

2004

## Utah v. Collier : Reply Brief

Utah Court of Appeals

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_ca2](https://digitalcommons.law.byu.edu/byu_ca2)



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

JoAnn B. Stringham; Uintah County Attorney; Attorney for Appellee.

Daniel C. Collier; Pro Se Appellant.

---

### Recommended Citation

Reply Brief, *Utah v. Collier*, No. 20040200 (Utah Court of Appeals, 2004).  
[https://digitalcommons.law.byu.edu/byu\\_ca2/4844](https://digitalcommons.law.byu.edu/byu_ca2/4844)

This Reply Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at [http://digitalcommons.law.byu.edu/utah\\_court\\_briefs/policies.html](http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html). Please contact the Repository Manager at [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu) with questions or feedback.

IN THE UTAH COURT OF APPEALS

---

State Of Utah,

Plaintiff and Appellee,

VS

Case No. 20040200 - CA

Daniel C. Collier

Defendant and Appellant.

---

APPELLANT REPLY BRIEF

---

REPLY BRIEF TO THE APPELLEE BRIEF OF THE EIGHTH DISTRICT COURT  
APPEAL FROM JURY CONVICTIONS FOR ASSAULT ~~AGAINST~~ A POLICE OFFICER, A  
CLASS A MISDEMEANOR, AND INTERFERENCE WITH ARRESTING OFFICER, A  
CLASS B MISDEMEANOR, IN THE EIGHTH JUDICIAL DISTRICT COURT IN AND FOR  
UINTAH COUNTY, STATE OF UTAH

THE HONORABLE JOHN R. ~~ANDERSON~~

JoANN B STRINGHAM,  
UINTAH COUNTY ATTORNEY  
152 East 100 North  
Vernal, Utah 84078  
Telephone: (435) 781-5436

Attorney for Appellee

Daniel C. Collier  
2076 North 3250 West  
Vernal, Utah 84078

Pro Se Appellant

FILED  
UTAH APPELLATE ~~COURTS~~  
JUL 08 2004

## TABLE OF CONTENTS

### TABLE OF

AUTHORITIES.....ii

JURISDICTION OF THE UTAH COURT OF APPEALS.....1

ISSUES PRESENTED AND STANDARDS OF REVIEW.....1

STATEMENT OF RELEVANT FACTS.....3

ARGUMENT..... 3

#### POINT 1 THE ARGUMENT

1-The prosecution states that a transcript of the case trial was not produced and suggests that the video time spots of the court proceedings should not be admissible in the appeals brief. The fact is the video tapes will disclose perjured testimony.

To deny the use of the video record would be to deny the defendant the right to a defense through due process of law.

When transcript is not available. Rules of Appellate Procedure apply, Rule 11.

The record on appeal. (g)

CONCLUSION AND PRECISE RELIEF SOUGHT.....6

ADDENDA.....8

#### CONSTITUTION OF UTAH

Section 28 [Declaration of the rights of crime victims.] Sec.7. [Due Process of law.]

#### UTAH CODE OF CRIMINAL PROCEDURE

77-7-6 Manner of making arrest,

77-7-7 Force in making arrest.

CRIMINAL CODE 76-9-305 Interference with arresting officer,

76-5-102 Assault

## TABLE OF AUTHORITIES

### Statutory provisions:

Utah Constitution, Art. 1 Sec. 28-7.....	9
Utah Code 77-7-6, 77-7-7.....	10
Assault and Related Offenses 76-5-102, 76-5-102,4.....	4

### Cases Cited:

<u>State vs. Gardner</u> , 814 p.2d 568 (Utah ( 1991)).....	4
<u>James vs. Kentucky</u> . 466 US 341, 80 Led2d 346, 104 SCt 1830 (1984)...	2
<u>Frankhauser vs. Rizzo</u> , 69 F. R. D. 210 at 343 (1973).....	5

**IN THE UTAH COURT OF APPEALS**

---

State Of Utah,	)	
Plaintiff and Appellee,	)	
vs.	)	Case No. 20040200 - CA
Daniel C. Collier	)	
Defendant and Appellant.	)	

---

**APPELLANT REPLY BRIEF**

In reply to the brief of the Appellee the Appellant acting pro se, and not proficient in the letter of the law points out that:

**STATEMENT OF FACTS**

- 1- No transcript of the court proceedings “as the Appellee mentions” are available as it is not required in a misdemeanor case, even though I did request them from both the Appellant Court and the Eighth District Court Clerk. The only record available is the Video tapes of the Court Proceedings and the onsite events which were referenced throughout the Appellants Brief.

2- The Prosecutor suggests I the defendant failed to object to the failure of the court to enter Jury instructions however I plead with an officer of the Court “my attorney” to enter said instruction but was repeatedly denied.

JAMES V. KENTUCKY, 466 US 341, 80 Led2d 346, 104 SCt 1830 ( 1984 )

The judge failed/refused to give requested instructions: The Supreme Court reversed and held that the state statutes did not take precedent over constitutional law and that the judge had to give the requested instruction.

The jury instructions the defendant was denied are relevant and vital to the defense as well as the Video time spots and are referenced throughout Appellant Brief and plainly read in the

UTAH CODE OF CRIMINAL PROCEDURE.

77-7-6 Manner of making arrest and

77-7-7 Force in making arrest.

3-The prosecution contends there was sufficient evidence to support the jury verdict, however:

The evidence presented by the prosecution was supported by perjured testimony therefore the jury had no way of knowing the truth. And the court failed to inform the Jury of the statute in:

#### UTAH CODE OF CRIMINAL PROCEDURE.

77-7-6 Manner of making arrest and

77-7-7 Force in making arrest

Which would have clearly vindicated the accused of wrong doing.

The defendant acted only in self defense having no way of knowing the assailant was a police officer due to his failure to identify himself as is required by law.

#### STATEMENT OF FACTS

The prosecution states there can be no legitimate statement of facts as the defendant has failed to order a transcript of the proceedings in the trial court.

This statement is frivolous and without merit wherein:

**There is no transcript in misdemeanor cases!**

#### ARGUMENT

1-The prosecution states that a transcript of the case trial was not produced and suggests that the video time spots of the court proceedings should not be admissible in the appeals brief. The fact is the video tapes will disclose perjured testimony.

To deny the use of the video record would be to deny the defendant the right to a defense through due process of law.

3- State v. Gardiner, 814 p.2d 568 (Utah 1991) makes it clear that a person may not resist an illegal arrest or search “if the officer is acting within the scope of authority of a police officer”. Within the “scope of authority” means the officer is doing what is required by the written law not engaging in a personal frolic of his own.

4- The Officers clearly acted outside the scope of there authority when they failed to act in accordance with written law.

5- The elements of assault do not exist:

#### UTAH CRIMINAL CODE

#### 76-5-102. Assault.

(1) Assault is:

(a) an attempt, with unlawful force or violence, to do bodily injury to another;

(b) a threat, accompanied by a show of immediate force or violence to do bodily injury to an other; or

(c) an act, committed with unlawful force or violence, that causes or creates a substantial risk of bodily injury to another.

(2) Assault is a class B misdemeanor.

The defendant made no deliberate or willful attempt to cause or inflict bodily harm, only to verbally warn and open-handedly push away the assailant in my rightful act of self-defense. I did not use aggression, only continued to retreat from



the assailant and enter the car as instructed, even after the attack I was told to “get back in the car”.

The assailant was acting totally without authority and was engaged in a frolic of his own in an act of punishing or retaliating against the accused for exercising his patriotic duty as a law abiding citizen to act as a witness to an act of police brutality.

\* Fankhauser vs. Rizzo, 69 F. R. D. 210, at 343 (1973) :

“ [It] is the manner of enforcement which gives [ Title 42 U.S.C] 1983 [in reality, R. S. 1979] its unique importance, for enforcement is placed in the hands of the people.

Each citizen “ acts as a private attorney general” who “takes on the mantle of the sovereign”

guarding for all of us the individual liberties enunciated in the Constitution. [ Title 42 U.S.C.]

Section 1983 [in reality, R.S 1979] represents a balancing feature in our governmental structure whereby individual citizens are encouraged to police those who are charged with policing us all.

Thus, it is of special import that suits brought under this statute be resolved by a determination of the truth rather than by a determination that the truth shall remain hidden.

54 F. R. D. at 10 –11 Federal Rules Decisions.\*

The argument for the defendant is thouraly and clearly defined in the brief of the accused Appellant.

### CONCLUSION

If the Jury had been privy to the truth “rather than false testimony” and the statutes UTAH CRIMINAL CODE: 77-7-6 Manner of making arrest.

77-7-7. Force in making arrest,  
pertaining to the incident had been submitted in the trial proceedings the verdict would have been “not guilty.”

For these reasons the accused respectfully requests this Court to overturn the verdict of the Eighth District Court and declare the defendant not guilty as charged.

RESPECTFULLY SUBMITTED THIS 8<sup>th</sup> day of July 2004.

  
\_\_\_\_\_  
Daniel C. Collier

**CERTIFICAT OF SERVICE**

I hereby certify that I Daniel C. Collier mailed/delivered  
copies of the foregoing to the following on this 8<sup>th</sup> day of July 2004.

JUDGE JOHN R. ANDERSON EIGHTH DISTRICT COURT VERNAL UTAH  
JOANN B. STRINGHAM UINTAH ,COUNTY ATTOREY. VERNAL, UTAH  
STATE OF UTAH APPEALS COURT SALT LAKE CITY, UTAH

Signed: Daniel C. Collier  
Daniel C. Collier

## **ADDENDA**

(iii) the person to be arrested is encountered by a peace officer in the regular course of that peace officer's investigation of a criminal offense unrelated to the misdemeanor warrant for arrest.

(2) (a) If the magistrate determines that the accused must appear in court, the magistrate shall include in the arrest warrant the name of the law enforcement agency in the county or municipality with jurisdiction over the offense charged.

(b) (i) The law enforcement agency identified by the magistrate under Subsection (a) is responsible for providing inter-county transportation of the defendant, if necessary, from the arresting law enforcement agency to the court site.

(ii) The law enforcement agency named on the warrant may contract with another law enforcement agency to have a defendant transported.

(c) (i) The law enforcement agency identified by the magistrate under Subsection (a) as responsible for transporting the defendant shall provide to the court clerk of the court in which the defendant is tried, an affidavit stating that the defendant was transported, indicating the law enforcement agency responsible for the transportation, and stating the number of miles the defendant was transported.

(ii) The court clerk shall account for restitution paid under Section 76-3-201 for governmental transportation expenses and disburse restitution monies collected by the court to the law enforcement agency responsible for the transportation of a convicted defendant.

1993

#### 77-7-5.5. Repealed.

1991

#### 77-7-6. Manner of making arrest.

The person making the arrest shall inform the person being arrested of his intention, cause and authority to arrest him. Such notice shall not be required when:

(1) There is reason to believe the notice will endanger the life or safety of the officer or another person or will likely enable the party being arrested to escape;

(2) The person being arrested is actually engaged in the commission of, or an attempt to commit, an offense; or

(3) The person being arrested is pursued immediately after the commission of an offense or an escape.

1990

#### 77-7-7. Force in making arrest.

If a person is being arrested and flees or forcibly resists after being informed of the intention to make the arrest, the person arresting may use reasonable force to effect the arrest. Deadly force may be used only as provided in Section 76-2-404.

1990

#### 77-7-8. Doors and windows may be broken, when.

To make an arrest, a private person, if the offense is a felony, and in all cases, a peace officer, may break the door or window of the building in which the person to be arrested is, or in which there are reasonable grounds for believing him to be. Before making the break, the person shall demand admission and explain the purpose for which admission is desired. Demand and explanation need not be given before

breaking under the exceptions in Section 77-7-6 or where there is reason to believe evidence will be secreted or destroyed.

1990

#### 77-7-9. Weapons may be taken from prisoner.

Any person making an arrest may seize from the person arrested all weapons which he may have on or about his person.

1990

#### 77-7-10. Telegraph or telephone authorization of execution of arrest warrant.

Any magistrate may, by an endorsement on a warrant of arrest, authorize by telegraph, telephone or other reasonable means, its execution. A copy of the warrant or notice of its issuance and terms may be sent to one or more peace officers. The copy or notice communicated authorizes the officer to proceed in the same manner under it as if he had an original warrant.

1990

#### 77-7-11. Possession of warrant by arresting officer not required.

Any peace officer who has knowledge of an outstanding warrant of arrest may arrest a person he reasonably believes to be the person described in the warrant, without the peace officer having physical possession of the warrant.

1990

#### 77-7-12. Detaining persons suspected of shoplifting or library theft — Persons authorized.

(1) A peace officer, merchant, or merchant's employee, servant, or agent who has reasonable grounds to believe that goods held or displayed for sale by the merchant have been taken by a person with intent to steal may, for the purpose of investigating the unlawful act and attempting to effect a recovery of the goods, detain the person in a reasonable manner for a reasonable length of time.

(2) A peace officer or employee of a library may detain a person for the purposes and under the limits of Subsection (1) if there are reasonable grounds to believe the person violated Title 76, Chapter 6, Part 8, Library Theft.

1997

#### 77-7-13. Arrest without warrant by peace officer — Reasonable grounds, what constitutes — Exemption from civil or criminal liability.

(1) A peace officer may arrest, without warrant, any person [that] he has reasonable ground to believe has committed a theft under Title 76, Chapter 6, Part 8, Library Theft, or of goods held or displayed for sale.

(2) A charge of theft made to a peace officer under Part 8, Library Theft, by an employee of a library, or by a merchant, merchant's employee, servant, or agent constitutes a reasonable ground for arrest, and the police officer is relieved from any civil or criminal liability.

1997

#### 77-7-14. Person causing detention or arrest of person suspected of shoplifting or library theft — Civil and criminal immunity.

(1) A peace officer, merchant, or merchant's employee, servant, or agent who causes the detention of a person as provided in Section 77-7-12, or who causes the arrest of a person for theft of goods held or displayed for sale, is not criminally or civilly liable where he has reasonable and probable cause to believe the person detained or arrested committed a theft of goods held or displayed for sale.

(2) A peace officer or employee of a library who causes a detention or arrest of a person under Title

## CONSTITUTION OF UTAH

### PREAMBLE

#### Article

- I. Declaration of Rights
- II. State Boundaries
- III. Ordinance
- IV. Elections and Right of Suffrage
- V. Distribution of Powers
- VI. Legislative Department
- VII. Executive Department
- VIII. Judicial Department
- IX. Congressional and Legislative Apportionment
- X. Education
- XI. Local Governments
- XII. Corporations
- XIII. Revenue and Taxation
- XIV. Public Debt
- XV. Militia
- XVI. Labor
- XVII. Water Rights
- XVIII. Forestry
- XIX. Public Buildings and State Institutions
- XX. Public Lands
- XXI. Salaries
- XXII. Miscellaneous
- XXIII. Amendment and Revision
- XXIV. Schedule

### PREAMBLE

Grateful to Almighty God for life and liberty, we, the people of Utah, in order to secure and perpetuate the principles of a government, do ordain and establish this CONSTITUTION.

1896

### ARTICLE I

#### DECLARATION OF RIGHTS

##### tion

[Inherent and inalienable rights.]  
[All political power inherent in the people.]  
[Utah inseparable from the Union.]  
[Religious liberty.]  
[Habeas corpus.]  
[Right to bear arms.]  
[Due process of law.]  
[Offenses bailable.]  
[Excessive bail and fines — Cruel punishments.]  
[Trial by jury.]  
[Courts open — Redress of injuries.]  
[Rights of accused persons.]  
[Prosecution by information or indictment — Grand jury.]  
[Unreasonable searches forbidden — Issuance of warrant.]  
[Freedom of speech and of the press — Libel.]  
[No imprisonment for debt — Exception.]  
[Elections to be free — Soldiers voting.]  
[Attainder — Ex post facto laws — Impairing contracts.]  
[Treason defined — Proof.]  
[Military subordinate to the civil power.]  
[Slavery forbidden.]  
[Private property for public use.]  
[Irrevocable franchises forbidden.]  
[Uniform operation of laws.]  
[Rights retained by people.]  
[Provisions mandatory and prohibitory.]

#### Section

27. [Fundamental rights.]

28. [Declaration of the rights of crime victims.]

#### Section 1. [Inherent and inalienable rights.]

All men have the inherent and inalienable right to enjoy and defend their lives and liberties; to acquire, possess and protect property; to worship according to the dictates of their consciences; to assemble peaceably, protest against wrongs, and petition for redress of grievances; to communicate freely their thoughts and opinions, being responsible for the abuse of that right.

1896

#### Sec. 2. [All political power inherent in the people.]

All political power is inherent in the people; and all free governments are founded on their authority for their equal protection and benefit, and they have the right to alter or reform their government as the public welfare may require.

1896

#### Sec. 3. [Utah inseparable from the Union.]

The State of Utah is an inseparable part of the Federal Union and the Constitution of the United States is the supreme law of the land.

1896

#### Sec. 4. [Religious liberty.]

The rights of conscience shall never be infringed. The State shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; no religious test shall be required as a qualification for any office of public trust or for any vote at any election; nor shall any person be incompetent as a witness or juror on account of religious belief or the absence thereof. There shall be no union of Church and State, nor shall any church dominate the State or interfere with its functions. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or for the support of any ecclesiastical establishment.

1899

#### Sec. 5. [Habeas corpus.]

The privilege of the writ of habeas corpus shall not be suspended, unless, in case of rebellion or invasion, the public safety requires it.

1896

#### Sec. 6. [Right to bear arms.]

The individual right of the people to keep and bear arms for security and defense of self, family, others, property, or the state, as well as for other lawful purposes shall not be infringed; but nothing herein shall prevent the legislature from defining the lawful use of arms.

1984 (2nd S.S.)

#### Sec. 7. [Due process of law.]

No person shall be deprived of life, liberty or property, without due process of law.

1896

#### Sec. 8. [Offenses bailable.]

(1) All persons charged with a crime shall be bailable except:

(a) persons charged with a capital offense when there is substantial evidence to support the charge; or

(b) persons charged with a felony while on probation or parole, or while free on bail awaiting trial on a previous felony charge, when there is substantial evidence to support the new felony charge; or

(c) persons charged with any other crime, designated by statute as one for which bail may be denied, if there is substantial evidence to support the charge and the court finds by clear and convincing evidence that the person would constitute a substantial danger to any other person

(c) *Filing of response.* The party moved against shall have 10 days from the service of such a motion in which to file a response. An original response and seven copies shall be filed in the Supreme Court. An original response and four copies shall be filed in the Court of Appeals.

(d) *Submission of motion; suspension of further proceedings.* Upon the filing of a response or the expiration of time therefor, the motion shall be submitted to the court for consideration and an appropriate order. The time for taking other steps in the appellate procedure is suspended pending disposition of a motion to affirm or reverse or dismiss.

(e) *Ruling of court.* The court, upon its own motion, and on such notice as it directs, may dismiss an appeal or petition for review if the court lacks jurisdiction; or may summarily affirm the judgment or order which is the subject of review, if it plainly appears that no substantial question is presented; or may summarily reverse in cases of manifest error.

(f) *Deferral of ruling.* As to any issue raised by a motion for summary disposition, the court may defer its ruling until plenary presentation and consideration of the case.

(Amended effective April 1, 1996; April 1, 2004.)

**Amendment Notes.** — The 2004 amendment, in Subdivision (a), changed the time allowed for a motion to dismiss for lack of

jurisdiction from 10 days to “at any time” and made related stylistic changes.

#### NOTES TO DECISIONS

##### **Dismissal by court.**

Permissive nature of motion.

Summary affirmance.

Time for filing.

Cited.

##### **Dismissal by court.**

Appeal appropriate for summary disposition (i.e., dismissal) on court's own motion. See *Thompson v. Jackson*, 743 P.2d 1230 (Utah Ct. App. 1987).

##### **Permissive nature of motion.**

Appellate court's lack of jurisdiction to consider defendant's cross-appeal was not waived by plaintiff's failure to move for dismissal under Subdivision (a). This rule is permissive, not mandatory, and a lack of subject matter jurisdiction cannot be waived. *Glezos v. Frontier Inv.*, 896 P.2d 1230 (Utah Ct. App. 1995).

##### **Summary affirmance.**

Summary affirmance under this rule is a

determination of the appeal on its merits, after the parties have been afforded a full and adequate opportunity to present relevant arguments and authorities. An appellate court's rejection of appellant's contentions as unmeritorious does not deny him his right of appeal. *Hernandez v. Hayward*, 764 P.2d 993 (Utah Ct. App. 1988); *State v. Palmer*, 786 P.2d 248 (Utah Ct. App. 1990) (decided under former Rule 10, Utah R. Ct. App.)

##### **Time for filing.**

A motion for summary disposition that is clearly meritorious supports a suspension of the time limitation contained in this rule. *Bailey v. Adams*, 798 P.2d 1142 (Utah Ct. App. 1990).

Cited in *Benchmark, Inc. v. Salt Lake Valley Mental Health Bd., Inc.*, 830 P.2d 218 (Utah 1991).

### Rule 11. The record on appeal.

(a) *Composition of the record on appeal.* The original papers and exhibits filed in the trial court, the transcript of proceedings, if any, the index prepared by the clerk of the trial court, and the docket sheet, shall constitute the record on appeal in all cases. A copy of the record certified by the clerk of the trial court to conform to the original may be substituted for the original as the record on appeal. Only those papers prescribed under paragraph (d) of this rule shall be transmitted to the appellate court.

(b) *Pagination and indexing of record.*

(b)(1) Immediately upon filing of the notice of appeal, the clerk of the trial court shall securely fasten the record in a trial court case file, with collation in the following order:

(b)(1)(A) the index prepared by the clerk;

(b)(1)(B) the docket sheet;

## PART 2

### ABUSE OF OFFICE

#### 76-8-201. Official misconduct — Unauthorized acts or failure of duty.

A public servant is guilty of a class B misdemeanor if, with an intent to benefit himself or another or to harm another, he knowingly commits an unauthorized act which purports to be an act of his office, or knowingly refrains from performing a duty imposed on him by law or clearly inherent in the nature of his office.

1973

#### 76-8-202. Official misconduct — Unlawful acts based on "inside" information.

A public servant is guilty of a class A misdemeanor if, knowing that official action is contemplated or in reliance on information which he has acquired by virtue of his office or from another public servant, which information has not been made public, he:

- (1) acquires or divests himself of a pecuniary interest in any property, transaction, or enterprise which may be affected by such action or information;
- (2) speculates or wagers on the basis of such action or information; or
- (3) knowingly aids another to do any of the foregoing.

1991

#### 76-8-203. Unofficial misconduct.

(1) A person is guilty of unofficial misconduct if he exercises or attempts to exercise any of the functions of a public office when:

- (a) He has not taken and filed the required oath of office; or
- (b) He has failed to execute and file the required bond; or
- (c) He has not been elected or appointed to office; or
- (d) He exercises any of the functions of his office after his term has expired and the successor has been elected or appointed and has qualified, or after his office has been legally removed.
- (e) He knowingly withholds or retains from his successor in office or other person entitled to the official seal or any records, papers, documents, or other writings appertaining or belonging to his office or mutilates or destroys or takes away the same.

(2) Unofficial misconduct is a class B misdemeanor.

1973

## PART 3

### OBSTRUCTING GOVERNMENTAL OPERATIONS

#### 76-8-301. Interference with public servant.

(1) A person is guilty of a class B misdemeanor if he uses force, violence, intimidation, or engages in any other unlawful act with a purpose to interfere with a public servant performing or purporting to perform an official function.

(2) For purposes of this section, "public servant" does not include jurors.

1993

#### 76-8-302. Picketing or parading in or near court.

A person is guilty of a class B misdemeanor if he pickets or parades in or near a building which houses a court of this state with intent to obstruct access to that court or to affect the outcome of a case pending before that court.

1973

#### 76-8-303. Prevention of Legislature or public servants from meeting or organizing.

A person is guilty of a felony of the third degree if he intentionally and by force or fraud:

- (1) Prevents the Legislature, or either of the houses composing it, or any of the members thereof, from meeting or organizing; or
- (2) Prevents any other public servant from meeting or organizing to perform a lawful governmental function.

1991

#### 76-8-304. Disturbing Legislature or official meeting.

(1) A person is guilty of a class B misdemeanor if he intentionally:

- (a) disturbs the Legislature, or either of the houses composing it, while in session;
- (b) commits any disorderly conduct in the immediate view and presence of either house of the Legislature, tending to interrupt its proceedings or impair the respect of its authority; or
- (c) disturbs an official meeting or commits any disorderly conduct in immediate view and presence of participants in an official meeting tending to interrupt its proceedings.

(2) "Official meeting," as used in this section, means any lawful meeting of public servants for the purposes of carrying on governmental functions.

1991

#### 76-8-305. Interference with arresting officer.

A person is guilty of a class B misdemeanor if he has knowledge, or by the exercise of reasonable care should have knowledge, that a peace officer is seeking to effect a lawful arrest or detention of that person or another and interferes with the arrest or detention by:

- (1) use of force or any weapon;
- (2) the arrested person's refusal to perform any act required by lawful order:
  - (a) necessary to effect the arrest or detention; and
  - (b) made by a peace officer involved in the arrest or detention; or
- (3) the arrested person's or another person's refusal to refrain from performing any act that would impede the arrest or detention.

1991

#### 76-8-306. Obstructing justice.

(1) A person is guilty of an offense if, with intent to hinder, prevent, or delay the discovery, apprehension, prosecution, conviction, or punishment of another for the commission of a crime, he:

- (a) knowing an offense has been committed, conceals it from a magistrate;
- (b) harbors or conceals the offender;
- (c) provides the offender a weapon, transportation, disguise, or other means for avoiding discovery or apprehension;
- (d) warns the offender of impending discovery or apprehension;
- (e) conceals, destroys, or alters any physical evidence that might aid in the discovery, apprehension, or conviction of the person;
- (f) obstructs by force, intimidation, or deception anyone from performing an act that might aid in the discovery, apprehension, prosecution, or conviction of the person; or
- (g) having knowledge that a law enforcement officer has been authorized or has applied for authorization under either Section 77-23a-10 or 77-23a-15 to intercept a wire, electronic, or oral communication, gives notice or attempts to give notice of the possible interception to any person.



(e)(3) *Statement of issues; cross-designation by appellee.* Unless the entire transcript is to be included, the appellant shall, within 10 days after filing the notice of appeal, file a statement of the issues that will be presented on appeal and shall serve on the appellee a copy of the request or certificate and a copy of the statement. If the appellee deems a transcript of other parts of the proceedings to be necessary, the appellee shall, within 10 days after the service of the request or certificate and the statement of the appellant, file and serve on the appellant a designation of additional parts to be included. Unless within 10 days after service of such designation the appellant has requested such parts and has so notified the appellee, the appellee may within the following 10 days either request the parts or move in the trial court for an order requiring the appellant to do so.

(f) *Agreed statement as the record on appeal.* In lieu of the record on appeal as defined in paragraph (a) of this rule, the parties may prepare and sign a statement of the case, showing how the issues presented by the appeal arose and were decided in the trial court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issues presented. If the statement conforms to the truth, it, together with such additions as the trial court may consider necessary fully to present the issues raised by the appeal, shall be approved by the trial court. The clerk of the trial court shall transmit the statement to the clerk of the appellate court within the time prescribed by Rule 12(b)(2). The clerk of the trial court shall transmit the index of the record to the clerk of the appellate court upon approval of the statement by the trial court.

(g) *Statement of evidence or proceedings when no report was made or when transcript is unavailable.* If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, or if the appellant is impecunious and unable to afford a transcript, the appellant may prepare a statement of the evidence or proceedings from the best available means, including recollection. The statement shall be served on the appellee, who may serve objections or propose amendments within 10 days after service. The statement and any objections or proposed amendments shall be submitted to the trial court for settlement and approval and, as settled and approved, shall be included by the clerk of the trial court in the record on appeal.

(h) *Correction or modification of the record.* If any difference arises as to whether the record truly discloses what occurred in the trial court, the difference shall be submitted to and settled by that court and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated, the parties by stipulation, the trial court, or the appellate court, either before or after the record is transmitted, may direct that the omission or misstatement be corrected and if necessary that a supplemental record be certified and transmitted. The moving party, or the court if it is acting on its own initiative, shall serve on the parties a statement of the proposed changes. Within 10 days after service, any party may serve objections to the proposed changes. All other questions as to the form and content of the record shall be presented to the appellate court.

(Amended effective October 1, 1992; July 1, 1994; April 1, 1995; January 1, 1998; April 1, 1998; November 1, 1999; April 1, 2001; November 1, 2002.)

**Advisory Committee Note.** — The rule is amended to make applicable in the Supreme Court a procedure of the Court of Appeals for preparing a transcript where the record is maintained by an electronic recording device. The rule is modified slightly from the former Court of Appeals rule to make it the appellant's responsibility, not the clerk's responsibility to arrange for the preparation of the transcript.

**Amendment Notes.** — The 2001 amendment added Subdivision (b)(1)(F) making a related change.

The 2002 amendment rewrote Subdivisions (d)(2) and (d)(3), substituting the present provisions for a detailed list of papers to be filed, and deleted "in a civil case" after "afford a transcript" in the first sentence of Subdivision (g).