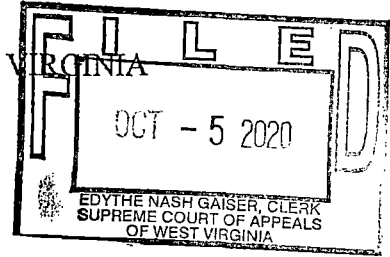


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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
DOCKET NO. 20-0492



City of Martinsburg,
Plaintiff Below, Respondent

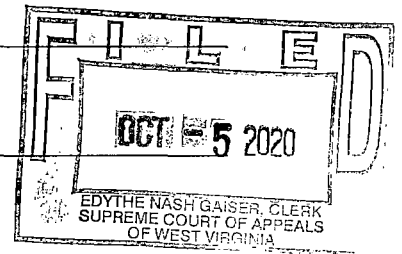
v.

Case No.: 20-M-AP-1

Rachel Dunbar,
Defendant Below, Petitioner

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BRIEF FOR APPEAL



Dylan K. Batten
W.Va. Bar No. 12466
Riddell Law Group
329 South Queen Street
Martinsburg, West Virginia 25401
(304) 267-3949
(304) 267-5411 facsimile

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I. Assignments of Error:

Petitioner asserts the following assignment of error with regard to the decision of the Berkeley County Circuit Court:

1. That the Circuit Court erred with it found that Petitioner, Defendant below, was required to notify the arresting officer in this case of her real name after learning that he was in fact a law enforcement officer;

II. Statement of the Case:

On or about January 8, 2019, Detective Smith (hereinafter "Smith") of the Martinsburg Police Department traveled to 100 Raleigh St., Martinsburg, West Virginia, to make contact with the occupants of said address. It is not disputed that the purpose of Smith's trip was pursuant to a legitimate investigation. See Appendix Pg. 13.

Upon his arrival, Smith made contact with the Petitioner and immediately began inquiring about her and the nature of her occupancy of the 100 Raleigh Street Address. It is not contested that Ms. Dunbar provided a false name to Smith, Danielle Shaffer. See Appendix Pg. 24, Ln 6-18. It is also not disputed that Smith arrived in plain clothes and an unmarked car. *Id.* at Pg. 19, Ln 18-24 and Pg. 20, Ln 1-5. It was disputed as to whether Smith identified himself as law enforcement prior to asking Ms. Dunbar for her name.

After speaking with Petitioner, Smith continued his investigation and began researching the residence and its most recent occupants. Upon making inquiries of the company that managed the property and local utility companies, as well as the DMV, Smith determined that the individual he had spoken with at 100 Raleigh Street. Based on this information, Smith then charged the Petitioner with providing false information to a law enforcement officer pursuant to Martinsburg Municipal Ordinance.

After a bench trial held in Martinsburg Municipal Court, the Petitioner appealed her conviction. At her trial *de novo* before the Circuit Court of Berkeley County the Petitioner was again convicted. In support of its decision, the trial Court asserted that the Defendant made no attempt to correct her original false statement after she had learned that Smith was a police officer. Appendix at Pg. 49 (“However, the Court finds by the Defendant’s own admission that the Defendant became aware that Detective Smith was a law enforcement officer and made no attempt to cure her prior false statement when she had the opportunity to do so. Accordingly, the Court concludes that the Defendant knowingly provided false or misleading information to Detective Smith, a member of the City of Martinsburg Police Department, and therefore was in violation of § 509.05, City of Martinsburg Municipal Code.”).

III. Summary of Argument

Petitioner asserts that she had no duty to correct a false statement to law enforcement made at a time when she did not know that the officer receiving said false statement was law enforcement at the time said statement was made even if she learned of the officer’s status at a later time. Petitioner believes that her conduct at the time was lawful given the circumstances as known to her at the time of her false statement and did not become illegal based on new knowledge obtained later.

IV. Statement Regarding Oral Argument

Petitioner does not feel that oral argument is necessary in this case given that many of the underlying legal principles governing this matter have already been decided.

V. Argument

A. Standard of Review:

As has been previously held by this Court, “challenges to the findings and conclusions of the circuit court made after a bench trial, a two-pronged deferential standard of review is applied. The final order and the ultimate disposition are reviewed under an abuse of discretion standard, and the circuit court’s underlying factual findings are reviewed under a clearly erroneous standard. Questions of law are subject to a *de novo* review.” *Public Citizen, Inc. v. First Nat. Bank in Fairmont*, 480 S.E.2d 538, (W. Va. 1996). In this instance, the Petitioner challenges the Court’s legal conclusion that she was required to correct false information given to a law enforcement officer after it was made known that said officer was, in fact, law enforcement. As such, Plaintiff believes the standard of review in this matter is subject to *de novo* review. *Id.*

B. Petitioner did not violate the law by later failing to correct false information given to a law enforcement officer when said false information was given prior to knowing that she was speaking with law enforcement.

The Court below appears to base its finding of guilt on the fact that the Petitioner did not correct false information. Below, the Petitioner argued, and the court accepted, that the city ordinance at issue in this matter was analogous to W.Va. Code § 61-5-17 and that case law from this Court interpreting said statute should be applied. Petitioner would request that the same be done now. Under the City of Martinsburg Municipal Code, “[n]o person shall, at any time intercept, molest, or interfere with any officer or member of the Martinsburg Police Department, while on duty, or knowingly give false or misleading information to a member of the Department.” See § 509.05, City of Martinsburg Municipal Code.

As has been previously held by this Court, one must “forcibly or illegally” hinder a law enforcement officer in the discharge of his or her duties before a charge of obstructing under

W.Va. Code § 61-5-17 may attach. See *State v. Srnsky*, 582 S.E.2d 859, 213. Going further, this Court has also held "that refusing to give one's name to a police officer, standing alone, does not constitute obstruction." *Id.* This holding was grounded in the idea that refusal to identify one's self when the purpose for which the information is being sought has not been communicated. The qualified the aforementioned holding by finding "when the refusal occurs after a law enforcement officer has communicated the reason why the citizen's name is being sought in relation to the officer's official duties" the crime of obstructing may be charged. *Id.*

In the case at bar it is apparent that the petitioner was not aware that she was speaking with law enforcement before she gave a false name and did not know the purpose of his inquiry. It was not until after she relayed false information to Smith that Ms. Dunbar learned of the reason for his inquiry. This information, had it been made known at the beginning of Ms. Dunbar's interaction with Smith, would have rendered the giving of a false name illegal.

The Circuit Court inserts into the jurisprudence of this Court, as well as W.Va. Code § 61-5-17 an additional requirement for defendants to attempt to rectify false information given to individuals not known to be law enforcement in order to make a previously legal action legal after the officer's status is known.

Put plainly, had Smith identified himself or his purpose prior to Ms. Dunbar providing the false name then her conduct would clearly fall within the confines of obstructing an officer or the Municipal Ordinance at issue. However, Smith did not make his purpose known prior to asking Ms. Dunbar to identify herself. As such, her conduct was not illegal at the time it occurred and her actions cannot be criminalized because of a failure to correct that information after the officer's status and purpose were made known to her.

VI. Conclusion:

The Petitioner did not engage in illegal activity prior to realizing that Smith was law enforcement and that there was a legitimate purpose for his inquiry. The lower court imposes a requirement that someone correct false information when the legitimate purpose of the request becomes known only after the information is given.

Respectfully Submitted,

Rachel Dunbar

By Counsel



Dylan Batten Esq.
WV Bar No: 12466
Stedman and Riddell
329 South Queen Street
Martinsburg, West Virginia 25401
(304) 267-3949
Counsel for the Petitioner

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CERTIFICATE OF SERVICE

I, Dylan K. Batten, Esq., do swear that a copy of the Petitioner's Appeal Brief, in this matter was served upon all Counsel of record via U.S. Postal Service, postage pre-paid to the addresses below of this 5th day of October, 2020.

Kin Sayre, Esquire
Bowles Rice, LLP
101 S. Queen Street
Martinsburg, WV 25401

Karen Villanueva-Matkovich
Deputy Attorney General
812 Quarrier Street
6th Floor
Charleston, WV 25301

/s


Dylan K. Batten (WV Bar #12466)
Riddell Law Group
329 S. Queen Street
Martinsburg, WV 25401
(P): (304) 267-3949 (F) (304) 267-5411
Email: stedmanriddell@gmail.com