STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions

The Honorable R. Keith Kelly, Circuit Court Judge

Appellate Case No. 2015-000667

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

ANNIE JACKSON,

APPELLANT.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The magistrate judge properly denied Appellant's directed verdict motion where the State presented evidence the offense occurred in Spartanburg County and was not required to prove the arrest occurred within the city limits of Spartanburg.

STATEMENT OF THE CASE

Appellant was arrested in Spartanburg County on September 28, 2013, for public disorderly conduct under S.C. Code § 16-17-530 and trespassing under S.C. Code § 16-11-620. On October 28, 2014, Appellant was tried before Magistrate Judge William R. Chumley and a jury. Judge Chumley denied Appellant's directed verdict motion, and the jury ultimately found Appellant guilty of both offenses. A timely notice of appeal to the circuit court was filed, and a hearing was held before the Honorable R. Keith Kelly on January 20, 2015. In an order dated February 19, 2015, Judge Kelly affirmed Appellant's convictions. This appeal follows.

ARGUMENT

The magistrate judge properly denied Appellant's directed verdict motion where the State presented evidence the offense occurred in Spartanburg County and was not required to prove the arrest occurred within the city limits of Spartanburg.

Appellant contends that the magistrate judge erred in denying her motion for directed verdict because the State "failed to establish jurisdiction over Appellant by failing to establish that the Appellant's arrest occurred within the city limits of Spartanburg." (Brief of Appellant, p. 1). Initially, in the State's view, Appellant's argument incorrectly blends and confuses two entirely distinct and separate issues.[1] One issue is whether or not the arresting officer had territorial jurisdiction to arrest Appellant. This issue, while relevant in a pre-trial hearing regarding whether or not Appellant's arrest was an illegal seizure under the Fourth Amendment, has nothing to do with the sufficiency of the evidence for directed verdict purposes. If the officer did not have territorial jurisdiction, and the arrest was therefore unlawful, the proper remedy would

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[1] Appellant relies on State v. Padgett, 354 S.C. 268, 580 S.E.2d 159 (Ct. App. 2003), a case which appears to blend territorial jurisdiction with sufficiency of the evidence. Initially, note that the "officer in pursuit" statute at issue in Padgett is not applicable to the facts of this case. See S.C. Code § 17-13-40. Instead, here, the applicable territorial jurisdiction statute would be S.C. Code § 5-7-11 ("[Municipal] police officers shall exercise their powers on all private and public property within the corporate limits of the municipality and on all property owned or controlled by the municipality wheresoever situated . . ."). Regardless, in the State's view, the Padgett case does not necessarily stand for the proposition that it is proper to blend the issues of territorial jurisdiction and sufficiency of the evidence. In that case, the State did not argue it was improper to combine these issues; thus, the Padgett court merely answered the question presented to it and nothing more. See generally Hutto v. S. Farm Bureau Life Ins. Co., 259 S.C. 170, 173, 191 S.E.2d 7, 8-9 (1972) ("It is, of course, settled law that 'a case cannot be considered as a binding precedent on a legal point that was not argued in the case and not mentioned in the opinion.' " (citations omitted)); State v. Austin, 306 S.C. 9, 19, 409 S.E.2d 811, 817 (Ct. App. 1991) ("[A]ppellate courts in this state, like well-behaved children, do not speak unless spoken to and do not answer questions they are not asked."). Furthermore, even assuming for argument's sake that the State was required to prove Appellant's arrest took place within Spartanburg city limits, it was still proper for the trial judge to deny the directed verdict motion because a reasonable jury could infer that the witnesses meant the *city* of Spartanburg, as opposed to the *county*, when they testified the shoe store was in "Spartanburg" and where one of the witnesses provided the *exact street address* of the shoe store, which was mere minutes away from the courthouse in which the jurors sat during Appellant's trial. See Brisbon at 327, 474 S.E.2d at 435 (venue in a criminal case need not be affirmatively proved if there is sufficient evidence from which it can be inferred; evidence of venue, even if slight, is sufficient in the absence of conflicting evidence and may be proved by circumstantial as well as direct evidence).

have been suppression of any "fruit" obtained as a result of the unlawful arrest, such as a confession or physical evidence seized. See, e.g., State v. Burgess, 408 S.C. 421, 440-41, 759 S.E.2d 407, 417-18 (2014); State v. Boswell, 391 S.C. 592, 707 S.E.2d 265 (2011). However, no motion to suppress is at issue here, so whether or not the arresting officer may have exceeded his territorial jurisdiction is a moot point.[2] Even if the arrest was unlawful, this is not a valid ground for the grant of a directed verdict, since the lawfulness of an arrest is **not** an element of the offenses the State must prove.[3]

A second, separate issue is whether or not the State presented sufficient direct or circumstantial evidence supporting all the elements of the offense, such that it was proper to submit the case to the jury. Appellant's sole argument is that the officer failed to "establish jurisdiction over Appellant" because he failed to expressly testify that the offense occurred within the *city limits* of Spartanburg. However, again, the State was not required to prove that the offense occurred within the city limits of Spartanburg – regardless of which law enforcement agency arrested Appellant – since this is not an element of the offenses. See S.C. Code § 16-11-620 ("Any person who, without legal cause or good excuse, enters into the dwelling house, place of business, or on the premises of another person after having been warned not to do so or any person who, having entered into the dwelling house, place of business, or on the premises of another

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[2] Even if Appellant's arrest was unlawful, this would have no impact on her subsequent prosecution and conviction. See State v. Burgess, 408 S.C. 421, 440-41, 759 S.E.2d 407, 417-18 (2014) ("Even if we assume that Burgess's arrest was invalid, such an assumption would be of no consequence to Burgess as this Court has held that 'the illegality of an initial arrest did not bar the accused person's subsequent prosecution and conviction of the offense charge.'") (citing State v. Biehl, 271 S.C. 201, 204, 246 S.E.2d 859, 860 (1978)).

[3] Nevertheless, the arresting officer clearly did have proper territorial jurisdiction since "550 South Church Street" is squarely within the city limits of Spartanburg, and the trial judge could have taken judicial notice of this fact in a pre-trial suppression hearing. See Rule 201, SCRE (a trial judge may take judicial notice of facts not subject to reasonable dispute that are generally known within the territorial jurisdiction of the trial court); see also http://www.city-data.com/zipmaps/Spartanburg-South-Carolina.html.

person without having been warned fails and refuses, without good cause or good excuse, to leave immediately upon being ordered or requested to do so by the person in possession or his agent or representative shall, on conviction, be fined not more than two hundred dollars or be imprisoned for not more than thirty days."); S.C Code § 16-17-530 ("Any person who shall . . . 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.").

However, to the extent Appellant's argument asserts that the State failed to prove the offense occurred within the jurisdiction of the court, this argument is likewise without merit. "As a rule, a criminal case brought in the Magistrate's Court must be prosecuted in the county where the charged offense occurred." State v. Brown, 351 S.C. 522, 529, 570 S.E.2d 559, 562 (Ct. App. 1995), *reversed on other grounds by* State v. Brown, 358 S.C. 382, 596 S.E.2d 39 (2004); see also State v. Black, 319 S.C. 515, 521, 462 S.E.2d 311, 315 n3 (Ct. App. 1995) ("[I]n the case of State ex rel McLeod v. Crowe, 272 S.C. 41, 249 S.E.2d 772 (1978) our Supreme Court concluded that Article V, Sections 1 and 23 of the South Carolina Constitution mandate jurisdiction of magistrates be uniform throughout the State. In order to accomplish such uniformity, the court conferred countywide jurisdiction upon magistrates."); S.C. Code § 22-2-170 ("Magistrates shall have jurisdiction throughout the county in which they are appointed."); S.C. Code § 22-3-520 ("Magistrates shall have and exercise within their respective counties all the powers, authority and jurisdiction in criminal cases herein set

forth."). Thus, all the State had to prove for purposes of its case-in-chief was that the offense occurred in the *county* of Spartanburg.[4] See State v. Crocker, 366 S.C. 394, 403, 621 S.E.2d 890, 895 (Ct. App. 2005) (stating that a defendant is entitled to a directed verdict if the State fails to present evidence the offense was committed in the county alleged).

Although an accused has a right to be tried in the county in which the offense is alleged to have been committed, this right is not jurisdictional and instead pertains to venue. State v. Brisbon, 323 S.C. 324, 327, 474 S.E.2d 433, 435 (1996) (citations omitted). Venue in a criminal case need not be affirmatively proved if there is sufficient evidence from which it can be inferred. Id. (citations omitted). Evidence of venue, though slight, is sufficient in the absence of conflicting evidence and may be proved by circumstantial as well as direct evidence. Id. (citations omitted).

Here, the undisputed testimony that the shoe store where the incident took place was "in Spartanburg" and that the shoe store was located at "550 South Church Street in Spartanburg" was clearly sufficient to show the offense occurred in Spartanburg County. See State v. Taylor, 399 S.C. 51, 61-62, 731 S.E.2d 596, 602 (Ct. App. 2012) (finding the trial judge properly denied the defendant's motion for directed verdict where the State presented sufficient evidence to establish the crime occurred in Williamsburg County); State v. Crocker, 366 S.C. at 403, 621 S.E.2d at 895 (finding the defendant's directed verdict motion was properly denied where "ample evidence exists to clear the hurdle necessary to support venue in Richland County"); State v. Brisbon, 323 S.C. at 328, 474

[4] It is wholly irrelevant, for purposes of the State proving proper venue, whether or not Appellant was arrested by a city police officer. The offenses with which Appellant was charged were **not** municipal offenses. See S.C. Code § 16-11-620 (trespassing); S.C Code § 16-17-530 (public disorderly conduct); see also S.C. Code § 14-25-45 ("Powers, duties and jurisdiction of municipal courts").

S.E.2d at 436 ("Under the low threshold discussed above, there exists sufficient evidence in the present case to find that venue was proper in Lexington County."); State v. Williams, 321 S.C. 327, 334, 468 S.E.2d 626, 630 (1996) ("Accordingly, we find that there was sufficient circumstantial evidence, although not conclusive, to support the inference that the victims died in Edgefield County, South Carolina, and Williams was not entitled to a directed verdict."). Therefore, the magistrate judge properly denied Appellant's directed verdict motion, and the circuit court properly affirmed the magistrate. Appellant's convictions should be upheld.

CONCLUSION

For the reasons discussed above, the State requests that this Court affirm Appellant's convictions and sentences.

Respectfully submitted,

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July 15, 2015

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
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The Honorable R. Keith Kelly, Circuit Court Judge

Appellate Case No. 2015-000667

THE STATE OF SOUTH CAROLINA,

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PROOF OF SERVICE

The undersigned attorney hereby certifies that the **Initial Brief of Respondent** and **Designation of Matter** in the above-referenced case has been served upon **Mary Frances Dassel Cole, 366 North Church Street, Suite 3000, Spartanburg, South Carolina, 29303,** this **15th** day of **July, 2015.**

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RECEIVED
JUL 15 2015
SC Court of Appeals

July 15, 2015

The Honorable Jenny A. Kitchings
Clerk of Court, S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: **State of South Carolina v. Annie Jackson**
Appellate Case No. 2015-000667

Dear Ms. Kitchings:

Enclosed please find the **Initial Brief of Respondent,** along with the **Designation of Matter** and **Proof of Service,** in the above-referenced appeal, which I am serving on opposing counsel today.

Thank you for your attention to this matter, and please do not hesitate to contact me at (803) 734-3713 should there be any questions or concerns.

Sincerely,

Christina Catoe Bigelow
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CCB/

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