

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
) CASE NO: 2018-CP-07-1080
) MAGISTRATE COURT CITATION NOS:
) 20182400269545 & 20182400269546

STATE OF SOUTH CAROLINA,
Respondent,

**ORDER ON MOTION
FOR NEW TRIAL**

-vs-

JOSEPH SUN,
Defendant/Appellant,

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JUL 01 2020

SC Court of Appeals

BEAUFORT COUNTY MAGISTRATE COURT
2019 APR -4 PM 12:44
CENTRAL COURT SOUTH

This matter came before the Court on April 1, 2019 on Defendant's Motion for New Trial, which was filed on September 10, 2018. Defendant has a pending appeal with the South Carolina Court of Appeals, and this matter was remanded for the limited purpose of hearing this motion.

Defendant argued that he deserved a new trial for after discovered evidence based on two pieces of newly discovered evidence. First, Defendant argued that he researched the Theory of Momentum after the trial and claims it would exonerate him. Second, Defendant argued that he is waiting on a new TR-310 in response to a Brady 5 request that will serve as exonerating evidence. Defendant further argued that the State had a burden to produce any exonerating evidence, but failed to so.

According to *State v. Spann*, 334 S.C. 618 (1999), in order to grant a new trial Defendant would have to show that the evidence: 1) would probably change the result if a new trial were granted; 2) has been discovered since trial; 3) could not have in the exercise of due diligence been discovered before trial; 4) is material to the issue of guilt or innocence; and 5) is not merely cumulative or impeaching.

When addressing the Theory of Momentum (herein after Theory), it is clear that the Theory has been around for a long time and if Defendant had done his due diligence

the Theory could have been discoverable prior to the original trial. There was no evidence regarding any scientific discoveries that would not have been discoverable prior to the original trial.

As far as the Brady 5 material argument, it is this Court's understanding that Defendant is requesting that an amended TR-310 be produced by the State. At this time no such document exists, and thus, no new evidence has been discovered. The only document in existence is a TR-310 that Defendant modified by hand to show the diagram of the collision as he believes it should be.¹

Therefore, Defendant's Motion for a New Trial is DENIED.

Respectfully Submitted,



Jose A. Fuentes
Beaufort County Magistrate

Bluffton, South Carolina
4th day of April, 2019

¹ On March 11, 2019, Defendant filed a "Motion To Obtain Brady Materials" with the Bluffton Magistrate Court. Attached to that Motion, as Exhibit "B", is the TR-310 that the investigating officer prepared but with a modification done by Defendant. Defendant placed an X on the depicted vehicles and hand drew a new location for the vehicles. The Court did not address the Motion, as it does not fall within the Court's limited jurisdiction.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

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June 15, 2020

Joseph C. Sun
P.O. Box 2543
Bluffton SC 29910

*Received on
June 22, 2020*

Re: Joseph Sun v. State of South Carolina
Appellate Case No. 2018-002225

Dear Mr. Sun:

The Court has received your motion to amend the notice of appeal. Within ten (10) days of the date of this letter you must provide a copy of the additional orders you are seeking to appeal, or your motion will not be considered.

Very truly yours,

Handwritten signature of Jenny A. Kitchings in cursive script.
CLERK

cc: Alan McCrory Wilson, Esquire
William M. Blich, Jr., Esquire

**Joseph C. Sun
P. O. Box 2543
Bluffton, SC 29910**

CHARLESTON SC 294

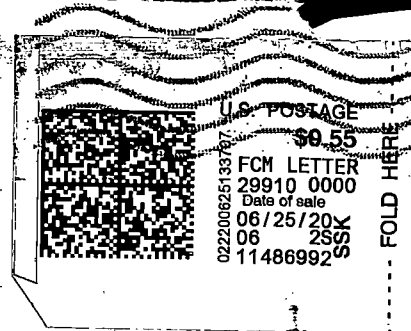
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SC Court of Appeals

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