

STATE OF SOUTH CAROLINA)
 WILLIAMSBURG COUNTY)
)
 City of Hemingway)
)
 v.)
)
 Dwayne Lamonde Doctor,)
)
 Appellant.)

**IN THE COURT OF COMMON PLEAS
 FOR THE THIRD JUDICIAL CIRCUIT**

Case No. 2009-CP-45-00350

ORDER

10 MAR -9 PM 3:28
 CAROLYN F. WILLIAMS
 CLERK OF COURT
 KINGSTREE, S.C.

FILED


This matter came before the Court on appeal from the conviction and sentence of the Hemingway Municipal Court, for public disorderly conduct, ticket number 67206EU. Representatives of both parties were present during oral argument on January 7, 2010. Based on the below findings of fact and conclusions of law, I find that there was insufficient evidence for this case to be presented to a jury.

Facts

The evidence presented at trial reveals that on June 20, 2009, as Officer Powell of the Hemingway Police Department was writing a warning ticket for the driver of an illegally parked car, Mr. Doctor walked over to Officer Powell and asked Powell why he was harassing the driver of the car. During the course of Mr. Doctor’s encounter with Officer Powell, Mr. Doctor complained that Officer Powell was “harassing the citizens of Hemingway” and stated that “this is bullshit.” Mr. Doctor was charged with public disorderly conduct, proceeded to a jury trial, and was convicted and sentenced on September 30, 2009.

Standard of Review

In appeal from a conviction and sentence of the municipal court “there shall be no trial de novo... but instead reviews for preserved errors raised to it by appropriate exception.” S.C. Code Ann. §14-28-105; State v. Henderson, 347 S.C. 445 (Ct. App. 2001).

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 CAROLYN F. WILLIAMS
 CLERK OF COURT
 WILLIAMSBURG COUNTY

“In considering a motion for a directed verdict, the judge is concerned with the existence or non-existence of evidence, not its weight. The case should be submitted to the jury if there be any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced.” State v. Williams, 303 S.C. 274, 276, 400 S.E.2d 131, 132 (1991). When the state fails to introduce any evidence to show an element of the crime, the judge must grant the directed verdict. “In reviewing the denial of a motion for a directed verdict, the evidence must be viewed in the light most favorable to the State, and if there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find that the case was properly submitted to the jury.” State v. Kelsey, 331 S.C. 50, 62, 502 S.E.2d 63, 69 (1998).

Law and Analysis

The Trial Judge erred when she failed to direct the verdict because the State did not prove the elements of the crime of Public Disorderly Conduct.

South Carolina Code Annotated Section 16-17-530 states:

Any person who shall (a) be found on any highway or at any public place or public gathering in a grossly intoxicated condition or otherwise conducting himself in a disorderly or boisterous manner, (b) use obscene or profane language on any highway or at any public place or gathering or in hearing distance of any schoolhouse or church or (c) while under the influence or feigning to be under the influence of intoxicating liquor, without just cause or excuse, discharge any gun, pistol or other firearm while upon or within fifty yards of any public road or highway, except upon his own premises, shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than one hundred dollars or be imprisoned for not more than thirty days.

Both the Supreme Court of our State and the United States Supreme Court have narrowed the crimes of breach of peace and public disorderly conduct based on accused speech to instances where the State alleges the use of fighting words. Lewis v. City of New Orleans, 413 U.S. 130 (1974); Cohen v. California, 403 U.S. 15, (1971); Terminiello v. Chicago, 337 U.S. 1,

1949); Gooding v. Wilson, 405 U.S. 518, (1972); City of Houston v. Hill, 482 U.S. 451 (1987); Lewis v. City of New Orleans, 413 U.S. 130 (1974). In re Jeremiah W., 361 S.C. 620 (2004) (holding that conviction for breach of peace would be overturned where defendant told officer “fuck you” when officer called to defendant); State v. Bailey, 368 S.C. 39 (Ct. App. 2006) (holding that conviction for public disorderly conduct is reversed because no fighting words were used where defendant was “extremely argumentative and loud and boisterous”); Landurm v. Sarratt, 352 S.C. 139 (Ct. App. 2002) (holding that a conviction for public disorderly conduct would be upheld because fighting words were used and defining instances of fighting words and non-fighting words.).

The First Amendment to the United States Constitution states that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” Speech objecting to unlawful arrest is protected under this Amendment so long as it does not rise to the level of fighting words. City of Houston v. Hill, 482 U.S. 451, 461-463 (1987). “The freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state.” Id. at 462-463.

In Mr. Doctor’s case the State failed to prove or even allege the use of fighting words. The State’s case was based on the fact that Mr. Doctor used profanity. Specifically the State’s witness, Lieutenant Powell stated all comments Mr. Doctor made were directed at him.

Q: When Dwayne Doctor said, this is bull shit, there is no question that it was directly at you; isn’t that true?

A: Yes, sir.

Q: And when he said you were harassing the citizens of Hemingway, there's no question that was directed at you; isn't that true?

A: Yes, sir.

At the jury trial the state presented evidence as to Mr. Doctor's conduct. As a matter of law, Mr. Doctor's conduct did not rise to the level of "fighting words," a standard required by both United States and South Carolina Supreme Court precedent. It is the opinion of this court that this case should not have gone to a jury. A directed verdict should have been granted as a matter of law.

The conviction and the sentence of the municipal court for Public Disorderly Conduct are REVERSED. The Municipal court is directed to enter a verdict of not guilty as to the charge of Public Disorderly Conduct on ticket number 67206EU.

IT IS SO ORDERED.



W. Jeffrey Young, Circuit Court Judge, Third Judicial Circuit