

**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 & Special Circuit Court Judge
and Magistrate Court of Beaufort County**

**Appeal Case No. 2018-002225
Circuit Court Case No. 2018CP-07-01080
and Circuit Court Case No. 2019-CP-07-1020**

JOSEPH C. SUN **Appellant**

v.

STATE OF SOUTH CAROLINA **Respondents**

INITIAL BRIEF OF APPELLANT

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STATEMENT OF THE ISSUES

1. Should the false location of the accident furnished by the state highway patrol in the State's report TR-310 provided to the Appellant before trial and subsequently the false location was presented to the jury in the trial using false and fabricated theory be considered as a deprivation of Brady material and/or right to due process against the Appellant when a truthful location of the collision would and could result in a favorable verdict for the Appellant.
2. Should the false location of the accident furnished by the state highway patrol in the State's report TR-310 provided to the Appellant before trial, in response to Appellant's S.C.R.Crim.P., Rule 5 request for discovery, be considered as a violation of Appellant's right to the rule.
3. Should Magistrate Tanner whose former employer Bluffton Police Department was a defendant in a lawsuit filed by Appellant, and the Magistrate knew about it and had possibly been involved in the lawsuit, be required to voluntarily recuse from presiding in the Trial.

STATEMENT OF THE CASE

The within case involved a collision between Appellant's pickup truck and a Nissan car driven by a man with a female passenger. Appellant was written two traffic citation by an officer from the South Carolina Highway Patrol. After some unsatisfactory discovery pursuant to *Rule 5*, *S.C.R.Crim.P.*, and *Brady v. Maryland*, the case was tried by a jury at the Beaufort County Magistrate Court where Appellant was found guilty and fined.

Appellant filed several post trial motions which were all denied. Appellant timely filed Notice of Appeal to the Beaufort County Circuit Court which affirmed Appellant's conviction. On

appeal to the South Carolina Court of Appeals, Appellant asked to remand the case to the Magistrate Court for a new trial on the ground of deprivation of Brady material. Beaufort County Magistrate denied his motion for a new trial and motion to obtain Brady Material.

Appellant filed another notice of appeal to the circuit court on the denial of his aforesaid motions. Beaufort County Circuit judge dismissed his appeal without prejudice for lack of jurisdiction. Appellant filed motion to supplement the within appeal to include the denial of his motions for new trial and to obtain Brady Material.

STATEMENT OF THE FACTS

On about January 25, 2018, Appellant Joseph Sun was traveling northbound on S.C. Highway 170 towards Beaufort, S.C. in his truck. After he stopped at the EnMarket Gas Station in the town of Okatie, he drove across the highway to get a sandwich with his companion. When he had almost crossed the road and reached the other side, a Nissan car came at a high speed going also northbound, went on the wrong side of the road and collided on the drivers side of his truck.

The driver of the Nissan was shaking all over as he got out of the car with no visible injury but could not walk on his own. His lady companion ran out of the car and lied on the grass with another female holding her. An ambulance came and took both of them to the hospital. Appellant was bruised on his left leg but did not need hospitalization. The lady passenger in Appellant's truck was unharmed.

About half an hour later, an officer from the South Carolina Highway Patrol came and appeared to investigate the accident. He briefly talked to Appellant in an unfriendly manner and gave Appellant two (2) citations of moving violation, for failure to yield right of way and unlawful

turn. (Item 19, Designation of Matter) After returning home, Appellant Sun wrote a letter to the S. C. Highway Patrol and requested discovery pursuant to *S.C.R. Crim.P., Rule 5* and the doctrine of *Brady v. Maryland*. (Item 18, Designation of Matter)

About two weeks later, Appellant was told to go by the highway patrol office in Ridgeland, S.C. to pickup some papers and a C.D. The C.D. was a recording of the patrol officer's video taken on his patrol car when he was going to the scene of the accident (Item 16 Designation of Matter) and the papers included an accident report TR-310 and the citations. (Items 17 &19)

Appellant read the TR-310 and saw that the officer drew the location depicting the scene of the accident on the wrong side of the road. Appellant called the highway patrol office and told them the error, but the reporting officer Mazzone refused to do anything. Appellant asked for a jury trial and a pro bono counsel to represent him in the trial at the Magistrate Court. In a pretrial hearing, the Magistrate did not assign any pro bono counsel, only asked Appellant if he was going to represent himself. Appellant answered that he had no money for a lawyer.

On the day of the trial, a new Magistrate conducted the jury trial with an all white jury. Appellant is Asian mostly of Chinese descent. Magistrate did not ask Appellant if he had any objection to the jury composition.¹ Appellant was facing the court room while the Magistrate was behind him all the time. Appellant after trial complained he was not asked of the jury composition and that he did not know his right to that challenge. Magistrate Angela Tanner sarcastically commented that she knew Appellant had much experience in litigation therefore should have known. Appellant therefore investigated Magistrate Tanner's background and learned that she was

¹ Prior to presentation of evidence, Appellant was facing the court room when he was striking the jury and the Magistrate was sitting behind him. Being 72 years old, Appellant was hard of hearing. There was only one black and one Hispanic juror in the pool in the beginning and were struck by the state.

the wife of Beaufort County Sheriff Tanner and that she was the acting Captain of Bluffton Police Department at a time when Appellant had a lawsuit against the Bluffton Police Department (South Carolina Appeal Case No. 2017-002270). Appellant had not met Magistrate Tanner before and he was not told the name of the Magistrate before the trial.

At the trial, highway patrol officer Troy Mazzone fabricated a scenario without any basis or foundation that the collision occurred in front of the EnMarket Gas Station² (Item 17 Designation of Matter) when in fact according to the video and the photograph of the scene of accident, the collision occurred on the other side of the highway when the other Nissan car was going on the wrong side of the road against the on coming traffic. The highway patrol officer disregarded all the collision debris was on the far side of the road showing the collision could only be on the opposite side of EnMarket. Video showed the wrecker driver was sweeping debris on the far side of the road, not in front of EnMarket.

Appellant tried to explain to the jury that at the location of the collision, he actually had the right of way as he had already completed the left turn going to Zaxby's sandwich shop whereas the other Nissan car was on the wrong side of the road therefore was guilty of failure to yield. The Highway Patrol Officer Mazzone fabricated a story that the collision had occurred in front of the EnMarket gas station, as he depicted in his TR-310 (Item 17 Designation of Matter) but the 45 MPH Nissan car had pushed Appellant's truck sideways to the other side of the road in front of Zaxby's. The all white jury found Appellant guilty of both count of the citations.

Officer Mazzone then requested both maximum fines in addition to jail time. South Carolina Code § 56-5-6190 provides that all convictions of a misdemeanor violation such as what

² As Officer Mazzone had falsely shown in his TR-310 and on the chalk board on the easel in court.

Appellant was convicted “shall be punished by a fine of not more than One hundred dollars OR by imprisonment for not more than thirty days.” South Carolina law does not allow punishment by both fines and jail time, therefore, State’s request for punishment was illegal for an ulterior motive.

Appellant Sun asked for a directed verdict of acquittal prior to jury verdict, and his motion was denied. After jury found him guilty, Appellant filed post trial motion of judgment notwithstanding the verdict which was also denied by Magistrate.

After the trial and conviction by the jury, Appellant called the home office of the State Highway Patrol in Blythewood, S.C. and asked for investigation regarding the false TR-310. Appellant was told that former Officer Troy Mazzone was no longer an officer in the South Carolina highway patrol and that he had moved to Georgia.

ARGUMENT

ISSUE 1

According to the exhibited Photograph, Items 15 of Defendant’s Designation of Matters, the collision occurred on the opposite side of the road from the false location that was depicted by the former State’s highway patrol Officer Mazzone. The photographs depict what the officer saw when he arrived at the accident scene.³ But officer Mazzone made his own guess in order to convict the Appellant that the collision occurred in front of EnMarket as he drew on his TR-310 and repeated that drawing in the trial on a black board on the easel to the jury. Then he made his own guess and fabrication without any basis or foundation that Appellant failed to yield to on coming traffic on Highway 170 and caused a collision which carried both cars to the other side of

³ The photographs were snap shots from the video taken with the camera on the patrol officer’s car.

the road as shown on the photographs.

Officer Mazzone cannot be allowed to fabricate a scenario and misrepresent the scene of the accident. He should truthfully report the location of the cars in his reports as he saw it when he arrived and shown in the photographs and video. If he could present reason and foundation, he could then explain to the jury what he believed had happened as he had falsely shown in his TR-310. Obviously, Appellant Sun could use the truthful TR-310 as his Brady material that the other car was on the wrong side of the road. Officer's false sketch on his TR-310 deprived Appellant Sun his favorable Brady evidence and gave Officer Mazzone excuse why he did not cite the other driver going on the wrong side of the road. Just because the TR-310 cannot be used as evidence to show guilt or innocence, if it showed the truthful location of the cars after collision, Appellant could use it as his Brady evidence to try to convince the jury that he had the right of way and the other driver was on the wrong side of the road in violation of the South Carolina traffic law Section 56-5-1920, causing the accident.

The South Carolina Supreme Court in *Riddle v. Ozmint*, 369 S.C. 39, 631 S.E.2d 70 (2006) held that "An individual asserting a Brady violation must demonstrate that evidence: (1) favorable to the accused; (2) in the possession of or known by the prosecution; (3) was suppressed by the State; and (4) was material to the accused guilt or innocence or was impeaching. *Kyles v. Whitley*, 514 U.S. 419 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995). In *Gibson v. State*, 334 S.C. 515, 514 S.E.2d 320 (1999) already held that if a *Brady* violation is found to have occurred, post conviction relief must be granted."

Even assuming that the exact location of the collision was arguable, whether it actually occurred in front of EnMarket (as Officer Mazzone showed in his TR-310) or on the other side of

the road in front of Zaxby's, the actual photographs and video taken on the patrol car showed that when the officer arrived, the cars were in front of Zaxby's not as the officer had falsely drawn on his TR-310, the State's misrepresentation that the collision occurred in front of EnMarket, then covered up by falsely claiming that the collision caused the two cars to be carried over to the other side of the road as seen by the officer when he arrived is considered as violation of Appellant's right to Brady and due process of the law.

Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed. 2d 215 (1963) held "that the suppression by the prosecution of evidence favorable to an accused upon request violates due process irrespective of the good faith or bad faith of the prosecution." See *Moore v. Illinois*, 408 U.S.786, 794-795, 92 S.Ct.2562, 33 L.Ed.2d 706 (1972), also *United States v. Agurs*, 427 U.S. 97, 96 S.Ct.2392, 49 L.Ed.2d 342 (1976).

Granted that this is a case of appeal, not one of post conviction relief, however the violation of Appellant's right to Brady material and due process of the law is clear and the issue is raised in this appeal, therefore, the conviction should be reversed.

ISSUE 2

Appellant requested pretrial disclosure of evidence by the prosecution pursuant to *Rule 5, South Carolina Rules of Criminal Procedure*, Item 18, Designation of Matter. Rule 5(C) provides that, "upon request of a defendant the prosecution shall permit the defendant to inspectpapers, documents within custody or control of the prosecution which are material to the preparation of the defense or are intended for use by the prosecution as evidence ..." Obviously, the rule requires the state to give Appellant truthful papers and documents, not a fabrication of a different location of the collision, just because the highway patrol officer wanted to coverup the

wrong doings of the other driver of the Nissan car going on the wrong side of the road and that the patrol officer cited the wrong driver for violation of traffic law.

The State's violation of Rule 5, S.C.R.Crim.P. against the Appellant requires the evidence presented by the State to be disregarded and nullified in the trial. Appellant should be acquitted of the charges in the citation, Item 19, Designation of Matter.

ISSUE 3

The Magistrate who tried the case against the Appellant was essentially an adversary in a prior civil case a few years ago. Magistrate Tanner had indicated she knew Appellant had been in legal matter before. There was no other legal case besides the one Appellant had filed against the Bluffton Police Department when Magistrate Tanner was a Captain.

South Carolina Judicial Cannon requires that a trial judge recuse himself whenever his/her impartiality can be questioned. Prior to trial, Appellant did not know who would be the trial judge. During the entire trial, Appellant had no knowledge of the background of the Magistrate trying the case. Not until Appellant was convicted and in a post trial hearing when the Magistrate commented that she knew Appellant had been in court frequently. Appellant then learned that Magistrate Tanner was a former Captain in Bluffton Police Department which was a defendant in a civil suit filed by Appellant.

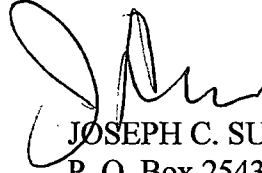
Appellant did not know the background of the Magistrate, but she knew about Appellant and his past litigations one of which was her past employer. That relationship and knowledge would give an appearance of impropriety where the impartiality of the Magistrate would be questioned.

CONCLUSION

For the foregoing reasons, the conviction against the Appellant should be reversed and a judgment of acquittal should be entered.

This 20th day of April, 2020.

Respectfully submitted,



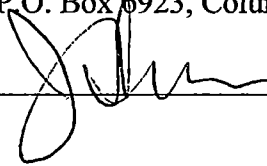
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CERTIFICATE OF SERVICE

This is to certify that I have this date served the Respondent a copy of my Initial Brief Appeal of Appellant by delivering a copy of same by U.S. Mail with sufficient postage to:

Alan McCrory Wilson, Esquire,
5 Calendar Court, Suite 202, P.O. Box 6923, Columbia, SC 29260

This 18th day of April, 2020.



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