

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

RECEIVED
DEC 17 2018
SC Court of Appeals

REPLY BRIEF OF APPELLANT

John D. Dalen
109 Wood Valley Drive
Westminster, SC 29693
Phone: 864.647.4705
Appearing Pro Per/Appellant

Attorneys for Respondent, The State:

Alan Wilson
Attorney General

William M. Blitch, Jr.
Assistant Attorney General
S.C. Bar No. 15608

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

David R. Wagner
Solicitor, Tenth Judicial Circuit

TABLE OF CONTENTS AND CASES

Authorities / Cases	ii
Statutes	ii
Other Authorities.....	iii
U. S. Constitution.....	iii
Reply to Respondent's Initial Brief.....	1
Conclusion.....	10

TABLE OF AUTHORITIES

Cases

Bowen v. Roy, 476 U.S. 693 (1986).....	P. 8
Hagans v. Lavine, 415 U.S. 533 (1974).....	P. 3
Hale vs. Hinkel, 201 US 43, 74-75.....	P. 7
Murdock v. Pennsylvania, 319 US 105	P. 6
Sherbert v. Verner, 374, U.S. 398 (1963).....	Pp. 9, 10
Shuttlesworth v. Birmingham, Alabama, 373 U.S. 262.....	P. 6
Simmons vs. United States, 390 US 377	P. 4
Simmons vs. United States, 390 US 389	Pp. 4, 11
Thompson vs. Smith, 154 SE 579.....	P. 11
US v. Bishop, 412 US 346.....	P. 6

Statutes

Privacy Act of 1974

5 U.S.C. Sec. 552a.....	P. 8
South Carolina Code of Laws, Title 56, Chapter 1, Motor Vehicles	Pp. 2, 5, 6, 12
Sec. 56-1-10 (7) Definition of Motor Vehicle.....	P. 4
Sec. 56-1-10 (13) Revocation of License.....	P. 3
Sec. 56-1-10 (14) Suspension of Driver's License or Privilege.....	P. 3
Sec. 56-1-10 (28) Definition of Vehicle.....	P. 4
Sec. 56-1-1090 Restoration of Privilege.....	P. 3
Sec. 56-1-20 Driver's License Required.....	Pp. 2, 3, 5, 11

Statutes Continued

United States Code, Title 18, Sec.. 31 (6) Motor Vehicle	P. 5
United States Code, Title 18, Sec.. 31 Commercial Purposes	P. 5

Other Authorities

Black's Law Dictionary, Fourth Edition

Definition of "Carrier" p. 269.....	P. 4
-------------------------------------	------

Black's Law Dictionary, Fourth Edition

Definition of "Driver" p. 585.....	P. 5
------------------------------------	------

Black's Law Dictionary, Fourth Edition

Definition of "License" p.1067.....	P. 3
-------------------------------------	------

Black's Law Dictionary, Fourth Edition

Definition of "Transportation" p.1670.....	P. 4
--	------

United States Constitution

U. S. Constitution, Bill of Rights.....	P. 8
U. S. Constitution, Commerce Clause, Article 1, Section 8, Clause 3.....	P. 5
U. S. Constitution, First Amendment	Pp. 8, 9, 10, 12
Freedom of Religion	
U. S. Constitution, Fifth Amendment	P. 11
Due Process of Law	

Reply to Respondent's Initial Brief

In reply to the Attorney General's Initial Brief, the Appellant would note the following:

The Appellant, John Dalen, stands by the issues on appeal that he has addressed in his Initial Brief as well as all of the arguments and case law cited therein. In reply to the Attorney General's Initial Brief, the following discussion is offered by the Appellant:

The Attorney General's Initial Brief attempts to address Appellant's Issues on Appeal #1, #2, and #4 but fails to address Issue #3, which is Violation of Due Process Protections; and the State Attorney instead of addressing Issue #3 adds in the issue of "transportation" and/or "elements of a crime" as addressed by the statute which are more properly addressed under Issue #1. He ignores the fact that the Constitution requires that the elements of a "crime" must involve a victim and willful intent to evade a known duty.

As for Issue #1, the lack of jurisdiction, in order for the Court to have jurisdiction in this case, there must first be a case. Common Law requires that there be an injured party and that there must be intent to disobey a known duty, neither of which is present in this case because the State cannot be an injured party, and Appellant has presented ample evidence / case law to show that he firmly believes, and has reason to believe that he is and has been acting within his rights from the

beginning. The State has produced no such evidence, but relies heavily on a Statute that it has not proven Appellant is subject to.

For a related example – the State has a contractor's license law, and if Appellant were charged with violating the State's contractor license law, the State would have to prove

- a) That I am a contractor, i.e. for hire
- b) That I am a person required (subject to the Statute) to obtain a license
(privilege – see definition of license, pp. 3, 4 of this brief)

In order to be subject to any contractor license statute and to be charged with violations of it, a person would have to have exchanged rights for privileges. Then the State would need to prove not only the elements of the “crime” as defined by the Statute, but firstly that I am a contractor exercising a privilege. The same applies to the transportation statute (S. C. Code of Laws, Title 56 Chapter 1, Motor Vehicles, Sec. 56-1-20 Driver's License Required) under which I, John Dalen was charged. The State throughout these proceedings has presumed – over my repeated objections – that I am a person subject to this statute, but no proof has been offered at any time.

In the above example, regarding the contractor license law, if I were working on my porch when an agent of the State *presumed* that I was working as a contractor and issued me a citation, I would rely on my rights as a homeowner to work on my own property. The State would have to prove that I was subject to the statute that they were attempting to enforce before any violations of said statute that had been charged could be upheld (jurisdiction).

Furthermore, it is well established that

“The law requires proof of jurisdiction to appear on the record of the administrative agency and all administrative proceedings.”

Hagans v. Lavine, 415 U.S. 533 (1974)

The Attorney General fails to address the issue of “terms of art” that I raised in my Initial Brief. This is discussed thoroughly in my Initial Brief and I would add only a few comments here. The very word “license” connotes a privilege. For a definition of license from *Black’s Law Dictionary Fourth Edition*, p. 1067: “Permission by some competent authority to do some act which, without permission, would be illegal, a trespass, or a tort.” “Leave to do thing which licensor could prevent.” “Permission to do a particular thing, to exercise a certain privilege or to carry on a particular business”

In order for these definitions to apply in this instance, the State would have to take the position that the exercise of a Constitutional Right to use the public roads in the ordinary course of life and business is illegal, a trespass, or a tort, which the State could then regulate or prevent.

The Attorney General’s Initial Brief repeatedly acknowledges Appellant’s right to travel. (See: Respondent’s Initial Brief, pp. 7, 9, and 10.) Throughout the statute that I was charged under, Sec. 56-1-20 of the Motor Vehicle Transportation Statute, it is clearly stated that it is granting privileges. Sec. 56-1-20 *Driver’s License Required* clearly states: “May exercise privilege thereby granted.” See also Sec. 56-1-10, *Definitions* numbers 13 *Revocation of License* and 14 *Suspension of Driver’s License or Privilege* and also Sec. 56-1-1090 titled *Restoration of Privilege*. The Supreme Court has repeatedly ruled that states cannot convert rights to privileges, and that regulation of rights must be narrow and specific. Privileges carry no such limitation.

States cannot require citizens to waive one right in order to enjoy another right, such as the right to travel, or the right to due process under the Common Law.

“The right of the citizen to travel upon the public highways and to transport his property thereon either by horse drawn carriage or by automobile, is not a mere privilege . . . but a common right which he has under the right to life, liberty, and the pursuit of happiness.”

Thompson vs. Smith, 154 SE 579

"The claim and exercise of a Constitution right cannot be converted into a crime"... "a denial of them would be a denial of due process of law."

Simmons vs. United States, 390 US 377 (1968)

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

Simmons vs. United States, 390 US 389 (1968)

The Attorney General errs in determining that the State does not need to prove that Appellant was involved in "transportation" as that is the subject of the statute, as discussed in this brief. How can the Appellant have violated a section of this statute without being engaged in the activity that the statute purports to regulate? This is where "terms of art" apply. The Statute in question provides a definition for "motor vehicle" in Sec. 56-1-10(7) where it is defined as a vehicle. And "Vehicle" is defined in Sec. 56-1-10(28) as: "means every device in, upon, or by which a person or property may be *transported*..." (Italics mine in Sec. 56-1-10.) The Statute fails, however to define transported so we look to *Black's Law Dictionary Fourth Edition*, p. 1670, and find that "transportation" means "the removal of goods or persons from one place to another, by a carrier." Now we go to *Black's Law Dictionary Fourth Edition*, p. 269 to find that "carrier" means "One undertaking to transport persons or property... one employed in or engaged in the business of carrying goods for others for

hire.” Therefore, the S. C. Motor Vehicle Code Title 56 Chapter 1 is in fact a transportation statute as discussed also in my Initial Brief.

Due to the Commerce Clause of the U.S. Constitution, the states’ transportation statutes have relied and continue to rely on the definitions in the United States Code, and now because of the State’s participation in the Real ID Act, the State’s driver’s license is now a Federal ID. We look to Federal Codes for clarification.

USC Title 18, Sec. 31 – Definition of “Motor Vehicle” ,,,

(6) “Motor Vehicle”:

The term “motor vehicle” means every description of carriage or other contrivance propelled or drawn by mechanical power and used for commercial purposes on the highways in the transportation of passengers, passengers and property, or property or cargo.

USC Title 18, Sec. 31 defines “Commercial Purposes”:

Used for commercial purposes – the term “used for commercial purposes” means the carriage of persons or property for any fare, fee, rate, charge, or other consideration, or directly or indirectly in connection with any business, or other undertaking intended for profit.

Black’s Law Dictionary Fourth Edition, p. 585

Definition of Driver: “One employed in conducting or operating a coach, carriage, wagon or other vehicle . . . or motor car”

The Attorney General’s assertions in the Statement of Issues on Appeal, under #1, 2 and 3 of his Initial Brief are in error in that the State could not have had any jurisdiction without proof that Appellant is/was subject to the Statute, South Carolina Code of Laws 56-1-20. Appellant was:

- a) not driving – he was traveling
- b) not engaged in transportation or for hire on the roadways
- c) no injured party was presented at the trial or claimed at any time in this case
- d) no property or persons were damaged in any way
- e) no claim was ever made that Appellant John Dalen acted with malice or otherwise violated a known duty.

“No state may convert a secured liberty into a privilege and attempt to issue a license and fee for it.”

Murdock v. Pennsylvania, 319 US 105

“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.”

Shuttlesworth v. Birmingham, Alabama, 373 US 262

“Willfulness is one of the major elements, which is required to be proven in any criminal element. You have to prove (1) that you are the party, (2) that you had a method or opportunity to do the thing, and (3) that you did so with willful intent. Willful is defined as an evil motive or intent to avoid a known duty or task under the law.”

US v Bishop, 412 US 346

In order to be Constitutional, the Statute in question, Title 56, Chapter 1 of the South Carolina Code of Laws, can only regulate privileges; and by the use of “terms of art” it does just that. It cannot convert the Appellant’s right to travel into a privilege, and charge a fee for it. This is well settled by the United States Supreme Court; and I, John Dalen, have relied on these decisions in the exercise of my rights. Even if I were mistaken and the State *could* prove that I am subject to the above-mentioned Statute, which it has not and cannot because I have not engaged in any for hire activities which would be properly regulated by the Transportation Statute (S.C. Code Title 56, Ch. 1) – then I would still be deprived of due process under the Common Law

as there is no victim – no one was hurt or damaged and I provide ample reason to believe that I was acting in accordance with the law as it applies to me, and there was no intent to violate a known duty.

“...We are of the opinion that there is a clear distinction in this particular between an individual and a corporation, and that the latter has no right to refuse to submit its books and papers for examination on the suit of the State. The individual may stand upon his Constitutional Rights as a Citizen. He is entitled to carry on his private business in his own way. His power to contract is unlimited. He owes no duty to the State or to his neighbors to divulge his business, or to open his doors to investigation He owes no such duty to the State, since he receives nothing therefrom, beyond the protection of his life, liberty, and property. His rights are such as the law of the land long antecedent to the organization of the state, and can only be taken from him by due process of law, and in accordance with the Constitution. Among his rights . . . and the immunity of himself and his property from arrest or seizure except under warrant of law. He owes nothing to the public so long as he does not trespass on their rights.”

Hale v. Hinkel, 201 US 43, 74-75

Any, and all, agents, or agencies, of any State are nothing more than “employees” of a State. Any man accused of any crime has a right to face his accuser, not a “representative” of the alleged accuser. If the “STATE” says I have injured the STATE, let the STATE be sworn in and questioned. Only a properly sworn and verified complaint from a true injured party may witness against this Appellant. Anything short of that is Constructive Fraud, with many other types of fraud to follow; normally U.S. Mail fraud, conspiracy, etc.

Due process is not just any process, but must be process under the Common Law. Most any “Legal Dictionary” will display the fact that (1) the People are Sovereign; and (2) the People are the State. The “majority” MAY be the consensus of

the people of a Democracy, but in a Republic, or any State with a “Republican form of government,” the minority is protected from the majority, or any other entity, cluster, group, or collection thereof that acts against actual “Law.” This Appellant and Belligerent Claimant yields no license, leave, or permit to do anything contrary to his unalienable rights, as ensured in the written documents referred to as the Constitution for the United States of America and the Bill of Rights.

Now we address Issue #4 wherein the Attorney General argues that the requirement for a driver’s license does not violate the free exercise of religion clause of the United States Constitution, the argument whether a Social Security number can be required in order to obtain a driver’s license. As discussed above, Appellant does not believe that he is required to obtain a driver’s license because the Statute as written could only be Constitutional if it were regulating privileges or commercial activity. The Attorney General cites a Supreme Court case, Bowen v. Roy, 476 U.S. 693 (1986) which addresses the issue of the requirement of a Social Security number in a case where the issue was the right to receive government benefits. As I have noted in my Initial Brief, p. 33, there is no law that requires anyone to obtain a Social Security number or to participate in the Social Security system unless the applicant wishes to receive government benefits in which case he/she *is* required to obtain a number. Appellant John Dalen asserts that the right to travel is *not* a government benefit. The Social Security system and the S.S. number associated with it were never intended as identification. In response to the increased use of the S.S. number for identification purposes, the subsequent hacking of public data bases, and identity theft issues, Congress passed the Privacy Act of 1974 (5 U.S.C. § 552a) to discourage

the use of S.S. numbers for identification purposes. The South Carolina State DMV was hacked several years ago, and many citizens' S.S. numbers were compromised. Because of this, alternatives to the S.S. number for purposes of identification are being discussed in the public realm.

The Attorney General further attempts to challenge whether I have a "deep religious conviction, shared by an organized group, and intimately related to daily living; . . ." (Respondent's Initial Brief, p. 16) Aside from the fact that the State is requiring a S.S. number that no law requires anyone to obtain, I – as well as a large organized group of people called "Christians" – believe that the S.S. number is *the* numbering system and/or a precursor to the "Mark of the Beast" that the Bible warns us about, and tells us not to accept. As far as "intimately related to daily living" one can see very simply that it is becoming increasingly difficult to operate in our society without a S.S. number. I – as well as many other Christians – believe that the S.S. number violates God's law and many have refused the number and refused to voluntarily obtain one for their children. The case that I have cited in my Initial Brief, Sherbert v. Verner, 374 U.S. 398 (1963), is the applicable Supreme Court case in regard to this topic, which is that the First Amendment rights to my religious beliefs cannot be denied or forced to be surrendered in order that I may exercise another right – the right to travel.

CONCLUSION

In summary, the Brief filed by the State's Attorney General is an attempt to defend the State's application of a Statute that specifically regulates privileges, not rights, and in doing so distorts the authority of the State in this case. He is in violation of his oath of office in that he has a sworn duty to defend and uphold the U.S. Constitution. The attorney general is failing in his duty to protect me in the exercise of my clearly defined rights. In his Statement of Issues #1, #2, and #3, the Attorney General relies on a Statute that has not been proven to apply to the Appellant. He ignores the "terms of art" definitions of words that are crucial to the understanding of the intent of the legislature; and therefore neither personal nor subject matter jurisdiction has been proven on the record, and in fact neither exists. As the Appellant has argued, the Statute could only be Constitutional for the regulation of privileges granted by the State, not as the regulation of rights which are granted by God, and protected by the Constitution of the United States.

Finally, in Issue #4, as in the Verner case, Sherbert v. Verner, 374 U.S. 398 (1963), Appellant's rights under the First Amendment have in fact been violated in that the Statute – as the State is attempting to enforce it – requires the Appellant to obtain a federal ID number which the federal government does not require anyone to obtain, in order to exercise the right to travel in the current modes of conveyance which include the automobile.

“The right of the citizen to travel upon the public highways and to transport his property thereon either by horse drawn carriage or by automobile, is not a mere privilege . . . but a common right which he has under the right to life, liberty, and the pursuit of happiness.”

Thompson vs. Smith, 154 SE 579

Citizens cannot be required to exchange one right in order to exercise another.

“We find it intolerable that one Constitutional Right should have to be surrendered in order to assert another.” Simmons vs. United States, 390 US 389 The State, by the Motor Vehicle Transportation Statute Sec. 56-1-20, is unlawfully attempting to require me to violate my religious beliefs by obtaining a number, and by removing the Constitutional protections of the Common Law (Fifth Amendment) due process that requires the elements of a crime to contain a victim and willful intent.

If the State is allowed to convert even one right into a privilege, then it would follow that any right could be thus converted using the “protection of the people” as the excuse to do so. [See Notice for Dismissal for Lack of Jurisdiction, pp. 2 – 7 (R. p. 12-17); and see Designation of Matter, p. 2 B. (R. p. 11)] Some rights are unalienable and cannot be waived or exchanged for privileges even if one wished to do so. The right to travel is described by the Supreme Court and other courts as a fundamental right that falls under the “unalienable” heading. The Supreme Court and other courts have repeatedly ruled as such and acknowledge that one may use the modes of conveyance of the day, including automobiles. [See Notice for Dismissal for Lack of Jurisdiction, pp. 2 – 7, and pp. 18 – 20 (R. pp. 12-17, and pp. 28-30); and see Designation of Matter, p. 2 B. (R. p. 11)]

WHEREFORE, the appellant moves this court to: (1) overturn/vacate the judgment of the Magistrates' Court and the Circuit Court; (2) order the return of all monies paid by John Dalen in the amount of \$237.45; and (3) the court affirms that the Statute in question (S. C. Code of Laws, Title 56, Ch. 1) is in fact a transportation statute that regulates commercial or "for hire" activities only. It does not regulate rights. The Appellant's right to due process and his First Amendment right to freedom of religion have been violated by the State, and the State failed to prove any jurisdiction in this matter.

Dated: December 14, 2018



John D. Dalen, Appearing Pro Per
109 Wood Valley Drive
Westminster, SC 29693
Ph. 864 647 4705