

STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM OCONEE COUNTY

Court of Common Pleas

R. Lawton McIntosh

Appellate Case No. 2018 - 000637

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S.C. SUPREME COURT

John Dalen, Appellant

v.

The State, Respondent

REPLY BRIEF FOR WRIT OF CERTIORARI

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Appearing Pro Per / Appellant

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Cases

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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”.

Statutes

South Carolina Code of Laws, Title 40, Chapter 1 P. 3
 Professions and Occupations
 See: Sec. 40-1-10 and Sec. 40-1-115

South Carolina Code of Laws, Title 56, Chapter 1 Pp. 3, 4, 10
 Motor Vehicles
 See: Sec. 56-1-20

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U. S. Constitution Article VI P. 9

Other Authorities

American Jurisprudence 1st Constitutional Law, Sect. 329, P. 1135P. 7

25 Am. Jur. (1st) Highways, Sec. 427, Pg. 717 P. 5
 Defines terms: Travel and Traveler

Bovier's Law Dictionary, 1914 ed., p. 940P. 5
 Defines: Driver

Bovier's Law Dictionary, 1914 ed., p. 3309P. 5
 Defines: Traveler

Century Dictionary, p. 2034 P. 5

Questions Presented for Review

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

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

STATEMENT OF THE CASE

Appellant refers the court to John Dalen's Brief for Writ of Certiorari, and asserts that the Attorney General in his return brief failed to address the "words of art" issue, continuing to apply the statutes inappropriately. This brief addresses the Attorney General's return brief issues one through four. As to issue five, the Attorney General's argument that I, John Dalen never presented the issue of the court of appeal's failure to protect my rights as guaranteed under the Constitution of the United States was never presented as a separate argument to the court of appeals, and is therefore not properly raised is ludicrous. How can one raise the issue of the court of appeal's failure until they failed to do so, which they did in their rulings in this case, which has resulted in this Writ of Certiorari to the Supreme Court? Furthermore, this case is about Rights versus Privileges. Appellant has shown conclusively that the Statute in question attempts to convert the right to travel into a privilege, and is therefore a violation of John Dalen's constitutionally-protected rights.

ARGUMENT

John Dalen demands all of his rights at all times and waives none of his rights at any time. I rely on my Brief for Writ of Certiorari to this court and contend that the Attorney General failed to address any of the issues that I

raised in that brief and I will not argue them again here. Instead I ask the court to consider the following:

- 1) The state contends that statutes trump Constitutional protections.

However, the Supreme Court has repeatedly ruled that the Constitution is the Supreme Law of the land. In a case involving a “corporation” the court drew a distinction between a corporation that has privileges and an individual who exercises rights. The individual “owes no duty to the state.” When judges appear to become “accomplices” in the willful disobedience to the Constitution they are sworn to uphold (*Elkins v. United States, supra, at 223*), we imperil the very foundation of our people’s trust in their government. See *Hale v. Henkel*, 201 U.S. 43 (1906).

- 2) The following cases are relevant to this issue:

- 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

Once again, the Attorney General fails to address the issue here, which is rights vs. privileges. The right to travel in any conveyance is a right that cannot be converted into a privilege. The South Carolina Motor Vehicle statutes are written in such a way as to deceive a “reasonable man” into believing that he is required to obtain a driver’s license which is accomplished through the use of legalese. Another example of this is the South Carolina contractor license law codified in Title 40, *Professions and Occupations*. Section 40-1-10 *Extent of Regulation* which reads as follows:

The right of a person to engage in a lawful profession, trade, or occupation of choice is protected by both the Constitution of the United States and the Constitution of the State of South Carolina. The State cannot abridge this right except as a reasonable exercise of its police powers.

Section 40-1-115, *Terms of board jurisdiction*, states:

A board has jurisdiction over actions committed ... by current and former licensees “*during the entire period of licensure.*”

Anyone who has not waived his/her constitutionally-protected right by obtaining a license is outside the jurisdiction of the Contractor’s License Board, which was created by the *Professions and Occupations* statute. The Supreme Court has ruled in *Butchers’ Union v. Crescent City Co.*, 111 U.S. 746 (1884):

Among these unalienable rights, as proclaimed in that great document, is the right of men to pursue their happiness, by

which is meant the right to pursue any lawful business or vocation...

The Attorney General, in previous briefs before the Court of Appeals and in his brief to the Supreme Court, acknowledges the right to travel. And John Dalen has provided Supreme Court cases which acknowledge that the right to travel includes the right to use the conveyances of the day, whether they be horse and buggy or automobile. The Attorney General continues to use definitions and words of art in his briefs that make my case, which is that the State, by the use of legalese and words of art is attempting to convert a Constitutionally-protected right into a privilege, issue a license and charge a fee for the exercise of said right. Therefore, as I have contended, the statute in question – *South Carolina Motor Vehicle Code* Section 56-1-20 – is unconstitutional because it converts a Constitutionally-protected right into a privilege as applied to John Dalen.

The following are facts that I wish the court to take judicial notice of:

1) My car is not a motor vehicle as per USC Title 18, § 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 means and used for *commercial purposes* on the highways in the transportation of passengers, passengers and property, or property or cargo.

USC Title 18, § 31 defines “Commercial Purposes”

(10) “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.

- 2) You are a “Driver” driving a “Motor Vehicle” when you are being paid to carry passengers, goods, or cargo for profit or for pay. Definition of “Driver” from Bovier’s Law Dictionary, 1914 ed., p. 940: “One employed in conducting a coach, carriage, wagon, or other vehicle...” A person is driving when employed to “Drive” a “Motor Vehicle” for “Commercial Purposes.”
- 3) Traveler and Traveling – You are a “Traveler” “Traveling” in your car for personal purpose also known as “participating in public vehicular travel.”

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 by *Right*, and who have occasion to pass over them for the purpose of business, convenience, or pleasure. [Emphasis added] 25 Am. Jur. (1st) Highways, Sect. 427, p. 717

Definition of “Traveler” from Bovier’s Law Dictionary, 1914 ed., p. 3309:

“Traveler – One who passes from place to place, whether for pleasure, instruction, business, or health.” *Locket vs. State*, 47 Ala. 45.

Definition of “Travel” from Century Dictionary, p. 2034:

“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, automobile, carriage, ship, or aircraft; Make a journey.”

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

All citizens must be free to travel throughout the United States uninhibited by statutes, rules, and regulations, which unreasonably burden or restrict this movement. If a law has no other purpose than to chill assertions of constitutional rights by penalizing those who choose to exercise them, it is patently unconstitutional.

The equal protection clause prohibits apportionment of state services according to per tax contributions of its citizens. Any classification that serves to penalize the exercise of the right of interstate travel unless shown to be necessary to promote a compelling government interest is unconstitutional.

That a right so elementary was conceived from the beginning to be necessary concomitant of the stronger union the constitution created in any event. Freedom to travel throughout the United States has long been recognized as a basic right under the constitution.

Shapiro v. Thompson, 394 US 618

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 the city may prohibit or permit at

will, BUT IS A COMMON RIGHT which he has under the Right to life, liberty, and the pursuit of happiness.

Thompson v. Smith, 155 Va 367

“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, not by 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.”

American Jurisprudence 1st Constitutional Law, Sect. 329, p. 1135

“The use of the highway for the purpose of travel and transportation is not a mere privilege, but a common fundamental right of which the public and individuals cannot rightfully be deprived.”

Chicago Motor Coach v. Chicago, 169 NE 221

“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

Appellant puts forth the following questions for the consideration of the court:

- A. Can the State arbitrarily convert a secured liberty, in this case the right to travel freely and unencumbered, into a privilege, and issue a license and a fee for it? (NO)

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

Murdock v. Pennsylvania, 319 US 105

- B. If a state does attempt to convert the right into a privilege and issue a license and fee for the exercise of that privilege; can it be enforced as law? (NO)

“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

- C. Did appellant willfully and with intent violate the law? (NO)

“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 states:

“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....” And:

“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....”

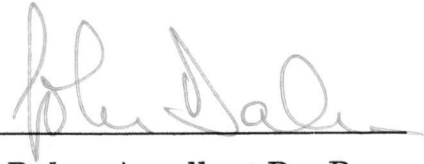
CONCLUSION

I believe that I have shown conclusively that I have every reason to believe, based on Supreme Court rulings that I have provided in my briefs, along with other court rulings and legal authorities that my arguments in this case are correct. Therefore, even if I were wrong, I could not be guilty of the crime (failure to obtain a license) due to the failure of the State to prove willfulness. The Attorney General in all of his briefs is failing to apply the law in the manner in which it was intended. He is in fact attempting to deceive the appellant and the court. The trial court and the appellate court have also failed in their duties to protect the constitutional rights of John Dalen. When the State operates outside the bounds of its authority, i.e. the United States Constitution, it operates without authority and is in effect an illegitimate government. The Constitution guarantees to the People a Republic. The rule of law – not the law of rulers.

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

DATED this 29 day of March 2021

By:



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