaced, altered, removed, covered, destroyed or obliterated. Truesdale had no lawful authority to seize or take Peter's private property. Since Peter's 4runner was not stolen, it was stolen by Officer Truesdale.

Additionally Honorable David Manweiler violated due process of law when he denied Peter his right to plead in the form of demur according to Cr. Prac. 1864 Sec. 273., "If the defendant do not require time as provided in the last section, or if he do, then, on the next day, or at such further day as the court may have allowed him, he may answer to the arraignment, and either move the court to set aside the indictment or may demur or plead thereto." Furthermore, Cr. Prac. 1864 Sec. 95.; "An indictment for any misdemeanor must be found within one year after its Commission," was violated.

The Constitution of Idaho declares that no person shall "be deprived of life, liberty or property without due process of law" (Idaho Constitution Article I, Section 13). The words "due process" do not mean anything which the legislature may see fit to declare to be "due process of law" *State ex rel. v. Billings*, 55 Minn. 466, 474 (1893). Due process was intended to preserve established fundamental rights by requiring that they can not be deprived except by the established modes of law as existing under the common law.

This guarantees that government shall follow a specified and pre-existing rule of conduct, process, or procedure is in itself a right the citizen held at common law, and was claimed by the colonists in early America. Thus, "it is clear that the common law is the foundation of that which is designated as due process of law" (6 R.C.L. "Const. Law," § 435). The constitution guarantees these pre-existing rights and procedures in the due process provision.

The common law drew a distinction between an arrest for misdemeanors, such as that which Truesdale arrested Peter upon, and arrests for felonies. When a felony was committed an arrest could be made without a warrant, but no arrest could be made for a misdemeanor without a warrant unless it constituted a "breach of the peace." The misdemeanor traffic violation was not a breach of peace and thus Truesdale needed a warrant to make an arrest for such offense.

In determining the law surrounding arrests, the Supreme Court of South Carolina, in the case of *State v. Byrd*, 72 S.C.104, 51 S.E. 542, 544 (1905), affirmed a prior decision of the Court holding that: At common law, as a general rule, an arrest could not be made without warrant for an offense less than felony, except for a breach of the peace. 3 *Cye.* 880; *State v. Sims.* 16 S.C. 486.

The fact that Truesdale believed that Peter committed a misdemeanor and had charged him with a violation of the traffic code, did not authorize him to arrest Peter. In a New York case, the State Supreme Court held that a city alderman or justice of the peace could not, at common law, arrest or cause an arrest for a

misdemeanor not amounting to a breach of the peace, without warrant, though happening in his presence. The Supreme Court, in the case of *Butolph v. Blust*, 5 Lansing's Rep. 84, 86 (1871) stated: At common law an arrest could not be made of a person charged with a misdemeanor except on warrant of a magistrate , unless it involved a breach of the peace, in which case the offender might be arrested by any person present at its commission. (1 Chitty, Criminal Law , 15; *Carpenter v. Mills*. 29 How. Pro R. 473).

In the very well reasoned and authoritative case of *Ex parte Rhodes*, 202 Ala. 68, 79 So. 462, 464 (1918), the Supreme Court of Alabama related the due process provision to the act of arrests. It asserted that, "any seizure or arrest of a citizen is not reasonable, or 'due process,' merely because a Legislature has attempted to authorize it. These phrases are limitations upon the power of the Legislature, as well as upon that of the other departments of government, or their officers." In determining what was 'due process' regarding arrests the Court stated: "It must not be forgotten that there can be no arrest without due process of law. An arrest without warrant has never been lawful, except in those cases where the public security requires it; and this has only been recognized in felony, and in breaches of the peace committed in the presence of the officer." *Ex parte Rhodes*. 202 Ala. 68, 79 So. 462,465; citing, *Sarah Way's Case*, 41 Mich. 304, I N.W. 1023 (1879), et al. Also cited and affirmed in *Pinkerton v. Verberg*. 78 Mich. 573, 44 N.W. 579, 583

(1889); *State v. Williams*. 45 Ore. 314, 77 Pac. 965, 969, (1904); *Adair v. Williams*. 24 Ariz. 422, 210 Pac. 853, 856 (1922) .

At one time in the history of American law and jurisprudence, the concept that no one could be arrested for a misdemeanor except with a proper warrant was so basic and "elementary" that it was not necessary to give any authorities to prove it. Yet this basic concept was found to be too restrictive to the ever-growing oppressive government that has gained power in this country. Thus in order for it to control the liberty of citizens, and to enforce its oppressive laws, the corrupt, *de facto* government has gradually undermined a very basic principle of constitutional law.

Since liberty cannot be deprived except by the law of the land, or due process of law, no statute or ordinance can constitutionally be enacted which allows arrests without a warrant for any purpose the legislature decides. Due process is a limitation upon the legislature, and thus a legislative statute cannot be the due process by which one can be deprived of his liberty by arrests.

Conclusion Prayer for Relief

WHEREFORE Petitioner, Peter-Alan: Hearn moves this Honorable Court to enter an order issuing a Writ of Prohibition restraining and/or prohibiting the Ada County District Court Honorable Judge Regan C. Jameson from proceeding with

the adjudication proceedings stated herein along with such other and further relief as the court may deem reasonable and just under the circumstances.

Dated this 16th Day of August, 2023.

Peter-A: Hearn non-14th Amendment Federal Citizen being sworn deposes and says: I verify that the statements made in this Brief are true and correct to the best of my ability.

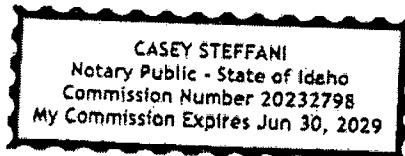
Respectfully submitted,

Peter-A: Hearn August 16, 2023
Peter-A: Hearn

State of Idaho
County of Ada

On this 16th day of August, 2023, Peter Alan: Hearn personally appeared before me and having been duly sworn did herein execute the above record for the purposes stated.

 8-16-23
Signature of Notary Public



Affidavit/Certificate of Service List

This Verified Brief in Support of Verified Petition for Writ of Prohibition has been served by Hand Delivery this 16th day of August, 2023 on the following:

To: Idaho Supreme Court
451 W. State St, Boise, ID 83702

To: Judge, Regan C. Jameson
200 W. Front Street
Boise, Idaho 83702

To: For the Record
Secretary of State, Phil McGrane
Capital Building, Room E205,
700 W. Jefferson Street
Boise, Idaho 83720

To: Attorney General, Raul Labrador
Capital Building, Room C210
700 W. Jefferson Street
Boise, Idaho 83720

Peter A. Hearn

Peter A. Hearn

Proof of Service