

IN THE ARDMORE MUNICIPAL COURT  
LIMESTONE COUNTY, ARDMORE, ALABAMA

MUNICIPALITY OF ARDMORE,

Plaintiff,

v.

Arthur Hirsch,

Accused.

Case Number: MC09-71

**OBJECTION TO ARRAIGNMENT IRREGULARITIES AND JUDGE-ENTERED PLEA**  
**and**  
**MOTION TO WITHDRAW “NOT GUILTY” PLEA**

I, Arthur Hirsch, accused, unrepresented but still seeking competent counsel, object to the arraignment irregularities and judge-entered plea below and move this court to withdraw the judge-entered plea of “not guilty” for fair and just reasons stated as follows:

1. That I am competent to declare and affirm the facts set forth herein;
2. That I have personal knowledge of the facts set forth herein, unless based upon best information and belief, which I will so state if applicable, and will testify to their veracity if called upon as a witness;
3. That I hereby object to the arraignment held on Wednesday, September 23, 2009 at 8:30 a.m. for reasons stated below;
4. That I have researched and learned that this municipal court is a statutory, inferior court with limited subject matter jurisdiction;
5. That I have researched and learned that there is no presumption in favor of the subject matter jurisdiction of a court of inferior or limited jurisdiction, and that such jurisdiction must appear on the record;
6. That I have researched and learned that the want of jurisdiction of the offense or subject matter cannot be waived;
7. That the record shows I challenged this court’s subject matter jurisdiction prior to said arraignment;
8. That the record shows I demanded by right a show cause evidentiary hearing to be held prior to arraignment and asked that strict proof under the common law and admissible documentary evidence pursuant to the Alabama Rules of Evidence be produced to establish this court’s jurisdiction by the

prosecutor at said hearing;

9. That upon my researched information this court has not acquired jurisdiction, i.e., challenge has been made before arraignment but not proven on the record;

10. That it was my intention to come to my requested evidentiary show cause hearing and/or arraignment by special appearance to test the jurisdiction of this court. If it were found that this court was not one of competent jurisdiction then the arraignment and pleading by the judge would be irrelevant, void, and unnecessary;

11. That the record shows that I did not submit to arraignment, but objected to jurisdiction;

12. That the record shows this court ignored my challenge to subject matter jurisdiction, denied my demand by right for a show cause evidentiary hearing, and presumptuously conducted the arraignment without proving its authority to do so on the record;

13. That I have researched and learned that once challenged, subject matter jurisdiction must be promptly proven by the prosecutor before this court can continue with any further proceedings in this cause;

14. That I have researched and learned that conducting the arraignment before addressing and resolving my jurisdictional challenge, renders the plea invalid;

15. That I can find no evidence in the record or in law that this court acted within its limited authority to conduct said arraignment without first proving its challenged subject matter jurisdiction on the record;

16. That I have researched and learned that the Alabama Supreme Court has consistently held that the function and importance of arraignment in Alabama to be a critical stage in a criminal proceeding. What happens there may affect the whole trial, e.g., available defenses may be irretrievably lost, if not then and there asserted, etc.;

17. That I hereby object to this court's judge entering the plea of "not guilty" over my protest for reasons set forth herein;

18. That the judge-entered "not guilty" plea was made without proof of subject matter jurisdiction (as stated above), i.e., there was no factual basis for this court's jurisdiction on the face of the record, and no jurisdictional presumption is allowed for inferior courts of limited subject matter jurisdiction as aforesaid;

19. That I have researched and learned that I have been wrongfully joined to this cause, and an invalid triable issue has been created by this court's judge-entered plea of "not guilty" being

recorded before a subject matter jurisdiction determination was made at an appropriate evidentiary hearing;

20. That the record shows my objections to this municipal court's presumed subject matter jurisdiction and to the judge-entered "not guilty" plea were timely made and reserved: therefore, I have researched and learned that this inferior court has no authority to proceed any further toward trial until subject matter jurisdiction is proven on the record at hearing and a proper plea is entered thereafter if jurisdiction is found;

21. That I have researched and learned that the judge-entered plea of "not guilty" admits the validity of the complaint to which I hereby object and protest. I do not admit the validity of the complaint. I fully intended to challenge its validity on a number of points, which directly affect the court's jurisdiction, at the evidentiary show cause hearing before arraignment, but this court's judge denied me said hearing;

22. That I have researched and learned that there is no statutory authority for this court to enter a plea for me (besides the problem of lack of subject matter jurisdiction) for reasons stated as follows:

- (a) The record shows that I did not receive a copy of the complaint from the judge at arraignment;
- (b) The record shows that I was not asked by the judge if I had received a copy of the complaint, nor if I had read the complaint, nor if I understood the charge, contrary to the rules of procedure;
- (c) The record shows that the judge twice tried to trick me into pleading without ever reading me the charge (What was I supposed to be pleading to? Nothing but thin air?);
- (d) The record shows that when the judge did finally read the charge to me he did not identify the source of the charge from which he read, nor did he cited any law that I allegedly violated;
- (e) From best information, I believe that without the citing of any law at the arraignment which I allegedly violated, and to which criminal charges attach, the judge's entered plea of "not guilty" is invalid—especially since he did not give me a copy of the complaint;
- (f) I had no assistance of counsel and did not understand the charge;
- (g) I had numerous questions regarding the charge but was prohibited from asking them by the court;
- (h) From my research I have learned that without understanding the charge against me there can be no valid entering of a "not guilty" plea by the court;
- (i) The record shows that I did not acknowledge the validity of the offense by pleading;
- (j) The record shows that I did not "stand mute" at the arraignment, but instead was "muted" by the judge;
- (k) I was not "unable" to plead;
- (l) I did not "refuse" to plead;

(m) I did not waived my right to counsel, but desired the assistance of counsel at arraignment, which unfortunately, was not available at that time. I had been actively seeking the assistance of competent counsel from the time of my release from jail, but was unsuccessful in obtaining counsel by the time of the arraignment (32 attorneys contacted). I intended to explain my situation to the judge, but was cut short by the court and ordered not to speak.

23. That I believe the arraignment defects as mentioned above have prejudiced me, worked grave injustice, are incurable, and can only be remedied by a hearing on subject matter jurisdiction and a proper arraignment and plea if jurisdiction is proven before proceeding to trial;

24. That I have researched and learned that there can be no valid trial until there is a pre-trial evidentiary hearing on this inferior court's subject matter jurisdiction per my rebuttal / challenge;

25. That I have researched and learned that when a "not guilty" plea is withdrawn, any proceedings based on the plea are likewise voided, and the plaintiff and the accused are returned to the position prior to the plea;

26. That I have researched and learned that it is the duty of the court, under the aforesaid circumstances, to allow a withdrawal of my "not guilty" plea, and that it would be an abuse of discretion to refuse it where the grounds of this motion are not only reasonable, but sufficient, to vitiate the arraignment proceedings and plea.

### **RELIEF SOUGHT**

WHEREAS, it would be a manifest injustice to continue to trial in this cause without proving subject matter jurisdiction on the record, or based on a defective arraignment and an invalid judge-entered plea, and

WHEREAS, without a valid plea there is no triable issue before the court, and

WHEREAS, in the interest of justice and for reasons set forth above this motion should be granted and the judge-entered plea of "not guilty" withdrawn by Order, and further,

WHEREAS, I hereby request that a fair and impartial evidentiary hearing on subject matter jurisdiction be ordered held on Wednesday, December 2, 2009 at 8:30 a.m. where I and/or my counsel will be in special appearance only, followed by a proper arraignment by a fair and impartial judge if jurisdiction is established by evidence on the face of the record, and

WHEREAS, granting this motion creates no prejudice to the plaintiff since the Town of Ardmore has collected from me an “interest free loan” in the form of an over-charged appearance bond in the amount of \$750.00:

THEREFORE, I move this court to withdraw said “not guilty” plea and to schedule an evidentiary hearing on subject matter jurisdiction by Order as requested above.

I declare under penalty of perjury that the facts alleged in the foregoing Objection To Arraignment Irregularities and Judge-Entered Plea and Motion to Withdraw “Not Guilty” Plea are true and correct to the best of my knowledge, information, and belief. Executed on November 20, 2009.

By: \_\_\_\_\_

Arthur Hirsch  
3121 Buffalo Road  
Lawrenceburg, Tennessee

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was mailed pre-paid this 20<sup>th</sup> day of November, 2009 to the following:

Clerk, Ardmore Municipal Court      USPS Certified Mail #7008 0150 0001 7526 1768  
26494 1<sup>st</sup> Street  
Ardmore, AL 35739

Chad Wise, Prosecutor  
317 W. Market St.  
Athens, AL 35612

William G. Mathews, Judge  
117 South Marion Street  
Athens, AL 35611

Ricky Mitchell, Mayor  
26641 2<sup>nd</sup> St.  
Ardmore, AL 35739

Billy Ray Hall, Councilman  
26204 7<sup>th</sup> St.  
Ardmore, AL 35739

Billy Shannon, Councilman  
29537 Gatlin Rd.  
Ardmore, AL 35739

Melody Duffey, Councilwoman  
29210 1<sup>st</sup> Ave., W.  
Ardmore, AL 35739

Mary Hobbs, Councilwoman  
29120 1<sup>st</sup> Ave., W.  
Ardmore, AL 35739

George King, Councilman  
c/o Town of Ardmore  
26494 1<sup>st</sup> St.  
Ardmore, AL 35739

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Arthur Hirsch