

STATE OF OKLAHOMA,

Case No. CM-2019-1

V.

Defendant.

BEAVER COUNTY OKLAHOMA

FILED

FEB 01 2019

TAMMIE PATZKOWSKY
COURT CLERK

BY DE DEPUTY

COMES NOW Patrick Braden Roth, *pro se* in this matter and Demurrers to the Information filed in this matter on January 2, 2019.

This demur is made pursuant to Title 22, O.S. § 504. Said statute provides:

The defendant may demur to the indictment or information when it appears upon the face thereof either:

1. That the grand jury by which an indictment was found had no legal authority to inquire into the offense charged, by reason of its not being within the legal jurisdiction of the county.
2. That it does not substantially conform to the requirements of this chapter.
3. That more than one offense is charged in the indictment or information.
4. **That the facts stated do not constitute a public offense.**
5. **That the indictment or information contains any matter which, if true, would constitute a legal justification or excuse of the offense charged, or other legal bar to the prosecution.**

(Emphasis added to Title 22 O.S. § 504 (4) and (5)).

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In support of the motion Defendant shows the court the following per the information:

Information

On January 2, 2019 the state of Oklahoma filed an information against Mr. Roth alleging a violation of Title 21 O.S. § 540 and stating in relevant part the following:

Count 1: **OBSTRUCTING OFFICER- a MISDEMEANOR**, on or about the 14th Day of December, 2018, by obstructing one Beaver County Sheriff's Deputy, Christopher McMinn, in the performance of said officer's official duty by willfully and intentionally delaying or obstructing the attempted discharge of Deputy McMinn's official duties by **intentionally and repeatedly refusing to identify himself during the course of Deputy McMinn's investigation into suspicious activity** at the Northern Natural Gas Plant in Beaver County Oklahoma. (Emphasis added).

ARGUMENT

Roth was not requested to identify himself in the course of a valid Terry stop. Rather McMinn assumes that his demand for identification converts his investigative stop into a Terry stop.

In drafting this Information, the state has failed to recognize that the Supreme Court of the United States has already addressed the issue of failure to identify under similar circumstances in relating this to the 4th Amendment:

Gonzalez v. Huerta, 826 F.3d 854, 858 (5th Cir. 2016) (citing *Brown*, 443 U.S. at 52 (“[E]ven assuming that purpose is served to some degree by stopping and demanding identification from an individual without any specific basis for believing he is involved in criminal activity, the guarantees of the Fourth Amendment do not allow it.”); *Hiibel v. Sixth Judicial Dist. Court of Nev., Humboldt Cty.*, 542 U.S. 177, 188 (2004));

Hiibel v. Sixth Judicial Dist. Court, 542 U.S. 177, 187-88, 124 S. Ct. 2451, 2459 (2004). “The principles of *Terry* permit a State to require a suspect to disclose his name in the course of a *Terry* stop. The reasonableness [*188] of a seizure under the Fourth Amendment is determined “by balancing its intrusion on the

individual's Fourth Amendment interests against its promotion of legitimate government interests." *Delaware v. Prouse*, 440 U.S. 648, 654, 59 L. Ed. 2d 660, 99 S. Ct. 1391 (1979). The Nevada [****21] statute satisfies that standard. The request for identity has an immediate relation to the purpose, rationale, and practical demands of a *Terry* stop. The threat of criminal sanction helps ensure that the request for identity does not become a legal nullity. On the other hand, the Nevada statute does not alter the nature of the stop itself: it does not change its duration, *Place, supra*, at 709, 77 L. Ed. 2d 110, 103 S. Ct. 2637, or its location, *Dunaway, supra*, at 212, 60 L. Ed. 824, 99 S. Ct. 2248. HN12 A state law requiring a suspect to disclose his name in the course of a valid *Terry* stop is consistent with Fourth Amendment prohibitions against unreasonable searches and seizures."

In the 10th Circuit regarding the requirement to provide identifying information the requirements are further in compliance with *Hiibel*:

United States v. Christian, 190 F. App'x 720, 723 n.2 (10th Cir. 2006). "Mr. Christian's First Amendment rights are not implicated here. It was not Mr. Christian's language that furnished the probable cause for his arrest-rather, it was his refusal to obey the officer's request to leave the immediate area until they concluded their business. That in and of itself furnished sufficient probable cause for the arrest. We also reject Mr. Christian's argument that his refusal to provide identification cannot form the basis for an arrest, *see Hiibel v. Sixth Judicial District Court of Nevada*, 542 U.S. 177, 188-90, 124 S. Ct. 2451, 159 L. Ed. 2d 292 (2004), but again, we note that his refusal to leave the immediate area was sufficient for probable cause."

Additionally, the 5th Amendment provides protections to Roth in such an instance as this from answering any questions or providing any information to McMinn. It is not necessary that one states that they "plead the 5th". It is simply enough to know that there is no requirement for a person to respond in any way to any questioning by a public official and that their refusal to do so neither implies nor defers to any admission nor can it create an obstruction. This protected activity cannot be treated as a foundation for a criminal charge.

Miranda v. Arizona 384 US 436 (1966). "Where rights are secured by the constitution are involved, there can be no rule making or legislation which would abrogate them."

Simmons v. United States, 390 U.S. 377 (1968) "The claim and exercise of a Constitutional right cannot be converted into a crime"... "a denial of them would be a denial of due process of law".

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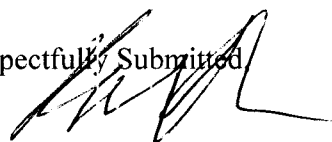
CONCLUSION

Deputy McMinn's investigation was initiated by the dispatch call in which it was reported that someone was taking photos of the gas plant; activity which is constitutionally protected relating to the 1st Amendment. The Information presents that McMinn was investigating "suspicious activity at the Northern Natural Gas Plant..." McMinn's stop of Roth did not comply with nor conform with the requirements of a Terry stop and therefore, was not a Terry stop. McMinn's investigation concluded when the Defendant was arrested by McMinn for refusing to produce identification or identify himself to McMinn; activity clearly established as being protected by the 4th and 5th Amendments.

It is patently obvious that the state has demonstrated no statement of an offense on the face of the information and therefore said information does not constitute any public offense.

WHEREFORE, in light of the aforementioned, defendant Roth prays that this matter be dismissed with prejudice by this honorable court *sua sponte*.

Respectfully Submitted,




Patrick Roth
P.O. Box 33
Buffalo, OK 73834
508-290-4343

CERTIFICATE OF HAND DELIVERY

I hear by certify that a true and correct copy of the foregoing Demurrer to Information relating to case # CM-2019-1 was hand delivered on January 31, 2019 to the office of the following:

Abby Cash
Beaver County District Attorney's Office
111 2nd Street
Beaver, OK 74103


Patrick Braden Roth