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At the arraignment hearing on 1/13/19, Roth, requested 1 day to review the related information with a legal person of his choosing. The court granted Roth until 2/13/19 to exercise this request.

On 2/5/19 Defendant filed a Demurrer to Information under the authority of Title 22 O.S. § 504 (4) and (5). Per this Demurrer, this Defendant noted with supporting argument that a simple lawful reading of the Information in question demonstrates:

The defendant may demur to the indictment or information when it appears upon the face thereof either:

**(4) That the facts stated do not constitute a public offense, AND/OR,  
(5), That the indictment or information contains any matter which, if true,  
would constitute a legal justification or excuse of the offense charged, or  
other legal bar to the prosecution.**

On 2/13/19, counsel for Plaintiff stated that she had not yet reviewed the Demurrer to Information and would require an additional 20-30 days to review and prepare a response. The court ordered that Plaintiff respond by 3/8/2019 and that the hearing be scheduled for 3/13/2019. On 3/8/2019 said response was filed.

On this date, 2/12/19, Defendant files his reply to said response.

### **ARGUMENT IN REPLY**

First, and foremost, the grounds for Demurrer under Title 22 O.S. § 504 provide for a very narrow argument and relate specifically to the “face of the information or indictment”. It is clear, unarguable, and irrefutable that Roth was arrested by McMinn specifically and exclusively for refusing to identify himself absent suspicion of any crime.

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Defendant presented, in part, as supporting argument for the claims of the Demurrer to *Gonzalez v. Huerta*, 826 F.3d 854, 858 (5th Cir. 2016)<sup>1</sup> referencing *Hiibel v. Sixth Judicial Dist. Court*, 542 U.S. 177, 187-88, 124 S. Ct. 2451, 2459 (2004)<sup>2</sup>. From *Terry* to these case citations, *Gonzalez*, 2016, and *Hiibel*, 2004, it is clear that the Supreme Court of the United States has clearly established that the requirement to stop and identify absent suspicion of specific criminal activity is violative of and prohibited by the 4<sup>th</sup> Amendment.

Counsel for the State cites numerous rulings which when read in their entirety stipulate to Defendant's Demurrer. One such citation in this reflective response by the State per the Response to Demurrer of 3/8/19, relates to *Oliver v. Woods*, 209 F.3d, 1179, 1186 (10<sup>th</sup> Cir. 2000). What State fails to report in her response is that the underlying claims including failure to identify were dismissed by the local court.

As additional support of this argument, "an individual's clearly established right to be free from unreasonable searches and seizures is violated when a law enforcement officer attempts to detain him or her without at least reasonable suspicion supported by articulable facts of wrongdoing", *United States v. Espinosa*, 782 F.2d 888, 890 (10<sup>th</sup> Circuit 1986).

Finally, Defendant argued that constitutional guarantees cannot be converted into crimes. This would include resisting 4<sup>th</sup> Amendment breaches relating to privacy and 5<sup>th</sup> Amendment protections, specifically the right to remain silent which goes beyond just mere statements and

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<sup>1</sup> *Gonzalez v. Huerta*, 826 F.3d 854, 858 (5th Cir. 2016) (citing *Brown*, 443 U.S. at 52 ("[E]ven assuming that purpose is served to some degree by stopping and demanding identification from an individual without any specific basis for believing he is involved in criminal activity, the guarantees of the Fourth Amendment do not allow it."); *Hiibel v. Sixth Judicial Dist. Court of Nev., Humboldt Cty.*, 542 U.S. 177, 188 (2004));

<sup>2</sup> *Hiibel v. Sixth Judicial Dist. Court*, 542 U.S. 177, 187-88, 124 S. Ct. 2451, 2459 (2004). "The principles of *Terry* permit a State to require a suspect to disclose his name in the course of a *Terry* stop. The reasonableness [\*188] of a seizure under the Fourth Amendment is determined "by balancing its intrusion on the individual's Fourth Amendment interests against its promotion of legitimate government interests." *Delaware v. Prouse*, 440 U.S. 648, 654, 59 L. Ed. 2d 660, 99 S. Ct. 1391 (1979).

includes refusing to give one's name. These are addressed in *Miranda v. Arizona* 384 US 436 (1966)<sup>3</sup> and *Simmons v. United States*, 390 U.S. 377 (1968)<sup>4</sup>.

### CONCLUSION

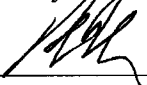
Counsel for the State in this matter completely ignores the actual four corners of the Information in question and makes great effort to distract from the simple matter before the court.

There is no case under Oklahoma law dealing with a person refusing to present identification as the sole basis for a conviction under Title 22 OS § 540. However, other courts have held a refusal to present identification during an investigative detention supported by reasonable suspicion of criminal activity constitutes an independent illegal act sufficient to support a conviction for obstruction under similar statutes. This is only valid when the underlying evidence of some specific crime was present. The information presents none.

As presented upon the face of the information, McMinn presents no suspicion of any crime, and Roth was arrested solely for failing to identify. The information is clear and does not meet necessary muster.

This honorable court should grant Defendant's Demurrer to information *sua sponte*.

Respectfully Submitted,



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<sup>3</sup> *Miranda v. Arizona* 384 US 436 (1966), "Where rights are secured by the constitution are involved, there can be no rule making or legislation which would abrogate them."

<sup>4</sup> *Simmons v. United States*, 390 U.S. 377 (1968) "The claim and exercise of a Constitutional right cannot be converted into a crime"... "a denial of them would be a denial of due process of law".

**CERTIFICATE OF HAND DELIVERY**

I hear by certify that a true and correct copy of the foregoing Defendant's Reply to Plaintiff's Response to Defendant's Demurrer to Information relating to case # CM-2019-1 was hand delivered on March 12, 2019 to the office of the following:

Abby Cash  
Beaver County District Attorney's Office  
111 2<sup>nd</sup> Street  
Beaver, OK 74103

  
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Patrick Braden Roth