

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-090710
	:	TRIAL NO. C-09CRB-13617
Plaintiff-Appellant,	:	
	:	<i>DECISION.</i>
vs.	:	
YUNTAYA HOSKINS,	:	
	:	
Defendant-Appellee.	:	

Criminal Appeal From: Hamilton County Municipal Court

Judgment Appealed From Is: Reversed and Cause Remanded

Date of Judgment Entry on Appeal: June 4, 2010

Joseph T. Deters, Prosecuting Attorney, and *Ronald W. Springman, Jr.*, Chief
Assistant Prosecuting Attorney, for Plaintiff-Appellant,

William R. Gallagher, for Defendant-Appellee.

Please note: This case has been removed from the accelerated calendar.

HILDEBRANDT, Presiding Judge.

{¶1} Plaintiff-appellant, the state of Ohio, appeals the judgment of the Hamilton County Municipal Court granting a motion to suppress filed by defendant-appellee, Yuntaya Hoskins.

{¶2} One morning, Corporal Troy Swearingen of the Hamilton County Sheriff's department went to Hoskins's house to investigate a report that shots had been fired at the home several hours earlier. Swearingen's investigation led him to the garage of the residence, where he observed what he believed to be an exit hole made by a bullet.

{¶3} Swearingen knocked on the door of the house, and Hoskins answered. Swearingen asked for permission to look inside the residence to determine if there were any injured persons. Hoskins stated that no one had been injured, and she told Swearingen that she would not let him in without a warrant.

{¶4} After asking for backup, Swearingen again knocked on the door and asked for permission to enter. He did not have a warrant, and Hoskins again denied him entry. Swearingen then told her that he was going to enter the house, and as he was stepping into the doorway, Hoskins pushed him away.

{¶5} Swearingen arrested Hoskins and charged her with obstructing official business under R.C. 2921.31(A), which provides that “[n]o person, without privilege to do so and with purpose to prevent, obstruct, or delay the performance by a public official of any authorized act within the public official's official capacity, shall do any act that hampers or impedes a public official in the performance of the public official's lawful duties.”

{¶6} Hoskins filed a motion to suppress on the basis that Swearingen had violated her rights under the Fourth Amendment to the United States Constitution by attempting to enter her home without a warrant in the absence of

any exception to the warrant requirement. Hoskins contended that, because of the alleged constitutional violation, she had not impeded an “authorized act” or the “lawful duties” of a public official within the meaning of R.C. 2921.31(A).

{¶7} After a hearing, the trial court granted Hoskins’s motion, stating the following in its judgment entry: “Motion to Suppress Granted as to warrantless attempt [sic] entry into residence. Court finds there were no exigent circumstances to justify a warrantless entry up to time of OOB charge.”

{¶8} In a single assignment of error, the state now contends that the trial court erred in granting the motion to suppress. Specifically, the state argues that the court erred by adjudicating an element of the offense in a pretrial motion.

{¶9} The state’s assignment of error is well taken. Crim.R. 12(C) states, in part, that “[p]rior to trial, any party may raise by motion any defense, objection, evidentiary issue, or request that is *capable of determination without the trial of the general issue.*” (Emphasis added.)

{¶10} Although styled as a motion to suppress, Hoskins’s motion was in essence a motion to dismiss. Hoskins did not ask the court to suppress any evidence that had been obtained as a *result* of the allegedly illegal entry. Instead, she sought a determination that the state could not prove an element of the offense due to the alleged misconduct. The trial court, in turn, did not suppress any evidence; it merely held that there were no exigent circumstances to justify the attempted entry into Hoskins’s residence.

{¶11} But a motion to dismiss can raise only matters that are capable of determination without a trial of the general issue.¹ If a motion to dismiss requires the examination of evidence beyond the face of the charging instrument, the issue

¹ See *State v. Scott*, 174 Ohio App.3d 446, 2007-Ohio-7065, 882 N.E.2d 500, ¶9, citing Crim.R. 12(C); *State v. Ethridge*, 8th Dist. No. 87859, 2006-Ohio-6768, ¶5; and *State v. Serban*, 5th Dist. No. 2006 CA 00198, 2007-Ohio-3634, ¶25.

must be presented in a motion for acquittal at the close of the state's case.² Therefore, even where the state and the defendant have stipulated the facts that form the basis of the charges, a motion to dismiss is premature because there is no equivalent of a motion for summary judgment in a criminal proceeding.³ Because the motion in this case required evidence beyond the face of the complaint, it was improperly decided prior to the trial of the general issue.

{¶12} Hoskins argues, though, that Crim.R. 12(C)(3) required her to file a pretrial motion to suppress evidence. Under Crim.R. 12(C)(3), “[t]he following must be raised before trial: * * * [m]otions to suppress evidence, including, but not limited to statements and identification testimony, on the ground that it was illegally obtained.” Hoskins contends that the failure to comply with Crim.R. 12(C)(3) would have resulted in the waiver of the Fourth Amendment issue.

{¶13} We are not persuaded that Crim.R. 12(C)(3) would have controlled in this case. Once again, Hoskins did not seek the suppression of evidence that had been obtained as a result of police misconduct, but rather a determination that an element of the offense itself could not be established. Under these circumstances, the failure to file a pretrial motion would not have operated as a waiver. At trial, the state would have still been required to prove each element of the offense—including the propriety of the officer's actions—beyond a reasonable doubt. A motion challenging the proof of those elements would have been proper only at the close of the state's case.

{¶14} Accordingly, the assignment of error is sustained. We reverse the judgment of the trial court and remand the cause for further proceedings consistent with this decision.

DINKELACKER and MALLORY, JJ., concur.

Please Note:

The court has recorded its own entry this date.

² *Scott*, supra, at ¶9, citing *Serban*, supra, at ¶26.

³ *Id.*