

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to York County

Michael G. Nettles, Circuit Court Judge

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Opinion No. 2014-UP-228 (S.C. Ct. App. filed June 18, 2014)  
11-GS-46-01390

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S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

TAURUS LAMARE THOMPSON,

PETITIONER.

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PETITION FOR WRIT OF CERTIORARI  
TO THE COURT OF APPEALS

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**CERTIFICATION OF COUNSEL**

The Court of Appeals issued its decision on June 18, 2014. App. 1-2. Counsel for Petitioner certifies that the petition for rehearing was made on July 3, 2014 and finally ruled on by the Court of Appeals on August 25, 2014. App. 3-12.

## QUESTIONS PRESENTED FOR REVIEW

- I. Whether the Court of Appeals erred in holding Petitioner's directed verdict argument was not preserved for appellate review where (1) a party is not required in a case tried before a judge without a jury to make a directed verdict motion to preserve for appeal an issue regarding the sufficiency of the evidence; and (2) the record establishes that Petitioner argued a second time for a directed verdict after the close of the defense case even though Petitioner did not expressly use the word "renew?"
  
- II. Whether Petitioner was entitled to a directed verdict on the charge of resisting arrest where the State failed to put forth any evidence that the arresting process was underway at the time of Petitioner's flight?

## STATEMENT OF THE CASE

On May 12, 2011, Petitioner 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.

On June 18, 2014, the South Carolina Court of Appeals affirmed Thompson’s conviction in an unpublished opinion. *State v. Thompson*, Opinion No. 2014-UP-228 (S.C. Ct. App. June 18, 2014); App. 1-2. Petitioner subsequently filed a petition for rehearing on

July 3, 2014. App. 3-11. The Court of Appeals issued an order denying the petition for rehearing on August 25, 2014. App. 12.

This petition for writ of certiorari to the Court of Appeals follows.

## 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, Petitioner 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.

During his closing argument to the Trial Court, Thompson reargued his directed verdict motion. 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.

## ARGUMENT

- I. The Court of Appeals erred in holding Petitioner’s directed verdict argument was not preserved for appellate review where (1) a party is not required in a case tried before a judge without a jury to make a directed verdict motion to preserve for appeal an issue regarding the sufficiency of the evidence; and (2) the record establishes that Petitioner argued a second time for a directed verdict after the close of the defense case even though Petitioner did not expressly use the word “renew.”**

On June 18, 2014, the Court of Appeals decided Petitioner Thompson’s case without oral argument and filed its unpublished opinion affirming the conviction of Thompson, holding that the issue raised by Thompson was not preserved for appellate review because Thompson did not renew his directed verdict motion after the close of all the evidence. App. 1-2.

The Court of Appeals erred in concluding that the directed verdict issue was not preserved for appellate review. In cases tried before a judge without a jury, a party need not make a directed verdict motion to preserve for appeal an issue regarding the sufficiency of the evidence. Norell Forest Prods. v. H&S Lumber Co., 308 S.C. 95, 99, 417 S.E.2d 96, 99 (Ct. App. 1992), *rev’d in part on other grounds*, 310 S.C. 368, 426 S.E.2d 800 (1993); see also In the Matter of the Care and Treatment of John Foley Kennedy, 353 S.C. 394, 396 n.1, 578 S.E.2d 27, 28 n.1 (Ct. App. 2003).

The Court of Appeals held that Thompson’s reliance on Norell Forest Prods. was misplaced because Norell Forest Prods. was a civil case. However, there is no reason why the same logic should not be applied to a criminal case where the defendant is tried in a bench trial without a jury because it is the trial judge making the factual determination of whether the defendant is guilty or not guilty – in essence, whether the defendant makes a

directed verdict motion or not, the trial judge is making this decision and is deciding whether the evidence is sufficient to support a conviction.

In addition, Thompson had pointed out to the Court of Appeals in his Reply Brief that it was clear from the record that while Thompson's trial attorney may not have used the word "renew," his trial attorney unmistakably renewed Thompson's directed verdict motion at the close of the defense case. After Thompson testified and the defense rested, Thompson's trial attorney began to make her closing argument to the Trial Court as this was a bench trial. Thompson's trial attorney began her argument to the court by stating:

Your Honor, most of my argument I think would be a similar sort of argument under which we handled on directed verdict motion. Of course, in this circumstance of – whereas that would be taken in the light most favorable to the State, at this point, the Court as the trier of fact, would consider all the facts and circumstances.

R. 73, ll. 7-13.

Thompson's trial attorney then presented argument consisting of eight pages of the transcript as to why the evidence as presented by the State and the defense was not sufficient to support a guilty verdict against Thompson for resisting arrest. R. 73, l. 7 – 80, l. 9. While Thompson's trial attorney might not have stated expressly that she was renewing Thompson's motion for directed verdict, that is in fact what the trial attorney did by arguing for a directed verdict at the close of all the evidence. A party need not use the exact name of a legal doctrine in order to preserve an issue for appellate review. State v. Brannon, 388 S.C. 498, 502, 697 S.E.2d 593, 595-96 (2010); State v. Russell, 345 S.C. 128, 132, 546 S.E.2d 202, 204 (Ct. App. 2001). Rather, a litigant is only required to fairly raise the issue to the trial court, thereby giving the trial court an opportunity to rule on the issue. Brannon, 388 S.C. at 502, 697 S.E.2d at 595-96.

Certainly in this case, the Trial Court, acting as the trier of fact, was given “the opportunity to pass on the sufficiency of the evidence as it stood” at the close of the defense case. See State v. Harry, 321 S.C. 273, 277, 468 S.E.2d 76, 79 (Ct. App. 1996). Accordingly, because Thompson was not required to make a directed verdict motion in a bench trial and because Thompson clearly renewed his directed motion at the close of all the evidence, the Court of Appeals erred in holding that the directed verdict issue was not preserved for appellate review.

**II. Petitioner was entitled to a directed verdict on the charge of resisting arrest where the State failed to put forth any evidence that the arresting process was underway at the time of Petitioner's flight.**

The Court of Appeals should have reached the merits of Thompson's directed verdict issue on appeal. As to the merits of Thompson's issue, Thompson was entitled to a directed verdict on the charge of resisting arrest where the State failed to put forth any evidence that the arresting process was underway at the time of Thompson's flight.

In this case, Officer Englert pulled Thompson over because he believed he observed Thompson 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 this 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.

This 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. This 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. This 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.

This 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. This 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.” This 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 officer. 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.

The State argued in its Respondent's Brief that after Thompson began running, Officer Englert then intended to arrest Thompson for violating city ordinances and Thompson was therefore guilty of resisting arrest by continuing to run. In Brannon, however, this Court specifically held that in determining whether a defendant resisted arrest in violation of § 16-9-320(A), the court's "inquiry is directed at determining whether *the arresting process was underway at the time of [the defendant's] flight.*" 388 S.C. at 504, 697 S.E.2d at 597 (emphasis added).

When Thompson fled, it is unequivocal that Officer Englert was not in the process of arresting Thompson. Based on Thompson's flight, Officer Englert may have then decided to arrest Thompson for failure to identify, even though Officer Englert never asked

Thompson to identify himself, and for resisting police pursuant to the Rock Hill municipal code, but that does not change the analysis of whether Thompson is guilty of resisting arrest pursuant to § 16-9-320(A) when the State has presented no evidence that an arrest was underway when Thompson fled as required by the language of the statute.

The Brannon case controls the outcome of this case. The State attempts to distinguish the facts of Brannon from this case, but they are essentially the same. In Brannon, the officers had no intent to arrest Brannon when they approached him but only to question him. The officers shouted at Brannon, “stop, police!” Brannon then fled which led to the officers chasing him for 300-350 yards, apprehending him, and placing him under arrest for fleeing. Brannon, 388 S.C. at 501, 697 S.E.2d at 595. Under those facts, this Court held that Brannon was entitled to a directed verdict on the charge of resisting arrest. Id. at 505, 697 S.E.2d at 597-98.

Essentially the same factual scenario occurred in Thompson’s case. Officer Englert had no intent to arrest Thompson when he pulled his patrol vehicle behind Thompson. Thompson fled and a chase followed. Officer Englert then placed Thompson under arrest for fleeing even though there was no arresting process underway when Thompson fled.

Accordingly, where the State failed to present any evidence that the arresting process was underway when Thompson fled, the Trial Court erred in denying Thompson’s motion for a directed verdict on the charge of resisting arrest.

**CONCLUSION**

For the reasons set forth herein, Petitioner Taurus Lamare Thompson respectfully requests this Court to grant his Petition and issue a writ of certiorari to the Court of Appeals to review the decision, reverse the Opinion of the Court of Appeals, reach the merits of Petitioner's appeal, and reverse Petitioner's conviction for resisting arrest.

Respectfully submitted,

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Carmen V. Ganjehsani  
Appellate Defender

ATTORNEY FOR PETITIONER.

This 18th day of September, 2014.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to York County  
Michael G. Nettles, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

TAURUS LAMARE THOMPSON,

PETITIONER.

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CERTIFICATE OF SERVICE

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I certify that a true copy of the petition for writ of certiorari and a copy of the appendix, in this case has been served on Christina J. Catoe, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and the S.C. Court of Appeals this 18th day of September, 2014.

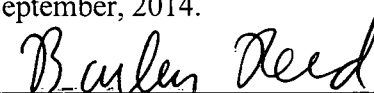


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Carmen V. Ganjehsani  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 18th day  
of September, 2014.

 (L.S.)  
Notary Public for South Carolina  
My Commission Expires: October 24, 2021