

No.

In The  
Supreme Court of the United States

Prescott McCurdy  
*Petitioner*

v.

State of Maine  
*Respondent*

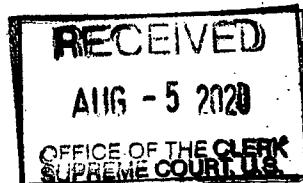
On Petition for the Writ of Certiorari  
to the Supreme Court of Maine

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PETITION FOR WRIT OF CERTIORARI

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Prescott McCurdy  
34 Allen Point Rd.  
Harpswell, Maine 04079  
(207) 449-1446





## QUESTIONS PRESENTED FOR REVIEW:

- 1) Has the 'peoples' right to '*personal liberty*' been suspended? Whereas the State; through statutes; is criminalizing '*personal liberty*' while authorizing its agencies and agents to seize private property(automobiles) without warrants; taking without compensation; then the transfer of such property to a private entity, as well as authorizing that private entity the right to demand compensation for the return of said property.
- 2) Does a statute which operates without *mens rea*, that criminalizes a contractual obligation, deny Due Process of Law and is this statute overly broad and vague on it's face and as applied?
- 3) Do the rulings/actions of judges and justices; in this case; deny Due Process of Law, violate their oaths of office to support the Constitution as well as constitute an '*Unfair Trial*'? Whereas the trial judge has; declared that definitions in a dictionary are not relevant in the State of Maine; denied questioning a witness on his/her knowledge of the Constitution; as well as denied submission of relevant evidence and law to the jury.

## PARTIES INVOLVED:

Prescott McCurdy <i>Petitioner</i> 34 Allen Point Rd. Harpswell, ME 04079 (207) 449-1446	A.A.G. MaComber <i>Respondent</i> 6 Statehouse Station Augusta, ME 04333-006 (207) 626-8507
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## LIST OF PROCEEDINGS:

*State of Maine v. Prescott McCurdy*, CUMCR - 18-20749, Cumberland County Superior Court, Judgment entered July 15, 2019.

*State of Maine v. Prescott McCurdy*, CUM-19-275, Maine Supreme Court, Judgment entered, March 5, 2020.

## (SIMILAR CASES)

*State of Maine v. Prescott McCurdy*, CUMCR -18-20748, Cumberland County Superior Court, Judgment entered August 6, 2019

*State of Maine v. Prescott McCurdy*, CUM-19-391, Maine Supreme Court, Judgment entered, May 12, 2020.

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## **BASIS FOR JURISDICTION:**

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1257 (a); Whereas; the State statutes involved in this case are repugnant to the Constitution and Laws of the United States. The judgment was affirmed by the Maine Supreme Court on March 5, 2020.

## **CONSTITUTIONAL PROVISIONS AND LEGAL PRINCIPLES INVOLVED:**

### **A: Constitutional Provisions**

(Article VI, Clause II, U.S. Constitution)

(Article VI, Clause 3, U. S. Constitution)

(4<sup>th</sup> Amendment, U.S. Constitution)

(5<sup>th</sup> Amendment, U.S. Constitution)

(6<sup>th</sup> Amendment, U.S. Constitution)

(9<sup>th</sup> Amendment, U.S. Constitution)

(13<sup>th</sup> Amendment, U.S. Constitution)

(14<sup>th</sup> Amendment; U.S. Constitution)

(Article I, Section 10, Clause 1, U.S.  
Constitution)

## B: Fundamental Principles

- ! *He who stands on his own rights injures no one.*
- ! *An action is not given to one who is not injured.*
- ! *Law favoreth life, liberty and dower.*
- ! *Law favoreth justice and right.*
- ! *Law favoreth common right.*
- ! *The intent and the act must both concur to constitute crime.*
- ! *The law is not to be violated by those in government.*
- ! *Force and wrong are greatly contrary to peace.*
- ! *An act of the court shall oppress no one.*
- ! *He is the best judge who relies as little as possible on his own discretion.*
- ! *That is the best system of law which confides as little as possible to the discretion of the judge.*
- ! *It is the duty of a judge to declare the law, not to enact the law or make it.*
- ! *Fraud and justice never dwell together.*
- ! *What is mine cannot be taken away without my consent.*
- ! *No action arises out of an immoral contract.*

- ! *A contract cannot arise out of an act radically vicious and illegal.*
- ! *The essence of a contract being assent, there is no contract where assent is wanting.*
- ! *Consent makes the law. A contract is a law between the parties, which can acquire force only by consent*
- ! *Nothing is so contrary to consent as force and fear.*
- ! *Whenever there is a doubt between liberty and slavery, the decision must be in favor of liberty.*
- ! *The government is to be subject to the law, for the law makes government.*
- ! *The construction of law works not an injury.*

"Our nation," wrote Chafee, "has thrived on the principle that, outside areas of plainly harmful conduct, every American is left to shape his own life as he thinks best, do what he pleases, go where he pleases." [cf. *Kent v. Dulles*, 357 U.S. 116 (1958)]

The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law. [ cf. *Marshall v. Jerrico*, 446 U.S. 238, 242 (1980); *Schweiker v. McClure*, 456 U.S. 188, 195 (1982)]

## STATEMENT OF THE CASE:

### Factual Background

On September 30, 2018, [i]; the Petitioner; was stopped by Brunswick Police officers and charged with operating an unregistered motor vehicle (M.R.S. 19-A §351) as well as false identification (M.R.S. 19-A § 2104). Crimes in the state of Maine. [My] property; a 1985 Toyota LandCruiser, FJ60; was searched and seized; without a warrant; then impounded at a local towing company, and 'held for safe keeping'. (see Appendix I )

On October 25, 2018, i sent a Notice to the town of Brunswick demanding the return of [my] property. (see Appendix J)

A reply from the police commander stated that i could not get [my] property back unless it was 'registered' and i would have to pay the impound fees. (see Appendix K)

A second Notice sent to the Brunswick Police dept. on November 9, 2018, was ignored. (see Appendix L)

{NOTE: The impounder, Atlantic Coast Towing, filed a claim for title under an abandonment statute. After a hearing at the Maine Bureau of Motor Vehicles, in which the BMV ordered [i] to pay Atlantic Coast

Towing for the return of [my] property or the automobile would have title transferred to Atlantic Coast Towing. [i] filed a Petition for Review and Ancillary Claim under M.R.Civ. P. 80(C) in Kennebec County Superior Court (Ap-19-09). As of, June 1, 2020, The decision of the BMV has been affirmed.}

A Pretrial Motion (see Appendix D) was submitted on March 21, 2019, declaring charges unconstitutional. Specifying that charge for false identification unconstitutionally vague, and challenging the legality of probable cause to arrest and seize property, as well as request for return of seized property.

A Motion Hearing was held on April 9, 2019. The Pretrial Motion claiming statutes unconstitutional was denied. (see Appendix B and C)

A Motion in Limine for Dismissal was filed on June 12, 2019. This motion argued that the False Identification charge, 29-A §2104, is overly broad and does not require intent. Alternatively requiring jury instruction on intent. (see Appendix D).

Motion in Limine was denied.

On June 2, 2019, a jury trial was held.

During cross examination, [i] asked the witness, “you have stated twice that you are familiar with the law.

Are you familiar with the Constitution of Maine and of the United States?" (trans pg67)

The prosecution objected. The trial judge allowed.

The witness stated "yes, sir."

Prosecution objected to further questions to the witness, on his knowledge of the Law.

Trial judge sustained the prosecutors objections, declaring that, "the Constitution is the law of the land but that is a legal issue not a factual issue for Officer Curtis." (trans pg68)

This error was further aggravated by disallowance of further questions regarding the Law. (tr 126, 127)

During cross examination, the witness, Brunswick Police Officer Curtis; confirmed that [i] was not driving to endanger anyone nor did the operation of [my] property harm anyone, and that i was conducting myself in a decent and orderly manner. (trans pg 68-71)

The witness also testified that [i] was not operating a commercial vehicle. (trans pg 71-2)

On furthering my questioning of the witness, i attempted to use documentary evidence in the form of Black's Law dictionary.

i requested the submission of definitions as facts. (trans pg77)

The trial judge denied my use of such evidence. Stating that, "definitions are not facts, those would be law, so i will sustain the objection." (trans pg77)

i argued, "definitions in a dictionary are facts, they are written and can be verified." (trans pg77)

The trial judge stated further that, "they are law because the bottom line is the definitions that are relevant to this proceeding are those set forth in the Statute, are those provided by the Court." (trans pg77)

The trial judge continued, " We don't let the jury have a dictionary to decide for itself what something means if the word has been defined in the Statute." (trans pg77)

[i] questioned the witness as to why he impounded [my] automobile.

the witness responded, "the reason i impounded your vehicle is because the registration expired back in 2014... the vehicle was not fit for roadway due to the... because... the rear registration plate was obstructed, there is no registration plate visible on the vehicle, and where it had expired in 2014, it was not registered to be legally operated on the roadway." (trans pg84-5)

[i] showed the witness a photograph that he took during the seizure. (Defense Exhibit 1)

[i] asked the witness, "is there anything obscuring that plate currently in the photograph?" (trans pg89)

The witness testified, "yes, there is."

i asked the witness, "what do you see that's obscuring in that photograph?"

The witness testified, "the expiration sticker is not attached to the registration plate." (trans pg89)

[i] repeated a questioning concerning obscuring, the witness stated, "because the sticker to the registration plate for the expiration is not attached which means it is falsely identified."(trans pg90)

[i] showed officer Curtis, the witness, States Exhibit 2, and asked, "in States Exhibit 2, we have bicycles and we have a spare tire. Officer Curtis, are those unusual things to have on the back of a vehicle?" (trans pg91)

Officer Curtis testified, " No, they are not."

Co-Counsel questioning [i]; the accused:

Question by co-counsel. "is your understanding that to register your vehicle has anything to do with safety?"

[My] response, "It is my understanding it has nothing to do with safety."

Continuing my response, "What is the basis of the registration is the taxation and the ... actually the excise tax is unlawful tax under the Constitution."

Further questions from co-counsel. "were you using – was this a vehicle that was used commercially." (tr pg126)

[My] testimony, "It was not, under the Constitution the police power of the State, they are required to regulate commerce. As far as private people are concerned, we need to be let alone unless we are interfering with somebody else. the limitations of the police power of the State are limited to the health and welfare of the people, and registration is a tax." (tr pg126)

Co-counsel, "In your opening statement, you asked the question, what kind of conduct would you consider a crime, tell me what you meant by that?"

[i] responded, "Conduct that is injurious to people, to the community, such as murder, rape, theft, arson." (tr pg127)

[my] continued responses. "No, the plate is not clearly covered with any kind of tape to change the markings or anything of that such." (tr pg129)

### Discussion of Jury Instruction:

The trial judge in discussing jury instructions, "then you can say i want the following additional definitions or instructions .... and i can give them or not depending on whether i agree with you." (tr pg135)

After break, the trial judge stated , "Let me tell you what i am going to do.... i am not going to give any of those (referring to accused instructions as to definitions) over your objection, Mr. McCurdy, because it seems to me that what we are doing now is talking about things that don't have anything to do with the case in particularly, and we are also getting things that are definitions from places that I don't necessarily agree are definitions applicable to Maine." (tr pg141)

Trial judge during further discussion of jury instructions, "it is the function of the court to instruct the jurors on the law and it is the jurors duty to decide the facts and be governed by the law as instructed." (tr pg144)

The jury was given some instruction as to the Constitutions of Maine and the United States. (trans pg155)

The other instructions on definitions; that [i] requested; were not given to the jury.

The trial judge, in speaking to the jury stated, "i am obliged to tell you that, under Maine Law, persons operating motor vehicles on roadways are properly required by law to have motor vehicles registered as a condition of operation."

The trial judge made it clear in his instructions to the jury that, "under Maine Law, there is no inherent Constitutional right to drive an unregistered motor vehicle." (tr pg155)

After deliberation the jury returned with a question regarding the title to statute 29-A §2104, False Identification.

The trial judge answered their question. "as a matter of law, Statutory titles of sections and subsections aren't law, the law is the text of the actual Statute. In fact, the legislature has actually said that our statutory titles are not provisions of law." (tr pg174-5)

On June 12, 2019, [i] was found guilty on both counts by the jury.

A Motion for New Trial with a claim of No 'Fair Trial' and a Motion for Arrest of Judgment claiming lack of jurisdiction and criminal activity were submitted on June 24, 2019.(see Appendix E and F)

Both of the Motions for New Trial and Arrest of Judgment were Denied on July 1, 2019.

A notice of Appeal was filed on July 12, 2019.

On November 12, 2019, the brief was filed.

The brief challenged the constitutionality of the statutes, as to the infringement of 'personal liberty', denial of Due Process of Law, denial of the right of contract, the unequal application of an overly broad and vague False Identification statute, as well as the lack of *mens rea*, the constitutionality of taxes associated with registration and involuntary servitude.

The brief also challenged the actions/ inactions of the trial judge as to 'standing', jurisdiction, denial of questioning the witness, denial of the use and submission of documentary evidence, and denial of jury instruction.

The appeal brief also declared the rights of the jury.

I submitted a reply brief on January 1, 2020. The reply brief challenged the 'Reasonableness' of the statutes in question.

The ruling of the Maine Supreme Court was judgment affirmed on March 5, 2020. (see Appendix A)

## REASONS FOR GRANTING WRIT:

### 1<sup>ST</sup> ARGUMENT: State Authorized Criminal Activity, and the UnConstitutionality of criminal Statute Claim<sup>1</sup>

**a)** The State, and its agencies and agents, believe that an unregistered automobile can not be used on the '*public*' roadways. (see Appendix H, 19-A §351) Constituting an abridgment of '*Personal Liberty*'.

"Undoubtedly the right of locomotion, the right to remove from one place to another according to inclination, is an attribute of personal liberty, and the right, ordinarily, of free transit from or through the territory of any State is a right secured by the Fourteenth Amendment and by other provisions of the Constitution." [cf. *Williams v. Fears*, 179 U.S. 270, 274 (1900)]

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 a 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 a common right which

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<sup>1</sup> The Unconstitutional claims and State authorized criminal activity were properly raised in state court proceedings.

he has under his right to life, liberty, and the pursuit of happiness. Under this constitutional guaranty 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." [cf. *II Am. Jur.* (1<sup>st</sup>) Constitutional Law, §329, p.1135]

Where activities or enjoyment natural and often necessary to the wellbeing of an American citizen, such as travel, are involved, we will construe narrowly all delegated powers that curtail or dilute them. See *Ex parte Endo*, 323 U. S. 283, 323 U. S. 301-302.; *Hannegan v. Esquire, Inc.*, 327 U. S. 146, 327 U. S. 156; *United States v. Rumely*, 345 U. S. 41, 345 U. S. 46. We hesitate to find in this broad generalized power an authority to trench so heavily on the rights of the citizen." [cf. *Kent v. Dulles*, 357 U.S. 116 (1958)]

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." [cf. *25 Am. Jur.* (1st) Highways Sect.163; *Chicago Motor Coach vs. Chicago*, 169 N.E. 22, ALR; *Ligare vs. Chicago*, 139 ILL. 46, 28 NE 934; *Boon vs. Clark*, 214 S.W. 607]

The witness testified that [i] was conducting myself in an orderly and decent manner, not endangering anyone. (see pg 6)

"State Police Power extends only to immediate threats to public safety, health, welfare," [cf. *Michigan v. Duke* 266 US, 476 Led. At 449]

**Happiness.** Under this constitutional guaranty, 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." [cf. *II Am.Jur.* (1st) Constitutional Law, § 329, p.1135]

The witness verified that the automobile [i] was operating, was not a commercial vehicle (see pg 6). Therefore the 'public' has no interest in [my] property.

"When, therefore, one devotes his property to a use in which the public have an interest, he in effect grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created." But so long as he uses his property for private use, and in the absence of devoting it to public use, the public has no interest therein which entitles it to a voice in its control." [cf. *Munn v. Illinois*, 94 U.S. 113, 24 L. Ed. 77 (1877)]

The witness claimed [my] property was impounded do to an expired registration. Is that an exigent circumstance?

[My] property was seized without a warrant; taken without compensation; stolen. (see Appendix H; pg XXII, Title 17-A §355)<sup>2</sup>

"The 4<sup>th</sup> Amendment general mandates that absent exigent circumstances, the police must secure a warrant prior to the search and seizure of an automobile." [cf. *Am. Jur. 2<sup>nd</sup>, Searches and Seizures* §137]

Under *Brown*, courts evaluating seizures "less intrusive than a traditional arrest" are to consider (1) "the gravity of the public concern served," (2) "the degree to which the seizure advances the public interest," and (3) "the severity of the interference with individual liberty".[cf. 43 U.S. 47, 50-51 (1979)]

Why is [my] property being "Held for safe keeping"? (see Appendix I )

*Colorado v. Bertine*, 479 U.S. 367 (1987), the seizure was unconstitutional because police exercised too much discretion in deciding whether to impound the vehicle and did not follow "standard criteria" in making the choice.

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2 See Sup. Ct. R. 14(1)(g)(i). The 4<sup>th</sup> Amendment and Due Process of Law claims were properly raised in the State court proceedings.

The taking and transfer to a private entity of [my] property, constitutes conversion.

"All that is required is that the defendant exercise control over the chattel in a manner inconsistent with the plaintiff's right of possession." [cf. *Jensen v. Chicago & W.I.R. Co.*, 94 Ill.App.3d 915, 50 Ill.Dec 407, 419 N.E.2d 578]

"An essential element of the crime of criminal conversion is that the property must be owned by another and the conversion thereof must be without the consent and against the will of the party to whom the property belongs, coupled with the fraudulent intent to deprive the owner of the property." [cf. *People v. Fielden*, 162 Colo. 574 (Colo. 1967)]

Being in possession of [my] stolen property, and demanding monetary compensation for the return of said property, is compulsion of a contract in which [i] did not agree to. In other words, BlackMail.

**BlackMail.** 'term for extortion and it is a criminal act where a person will attempt to get money from another person by threats.' (Black's Law Dict. 2<sup>nd</sup>)

And the State authorizes all these acts. (see Appendix H, pg XXI, Impoundment)

No Due Process of Law here.<sup>3</sup>

The right to travel is a part of the 'liberty' of which the citizen cannot be deprived without due process of law under the Fifth Amendment. . . . Freedom of movement across frontiers . . . and inside frontiers as well, was a part of our heritage. . . ." [ cf. *Kent v Dulles* 357 U.S. 116, 357 U.S 125-6 (1958)]

"The Due Process Clause is intended to prevent the government from abusing its power or employing it as an instrument of oppression." [cf. *General Motors Corp. v. Romein*, 503 U.S. 181, 112 S. Ct. 1105, 117 L. Ed.2d 328 (1992)]

All this in order to compel a contract of registration. Do the people no longer have liberty to contract?

**Contract.** A promissory agreement between two or more persons that creates, modifies, or destroys a legal relation. An agreement creating obligation, in which there must be competent parties, subject-matter, legal consideration, mutuality of agreement and mutuality of obligation. There can be no true contract without the mutual and concurrent intention of the parties. (emphasis added) (Black's Law Dict. 4<sup>th</sup>)

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3 See Sup. Ct. R. 14(1)(g)(i). The 5<sup>th</sup> and 14<sup>th</sup> Amendment claims were timely and properly raised in State Court proceedings.

“The right to contract is secured by constitutional provisions protecting property and liberty.” [cf. *Allgeyer v. Louisiana*, 165 U. S. 578; *Leep v. Ry.*, 58 Ark. 407; 41 Am. St. Rep. 109; 23 L. R. A. 264; 25 S. W. 75; *Gillespie v. People*, 188 Ill. 176; 80 Am. St. Hep. 176; 52 L. R. A. 283; 58 N. E. 1007; *State v. Loomis*, 115 Mo. 307; 21 L. R. A. 789; 22 S. W. 350.]

“The term “contracts” is used in the Contract Clause in its popular sense of an agreement of minds.” [cf. *Crane v. Hahlo*, 258 U.S. 142, 145–46 (1922); *Louisiana ex rel. Folsom v. Mayor of New Orleans*, 109 U.S. 285, 288 (1883); *Morley v. Lake Shore Ry.*, 146 U.S. 162, 169 (1892)]

“There is no legal or equitable right requiring a party to involuntary contract with another party.” [cf. *Am Jur 2d Const. Law* § 641; *Ohio University Faculty Ass'n v. Ohio University*, 5 Ohio App. 3d 130 449 N.E. 2d 792, 11 Ed. Law Pop 623 (4<sup>th</sup> dist. Athen County 1982)]

And the excise tax imposed for the use and enjoyment of an automobile, is Unconstitutional. (see Appendix H, pg XXIII)

**Excise.** a tax on the manufacture, sale, or consumption of goods within a country (New Merriam-Webster Dict.)

“duties, imposts and excises.” These terms, according to the Chief Justice, “were used

comprehensively to cover customs and excise duties imposed on importation, consumption, manufacture and sale of certain commodities, privileges, particular business transactions, vocations, occupations and the like." [cf. *Thomas v. United States* 192 U.S. at 370 (1904)]

"A state may not impose a charge for the enjoyment of a right granted by the Federal Constitution." [cf. *Murdock v. Pennsylvania* 319 U.S. 105]

The undue influence of such contracts through criminalization puts people under duress.

'Under the doctrinal test for duress, "wrongful acts" includes illegal actions, but extend beyond that to some immoral acts, including threats of criminal prosecution and claiming a right or failing to perform on a contract when one does not (subjectively) believe that one is legally justified.' [cf. *Restatement (Second) of Contracts* §175, 176]

THEREFORE; the said statute is Unconstitutional on its face and as applied, and the State is violating its own laws. (see Appendix H pg XXII-XXIII, Title 17-A)

2<sup>ND</sup> ARGUMENT. The other charge of 'False Identification', that i was convicted under;

M.R.S. 29-A §2104(2)(see Appendix H, pg XXII); is overly broad, vague, and does not require *mens rea*.<sup>4</sup>

“the “general rule” is that a guilty mind is “a necessary element in the indictment and proof of every crime.” [cf. *Elonis v. U.S.*, 575 U.S. \_\_\_\_ (2015)]

False implies an intent to deceive and injure.

**False.** Untrue; erroneous; deceitful; contrived or calculated to deceive and injure. Unlawful. In law, this word means something more than untrue; it means something designedly untrue and deceitful, and implies an intention to perpetrate some treachery or fraud. *Batterman v. Ingalls*, 48 Ohio St. 408. 28 N. 10. 108; *Hatcher v. Dunn*, 102 Iowa, 411, 71 N. W. 343, 30 L. It. A. GS9; *Mason v. Association*, 18 U. C. C. P. 19; (Black's Law Dict. 2<sup>nd</sup>)

The witness testified that bicycles and a spare tire are not uncommon items to have on the back of an automobile (see pg 8). Therefore; charging [i] with this vague and overly broad statute constitute an arbitrary and discriminatory application.

“Vagueness may invalidate a criminal law for either of two independent reasons. First, it may fail to provide the kind of notice that

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4 See Sup. Ct. R. 14(1)(g)(i). The *mens rea*, vagueness, and overly broad claims were properly raised in the State court proceedings. (see pg 5)

will enable ordinary people to understand what conduct it prohibits; second, it may authorize and even encourage arbitrary and discriminatory enforcement. *See Kolender v. Lawson*, 461 U.S., at 357. [cf. *Chicago v. Morales*, 527 U.S. 41, 56 (1999)]

Where is the injury?

"Due process of law and the equal protection of the laws are secured if the laws operate on all alike, and do not subject the individual to an arbitrary exercise of the powers of government." [cf. *Duncan v. Missouri*, 152 U.S. 377, 382 (1894)]

The witness also stated that not having the registration 'sticker' on the plate constituted obstruction and false identification. (see pg 7) How does this constitute obstruction or even classify as 'False'?

When the jury asked about the title of said statute; the judge declared that 'titles to law are not law or provisions of the law'. (see pg10)

"Under a constitutional provision \*\*\* requiring the subject of the legislation to be expressed in the title, that portion of an act is often the very window through which legislative intent may be seen." [cf. *State v. Clinton County*, 76 N.E. 986, 166 Ind. 162 (1906)]

Furthermore; Whereas this statute implies an obligation; where there is no contract/agreement, there exists no obligation. (see pg 15)

THEREFORE; the said statute; on its face and as applied; Unconstitutionally denies Due Process of Law.

3<sup>RD</sup> ARGUMENT: Non neutral judge, denial of evidence, denial of jury instruction, denial of Due Process, No Fair Trial claim<sup>5</sup>

**a)** Denial of questioning the witnesses knowledge of the Constitution.

During cross examination, i was denied questioning the witness on his knowledge of the Constitution. (see pg5)

According to Black's Law Dictionary, the Constitution is a fact. 'Laws of the State, international law, the constitutions, all are facts established by common notoriety.' (Black's Law Dictionary 4<sup>th</sup> ed., Judicial Notice)

**b)** Denial of the use of documentary evidence

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<sup>5</sup> All Due Process of Law claims were properly raised in State Court proceedings

[i] attempted to use and submit documentary evidence. This evidence was definitions found in Black's Law Dictionary 4<sup>th</sup> Ed. and others.

The judge denied the use of such, declaring that:

"definitions that are relevant to this proceeding are those set forth in the Statute, are those provided by the Court." continuing, "We don't let the jury have a dictionary to decide for itself what something means if the word has been defined in the Statute, are those provided by the Court." (see pg6)

Are the definitions in a dictionary untrue?

Fact: Something demonstrated to exist or known to have existed, a piece of information, the truth, A fact is an item of knowledge or information that is true. (Collins English Dictionary); a thing done, a state of things that is, the publication itself, evidence documentary and oral. (Black's Law Dict. 4<sup>th</sup> ed.)

This act is deceitful and oppressive.

**c) Denial of Jury instructions**

[i] submitted documentary evidence in the form of Judicial Notices under rule 201(2)(c & d) Maine Rules of Evidence. The judge denied these instructions declaring that: "because it seems to me that what we are doing now is talking about things that don't have anything to do with the case in particular, and we are also getting things that are definitions from places that I don't necessarily agree are definitions applicable to Maine." (see pg8)

Declaring that definitions from a dictionary are not applicable in Maine constitutes a deceitful and oppressive act.

As far as **a), b),** and **c)** above are concerned:

**Evidence.**

a) Any species of proof, or probative matter, legally presented at the trial of an issue, by the act of the parties and through the medium of witnesses, records, documents, concrete objects, etc., for the purpose of inducing belief in the minds of the court or jury as to their contention;

b) Facts judicially noticed are equivalent to evidence;

c) opinions of experts is evidence which is to be weighed and considered like any other evidence;

d) That which demonstrates, makes clear, or ascertains the truth of the very fact or point in issue;

e) That which furnishes or tends to furnish proof. It is that which brings to the mind a just conviction of the truth or falsehood of any substantive proposition which is asserted or denied.

f) That which tends to prove or disprove any matter in question, or to influence the belief respecting it. Belief is produced by the consideration of something presented to the mind. the matter thus presented, in whatever shape it may come, and through whatever material organ it is derived, is evidence.

(Black's Law Dict. 4<sup>th</sup> ed.)

'where the matter published is proper for public information, the truth thereof may be given in evidence. (Article I, sect 4, Maine Constitution)

It is a basic tenet in U.S. Jurisprudence that "the public ... has a right to every [person's] evidence," and that parties in litigation should avail themselves of all rational means of ascertaining truth" [cf. *Trammel v. United States*, 445 U.S. 40, 100 S.Ct. 906, 63 L. Ed. 2d 186 (1980)]

"and of the traverse Juries, respectively, to try, according to the established forms and principles of law; all causes which shall be committed to them, and to decide at their

discretion by a general verdict, both the 'fact and the law, involved in the issue;" [cf. Chapter LXXXIV, sect. 15, *Laws of The State of Maine* (1821)]

**d) Denial of Due Process of Law**

(see a, b, c, above)

Denial of '*Fundamental Principles*' of law is a denial of Due Process of Law.

"The Supreme Court laid down the rule which is now the accepted and settled principle, that the Due Process Clause requires that state action, through one agency or another, shall be consistent with the fundamental principles of liberty and justice which lie at the base of all our civil and political institutions." [cf. *Am. Jur.* 2d 16a, p.355: *Poulos v. State of New Hampshire*, 345 U.S. 395, 73 S. Ct. 760, 97 L. Ed., 1105, 30 A.L.R. 2d 987 (1953); *De Jonge v. State of Oregon*, 299 U.S. 353, 57 S. Ct. 255, 81 L. ed. 278 (1937)]

"The U.S. Supreme Court cannot interfere unless the judgment amounts to a merely arbitrary or capricious exercise of power or is in clear conflict with those '*fundamental principles*' which have been established in our system of jurisprudence for the

protection and enforcement of private rights." (emphasis added) [cf. *Am. Jur.* 2d 16b, p.494: *American Ry. Express Co. v. Commonwealth of Kentucky*, 273 U.S. 269, 47 S. Ct. 353, 71 L. Ed. 639 (1927)]

The '*fundamental principles*' that have been denied are:

- ! *He who stands on his own rights injures no one.*
- ! *An action is not given to one who is not injured.*
- ! *Law favoreth life, liberty and dower.*
- ! *Law favoreth justice and right.*
- ! *Law favoreth common right.*
- ! *The intent and the act must both concur to constitute crime.*
- ! *An act does not make a man a criminal, unless his intention be criminal.*
- ! *The law is not to be violated by those in government.*
- ! *Force and wrong are greatly contrary to peace.*
- ! *An act of the court shall oppress no one.*
- ! *He is the best judge who relies as little as possible on his own discretion.*
- ! *It is the duty of a judge to declare the law, not to enact the law or make it.*

- ! *That is the best system of law which confides as little as possible to the discretion of the judge.*
- ! *Fraud and justice never dwell together.*
- ! *No action arises out of an immoral contract.*
- ! *A contract cannot arise out of an act radically vicious and illegal.*
- ! *The essence of a contract being assent, there is no contract where assent is wanting.*
- ! *Consent makes the law. A contract is a law between the parties, which can acquire force only by consent*
- ! *Nothing is so contrary to consent as force and fear.*
- ! *Whenever there is a doubt between liberty and slavery, the decision must be in favor of liberty.*

“The vague contours of due process do not leave judges at large to do as they will and they may not draw on their merely personal and private notions and disregard the limits that bind them in their judicial functions.”  
[cf. *Rochin v. California*, 342 U.S. 165, 72 S. Ct. 205, 96L. Ed. 183, 25 A.L.R. 2d 1396 (1952)]

THEREFORE; given the denial of ALL the above (a, b, c, and d), there has been No Fair Trial and there has been an Obstruction of Justice.

"Our Supreme Court has also held the denial of due process is a denial of fundamental fairness, shocking to a universal sense of justice." [cf. *Oshrin v. Coulter*, 142 Ariz. 109, 688, P2.d 1001 (1984) See *Kinsella v. U.S. ex rel. Singleton*, 361 U.S. 234, 80 S. Ct. 297, 4 L. Ed.2d 268]

"The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law." [ cf. *Marshall v. Jerrico*, 446 U.S. 238, 242 (1980); *Schweiker v. McClure*, 456 U.S. 188, 195 (1982)]

'A right to jury trial is granted to criminal defendants in order to prevent oppression by the Government. Those who wrote our constitutions knew from history and experience that it was necessary to protect against unfounded criminal charges brought to eliminate enemies and against judges too responsive to the voice of higher authority.'

*(Constitution of the U.S.of A. Analysis and Interpretation 2013 pg1630)*

**Fair and Impartial Trial.** One where accused's legal rights are safeguarded and respected. (Black's Law Dict 4<sup>th</sup>)

**Obstruction of Justice.** The noncompliance with the legal system by interfering with (1) the law administration or procedures, (2) not fully disclosing information or falsifying statements, and (3) inflicting damage on an officer, juror or witness. (Black's Law Dict. 2<sup>nd</sup>)

## ADDITIONAL REASONS FOR GRANTING WRIT:

1. *The welfare of the people is the supreme law.*  
(Maxim of Law)
2. *Justice is neither to be denied nor delayed*  
(Maxim of Law)
3. “[c]onventional notions of finality of litigation have no place where life or liberty is at stake and infringement of constitutional rights is alleged.” [cf. *Sanders v. United States* 373 U.S. at 8]
4. “The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws whenever he receives an injury. One of the first duties of government is to afford that protection.” [cf. *Marbury v. Madison* 5 U.S. 137 (1803)]
5. The State believes that;  
labeling someone as a criminal; when NO ONE has been harmed; is '*Reasonable*'.  
And that; seizure; imprisonment; of a person; when NO ONE has been harmed; is '*Reasonable*'.  
And that; seizure without a warrant; taking without compensation; theft; of a person's property; when NO ONE has been harmed; is '*Reasonable*'.  
And that; Deceiving the jury is '*Reasonable*'.  
And that; Coercion is '*Reasonable*'.  
And that; Conversion of a people's property; is '*Reasonable*'.

And that; Extortion; is '*Reasonable*'.

And that; Oppression; is '*Reasonable*'.

And that; Involuntary Servitude; is '*Reasonable*'.

6. And the State also believes these actions are '*Manifestly Necessary*'.

7. And apparently so does the people of Maine's Justice(truth) system.

8. "It has been said that we must decide whether a state law is "fair, reasonable and appropriate," or is rather "an unreasonable, unnecessary and arbitrary interference with the right of the individual to his personal liberty or to enter into . . . contracts," [cf. *Lochner v. New York*, 198 U. S. 45, 198 U. S. 56. [cf. *Griswold v. Connecticut*, 381 U.S. 479 (1965)]]

9. The harm to the rights of appellants is apparent. It cannot be gainsaid that citizens have a right to drive upon the public streets of the District of Columbia or any other city absent a constitutionally sound reason for limiting their access. . . . It is apparent that appellants' constitutional rights are violated. It has long been established that the loss of constitutional freedoms, "for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion)

(citing *New York Times Co. v. United States*, 403 U.S. 713(1971)). [cf. *Caneisha Mills v. D.C.*, 08-7127 (2009)]

10. The State is ignoring the charter of its own existence and judges are ignoring their oath.

"It is abiding truth that "[n]othing can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard of the charter of its own existence." *Mapp v. Ohio*, 367 U.S. 643, 659 (1961)". [cf. *Harris v. New York* 401 U.S. 222 (1971)]

**Constitution.** The written instrument agreed upon by the people of a union or a particular state, as the absolute rule of action and decision for all departments and officers of the government in respect to all the points covered by it, which must control until it is changed by the authority which established it, and in opposition to which any act or ordinance of any such department or officer is null and void. (Cooley, Const. Lim, 3. Black's Law Dict. 4<sup>th</sup>)

11. What the State, its agencies, and agents are doing is akin to bullies on the playground.

The Court then declared that "[a]rbitrary power, enforcing its edicts to the injury of the persons and property of its subjects, is not law, whether manifested as the decree of a personal monarch or of an impersonal multitude. And the limitations imposed by

our constitutional law upon the action of the governments, both state and national, are essential to the preservation of public and private rights, notwithstanding the representative character of our political institutions. The enforcement of these limitations by judicial process is the device of self-governing communities to protect the rights of individuals and minorities, as well against the power of numbers, as against the violence of public agents transcending the limits of lawful authority, even when acting in the name and wielding the force of the government." [cf. *Hurtado v. California*, 110 U.S. 516, 528, 532, 536 (1884)]

12. "The constitution is a charter of negative liberties; it tells the state to let people alone....." [cf. *Bower v. Devito*, 686 F.2d 616, 618 (7<sup>th</sup> Cir. 1982)]

13. "The people's rights are not derived from the government, but the government's authority comes from the people." [cf. *City of Dallas v. Mitchell*, 245 S.W. 944 (Tex. App. - Dallas 5th Dist., 1922)]

14. "No one is bound to obey an unconstitutional law... Since an unconstitutional law is void, the general principles follow that it imposes no duties, confers no rights, creates no offices, bestows no power or authority on anyone, affords no protection, and justifies no acts performed under it...and no courts are bound to enforce it." [cf. *16 Am. Jur. 2d* 177]

15. *It has been said, with much truth, "Where the law ends, tyranny begins"* (Maxim of Law)

16. "justice. must satisfy the appearance of justice", [cf. *Levine v. United States*, 362 U.S. 610, 80 S.Ct. 1038 (1960), citing *Offutt v. Untied States*, 348 U.S. 11, 14, 75 S.Ct. 11,13 (1954)

#### CONCLUSION:

For the foregoing reasons, it is requested that; this Petition for a Writ of Certiorari be granted.

*"Without justice, there can be no peace."*

MLK

[i] say here and will verify in open court, that all herein be true; to the best of my knowledge.

DATE: 07/17/20   
\_\_\_\_\_  
Prescott McCurdy