STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County
The Honorable Michael G. Nettles, Circuit Court Judge
Appellate Case No. 2012-212659

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

TAURUS LAMARE THOMPSON,

APPELLANT.

FINAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The directed verdict argument raised on appeal is not preserved for appellate review because Appellant failed to renew his directed verdict motion at the close of the defense case. However, even if the issue had been preserved, the trial judge properly denied Appellant's directed verdict motion on the charge of resisting arrest where the officer fully intended to arrest Appellant for violating the municipal code; where Appellant knew the officer was trying to arrest him but he continued to run away; and where Appellant continued to resist arrest even after the officer manually touched him.

STATEMENT OF THE CASE

Appellant was indicted in York County in May 2011 for resisting arrest pursuant to S.C. Code § 16-9-320 (B). On July 24, 2012, Appellant waived his right to a jury trial and had a bench trial before the Honorable Michael G. Nettles. Judge Nettles found Appellant guilty of the lesser included offense of resisting arrest under S.C. Code § 16-9-320 (A) and sentenced Appellant to a total of 155 days of incarceration, with credit for 55 days of time already served. A timely notice of appeal was served and filed.

ARGUMENT

The directed verdict argument raised on appeal is not preserved for appellate review because Appellant failed to renew his directed verdict motion at the close of the defense case. However, even if the issue had been preserved, the trial judge properly denied Appellant's directed verdict motion on the charge of resisting arrest where the officer fully intended to arrest Appellant for violating the municipal code; where Appellant knew the officer was trying to arrest him but he continued to run away; and where Appellant continued to resist arrest even after the officer manually touched him.

Issue Preservation

Appellant argues on appeal that he was entitled to a directed verdict because the State failed to put forth any evidence that an arrest was being made when he fled from police. This argument is not preserved for appellate review. In order to preserve a directed verdict issue, a defendant must renew his directed verdict motion at the close of the defense case. State v. Harry, 321 S.C. 273, 277, 468 S.E.2d 76, 79 (Ct. App.1996) ("A motion for a directed verdict made at the close of the [state's] case is not sufficient to preserve error unless renewed at the close of all the evidence, because once the defense has come forward with its proof, the propriety of a directed verdict can only be tested in terms of all the evidence.") (alteration in original) (citation omitted); State v. Adams, 332 S.C. 139, 144, 504 S.E.2d 124, 126 (Ct. App. 1998) ("Moreover, the record does not reflect that Adams renewed the motion at the close of his case."); State v. Rosemond, 348 S.C. 621, 627-28, 560 S.E.2d 636, 639-40 (Ct. App. 2002) (noting that it was arguable that the directed verdict issue was not preserved since defense counsel did not specifically renew his directed verdict motion at the conclusion of the evidence, but instead made only a general reference to renewing his "previous objections"); see also State v. Parler, 217 S.C. 24, 26, 59 S.E.2d 489, 489 (1950) (holding, under Circuit Court Rule 76, a defendant who fails to renew a directed verdict motion after presenting evidence during the defendant's case has not preserved the denial of the motion for

appellate review); Note to Rule 19, SCRCrimP (stating the rule is "substantially the substance of Circuit Court Rule 76"); 15 S.C. Juris. Appeal and Error § 80 (1992) ("If a defendant presents evidence after the denial of his directed verdict motion at the close of the plaintiff's case, he must make a directed verdict motion at the close of all the evidence to appeal the sufficiency of the evidence. The defendant may renew his previous motion(s) in summary fashion, but if so, he will be limited to the grounds previously stated.").

In this case, Appellant testified in his own defense but subsequently failed to renew his directed verdict motion after the defense rested. (See R. p. 63-73). Contrary to Appellant's suggestion, defense counsel's closing argument to the trial judge cannot substitute for a specific renewal of the directed verdict motion. (See Brief of Appellant, p. 8). Accordingly, the directed verdict issue raised on appeal is not preserved for appellate review and this Court should dismiss the appeal on error preservation grounds.

Discussion Regarding the Merits

In ruling on a motion for directed verdict, the trial judge must view the evidence, and all of its reasonable inferences, in the light most favorable to the State. See State v. Frazier, 375 S.C. 575, 581, 654 S.E.2d 280, 283 (2007). If the State presents direct or substantial circumstantial evidence reasonably tending to prove the guilt of the defendant, including evidence from which his guilt can be logically deduced, the defendant's directed verdict motion is properly denied. State v. Lollis, 343 S.C. 580, 584, 541 S.E.2d 254, 256 (2001). The South Carolina Supreme Court has stated that the appropriate test to be applied when reviewing a directed verdict motion in a case relying solely on circumstantial evidence is as follows:

> When the state relies exclusively on circumstantial evidence and a motion for a directed verdict is made, the circuit court is concerned with the

> existence or nonexistence of evidence, not with its weight. The circuit court should not refuse to grant the directed verdict motion when the evidence merely raises a suspicion that the accused is guilty. "Suspicion" implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof. However, a trial judge is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis.

State v. Cherry, 361 S.C. 588, 593-594, 606 S.E.2d 475, 478 (2004) (citations omitted) (emphasis in original). On appeal from the denial of a motion for a directed verdict, the appellate court may only reverse the trial court only if there is no evidence to support the trial court's ruling. See, e.g., State v. Gaster, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002).

In State v. Williams, the defendant was tried on charges of robbery, grand larceny, and assault with a deadly weapon. 237 S.C. 252, 254, 116 S.E.2d 858, 859 (1960). The defendant claimed that the trial judge should have directed a verdict on the assault charge because the alleged assault was committed while he was resisting an attempted unlawful arrest. Id. at 255, 116 S.E.2d at 859. In determining that Appellant was not, in fact, under arrest until after the officer saw contraband in plain view, the Supreme Court found that the officer's requiring the defendant to get out of the car during a traffic stop did not constitute an "arrest." Id. at 257, 116 S.E.2d 860. The Court explained:

> To constitute an arrest, there must be an actual or constructive seizure or detention of the person, performed with the intention to effect an arrest and so understood by the person detained. It is not necessary that there be an application of actual force, or manual touching of the body, or physical restraint which may be visible to the eye, or a formal declaration of arrest; it is sufficient if the person arrested understands that he is in the power of the one arresting and submits in consequence. However, in all cases in which there is no manual touching or seizure or any resistance, the intentions of the parties to the transaction are very important; there must have been intent on the part of one of them to arrest the other, and intent on the part of such other to submit, under the belief and impression that submission was necessary. There can be no arrest where the person

> sought to be arrested as not conscious of any restraint of his liberty. Id. at 257, 116 S.E.2d at 860-61 (citations omitted).

The Court concluded that, where neither the officer nor the defendant himself believed an arrest was occurring at the relevant time, no arrest had occurred. Id. at 257, 116 S.E.2d 861.

In State v. Brannon, the defendant was tried for breaking into motor vehicles and resisting arrest. 388 S.C. 498, 697 S.E.2d 593 (2010). The defendant claimed that the trial judge should have granted a directed verdict on the resisting arrest charge because the State failed to prove an arrest was being made at the time he fled from police. Id. at 501, 697 S.E.2d at 595. The Supreme Court looked to State v. Williams for the "specific elements to determine when an arrest has been consummated." Id. at 504, 697 S.E.2d at 597. After pointing out that an arrest is an "ongoing process," the Court stated that it had to determine "whether the arresting process was underway" at the time of the defendant's flight. Id. (citing State v. Dowd, 306 S.C. 268, 270, 411 S.E.2d 428, 429 (1991)). The Court found that, pursuant to State v. Williams, the intentions of the parties must be evaluated under a subjective rather than an objective standard. Id. The Court then concluded that an arrest was not in fact being made at the time the defendant fled because the officers did not testify that they intended to arrest the defendant at that time; instead, the officers testified that their intent was to question him. Id. at 505, 697 S.E.2d at 597. The Court also noted that there was no evidence the defendant had submitted to an arrest since he ran as soon as he saw the officers. Id.

In Appellant's case, the trial judge properly denied Appellant's directed verdict motion on the charge of resisting arrest under S.C. Code § 16-9-320 (A)[1] because the

[1] S.C. Code § 16-9-320 (A) provides, in pertinent part: "It is unlawful for a person knowingly and wilfully to oppose or resist a law enforcement officer in serving, executing, or attempting to serve or execute a legal

evidence presented reflected that the arresting process was underway at the time Appellant fled and resisted arrest. Officer Englert pulled Appellant over for driving without his headlines on. (R. p. 14, lines 14-22). Appellant yielded to the traffic stop by pulling over into an apartment complex. (R. p. 14, lines 22-24). However, before Officer Englert could even get his seatbelt off, Appellant hopped out of his vehicle and began running away. (R. p. 14-15). Officer Englert took off after Appellant. (R. p. 15-16). Officer Englert testified that, while he was chasing Appellant, he was yelling that Appellant was under arrest; to stop running; to get on the ground; and that Appellant was going to be tired when he got to jail. (R. p. 16-22; p. 26; p. 34-35). Appellant admitted at trial that he knew during the chase that he was going to be arrested but he continued to run away from Officer Englert so as to try to avoid arrest. (R. p. 70, lines 14-21; p. 72, lines 13-15). Finally, even after Officer Englert had laid his hands on Appellant to arrest him when the two of them ended up in a creek, Appellant continued to struggle and resist the arrest. (R. p. 15-18).

Officer Englert indicated that Appellant violated two city ordinances that night, Rock Hill, South Carolina, Municipal Code § 23-7 (c), fleeing detainment, and Rock Hill, South Carolina, Municipal Code § 23-4, resisting police. (See R. p. 16-22; p. 24-26; p. 34-35; p. 47-48). Therefore, Officer Englert intended to arrest Appellant for violating the Municipal Code from the moment Appellant began running. (R. p. 18; p. 24; p. 34-35). Because Officer Englert fully intended to arrest Appellant after he began running, this case is easily distinguished from State v. Brannon, where the officers intended only to

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writ or process or to resist an arrest being made by one whom the person knows or reasonably should know is a law enforcement officer, whether under process or not." Appellant was indicted under subsection (B) of this statute, which proscribes assaulting an officer while resisting arrest, but the trial judge concluded there was insufficient evidence under subsection (B) and found Appellant guilty under subsection (A) as a lesser-included offense. (See R. p. 82, lines 3-11).

question the defendant. This case is also distinguishable from State v. Brannon because Appellant admitted he was aware the officer was trying to arrest him while the chase was taking place. See State v. Williams, at 257, 116 S.E.2d at 860 ("To constitute an arrest, there must be an actual or constructive seizure or detention of the person, performed with the intention to effect an arrest and *so understood by the person detained.*") (citation omitted) (emphasis added). Lastly, this case is distinguishable from State v. Brannon because there was testimony that, even after the officer manually touched Appellant for the purpose of placing him under arrest for violations of the municipal ordinances, Appellant continued to struggle and resist arrest. (See R. p. 56, lines 14-25). See Williams at 257, 116 S.E.2d at 860-61.

Based upon the foregoing, the State presented ample evidence supporting that Appellant committed the offense of resisting arrest. Accordingly, Appellant's directed verdict motion was properly denied. (See R. p. 35-59). See State v. Weston, 367 S.C. 279, 292-93, 625 S.E.2d 641, 648 (2006) ("If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the Court must find the case was properly submitted to the jury.").

CONCLUSION

For the reasons discussed above, Respondent requests that this Court affirm Appellant's conviction and sentence.

Respectfully submitted,

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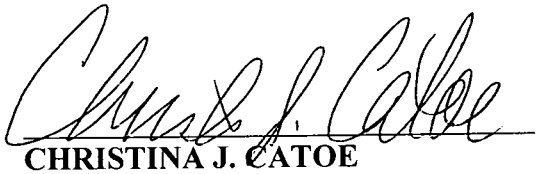
CHRISTINA J. CATOE
Assistant Attorney General



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October 21, 2013

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the **Final Brief of Respondent** complies with Rule 211(b), SCACR, and also complies with the South Carolina Supreme Court's August 13, 2007 **Order on Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings**.

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AFFIDAVIT OF SERVICE

The undersigned attorney hereby certifies that the **Final Brief of Respondent** in the above-referenced case has been served upon **CARMEN V. GANJEHSANI**, Division of Appellate Defense, South Carolina Commission on Indigent Defense, Post Office Box 11589, Columbia, South Carolina 29211-1589, this **21st day of October, 2013.**

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SWORN to before me this 21st day of October, 2013.

Notary Public for South Carolina.
My Commission Expires: 10/28/2014