

**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

PETITION FOR REHEARING

Joseph C. Sun, pro se
P. O. Box 151
Bluffton, SC 29910
843-227-0963

William B. Harvey, III, Esq.
P. O. Drawer 1107
Beaufort, SC 29901

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ARGUMENT

(1) In affirming the Beaufort County Circuit Court’s Order denying appeal and affirming the Municipal Court Order (R.p.15) pursuant to Rule 220(b), SCACR, this court overlooked that Circuit Court is erroneous in law in concluding that “after reviewing the briefs and the file, it found no error of law” that the Municipal Court in its Return (R.p.4, lines 16-20) stating 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. Rather, since it was used only for impeachment, and only after the Defendant stated he had not had a speeding violation in past t10 years, there was no Rule 5 violation.”

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Appellant has argued (in his Final Brief, Page 6-7) that Municipal Court was erroneous in its interpretation of, Rule 5 and that error was affirmed by the Circuit Court (R.p.15).

Since the violation of Rule 5 is a question of law and both the Beaufort Municipal Court and the Circuit Court were erroneous, it is within the scope of review by this court. City of Rock Hill v. Suchenski, 374 S.C. 12,15, 646 S.E.2d 879,880 (2007). Beaufort Police was in violation of Rule 5 when it failed to produce and allow Appellant to inspect the documents requested by the Appellant in his Rule 5 Letter (R.p.1), where Appellant specified that,

“Pursuant to Rule 5, SCRCP, and my rights under the Supreme Court case Brady v. Maryland. I am requesting all documents and tangible objects which Officer Sooknanan will present at the trial

The Court in its opinion (Page 2) cited both Rule 5(a)(1)(B) and (C), SCRCP where Subsection (B) required “the prosecution shall furnish to the defendant such copy of his prior criminal record ...” which would certainly include the record of traffic conviction Respondent used to “impeach” Appellant when he claimed at the trial to have no speeding conviction in past 10 years.

The Court also cited Subsection (C) which required “the prosecution to permit the defendant to inspect and copy books, papers and documents intended for use by the prosecution as evidence in chief at the trial

” The latter subsection may seem to allow the prosecution to allow inspection and copying by Appellant only what prosecution intended for use “as evidence in chief at the trial” and the Respondent assumed that the law allows it to hide impeaching evidence from the defendant. Appellant respectfully submits the court that it has overlooked that Respondent has violated Rule 5 Subsection (B) which required Respondent to furnish copy of his prior traffic conviction to Appellant “unconditionally” upon his request.

In affirming the Order of the Circuit Court, this court overlooked that Subsection (C) only

dealt with “inspection and copying”, not “furnishing” as in Subsection (B). Most of all, just because the prosecution only required to allow appellant to inspect and copy evidence it intended to use in its case in chief at the trial did not nullify the requirement on the prosecution to furnish Appellant a copy of his criminal record, in this case, his prior traffic conviction, which Respondent had possession and was ready to use at the trial. Those two subsections (B) and (C) do not actually conflict with each other as one deals with specific “criminal record” which the prosecution must give copies to the defendant, while the other deals with evidence in general which prosecution intend to use in its case in chief and must allow the defendant to inspect and copy.

The document hidden from Appellant was a surprise and contained a speeding conviction of which Appellant was not notified of the hearing and was tried in another County in Appellant’s absence. Therefore, Appellant was impeached with a document which was a product of a violation of his civil rights and was prejudiced by it.

Should the court be unconvinced by the argument of the Appellant, the United States Supreme Court held in Huddleston v. U.S., 415 U.S. 814, 94 S.Ct. 1262, 39 L.Ed.2d 782, 1974, that “Reliance is placed upon the maxim that an ‘ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity.’ Rewis v. United States, 401 U.S. 808, 812, 91 S.Ct. 1056. The South Carolina Supreme Court in State v. DeAngelis, 257 S.C. 44, 183 S.E.2d 906, (1971) held that “It is well settled in this State that a criminal statute must be strictly construed against the State and any doubt must be resolved in favor of the defendant.” Albeit this is not a case dealing with criminal statute, but rather, Rule of Criminal Procedure, we should follow the same spirit.

(2) In affirming the Circuit Court Order, this Court overlooked that Appellant had raised the issue of aforesaid violation of Rule 5, SCRCP, in his briefs filed at the Circuit court, therefore, the


matter is preserved on appeal. Pro se Appellant may not have clearly delineate the details of the due process violation at the Beaufort Circuit Court, he has shown his civil rights were violated in that he was impeached at the trial with a surprise document by the Respondent which contained a conviction he had no knowledge of, was not notified of the hearing therefore did not appear for trial.

CONCLUSION

For the foregoing reasons, Appellant prays the court pursuant to Rule 221(a), SCACR, for a rehearing in this case or a reconsideration of its opinion of November 12, 2014, and for a reversal of the Order of the Circuit Court.

Respectfully submitted,

This 24th day of November 2014.




JOSEPH C. SUN, pro se
P. O. Box 151
Bluffton, SC 29910
843-226-8788

PROOF OF SERVICE

I certify that I have this date served the Respondent City of Beaufort a copy of the Appellant's Petition for Rehearing by depositing a copy of same in the United States Mail, postage prepaid on November 24, 2014 to the following addresses:

William B. Harvey, III
P. O. Drawer 1107
Beaufort, SC 29901-1107
This 24th day of November, 2014,



JOSEPH C. SUN, pro se
P. O. Box 151
Bluffton, SC 29910

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