STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

Michael G. Nettles, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TAURUS LAMARE THOMPSON,

APPELLANT

APPELLATE CASE NO. 2012-212659

INITIAL REPLY BRIEF OF APPELLANT

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II. Appellant was entitled to a directed verdict on the charge of resisting arrest where the State failed to put forth any evidence that the arresting process was underway at the time of Appellant's flight.

ARGUMENT IN REPLY

I. Appellant's direct verdict argument is preserved for this Court's review where (1) a party is not required in a case tried before a judge without a jury to make a directed verdict motion to preserve for appeal an issue regarding the sufficiency of the evidence; and (2) the record establishes that Appellant argued a second time for a directed verdict after the close of the defense case even though Appellant did not expressly use the word "renew."

The State first argues that Appellant Taurus Lamare Thompson did not preserve his directed verdict argument for appeal because Thompson failed to renew his directed verdict motion at the close of the defense case.

As an initial matter, in cases tried before a judge without a jury, a party need not make a directed verdict motion to preserve for appeal an issue regarding the sufficiency of the evidence. Norell Forest Prods. v. H&S Lumber Co., 308 S.C. 95, 99, 417 S.E.2d 96, 99 (Ct. App. 1992), *rev'd in part on other grounds*, 310 S.C. 368, 426 S.E.2d 800 (1993); see also In the Matter of the Care and Treatment of John Foley Kennedy, 353 S.C. 394, 396 n.1, 578 S.E.2d 27, 28 n.1 (Ct. App. 2003).

In addition, it is clear from the record that while Thompson's trial attorney may not have used the word "renew," his trial attorney unmistakably renewed Thompson's directed verdict motion at the close of the defense case. After Thompson testified and the defense rested, Thompson's trial attorney began to make her closing argument to the Trial Court as this was a bench trial. Thompson's trial attorney began her argument to the court by stating:

> Your Honor, most of my argument I think would be a similar sort of argument under which we handled on directed verdict motion. Of course, in this circumstance of – whereas that would be taken in the light most favorable to the State, at this point, the Court as the trier of fact, would consider all the facts and circumstances.

Tr. 73, ll. 7-13.

Thompson's trial attorney then presented argument consisting of eight pages of the transcript as to why the evidence as presented by the State and the defense was not sufficient to support a guilty verdict against Thompson for resisting arrest. Tr. 73, l. 7 – 80, l. 9. While Thompson's trial attorney might not have stated expressly that she was renewing Thompson's motion for directed verdict, that is in fact what the trial attorney did by arguing for a directed verdict at the close of all the evidence. A party need not use the exact name of a legal doctrine in order to preserve an issue for appellate review. State v. Brannon, 388 S.C. 498, 502, 697 S.E.2d 593, 595-96 (2010); State v. Russell, 345 S.C. 128, 132, 546 S.E.2d 202, 204 (Ct. App. 2001). Rather, a litigant is only required to fairly raise the issue to the trial court, thereby giving the trial court an opportunity to rule on the issue. Brannon, 388 S.C. at 502, 697 S.E.2d at 595-96.

Certainly in this case, the Trial Court, acting as the trier of fact, was given "the opportunity to pass on the sufficiency of the evidence as it stood" at the close of the defense case. See State v. Harry, 321 S.C. 273, 277, 468 S.E.2d 76, 79 (Ct. App. 1996). Accordingly, because Thompson was not required to make a directed verdict motion in a bench trial and because Thompson clearly renewed his directed motion at the close of all the evidence, this Court should reject the State's contention that the directed verdict argument is not preserved for this Court's review.

II. Appellant was entitled to a directed verdict on the charge of resisting arrest where the State failed to put forth any evidence that the arresting process was underway at the time of Appellant's flight.

As to the merits of Thompson's appeal, the State asserts that Thompson was not entitled to a directed verdict on the charge of resisting arrest pursuant to S.C. CODE ANN. § 16-9-320(A) because the arresting process was underway at the time Thompson fled and resisted arrest. The facts do not support the State's argument.

There was no arrest of Thompson taking place when he fled from Officer Englert. When Officer Englert passed Thompson on the other side of the road, he believed that Thompson was driving without headlights, so Officer Englert turned around to pull Thompson over. Thompson pulled into an apartment complex, but only after Thompson pulled into the apartment complex and opened the door of his Ford Explorer to hop out did Officer Englert even activate the patrol vehicle's blue lights. Tr. 14, ll. 5-21; 69, l. 9 – 70, l.1.

"[A]n arrest requires intent on the part of the officer to arrest the suspect, and intent on the part of the suspect to submit to the arrest . . . ." State v. Brannon, 388 S.C. 498, 504, 697 S.E.2d 593, 597 (2010). Here, Thompson had no intent to submit to Officer Englert because he ran as soon as he saw the officer. Officer Englert had no intent when he pulled behind Thompson to arrest him because the officer testified that he had no intention to arrest Thompson for driving without headlights. Tr. 24, ll. 9-13. At the point when Thompson fled, there was clearly no arresting process underway.

The State argues that after Thompson began running, Officer Englert then intended to arrest Thompson for violating city ordinances and Thompson was therefore guilty of resisting arrest by continuing to run. In Brannon, however, the Supreme Court specifically held that in determining whether a defendant resisted arrest in violation of § 16-9-320(A), the court's "inquiry is directed at determining whether *the arresting process was underway at the time of [the defendant's] flight.*" 388 S.C. at 504, 697 S.E.2d at 597 (emphasis added).

When Thompson fled, it is unequivocal that Officer Englert was not in the process of arresting Thompson. Based on Thompson's flight, Officer Englert may have then decided to arrest Thompson for failure to identify, even though Officer Englert never asked Thompson to identify himself, and for resisting police pursuant to the Rock Hill municipal code, but that does not change

the analysis of whether Thompson is guilty of resisting arrest pursuant to § 16-9-320(A) when the State has presented no evidence that an arrest was underway when Thompson fled as required by the language of the statute.

The Brannon case controls the outcome of this case. The State attempts to distinguish the facts of Brannon from this case, but they are essentially the same. In Brannon, the officers had no intent to arrest Brannon when they approached him but only to question him. The officers shouted at Brannon, "stop, police!" Brannon then fled which led to the officers chasing him for 300-350 yards, apprehending him, and placing him under arrest for fleeing. Brannon, 388 S.C. at 501, 697 S.E.2d at 595. Under those facts, the Supreme Court held that Brannon was entitled to a directed verdict on the charge of resisting arrest. Id. at 505, 697 S.E.2d at 597-98.

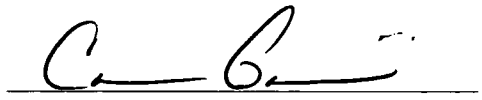
Essentially the same factual scenario occurred in Thompson's case. Officer Englert had no intent to arrest Thompson when he pulled his patrol vehicle behind Thompson. Thompson fled and a chase followed. Officer Englert then placed Thompson under arrest for fleeing even though there was no arresting process underway when Thompson fled.

Accordingly, where the State failed to present any evidence that the arresting process was underway when Thompson fled, the Trial Court erred in denying Thompson's motion for a directed verdict on the charge of resisting arrest.

CONCLUSION

For the reasons set forth herein and in the Appellant's Brief, Appellant Taurus Lamare Thompson requests this Court to reverse the Trial Court's denial of Thompson's motion for a directed verdict and issue an Order of Acquittal as to the charge of resisting arrest pursuant to S.C. CODE ANN. § 16-9-320(A).

Respectfully submitted,



Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR APPELLANT

This 4th day of September, 2013.

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TTAURUS LAMARE THOMPSON,

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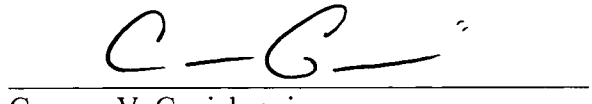
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Initial Reply Brief of Appellant in the above referenced case has been served upon Christina J. Catoe, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 4th day of September, 2013.



Carmen V. Ganjehsani
Appellate Defender

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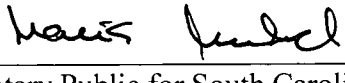
SUBSCRIBED AND SWORN TO before me
this 4th day of September, 2013.



(L.S.)
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My Commission Expires: July 3, 2023.