No Oral Argument Requested

No. 10-08-00208-CR

In The
COURT OF APPEALS
TENTH DISTRICT OF TEXAS

HARMON LUTHER TAYLOR,
Defendant - Appellant,

v.

STATE OF TEXAS,
Plaintiff - Appellee.

(Clerk's Record filed 7 August 2008.
Transcript filed 13 August 2008.)

On Collateral Order Doctrine appeal from the
COUNTY COURT AT LAW OF WALKER COUNTY
Case No. 07-1392

APPELLANT'S BRIEF

HARMON L. TAYLOR
7014 MASON DELLS DRIVE
DALLAS, TEXAS 75230

Identity of Parties and Counsel

Appellant	**Appellee**
HARMON LUTHER TAYLOR 7014 Mason Dells Drive Dallas, TX 75230	STATE OF TEXAS DAVID P. WEEKS Walker County DA 1036 11th Street Huntsville, TX 77340

Since the underlying case involves Statutory Challenges, the following are also Notified via service of his Brief.

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Nature of the Case

CIVIL. "No driver's license" "ticket" case. STATE wants like mad for this to be a ***criminal*** matter, but STATE has to prove "criminal." Without any commercial nexus, without a statute, without a complaint (substantive Notice), and without Notice (procedural), which failures render STATE's threshold burden legally impossible, it's a non-case, thus ***CIVIL***, for all purposes.

Course of Proceedings

In the municipal court.

Motion to dismiss; hearing; denied.

First arraignment. Court entered plea of Not Guilty for Taylor, upon Taylor's declination to plea, given the complete absence of Notice.

Court engaged its *sua sponte* mandamus "display."

THEN, the deputy clerk hand delivered the complaint to Taylor.

Trial with six-member administrative advisory panel. ***Second*** "arraignment" occurred immediately prior to STATE's case-in-chief, and Taylor declined for the ***second*** time to enter a plea given the complete absence of Notice.

Question from panel regarding "jury nullification."

Verdict of Guilty; fine of $100; costs of $65; Bond for $330.

In the county court.

Original "order," Notice for ***third*** arraignment, signed by non-judicial officer.

Taylor filed his motions; they were designed for ruling without any need for an appearance. The sole response was ***one more*** of the incessant threats of jail for non-appearance. That got several people sued. Taylor v. Hale, et al.

Original setting was used to try to sucker Taylor into signing the reset form, which overtly waives Notice, which is a key issue in this case. Taylor drove six hours (round trip) and waited for however long for his case to be called for a 2-minute exchange involving signing that reset form, designed to try to trick Taylor into waiving his objection to Notice. [Tr. Ex. D-111] (Vol. 2, next to last page).

Taylor's motion to dismiss was heard on 28 November. All motions denied.

Request for Transcript made immediately after that hearing.

Case reset ***multiple*** times.

Taylor requested a special setting. Request subtly denied by that next setting's not be a special setting. This was the "final" confirmation of the sentence of "probation for life with a bi-monthly check-in."

Taylor initiated this collateral order doctrine appeal.

Trial Court's Disposition

For this collateral order doctrine matter, the dispositions that are final, collateral, and appealed, here include (A) denial of access via refusal to produce the Transcript for use at trial, (B) confirmation, by denial of Taylor's motions, that a deputy clerk may be a witness *and* an agent for service of the complaint, (C) confirmation that the municipal court may be a witness *and* a judge in the same case, (D) confirmation that a deputy clerk may be a witness and a custodian of that same Record simultaneously, and (E) confirmation that the statute STATE relies on doesn't have to define a crime, that the complaint doesn't have to charge a crime, that there need be no commercial nexus, that Due Process is irrelevant, and that the law, generally, doesn't make one bit of difference.

Issues Presented

Point 1: Is the collateral order doctrine part of Due Process applicable to the states via the 14th Amendment?

Cox Broadcasting Corp. v. Cohn, 420 U.S. 469 (1975).
Pennsylvania v. Ritchie, 480 U.S. 39 (1987) (*Ritchie*).

The Permian Corporation v. Davis, 610 S.W.2d 236 (TX 1980).
TX RS. APP. P. 29.5, 29.5(b), 29.6.

Point 2: Does the trial court have jurisdiction during the pendency of a collateral order doctrine appeal?

TX R. APP. P. 29.5, 29.5(b).
Griggs v. Provident Consumer Discount Co., 459 U.S. 56 (1982).

STATUTORY CHALLENGE

Point 3: Does Civ. Prac. & Rem. Code § 51.014 violate Due Process?

TX CIV. PRAC & REM. CODE ANN. § 51.014 (West 1997 & Supp. 2008).

The Collateral Order Doctrine Issues

Point 4: What's the big deal with the "no driver's license" ticket?

The Bank of the United States v. The Planters' Bank of Georgia, 22 U.S. (9 Wheat.) 904 (1824) ("government" as proprietor).
Griswold v. Connecticut, 381 U.S. 479 (1965) (STATE ***cannot*** compel engagement of commerce).
Lev. 19:35-36 (honest system of weights and measures).

Point 5: May the trial court compel Taylor to trial without first delivering the transcript of that 28 November hearing?

Boddie v. Connecticut, 401 U.S. 371 (1971).
Christopher v. Harbury, 536 U.S. 403 (2002) (*Harbury*).

Spencer v. Kemna, 523 U.S. 1 (1998) (mootness exception).

Point 6: Where a deputy clerk is the complainant, is the clerk's office too "interested" to qualify as an agent for service?

TX R. CIV. P. 103.
FED. R. CIV. P. 4(c)(2).
TX CRIM. PROC. CODE ANN. art. 45.202.

Point 7: Where a deputy clerk is the complainant, is the court a witness/party, thereby triggering ***disqualification***?

TX R. CIV. P. 18a, 18b.
TX R. CIV. EVID. 605.
Bradley v. State of Texas ex rel. White, 990 S.W.2d 245 (TX 1999).
Tesco American, Inc. v. Strong Industries, 221 S.W.3d 550 (TX 2006).
McKenna v. State, 221 S.W.3d 765 (TX 2007).

Point 8: Where a deputy clerk is the complainant, can that deputy remain a "custodian of records?"

Witness for STATE serving simultaneously as custodian of records??

Issues included for jurisdictional purposes

Point 9: Does TX Trans. Code § 521.021 define a crime?

TX TRANS. CODE §§ 521.021, 521.025.
Gonzalez v. Carhart, __ U.S. __ (No. 05-380) (Apr. 18, 2007) (*Carhart*).

Point 10: Does the complaint charge a crime?

See Point 9.

Point 11: Where's the commercial nexus?

See Point 9.
United States v. Lopez, 514 U.S. 549 (1995) (*Lopez*).

Point 12: What does "operate" mean?

TX TRANS. CODE §§ 521.021, 521.025.

Point 13: What does "this state" mean?

TX TRANS. CODE §§ 521.021, 521.025.
TX PENAL CODE ANN. § 1.04 (West 2003).

Point 14: Does Art. 45.018(b) violate Due Process?

TX CRIM. PROC. CODE ANN. art. 45.018(b).
TX CRIM. PROC. CODE ANN. art. 27.14(d).

Point 15: Is an arraignment a "proceeding" for purposes of Art. 45.018(b)?

Rothgery v. Gillespie County, __ U.S. __ (23 June 2008).

Statement of Facts

Record References

There is one key Transcript, namely the one of 28 November. With that Transcript are Exhibits D-101 to D-111. Key here are D-101, D-104, D-106, and D-107, and Tr. p.9 lines 20-22, and p.10 lines 2-3, 10-24. *See* Appendix.

Here's what happened

The ticket.

On 24 January 2007, the City of Huntsville, via its executive, law enforcement agents, issued Taylor a ticket for "no driver's license" despite there being no "operating" or "driving" in "this state" "for profit or hire."

In the municipal court.

To confirm his appearance, Taylor filed his motion to dismiss. In that motion, served 31 January 2007, Taylor objected to the lack of Notice. The municipal court, by Notice dated 19 February, set the motion for hearing on 5 April, 8:30 a.m.

On 5 April, starting at 8:30 a.m., the court first heard Taylor's motion. Obviously, that motion was denied. At the close of that hearing, the municipal court moved immediately into the ***first*** arraignment. Taylor declined to plea, given that there was no Notice of any offence to which to respond. Thus, the court entered the plea of Not Guilty on Taylor's behalf. Then the court engaged a *sua*

sponte mandamus "display" compelling disclosure of information that the court never needed regarding contact information in the event of Taylor's non-appearance. At 9:13 a.m., i.e., *after* those ***three*** proceedings, a deputy clerk handed Taylor the "complaint," which is also dated 5 April.

The court then set the trial with a six-member administrative advisory panel for 17 May. On 17 May, after seating the panel and immediately before the start of STATE's case-in-chief, the court engaged the ***second*** "arraignment." Taylor declined for the ***second*** time to enter a plea given the complete absence of Notice.

After trial, which was run quite fairly, but which shouldn't have been run at all, and after objections to the instructions, and after submission of the case to the panel, the panel came back with a question regarding "jury nullification."

After they were informed that there is no such thing, which is correct for proceedings conducted in "this state," since they are not a Venire drawn from the vicinage but rather an administrative advisory panel, they returned a verdict of guilty. Fine was imposed of $100, and costs of $65.

Taylor submitted his Bond for $330, and the matter was transferred to the county court for trial *de novo*.

In the county court.

The county court's very first "order," which was Notice for yet ***third*** arraignment, was signed by non-judicial officer.

Taylor filed his motions, which were designed for ruling without any need for an appearance. The sole response sent to Taylor was one more of the incessant threats of jail for non-appearance. That got several people sued.

That original setting in the county court was used to try to sucker Taylor into signing the reset form, which form overtly waives Notice, which is a key issue in this case. Taylor drove six hours (round trip) and waited for however long for his case to be called for a 2-minute exchange involving signing that reset form. Taylor didn't fall for the scam, and the case was reset, complete with the Notice objection fully intact.

The county court heard Taylor's motion to dismiss on 28 November. All motions were denied.

Taylor made his request for the Transcript immediately after that hearing.

Thereafter, the case was reset ***multiple*** times, generally for two months out. Thus, STATE had heard Taylor's defense not only in the municipal court, but also again via the 28 November hearing on Taylor's special appearance and motion to dismiss, and to quash, etc. Thus, it stands to reason that having heard Taylor's defense, neither the court nor STATE was in any particular hurry to try the case.

Also, Taylor is three hours away from the courthouse, when measured by the speed limits imposed upon ***commercial*** traffic in "this state." Whether the pending Taylor v. Hale, et al. lawsuit in federal court or something else influenced the lack

of interest in providing a special setting for this case, it was clear that this case was ***not*** going to get any special setting. STATE wasn't asking for one, and Taylor's request was subtly denied by that next setting's not be a special setting. The denial of that request served as the "final" confirmation of the county court's full intent to maintain the pre-trial sentence of "probation for life with a bi-monthly check-in."

That motivated Taylor to initiate this collateral order doctrine appeal.

Summary of the Argument

In general, all that the trial court can produce is a void judgment

There's no Notice, no statute defining any offense, no competent complaint, and no subject matter jurisdiction. All that can happen, here, is a void judgment. This case ***should*** have been dismissed a long, long time ago.

The cost effective solution is the collateral order doctrine

The collateral order doctrine exists to protect "at risk" "federal issues." Thus, this doctrine is part of Due Process applicable to the states via the "14th Amendment." Since the collateral issues here started in the *municipal* court, and since those collateral issues are *designed* to be mooted out by the trial *de novo* process, there's only one time to address them, namely now. The "federal issues" are "at risk;" the municipal court never had jurisdiction; the county court rulings are "final;" and STATE's "case" should be dismissed.

Argument

Point 1: Is the collateral order doctrine part of Due Process applicable to the states via the 14th Amendment?

Standard: Question of law – *de novo*.

Texas doesn't recognize the collateral order doctrine.

The Permian Corporation.

Is the doctrine merely federal procedure or is it part of Due Process?

Cohen, 337 U.S. at 547 (federal court); *Cox Broadcasting* (state court); *Coopers & Lybrand*, 437 U.S. at 468 (federal court); *Moses H. Cone Hospital* (federal court); *Ritchie* (state court).

Obviously, if the collateral order doctrine is merely procedural, then Texas has discretion not to recognize it, and the state appellate courts don't have jurisdiction under this doctrine. However, if it's part of Due Process, then the state appellate courts *do* have jurisdiction under this doctrine.

In short, the collateral order doctrine exists to protect the "federal issues," especially where the federal issues are "at risk." Thus, no state has discretion to disregard the collateral order doctrine. The state may have discretion not to apply the same theory to ***state*** law issues, but when it comes to ***federal*** issues, e.g., Due Process, the state judicial systems are duty bound to recognize the doctrine.

In *Cox Broadcasting*, the Georgia high court's ruling on the federal question (statutory challenge) was "final" for purposes of Supreme Court jurisdiction.

In *Ritchie* not only was the federal question (Sixth Amendment confrontation v. privacy of state's files) ruling final, but also that question would have been impossible to reach had jurisdiction not been exercised right then.

Actually, Texas *does* recognize the collateral order doctrine.

"A rose by any other name …." SHAKESPEARE, ROMEO AND JULIET.

TX R. APP. P. 29.5 reads this way.

> **29.5 Further Proceedings in Trial Court.**
>
> While an appeal from an interlocutory order is pending, the trial court retains jurisdiction of the case and may make further orders, including one dissolving the order appealed from, and **if permitted by law**, may proceed with a trial on the merits. **But the court must not make an order that**:
>
> **(a)** is inconsistent with any appellate court temporary order; or
>
> **(b) interferes with or impairs the jurisdiction of the appellate court or effectiveness of any relief sought or that may be granted on appeal.**

TX R. APP. P. 29.5 (**emphasis** in original) (**emphasis** added).

This language begs the very question at issue. And, it's not the only language that does that.

> **29.6 Review of Further Orders.**
>
> **(a)** ***Motion to review further orders.***
> While an appeal from an interlocutory order is pending, **on a party's motion or on the appellate court's own initiative**, the appellate court may review the following:
>
> (1) a further appealable interlocutory order concerning the same

subject matter; and

(2) **<u>any interlocutory order that interferes with or impairs the effectiveness of the relief sought or that may be granted on appeal.</u>**

(b) ***Record*****.**
The party filing the motion may rely on the original record or may file a supplemental record with the motion.

TX R. APP. P. 29.6 (**emphasis** in original) (***emphasis*** in original) (**<u>emphasis</u>** added).

Thus, we have ***more*** language that formally begs the very questions raised in the collateral order doctrine appeal initiated, here.

<u>Federal issues are at risk of being rendered moot.</u>

Fundamentally, the problems raised here started in the *municipal* court, which is not a court of Record. In ***any*** trial *de novo* circumstance, reaching back far enough to correct the manifest abuses of Due Process in and by the *municipal* courts is ***very*** difficult! Thus, where we view the *county* trial court in its role as an *appellate* court, and where we recognize the purpose of the collateral order doctrine, we find that this is about the *only* way to address the problems that originate in the *municipal* courts that are not courts of Record. As additional or other superceding issues develop in the trial *de novo*, the original problems arising in the *municipal* courts truly are at risk of being mooted out, which one might say is rather much the purpose of the trial *de novo* system.

More details are raised in the following Points. Those details are not addressed here, because whether relief should be granted under this doctrine is secondary to the threshold matter of recognition of the doctrine. However, to make clear the value of recognition of the doctrine, in general, we're talking about Due Process, and while "interlocutory" includes rulings that address the merits of the case, "collateral" refers to rulings that don't address the merits. Those collateral matters are these: (1) being compelled to trial without a requested Transcript; (2) service by a deputy clerk of a deputy clerk's complaint; [1] (3) trial by the same municipal court (now a witness/party) of the case initiated by a deputy clerk as *complainant*, i.e., TX R. CIV. P. 18a, 18b ***disqualification***; [2] and (4) whether the deputy clerk complainant may remain as "custodian of records" of that case, i.e., an egregious conflict of interest issue. Regarding these matters, the municipal court's "final judgment" is void; all trial *de novo* (think appellate) "rulings" are

[1] This is distinct from the timing issue of Art. 45.018(b), which timing issue is already resolved in Taylor's favor. *See Rothgery* (the arraignment is a "proceeding" for purposes of appointment of counsel) (hence; it's a "proceeding" for ***all*** purposes). The overriding "federal issue" in *Rothgery* is the appointment of counsel issue, which analysis includes the "is an arraignment a proceeding" issue. Since the appointment of counsel timing issue survived the state appellate process, the collateral order doctrine would not necessarily apply for that issue. And, due to the timing issue, the best that the trial court can produce *here* is a void judgment.

[2] To establish the collateral order doctrine as policy is to provide a mitigation of damages, "prevention-oriented" remedy. *Cf. Helling* (problem *prevention*), *H. J. Inc.* (same), *Schall,* 467 U.S. at 298-300 (same), *Pulliam* (same), and *Juidice* (bad faith and harassment *both* justify *prevention*).

final; all involve Due Process; and proceeding beyond that point (A) severely jeopardizes reaching those issues, and (B) does nothing but exacerbate an already ***very*** unhealthy circumstance for everyone on STATE's side of what the trial courts were turning into an increasingly monstrous fiasco.

The Permian Corporation ruling is flat out wrong.

It's impossible to square *The Permian Corporation* with the purpose of the collateral order doctrine, in general, and with *Cox Broadcasting* and *Ritchie*, in particular. *The Permian Corporation* ruling cannot withstand this challenge.

Now, since even the Court of Criminal Appeals takes its direction from the Supreme Court of Texas, we may just be stuck trying to fix this on this side of Washington, but there's only one way to find out. And, criminal matters are distinct from civil matters, so it's a place to start.

Point 2: Does the trial court have jurisdiction during the pendency of a collateral order doctrine appeal?

Standard. Question of law – *de novo*.

The trial court has acted in accordance with TX R. APP. P. 29.5(b), [3] and the reason for even raising this issue is that this is exactly the response, namely

[3] The contrast is found in Florance v. State, No. 05-08-00724-CR, where the county court bulldozed ahead. There are three motions for contempt filed against that trial judge. It's a matter of "first impression," to be sure, but there's value in recognizing the right approach so as to avoid having the punish those who take the wrong approach. Contempt is called contempt for a reason.

cessation of "all" trial court activity during the collateral order doctrine appeal, that should be formally recognized as the correct handling of such matters.

What process is due? The trial court traditionally has no authority during the pendency of an appeal. *Cf. Dyches*; *Woodson*; *Griggs*, 459 U.S. at 58 ("[A] federal district court and a federal court of appeals should not attempt to assert jurisdiction over a case simultaneously."). If it's "final" enough to trigger the collateral order doctrine, it's "final" enough to trigger the "full stop" policy regarding appeal.

TX RS. APP. P. 29.5 and 29.5(b) ***very*** clearly prohibit the trial court from jeopardizing the relief available via appeal, which is the exact purpose of the collateral order doctrine.

"Collateral" order matters are not the same as "interlocutory" matters. Where a "collateral" order matter arises, and where the appellate jurisdiction is activated by the filing of that Notice of Appeal, trial court jurisdiction stops. The exception that makes sense is dissolution of the order that gave rise to the objection motivating the appeal. [4] To accommodate that, there should be recognized a traditional time period of plenary jurisdiction in the trial court that is ordinarily recognized following a "final judgment," say 30 days. Where trial is sooner than that, either the trial date is postponed so as to accommodate that time period, or else that plenary jurisdiction time period is necessarily shorter. However, under no

[4] That leaves an issue of costs, which can be addressed when it's relevant.

circumstances can the collateral order doctrine appellant be compelled to trial during the pendency of such appeal.

In the event of abuse of the collateral order doctrine, surely the panoply of sanctions available for other matters would apply equally well.

STATUTORY CHALLENGE

Point 3: Does Civ. Prac. & Rem. Code § 51.014 violate Due Process?

Standard. Question of law – *de novo*.

Where CIV. PRAC. & REM. CODE ANN. § 51.014 operates to deny jurisdiction that ***must*** exist in order to accommodate the collateral order doctrine, the statute facially violates Due Process and induces denial of access under color.

The Collateral Order Doctrine Issues

Point 4: What's the big deal with the "no driver's license" ticket?

Standard. Question of law – *de novo*.

Let's talk "funny money" for a moment.

If the system matched the marketing, then gold and silver Coin would be circulating generally as currency. Directly attached to any currency is its default "choice of law." The Supreme Court teach quite thoroughly the mechanism of "choice of law" via *Ogden v. Saunders* (1827). In short, the "choice of law" is built into the deal, itself. To begin the process of altering that default "choice of

law," gold Coin was sucked out of the system in the 1930's. To complete that "choice of law" altering process, silver Coin was sucked out of the system by 1965. The masterminds behind that effort wanted the "funny money" system in place "right then" so badly that they assassinated Kennedy, who opposed the "funny money" scam and who preferred "United States notes" to "notes" of a private banking house masquerading as a part of the government. [5] So, as screams out from both (A) the lack of any *asset*-based honest system of weights and measures in general circulation, and (B) the "exclusive" general circulation of "legal tender" that is *debt*-based, the default "choice of law" has been changed. Due to the general circulation of "paper currency" all along, the transition in default "choice of law" was rendered imperceptible by all but a very, very few.

Picture Great Britain and its Pound Sterling. Now picture post-WWI Germany and its property-consuming run-away inflation with the debased paper Deutsche Mark. These represent the two fundamental choices of law. America went to bed at the end of 1964 with a default "choice of law" of the Common Law, the Law of the Land, inherited from Great Britain, due to the general circulation of the honest system of weights and measures. America woke up in 1965 on the deck

[5] Lincoln also favored the "United States note" system over private banking house "notes," and he, too, was assassinated for opposing the international banking cartel who wanted to infect the world with their "funny money" scam, and who have largely succeeded, due to the generic "lack of awareness" of the problem.

of a huge barge anchored in the middle of the Rhine River in Germany, with a default "choice of law" being the maritime law, the Law of the Sea, due to the termination of the general circulation of the honest system of weights and measures. As it turns out, this duplicates almost exactly the fundamental operational transition from the Republic of Rome, governed by its Senate, to the dictatorship of Rome, governed by some generally insane madmen. Rome's transition was also very clearly accentuated by debasing its honest currency with the dishonest currency.

The single-most significant motivator for the Philadelphia Convention was the States' "attraction" to the circulation of "Bills of Credit." Why did the idea even come to mind for the States to want a super-sovereign? Because the leadership of the day wanted a "power" that could (A) render such "funny money" scams illegal ***and*** (B) enforce that policy/law successfully. Why does the "Constitution" prohibit the States from even "emit[ting] Bills of Credit?" Why does the "Constitution" prohibit the States from "mak[ing] any Thing but gold and silver Coin a [legal] Tender in Payment of Debts?" Because, the Founders understood that where the currency is not based on and directly tied to, an asset-in-existence-based honest system of weights and measures, we end up right back in Rome under insane dictators, or under king George, the insane dictator of the day

who was a bit closer to home. [6]

In short, if the system matched the marketing, there'd be no "funny money."

The banks profit greatly from the "funny money" scam. And, the banks have been behind every war this nation has ever been dragged into, which is the reality to this very day. Some key references are these: ROGER SHERMAN, A CAVEAT AGAINST INJUSTICE (1752); M. W. WALBERT, THE COMING BATTLE (1899); EUSTICE MULLINS, SECRETS OF THE FEDERAL RESERVE (1952); RICHARD KELLY HOSKINS, WAR CYCLES, PEACE CYCLES (1985); G. EDWARD GRIFFIN, THE CREATURE FROM JEKYLL ISLAND (1994).

In this "funny money" system, "government" acts far more in its commercial character than in its "sovereign" character. *Cf. Planters' Bank*, 22 U.S. at 907-08 ("government" as proprietor) (1824 is also the first year of this so-called "popular vote" for presidential elections; if the "popular vote" were part of the original plan, why did it not exist until 1824?); § 3002(15)(A) ("United States" is "a federal corporation") (this is the proclamation to the world that "debt collection" activities (think, e.g., irs/tax) engaged by this thing called "United States" operates under the ***proprietorship doctrine***, rather than some outrageous notion of "sovereignty").

[6] Obviously, king George had a ***lot*** of help from/by the Parliament.

Fundamental reality about the "law" of "this state."

Everything about "this state" depends upon *voluntary* agreement. The very threshold entrée into "this state" is *voluntary* agreement. *Ashwander*; FED. R. CIV. P. 9(a). The commercial identifier, i.e., the SSN, is *voluntarily* applied for. *See* Form SS-5; <http://www.ssa.gov/online/ss-5.pdf>; Social Security Numbers, 20 C.F.R. § 422.103(b)(1) at 1068-69. Transactions in "this state" are based upon *voluntary* use of 31 U.S.C. § 5103 items (the "funny money"). Asserting a *residence* in "this state" is purely *voluntary*. Even self-identification as a "taxpayer" is a purely *voluntary* commercial transaction.

Thus, *compelled* agreement is the exact *antithesis* of the very soul of "this state." It's one thing to establish a line of commerce and to require a license for those who opt to engage in that line of commercial activity. But it's *completely* another to ***compel*** a party into any particular line of commerce, much less into a line of commerce ***and*** a "choice of law." A coerced will is not evidence. *See* 1 PAGE, THE LAW OF WILLS, §§ 5.7, 15.11. A coerced trust is not evidence. BOGERT §§ 42 at 434, 44 at 452 and n.16. A coerced commercial transaction is not evidence. U.C.C. § 1-103. In the ultimate setting, a coerced confession is not evidence. *Escobedo*; *Miranda*. The coercive environment vitiates the very "evidence" it purports to create. *See Rudzewicz*, 471 U.S. at 486; *Ohralik*; *Bates*.

Parties may not be compelled to accept magistrate participation. *Gonzalez*. [7]

To understand what "this state" is, is to understand how it functions. To understand how it functions is to understand what the big deal is.

<u>This is what the big deal is—commerce cannot be compelled.</u>

What's the big deal? Commerce cannot be compelled.

STATE is not going to compel Taylor to engage in any particular line of commercial activity, including "driving" or "operating." STATE is not going to compel Taylor to adopt any particular "choice of law." And, the "driver's license" isn't really for commercial purposes, anyway. [8] It's ***primary*** function is as a STATE "ID card," and STATE is not going to compel Taylor to be a member of the "church of STATE OF TEXAS" come hell or high water! [9] That "church" exists to defy GOD, as is seen astronomically clearly in a multitude of ways, one of

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[7] This was an initial issue in Taylor v. Hale, et al. Taylor's position has been fully confirmed via the *Gonzalez* ruling.

[8] One of the clearest examples is *Griswold*. What's a "marriage license" for? Engaging in the commercial activity of making babies. But, even "licensed" couples cannot be ***compelled*** to make babies. Hence, criminalizing the use of contraceptives egregiously invades the right ***not*** to engage in commerce, even where there's a "license" to do so! Said another way, to criminalize the use of contraceptives is to compel commercial activity (making babies). And, what the Supreme Court teach via *Griswold* is that no STATE may compel ***any***one to engage in ***any*** type of commercial activity, even when s/he ***is*** "licensed" to do so!

[9] It's through the scam of using the "driver's license" as the ID card that the "internationalists" will seduce Americans, by the millions, to join politically with the "new world order." Taylor *ain't* going "there," either! But, that's ***very much*** secondary to the tyranny of compelled commerce and religious affiliation.

the more outrageous being STATE's defiance of and rebellion against the Scripturally-consistent honest system of weights and measures. *Cf*. Lev. 19:35-36.

What is ***any*** "license" for? The "license" is the pre-approved permission to engage in privileged commerce in "this state," at the licensee's discretion.

How is it that STATE's prosecutors have to have a "license" to "practice law" when presenting their case, but to perform that exact same activity, the ***exact*** same activity, Taylor doesn't need a "license?" The difference is that STATE's prosecutors present STATE's case "for profit or hire." Therefore, they have to have a "license." They're being paid to engage that line of commerce in "this state." [10] Taylor isn't engaging any line of commerce in "this state," much less "for profit or hire." Therefore, Taylor doesn't need a "license." But, the end result is the exact same on both sides. The ***exact*** same. Both sides present their cases.

By this exact same dichotomy, while "driving," or "operating," is privileged commercial activity that is subject to regulation, "traveling" is not privileged, for it is a right. The end result is the exact same; people get from here to there. It's just that some do so by pretending to engage in privileged commercial activity, whether "for profit or hire" or not, and Taylor isn't so pretending. The "licensees" engage in "transportation," but Taylor "travels." "Transportation" is privileged

[10] As speaks for itself, at all times before "this state," those providing "Assistance of Counsel" needed no "license."

commercial activity subject to regulation, including "licensure;" "travel" isn't commercial activity, at all; hence, "traveling" can't be regulated via any mechanism, including "licensure."

To compel anyone into the "transportation" business, and thus into "licensure" for such line of commerce, under threat of ***criminal*** sanctions, is to violate rights. But it's not just commerce, and it's not just licensure, and it's not just compelled "choice of law." Because that "license" isn't just a "license" but is also an "ID card," STATE is compelling Taylor into membership in "church of STATE OF TEXAS," which is tantamount to compelled political/religious association under threat of ***criminal*** sanctions. STATE OF TEXAS isn't big enough to dictate to Taylor what his political or commercial activities are going to be, who he will associate with politically/religiously, or Who his GOD is.

Compelled commerce has another name. It's called tyranny. [11] Those who want to volunteer into a maritime-law-based dictatorship may certainly do so, but Taylor isn't volunteering, and he will not be compelled into such system, either.

[11] If the mob were doing it, we'd call it extortion. Some of the gravest challenges facing this nation, which is teetering at the edge of the abyss into tyranny, have recently been decided. *Hamdan*; *Boumediene*; *Munaf*; *Medellin*. In each case, tyranny has been the issue, and each time, tyranny has been overruled.

Point 5: May the trial court compel Taylor to trial without first delivering the transcript of that 28 November hearing?

Standard. Question of law – *de novo*.

Denial of access is both a "federal issue" and collateral.

Boddie. *Harbury* (for a "denial of access" claim, access is ancillary to, i.e., "collateral" to, the underlying claim).

Transcript was requested immediately after that hearing.

It's not a matter of indigency or of lack of action on Taylor's part. It's an administrative matter over which Taylor had zero control. It took more than eight months ***and*** this appellate proceeding in order for Taylor to receive the 20-page transcript and its related Exhibits. This isn't quite the same as denial of discovery, but that's a very good analogy. The information needed for trial, which includes "witness statements," was in the possession, custody, or control of the "opposing party," and the inability/refusal to produce the information was quite prolonged.

Non-mootness of this issue.

Extraordinary delay in transcript production is more than capable of repetition and yet evade review, and, given the *de facto* "probation for life with a bi-monthly check-in" pre-trial sentence imposed by the county court, the likelihood of repetition is high. *See e.g. Spencer*, 523 U.S. at 17-18. Taylor should not be put in the position of having to initiate collateral order doctrine appeals in order to obtain transcripts for trial.

Point 6: Where a deputy clerk is the complainant, is the clerk's office too "interested" to qualify as an agent for service?

Standard. Question of law – *de novo*.

STATE never gave proper Notice.

It has become a systemic habit; STATE ***never*** gives proper Notice.

Taylor's motion, served 31 January 2007, objects to the lack of Notice. The court's Notice of 19 February set the motion for hearing on 5 April, 8:30 a.m. [12]

On 5 April, starting at 8:30 a.m., first there was (A) the hearing on Taylor's motion, *then* (B) the ***first*** arraignment, and *then* (C) a *sua sponte* mandamus "display." At 9:13 a.m., *after* those ***three*** proceedings, (D) a deputy clerk handed Taylor the "complaint," which is also dated 5 April.

Art. 45.018(b) says that Notice has to be delivered at least a day before "any proceeding." Quite consistently with both Common Sense and the language of Art. 45.018(b), and directly contrary to the unmitigated mindlessness running amuck throughout the municipal court system statewide, the Supreme Court have confirmed that the "arraignment" ***is*** a "proceeding." *See Rothgery* (the arraignment ***is*** a "proceeding" for purposes of appointment of counsel). Where the arraignment is a "proceeding" for one purpose, it is a "proceeding" for ***all*** purposes, including determining proper timing for Notice. [13]

[12] Thus, STATE had at least 60 days in which to address Taylor's objection.

[13] Where the arraignment is a proceeding, it's impossible for the hearing on the

By STATE's creation of and the delivery of the "complaint," it's clear that everyone involved is talking about the same document when it comes to ***what*** has to be served via Art. 45.018(b). All that remains is ***when***.

Thus, as is now all the ***more*** abundantly clear under the *Rothgery* ruling, the municipal court "judgment" is void on its face. *Harris,* 55 U.S. at 339 (cited in *Commercial Equip.*, 678 S.W.2d at 918; *Peralta*; *Lloyd v. Alexander*, 5 U.S. at 366 ("A citation not served is as no citation."). Why is it void? No Notice.

And, the taint of that "no Notice" problem arising in the municipal court isn't cleansed via trial *do novo*. Quite to the contrary, that particular procedural flaw affects this case at every stage. The best that the county court can produce is a void judgment, which puts the county court's "probation for life with a bi-monthly check-in" pre-trial sentence into its proper perspective. It's systemic, retaliatory, witness-tampering, extortionate harassment under color, all with the intent to compel Taylor into political/religious affiliations against his will.

However, since Notice isn't something that typically qualifies for review shy of a "final judgment," this collateral order doctrine proceeding isn't focusing on this fatal flaw regarding Notice, itself, but rather on the collateral matters underlying that untimely Notice.

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motion to dismiss not also to be a "proceeding," and it's impossible for the *sua sponte* mandamus "display" not also to be a "proceeding."

"Service" by the deputy clerk.

On the day of the hearing on Taylor's motion to dismiss in the municipal court, and *after* that ruling, and *after* the "arraignment," during which the judge entered a plea for Taylor, given that Taylor declined to plea, given the total and complete absence of Notice, and *after* the municipal court's *sua sponte* mandamus "display," a deputy clerk of that same court handed Taylor the complaint, for which a deputy clerk of that same court is the complainant.

No complainant is "disinterested" enough to serve the complaint. *Cf.* TX R. CIV. P. 103; FED. R. CIV. P. 4(c)(2); TX CRIM. PROC. CODE ANN. art. 45.202. Which deputy clerk "complained" and which "served" are fact issues, thus not yet resolvable. Obviously, if they are the same person, the problem is clear.

But, where one deputy clerk is necessarily an agent for *all* clerks in that office, since all are employees under the Clerk of the Court, thus agents for the Clerk, then which deputy clerk "complained" and which "served" it is irrelevant, for *all* clerks would be disqualified as service agents. *Cf.* same references.

Point 7: Where a deputy clerk is the complainant, is the court a witness/party, thereby triggering *disqualification*?

Standard. Question of law – *de novo*.

Loosy-goosy operations produce ***multiple*** defects of a permanent nature.

The discussion in Point 6 provides the background for this one. In addition to "complainant as agent for service," which produced the lack of Notice, thus, the lack of personal jurisdiction, ***disqualification*** goes to subject matter jurisdiction. Not only that, but also where there is a new trial, via trial *de novo*, there's a substantial likelihood that this ***disqualification*** issue will be rendered moot, because the county court doesn't face that same ***disqualification*** issue.

In short, where the court, itself, not the *executive* branch actually issuing the ticket, but the *judicial* branch, which learns of the matter *solely* as a consequence of serving in the judicial role, swears out the complaint, thereby rendering the ***court*** as a ***party*** to the case, how may a ***party*** to the case also be a ***judge*** over it?

Where a deputy clerk is the complainant, the court becomes a "witness" or a "party."

Participation solely by virtue of office/employment.

The complainant in this case is not a direct witness. Instead, it's a deputy clerk of the municipal court who has come into the information sworn to in the "complaint" solely by virtue of her employment. Thus, the deputy clerk purports to act "within the scope" of employment, but not in the role of someone qualified

to *certify* the complaints. Art. 45.019(e)(2). Instead, she *swears out* the complaint, as a "hearsay complainant," thus, as a witness for STATE. Via employment, the deputy clerks are agents of *the* clerk, who, in turn, via employment, is an agent of the court. That means, effectively, that the ***court*** is the "hearsay complainant" for STATE by bringing each and every "complaint" sworn out by a deputy clerk.

The court can't accomplish by agency what it can't do directly.

There's little question that clerks, thus courts, *may* be complainants, but a witness for STATE can't ***also*** be the judge of that same case. And, where the clerk acts as agent for that court, that makes the judge the complainant.

If the judge were a direct witness, there's zero question that the judge would be ***disqualified*** to preside over that trial. *Bradley*, 990 S.W.2d at 248, 249. Care is made here to distinguish ***disqualification*** from (mere) *recusal*. The former is an issue of subject matter jurisdiction as well as of voidness in the judgment, whereas the latter is a discretionary matter that requires a timely motion, etc. *See* TX R. CIV. P. 18a, 18b; *Tesco American, Inc.*, 221 S.W.3d at 551-52 n.1, 553 n.10, 555 n.27.

> The judge presiding at trial may not testify in that trial as a witness. No objection need be made in order to preserve this point. TEX. R. CIV. EVID. 605. … These cases hold that a judge testifying as a witness violates due process rights ***by creating a constitutionally intolerable appearance of partiality***. *See Brown* [*v. Lynaugh*, 843 F.2d 849, 851 (5th Cir. 1988)] ("It is difficult to see how the neutral role of the court could be more compromised,

> or more blurred with the prosecutor's role, than when the judge serves as a witness for the state."); … *see also In Re Murchison*, 349 U.S. 133 … (1955) (disapproving of the "spectacle" of a trial judge presenting testimony which he must consider in adjudicating guilt or innocence.).

Bradley, 990 S.W.2d at 249 (emphasis added) (internal quotes omitted). A "constitutional" level problem sounds in ***disqualification***, not mere *resucal*. Thought of another way, the judge who is a fully willing, voluntary, non-coerced, non-subpoenaed fact witness, on either side, "has an interest in the subject matter in controversy." *Cf.* TX R. CIV. P. 18b(1)(b); *McKenna*. Not "mere" bias subject to *recusal*, but "a constitutionally intolerable appearance" of bias subject to ***disqualification***. Moreover, by being a ***complainant***, despite the full availability of an actual witness, the clerk, thus, the court, is saying that s/he has an injury or has agency authority to speak on behalf of the party alleging injury, which is one more way of saying that the ***court*** "has as interest in the subject matter in controversy." *Cf. Burkett* (judge is ***disqualified*** if also the/an injured party).

The spectacular Separation of Powers problem.

On the one hand, where a lawyer may testify as to administrative matters, e.g., foundation for a document, and not also have to resign the representation, it must also be the case that there's room for "foundational" (collateral, not-merits-oriented) testimony from a clerk. That level of participation is presumed valid and not argued here either way.

But, to continue the analogy, where the lawyer testifies, even to hearsay, regarding the *merits* of the case, the lawyer would be instantly disqualified. This is the level of "participation" at issue, here, and, via agency, we're not merely talking about the clerks; we're talking about the ***court***. The deputy clerk, who came by the sworn-to information *solely* by virtue of her *judicial* office, swore out the complaint. Thus, via those hearsay statements made under oath, she has made herself an active participant in the prosecution. The act of starting a criminal case is an *executive* branch function. Thus, as a clerk, serving a *judicial* branch function, she has also become witnesses for the prosecution, thereby also serving an *executive* branch function. She has crossed that line of Separation of Powers between *sitting in judgment of* the prosecution and *being part of* the prosecution. And, obviously, hearsay ***may*** justify a complaint, which puts the hearsay evidence as found in a complaint beyond the ability of the defendant to object to, for the purposes that any complaint serves. So, the deputy clerk ***is*** a witnesses for the prosecution. And, since the deputy clerk has joined the *executive* branch function, solely by virtue of her *judicial* office, what follows, via rather direct application of very basic laws of agency, is that the ***court*** has joined the *executive* branch function. Again, while clerks and courts ***may*** be complainants, the "complainant ***court***" ***may not also*** sit in judgment of those same cases.

The "goose-gander" aspect.

From still another angle, where the judge *can't* be a witness in the case being tried, *Bradley*, 990 S.W.2d at 248, and where a law clerk of the presiding court *can't* be a witness, *id*. at 249, and where a special master of the presiding court *can't* be a witness, *id*., it follows that a clerk of the presiding court ***can't*** be a witness, either. Why? Because that's effectively calling the judge as a witness. Thus, in the "goose-gander" analysis, if a **defendant** can't compel a clerk of the presiding court to testify regarding the merits, due to the clerk's official, formal relationship with the court, any more than a defendant could compel a judge, a law clerk, or a special master to testify (in that court), then **STATE** can't get a clerk of the presiding court to testify, either. Why? Because that's effectively calling the judge as a witness. And, yet, that's exactly what happens where a clerk of the presiding court is the complainant. In that setting, STATE purports to get a pass to cross a line that no defendant may cross. STATE purports to be authorized to get sworn testimony from the ***court*** by which to start the case ***in that very same court***. Whether that's Due Process or Equal Protection, it's flagrantly inconsistent, biased, one-sided, and improper.

And, the entire matter is avoided by having the clerks stay as clerks, doing their jobs as clerks, rather than also becoming part of the prosecution, which is another systemic habit running amuck.

Where the clerk is the complainant, the court is disqualified.

Therefore, since the *municipal* ***court*** made itself a witness in the case, it instantly rendered itself ***disqualified***, not merely subject to *recusal*, but ***disqualified***, to preside over Taylor's case.

Since the municipal court judge is ***disqualified***, because one of his deputy clerks, solely by virtue of employment as a deputy clerk, is the complainant, the judgment is void. *Tesco American, Inc.*, 221 S.W.3d at 555 n.27; *Zarate*.

Void judgments are properly subject to review via appeal, but there's no way to reach the *municipal* court's judgment after a trial *de novo*. Thus, the time to reach this "federal issue" is right now, and the procedure for doing so is the collateral order doctrine.

Point 8: Where a deputy clerk is the complainant, can that deputy remain a "custodian of records?"

Standard. Question of law – *de novo*.

Egregious conflict of interest violates Due Process.

In Point 7, agency is applied twice. (1) The deputy is the agent of the clerk, and (2) the clerk is the agent of the court. Here, agency is applied for just that first time, where the deputy is an agent of the clerk.

Where the deputy clerk is a witness for the prosecution, and even if that is somehow *not* imputed to the court, there's still a major problem. A witness in the matter has full and direct access to the case file, not only from its inception, but also until that file is placed in storage. The "appearance of impropriety" factor skyrockets off the top of the charts. The conflict of interest, which manifestly sounds in Due Process, is egregious. The clerk/witness and the case file can't be in the same place day in and day out, and the file has to stay.

Issues included for jurisdictional purposes

Point 9: Does TX Trans. Code § 521.021 define a crime?

Standard. Question of law – *de novo*.

Where's the mens rea? Where's the actus reus? Where's the punishment level? Hence, where's the Notice regarding any crime? *Carhart*. There's no crime defined until § 521.025.

Point 10: Does the complaint charge a crime?

Standard. Question of law – *de novo*.

The complaint depends on § 521.021, which defines no crime. *See* Point 9.

Point 11: Where's the commercial nexus?

Standard. Question of law – *de novo*.

"Traveling" is a right. "Traveling" is not "transportation," which is a regulated commercial privilege. There is no commercial nexus, here. *Cf*. *Lopez*. Hence, STATE has no remote justification even for injunctive relief, much less for asserting ***criminal*** charges.

Point 12: What does "operate" mean?

Standard. Question of law – *de novo*.

"Operate" means to engage in "transportation," in "this state," "for profit or hire." It has everything to do with commercial activity and nothing to do with "traveling." Where "operate" is read to mean and include "traveling," ***all*** statutes using and referring to such term are instantly overbroad and facially void.

Point 13: What does "this state" mean?

Standard. Question of law – *de novo*.

The "place" called "this state" has no borders, no boundaries, and exists in the same way a corporation exists. The law fully recognizes it, but it's a concept; it is intangible in nature. The "place" called "this state" is the whole of the parts, which parts are "federal areas" or "federal zones," which are "counties" within

"this state." Those "counties" have names deceptively similar to those of the States with which names most people are familiar. TX is a "county" within "this state." OK is a "county" within "this state." Same with CA, NY, DC, and etc. The "place" called "this state" is the antithesis of the place called Texas. In "this state," it's possible to run the "funny money" scam ***without*** simultaneously committing fraud. In Texas, it's ***not*** possible to run the "funny money" scam without simultaneously committing fraud. What's the difference? The default "choice of law." In Texas, that default choice of law will be the Law of the Land. In "this state," the default choice of law is the Law of the Sea.

Where "this state" is read to mean and include the Common Law place known as Texas, ***all*** statutes using such term are instantly overbroad and facially void, which would render the Penal Code void instantly. *See* § 1.04.

Point 14: Does Art. 45.018(b) violate Due Process?

Standard. Question of law – *de novo*.

It does if it's read to mean that a "ticket" satisfies Notice!

What is a "complaint?"

It sure *ain't* the "ticket!" Art. 45.018(a) seems just fine.

What must be served?

The problem is with Art. 45.018(b). What is "notice of a complaint?" Is

that the "complaint," itself, or something that might incorporate a "complaint" by reference?

If this is read to mean that the "complaint," itself, must be served, then Art. 45.018(b) is fine, also. Otherwise, this statute completely dispenses with Notice.

There ***are*** alternatives. *Cf.* Art. 27.14(d) (waiver and signed agreement). But, alternatives apply only for those who *waive* Notice, knowingly or otherwise.

Point 15: Is an arraignment a "proceeding" for purposes of Art. 45.018(b)?

Standard. Question of law – *de novo*.

Obviously, yes. *Rothgery*. Thus, a hearing on a motion to dismiss is ***also*** a "proceeding," ***as is*** a *sua sponte* mandamus "display."

All ***three*** of those proceedings were concluded before a deputy clerk hand-delivered the deputy clerk's "complaint" to Taylor.

Hence, here, there's no Notice, thus, no jurisdiction, and nothing but a void judgment may be produced. For the municipal court to have applied the law at that first instance sure would have saved a lot of trouble and expense. [14]

[14] Taylor has objected to jurisdiction from the outset. The municipal court judge insisted that jurisdiction existed. When Taylor said they'd be "going round and round" on the issue, the response was, "No, we're not!" But, here we are! The difference is that now we have specific guidance by the Supreme Court. *Rothgery*.

Synopsis

The collateral order doctrine protects "at risk" "federal issues."

Denial of the Transcript for use at trial, complainant as agent for service, court as complainant thus ***disqualification***, and complainant as "custodian of records," all trigger the collateral order doctrine. This court has jurisdiction, and STATE's ***CIVIL*** "non-case" should be dismissed.

Relief Requested

Recognize the collateral order doctrine

Recognize the collateral order doctrine, thus the existence of "at risk" "federal issues" in state trial courts, and overrule *The Permian Corporation*.

Dismiss the case

Upon collateral order doctrine review, dismiss STATE's case.

Respectfully submitted,

/s/ Harmon Taylor
Harmon Luther Taylor
I reserve all my rights

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Certificate of Service

By my signature below, I certify that on this the ____ day of August, 2008, I have dispatched to the Clerk of the Court of Appeals, and have served on the following, by certified mail, a true and correct copy of this Brief with its Appendix:

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Appendix