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Mark McCoy
_____, Illinois [*** **]
Telephone: none

In propria persona

CIRCUIT COURT OF THE STATE OF ILLINOIS
IN AND FOR THE COUNTY OF ST. CLAIR

In The Matter Of	)	Case No. 2007 TR 034189
)	
THE PEOPLE OF THE STATE OF)	
ILLINOIS)	
Fictitious Plaintiff,	)	DEMURRER TO FAIRVIEW HEIGHTS
	)	POLICE CITATION(S) AND
vs.	)	COMPLAINT(S) # 1159154, 1159155,
	)	1159156, 1159157, AND 1115419, as well as
Mark McCoy,	)	<u>alleged Case Number 06TR0058724</u>
)	
Accused	)	Code of Criminal Procedure: 725 § 5/111-3(b)
)	
	)	Alleged Violations: 625 ILCS 5/3-413(f)
)	
	)	Court Date: October 4, 2007
	)	Time: 9:00AM
	)	Place: Court Room 6C
	)	Circuit Court, Sangamon County
	)	200 South 9th
	)	Springfield, IL 62701

1 COMES NOW the Accused, Mark McCoy, Sui juris and Suo nomine, untrained and
2 unskilled in the law and without legal counsel or representation, unfamiliar with the Rules of
3 Court and Rules of Criminal Procedure; proceeding In propria persona, of a Sane and Belligerent
4 Mind, appearing Specially and not Generally or Voluntary, at Common Law; reserving, enforcing
5 and invoking all State and Federal constitutionally protected rights, safeguards, privileges and
6 immunities and enforcing all constitutional limitations on all government agencies and agents when
7 dealing with them; not acquiescing to any quasi or colorable jurisdictions, consenting and conferring
8 only to the judicial power of the United States of America and the Illinois Republic state; and
9 requesting that this and all subsequent pleadings be "liberally construed" pursuant to Haines v.
10 Kerner, 404 U.S. 519 and 735 ILCS 5/2-603(c), and hereby submitting the above-entitled pleading in
the above-captioned matter(s).

11 PLEASE TAKE NOTICE that the Accused hereby pleads to the Fairview Heights
12 Police Citation(s) and Complaint(s) by Demurrer and demands the filing of a verified
13 complaint by the complainant pursuant to Illinois law at Code of Criminal Procedure 725 §
14 5/111-3(b).

15 The demand to file a verified complaint is based upon the fact that (1) a complaint MUST
16 be filed that shall conform to ILCS 725 § 5/111-3(a) which shall be deemed to be an original
17 complaint and (2) the Accused DOES NOT and WILL NOT voluntarily waive the filing of a
18 verified complaint.

19 DATED: July 6, 2009

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22 BY: _____
23 Mark McCoy, Accused
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MEMORANDUM OF LAW IN SUPPORT OF DEMURRER

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3 1. Accused DEMURRERS to the defective “Fairview Heights Police Citation and
4 Complaint”, hereinafter “Citation”, as it does not meet the statutory requirements of 1) a Verified
5 Complaint, 2) a Notice to Appear nor 3) a Summons. Illinois Law is clear that a charge comes in
6 three forms:

7 “Charge” means a written statement presented to a court accusing a person of the
8 commission of an offense and includes complaint, information and indictment.
9 725 ILCS 5/102-8 and 730 ILCS 5/5-1-3

10 The form of charge is not an indictment as the charge has not gone before a Grand Jury and
11 there is no Grand Jury foreman signature per 725 ILCS 5/111-3(b). This charge is not an
12 information for it has no signature by a State’s Attorney per 725 ILCS 5/111-3(b). Similarly the
13 charge fails as a complaint since the accused DOES NOT waive the filing of a formal verified
14 complaint. Where the accused/defendant does not waive the filing of a verified complaint by plea of
15 guilty or by proceeding to trial absent an objection, a verified complaint MUST be filed to give this
16 court in personam jurisdiction:

17 “[W]e hold that a defendant who does not waive, by plea of guilty or by proceeding to
18 trial without objection, the defective verification of a complaint, is entitled to be
19 prosecuted upon a complaint which states upon the oath of the complainant the facts
20 constituting the offense charged.”
21 People v. Brausam, 227 N.E.2d 533, 83 Ill. App.2d 354

22 Accused in the instant matter has not and will not plead guilty and absolutely does NOT
23 waive the filing of a verified complaint.

24
25 2. Illinois law is clear and precise on the matter of a verified complaint being filed in
26 order for a defendant to enter a plea on the record:

27 “[W]hen a citation is issued on a Uniform Traffic Ticket or Uniform Conservation Ticket
28 (in a form prescribed by the Conference of Chief Circuit Judges and filed with the
Supreme Court), the copy of such Uniform Ticket which is filed with the circuit court
constitutes a complaint for which the defendant may plead, unless he specifically requests
that a verified complaint be filed.”
Illinois Code of Criminal Procedure, 725 § 111-3(b)

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3. The charge clearly is not a summons for a summons can ONLY be issued by a court:

A "summons" is a written order issued by a court which commands a person to appear before a court at a stated time and place.
Illinois Code of Criminal Procedure, 725 ILCS 5/107-1(b)

4. The citation clearly is not a Notice to Appear as on its face it does NOT request nor require Accused to appear before a court at a specific place or time:

Sec. 107-12. Notice to appear.
(a) Whenever a peace officer is authorized to arrest a person without a warrant he may instead issue to such person a notice to appear.
(b) The notice shall:
(1) Be in writing;
(2) State the name of the person and his address, if known;
(3) Set forth the nature of the offense;
(4) Be signed by the officer issuing the notice; and
(5) Request the person to appear before a court at a certain time and place.
Illinois Code of Criminal Procedure, 725 ILCS 5/107-12

5. The charge(s) or alleged Vehicle Code offense(s) the Defendant has been charged with are governed by the Code of Civil Procedure, and under Illinois law, all actions governed by the Code of Civil Procedure must be commenced by written complaint:

“An action governed by the Code of Civil Procedure is commenced by filing a complaint.”
735 ILCS 5/2-201(a)

NOTE: Complainant means “plaintiff” or victim alleging injury.

6. Illinois law clearly states that the written complaint under oath must be subscribed by the complainant:

“A complaint shall be sworn to and signed by the complainant”
Illinois Code of Criminal Procedure 725 § 111-3(b)

NOTE: “Subscribe.” Literally to write underneath, as one’s name. To sign at the end of a document. See also Attest; Subscriber; Subscription. Black’s Law Dictionary (1979), 5th edition, pg. 1279

1 7. A police officer or peace officer is a witness for the State and cannot serve as the
2 witness for the State while simultaneously serving as the complainant. A witness is not a
3 Complainant. A witness, such as the citing and arresting officer, cannot as a matter of law instigate
4 or initiate prosecution against a suspected person. Only the complainant can instigate or initiate
5 prosecution:

6
7 “Complainant.” One who applies to the courts for legal redress by filing complaint
8 (i.e. plaintiff). Also, one who instigates prosecution or who prefers accusation against
9 suspected person.

10 Black’s Law Dictionary, 5th edition, pg. 258

11 8. Without the filing of a formal, verified complaint when the statutory requirement is
12 NOT waived as in the instant matter, the Court lacks subject matter jurisdiction over this case. It is
13 black letter law that the filing of a complaint gives the court subject matter jurisdiction to hear a
14 matter brought before it:

15 In order to invoke the subject matter jurisdiction of the circuit court, a plaintiff’s case, as
16 framed by the complaint or petition, must present a justiciable issue.

17 Belleville Toyota, Inc., 199 Ill. 2d at 334.

18 The test for the presence of a justiciable issue is found in the nature of the case as made
19 by the pleading and the relief sought.

20 Sullivan, 342 Ill. App. 3d at 563.

21 The complaint is the foundation of the jurisdiction of the magistrate.

22 22 Corpus Juris Secundum § 303, pages 456, 457

23 A trial court’s subject matter jurisdiction is triggered by the filing of information alleging
24 commission of a public offense within the appropriate venue.

25 21 American Jurisprudence, 2nd-Series § 480 (Criminal Law)

26 A formal accusation which charges some offense known to law is essential for every trial
27 for crime, without which the court acquires no jurisdiction to proceed, even with the
28 consent of the accused.

 22 Corpus Juris Secundum § 167 (Criminal Law)

 A formal accusation is essential for every trial for crime, without it the court acquires no
jurisdiction to proceed.

 16 Corpus Juris Secundum § 230 (Criminal Law)

 “Jurisdiction, once challenged, cannot be assumed and must be decided.”

Maine v. Thiboutot, 100 S.Ct. 250

1 “The law requires proof of jurisdiction to appear on the record of the administrative
2 agency and all administrative proceedings.”
Hagans v. Lavine, 415 U.S. 533

3 “The record must show affirmatively that the jurisdictional requirements have been
4 satisfied.” Hayman v. L.A., 17 Cal.App.2d. 674

5 “Jurisdiction may never be assumed, not even by colorable claims or status or black
6 robes or officialdom or appearances, but must be substantively proven by the
7 plaintiff/claimant of said jurisdiction. Once challenged by any proper party the
8 plaintiff/complaint must prove their jurisdiction in a timely manner.”
McNutt v. General Motors Acceptance Corp., 56 S.Ct. 502

9 9. The offense charged in the Citation is 625 ILCS 5/3-413(f) reads:

10
11 No person shall operate a vehicle, nor permit the operation of a vehicle, upon which is
12 displayed an Illinois registration plate, plates or registration stickers after the termination
13 of the registration period for which issued or after the expiration date set pursuant to
14 Sections 3-414 and 3-414.1 of this Code.
Illinois Vehicle Code 625 ILCS 5/3-413(f)

15 This offense is clearly a REGULATORY OFFENSE, STATUTORY OFFENSE, MALUM
16 PROHIBITUM, and STRICT LIABILITY STATUTE applied under civil jurisdiction that is
17 inapplicable to Accused under civil law.

18 Regulatory offense. Those crimes not inherently evil but which are wrong only because
19 prohibited by legislation i.e., one which is “malum prohibitum.” See 51 S.E. 945, 946.
20 “Generally a crime involving “moral turpitude” is “Malum in se”, but otherwise it is
21 “malum prohibitum.” LaFave & Scott, Criminal Law 33 (2nd edition, 1986). Some
22 examples of regulatory offenses are: driving over the speed limit, ...sale of intoxicating
23 liquors, public intoxication, hunting without permission, carrying a concealed weapon,
24 shooting in a public place, keeping slot machines, and passing through a toll gate without
25 paying the toll. Id. At 33-34. Regulatory offenses are also called “statutory offenses” and
26 often impose strict liability upon defendants for their violation. Barron’s Law Dictionary,
27 4th Edition

28 Malum prohibitum. Latin. Wrong because it is prohibited; made unlawful by statute for
the public welfare, but not inherently evil and not involving moral turpitude. See 223
N.E. 2d 755, 757. Refers to acts prohibited solely because of the existence of statutes. See
262 F.2d 245, 248. Barron’s Law Dictionary, 4th Edition.

NOTE: Speeding, running stop signs, traveling without license plates, or registration are
NOT threats to the public safety, and thus, are NOT arrestable offenses.
California v. Farley, 20 Cal.App.3d 1032 (1971). 98 Cal.Rptr. 89, Christy v. Elliot, 216 I.
131; 74 H.E. 1035; L.R.A. NS 1905-1910

1 Strict liability. In tort and criminal law, liability without fault. In the criminal law,
2 offenses sometimes do not require any specific or general mens rea. The conduct itself,
3 even if innocently engaged in, results in criminal liability. Because of the possible
4 harshness of holding people strictly accountable in this way, the courts require strong
5 evidence of a legislative intent to statutorily create strict liability before the usual
6 requirement of mens rea will be dispensed with; and strict liability crimes are usually
7 limited to minor offenses or regulatory offenses such as parking violations and violations
8 of health codes. Penalties for strict liability crimes are usually minimal, except in certain
9 instances such as drug and weapons offenses where the penalties may be quite
10 substantial. In some jurisdictions, strict liability offenses are reduced to “violations” that
11 carry only money fines (and short jail terms) and are not deemed “criminal offenses.”
12 Model Penal Code § 2.05 Barron’s Law Dictionary, 4th Edition

13 A civil action arises out of (1) An obligation; (2) An injury. The Citation does not state the
14 nature and elements of a charge which is mandatory under 725 ILCS 5/111-3(a)(3) and thus the
15 Plaintiff leaves an essential element to defense and that being whether this be a CIVIL matter
16 inferring an obligation and/or tort or a CRIMINAL matter inferring an injury to a person or to
17 property.

18 The Plaintiff has not alleged in the Citation that (1) Accused and State of Illinois have a
19 contractual agreement creating an obligation upon Accused which Accused has breached, or (2)
20 Accused has injured the State of Illinois, a fictitious entity.

21 Federal Constitutional 14th Amendment Due Process of law requires the Plaintiff to enter
22 into admissible evidence either a (1) CONTRACTUAL AGREEMENT or a (2) CIVIL TORT
23 COMPLAINT (with the essentials of a complaint as required by UNREPEALED law) so that
24 Accused may defend himself in the instant action.

25 Implied consent, rebuttable presumptions, and operation of law statutes are all violations of
26 Constitutional Due Process of law and thus void in this action as Accused hereby states on the
27 record that he is not a participant in commercial schemes in liability in a joint venture for profit
28 with an insurable interest requiring his participation in state nor municipal revenue-making
schemes.

This formally rebuts the presumption that Accused is an operator (Commercial) of a motor
vehicle. The Accused also does not OWN the automobile that he was arrested (seized) in.

The Plaintiff has the burden of proof beyond a reasonable doubt that the Accused was
engaged in commerce (regulated activity) along with every other element of the charge.

1 Since 625 ILCS 5/3-413(f) does not involve the requirements of a civil action (obligation
2 and/or tort involving real person or property) nor the requirements of a criminal action (sworn
3 affidavit of injured party or property) under law and thus is null and void as applied to Accused
4 in the instant matter at hand.

5 The Plaintiff, nor Court, can allege a contractual obligation based on the Citation as there is
6 NO signature from the Accused on the Citation wherein it states “WITHOUT ADMITTING
7 GUILT, I promise to comply with the terms of this Ticket and Release.”

8 10. The Court cannot allege that a written notice to appear is a verified complaint
9 simultaneously because Illinois law at 725 § 5/111-3(b) clearly states “ ..the copy of such Uniform
10 Ticket which is filed with the circuit court constitutes a complaint to which the defendant may plead, unless he
11 specifically requests that a verified complaint be filed.”

12 If a written notice to appear (traffic ticket) is a verified complaint, how could a defendant
13 possibly request that a verified complaint be filed? Clearly these two documents are not the same.

14 11. Lastly, if the Court argues and alleges that a written notice to appear (traffic ticket)
15 is a complaint, for purposes of appellate review, if necessary, Defendant gives the Court notice that
16 the written notice to appear does not conform to Illinois law at Illinois Code of Civil Procedure
17 735 § 5/2-401(c), 735 § 5/2-603(a) and (b), 735 § 5/2-604 and Illinois Supreme Court Rule 131(b)
18 pertaining to the nature and content of a complaint:

19
20 “Caption; contents.” All papers shall be entitled in the court and cause, and the plaintiff’s
21 name shall be placed first.

22 Illinois Supreme Court Rule 131(b)

23 “Names and designations of parties.” A party shall set forth in the body of his or her
24 pleading the names of all parties for and against whom relief is sought thereby.

25 Illinois Code of Civil Procedure § 5/2-401(c)

26 “Form of pleadings.” (a) All pleadings shall contain a plain and concise statement of the
27 pleader’s cause of action, counterclaim, defense, or reply. (b) Each separate cause of
28 action upon which a separate recovery might be had shall be stated in a separate count or
counterclaim, as the case may be and each count, counterclaim, defense or reply, shall be
separately pleaded, designated and numbered, and each shall be divided into paragraphs
numbered consecutively, each paragraph containing, as nearly as may be, a separate
allegation.

Illinois Code of Civil Procedure § 5/2-603(a) and (b)

1 “Prayer for relief” Every count in every complaint and counterclaim shall contain specific
2 prayers for the relief to which the pleader deems himself or herself entitled except that in
3 actions for injury to the person, no ad damnum may be pleaded except to the minimum
4 extent necessary to comply with the circuit rules of assignment where the claim is filed.
5 Illinois Code of Civil Procedure § 5/2-604

6 CONCLUSION

7 Based upon the foregoing which is buttressed against sound legal precedent, in the interest of
8 justice, this Honorable Court should dismiss the case in its entirety against the Accused with
9 prejudice for lack of jurisdiction due to lack of filing of a verified complaint as required by State
10 law, OR, in the alternative, compel the Plaintiff to conform to State law and file a verified
11 complaint and Bill of Particulars within fifteen (15) days to which the Accused can avoid double
12 jeopardy, enter a plea and defend the charges against him.

13 DATED: September 20, 2007

14 BY: _____
15 Mark McCoy, Accused

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CERTIFICATE OF SERVICE

I hereby certify that on September 20, 2007, a true and correct copy of the foregoing document or pleading entitled:

DEMURRER TO FAIRVIEW HEIGHTS POLICE CITATION(S) AND COMPLAINT(S) # 1159154, 1159155, 1159156, 1159157, AND 1115419

was mailed to the:

Circuit Court, Sangamon County, 7th Municipal District
200 South 9th
Springfield, IL 62701

Certified Mail, return receipt no.: _____

Mark McCoy

_____, Illinois USA [*** **]