

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC 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

FINAL BRIEF OF APPELLANT

CARMEN V. GANJEHSANI
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Appellant was entitled to a directed verdict on the charge of resisting arrest pursuant to S.C. CODE ANN. § 16-9-320(A) where the State failed to put forth any evidence demonstrating that an arrest was being made when Appellant fled from the police.

STATEMENT OF THE CASE

On May 12, 2011, Appellant Taurus Lamare Thompson was indicted by the York County Grand Jury on one count of resisting arrest in violation of S.C. CODE ANN. § 16-9-320(B) for knowingly and willfully assaulting a law enforcement officer while resisting the efforts of the officer to make a lawful arrest when the defendant knew or reasonably should have known that the officer was a law enforcement officer. R. 89.

A trial was held before the Honorable Michael G. Nettles on July 24, 2012. R. 1. Thompson was represented by Ashley Anderson, and the State was represented by Christopher Epting. R. 1. Thompson waived his right to a jury trial and proceeded with a bench trial before Judge Nettles. R. 3, l. 10 – 5, l. 10.

Judge Nettles found Thompson not guilty of resisting arrest under Subsection B of § 16-9-320 which makes it unlawful for a person to “knowingly and willfully assault, beat or wound an officer when the person is resisting an arrest being made by one whom the person knows or reasonably should know is a law enforcement officer” R. 82, ll. 10-11.

Judge Nettles, however, found that Thompson was guilty of resisting arrest under the lesser included offense pursuant to Subsection A of § 16-9-320 which makes it unlawful for a person to “resist an arrest being made by one whom the person knows or reasonably should know is a law enforcement officer” R. 82, l. 11.

On July 24, 2012, Judge Nettles sentenced Thompson to a period of one hundred and fifty-five (155) days. R. 86, ll. 4-8.

Thompson timely filed and served his Notice of Appeal on August 1, 2012.

STATEMENT OF FACTS

Officer Michael Englert of the Rock Hill City Police Department testified that between 4:00 and 5:00 in the morning on January 1, 2011, he was traveling east on Celanese Road when he believed he observed a Ford Explorer driving the opposite way with no headlights. R. 13, ll. 12-13; 14, ll. 5-21. Officer Englert then turned around to initiate a traffic stop. Officer Englert said the Ford Explorer traveled about 150 meters and then pulled into the Heather Heights apartment complex. Officer Englert pulled behind the Ford Explorer. R. 14, ll. 21-25. Officer Englert's testimony did not indicate that he ever turned on his blue lights prior to pulling into the apartment complex behind the Ford Explorer.

Officer Englert testified that before he could get his car in park and get his seatbelt off, Appellant Thompson exited the Ford Explorer and ran behind the apartment complex. R. 14, l. 25 – 15, l. 2.

Officer Englert got out of his vehicle and chased Thompson through the Heather Heights apartment complex to the Stone Crossing apartment complex, through thick vegetation, and finally into a creek where both Officer Englert and Thompson ended up in the water. R. 15, ll. 4-12.

Officer Englert was on top of Thompson in the water, and they both stood up. Officer Englert thought Thompson was holding a box cutter in his hand, so Office Englert struck Thompson, and the two both fell back in the water. Officer Englert was then able to handcuff Thompson and pull Thompson up out of the water. R. 15, ll. 12-22.; 32, ll. 23-25. Even though Officer Englert claimed he thought Thompson had a box cutter, no box cutter was ever found or recovered. R. 23, ll. 22-25.

Backup officers arrived, and Thompson was then taken to the police department. R. 15, ll. 23-25.

Officer Englert testified that during the chase, he was yelling at Thompson to stop running and get on the ground. At one point, Officer Englert yelled to Thompson, "You can keep running, but you're going to jail tired." R. 16, ll. 5-16. Officer Englert confirmed at trial that he did not tell Thompson he was under arrest at first, but only during the chase. R. 26, ll. 3-8.

Officer Englert stated to the Trial Court that Thompson was under arrest for violating two sections of the Rock Hill Municipal Code, including Sec. 23-4 for resisting police which provides: "No person in any physical manner shall oppose, resist, or interfere with any police officer in the discharge of the police officer's official duties." ROCK HILL, S.C., CODE § 23-4; R. 18, ll. 11-14; 24, ll. 14-17; 34, l. 24 – 35, l. 2.

Officer Englert said that Thompson was also under arrest for failure to identify under Sec. 23-7(b) which requires "[a]ny person detained as outlined in this section [to] identify himself or herself if requested by the police officer." ROCK HILL, S.C., CODE § 23-7(b); R. 18, ll. 11-14; 24, ll. 14-17; 34, l. 24 – 35, l. 2.

Thompson also testified at the bench trial. Thompson testified that he saw the police cruiser behind him, although the cruiser did not have any blue lights on at that point. Thompson said that only after he turned into the apartment complex and opened the door of his Ford Explorer to hop out did the officer activate the patrol vehicle's blue lights. R. 69, l. 9 – 70, l. 1.

Thompson said that he ran because his license was suspended. R. 68, ll. 21-25.

Thompson further testified that he did not hear Office Englert say anything to him when he started running. R. 65, ll. 17-19. According to Thompson, Officer Englert never informed him for what he was under arrest while the two were still in the creek. R. 66, ll. 20-23. Thompson did not remember Officer Englert saying to him at any point in time that he was under arrest. R. 68, ll. 7-9.

Thompson was never charged with either resisting arrest or failure to identify under the Rock Hill Municipal Code. R. 26, l. 22 – 27, l. 17; 67, ll. 16-17. At trial, Officer Englert confirmed that he had never requested Thompson's driver's license or asked him to identify himself at the point he began chasing Thompson. R. 31, ll. 4-13.

Officer Englert also conceded that he did not have any intention to place Thompson under arrest for driving without headlights, the conduct that led Officer Englert to pull Thompson over in the first place, and would have only issued Thompson a citation for that traffic violation. R. 24, ll. 9-13.

Thompson was ultimately charged with assaulting a law enforcement officer while resisting arrest under S.C. CODE ANN. § 16-9-320(B). R. 30, ll. 22-24.

At the bench trial, Thompson moved for a directed verdict on several grounds, including that there was no evidence that Thompson knowingly and willfully assaulted, beat, or wounded a law enforcement officer while resisting arrest as required by Subsection B of § 16-9-320. R. 35, l. 10 – 36, l. 17.

Thompson also argued that the offense of resisting arrest requires a lawful arrest and that there was not any lawful arrest of Thompson being made when he exited his vehicle. R. 36, l. 18 – 58, l. 17.

The Trial Court denied Thompson's motion for a directed verdict. R. 58, l. 21 – 59,
l. 17.

Thompson renewed his directed verdict argument during closing arguments. R. 73,
l. 7 – 80, l. 9.

The Trial Court found that Thompson was not guilty of violating Subsection B of §
16-9-320, which requires an assault to the officer while resisting arrest. The Trial Court,
however, did find Thompson guilty of violating Subsection A of § 16-9-320 and sentenced
Thompson to one hundred and fifty-five (155) days. R. 82, ll. 10-12; 86, ll. 4-8.

This appeal follows.

ARGUMENT

Appellant was entitled to a directed verdict on the charge of resisting arrest pursuant to S.C. CODE ANN. § 16-9-320(A) where the State failed to put forth any evidence demonstrating that an arrest was being made when Appellant fled from the police.

Officer Englert pulled Appellant Thompson over because he believed he observed Thompson was driving without headlights. R. 14, ll. 5-21. Officer Englert admitted that when he pulled Thompson over, he had no intent to arrest Thompson for driving without headlights. R. 24, ll. 9-13. According to Officer Englert's testimony, Thompson ran from him before he could even exit his patrol car. R. 14, l. 25 – 15, l. 2.

For a defendant to be guilty of a violation of S.C. CODE ANN. § 16-9-320(A), the State must demonstrate that the accused knowingly and willfully resisted an arrest being made. There was clearly no arrest of Thompson being made when he fled. Therefore, Thompson was entitled to a directed verdict where the State failed to present evidence on a material element of the offense charged. State v. Brannon, 388 S.C. 498, 502, 697 S.E.2d 593, 596 (2010).

The facts of this case comport with the Supreme Court's holding in Brannon. In Brannon, an apartment resident looked out her window in the early morning hours and noticed an individual inside her vehicle. She called 911 and waited on the line until the police could arrive. While waiting, the resident saw the individual exit her vehicle and enter a nearby Ford Explorer. Minutes later, the police officers arrived on the scene. Id. at 500, 697 S.E.2d at 595.

The police officers observed an individual standing next to a Ford Explorer and shouted "stop, police!" The suspect then fled. After chasing the suspect for 300 to 350 yards, the officers apprehended the suspect and placed him under arrest. The suspect was

charged with and convicted of resisting arrest under § 16-9-320(A). Id. at 500-01, 697 S.E.2d at 595.

The court recognized the principle that where a police officer does not manually touch a suspect, “an 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, under the belief that submission was necessary.” Id. at 504, 697 S.E.2d at 597. The court then stated that it needed to determine, as required by the plain language of § 16-9-320(A), whether an arrest was being made when Brannon fled from the police. The court noted that its inquiry was directed “at determining whether the arresting process was underway at the time of Brannon’s flight.” Id. at 504, 697 S.E.2d at 597.

The court also found that the intent of the parties as to whether an arrest was being made must be evaluated under a subjective rather than objective standard. Id. at 505, 697 S.E.2d at 597.

In Brannon, the officers did not testify that they intended to arrest Brannon after seeing him and stated their intention was to only approach him and find out what he was doing there at the time. The court also found that the State presented no evidence demonstrating that Brannon submitted to the officers, observing that “[t]o the contrary, as soon as Brannon saw the police officers, he ran.” The court accordingly found that an arrest was not being made at the time Brannon fled from the police. Id.

As in Brannon, there was no arrest being made at the time Thompson fled from Officer Englert. Officer Englert believed he observed Thompson driving without headlights and turned around to pull Thompson over. Thompson pulled into an apartment complex. R. 14, ll. 5-21. Thompson testified that only after he turned into the apartment complex and

opened the door of his Ford Explorer to hop out did the officer even activate the patrol vehicle's blue lights. R. 69, l. 9 – 70, l.1. This evidence was uncontradicted.

As in Brannon, Thompson ran as soon as he saw Officer Englert and thus there is no evidence that Thompson submitted to the officers. As in Brannon, Office Englert testified that he had no intention to arrest Thompson for driving without headlights. R. 24, ll. 9-13. As in Brannon, there was not an arrest of Thompson being made when Thompson fled from Officer Englert and therefore, Thompson was entitled to a direct verdict on the charge of resisting arrest pursuant to § 16-9-320(A). There is no evidence to support the Trial Court's findings that Thompson fled from a lawful arrest.

Where the State failed to put forth any evidence demonstrating that an arrest was being made of Thompson when he fled from Officer Englert, the Trial Court erred as in denying Thompson's motion for a directed verdict on the charge of resisting arrest.

CONCLUSION

Based on the foregoing argument, 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 15th day of October, 2013.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

October 15th, 2013



Carmen V. Ganjehsani
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final 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 15th day of October, 2013.



Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 15th day of October, 2013.



(L.S.)

Notary Public for South Carolina
My Commission Expires: July 3, 2023.