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**Aug 15 2025**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Richland County

Honorable Jocelyn J. Newman, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

TRAVIS JOHN ALSTON,

APPELLANT

APPELLATE CASE NO. 2025-000365

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INITIAL BRIEF OF APPELLANT

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JORDAN WAYBURN  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR APPELLANT

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**STATEMENT OF ISSUE ON APPEAL**

Is the lawfulness of the arrest underlying a resisting arrest charge an element of the offense, and if so, did the trial court err in denying Appellant's motion for a directed verdict?

## STATEMENT OF THE CASE

On October 21, 2023, Appellant Travis Alston was arrested for an alleged parking violation and for resisting that arrest, and he was also issued a traffic ticket. R. p. \*. On May 21, 2024, he was indicted by the Richland County grand jury for resisting arrest in violation of subsection 16-9-320(A) of the South Carolina Code. R. p. \*.

Appellant went to trial before Judge Jocelyn Newman and a jury on February 10, 2025. Tr. 1. At trial he was represented by Patrick Carpenter Sharpe, and Taylor Silkert prosecuted the case. Tr. 1. Ultimately, the jury found him guilty, and the trial court sentenced him to one year in prison. Tr. 92:9-18, 101:1-5. The day after trial, on February 11, 2025, the state dismissed the traffic ticket underlying the resisting arrest charge. R. p. \*.

This appeal follows.

## STATEMENT OF FACTS

On October 21, 2023, Appellant was going to attend a concert at Colonial Life Arena in Columbia. Bryan Rabon testified he was a parking attendant supervisor that night. Tr. 36:4-37:15. He was called to handle an issue where Appellant was refusing to move his car after being denied entry to the paid parking lot. Tr. 37:23-38:10, 39:17-40:25. Entry was twenty dollars in cash only; Appellant had only fourteen dollars. State's Ex. 1 at 00:33-00:50.

Eventually Rabon called Investigator Nicholas Hill, an officer with the University of South Carolina Police Department, for assistance. Tr. 40:8-12, 43:6-25. Hill wore a bodycam on the night in question, and that footage was introduced as State's Exhibit 1. Tr. 45:19-47:4. After Appellant did not comply with requests to move the vehicle, Investigator Hill and other officers decided to arrest him. Tr. 52:7-53:3; State's Ex. 1 at 26:00-27:00. When they attempted to remove Appellant from his truck, Appellant reached his arm out the window and held the vehicle door shut. Tr. 53:5-17; State's Ex. 26:50-27:30. He also tensed his muscles and did not immediately submit to officers' attempt to place him in handcuffs. State's Ex. 1, at 28:00-28:45. Hill testified that when he decided to arrest Appellant, "the actual jailable offense" was "stopping unlawfully in the road." Tr. 52:21-23. After the arrest, Hill issued a traffic citation for violation of section 56-5-2540 of the South Carolina Code. R. p. \*. Hill also testified he was not executing a warrant or other process when he arrested Appellant. Tr. 57:1-5.

Appellant moved for a directed verdict arguing, in part, that the arrest was not lawful and thus the state failed to meet its burden of proof. Tr. 59:20-60:1. Appellant argued the original offense was a violation of section 56-5-2540 and that statute prohibits parking only in places where official Department of Transportation signs say parking is prohibited. Tr. 60:1-17; R. p. \* (traffic ticket). He argued: "Your Honor, there's no testimony of any signs existing" and Hill

"doesn't have the authority to determine where it is unlawful to stop, stand, or park." Tr. 60:18-23. The trial court denied the motion. Tr. 64:4-5.

Initially, the jury reported it had a verdict finding Appellant guilty. Tr. 87:21-23. However, when individually polled, one juror changed her mind. Tr. 89:11-22. The jury was sent to continue deliberations. Tr. 90:1-92:5. Eventually the jury returned a unanimous verdict finding Appellant guilty. Tr. 92:9-95:13. Appellant renewed his motion for a directed verdict, and it was again denied. Tr. 97:23-98:3. The trial court sentenced him to one year in prison. Tr. 101:1-5.

### **STANDARD OF REVIEW**

On appeal from the denial of a directed verdict, the appellate court "views the evidence and all reasonable inferences in the light most favorable to the State." *State v. Pearson*, 415 S.C. 463, 470, 783 S.E.2d 802, 806 (2016) (citing *State v. Butler*, 407 S.C. 376, 380, 755 S.E.2d 457, 459-60 (2014)). If the state "fails to produce substantial circumstantial evidence that the defendant committed a particular crime, the defendant is entitled to a directed verdict." *Pearson*, 415 S.C. at 469, 783 S.E.2d at 805 (quoting *State v. Odems*, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011)).

## ARGUMENT

The law is clear: "A person has a right to resist an unlawful arrest, even to the extent of taking the life of the aggressor, if it be necessary, in order to re-gain his liberty." *State v. Robertson*, 191 S.C. 509, 5 S.E.2d 285, 285 (1939) (citing *State v. Bethune*, 112 S.C. 100, 99 S.E. 753, 754 (1919)); *see also State v. Hailey*, 33 S.C.L. (2 Strob.) 73, 76 (1847) ("Even a forcible resistance of an arrest may be defended, if it appear not that the arrest was lawful . . .").<sup>1</sup> "A citizen is not, of course, required to submit to an illegal arrest and may use as much force as is reasonably necessary to prevent an unlawful arrest." *State v. DeBerry*, 250 S.C. 314, 320, 157 S.E.2d 637, 640 (1967); *cf. State v. Williams*, 367 S.C. 192, 199, 624 S.E.2d 443, 446–47 (Ct. App. 2005) (holding that under subsection 16-9-320(B) "an individual, under the appropriate circumstances, has the right to utilize the amount of resistance reasonably necessary to defend himself in the event excessive force is utilized incident to a lawful arrest").

If an arrest is unlawful, a defendant is not guilty of a crime for resisting that arrest. *State v. LaCoste*, 347 S.C. 153, 165, 553 S.E.2d 464, 470 (Ct. App. 2001) (affirming jury charge that "[n]o citizen is required to submit to an illegal arrest and may use reasonable force in resisting an illegal arrest."); *see also* William Shephard McAninch et al., *The Criminal Law of South Carolina* 549 (6th ed. 2013) (describing resisting arrest under § 16-9-320 and stating "[t]he arrest, though it may be without a warrant, must be lawful" (internal citation omitted)); 67 C.J.S. *Obstructing Justice* § 43 ("Generally, a lawful arrest is an element of the state offense of resisting arrest . . .").

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<sup>1</sup> In fact, "there is no difference" even if the defendant did not know the arrest was unlawful. *State v. Wimbush*, 9 S.C. 309, 317 (1878).

Here, the violation underlying Appellant's resistance charge is a traffic ticket issued for parking in a prohibited location in violation of section 56-5-2540 of the South Carolina Code. R. p. \*. On the resisting arrest warrant Investigator Hill stated he arrested Appellant "because he was unlawfully stopped in a roadway in his vehicle." R. p. \*. Hill testified he arrested Appellant for "stopping unlawfully in the road." Tr. 52:21-23. The state offered no evidence section 56-5-2540 prohibited Appellant from parking his car where he did.<sup>2</sup>

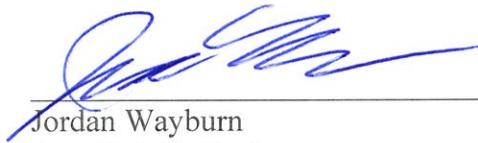
The General Assembly has not chosen to prohibit parking on all portions of all roads. Instead, as relevant here, the General Assembly determined it is unlawful to park on state highways only in places "deemed by the Department of Transportation to be hazardous to those using the highway" and then only if the Department places "official signs" restricting the usage of the highway. S.C. Code Ann. § 56-5-2540. As Appellant argued below, there was no evidence here of any signage at all and thus no basis for the arrest. Therefore, appellant's conviction for resisting arrest cannot stand as the state did not prove the validity of the underlying arrest. *See Town of Springdale v. Butler*, 299 S.C. 276, 279, 384 S.E.2d 697, 699 (1989) (noting "force may be used in resisting an unlawful arrest" but holding the underlying arrest was lawful); 5 Corpus Juris, *Arrest* § 32, at 408 (1916) ("Where the legality of the arrest for a breach of the peace is questioned, the burden of proof is on the officer, and the officer also has the burden of proof to show reasonable grounds in all cases.").

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<sup>2</sup> There are other provisions which also prohibit stopping and parking on roadways in various circumstances. *E.g.* S.C. Code Ann. § 56-5-2530 (stopping, standing, or parking prohibited in specified places). This is unimportant for two reasons. First, the traffic citation Hill issued specified section 56-5-2540, and that is how the state proceeded and Appellant defended the case. *Cf. State v. Brannon*, 388 S.C. 498, 505, 697 S.E.2d 593, 597 (2010) (determining whether an arrest under section 16-9-320 has occurred uses a "subjective standard" focusing on the officer's and suspect's intent). Second, the state offered no evidence to prove a violation of any other section, nor did the jury determine any facts necessary to support a conviction based on such violations.

**CONCLUSION**

Because the state failed to present any evidence Appellant's arrest was lawful, the trial court erred by denying his motion for a directed verdict. Appellant now respectfully requests this Court reverse his conviction.



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Jordan Wayburn  
Appellate Defender

ATTORNEY FOR APPELLANT

This 15th day of August, 2025.

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CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Initial Brief of Appellant and Designation of Matter in the above-referenced case has been served upon Mark Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 15th day of August, 2025.



Jordan Wayburn  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
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