ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JON ROSEBORO,

APPELLANT

APPELLATE CASE NO. 2013-000685

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the lower court erred in denying Appellant's motions to dismiss the charges against him arising from his arrest by patrolman Hilton, where Hilton in his vehicle computer system happened upon a bench warrant for Appellant while patrolling his neighborhood, where the warrant stemmed from a twelve-year old misdemeanor charge from a nearby town office and imposed a $111 fine, where Hilton accosted Appellant and his elderly mother at their home, where Appellant explained to Hilton he had no understanding of the warrant, and where Hilton disregarded Appellant and his mother's repeated requests for Hilton to show the warrant before making the arrest?

STATEMENT OF THE CASE

The Spartanburg County grand jury indicted Appellant Jon M. Roseboro on one count of throwing of bodily fluids and one count of opposing/resisting law enforcement officer serving process – assaulting officer engaged in serving process. R. *. Prior to trial, Appellant moved for a dismissal of the charges on grounds that the arrest at issue was unlawful because law enforcement did not serve an arrest warrant until well after he was taken into custody. R. *. The Honorable Roger L. Couch heard Appellant's argument and issued an order denying the motion on October 19, 2012. R. *.

On March 21, 2013, Appellant proceeded to trial before a jury and the Honorable J. Derham Cole. Roger Poole represented Appellant and Russell Ghent represented the State. Tr. 1. At the conclusion of the trial on March 22, 2013, the jury found Appellant guilty on both counts. Tr. 1; Tr. 161, ll. 6-16. For the charge of throwing bodily fluid, Judge Cole sentenced Appellant to ten years imprisonment suspended to the service of two years, the payment of a 100 dollar fine, and two years of probation. Tr. 165, ll. 15-24. For the charge of resisting arrest, Judge Cole sentenced Appellant to one year of imprisonment to run concurrently. Tr. 165, l. 25 – Tr. 166, l. 1.

ARGUMENT

The lower courts erred in denying Appellant's motions seeking dismissal of the charges against him because the record shows patrolman Hilton was persistently unreasonable in handling Appellant's arrest and therefore violated Appellant's Fourth Amendment rights.

STATEMENT OF FACTS

Patrolman Jason Hilton with Spartanburg County Sheriff's Department knows Appellant so well that even while testifying during his criminal trial, Hilton talked about Appellant on a first-name basis: "I went to the door of his residence at 310 Pine Ridge Road. I knew Jon, had spoken with him times in the past, knew him to live at that residence. Knocked on the front door and a friend of his came to the door." Tr. 36, ll. 2-5. On January 4th, 2011, Hilton had run a scan on his in-car computer for outstanding arrest warrants in his immediate area and saw notification of an outstanding bench warrant for Appellant at his home address. Tr. 35, l. 10 – Tr. 35, l. 20. The warrant stemmed from a 1998 misdemeanor charge and resulting in a $111 fine. Order of October 19, 2012 at 3; State's Exh. 1. When Hilton arrived at the address, Appellant's mother and his friend were inside the residence, while Appellant was in an outbuilding to the side and back of the house. Tr. 36, ll. 8 – 12. At some point, the four converged in the yard.

Appellant's friend Christopher Carver testified to Hilton's actions as he witnessed them:

> Well, when officer Hilton got to the residence he was asked not to come in the yard without paperwork. He said he had a warrant for Mr. Roseboro's arrest, but he couldn't show the warrant.
>
> So they suggested, look, just go get the warrant, I'll wait on you to come back. No, he said that he had the right to be on the property, come on the property and take him off the property.

> She – Ms. Roseboro asked him several times to leave the property. And he wouldn't leave the property. He said that he had it on the computer that he had a warrant and he had the right to take him to jail.
>
> Come to find out it was over a hundred and eleven dollar bench warrant. I even offered Mr. Hilton – I said, look, I'll pay the hundred and eleven dollars. Let's just, you know, get the paperwork. Show something that that's what's happening and we'll pay the money and it'll be over and done with. And that wasn't good enough. He, you know, he wanted him to go to jail right then.
>
> . . .
>
> . . . He had told Mr. Roseboro you wouldn't even be going to jail if it wasn't for your stupid ass mama. And, I mean, that was point blank. I was standing right beside him when he said it.
>
> And which to me was disrespectful you being a police officer. I know you. I've known you for twenty years. I've never seen you do that.

Tr. 104, l. 6 – Tr. 105, l. 8; Tr. 53, ll. 12 – 20.

Hilton testified that in Appellant's presence he confirmed the warrant over the radio, told Appellant the warrant was from Duncan City, and instructed Appellant he had to go with him. Tr. 38, l. 4 – tr. 39, l. 6. Hilton could not provide any other details about the warrant. When asked at trial whether he knew that the warrant was twelve years old, he did not recall looking at that information, but he admitted it was accessible. Tr. 52, l. 20 – Tr. 53, l. 11. While arresting and transporting Appellant, Hilton claimed Appellant said he had tuberculosis and attempted to cough on him. Tr. 40, l. 12 – Tr. 44, l. 11.

Appellant testified that he asked to see the warrant because he was not aware of it: "But he claims that warrant, which was dated 1998 . . . to this instant don't have any – supposedly I pled guilty in absentia and had a warrant. So I said, will, I don't have – I never

– I wasn't there in 1998. As a matter of fact, it wasn't me, you know." Tr. 81, ll. 5-17. He also described how his elderly mother was upset with the situation. "And she says, I've lived here in the South. My mother's seventy-nine years old. I'm pretty sure she's had something to do with the law before. She's had – She's never been to jail, you know, but she's seen enough evidence of what goes on."[1] Tr. 82, ll. 1-5.

Appellant testified that Hilton never told him for what offense was he under arrest. He also heard Hilton say that he would not be going to jail if it were not for his stupid mother. Tr. 82, ll. 6-15. Finally, Appellant said he told Hilton he was recovering from a severe cold, which was causing his coughing. Hilton overreacted: "When we get to the car now, . . . he turns me, slams me. He says he never touched me. He slammed me on the back of the car, my head on the back of the car . . . . He wants to put this hoodie on me. I'm telling him I can't breathe already." Tr. 83, ll. 3-10.

Appellant's mother appeared and corroborated Appellant's and Carver's version of the arrest:

> And I said, well, what do you want with Jon? And he said, I have a warrant for his arrest. And I said, where is your warrant? He said, I don't have it, but there is a warrant for his arrest.
>
> Of course, he came on in the gate. I asked him not to unless he had some paperwork. But he proceeded to come on in. And Jon came out from around the corner. And he said, Jon, I have warrant for your arrest. And I said, where is the warrant? And, of course, he kept on telling Jon that he had the warrant for his arrest.
>
> And he said, put your hands behind you. And he said, you're going to jail. If it hadn't been for your mama, you wouldn't be going. And I never understood that because I was only trying to protect my own property. I understand

[1] According to the South Carolina Department of Corrections website, Appellant is black.

> that you was safe on your property, that they would have to present some paper if they had a warrant.

Tr. 113, l. 13 – Tr. 114, l. 3.

Prior to trial, Appellant had moved for dismissal of the charges based on Hilton's failure to serve a warrant, and Judge Couch had heard Appellant's argument in a pretrial hearing. R. *. In his order denying Appellant's motion on October 19, 2012, Judge Couch first stated that under *State v. Grate*, 310 S.C. 240, 242, 423 S.E.2d 119, 120 (1992) and *State v. Sims*, 304 S.C. 409, 405 S.E.2d 377 (1991), an officer may make a warrantless arrest for a misdemeanor without a warrant in hand if the officer knows a valid warrant has been issued. R. *. However, he distinguished the case at hand, noting that Appellant was not aware of an outstanding warrant and asked to see it while at his residence. R. *.

Judge Couch attempted to settle the issue on statutory grounds. Quoting S.C. Code Ann. § 17-13-50 (1976), he stated that an arresting officer must provide a copy of an arrest warrant on request. R. *. Next, he held that under *State v. Dowd*, 306 S.C. 268, 411 S.E.2d 428 (1991), a case involving a charge of resisting arrest, an arrest is considered an ongoing process finalized only when a defendant is properly confined. R. *. Therefore, because Appellant was served with a warrant upon his confinement in a jail cell, the arrest was valid under section 17-13-50.

Appellant renewed his motion at trial by moving for a directed verdict of acquittal, and Judge Cole denied the motion. Tr. 69, l. 1 – Tr. 70, l. 22.

DISCUSSION

The lower courts erred in denying Appellant's motions seeking dismissal of the charges against him because the record shows patrolman Hilton was persistently unreasonable in handling Appellant's arrest and therefore violated Appellant's Fourth

Amendment rights. The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. amend. IV. A citizen has the right to resist an unlawful arrest. *State v. Grate*, 310 S.C. at 241-42, 423 S.E.2d at 120.

A. In his order, Judge Couch made a clear error in attempting to assess the reasonableness of Appellant's arrest by conflating the concept of arrest for purposes of the Fourth Amendment with the term's statutory meaning under S.C. Code section 17-13-50.

In his order, Judge Couch made a clear error in attempting to assess the reasonableness of Appellant's arrest by conflating the concept of arrest for purposes of the Fourth Amendment with the term's statutory meaning under S.C. Code section 17-13-50. A full custodial arrest is the quintessential seizure of a person under the Fourth Amendment. *Atwater v. City of Lago Vista*, 532 U.S. 318, 360 (2001). Indeed, "[i]t must be recognized that whenever a police officer accosts an individual and restrains his freedom to walk away, he has 'seized' that person." *Terry v. Ohio*, 392 U.S. 1, 16 (1968). In other words, as soon as the officer restricts the individual's interest in freedom of movement, Fourth Amendment protections apply.

In his order, Judge Couch relied on *State v. Dowd* for the proposition that an arrest is finalized only when a defendant is confined in a jail cell. The case is inapposite because the issue was the scope of arrest for purposes of a statute criminalizing resisting arrest. In such a case, the meaning of arrest would of course turn on the intent of the legislature. Implicit in

the *Dowd* decision was that the legislature intended for any resistance until incarceration to support a charge of resisting arrest. Alternatively, in the case at hand, Appellant's arrest was complete for purposes of the Fourth Amendment when Hilton accosted Appellant at his residential property and instructed him that he was under arrest. Accordingly, Judge Couch erred in holding that even though Appellant asked to see the arrest warrant when Hilton accosted him, his Fourth Amendment rights were not violated merely because he was provided an arrest warrant upon his eventual confinement in a jail cell.

B. Hilton was persistently unreasonable in effecting Appellant's arrest on a twelve-year old, misdemeanor bench warrant because he intruded on Appellant's residential property without the warrant, repeatedly refused to provide Appellant with information supporting the validity or existence of the warrant, and instead forcibly removed him from his property.

Hilton was persistently unreasonable in effecting Appellant's arrest on a twelve-year old, misdemeanor bench warrant because he intruded on Appellant's residential property without the warrant, repeatedly refused to provide Appellant with information supporting the validity or existence of the warrant, and instead forcibly removed him from his property. "[T]he Fourth Amendment's ultimate touchstone is 'reasonableness.'" *Brigham City, Utah v. Stuart*, 547 U.S. 398, 398 (2006). Whether a seizure is reasonable depends upon the facts and circumstances of each case. *Cooper v. California*, 386 U.S. 58, 59 (1967). *Accord McHam v. State*, 404 S.C. 465, 480, 746 S.E.2d 41, 49 (2013) ("'The touchstone of our analysis under the Fourth Amendment is always "the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security."'" (quoting *Pennsylvania v. Mimms*, 434 U.S. 106 (1977))). Key to this inquiry is balancing the importance of the governmental interests alleged to

justify the intrusion against the nature and quality of the intrusion on the individual's Fourth Amendment interests, including the extent of the intrusion. *Tennessee v. Garner*, 471 U.S. 1, 7 (1985).

The intrusion by the government into an area of private residence is of the gravest ilk. *Camara v. San Francisco*, 387 U.S. 523, 529-30 (1967) ("'The right of officers to thrust themselves into a home is also a grave concern, not only to the individual but to a society which chooses to dwell in reasonable security and freedom from surveillance.' . . . [E]ven the most law-abiding citizen has a very tangible interest in limiting the circumstances under which the sanctity of his home may be broken by official authority, for the possibility of criminal entry the guise of official sanction is a serious threat to personal and family security." (citations omitted)); *State v. Herring*, 387 S.C. 201, 209, 692 S.E.2d 490, 494 (2009) (holding Fourth Amendment protections of the home extend to outbuildings in the curtilage (citing *U.S. v. Dunn*,[2] 480 U.S. 294 (1987))).

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[2] The United States Supreme Court in *U.S. v. Dunn* described in more detail the Fourth Amendment's protection of the curtilage:

> [T]he Fourth Amendment protects the curtilage of a house and that the extent of the curtilage is determined by factors that bear upon whether an individual reasonably may expect that the area in question should be treated as the home itself. We identified the central component of this inquiry as whether the area harbors the "intimate activity associated with the 'sanctity of a man's home and the privacies of life.'"
>
> Drawing upon the Court's own cases and the cumulative experience of the lower courts that have grappled with the task of defining the extent of a home's curtilage, we believe that curtilage questions should be resolved with particular reference to four factors: the proximity of the area claimed to be curtilage to the home, whether the area is included within an enclosure

The primary function of the warrant requirement under the Fourth Amendment is to protect a citizen's privacy and security "by interposing, ex ante, the 'deliberate, impartial judgment of a judicial officer . . . between the citizen and the police.'" *U.S. v. Grubbs*, 547 U.S. 90, 99 (2006) (quoting *Wong Sun v. U.S.*, 371 U.S. 471 (1963)). This function in itself may be accomplished and, strictly speaking, a private citizen's privacy and security may be constitutionally safeguarded, when a magistrate issues upon probable cause a warrant setting forth the particular places to be searched or the particular items or persons to be seized, even though the citizen is entirely uninformed as to the warrant proceedings. *See, e.g., U.S. v. Bembry*, 321 Fed. Appx. 892 (11th Cir. 2009) (holding under the circumstances, arrest based on outstanding warrant, though not in officer's actual possession, valid because no express federal requirement exists that officer have warrant in hand or nearby when arresting suspect); *U.S. v. Cazares-Olivas*, 515 F.3d 726 (7th Cir. 2008) (holding under the circumstances, search based on magistrate's on-the-record determination of probable cause valid even though magistrate did not issue written warrant).

Nevertheless, an additional, "major function of the warrant requirement is to provide [the citizen] with sufficient information to reassure of the [intrusion's] legality." *Michigan v. Tyler*, 436 U.S. 499, 508 (1978). *Accord Holland v. Harrington*, 268 F.3d 1179, 1195 (10th Cir. 2001) ("[T]he interests protected by the Fourth Amendment are not confined to the right to be secure against physical harm; they include liberty, property

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> surrounding the home, the nature of the uses to which the area is put, and the steps taken by the resident to protect the area from observation by people passing by.

U.S. v. Dunn at 300-301.

and privacy interests—a person's 'sense of security' and individual dignity."). Thus, the Fourth Amendment requires that law enforcement provide a suspect with sufficient information to reassure him of the legality of the arrest as soon as it is reasonably practicable. *C.f.* Rule 4(c)(3)(A), FRCrimP. ("Upon arrest, an officer possessing the original or a duplicate original warrant must show it to the defendant. If the officer does not possess the warrant, the officer must inform the defendant of the warrant's existence and of the offense charged and, at the defendant's request, must show the warrant to the defendant as soon as possible."); S.C. Code Ann. § 17-13-50(A) (1976) ("A person arrested . . . has a right to know from the officer who arrests or claims to detain him the true ground on which the arrest is made. It is unlawful for an officer to . . . refuse to answer a question relative to the reason for the arrest . . . [or] neglect on request to exhibit to the person . . . the precept by virtue of which the arrest is made.").

A critical question in assessing the reasonability of providing reassuring information at the time of arrest is whether the burden of obtaining a warrant would be likely to frustrate the arrest. *See Camara* at 533 ("In assessing whether the public interest demands creation of a general exception to the Fourth Amendment's warrant requirement, the question is not whether the public interest justifies the type of search in question, but whether the authority to search should be evidenced by a warrant, which in turn depends in part upon whether the burden of obtaining a warrant is likely to frustrate the governmental purpose behind the search.").

The issue in *Camara v. San Francisco* was whether warrantless administrative searches of residences for inspection purposes were valid under the Fourth Amendment. The Supreme Court explained that the city, in arguing that the purposes of the Fourth

Amendment were served without the use of warrants, failed to understand the significance of the amendment's function in providing notice to a resident of the legality of the intrusion. The Court described the particular unreasonableness in failing to provide notice to the resident:

> In our opinion, these arguments unduly discount the purposes behind the warrant machinery contemplated by the Fourth Amendment. Under the present system, when the inspector demands entry, the occupant has no way of knowing whether enforcement of the municipal code involved requires inspection of his premises, no way of knowing the lawful limits of the inspector's power to search, and no way of knowing whether the inspector himself is acting under proper authorization. . . . Yet, only by refusing entry and risking a criminal conviction can the occupant at present challenge the inspector's decision to search. And even if the occupant possesses sufficient fortitude to take this risk, as appellant did here, he may never learn any more about the reason for the inspection than that the law generally allows housing inspectors to gain entry.

387 U.S. at 532.

In this case, Hilton's actions were persistently unreasonable in effecting Appellant's arrest. In the first instance, a proper balancing of the interests of law enforcement and those of private citizens mandated that before accosting Appellant at his home, Hilton obtain information about the warrant reasonably sufficient to assure Appellant of the warrant's existence and validity. No doubt can undercut the importance of the government's timely enforcement of validly issued criminal arrest warrants. However, Hilton was personally acquainted with Appellant and knew that he lived in a residence in his patrol area. Further, the warrant stemmed from a twelve-year old misdemeanor charge by a local office setting a minimal fine. On the other hand, executing the warrant entailed grave intrusions into Appellant's liberty, security, property, and privacy

interests and his individual dignity. Hilton had to enter a gate surrounding Appellant's curtilage. Within the curtilage were at least two private buildings, which included the residences of Appellant and his elderly mother. At the time, Appellant was also hosting a friend, Mr. Carver. The three occupants were minding their own private affairs in the security and peacefulness of Appellant and his mother's abode. Based on the virtually non-existent chance that Appellant would suddenly flee town based on a twelve-year old misdemeanor charge and an impending arrest of which he had no foreknowledge—and short of any reasonably apparent, affirmative indication that Appellant would cooperate with the arrest regardless—reasonableness required Hilton to endure the mild inconvenience of either obtaining an electronic or paper copy of the warrant or ascertaining more information than merely the name of the local office issuing it in order to provide proper assurance of the validity of the arrest.

Next, Hilton propagated Appellant's unreasonable arrest after Appellant clearly indicated he was not assured that the warrant was valid and instructed Hilton to leave the property. Appellant testified that he was not aware of the warrant and in fact denied to Hilton that he could have been subject to such a warrant. Appellant and his mother made clear to Hilton that he should leave if he could not provide the warrant or otherwise assure them it was valid. The record discloses a multitude of conceivable grounds for concern about Hilton's presence and the attempted arrest: ill health, concerns of criminal entry in official guise, indignity in front of present company, and abuse of property, privacy, and civil rights. The Constitution legitimizes each of these citizen concerns. Again, under the circumstances the private interests at stake dwarfed the interests of law enforcement in effecting an immediate arrest without showing a copy of the warrant or uncovering

sufficient information to reasonably assure Appellant of validity of the arrest.

Finally, Hilton was unreasonable in handcuffing and physically removing Appellant from his property before obtaining the warrant. Reasonableness under the circumstances required Hilton to call in delivery of the warrant by another officer or to leave and return with it. Again, Hilton was personally acquainted with Appellant and knew that he lived in a residence within his patrol area. Appellant told Hilton he would wait on Hilton to return with the warrant. Mr. Carver offered to pay the $111 fine as collateral for Hilton to leave and return with the warrant. Nothing in the record suggests leaving to obtain a copy of the warrant would frustrate the arrest.

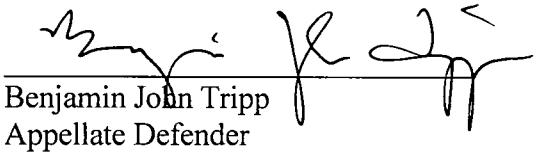
The constitution obligated the State to provide Appellant with sufficient information to reassure him of the legality of his arrest as far as it was reasonably practicable. For the duration of the encounter at Appellant's residence, Hilton, warrantless, was unreasonably intransigent. His disregard for the requirements of the Fourth Amendment notably directly resulted in some of the serious maladies it was meant to prevent—exacerbation of Appellant's ill health, disruption of Appellant's sense of personal safety and security, and the infliction of unjustifiable indignities on Appellant and his mother. In terms of a broader interest certainly contemplated by the Fourth Amendment, providing reasonable assurance of the validity of the arrest at the outset would have soothed the soreness of the seizure, averted the affray between citizen and state, and obviated the ensuing adjudicatory proceedings. And besides the misbalancing of private and State interests, the arrest illogically entailed Appellant's resisting the arrest and risking criminal conviction in order to find assurance that the arrest was valid. Accordingly, Appellant's

arrest was exceedingly unreasonable and in violation of his Fourth Amendment rights, and the lower courts erred in failing to dismiss the charges arising from the arrest.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court reverse the decisions of the lower courts, reverse his conviction, and dismiss the charges against him.

Respectfully submitted,



Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

This 13th day of November, 2013.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JON ROSEBORO,

APPELLANT

APPELLATE CASE NO. 2013-000685

DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

(1) True–billed indictment(s);
(2) Order dated October 19, 2012;
(3) Transcript of March 21-22, 2013:
   a) pp. 1;
   b) pp. 26-56;
   c) pp. 75-120;
   d) pp. 161-166.

I certify that this designation contains no matter which is irrelevant to this appeal.

November 13th, 2013

Benjamin John Tripp
Appellate Defender

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 13th day of November, 2013.

Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 13th day of November, 2013.

(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.