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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

Jocelyn J. Newman, Circuit Court Judge

Appellate Case No. 2025-000365

THE STATE,

Respondent,

v.

TRAVIS JOHN ALSTON,

Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Appellant's Issue Statement

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?

Respondent's Counterstatement

Whether the trial court erred in denying Appellant's motion for a directed verdict on his charge of resisting arrest given that the lawfulness of the underlying arrest is not an element of resisting arrest under the relevant statute and, in the light most favorable to the State, evidence in the record tends to prove Appellant's guilt.

STATEMENT OF THE CASE

In May 2024, a Richland County grand jury indicted Appellant for resisting arrest under section 16-9-320(A) of the South Carolina Code. (Indictment No. 2024-GS-40-03820). Prior to trial, the State offered Appellant a plea deal of Transfer Court with a recommended sentence of two days' time served. (Tr. 5, 101). Appellant proceeded to a jury trial on February 10, 2025, before the Honorable Jocelyn J. Newman. (Tr. 1).

At trial, Bryan Rabon testified that he was an events supervisor with the University of South Carolina Parking Services. (Tr. 36). He worked an event at Colonial Life Arena on October 21, 2023. (Tr. 37). Rabon stated that on that night, Appellant came into a parking lot near Colonial Life Arena but did not have enough money to pay for parking. (Tr. 37-38). Rabon testified that Appellant refused to move his truck away from the entrance to the parking lot despite both Rabon and a parking attendant asking him to do so. (Tr. 37-38). Rabon confirmed that there were signs posted with how much it cost to park in that parking lot. (Tr. 38-39). He also confirmed that he repeatedly asked Appellant to move because he was blocking traffic. (Tr. 39-40). Rabon called over a police officer and allowed the officer to handle the situation after the officer arrived. (Tr. 40). Rabon stated that the lot Appellant was attempting to enter was a pass lot, not a pay lot, so Appellant would not have been able to park there without a pass regardless of how much money he had. (Tr. 41). Rabon, however, could not say whether anyone told Appellant that the lot was a pass lot and not a pay lot. (Tr. 41-42).

Nicholas Hill, an investigator with the University of South Carolina Police Department, testified that he responded to Rabon's call. (Tr. 43-45). He wore a body camera during his interaction with Appellant, which recorded the interaction. (Tr. 45). The footage from this body camera was entered into evidence and published to the jury without objection as State's Exhibit 1.

(Tr. 45-46; State's Ex. 1). Investigator Hill stated that he could have arrested Appellant for "illegal standing in the roadway" when he approached Appellant but did not do so because he attempted to get voluntary compliance instead. (Tr. 48). He testified that his general approach was to obtain voluntary compliance and resolve the situation without making arrests because people go to events to have fun. (Tr. 48-49). Investigator Hill's main goal was to clear the roadway and open the parking lot to others. (Tr. 49). He stated that Appellant recognized him as law enforcement shortly after he approached Appellant. (Tr. 49). Investigator Hill was in his police uniform and introduced himself as a member of law enforcement. (Tr. 44, 49). Appellant asked for his police badge number, indicating that Appellant understood Investigator Hill was, in fact, a police officer. (Tr. 49). Investigator Hill also acknowledged a sign visible in his body camera footage that read "cash only parking $20." (Tr. 49).

While waiting for other officers to arrive, Investigator Hill told Appellant that if he did not move his truck, then he could be arrested. (Tr. 50-51). Investigator Hill testified that he wanted to issue Appellant a ticket, but he could not do so without Appellant's driver's license. (Tr. 51). He also noted that Appellant's truck was not registered to him. (Tr. 51). Investigator Hill stated that Appellant would not move his truck even after talking to three separate police officers. (Tr. 52). According to Investigator Hill, the arrestable offense at this point was "stopping unlawfully in the road." (Tr. 52). After over 25 minutes of discussion with Appellant, Investigator Hill asked him once more to move his car and for his license so he could issue Appellant a ticket, otherwise he would be going to jail. (State's Ex. 1 at 26:00 to 27:30).

When officers went to open Appellant's car door, Appellant attempted to hold the door closed through the open window, tensing his muscles to prevent officers from pulling him out of the car. (Tr. 53). Investigator Hill stated that Appellant was not complying "at all." (Tr. 53).

Investigator Hill went to the passenger side of the truck to unbuckle Appellant while Appellant was struggling to keep his door closed. (Tr. 53-54). Appellant attempted to block Investigator Hill from unbuckling him. (Tr. 53-54). Investigator Hill also briefly looked for any weapons in open view inside the truck. (Tr. 53-54). After law enforcement removed Appellant from the truck, Appellant continued to resist by tensing his muscles to keep from being handcuffed behind his back. (Tr. 54). Investigator Hill confirmed that no one explicitly told Appellant that he was under arrest for parking illegally or to get out of the car. (Tr. 56). However, according to Investigator Hill, he was only required to make sure a person knows they are under arrest and to inform them of the charges. (Tr. 58). He believed telling Appellant that Appellant would be going to jail if he did not move the truck and indicating it was Appellant's last chance satisfied that requirement. (Tr. 58).

After Investigator Hill's testimony, the State rested. (Tr. 59). Appellant then moved for a directed verdict. (Tr. 59). Appellant argued that he was arrested pursuant to section 56-5-2540 of the South Carolina Code, which concerns stopping, standing, or parking on state highways. (Tr. 60). He asserted that the officers did not have the authority to determine where it was unlawful to stop, stand, or park under that statute because the State presented no testimony that any Department of Transportation signage existed as required by that statute. (Tr. 60). Further, Appellant argued that no one told him he was under arrest or to exit his truck; therefore, he could not resist being arrested because he did not know he was being arrested. (Tr. 61).

The State argued that Appellant was lawfully arrested for blocking the street during an event and illegally parking on Devine Street, which is a state roadway. (Tr. 63). The State asserted that no question existed concerning whether Appellant was lawfully arrested for standing on a state roadway. (Tr. 63). As for resisting arrest, the State argued that Investigator Hill was wearing a

full police uniform and told Appellant he would be going to jail if he did not move the truck. (Tr. 63). Appellant did not comply and attempted to keep law enforcement from opening the truck door when law enforcement attempted to arrest him. (Tr. 63).

The trial court denied Appellant's motion for directed verdict, finding that the evidence presented tended to prove Appellant was guilty of resisting arrest because law enforcement told Appellant to move his truck or he would be going to jail; thus, Appellant was on notice that he would be arrested. (Tr. 64). In its ruling, the trial court made no mention of whether law enforcement's arrest was lawful. (Tr. 64).

In its jury charge, the trial court made no mention that the arrest need be lawful, and Appellant made no request for such a charge and did not object to the charge as given. (Tr. 83-86).

The jury returned a verdict of guilty. (Tr. 87). When the trial court polled the jury, one juror indicated that she changed her mind. (Tr. 89). After discussion with the State and Appellant, the trial court ordered the jury to continue deliberating. (Tr. 89-91). The jury again returned a guilty verdict after further deliberation. (Tr. 92). Appellant renewed his motion for directed verdict after the jury returned its verdict. (Tr. 98). The trial court sentenced Appellant to one year of imprisonment with credit for two days of time served. (Tr. 101).

This appeal followed.

STANDARD OF REVIEW

"When ruling on a motion for a directed verdict, the trial [court] is concerned with the existence of evidence, not its weight." *State v. Butler*, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014) (alteration in original) (quoting *State v. Wiggins*, 330 S.C. 538, 544-45, 500 S.E.2d 489, 492-93 (1998)). "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." *Id*. (alteration in original). "If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the [appellate court] must find the case was properly submitted to the jury." *State v. Weston*, 367 S.C. 279, 292-93, 625 S.E.2d 641, 648 (2006) (alteration in original).

ARGUMENT

I. The trial court properly denied Appellant's motion for a directed verdict because the lawfulness of the underlying arrest is not a statutory element of resisting arrest and, in the light most favorable to the State, evidence in the record tends to prove Appellant's guilt.

Section 16-9-320 of the South Carolina Code, the statute pursuant to which Appellant was charged for resisting arrest, has not expressly required a showing that a defendant resisted a "lawful arrest" since the statute was amended in 1990. *See State v. Brannon*, 388 S.C. 498, 504, 697 S.E.2d 593, 597 (2010) (declining to determine whether police officers intended to arrest the defendant based on objective inquiry as to whether they had probable cause and stating that "[u]nder the plain language of section 16-9-320(A), we are only focused on determining whether an arrest was being made at the time of [the defendant's] flight").

Initially, in 1980, the General Assembly enacted section 16-9-320, which read as follows:

> Any person who knowingly and wilfully [sic]:
>
> (a) Opposes or resists any law enforcement officer in serving, executing or attempting to serve or execute any legal writ or process or who resists any ***lawful*** arrest, whether under process or not, shall be deemed guilty of a misdemeanor . . . .
>
> (b) Assaults, beats or wounds any law enforcement officer engaged in serving, executing or attempting to serve or execute any legal writ or process or who assaults, beats or wounds such officer where such person is resisting any ***lawful*** arrest, whether under process or not, shall be guilty of a misdemeanor . . . .

1980 S.C. Acts 511 (emphasis added). However, in 1990, the General Assembly amended this section to change the phrase "lawful arrest" in both subsection (a) and subsection (b) to just "arrest." 1990 S.C. Acts 598. The 1990 amended version of the statute included in both subsections a requirement that the arrest be "made by one whom the person knows or reasonably should know is a law enforcement officer." 1990 S.C. Acts 598.

In contrast, the current version of section 16-3-625, which was also enacted in 1980 but concerns resisting arrest *with a deadly weapon*, has retained the requirement that the one charged with such an offense must resist "the ***lawful*** efforts of a law enforcement officer to arrest him or another person." (emphasis added).

South Carolina courts "have long acknowledged the presumption that in adopting an amendment to a statute, the Legislature intended to change the existing law." *Key Corp. Cap., Inc. v. County of Beaufort*, 373 S.C. 55, 60, 644 S.E.2d 675, 678 (2006). "Because the amendment materially changed the terminology of the statute, a departure from existing law clearly was intended, rather than a clarification of original intent." *Id*. at 61, 644 S.E.2d at 678. Further, "[t]he cardinal rule of statutory construction is that words used therein must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand its operation." *Hitachi Data Sys. Corp. v. Leatherman*, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992).

The 1990 amendments to the statute are consistent with the trend away from antiquated self-help remedies and toward law consistent with the needs of a more urbanized, modern society. *See generally* 5 Am. Jur. 2d Arrest § 89 ("Under the common law, a citizen generally is permitted to use reasonable force to resist an illegal arrest. However, many states have abrogated the common law by statute, or through court holdings, reasoning the common law rule is no longer consistent with the needs of modern society. The constitutionality of statutes negating the common law right to resist an unlawful arrest constitute a valid exercise of police power and do not violate due process." (internal citations omitted)).

The policy behind such a change is well articulated by the Supreme Court of Alaska in *Miller v. State*, 462 P.2d 421, 426 (Alaska 1969). There, the court noted that the common law rule supported a right to repel an unlawful arrest with force. *Id*. The court stated that this rule was

based on the idea that everyone should be privileged to use reasonable force to prevent "unlawful invasion of his physical integrity and personal liberty." *Id*. The court noted that the common law rule was developed when self-help was a more necessary remedy to resist intrusions into one's freedom. *Id*. (quoting Sam B. Warner, *The Uniform Arrest Act*, 28 Va.L.Rev. 315 (1942) ("[The common law rule] was developed largely during a period when most arrests were made by private citizens, when bail for felonies was usually unattainable, and when years might pass before the royal judges arrived for a jail delivery. Further, conditions in English jails were then such that a prisoner had an excellent chance of dying of disease before trial.")).

The Supreme Court of Alaska stated a "new principle" of "right conduct" had come forth because the legality of a peaceful arrest can be a close question that is more properly determined by courts rather than participants in a potentially "highly emotional situation." *Id*. The court noted that law enforcement will "normally" overcome resistance with necessary force, thus the danger of escalating unnecessary violence between law enforcement and arrestees is great and could turn a simple misdemeanor into serious bodily harm or even death. *Id*. The court concluded by stating, "Any rule which promotes[,] rather than inhibits[,] violence should be re-examined." *Id*.

Therefore, based on the plain language of section 16-9-320(A), the "lawfulness" of Appellant's arrest is no matter to the determination of his guilt. As to the trial court's denial of his motion for directed verdict, Appellant has not asserted that the record does not contain evidence tending to support his guilt; rather, he asserts only that the alleged unlawfulness of his arrest entitles him to a directed verdict. (App. Br. 6-7). The record contains ample evidence that tends to prove Appellant's guilt, including Investigator Hill's testimony and body camera footage, both of which demonstrate that Appellant resisted uniformed law enforcement officers' attempt to arrest him by tensing his muscles in a futile attempt to prevent law enforcement from removing him from his

truck and handcuff him behind his back. (Tr. 53-54; State's Ex. 1). *See* S.C. Code Ann. § 16-9-320(A) ("It is unlawful for a person knowingly and wilfully . . . 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."); *Weston*, 367 S.C. at 292-93, 625 S.E.2d at 648 ("If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the [appellate court] must find the case was properly submitted to the jury.") (alteration in original). Therefore, the trial court properly denied Appellant's motion for directed verdict.

CONCLUSION

Based on the foregoing, the State requests that this Court affirm Appellant's conviction for resisting arrest, as well as his associated sentence.

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