No. 30896 – State of West Virginia v. David Srnsky, Thomas Srnsky, and Brian Srnsky

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OF WEST VIRGINIA

Maynard, Justice, dissenting, in part, and concurring, in part.

I agree with the majority opinion that the trial evidence was insufficient under West Virginia law to sustain the appellants' convictions for removal of "posted" signs. However, I do not believe that the trespassing and obstruction convictions should have been reversed. I find the majority opinion to be a troubling disconnect with reality amounting to a triumph of hyper technical legal analysis over common sense and logic.

With regard to the trespassing convictions, the majority opinion rationalized

> that the meeting which took place on February 24, 2001, occurred on the porch or the yard immediately off of the porch, all within the curtilage of the Carr home. Clearly, the brothers could have been charged with trespass in or upon a structure or conveyance, including the curtilage, but no effort was made by the prosecution to amend the charging document. We simply cannot support the State's efforts to construe the evidence to fit the charged offense.

In essence, the majority concludes that it was a trespassing violation for the Srnskys to be within the curtilage of the home, but this was not the offense with which they were charged by the State. The majority reasons that the Srnskys were not in violation of trespassing outside of the curtilage of the home because the Carrs did not own the road in

which the appellants traveled to get to the Carrs' home, thus the State failed to prove that the Srnskys were on property outside the curtilage of the home.

Apparently the majority believes that the Srnskys magically leaped from their vehicle located outside of the curtilage of the Carrs' home, and landed safely and precisely within the curtilage of the home and thus outside of the reach of the statute under which they were charged. Perhaps the Srnskys were able to jump like Michael Jordan in a Nike commercial from their vehicle to the porch of the Carrs without touching any property in between.

The plain fact is, instead of acting as an appellate court, the majority retries the evidence of this case *de novo* and reaches its own conclusion regarding the placement of the Srnskys' feet on the Carr property. It is so obvious to me that the Srnskys committed the crime of trespassing when they left the public road, entered two fences, and walked onto the Carr property prior to reaching the Carrs' home or porch. The trial court in this case heard the evidence and concluded from the facts and testimony that the Srnsky brothers trespassed on property other than a structure. When the evidence is viewed in the light most favorable to the prosecution, I find no reason to disturb the Srnskys' trespassing convictions.

Potentially even more troubling is this Court's reversal of the obstruction charge against Brian Srnsky. I am very disappointed by the outcome of this case as I believe

that this Court has rewarded the criminal misconduct of aggressive and bellicose people. Let's look at what really occurred here. Three uniformed law enforcement officers, in possession of valid arrest warrants for Thomas and David Srnsky, came across four unidentified men, two of whom were armed, a half mile into the woods in a rural section of Tucker County. When the officers asked these men their names, two of them refused to answer. One of the law enforcement officers recognized one of the men as a Srnsky brother for whom they held a warrant, and proceeded to arrest this individual–a situation that, for all the officers knew, could have escalated into violence. In fact, sometime during this encounter, one of the four men said to the officers, "you don't know who you are f---ing with."

The majority now asserts that the officers acted inappropriately in this very tense and potentially violent situation. To reiterate, the officers did not know who was confronting them. The four men acted in a recalcitrant, abusive, and perhaps even hostile manner. These officers did not know at the time whether they had stumbled upon illegal activity, such as trespassing, and whether they would meet resistance from these individuals. While it is easy for us to sit in the safe confines of the Capitol and, in hindsight, criticize the conduct of these law enforcement officers, I seriously doubt that any reasonable law enforcement officer who has found himself or herself in a similar situation, facing armed men, on an isolated mountainside, would conclude that these officers did anything wrong. In such situations, officers must think of public safety as well as their own personal safety

first. A moment's hesitation, the slightest relaxation, and the result may be gunshots and dead people.

Events that occurred subsequent to Brian Srnsky's arrest indicate that these officers were dealing with men who were openly belligerent and who have absolutely no respect for the law. After being arrested, I believe properly, for obstruction, Brian Srnsky provided the officers with a false name indicating that he was "Betsy Ro[ss] or a name like that." Thereafter, he continued to defy authority by refusing to give his name to a magistrate.

These facts show the reasonableness and the restraint of the police in this case. The majority incorrectly states the relevant issue as, "whether the refusal to give one's name to a police officer, standing alone, constitutes the offense of obstructing a law enforcement officer." But that is simply not what happened in this case. Brian Srnsky's refusal to identify himself *did not* stand alone. Rather it was accompanied by the fact that three law enforcement officers were acting in an official capacity to arrest individuals for whom they carried warrants when they came across armed men deep in the woods, at least one of whom uttered threatening language, and another of whom refused to cooperate and acted in a suspicious manner. The majority's wording of the issue would lead us to believe that police officers randomly approached a pedestrian during lunch time on Capitol Street and gratuitously demanded to know his name absent any introduction or explanation for their inquiry. In fact, the majority's formulation of new Syllabus Point 4 would lead us to think

that such a rule is necessary to prevent idle law enforcement officers from badgering innocent citizens with pointless inquiries. Of course, this is not the case and new Syllabus Point 4 is wholly unnecessary.

Brian Srnsky was arrested and charged with obstructing a police officer in violation of West Virginia Code § 61-5-17(a) (2000) (Repl. Vol. 2000), which provides:

> Any person who threats, menaces, acts or otherwise, forcibly or illegally hinders or obstructs, or attempts to hinder or obstruct, any law-enforcement officer, probation officer or parole officer acting in his or her official capacity is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty nor more than five hundred dollars, and may, in the discretion of the court, be confined in the county or regional jail not more than one year.

As the majority explains:

> The complaint which was filed subsequent to Brian's arrest against "John Doe (last name Srnsky)" and signed by Trooper Clevenger alleged that: On 3-02-01 the . . . [undersigned] officer was executing arrest warrants on Thomas Srnsky and another member of the Srnsky family. This member refused to identify himself to the . . . [undersigned] officer on 4 occasions of being asked for his name."

Given the facts of this case, it is difficult to fathom how Brian Srnsky was not guilty under each and every separate section of the statute as the officers were threatened, menaced, and obstructed while acting within their official capacity. Brian Srnsky knew why the officers were there as Trooper Clevenger announced that he "ha[d] arrest warrants and

[was] doing an investigation," yet Srnsky defiantly continued to obstruct the administration of justice by refusing to provide his name, he began to walk away from the officers as they were handcuffing his brother Thomas Srnsky, and he caused an undue burden and a senseless waste of law enforcement time and resources as the officers were forced to arrest and transport him back to the county seat for processing before a magistrate.

In sum, in my opinion, the facts of this case indicate that the Srnskys are belligerent individuals who have no respect for authority or the law. The Srnskys deliberately went looking for trouble, they found it, and the authorities properly held them accountable by bringing them to justice. In my view, the majority's decision to reverse the Srnskys' convictions is wrong because the evidence below clearly shows trespass and obstruction of a police officer. The majority opinion will be disheartening to police officers who are regularly called upon to make snap judgments in potentially dangerous situations, but whose reasonably good-faith efforts are further limited by the restrictions of new Syllabus Point 4. It must be equally disheartening to the law-abiding citizens of Tucker County whose efforts to hold the Srnskys accountable for their unlawful and provocative conduct have been repudiated by this Court.

For the reasons stated above, I concur with the majority's reversal of the convictions for the removal of "posted" signs, and I dissent to the reversal of the trespassing and obstruction of a police officer convictions. I am authorized to state that Justice Davis

joins me in this separate opinion.