STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions

The Honorable R. Keith Kelly, Circuit Court Judge

Appellate Case No. 2015-000706

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

WILLIE JACKSON,

APPELLANT.

FINAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

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

II. **The magistrate judge properly denied Appellant's directed verdict motion as to the charge of trespass where the State presented evidence from which one could reasonably infer that Appellant was asked to leave by a representative of the store yet he failed to do so.**

STATEMENT OF THE CASE

Appellant was arrested in Spartanburg County on September 28, 2013, for public disorderly conduct under S.C. Code § 16-17-530, trespassing under S.C. Code § 16-11-620, and malicious injury to property under S.C. Code § 16-11-510. On October 28, 2014, Appellant was tried before Magistrate Judge William R. Chumley and a jury. Judge Chumley denied Appellant's directed verdict motion, and the jury ultimately found Appellant guilty of public disorderly conduct and trespassing but not guilty of malicious injury to property. The magistrate judge imposed fines and gave Appellant six months in which to pay them. A timely notice of appeal to the circuit court was filed, and a hearing was held before the Honorable R. Keith Kelly on January 20, 2015. In an order dated February 19, 2015, Judge Kelly affirmed Appellant's convictions. This appeal follows.

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Background Facts

On September 28, 2013, Appellant entered the "Shoe Show" retail establishment located at 550 South Church Street in Spartanburg, South Carolina for the purpose of attempting to help his daughter obtain a refund for a pair of shoes she purchased two days earlier.[1] After the store clerk explained she would be unable to refund the money for the shoes because the shoes appeared worn, Appellant's daughter became loud and irate, using profanity and threatening to call a lawyer. Appellant also became argumentative with the clerk. Eventually the store clerk called police because Appellant and his daughter refused to leave.

When Officer Bryan Shaw of the Spartanburg Police Department arrived, Appellant's daughter was still yelling and refusing to leave the store. After repeatedly asking Appellant's daughter to leave the store, Officer Shaw proceeded to place her under arrest for trespassing, and when he did so, Appellant attacked him. Officer Shaw wrestled away from Appellant and struck him in the face to try to thwart further advances. Appellant fell to the ground, knocking over a theft-deterrent stand in the process. While Officer Shaw was calling for backup, Appellant got up off the floor, picked up the theft-deterrent stand he had knocked over, and raised it above his head and started to come toward Officer Shaw as if to hit him with it. Officer Shaw quickly drew his weapon and Appellant ceased the attack and dropped the theft-deterrent stand. By that time, another officer arrived and took Appellant's daughter into custody, and Officer Shaw then told Appellant he was also under arrest. Appellant resisted but was eventually

[1] All facts described in this section are taken from the trial testimony as reflected in the audio CD of the jury trial. (See Respondent's Exhibit #1 to 1/20/15 Hearing).

subdued and taken into custody. Appellant was later charged with public disorderly conduct, trespassing, and malicious injury to property. Appellant, along with his daughter, proceeded to trial on October 28, 2014. The jury found Appellant guilty of public disorderly conduct and trespassing, but not guilty of malicious injury to property.

Applicable Law

In ruling on a motion for directed verdict, the trial judge must view the evidence, and all of its reasonable inferences, in the light most favorable to the State. State v. Frazier, 375 S.C. 575, 581, 654 S.E.2d 280, 283 (2007). If the State presents direct or substantial circumstantial evidence reasonably tending to prove the guilt of the defendant, including evidence from which his guilt can be logically deduced, the defendant's directed verdict motion is properly denied. State v. Lollis, 343 S.C. 580, 584, 541 S.E.2d 254, 256 (2001). Our Supreme Court has stated that the appropriate test to be applied when reviewing a directed verdict motion in a case relying solely on circumstantial evidence is as follows:

> When the state relies exclusively on circumstantial evidence and a motion for a directed verdict is made, the circuit court is concerned with the existence or nonexistence of evidence, not with its weight. The circuit court should not refuse to grant the directed verdict motion when the evidence merely raises a suspicion that the accused is guilty. "Suspicion" implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof. However, a trial judge is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis.

State v. Cherry, 361 S.C. 588, 593-594, 606 S.E.2d 475, 478 (2004) (citations omitted). On appeal from the denial of a motion for a directed verdict, an appellate court, like the trial court, views the evidence and all reasonable inferences which may be drawn therefrom in the light most favorable to the State. State v. Brandt, 393 S.C. 526, 542, 713

S.E.2d 591, 599 (2011). The appellate court may only reverse the trial court only if there is no evidence to support the trial court's ruling. See, e.g., State v. Gaster, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002).

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

Appellant first argues that the magistrate judge erred in denying his motion for directed verdict because the State "failed to establish jurisdiction over Appellant by failing to establish that the Appellant's arrest occurred within the city limits of Spartanburg." (Brief of Appellant, p. 2). Initially, in the State's view, Appellant's argument incorrectly blends and confuses two entirely distinct and separate issues.[2] One issue is whether the arresting officer had territorial jurisdiction to arrest Appellant. This issue, while relevant in a pre-trial hearing regarding whether or not Appellant's arrest was an illegal seizure under the Fourth Amendment, has nothing to do with the sufficiency of the evidence for directed verdict purposes. If the officer did not have territorial jurisdiction, and the arrest was therefore unlawful, the proper remedy would have been suppression of any "fruit" obtained as a result of the unlawful arrest, such as a confession

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[2] Appellant relies on State v. Padgett, 354 S.C. 268, 580 S.E.2d 159 (Ct. App. 2003), a case which appears to blend territorial jurisdiction with sufficiency of the evidence. Initially, note that the "officer in pursuit" statute at issue in Padgett is not applicable to the facts of this case. See S.C. Code § 17-13-40. Instead, here, the applicable territorial jurisdiction statute would be S.C. Code § 5-7-11 ("[Municipal] police officers shall exercise their powers on all private and public property within the corporate limits of the municipality and on all property owned or controlled by the municipality wheresoever situated . . ."). Regardless, in the State's view, the Padgett case does not necessarily stand for the proposition that it is proper to blend the issues of territorial jurisdiction and sufficiency of the evidence. In that case, the State did not argue it was improper to combine these issues; thus, the Padgett court merely answered the question presented to it and nothing more. See generally Hutto v. S. Farm Bureau Life Ins. Co., 259 S.C. 170, 173, 191 S.E.2d 7, 8-9 (1972) ("It is, of course, settled law that 'a case cannot be considered as a binding precedent on a legal point that was not argued in the case and not mentioned in the opinion.' " (citations omitted)); State v. Austin, 306 S.C. 9, 19, 409 S.E.2d 811, 817 (Ct. App. 1991) ("[A]ppellate courts in this state, like well-behaved children, do not speak unless spoken to and do not answer questions they are not asked.").

or physical evidence seized. See, e.g., State v. Burgess, 408 S.C. 421, 440-41, 759 S.E.2d 407, 417-18 (2014); State v. Boswell, 391 S.C. 592, 707 S.E.2d 265 (2011). However, no motion to suppress is at issue here, so whether or not the arresting officer may have exceeded his territorial jurisdiction is a moot point.[3] Even if the arrest was unlawful, this would not be a valid ground for the grant of a directed verdict, since the lawfulness of an arrest is **not** an element of the offenses the State must prove.[4]

A second, separate issue is whether the State presented sufficient direct or circumstantial evidence supporting all the elements of the offense, such that it was proper to submit the case to the jury. Appellant's sole argument is that the officer failed to "establish jurisdiction over Appellant" because there was no express testimony the offense occurred within the *city limits* of Spartanburg. However, again, the State was not required to prove that the offense occurred within the city limits of Spartanburg – regardless of which law enforcement agency arrested Appellant – since this is not an element of the offenses. See S.C. Code § 16-11-620 ("Any person who, without legal cause or good excuse, enters into the dwelling house, place of business, or on the premises of another person after having been warned not to do so or any person who, having entered into the dwelling house, place of business, or on the premises of another

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

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

person without having been warned fails and refuses, without good cause or good excuse, to leave immediately upon being ordered or requested to do so by the person in possession or his agent or representative shall, on conviction, be fined not more than two hundred dollars or be imprisoned for not more than thirty days."); S.C Code § 16-17-530 ("Any person who shall . . . be found on any highway or at any public place or public gathering in a grossly intoxicated condition or otherwise conducting himself in a disorderly or boisterous manner . . . shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than one hundred dollars or be imprisoned for not more than thirty days.").

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

forth."). Thus, all the State had to prove for purposes of its case-in-chief was that the offense occurred in the *county* of Spartanburg.[5] See State v. Crocker, 366 S.C. 394, 403, 621 S.E.2d 890, 895 (Ct. App. 2005) (stating that a defendant is entitled to a directed verdict if the State fails to present evidence the offense was committed in the county alleged).

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

Here, the undisputed testimony that the shoe store where the incident took place was "in Spartanburg" and that the shoe store was located at "550 South Church Street in Spartanburg" was clearly sufficient to show the offense occurred in Spartanburg County.[6] See State v. Taylor, 399 S.C. 51, 61-62, 731 S.E.2d 596, 602 (Ct. App. 2012) (finding the trial judge properly denied the defendant's motion for directed verdict where the State

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

[6] Furthermore, even assuming for argument's sake that the State was required to prove Appellant's arrest took place within city limits, it was still proper for the trial judge to deny the directed verdict motion because a reasonable jury could infer that the witnesses meant the *city* of Spartanburg, as opposed to the *county*, when they testified the shoe store was in "Spartanburg" and where one of the witnesses provided the *exact street address* of the shoe store, which was mere minutes away from the courthouse in which the jurors sat during Appellant's trial. See State v. Brisbon, 323 S.C. 324, 327, 474 S.E.2d 433, 435 (1996) (venue in a criminal case need not be affirmatively proved if there is sufficient evidence from which it can be inferred; evidence of venue, even if slight, is sufficient in the absence of conflicting evidence and may be proved by circumstantial as well as direct evidence).

presented sufficient evidence to establish the crime occurred in Williamsburg County); State v. Crocker, 366 S.C. at 403, 621 S.E.2d at 895 (finding the defendant's directed verdict motion was properly denied where "ample evidence exists to clear the hurdle necessary to support venue in Richland County"); State v. Brisbon, 323 S.C. at 328, 474 S.E.2d at 436 ("Under the low threshold discussed above, there exists sufficient evidence in the present case to find that venue was proper in Lexington County."); State v. Williams, 321 S.C. 327, 334, 468 S.E.2d 626, 630 (1996) ("Accordingly, we find that there was sufficient circumstantial evidence, although not conclusive, to support the inference that the victims died in Edgefield County, South Carolina, and Williams was not entitled to a directed verdict."). Therefore, the magistrate judge properly denied Appellant's directed verdict motion on this ground, and the circuit court properly affirmed the magistrate.

II. The magistrate judge properly denied Appellant's directed verdict motion as to the charge of trespass where the State presented evidence from which one could reasonably infer that Appellant was asked to leave by a representative of the store yet he failed to do so.

Appellant also argues that his directed verdict motion should have been granted as to the charge of trespass because the State failed to present any testimony establishing he was "ordered or requested" to leave as required by S.C. Code § 16-11-620. (Brief of Appellant, p. 4-5). In pertinent part, S.C. Code § 16-11-620 states as follows:

> Any person who, without legal cause or good excuse, enters into the dwelling house, place of business, or on the premises of another person after having been warned not to do so **or any person who, having entered into the dwelling house, place of business, or on the premises of another person without having been warned fails and refuses, without good cause or good excuse, to leave immediately upon being ordered or requested to do so by the person in possession or his agent or representative** shall, on conviction, be fined not more than two hundred dollars or be imprisoned for not more than thirty days.

S.C. Code § 16-11-620 (emphasis added).

Under this statute, the State was required to prove that Appellant, without good cause or good excuse, failed and refused to immediately leave after being ordered or requested to do so by the shoe store clerk. As the State agreed below, and as the circuit court judge found in his order affirming the convictions, there is no direct, express evidence the clerk requested that Appellant leave the shoe store. (See R. pp. 17-18; see pp. 2-4). However, there was evidence presented from which a reasonable inference could be drawn that Appellant had been ordered or requested to leave. First, Appellant and his daughter came to the store together and were clearly acting in concert in harassing the store clerk about a refund. Second, Appellant's daughter was asked repeatedly to leave the store and Appellant was present with her during this time. Finally and most importantly, the store clerk testified that although Appellant's daughter had been asked to leave repeatedly, Appellant's daughter "just would not do it; **[Appellant] wouldn't do it**." (Respondent's Exhibit #1, Audio CD of Trial, Track 1 at 35:35).

As the circuit court found, the clerk's testimony that Appellant "wouldn't" leave the store clearly implied that the clerk had requested that Appellant leave and he refused. (See R. p. 3). In other words, a reasonable inference to be drawn from the store clerk's testimony is that Appellant, like his daughter, had been asked to leave the store and, like his daughter, he refused to leave. See BLACK'S LAW DICTIONARY 1285 (7th ed. 1999) ("refusal" means "the denial or rejection of something offered or demanded"); see also http://thelawdictionary.org/refusal (noting that "'refusal' implies the positive denial of an application or command"). In the State's view, this evidence was sufficient to create a jury question on the issue of whether Appellant had been ordered or requested to leave.

See, e.g., State v. Parris, 363 S.C. 477, 481, 611 S.E.2d 501, 503 (2005) (if there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must find the case was properly submitted to the jury). Accordingly, the magistrate judge properly denied Appellant's directed verdict motion, and Appellant's conviction for trespassing should be upheld.

CONCLUSION

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

Respectfully submitted,

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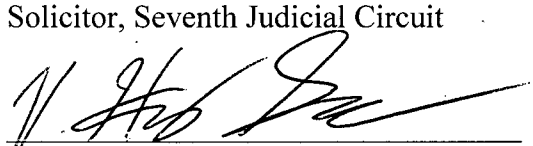

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July 25, 2016

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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July 25, 2016