THE STATE OF SOUTH CAROLINA

In The Court Of Appeals

APPEAL FROM OCONEE COUNTY

Court of Common Pleas

R. Lawton McIntosh

Case No. 2018 - 000637

John Dalen, Appellant

v.

The State, Respondent

FINAL BRIEF

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TABLE OF CONTENTS AND CASES

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

United States Constitution

Statement of Issues on Appeal

1. Was it error for the Magistrate Court to proceed where jurisdiction has been challenged and not been proven on the record, and therefore also error by the Circuit Court Appellate Judge R. Lawton McIntosh in affirming the Magistrate Court decision?
2. Was it error for both The Magistrate Court and the Circuit Court Appellate Judge R. Lawton McIntosh to ignore the Constitutional challenge to the statute and its application in question as it was applied to John Dalen, failing to protect the constitutional rights of the appellate, John Dalen.
3. Did the proceedings of both the Magistrate Court and the Circuit Court Judge R. Lawton McIntosh violate Due Process of law protections secured by the U.S. Constitution and the Common Law?
4. Did the Magistrate Court and the Circuit Court proceedings violate the religious freedom protections secured by the First Amendment of the U.S. Constitution?

Statement of the Case

This is an appeal from an appeal to the South Carolina Court of Common Pleas which was filed August 22, 2017, *[See item "N. (1)" from the Designation of Matter] (R. pp. 219–223),* challenging a decision by the Magistrate Court in the City of Westminster, SC. John Dalen did appear for trial on August 17, 2017, and was found guilty by a jury of only six *[See item "N.(2)(i)" from the Designation of Matter] (R. p. 229)*, although according to the Common Law, juries shall consist of 12 members of the community. John Dalen paid a fine of $237.45.

From the beginning, starting with an arrest on February 16, 2017, and the issuance of a traffic ticket/citation, *[See item "A" of the Designation of Matter (R. p. 201)]*, John Dalen challenged the arrest and issuance of the ticket and subsequent proceedings in the Magistrate Court. John Dalen objected to those proceedings repeatedly *[See the Designation of Matter items "B", Motion to Dismiss, (R. pp. 11–32) and "C", Transcript of Hearing of April 19, 2017, (R. p. 82, lines 14–25) (R. p. 83, lines 1–25) (R. p. 84, lines 1–16) (R. p. 87, lines 10–11), items "E", Motion to Reconsider of May 2, 2017, (R. pp. 33–37), "G", Motion for Findings of Facts and Conclusions of Law of June 13, 2017, (R. p. 38–40), and "H", Transcript of Hearing of June 13, 2017, (R. p. 93, lines 21–25); (R. p. 94, lines 1–10) (R. p. 94, lines 14–25), and items "I", Motion Challenging Constitutionality of the Application of the Motor Vehicle Transportation Statutes of June 28, 2017, (R. pp. 42–69), and "J", Transcript of Hearing of June 28, 2017, (R. p. 104, lines 18–22) (R. p. 105, lines 1–21) (R. p. 106, lines 22–25), and items "K", Offer of Plea of July 11, 2017, (R. pp. 70–71), and "L",*

and in Transcript of Jury Trial held August 17, 2017, (R. p. 128, lines 1–25) (R. p. 153, lines 10–13)]. The accused challenged the officer's probable cause and the court's jurisdiction, and demanded his rights secured by the U.S. Constitution and the Common Law *[See transcripts: items "C", Transcript of Hearing of April 19, 2017, (R. pp. 79–89), "H", Transcript of Hearing of June 13, 2017, (R. pp. 90– 99), "J", Transcript of Hearing of June 28, 2017, (R. pp. 100–123), and "L", Transcript of Jury Trial of August 17, 2017, (R. pp. 124–186) from the Designation of Matter.] [See also motions: items "B", Motion to Dismiss of April 18, 2017, (R. pp. 11– 32), "E", Motion to Reconsider of May 2, 2017, (R. pp. 33– 37), "G", Motion for Findings of Facts and Conclusions of Law of June 13, 2017, (R. pp. 38– 40), "I", Motion Challenging Constitutionality of the Application of the South Carolina Motor Vehicle Transportation Statutes of June 28, 2017, (R. pp. 42–69), and "K", Motion for Offer of Plea of July 11, 2017, (R. pp. 70–71) from the Designation of Matter.]*

The magistrate judge, the Honorable Will F. Derrick, issued an order dated April 21, 2017, *[(See item "D" from the Designation of Matter) (R. pp. 1–2)]* denying John Dalen's **Motion to Dismiss for Lack of Jurisdiction**, claiming jurisdiction without proving it on the record. John Dalen filed a **Motion to Reconsider** on May 22, 2017, *[(See item "E" from the Designation of Matter) (R. pp. 33–37)]* and the magistrate filed an order dated June 13, 2017, *[(See item "F" from the Designation of Matter) (R. pp. 3–4)]* denying John Dalen's **Motion to Reconsider**. John Dalen then filed a motion dated June 28, 2017, **Challenging the Constitutionality of the Application of the *SC Motor Vehicle "Transportation" Statutes Against the Accused***, as applied to John Dalen *[(See item "I" from the Designation of Matter) (R. pp. 42–69)].* No order

was issued regarding this motion, nor was any discussion held regarding the contents. *[See the Designation of Matter, Transcript of Hearing of June 28, 2017, item "J", (R. p. 105, lines 8–21) (R. 106, lines 19–23) (R. p. 107, lines 3–4.]*

On July 11, 2017, John Dalen filed a **Motion for Offer of Plea** *[See item "K" from the Designation of Matter (R. pp. 70–71)].* John Dalen had repeatedly objected to the court's entering of a plea for the accused. No order was issued regarding this motion; the motion was dismissed by the magistrate at the jury trial held August 17, 2017, and the magistrate entered a plea of "not guilty" over the objections of the accused. *[See the Transcript of Proceedings Jury Trial held August 17, 2017, item "L", (R. p. 131, lines 10–11) (R. p. 141, lines 5–6) from the Designation of Matter.]* The accused presented exhibits at the jury trial *[See item "M" from the Designation of Matter, items (1) through (7): Item 1, Copy of Uniform Traffic Ticket, Exhibit "B" (R. p. 206), Item 2, Letter to Dep't. of Public Safety, Colonel Oliver of June 15, 2017, Exhibit "D" (R. p. 209), Item 3, Letter to Sen. Thomas Alexander of June 22, 2017, Exhibit "C" (R. p. 208), Item 4, Letter to South Carolina Dep't of Motor Vehicles of June 15, 2017, Exhibit "E" (R. p. 210), Item 5, Response to John Dalen from Col. Oliver dated June 29, 2017, Exhibit "F" (R. p. 211), Item 6, Napa Valley Register article dated October 28, 2013, Exhibit "G" (R. pp. 212–213), Item 7, Accused's Motion to Dismiss for Lack of Jurisdiction of April 18, 2017, Exhibit "H" (R. p. 214, which is the first page of the document fully included on pages 11–32 of the Record on Appeal)]* that were intended to prove that there was no willful intent to violate any law and that defendant had more than ample reason to believe his contentions are/were correct, supported by law and by the Supreme Court of the United States as

well as by lower court decisions and other authorities *(See Table of Contents listed cases and authorities, incl. Law Dictionary definitions).* The trial judge, the Hon. Will F. Derrick did not inform the jury that every element of the "crime" had to be proven beyond a reasonable doubt. *[See Designation of Matter, item "L" Transcript of Proceedings Jury Trial held August 17, 2017, (R. p. 176, lines 8–25) (R. p. 177, lines 1–25) (R. p. 178, lines 1–25) (R. p. 179, lines 1–25) (R. p. 180, lines 1–25)].* John Dalen was convicted at the trial. The accused was threatened with thirty days in jail or the payment of a fine of $237.45, (incl. $5 for debit card fee) and was told he had to pay the fine before he could file an appeal.

On August 22, 2017, John Dalen filed an appeal with the Circuit Court *[(See: item "N. (1)" from the Designation of Matter), Notice of Appeal (R. pp. 219–223)].* And see John Dalen exhibits filed *[items "N. (2)(a) through (j)" from the Designation of Matter: Opening Statement, (2)(a), (R. pp. 202–205), Uniform Traffic Ticket, (2)(b), (R. pp. 206–207), Letter to Sen. Thomas Alexander, (2)(c), (R. p. 208), Letter to Col. Michael Oliver, (2)(d), (R. p. 209), Reply from Col. Oliver, (2)(e), (R. p. 211), Letter to S.C. Dep't of Motor Vehicles, (2)(f), (R. p. 210), Napa Valley Register article, (2)(g), (R. pp. 212–213), Motion to Dismiss, (2)(h), (R. p. 11–32), Return of Criminal Appeal, (2)(i), (R. pp. 224–230), and S. C. Municipal Court Handbook, (2)(j), (R. pp. 215–216)].* This appeal was denied, and the magistrate affirmed on March 1, 2018, *[See item "P" from the Designation of Matter, Magistrate's Order affirmed (R. pp. 5–7)].* John Dalen then filed an **Affidavit** *[See item "Q" from the Designation of Matter, Affidavit of John Dalen of March 12, 2018, (R. pp. 242–244)],* a **Motion for New Trial and/or Amendment of Judgment** *[See item "R" from the Designation of Matter, (R. p. 73–77)]*

and a **Motion for Findings of Facts and Conclusions of Law** *[See item "S" from the Designation of Matter (R. p. 78)].* Items "Q", "R", and "S" of the Designation of Matter were filed on March 12, 2018.

Circuit Court Judge R. Lawton McIntosh issued an order *[See item "T" from the Designation of Matter, Order Denying Motion to Reconsider (R. pp. 8–10)]* denying the **Motion for New Trial and/or Amended Judgment** on March 21, 2018, and the judge issued no order or addressed in any way the **Motion for Findings of Facts and Conclusions of Law** *[See item "S" from the Designation of Matter, (R. p. 78)].*

Standard of Review for Each Issue

The standard of review for issues 1, 2, 3 and 4 is de novo as such are errors of law. *U.S. v. Campa*, 529 F. 3d 980, 992 (11th Cir. 2008).

Argument

The saying that "ignorance of the law is no excuse" applied well to the Common Law because Common Law is limited in scope, and easily comprehended by the common man. It is necessary for citizens to know what the law is and what a person's duty is under that law. I, John Dalen, plan to show that I was convicted through the use of laws, codes, regulations, and court proceedings that are not consistent with our United States Constitution or in compliance with Common Law.

The idea that "ignorance is no excuse" is no longer valid or applicable today. Even the most learned scholar could not be expected to understand and comply with

our voluminous laws, codes, and regulations. This is inconsistent with the United States Constitution. Today there are plenty of excuses for ignorance of the law.

Common Law is the foundation of the United States system of laws, and the purpose of law is to protect persons, property, and liberty. Government and its courts were created by the people for this express reason. The U.S. Constitution is the Supreme Law of the Land, and it was created to bind the government and limit the scope of its authority. It is the duty *[See Municipal Court Handbook, Designation of Matter "N. (j)" (R. pp. 215–216)]* of every judicial officer and every citizen to help to ensure that every law is in compliance and not in conflict with the constitution. This concept is repeated over and over by the U.S. Supreme Court in rulings dating back to the founding of this nation. It is the only way that a free people can remain free. The Constitution *is* the Supreme Law of the Land. See *Marbury v. Madison,* 5 U.S. 137 and *16 Am. Jur. 2d,* Sec. 177 late 2d, Sec. 256; "No one is bound to obey an unconstitutional law, and no courts are bound to enforce it."

The arguments for each of the issues #1, #2, #3, and #4 tend to overlap. In my discussion for each issue, the arguments presented may apply to each of the other issues as well.

Issue #1:

Was it error for the Magistrate Court to proceed where jurisdiction has been challenged and not been proven on the record, and therefore also error by Circuit Court Appellate Judge R. Lawton McIntosh in affirming the Magistrate Court decision? I make the following arguments:

A. Probable Cause, Valid Charging Instrument and Elements of a Crime

B. Conversion of a Right to a Privilege

Issue #1, Argument A.

Probable Cause, Valid Charging Instrument and Elements of a Crime

From the beginning, starting with the traffic stop at a checkpoint – a checkpoint which in itself is antithetical to any concept of freedom – I, the appellant, John Dalen challenged the officer's probable cause which was never stated nor proven on the record. *[See item "A" from the Designation of Matter, Uniform Traffic Ticket, (R. pp. 206–207)]* The officer (named on the ticket as A. Taylor) did not provide the court with any proof of his probable cause that a crime had been committed, justifying his arrest of John Dalen or providing proof that he had any jurisdiction to make such an arrest. (See *McNutt v. GMAC,* 298 US 178, "The burden of proof lies with the asserter.")

The Magistrate Court judge, the Honorable Will F. Derrick, as well as the officer in charge of the checkpoint, throughout all the proceedings failed to prove

subject matter jurisdiction and/or personal jurisdiction on the record, and only presumed jurisdiction in this matter. The citation itself, the "charging instrument" *[See item "A" from the Designation of Matter, (R. pp. 206–207)]* is deficient because it was not supported by probable cause or a warrant as is required under the Common Law. See *Hale vs. Hinkel,* 201 US 43, 74 – 75, "Among his Rights are...immunity of an individual and his property from arrest or seizure except under warrant of law." See *Buchanan vs. Warley,* 245 US 60, "The police power of the state must be exercised in subordination to the provisions of the U.S. Constitution." See *Connolly vs. Union Sewer Pipe Co.,* 184 US 540, "With regard particularly to the U.S. Constitution, it is elementary that a Right secured or protected by that document cannot be overthrown or impaired by any state police authority." See also *The Fourth Amendment* to the *United States Constitution.*

Both the Magistrate Court and the Court of Common Pleas in Oconee County, SC, are guilty of egregious error in their judicial determinations and opinions that directly violate the written laws of criminal procedure, while doing absolutely nothing to serve the ends of justice. *[See Designation of Matter items "D", Magistrate Order denying motion to dismiss, (R. pp. 1– 2), "F", Order Denying Motion to Reconsider, (R. pp. 3– 4), "J" Transcript of Hearing June 28, 2017, (R. p. 105, lines 2–25) (R. p. 106, lines 1–25) (R. p. 107, lines 1–25) (R. p. 108, lines 1–25) (R. p. 109, lines 1–25) (R. p. 110, lines 1–14), "L" Transcript of Proceedings Jury Trial of August 17, 2017, (R. p. 128, lines 7–25) (R. p. 129, lines 7–15) (R. p. 143, lines 16–25) (R. p. 144, lines 13–25) (R. p. 145, lines 9–25) (R. p. 147, lines 1–25) (R. p. 148, lines 1–19) (R. p. 149, lines 13–25) (R. p. 150, lines 1–25) (R. p. 151, lines 1–11) (R. p. 153, lines 10–13)*

(R. p. 155, lines 9–25) (R. pp. 156–167, lines 1–25) (R. p. 171, lines 4–10) (R. p. 172, lines 1–14 and lines 22–25) (R. p. 173, lines 1–7) (R. p. 174, lines 16–25) (R. p. 175, lines 1–10 and lines 14–25) (R. pp. 176–180, lines 1–25; "O" Transcript of Appeal Hearing February 26, 2018, (R. p. 197, lines 6–25) (R. p. 198, lines 1–17), and items "P" Magistrate Order Affirmed (R. pp. 5–7), and "T" Order Denying Motion to Reconsider (R. pp. 8–10).] These determinations and opinions arbitrarily act and serve to deny an accused individual of their right to due process (discussion to follow on Issue #3) and to a proper determination of probable cause in *any* criminal case initiated against them by warrantless seizures and arrests of persons or property. The accused has the right to have that determination made by a neutral and detached magistrate who is acting in compliance with all the rules and processes of the Code of Criminal Procedure.

The issue of jurisdiction was discussed at length in my **Notice to Dismiss for Lack of Jurisdiction** *[See item "B" of the Designation of Matter (R. pp. 11–32)]*, and is incorporated herein by reference to said document, and discussed as well in my **Motion Challenging Constitutionality of the Application of the South Carolina Motor Vehicle "Transportation" Statutes Against the Accused** *[See item "I" of the Designation of Matter (R. pp. 42–69)]* which is incorporated herein by reference to said document. The only attempt by the judge to prove his jurisdiction is contained in the magistrate order for a motion to dismiss *[See item "D" of the Designation of Matter (R. pp. 1–2)]* in which he cited *South Carolina Code of Laws Ann. Title 22, Magistrates and Constables*, Chapter 3, *Jurisdiction and Procedure in Magistrates'*

Courts, Sec. 540, *Exclusive and Concurrent Jurisdiction*, Sec. 22-3-540, and also *South Carolina Code of Laws, Title 56, Motor Vehicles*, Chapter 1, Sec. 56-1-20.

Examination of *SC Code of Laws Ann. Title 22, Magistrates and Constables*, Chapter 3, Sec. 540, Sec. 22-3-540, explains "magistrates shall have exclusive jurisdiction of all criminal cases in which the punishment does not exceed a fine of $100 or imprisonment of 30 days...." However, in order to have jurisdiction the judge must first have a criminal case, i.e. a valid "charging instrument" supported by probable cause and a warrant which he did not have, and therefore he did not have a criminal case nor did he have jurisdiction because no "crime" had been committed or properly charged.

> "The requirement of standing, however, has a core component derived directly from the Constitution. A plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." *Allen v. Wright,* 468 U.S. 737, 751, (1984)

Referencing *Article III, Sec. 2* of the *United States Constitution,* which requires a plaintiff *to present a "case"* before a court may proceed: "The judicial power shall extend to all cases...."

Standing consists of two absolutely essential elements: 1) violation of a legal right, and 2) personal injury. With regard to the violation of a legal right: Has the *State of South Carolina* (a fiction) alleged that I violated the pretended "state's rights"? And, a plaintiff must allege personal injury. Has the *State of South Carolina*

(a fiction) alleged that I have caused a "personal injury"? The answer to these two questions is a resounding **NO.** *[See Designation of Matter item "A", Uniform Traffic Ticket (R. p. 201)]* Therefore, there is no case. It follows that if there is no case, there cannot be any jurisdiction. *US v. Bishop*, 412 US 346: "Regarding criminal elements required to be proven – willfulness is one of the major elements defined as an "evil motive or intent to avoid a known duty...under the law." Criminal elements, personal injury, and willfulness are covered also under Issue #3, page 30 of this brief.

Issue #1, Argument B. Conversion of a Right to a Privilege

South Carolina Code of Laws Title 56, Motor Vehicles, Chapter 1, Sec. 20 entitled *Driver's License Required...* states (in paragraph 2) that: "Any person holding a currently valid motor vehicle driver's license issued under this article may exercise the privilege thereby granted..." and "...license to exercise such privilege...." Neither of these two statutes proves the court's jurisdiction in this matter. There has been no proof that John Dalen was ever engaged in the activity known as "transportation." Furthermore, Sec. 56–1–20 proves the appellant's contention that either The State has attempted to convert a constitutionally-protected right into a privilege, or by this statute is in fact affirming that the statute applies only to persons engaged in commercial or for-hire activities. The former is unconstitutional, and the Magistrates' Court was repeatedly informed of this fact. See *Chicago Motor Coach vs. Chicago,* 169 NE 22; *Ligare vs. Chicago,* 28 NE 934; *Boon vs. Clark,* 214 SSW 607: "The use of the highways for the purpose of travel and transportation is not a mere privilege, but a common and fundamental Right of which the public and the individual cannot

be rightfully deprived." See also: *Murdock v. Pennsylvania,* 319 US 105 – The state may not convert a secured liberty into a privilege, and issue a license and fee for it. *Shuttlesworth v. Birmingham, Alabama*, 373 U.S. 262: "If the state does convert your right into a privilege and issue a license and charge a fee for it, you can ignore the license and fee and engage in the right with impunity." See also: *II Am. Jur. (1st) Constitutional Law,* Sec. 329, p. 1135, concerning the Right of the citizen to travel on the public highways.

All judges and elected officials swear an oath to uphold and defend the Constitution of these United States. *U.S. Constitution, Article VI, Clause 2,* "The Constitution is the Supreme Law of the Land and judges in every state shall be bound thereby." I believe it is the duty of every American to hold them to their oath. Any laws not in conformance with that sacred document *should* be challenged. *16 Am. Jur. 2d, Sec.* 177 late 2d, Sec. 256: "No one is bound to obey an unconstitutional law." The general misconception is that any statute passed by legislators bearing the appearance of law constitutes the law of the land. But the law is clear. As stated in *16 Am. Jur. 2d,* Sec. 70 – No public policy of a state can be allowed to override the positive guarantees of the U.S. Constitution.

The statute under which I was charged clearly states that the license is granting a privilege. Americans have a Right to travel on public highways, and it is not a privilege, and therefore the statute in question can only be referring to commercial activities. For it to be otherwise would be unconstitutional in its application. Although The State may argue that the police powers give them the authority to regulate rights, according to the U.S. Supreme Court this regulation

must be specific and narrow in its scope. See *Footnote 4* of the U. S. Supreme Court decision in *United States v. Carolene Products Co.* 304 U. S. 144 (1938), discussing and introducing the Strict Scrutiny Standard which I will elaborate on later in this brief. The statute in question is anything but specific and narrow, and even so, the police powers do not give The State the authority to convert a Right into a privilege. Concerning the Right to travel: *16 Am. Jur. 2d,* Sec. 260, and *25 Am. Jur. (1st) Highways,* Sec. 260, discussing the requirement that regulations not violate constitutional guarantees. See also *25 Am. Jur. (1st) Highways,* Sec. 427, p. 717, which defines the terms travel and traveler.

No evidence was presented by the officer – the only representative of The State to appear at the trial other than the judge – that the accused, John Dalen, was engaged in any commercial or for-hire activities which would support the arrest of John Dalen and subsequent charge. No evidence was presented that the accused, John Dalen, was subject to the statute in question; it was merely presumed by both the officer and the magistrate. *[See: Transcript of Proceedings Jury Trial held on August 17, 2017, item "L" (R. p. 128, lines 23–24) (R. p. 141, lines 1–5) (R. p. 175, lines 15–25) (R. p. 176, lines 1–6); and Return of the Criminal Appeal, item "N.(2)(i)" pages 2-4 of the Designation of Matter (R. pp. 225–227)]* The accused has argued these points in his **Notice to Dismiss, and Brief in Support of** *[See item "B" of the Designation of Matter (R. pp. 11–32)],* and is incorporated herein by reference to said document, as well as his **Motion Challenging the Constitutionality of the Application of the SC Motor Vehicle "Transportation Statutes" Against the Accused** *[See item "I" of the Designation of Matter (R. pp. 42–69)].* This Motion discusses in more detail the

issue of jurisdiction, and is incorporated herein by reference to said document, starting with item II,

Unconstitutional Executive and Judicial Expansion of Legislative Intent, Purpose and Scope of Legislation. *[See: item "II" letter A. (1) through (5), (R. pp. 45–46)]* These points were also raised in front of the Appellate Court judge in the Circuit Court in appealing the Magistrate decision. *[See **Notice of Appeal and Attachment to the Appeal**, item "N. (1)" (R. pp. 219–223) incorporated herein by reference to said document, and the Transcript of the Appeal Hearing on Feb. 26, 2018, item "O" of the Designation of Matter, (R. p. 188, lines 17–19) (R. p. 190, lines 2–8 and lines 19–24) (R. p. 191, lines 5–15) (R. p. 192, lines 16–25) (R, p. 193, lines 1–10, and lines 15–25) (R. p. 194, lines 1–25) (R. p. 195, lines 1–3) (R. p. 197, lines 6–25) and (R. p. 198, lines 1–17)]*

Item "B" (of the Designation of Matter, to be included in the Record on Appeal) is the accused's **Notice to Dismiss for Lack of Jurisdiction and Brief in Support of** *[item "B" of the Designation of Matter (R. pp. 11–32)]*, incorporated herein by reference to said document, wherein the case is made that traveling and the use of the highways is not a mere privilege, but a common and fundamental right, of which the public and the individual cannot be rightfully deprived. Cases in support of this contention include: *Chicago Motor Coach vs. Chicago* 169 NE 22, *Ligare vs. Chicago,* 28 NE 934, *Boon vs. Clark,* 214 SSW 607, *Murdock vs. Pennsylvania,* 319 U.S. 105, *Shuttlesworth vs. Birmingham, Alabama,* 373 U.S. 262, *Stephenson vs. Binford,* 287 U.S. 251, and *Thompson vs. Smith,* 154 SE 579. The Stephenson case explains the

distinction between "Right" to use public roads and "privilege". The Thompson case concerns "The Right of the citizen to travel...is not a mere privilege...but a common Right which he has under the right to life, liberty, and the pursuit of happiness." Other relevant authorities include: *II Am. Jur. (1st)* Constitutional Law, Sec. 329 p. 1135 and *16 Am. Jur. 2d,* Sec. 260.

The above-cited cases establish the legal principle that Rights cannot be converted into privileges. And, all laws must conform to the provisions of the United States Constitution. Additional cases that support this contention, discussed more fully in the **Notice to Dismiss for Lack of Jurisdiction and Brief in Support of,** *[item "B" of the Designation of Matter, (R. pp. 11–32)],* which is incorporated herein by reference to said document, include: *Buchanan vs. Warley,* 245 US 60; *Connolly vs. Union Sewer Pipe Co.,* 184 US 540; *Sherer vs. Cullen,* 481 F. 946; and *Marbury v. Madison,* 5 U.S. 137. Other relevant authorities: *16 Am. Jur. 2d,* Sec. 177 late 2d, Sec. 256; *16 Am. Jur. 2d,* Sec. 70; *25 Am. Jur. (1st) Highways,* Sec. 260, and the *United States Constitution, Article VI.*

Once again, *Marbury v. Madison*, one of the earliest Supreme Court cases, affirms the fact that the Constitution is the Supreme Law of the Land and any law in conflict is null and void. This foundational principle of law is as relevant today as it was then.

Concerning the rights of the people – *Hale vs. Hinkel,* 201 US 43, 74-75: "...there is a clear distinction...between an individual and a corporation..." and "Among his Rights are...immunity of an individual and his property from arrest or

seizure except under warrant of law." *Hurtado vs. California,* 110 U.S. 516: "The State cannot diminish Rights of the people." Due process of law is process of law according to the law of the land, i.e. the U.S. Constitution exercised within the limits proscribed and interpreted according to the principles of common law.

As stated strongly in *Miller vs. U.S.*, 230 F. 486, 489, "The claim and exercise of a constitutional Right cannot be converted into a crime." In *Miranda vs. Arizona,* 384 US 436, 491, the court stated: "Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them." See *U.S. v. Bishop,* 512 US 346; and *Sherer vs. Cullin*, 481 F. 946: "There can be no sanction or penalty imposed upon one because of this exercise of constitutional Rights."

The Magistrates' Court judge and the judge at the Court of Common Pleas who heard my initial appeal of the magistrate's decision both failed to protect and defend the U.S. Constitution in denying and/or failing to acknowledge the constitutional issues that were raised by John Dalen. In these United States, under our Constitution, it is the *core function* of the courts to protect the rights and property of individual citizens. By failing to do so, the magistrates' court had no jurisdiction over the person or the subject matter in this case. Regarding the duty of the courts and jurisdiction –*Boyd vs. United States,* 116 US 616: "It is the duty of the courts to be watchful for the Constitutional rights of the citizen and against any stealthy encroachments thereon." *Byars vs. U.S.*, 273 U.S. 28, 32 (1927) added that Constitutional provisions are to be liberally construed. *Manning v. Ketcham,* 58 F. 2d 948 (1932), "Where there is no jurisdiction at all, there is no judge; the proceeding is as nothing." *McNutt v. GMAC,* 298 US 178, "The burden of proof of jurisdiction lies

with the asserter." *Mulger vs. Kansas,* 123 US 623, 661, emphasized that it is the duty of the court to recognize the substance of things and not the mere form. In *Rubenstein v. Collins,* 20 F. 3d 160 (1990), the court said, "Failure to disclose material information necessary to prevent a statement from being misleading, or making representation despite knowledge that it has no reasonable basis in fact are actionable as fraud under law."

In *Simmons vs. United States,* 390 US 389, "We find it intolerable that one Constitutional Right should have to be surrendered in order to assert another." Certainly the courts would not sanction the conversion of Rights into privileges. Other relevant points and authorities: *South Carolina Code of Laws*, Title 16, Chapter 5, *Offenses against Civil Rights*; Sec. 16-5-10; Sec. 16-5-20; Sec. 16-5-30, *(R. pp. 235–240)* and the *United States Code,* Title 18, *Deprivation of Rights under Color of Law,* Sec. 242; *United States Code*, Title 42, *Civil Action for Deprivation of Rights,* Sec. 1983. See also *State of South Carolina Municipal Court Handbook, 2011,* Item "N. (2) (j)" of the Designation of Matter *(R. pp. 215–216).*

To summarize, in order for the Magistrate Court to have jurisdiction:

1) There must be a justiciable controversy *(See United States v. Interstate Commerce Commission,* 337 U. S. 426, 430*)*
2) There must be Standing, defined as "The position of a person in reference to his capacity to act in a particular instance... *19 Am. Jur. 2d Corp.* Sec. 559": *Ballantine's Law Dictionary,* page 1209. "In essence the question of standing is whether the litigant is entitled to have the court decide the

merits of the dispute or of particular issues." *Warth v. Seldin,* 422 U.S. 490, 498 (1975)

3) All elements of crime must be proven on the record.
4) The regulation of Rights must be reviewed by the Strict Scrutiny Standard. Regulated rights are still rights and cannot be converted into privileges.

Issue #2:

Was it error for both The Magistrate Court and Circuit Court Appellate Judge R. Lawton McIntosh to ignore the Constitutional challenge to the statute and its application in question as it was applied to John Dalen, failing to protect the constitutional rights of the appellate, John Dalen?

The arguments presented in Issue #1 apply as well to Issue #2, and the arguments in Issue #2 apply as well to Issue #1. As stated earlier, these issues overlap, and therefore the arguments will overlap. All of the cases and other authorities cited in Issue #1 are applicable to this issue also.

The appellant has relied on these Supreme Court and lower court decisions and the other authorities cited in Issue #1 regarding the right to travel and the principal of law that rights cannot be converted into privileges. John Dalen has clearly shown in his motions and court filings that the statute in question *(See S.C. Code of Laws,* Title 56, Ch. 1, *Motor Vehicles,* Sec. 56-1-20*)* can only be constitutional as applied to persons engaged in commerce or for-hire activities on the highways.

The *South Carolina Motor Vehicle Code* is in fact a "transportation code" and therefore I continue to refer to this statute as such. *Black's Law Dictionary, Revised Fourth Edition* defines motor vehicle as: "...any self-propelled 'vehicle' defined as including every device in, upon, or by which any person or property is or may be transported...." And from the same resource, transportation is defined as "The removal of goods or persons from one place to another by a carrier."

John Dalen has repeatedly asserted that he was not engaged in any such transportation activities, and had not consented or contracted with The State in any way that would subject him to the jurisdiction of The State in this matter, and no proof was offered by The State to prove otherwise. In fact, The State did not challenge any of the assertions made by John Dalen throughout the proceedings, but merely ignored the challenges offered by John Dalen, preferring to act on assumptions/presumptions, as did the Magistrate and the Circuit Court judge who heard the initial appeal. *[See: Designation of Matter item "D" Order for Motion to Dismiss (R. pp. 1– 2), "F" Order for Motion to Reconsider (R. pp. 3– 4), "J" Transcript of Hearing June 28, 2017, (R. p. 104, lines 18–22) (R. p. 105, lines 2–21) (R. p. 106, lines 1–23) (R. p. 107, lines 1–25) (R. p. 108, lines 1–16) (R. p. 109, lines 1–20) (R. p. 110, lines 1–5); "L" Transcript of Proceedings Jury Trial August 17, 2017, (R. p. 128, lines 1–25) (R. p. 129, lines 4–15) (R. p. 150, lines 5–25) (R. p. 151, lines 1–10) (R. p. 153, lines 10–15) (R. pp. 156 – 167, lines 1–25) (R. p. 171, lines 3–25) (R. p. 172, lines 1–14, and lines 21–25) (R. p. 173, lines 1–7) (R. p. 174, lines 16–25) (R. p. 175, lines 1–10) (R. pp. 176 – 180, lines 1–25), "O" Transcript of Appeal Hearing February 26, 2018, (R. p. 189, lines 2–5) (R. p. 190, lines 5–8, and lines 19–23) (R. p. 191, lines*

5–15) (R. p. 192, lines 9–12, and lines 16–25) (R. p. 193, lines 1–10, and lines 18–25) (R. p. 194, lines 1–25) (R. p. 195, lines 1–10) (R. p. 197, lines 6–25) (R. p. 198, lines 1–17) and "P" Magistrate is Affirmed (R. pp. 5– 7), "Q" Affidavit of John Dalen (R. pp. 242– 244), "R" Motion for New Trial (R. pp. 73– 77), "S" Motion for Findings of Fact (R. p. 78), and "T" Order Denying Motion to Reconsider (R. pp. 8–10)]

John Dalen objected to The State presenting any arguments at the Circuit Court appeal hearing held February 26, 2018, *[See: Transcript Appeal Hearing February 26, 2018, Designation of Matter item "O" (R. p. 189, lines 2–5; R. p. 191, lines 5–15) (R. p. 193, lines 8–10) (R. p. 197, lines 6–25) (R. p. 198, lines 1–17)]* The State had its opportunity to assert its authority and/or dispute or otherwise challenge the assertions of John Dalen at the trial and failed to do so. *[See above-cited pages from Transcript of Proceedings Jury Trial of August 17, 2017, item "L" (R. pp. 124–186)]* To allow The State to argue its case now though it had failed to present any evidence or arguments in support of their case against John Dalen at the magistrate trial would be a denial of Due Process. *[See above-cited Transcript of Appeal Hearing, February 26, 2018, Designation of Matter item "O" (R. p. 189, lines 2–5.)]*

Many of the above arguments were presented in the accused's **Notice to Dismiss for Lack of Jurisdiction and Brief in Support of** *[See item "B" of the Designation of Matter (R. pp. 11–32)],* and is incorporated herein by reference to said document, as well as in a later motion: **Motion Challenging the Constitutionality of the Application of the SC Motor Vehicle "Transportation" Statutes Against the**

Accused *[See item "I" of the Designation of Matter (R. pp. 42–69)]*, incorporated herein by reference to said document.

In the just-mentioned motion challenging constitutionality of the statute in question, I discuss in detail the unconstitutional judicial alteration of well-established law on the proper meaning and terms of art. *The Oxford English Dictionary* defines "term of art" as a word or phrase that has a precise, specialized meaning within a particular field or profession. *West's Encyclopedia of American Law, Ed. 2* defines "term of art" as a word or phrase that has special meaning in a particular context. The term "transportation" is a legal term of art, having a specific meaning within the specific context of transportation-related professions and occupations, and is not directly related to the actions and activities of the general public, acting in their private, common law capacities and activities.

Rather than repeating it verbatim here, I refer the court to this same motion, **Motion Challenging the Constitutionality of the Application of the SC Motor Vehicle "Transportation" Statutes Against the Accused** *[See item "I" of the Designation of Matter (R. pp. 42–69)]*, incorporated herein by reference to said document, specifically to discussions and headings entitled:

II. **Unconstitutional Executive and Judicial Expansion of Legislative Intent, Purpose and Scope of Legislation.**

A. Unconstitutional Executive and Judicial Expansion of Legislative Subject Matter, points 1 through 5 *(R. pp. 45–46)*

B. Unconstitutional Government Taking and Conversion of the Public Right-of-Way into a Private Revenue Source for the STATE OF SOUTH CAROLINA and other Corporate Entities, pts. 1 through 6 *(R. pp. 47–51)*

III. **Unlawful Suspension of Multiple Constitutional Protections, Prohibitions and Provisions.**

Items A through G and H, pts. 1 through 11 *(R. pp. 51–58)*

IV. **The Executive and Judicial Branches of South Carolina Government Are Guilty of Knowingly Conspiring and Colluding to Engage in an Ongoing Criminal Enterprise for the Specific Purpose of Perpetrating Fraud through Numerous and Constitutionally Egregious Deprivations of Individual Rights under Color of Law.**

A. Executive Departments Criminal and Civil Liability Exposed Items 1 through 6

B. The Judicial Departments Criminal and Civil Liability Exposed Items 1 through 6.

C. Unconstitutional Separation of Subject Matter Context from Statutory Object creates the fraudulent appearance that THE STATE has standing to prosecute Respondent for an offense that, in and of itself, creates an affirmative defense by proving that no actual standing exists.

Pts. 1 through 4.

D. This is an inherent problem associated with allowing "statutory revision committees" to rewrite the statutes applying the underlying law while having no public responsibility or accountability to fully research the actual laws *in pari materia.* These alterations are then submitted to a legislature that fails to fully read and discuss them as mandated by the South Carolina Constitution. *(R. pp. 58–68)*

In summary, all of the above arguments clearly establish the appellant's belief and show his reliance on U.S. Supreme Court decisions and other authorities, affirming that Rights cannot be converted to privileges and that the Statute that I was charged under, the *SC Code of Laws Title 56, Motor Vehicles,* Chapter 1, Sec. 20 entitled *Driver's License Required...* converts a right into a privilege, and states it explicitly in the Statute. In order for this Statute to be constitutional, it can only be applied to regulate commercial activities. None of these challenges were acknowledged in any of the courts' rulings/orders; they were simply dismissed or not considered, as evidenced by the courts' failure to respond to the appellant's motions for findings of facts and conclusions of law. *[See Designation of Matter items "D" Order for Motion to Dismiss (R. pp. 1– 2), "F" Order for Motion to Reconsider (R. pp. 3–4), "P" Magistrate's Order Affirmed (R. pp. 5–7), "Q" Affidavit of John Dalen (R. pp. 242–244), "R" Motion for New Trial (R. pp. 73–77), "S" Motion for Findings of Facts (R. p. 78), and "T" Order Denying Motion for Reconsideration (R. pp. 8–10)].*

Issue #3:

Did the proceedings of both the Magistrate Court and Circuit Court Judge R. Lawton McIntosh violate Due Process of law protections secured by the U.S. Constitution and the Common Law?

The *Fifth Amendment* to the *U.S. Constitution,* and the *Fourteenth Amendment,* making the *Fifth Amendment* applicable to the states, guarantees every citizen the Right to Due Process of Law. The failure of a Trial Court to make it mandatory that The State must allege the element of "transportation" within the charging instrument relating to any alleged offense codified within the South Carolina "Transportation" Code, and then prove that specific primary element at trial by showing admissible substantive evidence that the accused individual was actively engaging in "transportation" at the time of the alleged offense, invariably creates multiple unconstitutional instances where the accused individual's right to due process are directly violated. *[See Designation of Matter, Uniform Traffic Ticket, item "A" (R. pp. 206–207); and item "C" Transcript of Hearing April 19, 2017, (R. pp. 82 – 86, lines 1–25; and items "D" Order for Motion to Dismiss (R. pp. 1–2), "E" Motion to Reconsider (R. pp. 33–37), "F" Order for Motion to Reconsider (R. pp. 3–4), and "G" Motion for Findings of Facts and Conclusions of Law (R. pp. 38–40); and "H" Transcript of Hearing June 13, 2017, (R. pp. 93–97, lines 1-25), "J" Transcript of Hearing, June 28, 2017, (R. pp. 104–109, lines 1-25) (R. p. 110, lines 1-14), and "L" Transcript of Hearing of Hearing, August 17, 2017, (R. p. 128, lines 8-24) (R. p. 129, lines 4-13) (R. p. 131, lines 1-14) (R. p. 141, lines 1-4 and lines 9-25) (R. p. 142, lines*

18-21) (R. p. 153 lines 9-13) (R. p. 155, lines 9-25) (R. pp. 156 – 167, lines 1-25) (R. p. 173, lines 1-7); and item "N. (2) (i)" Return of Criminal Appeal from Magistrate Court (R. pp. 224–230).]

In other words, Due Process is denied by the prosecution's failure to both allege and prove the existence of "transportation" as the primary element of any transportation-related offense, as this invariably creates an unconstitutional, rebuttable presumption of guilt of the primary essential element of any "criminal" allegation involving "transportation". The unconstitutional presumption of guilt in relation to the primary fact element of the allegation is then used to fraudulently reinforce the state's equally false and unsubstantiated presumption and assertion that *in personam* jurisdiction over the accused individual actually exists.

In the first instance, Due Process is denied because the investigating/arresting officer neither reasonably has – nor can reasonably develop – any form of reasonable suspicion or probable cause to believe that a private non-commercial automobile is actively engaged in any activity encompassed within the subject matter context of "transportation" simply by looking at it alongside one or two other statutory elements pertinent to some perceived or concocted offense that is itself completely dependent upon that primary fact element already demonstrably existing. In which case, if there is no specific set of articulable facts known to an officer that would lead him/her to believe first and foremost that "transportation" is actually being engaged in, then no reasonable suspicion or probable cause exists to believe that any contextually-related "transportation" offense was or is being committed, making the initial warrantless stop completely unconstitutional and illegal.

In the second instance, Due Process is denied by multiple agents of The State whose unconstitutional and wholly presumptive and unsubstantiated presumption and allegation that *in personam* jurisdiction over the accused individual actually exists under the jurisdictional umbrella of the South Carolina "Transportation" Code, and that she/he has breached some known legal duty codified therein.

The unconstitutional, unrebuttable presumption being that an individual who was acting entirely within their private, common law capacity, and who did not violate any common law requirement to exercise due care so as to avoid causing an unjust harm to another person or private property, and who was not and is not acting in the legal capacity of any legal "person" defined within and regulated by the South Carolina "Transportation" Code, is actually subject to, and could actually breach a legal duty associated with the specific subject matter context of "transportation" as encompassed by said Code.

In the third instance, Due Process is denied by the court's own failure to ensure that a probable cause determination and written order was properly made in accordance with law. The Westminster Magistrate Court and the judge for the Court of Common Pleas of South Carolina which heard my initial appeal are guilty of egregious error in their judicial determinations and opinions that directly violate the written laws of criminal procedure, while doing absolutely nothing to serve the ends of justice. These determinations and opinions arbitrarily act and serve to deny an accused individual their due process right to a proper determination of probable cause in *any* criminal case initiated against them by a warrantless seizure and arrest of persons or property, as well as the right to have that determination made by a

neutral and detached magistrate who is acting in compliance with all of the proper rules and processes of the *Code of Criminal Procedure.*

An ordinary traffic stop by a police officer is a "seizure" within the meaning of the *Fourth Amendment.* (See *Delaware v. Prouse,* 440 U.S. 648, 653, 99 S. Ct. 1391, 59 L. Ed. 2d 660 (1979); *U.S. v. Blair,* 524 F. 3d 740, 748 [6th Cir. 2008]).

In the fourth instance, Due Process is denied by the prosecution's failure to both allege and prove the existence of "transportation" as the primary element of any "transportation" related offense, as this invariably creates an unconstitutional, unrebuttable presumption of guilt of the primary essential element of any "criminal allegation" involving "transportation".

Every accused individual is simply presumed guilty of that relevant and essential primary fact element when accused of any "transportation" related offense. An offense that is entirely dependent upon both the subject matter context of "transportation" and proof that the individual was actively engaged in some specifically identifiable act within the subject matter context of "transportation" at the time of the alleged offense. This unconstitutional presumption of guilt in relation to the primary fact element of the allegation is then used to fraudulently reinforce The State's equally false and unsubstantiated presumption and assertion that *in personam* jurisdiction over the accused individual actually exists.

In the fifth instance, an unrebuttable presumption of this nature denies the fundamental requirement that an accused individual is entitled to be presumed innocent of *every single element* of an alleged offense, not just those that The State

cares to allege or considers the easiest to offer evidentiary proof in support of. The constitutionally protected right of substantive and procedural due process *requires* that The State be made to prove every single fact element of the allegation being made against an individual. The unrebuttable presumptions of legal fact and substantive fact are unconstitutional precisely because they act in direct contradiction of these rights.

In the sixth instance, an unrebuttable presumption of this nature fails to provide proper, sufficient, and timely notice of every specific element of the charge being made against the individual, thus depriving them of an affirmative defense that is naturally inherent in the statutes and their controlling subject matter context. Specifically, that the accused individual was not engaged in the regulated subject matter activity of "transportation" at the time of the alleged offense, and, therefore, could not have breached any known legal duty associated therewith as codified within the South Carolina Transportation Code.

In the seventh instance, an unrebuttable presumption of this nature unconstitutionally relieves the prosecution of having to submit lawfully obtained admissible evidence proving every individual element of the allegation to a jury or to a magistrate in a bench trial, of which "transportation" is the primary essential element, with all other elements being subjectively and contextually dependent thereon.

In the eighth instance, an unrebuttable presumption of this nature unconstitutionally relieves the prosecution of having to prove that the warrantless seizure of any evidence proving that the individual was actually engaged in "transportation" at the time of the alleged offense was constitutionally proper by being based upon articulable facts that would serve to establish probable cause to believe that the accused individual was actually engaged in "transportation" at the time of the alleged offense.

Absent any specific articulable facts that would provide probable cause to believe the contextual existence of "transportation" at the time of the alleged offense and the officer's initial contact, the warrantless seizure and arrest of the individual by the officer is inherently unconstitutional, and any "evidence" found or seized under the auspices of such an arrest is to be considered inadmissible under the "fruit of the poison tree" doctrine.

In the ninth instance, an unrebuttable presumption of this nature unconstitutionally relieves The State of its burden to prove probable cause and obtain an appealable probable cause determination order stating that the facts and evidence provided to the issuing magistrate supported the judicial determination that the accused individual actually *was* engaged in "transportation" at the time of the alleged offense and was also most likely guilty of all other essential elements of the alleged offense.

The facts and evidence supporting a finding of probable cause to believe that the accused individual was actively engaged in some "transportation" related activity

is/are imperative to establishing the necessary belief that any and all of the other essential element of some specific "transportation" related offense could even possibly be true, as there is no other legal subject matter context in which offenses relating to "transportation" may be read, understood, and applied. Therefore, if there is no "transportation" context, there can be no "transportation" related offense, which means that there are no factual elements of such an offense upon which to base a finding of probable cause.

In the tenth instance, an unrebuttable presumption of this nature unconstitutionally shifts the burden of proof to the individual by requiring him/her to prove that she/he is not guilty of that specific primary element because he/she was not engaged in the regulated subject matter activity of "transportation" at the time of the alleged offense, and, thus, could not have breached any known legal duty so as to result in the commission of an offense under the context of the South Carolina "Transportation" Code.

In the eleventh instance, an unrebuttable presumption of this nature unconstitutionally separates the underlying statutes and objects within the "transportation" code into individual subjects that are then treated by the executive and judicial branches of government as being completely independent of the subject matter context of the enacting legislation.

By unconstitutionally converting the subordinate objects of the South Carolina "Transportation" Code into completely legislation independent subjects, The State, via local prosecutors and every level of court, are completely free to prosecute and

adjudicate them as isolated offenses with no legal context beyond themselves and having no relevant relationship or dependency upon the specific legislatively defined subject matter context of "transportation".

Finally, Due Process of law was violated in that the elements of a "crime" were not proven. Due process of law is not any process, but refers to process according to the Common Law. *Hurtado vs. California,* 110 U.S. 516: "The state cannot diminish Rights of the people." Due Process of law is process of law according to the law of the land, i.e. the U.S. Constitution as exercised within the limits proscribed and interpreted according to the principles of Common Law.

Even if all of my other arguments and all of the Supreme Court cases that I have quoted throughout this brief are found to be without merit or otherwise dismissed, I still cannot be convicted of a crime. I have presented a mountain of evidence and case law to show that I have every reason to believe that I have not committed a crime. The elements of a "crime" must include an injured party; The State cannot be an injured party; The State did not claim there was an injured party; and no injured party was presented at the trial, because in fact there was no injured party. "Willfulness" is one of the major elements which is required to be proven in any criminal case. "Willfulness" is defined as an evil motive or intent to avoid a known duty or task under the law. (See *US v. Bishop,* 412 US 346.)

The Supreme Court and lower court cases, as well as letters to The State authorities *[See "Exhibits M. (2), (3), (4) and (5) of the Designation of Matter: Exhibit D (R. p. 209), Exhibit C (R. p. 208), Exhibit E (R. p. 210), and Exhibit F*

(R. p. 211)] that were not responded to, clearly establish that John Dalen had reason to believe that he was acting lawfully and had no willful intent to violate a known duty. *[See Designation of Matter, "Exhibits" items "N. (2) (a) through (j)", Opening Statement, (2)(a), (R. pp. 202–205), Uniform Traffic Ticket, (2)(b), (R. pp. 206–207), Letter to Sen. Thomas Alexander, (2)(c), (R. p. 208), Letter to Col. Michael Oliver, (2)(d), (R. p. 209), Reply from Col. Oliver, (2)(e), (R. p. 211), Letter to S.C. Department of Motor Vehicles, (2)(f), (R. p. 210), Napa Valley Register article, (2)(g), (R. pp. 212–213), Motion to Dismiss, (2)(h), (R. p. 11–32), Return of Criminal Appeal, (2)(i), (R. pp. 224–230), and S. C. Municipal Court Handbook, (2)(j), (R. pp. 215–216), "L" Transcript of Jury Trial August 17, 2017, (R. p. 171, lines 4-14) (R. p. 172, lines 1-14, and lines 22-25) (R. p. 173, lines 1-7), "O" Transcript Appeal Hearing February 26, 2018, (R. p. 191, lines 5-15) (R. p. 193, lines 18-25) (R. p. 197, lines 14-25), and (R. p. 198, lines 13-20.]*

Issue #4:

Did the Magistrate and the Circuit Court proceedings violate the religious freedom protections secured by the First Amendment of the U.S. Constitution?

John Dalen had clearly stated his concern at the Magistrates' trial of August 17, 2017, *[See the Designation of Matter items "N. (2) (a)" Opening Statement, (2)(a), (R. pp. 202–205), and "L" Trial Transcript of August 17, 2017, (R. p. 139, lines 7-10) (R. p. 145, lines 13-23) (R. p. 146, lines 10-23) (R. p. 147, lines 16-25) (R. p. 148, lines 1-19) (R. p. 149, lines 6-11) (R. p. 150, lines 7-19) (R. p. 172, lines 1-14)]* that the driver's license is part of the Real ID Act, which I, John Dalen believe to be a

precursor to the "mark of the beast" and which violates my religious beliefs, and violates the protections secured by the *First Amendment of the United States Constitution.* (See *Simmons vs. United States,* 390 US 389:

> "We find it intolerable that one Constitutional Right should have to be surrendered in order to assert another.")

From a study of the Bible, I have concluded that a system of numbering the people violates God's law. Many Biblical scholars agree. The Social Security numbering system is a way of controlling people with the likelihood of leading to a complete loss of freedom. The Social Security numbering system was sold to the people with the assurance that it would never be used for identification. This was a common concern among the people and Congress at that time, and it never would have passed without that assurance. The original Social Security card contained the statement "Not to be used for identification."

In the Bible, this numbering system leads to a one world government that uses this numbering system to rule the world, limiting rights and denying people the right to buy or sell without such a number. Whether or not the Social Security number is the one that will be used in this future government, the Real ID Act creates a national identification system which is being implemented worldwide, using the driver's license as the vehicle to implement this system.

As noted above in Issue #3, any police power regulation of fundamental rights must be narrow and specific in scope, according to the U.S. Supreme Court. There is no way anyone could reasonably argue that the Real ID Act is narrow or specific.

Also for religious reasons, John Dalen years ago rescinded his Social Security number and does not participate in the Social Security system, which is a voluntary system. The Social Security Statutes do not require anyone to obtain a Social Security number unless one wishes to obtain benefits from the Federal government. John Dalen has consistently rejected any benefits from the Federal government, and will not be applying for any Social Security benefits.

At a local Department of Motor Vehicle office (DMV office), I inquired as to the possibility of obtaining a driver's license without a Social Security number, and was informed that the Social Security number is required in order to obtain a license. John Dalen sent a letter to the DMV to verify this and received no response. *[See item "M. (4)" of the Designation of Matter, Letter to Dep't. of Motor Vehicles, Exhibit "E" (R. p. 210).]*

A notable U.S. Supreme Court case involving the reversal of a South Carolina State Supreme Court decision is *Sherbert v. Verner,* 374 U.S. 398 (1963). This case pertains to the violation of our Constitution's *First Amendment* Right to the free exercise of religion, made applicable to the states by the *Fourteenth Amendment,* 374 U.S. 399 – 410. On pages 406 through 409, the court discusses that there's no compelling state interest which justifies substantial infringement of the Appellant's Right to religious freedom under the *First Amendment.*

I cite the Sherbert court with regard to compelling state interest for substantial infringement of *First Amendment* rights: "[o]nly the gravest abuses, endangering paramount interests, give occasion for permissible limitation," *Thomas v. Collins,*

323 U.S. 516, 323 U.S. 530. In this Sherbert case, the S.C. Supreme Court had rejected the Appellant's contention that, as applied to her, the disqualifying provisions of the S.C. Statute (in this instance the requirement for a Social Security number in order to obtain a license, as well as the Real ID Act conflicting with my religious beliefs) abridged her right to the free exercise of her religion secured under the *Free Exercise Clause* of the *First Amendment,* made applicable to the States by the *Fourteenth Amendment.*

> The door of the Free Exercise Clause stands tightly closed against any governmental regulation of religious beliefs as such, *Cantwell v. Connecticut,* 310 U. S. 296, 310 U. S. 303. Government may neither compel affirmation of a repugnant belief, *Torcaso v. Watkins,* 367 U. S. 488; nor penalize or discriminate against individuals or groups because they hold religious views abhorrent to the authorities; *Fowler v. Rhode Island,* 345 U. S. 67;
>
> See *Sherbert v. Verner,* 374 U. S. 403

The courts employ a Standard of Judicial Review called strict scrutiny, applying this standard to determine which is weightier: a constitutional Right or principle or the government's interest against this observance of principle. Strict Scrutiny was introduced in *Footnote 4* of the U. S. Supreme Court decision, *United States v. Carolene Products Co.,* 304 U. S. 144, (1938). In this instance, a fundamental constitutional right is infringed, and strict scrutiny ought to be applied.

In *Braunfeld v. Brown,* 366 U.S. 599 (1961): "...to make accommodation between religious action and exercise of state authority is a particularly delicate task ... because resolution in favor of the State results in the choice to the individual of either abandoning his religious principle or facing criminal prosecution."

To reiterate the theme of this argument, The State is requiring me to provide a Social Security number on an application for a "privilege" that I contend reflects an unlawful conversion of a Right. By ignoring my religious objection to the Social Security number and my objection to the Real ID Act numbering system – which I believe is a precursor to the "mark of the beast" – The State is violating the protections secured by the *First Amendment of the U. S. Constitution* made applicable to the States through the *Fourteenth Amendment.* The State is attempting to force me to surrender one right – religious freedom – in order to enjoy another right, the right to travel. (See *Simmons vs. United States,* 390 US 389:

> "We find it intolerable that one Constitutional Right should have to be surrendered in order to assert another.")

Conclusion

Because of all of the above-described issues, it is clear that The State and the lower courts are guilty of egregious errors in their judicial determinations and opinions and have directly violated the written laws of criminal procedure and denied the accused, John Dalen, of his rights to Due Process. It is further evident that the statute in question *(See S.C. Code of Laws,* Title 56, Ch. 1, *Motor Vehicles,* Sec. 56-1-20*)* in

this case is being applied to people not subject to the statute who are engaged in the exercise of their Common Law Rights, thus rendering the statute unconstitutional in its application by the statute's conversion of a right into a privilege. Furthermore, the "Transportation" Statute *(See S.C. Code of Laws,* Title 56, Ch. 1, *Motor Vehicles,* Sec. 56-1-20*)* violates the religious freedom protections under the *First Amendment of the United States Constitution.*

WHEREFORE, the appellant moves this court to overturn/vacate the judgment of the Magistrates' Court and the Circuit Court's Appellate Judge R. Lawton McIntosh, and to order the return of all monies paid by John Dalen in the amount of $237.45.

Dated: December 14, 2018

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Oconee County
Court of Common Pleas
Honorable R. Lawton McIntosh, Circuit Court Judge
Appellate Case No. 2018 - 000637

John Dalen, Appellant

v.

The State, Respondent

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

December 14, 2018 By:

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