

STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM OCONEE COUNTY

Court of Common Pleas

R. Lawton McIntosh

Appellate Case No. 2018 - 000637

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S.C. SUPREME COURT

John Dalen, Appellant

v.

The State, Respondent

PETITION FOR WRIT OF CERTIORARI

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Questions Presented for Review

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?
5. Did the South Carolina Court of Appeals fail to protect the rights guaranteed to John Dalen under the Constitution of the United States?

The Appellant requests that the Supreme Court review the Appellate Court decision in this case because there are substantial Constitutional issues directly involved and the decision of the Court of Appeals conflicts with the decisions of the United States Supreme Court.

Statement of the Case

Appellant believes that it would be sound judicial discretion to review the final decision of the Court of Appeals in this case. Substantial Constitutional rights are at issue in this case and Appellant believes that the South Carolina Court of Appeals has failed in its duty to protect Appellant's Constitutionally-protected rights.

In briefs filed with the S.C. Court of Appeals, incorporated herein by reference to same, Appellant has challenged the jurisdiction of the Trial Court due to "words of art" being used to deceive Appellant – and others similarly situated – into believing that a "law" has been violated. In these same briefs, Appellant has also shown that the Statute in question, South Carolina Code of Laws, Title 56, Chapter 1 entitled *Motor Vehicles* can only be Constitutional as applied to entities engaged in commercial activities, and is therefore unconstitutional when applied to citizens exercising Constitutionally-protected rights.

As I, John Dalen, have from the beginning of this case, starting with the traffic stop, I again assert my rights, including all of my rights, privileges, and immunities at Natural Law, Common Law, Maritime Law, and all commercial rights relevant to "the State." As Appellant believes that the courts have failed

to protect my rights that are guaranteed under the U.S. Constitution, Appellant requests this court to take Judicial Notice of the following:

- 1) The United States Supreme Court has repeatedly ruled that rights protected by the U.S. Constitution cannot be converted into privileges. And, that the exercise of a Constitutionally-protected right cannot be converted into a crime. (See *Miller v. U.S.*, 230 F. 486, 489; *Miranda v. Arizona*, 384 U.S. 436, 491; *Murdock v. Pennsylvania* 319 U.S. 105; and *Shuttlesworth v. Birmingham, Alabama*, 373 U.S. 262.)
- 2) The U.S. Supreme Court has ruled that the right to travel by any conveyance is a Constitutionally-protected right. (See *Stephenson v. Binford*, 287 U.S. 251.) Also see *II Am. Jur. (1st) Constitutional Law*, Sec. 329, p. 1135 regarding the right of the citizen to travel on public highways; *16 Am. Jur. 2d*, Sec. 260 regarding the right to travel; *25 Am. Jur. (1st) Highways*, Sec. 260 regarding the requirement that regulations not violate constitutional guarantees; *25 Am. Jur. (1st) Highways*, Sec. 427, p. 717 defining the terms “travel” and “traveler”; and *Black’s Law Dictionary, 4th Ed., Definition of “Motor Vehicle”*.
- 3) The Statute in question – S.C. Code Title 56, Chapter 1, Sec. 56-1-20 clearly states that it is granting a privilege. (See *Murdock v. Pennsylvania* 319 U.S. 105; and *Shuttlesworth v. Birmingham, Alabama*, 373 U.S. 262.)

- 4) It is the duty of the courts to protect the rights of the citizens, and there can be no rulemaking which would abrogate those rights. (See *Boyd v. United States*, 116 US 616; *Byars v. U.S.*, 273 US 28, 32 (1927); *Miller v. U.S.*, 230 F. 486, 489; *Miranda v. Arizona*, 384 U.S. 436, 491; *Murdock v. Pennsylvania* 319 U.S. 105; and *Shuttlesworth v. Birmingham, Alabama*, 373 U.S. 262.)
- 5) The statute in question *S.C. Code of Laws, Title 56, Chapter 1, Sec. 56-1-20* requires the applicant to provide a federal Social Security number/card in order to obtain a “license”. John Dalen does not participate in the social security system and objects to the social security number on religious grounds. See *Simmons v. United States*, 390 US 389, “We find it intolerable that one Constitutional Right should have to be surrendered in order to assert another.” And also, in *Sherer v. Cullen*, 481 F. 946, “There can be no sanction or penalty imposed upon one because of this exercise of Constitutional Rights.” See also *Sherbert v. Verner*, 374, US 398 (1963), a First Amendment case, wherein the U. S. Supreme Court overturned the South Carolina Supreme Court on this very issue.

Argument

To reiterate, in briefs filed with the Court of Appeals, incorporated herein by reference to same, Appellant has challenged the jurisdiction of the Trial Court due to “words of art” being used to deceive Appellant – and others similarly situated – into believing that a “law” has been violated.

In those briefs, Appellant has also shown that the Statute in question, South Carolina Code of Laws, Title 56, Chapter 1 entitled *Motor Vehicles* can only be Constitutional as applied to entities engaged in commercial activities, and is therefore unconstitutional when applied to citizens exercising Constitutionally-protected rights, absent the informed consent of the citizen. Therefore, the Issues on Appeal – numbers 1, 2, and 3 – should all be answered “yes” because Appellant was simply exercising a Constitutionally-protected right which the “state” through its statute converted into a privilege and a crime.

Appellant believes that the state’s Attorney General and the courts that have dealt with this case are simply protecting a revenue stream rather than doing their duties to apply the law equitably. When the Constitutionality of a statute is brought forward, any citizen has the right to expect that his/her elected officials and courts will first and foremost seek to protect the citizen;

this should be their first duty rather than the protection of the state. The American Republic relies on the rule of law, not the law of rulers.

The Appellate Court refused to consider the Constitutionality of the Statutes raised in Issues 1, 2, and 3, and dismissed Issue 4, claiming Appellant did not raise the issue “properly” with the Trial Court. (See Appendix p. 352) In answer to this, Appellant asserts that he did in fact raise the issue with the trial court. (See Record on Appeal, Pp. 150, 151, 175, 205, 208, 210, 243) As to whether or not the issue was “properly” raised, the Appellant points out that he is not an attorney and that he quite possibly made many errors in procedure. However, this does not excuse the court from their duty to protect the Constitutional rights of the citizen. Even if Appellant had not raised Issue 4, when brought to the court’s attention that Constitutionally-protected rights were violated, it is the court’s duty to protect those rights. See the following cases concerning the courts duty:

Boyd v. United States, 116 U.S. 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 v. U.S., 273 U.S. 28, 32 (1927). Constitutional provisions are to be liberally construed, and as well it “is the duty of the courts to be watchful for the Constitutional rights of the citizen and against any stealthy encroachments thereon.”

Miranda v. Arizona, 384 U.S. 436, 491: “Where rights secured by the Constitution are involved, there can be no rulemaking or legislation which would abrogate them.”

Mulger v. Kansas, 123 U.S. 623, 661. It is the duty of the court to recognize the substance of things and not the mere form.

Furthermore, regarding Issue 4, the Appellant has claimed from the beginning that the Statute as applied to John Dalen is unconstitutional as it requires the procurement of a Social Security number in order to obtain the license, which John Dalen believes is a violation of his religious freedom. As the Supreme Court says, in *Simmons v. United States*, 390 US 389, “We find it intolerable that one Constitutional Right should have to be surrendered in order to assert another.” And also, in *Sherer v. Cullen*, 481 F. 946, “There can be no sanction or penalty imposed upon one because of this exercise of Constitutional Rights.” See also *Sherbert v. Verner*, 374, US 398 (1963), a First Amendment case, wherein the U. S. Supreme Court overturned the South Carolina Supreme Court.

All of the above relate to the 5th question presented for review, Issue 5 wherein Appellant claims that the Appellate Court failed in its duty to protect the Constitutional Rights of the Appellant, John Dalen. This should also be answered in the affirmative as Appellant has conclusively shown that Constitutional Rights cannot be converted into privileges. Nor can the exercise

of said rights be converted into a crime. Nor should a citizen have to waive one right in order to exercise another. Many United States Supreme Court cases have affirmed all of these assertions. And, in fact, South Carolina's Attorney General Alan Wilson acknowledges in his Final Brief that John Dalen does in fact have a right to travel. (See Appendix Pp. 338, 340) A.G. Wilson errs in not defining the words used in the Statute, and the Appellate Court has done the same.

John Dalen relies on all of the arguments presented in his Final Brief to the South Carolina Court of Appeals as well as subsequent briefs filed with the South Carolina Court of Appeals. Furthermore, even if John Dalen were mistaken in his beliefs and interpretation of the laws in question, the State could not prove willfulness to avoid a known duty under the law. See *U.S. v. Bishop*, 412 US 346. Therefore John Dalen could not be convicted of the state's assertion of a crime in this case.

Conclusion and Demand for Relief

The statute in question, the South Carolina Code of Laws, Title 56, Chapter 1 converts a Constitutionally-protected right into a privilege in violation of the United States Constitution. The U. S. Supreme Court has ruled repeatedly that a state cannot convert a right into a privilege. The appellate court's ruling in this case is based on faulty statutory interpretation of terms of art / words of art.

The appellate never consented nor waived any of his rights, and in fact cannot waive fundamental, unalienable rights, within which is the right to travel. If the Appellate Court wishes to hold to their ruling of December 2, 2020, then the statute itself is unconstitutional. Proper statutory interpretation of "words of art" is the only way that the statute can be constitutional.

WHEREFORE John Dalen moves this court to declare that the South Carolina Code of Laws Title 56, Chapter 1 as applied to John Dalen in this case and others similarly situated is unconstitutional, and that all allegations and recommended administrative penalties against him be withdrawn and all fines collected be immediately refunded to the Appellant. Appellant also demands that should the appellant face further attempts to move forward with the assessment of any fees or penalties of any kind in relation to the South Carolina Code of Laws Title 56, Chapter 1, the administrative court be permanently enjoined from further harassment and libelous treatment of appellant and all others similarly situated, requiring the administrative court to cease and desist in any and all future actions relating thereto.

DATED this 15th day of February 2021

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