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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Greenville County

Robin B. Stilwell, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

CHRIS TEASLEY,

APPELLANT

Appellate Case No. 2011-200308

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# FINAL BRIEF OF APPELLANT

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# STATEMENT OF ISSUES ON APPEAL

Did the trial judge err in failing to direct a verdict in Appellant's favor on the charge of assault on an officer while resisting arrest, where the officer assaulted was not placing Appellant under arrest and was not aware that Appellant had been placed under arrest by another officer?

## STATEMENT OF THE CASE

Appellant was indicted by a Greenville County Grand Jury for resisting arrest with assault. R. 113. He was tried before the Honorable Robin B. Stilwell and a jury on September 22, 2011 and September 23, 2011. R. 1. Larry Cooke represented Appellant, and Ashley Case represented the prosecution. R. 1. The jury found Appellant guilty of assaulting an officer while resisting arrest. R. 111 lines 18-23. Judge Stilwell sentenced Appellant to three years imprisonment, which he suspended upon the service of one year home incarceration and two years probation. R. 112 lines 15-21.

Appellant filed a timely notice of appeal. This brief follows.

## ARGUMENT

The trial judge erred in failing to direct a verdict in Appellant's favor on the charge of assault on an officer while resisting arrest, where the officer assaulted was not placing Appellant under arrest and was not aware that Appellant had been placed under arrest by another officer.

Deputy Terrance Bowers with the Greenville County Sheriff's Office testified that he responded to Appellant's residence on November 14, 2010 in response to a 911 call concerning a juvenile, Appellant's son, suffering from seizures. R. 9 line 11 – R. 10 line 6. Bowers entered Appellant's residence and attempted to render aid to Appellant's son who was lying on the kitchen floor. R. 12 lines 5-10. Shortly thereafter, Appellant entered the residence. R. 13 lines 2-3. Bowers testified Appellant was yelling and screaming. R. 13 line 4. When other deputies arrived, Bowers instructed two deputies to detain Appellant and take Appellant outside. R. 16 lines 9-11; R. 16 lines 16-18. According to Bowers, Appellant was placed into investigative detention; he was not under arrest. R. 16 lines 20-21. Appellant was handcuffed and taken to a patrol car. R. 17 lines 1-3. Thereafter, Appellant's wife was detained as well. R. 17 lines 8-18. Bowers emphasized that Appellant was placed outside for an investigative detention as a safety measure. R. 18 lines 7-12.

Bowers then went outside and spoke to Appellant. Bowers described Appellant as continuing to cause a disturbance by cursing and acting out of control. R. 18 lines 20-23. Thereafter, Bowers explained to Appellant he was under arrest for "interference." R. 18 line 22- R. 19 line 2. Bowers then placed another charge, disorderly conduct, on Appellant because Appellant was verbally combative and caused a disturbance. R. 19 lines 8-12.

Bowers placed Appellant into a patrol car after he was advised he was under arrest. R. 19 lines 24-25.

As Bowers was checking on Appellant's son, he heard a disturbance near the patrol car. R. 20 lines 11-12. He ran down the road to assist officers who were removing Appellant from the car. R. 20 lines 14-16. According to Bowers, while trying to remove Appellant from the car, "an officer was assaulted in the face." R. 20 lines 20-22. Bowers explained the officers had a hard time trying to restrain Appellant and had to place him in hobble restraints. R. 20 lines 22-23. Bowers admitted that he did not "actually visibly see [Appellant's] feet touch Deputy Cunningham's face." R. 21 lines 5-8. According to Bowers, Deputy Swanson stepped in immediately and sprayed Appellant using a cap-stun spray. R. 21 lines 16-22.

On cross-examination, Bowers testified that Appellant appeared in court concerning the two charges of interfering with a police officer and disorderly conduct. R. 26 lines 14-20. According to Bowers, Appellant did not go before a judge; however, Bowers testified Appellant pled guilty and Bowers imposed a sentence of time served. R. 26 line 23 – R. 27 line 5. When questioned regarding the judge's function in the imposition of sentences and findings of guilt, Bowers explained "I mean, I didn't actually make the decision. But, I mean, I spoke with Judge Garrett about it." R. 27 lines 6-11. However, Bowers testified that he told Appellant that he was going to dismiss the charges. Bowers explained his decision was based upon his understanding that it was an emotional time for Appellant, and that Appellant was respectful and apologetic when he showed up for court. R. 27 line 16 – R. 28 line 4.

Deputy Ashley Swanson testified that she observed Appellant acting out in the patrol car. R. 52 lines 15-18. She suggested that a hobble be placed around Appellant's feet to prevent him from kicking out the window. R. 53 lines 9-15. Swanson attempted to place the hobble on Appellant, but "[h]e made motions that he was going to kick [her]." R. 53 lines 18-20. Deputy Cunningham took the hobble from Swanson and attempted to hobble Appellant. R. 53 line 24 – R. 54 line 1. Although Swanson testified Appellant kicked Cunningham, she admitted she never actually saw contact. R. 54 lines 11-15; R. 60 lines 16-22. Swanson deployed OC spray thereafter. R. 54 lines 21-25. On cross-examination, Swanson testified she was placing Appellant in hobble restraints for his safety and that she did not place him under arrest at that time. R. 57 lines 21-23; R. 58 lines 3-7. She further testified that she did not know whether Appellant was under arrest. R. 58 lines 8-9.

Investigator Charles Cunningham, Jr. testified that he observed Appellant in the back of a patrol car acting "hysterical." R. 69 lines 20-23. Cunningham called another deputy to open the car so that Appellant could be secured. R. 70 lines 20-23. The second deputy arrived and unlocked the car. R. 71 lines 7-8. Cunningham then secured Appellant in the seatbelt. R. 71 lines 8-23. Afterwards, Appellant continued to act out. R. 72 lines 5-12. Cunningham testified that Swanson attempted to place Appellant in the hobble restraint, but was unsuccessful. R. 73 lines 10-12. Cunningham testified that as he tried to place the hobble restraint on Appellant, Appellant kicked him. R. 73 line 20 – R. 74 line 2. Other deputies then finished applying the hobble restraint. R. 75 lines 14-15. Cunningham and other deputies then transported Appellant to the detention center. R. 76 lines 17-22. Cunningham charged Appellant with "resisting arrest, assault on an officer." R. 77 lines 7-12.

On cross-examination, Cunningham testified that he was one of the last officers to arrive at the scene. R. 80 lines 21-22. He also testified that when Swanson was preparing to hobble Appellant, she was not arresting him. R. 81 lines 21-23. He further testified that when he was placing the hobble restraint on Appellant, he was not placing Appellant under arrest. R. 82 lines 13-16. When asked if Appellant had already been arrested by Bowers, Cunningham responded "I'm not sure. I know he was in the back of Deputy Payne's police car in handcuffs." R. 82 lines 17-20. On re-direct examination, Cunningham testified that he was not present when Bowers placed Appellant under arrest. R. 84 lines 7-10.

At the conclusion of the prosecution's case, Appellant moved for a directed verdict. Appellant argued that the officers who were trying to hobble Appellant were not arresting Appellant. R. 93 lines 15-19. Thus, Appellant argued, he could not be resisting arrest. R. 93 lines 19-22. The prosecution responded that Appellant was under arrest for interfering with a police officer and disorderly conduct. R. 94 lines 7-9. The prosecutor argued: "The law is [] clear that the arrest process doesn't end until the suspect is properly placed in a jail cell. This was during the arrest process and he resisted." R. 94 lines 9-12. The trial judge held that based upon the definition of arrest – "[d]etention of a person for a corporal seizing of the defendant's body" – Appellant was under arrest at the time of the assault. R. 94lines 17-25. The trial judge went on to explain:

> I'll tell you that most resisting arrest cases that I see, ordinarily the subject has not been put under arrest yet. They're in the process of putting the suspect under arrest when, in fact, the resisting takes place. So – and the reason I say that is because I'm not aware of any requirement under the law that the Defendant be advised that he is being put under arrest. Or that be formally verbalized by law enforcement in order to substantiate or validate the resisting arrest charge.

R. 95 lines 1-9. The trial judge stated that absent some case law or authority saying that the defendant had to be advised he was under arrest in order to resist arrest, then he would deny the directed verdict motion. R. 95 lines 10-14.

Appellant argued that Bowers, who placed him under arrest, did not charge him with resisting arrest. R. 95 lines 18-24. Cunningham did not know Appellant had been placed under arrest, and was not attempting to arrest Appellant when the alleged assault took place. R. 96 lines 2-9. Appellant contended there could be no resisting arrest when the officer's intent was only to restrain Appellant, not arrest him. R. 96 lines 10-13. The trial judge explained "the question that arises is, okay, if he wasn't under arrest, if he wasn't being placed under arrest, shouldn't it have been an assault and battery or assault and battery of [a] high and aggravated nature? That's really the question." R. 97 lines 12-16. The judge asked if the issue could be cured through a jury charge of assault and battery. R. 97 lines 16-23. Appellant responded that he did not agree that assault and battery of a high and aggravated nature was applicable, but agreed that a jury charge of simple assault and battery would be appropriate. R. 97 line 24 – R. 98 line 8.

The judge explained that he was not going to change his ruling on Appellant's directed verdict motion because the case law indicated there need not be a formalization or vocalization of the arrest. R. 98 lines 11-23. Later, when the parties were discussing Appellant's right to testify, the trial judge placed on the record the definition of arrest as found in <u>Black's Law Dictionary</u>: "an arrest is taking under real or assumed authority, custody of another for purposes of holding or detaining him to answer a criminal charge or civil demand." R. 99 lines 13-17. The judge concluded that based on that definition,

Appellant was under arrest and the charge of resisting arrest was appropriate. R. 99 lines 18-23.

In closing arguments, the prosecutor argued to the jury that Cunningham testified he was not placing Appellant under arrest when Cunningham was kicked. R. 104 lines 15-17. The prosecutor argued that Appellant was already under arrest and "[t]he important thing is that [Appellant] knew that he was in an arrest mode." R. 104 lines 18-20. She stressed that what Cunningham knew was irrelevant. R. 104 lines 20-21.

A defendant is entitled to a directed verdict when the prosecution fails to provide evidence of the offense charged. State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). A trial court is required to direct a verdict when the prosecution fails to present evidence of a material element of an offense. State v. Gore, 318 S.C. 157, 456 S.E.2d 419 (Ct. App. 1995).

The prosecutor alleged Appellant violated S.C. Code Ann. § 16-9-320(B), which provides: "It is unlawful for a person to knowingly and willfully . . . assault, beat, or wound an officer when the person is resisting arrest being made by one whom the person knows or reasonably should know is a law enforcement officer." As the trial judge stated, the question is whether Appellant could be charged with assault while resisting arrest when the officer assaulted was not arresting Appellant and was not aware Appellant had been arrested by another officer.

The prosecutor correctly argued that in South Carolina, an arrest is an ongoing process that does not become final until a person is confined. In State v. Dowd, 306 S.C. 268, 270, 411 S.E.2d 428, 429 (1991), the South Carolina Supreme Court held that "an arrest is an ongoing process, finalized only when the defendant is properly confined."

Dowd was charged with driving under the influence at the scene of an accident. Id. at 268-269, 411 S.E.2d at 429. Thereafter, he was transported to the jail, booked, and given a breathalyzer test. Id. at 269, 411 S.E.2d at 429. When the arresting officer was placing Dowd in a cell, "Dowd stuck his arm and leg in the doorway, preventing the door from closing." Two other officers assisted the arresting officer in forcing Dowd into his cell. Id. At his trial for resisting arrest, Dowd claimed his arrest was final when he submitted to the arresting officer at the scene of the accident, and therefore, his conduct at the jail could not constitute resisting arrest. Id. The Supreme Court disagreed, holding that because "Dowd was never locked in his cell, the attempt to leave constituted resisting arrest." Id. at 270, 411 S.E.2d at 429.

However, the clear and unambiguous language of the statute requires the assault on a police officer occur "when the person is resisting arrest being made by ... a law enforcement officer." S.C. Code Ann. § 16-9-320(B). The evidence presented by the prosecution was that Cunningham was not placing Appellant under arrest at the time of the alleged assault and was not aware that Appellant had been arrested by Bowers.

This Court addressed this criminal offense in State v. Garvin, 341 S.C. 122, 533 S.E.2d 591 (Ct. App. 2000). While Garvin was in pre-trial detention, an officer, Detective Light, obtained additional arrest warrants for Garvin. Id. at 124, 533 S.E.2d at 591. Garvin was escorted from the detention center to a courtroom where the additional warrants were served, and then he appeared before a judge for a bond hearing. Id. During the bond proceedings, Garvin became belligerent and the detention center officer tried to escort him out of the courtroom. Id. at 124, 533 S.E.2d at 592. Garvin began shouting at Light's supervisor, who was present in the courtroom. Light attempted to assist the detention center

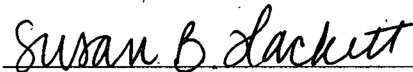
officer, but Garvin struck Light in the face. Eventually, officers subdued Garvin and returned him to his cell. Light and his supervisor were injured from the encounter. Id. This Court held Garvin had not been placed in confinement on the new charges; thus, his arrest was ongoing. Id. at 125, 533 S.E.2d at 592. Concerning the officers assaulted, this Court held "[a]lthough these officers did not serve the warrants and did not have custody of Garvin, they came to the aid of the custodial officer when Garvin resisted her authority" and therefore, the statutory requirements were satisfied. Id. at 126, 533 S.E.2d at 592. This Court explained Garvin's assault upon Light and his supervisor "was in connection with this arrest." Id. at 127, 533 S.E.2d at 593.

Unlike the facts in Garvin, Cunningham was not attempting to render aid to Bowers based upon Appellant resisting Bowers' authority. Unlike the facts in Garvin, Appellant's alleged assault on Cunningham was not in connection with the arrest made by Bowers. The trial judge erred in failing to direct a verdict in Appellant's favor concerning the charge of resisting arrest with assault where the prosecution's evidence was that he assaulted an officer who was not placing Appellant under arrest.

## CONCLUSION

Appellant respectfully requests this Court reverse his conviction and sentence for assault while resisting arrest, and order a directed verdict of acquittal.

Respectfully submitted,



Susan B. Hackett
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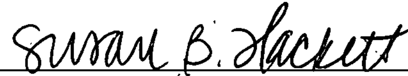
ATTORNEY FOR APPELLANT

This 16th day of October, 2012.

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."

October 16, 2012



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CERTIFICATE OF SERVICE

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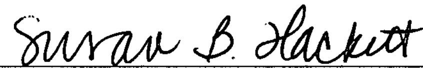
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon David Spencer, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 16th day of October, 2012.



Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 16th day of October, 2012.

_______________________(L.S.)
Notary Public for South Carolina

My Commission Expires: October 2, 2013.