STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County
The Honorable R. Markley Dennis, Circuit Court Judge
Appellate Case No. 2017-001876

THE STATE,

Respondent,

v.

SIDNEY ST. CLAIR MOORER,

Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The record amply supports the circuit court's denial of Appellant's directed verdict motion.

STATEMENT OF THE CASE

The State concurs with Appellant's procedural Statement of the Case only to the extent it includes procedural facts relevant to the instant appeal.[1]

[1]By way of a footnote in his Statement of the Case, Appellant appears to set up a potential post-conviction relief issue regarding his trial attorneys' failure to object to the circuit court's response to a jury request for further instructions. (Brief of Appellant, p. 2, n. 1). Gratuitous ineffective assistance of counsel claims are not appropriately raised on direct appeal, and are not relevant to the directed verdict issue Appellant raises in this appeal.

STATEMENT OF FACTS

On March 4, 2014, the Horry County Grand Jury indicted Appellant Sidney St. Clair Moorer on one count of obstruction of justice, arising from an investigation into the disappearance of Heather Elvis ("Heather") in December 2013. The matter was called for a jury trial on August 28, 2017, before the Honorable R. Markley Dennis, Circuit Court Judge.

Sergeant Danny Furr of the Horry County Police Department testified he received a report on December 19, 2014, of a suspicious vehicle, determined to belong to Heather, at a landing in Horry County. While one of the officers he supervised responded to the car's location, Sgt. Furr started looking for leads to Heather's location. His investigation lead him to contact Appellant by telephone. Appellant did not answer, and Sgt. Furr left a message. (Trial Transcript [TT], pp. 50-53; Record on Appeal [R.], pp. ____).

When Appellant returned Sgt. Furr's call, he initially stated he had not spoken to Heather in six weeks, and he only spoke to her because he wanted her to leave him alone. During the same conversation, however, Appellant changed his story and stated he had talked to Heather the night before (December 18). Appellant did not tell Sgt. Furr he had called Heather from a pay phone, or mention that he actually talked with her twice that night. In light of the change in Appellant's story, Sgt. Furr sent an officer out to Appellant's residence to interview him in person. Sgt. Furr testified if Appellant had told him about the payphone call and the two conversations, he would have gone to Appellant's residence himself to interview Appellant, and he would have contacted the Department's investigation division, because the case would have been become a "suspicious missing person," rather than a simple missing person case. Appellant also did not tell Sgt. Furr he had seen Heather within the last six weeks. (TT, pp. 53-56, 68; R., pp. _____).

Detective Brian Scales (Det. Scales) of the Horry County Police Department testified he was a patrol officer in December 2013. On December 20th, he and another officer were dispatched

to Appellant's residence to ask Appellant about a missing person, and they arrived at Appellant's residence at approximately 2:11 a.m. Appellant stated Heather had called him the night before and left a voicemail, which he deleted, and said he had not seen Heather in several weeks. Appellant did not say Heather drove past his house at any time, or tell the officers he had called Heather from a payphone that night. One of the officers told Appellant that Heather's phone records showed over 300 text messages between his phone and Heather's phone in the previous month. Appellant denied sending Heather any text messages. (TT, pp. 72-94, State's Exhibit 1 [DVD]; R., pp. _____).

Sergeant Jonathan Martin (Sgt. Martin) of the Horry County Police Department testified he assisted in obtaining Heather's phone records at approximately 8:30 a.m. on December 20, 2013. The records showed the telephone number, whether the communication was a phone call or text, the cellphone towers accessed, and the time and duration of the communication. (TT, pp. 96-100. State's Exhibit 2; R., pp. _____).

Sgt. Martin prepared a summary of Heather's phone records from 1:35 a.m. through 3:41 a.m. on December 18, 2013, which reflected a phone call to Heather's phone from a payphone that lasted almost five minutes. After that initial call, Heather called the payphone number back nine times. Heather then called Appellant's phone five times between 3:16 a.m. and 3:41 a.m., with one call lasting over four minutes. (TT, pp. 100-114; R., pp. _____). Sgt. Martin also prepared a summary of text messages from Heather's phone, which reflected several text messages from Heather's phone to the payphone after she received the phone call from the payphone. (TT, pp. 114-119; R., pp. _____). Sgt. Martin assisted in obtaining Appellant's phone records, which he received in the afternoon of December 20th, just before he and another investigator interviewed Appellant at the Police Department. (TT, pp. 119-121, State's Exhibit 6; R., pp. _____).

During the interview, Appellant's statements regarding his communications with Heather differed from the phone records law enforcement had already received. When confronted with the possibility there was a video from the area around the payphone, Appellant finally admitted he had called Heather from the payphone on December 18th, but again claimed he only called her to tell her to leave him alone. He also claimed Heather had left notes on his truck, which he destroyed. Sgt. Martin testified Appellant's lies about his communications with Heather on December 18th meant law enforcement had to spend time and resources to determine the truthfulness of his other claims regarding his communications with Heather. (TT, pp. 122-144, State's Exhibit 8 [Interview Recording]; R., pp. _____).

Jeff Cauble testified he worked for the Horry County Police Department in December 2013, and he was the lead investigator on Heather's case. He stated the primary objective in the early stages of the investigation was to talk to everyone who might have information about Heather's location, and to preserve any evidence that might be available. (TT, pp. 155-159; R., pp. _____). When he and Sgt. Martin talked to Appellant at the Police Department on the afternoon of December 20th, they asked him about where he was on the night of December 17th and the morning of December 18th because they believed he was in Heather's vicinity that morning. During the interview, Appellant continued to assert he had not seen Heather since they broke up in October 2013. After Appellant was advised there was a video from the payphone area, he admitted he called Heather from the payphone, but stated it was only to tell her to leave him alone and stop putting notes on his truck (a black Ford). (TT, pp. 155-159, State's Exhibit 8 [Interview Recording]; R., pp. _____)

Mr. Cauble testified that after Appellant's interview, law enforcement learned Appellant had not been truthful regarding his whereabouts on December 17th and 18th. Through Appellant's

phone records, they determined he was actually near Heather's residence and a bar she went to that night. Law enforcement was not able to determine what Appellant was truthful about and what he lied about until mid-February 2014, approximately two months after Heather disappeared, and Appellant's failure to provide truthful information regarding his communications with Heather on December 18th hindered the investigation into her disappearance. He also testified Appellant's failure to be totally truthful required investigators to get Appellant's detailed phone records, Appellant's wife's phone records, Appellant's children's phone records, as well as video surveillance from several locations, and it was difficult to say exactly what investigators would have found if Appellant had given truthful information when he originally spoke with investigators. (TT, pp. 159-225, State's Exhibit 8 [Interview Recording]; R., pp. _____).

A T-Mobile employee testified about Heather's phone records, including calls, texts, and tower information. According to those records, from July 17, 2013 to July 31, 2013, there were 411 contacts between Heather's phone and Appellant's phone. In August 2013, there were 564 contacts between Heather's phone and Appellant's phone, with 213 out-going calls from Heather to Appellant, and 351 in-coming calls from Appellant to Heather. In September 2013, there were 553 contacts, with 208 out-going contacts and 345 in-coming contacts. In October 2013, there were 517 contacts, with 199 out-going contacts and 318 in-coming contacts. In November 2013, there were sixty-four contacts, with 24 out-going contacts and 40 in-coming contacts. (TT, pp. 228-236, State's Exhibit 9; R., pp. _____).

Heather's phone records reflected she received a call from the payphone at 1:35 a.m. on December 18, 2013, which was Heather's first contact with that phone number. According to the records, between July 17, 2013, and December 18, 2013, Heather's phone did not access the cellphone tower that serviced Appellant's home. (TT, pp. 237-240; R., pp. _____).

Heather's roommate testified Appellant drove a white truck during the time he was involved with Heather, and she never saw him in a black truck. She stated Heather's break-up with Appellant was hard for Heather, but by December 2013, Heather was happy and starting to date other men. The roommate further testified she was out of town on December 18, 2013, and Heather called her at 1:44 a.m. She stated Heather was extremely emotional and crying hysterically, and they talked for approximately two minutes. Heather did not call her again after that date. (TT, pp. 248-255, 267-270; R., pp. _____).

Jessica Cooke testified she was the manager at a restaurant where Heather worked during the time she was involved with Appellant. During that time, she only saw Appellant driving a white truck. (TT, pp. 287-292; R., pp. _____).

Detective Will Lynch of the North Myrtle Beach Police Department testified he conducted a forensic examination of Appellant's phone on December 24, 2013. The examination revealed contact with Heather on November 3, 2013, and November 5, 2013, with no further contact until early on the morning of December 18, 2013, when there were multiple contacts, He also examined Appellant's wife's phone, which revealed text messages between Appellant and his wife at approximately 4:37 a.m. on the 18th. None of the text messages between Heather's and Appellant's phones included information regarding a black truck. (TT, pp. 293-326, State's Exhibit 12; R., pp. _____).

The sales manager of a Ford dealership testified he was personally involved in the sale of a Ford truck to Appellant. The dealership records reflected Appellant traded a white Ford F150 truck for a black Ford F150 truck on November 8, 2013. (TT, pp, 326-331, State's Exhibit 15; R., pp. _____).

Lieutenant Roxanne Love (Lt. Love) of the State Law Enforcement Division testified she retrieved surveillance video from a Wal-Mart on Seaboard Avenue in Myrtle Beach at the request of the Horry County Police Department. The video she obtained on January 27, 2014, showed Appellant arriving at the store at 1:13 a.m., on December 18, 2013, and leaving at approximately 1:21 a.m. (TT, pp. 333-343, State's Exhibit 16 [Video]; R., pp. _____).

Detective Brian Wilson (Det. Wilson) of the Horry County Police Department testified he was involved in the early stages of Heather's missing person case, and was tasked with obtaining any surveillance video of a payphone at a gas station on Seaboard Avenue because Heather's phone records showed she received a call from that payphone. The video was poor quality, and the person making the call could not be identified from the video. (TT, pp. 344-353, State's Exhibit 17 [Video]; R., pp. _____).

Michael Melson (Melson), an employee of Hawk Analytics, was qualified as an expert in cellular technology and historical data analysis. He testified he reviewed Heather's phone records and Appellant's phone records from December 2013, to analyze the locations of both phones related to the cellphone towers they connected with to determine if there were any discernible patterns.

From December 1 through December 18, 2013, Heather's records revealed she was consistently in the vicinity of her residence, her place of employment, and her parents' home. At the time she received the payphone call from Appellant, Heather's phone was in the vicinity of her residence. All activity remained in that vicinity until 2:32 a.m., when the phone started connecting with towers close to Long Beard's restaurant. At 3:16 a.m., the phone returned to the vicinity of Heather's residence, and the last four calls from Heather's phone connected with the tower in the

Peachtree Landing vicinity. There was never any activity connected with the tower servicing Appellant's residence. (TT, pp. 356-389; R., pp. _____).

Melson also analyzed Appellant's phone records for December 17-18, 2013. Between 10:13 a.m. and 9:15 p.m. on December 17th, Appellant's activity remained in the vicinity of his residence. From 9:29 p.m. through 11:06 p.m.. Appellant's phone connected with towers close to Heather's place of employment, Heather's residence, and Long Beard's restaurant. The phone then connected with several different towers until it arrived at the tower in the payphone vicinity at 1:29 a.m. until 1:40 a.m. There was no activity on the phone for approximately an hour and forty minutes, when four in-coming calls that went to voicemail around 3:30 a.m. placed the phone at Appellant's residence. (TT, pp. 389-425; R., pp. _____).

Donald Demario testified he was related to Appellant's wife, and he had known Appellant most of his life. He stated he was at Appellant's house after Heather was reported missing, and he spoke with Appellant outside the house. During their conversation, Appellant showed him a gray flip phone, and something he saw on the phone indicated Appellant knew more about Heather after she disappeared. (TT, pp. 439-442; R,, pp. _____).

At the close of the State's case, Appellant moved for a directed verdict on the ground the evidence presented did not show an obstruction of justice. He contended the common law regarding obstruction of justice was "murky," to which the trial judge responded "Amen." Appellant argued law enforcement would have conducted the same investigation regardless of any misleading statements he made when he spoke with the officers and detectives on December 20, 2013, and Appellant corrected his misleading statements within seconds of making them. He further argued all the obstruction of justice cases in South Carolina involved court officials who hampered the administration of justice.

The trial judge commented on the lack of a specific definition of "impede," but stated the issue was a fact to be determined by the jury. The judge found Appellant made a "misstatement" during the discussions with law enforcement, which he corrected, but the jury could conclude Appellant's misstatement impeded the investigation.[2] The judge further noted the jury could find Appellant told Heather when he called her from the payphone that he wanted to renew their relationship rather than telling her to stay away from him, which might be considered misleading. The judge also noted that if the jury believed Demario's testimony, it could conclude Appellant withheld information relevant to the investigation. Considering the evidence in the light most favorable to the State, the judge denied the motion, finding there was evidence in the record that if believed by the jury would support a guilty verdict. (TT, pp. 451-462; R., pp. _____).

The jury convicted Appellant as charged, and the trial judge sentenced him to ten years incarceration, with credit for 345 days served. This appeal followed

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[2]Appellant contends the trial judge "explained" that the State's evidence was a "misstatement." (Brief of Appellant, p. 25). Read in context, however, the statement was simply the trial judge's expression of his thought process in ruling on the directed verdict motion, not an explanation of Appellant's statements, or Appellant's intent when making them. (TT, p. 25; R., p. _____). A mere "misstatement" implies a lack of intent, and the trial judge made no such implication. Further, Appellant's contention the trial judge indicated "the state should have charged Appellant with misprision of a felony, not obstruction of justice," grossly misrepresents the trial judge's statement. (Brief of Appellant, p. 25, n. 10). The mere fact the trial judge referenced another potential charge does not indicate he believed the obstruction of justice charge was inappropriate or unsupported by the evidence. Standing alone, the trial judge's reference to misprision of a felony could imply the trial judge believed Appellant's actions did constitute a crime, even if he believed another charge would have been appropriate.

STANDARD OF REVIEW

"'On appeal from the denial of a directed verdict, this Court views the evidence and all reasonable inferences in the light most favorable to the State.'" State v. Bennett, 415 S.C. 232, 781 S.E.2d 352, 353 (2016) (*quoting* State v. Butler, 407 S.C. 376, 755 S.E.2d 457, 460 [2014]). The Court's review is limited to considering the existence or nonexistence of evidence, not its weight. *Id.* (citing State v. Cherry, 361 S.C. 588, 606 S.E.2d 475, 478–79 [2004]).

The appellate court must find the case was properly submitted to the jury if there is sufficient direct and/or substantial circumstantial evidence reasonably tending to prove guilt. State v. Lane, 410 S.C. 505, 765 S.E.2d 557, 558 (2014); State v. Davis, 422 S.C. 472, 812 S.E.2d 423, 429 (Ct. App. 2018) (same); State v. Lynch, 412 S.C. 156, 771 S.E.2d 346, 354 (Ct. App. 2015) (same). "Unless there is a total failure of competent evidence as to the charges alleged, refusal by the trial judge to direct a verdict of acquittal is not error." State v. Arnold, 361 S.C. 386, 605 S.E.2d 529, 531 (2004); State v. Bennett, 408 S.C. 302, 758 S.E.2d 743, 745 (Ct. App. 2014) (same). When the State relies on circumstantial evidence, the appellate court must determine whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt. Davis, 812 S.E.2d at 429.

ARGUMENT

The record amply supports the circuit court's denial of Appellant's directed verdict motion.

Appellant asserts the trial judge erred in denying his motion for directed verdict because the State did not present any direct or substantial circumstantial evidence that his actions obstructed the administration of justice. Specifically, he contends the evidence presented, at best, established a providing false information to a police officer charge, the evidence was "murky," and nothing in South Carolina jurisprudence regarding common law obstruction of justice indicates a private citizen can obstruct justice by hindering a police investigation,

When considering a motion for directed verdict, the trial court is concerned with the existence of evidence, not its weight. State v. Walker, 349 S.C. 49, 53, 562 S.E.2d 313, 315 (2002). The trial court's task is to simply determine "whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt. State v. Bennett, 415 S.C. 232, 781 S.E.2d 352 (2016).

"It is a fundamental concept of criminal law that the State must prove beyond a reasonable doubt all the elements of the offense charged against the defendant." State v. Brown, 360 S.C. 581, 602 S.E.2d 392, 397 (2004). Ultimately, the question is whether, in view of the evidence in the light most favorable to the State, a rational trier of fact could find all the elements beyond a reasonable doubt. State v. Robinson, 310 S.C. 535, 426 S.E.2d 317, 318 (1992) (finding any rational trier of fact could have found all the elements of the crime beyond a reasonable doubt in affirming the denial of a motion for directed verdict and citing Jackson v. Virginia, 443 U.S. 307 (1979)).

The United States Supreme Court noted the following:

> [T]he relevant question is whether, after viewing the evidence in the

> light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. . . . This familiar standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.

Jackson, at 319 (emphasis in original).

In 1980, the South Carolina legislature enacted Article 4, Chapter 9 of Title 16 of the South Carolina Code, entitled "Interference with Judicial Process." "This statute codifies various crimes which were categorized at common law under the general heading of obstruction of justice and which were previously prosecuted as such in South Carolina." MCCANINCH, FAIREY & COGGIOLA, THE CRIMINAL LAW OF SOUTH CAROLINA 547 (6th ed.2002). While the statute codified some acts previously prosecuted as common law obstruction of justice, the statute is not completely comprehensive, and some acts do not fall within the statutory scheme. *See* State v. Lyles-Gray, 328 S.C. 458, 492 S.E.2d 802, 805 (Ct. App. 1997) (Although the statute codifies '**various** common law crimes' it does not purport to codify or supersede **all** of them.") (emphasis in original).

Under common law, obstruction of justice is defined as "'any act which prevents, obstructs, impedes, or hinders the administration of justice.'" State v. Cogdell, 273 S.C. 563, 257 S.E.2d 748, 750-51 (1979) (*quoting* 67 C.J.S. Obstructing Justice §§2 and 3). "Success in the effort to obstruct justice is **not** necessary to constitute the offense; it is sufficient if some act is done in furtherance of the endeavor." State v. Love, 275 S.C. 55, 271 S.E.2d 110, 113 (1980) (emphasis provided).

In Lyles-Gray, an officer with the Camden Police Department, was indicted and convicted of two counts of common law obstruction of justice and two counts of official misconduct in office. The underlying facts of the case arose when a store security manager observed the defendant's

daughter and a companion acting suspiciously. *Id.* 492 S.E.2d at 803-805. The security manager watched the defendant's daughter put a sweater into a shopping bag, leave the store without paying for the sweater, place the shopping bag into a blue Ford Escort, and then return to the store. *Id.* The security manager reported the theft to Sergeant George Waters, who observed the shopping bag in the floorboard of the Escort when he arrived at the scene. *Id.* Defendant's daughter denied any knowledge of the Escort, and she and her companion ultimately drove away in another vehicle. *Id.*

Sgt. Waters performed a license check and discovered the defendant owned the vehicle. He then called the defendant to ask if a locksmith could open the vehicle, and she told him to "leave it alone." *Id.* When store personnel subsequently saw the defendant arrive and unlock the Escort, the security manager walked to the vehicle and tapped on the window. The defendant asked the manager "Do you know who I am?" The manager informed the defendant she believed there was stolen merchandise in the vehicle, to which the defendant replied, "I'm Henrietta Gray with the Camden City Police Department, and I think not." When the security manager again asked for the merchandise, the defendant stated, "I think not, lady," and drove away. *Id.*

The defendant's deceptive conduct continued throughout the investigation. She refused to interview witnesses after her daughter was identified as a suspect, and later prepared an arrest warrant for a third party who was not present. The security manager refused to sign the warrant affidavit because it did not accurately represent what actually occurred in the case. The defendant then refused to turn the stolen sweater to the officer who took over the investigation. *Id.* The State Law Enforcement Division subsequently investigated the defendant, and she was indicted and convicted for obstruction of justice and misconduct in office. *Id.*

On appeal, the defendant first contended the trial judge should have quashed the indictment for common law obstruction of justice on the ground S.C. Code Section 16-9-340 superseded common law obstruction. The court quickly dispensed with the argument, finding while the statute sought to codify some common law crimes, it did not purport to supersede all of them. *Id.* at 805-806.

Second, and more pertinent to the instant case, the defendant contended the trial judge erred in denying her motion for directed verdict on the obstruction charge. The Court found the State presented sufficient evidence from which a jury could logically conclude the defendant obstructed justice. *Id.* at 806-807.

In this case, it is uncontroverted Appellant lied to law enforcement regarding his relationship and contacts with Heather in December 2013. He contends, however, his lies could not constitute acts preventing, obstructing, impeding or hindering the administration of justice, because he eventually told the truth, and there was no evidence law enforcement would have done anything differently if Appellant had not lied.

The Lyles-Gray analysis belies Appellant's argument. The defendant in Lyles-Gray engaged in a deceptive and duplicitous course of conduct intended to derail a criminal investigation. While not as blatant as the Lyles-Gray defendant's conduct, Appellant engaged in a course of conduct designed to impede a criminal investigation. Critically, Lyles-Gray stands for the proposition that, contrary to Appellant's assertion a judicial proceeding must exist in order for someone to obstruct justice, common law obstruction of justice **does** apply to a pre-warrant or pre-charge investigation by police officers. *See* City of Columbia v. Bouie, 239 S.C.570, 124 S.E.2d 332 (1962) ("Resisting arrest is one form of the common-law offense of obstructing justice. . . ."),

rev'd on other grounds, 378 U.S. 347 (1964). Therefore, an on-going judicial process is not necessary for a defendant to be convicted of obstruction of justice.

Appellant's narrow interpretation of the common law obstruction of justice offense would generate an absurd result in this case, and encourage a culture of obstructionism by criminal defendants. It defies logic to hold that criminal defendants should be able to willfully lie to law enforcement officers in order to obstruct the investigation and potentially avoid justice, and then avoid any type of criminal liability for their conduct. Appellant's interpretation would encourage criminal defendants to deliberately sabotage any investigation by law enforcement because they know it may lead to their exoneration, and their obstruction is conduct for which they could not be punished.

Appellant's insistence the State failed to present any evidence his false statements to law enforcement impeded the investigation into Heather's disappearance is fundamentally flawed. First, his argument ignores the express holding in Love that "success in the endeavor" is **not** required for an obstruction of justice charge. 271 S.E.2d at 113. Significantly, Appellant only told the truth about his call to Heather from the payphone when confronted with the knowledge there was a surveillance video of the person making the call.[3] If admitting the fact after being confronted with proof of the lie is sufficient to defeat an obstruction of justice, suspects in criminal investigations will have free rein to lie until confronted with evidence contradicting the lie.

Second, Appellant's argument would require prosecutors to prove a negative. Law enforcement have to follow the information provided, and as officers testified in this case,

[3]At the time of the interview, investigators had seen the video, but were unable to identify the person making the call because of the video's poor quality. They never told Appellant they knew he was the person on the video, but apparently believing he would be identified by the video, Appellant admitted making the call.

Appellant's admitted lie required resources and time to corroborate or contradict the rest of his statements. It is impossible to know or prove what additional information or evidence law enforcement might have been able to pursue in the critical early stages of Heather's case if Appellant had simply told the truth. For instance, armed with the truth, law enforcement might have been able to pursue other leads and establish probable cause for warrants to search Appellant's and his wife's home and/or vehicles. Further, with the passage of time required to investigate the validity of Appellant's entire statements, such as his visit to Wal-Mart and the location of his phone during the critical time period, there was a greater possibility evidence was destroyed or contaminated.

Similarly, Appellant's contention an obstruction of justice charge requires interference with the "administration of justice" in a court proceeding is fundamentally flawed. His contention is premised on the lack of case law in South Carolina holding a private citizen can be guilty of obstructing justice for lying to law enforcement during a criminal investigation.[4] The absence of case law specifically addressing obstruction of justice charges against a private citizen does not lead to the inescapable conclusion the charge can never be supported. To the contrary, at least one court has held the investigation of crime is "critical to the administration of justice." People v.

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[4]Appellant argues lying to law enforcement may be the basis for charges of misprision of a felony or providing false information to a police officer, rather than obstruction of justice. The decision regarding what charges to bring is committed to the prosecutor's discretion, and the mere fact the prosecutor could have charged other offenses does not invalidate the charges the prosecutor ultimately brought. *See* State v. Geer, 391 S.C. 179, 705 S.E.2d 441, 449 (Ct.App.2010) ("In our criminal justice system, the Government retains broad discretion as to whom to prosecute. [S]o long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion." (alteration by court) (citation and internal quotation marks omitted)); Strickland v. State, 276 S.C. 17, 274 S.E.2d 430, 432 (1981) ("We [have] indicated the fact that a prosecuting attorney may select which of several offenses with which an accused may be charged is not constitutionally obnoxious." (internal quotation marks omitted)).

Barbee, 681 N.W.2d 348, 351 (Mich. 2004) (providing a false name to police during a criminal investigation constitutes interference with the administration of justice). The term "administration of justice" is purposely expansive, as conduct amounting to obstruction can arise any time from the inception of a criminal investigation through the adjudication of a particular defendant's case, and to hold that a judicial proceeding must be initiated **before** a person can obstruct justice would lead to patently absurd results.

Much of Appellant's brief is a recitation of obstruction cases involving public officials, and contentions regarding the substance of certain testimony and how it should be interpreted. These are red herrings intended to distract from the only issue before the court - the propriety of the trial judge's denial of Appellant's directed verdict motion. In other words, was there any direct or substantial circumstantial evidence from which the jury could have found Appellant lied to obstruct justice during the investigation into Heather's disappearance.

While the trial judge acknowledged the absence of case law defining "impede," the word does have a commonly understood, and readily apparent, definition – "to interfere with or slow the progress of" something. *See* https://www.merriam-webster.com/dictionary/impede.[5] As discussed above, a defendant does not have to **succeed** in interfering with, or slowing the progress of, an investigation. Love, 271 S.E.2d at 113. Rather, it is sufficient if the defendant lied to law enforcement **with the intent** to interfere with or slow down the investigation.

As the trial judge found, there were several aspects of the evidence presented from which the jury could find Appellant's lies or "misstatements" were intended to impede law enforcement's investigation of him as a suspect in Heather's disappearance, not the least of which was Demario's

[5]According to The Merriam-Webster Dictionary, "obstruct" and "hinder" are synonyms of "impede." (https://www.merriam-webster.com/dictionary/obstruct# and https://www.merriam-webster.com/dictionary/hinder#).

testimony he saw something on the phone Appellant showed him that indicated Appellant had withheld information from law enforcement.[6] (TT, pp. 453-462; R., pp. _____).

In addition to the trial judge referenced as supporting a jury verdict beyond a reasonable doubt, the evidence also established Appellant lied about Heather leaving notes on his truck as a premise for the payphone call on December 18th. All the evidence indicated Appellant drove a white truck while he was involved with Heather, and did not even own a black truck until well after he claimed he broke off the relationship, and days after the phone records indicated communications with Heather on November 3rd and 5th. There was no evidence Heather knew Appellant had traded in the white truck for a black one, and therefore, she could not have left notes on his truck in the days leading up to the payphone call.

The trial judge's concerns regarding a lack of instructive case law aside, considering the evidence in its entirety, and in the light most favorable to the State, leads to the natural conclusion the trial judge properly denied Appellant's directed verdict motion. In order to withstand the motion, the State had to present evidence from which a reasonable juror could conclude Appellant's deliberate "misstatements" (a/k/a lies) to law enforcement about the extent of his communications with Heather leading up to her disappearance could reasonably be interpreted as acts designed to obstruct, impede or hinder the criminal investigation. The jury was presented with substantial circumstantial evidence of the elements of common law obstruction of justice.

[6]Appellant boldly claims his lies actually "improved" the investigation because they forced law enforcement to investigate the case "more thoroughly." (Brief of Appellant, p. 34). If lying to law enforcement improves an investigation, every criminal defendant can lie indiscriminately to law enforcement regarding his involvement in a criminal act and then claim he was actually helping law enforcement do its job, even if the lies required law enforcement to divert resources otherwise available to investigate the case, especially in the early stages of the investigation.

Therefore, the trial judge properly denied Appellant's directed verdict motion, and Appellant's conviction and sentence should be affirmed.

CONCLUSION

Based on the foregoing, the State respectfully submits the circuit court's ruling and Appellant's conviction and sentence should be affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA

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PROOF OF SERVICE

I, Sally Ellison, certify I served the Initial Brief of Respondent and Designation of Matter on Appellant by depositing copies in the United States mail, postage prepaid, addressed to:

Susan B. Hackett
Assistant Appellate Defender
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.

This 28th day of May, 2019.

Sally Ellison

SALLY ELLISON
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ALAN WILSON
ATTORNEY GENERAL

May 28, 2019

Susan B. Hackett
Assistant Appellate Defender
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

RE: State v. Sidney St. Clair Moorer
Appellate Case No. 2017-001876

Dear Ms. Hackett:

Enclosed are two copies of the Initial Brief of Respondent and Designation of Matter, with proof of service, in the above-referenced case. If you have any questions, please do not hesitate to contact me.

Sincerely,

FOR Deborah R.J. Shupe
Senior Assistant Deputy Attorney General

Enclosures

cc: Honorable Jenny A. Kitchings (original and one enclosed)
Victim Services