IN THE CIRCUIT COURT FOR
LAWRENCE COUNTY, TENNESSEE

Case No. 36138

STATE OF TENNESSEE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	JUDGE DAVID ALLEN
	)	
Arthur Jay Hirsch,	)	
	)	
Accused.	)	
_____	/	

MOTION TO VACATE/SET ASIDE JUDGMENT

Accused, Arthur Jay Hirsch, hereby moves for a new, neutral, and unbias judge to enter an order vacating/setting aside the judgment that was obtained by actual systemic fraud and fraud upon the court, committed through prosecutorial misconduct, and by the trial Judge, who did not perform his impartial functions of the Court in accordance with the rule of law. The assistant district attorney's and Judge's acts and omissions at trial, (set forth herein), directly corrupted the judicial machinery by their utter disregard for well-established and clearly defined statutory and constitutional law and procedure. Accused's constitutionally protected right to fundamental and procedural DUE PROCESS and EQUAL PROTECTION OF THE LAW under the 14th Amendment was violated. Accused's expectation of fair and unbiased justice in Court proceedings was never realized; only oppression. The Court's lack of jurisdiction, due to the presence of actual fraud and a fraud upon the court, the entire case and judgment are void *ab initio*. The grounds in support of

this motion follow.

REQUEST FOR MANDATORY JUDICIAL NOTICE

1. **FACTS AND LAW NOTICED**. In order for the nature and magnitude of the underlying, systemic actual fraud in this case to be clearly understood, Accused hereby requests the Court to take MANDATORY JUDICIAL NOTICE pursuant to Tenn. R. Evid., Rules 201 and 202 (support found in footnotes 1-8). The fact is noticed that TCA Title 55 – Uniform Classified and Commercial Driver License Act, is commercial in nature. Continuing, it consists entirely of Tennessee regulatory statutes, which are required to be in full compliance with "each and every" federal regulatory standard,[1] and concerns government-granted permissive privilege[2]

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[1] SUPPORT: FEDERAL STANDARDS

● **49 CFR Subpart B - Minimum Standards for Substantial Compliance by States**

The rules in this part apply to **all States**.

§ 384.301 Substantial compliance-general requirements.

(a) To be in substantial compliance with **49 U.S.C. 31311(a)**[Requirements for State participation], a **State must meet each and every standard** of subpart B of this part by means of the demonstrable combined effect of its statutes, regulations, administrative procedures and practices, organizational structures, internal control mechanisms, resource assignments (facilities, equipment, and personnel), and enforcement practices.

[2] SUPPORT: PRIVILEGE

● Sample of many permissive "privilege" and "privilege tax" regulatory statutes in Tennessee Code Title 55 include, but are not limited to, §§ 55-4-111; 55-8-101; 55-10-102; 55-10:55-12-109 (2021); 55-10-615; 55-10-405; 55-50-701; 55-50-504; 55-50-401; 55-10-406; 5-10-702; 55-12-131; 55-12-117; 55-12-129; 55-50-502; 55-10-711; 55-12-134; . . . etc.

● "A privilege is whatever business, pursuit, occupation, or vocation, affecting the public, the Legislature chooses to declare and tax as such." *Corn et al. v. Fort,* 170 Tenn. 377, 385, 95 S.W.2d 629, 623, 106 A.L.R. 647.

● **Privilege**. A particular and peculiar benefit or advantage enjoyed by a person, company, or class, beyond the common advantages of other citizens. An exceptional or extraordinary power or exemption. A peculiar right, advantage exemption, power, franchise, or immunity held by a person or class, not generally possessed by others.
Black's Law Dictionary, 6th Ed., p. 1197

● "At the least, any **occupation, business, employment, or the like** affecting the public, may be classed and taxed as a **privilege**. *Turnpike Cases*, 92 Tenn. 372; *Kurth v. State,* 86 Tenn. 135; *Jenkins v. Ewin*, 8 Heisk. 456; *Wiltse v. State*, Ib. 544; *State v. Schlier*, 3 Heisk. 281; *Columbia v. Guest*, 3 Head, 414; *Robertson v. Hennegar*, 5 Sneed, 258; *French v. Baker*, 4 Sneed, 193; *Mabry v. Tarver*, 1 Hum. 94." (emphasis added)

● **PRIVILEGE,** right. This word, taken its active sense, is a particular law, or a particular disposition of the law, which grants certain special prerogatives to some persons, **contrary to common right**. In its passive sense, it is the same prerogative granted by the same particular law. Bouvier's Law Dictionary, 1856 Edition - Letter P (emphasis added)

for persons wanting to engage in business or occupational (commercial for-hire) activity,[3] which statutorially requires **(i)**the payment of a state privilege tax,[4] **(ii)** a voluntary[5]

● **Privilege**. For tax purposes, any occupation or business which the legislature may declare to be a privilege and tax as such. *Seven Springs Water Co. v. Kennedy*, 156 Tenn. 1, 299 S.W.792, 56 ALR 496. Ballentine's Law Dictionary, 3rd Ed., p. 995.

●37 C.J. LICENSES PART ONE:FOR OCCUPATIONS AND PRIVILEGES I. DEFINITIONS, NATURE, OBJECT, AND DISTINCTIONS § 2. Privilege. **A privilege is the exercise of an occupation or business which requires a license from some proper authority**, designated by some general law, and is not free to all, or any, without such license. To constitute a privilege the grant must confer authority to do something which,without the grant, would be illegal, for if what is to be done under the license is open to all without it, the grant would be a nugatory. (emphasis added)

3

SUPPORT: BUSINESS ACTIVITY

● "**The essential elements of the definition of privilege is occupation and business, and not the ownership simply of property, or its possession or keeping it."**
Phillips v. Lewis, 3 Shann. Cas. 231. Nashville, January Term, 1877 (emphasis added)

● **"The power to regulate commerce presupposes the existence of commercial activity to be regulated."** *National Federation Of Independent Business, et al., Petitioners* (No. 11-393) *v. Kathleen Sebelius, Secretary Of Health And Human Services*, 132 S. Ct. 2566 (emphasis added)

4

SUPPORT: PRIVILEGE TAX

●"The Constitution of the state (article II, § 28) recognizes only two general kinds of taxation—ad valorem and **privilege**." *Railroad Co. v. Harris*, 99 Tenn. 701, 43 S. W. 119, 53 L. R. A. 921.(emphasis added)

● **Privilege tax**. **A tax on the privilege of carrying on a business or occupation for which a licnse or franchise is required**. *Gulf & Ship Island R. Co. v. Hewes*, 183 U.S. 66, 22 S.Ct. 26, 46 L.Ed. 86.
Black's Law Dictionary, 6th Ed., p. 1198. (emphasis added)

●Taxation of the privilege is upon the **occupation or activity** carried on amid the social, economic, and industrial environment, under protection of the state. *Phillips v. Lewis*, 3 Tenn. Cas. 230. (emphasis added)

● **Privilege tax**. **A tax on the privilege of carrying on a business for which a license or franchise is required**. *Southeastern Express Co. v. City of Charlotte*, 186 N.C. 668, 120 S.E. 475, 477; *Gulf & Ship Island R.* ***Co. v. Hewes***, 183 U.S. 66, 22 S. Ct. 26, 46 L.Ed. 86. (emphasis added)

● **"A privilege tax cannot be imposed upon anything or any act, unless it constitutes a business, occupation, pursuit or vocation."** *Shannon's Compilation of Tennessee Statutes*, Vol 1, 1917. (emphasis added)

● **TCA 67-4-101. Privileges taxable -- License required**
"The occupations, businesses and business transactions deemed privileges are to be taxed, and not pursued without license, and shall be such as are declared by this code or by legislative acts that are not to be deemed repealed by the enactment of this code." (emphasis added)

● TCA 55-4-101 (a)(1)(2)(2)
The registration and the fees provided for registration shall constitute a **privilege tax upon the operation** of motor vehicles. (emphasis added)

● **Privilege tax** A tax upon the pursuit of an occupation or the conducting of a business.
Bank of Commerce & Trust Co. v Senter, 149 Tenn. 574, 577 , 579, 260 SW 144. Ballentine's Law Dictionary, 3rd Ed., p. 996.

●37 C.J LICENSES PART ONE:FOR OCCUPATIONS AND PRIVILEGES I. – DEFINITIONS, NATURE, OBJECT, AND DISTINCTIONS § 3. License Fee or License Tax. A "license fee" or as it is otherwise called a "license tax", the two terms generally being regarded as synonmous, since the requirement of a payment for a license is only a

application for said business privilege,[6] and **(iii)** the issuance of a classified license[7] as tangible receipt for privilege tax paid.[8] The facts and law hereby mandatorially noticed to the Court provides the supporting legal authority for the Accused's reliance defense, and for

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mode of **imposing a tax on the licensed business, is the sum exacted for the privilege of carrying on a particular occupation or business**. "License fee" is not synonymous with "inspection fee". (emphasis added)

5

SUPPORT: VOLUNTARY

●**The obligation to pay an excise is based upon the voluntary action of the person taxed in performing the act, enjoying the privilege or engaging in the occupation which is subject of the excise and the element of absolute and unavoidable demand is lacking."** 26 Ruling Case Law, p. 34 (emphasis added)

6

SUPPORT: APPLICATION

●**TCA 67-4-104. Issuance of license**.

(a) **Licenses for exercising all privileges** for which license provisions are not otherwise made shall be issued on the applicant's paying to the clerk or other proper officer the **specific tax laid on the license and the fees**. (emphasis added)

● TCA 55-50-301. License required — Requirements — Exception — Applicability to temporary licenses and permits.

(a) Every person **applying for an original or renewal driver license** shall be required to comply with and be **issued a classified driver license** meeting the following requirements: (emphasis added)

● TCA 62-76-104- Denial of license for prior criminal prosecution prohibited

Over a dozen references re. **application for license**, i.e., applicant "submitting the application necessary to obtain a license, certificate, or registration. . .**for an individual to engage in an occupation, profession, business, or trade in this state. . .** " (emphasis added)

7

SUPPORT: CLASSIFIED LICENSE

● TCA 55-50-301(a)(4) License required — Requirements — Exception — Applicability to temporary licenses and permits.

(a) Every person **applying for an original or renewal driver license** shall be required to comply with and be **issued a classified driver license** meeting the following requirements:

(4) Any person licensed as a driver may exercise the **privilege granted** upon all streets and highways in this state and shall not be required to obtain any other license to **exercise the privilege** by any county, municipal or local board, or body having authority to adopt local police regulations. (emphasis added)

●"a license is a police regulation controlling the **exercise of a profession, business or occupation**" *FLANIGAN v. SIERRA COUNTY*, 25 S. Ct. 314, 196 U.S. 553. (emphasis added)

8

SUPPORT: TAX RECEIPT

●"The payment required as a preliminary to the license is in the nature and form of a tax, and is due to the State." *Royall v. Virginia*, 116 U.S. 572, 579.

● "**The granting of a license therefore must be regarded as nothing more than a mere form of imposing a tax**. . . But as we have already said**, "these licenses give no authority. They are mere receipts for taxes**" *License Tax Cases*, 72 U.S. 5 Wall. 462, 472 {1866}. (emphasis added)

the ground for setting aside/vacating the judgment for actual fraud and fraud upon the court.

DEFINITIONS

2. **FRAUD UPON THE COURT DEFINED**. The 10th Circuit defined fraud on the court in

Bulloch v. United States, 763 F.2d 1115, 1121 (10th Cir. 1985) as

●"**Fraud upon the court** is fraud which is directed to the judicial machinery itself It is where the court or a member is corrupted or influenced or influence is attempted or **where the judge has not performed his judicial function — thus where the impartial functions of the court have been directly corrupted**." (emphasis added)

● **Fraud on the court**. A scheme to interfere with judicial machinery performing task of impartial adjudication, as by preventing opposing party from fairly presenting his case or defense. . . . It consists of conduct so egregious that it undermines the integrity of judicial process. *Stone v. Stone*, Alaska, 647 P.2d 582, 586. Black's Law Dictionary, 6th Ed., p. 661.

2. **FRAUD DEFIINED.** "Anything calculated to deceive, whether by a single act or combination, or by suppression of truth, or suggestion of what is false, whether it be by direct falsehood or innuendo, by speech or silence, word of mouth, or look or gesture." *Delahany v. First Pennsylvania Bank, N.A.*, 318 PaSupper. 90, 464 A.2d 1243, 1251. Black's Law Dictionary, 6th Ed., p. 660.

3. **ACTUAL FRAUD DEFINED**. "It is something said, done, or omitted by a person with the design of perpetrating what he knows to be a cheat or deception." Black'e Law Dictionary, 6th Ed., p. 661.
Also, Actual Fraud means an intentional and knowing misrepresentation of the truth or intentional and knowing concealment of a known fact (committed with actual knowledge) that constitutes common law fraud.

ORIGIN OF UNDERLYING SYSTEMIC ACTUAL FRAUD

4. **NO APPLICATION FOR STATE-GRANTED PRIVILEGE.** When Accused moved to

Tennessee in 2005, he did not voluntarily apply for the state-granted permissive privilege to

drive, because he was not engaged in a business, occupation, profession, or trade activity

affecting the public interest which required a license.[9] (See Mandatory Judicial Notice above, ¶1, footnotes 1-8, regarding license application, privilege/privilege tax, license issuance.) Instead, Accused chose to continue exercising his unalienable [10] common law right[11] to freely travel the public highways privately, in the ordinary and usual course of life,

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9

● Bouvier's Law Dictionary, 1914, p. 2961. "Those who have the right to do something cannot be licensed for what they already have right to do as such license would be meaningless."

● "**Travel is not a privilege** requiring licensing, vehicle registration, or forced insurances." *People v. Nothaus*, 147 Colo. 210. (emphasis added)

10

● "[T]he Due Process Clause protects the **unalienable liberty** recognized in the Declaration of Independence rather than the particular rights or privileges conferred by specific laws or regulations."
Sandin v. Connor, 515 US 472, 115 S. Ct. 2293, 132 L. Ed. 2d 418 - Supreme Court, 1995

● *Bouvier's Law Dictionary (1856)* defines unalienable: "Incapable of being transferred. Things which are not in commerce, as, public roads, are in their nature unalienable. Some things are unalienable in consequence of particular provisions of the law forbidding their sale or transfer; as, pensions granted by the government. **The natural rights of life and liberty are unalienable**."

● *Webster's 1828 Dictionary* defines unalienable: UNA"LIENABLE, a. Not alienable; that cannot be alienated; that may not be transferred; as unalienable rights.

● *William Blackstone*, 18th century Common Law English jurist and judge defined unalienable in his Commentaries on the Laws of England, 1:93: "Those rights, then, which God and nature have established, and therefore called natural rights, such as life and liberty, need not the aid of human laws to be more effectually **invested in every man** than they are; neither do they receive any additional strength when declared by the municipal laws to be inviolable. On the contrary, **no human legislature has power to abridge or destroy them, unless the owner shall himself commit some act that amounts to a forfeiture**." (emphasis added)

● *Blacks Law Dictionary, 2nd Edition, (1910)* defines unalienable: "Not subject to alienation; the characteristic of those things which cannot be bought or sold or transferred from one person to another such as rivers and public highways and certain personal rights; e.g., liberty."

11

● "The business of using the public highways for profit, earned by transporting persons and property for hire, has been definitely excluded from the category of private or personal rights . . .that **the primary use of the state highways is the use for private purposes**." *State v. Harris*, 76 S.W.2d 324, 168 Tenn. 159 (1934) (emphasis added)

● *Tennessee Declaration of Rights, 1796 Constitution*
Article 10th , Section 4th**.** The Declaration of Rights hereto annexed is declared to be a part of the Constitution of this State and Shall never be violated on any pretence whatever. And to Guard against transgressions of the high Powers which we have delegated, **we declare that everything in the Bill of Rights contained and every other right not hereby delegated is excepted out of the General Powers of Government and shall for ever [i.e. forever] remain inviolate**. (emphasis added) (Now appearing at Art. 11, §16)

● SCOTUS declared the "fundamental personal right, the **right to travel**" *Dunn v. Blumstein*, 3405 U.S. 330 (1972). (emphasis added)

● SCOTUS held that **the right to travel protected against private as well as governmental interference with travel**. . . Justice Stewart described the right to travel as "fundamental to the concept of our Federal Union" and **"secured against interference from any source whatever, whether governmental or private."**
U.S v. Guest, 383 U.S. 745 (1965) (emphasis added)

business, and pleasure, in his personal, private conveyance of the day.[12] With Accused having never applying for a driver license, there can be no applicable statutory permissive privilege license requirement, and thus, there can be NO valid criminal charges in this case. Now, the actual fraud revealed.

5. **FABRICATION OF FRAUDULENT DRIVER LICENSE**. Not finding Accused to be a licensee in their database, the Department of Safety and Homeland Security (DSHS), **without statutory authority and under color of law**, "assigned" a fabricated, ficititious

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● Chief Justice Fuller observed that "[u]ndoubtedly the **right of locomotion**, the right to remove from one place to another according to inclination, is an attribute of personal liberty . . ." *Williams v. Fears*, 179 U.S. 270, 274 (1900).

● The **right to travel** without undue restriction was the very first right recognized as a fundamental liberty under the **Fourteenth Amendment** to the U.S. Constitution. See *Crandall v. Nevada*, 73 U.S. (6 Wall.) 35 (1867).

● "The use of the highways for the purpose of **travel** and transportation is **not a mere privilege, but a common and fundamental Right** of which the public and the individual cannot be rightfully deprived." *Barney vs. Board of Railroad Commissioners*, 17 P.2d 82.

● "The right to operate a motor vehicle [an automobile] upon the public streets and highways is **not a mere privilege. It is a right of liberty**, the enjoyment of which is protected by the guarantees of the federal and state constitutions." *Berberian v. Lussier* (1958) 139 A2d 869, 872, See also: *Schecter v. Killingsworth*, 380 P.2d 136, 140; 93 Ariz. 273 (1963). (emphasis added)

12

● A **public highway** is such a passageway as any and **all members of the public** have an **absolute right** to use as distinguished from a **permissive privilege** of using same. *Standard Life Ins. Co. v. Hughes*, 203 Tenn. 636, 315 S.W.2d 239, 243, 1958 Tenn. LEXIS 229 (1958). (emphasis added)

●"Each citizen has the **absolute right** to choose for himself the **mode of conveyance he desires**, whether it be by wagon or carriage, by horse, motor or electric car, or by bicycle, or astride of a horse, subject to the sole condition that he will observe all those requirements that are known as the law of the road." *Cumberland Telephone. & Telegraph Co. v Yeiser* 141 Kentucy 15. (emphasis added)

● "The right to travel is an "**unconditional personal right**," a right whose exercise may not be conditioned.". . "Iron curtains have no place in a free world. …'Undoubtedly the **right of locomotion, the right to remove from one place to another according to inclination**, is an attribute of **personal liberty**, and the right, ordinarily, of free transit from or through the territory of any State is a right secured by the Constitution.'*Shapiro v. Thompson*, 394 U.S. 618, 643; *Dunn V. Blumstein*, 405 U.S. 330, 342 (1972) No. 70-13; *State v. Stroud*, 52 S.W. 697, 698 (emphasis added)

● "A citizen may have, under the Fourteenth Amendment, the **right to travel** and transport his property upon them by auto vehicle. But he has no right to make the highways his place of business by using them as a **common carrier for hire**. Such use is a **privilege** which may be granted or withheld by the state in its discretion, without violating either the due process clause or the equal protection clause." *Packard v. Banton*, 264 U.S. 140, 144 (1929) (emphasis added)

● "The business of using the public highways for profit, earned by transporting persons and property for hire, has been definitely **excluded** from the category of **private or personal rights** . . .that **the primary use of the state highways is the use for private purposes**." *State v. Harris*, 76 S.W.2d 324, 168 Tenn. 159 (1934) (emphasis added)

Tennessee driver license (#133629637) out of thin air in Accused's name, and suspended it (class B misdemeanor) for the purported non-statutory cause that Accused had "failed to show evidence of financial responsibility" (insurance) during a police encounter on July 29, 2017 (**ATTACHMENT A** - recent copy of another fraudulent suspension notice). Accused WAS NOT A LICENSEE subject to TCA 55-12-139 financial responsibility statutes, since there is no evidence that he was/is engaged in a regulable, taxable, privileged business or occupational activity, transporting people or goods for hire, requiring a license or insurance. (It should be noted that **THE CHARGING STATUTE CANNOT BE LAWFULLY ENFORCED AGAINST ACCUSED WHO WAS NOT AT THE TIME SUBJECT TO ITS CONSTRUCTION!)** Accused has learned from researching case law (*stare decisis)* that insurance is only mandatory for those persons conducting business in commerce, transporting people or goods for hire, by carrier/motor vehicle as "security against injuries from the carrier's negligent operations to persons and property [general public] other than the passengers and property he carries."[13]

6. **EFFORT TO COERCE ACCUSED INTO PRIVILEGE STATUS**. In an effort to coerce Accused into an involuntarily, taxable permissive privilege status against his will,[14] DSHS bypassed ALL required federal and state licensing and suspension rules and regulations in

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13

● "The use of public highways by private intrastate and interstate carriers of goods by motor vehicle may be conditioned by the state upon the carrier's **obtaining a license**, complying with reasonable regulations, **paying a reasonable license fee and a tax**, for expenses of highway administration and maintenance and reconstruction of the highways covered by the license, and upon the filing of an **insurance policy** as security against injuries from the carrier's negligent operations to persons and property other than the passengers and property he carries." *Continental Baking Co. v. Woodring*, 286 U.S. 352, 365 (1932) (emphasis added)

14

● "The claim and exercise of a constitutional Right cannot be converted into a crime." *Miller vs. U.S.*, 230 F. 486, 489

fabricating the aforesmentioned fraudulent suspended driver license, without Accused's knowlege or consent, pretending it to be the legal equivalent to a valid statutory license – which it is not![15] Said license was arbitrarily "assigned" to Accused by DSHS, NOT STATUTORILY "ISSUED," as required by law; therefore, it is a LIE**,** a FRAUD**,** and FALSE EVIDENCE, which the assistant district attorney, Gary Howell, and Judge David Allen, knowingly and intentionally condoned and perpetrated on the Court, causing injury to Accused.[16]

7. **EXCULPATORY EVIDENCE OBTAINED FROM DSHS**. Accused requested and received documentary evidence from DSHS admitting that "**you [Accused] have not applied for a driving license in the State of Tennessee**," and that **no copy of an application or license is on file –** as required by law. Accused's affidavit 3, admitted into evidence, states, to wit:

> ●P. 2, ¶ 11 **["That Affiant declares he received a letter from the Department of Safety ("DOS") dated January 11, 2018, addressed to Affiant, and signed by Kyle Turner, Staff Attorney, stating, "However, as a practical matter, this Department <u>does not have any responsive records to your requests 1 and 2</u> [i.e. (1) requested photo copy of the Accused's application for a Tennessee driver license, (2) requested a photo copy of the Accused's driver license;"]**
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> **●P. 2, ¶ 12 ["That Affiant declares he received a letter from the Department of Safety ("DOS") dated July 15, 2019, stating that he has never applied for a Tennessee driver license (ATTACHMENT C)"]**

8. **ROUTINE FRAUDULENT POLICY AND PRACTICE – CONSPIRACY**. Accused

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15

● **"No state may convert a secured liberty into a privilege, and issue a license and fee for it. . . a person cannot be compelled "to purchase, through a license fee or a license tax, the privilege freely granted by the constitution."** *Murdock v. Pennsylvania*, 319 U.S. 105 (emphasis added)

16

● It has long been established that the **<u>loss of constitutional freedoms</u>** , "for even minimal periods of time, unquestionably constitutes **<u>irreparable injury</u>** ." *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion) (citing *New York Times Co. v. United States*, 403 U.S. 713 (1971))." — *Caneisha Mills, et al., v. District of Columbi*a No. 08-7127, U.S. Court of Appeals for the District of Columbia, July 10, 2009 (emphasis added)

learned that non-statutory "assignment" of driver licenses by DSHS is a routine systemic fraud. A certified deposition transcript from a lawsuit in federal district court reveals that the unlawful fabrication and suspension of driver licenses is routine policy and practice by the DSHS, along with the approval and coverup of co-conspirator, former attorney general, Herbert Slatery, III. Proof for this assertion is in the following sworn testimony of DSHS commissioner, David Purkey, by counsel in the case of *Thomas & Hixson v. Haslam, et al,* Case No. 3:17-cv-00005, United States District Court, Middle District of Tennessee, Nashville Division:

"MEMORANDUM"

> ● **Page 5**. **Docket No. 64 ¶ 31** "An individual may be treated as having a revoked license, even if he was not licensed to drive by the State of Tennessee as an initial matter; TDSHS simply assigns such a person a driver's license number and classifies the corresponding "license" as revoked." [Defendant Purkey by counsel, attorney general, Herbert Slatery, III, admits] "That an individual's "license" may be "revoked" under section 40-24-105(b) even if the individual has never had a driver's license [FALSE – SEE BELOW]: upon the Court Clerk's notification that the person has Court Debt that has been unpaid for one year, the Commissioner assigns a license number [NOT LEGALLY EQUIVALENT TO A VALID STATUTORY LICENSE-NO LEGISLATIVE AUTHORITY] to the individual and notes the license as "revoked."
> (See Tenn. Code Ann. § 55-50-102(48)" that addresses revocation of a person's **EXISTING** "license or privilege," NOT one fabricated/assigned]

8.1. **NO AUTHORITY TO "ASSIGN" FICTITIOUS LICENSE**. The Title 40 statute cited in the above deposition was intentionally misrepresented/misconstrued and does NOT authorize the "assigning" of fabricated fictitious driver licenses and revocations as falsely alleged by attorney general Herbert Slatery, III! Here's what the statute says verbatim:

● **TCA 40-24-105.** Collection of fines, costs and litigation taxes -- Installment payment plan -- Suspended license -- Restricted license -- Conversion to civil judgment -- Settlement.
(b)
(1) "Any person who is **issued** a license under title 55 [ONLY FOR AN EXISTING STATUTORILY ISSUED LICENSE], and who has not paid all litigation taxes, court costs, and fines assessed as a result of disposition of any offense under the criminal laws of this state within one (1) year of the date of the completion of the sentence shall **enter into an installment payment plan** with the clerk of the court ordering disposition of the offense to make payments on the taxes, costs, and fines owed." [NOTHING SAID HERE ABOUT "ASSIGNING" A FABRICATED FICTITIOUS LICENSE TO A PERSON AND SUSPENDING IT AS FALSELY ALLEGED BY HERBERT SLATERY III ABOVE] (emphasis added)

Here's more on lack of authority to "assign" non-statutory licenses:

● **TCA 55-50-102(48)** "Revocation of driver license" means the termination by formal action of the department of a **person's driver license or privilege** to operate a motor vehicle on the public highways, which termination shall not be subject to renewal or restoration except that an **application** for a new license may be presented and acted upon by the department after the expiration of at least one (1) year after the date of revocation; [NO LEGISLATIVE AUTHORITY SHOWN FOR "ASSIGNING" A FICTITIOUS LICENSE OUTSIDE STATUTORY REQUIREMENTS]

9. **FALSE DATABASE ENTRY**. DHS entered the falsified record of Accused's alleged suspensed driver license in a database accessible to law enforcement officers, which resulted in three citations, arrest, impoundment, and physical, emotional distress, and financial injury.

10. **INDICTMENT BASED ON FALSE "SUSPENDED LICENSE**." Police encounter on July 29, 2017, resulted in an indictment due to the fraudulently suspended driver license appearing on the State's database, which led to Accused's trial, conviction and judgment after a five year delayed prosecution.

11. **GRIEVANCE NOTICE TO DSHS**. Accused sent a Grievance Notice and Revocation Request to DSHS to remove the fraudulent suspended driver license, but to no avail. Accused declared that there is no evidence of record, whatsoever, that he has ever been engaged in a state-granted privileged for-hire activity in commerce which would require the payment of a privilege tax, obtaining a driver license, vehicle registration, or insurance . DSHS refused to answer Accused's notice and request – silence. Since DSHS officials, as public seervants, have a duty to answer Accused, but have remained silent to date, the courts have held that such stonewalling is equivalent to fraud.

> ●*United States v. Prudden*, 424 F.2d 1021, 1032 (5th Cir. 1970)
> **"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**." *See United States v. Sclafani*, 265 F.2d 408 (2d Cir.), cert. den., 360 U.S. 918, 79 S.Ct. 1436, 3 L.Ed.2d 1534 (1959); *c.f., Avery v. Cleary*, 132 U.S. 604, 10 S.Ct. 220, 33 L.Ed. 469 (1890); *Atilus v. United States*, 406 F.2d 694, 698 (5th Cir. 1969); *American Nat'l Ins. Co., etc. v. Murray*, 383 F.2d 81 (5th Cir. 1967). (Emphasis added.)
>
> ●*United States v. Tweel*, 550 F.2d 297, 299 (5th Cir. 1977)
> **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**. (Emphasis added.)

FRAUD UPON THE COURT

12. **COURT AND PROSECUTION FULLY AWARE OF FRAUD**. At trial, the Judge stated that he had read the pleadings in Accused's case file which included mandatory judicial notices, verified motions to dismiss, motion to quash indictment, notice of fraud, FBI and DOJ fraud complaints, motion to dismiss for fraud, grievance notice and demand for revocation, affidavits, DSHS documents, Brady requests to district attorney general, Brent Cooper, supplemental filings, etc.. All these papers, and more. specifically called out and

exposed in detail to the Court, the fraud perpetrated by DSHS, i.e., by "assigning" the aforesaid NON-STATUTORY privilege license and criminalizing it in Accused's name, in the absence of any evidence that Accused was engaged in a regulated, privilege taxed business activity requiring a license, and subject to TCA Title 55 statutes. The prosecutor, assistant district attorney, Gary Howell, also, had been served with each of Accused's aforesaid pleadings spanning a five year period, and was cognizant of the fraudulent suspended license and void indictment. Yet, he knowingly and intentionally misrepresented Accused's alleged offense of "driving while his privilege to do so was suspended" to the grand jury and to the Court at trial, thus committing fraud on the Court.

13. **NO JURISDICTION WHEN FRAUD IS REVEALED**. Therefore, assuming the Judge's statement to be true, that is, he read pre-trial the aforesaid contents in Accused's case file, then it is clear that he was aware and fully informed, with respect to the non-statutory fraudulently fabricated suspended privilege license, and is without excuse for knowingly and intentially perpetuating the fraud-based indictment in bad faith.[17] Upon the Judge's knowledge of the fraud, the Court's subject matter jurisdiction was lost.[18] This fact did not

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● *Arnold v. Contemporary Media*, 19 S.W.3d at 789 (1999) WL 2922 The Arnold court adopted Black's Law Dictionary definition of bad faith, which includes an element of fraud, sinister motive, dishonest purpose, ill will, or similar intent

18

●"A court lacking jurisdiction cannot render judgment but must dismiss the cause at any stage of the proceedings in which it becomes apparent that jurisdiction is lacking." *Bradbury v. Dennis*, 310 F.2d 73 (10th Cir. 1962)

●When it clearly appears that the court lacks jurisdiction, the court has no authority to reach the merits. In such a situation the action should be dismissed for want of jurisdiction."
Melo v. United States, 505 F. 2d 1026

●22 C.J.S. p. 202 – Where jurisdiction to try offenses is acquired by an indictment or by an information where the indictment or information is invalid, the court is without jurisdiction.

● "But jurisdiction is not a matter of sympathy or favor. **The courts are bound to take notice of the limits of their authority,** and it is no part of the defendant's duty to help in obtaining an unauthorized judgment by surprise."

deter the Judge, however; for he and the prosecutor engaged in fraud on the court by proceeding to try the void offense anyway without jurisdiction. Accused's judgment was therefore void from its inception; a complete nullity, and without legal effect It must be set aside as a matter of law.

●". . .Even more clearly it is fraud to fail to "level" with one to whom one owes fiduciary duties." *Prosser and Keeton on the Law of Torts* §§ 105-06 (5th ed. 1984). **"Fraud destroys the validity of everything into which it enters**." *Boyce's Executors v. Grundy* (1830) 28 U.S. 210. (emphasis added); "**Fraud vitiates everything it touches**." (common law maxim) *Nudd v. Burrows* (1875) 91 U.S. 416; "**Out of fraud no action arises**." Maxim of law.

●"Where there is no jurisdiction, there can be no discretion, for discretion is incident to jurisdiction." *Piper v. Pearson*, 2 Gray 120, cited in *Bradley v. Fisher*, 13 Wall. 335, 20 L.Ed. 646 (1872)

●A void judgment or order is one that is entered by a court lacking jurisdiction . . . or where the order was **procured by fraud**, *In re Adoption of E.L.*, 733 N.E.2d 846, (Ill.App. 1 Dist. 2000); Void judgments generally fall into two classifications, that is, judgments where there is want of jurisdiction of person or subject matter, and **judgments procured through fraud**. *Irving v. Rodriquez*, 169 N.E.2d 145, (Ill.app. 2 Dist.); 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; *Lubben v. Selective Service System Local Bd.* No. 27, 453 F.2d 645, 14 A.L.R.; *Hobbs v. U.S. Office of Personnel Management*, 485 F.Supp. 456 (M.D. Fla. 1980); *Holstein v. City of Chicago*, 803 F.Supp. 205, reconsideration denied 149 F.R.D. 147, affirmed 29 F.3d 1145 (N.D. Ill 1992); Judgment is a void judgment if court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, of **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); *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.

Reid v. United States, 211 U.S. 529, 539 (1909) (emphasis added)

● 21 C.J.S. P. 105 **If the court finds at any state of the proceedings that it is without jurisdiction, it is its duty to take proper notice of the defect by staying the proceedings, dismissing, or other appropriate action. These rules apply irrespective of the wishes of the parties."** (emphasis added)

Const. Amed. 5, *Hays v. Louisiana*, Dock Co., 452 n.e.2D 1383 (Ill. App. 5 Dist. 1983);

14. **NO ADHERENCE TO THE RULE OF LAW.** The record shows that the Court Judge[19] violated a known duty to uphold the impartial "judicial machinery" of the Court at trial, but instead, undermined it, which constitutes FRAUD UPON THE COURT by definition. Accused alleges the Judge failed to conscientiously perform his judicial function impartially, but acted corruptly throughout the judicial process by not following clearly established law and failing to dismiss the case for fraud, and showing bias. By arbitrarily acting in a manner inconsistant with the constitutional DUE PROCESS and EQUAL PROTECTION clause of the Fourteenth Amendment, the Court committed fraud on the court. Again, the Court lacked/lost subject matter jurisdiction at trial from the begining; not only from the Judge willfully departing from well settled law, but also because of the presence of said underlying actual fraud, made fully to appear, which vitiated Accused's entire case making all proceedings, conviction, and judgment void.

- "Fraud vitiates and avoids all human transactions, from the solemn judgment of a court to a private contract and is as **fatal in a court of law** as in a court of equity." *New York Life Ins. Co. v. Nashville Trust Co.*, 200 Tenn. 513, 292 S.W.2d 749, 59 A.L.R.2d 1086 (1956). (emphasis added);

- "Fraud upon the court" makes void the orders and judgments of that court. . . **any attempt to commit "fraud upon the court" vitiates the entire proceeding.**" *The People of the State of Illinois v. Fred E. Sterling*, 357 Ill. 354; 192 N.E. 229 (1934). (emphasis added)

- The Supreme Court has also held that if a judge wars against the Constitution, or

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- **A judge is an officer of the court**, as well as all attorneys. A **state judge** is a **state judicial officer**, **paid** by the State **to act impartially and lawfully**. A federal judge is a federal judicial officer, paid by the federal government to act impartially and lawfully. State and federal attorneys fall into the same general catagory and must meet the same requirement. **A judge is not the court**. (emphasis added) *People v. Zajic*, 88 Ill. App.3d 412, 414 (1980), 410 N.E.2d 626

if he **acts without jurisdiction**, he has engaged in **treason to the Constitution**. *Cohens v. Virginia*, 6 Wheat. 264, 404 (1821). (emphasis added)

15. **MISCONDUCT AT TRIAL**. A sample list of the Judge's misconduct (in collusion with the prosecutor) in arbitrarily abandoning of the rule of law includes**:**

15.1. **DUE PROCESS VIOLATIONS**. Beside proceeding to prosecute Accused without jurisdiction, the Court further engaged in fraud on the court by violating Accused's constitutionally secured right to fundamental and procedural DUE PROCESS and EQUAL PROTECTION in other ways as follows:

15.1.1. **ARBITRARY REFUSAL/DENIAL CONTRARY TO LAW**. The Court engaged in fraud on the court by arbitrarily refusing to acknowledge and accept Accused's three pre-trial requests for mandatory judicial notice contrary to law, i.e., Tenn. R. Evid, Rule 201 and 202, which plainly state that judges "**SHALL**" take notice upon request by a litigant. The Judge knowingly and intentionally disregarded clearly established[20] law at trial in an apparent attempt to avoid being bound by the truth facts and law contained in said notices. As said before, Accused's constitutionally secured right to DUE PROCESS and EQUAL PROTECTION was violated by the Judge's willful breach of duty to abide by the rules of evidence, — further showing disrespect for the Rule of Law, and committing fraud upon the court.

20

● "Thus, to be "**clearly established**" a right must be sufficiently clear 'that every reasonable official would [have understood] that **what he is doing violates that right**.'"
Stack v. Boyle, 342 U.S. 1, 72 S.Ct. 1, 96 L.Ed.3 (1951). (emphasis added)

● **"The law is clearly established when it is regarded as controlling authority or based on a "robust consensus" of persuasive authority."** *Hodgers-Durgin v. de la Vina*, 199 F.3d 1037, 1040 n. 1 (9th Cir.1999). (emphasis added)

● On January 1, 1990, the Tennessee Rules of Evidence was enacted and Tenn. R. Evid. 202 provides for judicial notice of law. Rule 202(a) **requires the courts to take mandatory judicial notice of certain laws**, including "the constitutions and statutes of the United States and of every state, territory and other jurisdictions of the United States." *411 Partnership,v. Knox County, Tennessee, et al*.372 S.W.3d 582 (2011) (emphasis added)

● **"[A]cting contrary to a known duty is a common characteristic of willful conduct in other contexts**." *United States v. Pomponio*, 429 U.S. 10, 12, 97 S.Ct. 22, 50 L.Ed.2d 12 (1976) (filing tax returns); *People v. Hagen*, 19 Cal.4th 652, 80 Cal.Rptr.2d 24, 967 P.2d 563, 567 (1998) (filing tax returns); *Landwer v. Scitex Am. Corp*., 238 Ill.App.3d 403, 179 Ill. Dec. 653, 606 N.E.2d 485, 489 (1992) (refusing access to public records); *Att'y Grievance Comm'n of Md. v. Mininsohn*, 380 Md. 536, 846 A.2d 353, 369 (2004) (attorney discipline); *Suburban Hosp., Inc. v. Md. Health Res. Planning Comm'n*, 125 Md.App. 579, 726 A.2d 807, 814-15 (1999), vacated as moot 364 Md. 353, 772 A.2d 1239, 1240 (2001) (open meeting laws). (emphasis added)

● "Subjective judicial opinion has no place, however, in determining the constitutionality of the exercise of fundamental rights." *Konvalinka v. Chattanooga-Hamilton Cty Hospital*, 249 SW 3d 346 - Tenn: Supreme Court, 2008.

● *Anti-Fascist Committee v. McGrath*= 341 U.S. 123 (1951)
"Fairness of procedure is "due process in the primary sense."" *Brinkerhoff-Faris Co*. v. *Hill*, 281 U.S. 673, 681. (emphasis added)

●"[B]y `due process' is meant one which, **following the forms of law**, is appropriate to the case, and just to the parties to be affected. **It must be pursued in the ordinary mode prescribed by the law**; it must be adapted to the end to be attained; and wherever it is necessary for the protection of the parties, it must give them an opportunity to be heard respecting the justice of the judgment sought."
Hagar v. *Reclamation District*, 111 U.S. 701, 708.

15.1.2. **ACCUSED'S RELIANCE DEFENSE SABOTATED**: The refusal to accept pre-trial requests for the aforesaid three mandatory judicial notices by the Court, sabotaged Accused's entire defense source of authoritative legal material (*stare*

decisis) in one fell swoop, greatly weakened and prejudicing his reliance defense.[21] Accused's opportunity to be heard fairly in full, and his right to put on his best defense at trial – and in a meaningful manner[22] – was virtually destroyed. Accused alleges that his constitutionally secured RIGHT TO DUE PROCESS [23] and EQUAL PROTECTION was arbitrarily violated by the Court Judge, thereby perpetrating fraud on the court.

- "[A]n official who **acts outside the scope of his discretionary authority** and who **violates the Constitution** cannot assert qualified immunity even if his conduct did not violate then clearly established law." *Grossman v. City of Portland*, 33 F.3d 1200, 1209 (9th Cir.1994). (emphasis added)

15.1.3. **VERIFIED MOTION TO DISMISS DENIED WITHOUT FACTS AND LAW**.

The Court's Judge summarily denied Accused's pre-trial Verified Motion to Dismiss Per Rule 12(a),(2)(A)(B) with affidavits attached, immediately upon trial commencement *sua sponte,* without any argument in opposition or counter rebutal by the prosecution; and further, refused to state in writing the findings of fact and conclusions of law relied on for the denial as requested by Accused. Accused's

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Intent: Accused intended to present a large compilation of case law cites and legal definitions in court by pre-trial judicial notices in arguments for his reliance upon said high court controlling decisions as the foundational basis for his actions/omissions and innocent state of mind relative to his defense against the indictment charges

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Armstrong v. Manzo, 380 U.S. 545, 552 (1965)

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- *Screws v. U.S.,* 325 U.S. 92, 95, 104-6 (1945)

Thus it was stated in *Twining* v. *New Jersey*, 211 U.S. 78, 101, that due process requires that "no change in ancient procedure can be made which disregards those fundamental principles, to be ascertained from time to time by judicial action, which have relation to process of law and **protect the citizen in his private right, and guard him against the arbitrary action of government**." In *Snyder* v. *Massachusetts*, 291 U.S. 97, 105, **it was said that due process prevents state action which "offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental."** (emphasis added)

verified motion set forth copious probative cites from relevant case law and legal definitions under penalty of perjury which he relied on for his defense. Had the Court accepted Accused's motion in his defense, based upon his understanding of black letter law (*stare decisis*), legal definitions, maxims of law, law reviews, etc., as persuasive of Accused's innocense in light of his constitutional rights,[24] the prosecution would have had no case, and the Court would have had to dismiss. The Court acted contrary to judicial duty and to ABA's judicial decision elements, to wit

● **"Judges also must explain their decisions in public written opinions, and their decisions can be appealed to a higher court for review. These elements of judicial decision- making ensure that judges remain accountable to the rule of law"**
https://www.americanbar.org/advocacy/rule_of_law/what-is-the-rule-of-law/

15.1.4. **ALL EXCULPATORY EVIDENCE DISREGARDED**. The Court prejudicially disregarded ALL of Accused's exculpatory evidence, i.e., affidavits, oral testimony under oath, DSHS's exculpatory document, assistant district attorney's stipulation of fact statement that Accused "did not apply for a driving license," and State witness' lack of personal knowledge of the essential elements of the term "privilege" as applied to Accused's indictment Count One charge (see footnote 3).

15.1.4. **PRESUMPTION REBUTTALS IGNORED – NOT COUNTERED**. The Court arbitrarily refused to acknowledge Accused's rebuttal of all the State's presumptions and prima facie evidence listed below by affidavits, verified motion to dismiss, and

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[24] ● The construction given by the United States Supreme Court to the constitution and laws of the United States is to be accepted by all courts as the proper construction. *Elmendorf v. Taylor*, 23 U.S.152, 10 Wheat. 152, 6 L.Ed. 289. (1825)

oral testimony under oath, all supported by DSHS exculpatory documents and case law *stare decisis*. The prosecution did not counter Accused's rebuttals, thus it failed to bear the shifted burden of persuasion. The rebutted presumptions and related criminal charges were therefore defeated (ceased to exist) and made void – but this fact was intentionally ignored by the Court.

15.1.5. **STATE'S PRESUMPTIONS IDENTIFIED AND REBUTTED**. In light of the definition of the terms "privilege" and "privilege tax" set forth in footnotes 1-8 above, it is clear from the affidavit declarations below and oral testimony that the State's presumptions were soundly rebutted, namely**, (i)**that Accused presumably was engaged in a busines or occupation affecting the public interest requiring a privilege license, **(ii)** that Accused, therefore, was presumed to be subject to TCA title 55 charging statutes, **(iii)** that Accused had presumably applied voluntarily for the privilege to drive, and had paid the requisite privilege tax, **(iv)** that Accused presumably had been issued a valid Tennessee privilege license upon receipt of application and payment of the privilege tax, and **(v)** that Accused was presumed to be driving on said privilege license when it was allegedly suspended (main presumption). These essential presumptive elements were not only rebutted and defeated by Accused's aforesaid affidavit and sworn testimony, but also by DSHS exculpatory document stating that Accused had **never applied for a Tennessee driver license**, by assistant district attorney, Gary Howell's, stipulation-of-fact announced at trial that **"the State agrees that Mr. Hirsch never applied for a driver license**," and by State's witness' statement on cross examination that he had

no personal knowledge of any business or occupation that Accused was engaged in on July 29, 2017. The mandatory judicial notice in #1 with footnotes provided the Court with facts and law in support of Accused's rebuttal affidavits and exculpatory evidence mentioned above.

Presumptions rebutted by affidavit A3, admitted into evidence, to wit,

●P.2, ¶ 6 ["That Affiant hereby rebutts the claim by the Tennessee Department of Safety that he has a legally valid "suspended driver license" (# 133629637), because he never applied for, nor was he ever issued a proper Tennessee driver license as statutorily required, and any assumption, presumption or prima facie evidence to the contrary is hereby rebutted;"]

●P.2, ¶ 7 ["That Affiant declares he has never been engaged in a commercial business or occupational activity of transporting people or goods for hire on the public highways by carrier/motor vehicle, and any allegation, presumption or prima facie evidence to the contrary is hereby rebutted;"]

●P. 2, ¶ 8 [That Affiant declares that he is not in receipt of verified documentary evidence that he was ever engaged in a regulated, for-profit commerce activity affecting the public interest transporting passengers or property for hire on the public highways, and any allegation, presumption or prima facie evidence to the contrary is hereby rebutted;"]

● P. 2, ¶ 10 ["That Affiant declares that he is not in receipt of verified documentary evidence stating that he is subject to the commercial Tennessee Motor Vehicle Code, Title 55, and any allegation, presumption or prima facie evidence to the contrary is hereby rebutted;"]

●P. 2, ¶ 11 ["That Affiant declares he received a letter from the Department of Safety ("DOS") dated January 11, 2018, addressed to Affiant, and signed by Kyle Turner, Staff Attorney, stating, "However, as a practical matter, this Department <u>does not have any responsive records to your requests 1 and 2</u> [i.e. (1) requested photo copy of the Accused's application for a Tennessee driver license, (2) requested a photo copy of the Accused's driver license;"]

●P. 2, ¶ 12 ["That Affiant declares he received a letter from the Department of Safety ("DOS") dated July 15, 2019, stating that he has never applied for a Tennessee driver license (ATTACHMENT C)"]

Rebuttal by affidavit A, attached to motion to dismiss, to wit,

● P.1, ¶ 8 ["That Affiant declares he has never applied for, nor has he ever been issued, a valid Tennessee driver's license, because it is his daily practice to exercise his God-given, unalienable right to freely travel/move/locomote outside the "privilege" regulations of commerce, and any presumption, assumption or prima facie evidence to the contrary is hereby rebuttted."]

Rebuttal by affidavit A2, attached to motion to dismiss, to wit,

●P.1, ¶ 5 ["That Affiant declares that he has always used, and continues to use, the public highways in the ordinary and usual course of life, business (earning a living), and pleasure in his prsonal private conveyance of the day, and not for private gain in commerce, and any presumption, assumption or prima facie evidence to the contrary is hereby rebutted."]

●P. 1, ¶ 8 ["That Affiant declares he has never applied for, nor has he ever been issued, a valid Tennessee driver's license, because it is his daily practice to exercise his God-given, unalienable right to freely travel/move/locomote outside the "privilege" regulations of commerce, and any presumption, assumption or prima facie evidence to the contrary is hereby rebutted."]

The Court committed fraud on the court's judicial machinery by arbitrarily refusing to acknowledge Accused's rebuttal of all the State's presumptions and prima facie evidence by affidavits, verified motion to dismiss, and oral testimony under oath, all supported by DSHS exculpatory documents and case law *stare decisis*. Accused's constitutionally secured right to due process and equal protection was again violated by the Court which prejudicially declared Accused guilty.[25]

15.1.5. **REJECTED ESTABLISHED LEGAL AUTHORITIES**.. The Court arbitrarily rejected ALL relevant high court controlling decisions (*stare decisis*), legal and statutory definitions, maxims of law, state and federal statutory requirements for

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[25] ● Legal Maxim: *In dubiis, non præsumitur pro potentia.* In cases of doubt, the presumption is not in favor of a power.

licensing and suspensions, and constitutional provisions, which Accused intended to relied on for his defense.

15.1.6. **STIPULATION OF FACT IGNORED**. The Court willfully ignored the prosecution's stipulation of fact at trial that Accused "**never applied for a driver license**," i.e., Judge refused to acknowledge this key exculpatory fact that Accused never applied for the state granted taxable privilege to drive making the indictment charging statutes inapplicable and void.

15.1.7. **PROSECUTION ADDED CONFUSION**. The Court willfully ignored the assistant district attorney's statement at trial that no fraudulent suspended driver license was fabricated by the DSHS as alleged by Accused; but rather, an "historic" account number only was "assigned" by DSHS to Accused – **which directly contradicts, conflicts with and added confusion** to the criminal allegation that Accused was indeed driving on a suspended license as cited in the citation, indictment, and judgment. Which way is it? The prosecutor stated that there was no driver license fabricated by DSHS in Accused's name, but the charging instrument and judgment state that he did have a suspended driver license! Notice the contradiction, confusion and uncertainty allowed by the Judge in violation of due process!

15.1.8. **ARBITRARY JUDGMENT WITHOUT FACTS IN SUPPORT**. The crime elements, *actus reus*, *mens rea* and concurrence, were never proven at trial, yet the Court convicted Accused as guilty on all counts "beyond a reasonable doubt." The Court arbitrarily declared Accused guilty of a "culpable/guilty mental state" (**without evidence**) based on Accused's so-called "conduct." No facts or law were given for

the Court's guilty verdict.

● "[a] court abuses its discretion when its ruling is based on an erroneous view of the law." *Chaves v. M/V Medina Star*, 47 F.3d 153, 156 (5th Cir. 1995).

15.1.9. **BREACHED DUTY TO PROTECT RIGHTS**. The Court failed to perform its duty to safeguard Accused's constitutionally secured individual rights at trial, but worked against them by holding to its pre-conceived opinion that Accused was "guilty until proven innocent." It was apparent to Accused and to any onlookers that the Court was working with the prosecutor to achieve a pre-determined (adverse) outcome in favor of the "hand that feeds them," i.e., the State of Tennessee, their employer.

● "Individual rights protection is the **only legitimate reason for government to exist** ". . the duty of this court, as of every judicial tribunal, is limited to **determining rights of persons or of property**. . ." *Tyler v. Judges of Court of Registration*, 179 U.S. 405, 409 (1900) (emphasis added)

15.1.10.**BIAS, PARTIALITY, AND RESPECT OF PERSONS SHOWN**. The Judge showed bias, partiality and respect of persons in violation and disrespect of his oath of office, the Word of God, the Canons of Judicial Conduct, and due process by finding only State's witness to be competent and credible, and by rejecting all of Accused's affidavits, sworn testimony, documnetary evidence, supported rebuttals, and mandatory judicial notices without citing a single fact or law in justification. The impartial judicial machinery was attacked. Fraud on the court occurred.

15.1.11.**CONSTITUTIONAL VIOLATIONS**. The Court violated Accused's constitutionally secured right to due process and equal protection, and right of conscience, by presiding discriminatorially and oppressively over this case in order

to deny and criminalize Accused's unalienable right to freely travel privately outside the perimeter of permissive privilege statutes.

- "No state may convert a secured liberty into a privilege, and issue a license and fee for it." *Murdock v. Pennsylvania*, 319 U.S. 105

15.1.12. **STATE'S BURDEN OF PROOF NOT MET**. The Court showed partiality by letting the prosecution off the hook from bearing the shifted burden of proof to counter Accused's rebuttal to State's presumptions.

15.1.13, **REFUSAL TO ACKNOWLEDGE TITLE 55 COMMERCIAL NATURE.** The Court refused to acknowledge the noticed material fact that TCA Title 55 is commercial in nature, and deals exclusively with state granted taxable permissive privilege related matters.[26]

15.1.14. **REFUSED TO ACCEPT LEGAL DEFINITIONS OF KEY TERMS**. The Court skuttled Accused's reliance defense by refusing to acknowledge the legal definition of the key charging term "privilege" and "privilege tax"(presented to the Court in Accused's numerous pleadings, affidavits, attachments, and judicial notices) as exclusively pertaining to a business or occupational activity, affecting the public interest, that requires a statutory license,

15.1.15.**UNLAWFUL CONVERSION AND CRIMINALIZATION OF RIGHT**. The Court and the prosecutor were fully aware that the State unlawfully converted Accused's unalienable right to travel into a non-statutory permissive "privilege" and

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[26] Sample of many permissive "privilege" and "privilege tax" regulatory statutes in Tennessee Code Title 55 @ §§ 55-4-111; 55-8-101; 55-10-102; 55-10:55-12-109 (2021); 55-10-615; 55-10-405; 55-50-701; 55-50-504; 55-50-401; 55-10-406; 5-10-702; 55-12-131; 55-12-117; 55-12-129; 55-50-502; 55-10-711; 55-12-134; . . . etc.

criminalized Accused by means of the aforementioned fraudulently fabricated suspended driver license. By intentionally misapplying the law in bad faith at trial, and the perpetuation of a known fraud, the Court Judge and assistant district attorney, Gary Howell, together, directly interferred with the judicial machinery of the court, thus committing a fraud upon the court, rendering the judgment void and of no legal effect.

- "**No state may convert a secured liberty into a privilege, and issue a license and fee for it. . . a person cannot be compelled "to purchase, through a license fee or a license tax, the privilege freely granted by the constitution."** *Murdock v. Pennsylvania*, 319 U.S. 105 (emphasis added)

- "The claim and exercise of a constitutional Right cannot be converted into a crime." *Miller vs. U.S.*, 230 F. 486, 489

- "It has long been established that a State may not impose a penalty upon those who exercise a **right guaranteed by the Constitution** . . . `Constitutional rights would be of little value if they could be . . . 'indirectly denied'. . . ." *Harman v. Forssenius*, 380 U.S. 528, 540 (1965) (emphasis added)

- "There can be no sanction or penalty imposed upon one because of this exercise of constitutional Rights." *Snerer vs. Cullen*, 481 F. 946

- "The state cannot diminish Rights of the people." *Hurtado vs. California*, 110 US 516

REQUESTED RELIEF

WHEREAS, Accused, Arthur Jay Hirsch, alleges, that based on the factual grounds set forth above, that it is apparent his trial was tainted by fraud and the impartial functions of the court were directly corrupted i.e., fraud on the court was committed, due process right was violated, rule of law was abandoned, making the entire proceedings and judgment void.

THEREFORE, Accused moves **(1)** that a different, unbias judge hears and rules on this motion, **(2)** that an order is entered setting aside/vacating the judgment as void, **(3)** that Accused is declared NOT to be subject to permissive privilege statutes of TCA Title 55, **(4)** that Accused's fictitious suspended driver license is ordered to be removed/expunged from all statewide and/or national databases accessible to law enforcement, **(5)** that this case be expunged from the Lawrence County court records, and, **(6)** that, in the alternative, Accused's case is ordered to be re-opened (retried) or a new trial granted in a different venue with a different judge. (However, with the all pervasive underlying actual fraud vitiating everything and voiding the indictment, a re-opened case or new trial by jury would entail considerable expenditure of further time and expense, which would be wasteful, if not futile.) Finally, Accused requests that the Court Judge state his ruling in writing (in detail with specificity) the findings of fact and conclusion of law relied on, either, for granting or for denying this motion to vacate/set aside the judgment.

Date: _____ _____

Arthur Jay Hirsch
1029 W. Gaines Street
Lawrenceburg, TN 38464

CERTIFICATE OF SERVICE

I hereby certify that a copy of this motion and attachments was delivered to district attorney, Brent Cooper, by court clerk, on this ____ day of October, 2022.

_____
Arthur Jay Hirsch

CC: Attorney General, Jonathan Skrmetti
AOC
Judicial Disciplinary Committee
Governor, Bill Lee
Lt. Governor, Randy McNally
Commissioner of Revenue, David Gerregamo
Commissioner of Dept. Of Safety and Homeland Security, Jeff Long .
Senator Joey Hensley
House Representative Clay Doggett