

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from York County

Lee S. Alford, Circuit Court Judge  
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**RECEIVED**

JUL 09 2012

**SC Court of Appeals**

THE STATE,

RESPONDENT,

V.

DANNY LEE THOMAS,

APPELLANT

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ANDERS BRIEF OF APPELLANT  
\_\_\_\_\_

LANELLE CANTEY DURANT  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
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Columbia, SC 29211-1589  
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in denying appellant's motion for a directed verdict when the state did not prove that an assault occurred, as the officer testified that appellant did not threaten him; officer's injuries were from the underbrush; and appellant told the officer that he did not want to fight him?

## STATEMENT OF THE CASE

On November 11, 2010, the York County Grand Jury indicted Danny Lee Thomas on the charges of assaulting a law enforcement officer while resisting arrest in violation of S.C. Code Section 16-9-320(b); and indecent exposure. On July 25, 2011, Thomas proceeded to trial before the Honorable Lee S. Alford and a jury. Thomas was represented by B.J. Barrowclough, and the state was represented by Marina Bender and Erin Joyner. The jury returned a verdict of guilty on assaulting an officer, but found Thomas not guilty of the indecent exposure. Judge Alford sentenced Thomas to six years. Thomas's attorney filed a notice of appeal. This appeal follows.

## ARGUMENT

The trial court erred in denying appellant's motion for a directed verdict when the state did not prove that an assault occurred, as the officer testified that appellant did not threaten him; officer's injuries were from the underbrush; and appellant told the officer that he did not want to fight him.

On the evening of September 4, 2010, Officer Scott Cribb, who was in his marked police car, was patrolling an area of Rock Hill which included some houses and a big boulder rock on the edge of some woods. Tr. 52, ll. 16 – 25; Tr. 53, ll. 1 – 25; Tr. 56, ll. 1 – 25; Tr. 57, ll. 18 – 25; Tr. 60, ll. 1 – 13. He saw something on the boulder and turned on his “alley lights” in order to see better. Officer Cribb then saw Thomas sitting on the big rock. Tr. 57, ll. 1 – 25.

When Officer Cribb approached him, he saw that Thomas's pants were down around his knees exposing his genitals. When the officer asked Thomas what was going on, Thomas jumped up, pulled up his pants, and ran into the woods. Tr. 58, ll. 1 – 25; Tr. 59, ll. 1 – 25; Tr. 60, ll. 1 – 3.

Officer Cribb pursued Thomas into the woods which were very thick and dark with many briars. Officer Cribb became disoriented and the briars scratched his face and arms. He told Thomas to stop as he was under arrest. Tr. 60, ll. 4 – 24. He finally caught up with Thomas who punched the officer in the jaw and chest. The officer punched Thomas several times but Thomas kept running. Tr. 61, ll. 1 – 25; Tr. 62, ll. 1 – 6.

Officer Cribb tasered Thomas several times leaving marks in his back. Tr. 62, ll. 6 – Tr. 65, ll. 25. The officer admitted that the taser caused a “lot of pain.” Tr. 62, ll. 8 – 25.

Officer Cribb called for backup, When Officer Stewart arrived, he told Thomas to “get your hands behind your back if you don’t want to get shot.” They were able to subdue Thomas then. Tr. 77, ll. 1 – 25.

Officer Cribb testified that Thomas was trying to get the officer off of him, and that Thomas told him a couple of times: “I don’t want to fight you; I didn’t do nothing.” Officer Cribb said Thomas was trying to get away from him. Tr. 73, ll. 6 – 17.

On cross-examination, Officer Cribb said that Thomas never threatened him; did not curse him; did not scratch him. The officer did not seek medical attention as his injuries were not severe. The injuries and scratches were from the thick underbrush. Tr. 80, ll. 21 – 25; Tr. 81, ll. 1 – 25; Tr. 101, ll. 1 – 25Tr. 102, ll. 1 – 25. The officer admitted that Thomas was tasered multiple times. Tr. 103, ll. 1 – 25. Officer Cribb also admitted that the pants were too big for Thomas as he had to hold them up when he was running. The officer did not check the size. Tr. 92, ll. 3 – 24.

Officer Cribb said that his car was equipped with video but he did not turn it on initially when he got out of the car so there was no video of Thomas with his pants down. Tr.95, ll. 1 – 25; Tr. 96, ll. 1 – 25; Tr. 97, ll. 1 – 25.

At the close of the state’s case, defense counsel moved for a directed verdict on both charges on the basis that the evidence presented by the state was not sufficient. Tr. 120, ll. 23 – 25; Tr. 121, ll. 1 – 25; Tr. 122, ll. 1 – 25; Tr. 123, ll. 1 – 25. The judge denied the motion. Tr. 124, ll. 1- 25; Tr. 125, ll. 1 – 25; Tr. 126, ll. 1 – 25; Tr. 127, ll. 1 – 24.

After the verdict, defense counsel moved for a new trial on the resisting arrest charge which the judge denied. Tr. 179, ll. 1 – 25; Tr. 180, ll. 1 – 25; Tr. 181, ll. 1 – 3.

On appeal of a denial of a directed verdict of acquittal, the Supreme Court must look at the evidence in the light most favorable to the state. State v. Arnold, 361 S.C. 386, 605 S.E.2d 529 (2004). A trial judge should grant a directed verdict when the evidence merely raises a suspicion that the accused is guilty. Id.; State v. Cherry, 361 S.C. 588, 594, 606 S.E.2d 475, 478 (2004). Unless there is a total failure of competent evidence as to the charges alleged, refusal by the trial judge to direct a verdict of acquittal is not error. State v. Arnold, *supra*. A defendant is entitled to a directed verdict when the state fails to produce evidence of the offense charged. State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005).

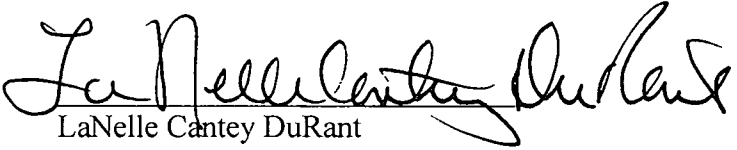
A directed verdict motion should be denied if there is direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused. State v. Latimore, 397 S.C. 9, 723 S.E.2d 589 (2012).

In Thomas's case, the evidence was not sufficient for the charge of assault as the officer did not sustain any injuries from Thomas allegedly hitting him. The officer's injuries, by his own admission, were from the briars. Thomas told the officer he did not want to fight him, and the officer said Thomas was just trying to get away from him.

CONCLUSION

Based on the above, the conviction and sentence on the resisting arrest should be reversed and a directed verdict of acquittal entered.

Respectfully submitted,

  
LaNelle Cantey DuRant  
Appellate Defender

ATTORNEY FOR APPELLANT

This 9th day of July, 2012.

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Appeal from York County

Lee S. Alford, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

DANNY LEE THOMAS,

APPELLANT

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PETITION TO BE RELIEVED AS COUNSEL

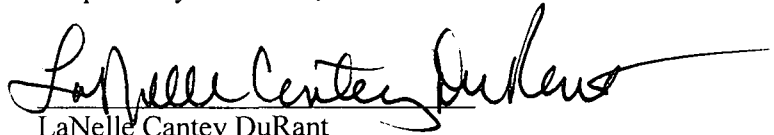
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Counsel for Danny Lee Thomas states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge Lee S. Alford, which was held on July 25-26, 2011, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Danny Lee Thomas.

Respectfully submitted,



LaNelle Cantey DuRant  
Appellate Defender

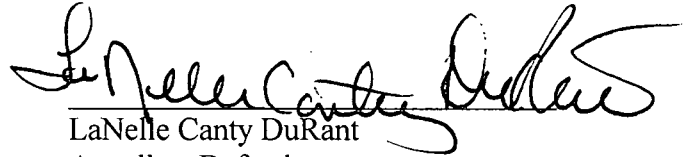
ATTORNEY FOR APPELLANT

This 9th day of July, 2012.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders 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."

July 9<sup>th</sup>, 2012

A handwritten signature in black ink, appearing to read "LaNelle Canty DuRant", written over a horizontal line.

LaNelle Canty DuRant  
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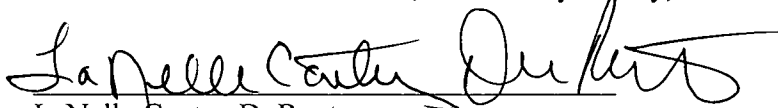
APPELLANT

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CERTIFICATE OF SERVICE

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The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and on Danny Lee Thomas, #129278 at Kershaw Correctional Institution, this 9th day of July, 2012.



LaNelle Cantey DuRant  
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 9th day of July, 2012.



(L.S.)

Notary Public for South Carolina  
My Commission Expires: June 21, 2020.