

**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

RECORD ON APPEAL

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

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

RECEIVED

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SC Court of Appeals

RECORD ON APPEAL
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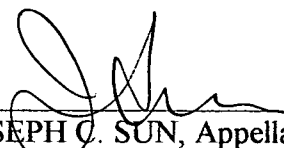
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CERTIFICATE OF COUNSEL

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 City of Beaufort a copy of the Record on Appeal by depositing a copy of same in the United States Mail, postage prepaid to the following addresses:

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

This 28th day of October, 2013,



JOSEPH C. SUN, Appellant pro se
P. O. Box 151
Bluffton, SC 29910
843-227-0963

RECORD ON APPEAL

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

This 28th day of October, 2013,



JOSEPH C. SUN, Appellant pro se
P. O. Box 151
Bluffton, SC 29910
843-227-0963

P. O. Box 3893
Bluffton, SC 29910

June 15, 2009

Beaufort City Police Department
1901 Boundary Street
Beaufort, SC 29901

Re: Traffic Tickets #58573BC and 58574BC
Attention: Sara Kollar

Dear Ms. Kollar:

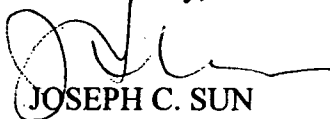
Pursuant to Rule 5, South Carolina Rules of Criminal Procedure and my rights under the Supreme Court case Brady v. Maryland, I am requesting all documents and tangible objects which Officer Sooknanan will present at the trial on the referenced Traffic Ticket for disclosure and copying under the aforesaid authority.

In particular, I request a copy of the video and audio CD or tape from Officer Sooknanan's patrol vehicle which shows or tends to show the violation which he claims that I have committed. I insist that I am innocent of the referenced Traffic Tickets. Furthermore, I ask for a sketch and identification of the exact locations of his and my vehicles where the alleged speeding violation occurred. I have the right to these specific information with which I can prove that it was impossible for me to be speeding at the location identified by Officer Sooknanan.

Pursuant to my rights under the Sixth Amendment of the U.S. Constitution, I will further request a jury trial and a state appointed attorney to represent me at no cost to me because of my financial difficulty. I have already filed my request for a jury trial and I will be filing a motion for the appointment of counsel.

Thank you for your attention. Please send the discovery material to my P.O. Box at the top right or let me know when and where I can pick them up.

Sincerely,



JOSEPH C. SUN

STATE OF SOUTH CAROLINA

2012 OCT 22 PM 2: 16

COUNTY OF BEAUFORT

JAMES ANDROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

CITY OF BEAUFORT,

Respondent

vs.

JOSEPH C. SUN,

Defendant/Appellant.

IN THE COURT OF
COMMON PLEAS

C/A NUMBER 2011-CP-07-4722

WARRANT/TICKET NO. 58573BC
and 58574BC

RETURN TO APPEAL

This matter came before me for a jury trial on January 11, 2011. The Defendant was charged with speeding (56 mph in a 45 mph zone) and for failing to produce registration to his vehicle.

Prior to the trial, Defendant filed a motion requesting appointment of Counsel for these charges. By written Order dated January 7, 2011 (copy attached), I denied this Motion, as neither of these charges would result in a sentence in which incarceration could be imposed as a result of a conviction.

Officer Kennedy Sooknannan, who was the arresting officer, 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. 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 Defendant's vehicle passing another vehicle in the opposite direction, and his radar tracked the Defendant'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.

Officer Sooknannan testified, and the video showed, the Defendant stating that he was late for Federal Court, which was later shown to be Family Court. The officer requested registration for the vehicle, no registration was produced, and the Defendant actually challenged the officer to issue him a ticket for no registration. The video showed that, during the stop, the Defendant was on his cell phone calling 911 emergency dispatch for no apparent reason.

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 Defendant 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. I ruled there was no Rule 5 violation, as this destruction was non-case specific, and was in the normal course of the Police Department.

The officer testified that the Defendant 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 Defendant, the officer had clear memory of the traffic stop despite the passage of time.

The Defendant 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 Defendant about a speeding charge on April 27, 2009 as shown on a driver record of Defendant's license obtained from the secured website of the South Carolina Department of Motor Vehicles (SCDMV), for which the Defendant was apparently found guilty. Defendant objected to this questioning because he had not been provided this driver's record document in response to his Rule 5 request. I explained that, since this was not part of the City's case, and would not have been admissible absent the Defendant'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, and so ruled.

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

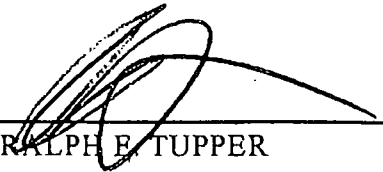
On January 20, 2011, Defendant filed a written Motion for New Trial. I held a hearing on this Motion on November 3, 2011. The Defendant again raised the issue of the Court's failure to appoint counsel to represent the Defendant. I reiterated the position stated in my written Order, which was also stated on the record at the trial. Defendant also raised again the allegation of the Rule 5 violation by the arresting officer in failing to provide the Defendant's driving record. I 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. Rather, since it was used only for impeachment, and only after the Defendant stated he had not had a speeding violation in the past 10 years (the Defendant wrongfully

argued that his testimony at trial was for the past 12 months), there was no Rule 5 violation.

Based on these reasons, I denied the Motion for a New Trial.

Beaufort, South Carolina

Dated: 10/21, 2012



RALPH E. TUPPER
Municipal Judge

**THE STATE OF SOUTH CAROLINA
In The Court of Common Pleas
Beaufort County**

13 MAR 28 PM 1:36
CLERK OF COURT
BEAUFORT COUNTY, S.C.

**APPEAL FROM CITY OF BEAUFORT
Municipal Court Judge Ralph Tupper**

Citation No. 58573BC & 58574BC

Court of Common Pleas Case 2011-4722

BEAUFORT MUNICIPAL COURT Respondent

v.

JOSEPH C. SUN Appellant

SUPPLEMENTAL BRIEF

A hearing was held on March 18, 2013 at the Beaufort County Court of Common Pleas before the Honorable Marvin H. Dukes, III, Master in Equity and Special Circuit Court Judge for Beaufort County. No court reporter was present. At the request of the Appellant, for the purpose of further appeal should it be necessary, Judge Dukes directed that Appellant may submit a supplemental brief within 10 days to summarize the evidence presented and arguments made at the hearing with copy to Respondent's counsel, and that no decision would be rendered until after the aforesaid brief and reply from the respondent, if any, are filed.

Appellant Sun appeals his conviction of 56/45 MPH speeding and driving without vehicle registration citations based on the respondent's violation of his right to due process of pretrial

Discovery pursuant to Rule 5, South Carolina Rules of Criminal Procedure and his rights under the Supreme Court case of Brady v. Maryland on evidence which was favorable to his defense. A copy of his request for Rule 5 discovery (Exhibit A) was presented at the hearing and copies were made for the Respondent counsel and the court. According to the letter, it is clear that Appellant is requesting "all documents and tangible objects which Officer Sooknanan will present at the trial on the referenced Traffic Ticket." The failure to honor Appellant's request of Rule 5 discovery is undisputed at the trial and the hearing on Appellant's motion for new trial, albeit the reason given by the Municipal Court on the justification is erroneous, therefore requires a reversal.

In his Return to Appeal filed by the Municipal Judge Ralph Tupper, (Page 2 of 4) he stated the notes on the back of the green copy of the ticket made by the arresting officer was "destroyed in the normal course of the business of the Police Department", and ruled that there was no Rule 5 violation. Judge Tupper further stated (Page 3 of 4) that "since Appellant's 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 the past 10 years¹, there was no Rule 5 violation." Based on these reasons, Municipal Judge denied Appellant's Motion for New Trial.

Rule 5, South Carolina Criminal Procedure provides the rights of a criminal defendant to Pretrial Disclosure of Evidence by the Prosecution which includes Appellant's Prior Driving Record where Subsection (a)(1)(B) provides:

¹ At the appeal hearing, the recording of the trial was played where it was heard that Appellant actually testified that he was 64 years old, he did not drive fast, and that he **believed** he had no speeding violation in past 10 years.

“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.”

Rule 5, Subsection (a)(3) requires that,

“The Prosecution shall respond to the defendant’s request for disclosure no later than thirty (30) days after the request is made, or within such other time as may be ordered by the court.”

Rule 5, Subsection © requires the prosecution the Continuing Duty to Disclose.

At the appeal hearing, Respondent counsel again argued erroneously that since Appellant stated that he believed he had no record of speeding in the past 10 years, he opened the door for prosecution to present the hidden copy of Appellant’s Prior Driving Record for purpose of impeachment. Respondent is not allowed to misread Rule 5 or add an “exception” for non-compliance. Rule 5 does not say if the document is only for the purpose of impeachment, the prosecution can hide it from the defendant.

At the trial, Officer Sooknanan after presenting a copy of Appellant’s prior driving record to the jury showing Appellant had a speeding conviction earlier in 2011, testified that he obtained Appellant’s prior record from a secured DMV website prior to trial, and he used it to show the jury that Appellant was lying that he believed he had no record of speeding violation in past 10 years. Officer Sooknanan testified that the website was only accessible by law enforcement. Obviously the jury gave the official Driving Record full credibility and discredited Appellant’s entire testimony and rendered a guilty verdict against Appellant.

Not only the non-disclosure of Appellant’s Prior Driving Record² is a violation of

² City of Beaufort obviously knew of the existence of Appellant’s prior Driving Record and could easily obtain a copy to comply with Appellant’s Rule 5 Request.

Appellant's rights to due process of Rule 5 Discovery, the record contained a surprised wrongful speeding conviction of which Appellant had no prior knowledge. The conviction in Jasper County was wrongful because Appellant was convicted in Jasper County without a trial, and more importantly, without a notice of the trial to Appellant. Appellant immediately filed a motion to set aside conviction at the Jasper County Magistrate Court and a motion for New Trial at Beaufort Municipal Court. (A copy of the motion is attached as Exhibit B.) Appellant's motion for New Trial was hastily denied at Beaufort Municipal Court. At a hearing in Jasper County, after the Magistrate determined from court records that the court had failed to notify Appellant of the trial at a correct address and that the wrongfully addressed letter was returned to the court, Appellant's speeding conviction was set-aside. The Jasper Magistrate issued only an Ismail Order to the Department of Motor Vehicles without a copy to the Appellant. Appellant has no paper to show the conviction was set-aside and asked Judge Dukes if he could submit an affidavit, but was told that he could include the facts in the Supplemental Brief. Obviously, the Respondent has the capability to verify the veracity. The prosecution's failure to disclose Appellant's Prior Record containing wrongful information against the Appellant is no doubt harmful and its use as an impeachment against the Appellant likely have caused the jury to render a wrongful guilty verdict.

Respondent's argument and the Municipal Judge's conclusion that Appellant's driving record was not a part of City's direct case or in the City's files, it was not subject to Rule 5 production is erroneous because Rule 5 requires the disclosure if "by the exercise of due diligence may become know, to the attorney for the prosecution." Officer Sooknanan testified that he had easy access to the law enforcement website to get Appellant's Driving Record and he obviously had already planned to get it to use it in the trial. Rule 5 prohibits the prosecuting officer to wait

until just before the trial, then obtain Appellant's Driving Record and hide it from the Defendant and surprise the Defendant with wrongful information to get a wrongful conviction.

The argument that there was no Rule 5 violation because the non-disclosed document was only used for impeachment after Appellant opened the door with his testimony is also erroneous. Rule 5 (a)(1)(B) required the prosecution to give the defendant such copy of his prior driving record upon his request, regardless of how it was used or not used. As his prior driving record was **included** as part of the Rule, Appellant was not required to spell out his prior driving record in his Rule 5 Request. When the prosecution has violated a defendant's right to Rule 5 discovery and failed to comply with Appellant's request, Subsection (d)(2) provides that,

"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, 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."

Not only Rule 5 gives no exception to use non-disclosed matters for purpose of impeachment, it requires the court to act as it deems just under the circumstances. Knowingly hiding a document from the defendant in violation of Rule 5, thereby obtaining a conviction when the hidden document contained false information against the defendant is certainly unjust and requires correction on appeal. The hidden prior driving record of the Appellant should have been inadmissible, and Appellant had objected at the trial after he saw it. Appellant also filed a motion for New Trial based on the same ground which was denied.

Had the City of Beaufort complied with Rule 5 and furnished Appellant a copy of his prior Driving Record containing the wrongful conviction, Appellant would notice the surprised wrongful conviction and take corrective action to notify the Jasper Court, obtain documentary evidence on

the wrongful conviction and present it to the jury in the Beaufort trial. At least Appellant would not have been shown as a liar to the jury. There would have been no impeachment.

On a less significant scale, Prosecution's failure to disclose favorable evidence to the defendant prior to trial is in violation of the supreme court doctrine of Brady v. Maryland, therefore, requires a reversal of Appellant's speeding conviction using the police radar.


Whether it is a custom for the law enforcement to disclose the defects of all speed detection radar does not alleviate the City of Beaufort's violation of Appellant's right to the requirement under Brady. Officer Sooknanan testified that he clocked Appellant speeding with his radar in his car. It was a busy intersection in front of Walmart where there are usually 20-30 cars stopped at the red light in all four directions during the day. The inability of police radar to identify the specific speeding vehicle in a crowd should be disclosed as favorable evidence to the defendant prior to trial. True, Appellant can make that same argument in the trial after cross examination of the Officer. But argument is not fact, and Appellant's credibility had already been wrongfully impeached by the Officer's hidden prior driving record containing wrongful conviction.

Officer Sooknanan failed to produce his video showing the speeding vehicle of the Appellant. According to his video played at the trial, it only consisted of the stopped vehicle of the Appellant at Lowes. When Appellant told him it was the car in front of him that was speeding and turned off, Officer asked Appellant if he saw where the car had turned to. Municipal Judge's Return to Appeal stated that Officer had destroyed the note written on the back of Appellant's ticket may give an explanation to the uncertainty of the Officer's radar detection. The destruction of the note was inexcusable.

For the foregoing reasons, Appellant's conviction on speeding and driving with no vehicle registration should be reversed.

This 27th day of March, 2013.

Respectfully submitted,

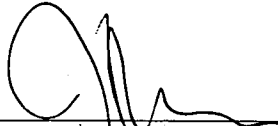


JOSEPH C. SUN, pro se
P. O. Box 151
Bluffton, SC 29910
843-227-0963

CERTIFICATE OF SERVICE

I certify that I have this date served the Respondent City of Beaufort a copy of my Supplemental Brief by mailing a copy of same to the counsel of the Respondent on March 28, 2013 at the following address:

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



JOSEPH C. SUN

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

CITY OF BEAUFORT,

Respondent

vs.

JOSEPH C. SUN,

Defendant/Appellant.

IN THE COURT OF
COMMON PLEAS
C/A NUMBER 2011-CP-07-4722

WARRANT/TICKET NO. 58573BC
and 58574BC

CITY'S RESPONSE TO
DEFENDANT'S SUPPLEMENTAL
BRIEF

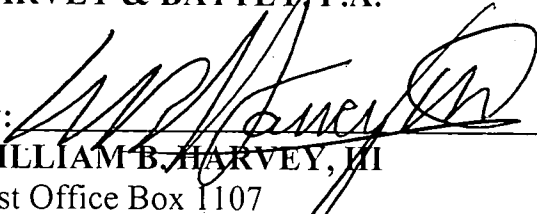
This is in response to the Defendant/Appellant's Supplemental Brief in this matter. Defendant reargues the same issues raised in his initial appeal, and argued to the Court at the hearing on March 18, 2013. Rule 5(a)(1)(B) clearly states that the prosecution shall furnish to the defendant a copy of his prior criminal record "upon the request of the defendant." It is equally clear that Defendant 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).

Further, the Defendant's prior driving record was not presented by the prosecution officer in the case in chief. Rather, this only became an issue when the pro-se Defendant testified "I don't drive fast. The records will show that in the past 10 years, I am not sure I had any speeding record."

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

Defendant requested a jury trial, and was found guilty by jury verdict on the charge of speeding 56/45. That verdict should stand. The Court's Return to Appeal explains the rulings. This appeal should be denied.

HARVEY & BATTEY, P.A.

By: 
WILLIAM B. HARVEY, III
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Attorneys for City of Beaufort

Beaufort, South Carolina

Dated: April 11, 2013

P14

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

City of Beaufort,

Plaintiff(s),

vs.

Joseph C. Sun,

Defendant(s).

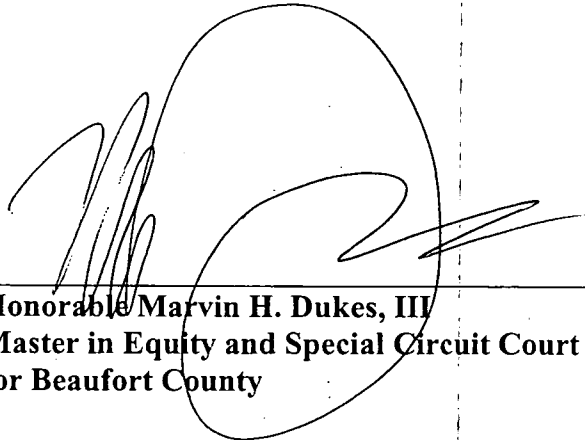
IN THE COURT OF COMMON PLEAS

CASE NO: 2011-CP-07-04722

ORDER DENYING APPEAL AND
AFFIRMING LOWER COURT ORDER

This matter came before me March 18, 2013 on Joseph C. Sun's Appeal filed November 10, 2011. The Appellant appeared pro-se, attorney William B. Harvey appeared for the city. At the hearing I gave the Appellant additional time to file a supplemental brief and attorney Harvey additional time to file a response brief. I have reviewed the briefs and the file and find no error of law. Therefore I affirm the lower court order.

IT IS SO ORDERED:



Honorable Marvin H. Dukes, III
Master in Equity and Special Circuit Court Judge
for Beaufort County

April 19, 2013
Beaufort, South Carolina

2013 APR 19 PM 12:36
JENNIFER ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

P 15

- (5) Defendant Sun was convicted unjustly by the jury and now may be incarcerated in this case because he is unable to pay the fine. Therefore, the court should have provided a counsel for his defense on January 11, 2011.
- (6) During the trial, Officer Sooknanan presented a surprising document as his evidence of impeachment against Sun's testimony that he had not been convicted of any speeding violation in the past ten (10) years. That document contained a wrongful and unconstitutional conviction totally unknown to Defendant Sun prior to the trial as shown in the attached Exhibit B. Sun has filed a motion to set aside the conviction at the Jasper County traffic court.
- (7) In May 2009, Sun had written Officer Sooknanan a letter pursuant Rule 5, SC R. Crim. P. requesting copies of all documentary evidence which the officer would be using against him in the trial and a copy of the DVD of the incident. The surprised driving record of Joseph Sun containing wrongful conviction should have been timely produced pursuant to Sun's request for Rule 5 discovery. Defendant Sun could have the opportunity to correct the wrongful conviction record or been prepared to explain it, but instead, Sun was caught in total surprise.
- (8) Defendant Sun only has a rough draft of his Rule 5 discovery letter written to Officer Sooknanan. He went to Beaufort City Police Department on January 17 asking for a copy of the Rule 5 letter he sent to the police department. Sarah at the Beaufort Police told Sun that because of the change in personnel, Sun's letter was temporarily misplaced.
- (9) Defendant Sun testified to the truth of his driving record that he has not been "convicted" of a speeding violation in past 10 years. But Officer Sooknanan's non-compliance of Sun's Rule 5 request for discovery and Sun's discovery of the new evidence that his driving record contains wrongful and unconstitutional conviction gave the jury a wrong impression that Sun was lying,

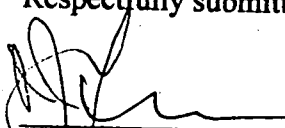
therefore, requires a new trial be granted in this case.

(10) Sun testified truthfully in the trial. Officer Sooknanan should not be allowed to use an inadmissible document containing a wrongful conviction unknown to Sun to impeach Sun.

Wherefore, based on the ground that Sun was deprived of the assistance of counsel for his defense and that the newly discovered evidence at the Jasper County Traffic Court shows that Sun was wrongfully impeached at the trial by the surprising document presented by Officer Sooknanan, and that Beaufort City Police should not have intentionally misplaced the Rule 5 discovery letter written by Sun in May 2009, a new trial should be granted.

This 19th day of January, 2011.

Respectfully submitted,



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

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

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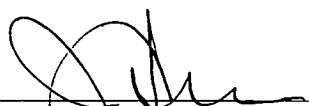
JOSEPH C. SUN Appellant

PROOF OF SERVICE

I certify that I have this date served the Respondent City of Beaufort a copy of the Appellant's Final Brief and the Record of Appeal by depositing a copy of same in the United States Mail, postage prepaid on October 28, 2013 to the following addresses:

William B. Harvey, III
P. O. Drawer 1107
Beaufort, SC 29901-1107
Attorney for Respondent
843-524-3109

This 28th day of October, 2013,



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

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SC Court of Appeals