

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI

United States of America,)
 Plaintiff) Case No. 4:10-CR-00162-FJG
)
v.)
)
NaRicco T. Scott)
 Defendant)

Motion To Suppress All Evidence In
Violation Of Title 21, 841-846 and 924 Of Title 18

Comes now the Defendant, NaRicco T. Scott, hereby submit to the Court, this motion to suppress all evidence counts in pursuant to Title 21 and 924 of Title 18. A warrant was issued on the defendant for violation of Title 21, 841-846 and Title 18, 924 on May 10, 2010 and on or around May 26, 2010. Under that order five charges and counts were issued upon the defendant. Pursuant to 21 U.S.C. 841-846 and 18 U.S.C. 924, Mr. Scott seeks to suppress the evidence and charges. Suppression is necessary because (1) The Federal statutory provisions under which Mr. Scott was charged are unpromulgated in the Federal Register (FR) and possess no published implementing authorities in the Code of Federal Regulations (CFR) as required under 44 USC, 1505 et seq., and 5 USC, 601. that the Court has no right to adjudicate sanctions for violations of unpromulgated regulatory statutes, these particular statutory provisions 841 of Title 21 and 924 of Title 18, lack the force and effect of law and are mis-applied beyond the parameters of Rule 54(c) - Acts of Congress, and Federal Rules of Criminal Procedure. "An individual cannot be prosecuted for violating the act unless he violates implementing regulations." U.S. v. Reinis, 794 F.2d 506, 508 (1986); U.S. v. Murphy, 809 F.2d 1427 (1987). (2) Non-Positive Law Titles, such as Title 21, and 924 (c) of Title 18, used in the (Supra), to denote a criminal violation, to the U.S. Code are "Prima Facie" evidence of the law. (1 U.S.C. 204) and are "Presumed to be law"; but are rebuttable by production of prior Unrepealed Acts of Congress at variance with the code. Positive Law Titles are legal evidence of the law and need no further authoritative citation as prior acts concerning those titles have been repealed. Under section 205 (e)(1) of House Resolution No. 988. 93d. Congress, as enacted into law by Public Law 93-554 (2 U.S.C., 285 (b)(1). Mr. Scott has broken no law as it pertains to Title 21 or Title 18 of the United States Code in said (Supra). Wickard v. Filburn 317 US 111, 129-131(1942); U.S. v. Landa. Mr. Scott is not a party to any contract or agreement to the Federal Corporate Government. Church of Scientology v. U.S. D.O.J. 612 F.2d 417, 425(1979). The indictment handed down by the jury foreperson has not stipulated and identified the liability of the statutes as they apply or operate on Mr. Scott. Islin v. LaCosta 147 F.2d, 791, 795(1943). "The Oath of Office require the public official in his/her foreign state capacity to uphold the constitutional form of Government or face consequences. Article 4 Section 4. Nor have Mr. Scott brought any claim or injury or damage in open court. 6th Amendment to the constitution; Rule 17 Federal Rules of Civil Procedure. The plaintiff has usurped authority not delegated by Congress. 9th Amendment, 10th Amendment. The Public Law 94-381 states that United States District

Court are admiralty courts under Article I, which changes the Federal Courts into Administrative Courts under Executive Branch of the Federal Government without any constitutional authority whatsoever. Senate Report 94-204; Mookini v. U.S. 303 U.S. 201(1938); Balzar v. Puerto Rico 258 U.S. 298 (1922). The better way of stating this is "there are no common law offenses (or crimes) against the United States. See: U.S. v. Britton, 108 US 199, 206(1882); U.S. v. Eaton, 144 US 677, 687(1891). The common law is not a source for [Federal] criminal jurisdiction as it is in the states; United States v. Grossman 1 F.2d 941, 050-951(1924). the constitution is not to be made to mean one thing at one time and another at some other time when circumstances have changed, as perhaps to make a different rule in the case seem desirable.

[A] court or legislative by the intention of its founders would be justly chargeable with reckless disregard of official oath and public duty (28 USC 453; 18 USC 162) if it did so. What the court is to do therefore is declare the law as written, T.M. Cooley, "A treatise on the constitutional limitation." 5th Ed. Pp. 54-55, rather than swayed by political ambition and the unlawful usurpation of police powers. The Administrative Procedure Act, is located at 5 USC 552 Et Seq., and the Federal Register Act located at 44 USC 1505, provide the means for determining which statutes in any given act of Congress are applicable within Federal areas, and which statutes have "general applicability". At 1505(a)(1) of Title 44 USC, you read that if a statute is not published in the Federal Register, then the application of the statutory provision is restricted to Federal Agencies, or persons acting in their capacity as officers, agents or, employees of the Federal Government. In Hotch v. U.S., 212 F.2d 280, @280 (9th Cir.). the court stated: Under our system of law, no act is punishable as a crime unless it is specifically condemned by the common law or by a statutory enactment of the legislature", see 22 Corpus Juris Secundum, Law 17.

In Wei v. Robinson, 246 F.2d 739(7th Cir, 1957) cert. denied, the Supreme Court stated "contents of the Federal Register Act and the Code of Federal Regulation are prima facie evidence, of the original text and are required to be judicially noted". In Wolfson v. U.S., 492 F.2d 1386, 204 S.Ct @83(1974), "When regulations are published in the Federal Register, they give legal notice of their contents to all who may be affected thereby". In Shafer v. U.S., 229 F.2d 124, Cert. denied, 76 S.Ct. 78, 351 US 931, the courts stated: "The publication of a document in the Federal Register creates a rebuttable presumption of validity". (Refer to : Fed. Reg. Act 1 et. Seq., 44 USC 301 Et. seq.) In U.S. v. Mersky, 361 U.S. 431, 438, 4 L.Ed 2d 423(1960) the Supreme Court stated: "once promulgated, these regulations called for by the statutes itself, have force of law, and violations thereof incur criminal prosecution." The result is that neither the statute nor the regulation is complete without the other, and only together do they have any force and effect. The construction of one necessarily involves the construction of the other. In the context of criminal prosecution, the rule of strict construction must be applied in the interpretation of an administrative regulation to which penal consequences attach under the statute authorizing the promulgation of the regulation. An individual cannot be prosecuted for violating a statute, unless he violates an implementing regulation. For a similar view , see U.S. v. two Hundred Thousand Dollars, 590 F. Supp 846(S.D. Fla, 1984); and specifically states at 1CFR-1; "All regulations must be published in the Federal Register to have applicability and legal effect."

The Supreme Court stated in U.S. v. Weldon, 377 US 95(1964), that: "Under 1 U.S.C. 294(a), which provides that the United States Code establishes prima facie the laws of the United States and that when titles of the Code are enacted into positive law, the text thereof, is legal evidence of the law contained therein... If construction of a section of the United States Code, which has not been enacted into positive law, is necessary, recourse must be had in the original statutes themselves and a changed arrangement by the codifier, without the approval of Congress, should be given no weight." (See: Stephen v. US., 319 US 423(1943); Best Food v. U.S., 147 F.Supp. 749, 37 Cust. Ct. 1 (1956); Pearl v. Motor Bering Explorer; 373 F.Supp. 927 (1974)). The law provides that when implementing regulations are at variance with the statutory provision for which they are intended to promulgate that they fail to give proper notice under the Due Process Clause of the Federal Constitution or the Fair Notice doctrine, set out under U.S. v. Nevers, 7 F.3d 59 (5th Cir. 1993). Administrative regulation in order to be valid must be also consistent with, and not contrary to, "the statutes under which they are promulgated." Neel v. US., 266 F. Supp. @10. "[I]t is necessary for the court to square the regulation against the statute that it purports to implement comparing the sphere of authority to each." Western Union Teleg. Co v. F.C.C., 541 F.2d 346 (3rd Cir. (1976), Cert. denied, 429 US 1029(1977)). "Failure to prove an essential element mandates that the conviction cannot stand." Jackson v. Virginia, 443 US 307, 61 L.Ed 2d 560, 573 (1979); Thompson v. Louisville, 362 US 199, 4 L Ed 2d 654(1960). The Due Process Clause requires that prosecution to prove, beyond reasonable doubt, all of the elements included in the definition of offenses of which the defendant is charged. Patterson v. New York 432 US 197, 210 (1977). Mr. Scott charges requires to be suppress and dismissal with prejudice, where the government omitted from the Grand Jury instructions the element of statutes never being promulgated to code in the same measures both House and Senate, and not to be found in the implemented Code of Federal Regulations. Nor is there a competent enactment. "Instructions not requiring proof of every element of a crime, violates due process and requires Reversal of Conviction." Sullivan v. Louisiana, 508 US 275, 281, 113 S.Ct 2078, 2080-2081(1993). The government undermined the Grand Jury's responsibility to determine that the Defendant committed an offense against the laws of the United States. "Tampering with administration of justice involves far more than just the injury to a criminal defendant, being a wrong against the institution set up to protect and safeguard the public at large." Hazel-Atlas Glass Co v. Hartford Empire Co., 332 US 238, 246, 88 L.Ed 1250(1944).

Mr. Scott asserts his Fifth and Sixth Amendment Right of Due Process, in arguing that he was never indicted by the Grand Jury for affecting any federal laws "positive laws" or any commerce. Finally, Title 21, 841-846 and 924(c) of Title 18 and all evidence brought against Mr. Scott should be suppressed.

The Federal Controlled Substance Act and non-registered person. 841 is found in our US Codes at Title 21 - Food and Drug, beginning with sentence: Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally (1) to manufacture distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance [Note: the substances and penalties are then listed]. "Except as authorized" means and "this subchapter". this subchapter is the 67 statutes of the CSA. The drugs are legal for some "persons" and illegal for other "persons".

Person: An individual an organization. An individual man, woman

or child, or as a general rule, a corporation. - Ballantine's Law Dictionary. Justice Oliver Wendell Holmes of our Supreme Court pointed out: Words having universal scope, such as..."Every person" will be taken, as a matter of course, to mean only everyone subject to such legislation, not all that the legislator subsequently may be able to catch. - American Banana Co. v. United Fruit Co., 213 U.S. 347.

The statute 841, used by the Department of Justice to arrest person manufacturing, distributing or dispensing substances, has been implemented by agency regulation. Title 21 CFR At Part 5. 21 CFR-"Food and Drugs" open Chapter 1, captioned "Food and Administration, Department of Health and Human Services" Part 5 of Chapter 1 is caption: "Delegations of Authority and Organization", It is strictly for registrants those receiving benefit from Food and Drug Administration. Nothing pertain to non-registrants, and there is no delegation of authority to the DEA (or any other agency) for the enforcement of penalties for non-registrants. This strictly an administrative matter for registrants. The Administrative statute and its implementing regulation comprise an Administrative Code of Regulation for registrants within the agency. In the case of the CSA, "person" registered might be Merck, Pfizer or Bayer. I, NaRicco T. Scott is a non-registered and not apart of the Administrative Agency, evidence must be suppress and counts dismissed. These are Administrative Procedures that apply to people within the Agency. Administrative Regulation for government Agencies, U.S. Supreme Court Ruling: California Bankers Association v. Schultz. Under the Act, the Secretary of the Treasury is authorized to prescribe by regulation certain record keeping and reporting requirements for banks and other financial institutions in this country. ...We think it is important to note that the Acts Civil and Criminal penalties attach only upon violation of regulation promulgated by the Secretary; if the Secretary were to do nothing the Act itself would impose no penalties on anyone. 416 US 21, 39L.Ed. 2d 812

(Article 1 Section 8) This limited power does not supercede our inalienable rights (in this case: "the right of the people to keep and bear arms shall not be infringed.") The 2nd Amendment was intended to secure this right from possible Government intervention or abuse of its powers. Where rights secured by the constitution are involved, there can be no rule making or legislation, which would abrogate them. Miranda v. Arizona, 384 U.S. 491.

If Congress tries to make a common law offense a crime (such as libel, drugs, theft, robbery, murder, kidnapping, arson, rape, abortion, assault, fraud, etc...), which have no relation to an enumerated power, it is an unconstitutional act. Congress can declare nothing to be a crime except where it is based upon delegated powers. Thus: "Congress may provide for the punishment of counterfeiting the securities and current coin of the United States, and may define piracies and felonies committed on the high seas, and offense against the Law of Nations (Art. I, 8***), but there is no reference to a common law authority. Every power is [A] matter of definit and positive grant; and the very powers that are granted cannot take effect until they are exercised through the medium of a law." U.S. v. Worald, 2 Dall (2 US) 384, 291 (1798).

The charges & counts are non-positive law titles, that have not been certified, codified, enacted, revived by the Supreme Court of the United States. Neither has those titles been enacted by Congress. The statutes are un-constitutional, I, NaRicco T. Scott, respectfully ask

this Court to allow Justice to satisfy the appearace of justice.
Levine v. U.S., 362 U.S. 610, 80 S.Ct. 1038 (1960) and suppress all
evidence and dismiss all charges with prejudice.

Where, I, NaRicco T. Scott ask this Court to grant this motion
to suppress. I am rquesting that the evidence & counts be suppressed,
and the indictment against me be dismissed with prejudice.

Respectfully submitted, Sui Juris
At Law,

NaRicco T. Scott, Pro se
100 Highway Terrace (22266045)
Leavenworth, Kansas 66048

CERTIFICATE OF SERVICE

I, NaRicco T. Scott, Sui Juris At Law, hereby certify that I properly
placed this motion to suppress in an envelope, sealed and mailed
it with first class postage, at C.C.A., Correction Corporation of
America, at 100 Highway Terrace, Leavenworth, Kansas, 66048. On this
25th day of July, 2011.

NaRicco T. Scott, Pro se.