STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Thomas L. Hughston, Jr., Circuit Court Judge

Appellate Case No. 2012-213602

THE STATE, ...RESPONDENT

v.

DANIEL DEMOND GRIFFIN,.....APPELLANT.

FINAL BRIEF OF RESPONDENT

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RESPONDENT'S STATEMENT OF ISSUE ON APPEAL

Whether Appellant's claim, that he was unlawfully arrested and entitled to dismissal of all charges because the arresting deputies were not duly qualified to serve pursuant to S.C. Code Sections 23-13-10 & 23-13-20, is preserved for appellate review where the trial court did not rule on the substance of the claim, properly declining to do so where the judge lacked authority to disregard or set aside the order of another circuit court judge which had already addressed the appointment and qualification of the deputies and, even if preserved, whether the trial court properly denied Appellant's motion to dismiss where: (1) the evidence showed the deputies were duly qualified when they participated in Appellant's arrest; (2) even if the deputies failed to follow the strict terms of the statutes, their official acts as de facto officers were legal as to Appellant; and (3) even if the deputies were not properly qualified, dismissal was not warranted where violation of the statute does not implicate a constitutional right?

STATEMENT OF THE CASE

Daniel Demond Griffin (Appellant) was indicted at the March, 2011 term of the grand jury for Greenwood County for assault and battery – first degree (2011-GS-24-793), armed robbery (2011-GS-24-794), and violation of section 16-23-490 [possession of a firearm during commission of a violent crime] (2011-GS-24-795). (~~Indictments and Sentencing Sheets~~ (R.p.381-p.386)). He was represented by Carson M. Henderson, Esquire. The State was represented by Assistant Solicitor Andrew M. Hodges of the Eighth Circuit Solicitor's Office. On May 8, 2012, Appellant proceeded to a bench trial before the Honorable Thomas L. Hughston, Jr.[1] At the conclusion of trial, Judge Hughston took the case under advisement to conduct deliberations. (R.p.1; p.221, line 9-p.223, line 18).

On October 12, 2012, Judge Hughston issued a written order finding beyond a reasonable doubt that Appellant was guilty as indicted. (R. pp. 377-379). Four days later he issued a letter amending a factual mistake in the October 12, 2012 verdict order. (R. p. 380). On December 12, 2012, Judge Hughston convened a sentencing hearing at the conclusion of which he sentenced Appellant to ten (10) years' imprisonment for first degree assault and battery, ten (10) years' concurrent imprisonment for armed robbery, and five (5) years' concurrent imprisonment for possession of a firearm during commission of a violent crime. (R.p.231, line 22-p.232, line 4). Appellant timely filed a notice of intent to appeal his conviction and sentence and subsequently submitted a Brief in support of his appeal. This Brief of Respondent (the State) follows.

[1] Co-defendants Sergio Quarles and Markus Allen were indicted for the same charges but testified on behalf of the State and were not tried jointly with Appellant.

STATEMENT OF FACTS

At the call of Appellant's case, the trial judge acknowledged Appellant's request for a nonjury trial as well as the State's consent to the request and then asked the State to call its first witness. (R.p.7, line 3-p.8, line 13). The victim, Quentin Carter, took the stand. On the morning of November 30, 2010, Mr. Carter and his two-year-old daughter drove his burgundy Crown Vic[toria] to K-mart to get batteries. At approximately 11 a.m. they left K-mart and drove to Zaxby's to get something to eat. On the way, Mr. Carter noticed a car with a pink "Lander Girl" tag drive past him in the opposite direction. He realized the car must have turned around and followed him when he later saw it behind him in the drive-through at Zaxby's. Mr. Carter identified a photograph of the vehicle that was introduced as State's Exhibit #1. (R.p.10, line 2-p.15, line 5).

After leaving Zaxby's, Mr. Carter drove to his mother's apartment and parked the car. He noticed the same car had followed him all the way to the apartment and pulled up behind him, but he was not particularly suspicious because it looked like a "girl car." (R.p.15, line 6-p.20, line 22). As Mr. Carter opened his door to step out, a black male jumped out of the passenger side with an automatic handgun and told him to "give it up." Mr. Carter had approximately six hundred dollars ($600) in cash and two small bags of marijuana, which he threw on the ground. The man then hit Mr. Carter on the back of the head with the gun, causing an injury that required medical treatment. Mr. Carter fell to the ground and "balled up" to try and protect himself. He believed there were at least two assailants because he could hear a second person's voice while he was being hit on the ground. After grabbing the money and drugs, the attackers jumped in their car and drove away. Mr. Carter got up, grabbed his daughter from the backseat, and ran into his mother's apartment. His sister, Maranda Etheridge (Etheridge), was inside and was on

the telephone with the police. (R.p.20, line 23-p.28, line 22). Mr. Carter gave the police a description of the car. After Appellant, Sergio Quarles and Markus Allen were taken into custody, Mr. Carter realized he knew Appellant and Quarles but did not know Allen. (R.p.28, line 23-p.30, line 21).

On cross-examination, Mr. Carter testified he had never sold marijuana to Allen and denied getting a call from Allen the morning of the robbery to arrange a drug buy. He claimed he had never seen Allen until the day Allen jumped out of the car with a handgun and robbed him. Mr. Carter said he did not see who was with Allen during the robbery and that the $600 in his pocket came from washing cars. (R.p.30, line 24-p.39, line 25; p.40, lines 15-17).

Etheridge testified she was home sleeping on November 20, 2010, when she heard a lot of noise outside and got up to look out the window. She saw her brother, Mr. Carter, kneeling on the ground while two men were hitting him, and she saw a white car parked behind her brother's car, blocking him in. Etheridge put on some clothes and called the police just before Mr. Carter came in through the door. (R.p.41, line 2-p.46, line 1).

Next, Allen testified on behalf of the State. He moved to Greenwood in 2010 to live with his girlfriend, who was a student at Lander. Allen met Appellant through friends a couple of months after he moved to Greenwood and later discovered he and Appellant were neighbors in the same apartment complex. Allen knew Quarles through friends of Quarles' family. He said Appellant and Quarles knew each other independently, and sometimes they all three hung out together at Allen's house playing video games. Allen testified that on the night before Mr. Carter was robbed, Allen,

Quarles and Appellant broke into a car together, and planned to break into a house the next morning. Appellant suggested a particular house because the people living there were supposed to have drugs. The next morning, they all three broke into the house and then briefly stopped by Allen's house before heading toward McCormick to "let things cool down." (R.p.47, line 23-p.63, line 9).

Allen was driving his girlfriend's white Camry with a pink "Lander Girl" sticker. He identified it as the same vehicle depicted in State's Exhibit #1. Quarles was in the passenger seat and Appellant was in the back. On the way out of Greenwood they saw Mr. Carter pull out of the K-mart parking lot in a burgundy Crown Vic and pass them going in the opposite direction. Appellant said Mr. Carter was a drug dealer, would probably have at least $5,000 on him, and that they should follow him. They turned around and followed Mr. Carter through the Zaxby's drive-through and eventually to the apartment complex because Appellant said he was a guy they could rob. (R.p.63, line 22-p.70, line 11).

Allen parked in a space near Mr. Carter and as he was getting out of his car he heard a gun cock from behind him, in the back seat. He knew Appellant had a gun because he saw it before they got in the car. Allen and Appellant both had guns for protection during the prior break-in, but Quarles did not have a gun. Allen identified his own .45 caliber gun as State's Exhibit #14. Allen testified he approached the Crown Vic just as Mr. Carter was stepping out. He had his gun drawn and was pointing it at Mr. Carter. When Mr. Carter saw the gun, he pulled money out of his pocket and threw it on the ground. As Allen bent down to pick up the money, he heard Appellant's footsteps coming up from behind. Appellant hit Mr. Carter in the head with the butt of his gun and

Allen saw Appellant continue to hit Mr. Carter while he was on the ground. (R.p.70, line 12-p.76, line 22).

At some point, Quarles got into the driver's seat and backed the Camry out. Allen got in the passenger seat, Appellant got in the back seat on the driver's side, and they drove away from the scene. Allen testified they got $630 and split it up with each assailant getting $200, and Appellant getting the extra $30 because he was the one who hit Mr. Carter in the head. Allen said Appellant had been wearing a clear mask during the robbery and he identified the mask as State's Exhibit #15. Allen testified his girlfriend found the mask under the driver's seat of her car several weeks after Allen got out of jail following his arrest, and she took it to the police. (R.p.78, line 23-p.83, line 11). Shortly after the robbery, the three men stopped at a convenience store to get gas when an unmarked police car pulled up behind them and activated its blue lights. They attempted to flee, but after a high speed car chase they crashed the Camry, split up, and attempted to flee on foot. Allen was arrested coming out of the woods. He subsequently took the police to the spot where he had tossed his gun out of the car window, and it was recovered. (R.p.83, line 13-p.96, line 11).

At the conclusion of Allen's testimony the State attempted to call Ray Watson to the stand; however, Appellant advised the trial judge that he first had a matter for the court's consideration. Appellant submitted a written motion captioned: "Defendant's Motion to Dismiss because of Unlawful Stop, Seizure, Detention, and/or Arrest" with attached Exhibits A through N. (R.p.97, line 23-p.99, line 14). In the motion, Appellant argued the trial court should dismiss all charges because all of the Greenwood County Sheriff's Office employees who chased, stopped, seized, detained, handcuffed, and/or

arrested him for those charges acted "prior to being duly qualified to serve as deputy sheriffs" for Greenwood County. Specifically, Appellant alleged they were not duly qualified because: (1) their appointment had not been evidenced by a certificate signed by the sheriff; (2) their appointment had not been approved by a judge of the circuit; (3) they had not entered into a bond in the sum of one thousand dollars, with sufficient surety; (4) they had not taken the oath of office prescribed by section 26, or Article III, of the Constitution; (5) they had not taken the additional oath set forth in Section 23-13-20 of the Code; and (6) they had not filed the bond and oaths of office with the Greenwood County Clerk of Court. (R.pp. 234-240).

Appellant presented testimony from Ingram Moon, the Greenwood County Clerk of Court, in support of his motion. First she identified a September 29, 2011 "General Order" issued by the Honorable Frank R. Addy, Jr., Judge of the Eighth Judicial Circuit, which was filed with the Clerk's Office on September 30, 2011. (R.p.99, line 18-p.102, line 9). The order finds that the matter was brought before Judge Addy at the request of the Petitioner, Greenwood County Sheriff Tony Davis. It further finds that Davis asked the court, pursuant to section 23-13-10 of the South Carolina Code, to acknowledge and/or approve the appointments of seventy-three (73) named deputies who were currently employed with the Greenwood County Sheriff's Office. Judge Addy noted possible constitutional separation of powers problems with section 23-13-10, but interpreted it in a way the merely requires the court's passive acceptance of what it deemed "an executive decision within the exclusive jurisdiction of the sheriff." He specifically found: "I acknowledge the oaths and approve the above listed individuals as Deputy Sheriffs for Greenwood County. To the extent permitted by law, his [sic] order

shall be applied *nunc pro tunc* back to the date the above named were first sworn as deputies." (R.pp. 244-248).

Ms. Moon testified she had been working at the Clerk's Office since 1985 and had been the Clerk of Court since 2004, and that in her capacity as Clerk she is the keeper of the records for the office. She testified that prior to September 30, 2011, she had never seen any type of order, document, or anything else from a circuit judge approving anyone to be a deputy for the Greenwood County Sheriff's Office. Ms. Moon also testified she had not seen or been able to find in her records any oaths or bonds from deputies who had been appointed by the Sheriff. On cross-examination, Ms. Moon was asked to read the final paragraph of Judge Addy's September 29, 2011 Order; however, the trial judge said he would simply read that paragraph himself rather than having Ms. Moon read it into the record. (R.p.102, line 10-p.109, line 2). That paragraph provides:

> In an effort to prevent this court from having to reissue this order every time the Greenwood Sheriff elects to discharge or hire any deputy, I hereby find that any deputy who is, has been, or ever shall be duly hired by the sheriff and who otherwise meets all other qualifications and legal requirements for the office of deputy sheriff shall automatically be covered by this order. [footnote 2: This includes any deputy whose name may have been misspelled or inadvertently omitted from the list above, as well as any past, present, or future duly appointed deputies]. Therefore, upon giving their oath and meeting any other requirements imposed by law or by the sheriff, any deputy hired subsequent to this order shall automatically be considered approved by this court under this order. The inverse is also true in the event a deputy should leave the sheriff's employ for whatever reason.

(Order) (emphasis added). When Ms. Moon concluded her testimony, Appellant asked the court to take his motion under advisement as the trial proceeded, and explained: "It's the defense's position that none of the employees of the sheriff's department involved in

this matter with my client or with Mr. Quarles or Mr. Allen are duly qualified deputy sheriffs, meaning they don't have the power of arrest." (R.p.109, lines 3-21).

The trial continued and the State presented testimony from a series of deputies and investigators with the Greenwood County Sheriff's Office, each of whom played a part in either the initial attempt to stop the white Camry, the car and foot chase, the arrest of Appellant, Quarles and Allen, and/or the investigation of the armed robbery and assault against Mr. Carter. (R.p.110, line 1-p.195, line 16). Deputies Marvin Ray Watson, II, Marc Cromer, Jimmy Boggs, Jeff Graham, Derrick Smith, Amy Tyler, and John Long each testified he or she took an oath of office under every Greenwood County Sheriff for which he or she worked, including Tony Davis. They further testified they were bonded and were working in their official capacities as deputy sheriffs when they participated in the investigation and arrest of Appellant in November of 2010. (R.p110, line 1-p.111, line 12; p.117, line 20-p.119, line 1; p.138, line 8-p.139, line 20; p.150, line 19-p.151, line 23; p.160, line 22-p.162, line 3; p.172, line 16-p.173, line 25; p.182, line 20-p.184, line 6).

After the State rested, Appellant moved for a directed verdict on the lawfulness of the arrest, as set forth in his written motion to dismiss. He acknowledged that absent dismissal of the charges pursuant to his motion, the State had put up sufficient evidence of the elements of the crimes to survive directed verdict. (R.p.195, line 16-p.196, line 15). Appellant then testified in his own defense. He admitted being with Quarles and Allen the day Mr. Carter was followed from Zaxby's to the apartment where he was then assaulted and robbed; however, Appellant claimed he was simply along for the ride in an effort to purchase marijuana from Mr. Carter. Appellant said Allen was the only one who

got out of the car, and that Allen was solely responsible for the assault and robbery. Appellant claimed he never had a gun or mask, never took any money from the scene, and never planned to rob Mr. Carter with Allen. Appellant testified he was scared for his life and never had an opportunity to get out of the car during the high speed chase. He claimed he never threw a gun from the window of the car and only ran from the police because he was scared and everyone else was running away. Appellant also claimed he never broke into a car or a house with Allen and Quarles before Mr. Carter was robbed. (R.p.197, line 14-p.216, line 11).

After the defense rested, Appellant renewed his motion to dismiss. The trial judge asked Appellant to submit a memorandum in support of his motion, took the motion under advisement, and took the entire case under advisement to conduct deliberations. (R.p.218, line 22-p.223, line 18). On May 18, 2012, Appellant submitted a "Memorandum in Support of Motion to Dismiss." The memorandum detailed the legislative history of sections 23-13-10 and 23-13-20 of the South Carolina Code, attempted to challenge portions of the September 29, 2011, "General Order" issued by Judge Addy, and attempted to respond to the trial testimony establishing that each of the testifying officers had taken the required oaths and posted the required bond described in the relevant statutes. (R.pp.287-297).

On October 12, 2012, the trial judge issued a written order finding beyond a reasonable doubt that Appellant was guilty as indicted. In that order, the court found:

> The Defendant has properly moved to dismiss these charges because of an unlawful stop, seizure, detention and or arrest. This motion is based on an alleged failure of the Sheriff of Greenwood County to comply with certain statutory requirements relative to appointment of deputies. I do not decide the issue of the appointment of his deputies. Even if the deputies were not

> properly appointed under the statutes, the remedy would not be to dismiss these charges, or suppress any evidence entered at trial.

(R.pp.377-379) (emphasis added). Appellant did not file a motion to reconsider or any other request asking the trial court to rule on the substance of his motion to dismiss. On December 12, 2012, the trial judge convened a sentencing hearing. Appellant did not renew his motion to dismiss or otherwise ask for a ruling from the trial judge on whether the sheriff's deputies were properly qualified under Sections 23-13-10 and 23-13-20 of the Code. (R.p.231, line 22-p.232, line 4).

ARGUMENT

Appellant's claim, that he was unlawfully arrested and entitled to dismissal of all charges because the arresting deputies were not duly qualified to serve pursuant to S.C. Code Sections 23-13-10 & 23-13-20, is not preserved for appellate review because the trial court did not rule on the substance of the claim, properly declining to do so where the judge lacked authority to disregard or set aside the order of another circuit court judge which had already addressed the appointment and qualification of the deputies. Even if preserved, the trial court properly denied Appellant's motion to dismiss because: (1) the evidence showed the deputies were duly qualified when they participated in Appellant's arrest; (2) even if the deputies failed to follow the strict terms of the statutes, their official acts as de facto officers were legal as to Appellant; and (3) even if the deputies were not properly qualified, dismissal was not warranted where violation of the statute does not implicate a constitutional right.

Appellant argues the trial court erred in denying his motion to dismiss due to his unlawful stop, seizure, detention, and arrest because the sheriff's deputies who apprehended him had not been duly qualified to serve as deputy sheriffs pursuant to sections 23-13-10 and 23-13-20 of the South Carolina Code. The State disagrees and submits Appellant's argument should be denied and dismissed on several grounds. First, Appellant's argument is not preserved for appellate review because it was not ruled upon by the trial court. Second, the trial judge properly declined to rule on Appellant's argument where he did not have the authority to disregard or otherwise set aside the "General Order" previously issued by Judge Addy on September 29, 2011. Third, the trial testimony demonstrates the deputies were duly qualified pursuant to the terms of the statute when they participated in Appellant's arrest. Fourth, even if the sheriff or his deputies failed to comply with some or all of the provisions of the relevant statutes, their official acts in regard to Appellant's arrest were legal under the doctrine of de facto officers because the statutory requirements are merely directory. Finally, even if the

deputy sheriffs were not properly qualified due to their failure to comply with the strict terms of the statutes, neither exclusion of the evidence nor dismissal of the charges would have been appropriate because a violation of the statute does not implicate a constitutional right. For all of these reasons, the State submits Appellant's argument should be denied and dismissed with prejudice.

A. Argument not Preserved

Initially, the State submits Appellant's argument that the sheriff's deputies had not been duly qualified to serve pursuant to sections 23-13-10 and 23-13-20 is not preserved for appellate review because it was never ruled upon by the trial court. Under South Carolina law, an issue must be raised and ruled upon in order for an appellate court to consider the issue on appeal. State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) (emphasis added). Here, Appellant failed to preserve the issue regarding qualification of the deputy sheriffs because he never obtained a ruling from the trial judge addressing the substance of his motion to dismiss.

In the October 12, 2012 verdict order, the trial court specifically found: "I do not decide the issue of the appointment of [the sheriff's] deputies. Even if the deputies were not properly appointed under the statutes, the remedy would not be to dismiss these charges, or suppress any evidence entered at trial." (R.pp. 377-379) (emphasis added). After receiving the order, Appellant did not file a motion to reconsider or any other request asking the trial court to rule on the substance of his motion to dismiss. At the December 12, 2012 sentencing hearing, Appellant stated: "I would like to renew all my trial motions in the form of a motion for a new trial"; however, he did not specifically ask for a ruling from the trial judge on whether the sheriff's deputies were properly qualified

under sections 23-13-10 and 23-13-20 of the Code. (R.p.231, line 22-p.232, line 15). Although the trial judge found dismissal of the charges would not be an appropriate remedy regardless of a ruling on the merits of the motion, he made no finding whatsoever as to whether the deputies were duly qualified in the first place. By failing to insist on such a ruling, Appellant failed to ensure his argument was preserved for appellate review. See State v. Covert, 368 S.C. 188, 200, 628 S.E.2d 482, 489 (Ct. App. 2006) (noting that it is the appellant's responsibility to make sure an issue is preserved for review on appeal).

B. No Authority to Disregard Prior Court Order

The State also submits the trial judge did not have the authority to disregard or otherwise set aside the September 29, 2011 "General Order" previously issued by Judge Addy approving the appointment and qualification of the Greenwood County deputies who participated in Appellant's arrest. In unambiguous terms, the order applies to any deputy who is, has been, or ever shall be duly hired by the sheriff, including any deputy whose name may have been misspelled or inadvertently omitted from the order, as well as any past, present or future duly appointed deputy. Judge Addy found that any of these deputies, "upon giving their oath and meeting any other requirements imposed by law or by the sheriff" would "automatically be considered approved" by the circuit court. The order was subsequently filed with the Greenwood County Clerk of Court and was not timely appealed or otherwise challenged by Appellant. At the very least, Judge Addy's order validated the appointment of the deputies by Sheriff Davis as well as their approval by the circuit court. The State submits it also validated the statutory requirements of entering into bond and taking the required oaths since no evidence to the contrary was

presented to Judge Addy. See Weathers v. State, 319 S.C. 59, 62, 459 S.E.2d 838, 839 (1995) ("Absent evidence to the contrary, the regularity and legality of the proceedings in general sessions court is presumed."). In South Carolina, one circuit court judge may not set aside or ignore the order of another circuit court judge. Enoree Baptist Church v. Fletcher, 287 S.C. 602, 604, 340 S.E.2d 546, 547 (1986); Dep't of Social Services v. Laura D., 386 S.C. 382, 386, 688 S.E.2d 130, 132-33 (Ct. App. 2010). Here, a ruling by the trial judge that the deputies were not qualified would be tantamount to setting aside or ignoring Judge Addy's order; therefore, Appellant's argument on these grounds should be dismissed.

C. Discussion/Analysis

To the extent this Court finds Appellant's argument is both sufficiently preserved for appellate review and not precluded by the trial court's lack of authority to disregard a prior court order, the State submits his argument is nevertheless without merit because: (1) the deputies who arrested Appellant were duly qualified; (2) even if not technically qualified, their actions were legal as to Appellant because the deputies were acting as de facto officers; and (3) even if not legal qualified, dismissal of the underlying charges against Appellant would not have been an appropriate remedy.

1. Standard of Review

In criminal cases the appellate court reviews errors of law only. State v. Banda, 371 S.C. 245, 251, 639 S.E.2d 36, 39 (2006). As such, an appellate court is bound by the trial court's factual findings unless they are clearly erroneous. Id. "The appellate court will reverse only when there is clear error." State v. Rogers, 368 S.C. 529, 533, 629 S.E.2d 679, 681 (Ct. App. 2006). In reviewing the appeal, the appellate court is limited

to determining whether the trial court abused its discretion. State v. Reed, 332 S.C. 35, 43, 503 S.E.2d 747, 751 (1998); State v. Walker, 366 S.C. 643, 653, 623 S.E.2d 122, 127 (Ct. App. 2005). The conduct of a criminal trial is left largely to the sound discretion of the trial judge, who will not be reversed absent a prejudicial abuse of discretion. State v. Bridges, 278 S.C.447, 448, 298 S.E.2d 212, 212 (1982); State v. Patterson, 367 S.C. 219, 230, 625 S.E.2d 239, 245 (Ct. App. 2006), cert. denied, May 3, 2007.

2. Sheriff's Deputies were Duly Qualified

The State submits the deputies who participated in Appellant's arrest were statutorily authorized to make that arrest based upon prompt information of a suspected freshly committed crime. In addition, the trial testimony established they were duly qualified under the terms of the statute. In regard to the appointment of deputies, the South Carolina Code provides:

> The sheriff may appoint one or more deputies to be approved by the judge of the circuit court or any circuit judge presiding therein. Such appointment shall be evidenced by a certificate thereof, signed by the sheriff, and shall continue during his pleasure. The sheriff shall in all cases be answerable for neglect of duty or misconduct in office of any deputy.

S.C. Code Ann. § 23-13-10 (2007). In regard to the qualification of those deputies it provides:

> Each deputy sheriff shall, before entering upon the discharge of his duty, enter into bond in the sum of one thousand dollars, with sufficient surety, to be approved by the sheriff of the county, conditioned for the faithful performance of his duties and for the payment to the county and to any person of all such damages as they or any of them may sustain by reason of his malfeasance in office or abuse of his discretion. He shall, in addition to the oath of office now prescribed by Section 26, of Article III, of the Constitution, take the following oath (or affirmation) to wit: "I further solemnly swear (or affirm) that during my term of office as county deputy, I will study the act prescribing my duties, will be alert and vigilant to enforce the criminal laws of the State and to detect and bring to punishment every violator of them, will conduct myself at all times with

> due consideration to all persons and will not be influenced in any matter on account of personal bias or prejudice. So help me, God." The form of such bond shall be approved by the county attorney and, with the oaths, shall be filed with and kept by the clerk of court for the county.
>
> A blanket bond may be used in any county to fulfill the bond requirement of this section upon approval of the County Council and the County Attorney.

S.C. Code Ann. § 23-13-20 (2007) (emphasis added). The South Carolina Code then explains: "When duly qualified a deputy sheriff may perform any and all of the duties appertaining to the office of his principal." S.C. Code Ann. § 23-13-50 (2007) (emphasis added). Finally, in regard to the power of deputies to arrest it provides: "The deputy sheriffs may for any suspected freshly committed crime, whether upon view or upon prompt information or complaint, arrest without warrant and, in pursuit of the criminal or suspected criminal, enter houses or break and enter them, whether in their own county or in an adjoining county." S.C. Code Ann. § 23-13-60 (2007) (emphasis added).

First, the State submits that the plain terms of the statutes do not require a sheriff's deputy to be "duly qualified" to exercise the power of arrest. Indeed, the phrase "duly qualified" is specifically mentioned where a deputy seeks to perform the duties appertaining to the office of the sheriff but is conspicuously absent from the very next provision addressing a deputy's power to arrest. The State submits that by failing to tie the deputies' qualifications to the power of arrest, the legislature could not have intended the result sought by Appellant. In any event, the State submits the evidence would support a finding that the deputies were qualified.

At trial, the State presented testimony from the deputies who played a part in Appellant's arrest. (R.p.110, line 1-p.195, line 16). Deputies Marvin Ray Watson, II, Marc Cromer, Jimmy Boggs, Jeff Graham, Derrick Smith, Amy Tyler, and John Long

each testified he or she took an oath of office under every Greenwood County Sheriff for which he or she worked, including Tony Davis. They further testified they were bonded and were working in their official capacities as deputy sheriffs when they participated in the investigation and arrest of Appellant in November of 2010. (R.p.110, line 1-p.111, line 12; p.117, line 20-p.119, line 1; p.138, line 8-p.139, line 20; p.150, line 19-p.151, line 23; p.160, line 22-p.162, line 3; p.172, line 16-p.173, line 25; p.182, line 20-p.184, line 6).

By denying Appellant's motion to dismiss, the trial court effectively found that all the deputies involved in Appellant's arrest were duly qualified pursuant to the terms of section 23-13-20. The State submits the trial testimony from the deputies themselves provided substantial evidence to support the trial court's findings; therefore, this Court is bound by those factual findings, and the denial of Appellant's motion to dismiss must be affirmed. Banda, supra.

3. Deputies' Actions were Legal under the Doctrine of *De Facto* Officers

It has been found that, "[a] person who has been duly elected sheriff and exercises the duties of the office is sheriff de facto, even though the person's bond is defective." 80 C.J.S. SHERIFFS AND CONSTABLES § 5 (2013) (citing Cooper v. Ricketson, 80 S.E. 217 (Ga. 1913). As explained by our supreme court: "The purpose of the doctrine of de facto officers is the continuity of governmental service and the protection of the public in dealing with such officers . . . . As nature abhors a void, the law of government does not ordinarily countenance an interregnum." Bradford v. Byrnes, 221 S.C. 255, 261-62, 70 S.E.2d 228 (1952). Thus, "[o]ne in office, transacting the duties, is supposed to be rightfully there, and so far as third persons are concerned, that presumption legalizes his

acts." Kottman v. Ayer, 34 S.C.L. 92, 95 (3 Strob. 1848). Indeed, "[i]t is the appointment that confers the office . . . . The omission to qualify by giving bond or taking the oaths is cause of forfeiture; but so long as the officer appointed continues to discharge the duties of his office, his official acts, as to third persons, are legal. The law which requires the bond, or the oath, is . . . merely directory." Id. at 94 (citing McBee v. Hoke, 29 S.C.L. 138 (2 Speers 1843);[2] see also State v. Toomer, 41 S.C.L. 216, 227 (7 Rich. 1854) ("The statutory provisions prescribing the manner of executing the bond, suing out the commission, or taking the oaths of office, are merely directory. . . . So long as the officer appointed continues to exercise the duties of his office, his official acts as to third persons are legal."). The State submits any other result would be absurd.

Here, Appellant presented no evidence to suggest anyone in the Greenwood County community, from himself to his codefendants to the victim, believed the deputies were not legally qualified to effect his arrest. As set forth by the South Carolina Law Court of Appeals and Court of Errors, under circumstances where an individual was recognized by the community as an officer, "it would be attended with the most mischievous and pernicious consequences to hold his official acts, and the official acts of all who have acted under the like circumstances, to be void." Kottman, 34 S.C.L. at 97 (3 Strob. 1848). In the absence of a showing of fraud, an individual holding an office and acting in the capacity of that office is a de facto officer and his failure to subscribe to the required oath of office will not vitiate his official acts. Davis v. Town of Cayce, 166 S.C.

[2] "The reason of the rule, and the rule itself, embrace every officer from the highest to the lowest. The acts of a king de facto are as binding as if he were in office by legal right, so long as those whom he governs acquiesce in his exercise of power." Thus: "[W]here the electing or appointing power has conferred the office upon him, and he is in the actual discharge of its duties, without his title being questioned in any legal way, the community in which he lives have [sic] a right to regard him as a legal officer, and his acts, as to them, will be as valid as if he wore on his forehead, to be read by every one, the evidences of his appointment and qualification. If it were otherwise there could be no guaranty or security for the validity of the official acts of any officer." Kottman, 34 S.C.L. at 94 (3 Strob. 1848).

372, 164 S.E. 883, 887-88 (1932). In addition, any defects in an officer's title caused by the failure to comply with the provisions of a statute, such as executing or filing a bond or taking the oaths of office within a given time frame, may be cured, "and if he be already in office, his de facto title is immediately converted into a title de jure, and has relation back to the period of his [appointment and] . . . as against all the world, is unquestionable." Toomer, 41 S.C.L. at 229 (7 Rich. 1954).

Specifically in regard to the office of sheriff, our courts have specifically applied the doctrine of de facto officers. The Court of Constitutional Law held that the Act of 1795, which required Sheriffs to give bond to the "Treasurers of the state" was: "merely directory, and . . . as long as he remained in office, he must be regarded as an officer, and his own failure to perfect his security cannot be pleaded in bar against the consequence of his misconduct, in not discharging his official duties." Stevens v. Tresurers, 13 S.C.L. 107, 109 (2 McCord 1822). Later, in discussing the office of coroner, the court stated:

> It is plain, from comparing these provisions, that the office of the Sheriff is much more hedged around with obstacles to entering upon it, without giving bond, than that of the Coroner; yet, I have no doubt, that if a Sheriff were to enter upon its duties, without giving bond, that all his acts, so far as third persons are concerned, would be good. The persons confiding or transacting business to or with him, finding him in office, would have the right to say, we did not enquire by what authority he exercised it. As to them, his acts for or against them, would be good.

McBee v. Hoke, 29 S.C.L. 138 (2 Speers 1843). In Appellant's case, the deputies were clearly in office and were transacting their duties of enforcing the laws of South Carolina by arresting individuals who broke those laws. As de facto officers, their actions were legal in arresting Appellant and his argument should be dismissed.

4. Dismissal not Warranted where a Constitutional Right was not Implicated

The State submits that even if this Court concludes the deputies who arrested Appellant were not properly qualified under the relevant statutes, and their actions were therefore not "legal" as to Appellant and other third parties as de facto officers, neither exclusion of the evidence developed as a result of Appellant's arrest nor dismissal of the underlying charges by the trial court was warranted. It is well established in South Carolina that the exclusionary rule does not apply where there has merely been a violation of a statutory privilege and does not implicate a constitutional right. Hutto v. State, 387 S.C. 244, 250, 692 S.E.2d 196, 199 (2010); see also State v. Chandler, 267 S.C. 138, 143, 226 S.E.2d 553, 555 (1976) ("[E]xclusion of evidence should be limited to violations of constitutional rights and not to statutory violations . . . ."). Because Appellant's challenges to the qualifications of the Greenwood County deputies were based on sections 23-13-10 & 23-13-20 of the South Carolina Code and not a constitutional violation, the exclusionary rule does not apply and, as recognized by the trial court, dismissal of the charges against Appellant was not appropriate. See State v. Goodwin, 351 S.C. 105, 110, 567 S.E.2d 912, 914 (Ct. App. 2002) ("When determining the constitutional validity of an arrest, a court must consider 'whether, at the moment the arrest was made, the officers had probable cause to make it—whether at that moment the facts and circumstances within their knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the [appellant] had committed . . . an offense.'") (citations omitted). For this reason, and all of the other reasons set forth above, the State submits Appellant's argument is without merit and should be denied and dismissed.

CONCLUSION

For all of the foregoing reasons, the State respectfully requests that the judgment, conviction, and sentence of the lower court be affirmed.

Respectfully submitted,

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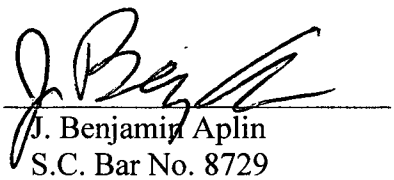
BY: 
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Columbia, South Carolina
March 18, 2014

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Thomas L. Hughston, Jr., Circuit Court Judge

Appellate Case No. 2012-213602

THE STATE, ... RESPONDENT

v.

DANIEL DEMOND GRIFFIN, ... APPELLANT.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Final Brief of Respondent complies with Rule 211(b), SCACR.

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PROOF OF SERVICE

I, Angela Bennett, Administrative Assistant, hereby certify that I have served the within *Final Brief of Respondent*, dated March 18, 2014, on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record:

LaNelle C. DuRant, Appellate Defender
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I further certified that all parties required by Rule to be served have been served. This 18th, day of March, 2014.

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The State v. Daniel Demond Griffin
Appellate Case No. 2012-213602

Dear Ms. DuRant:

I am enclosing two (2) copies of the Final Brief of Respondent in the above-referenced case.

Sincerely,

J. Benjamin Aplin
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JBA/ab
Enclosures

cc: Honorable Jenny A. Kitchings
(original & 9 enclosed)
Victim Services

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