

PRESS RELEASE

I have been asked by a staff writer for the Lynchburg News & Advance whether criminal charges will be placed against either or both of the two Lynchburg Police officers involved in the October 1, 2007 incident at Randolph College. Since I was out of town when this occurred, I have read the news accounts of the incident and contacted the Deputy Chief Parks Snead for detailed information on the facts of the incident. The facts do not appear to be in controversy.

FACTS

On Monday, October 1, 2007, Randolph College contacted the Lynchburg Police Department and requested that the Department provide security during the removal of four paintings from the Maier Museum on campus. This request came at approximately 4:30 p.m., two hours prior to the timeline set by Randolph College for the removal of the artwork. Due to the value of the artwork (estimated to be significantly more than 30 million dollars), administrators requested the items be moved as discreetly as possible. However, due to the very short notice provided by the school to the police department, there was no security plan in place between the two agencies.

The removal of the artwork was also very controversial; with many alumnae and students opposed to the proposed sale. Additionally, the past year has been a tumultuous year for Randolph College, as the board of trustees decided for economic reasons to transform the school from an all-women's college (Randolph-Macon Women's College) to a co-educational institution (Randolph College). In spite of that tumult, all protests to this point have been peaceful.

Two officers of the Lynchburg Police Department responded to Maier Museum to provide the requested security. The Maier Museum is located on the edge of the campus, at the dead end of Quinlan Street, bordered by woods and the school's soccer field. The officers closed access to the road leading to the museum as a truck was backed into the museum's side parking lot. During the removal of the artwork, the officers observed several people in the immediate area of the museum, which was not anticipated as the museum is closed on Mondays. Probably due to the controversy of the possible sale of the art, these people repeatedly asked the officers why they were at the museum.

In an effort to quickly clear the area as requested by the school administration, one of the two officers (neither officer is on the LPD command staff) made a spur-of-

the-moment decision and told the people in the area that there had been a bomb threat. No bomb threat had in fact been called into the school or to police communications. The museum was not evacuated and the building and grounds were not searched for any explosive devices. The officer who made up the story of the bomb threat did not consult with or contact any senior LPD staff. However, the area outside the museum was promptly evacuated and the artwork was removed from the museum. The ruse used by the officers was not orchestrated by Randolph College.

LAW

Virginia Code Section 18.2-83 states:

“Any person (a) who makes and communicates to another by any means any threat to bomb, burn, destroy or in any manner damage any place of assembly, building or other structure, or any means of transportation, or (b) who communicates to another, by any means, information, knowing the same to be false, as to the existence of any peril of bombing, burning, destruction or damage to any such place of assembly, building or other structure, or any means of transportation, shall be guilty of a Class 5 felony.”

A Class 5 felony is punishable by 1 to 10 years in the penitentiary, or up to 12 months in jail, or up to a fine of \$2500.00, or a combination of a jail sentence and fine.

The language of this code section was reviewed by the Court of Appeals of Virginia in the case of Perkins v. Commonwealth, 12 Va. App. 7, 402 S.E.2d 229 (1991). In upholding the constitutionality of this code section the Court held that “Code § 18.2-83 can be read as requiring a criminal *mens rea*.” *Id.* at 15. *Mens rea* is a legal term that basically means a criminal intent.

The Court went on to hold that “Only an individual who *maliciously* ‘makes and communicates . . . any threat’ prohibited by the statute will be punished.” *Id.* (emphasis added). Thus, while the statute does not specifically state that the actor must act out of malice, the Court has read this statute as requiring malice as an element of the offense.

“Malice” is defined legally as:

“that state of mind which results in the intentional doing of a wrongful act to another without legal excuse or justification, at a time when the mind of the actor is under the control of reason. Malice may result from any unlawful or unjustifiable motive including anger, hatred or revenge. Malice may be inferred from any deliberate willful and cruel act against another, however sudden.”

Criminal Model Jury Instruction 21:22.

APPLYING THE FACTS TO THE LAW

I see nothing in the facts of this case that suggests that the officer in question acted out of malice or with any criminal intent. The officer’s intent was to see that the four paintings were safely conveyed from the Maier Museum to the transporting vehicle. His intent was not to cause panic or fear; we can only speculate what the result might have been had there been a bigger crowd at the museum that evening.

CONCLUSION

For the foregoing reasons, I will not be seeking state criminal charges against the officer involved in this incident. In reaching this conclusion, I in no way condone what the officer did. The Lynchburg Police Department has appropriately dealt with this officer administratively.

Additionally, the Lynchburg Police Department has publicly acknowledged that the officer made a mistake in telling bystanders there was a bomb threat. Chief Bennett has succinctly described the situation as “this is one person attempting to do the right thing but he didn’t think about the consequences.”

While violating the criminal laws of the Commonwealth of Virginia can certainly be categorized as the making of a mistake, the mere making of a mistake does not always result in a violation of those same criminal laws.