

In municipal court of City of Adel, Georgia

City of Adel

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)

)

Vs.

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Case no. 22-07-00034

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David Albritton

)

Motion to Dismiss

Comes now the accused, David Albritton of Cookeville, Tenn., moving the court to dismiss this criminal case in its entirety for lack of subject matter jurisdiction, that being that the city employee and officer seeks to enforce provisions of Georgia law at O.C.G.A. §§ 40 not adopted by city of Adel, and so outside of the court's jurisdiction, and that the fourth charge, obstruction, lacks a charge upon which it might be premised or based to have any force and effect.

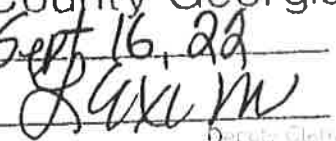
On these grounds, as explained in the accompanying brief in support, accused demands dismissal of the cause with prejudice.

Respectfully submitted,



David Albritton

F I L E D
Adel Municipal Court
Cook County Georgia

Sept 16, 22
By: 
Deputy Clerk

CERTIFICATE OF SERVICE

David Albritton avers that a true and exact copy of this motion is being sent this 13 th day of September, 2022, by first-class U.S. mail, with postage sufficient to assure delivery, to the following two parties:

1. Laura Exum
2. Judge David Sandbach



David Albritton

In municipal court of City of Adel, Georgia

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Vs.)	Case no. 22-07-00034
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Brief in support of Motion to Dismiss

Comes now the accused, David Albritton of Cookeville, Tenn., to show that this case, allegedly a criminal matter, is without legal foundation, lacking the requisite legal substance to be brought before the court, which accusations make claims for which relief cannot be granted in a court lacking subject matter jurisdiction.

Facts of the case

Accused is traveling north on Interstate 75 on July 8, 2022 with his wife and two sons as fellow occupants of a white four-door Camry automobile.

According to four "uniform citation, accusation & summons" forms, Officer C. McClellan no. 303, seizes and arrests accused without a warrant in hand and takes him to the Cook County jail. She files four criminal charges:

1. "15% windshield," according to her citation no. 30605722, citing as authority O.C.G.A. § 40-8-73.1

2. "5 year old no booster seat or shoulder restraint where equipped," according to her citation No. 306057223, citing O.C.G.A. § 40-8-76
3. "8 year old without shoulder restraint where equipped," according to her citation No. 30605724, citing O.C.G.A. § 40-8-76
4. "Subject refused to surrender his license after several verbal commands, would not identify ages of children without proper seatbelts[;] obstructing investigation necessary for which citation," according to citation No. 306005725, Obstruction, O.C.G.A. § 16-10-24

Jurisdictional statement

The accused granted in personam jurisdiction, and made appearance in city court Aug. 24, 2022.

The court is the city's judicial branch, established by city charter, Part 1, section 15, as the "mayor's or recorder's court," with jurisdiction "to try offenses against the laws and ordinances of said city, committed within the said jurisdictional limits" (Adel charter sect. 15(b)).

The city names a recorder to be judge of the municipal court, a person who "shall be any upright and intelligent registered voter of the City of Adel," with the city clerk acting as clerk of court, and the police chief who "shall attend said court" and "[enforce] its sentences as they may be required by ordinances" of the city (charter sect. 15(a)). The court, on conviction of "violation of any law or ordinance of said city," has authority to fine and to jail (charter sect. 15(d)).

The mayor's department of police is authorized to administer city code ordinances — to "see to the enforcement of all ordinances and laws made for the government of the city" (Code Sec. 46-31).

Adel code of ordinances adopts parts of the Georgia motor vehicle code in Title 40, specifically,

Pursuant to O.C.G.A. §§ 40-6-372 through 40-6-376, O.C.G.A. §§ 40-6-1 through 40-6-395 (except for O.C.G.A. §§ 40-6-393, 40-6-393.1 and 40-6-394) of that chapter known as the Uniform Rules of the Road are hereby adopted as and for the traffic regulations of this city with like effect as if recited in this chapter.

Sec. 74-1. - Adoption of Uniform Rules of the Road (Code 1986, § 13-1)

Georgia law holds that corporation courts administer a limited jurisdiction. Cities may enforce portions of state law if adopted by reference and insert by reference into city code.

[E]nforcement of state criminal laws in state courts is preempted when the legislature vests municipal courts with jurisdiction over the prosecution of state criminal laws. It has been consistently held — at least in the absence of state constitutional authorization, see *Hannah v. State*, 97 Ga.App. 188, 192, 102 S.E.2d 624 (1958); *Grant v. Camp*, 105 Ga. 428, 31 S.E. 429 (1898) — that:

This the General Assembly cannot do. ‘That the only courts with authority or jurisdiction under our Constitution to try “State Cases,” or persons charged with violations of State laws, are State courts, is firmly established *** . *State v. Millwood*, 242 Ga. 244, 246, 248 S.E.2d 643 (1978) [citations omitted]

Kolker v. State, 260 Ga. 240, 241, 391 S.E.2d 391, 392 (1990)

Three of the four charges in this case are state law charges that must be dismissed ministerially, as the court cannot reach any merits or law as it has no subject matter jurisdiction.

The window tint law at O.C.G.A. § 40-8-73.1 is not adopted by the city. The child restraint law, that affects children who are passengers under O.C.G.A. § 40-8-76, is not adopted by the city.

The accused next considers the court's jurisdiction over the fourth criminal charge in this case, that of obstruction.

City ordinance prohibits a person from obstructing city employees in two instances, both civil in nature. One is upon "holder of any alcoholic beverage license" who "fail[s] to cooperate with or obstruct any such officer *** in connection with the conduct of any investigation *** with respect to the licensed premises" (Adel code sect. 6-139). Secondly, the city is protected from obstruction when an inspector, under proper authority, seeks to inspect soil-disturbing activity, Adel code sect. 30-146.

City employee McClellan's obstruction charge is for a misdemeanor offense alleging the accused "knowingly and willfully obstructs or hinders any law enforcement officer" in "the lawful discharge of his or her official duties" (emphasis added).

The criminal obstruction statute reads as follows:

(a) Except as otherwise provided in subsection (b) of this Code section, a person who knowingly and willfully obstructs or hinders any law enforcement officer, prison guard, jailer, correctional officer, community supervision officer, county or Department of Juvenile Justice juvenile probation officer, probation officer serving pursuant to Article 6 of Chapter 8 of Title 42, or game warden in **the lawful discharge of his or her official duties** shall be guilty of a misdemeanor.

O.C.G.A. § 16-10-24. Obstruction of officers (emphasis added)

Argument

The court lacks subject matter jurisdiction to hear this case because its creator and master, city of Adel, has elected not to adopt Title 40 provisions cited in the charging instruments.

The charging instruments refer to state law in § 40, chapter 8. The city has adopted provisions in chapter 6, not chapter 8.

Thus there is no authority for the city court to do anything but dismiss the window tint and child restraint charges with prejudice. They are brought injuriously against accused, to his harm, humiliation and expense, *ultra vires*, outside of lawful authority, arbitrarily and capriciously, and oppressively.

Reviewing the four corners of the charging instrument, McClellan the city agent is not in pursuit of any "lawful discharge" of any "official duty," as described in the obstruction statute § 16-10-24 in filing the charges pertaining to window tint and child restraint. These charges are without force and effect. They are not merely voidable, they are void.


Obstruction is premised on violation of some other law. As the alleged underlying law violations upon which obstruction is based are nullities, city employee McClellan is not — in alleging obstruction — serving "in the lawful discharge of *** her official duties." The charge of obstruction, like the others, is therefore void. Accused demands the court dismiss the obstruction charge ministerially, with prejudice.

Further, he demands an order commanding refund of the whole amount of \$752.85 he paid to the city, and an order of expungement of this case.

Respectfully submitted,



David Albritton

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