

**IN THE GENERAL SESSIONS COURT
OF HAMILTON COUNTY, TENNESSEE**

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|--------------------|---|--------------------------|
| State of Tennessee |) | Case Numbers |
| |) | 1802593 , 1802594 |
| |) | |
| Vs. |) | BRIEF IN SUPPORT |
| |) | OF |
| Mr. Michael James, |) | MOTION TO DISMISS |
| Pro Se |) | |
| |) | |

1. **COMES NOW**, the Defendant Mr. Michael James Pro Se, and respectfully explains why this Honorable Court should **DISMISS** the two alleged criminal charges of aggravated assault as improper and without Basis in Fact or Law.
2. This Court “**LACKS SUBJECT MATTER JURISDICTION**” in the case because there **HASN’T** been a proper charging instrument to evoke its authority to hear the merits of the claim against the accused. State v. Hughes, 371 S.W.2d 445 (Tenn. 1963)
3. Take “**JUDICIAL NOTICE AND REVIEW**” of Police Officer Lance Hughes # 826, Magistrate Judge Lorrie Miller and the Assistant District Attorney, appear to agree on a violation of T.C.A. § 40-6-203, informants; examination, that states the following:

§ 40-6-203. Informants; examination

(a) Upon information made to any magistrate of the commission of a public offense, the magistrate shall examine, on oath, the **AFFIANT OR AFFIANTS**, reduce the examination to writing, and **CAUSE THE EXAMINATION TO BE SIGNED BY THE PERSON** making it. (emphasis added)

See also Tenn. Code Ann. § 40-6-205(a); Tenn. Rules Crim.P 3 & 4.

3.1 Tennessee Rule of Criminal Procedure 3 note says the magistrate is not a mere paper pusher. “It is important that any clerk issuing an arrest warrant know and fully appreciate the legal significance of the fact that it is a judicial function which is being performed. The validity of the warrant depends upon the making of a probable cause determination; **a warrant must never be issued as a mere ministerial act done simply upon application.**”

Essential facts of case

4. This case by the State of Tennessee was initiated on behalf of two **Questionable Girls**, Ella Peters, 14, and Kyaija Anderson, 16, neither of whom on May 6, 2020, made an appearance before the Magistrate at the Hamilton County Jail to be **EXAMINED** by the Magistrate, give Oath and have the cause “[reduced] *** to writing” by the Magistrate.
5. Ella Peters, is the **ONLY** named alleged victim in Officer Hughes “Affidavit Narrative”. The Officer, Swears that both girls are “victims” and that Ella’s mother, Tiffany Peters, is “witness.” It’s All a **FABRICATION** of **LIES** and **PERJURY**, also on Officer Hughes part, he **“INTENTIONALLY FALSIFIED”** the “Affidavit of Complaint” narrative report **“IN BAD FAITH”** to illegally incriminate me.
6. Tiffany Peters, wasn’t even there or inside the car that early morning of May 6, 2020. The Parents’ car was **“STOLEN”** by the 2 **“Bad Juvenile Delinquent”** girls who were up to No Good and by what I observed and **Witnessed**, how they were carry on acting like Fools, i believe they were INTOXICATED on ALCOHOL and/or DRUGS.
7. According to the Hughes’ Affidavit and testimony of the accused, a Truck Driver with No Criminal Record, the accused observed the girls approximately at 4:05am. traveling in a car at **Dangerous Speeds**, driving Recklessly and Erratically almost hitting my car.
8. I called 911 about their **Dangerous Bad Juvenile Behavior**, and followed the car to get the License Plate Number to Report them to the Police. They **NEGLIGENTLY** Crashed into a Business Building and **INTENTIONALLY** fled the Scene of an Accident and ran to a nearby house trying to **HIDE** from **RESPONSIBILITY**.
9. The homeowner at 1901 E. 25th St. called 911 and talked to a dispatcher. Here are the girl’s words from the **“Sound File”** from the girl’s 911 call:
 - i. Hey, ma'am. Me and my friend were getting ready to go and get something to eat and we was at a light and this man, he had flipped us off and we was at the

stoplight. And we, he started chasing us. And then we tried to get away. And we ran into this Building

- ii. And the man was still following us, and he got a gun and he was trying to shoot us. *** Yes, we are inside this woman's house. *** No, he was a black male. He was in a brown car, and he is still out here waiting for us to come out here. *** Make sure that door, go lock that door. **** We was at a stoplight, and he's still in front of the house now.

10. The dispatcher asks, "Did you see a gun?"

11. Ella Peters asks the older girl Kaija Anderson in the open phone line: "Did you see a gun?"

12. "Ya." But there's **NO** Statement given at the scene of May 6, 2020, from Kaija Anderson mentioning anything about a gun, Nor is it in Officer Hughes' "Affidavit of Complaint" Narrative Report.

13. "Yes. She saw a gun and we started running, and went into this woman house." This is also where **EVIDENCE** will show Ella Peters is also **LYING** on the 911 call.

14. Within seconds of this statement in the 911 call, Ella Peters says officers have arrived.

15. Mr. James also on the phone with 911, calling to report the girls' **ERRATIC** driving and their crash into a Business Building belonging to the Fowler Bros. Furniture Business. He was sitting in his car with his hazard lights flashing when officers arrived, according to the affidavit in the record.

16. Officer Hughes came 15 minutes later after the first 2 "Primary Officers" were on the scene and launched a **BIASED** investigation into Mr. James, based on **HEARSAY** by a "**Questionable, Bad Juvenile Delinquent**" minor in a "**STOLEN CAR**" with **NO VALID DRIVER LICENSE AND/OR INSURANCE**.

Basic law

17. **HEARSAY**. Evidence not proceeding from the personal knowledge of the witness, **but from the mere repetition of what he has heard others say**. That which does not derive its value solely from the credit of the witness, but rests mainly on the veracity and competency of other persons. The very nature of the evidence shows its weakness, and it is admitted only in

specified cases from necessity. *State v. Ah Lee*, 18 Or. 540, 23 P. 424, 425. *Young v. Stewart*, 191 N.C. 297, 131 S.E. 735, 737. It is second-hand evidence, as distinguished from original evidence; **it is the repetition at second-hand of what would be original evidence if given by the person who originally made the statement.** Literally, it is what the witness says he heard another person say. *Stockton v. Williams*, 1 Doug., Mich., 546, 570 (citing 1 Starkie, Ev. 229). Evidence, oral or written, is hearsay when its **probative force depends in whole or in part on the competency and credibility of a person other than the witness.** *State v. Klutz*, 206 N.C. 726, 804, 175 S.E. 81. Hearsay is a statement made by a person not called as a witness, received in evidence on the trial. *People v. Kraft*, 36 N.Y.S. 1034, 1035, 91 Hun, 474. The term is sometimes used synonymously with "report", *State v. Vettere*, 76 Mont 574, 248 P. 179, 183; and with "rumor" — Black's Law Dictionary 4th ed. (emphasis added)

18. "Every person accused of a crime has a right to 'confront the accusers and witnesses' against him, and there is no surer safeguard thrown around a person of the citizen than this guaranty, contained in this one of our declaration of rights," McCormick's Cases and Materials, Charles McCormick, 1971, citing *State v. Hargrave*, 97 N.C. 457, 1 S.E. 774. In Tennessee, that would be in article 1, section 9, "that in all criminal prosecutions, the accused hath the right *** to meet the witnesses face to face[.]"
19. The prosecution is based on a sworn statement of Officer Hughes, who is neither eyewitness nor an aggrieved or injured party.
20. This Court lacks "**SUBJECT MATTER JURISDICTION**" in this case and has a **DUTY** to dismiss it Ministerially, because it is **VOID** from inception, there being no actionable instrument to ignite prosecution or adjudication.
21. But seeing that accused's Attorney, Bill Speek — whom he fired for Incompetence — failed to point out the obvious at **the first hearing** before this Court, **the second hearing before this Court or the third hearing** before this Honorable Court, accused asks leave to review the law.
22. The Tennessee Rules of Criminal Procedure provide that when a person is arrested without a warrant, he or she "shall be taken without unnecessary delay before the nearest appropriate magistrate" and that "[a]n **affidavit of complaint** shall be filed promptly."
23. Tenn. R.Crim. P. 5(a). Tennessee Rule of Criminal Procedure 3 defines an **affidavit of complaint** as follows:
 - i. [A] statement alleging that a person has committed an offense. It must:
 - ii. (a) be in writing;

- iii. (b) be made **on oath before a magistrate** or a neutral and detached court clerk authorized by Rule 4 to make a probable cause determination; and
- iv. (c) **allege the essential facts** constituting the offense charged. (emphasis added)

24. A narrative by a Police Officer, even though sworn before a magistrate, is not evidence and sets forth no **“ESSENTIAL FACTS.”**

- i. Police reports are hearsay and are not admissible as evidence. The primary problem with the admissibility of police reports is that the report is hearsay made up of opinion or conclusion not based on personal knowledge. Paine, *Tennessee Law of Evidence* § 108 (1974); *McBee v. Williams*, 56 Tenn.App. 232, 238, 405 S.W.2d 668, 671 (1966):
 - a. Police reports based upon statements of witnesses are hearsay and are not admissible in evidence. The reasoning behind this rule is that if the officer is present he can testify as to his first hand knowledge. He cannot testify as to what was told to him and such matters could not be admitted with the report in any event. If the report is admitted, it may not contain material to which the author, had he been present, would be incompetent to testify. Burch, *Trial Handbook for Tennessee Lawyers* § 322 (1980) (citations omitted).

McDonald v. Onoh, 772 S.W.2d 913, 914 (Tenn. Ct. App. 1989)

25. *Trezevant v. Tampa* 741 F.2d 336 *; 1984 U.S. App. LEXIS 18863 makes clear that if one is under arrest and booked and humiliated even for a single minute **outside of due process**, the state or its agent imposes irreparable damage. The case turns on the fact that Mr. Trezevant being incarcerated rather than making bond.

- 1. Officer Eicholz escorted Mr. Trezevant to central booking and when [**5] they arrived he frisked Mr. Trezevant and took him through the door normally [*339] used by policemen with arrestees in custody. Officer Eicholz walked up to the central booking desk and presented the jailer on duty with Mr. Trezevant and with the citations that Mr. Trezevant had refused to sign.

2. The jailer took Mr. Trezevant's valuables and his belt and shoes and placed Mr. Trezevant in a holding cell until he could be processed. Mr. Trezevant was in the holding cell for a total of twenty-three minutes. Mr. Trezevant always had enough cash to bond himself out. **No one ever told Mr. Trezevant what he was being incarcerated for; he was not allowed to call an attorney before he was incarcerated; and, he was incarcerated with other persons who were under arrest for criminal violations.** Further, while he was being held in the holding cell, Mr. Trezevant suffered severe back pain and his cries for medical assistance were completely ignored.

In the case at bar, Mr. Trezevant's incarceration was the result of numerous mistakes which were caused by the policemen and deputies carrying out the policies and procedures of the City of Tampa and the HBCJ. There was certainly sufficient evidence for the jury to find, as it did, that pursuant to official policy Officer Eicholz escorted Mr. Trezevant to central booking where he was to be incarcerated until the HBCJ personnel could process the paper work for his bond. We cannot view [**10] the actions of Officer Eicholz and the jailer in a vacuum. Each was a participant in a series of events that was to implement the official joint policy of the City of Tampa and the HBCJ. 4

3. The failure of the procedure to adequately protect the constitutional rights of Mr. Trezevant was the direct result of the inadequacies of the policy established by these defendants. The trial court correctly denied the motions for directed verdict and submitted the case to the jury.

4. [T]here was sufficient evidence for the jury to find that **Mr. Trezevant's unconstitutional incarceration was the result of an official policy.** [**12] Officer Eicholz escorted Mr. Trezevant to central booking and the HBCJ deputies then processed Mr. Trezevant in the normal course of business and in accordance with what they considered to be governmental policy. The fact that no motorist prior to Mr. Trezevant had elected to not sign a citation but rather post a bond is hardly justification

for having no procedure. The record is devoid of any explanation as to **why Mr. Trezevant was not allowed to use the entrance and [*341] window routinely used by attorneys and bondsmen.**

Trezevant v. Tampa 741 F.2d 336 *; 1984 U.S. App. LEXIS 18863

26. The Trezevant court upheld damages of \$25,000, or \$1,086 per minute of false arrest. In that case, he was going to make his own bond before a magistrate. But he was jailed and damaged.
27. In the case against accused, without a proper charging instrument and no witness, an arrest is a tort, if not a crime, with accused in the jail and under arrest about seven hours.
28. With **NO LAWFUL ACCUSATION, NO LAWFUL CRIMINAL CASE** may proceed.
- i. A lawful accusation is an essential jurisdictional element of a criminal trial, without which there can be **no valid prosecution**. [citation omitted]
 - ii. No valid conviction can be had upon a void warrant or indictment. Criminal prosecutions cannot be sustained by intendment, but everything necessary to constitute the offense must be charged. Church v. State, 206 Tenn. 336, 333 S.W.2d 799 (1960). (emphasis added)
 - iii. *** “Conviction upon a charge not made would be sheer denial of due process.” De Jonge v. State of Oregon, 299 U.S. 353, 362, 57 S.Ct. 255, 259, 81 L.Ed.2d 278 (1937).

State v. Morgan, 598 S.W.2d 796, 797 (Tenn. Crim. App. 1979)

29. If this court lets this prosecution survive this motion, how will state argue mens rea, not having alleged it in the charging instrument? And, on the face of it, how could it convince a jury of wicked motive? **MENS REA** is an essential element, and innocent intent is written all over this case, even through the eyes of Officer Hughes. His affidavit makes no hint of motive, and leaves the reader baffled as to why accused would commit a felony and moments later call police to the scene and wait for their arrival with his report about the girls’ erratic driving and destruction of property and vehicle.

Argument

30. This Honorable Court has little option but to **DISMISS** this case because it has **NO PROPER CHARGING INSTRUMENT** allowing the accused to face his accuser. Officer Hughes is not a witness, and no accuser has come forth.
31. It is improper for accused to have been arrested, jailed for seven hours, all without a proper complaint. It is improper for him to not have been told, "Mr. James, seeing you have no accuser willing to swear a complaint before the magistrate, you are free to leave. Thank you for calling 911, and we are sorry for having troubled you with our questions for so long. You did the right thing, sir. Thank you for caring."
32. Accused is victim of a False Report and False Statement to a Police Officer in violation of Tenn. Code Ann. § 39-16-502. A hearing of Ella Peters' conversation with the 911 dispatcher shows she made up the story of a gun as she went. ***If she is the primary accuser, how is it that she alleges the accused waved a firearm then asks the older girl if the "black male" had a gun?***
33. This child, age 14, commits a crime, as it "is **unlawful** for any person to *** [i]nitiate a report or statement to a law enforcement officer concerning an offense or incident within the officer's concern knowing that *** [t]he offense or incident reported did not occur" and the "information relating to the offense reported is false" Tenn. Code Ann. § 39-16-502 (emphasis added).
- 34. FURTHER ACCUSED SAYETH NAUGHT.**

Mr. Michael James

CERTIFICATE OF SERVICE

I Hereby Certify that the above **Brief in Support of Motion to Dismiss** was served this _____ day of _____ 2020 by hand delivery to Mr. Neal Pinkston / Chief General District Attorney, in the Courts building in Chattanooga, Tennessee 37402

Mr. Michael James