

Rel: August 18, 2023

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# Alabama Court of Criminal Appeals

OCTOBER TERM, 2022-2023

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CR-2023-0059

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Town of Brookside

v.

Brandon Stephen Newton

Appeal from Jefferson Circuit Court  
(CC-22-1839; CC-22-1840; and CC-22-1841)

WINDOM, Presiding Judge.

The Town of Brookside ("the Town") charged Brandon Stephen Newton with possession of drug paraphernalia, see § 13A-12-260, Ala. Code 1975, second-degree possession of marijuana, see § 13A-12-214, Ala. Code 1975, and speeding, see § 32-5A-171, Ala. Code 1975. Newton's

charges arose from a traffic stop conducted in the Town on July 22, 2021. The municipal court found Newton guilty as charged, and he appealed to the Jefferson Circuit Court for a trial de novo.

On January 17, 2023, Newton filed a motion to dismiss the charges pending against him. Newton alleged that the traffic stop that gave rise to his charges was the product of predatory police practices:

"Mr. Newton was with his girlfriend when they were pulled over for allegedly speeding and obstruction of windshield. ... Once pulled over they were then harassed, and the auto was searched and was alleged to have [contained] marijuana and drug paraphernalia. They were arrested and the auto towed, and bonds were set at \$300 for his girlfriend and \$600 for him. Mr. Newton was stopped illegally and harassed, and his person and automobile searched and he and his girlfriend were illegally arrested in a trumped up stop and his vehicle towed."

(C. 81-82.) The Town objected to Newton's motion, arguing that the motion effectively sought to make a pretrial challenge to the sufficiency of the Town's evidence. (C. 84-85.)

The circuit court granted Newton's motion to dismiss. Specifically, the circuit court stated:

"Due to the lack of credibility and public trust of the Brookside Police Department under previous police leadership, all cases where the sole witness to the offense is a Brookside Police Officer will be met with heavy scrutiny by this Court.

"The only witness to the above-referenced case is a Brookside Police Officer.

"Therefore, the above-referenced case is hereby DISMISSED, with prejudice, by the court over the objection of the Brookside city prosecutor."

(C. 11, 20, 29.) On January 24, 2023, the Town filed a timely notice of appeal. (C. 42-44.)

The Town argues on appeal, as it did below, that the circuit court exceeded its authority by granting Newton's motion to dismiss.<sup>1</sup> The Town, relying on Rule 13.5(c)(1), Ala. R. Crim. P., asserts that the circuit court could dismiss the charges against Newton only on the following grounds: "objections to the venire, the lack of legal qualifications of an individual grand juror, the legal insufficiency of the indictment, or the failure of the indictment to charge an offense." The Town asserts that the circuit court went beyond Rule 13.5(c)(1), granting the motion to dismiss based on "unsubstantiated media interests, allegations, and community rumors." (Town's brief, at 9.) According to the Town, the circuit court engaged in a pretrial determination of the credibility of the witnesses and the sufficiency of the Town's evidence.

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<sup>1</sup>Newton did not file an appellee's brief in this case.

This specific issue was addressed by this Court in Town of Brookside v. Rowser, [Ms. CR-2022-0505, March 24, 2023] \_\_\_ So. 3d \_\_\_ (Ala. Crim. App. 2023), which was a consolidation of appeals by the Town in related cases. In Rowser, the circuit court dismissed the charges pending against various defendants with orders identical to the order at issue here. This Court held:

"Rule 13.5(c)(1), Ala. R. Crim. P., provides: 'A motion to dismiss the indictment may be based upon objections to the venire, the lack of legal qualifications of an individual grand juror, the legal insufficiency of the indictment, or the failure of the indictment to charge an offense.' In State v. Starks, [Ms. CR-21-0048, May 6, 2022] \_\_\_ So. 3d \_\_\_, 2022 WL 1438883 (Ala. Crim. App. 2022), this Court examined Rule 13.5(c)(1) and stated: '[T]here is no pretrial means to dismiss the charges against a defendant based on the insufficiency of the evidence.' In footnote 2 of Starks, this Court acknowledged Ankrom v. State, 152 So. 3d 373 (Ala. Crim. App. 2011), in which this Court recognized that a trial court could address pretrial the limited question 'whether the defendant's conduct could ever constitute a violation of the charged statutes.' Starks, \_\_\_ So. 3d at \_\_\_ n.2. But unlike Ankrom, which involved a pretrial ruling on a "'pure question of law,'" the pretrial ruling in Starks was 'based purely on a credibility determination' and thus was improper. Id. This Court in Starks reiterated that a circuit court lacks authority under Rule 13.5(c)(1) to dismiss the charges against a defendant pretrial based on an alleged insufficiency of the evidence or 'based purely on a credibility determination.' \_\_\_ So. 3d at \_\_\_ & n.2.

"The circuit court here dismissed the charges pretrial 'based purely on a credibility determination.' What's more, in

all but Rowser's cases, the circuit court dismissed the charges without a motion from the defendants. The prosecution objected to the dismissals, arguing that they were improper and that they were based on 'media and public clamor.' Under Starks and the authorities cited there, see, e.g., State v. Foster, 935 So. 2d 1216 (Ala. Crim. App. 2005), State v. McClain, 911 So. 2d 54 (Ala. Crim. App. 2005), State v. Edwards, 590 So. 2d 379 (Ala. Crim. App. 1991), the circuit court erred in dismissing the charges against the defendants based on a pretrial determination of credibility, and we must reverse its judgments."

Rowser, \_\_\_ So. 3d at \_\_\_.

As it did in Rowser, the circuit court erred in granting Newton's motion to dismiss the charges pending against him. Accordingly, this Court reverses the circuit court's judgment dismissing the charges and instructs the circuit court to restore Newton's case to its active docket.

**REVERSED AND REMANDED.**

Kellum, McCool, Cole, and Minor, JJ., concur.