

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

STATE OF OHIO,)	
)	CASE NO. 03 MA 4
PLAINTIFF-APPELLEE,)	
)	
- VS -)	OPINION
)	
RECO LANEY, aka ANTWAN LEWIS,)	
)	
DEFENDANT-APPELLANT.)	

CHARACTER OF PROCEEDINGS: Criminal Appeal from Youngstown
Municipal Court, Case
No.02CR3013B.

JUDGMENT: Affirmed.

APPEARANCES:

For Plaintiff-Appellee:	Attorney Dionne M. Almasy City Prosecuting Attorney Youngstown Municipal Court 26 S. Phelps Street Youngstown, OH 44503
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For Defendant-Appellant:	Attorney William Bagnola 6804 Kildeer Drive Canfield, OH 44406
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JUDGES:
Hon. Mary DeGenaro
Hon. Gene Donofrio
Hon. Joseph J. Vukovich

DeGenaro, J.

Dated: February 6, 2004

[Cite as *State v. Laney*, 2004-Ohio-570.]

{¶1} This timely appeal comes for consideration upon the record in the trial court and the parties' briefs. Defendant-Appellant, Reco Laney aka Antwan Lewis, appeals the decision of the Youngstown Municipal Court, Mahoning County, Ohio, which found him guilty of obstructing official business in violation of R.C. 2921.31(A), a misdemeanor of the second degree. Laney's appellate counsel has filed a no-merit brief and seeks to withdraw as counsel. Laney has failed to assign any errors pro se. Because we conclude that Laney's appeal is wholly frivolous, we grant counsel's motion to withdraw and affirm the trial court's decision.

Facts

{¶2} On September 21, 2002, Youngstown Police Department Officers Carlos Rivera and Barbara Copeland were working a side job for the Youngstown Metropolitan Housing Authority. The YMHA had a policy against loitering and criminal trespassing. The officers' job was to patrol the YMHA's properties, discourage loitering, and determine whether people were criminally trespassing on the property.

{¶3} Between 1:00 and 1:30 a.m., Officers Rivera and Copeland turned a corner and saw three males standing in front of YMHA property. Officer Rivera testified that he has previously arrested people for drug trafficking in approximately the same location. The officers observed that the men were just standing in place for between ten and twenty seconds, so the officers approached the men to investigate their presence. As the officers approached, the men began to walk away, but stopped when the officers asked them to do so.

{¶4} The officers then asked for identification. Two of the men produced identification and after a warrant check the officers let them go. The third male did not have identification, but told them his name was Antwan Lewis and gave them a social security number. The officers checked the information and found no existing warrants for an Antwan Lewis. But the officers learned the social security number was registered to a female living in Columbus, Ohio. The officers again asked the male for his social security number. He gave them a different number, but it also was registered to a female living in Columbus, Ohio.

{¶5} The officers asked the male where he was staying and he responded that

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he was staying with his brother and indicated in the direction of the YMHA property. Officer Copeland went to where the male indicated and spoke with some girls who were there. One girl responded that they knew his name was Reco, that he was from Columbus, and that he was staying with her boyfriend. Another woman came by and said that the male was her nephew's friend from Columbus and came up with her nephew.

{¶6} The officers asked the male a third time for his social security number. This time he gave a number which was registered to a Reco Laney and the male fit that person's general description. But the male never acknowledged that his name was Reco Laney. There were no warrants pending for Laney's arrest. Regardless, the officers arrested Laney and charged him with criminal trespassing and obstructing official business.

{¶7} Laney pled not guilty to the offenses, his bond was set and the matter proceeded to a bench trial. At the conclusion of that trial, Laney was found not guilty of criminal trespassing, but was found guilty of obstructing official business. The trial court sentenced Laney to 90 days incarceration and a \$100 fine. The trial court gave Laney credit for 21 days served and suspended the remaining 69 days of his sentence. It also placed Laney on one year of non-reporting probation.

Toney Analysis

{¶8} Laney's attorney has not cited any errors on appeal and Laney failed to file a pro se brief assigning any errors to the proceedings in the trial court.

{¶9} In *State v. Toney* (1970), 23 Ohio App.2d 203, this court set forth the procedure to be used when counsel of record determines an indigent's appeal is frivolous:

{¶10} "3. Where a court-appointed counsel, with long and extensive experience in criminal practice, concludes that the indigent's appeal is frivolous and that there is no assignment of error which could be arguably supported on appeal, he should so advise the appointing court by brief and request that he be permitted to withdraw as counsel of record.

{¶11} "4. Court-appointed counsel's conclusions and motion to withdraw as counsel of record should be transmitted forthwith to the indigent, and the indigent should be granted time to raise any points that he chooses, pro se.

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{¶12} "5. It is the duty of the Court of Appeals to fully examine the proceedings in the trial court, the brief of appointed counsel, the arguments pro se of the indigent, and then determine whether or not the appeal is wholly frivolous.

{¶13} "6. Where the Court of Appeals makes such an examination and concludes that the appeal is wholly frivolous, the motion of an indigent appellant for the appointment of new counsel for the purpose of appeal should be denied.

{¶14} "7. Where the Court of Appeals determines that an indigent's appeal is wholly frivolous, the motion of court-appointed counsel to withdraw as counsel of record should be allowed, and the judgment of the trial court should be affirmed." *Id.* at the syllabus.

{¶15} In this case, it appears Laney's appeal is frivolous. There is no violation of his speedy trial rights. He was arrested on September 21, 2002 and tried on October 9, 2002. The record contains no pretrial motions which could be subject to appellate review. Likewise, Laney's sentence is within the prescribed limits.

{¶16} Laney's appellate counsel points to one issue which may contain a cogent legal argument and it appears it is the only issue which merits any substantive discussion. Laney was convicted for a violation of R.C. 2921.31(A), obstructing official business. That section provides as follows:

{¶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." *Id.*

{¶18} Laney's trial counsel argued that Laney was not engaged in a criminal act at the time he lied to the officers about his identity and that Laney did not interfere with a valid arrest. Accordingly, he argued that Laney could not be convicted of obstructing official business.

{¶19} The Ohio Supreme Court recently addressed a similar issue in *State v. Lazzaro* (1996), 76 Ohio St.3d 261. In *Lazzaro*, the defendant was the administrator of a nursing home. Two of her nurse's aides were assisting a resident at the toilet when one of them got in to an argument with a resident, punched him in the face, and broke his

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nose. The defendant questioned each nurse's aide about the incident. The first one said that the other nurse's aide intentionally struck the resident and gave a written statement describing the assault. The other nurse's aide said he struck the resident accidentally when he put his arm up to defend himself and gave a written statement describing his version of the events.

{¶20} The defendant contacted the local police department so they could investigate the assault. The defendant told the responding officer that one of her employees struck a resident, but that the employee described it as an accident. She also told the officer that there were no witnesses. At no time during the initial investigation did the defendant ever inform the officer of the other witness's statement.

{¶21} Four days later, after learning of the severity of the resident's injuries, the defendant once again contacted the police and told them that new information about the incident had come to light which indicated that the assault was intentional. Two days later, when the officer came to investigate, she told him about the other witness's statement. The defendant was subsequently convicted of obstructing official business for lying to the police during their investigation of the assault.

{¶22} On appeal, the Ohio Supreme Court held that making an unsworn false oral statement to a public official with the purpose to mislead, hamper or impede the investigation of a crime is punishable conduct within the meaning of 2921.31(A). *Id.* at syllabus. "The General Assembly has adopted legislation intended to discourage individuals from purposely giving false information that hinders public officials in the performance of their duties. Complete and honest cooperation with the law enforcement process by all citizens is essential to the effective operation of the justice system." *Id.* at 266.

{¶23} In this case, Laney cannot seriously challenge the fact that he made an unsworn false oral statement to the police officers. When they asked him his name, he responded with a false name. When asked for his social security number, Laney twice gave false numbers which corresponded with females living in Columbus, Ohio. Only after someone else said his name was Reco did Laney provide his social security number.

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{¶24} The potential argument that Laney's appellate counsel points to is that Laney cannot be guilty of violating R.C. 2921.31(A) since he did not mislead, hamper, or impede the investigation of a crime. But it seems clear that this argument is also meritless. Laney was clearly trying to mislead the officers and hamper their investigation of whether he was criminally trespassing on YMHA property. The fact that he was found not guilty of criminal trespassing seems to be irrelevant. The officers could not have known whether or not Laney was guilty when they first began their investigation. Accordingly, this is a meritless issue.

{¶25} Because a review of the record does not disclose any appealable issues, Laney's attorney is correct and this appeal is frivolous. Therefore, Attorney Bagnola's motion to withdraw is granted and the judgment of the trial court is affirmed.

Judgment affirmed.

Donofrio and Vukovich, JJ., concur.