

Rel: August 18, 2023

Notice: This opinion is subject to formal revision before publication in the advance sheets of Southern Reporter. Readers are requested to notify the **Reporter of Decisions**, Alabama Appellate Courts, 300 Dexter Avenue, Montgomery, Alabama 36104-3741 ((334) 229-0649), of any typographical or other errors, in order that corrections may be made before the opinion is published in Southern Reporter.

Alabama Court of Criminal Appeals

OCTOBER TERM, 2022-2023

CR-2023-0061

Town of Brookside

v.

Leah Nicole Gengler

**Appeal from Jefferson Circuit Court
(CC-22-1842 and CC-22-1843)**

McCOOL, Judge.

The Town of Brookside ("the Town") appeals the Jefferson Circuit Court's dismissal of the charges against Leah Nicole Gengler. We reverse the circuit court's judgment.

The Town charged Gengler with second-degree unlawful possession of marijuana, see § 13A-12-214, Ala. Code 1975, and unlawful possession of drug paraphernalia, see § 13A-12-260, Ala. Code 1975. Gengler moved to dismiss the charges, asserting that she was "one of hundreds of thousands who was caught up in the [Town's] predatory police practices" and that she "was stopped illegally and harassed and her person and automobile searched and she was arrested and her auto towed." (C. 37-38.) Gengler further asserted that "[t]his has been an ordeal for all those people who have been wrongly stopped, harassed and arrested for trumped up allegations in order to produce money for the Town of Brookside through these predatory police practices which the Town of Brookside approved of." Id. Gengler stated that "[t]hese predatory police practices finally ended when journalist John Archibald became involved in investigating these predatory police practices in the Town of Brookside." Id. The Town objected to the motion to dismiss, asserting that, under Rule 13.5(c)(1), Ala. R. Crim. P., Gengler could not challenge the sufficiency of the evidence in a pretrial motion. (C. 47-48.) The Town also asserted that Gengler's "sole basis provided in support of the instant motion is born of unsubstantiated rumors and media allegations." Id.

The circuit court conducted a pretrial hearing on January 17, 2023. That same day, the circuit court dismissed the charges against Gengler, entering the following order:

"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.

"Any cash bond is to be returned to the defendant/surety."

(C. 12, 22.)

On appeal, the Town argues that "the trial court acted beyond the scope of Rule Ala. R. Crim. P., 13.5 in issuing 'blanket' pretrial dismissal[s] of verified criminal complaints as improperly based on a premature pre-trial challenge of the prosecution's evidence and the credibility and veracity of prosecution witnesses." The Town's brief, at 7. We agree.

The present situation is identical to the situation in Town of Brookside v. Rowser, [CR-2022-0505, March 24, 2023] ___ So. 3d ___ (Ala. Crim. App. 2023). In Rowser, the Town charged multiple defendants with various violations of municipal ordinances. After the municipal court found the defendants guilty as charged, the defendants each appealed to the Jefferson Circuit Court for trials de novo. After conducting pretrial hearings, the circuit court dismissed the charges against the defendants, entering the following identical order for each defendant:

"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 ..."

Rowser, ___ So. 3d at ___.

On appeal in Rowser, the Town, like it does in the present case, argued that the circuit court lacked authority to dismiss the charges against the defendants for the reasons it stated. Specifically, the Town

asserted that "Rule 13.5, Ala. R. Crim. P., does not permit a trial court to dismiss charges based on pretrial findings about the credibility of witnesses or 'unsubstantiated media conjecture and public clamor.'"

Rowser, ___ So. 3d at ___. 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 ___ (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.' 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 ___ (footnote omitted).

Likewise, in the present case, the circuit court erred in dismissing the charges against Gengler based on a pretrial determination of credibility. Therefore, we reverse the circuit court's judgment dismissing the charges, and we instruct the circuit court to restore Gengler's cases to its active docket.

REVERSED AND REMANDED.

Windom, P.J., and Kellum, Cole, and Minor, JJ., concur.