UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

UNITED STATES OF AMERICA	)	
---	)	Case No. 3:06-CR-00083/MCR
Kent E Hovind, a man.	)	

1. Notice - This document can not be used to create any form of jurisdiction over the man.
2. Notice - Court administrator, judge, is to take judicial notice of all evidence of law, and court rules, herein incorporated.
3. Notice - No oral arguments, all responses, defences, oppositions, to this motion, are to be in written form, and presented before the court, as the court so instructs. (See paragraph seven (7) below.)
4. Notice - 'Findings of Facts and Conclusions of Law' are requested on any ruling of this motion, as a matter of law, and/or as a matter of right. (Maxim of Law - A man has a right to know what a court relies upon for authority to act against that man.)
5. **Regarding**: **Motion to Vacate**, no evidence of a 4th Amendment 'verified complaint' before the Grand Jury, or in the official record, as required.
6. Motion under Rule 60(b), is only utilized in the event that Defendant can not seek the vacate as a man, by right, for the court may lack authority to require such of this man.
7. Court Rule: Federal Rules of Criminal Procedure - "Rule 9. Arrest Warrant or

Summons on an Indictment or Information (a) Issuance. The court must issue a warrant—or at the government's request, a summons—for each defendant named in an indictment or named in an information if one or more **affidavit**s accompanying the information establish probable cause to believe that an offense has been committed and that the defendant committed it. "

8. Federal and Local Rules of Appellate Procedure, Rule 34. **Oral Argument**

> (a) In General. (1) Party's Statement. Any party may file, or a court may require by local rule, a statement explaining why oral argument should, or need **not**, be permitted.
>
> (B) the dispositive issue or issues have been authoritatively decided; or
>
> (C) the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument.
>
> (f) Submission on Briefs. The parties may agree to submit a case for decision on the briefs, but the court may direct that the case be argued.
>
> Comment by Defendant - I, not being an attorney trained at court procedure, now ask the court administrator to aid me in the correct authority, procedure, for oral argument if the above is not applicable.

8. Defendant **motions** this court to vacate all judgments, orders, so associated, with this case, for the following reasons:
9. This document, hereafter, is in affidavit form.
10. That all arguments herein are based on facts that are directly germain to the captioned case, as to time, and location, as associated with the 'indictment'.
11. That Kent E Hovind, hereinafter as Affiant, is not evidenced as electing to become a United States citizen.
12. That Affiant is not evidenced as a 'person' that is not afforded the 'Bill of Rights' as enumerated in 'The Constitution for the United States'.

13. That Affiant is a man, possessing full birth right, as a man in Florida land, as such land not being ceded, owned, or purchased, by 'The United States of America', as such land is identified in Article 1, Section 8, Paragraph 17, as found in the Constitution for the United States.
14. That Affiant is not evidence as electing to be a 'resident', or one to 'reside', in the United States.
15. That Affiant is not evidenced as one who did any business, contract, or any activity, in land of the United States.
16. That Affiant requested the court clerk to send Affiant a certified copy of the 'sworn complaint' (affidavit) that the prosecutor used to proceed under.
17. That Affiant was notified, in writing, that no 'sworn complaint' (affidavit) that the prosecutor used to proceed under can be found in the official case record. SEE ATTACHED.
18. That there is no record of a 'sworn complaint' (affidavit) that the prosecutor used to proceed under is in the official case record.
19. That there is no '**affidavit**' in the record that meets the requirement of Federal Rules of Criminal Procedure - "Rule 9, as such rule is fully stated above in paragraph 7.
20. That Affiant is protected, by right of a man, from prosecution, or arrest, without evidence by 'sworn complaint', 'upon probable cause' (affidavit) in the/this official case record, according to the 4th Amendment/'Bill of Rights'.
21. That Affiant was arrested, when in land (his home) not evidenced as being land of the United States, by United States Marshals, under a claimed 'indictment', in association with this captioned case. (Administrator is asked to look to the record

for additional proof of arrest.)

22. That there is no evidence that Affiant waived any right, or that such a right can be waived, as associated with the 4th Article (Amendment) as found in the 'Constitution for the United States', 'Bill of Rights'.

> "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 Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." - 4th Amendment, Const. for the United States.

23. That Affiant is not evidenced as being charged by 'sworn complaint', by any claim, of any man.

24. That Affiant is not evidenced as being charged of doing any act in any **State**, or **district** as is required in the below sixth Amendment.

> "...of the **State** and **district** wherein the crime shall have been committed, which district shall have been previously ascertained by law,.." Sixth Amendment, 'Bill of Rights'.

25. That Affiant is not evidenced as being charged of doing any act in a **district that has been previously ascertained by law**, as is required in the below sixth Amendment.

> "...of the State and district wherein the crime shall have been committed, which **district shall have been previously ascertained by law,**.." Sixth Amendment, 'Bill of Rights'.

26. Affiant has not been 'charged' as a matter of law in this case.

27. Affiant has not been 'accused' as a matter of law in this case.

28. No evidence exists that a witness presented evidence, associated with any criminal action, to initiate a grand jury indictment. Sixth Amendment, Const. for

the United States.

29. That no man, has given sworn evidence, to the grand jury, of this case, that Affiant is a 'person', subject to any written laws, of the United States.

30. No man has given sworn evidence to the grand jury, of this case, that Affiant did any 'activity', that is subject to any written laws, of the United States.

31. That no man, has given sworn evidence, to the grand jury, of this case, that Affiant did any 'activity', 'in land' of the United States, as such land is described in Article 1, Section 8, Paragraph 17, of the 'Constitution for the United States'.

> American Banana Co.v. United Fruit Co.,**213 U.S. 347, 356-357 (1909) "...construction of any statute as intended to be confined in its operation and effect to the **territorial limits** over which the lawmaker has general and legitimate power." (Therefore the US has limited authority only unto its own land. Art1,Sec8 (17)

32. That there is no evidence that Affiant is charged by any man as to any claim of committing a crime as associated with this captioned case. See attached/accompanying seventeen (17) page brief, 'No Verified Complaint'.

33. That there is no evidence, no payment record, that a court reporter was paid to keep an official record of the Grand Jury proceedings of this case.

34. That Affiant wishes not to waive any right as associated with any of the said 'Bill of Rights'.

35. That the 'indictment' of this case is **not** supported by 'sworn complaint', a 4th Amendment '**due process violation**', leaving the court in want of 'subject matter jurisdiction', and lacking 'sufficiency of the pleadings', thus such 'indictment' is void, and all subsequent actions, judgments, orders, thereafter, are void.

Void judgments are those rendered by a court which lacked jurisdiction

either of the subject matter or the parties, *Wahl v. Round Valley Bank 38 Ariz. 41 1, 300 P. 955 (1931); Tube City Mining & Milling Co. v. Otterson, 16 Ariz. 305, 146 P. 203 (1914); and Milliken v. Meyer, 31 1 U.S. 457, 61 S.Ct. 339, 85 L.Ed. 2d 278 (1940).*

A void judgment is one which from its inception was a complete nullity and without legal effect, *Lubben v. Selective Service System Local Bd. No. 2 7, 453 F.2d 645, 14 A.L.R. Fed. 298 (C.A. 1 Mass. 1972).*

I, Kent E Hovind, declare under penalty of perjury under the laws of the United States of America that the foregoing Affidavit is true and correct. Executed on 28 day 10 month of 2019. Jurat: As sworn to before the below signed Notary this 28 day of 10 month, 2019, Oath: I, KENT HOVIND, solemnly swear that the contents of the above mailed Affidavit as subscribed is correct and true.

Signed by: x _____ Kent E Hovind, Affiant

STATE OF Alabama

COUNTY OF Conecuh

13. Personally, appearing before me the undersigned, an officer authorized to administer oaths, Kent E Hovind, ✓ with valid identification, and/or ✓ personally known to me, who first being duly **sworn**, deposes and says that the foregoing, **one** page, instrument was, is, subscribed and **sworn** before me, this 28th day of 10th month, 2019.

x _____ Notary

STEPHEN RAY FLEMING
Notary Public
Alabama State at Large

EMBOSSED STAMP

Judicial Notice on the 'Evidence of Law' (Law of Affidavits) as seen below:

MORRIS V NATIONAL CASH REGISTER; GROUP V FINLETTER Defendant is likely to be the only individual, now or in the future, who is willing and able to place a sworn affidavit affirming the herein disclosed facts under penalties of perjury, into the record of this case and as such, in absence of sworn counter-affidavit signed under the

penalties of perjury regarding these same facts, laws, case law and evidence, Defendant should be the only prevailing party. Morris v National Cash Register, 44 S.W. 2D 433, clearly states at point #4 that "uncontested allegations in affidavit must be accepted as true.", and the Federal case of Group v Finletter, 108 F. Supp. 327 states, "Allegations in affidavit in support of motion must be considered as true in absence of counter-affidavit." MN Rule 56, same as FRCP basically for summary Judgment. (All US courts are subject to the same.) They had their chance to dispute any facts with my administrative process. Read all of MN Rules of civil procedure 56. 56.05. "No affidavits have been done to counter".... See Group v. Finletter - "Defendant has filed no counter affidavit, and therefore for the purposes of the motion before the court, the allegations in the affidavit of the Plaintiff must be considered as true", - FCRP Rule 9(d), 28U.S.C.A. United States v. Kis "Indeed, no more than affidavits is necessary to make the prima facie case"; U.S. v. Tweel "Silence can only be equated with fraud where there is a legal or moral duty to speak, or where an inquiry left unanswered would be intentionally misleading...We cannot condone this shocking behavior...This sort of deception will not be tolerated and if this is routine it should be corrected immediately".

14. **Wherefore**, Affiant, Kent E Hovind, the signed, motions this court, now, to **vacate** all judgments, orders, as associated with this case, for the court is in want of 'subject matter jurisdiction', for the irrefutable, due process violation(s), as enumerated, sworn, above, '**as a matter of law**', and justice. And being that Affiant is not an attorney trained in this court's procedures if this document is not correct to meet Affiant's wish that the presiding court administrator provide assistance to perfect the document to meet all Affiant's requests and needs as associated with this motion. Justice delayed is justice denied. May God be honored by all men, all parties, of this court case.

Kent E Hovind

488 Pearl Lane,

Repton, Alabama 35475,

a post location without the United States.

KENT HOVIND OFFICIAL@GMAIL < Email

251-362-9635 < Phone

((Once a U.S. administrator is noticed of lacking authority, all acts thereafter are done in their personal commercial liability, subject to the highest court of the land, 7th Amendment common law. The law of evidence of a 'court reorder' employment is forthcoming if need be.))

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

UNITED STATES OF AMERICA	)	
---	)	Case No. 3:06-CR-00083/MCR
Kent E Hovind, a man.	)	

Regarding: **Proof of Service**

That the signed did mail the following to the below listed parties to this case:

1. Acting United States Attorney /s/ 21 East Garden Street, Ste. 4 00 Pensacola, Florida 32502 - 5675

Documents Sent:

i. Motion to Vacate, notarized, 7 pages.

ii. Supporting brief to the above 'Motion to Vacate', 17 pages.

iii. Copy of court clerks 'No Sworn Complaint Found in Court Record' 1 page.

iv. This 'Proof of Service', 1 page.

v. By USPS cert. mailing, tracking number 7016 3560 0000 2970 2259 to the court, by first class mailing to the remaining parties.

29/10/ 2019, Kent E. Hovind, Kent E Hovind

Evidence of law for Case No. 3:06-CR-00083/MCR

Brief in Support of the Requirement of a Sworn Complaint, the Affidavit of Probable Cause.

Information that May Be Related to No Verified Complaint

A "VERIFIED COMPLAINT" has three components:

1. The Statement of alleged facts.

2. A signature of the one making the sworn attestment to the Statement.

3. Authorized person to verify by jurat signature of the individual who swore to the truth of the Statement.))

4. If by **Grand Jury, or oral testimony before a judge's court of record,** the same thing but orally sworn and a court of record of all essential statements for jurisdiction in the official record.

Disclosure by the Prosecution Will Preserve the Criminal Trial
On the Basis of All the Evidence Which Exposes the Truth

Disclosure by the prosecution will preserve the criminal trial on the basis of all the evidence which exposes the truth.

"This means, naturally, that a prosecutor anxious about tacking too close to the wind will disclose a favorable piece of evidence. See Agurs, 427 U.S. at 108 ("[T]he prudent prosecutor will resolve doubtful questions in favor of disclosure"). This is as it should be. **Such disclosure will serve to justify trust in the prosecutor as**

> **the representative . . . of a sovereignty . . . whose interest . . . in a criminal prosecution is not that it shall win a case, but that justice shall be done.**

Berger v. US, 295 U.S. 78, 88 (1935). **And it will tend to preserve the criminal trial,** as distinct from the prosecutor's private deliberations, as the chosen forum for ascertaining the truth about criminal accusations. See Rose v. Clark, 478 U.S. 570, 577-78 (1986); Estes v. Texas, 381 U.S. 532, 540 (1965); United States v. Leon, 468 U.S. 897, 900-901 (1984) (recognizing general goal of establishing "procedures under which criminal defendants are `acquitted or convicted **on the basis of all the evidence which exposes the truth**'" (quoting Alderman v. United States, 394 U.S. 165, 175 (1969))). The prudence of the careful prosecutor should not therefore be discouraged." See *Kyles v. Whitley*, 514 US 419, 439 (1995).

"Moreover, the Court's analysis reduces the significance of deliberate prosecutorial suppression of potentially exculpatory evidence to that merely of one of numerous factors that "may" be considered by a reviewing court. *Ante* at 683 (opinion of BLACKMUN, J.). This is not faithful to our statement in *Agurs* that "**[w]hen the prosecutor receives a specific and relevant request, the failure to make any response is seldom, if ever, excusable.**" 427 U.S. at 106. **Such suppression is far more serious than mere nondisclosure of evidence** in which the defense has expressed no particular interest. **A reviewing court should attach great significance to silence in the face of a specific request,** when responsive evidence is **later** shown to have been in the Government's possession. **Such silence actively misleads in the same way as would an affirmative representation that exculpatory evidence does not exist when, in fact, it does** (i.e., perjury) -- indeed, the two situations are aptly described as "**sides of a single coin.**" Babcock, Fair Play: Evidence Favorable to an Accused and Effective Assistance of

Counsel, 34 Stan.L.Rev. 1133, 1151 (1982)." See *US v. Bagley*, 473 US 667, 714 (1985). See *Id.*, at footnote 8, "at fn.8, lead opinion: "In fact, the *Brady* rule has its roots in a series of cases dealing with convictions based on the prosecution's knowing use of perjured testimony. In *Mooney v. Holohan*, 294 U.S. 103 (1935), the Court established the rule that the knowing use by a state prosecutor of perjured testimony to obtain a conviction, and the deliberate suppression of evidence that would have impeached and refuted the testimony, constitutes a denial of due process. The Court reasoned that "a deliberate deception of court and jury by the presentation of testimony known to be perjured" is inconsistent with "the rudimentary demands of justice." *Id.* at 112. The Court reaffirmed this principle in broader terms in *Pyle v. Kansas*, 317 U.S. 213 (1942), ***where it held that allegations that the prosecutor had deliberately suppressed evidence favorable to the accused and had knowingly used perjured testimony were sufficient to charge a due process violation***."

When noticing the court there is no verified sworn complaint in the official record and the prosecutor failed to announce on the record where such evidence is, or is not, it is a deliberate act of misleading the court to believe it has subject matter jurisdiction to proceed, thus a form of ***suppressed evidence favorable to the accused.***

"Failure of government to obey the law cannot ever constitute "legitimate law enforcement activity." In any event, application of the derivative evidence presumption does not "irretrievably" lead to suppression. If a subsequent confession is truly independent of earlier, illegally obtained confessions, nothing prevents its full use to secure the accused's conviction. If the subsequent confession did result from the earlier illegalities, however, there is nothing "voluntary" about it. And even if a tainted

subsequent confession is "highly probative," we have never until today permitted probity to override the fact that the confession was "the product of constitutionally impermissible methods in [its] inducement." Rogers v. Richmond, 365 U.S. 534, 541 (1961). In such circumstances, the Fifth Amendment makes clear that the prosecutor has no entitlement to use the confession in attempting to obtain the accused's conviction." See Oregon v. Elstad, 470 US 298, 362 (1985) (dissent).

"Past decisions of this Court demonstrate that ***the touchstone of due process analysis in cases of alleged prosecutorial misconduct is the fairness of the trial,*** not the culpability of the prosecutor. In Brady v. Maryland, 373 U.S. 83 (1963), for example, the prosecutor failed to disclose an admission by a participant in the murder which corroborated the defendant's version of the crime. ***The Court held that a prosecutor's suppression of requested evidence -***

> ***violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.***

Id. at 87. Applying this standard, the Court found the undisclosed admission to be relevant to punishment, and thus ordered that the defendant be resentenced. Since the admission was not material to guilt, however, the Court concluded that the trial itself complied with the requirements of due process despite the prosecutor's wrongful suppression. The Court thus recognized that the aim of due process "is not punishment of society for the misdeeds of the prosecutor, but ***avoidance of an unfair trial to the accused.***" *Ibid.*

This principle was reaffirmed in United States v. Agurs, 427 U.S. 97 (1976). ***There we held that a prosecutor must disclose unrequested evidence which would create a reasonable doubt of guilt that did not otherwise exist.*** Consistent with Brady, we focused not upon the prosecutor's failure to disclose, but upon the effect of nondisclosure on the trial:

Nor do we believe the constitutional obligation [to disclose unrequested information] is measured by the moral culpability, or willfulness, of the prosecutor. ***If evidence highly probative of innocence is in his file, he should be presumed to recognize its significance even if he has actually overlooked it.*** Conversely, if evidence actually has no probative significance at all, no purpose would be served by requiring a new trial simply because an inept prosecutor incorrectly believed he was suppressing a fact that would be vital to the defense. If the suppression of the evidence results in constitutional error, it is because of the character of the evidence, not the character of the prosecutor." See *Smith v. Phillips*, 455 US 209, 219 (1982).

"Our overriding concern in cases such as the one before us is ***the defendant's right to a fair trial. One of the most basic elements of fairness in a criminal trial is that available evidence tending to show innocence, as well as that tending to show guilt, be fully aired before the jury; more particularly, it is that the State in its zeal to convict a defendant not suppress evidence that might exonerate him.*** See *Moore v. Illinois*, 408 U.S. 786, 810 (1972) (opinion of MARSHALL, J.). This fundamental notion of fairness does not pose any irreconcilable conflict for the prosecutor, for as the Court reminds us, the prosecutor "***must always be faithful to his client's overriding interest that `justice shall be done.'***" *Ante* at 111. ***No interest of the State is served, and no duty of the***

prosecutor advanced, by the suppression of evidence favorable to the defendant. On the contrary, the prosecutor fulfills his most basic responsibility when he fully airs all the relevant evidence at his command." See *US v. Agurs*, 427 US 97, 116 (1976) (dissent). See also *Id.*, at fn.17.

Federal Rule of Criminal Procedure 3 states the following: "The complaint is a written statement of the essential facts constituting the offense charged. It must be made under oath before a magistrate judge". F.R.Crim.P. rule 4 provides how probable cause is established. "... If the complaint or one or more affidavits filed with the complaint established probable cause to believe that an offense has been committed and the defendant committed it,..."

If the Prosecution had reasonable proof of probable cause of a violation sufficient to justify the bringing of charges, surely it would have produced it upon accused challenge. In order to be charged and convicted of a crime, the prosecution must prove every element of the crime as charged. See *People v. Lobato*, 109 Cal.App.4th 762 (2003); *People v. Sengpadychith*, 26 Cal.4th 316 (2001); *People v. Flood*, 18 Cal.4th 470, 76 Cal.Rptr.2d 180, 957 P.2d 869 (1998); *People v. Magee*, 107 Cal.App.4th 188, 131 Cal.Rptr.2d 834 (2003); *People v. Marshall*, 83 Cal.App.4th 186, No. B137038 (2003); *People v. Kobrin*, 11 Cal.4th 416, 45 Cal.Rptr.2d 895, 903 P.2d 102

(1995); *People v. Avila*, 35 Cal.App.4th 642, 43 Cal.Rptr.2d 853 (1995); *In Re Winship*, 397 U.S. 358 (1970); *Sullivan v. Louisiana*, 508 U.S. 275 (1993).

"The United States Supreme Court held: "What the factfinder must determine to return a verdict of guilty is prescribed by the Due Process Clause. **The prosecution bears the burden of proving all elements of the offense charged, [citations], and must persuade the factfinder 'beyond a reasonable doubt' of the facts necessary to establish each of those elements** . . ." The United States Supreme Court has extended this right to constitutionally require that no jury instructions relieve the prosecution of the responsibility of proving each element beyond a reasonable doubt. In Carella v. California, 491 U.S. 263, 265 (1989), the court held: "Jury instructions relieving States of this **burden [of proving each element of an offense beyond a reasonable doubt] violate a defendant's due process rights.** [Citations.] Such directions subvert the presumption of innocence accorded to accused persons and also invade the truth-finding task assigned solely to juries in criminal cases." See *People v. Avila*, 35 Cal.App.4th 642, 43 Cal.Rptr.2d 853 (1995).

The court lacks sufficiency of the pleadings to empower the courts' judicial power by completing jurisdiction.

Courts of limited jurisdiction are empowered by one source: sufficiency of pleadings – meaning one of the parties appearing before the inferior court must literally give the court its judicial power by completing jurisdiction. Federal courts are courts of limited

jurisdiction, and may only exercise jurisdiction when specifically authorized to do so. A party seeking to invoke a federal court's jurisdiction bears the burden of establishing that such jurisdiction exists. See *Scott v. Sandford*, 60 U.S. 393 (U.S. 01/02/1856), *Security Trust Company v. Black River National Bank* (12/01/02) 187 U.S. 211, 47 L. Ed. 147, 23 S. Ct. 52, *McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936), Hague *v. Committee for Industrial Organization et al.* (06/05/39) 307 U.S. 496, 59 S. Ct. 954, 83 L. Ed. 1423, *United States v. New York Tlelphone co.* (12/07/77) 434 U.S. 159, 98 S. Ct. 364, 54 L. Ed. 2d 376, Chapman *v. Houston Welfare Rights Organization et al.* (05/14/79) 441 U.S. 600, 99 S. Ct. 1905, 60 L. Ed. 2d 508, *Cannon v. University of Chicago et al.* (05/14/79) 441 U.S. 677, 99 S. Ct. 1946, 60 L. Ed. 2d 560, *Patsy v. Board of Regents State of Florida* (06/21/82) 457 U.S. 496, 102 S. Ct. 2557, 73 L. Ed. 2d 172, *Merrill Lynch v. Curran et al.*. (05/03/82) 456 U.S. 353, 102 S. Ct. 1825, 72 L. Ed. 2d 182, 50 U.S.L.W. 4457, *Insurance Corporation of Ireland v. Compagnie Des Bauxites de Guinee(06*/01/82) 456 U.S. 694, 102 S. Ct. 2099, 72 L. Ed. 2d 492, 50 U.S.L.W. 4553, *Matt T. Kokkonen v. Guardian Life Insurance Company of America* (05/16/94) 128 L. Ed. 2d 391, 62 U.S.L.W. 4313, *United States ex rel. Holmes v. Consumer Ins. Group,* 279 F.3d 1245, 1249 (10th Cir. 2002) citing *United States ex rel. Precision Co. v. Koch Industries,* 971 F.2d 548, 551 (10th Cir. 1992).

We recognize the district court, in our unified court system, is a court of general jurisdiction and is constitutionally endowed with "unlimited original jurisdiction of all justiciable matters, except as otherwise provided in this Article,". Article 7, Section 7, Oklahoma Constitution. However, this "unlimited original jurisdiction of

all justiciable matters" can only be exercised by the district court through the filing of pleadings which are *sufficient* to invoke the power of the court to act. The requirement for a verified information to confer subject matter jurisdiction on the court and *empower the court to act* has been applied to both courts of record and not of record. We determine that the mandatory language of 22 O.S. 1981 § 303 [22-303], requiring endorsement by the district attorney or assistant district attorney and verification of the information is more than merely a "guaranty of good faith" of the prosecution. It, in fact, *is required to vest the district court with subject matter jurisdiction, which in turn empowers the court to act.* Only by the filing of an *information* which complies with this mandatory statutory requirement can the district court obtain subject matter jurisdiction in the first instance which then empowers the court to adjudicate the matters presented to it. We therefore hold that the judgments and sentences in the District Court of Tulsa County must be REVERSED AND REMANDED without a bar to further action in the district court in that the unverified information failed to confer subject matter jurisdiction on the district court in the first instance, *Chandler v. State*, 96 Okl.Cr. 344, 255 P.2d 299, 301-2 (1953), *Smith v. State*, 152 P.2d 279, 281 (Okl.Cr. 1944); *City of Tulsa*, 554 P.2d at 103; *Nickell v. State*, 562 P.2d 151 (Okl.Cr. 1977); *Short v. State*, 634 P.2d 755, 757 (Okl.Cr. 1981); *Byrne v. State*, 620 P.2d 1328 (Okl.Cr. 1980); Laughton v. State, 558 P.2d 1171 (Okl.Cr. 1977)., and *Buis v. State*, 792 P.2d 427, 1990 OK CR 28 (Okla.Crim.App. 05/14/1990).

With no proper criminal accusation in the court record, there is no accused and the court is without jurisdiction over Applicant.

In *William t. Gholson* the court held:

> ***Therefore, it is the complaint alone, and not any other affidavits given in support of arrest or search warrants, which determines the validity of the information.*** Holland v. State, 623 S.W.2d 651 (Tex. Crim. App. 1981*). William t. Gholson v. STATE TEXAS*
>
> *(06/23/83) 1983.TX.41167; 667 S.W.2d 16*

See also, *J. W. Winans v. State:*

> **OPINION:**
>
> Graves, Judge.--The offense charged is for violating the local option liquor laws, the punishment assessed being a fine of $ 300.00. ***The record is before us without a complaint being incorporated therein. We have heretofore held that a complaint is necessary in order to confer jurisdiction upon the county court.*** See Article 415, C. C. P.; McQueen v. State, No. 19521, opinion this day handed down [page 74 of this volume], and *Olivares v. State, 76 S.W.2d 140.*

The judgment is reversed and the prosecution ordered dismissed. [***2]. *J. W. Winans v. The State, 135 Tex. Crim. 102; 117 S.W.2d 81; 1938 Tex. Crim. App. 584*

And *Olivares v. The State*:

HAWKINS, Judge.--Conviction is for operating a commercial motor vehicle which was over the gross weight permitted by law. Punishment was assessed at a fine of twentyfive dollars. The information found in the record recites that it is based upon the affidavit of a named party, which affidavit is "hereto attached and made a part hereof." ***There is no complaint attached to the information, or if so, it is not shown from the record, and no complaint appears anywhere in the record before this court. In such condition no jurisdiction is shown in the county court***. See article 415 C. C. P. (1925);

Wadgymar v. State, 21 Tex. Ct. App. [***2] *459, 2 S.W. 768; Diltz v. State, 56 Tex. Crim. 127, 119 S.W. 92; Day v. State, 105 Tex. Crim. 117, 286 S.W. 1107.* Other authorities are annotated in note 5 under said article 415, vol. 1, Vernon's Ann. Tex. C. C. P. ***No complaint appearing as a predicate for the information, it will be necessary for this court to reverse and direct the dismissal of the prosecution.*** *Olivares v. The State. 127 Tex. Crim. 316; 76 S.W.2d 140; 1934 Tex. Crim. App. LEXIS 42*

In . *J. M. Thornberry v. The State* the court held:

"Winkler, J. From all we can gather from the transcript of the record, ***the information upon which the appellant was tried and convicted was filed without***

any written affidavit that any offense against the law had been committed by the defendant; and without this the information was worthless and totally insufficient to support a conviction."

"The Bill of Rights declares, among other things, that "no warrant to search any place, or seize any person or thing, shall issue without describing them as near as may be, ***nor without probable cause, supported by oath or affirmation.***"

Const., Texas Code of

Criminal Procedure by Article 1, sec. 9."

"This declaration, being among *high powers* excepted out of the general powers of government, is placed beyond the control of courts and legislatures."

J. M. Thornberry v. The State. 3 Tex. Ct. App. 36; 1877 Tex. Crim. App. 202

(emphasis added)

An information is a "primary pleading in a criminal action on the part of the State," Article 27.01, V.A.C.C.P., a written pleading in behalf of the State drawn, filed and presented by a prosecuting attorney charging an accused with an offense that may be prosecuted under the law. Article 21.20, V.A.C.C.P. in order to "**protect its citizens from the inherent dangers arising from the concentration of power in any one individual**," Kennedy v. State, 161 Tex. Crim. 303, 276 S.W.2d 291 (1955)(Opinion on Motion for Rehearing, at 664**), the Legislature precluded a prosecutor from presenting an information "until affidavit has been made by some credible person charging the defendant with an offense," and also mandated, "The affidavit shall be**

filed with the information." Article 21.22, supra. Such an affidavit is, of course, a complaint within the meaning of Article 15.04, V.A.C.C.P. "In other words, a prosecuting attorney is not authorized to institute prosecutions in the county court upon his independent act or of his own volition." Kennedy v. State, supra, at 294. One may not be "both the accuser and the prosecutor is misdemeanor cases." Wells v. State, 516 S.W.2d 663, at 664 (Tex.Cr.App. 1974). Compare Glass v. State, 162 Tex. Crim. 598, 288 S.W.2d 522 (1956); Catchings v. State, 162 Tex. Crim. 342, 285 S.W.2d 233, at 234 (1955)

In *State of Texas v. Carroll Pierce* the court held:

> "***A valid complaint is a prerequisite to a valid information.*** Holland v. State, 623 S.W.2d 651, 652 (Tex. Cr. App. 1981). ***Without a valid complaint, the information is worthless.*** Williams v. State, 133 Tex. Crim. 39, 107 S.W.2d 996, 977 (Tex. Cr. App. 1937). A jurat is the certificate of the officer before whom the complaint is made stating that it was sworn to and subscribed by the Applicant before the officer. Carpenter v. State, 153 Tex. Crim. 99, 218 S.W.2d 207, 208 (Tex. Cr. App. 1949). ***A jurat is essential, for without it, the complaint is fatally defective and will not support an information.*** Shackelford v. State, 516 S.W.2d 180 (Tex. Cr. App. 1970). The jurat must be dated and signed by the official character. See 22 Tex. Jur. 3d, Criminal Law, Section 2266 at 490. ***Thus, a complaint not sworn to before any official or person in authority is insufficient to constitute a basis for a valid conviction.*** Nichols v. State, 171 Tex. Crim. 42, 344 S.W.2d 694 (Tex. Cr. App. 1961) (citing Purcell v. State; 317 S.W.2d 208 (Tex. Cr. App. 1958)); see also Eldridge v. State, 572 S.W.2d 716, 717, n.1 (Tex.

> Cr. App. 1978); Wheeler v. State, 172 Tex. Crim. 21, 353 S.W.2d 463 (Tex. Cr. App. 1961); Morey v. State, 744 S.W.2d 668 (Tex. App. 1988, no pet.). Even where the jurat on the complaint reflects that it was sworn to before a named person but does not show the authority of such person to act, the complaint is void. Johnson v. State, 154 Tex. Crim. 257, 226 S.W.2d 644 (Tex. Cr. App. 1950); Smola v. State, 736 S.W.2d 265, 266 (Tex. App. 1987, no pet.). The complaint is also void when the jurat contains no signature but only shows the office such as "County Attorney of Jones County, Texas." Carter v. State, 398 S.W.2d 290 (Tex. Cr. App. 1966). When a jurat showed that the complaint had been sworn to before "Lavern I. McCann, Hockley County, Texas," the complaint was insufficient to support the information. Carpenter, 218 S.W.2d at 208-09. In the early case of Neiman v. State, 29 Tex. Civ. App. 360, 16 S.W. 253 (Tex. Ct. App. 1891), the complaint was sworn to before "Wm. Greer J.P." It was held that the letters "J.P." could not be inferred to mean Justice of the Peace and an official who had the authority to administer the oath."

"When a jurat on a complaint shows that the oath was administered to the Applicant by a party designated as county attorney but who in reality is an assistant county attorney, the complaint is void. Thomas v. State, 169 Tex. Crim. 369, 334 S.W.2d 291, 292 (Tex. Cr. App. 1960); see also Aleman v. State, 162 Tex. Crim. 265, 284 S.W.2d 719 (Tex. Cr. App. 1956); Stalculp v. State, 99 Tex. Crim. 279, 269 S.W. 1044, 1045 (Tex. Cr. App. 1925). When the assistant or deputy is authorized by law to administer the oath himself, he may not administer it in the name of his principal and may not certify that the principal administered the oath by and through him as an

assistant. Goodman v. State, 85 Tex. Crim. 279, 212 S.W. 171 (Tex. Cr. App. 1919)." *State of Texas v. Carroll Pierce (09/25/91),1991.TX.41404; 816 S.W.2d 824*

The Jurisdictional Question Can Be Raised at Anytime And
Can Never Be Time Barred

The jurisdictional question can be raised at anytime and can never be time-barred. See *DeClaire v. Yohanan*, 453 So. 2d 375 (Fla. 1984). Absence of subject matter jurisdiction may be raised at any time by any party or by the court sua sponte. State ex rel. Grape v. Zach, (supra) (citing Plock v. Crossroads Joint Venture, 239 Neb. 211, 475 N.W.2d 105 (1991)).

Where there is Absence of Jurisdiction A Judicial Action
Must Cease, May Not Proceed and Must be Dismissed

"Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause." Ex parte McCardle, 7 Wall. 506, 514 (1869). In Steel Co. v. Citizens for Better Environment, 523 U. S. 83 (1998) "a long and venerable line of our cases," id., at 94, Steel Co. reiterated: "The requirement that jurisdiction be established as a threshold matter ... is `inflexible and without exception,' " id., at 94-95 (quoting Mansfield, C. & L. M. R. Co. v. Swan, 111 U. S. 379, 382 (1884)); for "[j]urisdiction is power to declare the law," and " `[w]ithout jurisdiction the court cannot proceed at all in any cause,' " 523 U. S., at 94 (quoting Ex parte McCardle, 7 Wall. 506, 514 (1869)).

Any Judgment In A Court That Lacks Personal Jurisdiction, Subject Matter Jurisdiction or Due Process Violation Is A Void Judgment

When the Plaintiff fails to prove that the court has subject matter jurisdiction the court lacks subject matter jurisdiction. Any judgment in a court that lacks subject matter jurisdiction is a void judgment. Where party is deprived of due process, the court is deprived of subject matter jurisdiction. A *Void Judgment* Is a *Void Judgment* Is a *Void Judgment*-Bill of Review and Procedural ***Due Process*** in Texas, 40 Baylor L. Rev. 367, 378-79 (1988). See *Thomas*, 906 S.W.2d at 262 (holding that trial court has not only power but duty to vacate a *void judgment*). Void judgment is one where court lacked personal or subject matter jurisdiction or entry of order ***violated due process***, U.S.C.A. Const. Amend. 5 – *Triad Energy Corp. v. McNell* 110 F.R.D. 382 (S.D.N.Y. 1986). Judgment is a void judgment if court that rendered judgment **lacked *jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process***, Fed. Rules Civ. Proc., Rule 60(b)(4), 28 U.S.C.A.; U.S.C.A. Const. Amend. 5 – *Klugh v. U.S.*, 620 F.Supp. 892 (D.S.C. 1985). Void judgment may be defined as one in which ***rendering court lacked subject matter jurisdiction, lacked personal jurisdiction or acted in manner inconsistent with due process of law*** *Eckel v. MacNeal,* 628 N.E. 2d 741 (Ill. App. Dist. 1993). Void judgment under federal law is one in which ***rendering court lacked subject matter jurisdiction over dispute or jurisdiction over parties, or acted in manner inconsistent with due process of law or otherwise acted unconstitutionally in entering judgment***, U.S.C.A. Const. Amed. 5, *Hays v. Louisiana Dock Co., 452 n.e.2D* 1383 (Ill. App. 5 Dist. 1983). ***Void judgment is one rendered by court which lacked personal or subject matter jurisdiction or acted in manner inconsistent with due process***, U.S.C.A. Const. Amends. 5, 14 *Matter of Marriage of Hampshire,* 869 P.2d 58 (Kan. 1997). ***A void judgment is one rendered by a court which lacked personal or subject matter jurisdiction or acted in a manner inconsistent with due process*** *In re Estate of Wells,* 983 P.2d 279, (Kan. App. 1999). ***judgments entered where***

court lacked either subject matter or personal jurisdiction, or that were otherwise entered in violation of due process of law, must be set aside, *Jaffe and Asher v. Van Brunt,* S.D.N.Y.1994. 158 F.R.D. 278. ***When rule providing for relief from void judgments is applicable, relief is not discretionary matter, but is mandatory,*** *Orner v. Shalala,* 30 F.3d 1307, (Colo. 1994).

WHEREFORE: No charges, affidavit, have ever been brought against Kent E Hovind by verified sworn complaint, therefore Hovind has never been charged, therefore the court never acquired the evidence in the official record to show subject matter jurisdiction, therefore a due process violation has occurred causing the court to lose subject matter jurisdiction prior to any call for arraignment, arrest, or call for any plea at bar. The only jurisdiction that the court has had was to dismiss for lack of subject matter jurisdiction '**as a matter of law**' forthwith when noticed of this fact.

DATE: 10-30-2019 Prepared by - Paul John Hansen. For Hovind
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Submitted by Defendant Kent E Hovind Kent E Hovind

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Visit our web site at www.flnd.uscourts.gov

Reply to: Pensacola Division

April 7, 2017

Mr. Paul John Hansen
1548 N 19th Street
Omaha, Nebraska 68110

RE: Case No. 3:14cr91-MCR

Dear Mr. Hansen:

We are unable to provide you with a copy of the document you recently requested. Your above-numbered case was opened on October 21, 2014, when the Grand Jury returned an Indictment. The first three documents in the case are a Motion to Seal the Indictment (#1), the Order granting that motion (#2) and the Sealed Indictment (#3), which was later unsealed. I've reviewed the entire docket sheet and there is no document in the official court record called "Sworn Statement" that the US Attorney's Office relied upon to present to the Grand Jury.

Sincerely,

JESSICA J. LYUBLANOVITS,
CLERK OF COURT

s/S. Simms
Deputy Clerk, S. Simms