

11-0587

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IN THE CIRCUIT COURT OF MARION COUNTY, WEST VIRGINIA
DIVISION I

STATE OF WEST VIRGINIA,

Plaintiff,

vs.

LISA DAVIS,

Defendant.

Case No. 10-M-AP-4
JUDGE FRED L. FOX, II
SENIOR STATUS JUDGE

RECORDED
CIRCUIT CLERK
2011 MAR 1 PM 3 19
BARBARA A. WILKINSON
CIRCUIT CLERK

AMENDED OPINION/ORDER

This case came before the Court on 24 November 2010 for a bench trial on the defendant's appeal from the judgment reached by the Marion County Magistrate Court on 13 August 2010. The State of West Virginia was represented by Patrick N. Wilson, Esquire, Prosecuting Attorney. The defendant, Lisa Davis, was present and represented by Roger D. Curry, Esquire. After due consideration of the testimony presented and arguments of the parties, and fully researching the legal issues presented, the Court finds the defendant guilty of the charge in question and affirms the judgment found in Marion County Magistrate Court. In support of this verdict, the Court makes the following findings of fact and conclusions of law:

Findings of Fact

1. The defendant was charged on 27 May 2010 with obstructing an officer, under W. Va. Code §61-5-17(a).

2. At the trial on 13 August 2010, Magistrate Melissa Pride-Linger found the defendant guilty, and sentenced her to pay court costs of One Hundred Sixty-Five Dollars and Eighty Cents (\$165.80). The defendant appealed on 17 August 2010.

3. At the bench trial before the Circuit Court, the State called Marion County Deputy Sheriff Christopher F. Gearde to testify. He testified that on 26 May 2010, he went to the Defendant's residence in Marion County to execute an arrest warrant upon Phillip Moran for violation of home confinement in a felony case. The Defendant and Phillip Moran were romantically linked at the time and Mr. Moran had given the Defendant's residence as his own address. While standing on the front porch, Deputy Gearde asked the Defendant if Mr. Moran was inside the residence. The Defendant denied his presence in the home. This exchange repeated multiple times. Another deputy then heard a noise within the structure and advised Deputy Gearde. Upon Deputy Gearde entering the residence, the Defendant then admitted that Phillip Moran was there. Mr. Moran was found in the residence and taken into custody.

Deputy Gearde noted that the Defendant was not abusive and made no physical act to oppose him. The Defendant did not dispute Deputy Gearde's testimony.

Conclusions of Law

1. § 61-5-17(a) of the West Virginia Code states:

(a) Any person who by threats, menaces, acts or otherwise, forcibly or illegally hinders or obstructs, or attempts to hinder or obstruct, any law-enforcement officer . . . acting in his or her official capacity is guilty of a misdemeanor . . .

2. The Defendant's attempted deception of Deputy Gearde is a violation of § 61-5-17(a). The Defendant lied to Deputy Gearde while he was acting in his official capacity as a law-enforcement officer, in an attempt to illegally hinder the deputy from carrying out his duties. The Defendant proposes the interesting argument that the deception in question does not "hinder" the officer as required in § 61-5-17(a) and that the Defendant should have been prosecuted under § 61-5-17(c). However, the facts recited during testimony indicate quite clearly that the Defendant was

illegally hindering the Deputy by deception. Further, the West Virginia Supreme Court of Appeals has reviewed this statute recently in State v. Srnsky, 213 W. Va. 412, 582 S.E.2d 859 (2003) and indicated that mere vocal actions could hinder a law-enforcement officer.

Accordingly, for the reasons set forth in the foregoing order, the Court is of the opinion to, and does, hereby **ORDER** that the judgment previously found in Marion County Magistrate Court be **AFFIRMED**.

The Circuit Clerk is directed to provide certified copies of the foregoing Amended Opinion/Order to Patrick N. Wilson, Esquire, Prosecuting Attorney, 213 Jackson Street, Fairmont, West Virginia 26554; to Roger D. Curry, Esquire at Curry Amos & Associates, LC, P.O. Box 3040, Fairmont, West Virginia 26554-3040; to Cathy Gower, Magistrate Clerk; and to Magistrate Melissa Pride-Linger. The Circuit Clerk is further directed to remove this case from the Court's docket and remand this matter to the Magistrate Court of Marion County.

ENTER: 01 MARCH 2011



FRED L. FOX, II,
SENIOR STATUS JUDGE

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CLERK OF THE CIRCUIT COURT
MARION COUNTY, WEST VIRGINIA