

STATE OF INDIANA
COUNTY OF PULASKI

IN THE PULASKI SUPERIOR COURT
ANNUAL TERM, 2014

STATE OF INDIANA

V.

MARK WALLACE

CAUSE NO. **FILED** 66D01111-CM-00119
IN OPEN COURT
JUL 15 2014

Justin J. Hone
CLERK PULASKI SUPERIOR COURT

DEFENDANT'S BRIEF IN SUPPORT
OF MOTION TO DISMISS

STATEMENT OF FACTS

On or about September 7, 2011, John Haley was hired as a Deputy by the Pulaski County Sheriff's department. (Ex. 1 page 2). He was then hired full-time or his status was changed on October 21, 2013.

He worked in 2011 for the Pulaski County Sheriff's Department and received checks from Pulaski County, Indiana as an employee in 2011, 2012, and 2013. (Ex 1, pages 2-6).

On March 19, 2014, John Haley testified at a Deposition in this matter (Original attached hereto and made a part hereof), that he was going to attend the Indiana Law Enforcement Academy this fall. (Deposition page 5).

ARGUMENT

John Haley began working as a paid employee on September 7, 2011. At that time, forms were completed by Mr. Haley, including W-4 forms. (Exhibit One, Page 11) This shows when John Haley was appointed as a part-time **deputy**. This form was completed by Michael Gayer, Sheriff of Pulaski County, Indiana, and John Haley, and sworn to in front of Tasha Foerg, or a Pulaski County Clerk's Office employee on September 7, 2011. (Ex 2, page 45).

In addition, on or about June 7, 2011, prior to being sworn in as a deputy, John Haley submitted medical bills to be paid by the Sheriff's Office. (Ex 2 pg 50 et seq). Thus evidencing his employment prior to even the September 7, 2011 date.

250 IAC 2-2-3 states:

“Any law enforcement officer described in section 1 of this rule who fails to successfully complete the required basic training course within one (1) year of the officer's **first or original appointment** (on or after July 6, 1972), shall not be empowered or authorized to enforce the laws or ordinances of the state or any political subdivision thereof as part of the duties of a law enforcement officer.”

(emphasis added)

250 IAC 2-1-10 defines a 'law enforcement officer' as any person hired by and on the payroll of the state or one (1) of its political subdivisions, whether part-time or full-time, to enforce all or some of the penal laws of the state and who has the power to effect arrests of persons who violates these laws.

The Sheriff's department was clearly aware of this. Exhibit 2, attached here to, shows on page 33, that “his (meaning John Haley) year will be up on September 2012”.

On November 9, 2013, John Haley, dressed in a Pulaski County Sheriff's uniform and driving a Pulaski County Sheriff's vehicle, pulled over the Defendant, Mark Wallace.

That subsequent to that illegal action, he arrested Mr. Wallace and required him to remain at the scene until other officers, arrived. This is well beyond the powers that John Haley had at the time.

Then, John Haley, who has no police powers, completed Exhibit Three, an outdated Affidavit for Probable Cause (Ind Code 35-44-2-1 was repealed and replaced in 2012), indicating findings from other officers. Mr. Haley noted in that form that Mr. Wallace, allegedly refused to consent to testing after reading him the implied consent form. Mr. Haley was not qualified to arrest Mr. Wallace, nor to advise him correctly of his rights and the potential consequences of such. Therefore, a valid suspension of his driving privileges for a refusal may not be had in this case.

Indiana's implied consent law mandates that “[i]f a person refuses to submit to a chemical test, the arresting **officer** shall inform the person that refusal *will* result in the suspension of the person's driving privileges.” Ind. Code 9-30-6-7(a) (emphasis added). In addition, the Bureau of Motor Vehicles is required to suspend the person's driving privileges for refusal to submit to a chemical test. Ind. Code 9-30-6-9(a)(1). Clearly, the language of the implied consent provisions is phrased in absolute terms. *State v. Huber*, 540 N.E.2d 140, 142 (Ind.Ct.App.1989), *trans. denied*. Thus, an arresting officer must adequately convey to the driver the strong likelihood that a suspension of driving privileges *will* result upon refusal to submit to a chemical test.; *Timmons v. State*, 723 N.E.2d 916, 922 opinion vacated in part on reh'g, 734 N.E.2d 1084 (Ind. Ct. App. 2000); *Zakhi v. State*, 560 N.E.2d 683, 686-87 (Ind.Ct.App.1990).

John Haley was not an ‘Officer’ certified to provide this information.

To add to these clear violations, John Haley then serves, executes, witnesses and completes the Return of the Search Warrant. Indiana Code 36-8-3-6 specifically requires an **officer** to execute a search warrant.

The multiple errors in allowing John Haley to act as an officer despite his having no legal authorization to do so, is clearly a violation of both the law and Mr. Wallace's constitutional rights.

CONCLUSION

The Court should find that because of Mr. Haley's failure to timely complete the academy, he had no power to arrest Mr. Wallace, detain Mr. Wallace, ask for a Search Warrant, serve, execute or file a return of a search warrant, or even to advise Mr. Wallace about implied consent.

This series of failures invalidates the arrest and the search warrant, therefore, there is no basis for the arrest or the continuation of charges in this Cause.

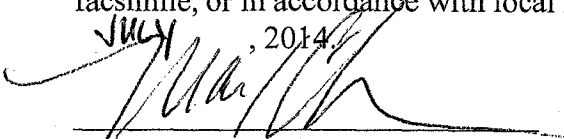
Respectfully submitted,

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PROOF OF SERVICE

I hereby certify that a true and complete copy of the above and foregoing document was served on the following individual(s) by regular US Mail sufficient postage affixed, facsimile, or in accordance with local rules, (as indicated below) on this 15 day of

JULY, 2014.



Mary C. Welker #19618-66

Blair Todd
Pulaski County Prosecutor's Office
Personal Delivery