

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas**

Marvin H. Dukes, III, Master in Equity

**CIRCUIT COURT CASE NO. 2011-CP-07-04722
APPEAL CASE NO. 2013-001101**

CITY OF BEAUFORT Respondent

v.

JOSEPH C. SUN Appellant

FINAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

Table of Authorities	2
Statement of Issues on Appeal	2
Statement of the Case	3
Statement of Facts	4
Arguments	6
Conclusion	8

TABLE OF AUTHORITIES

South Carolina Rules of Criminal Procedure, Rule 5	6-8
UNITED STATES CONSTITUTION, FIFTH AMENDMENT	8
UNITED STATES CONSTITUTION, FOURTEENTH AMENDMENT	8

STATEMENT OF ISSUES ON APPEAL

1. IT IS ERROR OF THE CIRCUIT COURT IN FINDING THAT THERE IS NO ERROR OF LAW COMMITTED BY THE RESPONDENT OR THE BEAUFORT MUNICIPAL COURT IN DENYING APPELLANT HIS RIGHTS TO RULE 5 DISCOVERY BY FAILING TO DISCLOSE APPELLANT'S DRIVING RECORD WHICH CONTAINED FALSE INFORMATION AGAINST APPELLANT AND WHICH THE RESPONDENT CLAIMED IT WAS ONLY USED FOR THE PURPOSE OF IMPEACHMENT.
2. IT IS ERROR OF THE CIRCUIT COURT IN FAILING TO FIND THAT THERE IS A DENIAL OF DUE PROCESS IN THIS CASE AND AFFIRMING THE ORDERS AND JUDGMENT OF THE BEAUFORT MUNICIPAL COURT.

STATEMENT OF THE CASE

As Beaufort Municipal Court Judge states in his Return, on or about May 22, 2009 Appellant Joseph Sun was issued two Uniform Traffic Tickets No. 58573BC and 58574BC for speeding (56 MPH in a 45 MPH zone) and for failing to produce the registration on his vehicle.

On about June 15, 2009, Appellant delivered his Request for Rule 5 Discovery to the Beaufort City Police Department. At the first hearing, Appellant asked for a jury trial and indicated that he was waiting for the production of documents and things pursuant to his right on Rule 5 Discovery. Beaufort Police Department allowed Appellant to pick up only a copy of the video showing the officer stopping Appellant and writing him the citations.

A jury trial was conducted on January 11, 2011 and Appellant was convicted of both counts by verdict of the jury. On January 20, 2011, Appellant filed a motion for new trial in which one of the grounds was that the City of Beaufort had violated his Right of Rule 5 Discovery, and that Beaufort Officer Sooknanan presented a surprising document - Appellant's Driving Record in the trial to impeach Appellant's earlier testimony that he believed he had no conviction of speeding in past 10 years. That document contained a wrongful speeding conviction which was totally unknown to Appellant prior to the trial, and the wrongful conviction in Jasper County was later vacated by the Jasper County Magistrate.

Beaufort Municipal Court denied Appellant's motion for new trial. Appellant filed his appeal to the Beaufort County Court of Common Pleas. The appeal was argued at the chamber of the Honorable Marvin H. Dukes, III on March 18, 2013. Appellant appeared pro se and complained that no court reporter was present. Judge Dukes directed that Appellant be allowed to file a supplemental brief (R.p. 6-12) and the city attorney a responsive brief after the hearing,

and that the Circuit Court would not rule on the appeal until after the briefs were filed.

On April 19, 2013, Beaufort County Court of Common Pleas issued an Order Denying Appeal and Affirming Lower Court Order. Appellant timely filed his Notice of Appeal to this court and this appeal case followed.

STATEMENT OF FACTS

There are several undisputed facts at the Circuit Court Appeal hearing:

(1) In response to Appellant's request of Rule 5 Discovery, Respondent Beaufort Police Department only gave Appellant a copy of the video from Officer's vehicle, showing only after the officer had turned on his blue light for the traffic stop.

(2) Over Appellant's objection, there was no court reporter therefore no transcript of the appeal hearing at the Beaufort County Court of Common Pleas. On appeal, an Agreement Not to Order Transcript was signed by Appellant and Respondent and filed in this case.

(3) In lieu of the court reporter, the Circuit Court Judge directed that supplemental brief from Appellant and response from Respondent be filed within 10 days to summarize the hearing and furnish any further argument.

In May 2009, after Appellant was written the aforesaid citations of speeding and failure to produce registration, he timely delivered his letter of request of documents and things pursuant to Rule 5, South Carolina Rules of Criminal Procedure to Respondent Beaufort City Police Department. (R.p.1) Some time later, Appellant was notified to pick up a copy of the video showing the traffic stop and the officer writing the aforesaid citations. The video did not show

Appellant's vehicle was speeding. Respondent did not give Appellant anything else.

During the jury trial, Appellant testified that he was 64 years old and did not drive fast, and that he believed he had no record of speeding in the past 10 years. According to Municipal Judge's Return to Appeal (R.p.4, line 3), Officer Sooknanan produced a copy of Appellant's driving record he obtained from a secured website of the South Carolina Department of Motor Vehicles. The document showed that Appellant had a speeding conviction a year earlier, therefore, showing the jury that Appellant had made false statement that he believe he had no prior speeding conviction. Appellant objected to the surprising document because it was not disclosed pursuant to his Request for Rule 5 Discovery and he had no knowledge of the speeding conviction. As explained by the Municipal Judge on the same page of his Return, he denied Appellant's objection because the judge ruled that Appellant's driver's record "was not part of the City's case."

As explained by Appellant at the appeal hearing at the Court of Common Pleas, the unknown conviction on his driver's record was wrongfully obtained in Jasper County when Appellant was tried at his absence without notice of hearing. After the Municipal Court trial, Appellant filed a motion to vacate and set aside the unknown speeding conviction which was vacated and set aside by the Jasper County Magistrate prior to the appeal hearing at the Court of Common Pleas on March 18, 2013.¹ By using the surprise document in violation of Appellant's

¹ After the trial of this case, the surprised Jasper speeding conviction was vacated and set-aside on motion by Appellant. Appellant was again found guilty by the same Magistrate at his absence without notice. This Jasper conviction is now on appeal to this court. (Appeal Case No. 2011-200406.) The fact remains that had Appellant been given a copy of his driving record by the Respondent pursuant to Rule 5, he could have either corrected the wrongful conviction before the Beaufort trial, or at least he would not have made the false statement that he had no speeding conviction in past 10 years. There would have been no impeachment.

right to Rule 5 Discovery when the document contained an unknown wrongful conviction, Respondent falsely showed the jury that Appellant was lying about his driving record.

The jury returned a guilty verdict on both counts against the Appellant. Appellant was prejudiced by Respondent's hidden document in violation of Rule 5.

Appellant timely filed his motion for new trial. One of the grounds was that Respondent had violated his right to Rule 5 Discovery. (R.p. 17,18) The Beaufort Municipal Court held a hearing and verbally denied Appellant's motion. (R.p. 4, line 12-22) In its Order Denying Appeal and Affirming Lower Court Order (R.p. 15), Circuit Court found no error of law and affirmed the Municipal Court's verbal order of denial of Appellant's motion for new trial (R.p. 16).

ARGUMENTS

ISSUE 1:

Prior to trial, Appellant wrote a letter (R.p. 1) to Respondent Beaufort City Police Department, requesting all discovery material he was entitled to pursuant to the authority of Rule 5, SCRCrP and Brady v. Maryland. Respondent only gave Appellant a copy of the video showing the event after Officer had stopped Appellant on the street. Beaufort Municipal Court Judge erroneously misinterpreted the rule by inserting an exception that the officer could withhold Appellant's driver's record in violation of Rule 5 if the officer did not use it in his case in chief, but could use it to impeach the defendant. (R.p. 4, line 6)

South Carolina Rules of Criminal Procedure, Rule 5, provides in pertinent part that:

- “(a) Disclosure of Evidence by the Prosecution.
 - (1) Information Subject to Disclosure.

(A)

(B) **Defendant's Prior Record.** Upon request of the defendant, the prosecution shall furnish to the defendant such copy of his prior criminal record, if any, as is within the possession, custody, or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution.

(C) **Documents and Tangible Objects.** Upon request of the defendant the prosecution shall permit the defendant to inspect and copy books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the prosecution, and which are material to the preparation of his defense or are intended for use by the prosecution as evidence in chief at the trial, or were obtained from or belong to the defendant.

(2) **Information Not Subject to Disclosure.**

(c) **Continuing Duty to Disclose.** If, prior to or during trial, a party discovers additional evidence or material previously requested or ordered, which is subject to discovery or inspection under this rule, he shall promptly notify the other party or his attorney or the court of the existence of the additional evidence or material.

(d) **Regulation of Discovery.**

(1)

(2) **Failure to Comply with a Request.** If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule, the court may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing evidence not disclosed, or it may enter such other order as it deems just under the circumstances. The court may specify the time, place and manner of making the discovery and inspection and may prescribe such terms and condition as are just.

(e)

Nowhere in Rule 5, South Carolina Rules of Criminal Procedure allows the Respondent to withhold documents for the purpose of impeachment against a defendant. Rule 5 simply states that "Upon request of the defendant, the prosecution shall furnish to the defendant such copy of his prior criminal record" Whether prosecution intends to use it or how to use it or not to use it at all, prosecution must furnish defendant's driving record upon his request.

Appellant's aforesaid letter to the Respondent clearly requested documents and things pursuant to Rule 5 even though he stated "which Officer Sooknanan will present at the trial on the

referenced Traffic Ticket for disclosure and copying under the aforesaid authority.” Appellant did not limit documents to only those which Officer would use in his case in chief. Obviously, “present at the trial” would mean for “case in chief”, “impeachment” or anything else, as long as the documents were used during the trial, Prosecution must furnish them to the defendant upon request, or suffer the consequences.

Rule 5 (d)(2) provides sanctions by the court for failure to comply with a request. Beaufort Municipal Court upon Appellant’s objection at the trial (R.p. 4, line 5) against the Officer’s use of the hidden driving record should have “prohibited the party from introducing evidence not disclosed, or it may enter such other order as it deems just under the circumstances.” But instead, as shown in his Return to Appeal (R.p.4, line 9), Municipal Judge ruled that there was no Rule 5 violation. Beaufort Municipal Court committed reversible error in denying Appellant’s Motion for New Trial. (R.p.4-5).

On appeal, Circuit Court committed reversible error in finding there was no error of law when Beaufort City Prosecution and Municipal Court impermissibly inserted an exception to Rule 5, SCRCrP, that documents and things can be withheld if used for impeachment after the defendant “opened the door to impeachment” as stated in Respondent’s Response to Defendant’s Supplemental Brief. (R.p.13)

ISSUE 2:

The Fifth Amendment of the United States Constitution provides that,

“No person shall be held to be deprived of life, liberty, or property, without due process of law;”

The Fourteenth Amendment of the United States Constitution again provides that,

"Section. 1. No State shall.....;
nor shall any State deprive any person of life, liberty, or property, without
due process of law; nor deny to any person within its jurisdiction the equal
protection of the laws."

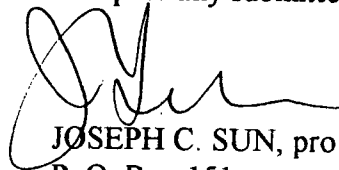
By denying Appellant's right to Rule 5 discovery, the Respondent violated Appellant's
right to due process of the law. Therefore, it is reversible error for the Circuit Court to overlook
the denial of due process committed against the Appellant and affirm the lower court order.

CONCLUSION

For the foregoing reasons, the Municipal Court Order denying Appellant's Motion for
New Trial and the Judgment of the circuit court should be reversed.

This 28th day of October, 2013.

Respectfully submitted,

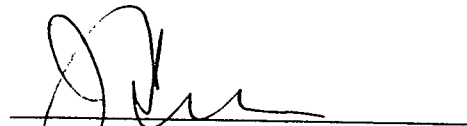


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CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACP.

October 28, 2013.


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