

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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Jun 13 2024

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Bentley Price, Circuit Court Judge Case No.
2023-CP-10-01941

Appellate Case No. 2023-001941

Meredith Logan Whitehurst,

Appellant,

versus

Town of Sullivans Island,

Respondent.

SUPPLEMENTAL RECORD ON APPEAL

C. Austin Elliott, Esq.
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SC Bar Number: 100072
Attorney for Appellant

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	Case Number: 2023-CP-10-01941
COUNTY OF CHARLESTON)	
MEREDITH LOGAN)	
WHITEHURST,)	
)	ORDER DENYING APPEAL
Appellant/Plaintiff,)	
vs.)	
)	
TOWN OF SULLIVAN’S ISLAND,)	
)	
Appellee/Defendant.)	
_____)	

THIS MATTER came to be heard by me on November 16, 2023 pursuant to a Notice of Appeal and Memorandum In Support filed herein on April 20, 2023 and an Amended Notice of Appeal and Memorandum In Support filed on November 15, 2023, as well as Appellee’s Notice of Motion and Motion to Dismiss Appeal filed on April 27, 2023. Present at the Hearing was C. Austin Elliott, Esquire, Attorney for Appellant, Meredith Logan Whitehurst (“Appellant”), and John J. Dodds III, Esquire, Attorney for Appellee, Town of Sullivan’s Island (“Town”). Appellee’s Motion to Dismiss Appeal was denied by the Court after arguments by the attorneys, respectively. The Court then heard argument regarding the Appeal and Amended Appeal filed by Appellant.

After carefully reviewing the Return filed by Sullivan’s Island Municipal Court Judge Francis J. Cornely on May 23, 2023, the Notice of Appeal and Memorandum In Support filed herein on April 20, 2023, the Amended Notice of Appeal and Memorandum In Support filed on November 15, 2023, the Disorderly Conduct Ordinance for the Town of Sullivan’s Island, the cases and other written materials submitted by the attorneys, respectively, and after carefully considering the oral arguments of the attorneys, respectively, the Court finds and concludes as follows:

ONE: This Court has jurisdiction over the subject matter of this action and the parties hereto;

TWO: Appellant was convicted by a jury in Sullivan’s Island Municipal Court of Disorderly Conduct on March 21, 2023;

THREE: In criminal appeals from municipal court, the circuit court does not conduct a de novo review; rather, it reviews the case for preserved errors raised to it by appropriate exception.

Section 14-25-105, Code of Laws of South Carolina, 1976, as amended. Town of Mt. Pleasant v. Roberts, 393 S.C. 332, 713 S.e.2d 278 (2011); and

FOUR: After careful consideration of the entire record in this matter, as well as the arguments of the attorneys for the parties, respectively, the Municipal Court Judge made no error of law and, accordingly, the Notice of Appeal and Amended Notice of Appeal are hereby dismissed.

AND IT IS SO ORDERED!

Bentley Price
Circuit Court Judge



Charleston Common Pleas

Case Caption: Meredith Logan Whitehurst VS Sullivans Island Town Of

Case Number: 2023CP1001941

Type: Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

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State of South Carolina)	Court of Common Pleas
County of Charleston)	Ninth Judicial Circuit
)	
MEREDITH LOGAN WHITEHURST,)	Case Number:
)	2023-CP-10-01941
Appellant/Plaintiff,)	
)	
vs.)	
)	
TOWN OF SULLIVAN'S ISLAND,)	MOTION HEARING
)	
Appellee/Respondent.)	TRANSCRIPT OF RECORD
)	

November 16, 2023
Charleston, South Carolina

B E F O R E:

The Honorable Benton Price

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

MR. C. AUSTIN ELLIOTT,
Attorney at Law,
for the Appellant/Plaintiff;

MR. JOHN J. DODDS III,
Attorney at Law,
for the Appellee/Respondent.

Jamie Bickett
Official Court Reporter

1 (The following proceedings were had in open court.)

2 THE COURT: Meredith Whitehurst versus Sullivan's
3 Island.

4 MR. DODDS: Judge, may I approach?

5 THE COURT: Yes, sir.

6 All right. Whose motion is it?

7 MR. DODDS: There are actually two motions, Judge. I've
8 got a motion to dismiss, and then he has a motion with regard
9 to an appeal.

10 MR. ELLIOTT: Judge, may I approach?

11 THE COURT: Yes, sir.

12 MR. ELLIOTT: These are two of the same, so there's one
13 for the law clerk. That's just everything that's filed for
14 this motion.

15 THE COURT: All right. Who wants to go first?

16 MR. DODDS: How about I go first, Judge? If I win on
17 this issue, then you don't hear their matter.

18 Judge, I've provided you a copy of an e-mail from
19 Attorney Elliott, who's with Mr. Kulp's firm, to Judge
20 Cornely dated March 28, 2023. The reason this is important
21 is because Mr. Elliott, the attorney for the defendant who
22 was tried and convicted in Sullivan's Island Municipal Court,
23 filed what he referred to as a motion for new trial. And if
24 it is, in fact, a motion for a new trial, then it would
25 extend the time period within which to file the appeal to 30

1 days, not 10 days.

2 Judge, I just want you to take a look at the motion for
3 new trial and notice of appeal. The e-mail which I've
4 provided to the Court says -- this is directly from
5 Mr. Elliott to Judge Cornely:

6 "Judge, I've attached a written motion for a new trial
7 in this matter only out of an abundance of caution and for
8 clarity of the timeline in this matter. I fully realize you
9 verbally ruled on this matter, but I wanted to make sure I
10 filed it in writing. My presumption is this written motion
11 for a new trial is summarily denied, as was the verbal
12 ruling. As such, we are moving forward with our notice of
13 appeal, which we will fully brief and file, per the rules,
14 within 30 days of the trial date," which was March 21, 2023.

15 And then if you go for the motion for new trial and
16 notice of appeal, Judge, there is no ground set forth for a
17 motion for a new trial. He says -- and he puts a brief
18 procedural summary, then he says, "Notice of Intent to
19 Appeal. The undersigned acknowledges that trial judge the
20 Honorable Francis Cornely verbally denied the defendant's
21 oral motion for a new trial after the verdict in this matter.
22 The defendant now respectfully submits this written motion
23 for a new trial only out of an abundance of caution and for
24 the purposes of clarifying the timeline and record in this
25 matter.

1 "Defendant presumes the written motion for a new trial
2 was summarily denied by the Court, as ruled by the trial
3 judge in the verbal order at the conclusion of the trial.
4 Accordingly, the defendant now writes" -- excuse me -- "now
5 files this written notice of intent to file an appeal in this
6 matter and shall submit a formal notice of appeal with a
7 statement on the grounds therein within 30 days of the jury's
8 verdict in this matter, which was entered on March 21, 2023.

9 "The undersigned respectfully submits this pleading not
10 for redundancy, but for purposes of clarity of the timeline
11 in this matter and shall file the defendant's fully briefed
12 notice of appeal on or before April 20, 2023, with a copy of
13 the notice submitted to the prosecutor for the State."

14 So what I'm suggesting to the Court, with all due
15 respect to Mr. Elliott, your Honor, is this is not a motion
16 for a new trial. This is Attorney Elliott seeking to
17 establish his own timeline. I mean, I just would ask the
18 Court to look at it.

19 THE COURT: Well, what has he violated as to the
20 timeline? Did he not file his notice of -- I mean, did he
21 not file something inside the 30 days?

22 MR. DODDS: He didn't file it within the 10 days, your
23 Honor. So he said this motion for new trial gave him an
24 additional 20 days within which to file the notice of appeal.
25 And he did do that.

1 THE COURT: Okay. That's what I was asking.

2 All right.

3 MR. ELLIOTT: Judge, in response to the State's motion
4 on this particular matter, there was a -- and I think the
5 record's clear in what I passed up to the Court and filed.
6 At the conclusion of the trial, a verbal motion for new trial
7 was made, grounds renewed and stated orally. And that's all
8 in the record. And then that was written, as Mr. Dodds just
9 alluded to, and filed within the 10 days, the motion for new
10 trial, essentially formalizing it and, actually, to avoid
11 this exact situation so there would not be any confusion
12 within the 10 days and then, therefore, extending it to the
13 30 days to fully brief this appeal.

14 We'd ask that you deny the State's motion to dismiss and
15 rule on this matter on the actual substantive grounds of the
16 appeal, which have been briefed and submitted to the Court.

17 THE COURT: All right. I find that it was procedurally
18 filed correctly, so I will deny the motion to dismiss.

19 What did -- what legally did the judge do that affected
20 your case?

21 MR. ELLIOTT: Your Honor, I'll hit the primary issues.

22 There were a number of grounds that were cited, and the
23 foremost of those is the constitutionality of the Sullivan's
24 Island ordinance for disorderly conduct.

25 Essentially, we're asking this Court to apply a recent

1 Fourth Circuit decision regarding the South Carolina state
2 statute for disorderly conduct that was rendered earlier this
3 year, affirming the South Carolina district court on the same
4 issue. Essentially, what we are arguing is that the
5 ordinance is unconstitutionally vague and allows for
6 discretion that would violate any defendant's due process
7 rights as to how that ordinance would be applied and what
8 sort of behavior would be criminalized in the Town of
9 Sullivan's Island.

10 The Fourth Circuit opinion, which is briefed and
11 submitted to the Court, is pretty thorough in its analysis of
12 the state statute and as it relates to this ordinance. The
13 grounds for which they invalidated that are exactly what we
14 are -- we raised at trial and that we are saying makes it
15 unconstitutional in this context as well. The ordinance
16 specifically -- the two subsections that were submitted to
17 the jury are -- I think it's Subsection 8 and 12. That's the
18 Sullivan's Island ordinance.

19 And the language -- operative language here, the
20 element's specifically "loud, boisterous, unreasonable noise
21 or disturbance to the annoyance of persons nearby or near any
22 public highway, road, street, lane, alley, park, square, or
23 common area whereby the public peace is broken, disturbed, or
24 the public annoyed." And Section 12 is, essentially, the
25 same exact language, with the difference being "the traveling

1 public annoyed."

2 And the language that's come out of the Fourth Circuit
3 specifically addressed the issues with loud, boisterous, and
4 issues with vagueness as it relates to annoyance. And the
5 jurisprudence out of the last about 15 years go directly with
6 those issues and speak exactly to the vagueness grounds that
7 we've raised. Those were raised pretrial and renewed
8 throughout, denied at every level by the trial court in its
9 present case.

10 And that is the primary thrust of the appeal before you
11 today, that the Sullivan's Island ordinance is
12 unconstitutional, the trial court erred in denying the
13 defendant's motions to dismiss on those same grounds.

14 And then the more moderate issues also raised in this
15 appeal have to do with evidentiary issues in regards to the
16 video -- which was the primary piece of the State's evidence
17 -- and its completeness. We raised those issues at trial.
18 Both in-camera testimony was taken and then testimony before
19 the jury was taken afterwards, and that evidence was admitted
20 over objection. And we'd ask that that motion to suppress --
21 the trial court erred in denying that motion to suppress on
22 those grounds.

23 And lastly, the Sullivan's Island ordinance for
24 disorderly conduct has -- I believe it's about 18 subsections
25 that vary pretty drastically in their prohibited behavior and

1 elements. We're not putting forth that the whole ordinance
2 itself is unconstitutional, but the two subsections -- that's
3 Subsection 8 and 12 that were presented to the jury and the
4 jury was instructed on -- we do think that those are
5 unconstitutional pursuant to that recent Fourth Circuit
6 opinion from this district and from this very year.

7 THE COURT: All right. Yes, sir.

8 MR. DODDS: Your Honor, would you like to see a copy of
9 the ordinance?

10 THE COURT: I got it right here.

11 MR. DODDS: Okay. Thank you, your Honor. May it please
12 the Court.

13 Judge, as you know, there is no de novo review, that
14 your scope of review is limited to disturbed errors of law,
15 so Mr. Elliott is stuck with the facts in the case. And I
16 would ask you to just carefully review the return of Judge
17 Cornely because there are numerous and sundry facts that are
18 not in dispute, contrary to what Mr. Elliott is telling you.

19 Judge, the case has already been decided similarly in
20 the case -- the South Carolina Court of Appeals case of
21 *Landrum v. Sarratt*. And that was language only, Judge, where
22 essentially you had the defendant screaming across the
23 courtyard at a woman using various and sundry profanity, to
24 include the "F" word on a couple of different occasions. In
25 this particular case, Judge, we only -- we have not only

1 that, which occurs on a public sidewalk, public street, on
2 the Town of Sullivan's Island, but we have an assault
3 committed by the defendant.

4 So if you look to the cases, particularly, Judge,
5 *Landrum v. Sarratt*, they talk about "The determination of
6 whether profane words constitute fighting words that are not
7 afforded freedom-of-speech protection under the First
8 Amendment depends upon the circumstances surrounding their
9 utterance. Some of the factors to be considered in
10 determining if profanity constitutes fighting words are the
11 presence of bystanders" --

12 And there were none. There was the complainant, who was
13 the Uber driver, your Honor; Ms. Whitehurst, the defendant;
14 and another codefendant who was not tried in the case.

15 The other thing that they look about in terms of
16 factors, Judge, the accompaniment of other aggressive
17 behavior. And we have that in the form of an assault
18 committed by the defendant in addition to the fighting words
19 that we believe she used in accordance with this case, Judge.

20 And whether the words are repeatedly uttered.

21 So this initially occurred, Judge, in the Uber
22 driver's -- the complainant's vehicle. They were let out.
23 Prior to exiting the vehicle, the Uber driver was attempting
24 to contact the police and dialed 911, had the phone plugs in
25 his ears, and the defendant reached over and tried to slap

1 those phone plugs out of his ears. They then exited the
2 vehicle -- and this was after midnight on a Sunday night,
3 Saturday morning, Sunday night (verbatim) -- and continued to
4 use profanity at the Uber driver, Judge.

5 So I believe if you look at the return that's been
6 filed, your Honor, as well as the court of appeals case in
7 *Landrum v. Sarratt*, the evidence is clear that the Judge made
8 no error of law.

9 With respect to the video, Judge, I don't believe that
10 Attorney Elliott -- I mean, the judge had an in-camera
11 hearing, ruled with respect to the ordinance, and that was
12 the end of the matter. So Attorney Elliott -- and I believe
13 this is in the return, your Honor -- acknowledged that the
14 video was complete and that I had provided him in discovery a
15 complete copy of that video.

16 With respect to the issue about the ordinance, Judge,
17 there was no reference of the specifics of the ordinance to
18 the jury prior to closing arguments. The judge did have an
19 in-camera hearing. He agreed to reduce the -- to limit my
20 ability to argue the ordinance to four. Once he heard the
21 evidence, we agreed to limit it to two. And that's what it
22 was argued at closing argument, Judge.

23 There is no error of law. The facts are as set forth in
24 the judge's return and we'd ask the Court to deny the appeal,
25 your Honor.

1 THE COURT: All right. Anything further?

2 MR. ELLIOTT: Just briefly, your Honor.

3 In terms of the fighting words that Mr. Dodds just
4 raised, I think it's very, very important to make this
5 distinction that disorderly conduct can be lawfully applied
6 under the state statute under *Sarratt* for fighting words.
7 But in the case before you today, fighting words were
8 specifically not alleged.

9 And I think that the clearest evidence of that is the
10 fighting words are Subsection 18 under the ordinance, and
11 that was not charged at jury. It was only Section 8 and 12.
12 So you don't have a situation where the jury was charged or,
13 as Mr. Dodds has alleged at the end of the case, that
14 fighting words were used. So what they presented to the jury
15 was only about loud, boisterous, or unreasonable noise or
16 disturbance to the annoyance of persons nearby or near to any
17 public highway.

18 So I think that distinction is what controls. We're not
19 talking about fighting words. Fighting words can be applied
20 in the context of disorderly conduct, but the vagueness of
21 the operative terms that were charged to the jury is exactly
22 the reason why it was unconstitutional based on that recent
23 Fourth Circuit opinion.

24 THE COURT: All right. I'm going to take a look at the
25 opinion. You'll have my answer by the end of the day.

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MR. DODDS: Thank you, your Honor.

THE COURT: Yes, sir.

(End of proceedings.)

CERTIFICATE OF REPORTER

State of South Carolina

County of Charleston

I, Jamie L. Bickett, an Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and evidence introduced in the hearing of the captioned case in the Court of Common Pleas for Charleston County, South Carolina.



Official Court Reporter

Dated this 20th day
of February, 2023.

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Jun 13 2024

Certificate of Counsel

S.C. SUPREME COURT

The undersigned hereby certifies that the Supplemental Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

s/ C. Austin Elliott

C. Austin Elliott, Esq.

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Attorney for Appellant

Charleston, South Carolina
June 13, 2024