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STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM YORK COUNTY

Michael G. Nettles, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

TAURUS LAMARE THOMPSON,

APPELLANT

APPELLATE CASE NO. 2012-212659

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)	GENERAL SESSIONS
)	
County of York)	2011-GS-46-01390
)	
)	
State of South Carolina,)	
)	
vs.)	TRANSCRIPT OF RECORD
)	
Taurus Lamare Thompson.)	
)	
)	
)	

July 24th, 2011
York, South Carolina

BEFORE:

THE HONORABLE MICHAEL G. NETTLES, JUDGE.

APPEARANCES:

CHRISTOPHER EPTING, ASSISTANT SOLICITOR
Attorney for the State

ASHLEY ANDERSON, ASSISTANT PUBLIC DEFENDER
Attorney for the Defendant

AMINAH R. HARDY, RPR
Official Court Reporter

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MR. EPTING: State calls State versus Taurus Lamare Thompson, true billed indictment 2011-GS-46-01390 for resisting arrest under subsection B, 16-9-327, South Carolina code of laws. It's my understanding the defendant wishes to enter a plea of not guilty to this charge, Your Honor.

THE COURT: Ms. Anderson, you're recognized.

MS. ANDERSON: Your Honor, I do represent Mr. Thompson. He's entering a plea of not guilty. We would in this case, be requesting a bench trial rather than a jury trial.

THE COURT: All right. The -- typically the -- you think of a jury trial would be something that a defendant is entitled to, and clearly in this case he's waiving that. The State is also entitled to a jury trial. What is the State's position?

MR. EPTING: The State is waiving its right to a jury trial. We concur with the decision to have a bench trial in this case.

THE COURT: Very good. I'm going to ask if the defendant could stand as the clerk administers the oath.

TAURUS LAMARE THOMPSON, after having first being duly sworn, testified under oath as follows:

THE COURT: Yes, sir, you can stand. You can remain

1 standing. Your full name?

2 THE DEFENDANT: Taurus Thompson.

3 THE COURT: All right. Mr. Thompson, you have been
4 speaking with your lawyer about your defense, and she
5 talked with you about your jury trial rights?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And you understand that we have a jury
8 available. As a matter of fact, they're going to be
9 coming in in about five minutes, and we could impanel a
10 jury. They would be the ones who would determine the
11 factual issues in this case, and it wouldn't just be one
12 person; it would be 12 people. They would have to agree
13 with regard to a verdict in order for there to be a
14 resolution of it. They would all have to agree. It would
15 have to be unanimous. By virtue of the fact you're giving
16 up your jury trial right, what you're doing is putting
17 their fact-finding role in my hands. I'll be the trier of
18 law and the trier of the facts..

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Is that what you want to do?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: All right. You understand that you can
23 talk with your lawyer about this particular issue and take
24 her advice and listen to it, and talk with your family
25 members and friends, but a jury trial right is something

1 that belongs to you. Nobody can take that away. That has
2 to be your decision about whether or not to elect to go
3 forward before me or a jury. What is your decision?

4 THE DEFENDANT: I rather do the bench trial.

5 THE COURT: Okay. And you've had adequate time to
6 speak with your lawyer about it?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: You need any additional time to confer
9 with her?

10 THE DEFENDANT: No, sir.

11 THE COURT: Very good. Thank you so much.

12 And yes, sir, you're recognized.

13 MR. EPTING: Your Honor, just as a matter of
14 pretrial, we would like to put on the record: I am
15 inheriting this case from another solicitor in our office
16 for trial purposes. I agreed to try it, but up until now,
17 my involvement has been largely preparing this for trial.
18 It's my understanding that an offer of probation and
19 reduced charge for resisting B to A was made to the
20 defendant. It's my understanding that proceeding today at
21 trial, he has rejected that offer.

22 THE COURT: Is that correct, Ms. Anderson?

23 MS. ANDERSON: Judge, just a minute.

24 (A sotto voce discussion was held between Ms.
25 Anderson and the defendant.)

1 MS. ANDERSON: Your Honor, could we have a few
2 minutes to think?

3 THE COURT: Certainly.

4 (A discussion was held off the record.)

5 THE COURT: Ms. Anderson, you're recognized.

6 MS. ANDERSON: Thank you, Your Honor. Your Honor, I
7 did convey during discussions yesterday the solicitor had,
8 in fact, at that point conveyed an offer of probation to
9 resisting arrest A. I did convey that to Mr. Thompson,
10 talked with him about that this morning and talked about
11 it with him again with his family, and we are not -- we
12 are, in fact, at this point rejecting that offer and
13 proceeding.

14 THE COURT: Very good. Mr. Epting, you're
15 recognized.

16 MR. EPTING: Your Honor, that's all the pretrial
17 motions the State would have on this case, Your Honor.

18 THE COURT: All right. I know this is a nonjury
19 matter, but we have the luxury of time, and I'm going to
20 ask each of you to give an opening statement very briefly.

21 MR. EPTING: Thank you, Your Honor, may it please the
22 Court.

23 THE COURT: Yes.

24 OPENING STATEMENTS BY MR. EPTING

25 Your Honor, this incident occurred on New Year's

1 Day in 2011. Officer Englert of the Rock Hill Police
2 Department was on patrol in the Celanese Road area. At
3 the time in the early morning hours, cold, foggy night, he
4 saw the defendant passing him in the opposite lane. He
5 noticed that the defendant's headlights were not turned on
6 at that time. He did a U-turn, pulled behind the
7 defendant, hit the blue lights, attempted to initiate a
8 stop.

9 At first, it looked like it was going to be a normal
10 traffic stop. The defendant pulled into a parking lot.
11 However, he did jump out of his car and run. Officer
12 Englert, pursuant to his duties, chased the defendant.
13 The chase went some way, as will further be developed at
14 trial once we put the arrow maps up there and the Court
15 sees how long the chase went. He did chase him. He said
16 several things while he was chasing him to the effect of
17 "Stop running." At one point, he said, "You need to stop
18 running" -- something to the effect of "You need to stop
19 running. All you're doing is you're going to go to jail
20 tired."

21 Eventually Mr. Thompson did leap into a nearby creek.
22 It's a rather lengthy creek with approximately 3 feet of
23 water on the bottom. Officer Englert jumped in after Mr.
24 Thompson, and there was a short tussle on the ground as
25 Officer Englert tried to get him under control. At that

1 point, they're both pretty tired from running. They stand
2 up.

3 The testimony I expect will develop that Taurus
4 Thompson stood up with both his hands in what Officer
5 Englert immediately recognized as a fighting stance. He
6 also noticed something glinting that very much appeared to
7 him to be a box cutter in one of Mr. Thompson's hands. At
8 that point utilizing his combat skill which he learned in
9 the military as a military combat trainer, he did strike
10 Mr. Thompson, which stunned him. He was able to get
11 Mr. Thompson cuffed and officers did come and assist
12 Officer Englert in getting Mr. Thompson out of the creek.

13 We would submit his actions there that night met the
14 definition of resisting B, and that he put up his hand in
15 a combative gesture, which leads to the assaultive
16 element, whether there was a knife or not; that he was
17 resisting arrest in that the officer was trying to arrest
18 him both for resisting police and officers for failure to
19 identify himself and for fleeing a detention. Both of
20 those are city ordinances. I'll be happy to pass up to
21 the Court at the appropriate time, and at the close of
22 this case, we'd ask you to render a verdict of guilty.

23 THE COURT: Ms. Anderson, you're recognized.

24 OPENING STATEMENTS BY MS. ANDERSON

25 May it please the Court. Your Honor, this was

1 essentially a traffic stop for the officer's allegations
2 of failure to use headlights. By the math, it appears
3 this was a very short period of time and the vehicle
4 pulled over into basically the next available road. Your
5 Honor, this is a situation that happened in a marked
6 patrol vehicle. That vehicle was equipped with in-car
7 video. Despite that, no in-car video that would have
8 showed the traffic stop, what specifically was said, was
9 ever put into evidence. Conversations with the solicitor
10 then subsequently and the delay of time, the tape has been
11 taped over. But January 1st of 2011, and at no time
12 shortly thereafter was the tape ever put into evidence.
13 Therefore, we don't have the sort of video and audio of
14 what actually happened.

15 Based on Officer Englert's report, he indicates --
16 mentions only stop for driving without headlights. My
17 discussions with the solicitor and the anticipated
18 testimony at this point will be and what was mentioned to
19 you was that this was actually -- the officer indicated he
20 intended to arrest Mr. Thompson for resisting police and
21 for failure to identify himself or produce and
22 identification.

23 Your Honor, the indication and the information and
24 incident report indicate that Mr. Thompson ran away from
25 Officer Englert. Mr. Thompson at no point advanced toward

1 Officer Englert. He never attempted to -- I would say
2 take an aggressive stance toward Officer Englert. Officer
3 Englert's incident report indicates that he fled, that he
4 chased Mr. Thompson into a creek, and he jumped into the
5 creek after Mr. Thompson. Again, always Officer Englert
6 being the person pursuing in this case.

7 At that point, the incident report filed by the
8 officer indicates they both fell, and that's when the
9 officer writes he saw what looked like a box cutter in his
10 hand, and neither the case file summary nor the incident
11 report is there any mention of any sort of boxing stance
12 or any sort of aggressive stance or standing up at this
13 point. Once in the water, then the officer was able to
14 detain Mr. Thompson and handcuff him. Mr. Thompson
15 doesn't resist after that. He doesn't run from the
16 officers, he doesn't struggle with the officers, and is
17 taken into custody in handcuffs.

18 Officers, it appears on the incident report, are on
19 the scene for about an hour. There's no box cutter
20 recovered. And the officer never mentioned thinking he
21 sees a box cutter during any point in time during the
22 pursuit of Mr. Thompson.

23 Your Honor, ultimately we would argue that 1) that
24 doesn't rise right off the bat to resisting arrest B. The
25 language of that statute requiring an assault, wound, or

1 beating an officer. Your Honor, I would anticipate
2 eliciting testimony regarding the warrant that was filled
3 out for resisting arrest B, which alleges Mr. Thompson
4 attempted to strike him in the face. Nowhere in the
5 report is that mentioned. I don't anticipate from what
6 I've been told testimony about that. So right from the
7 beginning, the premise of the basis of the warrant signed
8 by the magistrate is on incorrect facts that didn't happen
9 in this case.

10 Your Honor, regarding the -- I anticipate there is a
11 substantial legal issue because the requirement under
12 resisting arrest is the person be under a lawful arrest.
13 So that would hinge both of the fact Mr. Thompson being
14 under arrest at the time, and also that the arrest and the
15 charges he was being arrested for being lawful. And
16 that's based on the sort of factual/legal inquiry under
17 the Brannon case. There's previous case law in South
18 Carolina establishing that a person has a right to resist
19 an unlawful arrest, so the question of legality of the
20 arrest will be important.

21 Your Honor, at that point I point to city ordinances.
22 My position would be that the resisting police ordinance
23 is an unconstitutional ordinance; that it is overbroad and
24 is in violation of United States Supreme Court law, case
25 law, specifically the City of Houston, Texas versus Hill.

1 That dealt with a similar ordinance with similar language
2 to the Rock Hill ordinance, and that the United States
3 Supreme Court ruled that ordinance was unconstitutional
4 and overbroad. I would therefore argue that any resisting
5 of any arrest would be and that Mr. Thompson would be
6 entitled to resist an unlawful arrest because an arrest
7 for an unconstitutional ordinance would not be a valid or
8 lawful arrest under 16-9-320.

9 Additionally on the requirement to identify oneself,
10 under the copy of the city ordinance that the solicitor's
11 provided to me requires that an individual identify
12 themselves if requested by the police officer. And
13 nowhere in the case file does it indicate at any point
14 that the officer requested Mr. Thompson identify himself
15 or produce a card. Again, there was no probable cause in
16 that charge because a key element of that ordinance has
17 not been met. So again, if those are the two bases of the
18 officer attempting to place Mr. Thompson under arrest, I'm
19 going to argue those would not -- would not be a valid
20 arrest, which is required under 16-9-320 and the Brannon
21 case law.

22 Your Honor, after all the testimony, we would request
23 in this case a finding of not guilty.

24 THE COURT: Very good. Mr. Epting, you're
25 recognized.

1 MR. EPTING: Thank you, Your Honor. State calls
2 Officer Englert to the stand.

3 THE COURT: Officer Englert, if you could come
4 forward and put your left hand on the Bible and raise your
5 right hand as the clerk administers the oath.

6 MICHAEL ENGLERT, after having first being duly sworn,
7 testified under oath as follows:

8 THE COURT: Have a seat in the witness chair over
9 here. I'm going to ask you to speak loudly and clearly
10 slow have so we can hear everything you got to say. I'm
11 going to ask you to start with your full name and rank.

12 THE WITNESS: Michael Englert, E-N-G-L-E-R-T, PO 1
13 for Rock Hill City Police Department.

14 THE COURT: What is PO 1?

15 MR. EPTING: PO 1 is the lowest-ranked officer there.
16 Brand-new, sir.

17 THE COURT: Very good.

18 DIRECT EXAMINATION

19 BY MR. EPTING

20 Q. And Officer Englert, could you briefly give the Court
21 some of your standard duties when you're out on patrol?

22 A. I'm a patrol officer, so we do a little bit of
23 traffic, we answer calls for service. Little bit of
24 everything on patrol.

25 Q. When you say a "little bit of traffic," could you

OFFICER MICHAEL ENGLERT - DIRECT EXAMINATION BY MR. EPTING

1 expand a little bit more on that?

2 A. We run radar when we're patrolling. We look for
3 traffic violations. Mechanical violations with vehicles.
4 Any type of suspicious activity.

5 Q. Okay. Were you working January 1st, 2011?

6 A. Yes, sir.

7 Q. What shift were you working that time?

8 A. I was on David shift, Lieutenant Dowser's (phonetic)
9 shift.

10 Q. Okay. And what -- if you could give the Court an
11 idea what hours that involves.

12 A. That was from 20 -- 8:45 at night until 6:45 in the
13 morning.

14 Q. At some point that night, did you encounter the
15 defendant, Taurus Thompson?

16 A. Yes, sir.

17 Q. Would you please tell the Court about that encounter.

18 A. Between 4:00, 5:00 in the morning New Year's Day,
19 sir, I was traveling east on Celanese Road going toward
20 77. Ford Explorer was coming toward me. It was pretty
21 foggy out. Did not have his headlights on, so I turned
22 around, initiated a traffic stop. He traveled maybe
23 another 150 meters, pulled into the Heather Heights
24 apartments complex. I pulled behind him. I was probably
25 20 meters behind him. Before I get my car in park, get my

OFFICER MICHAEL ENGLERT - DIRECT EXAMINATION BY MR. EPTING

1 seatbelt off, Mr. Thompson exited the vehicle and ran
2 behind Heather Heights apartments, a good 80 meters head
3 start.

4 I finally got out my car, chased him through Heather
5 Heights apartments to Stone Crossing apartments, through a
6 little briar patch, around two buildings. Around the
7 second building, he cut around, took a right. I was
8 yelling at him to get down on the ground at one time.
9 Told him he was under arrest. He jumped over a little bit
10 of thick vegetation. I was right behind him. I jumped
11 too. I heard him splash in the water. I splashed in the
12 water. I was on top of him. It was a little bit of a
13 struggle. We both stood up. His hands were up. Thought
14 it was a box cutter in his hand, and that's when I hit
15 him.

16 We both fell back in the water. He pulled my arm. I
17 was able to get the handcuffs on him. He wouldn't take
18 his head out the water, so I don't know if he was
19 unconscious or just tired, so I had to hold him up, and I
20 had to radio for officers to help us get out the water. I
21 think we were in the water for 15 minutes. It was under
22 30 degrees that night.

23 So officers came, we took him out the water, let him
24 rest for a second, and I made sure they took him back to
25 the police department to get out the wet clothes. I had

OFFICER MICHAEL ENGLERT - DIRECT EXAMINATION BY MR. EPTING

1 change of clothes in my patrol car. So I stayed there,
2 processed the car, had a wrecker come pick up the car. I
3 finally met him at the police station maybe an hour later.
4 He was in dry clothes and a prison uniform.

5 Q. And I'd like to go back and touch on a couple things
6 that we've already gone over. You said you yelled some
7 things while you were chasing him around the apartment
8 complex?

9 A. Yes, sir.

10 Q. Could you go in more detail about what specifically
11 you said?

12 A. First told him he better stop running. Told him to
13 stop fucking running. He turned the corner. I said, "You
14 can keep running, but you're going to jail tired. I'm
15 going to catch you." At one point I told him, "You better
16 get down on the ground."

17 Q. Okay. And at that point you told him he better get
18 down on the ground, was that outside the creek or inside
19 the creek?

20 A. Before the creek. It was on the sidewalk.

21 Q. Very good. Before the creek. You mentioned he got
22 up in a boxer stance.

23 A. He got up in a fighting stance.

24 Q. And y'all tussled before that?

25 A. Just a little bit, yes.

OFFICER MICHAEL ENGLERT - DIRECT EXAMINATION BY MR. EPTING

1 Q. Laid hands on him?

2 A. Yes.

3 Q. Could you show the judge what his stance was?

4 A. Just like his hands were approximately this high, and
5 he was facing me. We were not even two feet apart.

6 Q. Did he have anything in his hand?

7 A. It looked like he had a box cutter in his right hand.
8 There's a little illumine coming from the apartments.
9 That's what I thought he had in his right hand.

10 Q. And have you received any type of training as far as
11 combat technique or stances or anything along those lines?

12 A. I was a boxer for 26 years. I continue to coach
13 boxing here in Rock Hill. I was a -- am a certified
14 defensive tactics for the state of South Carolina for law
15 enforcement level, and I'm a Level 1 USSOC, which is
16 United States Special Operations Command. I teach basic
17 level of combatives for Green Berets.

18 Q. The stance you saw, in your opinion, would that be a
19 stance for fighting with a knife?

20 A. It would be an offensive stance, yes.

21 Q. Fighting with fists?

22 A. Yes, sir.

23 Q. Were you in fear when he put his hands up?

24 A. I was in fear of being cut, yes.

25 Q. Were you in fear of anything else?

OFFICER MICHAEL ENGLERT - DIRECT EXAMINATION BY MR. EPTING

1 A. Yeah. Officer safety, public safety. If a man is
2 running from me and he can take me down, and he has access
3 to all my equipment, which -- that's a no go.

4 Q. Was he within striking distance of you?

5 A. Yes, sir.

6 Q. Now, you said you placed him in cuffs before you --
7 you chased him in the creek and y'all tussled.

8 A. Yes.

9 Q. Trying to get him under control.

10 A. Yes.

11 Q. Can you articulate for the Court specifically what he
12 was under arrest for?

13 A. Failure to identify and resisting police at that
14 time.

15 Q. And are those --

16 A. Those are city statutes.

17 Q. Those are both city statutes?

18 A. Yes, sir.

19 MR. EPTING: Your Honor, beg Court's indulgence.

20 Your Honor, may I approach?

21 THE COURT: Yes.

22 MR. EPTING: I have the statutes that the officer is
23 referencing. I apologize for the form of these because
24 they -- I had to take a screen capture off the municipal
25 code so they are not in proper form, but I've circled

OFFICER MICHAEL ENGLERT - DIRECT EXAMINATION BY MR. EPTING

1 statutes he's referring to, or the ordinances, rather.

2 THE COURT: Yes, sir.

3 BY MR. EPTING

4 Q Did this incident occur in York County?

5 A. Yes, sir.

6 Q. In the City of Rock Hill?

7 A. Yes, sir, in the limits of the city of Rock Hill.

8 Q. And you mentioned "he" and occasionally by name,
9 Taurus Thompson. Is the person that you tussled with that
10 night and that put up his hands in an offensive stature,
11 as you said earlier, is he here in this courtroom?

12 A. Yes, sir.

13 Q. Could you please point him out?

14 A. Right there in the white shirt.

15 MR. EPTING: I would ask the record reflect that
16 Officer Englert pointed to Taurus Thompson, the defendant
17 seated at defense counsel table.

18 Your Honor, may I approach the witness?

19 THE COURT: You may.

20 MR. EPTING: Beg the Court's indulgence.

21 (State's Exhibits Number 1 and 2 were marked.)

22 BY MR. EPTING

23 Q. I'm handing you what's been marked as State's
24 Exhibit 1 and State's Exhibit 2. If you could please
25 review both of those and look up when you're confident

OFFICER MICHAEL ENGLERT - DIRECT EXAMINATION BY MR. EPTING

1 that you're ready.

2 A. It's an aerial review of Heather Heights and Stone
3 Crossings apartments.

4 Q. And when you say that, could you go exhibit by
5 exhibit, naming the exhibits?

6 A. Exhibit 1 is Heather Square -- Heather Heights
7 apartments on Celanese Road from east to west. This one
8 here is Stone Crossing apartment. That's the creek I
9 jumped in.

10 Q. When you say "this one here," is that State's 2?

11 A. Yes, sir.

12 Q. Do you recognize those areas, obviously?

13 A. Yes, sir.

14 Q. Are those fair and accurate depictions of those
15 areas?

16 A. Absolutely, yes, sir.

17 MR. EPTING: I ask that State's Exhibit 1 and 2 be
18 entered into evidence.

19 THE COURT: Very good. Any objection from the
20 defense?

21 MS. ANDERSON: No, Your Honor.

22 THE COURT: State's Exhibits 1 and 2 are in evidence
23 without objection from defense.

24 (State's Exhibit Numbers 1 and 2 were admitted.)

25 MR. EPTING: Thank you, Your Honor. At this point, I

OFFICER MICHAEL ENGLERT - DIRECT EXAMINATION BY MR. EPTING

1 would like for Officer Englert to go through the path he
2 took with Mr. Thompson as far as the chase, as well as go
3 to the creek. We could do this in one or two way
4 according to the Court's comfort level. Officer Englert I
5 suppose could come up to the bench, and gesture with his
6 hand, or I could put this on the overhead, in which case
7 the whole courtroom could see.

8 THE COURT: Let's do it there would probably be
9 better. Easier for -- clearer. Y'all are going to have
10 to see what he's telling me. Be easier to do it that way.

11 MR. EPTING: Very well, Your Honor. Your Honor,
12 first I'm going to -- with the permission of the Court,
13 I'm going to publish State's Exhibit 1. Your Honor, could
14 I ask permission for the witness to step down?

15 THE COURT: Officer, if you could walk over there
16 towards the diagram:

17 BY MR. EPTING

18 Q And Officer Englert, if you could now please
19 demonstrate the route that was taken on the night of
20 January 1st, 2011.

21 A. Here's 77. This is Kate's Skating Rink. This is
22 Celanese and Cherry Road over here. This is Heather
23 Heights and Stone Crossings Apartment.

24 MR. EPTING: Let me interrupt you. Can the Court
25 see?

OFFICER MICHAEL ENGLERT - DIRECT EXAMINATION BY MR. EPTING

1 THE COURT: I can.

2 BY MR. EPTING

3 Q. I apologize. Please continue.

4 A. All right. This is Heather Heights apartments. This
5 is where Mr. Thompson pulled into the far east corner
6 here. This is where the sidewalk is. I was right behind
7 him maybe 20 meters. This is where he exited his vehicle.
8 Ran through here around here. There's a little wooded
9 area with a bunch of briars in it. I lost sight of him
10 here. I'm not sure which way he went, left or right,
11 here. I came around this way. I got eyes on him again
12 here. He ran around to the second building. I was
13 gaining ground on him here. This is the whole time I was
14 yelling to stop. He turned here. Came -- turned right
15 here. Lost eyes on him just as he took the right-hand
16 turn. Got eyes on him again. Right here is where he
17 jumped over a little bit of vegetation. I jumped in after
18 him. I heard him splash. I splashed. I actually hit a
19 rock and had a hairline fracture on my shin, and this is
20 where we ended up here, rolling --

21 Q. I'm going to interrupt you for just a second.

22 MR. EPTING: With the Court's permission, I'd like to
23 publish State's Exhibit 2.

24 A. This is Stone Crossing apartments, sir. This where I
25 came around. Had eyes on him right about here. Lights

OFFICER MICHAEL ENGLERT - DIRECT EXAMINATION BY MR. EPTING

1 were turning on. I was yelling. People were waking up.
2 He came around this corner. I lost eyes on him. Here's
3 where I turned the corner here. This is where he jumped
4 over in the creek. We both jumped -- this is where the
5 struggle ensued here. Other officers came from this
6 direction. Didn't really know where I was, and my radio
7 was in the water, so I had to yell for them to come find
8 us. Took maybe 15, 20 minutes to locate us. I couldn't
9 get him out the creek myself.

10 MR. EPTING: I would ask the witness take -- resume
11 his seat.

12 BY MR. EPTING

13 Q Officer, I'd like to speak you a little bit about the
14 water in the creek bed. Do you recall what approximately
15 temperature it was that night?

16 A. Below 30 degrees.

17 Q. And how deep was the water inside the creek?

18 A. Approximately 3 foot deep.

19 Q. Was it stagnant, or was it moving?

20 A. It was moving. It had rained for the past few days.
21 It was moving pretty good.

22 Q. And did y'all ever recover the box cutter that you
23 saw?

24 A. We didn't really look it. The water was dark and
25 murky, and I had other police business I had to do.

OFFICER MICHAEL ENGLERT - DIRECT EXAMINATION BY MR. EPTING

1 MR. EPTING: Beg Court's indulgence.

2 BY MR. EPTING

3 Q. That's all the questions I have for you at this time.
4 Please answer any questions Ms. Anderson may have for you.

5 THE COURT: Cross-examination, Ms. Anderson?

6 MS. ANDERSON: May it please the Court.

7 CROSS-EXAMINATION

8 BY MS. ANDERSON

9 Q. All right, Officer. I think to clear up a few
10 things, your testimony is you were not -- your intention
11 was not to place Mr. Thompson under arrest for driving
12 without headlights, correct?

13 A. He would have been issue a citation for that, yes.

14 Q. And what you testified to was you intended to place
15 him under arrest for resisting police and failure to
16 identify, the city ordinances?

17 A. Yes.

18 Q. And the traffic stop itself was a very short -- or
19 the actually -- from the time you said you passed him and
20 you initiated blue lights and pulled into the parking lot
21 was a very short period of time, correct?

22 A. Yes.

23 Q. So we're talking about a matter of probably seconds?

24 A. No, maybe less than -- little bit less than a minute.
25 More than a few seconds.

OFFICER MICHAEL ENGLERT - CROSS-EXAMINATION BY
MS. ANDERSON

1 Q. Less than a minute. And the only -- in terms of
2 driving activity at that point was just you -- the driving
3 without headlights, correct? No other traffic violation,
4 correct?

5 A. No.

6 Q. And you were in a marked patrol car?

7 A. Yes.

8 Q. And your vehicle was equipped with in-car video?

9 A. Yes.

10 Q. And the in-car video was never turned in to evidence
11 in the case?

12 A. No.

13 Q. And subsequently to that I think someone else when
14 you were deployed inherited your vehicle and it got taped
15 over?

16 A. I deployed two days later. I don't know what
17 happened to the tape. The other person that had my car
18 went to a different -- we no longer use VHS. So I don't
19 know what happened to the tapes. We use -- everything's
20 digital now.

21 Q. But at the point in time you filed your incident
22 report, you did not place the tape into evidence?

23 A. No. I reviewed the tape, but I did not place it into
24 evidence, no.

25 Q. And you testified basically of telling Mr. Thompson

OFFICER MICHAEL ENGLERT - CROSS-EXAMINATION BY
MS. ANDERSON

1 to stop running, correct?

2 A. At first, yes.

3 Q. And when he got out of the car and you got out of
4 your car, you did not say you're under arrest?

5 A. I told him he was under arrest. Not at first.

6 During the chase, yes.

7 Q. When was that?

8 A. Probably got into Stone Crossings apartments.

9 Q. Okay. And you're aware that's not in your report
10 anywhere, correct?

11 A. Yes, ma'am.

12 Q. And, in fact, your incident report -- you did write
13 your incident report, correct?

14 A. Yes.

15 Q. Okay. And it looks like it was written a few hours
16 afterward. It's dated January 1st, 2011.

17 A. Yes.

18 Q. And your incident report also does not indicate any
19 mention of resisting police or failure to identify,
20 correct?

21 A. No, ma'am, I don't think so.

22 Q. And Mr. Thompson was never charged ultimately with
23 either resisting police or failure to identify, correct?

24 A. There was a lot of things I didn't charge him with.
25 What are you asking? Why I didn't charge him with that?

OFFICER MICHAEL ENGLERT - CROSS-EXAMINATION BY
MS. ANDERSON

1 Q I'm just asking --

2 THE COURT: Officer, the way this operates, she asks
3 the questions and you answer them. You can't ask her
4 questions. It's not a conversational argument.

5 THE WITNESS: Yes, sir.

6 THE COURT: Just listen to her questions, and if you
7 don't understand, you can ask her to clarify. But you
8 can't ask her questions back.

9 THE WITNESS: Yes, sir.

10 THE COURT: Ms. Anderson, you're recognized.

11 MS. ANDERSON: Thank you, Your Honor.

12 BY MS. ANDERSON

13 Q. You did not write a citation for resisting police?

14 A. No.

15 Q. And you did not write a citation for failure to
16 identify?

17 A. No.

18 Q. And the -- I have a copy of it if you need to review
19 it, but the caption on your incident report under incident
20 type -- do you recall what that says?

21 A. Not right now. No, ma'am.

22 MS. ANDERSON: Your Honor, if I may approach?

23 THE COURT: You may.

24 BY MS. ANDERSON

25 Q. Under the top of your incident report, there's

OFFICER MICHAEL ENGLERT - CROSS-EXAMINATION BY
MS. ANDERSON

1 basically a list where you can list the charges or some of
2 the charges. There's a few blanks at the top, correct,
3 under incident type?

4 A. Yes.

5 Q. And the top of that is resisting arrest, right?

6 A. Yes.

7 Q. And that indicates resisting arrest A, correct?

8 A. Yes.

9 Q. Okay. I should have asked you this if you need to
10 review that again. Your incident report does not mention
11 Mr. Thompson taking any sort of boxing stance, correct?

12 A. No.

13 Q. At no point during the pursuit prior to reaching the
14 creek did Mr. Thompson ever turn around and come toward
15 you, correct?

16 A. No.

17 Q. And did you maintain sight of him the entire time?

18 A. Not the whole time, no, ma'am.

19 Q. Did you take out the warrant? Did you actually draft
20 the warrant yourself?

21 A. I don't think so, ma'am. I think someone else typed
22 the warrant for me.

23 Q. Were you the officer who testified to the magistrate
24 about this?

25 A. I have to see the warrant. I don't remember if I was

OFFICER MICHAEL ENGLERT - CROSS-EXAMINATION BY
MS. ANDERSON

1 the one who signed or not.

2 Q Okay.

3 A It would say on the top which officer was there.

4 MS. ANDERSON: May I approach Your Honor?

5 BY MS. ANDERSON

6 Q. Let you review that.

7 A. I can't read who signed the warrant. There's no --
8 officer looks like it had to sign. He didn't print his
9 name.

10 Q. So you don't recall whether you were the officer who
11 testified to the magistrate to seek the warrant?

12 A. No, there was no magistrate at that time in the
13 morning, so no, I don't think I was.

14 Q. Okay. Go through with me the process of how the
15 warrant was taken out in the case.

16 A. Ma'am?

17 Q. Could you then just kind of explain to me the
18 process? You just said there was no judge there?

19 A. Yeah.

20 Q. So how was a warrant taken out?

21 A. The next morning when the judge comes in, we have a
22 file in our jail where another officer comes in and swears
23 to what we -- typed out a warrant, and the judge will sign
24 it.

25 Q. Okay. So another officer would have essentially --

OFFICER MICHAEL ENGLERT - CROSS-EXAMINATION BY
MS. ANDERSON

1 correct me if I got anything wrong -- someone would have
2 typed out this warrant that evening?

3 A. Yes.

4 Q. And then the judge was not there at the time you were
5 on shift at that time?

6 A. Correct.

7 Q. And so the next morning, another officer would pick
8 these up and take it to the judge?

9 A. Yes.

10 Q. So you never actually testified to the judge or
11 swore -- gave any testimony regarding this.

12 A. Not that morning.

13 Q. What testimony -- did you produce a written affidavit
14 to give to the officer who went before the judge?

15 A. Just my police report. The incident report.

16 Q. Okay. He would have had the incident report taken
17 with him to the judge.

18 A. Yes, ma'am.

19 Q. And that is what the affidavit provided by the
20 arresting officer is, would be your police report?

21 A. Yes, ma'am.

22 Q. And the warrant was taken out for resisting arrest
23 section B, correct?

24 A. Yes, ma'am.

25 Q. Once Mr. Thompson was handcuffed, he didn't attempt

OFFICER MICHAEL ENGLERT - CROSS-EXAMINATION BY
MS. ANDERSON

1 to run away, or you were able to take him into custody at
2 that time?

3 A. I had my hands on him, yes, ma'am.

4 Q. And with Mr. Thompson -- when you began pursuing
5 Mr. Thompson, you had not at that point requested him to
6 produce a driver's license, correct?

7 A. Say it again, ma'am? I'm sorry.

8 Q. At the point you began chasing Mr. Thompson, when you
9 told him to stop running, you had not requested any
10 driver's license?

11 A. No, I didn't ask for his ID, no, ma'am.

12 Q. Didn't ask him to identify himself at that point?

13 A. No, ma'am.

14 MS. ANDERSON: Beg Court's indulgence.

15 BY MS. ANDERSON

16 Q. Do you recall approximately how long the actual chase
17 was?

18 A. Few minutes.

19 Q. And I think the incident report, it indicates the
20 total time the officers, the people were on scene just
21 short of an hour; is that correct?

22 A. Yes, ma'am.

23 Q. Do you recall how many officers ultimately were on
24 scene?

25 A. There was three of us.

OFFICER MICHAEL ENGLERT - CROSS-EXAMINATION BY
MS. ANDERSON

1 Q. And you indicated I think on direct that there was no
2 attempt to look for whether or not a box cutter was there?

3 A. We did look, but not very long. Like I said, the
4 water was running very fast and it was very dark.

5 Q. You didn't -- I think you testified you didn't see
6 anything prior to getting into the creek, correct? At no
7 point during the pursuit did you see a box cutter on
8 Mr. Thompson?

9 A. No, I wasn't close enough, ma'am, to see.

10 Q. And when you -- you didn't see anything prior to
11 jumping into the creek, correct?

12 A. No, ma'am.

13 Q. Okay. Didn't see him make any movement reaching into
14 any pocket or anything like that?

15 A. No, ma'am.

16 Q. Do you recall what he was wearing that evening?

17 A. I guess it was a jacket. Not really. Jeans
18 something. Heavy clothes.

19 Q. Okay. And Mr. Thompson didn't swing at you, correct?

20 A. I don't remember. I don't think so.

21 Q. Your report doesn't indicate that, correct?

22 A. No, ma'am.

23 Q. So the actual contact was you did strike Mr. Thompson
24 in the creek?

25 A. Yes.

OFFICER MICHAEL ENGLERT - CROSS-EXAMINATION BY
MS. ANDERSON

1 Q. And you indicated he was down in the creek and you
2 didn't know if he was tired or he was actually unconscious
3 or something of that nature? In other words, he wasn't
4 moving at this point and wasn't struggling, anyway.

5 A. Wasn't struggling anymore, no, ma'am.

6 MS. ANDERSON: Your Honor, that's all the questions I
7 have.

8 THE COURT: Any redirect? Ms. Anderson, in the
9 confines of this situation, it's going to be incumbent on
10 you to object to anything he brings up in redirect that is
11 new material.

12 MS. ANDERSON: Yes, Your Honor.

13 THE COURT: Because there will be no recross.

14 MR. EPTING: Your Honor, I have no further questions
15 for him.

16 THE COURT: Okay. I do have a couple of questions
17 myself, and I'll give both of you an opportunity to follow
18 up with this.

19 EXAMINATION BY THE COURT

20 Q. Officer, when you took after the defendant,
21 Mr. Thompson, what was your intention? Was your intention
22 to talk with him, to investigate, or was your intention to
23 arrest him?

24 A. During the foot chase, sir?

25

OFFICER MICHAEL ENGLERT - EXAMINATION BY THE COURT

1 Q. When you were chasing him, what were you going to do
2 when you caught him?

3 A. Arrest him.

4 Q. All right. There's no question about that in your
5 mind that's what you were going to do?

6 A. Yes, sir.

7 Q. In the opening statement, Mr. Epting said that you
8 said, "You might as well slow down because you just going
9 to go to jail tired." Did you say that? You didn't say
10 it in your direct testimony. I'm asking you if that was
11 said.

12 A. Close to that, yes, sir.

13 Q. In your direct testimony, you said in a snippet of
14 your testimony, you said, "You're under arrest." Did you
15 say that at some point between the car and the creek?

16 A. Yes, sir. One time I said it, sir.

17 Q. Answer any questions that Mr. Epting -- you can
18 follow-up in that regard.

19 MR. EPTING: I have no questions, Your Honor.

20 THE COURT: Ms. Anderson?

21 MS. ANDERSON: Your Honor, I think we're covered.

22 RE-CROSS-EXAMINATION

23 BY MS. ANDERSON

24 Q. Officer, just to make sure we're all completely
25 clear, your intention was to arrest for resisting police

OFFICER MICHAEL ENGLERT - EXAMINATION BY THE COURT

1 and failure to identify, correct?

2 A. Yes, ma'am.

3 MS. ANDERSON: That's all I have, Your Honor.

4 THE COURT: Very good. You may step down. Thank
5 you.

6 THE WITNESS: Yes, sir.

7 MR. EPTING: Your Honor, the State rests.

8 THE COURT: Very good. Ms. Anderson, you're
9 recognized.

10 MS. ANDERSON: May it please the Court. Your Honor,
11 at this time I would make a motion for a directed verdict
12 based on testimony taken in the light most favorable to
13 the State. Your Honor, the testimony -- basically
14 Mr. Thompson is charged with a violation of 16-9-320(B).
15 As an initial matter, my position would be that this does
16 not rise -- even taken in the light most favorable to the
17 State -- to the statutory -- the elements requiring a
18 person to knowingly and willfully assault, beat, or wound
19 a law enforcement officer. The testimony has been that
20 Mr. Thompson did not even attempt to strike Officer
21 Englert, despite the language of the warrant, which it
22 appears was completely incorrect and inaccurate, though
23 Officer Englert testified essentially that he did not
24 draft the warrant. So the warrant I would say initially
25 for resisting B, resisting arrest B would be signed on

1 incorrect information of statement contained in the body
2 of the warrant. There's been no testimony that Mr.
3 Thompson ever struck the officer. He never made any
4 contact with the officer. He fled from the officer, but
5 never turned and advanced toward the officer.

6 Understanding that the directed verdict stage is
7 taken in the light most favorable to the State, the
8 officer did testify that Mr. Thompson took a boxing-type
9 stance, but again, there was no advancing toward the
10 officer, attempt to strike the officer. There's been
11 testimony by the officer that he thought he saw a box
12 cutter, though no box cutter was recovered, and it was
13 never seen by the officer at any point during the chase or
14 again at any point of Mr. Thompson making a movement
15 toward the officer. I would argue based on that, again
16 taken in the light most favorable to the State, that does
17 not rise to a level of resisting arrest B.

18 Your Honor, taking into consideration then, just as
19 to the resisting arrest charge itself, Your Honor, it
20 requires a lawful arrest. The officer's testified clearly
21 that the arrest was not based on any traffic violation.
22 His testimony throughout direct and cross has been clearly
23 that he did not intend, there was not any act of arresting
24 Mr. Thompson for driving without headlights. The traffic
25 stop itself was based on that. That was the only activity

1. the officer observed at this point. Nothing was said when
2 the officer gets out of his vehicle. He said to stop
3 running, but nothing is said about what he is pursuing
4 Mr. Thompson for.

5 Your Honor, the failure to identify statute of
6 section 237 of the Rock Hill municipal code indicates that
7 a person shall identify himself if requested by police
8 officer. One of my questions on cross-examination of the
9 officer was whether he asked him to identify himself, and
10 the officer indicated he did not ask Mr. Thompson to
11 identify himself. I would therefore argue any arrest
12 premised on a violation of that section would not be a
13 lawful arrest, as there would not be probable cause under
14 the plain element requirements of the statute.

15 My second argument, Your Honor, would be as to the
16 arrest based on resisting police. The section 23-4
17 resisting police states that, "No person in any physical
18 manner shall oppose, resist, or interfere with any police
19 officer in the discharge of police officer's official
20 duties." In support of this, Your Honor, I'd like to hand
21 up -- and I've handed to opposing counsel as well.
22 Talking City of Houston, Texas versus Hill, which is a
23 United States Supreme Court case. Your Honor, in that
24 case, a Texas, Houston city ordinance had a -- language
25 that said, "Assaulting or interfering with police. It

1 shall be unlawful for any person to assault, strike, or in
2 any manner oppose, molest, abuse, or interrupt any
3 policeman in the execution of his duty, or any person
4 summoned to aid in making an arrest."

5 In that decision, the United States Supreme Court
6 under a traditional over-breadth analysis went through
7 that and found that that statute was unconstitutionally
8 overbroad and struck down that that statute, finding the
9 words "oppose, molest, or interrupt" so broad and vague as
10 to be unconstitutional. I would point to the similarity
11 of the Rock Hill city ordinance of "oppose, resist or
12 interfere" is actually being even less specific than that
13 in the Houston ordinance, which was struck down by the
14 United States Supreme Court as being unconstitutional.

15 Your Honor, one of the requirements under resisting
16 arrest would be that there actually be a lawful arrest.
17 There's case law in South Carolina, referencing a case of
18 State versus McGowan, 347 SC 618, which is a 2001 Supreme
19 Court case which holds that the person has the right to
20 resist an unlawful arrest. Now, the Court does limit that
21 in term of reasonable force, and doing an analysis up to
22 the point of deadly force, but we don't have that sort of
23 at play here because we have a situation factually where
24 Mr. Thompson didn't attempt to injure the officer in any
25 way. And that cites previous case law of State versus

1 Poinsett 250 SC 293, State versus Bethune 112 SC 100, and
2 State versus Robinson, 191 SC 509. All of those cases
3 stand in for this sort of proposition that a person has a
4 right to resist an unlawful arrest.

5 I would argue all of that together would equate to
6 the fact that an arrest in this situation for resisting
7 police would not be a valid arrest because of resisting
8 police, that statute being an unconstitutional statute.

9 Your Honor, additionally I would move to the case --
10 I believe Your Honor was provided a copy of last night,
11 State versus Brannon, 388 SC 498. This would be the 2000
12 opinion -- '10 opinion in the Supreme Court of South
13 Carolina. Understanding that the Court in that case
14 indicated that when the officer does not manually touch
15 the suspect, an arrest requires intent on the part of the
16 officer to arrest, and intent on the part of the other
17 individuals to submit to the arrest under the belief that
18 submission was necessary.

19 I understand the officer's testimony in that he
20 intended to arrest. I would still argue that that has to
21 be reasonable under the circumstances. It could have been
22 totally subjective, otherwise in any circumstance --

23 THE COURT: I think it has to be subjective.

24 MS. ANDERSON: It is, your Honor.

25 THE COURT: This case mandates that I look at it from

1 a subjective standpoint and not a objective standpoint.

2 MS. ANDERSON: Yes, Your Honor. I understand. I
3 would still argue the officer intent has to reasonable
4 under the circumstances, because it wouldn't go so far as
5 to say any time an officer says, I believe I can arrest.
6 There has to be a reasonable basis for the officer belief
7 he could arrest under those circumstances.

8 Your Honor, it also requires the intention of the
9 suspect. I would point out in this situation, Your Honor,
10 what the officer testified he was arresting Mr. Thompson
11 for had nothing to do with the driving. Therefore, I
12 would say you have the situation where the charges he's
13 being arrested for would not be linked in any way of any
14 of his behavior that prompted the traffic stop. So in
15 that case of -- for Mr. Thompson to understand he is under
16 arrest for two offenses, which he is isn't told that's
17 what he's under arrest for and are not linked in any way
18 to a traffic stop that would speak as to the intent of
19 Mr. Thompson to understand he was required to submit to an
20 arrest for resisting police and for failure to identify.

21 THE COURT: Wouldn't you agree the case is somewhat
22 distinguished from the Brannon case in that in this case
23 it was clear. The facts in the Brannon case involved, as
24 I recall, a lady who was in an apartment saw someone
25 breaking into her car, and the person got into a Ford

1 Explorer and moved to some other section. The police
2 officers came up, and they did not have on a -- they cut
3 off their headlights and their siren, which would seem to
4 indicate he might not have known who they were, but they
5 were in plain clothes uniform. So the defendant
6 understood who they were, and as soon as he saw them, he
7 took off running.

8 And the testimony of the officers in Brannon were
9 unequivocal in that they were going to go -- they were
10 going up to talk to him to ask them about the breaking
11 into the cars. And their intention at this time was not
12 to arrest. So at that point when he took off running, he
13 was not under arrest. Clearly if -- the facts in Brannon
14 would have been different if they would gotten up, started
15 talking and made some preliminary investigation and then
16 put their hands on him. That changes the whole analysis.
17 But when there is no contact, you have to do two things.
18 You have to look at the subjective intent of the officer,
19 which is clear from the testimony here today that he
20 intended to arrest him, which distinguishes somewhat from
21 Brannon in that regard. And I'm going to ask you, because
22 I don't know. It seems to indicate that in Brannon that
23 the defendant has to understand and submit to an arrest
24 and the power of the police officer in a subjective way,
25 which is kind of counterintuitive, because -- I mean, for

1 some reason, it confuses me. I want you to explain that
2 to me.

3 MS. ANDERSON: Your Honor, it's a bit confusing.
4 What I -- to me, the way this reads is the way the Supreme
5 Court does in this language right before the conclusion
6 that states there was no evidence presented demonstrating
7 Brannon submitted to the officers. Which --

8 THE COURT: Isn't that counterintuitive? Because
9 resisting arrest just by the very nature of it is
10 resisting. But according to the language of this opinion,
11 almost seems to be that in order for there to be resisting
12 arrest, they have to first submit to the authority of the
13 police officer. What would you say about this analysis in
14 that -- in view of the fact that he -- there was obviously
15 a traffic violation, obviously tried to evade being
16 stopped, pulled into the apartment. And this case is
17 distinguished from Brannon in he had his lights on. And
18 that clearly he knew based on the lights and based on the
19 fact that he was evading them before he came up there,
20 that he actually understood he was going to be put under
21 arrest, and therefore his intent was to resist arrest;
22 that he had submitted to authority in view of the fact
23 that he saw the lights, he knew he wasn't doing something
24 right, he tried to evade them and therefore understood he
25 was under the dominion and power of the police officer.

1 MS. ANDERSON: Your Honor, I think the distinction
2 there is that I don't think a traffic stop in and of
3 itself is an arrest. So I think at that point, you have
4 traffic stop, which isn't analogous to an arrest scenario.
5 Maybe a detention, but it's not to the point every time a
6 traffic stop is initiated, the person is under arrest. So
7 I would distinguish in that --

8 THE COURT: You're saying every time a police officer
9 in -- and this causes me some concern and I want you to
10 explain it to me. Essentially if someone stops me, and I
11 get stopped from time to time. I sometimes drive too
12 fast. If I can get out and I can outrun the police
13 officer and they finally catch up with me, I'm not
14 resisting arrest?

15 MS. ANDERSON: I think it would depend on what point
16 the traffic stop had progressed to at that point, Your
17 Honor. I think it -- the traffic stop in and of itself
18 not being an arrest, it's just the activation of blue
19 lights of sort of investigatory stop or detention center.
20 I think it would be a factual basis of what point the
21 traffic stop progressed to. Was it an investigation? Was
22 it actually more of a custodial? Was a ticket being
23 issued? Was there a license determined to be suspended or
24 a violation had already been determined that point? I
25 think that's where the difference would be, had the

1 traffic stop progressed to the point that there was an
2 articulated crime has been committed at this point. I
3 think that would be where I would distinguish.

4 I think the traffic stop itself I think particularly
5 in the situation where the intention to arrest was not for
6 anything based upon the traffic stop. We essentially have
7 a situation that -- where Mr. Thompson, the State's
8 position being he resisted -- that the resisting his
9 arrest is for the activity that also constitutes the
10 resisting arrest. So he is resisting arrest for resisting
11 police and failure to identify, which their argument for
12 the basis of those charges is the resisting arrest. So
13 it's essentially wrapped up together. It's not
14 distinguished from the situation of resisting arrest for a
15 distinctive offense. It's all the same behavior, so the
16 resisting arrest they're arguing triggers at the same time
17 the resisting police is triggered.

18 THE COURT: What do you think about the fact the
19 police officer, his intention was to arrest him, and he
20 made it very clear. He said, "You might as well stop
21 because I'm going to catch you, and if you don't stop only
22 thing that's going to change is you're going be arrested
23 and you'll be tired," because he's going to get him. And
24 he said that, "You stop; you're under arrest." He said
25 that on the witness stand.

1 MS. ANDERSON: Yes, Your Honor, and I understand
2 that. Information that wasn't in the file, but I do
3 understand that's his testimony today, and I know that
4 part of the Brannon analysis is that subject -- and in
5 Brannon it was distinguished in that the officers clearly
6 testified on the stand they had no intention to arrest.

7 THE COURT: All right. So where does that put us
8 with regard to the defendant's subjective submission to
9 power of the police officer?

10 MS. ANDERSON: Your Honor, my position would be even
11 the Supreme Court opinion of Brannon has not overruled
12 that requirement that there has to be an initial
13 submission to it. They reject the sort of seizure legal
14 analysis for submitting. Instead, the common law arrest
15 of when an arrest triggers, but based on the statement at
16 the end saying likewise, there was no evidence submitted
17 demonstrating Brannon submitted to the officers. To the
18 contrary, as soon as Brannon saw the officers, he ran.
19 Therefore, we find the arrest was not being made at the
20 time he fled the police.

21 THE COURT: But it also says an arrest is an evolving
22 process, and do you think it changes when he says, "You
23 better stop because if you don't, you're just going be
24 tired because I'm going to get you," and, "You're under
25 arrest." That's an evolving process. And at that time,

1 could you argue that he was under the dominion and power
2 of the police officer?

3 MS. ANDERSON: Your Honor, I think it would still
4 require -- which is sort of the second part of what I'm
5 addressing -- I think it would still require that be a
6 legal arrest. I think even with that, there would have to
7 be a legal basis for the arrest, which again would go back
8 to my argument it's not a legal basis or not a legal
9 arrest to be arrested for a violation of either of these
10 ordinances under this situation.

11 THE COURT: What's the police officer supposed to do
12 if you stop them for a traffic stop and they run? What
13 are they to do?

14 MS. ANDERSON: Your Honor, I think -- and I think I
15 read through various -- I think that's an unclear area of
16 the law. I think it's --

17 THE COURT: Let me ask you what you think about that.

18 MS. ANDERSON: I think the legislature if they
19 wished --

20 THE COURT: If you were a police officer and you
21 stopped someone for a traffic offense, which is fairly
22 dangerous, riding that road without your lights on. I
23 don't know this area of town. I would imagine there are
24 probably street lights and you probably could see pretty
25 good. The problem is people looking for headlights and

1 not cars, and they probably couldn't see him, which is a
2 very dangerous thing. If you were a police officer and
3 you put the lights on and they get out and get they get
4 rabbit in the blood and start running, what are you going
5 to do?

6 MS. ANDERSON: I don't think I'd chase them. I think
7 I'd just look up the information on the car. I think the
8 legislature has it within their power to make that a
9 specific violation, and I think it's -- the law is written
10 as it is and I don't think it's clear --

11 THE COURT: Well, the city council did. City council
12 said it's unlawful for any person to flee or attempt to
13 flee detainment, exactly what it says section C under
14 investigatory stops. It's a crime to flee or attempt to
15 flee detainment. City council did. What do you think
16 about that?

17 MS. ANDERSON: Well, I think I argue on the city
18 council again would be that these are overbroad statutes.

19 THE COURT: Well, I think the overbroad statute deals
20 with the other one that you were talking about, United
21 States Supreme Court case, which probably has some merit
22 to that argument. Resisting police very well might be
23 overbroad, but this one doesn't have anything to do with
24 that. It's talking about investigatory stop, and I think
25 there's probably some legitimate concern about that. And

1 it alleviates a problem that we have here. If you're
2 going down the road and there's a traffic violation, in
3 civilized society we can't tolerate people just getting
4 out and running. What do you have to say about that?

5 MS. ANDERSON: Your Honor, I would point with that
6 statute, again, we have the initial request. So we do
7 have the request for information and then a person not
8 complying.

9 THE COURT: No, no, no, because investigatory
10 stops -- B talks about if they ask for identification, you
11 got to give it to them, but C seems to be not an inclusive
12 but an either/or and say it's unlawful for a person to
13 flee or attempt to flee detaining, what it sounds like to
14 me. What does it sound like to you?

15 MS. ANDERSON: I would agree with Your Honor that
16 does seem to be what the language is saying. I think it
17 makes it a little unclear because at that point it would
18 be talking a situation that the situation would be merely
19 be a detainment versus an ongoing arrest at that point.

20 THE COURT: Seems like city council probably was -- a
21 lot of wisdom behind this statute because it alleviates
22 this whole dilemma, which I think does indeed make it
23 unlawful to do what he did.

24 MS. ANDERSON: And, Your Honor, I think that would be
25 if this were the charge, you know, but we're not --

1 THE COURT: I'm not really sure that you're
2 necessarily required to be guilty of what the initial
3 charge was nor that you be charged with it. I don't think
4 that's the law at all. If it is, you need to explain it
5 to me.

6 MS. ANDERSON: No, Your Honor, I think my point would
7 be that --

8 THE COURT: As a matter of fact, it's clear it's
9 always been the law, and I was painfully made aware of
10 this back in 1984 that if you're found not guilty of the
11 underlying charge of public disorderly conduct, it still
12 doesn't give you -- doesn't excuse the resisting arrest.

13 MS. ANDERSON: I think it would play into the
14 subjective intent of the individual, of the suspect.

15 THE COURT: I want you to explain that to me, because
16 it very well could be this matter goes all the way back up
17 to the Supreme Court. And doesn't that seem
18 counterintuitive that in order to avoid resisting arrest
19 if you run hard enough and fast enough, it's a valid
20 defense? Doesn't that make -- doesn't that -- isn't at a
21 counterintuitive to you, if you run from it, then it's
22 therefore a defense?

23 MS. ANDERSON: I think I would interpret more of it
24 may be an odd situation, but it may be the situation as
25 the law is framed by the legislature, that that's correct.

1 But that doesn't maybe --

2 THE COURT: I don't think it's the legislature that
3 has anything to say about that. I think it's this Brannon
4 decision that says if you run, you have not submitted to
5 authority, so therefore you can't be guilty of resisting
6 arrest. Seems odd to me.

7 MS. ANDERSON: And I agree, Your Honor, it does seem
8 an odd position, but I do think that is what Brannon --
9 the courts are essentially saying at this point in time we
10 have no statutory change or no case law change that says
11 anything different.

12 THE COURT: Well, we do have a factual distinction in
13 the case in that this police officer said you are indeed
14 under arrest, and it was unequivocal based on his
15 testimony he meant arrest. He didn't mean to talk with
16 him or chat with him. He was going to lock him up that
17 night. That was clear. So that prong of Brannon has been
18 met, and which leaves us with this quandary about what is
19 the intention of the defendant. Is there anything else
20 you want to add?

21 MS. ANDERSON: Just a moment to look through this
22 real quick, Your Honor.

23 THE COURT: Would that -- let me ask that, too,
24 Ms. Anderson, because that -- once the police officer puts
25 their hands on them, it changes the whole analysis. If

1 they run after they've made contact, it's a whole
2 different analysis. But this, the law the way it stands
3 now, if we take the interpretation that you're presenting
4 to the court, then the idea is an encouragement and
5 promulgation of running. If you can keep the police
6 officer from keeping their hands them, then therefore they
7 can't be charged.

8 MS. ANDERSON: I think it would -- for the record,
9 it's cited in the Brannon case, but just also add since
10 the Court references or cites to State versus Williams
11 237 SC 232, a 1960 case, this is discussed in the Brannon
12 case as well as saying -- I believe what Your Honor has
13 been touching on, "Where the police officer does not
14 manually touch -- manually touch the suspect, an arrest
15 requires intent on the part of the officer to arrest the
16 suspect" -- .

17 THE COURT: We got that.

18 MS. ANDERSON: -- "intent on the part of the suspect
19 to submit to the arrest under the belief the submission
20 was necessary." Now going farther down --

21 THE COURT: Read that again.

22 MS. ANDERSON: "Where the police officer does not
23 manually touch the suspect, an arrest requires intent on
24 the part of the officer to arrest the suspect, intent on
25 the part of the suspect to submit to the arrest, under the

1 belief that submission was necessary." The Court goes
2 down --

3 THE COURT: All right. Now, what do you think about
4 whether or not this defendant believed that submission was
5 necessary when you've got a police officer who is chasing
6 after you, you've got lights that have already been turned
7 on, and he's already running and he's chasing and
8 hollering saying, "You're under arrest," saying, "You
9 better stop because I'm going to get you," in so many
10 words. I think he said some colorful French language with
11 it.

12 MS. ANDERSON: Your Honor, I think then it's critical
13 that the arrest was not for anything connected with the
14 traffic, with the driving. I think there --

15 THE COURT: Does it really make any difference he was
16 not charged with the no headlights? Does that make a
17 difference?

18 MS. ANDERSON: For me, I argue not as much of the
19 issue of whether -- he was ultimately issued a ticket for
20 that. He was not issued a ticket for the other. I
21 understand the law is he doesn't ultimately have to be
22 charged with resisting police.

23 THE COURT: He was charged with no lights.

24 MS. ANDERSON: He was, Your Honor. He was not
25 charged with the other.

1 THE COURT: Okay. That was not made clear to me.
2 But he was charged.

3 MS. ANDERSON: He was charged with a ticket. He was
4 issued a ticket substantially for no headlights.

5 THE COURT: What you're saying is he was not charged
6 with this particular violation.

7 MS. ANDERSON: Yes. And, Your Honor, and where I
8 think that is is I think it would have to require some
9 sort of knowledge or some order of understanding of this
10 is what I'm being arrested for.

11 THE COURT: Let me ask you this. This presents a
12 very interesting question, because it might have been in
13 the police officer's best interest to do that because one
14 can argue that they charged him with this, and if he went
15 down, ran down real quick and pled to this in lower court,
16 it would be double jeopardy and you couldn't charge him
17 with resisting arrest.

18 MS. ANDERSON: And, Your Honor, I think that's
19 where --

20 THE COURT: Or even forfeited bond.

21 MS. ANDERSON: And that's the situation again where I
22 think both the factual or the evidentiary -- the State's
23 basis for the violation of the statute is the same
24 behavior as what they're saying the resisting is. But I
25 do think it's important as to whether or not an individual

1 understood he had to submit if he doesn't even know -- I
2 think it's -- we don't have any discussion at the time of
3 the traffic stop, Give me your license, what's your name,
4 and then they don't identify. When we have no sort of
5 communication or no sort of explanation from the officer
6 that this is what you're being charged with, I think that
7 is relevant as to whether or not an individual knows he
8 has to submit to an arrest for resisting police and
9 failure to identify.

10 THE COURT: Wouldn't that be analogous to someone --
11 there are a number of cases that deal with this issue,
12 reckless homicide where they -- the police inadvertently
13 charges them with left-of-center, gives them a citation
14 for that and reckless homicide. They run down and plead
15 to the left-of-center and that's double jeopardy, and they
16 can't prosecute for the other one. A lot of times,
17 they'll find 10 pounds of pot, they'll find one joint over
18 here and they charge them with simple possession and
19 trafficking, and I think that there's an argument to be
20 made if he pleads to simple possession, then there's
21 double jeopardy with regard to the trafficking.

22 And there's plenty of case law that that would seem
23 to indicate that, so would you not agree that it might be
24 in the police officer's best interest and the interest of
25 justice not to charge them with the violation of section

1 23-7 because it would preclude the prosecution of the more
2 serious, substantive offense?

3 MS. ANDERSON: I'm not exactly sure, Your Honor. I'm
4 thinking through that. Not exactly sure. I do think it
5 should factor whether in this case Mr. Thompson knew he
6 was being arrested for resisting police for failure to
7 identify. Or the fact that even subsequently, there's no
8 mention of either those charges being a basis in the
9 incident report or the case file summary that the officer
10 clearly testify that's his intent. I think the record is
11 completely clear that's his intent, but I do think that's
12 a factor that comes into consideration given the language
13 of Brannon.

14 And I'm going farther down in sort of the paragraph I
15 referenced before in the Brannon decision. Now it's
16 referencing because the State has failed to put forth any
17 evidence demonstrating the officer either attempted to
18 arrest Brannon -- we understand that's a different
19 situation than we have here -- or that Brannon submitted
20 to the arrest, we find arrest was not being made when
21 Brannon ran from the police.

22 I would point that language being more language in
23 the Supreme Court opinion requiring that an initial
24 submission to the arrest to sustain a resisting arrest
25 charge. It's more supportive of the fact that that is

1 still a requirement under the case law in order for an
2 individual to be convicted of resisting arrest.

3 THE COURT: I think it is probably interesting to
4 note that in Brannon, this was not a unanimous decision.
5 Chief Justice actually drafted the dissenting opinion.
6 And James E. Moore, Justice Moore also dissented.

7 MS. ANDERSON: I believe -- I'm scanning, but I
8 believe the Chief Justice was arguing for an objective
9 versus subjective standard.

10 THE COURT: Okay.

11 MS. ANDERSON: Which would be a different situation
12 versus what the officer's intent were -- was.

13 THE COURT: Mr. Epting, you're recognized.

14 MR. EPTING: Your Honor, I would point out that here
15 we do have the chase that occurred before we got the creek
16 bed. But once we got into the creek bed, we had laid-on
17 hands. I believe the police officer testified that they
18 tussled, and that he grabbed hold of the defendant at that
19 time, which, in my opinion, would -- the arrest process,
20 if it didn't beginning earlier, would begin at that time.
21 Taking Ms. Anderson's motions one at a time, I would
22 submit that in the light most favorable to the State that
23 putting up the dukes, knife or not, within striking
24 distance constitutes assault, particularly in the light
25 most favorable to the State. The officer testified he was

1 scared the defendant was going to strike him, either with
2 a knife or with his fists.

3 Your Honor's already covered my -- what my response
4 would have been to the statute, that the statute does
5 cover fleeing, detainment. The traffic stop would be
6 detainment of some sort, not to the level of arrest, but
7 nonetheless, I think we have to concede fourth --
8 detainment for Fourth Amendment purposes, he did flee
9 that, and in my opinion would be in violation of this
10 ordinance.

11 I do have a case if the Court wishes to have it
12 handed up, State v. Tyndall, where a person was ostensibly
13 initially arrested for trespassing. That trespassing
14 escalated into a much more serious assault where he struck
15 officers with hammers in the head. They charged him with
16 assault and battery with intent to kill, as well as
17 resisting arrest. And the Court did address the fact that
18 the original trespassing charge was never charged.

19 The Court seemed to think that was not part of the
20 prosecution of the resisting arrest charge, and that's
21 State v. Tyndall, 336 SC 8. I believe I've already given
22 Ms. Anderson a copy.

23 THE COURT: What do you think about the fact that --
24 of course part of her motion is that the section B
25 dismiss -- be dismissed which is actually the more severe,

1 the assault on a police officer and -- or actually
2 attacking or wounding, you know, the more serious injury
3 rather than just pulling away from him or attacking him.
4 What do you have to say about the fact the police officer
5 himself evaluated this as a simple arrest and put on his
6 report to that effect?

7 MR. EPTING: I can't speak for the police officer,
8 not being him and knowing what was put on there. I could
9 evaluate and look at it and that -- this is an unusual
10 arrest situation because no blows were struck. The knife
11 never was located. He himself may have thought at this
12 time he couldn't prove it to this level, given no blows
13 were exchanged and the knife wasn't recovered.
14 Nonetheless, I do think that -- the statute says "assault,
15 beat, or wound" and I think that even the conduct even
16 taking the knife out of the equations would constitute
17 assault.

18 THE COURT: All right. We're going to take about a
19 five minute recess.

20 MR. EPTING: Thank you, Your Honor.

21 (A recess was taken from 3:44 p.m. to 3:49 p.m.)

22 THE COURT: I'm going to deny the directed verdict
23 and taken in the light most favorable to the State, I find
24 there is evidence that he resisted arrest pursuant to
25 subsection B. I think the Brannon case is distinguished

1 from this case, factually distinguished in that it's clear
2 in Brannon the intent of the police officers were mainly
3 to do an investigation. In this case, the officer
4 testified he unequivocally was going to arrest him, and he
5 specifically made the statement. He testified to that
6 fact that he told him that he was under arrest, might as
7 well go and stop, and he was going to get him. And I
8 think in all of the facts -- the facts were distinguished.

9 As far as the subjective analysis of the intent of
10 the defendant, I think it's relevant to note in this case
11 there was a traffic stop, the lights were employed, and
12 under the facts of this particular case, 23-7 makes it
13 unlawful to flee or attempt to flee detainment, and I
14 think that all of the facts and circumstances would --
15 after applying the subjective test would seem to indicate
16 the defendant did indeed subject to the authority of the
17 police officer.

18 And Ms. Anderson at this time, it's not necessary
19 that you present a defense, however if you do, you're
20 recognized. At the appropriate time, it would probably be
21 time for me to talk to your client as to whether he would
22 like to take the stand. Would this be an appropriate time
23 to do that, or do you have other witnesses?

24 MS. ANDERSON: Your Honor, if I could have a few
25 moments to talk to Mr. Thompson in light of Your Honor's

1 ruling.

2 THE COURT: Very good.

3 (A recess was taken from 3:51 p.m. to 4:03 p.m.)

4 MS. ANDERSON: Your Honor, I think at this time if
5 you talk to Mr. Thompson that you need to ask him a few
6 questions about whether he wishes to --

7 THE COURT: Very good. Do you have any other
8 witnesses?

9 MS. ANDERSON: No, Your Honor.

10 THE COURT: Okay. Mr. Thompson, I'm going ask if you
11 can stand as the clerk administers the oath once again.

12 TAURUS LAMARE THOMPSON, after having first being duly
13 sworn, testified under oath as follows:

14 THE COURT: Mr. Thompson, at this time I'm going to
15 explain to you certain of your constitutional rights. If
16 you do not understand anything I say, please let me know.
17 You want me to explain anything in more details, please
18 let me know and I'll be happy to do so. Do you
19 understand?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: We've now reached the stage of the trial
22 where you present your defense. You have the right to
23 claim the protections given to you by the Fifth Amendment
24 of the Constitution of the United States, which provides
25 in relative part: No person shall be compelled in any

1 criminal case to be a witness against himself. This means
2 you cannot be required to testify in this case. You have
3 the right to testify on your own behalf, however. You
4 cannot be made to testify. This is a personal right. No
5 one can waive this right except you. If you decide to
6 testify, you will be subject to the same rules that govern
7 the other witnesses. You may be examined and
8 cross-examined on any relevance issue in this case. In
9 addition, if you have any convictions involving dishonesty
10 or false statement or crimes punishable by imprisonment
11 for more than one year, this Court -- and if I make the
12 determination that the probative value outweighs the
13 prejudicial value, I'll take it into consideration
14 personally. And the solicitor can use that in argument to
15 question your credibility. Do you understand that?

16 THE WITNESS: Yes, sir.

17 THE COURT: If you decide to testify, this decision
18 on your part must be freely, voluntarily, and
19 intelligently made with the knowledge of the protection
20 given to you by the Fifth Amendment and the consequences
21 of your decision to testify. If you decide not to testify
22 I will instruct the jury -- obviously that doesn't apply
23 because we don't have a jury here, but I will not take
24 into consideration in any way, shape, or form the fact you
25 elected not to testify. I will not hold that against you

1 in any way, shape, or form. Do you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: You have an absolute right to testify if
4 you want to. If you don't want to testify, you don't have
5 to. It's incumbent upon the State to prove each and every
6 element of this offense. Do you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And if you don't testify, I won't hold
9 that against you. Do you understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: If you elect to do so, you're welcome to
12 do that. This is your day in court. You're free to
13 testify if you want to. You understand that, don't you?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: The decision is left entirely up to you
16 about whether or not to testify. You may talk with your
17 attorney, friends, family or anyone else. The final
18 decision will be left entirely up to you. Do you
19 understand what I've explained to you?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you have any questions about what I've
22 explained to you?

23 THE DEFENDANT: No, sir.

24 THE COURT: Have you discussed this matter with your
25 lawyer?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right. Do you need any additional
3 time to talk with your lawyer about it?

4 THE DEFENDANT: No, sir.

5 THE COURT: All right. Do you wish to testify or
6 not?

7 THE DEFENDANT: I'd like to testify.

8 THE COURT: You'd like to testify? Very good. Very
9 good. You may have a seat.

10 Ms. Anderson, you're recognized.

11 MS. ANDERSON: Your Honor, defense calls Taurus
12 Thompson.

13 THE COURT: Mr. Thompson, you're under oath. I'm
14 going to ask you to have a seat in the witness chair.
15 Speak loud and clearly and slowly in order we can hear
16 everything you've got to say.

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Going to ask you to start with your full
19 name.

20 THE DEFENDANT: Taurus Thompson.

21 THE COURT: Very good, Mr. Thompson. Ms. Anderson,
22 you're recognized.

23 MS. ANDERSON: Thank you, Your Honor.

24 DIRECT EXAMINATION

25 BY MS. ANDERSON

TAURUS THOMPSON - DIRECT EXAMINATION BY MS. ANDERSON

- 1 Q. Taurus, how old are you?
- 2 A. 34.
- 3 Q. And where do you live?
- 4 A. Rock Hill.
- 5 Q. And you know we're here about January 1st, 2011,
- 6 correct?
- 7 A. Yes, ma'am.
- 8 Q. Okay. And talk to me what you were doing then
- 9 somewhere around 4:00 that morning.
- 10 A. I had stopped at the store. Got two Blacks, and got
- 11 back in the car. Pulled back out, and made a right like I
- 12 was going towards the skating rink, and seen the officer
- 13 there. He pulled out, and I turned over in the apartment
- 14 complex. I hopped out. I ran. Fell in the ditch -- or
- 15 the creek and passed out right there. That was it.
- 16 Q. Have you speak up a little bit. I'm having a little
- 17 bit of trouble hearing you. We'll break that down a
- 18 little bit. When you talk about the store, what store?
- 19 A. It was Petro at one time.
- 20 Q. Where was that at?
- 21 A. On Celanese.
- 22 Q. What were you driving?
- 23 A. A Ford Expedition.
- 24 Q. Was that --
- 25 A. Explorer. Ford Explorer.

TAURUS THOMPSON - DIRECT EXAMINATION BY MS. ANDERSON

1 Q. Was that your car?

2 A. No, ma'am.

3 Q. Okay. Whose car was it?

4 A. It was my sister's car.

5 Q. And did you have your headlights on?

6 A. Yes.

7 Q. Did you have the brights on?

8 A. I had the dim lights on.

9 Q. And you said you saw the officer pull you over?

10 A. I seen him when he crunk (phonetic) his car up and
11 turn his lights on.

12 Q. Okay. Where did you turn into?

13 A. I turned into the apartment of the same side of the
14 skating rink was on Celanese.

15 Q. You admitted you ran, right?

16 A. Yes, ma'am.

17 Q. Did you hear the officer say anything to you when you
18 started running?

19 A. No, ma'am. I hopped out the car, I ran, he hopped
20 out with me. I had fell on the ground. I hopped back up,
21 went -- went around the corner of the houses -- the
22 apartments, and it was a creek over there right after you
23 pass the end of the apartment. I fell over in there.

24 Q. Okay. And did the officer follow you in the creek?

25 A. Yes, ma'am.

TAURUS THOMPSON - DIRECT EXAMINATION BY MS. ANDERSON

1 Q. And what happened in the creek?

2 A. He put the handcuffs on me. He put his knee in my
3 back, put the handcuffs on me and everything. He asked me
4 what I had in my hand. I told him it was two Black and
5 Milds when I was able to talk to him. You know what I'm
6 saying, you know, but he had already got the Black and
7 Milds out my hand.

8 Q. All right. Did you have a box cutter with you that
9 night?

10 A. No, ma'am.

11 Q. Did you try to attack the officer?

12 A. No, ma'am, not at all.

13 Q. Did you try to run once they put the handcuffs on
14 you?

15 A. No, ma'am. I couldn't. I was in the creek. I was
16 in the water. There wasn't nothing I could do. He asked
17 me to stand up, could I get up for he can get me out the
18 creek. I couldn't, you know what I'm saying, because I
19 was tired.

20 Q. Did he say anything to you when you were in the creek
21 about you were under arrest or what you were under arrest
22 for?

23 A. He never did say nothing like that. He was trying to
24 get in contact with other officers to help me -- help him
25 get me out the creek.

TAURUS THOMPSON - DIRECT EXAMINATION BY MS. ANDERSON

1 Q. What were you arrested for or what were you arrested
2 that you know of? What did you find out that night?

3 A. I didn't know until the next evening, about 1:00 or
4 12:00 whenever I seen the judge and I actually looked at
5 the paperwork.

6 Q. Okay. And what did you see on your paperwork?

7 A. I really didn't understand it at the time because I
8 ain't know what I was charged with, know what I'm saying?
9 You know.

10 Q. Did the officer ever say anything to you about
11 resisting -- do you remember that?

12 A. No, ma'am.

13 Q. Did the officer ever talk to you about a failure to
14 identify charge?

15 A. No, ma'am.

16 Q. Did you get charged with those?

17 A. No, ma'am. I ain't even know what officer had
18 arrested me after I had got, you know, I got out the water
19 and they got uptown and everything. I don't know who the
20 officer was or nothing.

21 Q. And you did know you got arrested for resisting
22 arrest, though, right?

23 A. Yeah, after I look at the paperwork.

24 Q. And you had a couple other tickets for they arrested
25 you for that night, right?

TAURUS THOMPSON - DIRECT EXAMINATION BY MS. ANDERSON

1 A. Yeah. Yeah.

2 MS. ANDERSON: Beg the Court's indulgence.

3 BY MS. ANDERSON

4 Q. Were you trying to hurt the officer in any way that
5 night?

6 A. No, ma'am, no kind of way.

7 Q. Do you remember hearing him say anything about you're
8 under arrest? Do you remember that?

9 A. Not to my knowledge. No, I ain't have no idea.

10 Q. All right. I'm going to have you answer any
11 questions the solicitor has.

12 MR. EPTING: I'll be very brief.

13 CROSS-EXAMINATION

14 BY MR. EPTING

15 Q. Did you know the officer that was chasing you that
16 night?

17 A. No, sir.

18 Q. Had you ever encountered him before?

19 A. No, sir. I never did know who picked me -- I mean
20 got me out the water or none of that.

21 Q. Why did you run?

22 A. Because I ain't -- I had no license. My license was
23 suspended.

24 Q. Okay. Your license was suspended?

25 A. Yeah.

TAURUS LAMARE THOMPSON - CROSS-EXAMINATION BY MR. EPTING

1 Q. You said you knew the -- you knew the person was a
2 police officer?

3 A. No, I didn't know he was a police officer until he
4 cut his lights on and turned around.

5 Q. So in your car when he turned on the blue lights,
6 then you knew a police officer was behind you, correct?

7 A. He didn't turn the blue lights right then.

8 Q. You saw his cruiser?

9 A. Yeah, I seen his cruiser. When I seen his cruiser,
10 he had crunked up, turned his lights on. He ain't turned
11 no lights on like getting stopped or nothing. He just
12 turned his lights on, like starting his car up. And I
13 turned in the complex, and I hopped out. And when I
14 hopped out, that's when he put the lights on and
15 everything and hopped out the car with me.

16 Q. But you saw him in a cruiser, and you saw the cruiser
17 lights on, correct?

18 A. Yeah.

19 Q. So when you pulled into Heather Heights complex, you
20 knew he was a police officer?

21 A. Yeah.

22 Q. Or at least a person in a police cruiser?

23 A. Yeah.

24 Q. And the blue lights?

25 A. He ain't cut the blue lights on until I opened my

TAURUS LAMARE THOMPSON - CROSS-EXAMINATION BY MR. EPTING

1 door of the car.

2 Q. And you fled, didn't you?

3 A. Yeah, I ran.

4 Q. Ran some distance?

5 A. I ran -- it's probably like from here to the end of
6 that courthouse -- I mean to the end of the wall down
7 there. Probably the distance.

8 Q. And you knew the officer wanted you to stop while you
9 were running?

10 A. Yes, sir.

11 Q. You knew he was a police officer?

12 A. Yeah, I knew he was a police officer when he got out
13 the car.

14 Q. When did you think what was going to happen when he
15 caught up to you?

16 A. Probably going to go to jail.

17 Q. Arrest you?

18 A. Yes.

19 Q. Okay. So you kept running knowing he was wanting to
20 arrest you; is that correct?

21 A. Yes, I ran.

22 Q. Okay. And then you went down in the creek bed?

23 A. I went in the creek.

24 Q. You said he had his knee on your back.

25 A. Yeah, he had my knee in my back.

TAURUS LAMARE THOMPSON - CROSS-EXAMINATION BY MR. EPTING

1 Q. Was your chest down on the ground?

2 A. Yeah, I was face down in the water like this.

3 Q. You were under the water?

4 A. I -- yeah. I was still trying to hold my head up
5 trying to get some air.

6 Q. Okay. And then he handcuffed you?

7 A. He handcuffed me.

8 Q. Okay. And you said you passed out. Could you
9 explain a little bit more about that? Why did you pass
10 out?

11 A. It felt like I was going to pass out because I
12 couldn't get no breath.

13 Q. Okay.

14 A. Because I was in the water a little bit and it got in
15 my mouth and nose and everything. I was trying to
16 breathe.

17 Q. Okay. So you're saying the officer did not strike
18 you?

19 A. No, sir -- yeah, he struck me in the back of the
20 head.

21 Q. In the back of the head?

22 A. Yeah.

23 Q. So did he have his knee in your back or he hit you in
24 the back of the head?

25 A. He had his knee and he hit me a couple time from

TAURUS LAMARE THOMPSON - CROSS-EXAMINATION BY MR. EPTING

1 running, you know what I'm saying, you know.

2 Q. Because you didn't say that on cross, did you?

3 A. Excuse me?

4 Q. Did you say that in cross with Ms. Anderson?

5 A. No.

6 Q. Okay. How many times did he hit you?

7 A. About twice.

8 Q. Did you file any type of report, charge, complaint
9 against him?

10 A. No.

11 Q. Even though he struck you in the head?

12 A. Yeah.

13 Q. Okay. Bottom line is when you were running, you knew
14 he wanted to place you under arrest.

15 A. Yeah.

16 Q. And then you got in the creek, and you couldn't run
17 any farther, and he placed you under arrest.

18 A. Yeah, he --

19 Q. That's according to your testimony.

20 A. Yeah, he put the handcuffs on me.

21 MR. EPTING: Beg Court's indulgence. I have no
22 further questions.

23 THE COURT: Any redirect?

24 MS. ANDERSON: No, Your Honor.

25 THE COURT: You may step down. Thank you, sir.

1 MS. ANDERSON: Defense rests, Your Honor.

2 THE COURT: Very good. All right. Ms. Anderson, be
3 glad to hear from you.

4 MS. ANDERSON: May it please the Court.

5 THE COURT: Yes.

6 CLOSING ARGUMENT BY MS. ANDERSON

7 MS. ANDERSON: Your Honor, most of my argument I
8 think would be a similar sort of argument under which we
9 handled on directed verdict motion. Of course, in this
10 circumstance of -- whereas that would be taken in the
11 light most favorable to the State, at this point, the
12 Court as the trier of the fact, would consider all the
13 facts and circumstances.

14 Your Honor, I would point out the requirements of
15 16-9-320 requiring a lawful arrest in particular. My
16 position being that based on the officer's testimony, that
17 the arrest was -- and the intention of the arrest was for
18 the Rock Hill municipal ordinance 23-4 for resisting
19 police and 23-7, essentially failure the identify; that
20 those would be the testimony of -- those would be the
21 offenses that Mr. -- Officer Englert intended to arrest
22 Mr. Thompson for. Therefore, Mr. Thompson would be
23 charged under the elements with knowing and willfully
24 opposing a law enforcement officer in serving, executing,
25 or attempting to serve or execute legal process, resisting

1 a lawful arrest.

2 In that case, Your Honor, I would argue that the
3 State has the burden of proving that I would argue Mr.
4 Thompson knowingly resisted arrest for resisting police
5 and/or failure to identify.

6 Your Honor, I would argue that it's with -- not only
7 the fact with that Mr. Thompson was ultimately not charged
8 with either of those offenses. While I understand under
9 the law that doesn't bar the State from charging him with
10 resisting the arrest of those offenses, I do think it is
11 important to think of that or is -- comes into play in
12 regarding as to whether or not the State has met its
13 burden of proof of showing that Mr. Thompson willful and
14 knowingly resisted an arrest for those charges.

15 The testimony has been that the officer did not
16 specifically say you are under arrest for these charges,
17 that he had not at that point requested Mr. Thompson to
18 identify himself. Mr. Thompson, who has admitted he did,
19 in fact, run in this circumstance, but did not at any
20 point in time -- has testified he did not know he was
21 being arrested for those charges, and indeed ultimately
22 was never -- no charges were ever brought for either of
23 those offenses. So I do think that comes into play as to
24 whether or not Mr. Thompson intentionally, with criminal
25 intent, resisted arrest from those charges, and that would

1 be essentially sort of a factual situation of arguing the
2 State has not met their burden of proof.

3 Your Honor, the -- additionally I would argue as to
4 the State's charge of resisting arrest subsection B, which
5 is -- requires that the State show and prove beyond a
6 reasonable doubt Mr. Thompson assaulted or wounded the
7 officer. It's uncontroverted there was no physical
8 contact in terms of Mr. Thompson attacking or striking the
9 officer or attempting or taking a swing. We do have a
10 scenario where the language of the warrant is apparently
11 incorrect, that the officer testified he doesn't know
12 actually who filled the warrant out.

13 We had the officer's own incident report which was
14 drafted by him on January 1st, 2009, shortly after the
15 arrest, that was where this incident was described only
16 and identified only as a resisting arrest under
17 16-9-32(A). So the report filled out by the officer
18 described this only as a nonviolent resisting arrest.

19 Mr. Thompson has testified he did not attempt to
20 strike the officer. While the officer testified he
21 believed he might have seen a box cutter, Mr. Thompson
22 testified he did not have a box cutter, was not armed.
23 The officer had no other -- did not make any other
24 observations that would contradict that prior to being in
25 the creek bed, and no box cutter was recovered despite the

1 fact that multiple officers were there for over an hour.
2 There was sort of -- I believe the officer testified a
3 sort of initial or cursory search, but nothing beyond
4 that. Realistically, if they believed there was an weapon
5 involved and that an individual had a weapon while an
6 officer was pursuing, then I would have argued that
7 perhaps they could have looked a little further and
8 established whether a weapon was used.

9 So I would argue that this certainly does not rise to
10 the level of the State proving beyond a reasonable doubt
11 of this being an assault, beat, or wounding an officer.
12 The officer's testimony being only that Mr. Thompson took
13 some sort of a defensive stance would not rise to the
14 level of actually advancing toward him or attempting to
15 take an assault, even taken by the officer's words.

16 There was testimony regardless that the officer
17 pursued Mr. Thompson, continued to pursue Mr. Thompson,
18 despite the fact of testifying that he might have had some
19 sort of fear, the officer was the one who followed
20 Mr. Thompson into the creek. Mr. Thompson did not resist
21 ultimately when he was placed -- when handcuffs were
22 placed on him, did not fight the officer at any point.

23 To summarize, the facts presented by the State taken
24 in both the State's testimony and Mr. Thompson's testimony
25 would not support a verdict of guilty of resisting arrest

1 B. At most, would be only as a lesser offense of
2 16-9-320(A).

3 THE COURT: Let me see the text of A. I don't have
4 that before me right now.

5 MS. ANDERSON: Yes, Your Honor.

6 Your Honor, as to all around on the resisting charge
7 even which would be applicable at 16-9-320(A), the
8 requirement of that statute requiring one of the elements
9 does require a lawful arrest. As I pointed out in my
10 motion for directed verdict, there is one in the case law
11 of South Carolina, most recently State versus McGowan,
12 which does hold a person has a right to resist an unlawful
13 arrest. Therefore, that in addition with the language of
14 Brannon does require that there is an actual lawful arrest
15 in order to support a charge, and ultimately a conviction
16 for resisting arrest.

17 Your Honor, I would argue and we sort of, I think,
18 addressed on the directed verdict motion. I would take
19 the position that section 23-4 of the Rock Hill municipal
20 ordinance resisting police would be an unconstitutional
21 statute under the analysis and under the United States
22 Supreme Court's finding in the City of Houston versus Hill
23 where a similar law was invalidated as being
24 unconstitutionally overbroad with even more specific
25 language. I would argue certainly that no person shall

1 oppose, resist, or interfere with any police officer in
2 the discharge of police officer's official duties would be
3 a very overbroad language, and I would -- won't rehash the
4 entire argument I made, but would incorporate all the
5 arguments I made on the directed verdict stage regarding
6 why an arrest for resisting police under that ordinance
7 would not be a valid arrest that would support.

8 Your Honor, that leaves with the section 23-7. I
9 would point out that at no point in the traffic stop was
10 Mr. Thompson asked to identify himself. That was both --
11 the testimony presented both by the State and the defense.
12 So this would not be applicable as a failure to identify
13 because there was no actual request to identify made.

14 There is -- I believe your final question there is
15 sort of the situation regarding the subsection C in
16 regarding fleeing a detention. Your Honor, I think it's
17 clear in the case law -- I think the state as well -- that
18 a traffic stop itself is not an arrest. As to whether
19 that would rise to level of detention and whether that
20 would be a valid statute or valid ordinance, again, a
21 valid arrest under that ordinance. I would still argue
22 that that would not be a lawful arrest under section 23-7,
23 the essential situation being that the activity that
24 constitutes an alleged violation of 23-7, subsection C,
25 would be the same conduct that would constitute an

1 allegation of resisting arrest. It's not distinguished in
2 terms of articulating that there is a failure to comply
3 with the detention, and then because of that, then
4 subsequently a resisting arrest occurred. And I would
5 incorporate all the arguments I previously made regarding
6 that.

7 Your Honor, finally I would point to the Brannon
8 case. We've talked of that extensively. My position would
9 be that the law under Brannon still requires some sort of
10 initial submission to the arrest, that the Court while
11 they didn't ostensibly analyze it because in the Brannon
12 case it was distinguished that the officers, they clearly
13 testified their intention was not to arrest Mr. Brannon,
14 but simply to investigate. So most of the case law or
15 most of the case does focus on that analysis. They still
16 discussed the sort of Court of Appeals analysis, which
17 does require sort of a initial submission to the arrest,
18 regardless of sort of the logic of that or whether that
19 seems inconsistent logically, that is the current case law
20 in the state. And my reading of the case law is, in fact,
21 that there does require an initial submission. That would
22 also be cited in the State versus Williams case I
23 previously referenced as well.

24 Your Honor, based on all these arguments, the
25 arguments put forward in directed verdict and taking those

1 arguments now, not considering it solely in the light most
2 favorable to the State, considering all the facts and
3 circumstances, I would argue or would request, Your Honor,
4 a verdict of not guilty. I would certainly, Your Honor,
5 request that he be found not guilty of resisting arrest B.
6 We request that Your Honor find a verdict of not guilty on
7 all charges, but would certainly submit that he is not
8 guilty of resisting arrest at -- under 16-9-320 (B) and we
9 would ask Your Honor for such a finding.

10 THE COURT: Very good. Mr. Epting?

11 CLOSING ARGUMENT BY MR. EPTING

12 MR. EPTING: Your Honor, the State would submit any
13 difference between the testimony of the defendant and the
14 officer has now become questions of fact, credibility for
15 finder of the fact, which is the Court. We would again
16 point to 27-3 (C) which states that any person -- and I'm
17 skipping some language here -- any person who flees or
18 attempts to flee detainment shall be charged with
19 violation of the section. State would submit that is an
20 arrestable offense, an arrestable offense that the
21 defendant committed that night under State v. Tyndall,
22 which was handed up earlier. It is irrelevant essentially
23 to the case in a resisting arrest context whether that
24 charge itself was charged. I agree with some of Your
25 Honor concerns about double jeopardy should that be

1 charged and defeating the just purposes up here in general
2 sessions.

3 Again, I would reiterate my argument that -- of the
4 law -- the law of assault does not require a swing. It
5 does not require -- it does not require contact. It does
6 not require a swing. It does not -- it requires action on
7 the part of the defendant that creates fear of harm in the
8 victim with the present ability to complete that harm.
9 The officer testified he was within striking distance of
10 the defendant and the defendant put his hands up. I
11 understand their testimony differed, but again, that is an
12 issue for the finder of fact at this point.

13 THE COURT: Very good. All right. I specifically
14 find as a matter of law that the arrest was lawful and
15 that the actions were in violation of 23-7 of the
16 municipal code. Defendant did flee or attempt to flee
17 detainment. I specifically find the officer did state,
18 "You're under arrest." I find the defendant did not have
19 his lights on, which brought about the initial stop. I
20 find that the defendant was driving under suspension. I
21 find the defendant knew that the pursuing officer was
22 indeed a police officer. I specifically find factually
23 that he saw the lights and began to flee.

24 I find that under the subjective analysis test as a
25 matter of law and factually as a trier of fact, it was the

1 officer's intent to arrest the defendant. I find that
2 under the circumstances, the defendant submitted to the
3 authority of the arresting officer. Factually, I -- the
4 testimony is -- in my role as the trier of fact, I think
5 there's insufficient evidence there indeed was a box
6 cutter. I find the defendant did oppose the arresting
7 officer by assuming a boxing stance. I find the police
8 officer was not struck, attacked, or wounded by the
9 defendant.

10 The defendant is found not guilty of resisting arrest
11 B. The defendant is found guilty of resisting arrest A.
12 You may bring the defendant forward for sentencing.

13 SENTENCE OF THE COURT

14 MS. ANDERSON: Thank you, Your Honor.

15 MR. EPTING: Yes, Your Honor.

16 THE COURT: Mr. Epting, you're recognized with regard
17 to sentencing.

18 MR. EPTING: Thank you, Your Honor. I would like to
19 read into the record the defendant's prior rap sheet. It
20 appears he was convicted in the year 2000 of PWID crack
21 within proximity of a school, park, or playground as well
22 as one count of resisting arrest.

23 THE COURT: Did he serve any time for that?

24 MR. EPTING: I apologize, Your Honor. It appears
25 that he was given a 15-year suspended sentence suspended

1 on 30 months probation, and resisting arrest, one year
2 suspended on one year's probation. He has a failure to
3 stop for a blue light conviction from 1995 where he did
4 receive an active YOA sentence, not to exceed six years
5 and appears as a part of that same set of charges, he pled
6 guilty to a resisting arrest for service of process as
7 well as possession of crack cocaine at school and driving
8 without a license, second offense. For all those charges,
9 he pled to that same YOA, which appears to have been
10 running concurrent.

11 He appears to have a different conviction from 1995
12 from carrying a pistol unlawfully, using a party to
13 facilitate drugs, possession of crack cocaine with intent
14 to distribute, first offense. They gave him a YOA, so
15 must have been in those as well. In 1998, he was again
16 convicted of resisting arrest. He received a one-year
17 sentence suspended on 90 days and probation.

18 THE COURT: Ms. Anderson.

19 MS. ANDERSON: May it please the Court. Your Honor,
20 you heard Mr. Thompson's rap sheet. I would point out
21 that the most recent convictions were some time ago, as
22 well as the fact that this case has been pending now for
23 well over a year. Mr. Thompson hasn't been in any trouble
24 at all. During that period of time, has no arrests. Your
25 Honor, he did spend until February 23rd in jail on this

1 charge. He was set an extremely high bond, was not able,
2 so he did remain incarcerated for two months on this
3 charge.

4 THE COURT: How many days is he entitled to?

5 MS. ANDERSON: Your Honor, that would be -- I think
6 it should be 55 days.

7 Your Honor, he does work with his grandfather,
8 concrete work, so he has been responsible in working
9 when -- while he's been out. He's always -- he's been on
10 the docket numerous times. He's always appeared. He's
11 never missed a court date. He's always been very pleasant
12 to deal with, very easy to deal with. Your Honor, I don't
13 think this is a situation where he's been difficult to
14 deal with. I think it was just a -- it's -- it was an
15 unusual sort of case all around of a resisting arrest
16 where it did fall under the strange area of law where I
17 think it was strange to Mr. Thompson he was charged with
18 assaulting an officer and never struck the officer. And
19 then it was -- certainly for me posed some substantial
20 legal issues, which we litigated today, especially based
21 on the incident report, the case file summary that Mr.
22 Thompson's been diligent about coming to court and very
23 responsible.

24 Your Honor, he does have family support. Come
25 forward and we do have someone that wishes to speak. Give

1 you name for the record.

2 SPEAKER: Deborah Thompson. I'm his mother.

3 THE COURT: Yes, Ms. Thompson. If you could step
4 this way so I could see you. All right, Ms. Thompson. Be
5 glad to hear from you.

6 SPEAKER: Yeah, he's good. I don't see no -- you
7 know, where he would do something like that. Not no hit
8 an officer. That's something he wouldn't do.

9 THE COURT: Okay. Well, he's not -- he hadn't really
10 been found guilty of hitting the officer. I think the
11 officer said he didn't hit him. You're blessed in that
12 way.

13 SPEAKER: Yeah. Just give him a chance to, you know,
14 do what's right.

15 THE COURT: Okay.

16 SPEAKER: He's trying to do what's right. Please
17 give him another chance.

18 THE COURT: Very good. Thank you, ma'am.

19 SPEAKER: Thank you.

20 MS. ANDERSON: Your Honor, we certainly would ask
21 that he not receive any additional time. I think he -- he
22 is out working, he did serve two months on this charge
23 when he was arrested, so we would ask Your Honor to
24 consider that time he served and not sentence him to any
25 additional time on this charge, taking into consideration

1 all the facts of the case.

2 THE COURT: Anything further, Mr. Epting?

3 MR. EPTING: Nothing from the State.

4 THE COURT: All right. Mr. Thompson, on indictment
5 2011-GS-46-01390, resisting arrest, the sentence of the
6 Court is you be committed to the state Department of
7 Corrections for a period of 155 days, given credit for 55
8 days. Good luck to you.

9 MR. EPTING: Thank you, Your Honor.

10 (Whereupon, the proceedings were concluded.)

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STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

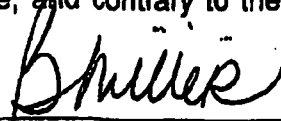
INDICTMENT

At a Court of General Sessions, convened on May 12, 2011, the Grand Jurors of York County present upon their oath:

RESISTING ARREST

The Defendant, Taurus Lamare Thompson, did in York County, South Carolina, on or about January 1, 2011, knowingly and wilfully assault, beat, or wound Officer Michael Englert, a law enforcement officer of this State, while resisting the efforts of the officer to make a lawful arrest of the defendant, when he knew or reasonably should have known that the Officer, is a law enforcement officer, in violation of Section 16-9-320(b), 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.



ASSISTANT SOLICITOR

DOCKET NO. 2011-GS-48-01390

WITNESSES

Englert

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

May 12, Term 2011

ARREST WARRANT NUMBER

Indictment RE: 1550

THE STATE

vs.

ACTION OF GRAND JURY

TAURUS LAMARE THOMPSON

TRUE BILL

[Signature]
Person of Grand Jury 5/12/11

VERDICT

Indictment for
RESISTING ARREST

SC Code: 16-9-320(b)
CDR Code: 258

Person of Petit Jury

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:


C.C.C. PLS. AND G.S.

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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."

September 30th, 2013



Carmen V. Ganjehsani
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR APPELLANT

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SEP 30 2013
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County
Michael G. Nettles, Circuit Court Judge

RECEIVED

SEP 30 2013

SC Court of Appeals

THE STATE,

RESPONDENT,

v.

TAURUS LAMARE THOMPSON,

APPELLANT

APPELLATE CASE NO. 2012-212659

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Christina J. Catoe, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, at this 30th day of September, 2013.

Brandon Hall

Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me.
this 30th day of September, 2013.

Maurice Kendall (L.S.)

Notary Public for South Carolina
My Commission Expires: July 3, 2023.