[Cite as *State v. Ballough*, 2002-Ohio-1006.]

COURT OF APPEALS
ASHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

	:	**JUDGES:**
STATE OF OHIO	:	**Hon. William B. Hoffman, P.J.**
	:	**Hon. Sheila G. Farmer, J.**
Plaintiff-Appellee	:	**Hon. John F. Boggins, J.**
	:	
-vs-	:	**Case No. 01-COA-01415**
	:	
JASON W. BALLOUGH	:	**O P I N I O N**
	:	
Defendant-Appellant	:	

CHARACTER OF PROCEEDING:	**Appeal from the Ashland County, Municipal Court, Case No. 01-CR-B-00041**
JUDGMENT:	**Affirmed**
DATE OF JUDGMENT ENTRY:	**02-22-2002**

APPEARANCES:

For Plaintiff-Appellee	**For Defendant-Appellant**
W. DAVID MONTAGUE **1213 E. Main St.** **Ashland, Ohio 44805**	**PHILLIP S. NAUMOFF** **19 West Main Street, Suite 5** **Ashland, Ohio 44805**

[Cite as *State v. Ballough*, 2002-Ohio-1006.]
Boggins, J.

{¶1} This is an appeal from the Ashland County Municipal Court.

STATEMENT OF THE FACTS AND CASE

{¶2} The facts in this case are that Officer Glass of the Ashland County police department pulled into a Wendy's drive-in restaurant on Claremont Ave. at 12:45 a.m. on January 8, 2001.

{¶3} At this time he observed appellant standing in the rear parking lot of the restaurant looking north in the direction of residences which face Broad Ave. and a GTE Building which contained company vehicles. Subsequent information indicated appellant lived on Broad Ave.

{¶4} Officer Glass deemed the conduct of appellant standing at such location, which was a parking area used by employees of Wendy's, and staring to be suspicious.

{¶5} He then approached appellant and inquired as to his purpose.

{¶6} Appellant stated that he was looking at a church steeple.

{¶7} The Officer asked appellant for his identity and address.

{¶8} Appellant refused to provide such information and began to leave.

{¶9} Appellant was then arrested for obstructing official business in violation of R.C. §2921.31(A).

{¶10} After presentation of evidence at a motion hearing and subsequently after trial to a jury, appellant moved for dismissal.

{¶11} The trial court denied such motions and appellant was found guilty.

ASSIGNMENTS OF ERROR

{¶12} The sole Assignment of Error is:

I.

{¶13} THE TRIAL COURT ERRED, WHEN IT FAILED TO SUSTAIN DEFENDANT-APPELLANT'S MOTION FOR DISMISSAL, AT BOTH THE MOTION HEARING AND AT TRIAL, WHEN THE EVIDENCE PRESENTED INDICATED THAT THE DEFENDANT-APPELLANT'S ACTIONS AND INACTIONS WERE NOT SUFFICIENT TO CONSTITUTE THE ELEMENTS OF THE CRIME OF OBSTRUCTING OFFICIAL BUSINESS, OHIO REVISED CODE §2921.31(A).

{¶14} Appellant argues that there was not sufficient evidence presented at trial to constitute the crime of obstructing official business. We disagree.

{¶15} Revised Code §2921.31(a) sets forth the elements of the crime of obstructing official business:

{¶16} 2921.31 OBSTRUCTING OFFICIAL BUSINESS.

{¶17} No person, without privilege to do so and with purpose to prevent, obstruct, or delay the performance by a public official of any authorized act within the public official's official capacity, shall do any act that hampers or impedes a public official in the performance of the public official's lawful duties.

{¶18} Motions for acquittal are governed by Crim. R. 29 which states in pertinent part:

{¶19} Motion for judgment of acquittal. The court on motion of a defendant or on its own motion, after the evidence on either side is closed, shall order the entry of a judgment of acquittal of one or more offenses charged in the indictment, information, or complaint, if the evidence is insufficient to sustain a conviction of such offense or offenses.

{¶20} In *State v. Bridgeman* (1978), 55 Ohio St.2d 261, the Supreme Court held: Pursuant to Criminal Rule

29(A), a court shall not order an entry of judgment of acquittal if the evidence is such that reasonable minds can reach different conclusions as to whether each material element of a crime has been proved beyond a reasonable doubt.

{¶21} This case is somewhat similar to *State v. Hill*, (Feb. 6, 1992) Ashland App. No. CA-993, unreported, which also arose in the Ashland Municipal Court, wherein this Court considered the refusal to provide a social security number to a State Highway Patrolman who had stopped that appellant for speeding.

{¶22} This Court in affirming, distinguished *City of Columbus v. Fisher* (1978), 53 Ohio St.2d 25, which has been cited by appellant herein as authority for its Assignment of Error.

{¶23} *City of Columbus v. Fisher* was specifically overruled by the Ohio Supreme Court in *State v. Lazzaro* (1996), 76 Ohio St.3d 261.

{¶24} While the facts of *Lazzaro* are significantly different from those in the case *sub judice* in that in *Lazzaro* false information was provided to an officer during an investigation, the Court cited *Columbus v. New* (1982), 1 Ohio St.3d 221 as to the proposition that "complete and honest cooperation with the law enforcement process by all citizens is essential to the effective operation of the justice system".

{¶25} Here, the articulated facts in testimony by the officer indicated a concern as to suspicious conduct.

{¶26} He was well within his official duties to make inquiry. The minimal, non-intrusive inquiry as to identification was in furtherance of his duties to investigate.

{¶27} In *Terry v. Ohio* (1968), 392 U.S. 1 and its progeny, courts have accepted the general theory that a casual encounter between the police and the public does

not violate the Fourth Amendment. Consequently, an officer can ask for identification.

{¶28} We therefore disagree with the Assignment of Error and affirm the decision of the trial court.

By: Boggins, J. and

Farmer, J. concur.

Hoffman, P.J. dissents.

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JUDGES

JFB/jb 0211

Hoffman, P.J., dissenting

I respectfully dissent from the majority opinion.

Concededly, appellant's conduct was suspicious and justified the officer's inquiry. The circumstances warranted a consensual encounter and request for identification information. However, I do not find appellant's refusal to provide his identity or address, under these circumstances, provided a reasonable, articulable suspicion of criminal activity sufficient to change the nature of the initial consensual encounter into an investigatory detention, let alone a full custodial arrest.[1]

When appellant refused to provide the requested information and began to leave, he was arrested for obstructing official business. Because there was insufficient grounds to detain appellant, his refusal to provide identification information does not constitute obstruction of official business. The same conclusion was reached by the appellate court in *State v. Collins* where the court

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[1]The majority notes this case is somewhat similar to *State v. Hill* (Feb. 6, 1992), Ashland App. No. CA-993, unreported. I find the fact the defendant in *Hill* had been legally detained a significant factual difference from that presented herein. Because of that factual distinction, I believe it is unnecessary to overrule *Hill* in this case, but state I believe *Hill* was wrongly decided. The fact the defendant in *Hill* was exercising his privilege to drive does not bear on or diminish his privilege to remain silent.

wrote, "we agree with the appellant that his mere refusal to disclose his name to a police officer will not support a conviction for obstructing official business."[2] Remaining silent in response to police interrogation may rise to the level of constitutional privilege.[3]

While the Ohio Supreme Court has held making an unsworn false oral statement to a public official with the purpose to mislead, tamper or impede the investigation of a crime is punishable conduct within the meaning of R.C. 2921.31(A), as noted the majority, this case is significantly different. In the case *sub judice*, no crime had been committed and appellant did not make a false statement with the purpose to mislead, hinder, or impede the investigation of the "uncommitted" crime. Because the encounter was consensual at the time the officer requested the identification information, I find appellant was not "without privilege" to refuse to answer; therefore, conclude the evidence was insufficient to sustain his conviction.

JUDGE WILLIAM B. HOFFMAN

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[2] ***State v. Collins*** **(1993), 88 Ohio App.3d 291, 294, affirmed on other grounds.**

[3] ***Malloy v. Hogan*** **(1964), 378 U.S. 1.**

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IN THE COURT OF APPEALS FOR ASHLAND COUNTY, OHIO

FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
	:	**JUDGMENT ENTRY**
Plaintiff-Appellee	:	
	:	**CASE NO.01-COA-01415**
-vs-	:	
	:	
JASON W. BALLOUGH		
Defendant-Appellant		

For the reasons stated in our Memorandum-Opinion, the judgment of the Municipal Court of Ashland County, Ohio, is affirmed. Costs to Appellant.

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JUDGES