

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

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STATE OF WEST VIRGINIA, *ex rel.*  
STATE OF WEST VIRGINIA,

Petitioner,

v.

THE HONORABLE TIMOTHY L. SWEENEY,  
Circuit Court Judge of the Circuit Court of  
Ritchie County, West Virginia,  
and EARNEST LEE OWENS,  
defendant below,

Respondents.

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SUMMARY RESPONSE OF EARNEST LEE OWENS  
TO PETITION FOR A WRIT OF PROHIBITION

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**NOW COMES** the Petitioner, **EARNEST LEE OWENS**, by and through his attorney, **GEORGE J. COSENZA**, and for his summary response to petition for a writ or prohibition, states as follows:

### **FACTS**

On or about August 15, 2023, the Respondent, **EARNEST LEE OWENS**, was working at the Cardinal Apartments in Pennsboro, Ritchie County, West Virginia. [T.R. 4-5]. While the Respondent was on the premises of the Cardinal Apartments, he became involved in a dispute with one of the tenants. During the dispute at the apartment complex, the tenant called 911 and complained, that during his argument with the Respondent, the Respondent “chest bumped” him and left. After the dispute with the tenant, the Respondent left the premises of the Cardinal Apartments and drove his black Dodge Ram pick-up truck to the Sav-A-Lot grocery store parking lot in Pennsboro, which was near the apartment complex. Ritchie County Deputy J.C. Egan was on patrol and received a dispatch regarding the dispute between the tenant and the Petitioner. The dispatcher gave Deputy Egan a description of the Respondent’s truck. [T.R. 6-7]. While en-route to the Cardinal Apartments, Deputy Egan saw a truck that matched the description of the Petitioner’s truck in the parking lot of the Sav-A-Lot grocery store. Deputy Egan put on his emergency lights and approached the Respondent’s vehicle, which was stopped and lawfully parked on the Sav-A-Lot premises. Prior to Deputy Egan approaching the Respondent’s vehicle, the Respondent had not committed any crime or wrongdoing in the officer’s presence. In addition, there was no criminal complaint or outstanding warrant against the Respondent for any crime. [T.R. 8-9]. When Deputy Egan approached the Respondent, he was equipped with a body camera, which was activated for both video and sound. [App.R. Thumb Drive]. Upon arriving at the Respondent’s vehicle, without

the Respondent being under arrest or lawfully detained, Deputy Egan ordered that the Respondent get out of his vehicle. The Respondent refused and locked the door to his vehicle. Deputy Egan continued to order the Respondent out of his vehicle, informing him that he was obstructing the officer's investigation of the incident at the Cardinal Apartments. After initially refusing to speak to Deputy Egan, the Respondent told the officer repeatedly that he would speak with him. Deputy Egan became agitated and continued to order that the Respondent get out of his vehicle and threatened him with arrest for obstruction. The Respondent offered to speak to the deputy through the window of the vehicle. However, that did not satisfy the deputy, who said he was concerned about weapons, even though no weapon was visible, the officer was not threatened with a weapon and there was no report of the Respondent having a weapon at the Cardinal Apartments. Deputy Egan continued to maintain that the Respondent was obstructing his investigation because the Respondent would not get out of the truck and speak to him. During the evidentiary hearing, Deputy Egan admitted that during his interaction with the Petitioner, the Respondent was not in custody and was free to leave at any time. [T.R. 15-17]. Deputy Egan called for back-up. After approximately four (4) minutes and thirty (30) seconds, the Respondent said he was going to get out of his vehicle and speak with the deputy. At approximately five (5) minutes into the interaction between Deputy Egan and the Petitioner, Deputy Casto arrived on scene and was debriefed by Deputy Egan. The Respondent continued to tell Deputy Egan that it was his intention to speak with him. At five (5) minutes and fifteen (15) seconds into the interaction with the Petitioner, Deputy Egan announced to Deputy Casto that he was going to pull the Respondent out of the truck through the window. Deputy Casto said "you have no choice." At approximately six (6) minutes into the body cam video, Deputy Casto started slamming his flashlight into the driver's

side window of the Respondent's vehicle. Deputy Egan started hitting the window with his ASP baton. After a few seconds, the driver's side window of the Respondent's vehicle broke, the deputies open the driver's side door and slam the Respondent to the ground face down. As a result of the deputies' actions, the Respondent was significantly injured as demonstrated by the photographs admitted into evidence. [App.R. 009-0014]. The Respondent was placed in handcuffs and treated for his injuries at the scene by EMS. The Respondent was, then, transported to Camden Clark Medical Center in Parkersburg for further treatment. The Respondent was treated and released. After his release from the hospital, the Respondent was transported to the Ritchie County Magistrate Court and was charged with assault of the tenant and obstruction. [App.R. 112]. The Respondent filed a motion in the Ritchie County Magistrate Court, the Respondent, Lessa D. Snodgrass, presiding, to dismiss the criminal charges against him because he was unlawfully detained and arrested at the Sav-A-Lot parking lot. Magistrate Snodgrass denied the Respondent's motion causing the Respondent to seek a writ of prohibition in the Circuit Court of Ritchie County, West Virginia.

### **ARGUMENT**

It is impossible for one to look at the body cam footage in this case and believe the actions of Deputies Egan and Casto were appropriate or lawful.

In the case before the court, Deputy Egan admitted during his testimony that the Respondent was not in custody and was free to leave at any time during their interaction. In addition, Deputy Egan admitted that the Respondent's vehicle was not subject to seizure or the Respondent, the sole occupant, had not committed, was committing or was about to commit a crime. Therefore, Deputy Egan had no authority to detain the Petitioner and demand he speak with him or get out of his truck. See *State v. Stuart*, 192 W.Va. 428, 452 S.E. 2d 886 (1994);

*Muscatell v. Cline*, 196 W.Va. 588, 474 S.E.2d 518 (1996).

The facts in *Muscatell*, *supra*, are relevant to this matter and are heavily relied upon by the Petitioner. On August 12, 1993, between 5:30 and 6:00 p.m., Senior Trooper G.L. Brown of the West Virginia State Police was on road patrol in Bridgeport, West Virginia, near the intersection of I-79 and U.S. Route 50. He received a radio call from the State Police Communication Office in Shinnston, West Virginia, requesting him to be on the lookout for a small, light blue vehicle traveling toward Clarksburg from the Grafton area. Trooper Brown was informed that the driver of the vehicle, named Beverly S. Jackson Muscatell, might have been involved in a hit and run accident, might be under the influence of alcohol, and might be proceeding toward Clarksburg from Grafton. At the time of the radio call, Trooper Brown did not know the source of the information conveyed to him and considered it anonymous. The trooper later learned that the information came from Trooper Pual Ferguson, who was investigating a reported hit-and-run accident in the Grafton area of West Virginia that appeared actually to have been a family argument which did not involve any hit-and-run incident.

Shortly after 6:00 p.m., Trooper Brown was traveling east on U.S. Route 50, near the I-79 interchange, when he observed a woman driving west on U.S. Route 50 in a light blue Dodge Omni or Plymouth Horizon, coming from the direction of Grafton and headed toward Clarksburg. The trooper turned around and followed the blue car west on U.S. Route 50. The car turned off U.S. Route 50 onto what is called Bridgeport Hill or old Route 50, going toward Clarksburg. The trooper testified that the vehicle straddled or went across the center line one time before coming back to the driving lane. On cross-examination the trooper acknowledged that he earlier had asserted that he observed no improper driving by appellee at the time of the stop. It also became unclear as to whether the appellee crossed the centerline

or simply moved from one westbound lane to another and back again. The trooper further testified that after observing the “straddle” of the centerline, he pulled the vehicle over and asked the subject if her name was Beverly. She answered in the affirmative, and the trooper looked at her operator’s license. Trooper Brown advised Ms. Muscatell of the reason for the stop by advising her that a complaint had been made against the type of vehicle she was driving that was coming from Grafton. No damage to the vehicle was observed.

The case was remanded to the Circuit Court for further proceeding, however this Court ruled as follows: For a police officer to make an investigatory stop of a vehicle the officer must have an articulable reasonable suspicion that a crime has been committed, is being committed, or is about to be committed. In making such an evaluation, a police officer may rely upon an anonymous call if subsequent police work or other facts support its reliability, and, thereby, it is sufficiently corroborated to justify the investigatory stop under the reasonable-suspicion standard.

None of these factors existed in the case at bar. In fact, Deputy Egan testified that the Respondent was free to leave at any time during their encounter. Further, it is well settled, that the United States Constitution and the West Virginia Constitution guarantees the right of a suspect to a crime to remain silent and his exercise of said right does not constitute obstruction of justice. For example, in *State v. Sinsky*, 213 W.Va. 412, 582 S.E. 2d 859 (2003) this court concluded that failure to give one’s name during a lawful investigation does not constitute the criminal offense of obstruction.

Most recently on the subject of offer *{sic}* safety our Supreme Court has held that:

Neither a showing of exigent circumstances nor probable cause is required to justify a protective sweep for weapons as long as a two-part test is satisfied: and officer must show there are specific articulable facts indicating danger and this suspicion of

danger to the officer or others must be plausible. If these two elements are satisfied, an officer is entitled to take protective precautions and search in a limited fashion for weapons.

Syllabus Point 6, *Lacy. State v. Ward*, Syl. Pt. 5, 249 W.Va. 347, 859 S.E. 2d 202 (2023).

The facts in *Ward, supra*, are significantly similar to the facts in the case at bar: the Sheriff's office received a telephone call concerning a dispute between individuals, there was no allegation that the defendant had a firearm, the officer had not personally observed the alleged conduct, and a gun was found during a search. This court reversed the circuit court's ruling holding that notwithstanding the presence of a gun, the search was not within the officer safety exception to the search warrant requirement. In support of its reversal, this court opined that a "general concern" absent testimony or evidence that the officer has "a particular suspicion" that a firearm was present or that a firearm posed a threat to himself or other officers present does not justify a protective sweep. Specifically, Deputy Egan stated he had "...no idea if you have any weapon" indicting a "general concern" rather than a "particular suspicion." Therefore, none of the factors contemplated by *Lacy* or *Ward, supra*, were present in the case *sub judice* and the deputies' actions do not come within prescribed legal parameters.

Law enforcement official may interfere with an individual's Fourth Amendment interest with less than probable cause and without a warrant if the intrusion is only minimal and is justified for law enforcement purposes. To determine whether the intrusion complained of was minimal, a circuit court must examine separately the interests implicated when the police feel a search for weapons is necessary to keep the premises safe during the search and the privacy interests of the defendant to be free of an unreasonable search and seizure of his or her residence. Only when law enforcement officers face a circumstance, such as a need to protect the safety of those on the premises, and a reasonable belief that links the sought after

information with the perceive danger is it constitutional to conduct a limited search of private premises without a warrant. *State v. Lacy*, 196 W.Va. 104, 468 S.E. 2d 719 (1996).

None of the factors contemplated by *Lacy, supra.*, were present in this case and the deputies' actions cannot be justified.

In the case before the court, when the Respondent indicated, he did not wish to cooperate with Deputy Egan, he should have been permitted to leave or Deputy Egan should have left and prepared a criminal complaint against the Petitioner, if probable cause could have been established, and, then, lawfully arrested the Petitioner.

### **CONCLUSION**

Based upon the foregoing, the Respondent, **EARNEST LEE OWENS**, respectfully requests that the Petition for a Writ of Prohibition be denied.

Dated this 28<sup>th</sup> day of April, 2025.

**//s// George J. Cosenza**  
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**CERTIFICATE OF SERVICE**

The undersigned counsel for Respondent, **EARNEST LEE OWENS**, hereby certifies that he served the foregoing **SUMMARY RESPONSE OF EARNEST LEE OWENS TO PETITION FOR A WRIT OF PROHIBITION** upon the Petitioner, **STATE OF WEST VIRGINIA**, by electronic filing, on this 28<sup>th</sup> day of April, 2025, addressed to:

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