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SC Court of Appeals

SOUTH CAROLINA
In The Court Of
Appeals

Case No. 2022-001437

Johnathan Daniels, Appellant.

v.

The City Of Cayce, Respondent

FINAL BRIEF OF APPELLANT

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[1] King James Bible, at Galatians 1-7, which reads, "**1** Stand fast therefore in the liberty wherewith Christ hath made us free, and be not entangled again with the yoke of bondage. **2** Behold, I Paul say unto you, that if ye be circumcised, Christ shall profit you nothing. **3** For I testify again to every man that is circumcised, that he is a debtor to do the whole law. **4** Christ is become of no effect unto you, whosoever of you are justified by the law; ye are fallen from grace. **5** For we through the Spirit wait for the hope of righteousness by faith. **6** For in Jesus Christ neither circumcision availeth any thing, nor uncircumcision;

STATEMENT OF ISSUES ON APPEAL

1. Prosecution and conviction of Appellant for the two nonmoving charges was prohibited by South Carolina § 1-32 and the State and federal constitutions.

2. The municipal judge acted without jurisdiction in accepting Appellant's guilty plea to the nonmoving charge of South Carolina § 56-1-20, Driving Without A License.

3. The municipal judge erred by failing to dismiss the two nonmoving charges against Appellant.

4. Appellant's guilty pleas were not valid because they were involuntarily, unknowingly, misunderstandingly, and mistakenly made.

5. Appellant's guilty pleas were not valid because they had no factual basis.

6. The municipal court erred or abused discretion by denying Appellant's Motion To Compel discovery responses from the State, causing prejudice against the Appellant.

7. The State's prosecution of Appellant for the nonmoving charges in this case was barred due to an estoppel in the nature of a collateral estoppel, or a judicial estoppel should have been recognized by the municipal court, requiring dismissal of the nonmoving charges.

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but faith which worketh by love. **7** Ye did run well; who did hinder you that ye should not obey the truth?"

[2] King James Bible, at Romans 3:19, which reads, "19 Now we know that what things soever the law saith, it saith to them who are under the law: that every mouth may be stopped, and all the world may become guilty before God."

STATEMENT OF THE CASE

On December 9th, 2019, Johnathan Martia Daniels, (hereafter, "Appellant") was in his truck driving east on 12th St. Ext. in Cayce, South Carolina. At 7:37 am, Appellant was observed by officer Robert Garmin of the City of Cayce Department of Public Safety, allegedly, traveling at a speed of 61 mph in a 45 mph zone, near the intersection of 12th St. Ext. and Steamboat Run. Officer Garmin initiated a traffic stop on Appellant and found that Appellant had no driver’s license and no vehicle registration. Appellant had a private tag and current insurance coverage on his truck. Officer Garmin confiscated Appellant’s private tag and issued citations to Appellant for the nonmoving charges of 56-1-20, No S.C. DL 1st, and 56-3-110, Failure to Register Vehicle (hereafter "nonmoving charges”). Appellant was also charged for violation of 56-5-1520(G)(3), Speeding (More than 15 over, but less than 25 over).

Appellant was arraigned on January 16th, 2020 at City of Cayce Municipal Court, where Appellant entered a plea of “Not Guilty” for all three charges and told Officer Garmin about his religious objections. Appellant served discovery requests to officer Garmin on February 2nd, 2020, to which Officer Garmin delivered a partial production of what was requested. Appellant motioned the court to compel a complete response. The municipal court denied Appellant’s Motion to Compel on September 2nd, 2020 via letter. Appellant timely objected to the denial and filed a Motion to Reconsider on September 11th, 2020. The Motion to Reconsider was also denied by the municipal court on October 8th, 2020, to which Appellant timely objected. On July 3rd, 2021, Appellant served and filed a Motion to Dismiss For Lack Of Jurisdiction.

While driving to the municipal court on July 22nd, 2021, for a mandatory jury strike called in the case, Appellant was seized, detained, and ticketed by City of Cayce police. Appellant was, again, ticketed for No S.C. DL and Failure to Register Vehicle.

On July 22nd, 2021, before jury selection began, the municipal judge ruled against Appellant's Motion To Dismiss, to which Appellant timely objected. A jury was struck and a trial of the matter was scheduled for October 28th, 2021. Appellant filed a Motion For A Directed Verdict, claiming a South Carolina § 1-32 defense, on October 5th, 2021.

On October 28th, 2021, Appellant met with City of Cayce (hereafter, "Respondent") prosecutor, Daniel E. Peagler (hereafter, "prosecutor") and arresting officer Garmin, with whom a plea deal was discussed, but no agreement made. The case was called for trial shortly thereafter, where without request from either party, Appellant and the prosecutor were called outside of the courtroom by the municipal judge for plea negotiations. While outside of the courtroom, the municipal clerk of court made an incomplete record of the hearing, and no written plea document was presented to Appellant. The municipal court accepted Appellant's guilty pleas to the charges of speeding and driving without a license, and Appellant was convicted and fined $180.63 for speeding and $155.00 for driving without a license.

On November 4th, 2021, Appellant issued written objections and filed an appeal with the municipal court. (R. pp. 14-26). The appeal was filed at the Lexington County Court of Common Pleas on November 4th, 2021. Respondent was served on November 26th, 2021 and a Motion to Cure Deficiency was served on Respondent and filed at the circuit court on December 6th, 2021. Appellant's grounds for appeal were: (1) the trial court's error in misstating the penalties, among other inaccuracies; (2) the trial court's failing to inform Appellant of his rights before the plea acceptance; (3) the trial court's failing to review evidence, examine facts, or question Appellant regarding admission to any of the facts alleged; (4) the municipal judge's insistence on, and participation in plea negotiations; (5) the trial court's error or abuse of discretion in refusing to make a ruling on Appellant's Motion for a Directed Verdict; (6) the municipal judge holding a

non public, “closed court” session; (7) to the prosecution of Appellant on charges for driving without a license and no vehicle registration, which were prohibited by an estoppel; (8) denial of Appellant’s Motion To Compel discovery responses from the State; (9) and Respondent’s law enforcement and court officers labeling Appellant as a “sovereign citizen,” and the consequences thereof denying Appellant due process.

The appeal was heard before Lexington County Circuit Court Judge, Robert E. Hood, on September 22nd, 2022. Judge Hood denied Appellant’s appeal and motion in an order dated September 27th, 2022. Appellant filed a Notice Of Appeal at the circuit court on October 4th, 2022 and filed the appeal to the South Carolina Supreme Court on October 13th, 2022. Appellant challenged Judge Hood's denial of his Motion To Amend Deficiency related to service of the municipal appeal, maintained his initial objections and challenged the constitutionality of the two nonmoving charges, as well as the jurisdiction of the municipal court. (R. pp. 141-148). The case was referred to the South Carolina Court of Appeals on October 14th, 2022.

ARGUMENT

A. <u>The Two Nonmoving Charges Prosecuted By Respondent Are Statutorily And/Or Constitutionally Prohibited As Enforced Against Appellant</u>

Standard of Review

When issues presented in an appeal are questions of law, they should reviewed de novo. Decisions on “questions of law “ are reviewable de novo,” *Pierce v. Underwood*, 487 U.S. 552, 558 (1988). Conclusions of law are subject to de novo review by the appellate court. *Husain v. Olympic Airways*, 316 F.3d 835 (9th Cir. 2002). Where a claim of substantial burden on the exercise of religion lies, South Carolina § 1-32 requires “a test of compelling state interest" as set forth in *Wisconsin v. Yoder*, 406 U.S. 205 (1972), and *Sherbert v. Verner*, 374 U.S. 398

(1963); this is essentially a “strict scrutiny” mandate. Further, failing either the neutrality or general applicability test is sufficient to trigger strict scrutiny. See *Church of the Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 546 (1993). Under strict scrutiny, the state must demonstrate that the law is "narrowly tailored" to achieve a compelling state interest, and that it uses the "least restrictive means" to achieve that purpose; if the state interest is not compelling (i.e. of the highest order), or the means employed are not the least restrictive means to achieve that purpose, the statute will be considered unconstitutional.

Discussion

Appellant maintains that this argument before this court is NOT barred, because his guilty pleas were invalid, involuntary, unknowing, and made due to misunderstanding and/or mistake. However, in the unlikely case that this Court finds that Appellant’s Pleas were valid, this constitutional challenge to the State’s right to prosecute Appellant for the two nonmoving charges in this case remains unbarred. The Court please recognize that Appellant is not arguing he has a constitutional right to noncompliance with the speeding laws of the State. Appellant does not use a driver’s license or vehicle registration, and “the face of the record” reflects the same. (R. p. 77, ¶ 1). Even after clarification was provided, Respondent chose to prosecute Appellant because of Appellant’s exercise of his constitutionally protected rights to religious freedom and liberty. This case is the epitome of retaliatory prosecution, which the State does not have the authority to conduct. Consequently, Appellant’s pleas, valid or invalid, cannot waive Appellant’s right to appeal the constitutionality of the charges under which he was convicted, no matter the validity of the pleas.

The U.S. Supreme Court acknowledges a distinction and allows the hearing of such constitutional challenges on direct appeal, concluding that while in *Tollett*, the claims were “of

constitutional dimension," the Court explained that "the nature of the underlying constitutional infirmity is markedly different" from a claim of vindictive prosecution, which implicates "the very power of the State" to prosecute the defendant. *Blackledge v. Perry*, 417 U. S. 30 (1974), (quoting *Tollett v. Henderson*, 411 U. S. 258, 266– 267 (1973)). Accordingly, the Court wrote that "the right" Perry "asserts and that we today accept is the right not to be haled into court at all upon the felony charge" since "[t]he very initiation of the proceedings" against Perry "operated to deprive him due process of law." *Id*., at 30–31. Further, the Court held that "a plea of guilty to a charge does not waive a claim that—judged on its face—the charge is one which the State may not constitutionally prosecute." *Menna v. New York*, 423 U. S. 63, and n. 2 (1975) (per curiam). Menna's claim amounted to a claim that "the State may not convict" him "no matter how validly his factual guilt is established." *Ibid*. Menna's "guilty plea, therefore, [did] not bar the claim." *Ibid*.

Because of Appellant's religious beliefs and practices, Respondent's prosecutor and arresting officer have labeled Appellant as a sovereign citizen, called him such on many occasions, and prosecuted Appellant for his religious views. "Sovereign citizens" are infamous persons and have been an annoyance to the State's law enforcement. Appellant is not a sovereign citizen, but simply a devoutly religious man trying to cooperate with the State within the framework of laws that the State's Legislature has created specifically for that purpose. (R. p. 108 ¶¶ "c.", "c. (a.)", and "c. (b.)"; R. p. 91, at "C" ¶¶ 1-3). Any similarity between Appellant's religiously motivated conduct and that of sovereign citizens is purely an unfortunate coincidence.

Regardless of Respondent's view, government may neither compel affirmation of a repugnant belief, *Torcaso v. Watkins,* 367 U. S. 488; nor penalize or discriminate against

individuals or groups because they hold religious views abhorrent to the authorities, *Fowler v. Rhode Island,* 345 U. S. 67; courts cannot examine the truth or falsity of religious beliefs, *United States v. Ballard*, 322 U.S. 78 (1944).

("[I]t is not within the judicial function and judicial competence to inquire whether" someone who has religious qualms with a law has "correctly perceived the commands of [his] faith."). *Thomas v. Review Bd. of Ind. Emp't Sec. Div.*, 450 U.S. 707, 716 (1981). The adherent alone defines the tenets of his or her religious observance. Courts may determine only the sincerity of religious beliefs, not their validity. Even religious beliefs that some reasonable observers would view as implausible are entitled to protection if sincerely held. *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 724 (2014). The Court has repeatedly emphasized, the reasonableness or truth of religious belief is beyond the competence and purview of the courts. *Id.* at 724.

Where a religious objector believes that performing an act will violate his or her religious beliefs, and that belief is sincerely held, courts must accept the objector's belief. *Hobby Lobby*, 573 U.S. at 686; see also *New Doe Child #1 v. Congress of the U.S.*, 891 F.3d 578, 586-587 (6th Cir. 2018). Substantial burden on an objector's religious exercise is evaluated on the basis of the objector's own sincerely held religious belief. *Hobby Lobby*, 573 U.S. at 682, 724. ("Repeatedly and in many different contexts, we have warned that courts must not presume to determine … the plausibility of a religious claim." (citations omitted)). A religious believer's exercise of religion is substantially burdened if the law presents the believer with the choice of either violating his or her religious beliefs or suffering a substantial penalty. *Hobby Lobby*, 573 U.S. at 726; see also *Holt v. Hobbs*, 574 U.S. 352, 361 (2015).

"The face of the record" in this case indicates that Appellant's beliefs are sincerely held, and that Appellant has possessed the beliefs for years. (R. pp. 137-138, ¶¶ "(1)" & "(5)"**;** R. pp. 119-121, ¶¶ "(1)", "(5)", "(8)", & "(9)"). Appellant has consistently challenged similar laws since 2017, and repeatedly put himself at risk of penalty for his noncompliance with those laws. Reviewing the charges brought in this case, Appellant was clearly faced with the choice of violating his religious beliefs or suffering a substantial penalty of jail time and fines.

The State's Legislature clearly and unambiguously does not intend for Appellant's religiously motivated conduct to be considered a crime, violation, or offense. South Carolina § 1-32-30 allows for the citing of a substantial burden on the free exercise of religion as defense to violating ***any*** South Carolina law, regulation, ordinance, rule, or custom. At the start of the present case under appeal, Appellant notified the municipal judge, prosecutor and arresting officer, that his sincerely held religious beliefs and practices (1) prohibit his participation in what he believes to be corporate franchising schemes in subjugation to the State, (2) prohibit him from representing and/or acting as a State-created corporate persona in bondage to the State, (3) that these religiously based prohibitions prevent his obtaining a State drivers license and vehicle registration, and (4) that the State had previously agreed to accommodate Appellant on the matter.

Appellant has repeatedly raised the defense allowed at South Carolina § 1-32-30(2) in response to purported violations of traffic laws relating to his driving without a license and having no vehicle registration. (R. p. 41, line 14 – p. 45, line 18). Other State officers, agencies, and subsidiaries, in privity with Respondent and also acting on behalf of the State, have previously been given notice that it is solely on this religious basis that Appellant has refused to

obtain a drivers license or register his truck, and while others have nolle prossed similar charges, Respondent refused to do so. (R. pp. 93 – 96).

As Appellant expressly explained to the municipal judge and prosecutor, he is a Sephardic man, descendent of actual and real Hebrew Negros exiled from Europe because of their religious beliefs, exiled to colonies of the Empire, later hunted down and enslaved under warrant, and subsequently moved back to the Americas from whence they came; Appellant is redeemed by God and freed with the revocation of the Alhambra Decree in 1968, making any enslavement of Negros illegal going back to before 1400 A.D. (R. pp. 120 – 121 at ¶¶ "(8)"and "(9)). It was not a mere coincidence that Negros in America were extended civil rights in the 1960's, but a result of the worldwide revocation of the order of the Empire that purported to authorize Hebrew Negro enslavement, especially in the New World. After having contracted peace in exile, Appellant's forefathers suffered betrayal at the hands of the King and Queen of Spain, the King of Portugal, and the Catholic Church, all acting in bad-faith. This resulted in the illegitimacy of the Expulsion Decree of 1492. Further, Appellant explained that the King James Bible, Holy Scriptures written specifically for Hebrews surviving in exile, prescribes that Appellant is obligated to avoid slavery, peonage, bondage, and involuntary servitude in all forms (see King James Bible, Galatians 5:1-7[3] & Romans 3:19[4]). Consequently, avoidance of direct

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[3] King James Bible, at Galatians 1-7, which reads, "**1** Stand fast therefore in the liberty wherewith Christ hath made us free, and be not entangled again with the yoke of bondage. **2** Behold, I Paul say unto you, that if ye be circumcised, Christ shall profit you nothing. **3** For I testify again to every man that is circumcised, that he is a debtor to do the whole law. **4** Christ is become of no effect unto you, whosoever of you are justified by the law; ye are fallen from grace. **5** For we through the Spirit wait for the hope of righteousness by faith. **6** For in Jesus Christ neither circumcision availeth any thing, nor uncircumcision; but faith which worketh by love. **7** Ye did run well; who did hinder you that ye should not obey the truth?"

[4] King James Bible, at Romans 3:19, which reads, "19 Now we know that what things soever the law saith, it saith to them who are under the law: that every mouth may be stopped, and all the world may become guilty before God."

slavery, chattel slavery, bondage, peonage, and any form of overt or covert involuntary servitude are central and fundamental to Appellant's sincerely held religious beliefs and practices.

Importantly, if any misunderstanding exists as to the accuracy of Appellant's conclusions regarding the existence of a surreptitiously imposed State franchise or State-created corporate persona and resulting bondage, the State is culpable for that misunderstanding because the State has refused to disclose requested information to Appellant. (R. pp. 126 – 138**;** R. p. 125). Through independent research and legally permissible discovery during litigation with the State between 2017 and 2022, Appellant has diligently attempted to prove or disprove whether the State's franchise and/or corporate schemes involve him. The State has refused to respond to the discovery requested, and the State's judges have ruled against Appellant on motions to compel responses from the State. The State has never rebutted or denied Appellant's affirmed attestations to the State's surreptitious enfranchisement and mischaracterization of Appellant as a State-created corporate persona. Appellant has thoroughly investigated the matter and reasonably concluded that through licensing, registration, and other means, the State has treated him and/or intends to treat him, as either a corporate franchisee of the State, or a State-created corporate person. The State has refused to provide any information, leaving Appellant to accept his findings as the truth of the matter. Appellant has thoroughly explained his religious beliefs and obligations to the municipal court and prosecutor, though they feign ignorance. (R. pp. 119-121, ¶¶ "1", "5","8", and "9**;** R. pp. 137-138, ¶¶ "1" and "5"; R. pp. 81-85, ¶¶ "2" and "3"; R. p. 57, lines 13-20)).

Regardless of the municipal judge's and prosecutor's disapproval of Appellant's religious beliefs and practices, the U.S. Supreme Court has already ruled that, "religious beliefs need not

be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." *Thomas v. Review Bd. of Ind. Employment Security Div.,* 450 U. S. 707, 714 (1981). The door of the Free Exercise Clause stands tightly closed against any governmental regulation of religious beliefs as such, *Cantwell v. Connecticut,* 310 U. S. 296, 310 U. S. 303. Further, the Court held that, "In our Establishment Clause cases we have often stated the principle that the First Amendment forbids an official purpose to disapprove of a particular religion or of religion in general. See, *e. g., Board of Ed. of Westside Community Schools (Dist.* 66) v. *Mergens*, 496 U. S. 226, 248 (1990) (plurality opinion); *School Dist. of Grand Rapids* v. *Ball*, *473* U. S. 373, 389 (1985); *Wallace* v. *Jaffree*, 472 U. S. 38, 56 (1985); *Epperson* v. *Arkansas,* 393 U. S. 97, 106-107 (1968); *School Dist. of Abington* v. *Schempp*, 374 U. S. 203, 225 (1963); *Everson* v. *Board of Ed. of Ewing,* 330 U. S. 1, 15-16 (1947).

As explained above, Appellant cannot comply with the State laws requiring him to use a State drivers license and registration without putting aside his sincerely held religious beliefs, practices, and obligations. It is obvious that the restrictions placed upon Appellant' free use of the State's public roads, along with his rights to liberty and free use of his property, result directly from the State's laws and requirements that he (1) use the public roads only after being granted a drivers license and (2) that he register his truck. These requirements and the resulting penalties for noncompliance constitute a very substantial burden on Appellant's free exercise of religion, and must be done under a compelling interest test, at a minimum (South Carolina § 1-32-30); federal guidelines also require "strict scrutiny".

South Carolina § 1-32-30 allows the defense to persons whose exercise of religion is substantially burdened by the State and reads, in part (bold added):

"The purposes of this chapter are to:

(1) restore the compelling interest test as set forth in Wisconsin v. Yoder, 406 U.S. 205 (1972), and

Sherbert v. Verner, 374 U.S. 398 (1963), and to guarantee that a test of compelling state interest will be imposed on all state and local laws and ordinances in all cases in which the free exercise of religion is substantially burdened; and

(2) provide a claim or defense to persons whose exercise of religion is substantially burdened by the State."

Please take notice that South Carolina §§ 1-32-30 and 1-32-40 require that a state burden on religious practice must pass the compelling interest test, which requires the burden to be the least restrictive means of furthering the compelling state interest. § 1-32-40 states (bold added):

"The State **may not** substantially burden a person's exercise of religion, even if the burden results from a rule of general applicability, unless the State demonstrates that application of the burden to the person is:

(1) **in furtherance of a compelling state interest**; **and**

(2) **the least restrictive means of furthering that compelling state interest.**"

South Carolina § 1-32-60 applies South Carolina § 1-32's restrictions on government burdening of religion to **all** laws, in **all** cases in South Carolina, and allows for the granting of exemptions for persons whose exercise of religion is substantially burdened by the State. South Carolina § 1-32-60 clarifies that South Carolina § 1-32 applies to **each and every state and local law and ordinance**, including the implementation of those laws and ordinances. Further, South Carolina § 1-32-60 addresses the granting of exemptions to prevent unlawful burdening of a person's religion by the state.

The statutes that govern the vehicle registration and driver's license requirements, South Carolina § 56-1-20 and South Carolina § 56-3-110, are not generally applicable, as their complimentary statutes allow many exemptions for secular purposes. For example, under South Carolina § 56-1-30(3), the State is willing to suffer a wholly unlicensed driver to drive a motor vehicle, unimpeded, on its public roads for 90 days a year; and under 56-3-120 and 56-3-180, the

State exempts those vehicles for which it provides special permits, allowing the operation of unregistered vehicles on State roads for discretionary periods of time. Each of these requirements is regulated through laws and statutes that allow exemptions, which leave appreciable damage to any supposedly vital or compelling interest unprohibited. It is established in strict scrutiny jurisprudence that "a law cannot be regarded as protecting an interest 'of the highest order' ... when it leaves appreciable damage to that supposedly vital interest unprohibited." *Florida Star* v. *B.* J. *F., supra,* at 541-542 (SCALIA, J., concurring in part and concurring in judgment) (citation omitted). See *Simon & Schuster, Inc.* v. *Members of* N. *Y. State Crime Victims Bd.,* 502 U. S. 105, 119-120 (1991). Therefore, Appellant challenges the notion that the State has a genuine compelling interest in regulating the use of the public roadways as regards its registration of motor vehicles and imposition of its drivers licensing requirement.

In light of the very substantial burdens placed on Appellant's constitutionally protected free exercise of religion, his right to liberty through travel, and his right to free use of his property, even if the State's regulatory interests were considered compelling, the State's methods of regulating Appellant's use of public roadways must take the form of the least restrictive means of regulation. As mentioned above, the laws of this State already suffer (1) unlicensed drivers to lawfully use the public roads, and (2) unregistered vehicles to be operated on public roads. Preference cannot be given to secular conduct and purposes, which is subsequently denied to Appellant's religiously motivated conduct and purpose. Doing so inevitably deters or discourages the exercise of First Amendment rights of religious freedom, and thereby threatens to "produce a result which the State could not command directly." *Speiser v. Randall,* at 357 U. S. 526 (1958). Likewise, to condition the availability of privileges upon Appellant's willingness to violate principles of his religion effectively penalizes his free exercise of constitutional rights.

Id. at 357 U. S. 518. Similar to the denial of exemptions for religious reasons in the present case, "to deny an exemption to claimants who engage in certain forms of speech is, in effect, to penalize them for such speech." *Id.* at 357 U. S. 518.

As to the nonmoving charges in this case, the State's requirements imposed upon Appellant are not the least restrictive means of furthering the State's interest. The relevant State motor vehicle laws do regulate through means that are less restrictive than those proposed to regulate Appellant's use of the public roadways. For example, the law requiring vehicle registration is not one of general applicability, as there are exemptions allowed for what appears to be a variety of discretionarily allowed purposes. South Carolina §§ 56-3-120 and 56-3-180 allow exemption from the requirement to register a motor vehicle, which may be done by way of special permit, and read as follows:

> "**SECTION 56-3-120.** Exemptions from registration and licensing requirement.
> The following vehicles are exempt from registration and licensing under this chapter:
> (1) a vehicle driven, operated, or moved upon a highway pursuant to the provisions of this chapter relating to nonresidents or under temporary permits issued by the department as authorized;…"

> "**SECTION 56-3-180.** Special permits to operate vehicles otherwise required to be registered and licensed; restrictions.
> **The department may issue in writing special permits to operate vehicles otherwise required to be registered and licensed under this chapter when the vehicles do not display the required current license plate or plates or registration cards.** A special permit issued pursuant to this section, shall specify the date on which the permit expires, and must be carried at all times on the vehicle authorized to be operated."

The law requiring driver licenses is also not one of general applicability, as many exemptions are allowed. South Carolina § 56-1-30 allows several classes of persons an exemption from licensing requirements, and reads in part at item (3):

> "**SECTION 56-1-30.** Persons exempt from licensing requirements.
>
> The following persons are exempt from licenses under this chapter:" ....
>
> "(3) **Any nonresident who is at least eighteen years of age and whose home state or country does not require the licensing of operators may operate a motor vehicle for a period of not**

> **more than ninety days in any calendar year**, if the motor vehicle is duly registered in the home state or country of the nonresident…"

South Carolina Title 56 does not provide any exemption related guidance directing any course of action, within any specified timeframe, for citizens whose free exercise of religion is burdened by the laws therein.

Many "generally applicable" laws provide categorical exceptions of one kind or another. Once a legislature has carved out an exemption for a secular group or person, the law is no longer "generally applicable," and thus subject to standards of strict scrutiny. As the U.S. Supreme Court opined, "where such a law is not neutral or not of general application, it must undergo the most rigorous of scrutiny: It must be justified by a compelling governmental interest and must be narrowly tailored to advance that interest." *Church of the Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520 (1993).

In *Church of the Lukumi Babalu Aye, Inc. v. Hialeah*, since the challenged ordinance both burdened religious practice and was not generally applicable, the Court applied the "strict scrutiny" standard, and the ordinance could not pass constitutional scrutiny. In light of Appellant's constitutionally protected rights to liberty and the free exercise of his religion, the laws and purported violations charged by Respondent in the present case are due the same level of scrutiny; and they cannot pass scrutiny because in this case they are being applied and enforced unconstitutionally.

Whereas the Citizen's right to freely travel by automobile "is not a mere privilege which may be permitted or prohibited at will, but a common right which he has under his right to life, liberty and the pursuit of happiness", the right may be locally regulated by the state's police power "in the interest of the public safety and welfare." *Thompson v. Smith*, 155 Va. 367 — Va: Supreme Court (1930); however, the state may not arbitrarily or unreasonably prohibit or restrict

it, nor may it permit one to exercise it and refuse to permit another of like qualifications, under like conditions and circumstances, to exercise it." *Id*.

The reasoning described in *Thompson v. Smith* does not allow the State's regulating of Appellant's rights for the purposes of suppressing his religious beliefs, forcing him into adhesion or indenture contracts with the State (i.e. bondage), exercising unlawful control over his private property, or any other unlawful purpose. Because the State's application of the laws forming the basis of the nonmoving charges, as applied to Appellant, do not pass the "compelling interest test", the laws at issue would likely not meet the federal "strict scrutiny" standard if challenged in a federal forum. It is beyond argument that the alternative regulatory means, provided for by the exemptions above, are far less restrictive than the means the State imposed on Appellant in this case; no reasonable argument can be made that prohibiting Appellant's driving on the public roads, under threat of jail or fine, until he obtains a State drivers license and vehicle registration is the least restrictive means of furthering the State interests involved.

Importantly, the Court please note that Appellant was not, and is not currently, required by law to park his truck and live under a self-imposed ban from travel upon the public roadways. Appellant need not wait for the State to recognize that he must be accommodated. "Persons faced with an unconstitutional licensing law which purports to require a license as a prerequisite to exercise of rights... may ignore the law and engage with impunity in exercise of such right." *Shuttlesworth v. Birmingham* 394 U.S. 147 (1969). Further, "If [state] officials construe a vague statute unconstitutionally, the citizen may take them at their word, and act on the assumption that the statute is void." *Id*. "

All of the above makes (1) the application of the State's drivers license and registration laws, and (2) the violations charged against Appellant in this case, unconstitutional in effect and

enforcement as relates to Appellant, as an individual person (as required by state, and federal law). The U.S. Supreme Court's interpretations of the state and federal constitutions prohibit any such application of state laws, and the Court has found statutes and ordinances void where they unreasonably restrict a constitutionally protected right.

The existence of this unconstitutional circumstance is obvious from the "face of the record", and was explained to the prosecutor, arresting officer, and the municipal judge at the hearing denying Appellant's Motion To Dismiss on July 22nd, 2021; and explained in further detail in Appellant's Motion For A Directed Verdict filed on October 5, 2021, which the municipal judge and prosecutor both acknowledged. At the hearing where Appellant made the guilty pleas, in an unrecorded conversation with the municipal judge and prosecutor, Appellant argued his Motion For A Directed Verdict, (filed October 5th, 2021). The municipal judge refused to make a ruling at that time, but Appellant's argument that the two nonmoving charges were statutorily and constitutionally prohibited was explained to the judge and prosecutor before the guilty pleas were made. (R. p. 66, line 21 – p. 67, line 8; and R. p. 13 at "5").

In this case, the statutes being challenged, South Carolina §§ 56-1-20 and 56-3-110, are not generally applicable, and Respondent's retaliatory prosecution of Appellant devalues Appellant's religious motivations as less important than the secular reasons for exemptions allowed under the same statutes. Thus, Appellant's "religious practice is being singled out for discriminatory treatment." *Employment Div., Dept. of Human Resources of Ore.* v. *Smith*, 494 U. S., at 722, n. 17 (STEVENS, J., concurring in part and concurring in result); *id.,* at 708 (opinion of Burger, C. J.); *United States* v. *Lee,* 455 U. S. 252, 264, n. 3 (1982) (STEVENS, J., concurring in judgment).

South Carolina courts have held that the sufficiency of an indictment, "must be viewed with a practical eye; all the surrounding circumstances must be weighed before an accurate determination of whether a defendant was or was not prejudiced can be reached." *State v. Adams*, 277 S.C. 115, 125, 283 S.E.2d 582, 588 (1981), overruled on other grounds by *State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991). "A court must look first to the statutory history, mindful that it is the Legislature, not the court that is responsible for defining a crime under a penal statute. Moreover, courts are bound to construe statutes strictly against the State." See *Williams v. State*, 306 S.C. 89, 91, 410 S.E.2d 563, 564 (1991) (It is a well-settled rule of statutory construction that penal statutes are strictly construed against the State and in favor of the defendant.).

The State is required to take notice that (1) Appellant has a religious belief and practice that he sincerely believes prohibits his participation in the State's licensing and registration schemes (R. pp. 119-121**;** R. p. 137-138**;** R. p. 81, item "2" – p. 84 at ¶ 1); (2) that in prior cases, the State had repeatedly acknowledged the burden to Appellant and conceded to accommodate Appellant (R. p. 93-96); (3) that relevant protections exist under South Carolina § 1-32 and the State and federal constitutions (South Carolina § 1-32; South Carolina Constitution Article 1 § 2; U.S. Constitution at 1st, 13th, and 14th Amendments); and (4) that exemptions exist under the law (South Carolina §§ 56-1-30(3), 56-3-120(1) and 56-3-180). As courts are deemed to know the law, the municipal court's failure to uphold its oath to protect Appellant's constitutional and statutory rights is a failure that should be corrected.

B. The Municipal Court Lacked Subject Matter Jurisdiction, Or Committed An Error Of Law By Permitting Retaliatory Prosecution Against Appellant To Proceed

Standard of Review

When issues presented in an appeal are questions of law, they should reviewed de novo. Decisions on "questions of law " are reviewable de novo," *Pierce v. Underwood*, 487 U.S. 552, 558 (1988). Conclusions of law are subject to de novo review by the appellate court. *Husain v. Olympic Airways*, 316 F.3d 835. (9th Cir. 2002).

Discussion

"There is no discretion to ignore lack of jurisdiction." *Joyce v. U.S.* 474 F.2d 215 (1973). "Jurisdiction can be challenged at any time," and "Jurisdiction, once challenged, cannot be assumed and must be decided." *Basso v. Utah Power & Light Co.*, 495 F. 2d (1974).

At the July 22nd, 2021 motion hearing, the municipal judge erred in ruling against Appellant's Motion to Dismiss, during which Appellant informed the municipal judge of the specifics of Appellant's sincere religious beliefs, which formed the basis for his noncompliance with the licensing and registration laws. At that hearing, Appellant argued that South Carolina § 1-32, and the exemptions given at Title 56 formed the basis of Appellant's defense. Appellant challenged the court's jurisdiction for the two nonmoving charges because, as explained in the preceding section, any prohibition or punishment for the nonmoving charges would be an unlawful deprivation of Appellant's constitutionally protected rights. (R.pp. 113-121, denial objected to on July 22, 2021**;** R. p. 112**;** and R. p. 110). The audio of the hearing is no longer available, however, the filed Motion To Dismiss and affidavit demonstrate that Appellant challenged the court's jurisdiction based on facts closely associated with Appellant's religious beliefs, which involved bondage, fictional personas, and Appellant's religious obligations not to participate in the same, along with defenses allowed under the law. Further, Appellant's Motion

For A Directed Verdict, filed on October 5th, 2021, presented the same arguments presented at the July 22nd, 2021 Motion To Dismiss hearing with more specificity, and provided the municipal judge and prosecutor with everything they needed to know to rightly conclude that prosecuting Appellant for the nonmoving charges was statutorily and constitutionally prohibited. (R. p. 72-107). Both, the judge and prosecutor told Appellant they had read and reviewed Appellant's Motion For A Directed Verdict before the court accepted the guilty pleas. (R. p. 66, line 8 – p. 67, line 6**;** R. p. 13, ¶ "5"). The municipal judge had neither jurisdiction, nor discretion to allow retaliatory prosecution for the exercise of lawfully protected rights. That the prosecution of Appellant for the nonmoving charges was retaliatory is clear, as the prosecutor denied the law, judged Appellant's religious views as nonsense, and sought to punish Appellant for exercising fundamental constitutionally protected rights. (R. p. 66, line 8 – p. 67, line 6**;** R. p. 40, lines 4-10**;** R. p. 48, line 19 – p. 49, line 5**;** R. p. 51, line 25 – p. 52, line 2**;** R. p. 54, line 15 – p. 55, line 17**;** R. p. 56, lines 9-18**;** and R. p. 57, lines 1-3). Any departure from those recognized and established requirements of law, however close the apparent adherence to mere form in method of procedure, which has the effect to deprive one of a constitutional right, is as much an excess of jurisdiction as where there exists an inceptive lack of power. *McClatchy v. Superior Court*, 119 Cal. 413, 418, 51 P. 696, 698, 39 L.R.A. 691. 'The substance and not the shadow determines the validity of the exercise of the power.' *Postal Telegraph, etc., Co. v. Adams*, 155 U.S. [688], 689, 698, 15 S.Ct. 268, 360, [39 L.Ed. 311]." Most constitutional defenses (and plenty of statutory defenses), if successfully asserted in a pretrial motion, deprive the prosecution of the "power" to proceed to trial or secure a conviction. *Class v. United States*, 583 U.S. 8, 9 (2018). Indeed, "all litigants who have a meritorious pretrial claim for dismissal can reasonably claim a right not to stand trial." *Van Cauwenberghe v. Biard*, 486 U. S. 517, 524 (1988). Prior to making

the guilty pleas, Appellant presented the municipal judge with a valid showing of substantial religious burden and a right to accommodation, and the prosecutor should have agreed to dismiss the two regulatory charges, or the judge was required to do so sua sponte. The municipal judge could not take any action to allow retaliatory prosecution, and an action taken by a court that lacks jurisdiction is a nullity and void.

Considering all of the above, as is proper in considering the sufficiency of the charges, due to the prevailing constitutional constraints on the municipal court, Respondent failed to state a crime as to the two nonmoving charges; once aware of this fact, the municipal court lost jurisdiction over those charges and the court was required to dismiss the charges. Even if every fact asserted relating to the two nonmoving charges brought by Respondent were true, when viewed in light of all the surrounding circumstances, there existed no lawful path to finding Appellant guilty, or for any grant of relief to Respondent, as no judge or jury could approve a thing so specifically forbidden by statute and the state and federal constitutions.

C. The Trial / Plea Hearing Transcript Is Prejudicial And Incomplete While The Municipal Court's "Judge's Notes" Is Full Of Errors

This section is provided to give context to this Court regarding Appellant's claim that his guilty pleas are not valid. The record in this case is incomplete for reasons that Appellant believes are improper. As a consequence, many of the issues complained of by Appellant do not appear in the municipal record, however, it should be obvious from what is in the record that Appellant's pleas were not voluntarily, knowingly, and understandingly made.

In Appellant's Notice Of Appeal, which was given to the municipal court only 7 days after making the pleas, on November 4th, 2021, Appellant expressed his suspicion that the municipal record was manipulated to ensure that the misstatement of penalties made to

Appellant, the municipal court's refusal to allow trial as was twice requested by Appellant, the municipal court's repeated insistence that Appellant negotiate with the prosecutor, and the municipal court's failure to inform the unrepresented Appellant of his rights and the waivers made in proffering the pleas, did not appear in the record. (R. p. 20, item "6"). Appellant's suspicions were realized as likely true upon his receipt of the audio record from the municipal clerk of court, nearly a year later, on August 25th, 2022. (R. p. 139, item "2"**;** R. p. 61, lines 3-15). Curiously, the audio files specific to the discussions complained of by Appellant captured no audio; however, the opening of court, the plea acceptance, sentencing, and jury dismissal, were all miraculously recorded; that is to say everything convenient to secure Appellant's conviction, was recorded. In total, 2 out of the 5 audio files captured no audio. Specifically, only the portions that would have captured the improprieties complained of by Appellant were not made. During all relevant discussions, the municipal court had assured Appellant that a record of the hearing was being made, but the record is incomplete. (R. p. 61, lines 3-15**;** R. p. 62, lines 21-24**;** R. p. 53, line 24 – p. 54, line 5). This circumstance pits Appellant's word directly against assertions made by the municipal judge in the "Judge's Notes" (R. p. 13), with no neutral record of what occurred available to this Court. Further, considering that Appellant claims repeated judicial and prosecutorial coercion to negotiate a plea deal and manipulation of the record, any disagreements between the objective record and the "Judge's Notes" should have been weighed in favor of the available municipal transcript (R. pp. 60-71) and objective records.

As explained to the circuit court judge, the municipal court's Return, especially the "Judge's Notes", contains outright misstatements of fact and gross errors, which either do not appear anywhere else in the record or are directly contradicted by the record. Even the things

claimed to have been done in the "Judge's Notes" appear no where else in the record; as statements and notices claimed to have been made and given at items 1, 2, and 5 appear nowhere else in the record, while the claims at items 3, 4 and 8 are directly contradicted by the record.

In response to Appellant objecting to the municipal judge not (1) reviewing the evidence that the prosecutor would have introduced, (2) not examining the facts of the case, (3) and not questioning Appellant regarding any admission to any fact related to the allegations charged, item #3 of the "Judge's Notes" responds that no evidence was submitted to be reviewed while remaining non-responsive to the two remaining issues of failure to examine facts and failure to question Appellant regarding facts. (R. p. 18, item "3"**;** R. p. 13, item "3"**;** R. p. 33, lines 7-14). Neither the judge's Return nor any portion of the hearing transcript demonstrate the required examination of facts and questioning of Appellant as to any admission of facts that might form a legal basis for a valid acceptance of Appellant's guilty pleas. Facts in the record include proof of (1) Appellant's sincere religious beliefs and practices, (2) his claims of substantial religious burden, (3) exemptions allowed under the law, and (4) prior accommodations by the State; in regards to the nonmoving charges; the facts in the record do not support a guilty plea for the charge of driving without a license.

Another contradiction arises from item # 4 of the "Judge's Notes" (R. p. 13, item "4"), which states that the municipal judge did not insist on negotiations between Appellant and prosecutor. Upon entering the courtroom, the parties almost immediately informed the judge that a plea agreement had not been reached and that they were ready for trial. As described above, and as can be verified by the Municipal Transcript, shortly after being so informed, the judge and court clerk are whispering as how to best accept an already refused and nonexistent plea from Appellant. (R. p. 62, lines 2-5). Immediately following, the judge addresses the jurors saying

that, "I guarantee you that, uh-- the reason we are running late is **we are trying to resolve some issues, umm-- in order to use as little of your time as is absolutely necessary…with that being said, could I see the parties, uh, very briefly.**" (R. p. 62, lines 7-13). At that point, Appellant and the prosecutor were lead outside the courtroom by the judge. The court's clerk followed with a digital recorder in hand, as the judge had told her that the discussions were to be on the record. (R. p. 62, lines 23-24). Once in the "closet" adjacent to the courtroom, the judge suggested further plea negations between Appellant and the prosecutor. The judge stated no reason as to why he was doing so. Appellant repeated that the parties had already conferred, that the prosecutor was not willing to accommodate his religion, and that Appellant was ready for trial. At some point unknown to Appellant, and without notice, the recording of the hearing had ceased. Recording does not resume again until the clerk can be heard announcing charges for entry of a guilty plea by Appellant. (R. p. 63, line 4). During the period for which no record was made, Appellant was misinformed of possible sentences and pressured into repetitive negotiations with the prosecutor. (R. p. 54, lines 6-17). Some of these negotiations did take place in front of the judge, with the judge interjecting at least once. Importantly, the plea negotiations were the sole and only matter discussed once the municipal judge directed the parties outside of the courtroom, and those discussions were not peripheral to any other conversation. Upon returning to the courtroom, the municipal judge told the jurors that his efforts outside of the courtroom were successful in avoiding the jury trial of Appellant (R. p. 68, lines 3-18); in Appellant's view, this plea deal was entirely the judge's goal and effort, not that of the parties', and certainly not that of Appellant.

Item #8 of the "Judge's Notes" states that the judge ordered the prosecution to turn over all evidence to be used in it's case in chief and all exculpatory evidence. (R. p. 13, item "8").

This is incorrect. The municipal judge ruled against Appellant outright on this motion, by letter, without any further explanation. (R. p. 125**;** R. p. 39, line 16 - p. 40, line 3). This denial, as relates to exculpatory evidence is acknowledged by the prosecutor. (R. p. 48, line 15 – p. 49, line 5). Further still, the judge ruled against Appellant on Appellant's Motion To Reconsider his ruling on the Motion To Compel discovery. There would have been no need for the Motion To Reconsider, if the judge had ordered the prosecution as claimed in the "Judge's Notes".

D. Appellant's Guilty Pleas Are Invalid Because They Were Involuntarily, Unknowingly, Misunderstandingly, Or Mistakenly Made And Have No Basis In Fact

Standard of Review

When issues presented in an appeal are questions of law, they should reviewed de novo. Decisions on "questions of law " are reviewable de novo," *Pierce v. Underwood*, 487 U.S. 552, 558 (1988). Conclusions of law are subject to de novo review by the appellate court. *Husain v. Olympic Airways*, 316 F.3d 835 (9th Cir. 2002). A mixed question of law and fact occurs when the facts are established, the rule of law is undisputed, and the issue is whether the facts satisfy the legal rule**.** *Pullman-Standard v. Swint*, 456 U.S. 273, 289 n.19 (1982)

Discussion

The law requires that a guilty plea be knowing, voluntary, and understandingly made, with the defendant understanding the consequences of his entering the plea. The record must establish that the guilty plea was voluntarily and understandingly made in order to be valid. *Gaines v. State*, 517 S.E.2d 439 (S.C. 1999) citing *Boykin v. Alabama,* 395 U.S. 238 (1969). "To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him." *Roddy v. State*, 528 S.E.2d 418, 421 (S.C. 2000).

For a guilty plea to be valid, the law requires that a defendant be "realistically" informed of all sentencing possibilities and of his rights and the waivers of those rights. The "court's warning should include an explanation of the defendant's waiver of constitutional rights and a realistic picture of all sentencing possibilities." *State v. Armstrong*, 211 S.E.2d 889 (S.C. 1975).

Appellant's pleas were made under the circumstances of sentencing misinformation provided by the municipal court, intimidation, misunderstanding, and/or mistake. To vitiate a guilty plea, a court's misstatement must be "material in the sense that it is part of the inducement for the defendant's decision to plead guilty." *State v. Higginbotham*, 351 N.W.2d 513, 516 (Iowa 1984). The record in the present case demonstrates that Appellant made the guilty pleas under fear and duress resulting from an induced misunderstanding of the sentencing possibilities and other intimidating circumstances that Appellant was not responsible for creating. A defendant may plead guilty when he intelligently concludes that his interests require a guilty plea and the record strongly evidences guilt. A defendant, after being informed of the evidence against him, must be convinced that he would be found guilty if he went to trial. Such defendant must also receive some benefit from the plea, such as a reduced charge or favorable sentence recommendation. *North Carolina v. Alford*, 400 U.S. 25 (1970).

1. **The pleas given by Appellant were induced by the municipal judge misstating maximum penalties for the charges to the Appellant.**

The municipal judge erred in stating that he could sentence Appellant to **30 days in jail AND a fine** for violation of 56-5-1520(G)(3), when in reality a violation of 56-5-1520(G)(3) (More than 15 over, but less than 25 over) is punishable by a **FINE ONLY.** (R. p. 29, Oath at lines 7-8**;** R. p. 31, lines 11-13**;** R. p. 53, lines 19-23).

This error was tantamount to a threat, and it did work to coerce and induce the unrepresented Appellant into pleading guilty to two of the three charges in this case**.** Appellant

was more than willing to go to trial for the two nonmoving charges in this case, but the erroneous threat of jail time for the speeding violation (for which Appellant offered no defense), induced Appellant into making a plea deal with the State's prosecutor; <u>but for the misstatement of penalties, Appellant would have taken the all of the charges to trial before the jury</u>. (R. p. 31, line 15 – p. 32, line 6**;** R. p. 34, lines 12-16).

In making the pleas, Appellant's primary motivation was to avoid a jail sentence. (R. p. 66, lines 17-20**;** R. p. 52, lines 7-16). The misstated possibility of jail time for the speeding violation was the SOLE AND ONLY prospective jail time Appellant considered to be a likely outcome when agreeing to the plead guilty. (R. p.108). Considering that Appellant believed then, and still believes today, that the municipal court lacked subject matter jurisdiction for the two nonmoving charges, which were unconstitutionally prosecuted according to the state and federal constitutions, as well as statutorily prohibited by South Carolina § 1-32, Appellant certainly did not think he could be jailed for convictions under those two charges. (R. p. 66, lines 8-20). Appellant felt so strongly that his being convicted and sentenced to jail time for the two nonmoving charges was not possible that he drafted and filed a 20-page motion for a directed verdict, with another 20 pages of proofs with the municipal court 3 weeks before the trial date; Appellant prematurely requested a ruling on his motion for a directed verdict just minutes before he proffered the guilty pleas. (R. p. 13, item "5"**;** R. p. 32, line 25 – p. 33, line 6). This demonstrates that Appellant still did not think he could be found guilty of the nonmoving charges if taken to trial; the municipal judge did not rule against Appellant's motion, and Appellant had, and still has, no reason to think that he is incorrect in his grounds for making that motion. Again, but for the misstatement of penalties, Appellant would have taken the all three of the charges to trial before the jury. Taking **ALL** facts into account, including Appellant's

religious beliefs and claims of substantial burden that appear in the record, there was no factual basis for the guilty plea to the Driving Without A License charge, as Appellant's guilt was impossible. (R. p. 32, line 25 - p. 34, line 14). Apart from the speeding charge, Appellant was not convinced of his guilt, or that he could be found guilty, nor did he derive any benefit from making the pleas. (R. p. 37, lines 2-8).

This is not a case of a legitimate *Alford* plea taken by Appellant, because as the Municipal Court Transcript demonstrates, Appellant's sole motivation for agreeing to plead guilty was to avoid a jail sentence. The only purported benefit to Appellant would be the avoidance of imaginary jail time for the speeding charge.

2. The guilty pleas given by Appellant were induced by the jud ge initiating and participating in negotiations between the prosecutor and Appellant.

With regards to plea-bargaining, the judge must remain isolated and detached from the negotiations. "A plea induced by the influence of the judge cannot be said to have been voluntarily entered." *State v. Cross*, 270 S.C. 44, 240 S.E.2d 514, at 516-517, (1977).

The *State v. Cross* quote referenced above is relevant here. On the day of trial, upon Appellant's entry into the courtroom, Appellant informed the municipal judge that he and the prosecutor had conferred, did not reach any plea agreement[5], and that Appellant was ready for trial. (R. p.108**;** R. p. 34, lines 10-11). Without a request being made by either party, the municipal judge ordered the parties outside and led the parties into a small break room "closet" adjacent to the courtroom, where he initiated further talks with the aim of reaching a plea agreement. (R. p. 62, lines 10-13**;** R. p. 54, lines 6-17). Appellant truly believes this was done so

[5] Prior to trial, Appellant had conferred with Respondent prosecutor, Daniel E. Peagler. Appellant offered to plead guilty to the speeding charge, if the prosecutor would drop the two nonmoving charges. The prosecutor refused, and Appellant insisted on going to trial. The municipal judge was informed of this upon the parties' entry into the courtroom.

that he could be deprived of rights outside the view of others and forced to enter a plea deal with the prosecutor, and that such a nonpublic conducting of the plea hearing prejudiced the unrepresented Appellant, likely violating South Carolina Constitution Article 1 § 9. At one point in the discussions, while the prosecutor was explaining the differences between a negotiated plea and a prosecutorial recommendation, the municipal judge interjected into the talks between the prosecutor and Appellant, suggesting that the prosecutor change his offer to Appellant from a "negotiated plea" to a prosecutorial "recommendation." (R. p. 19, item "4"). Although the prosecutor did eventually offer Appellant a negotiated plea deal, the fact that the municipal judge had already stated that Appellant was exposed to jail time for speeding[6] and appeared to prefer that the prosecutor offer less favorable terms to Appellant, created the impression to Appellant, that the judge was hostile towards Appellant. At that time, in an effort to avoid angering the judge, Appellant entered further negotiations with the prosecutor.

Explaining further, the municipal judge's insistence on and participation in plea negotiations between the parties, was repetitive to the point of intimidating Appellant, and had the effect of coercing Appellant to accept a plea deal. (R. p. 35, lines 1-17**;** R. p. 54, lines 6-17). The judge's preliminary and repeated insistence was not simply an encouragement of Appellant to consult counsel or take some time to think things over, but rather an insistence that Appellant meet again with the prosecutor to negotiate terms. At least twice, when Appellant refused to accept a plea agreement and insisted on starting trial, he was "talked down" and resent, by the municipal judge, to negotiate with the prosecutor. In Appellant's view, the judge, prosecutor, and court personnel were creating a situation, or circumstance, which would manipulate Appellant into accepting a plea deal or going to jail for speeding. After being intimidated, off

[6] Appellant had no defense against the speeding charge, and presumed that he would be found guilty on that charge.

the record, in the small "closet", by a large-in-stature judge and multiple court officers, Appellant was asked, "Has anyone threatened you or coerced you in any way to get you to plead guilty?" Notice that Appellant does not simply respond, "No." Appellant's response was, "No, just circumstances are tough. You know? But uh, no one--no one in particular threatened me or said anything." (R. p. 65, lines 8-11). In his response to the question posed, Appellant is referencing the intimidating circumstances described in this appeal. (R. p. 32, lines 8-12). Just because "no one in particular" directly threatened Appellant, does not mean that the court's officers did not create a threatening and intimidating circumstance, which unfairly prejudiced the unrepresented Appellant.

Consider (1) that though it was not his fault, it is still true that the municipal judge stood approximately 6' 8" tall and outweighed the 5' 11"Appellant by probably 80 pounds on October 28th, 2021, (2) that it was the judge alone who called for additional plea discussions, (3) that the judge twice refused to accept Appellant's decision to go to trial and NOT make a deal with the prosecutor, (4) that this pressuring to make a deal was done outside the presence of others while in a small "closet", and (5) that the recording of these events was not made and thus conveniently appear nowhere in the record, despite the clerk, who was present with a recorder in her hand, being told to make the record. (R. p. 62, lines 23-24**;** R. p. 35, line 23 - p. 36, line 11). Appellant truly needed the protection afforded by South Carolina Constitution Article 1 § 9 to ensure that the plea hearing was conducted in a way that was aboveboard. Appellant believes the record has been selectively made to avoid proof of the misstatement of penalties, intimidation, and coercion. Considering the nature of Appellant's complaint, this was an attempt to diminish Appellant's right to a meaningful appeal.

As explained to the circuit court, the municipal judge went out of his way at the start of the proceedings, whispering while saying that he could not "enter a plea with them [the jury] in here." IMPORTANTLY, this whispered statement was made, at the opening of the hearing, after Appellant and the prosecutor had already informed the judge that they had conferred without reaching an agreement and that Appellant was ready to start trial. (R. p. 62, lines 2-3**;** R. p. 34, lines 8-25). Since there was no plea offer on the table, the obvious question is - what potential plea was the judge referring to? The only logical answer is, a plea that Appellant would end up accepting, but given Appellant's prior refusals, how could the judge know that this would happen? Perhaps undue influence is the most reasonable answer.

Further, it is evident from the Municipal Court Transcript, that the municipal judge intended **NOT** to allow the trial of the Appellant to occur, and that he gave considerable effort to ensure that it did not occur. (R. p. 34, line 23 - R. p. 35, line 17). The municipal judge let the jurors know that he was actively working to avoid having the trial before insisting on additional plea discussions. (R. p. 62, lines 10-13). After Appellant accepted the plea deal under duress, the judge let the jury know that he was successful in avoiding having the trial. (R. p. 68, lines 4-7). The municipal judge owed a duty to ensure Appellant's rights to due process and a trial by jury, not a duty to ensure convenience to anyone else. The totality of circumstances, viewed objectively, shows that the judge went too far to force negotiations in an effort to disallow the trial of Appellant, and that his successful efforts effectively denied Appellant meaningful access to a trial by jury and due process. Appellant believes that his novel defense under South Carolina § 1-32 and the court's officers labeling of Appellant, as a "sovereign citizen", is what motivated these tactics used against Appellant in an effort to restrict his rights to make sure he did not "win" under any circumstance.

3. The pleas were induced without Appellant being notified of his rights or the waivers accompanying the pleas, causing prejudice against Appellant.

A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993). Although the trial court is not required to direct defendant's attention to each right and obtain a separate waiver, the record should indicate the defendant was fully aware of the consequences of the guilty plea. *State v. Lambert,* 266 S.C. 574, 225 S.E.2d 340 (1976). In *Boykin,* the United States Supreme Court held that before a court can accept a guilty plea, a defendant must be advised of the constitutional rights he is waiving. Specifically, a defendant must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969).

The municipal judge erred in accepting Appellant's guilty pleas because the judge never notified Appellant of his rights and waivers, such as: Appellant's rights to an attorney if found indigent, to confront his accusers, to his privilege against compulsory self incrimination, to testify on his own behalf, to cross examine state witnesses, that the state had to prove beyond a reasonable doubt that he is guilty, that the jury's verdict had to be unanimous, that Appellant understood that he was admitting all matters of fact in the accusation, that by pleading guilty Appellant was giving up any objections he may have to the charges, to an accurate citing of maximum penalties the court could impose, to sign and complete a form SCCA 685.

Appellant was not aware of the abovementioned rights at the time of his making the pleas, and was thus denied the opportunity to make an informed decision before entering the pleas. As a most relevant illustration, even in giving the guilty plea to the nonmoving charge for

driving without a license, Appellant was still reliant upon his right to appeal his conviction for the charge, which he believed to be unconstitutional-as-enforced, and he had no idea that giving the plea would forfeit his right to appeal that conviction. (R. p. 32, line 7 – p. 33, line 6). Appellant had been diligent in making objections on the record because he had a determined intent to appeal certain prior rulings, and had absolutely no intention of giving up that right. (R. p. 32, lines 16-23**;** R. p. 52, line 17 – p. 54, line 5).

The flawed "Judge's Notes" (R. p. 13) appear to have been given undue weight by the circuit court, considering that the record is otherwise silent on the issue of whether or not the municipal judge informed Appellant of his rights. In his "Judge's Notes", at item #2 the municipal judge does not even claim that he informed the unrepresented Appellant of any rights beyond Appellant's right to a jury trial, a bench trial, and an attorney, and for those notices he relies upon insufficient notices given at an earlier hearing which occurred nearly a year prior to day the guilty pleas were made. (R. p. 49, line 22 - p. 50, line 3**;** R. p. 50, line 18 - p. 51, line 5**;** R. p. 51, lines 12-23). At the appeal hearing before the circuit court, Appellant admitted to being informed of the right to a jury trial and an attorney at a motion hearing nearly a year prior to the date of trial/plea acceptance, however, that prior instance of Appellant being informed of those rights was done in the context of the municipal judge suggesting options that would have had Appellant either postpone arguing the grounds for the motion until trial (as Appellant was apparently doing a poor job of arguing the motion on that day) or suggesting that Appellant hire an attorney to argue the motion on Appellant's behalf. (R. p. 52, line 17 – p. 54, line 5). Importantly, at the prior motion hearing in question, the municipal judge did not inform Appellant that the court would provide an attorney, by application through the clerk, if Appellant could not afford one. Further, this kind of "informing" of rights at a temporally distant motion

hearing certainly cannot constitute adequate notice of an unrepresented defendant's right to an attorney if indigent, rights at trial or the rights and waivers presumed when agreeing to plead guilty.

Coincidently, at a November of 2022 hearing in a separate case for identical nonmoving charges brought before the same municipal judge, Appellant was informed that the City of Cayce would provide an attorney if Appellant applied for one. In that more recent case, Appellant has been found indigent, and an attorney has been appointed to represent Appellant in that case. However, in the case presently under appeal before this Court, which commenced more than a year earlier, Appellant has no recollection of the municipal court giving this information regarding appointment of counsel by application. Appellant likely would have qualified for a court appointed attorney in this case presently under appeal as well. While this fact may or may not be relevant to the present appeal, it is mentioned here to illustrate that without proper notice of rights given by the courts, important rights may be unknown, even to well read defendants, resulting in prejudice and injustice. Regarding Appellant's guilty pleas on the day of trial, no fair warnings or necessary informing of rights appear in the record, because they were not given; and even when claimed to have been given, they were not given in a proper context, or were given so long ago that it was not reasonable to assume Appellant was thoroughly aware of his rights at trial, conduct of plea negotiations, or rights at a plea hearing.

Appellant chose self-representation in this case because he could not afford an attorney. Appellant did not understand at the time of giving the pleas that a lawyer would have been provided if he could not afford one. Therefore, Appellant did not knowingly waive counsel. The waiver of the right to have a lawyer becomes especially critical when the defendant decides to plead guilty. In such instances, the judge must explain to the defendant that he is giving up the

following rights: 1) the right to a trial by jury, 2) the right to confront his accusers, and 3) the privilege against compulsory self-incrimination. In this present case, this was not done. The defendant must have an understanding of these rights, and realize how they relate to the facts of his case. Further, the court must be able to show in the court record that the accused both understood his offense and its possible consequences, and that he was not led into this decision by false promises or threats. *Vickery v. State*, 258 S.C. 33, 186 S.E.2d 827 (1972).

Defendants have the right to refuse court-appointed counsel and the right to represent themselves. However, an unrepresented defendant should be advised of the dangers of self-representation. *Faretta v. California*, 422 U.S. 806 (1975). To be lawful, the defendant's decision to waive counsel must be made both voluntarily and with an understanding of his rights. *Boykin v. Alabama,* 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); *State v. Lambert*, 266 S.C. 574, 225 S.E.2d 340 (1976). Though an absence of counsel does not invalidate a plea, it does greatly increase the burden put upon the judge to make sure that the defendant is aware of his rights. In the case presently under appeal, the municipal court did not carry its increased burden to make sure that Appellant was aware of his rights. Contrary to Respondent's position, unrepresented defendants cannot be treated as though they are attorneys, and some extra cautions must be taken. (R. p. 51, lines 12-18).

E. The municipal court erred or abused discretion by denying Appellant's Motion To Compel discovery responses from the State, causing prejudice against Appellant

Standard of Review

When issues presented in an appeal are questions of law, they should reviewed de novo. Decisions on "questions of law " are reviewable de novo," *Pierce v. Underwood*, 487 U.S. 552,

558 (1988). Conclusions of law are subject to de novo review by the appellate court. *Husain v. Olympic Airways*, 316 F.3d 835 (9th Cir. 2002).

Discussion

The United States Supreme Court, in *Brady v Maryland*, required the turning over of all exculpatory material, erring on the side of giving too much disclosure rather than giving too little. *Brady v. Maryland*, 373 U.S. 83 (1963). The United States Supreme Court explained further, in *Kyle's v Whitley*, that prosecutors are required to provide discovery of exculpatory information and materials in the possession or control of state agencies that have provided information to the prosecution. *Kyles v. Whitley*, 514 U.S. 419 (1995).

Appellant filed a Motion to Compel exculpatory information and documents from the State on August 31st, 2020, which was denied by the court. (R. pp. 126 – 138**;** R. p. 125**;** R. p. 48, line 15 - p. 49, line 5). The volume of materials and information requested was not oppressive or undue, because Appellant's liberty and property were at stake. Further, other State agencies had provided information to the prosecution, such as the South Carolina Department of Motor Vehicles.

In Appellant's view, information which might show that the laws he was charged under unjustly burdened his sincerely held religious beliefs and practices, would be exculpatory, and certainly Appellant had a right to ask for such information, and inquire as to its existence. Though claiming to have allowed the motion in its "Judge's Notes", the municipal court denied Appellant's motion outright, by letter, without a hearing. (R. p. 13, item "8"**;** R. p. 125). In denying the motion by letter, without a hearing, the municipal court intentionally closed the door; not allowing Appellant the right to even inquire. The municipal court should have ordered the discovery to be produced by the State, and if the materials and information requested did not

exist, the State could have responded so, or objected in the usual way and according to the rules (i.e., a response or objection to each individual request, stating the reason, if any, for an objection). Even a statement that the materials did not exist might have proven useful to the defense; and Appellant's request for identification of witnesses may have led to testimony benefiting either party. The court's ruling was prejudicial in that the judge made assumptions as to whether or not the evidence existed and whether the materials potentially given in response to the requests might be exculpatory. The judge did not know with certainty that the requested materials or information did not help Appellant's case.

Worse still, the likelihood remains that the judge, like the prosecutor[7], did not read or consider the motion at all, in which case the Appellant has been denied meaningful access to the courts, that being in and of itself a denial of due process. The municipal court improperly shielded the State from having to respond via production or objection. Such a ruling resolved nothing and only served to leave Appellant in ignorance as to whether the information requested existed or not, and this circumstance denied the Appellant due process and severely hampered the formulation of Appellant's South Carolina § 1-32 defense.

F. The State's Prosecution Of Appellant For The Nonmoving Charges In This Case Was Barred Due To An Estoppel In The Nature Of A Collateral Estoppel, Or A Judicial Estoppel Should Have Been Recognized By The Municipal Court

Standard of Review

When issues presented in an appeal are questions of law, they should reviewed de novo. Decisions on "questions of law " are reviewable de novo," *Pierce v. Underwood*, 487 U.S. 552,

[7] The prosecutor for the state in this case, admitted on October 28th, 2021, that he had not read any of Appellant's filings, and went on to say that his reading the filings or not doesn't matter because Appellant is a "sovereign citizen." Appellant has repeatedly denied the accusations, but prejudice has tainted this case from the start.

558 (1988). Conclusions of law are subject to de novo review by the appellate court. *Husain v. Olympic Airways*, 316 F.3d 835 (9th Cir. 2002).

Discussion

Charges for no driver's license and no vehicle registration should have been disallowed due to an estoppel, in the nature of a collateral estoppel, to prevent retaliatory prosecution and "double jeopardy" for the exercise of statutorily and constitutionally protected rights, which is prohibited by law and the state and federal constitutions, at South Carolina Article 1 §§ 2 and 12, and the 1st and 5th Amendments to the U.S. Constitution, as incorporated through the 14th Amendment. Importantly, although Respondent has not argued that Appellant did not endure a substantial burden to his free exercise of religion and was not owed any accommodation, a judicial estoppel would certainly be justified against any such position being taken by Respondent regarding this settled issue of fact. Against fair play and consistency in litigation, Respondent cannot be allowed to cause unfair detriment to Appellant by disavowing the State's past admissions that (1) Appellant indeed suffered a substantial religious burden under the laws in question and that (2) Appellant was owed accommodation from the State[8]. (R. p. 93 - 96**;** R. p. 41, lines 19 – p. 42, line 1).

Appellant notified the municipal court and prosecutor, orally and in writing, that the State had previously accommodated him regarding vehicle registration and license requirements, in cases brought in 2017 and in 2018. (R. p. 93 - 96**;** R. p. 41, lines 19-25).

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[8] In oral arguments early in this litigation, Appellant moved for dismissal of the charges in this case on at least two occasions. Despite being given the information contained in Appellant's Motion For A Directed Verdict, the prosecutor continued to pursue the charges, while unfairly challenging the state's established position on factual issues which were repeatedly and consistently decided in prior litigation between Appellant and other privies representing the state, each of whom exercised the same legal rights on behalf of the state as Respondent.

In those prior cases, the magistrate judges and prosecutors agreed to nolle prosse vehicle registration and license charges in recognition of Appellant's claim of substantial religious burden and as a religious accommodation owed to Appellant. In those cases, there were no accompanying charges of a moving or operational nature (i.e. moving violation, broken brake light, etc), Appellant did not offer any defense on the merits apart from a South Carolina § 1-32 defense, Appellant refused to comply with the burdensome laws, and Appellant did not enter into any plea agreement. The charges were nolle prossed because they were constitutionally and statutorily unlawful under the circumstances.

"Under the doctrine of collateral estoppel, once a final judgment on the merits has been reached in a prior claim, the relitigation of those issues actually and necessarily litigated and determined in the first suit are precluded as to the parties and their privies in any subsequent action based upon a different claim." *Richburg v. Baughman*, 290 S.C. 431, 434, 351 S.E.2d 164, 166 (1986); see also *Shelton v. Oscar Mayer Foods Corp*., 325 S.C. 248, 251, 481 S.E.2d 706, 707 (1997) (noting collateral estoppel or issue preclusion prevents a party from relitigating in a subsequent suit an issue actually and necessarily litigated and determined in a prior action). Only a party to a prior action or one in privity with a party to a prior action can be precluded from relitigating an issue on the basis of offensive collateral estoppel.[(1)] *Ex parte Allstate Ins. Co*., 339 S.C. 202, 206, 528 S.E.2d 679, 681 (Ct. App. 2000); *Wade v. Berkeley County*, 330 S.C. 311, 317, 498 S.E.2d 684, 687 (Ct. App. 1998) ("A party may assert nonmutual collateral estoppel to prevent relitigation of a previously litigated issue unless the party sought to be precluded did not have a fair and full opportunity to litigate the issue in the first proceeding, or unless other circumstances justify providing the party an opportunity to relitigate the issue.").

"'[T]he term "privity," when applied to a judgment or decree, means one so identified in interest with another that he represents the same legal right.'" *Allstate,* 339 S.C. at 207, 528 S.E.2d at 681 (quoting *Roberts v. Recovery Bureau, Inc.,* 316 S.C. 492, 496, 450 S.E.2d 616, 619 (Ct. App. 1994)). As the *Wade v. Berkeley County* court explained: "Privity deals with a person's relationship to the subject matter of the previous litigation, not to the relationships between entities. To be in privity, a party's legal interests must have been litigated in the prior proceeding."

The case presently under appeal results from charges brought against Appellant by City of Cayce, a municipality and subsidiary of the State, whose legal authority to bring charges against Appellant and to recognize or deny Appellant's claims of religious burden and right to accommodation, as to the laws in question, derives from its agency relationship to the State. In fact, Respondent represents the legal interest of the State in this case, but the State is the principal party to the suit. In line with the principles of fairness in litigation, consistent application of the law, and criminal collateral estoppel, the State's position on previously litigated facts must remain consistent and not change whenever the State seeks to use a different view of established facts to gain an advantage in litigation.

In 2019, at a hearing in Richland County Magistrate Court, the S. C. Highway Patrol, acting on behalf of the State, recognized and accepted Appellant's claim of religious burden and right to religious accommodation as, in fact, valid and nolle prossed the charge of Expired Vehicle License without any further act or promise of compliance from Appellant. (R. p. 93-94). Whether Appellant had proven a substantial religious burden and a right to accommodation was the central dispositive issue actually and necessarily litigated and decided at the hearing before the magistrate court. Appellant admitted to driving unregistered, and the entire case

turned on whether or not Appellant's religious exercise had been substantially burdened and if he had a right to accommodation under South Carolina § 1-32 and the state and federal constitutions. The court and the prosecution for the State deemed the correct course of action to be so obvious that the charges were not taken to trial, but were nolle prossed by the prosecutor. This represented the end of the road for an unconstitutional-as-enforced charge; it was a dispositive determination of this issue of fact.

Again, in 2020, at a hearing in Richland County Magistrate Court, the University of S. C. Police Department, acting on behalf of the State, recognized and accepted Appellant's claim of religious burden and right to religious accommodation as, in fact, valid and nolle prossed the No Vehicle Registration and License charges without any further act or promise of compliance from Appellant. (R. p. 95-96). Here again, whether Appellant had proven a substantial religious burden and a right to accommodation was the central dispositive issue actually and necessarily litigated and decided at the hearing before the court. Appellant admitted to driving unregistered without a license, and the entire case turned on whether or not Appellant's free exercise of religion had been burdened and if he had a right to accommodation under South Carolina § 1-32 and the state and federal constitutions. Again, the court and the prosecution deemed the correct course of action to be so obvious that the charges were not taken to trial; this was another dispositive determination of this issue of fact in favor of Appellant, and was consistent with the prior case.

In litigating identical charges against Appellant, the S.C. Highway Patrol, the University of S. C. Police Department, and the City of Cayce each represent the State's legal interests and act upon the same legal right, in privity with each other and with the State. The ONLY reason the charges nolle prossed in 2019 and 2020 did not result in a formal final judgment was due to the

fact that even attempting to bring the charges to trial, once the South Carolina § 1-32 defense was proven, would have been constitutionally and statutorily irresponsible; further, any resulting conviction would violate the state and federal constitutions, constituting a reversible error of law.

A judicial estoppel should lie to prohibit a factual challenge to the State's prior position that Appellant has proven his claim to a substantial burden on the free exercise of his religion under the laws in question and that he has a right to accommodation. The doctrine of judicial estoppel evolved to protect the truth-seeking function of the judicial process by punishing those who seek to misrepresent facts to gain advantage. *Hayne Fed. Credit Union v. Bailey*, 327 S.C. 242, 251, 489 S.E.2d 472, 477 (1997); see also *John S. Clark Co. v. Faggert & Frieden, P.C.,* 65 F.3d 26, 29 (4th Cir. 1995) (stating goal of judicial estoppel "is to prevent a party from playing 'fast and loose' with the courts, and to protect the essential integrity of the process."). "Judicial estoppel precludes a party from adopting a position in conflict with one earlier taken in the same or related litigation." *Hayne Fed. Credit Union v. Bailey*, 327 S.C. 242, 251, 489 S.E.2d 472, 477 (1997). ("[J]udicial estoppel focuses on the relationship between the litigants and the judicial system."). Since judicial estoppel precludes parties from misrepresenting the facts in order to gain an unfair advantage, once "a party has formally asserted a certain version of the facts in litigation, he cannot later change those facts when the initial version no longer suits him." *Id*.

As explicitly embraced by our Supreme Court, "[j]udicial estoppel precludes a party from adopting a position in conflict with one earlier taken in the same or related litigation." *Id*. The application of judicial estoppel "is an equitable concept, depending on the facts and circumstances of each individual case, [and] application of the doctrine is discretionary. "*Carrigg v. Cannon*, 347 S.C. 75, 83-84, 552 S.E.2d 767, 772 (Ct. App. 2001) (quoting *Hawkins v. Bruno Yacht Sales, Inc.*, 342 S.C. 352, 368, 536 S.E.2d 698, 706 (Ct. App. 2000), cert.

granted Sept. 27, 2001)). "Generally, for the doctrine to apply, courts look to the following factors: First, a party's later position must be clearly inconsistent with its earlier position. Second, . . . whether the party has succeeded in persuading a court to accept that party's earlier position, so that judicial acceptance of an inconsistent position in a later proceeding would create 'the perception that either the first or the second court was misled, . . . A third consideration is whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped." *N.H. v. Me.*, 532 U.S. 742, 750-51 (2001) (citations omitted); see *Lowery v. Stovall*, 92 F.3d 219 (4th Cir. 1996). In litigating the present case under appeal, the State took a position clearly inconsistent, and directly opposite to it's position taken in the two prior cases, deriving an unfair advantage to Appellant's detriment. In nolle prossing the charges in the prior two cases, the prosecutors for the State expressed in open court that they were in agreement with the fact that Appellant was substantially burdened and owed an accommodation as described above. How else could they have justified nolle prossing nonmoving charges, with Appellant refusing to comply with the law in the presence of the magistrate?

It is a fact that, since 2019, Appellant has heavily relied on the previously established position of the State as regards his right to accommodation in his use of the public roads without registering his vehicle and/or possessing a driver's license. It is wholly unfair to allow the State to approve of his lawful conduct and later declare the same conduct criminal under identical circumstances of law and religious beliefs and practices. Once the State recognized and accommodated Appellant's claim of religious burden and right to an accommodation under South Carolina § 1-32 and the state and federal constitutions, as it did in the 2019 and 2020 litigation, the State cannot later deny the existence of the same burden and right to

accommodation in subsequent litigation under the same circumstances of law and fact. This is true because, while generally judges and prosecutors exercise their judicial or prosecutorial discretion when dismissing or nolle prossing charges, in the previous cases against Appellant, the State's judges and prosecutors were not only exercising their discretion, but they were also recognizing and protecting the rights of Appellant. The State's recognition of the religious burden to Appellant and Appellant's rights to accommodation is evident by the fact that the prior charges were nolle prossed despite Appellant's outright refusal to comply with the religiously burdensome laws, accept a plea deal, or to offer any defense outside of South Carolina § 1-32.

The prior religious accommodation of Appellant's free exercise of religion by State trial judges (who are policymakers for the State) and prosecutors in 2019 and 2020 should have been recognized by the municipal court and prosecutor in this case, and served as an estoppel to prevent injustice.

The prosecutor in the present case knowingly and prejudicially pursued retaliatory charges because he has labeled Appellant as a sovereign citizen, causing the State to bring effectively the same suit which turns on the same dispositive legal issue of fact, which was previously decided in other venues, at other times, against the same defendant. (R. p. 46, lines 14-20**;** R. p. 54, line 15 – p. 55, line 17**;** R. p. 56, line 9 - 18). Despite the numerous notices and affidavits referenced above, Respondent's prosecutor feigns ignorance in order to maintain his unlawful attack on Appellant. (R. p. 56, lines 19-22**;** R. p. 57, lines 13-20**;** R. pp. 72-107).

In Appellant's view, barring a change in his religious beliefs and practices or a significant change to the laws of the State, the issue of his right to accommodation as relief from prohibited substantial religious burden has been decided with finality. Further, any notion that Appellant is required to defend against the same religiously burdensome charges across

each of the various jurisdictions of this State, on a case-by-case basis, is preposterous and creates a substantial religious burden in and of itself; it makes no sense that despite having twice proven substantial religious burden and a right to accommodation in Richland County, that Appellant should be subject to every other jurisdiction in this State each having its own crack at oppressing his religious exercise. If the State is allowed to flip flop its position on this fact issue at will, Appellant will undoubtedly suffer endless harassment through retaliatory litigation, with uncertain and inconsistent outcomes across multiple jurisdictions. The present dynamic of retaliatory prosecution and uncertainty of law suffered by Appellant is created by allowing Respondent to challenge issues of fact already proven, decided, and relied upon by Appellant.

G. Conclusion

In light of the above, this Court should vacate Appellant's guilty pleas; dismiss the No SC Driver's License and No Vehicle Registration charges as unconstitutional-as-enforced; remand the speeding charge back to the municipal court; and, issue an order requiring Respondent and other privies of the State to accommodate Appellant regarding the State's drivers license and registration requirements.

March 28th, 2023

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SC Court of Appeals

SOUTH CAROLINA
In The Court Of Appeals

Case No. 2022-001437

Johnathan Daniels, Appellant.

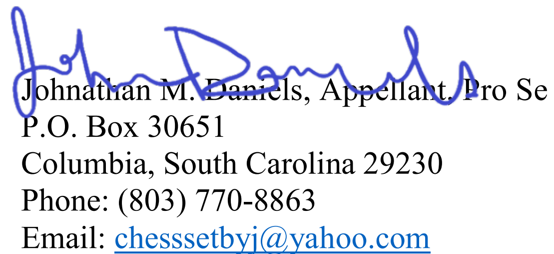
v.

The City of Cayce Respondent,

CERTIFICATE OF APPELLANT

The undersigned certified that Appellant's Final Briefs comply with Rule 211(b), SCACR.

April 2nd, 2023



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