STATEMENT OF THE CASE

Kim Collins is an upstanding citizen and deputy clerk in Okolona, Mississippi. She was stopped for speeding by Mississippi State Highway Patrol Trooper Matthew Hood on January 21, 2013 in Monroe County, Mississippi. Throughout the traffic stop, Trooper Hood and Ms. Collins exchanged comments about the stop, and Ms. Collins's expressed her disagreement with having been stopped. At the conclusion of the stop, Trooper Hood issued Ms. Collins a citation for speeding and no proof of insurance and informed Ms. Collins about her court date. He turned and walked to his car. Trooper Hood claims Ms. Collins made comments tantamount to calling him a racist while he walked to his car. However, Ms. Collins actually only expressed her intent that she would be contacting Trooper Hood's superior officer. Hearing this, Trooper Hood approached his vehicle and yelled to Ms. Collins that she had better drive off, and Ms. Collins began to enter the highway. As Ms. Collins pulled onto the highway, Trooper Hood illegally instructed her to stop again. Trooper Hood approached the vehicle and instructed Ms. Collins to exit the vehicle. At that time, Ms. Collins asked why she was being arrested and proceeded to lawfully resist what was an illegal arrest. She made no attempt to harm Trooper Hood or take any physical action toward him. Trooper Hood forcefully attempted to restrain Ms. Collins: first by dragging her from the vehicle, then by slamming her body against her car. Eventually, Trooper Hood got the best of Ms. Collins and slung her to the ground. The attempted restraint was so forceful that Ms. Collins suffered tears of multiple ligaments in her knee. Ms. Collins was transported to the local medical center, and Trooper Hood issued citations for resisting arrest, disorderly conduct, public profanity, and disturbing the peace. Ms. Collins was found guilty in the Justice Court of Monroe County on all counts. On appeal to the Circuit Court of Monroe County, Ms. Collins was also found guilty on all counts.

Trooper Hood lawfully stopped Ms. Collins and issued a citation for speeding and no proof of insurance (although it is now undisputed that Ms. Collins did have valid insurance). However, the reasonable suspicion that gave rise to the initial stop ended well before Trooper Hood initiated the second stop. Although Ms. Collins only made reference to contacting Trooper Hood's superior, even assuming Trooper Hood's account is accurate, Ms. Collins's comments were constitutionally protected speech. There were no circumstances under which Trooper Hood lawfully initiated the arrest. Because Ms. Collins's speech was constitutionally protected, all charges which stemmed from the second stop of Ms. Collins were illegal. Therefore, the Circuit Court should have granted Ms. Collins's motion to suppress and motion to dismiss and should have found Ms. Collins not guilty on all charges save for speeding.

Additionally, the events on which Trooper Hood based the subsequent charges were not sufficient to find Ms. Collins guilty on any count. She was allowed by law to resist the unlawful arrest, and so the charges of resisting arrest and disorderly conduct (failure to obey) were unfounded. The state failed to specifically prove any comment or language which would trigger Miss. Code Ann. § 97-35-15 Disturbance of the Peace, a requirement in charges which are based on comments or language. Finally, there was no evidence offered by the State in support of the charge of public profanity, which requires the presence of two or more persons.

The State proceeded under the assumption that Trooper Hood's account of the events on that day must prevail over that of Ms. Collins. But that mentality led to the victimization of Ms. Collins and a clear violation of her constitutional rights. The facts and evidence do not support guilty verdicts, and the judgment of the lower court must be reversed.

SUMMARY OF THE ARGUMENT

Mississippi State Highway Patrol Trooper Matthew Hood violated the constitutional rights of Kim Collins. Ms. Collins was pulled over for speeding, and after a routine traffic stop, Trooper Hood gave Ms. Collins a citation for speeding. The traffic stop for speeding was over, and Trooper Hood returned to his patrol car. He even instructed Ms. Collins to drive off. Because the stop was over, Trooper Hood was required to recognize new suspicion and, eventually, probable cause to arrest, if another stop were to take place. By his own account, that cause was some language that Ms. Collins used. While it is highly disputed what was said, even assuming that Trooper Hood's account is accurate, Ms. Collins's speech was constitutionally protected.

It is clear from the case law that Ms. Collins's speech was constitutionally protected. Ms. Collins did not believe that she should have been pulled over for speeding, and during the exchange on the roadside, she told Trooper Hood that she would be contacting his superior about the matter – well within her rights. The exchange that caused the second stop is inaudible in the video, and the only evidence offered that Ms. Collins's said anything was the testimony of the parties. In review of the video footage, and based on Trooper Hood's own testimony, the evidence fell very short of beyond a reasonable doubt.

Trooper Hood did not have the requisite cause to stop Ms. Collins after he told her to drive off. The case law, both from the Supreme Court of Mississippi and the Supreme Court of the United States, supports the contention that Ms. Collins's speech was constitutionally protected. Trooper Hood alleges the speech met the appropriate level for warrantless arrest. The truth of the matter is, for whatever reason, Trooper Hood was angered by Ms. Collins and decided to exert the authority he thought he had. While law enforcement is empowered with the ability to enforce the law, there are no circumstances whatsoever wherein they may disregard the United States Constitution or the

Mississippi Constitution. Unfortunately, Trooper Hood did disregard the constitutional requirements of seizures, and in doing so persisted in an unconstitutional arrest of Ms. Collins.

Trooper Hood's testimony confirmed that the initial traffic stop was over. The substance of whatever was said as Trooper Hood walked back to his patrol car is highly disputed; in any event, it was constitutionally protected speech. Further, the State failed to meet its burden of proof and failed to provide adequate, specific evidence to support guilty verdicts. Upon hearing the evidence, the trial court should have granted Ms. Collins's motion to suppress and motion to dismiss; additionally, the trial court should have found Ms. Collins not guilty of resisting arrest, disorderly conduct, public profanity, and disturbing the peace. The judgment of the circuit court must be reversed.

ARGUMENT

I. Standard of Review

The issues on appeal from the Circuit Court of Monroe County regard whether the circuit court erred when it denied Kim Collins's motion to suppress and motion to dismiss and found Ms. Collins guilty of resisting arrest, disturbing the peace, disorderly conduct, and public profanity. "When reviewing a trial court's denial of a motion to suppress, [the appellate court] adopts a mixed standard of review." *Gillett v. State*, 56 So. 3d 469, 482 (Miss. 2010) (citations omitted). "Determinations of reasonable suspicion and probable cause are reviewed *de novo*." *Id*. (citations omitted). Additionally, the appellate court "must determine whether the trial court's findings, considering the totality of the circumstances, are supported by substantial credible evidence." *Delker v. State*, 50 So. 3d 300, 303 (Miss. 2010). (citations omitted). "The standard of review for questions of law is *de novo*." *Id*. (citations omitted). "In a bench trial, the trial judge is the jury for all purposes of resolving issues of fact." *Sendelweck v. State*, 101 So. 3d 734, 738-739 (Miss. Ct. App. 2012) (citing *Evans v. State*, 547 So. 2d 38, 40 (Miss. 1989)). An appellate court will reverse the findings of a trial judge where the findings are manifestly erroneous or clearly wrong. See *Id*. (citing *Amerson v. State*, 648 So. 2d 58, 60 (Miss. 1994)). "When reviewing a challenge to the legal sufficiency of the evidence ... [the] relevant inquiry is whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Mastin v. State*, 180 So. 3d 732, 734 (Miss. Ct. App. 2015) (citing *Gray v. State*, 169 So. 3d 982, 984 (Miss. Ct. App. 2015)).

II. Statement of Facts

On the morning of January 21, 2013, Mississippi State Highway Patrol Trooper Matthew Hood engaged in a routine traffic stop of Ms. Kim Collins on Highway 45-Alternate in Monroe County. Trooper Hood stopped Ms. Collins for speeding and issued a citation for driving 80 miles per hour in a 65 miles per hour speed zone. Throughout the traffic stop, Trooper Hood and Ms. Collins exchanged comments about the reasons for the stop, including Ms. Collins' disagreement with why she was pulled over.

Upon issuing the citation, Trooper Hood informed Ms. Collins of her court date and that the issues she had could be considered at that time. Trooper Hood then turned and began walking toward his car. According to Trooper Hood's own testimony under oath in the Justice Court of Monroe County, the traffic stop was over at this time. Justice Tr. P. 26 Ln. 18-22. As he was walking back to his car, he claims that Ms. Collins continued to engage him in conversation. Trooper Hood continued walking toward his car despite the comments, and Ms. Collins began to enter the highway in her vehicle. As Ms. Collins was entering the highway and Trooper Hood was approaching his vehicle to leave the area, he claims Ms. Collins made comments out the window of her car, calling him a "racist motherfu-ker." Ms. Collins disputes these claims and asserts instead that all she said was "I'm going to call your boss."

According to Trooper Hood, when he heard Ms. Collins make the final alleged comments, he initially instructed her to drive off, but then turned from his vehicle and began ordering Ms. Collins, who was entering the highway, to stop her vehicle. In the video recording of the incident, Trooper Hood can clearly be heard yelling "you better drive off" to Ms. Collins before telling her to stop her vehicle. Ms. Collins complied with these orders to stop and stopped her vehicle where it was. Barely a second passes between the two instructions, although Trooper Hood claims that the order to stop came because Ms. Collins continued yelling. When Ms. Collins stopped, Trooper

Hood approached the driver's side door and further ordered Ms. Collins to exit the vehicle. Ms. Collins asked Trooper Hood why she was being arrested and said, "I'll call your boss; I'm reporting you. I can say what I want to say; it's a free country." After Ms. Collins said this, Trooper Hood began to physically remove her from the vehicle. She continued to ask Trooper Hood why she was being arrested, and she made no attempt to physically assault Trooper Hood or threaten him. Her actions, as are seen in the video of the event, specifically involved a non-threatening resist of what was an unlawful arrest.

Ms. Collins was still strapped into her seat when Trooper Hood began trying to forcefully remove her from the vehicle. His struggle continued, and Trooper Hood finally removed Ms. Collins from the vehicle and pressed her against the side of the car. Trooper Hood then began attempting to handcuff Ms. Collins, and Ms. Collins made efforts to get the attention of passing vehicles because of the way Trooper Hood was treating her. Trooper Hood repeatedly yelled "put your hands behind your back" to Ms. Collins and slammed her body against her own car before he finally threw her violently to the ground. When Ms. Collins hit the ground, she began yelling, "you've broken my leg," but Trooper Hood continued to order Ms. Collins to put her hands behind her back. He never informed her of any basis upon which she was being arrested.

Once he handcuffed Ms. Collins and placed her under arrest, Trooper Hood proceeded to call another Trooper for back up, Trooper Tucker, and called a medical staff for the injuries to Ms. Collins' knee. Ms. Collins was taken to the hospital in an ambulance by the medical staff and escorted by Trooper Tucker. Once Ms. Collins was transported, Trooper Hood was no longer within her presence.

III. The Circuit Judge Erred in Denying Ms. Collins's Motion to Suppress and Motion to Dismiss

a. Trooper Hood Illegally Stopped Ms. Collins After the Initial Stop Was Over

It is well-settled that a law enforcement officer may perform a traffic stop on a vehicle upon probable cause to believe a traffic violation has occurred. *Whren v. United States*, 517 U.S. 806, 810 (1996). Traffic stops are seizures for the purposes of the Fourth Amendment. *Brendlin v. California*, 551 U.S. 249, 255 (2007). A traffic stop begins when a vehicle is pulled over for a traffic violation. *Arizona v. Johnson*, 555 U.S. 323, 333 (2009). The traffic stop ends "when the police have no further need to control the scene, and inform the driver [she] is free to leave." *Id*. In Mississippi, if an arrest for a misdemeanor is made pursuant to a traffic stop, the arrest "must be made as quickly after the commission of the offense as the circumstances will permit." *Smith v. State*, 87 So. 2d 917, 919 (Miss. 1956). However, if "the officer witnesses the commission of an offense and does not arrest the offender, but departs . . . and afterwards returns, he cannot then arrest the offender without a warrant; for then the reasons for allowing the arrest to be made without a warrant have disappeared." *Id*.

The initial stop began when Trooper Hood pulled Ms. Collins over for a traffic violation. For the duration of the stop, Ms. Collins remained stationary and in her vehicle as she was aware she was not free to leave – even while Trooper Hood walked to and from his patrol car. When Trooper Hood arrested Ms. Collins, even if he thought it was proper in light of the traffic violation, the arrest was invalid. *Smith* makes clear that warrantless arrests for misdemeanors made pursuant to traffic stops must be made as quickly as possible after the stop. Nothing here indicated any reason for a delay in arrest; on the contrary, the facts show that the initial traffic stop had ended. Trooper Hood even admitted the initial stop was over when he testified under oath in the Justice Court trial. See Justice Tr. P. 26 Ln. 18-22 (stating they would talk about the issues in court and "have a nice

day"). Once Trooper Hood issued the citation, his actions and statements indicated that Ms. Collins was free to leave. Further, it was his intent that the stop be over, thus ending the traffic stop and the probable cause associated with it. Trooper Hood even ordered Ms. Collins to drive away, as can be clearly heard at the 12:19 mark of the video recording. The traffic stop had clearly ended, and any subsequent arrest required a new foundation of probable cause.

b. Trooper Hood Violated Ms. Collins's First and Fourth Amendment Rights

The First Amendment to the United States Constitution secures as a fundamental right the freedom of speech. *Thornhill v. State of Alabama*, 310 U.S. 88, 95 (1940); See also *Brendle v. City of Houston*, 759 So. 2d 1274, 1278 (2000). The Fourteenth Amendment applies this right to the States. *Id.* The United States Supreme Court has said that the freedom is not absolute, *Schenck v. United States*, 249 U.S. 47, 52 (1919), and that "states have the power constitutionally to punish 'fighting' words under carefully drawn statutes not also susceptible of application to protected expression." *Gooding v. Wilson*, 405 U.S. 518, 523 (1972). "The standard for arrest is probable cause," *Gerstein v. Pugh*, 420 U.S. 103, 110 (1975), and probable cause is determined by considering the totality of the circumstances. *Illinois v. Gates*, 462 U.S. 213, 228-233 (1983).

In its interpretation of U.S. Supreme Court freedom of speech jurisprudence, the Mississippi Court of Appeals said in *Brendle v. City of Houston* that "Mississippi cannot, under the confines of the U.S. Constitution, regulate speech which does not fall into the [category] of 'fighting words.'" *Brendle*, 759 So. 2d at 1283.

Brendle involved a citizen who was arrested after using certain language, including "God D---," "d---," and "f---," that the arresting officer found offensive. Brendle and Officer Ford were discussing a problem involving Brendle and another man. During the discussion, Brendle said "I'm tired of this God d--- police sticking their nose in s--- that doesn't even involve them." Officer

Ford issued a warning to Brendle not to use that language again. As Brendle turned away and walked toward his office, he made more profane remarks to Officer Ford. At this time Officer Ford arrested Brendle. *Brendle*, 759 So. 2d at 1274-1278.

Brendle was convicted in the municipal court of Chickasaw County for public profanity and resisting arrest, and the conviction was affirmed by the Circuit Court. Brendle appealed the convictions. The Mississippi Court of Appeals analyzed the U.S. Supreme Court jurisprudence, as well as the case law from other jurisdictions, and concluded that "Brendle's language, while vulgar, indecent, and arguably profane, did not rise to the level of 'fighting words.' *Brendle* at 1284. His language was not "'by its very utterance' sufficient to incite an immediate breach of the peace." *Id.* at 1284. The court said "the fact that [Officer] Ford may have sustained personal insult from Brendle's epithets is not enough to make such speech unlawful." *Id*. at 1283. The court vacated Brendle's conviction for public profanity and concluded:

> This is not to say that shouting profanities at a police officer is appropriate or proper behavior in any circumstance. In fact, such conduct may give rise to a situation where an immediate breach of the peace may occur. However, the facts in this case do not support such a situation. Rather the testimony shows that some of the vulagarities used by Brendle were spoken as he turned away from Officer Ford attempting to return to his office. Even further, there was no evidence that Brendle's epithets sought to incite others to prevent his arrest. As such, we find that the circuit court committed manifest error in determining that Brendle's conduct gave rise to probable cause for his arrest for a violation…" *Brendle*, 759 So. 2d at 1284.

The court in *Brendle* also vacated the Defendant's charge of resisting arrest, saying: "The offense of resisting arrest presupposes a lawful arrest. A person has a right to use reasonable force to resist an unlawful arrest." *Id.* (citing *Taylor v. State*, 396 So. 2d 39, 42 (Miss. 1981)).

United States Supreme Court jurisprudence and *Brendle v. City of Houston* are controlling in this matter, and *Brendle* is directly analogous to the current case. What was said to Trooper Hood has been disputed from the start. Ms. Collins claims she conveyed her intent to contact Trooper Hood's superior officer for the way he handled the situation of the legal stop for speeding. In any event, Trooper Hood took issue with Ms. Collins's comments which were made *after* Trooper Hood had turned to walk to his patrol car and was nearing entry. As she drove away, Ms. Collins is alleged to have made *one* vulgar remark to Trooper Hood, allegedly calling him a "racist motherfu-ker". Trooper Hood admits that he was offended by the remark. Trial Tr. P. 28 Ln. 14-24. In taking offense, Trooper Hood reacted by arresting Ms. Collins. Trial Tr. P. 28 Ln. 23-24. Trooper Hood stated in his testimony that he would arrest anybody who called him a "racist motherfu-ker" Trial Tr. P. 33 Ln. 27-29 & P. 25 Ln. 7-9. Ms. Collins disputes ever making the remarks, and Trooper Hood even admitted that Ms. Collins stated, "I'm going to call your boss." Trial Tr. P. 27 Ln. 7-9. Even assuming *arguendo* that Ms. Collins did call Trooper Hood a "racist motherfu-ker", the comment does not, under these circumstances, rise to the level of "fighting words." In fact, Trooper Hood *admits* that her comments were not fighting words. Trial Tr. P. 24 Ln. 1-5

Brendle is directly on point and analogous with the case *sub judice*. The factual scenario in that case mirrors the events in this action. The court in *Brendle* clearly stated that even insult does not create a situation to arrest for language that does not in itself constitute "fighting words." The remarks Ms. Collins is alleged to have made fall far below the remarks in *Brendle* that the Court of Appeals held to be constitutionally protected. Even Trooper Hood admits that the words did not incite him to fight. Because Ms. Collins's comments were not fighting words, they are not

words that the State is allowed to regulate in this situation. Therefore, Trooper Hood improperly treated the words as violations to support probable cause to arrest.

As the Court in *Illinois v. Gates* held, probable cause is to be determined by the totality of the circumstances. 462 U.S. 213 (1983). In this action, the only alleged remarks by Ms. Collins that Trooper Hood recalled were that she called him a "racist motherfu-ker". The rest of his testimony about the comments was broad and undescriptive. Given the totality of the circumstances as seen in Trooper Hood's own testimony, his basis for arrest was wholly invalid. By arresting Ms. Collins for her constitutionally protected remarks, Trooper Hood violated Ms. Collins's First Amendment fundamental right of freedom of speech. Because Trooper Hood's basis of probable cause to arrest was founded on a violation of her First Amendment constitutional right, his probable cause determination was void and illegal. Therefore, the arrest itself was void and illegal as an unreasonable seizure not supported by probable cause.

IV. The Circuit Court Erred in Finding the Defendant Guilty

a. Disturbance of the Peace

"It is elemental that to establish a case of disturbance of the peace, either public or private, the words used and the things done are the gist of the offense and must be specifically proved." *Taylor v. State*, 396 So. 2d 39, 41 (Miss. 1981). In deciding an appeal on a motion to quash an indictment under Mississippi's obscenity statute, the Supreme Court of Mississippi said:

> While the language of the statute is general in its terms, when you come to allege the offense, specific acts should be alleged, which acts on their face show a violation of the law. Whether the matter set out in the indictment is obscene or not is a question of law primarily for the court to decide as a matter of law.

Spears v. State, 253 Miss. 108, 117, 175 So. 2d 158, 162 (Miss. 1965).

Courts have a duty to construe statutes in such a manner to be sure that they will not infringe upon the constitutional rights of any person. *McLaurin v. City of Greenville*, 187 So. 2d 854, 859 (1966). In *McLaurin*, the Supreme Court of Mississippi adopted the language of *Cantwell v. State of Connecticut* and stated:

> The offense known as breach of the peace embraces a great variety of conduct destroying or menacing public order and tranquility. It includes not only violent acts but acts and words likely to produce violence in others. No one would have the hardihood to suggest that the principle of freedom of speech sanctions incitement to riot or that religious liberty connotes the privilege to exhort others to physical attack upon those belonging to another sect. When clear and present danger of riot, disorder, interference with traffic upon public streets, or other immediate threat to public safety, peace, or order, appears, the power of the State to prevent or punish is obvious.

187 So. 2d at 860 (quoting *Cantwell v. State of Connecticut*, 310 U.S. 296 (1940)).

In *McLaurin v. Burnley*, the United States District Court for the Northern District of Mississippi stated that breach of the peace

> as interpreted by the [Mississippi] state court, permits conviction for speech *only* if that speech was calculated to lead to a breach of the peace or was of such a nature as ultimately led to a breach of the peace ... This is consistent with the principle that one may be found guilty of breach of the peace if he commit acts or makes statements likely to provoke violence and disturbance of good order, even though no such eventuality be intended.

279 F. Supp. 220, 225 (N.D. Miss. 1967) (emphasis added).

"The Supreme Court has also held that profane words alone, unaccompanied by any evidence of violent arousal, are not fighting words, and are therefore protected speech." *Odem v. State*, 881 So. 2d 940, 947-948 (Miss. Ct. App. 2004) (citing *Cohen v. California*, 403 U.S. 15, 20 (1971)). The *Odem* court went on to say that "law enforcement officers must endure verbal abuse" and that

"[t]he freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state." *Odem*, 881 So. 2d at 948. (citing *City of Houston v. Hill*, 482 U.S. 451 (1987)). Further, adopting Justice Powell's concurrence in *Lewis v. City of New Orleans*, the court stated "a properly trained officer may reasonably be expected to exercise a higher degree of restraint than the average citizen, and thus be less likely to respond belligerently to fighting words." *Odem*, 881 So. 2d at 948. (citing *Lewis*, 415 U.S. 130, 134-36 (1974)).

Trooper Hood testified that the probable cause to arrest Ms. Collins was based on her calling him a "racist motherfu-ker". Trial Tr. P. 16 Ln. 10-17. He also testified that the words Ms. Collins used did not incite him to fight and that he did not consider them to be fighting words. Trial Tr. P. 24 Ln. 1-5. At no other time was Trooper Hood able to specifically recall anything else that Ms. Collins said. Further, the State failed to put on any proof that Ms. Collins made any comment or took any action which would or may have led to provoke violence or disturb good order.

The courts have made very clear the construction and interpretation regarding breaches of the peace. A breach of the peace must involve actions or language which bring about a "clear and present danger of riot, disorder, interference with traffic upon public streets, or other immediate threat to public safety, peace, or order" as stated in *McLaurin v. Burnley*, *supra*. An interpretation by a court otherwise, as here, results in the violation of constitutional rights. It cannot be disputed that Trooper Hood's sole purpose for arresting Ms. Collins was for her comments. Whether Ms. Collins said "I'll call your boss" or whether she called Trooper Hood a "racist motherfu-ker", it matters not. Nothing said rose to the level required for probable cause to arrest. Trooper Hood erred when he arrested Ms. Collins, and the circuit court erred when it found Ms. Collins guilty of disturbing the peace.

b. Disorderly Conduct – Failure to Comply

In reversing a guilty verdict for disorderly conduct under Miss. Code Ann. § 97-35-7(1)(i), the Mississippi Court of Appeals stated:

> To prove that [the defendant] violated section 97-35-7(1)(i), the State was required to prove that (1) [the defendant] – *with the intent to provoke a breach of the peace, or under circumstances as may lead to a breach of the peace, or which may cause or occasion breach of the peace* – refused to promptly comply with or obey a request, command, or order to act or do or refrain from acting or doing something; (2) the purpose of the request, command, or order was to avoid a breach of the peace; (3) the person giving the command was a law-enforcement officer; and (4) the law-enforcement officer – at the time of giving the command, order, or request – had the authority to then and there arrest [the defendant] for a violation of the law.

Mastin v. State, 180 So. 3d 732, 737 (Miss. Ct. App. 2015) (emphasis added).

In *Mastin*, a deputy arrested Mastin, the defendant, for disorderly conduct, failure to obey. The court first looked to the evidence to determine what order was given. *Mastin*, 180 So. 3d at 737. The court found that an order was given, but that the order or command "*was not issued for the purpose of avoiding a breach of the peace*, for at that point nothing had transpired that could be even remotely viewed as a brewing breach of the peace." *Id*. (emphasis added). Additionally, the deputy admitted during cross examination that he did not feel threatened by the defendant. *Mastin*, 180 So. 3d at 735 & 737. The court reversed the lower court's guilty verdict, stating "when [the deputy] arrested Mastin for disorderly conduct, Mastin had not refused an order or command by a law-enforcement officer to act or do, or refrain from acting or doing, something *in order to prevent a breach of the peace. Mastin*, 180 So. 3d at 737-738 (emphasis added).

It cannot be reasonably argued that Trooper Hood's command for Ms. Collins to exit the vehicle was issued for the purpose of avoiding a breach of the peace. At no point did he testify that

the order was to avoid a breach of the peace. It cannot even be assumed that Ms. Collins was disobeying the command in the first place. Ms. Collins testified that her seatbelt was still attached, and that she was asking Trooper Hood why he was arresting her. The video of the event seems to corroborate this, as it appears that Trooper Hood does reach to unbuckle the seatbelt. Trooper Hood admitted on cross examination that he was not threatened by Ms. Collins.

While *Mastin* is not directly on point factually, the principles the court announced in that case do specifically apply to this action. The State offered no evidence that supports a finding of guilty, as the State failed to prove beyond reasonable doubt two very essential elements of a disorderly conduct charge. The State failed to prove "that (1) [the defendant] – *with the intent to provoke a breach of the peace, or under circumstances as may lead to a breach of the peace, or which may cause or occasion breach of the peace* – refused to promptly comply with or obey a request, command, or order to act or do or refrain from acting or doing something; (2) the purpose of the request, command, or order was to avoid a breach of the peace" as required by *Mastin*, *supra*. The circuit court's guilty verdict must be reversed.

c. Resisting Arrest

"The offense of resisting arrest presupposes a lawful arrest. A person has a right to use reasonable force to resist an unlawful arrest." *Chambers v. State*, 973 So. 2d 266, 271 (Miss. Ct. App. 2007) (quoting *Brendle v. City of Houston*, 759 So. 2d 1274, 1284 (Miss. Ct. App. 2000) (citation omitted)). See also *Brown v. State*, 852 So. 2d 607, 611 (Miss. Ct. App. 2003) ("a person may use reasonable force to resist an illegal arrest"). Where the evidence is insufficient to support grounds for arrest, "it follows that [a] resisting-arrest charge cannot stand, as the law is clear that one may lawfully resist an unlawful arrest." *Mastin*, 180 So. 3d at 738.

The State did not offer evidence which supported for what charge Ms. Collins was being arrested.[1] Trooper Hood failed to clarify the issue during his testimony. However, Trooper Hood did testify that he charged Ms. Collins with resisting arrest because she was "physically trying to keep [him] from handcuffing her." Trial Tr. P. 17 Ln. 20-28. It must be assumed, then, that Ms. Collins was under arrest, and therefore *resisting* the arrest, for either disturbing the peace or disorderly conduct. The end result, however, is the same: Neither charge was lawful, *ergo* neither charge may lead to a lawful arrest. Because there was no lawful arrest, there can be no resisting arrest.

d. Public Profanity

In *Taylor v. State*, the Supreme Court of Mississippi, reviewing a charge of disturbing the peace based in large part on profane language, the court held: "It is elemental that to establish a case of disturbance of the peace, either public or private, the words used and the things done are the gist of the offense and must be specifically proved." 396 So. 2d 39, 41 (1981). In *Brendle v. City of Houston*, the Mississippi Court of Appeals found that the defendant, Brendle, was unlawfully arrested for public profanity. The court found "that the circuit court committed manifest error in determining that Brendle's conduct gave rise to *probable cause* for his arrest for a violation of Mississippi's statute against public profanity." *Brendle*, 759 So. 2d 1274, 1284 (Miss. Ct. App. 2000) (emphasis added).

In *Brendle*, the court found that the defendant's language, while vulgar, was not considered fighting words. As the language was not fighting words, the court found that the arresting officer lacked probable cause to arrest. Here, as will be explained below, there was no evidence of any

[1] Ironically, Ms. Collins continued to ask Trooper Hood why she was being arrested.

language used whatsoever. But even assuming *arguendo* there was some vulgar language, there was no evidence of any language constituting fighting words. In *Brendle*, there was specific evidence of vulgar language. However, the court still found a lack of probable cause to arrest. It follows then, because the standard of beyond a reasonable doubt greatly exceeds that of probable cause, there can be no conviction of Ms. Collins for public profanity.

While *Taylor* dealt with a disturbing the peace charge, the principle put forth by the court is applicable to this issue as the use of profane language is a primary issue in both. The *Taylor* court held that the State failed to specifically prove the words used in support of the disturbing the peace charge. In that case, the State presented the following testimony of the charging officer:

> Q: Was he just cursing and carrying on, you say?
>
> A: Yes, sir.

Taylor, 396 So. 2d 39, 40.

In the case *sub judice*, the State offered almost the same testimony in substance with regard to public profanity. The testimony was as follows:

> Q: Okay. The public profanity charge, that was for which point in time?
>
> A: It was going to be the point in time when Trooper Tucker and myself (sic) were there, also the EMTs, along with other motorists.
>
> Q: And do you recall – and it was audible, the profanity used prior to Trooper Tucker and the EMTs arriving on the scene. Do you recall what was said after they arrived on the scene and were in Ms. Collins's presence?
>
> A: No, ma'am, I do not.
>
> Q: Okay. Do you recall that she used profanity?
>
> A: Yes, ma'am.
>
> Q: You just don't recall the specific words?

A: That's correct.

Trial Tr. P. 17 Ln. 5-19.

The State offered literally no evidence to support a charge of public profanity. Trooper Hood did not state any word which Ms. Collins used that was the basis of his charge for pubic profanity. A precedent cannot be set that allows cursory testimony as broad as this to hold a person criminally liable for any charge of crime, no matter the degree. Additionally, in following the principles set out in *Taylor*, when words are a primary basis for the charge of a crime, those words must be specifically proven. To borrow from the court in *Taylor*: The prosecution wholly failed to make out a case against Ms. Collins of public profanity. The verdict of the circuit court must be reversed.

CONCLUSION

Trooper Hood's actions have been improperly condoned by two courts of law. By proxy, Ms. Collins has been victimized by two courts of law. Trooper Hood had no grounds to stop Ms. Collins after the stop for speeding was over. He admitted he stopped her for the language she used. That language was constitutionally protected speech. His testimony was that he gave her an opportunity to leave but that she kept yelling. The video shows a completely different account. He testified that he was not incited to fight or angered by Ms. Collins. He said he would arrest anyone who cussed at him.

The evidence offered by the State failed to meet any burden for any charge. Trooper Hood admitted Ms. Collins's language did not constitute fighting words, and yet he admittedly arrested Ms. Collins for her speech. In doing so, he clearly violated the court's holding in *Brendle*. The conviction of disturbing the peace, based *solely* on the words "racist motherfu-ker" per Trooper Hood himself, is in direct conflict with Mississippi law. There was no evidence offered that Trooper Hood issued an order to Ms. Collins to prevent a breach of the peace, nor any evidence that Ms. Collins took any action that breached the peace or would lead to a breach of the peace. Therefore, the charge of disorderly conduct is unsupported and unfounded. Because a charge of resisting arrest requires a lawful arrest, and there was no lawful arrest, Ms. Collins cannot be held guilty of resisting arrest. Finally, there was quite literally no supporting evidence of public profanity. Notwithstanding the violation of Ms. Collins's constitutional rights, each and every charge was unsupported by the wholly insufficient evidence offered.

Trooper Hood's actions cannot be condoned any further. To do so would dangerously expand the already broad power of law enforcement at the local level and endanger the constitutional rights of the law abiding citizens of Mississippi. "The freedom of individuals verbally to oppose or

challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state." *City of Houston, Tex. v. Hill*, 482 U.S. 451, 462-63 (1987). The judgment of the circuit court must be reversed.