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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREEVNILLE COUNTY
Court of General Sessions

Robin B. Stillwell, Circuit Court Judge

Appellate Case No. 2020-000108

THE STATE,.....Respondent,

v.

THOMAS CHARLES FELTON JONES,.....Appellant.

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INDEX

Transcripts

Transcript of Hearing, dated January 14, 2020 - Pages 1-20.....1
Transcript of Hearing, dated January 14, 2020 - Pages 64-105.....21
Transcript of Hearing, dated January 14, 2020 - Pages 115-116.....63
Transcript of Hearing, dated January 14, 2020 - Pages 119.....65
Transcript of Hearing, dated January 14, 2020 - Pages 150-155.....66

Exhibits

State’s Exhibit #1 (DVD).....72
State’s Exhibit #2 (DVD).....73
Court’s Exhibit #1 - Defendant’s Pre-Trial Written Motion74

Other Documents

True-billed Indictments.....81
Sentencing Sheet.....83
Certificate of Counsel84

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX OF WITNESSES

JONATHAN COOPER

Direct By Ms. Hendricks 65
Cross By Mr. Nguyen 80

JAKE LANCASTER

Direct By Ms. Hendricks 87
Cross By Mr. Nguyen 100
Redirect By Ms. Hendricks 105

JAMES BERGGRUN

Direct By Ms. Hendricks 106
Cross By Mr. Nguyen 112

THOMAS JONES

Examination By The Court 121

» > o < «

Jury Qualification 22
Opening Statement by Ms. Hendricks 59
Opening Statement by Mr. Nguyen 61
Closing Statement by Ms. Hendricks 132
Closing Statement by Mr. Nguyen 135
Jury Charge 139
Verdict 150
Sentencing 152
Certificate of Reporter 156

STATE EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	CD	5	75
2	CD	5	97

DEFENDANT EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Defendant's Motions	150	

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

COURT EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Note from the Jury	150	

ALL EXHIBITS WERE RETAINED BY THE GREENVILLE COUNTY CLERK OF COURT.

1 (WHEREUPON, State's Exhibits Nos. 1 & 2 were
2 marked for identification only.)

3 THE COURT: Okay. All right. Let's call to bar
4 The State v. Thomas Charles Jones, that's case No.
5 2018-GS-23-7031.

6 Is The State prepared to proceed?

7 MS. HENDRICKS: We are, Your Honor.

8 THE COURT: And The defense?

9 MR. NGUYEN: Yes, Your Honor.

10 THE COURT: Okay. All right. We have some
11 pre-trial motions we need to put on the record?

12 MR. NGUYEN: Yes, sir, Your Honor.

13 THE COURT: Okay, Mr. Nguyen, I'll be happy to
14 hear from you, sir.

15 MR. NGUYEN: We would like to put a motion that
16 we submitted to, Your Honor -- Section 15-10
17 unconstitutional. I'll very briefly go over the
18 statement of facts.

19 THE COURT: Yes, sir.

20 MR. NGUYEN: The Defendant was arrested on
21 July 21, 2018 by Deputy Cooper for resisting arrest
22 and with assault and violation of Section 15-10.
23 That section reads, It shall be unlawful for the
24 incorporated -- assault and battery or by any act,
25 physical or verbal, resist or interfere with any law

1 enforcement officer --

2 THE COURT REPORTER: I'm sorry, you're going to
3 have to repeat that. And please speak up, I can
4 barely hear you.

5 MR. NGUYEN: I apologize. And I'll slow down.

6 THE COURT REPORTER: Please.

7 MR. NGUYEN: Where should I start?

8 THE COURT REPORTER: Just the last sentence is
9 fine.

10 MR. NGUYEN: The Section 15-10 of the Greenville
11 County Ordinance reads, It shall be unlawful for any
12 person with [indiscernible] assault and battery or by
13 any act, physical or verbal, resist, hinder or
14 interfere with any law enforcement officer in the law
15 [indiscernible] duty.

16 Now, this was an arrest that was based on an
17 interaction between Deputy Cooper, Deputy Lancaster
18 and the Defendant. Deputy Lancaster and Cooper
19 initiated the traffic stop on Shauntana Williams,
20 outside the residence of the Defendant's. The
21 Defendant came out the rear of his house and
22 approached the officers. As the Defendant
23 approached, Officer Lancaster had requested backup.
24 The Defendant peacefully asked the officers what was
25 going on. And why Williams was pulled over.

1 Officers reply that she failed to use her turn
2 signals.

3 Now, at this point, Officer Lancaster inquired
4 if the Defendant needed anything. The Defendant
5 informed that they were friends and that Shauntana
6 was coming to see him that night. She was staying at
7 his place. They had a brief conversation about that.
8 During all this brief conversation, the Defendant
9 steps back a little bit and then a few minutes later
10 the backup that the officer called for arrived.

11 At this point, the Defendant made a statement a
12 statement that, They know damn well there was no big
13 group of people out here. Officer Lancaster demanded
14 the Defendant to go away or he can go to jail for
15 interfering. The Defendant refused saying he was at
16 his own house. The officer proceeded to arrest him
17 for interfering and they tackled him. There's body
18 camera footage of this and the Defendant's cell phone
19 of this incident.

20 The issue here is whether or not the County
21 ordinance should be declared basically
22 unconstitutional, it's substantial and overbroad or
23 vague. We think in this case it meets both. County
24 ordinance meets both standards. The first test to
25 determine is whether the enactment [indiscernible]

1 constituting the freedom of speech. If it does, then
2 the analysis turns on whether or not the enactment
3 here is substantially broad or vague. Of course, you
4 know, for it to be substantially overbroad, it can't
5 be just -- it's not enough for that enactment to work
6 on just a single permit application.

7 But the purpose of the underlining overbreadth
8 doctrine is to prevent vastly sweeping laws from
9 people chilling -- chilling [verbatim] the expression
10 of freedom of speech. The statute can also be
11 invalidated for vagueness. Under two conditions.
12 One, is if it fails to provide people of ordinary
13 intelligence a reasonable opportunity to understand
14 what conduct prohibits. Or two, authorize or
15 encourages arbitrary discriminatory enforcement.

16 Now, the First Amendment protects a significant
17 amount of the liberties and challenges and that has
18 been clear -- the case law has been clear throughout
19 our country. We have, you know, the freedom to
20 challenge statues without abuse and without risking
21 arrest. That is what distinguishes us from a free
22 nation -- distinguishes a free nation from a free
23 state. All the criticism aimed at police can only be
24 limited where it's shown to likely to produce a clear
25 and present danger of serious substantive evil that

1 rises above, far above [indiscernible].

2 Now, the Supreme Court struck down a ordinance
3 that was very similar to the Greenville County
4 ordinance out of the City of Houston. That ordinance
5 was assaulting or interfering with police meant -- it
6 made it unlawful for any person in any manner to
7 oppose, molest, abuse or interrupt any police in the
8 commission of his duties. The Supreme Court move
9 there that that ordinance was broad, was not narrowly
10 tailored to be only -- disorderly conduct or fighting
11 ordinance.

12 THE COURT: Okay. Let me make sure, Mr. Nguyen,
13 before you go any further. Right now we're talking
14 strictly about the county ordinance. That is
15 interfering with county officer, not resisting arrest
16 with assault?

17 MR. NGUYEN: We are not referring to the
18 resisting arrest with assault.

19 THE COURT: Okay.

20 MR. NGUYEN: This is just in reference to the
21 Section 15-10 of the Greenville County ordinance.

22 THE COURT: Okay, fair enough.

23 MR. NGUYEN: Now, Greenville County ordinance
24 specifically states by any act physical or verbal. I
25 think that's the key there. It says any act,

1 essentially, physical or verbal. There's no
2 limitations on what acts the officer can deem, you
3 know, as interfering. Essentially, if they deem it
4 so then they can make an arrest. In fact, any speech
5 construed by the officer can be interfering.

6 The Supreme Court's repeatedly invalidated laws
7 that does not give police unfettered discretion to
8 arrest individual for words or conduct that annoy or
9 offend them. I think the City of Houston, the court
10 noted that -- [indiscernible] -- expression because
11 only those individuals chosen by the police in their
12 unguided discretion are arrested. The Greenville
13 County ordinance presents the exact same problem.

14 Now, if the Greenville County ordinance does
15 have an exception in it that says that is, you know,
16 this section shall not apply to Constitutional
17 protective conduct such as peaceful questioning or
18 protesting government actions, I don't think that's
19 enough to say that this is basically invalid.
20 Essentially, that exception was written there,
21 essentially, to prevent a potential challenge I
22 think. But I don't think it's enough. Because then,
23 essentially, if that were allowed, we could write any
24 statute, you know, just say, well it's not, you know,
25 unconstitutional -- but even if the statute written

1 is unconstitutional. . .

2 THE COURT: Do we know if the constitutionality
3 of this ordinance, of this specific ordinance, or
4 like ordinance has been challenged before? And that
5 is has the caveat that you just referenced?

6 MR. NGUYEN: I do not think there is a
7 similar -- no, I don't think any of the other cases
8 that I looked into had that specific caveat. But
9 like I said, I don't think that's persuasive enough
10 to the. . . The legislature, essentially, Greenville
11 County council, can do without any county ordinance,
12 you know, try to make it valid on that ground. But I
13 don't think that's enough in this case.

14 THE COURT: Okay. All right.

15 MR. NGUYEN: Now, as far as the vagueness,
16 Greenville County ordinance legally fails to provide
17 ordinary intelligence or reasonable opportunity to
18 understand what conduct prohibits and even to
19 authorize, not even to issue discriminatory
20 enforcement. Again, the ordinance provides no
21 definition for what conduct, whether physical or
22 verbal, that will constitute interference with the
23 police. Without clear guidance, officers threaten
24 jail for interfering when it simply is freedom of
25 speech they deem annoying.

1 That was the case in the town of Honea Path in
2 South Carolina, the Supreme Court, you know, the
3 court noted that an arrest did occur upon nothing
4 more than mere words uttered by a person. Which were
5 not pleasing to local police officers who, obviously,
6 did not like any questioning or challenge -- anyone
7 questioning or challenging their authority. And that
8 ordinance was struck down for vagueness. In Columbia
9 District Court vs. The City of Columbia, that
10 statute, very similar to this, was policy deemed
11 unconstitutionally vague. And out of Kirbyville --
12 Bucannon in South Carolina, Charleston, also struck
13 down that their county ordinance was vague.

14 So I think there's enough case law throughout
15 our state and even across the country show that these
16 county ordinances that have interfering with police
17 without clear guidance on what officers can or can't
18 arrest for and vague and gives too much discretion to
19 the officer to decide what -- you know it's hard to
20 be on notice of what you can or can't do if there's
21 no clear definition as to what you can't do,
22 essentially. I mean, think this ordinance is pretty
23 all in compensated.

24 For those reasons we would ask that, you know,
25 Section 15-10 of the Greenville County Ordinance be

1 declared unconstitutional.

2 THE COURT: Okay. Good, thank you very much.

3 All right, Ms. Hendricks, I'll be happy to hear
4 from you if there's anything you'd like to say in
5 response.

6 MS. HENDRICKS: Thank you, Your Honor, may it
7 please the Court. I believe it was already mentioned
8 that none of the cases that the Defense references in
9 his brief contain the exception of the Greenville
10 County ordinance contains. Testimony at trial will
11 show that the Defendant was arrested for his actions
12 and interfering with police, not for his words. And
13 as far as vagueness, under South Carolina Department
14 of Social Services vs. Michelle Gee, the Defendant
15 must prove the challenge statute is vague as applied
16 to his own conduct, regardless if it's potentially
17 vague application of others. I don't think that has
18 been done in this case.

19 And then also under the United States Supreme
20 Court case Michigan v. DeFillippo, an arrest made in
21 good faith reliance on an ordinance, which at the
22 time had not been declared unconstitutional, it's
23 valid regardless of the subsequent determination of
24 its unconstitutionality. So I think regardless of
25 the ruling on the ordinance we will still be able to

1 go forward on the resisting arrest with assault.

2 THE COURT: Okay. All right. Well, I'm going
3 to take it under advisement. And I do want to hear
4 some of the underlining facts of the case.
5 Therefore, what I'd ask you to do is renew your
6 motion at directed verdict at the close of the
7 state's case and before we go to argument and charge.
8 And I want to consider the motion in context with the
9 conduct in this case. And you may or may not be
10 right. I don't know of any cases which challenge the
11 specific language and whether that specific language
12 overcomes the arbitrary and vague standard as
13 established by the case law that you articulated. So
14 I want to look at it. I do want to make sure that
15 we're clear on something. That's an interesting
16 point, it really is, it's a interesting point. But
17 that's the 30 day offense. And regardless of what
18 happens with the 30 day offense, you still have the
19 outstanding ten year offense.

20 So if I were to grant your motion with respect
21 to the interfering with a law enforcement officer, at
22 the end of day it may end up being a fairly academic
23 ruling. I know you know that Mr. Nguyen, I want to
24 make sure that Mr. Jones knows that, though. That if
25 you were to prevail on that point alone, it probably

1 wouldn't change a substantive outcome if he were to
2 be convicted of the other charge.

3 MR. NGUYEN: In response to that, our position
4 is the reason why we view this as important and it's
5 not just a academic matter is because in our state,
6 Your Honor, we have -- there's case law out there
7 that we have a right to resist an unlawful arrest. I
8 think at the appropriate time we may ask you to
9 charge the jury on that. And I think if this is
10 declared unconstitutionally or at trial --
11 [indiscernible] the Defendant. If we win on that,
12 then I think it leaves, you know, the question for
13 the jury is well, if that's unconstitutional the
14 arrest is, essentially, invalid and the arrest was
15 unlawful, then the Defendant had a right to a lawful
16 arrest.

17 In our state we have up to including using great
18 bodily injury even force to resist an unlawful
19 arrest. I think the question for the jury at that
20 point is whether or not what his actions are, are
21 they reasonable. I think leave it up to the jury.
22 So, I don't think--

23 THE COURT: You need to show me that case law
24 that says that a defendant or a person has a right to
25 resist an unlawful arrest when administered by a

1 uniform police officer in the conduct of his duty.
2 Because you might -- might want to talk about that
3 before we get started. Because I don't want you to
4 operate -- I don't want to Mr. Jones to operate under
5 a misapprehension of the law.

6 MR. NGUYEN: Yes, Your Honor.

7 THE COURT: The reason I say that is, Mr. Jones,
8 these are some interesting legal issues. And they're
9 fairly esoteric legal issues. And Mr. Jones is
10 looking at ten years in prison. And I don't want --
11 I don't want Mr. Jones to roll the dice unless and
12 until he understands fully the consequences of the
13 decision.

14 MR. NGUYEN: Yeah. The cases that I referenced
15 to, State v. Bethune, 112 S.C. 100. There the
16 Supreme Court.

17 THE COURT: 112 S.C. 100 State v. who?

18 MR. NGUYEN: State v. Bethune, B-E-T-H-U-N-E.

19 THE COURT: Okay.

20 MR. NGUYEN: There the Supreme Court stated a
21 person has a right to resist an unlawful arrest to
22 the extent of taking life or liberties, if be
23 necessary, and in order to regain. . .

24 THE COURT: So if you were to establish, let's
25 say in a case in which a defendant is accused of

1 murder.

2 MR. NGUYEN: Yes, sir.

3 THE COURT: Then if it was an unlawful arrest
4 for a county ordinance, that he would have been
5 justified in doing it?

6 MR. NGUYEN: Yes, Your Honor.

7 THE COURT: You don't think that's a
8 misapprehension of the law? I just want to make
9 sure. Because again, this is an important point.
10 And Mr. Jones is rolling the dice on ten years of his
11 life based on something that I'm uncertain of. And
12 that is whether the proposition of law that you have
13 articulated this morning is correct or not.

14 MR. NGUYEN: Our position is we believe it's
15 correct. The key is I think as long as the
16 defendant's actions are reasonable given the
17 circumstances. It doesn't give them this right to
18 law enforcement. I mean, it's a high bar at the end
19 of the day. If someone was to take a life of an
20 officer, I mean, at that point the bar is
21 extraordinary high for the defendant. But in this
22 case, I don't think the bar is quite as high in terms
23 of whether his actions are reasonable or not. Given
24 how the incident played out, essentially.

25 THE COURT: Okay. All right. That's fine. And

1 I'm not -- I'm not necessarily disagreeing with you.
2 I'm just saying that those are fairly academic and
3 esoteric positions of law that you're taking. Which
4 in a vacuum are very interesting to ponder. But
5 Mr. Jones is looking at 10 years.

6 MR. NGUYEN: Yes, Your Honor.

7 THE COURT: So, he needs to think about that. I
8 mean, this isn't a game. I mean, there a very, very
9 real consequences to this.

10 MR. NGUYEN: Yes, Your Honor.

11 THE COURT: And did The State ever make an offer
12 on this case?

13 MS. HENDRICKS: Yes, Your Honor, the offer was a
14 reduction to resisting with 90 days followed by
15 probation.

16 THE COURT: Okay. And I know that you aren't in
17 a position to continue with that. But, you know, I'm
18 not in a position, because I don't know the facts of
19 this case, to the tell you whether or not I would
20 sentence in accordance with that recommendation
21 pursuant to a plea. But at this stage of the game,
22 at this stage, I'm probably favorably inclined toward
23 that without making any promises. But subsequent to
24 a guilty verdict, if you were not to be successful on
25 your motions, then again, Mr. Jones will be looking

1 at real jail time.

2 MR. NGUYEN: Yes, sir, Your Honor.

3 THE COURT: And I just -- I want to make sure
4 we're clear of that because I don't want Mr. Jones,
5 at the end of this trial, to look around and say what
6 just happened? Why am I going to jail for several
7 years?

8 MR. NGUYEN: Yes, sir, Your Honor.

9 THE COURT: What just happened. Okay. I want
10 everybody to be clear on the front end.

11 MR. NGUYEN: Could we have a few minutes to
12 discuss this?

13 THE COURT: Sure, yeah. And while you're doing
14 that I'm going to look at this case, okay.

15 MR. NGUYEN: All right, thank you, Your Honor.

16 (WHEREUPON, a short break was taken.)

17 THE COURT: All right, Mr. Nguyen, ready for the
18 jury?

19 MR. NGUYEN: Yes, sir, Your Honor.

20 THE COURT: All right, good enough. Bring them
21 up, please.

22 While we're on the record, while we're waiting,
23 I do want to tell you I did some research, I'm
24 locking at it. And the legal position that you
25 compounded is a valid legal position which takes

1 effect if you determine that it was an unlawful
2 arrest. So if the court determines that it was a
3 lawful arrest, then he can't avail himself of that
4 defense. And that's in keeping with the Town of
5 Springdale vs. Butler, which was a Supreme Court
6 decision by Justice Toal in 1989.

7 So, if after -- after looking at the evidence in
8 this case, if The Court determines that that is a
9 Constitutional ordinance, and I looked at it again,
10 if I determine that it's a constitutional ordinance,
11 then he can't avail himself of that defense. Is that
12 your understanding of the law?

13 MR. NGUYEN: Well, my understanding was when we
14 read through this case law was the -- regardless of
15 whether or not it's unconstitutional. If the facts
16 under the indictment, what is presented at trial, if
17 the jury can come to the conclusion that the arrest
18 was unlawful -- essentially, what we're saying is
19 that if the jury comes to a conclusion of that he's
20 not guilty of -- I'm not saying -- the jury has to
21 ultimately decide themselves, he's not guilty of
22 this, the interfering. And therefore, the jury
23 should be given the charge that they have the option
24 to say that he is not -- that he had a right to
25 resist the unlawful arrest. If they say, you know,

1 that he--

2 THE COURT: I understand. I understand what
3 you're saying. And basically it's going to come down
4 to -- and I don't know for sure, I haven't seen the
5 evidence yet but basically if the jury finds that if
6 the police officers just conducted themselves
7 inappropriately.

8 MR. NGUYEN: Yes, Your Honor.

9 THE COURT: Okay. All right. Okay. And I'm
10 comfortable with that. Now, whether I give that
11 charge or not is something we'll discuss at a later
12 date and time. I just want to make sure that all of
13 this stuff is just very interesting to me from an
14 academic perspective. It really is. I read this and
15 I think, wow, this is really cool. And it could be
16 that after all this over, you know, and it goes to
17 the appellate courts, that lawyers talk about the
18 case of State vs. Jones and the proposition of law
19 that it stands for. But Mr. Jones, ultimately, may
20 pay a price of sitting in jail for a couple of years
21 while he's waiting for that outcome.

22 MR. NGUYEN: Yes, Your Honor.

23 THE COURT: I just want him to know that. That,
24 you know, this is all interesting stuff that lawyers
25 just love to talk about. And, you know, law

JONATHAN COOPER-DIRECT BY MS. HENDRICKS

1 Ladies and gentlemen, all that means is that the
2 witnesses who are going to testify have to leave the
3 courtroom. So that the witnesses can't listen to one
4 another and prepare their testimony based on somebody
5 else's testimony.

6 So counsel, y'all have to police the order of
7 sequestration because I'm not -- people coming in and
8 out of the courtroom, I may not know whether they're
9 a witness or not.

10 MS. HENDRICKS: Yes, Your Honor.

11 THE COURT: All right.

12 MS. HENDRICKS: We would want their witnesses
13 sequestered as well.

14 THE COURT: Okay.

15 MS. HENDRICKS: If they're planning on calling
16 them.

17 THE COURT: If you're not planning on calling
18 another witness then you're good to go.

19 DIRECT EXAMINATION

20 BY MS. HENDRICKS:

21 Q Deputy Cooper, what's your official title?

22 A I'm a deputy two.

23 Q Where are you employed?

24 A Greenville County Sheriff's Office.

25 Q How long have you been with the Greenville

JONATHAN COOPER-DIRECT BY MS. HENDRICKS

1 County Sheriff's Office?

2 A A little over three years.

3 Q Were you working on July 21, 2018?

4 A Yes, ma'am, I was.

5 Q Where were you patrolling that night?

6 A So we we're doing a proactive patrol in high
7 crime, high narcotic areas.

8 Q And where was that proactive patrol? In a
9 particular neighborhood?

10 A It was in the Judson Mill area is where we had
11 moved our focus to.

12 Q Can you explain to the jury what a proactive
13 patrol is?

14 A Yes. So what we do is instead of our normal
15 uniform duties of answering 911 calls, our job is to stop
16 cars, get out with people in these high crimes areas,
17 trying to target where that high crime is coming from,
18 stop and prevent.

19 Q So did you attempt to do a traffic stop that
20 night?

21 A Yes, we did.

22 Q Where was that?

23 A It was at B Street and Lyncrest.

24 Q Is that in Greenville County?

25 A Yes, ma'am, it is.

JONATHAN COOPER-DIRECT BY MS. HENDRICKS

1 Q Okay. Is that an unincorporated part of the
2 county?

3 A Yes, it is.

4 Q If I were to show you a blown-up map of that
5 area, would you recognize it?

6 A Yes, ma'am, I would.

7 Q Would that assist in your testimony?

8 A It would.

9 Q Can you see?

10 A Yes, ma'am.

11 Q And can you come down from the stand and point
12 out to the jury where the traffic stop was?

13 A Yes, ma'am. We were traveling this way when we
14 activated our emergency equipment. And we pulled and we
15 stopped in this area right here on B Street.

16 Q Thank you. Was the Defendant in this case in
17 the car that you stopped?

18 A No, ma'am.

19 Q Where did he come from?

20 A So, around number 20 on Lyncrest, there was a
21 large group of people gathered there. He walked up from
22 that direction toward the traffic stop.

23 Q Is the man who approached the traffic stop in
24 the courtroom today?

25 A Yes, he is.

JONATHAN COOPER-DIRECT BY MS. HENDRICKS

1 Q Could you point him out for us?

2 A He's sitting right over there.

3 Q Thank you. And you referenced a party going on
4 by a house nearby. Would you mind coming down and
5 pointing out for the jury where that party was?

6 A Yes, ma'am. There was approximately 20 to 30
7 subjects in the front yard of this house right here. So
8 just right up from where we were stopped.

9 Q Did the Defendant know the female who was
10 stopped originally?

11 A Yes, he did.

12 Q And were you able -- were you in a marked car at
13 this time?

14 A Yes, ma'am, we were.

15 Q Were you wearing a uniform?

16 A Yes, ma'am.

17 Q And so, did you actually see the Defendant walk
18 up?

19 A So when the Defendant walked up I was in the
20 vehicle. I had already made my initial contact with the
21 female that we had pulled over. I got back in the vehicle
22 while my partner was still out of the vehicle. And I was
23 running her through DMV or whatnot, making sure the
24 license is good, when I hear my partner having somewhat of
25 a confrontation, I guess, you could say with somebody. So

JONATHAN COOPER-DIRECT BY MS. HENDRICKS

1 I just kind of look over and I do see the Defendant
2 standing outside her car.

3 Q Okay. And did you get out of the car at some
4 point?

5 A Yes, ma'am. Once I completed running the
6 initial female that we had stopped, I got back out of the
7 car.

8 Q And what happened next?

9 A At that point, I was hearing Deputy Lancaster.
10 He was telling the Defendant, you know, what you're doing,
11 recording is fine but step away, you're too close, you're
12 interfering. Because at that point, not only are we
13 having to focus on our traffic stop, we're having to focus
14 on the subject who was interfering with us. And at that
15 point it's a risk to us.

16 So Deputy Lancaster was telling him to step
17 away. The Defendant wouldn't do it, wouldn't do it.
18 Finally, he was told, You're under arrest, put your hands
19 behind your back. At this point, we had already requested
20 other units for backup. But at this point, we went hands
21 on. I was on -- when you're looking at the Defendant from
22 my point of view, would be the left or the right side of
23 his body. At that point, I attempted to grab the
24 Defendant's right arm. At which point, he pulled back,
25 forced back forward and hit me in the nose.

JONATHAN COOPER-DIRECT BY MS. HENDRICKS

1 Q So after the Defendant hit you, was he -- would
2 you consider that resisting at that point?

3 A Yes, ma'am. With him just pulling away after
4 he's being told that he's under arrest, then him pulling
5 away, trying to flee from a lawful arrest, that's
6 resisting.

7 Q And after he hit you in the nose, did he stop
8 resisting?

9 A No, ma'am, he did not. At that point, other
10 deputies were arriving on the scene. And we were able to
11 take the Defendant to the ground. However, he was still
12 not complying. He wouldn't give us his hands, his hands
13 were tucked underneath his person. I didn't know if the
14 Defendant had a weapon in his waistband that he was trying
15 to go to, you know. There are a variety of factors there.
16 He was being told by all the deputies to put your hands
17 behind your back, you're under arrest, you're resisting,
18 stop resisting. Nothing we were doing was working.

19 At that point, I unholstered my issued
20 taser, gave the command that I was going to tase the
21 subject, which I did. And the taser was effective. And
22 after that we were able to apprehend the suspect -- or
23 excuse me, the Defendant.

24 Q So after you tased the Defendant he stopped
25 resisting, you were able to get him in handcuffs?

JONATHAN COOPER-DIRECT BY MS. HENDRICKS

1 A Correct.

2 Q Did the Defendant lose consciousness after being
3 tased?

4 A So he did. After we got him in handcuffs, we
5 went to sit him up. We sat him up against the patrol car,
6 he was unconscious at that point. And any time you tase
7 somebody, especially in a scenario as that, we immediately
8 called for EMS to come on scene to check on him.

9 Q Do defendants typically lose consciousness when
10 they're tased?

11 A No, ma'am, that's very uncommon.

12 Q Did the Defendant get checked out by EMS?

13 A Yes, ma'am. EMS came out and he came back to.
14 EMS cleared him. So on and so forth.

15 Q Can you tell the jury the normal procedure for
16 placing someone under arrest?

17 A Yes. So, of course, when we have probable cause
18 to make an arrest. There's no such thing as a routine
19 arrest. But you're average arrest that we deal with day
20 in and day out. You broke the law, I've got probable
21 cause to say that yes you did that. Therefore, I'm
22 placing you under arrest. And normally, it's you put your
23 hands behind your back, you go in handcuffs and off to
24 jail you go.

25 Q Is that what was attempted to be done in this

JONATHAN COOPER-DIRECT BY MS. HENDRICKS

1 case?

2 A Yes, it was.

3 Q So is a traffic stop considered a police
4 investigation?

5 A It is.

6 Q When conducting an investigation does the
7 Greenville County Sheriff's Office have policies and
8 procedures regarding how close somebody can be to your
9 investigation?

10 A It's in written -- you know, word for word I
11 can't say that, but he can be five feet or he can be 10
12 feet or so on and so forth. But it's a reasonable mean.
13 If somebody steps in to my investigation where I'm having
14 to take my attention off what I'm there to do, it hinders
15 me from doing my job. That's when we can say, you know,
16 you're too close, you need to back up.

17 Q Is this of extra concern when the bystander, who
18 may or may not be interfering, knows who's the subject of
19 your investigation?

20 A Yes, it absolutely is.

21 Q So when people get within a certain distance of
22 your investigation, what do you do to protect yourself and
23 your investigation?

24 A So at that point, when the Defendant walked up
25 and also the individuals that I spoke of earlier having a

JONATHAN COOPER-DIRECT BY MS. HENDRICKS

1 house party, they get agitated. So to protect ourselves,
2 of course, first thing we have to do is get more deputies
3 on scene. You know, 20 to 30 people against five still
4 isn't great numbers. But that's where we have to start
5 first. You know, get more deputies there. Retake control
6 of the situation and try to get the individual causing the
7 issue or instigating the issue away, taking away from the
8 scene.

9 Q Do any of your policies change if your on
10 someone's own property or are you still allowed to ask
11 them to back up?

12 A We're still allowed to ask them to back up.

13 Q Do these policies change when investigations are
14 being video recorded?

15 A No, ma'am.

16 Q Are members of the public allowed to record
17 police interactions?

18 A Yes, they are.

19 Q Can you tell us about the charge of interfering
20 with a law enforcement officer?

21 A Yes. So interfering is when a defendant,
22 person, whoever, if they take my attention away from the
23 investigation. So therefore, they're hindering me from
24 doing my job. So in this situation, like I said, I'm
25 there for a traffic stop. It's a routine thing, we make

JONATHAN COOPER-DIRECT BY MS. HENDRICKS

1 them all the time. Most traffic stops just go according
2 to plan. You write your ticket or your warning, you have
3 a good day. But when somebody walks up and they're now
4 taking my attention off the traffic stop, they're
5 interfering with my investigation. Because now I not only
6 have to worry about the potential risk that this traffic
7 stop can cause, but now I have another bystander that has
8 no business there, no dealings there, no nothing. All up
9 in my investigation, which is hindering me from doing my
10 job.

11 Q I'm going to show you what's been marked as
12 State's Exhibit 1. Do you recognize this?

13 A Yes, ma'am, I do.

14 Q How do you recognize it?

15 A That would be a recording of my body-worn camera
16 and I have initialed it.

17 Q Okay. And does this fairly and accurately
18 depict the events that occurred on July 21st of 2018 on B
19 Street?

20 A Yes, ma'am.

21 Q Has it been altered in any way?

22 A No, ma'am.

23 Q Was anything added or deleted from the
24 statement?

25 A No, ma'am.

JONATHAN COOPER-DIRECT BY MS. HENDRICKS

1 MS. HENDRICKS: Your Honor, at this time, The
2 State would move to admit State's Exhibit 1 into
3 evidence and publish portions to the jury.

4 THE COURT: Mr. Nguyen, any objections, sir?

5 MR. NGUYEN: No objection, Your Honor.

6 THE COURT: All right, without objection the
7 same is admitted.

8 (WHEREUPON, State's Exhibit No. 1 was admitted
9 into evidence.)

10 MS. HENDRICKS: Your Honor, if we can have just
11 a minute. I'm sorry, we had this working just a
12 moment ago.

13 THE COURT: Yes, ma'am.

14 BY MS. HENDRICKS:

15 Q Well, I'll continue questioning you while we try
16 to get your video working. So you were wearing a body
17 camera at that point?

18 A Yes, ma'am, I was.

19 Q Where do you wear those?

20 A I wear it at chest level. Either side of my
21 chest.

22 Q How are they attached to your uniform?

23 A Some are magnetic. I believe the ones that we
24 were wearing at the time of this incident were just a
25 magnet. I wear on a magnet on the inside of my shirt and

JONATHAN COOPER-DIRECT BY MS. HENDRICKS

1 one's on the outside.

2 Q And are they able to see everything that
3 happens?

4 A No, ma'am.

5 Q What are they able to see?

6 A They're able to see, you know, just what's
7 directly in front of the camera. I, you know, more times
8 than once gone back to look at a camera that I saw
9 something I didn't see when I was out there. So it
10 doesn't give a true perspective of everything transpiring
11 but it gives just kind of a bird's eye view, what's
12 directly in front of the lens.

13 Q Okay. And you mentioned earlier that the
14 Defendant was tased. What are the policies and procedures
15 for tasers?

16 A When we try to place somebody under arrest,
17 there's different types of resistance. You know, some
18 people are just -- there's a physical and there's a
19 verbal, per se. And once that resistance becomes physical
20 were they are attempting to harm us, half harm us or could
21 potentially, as I could not see the subject's hands, I
22 don't know if he has a weapon. So on and so forth. At
23 that point, I can deploy something such as a taser or any
24 other intermediate weapons.

25 Q How do tasers work?

JONATHAN COOPER-DIRECT BY MS. HENDRICKS

1 A It's a -- the ones that we carry, once you
2 activate it, it deploys two metal prongs or probes into
3 the target area. But it's a five second electrical cycle.

4 Q And can you tell us about the charge of
5 assaulting an officer while resisting arrest?

6 A Yes, ma'am. So with that--

7 MR. NGUYEN: Judge, Your Honor, objection.

8 THE COURT: What's the objection, sir?

9 MR. NGUYEN: He's, you know, concluding the
10 matter and that's something for the jury. Saying
11 what the law is. But not for us.

12 THE COURT: He's talking about law or polices
13 and procedures?

14 MS. HENDRICKS: I am trying to have him describe
15 when he would have arrested him for the offense. So
16 policy and procedure, not describe the law.

17 THE COURT: Okay. All right. In that
18 particular, I'm going to respectfully overrule the
19 objection. However, if you think that he's starting
20 to articulate points of law that are objectionable
21 under the rules of evidence, then you can oppose
22 that. I don't think he had gotten there yet.

23 MR. NGUYEN: What we object to is not -- for the
24 officer not to make any conclusions such. . .

25 THE COURT: I gotch you. I'll tell the base --

JONATHAN COOPER-DIRECT BY MS. HENDRICKS

1 to your point and I'm going to tell the jury and I'll
2 tell them now, that I'm the judge of the law and I'm
3 going to tell you what the law is as it relates to
4 the evidence that's presented in this case. Anybody
5 else in this courtroom who tells you what the law is,
6 is not necessarily wrong but that's not the law upon
7 which you should rely. And the law upon which you
8 should rely is the law that I give you. Okay.

9 All right, go ahead.

10 BY MS. HENDRICKS:

11 Q So assaulting an officer while resisting arrest,
12 could the Defendant -- I think you initially described him
13 pushing off of you; is that correct?

14 A Yes, ma'am, it is.

15 Q And would that have justified an arrest for
16 assault at that point?

17 A Yes, ma'am. I mean, a subject pushing off of
18 you, that can still cause harm and that's still considered
19 an assault. But then once the subject wants to push off,
20 I was attempting to grab his arm. So his arm, obviously
21 trying to pull away, would have to come back in a forward
22 motion to strike me in the face in front of him. So
23 that's when that transpired with the assault as far as
24 resisting arrest as well.

25 Q Okay. And what about the person who was the

JONATHAN COOPER-DIRECT BY MS. HENDRICKS

1 original subject of the stop, did you end up issuing her a
2 ticket?

3 A No, ma'am. Due to the factors that we're here
4 for today, that was kind of something that took precedent,
5 issuing a citation. So I just wrote her a written warning
6 and sent her on her way.

7 Q All right. I think we're ready for your video.
8 (WHEREUPON, State's Exhibit No. 1 was
9 published.)

10 BY MS. HENDRICKS:

11 Q Does anything else happen while you're in the
12 car that is of note?

13 A No, ma'am.

14 Q Okay. Let's skip forward.

15 (WHEREUPON, State's Exhibit No. 1 was continued
16 to be published.)

17 BY MS. HENDRICKS:

18 Q Is your body cam on at that point?

19 A So it is activated but at that point when you
20 saw me make contact with the subject, the body cam fell
21 off and fell onto the ground.

22 (WHEREUPON, State's Exhibit No. 1 was continued
23 to be published.)

24 BY MS. HENDRICKS:

25 Q So at that point, is the Defendant in handcuffs?

JONATHAN COOPER-CROSS BY MR. NGUYEN

1 A No, ma'am, he is not.

2 Q Okay.

3 (WHEREUPON, State's Exhibit No. 1 was continued
4 to be published.)

5 BY MS. HENDRICKS:

6 Q Is the Defendant handcuffed at this point?

7 A During this time is when we're getting the
8 Defendant in handcuffs, yes.

9 Q Is that buzzing noise that you heard in the
10 video, is that the taser?

11 A It is. The initial pop. It is the prongs
12 deploying and then the buzz, it's a five second cycle.

13 MS. HENDRICKS: Okay, I have no further
14 questions. Please answer any questions that The
15 Defense may have.

16 THE COURT: Your witness, Mr. Nguyen.

17 CROSS-EXAMINATION

18 BY MR. NGUYEN:

19 Q You said you were hit in the nose; is that
20 correct?

21 A That's correct.

22 Q I believe you testified earlier that you were
23 hit by the back of his right arm, right?

24 A Yes. When I went to grab him he was pulling
25 back and would have to come forward in a forward motion to

JONATHAN COOPER-CROSS BY MR. NGUYEN

1 hit me in the nose.

2 Q You said it was a closed fist strike?

3 A Yes, sir.

4 Q Palm strike.

5 A Closed fist.

6 Q Did you sustain any injuries?

7 A It was -- EMS looked at it while they were on
8 seen. It wasn't broken or anything. It was just sore for
9 about a week.

10 Q Okay. So you received a strike right to the
11 right side of your face or left side of your face?

12 A It would have been -- it was right here so my
13 left, when you're looking at me, the right.

14 Q So EMS checked you out?

15 A Yeah, I talked to one of the paramedics that I
16 knew that arrived on scene to give care to him. They just
17 looked at it, felt it, knew it wasn't broken, it was sore
18 so we moved on.

19 Q Any medical reports, any EMS reports?

20 A No.

21 Q No EMS reports. Did you -- you said it was sore
22 for a week, was there any follow-ups after that to the
23 injury?

24 A No. I had no reason to go to the doctor. It
25 was obviously some bruising.

JONATHAN COOPER-CROSS BY MR. NGUYEN

1 Q Now, earlier you discussed the Defendant was
2 hindering your investigation; correct?

3 A Correct.

4 Q Your attention was divided?

5 A Correct.

6 Q Was he physically interfering with your
7 investigation?

8 A So -- can you repeat that question?

9 Q Was he physically interfering?

10 A In what manner do you mean physically?

11 Q I mean, physical. Did he actually do anything?
12 Touch you, grab you?

13 A So physical interference could be his presence
14 being there, he's taking my attention off my primary
15 investigation. And I'm having to now make sure that he
16 doesn't continue to interfere and put me in potential
17 danger, essentially. So yes, I would say he was
18 physically interfering.

19 Q So you're saying that his presence physically
20 interfered with your investigation?

21 A Correct.

22 Q Okay. Did he -- is that -- you discussed
23 earlier about internal policies about, you know,
24 expectations of distances or whatnot and what you expect
25 from the public, I guess. Is that -- is that the

JONATHAN COOPER-CROSS BY MR. NGUYEN

1 ordinance? Or is that just policy?

2 A So, the ordinance or policy does not give a
3 physical five feet, 10 feet, 20 feet and so on and so
4 forth. It gives a if they are hindering me from doing my
5 job, what I'm there to do. So distance is not a factor.

6 Q Any other interference? Was he verbally
7 interfering?

8 A The biggest thing with the interference is he
9 did not have -- you know, if he wanted to check on his
10 friend, I get that. Hey, is she okay? Yeah, she's fine.
11 We'll have her out of here in a minute. If you wait over
12 there. The refusing to back up, refusing to leave after
13 multiple warnings, so on and so forth, that's the
14 interference. Because now we can't pay attention and do
15 what we're there to do.

16 Q So as that video played out, there was the
17 initial traffic stop, right?

18 A Correct.

19 Q Then Shauntana gets out of the car and exits,
20 correct?

21 A Correct.

22 Q Then Thomas comes up the road, right?

23 A He comes up blind, in the car running, I was
24 looking at the female's information.

25 Q You heard them have a discussion? You couldn't

JONATHAN COOPER-CROSS BY MR. NGUYEN

1 necessarily hear but you heard them having a discussion
2 about what was going on?

3 A Yeah, I have no idea what they said but I could
4 hear them talking.

5 Q Okay. Well at that point, you didn't ask him to
6 step away?

7 A I was not patrolling the outside of the vehicle.
8 At that point, there's a concept of a contact and a cover
9 officer. And at that point, I'm the contact. I stopped
10 the car, I'm doing all the information, checking all the
11 DMV records or whatnot for what I'm there for. As to
12 where Deputy Lancaster was my cover officer, trying to
13 patrol everything else outside that vehicle where I could
14 conduct my primary investigation.

15 Q Okay. So for you, you weren't really interfered
16 with in your investigation, you specifically? I'm not
17 saying Lancaster but you specifically?

18 A No, I was. Because him walking up and then
19 talking and hearing that, I'm now having to take my
20 attention off just her and now trying to run everything on
21 my computer so on and so forth. Well now, I have some
22 random person just walking up that I don't know from Adam.
23 So therefore, my attention is divided away from what I
24 need to be doing.

25 Q Okay. I want to briefly go over, I guess, the

JONATHAN COOPER-CROSS BY MR. NGUYEN

1 decision to tase Thomas. I believe earlier you said there
2 was reasons for deploying tasing if there's a physical
3 versus a verbal, correct?

4 A Uh-huh.

5 Q Was he physically, you know, assaulting -- how
6 long have you been an officer, a deputy?

7 A A little over three years.

8 Q A little over three years. You know how to
9 complete an investigation for a traffic stop?

10 A Yes, absolutely.

11 Q Now, the injuries you referenced earlier, are
12 there any photographs of your injury?

13 A No, there was no visible injury.

14 Q All right. Earlier you stated there was a
15 soreness, something like that. Essentially, you were
16 saying the assault was enough that you were sore for a
17 week after, correct?

18 A Correct. Yes, I was sore but there was nothing
19 that you could see with the eye.

20 Q So part of you didn't feel it was necessary to
21 take any photographs?

22 A No. If there's nothing visual, I do not see it
23 necessary to photographs.

24 MR. NGUYEN: Nothing further, Your Honor.

25 THE COURT: Any redirect?

JONATHAN COOPER-CROSS BY MR. NGUYEN

1 MS. HENDRICKS: No, Your Honor.

2 THE COURT: Okay.

3 All right, good enough, you can step down. I
4 appreciate it.

5 THE WITNESS: Thank you, sir.

6 THE COURT: Okay, Ms. Hendricks, how many
7 additional witnesses do you think you have?

8 MS. HENDRICKS: Just two.

9 THE COURT: Just two?

10 MS. HENDRICKS: Yes, Your Honor.

11 THE COURT: Okay. How long do you anticipate
12 those witness would take? About the same amount as--

13 MS. HENDRICKS: One of them, excuse me, Your
14 Honor. One of them will be about the same amount of
15 time as Deputy Cooper and one of them will be very
16 short.

17 THE COURT: Okay. All right.

18 So I'm going to put it to y'all, let you make a
19 decision. Do you want to take lunch now or do you
20 want to wait until The State has finished with their
21 evidence? By show of hands, how many people want to
22 take lunch now? One.

23 Oh, you're in the minority, sorry. So I'm
24 afraid you've been overruled.

25 So having said that, you may call your next

JONATHAN COOPER-DIRECT BY MS. COOPER

1 witness.

2 MS. HENDRICKS: Thank you, Your Honor. The
3 State calls Jake Lancaster to the stand.

4 JAKE LANCASTER, {,}after being duly
5 Sworn{,}testified as follows:{F}

6 THE CLERK: Please take a seat and state your
7 name.

8 THE WITNESS: Jake Lancaster.

9 DIRECT EXAMINATION

10 BY MS. HENDRICKS:

11 Q Mr. Lancaster where do you work?

12 A I'm currently employed by Spartanburg water.

13 Q And where did you work prior to your position
14 with Spartanburg water?

15 A The Greenville County Sheriff's Office.

16 Q What was your position at the Greenville County
17 Sheriff's Office?

18 A I was uniform patrol deputy assigned to Delta
19 platoon, area nine.

20 Q How long were you with the sheriff's office?

21 A Two years and seven months.

22 Q Were you working for the sheriff's office on
23 July 21, 2018?

24 A Yes, I was.

25 Q And what were you -- what were you doing that

JONATHAN COOPER-DIRECT BY MS. COOPER

1 night?

2 A We were involved in a street level crime unit.
3 Which is why me and Deputy Cooper were in the same
4 vehicle. Usually, we're not. We weren't assigned to a
5 certain beat area that night. It was just kind of a side
6 of town that we were working. Not necessarily responding
7 to calls for service unless they were emergencies.

8 Q Okay. And did you attempt a traffic stop that
9 night?

10 A I did. I was the passenger in the vehicle but
11 yes, we did attempt a traffic stop.

12 Q Where was that?

13 A Lynhurst [verbatim] Drive in area seven of
14 Judson Mills.

15 Q Is that in Greenville County?

16 A Yes, it is.

17 Q Is that in a unincorporated portion of the
18 county?

19 A Yes, it is.

20 Q All right. If I were to show you a blown-up map
21 of that area, would you be able to recognize it?

22 A Yes.

23 Q Would that help in your testimony?

24 A Yes.

25 Q The map is actually already up here. Does it

JONATHAN COOPER-DIRECT BY MS. COOPER

1 actually depict the area of the traffic stop?

2 A Yes, it does.

3 Q Would you mind--

4 A Yes, it does.

5 Q Would you mind stepping down and pointing out
6 where y'all were stopped?

7 A If I'm looking at this correctly, we had the
8 vehicle stopped somewhere right here in the front yard.
9 I'm not exactly sure where but it was in the front of this
10 house.

11 Q On B Street?

12 A On B Street, yes.

13 Q All right, thank you. Was the Defendant in the
14 car that you stopped?

15 A No.

16 Q And do you remember what reason that car was
17 stopped?

18 A I believe it was a turn signal. And they were
19 driving very erratically. We observed them traveling at a
20 high rate of speed through the mill village.

21 Q And so, did the Defendant walk up to the scene?

22 A Yes, he did.

23 Q Were you able to see where he was coming from?

24 A Yes, I did.

25 Q Is the person who walked up to the scene in the

JONATHAN COOPER-DIRECT BY MS. COOPER

1 courtroom today?

2 A Yes, he is.

3 Q Could you point him our for the jury?

4 A Yes, he's right there.

5 Q Were there other people outside beside the
6 Defendant?

7 A In front of the house where we stopped the
8 vehicle, no. But there was a large crowd at the house,
9 not directly to the right, but the one behind it.

10 Q Would you step out and point the jury to where
11 the crowd was?

12 A So we had the vehicle stopped here in front of
13 his house. The large group of people were right here in
14 his front yard. In front of this house here, or to the
15 side.

16 Q How many people would you say were outside?

17 A It was very dark, it was nighttime. But due to
18 the loud volume, I would say five to ten, maybe more.

19 Q And were members of the public able to tell you
20 were a law enforcement officer that night?

21 A Yes, we were in a marked uniform patrol vehicle.
22 We were both wearing matching uniforms.

23 Q So you weren't in a suit like you are today --

24 A No.

25 Q You had a uniform on?

JONATHAN COOPER-DIRECT BY MS. COOPER

1 A Correct. Uniform like they got on today.

2 Q Were you able to see the Defendant walk up?

3 A Yes.

4 Q Could you tell where he came from?

5 A Yes. So I observed -- so initially, when we
6 stopped the vehicle, because I was the passenger and not
7 the contact officer, where Deputy Cooper was focused on
8 the vehicle, when we stopped it I noticed that the front
9 vehicle kept going and I saw the break lights somewhere
10 around that other house. So I assumed that -- assuming
11 that the Defendant came from that house or that vehicle
12 because he walked up the road. I could see the flashlight
13 coming up the road.

14 Q So did the Defendant have a flashlight?

15 A I believe it was his phone. Looking back on it,
16 it was probably his phone. But that night it just looked
17 like light to me, I thought it was a flashlight.

18 Q And what happened once he walked up to the
19 scene?

20 A So he walked up the road and got in our
21 investigation and began questioning what we were doing,
22 why we were there and why we had stop that vehicle.

23 Q And so what did you do next?

24 A Because I was the cover officer and not no the
25 contact officer, Deputy Cooper was the contact officer

JONATHAN COOPER-DIRECT BY MS. COOPER

1 because he was the driver. He was talking to the suspect
2 that we had initially stopped. And I was there for his
3 scene, for safety. I'm just watching, making sure nothing
4 happens while he talks and does he thing. Can you repeat
5 the question? I'm sorry.

6 Q It was a broad question, I apologize. It was
7 just what happened after the Defendant walked up and you
8 described him as interfering with your investigation.
9 What did you direct the Defendant to do next?

10 A Oh, yes. He began questioning what we're doing,
11 why we were there. And I, honestly, can't remember if I
12 told him at first why we stopped her or not. But I
13 remember giving multiple verbal warnings of look, you can
14 go over there, you don't need to be questioning what we're
15 doing here, this is, essentially, a crime scene, we're
16 investigating a crime that occurred, you need go back over
17 to where you came from. You don't need to be asking us
18 any questions at this time.

19 Q And did the Defendant follow your command to
20 back up?

21 A No, that's why we had to give multiple, multiple
22 commands that he needed to back away from our scene.

23 Q And were any of those commands because he was
24 filming?

25 A No, filming was irrelevant. Like I said before,

JONATHAN COOPER-DIRECT BY MS. COOPER

1 I didn't even realize that that was a phone. I mean, I
2 thought it was a flashlight because it was dark out there.

3 Q So what happened next after you commanded him to
4 back up and he refused?

5 A I eventually told him why I was telling him to
6 back up. I said he was interfering. I made it known to
7 him, look, you're interfering with our investigation, you
8 need to go back over there or you're going to go to jail
9 for interfering. So I instructed him, look we're going to
10 take you to jail if you continue to interrupt our
11 investigation.

12 Q And did he back up?

13 A No, he did not. So at that point I informed
14 him, okay, you're not going to back up, you're under
15 arrest for interfering with an investigation.

16 Q Were you able to get him in handcuffs at that
17 point and place him under arrest?

18 A No. Luckily, initially, when I saw -- when I
19 observed him coming up and I heard the crowd. Just
20 because of the time of night with people walking up, I
21 knew that we had some other vehicles in the area because
22 we were working on that, you know, like, street crimes.
23 So I knew they were in the area so I went ahead and
24 requested them to come over there. Luckily, they had
25 pulled up as soon as we attempted to effect the arrest.

JONATHAN COOPER-DIRECT BY MS. COOPER

1 The Defendant shoved his arms out where I was able to get
2 out of the way. I attempted to effect the arrest by
3 grabbing his arm and trying to get him controlled to where
4 we could put him in handcuffs. He continued to struggle
5 and fight. After I continued to give verbal commands, you
6 know, stop resisting, you know, you're under arrest. He
7 continued to struggle where, eventually, Deputy Cooper let
8 myself and other deputies on the scene know that he was
9 going to use his taser in an attempt to control the
10 suspect. And we were eventually able to get him into
11 handcuffs at that point.

12 Q Okay. Did you see the Defendant hit Deputy
13 Cooper?

14 A No. Like I said, I did not see it. I was
15 trying to not get hit myself. I saw his hand come up but
16 he didn't hit me. But I wasn't able to observe him
17 hitting Deputy Cooper.

18 Q Did you even know that that happened?

19 A No.

20 Q Once he was tased, did he stop resisting?

21 A He did. He did.

22 Q And can you tell the jury, briefly, just the
23 procedure for placing somebody under arrest?

24 A Yes. So as soon as I verbalized that he was
25 under arrest, he was under arrest at that point regardless

JONATHAN COOPER-DIRECT BY MS. COOPER

1 of whether or not he's in handcuffs. He was under arrest
2 at that point. We attempted, just for our safety, we
3 handcuffed from behind the back with our issued standard
4 handcuffs so we can transport him safely to the Greenville
5 County Detention Center.

6 Q Is a traffic stop considered a police
7 investigation?

8 A Yes, it is. A crime had occurred. Like I said,
9 the failure to use a turn signal and driving erratically
10 are negligent driving. It's technically a crime has
11 occurred. Then I failed to mention that we had realized
12 that the driver of that vehicle had a suspend driver's
13 license. So now we started to investigate why she was
14 driving, who was going to come get her, if we were going
15 the write her a ticket or not. So there's a lot of things
16 we're trying to work on while being interrupted or
17 constantly, you know, interfered with.

18 Q When conducting a police investigation, does the
19 Greenville County Sheriff's Office have policies and
20 procedures regarding how close someone can come?

21 A I'm not sure if the sheriff's office themselves
22 has a policy, but I know that the State of South Carolina,
23 when we were trained at the academy, that we're taught
24 that through multiple tests and trials that there's a
25 28-foot reactionary gap to where somebody can stand so

JONATHAN COOPER-DIRECT BY MS. COOPER

1 close to you that if they rush me with the type of holster
2 that I have, if they rush me with a knife, a blunt object
3 or whatever, I wouldn't have time to react. I mean,
4 that's the science behind it that I wouldn't be able to
5 defend myself. So that's why it's important that we try
6 to keep that distance from help. It gives us time to
7 react to see what's going on and let things develop in
8 front of us.

9 Q Would you say the Defendant on this night was
10 standing closer than 28 feet to you?

11 A Yes. I don't know exactly how close he was but
12 I know I was standing right on the curve and he was right
13 beside the car. So I would say yes, he was closer than 28
14 feet.

15 Q So do any of these policies change when a
16 interaction is being video taped by the public?

17 A No. It all says the same. I was videoing too.
18 I had a body camera on too. We were all filming. There's
19 multiple cameras on.

20 Q So are members of the public allowed to video
21 police interactions?

22 A Yes. That's why there was -- really, the video
23 recording was irrelevant. If he would have stood on the
24 side away from us, not questioning what we were doing.
25 Could have came up to us after we got the traffic stop

JONATHAN COOPER-DIRECT BY MS. COOPER

1 completed said hey, I want to know what y'all were doing,
2 I'm just checking on her. But he didn't do that.

3 Q I'm going to show you what's been marked for
4 identification purposes as State's Exhibit 2. Do you know
5 what this is?

6 A Yes, that's my body-worn camera.

7 Q And how do you know?

8 A I previously watched it before we started and
9 initialed my name on top of it.

10 Q And does it fairly and accurately depict the
11 events that occurred on July 21, 2018 at B Street?

12 A Yes.

13 Q Has it been altered in any way?

14 A No.

15 Q Was anything added or deleted from this?

16 A No.

17 MS. HENDRICKS: Your Honor, at this time the
18 State would move State's Exhibit 2 into evidence.

19 THE COURT: Objection, sir?

20 MR. NGUYEN: No objection.

21 THE COURT: All right, without objection the
22 same is admitted.

23 (WHEREUPON, State's Exhibit No. 2 was admitted
24 into evidence.)

25 MS. HENDRICKS: We would like to publish a

JONATHAN COOPER-DIRECT BY MS. COOPER

1 portion to the jury.

2 THE COURT: Sure.

3 MR. NGUYEN: Your Honor, we would ask that this
4 be published in its entirety -- not entirely
5 continuous but without any breaks on this one.

6 THE COURT: Okay. All right. Well, I don't
7 know how long it is but--

8 MR. NGUYEN: I don't expect the entire but just
9 without any of the breaks.

10 MS. HENDRICKS: Your Honor, we were just going
11 to play the first five minutes continuously. I think
12 at the five minute mark he's in handcuffs and that's
13 the end of the. . .

14 THE COURT: Okay. All right. Good enough.

15 (WHEREUPON, State's Exhibit No. 2 was
16 published.)

17 BY MS. HENDRICKS:

18 Q Deputy Lancaster, is the first certain amount of
19 seconds muted on the body cam?

20 A Yes. The video recording starts immediately.
21 However, the audio portion it's -- on my particular body
22 cam that I wore was 30 seconds before audio started.

23 Q Thank you.

24 (WHEREUPON, State's Exhibit No. 2 was
25 published.)

JONATHAN COOPER-DIRECT BY MS. COOPER

1 BY MS. HENDRICKS:

2 Q Was the Defendant under arrest at this point,
3 y'all successfully got him in handcuffs?

4 A Yes, I believe so. I believe I picked my body
5 camera back up. I'm not sure exactly how long the span
6 was before I picked my body cam back up but it wasn't very
7 long after the taser was deployed.

8 Q At this point is your body camera still on your
9 body?

10 A No, it was laying in the grass.

11 Q Where did you wear a body camera?

12 A It's held by magnet on my chest. Which if you
13 hit it at a the right angle it will come off. I believe
14 Deputy Edwards when he came forward and knocked my camera
15 off.

16 Q And are body cameras able to see everything?

17 A No.

18 Q What are they able to see?

19 A Really just what is just directly in front of
20 me. Like in this instance, facial expressions, advertent
21 movements. May not capture something that I see over
22 here. Like they didn't -- the big group of people, can't
23 see that from the body camera, you couldn't really hear
24 it. But, I mean, I could hear it and I could see it.

25 Q So, did the Defendant do anything to you when he

JONATHAN COOPER-CROSS BY MR. NGUYEN

1 was resisting arrest?

2 A Other than put his arms up. Not -- not put his
3 arms up, other than shoving his hands out towards my face
4 and then just being, I guess, it's passive resisting where
5 he's pulling away from me. He's just constantly trying to
6 get away from me, wouldn't let me effect the arrest. But
7 he didn't strike me in any way.

8 Q Did he successful shove you?

9 A No, he missed me.

10 Q Okay.

11 All right, I have no further questions.

12 Please answer any that The Defense may have.

13 CROSS-EXAMINATION

14 BY MR. NGUYEN:

15 Q You stated earlier in -- earlier in your
16 testimony that you told him, as he came up, you answered
17 his question and you told him to go away; correct?

18 A Correct.

19 Q That he needed to go away. As soon as he walked
20 up?

21 A Correct.

22 Q That's what you testified, correct?

23 A I believe I did.

24 MR. NGUYEN: I want to play this again. 1:45

25 mark.

JONATHAN COOPER-CROSS BY MR. NGUYEN

1 (WHEREUPON, State's Exhibit No. 2 was
2 published.)

3 BY MR. NGUYEN:

4 Q Did you ask him to go away at this point?

5 A Not immediately, no.

6 Q All right.

7 (WHEREUPON, State's Exhibit No. 2 was continued
8 to be published.)

9 BY MR. NGUYEN:

10 Q We're a minute later, a little over a minute
11 later, you asked him to go away yet?

12 A No, I was just questioning while he was there
13 but I hadn't instructed him to leave yet.

14 Q Sorry, say that again.

15 A No, I was just questioning why he was there, I
16 hadn't instructed him to leave yet.

17 Q But earlier you said you instructed him to go
18 away right away, right?

19 A Well, I mean, it's all -- I did instruct him to
20 leave.

21 Q Okay.

22 (WHEREUPON, State's Exhibit No. 2 was continued
23 to be published.)

24 A Can you pause it right quick? I want to point
25 something out. If you didn't see how close he was

JONATHAN COOPER-CROSS BY MR. NGUYEN

1 standing to me. I had move over to the other side. Just
2 to go off your question earlier about how close he was,
3 that was less than 15 feet. Where he was standing.
4 That's why I had to move over to that other side of the
5 vehicle.

6 Q But again, you didn't ask him to go away yet?

7 A No, I haven't.

8 (WHEREUPON, State's Exhibit No. 2 was continued
9 to be published.)

10 BY MR. NGUYEN:

11 Q During all this time, you don't ask him to go
12 away.

13 (WHEREUPON, State's Exhibit No. 2 was continued
14 to be published.)

15 BY MR. NGUYEN:

16 Q At this point, I understand you stated earlier
17 you were worried about distance or whatnot, right?

18 A Correct.

19 Q But you never asked him, hey, I need more
20 distance at this point? That hasn't come up yet, right?

21 A Correct. I just did it on my own. As officer's
22 safety, I just went ahead and separated myself far enough
23 to where I thought I was okay.

24 (WHEREUPON, State's Exhibit No. 2 was continued
25 to be published.)

JONATHAN COOPER-CROSS BY MR. NGUYEN

1 BY MR. NGUYEN:

2 Q You heard him make that statement, right?

3 A Yes.

4 Q He was challenging your authority, right?

5 A I'm not sure what he said. I don't remember.

6 Q You don't remember?

7 A I couldn't hear what he said on the video.

8 Q Okay. Well, you can't hear it -- so you're

9 saying you couldn't hear what he said?

10 A No, I'm sure I heard it. I don't remember -- I
11 can't hear exactly what he said off the video. So I don't
12 know what he said.

13 (WHEREUPON, State's Exhibit No. 2 was continued
14 to be published.)

15 BY MR. NGUYEN:

16 Q So today you heard what he said, now you want
17 him to go away?

18 A Correct.

19 Q Okay. Earlier you were talking about his
20 interference, was he physically interfering with your
21 investigation of the traffic stop?

22 A By being closer than the reactionary gap, yeah,
23 I would say he was physically interfering by being that
24 close, yes. He's physically there, yes.

25 Q Physical presence in your mind is enough for

JONATHAN COOPER-CROSS BY MR. NGUYEN

1 interfering?

2 A Yeah. That's like, previously stated, when we
3 were trained in the Criminal Justice Academy, because he's
4 inside that reactionary gap, he's physically interfering
5 with what I've -- because I can't -- I've taken my focus
6 off the original suspect. Now that I'm focused on him and
7 his moving, talking. I've now no longer given my full
8 attention to the original offender.

9 Q So you mentioned that there's a expectation of
10 distance, correct? And now, Thomas is a little behind
11 Shauntana. You don't have a problem with her being that
12 close to you?

13 A I'm not exactly sure what you're asking. If
14 you're asking if she's inside the reactionary gap, yeah,
15 looks like Deputy Cooper--

16 Q And you?

17 A Okay, yes. But she's the primary suspect. So
18 that's who I'm supposed to be watching. But what I'm
19 getting at is I can't watch her and watch him at the same
20 time. Because he's inside that reactionary gap, that's
21 why I'm asking him to back up. Go back over there.

22 Q You're saying the body cam depicts exactly
23 what's in front of you, right?

24 A No, that's exact opposite of what I said. I
25 said it doesn't depict exactly what's going on.

JONATHAN COOPER-REDIRECT BY MS. HENDRICKS

1 Q So you said earlier, I think, just gives you
2 a --

3 A Frontal view.

4 Q Frontal view?

5 A Yep.

6 Q That's the frontal view, correct?

7 A Yes.

8 Q You can see both of them, correct?

9 A Well, I might be able to see that he's there but
10 I'm not going to be able to see advertent movements, if
11 he's reaching in his pocket, what he's saying, what he's
12 doing. I'm not going to be able to see that. I might be
13 able to see out of my peripheral vision that yes, he is
14 physically there. But I'm not going to be able to
15 watch -- I can't watch her and watch him at the same time.

16 MR. NGUYEN: Okay. No further questions.

17 THE COURT: Okay. Any redirect?

18 MS. HENDRICKS: Brief redirect, Your Honor.

19 REDIRECT EXAMINATION

20 BY MS. HENDRICKS:

21 Q I believe The Defense indicated that you heard
22 some statement the Defendant said that you can't hear on
23 this video and that that's why you asked him to back up.
24 Is that statement the only reason you -- is the statement
25 a reason you asked him to back up?

JAMES BERGGRUN-DIRECT BY MS. HENDRICKS

1 A No. The statement alone was not the reason that
2 I asked him to back up. That was one of the reasons
3 because he interrupted Deputy Cooper. I can't -- you
4 know, Deputy Cooper is trying to talk to this lady about
5 her original offense. And by him talking and saying, hey,
6 we're the only two here, what are you talking about, they
7 got other cops pulling up now, that's interrupting Deputy
8 Cooper's attention and his sentence [verbatim] to that
9 other female. So by him doing that that is interfering.

10 MS. HENDRICKS: Thank you, no further questions.

11 THE COURT: Have any recross?

12 MR. NGUYEN: No, Your Honor.

13 THE COURT: Thank you, officer, you can step
14 down. I appreciate it.

15 You have one more witness?

16 MS. HENDRICKS: One more, Your Honor, brief.

17 THE COURT: Sure, you may call your witness.

18 MS. HENDRICKS: The state calls Deputy Berggrun.

19 JAMES BERGGRUN, after being duly

20 sworn{,}testified as follows:{F}

21 THE CLERK: Please take a seat and state your
22 name.

23 THE WITNESS: My name is James Berggrun.

24 DIRECT EXAMINATION

25 BY MS. HENDRICKS:

1 THE COURT: Okay. All right. Good enough. So
2 you're going to call one witness?

3 MR. NGUYEN: Just the one, yes, sir.

4 THE COURT: Okay. All right, good enough.

5 All right, ladies and gentlemen, you heard that.
6 So what I want you to do is be back at 2:30. And the
7 reason that's a little bit longer is we got to
8 conduct some business while y'all are gone and I want
9 to make sure that the court staff personnel gets a
10 full hour for their lunch. So please don't discuss
11 the case, I'll see y'all back at 2:30, all right.

12 (WHEREUPON, the jury left open court at
13 approximately 1:12 a.m.)

14 THE COURT: Okay. All right. Motions?

15 MS. HENDRICKS: None from The State, Your Honor.

16 THE COURT: From The Defense?

17 MR. NGUYEN: Yes, Your Honor. We would move to
18 renew our motion that the Greenville County ordinance
19 is basically unconstitutional as well as it applies
20 to the Defendant. I think there was ample evidence
21 from the officers statements that, essentially,
22 placed physical presence with interfering. I don't
23 see how, you know, as applied to him that, you know,
24 his physical presence was enough to say he was
25 interfering with their investigation. In addition --

1 in addition, there was the, I believe, it was
2 officer -- deputy -- former Deputy Lancaster --
3 sorry, Your Honor, one minute.

4 THE COURT: That's all right.

5 MR. NGUYEN: So I think throughout the testimony
6 from the various deputies, that they don't have an
7 understanding themselves of what the interfering with
8 police ordinance is. I guess, they equate it to
9 physical presence. To me, it would appear that, you
10 know, egregious speech as well as applied to him.
11 Lancaster really didn't have a problem with his
12 presence until the speech. To me, they're going
13 to -- The State is going to say is that, you know,
14 it's only because he's refusing to go away. There's
15 no obligation for him on his own property. I don't
16 this he necessarily has to go away. But it's applied
17 to him and I think it's unconstitutional.

18 THE COURT: Okay. all right. Good enough.

19 Any response from The State?

20 MS. HENDRICKS: Yes, Your Honor. I think there
21 was ample testimony that their concern was not
22 anything that he said verbally, I think the concerns
23 were for officers safety, public safety and dividing
24 the attention of officers. You can tell from the
25 video it's very dark. They all -- well, the first

1 enforcement officer. And I think that is
2 quintessentially a question of fact for the jury to
3 determine.

4 So what I intend to do is if I find that the --
5 and I'm going to read that. But if I find that
6 the -- that the code is constitutional, I will read
7 them not only prohibition as relaid under this code
8 but also the exception as well. We'll talk a little
9 bit more about charge as well before we take off for
10 lunch, okay. Not in court but we'll have a charge
11 conference, okay.

12 All right, so on that basis I'm taking under
13 advisement the constitutionality and I respectfully
14 deny the motion for directed verdict based on
15 whether, in fact, it was impeded or interfering with
16 a law enforcement officer.

17 MR. NGUYEN: Okay. I move for a directed
18 verdict on everything.

19 THE COURT: Sure, I gotch you. I gotch you.
20 And I respectfully deny the motion for directed
21 verdict under the applicable standard. I think that
22 The State has presented sufficient evidence upon
23 which a motion for directed verdict could be
24 overcome, has been overcome.

25 MR. NGUYEN: All right. Thank you, Your Honor.

THOMAS JONES-EXAMINATION BY THE COURT

1 THE FOREPERSON: Both of them?

2 THE COURT: Yes, sir. Thank you.

3 Okay, you may publish the verdict.

4 THE CLERK: In the case of The State of South
5 Carolina vs. Thomas Charles Jones, we, the jury, by
6 unanimous agreement, find the Defendant not guilty of
7 resisting arrest with assault. Guilty of interfering
8 with a county law enforcement officer.

9 THE COURT: Okay. All right, anything further
10 from this jury from The State?

11 MS. HENDRICKS: Nothing from The State, Your
12 Honor.

13 THE COURT: From The Defense?

14 MR. NGUYEN: No, Your Honor.

15 THE COURT: Okay. All right. So, ladies and
16 gentlemen, I appreciate your service on this jury.
17 If you return to your jury room I'll come back and
18 I'll dismiss you informally, give you the opportunity
19 to ask me any questions that you may have or give me
20 any constructive criticism that you may have as well.
21 I won't keep you very long, I promise you. I know
22 that y'all are ready to get outside and play in this
23 nice weather we're having today. But I will give you
24 the opportunity to ask me any questions that you
25 might have. So, if you'd return to your jury room,

THOMAS JONES-EXAMINATION BY THE COURT

1 I'll be back in just a few seconds.

2 (WHEREUPON, the jury came into open court at
3 approximately 4:49 p.m.)

4 THE COURT: Okay. All right. So I understand
5 that the offense for which the Defendant was found
6 guilty is a 30 day offense. But I'm going to talk to
7 the jury and we'll come back in and we'll go to
8 sentencing, okay. We won't spend much time on it but
9 I want to talk the jury first, okay.

10 MS. HENDRICKS: Thank you, Your Honor.

11 (WHEREUPON, a short break was taken.)

12 SENTENCING

13 THE COURT: All right. All right, you may
14 approach for sentencing.

15 Ms. Hendricks, is there anything in addition
16 that The State would like to put on the record with
17 respect to sentencing?

18 MS. HENDRICKS: Yes, Your Honor, The State would
19 like to put the Defendant's prior record on the
20 record.

21 THE COURT: Yeah, I'll be happy to hear it.

22 MS. HENDRICKS: 2008, public disorderly conduct.
23 2009, CDV. 2011, possession of marijuana, a federal
24 conviction for dangerous drugs. 2013, receiving
25 stolen goods, possession of a controlled substance,

THOMAS JONES-EXAMINATION BY THE COURT

1 possession of Ecstasy. 2016, possession of a
2 controlled substance and PWID cocaine base.

3 THE COURT: Okay.

4 All right, Mr. Jones, does that sound like a
5 fair account of your prior record, sir?

6 MR. JONES: Yes, sir.

7 THE COURT: Okay, Mr. Nguyen, anything you'd
8 like to tell me, sir?

9 MR. NGUYEN: Yes, sir, Your Honor, may it please
10 the Court. We would ask you to take light of the
11 testimony from the officers, you know. Their
12 estimation for the violation of this ordinance was
13 his physical presence. They stated that on --
14 throughout their testimony. We'd ask you to consider
15 allowing time served. If not, in the alternative
16 give him a fine.

17 THE COURT: How much time did he serve?

18 MS. HENDRICKS: Zero days.

19 THE COURT: Zero days?

20 MS. HENDRICKS: If I put zero means he didn't
21 spend the night.

22 THE COURT: Yeah, I'm with you.

23 MR. NGUYEN: He said he got out the next day.

24 THE COURT: Okay. All right. Okay.

25 Mr. Jones, do you have a job, sir?

THOMAS JONES-EXAMINATION BY THE COURT

1 MR. JONES: Yes, sir.

2 THE COURT: Where do you work?

3 MR. JONES: DSL, I drive medical equipment.

4 THE COURT: You work everyday?

5 MR. JONES: Yes, sir.

6 THE COURT: Here's what I'm going to do. I'm
7 going to sentence you to 30 days house arrest, okay.
8 Means you can continue to work and you can continue
9 to do all those things that you do ordinarily. Now
10 you're going to have some expenses associated with
11 house arrest for 30 days, okay. Now I can let you do
12 30 days in the detention center but that 30 days --
13 and you get credit for good time. So, you know, I
14 wouldn't tell you how long you would spend but I
15 think it would probably between 15 and 20 days and
16 you would be done with it. Or you can do 30 days and
17 you have to do that day for day on house arrest. But
18 I presume you want to keep your job?

19 MR. JONES: Yeah, with the type of job I have
20 with me being on house arrest, I wouldn't be able to
21 I do it because I travel out of town.

22 MR. NGUYEN: Would Your Honor consider allowing
23 him do to the time on the weekends?

24 THE COURT: Yeah, that's a lot of weekends
25 though. That's a ton of weekends.

THOMAS JONES-EXAMINATION BY THE COURT

1 MR. JONES: It would still allow me to keep my
2 job. Due to the fact that I travel.

3 MR. NGUYEN: I think it would be hard for him to
4 keep up. Because he does -- as I discussed, I call
5 for appointments to talk with him, he could be on his
6 way back from Charleston. I just think it would be
7 hard for him.

8 THE COURT: All right, well, let me ask you
9 this, you can pay a fine? Because I can do -- I can
10 do -- you don't know who Monty Hall is but I'm not
11 here to make a deal with you or anything. I'm just
12 trying to find something that's fair to you, okay.

13 MR. JONES: Yes, sir.

14 THE COURT: You can pay a fine?

15 MR. JONES: If I can work out some payment plans
16 so I don't go to jail.

17 THE COURT: Yeah, to avoid going to jail for 30
18 days, y'all can get together, okay?

19 UNIDENTIFIED FEMALE: Yes, sir. Yes, sir.

20 THE COURT: All right, here's what I'm going to
21 do. I'm going to sentence you to 30 days. And a
22 fine of \$1,000, provided upon the service of ten
23 days, weekend time; and a fine of \$500, the balance
24 is suspend. Okay. So, all you have to do is ten
25 days weekend time and pay a fine of \$500. If you

THOMAS JONES-EXAMINATION BY THE COURT

1 don't do either of those, then you have to do 30 days
2 and pay a fine of a \$1000, okay.

3 MR. NGUYEN: Your Honor, how much time will he
4 have to pay?

5 THE COURT: Well what I'd like is to see him pay
6 the \$500 within 15 days. But I tell you what, I'll
7 do it within 30 days. Because he'll still be doing
8 weekend time to the end of 30 days. So I'll say pay
9 within 30 days.

10 MR. NGUYEN: Thank you, Your Honor.

11 THE COURT: All right, give credit for time
12 served. Although, it looks like you may not have
13 any. The HIP program -- or excuse me, the weekend
14 program at the detention center can calculate whether
15 you should have credit for time, okay. I'm going to
16 leave that in their discretion.

17 All right, good luck to you, sir.

18 MR. NGUYEN: Thank you, Your Honor.

19 MS. HENDRICKS: Thank you, Your Honor.

20 THE COURT: All right.

21 (WHEREUPON, the proceedings were concluded.)
22
23
24
25

State's Exhibit #1 (DVD)
Provided by
Greenville County Clerk of Court

State's Exhibit #2 (DVD)
Provided by
Greenville County Clerk of Court

STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
)	THE THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE)	
)	Warrant Number(s):
THE STATE)	2018A2330206756; 2018A2330206758
)	
v.)	Indictment Number(s):
)	2018-GS-23-07031
THOMAS CHARLES FELTON JONES)	
)	DEFENDANT'S MOTION TO DECLARE
)	GREENVILLE COUNTY ORDINANCE
)	§ 15-10 UNCONSTITUTIONAL

20 JAN 19 PM 12:38
 Paul Wickens/mae COC BUL SC

COMES NOW, Defendant, by and through his Attorney, respectfully submits his Motion to Declare Greenville County Ordinance § 15-10 Unconstitutional. Defendant respectfully requests that § 15-10 of the Greenville County, South Carolina Code of Ordinances be declared “facially” unconstitutional under the Constitution of the United States and the Constitution of the State of South Carolina.

Statement of Facts

Defendant was arrested on July 25, 2018 by Officer Jonathan Cooper for resisting arrest with assault and violation of § 15-10 of the Greenville County Ordinance. That ordinance states as follows:

It shall be unlawful for any person within the unincorporated area of county to commit an assault, battery or by any act, physical or verbal, resist, hinder, impede or interfere with any law enforcement officer in the lawful discharge of his or her duty, or to aid or abet any such act.

The Defendant’s arrest was based on an interaction between Defendant and Officer Charles Lancaster. Officers Jonathan Cooper and Lancaster initiated a traffic stop on Shontona Enicha Williams outside the residence of Defendant. Defendant came out at the rear of his house and approached the officers. As Defendant approached, Officer Lancaster requested back up.

Defendant peacefully asked officers what was going on and why Williams was pulled over. Officer Lancaster responded that Williams failed to use her turn signals while making turns. At this point, Officer Lancaster inquired if Defendant needed anything. Defendant informed Officer Lancaster that he and Williams are friends, and that Williams was staying at his place for the night. Further conversations ensued regarding the traffic stop between Officer Cooper and Williams. During this time, Defendant stepped back a little. A few minutes later, more officers arrived from the earlier call for back up. Defendant made a verbal statement. Defendant stated, "they know damn well there was no big group of people out here." Officer Lancaster appeared to become agitated and demanded that Defendant go away or he can go to jail for interfering. Defendant refused stating no this was his house. Officers proceeded to arrest him for "interfering." Subsequently, officers gang tackle and tase him. There is body worn camera footage and Defendant's cell phone footage of this incident.

Issue

Should § 15-10 of the Greenville County Ordinance be declared facially unconstitutional because it is substantially overbroad and vague?

Law

The "first task is to determine whether the enactment reaches a substantial amount of constitutionally protected conduct." *Hoffman Estates v. Flipside, Hoffman Estates*, 455 U.S. 489, 494, 102 S. Ct. 1186, 1191 (1982). If it does, the analysis turns to whether the enactment is substantially overbroad and/or vague.

"Only a statute that is substantially overbroad may be invalidated on its face." *City of Houston v. Hill*, 482 U.S. 451, 458, 107 S. Ct. 2502, 96 L. Ed. 2d 398 (1987). It is not enough that an enactment evokes only a "single impermissible application" to show facial overbreadth.

Id. at 457. The purpose underlying the overbreadth doctrine is to prevent vastly sweeping laws from repeatedly chilling the exercise of free expression. *New York v. Ferber*, 458 U.S. 747, 772, 102 S. Ct. 3348, 73 L. Ed. 2d 1113 (1982). As the Court has explained, “the requirement of substantial overbreadth stems from the underlying justification for the overbreadth exception itself—the interest in preventing an invalid statute from inhibiting the speech of third parties who are not before the Court.” *City Council of Los Angeles v. Vincent*, 466 U.S. 789, 802, 104 S. Ct. 2118, 80 L. Ed. 2d 772 (1984).

A statute or ordinance can also be invalidated for vagueness if the law (1) “fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits” or (2) “authorizes or even encourages arbitrary and discriminatory enforcement.” *City of Houston*, 482 U.S. at 461.

Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application. . .

Grayned v. City of Rockford, 408 U.S. 104, 108-09, 92 S. Ct. 2294, 33 L. Ed. 2d 222 (1972). “A statute is ‘void for vagueness’ when its ‘terms are so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application.” *Fitts v. Kolb*, 779 F. Supp. 1502,

1516 (D.S.C. 1991) (citing *Connally v. Gen. Constr. Co.*, 269 U.S. 385, 46 S. Ct. 126, 70 L. Ed. 322 (1925)).

Analysis

I. Constitutionally Protected Conduct/Substantially Overbroad

“The First Amendment protects a significant amount of verbal criticism and challenge directed at police officers.” *City of Houston*, 482 U.S. at 461. “Freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state.” *Id.* at 462-63. Verbal criticism aimed at police can only be limited where it is “shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest.” *Terminiello v. City of Chicago*, 337 U.S. 1, 4, 69 S. Ct. 894, 93 L. Ed. 1131 (1949).

In *City of Houston v. Hill*, the Supreme Court struck down an ordinance like the Greenville County Ordinance at issue. The City of Houston's ordinance, “Assaulting or interfering with policemen,” made it “unlawful for any person to . . . in any manner oppose, molest, abuse or interrupt any policeman in the execution of his duty.” *City of Houston*, 482 U.S. at 461. The Supreme Court noted that the ordinance's scope was broad and not “narrowly tailored to prohibit only disorderly conduct or fighting words.” *Id.* at 462-63, 465. The Supreme Court also held that the language “in any manner . . . oppose, molest, abuse or interrupt” dealt with speech. *Id.* at 460-61. Though the City of Houston did not specifically mention speech, the Supreme Court interpreted “in any manner” to prohibit both physical and verbal acts.

The Greenville County Ordinance is similar in nature to the City of Houston ordinance and is overly broad. Unlike the ordinance in the City of Houston, the Greenville County Ordinance specifically states, “by any act, physical or verbal.” Therefore, the scope of the

ordinance covers speech. Much like City of Houston, however, the ordinance is not narrowly tailored to prohibit specific speech such as fighting words. Practically any speech could be construed by police to be interfering.

The Supreme Court has also “repeatedly invalidated laws that provide the police with unfettered discretion to arrest individuals for words or conduct that annoy or offend them.” *City of Houston*, 482 U.S. at 465. The City of Houston ordinance was “susceptible of regular application to protected expression” because only those individuals “chosen by the police in their unguided discretion” are arrested. *Id.* at 466-67. The Greenville County Ordinance presents the very same problem. The ordinance gives the police free reign on what speech constitutes interference with their duties. Unique to the Greenville County Ordinance, however, is a provision that states, “*Exceptions.* This section shall not apply to constitutionally protected conduct such as the peaceful questioning or protesting of government action.” Though this is better than the City of Houston ordinance, the problem remains. Police ultimately have unfettered discretion as to what is constitutionally protected conduct.

Since the Greenville County Ordinance governs speech, is not restricted to obscene language or fighting words, and gives officers “unfettered discretion” to make arrests for constitutionally protected speech, it should be concluded that it is unconstitutionally overbroad on its face.

2. *Vagueness*

The Greenville County Ordinance both (1) “fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits” and (2) “authorizes or even encourages arbitrary and discriminatory enforcement.” *City of Houston*, 482 U.S. at 461. Under the first test, the ordinance provides no definition for what conduct, whether

physical or verbal, would constitute an interference with police. Under the ordinance, practically any speech could interfere with police if deemed so by the police. This leads us to the second test, the authorization of any arbitrary enforcement of the law. Without clear guidance from the Greenville County Ordinance, officers can threaten jail for interfering when they simply disapprove of speech, they deem annoying. Much like the analysis above for overbreadth, the ordinance gives unfettered discretion to the police allowing arbitrary enforcement. In a similar ordinance in *Town of Honea Path v. Flynn*, 255 S.C. 32, 176 SE.2d 564 (S.C. 1970), the ordinance had no guidance for the police in determining what conduct constituted interference. An arrest could occur “upon nothing more than mere words uttered by [a person] which were not pleasing to the local police officers who obviously did not like anyone questioning or challenging their authority.” *Town of Honea Path*, 176 S.E.2d at 567-68. That ordinance was struck down for vagueness by the South Carolina Supreme Court.

In addition to the above cases, there are two other cases in South Carolina of local ordinances being declared unconstitutional because they were vague. In *McCoy v. City of Columbia*, 929 F. Supp. 2d 541 (D.S.C. 2013), the District of South Carolina found the city’s interfering with police ordinance unconstitutionally vague. Its ordinance read “it shall be unlawful for any person to interfere with or molest a police officer in the lawful discharge of his duties.” In *Baker v. Cannon*, 2016 U.S. Dist. LEXIS 132987, the District of South Carolina also struck down a similarly vague statute. The statute read “it shall be unlawful for any person or persons willfully to approach nearer than twenty (20) feet to any town employee for the purpose of interfering or stopping that employee from carrying out his/her duties.”

Since the Greenville County Ordinance is similar to numerous other local ordinances that have been declared unconstitutionally vague, is not clear on what conduct is prohibited, and

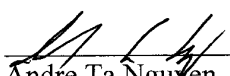
arbitrarily allows police to decide what violates the law, it should be concluded that it is unconstitutionally vague.

Prayer for Relief

Defendant respectfully requests that the Court declare § 15-10 of the Greenville County, South Carolina Code of Ordinances be declared unconstitutional.

IT IS SO MOVED.

Respectfully Submitted,



Andre Ta Nguyen
Attorney for Defendant
305 East North Street, Suite 123
Greenville, South Carolina 29601
(864) 467-8522

January 13, 2020
Greenville, South Carolina

WITNESSES

Jonathan G Cooper

JG

Greenville County Sheriffs Office

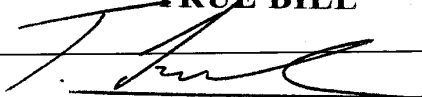
7/21/2018

ARREST WARRANT NUMBER

2018A2330206756 and 2018A2330206758

ACTION OF GRAND JURY

TRUE BILL



FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

AMENDED INDICTMENT

DOCKET NO. 2018-GS-23-07031

JVH

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

August

TERM 2018

2019

THE STATE

vs.

THOMAS CHARLES JONES

Amended Indictment for

0256 & 9004

RESISTING ARREST WITH ASSAULT

VIOLATION § 16-09-0320(B) South Carolina Code
of Laws

INTERFERING WITH A COUNTY LAW

ENFORCEMENT OFFICER

§ 15-10 Greenville County, SC Code of
Ordinances

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

AMENDED INDICTMENT FOR
RESISTING ARREST WITH ASSAULT &
INTERFERING WITH A COUNTY LAW ENFORCEMENT
OFFICER

At a Court of General Sessions, convened on **AUG 20 2019** the Grand Jurors of Greenville
County present upon their oath:

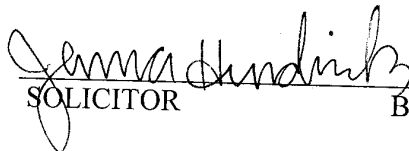
COUNT I – RESISTING ARREST WITH ASSAULT

That THOMAS CHARLES JONES did in Greenville County, on or about the 21st of July, 2018, knowingly and willfully and unlawfully assault, beat or wound Jonathan G Cooper with the Greenville County Sheriff's Office while resisting an arrest by one whom he knew or reasonably should have known was a law enforcement officer. This is in violation of §16-9-320(B) of the South Carolina Code of Laws (1976) as amended.

COUNT II- INTERFERING WITH A COUNTY LAW ENFORCEMENT OFFICER

That THOMAS CHARLES JONES did in Greenville County, on or about the 21st of July, 2018, willfully and intentionally commit an assault, battery or by any act, physical or verbal, resist, hinder, impede or interfere with Jonathan G Cooper with the Greenville County Sheriff's Office in the lawful discharge of his or her duty. This is in violation of § 15-10 of the Greenville County, South Carolina Code of Ordinances.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR BAR # 101236

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.

Thomas Charles Felton Jones

AKA:

Race: BLACK Sex: M Age: 28

DOB: [redacted] SS#: [redacted]

Address: [redacted]

City, State, Zip: Greenville, SC 29611

DL#: [redacted] SID#:

*CDL Yes [] No [] CMV Yes [] No [] Hazmat Yes [] No []

In disposition of the said indictment comes now the Defendant who was TO: Hindering / Hindering An Officer

1288050 1250045
IN THE COURT OF GENERAL SESSIONS 0-30 days \$10k up to \$500

INDICTMENT/CASE#: 2018GS2307031

A/W#: 2018A2330206758

Date of Offense: 7/21/2018

S.C. Code § : C/L, 17-25-0030

CDR Code #: 0878

SENTENCE SHEET

[] CONVICTED OF or [] PLEADS

in violation of § C/L, 17-25-0030 of the S.C. Code of Laws, bearing CDR Code # 0878
[] NON-VIOLENT [] VIOLENT [] SERIOUS [] MOST SERIOUS [] Mandatory GPS(CSC w/minor 1st or Lewd Act) [] §17-25-45

The charge is: [X] As Indicted, [] Lesser Included Offense, [] Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: [X] Without Negotiations or Recommendation, [] Negotiated Sentence, [] Recommendation by the State.

ATTEST: [Signature] 101236 SC Bar# [Signature] Defendant [Signature] NGUYEN, ANDRE TA 102084 SC Bar#
Hendricks, Jenna Thomas Jones

WHEREFORE, the Defendant is committed to the [] State Department of Corrections, [X] County Detention Center,
for a determinate term of 30 days/months/years or [] under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$ 1000 provided that upon the service of 10 days/months/years and/or payment of \$ 500; plus costs and assessments as applicable*; the balance is suspended with probation for 2 w/e
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
which are incorporated by reference.

[] CONCURRENT or [] CONSECUTIVE to sentence on:

[X] The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDoc.

[] The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

[] RESTITUTION: [] Deferred [] Def. Waives Hearing [] Ordered PTUP

Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms: [] Set by SCDPPPS 30 days

Recipient:

Table with 3 columns: Description, Amount, Total. Rows include §14-1-206 (Assessments 107.5%), §14-1-211(A)(1) (Conv. Surcharge) \$100, §14-1-211(A)(2) (DUI Surcharge) \$100, §56-5-2995 (DUI Assessment) \$12, §56-1-286 (DUI Breath Test) \$25, Proviso (Public Def/Probation) \$500, §14-1-212 (Law Enforce. Funding) \$25, §14-1-213 (Drug Court Surcharge) \$150, §50-21-114(BUI Breath Test Fee) \$50, §56-5-2942(J) (Vehicle Assessment) \$40/ea, 3% to County (if paid in installments) \$34.87

TOTAL \$1197.37

Clerk of Court/ Deputy Clerk Paul B. Wicencseimer
Court Reporter: Kerran

Presiding Judge [Signature]
Judge Code: 2158
Sentence Date: 01/14/2020

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

February 18, 2021

RECEIVED
Mar 01 2021
SC Court of Appeals

s/ John Christopher Shipman

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