

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

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

Michael G. Nettles, Circuit Court Judge

CASE NO. 2010-CP-27-0239

RECEIVED
APR 01 2013
SC Court of Appeals

STATE OF SOUTH CAROLINA Respondent

v.

JOSEPH C. SUN Appellant

RECORD ON APPEAL

Joseph C. Sun, pro se
18 Sixth Avenue
Bluffton, SC 29910
843-227-0963

Darrell Thomas Johnson, LLC
P. O. Box 1125
Hardeeville, SC 29927
Attorney for Respondent

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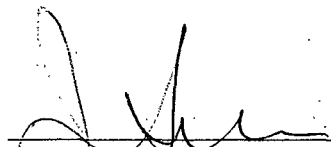
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CERTIFICATE OF SERVICE

I certify that this Record on appeal contains all material proposed to be included by any of the parties and not any other material, in compliance with Rule 210, SCACR, and I have this date served the Respondent State of South Carolina a copy of the Record on Appeal by depositing a copy of same in the United States Mail, postage prepaid to the following addresses:

Darrell Thomas Johnson, LLC
P. O. Box 1125
Hardeeville, SC 29927
Attorney for Respondent
843-784-2142

This 27th day of March, 2013,



JOSEPH C. SUN, pro se
18 Sixth Avenue
Bluffton, SC 29910
843-227-0963

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

2011 SEP 16 PM 3:51

IN THE CIVIL COURT
14TH JUDICIAL CIRCUIT

CLERK OF COURT
JASPER COUNTY SC ORDER

State of South Carolina
PLAINTIFF

VS.

Joseph C. Sun
DEFENDANT

CASE NUMBER: 2011-CP-27-239

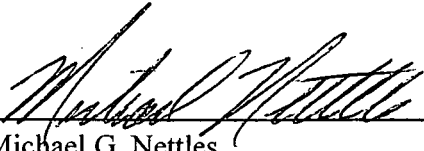
This matter is before me on Appeal from the Magistrate's Court. The Magistrate filed a very thorough Return which reads in part:

On or about March 24, 2011, I ... re-opened his case.... I advised the Defendant at the motion hearing that I was holding jury strikes on March 25th, the next day, and told him to come back to strike his jury the next day at 10:00 a.m. On March 25, 2011 at 10:00 a.m...., I had approximately eight to ten jury strikes: however, when we reached the Defendant's case, he had left and did not strike his jury as instructed by me several times the day before. I found the Defendant had waived his right to a jury trial. Therefore, he was tried in his absence, found guilty and was assessed a fine of One Hundred Eighty-Five (\$185.00) Dollars.

The Defendant made no attempt to settle the record pursuant to (case, leg cite?) so I am bound by the Return as the record of the cases. It appears that the Magistrate exercised great care to see that Mr. Sun got justice and due process.

Additionally Appellate now states that he sought appointed counsel. The short answer is that his issue is not preserved for review.

The conviction is affirmed.



Michael G. Nettles
Presiding Judge

Dated: September 16, 2011
Ridgeland, South Carolina

The Defendant has changed his address several times over the last couple of years, however, I will admit that he has been diligent in notifying the court of any address change, as he seems to have several cases pending at any given time.

On or about March 24, 2011, I heard the Motion to Set Aside Conviction and after sorting through the many address changes of the Defendant, I ruled with the Defendant, re-opened his case, prepared an Ishmell Order, and faxed it to Columbia whereby I recalled the ticket and reinstated the case to the Jury Roster. I advised the Defendant at the motion hearing that I was holding jury strikes on March 25th, the next day, and told him to come back to strike his jury the next day at 10:00 a.m. The Defendant stated that he did not want to strike his jury and set a date because the trooper had not answered his Rule 5 Discovery Motion. I assured the Defendant that we would strike the jury, and that I would set the case for a jury trial at least sixty (60) days out to give him ample time to receive and review his discovery.

On March 25, 2011 at 10:00 a.m., I had approximately eight to ten jury strikes set with various members of the highway patrol. On that morning I, other members of my staff and members of the highway patrol saw the Defendant in the hall at my chambers. We assumed the defendant was awaiting his turn to strike the jury as others were waiting, however, when we reached the Defendant's case, he had left and did not strike his jury as instructed by me several times the day before.

I found the Defendant had waived his right to a jury trial. Therefore, he was tried

in his absence, found guilty and was assessed a fine of One Hundred Eighty-Five (\$185.00) Dollars. This appeal followed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Joanne B. McDonald', written in a cursive style.

Joanne B. McDonald

Jasper County Magistrate

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

STATE OF SOUTH CAROLINA

V.

JOSEPH C. SUN,

COURT OF GENERAL SESSIONS
IN THE ~~CENTRAL TRAFFIC COURT~~
CASE NO. 2011-CP-27-239
CENTRAL TRAFFIC COURT
CITATION NO. D777382

DEFENDANT'S RESPONSE TO
MAGISTRATE'S RETURN

(1) In her Return, Page 2, Magistrate stated that on March 25, 2011 after the conviction was set aside because Defendant was not noticed for the previous trial, she assured the Defendant that she would set the case for jury trial AT LEAST SIXTY (60) DAYS OUT to give Defendant ample time to receive and review his discovery.

(2) Defendant did send his Rule 5 discovery FOR THE SECOND TIME, as shown in Exhibit A attached hereto, showing patrolman N. Sprouse received it on March 29, 2011. But on March 28, 2011, Magistrate McDonald found the Defendant had waived his right to jury trial and in Defendant's absence, found Defendant guilty and assessed a fine of \$185.00.

(3) In her Return, the Magistrate admitted she saw Defendant waiting in the Hall for jury strike. Her Return states "when we reached the Defendant's case, he had left and did not strike his jury" The fact is that Defendant waited all day for the jury trial, but no one ever called him, and at the end of the day, he asked the clerk at the window who told him that she knew nothing about his jury strike and that Defendant would be notified by mail.

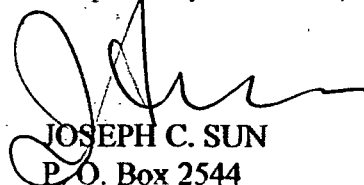
(4) Defendant Sun is 64 years old with his right ear near deaf and his left ear having only half hearing ability. Defendant had not left or heard anyone calling him or informing him that it was his turn for jury strike. In her Return, Magistrate McDonald does not say how she found out

Defendant had left. Defendant had filed motion for counsel which motion was not heard. (See Exhibit B.) Defendant waited from 10 a.m. until about 3 p.m. when the clerk of court told him he would be notified by mail.

(5) **Assuming** that Magistrate did call Defendant when it was his turn to strike the jury and that Defendant's failure to respond deemed his waiver to a jury trial, Defendant should still be notified of the March 28, 2011 bench trial. But instead, Defendant was tried on March 28, 2011 without any notice and deprived his trial by the jury. Furthermore, Defendant was deprived his Rule 5 discovery which request was receipted by the Officer on March 29, 2011, after he was tried without any notice.

(6) Defendant has his right to counsel for his defense, his motion for counsel at no cost to him should be heard and be granted. Defendant should also be allowed his Rule 5 discovery. He should be notified by the court of any trial schedule whether it was bench or jury trial, and Defendant has not waived his right to a jury trial as provided by the Constitution.

Respectfully submitted,



JOSEPH C. SUN
P.O. Box 2544
Bluffton, SC 29910
843-227-0963

1 State of South Carolina) In The Court
2 County of Jasper) Of Common Pleas

3 Docket No.: 2011CP2700239
4

5
6 State of South Carolina,)
7 Plaintiff.)
8 vs.) Transcript
9) of Record
10 Joseph C. Sun,)
11 Defendant.)

12
13 Monday, September 12, 2011
14 Ridgeland, South Carolina
15

16 B E F O R E:

17 The Honorable Michael G. Nettles, Judge.
18

19 A P P E A R A N C E S:

20 Tom Johnson, Assistant Solicitor
21 14th Judicial Circuit

22 Joseph C. Sun, Pro Se
23

24 Brenda J. Sigwald, Circuit Court
25 P.O. Box 206, Jackson, South Carolina 29831

I N D E X

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Motion Hearing

3

Certificate of Reporter

14

E X H I B I T S

NO. DESCRIPTION

PAGE

(REPORTER'S NOTE: There were no exhibits entered into evidence during this hearing.)

1 MR. JOHNSON: Joseph Sun.

2 If Your Honor please, first on the list is
3 Mr. Sun, who is present.

4 This case was brought up last time and
5 Mr. Sun was granted a continuance to -- until this
6 term of court.

7 THE COURT: All right. Bear with me just
8 one moment while I read the return.

9 MR. JOHNSON: Sure.

10 THE COURT: All right. Mr. Joseph C. Sun.
11 How you doing?

12 MR. SUN: Fine. How are you?

13 THE COURT: Fine. This is your motion on
14 appeal from a conviction on a traffic ticket where
15 you were convicted of more than -- speeding more
16 than 15 but less than 25 miles an hour over the
17 speed limit. And I'll be glad to hear from you
18 with regard to your appeal.

19 MR. SUN: Basically, I stated more clearly
20 in my response to the magistrate's return. She
21 found me -- or she tried me without a jury. Three
22 days after, she vacated my conviction because I
23 did not receive notice of the trial before. And
24 she says that I waived my -- for release the
25 defendant's case, he had left. Did not strike a

1 jury.

2 I didn't leave. I didn't hear anything. I
3 was here about an hour or two. I was waiting in
4 the courtroom in magistrate's court whereas later
5 on I found out that she was holding the jury
6 strike in her chambers, you know.

7 And just because of that, she held a trial
8 on the 28th without notice, without -- again
9 without notice to me. And if she -- you know, if
10 she was going to hold a trial on the 28th, she
11 should let me know too because she just -- I mean,
12 you know, then she found me guilty and fined me
13 \$185.

14 THE COURT: Very good. Anything further?

15 MR. SUN: Well, all I'm saying is I did not
16 -- my summary is at the end of the last sentence,
17 the last paragraph, six, my right -- first of all,
18 I asked for counsel. I was not given it. And
19 then I should also be allowed my Rule 5 discovery.
20 My discovery is not in the file. And then he -- I
21 should be notified of any trial date whether it
22 was a bench trial or a jury trial; but on the
23 28th, I was not notified and then she just found
24 me guilty and --

25 THE COURT: Okay. Anything further?

1 MR. SUN: No, sir.

2 THE COURT: I'll be glad to hear from the
3 State.

4 MR. JOHNSON: If Your Honor please, I'm not
5 looking at the file, but the -- my recollection
6 when I studied it was that the magistrate had gone
7 overboard trying to accommodate Mr. Sun and make
8 sure his rights were fully protected and after --
9 after giving him all possible accommodations, he
10 still wasn't there and it's my impression that all
11 proper notices were given.

12 As far as the right to counsel, that --
13 today is the first I've heard of that. I don't
14 think that it's in the appeal, but even if it is,
15 I don't think -- first of all, I don't think the
16 law compels appointed counsel on a speeding
17 ticket. Second, I don't think that Mr. Sun would
18 qualify as indigent. While I don't know him well,
19 I've known him for twenty years and I thought he
20 was a substantial businessman; and third, Mr. Sun
21 has litigated in this court, magistrate's court,
22 the administrative law court and the United States
23 District Court so that he's not a novice or a
24 semiliterate person who's at sea with the process.

25 So, again, I think the magistrate said it

1 in her return better than I can say it.

2 So that's all we have to say, is that we
3 defer to the Court and the return of the
4 magistrate.

5 THE COURT: All right. Mr. Sun, first of
6 all, I rule that the issue with regard to whether
7 or not you had counsel is not before the Court.
8 It was not adequately preserved in the appeal and
9 therefore you would waive -- you waive that.

10 The law with regard to appeals from
11 magistrate's court is that I am restricted to
12 correct any errors of law that transpire in the
13 lower court. And the law also requires that I am
14 restricted to the return that's provided to me.

15 This return explains all of the facts and
16 circumstances of your case and I'm bound by that.
17 And it's clear from this return that not only you
18 received notice of this, but she told you in
19 person that you were to strike the jury that day.
20 It's clear from this return that you were given
21 adequate notice. As a matter of fact, I'm going
22 to publish the return so you can hear it.

23 It says -- first of all, you were charged
24 with speeding. It says: On or about May 26,
25 2009, the defendant requested a jury trial. The

1 defendant was summoned for a roster meeting jury
2 strike on or about January 15, 2010 at 10 o'clock
3 a.m. The defendant did not appear for the roster
4 meeting strike and was then noticed to appear for
5 a bench trial on February 2nd, 2010.

6 The defendant, you, did not appear at the
7 scheduled bench trial and was tried in your
8 absence and found not guilty (sic). On about
9 January 18th, 2011, you filed a motion to set
10 aside the conviction and alleged that you had not
11 received notice of the January 2010 roster
12 meeting, nor the bench trial scheduled for
13 February 2nd, 2010, and it was probably due to an
14 address change.

15 The magistrate goes onto explain about your
16 address change. She says that the defendant has
17 changed his address several times.

18 Apparently you're a frequent flyer in this
19 court.

20 It says the defendant has changed his
21 address several times over the past couple of
22 years. However, I will admit he has been diligent
23 of notifying the Court of any address change
24 because he seems to have several cases pending at
25 any given time.

1 Mr. Sun, you like to speed?

2 MR. SUN: Yes, sir, I --

3 THE COURT: I had the propensity when I was
4 younger myself. Apparently you've got a lot of
5 cases pending there; is that correct?

6 MR. SUN: No, I don't.

7 THE COURT: Well, you have not had a lot of
8 speeding cases?

9 MR. SUN: No.

10 THE COURT: So the magistrate is incorrect
11 in that you don't go there a bunch.

12 MR. SUN: I don't believe it says anywhere
13 in the return that I go there a bunch.

14 THE COURT: Well, I think it does. It says
15 he seems to have several cases pending at any
16 given time. Does that have anything to do with
17 speeding cases or other type cases?

18 MR. SUN: I have no idea. That's the only
19 speeding ticket I have in the past -- for court --
20 in the past three --

21 THE COURT: Apparently you've been in
22 magistrate's court over other matters, haven't
23 you.

24 MR. SUN: Yes, civil matters.

25 THE COURT: Oh, okay. So that's what she's

1 talking about. She's not specifically --
2 apparently you show up in magistrate's court a
3 bunch and she's aware of the fact that you've
4 changed your address.

5 It says on or about March 24th, 2011, I
6 heard the motion to set aside the conviction and
7 after sorting through the many address changes of
8 the defendant, I ruled for the defendant, reopened
9 his case, prepared an Ishmael Order and faxed it
10 to Columbia whereby I recalled the ticket and
11 reinstated the case for a jury roster.

12 I advised the defendant at the motion
13 hearing that I was holding jury strikes on March
14 25th, the next day, and told him to come back to
15 strike his jury the next day at 10 o'clock a.m.
16 You can't get better notice than that when they
17 tell you eyeball to eyeball. You agree with me on
18 that?

19 MR. SUN: I was there.

20 THE COURT: All right. The defendant
21 stated that he did not want to strike his jury and
22 set a date because the trooper had not answered
23 his Rule 5 discovery motion. I assured the
24 defendant he would strike the jury and that I
25 would set the case for a jury trial at least sixty

1 | days out to give him ample time to receive and
2 | review his discovery.

3 | All right. First of all, the discovery,
4 | Rule 5 Discovery requires that the State produce
5 | any documents or reports. The only thing that
6 | you'll receive in a speeding case is the ticket
7 | itself and you already had that.

8 | MR. SUN: No, I asked for other things,
9 | such as the calibration and --

10 | THE COURT: Oh, okay. Very good. But she
11 | was going to give you ample time to receive that.
12 | And that didn't prohibit you from drawing a jury.

13 | On March 25th, 2011 at 10 o'clock a.m., I
14 | had approximately eight to ten jury strikes set
15 | for various members of the highway patrol. On
16 | that morning, other members of my staff and
17 | members of the highway patrol saw the defendant in
18 | the hall at my chambers. We assumed the defendant
19 | was awaiting his turn to strike the jury as others
20 | were waiting. However, when we reached the
21 | defendant's case he had left and did not strike
22 | his jury as instructed by me several times that
23 | day -- or the day before. I find the defendant
24 | had waived his right to a jury trial. Therefore,
25 | he was tried in his absence, found guilty and was

1 assessed a \$185 fine.

2 MR. SUN: I have to explain that.

3 THE COURT: Okay.

4 MR. SUN: First of all, that was on the
5 25th.

6 THE COURT: Right.

7 MR. SUN: She held the bench trial on the
8 28th. I should be notified of the 28th. This is
9 my complaint. I was not complaining about what
10 happened on the 25th.

11 THE COURT: Well, you were asked and
12 directed to come to court to draw your jury on
13 that given day, but you left and you did not draw
14 the jury.

15 MR. SUN: Well --

16 THE COURT: And when -- once they notify
17 you of the jury, that's all the notice you need is
18 to come there and draw the jury. You just up and
19 leave, you don't receive notice of when the jury
20 trial is. That's common practice. You didn't
21 receive -- you didn't wait, you didn't participate
22 in the jury selection and, therefore, you waived
23 your right to the jury trial.

24 In addition to that, I'm going to ask that
25 the solicitor prepare an order setting forth what

1 the return says. In addition to that, Mr. Sun, I
2 couldn't find any different than that because the
3 law compels that I comply with the return. And
4 that's what the facts are in this case. And it's
5 incumbent upon you as an appellant to challenge
6 anything that's in the return in the form of --
7 filing a motion to settle a record. As it stands
8 right now, this is the record of the case and you
9 haven't done what's necessary to challenge that.
10 And my ruling is I'm going to affirm the
11 conviction and ask the solicitor's office to draft
12 an order to that effect. You will receive a copy
13 of that order.

14 And I want you to say for the record right
15 now, where do you live right now.

16 MR. SUN: It's what I said in my response
17 that I filed to the Court -- P. O. Box --

18 THE COURT: Okay. Well, you tell me right
19 now on the record --

20 MR. SUN: P. O. Box 2544, Bluffton, South
21 Carolina 29910.

22 THE COURT: Okay. And I'm going to ask
23 that the solicitor's office provide or send to you
24 a copy of this order and you'll have ample time
25 thereafter to appeal. Good luck to you.

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MR. SUN: Thank you.

THE COURT: All right.

MR. JOHNSON: Thank you, Your Honor.

* * * * * END OF TRANSCRIPT * * * * *

1 | State of South Carolina)
 2 | County of Aiken) **Certificate of Reporter**

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I, THE UNDERSIGNED, Brenda J. Sigwald,
 Official Court Reporter for the Fifth Judicial
 Circuit of the State of South Carolina, do hereby
 certify that I reported the proceedings in the
 captioned case in the Court of General Sessions in
 and for the State of South Carolina on the 12th
 day of September 2011.

I FURTHER CERTIFY that the foregoing pages,
 numbered 3 through 13, constitute a true, accurate
 and complete transcript of said hearing.

I FURTHER CERTIFY that I am neither kin,
 counsel, nor of interest to any party hereto.

IN WITNESS WHEREOF, I have hereunto set my
 hand and seal at Aiken County, this 28th day of
 December, 2011.

Brenda J. Sigwald

 Brenda J. Sigwald,
 Court Reporter and Notary Public
 For the State of South Carolina
 My commission expires
 January 4, 2020.

NOTICE OF FAILURE TO COMPLY WITH TERMS OF CITATION



YOU HAVE FAILED TO RESPOND TO THE CITATION DESCRIBED IN THIS NOTICE BY APPEARING IN COURT OR PAYING THE FINE WITHIN THE PRESCRIBED TIME LIMIT, AND AS A RESULT YOU HAVE BEEN TRIED IN YOUR ABSENCE AND FOUND GUILTY. FAILURE TO REMIT THE FINE WITHIN 15 DAYS FROM THE DATE SHOWN IN THE LOWER RIGHT CORNER OF THIS NOTICE WILL RESULT IN THE NOTIFICATION OF THE LICENSING AUTHORITY IN YOUR STATE TO SUSPEND YOUR DRIVER'S LICENSE UNTIL THE FINE HAS BEEN PAID, PAYABLE BY CERTIFIED CHECK OR MONEY ORDER.

READ IMPORTANT INFORMATION BELOW

#1 DEFENDANT'S NOTICE

CITATION NO. D777382	DATE OF VIOLATION 4/27/2009	LOCATION OF VIOLATION	SECTION VIOLATED 2102
DESCRIPTION OF VIOLATION Traffic / Speeding, more than 15 but less than 25 mph over the speed limit		FINE AND COSTS \$185.00	TRIAL DATE 3/28/2011
DOCKET NO. D777382		COURT NO. 27101	

DRIVER'S LICENSE NO. 002094469	STATE SC	DATE OF BIRTH 11/15/1946	
NAME LAST Sun	FIRST Joseph	MIDDLE Chakwing	SEX M
STREET ADDRESS PO Box 2544			
CITY Bluffton		STATE SC	ZIP CODE 29910
REGIS.(TAG) NO.	STATE	YEAR 0	MAKE MODEL

COURT INFO	NAME OF COURT Jasper County Central Traffic Court		
	MAILING ADDRESS 967 West Adams Street		
	CITY Ridgeland	STATE SC	ZIP CODE 299360166
	TELEPHONE		
	AREA CODE (843)	NUMBER 726-7717	
	AUTHORIZED BY Sydney Joanne Mcdonald	DATE 4/1/2011	

FORM DL-53 (REV 08/06)

Return this form along with payment.

WARNING TO ALL MOTORISTS: Any person who drives a motor vehicle on any public highway of this State at a time when his license to drive or privilege to do so is cancelled, suspended or revoked shall, upon conviction, be punished by a fine of \$300 or imprisonment for ten to thirty days for the first violation; for the second violation a fine of \$600 or sixty days to six months imprisonment; and for the third and subsequent violation a fine of \$1000 and six months to three years imprisonment. In addition, persons convicted of a fourth or subsequent violation may have the vehicle operated during the offense confiscated.

WARNING TO OUT-OF-STATE MOTORISTS: If you fail to comply with this notice, the South Carolina Department of Motor Vehicles will notify your home state motor vehicle department. Your home state motor vehicle department may suspend your license or driving privileges.

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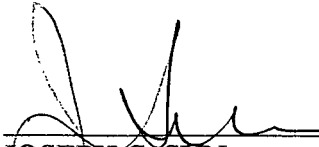
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CERTIFICATE OF SERVICE

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Darrell Thomas Johnson, LLC
P. O. Box 1125
Hardeeville, SC 29927
Attorney for Respondent
843-784-2142

This 27th day of March, 2013,



JOSEPH C. SUN, pro se
18 Sixth Avenue
Bluffton, SC 29910
843-227-0963