

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY COURT OF COMMON PLEAS
The Honorable Marvin H. Dukes, Master in Equity

Case No. 2011-CP-07-04722

CITY OF BEAUFORT, Respondent

v.

JOSEPH C. SUN, Appellant

RESPONDENTS' INITIAL BRIEF

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SC Court of Appeals

TABLE OF CONTENTS

Table of Authorities	iii
Statement of the Case	1
Statement of Facts	1
Standard of Review	5
Argument	5
Conclusion	7

TABLE OF AUTHORITIES

CASES

<i>City of Landrum v. Sarratt</i> 352 S.C. 139, 141, 572 S.E.2d 476, 477 (Ct.App.2002)	5
<i>Rogers v. State</i> 358 S.C. 266, 594 S.E.2d 278 (2004)	5
<i>State v. Bowie</i> 360 S.C. 210, 600 S.E.2d 112 (Ct.App.2004)	5
<i>State v. Branham</i> 392 S.C. 225, 230, 708 S.E.2d 806, 809 (Ct. App. 2011)	6
<i>State v. Cutter</i> 261 S.C. 140, 199 S.E.2d 61 (1973)	5
<i>State v. Henderson</i> 347 S.C. 455, 457, 556 S.E.2d 691, 692 (Ct.App.2001)	5
<i>State v. Landis</i> 362 S.C. 97, 101, 606 S.E.2d 503, 505 (Ct. App. 2004)	5
<i>State v. Wilson</i> 345 S.C. 1, 545 S.E.2d 827 (2001)	5

RULES

S.C. Rule of Criminal Procedure 5(a)(1)(B)	5
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STATEMENT OF THE CASE

In this case, Appellant, Joseph C. Sun, seeks review of his conviction in the Beaufort Municipal Court by jury verdict on the charges of speeding (56 mph in a 45 mph zone) and failing to produce registration to his vehicle. This jury trial occurred on January 11, 2011, which resulted in a verdict of guilty on both charges. (R. p. __). On January 20, 2011, Appellant filed a written Motion for New Trial. The Municipal Judge held a hearing on this Motion on November 3, 2011. (R. p. __). After a full hearing, the Municipal Judge denied the Motion for a New Trial. (R. p. __).

Appellant appealed this decision to the Circuit Court. (R. p. __). A hearing was held on March 18, 2013, before the Honorable Marvin Dukes, III, Beaufort County Master in Equity and Special Circuit Judge. At Appellant's request, Judge Dukes gave the Appellant additional time to file a supplemental brief, which Appellant filed on March 28, 2013. (R. p. __). Respondent replied to this supplemental brief on April 12, 2013. (R. p. __). By Order dated April 19, 2013, Judge Dukes ruled that there was no error or law, and he therefore affirmed the rulings of the Municipal Court and the jury's verdict. (R. p. __). This appeal followed.

STATEMENT OF FACTS

This case arises from a traffic stop by Beaufort Police Officer Kennedy Sooknannan on May 22, 2009, in which Appellant was charged with speeding (56 mph in a 45 mph zone)

and for failure to produce registration to his vehicle. Appellant demanded a jury trial on these charges.

By letter to the Beaufort City Police Department dated June 15, 2009, Appellant requested “all documents and tangible objects which Officer Sooknannan will present at the trial on the referenced Traffic Ticket...” (R. p. __). Pursuant to this request, Respondent produced to Appellant copies of the tickets, and the in-car video of the traffic stop from the officer’s patrol vehicle.

The case was called for a jury trial on January 11, 2011. Officer Kennedy Sooknannan, presented the case for the City. He testified that on May 22, 2009, at approximately 4:00, he was on Highway 170 in the City of Beaufort, heading south, controlling traffic in the oncoming north-bound lanes. (R. p. __). Prior to commencing work that day, the officer testified that he checked and tested his Doppler radar and found it to be working properly. He observed the Appellant’s vehicle passing another vehicle in the opposite direction, and his radar tracked the Appellant’s vehicle traveling 56 mph in a 45 mph zone. The officer activated his blue lights, turned around in the road, and proceeded to conduct a traffic stop in the Lowe’s parking lot. When he activated his blue lights, his in-car dash camera activated. At the trial, the video of the stop was played and shown to the jury, without objection. (R. p. __).

Officer Sooknannan testified, and the video showed, the Appellant stating that he was late for Federal Court, which was later shown to be Family Court. (R. p. __). The officer requested registration for the vehicle, no registration was produced, and the Appellant

actually challenged the officer to issue him a ticket for no registration. The video showed that, during the stop, the Appellant was on his cell phone calling 911 emergency dispatch for no apparent reason. (R. p. __).

During his testimony, the officer testified that he had placed personal notes on the back of the green copy of the ticket, which had subsequently been destroyed. The Appellant objected that this information had not been produced in response to his Rule 5 request. The officer explained that these, and other notes of unrelated cases, many containing sensitive personal information, were destroyed in the normal course of the business of the Police Department, after the original court date of this case which was June 25, 2009. The Municipal Judge ruled that there was no Rule 5 violation, as this destruction was non-case specific, and was in the normal course of the Police Department. (R. p. __).

The officer testified that the Appellant was difficult to deal with after the traffic stop, that he was yelling and very irate, and that he refused to give the documents requested by the officer. Because of this unexpected hostile attitude by the Appellant, the officer had clear memory of the traffic stop despite the passage of time. (R. p. __).

The pro-se Appellant testified, contending that he was not speeding because he doesn't drive fast, and that he had no record of speeding in the past 10 years. On cross examination, the officer questioned Appellant about a speeding charge on April 27, 2009 as shown on a driver record of Appellant's license obtained by the officer from the website of the South Carolina Department of Motor Vehicles (SCDMV), for which the Appellant was apparently found guilty. (R. p. __). Appellant objected to this questioning because he had

not been provided this driver's record document in response to his Rule 5 request. The Municipal Judge explained that, since this was not part of the City's case, and would not have been admissible absent the Appellant's testimony that he had no such record, and further since it was not part of the City's investigation records concerning these charges, there was no Rule 5 violation (R. p. __). The Municipal Judge therefore denied Appellant's objection.

After a two (2) hour trial, and jury charges by the Court, the jury returned a verdict of guilty on both charges. The Appellant was assessed a fine on each charge.

On January 20, 2011, Appellant filed a written Motion for New Trial (R. p. __) Municipal Judge Tupper held a hearing on this Motion on November 3, 2011. Appellant raised again the allegation of the Rule 5 violation by the arresting officer in failing to provide the Appellant's driving record. The Municipal Judge again explained that, since the driving record was not a part of the City's direct case, and was not otherwise in the City's files, it was not subject to Rule 5 production (R. p. __) Rather, since it was used only for impeachment, and was obtained only after the Appellant stated he had not had a speeding violation in the past 10 years (the Appellant wrongfully argued that his testimony at trial was for the past 12 months), the Municipal Judge ruled there was no Rule 5 violation (R. p. __).

On August 16, 2012, Appellant filed an appeal of these charges to the Circuit Court (R. p. __). This appeal came for a hearing on March 18, 2013 before Honorable Marvin Dukes, III, Beaufort County Master in Equity and Special Circuit Court Judge. (R. p. __). At the hearing, the Circuit Judge gave Appellant additional time to file a supplemental brief,

and Respondent additional time to file a response brief. (R. p. __). Appellant filed a supplemental brief on March 28, 2013. (R. p. __). Respondent filed its response brief on April 13, 2013. (R. p. __). By Order dated April 19, 2013, Judge Dukes found no error of law in the rulings of the Municipal Court, and therefore affirmed the lower court order. (R. p. __). This appeal followed.

STANDARD OF REVIEW

“In criminal appeals from magistrate or municipal court, the circuit court does not conduct a *de novo* review, but instead reviews for preserved error raised to it by appropriate exception.” *State v. Henderson*, 347 S.C. 455, 457, 556 S.E.2d 691, 692 (Ct.App.2001); accord *Rogers v. State*, 358 S.C. 266, 594 S.E.2d 278 (2004) (quoting *City of Landrum v. Sarratt*, 352 S.C. 139, 141, 572 S.E.2d 476, 477 (Ct.App.2002)). In criminal cases, the court of appeals sits to review errors of law only and is bound by the factual findings of the trial court unless clearly erroneous. *State v. Wilson*, 345 S.C. 1, 545 S.E.2d 827 (2001); *State v. Cutter*, 261 S.C. 140, 199 S.E.2d 61 (1973); *State v. Bowie*, 360 S.C. 210, 600 S.E.2d 112 (Ct.App.2004). *State v. Landis*, 362 S.C. 97, 101, 606 S.E.2d 503, 505 (Ct. App. 2004).

ARGUMENT

The Lower Court’s Order should be affirmed because there was no error of law, and Appellant’s driving record was obtained and used for impeachment only after Appellant opened the door by testifying that he doesn’t speed and he had no driving record for the last 10 years.

Rule 5(a)(1)(B) clearly states that the prosecution shall furnish to a defendant a copy of his prior criminal record “upon the request of the defendant.” It is equally clear that Appellant did not make request for his prior criminal record in his Rule 5 request to the City. “Pursuant to Rule 5 of the South Carolina Rules of Criminal Procedure, the prosecution must disclose certain types of information *upon request of the defendant.*” *State v. Branham*, 392 S.C. 225, 230, 708 S.E.2d 806, 809 (Ct. App. 2011).

Here, Appellant requested “all documents and tangible objects which Officer Sooknannan will present at the trial on the referenced Traffic Ticket...” (R. p. __). The issue here is the Appellant’s prior driving record, which was not in the Respondent’s investigative files, but was obtained by the Officer at trial from the SCDMV website.

As explained by the Municipal Court in its Return, since this was not part of the City’s case, and would not have been admissible absent the Appellant’s testimony that he had no such record, and further since it was not part of the City’s investigation records concerning these charges, there was no Rule 5 violation (R. p. __). Respondent did not have this driving record in its investigative files, but obtained it from the SCDMV website when Appellant testified he had no driving record.

Further, the Appellant’s prior driving record was not presented by the prosecution officer in the case in chief. Rather, this only became an issue when Appellant that he was not speeding because he doesn’t drive fast, and that he had no record of speeding in the past 10 years (R. p. __).¹

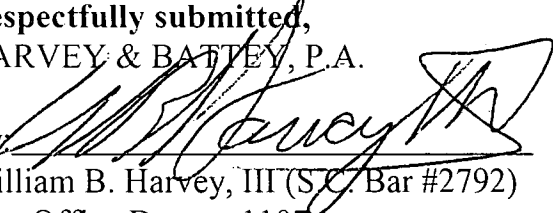
¹Appellant argues that this prior speeding record was a wrongful conviction by the Jasper County Magistrate’s Court, but acknowledges that he has again been convicted of this

By this testimony, Appellant opened the door to impeachment by his driving record which was available on the DMV website.

CONCLUSION

There was clear evidence to support the rulings of the Municipal Court. Both the Municipal Court and the Circuit Court ruled there was no error of law. Appellant cannot be heard to complain about impeachment by cross examination on an issue about which he first opened the door by his own contradictory testimony. For these reasons, Respondent respectfully requests that the Court of Appeals affirm the Order of the Circuit Court and the rulings of Municipal Court, and the jury verdict of guilty on both traffic charges.

Respectfully submitted,
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Dated: **August 22, 2013**

Attorneys for Respondent,
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same charge by the Jasper Magistrate's Court, which he currently has on appeal to this Court.
See Appellant's Brief p. 5, fn.1.

AUG 28 2013

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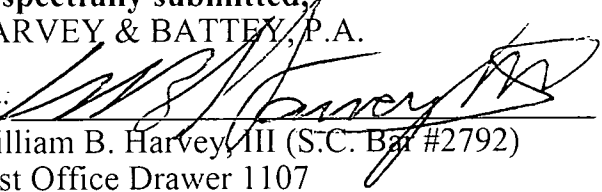
RESPONDENTS' COUNTER DESIGNATION
OF MATTER TO BE INCLUDED IN THE
RECORD ON APPEAL

Respondents counter designate the following items to be included in the Record on Appeal, pursuant to Rule 208 of the South Carolina Court of Appeals Rules:

- 6. Appellant's Motion for New Trial to the Municipal Court filed January 20, 2011
- 7. Appellant's Notice of Appeal to the Circuit Court filed November 10, 2011
- 8. Appellant's Issues on Appeal to the Circuit Court filed August 16, 2012.

I certify that this designation contains no matter which is irrelevant to this appeal.

Respectfully submitted,
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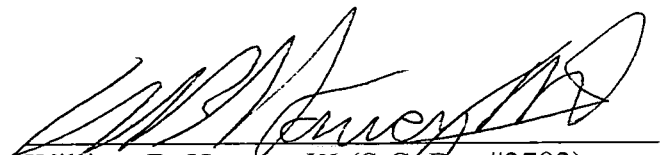
JOSEPH C. SUN, Appellant

PROOF OF SERVICE

I certify that I have served the **RESPONDENTS' INITIAL BRIEF** and **COUNTER DESIGNATION OF MATTER** on Appellant, by depositing a copy of same in the United States Mail, postage prepaid, on August 22, 2013, addressed as follows:

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Dated: **August 22, 2013**


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