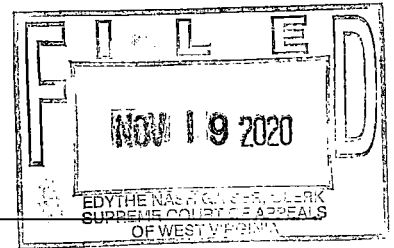


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No. 20-0492



IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

**CITY OF MARTINSBURG,
PLAINTIFF BELOW, RESPONDENT**

V.

CASE NO.: 20-M-AP-1

**RACHEL DUNBAR,
DEFENDANT BELOW, PETITIONER**

RESPONDENT'S BRIEF

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TABLE OF AUTHORITIES

Cases

Public Citizen, Inc. v. First Nat. Bank in Fairmont,
480 S.E.2d 538 (W. Va. 1996) 3

State v. Srnsky,
582 S.E.2d 859, 213 4

Statutes

City of Martinsburg Municipal Code § 509.05 2, 3

I. STATEMENT OF CASE

1. On January 2, 2019 Detective Jon Smith received a referral from the Douglas County Sheriff's Department Colorado, of a potential credit card fraud. Allegedly made within the corporate limits of Martinsburg, West Virginia. See Appendix Pg. 11
2. Detective Smith obtained a phone number that was associated with the alleged credit card fraud. WV. See Appendix Pg. 12
3. Detective Smith obtained a phone number associated with the alleged fraud investigation that belonged to Mr. Timothy Clayson with an address of 100 South Raleigh Street, Martinsburg, West Virginia. See Appendix Pg. 12
4. On January 8, 2019, Detective Smith in furtherance of his investigation approached the residence at 100 S. Raleigh St., Martinsburg, WV. See Appendix Pg. 13
5. Detective Smith identified himself police officer with the City of Martinsburg Police Department. See Appendix Pg. 13.
6. Detective Smith asked the Defendant for her name. The Defendant responded by giving Detective Smith the name of "Danielle Shaffer". See Appendix Pg. 15
7. Following Detective Smith's determination that the Defendant was in fact Rachel Dunbar, and not "Danielle Shaffer" as the Defendant had stated to him, Detective Smith sought a warrant to be issued for the Defendant for knowingly giving him false or misleading information pursuant to § 509.05 of the City of Martinsburg Municipal Code.
8. The Defendant testified that she knew that the Detective Smith was a member of the Martinsburg Police Department. See Appendix Pg. 30
9. The Defendant testified that she only became aware that fact after she had provided the Detective a false name. See Appendix Pg. 30

10. The Defendant intently failed to correct the false information when she became aware of the Detective's identity. See Appendix Pg. 30

11. After a bench trial held in Martinsburg Municipal Court, the Petitioner appealed her conviction.

12. At her trial *de novo* before the Circuit Court of Berkeley County the Petitioner was again convicted.

13. 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.").

II. SUMMARY OF ARGUMENT

Respondent asserts that she knowingly gave false or misleading information to Detective Smith with the intent to molest or interfere with his investigation after he had identified himself as a member of the Martinsburg Police Department.

III. STATEMENT REGARDING ORAL ARGUMENT

Because the legal issues presented are not novel and the relevant facts are largely uncontested, it is the opinion of the Respondent that oral argument is not necessary for the disposition of the present appeal.

IV. 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 courts 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).

V. ARGUMENT

After the Court had heard the testimony of both Detective Smith and the Defendant the Court determined that the credible evidence the Defendant knowingly gave false or misleading information to Detective Smith with the intent to molest or interfere with his investigation after he had identified himself as a member of the Martinsburg Police Department.

Even taking the evidence in the light most favorable to the Defendant she provided a false name to the Detective and continued to allow him to believe these false statements after she became aware of his association with Martinsburg Police Department.

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. The actions of the Defendant illegally interfered with the Detective in his discharge of his duties by providing a false name.

While it is not a violation of the Municipal Code for a person to refuse to provide their name to a police officer your name. 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. See *State v. Srnsky*, 582 S.E.2d 859, 213.

It is however a violation to provide a false name to a law enforcement officer. It is further a violation to fail to correct false information to a law enforcement officer.

The testimony of Detective Smith was he identified himself to Ms. Dunbar prior to her providing the false name and is a clear violation of the Municipal Ordinance

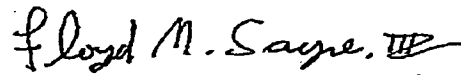
VI. CONCLUSION

In light of the foregoing and the record of this case, the Respondent respectfully asks that this Court AFFIRM the decision of the Circuit Court of Berkely County in its entirety

Respectfully submitted,

City of Martinsburg

By

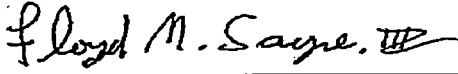


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CERTIFICATE OF SERVICE

I, the undersigned, counsel for the Respondent, hereby certify that I served a true copy of the foregoing upon counsel for the Petitioner, via U.S. Mail, postage prepaid, on this 19th day of November 2020.

Dylan K. Batten
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