

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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APPEAL FROM CHARLESTON COUNTY
Court of General Sessions
The Honorable Roger M. Young

S.C. Supreme Court

Case No. 2008-GS-10-7788, 7795, 7796

STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

ARTHUR LEE RIVERS,

PETITIONER.

REPLY TO STATE'S RETURN TO PETITION FOR WRIT OF CERTIORARI

TARA DAWN SHURLING
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ATTORNEY FOR PETITIONER.

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ARGUMENT IN REPLY

Question I

As set forth in his Petition for Writ of Certiorari, the Petitioner was convicted of violating S.C. Code Ann. §16-9-320(B), which reads in relevant part:

It is unlawful for a person to knowingly and willfully assault, beat, or wound a law enforcement officer engaged in serving, executing, or attempting to serve or execute a legal writ or process or to 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, whether under process or not.

In interpreting §16-9-320(A), which criminalizes resisting arrest,¹ this Court has held that “there must be an arrest before there can be a conviction of resisting arrest.” Brannon at 519, 666 S.E.2d at 288 (Ct. App. 2008). “The [resisting arrest] statute does not extend to investigatory stops or detentions.” Id. at 519, 666 S.E.2d at 289. In other words, “[t]he [resisting arrest] statute does not criminalize fleeing from officers attempting to conduct a Terry[²] stop.” Id. at 510, 666 S.E.2d at 284. The Respondent correctly notes in its Return that this Court affirmed the Court of Appeals decision in result after the Brief of Appellant was filed in the Court of Appeal in the matter before the Court. Ultimately this Court’s decision in Brannon turned on the finding that where the officer does not manually touch the suspect, the subjective intent of the officers and the suspect must be analyzed to determine if an arrest was in progress at the time of the behavior that is alleged to constitute resisting arrest.

¹ The only significant difference in the text of subsection (A) as compared to subsection (B) is that subsection (B) requires that the defendant “assault, beat, or wound” a law enforcement officer whereas subsection (A) only requires a defendant to “oppose or resist” a law enforcement officer’s arrest.

² Terry v. Ohio, 392 U.S. 1 (1968).

In the present case, Deputy Blakeley claimed the following sequence of events occurred. Deputy Blakeley wanted to handcuff the Petitioner in order to temporarily detain him while he investigated the item he saw the Petitioner throw on the ground. Deputy Blakeley acknowledged that he expressly told the Petitioner that he *was not* under arrest at that time. See ROA p. 119, lines 1-2. It was at that point that the Petitioner shook off Deputy Blakeley's attempt to handcuff him and fled. Deputy Blakeley then used his taser to knock the Petitioner to the ground and began struggling with him. According to Deputy Blakely, while he was struggling with the Petitioner, he told him *he was under arrest* and to quit resisting.

The analysis presented by the Respondent overlooks two critical factors. First, when the physical contact between the Petitioner and Deputy Blakely began, the Petitioner had been expressly told he was not under arrest. The Respondent argues that once the Petitioner pushed the officer, "Deputy Blakely formed the subjective intent to arrest for assaulting a police officer, and pursued [the Petitioner] for that purpose." Return, pg. 7. Blakely's own testimony however, confirms that *he did not* tell the Petitioner he was under arrest until after he had used his Taser to knock the Petitioner to the ground. In Brannon, in the absence of physical in the absence of physical contact between Brannon and law enforcement, this Court looked to the subjective intent of the officers and the suspect to determine whether Brannon was indeed under arrest at the time of the offending conduct. Here, no such analysis is necessary where the officer admitted expressly informing the Petitioner that he was not under arrest.

The Respondent claims that the Petitioner continued to struggle with the officer after he was told he was under arrest and therefore, that it was that behavior which justifies the charge of resisting arrest. Which leads to the Petitioner's second point in Reply? The Respondent's analysis is flawed where the Petitioner's act of pushing the officer took place when the Petitioner

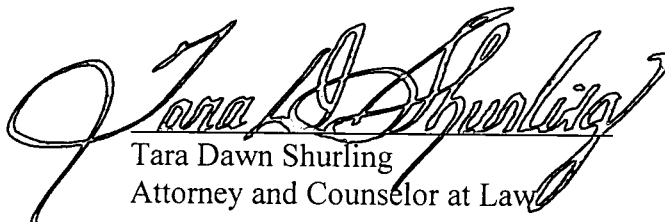
was, admittedly, not under arrest. The Respondent states that “as they struggled, Blakely informed [the Petitioner] that he was arresting [him] *for assault*, yet [the Petitioner] continued resisting by force.” Return, pg. 7. The testimony of Deputy Blakely does not indicate that he told the Petitioner he was arresting him for assault. He testified that he told the Petitioner he was “*under arrest*” but, did not claim to have told the Petitioner what he was under arrest for. While the officer testified that it was his intent to place the Petitioner under arrest for “assaulting police”, he never claimed to have told the Petitioner that this was his intent. ROA. p. 123, lines 2-7. Further, the Respondent’s analysis neglects to take into consideration that the Petitioner, who had been told he was not under arrest, had just been knocked to the ground with a Taser when the officer says he advised him that he was under arrest. Under these circumstances, the Petitioner would respectfully submit it is unreasonable for the Petitioner to have clearly understood that the Deputy was attempting to make any sort of lawful arrest for assault.

The Respondent further asserts that the 1990 amendment to S.C. Code Ann *16-9-320, omitting the term “lawful” from the statute, constituted an abrogation of the common law rule allowing a citizen to use reasonable force to resist an illegal arrest. This Honorable Court has yet to support such a conclusion and the Petitioner prays that the Court will not take this opportunity to do so.

CONCLUSION

Based upon the arguments and authority presented herein, as well as in the Petition for Writ of Certiorari previously submitted, the Petitioner most respectfully asserts that the decision of the South Carolina Court of Appeals in his case should be reversed.

Respectfully submitted,



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This 31st day of October 31, 2012.

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RESPONDENT

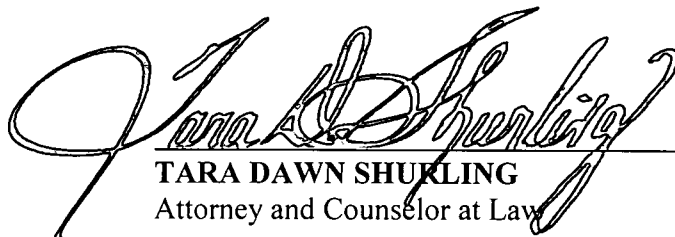
v.

ARTHUR LEE RIVERS,

PETITIONER.

CERTIFICATE OF SERVICE

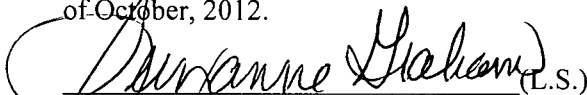
The undersigned attorney hereby certifies that a copy of the Reply to Return to Petition for Writ of Certiorari in the above-entitled case has been served upon opposing counsel, David Spencer, Assistant Attorney General, by depositing in the U.S. Mail, postage prepaid, this 31st day of October, 2012.



TARA DAWN SHUKLING
Attorney and Counselor at Law

ATTORNEY FOR PETITIONER.

SWORN TO BEFORE me this 31ST day
of October, 2012.


(L.S.)

Notary Public for South Carolina
My Commission Expires: 3/12/2013

LAW OFFICE OF



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October 31, 2012

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

RE: State v. Arthur Lee Rivers; 2008-GS-10-7788, 7795, 7796.

Dear Mr. Shearouse:

Enclosed for filing please find the original and six copies of the Reply to State's Return to Petition for Writ of Certiorari and my Certificate of Service in the above-captioned case. I would appreciate your clocking and returning the extra two (2) copies of the Reply in the envelope provided. Thank you for your assistance in this matter. I remain,

Sincerely yours,

A handwritten signature in cursive script that reads "Tara Dawn Shurling".

Tara Dawn Shurling
Attorney and Counselor at Law

TDS/sm

Enclosures

cc: David Spencer, Assistant Attorney General (w/enclosure)
Arthur Lee Rivers, 254993 (w/enclosure)

