

UNITED STATES *V.* POLITE *ET AL.*

*District Court, D. South Carolina.*

May 15, 1888.

INDICTMENT AND INFORMATION—FILING INFORMATION—SUFFICIENCY.

An information set out that it was issued on the oath of the office of the district attorney, but the information was not sworn to. Accompanying the information were the papers of the commissioner who held the preliminary examination, showing that the accused had been arrested on a warrant issued upon affidavits, and stating the necessary facts upon knowledge, and that at the hearing the evidence against the accused was taken under oath. *Held*, on motion to quash, that the information was good.

Information under Rev. St. U. S. § 5399, for impeding a witness. On motion to quash. *T. E. Miller*, for the motion.

*C. M. Farman, Asst. Dist. Atty., contra.*

SIMONTON, J. The defendants are before the court on an information filed by the district attorney for violating section 5399, Rev. St., impeding a witness. Accompanying the information are the papers of the commissioner who held the preliminary examination, including the sworn testimony of the witnesses taken in the presence of the accused. The information sets out that it is on the oath of office of the district attorney; but it is not sworn to. The defendants' motion is based upon the absence of an affidavit to the information. It is true that informations must be based upon affidavits which show probable cause arising from facts within the knowledge of the parties making them, and that mere belief is not sufficient. *U. S. v. Tureaud*, 20 Fed. Rep. 621. In the case at bar, the defendants were arrested on a warrant issued upon an affidavit stating facts on knowledge. They were brought before the commissioner, a committing magistrate. The evidence against them was taken on oath. Thus all the requirements of the law were fulfilled. BRADLEY, J., in *Instructions to Commissioners*, 3 Woods, 502. Upon this sworn testimony the information was filed. The motion to quash is refused.