STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

ORIGINAL

Appeal from Charleston County

Honorable Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

HERBIE VAL SINGLETON, JR.

APPELLANT

APPELLATE CASE NO 2016-002079

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FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The trial judge erred in refusing to direct a verdict of acquittal for obstruction of justice where the State presented no direct or substantial evidence that Appellant's actions in any way obstructed the administration of justice.

STATEMENT OF THE CASE

On January 5, 2016, the Charleston County Grand Jury indicted Appellant Herbie Singleton for attempted murder and obstruction of justice. R. 417-418.

On September 19-23, 2016, Appellant proceeded to trial before the Honorable Benjamin H. Culbertson and a jury. Laree A. Hensley and James W. Smiley represented Appellant. Assistant Solicitors David L. Osborne and Alexandria J. Ginsburg represented the State.

The jury found Appellant not guilty of attempted murder, but guilty of obstruction of justice. R. p. 396, l. 12 – 397, l. 13. The trial court sentenced Appellant under the Youthful Offender Act to a sentence not to exceed six years imprisonment. R. p. 414, l. 5 – 415, l. 18.

ARGUMENT

The trial court erred in refusing to direct a verdict of acquittal for obstruction of justice where the State presented no direct or substantial evidence that Appellant's actions in any way obstructed the administration of justice.

Relevant Facts

The essential facts of Appellant's case are not in dispute. Sometime in September, 2014, Dontaviha Patterson came into possession of several stolen electronics, including a laptop, a XBOX, and a Play Station. R. p. 225, l. 1 – 231, l. 3. Patterson claimed that a man named "Bubba" gave him the electronics. *Id.*

Patterson sold the XBOX and Play Station. He gave the proceeds of these sales to "Bubba." In exchange for his help "Bubba" gave Patterson the laptop. *Id.* At some point between October and December, 2014, Patterson and his then-friend, Lamont Gregg, decided to pawn the laptop. R. p. 230, l. 2 – 234, l. 32.

Patterson was too young to legally pawn the laptop so Gregg signed the pawn receipt. Patterson and Gregg split the hundred dollars they received for the laptop. Shortly after pawning the laptop, Gregg was shot in an unrelated incident. While Gregg was recovering in the hospital, he was arrested by law enforcement for pawning the stolen laptop. R. p. 206, l. 20 – 209, l. 3; R. p. 230, l. 2 – 232, l. 12.

After being released on bond, Gregg demanded that Patterson hand over his portion of the money they earned from pawning the laptop. *Id.* Patterson refused. Patterson's refusal ignited a long running argument between Gregg and Patterson. R. p. 232, l. 17 – 242, l. 23.

In the weeks leading up to the December 18, 2014 shooting, Gregg and Patterson repeatedly threatened each other. Patterson attempted to secure a handgun to protect himself

from Gregg. Gregg also blocked Patterson from communicating with him via Facebook messenger. R. p. 251, l. 4 – 258, l. 18.

After he blocked Gregg, Patterson began receiving threats in Facebook messenger from Appellant's account. *Id.* Appellant was friends with both Gregg and Patterson. These threats surprised Patterson as believed that Appellant had tried to mediate between him and Gregg. *Id.*

On the morning of the shooting, Appellant sent Patterson a Facebook message explaining that the threats Patterson received from Appellant's account had come from Gregg. *Id.* Patterson accepted this explanation. Appellant and Patterson reaffirmed their friendship and assured one another that Patterson's dispute with Gregg would not impact their friendship. *Id.*

On the afternoon of the shooting, Elijah Green and Kevin Corley asked Appellant to give them a ride to an area park where they could play basketball. R. p. 265, l. 15 – 268, l. 19. Appellant was one of Corley and Green's few friends with his own car. R. p. 268, l. 5 – 275, l. 22. As such, even law enforcement agreed at trial that it was not uncommon for Appellant to give his friends rides in exchange for gas money. *Id.*; R. p. 288, ll. 7-23.

As Appellant, Green, and Corley drove towards the park, they passed Gregg standing on the side of the road. Gregg flagged them down and asked for a ride to Patterson's house. R. p. 273, l. 5 – 276, l. 9; R. p. 293, l. 23 – 300, l. 25. Appellant agreed to give Gregg a ride and Gregg got into the rear driver's side passenger seat. *Id.*

At around 4:50 p.m. they parked in front of Patterson's house. R. p. 100, ll. 2-20. Gregg asked Appellant to drive around a parked vehicle that was blocking his view of Patterson's carport. R. p. 293, l. 23 – 300, l. 25.

As Appellant pulled forward, Gregg leaned out of the still moving car's open window and fired several shots towards Patterson's house with a revolver he had concealed in his

clothing. R. p. 281, l. 13 – 283, l. 17. Corley, who testified for the State pursuant to a proffer agreement, stated at trial that he, Appellant, and Green were all shocked by Gregg's actions. Tr. p. 301, l. 5 – 306, l. 22.

At the time of the shooting, Patterson was sitting in his carport with his girlfriend. R. p. 234, l. 10 – 235, l. 6. Patterson was shot once in the buttocks. R. p. 242, l. 7 – 243, l. 15; R. p. 190, l. 1 – 194, l. 9. His girlfriend was not hit. Patterson could not see who shot him, but he recognized Appellant's car as it drove away. R. p. 242, l. 7 – 243, l. 15.

Corley stated that did know Gregg was carrying a weapon until Gregg opened fire. R. p. 293, l. 23 – 300, l. 25. Corley believed that Appellant was just as surprised as he was that Gregg shot Patterson and that Appellant stopped the car immediately after Gregg opened fire. R. p. 282, l. 4 – 283, l. 8.

Appellant apparently recovered from his shock and drove the group a short distance. When the car stopped at a nearby intersection, Patterson jumped out unexpectedly without explanation. Appellant then drove back to Green and Corley's house. Corley recalled that "there wasn't no conversation" after the shooting. R. p. 284, l. 2 – 285, l. 8

Appellant Interrogated by Police

The police first suspected Appellant based on Patterson telling them that he saw Appellant's car drive past in the immediate aftermath of the shooting. R. p. 100, ll. 2-20. Patterson also told police about he and Gregg's argument and identified Gregg as the only person that he could think of that would want to hurt him. R. p. 252, l. 5 – 257, l. 6.

Appellant was taken into custody and brought to the police station for interrogation. Appellant's interrogation began less than two hours after the shooting at around 6:00 p.m. R. p. 29, l. 18 – 31, l. 21. The interrogation lasted approximately five hours. R. p. 39, ll. 3-22.

Appellant initially denied any involvement and claimed that his girlfriend had borrowed his car for the day. R. p. 324, l. 9 – 325, l. 14. The police made it clear to Appellant that they did not believe him; with an investigator telling Appellant that "he might be in jail for Christmas" if he did not tell police what he knew about the shooting. R. p. 40, l. 4 – 41, l. 24.

After several hours of interrogation, Appellant admitted that he was present at the shooting. Appellant told law enforcement that he drove Green, Corley and, another friend, Antonio Barrett, to Patterson's house. R. p. 215, l. 21 – 218, l. 20. He did not mention Gregg. Appellant identified Barrett as the shooter. *Id.*

Despite Appellant having admittedly lied to police throughout the course of the interrogation, the police decided to arrest Barrett based solely on Appellant's statement. R. p. 216, l. 5 – 220, l. 21. When they arrested Barrett, police had yet to speak to Gregg despite Patterson identifying Gregg as the only man who would want to kill him. R. p. 252, l. 5 – 257, l. 6.

When taken into custody and interrogated, Barrett denied any involvement in the shooting and told police that he was babysitting a younger relative when the shooting occurred. R. p. 214, l. 22 – 221, l. 9. Barrett and his family provided police with the names and contact information of people who could verify his alibi. *Id.*

Police made no effort to interview any of Barrett's alibi witnesses. R. p. 219, l. 5 – 221, l. 8; R. p. 351, l. 1 – 362, l. 13. Based on Appellant's statements alone, Barrett was charged with attempted murder and remained in pre-trial detention until February, 2015. *Id.*

Other Relevant Facts

Police also arrested Green and Corley. Corley told police that Barrett was not involved in the shooting and that Gregg was the shooter. *Id.* Gregg eventually pled guilty to attempted murder. *Id.*

Patterson testified at trial and again at Appellant's sentencing that he did not believe Appellant knew Gregg was going to try to kill him when Appellant drove Gregg to his house. R. p. 230, l. 2 – 242, l. 4; R. p. 412, ll. 6-16.

Pre-Trial Motion to Quash Indictment for Obstruction of Justice

Defense counsel moved pre-trial to quash Appellant's indictment for obstruction of justice. Counsel argued that the State was attempting to circumvent the prohibition on charging a principal with misprision of a felony. R. p. 54, l. 17 – 58, l. 25.

Counsel correctly stated that South Carolina retained common obstruction of justice despite the codification of several specific acts that would have constituted obstruction of justice. *Id.* Looking to the elements of obstruction of justice under the common law, defense counsel posited:

> It's common sense that obstruction of justice should not be applied to a principal in a case in this kind of situation where the allegation is not threatening jurors, not threatening a policeman, but lying, because [it's] truly – misprision where he's trying to [end around] the misprision [of a felony] by calling it obstruction of justice.

R. p. 58, ll. 1-6.

Citing to *State v. Cogdell*, 273 S.C. 563, 257 S.E.2d 748 (1979) counsel advanced that for obstruction of justice to lie:

> There must be an intentional failure to perform a duty which would constitute a And I would argue that that duty is when someone takes an oath to administer justice, whether it is a lawyer, whether it's a judge, whether it's a magistrate, whether -- it is

> someone who is a part of the administration of justice, a public official, whether appointed or elected. It, it -- I would argue the constitution does not provide that there is a duty on the ordinary citizen to come forward when they are charged with a crime and give a truthful statement.

Id. at ll. 17-25. Defense counsel observed that every reported obstruction of justice case in South Carolina involved a lawyer, public official, or person who had "a duty towards the administration of justice. . . rather than an ordinary citizen sitting in front of a police officer at the station." R. p. 59, l. 20 – 61, l. 3.

The State countered that since police arrested Barrett based on information Appellant supplied them that he knew was false, Appellant had obstructed justice. R. p. 61, ll. 21-24. "It is germane because that's justice. That's what -- that's why it's so broadly written. [Barrett] spent three weeks in jail. I indicted him for attempted murder based solely off of [Appellant's] statement and nothing else. *Id.*

In arguing for its broad interpretation of obstruction of justice, the State cited to *State v. Needs*, 333 S.C. 134, 508 S.E.2d 857 (1998), for the proposition that a person can be charged with obstruction of justice solely based on lying to the police. R. p. 62, ll. 1-10. The trial court refused to quash Appellant's indictment for obstruction of justice. R. p. 66, ll. 14-16.

Motion for a Directed Verdict on Indictment for Obstruction of Justice

At the close of the State's case, the defense motioned for a directed verdict of acquittal on the obstruction of justice charge. R. p. 363, l. 14 – 366, l. 3. Defense counsel incorporated by reference his previous arguments during the pre-trial motion to quash. R. p. 364, ll. 16-17.

Counsel reiterated that the State failed to produce any evidence that Appellant's statements to law enforcement "prevented, obstructed, impeded, or hindered the administration of justice." R. p. 364, ll. 16-25. Counsel stressed that the investigators admitted that Appellant's

false information had not ended or delayed their investigation. R. p. 365, l. 2 – 366, l. 3. The trial court denied Appellant's motion for a directed verdict. R. p. 367, ll. 21-23.

Discussion

The determinative issue on appeal is defining what constitutes, the "administration of justice" as used in the common law offense of obstruction of justice. The State argued at trial that the "administration of justice" encompassed any investigative acts by law enforcement. R. p. 61, l. 6 – 63, l. 8. Therefore, any deliberate act by any party that in any fashion "prevents, obstructs, impedes, or hinders" law enforcement's investigation into a crime constitutes obstruction of justice. *Id.*

The defense proffered that "administration of justice" pertains only to the essential functions of the judicial branch. R. p. 54, l. 17 – 66, l. 16. It does not encompass lying to an executive branch agency in the absence of a pending court proceeding or some other duty towards the judicial system. R. p. 363, l. 14 – 368, l. 23.

The State's preferred definition of "administration of justice" is manifestly too broad. As will be discussed *infra*, it is contrary to the existing South Carolina case law on obstruction justice.

It is also incompatible with our existing case law interpreting the scope of "the administration of justice" in other contexts; such as contempt proceedings and attorney disciplinary actions. Finally, the State's definition conflicts with relevant case law from other jurisdictions that similarly define the crime of obstruction of justice in terms of acts that hinder, obstruct, or subvert "the administration of justice."

Therefore, since the State failed to produce any evidence that Appellant's lies to law enforcement obstructed the "administration of justice," this Court should issue a directed verdict of acquittal with respect to Appellant's conviction for obstruction of justice.

Directed Verdict of Acquittal

The State is required to prove every element of a charged offense to obtain a conviction. *State v. Attardo,* 263 S.C. 546, 211 S.E.2d 868 (1975); *State v. Barksdale,* 311 S.C. 210, 428 S.E.2d 498 (Ct.App.1993). Accordingly, the accused is entitled to a directed verdict when the State fails to present evidence to support every element of the charged offense. *See State v. Brown*, 360 S.C. 581, 586, 602 S.E.2d 392, 395 (2004).

When considering a motion for directed verdict of acquittal, "the trial court is concerned with the existence or non-existence of evidence, not its weight." *Brown*, 360 S.C. at 586, 602 S.E.2d at 395. The defendant is entitled to a directed verdict when the State has failed to produce any direct or substantial circumstantial evidence that the defendant committed a particular crime. *State v. Odems*, 395 S.C. 582, 720 S.E.2d 48 (2011) (*emphasis added*).

In reviewing the denial of a motion for directed verdict, the appellate court must view the evidence in the light most favorable to the State. *State v. Kelsey,* 331 S.C. 50, 502 S.E.2d 63 (1998). **However, where the facts of the case, even if proved, do not constitute the alleged criminal conduct, a directed verdict must be granted.** *See State v. Lee,* 294 S.C. 461, 365 S.E.2d 734 (1988) (*emphasis added*); *see also State v. Cain*, 419 S.C. 24, 795 S.E.2d 846 (2017) (theoretical yield testimony forced jury to speculate as to whether Cain could have actually produced the requisite quantity of methamphetamine necessary to be guilty of trafficking).

This Court's opinion in *State v. Jackson*, aptly illustrates when the State's failure to present any evidence on an element of the charged offense mandates a directed verdict of

acquittal on appeal. 338 S.C. 565, 569, 527 S.E.2d 367, 369-370 (Ct. App. 2000). Jackson was convicted of breach of trust with fraudulent arising out of his purchase of a new car. Breach of trust with fraudulent intent is a common law crime defined as "larceny after trust." *State v. Owings,* 205 S.C. 314, 316, 31 S.E.2d 906, 907 (1944).

Jackson traded in his car to a dealership with the value of his car going towards the purchase of a new car. *Jackson*, 338 S.C. at 567-568, 527 S.E.2d at 368-369. His car had a $7,000 lien that the dealership agreed to pay off as part of the sales contract. *Id.* After the sale, the dealership mistakenly sent the check paying off the lien to Jackson instead of the lien holder. Jackson cashed the check, spent the money, refused to reimburse the dealership, and was arrested. *Id.*

In granting Jackson a directed verdict of acquittal on appeal, this Court held that the State did not prove the existence of a trust, defined as "an arrangement whereby property is transferred with intention that it be administered by trustee for another's benefit." *Id.* at 570, 527 S.E.2d at 370 *quoting* Black's Law Dictionary 1047 (6th ed.1991).

The State failure to prove an essential element of the crime charged, the existence of a trust, was fatal to the prosecution's case. This Court correctly reversed and remanded Jackson's case for the entry of a judgment of acquittal. *Id.* at 571-572, 527 S.E.2d at 371.

In Appellant's case, to overcome the defense's motion for a directed verdict of acquittal on the obstruction of justice charge, the State needed to present "any direct or substantial circumstantial evidence" that Appellant committed an "act which prevents, obstructs, impedes, or hinders the administration of justice." *Cogdell*, 373 S.C. at 567, 257 S.E.2d at 750-751. As will be discussed *infra*, the State could not and did not produce any evidence tending to prove that Appellant's actions in any manner impacted the "administration of justice."

Obstruction of Justice in South Carolina

In South Carolina obstruction of justice is defined as "any act which prevents, obstructs, impedes, or hinders the administration of justice." *Cogdell*, 373 S.C. at 567, 257 S.E.2d at 750-751 (quoting 67 C.J.S. Obstructing Justice §§ 2 and 3). Unfortunately, South Carolina has no statutory or precise common law definition what "the administration of justice" entails.

Despite the codification of several specific crimes under the title "Interference with Judicial Process," obstruction of justice remains a common law offense. *Id.*; *see also* S.C. Code Ann. § 16-9-380. "Although the statute codifies '*various* common law crimes' its does not purport to codify or supersede *all* of them." *State v. Lyles-Gray*, 328 S.C. 458, 492 S.E.2d 802 (Ct. App. 1997) (*emphasis original*).

This Court's determination that the General Assembly retained common law obstruction of justice is correct given the potentially unlimited ways in which a person can attempt to hinder or obstruct "the administration of justice." Therefore, whether an accused's acts constitute obstruction of justice does not turn on whether a specific act was committed.

Rather obstruction of justice requires that a defendant's intentional acts, whatever they may be, are directed towards preventing or delaying the proper functioning – "the administration" – of a constituent part of the judicial branch. Thus, some kind of judicial proceeding must exist at the time of the alleged obstruction.

In *Cogdell,* the Mayor of Landrum, South Carolina was convicted on twenty-one counts of obstruction of justice arising from his intentional failure to report traffic convictions to the Department of Transportation. 273 S.C. at 565-566, 257 S.E.2d at 749-750. His deliberate failure to report traffic adjudications prevented the Department of Transportation from imposing license suspensions.

The mayor appealed his convictions arguing, among other grounds, that his failure to report the traffic convictions could not constitute obstruction of justice. *Id.* Our Supreme Court rejected the Mayor's argument:

> Appellant was charged and convicted for the intentional failure to perform his statutory duty to report convictions of the traffic laws. **These reports followed the judicial determination of the traffic violation and constituted a necessary step in the proceedings designed by the General Assembly for the enforcement of the traffic laws.** The failure of the proper official to make the reports prevented the imposition of the penalties mandated by statutory law.
>
> The trial judge properly held that the intentional failure of appellant to report convictions of traffic violations, as required by the foregoing statutes, constituted the common law offense of obstruction of justice.

Id. at 566-567, 257 S.E.2d at 749 (*emphasis added*). The Mayor's convictions for obstruction of justice were dependent on the existence of a "judicial determination" that the Mayor was attempting to improperly obstruct or subvert.

Similarly, in *State v. Love*, a former Richland County Magistrate Judge appealed his conviction for two counts of obstruction of justice on the grounds that the State failed to present sufficient evidence to support the convictions. 275 S.C. 55, 60-61, 271 S.E.2d 110, 113 (1980). Magistrates are judicial branch officers. S.C. Const. Art. V, § 26.

The obstruction of justice charges in *Love* stemmed from the Magistrate's efforts to secure an invalid driver's license and "fix the prosecution" of William Dennis, who facing his fourth DUI charge. 275 S.C. at 60-61, 271 S.E.2d at 113. The Supreme Court affirmed the Magistrate's convictions.

In upholding his conviction for securing an invalid driver's license, the Court found there was evidence the Magistrate "told a driver's license examiner that, if he could get a driver's license for Dennis, it would be beneficial to the examiner." *Id.* The Magistrate then gave Dennis

an invalid temporary license he would not otherwise be entitled to during the pendency of his case given his prior DUIs. *Id.*

With respect to the second count of obstruction of justice, the Court held that "the record shows that [Magistrate] asked an investigator for the Public Defender's office if he knew anyone who could stop an indictment; and that [Magistrate] later admitted he had paid money to a public employee to obtain help in **preventing the prosecution** against Dennis for driving under the influence." *Id.* at 62, 271 S.E.2d at 113 (*emphasis added*).

The vast majority of reported obstruction of justice opinions, like *Cogdell* and *Love*, concern either an elected official, a judicial branch official, or a public employee that intentionally acts to obstruct or hinder a pending judicial proceeding. *See Lyles-Gray*, 328 S.C. at 460-464, 492 S.E.2d at 803-803 (affirming conviction of police officer for obstruction of justice where officer knowingly obtained a false arrest warrant and failed to timely hand over evidence during the pendency of a criminal case in a condition that would have allowed the evidence to be admitted at trial.); *see also State v. Caskey*, 273 S.C. 325, 256 S.E.2d 273 (1979) (affirming attorney's conviction for obstruction of justice and conspiracy to obstruct justice where attorney conspired with a magistrate to improperly dismiss client's pending DUI charge).

The only reported opinion addressing obstruction of justice by a private citizen, like Appellant, is *State v. Needs*. 333 S.C. 134, 508 S.E.2d 857 (1998). At Appellant's trial, the State argued that *Needs* allowed them to prosecute Appellant for obstruction of justice based on solely on lying law enforcement. R. p. 61, l. 21 – 62, l. 16. The State grossly misconstrued *Needs'* holding.

Needs was convicted of murder and first degree burglary arising out of the killing of his step-father, Lawrence Warmoth. 333 S.C. at 140, 508 S.E.2d at 859-860. During the

investigation into Warmoth's death, Needs' "young girlfriend" Nancy Smith initially provided him with an alibi for the time of the murder. *Id.* However, four months into the investigation Smith told police that Needs had confessed to her that he killed Warmoth. *Id.* She also admitted to police that her alibi for Needs was a lie. *Id.*

A month later, Smith attempted to walk back in her second statement to law enforcement by claiming that Needs' confession was couched in hypothetical terms. *Id.* Critically for her impending obstruction of justice charge, Smith testified at a pretrial hearing as an alibi witness for Needs. She also produced a diary entry recalling how she and Needs spent the night of the murder together. *Id.*

After her testimony at the pretrial hearing, a grand jury indicted Smith for obstruction of justice, accessory after the fact, and misprision of felony. *Id.* at 144, 308 S.E.2d at 862. Unsurprisingly, Smith changed her story again at Needs' trial and testified for the State. *Id.* On cross-examination, Smith admitted that "her testimony directly conflicted with the testimony" she gave at the pretrial hearing. Needs was convicted on both charges. Smith later pled guilty to misprision of a felony. *Id.*

On appeal, Needs argued that the solicitor committed misconduct by indicting Smith for her testimony at the pretrial hearing. *Id.* at 142, 508 S.E.2d at 862. Needs alleged that the indictments were an effort to intimidate Smith. *Id.* Our Supreme Court rejected Needs' arguments and affirmed his convictions.

The Court held there was no misconduct because probable cause existed to indict Smith on all of the charges, including obstruction of justice. *Id.* at 146, 508 S.E.2d at 863. The Court found that evidence showed Smith concealed information, lied to investigators, and lied in her testimony at the pretrial hearing. *Id.* Further, Smith ultimately admitted to doing all of these

things during her testimony at Needs' trial. Therefore, probable cause existed to charge her with the specified crimes. *Id.*

Any ambiguity concerning whether or not obstruction of justice requires the existence of a judicial proceeding is likely the result of many of the defendants in the above-detailed reported opinions facing charges in addition to obstruction of justice. *See Love,* 275 S.C. at 58, 271 S.E.2d at 111 (defendant also charged with two counts of obtaining goods under false pretenses and conspiracy); *Lyles-Gray*, 328 S.C. at 460-461, 492 S.E.2d at 803-804 (defendant also charged with two counts of official misconduct in office); *Needs*, 333 S.C. at 146, 508 S.E.2d at 863 (witness also indicted for accessory after the fact to murder and misprision of a felony).

The "golden thread" stitching these obstruction of justice opinions together is the existence of a judicial proceeding. The Mayor in *Cogdell*, the Magistrate in *Love*, the police officer in *Lyles-Gray*, the attorney in *Caskey*, and the girlfriend in *Needs*; all knew that a judicial proceeding existed and all of them intentionally attempted to obstruct the proper functioning of those judicial proceedings.

Accordingly, a private citizen's actions that hinder law enforcement's initial investigation into a crime, without more, cannot constitute obstruction of justice. *Needs*, 333 S.C. at 146, 508 S.E.2d at 863. In the absence of a pending proceeding conducted by a constitute part of the judicial branch, there is no "administration of justice" for an individual to obstruct or hinder. *See Love,* 275 S.C. at 58, 271 S.E.2d at 111.

Limiting when an individual can be charged with obstruction of justice to circumstances where there is a pending judicial proceeding is consistent with South Carolina case law interpreting "the administration of justice" in other contexts; notably contempt proceedings and attorney disciplinary actions.

South Carolina Authority Interpreting "the Administration of Justice"

Contempt of court and obstruction of justice are closely related offenses. The two offenses are so similar that S.C. Code Ann. § 16-9-380, prohibits prosecuting a person for contempt and one of Articles statutory offenses if the conduct at issue constitutes a single act.

As noted *supra*, obstruction of justice occurs when a person does "any act which prevents, obstructs, impedes or hinders **the administration of justice**." *Cogdell*, 273 S.C. at 567, 257 S.E.2d at 750 (*emphasis added*). Contempt of court occurs when:

> One is guilty of contempt whose **conduct is such as tends to bring the authority and administration of the law into disrespect or disregard, or to interfere with or prejudice parties litigant or their witnesses during the litigations. Any conduct which is calculated to interfere with the proceedings,** by assaulting litigants or witnesses within the precincts of the Court, or preventing or hindering, or endeavoring to prevent or hinder, them in their access to the Court or otherwise, is a contempt. The power of the Court in the matter of contempt cannot be defined within any limits, and **the primary question in all cases of alleged contempt is whether there has or has not been an interference with the due administration of justice**.

State v. Weinberg, 229 S.C. 286, 292, 92 S.E.2d 842, 845 (1956) *overruled on other grounds by State v. Kennerly*, 337 S.C. 617, 524 S.E.2d 837 (1999) (*emphasis added*).

In short, contempt of court constitutes any act "calculated to obstruct, degrade, and undermine the administration justice" that occurs in the presence of the court. *State ex rel. McLeod v. Hite*, 273 S.C. 303, 251 S.E.2d 746 (1979) (Parole Board, as an executive agency, could not grant early release to defendant incarcerated for contempt of court). "The presence of the court" is a term of art, broadly construed to encompass any "**constituent part of the court.**" *Kennerly*, 337 S.C. at 622, 524 S.E.2d at 839 (*emphasis added*).

For the purposes of contempt, "the administration of justice" occurs "wherever any of the court's constituent parts is engaged in the prosecution of the business of the court according to

law." *State v. Goff*, 228 S.C. 17, 88 S.E.2d 788 (1976) (conduct occurring on the courthouse steps could be subject of contempt prosecution).

The only substantive difference between obstruction of justice and contempt is that contempt proceedings are summary in nature based on charges brought by the court based on conduct done in its "presence." *Benedict v. Benedict,* 280 S.C. 508, 313 S.E.2d 56 (Ct. App. 1984) (holding that court had power to hold litigant who failed to appear for two rule to show cause hearings in contempt of court).

Sentences for contempt must be limited to the degree of punishment necessary to protect the functioning of the courts at the moment of the misconduct. However, the punishment for obstruction of justice ranges up to ten years imprisonment. *Hite*, 272 S.C. at 305-306, 251 S.E.2d at 747-748. Contempt of court and obstruction of justice are both directed at acts that hinder or attempt to hinder the judiciary from effectively administering its judicial functions. *Weinberg*, 229 S.C. at 294-295, 92 S.E.2d at 846-847 *citing* 121 A.L.R. 215, 239.

The "administration of justice" is also the frequent focus of attorney disciplinary actions. "It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice." *See* Rule 8.4(e), RPC, Rule 407, SCACR; *Cf:* Rule 7(a)(5), RLDE, Rule 413, SCACR (prohibiting lawyer from engaging "in conduct tending to pollute the administration of justice or to bring the courts or the legal profession into disrepute or demonstrating an unfitness to practice law").

Misconduct prejudicial to the administration of justice is distinct from other forms of misconduct, such as "conduct involving dishonesty, fraud, deceit, or misrepresentation." *See* Rule 8.4(d), RPC, Rule 407, SCACR. In the context of attorney discipline, "the administration of justice" embraces any act by an attorney, or an act by another that the attorney assists in or

induces, that impedes, obstructs, or undermines the proper functioning of a constituent part of the judicial branch. *See Matter of Fabri*, 418 S.C. 384, 390-391, 793 S.E.2d 306, 310 (2016) (public reprimand for attorney who issued two subpoenas without providing notice to opposing counsel and in violation of court rule prohibiting discovery in family court cases without prior judicial approval).

This includes an attorney's conduct at depositions, all phases of discovery during litigation, and any other judicial proceedings. *Matter of Golden*, 329 S.C. 335, 496 S.E.2d 619 (1998) (gratuitously insulting, threatening, and demeaning comments during depositions was conduct prejudicial to the administration of justice warranting public reprimand).

The "administration of justice" further comprises an attorney's representations and interactions with the Office of Disciplinary Counsel and the Commission on Lawyer Conduct, both of which are parts of the judicial branch. *Matter of Trapp*, 417 S.C. 113, 789 S.E.2d 750 (2016) (attorney's failure to respond to Office of Disciplinary Counsel's notice of investigation and failure to respond to notice to appear to answer questions on record and under oath violated Rule 8.4(e), RPC, Rule 407, SCACR).

Critically for this appeal, the "administration of justice" as used in Rule 8.4(e) does not extend misconduct unrelated to the functioning of the judicial system. For example, the attorney in *In Re Ellerbe* was found to have committed misconduct under Rule 8.4(a),(b),(d), RPC, Rule 407, SCACR for failing to file income tax. 348 S.C. 418, 682 S.E.2d 487 (2009).

The attorney's misconduct was not directed towards the judicial branch nor did it concern any pending litigation. Thus, the provision for misconduct effecting the "administration of justice" found in Rule 8.4(e), RPC, Rule 407, SCACR, was not implicated. *Id.*

South Carolina case law has, in the context of prosecutions contempt of court and attorney discipline cases, adopted a definition of "administration of justice" that limits the exercise of the court's contempt power and application of the relevant rules of professional conduct to circumstances where a person's conduct, in some manner, improperly obstructs, hinders, or subverts the functioning of a pending judicial proceeding. This limitation should also apply to obstruction.

Obstruction of justice, contempt of court, and attorney misconduct under Rule 8.4(e), RPC, Rule 407, SCRE all seek to punish intentional acts that hinder "the administration of justice." Accordingly, the definition of "administration of justice" should be consistent. Moreover, limiting obstruction of justice to crimes that impact the functioning of the judicial branch would be consistent with case law from other jurisdictions that define obstruction of justice in terms of hindering the "administration of justice."

Obstruction of Justice and "the Administration of Justice" in Other Jurisdictions

In addition to South Carolina, many other jurisdictions, including the federal code, define obstruction of justice as any intentional act that hinders, delays, or obstructs the "administration of justice." *See* 18 U.S.C. § 1503; *see also State v. Pari*, 564 A.2d 175 (R.I. 1988) (affirming obstruction of justice conviction for submitting false records to grand jury); *Baker v. State*, 178 S.E.2d 587 (Ga. Ct. App. 2nd. Div. 1970) (affirming obstruction of justice conviction of a police officer who fabricated evidence in an illegal gambling prosecution); *People v. Vallance*, 548 N.W.2d 718 (Mi. Ct. App. 1996) (affirming conviction for obstruction of justice arising out of defendant's efforts to intimidate witnesses).

In *State v. Pagano*, the Maryland Court of Special Appeals reversed a school teacher's conviction for obstruction of justice stemming from statements the teacher made while being

questioned by police during an investigation into child abuse where she was the prime suspect. 655 A.2d 55, 56 (Md. Ct. Spec. App. 1995). Maryland has codified obstruction of justice as any act that "obstructs, impedes, or endeavors to obstruct or impede the due administration of justice." Md. Ann. Code art. 27, § 26.

On appeal, Pagano argued that the State failed to prove there was a pending judicial proceeding at the time of she made the untruthful statements. *Id.* Thus, her actions could not have impeded the "due administration of justice." *Id.* Citing to cases addressing conspiracy to obstruction justice and an attempt to obstruct a prosecutor's investigation into a suicide, the State posited that the existence of a pending judicial proceedings was not element of obstruction of justice. *Id.* at 57

The Court began its analysis by examining elements of the common law crime of obstruction of justice, which it defined as "**a criminal act in which the victim is the court**." *Id.* (*internal citations omitted*) (*emphasis added*). The Court then concluded that:

> The obstruction of justice . . . is **a criminal act against the court that impedes the due administration of justice *in such court.* Because an obstruction of justice targets the court as its victim**, it follows that a court proceeding must be pending. Without a court proceeding, no impediment to the due administration of justice within that court can exist.

Id. at 58 (*emphasis added*). Accordingly, the Court of Special Appeals rejected the State's argument that the existence of a pending judicial proceeding was not an element of obstruction of justice and reversed Pagano's conviction. *Id.* at 60.

The federal obstruction of justice statute, which preempts federal common law, punishes a person who, "corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede . . . **the due administration of justice**." 18 U.S.C. § 1503. The federal obstruction of justice statute has been interpreted as addressing only conduct

aimed at interfering with a pending judicial proceeding. *United States v. Grubb*, 11 F.3d 426 (4th. Cir. 1993) ("substantial evidence" supported finding that defendant's purpose in lying to federal agents was to thwart an ongoing grand jury investigation).

In the federal code, obstructing a criminal investigation is a separate crime from obstruction of justice. "Whoever willfully endeavors by means of bribery to obstruct, delay, or prevent the communication of information relating to a violation of any criminal statute of the United States by any person to a criminal investigator shall be fined under this title, or imprisoned not more than five years, or both." 18 U.S.C. § 1510. Nowhere does 18 U.S.C. § 1510 reference the "administration of justice."

In sum, jurisdictions where obstruction of justice is defined in terms of an act's impact or intended impact on the "administration of justice," require that the State prove the existence of a pending judicial proceeding. *United States v. McComb*, 744 F.2d 555 (7th. Cir. 1984) (fabrication of records to provide "an innocent gloss" to incriminating records already submitted to federal grand jury constituted obstruction of justice); *State v. Fucci*, 117 A.3d 419 (Vt. 2015) (holding sufficient factual basis for a guilty plea to obstruction of justice existed where defendant admitted to hiring a hit man to kill opposing party in a civil suit).

Application to Appellant's Case

Appellant was taken into custody just hours after the shooting. He was continuously interrogated for five hours. R. p. 51, l. 14 – 53, l. 11. Appellant initially denied any knowledge of the shooting and claimed that his girlfriend borrowed his car. R. p. 324, l. 9 – 325, l. 14.

As the interrogation continued, police increased the pressure on Appellant to provide them with information. Law enforcement went so far as to threaten Appellant with incarceration unless he provided told them what he knew about the shooting. R. p. 40, l. 4 – 41, l. 24; *see State*

v. Osborne, 301 S.C. 363, 392 S.E.2d 178 (1990) (reversing conviction due to erroneous admission at trial of involuntary statement where defendant implicated herself only after police threatened to charge defendant with a crime if she remained silent).

Further, police knew Appellant's initial denials were false because Patterson had already told law enforcement that he had seen Appellant's car driving away from his house after the shooting. R. p. 40, l. 4 – 41, l. 24; R. p. 242, l. 7 – 243, l. 15. Moreover, Patterson had already identified Gregg as the only person with a motive to shoot him. R. p. 252, l. 5 – 257, l. 6.

After being told by police that they did not believe him, Appellant next gave a version of events consistent with the evidence presented at trial, excepting that Appellant identified Barrett as the shooter. R. p. 215, l. 21 – 218, l. 20. It is undisputed that Appellant knew his statement was untrue. It was equally undisputed that, at the time Appellant implicated Barrett, there was no pending judicial proceeding on the matter.

Appellant's untruthful statements to police during their initial investigation into the shooting cannot, without the existence of a pending judicial proceeding, constitute obstruction of justice. *Needs*, 333 S.C. at 146, 508 S.E.2d at 863. The common law's requirement that a judicial proceeding exist is a recognition that the investigation of crime does not constitute part of the "administration of justice."

Unlike judges, lawyers, jurors, and others charged with the administration of justice, police are allowed to lie in order to advance investigations. *See State v. Register*, 323 S.C. 471, 476 S.E.2d 153 (1996) (affirming conviction and concluding defendant's confession was voluntarily given despite police misrepresenting the evidence they had connecting defendant to murder). From a practical standpoint, police expect individuals to lie to them and derive an investigative benefit, separate from the evidentiary benefit derived by the State, from catching

people when they fail to tell the truth. *See State v. Copeland*, 278 S.C. 572, 300 S.E.2d 63 (1982) (parties may introduce testimony of prior inconsistent statements as substantive evidence when the declarant testifies at trial and is subject to cross-examination).

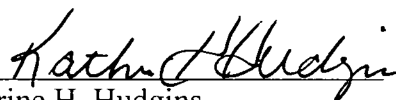
Police departments are agencies of the executive branch. They are tasked with investigating crimes and making arrests. Police are not a constituent part of the judicial branch tasked with "administering justice." *Pagano*, 655 A.2d at 59; *Ellerbe*, 348 S.C. at 418, 682 S.E.2d at 487; *Kennerly*, 337 S.C. at 622, 524 S.E.2d at 839. Unlike our reported opinions on obstruction of justice, in Appellant's case there was no pending judicial proceeding for Appellant to obstruct, hinder, or delay. *Needs*, 333 S.C. at 146, 508 S.E.2d at 863; *Love*, 275 S.C. at 60-61, 271 S.E.2d at 113; *Fabri*, 418 S.C. at 390-391, 793 S.E.2d at 310.

As such, the State could not and did not present any direct or circumstantial evidence tending to show that Appellant committed an act which prevented, obstructed, impeded, or hindered the administration of justice. *Cogdell*, 373 S.C. at 567, 257 S.E.2d at 750-751 (quoting 67 C.J.S. Obstructing Justice §§ 2 and 3); *see also Jackson*, 338 S.C. 571-572, 527 S.E.2d at 371. Therefore, the trial court erred in refusing to grant a directed verdict on Appellant's indictment for obstruction of justice.

CONCLUSION

By reason of the foregoing arguments, Appellant Herbie Singleton respectfully requests that this Court reverse his conviction for obstruction of justice and remand his case to the Charleston County Court of General Sessions for the issuance of an Order of Acquittal.

Respectfully Submitted,



Kathrine H. Hudgins
Appellate Defender

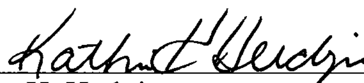
ATTORNEY FOR APPELLANT

This 18th day of December, 2017.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

December 18th, 2017



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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

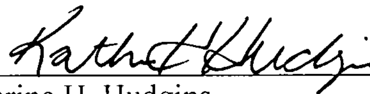
V.

HERBIE VAL SINGLETON, JR.

APPELLANT

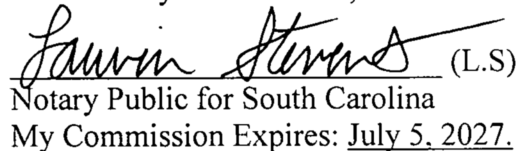
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon V. Henry Gunter, Jr., Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 18th day of December, 2017.



Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 18th day of December, 2017.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