

RECEIVED

Jun 07 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CLARENDON COUNTY
Court of General Sessions

R. Ferrell Cothran, Jr., Circuit Court Judge

Appellate Case No. 2021-000615

The State of South Carolina ,

Respondent,

v.

Lucretia Conyers,

Appellant.

Initial Brief of Appellant

TRISTAN M. SHAFFER

Tristan M. Shaffer
P.O. Box 1027
Chapin, SC 29036
(803) 467-2586
tristan@shafferlawsc.com

ATTORNEY FOR APPELLANT.

TABLE OF CONTENTS

TABLE OF CONTENTS..... 1

TABLE OF AUTHORITIES..... 2

STATEMENT OF ISSUES ON APPEAL..... 3

STATEMENT OF THE CASE..... 4

ARGUMENT 5

CONCLUSION 8

TABLE OF AUTHORITIES

Cases

Edwards v. South Carolina, 372 U.S. 229, 229, 83 S. Ct. 680, 680 (1963) 6, 7

Houston v. Hill, 482 U.S. 451, 462, 107 S. Ct. 2502, 2510 (1987) 7

In the Interest of Jeremiah W., 353 S.C. 90, 576 S.E.2d 185 (Ct. App. 2003)..... 7

In the Interest of Jeremiah W., 361 S.C. 620, 606 S.E.2d 766 (2004)..... 7

State v. Perkins, 306 S.C. 353, 354, 412 S.E.2d 385, 386 (1991) 6

State v. Pittman, 342 S.C. 545, 550-51, 537 S.E.2d 563, 566 (Ct. App. 2000)..... 11

State v. Poinsett, 250 S.C. 293, 297, 157 S.E.2d 570, 571 (1967) 6

Constitutional Amendments

U.S. Const. amend. I 7

U.S. Const. amend. XIV 6, 7

STATEMENT OF ISSUES ON APPEAL

1. Did the trial court err in deny a motion for directed verdict as to resisting arrest when the underlying arrest was for breach of peace based on Appellant yelling at Law Enforcement to get off her property?

STATEMENT OF THE CASE

Appellant, Lucretia Conyers, was indicted by the Colleton County Grand Jury for resisting arrest. R*(Indictment). On June 1, 2021, Lucretia was called to trial before the Honorable R. Ferrell Cothran and a jury. Tr. 1. Lucretia was represented by Tristan Shaffer. Tr. 1. The State was represented by Darla Pierce. Tr. 1. At the conclusion of the trial, Lucretia was found guilty. Tr. 169, ll. 16-20. Lucretia was sentenced to 45 days. Tr. 175, ll. 4-13. An appeal bond was granted. Tr. 176, ll. 20-22.

This appeal follows.

ARGUMENT

- I. The trial court erred in deny a motion for directed verdict as to resisting arrest when the underlying arrest was for breach of peace based on Appellant yelling at Law Enforcement to get off her property.

Relevant Facts

Appellant, Lucretia Conyers is an Intellectually Disabled woman who lives on Brown Road in Clarendon County. Tr. 110, l. 23—111, l. 2.

On November 19, 2016, Sherry McFaddin was parked in Lucretia’s driveway in her white van when Deputies Jackson and Hickman from the Clarendon County Sheriff’s Office pulled in to speak with Ms. Mcfaddin. Tr. 51, ll. 13-20. Jackson and Hickman had previously had a call about a burglary in the area and Ms. McFaddin’s van matched the description of a possible subject’s vehicle. Tr. 50, ll. 19-20; 52, ll. 3-24. Officer Jackson would later testify to the following:

We then stopped at that location, made contact with a Ms. Sherry McFaddin. She was still sitting inside the van. I approached her and began to explain the reason why I was there. At that point in time Ms. Lucretia came out on the porch. She was yelling and cursing and stated that she didn't like the police and to get off her property.

Tr. 51, ll. 15-20. Jackson admitted that Lucretia’s yelling and cursing was directed toward law enforcement. Tr.72, ll. 16-25. Because Appellant was “cursing and carrying on” Jackson decided to arrest Appellant and charge her with Breach of peace. Tr. 53, ll. 20-22; 55, l. 19—56, l. 4.

When Appellant did not comply with the breach of peace arrest, Jackson began to employ a straight arm bar takedown on Lucretia. Tr. 56, ll. 9-21. Lucretia went to the ground. She was charged with Breach of Peace and Resisting Arrest.

During the trial, Appellant argued that a directed verdict should be granted because the State failed to prove that the underlying arrest was lawful. Tr. 88, l. 16—89, l. 24. Specifically,

Appellant argued that Lucretia's criticism of law enforcement was constitutionally protected and cannot form the basis for a charge of breach of peace. Tr. 90, ll. 18-23. The Trial Court denied Appellant's motion for directed verdict. Tr. 94, l. 22—95, l. 18.

Argument

Directed verdict for the offense of resisting arrest should have been granted because the underlying arrest for breach of peace was unlawful. "A person has a right to resist an unlawful arrest even to the extent of taking the life of the aggressor if it be necessary in order to regain his liberty." *State v. Poinsett*, 250 S.C. 293, 297, 157 S.E.2d 570, 571 (1967). As such, in a prosecution for resisting arrest, the State must present evidence that the underlying arrest was lawful.

In the present case, the officer's claim to arrest Appellant for common law breach of peace.

The term "breach of the peace" is a generic one embracing a great variety of conduct destroying or menacing public order and tranquility. In general terms a breach of peace is a violation of public order, a disturbance of the public tranquility, by any act or conduct inciting to violence, which includes any violation of any law enacted to preserve peace and good order.

Poinsett, 250 S.C. at 297, 157 S.E.2d at 571. However, "[t]he Fourteenth Amendment does not permit a state to make criminal the peaceful expression of unpopular views." *Edwards v. South Carolina*, 372 U.S. 229, 229, 83 S. Ct. 680, 680 (1963). As such, the United States Supreme Court has struck down South Carolina's common law breach of peace law when it is used to criminalize speech that "stirred people to anger, invited public dispute, or brought about a condition of unrest." *See Id.*, 372 U.S. at 238, 83 S. Ct. at 685.

"The State may not punish a person for voicing an objection to a police officer where no "fighting words" are used." *State v. Perkins*, 306 S.C. 353, 354, 412 S.E.2d 385, 386 (1991).

Additionally, the fighting words exception must be narrowly interpreted when dealing with words directed at law enforcement. *See Houston v. Hill*, 482 U.S. 451, 462, 107 S. Ct. 2502, 2510 (1987). “It is well settled that the use of profanity alone does not constitute fighting words.” *In the Interest of Jeremiah W.*, 353 S.C. 90, 96, 576 S.E.2d 185, 189 (Ct. App. 2003) (*reversed on other grounds by In the Interest of Jeremiah W.*, 361 S.C. 620, 621, 606 S.E.2d 766, 767 (2004)). This Court has held a conviction requires more than profanity or loud and boisterous behavior directed at the officers. *See State v. Pittman*, 342 S.C. 545, 550-51, 537 S.E.2d 563, 566 (Ct. App. 2000) (*interpreting State v. Perkins*, 306 S.C. 353, 412 S.E.2d 385 (1991)).

By officer Jackson’s own admission Lucretia’s profanity and yelling was directed solely at Law Enforcement. Tr. 72, ll. 16-25. Although Lucretia’s yelling may have “stirred people to anger, invited public dispute, or brought about a condition of unrest” *See Edwards.*, 372 U.S. at 238, 83 S. Ct. at 685, Lucretia had a First Amendment right to vocalize her discontent with the officers who were on her property. There is no evidence of any fighting words or allegations of violence or enticing the public to violence prior to the Deputy Jackson attempting to arrest Lucretia for “cursing and carrying on”. Tr. 53, ll. 20-22; 55, l. 19—56, l. 4.

The Trial Court violated the First and Fourteenth Amendment in defining breach of peace in a way as to criminalize Lucretia’s cursing and carrying on against law enforcement. The Trial Court erred in failing to properly apply the United States Constitution in defining breach of peace and in denying Appellant’s motion for directed verdict.

CONCLUSION

For the foregoing reasons Appellant respectfully requests that this Court reverse Appellant's Conviction.

Respectfully submitted,

s/ Tristan Shaffer
Tristan M. Shaffer (SC Bar 77565)
P.O. Box 1027
Chapin, SC 29036
(803) 626-0188
tristan@shafferlawsc.com

ATTORNEY FOR APPELLANT.

This 7th day of June, 2022.