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BEFORE THE WEST VIRGINIA SUPREME COURT OF APPEALS

No. 33522

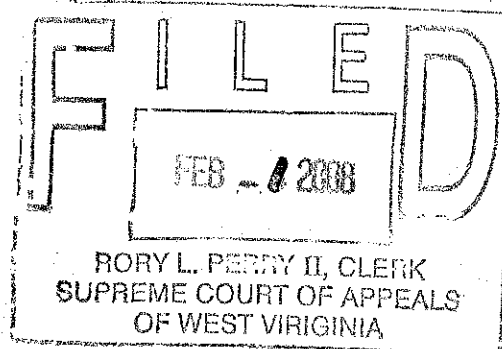
STATE OF WEST VIRGINIA,

Appellee,

v.

WANDA CARNEY and  
BETTY JARVIS,

Appellants.



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STATE OF WEST VIRGINIA'S BRIEF

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I.

**KIND OF PROCEEDING AND NATURE OF RULINGS BELOW**

Appellants were charged by Indictment A06-M1 [Wanda Carney] and A06-M3 [Betty Jarvis] with Obstructing, a violation of West Virginia Code § 61-5-17(a), and Conspiracy, a violation of West Virginia Code § 61-10-31 and § 61-5-17(a). Appellants were specifically charged with obstructing and conspiring to obstruct the Carla Collins murder investigation by illegally taking and concealing evidence from murder suspect Valerie Friend's residence without Friend's consent and by deceiving and intimidating material witnesses with false and defamatory accusations against First Sergeant D. M. Nelson, Trooper First Class A. S. Perdue and First Lieutenant C. E. Akers.

Appellants were convicted by a jury of Obstructing a Police Officer, a violation of West Virginia Code § 61-5-17(a), and Conspiracy to Obstruct a Police Officer, a violation of West Virginia Code § 61-10-31 and § 61-5-17(a).

Appellants were sentenced to confinement in a regional jail facility for a definite term of one [1] year for each conviction. The respective sentences were suspended and Appellants were granted probation for a definite term of three [3] years with no objection by the State of West Virginia. Appellants were required to serve the initial one hundred twenty [120] days of the probation term on electronic home confinement, fulfill two hundred [200] hours of community service and complete a higher education class in criminal justice/procedure.

II.

**STATEMENT OF FACTS**

The West Virginia State Police commenced a major drug enforcement

investigation in the Matewan area of Mingo County in 2004 [Tr. 4 – September 7, 2006]. George “Porgie” Lecco became a target of the investigation for selling substantial quantities of cocaine at Pizza Plus, a restaurant that Lecco owned. The police successfully executed controlled purchases of cocaine from Lecco [Tr. 4 – September 7, 2006]. In February 2005, a raid was performed at Pizza Plus resulting in the confiscation of controlled substances and money [Tr. 52, 53 – September 7, 2006]. Lecco was not arrested because Lecco volunteered to assist the police in investigating the source of Lecco’s cocaine [Tr. 5, 54 – September 7 2006].

Carla Collins was introduced to police by Lecco and became a cooperative witness [Tr. 4 – September 7, 2006]. Lecco thereafter became convinced that Collins was providing police with inculpatory information about Lecco’s ongoing cocaine trafficking. Lecco paid Valerie Friend to kill Collins and gave Friend a gun for the undertaking. On or about April 16, 2005, Valerie Friend brutally and heinously murdered Collins at Lecco’s direction.

Police began an extensive and exhaustive search for Collins after Collins was reported missing by Collins’ mother [Tr. 6 – September 7, 2006]. Collins’ lifeless body was found on or about June 17, 2005, in a makeshift grave near the abandoned burned trailer in which Collins was murdered [Tr. 7, 10, 66, 73 – September 7, 2006]. Harmon ultimately pleaded guilty in United States District Court Southern District of West Virginia for burning the abandoned trailer in which Collins was murdered, destroying evidence and digging the makeshift grave where Collins’ was found.

Michael T. Clifford was employed as Harmon’s lawyer. Appellant Jarvis’ is Harmon’s aunt and Lecco’s first cousin [Tr. 200 – September 8, 2006]. Appellant

Carney is an employee of Clifford [Tr. 147 – September 8, 2006].

During the Carla Collins murder investigation, Appellants hindered the police investigation by deceiving and intimidating material witness Alola Boseman with blatantly false and defamatory accusations against lead investigators First Sergeant D. M. Nelson, Trooper First Class A. S. Perdue and First Lieutenant C. E. Akers. Appellant's goal was to seek leverage against politicians to help Harmon [Tr. 14, 24 – September 8, 2006]. Appellants expressed no interest in information about primary suspects Friend and Lecco [Tr. 15 – September 8, 2006].

Appellant Carney deceived and intimidated Boseman by telling Boseman that First Sergeant Nelson, Trooper First Class Perdue and First Lieutenant Akers would kill Boseman if Boseman did not give Appellant Carney information. Appellant Carney also told Boseman that First Sergeant Nelson and Trooper First Class Perdue had sex with Collins and were involved in the cover up of Collins's murder [Tr. 15, 17 – September 8, 2006]. Further, Appellant Carney told Boseman that the U.S. Attorney involved in the Carla Collins murder investigation was crooked [T. 16, 18 – September 8, 2006] and even Appellant Carney and Clifford were in danger [Tr. 19 – September 8, 2006].

Appellant Carney convinced Blankenship that Blankenship was in danger and Blankenship's very survival depended on Appellant Carney and Clifford. Appellant Carney, along with Appellant Jarvis, thereafter convinced Blankenship to abscond to Charleston, hid Blankenship at Jarvis' residence, loaded Blankenship into a van and took Blankenship to an undisclosed location when police discovered Blankenship's whereabouts and came to take custody of Blankenship. Appellants offered similar "protection" to Boseman [Tr. 24, 81, 82, 83, 192, 193 – September 8, 2006].

Appellant Jarvis intimidated and deceived Boseman by telling Boseman that First Sergeant Nelson had sex with and impregnated Collins. Additionally, Appellant Jarvis told Boseman that First Sergeant Nelson was involved in the cover up of Collins' murder and Appellant Jarvis had to take material witness Carmella Blankenship into Appellant Jarvis' home to protect her from First Sergeant Nelson, Trooper First Class Perdue and First Lieutenant Akers.

Appellants' scheme to hinder the police investigation by deceiving and intimidating Boseman obviously worked as Boseman became extremely upset and scared of the police [Tr. 19, 20, 64 – September 8, 2006]. Boseman believed that the police and United States Attorney's Office was crooked. Boseman came to believe that Boseman could end up dead like Collins if Boseman cooperated as a witness [Tr. 20 – September 8, 2006]. First Lieutenant Akers in particular was frequently required to stop the investigation to reassure Boseman that First Sergeant Nelson, Trooper First Class Perdue and First Lieutenant Akers were not criminals [Tr. 20, 64 – September 8, 2006].

Appellants also hindered the police investigation by unlawfully entering Friend's residence without Friend's consent and by taking and concealing evidence. An accomplice gained entry to Friend's residence by climbing through a window [Tr. 134, 135 – September 7, 2006]. Appellant Jarvis then entered Friend's residence and removed evidence including a map, film and film canisters. [Tr. 136 – September 7, 2006; Tr. 108 – September 8, 2006]. Appellant Carney in complicity with Appellant Jarvis observed from a car parked approximately ten [10] feet from Friend's residence and received the stolen evidence from Appellant Jarvis [Tr. 135, 137 – September 7, 2006]. The evidence was tainted and had no value after being taken from Friend's

residence and concealed by Appellants [Tr. 108, 109 – September 8, 2006].

Appellants had to be prompted by the United States Attorney's Office to turn over the stolen evidence to the United States Attorney's Office [Tr. 76 – September 8, 2006]. Even more troubling, Appellant Jarvis took at least two [2] film canisters and film from Friend's residence that Appellants concealed and never turned over to police or the United States Attorney's Office [Tr. 136 – September 7, 2006]. Finally, the map taken from Friend's residence listed directions from the Matewan area to the Belfry area where evidence [shovel] was ultimately recovered [Tr. 108 – September 8, 2006].

### III.

#### APPELLANTS' ASSIGNMENT OF ERROR

The evidence is insufficient to sustain Defendants' convictions for obstructing a police officer and conspiracy to obstruct a police officer where the Defendants took no direct forcible or illegal action against a police officer.

### IV.

#### STATE OF WEST VIRGINIA'S RESPONSE TO ASSIGNMENT OF ERROR

The State of West Virginia presented legally sufficient evidence of every essential element of Obstructing [West Virginia Code § 61-5-17(a)] and Conspiracy [West Virginia Code § 61-10-31].

### V.

#### STANDARD OF REVIEW

The standard of review for a criminal case sufficiency of evidence challenge has been summarized by this Court as follows:

The function of an appellate court when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, is sufficient to convince a reasonable person of the defendant's guilt beyond a reasonable doubt. Thus, the

relevant inquiry is whether, after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proved beyond a reasonable doubt. Syllabus Point 1, State v. Guthrie, 94 W.Va. 657, 461 S.E.2d 163 (1995); Syllabus Point 1, State v. LaRock, 196 W.Va. 294, 470 S.E. 2d 613 (1996).

Moreover, the trial evidence must be analyzed in a light most favorable to the prosecution when determining a criminal case sufficiency of evidence challenge:

When a criminal defendant undertakes a sufficiency challenge, all the evidence, direct and circumstantial, must be viewed from the prosecutor's coign of vantage, and the viewer must accept all reasonable inferences from it that are consistent with the verdict. This rule requires the trial court judge to resolve all evidentiary conflicts and credibility questions in the prosecution's favor; moreover, as among competing inferences of which two or more are plausible, the judge must choose the inference that best fits the prosecution's theory of guilt. Syllabus Point 2, State v. LaRock, 196 W.Va. 294, 470 S.E. 2d 613 (1996).

## VI.

### ARGUMENT

The State of West Virginia presented legally sufficient evidence of every essential element of Obstructing [West Virginia Code § 61-5-17(a)] and Conspiracy [West Virginia Code § 61-10-31] such that a reasonable and rational jury could be convinced beyond a reasonable doubt of Appellants' guilt.

### OBSTRUCTING

West Virginia Code § 61-5-17(a) provides in pertinent part that the crime of obstructing occurs when:

Any person who by acts or otherwise, illegally hinders or obstructs, or attempts to hinder or obstruct, any law enforcement officer acting in his or her official capacity.

It is not disputed that First Sergeant Nelson, Trooper First Class Perdue and First

Lieutenant Akers were acting in an official capacity during the Carla Collins murder investigation. The State of West Virginia presented evidence of multiple acts by Appellants of deceiving and intimidating witnesses by making blatantly false and defamatory accusations against First Sergeant Nelson, Trooper First Class Perdue and First Lieutenant Akers. Appellants admitted to many of the acts of witness deception and intimidation. Most egregious was the Appellants' concealment of stolen evidence, some of which was never turned over to the United States Attorney's Office. First Sergeant Nelson, Trooper First Class Perdue and First Lieutenant Akers testified that the Appellants' deception and witness intimidation hindered the murder investigation by causing witnesses distrust and uncooperativeness, as well as numerous unnecessary delays. Therefore, it is incontrovertible that Appellants' acts obstructed the investigation.

Appellants erroneously argue that the hindering act must be per se illegal. In other words, Appellants contend that a person can legally obstruct a police officer acting in an official capacity as long as the hindering act is not a crime. This is a misinterpretation of the obstructing statute. The Appellants' hindering acts were illegal because those acts were intended to obstruct and did in fact obstruct police officers acting in an official capacity. Whether the hindering acts standing alone were illegal is essentially irrelevant. Nevertheless, Appellants' unlawfully intimidated witnesses, entered another person's residence with criminal intent and concealed evidence.

Appellants also erroneously argue that direct action by the perpetrator against a police officer is required to constitute the crime of obstructing. There is simply no "direct action" language or "presence requirement" in the statute. Even so, Appellants

engaged in direct acts of obstruction by deceiving and intimidating witnesses, convincing a witness to abscond to Charleston and hiding a witness from federal and state authorities.

Appellants have attempted to apply the in City of Houston and Wilmoth holdings to this case. However, the facts of this case are quite distinguishable from the facts in the City of Houston and Wilmoth cases. Appellants' did not merely question, oppose or challenge a police officer's authority or cause police officers trivial inconvenience. On the contrary, Appellants directly deceived and intimidated material witnesses in a vitally important murder investigation by making blatantly false and defamatory accusations against police officers, which undeniably caused witness fear, required police officers to leave investigative tasks to restore witness trust and caused unnecessary delays.

#### FREEDOM OF SPEECH

It is well understood that the freedom of speech is not absolute. The content and context of speech are relevant factors in free speech determinations. Freedom of speech must be balanced against compelling public concerns. The United States Supreme Court recognized the foregoing principals when it held:

It is well understood that the right of free speech is not absolute at all times and under all circumstances. There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which has never been thought to raise any Constitutional problem. These include the libelous and the insulting or 'fighting' words-those which by their very utterance inflict injury. Chaplinsky v. New Hampshire, 315 U.S. 568, 62 S.Ct. 766, 86 L.Ed.1031 (1942).

The United States Supreme Court further expounded as follows:

Resort to epithets and personal abuse is not in any proper sense communication of information or opinion safeguarded by the Constitution, and its punishment as a criminal act would raise no

question. Chaplinsky v. New Hampshire, 315 U.S. 568, 62 S.Ct. 766, 86 L.Ed. 1031 (1942); Cantwell v. Connecticut, 310 U.S. 296, 60 S.Ct. 900, 84 L.Ed. 1213 (1940).

This Court has not established free speech protection in obstructing cases when insulting or fighting words and opprobrious language are used. See State v. Davis 199 W.Va. 84, 483 S.E.2d 84 (1996).

Appellants' blatantly false and defamatory accusations against First Sergeant Nelson, Trooper First Class Perdue and First Lieutenant Akers are summarized as follows:

1. Sergeant Nelson, Trooper First Class Perdue and First Lieutenant Akers will kill Boseman if Boseman does not give Appellant Carney information;
2. First Sergeant Nelson and Trooper First Class Perdue had sex with Collins and are involved in the cover up of Collins's murder [Tr. 15, 17 – September 8, 2006].
3. The U.S. Attorney involved in the Carla Collins murder investigation is crooked [T. 16, 18 – September 8, 2006].
4. Appellant Carney and Clifford are in danger [Tr. 19 – September 8, 2006].
5. Blankenship is in danger [Tr. 82 – September 8, 2006].
6. Blankenship's very survival depends on Appellant Carney and Clifford [Tr. 192, 193 – September 8, 2006].
7. First Sergeant Nelson had sex with and impregnated Collins.
8. First Sergeant Nelson is involved in the cover up of Collins' murder.

The foregoing accusations were opprobrious, insulting and injurious as contemplated by Chaplinsky and Davis and therefore not protected speech. Appellants

admitted to having no personal knowledge to support the accusations, yet deviously attempted with criminal design to destroy the reputations of First Sergeant Nelson, Trooper First Class Perdue and First Lieutenant Akers simply to gain leverage against politicians. It should be emphasized that these officers have distinguished service records and were commended for their outstanding police work in the Carla Collins murder investigation. In fact, Trooper First Class Perdue was nominated as West Virginia State Police Trooper of the Year.

Justice Oliver Wendell Holmes argued that "The question in every case is whether the words used are used in such circumstances and are of such nature as to create a clear and present danger that will bring about the evils that [government] has a right to prevent." See Schenck v. United States, 249 U.S. 47, 39 S.Ct. 247, 63 L.Ed. 470 (1919). There was unquestionably a legitimate and compelling public interest in determining who brutally murdered a cooperating federal witness. Appellants' blatantly false and defamatory accusations were made during the context of a vitally important murder investigation and created a clear and present danger to the government's efforts in identifying and apprehending dangerous murderer[s]. Therefore, Appellants' accusations are not protected speech and do not merit consideration under the First and Fourteenth Amendments of the United States Constitution or Article III, Section 7 of the West Virginia Constitution.

#### CONSPIRACY

West Virginia Code § 61-10-31 provides in pertinent part that the crime of conspiracy occurs when:

Two or more persons conspire to commit any offense against the State if one or more such persons does any act to effect

the object of the conspiracy.

This Court has held that the agreement requirement can be shown by a tacit understanding to accomplish an unlawful act and the overt act requirement can be proven by evidence of the substantive crime which is the object of the conspiracy. State v. Rogers, 215 W.Va. 499, 600 S.E.2d 211 (2004). Appellants' agreement to obstruct First Sergeant Nelson, Trooper First Class Perdue and First Lieutenant Akers is evidenced by the Appellants' complicity in utilizing similar witness deception and intimidation tactics, as well as Appellants' collaboration in concealing stolen evidence from the Friend home invasion and convincing Blankenship to abscond to Charleston.

## VII.

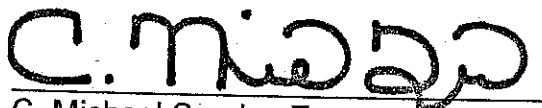
### CONCLUSION

Each of the Appellants had a motive to obstruct First Sergeant Nelson, Trooper First Class Perdue and First Lieutenant Akers in the Carla Collins murder investigation. Appellant Carney has become a pseudo-celebrity in the Charleston area as a frequent guest of a local tabloid radio show that appears to focus on sensationalism and scandalous innuendo. Appellant Carney appears to thrive on the controversy created by her tabloid radio show appearances and West Virginia Wants to Know shenanigans. It is clear that Appellant Carney irresponsibly attempted to expand Appellant Carney's provocative footprint into Mingo County at the expense of the criminal justice system and highly respected police officers. Appellant Jarvis appears to have also thrived on controversy and attempted to utilize scandalous innuendo to prevent the prosecution of her nephew and first cousin.

Appellants' blatantly false and defamatory accusations against First Sergeant Nelson, Trooper First Class Perdue and First Lieutenant Akers were not inconsequential media frivolities, but rather were malicious and injurious. More importantly, Appellants' knowing dissemination of false information deceived and intimidated witnesses during a vitally important murder investigation. Appellants also tampered with witnesses, concealed stolen evidence and never turned over missing evidence to the police. There is no Sixth Amendment implication because Appellants primarily endeavored to manufacture corruption and leverage against politicians and police officers rather than find exculpatory evidence for Appellant Carney's clients.

Appellants' similar complicit acts indicate conspiracy and undeniably obstructed police officers in the Carla Collins murder investigation. Justice required that Appellants be prosecuted and convicted for Appellants' criminal activity. Justice was attained by the Appellants' jury conviction. Accordingly, the State of West Virginia respectfully moves this Honorable Court to affirm Appellants' jury convictions in the Circuit Court of Mingo County, West Virginia.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing  
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