

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

R. Keith Kelly, Circuit Court Judge

RECEIVED

JUL 25 2016

SC Court of Appeals

Case No. 2014-CP-42-4713

The State,

Respondent,

v.

Willie Jackson,

Appellant.

FINAL BRIEF OF APPELLANT

Matthew W. Shealy
366 N. Church Street, Suite 3000
Spartanburg, South Carolina 29303
(864) 596-3102

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

Table of Authorities	ii
Statement of Issues on Appeal	1
Statement of the Case	1
Arguments.....	1

BECAUSE THE PROSECUTING OFFICER IS A POLICE AUTHORITY OF
THE CITY OF SPARTANBURG, HE FAILED TO ESTABLISH
JURISDICTION OVER APPELLANT BY FAILING TO ESTABLISH THAT
THE APPELLANT'S ARREST OCCURRED WITHIN THE CITY LIMITS OF
SPARTANBURG

THE PROSECUTING OFFICER FAILED TO PROVE THE CRIME OF
TRESPASS AFTER NOTICE REGARDING THE APPELLANT BY FAILING
TO ADDUCE ANY TESTIMONY THAT THE APPELLANT WAS PLACED
ON TRESPASS NOTICE AND SO A DIRECTED VERDICT SHOULD HAVE
BEEN GRANTED

Conclusion	5
------------------	---

TABLE OF AUTHORITIES

CASES

<u>State v. Padgett</u> , 354 S.C. 268 (2003)	2,3, 4
<u>State v. Robinson</u> , 310 S.C. 535, 426 S.E. 2d 317(1992).....	4
<u>State v. Venters</u> , 300 S.C. 260, 387 S.E. 2d 270 (1990).....	5
<u>State v. Blackmon</u> , 304 S.C. 270, 403 S.E. 2d 660 (1991).....	5

STATUTES

S.C. Code Ann. § 17-13-40(A)	2, 3, 4
S.C. Code Ann. § 22-3-710	4
S.C. Code Ann. § 16-11-620.....	5

STATEMENT OF ISSUES ON APPEAL

DID THE TRIAL COURT ERR IN FAILING TO GRANT APPELLANT'S MOTION FOR DIRECTED VERDICT WHERE THE PROSECUTING CITY OFFICER FAILED TO ESTABLISH THAT THE ARREST GIVING RISE TO THE CASE OCCURRED WITHIN THE CITY LIMITS OF SPARTANBURG?

DID THE TRIAL COURT ERR IN FAILING TO GRANT APPELLANT'S MOTION FOR DIRECTED VERDICT AS TO A TRESPASSING CHARGE WHERE THE PROSECUTING OFFICER FAILED TO ESTABLISH THAT WILLIE JACKSON WAS PLACED ON TRESPASS NOTICE?

STATEMENT OF THE CASE

On September 28, 2013, Officer Bryan Shaw of the Spartanburg City Police Department arrested Appellant Annie Jackson and charged her with Public Disorderly Conduct and Trespassing following an incident at a shoe store in which Appellant attempted to return merchandise that she had previously purchased. On October 28, 2014, Officer Shaw prosecuted the charges on behalf of the state at trial in the magistrate court. Testifying for the state at trial were Officer Shaw and Ms. Janice Littlejohn, the store clerk.

At the close of the state's evidence, Appellant moved for a directed verdict arguing that the prosecuting officer failed to establish jurisdiction over Appellant by failing to present evidence that Appellant was arrested within the city limits of Spartanburg. The Honorable William R. Chumley denied Appellant's directed verdict motion and Appellant was ultimately convicted of both charges. (R. p. 1). Appellant appealed to the Circuit Court, where the Honorable R. Keith Kelly affirmed Appellant's convictions in an Order dated February 19, 2015. (R. pp. 2-4). This appeal followed.

ARGUMENT

BECAUSE THE PROSECUTING OFFICER IS A POLICE AUTHORITY OF THE CITY OF SPARTANBURG, HE FAILED TO ESTABLISH JURISDICTION OVER APPELLANT BY FAILING TO ESTABLISH THAT THE APPELLANT'S ARREST OCCURRED WITHIN THE CITY LIMITS OF SPARTANBURG.

Officer Bryan Shaw is employed by the Spartanburg City Police Department (R. p. 23, CD Recording, at 11 minutes, 11 seconds). As such, South Carolina law limits the geographical area in which he can make a valid arrest. Section 17-13-40(A) of the South Carolina Code provides that city police officers may only execute an arrest either within the city limits or within three miles of such limits:

When the police authorities of a town or city are in pursuit of an offender for a violation of a municipal ordinance or statute of this State committed within the corporate limits, the authorities may arrest the offender, with or without a warrant, at a place within the corporate limits, at a place within the county in which the town or city is located, or at a place within a radius of three miles of the corporate limits.

S.C. Code Ann. § 17-13-40(A). This section therefore “operates to limit the jurisdictional authority of town and city police officers to effectuate arrests.” State v. Padgett, 354 S.C. 268, 272, 580 S.E.2d 159, 161 (Ct. App. 2003).

In Padgett, *supra*, an officer with the Ridge Spring Police Department attempted to stop defendant for a traffic violation and, when defendant failed to stop, pursued him for about three-fourths of a mile outside Ridge Spring city limits. Padgett, 354 S.C. at 269-270. The officer testified at trial that he initiated his pursuit of the defendant within the city limits of Ridge Spring. *Id.* At trial, defendant moved for a directed verdict asserting that the officer failed to establish jurisdiction over him due to insufficient evidence regarding when and where the officer initiated his blue lights.

Id. at 271. After the trial judge denied the motion, defendant was found guilty at trial and he appealed his conviction. Id. at 270.

On appeal, the court acknowledged that Section 17-13-40(A) limits the jurisdictional authority of city and town police authorities. Id. at 272. However, the court found that the officer's testimony that he initiated his blue lights within the city limits, standing alone, constituted sufficient evidence to survive a directed verdict motion. Id. at 272. In affirming the conviction, the court stated:

[T]he mere fact that there existed some question as to whether the officers in the instant case were operating outside of their jurisdictional limitations does not automatically give rise to the propriety of a directed verdict on the issue. To the contrary, the facts and circumstances attendant to this case present quintessential factual issues regarding the exercise of the statutory grant of jurisdiction.

Id. Thus, the court found that the trial judge "properly limited his [directed verdict] inquiry to the existence or nonexistence of evidence tending to establish the officers operated within the confines of section 17-13-40(A)." Id.

In the instant case, no similar question of fact exists. Officer Brian Shaw testified that he was employed by the Spartanburg City Police. (R. p. 23, CD Recording, at 11 minutes, 11 seconds). His jurisdictional authority is therefore limited by the confines of Section 17-13-40(A). The only testimony that Officer Shaw offered regarding the location of the incident was that he was dispatched to "the Shoe Show at 550 South Church Street." (R. p. 23, CD Recording, at 11 minutes, 30 seconds). Officer Shaw did not testify that the Shoe Show is located within the city limits of Spartanburg.

The only other testimony at trial regarding the location of the incident came from Ms. Littlejohn, the clerk at the shoe store. She testified that she is employed at the "Shoe Show at 550

South Church Street in Spartanburg.” (R. p. 23, CD Recording, at 23 minutes and 59 seconds). Although Ms. Littlejohn stated that the store is located “in Spartanburg,” she did not specify whether the store is located within the corporate limits of Spartanburg City. Because it is possible for a location to have a “Spartanburg” address without existing within the city limits, this testimony was insufficient to establish whether Officer Shaw had authority to arrest Appellant pursuant to the limitations of Section 17-13-40(A).

Therefore, unlike in Padgett, where there was specific testimony that the officer initiated his pursuit within the city limits, here, there was no such evidence. In offering insufficient testimony that the incident occurred within the city limits of Spartanburg, Officer Shaw failed to establish jurisdiction over Appellant. S.C. Code Ann. 17-13-40(A). See also S.C. Code Ann. § 22-3-710 (“All proceedings before magistrates in criminal cases shall be commenced on information under oath, plainly and substantially setting forth the offense charged, upon which, and only which, shall a warrant of arrest issue.”). Accordingly, the Court must reverse the ruling of the circuit court, remand the case, and order the magistrate court to enter a directed verdict in favor of the Appellant.

THE PROSECUTING OFFICER FAILED TO PROVE THE CRIME OF TRESPASS AFTER NOTICE REGARDING THE APPELLANT BY FAILING TO ADDUCE ANY TESTIMONY THAT THE APPELLANT WAS PLACED ON TRESPASS NOTICE AND SO A DIRECTED VERDICT SHOULD HAVE BEEN GRANTED

In determining whether a directed verdict should be granted, the State must produce either “direct evidence or substantial circumstantial evidence which reasonably tends to prove the guilty of the accused, or from which his guilt may be fairly or logically deduced.” State v. Robinson, 310 S.C. 535, 538, 426 S.E.2d 317, 319 (1992). In reviewing the denial of a motion for a directed verdict, the evidence must be viewed in the light most favorable to the State. Without competent evidence

tending to prove each element of the offense charged, a directed verdict must be granted. State v. Venters, 300 S.C. 260, 264, 387 S.E.2d 270, 272 (1990).

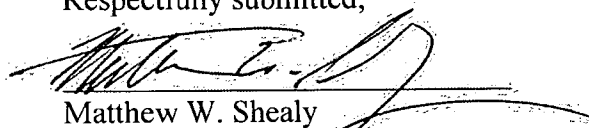
The crime of Trespass after Notice is committed when an individual "having entered into ... [a] place of business ... without having been warned fails and refuses, without good cause or good excuse, to leave immediately upon being ordered or requested to do so by the person in possession or his agent or representative." S.C. Code Ann. § 16-11-620. As such, there must be competent evidence proving that Appellant was either "ordered or requested" to leave. No such evidence was produced at trial. Appellate counsel for the Respondent admitted as much at the Circuit Court level. R. p. 17, lines 15-18. Respondent claimed that "a jury could infer that he was on trespass notice, as well." Id. at 18, lines 10-12. This is insufficient to comply with the statute. One must be "ordered or requested" to leave. S.C. Code Ann. § 16-11-620. "When the terms of the statute are clear and unambiguous, the court must apply them according to their literal meaning." Further, "when a statute is penal in nature, it must construed strictly against the State and in favor of the defendant." State v. Blackmon, 304 S.C. 270, 273, 403 S.E.2d. 660, 662 (1991).

CONCLUSION

For the reasons stated, this Court must reverse the ruling of the circuit court, remand the case, and order the magistrate court to enter a directed verdict in favor of the Appellant.

July 20, 2016

Respectfully submitted,


Matthew W. Shealy
366 N. Church Street
Suite 3000
Spartanburg, South Carolina 29303
(864) 596-3102
Attorney for Appellant

CERTIFICATE OF COUNSEL IN FINAL BRIEF

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

JUL 25 2016

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions

SC Court of Appeals

The Honorable R. Keith Kelly, Circuit Court Judge

Appellate Case No. 2015-000706

The State of South Carolina,

Respondent,

v.

Willie Jackson,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

July 20, 2016



Matthew W. Shealy
Bar No.: 77724
366 North Church Street
Suite 3000
Spartanburg, South Carolina 29303
(864) 596-3102
Attorney for Appellant