

The Truth, The Whole Truth ... And Nothing But

By

Lonnie G. Schmidt
RFB - Proverbs 21:31
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98% of California's prisoners are unlawfully imprisoned;
courtesy of derelict D.A.s and gangsters with gavels.

Driving the family to church one cold Sunday morning in 1949, my Dad tuned the radio until the familiar voice of Billy Graham came booming "Jesus is the way, the truth and the life. No man comes to the Father but by Him. Jesus said 'If you abide in My word, you are my disciples indeed! And you shall know the truth, and the truth shall make you free.'" "Listen kids ... this man will be a great preacher some day" said my Dad. He was right. And today, that great preacher, after ministering to more than Two Billion people, went Home.

From the bit of text of Mr. Graham's message I remember, knowing the truth was conditional; abiding in His Word. There's the key! His Word ... the Bible ... It is written! ... the ultimate authority!

After four years in California State Prison custody and fighting my case as a pro per¹ litigant, my prayers for HELP! bore fruit!

Hang on ... buckle-up ... let me share what He has shown me: that the Superior Court of California, in any County, has NO jurisdiction to issue an arrest warrant, detain, examine or hold for trial, any person charged with a felony by a complaint subscribed (signed) under penalty of perjury. And, any judgment of conviction rendered pursuant to such a complaint, is void ... and must be reversed as a matter of law ... at any time. It is written: in the California Penal Code²!

Your liberty is at stake ... check it out yourself ... and if you are one of the 117,000+ inmates initially charged by felony complaint ... you could be HOME FOR CHRISTMAS!

1

1 Propria persona (Latin) - by yourself without an attorney.

2 All statutory references (§) are to the Code unless otherwise stated.

INTRODUCTION

Picking up the ultimate authority, God's Word³ we start to read: "In the beginning, God ..." in the first book, Chapter 1, Genesis, verse 1. If you don't believe that opening statement, close the Book ... no need to read further ... but there are consequences⁴. Everyone has a choice. Read and believe or not.

Picking up our legal authority, the United States Constitution, we start to read: "WE THE PEOPLE ... establish this Constitution ... no person shall be deprived of life, liberty, or property without due process of law ... the right of the People to be secure in their person, house, papers and effects shall not be violated; and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation" in the Preamble and Amendments 4 and 5; also in Article I, §§ 7 and 13 of the California Constitution. District Attorneys and their deputies, public defenders and judges, is sworn to uphold the law, have no choice but to obey.

The phrase "By the book" is well understood by government employees. If the desired action to be taken is "in the book", it is taken with authority and blessing of the People. If an action is taken that's not in the book, it is taken without authority, its outside the law, the employee is an outlaw ... the People don't approve.

The "book" that must be read, understood and followed by prosecutors, defense attorneys and judges in all criminal actions is the California Penal Code. It is their rules and procedures to follow in order to comply with provisions of the state and federal constitutions from which their authority is derived. All statutes, rules and regulations protecting the liberties and securities of the citizen must find a legal basis in the constitutions. In order for a criminal prosecution to be valid, the rules must be followed. So let's take a look at the rule book and see if the prosecution passes constitutional muster when a complaint charging a felony is the accusatory pleading.

It either does pass or it doesn't. And if we find it doesn't ... we get to go home!

³ Holy Bible, New King James Version.

⁴ Eternal separation from God and those you love who do believe. You have everything to lose and nothing to gain by turning away from God's love letter to you, His Word. See John 3:16; Romans 10:9.

STATEMENT OF FACTS

As we analyze our case(s) we begin where no defense attorney dared to look⁵ ... the beginning ... by visually examining the complaint. The complaint is called an "accusatory pleading" and the term is defined at § 691(c): "The words 'accusatory pleading' includes an indictment, an information, an accusation, and a complaint." The California courts have held that a complaint is the foundation of the jurisdiction of the magistrate and it must be made by a private party or an informer. "The term 'complaint' is a technical one descriptive of proceedings before magistrates. It is and has been defined to be the preliminary charge or accusation against an offender, made by a private person or an informer to a justice of the peace or other officer, charging that the accused has violated the law. It has also been defined as a preliminary charge before a committing magistrate. ... The complaint is the foundation of the jurisdiction of the magistrate, and it performs the same office that an indictment or information does in the superior courts." Rupley v. Johnson, (1953) 120 Cal.App.2d 548, 552. (Emphasis added.)

The complaint is usually the first document in the court's file. Attached hereto and incorporated herein is a sample complaint which may be referenced for particular points to look for on your complaint to determine its adequacy. The name has been redacted to protect the innocent, and for the record, the charges are false.

First point: Is the complaint made by a private person or informer?

If the first page begins with a phrase similar to "The undersigned is informed and believes"(see sample) and the last page states "under penalty of perjury" ... and the signatory (complainant) is a law enforcement person (District Attorney, Deputy D.A., Investigator, Sheriff, Police, etc.) it is not a private person or informer.

The complaint is not sufficient. The magistrate lacks authority to proceed. If the magistrate did proceed in your case, he did so without subject matter jurisdiction.

5 retained or public defender, appellate counsel or magistrate.

Second point: If the word "felony" appears anywhere on the complaint it is a "complaint charging a felony" and termed an "accusatory pleading" (§ 691(c)). In order for an accusatory pleading to be sufficient, it must show on its face "If a complaint, that it is made and subscribed by some natural person and sworn to before some officer entitled to administer oaths." (§ 959.)

If the complaint was filed electronically (digital signature) then "It is sufficient to satisfy any requirement that an accusatory pleading or any part of it, be sworn to before an officer entitled to administer oaths, if the pleading, or any part of it, was in fact sworn to and the electronic form indicates which parts of the pleading were sworn to and the name of the officer who administered the oath." (§ 959.1(c)(3).)

If the complaint is NOT sworn to, it is not sufficient to confer jurisdiction on the magistrate (court). If the magistrate proceeded by asking you to plead guilty or not guilty to this unsworn complaint and you did, he/she did so without authority (§ 806) and any judgment of conviction connected with the complaint is void. "a judgment is void ... if the trial court lacked subject matter jurisdiction." People v. Alanis, (2008) 158 Cal.App.4th 1467, 1473.

A void judgment can be set aside at any time. One way to bring the matter to the attention of the courts is by Habeas Corpus petition (state uses MC-275; federal uses AO 241). Get a copy of the original (first; not Amended or 'information') complaint. It could be your ticket home ... and if insufficient, needs to be attached to your Habeas petition as an exhibit.

Our analysis and discussion could end here. In all the complaints I've seen, even those dating back to 1989, none have been made by a private person, informer⁶ or sworn to before anyone. The majority are made "under penalty of perjury"; some just state "upon information and belief." Some do not identify the complainant or person making the declaration; some are not signed at all. In these cases it is easy to take a "quick peek" and observe the complaint is defective, insufficient and void.

⁶ one who "informs" and brings charges in order to obtain a part of the penalty (reward).

At the risk of delving into the minds and motives of prosecuting attorneys and reaching a sound conclusion, it is my humble opinion that using the 'penalty of perjury' declaration rather than the Constitution and Penal Code mandates for a sworn complaint (oath) originated in the late 1960's. It appears that some errant District Attorney or Deputy D.A. used the civil verification found in the Code of Civil Procedure § 2015.5 in place of the oath requirement ... and others followed suit. It became the exclusive verification for complaints throughout the state. However, its use in the criminal arena is prohibited for several reasons: 1) civil code § 2015.5 clearly exempts its use for any "oath required to be taken before a specified official other than a notary public"; §§ 959 and 959.1(c)(3) require the oath to be taken "before some officer entitled to administer oaths"; 2) all penal code sections reference a "sworn" complaint; and 3) no authorization for its use is found in the Penal Code and excluded by § 948. "All the forms of pleading in criminal actions, and the rules by which the sufficiency of the pleading is to be determined, are those prescribed by this Code." (§ 948; enacted 1872.)

Third point: You are named as the "defendant" in the felony complaint. A defendant has only one pleading available; either a plea or a demurrer. (§ 1002.) The Code makes no provision for a plea by a defendant charged with a felony by complaint (§ 1016) "There are six kinds of pleas to an indictment or information, or to a complaint charging a misdemeanor or infraction: Guilty, Not guilty, Nolo Contendere, A former judgment of conviction or acquittal of the offense charged, Once in jeopardy, and Not guilty by reason of insanity."

That leaves only one option: demurrer. (§ 1004). Demurrer is used to challenge the complaint for defects; such as Points One and Two above. And the fact no plea is available. Did your attorney file a demurrer? I doubt it ... if he/she had, raising the issues we've discussed so far, you wouldn't be interested in this article.

Fourth point: We've just learned from the Code that a defendant charged with a felony by complaint cannot even enter a plea, as none is available and that's supposed to be his/her "only pleading" authorized by the code other than demurrer (§ 1002). (§ 1016.)

What about the People (prosecutor)? What pleadings do they have available, authorized by the Code? Let's look ... its in the book!

Section 949, First pleading on part of the people.

"The first pleading on the part of the people in the superior court in a felony case is the indictment, information, or the complaint in any case certified to the superior court under Section 859a. The first pleading on the part of the people in a misdemeanor or infraction case is the complaint except as otherwise provided by law." (§ 949.)

Since we are discussing complaints, we won't consider indictments or informations. Indictments come from the Grand Jury. Informations only come after a preliminary examination and committment by the magistrate. (§ 738) "Before an information is filed there must be a preliminary examination of the case against the defendant and an order holding him to answer made under Section 872. The proceeding for a preliminary examination must be commenced by written complaint, as provided elsewhere in this code." (§ 738.) For reference to what "written complaint" may be examined by the magistrate and from which a "First Pleading" by the People may be filed as an information, § 738 directs us to:

CA Constitution Article I, § 14 "A person charged with a felony by complaint subscribed under penalty of perjury and on file in a court in the county where the felony is triable shall be taken without unnecessary delay before a magistrate of that court." This is the accusation by written complaint of a private person or informer that the accused has violated the law. The court for hearing is the Municipal court⁷.

§ 858 "When the defendant is brought before the magistrate upon an arrest, either with or without warrant, on a charge of

⁷ Small claims, traffic court, etc. usually in Superior Court building, but separate in judicial duties.

having committed a public offense, that magistrate must immediately inform him of the charge against him, and of his right to the assistance of counsel in every stage of the proceeding." In order for the magistrate to proceed, the complaint, if the public offense charged by the private party or informer is a felony, must now be subscribed under oath by the accuser (complainant). (§ 959.)

§ 806 "A proceeding for the examination before a magistrate of a person on a charge of a felony must be commenced by written complaint under oath subscribed by the complainant and filed with the magistrate. Such complaint may be verified on information and belief⁸." If the private person or the informer wishes to press formal charges, the complaint must be sworn to by the private person/informer complainant before some officer entitled to administer oaths (§ 959); which could be the magistrate or Deputy District Attorney. If it appears the defendant is willing to plead guilty, the D.A. includes in the complaint prior convictions and the same allegations.

§ 859 "When the defendant is charged with the commission of a felony by a written complaint subscribed under oath and on file ... he or she shall, ... be taken before a magistrate. The magistrate shall immediately deliver to the defendant a copy of the complaint, inform the defendant that he or she has the right to have the assistance of counsel, ask the defendant if he or she desires the assistance of counsel, and allow the defendant reasonable time to send for counsel." The defendant can either retain private counsel or the court will appoint counsel.

§ 859a(a) "If the public offense charged is a felony not punishable with death, the magistrate shall immediately upon the appearance of counsel for the defendant read the complaint to the defendant and ask him or her whether he or she pleads guilty or not guilty to the offense charged therein and to a previous conviction or convictions of crime if charged." No plea available to defendant. (§ 1016.)

⁸ If the complainant does not have personal knowledge of the alleged offense, he must identify the source of his information and belief.

If the defendant pleads not guilty, the magistrate sets a date for a preliminary examination to see if there is sufficient evidence to hold the defendant for trial under § 859b. At the preliminary examination, the complainant produces his evidence and gives testimony. If the magistrate believes there is sufficient cause to believe a crime has been committed and the defendant is guilty, "the magistrate shall ... order that he or she be held to answer" the offense charged in the complaint. (§ 872.)

The examination complete, "it shall be the duty of the district attorney of the county ... to file an information against the defendant ..." (§§ 738, 739.)

§ 737 "All felonies shall be prosecuted by indictment or information, except as provided in Section 859a." The information becomes the first pleading in a felony case, brought on the part of the People. (§ 949.) Now, for the first time, the caption on the pleading becomes "The People of the State of California" when filed in the Superior Court and signed by the District Attorney as required by § 959 in order to be sufficient. But lets not get ahead of ourselves ... we still must deal with the "guilty" plea to the private person/informer complaint, now sworn, before the magistrate.

"While the charge remains pending before the magistrate and when the defendant's counsel is present, the defendant may plead guilty to the offense charged, ... or nolo contendere to the offense charged ..." (§ 859a(a).)

§ 859a(a) "Upon accepting the plea of guilty or nolo contendere the magistrate shall certify the case, ... to the court in which judgment is to be pronounced ..." (§§ 682(4), 689, and 737.) And, the "complaint in any case certified to the superior court under Section 859a" becomes the first pleading on the part of the People (§ 949). The complaint, now sworn, is sufficient (§ 959) and sentencing takes place.

The complaint is deemed an information by the magistrate. However, because the complaint was charging a felony, the magistrate compounded the problem by asking for and accepting an unauthorized plea. (§ 1016.) The plea is voidable as obtained by fraud.

The authority to prosecute felonies is found in Article I, § 14 of the California Constitution and is limited to two primary modes of procedure for a defendant who pleads not guilty; Indictment or Information. "Felonies shall be prosecuted as provided by law, either by indictment or, after examination and commitment by a magistrate, by information." (Article I, § 14 CA Const..)

The Penal Code authorizes the procedure at § 988 which begins at time of arraignment ... when you are first brought before the court after arrest ... and asked to plead. Section 988 uses the term "accusatory pleading" in place of "indictment or information" and has since 1951. The only "complaint" contemplated is one charging a misdemeanor or infraction. This is the arraignment procedure authorized to govern §.859 et seq. and the only complaint which may be heard is one "under oath subscribed by the complainant" (§ 806). Now is the time to look at your complaint ... is it sworn (name the officer who administered the oath)? "The arraignment must be made by the court, or by the clerk or prosecuting attorney under its direction, and consists in reading the accusatory pleading to the defendant and delivering to the defendant a true copy thereof, and of the endorsements thereon, if any, including the list of witnesses, and asking the defendant whether the defendant pleads guilty or not guilty to the accusatory pleading; provided, that where the accusatory pleading is a complaint charging a misdemeanor, a copy of the same need not be delivered to any defendant unless requested by the defendant." (§ 988.)

The Penal Code clarifies that the arraignment concerns only an indictment or information in Title Four, Division I Pretrial at Chapter 1 "Pretrial proceedings" Rules for Criminal Cases in the Superior Court, Rule 4.100 "At the arraignment on the information or indictment, unless otherwise ordered for good cause, and on a plea of not guilty ... the court shall set dates for"

Court Rule 4.101 covers bail.

There is no arraignment procedure for a complaint charging a felony⁹ subscribed under penalty of perjury. Period. The Superior Court lacks subject matter jurisdiction of such complaint.

⁹ No plea available (§ 1016).

Inasmuch as there is NO arraignment procedure in the Code for a defendant charged with a felony in an unsworn complaint, the prosecution can never begin. This fact can be readily confirmed by reference to the Penal Code's section on statute of limitations (Time Of Commencing Criminal Actions) at § 804: "prosecution for an offense is commenced when any of the following occurs:

- (a) An indictment or information is filed.
- (b) A complaint is filed charging a misdemeanor or infraction.
- (c) The defendant is arraigned on a complaint that charges the defendant with a felony.
- (d) An arrest warrant or bench warrant is issued." (Emphasis added.)

Prior to the year 2009, Subdivision "(c)" of § 804 read "A case certified to the superior court."

California Government Code §§ 26500 - 26501 governs authority for the District Attorney to prosecute criminal offenses. And gives him/her discretion as to what charges to bring against the accused person. However, how charges are prosecuted is not discretionary ... felonies may ONLY be prosecuted by indictment or information "except as provided in Section 859a". (§§ 682(4), 737.) Section 859a is the only statute in the Penal Code authorizing a case to "be certified to the superior court" and contemplates a guilty plea to a sworn complaint, and, which becomes a first pleading on the part of the People (§ 949) upon such certification to the superior court (arraignment).

So, if there is no plea (guilty or not guilty) available (§ 1016) to the defendant ... there is no arraignment (§ 859a) possible and no certification of the case to the superior court possible ... and therefore, no complaint that charges the defendant with a felony may ever become a first pleading on the part of the People.

Therefore, the only prosecution available to the state of a felony is by indictment or information ... the first pleading on the part of the People ... a Constitutional mandate. (Article I, § 14, Calif. Const.) And, if YOUR complaint, charging a felony is captioned "THE PEOPLE OF THE STATE OF CALIFORNIA", it is an unauthorized (illegal) first pleading on the part of the People. If YOUR complaint is not sworn as required by law (§§ 691(c), 959, 95911(c)(3); Article I, § 13 of the California Constitution and 4th Amendment to the United States Constitution) it is insufficient to confer jurisdiction on the court.

The Penal Code is the final authority ("The Book") for rules, sufficiency of the pleadings and procedures for conducting a criminal action (§ 948) and the Code does not permit a person to be arrested, detained, held for trial, asked to plead, prosecuted, tried, convicted, and imprisoned pursuant to a complaint charging a felony.

SUMMARY

The minute the Clerk of the Superior Court of California, in any County of California, accepted for filing and Filed, date stamped and initialed a complaint charging a felony subscribed by a law enforcement officer under penalty of perjury, he/she divested the Court of subject matter jurisdiction; and ensured any conviction pursuant to said complaint is void. The conviction must be reversed.

The District Attorney submitting the felony complaint to the magistrate or court for filing, requested arrest warrant to issue, arrested and prosecuted the person named as defendant in such complaint, violated that person's Rights to be secure in their Person house, papers and effects from unreasonable seizure and due process of law as guaranteed under the 4th, 5th and 14th Amendments to the Constitution of the United States. Person must be discharged.

The magistrate(s) failure to sua sponte dismiss the complaint for want of probable cause and to comply with the oath requirements of § 959 as required by § 806 upon presentation to him/her, not only violated the Person's Constitutional right to due process of law, but proceeded to detain and imprison the person in the absence of jurisdiction in violation of his/her oath of office. Treason?

"Jurisdiction is fundamental - without it, courts cannot proceed at all in any case." Ruhrgas v. Marathon Oil, 526 U.S. 574 (1999).

Long standing practice notwithstanding, the prosecution by the courts and officers thereof of felonies by complaints subscribed under penalty of perjury by law enforcement complainant is not authorized by state or federal law.

"It is obviously correct that no one acquires a vested or protected right in violation of the Constitution by long use, even when that span of time covers our entire National existence and even predates it." Walz v. Tax Commission of City of New York, 397 U.S. 664, 678 (1970).

Bottom line: The Fourth Amendment's prohibition of "unreasonable seizures" as it applies to the seizure of the person, preserves for citizens the traditional protections against unlawful arrest afforded by the common law. California v. Hodari D. 499 U.S. 621 (1991).

Every person unlawfully imprisoned ... under any pretense, may prosecute a writ of habeas corpus to inquire into the cause of his or her imprisonment. (§ 1473(a).) "And Habeas Corpus will lie whenever one is held under a sentence which violates his fundamental constitutional rights." In re Smiley, (1967) 66 Cal.2d 606, 614.

We've looked into the Rule Book the District Attorneys' and Magistrate (Judges) must follow to bring and maintain a valid prosecution and conviction ... The California Penal Code. Authority to prosecute a person for a violation of California law charged as a felony by complaint is either in the Book or not. I can't find it.

Now, if you're tired of being a "kept" person, take a look in the Book. Its available in all prison and county jail law libraries, online and most bookstores.

In the event you were prosecuted pursuant to such a complaint as we've discussed, regardless of the offenses charged therein, it just may be your conviction and sentence were obtained as a direct result of the state's violation of your fundamental constitutional rights.

The law declares in such circumstances that the judgment is void and must be vacated and you discharged from custody. (§ 1487(1), (3) and (6).) ENJOY!

EPILOG

I know; it sounds too easy, too good to be true. But it is. It is almost unbelievable that no one has pointed this out before; "Look the Emperor has no clothes on!" With California's prison population exceeding 130,000 and untold thousands having passed through it, and most pursuant to a felony complaint, its time to point out: "Look the D.A.'s and Judges have no authority!" How has this happened?

It appears that the prosecutor, your friendly D.A. doesn't look at the Rules - shame on him/her. The Judge doesn't check the Rules - shame on him/her. The defense attorney doesn't believe there are any Rules - shame on him/her. Now that we the People know, if we don't put a stop to this trafficking in human flesh - shame on us.

CT-1

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA
HALL OF JUSTICE

COMPLAINT FOR ARREST WARRANT
[REDACTED] ECBS30

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,

~~FILED~~

FELONY COMPLAINT

DA NO: 130101293

vs.

[REDACTED]

CEN
WARR

Defendant.

FILED

JAN 18 2013

DAVID N. YAMASAKI
CLERK OF SUPERIOR COURT
COUNTY OF SANTA CLARA

The undersigned is informed and believes that:

COUNT 1

On or about January 4, 2010, in the County of Santa Clara, State of California, the crime of RECORDING FALSE INSTRUMENT, in violation of PENAL CODE SECTION 115, a Felony, was committed by [REDACTED] who did knowingly procure and offer a false and forged instrument, Substitution of Trustee #20564216, to be filed, registered and recorded in a public office within the State of California, which instrument if genuine, might be filed, registered and recorded under the laws of the State of California and of the United States.

COUNT 2

On or about January 4, 2010, in the County of Santa Clara, State of California, the crime of RECORDING FALSE INSTRUMENT, in violation of PENAL CODE SECTION 115, a Felony, was committed by [REDACTED] who did knowingly procure and offer a false and forged instrument, Reconveyance #20564217, to be filed, registered and recorded in a public office within the State of California, which instrument if genuine, might be filed, registered and recorded under the laws of the State of California and of the United States.

COUNT 3

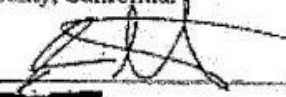
On or about January 4, 2010, in the County of Santa Clara, State of California, the crime of RECORDING FALSE INSTRUMENT, in violation of PENAL CODE SECTION 115, a Felony, was committed by [REDACTED] who did knowingly procure and offer a false and forged instrument, Notice of Rescission #20564218, to be filed, registered and recorded in a public office within the State of California, which instrument if genuine, might be filed, registered and recorded under the laws of the State of California and of the United States.

CT-9

Complainant therefore requests that the defendant be dealt with according to law.

I certify under penalty of perjury that the above is true and correct.

Executed on January 18, 2013, in SANTA CLARA County, California.

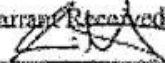


ODA BOI [REDACTED] ODA
LIM/ D553/ FELONY/vm

Cash or Bond \$ 100,000
Date: 1/18/13



JUDGE OF THE SUPERIOR COURT

Warrant Received for Service by:
 RIG
on 01/18/2013