

STATE of SOUTH CAROLINA

In The SUPREME COURT

CERTIORARI TO LEXINGTON COUNTY

EDWARD W. MILLER, CIRCUIT COURT JUDGE

Kurell Bathe

PETITIONER

V

STATE of SOUTH CAROLINA

RESPONDENT

Pro-SE APPLICANT Petition for writ of CERTIORARI

Kurell Bathe 292244
Pro-SE INMATE

Perry Prison - ~~000000~~
430 OAKLAWN RD
Pelter, SC (29664)

RECEIVED

OCT 23 2012

S.C. SUPREME COURT

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S.O. SUPREME COURT

ISSUE Presented

DID THE P.C.R. JUDGE ERR IN REFUSING TO FIND TRIAL COUNSEL Ineffective for BEING Inadequately FOR TRIAL AND FAILING TO INVESTIGATE OR DISCOVER CASES STATE V GOODMAN AND U.S. V KING AS EVIDENCE TO BE USED IN MY CASE IN MY defense AT suppression HEARING?

DID I RECEIVE Ineffective ASSISTANCE OF P.C.R. COUNSEL AT P.C.R. HEARING BY P.C.R. COUNSEL FAILING TO RAISE ISSUES E/K/O/Q FROM APPLICATION AT P.C.R. HEARING?

STATEMENT

OCTOBER 13, 2006 A K.F.C. IN LEXINGTON COUNTY WAS ROBBERED. KORELL BATTLE WAS CHARGED AND WENT TO TRIAL BEFORE R. KNOX MEMPHISON JUDGE. ATTORNEY WAS ARIE BAX AND ELIZABETH FULLWOOD. JURY FOUND BATTLE GUILTY AND JUDGE SENTENCE BATTLE TO 30 YEARS FOR ARMED ROBBERY / 5 FOR GUN CHARGE. NOBODY AT THE KFC WAS HURT OR HARMED IN ANYWAY.

A TIMELY NOTICE OF INTENT TO APPEAL WAS SERVED AND FILED AND A DIRECT APPEAL PERFECTED IN BATTLE BEHALF. ATTORNEY ELEANOR CLEARY REPRESENTED BATTLE FOR DIRECT APPEAL. SHE DID NOT PRESENT ANY OF BATTLE'S ISSUES ON DIRECT APPEAL, BUT INSTEAD PRESENTED 1 ISSUE SHE CAME UP WITH. THE SOUTH CAROLINA COURT OF APPEALS AFFIRMED THE SENTENCE AND CONVICTIONS, AND DID NOT AGREE WITH ATTORNEY CLEARY'S ISSUE. STATE OF BATTLE 2009-UP-289 - SC CtAPP FILED MAY 27, 2009

ON MAY 19, 2010 BATTLE FILED A APPLICATION FOR P.C.R. RELIEF. STATE FILED A RETURN ON 9/1/2010. BATTLE FILED A AMENDED COMPLAINT OF 5 ISSUES. HE WANTED HIS P.C.R. ATTORNEY MR. JOHN DUNCAN TO PRESENT, THIS WAS FILED ON 8/25/2011.

11/20/2011, AN EVIDENTIARY HEARING WAS HELD BEFORE JUDGE EDWARD W. MILLER WHO CAME DOWN FROM A DIFFERENT COUNTY TO SUBSTITUTE JUDGE KEESELY. ATTORNEY JOHN DUNCAN REPRESENTED BATTLE AT HEARING. JOHN DUNCAN DID NOT PRESENT ALL THE ISSUES AT HEARING THAT BATTLE RAISED IN APPLICATION AND ASKED FOR HIM TO RAISE AT HEARING, NOR DID JOHN DUNCAN CALL ALL WITNESSES THAT BATTLE REQUESTED; ONLY 1 WAS CALLED, AND 4 WERE NOT.

IN A WRITTEN ORDER SIGNED 1/30/2012, JUDGE MILLER DENIED RELIEF AND DISMISSED THE APPLICATION. A TIMELY NOTICE OF INTENT TO APPEAL WAS FILED ON 3/16/2012.

ON 4/4/2012 APPELLATE DEFENDER KATHERINE W. HUBBING ATTORNEY FOR PETITIONER BATTLE FILED A PETITION TO BE RELIEVED AS COUNSEL, AND FILED A WRIT OF HABEAS CORPUS.

ON 4/5/2012 SUPREME COURT OF SOUTH CAROLINA INFORMED BATTLE HE CAN FILE A PROSE RESPONSE TO THE PETITION FILED BY COUNSEL. AND COULD RAISE AND ARGUE ANY ISSUES I BELIEVE COURT SHOULD CONSIDER ON THIS APPEAL.

COURT REVIEW

STATE V HARRIS 513 SE2d 1 (GA 1994)

When we review a trial court's decision on a motion to suppress, the evidence is construed most favorably to uphold the findings and judgment of the trial court. Findings on disputed facts and credibility are adopted unless they are clearly erroneous and will not be disturbed if there is any evidence to support them.

HOOTEN V STATE 442 SE2d 863 (GA APP 1994)

As a general rule, the court's decision on questions of fact and credibility at a suppression hearing must be accepted unless clearly erroneous.

ARGUMENT

DID THE PCR JUDGE ERR IN REFUSING TO FIND TRIAL COUNSEL INEFFECTIVE FOR BEING INADEQUATELY PREPARED FOR TRIAL AND FAILING TO INVESTIGATE OR DISCOVER CASES STATE V GOODMAN AND U.S. V KING AS EVIDENCE TO BE USED IN MY CASE IN MY DEFENSE AT SUPPRESSION HEARING

(FAILURE TO OFFER LAYAL AUTHORITY FROM GEORGIA)

ON 10/13/2006 - BATTLE WAS AT A CIRCLE K GAS STATION IN IRMO. HIS CAR WAS PARKED ON SIDE OF CIRCLE K IN 1 OF THEIR PUBLIC PARKING SPOTS OPEN TO ANYBODY TO PARK THEIR. IN THAT PARKING AREA THERE IS A LIGHT BY THE TREES HANGING OVER THE PARKING SPOTS. WHEN I PULLED INTO THE STORE, ALL OF THE 5 OR 6 PARKING SPOTS IN FRONT OF THE STORE WAS FILLED, AND UNDER THE CANOPY PART WHERE THE GAS PUMPS WAS THERE WAS CARS AT EACH OF THOSE PUMPS SO I HAD NO CHOICE BUT TO PARK ON THE SIDE. PLUS, MY GAS TANK WAS ALREADY FULL! SO I DIDN'T NEED TO GET NO GAS UNDER CANOPY AND MY CAR WAS OVERHEATING SO THAT'S WHY I ALSO PARKED ON SIDE IS TO COOL CAR DOWN AND PUT ANTIFREEZE IN IT. IN THE PROCESS OF ALL THIS A PERSON I GAVE A PSE NAME JAY WAS WITH ME AND HE WENT TO THE KROGER BEHIND CIRCLE K TO DO SHOPPING (OR SO TOLD ME HE WAS). (MY CAR NEVER MOVED FROM THAT PARKING SPOT UNTIL I LEFT). NOW JAY CAME BACK A WHILE LATER AND GOT IN MY CAR WITH A BLACK BAG HE PUT IN THE BACK OF MY CAR ON SEAT OR FLOOR. I THOUGHT BAG HAD GIVEAWAYS IN IT CAUSE, I THOUGHT HE WENT SHOPPING. A MINUTE OR 2 LATER I HEAR SIRENS AND HE HOP OUT CAR AND TELL ME TO ^{MEET} HIM IN COLUMBIA, HE DID NOT TAKE BLACK BAG WITH HIM. NOW, WHAT I TEXT IS I PULLED MY CAR TO THE PARKING ENTRANCE OF CIRCLE K AND I STOPPED AND PUT MY RIGHT SIGNAL ON TO TURN RIGHT TO GET INTO THE LEFT TURN ONLY LANE WHICH WAS 3 LANES ACROSS. I LOOKED TO MY RIGHT AND EVERYTHING WAS SAFE. I LOOKED TO MY LEFT AND A CAR WAS COMING MY WAY, AFTER THE CAR PASSED ME I ~~NOT PARKED~~ ~~ON~~ ~~THE~~ ~~SIDE~~ ~~OF~~ ~~THE~~ ~~STORE~~ ~~AND~~ ~~THE~~ ~~CAR~~ ~~WAS~~ ~~NOT~~ ~~PARKE~~

1 Pull out of circle K at a normal regular speed of about less than 5 to 10 mph. The speed limit on St Andrews was 35 MPH, and I never exceeded that speed limit; so I was not violating any speeding laws. The car that had passed me that was in front of me had ~~turn~~ left. When I crossed 3 lanes and got into the left turn only lane at an intersection, the light for that lane turned red. In back of me there was no cars nor in front or elsewhere. A cop car pull up behind me. My left turn signal was on. We was at this red light for about 2 minutes! During this 2 minute period if he had reasonable suspicion or probable cause at this point to suspect me of any speeding violations or robbery violations he could have and should have at that very point activated his lights. But he did not. The light later changed to a green arrow left signal directing me to turn only left. After I made left turn from the St Andrews intersection into the Lake Murray Blvd roadway; that's when officer Majewski activated his lights. I then put left signal on and turned left into 92A B&H gas station, and turn car off when he came to my car. I asked him what's the problem officer was I speeding or something? Majewski said "no". He said "we just had a armed robbery in the area with your vehicle matching your description". (IR # 162, LINE 21/22/23/24)

Majewski car video does not show Majewski telling me that my car came out a high rate of speed at Circle K parking lot, his video does not show him telling me of why he pulled me over, his video does not show him telling me that I made a left turn onto Lake Murray Blvd from St Andrew Road without using a turn signal.

① In U.S. v. Manbeck 944 F.2d 360 Pg 375 (South Carolina 1989) It says a law enforcement officer may stop moving vehicles with less than probable cause where they have objective facts that support an articulable and and reasonable suspicion that the vehicle or any of its occupants is subject to seizure for violation of law, Delaware v. Prouse 99 S.Ct 1191, 1191 (1979)

SEE ALSO UNITED STATES V GONZALEZ 101 S.Ct 640, 644 (1991).

(B) IN MAXWELL V STATE 549 SE.2D 534 (9A APP 2001) - IT SAY UNDER THE U.S. CONSTITUTION A TRAFFIC STOP IS REASONABLE WHERE THE POLICE HAVE PROBABLE CAUSE THAT A TRAFFIC OFFENSE VIOLATION HAS OCCURRED, WREN V UNITED STATES 116 S.Ct 1769 (1996), OR REASONABLE SUSPICION THAT THE CAR'S OCCUPANTS WERE INVOLVED IN CRIMINAL ACTIVITY US V HENDERLEY 105 S.Ct 675 (1985)

(C) IN U.S. V ECALANTE 239 F.3d 678 (5TH CIR 2001) COURT SAY - TRAFFIC STOP MAY HAVE BEEN PRETEXTUAL, BUT UNDER WREN V U.S. 116 S.Ct 1769, A TRAFFIC STOP EVEN IF PRETEXTUAL, DOES NOT VIOLATE THE 4TH AMENDMENT IF THE OFFICER MAKING THE STOP HAS PROBABLE CAUSE TO BELIEVE THAT A TRAFFIC VIOLATION HAS OCCURRED. THIS IS AN OBJECTIVE TEST BASED ON THE FACTS KNOWN TO THE OFFICER AT THE TIME OF THE STOP, NOT ON THE MOTIVATIONS OF THE OFFICER IN MAKING THE STOP. ON THE OTHER HAND, IF IT IS CLEAR THAT WHAT THE POLICE OBSERVED DID NOT CONSTITUTE A VIOLATION OF THE CITED TRAFFIC LAW, THERE IS NO OBJECTIVE BASIS FOR THE STOP, AND THE STOP IS ILLEGAL. US V MILLER 146 F.3d 274/279 (5TH CIR 1998); SEE ALSO US V LOPEZ-VALDEZ 178 F.3d 282, 288 (5TH CIR 1999).

(D) IN US V WREN 53 F.3d 371, Pg 375 - COURT SAY, OFFICERS CANNOT MAKE A TRAFFIC STOP UNLESS THEY HAVE PROBABLE CAUSE TO BELIEVE A TRAFFIC VIOLATION HAS OCCURRED, OR A REASONABLE SUSPICION OF UNLAWFUL CONDUCT BASED UPON ARTICULABLE FACTS - REQUIREMENTS WHICH RESTRAIN POLICE BEHAVIOR DELAWARE V PROUSE 44 S.Ct 1402.

~~OFFICER MAJEWSKI TESTIFIED TO DIFFERENT VERSIONS OF HIS NARRATIVE~~

~~OF THE WAY HE OBSERVED THE IMPROPERLY TURNED RIGHT IN CAMERA STREET. HE SAW MY CAR AT 0100 PM TRIP 30, UNIT 11-001, P. 01-11-11. HE SAW MY CAR AT 0100 PM TRIP 32, LANE 6/10. HE SAW MY CAR AT 0100 PM TRIP 32, LANE 11/10. HE SAW MY CAR AT 0100 PM TRIP 32, LANE 11/10.~~

OFFICER MAJEWSKI AT SUPPRESSION HEARING TESTIFIED TO DIFFERENT VERSIONS OF WHAT THE OBJECTIVE FACTS WAS BEFORE SILENTOR MORE LOT, THAN BEFORE MR BAY 2ND, WHICH IS ON NEXT FEW PAGES

Brian MAJEWski - IN CAMERA JURED - MR MOORE

1st time He saw CAR

Pg 30 of TRANSCRIPT

(21) WHAT TIME DID YOU 1ST SEE THIS CAR?

(22) A LITTLE BIT AFTER 6:00 O'CLOCK IN EVENING.

Pg 31

(10) NOW WHAT TIME DID YOU 1ST SEE THAT CADILLAC?

(11) IT WAS APPROXIMATELY A LITTLE BIT AFTER 6:00 O'CLOCK IN THE EVENING.

2nd TIME He SAW CAR

Pg 32 of TRANSCRIPT

(6) WHERE DID YOU⁹⁰ THEN?

(1) CAME BACK, CIRCLED BACK AROUND, CAME UP LAKE MURRAY BLVD AND TURNED LEFT ON SAINT ANDREWS ROAD AND OBSERVED THAT THE VEHICLE WAS NOT THERE.

3rd TIME He SAW CAR

Pg 32 of TRANSCRIPT

(19) WHERE ELSE DID YOU GO?

(20) I CAME BACK SAINT ANDREWS RD, AND OBSERVED THAT THE VEHICLE - I CAME BACK, AND THE VEHICLE WAS GONE AT THAT TIME.

4TH TIME He SAW CAR

Pg 34 of TRANSCRIPT

(23) SO YOU ARE COMING UP THIS WAY. TAKE A RIGHT. AFTER YOU MAKE THAT RIGHT TELL ME WHAT HAPPENS

(25) I SEE THE CADILLAC PULL OUT AT A HIGH RATE OF SPEED...

1st TIME He SAW CAR

Pg 39 of TRANSCRIPT.

(8) TELL US EXACTLY WHY YOU STOPPED THAT CAR

(9) EARLIER IN THE NIGHT I OBSERVED THE VEHICLE PULLED INTO A PARKING SPOT WITH THE HOOD UP, AND THAT AREA IS NORMALLY NOT OCCUPIED BY ANY VEHICLES.

2nd TIME He SAW CAR

Pg 39 of TRANSCRIPT

(4) I CAME BACK LATER. THE VEHICLE WAS GONE.

3rd TIME He SAW CAR

Pg 39 of TRANSCRIPT

(10) I CAME BACK AGAIN ON PATROL, AND THE VEHICLE WAS BACKED INTO THE SAME PARKING SPOT. NO ONE PARKS THERE.

4TH TIME He SAW CAR

Pg 39 of TRANSCRIPT

(15) THEN WHEN HE LEFT OUT A HIGH RATE OF SPEED.

Brian Majewski - In camera cross - Mr Box

1st time HE SAW CAR

Pg 40 of Transcript

Q You testified, I believe, that the 1st time that you saw this vehicle was while you were on Saint Andrews Rd; is that correct?

A That's correct, at corner of St Andrews and Lake Murray, yes.

2nd time HE SAW CAR

Pg 44 of Transcript

Q About how much time had elapsed between the first time that you saw the vehicle and the time that you went by circle K the 2nd time.

A Approximately 20 to 30 minutes.

Q And testified that the vehicle you have described, the Cadillac, was no longer there; is that correct?

A That's correct.

3rd time HE SAW CAR

Pg 45 of Transcript

Q And you testified here today that you didn't observe the vehicle at that time; is that correct?

A When I came back the 3rd time, the vehicle was backed into that parking spot. When I came back from Saint Andrews and turned right on Lake Murray

CONTINUED ON NEXT PAGE

2nd time HE SAW CAR

Pg 47 of Transcript

Q Was the vehicle that you saw the 2nd time, was it in the same parking spot as the 1st vehicle you saw?

A Yes.

Q Did it have its hood up?

A No, it was just backed into that parking spot.

Q The 2nd time when you turned here and looked over, you saw the front of the vehicle; is that correct?

A That's correct.

CONTINUED.

3RD TIME HE SAW CAR

Pg 45 of TRANSCRIPT

(15) I MISUNDERSTOOD. I THOUGHT YOU HAD TESTIFIED THAT THE VEHICLE WAS STILL NOT THERE THE 3RD TIME YOU WENT BY.

(16) THE 3RD TIME THE VEHICLE WAS IN THERE. IT WAS BACKED IN.

(HIGH RATE OF SPEED)

TRIAL ATTORNEY MR BAX QUESTIONED MAJEWSKI BY ASKING HIM TO DESCRIBE A HIGH RATE OF SPEED, OF WHAT OF HIGH RATE OF SPEED HE TALKING ABOUT (Tr p 51 LINE 3). MAJEWSKI SAY "IT WAS EXITING THE PARKING LOT JUST TO THE POINT -- JUST PRIOR TO THE POINT WHERE HE WOULD BE SPINNING TIRES, ACCELERATED AT A HIGH RATE OF SPEED TO GET OUT OF THE PARKING LOT", (Tr p 51, LINE 4 TO 12). MR BAX ASK "WHEN DID YOU OBSERVE THIS?" WERE YOU TURNING HERE OR WERE YOU STILL BACK HERE? WHERE WERE YOU AT?" (Tr p 51 LINE 13 TO 15). MAJEWSKI SAY, "I WAS ALREADY ON ST ANDREWS ROAD" (Tr p 51 LINE 16). MR BAX ~~ASKED~~ ASKED, "WERE YOU ABLE... WERE THE TIRES, DID YOU HEAR ANYTHING? WERE THEY ACTUALLY SQUEALING?" (Tr p 51 LINE 20/21). MAJEWSKI ORY "NO", (Tr p 51 - LINE 22). MR BAX ASK "HOW WERE YOU ABLE TO TELL THAT IT WAS ACCELERATING TO THAT AMOUNT?" Tr p 51 - LINE 23-24). MAJEWSKI ORY "... I'm a CERTIFIED CABAR OPERATOR, AND TO BECOME CERTIFIED, YOU HAVE TO ESTIMATE VEHICLE SPEED. I ESTIMATED THE VEHICLE WAS TRAVELING AT A HIGH RATE OF SPEED." MR BAX ASKED "... WHAT IS THE SPEED LIMIT?" MAJEWSKI SAID 35 MPH, (Tr p 53 LINE 14-15). BAX ASKED "... TO YOUR KNOWLEDGE DID THE VEHICLE EVER EXCEED THE SPEED LIMIT IN THAT LITTLE STRETCH (Tr p 53 LINE 16-17). MAJEWSKI SAY TO MY KNOWLEDGE, NO IT DID NOT, (Tr p 53 LINE 18).

(LIGHT IN PARKING LOT)

IT WAS PULLED INTO THE PARKING SPOT ON THIS SIDE INDICATING THE HOOD UP. THIS SECTION OF THE PARKING BUILDING IS NOT LIT UP, AND NORMALLY NO ONE PARKS THERE. (Tr P 31, LINE 14 TO 17).

THERE WAS NOT A STREET LIGHT AT THAT TIME. SO THIS SECTION OF THE PARKING LOT IS DARK.

I CAME BACK ON PATROL, AND THE VEHICLE, WAS PULLED INTO THE SAME PARKING SPOT AND THE SAME SECTION OF THE PARKING LOT, WHICH THERE IS NO LIGHT IN THAT.

IT WAS PARKED FACE IN WITH THE HOOD UP. THERE WAS NO LIGHT REFLECTING ON THIS SIDE OF THE PARKING LOT AT THE TIME. (Tr P 158, LINE 4/6).

BECAUSE USUALLY MOST PEOPLE DON'T PARK UNDERNEATH THE CANOPY OR IN FRONT OF THE STORE SINCE THEY DIDN'T HAVE A STREET LIGHT LIGHTING THIS AREA. NO ONE USUALLY PARKS THERE. (Tr P 154 LINE 7/10).

AND THE STREET LIGHT -- THEY DID NOT HAVE A STREET LIGHT AT THE TIME IN THAT SECTION OF THE PARKING LOT. (Tr P 166 LINE 6/7).

THAT'S WHAT I MEANT BY STREET LIGHT -- THERE IS NO LIGHT IN THAT CORNER OF THAT BUILDING OR ON THE STORE EITHER, (Tr P 166 LINE 9/11).

TRIAL JUDGE - ... AS I UNDERSTOOD HIS TESTIMONY, HE SAW THE VEHICLE IN THE PARKING LOT IN A DARK AREA OF THE PARKING LOT WHERE THERE WAS NO LIGHT; ALTHOUGH THERE MAY BE A PARKING SPACE. IT PLANTED THAT VIEW IN HIS MIND, BUT HE DIDN'T APPROACH THAT VEHICLE AT THAT TIME. HE CONTINUED ON HIS PATROL. THE HOOD WAS UP. I AGREE THAT THAT IS NOT UNLAWFUL CONDUCT. BUT THE OFFICER SAW IT FROM THERE A 2ND TIME. THEN THE FINAL TIME, HE SAW IT COMING OUT, IN HIS DESCRIPTION AT A HIGH RATE OF SPEED, WHICH WOULD BE AN UNLAWFUL STOP. (Tr P 102 LINE 3 TO 14).

THAT OBVIOUSLY GIVES THE OFFICER MORE FACTS AT HIS COMMAND. WAS RESPONDING TO AN ARMED ROBBERY CALL. HE TURNS AROUND ON THE VEHICLE. I FIND THE OFFICER TESTIMONY IS CREDIBLE THAT THE VEHICLE DID NOT USE A TURN SIGNAL.

THE SPECIFIC ARTICLES FACTS GIVEN TO THE OFFICER OF WHAT HE OBSERVED WHICH APPEARS TO BE OF SUSPICIOUS ACTIVITY WAS THE HIGH RATE OF SPEED / NO LIGHT / AND HE SAW MY CAR ON SIDE OF GAS STATION AND THEN DIDN'T SEE IT.

TRIAL
COUNTS SAY all this was REASONABLE suspicion, I ARGUE THAT it's NOT REASONABLE
suspicion! I ARGUE THAT it WAS a HUNCH, A pretty good HUNCH! A HUNCH is
also a form of suspicion! But it is NOT a PARTICULARIZED Suspicion, It is a
UNPARTICULARIZED Suspicion.

* (FIRSTLY) ON HIS OBSERVATION OF He seeing my car IN a UNIT AREA of where
THERE is NO LIGHT. THERE WAS a LIGHT IN THE parking lot WHICH is BY Treat
Washing over parking lot THIS LIGHT WAS discovered BY EUGENE BIX WHEN HE WAS
looking through a PICTURE OF attorney general. It was error for Trial

Judge to conclude there WAS NO LIGHT there in parking lot, WHEN THERE WAS.

* (SECONDLY) ON HIS OBSERVATION OF SEEING my car THERE FIRST TIME ANDND He gave
CONSISTENT STATEMENTS ON THIS PART, BUT WHEN HE ^{Testify} ABOUT THE 2nd TIME
HE SAW my car HE did NOT give a consistent answer. (on Tr Pg 32 LINE 10/11
AND Tr P 34 LINE 9 and Tr P 44 LINE 9 TO 14) HE SAY CAR WAS GONE 2nd
TIME. (BUT ON Tr Pg 42 LINE 4/7/8/22/25) HE CONFIRMED CAR WAS THERE 2nd
TIME! THEN ON HIS 3rd TIME HE SAY HE SAW my car HE did NOT give consistent
statements. (on Tr Pg 32 LINE 19/20) HE SAY CAR WAS GONE 3rd TIME, (BUT ON Tr P
32 LINE 10 AND Tr P 45 LINE 4/11/15/16) HE SAY CAR WAS THERE. IT WAS

~~MAJOWSKI'S OBSERVATION OF SEEING my car THERE FIRST TIME ANDND He gave
CONSISTENT STATEMENTS ON THIS PART, BUT WHEN HE TESTIFY ABOUT THE 2nd TIME
HE SAW my car HE did NOT give a consistent answer. (on Tr Pg 32 LINE 10/11
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TIME! THEN ON HIS 3rd TIME HE SAY HE SAW my car HE did NOT give consistent
statements. (on Tr Pg 32 LINE 19/20) HE SAY CAR WAS GONE 3rd TIME, (BUT ON Tr P
32 LINE 10 AND Tr P 45 LINE 4/11/15/16) HE SAY CAR WAS THERE. IT WAS~~
ERROR FOR Trial Judge to BELIEVE MAJOWSKI
CREDIBILITY ON THIS WHEN THE RECORD AND SHOWS MAJOWSKI GAVE INCONSISTENT STATE-
MENTS ON THIS.

* (THIRDLY) ON HIS OBSERVATION OF SEEING my car pull out at a HIGH RATE of speed
IS. THE speed limit on THAT street is 35 MPH. A
HIGH RATE of speed definition I HAVE NOT found. THE question is WHAT is a
HIGH RATE of speed? Is it A SPEED THAT EXCEEDS THE speed limit, OR DOES IT NOT
EXCEED THE limit? AND IF IT DOES NOT EXCEED THE limit THEN WHAT is it?
MAJOWSKI SAY my car did NOT EXCEED THE speed limit of 35 MPH. SO THEREFORE
THE HIGH RATE of speed HE is accusing ME of did NOT EXCEED 35 MPH and WAS NOT
illegal to do. THE HIGH RATE of speed HE ACCUSING ME of HAD TO BE BETWEEN
1 MPH and 35 MPH. If it's BETWEEN 1 MPH / 35 MPH THEN THIS is NOT UNLAWFUL
CONDUCT nor a VIOLATION of any law. THE Judge Himself say THIS is NOT UNLAWFUL
CONDUCT (Tr P 107 LINE 12/14). THE STATE HAS NOT PRESENTED NO EVIDENCE of a DEFINITION
of WHAT a HIGH RATE of speed is. SO I ARGUE THAT a HIGH RATE of speed is a speed
THAT WOULD HAVE EXCEEDED THE 35 MPH.

MAJEWSKI OBJECTIVE FACTS HE GAVE DOES NOT AMOUNT TO REASONABLE SUSPICION OF CRIMINAL ACTIVITY

MAJEWSKI HAD A HUNCH THAT THE RED CAR HE TURNED AROUND ON WAS INVOLVE WITH ROBBERY OR HAD A WITNESS. HE WAS NOT SURE, FOR THIS REASON THIS IS WHY HE WAS BEHIND MY CAR FOR 1/2 MINUTES AND DID NOT ACTIVATE HIS LIGHTS TO PULL ME OVER FOR ARMED ROBBERY INVESTIGATION, HE WAS UNSURE IF HIS "HUNCH". HE HAD NO OBJECTIVE FACTS OF ANY DESCRIPTION OF A CAR FROM DISPATCHER, HE SAW NO CRIMINAL ACTIVITY OR UNUSUAL CONDUCT AROUND MY CAR FROM AT GAS STATION, SO ALL HE WAS OPERATING OFF OF WAS A PRETTY GOOD UNPARTICULARIZED HUNCH. HE WAITED TILL THE LIGHT TURN GREEN AND WAITED TO PULL ME OVER FOR AN ALLEGED TRAFFIC VIOLATION HE SAY HE OBSERVED AT TRIAL HE CONFIRMED THAT THE REASON WHY HE PULLED ME OVER IS CAUSE OF A LEFT TURN VIOLATION, NOT ARMED ROBBERY.

* COUNSEL ASK - AND I BELIEVE THAT YOU HAD THE REASON THAT YOU TESTIFIED THAT YOU PULLED THIS CAR OVER WAS DUE TO THE LACK OF A TURN SIGNAL CORRECT. (TR P 59 LINE)

* MAJEWSKI SAY - THAT IS CORRECT (TR P 58 LINE 1)

* COUNSEL ASK - SO BASICALLY IN YOUR WORK AS A POLICE OFFICER AND OBSERVING THE VEHICLE THAT YOU HAD SEEN AT THE CIRCLE K. AND THEN IT EXITING, YOU HAD A FEELING IT MIGHT HAVE SOMETHING TO DO WITH THIS INCIDENT

* MAJEWSKI SAY - THATS CORRECT

* COUNSEL SAY - AND YOU WERE OPERATING UNDER THAT SUSPICION, CORRECT?

* MAJEWSKI SAY - YES

* COUNSEL SAY - BUT THAT WASNT THE REASON YOU PULLED THE VEHICLE OVER, CORRECT?

* MAJEWSKI SAY - CORRECT

* COUNSEL SAY - BECAUSE YOU DIDNT HAVE A DESCRIPTION OF THE VEHICLE IN THIS CASE, IS THAT CORRECT

* MAJEWSKI SAY - THATS CORRECT.

* COUNSEL SAY - AND YOU DIDNT HAVE A DESCRIPTION OF ANY SUSPECT PHYSICAL WIFE, CORRECT?

* MAJEWSKI SAY - NOT AT THE TIME, NO

TO SUPPORT MY ARGUMENT THAT HE DID NOT HAVE PARTICULAR SPECIFIC OBJECTIVE FACTS TO STOP ME FOR ARMED ROBBERY, BUT WAS IN FACT OPERATING UNDER A HUNCH IS 2

- * COUNSEL ASK - WHAT HAPPENED NEXT? Tr P 162 LINE 20
- * MAJEWski SAY - HE ASKED WHY HE WAS BEING PULLED OVER, IF HE WAS SPEEDING. I ADVISED HIM NO. I SAID: WE JUST HAD AN ARMED ROBBERY WITH A VEHICLE MATCHING YOUR DESCRIPTION. (Tr P 162 LINE)
- * COUNSEL SAY - WHY DID YOU TELL HIM THAT? (Tr P 162 LINE)
- * MAJEWski SAY - IT WAS JUST THE HEAT OF THE MOMENT, THE SUBJECT EXITING THE PARKING LOT. I JUST SPURTED THAT OUT. JUST LIKE I SAID, ADONAHN WAS PUMPING, JUST A SLIP OF THE TONGUE. (Tr P 163 LINE 1 TO 4)
- * COUNSEL SAY - WHY WAS YOUR ADONAHN PUMPING? (Tr P 163 LINE 5)
- * MAJEWski - I JUST HAD A CALL FOR AN ARMED ROBBERY IN THE GENERAL AREA. I SAW THE SUSPECT'S VEHICLE EXITING AT A HIGH RATE OF SPEED. I THOUGHT WE COULD HAVE BEEN INVOLVED IN IT AS EITHER THE SUBJECT OR AS A POTENTIAL WITNESS. (Tr P 163 LINE 6 TO 10)

IN MAJEWski LAST STATEMENT THIS STATEMENT SHOW AND PROVE THAT HE WAS OPERATING ON A "HUNCH, A GUESS, IN PARTICULARIZED SUSPICION (HUNCH)". HE WAS GUESSING CAR HAD EITHER THE ROBBER OR A WITNESS. HE WASNT SURE IF CAR HAD THE ROBBER OR A WITNESS SO THIS WHY HE AINT ACTIVATE HIS LIGHTS ~~WHILE BEHIND ME~~ WHILE BEHIND ME AT RED LIGHT. HE PATIENTLY WAITED FOR ME TO TURN SO HE COULD FABRICATE PROBABLE CAUSE TO PULL ME OVER FOR A ALLEGED LEFT TURN VIOLATION. IN SOUTH CAROLINA COURTS HAVE RULED PROBABLE CAUSE FOR ARREST IN MURDER CASES WITHOUT A WARRANT IS SOMETHING MORE THAN A MERE SUSPICION OF THE GUILT OF THE ACCUSED, AND AN ARREST MADE ON A HUNCH, OR A MERE BELIEF OR GUESS UNSUPPORTED BY FACTS, CIRCUMSTANCES OR CREDIBLE INFORMATION POINTING TO GUILT OF THE PERSON ARRESTED CANNOT BE JUSTIFIED AS HAVING BEEN MADE ON PROBABLE CAUSE. SUMMERVILLE V S.C. DEPT OF PUBLIC SAFETY (S.C. APP 1499) 513 S.E.2D 619 / 522 S.E.2D 70 TERRY V U.S. 80 OCT 1979-01 AN INDETERMINATE AND INPARTICULARIZED SUSPICION OR HUNCH WILL NOT SUFFICE, 80 OCT 1983

1 IN THE ^{PER}COURT ORDER ON PAGE 4 THE JUDGE REJECTED MAJEWSKI ACTION AT TRIAL BY SAYING ... MAJEWSKI INFORMED APPLICANT THAT HE WAS STOPPED FOR FAILURE TO USE A TURN SIGNAL (TR P 59, LINE 12-17). I ALLEGED MAJEWSKI STATEMENT AT TRIAL ON (TR P 59, LINE 12 IS A LIE!)

VIDEO - THE VIDEO IN MAJEWSKI CAR IS THE TRUTH AND DON'T LIE! THE VIDEO SHOW MAJEWSKI WAS IN PURSUIT OF MY CAR FOR ARMED ROBBERY BEFORE ANY SO CALLED LEFT TURN VIOLATION. WHEN HE CAME TO MY CAR HE DID NOT MAKE AN INQUIRY OR INVESTIGATION WHATSOEVER CONCERNING THE ALLEGED LEFT TURN SIGNAL, NOR DID HE WRITE ME A CALIFORNIA TRAFFIC TICKET FOR LEFT TURN VIOLATION.

WITNESS REPORT - IN REPORT MAJEWSKI SAYS - THE SUBJECT PULLED INTO THE GAR-DEN AT 117A LAKE MURRAY BOULEVARD; OFFICER MAJEWSKI ASKED THE DRIVER FOR HIS LICENSE REGISTRATION, AND PROOF OF INSURANCE WHICH HE PROVIDED. THE SUBJECT ASKED WHY HE WAS PULLED OVER, AND OFFICER MAJEWSKI ADVISED THE SUBJECT THAT HE DID NOT USE THE TURN SIGNAL." APP P 439

NOW IN THIS STATEMENT OF HIS, WHEN HE PULLED ME OVER AND ASKED ME FOR MY PAPERWORK AND I GAVE IT TO HIM, I WAS IN MY CAR. THAT PART IS TRUE, BUT THEN HE LIES ON HIS REPORT AND SAYS HE ADVISED ME I DID NOT USE MY TURN SIGNAL. THE VIDEO SHOWS THAT HE NEVER ADVISED ME OF NO LEFT TURN SIGNAL. SO HIS REPORT IS A LIE

ON STAND AT TRIAL - MAJEWSKI GAVE TESTIMONY SAYING ... "I ADVISED HIM THAT HE DID NOT USE A TURN SIGNAL WHEN HE WAS IN THE BACK OF MY PATROL CAR. HE ASKED WHY, AGAIN WHY HE WAS BEING STOPPED FOR ~~FOR A TURN SIGNAL VIOLATION~~ AND WHY HE WAS UNDER ARREST. I TOLD HIM HE WAS STOPPED FOR NOT USING HIS TURN SIGNAL AND HE WAS UNDER ARREST FOR DRIVING UNDER SUSPENSION." (APP P 439 LINE)

MAJEWSKI TESTIMONY ON STAND ABOVE IS A LIE AND HE CONTRADICTS HIS REPORT.

IN U.S. V ESCALANTE 239 F.3d 678 (9TH CIR 2001) THE COURT SAID ... WHILE IT IS TRUE UNDER WHELAN V. U.S. A PRETEXTUAL STOP DOES NOT VIOLATE THE 4TH AMENDMENT IF THERE IS PROBABLE CAUSE, A POLICE OFFICER CANNOT CONSTITUTIONALLY CREATE THE VERY PROBABLE CAUSE UPON WHICH HE RELIED TO MAKE A STOP. WHELAN REJECTED THE NOTION THAT THE SUBJECTIVE INTENT OF AN OFFICER CAN BE USED IN ASSESSING THE CONSTITUTIONAL REASONABleness OF A STOP. HOWEVER THE COURT DID NOT GIVE

POLICE OFFICERS CARTE BLANCHE TO CREATE PROBABLE CAUSE. THERE IS AN IMPORTANT DISTINCTION BETWEEN PRETEXT, ADDRESSED IN WHEN, AND THE CREATION OF PROBABLE CAUSE, WHICH IS THE SCENARIO IN THIS CASE.

WHERE AN OFFICER CONDUCTS A PRETEXTUAL STOP, HE DOES UNDER THE GUISE OF ENFORCING THE TRAFFIC CODE HE WOULD LIKE TO DO FOR DIFFERENT REASONS.

SEE WHEN, HOWEVER, IN THIS CASE, DEPUTY PROCEEDED AFTER ESCALANTE ON A HUNCH, DISTRACTED HIM, AND CREATED PROBABLE CAUSE THAT HE NEEDED TO STOP HIM.

- I CITED U.S. V. ESCALANTE BECAUSE IN MY CASE THERE IS A SIMILARITY. IN MY CASE MADEWORTH HUNCH (UNPARTICULARIZED SUSPICION) WAS WHAT IS CALLED HIS SUBJECTIVE INTENT AS COURT PUT IT IN U.S. V. ESCALANTE. IN MY TRIAL THE ATTORNEY GENERAL MORE CONFIRMED THAT MADEWORTH HUNCH WAS SUBJECTIVE INTENTIONS. HE SAID, "YOUR HONOR THERE IS A CASE THAT WE WOULD OFFER, WHEN V. U.S., A SUPREME COURT CASE WHICH BASICALLY SAYS THAT ONCE YOU HAVE PROBABLE CAUSE OF A TRAFFIC VIOLATION, THAT STOP IS REASONABLE, WHATEVER THE OFFICER UNDERLYING SUBJECTIVE INTENTIONS MIGHT BE."
- IN STATE V. McLEOD 517 S.E.2d 128 THE COURT SAY "A OFFICER SUBJECTIVE MOTIVE FOR THE STOP IS IMMATERIAL".
- IN COM V. WATERS 456 S.E.2d 522 (VA APP 1995) THAT COURT SAY "... THE OFFICER'S PURPOSE IN ENCOUNTERING FRY WAS RELATED TO THEIR SUBJECTIVE SUSPICIONS OF FRY PRESENCE AND HIS POSSIBLE CONNECTION WITH... RECENT BURGLARIES."
- IN U.S. V. WHEN 53 F.3d 371 P.371 COURT SAY - FIRST IT ELIMINATED THE NECESSITY FOR THE COURTS INQUIRING INTO AN OFFICER'S SUBJECTIVE STATE OF MIND.

THE TRIAL COURT IN MY CASE DENIED THE SUPPRESSION MOTION BY ~~SAID~~ SAYING THAT STATE V. JIHAD PROVIDED PROBABLE CAUSE FOR THE STOP

THE JUDGE TRY TO EQUATE JIHAD'S BLAKE LIGHT COVE WITH MY LEFT TURN SIGNAL (TR P 106 LINE 21 - 25).

THEN THE JUDGE DESCRIBED THE OFFICER ARTICULATION AS HE UNDERSTOOD. HE SAY OFFICER SAW VEHICLE IN A DARK AREA OF PARKING LOT WHERE THERE WAS NO LIGHT. (THIS JUDGE WAS WRONG, THERE WAS A LIGHT).

THE JUDGE SAY OFFICER SAW IT AWAY FROM THERE A 2ND TIME. (THE JUDGE

WAS WRONG AGAIN! MAJAWOKI SAID ON PAGE 32 / Pg 39 / Pg 44 THAT CAR WAS GONE 2ND TIME. BUT ON PAGE 42 HE SAY CAR WAS THERE THE 2ND TIME WITH HOOD DOWN. SO THE JUDGE FINDING WAS ERRONEOUS

THEN THE JUDGE SAY "OFFICER SAW IT ~~coming from the road~~ THE FINAL TIME HE SAW IT COMING OUT IN HIS DESCRIPTION, AT A HIGH RATE OF SPEED, WHICH WOULD BE UNLAWFUL STOP"; (Tr P 107, LINE 11-14).

THE JUDGE IN HIS STATEMENT IS CONFIRMING THAT ON THE FINAL TIME OFFICER SAY HE SAW MY CAR COMING OUT AT A HIGH RATE OF SPEED, THAT IS A UNLAWFUL STOP.

~~THE JUDGE SAY ...~~ I FIND THE OFFICER'S TESTIMONY IS CREDIBLE THAT THE VEHICLE DID NOT USE A TURN SIGNAL. (Tr P 107, LINE 19/20/21.)

THE JUDGE'S FINDING OF CREDITABILITY IS ERRONEOUS ON BELIEVING I DID NOT USE TURN SIGNAL.

NOT ONLY THAT! THE SOLICITOR/NOR COUNSEL PRX STATED WHAT STATUTE NUMBER WAS THAT IT IS THAT I ALLEGEDLY VIOLATED. THE JUDGE CITED THE STATUTE FOR THE 1ST TIME AT ~~PAGE 106~~ (Tr P 106 LINE 15/20.) BUT HE ONLY CITED SUBSECTION (A), NOT SUBSECTION (B), OF 56-5-2150.

SUBSECTION "A" IS NOT THE "WHEN REQUIRED" PHRASE THAT APPLY TO THE LEFT TURN SIGNAL. SUBSECTION (B) IS WHAT APPLY TO THE "WHEN REQUIRED" PHRASE. AND THE JUDGE NEVER MENTIONED THAT. THE JUDGE NEVER EXAMINED SUBSECTION (B). IT WAS ERROR FOR TRIAL JUDGE TO FIND OFFICER TESTIMONY CREDIBLE WHEN HE NEVER EVEN EXAMINED THE SUBSECTION (B)

THE P.R. JUDGE IN ORDER OF DISMISSAL SAY THEY FIND COUNSEL FULLY INVESTIGATED THE ISSUE RESPECTING APPLICANT FAILURE TO USE A TURN SIGNAL AND THE VALIDITY OF THE STOP. COUNSEL REVIEWED THE APPLICABLE STATUTE, REGULATION AND HANDBOOK AS WELL AS DISCOVERED THE USE OF A TURN OF A SIGNAL IN A TURN ONLY HAVE WITH COUNSEL FOR THE D.M.V. Pgs. I DISAGREE! COUNSEL DID NOT FULLY INVESTIGATE FAILURE TO USE A TURN SIGNAL ISSUE! AT TRIAL COUNSEL NEVER EVEN MENTIONED THE STATUTE 56-5-2150. COUNSEL NEVER PRESENTED AT TRIAL OR P.C.A. HEARING AND HANDBOOK HE REVIEWED NOR PRESENTED STATE LAW 56-1-463 WHICH IS A STATUTORY EXCEPTION.

THE COURT SAY COUNSEL TESTIFIED THAT HE ALSO CONDUCTED EXTENSIVE RESEARCH

for authority in this state respecting use of a turn signal in a turn only lane. It may be a possibility counsel did ~~research~~ research this in this state, but why didn't he research this on the outside of south Carolina? It's only common sense that if he can't find case laws in this state on the left turn issue, then he should've did a nationwide search. He had access to Westlaw computer; all he had to do was type in the issue and cases nationwide would've pop up.

But did he try to find any cases outside south Carolina? No he didn't? It doesn't matter if it's a case from another state. It don't gotta be binding authority! It can be persuasive authority.

Court say testimony offered to this court by Earl Jentel of DPS indicate that driver are required to use a turn signal in a "turn only" lane.

I argue that Trooper testimony is incorrect. He is not the general assembly or the courts. He is an enforcer. General assembly make the statute law and the courts through its rulings in cases interpret ~~and~~ the law and how law is developed from rulings. Georgia court of appeals have created new law in State v Goodman, and other cases.

Court say counsel argued to trial court that malenoki lacked probable cause to initiate the traffic stop because applicant was not required to use a turn signal in a "turn only" lane.

The court is wrong! Counsel Bax did not argue I "was not required" to use a turn signal in a turn only lane. He argued that I did have my turn left signal on. This is a distinction.

The trial judge say trial counsel failure to offer non-binding authority from another state would not have changed this ruling. ~~I disagree!~~ The ~~malenoki~~ Goodman case does not have to be "binding authority", it can be persuasive authority from any state. The trial court ~~at~~ at its own discretion could've reviewed the State v Goodman case and could have adopted their ruling. But counsel Bax did not present that

RACE:

THE TRIAL COURT THEN SAID MY CASE IS "DISTINGUISHED" FROM GOODMAN. IN STATE V GOODMAN THE GEORGIA COURT OF APPEALS WAS PRESENTED WITH QUESTION WHETHER THE USE OF A TURN SIGNAL IN A TURN ONLY LANE IS NECESSARY TO ALERT OTHER DRIVERS OF A MOTORIST INTENTION TO TURN. THE COURT IN GOODMAN RULED THE DEFENDANT WAS NOT REQUIRED TO USE A TURN SIGNAL UNDER THE DISCRETE FACTS OF THAT CASE BECAUSE THERE WAS ~~NO EVIDENCE~~ NO EVIDENCE THAT OTHER VEHICLES IN THE VICINITY AT THE TIME OF GOODMAN'S TURN AND BECAUSE GOODMAN'S SOLE OPTION WAS TO ~~TURN~~ MAKE A TURN.

TRIAL COURT IN MY CASE THEN SAID... "UNLIKE IN GOODMAN, THERE WERE OTHER VEHICLES IN THE VICINITY WHEN APPLICANT FAILED TO USE HIS TURN SIGNAL."

TRIAL

AT TRIAL ~~MY COUNSEL ASKED~~ COUNSEL ASKED... "NOW DO YOU RECALL WHETHER OR NOT THERE WERE ALREADY ANY CARS IN THE TURNING LANE, THE LEFT TURNING LANE OF ST ANDREWS? (TR P 49 LINE 25 / TR P 50 LINE 1-4).

MAJEWSKI SAID, "NO, THERE WAS NOT", (TR P 50 LINE 5).

THEN MAJEWSKI WAS ASKED BY COUNSEL BAX... "DO YOU RECALL WHETHER OR NOT THERE WERE ANY CARS IN THE OTHER LANES, THE STRAIGHT LANE?" TR P 52 LINE 25, (TR P 53 LINE 2) / MAJEWSKI SAID, "I DO NOT RECALL", (TR P 53 LINE 2).

~~MY COUNSEL ASKED MAJEWSKI IF HE HAD ANY OTHER CARS IN THE VICINITY WHEN HE TURNED LEFT. MAJEWSKI ANSWERED THAT HE HAD NO OTHER CARS IN THE VICINITY WHEN HE TURNED LEFT.~~
MAJEWSKI STATEMENTS PROVE MY ALLEGATIONS THAT THERE WAS NO OTHER CARS IN THE LEFT TURN ONLY LANE, BUT MY CAR! WHEN I HAD PULLED OUT THE GAS STATION A CAR HAD PASSED. I PULLED OUT SLOW, AND RATHERLY, AND GOT IN THAT LEFT TURN ONLY LANE. THE CAR IN FRONT OF ME HAD JUST ~~TURNED~~ TURNED BEFORE LIGHT TURN RED. SO I STOP AT RED LIGHT AND WAS ONLY CAR IN THAT LANE BEFORE MAJEWSKI GOT BEHIND ME. THERE WAS NO OTHER CARS IN THE STRAIGHT LANE OR OTHER LANES WHEN I TURNED.

AT TRIAL COUNSEL BAX DID NOT ARGUE THAT SINCE THERE WAS NO OTHER CARS IN THE VICINITY OR AREA THEN ~~TURNING~~ A SIGNAL WAS NOT REQUIRED. NOR DID THE STATE ARGUE AT TRIAL THAT THERE WAS CARS IN THE VICINITY AND I SHOULD HAVE

USED MY ^{Left} TURN OF SIGNAL.

THE TRIAL COURT DETERMINED THAT A VIOLATION OF 56-5-2150 IN SOUTH CAROLINA CODE OF LAWS OCCURRED, BECAUSE I FAILED TO GIVE A TURN SIGNAL WHEN MAKING A LEFT TURN ~~WHEN~~ IN A LEFT TURN ONLY LANE. THIS DETERMINATION WAS ERRONEOUS. IT IS CLEAR FROM THE FACE OF THE STATUTE THAT THE S.C. LEGISLATURES ANTICIPATED OCCASIONS WHEN A SIGNAL WAS NOT REQUIRED. A LANE CHANGE MUST BE MADE WITH REASONABLE SAFETY AND IN SOME INSTANCES, REASONABLE SAFETY REQUIRED GIVING A ~~W~~-TURN SIGNAL 56-5-2150 (B). SUBSECTION (B) SETS FORTH THE MANNER AND PURPOSE OF SIGNALLING ONE'S INTENTION TO CHANGE LANES AT TIMES WHEN EVEN A SIGNAL IS REQUIRED. THE LEGISLATURES CONCERN WAS PLAINLY THE PRESENTATION OF THE SAFETY OF OTHERS BY REQUIRING SUFFICIENT NOTICE OF THE DRIVER'S INTENT TO TURN OR CHANGE LANES. THEIR USE OF THE TERM WHEN REQUIRED IN SUBSECTION (B), CLEARLY INDICATES THAT THEY ANTICIPATED TIMES WHEN USE OF A SIGNAL WAS NOT REQUIRED FOR THE SAFETY OF OTHERS. UNDER THE PRESENT FACTS, NOTICE OF INTENT TO CHANGE LANES WAS NOT NECESSARY. SAFETY DID NOT DENY THE USE OF A SIGNAL TO ALERT OFFICER MAJOWSKI OF MY INTENTION TO TURN LEFT IN LEFT TURN ONLY LANE. MAJOWSKI ADMITTED THAT FROM MY POSITION IN THAT LEFT TURN ONLY LANE, MY SOLE LEGAL OPTION WAS A LEFT TURN, AS DIRECTED BY LEFT TURN ^{TRAFFIC} LIGHT SIGNAL. UNDER THESE CIRCUMSTANCES, OFFICER MAJOWSKI COULD NOT REASONABLY MAINTAIN THAT HE WAS UNAWARE OF MY INTENTION TO TURN. THEREFORE A LEFT TURN SIGNAL WAS NOT NECESSARY, AND THERE WAS NO VIOLATION OF 56-5-2150 COMMITTED IN HIS PRESENCE WHICH WOULD JUSTIFY THE STOP ON THAT I TOOK ALONE.

AT PER HEARING TROOPER COLUMBUS GENTRY WAS ASKED BY PER COUNSEL "... SO PUTTING PEOPLE ON NOTICE, IF THEY ARE IN THE LEFT TURN ONLY LANE, THE NOTICE IS THEIR FOR THEM TO GO LEFT, IS THAT CORRECT?"

~~MAJOWSKI~~ ^{OFFICER} SAY "... THAT'S CORRECT!" (APP P 528 ^{LINE} 24/25 AND P 527 LINE 1/2.)

DURING PRETRIAL HEARING TO DETERMINE LEGALITY OF STOP, TRIAL COUNSEL FAILED TO ARGUE SPECIFICALLY THAT I WAS NOT REQUIRED BY SUBSECTION (B) OF 56-5-2150 TO USE LEFT TURN SIGNAL IN A LEFT TURN ONLY LANE AT INTERSECTION AND THAT

There was no other cars in vicinity.

If I was not required to use left turn signal in left turn only lane when other cars was not around, then officer did not have probable cause to ~~arrest~~ ~~pull me over~~ to pull me over for a left turn violation, and could not have been acting in good faith.

Trial counsel stated, During his motion (Tr P 10, WNE 6-10): "Your Honor, you have heard the testimony from both the officer and the defendant in this case regarding the turn signal. Your Honor, we would submit that the sworn testimony in this case is that turn signal ^{was} on." Then he say ... ~~that~~

~~that~~ "In addition to that, your Honor, there has been testimony also that this was not a legal turn. In addition to that, your Honor, he was in a turning lane where the only option is to go left. There has been plenty of testimony that this is a situation where officers went around and pulled people over for not using their turn signal in a turn-only lane, they wouldn't have time to do anything else. I submit to your Honor that even if, even if you believe that Mr Battle is not being truthful in telling you that he had his turn signal on," (Tr P 105 line 6 to 17).

Trial counsel argument above did not say nothing of state statute 56-5-5120 subsection B, nor did he argue that I was not required to use a left turn signal since no other cars was in vicinity.

PCR counsel questioned trial counsel about what he prepared for trial, and what investigation had he conducted (APP P 28 line 21-23). Trial counsel spoke about ~~that~~ what he did to find out if not using a left turn signal in a left turn only lane was actually a traffic violation (APP P 245 line 18-25) and (APP P 246 line 1 to 25). In his testimony at PCR hearing he did not say nothing about arguing at trial that ~~that~~ ~~there was no cars in the vicinity~~ and that since I was in a left turn only lane then I was not required by to ^{use} left turn signal. Trial counsel was ineffective in not requiring the state to meet its burden of proving that I was required to use left signal in a left turn only lane intersection when no other cars was around.

IN ORDER OF DISMISSAL THE P.R. JUDGE WROTE, AS IN WHELAN V. U.S., THE TRIAL COURT IN THIS CASE DETERMINED THAT APPLICANT FAILURE TO USE A TURN SIGNAL PROVIDED THE OFFICER WITH PROBABLE CAUSE TO BELIEVE A TRAFFIC VIOLATION HAD OCCURRED AND THE DECISION TO STOP THE VEHICLE WAS REASONABLE. TRIAL COUNSEL FAILURE TO OFFER NON BINDING AUTHORITY FROM ANOTHER ~~CASE~~ WOULD NOT HAVE CHANGED THIS RULING. PARTICULARLY IN LIGHT OF THE DISTINGUISHING FACTS OF THE CASE UPON WHICH APPLICANT RELIED, ~~ET...~~, THE COURT IN GOODMAN DETERMINED THE DEFENDANT WAS NOT REQUIRED TO USE A TURN SIGNAL UNDER THE ALLEGED FACTS BECAUSE THERE WAS NO EVIDENCE THAT OTHER VEHICLES WERE IN THE VICINITY AT THE TIME OF GOODMAN'S TURN BECAUSE GOODMAN'S SOLE LEGAL OPTION WAS TO MAKE A TURN. UNLIKE IN GOODMAN, THERE WERE OTHER VEHICLES IN THE VICINITY WHEN APPLICANT FAILED TO USE HIS TURN SIGNAL. ~~ET...~~ THE LEGAL AUTHORITY APPLICANT OFFERS FROM GEORGIA IS NOT BINDING, IS DISTINGUISHABLE AND ~~IT~~ WOULD NOT HAVE ALTERED THE TRIAL COURT RULING. ~~ET...~~

THE P.R. JUDGE ERRED. TRIAL COUNSEL WAS INEFFECTIVE IN NOT CHALLENGING THE FACT THAT WASN'T NO OTHER CARS IN VICINITY AND NOT ARGUING THAT I WAS NOT REQUIRED TO USE A LEFT TURN SIGNAL.

DURING THE PRETRIAL SUPPRESSION HEARING THE STATE HAS THE BURDEN OF PROVING THAT THE INITIAL STOP OF ~~DRIVER~~ WAS VALID. THE STATE FAILED TO MEET ITS BURDEN TO PROVE THAT THE OFFICER HAD PROBABLE CAUSE TO MAKE A TRAFFIC STOP FOR LEFT TURN VIOLATION. IF THERE WAS NO OTHER CARS IN THE VICINITY WHEN I TURNED LEFT, THEN OFFICER ARGUABLY WOULD HAVE HAD A GOOD FAITH ~~REASONABLE~~ BASIS TO BELIEVE PROBABLE CAUSE ~~EX~~ EXISTED TO PULL ME OVER FOR VIOLATION OF TRAFFIC LAW 56-5-2150. IF HOWEVER, ~~THAT~~ THERE WAS NO OTHER CARS IN THE VICINITY WHEN I TURNED LEFT THEN I WAS NOT REQUIRED BY SUBSECTION (B) TO USE LEFT TURN SIGNAL AND THEREFORE OFFICER HAD NO PROBABLE CAUSE AND THE STOP FOR A LEFT TURN VIOLATION WAS ILLEGAL. THE ILLEGAL STOP FOR LEFT TURN VIOLATION WOULD HAVE RENDERED THE SUBSEQUENT FINDINGS OF EVERYTHING AFTER THAT ILLEGAL REQUIRING SUPPRESSION OF THE ITEMS FOUND PURSUANT TO THE ILLEGAL SEARCH. SEE STATE V. COPELAND 468 SE.2D 620/629 THE FRUIT OF THE POISONOUS TREE DOCTRINE PROVIDES THAT EVIDENCE MUST BE EXCLUDED IF IT WOULD NOT HAVE COME TO LIGHT BUT FOR THE ILLEGAL ACTIONS OF THE POLICE, AND THE EVIDENCE HAS BEEN OBTAINED BY EXPLOITATION OF THAT ILLEGALITY. CITING WONG V. UNITED STATES 635 U.S. 407.

TRIAL COUNSEL FAILED TO CHALLENGE THE STATE'S FAILURE TO PROVE THAT NO CARS WERE IN THE VICINITY AND THAT I WAS NOT REQUIRED TO USE LEFT TURN SIGNAL. I WAS PREJUDICED BY COUNSEL DEFICIENT PERFORMANCE. IF TRIAL COUNSEL HAD ~~CHALLENGED~~ CHALLENGED THE TRIAL JUDGE SUBSECTION (B) OF STATE LAW 56-5-2150

AND THEN (B) ARGUED THAT THERE WAS NO CARS IN THE VICINITY WHEN I TURNED

AND THEN (C) ARGUE THAT I WAS NOT REQUIRED BY STATE LAW TO USE LEFT SIGNAL

AND THEN (D) PRESENT CASE STATE V GOODMAN TO BACK HIS ARGUMENT UP

THEN THE TRIAL JUDGE ^{WOULD} HAVE SUPPRESSED THE EVIDENCE OF EVERYTHING FOUND IN MY CAR

OFFICER MAJEWSKI ~~WAS~~ TESTIFIED ON STAND UNDER OATH. - ~~MAJEWSKI~~

* COUNSEL ASKED - NOW DO YOU RECALL WHETHER OR NOT THERE WERE ALREADY ANY CARS IN THE TURNING LANE, THE LEFT TURNING LANE OF ST ANDREWS (TR P 44 LINE 25 / TR P 50 LINE 1-4).

* MAJEWSKI SAY - NO THERE WAS NOT (TR P 50 LINE 5).

* COUNSEL ASKED - DO YOU RECALL WHETHER OR NOT THERE WERE ANY CARS IN THE OTHER LANES THE STRAIGHT LANE (TR P 52 LINE 25).

* MAJEWSKI SAY - I DO NOT RECALL (TR P 53 LINE 2).

THE STATE HAVE NOT PROVE ITS BURDEN TO PROVE THERE WAS OTHER CARS IN THE VICINITY

1 HAVE A 6TH AMENDMENT RIGHT TO U.S. CONSTITUTION.

2 PRUDY TEST TO EVALUATING ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF COUNSEL UNDER STRICKLAND V WASHINGTON 104 S Ct 2052 DEFICIENT AND PREJUDICE.

IF TRIAL COUNSEL HAD CHALLENGED THE STATE FAILURE TO PROVE THAT THERE WAS NO OTHER CARS IN VICINITY ~~THAT THERE WAS NO OTHER CARS~~ AND THAT I WAS NOT REQUIRED BY STATE LAW 56-5-2150 (B) TO USE LEFT TURN SIGNAL IN LEFT TURN ONLY INTERSECTION AND THAT WHAT OFFICER SAW WAS A MISTAKE OF LAW THERE IS A REASONABLE PROBABILITY THAT THE RESULT OF THE PROCEEDINGS WOULD HAVE BEEN DIFFERENT.

(FAILURE TO INVESTIGATE APPLICANT LICENSE OF SUSPENSION)
CITY OF FOREST ARREST COURT ON 9/1/2006 ISSUED A COMPLIANCE NOTICE RECEIPT
CERTIFYING THAT FINE OF 232.50 WAS PAID (EXHIBIT 9)

CITY OF FOREST ARREST COURT COMPLIANCE NOTICE SHOWS THAT FINE AND
COSTS ON 9/1/2006 - WAS AT 0.00 MEANING I DID OWE THEM NO MORE.

ON 9/5/2006 - DMV CLAIM THEY RECEIVED A "NOTICE OF SUSPENSION"
FROM CITY OF FOREST ARREST COURT, OF ME OWING \$149.50 AND TO
SUSPEND MY LICENSE. (EXHIBIT 8)

ON 9/6/2006 - DMV SENT BATTLE A "IMENDING SUSPENSION" (PROPOSED SUSPENSION)
TO SUSPEND MY LICENSE. THIS IMENDING SUSPENSION INFORMED BATTLE TO
PAY FINE OF 232.50 BY IMENDING SUSPENSION DATE OF 9/26/2006 (EXHIBIT 11)

ON 9/26/2006 - BATTLE DID NOT RECEIVE NO FINAL NOTICE OF SUSPENSION / OR
ACTUAL NOTICE OF SUSPENSION (EXHIBIT 15)

ON 0

ON 10/4/2006 - BATTLE WAS PULLED OVER IN NEWBERRY BY TROOPER COLUMBO
GENTRY. FOR SPEEDING. DISPATCHER FOR NEWBERRY KIM MEBRIDE SAID
LICENSE WAS NOT SUSPENDED.

ON OCTOBER 5/6/7/8/9/10/11/12/13 OF 2006 DMV DID NOT INFORM
ME LICENSE HAS BEEN SUSPENDED.

ON 10/13/2006 - I'MO POLICE OFFICER IN LEXINGTON COUNTY MADEWELL
PULLED BATTLE OVER AND SAW DISPATCHER SHERRY WOODWARD SAID LICENSE
WAS SUSPENDED FOR FAILURE TO PAY 232.50 FINE. AND I WAS
ARRESTED.

1 ALLEGED TRIN LANSER WAS INEFFECTIVE FOR FAILING TO CONDUCT A PROPER IN
VESTIGATION INTO SUSPENSION OF LICENSE.

ALL CAR REPORT BY SHERRY WOODWARD DISPATCHER DOES NOT SAY MY LICENSE
WAS SUSPENDED ON 10/13/2006.

AT P.I.R. HEARING TESTIFIED LICENSE ON OCTOBER 4, 2006 (APP P 523, LINE 1-3 AND
LINE 18-23) AND TESTIFIED TO ~~THEY~~ REASONS WHY SUSPENSION MIGHT NOT HAVE

Real Reported to him during Traffic Stop, such as delay in entering the info into database. ~~more~~ such as Sunday's. (APP P 524 LINE 14-25 / APP P 525 LINE 1-21).

HOWEVER IN MY CASE HE STOPPED ME ON A WEDNESDAY NOT A SATURDAY OR SUNDAY

PUR COURT SAY COUNSEL FULLY REVIEWED AND WAS KNOWLEDGEABLE OF THE EVIDENCE THE STATE WOULD PRESENT AGAINST ME, AND DID RESEARCH ON ISSUES INVOLVING THE CASE.

-CU.

COURT SAY COUNSEL REVIEWED WARNING TICKET ~~was~~ THAT WAS ISSUED TO ME ON OCTOBER 4TH 2006. THIS IS NOT TRUE! AT TRIAL THIS TICKET WAS NOT PRESENTED BY COUNSEL OR STATE AS IDENTIFICATION OR EVIDENCE. I TOLD HIM ABOUT THE STOP IN NEWBERRY BY TROOPER GENTRY BETWEEN 9-27-2006 AND 10-12-2006. I DID NOT KNOW EXACT DATE, OR WHAT AGENCY TO GET A COPY OF TICKET FROM. THIS WHY AT TRIAL I GAVE WRONG DATE OF 9/29/2006 INSTEAD OF 10/4/2006.

THE COMPLIANCE NOTICE PRESENTED AT TRIAL WAS DATED 9/1/2006. HOWEVER COUNSEL NOR STATE PRESENTED EVIDENCE OF THE NOTICE OF SUSPENSION THAT DMV KHAM CITY OF FOREST AGREE SENT THEM ON 9/5/2006 (EXHIBIT B) THE DMV SAY THEY THEN ISSUED A IMPENDING SUSPENSION ON 9/6/2006 INFORMING ME TO PAY FINE ON 9/26/2006.

FROM 9/26/2006 TO 10/4/2006 DMV DID NOT TAKE IN AFFIRMATIVE ACTION IN SUSPENDING MY LICENSE ON 9/26/2006. THIS IS PROVED BY FACT THAT ON 10/4/2006 WHEN TROOPER GENTRY PULLED ME OVER IN NEWBERRY AND CHECK MY LICENSE THROUGH ALL NEWBERRY DISPATCHER K/M MCBIDE WHO CONFIRMED THAT LICENSE WAS NOT SUSPENDED.

FROM 10/5/2006 TO DAY OF ARREST ON 10/13/2006 DMV DID NOT MAIL ME NO NOTICE THAT THEY SUSPENDED LICENSE.

PUR COURT SAY THIS COURT FINDS THAT APPLICANT FAILED TO ESTABLISH THAT HIS LICENSE WAS NOT SUSPENDED AT TIME OF THE INCIDENT THIS IS EVIDENCE! I DID CONFIRM IT WAS NOT SUSPENDED.

THEN PUR COURT SAY "... ~~AND~~ COUNSEL TESTIFIED THAT WE REVIEWED THE WARNING TICKET ISSUED TO APPLICANT ON OCTOBER 4TH 2006." COUNSEL NEVER SHOW TRIAL COURT NOR PUR COURT PROUT IT OCTOBER 4 TICKET.

PUR COURT SAY... ~~THAT COUNSEL~~ ^{CONFIRMED} THAT THE INFORMATION PROVIDED TO OFFICER MAJOWSKI BY THE DISPATCHER WAS CORRECT AND REVIEWED THE SUMMARY VERIFYING THAT THE DISPATCHER INFORMED THE OFFICER THAT APPLICANT LICENSE

WAS SUSPENDED. THE PER COURT DETERMINATION ON THIS IS ERRONEOUS! ~~PER COURT~~
COUNSEL TRIAL COUNSEL AT P.C.R. HEARING CLAIM HE THE C.A.D. REPORT OF ~~MARK~~ DISPATCHER
SHERY WOODWARD SAY DISPATCHER TOLD MAJEWSKI LICENSE WAS SUSPENDED. APP P
552 LINE 22-25 / APP P 553 LINE 1-8

THE C.A.D. REPORT BY DISPATCHER SHERY WOODWARD DOES NOT SHOW THAT MY
~~WAS~~ LICENSE WAS SUSPENDED.

THE P.C.R. COURT SAY THEY FIND COUNSEL TESTIMONY CREDIBLE, AND FIND THAT
I FAILED TO PRESENT ANY CREDIBLE PROOF AT P.C.R. HEARING TO ESTABLISH THAT
OFFICER WAS NOT TRUTHFUL ON THIS POINT. (ALL THIS IS NOT TRUE!)

COUNSEL PAX TESTIMONY WAS NOT CREDIBLE! HE LIED AND SAY HE REVIEWED
VIOLATION TICKET WHEN HE DID NOT. HE LIED AND SAY C.A.D. REPORT OF DISPATCHER
SAY DISPATCHER TOLD MAJEWSKI LICENSE WAS SUSPENDED WHEN IT WASN'T.

P.C.R. COURT SAY IT WAS NOT POSSIBLE FOR COUNSEL TO ESTABLISH THAT MY LICENSE
WAS NOT SUSPENDED ON 10/13/2006. P.C.R. COURT IS WRONG! IF COUNSEL WOULD
HAVE PRESENTED VIOLATION 4 TICKET AND TROOPER GENTRY AT MY TRIAL TO PROVE
LICENSE WAS NOT SUSPENDED, AND IF HE WOULD HAVE PRESENTED THE NOTICE
OF SUSPENSION FROM DMV AND WOULD HAVE PRESENTED CHECK AT COURT FROM
CITY OF FOREST ARKIE AS WITNESS TO TESTIFY THAT THEY DID NOT SEND THAT
TO ~~DMV~~ DMV TO SUSPEND MY LICENSE AND WOULD HAVE PRESENTED EVIDENCE
~~PROVING THAT DMV DID NOT NOTIFY LICENSE HAS BEEN SUSPENDED~~
ED, ~~AND~~ AND THAT THEY FAILED TO NOTIFY ME OF SUSPENSION FROM 4/26/2006
TO 10/13/2006, THEN IT'S A POSSIBILITY I COULD HAVE PROVE LICENSE WAS
NOT SUSPENDED!

P.C.R. COURT SAY MAJEWSKI ACTED IN GOOD FAITH IN ACCEPTING APPLICANT ~~FROM~~ ^{FOR}
D.V.S BASED UPON INFORMATION CONVEYED TO HIM BY THE ~~ALL~~ DISPATCHER. (P. 9)
I DISAGREE! I SAY MAJEWSKI LIED ABOUT MY LICENSE BEING SUSPENDED. THE
STATE DID NOT PROVE I RECEIVED ^{ACTUAL} NOTICE OF SUSPENSION FROM 4/26/2006 TO 10/13/2006
THAT LICENSE WAS BEEN SUSPENDED, AND THEY FAILED TO MEET THEIR BURDEN OF PROVING
AT TRIAL ~~THAT~~ ALL ELEMENTS OF D.V.S. (EXHIBIT 4A/4B/4C)

COUNSEL FAILED TO CHALLENGE IF ALL ELEMENTS OF D.V.S. MET, HE FAILED OBTAIN

copy of October 4 ticket proving license could not have been suspended on 11/26/2006. He failed to call Cooper Yentz / did not present notice laws of 56-1-350

If ~~anyway~~ license was not suspended on 10/13/2006 as it was on 11/4/2006 then officer had no probable cause to arrest me for D.J.S

PER Judge erred: Trial counsel was ineffective in not challenging the elements of D.J.S, and not presenting other evidence for my defense as I mentioned already

If license was not suspended then officer was not acting in good faith ~~anyway~~ to believe probable cause existed to arrest me.

This was a unlawful arrest and evidence should have been suppressed,

Trial counsel failed to challenge the state burden to prove the elements of D.J.S

Battle was reduced by counsel deficient performance

If Trial counsel had challenged state failure to prove elements of D.J.S and would have presented other evidence of state law 56-1-350 / October 4th ticket /

then there is a reasonable possibility that result of the proceedings would have been different.

Argument 2

Did I receive Ineffective Assistance of P.C.R. Counsel at P.C.R. Hearing
by P.C.R. Counsel ~~negligently~~ failing to raise Issues E/K/U/Q
from Application at P.C.R. Hearing?

PLEASE REVIEW ORIGINAL Application of Issues "E" AND "K".
AND REVIEW AMENDED Application of Issues "U" AND "Q".

Issue E say - I received ^{Ineffective} Assistance of Counsel at Trial in that Counsel
failed to object to PICTURES that was offered into EVIDENCE
IN SPITE of Request under Brady v Maryland 355 1194

Issue K say - I received Ineffective Assistance of Counsel at Trial in that
Counsel failed to object to SPECTATORS making argument comments
in Reference of calling me criminal/convict continually which
was done only to INFLAME the passions or prejudices of
the JURY.

Issue U say - I received Ineffective Assistance of Counsel in that Counsel
was inadequately prepared at for Trial and failed to IN-
vestigate whether or not I could be subjected to a full
custodial arrest for D.W.I. and failure to surrender
license for failure to pay a fine.

Issue Q say - I received Ineffective Assistance of Counsel at Trial in
that Trial Counsel failed to object to THE INADMISSIBLE
HEARSAY Testimony from MANDERLY that Information he
received from DISPATCHER that my LICENSE came back
suspended.

These claims are claims that I discussed with MR DUNCAN when he came to see me at Lehigh at prison and I spoke with him on phone. These are issues I wanted him to question me about at hearing. At the P.R. hearing I was not aware of procedure or how things go so I asked MR DUNCAN: Does the P.R. Judge review my full application before hearing? MR DUNCAN told me: Yes the judge review my application before hearing. I asked MR DUNCAN: Well when I get on stand do I have to read all my claims and everything I wrote in application? MR DUNCAN told me no I don't got to read nothing from application and just to answer the questions of him and the attorney general.

When I first started going to P.R. hearings in this case where the original attorney assigned to my case did not attend, I had the opportunity to watch other P.R. attorneys represent their clients before Judge MR Keesley. One attorney went through his client's application claim by claim and question his client and his client testified to each claim. This is how I thought MR DUNCAN was gonna do things in mine. There is a total of 7 claims I wanted him to question me about of E/K, N/O/P/Q/R.

MR DUNCAN on direct examination was lot to question me (APP P 529 LINE 10 / TO APP P 536 LINE 7).

MR DUNCAN QUESTIONED ME IN ORDER OF MY CLAIMS OF E/K/A/O/P/Q/R. He first question me about ~~about~~ the October 4th traffic stop (APP P 529 LINE 18-21) and other issues relating to claim "N".

We then question me about the left turn signal (APP P 533 LINE 4 to APP P 534 LINE 23) relating to issue claim "N".

We then question me about appellate counsel clearly (APP P 534 LINE 25 to APP P 535 LINE 32) relating to issue claim "R".

We then say "Answer any questions that the attorney general or the court might have." (APP P 536, LINE 6-7).

MR DUNCAN AT END OF P.R. HEARING AFTER QUESTIONING MR CLEARLY SAID TO MR CLEARLY "NOTHING ELSE" (APP P 572, LINE 17). THE COURT ASKED "ANYTHING ELSE?" (APP P 570, LINE 18). MR ELLIOT SAY "THAT'S ALL YOUR HONOR" (APP P 570, LINE 19).

The COURT say "THANK YOU, MAM" (APP P 570, LINE 20). MR ELLIOT SAY "THAT WOULD BE THE STATES CASE," (APP P 570, LINE 22).
THE COURT SAY "OKAY" (APP P 570, LINE 23). MR DUNCAN SAY "NOTHING FURTHER" (APP P 570, LINE 24). COURT SAY "ANYTHING YOU WANT TO TELL ME?" (APP P 570, LINE 25). MR DUNCAN SAY "NO SIR I THINK THE RECORD IS CLEAR". (APP P 571, LINE 1-2). THE COURT SAY "OKAY" (APP P 571, LINE 3).

I feel THAT MR DUNCAN did NOT FULLY do HIS JOB IN PRESENTING MY CLAIMS I PUT IN APPLICATION.

AFTER I GOT BACK TO HEBER PRISON, I IMMEDIATELY WROTE MR DUNCAN AND ASKED HIM TO PLEASE FILE A RULE 59 MOTION TO CLAIMS I WANTED HIM TO RAISE OF E/K/Q :

He Refused to file a Rule 59,

He WROTE ME ON 2/6/2012 AND SAID "AS FOR PARAGRAPH O, YOU DO NOT HAVE A VIABLE CLAIM FOR RELIEF BECAUSE OF THE U.S. SUPREME COURT CASE OF ATWATER V LAGO VISTA".

AND He SAY "AS FOR Q / E / K, YOU DID NOT TESTIFY TO ANY OF THOSE PARAGRAPH ALLEGATIONS IN P I R HEARING, AS SUCH THOSE ALLEGATIONS WERE DEEMED ABANDONED."

AT THE P I R HEARING MR DUNCAN SAID He WAS NOT GUNNA QUESTION ME ABOUT CLAIM "O" BECAUSE He SAID THAT WAS NOT A VIABLE CLAIM DUE TO THE ATWATER V LAGO VISTA, AND He SHOWED ME THAT CASE AT HEARING, AND LATER SENT ME A COPY OF THAT CASE, ON 2/6/2012.

~~MR DUNCAN MAY NOT HAVE QUESTIONED ME ABOUT THE DISPATCH REASON INFORMATION BUT THE ATTORNEY GENERAL (OUTSIDE) MAY HAVE BEEN THE REASON FOR NOT DISPATCHED~~
LINE 17

~~REASONABLE PROBABLY AND BECAUSE OF THE PROBABLY SHOULD HAVE
BEEN OFFERED TO THAT THAT SOME OTHER FROM ANOTHER AND THAT PROBABLY
THE PROBABLY TO THE PROBABLY PROBABLY A PROBABLY THE
MAY A PROBABLY PROBABLY A PROBABLY THE~~

Claim 0 NOT PRESENTED

As for claim "0". Please Review Claim "0" of what I wrote in
AMENDED APPLICATION

MR DUDAN WOULD NOT PRESENT THIS CLAIM BECAUSE HE SAID IT WAS NOT A
VAILABLE CLAIM DUE TO *WATER V LAGO VISTA*. I TOLD HIM I WANTED HIM
TO RAISE THIS ISSUE, HE REFUSED!

IN *WEST V COM* 549 SE.2d 605 DEFENDANT WAS CONVICTED OF POSSESSING
COCAINE WITH INTENT TO DISTRIBUTE : HE APPEALED. THE CIRCUIT OF APPEALS
HELD THAT SEARCH OF DEFENDANT WHILE FOLLOWING HIS ARREST FOR DRIVING WITHOUT
A LICENSE & FAILING TO SIGNAL WAS UNREASONABLE UNDER 4TH AMENDMENT
REVERSED AND DISMISSED.

~~WEST V COM 549 SE.2d 605 DEFENDANT WAS CONVICTED OF POSSESSING
COCAINE WITH INTENT TO DISTRIBUTE : HE APPEALED. THE CIRCUIT OF APPEALS
HELD THAT SEARCH OF DEFENDANT WHILE FOLLOWING HIS ARREST FOR DRIVING WITHOUT
A LICENSE & FAILING TO SIGNAL WAS UNREASONABLE UNDER 4TH AMENDMENT
REVERSED AND DISMISSED.~~

IN VIRGINIA THE GENERAL ASSEMBLY EXPRESSED ITS PREFERENCE FOR THE ISSUANCE OF
A SUMMONS IN LIEU OF AN ARREST WARRANT FOR MOST MISDEMEANOR CASES BY
ENACTING CODE 19-2-74. CODE 46-2-436 PARALLEL CODE 19-2-74 IN REITER-
ATING THE PREFERENCE FOR ISSUANCE OF SUMMONS WITH REGARD TO VIOLATIONS OF THE
MOTOR VEHICLE CODE. CODE 46-2-437 DIRECTS THAT FOR PURPOSES OF ARREST, TRAFFIC
INFRACTIONS SHALL BE TREATED AS MISDEMEANORS. CODE 19-2-74/42-2-436
MANDATE THE ARRESTING OFFICER "SHALL" ISSUE A SUMMONS IN THE ABSENCE OF AN
EXPRESS EXCEPTION TO THE STATUTE, OR A REASONABLE BELIEF THAT THE
PERSON ARRESTED WILL FAIL TO APPEAR IN COURT ON HIS OR HER PROMISE OR FAILS
TO DISCONTINUE THE UNLAWFUL ACT. HE WAS STOPPED FOR FAILING TO SIGNAL WHICH
IS A TRAFFIC INFRACTION, AND VIOLATED LAW AGAINST DRIVING WITHOUT A VALID
LICENSE, A MISDEMEANOR. NEITHER OF THOSE FALL UNDER ANY EXCEPTION DIRECTING
A OFFICER TO TAKE A SUSPECT TO JUDGE. *WEST V COM* CITES *KNOWLES V IOWA*
IN WHICH THE U.S. SUPREME COURT DECIDED TO EXPAND THE SEARCH INCIDENT
TO ARREST EXCEPTION TO THE

4TH AMENDMENT PROHIBITION AGAINST WARRANTLESS SEARCHES, UNLESS EITHER OF THE 2 HISTORICAL RATIONALES ARISE IN A SPECIFIC SITUATION, I.E., (1) THE NEED TO DISARM THE SUSPECT IN ORDER TO TAKE HIM INTO CUSTODY, AND (2) THE NEED TO PRESERVE EVIDENCE FOR LATER USE AT TRIAL. THE U.S. SUPREME COURT HOLD THERE IS NO REASON SEARCH INCIDENT TO CITATION EXCEPTION. AFTER KNOWING AN ARREST THAT IS EFFECTED BY ISSUING A CITATION OR SUMMONS RATHER THAN TAKING THE SUSPECT INTO CUSTODY DOES NOT BY ITSELF JUSTIFY A FULL FIELD TYPE SEARCH.

HARD IN SOUTH CAROLINA, THE GENERAL ASSEMBLY ALSO EXPRESSED ITS PREFERENCE FOR THE ISSUE OF A SUMMONS IN LIEU OF AN ARREST FOR MOST MISDEMEANOR CASES BY ENACTING 56-25-30 AND 56-25-40. IN 56-25-30 THIS LAW ~~MANIPULATE THE DIFFERENT REASON PEOPLE A MANDATE THAT SAY~~ ANY OFFICER WHO ISSUE A CITATION SHALL ALLOW A PERSON TO PROCEED WITHOUT FIRST HAVING TO POST BAIL OR GO BEFORE A JUDGE. AND IT SAY "THE OFFICER SHALL NOT SUBJECT TO THE EXCEPTIONS NOTED BELOW REQUIRE THE PERSON TO POST BOND BUT SHALL ALLOW THE PERSON TO PROCEED". IN 56-25-40 THIS A LAW THAT SAY A OFFICER DOES NOT HAVE TO RELEASE A PERSON ON P.R. PURSUANT TO 56-25-30 IF HE REQUIRE PERSON TO APPEAR BEFORE A JUDGE OR IF OFFENSE IS (1) ONE WHICH WOULD RESULT IN SUSPENSION OF LICENSE OR PRIVILEGE TO DRIVE (2) VIOLATION OF 56-1-440 PROHIBITING OPERATION OF VEHICLE WITHOUT VALID LICENSE (3) A VIOLATION OF HIGHWAY LIMITATIONS.

IN MY CASE ~~ANYWHERE~~ OFFICER MAJEWski SAY MY LICENSE WAS SUSPENDED FOR "FAILURE TO PAY A FINE".

CITY OF IRMO SAY IN INTERROGATORIES, "TYPICALLY PERSONS DRIVING UNDER SUSPENSION AND FAILING TO SURRENDER THEIR DRIVERS LICENSE ARE ARRESTED. THERE ARE EXCEPTIONS INCLUDING THE STATUTORY EXCEPTION WHEN THE SUSPENSION IS FOR "FAILURE TO PAY A FINE". (EXHIBIT 2)

UNDER THIS EXCEPTION MAJEWski WAS NOT SUPPOSE TO CUSTODIAL ARREST ME. HE WAS SUPPOSE TO ISSUE ME A CITATION AND LET ME PROCEED IN ACCORDANCE WITH 56-25-30. TRIAL COUNSEL WAS INEFFECTIVE AT TRIAL.

FOR NOT INVESTIGATING EVIDENCE FOR MY DEFENSE THAT THERE WAS AN EXCEPTION
TO BEING ARRESTED FOR D.V.S 1ST FOR FAILURE TO PAY A FINE, AND HE FAILED
TO RESEARCH KNOWLES V IOWA AND STATE LAWS 56-25-20 / 56-25-30 / 56-25-40
DURING PRETRIAL HEARING OF SUPPRESSION MOTION COUNSEL FAILED TO CHALLENGE WHETHER
THE OFFICER ~~AND~~ HAD PROBABLE CAUSE TO ~~ARREST~~ FULL CUSTODIAL ARREST BATTLE
FOR D.V.S 1ST

IF THERE IS A STATUTORY EXCEPTION WHEN THE SUSPENSION IS FOR FAILURE
TO PAY A FINE, THEN THE OFFICER WAS SUPPOSE TO WRITE ME A FINE AND LET ME
PROCEED.

AT THE TRIAL COUNSEL IN CAMERA CROSS QUESTIONED OFFICER (Tr P 67 LINE 2/E)
BAX IS IT THE PRACTICE OF THE IOWA P.D. TO UTILIZE A COURT SUMMONS FOR
D.V.S 1ST AT ANY TIME OR DOES THE IOWA P.D. ALWAYS CONDUCT ARRESTS ON
D.V.S? OFFICER SAY ... IT ALL DEPENDS ON WHAT THEY ARE DRIVING UNDER
SUSPENSION FOR, (Tr P 97, LINE 6-7). BAX SAY, "ARE THERE TIMES WHEN
A D.V.S CHARGE IS BROUGHT OR A TICKET IS ISSUED WHERE THE PERSON WHO
IS ACCUSED OF THAT IS NOT TAKEN INTO ARREST AT THAT TIME?" (Tr P 67, LINE
12).

OFFICER MADONSKI TESTIFIED THAT ... "THAT HE WAS DRIVING UNDER SUSPENSION
FOR UNPAID TRAFFIC TICKET AND IT ENDED INDEFINITELY."

OFFICER ALSO TESTIFIED ... (Tr P 121, LINE 9/10) BECAUSE WE WERE ADVISED
BY DISPATCH THAT THE SUBJECT WAS DRIVING UNDER SUSPENSION FOR AN UNPAID TRAFFIC
TICKET. BATTLE TESTIFIED AT TRIAL HE DID PAY FINE BEFORE SUSPENSION
DATE 4/26/2006. (APP P 75-77) AND EVIDENCE OF THIS WAS PRESENTED

~~APPROXIMATELY 11:00 AM ON 4/26/2006, THE IOWA P.D. OFFICER~~
~~WAS ADVISED BY DISPATCH THAT THE SUBJECT WAS DRIVING UNDER SUSPENSION~~
~~FOR AN UNPAID TRAFFIC TICKET. BATTLE TESTIFIED AT TRIAL HE DID PAY FINE~~
~~BEFORE SUSPENSION DATE 4/26/2006. (APP P 75-77) AND EVIDENCE OF THIS~~
~~WAS PRESENTED.~~

TRIAL COUNSEL WAS INEFFECTIVE IN NOT CHALLENGING THE FACT I SHOULD NOT
HAVE BEEN CUSTODIAL ARRESTED FOR D.V.S FIRST, WHEN THE STATE FAILED TO PROVE
THAT I SHOULD NOT HAVE BEEN ARRESTED FOR D.V.S 1ST

TRIAL COUNSEL FAILED TO CHALLENGE THE STATE FAILURE TO PROVE THAT I SHOULD HAVE BEEN CUSTODIAL ARRESTED FOR D.V.S 1ST FOR FAILURE TO PAY FINE. BATTLE WAS PREJUDICED BY COUNSEL DEFICIENT PERFORMANCE. IF HE HAD HAD CHALLENGED THE STATE FAILURE TO PROVE THAT I SHOULD HAVE BEEN ARRESTED FOR D.V.S 1ST FOR FAILURE TO PAY A FINE AND SHOULD HAVE INSTEAD BEEN ARRESTED WITH A CITATION AND ALLOWED TO PROCEED ON MY WAY, THEN THE EVIDENCE WOULD HAVE BEEN SUPPRESSED. 6TH AMENDMENT GUARANTEE A DEFENDANT THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL. IF COUNSEL BAX HAD CHALLENGED THE STATE'S FAILURE TO PROVE THAT CUSTODIAL ARREST WAS FOR D.V.S 1ST / FAILURE TO PAY FINE WAS VALID, THERE IS A REASONABLE PROBABILITY THE RESULT OF THE PROCEEDINGS WOULD HAVE BEEN DIFFERENT.

P.C.R. COUNSEL DID NOT QUESTION BAX ON THIS ISSUE IN MY P.C.R. APPLICATION. I ASK HIM TO RAISE THIS ISSUE AND HE DID NOT. ~~ANALYSIS~~, COUNSEL OF A CASE CALLED ATWATER V LAGO VISTA. HE SAID THIS WAS NOT A VIABLE CLAIM. I DISAGREE! IN WEST V LUM 549 S.E.2D 605 THE STATE IN THAT CASE SAID: "THE RECENT U.S. SUPREME COURT DECISION OF ATWATER V LAGO VISTA, 121 S.Ct. 1536, 1552 (2001) - HOLDING IF AN OFFICER HAS PROBABLE CAUSE TO BELIEVE AN INDIVIDUAL HAS COMMITTED EVEN A VERY MINOR CRIMINAL OFFENSE IN HIS PRESENCE HE MAY, WITHOUT VIOLATING THE 4TH AMENDMENT ARREST THE OFFENDER) DOES NOT APPLY IN THIS CASE. IN ATWATER THE RELEVANT TEXAS LAW EXPRESSLY ALLOWED FOR THE CUSTODIAL ARREST OF PERSONS VIOLATING A TRAFFIC OFFENSE AND GAVE DISCRETION TO THE ARRESTING OFFICER TO ISSUE A CITATION IN LIEU OF ARREST."

~~THE OFFICER HAD NO REASON TO BELIEVE I WAS NOT GOING TO APPEAR IN COURT OR MY PROMISE. I DID NOT REFUSE TO LET HIM AND DISCONTINUE MY UNLAWFUL ACTS. SO IN MY OPINION OFFICER MAWSON SHOULD HAVE LET ME PROCEED INSTEAD OF ARRESTING ME CUSTODIALLY FOR D.V.S AND FAILURE TO PAY MY FINE. HE CONDUCTED A SEARCH INCIDENT TO CITATION WHICH IN THE ABSENCE OF THE 2ND AMENDMENT RATIONALE WAS UNREASONABLE UNDER THE 4TH AMENDMENT. ~~MAWSON~~ 8/3/02 AT VON. BUT IN ATWATER THE RELEVANT TEXAS LAW IN THAT CASE WAS ABOUT DRIVING WITHOUT A SEATBELT, NOT ABOUT D.V.S FOR FAILURE TO PAY~~

A FINE. ~~THE~~ THE CASE MY LAWYER SENT ME SAY ... ATWATER V LAGO VISTA (2001) WAS A U.S. SUPREME COURT DECISION WHICH HELD THAT A PERSON'S 4TH AMENDMENT RIGHTS ARE NOT VIOLATED WHEN THE SUBJECT IS ARRESTED FOR DRIVING WITHOUT A SEAT BELT. THE COURT RULED THAT SUCH AN ARREST FOR A MISDEMEANOR THAT IS PUNISHABLE ONLY BY A FINE DOES NOT CONSTITUTE AN UNREASONABLE SEIZURE UNDER THE 4TH AMENDMENT.

IN ATWATER TEXAS LAW PROVIDED FOR POLICE DISCRETION IN ARRESTING ANY PERSON CAUGHT COMMITTING A MISDEMEANOR, SUCH AS VIOLATING ITS MANDATORY SEAT BELT. VIOLATION OF ITS SEAT BELT LAW IS PUNISHABLE WITH THE MAXIMUM FINE OF \$50.

IN MY CASE SOUTH CAROLINA ~~GENERAL~~ GENERAL ASSEMBLY EXPRESSED ITS PREFERENCE FOR FORFEITURE OF A SUMMONS IN LIEU OF ARREST WARRANT FOR MOST MISDEMEANOR CASES BY ENACTING 56-25-30. 56-25-30 MANDATES THE ARRESTING OFFICER SHALL ISSUE A SUMMONS IN THE ABSENCE OF AN EXPRESS EXCEPTION TO FORFEITURE OF THE EXCEPTIONS IN 56-25-40.

IN MY CASE I COULD BE FINED LIKE ATWATER DID IN HER CASE. SHE WAS FINED FOR A SEAT BELT VIOLATION, PENALTY WAS \$50.00. IN MY CASE THE MISDEMEANOR OF D.U.S 1ST FOR FAILURE TO PAY FINE, I COULD NOT BE FINED FOR BECAUSE I HAD ~~NOT~~ PAID THE FINE "BEFORE" THE IMPENDING SUSPENSION DATE OF 9/26/2006. SO THE FACTS OF MY MISDEMEANOR CASE FOR D.U.S 1ST - FAILURE TO PAY A FINE IS DIFFERENT FROM ATWATER CASE FOR SEAT BELT VIOLATION. I ALLEGY ATWATER CASE DOES NOT APPLY TO MY CASE AND THIS ~~INAPPROPRIATE~~ MAJEWICKI CONDUCTED A SEARCH INCIDENT TO CITATION WHICH IN THE ABSENCE OF THE 2 HISTORICAL RATIONALES WAS UNREASONABLE UNDER THE 4TH AMENDMENT RULES 513 SE2d AT 906.

APPLICANT

PURSUANT TO SECTION 17-27-90 OF O.C. CODE IS REQUIRED TO INCLUDE EVERY GROUND FOR RELIEF WITHIN HIS OR HER INITIAL, OR SUPPLEMENTAL OR AMENDED APPLICATION.

THIS CLAIM WAS INCLUDED IN AMENDED ~~DATA~~ APPLICATION.

CLAIM 2 NOT PRESENTED

1 EVEN SHOWED THE PCR Image / ATTORNEY GENERAL THE ^{CAD} INCIDENT REPORT OF SHERRY WOODWARD DISPATCHER WHICH DOES NOT STATE THAT MY LICENSE WAS SUSPENDED. IN STATE V BALLAN 510 S.E.2d 226 THE COURT SAID: [THERE WAS ERROR IN ADMITTING HEARSAY TESTIMONY OF OFFICER, THAT HE RELATED DEFENDANT NAME AND DATE OF BIRTH TO DISPATCHER AND OBTAINED MATCH WITH SUSPENDED LICENSE, WAS HARMLESS IN PROSECUTION OF D.U.I. IN LIGHT OF TESTIMONY AND DOCUMENTS THAT ESTABLISH BOTH THAT DEFENDANT'S LICENSE HAS BEEN SUSPENDED, AND THAT HE KNEW OF SUSPENSION].

THESE ARE DIFFERENT TYPE OF ERRORS LIKE PLAIN ERROR / HARMLESS ERROR / REVERSIBLE ERROR / PREJUDICIAL ERROR... AND OTHER ERRORS.

IN STATE V BALLAN COURT RULED IT WAS HARMLESS ERROR TO ADMIT HEARSAY TESTIMONY. MY CASE IS DISTINGUISHABLE FROM STATE V BALLAN IN THAT:

- (A) TESTIMONY OF MADEWICK AT TRIAL THAT HIS COMPUTER CHECK OF BATTLE REVEALED A SUSPENDED LICENSE FAILS TO ESTABLISH FACT OF SUSPENSION. BURLEY V STATE 540 S.E.2d 392 (94 APP 2000). HIS UNKNOWN REPRESENTATION AS TO THE CONTENTS OF MY DRIVING RECORD DOES NOT QUALIFY AS EVIDENCE.
- (B) UNIFORM TRAFFIC TICKET ON WHICH MADEWICK WROTE THAT MY LICENSE WAS SUSPENDED CANNOT BE USED AS EVIDENCE OF MY GUILT.
- (C) IMPENDING NOTICE OF SUSPENSION ISSUED BY DMV ON 4/6/2006, THAT WAS OFFERED AT TRIAL BY STATE TO SHOW LICENSE WAS SUSPENDED ON 4/26/2006. DOES NOT QUALIFY AS EVIDENCE TO MY GUILT OF D.U.I. BECAUSE NOTICE WAS NOT ADMITTED INTO EVIDENCE.
- (D) CAD INCIDENT REPORT OF DISPATCHER SHERRY WOODWARD DOES NOT SAY LICENSE WAS SUSPENDED.
- (E) SHERRY WOODWARD DISPATCHER GOT ON STAND TO TESTIFY AND SHE DID NOT SAY LICENSE WAS SUSPENDED, OR THAT SHE TOLD MADEWICK LICENSE WAS SUSPENDED.
- (F) STATE DID NOT PRESENT ANY EVIDENCE THAT D.M.V. ON 4/26/2006 SENT ME A NOTICE OF SUSPENSION OR FINAL NOTICE OF SUSPENSION THAT LICENSE HAS BEEN SUSPENDED.
- (G) BATTLE DENIED BEING AWARE OF SUSPENSION ON 4/26/2006 WHEN HE WAS ARRESTED ON 10/13/2006.

The STATE may say that this error was harmless, ^{but} I say it was prejudicial error to introduce this hearsay testimony of majewski.

In STATE v Barrett 386 S.E.2d 242 (SC 1989) - The Honorable Justice McTear said "A defendant seeking reversal of his conviction based upon the trial court's error in admitting evidence has the burden in admitting the evidence and that the erroneously admitted testimony was prejudicial. STATE v McELWAIN 313 S.E.2d 248 (1984). Specifically the improper introduction of hearsay constitutes reversible error only if its admission is prejudicial to the defendant." (EXHIBIT - 4)

In my trial majewski offered hearsay testimony by saying "He wanted me the information. I ran it through dispatch, and it came back that he was 'suspended'" (Tr P 36, line 14 to 15). / Later he said to counsel Dax, Dax ask "What information did you receive ^{from} your dispatch officer?" (Tr p 63, line 12/13). / "That he was driving under suspension for unpaid traffic ticket and it ended indefinitely" (Tr p 63 line 14).

^{AFTER} ~~During~~ Mr Dax suppression motion the trial judge believed majewski hearsay testimony by saying "Thereafter the officer does a computer check, finds that he is, according to the records given back to the officer he is driving under suspension", (Tr p 107 line 24/25, and Tr p 108 line 1/2). Later Sherry Woodward got on stand to testify (Tr p 130 line 12 / to Tr p 136, line 16). She did not once verify majewski testimony by saying she told him my license was suspended.

Late in ~~her~~ REDIRECT EXAMINATION - MOJIE ASKED majewski "OFFICER, WHEN YOU GOT THAT LICENSE AND YOU RAN IT, TELL ME WHY THE DEFENDANT WAS ARRESTED"? (Tr p 171 line 9/10). majewski said "BECAUSE WE WERE ADVISED BY DISPATCH THAT THE SUBJECT WAS DRIVING UNDER SUSPENSION FOR AN UNPAID TRAFFIC TICKET."

This introduction of Hearsay was prejudicial to me, because

I believe Dispatcher Sherry Woodward did not tell Majewski my license was suspended ~~just~~ on 10/13/2006, just like Dispatcher in Newberry on October 4th 2006 told Trooper Gentry that my license was not suspended.

I believe Majewski lied about Dispatcher Sherry Woodward telling him license was suspended just like he lied when he came to my car and told me Dispatcher told him there was a description of my car, when there wasn't.

He lied about vehicle description so why wouldn't he lie about what Dispatcher say?

AT TRIAL COUNSEL BAX HAVE A DUTY TO OBJECT TO HEARSAY TESTIMONY THAT IS INADMISSIBLE AND PREJUDICIAL TO ME. TRIAL COUNSEL WAS INEFFECTIVE IN NOT OBJECTING TO HEARSAY TESTIMONY OF MAJEWSKI. THE STATE FAILED TO PROVE THAT THE DISPATCHER TOLD HIM MY LICENSE WAS SUSPENDED.

BATTLE WAS PREJUDICED BY COUNSEL'S DEFICIENT PERFORMANCE. IF TRIAL COUNSEL HAD ~~MAJEWSKI~~ OBJECTED TO HEARSAY TESTIMONY OF MAJEWSKI AND WOULD HAVE ASKED DISPATCHER IF SHE TOLD MAJEWSKI MY LICENSE WAS SUSPENDED AND IF SHE ~~SHE~~ WOULD HAVE SAID "NO" SHE DID NOT TELL MAJEWSKI MY LICENSE WAS SUSPENDED. THEN THE JUDGE WOULD HAVE SUPPRESSED EVIDENCE IN MY CAR AND D.U.I. CHARGE AND FAILURE TO PAY FINE CHARGE.

THE 6TH AMENDMENT TO U.S. CONSTITUTION GUARANTEES A RIGHT TO EFFECTIVE ASSISTANCE A COUNSEL UNDER 6 AMENDMENT. IF TRIAL COUNSEL OBJECTED TO THE HEARSAY AND QUESTION DISPATCHER ON WHAT SHE TOLD MAJEWSKI AND IF SHE WOULD HAVE SAID NO SHE AINT SAY MY LICENSE WAS SUSPENDED ON 10/13/2006 THEN THERE IS A REASONABLE PROBABILITY THAT THE RESULT OF THE PROCEEDINGS WOULD HAVE BEEN DIFFERENT.

PCR COUNSEL - RULES OF PROFESSIONAL CONDUCT IS FOUND IN S.C. APPellate COURT RULE 401. RULE 11 REQUIRES A LAWYER TO PROVIDE COMPETENT SERVICE

TO A CLIENT. COMPETENT REPRESENTATION IS DEFINED AS THE LEGAL KNOWLEDGE, SKILL, THE THOROUGHNESS AND PREPARATION REASONABLY NECESSARY FOR THE PRESENTATION. RULE 1.2 REQUIRES A LAWYER TO ABIDE BY HIS CLIENT'S DECISIONS. THE LAWYER IS REQUIRED TO ACT WITH REASONABLE DILIGENCE AND PROMPTNESS IN REPRESENTING A CLIENT.

P.R. COUNSEL MR DUNCAN VISITED ME 1 TIME AT WEBER PRISON WE REVIEWED ORIGINAL APPLICATION. HE TOLD ME MOST ISSUES I RAISED SHOULD HAVE BEEN RAISED IN DIRECT APPEAL. ~~HE SAID ONLY INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS CAN BE RAISED AT P.R.~~ HE SAID ONLY INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS CAN BE RAISED AT P.R. SO IN MY ORIGINAL APPLICATION I TOLD HIM I WANTED TO KEEP CLAIM E AND K. I THEN FILED 5 MORE INEFFECTIVE ASSISTANCE CLAIMS AT N/U/P/O/R IN AMENDED APPLICATION. AT HEARING I TOLD HIM I WANTED ISSUES E/K/N/O/P/O ADDRESSED. HE TOLD ME HE WAS NOT GONNA RAISE EACH ISSUE.

AT P.R. HEARING IT IS NOT UP TO ME TO REPRESENT MYSELF AT HEARING ITS MR DUNCAN DUTY TO REPRESENT ME! THE BURDEN OF PROOF IS ON THE APPLICANT TO PROVE THE ALLEGATIONS, RULE 71.1(E) BUTLER V STATE 35A SE 28 013 (1905) BUT HOW CAN I PROVE MY ALLEGATIONS IN APPLICATION IF MR. DUNCAN IS NOT RAISING THE CLAIMS I PUT IN APPLICATION? MR DUNCAN KNEW THAT IF HE DID NOT RAISE THESE CLAIMS AT P.R. HEARING THEN THEY WOULD BE ABANDONED. I DID NOT KNOW ANYTHING OF P.R. PROCEDURE OR P.R. RULES OR IF ~~ABANDONED~~ I DIDN'T TELLIFY TO THESE CLAIMS THEN THEY WOULD BE ABANDONED. COUNSEL DID NOT TELL ME HE WAS GONNA WAVE OR ABANDON SOME OF MY CLAIMS, HE NEVER CONSULTED WITH ME OR HAD MY CONSENT.

THE PETITIONER ARGUES THAT SOUTH CAROLINA IS A STATE THAT REQUIRED BY LAW THAT FUNDAMENTAL CHALLENGE CONSTITUTIONAL CHALLENGES TO A CONVICTION FRAMED WITHIN THE 6TH AND 14TH AMENDMENTS RIGHTS TO INEFFECTIVE ASSISTANCE OF COUNSEL, CAN ONLY BE RAISED FOR THE 1ST TIME THROUGH P.R. SEE KORNHARENO V EVATT F.36 1350 1361-62 (7TH CIR 1945), AND SIMMONS V STATE 215 SE 25 003, 005 (1920).

THEREFORE UNDER SOUTH CAROLINA LAW THE PETITIONER P.R. WAS HIS 1ST APPEAL OF RIGHT

UPON FUNDAMENTAL CONSTITUTIONAL CHALLENGES TO HIS CONVICTION AND THUS IS ENTITLED TO ~~APPROPRIATELY~~ PROTECTED TO EFFECTIVE ASSISTANCE OF COUNSEL THROUGH THE 1ST APPEAL OF RIGHT UPON FUNDAMENTAL 6TH AND 14TH AMENDMENT TRIAL DEPRIVATION. SEE DOUGLAS V CALIFORNIA 357 SET 614/616-17. MOREOVER IT HAS BEEN LONG SETTLED THAT EVEN IF A RIGHT TO COUNSEL IS NOT REQUIRED BY US CONSTITUTION WHEN A STATE AFFORDS THIS RIGHT IT MUST ENSURE THAT IT IS NOT WITHDRAWN IN A MANNER INCONSISTENT WITH EQUAL PROTECTION AND DUE PROCESS. EVITT V LUCKY 105 SET 830, 838 (1985); ROSS V MOFFITT 44 SET 2437 (1979)

JOHNSON V AVERY 89 SET 741/752 (1964). IN SOUTH CAROLINA, THE STATE PROVIDES A RIGHT TO APPOINTED COUNSEL AT PCR THROUGH STATUTE AND PROCEDURAL RULES SC 17-21 / RULE 71 S.C.R.P.). YET ONCE COUNSEL IS APPOINTED, STATE RULE OF PROCEDURE AND CASE LAW PREVENTS APPOINTED COUNSEL TO WAIVE AND ABANDON ANY OF ALL ISSUES OF MERIT WITHOUT CONSULTING OR WITHOUT SEEKING THE CONSENT OF THEIR CLIENT. THIS IS ACCOMPLISHED BY THE PROCEDURAL PREVENTION OF THE APPLICANT FROM TRYING PRO-SE TO INTERVENE AND FEND OFF APPOINTED COUNSEL'S ACT OF FAILURE TO ACT THAT RESULTS IN THE INVOLUNTARY AND UNKNOWNLY WAIVER AND ABANDONMENT OF MERITORIOUS CONSTITUTIONAL GROUNDS FOR VACATING AND REVERSING CONVICTIONS. WITHIN THESE PREVAILING CIRCUMSTANCES UNDER SOUTH CAROLINA LAW IN EVIDENCE, THE PETITIONER'S STATE RIGHT TO COUNSEL WAS WITHDRAWN IN A MANNER INCONSISTENT WITH EQUAL PROTECTION AND DUE PROCESS.

MOFFITT, AT 2443, EXPLAINS THAT DUE PROCESS EMPHASIZES FAIRNESS BETWEEN THE STATE AND THE INDIVIDUAL DEALING WITH THE STATE AND SO FUNDAMENTAL FAIRNESS ENTITLES INDIGENT DEFENDANTS TO AN ADEQUATE OPPORTUNITY TO PRESENT THEIR CLAIMS WITHIN THE ADVERSARY SYSTEM. SEE AKE V OKLAHOMA 107 SET 1087, 1093

PETITIONER IS ENTITLED TO EFFECTIVE ASSISTANCE OF COUNSEL WITHIN DUE PROCESS AND EQUAL PROTECTION CHARTERED AT PCR AND ON APPEAL THEREFROM; THE RIGHT TO COUNSEL IS GUARANTEED TO COUNSEL AT TRIAL UNDER 6TH AMEND / AND EXTEND TO FIRST APPEAL OF RIGHT.

WHEN A RIGHT TO COUNSEL ATTACHES, COUNSEL MUST BE COMPETENT AND THEREBY MUST PROVIDE EFFECTIVE ASSISTANCE. STRICKLAND V WASHINGTON
APPLICANT UPON ORDER OF DISMISSAL ASKED PCR COUNSEL IN LETTER TO FILE A RULE 59(e) MOTION ASKING PCR COURT TO RULE ON UPON ISSUES NOT RAISED AT

AT P.C.R HEARING.

I feel I SHOULD BE ENTITLED TO HAVE P.C.R JUDGE HEAR claims NOT RAISED AT P.C.R HEARING THAT JUDGE NOT rule upon, for claim O/A and possibly claim E/K.

OR I feel I SHOULD BE ENTITLED TO A NEW TRIAL.

CONCLUSION

BASED ON THE ABOVE ARGUMENTS, THE PETITION for WRIT of certiorari SHOULD BE GRANTED TO allow FURTHER BRIEFING IN THE ISSUE

Respectfully submitted

Korall Butts / Korall Butts
PRO-SE APPLICANT

EXHIBITS

- 1 CITING STATE LAWS 56-1-350 / 56-1-360 / 56-1-465
- 2 ANSWER TO INTERROGATORIES (1) FAILURE TO PAY FINE EXCEPTION
- 3 JAN 7 2009 ANSWER ON BEHALF OF DEFENDANTS (18) / (25)
- 4 CASE CITINGS OF STATE V JAR / BACCH / STATE / STATE V MOVS
- 5 CASE CITINGS OF TERRY STOP CASES
- 6 CAD INCIDENT REPORT OF ARMED ROBBERY / TRAFFIC STOP
- 7 CITY OF FOREST ACRES COMPLIANCE NOTICE DATED 9/1/2006
- 8 NOTICE OF SUSPENSION THAT DMV CLAIM THEY RECEIVED ON 4/5/2006 FROM CITY OF FOREST ACRES.
- 9 GREEN ARROWS FROM S-D DRIVER MANUAL
- 10 LETTER FROM JOHN DUNNAN PCR ATTORNEY DATED FEB / 6 / 2012
- 11 IMPENDING SUSPENSION 9/6/2006
- 12 ALENANCE LETTER
- 13 56-1-463
- 14 CITY OF FOREST ACRES LETTER CONFIRMING THAT NO NOTICE OF SUSPENSION WAS SENT FROM THEM TO DMV TO SUSPEND MY LICENSE.
- 15 DEFENDANTS ADMIT THAT NO FINAL NOTICE OF SUSPENSION WAS SENT.

SOUTH CAROLINA Code of LAWS CITED From TITLE 56.

[56-1-350 NOTICE of Cancellation, suspension or Revocation of license; ^{surrender} of license]

In ALL CASES of Cancellation, Suspension, or Revocation of drivers license, The department "shall notify" the licensee as prescribed in 56-1-360 THAT HIS license "HAS BEEN CANCELLED, SUSPENDED or Revoked", and such licensee shall WITHIN 10 days AFTER NOTICE of cancellation, suspension, or revocation RETURN his license to the department. Any person willfully failing to return his license as required by section may on conviction thereof be fined \$100.00 or be imprisoned for 30 days.

[56-1-360 Form And Proof of Notice.]

When notice is required concerning a persons drivers license the notice must be given by the department by depositing the notice in the UNITED STATES mail with postage prepaid addressed to the person at the address contained in the drivers license records of the department. The giving of notice by mail is complete 10 days after the deposit of the notice. A certificate by the director of the motor vehicle division that the notice has been sent as required in this section is presumptive proof that the requirements as to the notice of suspension have been met even if the notice has not been received by addressee.

[56-1-465 - Notice of SUSPENSION REQUIRED.]

The licensee shall be notified of suspension under 56-1-460 the same as is required when the license is suspended due to loss of points as provided in 56-1-910.

2#

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

Korell Battle,

C/A #: 08-CP-32-4339

Plaintiff,

ANSWERS TO INTERROGATORIES

v.

City of Irmo and Brian Majowski,

Defendants.

The Defendant, Town of Irmo, answers Plaintiff's interrogatories as follows:

1. State the procedure in effect during 10/13/2006 at Irmo Police Department in city of Irmo for penalty of driving under suspension in violation of S.C. statue 56-1-460/ and failure to surrender suspended D.L. (56-1-350).

Answer: Typically, persons driving under suspension and failing to surrender their driver's licenses are arrested. There are exceptions including the statutory exception when the suspension is for failure to pay a fine.

2. State the procedure and policy in effect during 10/13/2006 at Irmo Police Department in city of Irmo for operation of video dash cam recorder. For example, how does it start operating...like is it automatically operating by itself when police officer is driving? Or does it begin operating automatically by itself when officer switch on blue lights and siren?

Answer: Different vehicles are equipped differently. Malfunctions occur in older equipment as well. Upon information and belief, Officer Majowski was using a vehicle with older equipment and it malfunctioned. In some vehicles the camera comes on when the lights are engaged. In others, the camera comes on manually.

3. State the procedure in effect during October 13, 2006 at Irmo Police Department in City of Irmo for observing and charging only motorist who commits a crime in officers presence of making a left turn in a "intersection" without left turn signal on?

Answer: There is no specific policy on that particular issue. That is up to the officer's discretion. In some instances, when there is a more serious offense discovered, such as here, the underlying charge will not be asserted because it would add nothing to the more serious charge.

3#
DAVIDSON & LINDEMANN, P.A.

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Of Counsel
Kenneth P. Woodington

January 7, 2009

* Also admitted in North Carolina
† Certified Mediator

The Honorable Jeanette W. McBride
Richland County Clerk of Court
Post Office Box 2766
1701 Main Street, Room 205
Columbia, SC 29202

RE: Korell Battle v. South Carolina Department of Motor Vehicles
Civil Action Number: 08-CP-32-4159
Claim Number: 50759
Date of Incident: August 6, 2006
Our File Number: 103.8004

Dear Ms. McBride:

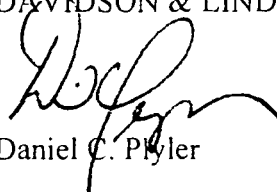
Please find enclosed the original and one copy each of the **Answer on Behalf of The Defendant** and a **Certificate of Service** regarding the above-referenced matter. Please file the originals, returning the clocked-in copies to me in the enclosed return envelope.

By copy of this letter, I hereby serve copies of the above documents upon the *pro se* Plaintiff.

Thank you for your assistance in this matter. Please contact me if you have any questions or concerns.

Very truly yours,

DAVIDSON & LINDEMANN, P.A.



Daniel C. Plyler

Enclosures

cc: Korrell Battle, #292294, Plaintiff *Pro Se*

3#
legal conclusion that can neither be admitted nor denied by the Defendant, and the Defendant *False* craves reference thereto. Further answering, to the extent said allegations attempt to establish liability on the part of the Defendant, those allegations are denied.

16. As to the allegations set forth in Paragraph 14 of the section of the Plaintiff's *Need warning Ticket* Complaint entitled "FACTS," the Defendant lacks sufficient information upon which to form a belief as to the veracity of those allegations, and therefore those allegations are denied as stated.

~~17.~~ The Defendant asserts that there was no Paragraph 15 in the section of the Plaintiff's Complaint entitled "FACTS."

18. As to the allegations set forth in Paragraphs 16, 17, ~~18~~, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, and 31 of the section of the Plaintiff's Complaint entitled "FACTS," the Defendant lacks sufficient information upon which to form a belief as to the veracity of those allegations, and therefore denies same as stated. Further answering, upon information and belief, the Defendant believes that the Plaintiff was arrested on, or about, October 13, 2006, and that the Plaintiff was charged with several felonies as a result of that arrest. Further answering, upon information and belief, the Defendant believes that the Plaintiff has been convicted of all, or some, of the felonies stemming from the October 13, 2006 arrest, and that the Plaintiff is currently incarcerated within the custody of the South Carolina Department of Corrections as a result of those convictions. Further answering, the Defendant asserts that the South Carolina Department of Motor Vehicles did receive notification on August 20, 2006 that the Plaintiff paid the fine associated with ticket 12804DK, and that said payment was made September 1, 2006.

19. As to the allegations set forth in Paragraph 32 of the section of the Plaintiff's *Im right there sorry* Complaint entitled "FACTS," the Defendant lacks sufficient information upon which to form a belief as to the veracity of those allegations, and therefore denies same as stated.

20. As to the allegations set forth in Paragraphs 33 and 34 of the section of the Plaintiff's Complaint entitled "FACTS," the Defendant asserts that said allegations attempt to establish a legal conclusion that can neither be admitted nor denied by the Defendant, and the Defendant craves reference thereto. Further answering, to the extent said allegations attempt to establish liability on the part of the Defendant, those allegations are denied.

3#
In right
This wrong

21. As to the allegations set forth in Paragraph 35 of the section of the Plaintiff's Complaint entitled "FACTS," the Defendant asserts that, upon information and belief, the Plaintiff was arrested on October 13, 2006 for Driving Under Suspension and Failure to Surrender a Suspended Driver's License.

True

22. As to the allegations set forth in Paragraphs 36, 37, and 38 of the section of the Plaintiff's Complaint entitled "FACTS," the Defendant lacks sufficient information upon which to form a belief as to the veracity of those allegations, and therefore denies same as stated.

In right
More wrong

23. As to the allegations set forth in Paragraph 39 of the section of the Plaintiff's Complaint entitled "FACTS," the Defendant denies same as stated.

In right
This wrong

24. As to the allegations set forth in Paragraph 40 of the section of the Plaintiff's Complaint entitled "FACTS," the Defendant lacks sufficient information upon which to form a belief as to the veracity of those allegations, and therefore denies same as stated.

In right
This wrong

25. As to the allegations set forth in Paragraph 41 of the section of the Plaintiff's Complaint entitled "FACTS," the Defendant asserts that the South Carolina Department of Motor Vehicles did receive notification on August 20, 2006 that the Plaintiff paid the fine associated with ticket 12804DK, and that said payment was made September 1, 2006, and that the Defendant did notify the Plaintiff of these facts.

True

STATE V MOVD 406 SE 2D 7 (S.C. APP 1986)

ELEMENTS of D.V.S

SC 56-1-460 PROHIBITS A PERSON FROM DRIVING A MOTOR VEHICLE ON ANY PUBLIC HIGHWAY OF THIS STATE WHEN HIS LICENSE TO DRIVE IS CANCELED, SUSPENDED, OR REVOKED. . . . ELEMENTS ARE,

- ① Driving
- ② A motor vehicle
- ③ on any public highway
- ④ when driver license to drive is canceled, suspended, or revoked

STATE V ORR 292 SE 346 J

B

APPEAL WAS TAKEN BY THE STATE FROM A JUDGEMENT OF THE SUPERIOR COURT ASAMS J, FINDING A PORTION OF THE DRIVER LICENSING ACT TO BE CONSTITUTIONALLY DEFICIENT. THE SUPREME COURT UNDER COLLIER C.J, HELD THAT ABSENT PROOF BY STATE OF ACTUAL OR LEGAL NOTICE TO DEFENDANT A CONVICTION FOR OFFENSE OF DRIVING WHILE ONE'S LICENSE IS SUSPENDED CANNOT BE SUSTAINED AND STATE CANNOT RELY ON A PRESUMPTION OF A SILENT RECORD RECORDED THAT SOME INDIVIDUAL WITHIN DEPT OF PUBLIC SAFETY DID NOT, ON A CERTAIN DATE, MAIL A LETTER BY ORDINARY MAIL TO DEFENDANT AND DEFENDANT DID IN FACT RECEIVE THE LETTER.

Affirmed.

STATE APPEALS A FINDING BY TRIAL COURT THAT CODE 68-214 OF THE O.C.G.A. 1995 P 1021, IS CONSTITUTIONALLY DEFICIENT TO SUPPORT A CONVICTION OF DRIVING WHILE LICENSE IS SUSPENDED. THE CONTENTED PORTION OF THE CODE SECTION PROVIDED, "THAT WHERE ANY PROVISION OF THIS TITLE REQUIRED THE DEPARTMENT OF PUBLIC SAFETY BY CERTIFIED OR ORDINARY MAIL TO GIVE WRITTEN NOTICE TO A PERSON EFFECTING SUCH PERSON'S DRIVER'S LICENSE, THE MAILING OF SUCH NOTICE TO THE NAME AND ADDRESS SHOWN BY DEPARTMENT RECORDS AT THE TIME OF MAILING SHALL BE PRESUMPTIVE EVIDENCE THAT SUCH PERSON RECEIVED NOTICE."

WE AGREE WITH THE TRIAL COURT THAT THE STATE HAS THE BURDEN OF PROVING EACH AND EVERY ELEMENT OF ANY OFFENSE; THAT ONE OF THE ELEMENTS OF DRIVING WHILE ONE'S LICENSE IS A MANDATORY STATE OF SUSPENSION IS NOTICE TO DEFENDANT OF ACTION IN SUSPENDING THE LICENSE; AND ABSENT PROOF BY THE STATE OF ACTUAL OR LEGAL NOTICE TO THE DEFENDANT A CONVICTION FOR THE OFFENSE OF DRIVING WHILE ONE'S LICENSE IS SUSPENDED CANNOT BE SUSTAINED. WE NOTE FURTHER THAT 68-313(D) PROVIDES THAT ALL RESTRICTIONS AND SUSPENSIONS PROVIDED FOR IN THIS TITLE SHALL BE EFFECTIVE ON THE DAY THE DRIVER RECEIVED ACTUAL KNOWLEDGE OR LEGAL NOTICE THEREOF, WHICHEVER OCCURS FIRST.

Barrett v State 326 S.E.2d 816 (Ga App 1985).

4#
c

Appellant appeals on the general grounds, contending that the state did not prove that he received notice his license was suspended and, therefore, his conviction cannot stand. Appellant relies on State v Orr 292 SE 2d 346 (Ga App), which held that absent proof by the state of actual or legal notice to the defendant a conviction for driving while ones license is suspended cannot be sustained.

Appellant contends that 50-13-10 (c) makes notice of suspension an essential element of the offense of driving while ones license is suspended, which was not proven by the state.

However, 50-13-10 (c) related to notice "prior" to suspension proceedings, not notice that ones license "has been suspended", thus it has no application here.

Never the less, we agree that "actual" or "legal notice" to the defendant that his license "has been suspended" is an essential element of driving after ones license has been suspended. [Orr] supra,

Terry STOP CASES ↓

- * MC Pherson v KELSEY 125 F.3d 989 - Terry stop is act of police officer stopping person whose behavior is reasonably considered suspicious and frisking that person for weapons.
- * Terry v Ohio BB set 1868 - UNDER Terry, a person may be stopped for brief questioning AND a pat down search without a warrant if 2 conditions are met.
 - 1st - The officer must be able to point to a reasonable suspicion of criminal activity
 - 2nd - The rational of the pat down is self defense or defense to others and to justify a warrantless pat down search without P.C. the officer must also be able to point to specific and articulable facts indicating that the individual may be armed and present a risk of harm to the officers or others.
- * U.S. v MEE 261 F.3d 79 - The purpose of a Terry search is not to discover evidence of a crime, but allow the officer to pursue his investigation without fear of violence.
- * Terry v Ohio BB set 1868 -
 - ① Terry allows only for an exception for concealed objects and prohibits searching for anything other than weapons.
 - ② For an investigative stop to be valid there must be reasonable articulable suspicion.
 - ③ To support stop in airport, police must identify specific facts which distinguish suspect from numerous innocent travelers who erratically dash through airports.
 - ④ THE TEST for a Terry stop is whether there is reasonable suspicion that the person detained was engaged in criminal activity, and a Terry stop cannot be justified merely by hunch or intuition.

* US V 184,025 IN CURRENCY 8 F SUPP 2d 1300 - A Traffic stop is a seizure within the meaning of 4th Amendment to the U.S.C. A Traffic stop is however, an investigative detention, not a custodial arrest. US V Woul 106 F3d 942/945. Traffic stops are, therefore, subject to the 2-pronged analysis established by the U.S. Supreme Court in Terry v Ohio 88 S Ct 1868 (1968)

(1st) The Traffic stop must have been justified from its inception. That is the vehicle must have been stopped for a legitimate law enforcement reason

(2nd) The law enforcement officers actions during the detention must be reasonably related in scope to the circumstances justifying the traffic stop

* STATE V Pulliam 533 S.E.2d 200 - In determining the reasonableness of a pat down search, the standard of Terry v Ohio is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger.

CAD INCIDENT REPORT

6#

DATE 2006-10-13 21:10:03.	TIME 21:10:03.	EVENT ID 061013-202223P	PHONE (803)732-1433	ESN 5	Police IRPD	Fire 17B	EMS 1
OWNER K F C	ADDRESS 7467 SAINT ANDREWS RD		CITY		GRID D7W1	CODE	

CALLER : SASHA MORGA
 LOCATION : 7467 SAINT ANDREWS RD
 BUSINESS : KENTUCKY FRIED CHICKEN
 CROSS 1 : LAKE MURRAY BLVD
 CROSS 2 : LAKE MURRAY BLVD
 NATURE : ARMED ARMED ROBBERY/HOLD-U
 LAT/LON : NOT AVAILABLE

***** REMARKS *****

21:09:34 KO OFFICER(S) ASSIGNED TO UNIT 812 : MAJEWSKI, BRIAN
 21:09:34 KO OFFICER(S) ASSIGNED TO UNIT 822 : DENNIS, COURTNEY
 21:09:34 KO OFFICER(S) ASSIGNED TO UNIT 810 : CROSLAND, JIM
 21:10:03 KO UNITS CODE 2
 21:10:15 SW EVENTCALLER CHANGED FROM K F C BY SW
 21:10:25 KO 822 IN AREA
 21:10:40 SW WAITING ON SOMEONE WHO SAW THE ROBBERS
 21:10:47 SW NO ONE ON THE LINE
 21:10:56 SW HALLOWEEN SCREAM MASK
 21:11:00 SW 38 REVOLVER
 21:11:05 SW BLACK MALE
 21:11:11 SW BLACK HOODIE ON AS WELL
 21:11:19 SW NO VEHICLE DESCRIPTION
 21:11:34 GMC BOLO CHAN I
 21:11:37 SW SIDE DOOR UP SAINT ANDREWS THROUGH THE WOODS BEHIND THEM
 21:11:50 SW NO ONE ELSE WAS WITH HIM
 21:12:03 SW EVENTCALLER CHANGED FROM ANITA BY SW
 21:12:04 SW EVENTCALLER CHANGED FROM ANITA BY SW
 21:12:05 SW EVENTCALLER CHANGED FROM ANITA BY SW
 21:12:06 SW EVENTCALLER CHANGED FROM ANITA BY SW
 21:12:17 SW EVERYONE IS FINE
 21:12:26 GMC OFFICER(S) ASSIGNED TO UNIT L233 : LAROSA, STEVE
 21:12:26 GMC OFFICER(S) ASSIGNED TO UNIT L203 : DAVIS, GLENN
 21:12:57 GMC 203 IN THE CHIPWOOD CT AREA IN THE APTS BEHIND KFC
 21:14:47 SW UNIT 810 REASSIGNED TO : 061013-202224P - (1048) - 1127 LAKE MURRAY BLVD
 21:15:48 KO B/M IN ALL BLACK, STOCKY BUILD, AROUND 6FT
 21:32:35 KO 822 UNDER CONTROL
 22:31:11 SW CALL (061013-202223P) CLOSED BY SW

***** UNITS *****

UNIT	DISP	ENRT	ONSC	ENRH	ONSH	CLRD	RUN NUMBER
810	21:09:34	21:09:34	21:14:36	00:00:00	00:00:00	21:14:47	1006-011852
			7467 SAINT ANDREWS RD	()			
P 812	21:09:33	21:09:33	21:11:50	00:00:00	00:00:00	21:13:15	1006-011852
			7467 SAINT ANDREWS RD	()			
822	21:09:34	21:09:34	21:11:00	00:00:00	00:00:00	22:31:11	1006-011852
			7467 SAINT ANDREWS RD	()			
L203	21:12:26	21:12:26	00:00:00	00:00:00	00:00:00	21:30:26	06-087142
			7467 SAINT ANDREWS RD	()			
L233	21:12:26	21:12:26	00:00:00	00:00:00	00:00:00	21:14:49	06-087142
			7467 SAINT ANDREWS RD	()			

SHIPPED 2006-10-13 21:10:11	ADVISED 2006-10-13 21:09:33	DISPATCHED 2006-10-13 21:09:33	ON SCENE 2006-10-13 21:11:00	CLEARED 2006-10-13 22:31:11
DISPOSITION REPORT REPORT WRITTEN				CT SW DP MP

11(L)/Pg 3-01/3-PP

CAD INCIDENT REPORT

DISPATCHER DOES NOT SAY IF
LICENSE SUSPENDED

6#

DATE 2006-10-13 21:13:12.	TIME	EVENT ID 061013-202224P	PHONE 732-2927	ESN 66	Police IRPD	Fire 17B	EMS -1																																																																																								
OWNER	ADDRESS		CITY		GRID D7X1	CODE																																																																																									
CALLER : NONE LOCATION : 1174 LAKE MURRAY BLVD BUSINESS : GAZ-BAH MINI SHOP CROSS 1 : CHURCH ST CROSS 2 : CHILDS ST NATURE : 1048 TRAFFIC STOP LAT/LON : NOT AVAILABLE ***** REMARKS ***** 21:13:15 SW OFFICER(S) ASSIGNED TO UNIT 812 : MAJEWSKI, BRIAN 21:13:25 SW LMB AT HOME FURN 21:13:30 SW 516TYG 21:13:43 SW PULLING INTO THE EXXON 21:14:47 SW OFFICER(S) ASSIGNED TO UNIT 810 : CROSLAND, JIM 21:15:06 GMC OFFICER(S) ASSIGNED TO UNIT L233 : LAROSA, STEVE 21:15:39 SW POSS SUSPECT FROM ARMED ROBBERY SEE CASE NUMBER 11852 21:15:48 SW 011415751 21:21:35 KO FOUND A 38 CAL GUN 21:27:13 KO ONE IN CUSTODY 21:27:20 KO FOUND MONEY BAG 21:28:52 SW OFFICER(S) ASSIGNED TO UNIT 802 : FRANKLIN, SCOTT 21:30:50 KO EVENTLOCATION CHANGED FROM 1127 LAKE MURRAY BLVD BY KO 21:49:01 SW SL93391 TAURAS 38 SPEC 21:49:05 SW NEXT WRECKER 21:51:51 SW SUMMIT ENRT ETA 20 MIN 22:14:55 SW ENRT LCDC WITH ONE BM 22:33:35 SW OUT AT LCDC 22:56:52 SW CALL (061013-202224P) CLOSED BY SW ***** UNITS ***** <table border="1"> <thead> <tr> <th>UNIT</th> <th>DISP</th> <th>ENRT</th> <th>ONSC</th> <th>ENRH</th> <th>ONSH</th> <th>CLRD</th> <th>RUN NUMBER</th> </tr> </thead> <tbody> <tr> <td>802</td> <td>21:28:52</td> <td>21:28:52</td> <td>21:29:45</td> <td>00:00:00</td> <td>00:00:00</td> <td>22:56:52</td> <td>1006-011853</td> </tr> <tr> <td></td> <td colspan="7">1174 LAKE MURRAY BLVD ()</td> </tr> <tr> <td>810</td> <td>21:14:47</td> <td>21:14:47</td> <td>21:14:47</td> <td>00:00:00</td> <td>00:00:00</td> <td>22:56:52</td> <td>1006-011853</td> </tr> <tr> <td></td> <td colspan="7">1174 LAKE MURRAY BLVD ()</td> </tr> <tr> <td>P 812</td> <td>21:13:15</td> <td>21:13:15</td> <td>21:13:15</td> <td>00:00:00</td> <td>00:00:00</td> <td>22:56:52</td> <td>1006-011853</td> </tr> <tr> <td></td> <td colspan="7">1174 LAKE MURRAY BLVD ()</td> </tr> <tr> <td>L233</td> <td>21:15:06</td> <td>21:15:06</td> <td>21:15:06</td> <td>00:00:00</td> <td>00:00:00</td> <td>21:31:44</td> <td>06-087143</td> </tr> <tr> <td></td> <td colspan="7">1127 LAKE MURRAY BLVD ()</td> </tr> </tbody> </table> ***** VEHICLE ***** ST PLATE SC 16TYG YEAR 2006 COLOR MAKE MODEL VIN 04-24-2007 0094 ***** PEOPLE ***** <table border="1"> <thead> <tr> <th>#</th> <th>NAME</th> <th>RACE</th> <th>S</th> <th>DOB</th> <th>ST</th> <th>OLN</th> <th>SSN</th> </tr> </thead> <tbody> <tr> <td>0</td> <td>BATTLE, KORELL R</td> <td>B</td> <td>M</td> <td>1975-02-24</td> <td>SC</td> <td>11415751</td> <td>148625187</td> </tr> </tbody> </table>								UNIT	DISP	ENRT	ONSC	ENRH	ONSH	CLRD	RUN NUMBER	802	21:28:52	21:28:52	21:29:45	00:00:00	00:00:00	22:56:52	1006-011853		1174 LAKE MURRAY BLVD ()							810	21:14:47	21:14:47	21:14:47	00:00:00	00:00:00	22:56:52	1006-011853		1174 LAKE MURRAY BLVD ()							P 812	21:13:15	21:13:15	21:13:15	00:00:00	00:00:00	22:56:52	1006-011853		1174 LAKE MURRAY BLVD ()							L233	21:15:06	21:15:06	21:15:06	00:00:00	00:00:00	21:31:44	06-087143		1127 LAKE MURRAY BLVD ()							#	NAME	RACE	S	DOB	ST	OLN	SSN	0	BATTLE, KORELL R	B	M	1975-02-24	SC	11415751	148625187
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DISPOSITION ARREST ARRESTED						CT SW DP SW																																																																																									

THIS IS A COMPLIANCE NOTICE THAT CLERK OF COURT ISSUED ON 9/1/2006.
UNDER FINE AND COSTS SECTION IT SHOW AMOUNT OF \$ 0.00 OWED WHICH MEAN I DID NOT OWE
THEM \$ 232.50 NO MORE ON 9-1-2006

STATE OF
SOUTH CAROLINA



NOTICE OF WITHDRAWAL OF SUSPENSION
A SUSPENSION IMPOSED FOR THIS VIOLATION MAY BE WITHDRAWN
PAYMENT HAS BEEN MADE IN THE AMOUNT OF
COVERING THE FINE AND COSTS FOR
THIS VIOLATION DESCRIBED HEREIN.

\$ 232.50

AUTH. SIGNATURE *[Signature]* DATE 9-01-06

FOR ADMINISTRATIVE USE

CITATION NO. 12804DK DATE OF VIOLATION 08/01/2006 LOCATION OF VIOLATION BRIARFIELD / SATCHELFORD DOCKET NO. SECTION VIOLATED 58-05-2740

DESCRIPTION OF VIOLATION DISREGARD SIGN SIG FINE AND COSTS 0.00 TRIAL DATE 08/10/2006

DRIVER'S LICENSE NO. 011418751 STATE SC DATE OF BIRTH 02/24/1978

NAME LAST FIRST MIDDLE SEX
BATTLE, KORELL ROBERT FLOYD M

STREET ADDRESS
124 RIVER ST

CITY STATE ZIP CODE
PEAK SC 29122

REG. (TAG) NO. STATE YEAR MAKE MODEL
536T SC 1990 CAD

NAME OF COURT CITY OF FOREST ACRES

CITY MAILING ADDRESS
5205 NORTH TRENHOLM ROAD

CITY STATE ZIP CODE
FOREST ACRES SC 29208

TELEPHONE
AREA CODE (803) NUMBER 790-5947

AUTHORIZED BY DATE
08/10/2006

FORM DL-53

☒ #3 HOME JURISDICTION (SUSPENSION WITHDRAWAL)
(SEE INSTRUCTIONS ON REVERSE SIDE)

Trial Officer's Instructions: Upon the defendant complying with the citation, the top portion of Form DL-53 (blue & pink) copies are completed and the blue copy is forwarded to the defendant.

IMPORTANT INSTRUCTIONS

SOUTH CAROLINA DRIVER: You must present or mail this blue copy of Form DL-53 to Driver Records, Post Office Box 1498, Columbia, South Carolina 29216-0028 in order for the suspension to be withdrawn. If this compliance is not received in the Driver Records Office before the beginning date of the suspension, a \$100.00 reimbursement fee will also be required in order for this suspension to be withdrawn.

OUT OF STATE DRIVERS: You must present or mail this blue copy of Form DL-53 along with any applicable reinstatement fees to the state in which you are a licensed driver. Any questions you may have concerning reinstatement fees or driver license suspension must be directed to your home state.

THIS IS THE FORM THAT D.M.V. CLAIM THAT CITY OF FOREST ACRES COURT SENT TO D.M.V. ON 9-5-2006, UNDER FINE AND COSTS SECTION IT SHOW AMOUNT OF \$147.50 OWED WHICH MEAN I HAD OWED THEM \$147.50 ON 9-5-2006

STATE OF
SOUTH CAROLINA



NOTICE OF SUSPENSION
(FAILURE TO RESPOND TO CITATION, APPEAR IN COURT, OR PAY FINE)

THE DEFENDANT HAS FAILED TO RESPOND TO A CITATION OR PAY A FINE FOR THE VIOLATION DESCRIBED HEREIN WITHIN THE PRESCRIBED TIME LIMIT. INITIATE ACTION TO SUSPEND THE DEFENDANT'S DRIVER'S LICENSE IN ACCORDANCE WITH THE LAWS OF THIS STATE OR THE PROVISIONS OF THE NONRESIDENT VIOLATOR COMPACT.

8#

DOCKET NO.

CITATION NO. 12804DK	DATE OF VIOLATION 08/01/2006	LOCATION OF VIOLATION BRIARFIELD / SATCHELFORD	SECTION VIOLATED 56-05-2740
DESCRIPTION OF VIOLATION DISREGARD SIGN SIG			TRIAL DATE 08/10/2006
FINE AND COSTS 147.50			

DRIVER'S LICENSE NO. [REDACTED]		STATE SC	DATE OF BIRTH 02/24/1975	
NAME LAST BATTLE, KORELL ROBERT FLOYD	FIRST [REDACTED]	MIDDLE [REDACTED]	SEX M	
STREET ADDRESS [REDACTED]				
CITY [REDACTED]		STATE SC	ZIP CODE [REDACTED]	
REGIS. (TAG) NO. [REDACTED]	STATE SC	YEAR 1990	MAKE CADI	MODEL [REDACTED]

NAME OF COURT CITY OF FOREST ACRES		
MAILING ADDRESS 5205 NORTH TRENHOLM ROAD		
CITY FOREST ACRES	STATE SC	ZIP CODE 29208
TELEPHONE AREA CODE (803) NUMBER 790-5947		
AUTHORIZED BY [REDACTED]		DATE 08/10/2006

FORM DL-53

#2 HOME JURISDICTION COPY

NO SIGNATURE

THIS NOTICE OF SUSPENSION FORM WAS NOT PRESENTED AT MAY 2009 TRIAL. IT IS NOT SIGNED BY NO JUDGE NOR CLERK AT CITY OF FOREST ACRES COURT. THIS FORM SHOWS UNDER FINE AND COSTS SECTION THAT I STILL OWE \$147.50

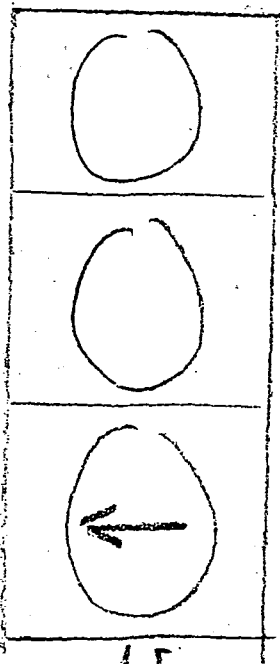
I RECEIVED THIS FORM THROUGH DISCOVERY IN A CIVIL ACTION AGAINST D.M.V. IN 2009 AFTER MY TRIAL.

D.M.V. CLAIM THAT CITY OF FOREST ACRES COURT SENT THEM THIS NOTICE OF SUSPENSION AND THAT D.M.V. RECEIVED IT ON 9/5/2005 AND THAT ON 9/8/2006, D.M.V. ISSUED A PENDING SUSPENSION TO ME TO PAY FINE BY 11/26/2006.

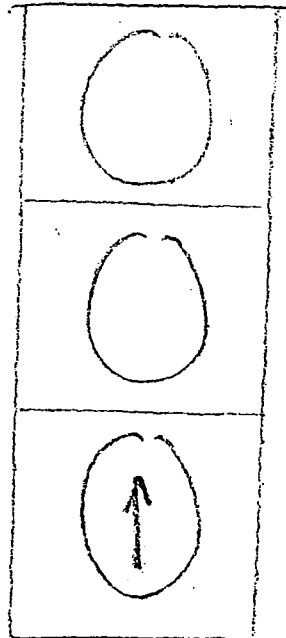
ON 8/18/2009 CITY OF FOREST ACRES COURT CLERK OF COURT SAY THEY HAD NOT SENT THAT FORM TO D.M.V. TO SUSPEND MY LICENSE.

C TRANSPORTATION

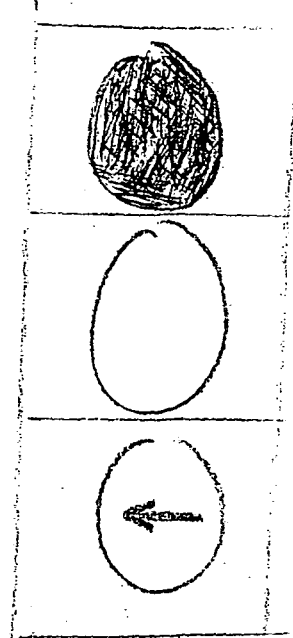
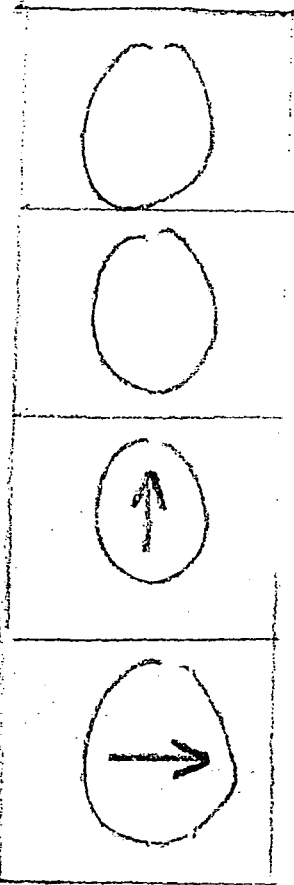
IR RECORDS



65



66



64

(GREEN ARROWS)

A Green Arrow showing along with a Red light (64 Example) means that you may proceed carefully only in the direction in which the arrow is pointing, but must give the right of way to pedestrians and vehicles already lawfully within the intersection. Depending on the circumstances, the green arrow may be illuminated with or without the red signal. One such situation is shown for example (65): Red is not illuminated. Often a signal may be associated with a particular lane and you may travel in the direction indicated by the signal facing your lane, (as in example 66).



JOHN DUNCAN

Attorney at Law
Servicios Legales

137 East Butler Street, Suite 3
Lexington, South Carolina 29072
Telephone (803) 951-2388
Facsimile (803) 951-2389
johnduncanlaw@gmail.com

February 6, 2012

Korrell Battle SCDC ID# 00292294
Lieber Correctional Institution
136 Wilborn Avenue
Ridgeville, South Carolina 29472

Dear Korrell:

I am in receipt of your letter of February 2, 2012, requesting I file a Rule 59 Motion regarding four particular allegations of yours in the original Application and Amended Application. You specifically mentioned Paragraphs O and Q of the Amended Application and Paragraphs E and K of the original Application.

As for Paragraph O, you do not have a viable claim for relief because of the US Supreme Court case of *Atwater v Lago Vista*. I've enclosed a Wikipedia article reference the same. As for Q, E, and K, you did not testify to any of those paragraphs/allegations in the PCR hearing. As such, those allegations are deemed abandoned.

In addition, I cannot yet file a Notice of Intent to Appeal as there is no signed Order in your case. I will do so upon receipt of the same.

Sincerely yours,

11 (L)/Py 3ss - Pg 3# /Py 3vv

THIS OFFICIAL NOTICE IS A
IMMINENT SUSPENSION, NOT NOTICE OF
SUSPENSION

South Carolina
Department of Motor Vehicles



09/06/2006

BATTLE, KORELL ROBERT FLOYD
P O BOX 4
Forest Acres, SC 29122-0000

CUSTOMER NO: 22209282
FILE NO: 4839521
DL NO: 11415751

OFFICIAL NOTICE

You may not drive commercial or non-commercial motor vehicles.

REASON: FAILURE TO PAY TRAFFIC TICKET

SECTION OF LAW: 56-25-10

<u>VIOL DATE</u>	<u>TICKET#</u>	<u>VIOLATION</u>
08/01/2006	12804DK	Disregard Sign or Signal

COURT:
CITY OF FOREST ACRES
5205 NORTH TRENHOLM ROAD
FOREST ACRES, SC 29206
803 790 5947

BEGINNING DATE: 12:01 AM 09/26/2006

ENDING DATE: When you receive notice from the Department that this action has been cleared.

SPECIAL DRIVING PRIVILEGES:

There are no special driving privileges available to you. You may not drive until you have done the following:

COMPLIANCE:

Pay the fine for the ticket to the court. When the fine is paid, the court will give you a compliance notice which shows the description of the violation, the date of the violation, the date the ticket was paid, and the ticket number. You must bring this compliance to your local DMV Office or mail it to Driver Records, Post Office Box 1498, Blythewood, SC 29016-0028. Note: It is your responsibility to give the Department proof that this ticket has been paid.

REINSTATEMENT FEE:

You must pay a \$100.00 reinstatement fee if your compliance notice shows payment on or after the suspension date. This fee can be paid at any DMV Office, mailed to Driver Records, PO Box 1498, Blythewood, SC 29016-0028 or paid by credit card online at www.scdmvonline.com. Make checks and money orders payable to SCDMV. Do not send cash through the mail.

Your license must be returned to any DMV Office or mailed to Driver Records if this suspension is not cleared before the suspension date listed above.

THIS NOTICE CONCERNS ONLY THE ACTION LISTED ABOVE AND DOES NOT CHANGE ANY OTHER NOTICES WE HAVE SENT TO YOU.

Driver Records Manager

11(L) / Pg 322

8:07-cv-00466-GRA-BHH

D2 THIS FORM IS A CLEARANCE -3 Page 12 of 27

Letter.

THIS FORM TALKS ABOUT A

PENDING SUSPENSION THAT

WAS TO BEGIN ON 9/26/2006

ILED Martin S. Adams
Director

Sta.

Y19 2 4:31

De BUT IT DOES NOT SAY

THAT D MY TALK AFFIRMA

TIVE ACTION IN ACTUALLY

A. CARRIGG
CLERK OF COURT
KINGSTON SC

November 13, 2006

Korell Robert Floyd Battle
PO Box 2019
Lexington, South Carolina

SUSPENDING LICENSE ON

9/26/2006.

Re: Driver's License: 1141

THE VICTIM A 2006 STOP IN

NEWBERRY PROVE THEY DID NOT

Dear Mr. Battle:

SUSPEND LICENSE ON 9/26/2006

At your request, we have reviewed your South Carolina driving record.

Our records indicate the following:

You were issued ticket number 12804DK, for Disobeying an Official Traffic Device on August 1, 2006. The court date for this ticket was August 10, 2006.

On September 6, 2006, this department notified you by mail of the pending Failure to Pay Traffic Ticket suspension to begin on September 26, 2006.

* →

The department received proof of compliance on October 20, 2006 showing the ticket was paid September 1, 2006.

* →

We have included in our mail a copy of the September 6, 2006 suspension notice and Failure to Pay Traffic Ticket clearance letter.

I hope this information is helpful to you. Should you have any additional questions, please contact my office.

Sincerely,

Annie L. Phelps

Annie L. Phelps
Compliance and Oversight Administrator

061109-1480

/jsw

11(L) Pg 322

Attorney NEVER Let ME Know Before Trial THIS LAW EXISTED.

Page 2 of 2

He claim He RESEARCHED STATUTES, BUT NEVER PROVIDED THIS LAW for my defense

I found out ABOUT THIS LAW IN 2009. THIS is the exception to the

Westlaw.

Code 1976 § 56-1-463

Page 1

Code of Laws of South Carolina 1976 Annotated Currentness

Title 56. Motor Vehicles

Chapter 1. Driver's License

Article 1. General Provisions

→ § 56-1-463. Inapplicability of penalty provision when suspension based on lack of notice of payment of fines.

Section 56-1-460 specifically does not apply if and when the proposed suspension is based solely on lack of notice being given to the Department of Motor Vehicles when the person has in fact paid any fines or penalties due to the court.

CREDIT(S)

HISTORY: 1987 Act No. 84 § 3; 1993 Act No. 181, § 1322; 1996 Act No. 459, § 95.

LIBRARY REFERENCES

Automobiles 326.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles §§ 1422 to 1432, 1524 to 1527, 1541, 1544.

Code 1976 § 56-1-463, SC ST § 56-1-463

Current through End of 2009 Reg. Sess.

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END OF DOCUMENT

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City of Forest Acres

MUNICIPAL COURT
5205 N. Trenholm Road FOREST ACRES, S.C. 29206 803/782-9444



August 18, 2009

Korell Battle #242294
Lieber CI
P O Box 205
Ridgeville, SC 29472

Mr. Battle:

I am sending you a copy of the suspension withdrawal. There is no back to this form. I don't show in the computer where there was any form sent to the highway department letting them know you didn't pay the ticket. As far as the documents from DMV that you are referring to, you would have to have someone from DMV explain their documents.

Sincerely,
Michelle Morrison

15#

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

FILED

Civil Action Number: 08-CP-32-4159

Korell Battle,

2010 MAY 19 3 4 30

Plaintiff,

BETH A CARRIGG
CLERK OF COURT
LEXINGTON, SC

v.

DEFENDANT'S RESPONSES TO
PLAINTIFF'S REQUEST FOR
ADMISSIONS

South Carolina Department of Motor
Vehicles,

Defendant.

TO: KORELL BATTLE, *PRO SE* PLAINTIFF:

Pursuant to Rule 34, SCRCP, Defendant responds to Plaintiff's First Request for Admission as follows:

REQUEST # 1:

"1. On August 1, 2006 Plaintiff was cited a ticket #12804DK in City of Forest Acres."

RESPONSE # 1: true

The Defendant admits that the Plaintiff was issued ticket 12804DK on August 1, 2006 by the Forest Acres Police Department.

REQUEST # 2:

"2. On September 1, 2006 City of Forest Acres municipal court issued a compliance certifying that they recorded this fine paid in full on 9/01/06."

JCP
①

15#

REQUEST #9:

"9. In September 29th or October 4th 2006, between times of 6:00 pm and 10:00 pm I was pulled over for speeding in Prosperity County or Newberry and cited a warning ticket after dispatchers confirmed that driver's license was valid."

RESPONSE # 9:

The Defendant lacks sufficient information upon which to form a belief as to the veracity of the factual statements contained in this request, and therefore denies same as stated.

REQUEST # 10:

"10. From September 20th to October 13th 2006 D.M.V. did not mail me any final notices of suspension."

★ **RESPONSE # 10:** TRUE

The Defendant admits that no "final notices of suspension" were mailed to the Plaintiff.

— **REQUEST # 11:**

11. On October 13, 2006 did D.M.V. post my license as suspended or no?

RESPONSE # 11:

The Defendant objects to this request on the grounds that it is not properly formulated as a request for admission under the applicable rules of civil procedure.

→ **REQUEST # 12:**

"12. Did the dispatcher misread information on computer as D.M.V. posting my license as being suspended or did they read information correct?"

RESPONSE # 12:

The Defendant objects to this request on the grounds that it is vague and that it is not properly formulated as a request for admission pursuant to the applicable rules of civil procedure.

STATE of SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO LEXINGTON COUNTY
EDWARD W. MILLER CIRCUIT COURT JUDGE

Korell BATTLE

PETITIONER

✓

STATE of SOUTH CAROLINA

RESPONDENT

CERTIFICATE of SERVICE

I CERTIFY THAT A TRUE COPY OF THE PRO-SE APPLICANT PETITION FOR WRIT OF
CERTIORARI AND A COPY OF THE ~~APPEAL~~^{THIS} IN THIS CASE HAVE BEEN ~~RECEIVED~~
~~MAILED~~ MAILED TO COURT ON 10/16/2012

Korell BATTLE 292299

P.C. 1 C-X-1

430 OAKHORN RD

Pelzer, SC (29664)

10/16/2012