STATE OF SOUTH CAROLINA
In The Court of Appeals

ORIGINAL

APPEAL FROM GREENWOOD COUNTY

Court of General Sessions
William P. Keesley, Circuit Court Judge

Appellate Case No. 2017-002406

THE STATE,

Respondent,

v.

TERRANCE L. BLAND,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I.

The trial court correctly denied Appellant's motion for a directed verdict on the burglary charge because the State produced evidence that Appellant entered the home without consent.

II.

The trial court correctly determined police did not need a search warrant to collect gunshot residue from Appellant's hands after his arrest. Regardless, no constitutional violation occurred because police obtained a valid search warrant.

STATEMENT OF THE CASE

A Greenwood County grand jury indicted Appellant for Burglary 1st Degree, Assault and Battery 1st Degree, Discharging a Firearm into a Dwelling, Possession of a Weapon during the Commission of a Violent Crime, Failure to Stop for a Blue Light, and three counts of Attempted Murder. The burglary and assault charges stemmed from an incident that occurred on February 27, 2016, when Appellant attacked his sister's boyfriend at his sister's house. The remaining charges stem from a shooting that occurred the following night, again at Appellant's sister's house. Appellant proceeded to jury trial before the Honorable William P. Keesley on November 6-9, 2017. Appellant admitted going to his sister's house on the 27th to confront his sister's boyfriend, but claimed he entered the home with consent. He denied being at the house on the night of the shooting. Appellant was convicted as charged of Burglary 1st Degree and sentenced to fifteen years' incarceration. Appellant was convicted as charged of Discharging a Firearm into a Dwelling and sentenced to ten years' incarceration. Appellant was convicted of Assault and Battery 1st degree and Failure to stop for a Blue Light and sentenced to ninety days' incarceration on each. Appellant was acquitted of each attempted murder charge but found guilty of the lesser included Assault and Battery 2nd degree on each charge and sentenced to three years' incarceration on each. Appellant was acquitted of Possession of a Weapon during the Commission of a Violent Crime. The Court ordered that all of Appellant's sentences run concurrently. This appeal follows.

STATEMENT OF FACTS

Okeava Bland lived at 207 Wheatfield Drive in Greenwood with her daughter. R. 168. Her boyfriend and child's father, Xavier Harris, often stayed with them overnight. R. 168-69. Okeava's brother, Terrance (Appellant), lived nearby and was a frequent guest at the house. R. 170.

On February 25, 2016, Xavier and Appellant got into an argument. R. 169. Two days later, on the night of February 27, 2016, Appellant came over to Okeava's house unannounced. R. 170. Xavier was staying over that night. R. 169-71. Appellant knocked and Okeava opened the door. R. 171. According to Okeava, Appellant walked past her without being invited in or asking to speak with Xavier. R. 171. Appellant claimed he did ask for Xavier when he entered the home, but admitted he went to the home to confront Xavier. R. 346-47; 356. Appellant entered the house and walked straight to the back bedroom where Xavier was sleeping. R. 171. Okeava followed him down the hall. R. 171. Appellant entered the bedroom and attacked Xavier. R. 186. The two of them briefly fought, and Appellant left the house. R. 187. On the way out, he threatened to shoot Xavier. R. 187-88.

Xavier called the police and an officer responded. Okeava told police Appellant came into the house uninvited and that his entry was "unwanted."[1] R. 221; 233. Appellant was charged with burglary and first degree assault and battery as a result of this incident. At trial, Okeava initially agreed with the solicitor's question that Appellant "rushed" by her as he entered the house, but shortly after testified "I wouldn't say rushed, but he just came right on in." R.

[1] Appellant claims in his brief that "Ms. Bland told Deputy Robertson that Appellant was 'uninvited,' but she did not say his entry into the house was 'unwanted.'" Brief of Appellant, 4. This is not accurate. Robertson testified that Okeava **did** tell him Appellant's entry was unwanted. R. 233, ll. 21-23. On cross-examination, Robertson admitted his **incident report** used the word "uninvited," but he never recanted his trial testimony that Okeava characterized Appellant's entry as "unwanted." R. 234.

171. Okeava also refuted the solicitor's assertion that she previously told him Appellant pushed her to the side as he entered the home. R. 171. She admitted she'd asked for the charges against her brother to be dropped. R. 171. She also testified Appellant, as her brother, was generally welcome to come over when he wanted. R. 170.

The next day, Appellant, Okeava, and Xavier all attended a birthday party in Greenville. R. 173. They did not speak about the fight. R. 290-91. Appellant was not aware at that time that Xavier had called the police about the incident. R. 173. While Appellant was in Greenville, an officer went to Appellant's home to inform him that he had been charged with burglary and assault and battery in relation to the previous night's incident. R. 221. Appellant was not home, but the officer spoke with his mother. Later in the day, Appellant spoke with police and learned there was a warrant for his arrest. R. 222. 30-40 minutes later, police received a report of shots fired at Okeava's home. R. 222.

Okeava was getting her daughter ready for bed when she heard the shots ring out. R. 174. She grabbed her daughter and fell to the floor. The shooting stopped and no one was hit. R. 175. At least three shots were fired into the home. R. 238. Xavier was also at the home, and called 911. R. 175. A neighbor heard the shots and saw a car drive away from the residence and called 911. R. 152-55. He described the car as a white Mercury Continental or Crown Vic. R. 154.

An officer recognized the description of the car from the incident the night before, and put out a be-on-the-lookout-for (BOLO) advisory for Appellant's car. R. 277. An officer spotted Appellant's car about two miles away from Okeava's subdivision. R. 223. Appellant led police on a high-speed chase lasting 10-15 minutes and reaching speeds of 100 mph. R. 257-58.

Appellant eventually stopped the car after he hit a deer and surrendered to police without incident. R. 258; 352-53.

Police transported Appellant to jail and attempted to perform a gunshot residue test.[2] R. 259. Appellant resisted. R. 278. Police decided to secure a search warrant before performing the test. R. 278. An officer obtained a warrant at approximately 3:00 a.m. and police performed the GSR test. R. 278. It took several officers to hold Appellant down so his hand could be swabbed. R. 260. Officers also collected the orange sweatshirt Appellant was wearing. R. 280. SLED scientists performed GSR testing on the sweatshirt and swabs of Appellant's hands. GSR was detected on the sweatshirt and the swab of Appellant's left palm. R. 303-07. The State produced evidence that Appellant was left-handed. R. 278. The SLED scientist concluded Appellant's hands and sweatshirt had been in the vicinity of a fired gun, and that the GSR on Appellant's hands was deposited within 6 hours of the test. R. 308. Appellant denied having a weapon that night. R. 357.

[2] A gunshot residue test consists of rubbing a cotton swab on a person's hands or an inanimate object in order to detect the presence of microscopic particles left behind after a person fires a gun. R. 277.

ARGUMENT

I.

The trial court correctly denied Appellant's motion for a directed verdict on the burglary charge because the State produced evidence that Appellant entered the home without consent.

The trial court correctly denied Appellant's motion for a directed verdict on the burglary charge because the State presented evidence to support a finding that Appellant entered his sister's home without consent and with the intent to commit a crime therein. The factual question whether Appellant had consent to enter was properly left to the jury. This Court should affirm.

Standard of Review

In ruling on a motion for a directed verdict, the trial court is concerned with the existence of evidence rather than with its weight. On appeal from the denial of a directed verdict, we must view the evidence in the light most favorable to the State. If any direct evidence or substantial circumstantial evidence tending to prove the accused's guilt exists, we must conclude the trial court properly submitted the case to the jury. State v. Dixon, 337 S.C. 455, 458, 523 S.E.2d 784, 786 (Ct. App. 1999).

Discussion

A person is guilty of first degree burglary when he enters a dwelling without consent and with the intent to commit a crime therein. S.C. Code § 16-11-311. "'Enters a building without consent' means: (a) To enter a building without the consent of the person in lawful possession; or (b) To enter a building by using deception, artifice, trick, or misrepresentation to gain consent to enter from the person in lawful possession." S.C. Code Ann. § 16-11-310(3). There is no "breaking" element of burglary. State v. Kornahrens, 290 S.C. 281, 287, 350 S.E.2d 180, 185 n.

4 (1986). The law of burglary is primarily designed to secure the sanctity of one's home, especially at nighttime when peace, solitude and safety are most desired and expected. State v. Brooks, 277 S.C. 111, 112, 283 S.E.2d 830, 831 (1981).

In State v. Dixon, this Court rejected Dixon's argument that "because Victim let her in his home on sight, she did not enter without consent, and thus cannot be guilty of first degree burglary." State v. Dixon, 337 S.C. 455, 458, 523 S.E.2d 784, 786 (Ct. App. 1999). In that case, Dixon and the homeowner were acquaintances. Dixon visited the home on prior occasions and knew the homeowner would let her in on sight. However, on this occasion Dixon entered the home with the secret intent to rob the homeowner. Citing § 16-11-310(3)(b), this Court affirmed the trial court's denial of Dixon's motion for a directed verdict, holding there was sufficient evidence for a jury to find Dixon entered the home through "deceit, trickery, artifice, or misrepresentation." Even though Dixon had not forced entry and the homeowner voluntarily admitted her to the home, she was nevertheless guilty of burglary because the homeowner was not aware of her secret intent to commit a crime and presumably would not have allowed her entrance had he known.[3] Id., 337 S.C. at 459, 523 S.E.2d at 786. She did not orchestrate an elaborate scheme to gain entry— her implied representation that she was entering the home for a legitimate purpose based on her past conduct and relationship with the homeowner was enough to make her entry nonconsensual.

The evidence in this case supports a finding that Appellant lacked consent under either subsection (a) or (b) of § 16-11-310(3). Appellant was a frequent guest at his sister's house and

[3] Appellant claims this case is distinguishable from Dixon because Appellant did not use fraud or deceit to enter. Brief of Appellant, 5. However, Dixon did not use fraud or deceit to enter either. She simply knocked on the door and was let in. Although part of her plot was to distract the homeowner and let her confederates inside, this Court explicitly declined to apply the "hand of one" doctrine and analyzed the case based solely on Dixon's entry.

would have normally been allowed to enter without calling ahead or receiving formal permission. However, there was no testimony that Appellant had unlimited consent to enter at any time and for any purpose. This was still Okeava's house. Viewing the evidence in the light most favorable to the State, Appellant went to the house on the night in question for the sole purpose of attacking his sister's sleeping boyfriend. He did not request permission to enter and did not have express consent to do so. According to Okeava, he barged in without asking to speak with Xavier. Okeava followed him down the hall to the bedroom, suggesting she did not expect or approve of his actions. Common sense and the surrounding circumstances indicate Okeava would not have willingly allowed Appellant to enter her home to attack her boyfriend in the middle of the night if she had known his intentions.[4] The lack of express consent to enter thus becomes a much more consequential fact. Conversely, consent should not be presumed from the fact that Okeava did not protest. See Duncan v. Com., 85 Ky. 614, 4 S.W. 321, 322 (1887) (explaining "it does not, therefore, make any difference whether, if the owner or other person be present, he does or does not object or protest; for if without regard to the intent with which a person may break a dwelling-house and carry away property of value, his guilt must be determined by the conduct of the owner, it would follow that he might escape punishment simply because the owner was too timid to protest or weak to resist"). The record suggests the entry happened so quickly that Okeava simply did not have time to protest or understand what was going on. Depending on one's view of the facts, a reasonable juror could conclude either that Appellant lacked consent to enter altogether, or that his entry was conditioned on an implied representation that he desired a friendly social visit when in fact he intended to commit a crime once inside.

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[4] When asked whether Appellant's entry to her home was "any different from any other time he came over," Okeava answered: "Except for him hitting Xavier." R. 179.

These facts create a nuanced question whether Appellant truly had consent to enter. Viewing the facts in the light most favorable to the State, he did not. The determination of this factual question called for the collective wisdom of the community in the form of a jury of Appellant's peers. The trial judge properly left the question to the jury. State v. Pipkin, 359 S.C. 322, 329, 597 S.E.2d 831, 834 (Ct. App. 2004) (in a burglary case, "[s]ince there was conflicting evidence presented on the issue of consent, the trial judge acted properly in denying Pipkin's motion and submitting the case to the jury."); State v. Bennett, 415 S.C. 232, 236–37, 781 S.E.2d 352, 354 (2016) ("[W]hen ruling on a directed verdict motion, the trial court views the evidence in the light most favorable to the State and must submit the case to the jury if there is 'any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced.'"); see also State v. Pichardo, 367 S.C. 84, 105, 623 S.E.2d 840, 851 (Ct. App. 2005) (in Fourth Amendment context, "[w]hether a consent to search was voluntary is a question of fact to be determined from the totality of the circumstances"). The jurors heard and saw Okeava's testimony in person and were able to judge her credibility, including her denial that she told the solicitor that Appellant "rushed" or "pushed" past her on his way in. R. 170-71. The jurors saw the testimony firsthand, heard persuasive arguments from both sides, received instruction on the current and correct law of South Carolina, and ultimately found Appellant entered the home without consent. This factual determination is within the province of the jury and should not be disturbed on appeal.

In summary, the State produced evidence from which a jury could (and did) conclude that Appellant did not have consent to enter his sister's home on the night in question. The jurors heard direct evidence in the form of Okeava's testimony that Appellant entered the home without notice, invitation, or even a word spoken. They also heard Deputy Robertson's testimony that

Okeava told him Appellant's entry was "unwanted." R. 233. The State also presented substantial circumstantial evidence that Appellant's did not receive consent to enter. Appellant's pre-formed intent to assault Xavier shows that his visit was not a friendly one, in contrast to the typical visit to which Okeava was accustomed. That Okeava followed him down the hall tends to show she was taken by surprise by his sudden entrance and did not want him to barge into her bedroom. Finally, the jury was in a much better position than this Court to determine whether Okeava was being truthful when she denied telling the solicitor that Appellant "rushed" or "pushed" past her on his way in. The trial court correctly submitted the case to the jury.

II.

The trial court correctly determined police did not need a search warrant to collect gunshot residue from Appellant's hands after his arrest. Regardless, no constitutional violation occurred because police obtained a valid search warrant.

The trial court correctly held that the collection of gunshot residue from Appellant's hands following his arrest did not violate the United States Constitution's Fourth Amendment prohibition against unreasonable search and seizure. Even though police obtained a valid search warrant before collecting GSR from Appellant's hands, it was not necessary to do so. The evanescent nature of GSR, the government's great need for the evidence, the minimal invasion of Appellant's bodily sovereignty, and the government's right to search incident to a lawful arrest justified the collection of GSR by swabbing Appellant's hands. Furthermore, GSR was collected from the sweatshirt Appellant was wearing, making the GSR from his hand cumulative. This court should affirm.

Standard of Review

On appeals from a motion to suppress based on Fourth Amendment grounds, this Court applies a deferential standard of review and will reverse if there is clear error. State v. Tindall, 388 S.C. 518, 521, 698 S.E.2d 203, 205 (2010). When reviewing a magistrate's decision to issue a search warrant, the "duty of a reviewing court is simply to ensure that the magistrate had a 'substantial basis' for ... conclud[ing] that probable cause existed. This review, like the determination by the magistrate, is governed by the 'totality of the circumstances' test. On review, great deference should be given to a magistrate's determination of probable cause." State v. Keith, 356 S.C. 219, 223, 588 S.E.2d 145, 147 (Ct. App. 2003) (internal quotations and citations omitted).

Discussion

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. The threshold question in this case is whether the government conducted a search. No reasonableness requirement exists for government conduct that does not implicate the Fourth Amendment. United States v. Dionisio, 410 U.S. 1, 15 (1973).

Obtaining and examining evidence from a person is a search if doing so infringes an expectation of privacy. Skinner v. Ry. Labor Executives' Ass'n, 489 U.S. 602, 616 (1989). One line of Supreme Court cases analyzes intrusions "into" a suspect's body for physiological data. See, e.g., Maryland v. King, 569 U.S. 435 (2013) (buccal swab from inside suspect's cheek was a search because it was an "intrusio[n] into the human body"); Schmerber v. California, 384 U.S. 757 (1966) (blood draw of DUI suspect was a search); Cupp v. Murphy, 412 U.S. 291 (1973) (taking fingernail scrapings from suspect was a search). This type of government conduct implicates the Fourth Amendment because it infringes on the sanctity of the human body and may compromise privacy interests in one's medical data. See Skinner, 489 U.S. at 616 (drug tests, including breath tests, seeking physiological data which may reveal "private medical facts" implicate the Fourth Amendment). Another line of cases focuses on evidence of a person's bodily characteristics obtained without intrusion into the body and that do not reveal the person's private medical data. See, e.g., Davis v. Mississippi, 394 U.S. 721 (1969) (fingerprinting "involves none of the probing into an individual's private life and thoughts that marks an interrogation or search"); United States v. Dionisio, 410 U.S. 1 (1973) (compulsory voice exemplar did not implicate Fourth Amendment privacy concerns).

The United States Supreme Court has not addressed whether swabbing a person's hands for gunshot residue constitutes a Fourth Amendment search. A GSR test does not seek to obtain "physiological data" which may expose private medical facts. Nor does it involve an intrusion into a person's body. Instead, the procedure seeks only to collect a foreign substance from the skin's surface by touching it with a cotton swab. The mere swabbing of a person's skin is more akin to fingerprinting than a blood draw or even a swab inside a person's cheek. The GSR rests on the outside of the body, exposed to the public. While a person is clearly "seized" if police physically restrain him to swab his skin, he is no more searched than if he was covered in someone else's blood and police dabbed a handkerchief against his skin.

Assuming for the sake of argument that a GSR swab constitutes a search, the question becomes whether the police were required to secure a warrant before performing the test. "Although the text of the Fourth Amendment does not specify when a search warrant must be obtained, [the U.S. Supreme Court] has inferred that a warrant must generally be secured." Kentucky v. King, 563 U.S. 452, 459 (2011). However, the government need not obtain a warrant in all circumstances. "[T]he Fourth Amendment's proper function is to constrain, not against all intrusions as such, but against intrusions which are not justified in the circumstances." Schmerber v. California, 384 U.S. 757, 768 (1966).

The most important fact in this case for determining whether a warrant was required is that Appellant was under arrest when the test was performed. Making a lawful arrest automatically entitles the government to search the arrestee. As explained by the United States Supreme Court in United States v. Robinson, 414 U.S. 218 (1973):

> A custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification. It is the fact of the lawful arrest which establishes the authority to search, and we hold that in the case of a lawful

custodial arrest a full search of the person is not only an exception to the warrant requirement of the Fourth Amendment, but is also a 'reasonable' search under that Amendment.

Id. at 235.

However, the Supreme Court has recognized that there are limits on the extent to which police may search a person's body incident to arrest. In Birchfield v. North Dakota, 136 S. Ct. 2160 (2016), the Court explained that arrest upon probable cause for DUI entitles the government to compel a breath test to determine the driver's blood alcohol level, but does not automatically entitle the government to conduct a blood draw. The crucial distinction is that a blood draw requires a much more intrusive violation of a person's bodily sovereignty. Rather than requiring a person to blow into a plastic tube, a blood draw entails piercing the suspect's skin with a needle in order to confiscate a part of their body. Id. at 2178. After recognizing the type of search at issue did not exist at the founding and therefore contemporary case law was not instructive, the Court utilized a balancing test to determine whether the government should be required to secure a warrant in this situation. The Court decided the constitutionality of the search "by assessing, on the one hand, the degree to which it intrudes upon an individual's privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests." Id. at 2176 (2016) (quoting Riley v. California, 134 S.Ct 2473, 2484). It determined the breath test was a permissible search incident to arrest because the test was a minimal inconvenience that did not "implicate significant privacy concerns" in part because, unlike blood, "air that humans exhale is not part of their bodies." Id. The Court cited King and Murphy as cases where the Court applied a balancing test to conclude the swab of suspect's inner cheek in King and fingernail scrapings in Murphy constituted "negligible" intrusions that did not require a warrant, even though those tests extracted "physiological data."

The same balancing test is appropriate in this case, and all of the factors favor the State. First, Appellant had been lawfully arrested upon probable cause for shooting into his sister's house and failing to stop for a blue light, and also had pending arrest warrants related to the burglary charge. "[O]nce placed under arrest, the individual's expectation of privacy is necessarily diminished." Birchfield, 136 S. Ct. at 2177. Appellant does not contest the legality of his detention.

Second, the privacy interest was insignificant. The trial court accurately described the intrusion caused by the GSR test "minimal at worst." As discussed, the test does not intrude into a person's body and does not reveal any physiological data. It is quick, painless, and causes no further inconvenience to someone already under arrest.

Third, GSR is highly evanescent and easily destroyed. It fits squarely within the rationale allowing a search incident to arrest— to prevent the destruction of evidence. See Murphy, 412 U.S. at 296 (rationale of search incident to arrest exception "justified the police in subjecting him to the very limited search necessary to preserve the highly evanescent evidence they found under his fingernails").

Fourth, the government's need for the evidence was great. Appellant was apprehended shortly after the shooting, near the scene, in a car fitting the description provided by the neighbor. However, police did not recover a gun from the vehicle. The GSR test provided probative evidence that Appellant had recently fired a gun and was a crucial element of the State's case. For all the foregoing reasons, no warrant was required to swab Appellant's hands incident to his arrest.

Although the U.S. Supreme Court has not addressed the need for a warrant for a post-arrest GSR test, other courts have. In United States v. Johnson, the Fifth Circuit Court of

Appeals persuasively explained that the warrantless collection of GSR evidence from an individual whom the police have arrested and have probable cause to believe has recently fired a gun in the course of committing a crime does not violate the Fourth Amendment's prohibition against unreasonable searches and seizures. United States v. Johnson, 445 F.3d 793, 795–96 (5th Cir. 2006) ("Because the presence of gun powder on his hands was relevant evidence that Johnson (or merely time) could have eventually removed or destroyed, if his arrest was valid, the performance of the gun powder residue test was lawful, and the admission of the results at trial was proper."). See also Jones v. State, 213 Md. App. 483, 501, 74 A.3d 802, 812 n. 8 (2013) (collecting cases from state and federal courts holding a warrant is not necessary to collect GSR from a suspect when police have probable cause).

The Jones court also found the search was justified under the exigent circumstances exception to the warrant requirement because the evanescent nature of GSR necessitates its prompt collection or it will be lost forever. Id. (recognizing "GSR evidence remains detectable on a person's hands for only a limited period of time after a shooting, and that it is easily destroyed"); see also Schmerber, 384 U.S. at 772 (seizure of DUI suspect's blood did not violate Fourth Amendment where there was no time to secure a warrant and test was performed in a "reasonable manner"). The determination whether a law enforcement officer faced an emergency that justified acting without a warrant is examined under the totality of circumstances. Missouri v. McNeely, 569 U.S. 141, 149 (2013). Unlike alcohol in the blood, which takes hours to metabolize, GSR can be rubbed or washed off by its carrier. In any case, it will not remain on a person's hands for more than four to six hours. R. 307. Although the police were able to obtain a warrant in this case, the destructibility of GSR is a factor relevant in a search incident to arrest analysis as well. Murphy, 412 U.S. at 296 (relevant factors include the

existence of probable cause, the extent of the intrusion, and the "ready destructibility of the evidence.").

The foregoing authority establishes that police may perform a GSR test on an arrestee without first securing a search warrant. However, in this case the police obtained a valid search warrant before performing the test, and the affidavit contained sufficient facts to establish probable cause and justify the magistrate's issuance of the warrant. It explained Appellant was arrested in the area of the shooting, following a vehicle pursuit, driving the type of car seen by an eyewitness leaving the scene of the shooting. The warrant was signed hours after the incident took place. R. 111. The affidavit mentioned the burglary incident from the night before without explicitly naming Appellant as the suspect in that case, but it did state the same type of car was used in both incidents.

Though Appellant relies on In Re Snyder, 308 S.C. 192, 417 S.E.2d 572 (1992), to support his argument that the affidavit was not specific enough, the additional factors to be included in a warrant enumerated in that case only apply to "bodily intrusions" carrying a significant privacy interest, such as a blood draw, and where there is no danger of imminent destruction of evidence. See Gantt v. State, 354 S.C. 183, 187, 580 S.E.2d 133, 135 (2003). Therefore, those additional factors were not required to be included in the warrant in this case. Even if they were, the affidavit in this case was specific enough to pass muster under the applicable deferential standard of review. See State v. Sanders, 388 S.C. 292, 298, 696 S.E.2d 592, 595 (Ct. App. 2009) (providing deferential review of magistrate's decision to issue warrant after balancing "the necessity for acquiring involuntary nontestimonial identification evidence against constitutional safeguards prohibiting unreasonable bodily intrusions, searches, and seizures"). Although Appellant complains the warrant did not explain how GSR would be

"important to the investigation," basic common sense supplies the answer. Common sense also dictates that shooting a gun into an occupied dwelling is a serious crime, though admittedly "not as serious as a homicide." Brief of Appellant, 12. Finally, the affidavit specified that a gunshot residue test would be performed, the safety and reliability of which is common knowledge in the judicial and law enforcement community. Though the magistrate did not explicitly list all of the Snyder factors, the evidence supports his decision to issue the warrant.

Finally, the GSR recovered from Appellant's hand is cumulative to the GSR discovered on the sweatshirt he was wearing when he was arrested shortly after the incident. Police may seize and search an arrestee's clothing upon his arrival at a detention center. United States v. Edwards, 415 U.S. 800, 803–04 (1974) ("Nor is there any doubt that clothing or other belongings may be seized upon arrival of the accused at the place of detention and later subjected to laboratory analysis or that the test results are admissible at trial."). Any error in the admission of the GSR for Appellant's hand is harmless.

In summary, no warrant was necessary to perform the GSR test. Assuming without conceding the test was a search implicating the Fourth Amendment, the police were entitled to perform the test incident to Appellant's valid arrest because the State's need was great and the impact on Appellant's privacy was slight. Regardless, the question is moot because police obtained a valid search warrant prior to the test. Finally, the GSR from Appellant's hand is cumulative to the GSR collected from his sweatshirt. This Court should affirm.

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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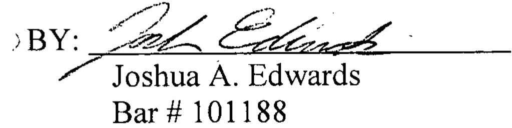
BY: 
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February 19, 2019

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of General Sessions

William P. Keesley, Circuit Court Judge

Appellate Case No. 2017-002406

RECEIVED
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SC Court of Appeals

THE STATE, Respondent,

v.

TERRANCE L. BLAND Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent 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."

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