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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Honorable David P. Caraker, Jr., Circuit Court Judge
Appellate Case No. 2024-001615

THE STATE,

Appellant,

vs.

ELISABETH ANNE GERMAIN,

Respondent.

INITIAL BRIEF OF APPELLANT

ALAN WILSON
Attorney General

AMBREE M. MULLER
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3747

SCARLETT A. WILSON
Solicitor, Ninth Judicial Circuit

101 Meeting St.
Charleston, SC 29401
(843) 958-1900

ATTORNEYS FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The trial judge reversibly erred by granting Germain's motion to dismiss both the unlawful use of 911 charge and the resisting arrest charge after finding that the arrest was unlawful when there were sufficient facts to support the charge of misuse of 911 prior to Fourth Amendment Violation occurring.

STATEMENT OF THE CASE

In July of 2023, Respondent Elisabeth Germain was arrested for unlawful use of 911 and resisting arrest. In November of 2023, the Charleston County Grand Jury indicted on those charges. On August 21, 2024, Germain's case was called for trial in the Charleston County Court of General Sessions with the Honorable David P. Caraker, Jr., circuit court judge, presiding. At the outset of the trial proceedings, Germain's counsel submitted a motion to dismiss both charges.¹ After hearing from witnesses for both parties and hearing arguments from counsel, the trial judge granted the motion to dismiss. An order granting the defense motion to dismiss was filed on September 24, 2024. The State then timely filed a notice of appeal. This Brief of Appellant follows.

¹ The Motion to Dismiss was actually filed with the Court on August 22, 2024, but was provided via email to the State and the trial judge on the night of August 20, 2024.

STATEMENT OF FACTS

On July 19, 2023, Officers Brandon Duritsa and Michael Hendricks responded to a report indicating an individual cussing out dispatch and that a physical disturbance occurred at her residence. (Tr. 5). Upon arrival, Elisabeth Germain, Respondent, was acting belligerent and smelled of alcohol. (Tr. 6). Dispatch had informed the officers that Respondent had made multiple calls to 911 and was using profane language toward the dispatchers. (Tr. 6). Officer Hendricks testified that Respondent made five phone calls to dispatch. (Tr. 44).

Upon arrival, Respondent made it known to Officers that she was not happy with how long it took them to arrive on scene. (Tr. 44). Respondent informed the Officers that there was a physical altercation at the residence, but Duritsa testified that he did not see any injuries, nor did anything look in disarray on the porch. (Tr. 6). Respondent told the officers that she and her boyfriend had a written contract that he would leave the residence if an altercation occurred between the two. (Tr. 93-97). Respondent wanted the officers to enforce the contract and when the officers informed Respondent they could not enforce the contract, she became angry and began cussing and yelling at them. (Tr. 8-9). Hendricks testified that there was no immediate danger, Respondent would not confirm why she needed her boyfriend removed from the residence, and Respondent would not ever allow the officers to make contact with the boyfriend. (Tr. 47). Officers concluded that there were no signs of any physical injury or any evidence of a physical disturbance and informed Respondent that if she called 911 again she would be going to jail. (Tr. 8-11).

Roughly five minutes after Officers left Respondent's residence, Respondent again called 911 and again used profane and aggressive language toward the dispatchers. Officers returned to Respondent's residence and informed her she was under arrest for misuse of 911. (Tr. 14).

Respondent responded by continuously opening the door, taunting the officers by cussing and yelling, and then shutting the door whenever officers got close to the door. (Tr. 15). After multiple instances of that occurring, Officer Duritsa was able to grab Respondent's wrist, escort her outside, and place handcuffs on her. (Tr. 15).

Contact was made with Respondent's boyfriend who looked like he had been asleep. (Tr. 49). Hendricks testified that he was calm and collected and no injuries were observed. (Tr. 49). Hendricks further testified that Respondent made it very clear that she was not going to stop calling 911 that night. (Tr. 53-54).

Prior to trial, Respondent made a motion to dismiss both charges of misuse of 911 and resisting arrest. (Tr. 3). Testimony was heard from Officers Duritsa and Hendricks as well as from Respondent. Respondent argued that Respondent's arrest was a Fourth Amendment violation because the officers had reached into Respondent's home to make a warrantless arrest. (Tr. 119-131). The State argued that the warrantless arrest was lawful because the officers did not enter her house and that she was in the doorway. (Tr. 131-149).

The State further argued that the motion should be for a motion for suppression and if suppression was granted, the State would be forced to dismiss the charge. (Tr. 149). Respondent responded stating that the motion was to dismiss the entire case. (Tr. 149-150). The trial judge agreed that that was his reading of the motion. (Tr. 150). The State argued that while it was labeled "Motion to Dismiss" that the appropriate remedy would be suppression as opposed to a straight-out dismissal for both charges because the issue was the unconstitutionality of the entrance of the home for the resisting arrest, not necessarily for her calling 911 many times prior to that point. (Tr. 150). The trial judge in his ruling agreed that as a threshold issue, they were able to make an arrest for misuse of 911, but that the arrest itself was not proper. (Tr. 151-155).

An order granting defense's motion to dismiss was filed and both charges were dismissed. (Order Granting Defense Motion to Dismiss). In the order, it again stated that there was evidence that fit the "freshly committed" requirement, obviating the need for an arrest warrant, yet then dismissed both the misuse of 911 and the resisting arrest charge. This appeal follows.

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). “An abuse of discretion arises from an error of law or a factual conclusion that is without evidentiary support.” State v. Meggett, 398 S.C. 516, 523, 728 S.E.2d 492, 496 (Ct. App. 2012).

ARGUMENT

The trial judge reversibly erred by granting Germain's motion to dismiss both the unlawful use of 911 charge and the resisting arrest charge after finding that the arrest was unlawful when there was sufficient facts to support the charge of misuse of 911 prior to Fourth Amendment Violation occurring.

On Appeal the State is not arguing that the arrest was lawful. Furthermore, the State is not challenging the dismissal of unlawful arrest charge although the proper remedy should have been suppression of the fruits of the unlawful arrest instead of judicial dismissal. Instead, the State's argument is solely focused on the trial judge's judicial dismissal of the misuse of 911 charge. The trial judge erred by dismissing the misuse of 911 charge because there was sufficient evidence supporting the misuse of 911 before any unconstitutional violation occurred. Thus, a subsequent constitutional violation could not properly serve as a basis for the complete dismissal of a crime that had already occurred and that required no evidence to prove that had been obtained as fruit of the constitutional violation.

The Fourth Amendment to the United States Constitution protects people from unreasonable searches and seizures and provides that no warrants shall be issued except 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 exclusionary rule is a judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect, rather than a personal constitutional right of the party aggrieved." State v. Adams, 409 S.C. 641, 647, 763 S.E.2d 341, 345 (2014). "The remedy of exclusion 'compel[s] respect for the constitutional guaranty in the only effectively available way- by removing the incentive to disregard it.'" Id. (citing Elkins v. United States, 364 U.S. 206, 217, 80 S.Ct. 1437

(1960)). The fact that a Fourth Amendment violation occurs does not mean that the exclusionary rule automatically applies. Id.

In this case the exclusionary rule does not apply because the Fourth Amendment violation occurred after there was sufficient evidence for the misuse of 911 charge.

It is unlawful for a person anonymously or otherwise to:

- (1) Use any words or language of a profane, vulgar, lewd, lascivious, or indecent nature on an emergency 911 number with the intent to intimidate or harass a dispatcher;
- (2) Contact the emergency 911 number, whether or not conversation ensues for the purpose of annoying or harassing the dispatcher or interfering with or disrupting emergency 911 service.

S.C. Code Ann. §23-47-80. There were sufficient facts to support the misuse of 911 prior to any Fourth Amendment violations. Officer Duritsa testified that dispatch had advised him that Respondent had made multiple calls to 911 and was cussing and threatening dispatch. (Tr. 6). Officers went to Respondent's residence and while there told her if she called 911 again she would be arrested for misuse of 911. (Tr. 41, 48). After leaving the residence, dispatch informed Duritsa that Respondent had called again and was using profane language against dispatch. (Tr. 14). Officer Hendricks testified that when they arrived the second time "she made it clear that she was not going to stop calling 911 that night. And there was something there – there was something else going on that she was not going to stop calling 911. And the last two times it was a clear indication that she was harassing dispatch at that point." (Tr. 53-54).

Respondent also testified and admitted that she said, "You are going to be in big trouble." (Tr. 112). The two calls that occurred after officers left the first time were clearly for the purpose of harassing dispatch. (911 Calls). On the calls you can hear Respondent call saying that she did not want officers to come back out but was calling to complain using profane

language about the officers that did come out to her residence. (911 calls). She admits in her testimony that she used foul language and called officers multiple times. (Tr. 110-118).

In the order granting defense's motion to dismiss, the court stated "In this case, the Defendant made the calls to 911, asking, at first for help. She never denied making the calls. She admitted to police that she made the calls, and, although she called numerous times, the officers arrived shortly after they had been informed about the calls for service. Because of these facts, the court finds that the facts and circumstances here fit the 'freshly committed' requirement, obviating the need for an arrest warrant." (Order Granting Defense Motion to Dismiss Pg. 4) While the arrest itself may have been a Fourth Amendment violation, there was sufficient evidence for the misuse of 911 that occurred **prior to** when the violation occurred. Thus, dismissal of a charge that occurred prior to the constitutional violation could not have been an appropriate remedy. Therefore, the trial judge erred by granting defense's motion to dismiss.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the ruling of the circuit court judge should be reversed and the case should be remanded for trial on the unlawful use of 911 charge.


Respectfully submitted,

ALAN WILSON
Attorney General

AMBREE M. MULLER
Assistant Attorney General

SCARLETT A. WILSON
Solicitor, Ninth Judicial Circuit

BY:



Ambree M. Muller

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3747

ATTORNEYS FOR APPELLANT

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