IN THE SUPREME COURT OF MISSISSIPPI

NO. 2012-CT-01237-SCT

IN THE INTEREST OF S.M.K.S., A MINOR

v.

YOUTH COURT OF UNION COUNTY, MISSISSIPPI

ON WRIT OF CERTIORARI

DATE OF JUDGMENT:	07/20/2012
TRIAL JUDGE:	HON. FREDERICK ROBBINS ROGERS
TRIAL COURT ATTORNEYS:	STEPHEN P. LIVINGSTON TIFFANY L. KILPATRICK
COURT FROM WHICH APPEALED:	UNION COUNTY YOUTH COURT
ATTORNEYS FOR APPELLANT:	TIFFANY L. KILPATRICK DAVID G. HILL
ATTORNEY FOR APPELLEE:	STEPHEN P. LIVINGSTON
NATURE OF THE CASE:	CIVIL - JUVENILE JUSTICE
DISPOSITION:	AFFIRMED - 01/22/2015
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

EN BANC.

LAMAR, JUSTICE, FOR THE COURT:

¶1. The Court of Appeals affirmed the Union County Youth Court's adjudication of thirteen-year-old S.S. as a delinquent for resisting arrest, and we granted S.S.'s petition for certiorari. After review, we find no error in the Court of Appeals' conclusion, and we affirm.

FACTS AND PROCEDURAL HISTORY

¶2. On April 29, 2011, the New Albany Police Department received a report that shots had been fired in the vicinity of Madison Street, Garfield Street, or Hayes Street. All of these

streets intersected and were "right there together on the north side of town." Officer Ben Kent heard the report—which he classified as a "serious situation"— activated his blue lights and siren and headed to the north side of town. On the way, the report was updated to state that the suspects were driving a tan Cutlass. When Officer Kent heard this new information, he headed to Cleveland Street, because he "knew that there was a tan Cutlass that stayed on Cleveland Street at the duplex apartments."

¶3. When Officer Kent arrived at the duplex, he saw the tan Cutlass and an SUV parked in front, and he noticed "several people in the yard." Officer Kent stopped his car in order to "keep the SUV in between [him] and the people in the yard to give [himself] a little bit of cover." Officer Kent got out of his patrol car and drew his weapon. He focused his attention on S.S.'s sixteen-year-old brother, D.S., but was trying to keep S.S. in his peripheral vision. Officer Kent began giving them orders to "let [him] see their hands." Officer Kent testified that he continued to approach the two of them, continued to order them to show their hands, and then he told them to put their hands on the car. When Officer Kent ordered them to put their hands on the car, S.S. stated "I'm not putting my hands on the car."

¶4. At that point, Officer Kent testified that he holstered his pistol and put S.S. "over the hood of the car to gain [S.S.'s] compliance so that [he] could pat [S.S.] down to check whether or not he had weapons." Other members of the New Albany Police Department arrived around that time. S.S. continued to struggle with Officer Kent. According to Officer Gabe Wilson, S.S. was "doing everything [he could] to keep from putting his hands behind [his back]. He's kicking. He's yelling. He's punching. He's doing whatever he can to try to

keep the officers from taking control." Officer Brent Baker eventually tased S.S., and he stopped struggling. Officer Wilson handcuffed S.S. and put him in a patrol car.

¶5. Officer Kent then turned his attention toward D.S., while Officer Stewart Dodds attempted to keep onlookers away from the other officers. Officer Dodds testified that he noticed a "large crowd," and that there were two other individuals near the car. He kept his attention on these individuals because they were "kind of trying to run off," and the officers "didn't know where the gun was at [that] time." Officer Wilson described the scene as "mass chaos." He described how the officers tried to "get the scene secure" and as "safe as possible," because there were "some smaller children in the area" and some "elderly people." And, according to Officer Dodds, it was the "most hostile environment" he had experienced during his four years as a police officer.

¶6. In May 2011, the Union County prosecuting attorney filed a petition alleging that S.S. should be adjudicated a delinquent child for resisting arrest, in violation of Mississippi Code Section 97-9-73. On July 20, 2012, the Youth Court conducted a hearing on the State's petition. Officers Kent, Wilson, Baker, Dodds, and several other officers testified regarding their involvement in the events that led to S.S.'s arrest, and S.S. presented one witness in his defense. The Youth Court ultimately adjudicated S.S. a delinquent child for "committing the act of arrest: resisting or obstructing in violation of § 97-9-73 . . . " S.S. appealed, and we assigned his case the Court of Appeals, which affirmed the Youth Court. We then granted S.S.'s petition for certiorari.

STANDARD OF REVIEW

¶7. The Court of Appeals correctly stated that the standard of review for youth-court matters is the reasonable-doubt standard:

> We consider all the evidence presented to the youth court in the light most favorable to the State. If the evidence is such that, beyond a reasonable doubt, reasonable [minds] could not have reached the youth court's conclusion, we must reverse. However, if the evidence in the record supports the youth court's adjudication, considering the reasonable doubt standard, then we must affirm.

In re S.M.K.S., No. 2012-CA-01237-COA, 2014 WL 43968, *2 (Miss. Ct. App. Jan. 7, 2014) (quoting ***In re L.C.A.***, 938 So. 2d 300, 303 (Miss. Ct. App. 2006)); *see also* ***In re D.K.L.***, 652 So. 2d 184, 189 (Miss. 1995).

ANALYSIS

¶8. In his brief before the Court of Appeals, S.S. stated that the "sole" issue on appeal is:

> Whether Officer Ben Kent lacked sufficient probable cause thereby rendering the arrest of S.S. unlawful such that the prosecution could not prove the essential element of "lawfulness" necessary to adjudicate S.S. delinquent on the grounds of resisting arrest as a matter of law.

We interpret S.S.'s argument as follows: Officer Kent did not have "probable cause" to arrest S.S. for anything; thus Officer Kent's actions in arresting S.S. were unlawful, and one cannot be properly charged and convicted of resisting an unlawful arrest.[1] We address these arguments in turn.

[1]"It shall be unlawful for any person to obstruct or resist by force, or violence, or threats, or in any other manner, his *lawful* arrest . . . by any state, local or federal law enforcement officer, and any person or persons so doing shall be guilty of a misdemeanor . . . ." Miss. Code Ann. § 97-9-73 (Rev. 2014) (emphasis added).

¶9. S.S. argues that Officer Kent had no probable cause to arrest him for firing the shots. First, we find nothing in the record to support S.S.'s assertion that he was being placed under arrest for firing the shots. Second, we find that S.S.'s probable-cause argument is a red herring. It is true that the Youth Court petition does not cite the underlying crime for which S.S. allegedly was resisting arrest. But the Juvenile Detention Report states that S.S. was charged with "disorderly conduct,"[2] along with resisting arrest. So we cannot agree with S.S.'s argument that Officer Kent had to have probable cause to arrest him for discharging the weapon in order for his arrest to be lawful.

¶10. Rather, we must determine if Officer Kent's arrest of S.S. for disorderly conduct was lawful. We first note that, because Officer Kent *personally observed* S.S. committing what he perceived to be a breach of the peace—the underlying offense for which S.S. was arrested—the requirement of probable cause was not implicated. *See, e.g.,* ***Bird v. State***, 122 So. 539, 540 (Miss. 1929) ("It is well settled that an officer may make an arrest for a misdemeanor committed in his presence without a warrant . . . ."); *see also* Miss. Code Ann.

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[2]The disorderly conduct statute states, in pertinent part:

> Whoever, *with intent to provoke a breach of the peace, or under such circumstances as may lead to a breach of the peace, or which may cause or occasion a breach of the peace*, fails or refuses to promptly comply with or obey a request, command, or order of a law enforcement officer, having the authority to then and there arrest any person for a violation of the law, to: (i) Act or do or refrain from acting or doing as ordered, requested or commanded by said officer to avoid any breach of the peace at or near the place of issuance of such order, request or command, shall be guilty of disorderly conduct, which is made a misdemeanor . . . .

Miss. Code Ann. § 97-35-7(1)(i) (Rev. 2014) (emphasis added).

§ 99-3-7(1) (Rev. 2007) ("An officer or private person may arrest any person without warrant, for . . . a breach of the peace threatened or attempted in his presence . . . .").

¶11. Second, we find that Officer Kent's actions in arresting S.S. for disorderly conduct were lawful under the facts of this case. Officer Kent—in response to a report of shots fired and to what he classified as a "serious situation"—testified that he drew his weapon and approached S.S. and his older brother D.S. and began ordering them to show their hands. Officer Kent testified that he continued to approach the two of them, continued to order them to show their hands, and then told them to put their hands on the car. When Officer Kent ordered them to put their hands on the car, S.S. stated "I'm not putting my hands on the car."

¶12. We find that S.S.'s refusal to "promptly comply with or obey a request, command, or order of" Officer Kent—"a law enforcement officer, having the authority to . . . arrest any person for a violation of the law"—constituted a circumstance "which may cause or occasion a breach of the peace," as two of the other officers at the scene described the situation as "very hostile" and as "mass chaos." So Officer Kent, as a New Albany police officer, lawfully arrested S.S. for disorderly conduct when S.S. failed to obey Kent's commands to show his hands or to place his hands on the car under circumstances that could lead to a breach of the peace, which is all that is required under the disorderly conduct statute.

¶13. Finally, the evidence introduced at the delinquency hearing certainly shows that S.S. resisted arrest, and S.S. does not appear to deny that he did.[3] Officer Kent testified that, after S.S. refused to place his hands on the car, he holstered his weapon and put S.S. "over the

[3]S.S. challenges only whether he was resisting a "lawful" arrest.

hood of the car to gain [S.S.'s] compliance so that [he] could pat [S.S.] down to check whether or not he had weapons." Other officers had arrived on the scene by that time, and S.S. continued to resist being patted down. S.S. struggled and would not put his arms behind his back, and some of the other officers ultimately tased S.S. to gain compliance.

¶14. So, in sum, we find that sufficient evidence exists to support the Union County Youth Court's adjudication of S.S. as a delinquent. Officer Kent personally observed S.S. refuse to comply with his orders under circumstances that "may cause or occasion a breach of the peace." He was therefore authorized by statute to arrest S.S. for disorderly conduct. And because S.S. resisted that lawful arrest, he was properly adjudicated a delinquent. We cannot say, after viewing all the evidence in the light most favorable to the State, that "reasonable minds could not have reached the youth court's conclusion beyond a reasonable doubt," and we therefore affirm the decision of the Court of Appeals and the Union County Youth Court.

¶15. **AFFIRMED.**

WALLER, C.J., RANDOLPH, P.J., PIERCE AND COLEMAN, JJ., CONCUR. WALLER, C.J., SPECIALLY CONCURS WITH SEPARATE WRITTEN OPINION JOINED BY RANDOLPH, P.J., AND PIERCE, J.; JOINED IN PART BY LAMAR AND COLEMAN, JJ. DICKINSON, P.J., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED BY KITCHENS, CHANDLER AND KING, JJ. CHANDLER, J., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED BY DICKINSON, P.J.

WALLER, CHIEF JUSTICE, SPECIALLY CONCURRING:

¶16. I fully agree with the majority opinion and write separately to address the underlying Fourth Amendment issue presented by this case, which S.S. raises in his petition for certiorari. That issue is whether S.S. was seized within the meaning of the Fourth Amendment when Officer Kent approached him with his weapon unholstered. I would find

S.S. was never seized because he never actually submitted to Officer Kent's show of force. *See* ***Brendlin v. California***, 551 U.S. 249, 254, 127 S. Ct. 2400, 168 L. Ed. 2d 132 (2007). Furthermore, Officer Kent's actions were reasonable under the circumstances, and when he approached S.S., he had reason to believe S.S. might have information about a possible crime. Therefore, S.S.'s Fourth Amendment rights were not violated.

¶17. It should first be noted that whenever an individual's Fourth Amendment rights are at stake, the issue of probable cause or reasonable suspicion is reviewed *de novo*. ***Eaddy v. State***, 63 So. 3d 1209, 1212 (Miss. 2011) (quoting ***Dies v. State***, 926 So. 2d 910, 917 (Miss. 2006)). This standard of review applies to all Fourth Amendment issues, including those raised in youth court. *See* ***In Interest of M.I.***, 519 So. 2d 433, 436 (Miss. 1988) (stating "neither the Fourteenth Amendment nor the Bill of Rights is for adults only" (citing ***In Re Gault,*** 387 U.S. 1, 13, 87 S. Ct. 1428, 1436, 18 L. Ed. 2d 527 (1967))).

¶18. The Fourth Amendment of the United States Constitution and Article 3, Section 23 of the Mississippi Constitution protect individuals from unreasonable searches and seizures. U.S. Const. amend. IV; Miss. Const. art. 3, § 23 (1890). This Court employs a two-part analysis to determine if a search or seizure is reasonable. ***Eaddy v. State***, 63 So. 3d 1209, 1212-13 (Miss. 2011). The Court must determine "(1) whether the officer's action was justified at its inception, and (2) whether it was reasonably related in scope to the circumstances which justified the interference in the first place." ***Gonzales v. State***, 963 So. 2d 1138, 1141 (Miss. 2007).

¶19. A police officer may approach an individual during the course of an investigation into possible criminal activity without the interaction rising to the level of a seizure requiring

probable cause. ***Floyd v. City of Crystal Springs,*** 749 So. 2d 110, 114 (Miss. 1999). A police officer may even detain the person to conduct an investigatory stop when the officer has "reasonable suspicion, grounded in specific and articulable facts . . ." that the person is connected with criminal activity. ***Eaddy v. State***, 63 So. 3d 1209, 1213 (Miss. 2011); ***Terry v. Ohio***, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968). That is, a police officer does not need probable cause to approach an individual while investigating criminal activity. *See* ***Terry***, 392 U.S. 1. In fact, "[c]onsideration of the constitutionality of seizures involves a weighing of the gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty." ***Floyd v. City of Crystal Springs***, 749 So. 2d 110, 117 (Miss. 1999) (quoting ***Brown v. Texas***, 443 U.S. 47, 50-51, 99 S. Ct. 2637, 2640, 61 L. Ed. 2d 357 (1979)); *see also* ***Singletary v. State***, 318 So. 2d 873, 876 (Miss. 1975). When an officer has reason to believe that an individual may be armed and possibly may pose a danger to the officer and others, the officer is justified in taking the measures necessary to safeguard himself and the public. ***Terry***, 392 U.S. at 24. This includes a limited detention of an individual and a pat-down search of the outer clothing to ensure an individual is not armed. ***Id.*** Furthermore, the determination of probable cause for an arrest is a practical matter, based upon "conventional considerations of everyday life" and not legal technicalities. ***Strode v. State***, 231 So. 2d 779, 782 (Miss. 1970).

¶20. The investigation of gunshots fired from a vehicle presents a dangerous and precarious situation. Police officers responding to such crimes must not only investigate the crime but must also take reasonable measures to safeguard themselves and others. ***Terry***, 392 U.S. at

24. As such, in the current case, we must first look at whether Officer Kent acted reasonably in having his weapons drawn. *See* ***id.*** And second, we must decide whether, under these circumstances, Officer Kent violated S.S.'s Fourth Amendment rights when he approached S.S. with his weapon drawn. *See* ***Floyd***, 749 So. 2d at 117.

¶21. Officer Kent arrived at the duplex shortly after the report of shots fired. Officer Kent found the tan Cutlass in front of the duplex with S.S. and others standing nearby. A significant crowd also had gathered in front of the duplex, adding complexity to this possibly deadly situation. Given the potential for harm to Officer Kent and members of the nearby crowd presented by a possible shooter at the duplex and the need to investigate the shooting, Officer Kent acted reasonably in having his weapon drawn when he exited his vehicle. *See* ***Singletary v. State***, 318 So. 2d 873, 877 (Miss. 1975) (providing that, while making a reasonable investigatory stop, police officers have the right to protect themselves from attack by a hostile suspect).

¶22. Furthermore, Officer Kent did not violate S.S.'s Fourth Amendment rights by approaching him as part of his investigation. First, S.S. was never seized within the meaning of the Fourth Amendment because he was neither under physical control of Officer Kent, nor did he submit to Officer Kent's show of authority. ***California v. Hodari D.***, 499 U.S. 621, 626, 111 S. Ct. 1547, 113 L. Ed. 2d 690 (1991). In ***Hodari D.***, the United States Supreme Court addressed whether a seizure occurred where an officer made a "show of authority," but the person refused to submit to that authority or to obey the officer's commands. ***Id.*** The Supreme Court found that such a person is not "seized" for purposes of the Fourth Amendment, providing "the Fourth Amendment . . . does not remotely apply . . . to the

prospect of a policeman yelling 'Stop, in the name of the law!' at a fleeing form that continues to flee. That is no seizure." ***Id.***; *see also* ***Brendlin v. California***, 551 U.S. 249, 254, 127 S. Ct. 2400, 168 L. Ed. 2d 132 (2007) ("A police officer may make a seizure by a show of authority and without the use of physical force, but there is no seizure without actual submission; otherwise, there is at most an attempted seizure, so far as the Fourth Amendment is concerned.").

¶23. Officer Kent, in responding to a report of shots fired from a tan Cutlass in that neighborhood, had the authority to investigate and to speak with individuals standing near the tan Cutlass, including S.S. *See* ***Floyd***, 749 So. 2d at 115. The fact that Officer Kent's pistol was unholstered as he spoke to S.S. does not alone constitute a seizure. In ***United States v. Mendenhall***, the U.S. Supreme Court found that a person is seized for purposes of the Fourth Amendment under circumstances in which a reasonable person would not feel free to leave. ***United States v. Mendenhall***, 446 U.S. 544, 554, 100 S. Ct. 1870, 1877, 64 L. Ed. 2d 497 (1980). In the current case, when Officer Kent approached S.S. and his brother D.S., Officer Kent had his weapon pointed at D.S. Officer Kent, rightly concerned about his safety and the safety of the nearby crowd, instructed both S.S. and D.S. to show him their hands. Only after S.S. refused to show Officer Kent his hands or to put his hands on the car, did Officer Kent seize S.S. All prior show of force had been directed at D.S.; therefore S.S. cannot argue he was seized at that point under the Fourth Amendment. To find otherwise would mean that every person in the yard at that moment who saw and heard Officer Kent was seized under the Fourth Amendment.

¶24. Additionally, S.S. was not unlawfully detained at any time prior to his refusal to obey Officer Kent's orders. Officer Kent, as part of his investigation, was free to question S.S. because Officer Kent had reason to believe S.S. may have had information about or been involved in the shooting. *See* ***Eaddy***, 63 So. 3d at 1213. While Officer Kent testified that he believed D.S., and not S.S., was involved in the shooting, the facts that the shots recently had been fired in the area and reportedly from a vehicle matching the description of the car S.S. was standing beside, could cause a reasonable officer under the circumstances to conclude that S.S. may have had information regarding the shooting. Therefore, Officer Kent was justified in approaching S.S., and due to the threat posed by a potential armed gunman in the area, Officer Kent acted reasonably in having his weapon unholstered as he approached S.S.

¶25. Because Officer Kent acted reasonably in having his weapon drawn, and because he had reason to believe S.S. might have information about a possible crime, Officer Kent did not violate S.S.'s Fourth Amendment rights when he initially approached him. Nor was S.S. ever seized prior to Officer Kent observing S.S.'s disorderly conduct, because S.S. never submitted to Officer Kent's show of force. Therefore, I fully agree with the majority opinion in affirming the judgments of the Court of Appeals and the Union County Youth Court.

RANDOLPH, P.J., AND PIERCE, J., JOIN THIS OPINION. LAMAR AND COLEMAN, JJ., JOIN THIS OPINION IN PART.

DICKINSON, PRESIDING JUSTICE, DISSENTING:

¶26. This case presents a troubling issue that both the majority and concurring justices skillfully avoid by reaching back to a civil-rights-era statute that was never argued to the trial judge, and that they presume empowers the police—even when they lack probable cause or

reasonable suspicion—to order citizens to obey their commands, and to arrest them for "disorderly conduct" when they refuse.

¶27. According to the majority, a citizen standing on a public sidewalk who is committing no crime, who has committed no crime and who is not even suspected of having committed a crime may properly be arrested for "*disorderly conduct*" for refusing to put his hands on a car to be searched by a police officer *who admits* he has no probable cause or reasonable suspicion to conduct the search.

¶28. And what is worse, for the majority to say that S.S. resisted arrest when he was being arrested for "disorderly conduct" stretches the outer bounds of any credible interpretation of the facts before us. The petition—the Youth Court's version of an indictment—makes no mention of "disorderly conduct." During the entire hearing before the Youth Court, the prosecutor never mentioned or argued "disorderly conduct," let alone proved it. Defense counsel had no reason to defend against "disorderly conduct" because it was neither mentioned in the petition nor raised by the prosecutor. And perhaps most importantly, the police officer who arrested S.S. never mentioned "disorderly conduct" and provided no testimony whatsoever about attempting to arrest S.S. for "disorderly conduct."

¶29. But my concern goes far beyond the question of whether the State argued "disorderly conduct." My fear is this Court's casual, pervasive grant of power to the police to arrest citizens who have done nothing wrong and who are not suspected of having done anything wrong, simply because they do not agree to put their hands on a car to be searched.

¶30. I want to be very clear: Had Officer Kent testified that he was reasonably concerned that S.S. might have a weapon, I would not be writing this dissent. Had he testified that he

reasonably suspected that S.S. was the one who fired the gun, I would not be writing this dissent. But Officer Kent testified his "concern wasn't with S.S." and he "did not think [S.S.] had shot the weapon."

¶31. Did Officer Kent have a right to order S.S. to put his hands on the car? Not even the majority claims he did. The majority recognizes Officer Kent had no probable cause or reasonable suspicion concerning S.S. The majority says S.S. committed disorderly conduct, not for refusing to put his hands on the car, but because his refusal was likely to lead to a breach of the peace. This is an interesting conclusion by the majority, given that nothing even close to this argument was made by the prosecutor, or by Officer Kent.

¶32. As S.S. stated in his brief, "[t]he prosecution's witnesses and the petition itself fail to point to a specific criminal act giving rise to the arrest that S.S. allegedly resisted . . . ." This alone is reason enough to reverse this case. But I would reverse it for the additional reason that police officers who lack any probable cause or reasonable suspicion concerning a citizen have no right to order that citizen to put their hands on a car to be searched. And I am astonished that a majority of this Court believes otherwise. For these reasons, I respectfully dissent.

BACKGROUND FACTS

¶33. Thirteen-year-old S.S., who had done nothing wrong, stood on a public sidewalk near a parked car that fit the general description of a car from which a gunshot reportedly had been fired at another location. Investigating Officer Ben Kent spotted the unoccupied car parked near an apartment complex. Several other persons, including males—one of the males was S.S.'s older brother, D.S.—females, and children, were standing in a nearby yard.

Officer Kent got out of his patrol car, drew his pistol, and approached the scene. He testified about the moments that followed:

> Q. Officer, did you know both D.S. and S.S., you knew who they were?
> A. I had never dealt with them personally. Some officers in the past had some dealings with them and gave me some information about where they stayed and the vehicle they were driving.
> Q. Did you know who they were when you saw them when you drove up?
> A. No, sir. I did not, not at the time.

¶34. In the Juvenile Detention Report, Officer Kent stated:

> There were several people outside, so I drew my pistol and told *all the males* by the car to place their hands on the car so I could pat them down for weapons.

At this juncture, as Officer Kent approached with his pistol and began to order S.S. to show his hands and put his hands on the car, there is not a scrap of evidence to indicate that the men, women, and children who stood in the yard talking presented any threat of any kind.

¶35. Next, according to the Youth Court Petition, S.S. "resisted his lawful arrest by [Officer Kent] by refusing to put his hands on the car and struggling with the officers." When Officer Kent was later asked what S.S. had done to "resist," he replied: "Well, he just would not put his hands behind his back, struggling."

¶36. Ordinarily, when a person resists arrest for some crime—say, assault—the person is indicted and prosecuted for both assault and resisting arrest. That did not happen here. Officer Kent's testimony clearly established that at no point did he ever suspect S.S. of having any involvement in the crime being investigated. In fact, Officer Kent testified that as he approached—with his weapon drawn—his "concern wasn't with S.S." and he "did not think [S.S.] had shot the weapon."

¶37. Prior to Officer Kent's move to arrest S.S., there is no evidence whatsoever that S.S. did anything other than say, "I'm not putting my hands on the car." For that, the Youth Court adjudicated him a delinquent. It is from that adjudication that S.S. appeals.

ANALYSIS

¶38. The key issue is whether S.S. committed disorderly conduct. If he did not, then Officer Kent's attempt to arrest S.S. was unlawful.[4] And at least in theory, citizens have the right to resist an unlawful arrest.[5]

Arrest must be lawful

¶39. Police officers have no power to exercise any authority over citizens except the powers specifically granted by the statutes and ordinances that control their respective jurisdictions. And where a police officer without probable cause attempts to exercise the power to arrest, a citizen is justified in resisting that arrest.[6] The statute that criminalizes resisting arrest—Section 97-9-73—states:

> It shall be unlawful for any person to obstruct or resist by force, or violence, or threats, or in any other manner, his *lawful* arrest or the *lawful* arrest of another person by any state, local or federal law enforcement officer, and any person or persons so doing shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than Five Hundred

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[4] ***Williamson v. State***, 876 So. 2d 353, 355 (Miss. 2004) (quoting ***Singletary v. State***, 318 So. 2d 873, 876 (Miss. 1975)).

[5] This was the law before today's case. After today, resisting an unlawful arrest may be relabeled "disorderly conduct."

[6] ***Taylor v. State***, 396 So. 2d 39, 42 (Miss. 1981) (quoting ***Smith v. State***, 208 So. 2d 746, 747 (Miss. 1968) (citing ***Pettis v. State***, 209 Miss. 726, 48 So. 2d 355 (1950); ***Craft v. State***, 202 Miss. 43, 30 So. 2d 414 (1947))).

> Dollars ($500.00), or by imprisonment in the county jail not more than six (6) months, or both.[7]

This statute clearly and specifically restricts its reach to *lawful* arrests. Prior to today's case, no statute criminalized resisting an unlawful arrest. Apparently, "disorderly conduct" now is an exception.

Disorderly conduct

¶40. The majority claims that S.S. committed the crime of disorderly conduct. The Mississippi Legislature enacted the disorderly conduct statute in 1964, during the Civil Rights movement's sit-ins, protests, marches, and other acts of civil disobedience.[8] Armed with the power of this new statute, police officers could arrest not only the protester or sit-in participant, but everyone else who refused to do whatever the officer ordered them to do during the course of the arrest. Specifically, the disorderly conduct statute states:

> (1) Whoever, with intent to provoke a breach of the peace, or under such circumstances as may lead to a breach of the peace, or which may cause or occasion a breach of the peace, fails or refuses to promptly comply with or obey a request, command, or order of a law enforcement officer, *having the authority to then and there arrest any person for a violation of the law* . . . .[9]

The statute clearly does not come into play unless a law enforcement officer has "the authority to *then and there* arrest any person for a violation of the law." The phrase "then and there" is not to be found in the majority opinion, and understandably so, because Officer Kent had no authority "then and there" to arrest S.S. or anybody else.

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[7] Miss. Code Ann. § 97-9-73 (Rev. 2014) (emphasis added).

[8] Miss. Code Ann. § 97-35-7(1) (Rev. 2014).

[9] *Id.* (emphasis added).

¶41. I believe that the phrase "*having the authority to then and there arrest any person for a violation of the law*" means an officer must have authority—at the particular time and place he gives the order—to arrest some particular person; and the authority to arrest requires probable cause. The arguments in favor of this interpretation are many.

¶42. First, no constitutional provision or statute grants police officers unbridled authority to make arrests. And no citation of authority is necessary for the universally accepted proposition that police officers are not authorized to arrest anyone without observing the crime or possessing probable cause that the person committed a crime.

¶43. Also, and perhaps most importantly, this Court has expressed a view consistent with mine in numerous cases. For instance, this Court has said that if a police officer:

> *does not have authority* to make an arrest at the instant he begins his pursuit for that purpose, the fact that the person the officer is pursuing violates in [sic] a traffic law in making his escape does not thereby authorize the arrest which began unlawfully.[10]

If a police officer always has authority to make arrests within the officer's jurisdiction, this language makes little sense.

¶44. In another case, this Court held:

> The *authority of the arresting officer* in the instant case cannot be denied. It is undisputed that he was a peace officer and as such *he had authority* under [statute omitted] to make an arrest without a warrant *if* a felony had in fact been committed and he had reasonable cause to believe that defendant had committed it.[11]

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[10] ***Terry v. State***, 252 Miss. 479, 485, 173 So. 2d 889 (1965) (emphasis added).

[11] ***Nash v. State***, 207 So. 2d 104 (Miss. 1968) (emphasis added).

The ***Nash*** Court's use of the word "if" as a qualifier to the officer's authority makes it even more clear that officers do not have authority to make arrests without probable cause.

¶45. And in still another case, this Court stated:

> It has been universally recognized as a rule of law in the United States that a police officer is *authorized to arrest* a person without a warrant where the officer has reasonable cause to believe a felony has been committed and that the person proposed to be arrested is the one who committed it.[12]

¶46. These cases, and numerous others, clearly set forth the proposition that a police officer's "*authority to then and there arrest any person for a violation of the law*" is limited to those instances where the officer has probable cause to arrest some person.

¶47. But there is a more compelling reason supporting my interpretation. Because both police officers and citizens alike have the general right to make arrests at any time or place, why would the "disorderly conduct" statute include the limiting language? Section 99-3-1 empowers police officers and citizens alike to make arrests.[13] Section 99-3-3 says arrests "may be made at any time or place."[14] Clearly, the "disorderly conduct" statute granted police officers the power to give orders—and to arrest those who disobeyed those orders—during the course of a specific arrest.

¶48. At the very least, the interpretation of the "disorderly conduct" statute requiring the police officer to have probable cause to then and there arrest some particular person is in

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[12] ***Powe v. State***, 235 So. 2d 920, 922 (Miss. 1970) (emphasis added).

[13] Miss. Code Ann. § 99-3-1 (Rev. 2007).

[14] Miss. Code Ann. § 99-3-3 (Rev. 2007). *See* ***Shinall v. State***, 199 So. 2d 251 (Miss. 1967) (peace officers and citizens may make arrests at any time), *overruled on other grounds by* ***Flowers v. State***, 473 So. 2d 164, 165-66 (Miss. 1985).

concert with numerous previous opinions from this Court and certainly is a reasonable interpretation. Thus, it should trump a different interpretation that is less favorable to a criminal accused. The majority provides no explanation why it fails to do so.

¶49. The majority's description of the duplex yard as a "chaotic scene" conjures up visions of a crime scene fraught with danger, where menacing thugs milled around, shouting threats, brandishing knives and guns, and committing violent acts. But the facts in the record conclusively establish that Officer Kent voluntarily drove to a place where he had no reason to believe any crime had been committed. When he arrived (before the other police officers), he found a thirteen-year-old kid and some people standing in a yard, including women and children. There is nothing to suggest anyone was breaching the peace. There was no gun, knife, threat, or aggressive behavior of any kind on the part of anyone present, prior to Officer Kent pulling his gun and ordering S.S. to place his hands on the car.

¶50. The majority cites testimony by officers who arrived after Officer Kent had pulled the gun and ordered S.S. to place his hands on the car. Certainly, Officer Kent's own actions do not justify charging S.S. with "disorderly conduct." And it is noteworthy that Officer Kent's appreciation of, or concern for, any danger was not such that he waited in his patrol car for back-up officers to arrive.

¶51. Here, we must simply ask who Officer Kent had probable cause "to then and there" arrest when S.S. "fail[ed] or refuse[d] to promptly comply with or obey [his] request, command, or order." The answer is that he had no probable cause to arrest anyone. The record lacks any evidence that Officer Kent already possessed probable cause to arrest anyone present when he drew his pistol and ordered S.S. to show his hands and put his hands

on the car. Officer Kent's only reason for going to the duplex on Cleveland Street instead of the location of the shooting was that he knew a car similar to the description often parked there.

¶52. The State presented no evidence that Officer Kent had information to connect any particular person present on Cleveland Street to the shooting or any other crime. Because the authority to arrest depends on the existence of probable cause, the State failed show that when Officer Kent ordered S.S. to put his hands on the car, he had the "authority to then and there arrest any person."

¶53. It is a sobering and frightening suggestion that, just because police officers are generally authorized to make arrests, they have the power to order citizens to do whatever the officers want them to do, and that a citizen's failure to comply with the officer's orders—no matter how unreasonable—should be made a crime, even though the officer had no probable cause to arrest anyone, and not even sufficient reasonable suspicion to make an investigatory stop and search.

¶54. If the law is to be as the majority suggests today, then the following decades-old quote from ***Williamson v. State*** has no meaning at all:

> An investigatory stop may be made even where officials have no probable cause to make an arrest *as long as* they have "reasonable suspicion, grounded in specific and articulable facts, that a person they encounter was involved in or is wanted in connection with a completed felony . . . or 'some objective manifestation that the person stopped is, or is about to be engaged in criminal activity.[15]

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[15] ***Williamson***, 876 So. 2d at 355 (emphasis added) (quoting ***Floyd v. State***, 500 So. 2d 989, 992 (Miss. 1986) (quoting ***McCray v. State***, 486 So. 2d 1247, 1249-50 (Miss. 1986))).

Applying the majority's interpretation of the disorderly conduct statute, I see little need for police officers to worry too much about the technicalities of reasonable suspicion, articulable facts, or probable cause. A savvy police officer need only give a person a few orders ("put your hands on the car" or "get off that sidewalk," etc.) and as soon as the person fails to comply with one of the orders, the officer may skip the ***Terry*** stop and proceed directly to an arrest for disorderly conduct. And if the person resists, the officer may add the charge of resisting arrest and then, as here, abandon the arrest for disorderly conduct.

¶55. The majority stands untroubled by this danger because it assumes citizens are sufficiently protected by the statute's requirement of a finding that the refusal to obey the officer's order must demonstrate "intent to provoke a breach of the peace, or under such circumstances as may lead to a breach of the peace." What protection did that requirement provide S.S.? He did nothing but say seven words: "I'm not putting my hands on the car." I remind the reader that S.S. was a thirteen-year-old kid, standing on a public sidewalk, who had done nothing wrong. And knowing he had done nothing wrong, he simply refused to place his hands on a car. If the trial court can find that this simple refusal amounted to S.S.'s intent to breach the peace, than what would not? The majority's perceived protection is no protection at all.

CONCLUSION

¶56. To conclude this doomed effort to ignite some interest in the constitutional protections being trampled today, I recite the following from the United States Supreme Court's opinion in ***Terry v. Ohio***:

> [C]ourts still retain their traditional responsibility to guard against police conduct which is over-bearing or harassing, or which trenches upon personal security without the objective evidentiary justification which the Constitution requires. When such conduct is identified, it must be condemned by the judiciary and its fruits must be excluded from evidence in criminal trials.[16]

The issue here is not whether at some point Officer Kent might have developed the right to frisk S.S. Rather, the issue is whether Officer Kent had probable cause to arrest S.S., or anyone else present, when he ordered S.S. to place his hands on the car. Because he did not, Officer Kent had no authority to arrest S.S. for disorderly conduct, and S.S. had every right to resist that arrest. And because the State presented insufficient evidence to adjudicate S.S. a delinquent for resisting a *lawful* arrest, I respectfully disagree with the views expressed by the majority and hereby dissent.

KITCHENS, CHANDLER AND KING, JJ., JOIN THIS OPINION.

CHANDLER, JUSTICE, DISSENTING:

¶57. I fully concur with Justice Dickinson's dissent. I write separately to express appreciation and respect for the difficult situations law enforcement officers frequently face as responses to reports of violence unfold. The desire to control potential threats to safety, as well as the difficulty in immediately ascertaining particular threats in a hostile environment, makes arriving at the perfect judgment call challenging. However, with full appreciation of this challenge, I must agree with Justice Dickinson that, in this instance, the officer lacked probable cause and reasonable suspicion to arrest or perform a ***Terry*** stop on

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[16] ***Terry v. Ohio***, 392 U.S. 1, 15, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968) (emphasis added).

the youth. *See* ***Terry v. Ohio***, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed 889 (1968). I cannot endorse the creation of a circular justification for such stops and arrests.

DICKINSON, P.J., JOINS THIS OPINION.