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In the city court
City of New Boston, Bowie County, Texas

State of Texas) case no 27887-1018-0
Plaintiff)
)
V.) **Affidavit and Amended**
) **Motion to Dismiss**
)
Michael James)
Accused)

FILED FEB 23 2023
FILED FEB 23 2023
FILED FEB 23 2023

Affidavit and amended motion to dismiss

COMES NOW, Mr. Michael James, of 2201 Park Drive, Chattanooga, Tenn., 37421, being of sound mind and body, declaring the following facts true and correct to the best of his firsthand knowledge and belief, and attests to matters of law and ordinance as follows:

1. This motion amends accused's motion to dismiss, stamped "received" by the city court clerk Lori Hancock on Jan. 12, 2023. The grounds for dismissal are the same as those respectfully argued in accused's second in-person appearance in the city court on Feb. 2, 2023, before Judge Young. Those merit grounds are a fact of law: The city court's **Lack of Subject Matter Jurisdiction**.
2. "A judgment is void only when it is apparent that the court rendering judgment had no jurisdiction of the parties or property, no jurisdiction of the subject matter, no jurisdiction to enter the particular judgment, or no capacity to act." Browning v. Prostok, 165 S.W.3d 336, 346 (Tex.2005) (internal quotation omitted). Travelers Ins. Co. v. Joachim, 315 S.W.3d 860, 863 (Tex. 2010)

Overview of case

3. Judge Young admits from the bench the city court has **NO** "subject matter jurisdiction" over a criminal matter and asks the accused does he want him to forward the case to the district

court. The accused, respectfully argues again and says the city court has **NO** “subject matter jurisdiction” and must dismiss the case **NOW** ministerially.

4. Judge Young refuses, violating his “Oath of Office,” and illegally pleads “not guilty” for accused over several objections by the accused, with Judge Young knowingly and intentionally violating Mr. James Constitutional and Due Process rights.
5. Judge Young cannot plead for accused. That’s against the law and judicial misconduct trying to give himself jurisdiction over accused’s several objections. Accused does not enter a plea — and would not to the bogus charge.
6. To which the city court says, “Well, I just plead ‘not guilty’ for you. This is your arraignment and you’re supposed to plea.”
7. Accused respectfully argues **NO**, it’s not. “This is the officer’s show cause hearing, not my arraignment,” which the city of New Boston municipal court letter dated Dec. 29, 2022, says and contradicts Judge Young **MISTRUTHS** in open court to me.
8. Accused states “The city court has **NO** “subject matter jurisdiction” to forward and/or to adjudicate the case, but must dismiss the case ministerially.”
9. There is **NO** subject matter jurisdiction for the city court to administer or adjudicate a criminal traffic ticket case. City courts are civil and administrative.

Facts of the proceedings

10. Accused is a federally regulated over-the-road truck driver. The New Boston city police has no authority over a federally regulated commercial driver in commerce. Nor does a city ordinance.
11. Accused received a letter dated Dec. 29, 2022, from the city of New Boston Municipal Court that he was to plead or pay the ticket, and that if he did neither he would have to appear in

court Jan. 12, 2023, which he did. After driving 612 miles one way from Chattanooga, Tenn., to New Boston, accused arrives Wednesday, Jan. 11, 2023, and calls city court clerk Lori Hancock at 10 a.m. Accused identifies himself, giving his case number, and asks about parking. Clerk Hancock says “Something has come up, and the judge had something had come up, and there is not going to be a court date on Jan. 12, on Thursday, as scheduled.”

12. She says the accused will have to reschedule.

13. Accused says, “I am already here. This is not sufficient notice for me. You can’t just cancel a court date one day before the actually scheduled hearing. This is a violation of my ‘**DUE PROCESS RIGHTS**’ and insufficient notice when I am already present here in town one day before the scheduled hearing on Jan. 11, 2023.”

14. She says, “I told you, something has come up. There ain’t gonna be no court tomorrow.”

15. “I’m already here,” accused says, “in New Boston to dispute the unlawful traffic citation.”

16. She hollers at accused and abruptly hangs up the phone while accused is talking.

17. Two hours later, around noontime, clerk Hancock calls accused’s cellphone and says. “Your next court date is going to be Jan. 19th.”

18. Accused says, “I can’t come back here just like that. I work for a living. And I am already here. She abruptly hangs up the phone.

19. Accused calls clerk Hancock back within five minutes. She says she had been on the phone with judge Young. She says the next court date would be Feb. 2, 2023.

20. The next day on Jan. 12, 2023, accused files his notarized 6-page “**MOTION TO DISMISS**” with the city court clerk Lori Hancock. Hancock deceives the accused knowingly and

intentionally by stamping the motion to dismiss “Received” rather than “Filed.” Accused understands there’s a big difference because that means the motion is **NOT** in the case file.

21. At the Feb. 2, 2023, “**show cause court hearing**” Judge Young says when asked by accused he has not seen or reviewed accused’s 6-page motion to dismiss.
22. Lori Hancock knowingly and intentionally does **NOT** file the motion to dismiss in the case file submitted in person by the accused, violating accused’s “**DUE PROCESS RIGHTS.**”
23. The municipal court letter dated Dec. 29, 2022, says, “Notice is hereby given that a **show cause hearing** of the above numbered and styled cause has been scheduled for Thursday January 12, 2023 at 1:30 p.m.” (emphasis added). The letter says the accused’s options are pleading guilty or not guilty, and if accused does not pay the fine, the accused must appear in court or a warrant will be issued for his or her arrest.
24. At the second scheduled hearing, accused meets Judge Young at the city council chambers front door as the judge is walking in on Feb. 2, 2023. Accused talks to the judge and asks if he received accused’s 6-page motion to dismiss that accused personally filed Jan. 12, 2023, with city clerk Hancock. Judge Young replies, “No.”
25. Accused says the judge is supposed to have received the motion to dismiss as it was filed three weeks prior on Jan. 12, 2023, and should have been in the case file. Lori Hancock knowingly and intentionally deceives accused, Mr. Michael James, by not filing it in the case file so Judge Young has it well before the Feb. 2, 2023, scheduled “officer show cause court hearing,” violating her sworn **OATH OF OFFICE IN BAD FAITH** and Mr. James’ **DUE PROCESS RIGHTS.**
26. Judge Young takes about 10 minutes to read the accused’s motion in open court.
27. He says this is not the time to handle the matter of a motion to dismiss

28. Accused says he traveled 646 miles one way from home Chattanooga, Tenn., to New Boston again a second time to attend and dispute the **unlawful** ticket and “officer show cause court hearing” on Feb. 2 2023. The judge, erroneously says that accused did not have to come to the city court. The judge deliberate mistruths about the hearing falsely saying this is your arraignment and that accused needs to plea. Accused **OBJECTS** and does not plead anything, stating the city court has **NO “SUBJECT MATTER JURISDICTION.”**
29. He says he can’t dismiss the case because it would violate the “prosecutor’s due process rights.” The judge is not concerned with accused’s due process rights already violated several times by city court clerk Hancock and now by the judge himself.

Relevant law & legal facts

30. The alleged offense on the citation is “truck prohibited” at location “James Bowie.” The city allegedly prohibits a public street from being used by trucks, a street leading to the city’s major retailer, Wal-Mart, visible from Interstate 30. A sign several hundred feet from the entrance to the street says “Trucks prohibited,” the officer, Robert Daniel, says the evening of the arrest.
31. James Bowie is a city street, open to the public for private travel and purposes.
32. Accused is a commercial over-the-road truck driver on commercial business, regulated by the federal government with a Tennessee CDL Class A license.
33. The city has no sign prohibiting trucks at the Wal-Mart. It posts no sign for any truck operator, arriving off the interstate, prohibiting the driver to make a left turn at James Bowie street to reach the Wal-Mart, open for business and to the public under city business license.
34. City code says the city adheres to Texas Manual on Uniform Traffic Control Devices for Streets and Highways.

All traffic-control devices, including signs, signals and pavement or curb markings installed or used for the purpose of directing and controlling traffic within the city, **shall conform to the Texas Manual on Uniform Traffic Control Devices for Streets and Highways** (hereafter called the manual). Vernon's Ann. Civ. St. art. 6701d requires that all signs, signals and markings erected or used by the city shall be uniform and **be located so far as practicable according to the directions shown** in the manual throughout the city. [emphasis added]

35. The Texas Manual at Section 2B.39 Selective Exclusion Signs, says at p. 77 signs barring trucks and commercial vehicles must be “appropriate[ly]” placed.

The Selective Exclusion sign should be placed on the right-hand side of the roadway at an **appropriate distance from the intersection** so as to be **clearly visible to all road users turning into the roadway** that has the exclusion. [emphasis added]

36. The New Boston “No Trucks” sign is 60 feet from the intersection, a distance inappropriately remote to be seen by an operator of a big rig making a left turn onto James Bowie drive, New Boston, as occurs in this case.

37. No ordinance number is painted on the original “No trucks” sign on James Bowie Drive.

38. There is no reference in the city code to this street, James Bowie Drive, indicating safety, crowding or traffic concerns, or limits or controls, by the city council.

39. The case is heard in the city’s “municipal court,” per city code § 5.1. The judge shall “perform the duties required under all pertinent statutes of the state and ordinances of the city” and shall “hear and try all cases arising under the ordinances of the city properly brought” before the court from ordinance controversies “within the territorial limits of the city.”

40. “The municipal judge shall take judicial notice of state law and the ordinances and corporate limits of the municipality” Tex. Gov’t Code Ann. § 30.00006.

41. New Boston city court “has jurisdiction over criminal cases arising under ordinances authorized by Sections 215.072, 217.042, 341.903, and 551.002, Local Government Code,” Tex. Gov't Code Ann. § 30.00005.
42. None of these provisions regarding criminal jurisdiction touch on traffic, trucking or use of the public right of way.
43. The city court, as a matter of law, is given no authority over criminal traffic matters, and if a case is brought before it has duty to consult with the Texas statute as to its subject matter jurisdiction, as well as applicable equity jurisprudence.
44. The court does not establish subject matter jurisdiction over the criminal matter alleged by the officer in this case, which officer(s) fails to appear twice to show cause.
45. Municipal court clerks are under control of the judge. “(c) The clerk and other court personnel perform their duties under the direction and control of the presiding judge.” Tex. Gov't Code Ann. § 30.00009
46. The green “New Boston Police Dept.” form used to create this erstwhile case, No. 027888, dated Dec. 19, 2022, is pretended to be the charging instrument. “(a) For purposes of this chapter, a complaint is **a sworn allegation charging the accused with the commission of an offense**. A defendant is entitled to notice of a complaint against the defendant not later than the day before the date of any proceeding in the prosecution of the defendant under the complaint. The defendant may waive the right to notice granted by this subsection” Tex. Code Crim. Proc. Ann. art. 45.018 (emphasis added).
47. The New Boston city erstwhile complaint form, being unsworn, is not a complaint.
48. Defects in charging instruments are easily visible in this matter.

If the defendant does not object to a defect, error, or irregularity of form or substance in a charging instrument before the date on which the **trial** on the merits commences, the defendant waives and forfeits the right to object to the defect, error, or irregularity. Nothing in this article prohibits a trial court from requiring that an objection to a charging instrument be made at an earlier time.

Tex. Code Crim. Proc. Ann. art. 45.019

49. As this case has not yet had a show cause hearing, much less a trial, accused timely objects to its initiatory documents as defective and insufficient.

Argument

50. The court has no authority to handle this case because municipal court has no subject matter jurisdiction, which assertion by accused Judge Young accepts as true at the hearing.
51. The court has authority to do a single thing: Dismiss the case ministerially, as it is incapable of doing anything else.
52. Absence of officer or attorney in a show cause hearing is the end of the case, as there is no evidence and no moving party to prosecute the misdemeanor.
53. Yet the municipal court sets another court date to further boggle accused and harass him in his calling as over-the-road truck driver. For a court that admits no subject matter jurisdiction to set a third court date, under penalty of arrest, is malicious and abusive.
54. Only accused or counsel or choice can enter testimony, or a plea, and only a defendant can enter a plea. The court at the hearing illicitly enters a plea of “not guilty,” ostensibly to give itself subject matter jurisdiction it lacks, as any plea grants at least in personam jurisdiction.
55. Accused provides additional legal bases for his claim, in the alternative, as the operators of the New Boston extortion racket are insensible to their duties under the law, and are willing to pile harms upon accused, in addition to injustice.


56. The city admits the single sign notice, the alleged violation of which sparks this case, is insufficient as to providing travelers and drivers with notice as to the city's authority to regulate trucks under ordinance sec. 17-91. - Truck routes.
57. It makes such admission by of recent date adding a sign at the main intersection forbidding trucks from making a left turn onto James Bowie Drive. On date of the ticket, such sign is not present for public viewing.
58. New Boston knowingly violates its own standards officials allege to be in compliance as regarding signs.
59. This case will not fly in district court, if justly considered. New Boston has no authority to "pass" the case there, or to a grand jury.
60. This case is one of selective prosecution outside of law, and malicious prosecution. The charging of out-of-town truckers under the "truck prohibited" mantra is an entrapment scheme, and fraud is not a basis upon which a municipal corporation may operate, as fraud and extortion are not for the public good nor in the public interest.
61. The city bars use of the highways with its side-track-trap, penalizes innocent activities, blocks roads open to the public, criminalizes truckers going to Wal-Mart to engage in transactions taxable to the benefit of city tax coffers.
62. The city is interfering with interstate commerce by using its city officers, untrained in the Department of Transportation and Federal Motor Carrier Safety Administration rules and regulations of commercial vehicles.
63. New Boston pretends it can enforce statewide privileges such as those involved in transportation and interstate commerce regulated by the U.S. Department of Transportation.

64. The case is an ambush, turning innocent acts by truck drivers in interstate commerce into a crime for purpose of ticketing and extracting money from them in breach of Texas penal code § 31.02, extortion, and accused's right of free movement and communication upon the federal highways.

65. At least two or more persons in the municipal corporation appear to conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws.


Further, at this time, affiant sayeth naught.

Respectfully submitted,



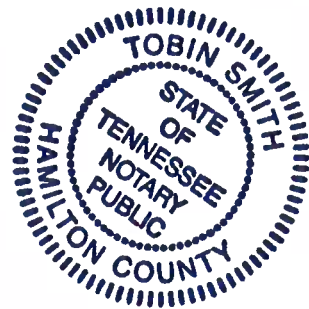
Mr. Michael James

STATE OF TENNESSEE, COUNTY OF Hamilton — I, the undersigned notary public, do hereby affirm that Michael Barnard James was present before me on the 21 day of February, 2023 and signed this affidavit as his free and voluntary act and deed.



(notary public)

Commission exp. Aug 12, 2026



CERTIFICATE OF SERVICE

I, Michael B. James, certify that a true and exact copy of this document is being sent by first class U.S. mail or by hand-delivery to the parties below on this 23rd day of February, 2023.

Mr. Michael James

Mr. Michael James

cc copies below to:

New Boston Police Department
108 N Center St.
New Boston, TX 75570

Municipal Court
108 N. Center St.
New Boston, TX 75570

See Attached 1 page Document marked
as Exhibit # 1 identified as
"City of New Boston Municipal Court"
Date December 29, 2022 1 page

FILED FEB 23 2023

IN THE MUNICIPAL COURT
CITY OF NEW BOSTON
BOWIE COUNTY, TEXAS

301 E. N. Front St. (P.O. Box 5)
New Boston, Texas 75570
903-628-5596 Ext: 6



State of Texas
Vs
27887-1018-0

December 29, 2022

Michael Barnard James
2201 Park Dr
Chattanooga, TN 37421

§
§
§

CASE: 27887-1018-0
OFFENSE: VCO Truck on Prohibited Street
AMOUNT: \$181.00

NOTICE IS HEREBY GIVEN that a show cause hearing of the above numbered and styled cause has been scheduled for Thursday, January 12 2023 at 1:30 P.M.

Further, you are required to appear in person at the City Council Chambers for the City of New Boston on or before the aforementioned date. and should you not appear, a Failure to Appear charge may be filed and a warrant may be issued for your arrest. In some cases a hold may be placed on your driver license with the Dept. of Public Safety.

You may enter a plea by mail at this time, if,

- * You wish to enter a plea of guilty or no contest, your money order must be returned with this plea sheet If you wish to do any type of Deferral. Community Service, Defensive Driving, Teen Court, Payment Plan, Etc. then you must appear in person to make the request and sign the appropriate papers.
- * You wish to enter a plea of not guilty. You must check Trail by Judge or Trial by Jury.

Plea of Nolo Contendere (No Contest)

I, the undersigned, do hereby enter my appearance on the complaint of the offence, to the charge and cause number above. I understand that I have a right to a jury trial and that my signature on this plea of nolo contendere (meaning "no contest" will have the same force and effect as a plea of guilty on the judgment of the Court. I do hereby plead nolo contendere to said offense as charged, waive my right to a jury trial or hearing by the Court, and agree to pay the fine and costs the judge assesses. I understand that my plea may result in a conviction appearing on either a criminal record or a driver's license record.

Plea of Guilty

I, the undersigned, do hereby enter my appearance on the complaint of the offence. to the charge and cause number above. I understand that I have a right to a jury trial and that my signature to this plea of guilty will have the same force and effect as a judgment of the Court. I do hereby plead guilty to the offense as charged, waive my right to a jury trial or hearing by the Court. and agree to pay the fine and costs the judge assesses. I understand that my plea may result in a conviction appearing on either a criminal record or a driver's license record.

Plea of Not Guilty

I, the undersigned, do hereby enter my appearance on the complaint of the offense, to the charge and cause number above. I plead not guilty,

Initial One:

- _____ I waive my right to a jury trial and request a trial before the court.
- _____ I request a trial by Jury.

Defendant's Signature _____ Date _____

Phone _____

Parent or Guardian Signature _____

Mailing Address _____

If you are convicted of an offense and are unable to pay the fine and court costs, you may have the court assess your ability to pay and the court may provide alternatives to full payment in satisfying the judgment.

If you have active Class C Misdemeanor Warrants issued by this court and you voluntarily appear before the court and resolve or make a good faith effort to resolve the warrant, THE WARRANT WILL BE RECALLED AND YOU WILL NOT BE ARRESTED.

If you are under age 18, a parent or guardian must be present.