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Alabama Court of Criminal Appeals

OCTOBER TERM, 2020-2021

CR-19-0046

Chikesia Eugenea Clemons

v.

City of Saraland

Appeal from Mobile Circuit Court
(CC-18-3569)

McCOOL, Judge.

Chikesia Eugenea Clemons appeals her conviction for resisting arrest, a violation of § 13A-10-41, Ala. Code 1975, for which she was

sentenced to six months in the Mobile County Metro Jail. The trial court suspended Clemons's sentence and ordered her to serve one year of "informal probation." (C. 370.)

Facts and Procedural History

In April 2018, Clemons was arrested by police officers employed with the City of Saraland ("the City") on charges of disorderly conduct, a violation of § 13A-11-7, Ala. Code 1975, and resisting arrest following an altercation with employees of a Waffle House restaurant in Saraland and Saraland police officers. On June 6, 2018, Clemons was convicted in the Saraland Municipal Court of disorderly conduct and resisting arrest. Clemons appealed to the Mobile Circuit Court ("the trial court") for a trial de novo and was tried by a jury. The evidence presented at Clemons's jury trial tended to establish the following facts.

At approximately 2:30 a.m. on April 22, 2018, Clemons and her friend, Canita Adams, along with an unidentified man, went to a Waffle House restaurant in Saraland and sat in a booth to await service. Janet Jackson, a waitress, testified that she "tried to wait on them to start with" but that "they didn't want regular silverware" and that she informed them

that "there was a 50 cent cost for [plastic] 'silverware.' " (R. 768.) According to Jackson, when she informed Clemons and Adams that there would be a charge for plastic utensils, "it started a ruckus" (R. 768) in which Clemons and Adams "started arguing with [her] and cussing" (R. 769) and "called [her] a bitch and [said] they wasn't paying for the motherfucking silverware." (R. 785.) Jackson testified that, at that point, she refused to serve Clemons and Adams and, instead, asked Goldie Mincey, another waitress, to serve them because, Jackson testified, Mincey "just seems like she can tame everybody down." (R. 769.)

Mincey testified that she approached Clemons and Adams and attempted to take their order but that Clemons and Adams called her "a fat bitch" and "a motherfucker" (R. 625) and that Adams "got up and went to pointing her finger in [Mincey's] face" (R. 626), at which point Mincey "said, 'It would be best if y'all go ahead and leave now.' " (R. 626-27.) However, according to Mincey, Clemons and Adams refused to leave, so she asked another Waffle House employee to telephone the police. Mincey testified that after briefly walking outside Clemons and Adams returned to the restaurant and that Clemons stated that she was "going to [get] ...

the manager's number and ... would have [Mincey's] job come tomorrow morning." (R. 631.) According to Mincey, Clemons was still "hollering and cussing" (R. 633) when Christopher Ramey and Bryson McDaniel, police officers with the Saraland Police Department, arrived at the restaurant, and Mincey testified that, within seconds of Officer Ramey entering the restaurant, Clemons said that she would " 'come across this counter and beat [Mincey's] ass.' " (R. 637.)

Officer Ramey testified that, when he and Officer McDaniel arrived at the restaurant, he encountered a man in the parking lot who had just left the restaurant and who informed him that he "better hurry up and get in there" because "it's fixing to get bad." (R. 557.) Regarding what occurred when he entered the restaurant, Officer Ramey testified:

> "Q. Okay. And, when you opened up th[e] door, please tell the jury what was the first thing that you noticed.
>
> "A. I opened the door and I seen the female, Miss Clemons, and [Mincey] having a verbal conversation and --
>
> "Q. Tell us about that verbal conversation.
>
> "A. When I opened it -- when I stepped inside, Miss Clemons said, 'Fuck you.' She looked at me, she said, 'Fuck you. I'm

fixing to come across that counter and beat your ass,' talking to [Mincey].

"Q. What did you do?

"A. At that time, I raised my hands, told Miss Clemons, not in Saraland you wouldn't; that you're under arrest for disorderly conduct.

"....

"Q. Okay. Why did you immediately arrest her?

"A. Because I felt like that she was a threat. She's already verbally assaulted [Mincey] as far as saying fuck you and then she's telling her she's going to come across the counter and beat her ass. At that time, I felt like she was a viable threat to [Mincey] and anybody else that she come in contact with.

"....

"Q. Okay. ... After you told Miss Clemons she was under arrest, what did you do?

"A. I proceeded to Miss Clemons and I grabbed her right hand and, when I grabbed her right hand, she stepped back and she sat down in a Waffle House chair by the wall.

"Q. Okay. She sat in the chair. I mean, were you trying to hold onto her when she did that?

"A. Yes, sir. I never let go of her hand.

"Q. All right. What happened next?

"A. I proceeded or attempted to cuff her and tell her she was under arrest several times, and she wasn't hearing that. She was, I want the corporate number for the Waffle House. She wasn't doing anything, basically, that I -- commands that I give her to place her under arrest.

"Q. Okay. What happened next?

"A. From there, Officer McDaniel come in and she said, 'I want to speak with him.' I said, 'Ma'am, I'm the supervisor at this time right now. You can speak to me. I'm placing you under arrest.' And it went from there as far as her not complying with anything else that me or Officer McDaniel told her to do.

"So, at that time, I had her right hand. Officer McDaniel got her right hand and I went to go get her left hand, and that's when she pulled away. When she pulled away, we all went to the ground.

"....

"Q. All right. When she was sitting in the chair, do you recall whether you and/or Officer McDaniel told her additional times that she was under arrest?

"A. Multiple times.

"Q. Do you recall whether you and/or Officer McDaniel told her to stand up?

"A. Yes, we both told her stand up.

"Q. Okay. Did she do so?

"A. No.

"Q. At some point, did you or Officer McDaniel attempt to physically stand her up?

"A. Yes.

"Q. What was the purpose of that?

"A. To ... effect the arrest.

"Q. Okay. What happened when you and Officer McDaniel attempted to stand her up?

"A. She went to the floor.

"Q. Did you go with her?

"A. Yes, sir.

"Q. All right. Tell us what happened while she was on the floor and you and Officer McDaniel were there.

"A. She was -- she actually tucked her left arm up under her body to keep us from -- The right hand was already cuffed. We couldn't get the left hand out from under her. We was trying to be as easy as we could to effect the arrest, but, also, at the same time, arrest a female.

"....

"Q. Okay. All right. While Miss Clemons was scuffling with you and Officer McDaniel, what happened with regard to her clothing?

"A. It come down.

"Q. Okay. Her top came down, didn't it?

"A. Yes, sir.

"Q. Did that happen during the scuffle?

"A. Yes, sir.

"....

"Q. Officer Ramey, do you know whether or not there was a gentleman that had accompanied Miss Clemons and Ms. Adams to the restaurant?

"A. Yes.

"Q. Okay. All right. While you and Officer McDaniel were attempting to arrest Miss Clemons, what was the gentleman doing?

"A. He was telling her to roll over. Said, 'Listen, just roll over and let him arrest you, you know. It ain't no need in doing this.'

"....

"Q. All right. And what, if anything, did you say to Miss Clemons during that, roughly, minute, minute-and-a-half scuffle?

"A. I was telling her to just roll over and let us arrest you. 'Put your hands behind your back. Let me get your wrist.'

"Q. Okay. All right. Were you all finally able to get her under control?

"A. Yes, sir."

(R. 558-66.) The jury also saw a video of the altercation recorded by the surveillance camera at the Waffle House and a video of Clemons's arrest that Adams had recorded on her cellular telephone.

At the close of evidence, Clemons moved for a judgment of acquittal and also moved "for a dismissal of the charges based on prosecutorial misconduct." (R. 874.) The trial court denied both motions and submitted the case to the jury, which acquitted Clemons of disorderly conduct but convicted her of resisting arrest. Clemons subsequently filed a motion for a judgment of acquittal following the jury's verdict in which she argued that her resisting-arrest conviction must be set aside because, she said, her arrest was unlawful. The trial court denied Clemons's postjudgment motion, and Clemons filed a timely notice of appeal.

Analysis

On appeal, Clemons argues that the trial court erred by denying her postjudgment motion for an acquittal and by denying her motion to dismiss the indictment. We address each claim in turn.

I.

Clemons argues that the trial court erred by denying her postjudgment motion for an acquittal. In support of that claim, Clemons notes that, in Alabama, a person " 'may use reasonable force to extricate himself from an unlawful arrest.' " Telfare v. City of Huntsville, 841 So. 2d 1222, 1229 (Ala. 2002) (quoting Ex parte Wallace, 497 So. 2d 96, 97 (Ala. 1986)). Relying on that principle, Clemons contends that her acquittal of disorderly conduct -- the offense for which she was arrested -- established that she did not commit that offense and that, as a result, her arrest for that offense was unlawful. Thus, Clemons argues, because reasonable resistance to an unlawful arrest is justified, id., her resisting-arrest conviction must be reversed.

However, this Court has expressly rejected a claim that a conviction for resisting arrest cannot stand in light of an acquittal of the offense that gave rise to the arrest. In Graham v. City of Mobile, 686 So. 2d 541 (Ala.

Crim. App. 1996), Donald Graham, Sr., was convicted of third-degree assault, a violation of § 13A-6-22, Ala. Code 1975, and resisting arrest. On appeal, however, this Court agreed with Graham's claim that the City of Mobile failed to prove a prima facie case of assault and thus reversed Graham's conviction for that offense. Id. at 543. Having concluded that Graham was entitled to a judgment of acquittal on the assault charge, the Court then turned to Graham's claim that his conviction for resisting arrest for the alleged assault must also be reversed:

> "Graham, Sr., argues that because the City failed to prove that he was guilty of assault in the third degree, he cannot be convicted of resisting arrest as to that charge. ...
>
> > "'"A person commits the crime of resisting arrest if he intentionally prevents or attempts to prevent a peace officer from affecting [sic] a lawful arrest of himself or of another person." Alabama Code 1975, § 13A-10-41.'
>
> "Contrary to Graham, Sr.'s argument, there was substantial testimony supporting the jury's verdict that the appellant was guilty of resisting arrest. The City presented evidence that Graham, Sr., was originally approached by police officers on a menacing charge. There was also evidence that as Graham, Sr., made an overt motion with his hand, Officer Byrts attempted to place him in custody by handcuffing him. Testimony was presented that Graham, Sr., physically resisted

> after which a struggle ensued between him and Officer Byrts. This testimony is sufficient to support the jury's verdict."

Graham, 686 So. 2d at 543.

As evidenced by Graham, the validity of a conviction for resisting arrest does not hinge on whether the arrestee is convicted of the offense that gave rise to the arrest. Put differently, an arrest may be lawful -- and thus the arrestee may be convicted of resisting that arrest -- even if the arrestee is ultimately acquitted of the offense for which he or she was arrested. See Hardeman v. State, 651 So. 2d 59, 67 (Ala. Crim. App. 1994) (noting that an acquittal " '[is] not synonymous with an unlawful arrest'; 'there [may] be a lawful arrest even though there is a finding of "not guilty" of the offense charged' " (quoting Parks v. Director, State Department of Public Safety, 592 So. 2d 1066, 1067 (Ala. Civ. App. 1992))). Thus, contrary to Clemons's contention, the fact that the jury acquitted her of disorderly conduct does not establish that her arrest was

unlawful and therefore does not warrant the reversal of her resisting-arrest conviction.[1] Graham, supra.

Alternatively, Clemons argues that, even if her acquittal of the offense of disorderly conduct does not prove that her arrest was unlawful, the facts of the case indicate that the arrest was unlawful because, she says, Officer Ramey had no basis for concluding that she had committed disorderly conduct. We disagree.

> "Section 15-10-3(a)(1), Ala. Code 1975, provides: 'An officer may arrest any person without a warrant, on any day and at any time for: Any public offense committed or breach of the peace threatened in his presence.' '[F]or an officer to arrest a person without a warrant for the commission of a misdemeanor, the violation of a city ordinance, or a threatened breach of the peace, the infraction must have been committed in the presence of the officer.' State v. Phillips, 517 So. 2d 648, 651 (Ala. Crim. App. 1987)."

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[1]In conjunction with this claim, Clemons argues that the trial court "made inconsistent verdicts possible by not answering the question when the jury asked whether it could convict Clemons of resisting arrest if it could not agree on disorderly conduct." Clemons's brief, at 21. However, because the jury's verdicts were not inconsistent, the trial court did not err by instructing the jury that it must render a verdict on each of the two separate charges. (R. 1055.)

Robinson v. State, 615 So. 2d 112, 113 (Ala. Crim. App. 1992) (emphasis added). Thus, when a law enforcement officer has probable cause to believe that a person has committed a misdemeanor in the officer's presence, the officer may lawfully arrest that person without first obtaining a warrant. See Powell v. State, 796 So. 2d 404, 425 (Ala. Crim. App. 1999) (holding that the arrest of the appellant for disorderly conduct was lawful because the arresting officers had probable cause to believe the appellant had committed disorderly conduct in their presence).

> " ' "The rule of reasonable or probable cause is a 'practical, nontechnical conception,' " ' [Daniels v. State, 534 So. 2d 628, 651 (Ala. Crim. App. 1985)], quoting Tice v. State, 386 So. 2d 1180, 1183 (Ala. Crim. App.), cert. denied, 386 So. 2d 1187 (Ala. 1980), and '[t]he level of evidence needed for a finding of probable cause is low.' State v. Johnson, 682 So. 2d 385, 387 (Ala. 1996). ' " 'Probable cause exists where "the facts and circumstances within [the arresting officers'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that" an offense has been or is being committed.' " ' State v. Johnson, 682 So. 2d at 388, quoting Young v. State, 372 So. 2d 409, 410 (Ala. Crim. App. 1979), quoting, in turn, Draper v. United States, 358 U.S. 307, 313, 79 S. Ct. 329, 333, 3 L. Ed. 2d 327 (1959). Put another way, '[p]robable cause is knowledge of circumstances that would lead a reasonable person of ordinary caution, acting impartially, to believe that the person arrested is guilty.' Sockwell [v. State], 675 So. 2d [4,] 13 [(Ala. Crim. App. 1993)].

' "An officer need not have enough evidence or information to support a conviction [in order to have probable cause for arrest] .... 'Only the probability, and not a prima facie showing, of criminal activity is the standard of probable cause.' " ' State v. Johnson, 682 So. 2d at 387-88, quoting Stone v. State, 501 So. 2d 562, 565 (Ala. Crim. App. 1986), overruled on other grounds, Ex parte Boyd, 542 So. 2d 1276 (Ala.), cert. denied, 493 U.S. 883, 110 S. Ct. 219, 107 L. Ed. 2d 172 (1989).

> " ' "In dealing with probable cause, however, as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians[,] act ...." Brinegar v. United States, 338 U.S. 160, 175, 69 S. Ct. 1302, 1310, 93 L. Ed. 1879, 1891 (1949). " 'The substance of all the definitions of probable cause is a reasonable ground for belief of guilt.' " Id. "Probable cause to arrest is measured against an objective standard and, if the standard is met, it is unnecessary that the officer subjectively believe that he has a basis for the arrest." Cox v. State, 489 So. 2d 612 (Ala. Cr. App. 1985).'

"Dixon v. State, 588 So. 2d 903, 906 (Ala. 1991). See also Minor v. State, 780 So. 2d 707, 733 (Ala. Crim. App. 1999), rev'd on other grounds, 780 So. 2d 796 (Ala. 2000); and McWhorter v. State, 781 So. 2d 257, 288 (Ala. Crim. App. 1999), aff'd, 781 So. 2d 330 (Ala. 2000). 'In making the determination as to whether probable cause exists for a warrantless arrest, we must examine the totality of the circumstances surrounding the arrest.' Sockwell, 675 So. 2d at 13, quoting Daniels, 534 So. 2d at 651."

Reeves v. State, 807 So. 2d 18, 35-36 (Ala. Crim. App. 2000) (emphasis added).

Section 13A-11-7(a)(3), Ala. Code 1975, provides, in pertinent part:

> "(a) A person commits the crime of disorderly conduct if, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he or she does any of the following:
>
> "....
>
> "(3) In a public place uses abusive or obscene language or makes an obscene gesture."

As to what constitutes "abusive or obscene language" for purposes of § 13A-11-7(a)(3), this Court has stated:

> "The words 'abusive or obscene language' and 'obscene gesture' in § 13A-11-7 have been narrowly interpreted to apply ' "only to 'fighting words.' " ' Robinson v. State, 615 So. 2d 112, 113 (Ala. Crim. App. 1992), quoting Swann v. City of Huntsville, 455 So. 2d 944, 950 (Ala. Crim. App. 1984).
>
> " 'Fighting words' are 'personally abusive epithets which, when addressed to the ordinary citizen are, as a matter of common knowledge, likely to provoke violent reaction.' Cohen v. California, 403 U.S. 15, 20, 91 S. Ct. 1780, 29 L. Ed. 2d 284 (1971). '[Fighting words] by their very utterance provoke a swift physical retaliation and incite an immediate breach of the peace.' Skelton v. City of Birmingham, 342 So. 2d 933, 936-37 (Ala. Crim. App.), remanded on other grounds, 342 So. 2d 937 (Ala. 1976). ' "The test is what men of common

> intelligence would understand would be words likely to cause an average addressee to fight."' Chaplinsky v. New Hampshire, 315 U.S. 568, 573, 62 S. Ct. 766, 86 L. Ed. 1031 (1942) (quoting State v. Chaplinsky, 91 N.H. 310, 18 A.2d 754, 762 (1941))."

H.N.P. v. State, 854 So. 2d 630, 632 (Ala. Crim. App. 2003).

Here, Officer Ramey testified that, when he entered the Waffle House restaurant, he heard Clemons say to Mincey: "Fuck you. I'm fixing to come across that counter and beat your ass." A reasonable person in Officer Ramey's position could have justifiably believed that Clemons's statement to Mincey, which was spoken in Officer Ramey's presence, was likely to provoke a physical and violent reaction from Mincey, i.e., that the statement constituted "abusive or obscene language," § 13A-11-7(a)(3), or "fighting words." H.N.P., 854 So. 2d at 632. Indeed, as one court has noted, "few words could more readily be classified as 'fighting words' than threats to physically injure the person to whom the words are directed." People v. Prisinzano, 648 N.Y.S.2d 267, 275 (N.Y. Crim. Ct. 1996). Thus, because Clemons's statement to Mincey provided Officer Ramey with a reasonable basis for believing that Clemons had uttered "abusive or obscene language" in a public place, Officer Ramey had probable cause to

believe Clemons had committed the offense of disorderly conduct, § 13A-11-7(a)(3), and, as a result, his arrest of Clemons for that offense was lawful. Powell, supra. As we have already noted, the fact that the jury acquitted Clemons of disorderly conduct does not change this conclusion. This is so because a determination of whether there was probable cause to arrest does not hinge on whether the arrestee is ultimately found to have committed an offense but, rather, is based upon a determination of whether the circumstances known to the arresting officer at the time of the arrest were sufficient to warrant a reasonable person of ordinary caution to believe that the arrestee had committed an offense. Reeves, supra. See Hardeman, 651 So. 2d at 68 ("Although the evidence presented by the State may not have been sufficient to sustain a conviction for public intoxication, that same evidence was sufficient to provide the officers with probable cause to arrest the appellant for that offense."); and Delchamps, Inc. v. Morgan, 601 So. 2d 442, 445 (Ala. 1992) ("The fact that Morgan was acquitted of the charge does not prove that Delchamps lacked probable cause to arrest her.").

We briefly note that the cases upon which Clemons relies are easily distinguishable. In Telfare, supra, the Alabama Supreme Court held that the appellant's arrest for misdemeanor offenses was unlawful because the offenses were not committed in the arresting officer's presence. In Shinault v. City of Huntsville, 579 So. 2d 696 (Ala. Crim. App. 1991), this Court held that the appellant's arrest was unlawful because the arresting officer was a trespasser on the appellant's property and thus was not acting within the scope of his duties when he made the arrest. In R.I.T. v. State, 675 So. 2d 97 (Ala. Crim. App. 1995), this Court held that the appellant's arrest was unlawful because the appellant's use of the words "fuck you" to the arresting officer did not constitute "fighting words" and therefore was "not a crime under our present law."[2] Id. at 100. Thus, the grounds for finding unlawful arrests in Telfare, Shinault, and R.I.T. are not present in this case, and we have already concluded that Clemons's arrest was lawful because Officer Ramey had probable cause to believe

[2]As noted, Clemons said more than the words "fuck you" to Mincey; she also threatened to "beat [Mincey's] ass."

that she had committed the offense of disorderly conduct in his presence. Accordingly, Telfare, Shinault, and R.I.T. do not entitle Clemons to relief.

Based on the foregoing, there is no basis for concluding that Clemons's arrest was unlawful. Thus, the trial court did not err by denying Clemons's postjudgment motion for an acquittal.

II.

Clemons argues that the trial court erred by denying her motion to dismiss the indictment as a sanction for prosecutorial misconduct. In support of that claim, Clemons contends that the City "engaged in three different kinds of improper conduct: suppressing material evidence, discriminatory juror strikes, and suborning perjury." Clemons's brief, at 24.

"[T]he dismissal of an indictment is an extreme sanction," and "[t]o warrant dismissal of the indictment the defendant must establish intentional or willful misconduct by the State and irreparable prejudice." Ex parte State, 287 So. 3d 384, 396 (Ala. 2018). "Typically, ' "[w]hether a trial court's denial of a motion to dismiss an indictment was error is reviewed under an abuse-of-discretion standard of review." ' Long v.

State, 14 So. 3d 184, 185 n.1 (Ala. Crim. App. 2008) (quoting Hunter v. State, 867 So. 2d 361, 362 (Ala. Crim. App. 2003))." Burt v. State, 149 So. 3d 1110, 1112 (Ala. Crim. App. 2013).

A.

Clemons first argues that the trial court should have dismissed the indictment because, she says, the City suppressed material evidence -- namely, the video recorded by the Waffle House surveillance camera. A brief procedural history is helpful in resolving this claim. Clemons's trial in the circuit court was scheduled to begin on February 27, 2019. Before trial, Clemons filed a motion to compel in which she alleged that the City had not produced the surveillance-camera video until the municipal-court trial was underway and requested that the trial court compel the City to provide her with "an exact copy of the unedited video and matrix files from the incident."[3] (C. 41.) It appears from the discussions at the hearings that the reason the City had not previously provided defense

[3]Clemons also filed a motion to dismiss the indictment based on the City's alleged failure to provide her with an "exact copy" of the surveillance-camera video.

counsel with an "exact copy" of the surveillance-camera video is that it is not possible to play the video without specific software provided by Waffle House. Thus, according to the City, the only manner in which it could provide defense counsel with the surveillance-camera video was "taking a phone or a video camera and playing [the surveillance-camera video] and taping it, which ... was done." (R. 14.) In two hearings on Clemons's motion to compel, the trial court and the parties' counsel discussed arrangements for defense counsel to be provided with an opportunity to view the original surveillance-camera video. Following those hearings, the trial court entered an order on February 22, 2019, that states: "Counsel for defendant is to review any and all Waffle House video footage within 14 days of date of this order. Counsel for defendant is to report to the Court that he has done so." (C. 140.) The trial court also continued the trial to August 19, 2019 -- a date more than five months after the deadline the court set for defense counsel to review the surveillance-camera video. The surveillance-camera video was not discussed on the record again until after the City rested, at which point defense counsel moved to dismiss the

indictment. In trying to ensure that it understood the ground for Clemons's motion to dismiss, the trial court stated:

> "THE COURT: ... I gave [defense counsel] a very limited amount of time, maybe 14 days to go and [review the surveillance-camera video]. It's my understanding that -- I don't know this for a fact, but I never heard that you did or did not go and see that footage. And so, if you did not, I guess you should have raised that at this time or at that time. So, are you saying now that you were not granted the opportunity to go and see the footage?
>
> "[DEFENSE COUNSEL]: No, ma'am. No, ma'am."

(R. 878.) Thus, the record indicates that defense counsel was provided with an opportunity to view an "exact copy" of the surveillance-camera video within 14 days of the trial court's February 22, 2019, order -- i.e., more than five months before the trial occurred in August 2019 -- and Clemons does not dispute that fact.

Given the foregoing, even if we assume, which we do not, that the City improperly withheld the surveillance-camera video, Clemons was ultimately provided access to the video approximately five months before trial, and, thus, defense counsel had ample time before trial to review the video. Therefore, we fail to see how Clemons was prejudiced by the City's

alleged misconduct. In fact, we note that the only attempt Clemons makes to demonstrate prejudice from the City's alleged misconduct is to suggest that she would not have been convicted in municipal court if she had been provided timely access to the surveillance-camera video. Clemons's brief, at 29-30. However, Clemons's new trial in the circuit court remedied any prejudice she suffered in the municipal court from the City's alleged misconduct. See State v. Moore, 969 So. 2d 169 (Ala. Crim. App. 2006) (holding that any prejudice the defendant suffered from the State's failure to disclose exculpatory evidence could be remedied by a new trial). Accordingly, in the absence of any prejudice to Clemons from the City's alleged misconduct with respect to the surveillance-camera video, we find no abuse of discretion in the trial court's refusal to impose the "extreme sanction" of dismissing the indictment on that basis. Ex parte State, 287 So. 3d at 396.

B.

Clemons also argues that the trial court should have dismissed the indictment after finding that the City used its peremptory strikes in a racially discriminatory manner in violation of Batson v. Kentucky, 476

U.S. 79 (1986). Initially, we note that is it less than clear that Clemons's motion to dismiss the indictment was based on the City's Batson violation. Regardless, we conclude that the City's Batson violation did not entitle Clemons to dismissal of the indictment. After the trial court found that the City had committed a Batson violation, the court empaneled a new venire from which the parties selected a different jury, which is a proper remedy when a trial court finds that a Batson violation has occurred. Tomlin v. State, 909 So. 2d 213, 249 (Ala. Crim. App. 2002) (reversed as to sentence by Ex parte Tomlin, 909 So. 2d 283 (Ala. 2003)). Notably, Clemons did not allege at trial and does not allege on appeal that the City violated Batson in striking the second jury, which is the jury that actually tried her. Thus, because Clemons received an adequate remedy at trial for the City's Batson violation -- a new jury -- and because she does not allege that the new jury was not impartial and fair, there is no basis for finding that Clemons was prejudiced by the City's Batson violation. Accordingly, in the absence of any prejudice to Clemons from the City's Batson violation, we find no abuse of discretion in the trial court's refusal

to impose the "extreme sanction" of dismissing the indictment on that basis. Ex parte State, 287 So. 3d at 396.

C.

Finally, Clemons argues that the trial court should have dismissed the indictment because, she says, the City engaged in prosecutorial misconduct by "suborning perjury." On the first day of testimony, the City elicited testimony from three Waffle House employees, including Mincey, that they felt threatened by Clemons's behavior because they were aware of a shooting that had supposedly occurred the previous night in a Waffle House restaurant in Tennessee. However, during arguments on Clemons's motion to dismiss at the close of the City's case, it was established that the shooting in Tennessee had occurred approximately one hour after the events in this case, and the City admitted that it had become aware of that fact before the second day of testimony began; yet, the City made no attempt to correct the false testimony from the first day of trial. The trial court subsequently found that "the testimony offered by the[ ] three witnesses as to those questions regarding the Waffle House incident in Tennessee was false." (R. 901.) However, the court did not

dismiss the indictment but, instead, instructed the jury that "it is an absolute fact that each of th[o]se three witnesses offered false testimony in response to a question by the Prosecutor" (R. 907) and that, as a result, the jury could take that fact into consideration when determining those witnesses' credibility and could choose to disregard their testimony entirely. According to Clemons, because the City elicited false testimony and made no subsequent attempt to correct that false testimony, the trial court should have dismissed the indictment.

It is true that " '[t]he knowing use of material false evidence by the [S]tate in a criminal prosecution does violate due process.' " Perkins v. State, 144 So. 3d 457, 469 (Ala. Crim. App. 2012) (quoting Williams v. Griswald, 743 F.2d 1533, 1541 (11th Cir. 1984), citing Giglio v. United States, 405 U.S. 150, 153 (1972), and Napue v. Illinois, 360 U.S. 264, 269 (1959)). " 'This rule applies equally when the [S]tate, although not soliciting perjured testimony, allows it to go uncorrected after learning of its falsity.' " Id. Here, it does not appear that the City knew the Waffle House employees' testimony was false at the time it solicited the testimony, but the City made no attempt to correct the testimony after

discovering its falsity. Nevertheless, Clemons is not entitled to relief on this claim because she has not demonstrated that she was prejudiced by the false testimony.

According to Clemons, the Waffle House employees' false testimony "that they were scared" of Clemons because they were aware of the shooting in Tennessee was "a key element to disorderly conduct." Clemons's brief, at 28 (emphasis added). However, even if Clemons is correct in suggesting that the false testimony was relevant to an element of disorderly conduct, the jury acquitted Clemons of that offense; thus, the false testimony clearly did not prejudice Clemons as to the disorderly-conduct charge. Likewise, although Clemons does not argue that she was prejudiced by the false testimony as to the resisting-arrest charge, we note that the false testimony was in no way relevant to that charge. Section 13A-10-41(a) provides that "[a] person commits the crime of resisting arrest if he intentionally prevents or attempts to prevent a peace officer from affecting a lawful arrest of himself or of another person." Here, the Waffle House employees' subjective beliefs regarding their fear of Clemons were not remotely relevant to whether Clemons's arrest was lawful --

which, as we have already noted, was based on the circumstances known to Officer Ramey at the time of the arrest, whose knowledge did not include the employees' subjective beliefs -- or to whether Clemons intentionally attempted to prevent Officer Ramey from arresting her. Thus, the Waffle House employees' false testimony as to their fear of Clemons could not have prejudiced Clemons as to the resisting-arrest charge.

In short, because the jury acquitted Clemons of disorderly conduct and because the Waffle House employees' false testimony was not relevant to the resisting-arrest charge, there is no basis for concluding that the false testimony impacted the jury's verdict in a way that was adverse to Clemons, i.e., there is no basis for concluding that Clemons was prejudiced by the false testimony. See Ex parte Belisle, 11 So. 3d 323, 329 (Ala. 2008) (noting that a defendant is entitled to relief based on the State's use of false testimony " ' "if the false testimony could ... in any reasonable likelihood have affected the judgment of the jury" ' " (quoting Giglio, 405 U.S. at 154, quoting in turn Napue, 360 U.S. at 271)). Accordingly, in the absence of any prejudice to Clemons from the false testimony, we find no

abuse of discretion in the trial court's refusal to impose the "extreme sanction" of dismissing the indictment on that basis. Ex parte State, 287 So. 3d at 396.

Conclusion

Clemons has not demonstrated any error in her trial that necessitates the reversal of her conviction. Accordingly, the judgment of the trial court is affirmed.

AFFIRMED.

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