

No.

IN THE
SUPREME COURT OF THE UNITED STATES

John Dalen,

Petitioner,

v.

The State,

Respondent.

On Petition for Writ of Certiorari
to the South Carolina Court of Appeals

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APPENDIX A

**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Unpublished Opinion No. 2020-UP-323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. Blich,
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 overhead 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

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

THOMAS, HILL, and HEWITT, JJ., concur.

APPENDIX B

STATE OF SOUTH CAROLINA)
COUNTY OF OCONEE)
IN THE CIRCUIT COURT

FILED OCONEE COUNTY SC
BY CLERK H. WHITEFIELD
2017 AUG 23 P 3 15

STATE OF SOUTH CAROLINA,

vs.

RETURN OF THE CRIMINAL APPEAL

CASE NUMBER

John Dalen

2017 CP 37 490

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 which is commonly referred to as

(Code Section)

NO SC DL

(Common Name of Offense)

2-16

20 17

This matter was heard in a Bench trial on 8-17, 2017

and the Notice of Appeal was filed on 8-22, 2017 The

proceedings were (check appropriate box)

- recorded electronically
- recorded by a court reporter
- recorded in writing by the judge.

(P) (D)
other Derrick & Dalen (mailed)
Boxed handed

ENTERED
AW
COMPUTER

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 028, 2012.

The State called the following witnesses:

1. Henry Taylor Smith
2. _____
3. _____
4. _____
5. _____
6. _____

A summary of their testimony is attached.

The Defendant called the following witnesses:

1. John D. Sten
2. _____
3. _____
4. _____
5. _____
6. _____

A summary of their testimony is attached.

The State made the following Motions:

1. NA
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. N/A - 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 in \$232.50

Attached are copies of the items which are checked.

- Uniform Traffic Ticket No(s). 102 POT9 8082
- 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.

STATE OF SOUTH CAROLINA)

IN THE MAGISTRATE'S COURT

COUNTY OF OCONEE)

STATE,)

VS)

TICKET NO(s) 5102 P.O. 778092

John Dalen
Defendant.

OFFENSE: NO SC 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

Justin Day
FOREMAN

Bobby D. Bryson
JUROR

Steven Koels
JUROR

Kathy A. Brantley
JUROR

Eunice B. Rowland
JUROR

Paula Long
JUROR

APPENDIX C



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 2018-03-01 15:17:15 page 3 of 3

IT IS
by the

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A TRUE COPY
MAR - 1 2018
CLERK OF COURT - OCGNER CO

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 : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> 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), SCRPC; Rule 41(a), SCRPC (Vol. Non suit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; 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 _____ Judge Code 2165 Date _____

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:

Defendant
Plaintiff

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 judgment to parties who are not E-Filed or who are appearing pro se. (See Rule 77(d), O.C.R.C.P.)

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.

Information

BOX

UNAL

Judgment

by

to

to

to

to

to

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: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	<input type="checkbox"/> 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), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON): Rule 40(j), SCRPC; 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

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

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 is to 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)
		\$
		\$
		\$

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

The information above has been provided by the submitting party. Disputes concerning the amounts contained in this judgment should be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest and costs not available at the time the form and final order are submitted to the judge may be provided to the court. Title abstractors and researchers should refer to the official court order for judgment details.

In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Judge _____ Judge Code 2155 Date _____

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 (8) 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) and 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 judgment to parties who are not E-Fileers 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.

Additional information regarding decision by the court as referenced on page 1

Table with multiple rows and columns, likely for recording case details or judgments.

Additional information regarding decision by the court as referenced on page 1

Additional information regarding decision by the court as referenced on page 1

APPENDIX D



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

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:

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,

V. Claire Allen

CLERK

cc: William M. Blicht, Jr., Esquire
Alan McCrory Wilson, Esquire
David Rhys Wagner, Jr., Esquire
The Honorable R. Lawton McIntosh

The South Carolina Court of Appeals

John Dalen, Appellant,

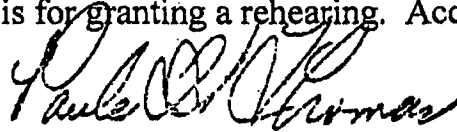
v.

The State, Respondent.

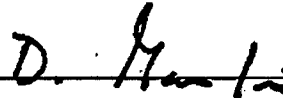
Appellate Case No. 2018-000637

ORDER

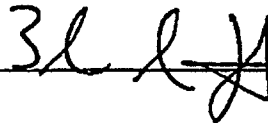
After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.



J.



J.

Columbia, South Carolina

cc:

John D. Dalen

William M. Blich, Jr., Esquire

Alan McCrory Wilson, Esquire

David Rhys Wagner, Jr., Esquire

The Honorable R. Lawton McIntosh

FILED
Jan 21 2021

APPENDIX E

The Supreme Court of South Carolina

John Dalen, Petitioner,

v.

The State, Respondent.

Appellate Case No. 2021-000168

ORDER

Based on the vote of the Court, the petition for a writ of certiorari is denied.

FOR THE COURT

BY Patricia A. Howard
CLERK

Columbia, South Carolina
December 10, 2021

cc:

William M. Blich, Jr., Esquire
Alan McCrory Wilson, Esquire
David Rhys Wagner, Jr., Esquire
John D. Dalen
The Honorable Jenny Abbott Kitchings

APPENDIX F

STATE OF SOUTH CAROLINA)
COUNTY OF OCONEE)

IN THE MAGISTRATE COURT OF
WESTMINSTER

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 21st day of April, 2017,


William F. Derrick, MAGISTRATE
OCONEE COUNTY

ise
udge
ode
ate

STATE OF SOUTH CAROLINA)
)
COUNTY OF OCONEE)

IN THE MAGISTRATE COURT OF
WESTMINSTER

STATE OF SOUTH CAROLINA)

ORDER FOR
MOTION FOR RECONSIDERATION

vs.)

JOHN DALEN,)

Defendant)

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.

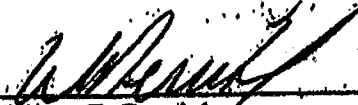
Rule 59 states that any motion for new trial (or reconsideration) may be granted 1) in which there has been a trial by jury, or 2) in an action tried without a jury. This particular case has not been heard nor decided, therefore this motion is improper.

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

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APPENDIX G

STATE OF SOUTH CAROLINA
OCONEE COUNTY

IN THE CITY OF WESTMINSTER
MUNICIPAL COURT

State of South Carolina,

Notice to Dismiss for Lack of
Jurisdiction

PLAINTIFF

John Dalen,

Summons No. 5102P0778082

ACCUSED,

Pro Per

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:

"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 will 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, 14

OCONEE COUNTY
SUMMARY COURT

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 dependant 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."

11 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, 20) 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."

Sherer 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 SW 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

"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;

Peckard vs. Benton, 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;

Pariett 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 as 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.

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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.

Ala. 45;
Pg. 3309

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.

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

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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.

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

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"... 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

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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."

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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.

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"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

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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.

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

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"... 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:

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"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. Patent 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.

Mostly imposed by the state for the purpose of raising revenue, and regulated; for when one seeks permission from someone to do something he 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.

PA 24 OF 244

"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 inflicted a penalty to a certain act, or where it requires licenses to be obtained to certain sum to 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)

A 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"

Applying these three questions to the statute in question, some very important issues

1. "Is there a threatened danger" in the individual using his automobile on the public in the ordinary course of life and business?

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

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

"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."

Bacahanan 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."

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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 be 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 constitution 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. 107
Dennis vs. Moses, 52 P. 107

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 not 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, P. 10

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

"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 or 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 (assuming 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 as 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.

STATE OF SOUTH CAROLINA
OCCONEE COUNTY

IN THE CITY OF WESTMINSTER
MUNICIPAL COURT

State of South Carolina,

Motion for Findings of Fact
and Conclusions of Law

PLAINTIFF:

Summons No. 5192P0778082

John Dale,

ACCUSED:

Pro Per

OCCONEE COUNTY
SUMMARY COURT

2013 JUN 13 P 1:25

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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.

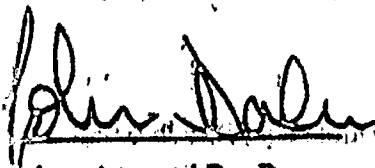
IN THE COURT OF THE COMMON PLEAS OF THE COUNTY OF ...
therefore, the state has no case, as the prosecution simply cannot prove that these statutes

...without first proving that the Accused was engaged in the regulated activity of ...
...which is legally impossible to do using only a law enforcement officer's
...or professional opinion during testimony absent other admissible substantive evidence,
...that conclusion, as the officer is not qualified to make such legal determinations and
...and then offer them as factual opinion and evidence through testimony at trial.

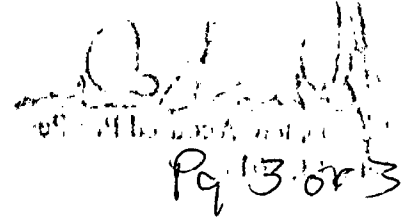
Whereby, on these legal and constitutional grounds, I move for your immediate
disqualification for bias, prejudice, and multiple violations of state law, the rules of procedure,
the rules of evidence, the rules of judicial and professional conduct, and criminal offenses
constituting felony violations 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. Dolan
Wend Valley Dr.
Wend Valley, SC 29693
77-4705



John Dolan, Accused Pro Per
Date: 13, 2017


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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

John Dalen, Appellant

v.

The State, Respondent

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DEC 17 2018

SC Court of Appeals

FINAL BRIEF

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“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

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“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.”

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“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.”

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“...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.”

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“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. 16

“Where there is no jurisdiction at all, there is no judge; the proceeding is as nothing.”

Marbury v. Madison, 5 U.S. 137Pp. 6, 15

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- Rubenstein v. Collins, 20 F. 3d 160 (1990) P. 17
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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 "*T*", *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

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*

(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

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

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

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, *[item “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

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

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

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 "T" 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 "T" 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)

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, un rebuttable 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, un rebuttable 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 un rebuttable 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 un rebuttable presumptions of legal fact and substantive fact are unconstitutional precisely because they act in direct contradiction of these rights.

In the sixth instance, an un rebuttable 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 un rebuttable 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 un rebuttable 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 un rebuttable 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

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.

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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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

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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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Applying 1st Amendment Protections to the States

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

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

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STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM OCONEE COUNTY

Court of Common Pleas

R. Lawton McIntosh

Appellate Case No. 2018 - 000637

RECEIVED

FEB 18 2021

S.C. SUPREME COURT

John Dalen, Appellant

v.

The State, Respondent

PETITION FOR WRIT OF CERTIORARI

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Questions Presented for Review

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

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

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Statement of the Case

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

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

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

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

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

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

Argument

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

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

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

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

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

Boyd v. United States, 116 U.S. 616: "It is the duty of the courts to be watchful for the Constitutional rights of the citizen and against any stealthy encroachments thereon."

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

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

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

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

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

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

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

Conclusion and Demand for Relief

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

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

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

DATED this 15th day of February 2021

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