

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

JUNE 1996 SESSION

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| <p>FILED</p> <p>August 12, 1996</p> <p>Cecil Crowson, Jr. Appellate Court Clerk</p> |
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| <p>STATE OF TENNESSEE,</p> <p style="padding-left: 40px;">Appellant,</p> <p>V.</p> <p>MAYNARD MORRIS,</p> <p style="padding-left: 40px;">Appellee.</p> | <p>)</p> <p>) C.C.A. No. 03C01-9510-CR-00309</p> <p>)</p> <p>) Hamilton County</p> <p>)</p> <p>) Hon. Stephen M. Bevil, Judge</p> <p>)</p> <p>) (State Appeal: Simple Assault)</p> <p>)</p> <p>)</p> |
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OPINION FILED: _____

AFFIRMED

PAUL G. SUMMERS,
Judge

OPINION

The appellee, Maynard Morris, was convicted of simple assault following a bench trial in Hamilton County General Sessions Court.¹ He appealed to the criminal court and, through appointed counsel, filed a motion to dismiss the prosecution. The trial judge granted the motion finding that the arrest was illegal. The state brings this appeal of the trial judge's finding.

The record reveals that Chattanooga police officers responded to an assault complaint at a Krystal restaurant. The victim told them that the appellee had hit her in the head with his fist and that she had fled to the restaurant. The officers observed a knot on her forehead and several knots on the back of her head. The appellee was located and arrested without a warrant. Subsequently, the arresting officer swore to the affidavit of complaint and signed the warrant charging the appellee with simple assault, a misdemeanor.

Tennessee Code Annotated section 40-7-103 provides that “[a]n officer may, without a warrant, arrest a person ... [f]or a public offense committed ... in his [or her] presence.” Tenn. Code Ann. § 40-7-103(a)(1) (1990). The state concedes that the appellee's arrest violated this section but maintains that dismissal of the prosecution was improper.

More specifically, the state argues that although the arrest was illegal, the prosecution is not barred. In support of its position, the state cites State v. Jimmerson, No. 01C01-9207-CR-00223 (Tenn. Crim. App. Feb. 11, 1993). In Jimmerson the trial court dismissed the indictment when it determined that the misdemeanor was not committed in the officer's presence. Slip op. at 3. However, this Court determined that the illegal arrest did not invalidate the indictment. Slip op. at 4. We agree with the appellee that this case is distinguishable from our present factual scenario.

¹The pro se appellee waived his right to be indicted and to a jury trial.

In the instant case, the charging instrument was not an indictment. Instead, the appellee was brought before the general sessions court on a warrant issued after the appellee's arrest. The affiant on the warrant was the responding officer and not the victim.

We have no explanation in the record as to why a warrant was not obtained prior to the appellee's arrest. Although the officer who swore out the warrant indicated that the victim drove herself to the hospital, we have no reason to believe that she could not have obtained a warrant prior to the appellee's arrest. Without question, the procedures followed violated Tenn. Code Ann. § 40-7-103. The arrest was illegal and the subsequent warrant was invalid.

The judgment of the trial court is affirmed.

PAUL G. SUMMERS, Judge

CONCUR:

JOE B. JONES, Presiding Judge

GARY R. WADE, Judge