

STATE OF NORTH CAROLINA
COUNTY OF ORANGE

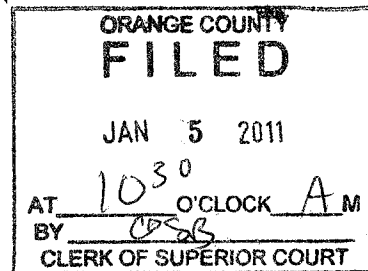
IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

STATE OF NORTH CAROLINA,)

V.)

SAMANTHA ELABANJO,)
Defendant.)

09 CRS 54172



ORDER GRANTING MOTION TO DISMISS

THIS CAUSE, coming on to be heard and being heard before the undersigned Superior Court Judge presiding over the January 3, 2011, Criminal Session of the Superior Court of Orange County, North Carolina upon defendant's Motion to Dismiss on grounds that the statute in question is unconstitutional. Present at the hearing were the Assistant District Attorney Morgan Whitney, the defendant, and defendant's attorney, Matthew Quinn. After reviewing the facts stipulated to by the attorneys, reviewing the file, and hearing arguments of counsel, the Court finds the following facts:

1. On February 15, 2010, defendant was engaged in conversation near a bus stop in Chapel Hill. Defendant stepped into Franklin Street as Chapel Hill Police Officers Bellavance and Telfair drove by in a patrol car.
2. The officers stopped their vehicle and asked defendant to move along.
3. The officers and defendant knew each other from prior instances.
4. As defendant was returning to the sidewalk, she said, "you need to clean your damn dirty car."
5. The officers began departing the scene.
6. After returning to the sidewalk, defendant called the officers "assholes" while waving her arms wildly.
7. The officers immediately stopped their vehicle and arrested defendant.

8. The officers at no time feared for their lives, felt compelled to physically retaliate, or believed any nearby crowd would imminently riot in response to defendant's words.

Based on the foregoing FINDINGS OF FACT, the Court concludes as a matter of law that:

1. N.C.G.S. Sect. 14-97 prohibits the use of "indecent or profane language" in a "loud and boisterous manner" on a public road or highway and in the hearing of two or more persons.
2. Based upon the stipulations of the parties, defendant's use of the word "assholes" occurred while she was on the sidewalk, and thus was not on a public road or highway, and therefore cannot as a matter of law violate N.C.G.S. Sect. 14-97.
3. The remaining statement by the defendant to be analyzed is her use of the word "damn" while standing in the street.
4. A statute is unconstitutionally overbroad if it "reaches a substantial amount of constitutionally protected conduct." *City of Houston v. Hill*, 482 U.S. 451, 458 (1987).
5. A line of United States Supreme Court cases, including *Lewis v. City of New Orleans*, 415 U.S. 130 (1974) and *Gooding v. Wilson*, 405 U.S. 518 (1972), invalidate as overbroad statutes attempting to criminalize the use of obscene or abusive language under certain circumstances.
6. N.C.G.S. Sect. 14-97 is overbroad in that it prohibits and criminalizes constitutionally protected speech, whether well-intentioned but perhaps in poor taste (e.g., a protest or rally using profane language), high-spirited (e.g., profane but happy exaltation directed at no one in particular on Franklin Street by a zealous Tar Heel after a national championship), or otherwise.
7. A statute is unconstitutionally vague if it "leaves the public uncertain as to the conduct it prohibits." *Giaccio v. Pennsylvania*, 382 U.S. 399, 402-03 (1966).

8. N.C.G.S. Sect. 14-97 defines neither “indecent” nor “profane,” and thus leaves to the imagination, or an officer’s discretion, what those terms mean, and which words, used in what context, would be prohibited. There is no longer any consensus, if there ever was, on what words in the modern American lexicon are “indecent” or “profane.” A reasonable person cannot be certain before she acts that her language is not violative of this law, and it is therefore unconstitutionally vague.
9. N.C.G.S. Sect. 14-97 is further unconstitutional as applied to defendant in this case, as her actions and use of the word “damn” while standing in the street are protected speech.

IT IS THEREFORE ORDERED ADJUDGED AND DECREED that because part of the language used by defendant occurred while she was not on a public road or highway, and because N.C.G.S. Sect. 14-97 is unconstitutional on its face and as applied to defendant, defendant’s motion to dismiss is **GRANTED**.

Ordered the 3rd day of January, 2011, and
Entered, this the 5 day of January, 2011.



Allen Baddour
Superior Court Judge