

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

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OCT 07 2020

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

SC Court of Appeals

**Marvin H. Dukes III, Master in Equity & Special Circuit Court Judge
and Magistrate Court of Beaufort County**

Appeal Case No. 2018-002225

JOSEPH C. SUN **Appellant**

v.

STATE OF SOUTH CAROLINA **Respondents**

**RESPONSE TO RESPONDENT'S
MOTION TO DISMISS AND TO ORDER TRANSCRIPT**

Respondent's motion to dismiss or in alternative require Appellant to order transcript should be denied on the following grounds:

- (1) It was Appellant's error to serve the initial brief at a wrong address and attorney, based on a previous document came from counsel for the S.C. Highway Patrol and officer (see attached Exhibit A). Appellant had no knowledge of Respondent's address and made the assumption that counsel for the South Carolina Highway Patrol was the same as counsel for the state. All documents from the court only had the name of the Attorney General, not his address. The respondent was notified by the court of Appellant's initial brief, and required it to serve and file its brief of respondent within 30 days of the date of its letter of July 13, 2020 (See Exhibit B).

Respondent therefore already had a copy of Appellant's Brief.

(2) On August 31, 2020 after the date it was required to file and serve its brief, respondent filed a motion out of time for extension to serve and file its brief. After Appellant found out the correct address of the respondent, he did not object to the motion out of time for extension. Respondent was granted until September 30, 2020 by the court. But on September 9, 2020 respondent filed its motion to dismiss or in the alternative require Appellant to Order Transcript.

(3) Respondent has not been prejudiced by Appellant's error in mailing his initial brief which has been corrected and served. Respondent was aware of the letter written by Appellant filed in the case that he did not intend to order any transcript in this case. There was no transcript of trial at the Magistrate Court because the entire proceeding was recorded in cassette tapes. Appellant is 73 years old and retired on social security with a small check every month. He could not afford to pay for any transcript when he had no need for it, furthermore Appellant will show that nothing in the transcript if there is one would be relevant or can be used in this appeal case.

(4) No transcript was included in Appellant's Designation of Matter to be Included in the Record of Appeal because Appellant does not require any citation of the transcript of the hearing at the circuit court. Therefore, Appellant certified that the designation contained no matter which is irrelevant to this appeal. (See Appellant's Designation of Matter filed.)

(5) There are three issues on appeal. The false location of the collision in the state's report TR-310 given to Appellant and subsequently falsely testified by the officer in the trial is considered as a deprivation of Brady material to Appellant and the deprivation of Appellant's right to S.C.R.Crim.P., Rule 5 after Appellant had written request of those materials in his letter of discovery to S.C. Highway Patrol (see Exhibit C) which responded and send Appellant erroneous

location of the collision. Therefore, both of the two issues were preserved on appeal here.

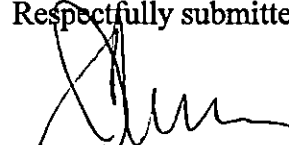
(6) The third and last issue is the fact that Magistrate Tanner presided in the jury selection and trial was the prior Captain of Bluffton Police Department who had been sued by Appellant in a lawsuit earlier and still pending appeal, therefore, should have voluntarily recused herself from the trial against the Appellant. Magistrate made statements in court showing her knowledge regarding Appellant's prior lawsuits but Appellant had no knowledge of her involvement until subsequent investigation after trial. There is no transcript regarding his matter as it was not brought up in the traffic case on appeal to the Circuit Court.

(7) Appellant has made a separate motion to proceed appeal without the transcript of the hearing at the circuit court. Appellant has certified that his designation contains no matter which is irrelevant to this appeal. The letter of discovery (Exhibit C) attached herewith has preserved the issues on appeal.

Respondent's motion should be denied.

This 30th day of September, 2020.

Respectfully submitted,



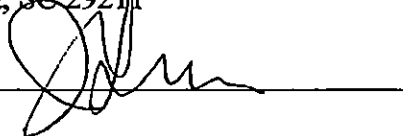
JOSEPH C. SUN, pro se
P. O. Box 2543
Bluffton, SC 29910
843-226-8788

CERTIFICATE OF SERVICE

This is to certify that I have this date served the Respondent a copy of my Response to respondent's Motion to Dismiss by delivering a copy of it by U.S. Mail with sufficient postage to:

Alan McCrory Wilson, Esq, Office of Attorney General
P. O. Box 11549, Columbia, SC 29211

This 1st day of October, 2020.



WHEREFORE, having fully answered the Complaint of the Plaintiff, the Defendants South Carolina Highway Patrol and Troy Mazzone pray that the Complaint be dismissed with prejudice, for the costs of this action, and for such other and further relief as the Court deems just and proper.

BY: s/ Joel S. Hughes
JOEL S. HUGHES #73708
5 Calendar Court, Suite 202
Post Office Box 6923
Columbia, South Carolina 29260
T: 803-881-8920
Email: joel@ldh-law.com

Counsel for Defendants SC Highway Patrol
and Troy Mazzone

Columbia, South Carolina

February 1, 2019

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OCT 07 2020

SC Court of Appeals

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

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July 13, 2020

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

Mr. William M. Blich, Jr., Esquire
PO Box 11549
Columbia SC 29211

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

Dear Counsel, and Mr. Sun:

Enclosed is the decision of the Court. The initial brief of respondent and designation of matter are due to be served and filed within thirty (30) days of the date of this letter.

Very truly yours,


CLERK

cc: Alan McCrory Wilson, Esquire

-B-

P. O. Box 2543
Bluffton, SC 29910

February 1, 2018

South Carolina Highway Patrol
407 Live Oak Drive
Ridgeland, SC 29936

Re: Traffic Citations #20182400269545
& #20182400269546

Gentlemen:

Pursuant to Rule 5, South Carolina Rules of Criminal Procedure and my rights under the doctrine of Brady v. Maryland, (my rights to all favorable evidence for the trial), I am requesting all documents and tangible objects pertinent to the trial on 3/15/2018, on the referenced Traffic Ticket for disclosure under the aforesaid authority. The referenced citations were written by Officer Troy Gonzalez, TFC on January 25, 2018.

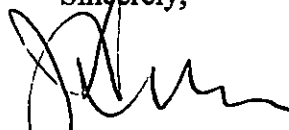
In particular, I request:

- (1) a copy of all the recording, video and/or photographs taken by the highway patrol officers, especially Troy Gonzalez on their body cameras at the scene of accident,
- (2) a full list of witnesses they talked to on the day of accident **and after**, pertaining to the accident and my alleged violations as charged in the above aforesaid citation. The list of witnesses should include their names, addresses and telephone numbers for my preparation for trial and subpoenas for their appearance or rebuttal witnesses.
- (3) A copy of the notes, memos and recordings if any, of all the interviews and meetings that the highway patrol officers had with them.
- (4) A copy of all the notes, memos and recordings if any, of all the interviews and meetings that the highway patrol department had with the driver and owner of the vehicle involved in the accident with me.
- (5) Any other documents and things your department may be using at the trial of the referenced traffic citations.

Please send me copies of all matters I requested to my mailing address as shown on top right at least 15 days prior to the trial date of 3/15/2018. Pursuant to my rights under the Sixth Amendment of the U.S. Constitution, and by copy of this letter to the Magistrate Court, I am requesting a jury trial.

Thank you for your attention.

Sincerely,



JOSEPH C. SUN

- C -

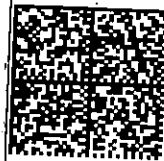
J. C. Sun
P. O. Box 2543
Bluffton, SC 29910

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SC Court of Appeals

Clerk, South Carolina Court of Appeals
P. O. Box 11629
Columbia, SC 29211



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