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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal From Oconee County
Hon. R. Lawton McIntosh, Circuit Court Judge
Appellate Case Tracking No. 2021-000168

John Dalen, Petitioner,

v.

The State, Respondent.

Opinion No. 2020-UP-323 (S.C. Ct. App. filed December 2, 2020)

RETURN TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

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IV. The Court of Appeals properly found the requirement of a driver's license does not violate Petitioner's First Amendment right to free exercise of religion.

V. Petitioners argument that the South Carolina Court of Appeals failed to protect the rights guaranteed under the Constitution of the United States was never presented as a separate argument to the Court of Appeals and is not properly raised as a separate argument to this Court.

STATEMENT OF THE CASE

Procedural History

On February 16, 2017, Petitioner 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 Petitioner, he proceeded to trial before The Honorable William F. Derrick and a jury on August 17, 2017. The jury found Petitioner guilty as charged and he was fined.

Petitioner 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 Petitioner and the Return from the magistrate, Judge McIntosh affirmed Petitioner's conviction and sentence by Order signed March 1, 2018. Petitioner 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. Petitioner served his Notice of Appeal on April 9, 2018.

After briefing and without oral argument, the Court of Appeals affirmed Petitioner's conviction and sentence. See Dalen v. State, Op. No. 2020-UP-323 (S.C. Ct. App. filed December 2, 2020). (App.352). Petitioner's Petition for Rehearing was denied by Order on January 21, 2021. (App. 358).

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 Court of Appeals correctly found the magistrate had proper jurisdiction to consider the trial of Petitioner for driving without a license. Further, the Uniform Traffic Ticket was a proper "charging instrument" and need not be supported by a separate warrant.

The Court of Appeals correctly found the magistrate court had proper jurisdiction over Petitioner's charges. Petitioner 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, Petitioner 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 Petitioner's trial for driving without a license.

Petitioner 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 Petitioner 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. This Court should deny the Petition for Writ of Certiorari.

II. The Court of Appeals correctly found section 56-1-20 of the South Carolina Code to be applicable to all persons who seek to drive.

The Court of Appeals correctly found section 56-1-20 is constitutional and applies to all who seek to drive on the roadways of South Carolina. Petitioner maintains the 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 Petitioner even though he is not a commercial driver, and failing to protect the constitutional rights of Petitioner. 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 Petitioner's right to travel.

Petitioner 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 Petitioner or only to commercial drivers. Section 56-1-20 states in

pertinent part: "No person, except those expressly exempted[1] 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). Petitioner 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 Petitioner.

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 Petitioner, a natural person driving a motor vehicle on a public highway in South Carolina.

[1] None of the exemptions apply to Petitioner. See S.C. Code Ann. § 56-1-30 (Supp. 2017).

Having determined the licensing requirement applies to Petitioner, 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[2] being used in South Carolina to obtain a driver's license. As a result, the requirement of a driver's license does not violate Petitioner'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.

Petitioner'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:

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[2] 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 a well-reasoned 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.[3] 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. Petitioner 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. Accordingly, this Court should deny the Petition for Writ of Certiorari.

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[3] 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). Petitioner 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 Court of Appeals properly concluded the State need not prove as a separate element that Petitioner was involved in "transportation" as it is not an element of driving without a license.

The Court of Appeals correctly found the State need not prove Petitioner was involved in "transportation" because it is not an element of driving without a license. Petitioner 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, Petitioner 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 Petitioner to have a driver's license. The applicable statutes read:

> "No person, except those expressly exempted[4] 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

[4] None of the exemptions apply to Petitioner. 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. Petitioner has not challenged these elements.[5] 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 Petitioner of driving without a license. Therefore, this Court should deny the Petition for Writ of Certiorari.

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[5] 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 Court of Appeals properly found the requirement of a driver's license does not violate Petitioner's First Amendment right to free exercise of religion.

The Court of Appeals correctly found requiring Petitioner to possess a driver's license does not violate his First Amendment rights. Petitioner contends the trial court erred in not finding the requirement of a driver's license violates Petitioner'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).

Petitioner 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 Petitioner'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.

Petitioner 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 deny the Petition for Writ of Certiorari.

V. Petitioners argument that the South Carolina Court of Appeals failed to protect the rights guaranteed under the Constitution of the United States was never presented as a separate argument to the Court of Appeals and is not properly raised as a separate argument to this Court.

Petitioner has added this issue to the ones previously raised to the Court of Appeals. To the extent this is merely a summary of the issues above, the State relies on the arguments raised for questions I-IV and asks the Court to deny the Petition for Writ of Certiorari. If this is a new standalone issue being raised for the first time to this Court, the issue is not properly presented or preserved for review by this Court. See Rule 242, SCACR ("Only those questions raised in the Court of Appeals and in the petition for rehearing shall be included in the petition for writ of certiorari as a question presented to the Supreme Court."). Additionally, this Court has found: "An issue not raised to or addressed by the trial court or the Court of Appeals is not properly preserved for review by the Supreme Court on certiorari." Kleckley v. Nw. Nat. Cas. Co., 338 S.C. 131, 138, 526 S.E.2d 218, 221 (2000); see also, Camp v. Springs Mortg. Corp., 310 S.C. 514, 516, 426 S.E.2d 304, 305 (1993) ("The Court of Appeals did not address this issue nor did Camp petition for rehearing for the court to consider it. We therefore decline to address this issue."). As a result, this Court should deny the Petition for Writ of Certiorari as to Question V.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that this Court should deny the Petition for Writ of Certiorari to the Court of Appeals.

Respectfully submitted,

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Hon. R. Lawton McIntosh, Circuit Court Judge
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John Dalen, Petitioner,

v.

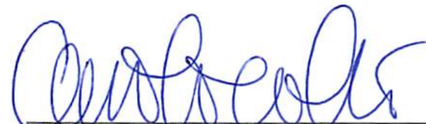
The State, Respondent.

PROOF OF SERVICE

I, Caroline Collins, certify that I have served the within Return to Petition For Writ of Certiorari to the Court of Appeals by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Mr. John D. Dalen
109 Wood Valley Drive
Westminster, South Carolina 29693

I further certify that all parties required by Rule to be served have been served.
This 12th day of March, 2021.



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ALAN WILSON
ATTORNEY GENERAL

March 12, 2021

Mr. John D. Dalen
109 Wood Valley Drive
Westminster, South Carolina 29693

Re: John Dalen v. State of South Carolina
Appellate Case Tracking No. 2021-000168

Dear Mr. Dalen:

I am enclosing two (2) copies of the Return to Petition for Writ of Certiorari to the Court of Appeals in the above-referenced case.

If you have any questions concerning this matter, please contact me.

Sincerely,

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

cc: Honorable Daniel E. Shearouse (Electronically Filed)
Honorable Jenny A. Kitchings (Electronically Filed)