

IN THE CIRCUIT COURT FOR
LAWRENCE COUNTY, TENNESSEE

STATE OF TENNESSEE,

Plaintiff,

v.

Arthur Hirsch,

Accused Petitioner.

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Case No. 32518

JUDGE JIM HAMILTON

VERIFIED SUPPLEMENTAL FILING

IN SUPPORT OF ACCUSED PETITIONER'S

VERIFIED MOTION TO DISMISS FOR LACK OF JURISDICTION

Pro se Accused Petitioner, Arthur Hirsch, hereby supplements accused's VERIFIED MOTION TO DISMISS FOR LACK OF JURISDICTION with additional case law below in support thereof. Accused would have the Court notice that the record contains no document purporting to be an "arrest warrant" issued in this case, the state does not contends that one was executed or issued, and without a lawful charging instrument the indictment is invalid and the Court must dismiss.

1. " A lawful accusation is an essential jurisdictional element of a criminal trial, without which there can be no valid prosecution. *State v. Hughes, supra.*"
STATE v. MORGAN, 598 S.W.2d 796, 797 (Tenn.Crim.App. 1979)

2. "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).

**CHARGES ARE TO BE DISMISSED FOR FAILURE TO COMPLY
WITH TENNESSEE RULES OF CRIMINAL PROCEDURE**

3. "The court also reviewed carefully the applicable Rules of Criminal Procedure. After noting that "no arrest warrant was issued contemporaneously with the affidavit of complaint" and

that "[s]uch a practice of not issuing a warrant . . . begs some rather important questions," the court correctly concluded that the charge against the Defendant had to be dismissed because of the State's failure to "comply with the requirements of" Tennessee Rules of Criminal Procedure 3, 4 and 5." *STATE v. FERRANTE*, 269 S.W.3d 908, 915 (Tenn. 2008)

JUDGMENT REVERSED BECAUSE NO ARREST WARRANT OBTAINED

4. "More fundamentally, however, such arguments of policy must give way to a constitutional command that we consider to be unequivocal. . . . Because no arrest warrant was obtained in either of these cases, the judgments must be reversed and the cases remanded to the New York Court of Appeals for further proceedings not inconsistent with this opinion. "

PAYTON v. NEW YORK, 445 U.S. 573, 603 (1980)

ARREST WARRANT NOT AFFIDAVIT OF COMPLAINT IS CHARGING INSTRUMENT

5. "Similarly, a citation issued by an officer in lieu of a custodial arrest is not a "formal accusation." Just as a warrantless custodial arrest does not, alone, commence a prosecution, a citation issued in lieu of an arrest is not the result of an independent probable cause determination and, therefore, does not mark the beginning of the prosecution. *See State v. Best*, 614 S.W.2d 791, 795 (Tenn. 1981) (holding in the case of a warrantless arrest that without a "follow-up" determination of probable cause either through the issuance of a warrant or a binding over to the grand jury "the criminal prosecution terminates"); *see also Ferrante*, 269 S.W.3d at 912 (noting that Rule 5(a) of the Tennessee Rules of Criminal Procedure requires those defendants arrested without a warrant be taken before a magistrate for the lodging of "formal" charges by the filing of the affidavit of complaint and issuance of a warrant). Indeed, the Advisory Commission Comments to Rule 4 of the Tennessee Rules of Criminal Procedure note clearly that, even in cases of warrantless arrest, the arrest warrant issued upon the affidavit of complaint rather than the affidavit of complaint itself "still serves as the official charging instrument, issued after a judicial finding of probable cause, and gives notice of the charge which must be answered." Tenn. R.Crim. P. 4, Advisory Comm'n Comments. In consequence, the affidavit of complaint and citation in lieu of arrest issued to the defendant on February 20, 2004, did not commence the prosecution in this case. . . . Moreover, Code section 40-2-104 clearly states the means by which a prosecution may be commenced, and the issuance of an affidavit of complaint is not listed among the alternatives. *See T.C.A. § 40-2-104*. In addition, the rules of procedure provide that the arrest warrant rather than the affidavit of complaint is the "formal charging instrument." Tenn. R.Crim. P. 4, Advisory Comm'n Comments. We surmise that the high court did not intend to suggest that an affidavit of complaint, standing alone, can serve as a charging instrument."

STATE v. McCLOUD, 310 S.W.3d 851, 860, 867 (Tenn.Crim.App. 2009)

VIOLATION OF CRIMINAL CODE SHOULD NOT BE TOLERATED

6. "The enforcement of the criminal laws is important, but in their enforcement it is always to be remembered that it is just as important that the state follow the statutory provision for [the

defendant's] prosecution, as that [the defendant] follow the law for which he is being prosecuted. . . . To take away from him the benefits and protection which the criminal code grants him is to deprive him of his rights and privileges guaranteed to him under our system of government and should not be tolerated." *STATE v. HOWLAND*, 153 Kan. 352, 110 P.2d 801, 808 (1941).

7. "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).

8. " The plain language of Code section 40-2-104 provides five specific ways by which a prosecution may be commenced, and an affidavit of complaint is not listed among the alternatives. *See* T.C.A. § 40-2-104. An affidavit of complaint is merely "a statement alleging that a person has committed an offense," *see* Tenn. R.Crim. P. 3, and is not, standing alone, sufficient to provide formal notice of the offense charged, *see State v. Richard Gastineau*, No. W2004-02428-CCA-R3-CD, slip op. at 4, 2005 WL 3447678 (Tenn.Crim.App., Jackson, Dec. 14, 2005). Because an arrest warrant may or may not issue upon the affidavit of complaint, the "affidavit of complaint will not necessarily provide a defendant with notice that he is being charged with an offense, and an affidavit of complaint, with nothing more to provide a defendant with notice, is not a charging instrument." *See id.* *STATE v. McCLOUD*, 310 S.W.3d 851, 867 (Tenn.Crim.App. 2009)

Date_____

By_____

Arthur Hirsch
1029 W. Gaines St.
Lawrenceburg, TN 38464

VERIFICATION

State of Tennessee }
 } to-wit:
County/city of _____ }

Before me, the undersigned duly commission notary public, personally appeared a man, Arthur Hirsch, known or identified to me to be the party described in and who executed the above foregoing document, and being by me first duly sworn, did acknowledge to me that the facts alleged are true to the best of his knowledge, information and belief.

Subscribed, sworn to and acknowledged before me on this _____ day of August, 2014.

Witness my hand and official seal:

_____ (Seal)

Signature of Notary Public

My commission expires _____

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was sent by first class mail on August _____, 2014 as follows:

District Attorney General Pro Tem KIM HELPER
Lawrence County Courthouse
240 W. Gaines Street,
Lawrenceburg, TN 38464

Arthur Hirsch