

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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THE STATE,

S.C. Supreme Court
RESPONDENT,

V.

BOBBY LEE BURDINE,

PETITIONER

Appeal from Spartanburg County

Eugene C. Griffith, Jr., Circuit Court Judge

Opinion No. 2011-UP-285

APPENDIX

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THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Bobby Lee Burdine, Appellant.

Appeal From Spartanburg County
Eugene C. Griffith, Jr., Circuit Court Judge

Unpublished Opinion No. 2011-UP-285
Submitted June 1, 2011 – Filed June 13, 2011

AFFIRMED

Appellate Defender Kathrine H. Hudgins, of
Columbia, for Appellant.

Attorney General Alan Wilson, Chief Deputy
Attorney General John W. McIntosh, Assistant
Deputy Attorney General Salley W. Elliott, and
Assistant Attorney General William M. Blich, Jr., all

of Columbia; and Solicitor Barry Barnette, of Spartanburg, for Respondent.

PER CURIAM: Bobby Lee Burdine appeals his conviction for resisting arrest, arguing the circuit court erred in denying his motion for a directed verdict because the State failed to present sufficient evidence that his underlying arrest was lawful. We affirm¹ pursuant to Rule 220(b)(1), SCACR, and the following authorities: S.C. Code Ann. § 16-17-530 (2003) ("Any person who shall . . . be found on any highway or public place . . . in a grossly intoxicated condition . . . shall be deemed guilty of [public disorderly conduct]."); State v. Williams, 280 S.C. 305, 306, 312 S.E.2d 555, 556 (1984) (defining public places as places "so situated that what passes there can be seen by any considerable number of persons, if they happen to look" and where "the public has an interest as affecting the safety, health, morals, and welfare of the community." (citation and internal quotation marks omitted)); State v. Galloway, 305 S.C. 258, 263, 407 S.E.2d 662, 665 (Ct. App. 1991) (holding that, "in the light most favorable to the State, the officers' testimony [at trial] established the existence of probable cause to arrest" the defendant, who was charged with resisting arrest).

AFFIRMED.

FEW, C.J., PIEPER and LOCKEMY, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

COPY

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

BOBBY LEE BURDINE,

APPELLANT

Appeal from Spartanburg County

Eugene C. Griffith, Jr., Circuit Court Judge

Opinion No. 2011-UP-285

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JUN 28 2011
SC Court of Appeals

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, counsel for Bobby Lee Burdine petitions the Court for rehearing. Counsel respectfully submits that the Court overlooked the fact that the State failed to prove that the underlying arrest for disorderly conduct was lawful. Specifically, the State failed to prove that appellant was in a public place at the time of his arrest for disorderly conduct.

Appellant was arrested for disorderly conduct in the driveway of the home where he and his finacee, Kathy Fowler, lived. (R. p. 53, lines 10 – p. 54, lines 1- 4). The incident took place at 11:15 at night and the officer testified that he did not see anyone else out in the neighborhood at the time. (R. p. 6, lines 21 – p. 7, lines 1-2). After taking a friend home, the appellant and his finacee's

brother, Truman Hughes, parked in the driveway and decided to have a few drinks and listen to some music in the car. (R. p. 48, lines 10-18).

Deputy Matthew Owens with the Spartanburg County Sheriff's Office testified that on the evening of June 17, 2008, he was on routine patrol when a Honda Accord passed him with no tag lights. (R. p. 2, lines 5-25). The officer turned around and followed the Honda. The officer testified that the Honda pulled into a driveway at a house. The officer drove past the house and turned around and parked. (R. p. 3, lines 1-8). The officer admitted that he was waiting to see if the car pulled out of the driveway. (R. p. 8, lines 13-25). When the car did not leave, the officer drove past the parked vehicle and saw two people inside the vehicle. (R. p. 3, lines 9-12). The officer later learned that the two people were the appellant, Bobby Lee Burdine, Hughes, the brother of appellant's fiancée. Appellant and Hughes noticed the officer pass them and shine his spotlight on them. At that point, they decided to get out of the car. (R. p. 31, lines 6-24).

The officer approached appellant and Hughes as they were standing in the driveway. According to the officer, Burdine became "loud and boisterous and started using profanity, getting very hostile" when he informed him that the tag light was out. (R. p. 4, lines 19-22). The officer testified, "I informed him [Burdine] that he needs to quiet down once or twice and stop using profanities. I said you are in plain view of the public right now, you're disrupting the public, there are people that live here that don't want to be hearing that stuff right now. He refused to do so. He then got on his phone and started dialing the phone. I informed him that he was under arrest for public disorderly conduct." (R. p. 5, lines 17-24). When Burdine refused to put the phone down, a scuffle ensued between Burdine and the officer. Appellant Burdine was then charged with resisting arrest.

At the close of the State’s case, Burdine moved for a directed verdict of not guilty of resisting arrest based on the fact that the State failed to prove that the underlying arrest for public disorderly conduct was lawful. Specifically, Burdine argued that first, words alone without threats are not sufficient to arrest for public disorderly conduct and second that the State failed to prove that Burdine was in a public place when he was alleged to have been disorderly. (R. p. 27, lines 6 – 24). The judge denied the motion stating, “I think there was some other testimony by the arresting officer that there was loud and boisterous cursing, as well as some, I think he said, boisterous behavior, profanity, possible behavior and then the raising of the bottle and whatnot. So I think it’s a factual question. I’m going to go ahead and let the jury hear that.” (R. p. 27, line 25 – p. 28, lines 1-6). Burdine renewed the motion at the close of the case. (R. p. 57, lines 23-24).

Burdine also filed a motion for new trial based on the fact that 1.) the State failed produce sufficient evidence to prove beyond a reasonable doubt that the arrest for public disorderly conduct was lawful; 2.) the State failed to produce sufficient evidence to prove beyond a reasonable doubt that the defendant was lawfully detained; and 3.) the State failed to produce sufficient evidence to prove beyond a reasonable doubt that the Defendant was not entitled to use reasonable force to prevent an illegal arrest. (R. p. 83). The judge denied the motion on April 21, 2009.

This Court affirmed the conviction pursuant to Rule 220(b)(1), SCACR, and the following authorities: S.C. Code Ann. § 16-17-530 (2003) (“any person who shall . . . be found on any highway or public place . . . in a grossly intoxicated condition . . . shall be deemed guilty of [public disorderly conduct].”); State v. Williams, 280 S.C. 305, 306, 312 S.E.2d 555, 556 (1984) (defining public places as places “so situated that what passes there can be seen by any considerable number of person, if they happen to look” and where “the public has an interest as affecting the safety, health, morals, and welfare of the community.” (citation and internal quotation marks omitted));

State v. Galloway, 305 S.C. 258, 263, 407 S.E.2d 662, 665 (Ct.App. 1991) (holding that , “in the light most favorable to the State, the officers’ testimony [at trial] established the existence of probable cause to arrest the defendant, who was charged with resisting arrest). State v. Bobby Lee Burdine, 2011-UP-285 (S.C.Ct.App. filed June 13, 2011). The Court erred.

The disorderly conduct statute, S.C. Code §16-17-530(a) provides:

Any person who shall (a) be found on any highway or at any public place or public gathering in a grossly intoxicated condition *or otherwise conducting himself in a disorderly or boisterous manner ... shall be deemed guilty of a misdemeanor....*

In State v. Williams, 280 S.C. 305, 306 312 S.E.2d 555, 556 (1984) the Court defined public place as:

A place to which the general public has a right to resort; not necessarily a place devoted solely to the uses of the public, but a place which is in point of fact public rather than private, a place visited by many persons and usually accessible to the neighboring public. People v. Whitman, 178 App.Div. 193, 165 N.Y.S. 148, 149. Roach v. Eugene, 23 Or. 376, 31 P. 825. Any place so situated that what passes there can be seen by any considerable number of persons, if they happen to look. Steph.Cr.L. 115. Also, a place in which the public has an interest as affecting the safety, health, morals, and welfare of the community. A place exposed to the public, and where the public gather together or pass to and fro. Lewis v. Commonwealth, 197 Ky. 449, 247 S.W. 749, 750.

In Williams, the court found that the lobby of the Alston Wilkes Society Home was a public place as contemplated by the disorderly conduct statute. The private driveway and yard at issue in the present case are easily distinguished from the hotel like lobby at issue in Williams.

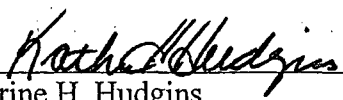
Applying the definition of public place from Williams, the Court in State v. McGowan, 347 S.C. 618, 557 S.E.2d 657 (2001), found that the defendant’s driveway could be considered a public place. In making the public place determination, the Court noted that a carload of teenagers witnessed the incident. The McGowan court found there was evidence from which

the jury could find, for purposes of the disorderly conduct statute, that McGowan was conducting himself in a grossly intoxicated and disorderly manner in a public place. There is no evidence that any one other than the officer and the passenger witnessed the incident in the present case. An additional factor that distinguishes this case from McGowan is the fact that McGowan retrieved a gun during his encounter with the police. The retrieval of the gun constitutes a threat and takes his actions beyond mere words or objections to the police. Burdine made no threats and used no fighting words. Burdine's arrest for disorderly conduct was unlawful for two reasons: 1.) Burdine's actions did not take place in a public place; and 2.) Burdine did not use fighting words and made no threats so his actions did not constitute disorderly conduct.

Respectfully, appellant submits that the Court's reliance on State v. Galloway, 305 S.C. 258, 263, 407 S.E.2d 662, 665 (Ct.App. 1991) is misplaced because there was no question that Galloway was on a public highway when officers attempted to arrest him for disorderly conduct. Appellant Burdine was in a private driveway, not on a public highway.

A person may not be convicted of resisting arrest where the underlying arrest is unlawful. A person has a right to resist an unlawful arrest. State v. Poinsett, 250 S.C. 293, 157 S.E.2d 570 (1967). The State failed to prove that the arrest for disorderly conduct was lawful. Appellant Burdine was not in a public place. He was in his driveway, at 11:15 at night and there were no neighbors outside who saw the confrontation. Burdine had a right to resist his unlawful arrest for disorderly conduct. The judge erred in refusing to direct a verdict of acquittal for resisting arrest. Appellant respectfully seeks rehearing.

Respectfully submitted,



Kathrine H. Hudgins
Appellate Defender

This 28th day of June, 2011.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
Eugene C. Griffith, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BOBBY LEE BURDINE,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon William M. Blicht, Jr., Esquire, this 28th day of June, 2011.

Kathrine H. Hudgins
Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 28th day
of June, 2011.

Ramon E. Cuse (L.S.)
Notary Public for South Carolina
My Commission Expires: August 23, 2014.

The South Carolina Court of Appeals

The State,

Respondent,

v.

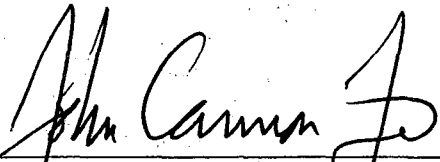
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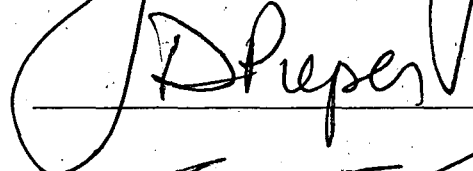
Appellant.

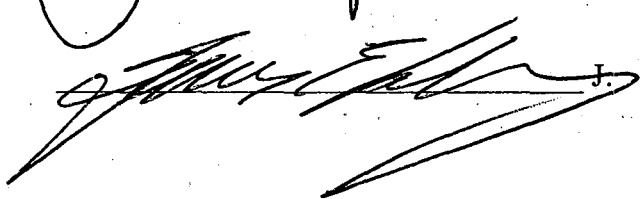
The Honorable Eugene C. Griffith, Jr.
Spartanburg County
Trial Court Case No. 2008-GS-42-05470

ORDER

After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing. It is, therefore, ordered that the Petition for Rehearing be denied.



C.J.


J.


J.

Columbia, South Carolina

FILED

AUG 23 2011

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY

Eugene C. Griffith, Jr., Circuit Court Judge

THE STATE,

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V.

BOBBY LEE BURDINE,

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RECORD ON APPEAL

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Matthew Owens
Direct examination by Ms. Poulos

1 THE COURT: Are we ready to go?

2 MS. POULOS: Yes, sir, Your Honor.

3 MS. JONES: Yes, sir, Your Honor.

4 THE COURT: All right. Bring the jury in.

5 (The following takes place in the presence of the
6 jury.)

7 THE COURT: Ms. Solicitor.

8 MS. POULOS: Thank you, Your Honor. May it please the
9 Court.

10 THE COURT: Yes, ma'am.

11 MS. POULOS: The state calls Deputy Matthew Owens.

12 MATTHEW OWENS, having been
13 first duly sworn, testified as follows:

14 DIRECT EXAMINATION BY MS. POULOS

15 Q Please state your full name for the record.

16 A Excuse me?

17 Q Please state your full name for the record.

18 A Deputy Matthew Owens.

19 Q And where are you employed?

20 A Spartanburg County Sheriff's Office.

21 Q How long have you been employed there?

22 A Two years and four months.

23 Q Can you tell the jury what are some of your current
24 job duties and responsibilities?

25 A Patrol my assigned area, perform crime offense in my

Matthew Owens
Direct examination by Ms. Poulos

1 area, let myself be known, get out and talk with the public
2 and let them know I'm there, answer calls from people who
3 call 9-1-1, assist E. M. S. and fire just to help, to look
4 out.

5 Q Were you on duty on June the 17th of 2008?

6 A I was, ma'am.

7 Q Were you on routine patrol that day?

8 A Yes, ma'am.

9 Q And do you recall where this incident occurred?

10 A Yes, ma'am, exactly.

11 Q Can you give us the address?

12 A It's going to be the residence there on Pine Ridge,
13 but it's actually near the intersection of Martinez Road
14 and Pine Ridge Drive.

15 Q Is that in Spartanburg County?

16 A Yes, ma'am.

17 Q Okay. Tell the jury what happened that day.

18 A That night I was on continuing patrol in that area.
19 From my experience I've made several drug cases and had --
20 it's kind of a high-crime area. It's kinda picked up in
21 the past. So I like to hang out in the area and get to
22 know the people moving out there and just do my homework
23 pretty much in that area.

24 I passed, was coming up Pine Ridge Road and a Honda
25 Accord passed by with no tag lights. I then turned around

Matthew Owens
Direct examination by Ms. Poulos

1 on the vehicle. And the vehicle pulled into the residence.

2 My experience, several times I've had vehicles as I've
3 turned around on them, they immediately pull into a
4 residence as if to make me think that they live there or
5 think that I can't get out with them.

6 And so I turned around and come back up the road and
7 stopped and parked and waited for them to come out. I
8 waited approximately five minutes.

9 I drove back down. I saw two subjects sitting inside
10 the vehicle, which was still to me showing suspicious,
11 because if they lived there they would be getting out of
12 the vehicle and going inside the residence.

13 So I went down the road and turned around and come
14 back again. They were outside the vehicle standing around
15 the vehicle, didn't walk back in.

16 So at that point in time instead of immediately
17 pulling into the driveway I decided to go up one more time
18 so I can get on the radio and let dispatch know I was
19 getting out with them instead of me just jumping out with
20 them in case something bad happened. So I did get out with
21 them, and that's why we're here now.

22 Q Okay. And you said the defendant was with somebody
23 else.

24 A Yes, ma'am.

25 Q Okay. Can you -- at that point when you approached

1 the defendant, can you describe the scene for us?

2 A He was standing in front of his vehicle to the front
3 side of it as I approached from the rear. Him and his --
4 this friend that was there with him, I noticed a bottle of
5 liquor in his hand.

6 It was very dark out. There's a house right there.
7 There's numerous houses in the trek area.

8 He had the bottle of liquid he had in his hand, was
9 actually E. M. J., I believe. And immediately the smell of
10 the aroma of alcohol. And I noticed that he was extremely
11 slurred in his speech.

12 Q Okay. Can you describe the defendant's behavior?

13 A Yes. He -- well, when I first walked up, I informed
14 him. You know, I was be-courtesy and courteous and pretty
15 much just kinda let people know I was out there and
16 informed him that his tag light was out and there to
17 perform a traffic stop. I was going to get and talk with
18 him. That was all.

19 I informed him that his tag light was out, and that's
20 when I noticed he had a bottle of liquor in his hand. He
21 immediately started getting loud and boisterous and started
22 using profanity, getting very hostile.

23 And usually from my experience someone's getting very
24 hostile like that, they usually are hiding something or
25 they're, they're trying to show me I'm in the wrong, you

Matthew Owens
Direct examination by Ms. Poulos

1 know, like I don't need to mess with them.

2 People -- a common person I get out with, they're very
3 polite. I show them respect, and they give my respect. He
4 was from the very beginning very hostile toward me, very
5 loud, boisterous using profanities. And at that point,
6 that's where it escalated.

7 Q Okay. Can you describe the area that you guys were
8 in? Was it a residential area?

9 A Yes. It's Pine Ridge Road, which is I want to say
10 anywhere from probably 40 to 50 houses on that one road.

11 The houses are very close together. There's several
12 side roads that run off there, and it echoes very easily
13 because there's trees right there, and all the houses. And
14 it's definitely in earshot of all kinds of vaments (sic).

15 Q At that point you said that you -- did you place him
16 under arrest at that point?

17 A I informed him that he needs to quiet down once or
18 twice and stop using profanities. I said you are in plain
19 view of the public right now, you're disrupting the public,
20 there are people that live here that don't want to be
21 hearing that stuff right now.

22 He refused to do so. He then got on his phone and
23 started dialing the phone. I informed him that he was
24 under arrest for public disorderly conduct.

25 At that point in time he refused to put the cell phone

Matthew Owens
Cross-examination by Ms. Jones

1 down after I'd asked him to. I then grabbed his cell phone
2 out of his hand and put it on his car.

3 Right when I did that he reached back and struck me in
4 my face, in the jaw, with his hand. I pushed him back and
5 went for my O. C. spray. I sprayed him with a half second
6 burst. And he raised up the bottle like he was going to
7 hit me or strike me with me, or throw it at me. And that
8 there's considered deadly force.

9 If he were to hit me in the head and incapacitate me,
10 I wouldn't able to defend myself. I then drew my weapon
11 and pointed it at him and ordered him immediately to drop
12 the glass bottle.

13 At that time Deputy Bradley arrived and we were able
14 to take the suspect to the ground and put him into custody.

15 Q Deputy Owens, did you know the defendant prior to this
16 incident?

17 A I have never met him in my life, no.

18 Q Please answer any questions Ms. Jones has.

19 CROSS-EXAMINATION

20 BY MS. JONES

21 Q Deputy Owens, what time of night was this?

22 A It was 11:15, ma'am.

23 Q Okay. Fair to say a lot of people are sleeping in the
24 neighborhood at that time, correct?

25 A Yes, ma'am.

Matthew Owens
Cross-examination by Ms. Jones

1 Q Did you notice anybody out?

2 A No, ma'am.

3 Q So you passed this Honda Accord, correct?

4 A Yes, ma'am.

5 Q And you indicated that the tag light was out.

6 A Yes, ma'am.

7 Q Okay. And you indicate in your report that by the
8 time you turned around the car had already pulled into a
9 driveway.

10 A Yes, ma'am.

11 Q Okay. So you didn't necessarily -- you weren't right
12 behind this car, correct, and he just immediately pulled
13 into a driveway, fair to say?

14 A I wasn't too far behind him. I mean, it was fairly
15 quick. I was able to whip it around, and he immediately
16 pulled in the driveway.

17 Q Okay. And, in fact, did you see -- did you try to run
18 the tag at all to determine whose car it was?

19 A No, I did not. I didn't have a chance to do that.

20 Q And, in fact, had you done that would you have been
21 able to identify who owned this car and whether or not this
22 car belonged in this driveway?

23 A Not necessarily.

24 Q But you could have. I mean, a tag sometimes is
25 registered to a Mr. John Jones, and, in fact, we could

Matthew Owens
Cross-examination by Ms. Jones

1 probably figure out whether Mr. John Jones lives there,
2 correct?

3 A Maybe 50 percent of the time.

4 Q And you also indicate in your police report that you
5 drove by. This car had parked into the driveway, correct?

6 A Yes.

7 Q Okay. You didn't stop then and get on the radio and
8 say, hey, I'm going to stop at this house, there's a tag
9 light and I'm just going to do a courtesy check and let
10 them know that there's a tag light out, did you?

11 A I actually informed dispatch that I was going to be in
12 the area watching a suspicious vehicle.

13 Q But at the time when you saw this car pull into the
14 driveway you didn't get on dispatch and say, hey, I'm going
15 to talk with these folks about this tag light, did you?

16 A Not at the moment.

17 Q You drive by and you went up the road and you waited,
18 isn't that correct?

19 A Yes, ma'am.

20 Q And, in fact, in your police report you indicated you
21 were going to wait to see if this car pulled out again,
22 correct?

23 A Yes, ma'am.

24 Q Because you wanted to perform a traffic stop, correct?

25 A Yes, ma'am.

Matthew Owens
Cross-examination by Ms. Jones

1 Q You wanted to speak with these people, correct?

2 A Yes, ma'am.

3 Q Because you thought they were suspicious men, correct?

4 A Yes, ma'am.

5 Q Two black men driving in a Honda Accord with a tag
6 light out in a neighborhood is suspicious to you, is that
7 correct, sir?

8 A I was unaware of their race. It was nighttime. They
9 had tinted windows, and they drove past me.

10 Q In fact, when you talked with dispatch in your police
11 report, you've indicated that you were getting out with two
12 suspicious males, correct?

13 A Yes.

14 Q Okay. And you, in fact, realize Mr. Bobby Burdine was
15 driving, correct?

16 A Yes.

17 Q So you're trying to tell me you could figure out who
18 the driver was. But now your testimony is when they drove
19 by you couldn't figure out what color of skin they had?

20 A As I drove by I observed Mr. Burdine get out of the
21 driver's-side door.

22 Q So then you knew, in fact, that they were
23 African-American men, correct?

24 A Yes, ma'am.

25 Q And when you saw them get out of the car when you told

Matthew Owens
Cross-examination by Ms. Jones

1 dispatch, you said you were getting out with suspicious
2 men, correct?

3 A Yes, ma'am.

4 Q And the only thing they had done at this point in time
5 was have a tag light out, correct?

6 A Yes, ma'am.

7 Q So, again, my point to you is two black men getting
8 out in a neighborhood is apparently suspicious to you.

9 A Yes, ma'am. It doesn't have anything to do with race.
10 It could be a white male, a black male, Hispanic male,
11 Asian male. The way, their actions, and the way they're
12 driving is what's suspicious, ma'am.

13 Q Well, let's talk about that then. You say the way
14 they were driving was suspicious.

15 A Yes, ma'am.

16 Q Because they had a tag light out?

17 A No, ma'am.

18 Q Tell me what was suspicious.

19 A The way it's suspicious is, my experience numerous
20 times I have turned around on a vehicle, that vehicle
21 driving around in a neighborhood late hours at night. I
22 turned on the vehicle, run the tag, see what they're doing
23 and they immediately pull in a driveway. And I pass by and
24 come back again. They would back out again not even 30 or
25 40 seconds later after they seen I'd leave the area in

Matthew Owens
Cross-examination by Ms. Jones

1 attempts to evade from me.

2 At one point in time -- I'll give you an example. I
3 was on Southland Avenue and turned around on a vehicle that
4 was driving around in the area, turned around on the
5 vehicle, the vehicle pulled in the driveway.

6 I went down the road and waited a second for the
7 vehicle to pull back out. I come back out again and the
8 vehicle pulled in another driveway. And I pulled in behind
9 the vehicle. The subjects jumped out of the car and took
10 off running, had a stolen pistol and performed several of
11 the carbreakings in the area.

12 Q Let's back up. You indicated that a lot of times a
13 car would pull in and you're viewing the tag light or the
14 tag, correct?

15 A Yes.

16 Q You didn't do that this particular time, did you? You
17 never ran that tag, correct?

18 A I didn't have the opportunity to. That's all I did.

19 Q They pulled into the driveway. And you rode up hoping
20 that they would, they would go again, correct?

21 A Yes.

22 Q And in your experience people do.

23 A Yes.

24 Q They see the police leave and they're like, oop, and
25 then they book it on out of there, correct?

Matthew Owens
Cross-examination by Ms. Jones

1 A Not all times, I mean, every, every --

2 Q In your example that you just gave, isn't that what
3 they did? Correct?

4 A That one example, yes.

5 Q And, in fact, Mr. Bobby Burdine, he sat there,
6 correct?

7 A Yes.

8 Q Isn't that unusual for people to sit in their car and
9 finish a conversation or listen to the end of a song or
10 maybe there's something good on the radio that they want to
11 finish listening to? People sit in the car maybe for five
12 minutes. Is that really unusual, suspicious behavior,
13 officer?

14 A Depends. There's not a textbook for behavior. The
15 most people, I mean, some people could pull in the
16 driveway, ready to walk in the house, of that house. Walk
17 inside. Other people at the house might sit there and get
18 their belongings together and then exit the vehicle. The
19 way I took it as to subjects sitting in the car waiting for
20 me to either leave the area or see what I was going to do
21 before they exited out of the vehicle.

22 Q So two black men sitting in a vehicle waiting on
23 the -- waiting for about five minutes, again, suspicious
24 behavior to you, sir, correct? That's in your police,
25 correct? The suspicious behavior.

Matthew Owens
Cross-examination by Ms. Jones

1 A The suspicious behavior. Once again, race didn't have
2 anything to do with it.

3 Q And, in fact, when you drive by again, now they're out
4 of the vehicle, correct?

5 A Yes, ma'am.

6 Q Is that suspicious too?

7 A Yes, ma'am.

8 Q How is that suspicious?

9 A Because they were not walking to the house. They're
10 standing on the side of, in front of the vehicle.

11 Q Okay. Again, is it unusual for people when they're
12 home to get out of their vehicle and maybe hang out in
13 their yard? Is there a law against hanging out in their
14 yards?

15 A No, ma'am. 11:15 at night it's kind of suspicious
16 though.

17 Q So it's suspicious to you that this car with two
18 African-America men pull into a driveway, wait for about
19 five minutes and then exit the vehicle. They're not trying
20 to run, correct?

21 A No, ma'am. They were acting suspicious.

22 Q And, again, they're hanging out in the yard.

23 A Yes, ma'am.

24 Q That's suspicious to you.

25 A Yes, ma'am.

Matthew Owens
Cross-examination by Ms. Jones

1 Q Okay. In fact, officer, you drove by this house a few
2 times, correct?

3 A When I first turned around on the vehicle, the vehicle
4 pulled in the driveway. So I went down towards the Pine
5 Ridge or the Pine Street of Pine Ridge and waited
6 approximately five minutes.

7 They would not pull out. So I come back up. All of a
8 sudden the suspects still inside the vehicle come back
9 down. And once I came back down again they're outside the
10 vehicle.

11 So I was able to go to the road. And I let dispatch
12 know that I was stepping out two suspicious males. So that
13 way when I turned around all I do is exit the vehicle
14 instead of trying to get on the radio once I pull into the
15 driveway. So once I pull in the driveway, I got them.

16 Q And you, in fact, were hoping that they would pull out
17 to conduct some type of traffic stop.

18 A I was just trying to see if they were going to try to
19 evade me because most of the times they will try to evade
20 the police if they have something to hide or are doing
21 something wrong.

22 Q So a tag-light violation is pretty serious stuff to
23 you, correct?

24 A I've actually gotten PWID marijuana and trafficking
25 cocaine off a tag light before.

Matthew Owens
Cross-examination by Ms. Jones

1 Q Okay. So now we're accusing these folks of having
2 drugs in their car?

3 A You know, I don't have an idea of what they have or
4 who they are. That's why I wanted to investigate the
5 situation and see who they are.

6 Q Fair enough. So you wanted to investigate whether
7 Mr. Burdine and his client (sic) had drugs in his car,
8 correct?

9 A Not necessarily drugs. If they're -- it's who they
10 were doing, who they are, what they're doing, where they're
11 from, introduce myself, just pretty much.

12 I do a lot of community-base police at night, park my
13 car at night and get out and walk on foot and let people
14 know who I am. I want to get to know the people in this
15 area so I can do my duties as a police officer better.

16 Q So is it fair to say that this whole tag-light issue
17 is sort of a pretext to talk with these people, to stop
18 their car, to see whether or not they've got drugs, to see
19 whether or not they've got weapons and things along those
20 lines?

21 A It is a lawful stop.

22 Q And when they wouldn't leave that driveway you kept
23 driving back and forth and you thought to yourself, well,
24 gosh, if I can't get them out of that driveway in that car
25 how am I going to stop them? I know, why don't I just go

Matthew Owens
Cross-examination by Ms. Jones

1 onto their property and confront them there, correct?

2 A Yes, ma'am.

3 Q And, in fact, when you approached Mr. Burdine, one of
4 the first things you told him is I want to search you,
5 correct?

6 A Negative.

7 Q And he said, wow, you're not going to search me. And
8 that's where the situation escalated, correct? You wanted
9 to search this man. You're looking for PWID, possession
10 with intent to distribute marijuana. You're looking for
11 cocaine. You're look for something. And you decide
12 they're not going to drive in their car. I'm going to get
13 into their private property and get into their business and
14 demand to search this man, correct?

15 A Ma'am, I never once stated I was going to search him.
16 I never stated anything about searching awhile ago.

17 Q And, in fact, when Ms. Fowler came out to ask what's
18 going on, why is my fiancé on the ground in handcuffs. You
19 indicated to her this neighborhood is going to respect me,
20 correct? You did community-based --

21 A No, ma'am.

22 Q And you try and get out in the community. And you
23 want this neighborhood to respect you. So you're going to
24 show them who is in charge, correct?

25 A No, ma'am.

Matthew Owens
Cross-examination by Ms. Jones

1 Q You also indicated, and let me ask you this. How long
2 have you been a police officer?

3 A Two years and four months.

4 Q Two years and four months. Okay. And I'm sure in the
5 course of -- how much training have you had? Let me ask
6 you that.

7 A How much training have I had? I did nine weeks of
8 basic law enforcement at the academy. I've done DataMaster
9 classes. I've done on-the-job training with our narcotics
10 and R. C. guys. I'm on a support team. Exactly what kind
11 of training are you asking for, ma'am?

12 Q Okay. So it sounds like you've been trained in law
13 enforcement investigation and how to write a report,
14 correct?

15 A Yes, ma'am.

16 Q And we always put very important things in reports,
17 right?

18 A Yes, ma'am.

19 Q Because our memories get fuzzy after a while.

20 A Yes, ma'am.

21 Q Correct? And ultimately you want to prosecute a case,
22 correct?

23 A Yes, ma'am.

24 Q Okay. And one of the things that we use, as well as
25 written reports, right, are written statements, correct?

Matthew Owens
Cross-examination by Ms. Jones

1 A Yes, ma'am.

2 Q And we also use pictures, correct?

3 A Yes, ma'am.

4 Q Pictures say a thousand words, correct? Okay. And,
5 now, you indicate you were hit in the jaw, correct?

6 A Yes, ma'am.

7 Q Punched. There was no pictures, correct?

8 A There's no visible injury, ma'am.

9 Q Okay. There was no redness, no nothing.

10 A Nothing to photograph, ma'am.

11 Q Okay. Did you go to the hospital?

12 A No, ma'am.

13 Q Okay. Did you write any other report regarding that?

14 A Yes, ma'am. I did a use-of-force report for in-house
15 at the sheriff's office.

16 Q Okay. And was that ever provided to the prosecutor to
17 be provided to us?

18 A Excuse me, ma'am. That's for in-house. If you would
19 like to see that you would need to speak with our sheriff
20 or chief deputy.

21 Q You're not aware of Rule 5 discovery issues and
22 turning over information when it's requested?

23 MS. POULOS: Objection, Your Honor.

24 THE COURT: I'll sustain that. He's answered the
25 question. It's in-house.

Matthew Owens
Cross-examination by Ms. Jones

1 MS. JONES: Fair enough, Your Honor.

2 Q You also with this tag-light violation, you claim that
3 they didn't have a tag light, correct?

4 A Yes, ma'am.

5 Q And, in fact, again, with your training, when you see
6 a violation, we write reports or we write a citation,
7 correct?

8 A Yes, ma'am.

9 Q You never wrote a citation for the tag-light
10 violation, correct?

11 A I never performed a traffic stop, ma'am.

12 Q But you observed it.

13 A I did observe it.

14 Q And when an officer observes a crime, correct, or a
15 traffic violation, they get to issue what's called a
16 citation, correct?

17 A At our discretion.

18 Q I'm sure you've written them for speeding. Somebody
19 speeds and you write a citation.

20 A I haven't wrote a ticket for speeding, ma'am.

21 Q I'm sorry?

22 A I have not wrote a ticket for speeding, ma'am.

23 Q You never have written a ticket for speeding when
24 you're on patrol.

25 A No, ma'am; yes, ma'am.

Matthew Owens
Redirect examination by Ms. Poulos

1 Q I'm sure you've written some types of citations,
2 correct?

3 A Yes.

4 Q Okay. So you didn't write out a citation for a
5 tag-light violation here --

6 A I never --

7 Q -- even though given the fact that you drove by and
8 waited five minutes and drove by again, oh, gosh, I hope
9 this car goes, and drove by again for this apparent
10 tag-light violation and get out of your car and go onto
11 private property to discuss this tag-light violation, and
12 yet you never wrote a ticket, correct?

13 A No, ma'am.

14 MS. JONES: I have nothing further.

15 THE COURT: Any redirect?

16 MS. POULOS: Briefly, Your Honor.

17 REDIRECT EXAMINATION

18 BY MS. POULOS

19 Q Deputy Owens, how much time passed by from the time
20 that you first saw the defendant to when you stopped and
21 got out of your car?

22 A I want to say approximately five to seven minutes.

23 Q Was it 30 minutes?

24 A No, ma'am.

25 Q And didn't you want the neighborhood to be safe?

Matthew Owens
Recross-examination by Ms. Jones

1 A Yes, ma'am. That's my, that's our sole mission as law
2 enforcement, is to protect the public.

3 A person once said that there's three types of people
4 in this world. We have sheepdogs; we have wolves; and we
5 have sheep. And law enforcement is the sheepdogs watching
6 and they're watching over the sheep. That's all I'm doing,
7 is making my presence be known and getting out so people
8 can know us, and protect the public. And also trying to
9 catch bad guys.

10 Q Thank you.

11 MS. JONES: Just very briefly, Your Honor.

12 THE COURT: Sure.

13 RECROSS-EXAMINATION

14 BY MS. JONES

15 Q Does that mean protecting the public against black
16 men?

17 A Ma'am, black men have nothing to do with it. The
18 public is all kinds of races and everyone else.

19 MS. JONES: I have nothing else.

20 THE COURT: Thank you. You can step down.

21 Yes, ma'am.

22 MS. POULOS: Thank you, Your Honor. The state would
23 next call Deputy Clayton Bradley.

24

25

Clayton Bradley
Direct examination by Ms. Poulos

1 to talk with these two occupants of the car. So I go ahead
2 and head over to that specific area.

3 Q What location was that?

4 A I'd have to look at the exact report to see the exact
5 location, but it was over on Pine Ridge Drive.

6 Q Do you recall what time it was?

7 A I believe it was definitely after dark, these things
8 about 11:30-ish.

9 Q Please tell the jury what happened when you arrived.

10 A When I got there the situation had already turned
11 tense.

12 If this is the road right here, you've got the other
13 road -- I believe it's called Martinez -- that runs
14 perpendicular over here. And the house is over here on the
15 corner.

16 So they're down here in the driveway. I'm up here on
17 the road. There's a bit of an embankment, probably about
18 as tall as this is to the floor.

19 When I got there I saw that he had Mr. Burdine over
20 there at gunpoint. Mr. Burdine was over there and had a
21 glass bottle raised, looked like a bit of a liquor bottle
22 kind of thing. Had it raised and kind of like he was ready
23 to strike pose, I guess would be the best way to say it,
24 you know, raised up and gun pointed over here.

25 So I came in at an angle off to the side from him and

Clayton Bradley
Direct examination by Ms. Poulos

1 was able to get him and shove him up against the car. Once
2 I got him up against the car, Deputy Owens was able to
3 holster his gun and come over and assist me. We put him on
4 the ground. The whole time there's all of this yelling and
5 cussing still going on.

6 We get him handcuffed and put him in the back of
7 Deputy Owens' car. And that's about the end of my
8 involvement.

9 Q Can you describe the defendant's behavior if you
10 recall?

11 A Sure. Like I said, when I got there, of course,
12 everything had already gotten tense on us, so tensions were
13 high.

14 And Mr. Burdine was still over there cussing and
15 yelling. I don't remember exactly what he was cussing and
16 yelling. As you can imagine, you've got a gun being
17 pointed over here, a bottle being raised over here. And I
18 kinda had more important things than to try to remember
19 exactly what he said, which is basically trying to keep
20 anybody including Mr. Burdine from getting hurt.

21 Q Did he appear to you to be intoxicated?

22 A Yes, ma'am.

23 Q Deputy Bradley, based on your experience as a law
24 enforcement officer have you ever had a situation where
25 someone passed you and pulled into a driveway and stopped

Clayton Bradley
Cross-examination by Ms. Jones

1 and then later left?

2 A Oh, absolutely. It's a very common technique used,
3 the hope being of course they're on their way home and we
4 just drive on. So I've had that happen quite a bit.

5 Q Thank you.

6 A Yes, ma'am.

7 Q Answer any questions Ms. Jones may have.

8 CROSS-EXAMINATION

9 BY MS. JONES

10 Q You indicated that the officer had a gun pulled on
11 Mr. Burdine, correct?

12 A Yes, ma'am, that is correct.

13 Q Okay. And that would be included in some type of
14 use-of-force report, correct?

15 A Oh, yes, ma'am.

16 Q Now, you also indicated that it's kind of a common
17 technique for people to pull into a driveway, correct?

18 A Yes, ma'am. That's correct.

19 Q But probably they can't stay there very long because
20 if the residents are home they're going to call the police
21 and say, hey, there's this car in my driveway and it's not
22 mine, correct?

23 A The amount of time varies. There's no set time on how
24 long they stay.

25 Q But I'm saying though generally speaking if somebody's

Clayton Bradley
Cross-examination by Ms. Jones

1 home they might be able to notice that car, correct?

2 A Right, yes, ma'am. Generally, going to be short, but
3 that's not a rule. It's not a guarantee.

4 Q But a lot of times people pull into their own
5 driveways, correct?

6 A That's a reason the other people do it also.

7 Q And sometimes we pass the police and we just happen be
8 home.

9 A Sure.

10 Q No harm with that, correct?

11 A Exactly.

12 MS. JONES: Nothing further.

13 THE COURT: Anything else?

14 MS. POULOS: That's all I have, Your Honor.

15 THE COURT: Thank you, officer.

16 MS. POULOS: Your Honor, the state rests.

17 THE COURT: All right. Ladies and gentlemen of the
18 jury, that's the state's case. So I'm going to ask you to
19 withdraw to the jury room. I've got a matter of law I need
20 to take up outside of your presence. So retire to the jury
21 room momentarily.

22 (The following takes place outside the presence of the
23 jury.)

24 THE COURT: Yes, ma'am. Anything?

25 MS. POULOS: Nothing from the state, Your Honor.

Motion

1 MS. JONES: We make a motion for a directed verdict.
2 Are you ready for motions, Your Honor?

3 THE COURT: Yes. That's what I was asking for.

4 MS. JONES: Okay. I'm sorry. I didn't hear you.

5 THE COURT: That's okay.

6 MS. JONES: We're going to make a motion for a
7 directed verdict, Your Honor. It is our contention that
8 there was not enough evidence presented to arrest
9 Mr. Burdine for public drunk, Your Honor.

10 According to some state law, fighting words without
11 more is not enough to arrest somebody for public disorderly
12 conduct. There has to be something along the words of
13 fighting words. Or fighting words alone aren't enough,
14 Your Honor. There has to be something more like a threat
15 to an officer.

16 We heard both officers testify. There wasn't any type
17 of threat to their lives or anything along those lines.

18 Also Mr. Burdine was in his private area. I think
19 there was some testimony that he was in a residential area,
20 Your Honor. That is not a public place. Therefore we
21 don't believe that his conduct rose to the level of a
22 violation of the statute making his arrest illegal. And
23 according to South Carolina law a citizen has a right to
24 resist an illegal arrest, Your Honor.

25 THE COURT: All right. I think there was some other

Motion

1 testimony by the arresting officer that there was loud and
2 boisterous cursing, as well as some, I think he said,
3 boisterous behavior, profanity, possible behavior and then
4 the raising of the bottle and whatnot. So I think it's a
5 factual question. I'm going to go ahead and let the jury
6 hear that.

7 MS. JONES: Thank you, Your Honor.

8 THE COURT: All right. Are y'all ready to go, or do
9 you want a quick break?

10 Find out when they are ready, and we will take them as
11 soon as they are ready. How about that?

12 MS. JONES: Can we have five so I can run to the
13 restroom?

14 THE COURT: Go ahead.

15 (Whereupon, a recess was taken.)

16 THE COURT: Okay.

17 (The following takes place in the presence of the
18 jury.)

19 THE COURT: Welcome back.

20 The state has rested its case. They have presented
21 all the evidence they intend to present in this trial.

22 It is now the defendant's turn to present any evidence
23 he wishes.

24 Yes, ma'am.

25 MS. JONES: Your Honor, we call Truman Hughes to the

Lawrence Truman Hughes
Direct examination by Ms. Jones

1 stand.

2 LAWRENCE TRUMAN HUGHES, having
3 been first duly sworn, testified as follows:

4 DIRECT EXAMINATION BY MS. JONES

5 Q Mr. Hughes, can you state your name for the record?

6 Can you state your name for the record?

7 A Okay. Lawrence Truman Hughes.

8 Q And, Mr. Hughes, do you know Mr. Bobby Burdine?

9 A Yes, I do.

10 Q And how do you know Mr. Bobby Burdine?

11 A He's my sister's friend. They are about to be
12 married.

13 Q Okay.

14 A Okay.

15 Q And do you recall being with Mr. Burdine on
16 June 17th of 2008?

17 A Yes, I do.

18 Q Okay. And how were you with Mr. Burdine?

19 A Well, we was going to have a few drinks that night.
20 He had his bottles and I had my bottles.

21 Q Okay.

22 A Okay.

23 Q And where -- were you walking or were you in --

24 A We was riding.

25 Q Okay. Were you in a car?

Lawrence Truman Hughes
Direct examination by Ms. Jones

- 1 A We was in a car.
- 2 Q Do you remember what car that was?
- 3 A It's my sister's car. It's about a '91 or, about a
4 '91 Honda.
- 5 Q Okay. And who is your sister?
- 6 A Kathy Fowler.
- 7 Q Okay. Put that on the record. And who was driving
8 this car?
- 9 A Mr. Burdine, Bobby.
- 10 Q Okay. And on this particular evening where were you
11 going?
- 12 A We was going to my sister's house.
- 13 Q And where does she reside?
- 14 A She lives off Pine Ridge Road.
- 15 Q Do you know the specific address?
- 16 A Not the number, no. I should, but I don't.
- 17 Q Is it at the intersection of Martinez Road?
- 18 A Yes. I don't know the number.
- 19 Q Okay. All right. And so you're driving there. Do
20 you recall passing anybody or seeing anybody?
- 21 A Yes, the sheriff. He passed us, and, you know, after
22 we went by he turned around. But we was turning, you know.
23 We was turning in the drive.
- 24 Q Okay. You turned into a driveway, right?
- 25 A Right.

Lawrence Truman Hughes
Direct examination by Ms. Jones

1 Q Okay. What did you do at that point?

2 A We just pulled in. I didn't think nothing about it.
3 He come by real slow, and he looked at us. And he
4 continued on down, on down the street.

5 Q Okay. And where were you at at that point in time?

6 A We was sitting in the car right then.

7 Q Okay. And how long do you think you sat in the car?

8 A About 15 or 20 minutes.

9 Q Okay. What were you doing in the car?

10 A Listening to music.

11 Q Okay. And after about 15 to 20 minutes, what happened
12 at that point?

13 A The sheriff came back up. He came back up the street.
14 He shined his spotlight on us. And he continued up the
15 street.

16 So at that time I told Bobby, said we might better get
17 out of the car. We was going to get out of the car then.

18 Q Okay.

19 A So he --

20 Q You got out of the car. Did you go into the house?

21 A No, no.

22 Q Where were you at then?

23 A Bobby was in front of the car and I was on the side of
24 the car.

25 Q Okay. What were you doing?

Lawrence Truman Hughes
Direct examination by Ms. Jones

- 1 A Drinking and listening to music.
- 2 Q Okay. So it sounds like you still had the radio on.
- 3 A Right.
- 4 Q Okay. What happened at that point? You're listening
- 5 to music. You're outside in the car.
- 6 A Well, that's when he came back up the street.
- 7 Q Okay. How much time had passed at this point?
- 8 A I don't really know. I want to say about 15 or 20
- 9 minutes.
- 10 Q Okay. So about every 15 to 20 minutes he's making a
- 11 pass by the house?
- 12 A Yes. He made a pass.
- 13 Q Okay. And then what happened?
- 14 A Well, he came back down. When he came back down, he
- 15 shined the light on us again and --
- 16 Q Let me stop you. At this point were you out of the
- 17 car?
- 18 A We was out of the car.
- 19 Q Okay.
- 20 A And he just turned and come in the driveway then, you
- 21 know. He just come in the driveway and turned his light
- 22 on, spotlight and all on.
- 23 Q And then what happened?
- 24 A He got out of the car, and Bobby asked him what was he
- 25 doing.

Lawrence Truman Hughes
Direct examination by Ms. Jones

1 Q Okay. And did the officer respond to that?

2 A I can't remember what all was said, you know. Bobby
3 was raising. He had his voice up and the officer had his
4 voice up. And at that time I was telling Bobby to just go
5 ahead and let him say what he was going to say and maybe
6 he'll go ahead, you know. I don't, I don't --

7 Q Do you recall specifically what he was saying? Was he
8 talking about a tag light?

9 A Not, no, not at that time, no.

10 Q What was he requesting of Mr. Burdine, do you
11 remember?

12 A He told Bobby, said you're getting loud, I need to
13 search you, you're getting too loud.

14 Q And did Mr. Burdine comply with that, that he wanted
15 to be searched?

16 A No. He didn't want to be searched.

17 Q Okay. What happened at that point when that sort of
18 exchange happened when the officer said you need to get in
19 line because I am going to search you, do you remember?

20 A Well, Bobby had a bottle of whiskey. He had a half
21 pint of whiskey in his right hand.

22 Q Uh-huh.

23 A And everything had happened so fast. You got to
24 excuse me. He had his cell phone. He had the whiskey in
25 his hand, and he was still arguing with the officer about

Lawrence Truman Hughes
Direct examination by Ms. Jones

1 why was he harassing us, that he was on private property,
2 he had no reason to stop us, you know, just stop and harass
3 us because we was on private property in my sister's yard.
4 But the officer didn't know this.

5 Q Okay. But Mr. Burdine is telling him this, this is
6 private property and my sister --

7 A Telling, uh-huh, my sister, yeah.

8 Q Okay. And do you remember how the officer responded
9 to that?

10 A Well, both of them had got heated then. You know,
11 Bobby was mad, the officer was mad. And, like I said, the
12 officer said he needed to search, I need to search you,
13 you're getting too loud.

14 Q Okay. And did he make any movement towards
15 Mr. Burdine to search him?

16 A Yes.

17 Q Okay. Did he actually put his hands on Mr. Burdine?

18 A Yes.

19 Q Okay. And what did Mr. Burdine do?

20 A Well, he pushed him away. You know, he just pushed
21 off from him.

22 Q Okay. And what happened at that point?

23 A At that point the officer fell back, you know, and I
24 thought he was going for his gun at that time. But I don't
25 know if it was pepper spray or mace. He come out with

Lawrence Truman Hughes
Direct examination by Ms. Jones

1 something and got to spraying it, you know.

2 Q Okay.

3 A And at that time I ducked my head. You know, I went
4 down because I thought it might have been mace or
5 something. So I was going to get out of the way.

6 But when I came back up there was two more officers
7 there. One told me not to move. And the other two, the
8 officer here and another officer, carried Bobby down to the
9 ground.

10 Q Okay.

11 A Rolled him over and put handcuffs in him.

12 Q All right. And at this point he's in handcuffs,
13 correct?

14 A Right.

15 Q Okay. Did you ever during this whole incident observe
16 Mr. Burdine strike the officer?

17 A No.

18 Q Did you ever observe him put his flask or bottle, as
19 you say, up to like he was going to strike the man?

20 A No.

21 Q Do you ever recall the officer pulling out his gun?

22 A No.

23 Q Okay. You only recall mace.

24 A Mace. That's the only thing I recall, right.

25 Q And at this point after Mr. Burdine is down on the

Lawrence Truman Hughes
Cross-examination by Ms. Poulos

1 ground, what happened at that point? Did you ask the
2 officer what he was being arrested for?

3 A My sister had come out then. My sister come out there
4 you know, what was he being arrested for. And he said
5 something about the tag light. So then we checked the
6 light, and all the lights was working on the car.

7 Q Was the tag light -- this is important. Was the tag
8 light working on the car?

9 A Yes, it was because we checked it.

10 Q You specifically remember checking it.

11 A Right.

12 MS. JONES: I have nothing further.

13 THE COURT: Yes, ma'am. Your witness.

14 CROSS-EXAMINATION

15 BY MS. POULOS

16 Q Mr. Hughes, you pulled up to the driveway and turned
17 the vehicle off, right?

18 A I wasn't driving.

19 Q Okay. Well, was the vehicle off?

20 A The vehicle was off, yes.

21 Q Okay. So how are you listening to music when the
22 vehicle was off?

23 A On A. C. C. You've got A. C. C. You know, you can
24 turn it on A. C. C. and you can still listen to the radio
25 with the vehicle off.

Lawrence Truman Hughes
Cross-examination by Ms. Poulos

1 Q Okay. So you were sitting there. Why didn't you get
2 out? Why didn't you go inside the house?

3 A Well, my sister don't like no drinking in the house.
4 So we was just sitting out there drinking.

5 Q And that was going to be my next question. You had
6 been drinking that night, right?

7 A Yeah, when we got there in the yard.

8 Q And the defendant had been drinking that night,
9 correct?

10 A Correct. We was in the yard drinking. Don't see
11 anything wrong with drinking in the yard.

12 Q Okay. I am sorry?

13 A Yes. We was out in the yard drinking.

14 Q In fact, you had a good bit to drink that night.

15 A No. We just had started drinking.

16 Q Well, would you agree with me that drinking a certain
17 amount of alcohol affects your ability and your impairment
18 and your recollection of certain events?

19 A Well, yes. I agree with you there. But we, like I
20 said we had, we had ample time to drink, because when the
21 officer went down the street he should have pulled in the
22 yard then. When he went down the street, he stayed down
23 there a while. We was drinking then.

24 Q Mr. Hughes, do you know Deputy Owens?

25 A No.

Lawrence Truman Hughes
Redirect examination by Ms. Jones

1 Q And you're not a police officer, are you?

2 A No, no, ma'am.

3 Q You don't have any law enforcement officer experience,
4 do you? Do you have any law enforcement experience?

5 A I know what's wrong and what's right.

6 Q And you say that you are really good friends with the
7 defendant, is that right?

8 A Yes.

9 Q Thank you.

10 MS. JONES: That's all I have.

11 THE COURT: Any redirect?

12 MS. JONES: Just briefly, Your Honor.

13 REDIRECT EXAMINATION

14 BY MS. JONES

15 Q Mr. Hughes, would you say that you were drunk that
16 night?

17 A No, ma'am.

18 Q Would you say Mr. Burdine was drunk?

19 A No, ma'am.

20 Q You hang out a lot with Mr. Burdine, that's fair to
21 say?

22 A Right, fair to say.

23 Q You probably know when he's had a little too much.

24 A Right.

25 Q Had he had a little too much that night?

Lawrence Truman Hughes
Redirect examination by Ms. Jones

1 A Burdine? No. He hadn't, no.

2 Q And let me ask you this so we're clear on the timeline
3 here. From the moment you pulled into the driveway to when
4 the officer approached you in the yard, how much time do
5 you believe had elapsed?

6 A I know it was between -- I want to say from 20,
7 somewhere between 20 and 30 minutes before he pulled in the
8 yard.

9 Q Okay. About 20 to 30 minutes before y'all had
10 face-to-face contact.

11 A Right.

12 Q Okay. And did the officers ever ask you to write a
13 statement regarding your recollection of the incident that
14 happened out on this particular night?

15 A No.

16 Q They weren't interested in your side of the story,
17 were they?

18 A No.

19 Q Nothing further.

20 MS. POULOS: Nothing further, Your Honor.

21 THE COURT: You may step down.

22 MS. JONES: Your Honor, we next call Kathy Fowler to
23 the stand.

24

25

Kathy Fowler
Direct examination by Ms. Jones

1 KATHY FOWLER, having been
2 first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MS. JONES

4 Q Ms. Fowler, can you state your name for the record?

5 A My name is Kathy Fowler.

6 Q Okay. And do you know Mr. Bobby Burdine?

7 A Yes.

8 Q And how do you know Mr. Burdine?

9 A I been knowing Mr. Burdine 18 years. He is my fiancé.

10 Q Okay. And, Ms. Fowler, where do you reside?

11 A 106 Martinez Road.

12 Q Okay. And were you home on the night of June 17th of
13 2008?

14 A Yes, ma'am.

15 Q Okay. What were you doing that night?

16 A On that night I was in my bedroom watching T. V.

17 Q Okay. And was Mr. Burdine home with you that night?

18 A Well, they came home. My bedroom faces my driveway.

19 So when someone pulled in my driveway, the headlights hit
20 my bed and my bedroom. So I was in my bedroom when him and
21 my brother pulled in.

22 Q So sounds like they were gone for the evening but then
23 later came.

24 A Right. They later came home.

25 Q Do you recall what car Mr. Burdine was driving?

Kathy Fowler
Direct examination by Ms. Jones

1 A He was driving my '91 Honda Accord.

2 Q So that's your car, the Honda Accord.

3 A Yes, ma'am.

4 Q But Mr. Burdine has permission to drive it.

5 A Yes, ma'am.

6 Q Kind of like a family car.

7 A Yes, ma'am.

8 Q So you indicated you saw some headlights coming
9 through the driveway.

10 A Yes, ma'am.

11 Q Do you recall getting a call from Mr. Burdine and
12 letting you know he was home?

13 A Yes, ma'am. When he pulled in the driveway he called
14 me and said, "Cat, I'm letting you know I'm at home. I'm
15 out here with Truman. We're going to sit out here and have
16 a drink." And I said okay.

17 Q Okay. And then what happened after that?

18 A About 30 or 40 minutes later another set of headlights
19 pulled up in the driveway.

20 My granddaughter was there. And she said it's a
21 police out here. So I looked out the bedroom window, and
22 it was the police out there.

23 And so a little while later my granddaughter said
24 Bobby and the police arguing. So I jumped up then
25 immediately and put my clothes on and went out the door.

Kathy Fowler
Direct examination by Ms. Jones

1 Q Okay. And when you got outside, where was
2 Mr. Burdine?

3 A He was on the ground in front of the car, and the
4 police was -- it was two polices standing up on the hill.
5 It's like, like this is my driveway. Well, it's a
6 hill. And it was two polices up under the hill. And one
7 was coming like, like he was coming down the hill. And he
8 had his hands on his holster, the, the police that's in the
9 courtroom.

10 He had Bobby on the ground, and he was standing over
11 Bobby. And when I got out I walked down and I said, "What
12 in the world is going on?"

13 That officer, he came over. He said, "Well,
14 Ms. Fowler," he said, "I came in your driveway because you
15 had a tag taillight out." He said, "And I'm here to tell
16 you that I'm arresting Bobby for disorderly conduct and
17 resisting arrest." He said, "And I came in the yard
18 because of the tag taillight."

19 Q Okay. And did -- let me clarify. Which officer?
20 Well, is it the one sitting behind?

21 A Uh-huh.

22 Q So that's the officer you spoke with?

23 A Uh-huh.

24 Q And do you recall him saying anything else to you that
25 night?

Kathy Fowler
Direct examination by Ms. Jones

1 A Oh, he said that people is going to respect him in the
2 neighborhood, that he is the officer and that he's there
3 for the neighborhood or something like that.

4 Q Do you remember what prompted him to say that, what,
5 you know, in your discussion led him to say, you know,
6 these people in the neighborhood are going to learn to
7 respect me? Do you remember?

8 A I guess I'm trying to figure out your question.

9 Q Okay. That's fine. Okay. You indicated he basically
10 said to you folks in the neighborhood are going to respect
11 me.

12 A Yeah.

13 Q Do you remember the context that was in? Was that
14 when you were asking him about the tag light or the public
15 disorderly, or was it a little while later? I'm just
16 trying to put this all in context, the familiarity of the
17 situation.

18 A Okay. Well, when he, when he was telling me why he
19 was going to arrest Bobby.

20 Q Okay.

21 A And that's when it came up. I mean, you know, when he
22 was talking about that he -- he just said it in the context
23 when he was talking about disorderly conduct and resisting
24 arrest.

25 Q Okay. So sounds like when you were asking him why he

Kathy Fowler
Direct examination by Ms. Jones

1 was being arrested.

2 A Uh-huh.

3 Q Okay. You indicated that he also said the tag light
4 was out, correct?

5 A Uh-huh.

6 Q Did you do anything with that information?

7 A Yes, ma'am. After he had got Bobby in the car and was
8 arresting Bobby, I told Truman, I said, "Well, Truman," I
9 said, "I don't remember no lights being out on the car." I
10 said, "We better check the lights. So, you know, you know,
11 the car go back on the road." So Truman said okay.

12 He went in there and he turned the car on. He turned
13 all the lights on. But we was not missing any taillights
14 or anything on the car. It was no tag light out. The
15 lights was on the -- the lights to the tag was working
16 fine.

17 Q Okay. And do you keep pretty good maintenance of this
18 car?

19 A Yes, ma'am. My brothers own a auto mechanic shop, and
20 he do all my auto mechanic work on my car.

21 Q And let me ask you this. Did the police ever ask you
22 for any type of statement or anything like that?

23 A No, ma'am.

24 MS. JONES: I have nothing further.

25

Kathy Fowler
Cross-examination by Ms. Poulos

1 CROSS-EXAMINATION

2 BY MS. POULOS

3 Q Ms. Fowler, you just said that you checked and there
4 were no taillights out.

5 A No, ma'am. No taillights or no tag lights.

6 Q Do you know what a tag light is?

7 A Yes, ma'am.

8 Q What is it?

9 A It's over the tag.

10 Q You didn't see that vehicle pass by, the officer, did
11 you?

12 A No, ma'am.

13 Q You didn't see the patrol car pass back and turn
14 around and then approach the defendant, did you?

15 A No, ma'am. What I seen was when the police officer
16 pulled in my driveway about 30 or 40 minutes after Bobby
17 and them was home, because once he pulled in my driveway
18 his lights hit my bed in my bedroom because it faces
19 straight to the driveway.

20 Q Did you have curtains in your bedroom?

21 A No, ma'am. I got blinds, but my blinds was open.

22 Q They were open at 11:00 o'clock at night?

23 A Yes, ma'am. They were open. And the reason why they
24 were open is because when Bobby first pulled in -- I have a
25 dog, a German shepherd, that sits right there. And he

Bobby Lee Burdine
Direct examination by Ms. Jones

1 barks. And I had opened the blinds when Bobby pulled in to
2 see who was out there then. So my blinds were open.

3 Q And you said that you are Mr. Burdine's fiancée.

4 A Yes, ma'am.

5 Q You don't want anything bad to happen to him, do you?

6 A Ma'am?

7 Q You don't want anything bad to happen to him, do you?

8 A I'm sorry?

9 Q You don't want anything bad to happen to him, do you?

10 A I wouldn't want nothing bad to happen to nobody.

11 MS. JONES: I have no redirect, Your Honor.

12 THE COURT: Ms. Fowler, you can step down.

13 MS. JONES: Your Honor, we last call Mr. Bobby
14 Burdine.

15 BOBBY LEE BURDINE, having been
16 first duly sworn, testified as follows:

17 DIRECT EXAMINATION BY MS. JONES

18 Q Mr. Bobby Burdine, state your name for the record.

19 A Bobby Lee Burdine.

20 Q It's Burdine. I'm sorry. I have been mispronouncing
21 your name, sir.

22 There's been ample testimony that you were on a car on
23 June 17th of 2008, correct?

24 A Ma'am, say that again.

25 Q There's been a lot of testimony that you were driving

Bobby Lee Burdine
Direct examination by Ms. Jones

- 1 in a car on June 17th.
- 2 A Correct.
- 3 Q Okay. Take us from this moment that you were in your
4 car. Where were you going?
- 5 A I was going to the house.
- 6 Q Okay. And whose house were you going to, sir?
- 7 A Kathy's.
- 8 Q Okay. Ms. Fowler's house?
- 9 A Right.
- 10 Q Okay. And where does she live, sir?
- 11 A She stays on Martinez, on Pine Ridge and Martinez
12 Road.
- 13 Q Okay. And did you pass anybody while you were going
14 to Ms. Fowler's home?
- 15 A I did.
- 16 Q And who was that?
- 17 A The officer.
- 18 Q Okay.
- 19 A I was going. I was coming this way and he was going
20 this way.
- 21 Q So you just passed like this.
- 22 A Right.
- 23 Q Okay. And how far would you say you were away from
24 Ms. Fowler's home when you passed him?
- 25 A I was right there, you know.

Bobby Lee Burdine
Direct examination by Ms. Jones

- 1 Q Could you estimate the distance? Are we talking, you
2 know, 300 feet?
- 3 A No. It wasn't even 300. It was about from here to
4 where the officer is. We passed them right when I got
5 ready to turn.
- 6 Q Okay.
- 7 A He went up and turned in the driveway. By the time he
8 turned in that driveway I was making a right turn to go in
9 the driveway.
- 10 Q Okay. And sounds like as you were turning into the
11 driveway -- once you turned into the driveway, what did you
12 do, sir?
- 13 A Pulled up and parked.
- 14 Q Okay.
- 15 A And started listening to music and opened a bottle of
16 whiskey.
- 17 Q Okay.
- 18 A Yeah.
- 19 Q Okay. So you were going to enjoy some music, talk
20 with your friend and have a few drinks.
- 21 A Drinks, right.
- 22 Q Did you call anybody or do anything?
- 23 A I called Kathy.
- 24 Q Okay. And why did you do that?
- 25 A Well, boy, she gets mad.

Bobby Lee Burdine
Direct examination by Ms. Jones

- 1 Q Okay. Why does she get mad?
- 2 A Well, you know, if I stay out too late, you know, she
3 worries about me.
- 4 Q Okay.
- 5 A So I always call her and let her know where I'm at.
- 6 Q Okay. So you let her know you were in the driveway.
- 7 A Right, because I wasn't going in the house.
- 8 Q Okay, okay. All right. And we heard some testimony
9 that she doesn't like drinking in her house.
- 10 A No.
- 11 Q She doesn't like to drink?
- 12 A No. She don't drink. She don't like that.
- 13 Q So y'all were going to sit outside.
- 14 A Right. It was warm. It was a warm day.
- 15 Q Okay, okay. So you were sitting in your car listening
16 to music and drinking a little bit. What happens at that
17 point?
- 18 A The officer turned around. When he turned around he
19 went down the street. He stayed down there, I guess, 15 or
20 20 minutes. And then when he came back up the street I was
21 out of the car. I was on the back of another car that I
22 parked behind on, yeah. So I was there. And he come by
23 and he flashed his light and he went on up the street.
- 24 Q Okay. How long did he stay up the street?
- 25 A About 15 or 20 minutes.

Bobby Lee Burdine
Direct examination by Ms. Jones

1 Q Okay.

2 A And then he came back down. When he came down the
3 third time he threw the light on. And then he swooped in
4 the yard. Bam.

5 Q Okay. Came into --

6 A Into the driveway, right.

7 Q Okay. What happened at that point?

8 A I asked him what was the problem.

9 Q Okay. He didn't come up to you and tell you, hey, I'm
10 here to tell you about the tag light?

11 A I didn't hear about the tag light until I got downtown
12 and they had locked me up and I had to spend the night down
13 there.

14 Q Okay.

15 A And got the paper the next morning.

16 Q What was the first thing he said to you, sir?

17 A Well, he said something. One word led to another one.

18 Q Okay.

19 A And he said, well, since you're talking I want you to
20 come over here and let me search you. And I told him no.
21 I said I hadn't did nothing wrong.

22 Q Okay. And what happened at that point when he said I
23 want to search you and you said no, you cannot search my
24 person?

25 A Well, he started toward me.

Bobby Lee Burdine
Direct examination by Ms. Jones

- 1 Q Okay.
- 2 A So then when he came over, I pushed him off me.
- 3 Q Okay. Had he touched you?
- 4 A Yeah, he reached to touch me.
- 5 Q Okay.
- 6 A And I pushed him.
- 7 Q Because you didn't want to be searched.
- 8 A No, I didn't want to be searched.
- 9 Q Did you ever punch the officer?
- 10 A No.
- 11 Q Did you ever raise a whiskey bottle that you were
12 drinking --
- 13 A No, ma'am.
- 14 Q -- and try?
- 15 A No, ma'am.
- 16 Q Okay. After you pushed him off to say you can't
17 search me, what did the officer do at that point?
- 18 A When, after I pushed him off it was like he was fixing
19 to go for the gun.
- 20 Q Okay.
- 21 A And I said oh. He sprayed me.
- 22 Q Okay.
- 23 A He sprayed me with a pepper spray or whatever it was.
24 And then about that time two officers come off that hill
25 and kicked me from behind and pushed me on the ground.

Bobby Lee Burdine
Direct examination by Ms. Jones

- 1 Q Okay.
- 2 A That's where it ended.
- 3 Q Okay. So then at that point you were arrested.
- 4 A I was arrested.
- 5 Q Okay. And at this point did they tell you why you
6 were being arrested?
- 7 A For disorderly conduct.
- 8 Q Okay.
- 9 A But I wasn't raising no sand. We was just having a
10 decent conversation. The music wasn't loud. We was just
11 out there in the yard. It was summertime. Yeah.
- 12 Q Okay. And I'm assuming after you were down on the
13 ground and hands were behind your back the officers went
14 through your pockets and different things like that,
15 correct?
- 16 A Yeah.
- 17 Q They didn't find anything.
- 18 A No, they didn't do it -- they didn't do it until they
19 got me downtown.
- 20 Q They didn't find anything, correct?
- 21 A Yeah. They found a pocketknife that they didn't
22 return to me.
- 23 Q Okay. But, I mean, they didn't find any marijuana or
24 cocaine or anything like that.
- 25 A No, no, no, no, no, no.

Bobby Lee Burdine
Cross-examination by Ms. Poulos

1 Q Anything like that, correct?

2 A No, no, ma'am, no, ma'am.

3 MS. JONES: I have nothing further.

4 CROSS-EXAMINATION

5 BY MS. POULOS

6 Q Mr. Burdine, where had you been that night?

7 A I had took a friend home.

8 Q And y'all had been drinking, right?

9 A No.

10 Q So you're saying that you basically came home and then
11 pulled in your driveway and then opened up the liquor
12 bottle. And at that point you started drinking?

13 A That's right.

14 Q So what were you guys going to do, just camp out all
15 night and drink?

16 A Well, we was at home. He stayed next door. So where
17 we had to go?

18 Q Okay. So if supposedly Ms. Fowler wouldn't let you in
19 because she didn't want anybody who had been drinking
20 inside, were you just going to sober up all night and just
21 hang out in the driveway?

22 A It wasn't like that.

23 Q Well, how was it?

24 A It was just like I said. We was sitting there
25 drinking. I mean, if I wanted to go in the house, I can go

Bobby Lee Burdine
Cross-examination by Ms. Poulos

1 in the house. I been here 18 years. I don't see why I
2 can't get in the house. I ain't never been put out of the
3 house for drinking or raising sand or anything at that
4 time.

5 Q Mr. Burdine, when you were placed under arrest for
6 public disorderly conduct you -- you refused to put your
7 hands behind your back, isn't that correct?

8 A No, I didn't because I was forced to put my hands
9 behind my back.

10 Q You were forced to put your hands behind your back.

11 A I was forced, yes.

12 Q And how were you forced? Did this officers come and
13 grab your hands and --

14 A Correct. They came from over the hill behind me and
15 hit me and put me on the ground face first.

16 Q They hit you?

17 A Whatever you want to call it. They put me on the
18 ground face first and put handcuffs on me.

19 Q So basically it's your testimony that the officers
20 just came in and just ambushed you.

21 A I mean, he called them, I guess.

22 Q Is that what you're saying? You're saying that the
23 deputy --

24 A I mean, that's the only reason they could have been
25 there.

Bobby Lee Burdine
Cross-examination by Ms. Poulos

1 Q So they just came out of the blue and they just, they
2 just targeted you of all people. Is that what you're
3 saying? And they came in and attacked you and just put you
4 on the ground. Is that what you're saying?

5 MS. JONES: Objection. She's characterizing testimony
6 that's not in evidence. Attacking. He never said that,
7 Your Honor. He indicated that they came in and threw him
8 to the ground.

9 THE COURT: I'm going to sustain your objection. I
10 think he answered the question. Ask the next question,
11 please.

12 MS. POULOS: Yes, sir, Your Honor.

13 Q You had a bottle in your hand, is that correct?

14 A That's correct.

15 Q And you drew it up.

16 A No, I did not.

17 Q You did not?

18 A No, I did not.

19 Q Where was the bottle?

20 A In my right hand.

21 Q You just -- and you were holding it?

22 A Yes.

23 Q What happened when -- did you push the officer off
24 you?

25 A Yeah, after he came to search me.

Bobby Lee Burdine
Cross-examination by Ms. Poulos

1 Q Where was the bottle at that point?

2 A In my right hand.

3 Q What did you do, push him with your left hand?

4 A I pushed him off just like that.

5 Q Mr. Burdine, why didn't you just answer the officer's
6 questions and be cooperative?

7 A Well, he, he was the one uncooperative when I asked
8 him what was the problem when he pulled in the yard. You
9 know, wasn't nobody, wasn't doing nothing wrong. We was
10 tending to our business. Wasn't nobody, hadn't broke no
11 law. We was just sitting out there in the yard drinking.
12 And wasn't nobody raising no sand. It was just as quiet
13 and peaceful.

14 He come down the road three times, and he decided to
15 come in and then just started raising sand. Actually, I
16 asked him a question, and he couldn't answer it. But he
17 wanted to search me for no reason. I didn't have nothing
18 to hide, but I didn't have no reason to be searched either.

19 MS. POULOS: Beg the Court's indulgence one moment.

20 THE COURT: Yes, ma'am.

21 (Pause.)

22 Q Mr. Burdine, what is wrong with an officer pulling
23 into your yard?

24 A Nothing is wrong with him pulling in the yard. I'm
25 glad he's in the neighborhood as far as that's concerned,

Bobby Lee Burdine
Cross-examination by Ms. Poulos

1 you know, because everybody got to obey. But I'm drinking,
2 and he done been up and down the road three times, I mean,
3 seems like if he was going to stop he would have stopped
4 the first time or the second time.

5 Then when he come in, he came in in a vicious way like
6 somebody, they did a crime there. You know, he just
7 whipped in dust flying everywhere.

8 Q Thank you.

9 MS. POULOS: That's all I have.

10 THE COURT: Anything else?

11 MS. JONES: I have nothing further, Your Honor.

12 THE COURT: Mr. Burdine, you may step down.

13 MS. JONES: The defense rests, Your Honor.

14 THE COURT: All right. Let's take about five minutes.

15 Y'all retire to the jury room about five minutes, and
16 we'll continue in just a moment.

17 (The following takes place outside the presence of the
18 jury.)

19 THE COURT: All right. Ladies, do you think we can
20 get all of this done this afternoon? Do you want to argue
21 and charge right now? I don't think y'all are going to be
22 too long based on your witnesses.

23 MS. JONES: Your Honor, I just have to renew my motion
24 for a directed verdict. And then I think we could do the
25 jury instructions, do closings. I don't imagine they're

Motion

1 going to take that long. And we could charge. I think we
2 could be done by today.

3 THE COURT: Okay. I'm going to go ahead and let's try
4 to get it done today and be done with it by unless y'all
5 have some reason to tell me not to. And that way y'all
6 will be finished with the jury trial and we won't have to
7 worry about handling this tomorrow. Does that suit y'all?

8 Do y'all want a break? My instructions won't be too
9 long. I've tried one case all the way to a jury, and it
10 was resisting arrest, and I have a charge ready. I don't
11 have to worry about that. It's ready to go. It was the
12 same trial, resisting arrest.

13 I will deny your motion. It's a close call on denying
14 it. I'll let the jury consider it as a factual question.
15 So if y'all are ready, bring the jury in.

16 (The following takes place in the presence of the
17 jury.)

18 THE COURT: All right. Are you ready?

19 MS. JONES: I am, Your Honor.

20 THE COURT: All right.

21 MS. JONES: Ladies and gentlemen, as I indicated to
22 you at the beginning of this, this was going to be a
23 straightforward case, a straightforward case of harassment.
24 And I think you understand why at this point.

25 Mr. Burdine and his friend were driving home, going

Jury charge

1 So at that point another officer comes in for backup.
2 And, again, Mr. Burdine was so loud and creating this big
3 scene that the officer had no choice but to draw the
4 weapon. That was after Mr. Burdine had the glass bottle
5 full of alcohol in his hand and was holding it up trying to
6 strike him. What's the officer supposed to do, you know?

7 I submit to you, ladies and gentlemen, that the force
8 was very reasonable considering the circumstances, that it
9 was a lawful arrest which the defendant clearly resisted
10 and hopefully that you will see that once you put all of
11 this together.

12 Please don't be clouded by the fact that this was a
13 racial thing or an harassment thing. That's not the issue
14 at all. Officer Owens has no intent or had no intent to
15 single Mr. Burdine out because he was black or because of
16 this or because of that.

17 I mean, just please don't be clouded by all of that
18 stuff. He was doing his job. He did it properly. And I
19 submit to you, ladies and gentlemen, that you please return
20 a verdict of guilty. Thank you.

21 THE COURT: Mr. Foreman, ladies and gentlemen of the
22 jury, you've seen and heard all the evidence presented, as
23 well as the arguments of counsel. Therefore it becomes my
24 obligation to instruct you on the law which is applicable
25 in this case.

Jury charge

1 It will then be your obligation and duty to begin
 2 deliberations, the process in which you will decide the
 3 facts and apply the law as I instruct it and render a fair
 4 and impartial verdict.

5 It is your exclusive duty to determine what the facts
 6 are based upon your own common sense examination and
 7 evaluation of the evidence that you received from this
 8 witness stand.

9 You 12 jurors will decide what weight, value and
 10 effect to give to particular evidence presented. Your
 11 ultimate goal is to simply reach the truth in this matter.
 12 And by doing so you will have fulfilled your obligations as
 13 jurors. And that is to give both the state and the
 14 defendant a fair and impartial trial based solely upon the
 15 evidence presented today and the law of this case.

16 In this case the State of South Carolina through the
 17 solicitor has charged the defendant with resisting arrest.
 18 The allegations charging this defendant in this crime are
 19 set forth in an indictment that I have previously shown to
 20 y'all.

21 This indictment is not evidence in the case and may
 22 not be considered as evidence against the defendant. The
 23 indictment will be in the jury room with you, but only for
 24 one purpose, and that is to serve as a verdict form on
 25 which to write the jury's unanimous decision.

Jury charge

1 As to each -- there's only one charge set forth in the
 2 indictment. The defendant has entered a plea of not
 3 guilty. That plea of not guilty has therefore placed the
 4 burden on the state of proving all the allegations beyond a
 5 reasonable doubt.

6 The burden is never upon the defendant to prove that
 7 he or she is not guilty or to prove that he is not -- is
 8 innocent, because in many cases that would be impossible.
 9 The burden rests with the state because they have made the
 10 allegations to prove the defendant's guilt beyond a
 11 reasonable doubt.

12 You are further instructed that it is a vital,
 13 important and cardinal rule of law that every defendant in
 14 a criminal trial, no matter how serious the offense might
 15 be, the defendant always is presumed to be innocent of that
 16 charge.

17 That presumption of innocence follows the defendant
 18 from the moment of his or her arrest, throughout the course
 19 of the criminal process and, in fact, throughout the course
 20 of this trial.

21 The presumption of innocence will even be with the
 22 defendant when you retire to the jury room to begin
 23 deliberations at this trial's conclusion. That presumption
 24 of innocence shall be with him and shall remain with him
 25 forever unless you 12 jurors determine that he is no longer

Jury charge

1 entitled to that presumption of innocence.

2 That is if after you've carefully considered all the
3 evidence in this case, decided upon the facts, applied the
4 law which I will instruct you, if you determine that the
5 defendant's guilt has been proved beyond a reasonable
6 doubt, then he would no longer be entitled to this
7 presumption.

8 However, it is only if and until you determine his
9 guilt has been proven beyond a reasonable doubt that he
10 would no longer be entitled to this presumption of
11 innocence.

12 The state does not have the burden of proving the
13 defendant's guilt to your satisfaction beyond -- I'm sorry.
14 The state has a burden of proving the defendant's guilt to
15 your satisfaction beyond a reasonable doubt. But the state
16 is not required to prove the defendant's guilt beyond all
17 doubt or beyond any possible doubt. But the state must
18 prove the defendant's guilt beyond a reasonable doubt.

19 The term reasonable doubt should be given its plain
20 and ordinary meaning. A reasonable doubt is the kind of
21 doubt which would cause an ordinary reasonable person to
22 hesitate to act.

23 The defendant is entitled to any reasonable doubt
24 which arises from the evidence or lack of evidence. And if
25 upon any factual issue essential to the verdict of guilty

Jury charge

1 if you have a reasonable doubt as to how that issue should
2 be resolved, it would be your duty to resolve that doubt in
3 favor of the defendant.

4 It is therefore -- upon your consideration of the
5 whole case if you have a reasonable doubt as to the
6 defendant's guilt, it would your duty to resolve that doubt
7 in the defendant's favor and return a verdict of not
8 guilty.

9 If, on the other hand, after you've carefully
10 considered the evidence in this case and you have no
11 reasonable doubt as to the defendant's guilt, then it would
12 be your duty to find and convict the defendant, that is to
13 find him guilty of the charge of resisting arrest.

14 The same law provides that you as judges of the
15 facts -- also provides that I am the judge of the law.
16 This simply means that no one is going to tell you how to
17 arrive at your determination of the facts.

18 You do that, as I have stated, throughout, through the
19 exercise of good judgment and common sense conscientiously
20 applied to the evidence in this case. You must however
21 as -- under your oath as a juror accept the law as I give
22 it to you as being the law that is applicable in this case.

23 You are not to concern yourself with what you think
24 the law may be or what the law might should be. You simply
25 accept the law as I give it to you as that law being

Jury charge

1 applicable in the case.

2 Then you take that law and you apply it to the facts
3 as you have found them based upon your common sense
4 examination of the evidence presented in this case.

5 As I've told y'all previously, you 12 are the sole
6 finders of the facts in this case. It is your sole duty to
7 determine where the true facts are from the evidence that
8 has been presented in this case, or lack thereof.

9 You must decide what effect, value and weight, and the
10 truth of any evidence that's been presented to you during
11 the course of this trial. You are the sole judges of the
12 facts in this case, as you will necessarily be required to
13 evaluate the credibility, and that's the believability, of
14 the witnesses who have testified in this matter.

15 In determining credibility or believability of a
16 particular witness you may consider a number of things.
17 You can consider the demeanor of a witness, and that is
18 their manner and appearance, how they testified and their
19 voice inflection.

20 Was the witness direct and straightforward in response
21 to the questions posed to them by counsel? Was the
22 testimony of the witness consistent or was it inconsistent
23 with that witness' own testimony or with other statements
24 made by other witnesses?

25 How did the witness come to know the facts about which

Jury charge

1 they testified? And what opportunity did each witness have
 2 to perceive the existence of the facts to which they
 3 testified or were they -- by means of their own senses and
 4 their ability to accurately recall those facts?

5 Does the witness have any bias or prejudice or any
 6 particular interest in the outcome that would constitute a
 7 reason for testifying one way or another to help or to hurt
 8 one side or the other? Was the testimony of a witness
 9 strengthened, or was it weakened by the other testimony or
 10 other evidence received during the case?

11 You as the finders of facts are judges of the
 12 credibility of each witness who testified, are permitted to
 13 believe as little of what one witness said or as much as
 14 one witness said as y'all deem appropriate.

15 You can believe all that a witness has testified to,
 16 or you may believe none. You may choose to accept some
 17 portion of the testimony and reject some other portion of
 18 that same witness' testimony.

19 You may believe one witness as against several, or
 20 several against one. Whatever your good judgment and
 21 common sense tells you is the most believable testimony is
 22 that which you should accept. And reject that which you
 23 find not to be credible or believable.

24 Your sole objective is to reach the truth in this
 25 matter. And it should not matter from what source the

Jury charge

1 truth may come, whether it be from a witness for the state
 2 or a witness for the defense or a combination of testimony
 3 or evidence from both sides in the case. Your duty is to
 4 render a fair and impartial verdict.

5 There are various forms of evidence in this case such
 6 as testimony, photographs and documents and other physical
 7 exhibits. There are really only two types of evidence,
 8 both of which may be used independently or in combination
 9 to prove the facts in this issue. The two types are direct
 10 and circumstantial.

11 Direct evidence is testimony of a person who testifies
 12 from actual knowledge of the facts, the testimony by a
 13 person who perceived the existence of the fact by means of
 14 their own senses and then comes into court and testifies as
 15 to what they recollect as having previously seen or heard
 16 as when the person views the commission of some act and
 17 then comes into court and testifies to what he or she has
 18 previously seen.

19 Circumstantial evidence, on the other hand, is the
 20 proof of some other fact or set of facts which may be taken
 21 singly or collectively and may prove the existence of a
 22 fact in question as a necessary consequence. That is by an
 23 inference.

24 The law however means absolute -- makes absolutely no
 25 distinction between the weight or value given between

Jury charge

1 either direct evidence or circumstantial evidence, nor is a
2 greater degree of certainty required of circumstantial
3 evidence as opposed to direct evidence.

4 Whatever the type of evidence used to prove a fact,
5 you should consider all of it. After carefully considering
6 and weighing that evidence in your minds if you're not
7 convinced of the guilt of the defendant beyond a reasonable
8 doubt, then you must resolve that doubt in favor of the
9 defendant and return a verdict of not guilty.

10 I instruct you further that the law in South Carolina
11 provides that it is unlawful for a person knowingly or
12 wilfully to resist an arrest being made by one whom the
13 person knows or reasonably should know is a law enforcement
14 officer, whether under process or not.

15 I further instruct you that the term knowingly means
16 an act done with knowledge and awareness of the facts.

17 The term wilfully means an act done intentionally and
18 purposefully and not by accident or inadvertence or
19 mistake.

20 The terms oppose and resist mean to impede, hinder,
21 obstruct or interfere, whether by violent or nonviolent
22 means or methods.

23 The term knows or reasonably should know means that
24 the defendant had actual knowledge that the person making
25 the arrest was a law enforcement officer and the defendant

Jury charge

1 was on notice of sufficient facts and circumstances which
2 put a reasonable person acting under the same or similar
3 circumstances as established by the evidence in this case
4 or on notice of the fact that the person making the arrest
5 was a law enforcement officer. The term law enforcement
6 officer means any duly appointed or commissioned law
7 enforcement officer of this state.

8 Before the defendant can be found guilty of resisting
9 arrest it is necessary that the evidence in the case
10 establish to the satisfaction of you 12 jurors beyond a
11 reasonable doubt the following two essential elements: The
12 defendant knowingly and wilfully opposed or resisted a law
13 enforcement officer in making an arrest and that at the
14 time the defendant opposed or resisted the arrest he knew
15 or reasonably should have known that the person making the
16 arrest was a law enforcement officer.

17 Now, as I told y'all earlier, madam forelady, this is
18 the indictment. This will be handed to y'all in the grand
19 jury room. Do not begin deliberations until I submit this
20 indictment to you.

21 As I've told you before, your verdict must be
22 unanimous. All 12 of you must agree one way or the other.

23 Once you reach a verdict, unanimous verdict, over here
24 on the far left-hand side in the very bottom left-hand
25 corner, says verdict. And upon one of those lines you

Jury charge

1 would write the words guilty or not guilty and then sign
2 your name here. Do you understand?

3 All right. I'm going to take up a few matters with
4 the attorneys. And at such time as I submit this
5 indictment to you, y'all can then begin your deliberations.

6 (Whereupon, the jury retired to deliberate at
7 4:05 p.m.)

8 THE COURT: Thank you, sir.

9 Any objections or exceptions to the charge made to the
10 jury?

11 MS. POULOS: No, sir, Your Honor.

12 MS. JONES: Yes, sir.

13 Your Honor, I'm not sure that I heard the jury charge
14 regarding the right to resist unlawful arrest.

15 THE COURT: Did you submit that to me?

16 MS. JONES: I did. I gave it to your law clerk.

17 THE COURT: Is this the State vs. Fowler language?

18 MS. JONES: May I approach, Your Honor?

19 THE COURT: Sure. Yes, ma'am.

20 MS. JONES: That is the document I handed. It would
21 be the State vs. Maybart -- Maybank. There I am.

22 We also requested a public disorderly conduct, and I
23 think the solicitor then wanted a jury instruction on what
24 is --

25 THE COURT: Public place.

Jury charge

1 MS. POULOS: Place, that's correct. If, Your Honor,
2 you were going to charge the definition of public
3 disorderly conduct, at that point we would have requested
4 the definition of a public place.

5 MS. JONES: I guess at this point I'm more concerned
6 about the instruction regarding if it's an illegal arrest,
7 then one has a right to resist that.

8 THE COURT: All right. Let me ask y'all so we don't
9 alert anybody or make too big of an issue before the jury.
10 Would y'all agree that we could instruct them on all
11 three -- the public place, disorderly conduct and the right
12 to resist an unlawful arrest?

13 MS. JONES: Yes, sir.

14 THE COURT: That way we don't attract attention to one
15 issue or the other. It's an all-encompassing type, the
16 resisting arrest and other two and put it back together?
17 That will be agreeable?

18 MS. POULOS: That will be fine, Your Honor.

19 THE COURT: All right. Bring the jury back.

20 (Whereupon, the jury returned to the courtroom at
21 4:08 p.m.)

22 THE COURT: All right. Ladies and gentlemen, I want
23 to instruct you a little further on a couple of issues in
24 particular. And I will try to summarize the law of South
25 Carolina regarding the resisting arrest and the public

Jury charge

1 disorderly conduct.

2 To that end I instruct you that a person may be found
3 guilty of public disorderly conduct if they are grossly
4 intoxicated or otherwise conducting themselves in a
5 disorderly or boisterous manner by using obscene or profane
6 language on any highway or any public places of gathering
7 or in nearness to the schoolhouse or a church while under
8 the influence or things under the influence of intoxicating
9 liquors.

10 I further instruct you that a public place is a place
11 where the general public has a right to resort, not
12 necessarily a place public solely for the use of the public
13 but a place which is a point of fact public rather than
14 private and visited by many persons and is usually
15 accessible to the neighboring public. It may be any place
16 situated that what passes there can be seen by a
17 considerable number of persons if they happen to look.

18 I further instruct you that when the person is the
19 subject to a lawful arrest there's a duty to allow the
20 officer to peacefully arrest one.

21 However, when the person is the subject of an unlawful
22 arrest such force may be used as is reasonably necessary to
23 prevent the unlawful arrest.

24 In order to determine whether the defendant was
25 entitled to resist arrest you must first determine whether

Jury charge

1 the arrest in this case was lawful. A law enforcement
2 officer may arrest a person without a warrant when the
3 crime is committed in the officer's presence.

4 A law enforcement officer may also arrest for a
5 misdemeanor without a warrant when the facts or
6 circumstances observed by him provide probable cause to
7 believe that a crime has been freshly committed.

8 Probable cause is a good faith basis to believe that
9 the defendant has committed a crime. This means that the
10 moment the arrest was made the officer had reasonable
11 information which would cause a reasonable person to
12 believe that the defendant committed a crime.

13 I further charge you that if you find the defendant
14 had a right to resist arrest in this case you must first
15 decide whether the force used by the defendant was
16 reasonable and necessary to prevent the unlawful arrest,
17 detention or interference with the defendant's person.

18 Now, y'all may retire to the jury room, and I'll
19 submit the indictment to you shortly.

20 And please remember the verdict must be unanimous.
21 All 12 of you must agree.

22 Alternate, you can stay out here.

23 (Whereupon, the jury retired to deliberate at
24 4:12 p.m.)

25 (Whereupon, the alternate juror was excused.)

Jury charge

1 THE COURT: Any exceptions by the state?

2 MS. POULOS: No, sir, Your Honor.

3 THE COURT: Any exceptions by the defense?

4 MS. JONES: No, Your Honor. Thank you.

5 (Whereupon, a recess was taken.)

6 THE COURT: For the record, the jury has submitted a
7 question to me, and the question reads, "Can the defendant
8 resist if he thinks he's being unlawfully arrested?"

9 Signed by the foreman, Ms. Nunnery.

10 After consultation with both counsel for the state and
11 the defense, it is agreed by the parties that we will
12 respond to the question on the note with the following
13 sentence. And I quote. "If the arrest is unlawful, then a
14 defendant may resist the arrest."

15 We're going to submit that to the jury room.

16 All right. Anything else? Does that summarize what
17 we discussed? We will be at ease.

18 MS. JONES: Thank you, Your Honor.

19 (Question from the jury marked Court's Exhibit No. 1.)

20 (Whereupon, the note was submitted to the jury at
21 4:37 p.m.)

22 (Whereupon, a recess was taken.)

23 (Question from the jury marked Court's Exhibit No. 2.)

24 (Whereupon, a question was sent from the jury and
25 resubmitted to the jury 5:17 p.m.)

1 (Whereupon, a recess was taken.)

2 THE COURT: Are y'all ready? The court reporter is
3 ready. Bring the jury.

4 (Whereupon, the jury returned to the courtroom at
5 5:35 p.m.)

6 (Ms. Jones was absent from the courtroom; Robert Hall
7 was present in the courtroom.)

8 THE COURT: All right. Ladies and gentlemen, what we
9 are going to do is we are going to play back the testimony
10 of the arresting officer first because it came first in the
11 trial. And then we'll play the defendant's testimony.
12 Y'all give your attention, and the court reporter will play
13 it for you.

14 (Whereupon, the testimony was replayed for the jury.)

15 (Question from the jury marked Court's Exhibit No. 3.)

16 THE COURT: All right. Ladies and gentlemen, that's
17 the testimony of the police officer and the defendant.

18 In case you are wondering, Ms. Jones, the attorney for
19 the defendant, she had to go pick up her children. And so
20 Mr. Hall is sitting in her stead. So nothing's happened
21 other than she had to go pick up her children.

22 So y'all retire to the jury room and continue with
23 your deliberations.

24 (Whereupon, the jury retired to deliberate at
25 6:07 p.m.)

1 THE COURT: We will be at ease.

2 (Whereupon, a recess was taken.)

3 THE COURT: Bring them in.

4 (Whereupon, the jury returned to the courtroom at
5 7:02 p.m.)

6 THE COURT: Good evening now, ladies and gentlemen.

7 I got your note, and it suits me. You can resume
8 deliberations in the morning.

9 What I'll ask is y'all report back to the jury room.
10 And y'all tell me what time -- 9:00 or 9:15? Do you want
11 9:30? Some people want to get here earlier than that?

12 UNIDENTIFIED JUROR: Are we excused for the rest of
13 the day?

14 THE COURT: Is 9:00 too early? Is 9:10 too early, or
15 do y'all want 9:30?

16 UNIDENTIFIED JUROR: That's fine.

17 THE COURT: 9:15. Okay. At 9:15 y'all report
18 directly to the jury room. The bailiffs will be here to
19 show you in there.

20 As soon as all 12 of you are there, I should be here.
21 As soon as all 12 of you are there y'all may resume your
22 deliberations.

23 All right. Warning and caution to y'all. Do not
24 discuss this case or anything about it, any of the facts,
25 with anyone else. You may not even call another juror on

1 the phone, text or otherwise communicate with anybody, any
2 of the 12. Y'all just put this aside and tend to your home
3 duties and whatnot, your children, your spouses.

4 At 9:15 in the morning once everybody is in the
5 room -- if everybody is not, you may not begin deliberating
6 until everybody is here. And the bailiffs, they count
7 y'all as you come in. They know.

8 So, anyway, see y'all tomorrow morning at 9:15. Don't
9 talk about the case.

10 (Whereupon, the trial jury was excused from the
11 courtroom.)

12 MR. HALL: Your Honor, I was just checking with the
13 state.

14 I believe the client was out on personal recognizance
15 bond. I don't think they have any objection to him
16 remaining on his own cognizance.

17 THE COURT: He's not had any trouble reporting. I
18 don't see any problem. I don't want to take him into
19 custody.

20 MS. POULOS: We have no objection to that.

21 MR. HALL: Thank you.

22 THE COURT: Do you understand you are under the same
23 terms of the bond?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: If you're not here in the morning it will

1 be a contempt-of-court action rather than -- you know, the
2 conviction would be sealed. If that was to happen, it
3 would be sealed. But you would be in violation of your
4 bond if you don't report back at 9:15 in the morning.

5 THE DEFENDANT: 9:15 or 9:30?

6 THE COURT: The jury is coming at 9:15. I want you
7 here at 9:15.

8 THE DEFENDANT: 9:15?

9 THE COURT: Yes, sir.

10 THE DEFENDANT: All right.

11 END OF PROCEEDINGS MARCH 12, 2009

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Verdict

1 (Proceedings March 13, 2009)

2 (Whereupon, the jury reported to the jury room at 9:15
3 a.m.)

4 THE COURT: I'm informed the jury has got a verdict.
5 Bring the jury in, please.

6 (Whereupon, the jury returned to the courtroom at
7 9:30 a.m. to report its verdict.)

8 THE COURT: Welcome back.

9 Madam forelady, has the jury reached a unanimous
10 verdict?

11 THE FOREPERSON: Yes, sir.

12 THE COURT: Would you hand it to the bailiff?

13 THE CLERK: State of South Carolina, County of
14 Spartanburg, State vs. Bobby Lee Burdine, Indictment No.
15 2008-GS-42-5470, we, the jury, find the defendant guilty.
16 Signed today's date. Foreperson, Mary Nunnery.

17 Ladies and gentlemen, if this is your verdict and
18 still your verdict, please raise your right hand.

19 (Whereupon, all responded in the affirmative.)

20 THE CLERK: So say you all.

21 THE COURT: Anything from the state or the defense
22 before we dismiss the jury?

23 MS. POULOS: No, sir, your Honor.

24 MS. JONES: No, Your Honor.

25 (Whereupon, the trial jury was excused.)

Sentence

1 THE COURT: Ms. Jones, tell me. I didn't see the bond
2 paperwork.

3 How much time did Mr. Burdine spend in the county
4 lockup until he made bond?

5 MS. JONES: My understanding is he just spent
6 overnight, Your Honor, probably about 12 hours.

7 THE COURT: Are you ready?

8 Indictment No. 08-GS-42-5470, State of South Carolina
9 vs. Bobby Burdine, conviction of resisting arrest, the
10 misdemeanor version, the defendant is committed to the
11 state -- to the county detention center for a term of -- I
12 mean, a determinant period of 30 days and pay a fine of
13 \$500.

14 Provided upon the service of one day and payment of
15 \$250 plus costs and assessments the balance is suspended.
16 On probation for 12 months.

17 The defendant is given credit for time served and his
18 probation will terminate upon his payment.

19 Also, put the public defender fee in there because of
20 the probation.

21 Now, if he has the fine and can pay that today, I will
22 not impose a probationary sentence.

23 MS. JONES: Okay. I don't think he is going to be
24 able to pay, Your Honor.

25 THE COURT: Do you understand the sentence?

Sentence

1 MS. JONES: Yes, I do.

2 THE DEFENDANT: Do we have a chance to appeal this? I
3 want to appeal this.

4 MS. JONES: I will talk to my client, Your Honor.

5 END OF REQUESTED TRANSCRIPT OF RECORD.

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WITNESSES

08-GS-42-5470

The State of South Carolina
County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

SEP 22 2008

TERM

THE STATE
vs.

Bobby Lee Burdine

ACTION OF GRAND JURY

True Bill

Coreperson of Grand Jury
date: 9-19-08

VERDICT

guilty
Mary Ann Quinley
3-13-09

Coreperson of Petit Jury
date:

Indictment for
RESISTING ARREST

SC Code: 16-9-320 (A)
CDR Code: 326
Class MIS-C

MARC KITCHENS
2008 SEP 24 AM 11:46
CLERK OF COURT
FILED

Computer

Computer

Spartanburg County Sheriff's Office

1. SENTENCE MADE

2. REPORT ENDED

3. CARD FILLED

4. INDEXED

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

ARREST WARRANT NUMBER

7. ASSESSMENT AND FINE CARD MADE

TRAFFIC VIOLATIONS COPY

1022498

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on SEP 19 2008, the

Grand Jurors of Spartanburg County present upon their oath:

RESISTING ARREST

That Bobby Lee Burdine, did in Spartanburg County, on or about June 17, 2008, knowingly, willfully and unlawfully oppose and/or attempt to resist the effort of Spartanburg County Sherriff's Officer Matthew Owens, a law enforcement officer of this State, to make a lawful arrest of the said defendant, in violation of §16-09-320 (A), *THE CODE OF LAWS OF SOUTH CAROLINA* (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

A CERTIFIED COPY
man Kitchens
CLERK OF COURT
SPARTANBURG COUNTY
BY: K. P. ... D.C.
DATED 4/29/09

Timi Pullos
ASSISTANT SOLICITOR
A CERTIFIED COPY
~~CLERK OF COURT
SPARTANBURG COUNTY
BY: _____ D.C.
DATE: _____~~

STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG)	SEVENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA)	
V.)	INDICTMENT NO: 2008-GS-42-5470
BOBBY BURDINE,)	WARRANT NO: M022498
DEFENDANT.)	CHARGE: RESISTING ARREST
_____)	

DEFENDANT'S MOTION FOR NEW TRIAL

Now comes the Defendant, Bobby Burdine, and moves, pursuant to Rule 29, South Carolina Rules of Criminal Procedure, for a new trial on the above-referenced indictment number. In support of this Motion, the Defendant alleges that the State failed to prove the Defendant's guilt beyond a reasonable doubt and that there was insufficient evidence for the jury to find the Defendant guilty. Specifically, in support of his Motion the Defendant avers that:

1. The State failed to produce sufficient evidence to prove beyond a reasonable doubt that the arrest for public disorderly conduct was lawful.
2. The State failed to produce sufficient evidence to prove beyond a reasonable doubt that the Defendant was lawfully detained.
3. The State failed to produce sufficient evidence to prove beyond a reasonable doubt that the Defendant was not entitled to use reasonable force to prevent an illegal arrest.

The Defendant argues that the State did not produce sufficient evidence on any one of the elements of public disorderly conduct, in which the resisting arrest charge is based and therefore renews his Motion for Directed Verdict raised at the close of the State's case on the above grounds and upon any and all grounds articulated orally at the time of the Motion for Directed Verdict. Furthermore, the Defendant makes this Motion for a New Trial on the above grounds and reserves the right to raise further grounds at any hearing that may be held by the Court on this motion.

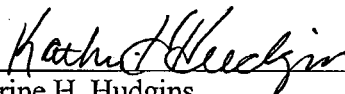
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2009 MAR 17 AM 9:20
 MARC KITCHENS
 CLERK OF COURT
 COUNTY OF SPARTANBURG

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

May 12th, 2010



Kathrine H. Hudgins
Appellate Defender

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

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Eugene C. Griffith, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BOBBY LEE BURDINE,

APPELLANT

FINAL BRIEF OF APPELLANT

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ATTORNEY FOR APPELLANT.

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S.C. Code §16-17-530(a).....8

STATEMENT OF ISSUES ON APPEAL

Did the judge err in refusing to direct a verdict of acquittal for the charge of resisting arrest when the underlying arrest for disorderly conduct was unlawful because there was no evidence of fighting words and the conduct took place in a driveway, which, under the facts of this case, is not a public place?

STATEMENT OF THE CASE

In September of 2008, the Spartanburg County Grand Jury indicted Burdine for misdemeanor resisting arrest, indictment #08-GS-42-5470. On March 12, 2009, Burdine proceeded to jury trial before the Honorable Eugene C. Griffith, Jr. The jury returned a verdict of guilty and Judge Griffith sentenced Burdine to 3 days suspended upon the service of one day to be followed by 12 months of probation. On March 17, 2009, Burdine filed a motion for a new trial. Judge Griffith denied the motion on April 21, 2009. A timely notice of intent to appeal was served on April 29, 2009. This appeal follows.

ARGUMENT

The judge erred in refusing to direct a verdict of acquittal for the charge of resisting arrest when the underlying arrest for disorderly conduct was unlawful because there was no evidence of fighting words and the conduct took place in a driveway, which, under the facts of this case, is not a public place.

Deputy Matthew Owens with the Spartanburg County Sheriff's Office testified that on the evening of June 17, 2008, he was on routine patrol when a Honda Accord passed him with no tag lights. (R. p. 2, lines 5-25). The officer turned around and followed the Honda. The officer testified that the Honda pulled into a driveway at a house. The officer drove past the house and turned around and parked. (R. p. 3, lines 1-8). The officer admitted that he was waiting to see if the car pulled out of the driveway. (R. p. 8, lines 13-25). When the car did not leave, the officer drove past the parked vehicle and saw two people inside the vehicle. (R. p. 3, lines 9-12). The officer later learned that the two people were the appellant, Bobby Lee Burdine, and Truman Hughes. Hughes is the brother of appellant's fiancée, Kathy Fowler. The Honda belonged to Kathy Fowler. Burdine and Hughes were parked in front of her house at the time of the incident. The officer turned around once again and when he passed the car this time, the two people had gotten out and were standing around the car. (R. p. 3, lines 13-15). The officer drove past a final time, contacted dispatch to notify that he was going to approach the two individuals, turned around and drove to the house where the Honda was parked. (Tr. p. 20, lines 16-21).

The officer walked up and noticed that Burdine was holding a liquor bottle and had slurred speech. (R. p. 4, lines 2-11). According to the officer, Burdine became "loud and boisterous and started using profanity, getting very hostile" when he informed him that the tag light was out. (R. p. 4, lines 19-22). Hughes testified at trial that when the officer

walked up, Burdine asked him what he was doing and then both the officer and Burdine began to raise their voices. (R. p. 32, lines 20 – p. 33, lines 1-9). Hughes testified, “He [the officer] told Bobby, said you’re getting loud, I need to search you, you’re getting too loud.” (R. p. 33, lines 12-13). The officer denied telling Burdine that he needed to search him. (R. p. 16, lines 3-6). Burdine testified at trial that he and the officer exchanged words and then Burdine testified, “And he [the officer] said, well, since you’re talking I want you to come over here and let me search you. And I told him no. I said I hadn’t did nothing wrong.” (R. p. 50, lines 16-21).

The officer testified, “I informed him [Burdine] that he needs to quiet down once or twice and stop using profanities. I said you are in plain view of the public right now, you’re disrupting the public, there are people that live here that don’t want to be hearing that stuff right now. He refused to do so. He then got on his phone and started dialing the phone. I informed him that he was under arrest for public disorderly conduct.” (R. p. 5, lines 17-24). According to the officer, Burdine refused to put the cell phone down and when the officer grabbed the phone out of Burdine’s hand, Burdine struck the officer in the jaw. (R. p. 5, lines 25 – p. 23, lines 1-8). Burdine denied striking the officer. (R. p. 51, lines 9-15). The officer then sprayed Burdine with O.C. spray. (R. p. 6, lines 4-6). According to the officer, Burdine then raised the liquor bottle he had been holding and the officer then drew his weapon. (R. p. 6, lines 6-12). Burdine denied raising the liquor bottle. (R. p. 51, lines 11-15). Another officer arrived and Burdine was arrested. (R. p. 6, lines 13-14).

Burdine testified that the officer reached out to search him and Burdine admitted pushing the officer back because he did not want to be searched. (R. p. 51, lines 2-8). Burdine testified that the officer sprayed him with pepper spray after Burdine pushed him

away and told him he could not search him. (R. p. 51, lines 16-25). Hughes confirmed that the officer put his hands on Burdine to search him and Burdine pushed him away. (R. p. 34, lines 10-21). Hughes did not see Burdine strike the officer and did not see Burdine raise the liquor bottle.

At the close of the State's case, Burdine moved for a directed verdict of not guilty of resisting arrest based on the fact that the State failed to prove that the underlying arrest for public disorderly conduct was lawful. Specifically, Burdine argued that first, words alone without threats are not sufficient to arrest for public disorderly conduct and second that the State failed to prove that Burdine was in a public place when he was alleged to have been disorderly. (R. p. 27, lines 6 – 24). The judge denied the motion stating, "I think there was some other testimony by the arresting officer that there was loud and boisterous cursing, as well as some, I think he said, boisterous behavior, profanity, possible behavior and then the raising of the bottle and whatnot. So I think it's a factual question. I'm going to go ahead and let the jury hear that." (R. p. 27, line 25 – p. 28, lines 1-6). Burdine renewed the motion at the close of the case. (R. p. 57, lines 23-24).

On March 17, 2009, after the jury's finding of guilt, Burdine filed a motion for new trial based on the fact that 1.) the State failed produce sufficient evidence to prove beyond a reasonable doubt that the arrest for public disorderly conduct was lawful; 2.) the State failed to produce sufficient evidence to prove beyond a reasonable doubt that the defendant was lawfully detained; and 3.) the State failed to produce sufficient evidence to prove beyond a reasonable doubt that the Defendant was not entitled to use reasonable force to prevent an illegal arrest. (R. p. 83). The judge denied the motion on April 21, 2009. The judge erred.

The disorderly conduct statute, S.C. Code §16-17-530(a) provides:

Any person who shall (a) be found on any highway or at any public place or public gathering in a grossly intoxicated condition *or otherwise conducting himself in a disorderly or boisterous manner* ... shall be deemed guilty of a misdemeanor....

In State v. Perkins, 306 S.C. 353, 412 S.E.2d 385 (1991), the South Carolina Supreme Court held that raising voices to police officers, standing alone, is insufficient to convict of disorderly conduct. “[T]he First Amendment protects a significant amount of verbal criticism and challenge directed at police officers.” City of Houston v. Hill, 482 U.S. 451, 461, 107 S.Ct. 2502, 2505, 96 L.Ed.2d 398, 412 (1987). The State may not punish a person for voicing an objection to a police officer where no “fighting words” are used. Norwell v. Cincinnati, 414 U.S. 14, 94 S.Ct. 187, 38 L.Ed.2d 170 (1973). To punish only spoken words addressed to a police officer, a statute must be limited in scope to fighting words that “by their very utterance inflict injury or tend to incite an immediate breach of the peace.” Hill, 482 U.S. at 461-462, 107 S.Ct. at 2509-10, 96 L.Ed.2d at 412 (quoting Lewis v. City of New Orleans, 415 U.S. 130, 94 S.Ct. 970, 39 L.Ed.2d 214 (1974)). As further noted by the United States Supreme Court, the “fighting words” exception may require narrow application in cases involving words addressed to a police officer “because a properly trained officer may reasonably be expected to exercise a higher degree of restraint than the average citizen.” Hill, 482 U.S. at 462, 107 S.Ct. at 2510, 96 L.Ed.2d at 412.

As stated by the high court:

The freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state.

Id. at 462-63, 107 S.Ct. at 2510, 96 L.Ed.2d at 412-13.

There is no evidence that Burdine used fighting words or in any way threatened the officer prior to the arrest for disorderly conduct. The officer testified that Burdine was “loud and boisterous and started using profanity, getting very hostile” when he informed him that the tag light was out. (R. p. 4, lines 19-22). The officer told Burdine to “quiet down once or twice and stop using profanities.” According to the officer, Burdine refused and made a phone call on his cell phone. At this point the officer told Burdine he was under arrest for public disorderly conduct. (R. p. 5, lines 17-24). Burdine’s actions, as described by the officer, do not constitute disorderly conduct. If the record reflected that Burdine’s profanity included telling the officer “fuck you,” which it does not, this alone would still not constitute disorderly conduct. See In re Jeremiah W., 361 S.C. 620, 606 S.E.2d 766 (2004). Burdine’s arrest for disorderly conduct was unlawful.

In State v. Pittman, 342 S.C. 545, 537 S.E.2d563 (Ct.App. 2000), the South Carolina Court of Appeals held that an arrest for disorderly conduct was justified where there was evidence that the defendant was both grossly intoxicated and used obscene language toward arresting officers. While there is evidence in the record that Burdine was drinking and had slurred speech, there is no evidence that he was grossly intoxicated. An additional distinction between the present case and Pittman is the fact that Pittman, a passenger in a vehicle on a public street was in a public place for purposes of the disorderly conduct statute. As discussed below, the driveway and yard where the

incident took place was where Burdine's fiancée and arguably Burdine lived and, under the facts of this case, is not a public place for purposes of the disorderly conduct statute.

In State v. Williams, 280 S.C. 305, 306 312 S.E.2d 555, 556 (1984) the Court defined public place as

“A place to which the general public has a right to resort; not necessarily a place devoted solely to the uses of the public, but a place which is in point of fact public rather than private, a place visited by many persons and usually accessible to the neighboring public. People v. Whitman, 178 App.Div. 193, 165 N.Y.S. 148, 149. Roach v. Eugene, 23 Or. 376, 31 P. 825. Any place so situated that what passes there can be seen by any considerable number of persons, if they happen to look. Steph.Cr.L. 115. Also, a place in which the public has an interest as affecting the safety, health, morals, and welfare of the community. A place exposed to the public, and where the public gather together or pass to and fro. Lewis v. Commonwealth, 197 Ky. 449, 247 S.W. 749, 750.”

Applying the definition of public place from Williams, the Court in State v. McGowan, 347 S.C. 618, 557 S.E.2d 657 (2001), found that the defendant's driveway could be considered a public place. In making the public place determination, the Court noted that a carload of teenagers witnessed the incident. The McGowan court found there was evidence from which the jury could find, for purposes of the disorderly conduct statute, that McGowan was conducting himself in a grossly intoxicated and disorderly manner in a public place. There is no evidence that any one other than the officer and the passenger witnessed the incident in the present case. An additional factor that distinguishes this case from McGowan is the fact that McGowan retrieved a gun during his encounter with the police. The retrieval of the gun constitutes a threat and takes his actions beyond mere words or objections to the police. As discussed above, Burdine

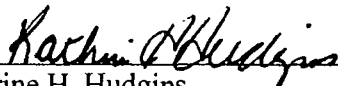
made no threats and used no fighting words. Burdine's arrest for disorderly conduct was unlawful for two reasons: 1.) Burdine's actions did not take place in a public place; and 2.) Burdine did not use fighting words and made no threats so his actions did not constitute disorderly conduct.

A person may not be convicted of resisting arrest where the underlying arrest is unlawful. A person has a right to resist an unlawful arrest. State v. Poinsett, 250 S.C. 293, 157 S.E.2d 570 (1967). Burdine had a right to resist his unlawful arrest for disorderly conduct. The judge erred in refusing to direct a verdict of acquittal for resisting arrest.

CONCLUSION

Based on the above argument, the conviction must be reversed and a directed verdict of acquittal entered.

Respectfully submitted,



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT.

This 1st day of June, 2010.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

June 1, 2010



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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County

Eugene C. Griffith, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

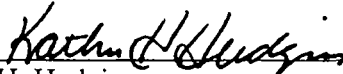
V.

BOBBY LEE BURDINE,

APPELLANT

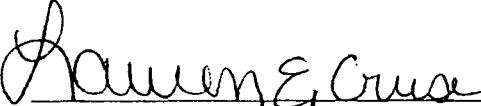
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon William M. Blich, Jr., Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, SC 29201, this 1st day of June, 2010.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 1st day of June, 2010.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: August 23, 2014.



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June 1, 2010

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Re: The State v. Bobby Lee Burdine

Dear Salley:

Enclosed are two copies of the Final Brief of Appellant in the above-entitled case, which I have filed today with the South Carolina Court of Appeals.

Please call me if you have any questions.

Sincerely,

Kathrine H. Hudgins
Appellate Defender

KHH/pds

Enclosure



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June 1, 2010

Mr. Bobby Lee Burdine
108 Temple Street
Greenville, SC 29601

Re: Your appeal

Dear Mr. Burdine:

Enclosed is a copy of the Final Brief of Appellant in your case, which I have filed with the South Carolina Court of Appeals.

Please contact me if you have any questions.

Sincerely,

Kathrine H. Hudgins
Appellate Defender

KHH/pds

Enclosure

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
Eugene C. Griffith, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

v.

BOBBY LEE BURDINE,

APPELLANT.

FINAL BRIEF OF **RESPONDENT**

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STATEMENT OF ISSUES ON APPEAL

The trial court did not err in denying Appellant's motion for a directed verdict on the resisting arrest charge because the arrest for disorderly conduct was lawful.

STATEMENT OF THE CASE

The Spartanburg County Grand Jury indicted Appellant for misdemeanor resisting arrest. On March 12-13, 2009, Appellant proceeded to trial before a jury and the Honorable Eugene C. Griffith, Jr. The jury found him guilty of resisting arrest and Judge Griffith sentenced him to thirty days, suspended upon service of one day and twelve months probation. On March 17, 2009, Appellant filed a Motion for New Trial, which the trial court denied on April 21, 2009. This appeal follows.

ARGUMENT

I. The trial court did not err in denying Appellant's motion for a directed verdict on the resisting arrest charge because the arrest for disorderly conduct was lawful.

Appellant contends the trial court erred in denying his motion for a directed verdict on the resisting arrest charge because there was insufficient evidence to support the legality of the initial arrest for public disorderly conduct. The Officer's testimony provided sufficient evidence the arrest for public disorderly conduct was legal and was a proper charge to support the resisting arrest conviction. As an additional sustaining ground, the evidence clearly indicated Appellant was grossly intoxicated when confronted by the Officer and the evidence supports the decision to submit the charge to the jury.

"When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight." State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. Id. When reviewing a denial of a directed verdict, the appellate court must view the evidence and all reasonable inferences in the light most favorable to the State. State v. Cherry, 361 S.C. 588, 593-593, 606 S.E.2d 475, 477-478 (2004). "If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury." Id.

Section 16-17-530 of the South Carolina Code provides:

Any person who shall (a) be found on any highway or at any public place or public gathering in a grossly intoxicated condition or otherwise conducting himself in a disorderly or

boisterous manner, . . . shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than one hundred dollars or be imprisoned for not more than thirty days.

Further, in State v. Williams, the Supreme Court adopted the following definition of “public place”:

A place to which the general public has a right to resort; not necessarily a place devoted solely to the uses of the public, but a place which is in point of fact public rather than private, a place visited by many persons and usually accessible to the neighboring public. **Any place so situated that what passes there can be seen by any considerable number of persons, if they happen to look.** Also, a place in which the public has an interest as affecting the safety, health, morals, and welfare of the community. A place exposed to the public, and where the public gather together or pass to and for.

State v. Williams, 280 S.C. 305, 306-7, 312 S.E.2d 555, 556 (1984) (internal citations omitted) (emphasis added).

In State v. Perkins, the Supreme Court determined an individual “cannot be punished under § 16-17-530(a) for voicing their objections to sheriff’s officers where the record indicates no use of fighting words.” State v. Perkins, 306 S.C. 353, 355, 412 S.E.2d 385, 386 (1991). The Court of Appeals distinguished the Perkins holding in instances where the individual not only conducted himself in a boisterous manner or shouted profanities at a police officer, but the individual was also grossly intoxicated. See State v. Pittman, 342 S.C. 545, 547, 537 S.E.2d 563, 565 (Ct. App. 2000) (holding an arrest under section 16-17-530 is justified where a defendant is both grossly intoxicated and uses obscene language toward arresting officers); State v. Galloway, 305 S.C. 258, 407 S.E.2d 662 (Ct. App. 1991).

In this case, Officer Owens testified he witnessed Appellant driving without a tag light. Appellant pulled into a driveway and Officer Owens watched for a period of time to see if they planned to leave. Appellant and his passenger exited the vehicle and Officer Owens approached to inform Appellant his tag light was out. (T.19-20; R.2-3). Officer Owens explained that even though Appellant was in the driveway of his fiancée or girlfriend, Appellant was within view or hearing distance of 40-50 houses in the middle of a residential area. (T.22; R.5).

As he approached, Officer Owens noticed Appellant held a bottle of liquor in his hands. Officer Owens testified he noticed “**immediately the smell of the aroma of alcohol. And I noticed that he was extremely slurred in his speech.**” (T.21; R.4) (emphasis added).¹ Officer Owens testified Appellant “immediately started getting loud and boisterous and started using profanity, **getting very hostile.**” (T.21; R.4) (emphasis added). Officer Owens stated he tried to be respectful, but from the beginning Appellant was “**very hostile**” toward the Officer. (T.22; R.5).

Officer Owen attempted to get Appellant to calm down and explained to him he was disrupting the public with his behavior. (T.22; R.5). Appellant then picked up his cell phone and attempted to make a call when Officer Owen placed him under arrest for disorderly conduct. When Appellant refused to get off the phone, Officer Owen took the phone from him and placed it on Appellant’s car. (T.22-23; R.5-6).

Appellant then struck Officer Owen in the jaw. Officer Owen sprayed Appellant with his O.C. spray, or pepper spray, and Appellant raised the bottle as if he was going to hit

¹Officer Bradley also testified Appellant appeared intoxicated. (T.41; R. 24).

Officer Owen. Officer Owen drew his weapon and another officer, who had just arrived, was able to subdue Appellant and place him in handcuffs. (T.23; 40-41; R.6; 23-24). Officer Bradley testified the entire time Appellant was being subdued he continued to yell and shout profanities. (T.41; R. 24).

The South Carolina Supreme Court considered a case with similar facts to the instant case in State v. McGowan, 347 S.C. 618, 557 S.E.2d 657 (2001). McGowan was in his driveway, intoxicated, acting in a loud and boisterous manner, and cursing at police. Id. at 625-626, 557 S.E.2d at 661. The Court found the evidence sufficient for the jury to determine he violated the disorderly conduct statute, and therefore, his arrest was lawful such that he was not entitled to a directed verdict on the charge of resisting arrest with deadly force. Id. at 626, 557 S.E.2d at 661.

The Court of Appeals considered another similar case in State v. LaCoste, 347 S.C. 153, 553 S.E.2d 464 (Ct. App. 2001). In LaCoste, the officer testified, as he approached LaCoste and instructed him to stop, LaCoste threw up his arms in a hostile manner and began yelling obscenities at the officer, insisting he would not comply with the officers demands. After the officer informed LaCoste he was under arrest for disorderly conduct, LaCoste continued to repeatedly shout obscenities and challenge the officer. This testimony constituted ample evidence of disorderly conduct to enable the trial court to deny LaCoste's motion for directed verdict. Id. at 164, 553 S.E.2d at 470.

The facts of this case clearly support the trial court's decision to submit the resisting arrest charge to the jury based on Appellant's resisting the lawful arrest for disorderly conduct. Appellant's disorderly conduct was more than just using profanity and being loud

towards a police officer. According to Officer Owen's testimony Appellant was "hostile" to the officer in addition to the profanity and boisterous behavior. The hostility is sufficient to submit the case to the jury.

Further, both Officer Owen and Officer Bradley testified Appellant was intoxicated. Officer Owen testified Appellant had a liquor bottle in his hand when he approached. He testified Appellant speech was "extremely slurred." As Officer Owen approached from the rear of the vehicle while Appellant was standing at the front of the vehicle, Officer Owen could smell alcohol. This is certainly evidence the jury could rely on to determine Appellant could was grossly intoxicated in a public place. See McGowan, 347 S.C. at 626, 557 S.E.2d at 661; Pittman, 342 S.C. at 547, 537 S.E.2d at 565.

Finally, the State submits Appellant was clearly in a public place when grossly intoxicated or acting in such a manner to constitute disorderly conduct. As the Court found in McGowan, Appellant was within view and hearing distance of numerous houses in the middle of a residential neighborhood. He was certainly in a "place so situated that what passes there can be seen by any considerable number of persons, if they happen to look." See Williams, 280 S.C. at 306-7, 312 S.E.2d at 556.

The evidence in this case that Appellant was intoxicated, slurring speech, holding a liquor bottle, being loud and boisterous, shouting profanities at the officer, and acting hostile to the officer while in the driveway of a home in the middle of a residential neighborhood, constitutes evidence of disorderly conduct. Because his arrest for disorderly conduct was a legal arrest, the trial court properly denied his motion for a directed verdict on his charge of resisting arrest.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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May 20, 2010

STATE OF SOUTH CAROLINA

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The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

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May 20, 2010

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Bobby Lee Burdine,

Appellant.

PROOF OF SERVICE

I, ELLEN DuBOIS, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Kathrine H. Hudgins, Esquire
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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I further certify that all parties required by Rule to be served have been served.
This 20th day of May, 2010



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