



Maricopa County Justice Courts, State of Arizona
North Valley Justice Court
14264 West Tierra Buena Lane
Surprise, Arizona 85374
(602) 372-2000

CASE NUMBER: JC2024-141028

STATE OF ARIZONA

REBEKAH ANNE MASSIE

Plaintiff(s)

Defendant(s)

ATTORNEY for Plaintiff

ATTORNEY for Defendant

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RULING ON MOTION

The question presented is whether this case should be dismissed with or without prejudice. Based on the underlying facts and on the inability of the Defendant to file a meaningful motion requesting that her record be sealed, the interests of justice mandate dismissal with prejudice.

Procedural Issue

In response to the State's Motion to Dismiss, the Court requested both parties stipulate to the facts in the Defendant's Response to the State's Motion to Dismiss, for the purposes of the Court ruling on the pending motion. In the alternative, the Court requested both parties allow the Court to view the video record of the city council meeting. The State responded that it would not stipulate and that the Court should not view the video because what happened at the city council meeting was irrelevant to how the Court should rule on the pending motion. The State's position is that the only issue before the Court is the motion to dismiss and not whether there was probable cause for an arrest. The State also maintained that the video record presented an incomplete picture of the events.

Upon further review, the Court concluded it has the authority to review the video record of the city council meeting. First, it was specifically referenced in the Defendant's response to the State's motion and is therefore referenced in the record.

Second, viewing the video can be distinguished from the Court doing independent factual research. Judicial ethics standards prohibit a judge from doing an independent investigation of the facts of a case. Ariz. Code of Jud. Conduct, Rule 2.9(C). Here, one side has offered the video as evidence and the other side has objected to it being considered. Consequently, this situation is closer to a trial evidentiary objection than to a judge typing the location of a crime scene into Google Maps so he can view something outside of the record that is unknown to either party. *See generally, United States v. Bari*, 599 F.3d 176, 181(2d Cir. 2010)(Court performed a Google

search and concluded a bank robber's hat was uncommon; doing so was acceptable given the relaxed evidentiary standards in a parole revocation hearing); Transcript of Oral Argument at 18, *Nat'l Inst. of Family & Life Advocates v. Becerra*, 138 S.Ct. 2361 (2018)(Justice Sotomayor looked at a website that had been cited in an amicus brief and asked a question about it during oral argument).

Third, the alternative would be for the court to order an evidentiary hearing, which would be inconsistent with judicial economy given that both parties agree the charge should be dismissed. The Defendant's attorney requested this option during the pre-trial conference, in part to gain additional discovery to obtain evidence in support of the dismissal with prejudice position; but the Court's decision makes any additional litigation of the case before this Court unnecessary.

Finally, the video was not viewed to determine any "ultimate fact" at issue in the case. It was viewed with respect to the sole determination of whether the case should be dismissed with or without prejudice, a decision that can be readily reviewed with a motion for reconsideration, or on appeal, if made in error.

Findings of Fact

On August 20, 2024, the Defendant started addressing a city council meeting, during a time designed for public comments, on an item she said was on the agenda. Specifically, she questioned whether a specific government employee deserved a raise and further stated, in her opinion, he was performing his job duties poorly. She was interrupted and informed that the city council had a policy that prohibited using public comment time to "lodge charges or complaints against" any city employee. The Defendant and the government official then argued about whether the city's policy violated the Defendant's First Amendment rights. The government official ended this discussion by ordering a law enforcement agent to forcibly remove the Defendant from the city council meeting. The Defendant verbally protested as she was apprehended and removed.

Law Applied to the Facts

There is a presumption that dismissals of criminal charges are without prejudice. *In re Armulfo G.*, 71 P.3d 916 (Ariz.Ct.App. 2003). However, courts have the authority to order a dismissal with prejudice if the interests of justice require it. *State v. Huffman*, 215 P.3d 390 (Ariz.Ct.App. 2009)(dismissal with prejudice was appropriate after a series of hung juries); Ariz. R. Crim. P. 16.4.

In this case, the Defendant was charged with trespass in violation of A.R.S. § 13-1502(A)(1) after a government official ordered her removal from a public city council meeting because she was allegedly violating a government policy. (Exhibit 1 to Defendant's Motion.) There are a few problems. That policy regulated not just speech; but **political** speech. It regulated not just the time, place, and manner of the speech. It regulated the **content** of political speech. In any constitutional law analysis, the government's actions would trigger strict scrutiny.

No branch of any federal, state, or local government in this country should ever attempt to control the content of political speech. *Rankin v. McPherson*, 483 U.S. 1056 (1987) (Held government employee should not have been fired for saying, after an assassination attempt on President Reagan, "If they go for him again, I hope they get him.") In this case, the government did so in a manner that was objectively outrageous. "Whatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs." *Burson v. Freeman*, 504 U.S. 191, 196 (1991)(Held law prohibiting electioneering 100 feet from polling place was constitutional).


The Defendant's position that a dismissal without prejudice creates an articulable harm because it will delay her a meaningful opportunity to file a request to seal her records is also persuasive. In Arizona, a person who had their criminal charge(s) dismissed can file a petition to seal their arrest and case record. A.R.S. § 13-911(A)(2). Although the statute is silent concerning how the time to refile a case impacts the grant of a petition to seal, as a matter of common sense, it would appear a court should not grant a petition to seal a dismissed criminal charge if there is a chance it will be re-filed.

The Defendant should not have faced criminal prosecution once for expressing her political views. The Court agrees that she should never face criminal prosecution, for expressing her political views on that date at that time, again. Nor should she be forced to encounter additional attorney fees should this matter be re-filed, as she would not likely be entitled to a court-appointed attorney.

IT IS ORDERED THAT this case is dismissed with prejudice, in the interests of justice.

IT IS FURTHER ORDERED THAT the Court will entertain a motion for reconsideration from the State in the event the State wants to request an evidentiary hearing to provide additional evidence that was not recorded on the video record from the city council meeting. Doing so would provide the State the opportunity to rebut any unfavorable or incorrect information, finding, or conclusion.

Date: OCT 23 2024


GERALD A. WILLIAMS
Justice of the Peace



I CERTIFY that I mailed a copy of this Ruling to:

State at the above address

Defendant at the above address or Defendant's attorney

Date: 10/23/24

By: 
Clerk