

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg County

J. Derham Cole, Circuit Court Judge

Opinion No. 2015-UP-476 (S.C. Ct. App. filed 10/7/2015)
11-GS-42-01833; 12-GS-42-06339

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DEC - 8 2015

S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

JON ROSEBORO,

PETITIONER

APPELLATE CASE NO. 2013-000685

A P P E N D I X

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

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

The State, Respondent,

v.

Jon Michael Roseboro, Appellant.

Appellate Case No. 2013-000685

Appeal From Spartanburg County
J. Derham Cole, Circuit Court Judge

Unpublished Opinion No. 2015-UP-476
Heard September 17, 2015 – Filed October 7, 2015

AFFIRMED

Appellate Defender Benjamin John Tripp, of Columbia,
for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General William M. Blich, Jr., both of
Columbia, for Respondent.

PER CURIAM: Jon Roseboro appeals his convictions for throwing bodily fluids and resisting arrest, arguing the trial court erred in not dismissing the charges because the arresting officer was "persistently unreasonable in handling [his] arrest and therefore violated [his] Fourth Amendment rights." We affirm pursuant to

Rule 220(b), SCACR, and the following authorities: *State v. Odom*, 412 S.C. 253, 258, 772 S.E.2d 149, 151 (2015) ("In criminal cases, the appellate court sits to review errors of law only. Therefore, this [c]ourt is bound by the trial court's factual findings unless the appellant can demonstrate that the trial court's conclusions either lack evidentiary support or are controlled by an error of law." (citation and internal quotation marks omitted)); *State v. Sims*, 304 S.C. 409, 418-19, 405 S.E.2d 377, 382-83 (1991) (holding the defendant's arrest was lawful when the arresting officer, while not in possession of the warrant itself, was acting pursuant to a valid arrest warrant); *State v. Grate*, 310 S.C. 240, 242, 423 S.E.2d 119, 120 (1992) (holding the defendant's arrest was lawful even though the arresting officer did not have physical possession of the arrest warrant when the officer called to verify there was an outstanding warrant for the defendant's arrest).

AFFIRMED.

FEW, C.J., and KONDUROS and LOCKEMY, JJ., concur.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

JON ROSEBORO,

APPELLANT

APPELLATE CASE NO. 2013-000685

Appeal from Spartanburg County

J. Derham Cole, Circuit Court Judge

Opinion No.

PETITION FOR REHEARING

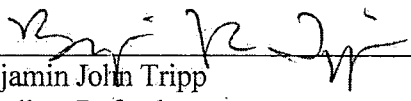
Pursuant to Rule 221(a), SCACR, Appellant Jon Roseboro respectfully petitions the Court for a rehearing of its Unpublished Opinion No. 2015-UP-476 issued on October 7, 2015 based upon the following points overlooked or misapprehended by the Court.

The Opinion cites *State v. Sims*, 304 S.C. 409, 418-19, 405 S.E.2d 377, 382-83 (1991) and *State v. Grate*, 310 S.C. 240, 242, 423 S.E.2d 119, 120 (1992), for the proposition that an officer is not required to have an otherwise valid arrest warrant in his possession in order to make an arrest. *State v. Sims* is inapposite. The defendant in that case argued that officers arrested him in his motel

room without the existence of a valid arrest warrant. The South Carolina Supreme Court concluded that a valid arrest warrant did exist. *Sims* at 418-19, 405 S.E.2d at 382-83. In this case, **Appellant acknowledges that a valid arrest warrant existed. He argues that the Fourth Amendment required the arresting officers in this case to show him the warrant or a copy of the warrant in order to enter his curtilage and arrest him.**

State v. Grate is also inapposite. In that case, officers arrested the defendant pursuant to a valid arrest warrant—although they were not in actual possession of it—in public. *Grate* at 241, 423 S.E.2d at 119. Appellant's argument in this case relies on the principle that the Fourth Amendment places **"a greater burden is placed . . . on officials who enter a home or dwelling without consent."** *Payton v. NY*, 445 U.S. 573, 587 (1980) (internal quotations omitted).

Respectfully submitted,


Benjamin John Tripp
Appellate Defender

This 12th day of October, 2015.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

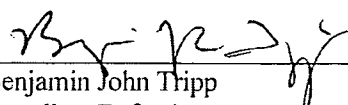
JON ROSEBORO,

APPELLANT

APPELLATE CASE NO. 2013-000685

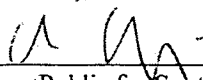
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon William M. Blich, Jr., Esquire, this 12th day of October, 2015.


Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 12th day
of October, 2015.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: May 12, 2025.

The South Carolina Court of Appeals

The State, Respondent,

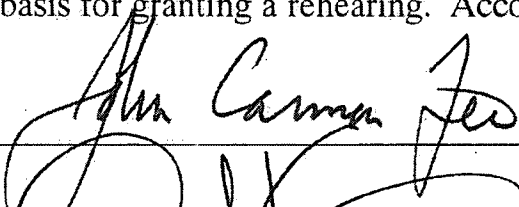
v.

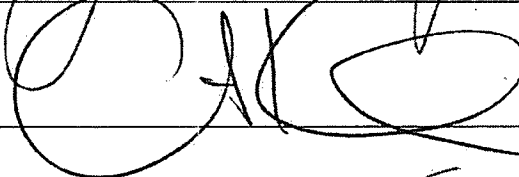
Jon Michael Roseboro, Appellant.

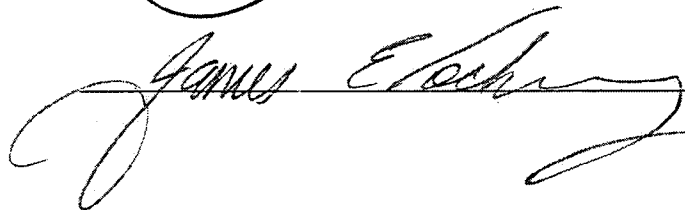
Appellate Case No. 2013-000685

ORDER

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


C.J.


J.


J.

Columbia, South Carolina

cc:

Alan McCrory Wilson, Esquire

Benjamin John Tripp, Esquire

William M. Blicht, Jr., Esquire

FILED

November 19, 2015

STATE OF SOUTH CAROLINA

In The Court of Appeals

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DEC - 8 2015

APPEAL FROM SPARTANBURG COUNTY

J. Derham Cole, Circuit Court Judge

S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

JON ROSEBORO,

APPELLANT

APPELLATE CASE NO. 2013-000685

RECORD ON APPEAL

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The State of South Carolina,

Plaintiff,

-VS-

Jon Michael Roseboro,

Defendant.

TRANSCRIPT OF RECORD

October 4, 2012
Spartanburg, South Carolina

Ordered: February 12, 2014

Delivered: April 13, 2014

BEFORE:

The Honorable Roger L. Couch, Presiding Judge.

APPEARANCES:

Mr. Russell Ghent, Esquire
Assistant Solicitor Appearing for the State

Mr. Roger Poole, Esquire
Attorney Appearing for the Defendant

Pamela Faucette, CVR-M
Circuit Court Reporter

PAMELA FAUCETTE, CVR - 864-574-9534 or 336-260-2864

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EXHIBITS**Court's Exhibits:****Marked:****Received:**

1 - (Copy of Bench Warrant)

9

12 (First marked
as State's 1. for
ID)**Defendants' Exhibits:****Marked:****Received:**

(None)

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REPORTER'S NOTE: This transcript may contain quoted material. Such material is reproduced as read or quoted by the speaker.

REPORTER'S NOTE: Some of the names in this transcript may be spelled phonetically.

October 4, 2012

2:15 P.M.

(Brief Pause)

(Off-the-Record Comments)

MR. POOLE: May we approach, Your Honor?

THE COURT: Please do.

(Whereupon, a bench conference was had with both attorneys present.)

THE COURT: All right.

MR. GHENT: Your Honor, the -- the State's witness who is --
are ready.

THE COURT: I'm getting them.

MR. GHENT: All right.

THE COURT: Bring them in and we'll do our pretrial motions.

BAILIFF: Yes, sir.

(Brief pause while witnesses are summoned into the courtroom.)

(Off-the-Record Comments)

THE COURT: All right. We are on the record in the case of *The State of South Carolina vs. Jon Michael Roseboro*. I had deferred hearing any pretrial motions until this point in time. At this time, Mr. Poole, does the Defense wish to raise any motions?

MR. POOLE: Yes, sir, I do have a motion. May it please the Court?

THE COURT: Yes, sir.

MR. POOLE: And may I just rest these documents here
(indicating)?

1 THE COURT: Certainly. That's fine.

2 MR. POOLE: Mr. Roseboro is charged under Section 24-13-470
3 of throwing of body fluids.

4 MR. GHENT: Your Honor, could I clarify? That would be 453 --
5 oh, 470. That's correct, Your Honor.

6 THE COURT: All right.

7 MR. POOLE: Oh, I'm sorry, 24-13-470.

8 THE COURT: Four, seventy (470)? Okay.

9 MR. POOLE: The throwing body fluids statute.

10 THE COURT: All right.

11 MR. POOLE: And the circumstances of -- of the case, I'll -- I'll
12 have to mention those first. And I think the -- these facts are not contested.

13 THE COURT: Go ahead and state your version. And, then, we'll
14 see if the State contests any of the facts you state.

15 MR. POOLE: Yes, sir.

16 THE COURT: All right.

17 MR. POOLE: On January 4th of 2011, at the residence of Jon
18 Michael Roseboro -- he was living with his mother, who is Fannie Roseboro,
19 who is here in court and also with Mr. Carver, who is a witness under
20 subpoena today.

21 They were living at this address in the Roebuck area. And officer ---
22 Deputy --- Officer Hilton came at around 2 o'clock to this address. And --

23 THE COURT: A.m. or p.m.?

24 MR. POOLE: It was around 2:00 p.m.

25 THE COURT: All right, in the afternoon?

1 **MR. POOLE:** In the day time.

2 **THE COURT:** Yes, sir.

3 **MR. POOLE:** And he stated that there was a warrant for his
4 arrest. It was either a bench warrant or an active warrant. My impres — it's
5 my impression that it was a bench warrant.

6 Then, it's my understanding, that Ms. Roseboro told Deputy Hilton to
7 get off the property if he did not have the warrant. And thereafter -- and, of
8 course, this transpired during a brief period of time -- Mr. Roseboro was
9 placed under arrest for this warrant that Deputy Hilton did not have in his
10 possession, and taken into custody.

11 During the course of this, is when the alleged crime occurred of
12 throwing bodily fluids.

13 **THE COURT:** Uh-huh (affirmative).

14 **MR. POOLE:** Mr. Roseboro was held in custody for 14 hours
15 before he saw a warrant or he received the warrant.

16 **THE COURT:** By custody, had he been delivered to the
17 detention facility by that time?

18 **MR. POOLE:** Yes, sir.

19 **THE COURT:** And had been booked into the detention facility?

20 **MR. POOLE:** Yes, sir.

21 **MR. ROSEBORO:** No, Sir. I had Not been booked. I was still in the
22 holding cell.

23 **THE COURT:** In a holding cell?

24 **MR. POOLE:** In a holding cell.

25 **THE COURT:** Well, he was in detention; he was a cell?

1 MR. POOLE: He was in a cell.

2 THE COURT: Okay.

3 MR. POOLE: Now, as — as Your Honor knows, if this was a
4 warrantless arrest, there are absolutely certain statutory provisions that
5 require — that must be met. And they're required by the Constitution.

6 They're — in this state, if — to use sort as an analogy, which I think
7 this fits squarely within, one may resist an arrest if it is unlawful, even to the
8 point of using deadly force. I think that's still the current state of the law in
9 South Carolina.

10 Now, under the Fourth Amendment, the search and seizure
11 amendment of the United States Constitution, made applicable to the State's
12 through the 14th amendment, and the counterpart to — to the 4th federal
13 amendment, which is South Carolina Constitution 1; Article 1, Section 10,
14 "Any type of a search — any type of search and arrest that is warrantless is
15 presumed unconstitutional."

16 And therefore, the burden shifts to the State to show that it was
17 constitutional and proper and meeting all these requirements.

18 The case of *Lego versus Toomey* (phonetic) — I don't have that case
19 in front of me — but I believe that is a case that supports what I'm trying to
20 get across to the Court.

21 And that is our argument; that, if these facts were such as they are,
22 then, it was unconstitutional. And, therefore, this case should be dismissed.

23 THE COURT: All right. I'll hear from the State, if you challenge
24 any of the facts, or I'll hear from you concerning the law.

25 MR. GHENT: Your Honor, if we may, we would like to call officer

1 Jason Hilton to present testimony to clarify the facts a bit.

2 THE COURT: All right.

3 MR. GHENT: And also we will argue our position on the law.

4 THE COURT: All right. Come forward, sir, and be sworn.

5 (The witness stepped forward to be sworn.)

6 (Whereupon,

7 DEPUTY WILLIAM JASON HILTON

8 first being duly sworn, testified as follows:)

9 (Off-the-Record Comments)

10 THE COURT: Have a seat, please, sir. And, once you're seated,
11 state your name.

12 THE WITNESS: William Jason Hilton.

13 THE COURT: Mr. Ghent?

14 MR. GHENT: May it please the Court?

15 THE COURT: Yes, sir.

16 Direct Examination by Mr. Ghent:

2:29 P.M.

17 Q. Where are you employed, Mr. Hilton?

18 A. The Spartanburg County Sheriff's Department.

19 Q. And how long have you worked there?

20 A. Seventeen (17) years.

21 Q. What was your previous employment?

22 A. I was a teacher at Chapman High School, 9th and 10th grade English
23 teacher.

24 Q. And were you working for the Spartanburg County Sheriff's Office on
25 January 4th of 2011?

1 A. I was.

2 Q. Did you — or in the afternoon as was related by Mr. Poole — go to

3 [REDACTED] (phonetic) in Duncan, in the County of Spartanburg, on that
4 date?

5 A. Yes, sir.

6 Q. Was — well, what was your purpose in going there?

7 A. I, as a rule, will scan streets in my mobile computer —

8 Q. Yes, sir.

9 A. — when I'm in the car on parole. And, in scanning [REDACTED] that
10 day, I noticed that there was a active warrant for Jon Roseboro. So I went to that
11 address to serve that warrant.

12 Q. Now, first question: Did your computer indicate that Mr. Roseboro
13 lived at that address?

14 A. It did.

15 Q. And, again, that is in Spartanburg County?

16 A. Yes, sir.

17 Q. When you say, "serve that warrant," did you have, in your possession
18 at that time, a physical warrant?

19 A. No.

20 Q. Would you please tell the Court what you had in your possession
21 regarding the warrant? And — and I would ask you to clarify, first of all, was it a
22 bench warrant?

23 A. Yes, sir, it was a — a Duncan City bench warrant.

24 MR. GHENT: Your Honor, if I may, I would, at this time, asked to
25 have this marked for identification purposes only.

1 **THE COURT:** Any objection?

2 **MR. POOLE:** No, sir.

3 **THE COURT:** You may do so.

4 **(Off-the-Record Discussion)**

5 **MR. GHENT:** And may the record reflect that I am providing
6 Counsel with the copy.

7 **(Whereupon, State's Exhibit Number 1 was marked for**
8 **identification.)**

9 **THE COURT:** Yes, sir, it does so reflect. You may proceed.

10 **(Off-the-Record Discussion)**

11 **MR. GHENT:** And, if I may approach the witness, Your Honor?

12 **THE COURT:** Yes, sir, you may do so.

13 **Q.** (By Mr. Ghent) Is that a hard copy of the warrant that your car
14 computer indicated was outstanding against Mr. Roseboro?

15 **A.** Yes, it is.

16 **Q.** Did you have a copy of that hard copy at the time?

17 **A.** I did not. It was in my Spilman (phonetic) data bank.

18 **Q.** Okay. Please explain to the Court what a Spilman data bank is, what
19 it does, and what it is.

20 **A.** That's — that's the operating system that we use at the sheriff's office
21 to disseminate information, show wanted subjects. When you have a — a Duncan
22 City bench warrant, which is a — a municipality within Spartanburg County, to have
23 it actually entered into Spilman, it has to be countersigned by the magistrate judge
24 for the County, which, then, makes it go into the computer and show up as a wanted
25 person.

1 Q. Does it show the actual warrant itself?

2 A. You can access different screens that gives you information, but not a
3 photocopy of the actual warrant. It will give you fines, dates, times, and the charge.

4 Q. And this information was on your computer through Spilman showing
5 that this was an active bench warrant?

6 A. Yes, sir. It — in fact, in Spilman, it's red flagged. If you run across a
7 person, who is either on probation, parole, or wanted, it will flash bright red.

8 Q. Was this flashing bright red?

9 A. Yes, it was.

10 Q. Did that indicate to you that the Defendant was on probation or parole?

11 A. No, it didn't. It actually indicated that he had an active outstanding City
12 of Duncan bench warrant.

13 Q. Okay. Now, with respect to this warrant, does it indicate the reason
14 why it was issued? Was it issued for a conviction?

15 A. It says he's convicted in — in the Duncan Court of drug paraphernalia.

16 Q. Okay. And what was the date he was convicted?

17 A. The 21st day of July in 1998.

18 Q. All right. Does it indicate what the Court did with respect to
19 sentencing?

20 A. Yes. It — it was imposed \$111 or 30 days consecutively.

21 Q. All right. Does — did your Spilman computer indicate whether or not
22 that judgment, that sentence, had been satisfied?

23 A. The indication, by the red flag and the bench warrant, is that it was not
24 satisfied and was outstanding and he was still wanted.

25 Q. And the warrant was executed when and by whom?

1 A. I executed the warrant on the 4th day — well, I served the warrant on
2 the 4th day of June really.

3 Q. Who signed the bench warrant?

4 A. Judge Kenneth Dover (phonetic).

5 Q. And that's a City Court Judge in Duncan?

6 A. Yes.

7 Q. And what was the date?

8 A. The 10th day of March in the year of 1999.

9 Q. All right. Now, with respect to this warrant, is this why you went there?

10 A. Yes, sir.

11 Q. And it has a portion of it down at the bottom which is labeled, "Officer's
12 Return"?

13 A. Yes, sir.

14 Q. Does it indicate the date the warrant was served, the bench warrant
15 was served, and what officer vouches for that?

16 A. The actual name is — it appears to be a "T. Lane." It's dated one,
17 four (1-4) of 2011.

18 Q. That would have been January 4th, 2011, the day that you took the
19 Defendant into custody?

20 A. Yes, sir.

21 Q. When did you give him a copy of that warrant?

22 A. Since Officer Lane, his signature is on it, I didn't actually physically
23 hand him the warrant. It was done at booking.

24 Q. All right. Did you have a copy of the warrant?

25 A. Yes — well, at the scene, I made a phone call to our warrant officer,

1 who put the warrant in hand, before I actually placed Mr. Roseboro in cuffs.

2 Q. In whose hand?

3 A. In a fellow officer's hand at the warrant office.

4 Q. All right.

5 MR. GHENT: Your Honor, at this time, we would offer this to the
6 Court as a Court's exhibit for purposes of the hearing. And —

7 THE COURT: Any objection?

8 MR. POOLE: No, sir.

9 THE COURT: All right. It'll be marked as an exhibit.

10 (Whereupon, Court's Exhibit 1 was admitted into evidence.)

11 (Brief Pause)

12 MR. GHENT: At this time, Your Honor —

13 (Documents handed up.)

14 (Off-the-Record Comments)

15 Q. (By Mr. Ghent) Officer, let me just clarify. When you went out to [REDACTED]
16 [REDACTED] in Duncan, when you say one of your fellow officers got a copy of
17 the warrant in hand, where was that officer located?

18 A. At the warrant office.

19 Q. And that's at the —

20 A. Spartanburg County de — detention facility on California Avenue.

21 Q. Okay. Is that where the sheriff's office is?

22 A. No, sir. The sheriff's office is on Howard Street behind the old
23 Flowers.

24 Q. So basically we're talking about the jail, the detention facility?

25 A. Yes, sir. On the side of the jail we have the warrant office that houses

1 all of our active warrants.

2 Q. All right. And do you recall who the officer was who you were in
3 contact with?

4 A. I do not.

5 Q. But this was by radio contact?

6 A. Actually, I believe I used my cell phone.

7 Q. All right. You called him by your cell phone and asked him to clarify, at
8 the time you were at the premises, that he had the warrant in hand; it was a valid
9 warrant?

10 A. That's correct.

11 Q. Okay. Please go ahead and tell the Court how you proceeded from
12 there.

13 A. After confirming that the warrant was in hand, I told Mr. Roseboro that
14 he was under arrest and guided him towards my vehicle, which was parked in front
15 of his residence.

16 Q. All right. Had you handcuffed him at that time?

17 A. No, sir.

18 Q. At what point did you handcuff him?

19 A. It would have been either right there at his fence before entering the
20 street, after I told him that, or right at the car. I don't recollect exactly.

21 Q. But, at any rate, before he was put in the car, he was handcuffed?

22 A. Yes, sir.

23 Q. With his hands behind his back?

24 A. Yes, sir.

25 Q. That's standard procedure?

1 A. Yes, sir.

2 Q. And it was your understanding at the time that, again, through your
3 contact with a fellow officer, that you were acting pursuant to a lawful and valid
4 arrest warrant; is that correct?

5 A. Yes, sir.

6 Q. Did you ever --- ever during the scope of your actions that day or since
7 then, determine that, that was not, in fact, a valid bench warrant?

8 A. Everything has confirmed that it was a valid bench warrant.

9 Q. All right. If you would, at this point, I'm just going to ask you to tell the
10 judge, in your own words, how things, then, proceeded from that point; the
11 Defendant was handcuffed. Please, tell the judge what he did.

12 Q. He instructed me that he had tuberculosis and that he was going to
13 cough all over me. He, then, turned his head and he -- he was trying to cough all
14 over me.

15 I -- I maintained control over him and tried to direct his face away
16 from me. And retrieved a -- a spit hoodie from my trunk, the trunk of my vehicle,
17 placed that over his head, placed him in the back of the vehicle, and then, went to
18 my germ killing lotion and started wiping myself down with that.

19 I -- I, then, started to leave the premises in the vehicle. And Mr.
20 Roseboro was trying to cough and project his breath through the crevices of the
21 cage in the car, all around the outer perimeter and through the crevices where the
22 window was.

23 At that point, I retrieved a aerosol germ killer from my trunk and used it
24 to direct spray at these openings. I also cracked the back window and turned the air
25 on high so that it would push from the front cabin of the vehicle through the back,

1 through these crevices, and through that crack in the back window.

2 I transported him to the jail and put him in the holding cell.

3 Q. And by clarification — I'm just throwing this out — it was a fellow
4 officer, with the Spartanburg County Sheriff's Office, who confirmed that he had
5 obtained a hard copy of the bench warrant. And that it was, in fact, a valid bench
6 warrant? That was confirmed before you placed the Defendant under arrest; is that
7 correct?

8 A. That's correct.

9 (Brief Pause)

10 MR. GHENT: That would be our factual showing, Your Honor.

11 THE COURT: Do you wish to ask questions, Mr. Poole?

12 MR. POOLE: Yes, sir.

13 THE COURT: You may do so.

14 MR. POOLE: May I see a copy of — of ---

15 THE COURT: Yes, sir.

16 MR. JOHNSON: ----- the warrant?

17 (Exhibit handed to Mr. Poole.)

18 Cross Examination by Mr. Poole:

2:47 P. M.

19 Q. So it was on January the 4th of 2011 that you noticed that there was an
20 active warrant for — for this Defendant?

21 A. Yes.

22 Q. Okay. And you say it was confirmed that there was a bench warrant
23 by — by a telephone conversation?

24 A. Yes, sir.

25 Q. But you did not have a warrant in your possession?

1 A. No, sir, not at that time.

2 Q. Why didn't you go get one?

3 A. As a means of regular patrol, it's oftentimes not feasible to obtain
4 warrants and put them in hand and, at the same time, be diligent in serving them.
5 And I knew Mr. Roseboro to live there.

6 I was out on patrol, happened to cross the information on Spilman that
7 he was wanted, decided to, as a direct result of regular patrol, get out and see if he
8 was there.

9 At which time I confirmed, via telephone, that the warrant was active,
10 in hand, and had not been served yet. At which point, I placed him under arrest.

11 Q. Well, if you knew that he lived there, you knew that he that he was not
12 going to be going anywhere, didn't you? I mean, it was not like he was in a car and
13 he was going to be fleeing you, is it?

14 A. I didn't see him in the car.

15 Q. I mean, you knew he was al -- always at that address; that's where he
16 lived?

17 A. I knew Jon to be at that address on a regular basis, yes.

18 Q. And you happened to be riding by his house? And you happened to
19 look his name up on Spilman?

20 A. No. What I -- what I generally do is I scan by road.

21 Q. Uh-huh (affirmative).

22 A. But, if I'm patrolling an area, if I put it in an asterisk and the road name,
23 it will give me feedback as to any wanted suspects that live on that road.

24 Q. Okay.

25 A. So that would be how I came across the fact that he was wanted.

1 (Brief Pause)

2 Q. So, without you having the bench warrant in hand, you placed him
3 under arrest?

4 A. With it confirmed in hand of a fellow officer, yes, sir.

5 Q. But not in your hand?

6 A. Not in my hand.

7 Q. And who was that fellow officer?

8 A. I do not recall his name.

9 Q. You don't recall his name?

10 A. No, sir.

11 Q. So you — you're going on the information of someone telling you that,
12 that person has a particular warrant in their hand?

13 A. Yes, sir. I'm going on the fact that I made a phone call to a known
14 warrant office number, speaking with a known officer, who I would've known by
15 name at the time, but not particularly concerned about documenting.

16 And, since this case is a — is a year old, I don't — I don't recollect the
17 exact name of the officer. But I would have known him both by voice, name,
18 number, and know them to be a fellow officer. And they did confirm that it was in
19 hand.

20 Q. Okay. All right. Deputy Hilton, you made an arrest of this Defendant
21 without a warrant, didn't you?

22 A. No, sir, it was a Duncan —

23 Q. You didn't have a warrant in your possession, did you?

24 A. Not in my possession.

25 Q. Okay. You placed him under arrest and took him into custody?

1 A. I did.

2 Q. And you put him in jail?

3 A. I did.

4 Q. Okay. And you left him?

5 A. I did leave him at the jail.

6 Q. And you didn't see whether or not he was served with the bench

7 warrant?

8 A. Yes, sir. I made sure that all of the booking paperwork was done, that

9 the warrant was in hand, and was to be served on him ----

10 Q. And was it?

11 A. — during the booking process.

12 Q. Was it served on him? You didn't see it get served, did you?

13 A. No, sir.

14 Q. Okay. All right. So you don't know when he was served with this

15 bench warrant, do you?

16 A. It was served on the 4th of January, 2012.

17 Q. How do you know that?

18 A. It's the date on the warrant.

19 Q. Well, if you look on this officer's return, it says — what does it say?

20 A. (No Response)

21 Q. It says, "I certify that, pursuant to the command with -- within the

22 warrant, I have placed the said Jon Michael Roseboro in this --- the jail this 4th day of

23 January, 2011." (Phonetic) It doesn't say anything about serving a warrant, does

24 it?

25 A. It says, "I hereby certify that, pursuant to the command with -- within

1 the warrant, I have placed the said Jon Michael Roseboro in this jail the 4th day of
2 January in the year of our Lord 2011."

3 Q. Okay. It says "placed in jail," but not — there's nothing that we have
4 that says he was actually certified — not actually served with the warrant?

5 A. No, sir.

6 MR. GHENT: Your Honor, I have to object. I think the warrant
7 speaks for itself and that he's arguing not only with the witness but the
8 warrant.

9 THE COURT: Well, let's move on. I think it's clear that the
10 warrant wasn't served until after he was booked in jail and in a cell.

11 MR. POOLE: Okay. Thank you.

12 THE COURT: That's what I've gleaned from the testimony thus
13 far.

14 Q. (By Mr. Poole) Deputy Hilton, when you came onto the property, did
15 you tell Mr. Roseboro and Ms. Roseboro that you didn't have a warrant with you?

16 A. I probably told him he had an active warrant. My recollection is that he
17 denied that there were any warrants on him. At which point, I confirmed, via cell
18 phone through a fellow officer, that there was an active warrant and it was in hand.

19 Q. Okay. But did — my question to you is, did you tell them that you had
20 a warrant for his arrest in your hand?

21 A. No, sir.

22 Q. Okay. Did he ask or did Ms. Roseboro ask you if you had a warrant in
23 your hand?

24 A. I don't recall her asking me.

25 Q. Okay. Do you recall Mr. Roseboro asking you that, if you had a

1 | warrant in your hand?

2 | A. It seems that he may have asked me that, yes.

3 | Q. Okay. And, after you told him no, were you told to leave the premises
4 | by anyone, including Ms. Roseboro?

5 | A. I was constantly berated by Ms. Roseboro and Mr. Roseboro, from the
6 | point of contact with him, outside of his residence in his yard. They verbally berated
7 | me and accosted me the entire time that I was trying to use the cell phone to
8 | confirm that there was a warrant in hand.

9 | I advised Mr. Roseboro that per my computer, there was an active
10 | warrant and that I would confirm it by a fellow officer via cell phone. I
11 | accommodated him with that.

12 | And, when it was confirmed, I told him that he was under arrest. The
13 | verbal accosting continued. In fact, Mr. Carver tried to restrain Ms. Roseboro ----

14 | Q. Okay.

15 | A. — continually.

16 | Q. Let me just ask the question again: When they became aware that
17 | you didn't have a warrant in your hand, were you asked to leave the premises by
18 | anyone?

19 | A. (No Response)

20 | Q. You were, weren't you, by Ms. Roseboro?

21 | A. I don't recollect that she said that specifically.

22 | Q. All right. Well anything like that, like, "You're trespassing; get off the
23 | property"?

24 | A. It may have been said. I don't recollect the exact verbiage. I can tell
25 | you that I was under extreme verbal duress and also physical proximity duress

1 based on her being behind me and getting right up to me and hollering at me and
2 screaming at me.

3 Q. Okay.

4 A. And I was just trying to do my job ----

5 Q. All right. So she did tell you to get off the property?

6 A. ---- trying to serve an active warrant.

7 Q. So she did tell you to get off the property; is that right?

8 A. I don't recall her saying that.

9 Q. Or that you were trespassing?

10 A. I don't recall that.

11 Q. How about Mr. Roseboro?

12 A. He didn't want me to serve the warrant on him.

13 Q. I know that, but can I -- I'm just asking you the question, did he ask
14 you --

15 A. I don't recall.

16 Q. -- to get off the property?

17 A. It was a year ago and I don't particularly recall the exact verbiage of
18 any of that. I can tell you that I was under constant duress and was being accosted
19 verbally by both of them. In fact, it was so much to the point Mr. Carver tried to
20 restrain Ms. Roseboro.

21 Q. Okay. All right. So you're saying you -- you could have been told to
22 get off the property, but you don't remember? Is that what your answer is?

23 A. It's possible.

24 Q. Okay.

25 MR. POOLE: Thank you.

1 THE COURT: Anything further from the state?

2 MR. GHENT: No, sir.

3 THE COURT: You may step down, sir.

4 THE WITNESS: Thank you.

5 (Witness complied with the Court's request.)

6 THE COURT: Does the State wish to offer any additional
7 evidence in the matter?

8 MR. GHENT: No additional evidence, but, Your Honor, if — if I
9 may, I am prepared to argue.

10 THE COURT: Well, let me see if the moving party wishes to put
11 up any testimony —

12 MR. GHENT: Yes, sir.

13 THE COURT: --- or anything of that nature. Mr. Poole?

14 (Brief Pause)

15 (Off-the-Record Discussion)

16 THE COURT: Are you going to call him as a witness?

17 MR. POOLE: Yes, sir.

18 THE COURT: Come forward, sir, and be sworn.

19 THE WITNESS: Yes, sir.

20 (The witness stepped forward to be sworn.)

21 (Whereupon,

22 JON MICHAEL ROSEBORO

23 first being duly sworn, testified as follows:)

24 THE COURT: Have a seat, please, sir, and state your name
25 once you're seated.

1 **THE WITNESS:** My name is Jon Michael Roseboro.

2 **THE COURT:** Yes, sir?

3 **Direct Examination by Mr. Poole:**

2:54 P.M.

4 **Q.** Mr. Roseboro, let me ask you just a few questions. They're going to
5 be just a handful, all right?

6 **A.** Yes, sir.

7 **Q.** We're not here to try your case right now.

8 **A.** Yes, sir.

9 **Q.** Do you understand why you are on the witness stand?

10 **A.** Yes, sir.

11 **Q.** You know there's a motion pending?

12 **A.** Yes, sir.

13 **Q.** You're here at the court?

14 **A.** Yes, sir.

15 **Q.** I'm going to ask you a couple of questions.

16 **A.** Yes, sir.

17 **Q.** Now, on January 4th, 2011, were you placed under arrest?

18 **A.** Yes, sir.

19 **Q.** And were you placed under arrest by Deputy Hilton?

20 **A.** Yes, sir.

21 **Q.** Okay. Did he come onto your property?

22 **A.** Yes, sir.

23 **Q.** Did he have a warrant with him?

24 **A.** No, sir, he did not.

25 **Q.** Did he tell you that he had a warrant with him?

1 A. No, sir. He said — he stated that he did not ----

2 Q. Okay.

3 A. ---- have it in his possession.

4 Q. All right. And, when he stated that he didn't, what happened? What
5 was — what did you say to him?

6 A. I said — well, when I first saw him on the property, not being mind, my
7 mother told him first before he ever got to where I was at to leave the property if he
8 didn't have a warrant in his hand. And he proceeded to me.

9 At that time, I asked him if he'd didn't have a warrant — did he have
10 the warrant in his hand, and he said "No." I said, "Well, then, I don't have to go
11 anywhere with you. You need to go get the warrant and come back. And I'll be
12 here." And he needs to leave the property.

13 Q. Does he know where you live?

14 A. He passes it every day. He sits across the road and takes pictures of
15 my house.

16 Q. Okay. Now, did you ever see a copy of the warrant?

17 A. Not from him, no, sir.

18 Q. When did you receive it?

19 A. After being in the holding cell about 14 hours.

20 Q. Okay.

21 A. They slid it under the door. I never saw a physical person put it in my
22 hand, no, sir.

23 Q. You were not served with it?

24 A. No, sir.

25 Q. You were in a holding cell?

1 A. Yes, sir.

2 Q. For 14 hours?

3 A. Yes, sir.

4 Q. Okay.

5 A. Before I was even read any rights. Nobody even read my rights.

6 Q. Okay.

7 A. So....

8 Q. And you had not been given a — a warrant ----

9 A. No, sir.

10 Q. ---- prior to that?

11 A. No, sir.

12 Q. Okay.

13 MR. POOLE: All right. Answer any questions Mr. Ghent may
14 have for you.

15 THE WITNESS: Yes, sir.

16 THE COURT: Mr. Ghent, your witness.

17 MR. GHENT: May it please the Court?

18 THE COURT: Yes, sir.

19 Cross Examination by Mr. Ghent:

2:55 P.M.

20 Q. Mr. Roseboro, as I understood what you said, —

21 A. Yes, sir.

22 Q. — the property is not yours?

23 A. No, sir. The property ain't mine, but my mother's.

24 Q. Okay. So there is no question that the property that you were on —

25 A. Yes, sir.

1 Q. — at all times was not yours?

2 A. No, sir, she's the surety bondsman in this case. That's my mother's
3 property. That's why she's here.

4 Q. Okay.

5 A. She is the bondsman.

6 Q. All right.

7 A. It belongs to her.

8 Q. You don't own — you don't have any interest in it whatsoever?

9 A. That's my mother and I own things there, I have my own — I have
10 belongings there.

11 Q. I'm not talking about that, I'm talking about the land. Do you own that
12 land?

13 A. No, sir. That's hers.

14 Q. Do you own the house?

15 A. No, sir. That's hers.

16 Q. Do you pay rent?

17 A. Yes, sir, I do.

18 Q. What do you pay?

19 A. I pay my mother an "x" (phonetic) amount of rent, an undisclosed
20 amount.

21 Q. All right.

22 A. Yes, sir.

23 Q. And, with respect to the officer who came on to the property —

24 A. Yes, sir.

25 Q. — you said that you know him?

1 A. Yes, sir.

2 Q. You all had considerable contacts?

3 A. He's been — that particular week, he had been in my -- in my yard on
4 the property at least three times, but not for me.

5 MR. GHENT: Your Honor, at this time, I would ask — I want to
6 clarify before I go into this. My understanding is he's taking the stand for the
7 purpose of this hearing?

8 THE COURT: Yes, that's right.

9 MR. GHENT: He's, therefore, waived any Fifth Amendment
10 privilege in this hearing. And I would like to go into the circumstances of all of
11 this.

12 THE COURT: Well, you can do that. Obviously, whatever he
13 testifies to cannot be used against him in the later trial.

14 MR. GHENT: I understand that, Your Honor.

15 THE COURT: Only for the purposes of this hearing. Any
16 objection to that, Mr. Poole?

17 MR. POOLE: No, sir.

18 THE COURT: All right. You may proceed.

19 MR. GHENT: Okay.

20 Q. (By Mr. Ghent) Mr. Roseboro, by way of clarification, you lived for an
21 extended period in Florida, did you not?

22 A. No, sir, I did not.

23 Q. You did not?

24 A. I've never been living in Florida, no, sir.

25 Q. Have you ever been to Florida?

- 1 A. Yes, sir.
- 2 Q. Have you ever been arrested in Florida?
- 3 A. No, sir, I have not.
- 4 Q. You have not?
- 5 A. No, sir, I have not.
- 6 Q. Have you ever been arrested in South Carolina?
- 7 A. Yes, sir, I have.
- 8 Q. A number of times?
- 9 A. More than once.
- 10 Q. Well, a number of times?
- 11 A. Okay. That's more than once, yes, sir.
- 12 Q. Okay. And have you ever been convicted in South Carolina?
- 13 A. Yes, sir, I have.
- 14 Q. Is there any question you were convicted in Duncan City Court on the
- 15 charges that gave rise to this bench warrant?
- 16 A. There's a question to me, sir because I can — to this day — til the day
- 17 that I heard about the warrant, I had never known anything about it.
- 18 I was tried in absentia, okay, and I didn't even know anything about
- 19 trial or a case in Duncan City. I live in Roebuck.
- 20 Q. Were you arrested in absentia — in absentia?
- 21 A. I wasn't arrested in Duncan, sir. I never went to jail in Duncan.
- 22 Q. Were you arrested for drug paraphernalia?
- 23 A. No, sir.
- 24 Q. You've never been arrested for —
- 25 A. Not in Duncan, no, sir. Not in Duncan, because I live in Roebuck.

1 Q. Okay. Have you ever been arrested in Roebuck for drug
2 paraphernalia?

3 A. No, sir, I have not, not in Roebuck.

4 Q. Have you ever been arrested in South Carolina —

5 A. Yes, sir, I have.

6 Q. — for drug paraphernalia? Where?

7 A. Spartanburg.

8 Q. Spartanburg?

9 A. Yes, sir.

10 Q. In the county or the city?

11 A. The city I think it was.

12 Q. More than one time?

13 A. I can't remember. I think — I think maybe I had — no, not more than
14 once; not in the city, no.

15 Q. Have you been arrested for forgery?

16 A. Yes, sir.

17 Q. More than one time?

18 A. I thought I was arrested once for more than one charge.

19 Q. Okay.

20 A. Yes, sir.

21 Q. Once for more than one charge?

22 A. Yes, sir.

23 Q. We can go with that. Now, with respect to this particular charge —

24 A. Yes, sir.

25 Q. — this particular bench warrant —

1 A. Yes, sir.

2 Q. — when Officer Hilton came, did he tell you that there was an
3 outstanding bench warrant for you?

4 A. He said, "I have a warrant. Jon, I have a warrant for you."

5 Q. Are you all on a first name basis?

6 A. That's what he called me. I don't call him Jason. He called me Jon.

7 He took that liberty. We're not friends.

8 Q. Well, what do you call him?

9 A. Officer Hilton.

10 Q. Okay. Did you, once you were in the car — or even before you got in
11 the car, began coughing on him?

12 A. No, sir, I did not.

13 Q. Did you tell him you had tuberculosis?

14 A. No, sir, I did not.

15 Q. Have you ever said that you had tuberculosis?

16 A. Sir, I said that I had been tested for tuberculosis. Now, would you like
17 to hear the stipulation on — on the procedure behind that?

18 Q. I will ask the question again: Have you ever said —

19 A. Said I had tuberculosis?

20 Q. Right, in response to a questionnaire that you have tuberculosis?

21 A. Yes, sir, I have.

22 Q. Okay.

23 A. But not to him. I said that I had been tested for tuberculosis and that
24 they had not proven rather it was active or not. And that was based on my next door
25 neighbor's son who had died from tuberculosis and his mother giving my name to

1 the health department as possibly being exposed to tuberculosis.

2 So I had to go and get tested for tuberculosis ----

3 Q. Okay.

4 A. — at the time I got arrested.

5 Q. Again, with respect to those records —

6 A. Okay.

7 Q. — what you signed, put down at the jail —

8 A. Okay.

9 Q. — did you not, number one, respond — in response to a
10 questionnaire, yes, you had tuberculosis?

11 A. Not to my knowledge. If that is so, that is why I did so, sir, because I
12 was being tested for tuberculosis. They tested me when I went down there with
13 Officer Hilton's arrest for tuberculosis. They had —

14 Q. Did they not send you out for an x-ray?

15 A. Yes, sir, against my consent. Sir, I'm a recovering cancer patient. For
16 me not to sign a consent form to be exposed to radiation, should not ever occurred.
17 But, yes, they did send me out for a chest x-ray.

18 Q. Did they not give you Mucinex?

19 A. Mucinex for tuberculosis?

20 Q. No, not for tuberculosis because you are coughing?

21 A. They gave me Mucinex for the sinus from the dust from being in the
22 Annex, sir.

23 Q. Because you were coughing?

24 A. Well, I guess if — if Mucinex is for a cough. It's really for — for sinus
25 congestion.

1 Q. All right.

2 A. Which I — which I incurred from having a third of a can of Germ-X
3 sprayed in my face in the police car.

4 Q. So what you're saying is, that before you got to the jail, you didn't say a
5 word about tuberculosis?

6 A. No, sir. My exact words to Officer Hilton were, "I am just now getting
7 over the worst cold of my life. My brother Roy (phonetic) had given me the worst
8 cold of my life.

9 I said, "And I can just barely breathe." He was going to tell me that I
10 was going to have to put on a hoodie because I might cough. And I said, "I'm not
11 coughing."

12 He said — he argued with me, you wouldn't be going to jail if it wasn't
13 for my stupid mother. But, nevertheless, these are his exact words.

14 But he was going to put this hoodie on my head and turn it sideways
15 and then spray at a crease with the wind blowing it back there in my face.

16 So I'm laying on the floor of the car coughing because he's spraying it,
17 which it says on the can, "Do not ingest — do not in — inhale in a small area," and
18 all of this. And he's spraying it in my face with a hoodie and I can't even breathe.

19 And I'm telling him, "I'm just getting over the worst cold in my life." I
20 told him, "I've got a mask in the house for my protection." He would not —

21 Q. Well, let me just get it clear, okay?

22 A. Okay.

23 (Inaudible, both speaking at the same time.)

24 Q. Please ----

25 THE COURT: I'm going to ask both of you —

1 THE WITNESS: I'm sorry, sir.

2 THE COURT: — to — to allow the Court to intervene.

3 THE WITNESS: Yes, sir.

4 THE COURT: Let's try to stay on the subject of the arrest.

5 MR. GHENT: Yes, sir.

6 THE COURT: I think we've gotten far afield.

7 MR. GHENT: Yes, sir.

8 Q. (By Mr. Ghent) With respect to the arrest —

9 A. Yes, sir.

10 Q. — he told you that there was an outstanding bench warrant, did he
11 not?

12 A. Yes, he did. He stated there was an outstanding bench warrant.

13 Q. And you were, then, taken to jail?

14 A. No. I asked him to show it to me, sir.

15 Q. Okay. And he made a phone call?

16 A. No, sir.

17 Q. Did he not?

18 A. No, sir, he did not.

19 Q. You deny that he made a phone call?

20 A. He was already on the phone at the time he was walking up. He said,
21 "I have a — I have an outstanding warrant for you." I said, "Show it to me."

22 Q. And, then, at that time, he confirmed there was an outstanding bench
23 warrant to you —

24 A. How was he going to confirm it to me, sir, if he never gave it to me?

25 Q. I'm saying he confirmed that there was ----

1 THE COURT: I'm going to ask the witness to answer the
2 question.

3 THE WITNESS: I'm sorry.

4 THE COURT: You don't ask questions; he asks questions.

5 THE WITNESS: I'm sorry, I ----

6 THE COURT: Be responsive.

7 THE WITNESS: Okay.

8 A. No, sir, he did not confirm it to me.

9 THE COURT: Thank you.

10 Q. He did not tell you that there was an outstanding bench warrant?

11 A. Yes, sir, he did. He did say that. He did say that, yes, he did.

12 Q. Okay. He did not serve you at the time?

13 A. No, sir, he did not.

14 Q. And you were later served at the jail?

15 A. I later received the warrant, on -- on -- yes, sir, in a holding cell, yes,

16 sir.

17 Q. Okay.

18 MR. GHENT: That will be all, Your Honor.

19 THE COURT: Thank you. Anything further, Mr. Poole?

20 MR. POOLE: No, sir.

21 THE COURT: You may step down.

22 THE WITNESS: Thank you, Your Honor.

23 (Witness complied with the Court's request.)

24 MR. POOLE: Fannie Roseboro (phonetic).

25 THE COURT: Ma'am, come forward and be sworn.

1 (The witness stepped forward to be sworn.)

2 (Whereupon,

3 Fannie Mae Roseboro

4 first being duly sworn, testified as follows:)

5 (Off-the-Record Comments)

6 THE COURT: Have a seat, please, ma'am. And, once you're
7 seated, state your name.

8 THE WITNESS: Fannie Roseboro.

9 THE COURT: You may proceed, Mr. Poole.

10 Direct Examination by Mr. Poole:

3:04 P.M.

11 Q. Ms. Roseboro, may I ask you to speak up because you have a very
12 faint voice and everything has to be taken down by this lady right here (indicating),
13 Okay?

14 A. Okay. I'll do my best.

15 Q. All right. You live in Roebuck?

16 A. Yes, I do.

17 Q. What is your address?

18 A. [REDACTED]

19 Q. Okay. And who lives there with you?

20 A. Jon Michael Roseboro, my son.

21 Q. Okay. Who lived with you there on January 4th of 2011?

22 A. Jon Michael and Rodney Carver (phonetic).

23 Q. Okay. How old you, ma'am?

24 A. Seventy-nine (79).

25 Q. Okay. Do you work anywhere?

1 A. Occasionally I'll do a day's work.

2 Q. Okay. All right. Were you at home on — the time that your son was
3 taken into custody on January 4th?

4 A. Yes, I was.

5 Q. Okay. Did you see Deputy Hilton come into your yard?

6 A. Oh, yes. My dog always barked. And I went to see what she was
7 after. And it was him. And I asked him what he wanted.

8 Q. What did he say?

9 A. He said he had a warrant for Jon's arrest.

10 Q. Okay.

11 A. And I asked him to show me the warrant. And he said he didn't have it
12 with him. But he — I asked him to leave if he didn't have the warrant and come
13 back with the paperwork. But he proceeded into the yard and he would not leave.

14 Q. Okay. Did you berate him or get into an argument with him?

15 A. Oh, no. I'm — I'm not a violent person. And I had no reason to berate
16 him. But I did ask him to leave my property.

17 Q. Is it your property?

18 A. Yes, sir.

19 Q. And Jon lives with you there?

20 A. Yes, sir.

21 Q. Does he pay you money to live there?

22 A. Yes, sir.

23 Q. Okay. All right.

24 (Brief Pause)

25 MR. POOLE: Thank you.

1 THE COURT: Mr. Ghent?

2 MR. GHENT: May it please the court?

3 THE COURT: Uh-huh (affirmative).

4 Cross Examination by Mr. Ghent:

3:07 P.M.

5 Q. Just a few questions, Ms. Roseboro. What does Jon do by way of
6 employment?

7 A. He's not employed right now, sir.

8 Q. What does Rodney do by way of employment?

9 A. I don't know. Rodney don't live with me.

10 Q. Okay. Was Rodney there that day?

11 A. He was there at that time.

12 Q. But it's only Jon who lives there?

13 A. Yes.

14 Q. And Jon is unemployed?

15 A. Yes, sir.

16 MR. GHENT: Thank you.

17 MR. POOLE: Nothing further, Your Honor.

18 THE COURT: You may step down, ma'am.

19 THE WITNESS: Thank you.

20 (Witness complied with the Court's request.)

21 MR. POOLE: No other proffered testimony at this time.

22 THE COURT: All right. Then, I'll hear argument. Your motion.

23 MR. POOLE: I -- I would merely reiterate already what has
24 been presented into the record. This was a warrantless arrest without a
25 doubt.

1 Therefore, it's unconstitutional. If there was any resistance, which
2 would include any throwing of bodily fluids. It would have been allowed and
3 appropriate. But more particularly, there's really no proof that what the
4 Defendant said is not true.

5 He was placed under arrest, after the officer was told to leave the
6 property by two people, who have ownership interest and -- and/or possessor
7 interest, in that property.

8 The officer proceeded with the arrest without a warrant, taking in --
9 into custody, and we have no proof, other than what the Defendant said, that
10 he received the warrant 14 hours later when he was still in a holding cell.

11 Under all these circumstances -- under these facts -- which I think
12 are uncontroverted, this case should be dismissed on the aforementioned
13 constitutional grounds. And that's simply our argument.

14 **THE COURT:** All right. Mr. Ghent?

15 **MR. GHENT:** May it please the court?

16 **THE COURT:** Yes, sir.

17 **MR. GHENT:** With respect to our burden, our burden is only to
18 show circumstances of a lawful arrest, a reasonable arrest, a proper arrest,
19 under the Constitution by a preponderance of the evidence.

20 Several things: First of all, the officer testified -- Mr. Hilton testified that
21 he called on his cell phone and received confirmation, via the sheriff's office
22 computer network, that there was a valid outstanding warrant. That was on
23 his computer.

24 Again, we live in a different day and age. We now have officers who
25 are wired for instant communication verbally with each other, as well as

1 through computers that are in their cars.

2 He's now satisfied with that. He, then, called on the telephone and
3 asked one of his fellow officers to give confirmation to him that there was, in
4 fact, an actual warrant outstanding. That showed that he was not going to
5 leave it with only what the computer said.

6 He called another officer, got him on the phone, asked him to confirm.
7 The officer confirmed that he had the warrant in hand.

8 And two things that are critical, according to the Defendant himself:
9 He was on the phone as he was walking up.

10 Your Honor, I will respectfully submit that there is a doctrine that
11 applies under the Fourth Amendment to arrests and searches. And a
12 doctrine which applies — which would also apply under Article 1 — excuse
13 me — Article 5, Section 10 of the South Carolina Constitution, called the
14 collective knowledge doctrine.

15 Basically, if an officer has information, knowledge, confirmation, and
16 he is part of the same law enforcement unit, same law enforcement activity,
17 then, the knowledge of one is imputed to all.

18 Under these circumstances, at that point, Officer Hilton had
19 information sufficient to make a lawful arrest.

20 Now, with respect to the property, I would respectfully submit that
21 number one, he got that information as he was walking up to the door,
22 walking up to the house, walking onto the property. There's no question this
23 Defendant had no ownership right in the property.

24 It was not his property. I know that the next question that would come
25 to me is, but what if he was a tenant? Well, that's all well and good except for

1 a tenant who pays money has to get the money from somewhere.

2 According to his own mother, he doesn't work. I let him go on and on
3 and on, but —

4 **THE COURT:** Well, he could be a licensee. He could be on the
5 property with permission.

6 **MR. GHENT:** He could be on the property with permission, but
7 under these circumstances, Your Honor, the contention was that he was a
8 tenant. And I am merely saying that the evidence —

9 **THE COURT:** Well --- and really, I'm not sure that's an important
10 point. The question is, he could have been on a city street, if he's being —
11 the question is whether he's being legally arrested or not.

12 **MR. GHENT:** And I'll go back to the collective knowledge
13 doctrine, Your Honor. And that's really what I have to rely on because the
14 facts are what they are. There was not an actual, physical bench warrant in
15 the officer's hand.

16 And the officer testified truthfully. He testified what he did and why he
17 did it. But, again, in this day and age especially, we live under circumstances
18 where these officers are in greater communication with one another.

19 There is a recent case, from the US Supreme Court, *United States vs.*
20 *Antonio Jones* (phonetic), which qualified an older case, *Karo* — I think it's K
21 — A — R — O.

22 And a lot of the things that both the majority and I believe it's either
23 concurring or dissenting — no, it's a concurring opinion — Justice Sotomayor
24 (phonetic) reminds us of is how this world has changed and has changed
25 dramatically for purposes of the Fourth Amendment.

1 So my argument is collective doc -- knowledge doctrine. And, again,
2 we are in different circumstances where the actual physical warrant itself, a
3 bench warrant, would not have been required once the officer confirmed that
4 it did exist. Thank you, Your Honor.

5 **THE COURT:** All right. What I intend to do is I'm going to — I'm
6 not going to place the case before the jury today. I'm going to take the matter
7 under advisement. There are some things I need to look at.

8 I'm — I'm reviewing, at the present time, *State vs. McGowan*
9 (phonetic). It's a 2001 case. It seems to — to reaffirm the Supreme Court's
10 previous position.

11 And I'll just read the paragraph I'm looking at; "This Court has
12 previously recognized that a person has a right to resist an unlawful arrest,
13 even to the extent of taking the life of the aggressor if that be necessary in
14 order to regain his liberty."

15 And it cites cases that go back as far as 1919. However, the cases do
16 not stand for the blanket proposition that one may, in every instance, resist an
17 unlawful arrest to the point of deadly force without the fear of repercussion.

18 Of course, this doesn't involve deadly force. This particular case,
19 unfortunately, did. To the contrary, the case that clearly reveal (someone
20 coughs) that "only such force as is reasonably necessary under the
21 circumstances may be invoked."

22 I guess the first question I'll have to breach is whether or not the arrest
23 was legal or not. And I've got to admit that, on my first look at it, it appears
24 that, if you're serving process, you have to have the process. And, when
25 you're asked for it, you have to produce it.

1 And that's what — that's what the statutes appear to require. And, in
2 this case, obviously, someone questioned the authority of the arrest, the
3 actual process, and none was produced. And he was taken into custody and
4 held 14 hours without receiving any process.

5 It seems like a long time. And, of course, I understand your argument,
6 Mr. Ghent, but, you know, I also have to recognize that, in this day and time
7 of computers and things of that nature, probably we're more capable of
8 serving warrants now than we were when these cases came down in the
9 early 1900s.

10 So it would seem to me that, if anything the requirement might be
11 more stringent that the document be produced. But, at any rate, there's a lot
12 of things that have to be considered.

13 I think I need the time to read the cases that underlie this one, as well
14 as the cases that underlie the statute. So I want to take the matter under
15 advisement at this point in time.

16 I'll issue a decision at a later time. Because of the dispositive nature of
17 your motion, we couldn't dispose of the case altogether and I'm going to
18 release the jury at this point in time.

19 **MR. GHENT:** Yes, sir. Thank you, Your Honor.

20 **THE COURT:** Let's bring the jury in.

21 **(Whereupon, the jury was summoned and entered the courtroom**
22 **at 3:20 p.m.)**

23 **(Off-the-Record Comments)**

24 **THE COURT:** All right. Ladies and gentlemen, I want to thank
25 you for your patience. I told you that I had some pretrial matters to take up

1 with the attorneys. And I have done that thus far.

2 I will tell you that one of the motions that I have heard, it is -- it's a
3 motion such that, depending on the decision that I make, the case won't --
4 will most probably be disposed of.

5 I don't see any reason to -- to hold you any longer in the matter. And,
6 for that reason, I'm going to release you from any further service in this
7 matter.

8 I want to thank you for your cooperation and -- and your presence
9 here today. The good news is, I believe they've released the jury for the
10 week. They're not starting another case; is that right?

11 **MR. GHENT:** Yes, Your Honor, you're right.

12 **THE COURT:** So, this will end your service as far as the jury is
13 concern. The bailiffs will take you back around to the assembly room, check
14 you out.

15 I want to thank you for your presence. I don't know how many of you
16 got to be involved in the process of a trial, but I hope that this has been of
17 interest to you and somewhat educational as you learned a little bit about
18 what goes on in the courthouse during weeks of criminal court.

19 But thank you for your presence. Your presence has been of great
20 assistance. And the bailiffs will show you out and I trust you have a good
21 weekend. Thank you.

22 **(Whereupon, the jury was released and exited the courtroom**
23 **at 3:22 p.m.)**

24 **THE COURT:** All right. Court is in recess in this matter. I'll issue
25 an order in this matter shortly. Thank you very much.

1

MR. GHENT: Thank you, Your Honor.

2

MR. POOLE: Thank you, Your Honor.

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(Whereupon, the proceeding concluded at 3:23 p.m.)

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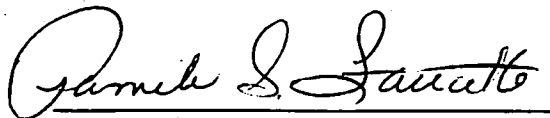
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REPORTER'S CERTIFICATE

I, the undersigned **PAMELA FAUCETTE**, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that I acted as the court reporter at the foregoing proceeding; that the foregoing pages, numbered 1 through 44, were transcribed by me and represent a true and accurate transcript of said proceeding to the best of my knowledge and belief.

I do further certify that I am not of counsel for or in the employment of either of the parties to this action, nor am I interested in the results of this action.

April 12, 2014

A handwritten signature in cursive script, reading "Pamela S. Faucette", written over a horizontal line.

Pamela S. Faucette
Official Court Reporter
Seventh Judicial Circuit

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
The State,	)	
	)	
v.	)	ORDER
	)	
Jon Roseboro,	)	
	)	
Defendant.	)	

The Defendant was arrested on January 4, 2011 on a bench warrant. Based on his actions during and after that arrest, charged by arrest warrant # M-751878, he was indicted at the March 28, 2011 term of the Spartanburg County Grand Jury on a Count of Throwing of Bodily Fluids pursuant to S.C. Code of Laws of 1976, as amended.

The case was set for trial during the October 1 term of Circuit Court. Prior to trial the Assistant Solicitor learned that the bench warrant was not physically served upon the Defendant until after he was arrested and in a detention cell at the County Jail on January 4, 2011, some fourteen hours after having been taken into custody.

The Defendant moved for dismissal of the charges based on the allegation that the arrest was unlawful and that the Defendant had the right to resist an unlawful arrest by any means available to him up to, and including, the use of deadly force.

FACTS

On the afternoon of January 4, 2011, Officer Jason Hilton of the Spartanburg Sheriff's Office was on routine patrol in the Roebuck Community of Spartanburg County. While on his assigned route, he reviewed by streets on his route listings on Spillman 6.1, a database of the Spartanburg County Sheriff's Office for defendants, for outstanding warrants and incident reports in Spartanburg County. From Spillman, Officer Hilton learned that there was an outstanding bench warrant from Duncan, in Spartanburg County for Jon Roseboro, who lived at [REDACTED] in the Roebuck Community on Officer Hilton's route.

Officer Hilton went to the address for Mr. Roseboro and while walking across the lawn and exterior premises, called to double-check and confirmed with the Warrants Division of the

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Spartanburg County Sheriff's Office, who confirmed with the City of Duncan that the Bench Warrant was still active. The warrant was not in the possession of Deputy Hilton.

The home was owned by Mr. Roseboro's mother and he resided there with her. When the Deputy encountered the Defendant, Deputy Hilton told the Defendant that there was an outstanding bench warrant and he was to come with him. Defendant testified and the Deputy agreed with Mr. Roseboro that he disputed the bench warrant at the scene and asked to be shown the warrant. After the Deputy was unable to produce the warrant the Defendant's mother testified that she told the officer to leave her property.

At some point in the encounter, according to Officer Hilton he walked the Defendant to his patrol car and handcuffed him; during this period Officer Hilton testified that the Defendant told him that he had tuberculosis, that he was going to cough all over him and began coughing towards and on him. At the patrol car, the officer took out a "hoodie" or plastic bag with a plastic mesh face cover to allow for breathing, put it on the Defendant's head and then put him in the back of his patrol car. Officer Hilton testified that on the way to the County jail, the Defendant continued resist the arrest by coughing in his direction through the metal mesh divider between the front and back seats. The Defendant disputed this.

At the jail, Officer Hilton put the Defendant in a holding cell, removed the handcuffs and "hoodie" and Officer Hilton left the Defendant in the cell. He then informed booking officers of the Defendant's conduct and cleaned his uniform and squad car with antibacterial sanitizers. Mr. Roseboro remained in the holding cell for fourteen hours before a copy of the Town of Duncan Bench Warrant was slid under the door of his holding cell.

Based on this conduct, and after Deputy Hilton conferred with Sergeant Ted Beaty, a warrant was issued against the Defendant for Throwing Bodily Fluids under S.C. Code Ann. Sec. 24-13-470 (1976) as amended.

ISSUE PRESENTED

Whether the Defendant's arrest on an outstanding bench warrant, under the totality of the circumstances presented, was lawful and constitutional under federal and state constitutional state statutory requirements and the common law of this State and the United States?

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ARGUMENT

There appears to be no question that a Deputy Sherriff has the duty and the responsibility to arrest and bring before the proper authorities a person for whom there is an outstanding warrant for their arrest. Under the statutory law of South Carolina, "[t]he sheriff or his deputy *shall* arrest all persons against whom process for that purpose shall issue from any competent authority commanding such person to be taken into custody or requiring him to give bond, with security." S.C. Code Ann. Sec. 23-15-50 (1976, as amended, 2010/2011). It is noted that, with respect to the directive of the statutory language to deputies in the course of their duties, it is *mandatory*, rather than precatory.

Officer Hilton was properly and reliably informed that process for the arrest of the Defendant had been issued from the City Court of Duncan on a bench warrant for a conviction in that court for possessing drug paraphernalia, a misdemeanor. The sentence imposed for this misdemeanor was a fine of \$111 or 30 days. Deputy Hilton was also compelled by statute as to some of the steps he took to verify the warrant, its efficacy, and the information which corroborated the address of the Defendant in arresting the Defendant.

Historically in South Carolina in order for an officer to have probable cause to make an arrest for a misdemeanor it was necessary for the crime to have been committed in the officer's presence or, if the arrest is based on a warrant, that the officer have the warrant in his possession at the time of the arrest. State v. Mims, 263 S.C. 45, 208 S.E. 2d 288 (1974). That rule was relaxed in State v. Martin, 275 S.C. 141, 268 S.E. 2d 105 (1980) which provided that a legal arrest for a misdemeanor could be made "when the facts and circumstances observed by the officer give him probable cause that a crime has been freshly committed."

The erosion of the Mims rule has continued in that now under South Carolina law an officer is allowed to make a warrantless arrest for a misdemeanor if the officer knows that a valid arrest warrant has been issued for an arrest of an individual. See State v. Grate, 304 S.C. 423, 423 S.E. 2d 119 (1992) and State v. Sims, 304 S.C. 409, 406 S.E. 2d 377 (1991) and State v. Sims, 304 S.C. 112, 112 S.Ct. 1193 (1992). It appears that South Carolina does recognize that Officer Hilton had the probable cause and the right to proceed with an arrest given that fact that he had confirmed the existence of an active arrest warrant for Roseboro.

However, this case is further complicated by the fact that Roseboro did not realize that a warrant was outstanding for his arrest and because he demanded to see the warrant while still on

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his mother's premises. This demand for service of a warrant is addressed in the S.C. Code as follows:

§ 17-13-50. Right to be informed of ground of arrest; consequences of refusal to answer or false answer.

(A) A person arrested by virtue of process or taken into custody by an officer in this State 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:

- (1) refuse to answer a question relative to the reason for the arrest;
- (2) answer the question untruly;
- (3) assign to the person arrested an untrue reason for the arrest; or
- (4) neglect on request to exhibit to the person arrested or any other person acting in his behalf the precept by virtue of which the arrest is made.

(B) An officer who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both.

This code section requires that an arresting officer must answer questions relating to the arrest truthfully and provide a copy of the precept (warrant) upon which the arrest is made, if requested. A copy of the arrest warrant was not given to Roseboro until after he was detained fourteen hours in a holding cell at the Spartanburg County Detention Center. § 17-13-50 (A)(4) does not provide any specific requirement as to exactly when during an arrest that the precept must be exhibited to the arrestee.

South Carolina has viewed an arrest as a continuing process that begins with announcement to a suspect that he/she is under arrest and continues until the person is properly confined in his/her cell. "An arrest is an ongoing process, finalized only when the defendant is properly confined." State v. Dowd, 411 S.E.2d 428, 306 S.C. 268, (S.C. 1991). In Dowd the suspect had been arrested for DUI, had been given his breathalyzer test, booked and was being placed in his cell when he struggled with the officers resulting in injuries to himself and the

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officers. The court held that until the cell door had slammed (which it had not yet done) the suspect could be charged with resisting arrest, since the arrest process had not yet been completed.

In this case this court finds that the arrest process started with Deputy Hilton's announcement to Mr. Roseboro that he was under arrest for an outstanding bench warrant and continued until he was booked at the jail and placed in his assigned cell. While probable cause was still being determined and prior to being placed in his assigned cell, he was served with a copy of the bench warrant from the Town of Duncan. This court finds that this process satisfied the requirements of §17-13-50 (A)(4).

Having determined that the arrest process in this case was legally conducted, and that therefore, the Defendant Roseboro would have had no common law right to resist an illegal arrest, it is:

ORDERED, that the motion to dismiss the charges of Throwing Bodily Fluids is denied and those charges may proceed to trial.

Spartanburg, S.C.
October 19, 2012


Roger L. Couch, Circuit Judge
Seventh Judicial Circuit

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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
 -VS-)
)
 JON M. ROSEBORO,)
)
 DEFENDANT.)
 _____)

2011-GS-42-01833
2012-GS-42-06339
TRANSCRIPT OF RECORD

MARCH 21 - 22, 2013
SPARTANBURG, SOUTH CAROLINA

B E F O R E:

THE HONORABLE J. DERHAM COLE

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

ATTORNEY FOR PLAINTIFF:

RUSSELL GHENT,
ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

ROGER POOLE,
ASSISTANT PUBLIC DEFENDER

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

1 **MR. GHENT:** Good morning, Your Honor.

2 **THE COURT:** Good morning.

3 **MR. POOLE:** Could we approach, Your Honor?

4 (Whereupon a bench conference was held off the record)

5 (Whereupon Court's exhibit 1 was marked)

6 **MR. GHENT:** Your Honor, is there any problem with me
7 just, on the record, -- Mr. Couch [sic] has stepped out.
8 And at this time I don't know if we put on the record the
9 number on the roster. It was my understanding that Your
10 Honor likes to know what the case number ---

11 **THE COURT:** Oh, well, that's just on guilty pleas.
12 I'll need to know where it is.

13 **MR. GHENT:** Yes, sir. These are the indictments, Your
14 Honor. Thank you, sir.

15 **THE COURT:** Okay.

16 **MR. GHENT:** Your Honor, I know it's premature, but this
17 is requests to charge that I pulled from my source. So I'm
18 kind of doing everything. And I didn't get a chance to make
19 a copy of that for you. And I apologize.

20 **THE COURT:** All right. The next case is State versus
21 Jon Michael Roseboro. Are you Mr. Roseboro?

22 **MR. ROSEBORO:** Yes, sir.

23 **THE COURT:** Mr. Poole's your lawyer?

24 **MR. ROSEBORO:** Yes, sir.

25 **THE COURT:** And, Mr. Poole, your client wants to have a

OPENING STATEMENTS - MR. GHENT

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1 the credibility of their testimony in light of every
2 witness's testimony and all the evidence in the case. Keep
3 an open mind throughout the course of the trial. Don't
4 begin formulating your opinions as to the ultimate decision
5 until all of the evidence has been received, until I've
6 instructed you on the law that's applicable and until you've
7 been asked to begin with your deliberations.

8 That is the process that is designed for you twelve
9 jurors to arrive at a fair and just decision in the case.
10 So thank you in advance for your participation as well as
11 for your careful attention. Please give the lawyers your
12 attention now as they give you their opening statements.
13 Mr. Ghent.

14 **MR. GHENT:** May it please the Court.

15 **THE COURT:** Yes, sir.

16 **MR. GHENT:** Mr. Poole, Madame Forelady, ladies and
17 gentlemen of the jury. Again, I'm Russell Ghent. It's my
18 job, my privilege, my duty to represent the State in this
19 case that you're now going to decide.

20 It's rather late in the week. Some of you may have
21 already served. So some of what I say may be repetitive.
22 But I want to begin with two words which can never be
23 redundant, those words are thank you.

24 Thank you for doing your duty in coming here to serve.
25 Thank you for in the process of qualifications serve,

OPENING STATEMENTS - MR. GHENT

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1 undergoing some somewhat intrusive questions, I'm sure you
2 felt were intruding, but we need to know that you will take
3 your duty and your oath seriously. And, finally, thank you
4 for now being sworn to perform a very serious, a very
5 important duty in our legal process.

6 It seems that we live in an era where people
7 continually complain about the government. They say the
8 government is constantly doing things wrong. They say the
9 government can't get it right. They say people in the
10 government can't work together.

11 Well, congratulations, ladies and gentlemen, you are
12 now that government. You are now part of that government.
13 You now have a chance to do a solemn duty, follow your oath,
14 be fair and impartial, listen to the evidence and give us a
15 verdict.

16 Your duty is to decide what happened. And the Judge
17 will instruct you as to the law that you will apply to what
18 happened. What that means is that the Judge is the judge of
19 the law.

20 And we address Judge Cole, we call him Your Honor.
21 That's not pandering or sucking up to the Judge or whatever
22 expression you choose to use. That is something that has
23 evolved through decades, centuries of tradition. And the
24 reason for that, it is our hope that the man who -- or woman
25 who wears the black robe will, in fact, become synonymous

OPENING STATEMENTS - MR. GHENT

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1 with the honor and dignity that we expect in the courts.

2 With you, you are judges of facts. And while the word
3 juror may not have a particular significance to you, the
4 word verdict should. The word verdict comes from the Latin,
5 veredicto, which means I speak the truth. That is what we
6 are looking for from you.

7 We want a verdict that is the truth when you take the
8 facts as you find them and you apply those facts to the law
9 that His Honor, Judge Cole, will instruct you on. You
10 cannot change the law. You cannot say I don't like it, it's
11 a bad law, I'm not going to do that. In the same way, he
12 cannot invade your jury room and tell you what the facts
13 are.

14 This is a matter of everybody in the process being
15 allocated a certain duty to apply what they bring to the
16 courtroom. We bring our experience as lawyers. You bring
17 common sense. You bring your every-day experiences. And
18 hopefully you bring the sense of being fair to both sides,
19 that you don't feel that you should go back in that jury
20 room and be where Mr. Poole and I are. We're advocates.
21 The Judge has already told you that what I say is not
22 evidence.

23 When you go back in that jury room I would hope that
24 once you're ready to deliberate that you will understand
25 that while you came here as one, and you will leave as one,

OPENING STATEMENTS - MR. GHENT

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1 you are now a jury as one. You came alone, but twelve of
2 you together are now one.

3 And you must, in order to do your duty, show respect
4 for one another, discuss the facts. There are twelve of you
5 for a lot of reasons. And one of those reasons is that
6 allows twelve different eyes and ears to be trained on what
7 is going on in this courtroom and give us a fair decision
8 that takes everything together and says this is what
9 happened, this is the truth, we believe this. That is
10 critical in what you do.

11 The Judge has already told you we have the duty, the
12 burden, and I'll say, the privilege of proving the charges
13 beyond a reasonable doubt. That is what we must do. And we
14 intend to.

15 But a reasonable doubt is a real doubt. It's not a
16 fanciful doubt. It's not a doubt based on speculation.
17 It's not a, well, I just don't like it doubt. It's
18 listening to one another to where you eliminate the chaff
19 and get to the lead of what the truth is.

20 I accept readily our burden to prove guilt beyond a
21 reasonable doubt. The charges in this case are throwing
22 bodily fluids on an officer when someone's in custody, and
23 we'll tell you how that applies, and opposing and resisting
24 an officer when he is trying to take someone into custody
25 pursuant to a legal process.

OPENING STATEMENTS - MR. GHENT

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1 We will prove beyond any reasonable doubt that on
2 January 4th, 2011 during the afternoon Jason Hilton, a
3 deputy with the Spartanburg County Sheriff's Office, routine
4 patrol, they have computers in their cars. He learns that
5 the Defendant, Jon Roseboro, has an outstanding warrant.

6 He goes to the Defendant's residence to serve the
7 warrant. He double checks, when he gets there, yes, there
8 is a warrant. He then goes up and knocks on the door,
9 approaches the Defendant and says he has a warrant. The
10 Defendant then says, well, I want to see it. He doesn't
11 have it yet, but he tells him there is a warrant.

12 He then begins the process of taking him into custody.
13 And there will be testimony then as to what happened. And
14 it's up to you to decide the truth of what happened. The
15 bottom line is the Defendant told the deputy he had
16 tuberculosis and proceeded to cough on him repeatedly and
17 cough in his direction.

18 And one of the things I will tell y'all is I have a
19 chronic cough. I've had it for forty years. You can't
20 catch it, okay? None of you needs to be concerned if I
21 cough when I'm up here, okay?

22 On the other hand, if someone were to tell you, I have
23 tuberculosis, and then begin coughing all over you, ask
24 yourself what is to be expected under those circumstances.
25 This is going to be the nub of this case, the gist of this

OPENING STATEMENTS - MR. POOLE

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1 case.

2 We are not going to say that the Defendant attacked
3 this officer. But these officers have been called in the
4 language of our own Supreme Court, the infantry men of
5 democracy. It means that they are that thin blue line
6 that's out there on the streets.

7 I ask that you listen to the evidence, it's going to be
8 a brief case, three witnesses, that you be fair to the State
9 as well as to the Defendant. And I'm sure at the end of it
10 you will be satisfied that the State has satisfied its
11 burden of proving this Defendant's guilt beyond a reasonable
12 doubt. Thank you.

13 **MR. POOLE:** May it please the Court.

14 **THE COURT:** Mr. Poole.

15 **MR. POOLE:** Mr. Ghent. Good morning. Madame Forelady,
16 ladies and gentlemen, I have the privilege of representing
17 Jon Roseboro. He's charged with what you already know as
18 resisting arrest and throwing bodily fluids.

19 I agree with the majority of what Mr. Ghent, my friend,
20 has told y'all about what your role is. You already know
21 that. I'm not going to go back over it.

22 I want to say thank you, like he did, for being here.
23 I know you don't have a choice, but it's kind of an
24 imposition on a Thursday afternoon, people have things to do
25 and lives to lead to be stuck in a box on a Thursday

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1 afternoon.

2 But I will tell you this, I think the case is going to
3 be short also. But the brevity of the case does not take
4 away from the fact that it's very important for the State
5 and for this man right over here, who I have the privilege
6 to represent, Mr. Jon Roseboro.

7 Mr. Roseboro is in his fifties, okay? He lives on Pine
8 Ridge Road down in Roebuck. And he lives with his mother,
9 this lady right over here. And she's going to be a witness.

10 Now, Mr. Roseboro doesn't have to prove anything. He
11 does not have to come to the witness stand, but he will.

12 And this lady will come to the witness stand and she will
13 too show you and tell you what happened on this day.

14 Now, let's get right straight to the facts because
15 that's what y'all have got to decide, what the facts were.
16 Y'all are like reconstructionists. You have to piece
17 together what is the truth from what you will hear, two
18 opposing and different versions of.

19 The State is going to put up one version, the Defense
20 is going to put up another. And the reason for all of this
21 is because what happened on that January day over two years
22 ago in 2011 was really a lot of confusion going on.

23 Mr. Roseboro lives with his mother in Roebuck, as I
24 have said. And on the afternoon of that January day the
25 officer noticed this on his computer that there is an

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1 outstanding old bench warrant on Mr. Roseboro, okay? So the
2 officer comes up into the yard upon the property of Ms.

3 Fannie Roseboro. And he starts talking with Mr. Roseboro.

4 And Mr. Roseboro says, show me the warrant. I want to
5 know what I'm getting ready to get arrested for. Well, the
6 officer tells him, I don't have the warrant. And he didn't.
7 He didn't have the warrant for his arrest.

8 Mr. Roseboro says, well, you know, I'm not -- I'm not
9 going to cooperate here because I think I'm within my
10 rights. And then Ms. Roseboro tells Officer Hilton to get
11 off the property, come back when you have a warrant.

12 Well, he didn't do that. He didn't go get the warrant
13 and then come back. And because of that is when this
14 confusion and these allegations start flying.

15 Mr. Roseboro never told the officer that he had
16 tuberculosis. He never intentionally coughed on him or
17 threw bodily fluids. He felt that he had no reason to be
18 arrested and taken from his property without a warrant. And
19 that being right or wrong, that's what he felt.

20 And we all have that sort of safety feeling, safe
21 feeling when we're on our own property. And we all think
22 that we should be safe from an intrusion such as this. But
23 things got heated, and they got heated really fast.

24 And what happened was Mr. Roseboro was yanked about.
25 They put one of these hoods on the face similar to those

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1 notorious hoods we saw from the Abu Ghraib photographs from
2 what? 2001, whatever -- a long time ago that are in our
3 memories.

4 And then he was sprayed with some Lysol or something
5 while he was in the backseat of the car and was taken to the
6 detention facility where he was in a cell, a holding cell,
7 not with the population, for fourteen hours before somebody
8 slid the so-called warrant under the door of his holding
9 cell. That's what we're talking about.

10 And I think that when you hear all the evidence that
11 y'all will reach a verdict that does speak the truth. And
12 the truth in this case is this man is not guilty of these
13 charges. Thank you.

14 **THE COURT:** Mr. Ghent.

15 **MR. GHENT:** May it please the Court. The State calls
16 Jason Hilton.

17 **Jason Hilton**, being duly
18 sworn testified as follows:

19 **MADAME CLERK:** Thank you. You may be seated.

20 **Direct Examination by Mr. Ghent:**

21 Q. Your name is Jason Hilton?

22 A. Yes, sir.

23 Q. And where are you employed? What's your job?

24 A. Spartanburg County Sheriff's Department. And I'm a
25 patrol deputy.

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1 Q. How long have you been there?

2 A. Eighteen years. Going on eighteen years.

3 Q. What was your previous employment history?

4 A. I was employed as a ninth and tenth grade English
5 teacher and coach at Chapman High School.

6 Q. And how long did you do that?

7 A. Three years.

8 Q. And from there you went in to law enforcement?

9 A. Yes, sir.

10 Q. Were you working on the afternoon of January 4th, 2011?

11 A. Yes, sir.

12 Q. Were you on a routine patrol?

13 A. Yes, sir, in the Roebuck area.

14 Q. Did you learn in the course of your duties of a warrant
15 outstanding for the Defendant, Jon Roseboro?

16 A. Yes, sir. We have a Spillman System, which allows you
17 to run scans by roads. So I ran a scan by road without any
18 numeric in front of it. And that scan pulls up any wanted
19 subjects from that road. So I did that as I was in the area
20 and found that Mr. Roseboro had a warrant on him.

21 Q. All right. And where did you then go?

22 A. I went to his residence at 310 Pine Ridge Road in
23 Spartanburg County.

24 Q. All right. When you got there -- I want you in your
25 own words, Deputy Hilton, just tell the jury what you did

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1 and what happened.

2 A. I went to the door of his residence at [REDACTED]
3 Road. I knew Jon, had spoken with him times in the past,
4 knew him to live at that residence. Knocked on the front
5 door and a friend of his came to the door. I think his
6 name's Michael Moore. I might -- I can look it up to
7 confirm that.

8 But he came to the door and told me that, yes, Jon was,
9 indeed, on the premise. There's an actual residence. And
10 then off to the back side there's a side out-building. And
11 he indicated to me that that was where Jon was at the time
12 and that he would go get him.

13 So we -- I was on the phone confirming that the warrant
14 was valid and in-hand. So ---

15 Q. What do you mean by valid and in-hand?

16 A. I mean that the warrant -- it needs to be in the hand
17 of a fellow officer before I would act on it, before I would
18 make an arrest on it. The computer showed that the warrant
19 was active, red-flagged Mr. Roseboro. And that is one
20 indicator, but we go above and beyond that to confirm that
21 the warrant is still outstanding and still active.

22 Q. So someone gets the paperwork?

23 A. Yes, sir. Someone had -- a fellow officer has to have
24 it in-hand before I would make an arrest on it.

25 Q. All right. Before you continue with what happened ...

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1 **MR. GHENT:** Your Honor, could the record reflect, I am
2 showing a document -- we have agreed to copies, Your Honor,
3 in lieu of the originals.

4 **MR. POOLE:** No objection, Your Honor.

5 **MR. GHENT:** Your Honor, would Your Honor care to see
6 it?

7 (Whereupon the document was handed to the Court)

8 **THE COURT:** Thank you.

9 **MR. GHENT:** Your Honor, at this time I would ask to
10 have that marked as State's exhibit 1 and move to put it
11 into evidence.

12 **MR. POOLE:** No objection.

13 **THE COURT:** It's admitted.

14 **MR. GHENT:** Thank you, Your Honor.

15 (Whereupon State's exhibit 1 was marked and admitted
16 into evidence)

17 Q. Is that a copy of the warrant that gave rise to all of
18 this?

19 A. Yes, sir.

20 Q. Thank you. It's what's called a bench warrant?

21 A. Yes, sir.

22 Q. I mean right up there at the top ---

23 A. It says ---

24 Q. --- it says bench warrant?

25 A. --- bench warrant.

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1 Q. And did you explain to Mr. Roseboro that in point of
2 fact you did have a warrant, that the County of Spartanburg
3 had a warrant that had been outstanding for him?

4 A. Yes, sir. Mr. Roseboro expressed some concern about a
5 warrant being on him and actually saw me on the phone and
6 heard me talking and deliberating and confirming through our
7 warrant office that there was an active and valid warrant
8 outstanding.

9 MR. GHENT: Your Honor, at this time I'd ask to publish
10 this to the jury.

11 THE COURT: You may.

12 MR. GHENT: Thank you.

13 Q. With respect to what then happened after you told him
14 that there was an outstanding warrant, a warrant in-hand,
15 what happened?

16 A. Well, we were in the area -- between the residence
17 there's a path that walks around to the out-building. We
18 are in that area. His mother comes outside and starts
19 verbally accosting me, basically kind of making the
20 situation very uncomfortable. I'm still on the phone trying
21 to make sure that the warrant's valid, waiting for that
22 confirmation.

23 And so we're standing there in the yard just waiting.
24 The friend, Mr. Moore, is trying to calm the situation,
25 which I appreciated. Basically I was just going to keep

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1 control of the scene, make sure no weapons could be reached,
2 make sure that Mr. Roseboro didn't flee and await my
3 confirmation.

4 So as that occurred, then I told Mr. Roseboro he was
5 under arrest for an outstanding and valid bench warrant from
6 Duncan City and he had to come with me.

7 Q. Go ahead and tell the jury the rest of the story, as
8 they say.

9 A. Well, we came -- came out the path and out of the gate
10 and to my vehicle. About the time, which was parked right
11 in the roadway in front of the residence. About the time
12 that we get to the vehicle, in that general proximity, Mr.
13 Roseboro tells me that he has tuberculosis and he is going
14 to cough all over me.

15 At that point he turns, and I'm kind of behind him in
16 an escort position with -- I can't recall exactly if the
17 handcuffs were fully engaged at that point or not, but he
18 turns to cough on me. And I kind of push him away and try
19 to stay away from that as much as possible.

20 I then hit the latch ---

21 **MR. GHENT:** Your Honor, may I approach the witness?

22 **THE COURT:** You may.

23 Q. Deputy Hilton, when this occurred, please come down and
24 just with me show me how close physically ---

25 A. If you'll turn around, Mr. Ghent. I'm like this and

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1 the vehicle is right here across your front and the hands
2 were behind. And the back of the vehicle's right here. I'm
3 kind of close to getting into the door.

4 And he tells me he's going to turn and cough all over
5 me in which case he turns about that far right there. And I
6 deflect him from that direction. And I wanted to keep his
7 face and everything from facing me.

8 I then grabbed his shirt and controlled him and move
9 around to the rear of my vehicle and get the trunk open and
10 get what we call a hoodie.

11 Q. Was he coughing during this period?

12 A. He's -- at this time he's trying to turn and cough. He
13 said -- he said, I'm going to -- I've got TB and I'm going
14 to cough all over you. And he turned to do so. He was
15 successful at times, but after that first -- the first time
16 he was a little more successful than others because I tried
17 to stay behind him after that.

18 Q. You were on alert, so you were avoiding ---

19 A. Trying to. I was keeping him facing away from me.

20 Q. Thank you. Tell the ladies and gentlemen of the jury
21 what this hoodie is because it's been made out as if it's
22 something from Abu Ghraib.

23 A. It's a canvas bag about the size of a head. It's got a
24 mesh for air ventilation on a portion of it. They're
25 generally green. And we use them when someone is trying to

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1 spit on us, generally. If someone's trying to spit on you,
2 then you put this mesh head cover on them.

3 Q. And when someone spits, they expel bodily fluid, ---

4 A. They ---

5 Q. --- correct?

6 A. --- certainly do. Yes, sir.

7 Q. And that would also be the case with coughing?

8 A. Yes, sir. Something I investigated a little more
9 later, but TB, as I understand from one of our professionals
10 at the Sheriff's Office, Mr. ---

11 **MR. POOLE:** Your Honor, ---

12 A. --- Ted Beaty, ---

13 **MR. POOLE:** --- I object to any hearsay testimony.

14 **THE COURT:** Sustained.

15 Q. All right. Let's simply go to the matter of -- without
16 elaborating, did you take what he said seriously about ---

17 A. Yes, sir.

18 Q. --- tuberculosis?

19 A. Yes, sir.

20 Q. All right. Did you deliver him safely to the jail?

21 A. I did. After getting the hoodie on him, I placed him
22 in the backseat of my car. At which point I go to do so,
23 and he stops and pushes back against me and tells me I have
24 to touch his head to put him in the car. I guess what you
25 see in Hollywood version where they always hold the head to

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1 get in. And after he makes that resistance, then he gets in
2 the car with a little -- little bit of coercive force.

3 Q. Okay. What do you mean by that?

4 A. He stopped briefly and then I -- no, you're getting in
5 the car. And he just kind of got in the car.

6 Q. Then at any time did you strike him?

7 A. No, sir.

8 Q. Did at any time you taze him?

9 A. No, sir.

10 Q. Did at any time you draw your weapon, your sidearm?

11 A. No, sir.

12 Q. So you got him in the car and you began driving to the
13 jail?

14 A. Yes, sir. After I get him in the car I went around to
15 the driver's seat and obtained the alcohol germ killing
16 gels. I clean my hands off and kind of just wiped down a
17 little bit right around my chest and wiped my steering wheel
18 and started towards the jail.

19 Q. Did you -- again, did you deliver him safely there?

20 A. Well, not exactly yet. While en route he started
21 coughing through every crevice and seam around the cage. He
22 made a deliberate effort to cough as deep as he could, you
23 know, like as if you have phlegm, or cold, flu or something
24 like that.

25 And he's coughing -- the cage isn't entirely secure.

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1 So there is -- there's crevices and cracks all the way
2 around the cage. And he's trying to cough through the
3 window section in the middle at one point, through this
4 corner over here at another point.

5 Actually, only made it down to the end of the road that
6 he lives on, [REDACTED], and stopped and got out and
7 went back to my trunk to retrieve an aerosol germ killer. I
8 felt like this would assist in any germs that were coming
9 into the cab, up into the front. I wanted to protect myself
10 against those.

11 So I used that aerosol spray to spray at these corner
12 crevices. I also cracked his right rear window, the window
13 farthest away from me, approximately that much and turned my
14 air condition on high so that I could push any air
15 particles, anything that might have been coughed up back
16 away from me and out of my vehicle window.

17 Q. And you -- did you continue on to the jail?

18 A. Continued on to the jail and delivered him safely to
19 the jail.

20 Q. All right. Did you tell anyone about what had
21 happened?

22 A. I did. As soon as I arrived at the jail I placed Mr.
23 Roseboro into a holding cell in the booking area. I felt
24 like that was the most controlled and isolated. And as soon
25 as I put him in there I notified the jail booking officers

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1 that Mr. Roseboro during the effect of my arrest had told me
2 he had TB and that he was going to cough all over me and
3 that he then commenced to doing that and that he continually
4 tried to cough through the crevices of the cage all the way
5 to the jail.

6 Q. Did -- did you then return to your car?

7 A. After completing booking and turning that paperwork in,
8 I returned to my vehicle and took all of the cleaning
9 materials, all of the germ killing materials and sprayed the
10 entire inside of my rear seat out, wiped it down, sprayed it
11 and just tried to clean it as best I could.

12 Q. And is it your understanding that later the Defendant,
13 Mr. Roseboro, was, in fact, served with a copy of the
14 warrant?

15 A. Yes, sir. I wasn't particularly concerned about that.
16 I had already confirmed that it was active, valid and that
17 it was en route to the jail to be served through Duncan
18 Police Department.

19 **MR. GHENT:** Your Honor, may -- I would at this time
20 move to have this marked, offered into evidence. This is
21 the bench warrant with an officer's return on it. May I
22 approach? To establish that it was, in fact, served.

23 **THE COURT:** Any objection, Mr. Poole?

24 **MR. POOLE:** No, sir.

25 **THE COURT:** It's admitted.

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1 (Whereupon State's exhibit 2 was marked and admitted
2 into evidence)

3 **MR. GHENT:** And, Your Honor, at this time, with the
4 Court's leave, I'll publish it to the jury.

5 **THE COURT:** You may.

6 **MR. GHENT:** Thank you.

7 Q. Deputy Hilton, were you concerned enough about this
8 that you did anything else to assure that you were okay?

9 A. Health-wise, I made contact with our Hazmat specialist,
10 Detective Beaty, and ---

11 Q. You can't tell what he said, but the purpose of your
12 meeting with Detective Beaty was your concerns with what had
13 happened.

14 A. Yes, sir. He is our liaison for all Hazmat materials
15 as well as any time that we might be subjected to blood
16 borne pathogens or tuberculosis, anything of that matter.

17 Q. Did you also take any further reaction -- action with
18 respect to what had occurred, any action which you're
19 required as an officer when there's an incident where you
20 may have been injured on the job?

21 A. After talking with Detective Beaty, who is our exposure
22 expert, I was advised to make contact with our medical
23 health facility, which is Spartanburg Regional, about an
24 exposure. So I attempted to make contact with them and was
25 referred, because it was after hours, to Spartanburg

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1 Regional Emergency Center.

2 After talking with them, they tried to defer
3 responsibility back to our Occupational Health that handles
4 all of the County health issues for the Sheriff's Office.
5 So at that point I just went home, took a shower, cleaned my
6 uniform.

7 And the next morning I got up and went to Occupational
8 Health and presented to them an exposure form. And they ran
9 the test on me for tuberculosis active at that point and
10 commenced the process of checking on my exposure.

11 Q. All right. The simple fact is, you took this very
12 seriously?

13 A. Yes, sir.

14 Q. Are you married?

15 A. Yes, sir.

16 Q. Do you have children?

17 A. Three.

18 Q. Thank you.

19 **MR. GHENT:** Your Honor, could the record reflect that
20 I'm showing counsel a copy of -- a four page copy of a
21 document from the Regional -- Spartanburg Regional regarding
22 this matter?

23 **MR. POOLE:** May we approach, Your Honor?

24 (Whereupon a bench conference was held off the record
25 in the presence of the jury, but out of their hearing)

JASON HILTON - CROSS EXAMINATION BY MR. POOLE

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1 (Whereupon the bench conference was ended)

2 Q. Thank you, Deputy Hilton. Please answer any questions
3 counsel has.

4 MR. POOLE: Thank you.

5 Cross Examination by Mr. Poole:

6 Q. Deputy Hilton, how you doing today?

7 A. Okey doke.

8 Q. You are -- you were a teacher for a little while?

9 A. Yes, sir.

10 Q. Okay. Was that a hazardous profession?

11 A. I guess it could be considered that at times.

12 Q. That was a while back, though, wasn't it?

13 A. Yes, sir.

14 Q. It's not as bad in the public schools now as it was
15 then, is it?

16 A. That could be up to a argument.

17 Q. All right. And you've been a deputy for eighteen
18 years?

19 A. Yes, sir.

20 Q. All right.

21 A. Just about.

22 Q. Okay. So let's get right to this January 4, 2011
23 afternoon. You are on -- you're driving around on routine
24 patrol, you have your computer. Is that it right there?

25 A. That's the very one, yes, sir.

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1 Q. Okay. And you look up and see if there are any
2 warrants on people in the area, is that right?

3 A. Yes, sir. What it is is you can run it by road name.
4 So if you live on Jones Road, I can put asterisk Jones Road,
5 and it would show me anyone in our system that has an active
6 warrant on Jones Road despite whether it's number one, two
7 hundred or a thousand.

8 Q. All right. And then you said that you found that there
9 was a warrant, outstanding warrant for Jon Roseboro on the
10 computer.

11 A. Yes, sir.

12 Q. All right. And then your next move is that you went to
13 his residence.

14 A. Yes, sir.

15 Q. And that you spoke to an individual who said that Jon
16 was there.

17 A. Yes, sir.

18 Q. And then you went and found Jon. And then you said
19 there was a warrant for his arrest. And you basically
20 placed him under arrest, is that right?

21 A. Yes, sir.

22 Q. Okay. Now there's some things in between, certain
23 events in between. But didn't he ask you to see the copy of
24 the warrant?

25 A. I can't recall specifically, but that's a possibility,

JASON HILTON - CROSS EXAMINATION BY MR. POOLE

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1 yes, sir.

2 Q. Okay. But you didn't have anything in your hand to
3 show him that there was an outstanding warrant, is ---

4 A. No, sir, ---

5 Q. --- that right?

6 A. --- I did not have the actual warrant in my hand.

7 Q. Okay. And did he not tell you that unless you've got a
8 warrant I'm not going to go with you?

9 A. I don't recall. There was definitely some resistance
10 both verbal and physical from him and his mother. It wasn't
11 physical contact at that point, but I don't recall exactly
12 what he said.

13 Q. Well, ---

14 A. That's a possibility.

15 Q. I mean, he was reluctant to go with you because you
16 couldn't produce a warrant, something to show him, right?

17 A. I explained to him that a fellow officer had the
18 warrant in-hand and then told him he had to come with me and
19 he was under arrest.

20 Q. Okay. All right. So you arrested him without having
21 the actual warrant?

22 A. I didn't have it in my hand, but it was confirmed
23 through a fellow officer that the warrant was in-hand, yes,
24 sir.

25 Q. The answer to the question is yes, right?

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1 **MR. GHENT:** Your Honor, at this time I'd object. May
2 we approach?

3 **THE COURT:** Okay.

4 (Whereupon a bench conference was held off the record
5 in the presence of the jury, but out of their hearing)

6 (Whereupon the bench conference was ended)

7 Q. Deputy Hilton, you did have some contact with Fannie
8 Roseboro, did you not?

9 A. Yes, sir. She came outside into the space between the
10 front porch of the residence and the out-building.

11 Q. Um-hum (affirmative). And she asked you to get off the
12 property, did she not?

13 A. I can't recall exactly. She was -- showed some
14 animosity towards me for arresting her son.

15 Q. Okay. And you were not fearful of her, were you?

16 A. I was alert to her location. She's smaller than me.
17 Definitely tried to keep my eyes on her. You just never
18 know. You try to be ready for everything.

19 Q. Okay. But, I mean, are y'all all huddled together or
20 ---

21 A. Yeah, it's a pretty -- the space is probably smaller
22 than about half of this section right here. It's a short
23 distance from here -- right here to the corner of that
24 little trail. So it's kind of a confined space with shrubs,
25 a fence line right here, another fence line right there. So

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1 it's kind of a confined area, yes, sir.

2 Q. Okay. And then you got, as you described, the arrest,
3 then you described him as being in an escort position as you
4 demonstrated with Mr. Ghent?

5 A. Yes, sir. Moving from this area that I just described
6 over to the fence line here, there's a gated exit, and we
7 just go down a few, three, four stairs into the roadway,
8 which is where my car was parked and around to the back side
9 of my car.

10 Q. Okay. And he asked you to push his head down?

11 A. Not right then. First he said that he had TB and he
12 was going to cough all over me.

13 Q. We've heard about that, yes, sir. I understand that.

14 And -- but did -- what was the -- you said that you were
15 helping him get into the car and he mildly resisted, ---

16 A. Yes, sir. He ---

17 Q. --- something like that.

18 A. Yes, sir. He just -- he stopped his feet and made a
19 posture of not going into the vehicle and said that I had to
20 touch his head to put him in the car.

21 Q. Is that what you call the resisting arrest portion of
22 this case?

23 A. That was a resist, yes, sir.

24 Q. Him just putting his feet down and not fully
25 cooperating with you?

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- 1 A. Yes, sir, that was resisting.
- 2 Q. So he didn't strike you or anything, did he?
- 3 A. He didn't strike me.
- 4 Q. Okay. Well, he didn't want to go with you.
- 5 A. He just tried to cough TB all over me.
- 6 Q. Well, he didn't want to go get in that car, did he?
- 7 A. I'd presume no one wants to be arrested.
- 8 Q. So by him just kind of digging his heels in, that's
- 9 what you call resisting arrest?
- 10 A. That was resisting, yes, sir.
- 11 Q. That's what you call it? Okay.
- 12 A. And then you said that you had to -- well, let me just
- 13 ask you this. When was the real warrant served on him? Do
- 14 you know?
- 15 A. After doing some investigation I do have some knowledge
- 16 of that, but I wasn't actually present for the signing of
- 17 the warrant by, I think it was Officer Lane with Duncan.
- 18 **MR. POOLE:** Who's got the warrants? Thank you. May I
- 19 approach?
- 20 Q. So did you know when you were on the computer how old
- 21 this warrant was?
- 22 A. The computer would have a date notation both for when
- 23 it was originated through Duncan and also when it was put
- 24 into Spartanburg County's system and co-signed by a
- 25 Spartanburg County judge to make it, you know, applicable

JASON HILTON - CROSS EXAMINATION BY MR. POOLE

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1 County-wide. So there would have been a couple of dates.

2 And if I look at that, yes, I would note that.

3 Q. Well, did you know that it was twelve years old?

4 A. I can't recall that I actually looked at those dates
5 that time. I saw that I have the active warrant on Mr.

6 Roseboro in my computer. And I don't know that I really
7 looked at those dates right off.

8 Q. So you didn't know that it was a twelve year old
9 warrant?

10 A. Well, I could -- I don't recall if I looked. That
11 information is accessible.

12 Q. Okay. You mentioned that there was another individual,
13 a male, who was there in Roebuck at the residence. Could
14 that individual have been a one Christopher Carver instead
15 of ---

16 A. That's exactly ---

17 Q. --- Michael Moore?

18 A. --- who it was, yes, sir. Yes, sir.

19 Q. Is that right?

20 A. Yes, sir. Christopher Carver.

21 Q. All right. Thank you, sir.

22 A. Yes, sir.

23 **MR. GHENT:** May it please the Court.

24 **THE COURT:** You may step down. You have some more
25 questions?

JASON HILTON - REDIRECT EXAMINATION BY MR. GHENT

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1 **MR. GHENT:** Yes, sir.

2 **THE COURT:** Okay.

3 **Redirect Examination by Mr. Ghent:**

4 Q. Counsel asked you several things, first of all about
5 the Defendant's mother, was she involved in what we'll call
6 the fracas of getting the Defendant placed under arrest?

7 A. Yes, sir.

8 Q. Did you ever lay hands on her?

9 A. No, sir.

10 Q. There were three individuals out there at that time.

11 A. Yes, sir.

12 Q. It was at a domestic residence.

13 A. Yes, sir.

14 Q. Are those circumstances in law enforcement potentially
15 dangerous to officers?

16 A. Effecting an arrest is one of the most dangerous things
17 you can do. So any time you're arresting somebody, you need
18 to be on full alert.

19 Q. All right. Now, during the course of your contacts
20 with the Defendant, the Defendant's mother, or the other
21 individual, did you strike anyone?

22 A. No, sir.

23 Q. Did you put your hands on his mother?

24 A. No, sir.

25 Q. The other individual?

JASON HILTON - REDIRECT EXAMINATION BY MR. GHENT

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1 A. No, sir. Mr. Carver, no, sir.

2 Q. Counsel also asked you about -- he narrowed the notion
3 of resisting down to digging in his heels. Was the entire
4 process from the time you told him there was a warrant, was
5 he opposing you in doing your duty to arrest him?

6 MR. POOLE: Objection. Leading, Your Honor.

7 THE COURT: Overruled.

8 Q. Was he opposing you?

9 A. Yes, sir. He was opposing me verbally both by his
10 stance and his words and basically just refusing to comply
11 with my orders after I told him he was under arrest. In
12 addition to that, he's trying to cough TB all over me.

13 Q. And you were asked about the age of the warrant. Is a
14 warrant one year old still valid?

15 A. Yes, sir.

16 Q. Two, three, four, five, six?

17 A. Still valid.

18 Q. Is it your duty, your job if you're told there's an
19 outstanding warrant, it's in-hand, is it your duty to
20 enforce the warrant?

21 A. Yes, sir.

22 Q. And with respect to the age on not just the warrant,
23 but on criminal charges, is there such a thing as a Cold
24 Case Unit ---

25 A. Yes, sir.

JASON HILTON - REDIRECT EXAMINATION BY MR. GHENT

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1 Q. --- for more serious offenses?

2 A. Yes, sir.

3 Q. There is no statute of limitations on warrants or
4 offenses in State law in South Carolina, is that correct?

5 A. I've heard of the Law of Statutes involving time of
6 expiration, but not with that -- not with an active warrant.

7 Q. Thank you.

8 MR. GHENT: I have no further questions, Your Honor.

9 MR. POOLE: Nothing.

10 THE COURT: You may step down. Ladies and gentlemen,
11 we're going to break for lunch. Let me caution you not to
12 talk about the case during the lunch recess. You can't
13 discuss it with anybody including your fellow jurors.
14 You're only permitted to talk about the case during
15 deliberations. And that's not until the trial's concluded.
16 So have a good lunch. Please report to your jury room at
17 2:15, 2:15 this afternoon.

18 (Whereupon the jury exited the courtroom at 12:50 pm)

19 THE COURT: Is the Defendant on bond?

20 MR. POOLE: Yes, sir, he is on bond. And he's always
21 reported for every term of court in every case.

22 THE COURT: Mr. Roseboro, you understand you've got to
23 be back, we're going to continue with this trial at 2:15.

24 MR. ROSEBORO: Yes, sir.

25 THE COURT: Mr. Poole might need you before then, but

1 I've got to have you here not later than 2:15. If you don't
2 show up, we'll issue a bench warrant for your arrest, and
3 we're going to continue this trial even in your absence.

4 **MR. ROSEBORO:** Yes, sir.

5 **THE COURT:** Understand?

6 **MR. ROSEBORO:** Yes, sir.

7 **THE COURT:** Okay. Court's in recess until 2:15.

8 **MR. GHENT:** Thank you, Your Honor.

9 (Whereupon court was in recess at 12:52 pm)

10 (Whereupon court resumed at 2:53 pm)

11 **THE COURT:** All right. We ready for the jury?

12 **MR. GHENT:** Yes, Your Honor, State's ready.

13 **THE COURT:** Bring them in.

14 (Whereupon the jury entered the courtroom at 2:54 pm)

15 **THE COURT:** Good afternoon, ladies and gentlemen. I
16 apologize for the delay. I got caught up in something that
17 took longer than I had anticipated that it would. But we
18 are now ready to get back to the trial of this case.

19 And we were in the midst of the State's presentation.
20 So we'll continue with that presentation this afternoon.
21 Mr. Ghent.

22 **MR. GHENT:** May it please the Court. The State calls
23 Sergeant Ted Beaty.

24 **Ted Beaty,** being duly
25 sworn testified as follows:

TED BEATY - DIRECT EXAMINATION BY MR. GHENT

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1 **MADAME CLERK:** Thank you. You may be seated.

2 Direct Examination by Mr. Ghent:

3 Q. Please state your full name for the record.

4 A. Ted Beaty.

5 Q. And where are you employed?

6 A. Spartanburg County Sheriff's Office.

7 Q. How long have you been there?

8 A. Been with the County thirty-five years, thirty-three
9 and half of it at the Sheriff's Office.

10 Q. All right. And you are currently employed in what
11 capacity? What are your duties?

12 A. I'm a sergeant in the Special Services Division. I'm
13 assigned sergeant of the Bomb Squad and Dive Team commander.
14 And also one of my duties is a Infection Control officer.

15 Q. That would be infectious disease ---

16 A. Disease Control.

17 Q. Are you -- have you received any particular training
18 with respect to infectious diseases?

19 A. I've been trained and certified by Spartanburg Regional
20 Medical Center, South Carolina Department of Health and
21 Environmental Control and Katherine West Associates, which
22 is -- she's a national trainer. She's over the FBI, DEA and
23 ATF Infection Control Programs.

24 Q. You've been to special schools and classes on this and
25 received certificates?

TED BEATY - DIRECT EXAMINATION BY MR. GHENT

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1 A. Yes.

2 Q. All right. Did Officer Hilton contact you regarding a
3 case on January 4th, 2011?

4 A. Yes, sir.

5 Q. Please tell us about that.

6 A. He had, according to what he told me, he was attempting
7 an arrest and had a subject to start coughing on him and in
8 his direction and the subject told him he had tuberculosis.

9 Q. Based on what he told you did you assist him in
10 determining whether or not it would be appropriate to bring
11 a charge?

12 A. Yes, I did.

13 Q. And as a result of that did y'all get a warrant?

14 A. Yes, sir. Officer Hilton did.

15 Q. Now, counsel -- you were in the court when counsel was
16 asking a great deal about the arrest warrant and whether
17 Officer Hilton had an arrest warrant, what he meant by an
18 arrest warrant was in-hand. Has there been a development in
19 the past couple of years, several years regarding technology
20 in law enforcement vehicles?

21 A. Yes, sir.

22 Q. Is that development computers?

23 A. Yes.

24 Q. Tell us a little bit about the way it used to be with
25 respect to officers having the actual warrants to serve.

TED BEATY - DIRECT EXAMINATION BY MR. GHENT

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1 A. We've always -- at one point we actually carried
2 warrants or copies of warrants in our vehicles. In recent
3 years it's -- we would call directly to the warrant office
4 on the radio, the officer would get the original copy of the
5 warrant in his hand and at that point it was confirmed that
6 there was an active warrant and that it was in possession of
7 a law enforcement officer. And at that point we would make
8 the arrest.

9 Now it's done -- you duplicate it, check on the
10 computer, see if it's on the computer. If so, then you call
11 the warrant office still to, I guess, kind of eliminate
12 error. And they get it in-hand so you confirm that the
13 officer does have the physical -- the warrant physically in
14 his possession.

15 Q. All right. Did you advise Officer Hilton about getting
16 checked out, following up regarding any potential problems
17 with what he thought ---

18 A. Yes, sir.

19 Q. --- about the truth of what the man said?

20 A. Yes.

21 Q. What did you tell him?

22 A. He was -- I'm not going -- I don't remember exactly
23 where I told him to go, but our policy, if it was during
24 working hours, eight am to five pm, he would have been
25 directed to go to Occupational Medicine on 29, which is an

TED BEATY - CROSS EXAMINATION BY MR. POOLE

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1 extension of Spartanburg Regional Medical Center.

2 If it's after hours and holidays, they would go to the
3 admissions desk at Spartanburg Regional on Wood Street. And
4 the admissions clerk intern calls the proper staff in to
5 take care of the exposure problem.

6 Q. Thank you. Please answer any questions counsel might
7 have for you.

8 **Cross Examination by Mr. Poole:**

9 Q. You said this development about the not having the
10 actual warrants or copies of warrants has only come about in
11 the past couple of years?

12 A. No. We've been -- I've been doing it over thirty-three
13 years and we've been able to confirm by radio. And if the
14 warrant office has it in-hand, we confirmed it by radio.
15 Now it's just a duplicate process. It's done by computer
16 and by radio or telephone.

17 Q. I mean the actual delivery of a warrant. Used to be,
18 as I understood your testimony, it used to be that to make
19 an arrest the warrant would be served on the Defendant,
20 right?

21 A. I did not say that.

22 Q. You said it's always been the case that ---

23 A. No, sir.

24 Q. --- that the people could be arrested without a warrant
25 on their own property, if a warrant was outstanding?

TED BEATY - REDIRECT EXAMINATION BY MR. GHENT

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1 A. If the warrant's physically in possession of an officer
2 in the warrant office, it's always been policy we could make
3 the arrest.

4 Q. Well, do you think the people that are out there
5 throughout this County understand that?

6 MR. GHENT: I'd object, Your Honor. That's not ---

7 THE COURT: Sustained. It doesn't matter what they
8 think.

9 Q. When you talked to him about Officer Hilton about
10 getting a warrant for throwing bodily fluids he had told you
11 basically everything about the case, had he not? I'm sure
12 he did.

13 A. About the exposure part.

14 Q. Yeah. Well, did you ever talk to him about getting a
15 warrant for resisting arrest?

16 A. As -- my involvement in it was the exposure. The act
17 of actively coughing ---

18 Q. Okay. So -- excuse me. Did he mention to you about
19 seeking a warrant for resisting arrest?

20 A. I don't remember if he did.

21 Q. Okay. Thank you.

22 MR. GHENT: Just a couple of more questions, Your
23 Honor.

24 **Redirect Examination by Mr. Ghent:**

25 Q. You've been working in the system as a police officer

KATHY WHITE - DIRECT EXAMINATION BY MR. GHENT

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1 A. Kathy White.

2 Q. And where are you employed?

3 A. Spartanburg County Detention Center.

4 Q. For how long have you been there?

5 A. Eleven months.

6 Q. What is your position there?

7 A. I'm the Medical Administrator.

8 Q. And did you receive a subpoena from our office to bring
9 detention records in this case having to do with medical
10 attendance to the Defendant, Mr. Roseboro?

11 A. I did.

12 Q. Now, are those the records that you brought?

13 A. This is.

14 Q. Yes..

15 MR. GHENT: Your Honor, at this time, by agreement with
16 counsel, we've agreed that we will use copies, a copy rather
17 than the originals.

18 MR. POOLE: That's true.

19 MR. GHENT: If you would, could the record reflect I'm
20 showing a copy of medical records pertaining to the
21 Defendant. Without objection?

22 MR. POOLE: Without objection.

23 THE COURT: They're admitted.

24 MR. GHENT: Thank you, Your Honor.

25 THE COURT: That packet consists of how many pages?

KATHY WHITE - DIRECT EXAMINATION BY MR. GHENT

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1 **MR. GHENT:** I'm sorry.

2 (Whereupon State's exhibit 3 was marked and admitted
3 into evidence)

4 **MR. GHENT:** Your Honor, at this time, thank you, ma'am,
5 State's exhibit 3 is seven pages.

6 **THE COURT:** Thank you..

7 **MR. GHENT:** May I approach the witness?

8 **THE COURT:** You may.

9 Q. Ms. White, please review these. Take a moment and
10 review them and tell me if those appear to be a true,
11 correct and accurate copy of medical records when the
12 Defendant was put in your facility on January the 4th, 2011.
13 And my questions are only as to those records.

14 A. These are all accurate.

15 Q. Thank you. With respect to the first page, it is a
16 screen form, is that correct?

17 A. It is.

18 Q. And referring now to January 4th, 2011 does it indicate
19 that there's a signature at the bottom, an inmate signature?

20 A. There is.

21 Q. And whose signature is that?

22 A. Mr. Roseboro's.

23 Q. All right. And above that, number sixteen, could you,
24 please, read that to the jury?

25 A. It states, admits to the following; check if inmate

KATHY WHITE - DIRECT EXAMINATION BY MR. GHENT

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- 1 notes problem. And there's a list of problems below.
- 2 Q. Is there a question regarding tuberculosis?
- 3 A. There is.
- 4 Q. And what is the answer?
- 5 A. Yes.
- 6 Q. He indicated that that was a problem?
- 7 A. He did.
- 8 Q. Is there a question regarding hepatitis?
- 9 A. There is.
- 10 Q. And he indicated what?
- 11 A. Yes.
- 12 Q. All right. Was Mr. Roseboro examined even to the point
- 13 of being given an x-ray?
- 14 A. He was.
- 15 Q. And all of examinations as well as his own statements
- 16 are in these records, is that correct?
- 17 A. They are.
- 18 Q. And with respect, again, to tuberculosis, his answer to
- 19 the question of whether or not he had tuberculosis, what was
- 20 it?
- 21 A. Yes, he does.
- 22 Q. That's what he said?
- 23 A. That's what he said.
- 24 Q. Thank you.
- 25 **MR. GHENT:** Your Honor, at this time may I publish this

KATHY WHITE - CROSS EXAMINATION BY MR. POOLE

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1 to the jury?

2 THE COURT: You may.

3 MR. GHENT: No further questions.

4 **Cross Examination by Mr. Poole:**

5 MR. POOLE: May I approach the witness, Your Honor?

6 THE COURT: You may.

7 Q. Do you have that record or is it ---

8 A. I do.

9 Q. May I see it? Number sixteen says, admits to the
10 following; parentheses, check if inmate notes problem, ---

11 A. Um-hum (affirmative).

12 Q. --- closed parentheses.

13 A. Um-hum (affirmative).

14 Q. And it's unmistakable that he says yes for tuberculosis
15 or TB?

16 A. Correct.

17 Q. Okay. And did he have a test for tuberculosis?

18 A. He did. This -- he had a chest x-ray.

19 Q. Okay. And what was the result of that test?

20 A. The results were normal.

21 Q. Okay. So he did not have tuberculosis?

22 A. Correct.

23 Q. So -- but he did state that he -- if inmate notes a
24 problem, ---

25 A. Um-hum (affirmative).

KATHY WHITE - REDIRECT EXAMINATION BY MR. GHENT

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1 Q. --- he checked yes?

2 A. Um-hum (affirmative). It also states right here.

3 Q. Okay. Thank you very much.

4 **MR. GHENT:** Just one question by way of follow-up.

5 **Redirect Examination by Mr. Ghent:**

6 Q. The statement of the inmate, the answer as well as the
7 chest x-ray, all of that was given after he was placed in
8 the detention facility on January 4th, 2011?

9 A. Correct.

10 Q. It was only after that that a determination was made
11 that he, in fact, did not have TB?

12 A. Correct.

13 Q. Thank you.

14 **THE COURT:** You may step down.

15 **MR. GHENT:** Your Honor, again, we would move all items,
16 1, 2 and 3, State's exhibits, into evidence. And at this
17 point that would be the State's case.

18 **THE COURT:** All right. Ladies and gentlemen, that's
19 the State's presentation of evidence. Before we go further
20 I've got a couple of matters I'll need to address with the
21 lawyers. It should take only a few minutes. So, please, go
22 to your jury room. Don't yet discuss the case. I'll bring
23 you back after that short break.

24 (Whereupon the jury exited the courtroom at 3:10 pm)

25 **THE COURT:** Motions or other matters to address?

25 A. Yes, sir.

JON ROSEBORO - DIRECT EXAMINATION BY MR. POOLE

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1 **THE COURT:** Mr. Roseboro, how about go ahead and pull
2 up a little bit closer to that microphone and use that for
3 providing your answers, please.

4 A. Yes, sir.

5 Q. You understand the nature of the charges against you?

6 A. Yes, sir.

7 Q. How old are you?

8 A. Fifty-two.

9 Q. Where do you live?

10 A. At [REDACTED] in Roebuck, South Carolina.

11 Q. How long have you lived there?

12 A. After I got out of the service and after my wife died,
13 I came back. Probably all my life. So let's just say all
14 my life.

15 Q. Who else lives there?

16 A. My mother, Fannie Roseboro. And I have two grandbabies
17 that live there.

18 Q. Okay. And how far did you go in school?

19 A. I have an associates in music and let's say four --
20 three years, three and a half years of college.

21 Q. Okay. Past high school?

22 A. Yes, sir.

23 Q. Are you employed anywhere right now?

24 A. No, sir.

25 Q. Do you have any physical disabilities?

JON ROSEBORO - DIRECT EXAMINATION BY MR. POOLE

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1 A. I'm a recovering cancer patient.

2 Q. Okay.

3 A. And I have migraine headaches. And that's about it.

4 Q. Are you on disability? Do you have a disability
5 income?

6 A. I have -- I was on disability when I was in Seattle
7 with my wife. My disability here is currently pending.

8 Q. Pardon me? I'm sorry.

9 A. My disability is currently pending here. I'm going to
10 go back to another hearing for disability here. But I've
11 been -- I've drawn disability, yes, sir.

12 Q. Okay. All right. Do you have tuberculosis?

13 A. No, sir, I do not.

14 Q. Were you tested for tuberculosis?

15 A. Yes, sir, I was.

16 Q. Were you tested for tuberculosis after this incident?

17 A. Yes, sir. Against my will, I was given a chest x-ray.
18 I'm a recovering cancer patient. And I'm exposed to RADs
19 without having any consent. I didn't even know where I was
20 going, you know.

21 Q. Okay.

22 A. And I don't have ---

23 Q. I want to begin with the first -- the last question --
24 the line of questioning that was asked Ms. Kathy White ---

25 A. Yes, sir.

JON ROSEBORO - DIRECT EXAMINATION BY MR. POOLE

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1 Q. --- from a form to which you gave certain information

2 ---

3 A. Yes, sir.

4 Q. --- to an individual.

5 A. Yes, sir.

6 Q. And it said -- if I may approach and get it, the
7 exhibit. Right here on State's exhibit number 3, ---

8 A. Yes, sir.

9 Q. --- there under number sixteen, admits to the
10 following; parentheses, check if inmate notes problem,
11 closed parentheses.

12 A. Yes, sir.

13 Q. Tuberculosis?

14 A. Yes, sir.

15 Q. Did you respond that way?

16 A. Yes. It didn't say -- I wasn't asked do I have
17 tuberculosis, sir. It said if there was a problem. Now,
18 ---

19 Q. All right. Explain to us why you said yes.

20 A. Well, at one time, and Officer Hilton would know this
21 quite well, my very next door neighbor, his name was Danny
22 Payden, and one of Officer Hilton's favorite stops in my
23 area because he must have recognized -- well, I see Officer
24 Hilton on a regular basis, was Danny's mother next door.
25 And Danny died from tuberculosis and the lung cancer. And I

JON ROSEBORO - DIRECT EXAMINATION BY MR. POOLE

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1 used to speak to Danny on a regular basis.

2 After such time as Danny died his mother gave the
3 Health Department a list of those people who had close
4 contact with Danny. And we were all required to go to the
5 Health Department and be tested for tuberculosis.

6 Now, prior to that testing, I mean, I got the testing,
7 but prior to the results of the testing, I left town and
8 came back. And so then the Health Department contacted me
9 again. But I was still being screened. I hadn't received
10 any results.

11 So I told them that, yes, I've been tested and had been
12 screened for tuberculosis. I never said that tuberculosis
13 was what I had because, obviously, I don't have it.

14 Q. So you just noted that there was a problem ---

15 A. Yes, there was a problem.

16 Q. --- just as the question is asked?

17 A. Yes, because the Health Department threatened to
18 quarantine my house until such time as the tests were
19 finished. And that's all a matter of record.

20 Q. Okay. Now, going back to the day in January when you
21 were arrested.

22 A. Yes, sir.

23 Q. Tell us about what happened.

24 A. Okay. Well, first of all, let me -- let me -- let me
25 tell you exactly what happened, okay? First of all, when

JON ROSEBORO - DIRECT EXAMINATION BY MR. POOLE

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1 Officer Hilton arrived at my house he did not see me first.
2 The dog began to bark. I have a dog, a little Chihuahua.
3 It came outside and was barking.

4 Then my mother came out of the house and met Officer
5 Hilton at the gate to the yard asking him -- since he had
6 been there twice before that very week with regard to a case
7 he was doing with my brother, Roy, who doesn't live there.
8 She asked him why are you here again? To which he responded
9 -- she said, Roy is not here. He says, no, I'm looking for
10 Jon. She says, for what reason?

11 He asked -- he then answered -- I'm a witness to all
12 this because I'm standing in the path that he's described to
13 you so adequately back over in the corner, myself and the
14 other defendant -- and the other witness who's here. There
15 was no Michael Moore. I have no God's earth idea who
16 Michael Moore is.

17 Rodney Carver and myself were standing to the side and
18 we watched as she then asked Officer Hilton, do you have a
19 warrant? He says, there's a warrant. She says, well, do
20 you have it with you? And he said, no, I do not.

21 She says, then you need to leave my property. She
22 says, you don't have any paper. If you have some paperwork,
23 then she said, why not just go and get it and come back?
24 She said, he's not going anywhere. You find him now, you
25 can find him then.

JON ROSEBORO - DIRECT EXAMINATION BY MR. POOLE

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1 But he, at this time, is proceeding to come across the
2 yard. The dog's biting, I mean, snapping at him and barking
3 at him. And he walks over to where I am now standing
4 outside of this little area.

5 And that's when he came up to me and said, Jon, I have
6 a warrant for you. I said, well, let me see it. I said --
7 and he says -- no, at first I said, a warrant? A warrant
8 for what? He says, it's out of Duncan. I said, a warrant
9 out of Duncan? Oh, let me see. Well, I don't have it with
10 me. Well, how do you know it's me? Well, I'm pretty sure
11 it was you. I saw your picture.

12 To this instant I've still not seen a picture on that
13 warrant. But he claims that the warrant, which was dated
14 1998 -- I can't -- to this instant don't have any --
15 supposedly I pled guilty in absentia and had a warrant. So
16 I said, well, I don't have -- I never -- I wasn't there in
17 1998. As a matter of fact, it wasn't me, you know.

18 So I said, why don't you just go get the paper and
19 bring it back and then we'll know? Meanwhile, Rodney Carver
20 is right here to witness this, you know, Christopher Carver,
21 you know.

22 My mother, she had every legal ground, or at least I
23 thought to, was asking him still why he was on the property.
24 Why you still here? I asked you to leave. You're criminal
25 trespassing. You don't have any paperwork.

JON ROSEBORO - DIRECT EXAMINATION BY MR. POOLE

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1 And she says, I've lived here in the South. My
2 mother's seventy-nine years old. I'm pretty sure she's had
3 something to do with the law before. She's had -- she's
4 never been to jail, you know, but she's seen enough evidence
5 of what goes on.

6 And so she asked him to leave. And he still -- and so
7 his exact words were then, put your hands behind your back,
8 you're under arrest. He doesn't ask me anything. I told
9 you -- I said, I'm under arrest for what? He would never
10 tell me. Okay.

11 I placed my -- I mean, my mother's right here. And he
12 tells me in his own words, you wouldn't be going to jail if
13 it wasn't for your stupid mother. I didn't hear that as an
14 hallucination. He said this on his own words. And there
15 was a witness that also heard it. Okay.

16 And as I'm putting my hands behind my back and he
17 starts to shove me forward, it's not -- I'm not coughing. I
18 had told him prior to this, I said, what I'm doing, I'm
19 getting over the worst cold I've ever had in my life. My
20 brother, Roy, the one he'd been there looking for twice that
21 other week has given me the worst cold I've ever -- I'm
22 getting over it. And that's what I'm going through. Okay.

23 But as he's shoving me toward the gate -- now I'm not
24 trying to turn around. I said, listen, the best thing for
25 me to do is walk and get out of the yard before you cause me

JON ROSEBORO - DIRECT EXAMINATION BY MR. POOLE

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1 to bump into my mother. Then we going to have a problem.

2 And so I left willingly and walked out of the yard.

3 When we get to the car now, it's like a -- he -- he
4 turns me, he slams me. He says he never touched me. He
5 slammed me on the back of the car, my head on the back of
6 the car as he's opening the hood. He wants to get the trunk
7 open, right? You know, I said I'm not going to put that on.
8 That's where my reluctance and recalcitrance came from.

9 He wants to put this hoodie on me. I'm telling him I
10 can't breathe already. I'm getting over the worst cold in
11 my life. Had nothing to do with any tuberculosis. And as
12 he puts the hoodie on me, it's sideways. And if anybody
13 ever ---

14 Q. What do you mean sideways?

15 A. I mean -- okay. There's a mesh screen here, but the
16 back of it is enclosed. So if you turn it sideways, I mean,
17 as he's jamming it on my head, I can't see. And I can't
18 breathe on this side, okay?

19 Now, he's talking about reluctance to get in the car,
20 as he opens the car I can't even see for the car -- how to
21 get in the car. I said, you're going to have to get me into
22 the car. I said, like you're going -- guide me in here. It
23 wasn't about you've got to put your hands on my head. I had
24 to -- I couldn't see the car, the hood's turned sideways.

25 And then as I'm getting in the car I'm literally -- the

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1 hand -- the handcuffs are up here like this. So literally
2 I'm sideways. And I'm basically between the seat -- and I'm
3 not -- that's when he goes into the trunk and he comes out
4 with this germicide can. And it's Marco Germicide. And
5 it's ---

6 Q. Mark what?

7 A. It's called Markay or whatever, Marco Germicide. The
8 company's right on 295. I've seen it. I started to go and
9 see about getting a can. But ---

10 Q. What is it?

11 A. It's a germicide. And it says on the side of the can,
12 do not spray in enclosed areas. Do not ingest. Do not
13 breathe fumes, okay?

14 Meanwhile, he proceeds to shoot up the road. At one
15 point we almost run off the road. It's not like he came to
16 a complete stop to come and get this stuff out of the car.
17 He's got it in his possession as we leave Pine Ridge Road,
18 okay? And he's spraying it.

19 He cracks the door, I mean, the window in the back of
20 the car like this much, okay? And he sprays from the front.
21 And the fumes are just -- I'm laying face-down on the floor
22 and I'm coughing my brains out because I can't breathe.

23 He's -- and I'm asking him, would you stop, stop doing
24 that. And I'm asking him -- and I even ask him, when I
25 could breathe, why don't you turn on your dashboard camera?

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1 Why don't you turn on the camera so it can be witnessed what
2 you're doing?

3 I said -- he was -- it was a huge cloud. It's like a
4 cloud of this. And I can't breathe. I'm like -- I'm not --
5 like trying to find crevices.

6 If you've ever been in the back of a police car, maybe
7 I'm not the only one in here who's ever been in the back of
8 a police car, there are no crevices and creases for you to
9 find a place to try to attempt to cough through. It's a
10 pretty -- it's Kevlar glass. And they don't leave any space
11 in there for you to try to do anything to people who are in
12 the front of the car less alone try to cough and shoot some
13 kind of a bodily fluid with a hoodie that's turned sideways
14 and you -- I'm laying on the face -- on my face in the car
15 coughing and I can't breathe.

16 And I asked him more than once, and a matter of fact I
17 asked him just prior to getting to the jail to take me to
18 the hospital first. I said, I can't breathe. I said, I'm
19 blacking out, I can't breathe, would you take me there
20 first, okay? There was no response to that.

21 I just got -- and then upon arriving at California
22 Avenue prior to me, you know, to seeing anyone, I'm in this
23 holding cell. There's no restroom. I'm telling him I'm
24 getting over the best -- the worst -- that's when the hoodie
25 finally came off.

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1 Q. When did it come off?

2 A. When I finally got into that holding cell. That's when
3 it ---

4 Q. What was the holding cell?

5 A. The holding cell -- okay. Inside the -- inside these
6 other doors where there's a booking area where I supposedly
7 signed this form, that's where the general population is.
8 Out here in the exterior of this place is -- I guess that
9 would be for people who are violent or for drunks or
10 whatever where they might -- they got a cell there. It has
11 no toilet. And there's only a grate in the floor. There's
12 not even a place to sit, okay?

13 I spent fourteen hours in that holding cell. I hadn't
14 seen a warrant. I hadn't seen anything, okay? And so then
15 if you've got a warrant in your hand, then how would it take
16 you, I mean, I know where Duncan is in relation to where
17 Spartanburg -- how would it take you fourteen hours to
18 transport a warrant in-hand to the holding cell for me to
19 see it?

20 I stayed in there for fourteen hours. Then here's the
21 bathroom, and that's it. No water, I mean, nothing. That's
22 it, okay?

23 And so then when I -- when I get up and then they
24 finally come to the door to let me out, the first thing --
25 and I was thinking it might have been Mr. Beaty, but it

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1 wasn't, maybe not. But the first thing that guard asked me
2 was you're not going to spit on me, are you? Who would give
3 you the impression that I would spit on you in the first
4 place? I'm not going to spit on you. I'm not even going to
5 do anything. I just want to get up out of here.

6 When I finally got to my -- I went to the -- to the
7 judge and, you know, they read me my rights, finally, okay.
8 When I finally got upstairs, by the time I got there,
9 upstairs to the holding area, I mean, to the dressed out
10 place where the inmates are, my news -- the paper was there
11 on the paper -- the paper was on the table with my picture.
12 There's my picture in the newspaper, man tries to throw --
13 gives tuberculosis to a man.

14 And then I'd been on channel 21 and channel 40 news,
15 and I didn't -- I'd just got upstairs. I just got out of
16 the holding cell. I've been on the news and I've been in
17 the newspaper already. I got the paper at home.

18 I don't have tuberculosis. I didn't try to spit on
19 this guy. I didn't try to cough on him. Had it not been
20 for him spraying a half a can of this stuff into the area,
21 which I'm still suffering and have problems from. I still
22 have bleeding sinuses and stuff from that. And it's been
23 two years. Had it not been for that, I wouldn't have
24 coughed at all.

25 I was getting over -- I couldn't breathe. The hoodie

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1 faces forward. It's a shield. It's a mesh screen, okay?

2 Q. Did you tell him that you had tuberculosis?

3 A. No, I did not. But he's very good friends -- he was
4 very good friends with the lady who lived next door. She's
5 institutionalized now. She called the police maybe two or
6 three times a week, you know. She -- she's -- she had a
7 little -- she had some ---

8 **MR. GHENT:** Your Honor, I'll object to the relevance of
9 this.

10 **THE COURT:** Sustained.

11 A. Okay. Nevertheless, the man next door to me that Mr.
12 -- Officer Hilton went to see all the time died from
13 tuberculosis. And I was on that list.

14 Q. And you were on the list?

15 A. Yes, sir.

16 Q. For screening?

17 A. Yes, sir.

18 Q. Okay. All right, Mr. Roseboro. Answer any questions
19 Mr. Ghent may have for you.

20 A. Yes, sir.

21 **MR. GHENT:** May it please the Court.

22 **THE COURT:** Mr. Ghent.

23 **Cross Examination by Mr. Ghent:**

24 Q. Mr. Roseboro, other than a single objection I have not
25 interrupted you ---

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1 A. Yes, sir.

2 Q. --- during your entire speech delivery, ---

3 A. Yes, sir.

4 Q. --- have I?

5 A. Not to my knowledge, no, sir.

6 Q. You understand that we're now on cross examination. I
7 ask a question and you answer the question?

8 A. Yes, sir.

9 Q. Okay. Let's start with, again, your direct testimony
10 was that your mother had every legal ground to order Deputy
11 Hilton off the property ---

12 A. I said to my knowledge, yes, sir.

13 Q. Okay. Well, to your knowledge?

14 A. Yes, sir.

15 Q. You do remember being in court October of last year ---

16 A. No, I do not.

17 Q. --- on this matter?

18 A. Is this when we came to court? Yes, sir. If that's
19 the case, yes.

20 Q. You recall that?

21 A. Yes, sir.

22 Q. And the entire issue ---

23 A. Yes, sir.

24 Q. --- at that time, which has just been gone over and
25 over and the State has allowed this to be done, about the

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1 arrest. The whole purpose of that hearing was for the judge
2 to determine whether or not it was a lawful arrest. Do ---

3 A. Is that ---

4 Q. --- you recall that?

5 A. Is that why we were there, sir? I thought we were
6 going for a trial then and ---

7 Q. It was a motion to dismiss ---

8 A. Yes, sir.

9 Q. --- based upon your attorney contending it was an
10 unlawful arrest.

11 A. Yes, sir. I didn't know I could speak about that here.

12 Yes. Yes, sir.

13 Q. Okay.

14 A. I didn't know that was admissible here.

15 Q. And the judge made a determination, did he not?

16 A. It was sent to me in the mail, yes, sir.

17 Q. And you read it?

18 A. Yes, sir, I did.

19 **MR. POOLE:** Your Honor, I'm going to object.

20 A. I mean -- I mean, how is that ---

21 **MR. GHENT:** Cross examination ---

22 **THE COURT:** Let me see y'all just a minute.

23 (Whereupon a bench conference was held off the record
24 in the presence of the jury, but out of their hearing)

25 (Whereupon the bench conference was ended)

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1 **MR. GHENT:** Thank you, Your Honor.

2 **Q.** The way you described it to the jury was that in no
3 way, as I understood it, did you even bring up the matter of
4 tuberculosis, is that correct?

5 **A.** Is that how you understood it, sir? What's your
6 question? I'm ---

7 **Q.** Did you at any time bring up the matter of tuberculosis
8 during the time when that arrest was taking place? I
9 thought I heard you say ---

10 **A.** Oh. The way we got -- would you like me to answer it
11 or can I just, I mean, yes or no ---

12 **Q.** I would like to know.

13 **A.** Yes, sir.

14 **Q.** Did ---

15 **A.** The way we got ---

16 **Q.** --- you ever say anything about tuberculosis ---

17 **A.** Yes, sir. The way that we got onto the subject of
18 that, Officer Hilton and I, as we were having this
19 confrontation?

20 **Q.** Um-hum (affirmative).

21 **A.** Okay. It wasn't me saying I have tuberculosis and I'm
22 going to cough on you.

23 **Q.** Um-hum (affirmative).

24 **A.** I -- I had told him that I was getting over the worst
25 cold in my life. But he asked me -- I said, I've been to

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1 court with regard to bench warrants and I'm supposed, based
2 on my health, not supposed to be going, I mean, they
3 screened me and they -- and they checked me for bench
4 warrants.

5 And he said, they screened you for what? I said, at
6 the time -- I said I was being screened the last time I went
7 to court for ---

8 **THE COURT:** Be careful with the microphone.

9 A. I'm sorry. For tuberculosis. I was being screened ---

10 Q. Okay.

11 A. --- for tuberculosis.

12 Q. My question, to go back, was ---

13 A. That's why I wasn't in court.

14 Q. --- did you tell him you had tuberculosis, ---

15 A. No, ---

16 Q. --- yes or no?

17 A. No, sir, I did not.

18 Q. Do you have any idea why everything that he said,
19 everything that he did after that, everything he's testified
20 to, all of this coming about started with you opposing his
21 arrest, resisting his arrest ---

22 A. No.

23 Q. --- and telling him that you had tuberculosis and were
24 going to cough all over him?

25 A. Are you asking me a question, sir?

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1 Q. Yes.

2 A. Then I just now told you, once again, ---

3 Q. Do you have ---

4 A. --- no, I ---

5 Q. --- any idea ---

6 A. --- did not ---

7 Q. --- why he would have testified to all of that?

8 A. Yes, I -- well, if you'd like me to tell you once
9 again, I will. I told you that the reason I haven't been
10 going to court -- he asked me, do you have a warrant -- do
11 you -- you have a warrant. He told me I have a warrant. I
12 said, no, I don't. I've been to court. If they had a
13 warrant, I would have known about it.

14 Well, said, why haven't you been -- why aren't you in
15 court? I said, I was, due to my health, not in going to
16 court -- not going to court. And he was asking me about my
17 health. We talked about ---

18 Q. So he told ---

19 A. --- my ---

20 Q. --- you there was a bench warrant for you?

21 A. He said -- yes, of course. Excuse me, sir, ---

22 Q. He told you ---

23 A. --- you asking me one question ---

24 Q. --- there was a warrant ---

25 A. --- and then you're ---

JON ROSEBORO - CROSS EXAMINATION BY MR. GHENT

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1 **THE COURT:** Excuse me.

2 A. --- asking me another ---

3 **THE COURT:** Whoa.

4 A. --- one. I don't ---

5 **THE COURT:** Hey.

6 A. I don't know which one to answer.

7 **THE COURT:** Just a minute. Y'all cannot talk over each
8 other. This lady ---

9 A. I'm sorry, sir. I just don't know which one ---

10 **THE COURT:** You can't ---

11 A. --- to answer.

12 **THE COURT:** --- talk over me either, sir.

13 A. I'm sorry. I'm sorry. Yes, sir.

14 **THE COURT:** This lady's taking down everything that's
15 asked and everything that's answered.

16 A. Yes, sir.

17 **THE COURT:** She can't do that when y'all talk at the
18 same time.

19 A. I agree.

20 **THE COURT:** So listen to the question, ---

21 A. Yes, sir.

22 **THE COURT:** --- and then let the witness finish the
23 answer before we ask the next question, okay?

24 A. Yes, sir.

25 **MR. GHENT:** Yes, Your Honor.

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1 Q. Counsel questioned you from State's exhibit 3, which
2 you went over. You didn't deny this is your signature,
3 correct?

4 A. I didn't -- I didn't ...

5 Q. That's your signature?

6 A. I didn't see a signature on here, sir. But I didn't
7 deny that I responded to it.

8 Q. Okay.

9 A. Yes, sir.

10 Q. And you responded and you explained right here, yes,
11 ---

12 A. Yes, sir.

13 Q. --- tuberculosis?

14 A. No, no. The question is not on there -- does not ask
15 me if I had tuberculosis. It said if there's a problem,
16 check if there's a problem. And I explained to them that I
17 had been screened and had not received the results for
18 tuberculosis.

19 Q. Please read number sixteen.

20 A. Yes, sir.

21 Q. What does it say?

22 A. Admits to the following; check if inmate notes
23 problem.

24 Q. All right. And it ---

25 A. Is that ---

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1 Q. Says TB, tuberculosis.

2 A. Check if inmate notes problem. Then --- there's ---

3 Q. Yes.

4 A. --- a mitigating circumstance, sir. I didn't say I
5 have tuberculosis. It says check if inmates notes problem.
6 I said I've been screened by the Health Department and not
7 received any response -- any reply. They were going to
8 quarantine my house.

9 Q. Well, let's go back up to number ten.

10 A. Okay.

11 Q. What does question ten say? Just read it to the jury.

12 A. Are you under doctor's care? Yes.

13 Q. And the answer is what?

14 A. Yes.

15 Q. And what does it say you're under a doctor's care for?

16 A. Well, it doesn't ---

17 Q. What ---

18 A. It says ---

19 Q. --- does it say?

20 A. On here it says, sir, if yes, for what?

21 Q. For what?

22 A. Okay.

23 Q. What does it say? Read it.

24 A. What's written here is TB. Why isn't what's written

25 there also cancer or prostate and all that? It doesn't -- I

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- 1 was under a ---
- 2 Q. Sir.
- 3 A. --- doctor's care from ---
- 4 Q. Sir.
- 5 A. --- the Health Department.
- 6 Q. Sir. I asked ---
- 7 A. From the Health Department.
- 8 Q. --- you a question.
- 9 A. It says TB.
- 10 Q. It says TB?
- 11 A. Yes, sir.
- 12 Q. So you were asked are you under a doctor's care? You
- 13 said, yes. And then, if yes, for what? And it says TB.
- 14 A. Well, I apologize, sir, because I misunderstood that
- 15 question. You must don't understand now. That's the 4th of
- 16 January that it's dated? Does that say January the 4th?
- 17 Q. Yes.
- 18 A. Okay. On January the 4th I wasn't there to give that
- 19 testimony. I was in a holding cell. I'm sorry I didn't
- 20 give that. I was woozy. I hadn't been -- I hadn't seen
- 21 anybody to write any of that down until January the 5th.
- 22 I'd been in the holding cell for fourteen hours. So if I --
- 23 if I misunderstood any question, I apologize.
- 24 Q. This is date ---
- 25 A. January 4th.

JON ROSEBORO - CROSS EXAMINATION BY MR. GHENT

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1 Q. --- January the 4th.

2 A. That's the day I was picked up. I was in a ---

3 Q. Now, previously until ---

4 A. --- holding cell for fourteen hours.

5 Q. --- you just hit the wall, ---

6 A. Yes, sir.

7 Q. And please quit giving speeches because I don't want us
8 to be talking over one another.

9 A. I apologize.

10 Q. Previously your testimony to this jury ---

11 A. Yes, sir.

12 Q. --- was that you didn't tell anything about TB,
13 correct?

14 A. I ---

15 Q. You never said you had TB, correct?

16 A. To whom, sir? Never said it to whom?

17 Q. How about on this form?

18 A. Okay. You're asking me about Officer Hilton. You ---

19 Q. Well, I'm ---

20 A. --- didn't ask ---

21 Q. --- asking you ---

22 A. --- me about the form.

23 Q. --- right now about on this form.

24 A. Sir, I'm not under a doctor's care, nor was I then for
25 tuberculosis. I did say that it was a problem. And the

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1 problem noted was I'd been screened by the Health
2 Department, having taken one of those little tests, and
3 never received the results.

4 **MR. GHENT:** Your Honor, ---

5 A. That's ---

6 **MR. GHENT:** --- at this time I would publish ---

7 A. I mean, I don't understand. You're asking me a
8 question, but you're not -- you're not asking, I mean, I
9 don't know how to answer it because I answer it and it's not
10 ---

11 Q. Well, it's a simple yes or no. You did tell them that
12 you were under a doctor's care and for what was TB.

13 A. No, I did not.

14 Q. Okay. So whoever prepared that just like Officer
15 Hilton would be lying?

16 A. Well, I apologize if I -- if I misunderstood, sir. I
17 was somewhat woozy. I'm not under -- I wasn't under a
18 doctor's care for TB. I was being screened. There had to
19 have -- be doctor's there, I'm sure, from the Health
20 Department. But I was being screened for it, that's it.

21 Q. Okay.

22 A. I don't have tuberculosis, sir.

23 Q. And you deny that you said anything that could have
24 given Deputy Hilton concerns that you had tuberculosis? Yes
25 or no?

JON ROSEBORO - CROSS EXAMINATION BY MR. GHENT

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- 1 A. I do not ---
- 2 Q. You deny it?
- 3 A. I -- do I deny what? What -- what -- I'm sorry, sir.
- 4 That's a little -- do I deny what?
- 5 Q. That you said anything ---
- 6 A. Said anything?
- 7 Q. --- to give this officer the ---
- 8 A. Yes, I do.
- 9 Q. --- understanding that you had TB. ---
- 10 A. Yes, I do.
- 11 Q. --- when he was arresting you?
- 12 A. Yes, I do. And there's witnesses to that. Yes, sir, I
- 13 do.
- 14 Q. And everything he did after that was what, merely a
- 15 matter of abusing you, spraying, as you say, ---
- 16 A. That's how I received it, sir. I mean, I can't
- 17 understand why he would spray -- I told him I was getting
- 18 over the worst cold in my life. Maybe he was worried about
- 19 catching the cold, too, you know?
- 20 Q. Um, ---
- 21 A. But I know ---
- 22 Q. --- so you were coughing on him?
- 23 A. Well, after he sprayed the germicide in my face, yes, I
- 24 was. But I wasn't coughing on him. I was in the backseat
- 25 of the car coughing.

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1 Q. But you said you were getting over the worst cold of
2 your life?

3 A. Yes, I was.

4 Q. And you're saying that you weren't coughing before ---

5 A. No. During this incident there hadn't been any -- any
6 opportunity for me to do any coughing. I was getting over
7 it. I was getting over it. I had used camphorated oil. I
8 had just gotten -- I came back from the VA. I had taken
9 Theraflu and that kind of stuff.

10 And I wasn't being exerted, I wasn't stressed. I was
11 just standing there talking to the officer. And there was
12 no coughing going on. None. When I got so I couldn't
13 breathe from the hoodie being on my head and then him
14 spraying, that's when I began to cough.

15 Q. Please explain, I'm going to do this open-ended, ---

16 A. Okay.

17 Q. --- why he would have put a hoodie on you if there was
18 no issue with coughing?

19 A. I have no idea, sir. I asked him ---

20 Q. No issue of tuberculosis?

21 A. I have no idea, sir. I asked him that at the time.

22 And there are witnesses to that, too. I asked him, why are
23 you putting this hoodie on my head? I said, I'm getting
24 over the worst cold. I can't breathe. I already can't
25 breathe. Please don't put this hoodie on. And I asked him

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1 not to. And he did so anyway.

2 Q. And your witnesses are your mother?

3 A. Yes, sir, she's one of them.

4 Q. And Mr. Carver?

5 A. Yes, he's the other one. And they were within this --
6 this distance.

7 Q. Where was Mr. Carver living during that period?

8 A. At my home.

9 Q. Where is Mr. Carver living now?

10 A. I have no idea. He doesn't live with me. But at the
11 time ---

12 Q. You have no idea where he's gone off to?

13 A. Does this -- do I have any idea where he's gone off to?

14 Q. Yes.

15 A. Where he moved to?

16 Q. Yes.

17 A. When he left my house? As far as I know he moved in
18 with his daughter when he left my house.

19 Q. Okay.

20 A. Yes, sir.

21 Q. Thank you.

22 A. That's where he moved to, yes.

23 **MR. GHENT:** I have no further questions, Your Honor.

24 A. Am I done?

25 **MR. POOLE:** No further questions.

CHRISTOPHER CARVER - DIRECT EXAMINATION BY MR. POOLE

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1 **THE COURT:** You may step down.

2 A. Thank you, sir.

3 **MR. POOLE:** Our next witness is being brought in, Your
4 Honor. Mr. Christopher Carver.

5 Christopher Carver, being
6 duly sworn testified as follows:

7 **MADAME CLERK:** Thank you. You may be seated.

8 Direct Examination by Mr. Poole:

9 Q. Good afternoon.

10 A. How you doing?

11 Q. You're Mr. Christopher Rodney Carver?

12 A. Yes, sir.

13 Q. Mr. Carver, you know Jon Roseboro?

14 A.. I do.

15 Q. And you know Fannie Roseboro?

16 A. I do.

17 Q. Okay. Now, you're dressed a little different.

18 A. Yes, I am.

19 Q. Where are you currently residing?

20 A. Kirkland Correctional Institute.

21 Q. Okay. And when will you be getting out?

22 A. April the 1st.

23 Q. Okay. Have you been brought up here to testify?

24 A. Yes, sir, I have.

25 Q. Have you been served with a subpoena?

CHRISTOPHER CARVER - DIRECT EXAMINATION BY MR. POOLE

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1 A. I have.

2 Q. Okay. And were you a witness to the offense that
3 occurred on January 4, 2011 in the Roebuck community?

4 A. Yes, sir, I was.

5 Q. Do you -- would you relate to us what happened?

6 A. Well, when Officer Hilton got to the residence he was
7 asked not to come in the yard without paperwork. He said he
8 had a warrant for Mr. Roseboro's arrest, but he couldn't
9 show the warrant.

10 So they suggested, look, just go get the warrant, I'll
11 wait on you to come back. No, he said that he had the right
12 to be on the property, come on the property and take him off
13 the property.

14 She -- Ms. Roseboro asked him several times to leave
15 the property. And he wouldn't leave the property. He said
16 that he had it on the computer that he had a warrant and he
17 had the right to take him to jail.

18 Come to find out it was over a hundred and eleven
19 dollar bench warrant. I even offered Mr. Hilton -- I said,
20 look, I'll pay the hundred and eleven dollars. Let's just,
21 you know, get the paperwork. Show something that that's
22 what's happening and we'll pay the money and it'll be over
23 and done with. And that wasn't good enough. He, you know,
24 he wanted him to go to jail right then.

25 Q. Did Mr. -- Deputy Hilton make any remarks toward or

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1 about Ms. Roseboro?

2 A. Yes, sir, he did. He had told Mr. Roseboro you
3 wouldn't even be going to jail if it wasn't for your stupid
4 ass mama. And, I mean, that was point blank. I was
5 standing right beside him when he said it.

6 And which to me was disrespectful you being a police
7 officer. I know you. I've known you for twenty years.
8 I've never seen you do that.

9 Q. But, Mr. Carver, please direct your answers ---

10 A. I'm sorry.

11 Q. Now, Fannie Roseboro owns the property?

12 A. Yes, sir.

13 Q. Okay. Now, let's back up one more time.

14 A. Um-hum (affirmative).

15 Q. And describe to us how it came to pass that Mr.
16 Roseboro was taken into custody and arrested.

17 A. Because, like I said, he wasn't going to take no for an
18 answer.

19 Q. Okay. How was the arrest effected?

20 A. It was, to me, there again, unprofessional. He -- he
21 -- Mr. Roseboro, finally, willingly let him put the
22 handcuffs on him. When Mr. Hilton put him in the back of
23 the police car, he had done put a mask over his head, turned
24 it around to where, to me, I don't know anything about
25 anything like that. I've never seen a mask like that

CHRISTOPHER CARVER - DIRECT EXAMINATION BY MR. POOLE

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1 before. I don't see how he could even breathe. But then he
2 sprayed this -- this either Lysol or something to that
3 effect in the backseat of the car with him.

4 Q. How did he do that?

5 A. Just through the window of the car.

6 Q. Was the window up or down or ---

7 A. No.

8 Q. --- cracked?

9 A. In the -- where he's in his driver's side seat, you
10 know, it's a window right there that goes to the backseat.
11 He just stuck the Lysol can up there and just started
12 spraying it.

13 Q. Okay. And did you hear Mr. Roseboro tell the deputy
14 that he had tuberculosis?

15 A. Never the first time did I ever hear that come out of
16 his mouth.

17 Q. Did you hear him tell him anything?

18 A. I never heard anything to be -- no illnesses or
19 anything like that. I heard him asking him could he work
20 this out to where we could just go pay the fine.

21 Q. Okay. And did you ever see Mr. Roseboro resist arrest?

22 A. No.

23 Q. Did you ever see him intentionally cough upon ...

24 A. No. Why would he cough on him?

25 Q. Mr. Hilton?

CHRISTOPHER CARVER - DIRECT EXAMINATION BY MR. POOLE

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1 A. What would have been the purpose?

2 Q. Did you ever see anything like that? That's what I'm
3 asking.

4 A. No, sir.

5 Q. Did you see him spit on him or anything like that?

6 A. Definitely not. I even -- it's like I was explaining
7 to you this morning, I even have pictures of him doing that,
8 but I can't present those pictures at this time because I
9 don't, you know, there's no way for that to happen with me
10 being locked up.

11 MR. GHENT: Your Honor, I object. And I'll ask that
12 this be stricken.

13 THE COURT: Let me see y'all just a minute.

14 (Whereupon a bench conference was held off the record
15 in the presence of the jury, but out of their hearing)

16 (Whereupon the bench conference was ended)

17 Q. Was -- from what you saw was Officer or Deputy Hilton
18 rough with Mr. Roseboro?

19 A. I'm not going to say rough as in excessive force of
20 putting handcuffs on him or anything like that, but as far
21 as spraying this Lysol in his face through this hole with
22 the back windows rolled up in that car, yes, sir. You know,
23 I've seen a lot of things in my day with police officers.

24 So I -- no, I can't say he used excessive force to put him
25 in handcuffs because he wasn't resisting him to put the

CHRISTOPHER CARVER - CROSS EXAMINATION BY MR. GHENT

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1 handcuffs on.

2 Q. Okay. All right. Well, thank you, Mr. Carver.

3 A. Um-hum (affirmative).

4 **MR. GHENT:** May it please the Court.

5 **THE COURT:** Mr. Ghent.

6 **Cross Examination by Mr. Ghent:**

7 Q. Mr. Carver, how long have you been a guest of Kirkland
8 Institute?

9 A. Two months.

10 Q. What are you there for?

11 A. Selling drugs.

12 Q. What kind of drugs?

13 A. Selling crack and selling marijuana.

14 Q. Okay. With respect to your testimony you said that
15 y'all basically tried to work it out with the officer?

16 A. Um-hum (affirmative).

17 Q. Offered just to give him the hundred and eleven
18 dollars?

19 A. No, sir. No, sir.

20 Q. To pay the hundred and eleven dollars?

21 A. Offered to come to the courthouse and pay the bench
22 warrant before we ever even saw a bench warrant.

23 Q. You made it sound as if it was his prerogative, his
24 right to serve that warrant. Do you know whether or not it
25 was his duty?

CHRISTOPHER CARVER - CROSS EXAMINATION BY MR. GHENT

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1 A. If he had have had the proper paperwork, it was his
2 duty. He's a police officer.

3 Q. Well, he had told Mr. Roseboro that there was a warrant
4 in-hand, had he not?

5 A. He didn't have the warrant in his hand.

6 Q. Not in his hand. There was a warrant -- that a bench
7 warrant ---

8 A. Yes, he did ---

9 Q. --- had been issued ---

10 A. He did say that.

11 Q. And there was, indeed, a warrant that had been issued.

12 A. He did say that.

13 Q. And your notion was simply that y'all be allowed just
14 go about your business, officer, go someplace else, we'll
15 take care of this later, that's what you're saying?

16 A. No, that was not what was said at all.

17 Q. Well, ---

18 A. What ---

19 Q. --- the way I understood it, you were saying that he
20 should have just left.

21 A. No. No. If she, the owner of the property, asked him
22 to show paperwork to take him off of the property, he should
23 have had that handy. He should have had that to present to
24 the owner of the house and to the person he's trying to lock
25 up.

CHRISTOPHER CARVER - CROSS EXAMINATION BY MR. GHENT

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1 Q. Are you a law enforcement officer?

2 A. No, I'm not.

3 Q. Obviously not. Do you know whether or not in this case
4 the officer did exactly what the procedures call for him to
5 do?

6 A. No, he didn't. And I'm not a police officer, but, no,
7 he didn't.

8 Q. You've had lots ---

9 A. He was unprofessional.

10 Q. You've had lots of contact?

11 A. No, I have not.

12 Q. Well, you said you've known this officer ---

13 A. I have.

14 Q. --- for twenty years.

15 A. I have. And a lot of times it ain't been nothing about
16 him locking me up. A lot of times it's been talking on the
17 streets and him just coming up to the house and talking and
18 stuff like that. It ain't like that every time that I've
19 seen this officer it's been trouble between me and him or me
20 and somebody else.

21 Q. Okay. And with respect to the officer's handling of
22 Mr. Roseboro's mother, didn't you calm her down?

23 A. Yes, I did. To keep him -- he's already done caused
24 major problems with her by disrespecting her and cussing
25 like that in front of her. She's a church-going ---

CHRISTOPHER CARVER - CROSS EXAMINATION BY MR. GHENT

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- 1 Q. That's your testimony ---
- 2 A. That's my testimony.
- 3 Q. Yes. But, again, you're a convicted drug dealer?
- 4 A. And? Your point?
- 5 Q. He is your friend?
- 6 A. Yes.
- 7 Q. You were living with him?
- 8 A. Yes.
- 9 Q. At the time?
- 10 A. But I have no reason to lie about nothing.
- 11 Q. And you just wouldn't do that?
- 12 A. Why would I? Prove that I did. 'Cause I haven't. Mr.
- 13 ---
- 14 Q. That's what ---
- 15 A. --- Hilton will ---
- 16 Q. --- these folks are for, ---
- 17 A. --- tell you -- Mr. ---
- 18 Q. --- not you.
- 19 A. --- Hilton -- Mr. Hilton will tell you the same thing.
- 20 I -- he has come to me with cases that I have been in
- 21 trouble with. And I have told him before he ever showed the
- 22 warrant, yes, sir, I done it or no, sir, I didn't do it.
- 23 Q. So you'd never lie about whether or not you did
- 24 something wrong?
- 25 A. Why would I? I'm a man. If I do it, I'm going to

FANNIE ROSEBORO - DIRECT EXAMINATION BY MR. POOLE

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1 admit to it.

2 Q. Thank you. No questions.

3 **MR. POOLE:** No redirect.

4 **THE COURT:** You may step down.

5 **MR. POOLE:** Ms. Fannie Roseboro.

6 **Fannie Roseboro, being**

7 duly sworn testified as follows:

8 **MADAME CLERK:** You may be seated.

9 **Direct Examination by Mr. Poole:**

10 Q. What is your name, please, ma'am?

11 A. Fannie Roseboro.

12 Q. Ms. Roseboro, where do you live?

13 A. [REDACTED], Roebuck.

14 Q. And who lives there with you?

15 A. Jon, my son, and right now my daughter and two
16 grandbabies are there.

17 Q. Okay. How long have you lived there?

18 A. Since 1955.

19 Q. Okay. Do you work?

20 A. I don't exactly work. I babysit and kind of piddle.

21 Q. Pardon me?

22 A. I said I babysit and kind of piddle around. When
23 you're tending to two babies you don't work.

24 Q. Oh, you babysit and piddle around. You're talking
25 about your grandchildren?

FANNIE ROSEBORO - DIRECT EXAMINATION BY MR. POOLE

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1 A. My grandchildren.

2 Q. Oh, okay. All right. And how old are you, ma'am?

3 A. Seventy-nine.

4 Q. All right. Do you remember this afternoon in January
5 when your son was arrested?

6 A. I do.

7 Q. Would you tell us what happened?

8 A. Officer Hilton came up to the gate. And, of course,
9 the dog was having a fit. And, of course, I went outside
10 and asked him what he wanted because Roy wasn't there. And
11 he said he wasn't looking for Roy, that he was looking for
12 Jon.

13 And I said, well, what do you want with Jon? And he
14 said, I have a warrant for his arrest. And I said, where is
15 your warrant? He said, I don't have it, but there is a
16 warrant for his arrest.

17 Of course, he came on in the gate. I asked him not to
18 unless he had some paperwork. But he proceeded to come on
19 in. And Jon came out from around the corner. And he said,
20 Jon, I have a warrant for your arrest. And I said, where is
21 the warrant? And, of course, he kept on telling Jon that he
22 had the warrant for his arrest.

23 And he said, put your hands behind you. And he said,
24 you're going to jail. If it hadn't been for your mama, you
25 wouldn't be going. And I never understood that because I

FANNIE ROSEBORO - DIRECT EXAMINATION BY MR. POOLE

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1 was only trying to protect my own property. I understood
2 that you was safe on your property, that they would have to
3 present some paper if they had a warrant.

4 But I remember Jon saying, mama, I'm going 'cause I
5 don't want him to bump into you. And I ---

6 Q. What did he mean by that? I mean, ---

7 A. Well, he -- he was putting cuffs on Jon. And, of
8 course, he was acting as if he wanted to bump me aside. But
9 I moved back 'cause I know Jon's got a temper and if he had
10 of bumped into me, he'd went wild.

11 Q. Well, I mean, were y'all like all together on the porch
12 or on the ---

13 A. Oh, no, we were out in the yard.

14 Q. Okay. All right. Did you ever hear Deputy Hilton say
15 anything about you?

16 A. Well, he said that I wouldn't -- Jon wouldn't be going
17 to jail if it wasn't for me.

18 Q. Do you remember how he said it?

19 A. He said it -- he wouldn't -- you wouldn't be going to
20 jail if it wasn't for your stupid mama. So I've had Officer
21 Hilton come before for my other son. So, I mean, that was
22 nothing new for him.

23 Q. Did you see your son resist arrest?

24 A. No, he didn't resist arrest.

25 Q. Did you see him spit or cough on Deputy Hilton?

FANNIE ROSEBORO - CROSS EXAMINATION BY MR. GHENT

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1 A. No.

2 Q. Did you see your son have the hoodie placed on him?

3 A. I saw him put the hoodie on him.

4 Q. How did that occur?

5 A. Well, he was out in the road and I was in the yard. I
6 couldn't see it good, but I know he pulled that thing down
7 over his head.

8 Q. Okay. Did you see anything else?

9 A. No. I'd seen enough.

10 Q. Thank you, ma'am.

11 **MR. GHENT:** May it please the Court.

12 **THE COURT:** Mr. Ghent.

13 **Cross Examination by Mr. Ghent:**

14 Q. Ms. Roseboro, correct me if I'm wrong, it was two or
15 three times that you've been asked the question before you
16 finally put the word stupid into what Officer Hilton
17 supposedly said, am I not correct? You -- the first couple
18 of times you claimed that Officer Hilton said you wouldn't
19 be going to jail if it wasn't for your mother, isn't that
20 true?

21 A. Yes.

22 Q. With respect to where you were, you said you were in
23 the yard, so you couldn't see that well. Wasn't Mr. Carver
24 with you in the yard? Hadn't he walked with you because you
25 were getting upset?

FANNIE ROSEBORO - CROSS EXAMINATION BY MR. GHENT

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- 1 A. Yeah, he had a camera.
- 2 Q. He had a camera?
- 3 A. Um-hum (affirmative).
- 4 Q. But you were in court and heard him say that?
- 5 A. What?
- 6 Q. That he took pictures.
- 7 A. No, I was there when he took the pictures.
- 8 Q. Okay. Do you have the pictures?
- 9 A. No, I didn't take pictures.
- 10 Q. And nobody ever got pictures?
- 11 A. They were in his camera. I don't know.
- 12 Q. He was in the yard with you. Did he ever leave you and
- 13 go up to the car?
- 14 A. Who?
- 15 Q. Mr. Carver?
- 16 A. No, he didn't go to the car as I know of.
- 17 Q. Okay. But you were in court and heard him testify in
- 18 detail as to how he could see all that was going on in the
- 19 back of the car claiming that Mr. Hilton was spraying your
- 20 son in the car.
- 21 A. Well, Mr. Hilton, himself, admitted that he sprayed.
- 22 Q. Are you saying he admitted that he sprayed your son
- 23 with this?
- 24 A. He admitted that he sprayed. So, I mean, that's --
- 25 that's my question.

JASON HILTON - DIRECT EXAMINATION BY MR. GHENT

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1 Q. Okay. Jon's your son?

2 A. Yes.

3 Q. Do you love him?

4 A. Of course I do.

5 Q. You became upset, correct? Out there you became upset
6 that the officer wouldn't leave.

7 A. Not enough to be so violent that he had to be scared of
8 me.

9 Q. Thank you. He never touched you? Officer Hilton never
10 touched you, never bumped you?

11 A. No. I wouldn't give him a chance. And then Jon said,
12 mama, go, I'm going.

13 Q. Okay. Thank you, ma'am.

14 MR. POOLE: No redirect.

15 THE COURT: You may step down.

16 MR. POOLE: That's the Defense, Your Honor.

17 THE COURT: Any reply?

18 MR. GHENT: The State would call Jason Hilton by way of
19 reply.

20 THE COURT: You've previously been placed under oath.
21 And so you're still under oath for the purpose of these
22 questions, too.

23 OFFICER HILTON: Yes, sir.

24 **Direct Examination by Mr. Ghent:**

25 Q. Deputy Hilton, you've heard the claims about how you

JASON HILTON - DIRECT EXAMINATION BY MR. GHENT

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1 conducted yourself.

2 A. Yes, sir.

3 Q. First question with respect to what's been claimed
4 about the statements you made about Ms. Roseboro, did you
5 say anything like that?

6 A. No, sir. I did not talk to her like that. I would not
7 talk to her like that.

8 Q. Did you make any remark to Mr. Roseboro that it was his
9 mother's fault that he was being arrested?

10 A. I see no correlation now, I don't know how I could have
11 then. And I did not ever make any such statement.

12 Q. Why did you arrest Mr. Roseboro?

13 A. Because he had an active Duncan City bench warrant.

14 Q. Outstanding for his arrest?

15 A. (Affirmative nod).

16 Q. In short, you did your duty, you did your job, is that
17 correct?

18 A. Tried to do it and as safely as I could.

19 Q. In arresting him you were doing your duty, is that
20 correct?

21 A. Yes, sir.

22 Q. Thank you. No further questions.

23 **MR. POOLE:** No questions.

24 **THE COURT:** You may step down. All right, ladies and
25 gentlemen, that is all the evidence. What remains to be

1 done are the lawyers' final summations afterwhich I'll
2 instruct you on the law and then you'll begin deliberations.
3 And that's going to take likely longer than what we have
4 left for the balance of the day.

5 So we're going to recess for the afternoon. And we'll
6 resume in the morning at 9:30 with the summations, the
7 instruction and your deliberations.

8 During the overnight recess don't discuss the case,
9 don't conduct any research, don't do your own investigation
10 into any issue. You've got to base your decision upon what
11 you see in here during the course of the trial. You can't
12 supplement that wealth of knowledge by talking to other
13 people or conducting any research on your own.

14 Do have a good evening. And please report to your jury
15 room at 9:30 in the morning, 9:30 in the morning.

16 (Whereupon the jury exited the courtroom at 4:12 pm)

17 **THE COURT:** Y'all have any requests for jury
18 instructions?

19 **MR. GHENT:** No, sir, Your Honor. May we approach?

20 (Whereupon a bench conference was held off the record)

21 **THE COURT:** All right. Court is in recess until 9:30
22 in the morning. Mr. Roseboro, as I told you before lunch,
23 the trial will proceed whether or not you appear, but you
24 are required to appear. And you have to be here not later
25 than 9:30 in the morning.

1 **MR. ROSEBORO:** Yes, sir.

2 **THE COURT:** Mr. Poole might need you before that time,
3 but I've got to have you by 9:30. If you fail to appear or
4 fail to appear on time, it's an additional criminal offense
5 for not following an instruction of the Court, you
6 understand?

7 **MR. ROSEBORO:** Yes, sir.

8 **THE COURT:** All right. Court's in recess until 9:30 in
9 the morning.

10 **MR. GHENT:** Thank you, Your Honor.

11 (Whereupon court was in recess at 4:16 pm)

VERDICT OF THE JURY

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1 **MADAME FORELADY:** Yes, sir.

2 **THE COURT:** If you'll, please, hand those up by way of
3 the bailiff.

4 (Pause)

5 **THE COURT:** You may publish the verdicts.

6 **MADAME CLERK:** Case number 2011-GS-42-1833, the State
7 versus Jon Michael Roseboro, on the indictment of throwing
8 bodily fluids, the verdict is guilty, signed by the
9 Foreperson, dated March the 22nd of 2013.

10 Indictment 2012-GS-42-6339, the indictment for
11 resisting arrest, the verdict is guilty, signed by the
12 Foreperson, dated March the 22nd of 2013.

13 Ladies and gentlemen of the jury, is this your verdict
14 and still your verdict? If so, please raise your right
15 hands.

16 (Whereupon all jurors raised their right hand)

17 **MADAME CLERK:** So say you all.

18 **THE COURT:** Does the Defendant wish to have the jury
19 polled?

20 **MR. POOLE:** No, sir.

21 **THE COURT:** All right. Thank you, ladies and
22 gentlemen, for your participation in the trial of the case
23 and also for your service this week. This is the last case
24 that's going to require your assistance.

25 So I do want to thank you for your willingness to serve

VERDICT OF THE JURY

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1 as jurors this week and, of course, for your actual service
2 in the trial of the case. I hope that the imposition by way
3 of your jury service has not posed too much of a hardship on
4 you. And I do sincerely hope that your service has been an
5 educational and a beneficial experience for you.

6 You will receive a pay voucher for your service this
7 week. That pay voucher will be mailed to you at the address
8 that appears on your juror summons unless you have provided
9 the clerk with a different address. So is everyone's
10 address on the summons correct?

11 **THE JURY:** (Affirmative nods).

12 **THE COURT:** Anybody's not?

13 (No response)

14 **THE COURT:** Okay. Well, you should receive it when?
15 Within the week?

16 **MADAME CLERK:** Probably middle of next week.

17 **THE COURT:** Middle of next week. I mean, don't commit
18 to buying any big things with the money you're going to get.
19 It won't be that much, but we do thank you for your service.

20 If you'll go with the bailiff one more time he'll check
21 you out and take your name tags. And you won't need to come
22 back or call back any further. So thank you again for your
23 participation.

24 (Whereupon the jury exited the courtroom at 11:19 am)

25 **THE COURT:** All right. Any matters to address prior to

VERDICT OF THE JURY

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1 the imposition of sentence?

2 **MR. POOLE:** Your Honor, I would like to renew my
3 motions made prior to the trial of this case last year and
4 the motions made during the course of the trial and ask for
5 a new trial.

6 **THE COURT:** All right. Each of those motions are
7 denied.

8 **MR. POOLE:** Yes, sir.

9 **MR. GHENT:** Your Honor, I had the sentencing sheets
10 prepared. And could I have a moment to find ...

11 **THE COURT:** How do you know it'll only take a moment?

12 **MR. GHENT:** With me, you're right, Your Honor. That
13 may be a gross ---

14 **THE COURT:** All right.

15 **MR. GHENT:** --- understatement.

16 **THE COURT:** We'll take -- we'll take ten minutes. And
17 let me see ---

18 **MR. POOLE:** Your Honor, may I complete my ---

19 **THE COURT:** Yeah, but let me see you and Mr. Ghent
20 before y'all take off.

21 **MR. GHENT:** Yes, sir.

22 **THE COURT:** Mr. Roseboro's in custody now.

23 (Whereupon a bench conference was held off the record)

24 **THE COURT:** All right. We'll be at ease ten minutes.

25 (Whereupon court was in recess at 11:21 am)

SENTENCE OF THE COURT

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1 (Whereupon court resumed at 11:42 am)

2 **THE COURT:** Thank you. Be seated. All right. You
3 haven't given me his record yet, have you? Tell me what his
4 record is, Mr. Ghent.

5 **MR. GHENT:** Your Honor, I don't have anything of
6 consequence. There are ---

7 **THE COURT:** Okay.

8 **MR. GHENT:** --- some charges most of which were
9 dismissed.

10 **THE COURT:** Okay.

11 **MR. GHENT:** But there is no significant criminal
12 history that I know of.

13 **THE COURT:** All right. Anything further on behalf of
14 the State?

15 **MR. GHENT:** Your Honor, the only thing I will say is
16 that this really did matter because these men and women do
17 put it on the line, they do serve and protect. And I would
18 respectfully disagree with those who say otherwise that they
19 can't protect us, so everybody get a gun. These men and
20 women do protect us. And I'd ask Your Honor to take that
21 into consideration. Thank you.

22 **THE COURT:** All right. Mr. Poole.

23 **MR. POOLE:** Your Honor already knows a little about Mr.
24 Roseboro. He is fifty-two years of age. He's lived in this
25 area all of his life. He was in the Marines. He re-upped

SENTENCE OF THE COURT

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1 once and he served almost eight years with an honorable
2 discharge.

3 He has cancer. He is being treated at the V. A.
4 Hospital. He goes there or to an outlet, I understand
5 there's one in Boiling Springs, now about two or three times
6 a week. His T-cells are elevated. So he has some medical
7 condition -- conditions that I'd ask you to take into
8 consideration and the lack of or the paucity of his prior
9 criminal history. I'd ask that you just simply don't load
10 him down too much.

11 **THE COURT:** All right. Mr. Roseboro, anything you want
12 to add?

13 **MR. ROSEBORO:** No, sir. I'm on the mercy of the Court.
14 (Pause)

15 **THE COURT:** On indictment 2011-1833, that's the
16 indictment for the throwing of bodily fluids wherein you
17 have been found guilty by the jury for that offense, the
18 sentence of the Court is you, Jon Michael Roseboro, be
19 confined to the South Carolina Department of Corrections for
20 a period of ten years. That sentence is suspended upon the
21 service of two and payment of a fine of one hundred dollars
22 plus the costs and assessments, probation for two.
23 Condition of probation, random drug and alcohol testing, pay
24 five hundred dollars for your appointed lawyer.

25 Indictment 2012-6339, resisting arrest, one year

SENTENCE OF THE COURT

1 concurrent.

2 MR. GHENT: Thank you, Your Honor.

3 MR. POOLE: Thank you, Your Honor.

4 MR. GHENT: Thank you, Your Honor.

5 (Hearing ended at 11:47 am)

6 (End of requested transcript of record)

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THE STATE OF SOUTH CAROLINA
CITY OF DUNCAN
Judge Kenneth Harold Dover

18742A0BW

BENCH WARRANT

To any Lawful Constable or Officer:

WHEREAS One Jon Michael Roseboro, On the 21 st day of July in the year of our Lord, 1998

Was convicted in this Court of Drug Paraphernalia

with sentence imposed of \$111 OR 30 DAYS CONSECUTIVELY.

This order is to command you to take and convey him/her to the common jail. The keeper of the said jail is hereby commanded to receive the said defendant and to safely keep until he/she shall be thereof discharged by due course of law; And for so doing, this shall be your good and sufficient warrant.

Witness: The due execution of this warrant on the 10 th day of March in the year of our Lord, 1999

Kenneth Dover
Judge: Kenneth Harold Dover

(L.S.)

(Tear Here)

OFFICER'S RETURN

THE STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
Judge Kenneth Harold Dover

I hereby certify that pursuant to the command of the within warrant, I have placed the said Jon Michael Roseboro in the jail this 21 day of April in the year of our Lord.

29

2011

Officers Name

L. L. Lark 1-9-11

Address:

ROEBUCK, SC 29376

Race:

Height: 5'7"

SOB:

Sex: m

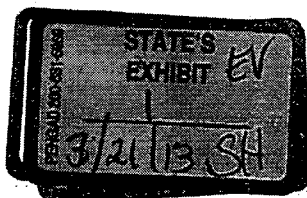
Weight: 140

DOB:

DL Number

SMT

DEBT SET-OFF
DATE _____



708349

THE STATE OF SOUTH CAROLINA
CITY OF DUNCAN
Judge Kenneth Harold Dover

18742AOBW



BENCH WARRANT

To any Lawful Constable or Officer:

WHEREAS: One Jon Michael Roseboro, On the 21 st day of July in the year of our Lord, 1998

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Witness: The due execution of this warrant on the 10 th day of March in the year of our Lord, 1999

This warrant is countersigned
for service in Spartanburg county

Judge: Kenneth Harold Dover

(L.S.)

Judge

(Tear Here)

OFFICER'S RETURN

THE STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
Judge Kenneth Harold Dover

I hereby certify that, pursuant to the command of the within warrant, I have placed the said Jon Michael Roseboro in the jail this 4 day of 01 in the year of our Lord, 2011.

Officers Name

T. L. Loe

Address:
ROEBUCK, SC 29376

Race: b Height: 507 SOC:
Sex: m Weight: 140 DOB:
DL Number: SMT:

DEBT SET-OFF
DATE

2010 DEC -8 PM 1:51

ANDREWS DEPT
CLIFF S. PHELPS

150

SPARTANBURG COUNTY DETENTION FACILITY

Medical Receiving Screening Form

Date 1-11-11Time 1530Inmate Name Roseboro, John Michael Sex MDOB 9-22-60

Officers Visual Observation

1. Unconscious?
2. Visual signs of trauma or illness requiring emergency medical care? Describe
3. Obvious fever, swelling, jaundice, or other infection? Describe:
4. Poor skin condition, vermin, rashes, or needle marks? Describe
5. Under influence of alcohol or drugs? Describe
6. Visible signs alcohol/drug withdrawal? (Extreme perspiration, pinpoint pupils, shakes, nausea, cramping, vomiting)
7. Behavior suggesting risk of suicide or assault? Describe
8. Carrying medication or reporting medication? Describe
9. Deformities or other injuries? Describe: Scars on neck

Yes No No response

QUESTIONNAIRE

10. Are you under a doctor's care? yes If yes, for what? TB
11. Are you using medication? no If yes, what?
12. Doctor's name Where located
13. Do you use alcohol? no If yes, how often?
14. Do you use drugs? no If yes, how often and what kind?
15. If female, are you pregnant? no If yes, delivery date?
16. Admits to the following (check if inmate notes problem)

no Allergies
no Arthritis
yes Asthma
no Delirium (Tremors D.T.'s)
no Dental
no Diabetes
no Epilepsy
no Fainting
no Heart Condition

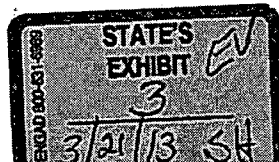
yes Hepatitis
no High Blood Pressure
no Physician Prescribed Diet
no Psychiatric disorder
yes Tuberculosis (TB)
no Ulcers
no Urinary Tract Problems
no Venereal disease
no Other (specify)

Comments: Hepatitis

I hereby state that the above information is correct to the best of my knowledge.

Signature of Inmate Detention Officer

1-Inmate folder
 1-Nurse



SPARTANBURG COUNTY DETENTION FACILITY
INMATE REQUEST TO SEE MEDICAL STAFF

INMATE'S NAME & CELL NUMBER: Jon Roseboro	DATE: 1/4/11	DATE OF BIRTH: [REDACTED] ANY DRUG ALLERGIES:
COMPLAINT: Per Pkg epc. ~~Im~~ c/o Dpc state Im has active TB. Im in bkg Cell (BA area) - masked. No active coughing. Im unsure of who, when dx.		
NURSE'S FINDINGS: Called Sptg Co Health Dept - spoke to Heather per Heather, no active case open. Given contact info Ellen Bouknight Central Health Dept. (Columbia, 1-803 898 0539. Per Ms Bouknight - Prison liaison Im not registered as TB carrier (active disease) <i>(initials)</i> 720 PM - Dpc. Wm Hilton - states exposed to TB through		
PHYSICIAN'S EVALUATION: <i>(initials)</i> Spitting. States went to Reg Occupational they were closed, referred to SPMC ER. Per Mr Hilton told to flip w/ jail + further testing to be done by this facility. Mr. Hilton request. Sent to hold Im until further testing can be done. Explained that CXR require radiology reading (Im could be released before being read, skin test would take 48-72 to be read. Explain to inform R.O. # ^{possible} for Hepatitis, TB exp. States unsure if he disclosed Hepatitis exposure while @ Regional ER. <i>(initials)</i>		
DISPOSITION:		
PHYSICIAN'S SIGNATURE:	DATE: 1/5/11	

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SPARTANBURG REGIONAL MEDICAL CENTER
Radiology Report

NAME: ROSEBORO, JON M

ORDERING PHYSICIAN: BIANCO, SALVATORE

LOC: OPT

Pt. Type: OPT

DOB: [REDACTED]

SPARTANBURG COUNTY JAIL

UNIT #: 000509632

CI #: 2947168

AN#: S1100601854

FINAL

Exam

50342 XR CHEST PA AND LATERAL
71020

Date: 01/06/11 1732

Ord Diag: 786.2-COUGH

CHEST X-RAY, 2 views 1/6/2011

History: Cough

Technique: PA and lateral views of the chest.

Comparison: None

Findings:

The cardiac silhouette is normal in respect to size. The lungs are expanded without evidence for pneumothorax. No infiltrate, consolidation, or evidence of pleural effusion is seen. Right upper lobe parenchymal calcifications are seen which can suggest remote granulomatous infection.

The bony thorax demonstrates no acute changes. The upper abdomen is unremarkable in appearance.

IMPRESSION:

1. No acute cardiopulmonary process evident by plain film imaging.

Transcriptionist- n/a

Reading Radiologist- BARRY M LAZENBY MD

Releasing Radiologist- BARRY M LAZENBY MD

Released Date Time- 01/06/11 1751

Page 1

SPARTANBURG COUNTY DETENTION FACILITY
INMATE REQUEST TO SEE MEDICAL STAFF

INMATE'S NAME & CELL NUMBER: <i>Jon Roseboro</i>	DATE: <i>1-6-11</i>	DATE OF BIRTH: [REDACTED] ANY DRUG ALLERGIES:
COMPLAINT:		
NURSE'S FINDINGS: <i>Elm was seen by 'Melinda' wants Chest xray + to Collect Sputum x 3 days first thing in Am. PPD was placed DFA. Needs to be read Saturday 430pm. Dr. Fulgini notified of xray. _____ Sputum placed on Calander CPO _____ Crystal Thompson</i>		
PHYSICIAN'S EVALUATION: <i>1810 - Called Melinda @ 909-5308 notified of Elm ATW. Will pick of Sputum Cans in Am. _____ _____ Crystal Thompson</i>		
DISPOSITION:		
PHYSICIAN'S SIGNATURE:	DATE:	

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SPARTANBURG COUNTY DETENTION FACILITY

Larry Powers, Director

INMATE HEALTH ASSESSMENT

Telephone (804) 505-2636

Copy of Yellow Booking Sheet (reviewed and attached)

FEDERAL Yes ☒ No ☐

Today's Date: 1, 5, 10

Inmate Name: <u>Jon Michael Roseboro</u>		Date of Birth: <u>[REDACTED]</u>																
Allergies/Reaction: <u>Sulfa</u>		RACE: <u>B</u>	SEX: <u>M</u>															
FEMALES ☐ Males ☒		Currently pregnant? ☐	Prenatal Care Physician: <u>[REDACTED]</u>															
MEDICAL HISTORY <table border="1"> <tr> <td>Heart Disease: <u>1</u></td> <td>Diabetes (type): <u>1</u></td> <td>Glasses/Contacts: <u>DOES NOT HAVE</u></td> </tr> <tr> <td>Lung Disease: <u>Smoker TB, 8005</u></td> <td>Seizures: <u>1</u></td> <td>AIDS/HIV: <u>1</u></td> </tr> <tr> <td>Kidney Disease: <u>1</u></td> <td>Sickle Cell: <u>1</u></td> <td>STD's: <u>1</u></td> </tr> <tr> <td>Cirrhosis: <u>1</u></td> <td>Hypertension: <u>1</u></td> <td>Psychiatric/Mental Health Hx: <u>1</u></td> </tr> <tr> <td>Hepatitis (type): <u>1</u></td> <td>Cancer (type): <u>1</u></td> <td>Other Relevant Med. Hx: <u>1</u></td> </tr> </table>				Heart Disease: <u>1</u>	Diabetes (type): <u>1</u>	Glasses/Contacts: <u>DOES NOT HAVE</u>	Lung Disease: <u>Smoker TB, 8005</u>	Seizures: <u>1</u>	AIDS/HIV: <u>1</u>	Kidney Disease: <u>1</u>	Sickle Cell: <u>1</u>	STD's: <u>1</u>	Cirrhosis: <u>1</u>	Hypertension: <u>1</u>	Psychiatric/Mental Health Hx: <u>1</u>	Hepatitis (type): <u>1</u>	Cancer (type): <u>1</u>	Other Relevant Med. Hx: <u>1</u>
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Hepatitis (type): <u>1</u>	Cancer (type): <u>1</u>	Other Relevant Med. Hx: <u>1</u>																
CURRENT MEDICATIONS: <u>Penicillin</u>		PRIVATE PHYSICIAN(S): <u>[REDACTED]</u>																
SURGICAL HISTORY: <u>Penicillin</u>		Does Inmate Wish to have Private MD reached? <u>1</u>																
SUBSTANCE ABUSE: (amount, frequency, length of use, last used)		Inmate DENIES ANY SUBSTANCE ABUSE <u>1</u>																
Crack/Cocaine:	Methamphetamines	Ecstasy:	LSD:															
Tobacco:	Marijuana:	Inhalants:	Opiates:															
Benzodiazepines:	Heroin:	FTOH:	OTHER:															
Vital Signs: HT: <u>5'7"</u> WT: <u>158</u> BP: <u>128/72</u> Temp: <u>74</u> Pulse: <u>74</u> Respirations: <u>18</u>																		
Any TB testing Results:		Facility: Follow-up Tx:																
Dental Screening: Cavities YES or NO <u>1</u> Dental List: <u>1</u>		Dentures: FULL/Partial/Edentulous Natural Teeth: YES or NO <u>1</u>																
Wounds or Injuries: WNL <u>1</u>																		
Special Needs (crutches, cane, walker, prosthesis, braces, etc.) <u>EXPLAIN</u>																		
GENERAL APPEARANCE: Healthy <u>1</u> If not, explain:																		
Mental Status: <u>A/O X3</u>	Suicidal: <u>1</u>	Mental Health: <u>1</u>	Other: <u>1</u>															
EYES: <u>1</u>	EARS: <u>1</u>	SKIN: <u>1</u>	FOLLOW-UP: <u>1</u>															
PARASITES: <u>1</u>	CHEST: <u>1</u>	EXTREMITIES: <u>1</u>																
GAIT: <u>1</u>	OTHER: <u>1</u>																	
RN/LPN Signature: <u>[Signature]</u>		MD Signature: <u>[Signature]</u>																
I HAVE READ AND ANSWERED TO THE ABOVE QUESTIONS TRUTHFULLY AND TO THE BEST OF MY KNOWLEDGE.																		
INMATE'S SIGNATURE: <u>[Signature]</u>																		
NURSING ONLY: Withdrawal Protocol UN/VCC Medications: Follow Up: <u>1</u>																		

MINI REGISTRATION
(Short Form)

Department/Office: Medical Form Completed By: C. Thompson Date: 1-6-11
Account #: 1180601854 Medical Record # _____ Date of Procedure/Test: _____

Patient's Last Name Roseboro First Name Jon Middle Initial Michael
Street/Mailing Address 930 California Ave
City Spartanburg State SC Zip Code 29303
Sex M Race B Marital Status: _____ Age _____ Date of Birth: [REDACTED] Social Security #: [REDACTED]
Patient's Signature: _____
Patient Employer: _____
(Company Name) (Address) (Phone)
Spouse Name: _____ Spouse Security #: _____
Primary Insurance (1) _____
(Insured Name) Policy ID# Social Security #
Primary Insurance (2) _____
(Insured Name) Policy ID# Social Security #
Spouse's Retirement Date _____
Compensation: _____ Date of Accident: _____ Responsible Employer: _____

Ordering Physician: Bianco Roseboro Diagnosis/Symptom: _____
(Last Name) (First Name)

Diagnostic Tests/Procedure Ordered: Chest X-Ray 786-2

State Registration Input: _____ Registration Entered By (Initials): _____

NOTE: HOSPITAL AUTHORIZATION FORM MUST BE SIGNED. IF MEDICARE PATIENT, HAVE PATIENT ANSWER "MEDICARE MSP QUESTIONNAIRE" AND SIGN. OBTAIN A COPY OF INSURANCE CARDS. ATTACH ALL DOCUMENTATION TO THIS FORM AND PLACE IN THE PATIENT'S FILE.

FAX RESULTS TO (864) 596-2663 Spartanburg Co. Detention Facility (Medical Dept)

For Pharmacy
Use Only

SPARTANBURG COUNTY DETENTION USE ONLY

Doctor's Name _____

DEA Number _____ S.C. Lic. Number _____

Address _____

Patient Name Jon Cardano Date 1-6-11

Address _____

R Chest x ray RFX

786-2

R RFX

John E. Bando

Dispense as Written

Substitution Permitted
(Minuteman Press 9/00)

WITNESSES

Spartanburg County Sheriff's Office

Kevin [Signature]
 2. REPORT ENTERED ☒ **Computer**

3. CARD PULLED ☐

4. INDEXED ☐

5. CHECKED WARRANTS ☐
 ARREST WARRANT NUMBER

6. CHECKED SIGNATURE ☐

M751878 7. ASSESSMENT AND FINE CARD MADE ☒ **Computer**

8. TRAFFIC VIOLATION COPY ☐

ACTION OF GRAND JURY

Dean Dill

True Bill

Foreperson of Grand Jury DEC 06 2012
 Date:

VERDICT

Guilty

Christa K. [Signature]
 Foreperson of Petit Jury
 Date:

March 22, 2013

DOCKET NO. 11-GS-42-1833

**Amended
 The State of South Carolina**

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

DEC 11 2012

TERM

THE STATE
 vs.

Jon Michael Roseboro

Indictment for

**COUNT ONE-THROWING OF BODILY
 FLUIDS**

SC Code: 24-13-470
 CDR Code: 2526
 Class FEL/UNC

2012 DEC 11 PM 4:32

M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

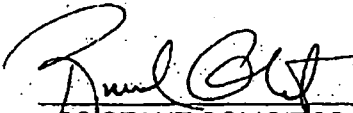
At a Court of General Sessions, convened on DEC 05 2012 the

Grand Jurors of Spartanburg County present upon their oath:

THROWING OF BODILY FLUIDS

That the Defendant, Jon Michael Rosboro, did in Spartanburg County on or January 4, 2011, did commit an assault and battery upon the victim, Jason Hilton, a Deputy with the Spartanburg County Sheriff's Office, Spartanburg, South Carolina, constituting an unlawful act of violent injury to the person of the said victim, Deputy Hilton of the Spartanburg County Sheriff's Office who was acting in the scope and course of his duty to arrest the Defendant, by the Defendant telling deputy Hilton that he had tuberculosis while he was detained and in custody and arrested by Deputy Hilton, and proceeding and continuing to cough phlem, saliva and sputum, bodily fluids under the statutory law on Deputy Hilton during the course of the Defendant's being detained, arrested, and taken into custody, and transportation in a patrol car and continuing until he was delivered to the Spartanburg County Detention Facility, in violation of §24-13-470 of *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

WITNESSES

Spartanburg County Sheriff's Office

2. REPORT ENTERED

3. CARD PULLED

4. INDEXED

5. CHECKED WARRANTS
ARREST WARRANT NUMBER6. CHECKED SIGNATURE
Direct Indictment7. ASSESSMENT AND
FINE CARD MADE

8. TRAFFIC VIOLATION COPY

ACTION OF GRAND JURY

True Bill

DEC 06 2012

Foreperson of Grand Jury

Date:

VERDICT

Guilty

Christa K. Squire

Foreperson of Petit Jury

Date:

March 22, 2013

12-GS-42-6339

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

DEC 17 2012

TERM

THE STATE
v.

JON MICHAEL ROSEBORO

Indictment for

OPPOSING/RESISTING LAW
ENFORCEMENT OFFICER SERVICE
PROCESS - ASSAULTING OFFICER
ENGAGED IN SERVING PROCESS

SC Code: 16-9-320 (A)(B)

CDR Code:

Class

FILED
CLERK OF COURT
SPARTANBURG COUNTY

2012 DEC 12 AM 8:53

M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

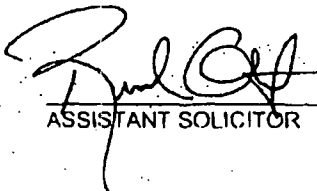
At a Court of General Sessions, convened on DEC 06 2012 the

Grand Jurors of Spartanburg County present upon their oath:

OPPOSING/RESISTING LAW ENFORCEMENT OFFICER SERVING
PROCESS – ASSAULTING OFFICER ENGAGED IN SERVING
PROCESS

That the Defendant, Jon Michael Roseboro, did in Spartanburg County on or about January 4, 2011, knowingly and willfully oppose a law enforcement officer attempting to serve process upon him, knowing him to be a law enforcement officer, and did further in the course of same commit an assault upon the victim, Jason Hilton, a Deputy with the Spartanburg County Sheriff's Office, in the course of Deputy Hilton attempting to serve process, a bench warrant of the court, all in violation of South Carolina Code Ann., Section 16-9-320 (A) and (B).

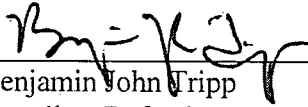
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

September 3, 2014



Benjamin John Tripp
Appellate Defender

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

ATTORNEY FOR APPELLANT

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

FINAL BRIEF OF APPELLANT

BENJAMIN JOHN TRIPP
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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Rules

C.f. Rule 4(c)(3)(A), FRCrimP 11

Constitutional Provisions

U.S. Const. amend. IV passim

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. 157 – R. 160. 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. The Honorable Roger L. Couch heard Appellant's argument and issued an order denying the motion on October 19, 2012. R. 46 – R. 50.

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. R. 51. At the conclusion of the trial on March 22, 2013, the jury found Appellant guilty on both counts. R. 51; R. 141, 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. R. 145, ll. 15-24. For the charge of resisting arrest, Judge Cole sentenced Appellant to one year of imprisonment to run concurrently. R. 145, l. 25 – R. 146, l. 1.

ARGUMENT

The lower courts erred in denying Appellant's motion 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." R. 63, 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. R. 62, l. 10 – R. 63, 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. R. 63, 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.

R. 124, l. 6 – R. 125, l. 8; R. 80, 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. R. 65, l. 4 – R. 66, 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. R. 79, l. 20 – R. 80, l. 11. While arresting and transporting Appellant, Hilton claimed Appellant said he had tuberculosis and attempted to cough on him. R. 67, l. 12 – R. 71, 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." R. 101, 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 R. 102, 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. R. 102, 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." R. 103, 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.

R. 133, l. 13 – R. 134, 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. 1-44. 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. 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. 46 – R. 50.

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. 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. Therefore, because Appellant was served with a warrant upon his confinement in a jail cell, the arrest was valid under section 17-13-50. R. 46 – R. 50.

DISCUSSION

The lower courts erred in denying Appellant's motion 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))).

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 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.

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 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

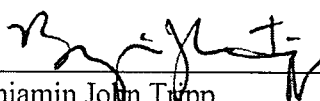
ATTORNEY FOR APPELLANT

This 18th day of September, 2014.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

September 18, 2014



Benjamin John Tripp
Appellate Defender

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

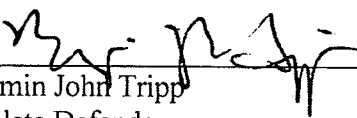
V.

JON ROSEBORO,

APPELLANT

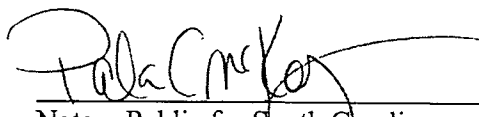
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon William M. Blich, Jr., Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 18th day of September, 2014.


Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 18th day of September, 2014.


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



SCCID

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September 18, 2014

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Re: The State v. Jon Roseboro

Dear William:

Enclosed are two copies of the Final Brief of Appellant in the above-entitled case, which I have filed today with the South Carolina Court of Appeals.

Please call me if you have any questions.

Sincerely,

Benjamin John Tripp
Appellate Defender

BJT/pcm

Enclosure

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. The trial court properly denied Appellant's motion to dismiss because the arrest was lawful and reasonable and Appellant's subsequent actions supported the charges against him.

STATEMENT OF THE CASE

The State agrees with Appellant's procedural Statement of the Case.

ARGUMENT

- I. **The trial court properly denied Appellant's motion to dismiss because the arrest was lawful and reasonable and Appellant's subsequent actions supported the charges against him.**

Appellant contends the trial court erred in denying his motion to dismiss the charges against him because they arose from an unlawful arrest. Appellant's arrest was lawful and reasonable. Further, an issue related to the timing of the presentment of the warrant does not affect the lawfulness of the arrest. Finally, his actions of throwing bodily fluid constitute a separate crime for which he could be arrested even if the initial arrest was unlawful.

Preservation

First, the issue as raised on appeal by Appellant is not preserved for review. Appellant contends the arrest was unreasonable under the Fourth Amendment to the United States Constitution, and therefore, unconstitutional. The trial court issued a written order in this case in which he never addresses or discusses the Fourth Amendment. The court's entire order revolves around South Carolina statutory and case law and their interpretations. Further, Appellant never asked the trial court to specifically address an argument that the arrest was unreasonable under the Fourth Amendment. Finally, prior to trial and several months after the court issued its order, Appellant never raised the motion to dismiss nor did he ask for any further ruling regarding the constitutionality or the reasonableness of the arrest. (3/21T.6; R. 52). As a result, the issue is not preserved for review on appeal. See State v. Langford, 400 S.C. 421, 446, 735 S.E.2d 471, 484 (2012) ("Constitutional issues are not exempt from issue

preservation requirements.”); State v. Freiburger, 366 S.C. 125, 134, 620 S.E.2d 737, 741 (2005) (holding an issue not preserved when one ground is raised to the trial court and another ground is raised on appeal); State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) (providing that in order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial court).

Merits

Appellant’s contention he was unlawfully arrested because Officer Hilton did not have a physical copy of the bench warrant for Appellant is without merit. Further, Officer Hilton did not unreasonably handle Appellant’s arrest. In addition, Appellant received a copy of the bench warrant and has never challenged its validity. Finally, even if the arrest were unlawful for any reason, Appellant committed the second offense of throwing bodily fluids which would constitute a separate and distinct crime for which he could be prosecuted.

Lawful Arrest

Officer Hilton’s arrest of Appellant was entirely constitutional regardless of whether he had a copy of the warrant in his hand. Further, the arrest was valid and lawful under South Carolina law even though Officer Hilton did not have a copy of the warrant in his actual possession.

The Fourth Amendment provides:

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. As the United States Supreme Court has stated:

Unreasonable searches or seizures conducted without any warrant at all are condemned by the plain language of the first clause of the Amendment. . . . [I]t is sufficient to note that the warrantless arrest of a person is a species of seizure required by the Amendment to be reasonable.

Payton v. New York, 445 U.S. 573, 585 (1980) (emphasis added). It is clear the Fourth Amendment is concerned with a warrantless arrest.

Appellant seems to presume this case involves a warrantless arrest and, therefore, a consideration of the reasonableness of the seizure is required. In the instant case, however, it is uncontested that a bench warrant based on Appellant's conviction for possession of drug paraphernalia in the City of Duncan existed.¹ (State's Exhibits 1² and 2; R. 148-149). In State v. Sims, 304 S.C. 409, 405 S.E.2d 377 (1991), the South Carolina Supreme Court considered a situation in which the officer did not have actual possession of the warrant, but instead had knowledge of the existence of outstanding warrants for the defendant. The Court specifically found: "The arresting officer did not make a warrantless arrest." Id. at 418-419; 405 S.E.2d at 383. Accordingly, the issue in the case *sub judice* is not whether there was an unreasonable warrantless arrest because a warrant clearly existed and, as the trial court found, the arrest was made pursuant to the outstanding bench warrant.

Further, Appellant complains Officer Hilton was required to have the warrant in hand at the arrest. Nothing in the Fourth Amendment requires the warrant be present at the time of the arrest, only that the arrest be pursuant to a warrant obtained from an

¹ Appellant has not challenged the validity of the underlying bench warrant or the reasonableness of the officer in relying on the warrant. He has simply articulated an argument based on the lack of actual possession of the warrant.

² State's Exhibit 1, the bench warrant for Appellant which was admitted during trial, is the same document as Court's Exhibit 1, which was entered during the October 4 hearing regarding the dismissal of the charges. In referring to the bench warrant for Appellant, the State will refer to the Exhibit throughout this brief as State's Exhibit 1.

appropriate neutral source such as a magistrate or judge. Many federal Courts of Appeal have considered the question and found that an arrest without the warrant present is appropriate and lawful. See U.S. v. Leftwich, 461 F.2d 586, 592 (3rd Cir. 1972) (“While it is true that the arresting agents did not have the warrant with them at the time of arrest, they were not required to have it in their possession if it was outstanding at that time.”); United States v. Salliey, 360 F.2d 699, 704 (4th Cir. 1966) (“The arrest by officers not in possession of the outstanding warrant was legal.”); Gill v. United States, 421 F.2d 1353, 1355 (5th Cir. 1970) (“Under the circumstances the arrest was proper even though the arresting officer did not have the actual written warrant in hand.”); United States v. Holland, 438 F.2d 887, 888 (6th Cir. 1971) (“The fact that the officers did not have physical possession of the warrant at the time of the arrest is of no consequence to the validity of the arrest.”); United States v. Turcotte, 558 F.2d 893, 896 (8th Cir. 1977) (“We find no merit to appellant’s contention that his arrest was unlawful due to the failure of the arresting officer to serve him with a copy of the arrest warrant.”).

Appellant even acknowledges federal law does not require possession of the warrant. In United States v. Bembry, 321 Fed. Appx. 892 (11th Cir. 2009), the Court, after discussing the Fourth Amendment, specifically held:

There is no federal requirement that an officer have a warrant in hand or nearby when he is arresting a suspect. Instead, when an officer is arresting a suspect, pursuant to a warrant, and “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.”

Id. at 894 (quoting Rule 4(c)(3)(A), FRCrimP).

Additionally, South Carolina has considered the propriety of an arrest when it is conducted by an officer not in actual possession of the warrant upon which the arrest is based. In State v. Sims, the defendant alleged evidence seized during his arrest should be suppressed because it was seized during an unlawful warrantless arrest. State v. Sims, 304 S.C. 409, 418-419, 405 S.E.2d 377, 382-383 (1991). The South Carolina Supreme Court found the arrest was not a warrantless arrest. Id. at 419, 405 S.E.2d at 383. Specifically, the Court explained:

The arresting officer **did not make a warrantless arrest**; the officer testified that he was aware of the Federal Bureau of Investigation warrant, and of a warrant in California that had been issued for Sims' arrest. In addition, there were warrants for Sims' arrest in South Carolina. Since the officers were **acting pursuant to valid arrest warrants** which had been issued for Sims, they were authorized to enter the motel room to make the arrest.

Id. (emphasis added).

Further, the Court considered the issue again in State v. Grate, 310 S.C. 240, 423 S.E.2d 119 (1992). The defendant maintained his arrest was unlawful and, therefore, he had a right to resist the arrest. He moved for a directed verdict arguing the State failed to prove the arrest was lawful because the officer did not have the warrant in his possession. The South Carolina Supreme Court found the arresting officer was not required to have in his possession a warrant for assault with a deadly weapon, a misdemeanor, at the time of the defendant's arrest pursuant to the warrant. The Supreme Court concluded the trial court properly denied Grate's motion for a directed verdict on his resisting arrest charge where he had argued he had a right to resist the unlawful arrest. Id. at 241-242, 423 S.E.2d at 119-120.

The South Carolina Supreme Court again found evidence should not be suppressed as a result of an unlawful search solely because an officer does not have a copy of the warrant in his actual possession. See State v. Holmes, 320 S.C. 259, 464 S.E.2d 334 (1995). The Court found: "The record indicates a warrant had been issued prior to appellant's arrest and that the arresting officer, while not in possession of the warrant itself, was acting pursuant to the warrant when the arrest was made." Id. at 267, 464 S.E.2d at 338. Accordingly, the South Carolina Supreme Court has made it clear an officer is not acting unlawfully, and an arrest does not become unlawful, merely because the officer does not have actual possession of the warrant being executed.

Appellant filed a supplemental authority citing to State v. Shaw, 104 S.C. 359, 89 S.E. 322 (1916). In Shaw, the Court analyzed an arrest made based on an outstanding warrant and whether resistance to that arrest was lawful or unlawful. In that case, the Court explained the common law requirement that an officer cannot arrest an individual for a misdemeanor not committed in his presence unless he has the warrant in his possession. The Court noted the question of the arrest implicates the liberty of the individual versus the necessity to yield to proper authority. The Court explained the purpose of having the warrant is to enable the officer to explain to the individual "by what authority and for what cause he is deprived of his liberty." Id. at 322. The Court then articulated:

It was not necessary that he should have had the warrant in his hand or in his pocket at the time of making the arrest. Actual possession of it does not mean that. The rule is satisfied if the officer has such possession of the warrant that he can produce it with reasonable promptness on demand.

Id. at 323. The Court explained as long as the officer can provide the information in a reasonable time, the policy behind the common law rule is satisfied.

In today's practice, the same policy is properly considered by the holdings in Sims, Grate, and Holmes. The officer now has access to cell phones, computers, and other communication abilities unheard of even twenty years ago. As in this case, the authority and verification of the warrant can take place in front of the individual over a cell phone or computer and accomplish the exact same policy goals which required possession of the warrant on or near the officer in 1916. Accordingly, the trial court properly concluded the arrest was not unlawful because the officer did not have a physical copy of the warrant with him when it was otherwise properly verified through today's communications.

Reasonableness of Arrest

Appellant contends Officer Hilton's actions were unreasonable during the arrest. The facts as testified to during the hearing paint a completely different picture, especially in light of the law above.

First, the reasonableness of the seizure is considered when no warrant exists. In this case, as discussed above, a warrant existed and Officer Hilton could proceed to act on that warrant even though he did not have it in his possession. Several of the cases cited by Appellant to try and argue Officer Hilton acted unreasonably by failing to provide the warrant are cases in which no warrant existed. These cases are inapposite to the case at hand. See Camara v. Municipal Court of City and County of San Francisco, 387 U.S. 523 (1967) (addressing **warrantless** administrative searches); Michigan v.

Tyler, 436 U.S. 499 (1978) (addressing warrantless search of burned building hours after fire extinguished and initial investigation complete).

In the instant case, Appellant had a valid bench warrant for his arrest from the City of Duncan for possession of drug paraphernalia. (10/4T.10; State's Exhibit 1 and 2; R. 10; 148-149). Officer Hilton verified the warrant on his computer³ as well as by calling the warrant officer to ensure a copy was in the hand of the officer. He made this communication in front of Appellant and with Appellant's knowledge. (10/4T.11-13; 15-17; 19; R. 11-13; 15-17; 19). Officer Hilton testified:

I was constantly berated by [Appellant's mother] and [Appellant], from the point of contact with him, outside of his residence in his yard. They verbally berated me and accosted me the entire time that I was trying to use the cell phone to confirm that there was a warrant in hand.

I advised [Appellant] that per my computer, there was an active warrant and that I would confirm it by a fellow officer via cell phone. I accommodated him with that.

And, when it was confirmed, I told him that he was under arrest.

(10/4T.20; R. 20). Further, at trial, Officer Hilton testified similarly. (3/21T.36; 38; R. 63; 65).

Sergeant Beaty testified the Sheriff's office uses a duplicate process to verify the validity of an outstanding warrant. He stated officers "check on the computer, see if [the warrant] is on the computer. If so, then you call the warrant office still to, I guess, kind of

³ Appellant's arguments seem designed to eliminate the current system used by officers of determining the existence of outstanding warrants on their in-car computer systems. Public policy alone would run counter to any attempt to reduce the information available to officers whose primary function is the safety of the public. As Officer Hilton explained: "As a means of regular patrol, it's oftentimes not feasible to obtain warrants and put them in hand and, at the same time, be diligent in serving them." (10/4T.16; R. 16). Public policy alone should dictate the diligent service of the warrants especially in light of the fact there are no constitutional or other grounds for requiring otherwise. Additionally, as the trial court found, section 23-15-50 of the South Carolina Code mandates arrest of any person for which the officer knows the existence of a valid warrant.

eliminate error. And they get it in-hand so you confirm that the officer does have the physical—the warrant physically in his possession” (3/21T. 60; R. 87). Sergeant Beaty continued: “if the warrant is physically in [the] possession of an officer in the warrant office, it’s always been policy we could make the arrest.” (3/21T.62; R. 89). Officer Hilton followed this process in executing the warrant against Appellant.

The officer’s actions in executing a valid arrest warrant, and confirming its existence in the presence of the defendant despite being constantly berated by multiple individuals, were entirely reasonable.

Appellant makes significance of the fact he and his mother told Officer Hilton to leave his property unless he had the warrant in hand. First, as discussed above, there is no requirement the officer be in actual possession of the warrant. Further, the existence of the warrant justified the officer entering the property to arrest Appellant. See Payton, 445 U.S. at 603 (“Thus, for Fourth Amendment purposes, an arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within.”); State v. Loftin, 276 S.C. 48, 51, 275 S.E.2d 575, 576 (1981) (“A valid arrest warrant implicitly grants police the limited authority to enter a suspect’s residence when there is reason to believe the suspect is within.”) (internal quotation removed).

Testimony from Appellant indicated him and his mother both told Officer Hilton to leave before he made the arrest. Appellant testified he refused to go anywhere with Officer Hilton unless he left and came back with the warrant in hand. (10/4T.24; R. 24). Additionally, Officer Hilton explained that as soon as he got Appellant handcuffed to arrest him, Appellant “instructed [the officer] he had tuberculosis and that he was going

to cough all over [the officer]. He then, turned his head and he - - he was trying to cough all over [the officer]." (10/4T.14; R. 14).

Also, as discussed above, Appellant has relied on the case of State v. Shaw, 104 S.C. 359, 89 S.E. 322 (1916). In Shaw, the South Carolina Supreme Court explained: "it is equally well settled that, where the officer is known, the production of the warrant cannot be required before the person to be arrested has actually submitted to his authority, though it may be demanded immediately after the arrest is made." Id. The Court continued:

It is considered that the arrest, the explanation, and the reading of the warrant when demanded are obviously successive steps. They cannot all occur at the same instant of time. And in case of a known officer the accused must first submit to his authority, and then he can demand explanation of the cause of the arrest and the production and perusal of the warrant therefor.

Id.

Appellant knew Officer Hilton was a sheriff's deputy, the two knew each other's first names, and Appellant admitted he knew the officer and that the officer had been to his property previously for other individuals. (10/4T.24; 26-27; R. 24; 26-27). As Officer Hilton was a known officer, the law requires Appellant submit to the officer's authority first and then he is entitled to demand the warrant. Based on his own testimony, Appellant never submitted to the authority of a known officer, and in fact specifically stated: "Well, then, I don't have to go anywhere with you." (10/4T.24; R. 24). Appellant had no right to resist the arrest, and Officer Hilton acted reasonably in placing Appellant under arrest pursuant to the warrant he verified was valid.

Failure to Immediately Provide Warrant and Section 17-13-50

Further, Officer Hilton's actions subsequent to Appellant being placed in handcuffs were entirely reasonable when Appellant claimed to have tuberculosis and was coughing and sending bodily fluids toward the officer. Appellant did not calmly submit to the arrest and then ask for the warrant. Instead, he refused to cooperate prior to Officer Hilton even entering the property. Once placed in handcuffs, Appellant then began coughing and spitting fluid in the direction of Officer Hilton while claiming he had tuberculosis. (10/4T.14; R. 14).

At this point, whether Officer Hilton had the warrant in hand or not became irrelevant. Appellant was actively committing a crime by coughing and sending his saliva toward Officer Hilton while claiming he had tuberculosis. He had to take the necessary precautions to protect himself and to prevent Appellant from causing any more harm. This included placing a "spit hoodie" over Appellant and using germ killer spray and gel. (10/4T.14-15; R.14-15).

Officer Hilton transported Appellant directly to the jail and placed him in a holding cell. He notified the jail booking officers that Appellant had tried to infect him with tuberculosis and that he had continually coughed on the officer all the way to the jail. (3/21T.44; R. 71). Appellant was served with a copy of the bench warrant against him while he was in his holding cell. (10/4T. 11; 24; 3/21T.44; R. 11; 24; 71).⁴

Section 17-13-50 states:

⁴ Appellant complains it was fourteen hours that he was in the holding cell before the warrant was delivered to him. This is uncorroborated testimony, but any delay could be because Appellant tried to spit and cough on an officer while claiming to have tuberculosis and indicated he had a problem with tuberculosis in filling out admission medical paperwork for the jail. (3/21T.65-66; State's Exhibit 3; R. 91-92; 150-156). This concern is amply supported by Appellant's own statement describing what took place when he was removed from the holding cell: "But the first thing that guard asked me was you're not going to spit on me, are you?" (3/21T.87; R. 107).

(A) A person arrested by virtue of process or taken into custody by an officer in this State 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:

(1) refuse to answer a question relative to the reason for the arrest;

(2) answer the question untruly;

(3) assign to the person arrested an untrue reason for the arrest; or

(4) neglect on request to exhibit to the person arrested or any other person acting in his behalf the precept by virtue of which the arrest is made.

S.C. Code Ann. § 17-13-50 (Supp. 2013). First, Officer Hilton provided Appellant with ample information regarding the basis for his arrest, including verifying the existence and validity of the warrant on the phone in front of Appellant. Next, the statute does not proscribe a time requirement for when the officer must “exhibit to the person arrested or any other person acting in his behalf the precept by virtue of which the arrest is made.” A reasonable time requirement should be read into this statute, especially in light of the holdings of Sims, Grate, and Holmes which do not require the officer to have the warrant present at arrest.

Additionally, the requirement to exhibit the warrant upon which a person is arrested, as well as the reasonableness requirement necessarily included in the statute, should be viewed in light of the totality of the circumstances of the particular case. As discussed above, Appellant thwarted and resisted Officer Hilton starting before the officer even set foot on the property to arrest Appellant. Appellant then claimed to have a highly infectious disease and began coughing on Officer Hilton while maintaining he was trying to infect him. He acknowledged on paperwork at the jail that he had an issue

related to tuberculosis. It is entirely reasonable that there was some delay in Appellant receiving a copy of the warrant in this case.

Even if Officer Hilton failed to technically conform to the requirements of section 17-13-50, that failure did not justify Appellant resisting arrest or throwing bodily fluids and did not render the arrest unlawful. See e.g., 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....”). Any violation of the statute would not convert a lawful arrest into an unlawful one, nor would it in any way implicated Appellant’s Fourth Amendment rights so as to require exclusion or dismissal.

Further, the remedy for a violation of this statute is specified in subsection (B):

(B) An officer who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both.

S.C. Code Ann. § 17-13-50(B) (Supp. 2013). The statute specifies the remedy for its violation, and so the court is not free to craft other remedies including exclusion or dismissal when they are not provided for by the legislature. As a result, any violation of this statute could result in the officer being subjected to penalty, but not the exclusion or dismissal of any charges against Appellant.⁵

Throwing Bodily Fluids

Further, even if the initial arrest of Appellant could be classified as unlawful, the commission of the subsequent crime of throwing bodily fluids would not be impacted. The new and distinct crime, even if connected to the unlawful arrest, would still be valid

⁵ The State, of course, does not believe any violation of the statute has occurred as Officer Hilton went out of his way to properly inform Appellant of the basis of his arrest and Appellant’s own behavior likely contributed to any delay in providing him with the warrant.

and would provide an independent ground to justify Appellant's arrest. See e.g., State v. Nelson, 336 S.C. 186, 519 S.E.2d 786 (1993) (finding even if the police officer's initial attempt to stop defendant motorist had been unlawful, defendant's subsequent acts of running stop sign and speeding were new and distinct crimes for which the officer had probable cause to stop defendant).

This case is similar to the case of In re Jeremiah W., 361 S.C. 620, 606 S.E.2d 766 (2004). In Jeremiah W., the defendant was unlawfully arrested on the charge of breach of the peace. He was also charged with threatening a public official for threats to take the officer's life or to cause bodily harm to the officer made after he was in patrol car. The South Carolina Supreme Court found the threats constituted a new and distinct crime, separate from resisting the original arrest. Id. at 625, 606 S.E.2d at 768-769.

A similar holding should apply here when the actions of coughing and spitting on Officer Hilton constituted a new and distinct crime, separate from Appellant's initial resistance to the arrest. The actions continued while in the patrol car, similar to the threats to do bodily injury in Jeremiah W. As a result, even if the trial court erred in finding the arrest lawful, it would not require dismissal of Appellant's charge for throwing bodily fluids which was on its own a proper basis for Appellant's arrest.

CONCLUSION

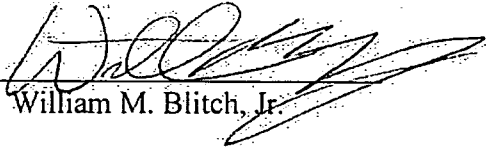
For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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September 12, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County
Honorable J. Derham Cole, Circuit Court Judge
Appellate Case Tracking No. 2013-000685

The State;

Respondent,

vs.

Jon Roseboro,

Appellant.

CERTIFICATE OF SERVICE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled, "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

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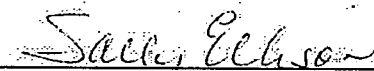
Appellant.

PROOF OF SERVICE

I, Sally Ellison, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Benjamin John Tripp, Esquire
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I further certify that all parties required by Rule to be served have been served.
This 12th day of September, 2014.


SALLY ELLISON

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