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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM OCONEE COUNTY
Court of Common Pleas
R. Lawton McIntosh

Appellate Case No. 2018 - 000637

John Dalen, Appellant

v.

The State, Respondent

APPENDIX

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Appearing Pro Per / Appellant

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INDEX

Record on Appeal 1

BRIEFS OF APPELLANT

Final Brief of Appellant 245

Reply Brief of Appellant 294

Appellants Petition for Rehearing 310

BRIEFS OF RESPONDENT

Final Brief of Respondent 327

APPEALS COURT DECISIONS AND ORDERS

Opinion Affirmed 352

Order Denying Petition for Rehearing 358

THE STATE OF SOUTH CAROLINA

In The Court Of Appeals

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Court of Common Pleas

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Case No. 2018 - 000637

John Dalen, Appellant

v.

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SC Court of Appeals

RECORD ON APPEAL

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INDEX

Orders:

Order for Motion to Dismiss, April 21, 2017..... 1

Order for Motion for Reconsideration, June 13, 2017..... 3

Order for Circuit Court Magistrate is Affirmed, March 1, 2018 5

Order for Circuit Court Motion for Reconsideration Denied, March 21, 2018 8

Pleadings:

Accused's Notice to Dismiss for Lack of Jurisdiction, April 18, 2017.....11

Accused's Notice of Motion and Motion to Reconsider, May 2, 2017..... 33

Motion for Findings of Facts and Conclusions of Law, June 13, 2017..... 38

Motion for Pretrial Hearing, June 13, 2017.....41

Motion Challenging Constitutionality of the Application of the SC Motor Vehicle "Transportation" Statutes Against the Accused, June 28, 2017..... 42

Accused's Motion for Offer of Plea, July 11, 2017..... 70

Notice of Motion and Motion for Change of Venue, August 11, 2017..... 72

Motion of Motion and Motion for New Trial and/or Amendment of Judgment, March 12, 2018 73

Notice of Motion and Motion for Findings of Facts and Conclusions of Law, March 12, 2018..... 78

Hearing Transcripts:

Transcript of Hearing Magistrate Court, April 19, 2017 79

Transcript of Motion Hearing Magistrate Court, June 13, 2017 90

Transcript of Hearing, a Voir Dire, June 28, 2017.....100

Transcript of Jury Trial, August 17, 2017.....124

Transcript of Circuit Court Appeals Hearing, February 26, 2018 187

Charges:

Uniform Traffic Ticket, February 16, 2017..... 201

Exhibits:

Exhibit A: Opening Statement by John Dalen..... 202

Exhibit B: Uniform Traffic Ticket, February 16, 2017..... 206

Exhibit C: Letter to Senator Thomas Alexander, June 22, 2017.....208

Exhibit D: Letter to Colonel Michael Oliver, SC Dep't. of Public Safety, June 15, 2017.....209

Exhibit E: Letter to SC Department of Motor Vehicles, June 15, 2017.....210

Exhibit F: Letter from Colonel Michael R. Oliver, June 29, 2017.....211

Exhibit G: Article from Napa Valley Register.com, October 28, 2013 212

Exhibit H: Cover page of Accused's Notice to Dismiss for Lack of Jurisdiction - Complete motion of April 18, 2017, was filed as an exhibit; to avoid unnecessary duplication, the 22-page document is located on page 11 of this Record on Appeal 214

Exhibits presented to Circuit Court for Appeal:

Exhibit I: State of South Carolina Municipal Court Handbook 2011...(p. 6)..... 215

Exhibit J: 16 Am. Jur. 2d. Constitutional Law § 260.....217

Exhibit K: 16 Am. Jur. 2d. Sec. 177 late 2d. Sec. 256 218

Other:

Appeal and Attachment to Appeal of the Magistrate Court proceedings to Court of Common Pleas, August 22, 2017..... 219

Return of the Criminal Appeal, August 23, 2017..... 224

Letter to David A. Root, Esq., Oconee County Attorney, July 27, 2017, Notice of Intent to Sue 231

South Carolina Code of Laws, Chapter 5, Offenses Against Civil Rights..... 235

Second Letter to David A. Root, Esq., Oconee County Attorney, August 11, 2017, Re: August 17 Trial and Motion for Change of Venue..... 241

Affidavit of John Dalen, March 12, 2018..... 242

Certification of Matter to be Included in the Record on Appeal

STATE OF SOUTH CAROLINA	)	IN THE MAGISTRATE COURT OF
	)	WESTMINSTER
COUNTY OF OCONEE	)	
STATE OF SOUTH CAROLINA	)	ORDER FOR
	)	MOTION TO DISMISS
vs.	)	
	)	
JOHN DALEN,	)	
	)	
Defendant	)	
	)	

The above referenced matter is before the court on Defendant's Motion to Dismiss filed on April 18, 2017. A hearing was held on that same day and arguments were heard from both the Defendant and the State.

In response to the motion, the Court presents the following findings of fact:

Traffic offenses are offenses against the state and therefore are criminal in nature. An individual has the same due process including the right to counsel and trial by jury as other criminal offenses.

Further, the statutory authority of Magistrate Judges to handle traffic offenses by jurisdiction is granted by SC Code Ann. 22-3-540. Magistrate judges may also impose sentences within these limits. This jurisdiction covers the countywide area that the Judge serves.

As far as the offense charged is concerned, Section 56-1-20 of the South Carolina Code explicitly states that No Person shall drive a motor vehicle upon a highway in this state unless such person has a valid motor vehicle license issued to him under this article.

THEREFORE, Defendant's Motion to Dismiss is hereby DENIED.

The Defendant shall appear at the next scheduled court date of June the 13th, 2017 at 2:00pm.

IT IS SO ORDERED!

Dated this 21th day of April, 2017.

William F. Derrick, MAGISTRATE
OCONEE COUNTY

STATE OF SOUTH CAROLINA COUNTY OF OCONEE	IN THE MAGISTRATE COURT OF WESTMINSTER
STATE OF SOUTH CAROLINA vs. JOHN DALEN, Defendant	ORDER FOR MOTION FOR RECONSIDERATION

The above referenced matter was before the court on Defendant's Motion to Dismiss filed on April 18, 2017. A hearing was held on that same day and arguments were heard from both the Defendant and the State, and a decision to deny the motion to dismiss was rendered.

The Defendant now files a motion to reconsider before the Court and motion for findings of fact and conclusions of law.

Rule 59 states that any motion for new trial (or reconsideration) may be granted 1) in which there has been a trial by jury, or 2) in an action tried without a jury. This particular case has not been heard nor decided, therefore this motion is improper.

I also further find that the second motion for findings of fact is also improper without a trial and the protections of the defendant's rights are not preserved in this manner.

THEREFORE, Defendant's Motions are hereby DENIED. The Court now enters a plea for the defendant of not guilty and hereby sets a bench trial, unless a jury trial is requested, for June 28, 2017 at 1:00pm.

IT IS SO ORDERED!

Dated this 13th day of June, 2017.

William F. Derrick,
MAGISTRATE
OCONEE COUNTY

ELECTRONICALLY FILED - 2018 Mar-01 4:59 PM - OCONEE - COMMON PLEAS - CASE#2017CP3700490

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2017 CP-37-00490

JOHN DALEN
PLAINTIFF(S)

STATE OF SOUTH CAROLINA
DEFENDANT(S)

Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

MAGISTRATE IS AFFIRMED.

This order ☒ ends ☐ does not end the case.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

2156
Judge Code

Date

ELECTRONICALLY FILED - 2018 Mar 01 4:59 PM - OCONEE - COMMON PLEAS - CASE#2017CP3700490

For Clerk of Court Office Use Only

This judgment was entered on the ____ day of ____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this ____ day of ____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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Oconee Common Pleas

Case Caption: John Dalen VS State of South Carolina

Case Number: 2017CP3700490

Type: Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

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MAR - 1 2018
CLERK OF COURT - OCONEE COUNTY

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2017 CP-37-00490

JOHN DALEN
PLAINTIFF(S)

STATE OF SOUTH CAROLINA
DEFENDANT(S)

Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

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NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court.

ORDER INFORMATION

MOTION FOR RECONSIDERATION IS DENIED WITHOUT THE NECESSITY OF A HEARING. NO FORMAL ORDER IS REQUESTED.

This order ☒ ends ☐ does not end the case.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

2185
Judge Code

Date

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ELECTRONICALLY FILED - 2018 Mar 21 3:20 PM - OCONEE - COMMON PLEAS - CASE#2017CP3700490

For Clerk of Court Office Use Only

This judgment was entered on the ____ day of ____, 20____ placed in the appropriate attorney's box on this day of ____, 20____ to parties (when appearing pro se) as follows:	and a copy mailed first class or to attorneys of record or

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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Oconee Common Pleas

Case Caption: John Dalen VS State of South Carolina

Case Number: 2017CP3700490

Type: Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2018-03-21 14:58:12 page 3 of 3

CERTIFIED TRUE COPY
MAR 21 2018
CLERK OF COURT
OCONEE COUNTY, SC

STATE OF SOUTH CAROLINA OCONEE COUNTY	)	IN THE CITY OF WESTMINSTER MUNICIPAL COURT
State of South Carolina, PLAINTIFF	)	**Notice to Dismiss for Lack of Jurisdiction**
John Dalen, ACCUSED, Pro Per	)	Summons No. 5102P0778082

Accused's Notice to Dismiss for Lack of Jurisdiction

The forgotten legal maxim is that free people have a right to travel on the roads which are provided by their servants for that purpose, using ordinary transportation of the day. Licensing cannot be required of free people, because taking on the restrictions of a license requires the surrender of a right. The driver's license can be required of people who use the highways for trade, commerce, or hire; that is, if they earn their living on the road, and if they use extraordinary machines on the roads. If you are not using the highways for profit, you cannot be required to have a driver's license.

BRIEF IN SUPPORT OF NOTICE FOR DISMISSAL FOR LACK OF JURISDICTION

NOW, comes the Accused, appearing specially and not generally or voluntarily, but under threat of arrest if he failed to do so, with this "BRIEF IN SUPPORT OF NOTICE FOR DISMISSAL FOR LACK OF JURISDICTION," stating as follows:

ARGUMENT

If ever a judge understood the public's right to use the public roads, it was Justice Tolman of the Supreme Court of the State of Washington. Justice Tolman stated:

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OCONEE COUNTY
SUMMARY COURT

"Complete freedom of the highways is so old and well established a blessing that we have forgotten the days of the Robber Barons and toll roads, and yet, under an act like this, arbitrarily administered, the highways may be completely monopolized, if, through lack of interest, the people submit, then they may look to see the most sacred of their liberties taken from them one by one, by more or less rapid encroachment."

Robertson vs. Department of Public Works, 180 Wash 133, 147.

The words of Justice Tolman ring most prophetically in the ears of Citizens throughout the country today as the use of the public roads has been monopolized by the very entity which has been empowered to stand guard over our freedoms, i.e., that of state government.

RIGHTS

The "*most sacred of liberties*" of which Justice Tolman spoke was personal liberty. The definition of personal liberty is:

"Personal liberty, or the Right to enjoyment of life and liberty, is one of the fundamental or natural Rights, which has been protected by its inclusion as a guarantee in the various constitutions, which is not derived from, or dependent on, the U.S. Constitution, which may not be submitted to a vote and may not depend on the outcome of an election. It is one of the most sacred and valuable Rights, as sacred as the Right to private property ... and is regarded as inalienable."

16 C.J.S., Constitutional Law, Sect.202, p.987

This concept is further amplified by the definition of personal liberty:

"Personal liberty largely consists of the Right of locomotion -- to go where and when one pleases -- only so far restrained as the Rights of others may make it necessary for the welfare of all other citizens. The Right of the Citizen to travel upon the public highways and to transport his property thereon, by horse drawn carriage, wagon, or automobile, is not a mere privilege which may be permitted or prohibited at will; but the common Right which he has under his Right to life, liberty, and the pursuit of happiness. Under this Constitutional guarantee one may, therefore, under normal conditions, travel at his inclination along the public highways or in public places, and while conducting himself in an orderly and decent manner, neither interfering with nor disturbing another's Rights, he will be protected, not only in his person, but in his safe conduct."

II Am.Jur. (1st) Constitutional Law, Sect.329, p.1135

and further ...

"Personal liberty -- consists of the power of locomotion, of changing situations, of removing one's person to whatever place one's inclination may direct, without imprisonment or restraint unless by due process of law."

Bovier's Law Dictionary, 1914 ed., Black's Law Dictionary, 5th ed.; Blackstone's Commentary 134; Hare, Constitution, Pg. 777

Justice Tolman was concerned about the State prohibiting the Citizen from the "*most sacred of his liberties*," the Right of movement, the Right of moving one's self from place to place without threat of imprisonment, the Right to use the public roads in the ordinary course of life.

When the State allows the formation of a corporation it may control its creation by establishing guidelines (statutes) for its operation (charters). Corporations who use the roads in the course of business do not use the roads in the ordinary course of life. There is a difference between a corporation and an individual. The United States Supreme Court has stated:

"...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, so far as it may tend to incriminate him. 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 are the refusal to incriminate himself, 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 upon their rights."

"Upon the other hand, the corporation is a creature of the state. It is presumed to be incorporated for the benefit of the public. It receives certain special privileges and franchises, and holds them subject to the laws of the state and the limitations of its charter. Its rights to act as a corporation are only preserved to it so long as it obeys the laws of its creation. There is a reserved right in the legislature to investigate its contracts and find out whether it has exceeded its powers. It would be a strange anomaly to hold that the State, having chartered a corporation to make use of certain franchises, could not in exercise of its sovereignty inquire how those franchises had been employed, and whether they had been abused, and demand the production of corporate books and papers for that purpose."

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

Corporations engaged in mercantile equity fall under the purview of the State's admiralty jurisdiction, and the public at large must be protected from their activities, as they (the corporations) are engaged in business for profit.

"...Based upon the fundamental ground that the sovereign state has the plenary control of the streets and highways in the exercise of its police power (see police power, infra.), may absolutely prohibit the use of the streets as a place for the prosecution of a private business for gain. They all recognize the fundamental distinction between the ordinary Right of the Citizen to use the streets in the usual way and the use of the streets as a place of business or a main instrumentality of business for private gain. The former is a common Right, the latter is an extraordinary use. As to the former, the legislative power is confined to regulation, as to the latter, it is plenary and extends even to absolute prohibition. Since the use of the streets by a common carrier in the prosecution of its business as such is not a right but a mere license of privilege."

Hadfield vs. Lundin, 98 Wash 516

It will be necessary to review early cases and legal authority in order to reach a lawfully correct theory dealing with this Right or "privilege." We will attempt to reach a sound conclusion as to what is a "Right to use the road" and what is a "privilege to use the road". Once reaching this determination, we shall then apply those positions to modern case decision.

"Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them."

Miranda vs. Arizona, 384 US 436, 491

and ...

"The claim and exercise of a constitutional Right cannot be converted into a crime."

Miller vs. U.S., 230 F. 486, 489

and ...

"There can be no sanction or penalty imposed upon one because of this exercise of constitutional Rights."

Snerer vs. Cullen, 481 F. 946

Streets and highways are established and maintained for the purpose of travel and transportation by the public. Such travel may be for business or pleasure.

"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."

Chicago Motor Coach vs. Chicago, 169 NE 2271;
Ligare vs. Chicago, 28 NE 934;
Boon vs. Clark, 214 SSW 607;
25 Am.Jur. (1st) Highways Sect.163

and ...

"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 which a city can prohibit or permit at will, but a common Right which he has under the right to life, liberty, and the pursuit of happiness."

Thompson vs. Smith, 154 SE 579

So we can see that a Citizen has a Right to travel upon the public highways by automobile and the Citizen cannot be rightfully deprived of his Liberty. So where does the misconception that the use of the public road is always and only a privilege come from?

"... For while a Citizen has the Right to travel upon the public highways and to transport his property thereon, that Right does not extend to the use of the highways, either in whole or in part, as a place for private gain. For the latter purpose, no person has a vested right to use the highways of the state, but is a privilege or a license which the legislature may grant or withhold at its discretion."

State vs. Johnson, 243 P. 1073;
Cummins vs. Homes, 155 P. 171;
Packard vs. Banton, 44 S.Ct. 256;
Hadfield vs. Lundin, 98 Wash 516

Here the court held that a Citizen has the Right to travel upon the public highways, but that he did not have the right to conduct business upon the highways. On this point of law all authorities are unanimous.

"Heretofore the court has held, and we think correctly, that while a Citizen has the Right to travel upon the public highways and to transport his property thereon, that Right does not extend to the use of the highways, either in whole or in part, as a place of business for private gain."

Willis vs. Buck, 263 P. 1982;
Barney vs. Board of Railroad Commissioners, 17 P.2d 82

and ...

"The right of the citizen to travel upon the highway and to transport his property thereon, in the ordinary course of life and business, differs radically and obviously from that of one who makes the highway his place of business for private gain in the running of a stagecoach or omnibus."

State vs. City of Spokane, 186 P. 864

What is this Right of the Citizen which differs so "radically and obviously" from one who uses the highway as a place of business? Who better to enlighten us than Justice Tolman of the Supreme Court of Washington State? In State vs. City of Spokane, supra, the Court also noted a very "radical and obvious" difference, but went on to explain just what the difference is;

"The former is the usual and ordinary right of the Citizen, a common right to all, while the latter is special, unusual, and extraordinary."

and ...

"This distinction, elementary and fundamental in character, is recognized by all the authorities."

State vs. City of Spokane, supra.

This position does not hang precariously upon only a few cases, but has been proclaimed by an impressive array of cases ranging from the state courts to the federal courts.

"the right of the Citizen to travel upon the highway and to transport his property thereon in the ordinary course of life and business, differs radically and obviously from that of one who makes the highway his place of business and uses it for private gain in the running of a stagecoach or omnibus. The former is the usual and ordinary right of the Citizen, a right common to all, while the latter is special, unusual, and extraordinary."

Ex Parte Dickey, (Dickey vs. Davis), 85 SE 781

and ...

"The right of the Citizen to travel upon the public highways and to transport his property thereon, in the ordinary course of life and business, is a common right which he has under the right to enjoy life and liberty, to acquire and possess property, and to pursue happiness and safety. It includes the right, in so doing, to use the ordinary and usual conveyances of the day, and under the existing modes of travel, includes the right to drive a horse drawn carriage or wagon thereon or to operate an automobile thereon, for the usual and ordinary purpose of life and business."

Thompson vs. Smith, supra.;
Teche Lines vs. Danforth, Miss., 12 S.2d 784

There is no dissent among various authorities as to this position. (See Am. Jur. [1st] Const. Law, 329 and corresponding Am. Jur. [2nd].)

"Personal liberty -- or the right to enjoyment of life and liberty -- is one of the fundamental or natural rights, which has been protected by its inclusion as a guarantee in the various constitutions, which is not derived from nor dependent on the U.S. Constitution. ... It is one of the most sacred and valuable rights [remember the words of Justice Tolman, supra.] as sacred as the right to private property ... and is regarded as inalienable."

16 C.J.S. Const. Law, Sect.202, Pg. 987

As we can see, the distinction between a "Right" to use the public roads and a "privilege" to use the public roads is drawn upon the line of "using the road as a place of business" and the various state courts have held so. But what have the U.S. Courts held on this point?

"First, it is well established law that the highways of the state are public property, and their primary and preferred use is for private purposes, and that their use for purposes of gain is special and extraordinary which, generally at least, the legislature may prohibit or condition as it sees fit."

Stephenson vs. Rinford, 287 US 251;
Pachard vs Banton, 264 US 140, and cases cited;
Frost and F. Trucking Co. vs. Railroad Commission, 271 US 592;
Railroad commission vs. Inter-City Forwarding Co., 57 SW.2d 290;
Parlett Cooperative vs. Tidewater Lines, 164 A. 313

So what is a privilege to use the roads? By now it should be apparent even to the "learned" that an attempt to use the road as a place of business is a privilege. The distinction must be drawn between ...

1. Travelling upon and transporting one's property upon the public roads, which is our Right; and
2. Using the public roads as a place of business or a main instrumentality of business, which is a privilege.

"[The roads] ... are constructed and maintained at public expense, and no person therefore, can insist that he has, or may acquire, a vested right to their use in carrying on a commercial business."

Ex Parte Sterling, 53 SW.2d 294;
Barney vs. Railroad Commissioners, 17 P.2d 82;
Stephenson vs. Binford, supra.

"When the public highways are made the place of business the state has a right to regulate their use in the interest of safety and convenience of the public as well as the preservation of the highways."

Thompson vs. Smith, supra.

"[The state's] right to regulate such use is based upon the nature of the business and the use of the highways in connection therewith."

Ibid.

"We know of no inherent right in one to use the highways for commercial purposes. The highways are primarily for the use of the public, and in the interest of the public, the state may prohibit or regulate ... the use of the highways for gain."

Robertson vs. Dept. of Public Works, supra.

There should be considerable authority on a subject as important a this deprivation of the liberty of the individual "*using the roads in the ordinary course of life and business*." However, it should be noted that extensive research has not turned up one case or authority acknowledging the state's power to convert the individual's right to travel upon the public roads into a "*privilege*."

Therefore, it is concluded that the Citizen does have a "*Right*" to travel and transport his property upon the public highways and roads and the exercise of this Right is not a "*privilege*."

DEFINITIONS

In order to understand the correct application of the statute in question, we must first define the terms used in connection with this point of law. As will be shown, many terms used today do not, in their legal context, mean what we assume they mean, thus resulting in the misapplication of statutes in the instant case.

AUTOMOBILE AND MOTOR VEHICLE

There is a clear distinction between an automobile and a motor vehicle. An automobile has been defined as:

"The word 'automobile' connotes a pleasure vehicle designed for the transportation of persons on highways."

American Mutual Liability Ins. Co., vs. Chaput, 60 A.2d 118, 120; 95 NH 200

While the distinction is made clear between the two as the courts have stated:

"A motor vehicle or automobile for hire is a motor vehicle, other than an automobile stage, used for the transportation of persons for which remuneration is received."

International Motor Transit Co. vs. Seattle, 251 P. 120

The term 'motor vehicle' is different and broader than the word 'automobile.'"

City of Dayton vs. DeBrosse, 23 NE.2d 647, 650; 62 Ohio App. 232

The distinction is made very clear in Title 18 USC 31:

"Motor vehicle" means every description or other contrivance propelled or drawn by mechanical power and used for commercial purposes on the highways in the transportation of passengers, or passengers and property.

"*Used for commercial purposes*" means the carriage of persons or property for any fare, fee, rate, charge or other considerations, or directly or indirectly in connection with any business, or other undertaking intended for profit.

Clearly, an automobile is private property in use for private purposes, while a motor vehicle is a machine which may be used upon the highways for trade, commerce, or hire.

TRAVEL

The term "*travel*" is a significant term and is defined as:

"The term 'travel' and 'traveler' are usually construed in their broad and general sense ... so as to include all those who rightfully use the highways viatically (when being reimbursed for expenses) and who have occasion to pass over them for the purpose of business, convenience, or pleasure."

25 Am.Jur. (1st) Highways, Sect.427, Pg. 717

"Traveler -- One who passes from place to place, whether for pleasure, instruction, business, or health."

Locket vs. State, 47 Ala. 45;
Bovier's Law Dictionary, 1914 ed., Pg. 3309

"Travel – To journey or to pass through or over; as a country district, road, etc. To go from one place to another, whether on foot, or horseback, or in any conveyance as a train, an automobile, carriage, ship, or aircraft; Make a journey."

Century Dictionary, Pg. 2034

Therefore, the term "*travel*" or "*traveler*" refers to one who uses a conveyance to go from one place to another, and included all those who use the highways as a matter of Right.

Notice that in all these definitions, the phrase "*for hire*" never occurs. This term "*travel*" or "*traveler*" implies, by definition, one who uses the road as a means to move from one place to another.

Therefore, one who uses the road in the ordinary course of life and business for the purpose of travel and transportation is a traveler.

DRIVER

The term "*driver*" in contradistinction to "*traveler*," is defined as:

"Driver -- One employed in conducting a coach, carriage, wagon, or other vehicle ..."

Bovier's Law Dictionary, 1914 ed., Pg. 940

Notice that this definition includes one who is "*employed*" in conducting a vehicle. It should be self-evident that this individual could not be "*travelling*" on a journey, but is using the road as a place of business.

OPERATOR

Today we assume that a "*traveler*" is a "*driver*," and a "*driver*" is an "*operator*." However, this is not the case.

"It will be observed from the language of the ordinance that a distinction is to be drawn between the terms 'operator' and 'driver'; the 'operator' of the service car being the person who is licensed to have the car on the streets in the business of carrying passengers for hire; while the 'driver' is the one who actually drives the car. However, in the actual prosecution of business, it was possible for the same person to be both "*operator*" and "*driver*."

Newbill vs. Union Indemnity Co., 60 SE.2d 658

To further clarify the definition of an "operator" the court observed that this was a vehicle "for hire" and that it was in the business of carrying passengers.

This definition would seem to describe a person who is using the road as a place of business, or in other words, a person engaged in the "privilege" of using the road for gain.

This definition, then, is a further clarification of the distinction mentioned earlier, and therefore:

1. Travelling upon and transporting one's property upon the public roads as a matter of Right meets the definition of a traveler.
2. Using the road as a place of business as a matter of privilege meets the definition of a driver or an operator or both.

TRAFFIC

Having defined the terms "automobile," "motor vehicle," "traveler," "driver," and "operator," the next term to define is "*traffic*":

"... Traffic thereon is to some extent destructive, therefore, the prevention of unnecessary duplication of auto transportation service will lengthen the life of the highways or reduce the cost of maintenance, the revenue derived by the state ... will also tend toward the public welfare by producing at the expense of those operating for private gain, some small part of the cost of repairing the wear ..."

Northern Pacific R.R. Co. vs. Schoenfeldt, 213 P. 26

Note: In the above, Justice Tolman expounded upon the key of raising revenue by taxing the "*privilege*" to use the public roads "*at the expense of those operating for gain.*"

In this case, the word "*traffic*" is used in conjunction with the unnecessary Auto Transportation Service, or in other words, "*vehicles for hire.*" The word "*traffic*" is another word which is to be strictly construed to the conducting of business.

"Traffic -- Commerce, trade, sale or exchange of merchandise, bills, money, or the like. The passing of goods and commodities from one person to another for an equivalent in goods or money ..."

Bovier's Law Dictionary, 1914 ed., Pg. 3307

Here again, notice that this definition refers to one "*conducting business.*" No mention is made of one who is traveling in his automobile. This definition is of one who is engaged in the passing of a commodity or goods in exchange for money, i.e .., vehicles for hire.

Furthermore, the words "*traffic*" and "*travel*" must have different meanings which the courts recognize. The difference is recognized in Ex Parte Dickey, supra:

"...In addition to this, cabs, hackney coaches, omnibuses, taxicabs, and hacks, when unnecessarily numerous, interfere with the ordinary traffic and travel and obstruct them."

The court, by using both terms, signified its recognition of a distinction between the two. But, what was the distinction? We have already defined both terms, but to clear up any doubt:

"The word 'traffic' is manifestly used here in secondary sense, and has reference to the business of transportation rather than to its primary meaning of interchange of commodities."

Allen vs. City of Bellingham, 163 P. 18

Here the Supreme Court of the State of Washington has defined the word "*traffic*" (in either its primary or secondary sense) in reference to business, and not to mere travel! So it is clear that the term "traffic" is business related and therefore, it is a "*privilege*." The net result being that "traffic" is brought under the (police) power of the legislature. The term has no application to one who is not using the roads as a place of business.

LICENSE

It seems only proper to define the word "*license*," as the definition of this word will be extremely important in understanding the statutes as they are properly applied:

"The permission, by competent authority to do an act which without permission, would be illegal, a trespass, or a tort."

People vs. Henderson, 218 NW.2d 2, 4

"Leave to do a thing which licensor could prevent."

Western Electric Co. vs. Pacent Reproducer Corp., 42 F.2d 116, 118

In order for these two definitions to apply in this case, the state would have to take up 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.

This position, however, would raise magnitudinous Constitutional questions as this position would be diametrically opposed to fundamental Constitutional Law. (See "Conversion of a Right to a Crime," infra.)

In the instant case, the proper definition of a "*license*" is:

"a permit, granted by an appropriate governmental body, generally for consideration, to a person, firm, or corporation, to pursue some occupation or to carry on some business which is subject to regulation under the police power."

Rosenblatt vs. California State Board of Pharmacy, 158 P.2d 199, 203

This definition would fall more in line with the "privilege" of carrying on business on the streets.

Most [illegible] imposed by the state for the purpose of raising revenue, [illegible] regulated; for when one seeks permission from [illegible] something that invokes the jurisdiction of the licensor which, in this case, is the state. In essence, the licensee may well be seeking to be regulated by the licensor.

"A license fee is a charge made primarily for regulation, with the fee to cover costs and expenses of supervision or regulation."

State vs. Jackson, 60 Wisc.2d 700; 211 NW.2d 480; 487

The fee is the price; the regulation or control of the licensee is the real aim of the legislation.

Are these licenses really used to fund legitimate government, or are they nothing more than a subtle introduction of police power into every facet of our lives? Have our "enforcement agencies" been diverted from crime prevention, perhaps through no fault of their own, instead now busying themselves as they "check" our papers to see that all are properly endorsed by the state?

How much longer will it be before we are forced to get a license for our lawn mowers, or before our wives will need a license for her *blender* or *mixer*? They all have motors on them and the state can always use the revenue.

POLICE POWER

The confusion of the police power with the power of taxation usually arises in cases where the police power has affixed a penalty to a certain act, or where it requires licenses to be obtained and a certain sum be paid for certain occupations. The power used in the instant case cannot, however, be the power of taxation since an attempt to levy a tax upon a Right would be open to Constitutional objection. (See "*taxing power*," infra-)

Each law relating to the use of police power must ask three questions:

1. "*Is there threatened danger?*
2. *Does a regulation involve a Constitutional Right?*
3. Is this regulation reasonable?"

People vs. Smith, 108 Am.St.Rep. 715;
Bovier's Law Dictionary, 1914 ed., under "Police Power"

When applying these three questions to the statute in question, some very important issues emerge.

First, "*is there a threatened danger*" in the individual using his automobile on the public highways, in the ordinary course of life and business?

The answer is **No!** There is nothing inherently dangerous in the use of an automobile when it is carefully managed. Their guidance, speed, and noise are subject to a quick and easy control, under a competent and considerate manager, it is as harmless on the road as a horse and buggy.

It is the manner of managing the automobile, and that alone, which threatens the safety of the public. The ability to stop quickly and to respond quickly to guidance would seem to make the automobile one of the least dangerous conveyances. (See Yale Law Journal, December, 1905.)

"The automobile is not inherently dangerous."

Cohens vs. Meadow, 89 SE 876;
Blair vs. Broadmore, 93 SE 532

To deprive all persons of the Right to use the road in the ordinary course of life and business, because one might, in the future, become dangerous, would be a deprivation not only of the Right to travel, but also the Right to due process. (See "*Due Process*," infra.)

Next; *does the regulation involve a Constitutional Right*?

This question has already been addressed and answered in this brief, and need not be reinforced other than to remind this Court that this Citizen does have the Right to travel upon the public highway by automobile in the ordinary course of life and business. It can therefore be concluded that this regulation does involve a Constitutional Right.

The third question is the most important in this case. "*Is this regulation reasonable*?"

The answer is No! It will be shown later in "*Regulation*," infra., that this licensing statute is oppressive and could be effectively administered by less oppressive means.

Although the Fourteenth Amendment does not interfere with the proper exercise of the police power, in accordance with the general principle that the power must be exercised so as not to invade unreasonably the rights guaranteed by the United States Constitution, it is established beyond question that every state power, including the police power, is limited by the Fourteenth Amendment (and others) and by the inhibitions there imposed.

Moreover, the ultimate test of the propriety of police power regulations must be found in the Fourteenth Amendment, since it operates to limit the field of the police power to the extent of preventing the enforcement of statutes in denial of Rights that the Amendment protects. (See Parks vs. State, 64 NE 682.)

"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."

Connolly vs. Union Sewer Pipe Co., 184 US 540;
Lafarier vs. Grand Trunk R.R. Co., 24 A. 848;
O'Neil vs. Providence Amusement Co., 108 A. 887

"The police power of the state must be exercised in subordination to the provisions of the U.S. Constitution."

Buchanan vs. Wanley, 245 US 60;
Panhandle Eastern Pipeline Co. vs. State Highway Commission, 294 US 613

"It is well settled that the Constitutional Rights protected from invasion by the police power, include Rights safeguarded both by express and implied prohibitions in the Constitutions."

Tiche vs. Osborne, 131 A. 60

"As a rule, fundamental limitations of regulations under the police power are found in the spirit of the Constitutions, not in the letter, although they are just as efficient as if expressed in the clearest language."

Mehlos vs. Milwaukee, 146 NW 882

As it applies in the instant case, the language of the Fifth Amendment is clear:

"No person shall be ... deprived of Life, Liberty, or Property without due process of law."

As has been shown, the courts at all levels have firmly established an absolute Right to travel.

In the instant case, the state, by applying commercial statutes to all entities, natural and artificial persons alike, has deprived this free and natural person of the Right of Liberty, without cause and without due process of law.

DUE PROCESS

"The essential elements of due process of law are ... Notice and The Opportunity to defend."

Simon vs. Craft, 182 US 427

Yet, not one individual has been given notice of the loss of his/her Right, let alone before signing the license (contract). Nor was the Citizen given any opportunity to defend against the loss of his/her right to travel, by automobile, on the highways, in the ordinary course of life and business. This amounts to an arbitrary deprivation of Liberty.

"There should be no arbitrary deprivation of Life or Liberty ..."

Barbour vs. Connolly, 113 US 27, 31;
Yick Wo vs. Hopkins, 118 US 356

and ...

"The right to travel is part of the Liberty of which a citizen cannot deprived without due process of law under the Fifth Amendment. This Right was emerging as early as the Magna Carta."

Kent vs. Dulles, 357 US 116 (1958)

The focal point of this question of police power and due process must balance upon the point of making the public highways a safe place for the public to travel. If a man travels in a manner that creates actual damage, an action would lie (civilly) for recovery of damages. The state could then also proceed against the individual to deprive him of his Right to use the public highways, for cause. This process would fulfill the due process requirements of the Fifth Amendment while at

the same time insuring that Rights guaranteed by the U.S. Constitution and the state constitutions would be protected.

But unless or until harm or damage (a crime) is committed, there is no cause for interference in the private affairs or actions of a Citizen.

One of the most famous and perhaps the most quoted definitions of due process of law, is that of **Daniel Webster** in his Dartmouth College Case (4 Wheat 518), in which he declared that by due process is meant:

"a law which hears before it condemns, which proceeds upon inquiry, and renders judgment only after trial."

See also State vs. Strasburg, 110 P. 1020; Dennis vs. Moses, 52 P. 333

Somewhat similar is the statement that is a rule as old as the law that:

"no one shall be personally bound (restricted) until he has had his day in court,"

by which is meant, until he has been duly cited to appear and has been afforded an opportunity to be heard. Judgment without such citation and opportunity lacks all the attributes of a judicial determination; it is judicial usurpation and it is oppressive and can never be upheld where it is fairly administered. (12 Am.Jur. [1st] Const. Law, Sect. 573, Pg. 269)

Note: This sounds like the process used to deprive one of the "*privilege*" of operating a motor vehicle "for hire." It should be kept in mind, however, that we are discussing the arbitrary deprivation of the Right to use the road that all citizens have "in common."

The futility of the state's position can be most easily observed in the 1959 Washington Attorney General's opinion on a similar issue:

"The distinction between the Right of the Citizen to use the public highways for private, rather than commercial purposes is recognized; ..."

and ...

"Under its power to regulate private uses of our highways, our legislature has required that motor vehicle operators be licensed (I.C. 49-307). Undoubtedly, the primary purpose of this requirement is to insure, as far as possible, that all motor vehicle operators will be competent and qualified, thereby reducing the potential hazard or risk of harm, to which other users of the highways might otherwise be subject. But once having complied with this regulatory provision, by obtaining the required license, a motorist enjoys the privilege of travelling freely upon the highways ..."

-Washington A.G.O. 59-60 No. 88, Pg. 11

This alarming opinion appears to be saying that every person using an automobile as a matter of Right, must give up the Right and convert the Right into a privilege. This is accomplished under the guise of regulation. This statement is indicative of the insensitivity, even the ignorance, of the government to the limits placed upon governments by and through the several constitutions.

This legal theory may have been able to stand in 1959; however, as of 1966, in the United States Supreme Court decision in Miranda, even this weak defense of the state's actions must fall.

"Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them."

Miranda vs. Arizona, 384 US 436, 491

Thus the legislature does not have the power to abrogate the Citizen's Right to travel upon the public roads, by passing legislation forcing the citizen to waive his Right and convert that Right into a privilege. Furthermore, we have previously established that this "*privilege*" has been defined as applying only to those who are "*conducting business in the streets*" or "*operating for-hire vehicles.*"

The legislature has attempted (by legislative fiat) to deprive the Citizen of his Right to use the roads in the ordinary course of life and business, without affording the Citizen the safeguard of *due process of law*. This has been accomplished under supposed powers of regulation.

REGULATION

"In addition to the requirement that regulations governing the use of the highways must not be violative of constitutional guarantees, the prime essentials of such regulation are reasonableness, impartiality, and definiteness or certainty."

25 Am Jur, (1st) Highways, Sect. 260

and...

"Moreover, a distinction must be observed between the regulation of an activity which may be engaged in as a matter of right and one carried on by government sufferance of permission."

Davis vs. Massachusetts, 167 US 43;
Pachard vs. Banton, supra.

One can say for certain that these regulations are impartial since they are being applied to all, even though they are clearly beyond the limits of the legislative powers. However, we must consider whether such regulations are reasonable and non-violative of constitutional guarantees.

First, let us consider the reasonableness of this statute requiring all persons to be licensed (presuming that we are applying this statute to all persons using the public roads). In determining the reasonableness of the statute we need only ask two questions:

1. Does the statute accomplish its stated goal?

The answer is **No!**

The attempted explanation for this regulation "*to insure the safety of the public by insuring, as much as possible, that all are competent and qualified.*"

However, one can keep his license without retesting, from the time he/she is first licensed until the day he/she dies, without regard to the competency of the person, by merely renewing said license before it expires. It is therefore possible to completely skirt the goal of this attempted regulation, thus proving that this regulation does not accomplish its goal.

Furthermore, by testing and licensing, the state gives the appearance of underwriting the competence of the licensees, and could therefore be held liable for failures, accidents, etc. caused by licensees.

2. Is the statute reasonable?

The answer is **No!**

This statute cannot be determined to be reasonable since it requires to the Citizen to give up his or her natural Right to travel unrestricted in order to accept the privilege. The purported goal of this statute could be met by much less oppressive regulations, i.e., competency tests and certificates of competency before using an automobile upon the public roads. (This is exactly the situation in the aviation sector.)

But isn't this what we have now?.

The answer is **No!** The real purpose of this license is much more insidious. When one signs the license, he/she gives up his/her Constitutional Right to travel in order to accept and exercise a privilege. After signing the license, a quasi-contract, the Citizen has to give the state his/her consent to be prosecuted for constructive crimes and quasi-criminal actions where there is no harm done and no damaged property.

These prosecutions take place without affording the Citizen of their Constitutional Rights and guarantees such a the Right to a trial by jury of twelve persons and the Right to counsel, as well as the normal safeguards such as proof of intent and a corpus dilecti and a grand jury indictment. These unconstitutional prosecutions take place because the Citizen is exercising a privilege and has given his/her "*implied consent*" to legislative enactments designed to control interstate commerce, a regulatable enterprise under the police power of the state.

We must now conclude that the Citizen is forced to give up Constitutional guarantees of "Right" in order to exercise his state "privilege" to travel upon the public highways in the ordinary course of life and business.

SURRENDER OF RIGHTS

A Citizen cannot be forced to give up his/her Rights in the name of regulation.

"... the only limitations found restricting the right of the state to condition the use of the public highways as a means of vehicular transportation for compensation are (1) that the state must not exact of those it permits to use the highways for hauling for gain that they surrender any of their inherent U.S. Constitutional Rights as a condition precedent to obtaining permission for such use ..."

Riley vs. Laeson, 142 So. 619;
Stephenson vs. Binford, supra.

If one cannot be placed in a position of being forced to surrender Rights in order to exercise a privilege, how much more must this maxim of law, then, apply when one is simply exercising (putting into use) "But when the community allows the right (12) and declares it to exist, that constitution is the freest and best, which forbids the government to abolish the right, or which restrains the government from depriving a particular citizen of it. In other words, public liberty requires that private property should be protected even from the government itself."

Hoke vs. Henderson, 15 NC 9

and ...

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

Simons vs. United States, 390 US 389

Since the state requires that one give up Rights in order to exercise the privilege of driving, the regulation cannot stand under the police power, due process, or regulation, but must be exposed as a statute which is oppressive and one which has been misapplied to deprive the Citizen of Rights guaranteed by the United States Constitution and the state constitutions.

TAXING POWER

"Any claim that this statute is a taxing statute would be immediately open to severe Constitutional objections. If it could be said that the state had the power to tax a Right, this would enable the state to destroy Rights guaranteed by the constitution through the use of oppressive taxation. The question herein, is one of the state taxing the Right to travel by the ordinary modes of the day, and whether this is a legislative object of the state taxation.

The views advanced herein are neither novel nor unsupported by authority. The question of taxing power of the states has been repeatedly considered by the Supreme Court. The Right of the state to impede or embarrass the Constitutional operation of the U.S. Government or the Rights which the Citizen holds under it, has been uniformly denied."

McCulloch vs. Maryland, 4 Wheat 316

The power to tax is the power to destroy, and if the state is given the power to destroy Rights through taxation, the framers of the Constitution wrote that document in vain.

"... it may be said that a tax of one dollar for passing through the state cannot sensibly affect any function of government or deprive a Citizen of any valuable Right. But if a state can tax ... a passenger of one dollar, it can tax him a thousand dollars."

Crandall vs. Nevada, 6 Wall 35, 46

and ...

"If the Right of passing through a state by a Citizen of the United States is one guaranteed by the Constitution, it must be sacred from state taxation."

Ibid., Pg. 47

Therefore, the Right of travel must be kept sacred from all forms of state taxation and if this argument is used by the state as a defense of the enforcement of this statute, then this argument also must fail.

CONVERSION OF A RIGHT TO A CRIME

As previously demonstrated, the Citizen has the Right to travel and to transport his property upon the public highways in the ordinary course of life and business. However, if one exercises this Right to travel (without first giving up the Right and converting that Right into a privilege) the Citizen is by statute, guilty of a crime. This amounts to converting the exercise of a Constitutional Right into a crime.

Recall the Miller vs. U.S. and Snerer vs. Cullen quotes from Pg. 5, and:

"The state cannot diminish Rights of the people."

Hurtado vs. California, 110 US 516

and ...

"Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them."

Miranda, supra.

Indeed, the very purpose for creating the state under the limitations of the constitution was to protect the rights of the people from intrusion, particularly by the forces of government.

So we can see that any attempt by the legislature to make the act of using the public highways as a matter of Right into a crime, is void upon its face.

Any person who claims his Right to travel upon the highways, and so exercises that Right, cannot be tried for a crime of doing so. And yet, this Freeman stands before this court today to answer charges for the "*crime*" of exercising his Right to Liberty. As we have already shown, the term "*drive*" can only apply to those who are employed in the business of transportation for hire. It has been shown that freedom includes the Citizen's Right to use the public highways in the ordinary course of life and business without license or regulation by the police powers of the state.

CONCLUSION

It is the duty of the court to recognize the substance of things and not the mere form.

"The courts are not bound by mere form, nor are they to be misled by mere pretenses. They are at liberty – indeed they are under a solemn duty – to look at the substance of things, whenever they enter upon the inquiry whether the legislature has transcended the limits of its authority. If, therefore, a statute purported to have been enacted to protect ... the public safety, has no real or substantial relation to those objects or is a palpable invasion of Rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution."

Mulger vs. Kansas, 123 US 623, 661

and ...

"It is the duty of the courts to be watchful for the Constitutional rights of the citizen and against any stealthy encroachments thereon."

Boyd vs. United States, 116 US 616

The courts are *duty bound* to recognize and stop the *stealthy encroachments* which have been made upon the Citizen's Right to travel and to use the roads to transport his property in the "*ordinary course of life and business.*" (Hadfield, supra.)

Further, the court must recognize that the Right to travel is part of the Liberty of which a Citizen cannot be deprived without specific cause and without the *due process of law* guaranteed in the Fifth Amendment. (Kent, supra.)

The history of this *invasion* of the Citizen's Right to use the public highways shows clearly that the legislature simply found a heretofore untapped source of revenue, got greedy, and attempted to enforce a statute in an unconstitutional manner upon those free and natural individuals who have a Right to travel upon the highways. This was not attempted in an outright action, but in a slow, meticulous, calculated encroachment upon the Citizen's Right to travel.

This position must be accepted unless the prosecutor can show his authority for the position that the "*use of the road in the ordinary course of life and business*" is a privilege.

To rule in any other manner, without clear authority for an adverse ruling, will infringe upon fundamental and basic concepts of Constitutional law. This position, that a Right cannot be regulated under any guise, must be accepted without concern for the monetary loss of the state.

"Disobedience or evasion of a Constitutional Mandate cannot be tolerated, even though such disobedience may, at least temporarily, promote in some respects the best interests of the public."

Slote vs. Examination, 112 ALR 660

and ...

"Economic necessity cannot justify a disregard of Constitutional guarantee."

Riley vs. Carter, 79 ALR 1018;
16 Am.Jur. (2nd), Const. Law; Sect. 81

and ...

"Constitutional Rights cannot be denied simply because of hostility to their assertions and exercise; vindication of conceded Constitutional Rights cannot be made dependent upon any theory that it is less expensive to deny them than to afford them."

Watson vs. Memphis, 375 US 526

Therefore, the Court's decision in the instant case must be made without the issue of cost to the state being taken into consideration, as that issue is irrelevant. The state cannot lose money that it never had a right to demand from the *Sovereign People*.

Finally, we come to the issue of *public policy*. It could be argued that the *licensing scheme* of all persons is a matter of public policy. However, if this argument is used, it too must fail, as:

"No public policy of a state can be allowed to override the positive guarantees of the U.S. Constitution."

16 Am.Jur. (2nd), Const. Law, Sect. 70

So even public policy cannot abrogate this Citizen's Right to travel and to use the public highways in the ordinary course of life and business. Therefore, it must be concluded that:

"We have repeatedly held that the legislature may regulate the use of the highways for carrying on business for private gain and that such regulation is a valid exercise of the police power."

Northern Pacific R.R. Co., supra.

and ...

"The act in question is a valid regulation, and as such is binding upon all who use the highway for the purpose of private gain."

Ibid.

Any other construction of this statute would render it unconstitutional as applied to this Citizen or any Citizen.

In addition:

Since no notice is given to people applying for driver's (or other) licenses that they have a perfect right to use the roads without any permission, and that they surrender valuable rights by taking on the regulation system of licensure, the state has committed a massive construction fraud. This occurs when any person is told that they must have a license in order to use the public roads and highways.

The license, being a legal contract under which the state is empowered with policing powers, is only valid when the licensee takes on the burdens of the contract and bargains away his or her rights knowingly, intentionally, and voluntarily.

Few know that the driver's license is a contract without which the police are powerless to regulate the people's actions or activities.

Few (if any) licensees intentionally surrender valuable rights. They are told that they must have the license. As we have seen, this is not the case.

No one in their right mind voluntarily surrenders complete liberty and accepts in its place a set of regulations.

"The people never give up their liberties but under some delusion."

Edmund Burke, (1784)

WHEREFORE the accused moves this Honorable Court to dismiss this complaint brought by the State of South Carolina, with prejudice.

Respectfully submitted:

John D. Dalen, Accused Pro Per
109 Wood Valley Drive
Westminster, SC 29693
Ph. 864.647.4705

DATED this 29 day of March, 2017

STATE OF SOUTH CAROLINA OCONEE COUNTY	IN THE CITY OF WESTMINSTER MUNICIPAL COURT
State of South Carolina, PLAINTIFF	**CERTIFICATE OF SERVICE** **Notice of Motion and Motion to Reconsider**
John Dalen, ACCUSED, Pro Per	Summons No. 5102P0778082

CERTIFICATE OF SERVICE for

Accused's Notice of Motion and Motion to Reconsider

I, John D. Dalen hereby certifies that a copy of the foregoing Notice of Motion and Motion to Reconsider was sent to Plaintiff by First Class mail addressed to:

Traffic Court
106 E. Windsor Street
Westminster, SC 29693

DATED this 1st day of May, 2017

By: _____
John Dalen, Accused Pro Per

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OCONEE COUNTY
SUMMARY COURT

STATE OF SOUTH CAROLINA OCONEE COUNTY	IN THE CITY OF WESTMINSTER MUNICIPAL COURT
State of South Carolina, PLAINTIFF	**Notice of Motion and Motion to Reconsider**
John Dalen, ACCUSED, Pro Per	Summons No. 5102P0778082

NOW comes the Accused, appearing specially and not generally or voluntarily, but under threat of arrest if he failed to do so, with this NOTICE.

YOU WILL PLEASE TAKE NOTICE that John Dalen moves this court to reconsider its decision, dated April 21, 2017, to deny accused's Motion to Dismiss. John Dalen demands all of his rights at all times and does not waive any rights at any time.

1) The court has no subject matter jurisdiction. The State cannot convert rights into privileges and charge a fee for the exercise thereof. The Supreme Court has repeatedly ruled on this issue. John Dalen was clearly engaged in the exercise of a Constitutional right when he was unlawfully arrested by Trooper A.M. Taylor. Along with other troopers present, Trooper Taylor has engaged in a conspiracy to deny me, John Dalen my Constitutionally-protected rights, and has acted without any lawful authority.

The definitions of "person", "motor vehicle", and "drive", as well as the requirement to obtain a "license" apply only to commercial or for hire activities as the Supreme Court repeatedly ruled. I have a right to rely on the decisions of the Supreme Court. No evidence has been presented by the state that John Dalen was engaged in any commercial or for hire activity at the time of his unlawful arrest.

Under South Carolina Code of Laws, Title 16, Sec. 5, Offenses against Civil Rights, the aforementioned troopers have committed a criminal felony, by violating the rights of John Dalen. (Sec. 16-5-10). My rights constitute my property. Under Title 16, Chapter 5, (Sec. 16-5-30) it is the court's duty to take all legal means necessary for the protection of such property as is attacked or threatened to be attacked. Any constable, sheriff or magistrate that neglects or refuses to perform his/her duty, shall be liable for the damages done to such property, and shall also be deemed guilty of a misdemeanor in office.... Actions filed under this chapter do not preclude other remedies or actions that are available to the injured party.

2) All courts have a duty to protect the rights of the citizens. This court can do so by dismissing summons and instructing the State troopers to cease and desist violating the rights of John Dalen.

Motion is hereby respectfully made by John Dalen for this court to dismiss this ticket on the grounds that my rights to due process of law are being violated, and due to the fact that no crime has been committed, this court does not have subject matter jurisdiction. Once challenged, subject matter jurisdiction must be proven by the court; it cannot be waived. The court, in its denial of my motion to dismiss has not proven its jurisdiction, but has in fact, acknowledged its lack thereof.

Please consider the following:

1) Hurtado v. California, 110 U.S. 516, 3 Sup. Ct. 111, 292, 28 L. Ed. 232 (1884)

Due process of law is process according to the law of the land . . . . Due process of law in the latter (the Fifth Article of Amendment to the Constitution) refers to that law of the land which derives its authority from the legislative powers conferred upon Congress by the Constitution of the United States, exercised within the limits therein prescribed and interpreted according to the principles of the common law.... Mr. Justice Matthews, delivering the opinion of the court....

* Note that the 14th Amendment insured that all of the above applies to the states.

2) An affirmance results when a judge acts in the clear absence of all jurisdiction, i.e., of authority to act officially over the subject matter in hand, the proceeding coram non judice. In such a case the judge has lost his judicial function, has become a mere private person, and is liable as a trespasser for the damages resulting from his unauthorized acts. Such has been the law from the days of the case of The Marshalsea, 10 Coke 68. It was recognized as such in Bradley v. Fisher, 13 Wall. (80 U.S.) 335, 351, 20 L. Ed. 646. In State ex rel. Egan v.

Wolever, 127 Ind. 306, 26 N.E. 762, 732, the court said: 'The converse statement of it is also ancient. Where there is no jurisdiction at all there is no judge; the proceeding is as nothing.' Manning v. Ketcham, 58 F.2d 948 (1932).

3) McNutt v. GMAC, 298 US 178

"The burden of proof of jurisdiction lies with the asserter."

4) Wuest v. Wuest, 127 P2d 934, 937. Outboard Marine Corp. v. Thomas, 610 F. Supp. 1234, 1242 (N.D. Ill., 1985)

"A departure by a court from those recognized and established requirements of law, however close apparent adherence to mere form in method of procedure, which has the effect of depriving one of a constitutional right, is an excess of jurisdiction."

5) The United States Supreme Court has clearly, and repeatedly, held that any judge who acts without jurisdiction is engaged in an act of treason. U.S. v. Will, 449 U.S. 200, 216, 101, S. Ct. 471, 66 L. Ed. 2d 392, 406 (1980): Cohens v. Virginia, 19 U.S. (6 Wheat) 264, 404, 5 L. Ed. 257 (1821)

6) "Officials and judges are deemed to know the law and sworn to uphold the law; officials and judges cannot claim to act in good faith in willful deprivation of law, they certainly cannot plead ignorance of the law, even the citizen cannot plead ignorance of the law, the courts have ruled there is no such thing as ignorance of the law, it is ludicrous for learned officials and judges to plead ignorance of the law therefore there is no immunity, judicial or otherwise, in matters of rights secured by the Constitution for the United States of America." Owen vs. City of Independence, 100 S. Ct. 1398; Maine vs. Thiboutot, 100 S. Ct. 2502; and Hafer vs. Melo, 502 U.S. 21

7) Rubinstein v. Collins, 20 F. 3d 160, 1990

"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."

My rights to due process of law are being violated, and due to the fact that no crime has been committed, this court does not have subject matter jurisdiction. The State, and this Court is attempting to prosecute a case without authority to do so. Once challenged, subject matter jurisdiction must be proven by the court; it cannot be waived.

WHEREFORE the Accused moves this court to dismiss this action immediately and instruct state troopers that the statute in question can only be enforced upon "persons" exercising privileges and not on individuals exercising Constitutionally-protected rights.

John D. Dalen
109 Wood Valley Dr.
Westminster, SC 29693
864-647-4705

John Dalen, Accused Pro Per
May 1, 2017

STATE OF SOUTH CAROLINA)
OCONEE COUNTY)

IN THE CITY OF WESTMINSTER
MUNICIPAL COURT

State of South Carolina,)
PLAINTIFF)

Motion for Findings of Facts and Conclusions of Law

John Dalen,)
ACCUSED)
Pro Per)

Summons No. 5102P0778082

OCONEE COUNTY
SUMMARY COURT
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Motion for Findings of Facts and Conclusions of Law

Judge, I believe the burden of proving that the specific regulatory statutes at issue in this matter actually DO apply to the Accused rests upon the Prosecution, rather than upon the Accused to prove that they do not. It's called "the presumption of innocence."

Furthermore, the prosecution has failed to allege even a single fact in the complaint and/or charging instrument that the Accused was actively engaging in some form of commercial "transportation" activity upon the highway, which is the ONLY way that these specific regulatory statutes legally CAN apply.

All persons are presumed to be innocent and **no person may be convicted of an offense unless each element of the offense is proved beyond a reasonable doubt**. The fact that he has been arrested, confined, or indicted for, or otherwise charged with, the offense gives rise to no inference of guilt at his trial.

Further still, Section 56-1-20 regulates a specific type of business or business related activity, that of "transportation." An activity in which the Accused was NOT and never has been engaged, the allegation and proof of which is an essential required fact element that the

prosecution cannot presume to be true or legally prove due to a lack of admissible evidence relating to and proving said activity.

The prosecution is duty-bound to set forth EVERY element that is required to be proven at trial IN the complaint AND the charging instrument, AND must prove EVERY element at trial with ADMISSIBLE EVIDENCE, not hypothetical and overly ridiculous red herring arguments and contrived situations that have no relevance or bearing upon the facts of the case.

Finally, neither this court nor the prosecution may simply presume ANY required fact element of an alleged offense to be true, as that subverts the right of the Accused to the presumption of innocence of EVERY element of an alleged offense, which is fatal error, being a clear violation of the Accused's right of due process. There can be no reasonable legal debate as to whether or not the act of "transportation" is a necessary fact element of the alleged offense considering that it is the specifically stated subject matter of the very legislation that created the recodified "transportation" code and the statutes therein.

There is no such fact element alleged in the complaint and charging instrument, and the state has no admissible evidence that would serve as proof of that necessary element. This lack of admissible evidence also proves that the arresting officer could not possibly have had any "articulable" facts or evidence supporting reasonable suspicion or probable cause, thus making the warrantless detention, seizure and arrest of the Accused completely unlawful in the first instance...which, in turn, makes it more than clear that the state is attempting to unlawfully apply the "transportation" code and its regulatory statutes to a completely unrelated subject matter activity to which it simply and legally does NOT and CANNOT apply as said activity is entirely OUTSIDE of the code's subject matter jurisdiction and application.

Therefore, the state has no case, as the prosecution simply cannot prove that these statutes apply without first proving that the Accused was engaged in the regulated activity of "transportation," which is legally impossible to do using only a law enforcement officer's personal or professional opinion during testimony absent other admissible substantive evidence supporting that conclusion, as the officer is not qualified to make such legal determinations and conclusions and then offer them as factual opinion and evidence through testimony at trial.

Whereby, on these legal and constitutional grounds, I move for your immediate disqualification for bias, prejudice, and multiple violations of state law, the rules of procedure, the rules of evidence, the rules of judicial and professional conduct, and criminal offenses constituting felony violations under South Carolina Code of Laws, Title 16 Chapter 5 Offences Against Civil Rights, Section 16510, 16520, 16530.

WHEREFORE the Accused moves this court to dismiss this action immediately.

John D. Dalen
109 Wood Valley Dr.
Westminster, SC 29693
864-647-4705

John Dalen, Accused Pro Per
June 13, 2017

STATE OF SOUTH CAROLINA OCONEE COUNTY	IN THE CITY OF WESTMINSTER MUNICIPAL COURT
State of South Carolina, PLAINTIFF John Dalen, ACCUSED Pro Per	**Motion for Pretrial Hearing** Summons No. 5102P0778082

Motion for Pretrial Hearing

Your Honor, per Rule 16 of the South Carolina Rules of Civil Procedure, I hereby move the court for a pretrial hearing. Also I move for an extension of the trial date of June 28, to be determined at the hearing; I am attempting to understand the nature and the cause of the allegations against me. I believe a pretrial hearing will help to settle these issues. I also have discovery requests that I would like to present at this hearing; namely, I have a right to know what evidence the state is going to present so that I may adequately prepare for the trial.

I have contacted the Department of Motor Vehicles with questions regarding the Social Security number requirement for obtaining a "driver's license" as well as Colonel Michael Oliver of the South Carolina Department of Public Safety. In order for me to try to understand the nature and cause of the allegations. Their response to my inquiries are crucial to the preparation of my defense.

WHEREFORE the Accused moves this court to schedule a pretrial hearing.

John D. Dalen
109 Wood Valley Dr.
Westminster, SC 29693
864-647-4705

John Dalen, Accused Pro Per
June 13, 2017

STATE OF SOUTH CAROLINA OCONEE COUNTY	IN THE CITY OF WESTMINSTER MUNICIPAL COURT
State of South Carolina, PLAINTIFF	**Motion Challenging Constitutionality of the Application of the SC Motor Vehicle "Transportation" Statutes Against the Accused**
John Dalen, ACCUSED Pro Per	Summons No. 5102P0778082

Motion Challenging Constitutionality of the Application of the South Carolina Motor Vehicle "Transportation" Statutes Against the Accused

I. Unconstitutional judicial alteration of Well-Established Law on the Proper Meaning and Use of Terms of Art. Thus, Unconstitutionally Affecting Legislative Purpose and Intent While Unlawfully Expanding the Scope of Legislation.

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. The online version of the Oxford English Dictionary defines "term of art" this way: *A word or phrase that has a precise, **specialized meaning within a particular field or profession.*** *(Emphasis added)* While the online version of West's Encyclopedia of American Law, Ed. 2, defines the phrase in this way: *word or phrase that has special meaning **in a particular context.*** *(Emphasis added)* West's Encyclopedia of American Law then goes on to provide us with some clarity as to exactly why this differentiation of language is important to know and fully understand,

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as it is the precise avenue by which the perversion/corruption of our understanding of our common language use has taken place.

A term of art is a word or phrase that has a particular meaning. Terms of art abound in the law. For example, the phrase *double jeopardy* can be used in common parlance to describe any situation that poses two risks. In the law, ***Double Jeopardy*** refers specifically to an impermissible second trial of a defendant for the same offense that gave rise to the first trial.

The classification of a word or phrase as a term of art can have legal consequences. In *Molzof v. United States,* 502 U.S. 301, 112 S. Ct. 711, 116 L. Ed. 2d 731 (1992). Shirley M. Molzof brought suit against the federal government after her husband, Robert E. Molzof, suffered irreversible brain damage while under the care of government hospital workers. The federal government conceded liability, and the parties tried the issue of damages before the U.S. District Court for the Western District of Wisconsin. Molzof had brought the claim as executor of her husband's estate under the ***Federal Tort Claims Act*** (FTCA) (28 U.S.C.A. §§ 1346(b), 2671-2680 [1988]), which prohibits the assessment of Punitive Damages against the federal government. The court granted recovery to Molzof for her husband's injuries that resulted from the Negligence of federal employees, but it denied recovery for future medical expenses and for loss of enjoyment of life. According to the court, such damages were punitive damages, which could not be recovered against the federal government.

The U.S. Court of Appeals for the Seventh Circuit agreed with the trial court, but the U.S. Supreme Court disagreed. According to the Court, punitive damages

is a legal term of art that has a widely accepted common-law meaning under state law. Congress was aware of this meaning at the time it passed the FTCA. Under traditional common-law principles, punitive damages are designed to punish a party. Since damages for future medical expenses and for loss of enjoyment of life were meant to compensate Molzof rather than punish the government, the Court reversed the decision and remanded the case to the Seventh Circuit.

When we are interacting with it in any way, the legal system constantly and subversively presumes and construes our *every* use of language as being the same as its own legal terms of art rather than the *real* common English meaning and usage. The primary reason that there is any misunderstanding at all about this fact is because those operating professionally within the system are constantly telling the rest of us that, unless the law creates a specific definition for a given term or phrase, then, they too are *always* using regular English words and sentences in their everyday common and ordinary meaning and context, rather than legal terms and phrases of art having an entirely legal meaning and context.

But this is a lie, because they have neither the authority nor any legitimate purpose for addressing or dealing with any one of we the People ***except*** in the context of, and in relationship to, some breach of law or legal duty and any related legal process associated therewith. This is the entire reason that the system of law has developed its own language, as well as law-related dictionaries containing the definitions of its legal terms and phrases. These legal dictionaries are positive proof that a term or phrase of art actually means something different when used in relation to law, which is the only way that *our public servants and the courts can* use it, as differentiated from the common English manner that we the People use that identical word or phrase every day.

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

A. Unconstitutional Executive and Judicial Expansion of Legislative Subject Matter.

(1) Unconstitutional Executive and Judicial Expansion of Legislative Intent

(2) Unconstitutional interpretation of statutes as being completely independent of the subject matter context of the legislation as a whole, thus furthering the unconstitutionally of the executive and judicial department's reading and interpretation by converting the object of the statute into isolated legislative subjects unto themselves.

(3) Unconstitutional facilitation and propagation of numerous unrebuttable legal presumptions by the courts themselves that:

(a) a known legal duty actually existed in the first instance; and

(b) the known legal duty was applicable and binding upon the accused; and

(c) the accused individual knowingly and willfully breached that known legal duty; and

(d) the unrebuttable allegation of a breach of legal duty being made by other agents of the State is actually lawfully and legally true; and

these unrebuttable legal presumptions are then used to provide the State and the court the necessary legal grounds for asserting that *in personam* jurisdiction over the accused exists simply due to the allegation of breach that is actually being made by *other* agents of the State who read and comprehend at an even lower level than the prosecutors and the courts.

(4) Unconstitutional interpretation, expansion, and application of South Carolina "Transportation" Code to the general public effectively creates a predatory revenue system where the STATE is the predator and considers the people to be its prey. The STATE uses the South Carolina "Transportation" Code to unconstitutionally and illegally harass and prey upon those who refuse or have no desire to participate in any commercial use of the roads and highways, but are simply acting in their own private common law capacity to exercise their right to liberty through locomotion as their means and whim moves them to do. Locomotion, the right to move about as one's private needs or desires dictate, is a fundamental inherent right of liberty, and is not subject to permissive license or punitive sanction by our government simply because we choose to freely exercise and enjoy these rights as either an individual or group.

(5) Unconstitutional interpretation, expansion, and application of South Carolina "Transportation" Code to the general public effectively converts the right to liberty through locomotion into a privilege for which the people must now "pay to play" in order to even use their own private property for its intended purpose of travel upon the public right-of-way that they have every right to access and make use of without STATE permission of any kind. The public is the rightful owner of the roads and highways, not the governmental or corporate STATE. The people never empowered their servant government to steal way their rights and convert them into privileges that we must buy back one-by-one in order to access and exercise them, but that is precisely what these unconstitutional governmental actions have done.

B. Unconstitutional Governmental Taking and Conversion of the Public Right-of-Way into a Private Revenue Source for the STATE OF SOUTH CAROLINA and Other Corporate Entities.

(1) By fraudulently converting the People's right to access and use the public right-of-way for their own private business and pleasure, THE STATE OF SOUTH CAROLINA corporation has not only unlawfully stolen a public resource rightfully belonging to the People of South Carolina, it has converted that right into a privilege held for ransom at the whim of the STATE itself. The People of South Carolina created and appointed our government as the protector of our rights, liberty, and property, both private and public. The government is nothing more than an elected and appointed caretaker of that property, *not* the rightful *owner*. The government was not given any delegated power to act or presume that its caretaking authority extended to requiring any individual member of the People to "qualify" with some governmentally devised standard before they may use what is already rightfully theirs, the public right-of-way, for its lawful intended purpose, to serve the People as a way to travel from place-to-place as their whims, desires, or needs motivated them.

(2) THE STATE OF SOUTH CAROLINA corporation has based its ransoming of the People's right to liberty through locomotion upon the coerced acceptance and obedience to all the regulatory fees and rules of the South Carolina "Transportation" Code. THE STATE OF SOUTH CAROLINA corporation, and the executive and judicial departments therein, have conspired and colluded to create the appearance to the general public that this unlawful application of a regulatory code to their private lives and activities is a legitimate use of the police power. This deception is put forth despite the

clear limitations of the legislation itself to only those using the road and highways for the commercial purpose of generating private profit or gain. This further translates into a requirement upon the People to pay THE STATE's extortive ransom in order to exercise their fundamental rights, and has been wrongfully and unlawfully ruled upon as being "constitutional" under the "police power" by the South Carolina Courts. This intentional misinterpretation and misapplication of the regulatory code is declared "constitutional" despite the readily apparent fact that every privately traveling member of the public is then compelled into an involuntary mandatory requirement to either waive, or *purchase* through licensing fees, many of their fundamentally protected rights if they wish to "pay-to-play" upon the very public right-of-way that they already have every natural right to access and use.

(3) This serves to convert the People's individual right of access and use of the public right-of-way into a licensed and revocable-at-will privilege that THE STATE OF SOUTH CAROLINA corporation may grant or revoke at its own pleasure, thus, despotically taxing, controlling, monitoring, and tracking the People's movements, as well as where they live and work.

(4) Unconstitutional interpretation, expansion, and application of the South Carolina "Transportation" Code to the general public effectively creates a total ban upon *any* private use of a car or truck upon the public right-of-way. How can this be said to be anything other than an unconstitutional governmental taking when it prohibits the rightful use of both private property and a public resource to every member of the public that lawfully purchased an automobile for private non-commercial use only? Especially when THE STATE threatens and coerces the public into accepting THE STATE's fraudulent conversion of both our private property and our public resources for its own

12 of 28

exclusive use as a means of generating private profit or gain by then selling our inherent fundamental right to access the public right of-way back to we the People through mandatory licensing and registration fees?

This total ban upon private personal use of the public right-of-way is an unconstitutional governmental taking and conversion of every privately owned automobile (car, truck, etc.) into a regulated "commercial/ motor/vehicle" that is then unlawfully presumed to *always* be engaged in "transportation" upon the public right-of-way, even when that private property is *not* being "used" for "transportation" to "transport" passengers, property, or goods upon the public right-of-way for the extraordinary purpose of generating private profit or gain. This unconstitutional taking not only deprives the individual property owner of the rightful intended purpose and use of that property for private noncommercial purposes, it also requires the owner to first acquire a grant of governmental permission via fee-based licensing before they can legally make any use of it at all. This willful misinterpretation and misapplication of regulatory statute unlawfully converts private property into commercial use property without full disclosure to the public or the knowing and willful consent of the private property owner, thus replacing the owner's private property interest in the automobile with the commercial revenue interests of THE STATE.

THE STATE then enforces the collection of its profits by using coercive fraud backed by threats of punishment and violence from its crooked revenue collection courts and poorly trained executive functionaries. People are being seriously injured or *killed* on an almost routine basis by executive law enforcement officers that understand little to nothing about the laws they enforce or to whom and what they properly apply, while the

courts pretend that the officer knew what do and did it properly despite the clear and damning evidence to the contrary. How can any legislative, executive, or judicial officer or body loudly and boldly proclaim with a straight face that these statutes and their enforcement are about public safety when it is *their* very own ill-advised rights destroying legislation, enforcement, and rulings that are solely responsible for injuring or killing members of that very same public by the hundreds and thousands? This is further compounded by the absolutely fraudulent and malicious refusal by every level of our South Carolina Courts to recognize the inherent fundamental right of the People to move about freely upon the public right-of-way while using their own private property (automobile), without THE STATE's permission or tracking programs interfering, or to even see and understand the entirety of the "Transportation" Code for the *commercial-only* regulatory scheme that it is. None of this is any less true even when examined as an unconstitutional taking of the Public's right to freely access and make use of the public right-of-way with that same property, which is the fundamentally intended lawful and ordinary purpose of both the property and the public resource, to serve the people individually and/or collectively in the pursuit of their own private business and pleasure.

(5) State granted privileges are fee-based favors from the government that regulate taxable commercial activities; and are, by nature and definition, discriminatory, and show an improper "respect of persons" by discriminating against and oppressing persons who are poor, homeless, elderly, handicapped, infirmed, ex-felons (non-violent, victimless crimes) who need to work and protect themselves and their families, the disenfranchised who live, work and travel in remote wilderness-areas where they are at risk from predatory animal attack, those who simply want their privacy and to be let alone, and those people who

chose to remain private and not engage in commercial revenue generating (taxable) state privileges, especially upon the public right-of-way.

(6). Only those individuals who will ignorantly waive their superior inherent unalienable fundamental non-statutory rights for the purpose of applying for and obtaining a governmental privilege, and who promises to obey the everchanging rules and regulations of THE STATE's statutory schemes, are granted access to THE STATE's "pay-to-play" system.

A system whereby the people's rightful access and use of the public right-of-way is unconstitutionally held for ransom by the threat of punitive sanctions and violent use of force, up to and including the use of deadly force, by the very same STATE actors that swore an oath to uphold and protect those very same individual rights to acquire and make use of private property for any lawful purpose for which it is designed or intended, and to have access and make use of all public property for private non-commercial purposes, including, but not limited to, the public right-of-way.

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

A. Constitutional requirements and prohibitions cannot be waived, violated, or presumed ineffective simply by making an application for some benefit or privilege, or by contracting or consenting to waive such requirements.

B. Neither creation nor acceptance of any "Certificate of Title" or "License" instrument can create a nexus where any of the provisions of the South Carolina Constitution, or the Bill of Rights contained therein, becomes void and of no effect.

C. Voluntary registration of an automobile for the purpose of enrolling in state provided services relating to "theft prevention and recovery" cannot create a nexus where any of the provisions of the South Carolina Constitution, or the Bill of Rights contained therein, becomes void and of no effect.

D. An opinion by any court that purports to remove the subject matter context of "transportation" from the adjudication of the facts and evidence of a "transportation" related offense is not simply harmless error or an innocent misinterpretation of the statutes in general. It is a knowing and willful unconstitutional attempt to judicially legislate from the bench.

E. Such an opinion by a court would further act unconstitutionally by judicially altering the contextual character and nature of the original legislation, changing it from a collection of statutes applicable to a specific subject and context designed and intended to regulate a specific class of legal "persons" that are engaging in a specific contextually related activity, into a constitutionally and legislatively unintended collection of general laws applicable to every individual member of the public at large.

F. Such an opinion would also serve to fundamentally alter and/or totally ignore and discard long-standing legal interpretations, subject matter expert opinions, and all relevant recognized professional and occupational standards of usage and meaning relating to the particularized subject matter context that defines "transportation" as a legal term of art encompassing only that specific class of activities involving the use of "commercial/ motor/ vehicles" upon the highways for commercial purposes intended to generate private profit or gain.

G. To apply any title, definition, section, or provision of the South Carolina "Transportation" Code to any activity or individual that is acting in their private common law capacity, outside of the specific subject matter context of "transportation," is an unconstitutional executive and judicial expansion and misapplication of the legislative intent and purpose of the statutes codified within the "Transportation" Code.

H. 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. To wit:

(1) 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 noncommercial 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 exists to believe that any contextually related "transportation" offense was or

is being committed, making the initial warrantless stop completely unconstitutional and illegal.

(2) 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 s/he 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.

(3) 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 courts of South Carolina 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 in 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. *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)

To say that the right of a proper probable cause determination and order belongs only to those being charged with a felony level offense is a disingenuous affectation of fairness that, at its heart, actually conceals a violation of the equal application and protections clause that is shocking to the conscience.

(4) 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 actually 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.

(5) 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. These unrebuttable presumptions of legal and substantive fact are unconstitutional precisely because they act in direct contradiction of these rights.

(6) 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.

(7) 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.

(8) 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 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.

(9) 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 imperative to establishing the necessary belief that any and all of the other essential elements 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.

(10) 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 s/he is not guilty of that specific primary element because s/he 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.

(11) 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."

IV. The Executive and Judicial Branches of South Carolina Government Are Guilty of Knowingly and Willingly 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. The Executive Departments Criminal and Civil Liability Exposed.

(1) The officers and employees of the executive department of South Carolina government knowingly and willfully fail or intentionally miseducate and misinform local and state law enforcement personnel on the specific legal meaning and limitations of "transportation" that would serve to establish the necessary legal parameters for properly applying and enforcing the South Carolina "Transportation" Code.

(2) Demonstrative evidence of this fact can be easily verified, and the assertion thus proven, by even the most superficial reading of any police incident report involving the allegation of virtually any "transportation" related offense.

(3) No documentation proving that the arrested individual was ever notified of their fundamentally protected right to counsel and to remain silent, or was ever given any meaningful opportunity to exercise those rights in every possible self-protective manner without threat, duress, or coercion perpetrated by any officer on the scene.

(4) No documentation proving that the right of the arrested individual to be free from any unreasonable search and seizure was ever recognized or considered by the arresting officer, despite the officer's complete lack of any facts or evidence providing probable cause to believe that the arrested individual was ever engaged in "transportation" at the time of the alleged offense.

(5) No documentation proving that the arrested individual was ever notified or given any meaningful opportunity to exercise their fundamentally protected right to counsel and remain silent in every relevant and self-protective manner.

(6) Invariably, you will find the following legal deficiencies and due process violations contained within the police records:

(a) No mention of any investigative questions intended toward discovering whether or not the accused individual was ever actually engaging in "transportation" at the time of the alleged offense.

(b) No mention of any evidence having been discovered proving the accused individual was ever actually engaging in "transportation" at the time of the alleged offense. Admissible forms of evidence proving the existence of the context of "transportation" can exist in only one or more of four specific forms:

1. Commercial log book showing that the accused individual was "on the clock" at the time of the alleged offense.

2. Passenger manifest proving a business related activity, and the actual presence of some other individual named therein as having engaged the accused individual for the purpose of being "transported" from one place to another by him/her for compensation or hire.

3. Bill of lading proving a business related activity, and the actual presence of some property or goods named therein as being in the custody and possession of the accused individual for the purpose of being "transported" from one place to another by him/her for compensation or hire.

4. A voluntarily signed confession that the accused individual was actively engaged in "transportation" at the time of the alleged offense.

(c) Even if such evidence is shown to have been presented at trial, there will be no evidence admitted into the record proving that the search and seizure of that evidence was

lawfully valid as it would be the fruit of a presumptively unlawful warrantless arrest -- which means that the evidence is inherently inadmissible absent supporting evidence of a lawful arrest, search, and seizure of same, which can be proven only by a properly issued warrant or signed order of probable cause.

B. The Judicial Departments Criminal and Civil Liability Exposed.

(1) The officers and employees of the judicial department of South Carolina government knowingly and willfully fail or intentionally miseducate and misinform local and state executive law enforcement officers, judicial personnel, prosecutors, and defense attorneys, on the specific legal meaning and limitations of "transportation" that would otherwise serve to establish the necessary legal parameters for properly applying and adjudicating all South Carolina "Transportation" Code offenses.

(2) Demonstrative evidence of this fact can be easily verified, and the assertion thus proven, by even the most superficial reading of any court record involving the prosecution and adjudication of virtually any "transportation" related offense.

(3) No documentation proving that the arrested individual was ever notified of their fundamentally protected right to counsel and to remain silent, or was ever given any meaningful opportunity to exercise those rights in every possible self-protective manner without threat, duress, or coercion perpetrated by any officer on the scene.

(4) No documentation proving that the right of the arrested individual to be free from any unreasonable search and seizure was ever recognized or considered by the arresting officer, despite the officer's complete lack of any facts or evidence providing probable cause to believe that the arrested individual was ever engaged in "transportation" at the time of the alleged offense.

(5) No documentation proving that the arrested individual was ever notified or given any meaningful opportunity to exercise their fundamentally protected right to counsel and remain silent in every relevant and self-protective manner.

(6) Invariably, you will find the following legal deficiencies in admissible and substantive evidence and numerous un/related due process violations contained within the court record:

(a) No mention of any investigative questions intended toward discovering whether or not the accused individual was ever actually engaging in "transportation" at the time of the alleged offense.

(b) No mention of any evidence having been discovered proving the accused individual was ever actually engaging in "transportation" at the time of the alleged offense.

Admissible forms of evidence proving the existence of the context of "transportation" can exist in only one or more of four specific forms:

1. Commercial log book showing that the accused individual was "on the clock" at the time of the alleged offense.

2. Passenger manifest proving a business related activity, and the actual presence of some other individual named therein as having engaged the accused individual for the purpose of being "transported" from one place to another by him/her for compensation or hire.

3. Bill of lading proving a business related activity, and the actual presence of some property or goods named therein as being in the custody and possession of the accused individual for the purpose of being "transported" from one place to another by him/her for compensation or hire.

4. A voluntarily signed confession that the accused individual was actively engaged in "transportation" at the time of the alleged offense.

(c) Even if such evidence is shown to have been presented at trial, there will be no evidence admitted into the record proving that the search and seizure of that evidence was lawfully valid as it would be the fruit of a presumptively unlawful warrantless arrest...which means that the evidence is inherently inadmissible absent supporting evidence of a lawful arrest, search, and seizure of same, which can be proven only by a properly issued warrant or signed order of probable cause.

(d) No appealable determination of probable cause or supporting order, which, if existing, would then serve to prove that an unlawful *ex parte* evidentiary proceeding took place where someone presented facts and evidence relevant to the material facts of the case without notice and opportunity of any kind being provided to the accused individual to present and oppose any facts or evidence being submitted against them.

(e) No order of appointed counsel despite there also being no knowing and voluntary signed waiver of counsel, because the language of legalese has concluded that the term "*all*" doesn't really always mean "*every one of*."

(f) Documents with dates and times that prove there were numerous proceedings in the prosecution despite there being no verified complaint and/or proper charging instrument in the form of an indictment or information having ever been filed with the court prior to such proceedings.

(g) Failure to file a proper criminal complaint and charging instrument prevents the starting of the speedy trial clock and, thus, allows all of the preliminary procedures of the

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prosecution to be completed *without* speedy trial protections being afforded to the Accused, which violates the rights of the accused to a speedy trial by preventing the proper computation of time.

This also means that, if the filing of a complaint and/or information is the *minimum* requirement to properly invest a court with jurisdiction of a cause, then each and every one of those proceedings was conducted entirely *without* the court having even the *prima facie* appearance of proper jurisdiction.

(h) A factually and facially insufficient criminal complaint.

(i) No proper charging instrument in the form of an indictment or information properly invoking the subject matter and *in personam* jurisdiction of the court.

(j) No actual evidence of either the subject matter or *in personam* jurisdiction of the court having ever been constitutionally and legally invoked.

(k) No actual admissible evidence proving every element of the alleged offense.

(l) Affiant on criminal complaint against the accused is a clerk of the court adjudicating the case, and as such, is for all intents and purposes, an acting agent of the judge adjudicating the case, creating an agency problem where the court is both the accuser and the trier of fact.

(m) The clerk of the court is *also* an official custodian of the court record, within the same court, and in the same case, where the clerk is *also* acting as the criminal accuser and affiant, an employee of the adjudicating court, *and* as an agent of the judge adjudicating the case.

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.

(1) By fraudulently claiming that the Statutory Object of "driving without a license" is somehow separate and apart from the Subject Matter Context of "transportation," THE STATE creates the fraudulent appearance that it has acquired standing, subject matter, and *in personam* jurisdiction so as to pursue an action against Respondent. Furthermore, THE STATE makes this contention despite there being absolutely no evidence whatsoever that would serve to prove that Respondent was actually engaging in any activity regulated by the "Transportation" Code, which is the only source from which such standing and jurisdiction could flow.

(2) Neither the allegations made in the criminal complaint nor in any related information or indictment is based upon any actual admissible evidence. The alleged "facts" as stated are in and of themselves nothing more than the officer's mere unsubstantiated opinion founded entirely upon his own legal presumptions and conclusions as to what the law is and what it means.

(3) Neither the mere naked allegation of an offense, nor the inadmissible opinion of the officer, is, in and of itself, admissible evidence of a criminal offense allegedly committed by Respondent. One of the leading commentators on standing has written, "Even though the past law of standing is so cluttered and confused that almost every proposition has some exception, the federal courts have consistently adhered to one major proposition without exception: One who has no interest of his own at stake always lacks standing." K. Davis, Administrative Law Text 428-429 (3d ed. 1972).

(4) If Respondent was not engaged in "transportation," and THE STATE has no admissible tangible evidence proving that Respondent was so engaged, then it is legally impossible for THE STATE to have standing or jurisdiction over Respondent as a matter of law. THE STATE has

nothing in the form of actual admissible evidence, but is proceeding merely and entirely upon the wholly unsubstantiated opinion and flawed legal presumptions and conclusions of the officer.

(a) Standing is legally defined as "The position of a person in reference to his capacity to act in a particular instance – 19 Am J2d Corp § 559." Ballentine's Law Dictionary, page 1209.

(b) Arrest may be procured and complaint filed by officers for crimes committed in the presence of the officer. However, a warrantless arrest committed without any articulable facts establishing a basis for probable cause is inherently unlawful.

(c) If an officer cannot articulate specific facts that would lead a reasonable person to believe that the individual being accused of a "transportation" related offense was actually engaging in the regulated activity of "*transportation*," rather than merely exercising his or her common law right of liberty through locomotion by simply traveling down the highway for his/her own personal business or pleasure, then that officer lacks the fundamental elements necessary for articulable probable cause.

(d) Without the context and existence of "*transportation*," everything else that follows, i.e. "*commercial/ motor/ vehicle*," "*drive/ operate*" or any grammatical variation thereof, or any alleged "*transportation*" related and dependent offense, is not simply a mistake of law, it is entirely the officer's legally flawed personal opinion based solely upon his or her own factually and evidentiary unsubstantiated legal presumptions and conclusions --presumptions and conclusions that the officer is not competently and legally qualified to even make, much less testify to.

(e) The "Supreme Court" has held consistent with this principal of standing: "the duty of this court, as of every judicial tribunal, is limited to determining rights of persons or of property, which are actually controverted." (Tyler v. Judges of the Court of Registration, 179 US 405,

414 (1900)); "Courts only adjudicate justiciable controversies." (United States v. Interstate Commerce Commission, 337 US 426, 430 (1949)).

(f) "As a general principal, standing to invoke the judicial process requires an actual justiciable controversy as to which the complainant has a real interest in the ultimate adjudication because he or she has either suffered or is about to suffer an injury." (People v. Superior Court, 126 Cal.Rptr.2d 793, 103 Cal. App. 4th 409 (2002)).

(g) "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)).

(h) "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))

(i) "[P]rudential standing encompasses the general prohibition on a litigant's raising another person's legal rights..." (Elk Grove Unified School District et al. v. Newdow et al., 542 U.S. 1, 1 (2004)).

(j) So, Where do cops derive standing too prosecute cause of action on behalf of others for personal injury claim, by a disinterested alleged victim? They do it all the time.

(k) "A complaint must contain a statement of facts showing the jurisdiction of the court, ownership of a right by plaintiff, violation of that right by the defendant, injury resulting to plaintiff by such violation, justification for equitable relief where that is sought, and a demand for relief." (Pierce v. Wagner, 134 F.2d. 958). "The complaint, on its face, must show that the plaintiff has the better right." (Rogers v. Shannon 52 C. 99 (1877).

(I) Standing consists of two absolutely essential elements:

1) violation of a legal right, and

2) personal injury. *Cas. Co. v. Certain Underwriters at Lloyd's of London*, 119 F.3d 619, 625 (8th Cir. 1997))

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.

By constant, potentially even willful, misinterpretation, altering of language, and obfuscating the real meaning of terms and phrases within multiple levels of intentionally obtuse language and uses of self-referencing circular logic definitions, these committees unconstitutionally alter the original legislative purpose and intent of the statutes in much the same manner the courts do by refusing to interpret and apply the law consistent with its language and the specific subject matter context of the legislative Bill that originally created it.

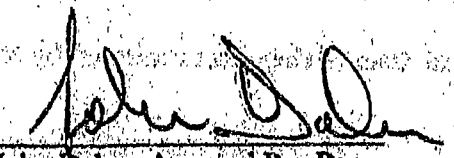
RQ 27 08 28

CONCLUSION

For all of the above reasons, a motion is made to move the court to rule the entire South Carolina Transportation Statutes to be unconstitutional as applied to a citizen's rights under the Common Law to travel upon the public highways, not for commercial gain or activity.

WHEREFORE the Accused moves this court to dismiss this complaint with prejudice.

John D. Dalen
109 Wood Valley Dr.
Westminster, SC 29693
864-647-4705



John Dalen, Accused Pro Per
June 28, 2017

STATE OF SOUTH CAROLINA OCONEE COUNTY	IN THE CITY OF WESTMINSTER MUNICIPAL COURT
State of South Carolina, PLAINTIFF	**Accused's Motion for Offer of Plea**
John Dalen, ACCUSED Pro Per	Summons No. 5102P0778082

Accused's Motion for Offer of Plea

RECEIVED
2017 JUL 11 A 8:37
OCONEE COUNTY
SUMMARY COURT

Your Honor, the Accused hereby offers to enter a plea of guilty contingent upon this court establishing its jurisdiction on the record and informing me of the nature and cause of the charge leveled against me.

Discussion

I have objected to the court entering a plea on my behalf as a violation of my rights to due process. I have also noticed this court that subject matter jurisdiction is lacking in this case. And I have also filed several motions that have either not been ruled on or have been ruled on while ignoring the substantive issues that were raised. I have also requested a pretrial hearing which this court has scheduled for the day of the trial, which leaves me no time to prepare an adequate defense. Therefore, I move the court to schedule a pretrial hearing at least two weeks prior to any scheduled trial so that: 1) the complaining party, not the judge, can present evidence of jurisdiction as required by law to validate his complaint, 2) the motions for dismissal, notice of adjudicated facts, as well as this motion can be responsively addressed, and 3) that I be fully informed of the nature and cause of the charges against me so that I may prepare an adequate defense.

To date, I have seen no evidence that the statute in question applies to me. Can you confirm that the complaining party has presented facts proving the code applies and that you have jurisdiction over me? Isn't the applicability of the code an essential element of a code violation?

And, as an element of the violation, it must be proven beyond a reasonable doubt by facts from a competent witness, someone who has personal knowledge of the matter?

Conclusion

Your Honor, I demand all of my rights at all times as guaranteed to me by the United States Constitution as well as the South Carolina State Constitution and I will exercise all available, lawful remedies to which I am entitled in defense of these rights.

WHEREFORE the Accused moves this court to schedule a pretrial hearing. In the interests of justice and a fair trial by an impartial judge, the accused moves this court to schedule a pretrial hearing in advance of the trial by at least ten working days so that the accused may have answers to the questions just raised under the above discussion, and therefore be able to enter a plea and/or prepare an adequate defense. Or, in the absence of jurisdiction and the lack of evidence thereof, the accused moves this court to dismiss this action with prejudice.

John D. Dalen
109 Wood Valley Dr.
Westminster, SC 29693
864-647-4705

John Dalen, Accused Pro Per
July 10, 2017

STATE OF SOUTH CAROLINA OCONEE COUNTY	IN THE CITY OF WESTMINSTER MUNICIPAL COURT
State of South Carolina, PLAINTIFF John Dalen, ACCUSED, Pro Per	**Notice of Motion and Motion for Change of Venue** Summons No. 5102P0778082

Notice of Motion and Motion for Change of Venue

YOU WILL PLEASE TAKE NOTICE that John Dalen moves this court for a change of venue in the interests of justice; the accused believes that the court is acting without jurisdiction. Jurisdiction has not been proved on the record and I believe the judge in this case is biased against the accused due to filings of the accused that have upset the judge, including a Notice of Intent to Sue which names the judge as a defendant.

All courts have a duty to protect the rights of the citizens. This court can do so by granting a change of venue to eliminate even the appearance of bias in this case.

WHEREFORE the Accused moves this court to grant change of venue to the Tenth Judicial Circuit Court for the County of Oconee, or dismiss this action immediately.

John D. Dalen
109 Wood Valley Dr.
Westminster, SC 29693
864-647-4705

John Dalen, Accused Pro Per
August 11, 2017

STATE OF SOUTH CAROLINA COUNTY OF OCONEE	FILED OCONEE COUNTY, SC BEVERLY H. WHITFIELD CLERK OF COURT 2018 MAR 12 A 10:03	IN THE COURT OF COMMON PLEAS TENTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2017 CP-37-00490
John Dalen, PLAINTIFF,		**Notice of Motion and Motion for New Trial and /or Amendment of Judgment**
State of South Carolina, DEFENDANT,		

Notice of Motion and Motion for New Trial and/or Amendment of Judgment

YOU WILL PLEASE TAKE NOTICE that John Dalen moves this court to amend its judgment dated March 1, 2018, which was received by the Plaintiff on March 3, 2018, or in the alternative, grant a new trial on all of the issues. This Motion is made pursuant to Rule 59, SCRCP, Rule 59(a) and Rule 59(e). Affidavit of the Plaintiff is attached.

BRIEF IN SUPPORT OF THIS MOTION

1) The court has no subject matter jurisdiction. The State cannot convert rights into privileges and charge a fee for the exercise thereof, The Supreme Court has repeatedly ruled on this issue. John Dalen was clearly engaged in the exercise of a Constitutional right when he was unlawfully arrested by Trooper A.M. Taylor. Along with other troopers present, Trooper Taylor has engaged in a conspiracy to deny me, John Dalen my Constitutionally protected rights, and has acted without any lawful authority.

The definitions of "person", "motor vehicle", and "drive", as well as the requirement to obtain a "license" apply only to commercial or for hire activities as the Supreme Court repeatedly ruled. I have a right to rely on the decisions of the Supreme Court. No evidence has been presented by the state that John Dalen was engaged in any commercial or for hire activity at the time of his unlawful arrest.

Under South Carolina Code of Laws, Title 16, Sec. 5, Offenses against Civil Rights, the aforementioned troopers have committed a criminal felony, by violating the rights of John Dalen. (Sec. 16-5-10). My rights constitute my property. Under Title 16, Chapter 5, (Sec. 16-5-30) it is the court's duty to take all legal means necessary for the protection of such property as is attacked or threatened to be attacked. Any constable, sheriff or magistrate that neglects or refuses to perform his/her duty, shall be liable for the damages done to such property, and shall also be deemed guilty of a misdemeanor in office...

Actions filed under this chapter do not preclude other remedies or actions that are available to the injured party.

2) All courts have a duty to protect the rights of the citizens.

3) My rights to due process of law have been violated, and due to the fact that no crime has been committed, this court does not have subject matter jurisdiction. Once challenged, subject matter jurisdiction must be proven on the record; it cannot be waived. The court, in its denial of my motion to dismiss has not proven its jurisdiction, but has in fact, acknowledged its lack thereof.

The following case law is applicable and relevant to the issues involved in this case:

1) Hurtado v. California, 110 U.S. 516, 3 Sup. Ct. 111, 292, 28 L. Ed. 232 (1884)

> Due process of law is process according to the law of the land . . . . Due process of law in the latter (the Fifth Article of Amendment to the Constitution) refers to that law of the land which derives its authority from the legislative powers conferred upon Congress by the Constitution of the United States, exercised within the limits therein prescribed and interpreted according to the principles of the common law. . . . Mr. Justice Matthews, delivering the opinion of the court. . . .

* Note that the 14th Amendment insured that all of the above applies to the states.

2) An affirmance results when a judge acts in the clear absence of all jurisdiction, i.e.,

> of authority to act officially over the subject matter in hand, the proceeding coram non judice. In such a case the judge has lost his judicial function, has become a mere private person, and is liable as a trespasser for the damages resulting from his unauthorized acts. Such has been the law from the days of the case of The Marshalsea, 10 Coke 68. It was recognized as such in Bradley v. Fisher, 13 Wall. (80 U.S.) 335, 351, 20 L. Ed. 646. In State ex rel. Egan v. Wolever, 127 Ind. 306, 26 N.E. 762, 732, the court said: 'The converse statement of it is also ancient. Where there is no jurisdiction at all there is no judge; the proceeding is as nothing.' Manning v. Ketcham, 58 F.2d 948 (1932).

3) McNutt v. GMAC, 298 US 178

> "The burden of proof of jurisdiction lies with the asserter."

4) Wuest v. Wuest, 127 P2d 934, 937. Outboard Marine Corp. v. Thomas, 610 F. Supp. 1234, 1242 (N.D. Ill., 1985)

"A departure by a court from those recognized and established requirements of law, however close apparent adherence to mere form in method of procedure, which has the effect of depriving one of a constitutional right, is an excess of jurisdiction."

5) The United States Supreme Court has clearly, and repeatedly, held that any judge who acts without jurisdiction is engaged in an act of treason. U.S. v. Will, 449 U.S. 200, 216, 101, S. Ct. 471, 66 L. Ed. 2d 392, 406 (1980): Cohens v. Virginia, 19 U.S. (6 Wheat) 264, 404, 5 L. Ed. 257 (1821)

6) "Officials and judges are deemed to know the law and sworn to uphold the law;

officials and judges cannot claim to act in good faith in willful deprivation of law, they certainly cannot plead ignorance of the law, even the Citizen cannot plead ignorance of the law, the courts have ruled there is no such thing as ignorance of the law, it is ludicrous for learned officials and judges to plead ignorance of the law therefore there is no immunity, judicial or otherwise, in matters of rights secured by the Constitution for the United States of America." Owen vs. City of Independence, 100 S. Ct. 1398; Maine vs. Thiboutot, 100 S. Ct. 2502; and Hafer vs. Melo, 502 U.S. 21

7) Rubinstein v. Collins, 20 F. 3d 160, 1990

"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."

My rights to due process of law are being violated, and due to the fact that no crime has been committed, this court does not have subject matter jurisdiction. The State and this Court is attempting to prosecute a case without authority to do so. Once challenged, subject matter jurisdiction must be proven by the court on the record; it cannot be waived. The Plaintiff John Dalen repeatedly has challenged the court's jurisdiction – both personal and subject matter – on this matter and continues to do so.

WHEREFORE, John Dalen moves this court to alter or amend its judgment or in the alternative, grant a new trial. The statute in question can only be enforced upon "persons" exercising privileges and not on individuals exercising Constitutionally protected rights.

RESPECTFULLY SUBMITTED,

John D. Dalen
109 Wood Valley Dr.
Westminster, SC 29693
864-647-4705

Dated: March 12, 2018

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

FILED OCONEE COUNTY, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2018 MAR 12 A 10: 03

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2017 CP-37-00490

John Dalen,

PLAINTIFF,

State of South Carolina,

DEFENDANT,

Notice of Motion and Motion for Findings of Facts and Conclusions of Law

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Notice of Motion and Motion for Findings of Facts and Conclusions of Law

YOU WILL PLEASE TAKE NOTICE that John Dalen moves this court to reconsider its decision to deny Plaintiff's Appeal, dated March 1, 2018, which was received by the Plaintiff on March 3, 2018. This Motion is made pursuant to Rule 52, SCRCP, Rule 52(a) and Rule 52(b).

Plaintiff John Dalen requests the Court to set forth the findings of fact and conclusions of law which constitute the grounds of its action. John Dalen believes that there is insufficient evidence in the record to support the findings of this Court.

WHEREFORE the Plaintiff, John Dalen moves this court to find the facts specially and state separately its conclusions of law thereon.

RESPECTFULLY SUBMITTED,

John D. Dalen
109 Wood Valley Dr.
Westminster, SC 29693
864-647-4705

Dated: March 12, 2018

STATE OF SOUTH CAROLINA) IN THE MUNICIPAL COURT

)

COUNTY OF OCONEE) C.A. NO. 5102-PO-77-8082

STATE OF SOUTH CAROLINA,)

PLAINTIFF,)

VERSUS)

JOHN DALEN,)

DEFENDANT.)

COPY

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TRANSCRIPT OF PROCEEDINGS

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PURSUANT TO AGREEMENT, A HEARING WAS HELD ON THE 19TH DAY OF APRIL, 2017, COMMENCING AT THE HOUR OF 2:23 AM AT THE WESTMINSTER MUNICIPAL COURT, WESTMINSTER, SOUTH CAROLINA.

BEFORE:

THE HONORABLE WILLIAM F. DERRICK, JR.

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APPEARANCES:

JOHN DALEN,

PRO SE.

TROOPER TAYLOR

REPORTED BY: MARLA J. O'BRIEN, CVR-M, ACR

INDEX

MOTIONS:

MR. DALEN.....4

CERTIFICATE OF REPORTER.....11

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

THE COURT:

This is case number 5102-PO-77-8082, State versus John Dalen. That is you, sir? Is that correct?

MR. DALEN:

That's correct.

THE COURT:

All right, Mr. Dalen. And you have been charged with a traffic violation of no South Carolina driver's license. And it's my understanding that you have a motion for the Court. I'll be glad to hear it.

MR. DALEN:

Okay. All right, before we start on the motion, I just want to reiterate that it's stated in the motion that my appearance here today is under duress, and under threat of incarceration. And that I object to these proceedings in their entirety, that the Court lacks subject matter jurisdiction, as well as personal jurisdiction. And therefore, I will not be entering any pleas.

I have the right to be informed of the nature and cause of the accusations under the Fifth Amendment. I do not understand the charges of the -- or, against me. And that is thoroughly explained in my motion to dismiss.

And, it is also the duty of this court to protect

my rights and my property. There has been no contract produced, or other authority that gives you either personal or subject matter jurisdiction. Under my common law right to due process, I have a right to have a victim or injured party in this court. I have a right to a jury trial. And the Court is required to prove their jurisdiction, not assume it or presume it. And I'm giving this Court notice and demanding all of my rights under the common law, including my right to trial by jury. Again, I do not understand the charges against me, based on the fact that I was not engaged in any commercial activities. I was exercising a right to travel. If I could, I'd like to hand out a couple more documents.

THE COURT:

Sure.

MR. DALEN:

This is from American Jurisprudence. It's basically a handbook for judges, and it tells you that the purpose of the courts is -- the core function is the protection of constitutional rights.

THE COURT:

Okay.

MR. DALEN:

And I'll give you one, also.

And then, also, I want to inform you of a law that we have in South Carolina, Chapter 5, Offenses Against Civil Rights. I'll give you a copy of that, also.

And it says in this law, Section 16-5-30, any constable, sheriff, or magistrate, upon receipt of notice from any person, that has knowledge of an intention or attempt to destroy his property, shall take all legal means necessary for the protection of such property. My rights are also considered my property. And I am informing you that under Section 16-5-10, the office -- the officers involved in this action conspired to violate my constitutionally protected rights.

Okay. Now we have the motion, in which I explain that I have a right to travel. I think that is what I was doing on the day in question.

Do I need to read through this whole thing, or...

THE COURT:

No, sir. You can just go over it briefly, and I'll take it into consideration.

MR. DALEN:

Okay. Basically, I was exercising a right to travel under the Constitution, and the Supreme Court backs this up with numerous Supreme Court cases that are all in this motion. That unless I am transporting property

for hire or otherwise engaged in commerce on the highway, I have a right to travel. And my personal property, which was my van that I was driving, is not required -- I'm not required to have a license. Okay, the definitions in here are all spelled out for you.

THE COURT:

Uh-huh.

MR. DALEN:

If you're using different definitions, I would like to know what they are, because I'm following the Supreme Court, and the Supreme Court tells me what these definitions mean.

And I really don't need to read all this to you, and it's all here. You can't convert a right into a crime, and that's, in effect, what is happening here, attempting to convert a privilege -- I mean, a right into a privilege. And I am asking you what your authority is to do that. And therefore, if you do not have that authority, you do not have jurisdiction to have this trial or detain me in any way.

THE COURT:

All right. Anything else?

MR. DALEN:

Yeah, I did have one other thing that I just wanted to ask. Back in 2010, I actually had a driver's license

from another state. And when I went to get a South Carolina license, I was told -- well, I'm going to wait until you're done reading that.

THE COURT:

Well, actually, I'm not going to let you. Obviously, you're challenging the jurisdiction of the Court. Any facts regarding the case, I'm not going to let you go into at this point, because it might affect your constitutional rights.

If I find for your motion, obviously, that would end the case at that point. But if I find against it, anything you may say regarding the actual ticket may threaten that case for you. And I don't want you to violate your rights, or your right to remain silent as far as that's concerned.

MR. DALEN:

Okay.

THE COURT:

So that would be my concern in you doing that. What I'm going to do as far as your motion for lack of jurisdiction is take it into consideration. I do want to read through it, and everything you presented. I will then make a decision on that and mail it out to you.

MR. DALEN:

Okay.

MR. DALEN:

At that point, depending on how I rule -- obviously, if I rule for you, the case will be over. If I do not, then I will give you a date and time. I will actually enter into you a plea of not guilty for you, and a jury trial request, which you may change at any time. And we will go from there. Okay?

MR. DALEN:

Okay with everything there except the entering of a plea for me. I would object to that.

THE COURT:

Well, at this time, I am not.

MR. DALEN:

I understand that.

THE COURT:

If I find against you in this motion, then obviously, there has to be a plea entered. And until you decide differently, that plea will be not guilty to protect your right. Obviously, I'm not going to enter a plea of guilty for you. So it would automatically be a plea of not guilty, and a jury trial request. And we'll go forward at that point, if needed.

MR. DALEN:

Okay.

THE COURT:

All right. Thank y'all very much.

MR. DALEN:

Thank you.

THE COURT:

I'm sorry. Anything, Trooper Taylor, in response to his motion?

TROOPER TAYLOR:

No, Your Honor.

THE COURT:

Okay. Thank you very much.

(There being nothing further at this time, the hearing was concluded at 3:34 PM)

CERTIFICATE OF REPORTER

I, Marla J. O'Brien, a Notary Public in and for the State of South Carolina, do hereby certify that the foregoing 10 pages represents a true and accurate transcript of the hearing in the above-referenced matter, which was taken by me on the 19th day of April, 2017.

That I am not related to nor the employee of any of the parties hereto, nor related to or employed by any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

Marla J. O'Brien

MARLA J. O'BRIEN, CVR, ACR
NOTARY PUBLIC FOR S.C.
COMMISSION EXPIRES: 8-12-2021

STATE OF SOUTH CAROLINA,) IN THE MUNICIPAL COURT
)
COUNTY OF OCONEE) SUMMONS NO. 5102P0778082

STATE OF SOUTH CAROLINA,

PLAINTIFF,

VERSUS

JOHN DALEN,

DEFENDANT.

COPY

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TRANSCRIPT OF PROCEEDINGS

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A MOTION HEARING WAS HELD ON THE 13TH DAY OF JUNE, 2017, COMMENCING AT THE HOUR OF 2:01 P.M., IN THE WESTMINSTER MUNICIPAL COURT, 106 EAST WINDSOR STREET, WESTMINSTER, SOUTH CAROLINA.

BEFORE: THE HONORABLE WILL F. DERRICK, JR.

REPORTED BY: LISA M. NOWELL, VERBATIM REPORTER

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APPEARANCES:

JOHN DALEN

PRO SE;

TROOPER TAYLOR.

INDEX

COMMENCEMENT OF PROCEEDINGS 4

RULING OF JUDGE DERRICK 9

CERTIFICATE OF REPORTER 10

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

JUDGE DERRICK:

This is the case of the State of South Carolina versus John Dalen. Just for the record, this is a charge for no South Carolina driver's license. Mr. Dalen, on May the 1st of this year, you served the Court with -- and the officer with a Notice of Motion and Motion to Reconsider on an earlier decision. You've also today filed with the Court Motion for Findings of Facts and Conclusions of Law. If there's anything you'd like to add to those two motions without -- I mean, I don't feel you need to go through them. I've read them both.

MR. DALEN:

Okay.

JUDGE DERRICK:

But if there's anything you'd like to add before I make a decision on those, I'll be glad to hear it.

MR. DALEN:

Okay. First, actually, I'd like to comment on your order for Motion to Dismiss. You have a couple of terms in there, "no person", "drive", "motor vehicle", "in the state". I want the Court to know that I object to the use of those terms. They have not been introduced as evidence. The legal meaning of those terms has not been introduced as evidence. Without a proper definition and understanding of the legal

implications and semantics of those definitions, it is nothing more than a legal conclusion made by an unqualified individual capable of making that conclusion. And I'm referring to the prosecutor and/or the officer. So I object to the use of those terms without a proper definition. Also -- okay, so I do have the two motions before the Court. I really would appreciate the Court give that proper consideration before you make a decision, and then I'd like to make a statement today.

JUDGE DERRICK:

Go ahead.

MR. DALEN:

Okay. I'm here under duress, and I did not consent to these proceedings. I do not understand the cause and nature of the charges and proceedings against me. Therefore, I will not be entering any plea to charges that I do not understand the cause and nature of. The 6th Amendment to the Constitution protects my right to be informed of both the nature and the cause of the charges and the proceedings against me. Entering a plea for me against my wishes is a violation of due process of law. Discussion and discovery come before entering a plea in the proper order of due process. There has been no discussion or discovery which would

prove standing in corpus delicti. There are three elements for a valid cause of action under corpus delicti. Number one is a violation of a legal right; number two, damage or injury; and number three, redressability by the court. For the record, no one's legal rights have been violated, other than mine, which is the essence of a criminal act. And I have a question for the judge. Does corpus delicti apply in this case?

JUDGE DERRICK:

I'm not here to answer your questions. I'm here to answer your motions, Mr. Dalen.

MR. DALEN:

Okay. All right. Well, can I ask the prosecution a question?

JUDGE DERRICK:

You may not. This is not a trial.

MR. DALEN:

Okay. All right. Well, my statement continues with the State cannot be the injured party because the government itself, through numerous cases, has ruled that the government is not obligated to protect the public. This is because the government wishes to be protected from lawsuits when they fail to protect, even in cases where there was a restraining order. The

Constitution lays out why we have a government, which is to protect and maintain individual rights. That is what the courts and the police are limited to. Anything beyond this is ultra vires, which is outside the scope of the authority. I guess that's it for today. That's all I have to say.

JUDGE DERRICK:

Trooper Taylor, do you have anything?

TROOPER TAYLOR:

No, sir.

JUDGE DERRICK:

Thank you very much. All right. For the record -- and a little of this is repetitive, but I do want to preserve the record for you, Mr. Dalen, and for Trooper Taylor.

MR. DALEN:

Okay.

JUDGE DERRICK:

The above-referenced matter which was before the Court on the defendant's Motion to Dismiss filed on April the 18th, a hearing was held on that date and arguments were heard from both the defendant and the State and a decision to deny the Motion to Dismiss was rendered. The defendant now files a Motion to Reconsider before the Court and Motion for Findings of Fact and

Conclusions of Law. Rule 59 states that any motion for a new trial or reconsideration may be granted, one, in which there has been a trial by jury, or two, in an action tried without a jury. This particular case has not been heard or decided, and therefore I find this motion is improper. I also further find that the second motion for findings of fact in the case, which is the ticket, is also improper without a trial, and the protections of the defendant's rights are not preserved in this matter. Therefore, defendant's motions are hereby denied. The Court now enters a plea for the defendant of not guilty to protect his rights only and sets a bench trial, unless a jury trial is requested by the defendant, for June the 28th at 1:00. I do have copies of this for both of you. Thank you very much.

MR. DALEN:

Your Honor, I have requested a jury trial.

JUDGE DERRICK:

Okay. If you would --

MR. DALEN:

Do I have to do that again?

JUDGE DERRICK:

Yeah, you just did. And what we'll do is get a jury -- for that day, we will do the jury selection. If you

wish to have representation from an attorney, make sure he's here that day. But we will have everything set up to select a jury on that day and not have a bench trial.

MR. DALEN:

Okay.

JUDGE DERRICK:

Thank you very much.

(THERE BEING NOTHING FURTHER, THIS HEARING CONCLUDED AT 2:07 P.M.)

CERTIFICATE OF REPORTER

I, LISA M. NOWELL, A NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING 9 PAGES REPRESENTS A TRUE AND ACCURATE TRANSCRIPT OF THE HEARING, WHICH WAS TAKEN BY ME ON THE 13TH DAY OF JUNE, 2017.

THAT I AM NOT RELATED TO NOR THE EMPLOYEE OF ANY OF THE PARTIES HERETO, NOR RELATED TO OR EMPLOYED BY ANY ATTORNEY OR COUNSEL EMPLOYED BY THE PARTIES HERETO, NOR INTERESTED IN THE OUTCOME OF THIS ACTION.

Lisa M. Nowell

LISA M. NOWELL, REPORTER
NOTARY PUBLIC FOR S.C.
COMMISSION EXPIRES: 11-22-2023

STATE OF SOUTH CAROLINA) IN THE MUNICIPAL COURT
)
COUNTY OF OCONEE) C.A. NO. 5102-PO-77-8082

STATE OF SOUTH CAROLINA,

PLAINTIFF,

VERSUS

JOHN DALEN,

DEFENDANT.

COPY

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TRANSCRIPT OF PROCEEDINGS

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PURSUANT TO AGREEMENT, A VOIR DIRE WAS HELD ON THE 28TH DAY OF JUNE, 2017, COMMENCING AT THE HOUR OF 1:09 PM AT THE WESTMINSTER MUNICIPAL COURT, WESTMINSTER, SOUTH CAROLINA.

BEFORE:

THE HONORABLE WILLIAM F. DERRICK, JR.

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Post Office Box 5682
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APPEARANCES:

JOHN DALEN,

PRO SE.

TROOPER TAYLOR.

REPORTED BY: MARLA J. O'BRIEN, CVR-M, ACR

INDEX

MOTIONS:

MR. DALEN 4

CERTIFICATE OF REPORTER 24

THE COURT:

This is case number 5102-PO-77-8082, State versus John Dalen. Mr. Dalen, you've requested a jury trial in this matter, and we are here today for a jury selection.

We'll just let you know how that process will go. I have a random strike sheet in front of me, and you both have the list in alphabetical order. These are drawn at random by the computer, and that is the list that I have.

Once I call a name, the State will have the opportunity to present or strike the juror. If they present the juror, you will then have the opportunity to present the juror or strike.

We will pick six primary jurors, and then nine alternates. And then, at the end, we will select a date for the jury trial.

Mr. Dalen, it's my understanding that you have presented another motion to the Court; is that correct?

MR. DALEN:

Two motions.

THE COURT:

I'll be glad to hear those now.

MR. DALEN:

Okay. Well, one is for a pre-trial hearing.

THE COURT:
That's what we're doing.
MR. DALEN:
Okay. Well, I believe that, if we can have this pre-trial hearing, which I'm not ready to do today, because I sent letters out to certain government officials. I'd like to get a response back from them so that we can discuss their responses.
THE COURT:
We will postpone that to a later date, then.
MR. DALEN:
Okay. Well, that's what I would like on that. I'd like to make a statement, as I always do at these hearings, if that's okay.
THE COURT:
Go ahead.
MR. DALEN:
Okay. I'm here by special appearance. And I'm also here under duress, and I do not consent to these proceedings. I do not understand the cause and nature of the charges and the proceedings against me. I have not entered a plea, and I do not understand how --
THE COURT:
Take your hat off for me, please.
MR. DALEN:

I'm sorry, sir. I forgot I had it on.

The 6th Amendment protects my right to be informed of both the nature and cause of the charges and proceedings against me. One of them reasons I sent these letters out is to try and determine the nature and cause, since this court has not informed me of such.

Entering a plea for me against my wishes is a violation of due process of law. Discussion and discovery come before entering a plea in the proper order of due process. And there has been no discussion or discovery which would prove standing or corpus delicti.

Corpus delicti is -- contains three elements for a valid cause of action. A violation of a legal right, damage or injury, and redressability by the court. As far as I understand, no one's legal rights have been violated.

I believe I asked you this at the last hearing, and I'm asking again. Does corpus delicti apply in this case?

THE COURT:

I have ruled on every motion that you've made, Mr. Dalen. We're not going to revisit those.

MR. DALEN:

Okay. So I can't ask any questions?

THE COURT:

No, sir.

MR. DALEN:

Okay. The state cannot be an injured party, becau

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the government itself, doing endless cases, has ruled that the government is not obligated to protect the public. This is because the government wishes to be protected from lawsuits when they fail to protect, even in cases where there was a serious (indiscernible). And the Constitution lays out why we have a government, which is to protect and maintain individual right. And this is what the courts and the police are limited to. Anything beyond that is ultra vires.

There are seven elements of jurisdiction.

THE COURT:

I've already ruled on jurisdiction, Mr. Dalen. Move on.

MR. DALEN:

I object to that, Your Honor. I don't believe we've addressed the issues.

THE COURT:

Objection noted. You have several motions on

jurisdiction, which I have ruled on.

MR. DALEN:

All right. Okay, I also had some motions that you just dismissed. One is the motion of finding of facts.

THE COURT:

We are not here on motions that I've already ruled on. If you have any new motions --

MR. DALEN:

Well --

THE COURT:

-- you would like to make today, that would be fine.

MR. DALEN:

-- you cited Rule 59, and neither one of these motions are under Rule 59.

THE COURT:

Mr. Dalen, I am not here to rehash old motions.

MR. DALEN:

Okay. All right. I would -- I'd just like to know what rules we're under so that I can properly prepare my defense. I don't know what rules this court is operating under.

THE COURT:

We are operating under the Rules of Criminal Procedure as outlined in the Code of Laws, particularly in the nature of charges that you say you have not been

notified of, you were, in fact, given a ticket for no South Carolina driver's license. That is the nature of the charge. That section code is 56-120. And we will be operating under the criminal traffic jury process.

MR. DALEN:

Okay. But that doesn't -- that's not --

THE COURT:

I'm not going to argue with you about it.

MR. DALEN:

Okay.

THE COURT:

That is exactly what we're operating under.

MR. DALEN:

All right. It still doesn't appear to be the nature and cause. That's just a conclusion, it's legal conclusions.

THE COURT:

All right, Mr. Dalen. Thank you very much.

MR. DALEN:

I just have a few more, if you don't mind.

THE COURT:

I do mind, but I'm going to allow you to make them.

MR. DALEN:

Okay.

THE COURT:

If you have made them in the past, I'm going to stop you.

MR. DALEN:

Okay. I appreciate that. Well, that's going to be difficult. You're going to just have to tell me if you've heard this before. My accuser has not proven jurisdiction. It's --

THE COURT:

That one, we've heard and addressed. Jurisdiction -- anything you have on jurisdiction has been addressed.

MR. DALEN:

I haven't heard it from the accuser, and that's who is supposed to do it.

In order to have a fair trial, Your Honor, I have to have an impartial judge that is not making decisions for the prosecution, or answering for the prosecution. It is the person claiming jurisdiction that's required to prove jurisdiction, not the court. The court is simply here to make sure that everything is handled in a proper manner.

THE COURT:

Well, if we ever get to the point where you actually have a trial and those rights of yours kick into place, then I will certainly enforce those. But you haven't let us get to that point yet.

MR. DALEN:

Well, it's not that I haven't -- I'm trying to understand the nature and the cause. I sent a letter to Senator Alexander, and I have copies of the letters that I sent. I'd like to introduce them into evidence.

THE COURT:

No, sir, this is not a trial for you to introduce evidence --

MR. DALEN:

Okay.

THE COURT:

-- at this point.

MR. DALEN:

All right.

THE COURT:

All right, we're going to proceed now with the jury selection, because at the last motion hearing, you actually, on record, did request a jury trial, and that's why we're here today.

MR. DALEN:

Okay.

THE COURT:

So if you'll have a seat.

MR. DALEN:

All right. Thank you.

THE COURT:

All right. The first name on the random strike list is Patricia Flores. And I'll give just a second for each side to look that up on your list.

Any voir dire that you would like to give these jurors before we start the trial, there will be opportunity to do that. Obviously, all you have is address and particulars on each juror. If you have any voir dire for this particular charge, I will allow you to do that before the trial begins.

First is Patricia Flores. What says the state?

TROOPER TAYLOR:

Present.

THE COURT:

Mr. Dalen?

MR. DALEN:

I'm looking for that. Where is that?

THE COURT:

It's in alphabetical order.

MR. DALEN:

Okay, you're just --

THE COURT:

You will need to present or strike for cause. You cannot strike because of gender, race -- obviously, religion doesn't fall into place here because you don't

know the religion. But you have to have an actual cause to strike. Just for example, if you were to know the person, or had any dealings with the person and feel they can't be fair and impartial, then you would have the right to strike them.

MR. DALEN:

Okay. What was the name, again?

THE COURT:

Patricia Flores.

MR. DALEN:

You know, I don't understand how I can make a decision if I don't -- you know, all I have is a name and an address.

THE COURT:

I understand that, and that is all the state has, as well.

MR. DALEN:

Well, if I -- if I say strike, how do I -- how do I justify striking --

THE COURT:

Well, unless he has a reason that you're striking for a gender or a racial bias, then he can make an objection. Otherwise, then I would allow you to make that strike.

MR. DALEN:

Okay, I'm going to strike.

THE COURT:

Okay. You have six strikes on the primary jury list. I'll let you know that.

The next name is Alvin Browning. State?

TROOPER TAYLOR:

Present.

THE COURT:

Mr. Dalen?

MR. DALEN:

I will accept that one.

THE COURT:

Beverly Bryson?

TROOPER TAYLOR:

Present.

MR. DALEN:

I will accept that one.

THE COURT:

Autry L. Bailey, Jr.

TROOPER TAYLOR:

Present.

MR. DALEN:

I'll strike that one.

THE COURT:

Steven Koules, K-O-U-L-E-S,

TROOPER TAYLOR:

Present.

MR. DALEN:

Was that a K?

THE COURT:

Yes, sir.

MR. DALEN:

I'm sorry, I'm not seeing that. Okay, Steven Koules, Okay, we'll accept that one, too.

THE COURT:

Jeremy Head, H-E-A-D.

TROOPER TAYLOR:

Present.

MR. DALEN:

I'd like to strike that one, also.

THE COURT:

Lauren Gossett, G-O-S-S-E-T-T.

TROOPER TAYLOR:

Strike.

THE COURT:

Mckenzie Fletcher?

TROOPER TAYLOR:

Present.

MR. DALEN:

Strike that one, also, please.

THE COURT:

Julie Gibson?

TROOPER TAYLOR:

Present.

MR. DALEN:

I'll accept that one.

THE COURT:

Kathy Woodland.

TROOPER TAYLOR:

Present.

MR. DALEN:

I would like to strike that one.

THE COURT:

Jenny Cassick, C-A-S-S-I-C-K.

TROOPER TAYLOR:

Present.

MR. DALEN:

I'd like to strike that one.

THE COURT:

All right, Mr. Dalen, that is your six strikes on the primaries. So for the next two primary jurors, it will just be the State answering.

MR. DALEN:

Okay.

THE COURT:

Lester Haley, Jr.?

TROOPER TAYLOR:

Present.

THE COURT:

Charles R. Bowen?

TROOPER TAYLOR:

Present.

THE COURT:

Okay, those will be our six primary jurors. We will now pick nine alternates due to the fact that, since it is such a small jury area, some have moved, some have no forwarding address, or some may actually be deceased. So we will pick 15 total, just to protect the jury pool. And I will allow three strikes on these.

The first one is Joseph Mason.

TROOPER TAYLOR:

Present.

MR. DALEN:

I'm going to strike that one.

THE COURT:

Kathy Bramlett?

TROOPER TAYLOR:

Present.

MR. DALEN:

I'll accept that one.

THE COURT:

Jennifer Sanchez?

TROOPER TAYLOR:

Present.

MR. DALEN:

I'm going to strike that.

THE COURT:

Gary Grant?

TROOPER TAYLOR:

Strike.

THE COURT:

Sennah Honea, H-O-N-E-A?

TROOPER TAYLOR:

Present.

MR. DALEN:

I'll accept that.

THE COURT:

Holly Thene, T-H-E-N-E?

TROOPER TAYLOR:

Present.

MR. DALEN:

Sorry, I'm not seeing that.

THE COURT:

It is T-H-E-N-E.

TROOPER TAYLOR:

The back page.

MR. DALEN:

That way?

TROOPER TAYLOR:

Yeah.

MR. DALEN:

Okay. Thene. I would like to strike that one, also.

THE COURT:

That is your third strike, so the State will present or strike from now on for the remaining alternates.

Jonathan Lopez?

TROOPER TAYLOR:

Present.

THE COURT:

Laverne Stamey?

TROOPER TAYLOR:

Present.

THE COURT:

Chadrick Watts?

TROOPER TAYLOR:

Present.

THE COURT:

Tricia Long?

TROOPER TAYLOR:

Present.

THE COURT:

Terry Nations?

TROOPER TAYLOR:

Present.

THE COURT:

Sabrenna Gardiner?

TROOPER TAYLOR:

Strike.

THE COURT:

I believe that's your second strike.

TROOPER TAYLOR:

Yes.

THE COURT:

Sandra Rodriguez?

TROOPER TAYLOR:

Present.

THE COURT:

Eunice Rowland?

TROOPER TAYLOR:

Present.

THE COURT:

All right, those will be our nine alternates. Any objection from the State as to the selection of the jury?

TROOPER TAYLOR:

No, sir.

THE COURT:

Any objection, Mr. Dalen, to the selection of the jury? Other than your objection earlier of just what you've got?

MR. DALEN:

I have two of the -- according to the Rules of Criminal Procedure, I thought there were 12 jurors.

THE COURT:

That is in General Sessions or Court of Common Pleas, not in Magistrate's Court.

MR. DALEN:

Okay. And I will have an opportunity to question?

THE COURT:

If you have appropriate voir dire as to the charge only, I will allow you to present those before trial so I can make a decision as to which questions are acceptable, and then I will allow you to ask any of those questions to the jury panel, yes

MR. DALEN:

Okay.

THE COURT:

-- before we select the actual six.

MR. DALEN:

All right.

THE COURT:

All right, thank you very much. If y'all would check in at the front, and we will pick a day for the actual trial to begin.

Just for the record, Mr. Dalen, to protect your rights, as earlier, I am going to suggest to you that you do obtain legal counsel to help you with these matters. I will also make the same suggestion to the State, that you do the best you can to have legal representation, if there's going to be these motions and matters before trial, to help you in the prosecution or defense of your case.

Thank you very much.

MR. DALEN:

Okay. And then you are going to schedule a hearing prior to trial?

THE COURT:

If there is a motion hearing that needs to be held, I will have it 30 to 45 minutes before the actual voir dire of the jury.

MR. DALEN:

Okay.

THE COURT:

It will not be a different date.

MR. DALEN:

Okay.

THE COURT:

Thank you very much.

(There being nothing further at this time, the voir dire was concluded at 1:29 PM)

CERTIFICATE OF REPORTER

I, Marla J. O'Brien, a Notary Public in and for the State of South Carolina, do hereby certify that the foregoing 23 pages represents a true and accurate transcript of the hearing in the above-referenced matter, which was taken by me on the 28th day of June, 2017.

That I am not related to nor the employee of any of the parties hereto, nor related to or employed by any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

MARLA J. O'BRIEN, CVR, ACR
NOTARY PUBLIC FOR S.C.
COMMISSION EXPIRES: 8-12-2021

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF OCONEE) SUMMONS NO. 5102P0778082

State of South Carolina,

Plaintiffs,

COPY

Versus

John Dalen,

Defendant.

****

TRANSCRIPT OF PROCEEDINGS
JURY TRIAL

****

A jury trial was held on the 17th day of August, 2017, commencing at the hour of 10:02 a.m., in the Westminster Municipal Court, 106 East Windsor Street, Westminster, South Carolina.

BEFORE THE HONORABLE WILL F. DERRICK, JR.

REPORTED BY: Rosalind Poole Walters, CVR-M

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APPEARANCES:

TROOPER TAYLOR,

For The State.

JOHN DALEN,

Pro Se Defendant.

INDEX

Commencement of Proceedings..... 4
Opening statement by the State..... 20
Opening statement by the Defendant..... 20
The State's case..... 28
The Defendant's case..... 48
Closing statement by the Defendant..... 51
Closing statement by the State..... 52
Jury Charge..... 53
Verdict..... 58
Sentencing..... 60
Certificate of Reporter..... 63

EXHIBITS:

Plaintiff's Exhibit 1, uniform traffic ticket..... 28
Defendant's Exhibit 1, miscellaneous documents..... 48

Note: All exhibits were marked and retained by Judge Derrick.

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

JUDGE DERRICK:

This is Case Number 5102P0778082, The State versus John Dalen. Mr. Dalen, you have requested a jury trial in this, just for the record. All the motions you've been made have been noted for the record and the decisions on those motions, and we are going forward today. Is there anything you have before we get started?

MR. DALEN:

Well, I did file a motion for change of venue.

JUDGE DERRICK:

Yes, sir, and that motion has been denied. You have to show some sort of bias by the court, and I don't see any. I don't hold any bias or prejudice towards you at all. In fact, I'm not going to be the one making the decision today. It will be the jury. So we will go forward today.

MR. DALEN:

Okay.

JUDGE DERRICK:

Anything from the State?

MR. DALEN:

I wasn't finished, sir.

TROOPER TAYLOR:

No, Your Honor.

JUDGE DERRICK:

Yes, ma'am? I mean yes, sir?

MR. DALEN:

Can I say a little bit more?

JUDGE DERRICK:

Yes, sir.

MR. DALEN:

Would you agree that I'm entitled to a fair trial?

JUDGE DERRICK:

I am not here to -- I am not a witness in this case. If you have any motions to make that you have not already made, you may make them now.

MR. DALEN:

Well, can I get a fair trial if there's a conflict of interest?

JUDGE DERRICK:

Absolutely you can get a fair trial here. That's why we're here. We're going to follow your constitutional rights and the laws of the state in regards to your jury trial, and we're going to follow that procedure here today.

MR. DALEN:

Okay, but it's my contention that there are no facts to back up the charges leveled against me.

JUDGE DERRICK:

And you may ask the officer that when he testifies.

MR. DALEN:

Well, You know, how can I get a fair trial here or how can---

JUDGE DERRICK:

I'm not here to discuss it with you. You're getting ready to have your fair trial.

MR. DALEN:

I'm asking you--

JUDGE DERRICK:

I'm not going to argue with you today. Do you understand me?

MR. DALEN:

Yes, sir.

JUDGE DERRICK:

Have a seat. Call in the jury, please. All right, ladies and gentlemen, thank you for being here. For those of you that do not know me, my name is Will Derrick, and I am a Magistrate here in Oconee County. We have three. And you have been summoned for jury duty here today, and I know you could not be happier about being here and there's absolutely nowhere else you'd rather be. All kidding aside, I know there's a hundred other things that y'all need to be doing, and I

know it's the first day of school for some of you and you may have grandkids or children that are involved with that. So I do appreciate you being here. You will hear in the testimony that this case has been going on for a little while, and we could not resolve this without you. So you have my heartfelt thanks. Thank you for being here today. We're not going to keep you any longer than we have to. The good news is I think it's to be the hottest day of the year, so I'm sparing you from that.

Having said that, a little point of order. It's going to get warm in here. It's a small courtroom. If you are appalled at how small it is or how warm it gets, please contact your local senator and your County Council. We are working on trying to get a bigger space and have been for quite some time. It's just kind of tough to do with everything they've got going on, but I like to make that disclaimer in case you feel inclined to call someone.

There are some things I do need to go over with you to make sure you are certified and can serve on this jury. These are some questions I need to ask you that are not meaning to pry into your personal life at all, but they are questions that under our Constitution and Code of Laws have to be asked just to make sure you

can be fair and impartial, because we do want to protect that.

Each of you has been summoned as a juror in this case, and this is the case of The State of South Carolina versus John Dalen. And Mr. Dalen is seated directly across from me, and it charges or alleges that the Defendant on February 16 of this year did violate South Carolina Code 56-1-20, which is a crime of -- it's actually a traffic charge of no South Carolina driver's license. To this charge the Defendant has entered a plea of not guilty, which is his right. Both the State and the Defendant are entitled to an impartial jury to decide this case, and that's why you're here.

Before we begin I must ask you some questions to determine if you are qualified to serve as a juror. Representing the State here today is Trooper Avery Taylor with the South Carolina Highway Patrol, who is seated to my left, and, of course, I've already introduced the Defendant. Do any of you know either one of these parties? [No verbal response] Has this police officer ever charged you or anyone you know in any case? [No verbal response] Is there any member of the jury panel -- well, there are no attorneys here today, so we don't have to worry about that one. This

alleged crime is to have occurred in Seneca here in Oconee County. Does anybody have any knowledge of this case? [No verbal response] Is there any juror who is related by blood or marriage to the police officer, the defendant or another person having authority to enforce laws of this state, county, or city? [No verbal response] Is there any member of the jury panel or any member of your immediate family who has ever worked for any law enforcement agency or had the power and authority to arrest in this city, county, state, or any other state? I usually get one there. Yes, ma'am?

JUROR:

Well, mine is questionable. My son works for the Anderson County Sheriff's Department.

JUDGE DERRICK:

Presently?

JUROR:

Yes.

JUDGE DERRICK:

Would that in any way affect your ability to be fair and impartial in this?

JUROR:

No.

JUDGE DERRICK:

What's your name, ma'am?

JUROR:

Kathy Bramlett.

JUDGE DERRICK:

All right, Ms. Bramlett, thank you very much.

JUROR:

My cousin is a state police officer.

JUDGE DERRICK:

Where is that?

JUROR:

In Illinois.

JUDGE DERRICK:

Would that affect your ability to be fair and impartial in this case?

JUROR:

No.

JUDGE DERRICK:

Thank you very much. And what was your name, sir?

JUROR:

Steve (inaudible).

JUDGE DERRICK:

Is there any member of the jury panel who believes that a defendant must prove his innocence in a case? [No verbal response] Is there any member of the jury panel who for any reason does not feel that he or she can render a fair and impartial verdict for the State

or on the Defendant based on the testimony that you hear? [No verbal response] Thank you very much, Ms. Honea?

JUROR:

Yes.

JUDGE DERRICK:

You are free to go.

JUROR:

Thank you.

JUDGE DERRICK:

You were going to be my alternate, and we don't anticipate needing an alternate in the case. So I'm going to let you go. I believe you had -- I hope you didn't already change it.

JUROR:

No, I didn't.

JUDGE DERRICK:

I know you had appointment that's pretty important. So I'm going to let you be the alternate and excuse you.

JUROR:

Thank you, sir.

JUDGE DERRICK:

Thank you very much.

MR. DALEN:

Excuse me, Your Honor. Do I get to ask questions?

JUDGE DERRICK:

No, sir.

MR. DALEN:

I don't get to ask the jury any questions?

JUDGE DERRICK:

No, SIR. Mr. Haley?

JUROR:

Yes.

JUDGE DERRICK:

Mr. Haley, I am going to let you be Foreperson.

JUROR:

What does that mean?

JUDGE DERRICK:

That means that you have absolutely no additional responsibility whatsoever; however, at the end of the trial -- and I will go over the verdict form with you, any evidence that's presented and show you exactly how you're going to deliberate and where you're going to deliberate and that kind of thing. That's the only responsibility that you have. So as for right now don't worry about it.

JUROR:

Okay.

JUDGE DERRICK:

And I'll go over it with you later. Now Mr. Dalen or officer Taylor, if you have any relevant questions for the jury as a whole, I will allow you to ask that.

TROOPER TAYLOR:

No.

JUDGE DERRICK:

Thank you. Mr. Dalen?

MR. DALEN:

Okay. Yes, I do. I have a right to ask jurors questions to determine whether there might be any bias. Correct?

JUDGE DERRICK:

Yes. They have to be relevant questions.

MR. DALEN:

All right. Do you think you would have any bias against me because the judge forced you to be here under threat of jail? [No verbal response] Would you be if you weren't forced to be here? [No verbal response] Would you have come if there was no threat of jail if you didn't show up?

JUROR:

No, because I would be working.

MR. DALEN:

You wouldn't have come. Right?

JUROR:

No.

MR. DALEN:

Do you mind being forced to be here? [No verbal response] Are you intimidated by the judge? [No verbal response]

JUROR:

No.

MR. DALEN:

All right. This is my most important question. Did you bring your own sense of what is right and wrong to the court or will you rely on what the judge tells you? I'll give you an example what that means. Rosa Parks was accused---

JUDGE DERRICK:

You may only ask questions, Mr. Dalen.

MR. DALEN:

Well, they---

JUDGE DERRICK:

Mr. Dalen, I'm not arguing with you.

MR. DALEN:

Do you understand the question I'm asking you?

JUROR:

Yes.

MR. DALEN:

Would you be willing to render a decision that

conflicts with the judge's instructions or orders if you believed that it was just, that your decision was just even if it conflicted with what the judge instructs you to do as a jury? Would you be willing to not follow the judge's instructions in order to render a verdict that you believe is just?

JUROR:

Can I ask a question?

JUDGE DERRICK:

Understand, ladies and gentlemen of the jury, that you will be making a decision in this case based on the evidence presented. I will not be instructing you on how to make a decision in this case.

JUROR:

Okay.

JUROR:

I have my own sense of right and wrong.

MR. DALEN:

And that's what I'm asking. Thank you. Okay. Would you -- do you believe all laws should be blindly complied with because it's a law? [No verbal response] If someone tells you it's the law and you believe that it's wrong, do you believe that you should comply with it as in Rosa Parks, she can't sit in the front of the bus? [No verbal response] Are you not understanding?

JUROR:

Due to the circumstances.

MR. DALEN:

Huh?

JUROR:

It's due to the circumstances.

MR. DALEN:

Okay. I mean, you would be willing to not comply with such a law that you believe violated your religious beliefs maybe?

JUROR:

Under the circumstances.

MR. DALEN:

All right. And does your model of the world require subjection in following orders? [No verbal response] It does? Okay. Do you think people not accused of hurting anyone should be punished just because politicians say so?

JUDGE DERRICK:

All right, that's not a relevant question to this case. I'm not going to allow that.

MR. DALEN:

Well, that was the last one.

JUDGE DERRICK:

All right. Thank you very much.

MR. DALEN:

Thank you.

JUDGE DERRICK:

All right, ladies and gentlemen, if you would raise your right hand for me, please? Do each of you swear or affirm to render a fair and impartial decision based only upon the evidence presented in this case, so help you God? I will?

ALL JURORS:

I will.

JUDGE DERRICK:

Thank you very much. There are some things I would like to go over with you before we begin the testimony in case you're not familiar with trial proceedings. As jurors, it is your duty to decide the facts of this case from the evidence that is presented during the trial. I know little about this case, but it doesn't matter since it is you, the jury, that must decide the facts based upon the evidence presented from the witness stand. There will probably be some conflicts in the testimony. So I ask you to pay careful attention to the witnesses as they testify, because it is you who will have to determine which witnesses are telling the truth for you to decide the facts of the case.

The ticket charging the Defendant with the crime of no South Carolina driver's license is not evidence against the Defendant. Is is only the charging document and the means of bringing this matter before you for trial. The Defendant has in fact entered a plea of not guilty. Anyone accused of a crime can plead not guilty and, having done so, the State then has the burden of proving his guilt beyond a reasonable doubt. Anyone accused of a crime is presumed to be not guilty, and that presumption must remain with the accused until his guilt has been proven to you beyond that reasonable doubt. Each side will have the opportunity to address you and explain their position as to the charge, and then the Defendant, if he desires, may present evidence. When all the evidence is in, each side will again have the opportunity to argue their case, and then I will explain to you the law that applies. Understand that opening and closing arguments are not evidence, as well. The evidence and testimony only comes to you from the principal case in chief that you will hear between those two situations.

When all the evidence is in, I will explain to you the law that applies in this state and the law that the Defendant has been charged with. It will then be up to you and only you to determine the facts of the case,

apply the law that I explain to you, and then you will determine the guilt or innocence of the Defendant. State law doesn't allow you to take notes or ask questions. You will notice that I may ask questions for clarification. You will notice that I may take notes, and what I'm doing is preserving the record. Obviously, I'm recording everything that happens here today in case we need that for a future purpose, but if there's something we need to refer back to without having to replay everything, that's why I take notes, so we can just go ahead and look at that. There also may be times that I need to confer with both parties outside of your presence to make sure that both parties receive a fair trial under the laws and rules of evidence. During this time it is inappropriate for you to talk to anyone, even among your other jurors, about this case. If anyone attempts to talk to you about the case, please report it to me immediately. It will also be improper of you to form an opinion about the case before all the evidence has been presented and I have explained the law that applies. Remember, you swore to be fair and impartial to both the State and the Defendant, and I know you will do just that. I will allow a brief opening statement from each party. Officer Taylor?

TROOPER TAYLOR:

Just like the judge said, I want to thank y'all for coming today. Like he said, I'm sure there was a thousand other things that you could have been doing that may have been more important to you, but we really do thank y'all for coming today. Like he said, we are speaking on a case of no South Carolina driver's license. Okay? We'll do that later, because this is not the time for that. But I just want to say thank y'all for coming, and I really appreciate you.

JUDGE DERRICK:

Thank you very much. Mr. Dalen?

MR. DALEN:

I get really emotional about this sometimes. So if I get a little choked up, I hope y'all understand. I hope to show you in this trial that there is no criminal intent on my part to violate the law, which is a necessary element for conviction. I have made a study of this, and I do not believe I am violating the law. I believe the law is being routinely misapplied. In addition, I'd like to thank you for being here.

My name is John Dalen. I'm a husband and a father of one son, and I am very proud of him. Following the economic collapse of 2008, like many Americans, I became increasingly concerned about how our government

operates. I decided to get off the fence and do something about it. I began studying history, law, and government, and I entered my first race for public office as a Constitution party candidate for Congress in 2010. I followed that in 2012 with a run for the State House as a Republican, and then in 2016 I ran for County Council, once again as a Republican. All of these attempts to get elected to public office were not because I needed a job, but because I wanted to put government back on its proper footing, and that is for the protection of persons and property, the only legitimate purpose of government.

And one thing I learned in my study of the law and it's important that you know, words used in the law do not necessarily have the same definitions as commonly understood. In legal terms these words are called terms of art and they have specific meanings even in contradiction to their common usage. An example of this, words used in the food industry, natural and no fat. Natural in the legal sense can include artificial ingredients, and no fat can actually include a certain percentage of fat. The same is true in this case for the words person, driver, automobile, et cetera. Also, in my study I came to see that many of our rights have been gradually converted to privileges, but before I

explain more in detail about that I'd like to tell you more about me and how personal this is for me.

I can recall when I was 10 years old and I was watching civil rights marches on TV. Even at that age I was appalled to see people pulled from the march and beaten just because they were demanding their God-given rights, the right not to be discriminated against because of the color of their skin. But this case is about the right to travel. There are numerous Supreme Court decisions that affirm Americans have a right to travel on the public highways and that government can only regulate the use of highways for commercial purposes, and I'll say more on that later. I've also been very concerned that the driver's license is becoming a national ID. You may have heard the term Real ID. I believe this idea is a precursor to the mark of the beast as mentioned in the Bible. The chip that is on your driver's license will eventually be required to be inserted into your hand just as the Bible prophecy predicts. And I'm conducting a Bible study on the mark of the beast at Toxaway Baptist. Anybody interested, you're welcome to come on Wednesday nights at seven.

Okay, an interesting thing happened to me on my second political race. You may recall that all the

challengers were kicked off the ballot due to a technicality on their filing papers. All the challengers to the incumbents, including all for sheriff's candidates, were removed from the ballot. We all banded together to help each other gather the signatures necessary to requalify for the ballot. That is, all the challengers helped all the sheriffs, and all the sheriffs helped all the challengers. And this is how I got to know Mike Crenshaw, who is also a Christian, and it felt natural to pay him a visit to discuss my case with him. I gave him all the filings and related documents that I had already sent to the Colonel at the Department of Public Safety. Mike told me that he would follow up with the solicitor's office in Greenville and try to get an informed legal opinion and get back with me to address my concerns. He said he was also concerned about the Real ID and the possibility of a national ID and even the possibility of a chip implant. And I asked him how a Christian might enforce such a law that obviously violates God's law commanding his people not to accept the mark, because that, ladies and gentlemen, is what this is all about.

And here is where I begin to explain my understanding of the law. I really don't believe the

judge should have proceeded to trial on this case as I have not committed any crime. One of the elements for a conviction is that the accused knew what the law was and intended to violate it. My study of the law has shown me that the Supreme Court has ruled repeatedly that travel upon the public highways is a right and that the State cannot issue a license or charge a fee or a tax for the exercise of that right. The State's only authority to regulate travel on the highways is when you act in a commercial capacity for hire. Every other license the state issues is for people acting for hire, such as a plumber versus a homeowner working on his own property. The State can require the plumber to get a license, but the State cannot force the homeowner to have a license to unclog their kitchen sink.

Also, I believe the driver's license is turning into a national ID and it's being sold to the public as a way to protect the people. It is, however, a way to control them. At some point -- and this is already true for air travel -- you will not be able to buy or sell without this ID card, and eventually the chip on this card will be implanted in your hand, and I recently saw a news report of a company in Wisconsin which is doing just that. I believe this is the mark of the beast mentioned in the Bible, and I believe

there is plenty of evidence to support that belief as well as plenty of evidence to support the belief that the right to travel is a constitutionally protected right.

All law originates from God's law. The Constitution of the United States is based on the common law which is derived from God's law, and it's also known as natural law. Where man's law deviates from God's law, God's law must prevail. A prime example of this is an infamous Supreme Court decision known as the Dred Scott decision. A man named Dred Scott was a black slave who escaped from his owner, a Mr. Sanford, and he made it to a free state where he obtained a lawyer and attempted to sue for his freedom. The court followed the letter of the law, but, as most scholars agree, the law was in opposition to God's law and resulted in an unjust decision in denying Mr. Dred his freedom. He was returned to his slave owner. And let me tell you about a case in history in which---

JUDGE DERRICK:

Mr. Dalen---

MR. DALEN:

I'm just almost done, sir.

JUDGE DERRICK:

I'm going to give you a lot of leeway here because

this is just an opening argument. I'm going to ask you to stick to the relevance of this case. We're not going to have a history lesson here. So I need you to start tying some things in. Thank you very much.

MR. DALEN:

Okay, I'm going to wrap up. Thank you, sir. I'm talking about the Rosa Parks case where the law required her to sit at the back of the bus. She challenged that law knowing that it was immoral and even against God's law, and, as a result of her courage, the law was changed. The Civil Rights Act was passed which forces government to not discriminate.

In essence and in summation, there is no crime if there is no intent to commit a crime. A person's belief is sufficient to overcome the charge of willful intent even if that belief is erroneous. That's supported by a Supreme Court case, Cheeks versus United States. And I am going to introduce into evidence letters to various government officials that I have written to requesting a review of the Supreme Court cases that I believe support my contention that citizens have a right to travel without a license. To date I have not received any responses from any government agency that I have written to. And the Supreme Court has also ruled that the government's

failure to answer a citizen's reasonable request results in an affirmance of those positions. It means that I can assume that I'm correct, because they didn't answer.

Okay, so the main points, in conclusion, the State only has authority to regulate commercial for-hire transportation activities, and I have a strong religious belief that the driver's license is a precursor to the mark from the Bible. And if I have not convinced you of the validity of my position, here's one final point. In order to obtain a driver's license you must provide some evidence of your Social Security number, not just the number but a document proving that you are registered with the Social Security Administration. More than 40 years ago I informed the Social Security Administration that I did not want to participate in what I believe is a Ponzi scheme and a scheme to number the people, which violates my religious beliefs. Because participation in the Social Security system is voluntary and not mandatory by law and is only required if you wish to receive government benefits, which I do not, I chose not to participate. Therefore, I am unable to qualify for a driver's license.

One of the exhibits I have included for you to

look at is a letter to the South Carolina DMV asking them if I could obtain a license without the number. I had previously visited the Seneca office and was told there was no exception, you have to provide the number or you don't get the license. And I have not received any response to my letter. So ladies and gentlemen, where is the crime? Am I to be denied my right to travel because I do not participate in a voluntary system that violates my religious beliefs? Thank you for your patience and listening to all of that.

(Plaintiff's Exhibit Number 1 marked)

JUDGE DERRICK:

Thank you very much. Officer Taylor, call your first witness, please, sir.

TROOPER TAYLOR:

I'll call myself.

JUDGE DERRICK:

All right. If you would raise your right hand, do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

TROOPER TAYLOR:

Yes, sir.

JUDGE DERRICK:

If you would come up. You can't obviously question yourself. So if you'll just testify to

whatever relevant information you need to say.

TROOPER TAYLOR:

Yes, sir.

JUDGE DERRICK:

Introduce yourself, please.

TROOPER TAYLOR:

I am Trooper Taylor, Avery Taylor, with the South Carolina Highway Patrol. I work in this county out of this troop office, which is in Central. I work both Oconee County and Pickens Counties. Okay? But regarding the case, on February 16, 2017 at approximately 3:30 in the afternoon, me and a few of the other troopers that I work with, we were conducting a checkpoint, a license checkpoint on Sitton Mill Road in Seneca, South Carolina, in this county, which is why we're at this court. When we were conducting that safety checkpoint, which we do checkpoints for reasons of to get drunk drivers off the road, protect property, personal property and other peoples' vehicles, as well, for reckless drivers, suspended licensed drivers, nonlicensed drivers, and just any other thing. We don't really -- we check every car that comes through for license and insurance. We do that with every vehicle. We don't pick and choose which vehicles that we stop and talk to. We stand in the middle of the

road with our vests, our hats, and our flashlights if it's at night to be seen, and we stop every vehicle and ask for a driver's license and insurance and registration.

But on that date, February 16, I observed a white utility vehicle, a van coming my way. I then had the van stop. I made contact with the driver, which is Mr. John Dalen.

MR. DALEN:

Your Honor, I object to the use of the terms. They assume facts not in evidence. They're not previously agreed to, and they require a legal conclusion by the fact witness.

JUDGE DERRICK:

Objection noted and overruled.

TROOPER TAYLOR:

Okay. I made contact with the operator of the vehicle, which means who was ever in control of the vehicle, which was Mr. John Dalen. He was sitting in the driver's seat. I then started asking Mr. Dalen for his license, his registration, and his insurance card. And at that point he told me that he did not have to give me any information, and after that time he said that he could travel freely just like you heard in his opening statements. That's what we heard on the side

of the road. But then I did obtain a name and a date of birth from him, which I got John Dalen, 4/30/1957. I then checked with my dispatch, who is out of Greenville, I checked with them and on the South Carolina Department of Motor Vehicles online that we have on our website. We can go in there and check for driver's license and vehicle records, as well. I then checked with them and the dispatch, and it come back the he did not have a driver's license in the state of South Carolina. I then asked them to run it regionally, which means you run it nationally, as well. Okay? You can check all the states with that name and that date of birth, and nothing came back. We then -- I then charged him with the ticket, as he said.

I summonsed him with Section 56-1-20, which is driving with no South Carolina driver's license. We then had him pull to the side of the road and let him call his wife and his son to come pick him and his passenger in his vehicle up. That way we didn't have to tow his vehicle. That way we could help him out by not having to do a tow fee or anything like that. We let him make a phone call and get somebody to come pick him up, and then his wife and son did come pick him and the vehicles up. And then we're here today.

JUDGE DERRICK:

Anything else?

TROOPER TAYLOR:

No, sir.

JUDGE DERRICK:

Answer any questions Mr. Dalen may have. Mr. Dalen, I would caution you that you may only cross examine on things that he testified to.

EXAMINATION BY MR. DALEN:

Q. Are you the primary fact witness for the State in this matter? There's no other witnesses?

A. What--

Q. I'm asking you if you are the primary fact witness in this matter.

A. Are you asking if I'm the only trooper there?

Q. No. Is any other trooper going to show up and appear to be a witness?

A. No.

Q. You're the only witness?

A. I'm the only one showed.

Q. You're the only witness, okay. And you testified that you work for the State of South Carolina Department of Public Safety. Correct?

A. Yes.

Q. And you get paid to work for the South Carolina Department of Public Safety?

A. What's the relevance to the case?
JUDGE DERRICK:
Don't ask questions back. Just answer the question.
EXAMINATION RESUMED BY MR. DALEN:
Q. It's simple.
A. Yes.
Q. Obviously you do, okay. Thank you. And is writing transportation citations part of what you get paid to do?
A. Say that again?
Q. Writing tickets, that's what you get paid to do?
A. Yes, I write traffic violation tickets.
Q. Okay. And so part of what you get paid to do in your job is accuse people of violating the transportation code. Is that correct?
A. I don't accuse. I have facts to back up what I do.
Q. Okay. I don't see any facts in evidence, but all---
JUDGE DERRICK:
Do not argue with the witness. You may only ask questions, and the witness may only answer them.
EXAMINATION RESUMED BY MR. DALEN:
Q. Okay. When you stopped the accused, me, did you ever inform me that I was under arrest and not free to leave?

A. You were legally detained at that point, not arrested.
Q. But I wasn't free to leave, was I?
A. No, sir.
Q. But you never informed me that I was under arrest?
A. You were never under arrest.
Q. I was never under arrest? Then I was free to leave?
A. No, sir. You were legally detained.
Q. All right. Did I ever ask you if I was under arrest?
A. Yes, sir, and we advised you that you were legally detained.
Q. So, in other words, I could have left?
A. No, sir. You were legally detained.
Q. All right. You told me I was under investigative detention---
JUDGE DERRICK:
That's not a question.
EXAMINATION RESUMED BY MR. DALEN:
Q. Are you aware that transportation stops constitute a custodial arrest, according to the Supreme Court?
A. Explain.
Q. When you stop someone and they're not free to leave, the Supreme Court considers that an arrest.
A. What is the question?
Q. I'm asking. Are you aware that the Supreme Court considers that an arrest?

A. No.
Q. Well, they do. Did I invoke my fundamentally protected rights, including the right to remain silent and the right to assistance of counsel?
A. No.
Q. I didn't tell you I had a right to remain silent?
A. You never said you wanted counsel.
Q. But I did tell you I wanted the right to remain silent?
A. Yes, sir.
Q. That I didn't have to talk to you?
A. You didn't have to.
Q. And then you told me that I would not be allowed to leave until I talked to you.
A. No, sir. We would not let you leave without giving us a name and a date of birth.
Q. Okay, same thing. Did you attempt in any way to get me to waive my rights?
A. No.
Q. By telling me that I couldn't leave?
A. We told you you were legally detained but not arrested.
Q. So you never asked me to produce a driver's license or produce proof of financial responsibility?
A. We asked you for your license and registration and insurance card.
Q. Could any of the--

A. Your driver's license.
Q. Could any of the information or documents that you demanded potentially be used against me in a court of law?
A. Your driver's license? Explain what you're saying.
Q. Well, what if the thing was expired? Could you use that against me in a court of law?
A. Yes.
Q. Yes, you could, okay. So you never informed me that the information that you were asking for could be used against me in a court of law?
A. No, sir.
Q. In other words, you never read me my rights?
A. You were never arrested.
Q. When you wrote the ticket was I arrested?
A. Yes, sir. That is a form of an arrest, but not a custodial arrest.
Q. So did you inform me -- you're not required to inform me of my rights when you write a ticket?
A. No, sir, only when I take you into custody.
Q. Did you at any time -- could you please explain for the record and benefit of the jury just how failing or refusing to inform someone that he is under arrest while intentionally failing to read him his rights is not a violation of the accused's rights to due process?

A. Explain what you're asking.
Q. By not informing me of my rights and arresting me --
A. You were never under arrest.
Q. -- you violated -- when you wrote the ticket I was under arrest technically. It says it right on the ticket.
A. Okay. Well, that--
Q. It says it right on the ticket.
A. You wasn't taken into custody.
Q. What's the difference between being arrested and taken into custody? If you're under arrest--
TROOPER TAYLOR:
Objection, Your Honor, what's the relevance to the ticket?
JUDGE DERRICK:
I'm going to allow it, but be careful, Mr. Dalen, it's already been asked and answered several times.
MR. DALEN:
I'm just trying to determine whether my rights to due process were violated, because I was never read my rights and I was in fact arrested.
JUDGE DERRICK:
But he explained. He's already answered that question on one, two, three occasions, that you were not under custodial arrest.

EXAMINATION RESUMED BY MR. DALEN:

Q. Okay. Do you believe that a law can rightfully require the accused to waive fundamentally protected rights against his will in order to comply with the law and your demands?

JUDGE DERRICK:

All right, that was not -- that's not covered under cross-examination. He didn't testify to any of that, and under cross-examination you can only ask questions that he testified to.

EXAMINATION RESUMED BY MR. DALEN:

Q. Did you threaten the accused with prolonged detention and incarceration or jail if I did not produce the information and documents that you demanded?

A. No, sir. We never said we were taking you to jail or put our hands on you.

Q. No, but did you not tell me that I would sit there all day?

A. No, sir.

Q. I asked you if I was free to leave and you said--

JUDGE DERRICK:

That's not a question.

EXAMINATION RESUMED BY MR. DALEN:

Q. So you're saying you did not tell me that I was not free to leave?

A. We told you that you were not arrested, that you were legally detained and you were not free to leave.

Q. And that I would be detained until I produced the required---

A. Yes.

Q. Okay. That's what I asked. At any time during your alleged investigation did you discover, obtain, or otherwise receive from me a bill of lading?

TROOPER TAYLOR:

Objection, Your Honor. What's the relevance to this case?

JUDGE DERRICK:

I will allow that.

EXAMINATION RESUMED BY MR. DALEN:

A. No, sir.

Q. Did you attempt at any time to determine if I was transporting goods or property for compensation or hire?

A. No.

Q. At any time during your alleged investigation did you discover, obtain, or otherwise receive from me a passenger manifest?

A. No.

Q. Did you attempt at any time to determine if I was transporting passengers for compensation or hire?

JUDGE DERRICK: Already asked.

EXAMINATION RESUMED BY MR. DALEN:

Q. When you stopped me did you attempt at any time to determine if I was actually engaging in business as a private, common, or commercial carrier or, quotes, driver that was, quote, operating, quote, a motor vehicle for compensation or hire?

A. No.

Q. And did you at any time have any reasonable suspicion or facts leading you to believe that I was engaging in any kind of commercial business use of the highway for compensation or hire?

A. No.

Q. So is it correct to summarize your testimony by saying that you never conducted any actual investigation whatsoever intended to discover facts or evidence that would prove that I was engaged in a regulable commercial activity related to transportation?

A. No.

Q. It's not correct?

A. Explain what you're saying.

Q. I'm asking you if it's correct to summarize that you never conducted any actual investigation into whether - into any facts that would prove that I was engaged in

a regulable commercial activity.

A. No. We asked you if you had a driver's license in the state of South Carolina.

Q. But you never tried to determine if I was engaged in a commercial activity?

A. No. We asked you if you had a driver's license in the state of South Carolina.

Q. Okay. Are you qualified and competent to make binding legal conclusions and determinations relating to matters of law and facts of this case?

A. Yes.

MR. DALEN:

You know, at this time I would like to move the court to enter a ruling on this issue. Is---

JUDGE DERRICK:

This is your time to cross-examine the witnesses. It's not the time for that right now.

MR. DALEN:

I'm trying to determine if the witness is qualified, Your Honor. So I have other questions that I would ask.

JUDGE DERRICK:

Well, he's not being qualified as an expert. He's testifying as to the facts of why he wrote the ticket. So there's no need to qualify the witness.

MR. DALEN:
Well, the--
JUDGE DERRICK:
I'm not going to argue with you. This is your time to cross-examine him on what he testified to. That is it.
MR. DALEN:
Well, all right. Your Honor, it's my contention that he is not a qualified fact witness.
JUDGE DERRICK:
That's not a question for the witness. Do you have any further questions for this witness?
MR. DALEN:
Yes, I do.
EXAMINATION RESUMED BY MR. DALEN:
Q. I want to show you a copy of the ticket, which is the one you handed me. Can you identify the signature on that document? Is that your signature?
A. Where? What signature?
Q. It is signed by you as a complaint, is it not?
A. I never signed it.
Q. You never signed the ticket? So there's---
A. We put our -- we print our initials and last name and our rank.
Q. So you didn't sign the document? There's no signature

on the document?

A. No. We put our rank, our initials, and our last name in the block that says Name and Rank of Arresting Officer.

Q. And is that considered a criminal complaint?

A. This is the traffic uniform ticket.

Q. So there's no criminal complaint in this case?

A. This is a uniform traffic ticket.

Q. Okay, but it's not a complaint?

JUDGE DERRICK:

Asked and answered. Move on.

EXAMINATION RESUMED BY MR. DALEN:

Q. Criminal complaints must be signed and verified under penalty---

JUDGE DERRICK:

That is not a question.

EXAMINATION RESUMED BY MR. DALEN:

Q. Did you sign -- or since you didn't sign it, there's no penalty of perjury for you to bring that accusation, is there? In other words---

A. We put our name and rank of arresting officer, like I just said.

Q. Okay, but you don't have to -- you don't have to swear under penalty of perjury that what you put on there is correct? There's nothing on that document that says---

A. It has my name on it---
Q. There's nothing on the document that says there's penalty of perjury if it's not true? I don't believe there is.
A. Okay. So what's the question?
Q. Okay. Did you conclude that I was engaged in a regulable business activity involving transportation for hire?
JUDGE DERRICK:
Again, asked and answered.
MR. DALEN:
Your Honor, this is not a valid complaint if it's not signed by the person--
JUDGE DERRICK:
Again, this is not your time to argue with the court. I'm trying --
MR. DALEN:
I'm not--
JUDGE DERRICK:
-- to protect your constitutional rights, Mr. Dalen, and if I allow you to make summations, that possibly could hurt you in this case. This is the time for you to cross-examine this witness only.
MR. DALEN:
All right. I'm sorry. I'm just trying to learn

the procedures here. I guess I'm going to end questioning at this point.

JUDGE DERRICK:

Thank you very much. You may step down. Anything further from the State?

TROOPER TAYLOR:

No, sir.

JUDGE DERRICK:

All right. The State rests?

TROOPER TAYLOR:

Yes, sir.

JUDGE DERRICK:

Thank you very much. Let's take a break. We'll take about five minutes. Please remain seated while the jury exits, please. [Jury exits] Anything further from the State before we proceed?

TROOPER TAYLOR:

No, sir.

JUDGE DERRICK:

All right. Mr. Dalen, do you have anything?

MR. DALEN:

Well, I'd like to present evidence. I'm not sure when that's appropriate.

JUDGE DERRICK:

Well, that was going to be my next question, is I

wanted to go over that with you. Understand that in any criminal or traffic trial that you have the right to testify. You also have the right not to testify, and if you choose not to testify in this case, then I must instruct the jury they in no way can hold that against you. Do you understand that?

MR. DALEN:

Yes.

JUDGE DERRICK:

Now, knowing that, do you wish to testify in this case?

MR. DALEN:

Well, I'd like to just submit some evidence for the jury to review.

JUDGE DERRICK:

Well, you have to testify to submit evidence. You can't just submit things randomly for the jury to review. There's a procedure and a foundation you have to lay, and it has to be relevant evidence. So if you're not going to testify, you're not going to be allowed to present evidence. If you testify, then you can present anything relevant, but you have to lay a foundation for that under the law and then present that into evidence.

MR. DALEN:

Okay. Well, yeah, I guess I will testify then.

JUDGE DERRICK:

All right. Thank you very much. Let's take about a five-minute break. You're not to discuss anything in front of the jury, and then we will resume.

(Off the Record; 10:49 -- 10:55 a.m.)

JUDGE DERRICK:

All right, ladies and gentlemen of the jury, the State has rested, and we will now proceed with the defense. Mr. Dalen, do you wish to testify in this case?

MR. DALEN:

Yes, sir.

JUDGE DERRICK:

If you would raise your right hand for me, please, sir. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

MR. DALEN:

I don't swear. I affirm.

JUDGE DERRICK:

Thank you very much. Let the record reflect that the Defendant has affirmed to tell the truth. Mr. Dalen, if you would come up, please. And, as with Trooper Taylor, obviously there's no counsel here. So you may testify to anything relevant, and then Trooper

Taylor can cross-examine on anything that he has testified to. Thank you very much.

MR. DALEN:

Well, to keep this brief, I would -- I'd basically just like my opening statement to be my testimony, and I have documents that I referred to in my opening statement that I'd like the jury to be able to see, including the brief that I filed which lists numerous Supreme Court decisions regarding my belief that we have a right to travel and it's not a privilege.

JUDGE DERRICK:

Any objection to that, Officer Taylor?

TROOPER TAYLOR:

No, sir.

JUDGE DERRICK:

If you'll let me mark those, I'll just mark them as a grouping as Defense Exhibit Number 1.

(Defendant's Exhibit Number 1 marked)

MR. DALEN:

I have two copies here.

JUDGE DERRICK:

I just need one copy, thank you, since it's in evidence. If you would like to refer to those or testify to anything else, you are welcome to do so.

MR. DALEN:

Okay. Well, just basically what I've already said is I have a firm belief that this licensing is not a privilege -- licenses are a privilege, and Americans have rights. We don't have privileges. Our government does not have authority to convert rights into privileges for any reason whether, you know, they think it's for your safety or not. You might recall Benjamin Franklin saying that people that give up their rights for a little security will end up having neither rights or security, and I firmly believe that. And my religious beliefs, I firmly believe those also, that this is a precursor to the mark of the beast. You're going to have that chip implanted in your hand whether you like it or not.

TROOPER TAYLOR:

Objection, Your Honor.

MR. DALEN:

Unless you refuse.

JUDGE DERRICK:

It's been referred to.

MR. DALEN:

Okay. So basically that's it. I had no intent of violating any law. I've been a law-abiding citizen for many years, and I'm basing my decision on Supreme Court decisions, and I have a right, as you do, to rely on

decisions of the Supreme Court. So I hope you'll read the documents that I've included. And, also, the fact that I've tried to contact government officials, including Senator Thomas Alexander, to get an explanation. If I'm wrong, then tell me I'm wrong. But no one is telling me I'm wrong. They're just refusing to answer. Okay, that's my testimony.

JUDGE DERRICK:

Thank you very much. Officer Taylor, do you have any questions for Mr. Dalen?

TROOPER TAYLOR:

No, sir, I do not.

JUDGE DERRICK:

You met step down. Thank you very much.

MR. DALEN:

Oh, could I say one more thing?

JUDGE DERRICK:

No, sir.

MR. DALEN:

It's just that I have no --

JUDGE DERRICK:

No, sir.

MR. DALEN:

-- animosity to anyone here.

JUDGE DERRICK:

You can cover that -- I'm going to let you have a closing argument.

MR. DALEN:

Okay.

JUDGE DERRICK:

All right. Trooper Taylor, since the Defendant did testify, you have the right to open and then close. You can open on the law if you wish to, or you may waive that before your final closing argument.

TROOPER TAYLOR:

I'll waive that, Your Honor.

JUDGE DERRICK:

Thank you very much. Mr. Dalen, any closing argument that you wish to make, please, sir?

MR. DALEN:

Okay. I just want to state that I have no animosity towards the judge or the officers. I appreciate the job that law enforcement does. I'm simply exercising my constitutional right to challenge the law, and I believe that I have plenty of evidence to suggest that I am correct. And when government does not respond when you ask them a question and they don't respond, you have a right to believe that you are correct in your assertions. They had opportunity. I filed -- I mailed these letters back in June. No

response from the government. So I believe that I am correct in my assertions. So I firmly believe I haven't violated the law. I'm under no obligation to comply with the statute in question. And, finally, in order to obtain a license I'd have to give a number that I'm not required to have. So that can't possibly be a requirement for me to have a license. They can't take -- you can't force someone to exchange one right in order to enjoy another. That's pretty much all I have to say.

JUDGE DERRICK:

Thank you very much, officer Taylor?

TROOPER TAYLOR:

Again, I want to say thank y'all for coming. Like I said, we are here on a charge of no driver's license in the state of South Carolina like I've already testified. And I've already checked again. He still does not have a driver's license in the state of South Carolina nor a driver's license in the United States of America in any state, and he was operating and driving a vehicle in South Carolina. I mean, I don't know about y'all, but I have a driver's license. I'm sure y'all have a driver's license, and this man does not have a driver's license. He thinks he doesn't have to have a driver's license, so he thinks that -- he may

think he's better than y'all and that he doesn't have to have one, okay? We've all had to take the time to acquire a driver's license, take the time to go get it, keep it issued, keep it up-to-date, and he does not think he has to have one. Okay? Again, I want to say thank y'all for y'all's time, and I thank you, Judge.

JUDGE DERRICK:

Thank you very much. Ladies and gentlemen, you listened to the proceedings and evidence in this case, and now it is my legal duty to instruct you as to the law which applies to the facts. I am not permitted to indicate how I may feel about the testimony and evidence which has been presented, and throughout this trial I've intended to be fair and impartial toward all the parties involved. Nothing I may have said or done during the course of this trial has been in any way intended to express, suggest a view of the case or an opinion as to any of the facts, the weight of the evidence or the credibility of any witness. If any of my actions or words has indicated that, please disregard it and form your own opinion as to these matters.

As you well know, this trial is very important to both the State and the Defendant. You the jury have sworn to see that both the State and Defendant have a

fair and impartial trial, and you are not to be governed by sympathy, prejudice, or public opinion. It is for you to determine which witness or witnesses are recalling or truthfully relating what transpired at the time of the alleged commission of the crime. You may believe or disbelieve all or any part of the testimony of any witness. You may believe the testimony of a single witness against that of many or just the opposite. Of course, you don't determine the truth merely by counting witnesses presented by each side. In determining the facts of this case you should treat the evidence presented by the witnesses as any reasonable person would treat any question presented to him or her. Use your common sense. Consider the evidence in the case for only the purpose for which it was admitted. Give it a reasonable and fair construction, drawing such reasonable doubts as you feel are justified in the light of your own personal experience.

Now, the Defendant has entered a plea of not guilty. The effect of the Defendant's plea of not guilty is to place upon the State of South Carolina the burden of proof, and this proof must be beyond a reasonable doubt. The law presumes the Defendant to be innocent of a crime; thus, the Defendant, although

accused, begins the trial with a clean slate with no evidence presented before the jury to be considered in support of any charge against the accused. So the inference of innocence alone is sufficient to acquit the Defendant unless you, the jurors, are satisfied beyond a reasonable doubt of the Defendant's guilt after careful and impartial consideration of all the evidence in the case.

The State does have that burden of proving the Defendant guilty beyond a reasonable doubt. Some of you may have served as jurors in a civil case where you're told it's only necessary to prove the fact more likely true than not, such as a greater weight or preponderance of the evidence. In criminal cases the State's proof is more powerful than that. It must be beyond a reasonable doubt, which is defined as: A reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act. Ladies and gentlemen, proof beyond a reasonable doubt is proof that leaves you firmly convinced of the Defendant's guilt. There are very few things in this world we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt.

The Defendant in this case has been charged with

no South Carolina driver's license, which in our Code of Laws is section 56-1-20 which reads: No person except as expressly exempted in this article shall drive a motor vehicle upon a highway in this state unless such person has a valid motor vehicle driver's license issued to him under the provisions of this Article. No person shall receive a motor vehicle driver's license unless and until he surrenders to the Department of Motor Vehicles all valid operator's license in his possession issued to him by any other state. No person shall be permitted to have more than one valid motor vehicle driver's license or operator's license at any time. Under our Constitution and Code of Laws, only you, the jury, can make the findings of fact in this case.

The same Constitution and laws which designate and make you finders of the facts as I just explained make me the instructor of the law. You must accept the law as I have given it to you. This means you should not be concerned with what you think the law should be, but only what I have instructed you the law is at this time. We have now arrived at the point of the trial for each of you to consider and weigh all of the evidence to determine, if you can, the question of the guilt or innocence of the defendant. I charge you, you

must try this case according to the evidence that you have heard come from the lips of the witnesses under oath and apply the law as I have given it to you. When you have reached your verdict under your oath to be a true verdict no one can criticize you as to whatever that verdict may be. Mr. Foreman, this must be a unanimous verdict and all six of you must agree. What I have done is, in order -- not necessarily in order, but I have laid out for you what the Defendant has presented as evidence, the charging document, and a verdict form. Mr. Foreman, when the jury reaches a verdict, please record it by striking out the statement that does not reflect your decision. I would also add that you circle the one that you want. After having done this, please sign your name under the verdict to signify that the statement reflects the verdict of the jury, and the rest of your jurors will sign under your name. I have spaces for each of you.

For the convenience of the jury I have listed below the possible verdicts in this case. Attach no significance to the order in which I set them out. Obviously one has to be first, one has to be second, when you've reached a verdict and have recorded it, please notify us by knocking on the door. We do have a jury room, which you may have seen when we got water.

You won't fit in there. So what we do is we're going to exit with all our documentation and everything that we have. Madame Court Reporter, you may leave your stuff if you need to. And then we will go out. Y'all may use the courtroom as your jury room so you don't suffocate. If you need to take a break, the only thing I would ask, that if you do that, stop your deliberations until everyone has reconvened. We want all of you together for the deliberations. If you have any questions or anything comes up, if anything needs to be played back or if there's a question that I can answer for you, then just knock on the door and I'll answer your question, see what your question is. If we need to reconvene for your question and put it on the record, we'll do that. All right? If everyone would please exit the courtroom, please.

(Off the Record; 11:08 -- 11:18 a.m.)

JUDGE DERRICK:

We are back on the record. Mr. Foreman, it is my understating that you have reached a verdict in this case. Is that correct?

MR. FOREMAN:

Yes, sir.

JUDGE DERRICK:

If you would, read your verdict for the courtroom,

please, sir.

MR. FOREMAN:

We find the Defendant guilty.

JUDGE DERRICK:

Thank you very much. If you would hand that up. And, once again, I want to thank you. I know both parties have. And, obviously, you've heard from the facts, this case is roughly six months old. So you have helped us resolve it. I hope you feel good about it, feel like you've done the County a service, because I certainly think you have. Obviously, we could not have resolved it without you. Don't spend your checks in one place.

JUROR:

We probably won't have enough to spend it in one place.

JUDGE DERRICK:

We do ask that once you do get the check, if you would do something with it, whatever you want to do with it within 90 days; otherwise, the County does void those. So thank you very much. You are free to go.

JUROR:

Okay. Thank you.

JUDGE DERRICK:

Everyone else stay seated, please.

JUROR:

Thank you so much. [Jury exits]

JUDGE DERRICK:

All right. Anything else from the State?

TROOPER TAYLOR:

No, Your Honor.

JUDGE DERRICK:

Anything from the Defendant?

MR. DALEN:

Only, Your Honor, that I have no intent to violate laws. I am simply exercising my constitutional rights to challenge those laws.

JUDGE DERRICK:

Absolutely, and I certainly respect that, Mr. Dalen. Unfortunately, the jury has found you guilty. We'll go on with sentencing now. The sentence of the court is 30 days or a fine of 232.50. Mr. Dalen, I will allow you till 1 o'clock, let's say 1:30 to pay that if you don't have it with you right now, or, otherwise, the 30 days will have to go into effect. So have that paid by 1:30 today, please, sir.

MR. DALEN:

And I also want to notify the court that I intend to appeal.

JUDGE DERRICK:

Okay.

MR. DALEN:

Is there any chance that the court will stay their judgment until---

JUDGE DERRICK:

No, sir. You would have to file an appeal bond, which would be the amount of the fine. If you wish to do that, that would stay the jail time, but that would be the only thing. And you would file that appeal at the courthouse in Walhalla.

MR. DALEN:

Not here?

JUDGE DERRICK:

Not here, no, sir. We will get a copy of it and file the return, but you do have to file it at the courthouse.

MR. DALEN:

Well, can I ask you another question?

JUDGE DERRICK:

Yes, sir.

MR. DALEN:

I don't know if this is a new thing, appeal directly to the Appeals Court in Columbia?

JUDGE DERRICK:

No, sir. You have to go through the county level

first. So it would be the circuit court.

MR. DALEN:

Well, it's called the Uniform Post-Conviction Procedure Act. It's Section 17-27-10. And it's persons who may---

JUDGE DERRICK:

Yes, sir, I'm aware of it, but you have to go through -- you have to file that at the courthouse in the county that you were convicted first.

MR. DALEN:

Okay. All right. Thank you.

JUDGE DERRICK:

Thank you very much. We are adjourned.

(There being nothing further, the trial concluded at 11:21 a.m.)

CERTIFICATE OF REPORTER

I, ROSALIND POOLE WALTERS, a Notary Public in and for the State of South Carolina, do hereby certify that the foregoing 62 pages represents a true and accurate transcript of the jury trial which was taken by me on the 17th day of August, 2017.

That all witnesses were first duly sworn to tell the truth, the whole truth and nothing but the truth of their own knowledge concerning this matter.

That I am not related to nor the employee of any of the parties hereto, nor related to or employed by any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

Rosalind Walters

Rosalind Poole Walters, CVR-M
Notary Public for South Carolina
Commission Expires: 4/29/26

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF OCONEE)

John Dalen,)
)
Plaintiff,)
)
v.) Case No. 17-CP-37-00490
)
State of South Carolina,)
)
Defendant.)

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on February 26, 2018, before The Honorable R. Lawton McIntosh in the Court of Common Pleas for Oconee County; attended by counsel as follows:

APPEARANCES:

John Dalen ... Appearing *Pro Se*

Bethany Blundy, Esq. ... Appearing for State of South Carolina

Vivian H. Cross
Circuit Court Reporter –10th Judicial Circuit
P O Box 704
Belton, South Carolina 29627
vcross@sccourts.org

THE COURT: Dalen versus the State of South Carolina. You're here, you're ready to proceed?

MR. DALEN: Sure.

THE COURT: Come on around.

MR. DALEN: (Complies).

THE COURT: You have the return, do we have a return on that?

CLERK: Yes, all of these have returns on them.

THE COURT: Okay. So Mr. Dalen, is this your appeal?

MR. DALEN: Yes, sir.

THE COURT: All right, I will be glad to hear from you. Go ahead.

MR. DALEN: First I want to make sure that you have all the documents that I have in this.

THE COURT: At this juncture, I do not have any documents in front of me. They should be in my queue. I'll look them up and read them, but I don't have them in front of me as we speak.

MR. DALEN: Okay. All right, can I add

a few things to that?

THE COURT: You're appealing from the magistrate, so your record of the case is what you made in the court below and you can't add to it.

MR. DALEN: What I've got is the transcript, which I didn't have --

THE COURT: Oh, sure. If it's the transcript of the hearing, -- have you given a copy to Ms. Blundy?

MR. DALEN: I just assumed that everybody would have one. I'm not sure if I have two copies, let me see if I have another copy -- (reviewing files).

THE COURT: While you're doing that, let me go get my computer. I'll be right back.

(JUDGE EXITS AND RE-ENTERS COURTROOM)

COURT REPORTER: Mr. Dalen, you've got your computer bag open and it is blocking my recorder.

MR. DALEN: I'm sorry, (closes computer bag).

COURT REPORTER: Now your paperwork is on it.

MR. DALEN: Sorry, (removes paperwork). Your Honor, the yellow document is a page from the South Carolina Municipal Handbook.

THE COURT: It's a case?

MR. DALEN: Well, it goes along with my argument. It is a page from the American Jurisprudence, (tendering copies to defense counsel and Judge McIntosh).

THE COURT: All right. This is your appeal. Give me some background on it, please, Mr. Dalen. What the issues are on appeal?

MR. DALEN: This is also a copy, I'd like it in the record.

THE COURT: Sure.

MR. DALEN: (Tendering copy to defense counsel and Judge McIntosh). Are we ready?

THE COURT: Yes, sir.

MR. DALEN: In the trial that was held in the municipal court, I believe that my constitutional rights were violated and that Judge Ballard violated his oath of office and that due process was violated.

At no time did the State ---

THE COURT: I don't mean to interrupt

you but please go back and give me the background of -- obviously you were criminally charged, so what were the charges you were ---

MR. DALEN: Yes, I was criminally charged with driving without a South Carolina driver's license. I believe that the statute in question applies to people who are driving for hire, commercial activity. There's been a lot of court cases, the Supreme Court as well as lower courts that back up that contention.

At no time did the State or anybody else, even the Judge, offer any rebuttal to anything that I presented.

THE COURT: The judge never offers rebuttal. He just ---

MR. DALEN: Well, when I made Motions he basically ---

THE COURT: Do you have a license -- did you have a license at all?

MR. DALEN: No, sir, I did not.

THE COURT: You didn't have a license at all, from any State?

MR. DALEN: No.

THE COURT: When you were arrested or when you were charged, where were you driving?

MR. DALEN: Well, they claim that I wasn't arrested, but I got stopped at a checkpoint.

THE COURT: Okay, sir. You were issued a citation at that point?

MR. DALEN: A citation, yes. I was threatened with arrest and I was threatened to have my property towed if I didn't comply in full, not to drive away in the vehicle.

THE COURT: So it is your contention that you do not have to have a driver's license?

MR. DALEN: Right. Based on the United States Supreme Court's decision and what -- what the main issue here is rights versus privileges. The Supreme Court says that I have a right to travel. The State has converted that right to a privilege and is unlawful. The only way that the statute could be lawful or Constitutional is if it's applied to people engaged for hire, commercial activity. Otherwise they are

trampling on a constitutionally protected right. The State does have a right to regulated fundamentally-protected rights. But they do not have the right to convert it to a privilege. So once they convert it to a privilege, it no longer applies to an individual that is not engaged in commercial activity. And all the evidence that I've put in the record supports that. The State did not put any evidence in the record.

THE COURT: Was this a bench trial or a jury trial?

MR. DALEN: It was a jury trial.

THE COURT: A jury trial?

MR. DALEN: A jury of six. I demanded my rights under common law and common law requires a jury of twelve.

Common law also requires that there be a victim, that the State cannot be a victim.

And common law also requires that there be willful intent.

I think all the evidence that I've presented disproves any willful intent to violate any law. I have plenty of evidence to show that I believe what I believe, and I

have good reason to believe that.

Unless the State can show how they can convert a right into a privilege, then they have no case.

THE COURT: So essentially you came to a checkpoint, did not have a license from state that allows you to drive. You were charged with driving without a license and your argument is that you have the right to freely travel throughout various states. That it is a right and not a privilege.

MR. DALEN: That's right. It is a constitutionally-protected right, it's a three part rule that it is a fundamental right and a state cannot convert it to a privilege.

Just like under the gun laws, they are not claiming that the second amendment is a privilege, it's a right. They're trying to regulate that right, but they're not claiming it is a privilege.

The same with travel. They State could argue that they are trying to regulate a right, but they are not. They're arguing that they can convert it to a privilege.

Once a state can grant privileges, they can take privileges away. They cannot take rights away.

THE COURT: All right, sir. Anything further on your argument?

MR. DALEN: I guess that's about it. That covers everything.

THE COURT: All right. Ms. Blundy?

MS. BLUNDY: Thank you, Your Honor. I want to commend Mr. Dalen on --- is that how you pronounce your name?

MR. DALEN: That's correct.

MS. BLUNDY: --- his analysis, I found it to be very interesting. I actually read through each one of his documents that he provided. But we have a significant difference in our understanding of the law. I had to go back over my Constitutional law notes that I've had from years ago, uh, but when I did look at it, I looked at how the government has come up with fundamental rights. And if you'll recall, Your Honor, the enumerated rights come from the Bill of Rights, the first ten amendments.

Then there's un-enumerated rights which

the courts have determined that we have a right to, such as privacy, things of that nature. They did voting -- and political association. They did determine there to be an un-enumerated right to interstate travel. We are looking at entrusting traffic. Two totally different issues.

Intrastate is within the state's borders. Interstate is between states' borders.

Now, the other thing that Mr. Dalen didn't consider is the mode of that travel. I don't think the Court specifically said you have a right to use a car for that mode and means of travel.

So we're looking at an abridged right that is un-enumerated, so then we have to do a substantive due process analysis; which is, uh, you know, what is the government's ends and what are the means to accomplish those ends and what kind of level of review, Constitutional review is applied to that and its rational basis for this un-enumerated right that he is claiming.

Certainly it's easy to say that the government has an interest to protect people

out on the roads and to require them to have a driver's license if they are using a motor vehicle.

THE COURT: Thank you very much. Mr. Dalen, anything further?

MR. DALEN: Yes, sir. You know, the State could have argued this at the trial and didn't. So for me to have to defend argue here, that's -- I don't think that's fair.

They shouldn't be able to enter anything that wasn't at the trial. This is an appeal, not a trial here. None of this was brought up.

I wrote letters to the State, I got zero responses. That's in the evidence that I presented to the Court. I wrote to the Highway Patrol, I wrote to the Department of Motor Vehicles, I wrote to Congressman Alexander. No one responded.

The Supreme Court says that if I ask the State some questions and they don't respond, then I have the right to assume I'm correct. So that's how I based my decision to do this. No one bothered to tell me that I was wrong, no one bothered to present any of this. I

disagree with her totally because the issue is still a fundamental right versus a privilege. The State cannot convert it to a privilege. And the statute that I am charged under clearly states that it is a privilege. They can't do that. That is unconstitutional.

The only way that it could be a privilege is if I'm engaged in commercial activity. There are plenty of cases in my Motion to dismiss that back that up, Supreme Court cases.

Also willful intent, there was no willful intent to violate any law. I have plenty of reason to believe what I believe. And unless the State can show me how that convert a right into a privilege, they have no case.

THE COURT: Thank you. I'll read your submissions and I will issue an Order as soon as I get through them.

MS. BLUNDY: Thank you, Your Honor.

MR. DALEN: Thank you. May I approach the court reporter?

THE COURT: What is it that you want to say?

MR. DALEN: I just need to know how I get a transcript.

THE COURT: Oh, go right again.

(HEARING CONCLUDED)

STATE OF SOUTH CAROLINA)
: CERTIFICATE
COUNTY OF GREENVILLE)

I, the undersigned Deborah Garrison, Circuit Court Reporter for the 13th Judicial Circuit, hereby certify that the foregoing is a complete and accurate transcript of the hearing held in the within action on February 26th, 2018, before The Honorable R. Lawton McIntosh as prepared from the audio notes of Vivian H. Cross, assigned court reporter.

I further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Deborah Garrison

Deborah Garrison

STATE OF SOUTH CAROLINA
PUBLIC CONTACT / WARNING

AGENCY NAME: CITY: COUNTY OF OCCURRENCE
FIRST NAME: MI: LAST NAME:
SEX:
SC LICENSED DRIVER'S LIC. NO.:
EXACT TIME: DATE OF BIRTH: LATITUDE: LONGITUDE:
VEH. TYPE: VEH. MAKE:
CITY: STATE: ZIP:
02-16-2017 1530
VEH. LICENSE NO.: STATE: VEH. REG. YEAR: COMM.
CONV.
ISSUED BY: BANK: ID CARD:

NATURE OF CONTACT

- SPEEDING
- CONTACT ONLY
- IMPROPER LANE USE
- FAILURE TO DIM LIGHTS
- IMPROPER BACKING
- EQUIPMENT LIGHTS
- IMPROPER TURN
- DISREGARDING STOP SIGN
- SEATBELT VIOLATION
- TEXTING VIOLATION
- DISREGARDING TRAFFIC SIGNAL
- FOLLOWING TOO CLOSE
- CHANGING LANES UNLAWFULLY
- NO RIGHT OF WAY
- DEFECTIVE EQUIPMENT
- IMPROPER PASSING
- OPERATOR LICENSE VIOLATION
- VEHICLE LICENSE VIOLATION
- FLEE/ATTEMPT
- IMMIGRATION STOP
- OTHER (SPECIFY):

In compliance with South Carolina code of laws 56-5-6560 (A) any person operating a motor vehicle is stopped by a state or local law enforcement officer or detained during a traffic stop, checkpoint or an arrest being made, the officer who initiated the stop must complete a data collection form. Data must include information regarding the age, gender, and race or ethnicity of the driver.

SUPERVISOR'S COPY

Form DPS-[illegible]

DRIVER COPY

UNIFORM TRAFFIC TICKET

STATE OF SOUTH CAROLINA
VERSUS

FIRST NAME: John MIDDLE NAME: LAST NAME: Dalen
STREET: 109 Cawood Valley Dr
CITY: Williamston STATE: SC ZIP CODE: 29697
S.S. NUMBER OR NOTIFICATION NO.: N/A COMM. VEH.: N/A TYPE: CMV
RACE: W SEX: M BIRTH DATE: 4/30/67 HGT: 6'00 WGT: 220 HAIR: Brn EYES: Brn
MOTOR VEH. LIC. NO.: 201467 STATE: SC YEAR: 2011 COLOR: GRY MAKE: CHEV STYLE: [illegible] VIN: [illegible]
DRIVER CHARGED WITH: Violation OWNER: Ann LAST NAME: Dalen
OWNER STREET: [illegible] CITY: Williamston STATE: SC ZIP CODE: 29697
YOU ARE SUMMONED TO APPEAR AT THE TRIAL COURT
TRIAL COURT: Traffic STREET: 106 E Winston ST
DATE OF TRIAL: 4/18/17 TIME OF TRIAL: 1:30 CITY: Williamston SC ZIP CODE: 29697
VIOLATION SECTION NO.: 56-5-1520 VIOLATION DESCRIPTION: No DL
DATE OF VIOLATION: 2/16/17 TIME OF VIOL.: 1530 CITY/CMA: SEA LEVEL: —
LOCATION OF VIOLATION: 28.64 COUNTY: Oconee
MAP: 24 36 47 64 LONG: 82 8 42 96 CITY: Seneca
ARRESTING OFFICER: T.E. A. M. Taylor BADGE OR OFFICER NUMBER: 106213
CHARGED: A MADE: DATE OF ARREST: 2/16/17 BOND AMOUNT REQUIRED: $200.00 BOND ACCEPTED BY: [illegible]

PRESENT THIS SUMMONS TO THE TRIAL COURT SHOWN ABOVE.
BE SURE YOU UNDERSTAND FROM THE ARRESTING OFFICER THE EXACT TIME AND BEFORE WHOM YOU ARE TO APPEAR. IF THIS TICKET IS WRITTEN FOR A TRAFFIC VIOLATION AND YOU FORFEIT BAIL, PLEAD GUILTY OR NOLO CONTENDERE, OR ARE CONVICTED AFTER A TRIAL, THIS VIOLATION WILL BE PLACED AGAINST YOUR DRIVING RECORD, OR FORWARDED TO YOUR HOME STATE. POINTS FOR OUT OF STATE VIOLATION WILL BE ASSESSED BY YOUR HOME STATE LICENSING AUTHORITY AND MAY DIFFER FROM STATE TO STATE. FAILURE TO COMPLY WITH THE TERMS OF THIS SUMMONS MAY RESULT IN THE SUSPENSION OF YOUR DRIVERS LICENSE BY YOUR HOME STATE. YOU ARE REQUIRED BY LAW TO APPEAR IN COURT FOR CERTAIN OFFENSES.

SEE IMPORTANT INFORMATION ON THE REVERSE SIDE OF THIS TICKET.

VIOLATORS COPY TICKET: 5102P0778082

ARRESTING OFFICER: [illegible] COUNTY OF OCONEE: [illegible]

EXHIBITS PT TO

2017.08.31.490

OPENING STATEMENT

Ladies and gentlemen,

I hope to show you in this trial that there is no criminal intent on my part to violate the law. I have made a study of this and I do not believe I am violating the law. I believe the law is being routinely misapplied. In addition, I'd like to thank you for being here. I am John Dalen. I am a husband and father of one son we are very proud of.

Following the economic collapse of 2008, like many Americans, I became increasingly concerned about how our government operates. I decided to "get off the fence" and do something. I began studying history, law and government, and I entered my first race for public office as a Constitution Party candidate for Congress in 2010. I followed that in 2012 with a run for State House as a Republican. Then in 2016, I ran for County Council, once again as a Republican. All of these attempts to get elected to public office were not because I needed a job, but because I wanted to put government back on its proper footing, and that is for protection of persons and property – the only legitimate purpose of government.

One thing I learned in my study of the law and it's important that you know -- words used in the law do not necessarily have the same definitions as is commonly understood. In legal terms, these words are called "terms of art" and they have specific meanings, even in contradiction to their common usage. An example of this: words used in the food industry... such as "natural" and "no fat". Natural in the legal sense can include artificial ingredients and "no fat" can actually include a certain percentage of fat. The same is true in this case for the words "person," "driver," "automobile" and others.

And also in my years of study, I came to see that many of our rights have been gradually converted to privileges. But before I explain more in detail about that, I'd like to tell you more about me and how personal this is for me. I can recall when I was ten years old and I was watching civil rights marches on tv. Even at that age I was appalled to see people pulled from the march and beaten just because they were demanding their God-given rights--the right not to be discriminated against because of skin color.

But this case is about the right to travel. There are numerous Supreme Court decisions that affirm Americans have a right to travel upon the public highways, and that government can only regulate the use of the highways for commercial purposes. More on that later as well....

I have also become very concerned that the driver's license is becoming a national ID – you may have heard the term "Real ID." I believe this ID is a precursor to the mark of the beast as mentioned in the Bible. The chip that is on your driver's license will eventually be required to be inserted into your hand, just as Bible prophecy predicts.

By the way, an interesting thing happened in my second political race – all the challengers were kicked off the ballots due to a technicality with filing papers. All of the challengers to the incumbents, including all four sheriff candidates, were forced to gather petition signatures to re-qualify for the ballot. We all banded together to help each other gather the signatures necessary. That is, all the challengers helped all the sheriffs and all the sheriff candidates helped all the other petition candidates. So anyway, recently, knowing that our sheriff, Mike Crenshaw is also a Christian, it felt natural to pay him a visit to discuss my case with him. I gave him all the filings and related documents that I had already sent to the Colonel at the Dep't of Public Safety. Mike told me that he would follow up with the solicitor's office in Greenville and try to get an informed legal opinion and get back with me to address my concerns. He said that he was also concerned about the Real ID and the possibility of a national ID, and even the possibility of a chip implant. I asked him how a Christian might enforce such a law that obviously violates God's law commanding His people not to accept the mark. Because that, ladies and gentlemen is what this is all about –

Here is where I begin to explain my understanding of the law. I really don't believe the judge should have proceeded to trial on this case as I have not committed any crime. One of the elements for a conviction is that the accused knew what the law was and intended to violate it. My study of the law had shown me that the Supreme Court has ruled repeatedly that travel upon the public highways is a right and that the state cannot issue a license or charge a fee or a tax for the exercise of that right. The state's only authority to regulate travel on the highways is when you act in a commercial capacity, for hire. Every other license the state issues is for people acting for hire, such as a plumber, versus a homeowner performing work on his own property. The state can require the plumber to get a license but the state cannot force the homeowner to have a license to work at unclogging the kitchen sink.

Also, I believe that the driver's license is turning into a national ID that is being sold to the public as a way to protect the people.... It is, however, a way to control them. At some point--and this is already true for air travel--you will not be able to buy or sell without this ID card. Eventually, the chip on this card will be implanted in your hand. I recently saw a news report of a company in Wisconsin which is doing just that. I believe

this is the mark of the beast mentioned in the Bible, and I believe there is plenty of evidence to support that belief, as well as plenty of evidence to support the belief that the right to travel is a Constitutionally-protected right.

All law originates from "God's law." The Constitution of the United States is based on the Common Law which is derived from God's law, aka natural law. Where man's law deviates from God's law, God's law must prevail. A prime example of this is an infamous Supreme Court decision known as the Dredd Scott decision. A man named Dredd Scott was a black slave who escaped from his owner, Sanford, and made it to a free state where he obtained a lawyer and attempted to sue for his freedom. The court followed the letter of the law, but as most scholars agree, the law was in opposition to God's law, and resulted in an unjust decision in denying Mr. Dredd his freedom.

Let me tell you about a case in history in which a woman was charged with violating a law that required her to sit at the back of the bus. You might recall her name was Rosa Parks. Would it be proper to convict her of this violation, knowing that it's immoral, unjust and even against God's law? As a result of her courage, the law was changed. The Civil Rights Act was passed which forces government to not discriminate based on color or race.

In essence, in summation, there is no crime if there is no intent to commit a crime. A person's belief is sufficient to overcome the charge of willful intent, even if that belief is erroneous. This is supported by a Supreme Court case: Cheeks vs. United States. I have introduced into evidence letters to various government officials requesting a review of the Supreme Court cases that I believe support my contention that citizens have a right to travel without a license, and to date I have not received any responses. The Supreme Court has also ruled that the government's failure to answer a citizen's reasonable questions results in an affirmance.

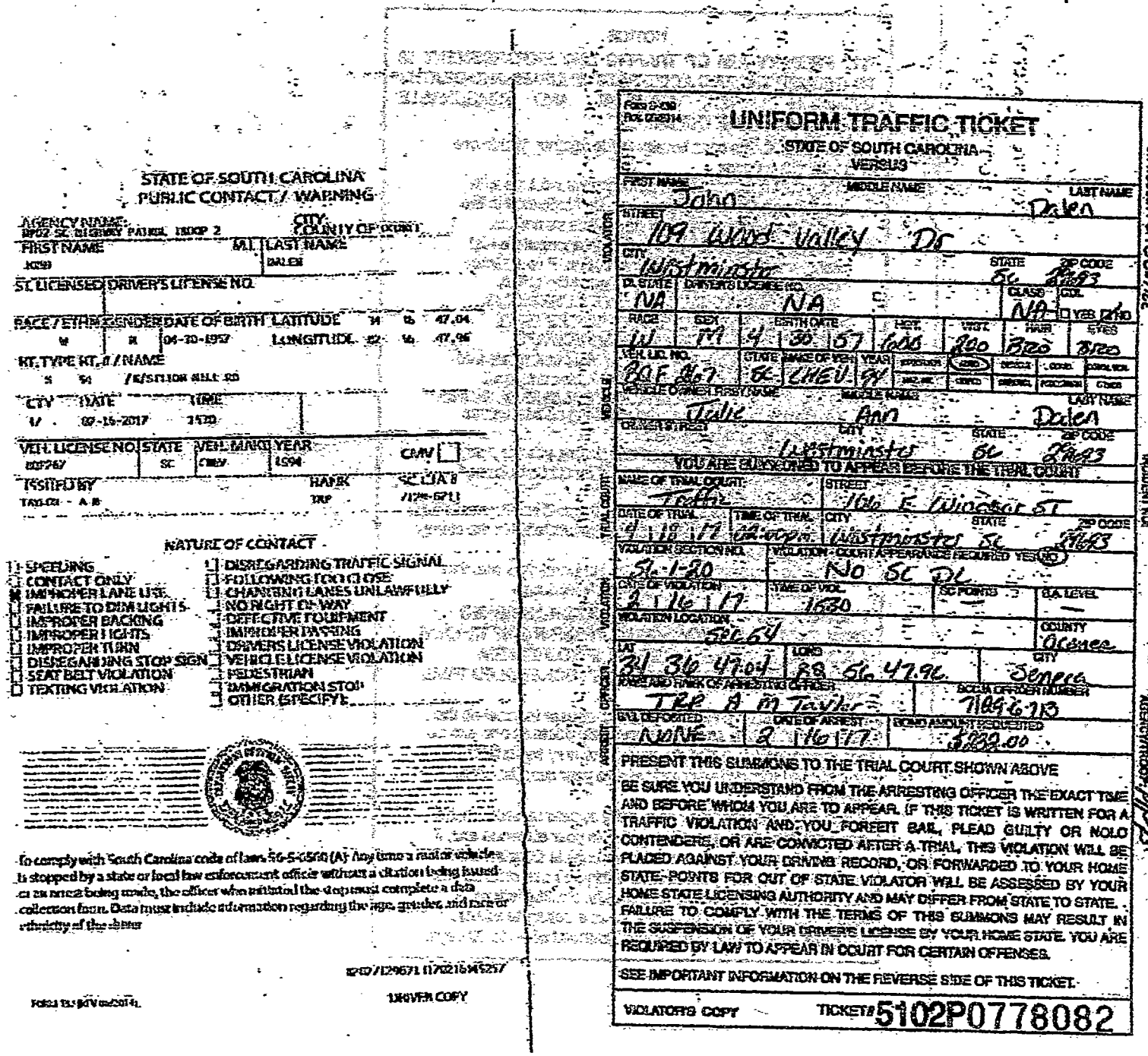
So let me touch again on the main points:

1) The state only has authority to regulate commercial, for hire transportation activities.
2) I have a strong religious belief that the driver's license is the precursor to the mark from the Bible.

If I have not yet convinced you of the validity of my position, here's one more point:

In order to obtain a driver's license, you must provide some evidence of your social security number—not just the number but a document proving that you are registered with the social security administration. More than forty years ago, I informed the Social Security administration that I did not want to participate in what I believe is a ponzi scheme and a scheme to number the people which violates my religious beliefs. And because participation in the Soc. Sec. system is voluntary and not mandatory by law, and is only required if you wish to receive government benefits (which I do not), I chose not to participate. Therefore, I am unable to qualify for a driver's license! One of my exhibits that I have included for you to look at is a letter to the SCDMV, asking them if I could obtain a license without the number. I had previously visited the Seneca office of the SCDMV and was told there was no exception. I have not received a response to my letter.

So, ladies and gentlemen, where is the crime? Am I to be denied my right to travel because I do not participate in a voluntary system that violates my religious beliefs?



STATE OF SOUTH CAROLINA
PUBLIC CONTACT / WARNING

AGENCY NAME: HP02 SC HIGHWAY PATROL TROOP 2 — CITY: COUNTY OF OCONEE

FIRST NAME: JOHN — M.I. — LAST NAME: DALEN

SC LICENSED DRIVER'S LICENSE NO.

RACE / ETHNIC: W — GENDER: M — DATE OF BIRTH: 04-30-1957 — LATITUDE: 34 35 47.04 — LONGITUDE: 82 46 47.96

RT. TYPE RT. # / NAME: S 91 / RUSSELL MILL RD

CITY — STATE — TIME
W — 09-16-2017 — 1520

VEH. LICENSE NO. — STATE — VEH. MAKE — YEAR — CMV ☐
807767 — SC — CHEV — 1994

ISSUED BY — RANK — SCDPS #
TAYLOR - A B — TRP — 7196713

NATURE OF CONTACT

- [ ] SPEEDING
- [ ] CONTACT ONLY
- [X] IMPROPER LANE USE
- [ ] FAILURE TO DIM LIGHTS
- [ ] IMPROPER BACKING
- [ ] IMPROPER LIGHTS
- [ ] IMPROPER TURN
- [ ] DISREGARDING STOP SIGN
- [ ] SEAT BELT VIOLATION
- [ ] TEXTING VIOLATION
- [ ] DISREGARDING TRAFFIC SIGNAL
- [ ] FOLLOWING TOO CLOSE
- [ ] CHANGING LANES UNLAWFULLY
- [ ] NO RIGHT OF WAY
- [ ] DEFECTIVE EQUIPMENT
- [ ] IMPROPER PASSING
- [ ] DRIVERS LICENSE VIOLATION
- [ ] VEHICLE LICENSE VIOLATION
- [ ] PEDESTRIAN
- [ ] IMMIGRATION STOP
- [ ] OTHER (SPECIFY):

To comply with South Carolina code of laws 56-5-6560 (A) Any time a motor vehicle is stopped by a state or local law enforcement officer without a citation being issued or an arrest being made, the officer who initiated the stop must complete a data collection form. Data must include information regarding the age, gender, and race or ethnicity of the driver.

ID#D129671 I1702161495257

DRIVER COPY

FORM TR-SCDV rev2014

UNIFORM TRAFFIC TICKET

STATE OF SOUTH CAROLINA
VERSUS

FIRST NAME: John — MIDDLE NAME — LAST NAME: Dalen

STREET: 109 Wood Valley Dr

CITY: Westminster — STATE: SC — ZIP CODE: 29693

DL STATE: NA — DRIVERS LICENSE NO.: NA — CLASS: NA — COM: ☐ YES ☑ NO

RACE: W — SEX: M — BIRTH DATE: 4 30 57 — HGT: 6'05 — WGT: 200 — HAIR: BRO — EYES: BRO

VEH LIC. NO.: BAF 867 — STATE: SC — MAKE OF VEH: CHEV — YEAR: 94

VEHICLE OWNER FIRST NAME: Julie — MIDDLE NAME: Ann — LAST NAME: Dalen

OWNER STREET — CITY: Westminster — STATE: SC — ZIP CODE: 29693

YOU ARE CONVICTED TO APPEAR BEFORE THE TRIAL COURT

NAME OF TRIAL COURT: Traffic — STREET: 106 E Winster St

DATE OF TRIAL: 4 18 17 — TIME OF TRIAL: 09:00 a.m. — CITY: Westminster — STATE: SC — ZIP CODE: 29693

VIOLATION SECTION NO.: 56-1-20 — VIOLATION - COURT APPEARANCE REQUIRED YES (NO): No SC DL

DATE OF VIOLATION: 2 16 17 — TIME OF VIOL.: 1630 — SC POINTS — BA LEVEL

VIOLATION LOCATION: SR 64 — COUNTY: Oconee

LAT: 34 36 47.04 — LONG: 82 56 47.96 — CITY: Seneca

NAME AND RANK OF ARRESTING OFFICER: TRP A M Taylor — SCDPS OFFICER NUMBER: 7196713

BAIL DEPOSITED: NONE — DATE OF ARREST: 2 16 17 — BOND AMOUNT REQUESTED: $839.00

PRESENT THIS SUMMONS TO THE TRIAL COURT SHOWN ABOVE

BE SURE YOU UNDERSTAND FROM THE ARRESTING OFFICER THE EXACT TIME AND BEFORE WHOM YOU ARE TO APPEAR. IF THIS TICKET IS WRITTEN FOR A TRAFFIC VIOLATION AND YOU FORFEIT BAIL, PLEAD GUILTY OR NOLO CONTENDERE, OR ARE CONVICTED AFTER A TRIAL, THIS VIOLATION WILL BE PLACED AGAINST YOUR DRIVING RECORD, OR FORWARDED TO YOUR HOME STATE. POINTS FOR OUT OF STATE VIOLATOR WILL BE ASSESSED BY YOUR HOME STATE LICENSING AUTHORITY AND MAY DIFFER FROM STATE TO STATE. FAILURE TO COMPLY WITH THE TERMS OF THIS SUMMONS MAY RESULT IN THE SUSPENSION OF YOUR DRIVERS LICENSE BY YOUR HOME STATE. YOU ARE REQUIRED BY LAW TO APPEAR IN COURT FOR CERTAIN OFFENSES.

SEE IMPORTANT INFORMATION ON THE REVERSE SIDE OF THIS TICKET.

VIOLATOR'S COPY — TICKET# 5102P0778082

CITY/COUNTY OF: Oconee — INCIDENT NO.: 2017-CO-37-490 — AGENCY/ORI: HP02

206 of 244

NOTICE

THE PRIMARY AIM OF TRAFFIC LAW ENFORCEMENT IS TO REDUCE TRAFFIC ACCIDENTS, INJURIES AND DEATHS THROUGH FAIR, IMPARTIAL AND REASONABLE ENFORCEMENT OF THE LAWS.

You must settle the case hereby made against you in one of the following ways:

1) You must appear in court at the appointed time with your South Carolina drivers license if indicated in the violation block on the front side of this summons.
2) You may post a cash bond with the appropriate trial court prior to the assigned date of trial. If you decide to mail in your bond rather than go to the office, MAIL MONEY ORDER, CASHIER'S CHECK OR CERTIFIED CHECK DIRECTLY TO THE TRIAL COURT OFFICE BEFORE WHOM YOU ARE SUMMONED TO APPEAR. The trial court name and address shown on the front side of this summons. DO NOT MAIL CASH OR PERSONAL CHECK. Be sure to enclose with the bond the arresting officer's name and the summons number.
3) If a court appearance is not mandatory, you may pay your fine online with a credit card for citations issued in participating counties. Go to http://sc.gov/OnlineServices/Pages/CourtPayments.aspx to determine if online payments are available in the county the citation was issued.
4) You may appear in court on the assigned date and time and have a trial conducted by the Trial Judge.

THE POSTING OF BOND BEFORE YOUR ASSIGNED TRIAL DATE IN NO WAY AFFECTS YOUR RIGHT TO HAVE A FAIR TRIAL BY THE JUDGE OR, IF YOU MAKE A WRITTEN REQUEST BEFORE YOUR SCHEDULED TRIAL BY JURY.

However, if you are NOT required to appear in court on the assigned trial date and have previously posted bond and do not appear on the trial date, your bond may be forfeited unless the judge has agreed to have your case heard at another time.

If you fail to post bond or personally appear in court on the assigned trial date, you will be tried in your absence and, if convicted, your home state's Motor Vehicle Division will be notified to suspend your license until you have cleared this matter with the trial court. Additionally, a willful failure to appear or post bond is punishable as a separate offense by a fine of up to $200.00 or imprisonment of up to 30 days.

2017.08.31.490

John Dalen
864.647.4705
johndalen@gmail.com
109 Wood Valley Drive
Westminster, SC 29693

June 22, 2017

Senator Thomas Alexander
313 Gressette Bldg.
Columbia, SC 29201

Re: Pending Court Action

Dear Mr. Alexander:

Please see the enclosed *Notice to Dismiss* that I filed with the Westminster Municipal Court, which the judge denied without any discussion of the issues raised. This concerns a charge of driving without a license. I received this citation at a checkpoint, something I believe is antithetical to the Constitution and to the sensibilities of a free people. Also, I've enclosed a letter which I wrote to the SCDMV, and as well a letter to Col. Michael Oliver, head of the Dep't. of Public Safety.

I don't believe I will receive a fair trial in this case. I am concerned that the judge in this case is simply an administrative judge, an employee of the state who believes his job is to enforce state statutes, regardless of the Constitution and Supreme Court rulings on this issue. I believe my right to due process of law is being violated.

Furthermore, I visited a local DMV and was told that a license cannot be issued without the applicant providing a social security number. The Social Security law does not require anyone to obtain a number unless they wish to receive government "benefits", which I do not. Therefore I do not participate in the Social Security system, and I will not provide them with a number, as this violates my religious beliefs. If there is no exemption regarding the SS #, then apparently the law is requiring me to waive one right in order to exercise another, which is unconstitutional. As I see it, the law itself is Constitutional, but only as applied to commercial activity. My understanding of the "transportation" statute in this state applies only to persons or entities engaged in commercial activities. I am awaiting a response to the above-mentioned letters. I would appreciate it if you would review the enclosures and possibly comment on your understanding of the statutes involved?

I believe the law is being misapplied in this case as I was not, and have not engaged in any commercial activities on the public highways. Any attempt to apply the law to persons exercising their right to travel is a violation of my Constitutional rights. Your thoughts would be appreciated! Also, I am wondering if you could contact the State Attorney General and ask for his opinion on this matter, as he will not respond to a citizen making such a request.

Sincerely,

John Dalen

Enc.: Legal brief filed with Westminster Municipal Court
Letters to Dept of Public Safety and Dept of Motor Vehicles

Pg 208 of 244

John Dalen
864.647.4705
johndalen@gmail.com
109 Wood Valley Drive
Westminster, SC 29693

June 15, 2017

Colonel Michael Oliver
South Carolina Department of Public Safety
103111 Wilson Blvd.
P. O. Box 1993
Blythewood, SC 29016

Re: Pending Court Action

Dear Col. Oliver:

First, I'd like to introduce myself – my name is John Dalen. I am a husband, a father, and a Christian. For the record, I am *not* against government, not a threat to any government officials, including peace officers. I have the highest respect for our nation's law enforcement. I also believe that, as an American, it is my duty (as well as *every* American's duty) to preserve and protect the Constitution of these United States. To that end, I have run for office locally here in Oconee County as well as for State and Federal offices because I have become increasingly concerned that government at all levels is overstepping its Constitutional authority.

I am attaching a brief that I filed with the Westminster Municipal Court which concerns the charge that I am facing... "driving without a license". I received this citation at a checkpoint. I am particularly concerned that the United States Supreme Court has repeatedly ruled that traveling on the nation's highways in any mode of conveyance is a Constitutionally-protected fundamental right that somehow has been converted by the State(s) into a "privilege". It is also my belief that the "transportation" statutes only apply to "persons engaged in commercial activity".

Please review the attached brief. Again, I support law enforcement and our government, but as the Founder's believed, government is a necessary evil and it is the duty of the people to keep it in check. And also, with regard to many of the arguments I hear from law enforcement about protecting our safety, Benjamin Franklin once said that a people willing to sacrifice their freedom for safety will have neither freedom nor safety. Your comments are appreciated. I look forward to hearing from you.

Sincerely,

John Dalen

Enc.: Legal brief filed with Westminster Municipal Court
Copy of Citation

John Dalen

864.647.4705
johndalen@gmail.com

109 Wood Valley Drive
Westminster, SC 29693

June 15, 2017

South Carolina Department of Motor Vehicles
10311 Wilson Blvd., Building C
P. O. Box 1498
Blythewood, SC 29016

Re: Requirement for Social Security Number

To Whom it May Concern:

Please advise as to your requirement(s) that an applicant for a Driver's License must provide a Social Security number or proof thereof.

1) Are there any exemptions whereby an individual may obtain a driver's license without providing a social security number?

2) I, John Dalen, was issued a social security number many years ago at the age of 16. I do not consider this a valid contract – I was a minor/child at the time. Thereafter I rescinded that number and will not acknowledge the validity of that number…it violates my religious beliefs to be part of such a numbering system. Further, when the social security number system was implemented, it was *not* intended to be used for identification.

   Also, I have since learned that there is no legal requirement that mandates anyone obtain a social security number; it is only required if an individual wishes to receive government benefits, which I do not. I do not participate in the social security system, and have not for many years. I was told by the local DMV office that, if a number had been issued, then I would be required to provide it in order to obtain a license. Is this a true requirement, or are there any exemptions to this rule?

3) In recent years, the DMV computer data bases have been hacked and many licensed drivers had their information compromised, i.e. hackers obtained social security numbers. What protections are afforded to applicants?

Your comments are appreciated. I look forward to hearing from you.

Sincerely,

John Dalen

South Carolina Department of Public Safety
S.C. Highway Patrol

June 29, 2017

Mr. John Dalen
109 Wood Valley Drive
Westminster, SC 29693

Dear Mr. Dalen,

Thank you for your recent letter dated June 15, 2017 regarding a Pending Court Action – Driving Without A License.

I have reviewed your letter and forwarded it to our Office of General Counsel (OGC) for their review and handling.

Sincerely,

Michael R. Oliver
Colonel

MRO/djg

cc: Major Melvin Warren

Napa Valley Register.com

2013 U.S. 490

Difference between 'individual rights' and 'privileges'

OCTOBER 28, 2013 9:00 PM • KEVIN EGGERS

Understanding the difference between "individual rights" and government-provided "privileges" is as important as understanding the difference between freedom and slavery.

It's simple to understand: We own our "individual rights," such as our Bill of Rights. The government owns the "privilege" that the government provides, such as public welfare, public housing, public education, driving, etc. Nearly everything that the government subsidizes is a privilege that the government owns.

Individual rights are essential for freedom. Some privileges are essential for the safety of citizens.

What concerns me is bureaucrats (and citizens) referring to our individual rights as government-provided privileges, and vice versa.

As an example, Sen. Dianne Feinstein recently referred to the First Amendment in our Bill of Rights as a "special privilege." Also, people often refer to different forms of government-provided welfare (such as health care) as an "individual right" when they are really privileges.

To add to the confusion, some educators refer to our individual rights as "negative rights," while referring to government-provided privileges as "positive rights." They claim negative rights interfere with the positive rights the government is trying to provide.

Just remember, if we as individuals own the "right," it's our individual right. If the government owns (or controls) the "right," it's really a privilege.

Our Declaration of Independence recognizes that every individual is born with certain "unalienable rights," which come from our creator, not from government. Every individual has a force field of individual rights around us (including our Bill of Rights), which protects us from each other and from the government itself.

Our Founding Fathers recognized that if citizens believed individual rights came from government (not from our creator), then our rights would become a worthless "special privilege," as Feinstein refers to them. There would be no protection from a government with unlimited power to distribute, modify and rescind privileges.

In a system of excessive privileges, "freedom" of individual rights (and individual responsibility) is replaced by the perceived "safety" of government-provided privileges. Citizens become slaves of government in the form of excessive debt (and taxes) to pay for the privileges, and by conforming to the excessive requirements of the privileges.

Modern-day totalitarian systems, such as the Nazi, Soviet and current worldwide "communitarian" system, are collectivist systems of privileges without individual rights. Everything, including all life, is considered a "special privilege" owned by government. The cream of corruption rises to the top, as the most selfish individuals gain government control over the privileges of fellow citizens for their own personal agendas.

In the Nazi and Soviet systems, millions of citizens were murdered by their own governments, because citizens had only their worthless "special privilege" to protect them from government.

The United Nations is a system of privileges without individual rights. The United Nations' "Universal Declaration of Human Rights" should be called the "Universal Declaration of Human Privileges." Every "human right" is a privilege owned by the

United Nations. Article 29 states, "These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations."

Imagine our Bill of Rights stating, "All Bill of Rights may in no case be exercised contrary to the purposes and principles of government." Our Bill of Rights would be a worthless "special privilege" with no protection from government.

Today, most countries (including the U.S.) function under communitarianism ideology and communitarian policies (such as Agenda 21, "Sustainable Development"). Everything, including all life, within the local and international "community" is considered a "special privilege" owned by government.

Written into our Napa County General Plan is the definition of communitarianism, calling for "balancing the rights of the individual with the rights of the community." The "rights of the community" include government privileges and policies.

When the government believes it can "balance" our individual rights with their privileges and policies, government implies ownership over individual rights. You can't "balance" what you don't own, meaning individual rights are considered a "special privilege" owned by government.

On March 21, 2012, I discussed communitarianism with Napa County Sheriff John Robertson. He stated, "As you know, you surrender some of your rights to live in the community." He said the only way to protect individual rights was to join government.

On Aug. 10, 2012, I discussed communitarianism with Napa Mayor Jill Techel. She asked, "Don't we elect representatives to balance rights?"

I replied, "Where does the power end, if government believes it can balance individual rights?"

In most communities (including Napa), it's no longer a question of privileges versus individual rights; it's a question of who within government controls the "special privilege" now called "individual rights."

Bottom line, without citizens understanding the difference between their individual rights and government-provided privileges, the U.S. is destined to become a nation of government-owned slaves.

Eggers lives in Napa.

STATE OF SOUTH CAROLINA OCONEE COUNTY	IN THE CITY OF WESTMINSTER MUNICIPAL COURT
State of South Carolina, PLAINTIFF John Dalen, ACCUSED, Pro Per	Notice to Dismiss for Lack of Jurisdiction 2017 03 31 1410 Summons No. 5102P077808

Accused's Notice to Dismiss for Lack of Jurisdiction

The forgotten legal maxim is that free people have a right to travel on the roads which are provided by their servants for that purpose, using ordinary transportation of the day. Licensing cannot be required of free people, because taking on the restrictions of a license requires the surrender of a right. The driver's license can be required of people who use the highways for trade, commerce, or hire; that is, if they earn their living on the road, and if they use extraordinary machines on the roads. If you are not using the highways for profit, you cannot be required to have a driver's license.

BRIEF IN SUPPORT OF NOTICE FOR DISMISSAL FOR LACK OF JURISDICTION

NOW, comes the Accused, appearing specially and not generally or voluntarily, but under threat of arrest if he failed to do so, with this "BRIEF IN SUPPORT OF NOTICE FOR DISMISSAL FOR LACK OF JURISDICTION," stating as follows:

ARGUMENT

If ever a judge understood the public's right to use the public roads, it was Justice Tolman of the Supreme Court of the State of Washington. Justice Tolman stated:

"Completely freedom of the highways is so old and well established a blessing that we have forgotten the days of the Robber Barons and toll roads, and yet, under an act like this, arbitrarily administered, the highways may be completely monopolized, if, through lack of interest, the people submit, then they may look to see the most sacred of their liberties taken from them one by one, by more or less rapid encroachment."

Robertson vs. Department of Public Works, 180 Wash 133, 147.

2017 APR 3 PM 2:15
OCONEE COUNTY
SUMMARY COURT

State of South Carolina
Municipal Court
Handbook

2011

The Constitution

The constitutions of the United States and South Carolina provide the fundamental law of the judicial system. All other laws, regardless of their source, must not conflict with the U.S. Constitution. All state laws, regulations and ordinances must not conflict with the state constitution.

All summary court judges must strictly heed the provisions of both constitutions. The two constitutions are printed in Volume 21 of the S.C. Code of Laws.

The South Carolina Code of Laws

The South Carolina Code of Laws is the basic authority for all state courts and is of particular importance to municipal courts. The Code is the collection of the laws enacted by the S.C. General Assembly. It also includes the United States and South Carolina constitutions, rules of court, and administrative rules and regulations.

Each statute (law) has a specific title, chapter and section number and is usually written by using numbers and letters separated by hyphens. For example, Title 1, Chapter 1, Section 10 is written "S.C. Code Ann. § 1-1-10." To find a particular statute, this series of numbers (a citation) is used.

The Code is annotated. This means that below each statutory provision are brief summaries of certain court opinions which interpret and apply the statute to particular cases. These opinions are binding upon a municipal judge in a similar case. Because these case notes may report a case that has been overruled or distinguished by a more recent case or by an amendment to the statute it interprets, the municipal judge must exercise caution in applying these cases. A case note is intended to be used as a research tool and not as final authority. The case note should not be relied upon as a complete and accurate restatement of the case. Therefore, the case itself should be read in its entirety prior to application.

Municipal clerks of court should note the Code is supplemented by pocket parts which bring the statutes up-to-date by including any changes in the law. Each time a statute is researched, the municipal judge or clerk of court should check the pocket part to ensure the law has not been amended or repealed.

An "A to Z" general index is contained in two soft-cover volumes. Every municipal clerk of court should develop a good working knowledge of this index.

American Jurisprudence, Second Edition
Database updated September 2008

Constitutional Law

Donald T. Kramer, J.D.

VII. Departmental Separation of Governmental Powers [§§ 246–312]

C. Judicial Powers [§§ 259–274]

I. In General [§§ 259–263]

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Topic Summary Correlation Table References

§ 260. Judicial functions, generally

The federal and state constitutions are the common sources of the power and authority of every court, and all questions concerning the jurisdiction of a court must be determined by those instruments,[38] with the exception of certain inherent powers which of right belong to all courts.[39] Therefore, unless the power or authority of a court to perform a contemplated act can be found in the constitution or the laws enacted thereunder, it is without jurisdiction and its acts are invalid.[40] At least in the absence of a textually demonstrable constitutional commitment of an issue to a coordinate political department, it is presumed by the United States Supreme Court that justiciable constitutional rights are to be enforced through the courts.[41]

Various tests have been suggested for determining what are or what are not judicial powers. The protection of constitutional rights is a core function of the judiciary.[42] It is, of course, the ultimate prerogative of the judiciary to determine whether an act of Congress is consistent with the United States Constitution,[43] or to determine whether an act of a state legislature is consistent with the state's constitution,[44] and the power, under certain circumstances, to review decisions of the separate departments of government—judicial review—is an exclusive power of the judiciary.[45] Clearly and unarguably, the construction and interpretation of a constitution is a judicial function.[46]

Sentencing those who violate criminal laws is an important function of the judiciary.[47] The separation of powers doctrine also inherently places responsibility for regulating the practice of law in the state supreme courts.[48] The judiciary has exclusive power and responsibility over court records[49] and court personnel.[50] And it is peculiarly and exclusively the judiciary's function to determine whether a jury award in a civil case exceeds an amount that the state and federal constitutions will allow without violating the due process rights guaranteed to all citizens of the state and the United States.[51]

Where the inquiry to be made involves questions of law as well as fact, where it affects a legal right, and where the decision may result in terminating or destroying that right, the powers to be exercised and the duties to be discharged are essentially judicial.[52] Thus, where the facts out of which a moral or legal obligation is claimed to arise are disputed, the contention falls within the province of the courts, under the distribution of governmental powers

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Unconstitutional Official Acts

16 Am Jur 2d. Sec 177 late 2d. Sec 256:

The general misconception is that any statute passed by legislators bearing the appearance of law constitutes the law of the land. The U.S. Constitution is the supreme law of the land, and any statute, to be valid, must be in agreement. It is impossible for both the Constitution and a law violating it to be valid; one must prevail. This is succinctly stated as follows:

The General rule is that an unconstitutional statute, though having the form and name of law is in reality no law, but is wholly void, and ineffective for any purpose; since unconstitutionality dates from the time of it's enactment and not merely from the date of the decision so branding it. An unconstitutional law, in legal contemplation, is as inoperative as if it had never been passed. Such a statute leaves the question that it purports to settle just as it would be had the statute not been enacted. Since an unconstitutional law is void, the general principles follow that it imposes no duties, confers no rights, creates no office, bestows no power or authority on anyone, affords no protection, and justifies no acts performed under it. . . A void act cannot be legally consistent with a valid one. An unconstitutional law cannot operate to supersede any existing valid law. Indeed, insofar as a statute runs counter to the fundamental law of the land, it is superseded thereby.

No one is bound to obey an unconstitutional law and no courts are bound to enforce it.

Jon Roland:

Strictly speaking, an unconstitutional statute is not a "law", and should not be called a "law", even if it is sustained by a court, for a finding that a statute or other official act is constitutional does not make it so, or confer any authority to anyone to enforce it.

All citizens and legal residents of the United States, by their presence on the territory of the United States, are subject to the militia duty, the duty of the social compact that creates the society, which requires that each, alone and in concert with others, not only obey the Constitution and constitutional official acts, but help enforce them, if necessary, at the risk of one's life.

Any unconstitutional act of an official will at least be a violation of the oath of that official to execute the duties of his office, and therefore grounds for his removal from office. No official immunity or privileges of rank or position survive the commission of unlawful acts. If it violates the rights of individuals, it is also likely to be a crime, and the militia duty obligates anyone aware of such a violation to investigate it, gather evidence for a prosecution, make an arrest, and if necessary, seek an indictment from a grand jury, and if one is obtained, prosecute the offender in a court of law.

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2017-CP-37-490

Court of Common Pleas
Oconee County
South Carolina
Tenth Judicial Circ.

STATE OF SOUTH CAROLINA

2017 AUG 22 AM 9:36

APPEAL

PLAINTIFF

TICKET #(S): 5102P0778082

-VERSUS-

CHARGE(S): No SC DL

DEFENDANT

I, John Dalen, PLAINTIFF IN THE CRIMINAL ACTION MAKE THE FOLLOWING CLAIM.

1. I BELIEVE THAT THE PLAINTIFF/DEFENDANT RESIDES IN AND IS WITHIN THE JURISDICTION OF THE COURT.

2. I MAKE THIS APPEAL BASED ON THE FOLLOWING ERRORS COMMITTED BY THE LOWER COURT: (a) Court proceeded without subject matter jurisdiction / No proof on the record (b) Denial of due process / No evidence on the record of any crime / No corpus delecti: (c) Court ignored the Constitutional challenge to the Statute in question Defendant relied on Supreme Ct rulings that clearly support defendant's contention that the State cannot convert a right into a privilege or issue a license or charge a fee for the exercise of a Constitutionally-protected right.

3. I BELIEVE, BECAUSE OF THE ABOVE INFORMATION, THAT I AM ENTITLED TO AND REQUEST: Vacate judgment / Return fine

I STATE UNDER PENALTY OR PERJURY THAT THE ABOVE IS CORRECT AND TRUTHFUL.

DATE: August 21, 2017

SIGNED: John Dalen

ADDRESS OF PLAINTIFF:
Westminster Municipal Ct.
106 E. Windsor Street
Westminster, SC 29693

BUSINESS TELEPHONE:
864 647 3212

HOME TELEPHONE:

ADDRESS OF DEFENDANT:
109 Wood Valley Drive
Westminster, SC
29693

BUSINESS TELEPHONE:
864 647 4705

HOME TELEPHONE:

ATTACHMENT TO APPEAL

COURT OF COMMON PLEAS

OCONEE COUNTY, SOUTH CAROLINA

TENTH JUDICIAL CIRCUIT

2021-UP-251-490

STATEMENT OF THE ISSUES

1. Was it error for the court to proceed where jurisdiction has been challenged and not been proved on the record?

2. Was it error for the court to ignore the Constitutional challenge to the Statute in question as it was applied to the defendant?

3. Was the result of the above errors a denial of due process?

STATEMENT OF THE CASE

This is an appeal from a jury trial in which Defendant/Appellant was found guilty of the charge of no South Carolina driver's license. Defendant did appear for trial and was found guilty. Defendant had relied on Supreme Court rulings that clearly support defendant's contention that the state cannot convert a right into a privilege, or issue a license or charge a fee for the exercise of a constitutionally-protected right. The judge in this case summarily dismissed numerous motions filed by the defendant with no cause or suitable explanation given. Defendant believes that he is entitled to responsive answers to his motions and that the lack of responsive answers constitutes a denial of due process.

The Court had no jurisdiction to hold a trial without first having proven jurisdiction on the record. It is the accuser's duty to prove jurisdiction—not the judge who, in this case,

determined that he had subject matter jurisdiction. The judge and the officer involved had both sworn an oath to uphold and defend the Constitution of the United States, and have violated said oath.

SCOPE OF REVIEW FOR EACH CONTENTION

The standard of review for errors letters a, b, and c is de novo as such errors are errors of law. U.S. v. Campa, 529 F. 3d 980,992, (11th Cir. 2008).

SUMMARY OF THE ARGUMENT

The defendant was engaged in a Constitutionally-protected right, and the Statute and summons and subsequent trial are invalid and null and void of law as it was applied to the defendant in this case. The municipal court erred in conducting a trial on a charge that was clearly invalid and null and void on its face as it was applied to the defendant in this case. The municipal court caused harmful error to the defendant in failing to perform its core function, which is the protection of citizen's constitutional rights.

16 AM JUR. 2d Sec. 177 late 2d, Sec.256

16 AM JUR. 2d Sec. 260

ARGUMENT AND CITATIONS

Defendant's arguments and citations are contained in the exhibits entered into evidence at the trial and attached herein. They consist of:

defendant's opening 4-page statement,
copy of the citation (2 pages),
letter to Senator Thomas Alexander,

response from Colonel Michael R. Oliver, SC Dept. of Public Safety,
defendant's original letter to Col. Oliver,
defendant's letter to SCDMV,
newspaper article *Difference Between Individual Rights and Privileges (2 pgs.)*, and
defendant's notice to dismiss for lack of subject matter jurisdiction (22 pgs.)

The Supreme Court said:

Constitutional provisions for the security of person and property are to be liberally construed, and "it is the duty of 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).

THE CONSTITUTION IS THE SUPREME LAW OF THE LAND

A. "The constitution of these United States is the supreme law of the land. Any in conflict is null and void of law." *Marbury v. Madison*, 5 U.S. 137

B. "No state may convert a secured liberty into a privilege, and issue a license and fee for it." *Murdock v. Pennsylvania* 319 US 105

C. "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." *Schuttlesworth v. Birmingham, Alabama*, 373 US 262

D. "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

ARTICLE VI OF THE U.S. CONSTITUTION

"This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby...."

"The Senators and Representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution ...."

CONCLUSION

The Municipal Courts conducting of a trial on a Statute that clearly violates the constitutional rights of the defendant as it was applied to him, and the Courts ignoring the constitutional arguments and Supreme Court authorities is harmful error of law. Further, the judge as well as the arresting officer are in violation of Title 18 Sec. 242 and Title 42 Sec. 1983 of the U.S. Code, as well as their oath of office. The municipal court's judgment should be reversed/vacated and the fine paid by the defendant promptly returned.

John Dalen, Defendant /Appellant Pro Se

August 21, 2017

STATE OF SOUTH CAROLINA) IN THE CIRCUIT COURT

COUNTY OF OCONEE)

FILED OCONEE COUNTY SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2017 AUG 23 P 3:15

STATE OF SOUTH CAROLINA,)

vs.) RETURN OF THE CRIMINAL APPEAL

) CASE NUMBER

John Dalen) 2017 CP-37- 470

) Defendant/Address

This matter is on appeal from the Magistrate's Court of Oconee County, South Carolina, the Honorable Will F. Derrick, Presiding Judge.

The defendant, John Dalen, was charged with violating S.C. Code Ann. § 56-1-20 (Code Section) which is commonly referred to as NO SC DL (Common Name of Offense), on 2-16, 20 17.

This matter was heard in a Bench/Jury trial on 8-17, 20 17 and the Notice of Appeal was filed on 8 22, 20 17. The proceedings were (check appropriate box)

[X] recorded electronically

[ ] recorded by a court reporter

[X] recorded in writing by the judge.

ENTERED
COMPUTER

Copies to:
Atty ___(P)___(D)___
DSS ___other Derrick & Dalen (mailed)
Mailed ___Boxed ___Changed ✓

The jury list was prepared pursuant to S.C. Code Ann. (check appropriate box)

[✓] § 22-2-80 Selection of jury list for a single trial.

[ ] § 22-2-90 Selection of jury list for scheduled terms of jury trials.

and the Defendant and the State were given an opportunity to exercise peremptory challenges on 6-28, 2017.

The State called the following witnesses:

1. Henry Taylor, SCHP
2. _____
3. _____
4. _____
5. _____
6. _____

A summary of their testimony is attached.

The Defendant called the following witnesses:

1. John Dillon
2. _____
3. _____
4. _____
5. _____
6. _____

A summary of their testimony is attached.

The State made the following Motions:

1. N/A
2. _____
3. _____
4. _____

A summary of the State's and Defendant's position on each motion and the Court's ruling is attached.

The Defendant made the following Motions:

1. Many- all attached.
2. _____
3. _____
4. _____

A summary of the Defendant's and State's position on each motion and the Court's ruling is attached.

The State offered the following items into evidence:

1. N/A
2. _____
3. _____
4. _____
5. _____
6. _____

The Defendant raised the following objections to the items that the State sought to introduce into evidence:

1. N/A
2. _____
3. _____
4. _____
5. _____
6. _____

A summary of the Defendant's and State's position and the Court's ruling on the objection is attached.

The Defendant offered the following items into evidence:

1. See attached
2. _____
3. _____
4. _____
5. _____
6. _____

The State raised the following objections to the items that the Defendant sought to introduce into evidence:

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____

A summary of the State's and Defendant's position and the Court's ruling on the objection is attached.

The Defendant was found guilty of violating S.C. Code Ann. § 56-1-20, commonly known as NO SC DL and the Court imposed the following sentence: 30 days or $232.50

Attached are copies of the items which are checked.

[✓] Uniform Traffic Ticket No(s). 5702 P077 5082

[ ] Arrest Warrant No(s). _____

[✓] The jury list.

[✓] List of witnesses and a summary of their testimony.

[✓] List of motions, summary of the parties' positions and court's ruling.

[✓] **List of items offered into evidence, a summary of objections and the Court's ruling.**

[✓] **Documents and exhibits entered into the record.**

[✓] **The Notice of Appeal**

STATE OF SOUTH CAROLINA)
) IN THE MAGISTRATE'S COURT
COUNTY OF OCONEE)

STATE,)

VS) TICKET NO(s). 5102P0778082

John DALEN)
Defendant.)

OFFENSE: NO SO DL

Mr. Foreman, when the jury reaches a verdict, please record it by striking out the statement that does NOT reflect the jury's decision. After having done this, Mr. Foreman, please sign your name under the verdict to signify that the remaining statement reflects the verdict of the jury.

The law in this State requires that a jury verdict be unanimous which means that all of the jurors must agree.

For the convenience of the jury, I have listed below the possible verdicts in this case. You are to attach no significance to the order in which I set out the possible verdicts.

When you have reached a verdict and have recorded it, please notify us by knocking on the door.

THE POSSIBLE VERDICTS ARE:

WE FIND THE DEFENDANT GUILTY.

~~WE FIND THE DEFENDANT NOT GUILTY.~~

DATE: 8-17-17

Lester Daly
FOREMAN

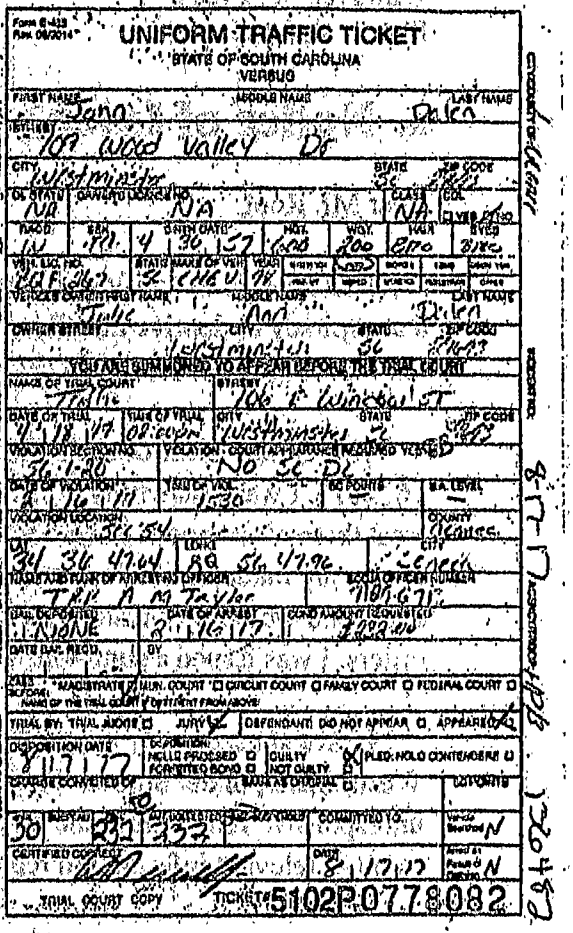
Barry L. Bryson
JUROR

Steven Kouns
JUROR

Lesley M. Brandt
JUROR

Eunice B. Rowland
JUROR

Tisha Long
JUROR



UNIFORM TRAFFIC TICKET
STATE OF SOUTH CAROLINA
VERSUS

Jana Dixon
107 Wood Valley Dr
Westminster SC 29693
NA NA NA
W M 4 36 157 Brn Grn 200 Gmc 3500
PAF 367 SC 2016 VI
Jana Dixon
107 Wood Valley Dr Westminster SC 29693
YOU ARE SUMMONED TO APPEAR BEFORE THIS TRIAL COURT
Traffic
106 E Windsor ST
9/18/17 08:00AM Westminster SC 29693
56-1-20 No SC DL
8/16/17 1530
Sc 54
34 34 4704 RG 54 1/7.96 Seneca
TPR A M Taylor 7101-671
NONE 8/16/17 $292.00
MAGISTRATE MUN. COURT CIRCUIT COURT FAMILY COURT FEDERAL COURT
TRIAL BY: TRIAL JURY JURY DEFENDANT: DO NOT APPEAR APPEARED
9/7/17 PLED: GUILTY NOLO CONTENDERE
30 232 137 N N
8/17/17
TRIAL COURT COPY TICKET # 5102P077808 2

John Dalen

109 Wood Valley Drive, Westminster, SC 29693
Ph. 864.647.4705

OCONEE COUNTY SC CLERK OF COURT
2017 AUG -1 A 8:15
RECEIVED

July 27, 2017

David A. Root, Esq.
Oconee County Attorney
415 S. Pine Street
Walhalla, SC 29691
Phone: 864 364 - 5332

Re: **Notice of Intent to Sue**

Dear Mr. Root,

This letter is to notify you that I intend to file suit against the county and others who have engaged in a conspiracy to deprive me of my constitutionally-protected rights. A copy of Title 16, Chapter 5, Offenses Against Civil Rights is included for your perusal.

This action arises out of a traffic stop at a checkpoint that was set up in Oconee County on February 16, 2017. I was unlawfully arrested by a state trooper, known by me only as Trooper A.M. Taylor. At least three other troopers were involved in this unlawful arrest and will be added to this lawsuit as their names are made available to me. I was stopped without probable cause, told I would not be allowed to leave and would be physically taken into custody and my property seized if I did not comply with their orders. I was issued a summons for violating Section 56 – 1 – 20, the transportation statute of this state.

I have subsequently appeared at all scheduled hearings held at Westminster Municipal Court in Westminster, under duress. I have filed numerous motions with the court that have produced unresponsive orders from the magistrate. I am including copies of the motions I have submitted as well as other relevant information regarding this case.

My right to due process of law is being violated in these hearings. The court has no personal or subject matter jurisdiction, cannot or will not explain the nature or the cause of this action against me as required by the Constitution of the United States; therefore I will no longer participate in the magistrate's proceedings, but will bring charges against all the individuals involved as well as file suit for damages against the magistrate and the troopers involved.

I, John Dalen, intend to file an action at law against all actors in this false arrest and subsequent hearings. I have not consented to these proceedings, and demand my rights under the Common Law, including the right to a trial by jury in a court of record. Please consider the following:

1) I relied on Supreme Court decisions noted in previously filed memorandums of law and motions before the court. A citizen has a right to rely on the decisions and opinions of the Supreme Court of the United States.

2) Based on these Supreme Court decisions and opinions, I believed and still believe that the summons in question is invalid and null and void of law.

3) Further, there was no willful intent to disobey any valid law or order of the court.

4) This court lacks subject matter jurisdiction in this matter because no valid law was violated. I, the accused, was engaged in a lawful, Constitutionally-protected fundamental right. The statute in question attempts to convert that right into a privilege and tax that right, in violation of my Constitutionally-protected rights. See 16 Am. Jur. 2d, Sec. 177 late 2d, Sec. 256:

> "The general misconception is that any statute passed by legislators bearing the Appearance of law constitutes the law of the land.... No one is bound to obey an Unconstitutional law and no courts are bound to enforce it."

Also see Hale v. Henkel, 201 U.S. 43 (1906):

> "[w]e 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 an examination at 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 an investigation, so far as it may tend to criminate him. He owes no such duty to the State, since he receives nothing therefrom beyond the protection of his life and property. His rights are such as existed by 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 are a refusal to incriminate himself and the immunity of himself and his property from arrest or seizure except under a warrant of the law. He owes nothing to the public so long as he does not trespass upon their rights."

5) This court does not have personal jurisdiction. I, John Dalen, do not consent to these proceedings. My appearances and filings in this case are under duress and under threat of arrest.

6) The protection of Constitutional rights is a core function of the judiciary. See: 16 Am. Jur. 2d, Sec. 260.

7) Hurtado v. California, 110 U.S. 516, 3 Sup. Ct. 111, 292, 28 L.Ed. 232 (1884)
Due process of law is process according to the law of the land.... Due process of law in the latter (the Fifth Article of Amendment to the Constitution) refers to that law of the land which derives its authority from the legislative powers conferred upon Congress by the Constitution of the United States, exercised within the limits therein prescribed and interpreted according to the principles of the common law.... Mr. Justice Matthews, delivering the opinion of the court....
* Note that the 14th Amendment insured that all of the above applies to the states.

8) Manning v. Ketcham, 58 F.2d 948 (6th Cir. 1932): An affirmance results when a judge acts in the clear absence of all jurisdiction, i.e. of authority to act officially over the subject matter in hand, the proceeding coram non judice. In such a case the judge has lost his judicial function, has become a mere private person, and is liable as a trespasser for the damages resulting from his unauthorized acts. Such has been the law from the days of the case of The Marshalsea, 10 Coke 68. It was recognized as such in Bradley v. Fisher, 13 Wall. (80 U.S.) 335, 351, 20 L. Ed. 646. In State ex rel. Egan v. Wolever, 127 Ind. 306, 26 N.E. 762, 732, the court said: 'The converse statement of it is also ancient. Where there is no jurisdiction at all there is no judge; the proceeding is as nothing.'

9) McNutt v. GMAC, 298 US 178 "The burden of proof of jurisdiction lies with the asserter."

10) Wuest v. Wuest, 127 P2d 934, 937. Outboard Marine Corp. v. Thomas, 610 F. Supp. 1234, 1242 (N.D. Ill., 1985) "A departure by a court from those recognized and established requirements of law, however close apparent adherence to mere form in method of procedure, which has the effect of depriving one of a constitutional right, is an excess of jurisdiction."

11) The United States Supreme Court has clearly, and repeatedly, held that any judge who acts without jurisdiction is engaged in an act of treason. U.S. v. Will, 449 U.S. 200, 216, 101, S. Ct. 471, 66 L. Ed. 2d 392, 406 (1980); Cohens v. Virginia, 19 U.S. (6 Wheat) 264, 404, 5 L. Ed. 257 (1821).

12) "Officials and judges are deemed to know the law and sworn to uphold the law; officials and judges cannot claim to act in good faith in willful deprivation of law, they certainly cannot plead ignorance of the law, even the Citizen cannot plead ignorance of the law, the courts have ruled there is no such thing as ignorance of the law, it is ludicrous for learned officials and judges to plead ignorance of the law therefore there is no immunity, judicial or otherwise, in matters of rights secured by the Constitution for the United States of America." Owen vs. City of Independence, 100 S. Ct. 1398; Maine vs. Thiboutot, 100 S. Ct. 2502; and Hafer vs. Melo, 502 U.S. 21

13) There is no injured party. The state cannot be the injured party. In order for a cause of action to exist, there must be an injured person or party.

14) Wilson v. Omaha Indian Tribe 442 US 653 (1979); Will v. Michigan State Police 491 U.S. 58, 105 L. Ed. 2nd 45 (1989); U.S. v. General Motors Corporation, D.C. Ill, 2 F.R.D. 528, 530: "The word 'person' as used and employed in most statutory language is ordinarily construed to exclude the sovereign, and that for one as such to be bound by statute, they must be 'specifically' named.

15) Church of Scientology v. U.S. Dept. of Justice 612 F. 2d 417, 425 (1979): "The word 'person' in legal terminology is perceived as a general word which normally includes in its scope a variety of entities other than human beings."

16) United States v. Lacher, 134 U.S. 624, 628, 10 S. Ct. 625, 626, 33 L. Ed. 1080 (1890); United States v. Gradwell, 243 U.S. 476, 485, 37 S. Ct. 407, 61 L. Ed. 857 (1916): "The legislature cannot be deemed to have intended to punish anyone who is not 'plainly and unmistakably' within the confines of the statute."

I will file this suit on or about August 15, 2017. I will also be filing a complaint with the judicial review board against the magistrate as well as criminal charges against the magistrate and the troopers involved. If you notify me that all charges against me have been dropped and the case has been dismissed, before I file the suit, I will not file suit.

The freedoms that have been hard won by the American people are in grave danger in this country. The Constitution is routinely ignored by our elected officials and the oaths they take to defend and support it are nothing more than "lip service." With this action, I intend to determine if in fact the Constitution is still in force and effect. And I pray, for the sake of all Americans, that it is.

For all of the above reasons, I believe that this unlawful prosecution should be dismissed. Government officials have repeatedly violated my Constitutionally-protected rights and I, John Dalen will file an action at law to protect said rights and recover damages for deprivation of rights under color of law.

Sincerely,

John Dalen

Enc.: Copy of Summons
Brief in Support of Notice for Dismissal for Lack of Jurisdiction
Copy of Title 16, Chapter 5, Offenses Against Civil Rights
Copy of Motion for Pretrial Hearing
Copy of Motion for Findings of Facts and Conclusions of Law
Copy of Motion for Offer of Plea
Copy of Response Letter from Col. Michael R. Oliver, S.C. Dep't of Public Safety
Letter to Senator Thomas Alexander
Judge's Order to Dismiss
Judge's Order to Denying Motion for Reconsideration

Cc (of Letter) to: Senator Thomas Alexander
Col. Michael R. Oliver, S.C. Dep't. of Public Safety
William F. Derrick, Westminster Magistrate, Oconee County

CHAPTER 5
Offenses Against Civil Rights

SECTION 16-5-10. Conspiracy against civil rights.

It is unlawful for two or more persons to band or conspire together or go in disguise upon the public highway or upon the premises of another with the intent to injure, oppress, or violate the person or property of a citizen because of his political opinion or his expression or exercise of the same or attempt by any means, measures, or acts to hinder, prevent, or obstruct a citizen in the free exercise and enjoyment of any right or privilege secured to him by the Constitution and laws of the United States or by the Constitution and laws of this State.

A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined not more than two thousand dollars or imprisoned not more than five years, or both. A person convicted under this section is ineligible to hold, and disabled from holding, any office of honor, trust, or profit in this State.

HISTORY: 1962 Code Section 16-101; 1952 Code Section 16-101; 1942 Code Section 1380; 1932 Code Section 1380; Cr. C. '22 Section 310; Cr. C. '12 Section 320; Cr. C. '02 Section 233; G. S. 2567; R. S. 198; 1871 (14) 560; 1960 (51) 1602; 1993 Act No. 184, Section 22.

SECTION 16-5-20. Punishment for commission of additional crimes.

If in violating any of the provisions of Section 16-5-10 or 16-5-50 any other crime, misdemeanor or felony shall be committed, the offender or offenders shall, on conviction thereof, be subjected to such punishment for the same as is attached to such crime, misdemeanor and felony by the existing laws of this State.

HISTORY: 1962 Code Section 16-102; 1952 Code Section 16-102; 1942 Code Section 1381; 1932 Code Section 1381; Cr. C. '22 Section 311; Cr. C. '12 Section 321; Cr. C. '02 Section 234; G. S. 2568; R. S. 199; 1871 (14) 560.

SECTION 16-5-30. Duty and liability of officers.

Any constable, sheriff or magistrate, upon receipt of notice from any person that he has knowledge of an intention or attempt to destroy his property or to collect a mob for that purpose, shall take all legal means necessary for the protection of such property as is attacked or threatened to be attacked, and if such constable, sheriff or magistrate, upon receipt of such notice or upon knowledge of such intention or attempt to destroy such property in any wise received, shall neglect or refuse to perform his duty in the premises, he shall be liable for the damages done to such property, to be recovered by action, and shall also be deemed guilty of a misdemeanor in office and, on conviction thereof, shall forfeit his commission.

HISTORY: 1962 Code Section 16-103; 1952 Code Section 16-103; 1942 Code Section 1386; 1932 Code Section 1386; Cr. C. '22 Section 316; Cr. C. '12 Section 326; Cr. C. '02 Section 239; G. S. 2573; R. S. 204; 1871 (14) 561.

SECTION 16-5-40. Duty of officers to execute warrants.

All sheriffs, constables, and other officers specially empowered shall obey and execute all warrants and other processes issued under the provisions of Sections 16-5-10, 16-5-20, or 16-5-50 and directed to them. If a sheriff, constable, or other officer specially empowered refuses to receive a warrant or other process when tendered to him or neglects or refuses to execute the same, he is guilty of a misdemeanor and, upon conviction, must be fined five hundred dollars or imprisoned not more than three years. Fines collected are for use of citizens deprived of the rights secured by the provisions of this chapter.

Warrants and other processes run with and are executed by officers anywhere within the circuit or county in which they are issued.

HISTORY: 1962 Code Section 16-104; 1952 Code Section 16-104; 1942 Code Section 1382; 1932 Code Section 1382; Cr. C. '22 Section 312; Cr. C. '12 Section 322; Cr. C. '02 Section 235; G. S. 2569; R. S. 200; 1871 (14) 560; 1993 Act No. 184, Section 163.

SECTION 16-5-50. Penalty for hindering officers or rescuing prisoners.

Any person who shall (a) hinder, prevent, or obstruct any officer or other person charged with the execution of any warrant or other process issued under the provisions of this chapter in arresting any person for whose apprehension such warrant or other process may have been issued, (b) rescue or attempt to rescue such person from the custody of the officer or person or persons lawfully assisting him, as aforesaid, (c) aid, abet, or assist any person so arrested, as aforesaid, directly or indirectly, to escape from the custody of the officer or person or persons assisting him, as aforesaid, or (d) harbor or conceal any person for whose arrest a warrant or other process shall have been issued, so as to prevent his discovery and arrest, after notice or knowledge of the fact of the issuing of such warrant or other process, shall, on conviction for any such offense, be subject to a fine of not more than three thousand dollars or imprisonment for not more than three years, or both, at the discretion of the court having jurisdiction.

HISTORY: 1962 Code Section 16-105; 1952 Code Section 16-105; 1942 Code Section 1383; 1932 Code Section 1383; Cr. C. '22 Section 313; Cr. C. '12 Section 323; Cr. C. '02 Section 236; G. S. 2570; R. S. 201; 1871 (14) 561; 2010 Act No. 273, Section 19, eff June 2, 2010.

SECTION 16-5-60. Suits against county for damages to person or property resulting from violation of person's civil rights.

Any citizen who shall be hindered, prevented or obstructed in the exercise of the rights and privileges secured to him by the Constitution and laws of the United States or by the Constitution and laws of this State or shall be injured in his person or property because of his exercise of the same may claim and prosecute the county in which the offense shall be committed for any damages he shall sustain thereby, and the county shall be responsible for the payment of such damages as the court may award, which shall be paid by the county treasurer of such county on a warrant drawn by the governing body thereof. Such warrant shall be drawn by the governing body as soon as a certified copy of the judgment roll is delivered to them for file in their office.

HISTORY: 1962 Code Section 16-106; 1952 Code Section 16-106; 1942 Code Section 1384; 1932 Code Section 1384; Cr. C. '22 Section 314; Cr. C. '12 Section 324; Cr. C. '02 Section 237; G. S. 2571; R. S. 202; 1871 (14) 561.

SECTION 16-5-70. Indemnity for property destroyed by mob or riot.

When any dwelling house, building or other property, real or personal, shall be destroyed in consequence of any mob or riot it shall be lawful for any person owning or interested in such property to bring a suit against the county in which such property was situated and being for the recovery of such damages as he may have sustained by reason of the destruction thereof. The amount which shall be recovered in such action shall be paid in the manner provided by Section 16-5-60.

HISTORY: 1962 Code Section 16-107; 1952 Code Section 16-107; 1942 Code Section 1385; 1932 Code Section 1385; Cr. C. '22 Section 315; Cr. C. '12 Section 325; Cr. C. '02 Section 238; G. S. 2572; R. S. 203; 1871 (14) 561.

SECTION 16-5-80. Damages shall not be recoverable from county when property damage results from plaintiff's illegal or negligent conduct.

No person shall be entitled to the recovery of such damages if it shall appear that the destruction of his property was caused by his illegal conduct, nor unless it shall appear that he, upon knowledge had of the

intention or attempt to destroy his property or to collect a mob for that purpose and sufficient time intervening, gave notice thereof to a constable, sheriff or magistrate of the county in which such property was situated and being.

HISTORY: 1962 Code Section 16-108; 1952 Code Section 16-108; 1942 Code Section 1386; 1932 Code Section 1386; Cr. C. '22 Section 316; Cr. C. '12 Section 326; Cr. C. '02 Section 239; G. S. 2573; R. S. 204; 1871 (14) 561.

SECTION 16-5-90. Preservation of property owner's right of action against participants in mob or riot resulting in damage to property.

Nothing in this chapter shall be construed to prevent the person whose property is so injured or destroyed from having and maintaining his action against every person engaged or participating in such mob or riot to recover full damages for any injury sustained; provided, however, that no damages shall be recovered by such person against any of such rioters for the same injury for which compensation shall be made by the county.

HISTORY: 1962 Code Section 16-109; 1952 Code Section 16-109; 1942 Code Section 1387; 1932 Code Section 1387; Cr. C. '22 Section 317; Cr. C. '12 Section 327; Cr. C. '02 Section 240; G. S. 2574; R. S. 205; 1871 (14) 562.

SECTION 16-5-100. Jurisdiction of circuit courts.

The circuit courts of this State within their respective circuits in the counties of which the circuits are respectively composed shall have cognizance of all actions arising under the provisions of Sections 16-5-30, 16-5-70 and 16-5-110.

HISTORY: 1962 Code Section 16-110; 1952 Code Section 16-110; 1942 Code Section 988; 1932 Code Section 988; Cr. P. '22 Section 79; Cr. C. '12 Section 330; Cr. C. '02 Section 243; G. S. 2577; R. S. 208; 1871 (14) 562.

SECTION 16-5-110. County's right of action against participants in mob or riot resulting in county's liability for damages to property.

The governing body of the county against which damages shall be recovered under the provisions of this chapter may bring suit in the name of the county against any and all persons engaged or in any manner participating in any such mob or riot and against any constable, sheriff, magistrate or other officer charged with the maintenance of the public peace who may be liable, by neglect of duty, to the provisions of this chapter for the recovery of all damages, costs and expenses incurred by the county and such suits shall not abate or fail by reason of too many or too few parties defendant being named therein.

HISTORY: 1962 Code Section 16-111; 1952 Code Section 16-111; 1942 Code Section 1388; 1932 Code Section 1388; Cr. C. '22 Section 318; Cr. C. '12 Section 328; Cr. C. '02 Section 241; G. S. 2575; R. S. 206; 1871 (14) 562.

SECTION 16-5-120. Penalty for engaging in riot where weapon was not used.

Any person, upon conviction of engaging in a riot, rout or affray when no weapon was actually used and no wound inflicted shall be subject and liable for each offense to a fine not to exceed one hundred dollars or to imprisonment for a term not exceeding thirty days.

HISTORY: 1962 Code Section 16-113; 1952 Code Section 16-113; 1942 Code Section 1737; 1932 Code Section 1737; Cr. C. '22 Section 719; Cr. C. '12 Section 23; Cr. C. '02 Section 15; R. S. 14; 1892 (21) 93; 1893 (21) 411; 1894 (21) 824.

HISTORY: 1962 Code Section 16-104; 1952 Code Section 16-104; 1942 Code Section 1382; 1932 Code Section 1382; Cr. C. '22 Section 312; Cr. C. '12 Section 322; Cr. C. '02 Section 235; G. S. 2569; R. S. 200; 1871 (14) 560; 1993 Act No. 184, Section 163.

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HISTORY: 1962 Code Section 16-105; 1952 Code Section 16-105; 1942 Code Section 1383; 1932 Code Section 1383; Cr. C. '22 Section 313; Cr. C. '12 Section 323; Cr. C. '02 Section 236; G. S. 2570; R. S. 201; 1871 (14) 561; 2010 Act No. 273, Section 19, eff June 2, 2010.

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HISTORY: 1962 Code Section 16-106; 1952 Code Section 16-106; 1942 Code Section 1384; 1932 Code Section 1384; Cr. C. '22 Section 314; Cr. C. '12 Section 324; Cr. C. '02 Section 237; G. S. 2571; R. S. 202; 1871 (14) 561.

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HISTORY: 1962 Code Section 16-107; 1952 Code Section 16-107; 1942 Code Section 1385; 1932 Code Section 1385; Cr. C. '22 Section 315; Cr. C. '12 Section 325; Cr. C. '02 Section 238; G. S. 2572; R. S. 203; 1871 (14) 561.

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intention or attempt to destroy his property or to collect a mob for that purpose and sufficient time intervening, gave notice thereof to a constable, sheriff or magistrate of the county in which such property was situated and being.

HISTORY: 1962 Code Section 16-108; 1952 Code Section 16-108; 1942 Code Section 1386; 1932 Code Section 1386; Cr. C. '22 Section 316; Cr. C. '12 Section 326; Cr. C. '02 Section 239; G. S. 2573; R. S. 204; 1871 (14) 561.

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HISTORY: 1962 Code Section 16-111; 1952 Code Section 16-111; 1942 Code Section 1388; 1932 Code Section 1388; Cr. C. '22 Section 318; Cr. C. '12 Section 328; Cr. C. '02 Section 241; G. S. 2575; R. S. 206; 1871 (14) 562.

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Any person, upon conviction of engaging in a riot, rout or affray when no weapon was actually used and no wound inflicted shall be subject and liable for each offense to a fine not to exceed one hundred dollars or to imprisonment for a term not exceeding thirty days.

HISTORY: 1962 Code Section 16-113; 1952 Code Section 16-113; 1942 Code Section 1737; 1932 Code Section 1737; Cr. C. '22 Section 719; Cr. C. '12 Section 23; Cr. C. '02 Section 15; R. S. 14; 1892 (21) 93; 1893 (21) 411; 1894 (21) 824.

SECTION 16-5-130. Penalties for instigating, aiding or participating in riot.

A person who is convicted of riot, or of participating in a riot, either by being personally present, or by instigating, promoting, or aiding the same, is guilty of a:

(1) felony and must be imprisoned not more than five years or fined not more than one thousand dollars, or both, if the purpose of the assembly, or of the acts done or threatened or intended by the persons engaged, is to resist the enforcement of a statute of this State, or of the United States, or to obstruct any public officer of this State, or of the United States, in serving or executing any process or other mandate of a court of competent jurisdiction, or in the performance of any other duty, or if the offender carries, at the time of the riot, firearms, or any other dangerous weapon, or is disguised;

(2) misdemeanor and must be imprisoned not more than two years or fined not more than five hundred dollars, or both, if the offender directs, advises, encourages, or solicits other persons, present or participating in the riot or assembly, to acts of force or violence;

(3) misdemeanor and must be imprisoned not more than two years or fined not more than two hundred and fifty dollars, or both, in any case, not embraced within the foregoing subdivisions of this section.

This section must not be construed to prevent the peaceable assembling of persons for lawful purposes of protest or petition.

HISTORY: 1962 Code Section 16-113.1; 1968 (55) 2286; 1993 Act No. 184, Section 164.

SECTION 16-5-140. Enforcement of chapter.

Sheriffs, constables and other officers in the several circuits or counties vested with powers of arresting, imprisoning and bailing offenders against the laws of this State shall institute proceedings against every person who shall violate the provisions of this chapter and cause them to be arrested, imprisoned or bailed, as the case may require, for a trial before such court as shall have jurisdiction of the offense.

HISTORY: 1962 Code Section 16-112; 1952 Code Section 16-112; 1942 Code Section 1389; 1932 Code Section 1389; Cr. C. '22 Section 319; Cr. C. '12 Section 329; Cr. C. '02 Section 242; G. S. 2576; R. S. 207; 1871 (14) 566.

John Dalen

109 Wood Valley Drive, Westminster, SC 29693
Ph. 864.647.4705

August 11, 2017

David A. Root, Esq.
Oconee County Attorney
415 S. Pine Street
Walhalla, SC 29691
Phone: 864 364 - 5332

Re: August 17 Trial and Motion for Change of Venue

Dear Mr. Root:

This is regarding my July 27, 2017 letter to you and the notice of intent to sue. In that letter I stated that I would not appear at the trial, and would file the suit sometime prior to the trial. After careful consideration and advice of counsel, I have decided instead to file a motion, a copy of which is enclosed.

If this motion is denied, I will appear at the August 17 scheduled trial date. It is my hope that a lawsuit will not be necessary as I do not wish to sue anyone. However, as I am merely attempting to assert my Constitutionally-protected rights, I will file the suit if it seems necessary.

Sincerely,

John Dalen

Enc.: Copy of Motion

RECEIVED
2017 AUG 11 P 3:31

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

FILED OCONEE COUNTY, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2018 MAR 12 A 10:03

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2017 CP-37-00490

John Dalen,
PLAINTIFF,

State of South Carolina,
DEFENDANT,

Affidavit of John Dalen

AFFIDAVIT OF JOHN DALEN

Comes now, John D. Dalen, who first being sworn, states as follows:

1. At the time that I was cited by Officer Avery Taylor, I had not been engaged in any commercial activity or for hire activity on the highway, nor was I at any time prior or since engaged in any commercial activity or for hire activity upon the highways.

2. I fully believe, based on my study of the law, and numerous Supreme Court and other lower court decisions, that I have a right to travel and that such right is not a privilege and cannot be converted to a privilege by any state. I also believe that the Statute that I was charged under clearly states that it is attempting to license a privilege, and not to regulate a Constitutional right which would require the State to prove a narrow and specific need for such regulation.

3. A necessary element of a crime is willfulness to evade a known duty under the law. No evidence of willfulness was presented in my case. On the contrary, I have presented numerous arguments, authorities, and letters to government

officials which prove that I did not willfully violate any law. The state's failure to respond to any of my letters or produce any evidence against me has been taken by me as affirmation of the correctness of my arguments.

4. The Statute in question violates my religious liberties secured by the United States Constitution. The Statute requires applicants to produce a federal Social Security card containing a number that is not required by the federal government, but is in fact *voluntary*. The Statute in effect is requiring applicants to waive one Constitutionally-protected right in order to engage in another -- in the absence of informed consent, clearly a violation of the limits placed on government by the U.S. Constitution.

I, John Dalen, do not believe in the Social Security system, and I do not participate in that system due to my religious objections. Therefore, even if I wanted to obtain a "driver's license" the state would not issue one to me. Further, since the State of South Carolina is enforcing the Real ID Act, which is a federal mandate, it is my belief that this is further proof that the Statute in question must come under USC Title 18, Sec. 31, Commercial Activity, and cannot be applied to individuals exercising Constitutional rights.

5. Due to the lack of evidence submitted against me in this case – not one piece of evidence, nor any refutation of the authorities I cited in support of my contentions – I believe that the court in this case is engaged in what as known as "conclusive presumptions" which may be defeated where its application would

impair a party's Constitutionally protected liberty or property interests. In such cases, conclusive presumptions have been held to violate a party's due process and equal protection rights.

FURTHER AFFIANT SAYETH NOT.

John D. Dalen

Sworn to and subscribed before me this 12th day of March, 2018.

Tracy Michelle Smith
South Carolina Notary Public

My Commission expires 12/08/2027

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

RECEIVED
DEC 07 2018
SC Court of Appeals

John Dalen, Appellant

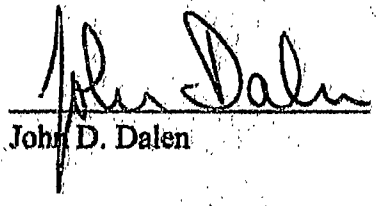
v.

The State, Respondent

CERTIFICATION OF RECORD ON APPEAL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

November 30, 2018



John D. Dalen

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THE STATE OF SOUTH CAROLINA

In The Court Of Appeals

APPEAL FROM OCONEE COUNTY

Court of Common Pleas

R. Lawton McIntosh

Case No: 2013-000687

John D. Dalen, Appellant,

v.

The State, Respondent.

FINAL BRIEF

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TABLE OF CONTENTS AND CASES

Authorities / Cases ii

Statutes vii

Other Authorities viii

United States Constitution ix

Statement of Issues on Appeal x

Statement of the Case 1

Standard of Review 5

Argument 5

Conclusion 36

TABLE OF AUTHORITIES

Cases

Allen v. Wright, 468 U.S. 737, 751, (1984).....P. 10

Requirements of Standing

Buchanan vs. Warley, 245 US 60 .....P. 8, 15

"The police power of the state must be exercised in subordination to the provisions of the U.S. Constitution."

Boyd vs. United States, 116 US 616 .....P. 16

"It is the duty of the courts to be watchful for the Constitutional rights of the citizen and against any stealthy encroachments thereon."

Braunfeld v. Brown, 366 U.S. 599 (1961) .....P. 36

"...because resolution in favor of the State results in the choice to the individual of either abandoning his religious principle or facing criminal prosecution." (*First Amendment* case)

Byars v. U.S. 273 U.S. 28, 32 (1927) .....P. 16

Constitutional provisions to be liberally construed, and "it is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon."

Chicago Motor Coach vs. Chicago, 169 NE 22 ..... Pp. 11, 14

Ligare vs. Chicago, 28 NE 934..... Pp. 11, 14

Boon vs. Clark, 214 SSW 607..... Pp. 11, 14

"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."

Connolly vs. Union Sewer Pipe Co., 184 US 540 .....Pp. 8, 15

"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."

Delaware v. Prouse, 440 U.S. 648, 653, 99 S. Ct. 1391, 59 L.Ed. 2d 660 (1979)...P. 27

An ordinary traffic stop by a police officer is a "seizure" within the meaning of the *Fourth Amendment.*

Hale vs. Hinkel, 201 US 43, 74-75.....Pp. 8, 15

"...there is a clear distinction...between an individual and a corporation..."

"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 .....Pp. 16, 31

"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 prescribed and interpreted according to the principles of common law.

p. 248

Manning v. Ketcham, 58 F. 2d 948 (1932).....P. 16

"Where there is no jurisdiction at all, there is no judge; the proceeding is as nothing."

Marbury v. Madison, 5 U.S. 137.....Pp. 6, 15

Constitution is the Supreme Law of the land. Any law in conflict is null and void.

McNutt v. GMAC, 298 US 178.....Pp. 7, 16

"The burden of proof of jurisdiction lies with the asserter."

Miller vs. U.S., 230 F. 486, 489.....P. 16

"The claim and exercise of a constitutional Right cannot be converted into a crime."

Miranda vs. Arizona, 384 US 436, 491.....P. 16

"Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them."

Mulger vs. Kansas, 123 US 623, 661.....P. 17

Duty of the court to recognize the substance of things and not the mere form.

Murdock v. Pennsylvania, 319 US 105.....Pp. 12, 14

The state may not convert a secured liberty into a privilege, and issue a license and fee for it.

Rubenstein v. Collins, 20 F. 3d 160 (1990) ..... P. 17

"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."

Sherbert v. Verner, 374, U.S. 398 (1963) ..... Pp. 34, 35

First Amendment case, U.S. Supreme Ct. overturns South Carolina Supreme Court

Shuttlesworth v. Birmingham, Alabama, 373 U.S. 262 ..... Pp. 12, 14

"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."

Simmons vs. United States, 390 US 389 ..... Pp. 17, 33, 36

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

Sherer vs. Cullen, 481 F. 946 ..... Pp. 15, 16

"There can be no sanction or penalty imposed upon one because of this exercise of constitutional Rights."

Stephenson vs. Binford, 287 US 251 ..... P. 14

Explains distinction between "Right" to use public roads and "privilege"

Thomas v. Collins, 323 U.S. 516, 530 ..... Pp. 34-35

Limitations on *First Amendment* Rights

Thompson vs. Smith, 154 SE 579..... P. 14

"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."

US v. Bishop, 412 US 346..... Pp. 11, 16, 31

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".

U.S. v. Blair, 524 F.3d 740, 748 [6th Cir. 2008])..... P. 27

An ordinary traffic stop by a police officer is a "seizure" within the meaning of the *Fourth Amendment*.

U.S. v. Campa, 529 F. 3d 980, 992 (11th Cir. 2008)..... P. 5

Standard of Review, errors of law

United States v. Carolene Products Co., 304 U.S. 144 (1938).....Pp. 13, 35

Footnote 4, Strict Scrutiny Standard

United States v. Interstate Commerce Commission, 337 U.S. 426, 430.....P. 17

Justiciable controversy

Warth v. Seldin, 422 U.S. 490, 498 (1975)..... P. 18

A Standing case

p. 251

Statutes

S.C. Code Ann. Title 22, Magistrates and Constables, Chapter 3.....Pp. 9-10

Jurisdiction and Procedure in Magistrates' Courts, See: Sec. 22-3-540

South Carolina Code of Laws, Title 16, Chapter 5.....P. 17

Offenses against Civil Rights

See: Sec. 16-5-10, Sec. 16-5-20, Sec. 16-5-30

South Carolina Code of Laws, Title 56, Chapter 1.....Pp. 10, 11, 18, 23, 36-37

Motor Vehicles

See: Sec. 56-1-20

United States Code, Title 18, Deprivation of Rights under Color of Law.....P. 17

See: Sec. 242

United States Code, Title 42, Civil Action for Deprivation of Rights.....P. 17

See: Sec. 1983

Other Authorities

II Am. Jur. (1st) Constitutional Law, Sec. 329, p. 1135..... Pp. 12, 15

Right of the citizen to travel on the public highways

16 Am. Jur. 2d, Sec. 177 late 2d, Sec. 256.....Pp. 6, 12, 15

"The general misconception is that any statute passed by legislators bearing the appearance of law constitutes the law of the land."

16 Am. Jur. 2d, Sec. 70.....Pp. 12, 15

No public policy of a state can be allowed to override the positive guarantees of the U.S. Constitution

16 Am. Jur. 2d, Sec. 260.....P. 13, 15

Right to travel

19 Am. Jur. 2d Corp., Sec. 559..... P. 17

Definition of "Standing"

25 Am. Jur. (1st) Highways, Sec. 260..... P. 13, 15

Requirement that regulations not violate constitutional guarantees

25 Am. Jur. (1st) Highways, Sec. 427, p. 717.....P. 13

Defines the terms travel and traveler

Ballantine's Law Dictionary, p. 1209..... P. 17

Definition of "Standing"

Black's Law Dictionary, 4th Edition.....P. 19

Definition of "Motor Vehicle"

p. 253

Oxford English Dictionary.....P. 21

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.....P. 21

Defines "term of art" as a word or phrase that has special meaning in a particular context.

United States Constitution

U. S. Constitution, Article III.....P. 10

"The judicial power shall extend to all cases...."

U. S. Constitution, Article VI.....Pp. 12, 15

Constitution is the Supreme Law of the Land and judges are bound thereby

U. S. Constitution, 1st Amendment.....Pp. 32-37

Freedom of Religion

U. S. Constitution, 4th Amendment..... Pp. 8, 27

Unreasonable Search and Seizure

U. S. Constitution, 5th Amendment.....P. 24

Due Process of Law

U.S. Constitution, 14th Amendment.....Pp. 24, 34-36

Applying 1st Amendment Protections to the States

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

p. 257

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*

p. 265

(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

p. 266

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

p. 267

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

p. 268

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, *litem "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

p. 270

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

p. 271

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

p. 272

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)*

p. 276

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

p. 287

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.

p. 290

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

RECEIVED
DEC 17 2018
SC Court of Appeals

CERTIFICATE OF COUNSEL

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

December 14, 2018

By:

John Dalen
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p. 293

THE STATE OF SOUTH CAROLINA

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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

p. 295

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

p. 296

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

p. 297

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.

p. 300

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)]

p. 308

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

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p. 309

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 16 2020
SC Court of Appeals

PETITION FOR REHEARING EN BANC

Appellant petitions The South Carolina Court of Appeals for a Rehearing En Banc per South Carolina Appellate Court Rules, Rule 219 (a)(2)(b).

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TABLE OF CONTENTS AND CASES

This Table of Contents and Cases refers and corresponds to the pages in this Appellant's Final Brief filed with this court in this case. Please refer to my final Brief as I am asking this court En Banc to review the arguments I presented in that Brief.

Authorities / Cases ii

Statutes vii

Other Authorities viii

United States Constitution ix

Appellant puts forth these additional arguments:

Appellant's Assertion of Rights 1

Argument 1

Conclusion and Demand for Relief 5

TABLE OF AUTHORITIES

Cases

Allen v. Wright, 468 U.S. 737, 751, (1984).....P. 9

Requirements of Standing

Bacahanan vs. Wanley, 245 US 60 .....Pp. 7, 14

"The police power of the state must be exercised in subordination to the provisions of the U.S. Constitution."

Boyd vs. United States, 116 US 616 .....P. 15

"It is the duty of the courts to be watchful for the Constitutional rights of the citizen and against any stealthy encroachments thereon."

Braunfeld v. Brown, 366 U.S. 599 (1961) .....P. 35

"...because resolution in favor of the State results in the choice to the individual of either abandoning his religious principle or facing criminal prosecution." (*First Amendment* case)

Byars v. U.S. 273 U.S. 28, 32 (1927) .....P. 15

Constitutional provisions to be liberally construed, and "it is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon."

Chicago Motor Coach vs. Chicago, 169 NE 22 ..... Pp.10, 13

Ligare vs. Chicago, 28 NE 934..... Pp.10, 13

Boon vs. Clark, 214 SSW 607..... Pp.10, 13

p. 312

"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."

Connolly vs. Union Sewer Pipe Co., 184 US 540 .....Pp. 7, 14

"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."

Delaware v. Prouse, 440 U.S. 648, 653, 99 S. Ct. 1391, 59 L.Ed. 2d 660 (1979)...P. 26

An ordinary traffic stop by a police officer is a "seizure" within the meaning of the *Fourth Amendment.*

Hale vs. Hinkel, 201 US 43, 74-75.....Pp. 6, 14

"...there is a clear distinction...between an individual and a corporation..."

"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 .....Pp. 14, 30

"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 prescribed and interpreted according to the principles of common law.

Manning v. Ketcham, 58 F. 2d 948 (1932) .....P. 15

"Where there is no jurisdiction at all, there is no judge; the proceeding is as nothing."

Marbury v. Madison, 5 U.S. 137 .....Pp. 5, 14

Constitution is the Supreme Law of the land. Any law in conflict is null and void.

McNutt v. GMAC, 298 US 178 .....Pp. 6, 15

"The burden of proof of jurisdiction lies with the asserter."

Miller vs. U.S., 230 F. 486, 489 ..... P. 15

"The claim and exercise of a constitutional Right cannot be converted into a crime."

Miranda vs. Arizona, 384 US 436, 491 ..... P. 15

"Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them."

Mulger vs. Kansas, 123 US 623, 661..... P. 16

Duty of the court to recognize the substance of things and not the mere form.

Murdock v. Pennsylvania, 319 US 105 .....Pp. 10, 13

The state may not convert a secured liberty into a privilege, and issue a license and fee for it.

Rubenstein v. Collins, 20 F. 3d 160 (1990) ..... P. 16

"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."

Sherbert v. Verner, 374, U.S. 398 (1968)..... Pp. 33, 34

First Amendment case, U.S. Supreme Ct. overturns South Carolina Supreme Ct.

Shuttlesworth v. Birmingham, Alabama, 373 U.S. 262..... Pp. 10, 13

"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."

Simons vs. United States, 390 US 389 .....Pp. 16, 32, 35

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

Snerer vs. Cullen, 481 F. 946.....Pp. 14, 15

"There can be no sanction or penalty imposed upon one because of this exercise of constitutional Rights."

Stephenson vs. Rinford, 287 US 251..... P. 13

Explains distinction between "Right" to use public roads and "privilege"

Thomas v. Collins, 323 U.S. 516, 530 ..... P. 33-34

Limitations on *First Amendment* Rights

Thompson vs. Smith, 154 SE 579..... P. 13

"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."

US v. Bishop, 412 US 346..... Pp. 9, 15, 31

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".

U.S. v. Blair, 524 F.3d 740, 748 [6th Cir. 2008)..... P. 25

An ordinary traffic stop by a police officer is a "seizure" within the meaning of the *Fourth Amendment*.

U.S. v. Campa, 529 F. 3d 980, 992 (11th Cir. 2008)..... P. 4

Standard of Review, errors of law

United States v. Carolene Products Co., 304 U.S. 144 (1938).....Pp. 11, 34

Footnote 4, Strict Scrutiny Standard

United States v. Interstate Commerce Commission, 337 U.S. 426, 430.....P. 16

Justiciable controversy

Warth v. Seldin, 422 U.S. 490, 498 (1975)..... P. 17

A Standing case

p. 316

Statutes

S.C. Code Ann. Title 22, Magistrates and Constables, Chapter 3.....P. 8

Jurisdiction and Procedure in Magistrates' Courts, See: Sec. 22-3-540

South Carolina Code of Laws, Title 16, Chapter 5.....P. 16

Offenses against Civil Rights

See: Sec. 16-5-10, Sec. 16-5-20, Sec. 16-5-30

South Carolina Code of Laws, Title 56, Chapter 1.....Pp. 8, 10, 18, 22, 36

Motor Vehicles

See: Sec. 56-1-20

United States Code, Title 18, Deprivation of Rights under Color of Law.....P. 16

See: Sec. 242

United States Code, Title 42, Civil Action for Deprivation of Rights.....P. 16

See: Sec. 1983

p. 317

Other Authorities

II Am. Jur. (1st) Constitutional Law, Sec. 329, p. 1135.....Pp. 10-11, 14

Right of the citizen to travel on the public highways

16 Am. Jur. 2d, Sec. 177 late 2d, Sec. 256.....Pp. 5, 11. 14

"The general misconception is that any statute passed by legislators bearing the appearance of law constitutes the law of the land."

16 Am. Jur. 2d, Sec. 70.....Pp. 11, 14

No public policy of a state can be allowed to override the positive guarantees of the U.S. Constitution

16 Am. Jur. 2d, Sec. 260.....P. 12, 14

Right to travel

19 Am. Jur. 2d Corp., Sec. 559.....P. 16-17

Definition of "Standing"

25 Am. Jur. (1st) Highways, Sec. 260.....P. 12, 14

Requirement that regulations not violate constitutional guarantees

25 Am. Jur. (1st) Highways, Sec. 427, p. 717.....P. 12

Defines the terms travel and traveler

Ballantine's Law Dictionary, p. 1209.....P. 17

Definition of "Standing"

Black's Law Dictionary, 4th Edition.....P. 18

Definition of "Motor Vehicle"

p. 318

Oxford English Dictionary.....P. 20

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.....P. 20

Defines "term of art" as a word or phrase that has special meaning in a particular context.

United States Constitution

U. S. Constitution, Article III.....P. 9

"The judicial power shall extend to all cases..."

U. S. Constitution, Article VI.....Pp. 11, 14

Constitution is the Supreme Law of the Land and judges are bound thereby

U. S. Constitution, 1st Amendment.....Pp. 31-36

Freedom of Religion

U. S. Constitution, 4th Amendment.....Pp. 7, 18, 26

Unreasonable Search and Seizure

U. S. Constitution, 5th Amendment.....P. 23

Due Process of Law

U.S. Constitution, 14th Amendment.....Pp. 23, 33-35

Applying 1st Amendment Protections to the States

p. 319

Appellant's Assertion of Rights

Appellant asserts all his unalienable rights, privileges, and immunities at Natural Law, Common Law, Maritime Law, and all his commercial rights relevant to "this state."

Argument

I am asking for a rehearing by this court en banc because these proceedings involve a question of exceptional importance as per Rule 219 (a)(2). Appellant relies on all of the arguments put forth in appellant's final brief to this court. Appellant believes that the court has failed to consider the "terms of art" that was discussed in the aforementioned brief. Some additional clarification may be in order:

1) Appellant is not a legal "person" subject to administrative jurisdiction, orders, fines, or other penalties. Appellant denies being a legal "person" under the Statutory meaning of that term as defined by the South Carolina Code of Laws, Title 56, Chapter 1, which definition applies to any and all Titles, Chapters, Sections and Provisions of the Motor Vehicle Code, and also Appellant denies having acted in any "legal capacity" therewith.
2) The magistrate court judge and the circuit court judge each have a legal duty to know and understand the laws associated with the duties of their respective offices, as well as how to properly use and apply them consistent with the

p. 320

legislative meaning and intent provided for therein and the fundamental and due process rights of the appellant and those similarly situated.

3) Section 56-1-10 of Title 56 Chapter 1 (22) defines "Person" –

"means every natural person, firm, partnership, trust, company, firm, association or corporation. Where the term 'person' is used in connection with the registration of a motor vehicle, it includes any corporation, association, partnership, trust, company, firm, or other aggregation of individuals which owns or controls the motor vehicle as actual owner, or for the purpose of sale or for renting, as agent, sales person, or otherwise." Appellant reminds the court of the rules of statutory construction and interpretation, in that "includes" and "including" while defined as being "terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded. This does not mean that such definitions are without any constructive limitations or restrictions upon that which may be "included" within any given enumeration using such terms, but merely defines a specific "class" of thing within which the "enlargement" provision may be exercised by which such definition is then simultaneously limited to those things that reasonably fall within that same specified "class".

The phrases "ejusdem generis" (Latin: the inclusion of one thing excludes another) and "inclusio unius est exclusio alterius" (Latin: the expression of one thing is the exclusion of the other), are common rules of

statutory construction and interpretation. These rules are used to determine the actual meaning and application of statutory terms and definitions so as to not have a ridiculous or unintended outcome to an interpretation or application of same.

These rules of interpretation specify that a particular section of the statute shall not be divorced from the rest of the act, or from the provisions of other acts that might be relevant to and influential upon the meaning and application of that same subject within an act. The rule of *ejusdem generis* is a principle of statutory construction used to resolve the problem of giving meaning to groups of words where one of the words is ambiguous or inherently unclear, such as an example definition that reads "Person" includes an individual, corporation, association, partnership, or other "legal entity."

The rule of *inclusio unius est exclusion alterius* is a principle of statutory construction which means that, when one or more things of a class are expressly mentioned others of the same class are excluded. Therefore, the term "individual" in the example definition would require proper resolution as to its meaning, because "individual" is usually loosely defined as a " living being" and is not normally defined as or associated with a class of "legal entity" like those also listed therein.

Therefore, the only logical manner by which to apply these rules of statutory construction in the above example definition is to find a logical way to reconcile the term "individual" as being somehow representative of the same "class" or "type" as the "other legal entities" expressly listed therein.

Since a "legal entity" can *never* be a class of "living being" the method of interpretation must seek the alternative by determining if an "individual" can ever be defined as a "class" or "type" of "legal entity." The only manner that an appellant can reasonably theorize by which this may be achieved without a ridiculous result, is that an "individual" may serve as an "agent" for any "other legal entity" as expressly listed, i.e. act within the "legal capacity" of "agent" thus, authorizing and allowing the "individual" to act on behalf / for the benefit of any class of "legal entity" or "other legal entity" as expressly listed therein.

Appellant is a living, breathing man, and is not a "legal entity" or an officer, individual, agent, representative, or employee of any "legal entity" expressly included in the statutory definition of a legal "person" within the South Carolina Code of Laws, Section 56-1-10 of Title 56, Chapter 1 (22) and is not a legal "person" or "individual" as those terms apply to any provision of the South Carolina Code of Laws, Title 56, Chapter 1.

Appellant is not a "legal entity," legal "individual," or legal "agent," acting on behalf / for the benefit of any "class" of "legal entity" listed therein, and, therefore is not a legal "person" within the meaning and application of this statutory definition and its application and usage within the South Carolina Code of Laws Title 56, Chapter 1.

Therefore appellant asserts that the charges that were levelled against me under this statute are without merit and lacking in jurisdiction, substantive facts, and / or admissible evidence that would serve to provide

them with any validity whatsoever. Again, the charges were levelled against me under this statute arbitrarily, negligently, and libelously in violation of law and statute as appellant is not and never has been a legal "person" as defined by said law or statute as one being subject to same, or to the administrative jurisdiction of the Department of Motor Vehicles as codified therein.

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. The Appellate has never 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 terms of art is the only way that the statute can be constitutional.

Appellant moves 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, that 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 December 2020

By: _____

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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

RECEIVED
DEC 16 2020
SC Court of Appeals

John Dalen, Appellant

v.

The State, Respondent

CERTIFICATE OF SERVICE

I, John D. Dalen hereby certify that a copy of the foregoing Petition for Rehearing En Banc was sent to the parties of record by First Class mail addressed to:

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DATED this 15th day of December 2020

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ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RECEIVED
DEC 18 2018
SC Court of Appeals

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

John Dalen, Appellant,

vs.

The State, Respondent.

FINAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUES ON APPEAL 1

STATEMENT OF THE CASE 2

STANDARD OF REVIEW 3

ARGUMENT 4

I. The magistrate had proper jurisdiction to consider the trial of Appellant for driving without a license. Further, the Uniform Traffic Ticket was a proper "charging instrument" and need not be supported by a separate warrant 4

II. The requirements of section 56-1-20 of the South Carolina Code are constitutional and applicable to all persons who seek to drive on the roadways of South Carolina. 7

III. The State need not prove Appellant was involved in "transportation" as that is not an element of the crime of driving without a license. The State proved the required elements showing Appellant violated section 56-1-20 of the South Carolina Code and was subject to the punishments found in 56-1-440 of the South Carolina Code. 11

IV. The requirement of a driver's license does not violate Appellant's First Amendment right to free exercise of religion. 13

CONCLUSION 17

TABLE OF AUTHORITIES

Cases

Attorney Gen. of New York v. Soto-Lopez, 476 U.S. 898, 903 (1986) 9

Bayly v. State, 397 S.C. 290, 295, 724 S.E.2d 182, 184 (2012) 4, 5

Berberian v. Petit, 374 A.2d 791, 794 (1977) 10

Bowen v. Roy, 476 U.S. 693 (1986) 14

Charleston County Sch. Dist. v. State Budget and Control Bd.,
313 S.C. 1, 437 S.E.2d 6 (1993) 7

Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520, 533 (1993) 13

City of Greer v. Humble, 402 S.C. 609, 613, 742 S.E.2d 15, 17 (Ct. App. 2013) 3

City of Houston v. F. A. A., 679 F.2d 1184, 1198 (5th Cir. 1982) 10

City of Rock Hill v. Suchenski, 374 S.C. 12, 15, 646 S.E.2d 879, 880 (2007) 3

Cutter v. Wilkinson, 544 U.S. 709, 719 (2005) 13

Dunn v. Blumstein, 405 U.S. 330, 338, (1972) 9

Employment Div. v. Smith, 494 U.S. 872, 879 (1990) 13

Hendrick v. State of Maryland, 235 U.S. 610, 622 (1915) 15

Miller v. Reed, 176 F.3d 1202, 1205 (9th Cir. 1999) 10

Oregon v. Mitchell, 400 U.S. 112, 285 (1970) 9

Reynolds v. United States, 98 U.S. 145, 167 (1878) 16

Shirley's Iron Works, Inc. v. City of Union, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013) 12

State v. Biehl, 271 S.C. 201, 204, 246 S.E.2d 859, 860 (1978) 6

State v. Crocker, 366 S.C. 394, 402, 621 S.E.2d 890, 894 (Ct. App. 2005) 5

State v. Gentry, 363 S.C. 93, 100, 610 S.E.2d 494, 498 (2005) 4

State v. Henderson, 347 S.C. 455, 457, 556 S.E.2d 691, 692 (Ct. App. 2001) 3

State v. Pittman, 373 S.C. 527, 561, 647 S.E.2d 144, 161 (2007) 7

State v. Sampson, 317 S.C. 423, 427, 454 S.E.2d 721, 723 (Ct. App. 1995) 12

State v. Scott, 351 S.C. 584, 588, 571 S.E.2d 700, 702 (2002) 7

State v. Sheppard, 391 S.C. 415, 422, 706 S.E.2d 16, 19 (2011) 4

State v. Taylor, 411 S.C. 294, 300, 768 S.E.2d 71, 74 (Ct. App. 2014) 3

United States v. Bales, 813 F.2d 1289, 1297 (4th Cir. 1987) 16

United States v. Guest, 383 U.S. 745, 758 (1966) 9

United States v. Hardman, 297 F.3d 1116, 1126 (10th Cir.2002) 13

Wisconsin v. Yoder, 406 U.S. 205, 216 (1972) 16

Other Authorities

4 Wayne R. LaFave et al., Criminal Procedure § 16.4(c) (2d ed. 1999) 5

S.C. Code Ann. § 56-1-2005 through 56-1-2160 (Supp. 2017) 8

S.C. Code Ann. § 18–3–70 (Supp.2013) 3

S.C. Code Ann. § 22-3-540 (Supp. 2017) 4

S.C. Code Ann. § 22-3-550(A) (Supp. 2017) 5

S.C. Code Ann. § 22-3-710 (Supp. 2017) 6

S.C. Code Ann. § 56-1-10(22) (Supp. 2017) 8

S.C. Code Ann. § 56-1-20 (Supp. 2017) ..... passim

S.C. Code Ann. § 56-1-30 (Supp. 2017) 8, 11

S.C. Code Ann. § 56-1-440 (Supp. 2017) ..... passim

S.C. Code Ann. § 56-1-440(B) (Supp. 2017) 5

S.C. Code Ann. § 56-1-620 (Supp. 2017) 9

S.C. Code Ann. § 56-7-10(A) (Supp. 2017) 6

S.C. Code Ann. § 56-7-10(C) (Supp. 2017) 6

S.C. Code Ann. 56-1-40 (Supp. 2017) 9

S.C. Const. art. V, § 26 4

U.S. Const. amend I 13

STATEMENT OF ISSUES ON APPEAL

I. The magistrate had proper jurisdiction to consider the trial of Appellant for driving without a license. Further, the Uniform Traffic Ticket was a proper "charging instrument" and need not be supported by a separate warrant.

II. The requirements of section 56-1-20 of the South Carolina Code are constitutional and applicable to all persons who seek to drive on the roadways of South Carolina.

III. The State need not prove Appellant was involved in "transportation" as that is not an element of the crime of driving without a license. The State proved the required elements showing Appellant violated section 56-1-20 of the South Carolina Code and was subject to the punishments found in 56-1-440 of the South Carolina Code.

IV. The requirement of a driver's license does not violate Appellant's First Amendment right to free exercise of religion.

STATEMENT OF THE CASE

On February 16, 2017, Appellant was issued a Uniform Traffic Ticket for driving without a driver's license. He was summoned to appear before the Magistrate Court of Oconee County. After multiple hearings to address various motions by Appellant, he proceeded to trial before The Honorable William F. Derrick and a jury on August 17, 2017. The jury found Appellant guilty as charged and he was fined.

Appellant timely appealed to the circuit court on August 22, 2017. The Honorable R. Lawton McIntosh held a hearing on February 26, 2018. After reviewing all the submissions by Appellant and the Return from the magistrate, Judge McIntosh affirmed Appellant's conviction and sentence by Order signed March 1, 2018. Appellant filed a Motion for New Trial and/or Amendment of Judgment on March 12, 2018. At the same time, he filed a Motion for Findings of Facts and Conclusions of Law. Judge McIntosh denied the motion to amend on March 21, 2018. Appellant served his Notice of Appeal on April 9, 2018.

STANDARD OF REVIEW

"In criminal appeals from magistrate ... court, the circuit court does not conduct a de novo review, but instead reviews for preserved error raised to it by appropriate exception." State v. Henderson, 347 S.C. 455, 457, 556 S.E.2d 691, 692 (Ct. App. 2001); S.C. Code Ann. § 18–3–70 (Supp.2013) ("The appeal [from a magistrate in a criminal case] must be heard by the Court of Common Pleas upon the grounds of exceptions made and upon the papers required under this chapter, without the examination of witnesses in that court. And the court may either confirm the sentence appealed from, reverse or modify it, or grant a new trial, as to the court may seem meet and conformable to law."). "This court will review the decision of the magistrate court for errors of law only." State v. Taylor, 411 S.C. 294, 300, 768 S.E.2d 71, 74 (Ct. App. 2014) (citing City of Rock Hill v. Suchenski, 374 S.C. 12, 15, 646 S.E.2d 879, 880 (2007); Henderson, 347 S.C. at 457, 556 S.E.2d at 692).

"In criminal appeals from the magistrate court, the circuit court is bound by the magistrate court's findings of fact if any evidence in the record reasonably supports them." Id. "Moreover, [q]uestions of statutory interpretation are questions of law, which are subject to de novo review and which we are free to decide without any deference to the court below." Id. (citing City of Greer v. Humble, 402 S.C. 609, 613, 742 S.E.2d 15, 17 (Ct. App. 2013)).

ARGUMENT

I. The magistrate had proper jurisdiction to consider the trial of Appellant for driving without a license. Further, the Uniform Traffic Ticket was a proper "charging instrument" and need not be supported by a separate warrant.

Appellant contends the trial court erred in proceeding to trial because neither the State nor the trial court proved jurisdiction on the record. He also contends the trial proceeded without a proper "charging instrument." The magistrate had both subject matter jurisdiction and personal jurisdiction. Further, the Uniform Traffic Ticket (UTT) was a valid "charging instrument" for the crime of driving without a license. Accordingly, the magistrate properly proceeded to trial.

Issues relating to subject matter jurisdiction may be raised at any time. State v. Gentry, 363 S.C. 93, 100, 610 S.E.2d 494, 498 (2005). In Gentry, this Court clarified that a court's subject matter jurisdiction is that court's power "to hear and determine cases of the general class to which the proceedings in question belong." Id.; see also, State v. Sheppard, 391 S.C. 415, 422, 706 S.E.2d 16, 19 (2011).

In South Carolina, the General Assembly is constitutionally vested with the authority to establish the jurisdiction of the magistrate court. See S.C. Const. art. V, § 26 ("The General Assembly shall provide for [magistrates'] terms of office and their civil and criminal jurisdiction."); see also Bayly v. State, 397 S.C. 290, 295, 724 S.E.2d 182, 184 (2012) (recognizing the legislature has the constitutional authority to establish the jurisdiction of magistrate court). The legislature has determined the exclusive jurisdiction of the magistrate court: "Magistrates shall have exclusive jurisdiction of all criminal cases in which the punishment does not exceed a fine of one hundred dollars or imprisonment for thirty days . . ." S.C. Code Ann. § 22-3-540 (Supp. 2017). Further, the legislature has provided: "Magistrates

have jurisdiction of all offenses which may be subject to the penalties of a fine or forfeiture not exceeding five hundred dollars, or imprisonment not exceeding thirty days, or both." S.C. Code Ann. § 22-3-550(A) (Supp. 2017). Additionally, Appellant was charged with driving without a license, which is covered by section 56-1-440 of the South Carolina Code. In pertinent part, the statute specifically grants jurisdiction to the summary courts, which includes the magistrate court: "The summary courts are vested with jurisdiction to hear and dispose of cases involving a violation of this section." S.C. Code Ann. § 56-1-440(B) (Supp. 2017). As a result, the Magistrate Court of Oconee County had clear subject matter jurisdiction to consider Appellant's trial for driving without a license.

Appellant also challenges the personal jurisdiction of the Magistrate Court of Oconee County to continue with his trial. "[I]t is generally recognized that jurisdiction over the person in a criminal case lies in the state or county where the crime was committed." State v. Crocker, 366 S.C. 394, 402, 621 S.E.2d 890, 894 (Ct. App. 2005) (citing 4 Wayne R. LaFave et al., Criminal Procedure § 16.4(c) (2d ed. 1999)). The UTT clearly explains that the violation occurred within Oconee County, South Carolina. Here the UTT contains the requisite information to show personal jurisdiction over Appellant was proper to proceed.

Finally, the UTT is the proper "charging instrument" to being the proceedings in magistrate court. Once again, the legislature is necessarily vested with the authority to establish the procedures to be used in the exercise of magistrate court jurisdiction. See Bayly, 397 S.C. at 295, 724 S.E.2d at 184 (recognizing the legislature possesses the authority to establish the procedures of magistrate court). Pursuant to the procedures enacted by the legislature, a criminal case in magistrate court is typically commenced through the issuance of either an arrest warrant or a UTT, which provides notice to the defendant of the charge he is facing. See S.C. Code Ann.

§ 22-3-710 ("All proceedings before magistrates in criminal cases shall be commenced on information under oath, plainly and substantially setting forth the offense charged, upon which, and only which, shall a warrant of arrest issue."); S.C. Code Ann. § 56-7-10(C) (Supp. 2017) ("The service of the uniform traffic ticket shall vest all traffic, recorders', and magistrates' courts with jurisdiction to hear and to dispose of the charge for which the ticket was issued and served."). "The issuance of the uniform traffic ticket merely summons the accused person to appear before a magistrate, where he may submit any contention relative to the preservation of his rights." State v. Biehl, 271 S.C. 201, 204, 246 S.E.2d 859, 860 (1978).

Pursuant to section 56-7-10 of the South Carolina Code, a UTT will be used by all law enforcement officers in arrests for traffic offenses. S.C. Code Ann. § 56-7-10(A) (Supp. 2017). The charge of driving without a license is clearly a traffic offense for which the issuance of a UTT is proper. As a result, a proper "charging instrument" was issued and the magistrate properly proceeded to trial.

II. The requirements of section 56-1-20 of the South Carolina Code are constitutional and applicable to all persons who seek to drive on the roadways of South Carolina.[1]

Appellant maintains the trial court erred in ignoring the constitutional challenge to sections 56-1-20 and 56-1-440 of the South Carolina Code, in finding the statute requiring a driver's license applied to Appellant even though he is not a commercial driver, and failing to protect the constitutional rights of Appellant. The right to travel, as articulated by the United States Supreme Court, does not include the right to travel by any means without any restrictions. Further, the statutes involved clearly apply to all drivers and do not restrict their application to commercial drivers. Finally, the requirement of a driver's license under the statute does not impede Appellant's right to travel.

Appellant first seems to argue the statutes only apply to commercial vehicles, vehicles for hire, or vehicles involved in the transportation of goods or persons. A clear reading of the statutes demonstrates no such restriction. "The cardinal rule of statutory construction is a court must ascertain and give effect to the intent of the legislature." State v. Scott, 351 S.C. 584, 588, 571 S.E.2d 700, 702 (2002) (citing Charleston County Sch. Dist. v. State Budget and Control Bd., 313 S.C. 1, 437 S.E.2d 6 (1993)).

> All rules of statutory construction are subservient to the maxim that legislative intent must prevail if it can be reasonably discovered in the language used. A statute's language must be construed in light of the intended purpose of the statute. Whenever possible, legislative intent should be found in the plain language of the statute itself.

State v. Pittman, 373 S.C. 527, 561, 647 S.E.2d 144, 161 (2007) (internal citations omitted).

Several statutes are relevant to a determination of whether the driver's license requirement applies to Appellant or only to commercial drivers. Section 56-1-20 states in

[1] This issue addresses argument by Appellant found in both his Issue #1 and Issue #2.

pertinent part: "No person, except those expressly exempted[2] in this article shall drive any motor vehicle upon a highway in this State unless such person has a valid motor vehicle driver's license issued to him under the provisions of this article." S.C. Code Ann. § 56-1-20 (Supp. 2017). Based on its clear, unambiguous language, the statute applies to every person. "Person" is defined as "every natural person, firm, partnership, trust, company, firm, association, or corporation." S.C. Code Ann. § 56-1-10(22) (Supp. 2017). Appellant certainly qualifies as a member of the class of "every natural person." Additionally, section 56-1-440 states:

> A person who drives a motor vehicle on a public highway of this State without a driver's license in violation of Section 56-1-20 is guilty of a misdemeanor and, upon conviction of a first offense, must be fined not less than fifty dollars nor more than one hundred dollars or imprisoned for thirty days and, upon conviction of a second offense, be fined five hundred dollars or imprisoned for forty-five days, or both, and for a third and subsequent offense must be imprisoned for not less than forty-five days nor more than six months.

S.C. Code Ann. § 56-1-440 (Supp. 2017). Again, the provision applies to every person, and as discussed above it would apply to Appellant.

It is also significant to note that the statutory framework for motor vehicles includes an entirely separate Article related to the administration of South Carolina's commercial driver's license program. See 56-1-2005 through 56-1-2160 (Supp. 2017). It would be entirely superfluous for the state to have section 56-1-20 if it only related to a requirement to have a commercial driver's license when the legislature has provided an entire separate framework under the South Carolina Commercial Driver License Act. Accordingly, section 56-1-20 and 56-1-440 clearly apply to Appellant, a natural person driving a motor vehicle on a public highway in South Carolina.

[2] None of the exemptions apply to Appellant. See S.C. Code Ann. § 56-1-30 (Supp. 2017).

Having determined the licensing requirement applies to Appellant, the question becomes does it infringe his right to travel. "'[F]reedom to travel throughout the United States has long been recognized as a basic right under the Constitution.'" Dunn v. Blumstein, 405 U.S. 330, 338, (1972) (quoting United States v. Guest, 383 U.S. 745, 758 (1966)). Further, "the freedom to travel includes the 'freedom to enter and abide in any State in the Union.'" Dunn, 405 U.S., at 338 (quoting Oregon v. Mitchell, 400 U.S. 112, 285 (1970)). "A state law implicates the right to travel when it actually deters such travel, when impeding travel is its primary objective, or when it uses any classification which serves to penalize the exercise of that right." Attorney Gen. of New York v. Soto-Lopez, 476 U.S. 898, 903 (1986) (internal citations and quotation marks omitted).

The requirement of a driver's license does not actually deter travel and certainly does not have as its primary objective impeding travel. Its clear primary objective is to provide for the safety of the state's citizens on its roadways by requiring all persons to demonstrate and ability to properly operate a motor vehicle. See e.g., S.C. Code Ann. § 56-1-620 (Supp. 2017). Additionally, there is no classification system[3] being used in South Carolina to obtain a driver's license. As a result, the requirement of a driver's license does not violate Appellant's right to travel and any imposition is reasonably necessary in light of the stated purpose of providing for the safety of all drivers within South Carolina.

Appellant's main argument appears to be the state's requirement of a driver's license impacts his freedom to drive and not his freedom to travel. As the Rhode Island Supreme Court explained:

[3] The only classification required is that the person be of a certain age prior to obtaining their permit or license. See e.g., S.C. Code Ann. 56-1-40 (Supp. 2017).

> [The] argument that the right to operate a motor vehicle is fundamental because of its relation to the fundamental right of interstate travel, is utterly frivolous. The plaintiff is not being prevented from traveling interstate by public transportation, by common carrier, or in a motor vehicle driven by someone with a license to drive it. What is at issue here is not his right to travel interstate, but his right to operate a motor vehicle on the public highways, and we have no hesitation in holding that this is not a fundamental right.

Berberian v. Petit, 374 A.2d 791, 794 (1977).

In the seminal case discussing whether the requirement of a driver's license impacts the right to travel, the Ninth Circuit Court of Appeals explained: "burdens on a single mode of transportation do not implicate the right to interstate travel." Miller v. Reed, 176 F.3d 1202, 1205 (9th Cir. 1999). The Court continued: "Miller does not have a fundamental "right to drive." Id. at 1206.[4] The Court concluded: "the DMV did not unconstitutionally impede his right to interstate travel by denying him a driver's license."

This Court should find the right to drive is not a fundamental right and is not the same as the right to travel. Appellant wishes to be able to travel by the most convenient means for him, driving a vehicle, but he does not have a right to the most convenient method of transportation. Instead, he has a right to travel, which he could do by foot, bus, hired vehicle, or other means. The requirement of a driver's license promotes the safety of all persons on the highways of South Carolina and is a reasonable requirement placed upon those wishing to utilize the convenience of a motor vehicle.

[4] The Fifth Circuit has rejected an argument that a person has "a constitutional right to the most convenient form of travel." City of Houston v. F. A. A., 679 F.2d 1184, 1198 (5th Cir. 1982). Appellant may want the convenience of being able to drive a vehicle, but he is not entitled to do so without the ability of the State to place reasonable burdens on him. A driver's license is certainly a reasonable burden.

III. The State need not prove Appellant was involved in "transportation" as that is not an element of the crime of driving without a license. The State proved the required elements showing Appellant violated section 56-1-20 of the South Carolina Code and was subject to the punishments found in 56-1-440 of the South Carolina Code.

Appellant contends the trial court violated his Due Process rights by not requiring the State to 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.'" (App. Br. 23). The state proved the required elements of section 56-1-440 and "transportation" is not a required element.

As discussed in the issue above, Appellant need not be involved in any commercial endeavor in order for the State to require him to possess a valid driver's license prior to operating a motor vehicle on the highways of this State. Accordingly, the State proceeded pursuant to section 56-1-20 and 56-1-440 of the South Carolina Code which require Appellant to have a driver's license. The applicable statutes read:

> "No person, except those expressly exempted[5] in this article shall drive any motor vehicle upon a highway in this State unless such person has a valid motor vehicle driver's license issued to him under the provisions of this article."

S.C. Code Ann. § 56-1-20 (Supp. 2017). Section 56-1-440 states:

> A person who drives a motor vehicle on a public highway of this State without a driver's license in violation of Section 56-1-20 is guilty of a misdemeanor and, upon conviction of a first offense, must be fined not less than fifty dollars nor more than one hundred dollars or imprisoned for thirty days and, upon conviction of a second offense, be fined five hundred dollars or imprisoned for forty-five days, or both, and for a third and subsequent offense

[5] None of the exemptions apply to Appellant. See S.C. Code Ann. § 56-1-30 (Supp. 2017).

> must be imprisoned for not less than forty-five days nor more than six months.

S.C. Code Ann. § 56-1-440 (Supp. 2017). As a result, the State must prove: 1) a person; 2) drove a motor vehicle; 3) on a public highway of this state; 4) without a driver's license. Appellant has not challenged these elements.[6] He is clearly a person as discussed above. He was on a public highway in the State of South Carolina, and he has not contested the fact he does not possess a valid driver's license issued by this state. As a result, the State has met the elements required to convict Appellant of driving without a license.

[6] See Shirley's Iron Works, Inc. v. City of Union, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013) ("An unappealed ruling is the law of the case and requires affirmance."); State v. Sampson, 317 S.C. 423, 427, 454 S.E.2d 721, 723 (Ct. App. 1995) (holding that an unchallenged ruling, right or wrong, is the law of the case).

IV. The requirement of a driver's license does not violate Appellant's First Amendment right to free exercise of religion.

Appellant contends the trial court erred in not finding the requirement of a driver's license violates Appellant's religious freedom protections under the First Amendment of the United States Constitution. The requirement of a driver's license, or a social security number, does not violate the freedom of religious expression secured by the First Amendment.

The Religion Clauses of the First Amendment provide: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U.S. Const. amend I. "[T]he Free Exercise Clause[ ] requires government respect for, and noninterference with, the religious beliefs and practices of our Nation's people." Cutter v. Wilkinson, 544 U.S. 709, 719 (2005).

Neutral rules of general applicability normally do not raise free exercise concerns even if they incidentally burden a particular religious practice or belief. Employment Div. v. Smith, 494 U.S. 872, 879 (1990) (free exercise clause "does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes)" (internal quotation omitted)). "The nature of the government action determines the appropriate level of scrutiny. If . . . the law is facially neutral and generally applicable, then the plaintiff['s] free exercise claim fails if the law is supported by a rational basis." Smith, 494 U.S. at 879. Thus, a law that is both neutral and generally applicable need only be rationally related to a legitimate governmental interest to survive a constitutional challenge. United States v. Hardman, 297 F.3d 1116, 1126 (10th Cir.2002). A law is neutral so long as its object is something other than the infringement or restrictions of religious practices. Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520, 533 (1993).

Appellant seems to object to both the requirement of a driver's license and the requirement of using a social security number to obtain the driver's license. Neither of these two requirements violate the Free Exercise Clause as they do not curtail or limit Appellant's ability to believe as he chooses, but merely limit his ability to act without compliance.

The United States Supreme Court has explicitly addressed the requirement of a social security number. See Bowen v. Roy, 476 U.S. 693 (1986). The petitioner, a Native American, who believed using a social security number, or any numbering system of identity, for his daughter would harm her spirit. The United States Supreme Court explained: "Our cases have long recognized a distinction between the freedom of individual belief, which is absolute, and the freedom of individual conduct, which is not absolute. This case implicates only the latter concern." Id. at 699. The Supreme Court continued:

> Never to our knowledge has the Court interpreted the First Amendment to require the Government *itself* to behave in ways that the individual believes will further his or her spiritual development or that of his or her family. The Free Exercise Clause simply cannot be understood to require the Government to conduct its own internal affairs in ways that comport with the religious beliefs of particular citizens. Just as the Government may not insist that appellees engage in any set form of religious observance, so appellees may not demand that the Government join in their chosen religious practices by refraining from using a number to identify their daughter. "[T]he Free Exercise Clause is written in terms of what the government cannot do to the individual, not in terms of what the individual can extract from the government."

Id. at 699–700 (internal citations omitted and emphasis in original). The Court concluded the requirement and use of a social security number for purposes of obtaining government aid and food stamps did not violate the First Amendment. This Court should find the use of the same number for purposes of obtaining a driver's license does not violate the Free Exercise Clause.

Additionally, the requirement of a driver's license, a requirement designed for the safety and protection of those on the state's highways, is not violative of the Free Exercise Clause. It is clearly facially neutral and generally applicable. It applies to every person who intends to drive a motor vehicle in South Carolina. The law does not discriminate or restrict its application based on any religious basis. Neither section 56-1-20 nor 56-1-440 target religious practice, and neither are aimed at regulating any activity that could be even considered religious. As a result, there must only be a rational basis for requiring a driver's license.

A rational basis for a driver's license is easily determined. The safety of all on the roads is heightened by the requirement that every driver have demonstrated the knowledge and ability to drive a motor vehicle. The United States Supreme Court has recognized the safety of those who utilize the highways as an important state interest:

> In the absence of national legislation covering the subject, a state may rightfully prescribe uniform regulations necessary for public safety and order in respect to the operation upon its highways of all motor vehicles,—those moving in interstate commerce as well as others. And to this end it may require the registration of such vehicles and the licensing of their drivers. . . . This is but an exercise of the police power uniformly recognized as belonging to the states and essential to the preservation of the health, safety, and comfort of their citizens. . . .

Hendrick v. State of Maryland, 235 U.S. 610, 622 (1915). Vehicles are dangerous instruments. The requirement of a certain level of knowledge regarding their maintenance and operation, as well as demonstration of the ability to properly and lawfully operate a vehicle as required to obtain a driver's license is a means of promoting public safety for those on and around the state's highways. A rational basis exists for the requirement of a driver's license and, therefore, the statutes should be upheld.

Appellant has failed to demonstrate his refusal to obtain a driver's license is a "deep religious conviction, shared by an organized group, and intimately related to daily living;" instead, his arguments show it is "more on the order of a 'philosophical and personal' belief, which does not garner protection under the first amendment." United States v. Bales, 813 F.2d 1289, 1297 (4th Cir. 1987) (citing Wisconsin v. Yoder, 406 U.S. 205, 216 (1972)). The statutes at question uniformly require a driver's license to lawfully operate a motor vehicle on the roads of South Carolina, and they do so to promote the safety of all drivers on those roads. As the United States Supreme Court noted: "Can a man excuse his practices to the contrary because of his religious belief? To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself." Reynolds v. United States, 98 U.S. 145, 167 (1878). Accordingly, this Court should uphold section 56-1-20 and 56-1-440 and affirm Appellant's conviction and sentence.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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December 13, 2018

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RECEIVED
DEC 13 2018
SC Court of Appeals

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

John Dalen, Appellant,

vs.

The State, Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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December 13, 2018

The South Carolina Court of Appeals

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December 02, 2020

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Re: John Dalen v. The State
Appellate Case No. 2018-000637

Dear Counsel:

Enclosed is the decision of the Court. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,

V Claire Allen

CLERK

cc: Alan McCrory Wilson, Esquire
David Rhys Wagner, Jr., Esquire
The Honorable R. Lawton McIntosh

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

John Dalen, Appellant,

v.

The State, Respondent.

Appellate Case No. 2018-000637

Appeal From Oconee County
R. Lawton McIntosh, Circuit Court Judge

Unpublished Opinion No. 2020-UP-323
Submitted November 1, 2020 – Filed December 2, 2020

AFFIRMED

John Dalen, of Westminster, pro se.

Attorney General Alan McCrory Wilson and Senior Assistant Deputy Attorney General William M. Blitch, Jr., both of Columbia; and Solicitor David Rhys Wagner, Jr., of Anderson, all for Respondent.

PER CURIAM: John Dalen appeals the circuit court's orders affirming his conviction for driving without a license and denying his motion for a new trial. On appeal, Dalen argues (1) the magistrate erred in proceeding with trial after he challenged the court's jurisdiction, (2) the magistrate and circuit courts erred in

ignoring his constitutional challenges to S.C. Code Ann. § 56-1-20 (2018), (3) the proceedings before the magistrate and circuit courts violated his due process rights, and (4) the magistrate and circuit courts violated his First Amendment rights. We affirm.

1. The magistrate court did not err in proceeding with trial because it had subject matter and personal jurisdiction, and a uniform traffic ticket is a valid charging instrument. First, the magistrate court had subject matter jurisdiction over the case. *See State v. Gentry*, 363 S.C. 93, 100, 610 S.E.2d 494, 498 (2005) ("[S]ubject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong . . . ."); S.C. Const. art. V, § 26 ("The General Assembly shall provide for [a magistrate's] term[] of office and [its] civil and criminal jurisdiction."); S.C. Code Ann. § 22-3-520 (2007) ("Magistrates shall have and exercise within their respective counties all the powers, authority and jurisdiction in criminal cases herein set forth."); S.C. Code Ann. § 22-3-540 (2007) (providing magistrates with exclusive jurisdiction "of all criminal cases in which the punishment does not exceed a fine of one hundred dollars or imprisonment for thirty days"); S.C. Code Ann. § 22-3-550(A) (2007) (providing magistrates with jurisdiction over "all offenses which may be subject to the penalties of a fine or forfeiture not exceeding five hundred dollars, or imprisonment not exceeding thirty days, or both"); *Bayly v. State*, 397 S.C. 290, 300, 724 S.E.2d 182, 187 (2012) (stating "section 22-3-540 provides for magistrate courts to have exclusive jurisdiction of all criminal cases in which punishment does not exceed a fine of $100 or imprisonment for thirty days and section 22-3-550(A) increases the amount of the maximum fine to $500").

Second, the magistrate court had personal jurisdiction over Dalen because Dalen's uniform traffic ticket stated the violation occurred in Oconee County and the magistrate court conducted the trial in Oconee County. *See State v. Crocker*, 366 S.C. 394, 402, 621 S.E.2d 890, 894 (Ct. App. 2005) (stating personal jurisdiction "in a criminal case lies in the state or county where the crime was committed").

Third, a uniform traffic ticket is a proper charging instrument, and Dalen's ticket was supported by probable cause. *See* § S.C. Code Ann. § 56-7-10(A) (Supp. 2019) (stating a uniform traffic ticket will be used by police in arrests for traffic offenses and additional offenses); S.C. Code Ann. § 56-7-10(C) (2018) ("The service of the uniform traffic ticket shall vest all traffic, recorders', and magistrates' courts with jurisdiction to hear and to dispose of the charge for which the ticket was issued and served."); *State v. Ramsey*, 398 S.C. 275, 279, 727 S.E.2d 429, 431 (Ct. App. 2012) (stating section 56-7-10 "'eliminates the need for an arrest warrant

and authorizes the use of a uniform traffic ticket to notify an accused and commence judicial proceedings in the magistrate court'" (quoting *Bayly*, 397 S.C. at 296, 724 S.E.2d at 185-84)), *aff'd*, 409 S.C. 206, 762 S.E.2d 15 (2014); *id.* ("[I]f the offense is a traffic offense or is listed in section 56-7-10, an officer may make an arrest with a uniform traffic ticket, and the State may proceed to trial in the magistrate court without an arrest warrant.").

2. The magistrate and circuit courts did not ignore Dalen's challenge to the constitutionality of section 56-1-20 as applied to him. Section 56-1-20 applies to all persons driving on the public roads in South Carolina, not just individuals engaged in commercial activities. *See* § 56-1-20 ("No person, except those expressly exempted in this article shall drive any motor vehicle upon a highway in this State unless such person has a valid motor vehicle driver's license issued to him under the provisions of this article."); S.C. Code Ann. § 56-1-10(22) (Supp. 2019) (defining person as "every natural person"); S.C. Code Ann. § 56-1-10(7) (Supp. 2019) (defining motor vehicle as "every vehicle which is self-propelled and every vehicle which is propelled by electronic power obtained from overhead trolley wires but not operated upon rails"). Further, although Dalen has a constitutional right to travel, this right does not encompass the right to drive without a license. Rather, the State has the authority under its police powers to regulate drivers in the interest of public safety and welfare, and this regulation does not impede the right to travel. *See United States v. Guest*, 383 U.S. 745, 758 (1966) ("[F]reedom to travel throughout the United States has long been recognized as a basic right under the Constitution."); *S.C. State Highway Dep't v. Harbin*, 226 S.C. 585, 595, 597-98, 86 S.E.2d 466, 470, 472 (1955) ("A license to operate a motor vehicle is not a property right but a mere privilege which is subject to reasonable regulations under the police power in the interest of public safety and welfare. . . . There can be no doubt that the Legislature, which under its police power has full authority in the interest of public safety to prescribe conditions under which the privilege to operate a motor vehicle may be granted and upon which such privilege will be revoked, may make the violation of traffic regulations, or other cause having to do with public safety, the basis for the revocation or suspension of a driver's license . . . ."); *Hendrick v. Maryland*, 235 U.S. 610, 622 (1915) ("[A state] may require the registration of such vehicles and the licensing of their drivers . . . . This is but an exercise of the police power uniformly recognized as belonging to the states and essential to the preservation of the health, safety and comfort of their citizens . . . ."); *Att'y Gen. of New York v. Soto-Lopez*, 476 U.S. 898, 903 (1986) ("A state law implicates the right to travel when it actually deters such travel, . . . when impeding travel is its primary objective, . . . or when it uses 'any classification which services to penalize the

exercise of that right.'" (quoting *Dunn v. Blumstein*, 405 U.S. 330, 340 (1972))); *Miller v. Reed*, 176 F.3d 1202, 1205-06 (9th Cir. 1999) (recognizing the court had previously "held that burdens on a single mode of transportation [did] not implicate the right to interstate travel" and finding Miller did not have a fundamental right to drive).

3. Dalen's due process rights were not violated by the State's failure to allege and prove he was engaged in transportation because section 56-1-20 only requires the State to prove (1) a person; (2) drove a motor vehicle; (3) on a public highway in South Carolina; (4) without a driver's license. The testimony at trial showed Dalen drove his van on a public highway to a license checkpoint in Oconee County without a valid South Carolina driver's license. *See* § 56-1-20 ("No person, except those expressly exempted in this article, shall drive any motor vehicle upon a highway in this State unless such person has a valid motor vehicle driver's license issued to him under the provisions of this article."); S.C. Code Ann. § 56-1-440 (2018) (stating a person is guilty of a misdemeanor when he or she "drives a motor vehicle on a public highway of this State without a driver's license in violation of [s]ection 56-1-20"); § 56-1-10(7) (defining a motor vehicle as "every vehicle which is self-propelled and every vehicle which is propelled by electronic power obtained from overheard trolley wires but not operated upon rails"); § 56-1-10(22) (defining a person as "every natural person").

4. Dalen's argument that his First Amendment rights were violated is not preserved for review because Dalen did not raise this issue to the magistrate court or obtain a ruling. *See In re Michael H.*, 360 S.C. 540, 546, 602 S.E.2d 729, 732 (2004) ("In order to preserve an issue for appeal, it must be raised to and ruled upon by the [magistrate] court. . . . In other words, the [magistrate] court must be given an opportunity to resolve the issue before it is presented to the appellate court."); *State v. Gault*, 375 S.C. 570, 573-74, 654 S.E.2d 98, 100 (Ct. App. 2007) (finding the defendant's argument that his directed verdict motion was improperly denied based on the First Amendment was not preserved for review because the defendant did not raise the specific argument to the magistrate at trial); *In re Corley*, 365 S.C. 252, 258, 616 S.E.2d 441, 444 (Ct. App. 2005) ("Constitutional issues, like most others, must be raised to and ruled upon by the trial court to be preserved for appeal.").

AFFIRMED.[1]

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[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

THOMAS, HILL, and HEWITT, JJ., concur.

The South Carolina Court of Appeals

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January 21, 2021

John D. Dalen
108 Jessie Road
Westminster SC 29693

Re: John Dalen v. The State
Appellate Case No. 2018-000637

Dear Mr. Dalen:

V Claire Allen

Enclosed is a copy of an order of the panel denying your petition for rehearing. Your petition for rehearing en banc was distributed to the judges, but it has been rejected. *See* Rule 219, SCACR.

Very truly yours,

CLERK

cc: William M. Blitch, Jr., Esquire
Alan McCrory Wilson, Esquire
David Rhys Wagner, Jr., Esquire
The Honorable R. Lawton McIntosh

p. 357

The South Carolina Court of Appeals

John Dalen, Appellant,

v.

The State, Respondent.

Appellate Case No. 2018-000637

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

J.

J.

J.

Columbia, South Carolina

cc:
John D. Dalen
William M. Blitch, Jr., Esquire
Alan McCrory Wilson, Esquire
David Rhys Wagner, Jr., Esquire
The Honorable R. Lawton McIntosh