

IN RE L.E.C.

W. Va. 627

Cite as, W.Va., 301 S.E.2d 627

W.Va., 272 S.E.2d 304 (1980).² Syllabus Point 4 thereof states the applicable law:

An automobile may be stopped for some legitimate state interest. Once the vehicle is lawfully stopped for a legitimate state interest, probable cause may arise to believe the vehicle is carrying weapons, contraband or evidence of the commission of a crime, and, at this point, if exigent circumstances are present, a warrantless search may be made.

There is no question that Shingleton's automobile was legitimately stopped for speeding. The question here is whether there were probable cause and exigent circumstances justifying a warrantless search.

[2] The record clearly shows that the facts within the knowledge of the Ohio trooper were sufficient to warrant a prudent man in believing the automobile contained evidence of the commission of a crime. There was thus probable cause for the search. See, e.g., *State v. Duvernoy*, 156 W.Va. 573, 195 S.E.2d 631 (1973); *State v. Plantz*, 155 W.Va. 24, 180 S.E.2d 614 (1971).

Shingleton's responses to his questioning about the coins was sufficient to elevate the officer's prior suspicions to the level of probable cause. Shingleton became nervous when questioned about the coins, and his responses were both conflicting and evasive. It is particularly significant that the trooper knew Shingleton's assertion about empty rolls of coins was false. Courts generally recognize that responses to police questions are often an ingredient in a probable cause decision. E.g., *State v. Valenzuela*, 121 Ariz. 274, 539 P.2d 1306 (1979) (In banc) (obviously false answer that a pocket was empty despite a bulge, combined with other circumstances, established probable cause); *Taylor v. Commonwealth*, 22 Va. 816, 284 S.E.2d 333 (1981), cert. denied, 456 U.S. 906, 102 S.Ct. 1753, 72 L.Ed.2d 163 (1982) (denial of an obvious fact that a truck was loaded, coupled with numerous

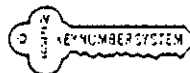
other facts, established probable cause); 1 W. LaFave, *Search and Seizure*, § 3.6(f) (1973).

There were also sufficient exigent circumstances present to justify the warrantless search. The trooper who conducted the search believed that it would take two to three hours to obtain a search warrant; we accept that as fact. The trooper also testified that he believed Shingleton might post bond within a short time and be on his way. Furthermore, Shingleton could have easily authorized his passenger, Damron, to use the car. The mobility of the vehicle, given the time necessary to secure a warrant, provided the necessary exigent circumstances justifying the warrantless search.

The State carried its burden of showing that this search came within an exception to the warrant requirement, and the trial court did not err in refusing to suppress the evidence seized from the vehicle.

The judgment is, therefore, affirmed.

Affirmed.



In re L.E.C.

No. 15638.

Supreme Court of West Virginia.

March 25, 1983.

Attorney who had been privately reprimanded by the Committee on Legal Ethics sought review. The Supreme Court of Appeals, Harshbarger, J., held that: (1) attorney had sufficient personal and professional interest to be permitted to appeal; (2) attorney who is appointed to represent indi-

2. For other cases involving searches and seizures of automobiles, consult *State v. Flint*, W.Va., 301 S.E.2d 765 (1983); *State v. Win-*

ston, W.Va., 295 S.E.2d 46 (1982); *State v. Boswell*, W.Va., 294 S.E.2d 297 (1982); *State v. Totten*, W.Va., 289 S.E.2d 491 (1982).

gent defendant after initially being retained to represent the defendant may retain amounts paid to him for work done prior to his appointment and still obtain compensation pursuant to statute; and (3) failure of attorney in such a situation to disclose the fact of the prior payment warrants private reprimand.

Affirmed.

1. Attorney and Client ⇌ 48, 54

Committee on Legal Ethics, created by the bylaws of West Virginia State Bar, has broad jurisdiction to conduct legal ethics investigation and is authorized to hold hearings and to make findings and recommendations.

2. Attorney and Client ⇌ 58

When Committee on Legal Ethics recommends public reprimand or suspension or annulment of an accused attorney's license to practice law, it must sue in the Supreme Court of Appeals to impose such sanctions.

3. Attorney and Client ⇌ 57

Absent a mistake of law or arbitrary assessment of facts, recommendations of the Committee on Legal Ethics are to be given substantial consideration.

4. Attorney and Client ⇌ 48

If Committee on Legal Ethics decides that case merits only a private reprimand, it administers any sanction without court involvement.

5. Attorney and Client ⇌ 57

Attorney who is privately reprimanded by the Committee on Legal Ethics has a sufficiently weighty personal and professional interest to appeal to the Supreme Court of Appeals to challenge the reprimand; no attorney should be held to have violated the professional and ethical standards of his profession and have no opportunity for review of the correctness of that decision.

6. Attorney and Client ⇌ 57

Rule permitting review of private reprimand to the Committee on Legal Ethics is adopted by the Supreme Court of Appeals

under its inherent power to supervise, regulate, and control practice of law and its authority to proscribe procedures for disciplinary attorneys. Code, 51-1-4a(c).

7. Attorney and Client ⇌ 132

When lawyer has been appointed to represent an indigent criminal defendant, he may not solicit or contract for an additional fee for his professional services with the indigent criminal or any person; compensation provided by statute for an attorney's actual and necessary services and expenses represents the exclusive source of compensation. Code, 29-21-14.

8. Attorney and Client ⇌ 132

If lawyer has been paid from a private source for services rendered or expenses incurred representing an indigent criminal defendant who he later is appointed to represent, he must disclose that fact to the trial court when he submits a defense counsel voucher seeking payment from public funds. Code, 29-21-14, 62-3-1.

9. Attorney and Client ⇌ 132

Attorney who is initially retained to represent a criminal defendant but later is appointed to represent that defendant when he is found to be indigent is not limited exclusively to the compensation provided by statute if he can demonstrate that he has received compensation for work or expenses incurred before his appointment, in which case he can retain those funds and be compensated for his later work. Code, 29-21-14.

10. Attorney and Client ⇌ 58

Failure to disclose, seeking compensation for representation of indigent defendant, receipt of \$500 which he received when he was retained to represent the defendant prior to his appointment to represent the defendant warrants private reprimand.

Syllabus by the Court

1. An attorney who is privately reprimanded by the Committee on Legal Ethics of the West Virginia State Bar has a personal and professional interest justifying a petition to this Court for an appeal challenging his reprimand.

2. An attorney who has been appointed to represent an indigent criminal defendant may not solicit or contract for an additional fee for his professional services with the indigent criminal defendant or any other person. The pay provided by statute, W.Va.Code, 29-21-14 [1981], for his actual and necessary services and expenses, is his exclusive compensation.

3. If an attorney receives any compensation from a private source for services rendered or expenses incurred representing an indigent criminal defendant who he has been appointed to represent pursuant to W.Va.Code, 62-3-1, he shall disclose this fact to the trial court. The disclosure must be made at the time he submits a Defense Counsel Voucher seeking compensation from public funds as provided for by W.Va. Code, 29-21-14.

4. An attorney who is initially retained but later appointed to represent an indigent criminal defendant, is not limited exclusively to the compensation provided by statute, W.Va.Code, 29-21-14, if he can demonstrate to the trial court that he has received compensation for professional services performed or expenses incurred before his appointment. He can retain those funds and be compensated per W.Va.Code, 29-21-14, as if he had not been previously retained.

Michael T. Clifford, Charleston, for complainant.

Robert H. Davis, Jr., W.Va.State Bar, Charleston, for defendant.

HARSHBARGER, Justice:

This is an appeal by a lawyer who was privately reprimanded by the Committee on Legal Ethics of the West Virginia State Bar. Can he challenge a private reprimand in this Court?

1. The disciplinary process in this and other states is administered by a disciplinary agency as an adjunct to the court. The rules and regulations by which the disciplinary system is administered vary from state to state. Though

[1-3] The Committee on Legal Ethics, created by the By-Laws of the West Virginia State Bar, has broad jurisdiction to conduct legal ethics investigations and is authorized to hold hearings and to make findings and recommendations. Article VI, § 4, By-Laws of the West Virginia State Bar. When the Committee recommends public reprimand, or suspension or annulment of an accused attorney's license to practice law it must sue in this Court to impose such sanctions. Article VI, § 18, By-Laws of the West Virginia State Bar. Absent a mistake of law or arbitrary assessment of facts, the Committee's recommendations are to be given substantial consideration. *In Re Brown*, W.Va., 273 S.E.2d 567 (1980).

[4] As the final arbiter of legal ethics problems, *State ex rel. Sowa v. Somerville*, W.Va., 280 S.E.2d 85 (1981), we must make the ultimate decision about public reprimands, suspensions or annulments of attorneys' licenses to practice law. However, if the Committee decides that the case merits only a private reprimand, it administers that sanction without our involvement. Article VI, § 17(c), By-Laws of the West Virginia State Bar.

The bar by-laws are silent about whether an attorney may petition us to review the Committee's decision to reprimand him.

[5] An attorney who is privately reprimanded by the Committee on Legal Ethics has a sufficiently weighty personal and professional interest to appeal to us to challenge the reprimand. No attorney should be held to have violated the professional and ethical standards of his profession and have no opportunity for review of the correctness of that decision.

A private reprimand is not insignificant. A lawyer's good record is important to him. See, e.g., *The Committee on Legal Ethics of the West Virginia State Bar v. Pence*, W.Va., 216 S.E.2d 236 (1975).¹

no comprehensive survey has been undertaken, we note that other states permit the agency to administer private reprimands but allow for an appeal to the state's highest court. See, e.g., *The Florida Bar v. W.H.P.*, 384 So.2d 28 (Fla.

[6] We adopt this rule permitting review of private reprimands under our inherent power to supervise, regulate and control the practice of law, *see, e.g., State ex rel. Partain v. Oakley*, W.Va., 227 S.E.2d 314 (1976); *W.Va. State Bar v. Earley*, 144 W.Va. 504, 109 S.E.2d 420 (1959), and our authority to prescribe procedures for disciplining, suspending, and disbaring attorneys-at-law. *W.Va. Code*, 51-1-4a(c).

This proceeding was formally commenced on December 29, 1980, when respondent was charged with violations of the Code of Professional Responsibility and directed to appear before the Committee to answer those charges. There was a formal hearing, requested by the respondent, before a subcommittee of the Committee on Legal Ethics. On June 13, 1982, a majority of the Committee determined there was merit in the charges and issued a private reprimand. In response to respondent's suggestion, the Committee issued Ethics Opinion No. 79-36 on June 24, 1982, to inform the West Virginia State Bar of the Committee's opinion. Respondent then petitioned this Court for an appeal.

The undisputed facts are that in the early morning hours of January 6, 1979, an individual who we will refer to as "B", while driving an automobile, ran over another person. B was arrested, taken to a magistrate, and charged with driving a motor vehicle without a valid operator's license and driving under the influence of alcohol. While further charges were being considered by the magistrate, the victim died and B was then charged with murder. B telephoned his mother and told her about the charges against him.

A short time later, B's mother telephoned respondent and discussed retaining him and his partner to represent B. A \$5,000 fee was agreed upon to be paid by B's grandfather in \$500 installments, and respondent

immediately employed an investigator to help prepare the defense.

When the first installment was not paid and it became clear that there would be no payments, B filed a pauper's affidavit and respondent and his partner were appointed to represent B on January 25, 1979.² On April 5, 1979, a jury found B guilty of first degree murder.

On the day of sentencing, B's mother delivered a \$500 check to the respondent. The funds for this payment were obtained with respondent's assistance when a \$1,000 cash bond previously posted on the misdemeanor charges was released. The check, drawn on B's grandfather's account, was made payable to cash and was deposited in respondent's law office account.

Thereafter, respondent submitted a verified Defense Counsel Voucher for services rendered and expenses incurred and received \$1,500.00. *W.Va. Code*, 29-21-14. The voucher was submitted by mail to the trial court without indication that the lawyer already received \$500 for his work on the case. The voucher form does not provide for such disclosure.

The Committee concluded that respondent had a duty to disclose to the trial court any money he had received from B's family, and further that the "statutory fee paid to him constituted his exclusive compensation and he had no right to receive additional compensation from B or his family without disclosing that fact to the Court which appointed him." The Committee also stated that an attorney owes a duty of "utmost frankness" to the trial court and reprimanded him for failing to inform the court about the money.

The respondent's contention throughout has been that the money he got from B's family was for services rendered on the misdemeanor and murder charges, before his appointment. The Committee apparent-

1980), 32 West's F.S.A. Integration Rules of the Florida Bar, Art. 11, Rule 11.11; Miss. Code Ann. § 73-3-319(b) (Cum.Supp.1982); 22 S.C. Code Ann., Rules on Disciplinary Procedure § 1-4(B)(1) (Cum.Supp.1982).

2. Although the Committee's opinion states that respondent and his partner were appointed on January 17, 1979, the record reveals the appointment was made on January 25, 1979. The date of the appointment is not in dispute in this Court.

ly resolved this issue against him, finding that "it appears from the evidence that no action was taken on the misdemeanor charges by the magistrate and that the charges were ultimately dismissed. Nor does the evidence indicate the extent of any services rendered by the respondent or his partner during the period of January 6, the date of B's arrest, and January 17, the date of their appointment to defend him on the felony charge." Respondent contends that he had no duty to make a disclosure to the trial court and that to discipline him for nondisclosure is an *ex post facto* application of law.

There is scarcely any law on this subject and the decisions that do exist are divided, contain somewhat divergent analyses, and relate to singular fact patterns. Annot. 43 A.L.R.3rd 1426 (1972).

The earliest case, *Commonwealth v. Wormsley*, 294 Pa. 495, 144 A. 423 (1923), involved two attorneys who sought to withdraw an appeal in a murder case because the indigent's relatives had not paid their fees and expenses as promised. The court ruled that the lawyers had a duty to appeal to protect their client and had to accept as their exclusive compensation the amount provided by statute. Historically, of course, attorneys, as court officers, were expected upon request by the court, to represent indigent criminal defendants without any compensation.

The Supreme Court of New Mexico in *Hale v. Brewster*, 81 N.M. 342, 467 P.2d 3 (1970), concluded that an attorney appointed to represent an indigent defendant must accept as his sole compensation the payment provided by statute. After being appointed, this lawyer took a promissory note from the accused and his mother and after being paid a statutory fee, sued on the note. The court, ruling against him, emphasized that lawyers are obliged to accept criminal appointments and that the statutory fees should be their exclusive compensation. Relying on traditional contract principles, the court held that the note would not be valid, if it was for services rendered in the criminal case, because the client would not

have received anything of value that he was not entitled to receive without payment of any amount.

Relying on these two cases, one legal encyclopedia states:

"In general, since an attorney is an officer of the court, he may be required to defend an accused person and accept such compensation, within the limits of the statute or rule, as the court may allow, and ordinarily the amount allowed by the court must represent the exclusive compensation of the attorney, and he has no right to contract with other persons for fees." (Emphasis supplied.) (Footnote references omitted.) 7A C.J.S. Attorney & Client § 301 (1980).

The only case reaching a contrary result, *Oliver v. Mitchell*, 14 Utah 2d 9, 376 P.2d 390 (1962), upheld a contract requiring the client to pay for future legal services. The court rejected the argument that there was no consideration for the contract. Utah did not have a statute providing compensation for attorneys appointed to represent indigent criminal defendants.

[7] When a lawyer has been appointed to represent an indigent criminal defendant, he may not solicit or contract for an additional fee for his professional services with the indigent criminal defendant or any other person: the compensation provided by statute, W.Va.Code, 29-21-14 [1981], for an attorney's actual and necessary services and expenses, represents the exclusive source of compensation.

[8] If, however, a lawyer has been paid from a private source for services rendered or expenses incurred representing an indigent criminal defendant who he later is appointed to represent pursuant to W.Va. Code, 62-3-1, he shall disclose this fact to the trial court. This disclosure must be made when he submits a Defense Counsel Voucher seeking payment from public funds as provided for by W.Va.Code, 29-21-14.

[9] An attorney who is initially retained but later appointed to represent an indigent criminal defendant is not limited exclusive-

ly to the compensation provided by statute, W.Va.Code, 29-21-14, if he can demonstrate that he has received compensation for work or expenses incurred before his appointment. He can retain those funds and be compensated for his later work per W.Va.Code, 29-21-14, as if he had not been previously retained.

Whether the \$500 payment in this case was for services rendered and expenses incurred before the appointment is not clear. We need not decide that question, however, because the Committee's private reprimand is based entirely on respondent's non-disclosure of any payment.

[10] We agree with the Committee's imposition of a private reprimand for failure to disclose the payment. It is conceded that respondent was familiar with the rule that an attorney may not solicit or contract for

an additional fee after having been appointed in a criminal case. The evidence clearly warrants a finding that respondent not only knew he should have disclosed the \$500.00 payment but also that he sought to avoid its discovery by demanding, albeit unsuccessfully, that the payment be made to him in cash rather than by check.

For the foregoing reasons, we affirm the Committee's imposition of a private reprimand.

Affirmed.



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Gregory, J.,
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