

IN THE SUPREME COURT OF APPEALS
OF WEST VIRGINIA
CHARLESTON

No. 33905

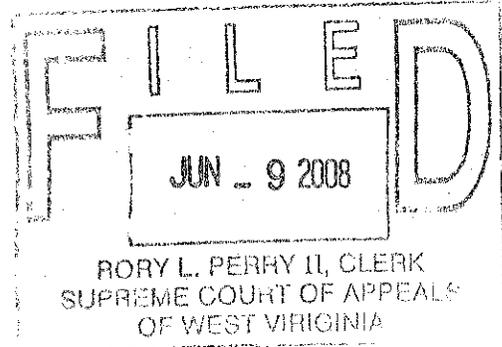
LEA ANNE HAWKINS,

Petitioner Below/Appellant,

v.

ANTHONY J. JULIAN, JUDGE,
MUNICIPAL COURT OF THE CITY OF FAIRMONT,

Respondents Below/Appellees.



AND

No. 33906

GRETCHEN MEZZANOTTE,

Petitioner Below/Appellant,

v.

ANTHONY J. JULIAN, JUDGE,
MUNICIPAL COURT OF THE CITY OF FAIRMONT,

Respondents Below/Appellees.

REBUTTAL BRIEF OF APPELLANTS

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The Appellees refuse to concede that an automobile's receipt of a parking ticket is not a crime and has not been classified by the City of Fairmont as "unlawful." The Appellees refuse to address this point. The Appellee's skirt this issue and would rather

rely on hyperbole and a circuitous argument that arrives no where in regard to this issue. The Appellees even state that the City of Fairmont's "Ordinance itself does not have to state that a violation of the [parking meter code] is a crime," which allegation is clearly not in accordance with criminal procedure of any state or the United States.

The Municipal Court of the City of Fairmont had absolutely no jurisdiction over the Appellants. The Appellants may have owned the automobiles which received the parking tickets, but there was and never will be any evidence to suggest that the Appellants engaged in illegal or criminal behavior which would have subjected them to prosecution in the Municipal Court. That is the very reason that the parking tickets were issued to the automobiles, not the owners of the vehicles. That is the very reason why owners of cars cannot be subjected to prosecution for illegally parked cars. That is the very reason why the State and/or the City of Fairmont cannot criminalize the acquiring of parking tickets. The parked automobile that has acquired a parking ticket which is left unpaid is then subjected to towing or immobilization. That is precisely how the City of Fairmont and every other municipality may enforce parking meter ordinances and payment of the fixed penalties associated with the receipt of parking tickets.

Furthermore, and importantly, just because it is printed on the face of the parking ticket that if the parking ticket is not paid within a certain amount of time, an enforcement warrant may be issued, that does not make the so-called "enforcement warrant" constitutionally valid. There is no authority in the State Code for such a remedy. There is no authority in the City's own Code for such a remedy. If a valid remedy existed, it would have to be authorized at least by ordinance, and must pass constitutional muster. A person cannot be arrested for acquiring a parking ticket and not paying it without the

behavior being criminalized and the penalty for the criminal behavior being set out in the City Code. It is well-known in the subject matter of criminal law and procedure that if a behavior is codified as criminal conduct, that a person must be fairly advised of same and the penalty must be set forth.

The Appellees would have this Court believe that each numbered parking ticket was a case before the Municipal Court and therefore the Appellants must have been well aware that failure to pay would subject them to criminal prosecution. This allegation is a misrepresentation to this Honorable Court. The Municipal Court of the City of Fairmont numbers its cases according to criminal citations written by police officers. A meter maid is not authorized by law to write a criminal citation which would be the charging instrument in municipal court. The City of Fairmont does not and has not ever prosecuted cases for parking tickets, and the case numbers are not the parking ticket numbers, up until Appellees alleged this in their reply brief.

The scheduled arraignment hearings were for the breach of the parking ticket amnesty agreements, and this was no "shorthand" for the Appellants' unpaid parking tickets. Police officers filled out the arraignment hearing notices and they did not know any other wording to place in the blanks. Criminal arraignment hearings cannot be held for people who breach parking ticket amnesty agreements. Criminal arraignment hearings cannot be held for people who do not pay their parking tickets. Criminal proceedings cannot be conducted for people who do not pay their parking tickets. Having unpaid parking tickets is not a criminal offense which would subject any person to being taken into custody. If the automobile which received the unpaid parking tickets is found on a city street, however, it could be subjected to being taken into custody,

which would therefore force the owner to pay the unpaid parking tickets in their entirety. That is the simple solution.

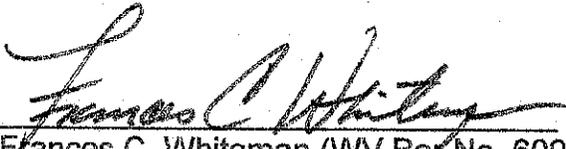
It is further interesting to consider what would have happened to the Appellants had they not been able to post bond after being arrested. To draw this to a logical conclusion and the conclusion as with all other defendants, if they could not post bond, they are taken to the regional jail until someone posts bond for them. This circumstance would have been not only outrageous but completely unconstitutional. A government cannot jail a person for a non-jailable offense. Likewise, a government cannot lawfully arrest a person for a non-criminal activity and subject them to further criminal proceedings.

The Appellees contend that the Appellants were served with notice of the criminal cases against them with each parking ticket that their automobiles acquired, and that each Appellant would have been well aware of the specific charges against them. These statements could not be further from the truth because the City of Fairmont, up until 2007, did not ever arrest any people and subject them to criminal proceedings for breach of amnesty agreements or even unpaid parking tickets. This scheme was not utilized to collect unpaid parking tickets until the parking ticket amnesty agreements were being breached. No one had ever been arrested and subjected to criminal proceedings just because they had unpaid parking tickets. The arresting of unwitting, uninformed citizens was a completely new ideology that was dreamed up just before their arrests, and thus the Appellants had no idea that an arrest and criminal proceedings were in their future. The City of Fairmont Municipal Court had never heard these "cases" and no unpaid parking ticket cases or breached amnesty agreement

cases were ever filed. No "case" to this date, has been filed against the Appellants. They should not be subjected to criminal proceedings.

WHEREFORE, the foregoing reasons and reasons set forth in Appellants' brief, your Appellants pray that this Court will reverse the Order of the Circuit Court of Marion County with instructions to institute an injunction and writ of prohibition against the Municipal Court of the City of Fairmont and Judge Anthony J. Julian.

LEA ANNE HAWKINS and
GRETCHEN MEZZANOTTE,
Appellants by Counsel



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Counsel for Appellants

Rule 4A(c) Certificate of Appellants' Counsel

I, Frances C. Whiteman, pursuant to Rule 4A(c) of the West Virginia Rules of Appellate Procedure, do hereby certify that the facts alleged in this Brief of Appellants are faithfully represented and that they are accurately presented to the best of my ability.



Frances C. Whiteman

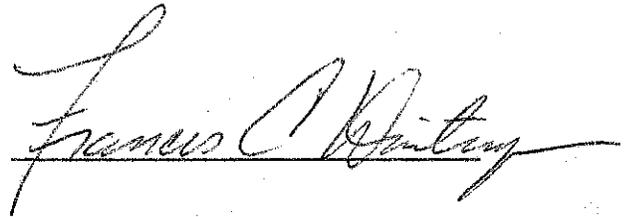
CERTIFICATE OF SERVICE

I, Frances C. Whiteman, do hereby certify that I served the foregoing

REBUTTAL BRIEF OF APPELLANTS

this 6th day of June, 2008, by first class mail, postage prepaid, to the following:

Boyd Warner, Esquire
Waters Warner & Harris
P.O. Box 1716
Clarksburg, WV 26302

A handwritten signature in cursive script, reading "Frances C. Whiteman", written over a horizontal line.