

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County
William Jeffrey Young, Circuit Court Judge

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S.C. Supreme Court

Opinion No. 2012-UP-580 (S.C. Ct. App. filed 10/24/2012)

10-GS-40-10167.

THE STATE,

RESPONDENT,

V.

KENDRICK DENNIS,

PETITIONER

Appellate Case No. 2013-000398

APPENDIX

SUSAN B. HACKETT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

Attorney for Petitioner

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

MEGAN HARRIGAN
Assistant Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3727

DANIEL E. JOHNSON
Solicitor, Fifth Judicial Circuit
Post Office Box 192
Columbia, SC 29202-0192
(803) 576-1800
Attorneys for Respondent

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Kendrick Dennis, Appellant.

Appellate Case No. 2011-185188

Appeal From Richland County
William Jeffrey Young, Circuit Court Judge

Unpublished Opinion No. 2012-UP-580
Submitted October 1, 2012 – Filed October 24, 2012

AFFIRMED

Appellate Defender Susan Barber Hackett, of Columbia,
for Appellant.

Attorney General Alan Wilson, Chief Deputy Attorney
General John W. McIntosh, Assistant Deputy Attorney
General Salley W. Elliott, Senior Assistant Attorney
General Harold M. Coombs, Jr., and Solicitor Daniel E.
Johnson, all of Columbia, for Respondent.

PER CURIAM: Dennis appeals his conviction of resisting arrest, arguing the trial court erred in denying his motion for a directed verdict because the State failed to present evidence the arrest occurred in a public place. Because the State introduced into evidence (1) the apartment is freely accessible to the public; (2) there is a driveway leading in and out of the apartment complex off of a main road; (3) the entrance and exit are not blocked by access gates; and (4) the public is free to enter the complex without the requirement of passing through security or using codes, we affirm¹ pursuant to Rule 220(b), SCACR, and the following authorities: *State v. Weston*, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006) ("When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight."); *id.* at 292-93, 625 S.E.2d at 648 (stating an appellate court views the evidence and all reasonable inferences in the light most favorable to the State when reviewing a denial of a directed verdict and must find the case was properly submitted to the jury if any direct evidence or any substantial circumstantial evidence reasonably tends to prove the guilt of the accused); S.C. Code Ann. § 16-17-530 (2003) (providing a person engages in public disorderly conduct when he is "found on any highway or at any public place or public gathering in a grossly intoxicated condition or otherwise conducting himself in a disorderly or boisterous manner"); *State v. Williams*, 280 S.C. 305, 306-07, 312 S.E.2d 555, 556 (1984) (defining public place as "[a] place to which the general public has a right to resort; not necessarily a place devoted solely to the uses of the public, but a place which is in point of fact public rather than private, a place visited by many persons and usually accessible to the neighboring public. Any place so situated that what passes there can be seen by any considerable number of persons, if they happen to look. Also, a place in which the public has an interest as affecting the safety, health, morals and welfare of the community. A place exposed to the public, and where the public gather together to pass to and fro." (citations omitted)).

AFFIRMED.

HUFF, THOMAS, and GEATHERS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

KENDRICK DENNIS,

APPELLANT

Appeal from Richland County

William Jeffrey Young, Circuit Court Judge

Opinion No. 2012-UP-580

Appellate Case No. 2011-185188

PETITION FOR REHEARING

On October 24, 2012, this Court affirmed Appellant's conviction and sentence for resisting arrest in an unpublished opinion. State v. Dennis, 2012-UP-580 (Ct. App. filed Oct. 24, 2012). Appellant asks this Court to grant his Petition for Rehearing and direct a verdict of acquittal in his favor.

According to this Court, the trial judge correctly denied Appellant's motion for directed verdict because the prosecution presented evidence that (1) the apartment was freely accessible by the public; (2) the driveway into and out of the apartment led to a main road; (3) the entrance and exit were not blocked by gates; and (4) the public could freely enter the area without passing

through security or entering codes. Relying upon State v. Williams, 280 S.C. 305, 306-307, 312 S.E.2d 555, 556 (1984) for the definition of a public place, this Court held the apartment complex was a public place. Appellant respectfully asks this Court for rehearing based upon a misapprehension of the facts and relevant case law. See Rule 221(a), SCACR.

According to South Carolina statutory law, a person engages in public disorderly conduct when he is "found on any highway or at any public place or public gathering in a grossly intoxicated condition or otherwise conducting himself in a disorderly or boisterous manner." S.C. Code Ann. § 16-17-530(a). The prosecution presented no evidence that Appellant was found on any highway or at a public gathering; therefore, the question presented in the appeal was whether he was found at any public place. Although this Court correctly noted a definition of public place as approved by the Supreme Court of South Carolina, this Court failed to apply the definition to Appellant's case properly. In Williams, 280 S.C. at 306-307, 312 S.E.2d at 556, the Supreme Court defined public place as follows:

A place to which the general public has a right to resort; not necessarily a place devoted solely to the uses of the public, but a place which is in point of fact public rather than private, a place visited by many persons and usually accessible to the neighboring public. Any place so situated that what passes there can be seen by any considerable number of persons, if they happen to look. Also, a place in which the public has an interest as affecting the safety, health, morals, and welfare of the community. A place exposed to the public, and where the public gather together or pass to and for.

Applying this definition to the facts as presented in that case, the Supreme Court held that the lobby of the Austin Wilkes Society Home was a public place because it was common knowledge that the Homes, which received financial assistance often from United Way and governmental grants, were not private residences. Id. at 307, 312 S.E.2d at 556.

Two civil cases provide particularly strong support for Appellant's position that the apartment complex where he was arrested was not a public place. First, in answering a certified

question from the United States District Court for the District of South Carolina, the South Carolina Supreme Court cited with approval a prior district court case, Cooke v. Allstate Management Corp., 741 F.Supp. 1205 (D.S.C. 1990), when determining the duties owed by landlords to tenants. Cramer v. Balcor Property Management, 312 S.C. 440, 443, 441 S.E.2d 317, 318 (1994). In Cramer, the Court held that landlords did not owe an affirmative duty to protect tenants from criminal activity merely by reason of the relationship. Id. at 443, 441 S.E.2d at 318-319. Holding that “[t]enants in a huge apartment complex ... do not live where the world is invited to come,” the Court reasoned that “[a]n apartment building is not a place of public resort where one who profits from the very public it invites must bear what losses that public may create. It is of its nature private and only for those specifically invited.” Id. at 443, 441 S.E.2d at 318.

Second, this Court relied upon Cramer, *supra*, to determine that an apartment complex owner owed no duty to a social guest of a tenant to protect that guest from an assault. Goode v. St. Stephens United Methodist Church, 329 S.C. 433, 442-444, 494 S.E.2d 827, 831-832 (Ct. App. 1997). This Court determined the guest was not a public invitee because “an apartment complex is not a place held open to the public and is instead a private place for only people who are specifically invited.” Id. at 442, 494, S.E.2d at 831.

Although State v. McGowan, 347 S.C. 618, 557 S.E.2d 657 (2001) appears to support the prosecution’s position that the apartment complex was a public area, the facts illustrate substantial differences with Appellant’s case. While intoxicated, McGowan called police to his home to file a false complaint. Id. at 620-621, 557 S.E.2d at 659. The responding officer found McGowan waiting in his driveway. Id. at 621, 557 S.E.2d at 659. While still outside, McGowan was loud, boisterous, and using profanity. The officer decided to arrest McGowan for disorderly conduct when he began “ranting and raving” for the third or fourth time. When the officer attempted to

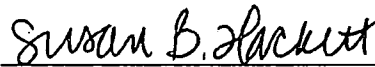
place handcuffs on him, McGowan ran toward his home. The officer caught McGowan and the two struggled. McGowan retrieved a shotgun. The officer attempted to subdue McGowan with mace, but this was not successful. Ultimately, the officer fired three shots: one warning shot, one shot hitting McGowan in the hand, and one shot grazing McGowan. On appeal, McGowan claimed the underlying arrest for disorderly conduct was unlawful, permitting him to resist the arrest and entitling him to a directed verdict on the resisting arrest charge. *Id.* at 624, 557 S.E.2d at 661. The Court held there was sufficient evidence from which a jury could find McGowan guilty of disorderly conduct where there was testimony that "McGowan was intoxicated, was acting in a loud and boisterous manner and cursing at police, that his language was loud enough to disturb the neighborhood, and that at some point during the incident, there was a car load of teenagers on the cul-de-sac across the street." *Id.* at 625-626, 557 S.E.2d at 661.

The key facts in determining that the evidence presented against McGowan satisfied the elements of disorderly conduct was the car load of teenagers on the cul-de-sac across the street and his loud volume of speech. *Id.* at 625-626, 557 S.E.2d at 661. The evidence presented at Appellant's trial was clear: there was no one else around. There was no evidence that Appellant was loud or boisterous prior to the officer's arrival. The officers arrived at the scene due to a dispatch call concerning an automobile accident. The record contained no evidence of any calls concerning loud noises or disruptive behavior at the apartment complex. The record contained no evidence that anyone other than the officers actually heard Appellant. Finally, no one testified that Appellant used abusive language or profanity to the officers or anyone else prior to his unlawful arrest. All of the evidence supported Appellant's position that he was deep within the apartment complex, not exposed to any public thoroughfares. Appellant disputes this Court's finding that the prosecution presented evidence that the apartment complex was freely accessible to the public.

Rather, the evidence presented indicated the complex was private property and not accessible to the public at large. In its opinion, this Court failed to address the facts specified by Appellant supporting his position that he was not in a public place, specifically, the sign on the gate of the apartment complex indicating it was private property.

Appellant respectfully asks this Court to grant rehearing on the matter to consider the facts and law supporting Appellant's position that he had a lawful right to resist arrest where the arrest for public disorderly conduct was unlawful because Appellant was not in a public place.

Respectfully submitted,



Susan B. Hackett
Appellate Defender

This 5th day of November, 2012.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KENDRICK DENNIS,

APPELLANT

CERTIFICATE OF SERVICE

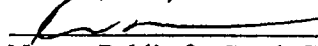
The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Harold M. Coombs, Jr., Esquire at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Kendrick Dennis, at 4443 Bethel Church Road, Unit 59, Columbia, SC 29206, this 5th day of November, 2012.

Susan B. Hackett

Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 5th day
of November, 2012.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: October 2, 2013.

The South Carolina Court of Appeals

The State, Respondent,

v.

Kendrick Dennis, Appellant.

Appellate Case No. 2011-185188

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Thomas C. Hoff

J.

Paul W. Thomas

J.

John O. Beatty

J.

Columbia, South Carolina

cc:

Harold M. Coombs, Jr.

Susan Barber Hackett

Daniel Edward Johnson

JAN 25 2013

FILED

January 25, 2013

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

William Jeffrey Young, Circuit Court Judge

RECEIVED
APR 22 2013
S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

KENDRICK DENNIS,

APPELLANT

RECORD ON APPEAL

SUSAN B. HACKETT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

Attorney for Appellant

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

MEGAN HARRIGAN
Assistant Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3727

DANIEL E. JOHNSON
Solicitor, Fifth Judicial Circuit
Post Office Box 192
Columbia, SC 29202-0192
(803) 576-1800

Attorneys for Respondent

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STATE OF SOUTH CAROLINA) IN THE COURT
COUNTY OF RICHLAND) OF GENERAL SESSIONS

INDICTMENT NO: 2010-GS-40-10167

STATE OF SOUTH CAROLINA,)
Plaintiff,)

VS.)

TRANSCRIPT OF RECORD)

KENDRICK DENNIS,)
Defendant.)

FEBRUARY 3, 2011
Columbia, South Carolina

B E F O R E:

THE HONORABLE WILLIAM J. YOUNG, JUDGE AND A JURY.

A P P E A R A N C E S:

RICARDO BUNGE, Assistant Solicitor
FOSTER MATHEWS, Assistant Solicitor
5th Judicial Circuit

JAMES COOPER, Esquire
CLARK NEWTON, Esquire

Brenda J. Sigwald, Circuit Court
P.O. Box 206, Jackson, South Carolina 29831

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1 **The Court:** Thank you. Please take your
2 seats.

3 Good morning, everyone.

4 **Mr. Bunge:** Good morning, Judge.

5 **The Court:** All right. The State want to
6 call the next case?

7 **CALLING OF THE CASE**

8 **Mr. Bunge:** The State would call the case of
9 The State versus Kendrick Dennis, Indictment No.
10 2010-GS-40-10167.

11 The defendant is charged with resisting
12 arrest under 16-9-320 subsection A.

13 **The Court:** Okay. That's the lesser charge,
14 correct.

15 **Mr. Bunge:** That's correct.

16 **The Court:** Are there any motions from the
17 defense?

18 **PRETRIAL MOTIONS**

19 **Mr. Cooper:** Yes, Your Honor, just a couple
20 of matters that I -- I think I have left copy up on the
21 bench.

22 **The Court:** I've got them.

23 **Mr. Cooper:** You know, I'm just renewing my
24 Rule 5 motion at this time, and I have already discussed
25 this with the solicitor and I think --

1 trial. So just pay attention to that. Take to mind
2 that. You know, think of what is their motive. Well,
3 they deployed a taser in this case. They have got to
4 explain why they did that. That is a weapon and they
5 have got to explain it. So keep that in mind. I want
6 you guys to think about that credibility is a huge
7 portion of what we've got going on right now.

8 I ask you guys to keep an open mind, listen
9 to all the facts. I think that when you do, you will go
10 back -- back in the jury deliberation room, hopefully
11 very shortly, and you will find Mr. Dennis not guilty.

12 Thank you.

13 **The Court:** Thank you.

14 State may call its first witness.

15 **Mr. Mathews:** Thank you, Your Honor. The
16 state calls Master Deputy Steven Oliphant.

17 STEVEN OLIPHANT, after being duly
18 sworn, testified as follows:

19 **The Clerk:** State your name for the record.

20 **The Witness:** Master Deputy Steven Oliphant.

21 **DIRECT EXAMINATION**

22 By Mr. Mathews:

23 Q Good morning Master Deputy. Where are you employed
24 at this time?

25 A Richland County Sheriff's Department, sir.

1 Q And how long have you been with the sheriff's
2 department?

3 A Since September 2002.

4 Q And have you worked in law enforcement before
5 Richland County?

6 A Yes, sir.

7 Q And where was that?

8 A Fayetteville, North Carolina, with the Fayetteville
9 Police Department.

10 Q How long were you with that department?

11 A Six years.

12 Q And could you briefly give the jury a little idea of
13 your education and training that you've had to become
14 a police officer.

15 A Well, when I was in Fayetteville, North Carolina, I
16 went to the academy for 14 weeks. During that time
17 we learned about domestic violence, traffic safety.
18 Came here in 2002, went to the Criminal Justice
19 Academy. We did 3 weeks there had DUI detection,
20 CDV, South Carolina laws.

21 Q And have you had constant training as training as
22 well throughout your service?

23 A Yes, sir, we have -- we hold training once a year.
24 It's mandatory with the sheriff's department.

25 Q And what exactly is your position the sheriff's

1 department?

2 A I'm a master deputy.

3 Q And what are your duties as a master deputy?

4 A As a master deputy, one of my duties is to train new
5 officers, to teach them department policy and
6 procedures, to make sure they're ready for solo
7 patrol.

8 Q And you actually patrol yourself?

9 A Yes, sir.

10 Q And were you employed by Richland County back on
11 October the 25th, 2009?

12 A Yes, sir.

13 Q And were you working that day?

14 A Yes, sir.

15 Q What shift were you working?

16 A The midnight shift 7 p.m. to 7 a.m.

17 Q And during that shift did you have occasion to come
18 upon

19 A Yes, sir.

20 Q And why were you at that location?

21 A I went to that location that night because I was
22 dispatched by our dispatch in reference to a single
23 car accident, and the subject had left the scene.

24 Q And did you go by yourself?

25 A Initially I was there, then Corporal James Gore

1 responded also.

2 Q And when you came upon the scene can you describe
3 that for us. Tell us what you saw at that --

4
5 A Right. Once I turned into the apartment complex, as
6 I was driving up, I noticed a burgundy-colored van
7 that was taking up probably, approximately two or
8 three parking spots, spaces. And I noticed that
9 there was debris from the vehicle that was -- that
10 was lying in the roadway, and there were skid marks
11 that was in the road.

12 Q And after you noticed the vehicle, what did you do?

13 A At that time it's normal procedure once we come
14 across a vehicle to run the tag information. I can't
15 recall the owner of the vehicle information, but I
16 did at that time went to the building that was
17 directly in front of the car. And I went to the
18 first apartment on the right and knocked on the door.

19 Q And who was in that apartment?

20 A A black female came to the door, and at that time I
21 asked her about ownership of the van. So she came
22 with me out to -- well, she walked outside with me to
23 the van. At that time she stated that she was the
24 owner of the vehicle.

25 Q And did you find out who was driving the vehicle?

1 A Yes, sir.

2 Q That morning?

3 A Yes, sir. At that time I asked her was she driving
4 the vehicle and she stated no. Then she later told
5 me that her boyfriend was driving it, was in
6 possession of the vehicle.

7 Q Did she tell you who her boyfriend was?

8 A Yes, sir.

9 Q And who was that?

10 A Kendrick Davis -- the defendant, Kendrick Dennis.

11 Q Did you get any other information about him?

12 A The only information, she described -- she just gave
13 brief description about his height and weight. And
14 at that time I put that information out over the
15 radio.

16 Q Did she gave you any indication where he might be?

17 A She told me that he was in the apartment complex. He
18 went walking in the apartment complex.

19 Q And what was the next step of your investigation,
20 after finding this information out?

21 A My next step was, I put information out over the
22 radio, and a short time after that Corporal Gore
23 called out that the -- he had a subject, he sees the
24 subject.

25 Q And after you received that information, what did you

1 do?

2 A Once I received it, I spoke with the young lady,
3 because the subject was walking towards me on the
4 sidewalk. And I said is that your boyfriend, and she
5 stated yes. So at that time, myself -- I went to
6 assist Corporal Gore with the investigation.

7 Q And when you arrived on the scene can you describe
8 what you saw and who was there.

9 A At I was walking down the sidewalk, Mr. Dennis was
10 walking towards my direction. At that time I could
11 see him stumbling. So once I -- once I reached to
12 his position where Corporal Gore -- I detected a
13 strong odor of alcohol about his person.

14 Q You said you could smell alcohol on his person?

15 A Yes, sir.

16 Q And do you recognize the person you saw that night in
17 the courtroom today?

18 A Yes, sir.

19 Q Can you please point him out and describe what he's
20 wearing.

21 A Mr. Dennis shaved head, glasses, brown sweater.

22 **Mr. Mathew:** Your Honor, could we let the
23 record reflect that the witness has identified the
24 defendant?

25 **The Court:** The record will so reflect.

1 **Mr. Mathews:** Thank you, Your Honor.

2 By Mr. Mathews:

3 Q And did you make first contact with the defendant or
4 was it Corporal Gore?

5 A Corporal Gore.

6 Q And what happened once you came up on the incident
7 location?

8 A Once I came up on the incident location, Corporal
9 Gore was asking him several questions. At that time
10 I noticed that he was slurred in his speech. I can't
11 remember the exact questions, but then Corporal Gore
12 told him to put his hands behind his back.

13 Q And now, before this, you described that he was
14 slurring his words. How in general was he acting?
15 Was he cooperative?

16 A Not necessarily. He was -- he was loud and I noticed
17 when Corporal Gore asked him several questions, he
18 was getting louder, and Corporal Gore told him
19 several times to calm down.

20 Q Was this in the vicinity of any other apartments
21 close by?

22 A Probably about 10 or 15 feet from the apartments.

23 Q So people could have heard him?

24 A Yes, sir.

25 Q And just to go back, about how far was this from

1 where the original van that you located was?

2 A About 40 or 50 yards.

3 Q Okay. And now, you said Corporal Gore attempted to
4 handcuff him, do you know why?

5 A Well, I can't testify as to why he told him to --

6 Q All right. Then after -- as Corporal Gore went to
7 handcuff him, what happened after that?

8 A At that time -- it was normal procedure if we have
9 got two officers on the scene if we get ready to
10 handcuff a guy -- he told him to put his hands behind
11 his back. I was standing there to his left to assist
12 him. The defendant put one hand behind his back.
13 Corporal Gore went to handcuff him, and then he
14 snatched away, while I was trying to assist him with
15 the other hand.

16 At that time we got into a struggle and we
17 fell to the ground and the defendant took his -- both
18 arms and placed them up under his chest.

19 Q And after you fell to the ground, what happened?
20 Where -- were his arms in front of him? Behind him?
21 How were they?

22 A Once we fell to the ground, he had both arms up under
23 him. He was face down with both arms underneath him.

24 Q And then what happened after that?

25 A Well, we kept attempting to get him to try to put his

1 arms behind his back, at that time Corporal Gore
2 deployed the taser and dry shot him.

3 Q At that time you were able to handcuff Mr. Dennis?

4 A Yes, sir. Right after the dry stun, I would say
5 about two seconds maybe, and he put his hands behind
6 his back.

7 Q And after that -- after you had him under control,
8 can you describe the rest of the events at that
9 location?

10 A Once we had him got him handcuffed we stood him up
11 and we was taking him back to the patrol car. At
12 that time we did a search of his person, and that's
13 when he made the comment about, you know, if I wasn't
14 in handcuffs, I would beat you down.

15 Q Who was he referring to?

16 A Me.

17 Q Did EMS respond to the scene?

18 A Yes, sir. EMS responded. It's normal protocol for
19 anyone -- taser or pepper spray, for to us to call
20 EMS. They came out there, assessed the scene. They
21 determined that he was okay. They did a release form
22 and they left.

23 Q So did he go to the hospital with EMS or with you?

24 A He was cleared by EMS, so at that time he was
25 processed and transported to the Alvin S. Glen

1 Detention Center.

2 Q And this location, this is
3 that Richland County?

4 A Yes, sir.

5 Mr. Mathew: Beg the Court's indulgence?

6 The Court: Yes, sir.

7 Mr. Mathew: Nothing further.

8 The Court: Defense, cross-examination?

9 Mr. Newton: May it please the Court?

10 The Court: Yes, sir.

11 CROSS-EXAMINATION

12 By Mr. Newton:

13 Q Master Deputy Oliphant, is it safe to say -- you have
14 been an officer since 1996, correct?

15 A Yes, sir.

16 Q And you have had training in accident investigations,
17 correct?

18 A Yes, sir.

19 Q Okay. And you've had taser training, correct?

20 A Yes, sir.

21 Q And your utility belt, you carry a taser along with
22 other -- what else is on your utility belt?

23 A Pepper spray, a handgun, handcuffs.

24 Q Okay.

25 A That would be all.

1 Q When you arrived on the scene, you spoke to a young
2 lady. Correct?

3 A Yes, sir.

4 Q Was this at Building 1100?

5 A Are you talking about the young lady?

6 Q Yes.

7 A No, sir.

8 Q What building was it?

9 A 300.

10 Q 300?

11 A Yes, sir.

12 Q Okay. So Building 300 is across from Building 1100,
13 correct?

14 A It's down -- if I'm coming out of the -- coming out
15 of building 300 I can look down and building 1100
16 would be to my left.

17 Q And Building 1100 is where you found Mr. Dennis,
18 correct?

19 A Well, he was walking from -- around Building 1100
20 back towards me.

21 Q Okay. And when you when you first identified Mr.
22 Dennis, he was with Deputy Gore, correct?

23 A He was walking -- Corporal Gore identified the
24 subject, said he saw the subject, but Mr. Dennis was
25 walking towards me as -- once I came in contact with

1 him Corporal Gore had already got out of the car and
2 made initial contact with the subject.

3 Q So did you make the first contact with him or did
4 Corporal Gore?

5 A Corporal Gore.

6 Q Corporal Gore made contact. And you testified that
7 you didn't know what he was being arrested for at the
8 time. Correct?

9 You didn't know why he was asking to have his
10 hands behind his back, correct?

11 A Well, I was there when he was questioning him, but
12 Corporal Gore said, Put your hands behind your back.
13 I can't testify that that's why he said -- he didn't
14 have a chance to tell Mr. Dennis that he was under.

15 Q He didn't get a chance to tell him?

16 A No, sir.

17 Q Okay. Mr. Dennis' behavior, you said that he smelled
18 of alcohol, correct?

19 A Yes, sir.

20 Q He was slurring his words, correct?

21 A Yes, sir.

22 Q He was being loud and boisterous, correct?

23 A Yes, sir.

24 Q He was angry at y'all. Correct?

25 A Was he angry at me?

1 Q Yes. Well, I mean he was -- well he was talking to
2 y'all, correct?

3 A Right.

4 Q He was saying things to y'all, correct?

5 A Right.

6 Q He wasn't talking to other people, correct?

7 A Right. But I wasn't saying anything.

8 Q I understand that. But what I'm saying, is he wasn't
9 saying pleasantries to you, correct? He wasn't
10 saying thank so much, correct?

11 A He wasn't. He was not.

12 Q Okay. He was not saying -- he was not being nice.

13 A Maybe if you want to say that.

14 Q Okay.

15 Mr. Newton: Beg the Court's indulgence.

16 The Court: Yes, sir.

17 By Mr. Newton:

18 Q Okay. You and Corporal Gore were the only two
19 officers there; correct?

20 A Yes, sir.

21 Q All right. And let's go back to the -- okay -- the
22 struggle. He's arresting. There's one arm behind
23 here now. Right? And he moves it away, is that the
24 testimony that you had?

25 A The initial contact was once he told him to put his

1 hands behind his back, he put one hand behind his
2 back. I stood to the left while Corporal Gore was
3 handcuffing him on the right, I was trying to assist,
4 putting his left arm behind his back when he started
5 resisting.

6 Q Okay. When you took -- when there was a takedown
7 that occurred, you said he curled up into a ball,
8 like this?

9 A While I was trying to assist putting the left arm
10 behind his back, that's when the struggle took place.

11 Q Okay. And once he hits the ground, he's like this?

12 A He placed both hands up underneath him while he was
13 still handcuffed on his right arm.

14 Q Okay. So he was in a ball on the ground like that,
15 correct?

16 A Yes, sir.

17 Q Okay. The taser that was deployed by Corporal Gore?

18 A Corporal Gore.

19 Q What -- in the incident report, if I -- do you have
20 that in front of you?

21 A Yes, sir.

22 Q Okay. The incident report says that the dry stun
23 went to the left leg. Is that what you remember?

24 A I can't remember that.

25 Q Okay.

1 A That's too remote. I can't remember that.

2 Q And was it only deployed once?

3 A I can't testify to that.

4 Q You can't testify how many times the taser was
5 deployed?

6 A I can't testify how many times he dry stunned him..

7 Mr. Newton: Beg the Court's indulgence.

8 The Court: Yes, sir.

9 Mr. Newton: No further questions.

10 The Court: Any redirect?

11 Mr. Mathews: No, Your Honor.

12 The Court: Thank you. You may step down.

13 Yes, sir?

14 Mr. Bunge: Thank you, Your Honor. The State
15 would call Senior Corporal James Gore.

16 The Court: I tell you what, before we do
17 that, why don't we take a short break. We have been in
18 here about an hour.

19 Mr. Bunge: Certainly, Your Honor.

20 The Court: All right. Ladies and gentlemen,
21 I'm going to send you back to the jury room for a short
22 break, where maybe you can get cup of coffee, and use the
23 restroom. If any of you need to smoke, please let the
24 bailiff know and they will make that available for you.
25 We'll take about a 15-minute break. Please do not

1 discuss anything about the case while you're taking your
2 break.

3 Thank you.

4 (WHEREUPON the jury was excused from open
5 court at 10:53 a.m.)

6 **The Court:** All right. Court will be in
7 recess until five after eleven.

8 **Mr. Bunge:** Thank you, Your Honor.

9 (WHEREUPON a short break was taken.)

10 **The Court:** Anything we need to take up
11 before we bring our jury back in?

12 **Mr. Bunge:** Nothing from the State, Your
13 Honor.

14 **Mr. Cooper:** Nothing from the defense.

15 **The Court:** All right.

16 All right. Let's bring our jury back.

17 (WHEREUPON the jury was brought into open
18 court at 11:10 a.m.)

19 **The Court:** Y'all can sit anywhere you want
20 except for the alternate and the foreman.

21 **The Bailiff:** The jury is present.

22 **The Court:** Okay. Thank you.

23 Is the State ready?

24 **Mr. Bunge:** Yes, Your Honor.

25 **The Court:** Defense ready?

1 **Mr. Cooper:** Yes, Your Honor.

2 **The Court:** You may call your next witness.

3 **Mr. Bunge:** The State would call Senior
4 Corporal James Gore.

5 SENIOR CORPORAL JAMES GORE, after being duly
6 sworn, testified as follows:

7 **The Clerk:** State your name for the record.

8 **The Witness:** Senior Corporal James Gore.

9 **DIRECT EXAMINATION**

10 By Mr. Bunge:

11 Q Good morning, Corporal Gore. I apologize if I
12 abbreviated Corporal Gore.

13 What's your current job?

14 A I'm the Assistant Shift Manager with the Richland
15 County Sheriff's Department.

16 Q And how long have you been with the sheriff's
17 department?

18 A Seven years.

19 Q How long have you been in law enforcement in general?

20 A Originally I started in 1996 as an 9-1-1 operator,
21 left and went to work for the fire department. Came
22 back in 2003 as a reserve police officer. Came back
23 in 2004 as a full-time officer.

24 Q Was that all here in Columbia?

25 A It was all with Richland County.

1 Q Did you attend the academy?

2 A I did.

3 Q How long is that program?

4 A Nine weeks.

5 Q What sorts of training and instruction do you receive

6 there?

7 A Legals, you receive drugs, hazard materials, the DUI

8 detection, traffic enforcement, it's a wide array of

9 training.

10 Q When you say legals what do you mean?

11 A As far as arrest procedures, what can and can't be

12 done. It's...

13 Q Do you have any additional specialized

14 certifications?

15 A I have Advanced DUI Detection.

16 Q What's involved in that?

17 A Basically involves clues to look for and indicators

18 of impairment, what people show that they have been

19 drinking and they don't even know that they're

20 showing. It's stuff to look at.

21 Q And you say you're certified in that?

22 A I am.

23 Q How long have you been so certified?

24 A Three years now.

25 Q Were you working on October 25th, of 2009?

1 A I was.

2 Q What region are you working or were you working?

3 A Region 7.

4 Q Did you have an occasion to be called out to

5

6 A I did.

7 Q And is there an apartment complex there?

8 A Yes.

9 Q What's it called?

10 A Apartments.

11 Q Is that in Richland County?

12 A It is.

13 Q Why did you get called out to

14 Apartments?

15 A I was the secondary unit called out to investigate a

16 vehicle accident at that location.

17 Q Is it typical to respond in pairs?

18 A It is.

19 Q Who was the other deputy that responded?

20 A Master Deputy Oliphant.

21 Q And what was the nature you said of the call?

22 A It was a vehicle accident.

23 Q And you arrived?

24 A I did.

25 Q What did you observe?

1 A I observed a vehicle with extensive damage to the
2 side of it, chunks of the curb taken out, skid marks
3 on the road. It just looks like somebody just
4 trashed the car there.

5 Q Okay. Were there pictures taken at the scene?

6 A No, there wasn't.

7 Q Do you recall why not?

8 A I don't believe any of us had camera at the time.

9 Q Did you receive a radio call at some point from
10 Master Deputy Oliphant?

11 A I did.

12 Q And what was nature of that call?

13 A He gave a brief description of the suspect we were
14 possibly looking for. I was circulating the area at
15 the time the description was given out because we
16 were looking for the actual driver of the vehicle.

17 Q And if you remember, what was the height, weight, any
18 clothing description?

19 A I don't remember the exact...

20 Q At some point did you see somebody that matched
21 description?

22 A I did.

23 Q Did you approach them?

24 A I did.

25 Q That individual that you approached, do you see them

1 in the courtroom today?

2 A I do.

3 Q If you could point him out got jury and describe an
4 article of the clothing?

5 A He's got a shaved head, glasses and, a sweater.

6 **Mr. Bunge:** Let the record reflect, please,
7 that the witness has identified the defendant.

8 **The Court:** The record will so reflect.

9 By Mr. Bunge:

10 Q When you approached the individual, what is your
11 procedure?

12 A I just went up and started talking to him. You know,
13 I didn't know if he was involved or anything as far
14 as the accident goes. The -- I started talking to
15 him. When I was actually walking up to him, we look
16 to see if there's any visible weapons on them and I
17 had looked, saw there was no weapons, that he had no
18 weapons, and I also noticed that had he was
19 staggering or staggering his speech or his footsteps.
20 He wasn't walking as I would say a sober person would
21 walk.

22 Q When you approached him and engaged him, was there
23 anything about his speech that caught your attention?

24 A It was very slurred.

25 Q What other observations did you make with respect to

1 his demeanor and manner of acting?

2 A He was just loud, boisterous. His speech was
3 slurred.

4 Q In your opinion, would he, what was his level of
5 intoxication?

6 A In my opinion he was grossly intoxicated.

7 **Mr. Cooper:** Objection, Your Honor.

8 **The Court:** Sustained he cannot say the level
9 of intoxication. The jury will strike that.

10 By Mr. Bunge:

11 Q In your opinion he was intoxicated, you said?

12 A Yes.

13 Q How was he walking?

14 A He was staggering. He wasn't taking a complete step.
15 His feet were shuffling. He was very unsteady.

16 Q And what was volume of his voice?

17 A It was above normal speaking.

18 Q How would you characterize his, demeanor, I guess,
19 for lack of a better word?

20 A He was upset.

21 Q And what day of the week was this?

22 A It was a Sunday.

23 Q And what time of day were you dispatched?

24 A At six o'clock in the morning.

25 Q Was this -- I'm sorry.

1 A Around six in the morning.

2 Q Was this in an apartment or outside an apartment?

3 A It was outside an apartment.

4 Q Sidewalk or parking lot?

5 A Right next to the sidewalk, next -- 10 feet to an

6 apartment.

7 Q And what was the -- did you get any answers to your

8 questions?

9 A When I started talking to him I asked him for his

10 identification or his driver's license.

11 Q Is that common procedure?

12 A Yes. Just so I can know who I'm talking to. And

13 when I did, he look at me he said I'm not driving.

14 And when he said it, his speech was again slurred.

15 Q And again what was the volume of his voice?

16 A It was raised above normal speaking level.

17 Q And at that point what, if any, actions did you take?

18 A I went place him in custody for --

19 Q For?

20 A For being drunk in public, disorderly conduct.

21 Q And what is the typical procedure when you take

22 somebody into custody or place them under arrest?

23 A I generally tell them to put their hands behind their

24 back and while I'm doing that I apply the handcuffs,

25 and for -- walk them back to the car.

1 Q So is it typically one first then the other?

2 A Yes.

3 Q Do you typically have another officer present?

4 A Yes, if we're that lucky.

5 Q Did you in this case?

6 A I did.

7 Q And who was that?

8 A Master Deputy Oliphant.

9 Q Is it safe to say you were the only two units that
10 responded that day?

11 A Yes.

12 Q Did you attempt to place Mr. Dennis's arm behind his
13 back, or did you ask him to?

14 A I asked him to, and managed to get one handcuff on
15 him behind his back. It was at that time he jerked
16 his arm around, which is, we call it locking out
17 because when the arm is locked out, you can't
18 actually put it behind their back without...

19 Q That would be like this?

20 A Yes, just locking that arm.

21 Q Was that the arm with the handcuff?

22 A Yes.

23 Q So essentially the handcuff, one is here and one is
24 dangling?

25 A Yes.

1 Q At that point what, if anything, did you or Oliphant
2 do?

3 A I tried a straight-arm bar or a take-down.

4 Q If you could -- hold on one second.

5 A Okay.

6 Q Are you trained in techniques to subdue subjects?

7 A Yes.

8 Q What is a straight-arm bar?

9 A It's -- you're actually securing the arm at the wrist
10 and the shoulder, and you're controlling their
11 momentum, and putting them on the ground.

12 Q And is that what you did?

13 A Yes.

14 Q And was Master Deputy Oliphant present?

15 A Yes.

16 Q You went to the ground.

17 A Yes.

18 Q And at that point did Mr. Dennis put his hands behind
19 his back and --

20 A No, he took his arms and locked both of them
21 underneath him at that time, so we couldn't control
22 either one of them.

23 Q The arm lock that you're referring to?

24 A Yes.

25 Q But you said both arms.

1 A Yes.

2 Q When he was on the ground was he face up or face
3 down?

4 A He was face down.

5 Q At that point, what if anything, did you do to try
6 and get his compliance?

7 A We began yelling to him, Put your arms behind your
8 back, put your hands behind your back. Do it now, Do
9 it now.

10 Q Was he complying?

11 A No.

12 Q What if anything -- what if any measures did you take
13 to?

14 A After we --

15 Q -- insure his compliance?

16 A After we say, maybe five times of getting him --
17 trying to put his arms behind his back, I took out
18 the electronic control device, which is commonly
19 known as a taser, removed the probes and initiated
20 what is called a drive stun to a nerve motor point,
21 to the back of his leg.

22 Q Do you have your taser with you?

23 A I do.

24 Q When you say remove the probes, if you could explain
25 what that means.

1 A There's two ways of deploying this. One, this unit
2 actually deploys probes, little, tiny little metal
3 things that will stick in you, kind of like a number
4 of baby fish hooks. And --

5 Q Are they attached to the device any way?

6 A Yes. There's -- ones -- this is inserted in here.
7 It's got very small little wires that shoot out up to
8 21 feet.

9 Q And if you remove it you said --

10 A It becomes like a stun gun.

11 Q And what's the purpose of that?

12 A This is -- we use this to stop any type of
13 resistance. It's -- again it's a control device.
14 The -- it will stop your resistance and not hurt you.

15 Q When you say not hurt you, not hurt the person on the
16 other end?

17 A Yeah, the person on the other end.

18 Q Do you do you receive training in its use at the
19 academy?

20 A I received it at the department.

21 Q At the department.

22 Do you currently train officers?

23 A I don't any more.

24 Q Do you supervisor training?

25 A I do.

1 Q Is that part of your training?

2 A The taser training, yes.

3 Q When you applied the electronic device, the taser to

4 Mr. Dennis was he then compliant?

5 A He yelled out and said, Ouch. And it was probably

6 two to three seconds, his arms came out, and we were

7 able to take him in custody.

8 Q And where is that applied?

9 A To a nerve-motor-point to the back of the leg it can

10 be or just below the knee. It can be applied to the

11 side of the leg, arms, chest?

12 Q And you say it's a nerve point?

13 A Yeah.

14 Q What, if anything, does that do to the individual?

15 A It just disables them long enough for us to take

16 control of them.

17 Q And I believe you said he was, you were able to place

18 the handcuffs?

19 A Yeah.

20 Q And then what happened?

21 A We started walking him back to the car. He continued

22 to jerk away and pull away from us. Got him back to

23 the car.

24 Q Was he incapacitated once he got up?

25 A No, it's over once you're -- once you're -- it's off.

1 Q And you said the resistance continued?

2 A Yes.

3 Q Did the defendant make any statements?

4 A Once we got him back to the car after we searched
5 him, he was, I believe he was sitting on the
6 sidewalk, he told Master Deputy Oliphant that if he
7 wasn't in his handcuffs that he would beat him down
8 in three to maybe five seconds.

9 Q And did you or Master Deputy Oliphant question him in
10 any way?

11 A No.

12 Q At the -- how did he get to the jail?

13 A He was -- I believe the transport van took him to the
14 jail.

15 Q So that, essentially was the end of your involvement?

16 A Yes.

17 Q Was EMS called out?

18 A Yes.

19 Q Why is that?

20 A EMS is always called out as -- with any type of
21 electronic control device deployment, OC Spray, which
22 is pepper spray, or any type of impact weapon,
23 they're always called out to check every person that
24 that gets used against.

25 Q And did EMS check Mr. Dennis that day?

1 A They did.

2 Q What was the result?

3 A They determined him to be okay.

4 Q Do you have various ways to subdue individuals?

5 A There's all kind of different ways.

6 Q Pepper spray, you said?

7 A Yeah. Pepper spray, impact weapons, batons.

8 Q How do you decide which is the most appropriate for

9 the circumstances?

10 A It's -- we use -- there's a department level of use

11 of force called a force continuum, where you could

12 enter into that -- at whatever level they enter.

13 I'm sorry. If they're actively fighting you,

14 you can enter in and go one step above that in order

15 to control him.

16 Q Was he charged with assaulting a police officer?

17 A No.

18 Q Would you say he was fighting you?

19 A He was -- he was just trying not to be arrested. He

20 was resisting the arrest.

21 Q And again, he was arrested for what?

22 A Being drunk in public, disorderly conduct.

23 Q And resisting arrest?

24 A And resisting arrest.

25 Q Thank you, Senior Corporal Gore. Please answer any

1 questions the defense may have.

2 **The Court:** Mr. Newton or Mr. Cooper.

3 **Mr. Cooper:** Thank you, Your Honor, may it
4 please the Court?

5 **The Court:** Yes, sir.

6 **CROSS-EXAMINATION**

7 By Mr. Cooper:

8 Q Good morning, Officer.

9 A Good morning.

10 Q You told the jury a few minutes ago that you've been
11 an officer in law enforcement for like 7 years right?

12 A Uh-huh.

13 Q Okay. And I think you also told them that you had 9
14 weeks of training; right?

15 A Uh-huh.

16 Q And you told them that you actually have a specialty
17 in DUI detection; right?

18 A Uh-huh.

19 Q So that means that you are more capable than other
20 officers of detecting when somebody has been drinking
21 and driving; right?

22 A I don't know if it makes me more capable, but I have
23 additional training in observing clues.

24 Q Okay. Well, not everybody has your specialty do
25 they?

1 A No.

2 Q All right. Now, in addition to all that, you I guess
3 in 7 years of being a law enforcement officer, you've
4 had the occasion to respond to many scenes where
5 alcohol was involved. Right?

6 A Yes.

7 Q And as part of your general training, they teach you
8 how -- how to be a first responder in general as law
9 enforcement officer; right?

10 A (Witness nodded head up and down.)

11 Q And you learned how to write incident reports; right?

12 A Yes.

13 Q You learned how to conduct initial field interviews;
14 right?

15 A Yes.

16 Q You learn how to search out potential witnesses;
17 right?

18 A Yes.

19 Q You learn how to initially at a scene locate what may
20 later be relevant evidence; right?

21 A Yes.

22 Q Because you want to secure that evidence; right?

23 A Yeah.

24 Q All right. So you've -- basically they training you
25 train you how to identify what might be evidence at a

1 scene; right?

2 A Yes.

3 Q And they train you how to search out people that
4 might have seen something or might know something;
5 right?

6 A Yes.

7 Q And I think you told Mr. Bunge that you've actually
8 trained other officers to do these types of things;
9 right?

10 A Yes.

11 Q And the reason that you take detailed reports, search
12 out evidence and search out witnesses is so that on a
13 day like today when you're in front of 12 people like
14 these you can tell them with the most accuracy what
15 happened. Right?

16 A Yes.

17 Q Okay. And that's what you routinely do; right?

18 A Yes.

19 Q Because you want to have when you take this stand,
20 you want to have the most accurate and detailed
21 report and information that you can to give them;
22 right?

23 A Yes.

24 Q All right. And this is what you teach other deputies
25 to do; right?

- 1 A (Witness nodded head up and down.)
- 2 Q Okay. Now, one thing I heard you talking to Mr.
- 3 Bunge about was the fact that you have been trained
- 4 in the use of a taser, right?
- 5 A Yes.
- 6 Q And you've actually trained other officers in the use
- 7 of a taser right?
- 8 A I train them when to use it.
- 9 Q When to use them?
- 10 A Yes.
- 11 Q And that would include when not use it; right?
- 12 A Yes.
- 13 Q And that would include -- I mean, once y'all got the
- 14 tasers you didn't stop teaching other methods of
- 15 subduing suspects; right?
- 16 A No.
- 17 Q And one of those, I believe you mentioned to Mr.
- 18 Bunge was actually what's called a straight-arm bar
- 19 right?
- 20 A Yes.
- 21 Q And I guess, you recall preparing an incident report
- 22 in this case; right?
- 23 A Yes.
- 24 Q And this is one of like -- this is one of those
- 25 incident reports that we -- like we just talked about

1 that you have been trained to prepare; correct?

2 A Yes.

3 Q All right. And you used your experience and training
4 in preparing this incident report; right?

5 A Yes.

6 Q So it should be fairly accurate; correct?

7 A Yes.

8 Q All right. Now, you are sure that you and Master
9 Deputy Oliphant were the only two officers to go out
10 there that night?

11 A I believe so, other than the transport officer, yes.

12 Q I mean, is there any doubt in your mind? You kind of
13 hesitated. I mean, do you know?

14 A I'm trying to -- I don't...

15 Q You don't know for sure?

16 A Not positive, no.

17 Q So there could have been other officers out there?

18 A (Witness nodded head up and down.)

19 Q All right. But this report is just yours; right?

20 A Yes.

21 Q Okay. Now, you talked to Mr. Bunge about your
22 initial contact with Mr. Dennis, and I believe that
23 your testimony was that you first encountered him
24 walking from the 1100 Building; is that right?

25 A That's where -- no, that's where I stopped him.

1 Q Stopped him?

2 A I got out there.

3 Q Let's back up just a little bit just so they
4 understand. Is this Region 7? Which region is this?

5 A Region 7.

6 Q Region 7. Are you familiar with that region?

7 A Yes.

8 Q And how long had you worked that region at this
9 point?

10 A Seven years I was originally assigned the Region 2 --

11 Q All right.

12 A -- at my beginning of my career.

13 Q Is it kind of like the Spring Valley area out there,
14 Northeast Columbia?

15 A Yeah.

16 Q So you knew that area pretty well?

17 A Uh-huh.

18 Q Did you ever respond to these apartments before?

19 A Yes.

20 Q Okay. So you were kind of familiar with how they
21 look and the general layout; right?

22 A Yes.

23 Q All right. So that morning, you stopped him right in
24 front of the 1100 Building, right?

25 A Yes.

1 Q And I believe what you told Mr. Bunge was that that
2 was about 10 feet away from the sidewalk; right?

3 A From another apartment.

4 Q From another apartment.

5 A Uh-huh.

6 Q Now, just to give the -- just to kind of set the
7 scene for the jury this is in the interior of this
8 apartment complex; right?

9 A Yes.

10 Q This is not like on a main highway, this is inside
11 the apartment; right?

12 A Yes.

13 Q Okay. Now, let's go back to your encounter with Mr.
14 Dennis. You stated that when you first got there,
15 you went out there because you knew that a vehicle
16 had been involved in an accident. Right?

17 A Yes.

18 Q And when you discovered Mr. Dennis, you immediately
19 suspected that alcohol was involved in this incident;
20 right?

21 A No.

22 Q You did not?

23 A No.

24 Q Was your -- did you tell Mr. Bunge that he smelled of
25 alcohol?

1 A Yes.

2 Q All right. So you don't think alcohol was involved?

3 A He wasn't driving. That's what I'm -- he told me
4 that, and when I initially made contact with him, I
5 determined that he was under the influence of
6 alcohol.

7 Q Okay. So --

8 A I didn't assume it. I had observations that I
9 observed. He was unsteady on his feet, his speech
10 was slurred, and that's the indicators that, you
11 know, we pick up on.

12 Q Yes, sir. And I think you told the jury that you
13 were -- are trained in spotting those things. So my
14 question is: When you -- you had observed a crashed
15 vehicle and a gentleman that you believe to exhibit
16 all the signs of being under the influence of
17 alcohol, and you didn't you didn't suspect a DUI
18 case?

19 A You have to be able to -- I can't just arrest him for
20 DUI without being able to prove that he was actually
21 driving the car.

22 Q All right. Well let's talk about how you -- you told
23 the jury about your special training. Let's talk
24 about some of the things you might use to be able to
25 prove a case.

1 Is your car fixed with a camera?

2 A It is.

3 Q All right. And are you trained in the use of that
4 camera?

5 A I am.

6 Q All right. And was that camera in your car that
7 night?

8 A It was.

9 Q But we don't have a video of this incident; right?

10 A No.

11 Q And that's because you left your car parked
12 elsewhere?

13 A It was around the corner.

14 Q All right. And you did not attempt to retrieve it
15 and use the camera to record any of this incident;
16 did you?

17 A No.

18 Q All right. Let's go a little bit further into your
19 encounter with Mr. Dennis.

20 You told Mr. Bunge that you were forced to
21 use a straight-arm bar. Okay. Right?

22 A Yes.

23 Q All right. Well, I'd like to give the jury a little
24 bit better idea of that. If I could ask you, with
25 the judge's permission, to --

1 **The Court:** Yes.

2 By Mr. Cooper:

3 Q -- to leave the stand, I'd like you to, in slow
4 motion, now don't hurt me. I'd just like you to --
5 I'd like you to -- I don't get paid enough to get
6 injured on the job. I'd like you to just kind of
7 demonstrate what in general that is.

8 A Do you want the handcuff on or off?

9 Q Well, how ever -- whatever the most accurate
10 representation to the jury is, okay?

11 A (Demonstrating.)

12 Q All right.

13 A At this point we're going -- so I can show you?

14 Q Sure.

15 A We're going to put his arm behind his back. This arm
16 is then taken in, and it's easily fit right into the
17 handcuff --

18 Q Uh-huh.

19 A -- where you can be taken into custody.

20 Q Okay.

21 A Now, Mr. Dennis takes and -- just hold it against
22 your body as hard as you can.

23 Q Right.

24 A Which makes the arm -- you can't put pull it back if
25 it's locked in.

1 Q Right.

2 A We can do one of two things. We can do an
3 iron-wrist-lock take-down, which actually puts lots
4 of pain in his wrist, and it brings compliance.

5 Q Uh-huh.

6 A I, instead, grabbed his wrist and took him down,
7 just -- just fall straight down. Which then puts him
8 in a position where we can control the arm, unless he
9 locks it out under his body.

10 Q Okay.

11 A Which is what he did.

12 Q All right. So let me ask you this from this very
13 awkward position. This is the position that you just
14 demonstrated Mr. Dennis was in.

15 A Actually, if you'll go face down with both arms
16 behind -- underneath you.

17 Q Okay.

18 A Flat. There you go. Don't let me pull them out.

19 Q All right.

20 A Now, I was on his back at this point with a knee
21 trying to get his arm out.

22 Q Right.

23 A Can't do it because he's fighting.

24 Q Right.

25 A He won't let it out. Now, I come in from this side

1 to try and control the other arm.

2 Q Uh-huh.

3 A Which I can't get it.

4 Q Right.

5 A Because it's locked up underneath him, which is after
6 we tell him, Put your arms behind your back. Put
7 your arms behind your back. Do it now.

8 Q Right.

9 A He still doesn't want to do it, so we take --

10 Q Well, let me stop you there just so the jury
11 understand what we mean.

12 So at this point, I think it's pretty clear
13 to all of y'all how they had him, and I'm going --
14 and I'm immediately asking for a raise after this
15 case.

16 So that's the position he was in, and then
17 I'll let you go ahead and do that so you can
18 concentrate. You can take the stand. So it's pretty
19 clear that's the position he was in.

20 Let's talk about what happened right after
21 that. I'm just trying to slow it down so they can
22 understand. When he wouldn't comply, that is, when
23 it became necessary to deploy the dry stun with the
24 taser, right?

25 A Yes.

1 Q And was that -- you did that more than one time?

2 A No, just once.

3 Q Okay. You're positive it was just once?

4 A I'm absolutely positive.

5 Q All right. And the -- just a little bit more about
6 the taser, in general, that taser device delivers an
7 electric shock to the body; correct?

8 A It delivers a pulse. It's a...

9 Q Well, if you're the one taking it, you might call it
10 a shock; right?

11 A Yeah. Oh, I've taken it. I've been fully exposed to
12 what this will do.

13 Q So you have actually experienced it?

14 A Yes.

15 Q All right.

16 **Mr. Cooper:** I beg the Court's indulgence for
17 one second.

18 **The Court:** All right.

19 By Mr. Cooper:

20 Q All right. Do you recall what leg you used the dry
21 stun on?

22 A It was the left leg.

23 Q Okay. A few minutes ago you testified you're
24 familiar with Region 7, and you're actually familiar
25 with these apartments; correct?

1 A Yes.

2 Q All right. Do you recall what the entrance to the
3 apartment complex looks like?

4 A It's open. Anybody can get to it. It's just two,
5 one driveway in and one driveway out with some
6 shrubbery.

7 Q Okay. Do you recall what the sign at the entrance of
8 the apartment looks like?

9 A Green and white.

10 Q All right.

11 A Free apartment rent for a month, or something like
12 that.

13 Q Okay. Do you recall the sign at the entrance to the
14 apartment declaring that the complex is private
15 property?

16 A No.

17 Q All right. Well, if I showed you a picture of that
18 sign, would it refresh your memory?

19 A Sure.

20 Q All right. Actually I have two pictures, Your Honor,
21 if I could have these marked as Defense Exhibits 1
22 and 2?

23 **The Court:** Let him see it first.

24 **Mr. Cooper:** We'll just go with this one.

25 Your Honor, if I could just have this marked as Defense

1 Exhibit 1 for ID only.

2 (Defendant's Exhibit 1 marked for
3 identification only.)

4 **Mr. Cooper:** Thank you, ma'am.

5 By Mr. Cooper:

6 Q All right. Sergeant Gore, is this -- is this the
7 entrance to the Apartments with the
8 private property sign?

9 A That looks like it, yes.

10 Q All right. Thank you?

11 **Mr. Cooper:** Beg the Court's indulgence for
12 one second.

13 **The Court:** Yes, sir.

14 **Mr. Cooper:** All right. Your Honor, I'm
15 going to go ahead and attempt to admit this now.

16 **The Court:** Any objection?

17 **Mr. Bunge:** No, Your Honor.

18 **The Court:** All right. Without objection
19 Defense Exhibit No. 1 is admitted into evidence.

20 (Defendant's Exhibit No. 1 was received into
21 evidence.)

22 **Mr. Cooper:** Thank you, Your Honor.

23 By Mr. Cooper:

24 Q All right. Deputy Gore, just maybe one more thing.
25 Like you said, you -- oh, how much do you -- how much

1 do you weigh?

2 A 295.

3 Q All right. Did you weigh about 295 on that night; do
4 you think?

5 A Yeah.

6 Q Okay. All right.

7 Mr. Cooper: Your Honor, that's all I have at
8 this time.

9 The Court: Thank you. Any redirect from the
10 State?

11 Mr. Bunge: Very briefly, Your Honor.

12 The Court: Yes, sir.

13 Mr. Bunge: Thank you.

14 REDIRECT EXAMINATION

15 By Mr. Bunge:

16 Q Is the camera in the car portable?

17 A No, it's mounted.

18 Q And when you arrived, you parked?

19 A Yes.

20 Q Did you -- where did you encounter the defendant with
21 respect to your car?

22 A The car was on the side of 300 -- Building 300, and I
23 walked around to the front of 1100 and saw him.

24 Q And is it a requirement that you take taser blasts
25 let's say, or shock as Richland County sheriff's

1 deputies?

2 A Yes. If you're going to carry it, you have to be
3 exposed to it with OC spray and everything.

4 Q And I believe the --

5 A -- impact weapons -- the only thing we don't have to
6 do is get shot with our guns.

7 Q I'd have to test the bullet.

8 So the was the taser the first take-down
9 method or -- that you used?

10 A No. It was the straight-arm bar was the first
11 take-down method.

12 Q Is that your training?

13 A Yes.

14 Q I believe you testified that sometimes you start at
15 one and go up?

16 A Yes. I started at the lowest level I could with him
17 and went up. And he determined that, not me.

18 Q And is that on a case-by-case basis?

19 A Yes.

20 Q And the apartment complex that we -- that we're
21 talking about, there are no gates?

22 A No.

23 Q There's no code required?

24 A No. Anybody can get in there.

25 Q And I thought I heard Mr. Cooper say in the

1 apartment, he may have meant in the apartment
2 complex, remind the jury where did the altercation
3 take place?

4 A It was --

5 Q Inside an apartment? outside? sidewalk?

6 A It was outside of the apartments themselves. It was
7 on -- if you walk outside of your apartment door, if
8 you live in an apartment, there's grass, sidewalk and
9 a parking lot. Well, it happened in between the
10 grass and the parking lot.

11 Q And I believe you said 10 to 15 feet from the
12 apartment?

13 A That's an estimate.

14 Q In your estimation could other residents hear the
15 defendant?

16 A Absolutely.

17 Q When you first arrived, I think Mr. Cooper asked you
18 about scoping out witness or searching out witnesses.
19 Is that what you were doing when you approached Mr.
20 Dennis?

21 A I was looking for possible suspects. I didn't know
22 if he was a witness. I didn't know who he was.

23 Q Was there anybody else around?

24 A No, it was just him.

25 Q And he fit the description, I believe you said?

1 A Yes.

2 Mr. Bunge: Nothing more, Judge. Thank you.

3 The Court: Any recross based upon his
4 redirect?

5 Mr. Cooper: No, Your Honor.

6 The Court: All right.

7 Thank you, you may step down, Officer.

8 Anything else from the State?

9 Mr. Bunge: Your Honor, at this time the
10 State of South Carolina would rest its case.

11 The Court: All right. Thank you.

12 All right ladies and gentlemen, the State has
13 rested. I'm going send you back to the jury room for a
14 few moments while we take up a few matters of law.

15 Thank you. Please do not discuss anything
16 about the case while you're back there.

17 (WHEREUPON the jury was excused from open
18 court at 11: 43 a.m.)

19 The Court: Are there any motions to be made
20 at this time?

21 MIDTRIAL MOTIONS

22 Mr. Newton: Yes, Your Honor. At this time
23 the defense would move for a directed verdict in the
24 matter. In regards to the element of in-public
25 disorderly conduct that the -- I'll read the statute, so

1 I can explain myself a little better.

2 He was charged under state -- county -- the
3 state statute of this county, any person who shall be
4 found on any highway or in any public place or gathering
5 in a grossly intoxicated condition or otherwise
6 conducting himself in a disorderly or boisterous manner.
7 I believe -- or using obscene or profane language on any
8 highway or at any public place or gathering.

9 **The Court:** What is the code section on that?

10 **Mr. Newton:** This is Code Section 16-17-530,
11 I believe; which is what he was charged under. Your
12 Honor, we would argue that it has been established that
13 it is private property. It was not refuted that this was
14 private property. You will -- as you know, Your Honor,
15 you are allowed to resist an unlawful arrest, that's
16 State V. McGowan. Mr. Kendrick, our stance is that he
17 was being arrested under an ordinance for public
18 disorderly conduct. He is in a private place, the
19 apartment complex.

20 There is no law that they cited him under
21 saying that this -- that they that they could arrest him
22 in a private location. The City of Columbia has a
23 private -- has an ordinance, which the governor allows
24 you to make a more restrictive statute. And the City of
25 Columbia has a restrictive statute. This wasn't in the

1 City of Columbia. I have a copy of it. It removes --
2 the City of Columbia removes that public portion of the
3 State statute so that you can be arrested in any private
4 area.

5 He was arrested in the county under the state
6 statute that does not remove that. And we would argue
7 that they presented zero evidence to refute that this is
8 a public setting.

9 If I can approach the bench, Your Honor, the
10 evidence that we showed is the front of the apartment
11 complex, which very clearly states that this was private
12 property, residents and/or their guests only.

13 I'd submit to you, Your Honor, if he was
14 charged under breach of peace we would not be having this
15 argument, but since he was specifically charged under
16 public disorderly conduct stating that it needed to be a
17 public place or a public highway, that they have not --
18 not even refuted that this is private.

19 Beg the Court's indulgence.

20 And it is their burden. They offer no
21 evidence -- they just said it was an apartment complex,
22 they didn't say it was a public place. We actually
23 introduced the evidence to show that it was private
24 property and they did nothing to refute that whatsoever.

25 **The Court:** All right. Mr. Bunge?

1 **Mr. Bunge:** Your Honor, I believe there was
2 testimony from Master Corporal Gore that it was a public
3 place to which the public was invited. I also would --
4 did you hand up McGowan?

5 **Mr. Newton:** No, I don't have a copy of it.
6 It's just -- it's the --

7 **Mr. Bunge:** I would also cite McGowan on page
8 5, where -- citing the same statute -- going through the
9 public place, it says we define public place -- the
10 Supreme Court in State v. Williams page 5, Your Honor,
11 towards the bottom. Paragraph at the end in State v.
12 Williams, Adopted the following definition of a public
13 place: A place to which the general public has the right
14 to resort, a place visiting visited by many persons and
15 usually accessible to the neighboring public. In bold,
16 Any place so situated that would pass as that and can be
17 seen any considerable number of persons, and I
18 specifically asked, I believe my colleague did as well,
19 if others in the apartment could have heard and seen this
20 if they happened to look.

21 Also a place in which the public has an
22 interest as affecting the safety, health, morals, and
23 welfare of the community. It would be the State's
24 argument that the apartment complex would have such an
25 interest a place exposed to the public and where the

1 public gathered together and/or passed to and from.

2 Your Honor, I believe there is some evidence
3 then that has been placed in the record to contradict my
4 colleague that there has been some evidence of its public
5 nature. Further, I would argue that under Ruff versus
6 Eckerd Drug, which I need to get, in that case the --
7 there was an underlying disorderly conduct as well, and
8 Ruff is cited at 265 South Carolina 563. It's a 1975
9 case. And I apologize I'll get a copy for the Court.

10 The fact that respondent was discharged by
11 the magistrate under charges of disorderly conduct is not
12 conclusive on the question of probable cause. That is,
13 if it appears affirmatively from the facts that
14 respondent was guilty of a misdemeanor, although one
15 which contains different elements, there would still not
16 be an absence of probable cause. The State's argument
17 would be that the deputy testified that he had probable
18 cause to arrest for public drunkenness.

19 Arguably breach of the peace -- it's the
20 State's position that if there's an offense which could
21 have been arrested for, but necessarily wasn't, that
22 there would still be probable cause in the totality of
23 the circumstances. Baccas and other cases put forth that
24 it was a lawful arrest under the totality of the
25 circumstances at the time. That would be the State's

1 reply to the Directed Verdict Motion.

2 **The Court:** Anything?

3 **Mr. Newton:** Your Honor, in response to State
4 v. McGowan, and place so situated that can be seen by any
5 considerable number of persons if they happen to look,
6 the location -- and I don't believe they can dispute this
7 because when he went to the location yesterday, Your
8 Honor, this is in the apartment complex. This isn't
9 outside the apartment complex near the major highway.
10 This is deep inside the arena.

11 The people -- the public, the general public
12 that would be concerned, are the private citizens of the
13 apartment. I don't think they fall in the general
14 public. Anybody that could hear and see him in that
15 vicinity should be, unless they are trespassers, should
16 be the private residents. This is private property.

17 **The Court:** You mean other people can't come
18 onto the property unless there.

19 **Mr. Newton:** Unless you've been invited,
20 you're an invited guest.

21 **The Court:** Let's say you're going visit
22 someone there and haven't been invited.

23 **Mr. Newton:** Well, Your Honor, I think
24 they're going to allow you a little bit of leeway, but as
25 we read the sign and when we went, we went directly to

1 the leasing office to come in because it said, No
2 Trespassing. I mean, there is -- there is an intent to
3 keep this private, Your Honor, by a huge sign out in the
4 front. Whether or not people come in there and trespass
5 and whether or not they enforce that is one thing, but
6 there is an intent to keep this a private property.

7 I would say in refute to the probable cause
8 on multiple charges, he was only charged under that --
9 and, Your Honor, there has been testimony that not only
10 was he just charged with the one offense of public
11 disorderly conduct, he was never told while he was being
12 arrested what he was being charged with. He just told
13 him to put his hands behind his back. I asked Deputy
14 Oliphant and there was no testimony from Deputy Gore that
15 he announced what he was being arrested for.

16 I would say under that, a person has a right
17 to resist an unlawful arrest. This is State v. McGowan,
18 even to the extent of taking the life of the aggressor if
19 necessary. It is -- the resisting arrest statute says it
20 is unlawful for a person knowing and willfully to oppose
21 or resist a law enforcement officer in serving, executing
22 or attempting to serve and to resist an arrest by whom
23 the person knows or reasonably knows to be a law
24 enforcement officer.

25 I would submit that you can't knowingly and

1 willfully -- if he had been told what he was he's being
2 arrested for, Your Honor, he's not being told what he's
3 being arrested for. How does he know -- I think I'm
4 being inarticulate and my mouth is dry so --

5 Beg...

6 All right. Your Honor I'm going to be brief
7 on this point. Everybody is on notice this is private
8 property. He believes it's private property. The
9 citizens, the people there, know that this is private
10 property. It is published as soon as you come in. I
11 submit that it's private property.

12 **The Court:** Mr.. Bunge?

13 **Mr. Bunge:** Judge, again, I would rely on two
14 positions. One, that it is a public -- going back to
15 whether or not he was advised of what he was under arrest
16 for, I believe Mr. Newton slightly misstates -- the
17 testimony as I recall it, from the stand, is that he
18 didn't get chance to tell him what he was under arrest
19 for at that point. The question was never asked,
20 obviously nor was it elicited, did you ultimately tell
21 him what he was under arrest for. I asked Senior
22 Corporal Gore what was he ultimately arrested for.

23 So to say that he wasn't told, the question
24 and the answer was, Did you tell him. I didn't get a
25 chance at that time. Obviously, they were busy taking

1 him down. The public angle has already been addressed..
2 I believe there's testimony that the public can go -- to
3 use your example or even Mr. Newton's example, if they
4 went, they would have been trespassing. There is a
5 certain expectation that the public can go on there. You
6 then have loitering or other crimes, but again, backing
7 off from that even, it is State's position that there was
8 probable cause for other misdemeanors, which although
9 uncharged and un-arrested for, would still give the
10 defense -- would still give the officers probable cause
11 to arrest.

12 The determination of -- this is from Jackson
13 v. City of Abbeville, The determination of probable cause
14 is not an academic exercise in hindsight. Evenhanded law
15 enforcement is best achieved by the application of
16 objective standards of conduct rather than standards that
17 can depend on the subjective mind of the officer.
18 Looking at the totality of circumstances, the officers
19 had probable cause to arrest for a variety of things.
20 They ended up arresting him for two. It's the State's
21 position that even if you look -- and in this case, the
22 Ruff case, if the disorderly conduct is thrown out, there
23 is still a basis for probable cause for the arrest
24 itself. That would be the State's position.

25 **The Court:** All right. I think there's

1 sufficient evidence to goes to the jury to go forward.
2 I'm going to respectfully deny your motion for a directed
3 verdict.

4 **Mr. Newton:** Thank you, Your Honor.

5 I do have another prong to that. I'm sorry I
6 got kind of long winded and excited for the other one.

7 **The Court:** What's your other point?

8 **Mr. Newton:** Before you make a final ruling,
9 I would also say the testimony was that he was being
10 arrested because he was drunk in public. That was one of
11 the one of them. However, there has been no evidence
12 other than slurred speech and unsteady on their feet that
13 he falls under public disorderly conduct of grossly
14 intoxicated. You, yourself, sustained an objection
15 saying that he could not testify to that.

16 We asked him if he performed any DUI
17 detection or a field sobriety test could have been done
18 to determine his intoxication. If they have field
19 Breathalyzer's anymore -- I'm not aware of those anymore,
20 but they could have done that. There was none to that,
21 but there was testimony that they arrested him for being
22 drunk; and I would submit that under the State statute
23 that he was arrested under it, says, grossly intoxicated.

24 I think that the State needs to show that and
25 I don't believe they did.

1 **The Court:** All right.

2 **Mr. Bunge:** Your Honor, the State's position
3 would be that that's for the jury to determine. They've
4 heard that he was loud. He was stumbling. He couldn't
5 keep his balance. He was -- his speech was slurred.
6 There may have been one or two other indicators.

7 **The Court:** Please be seated while he's
8 arguing.

9 **Mr. Newton:** Oh, I'm sorry. I'm sorry.
10 Thank you.

11 **The Court:** Thank you.

12 **Mr. Bunge:** I believe your charge will
13 include the statutory language of -- et cetera, and it's
14 for jury to determine the State's position is that there
15 is sufficient evidence from which they can make the
16 determination that he was grossly intoxicated or not,
17 based on his lack of balance, loud behavior, slurred
18 speech, et cetera.

19 **The Court:** I believe that's a jury question.
20 I'm going to let the jury resolve that.

21 **Mr. Newton:** Thank you, Your Honor.

22 **The Court:** All right. Do you want me to go
23 ahead and question your client now as to whether or not
24 he's going to testify?

25 **Mr. Cooper:** Yes, Your Honor. We discussed

1 it, and I think now would be the appropriate time.

2 **The Court:** All right. Please stand and
3 place the defendant under oath.

4 KENDRICK DENNIS, after being duly sworn,
5 testified as follows:

6 **Examination by the Court - In Camera**

7 **The Court:** All right. Mr. Dennis, at this
8 time I'm going to explain to you certain of your rights.
9 If you do not understand anything that I say, please let
10 me know and if you want me to explain anything in more
11 detail, I'll be glad to do so.

12 **The Defendant:** Yes, sir.

13 **The Court:** Now, we have reached the stage of
14 this trial where you may present your defense. You have
15 a right to claim protections of the Fifth Amendment of
16 the United States Constitution which says in part that no
17 person shall be compelled in any criminal case to be a
18 witness against himself. This means that you cannot be
19 required to testify in this case. Of course, you do have
20 a right to testify on your own behalf; however, no one
21 can make you testify. This is a personal right and no
22 one can waive the right except yourself.

23 Now, if you decide to testify you will be
24 subject to the same rules that govern other witnesses and
25 you may be examined and cross-examined on any relevant

1 issue in this case. In addition, if you have any
2 convictions involving dishonesty or false statement or
3 for crimes punishable by imprisonment for more than one
4 year and I determine that the probative value of
5 admitting those into evidence outweighs any prejudicial
6 effect on you, then the solicitor will be able to
7 introduce your record to attack your credibility.

8 If you decide to testify, the decision on
9 your part must be freely, voluntarily, and intelligently
10 made with full knowledge of the protections provided to
11 you by the Fifth Amendment of the United States
12 Constitution and the consequences of your decision to
13 testify.

14 If you decide not to testify, I will instruct
15 the jurors that they cannot give the fact that you do not
16 testify any consideration whatsoever and that there's to
17 be absolutely no prejudice to you because you did not
18 testify. It is left entirely up to you whether or not
19 you want to testify. You may talk to your attorney and
20 any family members or any friends you may have here or
21 anyone else, but the ultimate decision will be entirely
22 left up to you.

23 Now, do you understand everything that I have
24 explained to you?

25 **The Defendant:** Yes, sir.

1 **The Court:** Okay. Do you have any questions
2 about what I have said to you?

3 **The Defendant:** No, sir.

4 **The Court:** All right. Have you discussed
5 with your lawyers whether or not you want to testify?

6 **The Defendant:** I know I want to testify.

7 **The Court:** All right. So you do want to
8 testify?

9 **The Defendant:** Yes, sir.

10 **The Court:** All right. Very well. You may
11 be seated.

12 **Mr. Bunge:** Your Honor, would now be the
13 appropriate time to settle his record, or do you want to
14 do that...

15 **The Court:** Yes. Let's -- what is his
16 record?

17 **Mr. Bunge:** Your Honor, the convictions that
18 Counsel and I have been able to identify are four.
19 There's a threatening the life of a public official in
20 2003. That carries zero to three or five years, I
21 believe. Driving under the influence, second offense, he
22 was convicted, received three years in 2006. There was a
23 driving under the influence, third, for which he received
24 three years in 2009. I misspoke. There are only three
25 convictions.

1 And the State's position, obviously, would be
2 number one, under 609(a), I believe it is where it
3 references the defendant, as you said, they have to carry
4 more than a year. They do. The Court has to make a
5 finding that the probative value exceeds the prejudicial
6 effect, in a sense a reverse 403 analysis. It would be
7 the State's position, and I believe the notes to 609
8 provides some guidance to the Court, considering the
9 certain factors when deciding, weighing probative value,
10 the impeachment value of the crime, the point and time of
11 the conviction of the witness and subsequent history,
12 similarity between past crime and charged crime, the
13 importance of the defendant's testimony, and the
14 centrality of the credibility issue.

15 The State submits that with the defendant
16 being the only evidence that the State that the defense
17 would provide, it's crucial to the State to be able to
18 impeach the credibility. It's the only evidence that's
19 going forward. So the State would submit that the three
20 convictions would meet 609's threshold, threatening the
21 life of a public official person or family. There is no
22 allegation here that he was threatened -- that the
23 official was threatened. I specifically asked the
24 deputies or the deputy was he charged with resisting, was
25 he charged with anything else. So the State wouldn't

1 feel that there's sufficient prejudice -- the probative.
2 would outweigh the prejudicial. Similarly the DUI second
3 and DUI third, not only is there no allegation of DUI,
4 Senior Corporal Gore made a specific finding that I
5 couldn't charge him with DUI. I had no evidence that he
6 was driving. He himself said he wasn't driving. So the
7 State would submit that they do not meet -- the
8 probative, again, impeachment value would outweigh any
9 prejudicial effect to the defendant.

10 **The Court:** Yes, sir.

11 **Mr. Cooper:** Your Honor, my position is that
12 none of these convictions are probative of anything
13 relevant to this case. What is a DUI probative of in
14 this case other than a way to introduce what we would
15 characterize as impermissible character evidence. They
16 don't want these convictions in to attack his
17 truthfulness. What they want is for -- what these
18 convictions would amount to is an attack on his character
19 on prior bad acts and, Your Honor, that's -- what's a
20 DUI, a past conviction for DUI probative of in this case?

21 It is prejudicial. The jury hears he's been
22 convicted of DUI several times, they're going to start to
23 think he's a bad guy. That's why you can't do this with
24 character evidence. But what is it probative of? The
25 rule he cited says the probative value has got to

1 outweigh -- the prejudicial effect of those DUI's way
2 outweighs any probative value they have.

3 As Mr. Bunge stated, you know, their own
4 officer said, I didn't charge him with DUI. It's got
5 nothing to do with DUI. Those convictions aren't
6 probative of anything. All they're going to do is
7 inflame the jury.

8 I think the same thing goes for threatening a
9 public official. That conviction is not -- it's not
10 probative of his credibility. It's an attack on his
11 character, and it's not going to do anything but just
12 inflame the passions of the jury. It has no probative
13 significance in the case. So I would argue that none of
14 those should come in against Mr. Dennis.

15 **The Court:** Let me take that under
16 advisement. Why don't we -- let me bring the jury back
17 out here and then we're going to break for lunch and then
18 we will -- I'll let you know before you start your case.

19 **Mr. Cooper:** Yes, Your Honor. Thank you.

20 **Mr. Newton:** Thank you, Your Honor.

21 **The Court:** Let's bring the jury back out.

22 (WHEREUPON the jury was brought into open
23 court at 12:04 p.m.)

24 **The Bailiff:** The jury is present, Your
25 Honor.

1 **The Court:** Thank you.

2 All right. Ladies and gentlemen, at this
3 time I think we're going break for lunch. So I'm going
4 dismiss you for lunch with the instructions that you be
5 back here at eleven, or excuse me, 1:30. And if you
6 would, please, not discuss this case with anyone or
7 amongst each other while you go on your lunch break.

8 Have a nice lunch, and I guess the weather is
9 probably getting pretty nasty out there so I'm sorry we
10 don't have a good day for you. Have a nice lunch. We'll
11 see you right back here before 1:30. Thank you.

12 (WHEREUPON the jury was excused from open
13 court to go to lunch at 12:06 p.m.)

14 **The Court:** All right. Court's in recess
15 until 1:30.

16 **Mr. Bunge:** Yes, sir.

17 **Mr. Cooper:** And the defendant can remain on
18 bond?

19 **The Court:** Certainly he'll remain on bond.

20 **Mr. Cooper:** Thank you.

21 **The Court:** With the caution that if he does
22 not show back up for trial the trial will still go on.

23 **Mr. Cooper:** Yes, sir.

24 (WHEREUPON a lunch break was taken.)

25 (Defendant's Exhibit No.'s 2 through 6 were

1 marked for identification only.)

2 **The Court:** Thank you. Please be seated.

3 All right. As to the issue of whether the
4 defendant's prior convictions for DUI second and DUI
5 third and threatening the life of a public official, due
6 to the fact that the DUI's are -- this is an alcohol case
7 to some extent that they arrested him for. I think it's
8 a little too similar and the prejudicial would outweigh
9 the probative on that. And, again, it's a similar
10 argument or similar feeling on the threatening the life
11 of a public official, when you have the officers and it's
12 resisting arrest. But if the defendant in any way says
13 any statement like, you know, I have never done anything
14 wrong I have never done anything like this again, then
15 it's going open it up and I'm going to let everything in.

16 **Mr. Bunge:** Very well, Your Honor.

17 **The Court:** Do y'all understand that?

18 **Mr. Cooper:** Okay.

19 **The Court:** Anything else before we bring our
20 jury back in?

21 **Mr. Cooper:** No, Your Honor.

22 **The Court:** All right. Let's bring our jury
23 in.

24 (WHEREUPON the jury was brought into open
25 court at 1:35 p.m.)

1 **The Bailiff:** Jury is present.

2 **The Court:** All right. Thank you.

3 All right. The State has rested.

4 Does the defense wish to put up a defense?

5 **Mr. Cooper:** Yes, Your Honor. At this time
6 the defense would call Kendrick Dennis to the stand.

7 **The Court:** Come forward, please.

8 KENDRICK DENNIS, after being duly sworn,
9 testified as follows:

10 **The Clerk:** Please state your name for the
11 record.

12 **The Witness:** Kendrick LaVon Dennis.

13 **DIRECT EXAMINATION**

14 By Mr. Cooper:

15 Q Good afternoon, Mr. Dennis.

16 A Good afternoon.

17 Q Just -- I want to just start out by introducing you
18 to the jury. How old are you, sir?

19 A Thirty-seven.

20 Q Where are you from originally?

21 A Camden, South Carolina.

22 Q All right. Where did you go to high school?

23 A Camden High.

24 Q Did you complete Camden High?

25 A No, sir.

1 Q How far did you get?

2 A To the tenth grade.

3 Q All right. Are you married, sir?

4 A Yes, sir. It will be seven years in August.

5 Q Do you have any children?

6 A Yes, I have five.

7 Q All right. Where do you currently live?

8 A Apartments.

9 Q Is that address in Columbia?

10 A Yes, it is.

11 Q All right. And is that generally kind of in the
12 Spring Valley area of the -- Columbia?

13 A Yes, sir.

14 Q All right. How long have you lived there?

15 A Going on three years.

16 Q Okay. Mr. Dennis, what kind of work do you do for a
17 living?

18 A I'm a welder with Arcadian Steel and part-time I
19 cater at the civic center for events.

20 Q All right. How long have you been doing those jobs?

21 A Since -- since November I was doing part-time at the
22 convention center and Arcadia Steel since the first
23 of December.

24 Q All right. Now, Mr. Dennis, I've already asked you
25 about living out at Apartments. Is it

1 fair to say that you're familiar with the apartment
2 complex?

3 A Totally.

4 Q Is it fair to say that you're familiar with the
5 layout?

6 A Yes, I am.

7 Q All right. Your Honor if I could approach?

8 **The Court:** You may.

9 By Mr. Cooper:

10 Q Well, Mr. Dennis, I'm going to show you some pictures
11 that have already been pre-marked. And I'm referring
12 to what's been premarked as Defense 2. Do you
13 recognize this photograph, sir?

14 A Yes, sir.

15 Q And --

16 A That's my building.

17 Q And what building does that photograph depict?

18 A -- I mean -- yeah, Building.

19 Q Is that an accurate depiction of the building you
20 live in out at the apartments?

21 A Yes, sir.

22 Q And is that an accurate depiction of the building
23 that you lived in on October 25th, 2009?

24 A Yes, sir.

25 **Mr. Cooper:** I'd offer No. 2, Your Honor.

1 **Mr. Bunge:** For the record I have seen all of
2 them, I have no objection to any of them.

3 **The Court:** No objection.

4 **Mr. Cooper:** I'll offer 2 through -- let's
5 see --

6 **Mr. Bunge:** Of course, subject to the witness
7 identifying them.

8 **The Court:** Certainly.

9 By Mr. Cooper:

10 Q All right. Well, let me go ahead and show you all
11 these.

12 **The Court:** How many are there?

13 **Mr. Cooper:** There's five of them, Your
14 Honor.

15 **The Court:** So all five come in subject to
16 the witness --

17 **Mr. Bunge:** Sure, if he can identify them, no
18 objection from the State.

19 **Mr. Cooper:** Sure.

20 By Mr. Cooper:

21 Q All right. I'm just going to show you these in order
22 then. Is this another picture of your apartment
23 complex?

24 A Yes.

25 Q Okay. I'm referring to No. 3. Is that a picture of

1 your apartment complex?

2 A Yes.

3 Q No. 4, is this a picture you've apartment complex?

4 A That's a -- the apartment -- the parking lot in front
5 of my building, yes.

6 Q The parking lot?

7 A Yes.

8 Q But it's in your complex?

9 A Yes.

10 Q All right. No. 5 and 6 are these pictures of the
11 apartment complex you live in?

12 A Yes, sir.

13 Mr. Cooper: All right. I'd offer them, Your
14 Honor.

15 The Court: All right. They're admitted
16 without objection from the State.

17 (Defendant's Exhibits 2 through 6 received in
18 evidence.)

19 All right.

20 The Court: It will be 1 through 5.

21 The Court Reporter: 2 through 6, Judge.

22 The Court: 2 through 6, received in evidence
23 of defense.

24 By Mr. Cooper:

25 Q Now, Mr. Dennis, getting to the morning of October

1 25th, 2009, do you recall that morning?

2 A Yes, sir.

3 Q All right. Do you recall being present at the
4 Apartments that morning?

5 A Yes, sir.

6 Q Where do you recall being, exactly, in the parking
7 lot that morning?

8 A In the front of my building.

9 Q All right. Okay. I'm referring to Defense 2, which
10 is already in evidence. This is the -- this is the
11 front you're building?

12 A Yes, sir.

13 Q All right.

14 Mr. Cooper: Permission to publish this to
15 the jury, Your Honor?

16 The Court: Yes, sir. Certainly they're in
17 evidence.

18 By Mr. Cooper:

19 Q All right. And when you say in the front of your
20 building, where exactly do you mean? The jury is
21 looking at the picture.

22 A It was in the front of the building right across on
23 the sidewalk in the green -- of the green car.

24 Q Okay. And do you recall the police arriving that
25 morning?

1 A Yes, sir, I was -- I flagged them down when they was
2 coming in and wasn't Officer Gore.

3 Q I'm sorry could you repeat that last part?

4 A I said it wasn't Officer Gore when the officer came
5 in the apartment complex.

6 Q All right. Was this officer that you first
7 encountered, was he driving a marked car?

8 A Yes, sir.

9 Q All right. Was he in uniform?

10 A Yes, sir.

11 Q Do you recall the officer's name?

12 A No, sir, but it was a white -- it was a young, white
13 cop, and he had no -- he had no -- he was most
14 likely, he was a private he was under training.

15 Q All right. Tell us about your -- tell us about your
16 first interactions with this officer.

17 A Okay. When he first came -- when he came in -- and
18 like I said it wasn't Gore, it was a young, white
19 cop. And I talked to him, and I told him -- which he
20 told me to sit down on the sidewalk, which is what I
21 did. And the officer -- and Officer Gore, he went
22 straight to my -- he went straight to my vehicle and
23 he searched it the whole time. He never said nothing
24 to me and --

25 Q Well, let's stop right there, Mr. Dennis.

1 A Okay.

2 Q Because I want the -- I know this is in your mind,
3 but I want the jury to understand this. The -- when
4 the first officer that you described -- when he
5 stopped, was his car right there next to him?

6 A Yes, sir.

7 Q All right. And the car was in both of y'all's view
8 as he was talking to you?

9 A Yes, sir. It was parked beside the sidewalk in front
10 of my building.

11 Q And was this a marked car from the Richland County
12 Sheriff's Department?

13 A Yes, sir.

14 Q All right. Now, you started to mention a -- your
15 interaction with Officer Gore, and you see Officer
16 Gore here in the courtroom; right?

17 A Yes, sir.

18 Q All right. And at some point he arrived on the
19 scene; right?

20 A He arrived immediately after the -- after the young
21 cop.

22 Q Right. Well, tell the jury when Officer Gore arrived
23 what was the -- what was going on with you and the
24 other officer?

25 A We was standing up having a conversation, and then

1 Officer Gore didn't say nothing to me. He passed
2 right be beside me and walked to my vehicle, and he
3 continued to search my vehicle until it was time for
4 the young officer -- I guess they was relaying
5 messages back and forth, and the young officer came
6 over to me, and said I was being charged with DUS --
7 no not DUS, disorderly conduct. And he told me to
8 put my hands on the car and he was patting me down.

9 Q Lets stop right there.

10 A Yes, sir.

11 Q Just so they can follow you. Because you have a
12 tendency to talk a little fast.

13 A Okay. Sorry.

14 Q I just want them to understand.

15 A Okay.

16 Q So at this point, is it your testimony that the
17 original officer has your hands on the car?

18 A Yes, sir.

19 Q All right. At that point were you in handcuffs?

20 A No, sir we wasn't. We was --

21 Q Had the -- had the original officer informed you that
22 you were under arrest?

23 A Yes, sir. And he was patting me down at the time.

24 Q All right. Now, at this point were you in any way
25 hostile to this officer?

1 A Not whatsoever.

2 Q Did you take a swing at this officer?

3 A No, sir.

4 Q Did you -- did you -- at this point, did you threaten
5 this officer?

6 A No, sir, I didn't.

7 Q All right. Did you try to run away from this
8 officer?

9 A No, sir.

10 Q All right. So let's go back to the interaction with
11 Officer Gore. Tell jury what happened immediately
12 after that, when you interact with Officer Gore.

13 A When I immediately acted with Officer Gore?

14 Q Yes, sir.

15 A When I was reacting with him, when the other cop was
16 a patting me down, all of a sudden I get tased in the
17 back of the leg, and then I was on the ground
18 flopping like a fish. And he told me, Stop
19 resisting. Stop resisting. You know?

20 I'm saying in my mind, I'm conscious, and I'm
21 saying in my mind, Why is he telling me to stop
22 resisting. I know I can't move.

23 Q All right. Mr. Dennis, well let's -- again, you
24 were -- you were in the courtroom during me and
25 Officer Gore's demonstration, right?

1 A Yes, sir.

2 Q And when you -- according to your testimony when you
3 were tased, is it your testimony that you went
4 directly to the ground?

5 A Of course, you're going to fall directly to the
6 ground like a fish.

7 Q What did that taser -- after you fell to the ground
8 what does that taser do to your body?

9 A You automatically lock every muscle up in your body.

10 Q Can you move?

11 A No, you couldn't move.

12 Q All right. Now, let's talk about -- oh, I just --
13 since the jury already has the picture of Building
14 300, I just want them to be clear when they take this
15 back there. This is already in evidence as No. 6,
16 but this is the 1100 Building that we have heard
17 references to; right?

18 A Yes, sir.

19 Q This is facing that building. Okay.

20 Mr. Cooper: Permission to publish, Your
21 Honor?

22 The Court: Yes.

23 By Mr. Cooper:

24 Q And you see that little -- that sidewalk right there,
25 did the officers have their cars at that sidewalk?

1 A The officer that was parked right there on the
2 sidewalk and I was sitting in front of the vehicle
3 while they were -- while Officer Gore was searching
4 my car.

5 Q So were the officers cars right there with them?

6 A They was right behind each other the -- the first
7 patrol car was up and Officer Gore parked behind the
8 second patrol car.

9 Q So, Mr. Dennis, how far away from you -- when you
10 were arrested and tased -- how far were you away from
11 one of their patrol cars?

12 A I was right there in front.

13 Q All right. Now, Mr. Dennis I want to ask you about
14 this: There's some testimony earlier that you became
15 heated and somewhat threatening. Did that occur
16 after you were tased?

17 A Yes, sir, because like I said, me and the young
18 officer who was first on the scene, we was having a
19 nice little conversation. It wasn't no yelling nor
20 belligerent, nothing going on until after I got
21 tased, and I didn't know where it come from, so, of
22 course, after they handcuffed me I had jumped up, and
23 I started -- and I said -- I started being
24 belligerent after that because first we was having a
25 nice conversation, then all of a sudden I get tased

1 for no reason. I was upset. Yes, I was.

2 Q All right. Fair enough, Mr. Dennis. Now, again,
3 just so that the jury is clear, how much -- how much
4 do you weigh right now?

5 A I weigh about 210.

6 Q All right. How much do you think you weighed when
7 this happened?

8 A Lesser than that, because I was working out a little
9 bit.

10 Q But when you were on the ground, Officer Gore here
11 was on top of you; right?

12 A Man, me and -- Officer Gore never did interact with
13 me until when he was tasing me. That's the only time
14 I ever spoke to him.

15 Q When you were on the ground, did he get on top of
16 you?

17 A No, sir, he never touched me.

18 Q He never touched you?

19 A He never even grabbed my arm -- he ain't arm bar me
20 or nothing.

21 Q When you were on the ground, were able to move?

22 A No, sir, until he stopped tasing me. And then I
23 politely put my hands behind my back. He didn't have
24 to wrestle with me. It was not, -- even the first
25 time he had to wrestle.

1 Q Yes, sir, I understand.

2 Mr. Cooper: Your Honor, I beg the Court's
3 indulgence.

4 The Court: Yes, sir.

5 By Mr. Cooper:

6 Q Okay. Only a couple more things, Mr. Kendrick. You
7 know, you have heard the discussion in front of the
8 jury today about alcohol involvement in this case.
9 Had you been drinking that night?

10 A Yes, sir.

11 Q Okay. All right.

12 A It was -- as a matter of fact, it was earlier that
13 night. It wasn't that morning it was earlier that
14 night.

15 Q Okay. Was it when they -- when the officers
16 approached you and told you that you were under
17 arrest, was it your intention to resist their arrest?

18 A No, sir, it wasn't. Because like I said, when the
19 first -- when the first officer came up, I explained
20 to him that I wasn't driving. I also explained to
21 him I was on probation, and I got kids, and I wasn't
22 trying get in no trouble.

23 Yes, I explained that to that young cop, and
24 that I -- that I had encountered. I did not
25 encounter Officer Gore. I never did talk to Officer

1 Gore.

2 Q All right.

3 Mr. Cooper: All right. Your Honor, that's
4 all the questions I have at this time.

5 The Court: All right. Thank you.

6 Mr. Bunge, cross-examination.

7 Mr. Bunge: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 By Mr. Bunge:

10 Q Good afternoon, Mr. Dennis.

11 A How are you doing?

12 Q What were you what were you on probation for?

13 A DUI, I think.

14 Q What is DUI?

15 A Driving under the influence.

16 Q So you -- it's Sunday morning; right?

17 A Yes, sir, like about three -- about three or four
18 o'clock in the morning.

19 Q Not six?

20 A No, sir, it wasn't.

21 Q And you flagged -- I believe you said you flagged a
22 young, white cop down.

23 A Yes, I did.

24 Q Why did you flag the cop down?

25 A Because the wreck just occurred, and I was now

1 stopping him.

2 Q What wreck?

3 A The wreck with my car.

4 Q Did you see it or cause it?

5 A Yes, I caused it. I caused it.

6 Q And did the policeman just happen to be standing
7 there, or did you call and he respond?

8 A No, I walked to his patrol car.

9 Q What was he doing there?

10 A Well, he just rolled up after I wrecked he rolled up.

11 Q Oh, so it just -- you wrecked, and he happens to show
12 up, and you flag him down?

13 A Yeah, he came in -- and with the lights on, so I
14 walked in front of the car towards him.

15 Q And what -- he told you sit down?

16 A Yes, sir.

17 Q That you were having a friendly conversation?

18 A After that -- when I sat down, him and Officer Gore
19 went to my car.

20 Q And what was your intention in flagging him down?

21 A My intention was, at the time, I was -- I told him
22 somebody else was driving because I didn't want to
23 get in trouble. But then at that point in time
24 that's -- that was my motive at that time, yes it
25 was.

1 Q So it was your intention to lie, but did you lie to
2 the officer?

3 A Did I lie to the officer about I wasn't driving?

4 Q Right.

5 A Yes, sir, at that time yes, I did.

6 Q And you're having a friendly conversation with the
7 officer to whom you lied, and I think you said you
8 had your hands on his car?

9 A Did I have my hands on his car?

10 Q Right, the young white cop as you described him?

11 A No, I was sitting on the sidewalk. When he told me
12 to sit on the sidewalk, I was sitting on the
13 sidewalk.

14 Q At what point did you have your hands on his car, as
15 you said?

16 A At the point when they was getting ready to arrest me
17 for disorderly conduct.

18 Q And that leads me to my next point, you were under
19 arrest but you weren't in handcuffs?

20 A No, sir, I wasn't in handcuffs. He told me to sit --
21 on -- he told me to sit on the sidewalk.

22 Q And he's patting you down, still not in handcuffs?

23 A Yes, sir, exactly.

24 Q When all of a sudden, bam you get tased, no reason.

25 A Yes, sir.

1 Q By Gore.

2 A Yes, sir.

3 Q Why would he tase you?

4 A I asked myself the same question.

5 Q You said --

6 A Because like I said I wasn't being belligerent, and
7 he said -- he even said that in the hearing.

8 Q What hearing?

9 A That hearing before we have to come here, in
10 magistrate's court.

11 Q Okay. You said you weren't being belligerent?

12 A No, sir, I wasn't. Exactly. That's what he said.

13 Q He just felt like tasing you because --

14 A I don't know. He must have had a bad night or
15 something. I don't know.

16 Q You said the cop cars, the police cars were parked
17 one behind the other.

18 A Exactly.

19 Q So they weren't in spots, parking spots.

20 A They parked one behind each other. No, you can't
21 park in parking spots. It's one behind each other,
22 on the side of the sidewalk.

23 Q So parallel to the sidewalk?

24 A Here is -- this is the sidewalk, they parked right
25 here behind each other.

1 Q And you just happened to be right in front of them.

2 A Yes, sir. That's where he told me to sit down at, in
3 the front of the patrol car on the sidewalk.

4 Q Well, if --

5 **Mr. Bunge:** Do we have a marker, please?

6 Thank you.

7 By Mr. Bunge:

8 Q If I understand you correctly, and let's say these
9 are the buildings.

10 A Uh-huh.

11 Q Let's say for the benefit of the jury?

12 A Yes, sir.

13 Q Here is the sidewalk.

14 A Yes, sir.

15 Q Spots, parking spots; right?

16 A Okay. Sidewalk.

17 Q There is the sidewalk?

18 A Yes, sir, yes.

19 Q So it's your contention, and pardon my drawing, but
20 this will be a police car with a siren?

21 A That's a police car uh-huh.

22 Q They're back-to-back.

23 A Yes, sir.

24 Q And they tell you to sit down on the sidewalk which
25 is here?

1 A Huh-uh. No, the sidewalk is over there.

2 Q Okay. The sidewalk is on this side?

3 A Yes, sir.

4 Q Okay. Is there a sidewalk in front of this car or in

5 front of this car?

6 A It's on the side of the car. It's not in the front.

7 Q You said you were right in front of the car?

8 A Right -- may I -- may I?

9 Q Yeah. Here I'll give you a pointer.

10 A I said, right here -- there's a sidewalk right here,

11 there's a sidewalk right here. Okay? And I was

12 sitting right here in the front of the cars on the

13 sidewalk.

14 Q The sidewalk is here. Right?

15 A Yes, sir.

16 Q And if you're here, you're never in front of the car

17 are you?

18 A I'm in front of the cars, I'm right here in front of

19 the cars. The sidewalk is much bigger than that, and

20 the cars -- by me sitting on the sidewalk, I'm right

21 there in front of the cars.

22 Q You were angry though?

23 A No, sir, I wasn't angry. I ain't never did -- I

24 never bolt, or I ain't never jumped to conclusion

25 about nothing. I know I had to keep my composure,

1 so, no I wasn't angry. I never did cuss at them or
2 nothing until after I got tased.

3 Q Right. That's what I'm saying you were angry?

4 A After I got tased, yes, sir, I was. Who wouldn't be?

5 Q Perhaps it happened in a slightly different order.

6 A No, sir, it never did.

7 Q You remember it?

8 A Oh, of course.

9 Q But you'd been drinking?

10 A Yeah, earlier, that night, not that morning, earlier.

11 Q I think you said it was two or three in the morning?

12 A Yes, sir, that's when it occurred, the accident
13 occurred.

14 Q What time did you drink?

15 A About ten, eleven.

16 Q How much did you drink?

17 A I'm not for sure, but I wasn't belligerent drunk.

18 Q You don't remember what you drank?

19 A Of course, I remember what I drunk.

20 Q What did you drink?

21 A Some beer.

22 Q How much?

23 A About three cans, 24's.

24 Q What else?

25 A That's it.

- 1 Q That's all you had?
- 2 A Yes, sir.
- 3 Q And how did the accident happen that put so much
- 4 damage on this car?
- 5 A When I went to the store and got me a pack of
- 6 cigarettes, that's the only thing I had in my
- 7 possession, was my wallet and a pack of cigarettes, a
- 8 fresh pack. I dropped a cigarette and then I hit the
- 9 sidewalk.
- 10 Q You weren't paying attention?
- 11 A Yes, sir, eventually.
- 12 Q Could you have been drunk?
- 13 A No, sir, I wasn't. I used to drink more than that,
- 14 so no, three beers wouldn't have did it.
- 15 Q So it wasn't possible that you were drinking and
- 16 driving that night?
- 17 A Of course, I mean, at the time, like I said, I drunk
- 18 earlier, but no, I wasn't drinking when I went to the
- 19 store.
- 20 Q Your wife lives with you in
- 21 A Yes, my wife, not my girlfriend.
- 22 Q That night she pointed you out to the police?
- 23 A No, she didn't. My wife never did talk to neither
- 24 one of these others sitting in this courtroom.
- 25 Q How do you know the young, white cop was in training?

1 A Because I was in ROTC, and I know anybody got stripes
2 for -- I know a PFC or a Private First Class, I know
3 that, because I was in ROTC. That's how I know, and
4 I did want to go into the army.

5 Q So what did the young, white cop dress like?

6 A He was dressed in all black with no -- with no -- no
7 stripes on him.

8 Q And that means he was in training.

9 A Yes, sir, that's what I assumed he was, because --

10 Q And he's driving around by himself at three in the
11 morning at the Apartments?

12 A Yes, sir. And like I said, Officer Gore pulled up
13 right behind him because -- and then I seen Officer
14 Gore's stripes and so that's when I immediately knew
15 he was in training.

16 Q The stripes that he has where today?

17 A Where?

18 Q Yeah, where are his stripes?

19 A On his shoulders. That should be a sergeant.

20 Q Do you see stripes now?

21 A The -- on the side, yes.

22 Q So the emblem --

23 A Yes, sir, if what's you want to call it, yes, sir.

24 Q And the young, white cop, who was in training by
25 himself at three in the morning, was dressed all in

1 black?

2 A He had nothing -- Yes, sir.

3 Q Did it say, Sheriff, Deputy Sheriff?

4 A Of course, it said Sheriff. It said Sheriff, but he
5 ain't had no rank.

6 Q And again you didn't call this in, he just happened
7 to drive up right after you had your accident.

8 A Yes, sir, I did.

9 Q Did you -- you don't remember his name?

10 A No, sir, but he was the one -- they said -- they said
11 I went to jail in the paddy wagon. That young cop is
12 the one that took me to the jailhouse.

13 Q Let me back up then because the jury may be getting
14 confused like I am. The young, white cop has his own
15 car, and it's three in the morning, and he's driving
16 his own car that you happen to flag down, and then he
17 leaves his car, jumps in the paddy wagon and takes
18 you downtown?

19 A No, Lord, no. You're twisting it up. He put me in
20 his car, and he drove me to the police station, and
21 he booked me in.

22 Q Oh, so it wasn't -- I see what you're saying. My
23 mistake. It wasn't a paddy wagon you're saying, it
24 was his car?

25 A Yeah, the car he drove up in. And Gore stayed on the

1 scene with the wrecked car.

2 Q Gore never said anything to you?

3 A He never said nothing, but said, Stop resisting.

4 Stop resisting, while he was tasing me. That's the
5 only thing he said. He ain't never approached me or
6 nothing.

7 Q He approached you at some point because he had to
8 tase you.

9 A Yeah, he tased me from a distance from behind.

10 Q Oh, from a distance. So he fired the little prong
11 things?

12 A Yeah, like I said --

13 Q I got you.

14 A When the other -- when the other young cop was
15 patting me down, I saw Gore out of the corner of my
16 eye and I thought he was walking back to his car.
17 Eventually he walked behind me and while me and the
18 young cop was having a conversation, all of a sudden
19 I just -- I just drop.

20 Q So correct me if I'm wrong, you're being patted down
21 by the young, white cop here?

22 A Yes, sir.

23 Q You see Gore.

24 A Out of the corner of my eye, on my left.

25 Q And somewhere, he's be behind you and he fires and he

1 shoots -- the prongs shoot out and stick into you
2 somewhere?

3 A Yes, sir.

4 Q You don't remember where?

5 A In my leg.

6 Q And did you pull them out?

7 A Did I pull it out?

8 Q The prongs.

9 A No, I didn't pull it out.

10 Q What happened to it?

11 A He -- eventually he pulled it out.

12 Q After you finished flopping like a fish?

13 A Yes, sir.

14 Q What are they doing while you're flopping like a
15 fish?

16 A Standing over me, telling me, Stop resisting. Stop
17 resisting. You couldn't -- if he got his finger on
18 the trigger, how could you -- how could you not move?
19 I mean you ain't got no choice but to keep flopping.

20 Q When did he search your car?

21 A He was searching my car the whole time, instead of --
22 instead of, you know, like any other accident,
23 instead of calling EMS or to see if I was internally
24 hurt or something like that, no, he just was
25 searching my car. And, yes, Spring Valley is a bad

1 neighborhood. We're selling drugs and I -- most
2 likely that was what he was looking for the whole
3 time, but, no, I wasn't even working at the time and
4 I was barely getting my unemployment.

5 Q If I heard you correctly, We're selling drugs and
6 things who sells drugs?

7 A I said that environment, the environment that I live
8 in, yes it's a drug-active neighborhood. Yes, it is.

9 Q You didn't see EMS?

10 A No, not until after he tased me.

11 Q So you did see EMS?

12 A Not until after I got up. He tased me, and after he
13 tased me I got up, and that's when EMS rolled up.

14 Q And how many were there?

15 A How many EMS?

16 Q Yeah.

17 A Two.

18 Q What did they say to you?

19 A They didn't say nothing to me. I was -- at the time
20 I really wasn't -- after I had been tased I really
21 wasn't trying to hear nothing, because yes, I was
22 frustrated and upset at the time.

23 Q What did they do for you?

24 A They didn't do nothing.

25 Q They just stood there and looked at you?

1 A Eventually so. I mean like the -- that prong pulled
2 out of my leg. It was bleeding for like a day.

3 Q It was bleeding for a day?

4 A Yeah.

5 Q But EMS just watched it?

6 A It wasn't pouring out bleeding. Of course, it would
7 stop sooner or later, but -- no.

8 Q Do you think they saw it bleeding?

9 A No. They couldn't see it. They ain't really do
10 nothing because I had pants on.

11 Q Oh, I see. So you find out it was bleeding after you
12 got home?

13 A No, I found out it was bleeding after I got to the
14 county.

15 Q Gore is searching you the entire time?

16 A Gore is searching my car.

17 Q Right. I'm sorry, your car. But he has time to tase
18 you during that time?

19 A After he finished searching my car and couldn't find
20 nothing. He couldn't even find no alcoholic bottles
21 or nothing, so I don't know -- I mean if he say I was
22 driving drunk or something, eventually it don't take
23 long to find bottles or no cans or anything.

24 Q I'm sorry it wouldn't be them. I believe you said
25 you were driving drunk?

1 A No, I didn't say I was driving drunk.

2 Q Had you been drinking at ten o'clock?

3 A Of course. I told you I drank three beers.

4 Q And then you drove?

5 A That was about three -- that was about two or three
6 in the morning when I went to get a pack of
7 cigarettes, like I said.

8 Q So he was so mad because he couldn't find anything in
9 your car to set you up for it, that he tased you?

10 A I don't know what the excuse was, sir. Don't try to
11 make me say that.

12 Q How many times have you been arrested for DUI.

13 **Mr. Cooper:** Objection, Your Honor.

14 **Mr. Bunge:** Judge, he opened the door.

15 **The Court:** Overruled.

16 **The Witness:** Two, three maybe.

17 By Mr. Bunge:

18 Q How many convictions do you have for DUI?

19 A I have no -- I have no idea. I think two. I'm not
20 sure.

21 Q If I told you had a conviction for DUI second offense
22 and a conviction for DUI third offense would that
23 surprise you?

24 A No, no, sir.

25 Q I believe you said Gore didn't touch you or anything

1 he didn't arm rob you or anything. How often do you
2 get arm robbed by the police?

3 A What you mean by arm robbed?

4 Q I don't know. I thought that's what you said. I
5 wrote down, He didn't touch me, didn't even arm rob
6 me.

7 A No, I said he's talking -- where he's talking about
8 that arm bar.

9 Q Oh, the straight-arm bar?

10 A Yeah, he didn't do none of that. As a matter of
11 fact, we didn't have any physical contact whatsoever.

12 Q Just the little prongs that flew out from his taser?

13 A That was it.

14 Q That made you bleed. And that made you mad?

15 A That made me mad, because I thought the young cop had
16 did it while we was up there having a civilized
17 conversation, and then all of a sudden it came out of
18 nowhere. Then I start getting -- I start getting
19 angry at the young cop. And if he was here today I
20 would apologize to him for which I found now it was
21 Officer Gore that did it.

22 Q Did what?

23 A That tased me.

24 Q So you thought it might have been the young, white
25 cop?

1 A Yes, sir, at the time I thought it was him, as far as
2 him tasing me for no reason.

3 Q Well at what point, if you were having a friendly
4 conversation and always knew where the young, white
5 guy was, when did you think it was him if you didn't
6 know who tased you?

7 A When did I think it was him? After I got up because
8 it was a surprise to me.

9 Q Who, if anybody, put their hands on you?

10 A The only -- the only young, white cop that put the
11 handcuffs on me. That was the only one. And this
12 other cop, he wasn't even there.

13 Q Who is that?

14 A The cop right there. He wasn't ever there on the
15 scene.

16 Q So let's recount to the jury, how many people were
17 there?

18 A There was just the young officer and Officer Gore.

19 Q So the young, white copy in training that you flagged
20 down and Gore.

21 A That's correct.

22 Q Nobody else?

23 A That's correct.

24 Q Never saw Oliphant?

25 A Never was there.

1 Q And what was your civilized conversation about with
2 the young, white cop?

3 A Asking him why I'm getting arrested for public
4 disorderly conduct, like -- which was in the front of
5 my building.

6 Q No. No. No. Sorry. Back up. I thought you flagged
7 him down?

8 A Yeah, that's what I said exactly.

9 Q So you flagged him down, and he said thanks for
10 flagging me down, and now, I'm going to arrest you
11 for public disorderly conduct?

12 A No, no, you're twisting it up.

13 Q What was the civilized conversation about?

14 A The civilized conversation was about when I was
15 telling that I am had kids, and it wasn't my fault,
16 and then, yes, like I said, I admit that I was trying
17 to stay out of trouble. That's why I told him that.

18 Q You said that because you were on probation?

19 A Exactly. And so -- and then if he was going to take
20 me to jail for the disorderly conduct, that is
21 nothing compared to resisting arrest. That's
22 nothing. And which I didn't do. Okay.

23 Q I think we're not back far enough. You flag him down
24 because you have just crashed into this -- what do
25 you call it, sidewalk, and damaged the car. So you

1 flag him down. He just happens to be there.

2 A Yes.

3 Q You flag him down?

4 A Yes.

5 Q At that point, what do you say to him, and what does
6 he say to you?

7 A I can't remember everything he said, sir.

8 Q What was nature of it? Were you saying, Please
9 arrest me for DUI. Please arrest me for leaving the
10 scene?

11 A I can't -- it was a year ago, I can't remember all
12 that.

13 Q But you can remember Gore, the young, white cop with
14 all black, no stripes?

15 A Exactly.

16 Mr. Bunge: I have nothing further. Thank
17 you, Your Honor.

18 The Court: Any redirect.

19 Mr. Cooper: Thank you, Your Honor.

20 REDIRECT EXAMINATION

21 By Mr. Cooper:

22 Q All right. Mr. Dennis, let's get back to the -- to
23 the heart of this case. When you were on the ground,
24 were you able to move at all?

25 A No, sir.

1 Q All right. How did you get on the ground?

2 A By a tase.

3 Q Did you ever -- this whole evening, did you ever --
4 from start to finish, did you ever attempt to resist
5 a lawful arrest?

6 A No, sir. May I show y'all how it happened?

7 Q Okay. If You want to leave the stand?

8 A Sure.

9 Q Let's go ahead and show them. All right. First of
10 all, first of all, now, I have to ask you a question,
11 Mr. Dennis. When you -- when you were first hit by
12 the taser, what happened?

13 A When I was first hit by the taser, like I said, of
14 course, all your muscles are going to lock up and I
15 fell. I didn't want to fall on my face, but I fell.
16 And then I -- that's the -- only thing I heard was,
17 Stop resisting. Stop resisting.

18 If y'all are going to tase me, why are you
19 talking about, stop resisting.

20 Q All right. All right. All right. That's enough
21 take the stand.

22 Mr. Cooper: All right. Your Honor, that's
23 all I have.

24 The Court: Any recross based upon the
25 redirect?

1 **Mr. Bunge:** Thank you very much, Your Honor.

2 No.

3 **The Court:** Thank you. You may step down.

4 Anything further from the defense?

5 **Mr. Cooper:** At this time the defense rests,
6 Your Honor.

7 **The Court:** All right. Thank you.

8 Ladies and gentlemen of the jury, I'm going
9 to now send you back to the jury room for a brief recess.
10 If you would like to get a drink or something like that,
11 you may do so. All right. Thank you.

12 Please do not discuss the case at this point.

13 (WHEREUPON the jury was excused from open
14 court at 2:09 p.m.)

15 **The Court:** Does the State intend to put up
16 reply testimony?

17 **Mr. Bunge:** I don't believe so. Thank you,
18 Your Honor.

19 **The Court:** All right. Thank you. Are there
20 any motions now that all the evidence has been presented?

21 **Post-Trial Motions**

22 **Mr. Cooper:** Yes, Your Honor, seeing this is
23 the close of evidence, the defense would renew it's
24 directed verdict motion that you heard earlier and I just
25 want to put on the record my objection, renew my

1 objection to Mr. Bunge's mention about how many
2 conviction he had and his line of questioning about that.

3 I think that's all we have, Your Honor.

4 **The Court:** Denied. The defendant opened up
5 the door when he started talking about the fact that he
6 was on probation and that was not even any result of his
7 questioning, but was the result of your question. So he
8 had been warned on that. He opened the door. So it was
9 properly admitted. All right.

10 **Mr. Cooper:** And I'm sorry?

11 **The Court:** The directed verdict is denied.

12 **Mr. Cooper:** Thank you, Your Honor.

13 **The Court:** Thank you. If you have your
14 e-mail addresses, Clay will send you a proposed draft of
15 the charge if you'd like an opportunity to look at it and
16 then why don't we do that over the next a ten or fifteen
17 minutes.

18 **Mr. Cooper:** Okay.

19 **The Court:** Do y'all have any other proposed
20 charges?

21 **Mr. Newton:** We do, Your Honor.

22 **Mr. Cooper:** We do have...

23 **Mr. Newton:** One is just the reading of the
24 public disorderly conduct statute. I don't know -- may I
25 approach? This is a copy of each one. The other is a

1 charge to resisting an unlawful arrest from State v.
2 Bethune. If you have another one that you would like to
3 use, but that's -- that just seemed the most clear out of
4 all the cases.

5 **The Court:** Yeah, I think we have State
6 versus Bethune available.

7 **Mr. Newton:** Is that the one? Okay. And
8 then just the reading of the public disorderly, the state
9 statute.

10 **Mr. Bunge:** Your Honor, the State would have
11 a request. I don't have -- I can e-mail to it all
12 parties if that's acceptable, and then we can have a
13 quick discussion, or I can go and make a couple of
14 copies. I was e-mailed this. I had asked for and I got
15 it during lunch.

16 **The Court:** What is it? What does it
17 concern?

18 **Mr. Bunge:** It's a -- I can read it. I
19 charge you that you a claim for false arrest turns only
20 on whether probable cause existed to arrest the subject
21 and it is not relevant whether probably cause existed
22 with respect to each individual charged or indeed any
23 charge actually invoked by the arresting officer at the
24 time of arrest.

25 I believe mention was made of the underlying

1 being an unlawful arrest. So the State would have that
2 as a proposed charge.

3 **The Court:** Okay. Any objection to that?

4 **Mr. Cooper:** Yes, we object to that.

5 **The Court:** All right. Overruled.

6 **Mr. Cooper:** I think --

7 **The Court:** Because I think he's correct on
8 that. I mean, I will probably charge the public
9 disorderly conduct, that the law is he's resisting
10 arrested arrest. He's not on trial for public disorderly
11 conduct. I'm not going to have a trial within a trial,
12 in essence. If they had probable cause to arrest then
13 that's sufficient, but I'll let you argue public
14 disorderly conduct, but the law is that if they had
15 probable cause they can activate an arrest.

16 **Mr. Bunge:** I'll e-mail this to Clay and to
17 Defense Counsel.

18 **The Court:** All right. Why don't you get a
19 full copy and let me know what you think and we'll
20 take...

21 **Mr. Cooper:** Yes, sir.

22 **Mr. Newton:** How long are we recessing?

23 **The Court:** About 10 or 15 minutes.

24 **Mr. Newton:** Thank you.

25 (WHEREUPON a short break was taken.)

1 **The Court:** Thank you. Man, it's cold. In
2 Sumter one time we had it so cold in the courtroom that
3 the jurors all wore gloves. That's cold.

4 All right. Have y'all seen a copy of the
5 draft.

6 **Mr. Bunge:** Yes, Judge.

7 **The Court:** Any problems with it from the
8 State?

9 **Mr. Bunge:** No, Your Honor.

10 **The Court:** Any problems with it from the
11 defense.

12 **Mr. Cooper:** Your Honor, I just renew my
13 objection to his proposed charge, but other than that,
14 no.

15 **The Court:** Okay. All right. Objection
16 overruled.

17 Let's bring our jury in.

18 And the State will open and close. Is that
19 correct or...

20 **Mr. Bunge:** We will waive the opening on the
21 law.

22 **The Court:** Okay.

23 **Mr. Bunge:** Thank you.

24 (WHEREUPON the jury was brought into open
25 court at 2:45 p.m.)

1 alcohol, and he's placed under arrest for public
2 drunkenness or disorderly conduct. You heard testimony
3 that there were several things he might have been
4 arrested for. He was arrested for disorderly conduct and
5 resisting arrest.

6 Much was made of the private versus public.
7 And listen to the judge's charge. This is not a trial
8 for disorderly conduct. As the defendant told you, he's
9 had a hearing on that in another court. This is the
10 charge on resisting arrest. And you'll hear that if
11 there's probable cause to arrest someone for any offense
12 that that's sufficient.

13 So when you go back playing the officials
14 that the defense would have you play, and consider the
15 testimony, you will decide that the call on the field is
16 reversed; and that Kendrick Dennis is guilty of resisting
17 arrest on October 25th, 2009. Thank you.

18 **JURY CHARGE**

19 **The Court:** Thank you. Please secure the
20 courtroom. All right. Thank you.

21 All right. Ladies and gentlemen, all of the
22 testimony that you're going to hear in this trial has
23 been heard. The attorneys have given you their closing
24 arguments, and now is the time that I will charge you
25 with the law to be applied in this case. As I stated,

1 the indictment in this case alleges one offense against
2 the defendant, Kendrick Dennis, under Indictment
3 2010-GS-40-10167, on the charge of resisting arrest. I
4 remind you the fact that the defendant was arrested,
5 charged and indicted in this case is not evidence and
6 cannot be considered by you as evidence of guilt in this
7 case, nor does it create any presumption or inference of
8 guilt. The indictment is simply the formal written
9 instrument which contain the charge made against the
10 defendant and by which the case is brought into this
11 courtroom.

12 Ladies and gentlemen, let me further you
13 remind you that during this trial you and I -- you as
14 jurors and I as judge have important duties to perform.
15 As the trial judge it is my responsibility to preside
16 over the trial of this case, and I also have the duty to
17 rule on the admissibility of evidence offered during this
18 trial. You're to consider only the competent evidence
19 that is before you. If there was any testimony ordered
20 stricken from the record in this case during the trial,
21 you must disregard that testimony. You are to consider
22 only the testimony which has been presented from this
23 witness stand, any exhibits which have been made a part
24 of the record in this case or any stipulations of
25 counsel.

1 I have the additional duty to charge you the
2 law applicable to this case, and as the presiding judge I
3 am the sole judge of the law in this case. Ladies and
4 gentlemen, it is your duty as jurors to accept the law
5 and apply the law as I now state it to you. If you
6 already have any idea as to what the law is or what you
7 think the law ought to be and it does not agree with what
8 I'm telling you now the law is, you must abandon that
9 idea because you were sworn to uphold and accept the law
10 as I state it to you.

11 Ladies and gentlemen, in every case tried
12 before a jury the jury becomes the sole and exclusive
13 judge of the facts in that case. As the trial judge, I
14 cannot intimate, state, comment or make any statement to
15 a trial jury about the facts in a case. Since you are
16 the jury you are the sole judges of the facts in this
17 case, and you are not to infer by anything that I have
18 said during the progress of this trial in ruling upon the
19 admissibility of evidence or otherwise or anything that I
20 might say during the course of this instruction to you
21 that I have any opinion about the facts in this case.
22 The law simply does not allow me to have any opinion
23 about the facts. It is solely for you the jurors, to
24 determine. And as jurors it is your duty to determine
25 the effect, the value, the weight, and the truth of the

1 evidence that has been presented in this trial.

2 Now, the defendant has pled not guilty to the
3 indictment, and that plea puts the burden on the State to
4 prove the defendant guilty. A person charged with
5 committing a criminal offense in South Carolina is never
6 required to prove their innocence. I charge you that
7 this is an important rule of law that the defendant in a
8 criminal trial, no matter how serious the charge may be,
9 will always be presumed to be innocent for the crime of
10 which the indictment was issued unless guilt has been
11 proven by evidence satisfying you of that guilt beyond a
12 reasonable doubt.

13 The presumption of innocence does not end
14 when you begin your deliberations, but it accompanies the
15 defendant throughout the trial until you reach a verdict
16 of guilt based on evidence satisfying you of that guilt
17 beyond a reasonable doubt. The presumption of innocence
18 is like a robe of righteousness placed about the
19 shoulders of the defendant which remain with the
20 defendant until it has been stripped from the defendant
21 by evidence satisfying you of the defendant's guilt
22 beyond a reasonable doubt.

23 The presumption of innocence is not a mere
24 legal theory it is not just a legal phrase, but it is a
25 substantial right to which every defendant is entitled to

1 unless you, the jury, are satisfied from the evidence of
2 the defendant's guilt beyond a reasonable doubt.

3 Ladies and gentlemen, what is a reasonable
4 doubt in the law? A reasonable doubt is the kind of
5 doubt that would cause a reasonable person to hesitate to
6 act. The State has the burden of proving the defendant
7 guilty beyond a reasonable doubt and again some of you
8 may have served as jurors in civil cases where you were
9 told it is only necessary that a fact be more likely true
10 than not true, such as by a greater weight or a
11 preponderance of the evidence. In criminal cases,
12 however, the State's proof must be greater than that and
13 it must be beyond a reasonable doubt.

14 Now, proof beyond a reasonable doubt is proof
15 that leaves you firmly convinced of the defendant's
16 guilt. There are very few things in this world that we
17 know with absolute certainty and in criminal cases the
18 law does not require proof that overcomes every possible
19 doubt. If, based upon your consideration of the
20 evidence, you are firmly convinced of the defendant's
21 guilt of the crime charged, you must find the defendant
22 guilty. If, on the other hand, you think that there's a
23 real possibility that the defendant is not guilty, you
24 must give the defendant the benefit of the doubt and find
25 him not guilty.

1 There are two types of evidence that is
2 generally presented during a trial. There's direct
3 evidence and circumstantial evidence. Direct evidence is
4 the testimony of a person who claims to have actual
5 knowledge of a fact, such as an eyewitness. It is
6 evidence which immediately establishes the main fact to
7 be proved.

8 Circumstantial evidence is a proof -- is
9 proof of a chain of facts and circumstances indicating
10 the existence of a fact. It is evidence which
11 immediately establishes collateral facts from which the
12 main fact may be inferred. Circumstantial evidence is
13 based on inference and not on personal knowledge or
14 observation. But the law makes absolutely no distinction
15 between the weight or the value to be given to either
16 direct or circumstantial evidence, nor is a greater
17 degree of certainty required for circumstantial than of
18 direct evidence.

19 Ladies and gentlemen, as jurors you should
20 weigh all the evidence in this case and after weighing
21 all the evidence if you are not convinced of the guilt of
22 the defendant beyond a reasonable doubt, you must find
23 the defendant not guilty.

24 Now, necessarily, ladies and gentlemen, you
25 must determine the credibility of witnesses who have

1 testified in this case. Credibility simply means
2 believability. It becomes your duty as jurors to analyze
3 and to evaluate the evidence and determine which evidence
4 convinces you of its truth. In determining the
5 believability of witnesses who have testified in this
6 case, you may believe one witness over several witnesses
7 or several witnesses over one witness. You may believe a
8 part of the testimony of a witness and reject the
9 remaining part of the testimony of that same witness.
10 You may believe the testimony of a witness in its
11 entirety or reject the testimony of a witness in its
12 entirety.

13 You may consider whether the witness has
14 exhibited to you any interest, bias, prejudice or other
15 motive in this case. You may also consider the
16 appearance and the manner in which the witness -- of a
17 witness while on the witness stand.

18 Ladies and gentlemen, some of the testimony
19 entered into evidence in this case referenced other
20 charges which this defendant may or may not have been
21 charged. I charge you that this defendant is only on
22 trial for the crime listed in Indictment 2010-GS-40-10167
23 and that is of resisting arrest.

24 Ladies and gentlemen, the defendant is
25 charged with resisting arrest. The State must prove

1 beyond a reasonable doubt that the defendant resisted a
2 lawful arrest, being made by a person the defendant knew
3 or reasonably should have known was a law enforcement
4 officer. Knowingly means with knowledge and consciously
5 done. Willfully means done intentionally and not done by
6 accident. To resist means to oppose, to strive against
7 or obstruct. Obstruct means to impede, hinder, or
8 interfere with -- even peaceful, nonviolent obstruction
9 of an arrest is considered resisting arrest. If the
10 means used are sufficient to prevent the officer from
11 making an arrest, the defendant is guilty of resisting
12 arrest.

13 When a person is the subject of a lawful
14 arrest there is a duty to peacefully allow the arrest.
15 However, a person has the right to resist an unlawful or
16 illegal arrest and may use as much force as is reasonably
17 necessary to prevent an unlawful arrest. In order to
18 determine whether the defendant was entitled to resist
19 arrest, you must first determine whether the arrest in
20 this case was lawful.

21 A law enforcement officer may arrest a person
22 without a warrant when the crime is committed in the
23 officer's presence. A law enforcement officer may also
24 arrest for a misdemeanor without a warrant when the facts
25 or circumstances observed by the officer provide probable

1 cause to believe that a misdemeanor has been freshly
2 committed. Probable cause is a good-faith basis to
3 believe that the defendant committed a crime. This means
4 that at the moment the arrest was made, the officer had
5 reasonably, trustworthy information which would cause a
6 reasonable person to believe that the defendant committed
7 a crime.

8 If you determine that the defendant had the
9 right to resist the arrest in this case, you must then
10 decide whether the force used by the defendant was
11 reasonable and necessary to prevent the unlawful arrest,
12 detention, or interference with the defendant's person.
13 Only that force which is reasonably necessary under the
14 circumstances to resist the unlawful arrest may be used.

15 Under 16-17-530 public disorderly conduct is
16 defined as when any person who shall be found on any
17 highway or at any public place or public gathering in a
18 grossly intoxicated condition or otherwise conducting
19 himself in a disorderly or boisterous manner or used
20 obscene or profane language or on any highway or at any
21 public place or public gathering or at any hearing
22 distance of any schoolhouse or church.

23 Now, ladies and gentlemen, I charge you that
24 a claim for false arrest turns on whether probable cause
25 existed to arrest the subject and it is not relevant

1 whether probable cause existed with respect to each
2 individual charge or indeed any charge actually invoked
3 by the arrest officer at the time of arrest.

4 Ladies and gentlemen there are two possible
5 verdicts which you may find in this case on the charge of
6 resisting arrest. There's not guilty and guilty. Ladies
7 and gentlemen, there is no significance whatsoever in the
8 order that I state the possible verdict. It's simply
9 that one must be stated first.

10 Now, ladies and gentlemen, your verdict must
11 be a unanimous one. All 12 of you must agree on the
12 verdict. Your decision must not be based on sympathy,
13 passion, prejudice, emotion, or any other consideration
14 that is not in evidence in this case.

15 Mr. Foreman, when the jury reaches its
16 verdict, you will check the appropriate box on the
17 verdict form that I will send back with you and you will
18 sign your name as foreman. And then please knock on the
19 jury room door and inform the bailiff that you have
20 reached a verdict, and at that time you will be received
21 back into the courtroom for publication of your verdict.

22 Now, ladies and gentlemen, I'm going to ask
23 that you return to your jury room. But please do not
24 begin your deliberations there's still a few matters that
25 I have to take up with the lawyers before you start your

1 deliberations.

2 Thank you.

3 (WHEREUPON the jury was excused from open
4 court at 3:20 p.m.)

5 **The Court:** Yes, we need to separate the
6 alternate, if you could put him in another jury room.
7 Thank you.

8 Are there any objections from the State
9 concerning the closing arguments.

10 **Mr. Bunge:** No, Your Honor. Thank you.

11 **The Court:** Any objection from the defense?

12 **Mr. Cooper:** No new objections, Your Honor.

13 **The Court:** Thank you.

14 **Mr. Newton:** I just want to check and make
15 sure all our pictures are here are up here.

16 **The Court:** Certainly here is the verdict.
17 form make sure all the pictures are in evidence and once
18 they are, take everything back to them.

19 (WHEREUPON the jury began deliberating at 3:
20 22 p.m.)

21 **The Court:** I've got a question from the
22 jury. Please mark this as a Court's Exhibit.

23 (Court's Exhibit 1 marked for identification
24 only.)

25 **The Court:** All right this is from the

1 foreman it says, Your Honor, can we please see the police
2 report. My answer back would be the police report is not
3 in evidence in this trial and you'll have to rely on your
4 memory.

5 Mr. Bunge: That's acceptable, Your Honor.

6 Mr. Cooper: Yes, Your Honor.

7 Mr. Newton: Yes, Your Honor.

8 The Court: Thank you.

9 (The note was sent back with an answer to the
10 jury at 3:38 p.m.)

11 The Court: Looks like we've got a note from
12 the jury. All right. This is the from the foreman. He
13 said, we would like to see the three witness's testimony.
14 That is not really possible in this matter. That would
15 be basically retrying the case so I'm just going to tell
16 them that they will have to rely on their memory of the
17 testimony.

18 Mr. Cooper: I have no objection to that,
19 Your Honor.

20 Mr. Bunge: Yes, thank you, Judge.

21 Mr. Newton: No objection.

22 The Court: All right. That is not possible
23 the jury should rely on its memory of the testimony.

24 Mr. Newton: Thank you, Your Honor.

25 The Court: Please mark this as Court's

1 Exhibit No. 2.

2 (Court's Exhibit No. 2 was marked for
3 identification only.)

4 **The Court:** Court will be at ease.

5 (Pause in proceedings while the jury
6 continues to deliberate.)

7 **The Court:** Thank you. Please be seated.

8 Apparently we have another interrogatory from
9 the jury.

10 All right. This is not a question. It says,
11 One of the jurors said they need let someone know their
12 son needs to be picked up by 5:30 p.m. and they wanted to
13 use a phone. They said they are not close to making a
14 decision. So...

15 **Mr. Newton:** I have...

16 **Mr. Cooper:** Absolutely no problem with that.

17 **Mr. Newton:** Yes, please that's very
18 important.

19 **Mr. Cooper:** Whatever is easier for them.

20 **Mr. Mathews:** No problem, Your Honor.

21 (Pause in proceedings while the jury
22 continues to deliberate.)

23 (Alternate brought into open court at 5:08
24 p.m.)

25 **The Court:** I'm going to go ahead and release

1 the alternate juror.

2 **Mr. Newton:** Oh, that will be fine.

3 (The alternate was excused from the trial.)

4 **VERDICT**

5 **The Court:** I figured they would have stayed
6 around for free supper. Everybody here? All right.

7 Let's bring our jury in.

8 (WHEREUPON the jury returned to open court
9 with a verdict at 5:10 p.m.)

10 **The Court:** Mr. Foreman, I understand the
11 jury has reached a verdict in this trial. Is that
12 correct?

13 **The Foreman:** We have.

14 **The Court:** Is it unanimous.

15 **The Foreman:** Unanimous.

16 **The Court:** All right. Would you please pass
17 it to the bailiff and to the clerk.

18 Let the clerk please publish the verdict.

19 **The Clerk:** Indictment No. 2010-GS-40-10167
20 the State of South Carolina versus Kendrick L. Dennis, as
21 to the charge contained in Indictment No.
22 2010-GS-40-10167, resisting arrest, we the jury
23 unanimously find the defendant Kendrick Dennis guilty.
24 This is signed, Foreperson, Oliver Brown. February 3rd,
25 2011.

1 Mr. Foreperson, is this your verdict and the
2 verdict of the entire jury?

3 The Foreman: It is.

4 The Court: Thank you. Would all jurors who
5 voted for guilty please raise your hands if that's your
6 verdict. All right. Thank you. Does the plaintiff or
7 the State request polling of the jury?

8 Mr. Bunge: No, Your Honor.

9 The Court: Does the defense request polling.

10 Mr. Cooper: I do request, Your Honor.

11 The Court: All right. Please poll the jury.

12 POLLING OF THE JURY

13 The Clerk: Ladies and gentlemen of the jury,
14 I'm going to ask you two questions regarding your
15 verdict. Please answer yes or no to both questions.

16 Oliver Brown, was this your verdict?

17 The Juror: Guilty.

18 The Clerk: Is it still your verdict?

19 The Juror: Still.

20 The Clerk: Maris Burton, was this your
21 verdict.

22 The Juror: Yes.

23 The Clerk: Is it still your verdict?

24 The Juror: Yes.

25 The Clerk: Jason McLaughlin, was this your

1 verdict?

2 The Juror: Yes.

3 The Clerk: Is it still your verdict?

4 The Juror: Yes.

5 The Clerk: Thomas Mayne, was this your

6 verdict?

7 The Juror: Yes.

8 The Clerk: Is it still your verdict?

9 The Juror: Yes.

10 The Clerk: Angela Thompson, was this your

11 verdict?

12 The Juror: Yes.

13 The Clerk: Is it still your verdict?

14 The Juror: Yes.

15 The Clerk: Brandon Crater, was this your

16 verdict?

17 The Juror: Yes.

18 The Clerk: Is it still your verdict?

19 The Juror: Yes.

20 The Clerk: Rosalyn Ross, was this your

21 verdict?

22 The Juror: Yes.

23 The Clerk: Is it still your verdict?

24 The Juror: Yes.

25 The Clerk: Eugene Zeigler, was this your

1 verdict?

2 The Juror: Yes.

3 The Clerk: Is it still your verdict?

4 The Juror: Yes.

5 The Clerk: Wanda Lewis, was this your

6 verdict?

7 The Juror: Yes.

8 The Clerk: Is it still your verdict?

9 The Juror: Yes.

10 The Clerk: Daniel Woodruff, was he your

11 verdict?

12 The Juror: Yes.

13 The Clerk: Is it still your verdict?

14 The Juror: Yes.

15 The Clerk: Gail Haddock, was this your

16 verdict?

17 The Juror: Yes.

18 The Clerk: Is it still your verdict?

19 The Juror: Yes.

20 The Clerk: Ronald Garrison, was this your

21 verdict?

22 The Juror: Yes.

23 The Clerk: Is it still your verdict?

24 The Juror: Yes.

25 The Clerk: The jury has been polled, Your

1 Honor.

2 **The Court:** All right. Thank you. The
3 verdict stands.

4 Ladies and gentlemen, let me thank you for
5 taking the time that you did to analyze the testimony and
6 the evidence and to come to a verdict. You know it's not
7 always easy to sit in judgment of your fellow citizen,
8 but in our democratic way of life somebody has to do
9 that. And so I want to thank you for your service.
10 Throughout this trial I have told you, you can't talk to
11 anybody about the case. Now that the case is over with,
12 you may talk to whoever you want to for as long as you
13 want to or for as little as you want to. So if somebody
14 persists in talking to you about the case, then if you
15 let one of the bailiffs know I'll make sure that doesn't
16 happen any longer.

17 Now, ladies and gentlemen, this satisfies
18 your requirement for jury duty.

19 (WHEREUPON the jury excused from the trial of
20 the case.)

21 **The Court:** Are there any motions to be made
22 at this time?

23 **POST-TRIAL MOTIONS**

24 **Mr. Cooper:** Yes, Your Honor. At this time I
25 have a motion for a new trial. Specifically my grounds

1 for that would be the charge that was given over my
2 objection to the jury the State's proposed charge and
3 also the -- the impeachment evidence of his record that
4 was allowed in against Mr. Dennis.

5 **The Court:** All right. Anything from the
6 State?

7 **Mr. Bunge:** Your Honor, again the State's
8 position would be that you admonished him that nothing
9 would come in unless he opened the door and on direct
10 testimony, I believe Mr. Cooper elicited a response along
11 the lines of I wouldn't do that because I was on
12 probation, which in the State's opinion opened the door.
13 There was a contemporaneous objection and Your Honor
14 ruled upon it.

15 **The Court:** Thank you. I respectfully deny
16 your motion. I think the jury, quite frankly, took
17 almost two hours in trying to analyze everything. They
18 asked some interesting questions, and so the verdict
19 stands.

20 I will give y'all few minutes to talk to your
21 client what about y'all want to say but I'll sentence the
22 defendant as 5:30.

23 **Mr. Cooper:** Yes, sir.

24 **The Court:** Court will be at ease until 5:30.

25 (WHEREUPON a short break was taken.)

SENTENCING

The Court: Thank you. Please be seated.

All right. Mr. Bunge, what is the defendant's prior criminal record?

Mr. Bunge: Your Honor, it dates to 1991, burglary second and grand larceny; 1995 Driving Under Suspension; 1998 affray, which is a fighting charge; 2001 resisting arrest; 2001 criminal domestic violence, first offense; 2002 public drunk and simple possession of marijuana; 2003 threatening the life of a public official; 2005 Driving Under Suspension; also 2005 public disorderly conduct; 2006 driving under the influence, second offense; 2008 public disorderly conduct; 2009 driving under the influence, third offense; there's a first offense listed in 2009. I don't know if that's out of order. A probation violation in 2009. And that appears to be the extent of his convictions as of February 2nd, 2011.

The Court: All right. Does the defense have any objection that that's not his record?

Mr. Cooper: Well, Your Honor, in -- the defendant has just informed me that he thinks some of those were dismissed I have no other -- I have no other information other than what he's just told me.

The Court: Are they reflected as

1 convictions?

2 **Mr. Bunge:** They are. I have only circled
3 the ones that were reflected as convictions. I'll be
4 happy to let the defense scan that, if they would like..

5 **Mr. Cooper:** I have seen a similar sheet and
6 I know they were on here. All I can go off is what he's
7 just told me. I don't have any other information about
8 that, Your Honor.

9 **The Court:** All right. Yes, sir, Mr. Cooper?

10 **Mr. Cooper:** Your Honor, you know, you sat
11 through this trial, and I think you heard when I
12 introduced Mr. Dennis to the jury. I told them that or
13 he told them that he went to the 11th grade, that he has
14 worked a number of jobs, including a welding job and you
15 know, a variety of other jobs in addition to that, and
16 that he supports five children. He's 36 years old -- 37
17 years old now, Your Honor.

18 You know, we don't dispute at all that this
19 is a gentleman with a somewhat troubled past. He's made
20 mistakes in the past, and at this time, you know, while
21 he disagrees with what the jury's verdict is, he's
22 standing and taking responsibility -- well, he's
23 standing...

24 **The Court:** He did not take responsibility.

25 **Mr. Cooper:** He's accepting -- I'm sorry I

1 misspoke, Judge. He is accepting the jury's verdict and
2 he's standing before you to be sentenced.

3 Your Honor, in light of his situation you
4 know, I think I'd respectfully request for you to
5 consider a weekend time sentence for him because I know
6 that his support is really just paramount and key to the
7 support of his family, and I don't know if he has
8 anything to say to you along those lines, but I'd ask
9 you, I'd ask for the Court to consider that alternative
10 in sentencing, Your Honor.

11 **The Court:** Thank you.

12 Would you like to say anything?

13 **The Defendant:** Yes, Your Honor, I respect
14 the verdict and I just -- I'm just thankful that I'm not
15 where I used to be at, so I thank God for that. And yes,
16 I did it, it's a big responsibility, but I'll stand past
17 that whatever your decision may you be lenient.

18 **The Court:** All right. Thank you.

19 Mr. Newton?

20 **Mr. Newton:** I just have nothing but
21 pleasantries with Mr. Dennis. He's always been on time
22 he's shown up for every court appearance. I was part of
23 this case before Mr. Cooper was with the original first
24 seat, and he's always been here. He's easy to contact.
25 I have met his two little -- a couple of his little kids,

1 and I do he works really hard to support those people.

2 **The Court:** You know, the defendant has a
3 very extensive -- I don't know when he's had to work he's
4 been violating laws extensively since 2001 and before.
5 He just doesn't seem to learn when it's -- no, sir I'm
6 speaking now.

7 He doesn't seem to learn when he's supposed
8 to do straighten up. I'm sure he's telling me he will
9 straighten up now that -- I mean, I did not believe a
10 word he said when he was on the stand. I don't know that
11 the truth is in him. I think he will say anything he has
12 to at any point in time. He has resisted arrest before,
13 he has just had an extensive history. He doesn't obey
14 the law. And I don't think if he gets out here on
15 probation or anything like that that he's going to obey
16 the law.

17 And I'm not sentencing him because he went to
18 trial. I think he has a constitutional right, and I
19 think that your attorneys did a good job for you, but,
20 with your record I see no reason to deviate from the
21 maximum sentence; and therefore, the sentence of this
22 court is that you be committed to the State Department of
23 Corrections for a period of one year.

24 Please take him into custody.

25 All right. Let me compliment attorneys on

1 both sides. I think you all acted professionally. You
2 certainly honored the oath of civility; and quite frankly
3 again I thank you for your civility in this matter and
4 it's a pleasure working with you. Thank you.

5 **Mr. Bunge:** Thank you, Your Honor.

6 (WHEREUPON, the proceedings were concluded.)
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LC

WITNESSES

✓ (S) J.R. Gore – Richland County Sheriff

DOCKET NO: 2010GS4010167

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

Defendant

The State of South Carolina

County of

Richland

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

ARREST WARRANT NUMBER

M236899

COURT OF GENERAL SESSIONS

October TERM 2010

143

Defendant

THE STATE
vs.

Witness:

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

ACTION OF GRAND JURY

Kendrick Levion Dennis

TRUE BILL

Julie H. Field

Foreperson of Grand Jury OCT 14 2010

Date:

VERDICT

Indictment for
RESISTING ARREST

SC Code: 16-09-0320(A)
CDR Code: 0326

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

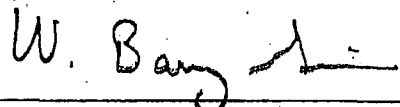
At a Court of General Sessions, convened on October 13, 2010, the
Grand Jurors of Richland County present upon their oath:

RESISTING ARREST

CDR: 0326 16-09-0320(A)

That Kendrick Levion Dennis did in Richland County on or about October 25, 2009,
knowingly and willfully oppose or resist an arrest being made by one whom the
defendant knew or reasonably should have known was a Law Enforcement Officer, in
violation of Section 16-09-0320(A), S. C. Code of Laws, 1976, as amended.

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


WARREN B. GIESE, SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

May 17th, 2012



Susan B. Hackett
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

RECEIVED

APR 22 2013

S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KENDRICK DENNIS,

APPELLANT

FINAL BRIEF OF APPELLANT

SUSAN B. HACKETT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the lower court err in denying Appellant's motion for directed verdict where the evidence showed the property on which the arrest took place was private property and therefore the arrest for public disorderly conduct was unlawful to which Appellant had a right to resist?

STATEMENT OF THE CASE

A Richland County Grand Jury indicted Appellant for resisting arrest in violation of S.C. Code Ann. § 16-9-320(A). R.135 (Indictment). The state, represented by Ricardo Bunge and Foster Mathews, called the case for trial on February 3, 2011. R. 4. James Cooper and Clark Newton represented Appellant. R. 1. The jury returned its verdict of guilty. R. 124 lines 19-25. The Honorable William J. Young sentenced Appellant to one year imprisonment, the maximum permitted under the statute. R. 133 lines 20-23.

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

ARGUMENT

The lower court erred in denying the motion for directed verdict where the evidence showed the property on which the arrest took place was private property, and therefore an arrest for public disorderly conduct was unlawful to which Appellant had a right to resist.

Senior Corporal James Gore of the Richland County Sheriff's Department testified on behalf of the prosecution. R. 21 lines 3-4. On October 25, 2009, Gore responded to Spring Valley Apartments located at 127 Sparkleberry Lane to investigate a vehicle accident. R. 22 line 25 – R. 23 line 16. When Gore arrived at the apartment complex he observed a damaged vehicle. R. 23 line 23 – R. 24 line 4. Gore saw Appellant in the apartment complex and approached him. R. 24 line 23 – R. 25 line 8. Gore noticed that Appellant was "staggering or staggering his speech or his footsteps." R. 25 lines 18-20. Gore described Appellant's speech as "very slurred," R. 25 lines 22-24, and his demeanor as "just loud, boisterous," R. 26 line 2. Upon further questioning, Gore stated Appellant's "feet were shuffling," R. 26 line 15, and he was speaking above normal volume, R. 26 lines 16-17. Gore interacted with Appellant next to the sidewalk within ten feet of an apartment. R. 27 line 5. Gore asked Appellant for identification, R. 27 lines 9-10, and then placed him in custody for "being drunk in public, disorderly conduct," R. 27 lines 18-20; R. 34 line 22. Gore asked Appellant to place his arms behind his back. R. 28 lines 12-14. Gore handcuffed one arm, but Appellant jerked his arm around. R. 28 lines 14-16. Gore then executed a "straight-arm bar or a take-down." R. 29 line 3. This maneuver forced Appellant and Gore to the ground. R. 29 lines 9-17. Both of Appellant's arms were beneath him. R. 29 lines 20-22. Gore then stunned Appellant with his taser. R. 30 line 17-21. Gore testified that Appellant "yelled out and said, Ouch" and then placed his arms behind his

back. R. 32 lines 5-7. Gore placed the handcuffs on Appellant and walked him to the patrol car. R. 32 lines 17-21.

The prosecution also called Master Deputy Steven Oliphant with the Richland County Sheriff's Department as a witness. R. 5 line 16. Oliphant testified that he went to Spring Valley Apartments on October 25, 2009 in response to a call regarding a single car accident. R. 7 lines 10-23. While responding to the call, Oliphant made contact with Appellant and Gore. R. 10 lines 2-6. Oliphant noticed Appellant was stumbling and had a "strong odor of alcohol about his person." R. 10 lines 10-13. As Oliphant drew closer to Appellant, he noticed Appellant "was slurred in his speech." R. 11 line 10. He further described Appellant as "loud and ... getting louder." R. 11 lines 16-18. Oliphant estimated they were ten or fifteen feet from the apartments and other people could have heard Appellant. R. 11 lines 20-24. Oliphant testified that Gore instructed Appellant to place his hands behind his back. Appellant responded by placing one hand behind his back, but when Gore attempted to handcuff him, Appellant pulled away. R. 12 lines 8-15. Oliphant stated "we got into a struggle and we fell to the ground" and Appellant placed both of his arms under his chest. R. 12 lines 16-18. Gore then deployed his taser and shot Appellant. R. 13 lines 1-2. Thereafter, Appellant placed his hands behind his back and officers handcuffed him. R. 13 lines 4-6. According to Oliphant, Gore did not have a chance to tell Appellant that he was under arrest. R. 16 lines 13-14.

On cross-examination, Gore identified a photograph of the entrance to Spring Valley Apartments. The photograph included a sign identifying the apartment complex as private property. R. 49 lines 6-9. This photograph was admitted into evidence without objection. R. 49 lines 14-19. Additionally, Gore testified that the location was in the interior of the

complex, R. 41 lines 6-9, and not on a main highway, R. 41 lines 10-12. On re-direct, Gore stated that there were no gates at the apartment complex and anybody could get in as no code was required. R. 51 lines 20-24. Gore estimated that other residents could hear Appellant. R. 52 lines 14-16. Gore also testified that there were no other people around, "it was just him." R. 52 lines 23-24.

At the conclusion of the state's case, Appellant moved for a directed verdict on the basis that if Appellant resisted arrest at all, he had a right to do so as it was an unlawful arrest in light of the fact that he was on private property and the arrest was for public disorderly conduct. R. 53 line 22 – R. 54 line 19. Appellant argued that the prosecution offered no evidence that it was a public place. R. 55 lines 20-22. Judge Young denied Appellant's motion for directed verdict. R. 61 line 25 – R. 62 line 3.

At the conclusion of the presentation of his case, Appellant renewed his motion for directed verdict heard earlier by the court. R. 106 lines 22-24. Again, Judge Young denied the motion. R. 107 lines 4-11. During deliberations, the jury sent a note to the judge asking for the police report and the testimony of the three witnesses who testified. R. 121 lines 21-22; R. 122 line 1; R. 122 line 13. The judge responded that the police report was not in evidence, R. 122 lines 2-4, and that the jurors would have to rely upon their memories for the testimony because "[t]hat would be basically retrying the case." R. 122 lines 11-17.

A person engages in public disorderly conduct when he is "found on any highway or at any public place or public gathering in a grossly intoxicated condition or otherwise conducting himself in a disorderly or boisterous manner." S.C. Code Ann. § 16-17-530(a). Clearly, Appellant was not found on any highway or at a public gathering; therefore, the

question is whether he was found at any public place. The Supreme Court of South Carolina held the following definition was "proper and satisfactory":

A place to which the general public has a right to resort; not necessarily a place devoted solely to the uses of the public, but a place which is in point of fact public rather than private, a place visited by many persons and usually accessible to the neighboring public. Any place so situated that what passes there can be seen by any considerable number of persons, if they happen to look. Also, a place in which the public has an interest as affecting the safety, health, morals, and welfare of the community. A place exposed to the public, and where the public gather together or pass to and for."

State v. Williams, 280 S.C. 305, 306-307, 312 S.E.2d 555, 556 (1984)(internal citations omitted). In Williams, the Supreme Court held that the lobby of the Austin Wilkes Society Home was a public place because it was common knowledge that the Homes, which received financial assistance often from United Way and governmental grants, were not private residences. Id. at 307, 312 S.E.2d at 556.

Answering a certified question from the United States District Court for the District of South Carolina, the South Carolina Supreme Court cited with approval a prior district court case, Cooke v. Allstate Management Corp., 741 F.Supp. 1205 (D.S.C. 1990), when determining the duties owed by landlords to tenants. Cramer v. Balcor Property Management, 312 S.C. 440, 443, 441 S.E.2d 317, 318 (1994). In Cramer, the Court held that landlords did not owe an affirmative duty to protect tenants from criminal activity merely by reason of the relationship. Id. at 443, 441 S.E.2d at 318-319. Holding that "[t]enants in a huge apartment complex ... do not live where the world is invited to come," the Court reasoned that "[a]n apartment building is not a place of public resort where one who profits from the very public it invites must bear what losses that public may create. It is of its nature private and only for those specifically invited." Id. at 443, 441 S.E.2d at 318.

The South Carolina Court of Appeals relied upon Cramer, *supra*, to determine that an apartment complex owner owed no duty to a social guest of a tenant to protect that guest from an assault. Goode v. St. Stephens United Methodist Church, 329 S.C. 433, 442-444, 494 S.E.2d 827, 831-832 (Ct. App. 1997). The Court of Appeals determined the guest was not a public invitee because “an apartment complex is not a place held open to the public and is instead a private place for only people who are specifically invited.” Id. at 442, 494, S.E.2d at 831.

At trial, the prosecution cited State v. McGowan, 347 S.C. 618, 557 S.E.2d 657 (2001) to support its position that the apartment complex was a public area. R. 56 line 7. While intoxicated, McGowan called police to his home to file a false complaint. Id. at 620-621, 557 S.E.2d at 659. The responding officer found McGowan waiting in his driveway. Id. at 621, 557 S.E.2d at 659. McGowan, who was loud and boisterous, used profanity toward the officers on the scene. Id. The officer decided to arrest McGowan for disorderly conduct when he began “ranting and raving” for the third or fourth time. Id. When the officer attempted to place handcuffs on him, McGowan ran toward his home. Id. The officer caught McGowan and the two struggled. Id. McGowan retrieved a shotgun. Id. The officer attempted to subdue McGowan with mace, but this was not successful. Ultimately, the officer fired three shots: one warning shot, one shot hitting McGowan in the hand, and one shot grazing McGowan. Id. On appeal, McGowan claimed the underlying arrest for disorderly conduct was unlawful, permitting him to resist the arrest and entitling him to a directed verdict on the resisting arrest charge. Id. at 624, 557 S.E.2d at 661. The Court held there was sufficient evidence from which a jury could find McGowan guilty of disorderly conduct where there was testimony that “McGowan was intoxicated, was acting

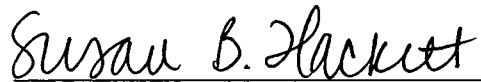
in a loud and boisterous manner and cursing at police, that his language was loud enough to disturb the neighborhood, and that at some point during the incident, there was a car load of teenagers on the cul-de-sac across the street.” Id. at 625-626, 557 S.E.2d at 661.

The instant case is easily distinguished from McGowan. The key fact in determining that the evidence presented against McGowan satisfied the elements of disorderly conduct was the car load of teenagers on the cul-de-sac across the street. Id. at 625-626, 557 S.E.2d at 661. The evidence presented at Appellant’s trial was clear: there was no one else around. There was no evidence that Appellant was loud or boisterous prior to the officer’s arrival. The officers arrived at the scene due to a dispatch call concerning an automobile accident. The record contains no evidence of any calls concerning loud noises or disruptive behavior at the apartment complex. The record contains no evidence that anyone other than the officers actually heard Appellant. Finally, no one testified that Appellant used abusive language or profanity to the officers or anyone else prior to his unlawful arrest. All of the evidence supports Appellant’s position that he was deep within the apartment complex, not exposed to any public thoroughfares.

CONCLUSION

This court should reverse Appellant's conviction for resisting arrest and vacate his sentence because Appellant had a right to resist his unlawful arrest for public disorderly conduct as he was on private property within the confines of a large apartment complex.

Respectfully submitted,



Susan B. Hackett
Appellate Defender

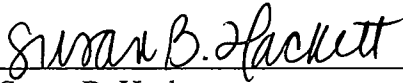
ATTORNEY FOR APPELLANT

This 6th day of June, 2012.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

June 6th, 2012



Susan B. Hackett
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina
29211-1589

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

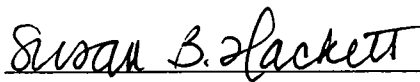
V.

KENDRICK DENNIS,

APPELLANT

CERTIFICATE OF SERVICE

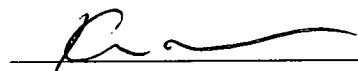
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Harold M. Coombs, Jr., Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 6th day of June, 2012.



Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 6th day of June, 2012.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: October 2, 2013.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

APR 24 2013

Appeal From Richland County
Honorable William Jeffrey Young, Judge S.C. Supreme Court

THE STATE,

Respondent,

vs.

KENDRICK DENNIS,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

HAROLD M. COOMBS, JR.
Senior Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

DANIEL E. JOHNSON
Solicitor, Fifth Judicial Circuit

Post Office Box 192
Columbia, South Carolina 29202
(803) 748-4785

ATTORNEYS FOR RESPONDENT

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TABLE OF AUTHORITIES

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STATEMENT OF ISSUE ON APPEAL

The defendant says the evidence showed the property on which the arrest took place was private property, and, therefore, the arrest for public disorderly conduct was unlawful. Since the defendant had the right to resist the unlawful arrest, the court erred in denying his motion for directed verdict [for resisting arrest]. (Appellant's Statement of Issue on Appeal).

STATEMENT OF THE CASE

The Richland County Grand Jury charged the defendant with resisting arrest. (2010-GS-40–10167). The defendant and his counsel came to trial on February 3, 2011, before the Honorable William J. Young, Judge, and a jury. The jury found the defendant guilty, and the court imposed a sentence of one year imprisonment. The defendant served a timely notice of appeal to opposing counsel.

ARGUMENT

The motion for directed verdict was soundly denied.

The defendant argues that the court should have granted his motion for directed verdict for resisting arrest: [1] the arrest for public disorderly conduct took place on private property; [2] the arrest was therefore unlawful; [3] he had the right to resist the unlawful arrest. (Appellant's Statement of Issue on Appeal). An examination of the evidence and applicable law refutes the defendant's argument.

Pertinent Trial Testimony

Officer Oliphant of the Richland County Sheriff's Department responded to Spring Valley Apartments concerning a reported single car accident and leaving the scene. The Department had responded before to those particular apartments and was familiar with the area. After Oliphant turned into the apartment complex, he saw a burgundy van taking up two or three parking spaces, skid marks, and debris from the vehicle. He went to apartment building 300 directly in front of the van and knocked on the door of the first apartment on the right. A woman came to the door and said that she owned the van. The defendant (her boyfriend) was driving it, and she identified him when he walked into view. (ROA. pp. 7-10, line 6; p. 15; p. 53, lines 4-10; p. 40). After another officer (Gore) met the defendant, Oliphant noted the defendant's stumbling, speaking with slurred speech and smelling of alcohol. When Gore asked the defendant questions, the defendant got progressively louder some ten to fifteen feet from the apartments, and Gore told him several times to calm down. (ROA. p. 10, line 9 - p. 11). Gore tried to handcuff the defendant, but the defendant did not follow the officer's instructions to put his hands behind his back. The defendant snatched away even while Oliphant tried to assist the other officer. A struggle ensued with the

defendant face down on the ground with both arms beneath him, and both officers attempted to put his arms behind his back. Finally, Gore used a taser. The defendant put his hands behind his back, and the officers handcuffed him. Once cuffed, the defendant allowed that, but for the handcuffs, he would beat Oliphant. (ROA. pp. 12-13).

Officer Gore saw extensive damage to the side of the vehicle that appeared trashed. There were skid marks on the road and missing chunks of the curb. Gore saw the defendant, and the defendant matched the description of the driver. At about 6 AM on a Sunday - right next to a sidewalk and about ten feet from an apartment - the defendant appeared intoxicated, emotionally upset, staggering, loud and boisterous, and his speech was slurred and audible to the other residents. The defendant did not offer the requested driver's license or identification but raised his voice and said that he wasn't driving. Gore arrested the defendant for being drunk in public, disorderly conduct. (ROA. pp. 24-27, line 20; p. 52). Gore testified about the defendant's persistent, able work in trying not to be arrested, struggling and resisting and fighting the officers' efforts to handcuff him, the need to use the taser, the defendant's continuing to resist the arrest after the taser and while in handcuffs, and threatening the other officer (Oliphant). (ROA. p. 27, line 21 - p. 34; p. 45).

Officer Gore testified that the entrance to the apartment complex was open. He acknowledged there was a private property sign, but anyone could get into the complex. There was a driveway in, a driveway out, and shrubbery. (ROA. pp. 48-49).

The defendant testified. After drinking earlier in the night, he caused the wreck, flagged down a young officer in the apartment complex, explained he was on probation, wanted no trouble, and lied about not driving. He got tased for no apparent reason, became belligerent, but politely put his hands behind his back. (ROA. pp. 78-88). He thought the

Spring Valley [Apartments] neighborhood was a “bad neighborhood” and drug active. (ROA. p. 97, line 20 - p. 98, line 8).

The Directed Verdict Motion at Trial

At the close of the state’s case, the defendant moved for a directed verdict: the defendant was arrested under S.C. Code § 16-17-530 [prohibiting, in part, being “found on any highway or at any public place or public gathering in a grossly intoxicated condition or otherwise conducting himself in a disorderly or boisterous manner”], and the defendant was on private property, making the arrest unlawful; the defendant variously noted zero evidence to refute that it was a public setting, and no evidence refuted that it was private property; if the defendant had been charged under breach of peace, the defendant would not have his argument; the scene of the offense was not near the major highway - rather, it was deep inside the arena; the private citizens of the apartment comprised the concerned general public, and they did not fall within the general public; the state introduced no evidence of gross intoxication. (ROA. pp. 53-55; p. 58; p. 62). The defendant renewed this motion at the close of the evidence. (ROA. p. 106, line 5 - p. 107, line 3).

The state cited State v. Williams, 280 S.C. 305, 312 S.E.2d 555 (1984). (ROA. p. 56). Also the assistant solicitor noted probable cause for the police to have arrested for a “variety of things.”¹ (ROA. p. 61).

The court found there was sufficient evidence to go to the jury and denied the motion for directed verdict. (ROA. p. 61, line 25 - p. 62, line 3; p. 63, lines 19-20). The court again

¹ As a matter of law, apart from the state’s position at trial (ROA. p. 67, line 15 - p. 68, line 9), the officers’ investigation at the scene may have supported probable cause to arrest for a freshly committed offense of driving under the influence. Additionally, the same may have supported reckless driving and a driver’s license violation.

denied the motion after it was renewed at the close of the evidence. (ROA. p. 106, line 5 - p. 107, line 11).

Discussion

The arrest for public disorderly conduct (ROA. p. 27, lines 17-20) was based upon conduct in a place which is in point of fact public rather than private. The defendant had no right to resist the lawful arrest, and the court soundly denied the motion for directed verdict for the offense of resisting arrest.

There was no disorderly conduct at common law. "Breach of the peace" was the analogous common law offense and included any behavior that disturbed or tended to disturb the tranquility of the citizenry. Codification of the common law contemplates that a public disturbance can occur at privately owned facilities such as stores, theaters, and apartment houses. Model Penal Code § 250.2 comments 1 and 2, at 325 and 329. The Supreme Court of South Carolina has interpreted "public place" in the statute prohibiting public disorderly conduct [S.C. Code Ann. § 16-17-530 (Westlaw 2012)] as a place which is in point of fact public rather than private.

A place to which the general public has a right to resort; not necessarily a place devoted solely to the uses of the public, but a place which is in point of fact public rather than private, a place visited by many persons and usually accessible to the neighboring public. Any place so situated that what passes there can be seen by any considerable number of persons, if they happen to look. Also, a place in which the public has an interest as affecting the safety, health, morals, and welfare of the community. A place exposed to the public, and where the public gather together or pass to and fro.

State v. McGowan, 347 S.C. 618, 557 S.E.2d 657 (2001)(citation omitted), citing State v. Williams, 280 S.C. 305, 312 S.E.2d 555 (1984). The only evidence in the record is that the

private citizens of the apartment complex comprised the concerned public and were part of the general public - relying on the police to investigate and to enforce the law concerning the vehicles and people who enjoyed open access to the apartment complex. Testimony demonstrated that the defendant was intoxicated to the point of walking and speaking with some difficulty. Further, he was emotionally upset and acting in a loud and boisterous manner - audible to other residents in the early morning - next to a sidewalk and only some ten feet from an apartment. That was sufficient evidence from which the jury could have found, for purposes of the statutory prohibition of public disorderly conduct, that the defendant was loud enough to disturb the other residents of the apartment complex and conducting himself in a grossly intoxicated and disorderly manner in a public place.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

HAROLD M. COOMBS, JR.
Senior Assistant Attorney General

DANIEL E. JOHNSON
Solicitor, Fifth Judicial Circuit

BY: Harold M. Coombs, Jr.
Harold M. Coombs, Jr.

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

May 22, 2012

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Richland County
Honorable William Jeffrey Young, Judge

THE STATE,

Respondent,

vs.

KENDRICK DENNIS,

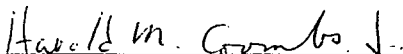
Appellant.

PROOF OF SERVICE

I, Harold M. Coombs, Jr., certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record, Susan B. Hackett, Esquire, South Carolina Commission on Indigent Defense, Division of Appellate Defense, P.O. Box 11589, Columbia, South Carolina, 29211.

I further certify that all parties required by Rule to be served have been served.

This 22nd day of May, 2012.


HAROLD M. COOMBS, JR.

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEY FOR RESPONDENT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Richland County
Honorable William Jeffrey Young, Judge

THE STATE,

Respondent,

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KENDRICK DENNIS,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

HAROLD M. COOMBS, JR.
Senior Assistant Attorney General

DANIEL E. JOHNSON
Solicitor, Fifth Judicial Circuit

By: Harold M. Coombs, Jr.
Harold M. Coombs, Jr.

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

May 22, 2012