

FILED

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Annetta D. Stembidge, Clerk
Superior & State Court
Douglas County, GA



IN THE STATE COURT OF DOUGLAS COUNTY
STATE OF GEORGIA

STATE OF GEORGIA

vs.

HILARY MICHELLE JACOBS
PHILIP MATTHEW JACOBS

Defendant

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Case No.: 25SR00596 A
25SR00596-B

ORDER GRANTING DEFENDANTS GENERAL DEMURRER
AND MOTION TO QUASH

The above-styled matter came before the Court on the Defendant's General Demurrer and Motion to Quash the Accusation. The case arises from a series of incidents that occurred in early November of 2023. In response to multiple 911 calls, the Sheriff's Department discovered that the Defendants had been distributing material from their vehicle on various roads around Lithia Springs, GA. The material consisted of plastic baggies with leaflets containing written material inside. The baggies also had corn inside to weigh them down. The written material on the leaflets was described by some as antisemitic and critical of the nation's partnership with Israel. Multiple citizens found the material offensive and reported it. The Sheriff's Office investigated the incidents and charged the Defendants with multiple counts of littering in violation of OCGA § 16-7-43.

The State filed an Accusation on May 21, 2025, charging the Defendants with five counts of littering each. Arraignment was scheduled for September 30, 2025. However, counsel for the

Defendants filed an Entry of Appearance and a Waiver of Arraignment on September 29, 2025. The Defendants filed the General Demurrer seeking to have the Accusation quashed on December 18, 2025, nine days after they received discovery in the case. That discovery included a copy of the Accusation. Count 1 of that Accusation reads as follows:

“On behalf of the people of the State of Georgia, the undersigned, as prosecuting attorney for the county and State aforesaid, does hereby charge and accuse HILARY MICHELLE JACOBS and PHILIP MATTHEW JACOBS, individually and as parties concerned in the commission of a crime, with the offense of Littering [O.C.G.A. 16-7-43], for that the said accused, in the State of Georgia and County of Douglas, on or about November 2, 2023, did unlawfully throw and/or leave litter on Wisteria Lane, Skyline Ridge Drive, Sunset Ridge Drive, Sky Crest Drive and Sky Pine Ct in Lithia Springs, Georgia, on public and private property not belonging to the accused, contrary to the laws of this State, the good order, peace and dignity thereof.”

(All five counts of the Accusation read exactly the same with different road names)

The Defendants argue that none of the counts set forth and explain what the State is alleging constitutes the term “litter” as defined in § 16-7-42. The statute defines it as “discarded or abandoned refuse, rubbish, junk or other waste material”. However, the substance and nature of the alleged “litter” is wholly undescribed in each count of the Accusation. It does not specify if the Defendants are being charged with throwing or leaving refuse, rubbish, junk or other waste material. Furthermore, the Accusation does not describe the material and it does not describe how

or where the defendants supposedly threw or left the supposed litter. The Defendant's argue that the Accusation fails to adequately set forth the essential elements of these five alleged littering crimes in a full and adequate manner and this prosecution cannot be allowed to go forward in its present form.

An accused may challenge an accusation by general or special demurrer. "A general demurrer challenges the sufficiency of the substance of the indictment, whereas a special demurrer challenges the sufficiency of the form of the indictment." State v. Corhen, 306 Ga. App. 495 (2010); Bramblett v. State, 239 Ga. 336 (1977). With respect to general demurrers, the test for determining the sufficiency of an indictment or accusation is not whether the charging instrument could have been made more definite and certain or, for that matter, perfect, but whether it contains the elements of the offense intended to be charged, and sufficiently apprises the defendant of what he must be prepared to meet, and in case any other proceedings are taken against him for a similar offense, whether the record shows with accuracy to what extent he may plead a former acquittal or conviction. Newsome v State, 296 Ga App 490 (2009).

The State argues that the Defendant's Motion to Quash amounts to a Special Demurrer instead of a General Demurrer. Therefore, having not been filed within 10 days of arraignment and before pleading to the accusation, the State argues that the right to an Accusation perfect in form has been waived pursuant to Bramblett v. State, 239 Ga. 336 (1977). However, the State fails to recognize that the Defendant's motion goes beyond a mere claim that more specificity or information is needed. Instead, the Defendants claim that the Accusation is so deficient that it fails to apprise the Defendants of what they must be prepared to meet at trial. While Rule 31.1 of the Uniform Superior Court Rules and OCGA § 17-7-110 does require all motions and demurrers to be made and filed within 10 days after the date of arraignment, these rules, however, do not

preclude an objection to the sufficiency of an indictment or accusation at any time during trial if it is so defective that judgment upon it would be arrested. If the indictment or accusation is so defective that judgment upon it would be arrested, attention may be called to this defect at any time during the trial. Pullen v. State, 199 Ga. App. 881 (1991); Ross v. State, 235 Ga. App. 7 (1998).

In Ross, the defendant made an oral motion to quash one of the charges after the close of evidence in a bench trial. The court held that Ross did not except merely to the form of the accusation but asserted that the substance of the accusation was defective in that it failed to allege the essential elements of reckless driving. Therefore, the oral objection at the close of the evidence was a timely challenge to the substance of the accusation. In addressing the challenge on Ross, the Court held that the true test of the sufficiency of an indictment or accusation or citation is not whether it could have been made more definite and certain but whether it contains the elements of the offense intended to be charged and sufficiently apprises the defendant of what he must be prepared to meet. Ross, at 8.

This Case is similar to Ross but even more similar to the issues addressed in Newsome v. State, 296 Ga. App. 490 (2009). In that case, the defendant was charged by accusation with Criminal Trespass and Violation of a Family Violence Order. The relevant portions of the accusation charged the defendant as follows:

Count 1 “with the offense of CRIMINAL TRESPASS - DAMAGE/INTERFERE, for that said Accused, on or about August 10, 2007, in Gwinnett County, Georgia, did unlawfully damage and interfere with the property of [the victim], in violation of OCGA § 16-7-21(a)” and

Count 2 “with the offense of VIOLATION OF FAMILY VIOLENCE ORDER, for that said Accused, on or about August 10, 2007, in Gwinnett County, Georgia, did unlawfully violate the provisions of a family violence order, in violation of OCGA § 16-5-95” Newsome, at 490-491.

In addressing the issues in Newsome, the Court of Appeals reiterated that “the test for determining the sufficiency of an indictment or accusation is not whether the [charging instrument] could have been made more definite and certain or, for that matter, perfect, but whether it contains the elements of the offense intended to be charged and sufficiently apprises the defendant of what he must be prepared to meet.” Id., at 491.

Although the accusation at issue in Newsome clearly charged the elements of the offense of Violation of a Family Violence Protective Order, the Court of Appeals found that it “failed to sufficiently set out the substance of the essential elements of the offense. That is, the accusation failed to specify the terms of the order and the manner in which he violated those terms.” Id., at 491-492. Therefore, the Court held that the accusation did not state the offense in the terms and language of the law or so plainly that the nature of the offense charged may be easily understood by the jury as required in OCGA § 17-7-71(c). The court clarified that “although recitation of the statute may, in certain cases, be a sufficient, though not desirable, method of apprising a defendant of the charges against him, recitation of portions of the statute is not sufficient if, reading the accusation together with the statute, a defendant is unable to determine which of his acts are alleged to be criminal in nature.” Id., at 492.

That is the same issue that we have in the case at hand. The Accusation at issue charges the Defendants with five counts of littering and cites the words of the related statute at issue in

each Count. However, the Accusation fails to apprise the Defendants of what the “litter” was, how they supposedly threw it or left it, or specifically where it was supposedly left or thrown. Not a single count states anything beyond a recitation of the statute. The Accusation fails to allege the charged offense with the particularity required by OCGA § 17-7-71(c). It fails to state the alleged violation so plainly that the nature of the offense charged may be easily understood. The lack of specificity prevents the Defendant from preparing an adequate defense because it doesn’t specify how they supposedly violated the law or what acts constituted the violations.

This issue becomes even more important given the fact that this case involves behavior possibly protected by the First Amendment of the United States Constitution. The Defendants were engaged in distributing leaflets in baggies with corn inside them to weigh them down. The leaflets contained written information concerning various issues related to the government’s partnership with Israel and other issues related to the Jewish individuals. It is material that many might find antisemitic and offensive as they did in this case. That is what prompted the initial calls to law enforcement. However, the Supreme Court of the United States has held that the First Amendment prohibits cities from banning the distribution of handbills, leaflets, circulars, and papers in the streets or from house to house. The Supreme Court recognized the freedom to distribute such information to every citizen is vital to the preservation of a free society. Schneider v. New Jersey, 308 U.S. 147 (1939); Martin v. City of Struthers, 319 U.S. 141 (1943); Statesboro Publishing Co. v. City of Sylvania, 271 Ga. 92 (1999).

The lack of specificity and information in the Accusation prevents the Defendants from being able to adequately prepare their defense in the case because they have been given no idea what they must be prepared to meet. The deficiency also prevents them from knowing if they have constitutional protection from prosecution by not specifying what acts they are being prosecuted

for. As an illustration, the First Amendment would arguably protect a person putting a weighted leaflet conveying information in a driveway. However, it might not allow that same person to throw five such leaflets in the middle of the road. One act might be prosecuted as littering and one might be constitutionally protected. That is why OCGA § 17-7-71(c) requires that the accusation must state the offense in the terms and language of the law or so plainly that the nature of the offense charged may be easily understood by the jury. This Accusation fails to do so and to allow this prosecution to move forward would be a significant injustice. Even if the Defendants' challenge is considered a Special Demurrer, this Court would use its discretion to allow the untimely challenge and reach the same conclusion in the interest of justice, because prosecution under this Accusation would likely be subject to an arrest of judgment. The only issue addressed in this Order is the pending Motion to Quash and the charging instrument in the case.

Accordingly, the **Defendant's General Demurrer and Motion to Quash the Accusation is GRANTED** and all five Counts of the Accusation are **QUASHED**.



BRIAN K. FORTNER, Judge
State Court, Douglas Judicial Circuit

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