

“We Dare Defend Our Rights” – Alabama State Motto

State of Alabama
IN THE ARDMORE MUNICIPAL COURT
Limestone County, Ardmore, Alabama

Criminal Case Number: MC09-71

MUNICIPALITY OF ARDMORE, ALABAMA,

Plaintiff,

vs.

Arthur Hirsch,

Unalienable Rights Claimant.

**NOTICE OF LACK OF SUBJECT MATTER JURISDICTION
and
DEMAND FOR SHOW CAUSE HEARING**

NOTICE OF LACK OF SUBJECT MATTER JURISDICTION

Please take actual notice that I, Arthur Hirsch, Unalienable Rights Claimant, in special appearance, hereby challenge and rebut the presumption that this court has subject matter jurisdiction to hear this case based on factual reasons stated below; and, upon this court finding insufficient admissible evidence to establish jurisdiction as presented by the accuser, I demand dismissal of this matter (there is no discretion to ignore lack of jurisdiction). I reserve all my unalienable rights, waive none, and declare as follows:

1.0 UNAUTHORIZED JUDGE AND POLICE OFFICERS - COLOR OF OFFICE

1.1. That this court does not have subject matter jurisdiction because purported municipal judge, WILLIAM G. MATHEWS, purported prosecutor, CHAD WISE, purported Ardmore Police Department officers TRACY LUNA, TERRY JOHNSON, purported police chief W. M. OLIVER, and six other JOHN DOE officers, do not have constitutionally mandated oaths of office on file in the public record according to Ardmore clerk-magistrate SANDRA TUCKER on August 3, 2009, and therefore, they do not have lawful authority to act in this matter *ab initio*. They have operated fraudulently under color of office, color of procedure and have engaged in impersonation of judicial and police officers.

2.0 CONSTITUTIONAL PROHIBITIONS

2.1. **Article I, § 36, Alabama Constitution (1901) prohibition:** That this court lacks subject matter jurisdiction because it is part of the State of Alabama Unified Judicial System, which represents the judicial branch of state government, and is specifically prohibited forever (no jurisdiction) from enforcing statutory legislation that encroaches on my constitutionally enumerated and my unenumerated (retained) rights under the U.S. and Alabama Constitutions.

2.2. **U.S. Constitution, Article I, § 10 prohibition against Bills of Attainder:** That this court lacks subject matter jurisdiction because it seeks to prosecute and punish me, a member of a discernable group of people, pursuant to a constitutionally forbidden legislative act, known in the U.S. Constitution as a Bill of Attainder / Bill of Pains and Penalties, which would override my right to fundamental due process (as contemplated under the common law) and my right to a trial by jury of my peers.

3.0 NOT A COURT OF COMPETENT JURISDICTION

3.1. That I hereby rebut the presupposition that this court is a court of competent jurisdiction and support my rebuttal with the following facts:

(3.1.1) **Limited statutory jurisdiction:** That this court is a creation of the Alabama Legislature and does not have jurisdiction to hear issues concerning common law rights guaranteed under the U.S. and Alabama Constitutions, but only municipal ordinances under statutory law in accord with said Constitutions. The common law consists of those principles, usage and rules of action applicable to government and security of persons and property which do not rest for their authority upon any express and positive declaration of the will of the legislature.

(3.1.2) **No common law jurisdiction:** That this court has no delegated judicial authority to exercise judicial powers according to the course of the common law to decide cases cognizable by the courts of law under the English common law by which all my constitutionally enumerated rights are secured.

(3.1.3) **No trial by jury of my peers:** That this court lacks jurisdiction because it cannot hear a common law suit, counter claim, or cross claim which I may chose to file in conjunction with this criminal prosecution, where the value in controversy exceeds twenty dollars and a public trial by jury of my peers is my preserved right under the U.S. and Alabama Constitutions.

(3.1.4) **Fair and impartial trial impossible:** That this court lacks jurisdiction since it cannot possibly provide me with a fair and impartial trial, which is my protected right under the U.S. and Alabama Constitutions, because of inherent conflicts of interest and prejudicial self-serving

“We Dare Defend Our Rights” – Alabama State Motto

relationships as follows:

(A) the prosecutor, judge, clerk-magistrate, bailiff, police officers, police chief, all receive their paychecks from the same employer source, i.e., from the Town of Ardmore; all have a personal, vested money-interest in the conviction of defendants, which provides a self-serving revenue stream from the fines, penalties, and seizures obtained through the municipal court prosecutions;

(B) the prosecutor (executive branch) is an officer of the court (judicial branch) and is not independent of the judiciary, but rather is under its control - no separation of powers here, i.e., he and the judge are working together on the same “team”;

(C) the prosecutor and the judge are members of the same monopolistic trade union, namely, the bar association (they’re loyal ‘good-old-buddies’);

(3.1.5) **Disregard for the rule of law:** That this court lacks jurisdiction because it flagrantly disregarded the rule of law (constitutional and statutory) and operated in the absence of procedural and substantive due process of law in violation of the Alabama Rules of Criminal Procedure as demonstrated at my hearing on 08/26/09. When this court failed to observe safeguards, it amounted to denial of due process of law, and the court was deprived of any jurisdiction it may have presumed. (See *Merritt v. Hunter*, C.A. Kansas 170 F2d 739.)

“In contrast, a court's authority to exercise its subject matter jurisdiction over a case may be restricted by a **failure to comply with statutory requirements that are mandatory** in nature and, thus, are prerequisite to a court's rightful exercise of that jurisdiction.” (Emphasis added.) *MOORE v. COMMONWEALTH*, 259 Va. 431 (2000)

4.0 IMPROPER PARTIES

4.1. That this court does not have subject matter jurisdiction because the Ardmore arresting

“We Dare Defend Our Rights” – Alabama State Motto

police officers are improper parties-witnesses to the action and have no standing for the following reasons:

(4.1.1) That the police officers employed by the Ardmore Police Department have no lawful, constitutional authority to act or standing in this case as stated above since they do not have oaths of office on file in public record according to clerk-magistrate SANDRA TUCKER, and are operating under color of office and color of procedure *ab initio*.

(4.1.2) That the arresting police officers have no lawful enforcement authority to make warrantless arrests on private property for non-felony offenses or for non-breaches of the peace under the common law, which the face of the record shows is where the arrest and imprisonment took place.

4.2. That this court does not have subject matter jurisdiction because the prosecutor, CHAD WISE, as mentioned above, does not have a constitutionally mandated oath of office on file in public records according to clerk-magistrate SANDRA TUCKER, and is acting corruptly under common law extortion to collect a fine under color of office and color of procedure.

5.0 JURISDICTION LOST BECAUSE OF COMMON LAW DUE PROCESS VIOLATIONS

5.1. That this court has lost any jurisdiction that it may presumed to have had because of the many violations of my constitutionally protected right to due process under the common law including, but not limited to the following examples:

(5.1.1) That I was thrice denied my unalienable right to compulsory process by magistrate SANDRA TUCKER on August 3, 2009 (she refused to issue a subpoena for me).

“We Dare Defend Our Rights” – Alabama State Motto

(5.1.2) That discrimination and obstruction of justice was committed by POLICE CHIEF W. M. OLIVER and his staff of police officers’ coercive action employing S.W.A.T. Team-style show-of-force and implied threat of violence on August 26, 2009, when used for the purpose of instilling fear and intimidation in me to thwart a fair due process hearing in my case.

(5.1.3) That purported judge, WILLIAM G. MATHEWS, committed multiple violations of the Alabama Rules of Criminal Procedure at said 08/26/09 hearing with respect to mandatory arraignment procedures.

(5.1.4) That purported judge, WILLIAM G. MATHEWS, repeatedly attempted to conduct a “trial” without due process notice thereof on 08/26/09.

(5.1.5) That purported judge, WILLIAM G. MATHEWS, made biased and prejudicial comments at August 26, 2009 hearing, and to attorney Stan McDonald *ex parte* on or about the weekend of August 1, 2009, indicating he had already found me guilty before arraignment or any trial facts were known.

(5.1.6) That purported judge, WILLIAM G. MATHEWS, condoned *ex parte* communications on 08/26/09 between POLICE CHIEF OLIVER, PROSECUTOR CHAD WISE, and himself, with POLICE CHIEF OLIVER boasting that he “knew the law” and lectured the others on municipal ordinance statutes being superior to the Alabama and U.S. Constitutions which trumped my constitutional challenge. (This information was obtained from media witness, Michael Hollaway, by affidavit).

(5.1.7) That purported judge, WILLIAM G. MATHEWS, condoned discrimination and “selective prosecution” and was an accomplice with the Ardmore police officers “looking the

“We Dare Defend Our Rights” – Alabama State Motto

other way” when an older woman court attendee was found with a concealed knife in her purse (same ordinance class as my alleged offense) but was not arrested and prosecuted for carrying said weapon into court on 08/26/09. This is “ respect of persons,” partiality, and a violation of my right to equal treatment before the law / equal protection of law.

6.0 INVALID COMPLAINT / PLEADING

6.1. That this court lacks subject matter jurisdiction because the complaint (charging instrument) is void on its face and no valid conviction can occur by reason thereof. Please take notice as follows:

(6.1.1) That the complaint is void because it meets the definition of a constitutionally unlawful Bill of Attainder / Bill of Pains and Penalties as stated above.

(6.1.2) That the complaint is void on its face because it was executed on July 31, 2009, five days after my warrantless arrest and imprisonment on July 26, 2009, in violation of Alabama Rules of Criminal Procedure Rules 4.3(a)(1)(iii) and 4.3(a)(2). I was not cited by the arresting officer, TRACY LUNA, but was released without a citation, without a probable cause determination by the magistrate, and OFFICER LUNA did not make a complaint without undue delay and served on me as mandated by said rules.

(6.1.3) That the complaint is void on its face because it was not sworn upon personal knowledge in violation of the rules of evidence.

(6.1.4) That the complaint is void on its face because it does not state under oath that the facts alleged are true and correct which nullifies the test for perjury and makes the complaint

“We Dare Defend Our Rights” – Alabama State Motto

invalid.

(6.1.5) That the complaint is void on its face because it states that I was on private property (“M.E.W.S. parking lot”) when allegedly carrying a concealed weapon and no other facts are alleged in said complaint that presumably gave officers TRACY LUNA and TERRY JOHNSON personal or subject matter jurisdiction to make a warrantless arrest for a misdemeanor on said private property.

(6.1.6) That the complaint is void on its face because the “probable cause” for my purported misdemeanor (as alleged in the complaint) has no foundation anywhere in the common law. The common law recognizes no “probable cause” reason/excuse for warrantless arrests except for felonies and breaches of the peace committed in the presence of a peace officer – never for misdemeanors. Therefore, officer TRACY LUNA’s so-called “probable cause” statement on the complaint is meaningless for my alleged misdemeanor offense and leaves the complaint insufficient on its face.

(6.1.7) That the complaint is void on its face because it fails to declare (a) the nature of my alleged offense, namely, a felony or a misdemeanor, and (b) the cause of the alleged offense, like felony murder, robbery, kidnapping, etc. or misdemeanor breaches of the peace committed in the presence of the police officer, which is a necessary element for it to be triable.

(6.1.8) That the complaint is void on its face because it fails to state sufficient foundational facts of how the arresting officer came to discover my alleged concealed weapon on my person in the first place that would justify their warrantless arrest for the offense alleged on the aforementioned private property. Further, the complaint does not inform this court of enough facts

“We Dare Defend Our Rights” – Alabama State Motto

for determination of sufficiency to support conviction, should one be obtained.

(6.1.9) That the complaint is void on its face because it fails to state the municipal ordinance’s common or proper name and number I allegedly violated, therefore, this court lacks statutory subject matter jurisdiction and is incompetent.

(6.1.10) That the complaint is void on its face because it does not invoke this court’s jurisdiction, without which this court cannot exercise authority on its own.

(6.1.11) That the complaint is void on its face because it was not made under penalty of perjury by the accuser, MUNICIPALITY OF ARDMORE, or its presumed agent, OFFICER TRACY LUNA. If perjury cannot reach said accuser, there is no accusation. Otherwise, anyone may accuse me falsely without risk.

(6.1.12) That the complaint is void on its face because it does not declare that the accuser, MUNICIPALITY OF ARDMORE or its presumed agent, OFFICER TRACY LUNA, was injured (corpus delecti) by my alleged offense, which is a requisite element under the common law affecting my right to bear arms without infringement. Without injury there is no valid accusation.

7.0 FRAUD – JURISDICTION LOSS

7.1. That this court does not have subject matter jurisdiction because of the fraudulent behavior of JUDGE WILLIAM G. MATHEWS when he concealed material information from me in his fiduciary capacity concerning my due process rights, my right to notice of hearing, my right to arraignment, my right to counsel, my right to be informed of my charges, my right to equality under the law, etc. Fraud (through concealment) vitiates everything and leaves this court without

jurisdiction to proceed.

DEMAND FOR SHOW CAUSE HEARING

8.0 DEMANDS BY RIGHT

8.1. That I hereby below make the following DEMANDS BY RIGHT under the authority of the Alabama Constitution (1901), Article I, §§§ 2, 35 & 36, and the Bill of Rights, Article IX:

9.0 DEMAND FOR OATHS OF OFFICE

9.1. DEMANDED: That I hereby demand by right that this court's judge, the prosecutor, Ardmore POLICE CHIEF OLIVER, Ardmore police officers TRACY LUNA and TERRY JOHNSON, and clerk-magistrate SANDRA TUCKER each produce a certified copy of his/her oath of office prior to the commencement of said show cause hearing.

10.0 DEMAND FOR SHOW CAUSE HEARING

10.1. DEMANDED: That I hereby demand by right that this court schedule a due process SHOW CAUSE HEARING on September 23, 2009 at 8:30 a.m. AFTER the above demand for oaths of office has been met and BEFORE my arraignment on the following question:

BY WHAT AUTHORITY DOES THIS COURT ASSUME JURISDICTION TO HEAR THIS CASE CONTRARY TO ALABAMA CONSTITUTION (1901), ARTICLE I, § 36 PROHIBITION, TO U.S. CONSTITUTION ARTICLE I, § 10 PROHIBITION OF BILLS OF ATTAINDER, AND THE ABOVE ALLEGED FACTS?1

11.0 DEMAND FOR STRICT PROOF

11.1. DEMANDED: That I hereby demand by right that strict proof under the common law

“We Dare Defend Our Rights” – Alabama State Motto

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. As this court knows, 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. GMAC*, 298 U.S. 178; *Maxfield’s Lessee v. Levy*, 4 U.S. 308.

12.0 DEMAND FOR ALTERNATIVE JUDICIAL ACTIONS

12.1. DEMANDED: That I hereby demand by right that this court’s judge dismiss this case by ORDER in his ministerial capacity if sufficient admissible documentary evidence is not presented by the prosecutor at said hearing to show that this court’s jurisdiction is superior to the Alabama Constitution and the U.S. Constitution sections cited above in the question.

12.2. DEMANDED: That I hereby demand by right in the alternative that this court’s judge give a judicial determination or ruling in writing, stating his findings of facts and conclusions of law, if it is found at said hearing from sufficient admissible documentary evidence submitted by the prosecutor that this court does have jurisdiction superior to the prohibitions of the Alabama Constitution and U.S. Constitution sections cited above in the question. Further, I demand by right under the alternative a **TRIAL BY JURY OF MY PEERS.**

12.3. DEMANDED: That I hereby demand by right that this court’s judge does not attempt to convert this Notice and Demand into a motion subject to his discretion for the purpose of quashing this jurisdictional challenge and proof of oaths of office.

12.4. DEMANDED: That I hereby demand by right that I be notified by this court on or before Monday, September 21, 2009 that the SHOW CAUSE HEARING is scheduled on the docket

"We Dare Defend Our Rights" – Alabama State Motto

before my arraignment proceedings on September 23, 2009 at 8:30 a.m.

I hereby solemnly affirm and declare under penalty of perjury under the laws of the United States of America that the foregoing NOTICE OF LACK OF SUBJECT MATTER JURISDICTION and DEMAND FOR SHOW CAUSE HEARING is true and correct to the best of my personal knowledge, information, and belief.

Executed on September 14, 2009.

Arthur Hirsch, Unalienable Rights Claimant
3121 Buffalo Road
Lawrenceburg, Tennessee 38464

"We Dare Defend Our Rights" – Alabama State Motto

CERTIFICATE OF SERVICE

In the matter of: *MUNICIPALITY OF ARDMORE (AL) vs. Hirsch*

Case No. MC09-71

I hereby certify that a copy of NOTICE OF LACK OF SUBJECT MATTER JURISDICTION AND DEMAND FOR SHOW CAUSE HEARING in the above referenced case was mailed to plaintiffs and plaintiffs' counsel by pre-paid first class mail on September_____, 2009 as follows:

RICKY MITCHELL, Mayor

26641 2nd St, Ardmore, AL 35739

BILLY RAY HALL, Councilman

26204 7th St., Ardmore, AL 35739

BILLY SHANNON, Councilman

29537 Gatlin Rd., Ardmore, AL 35739

MELODY DUFFEY, Councilwoman

29210 1st Ave. W., Ardmore, AL 35739

MARY HOBBS, Councilwoman

29120 1st Ave. W., Ardmore, AL 35739

GEORGE "MOODY" KING, Councilman

c/o Town of Ardmore, AL, 26494 First St., Ardmore, AL 35739

CHAD WISE, Esq.

Town of Ardmore, Attorney

317 W. Market St.

Athens, AL 35612

By:_____

Arthur Hirsch, Unalienable Rights Claimant