STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable D. Craig Brown, Circuit Court Judge

ORIGINAL

THE STATE,

RESPONDENT,

V.

ROBERT W. MCCAFFERY, JR.

APPELLANT

APPELLATE CASE NO. 2019-000540

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err by failing to direct a verdict where the state failed to present any direct or substantial circumstantial evidence that Appellant obstructed justice?

STATEMENT OF THE CASE

A Charleston County Grand Jury indicted Appellant on January 12, 2015 for obstruction of justice. R. *. His case was called to trial on March 4, 2019 before the Honorable D. Craig Brown, and a jury. Tr. 1. Assistant Solicitors Jennifer Shealy and Daniel Cooper represented the state. Tr. 1. Christopher Lizzi represented Appellant. Tr. 1.

On March 8, 2019, the jury found Appellant guilty as indicted. Tr. 815, ll. 6-10. He was sentenced to ten years' imprisonment. Tr. 825, ll. 4-6.

This appeal follows.

STANDARD OF REVIEW

"The defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged." State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011) (citing State v. McHoney, 344 S.C. 85, 97, 544 S.E.2d 30, 36 (2001)). "However, if there is any direct or *substantial* circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury." Id. (citing State v. Pinckney, 339 S.C. 346, 349, 529 S.E.2d 526, 527 (2000)) (emphasis in original). "On appeal from the denial of a directed verdict, this Court must view the evidence in the light most favorable to the State." Id. (citing State v. Lollis, 343 S.C. 580, 583, 541 S.E.2d 254, 256 (2001)).

"A [trial] judge should grant a directed verdict motion when the evidence merely raises a suspicion the accused is guilty." Id. (citing State v. Schrock, 283 S.C. 129, 132, 322 S.E.2d 450, 451-452 (1984)). "Suspicion implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof." State v. Buckmon, 347 S.C. 316, 322, 555 S.E.2d 402, 404-405 (2001) (citing Lollis, 343 S.C. at 584, 541 S.E.2d at 256). "When ruling on a motion for a directed verdict, the trial [judge] is concerned with the existence or nonexistence of evidence, not its weight." State v. Shands, 424 S.C. 106, 135, 817 S.E.2d 524, 539 (Ct. App. 2018) (citing State v. Hernandez, 382 S.C. 620, 624, 677 S.E.2d 603, 605 (2009)).

STATEMENT OF FACTS

Appellant was married to Gayle McCaffrey (hereinafter "McCaffrey") for fourteen years. The couple lived in Charleston with their two children. Appellant was a talented carpenter who often renovated homes. McCaffrey worked for the Citadel. McCaffrey disappeared on or about March 18, 2012. She has not been seen or heard from since. The state ultimately charged Appellant with obstruction of justice related to law enforcement's investigation of McCaffrey's disappearance.

In February 2012, Appellant was remodeling a home in Brevard, North Carolina. On Valentine's Day, Appellant met a woman named Brandy Lee at a pub in Brevard. The two began an intimate relationship which continued for several weeks until McCaffrey discovered the affair. McCaffrey sent Lee a text message asking Lee to "leave her husband alone" because the two "want to work it out and save their marriage." Tr. 160, ll. 10-22. On or about March 6, 2012, after receiving the message from McCaffrey, Lee told Appellant she could not see him anymore. Tr. 165, ll. 15-22. Despite ending the relationship, Appellant and Lee still talked occasionally through text message and over the phone.

On the night of March 17, 2012, St. Patrick's Day, Appellant and McCaffrey ate dinner at home with their children and McCaffrey's aunt and uncle who lived nearby. Sometime after dinner, Appellant and McCaffrey got into a verbal argument. Appellant ultimately left the home and drove to Traveler's Rest to see Lee who was at a bar with friends. Appellant arrived around one o'clock in the morning. Tr. 175, ll. 15-21.

When Appellant arrived at the bar, Lee ignored him. She "was drinking and singing and dancing and . . . really wasn't paying him much attention." Tr. 179, ll. 21-24. Appellant was "propped up against a wall staring at [her]." Tr. 180, ll. 9-19. Over the next hour, Lee refused to

talk to Appellant. Tr. 180, l. 2 – 183, l. 20. The bar ultimately closed around 2:00 am. Tr. 183, ll. 3-6. Lee left the bar in her car and Appellant left in his truck. Lee claimed Appellant followed her car but she turned on "a back road and lost him." Tr. 183, l. 21 – 184, l. 5. Lee called Appellant 2:16 am. During this call, which lasted one minute and twenty-eight seconds, Appellant was pulled over for speeding. Tr. 185, ll. 10-18.

The state presented the dash cam footage from the traffic stop. Appellant admitted to the officer that he was having "problems" with his wife and that he was visiting a girlfriend in Travelers Rest. He explained that he had driven four hours to see the girlfriend but he "got blown off." State's Exhibit No. 75B.

Later that same day, March 18, 2012, at 5:19 pm, Appellant called the police to report McCaffrey missing. Chris Davis, a patrol deputy, responded to Appellant's house at 5:46 pm. Tr. 117, l. 22 – 118, l. 19. Appellant answered the door. He told Davis he wanted to file "a missing person report on his wife Gayle McCaffrey." Tr. 119, l. 8 – 120, l. 2. Appellant explained that he and McCaffrey went out to eat around 2:30 pm the day before, March 17, 2012. They returned home between 3:00 pm and 4:00 pm. After they returned home, Appellant and McCaffrey "got into a verbal altercation." Appellant allegedly told Davis that after the argument, Appellant took a walk around the neighborhood "because he had a lot on his mind." Tr. 120, ll. 3-22. He got back to the house around 7:45 pm and found McCaffrey in their bedroom lying down. She "ignored him." Tr. 120, l. 23 – 121, l. 14. Appellant allegedly said he then left their house in Charleston around 10:00 pm and drove to their "second home" in Easley because "he was very emotional and distressed about his marriage and he wanted some space and to have time away." Tr. 121, l. 15 – 123, l. 7. Appellant said "their marriage [was] on the rocks."

Appellant told Davis that when he returned home to Charleston at 6:30 am McCaffrey was gone. Tr. 123, ll. 10-14. However, Appellant found her wedding ring, phone, checkbook, and car keys on the kitchen counter. Her car was parked in the driveway. Tr. 124, ll. 2-12. Appellant gave Davis a letter he had found on the printer. The letter, which was marked and admitted as State's Exhibit No. 63, was typed and addressed to Appellant. Tr. 124, l. 7 – 125, l. 9. It stated:

> Dear Bob,
>
> It is St. Patrick's Day and you are on your way out somewhere ignoring me again. You are right again, we are through. When you get back I will not be here. I found your safe – WTF – we live like this and you have over $110,000 dollars in cash and the coins and all the old money?
>
> I know why you never say anything about Nicky. You have known, and what, just waiting for someone to come along so you could leave us? Oh wait, you have met someone.
>
> I hope you are happy.
>
> Nicky is going home in a couple of days and has asked me to go with him.
>
> I am going! I an going to be happy!
>
> Madison told me that she wanted to go with you two weeks ago when she first asked if we were getting a divorce. You could not be a better dad and the kids love you so much more than they love me! It hurts so bad, and before you hurt all of us I am making it easy for you. I am starting over also, while I have someone that worships me and cares so deeply for me.
>
> I will always love you and the kids and cherish the moments we had. I do not want to end up like my mom or sisters. In loveless marriages and bitter, always trying and never really being happy.
>
> I have tried to settle a few things for you, but since you have not really helped me, you can see what it takes to keep a family together by yourself, or with whatever ugly redneck bitch you want now.
>
> If you were going to stay, I would have forgotten about Nicky. But I can see you have no desire to stay, and I am done suffering and trying and praying.

I know this is not all your fault, but like you said "I am done."

You can tell everyone whatever you want, as I am sure you will.
If you look for me and find me, because I am sure [you] will try, I will use the gun, that was in the safe, on you.

Tell the kids that I love them, and I will miss them.

Gayle

R. * (State's Exhibit No. 63); Tr. 126, l. 8 – 127, l. 20.

After showing Davis the letter, Appellant told him about a safe that he had hidden in the attic, which contained one hundred and ten thousand dollars in cash and coins. The safe weighed approximately three hundred and fifty pounds. Tr. 128, ll. 2-9.

Davis found it "odd" that the letter was typed. Tr. 127, l. 23 – 128, l. 1. He was also concerned that McCaffrey's personal items were inside the house and her car was in the driveway. He suspected "foul play." Tr. 129, ll. 4-9. Davis ultimately completed a missing persons affidavit and entered McCaffrey into the National Crime Information Center (NCIC). Tr. 130, ll. 3-15. He then notified his supervisor who made the decision to inform the detectives division. Tr. 133, ll. 7-19.

Detective James Perkins responded to Appellant's house. Davis told Perkins what he had learned and gave Perkins the letter Appellant had found in the house. Tr. 133, l. 20 – 134, l. 13. Appellant voluntarily agreed to go to the sheriff's office to give a statement. Tr. 276, ll. 3-15. He was interrogated by the police from just after 9:00 pm until 2:00 am the following morning. Tr. 281, ll. 15-17. Appellant told Perkins that he and McCaffrey "were having marital problems" as well as "financial problems" as he had been out of work for some time and had only been doing "odd end jobs." Tr. 284, l. 19 – 285, l. 4. Perkins found Appellant's employment status interesting since Appellant had said he had one hundred and ten thousand dollars hidden from his

wife in a safe in a room above the garage. Tr. 285, l. 1 – 286, l. 2. Appellant said the safe weighed between two hundred and three hundred pounds. Tr. 290, ll. 1-11.

Appellant told Perkins that he and his wife along with an aunt and uncle ate dinner together the night before, March 17, 2012. After dinner, Appellant admitted he and McCaffrey had "a little spat" and he drove to Travelers Rest to see Brandy Lee. Tr. 286, ll. 7-25. He met Brandy at a bar, but "she blew him off." Tr. 287, ll. 8-12. After he left the bar, Appellant said he drove home to Charleston. He admitted he was pulled over in Travelers Rest. Tr. 287, ll. 16-19.

Appellant told Perkins that he arrived home at 6:30 in the morning. McCaffrey was not there, but her car was in the driveway, her keys and phone were inside, and the children were there sleeping. Tr. 288, ll. 2-9. A few hours later, Appellant found the letter on the printer. After he found the letter, Appellant laid on the couch and cried. Appellant told Perkins he waited to called the police because he wanted to talk to his father, who was a retired detective, first. His father recommended he contact an attorney. Tr. 288, l. 13 – 289, l. 8.

Law enforcement found no trace of a Nicky during its investigation. None of McCaffrey's family or friends "knew of a Nikki." Tr. 307, ll. 17-20. The police also retained the services of a forensic linguist to determine if McCaffrey had authored the letter Appellant found on the printer. Tr. 305, ll. 7-21.

Perkins testified that law enforcement ultimately arrested Appellant in 2014 for obstruction of justice during its investigation into McCaffrey's disappearance because Appellant allegedly "lead us in a direction to where it hindered us from being able to locate her quickly. More so we were pretty much chasing our tail and going in opposite directions." Tr. 306, l. 17 – 307, l. 1.

Robert Leonard, who was qualified as an expert in linguistics without objection, testified that there was a "consistency of features" between the "linguistic patterns" in the letter admitted as State's Exhibit No. 63 and the "linguistic patterns" in the documents known to be written by Appellant. He maintained that such consistency did not exist between the "linguistic patterns" in the letter and the "linguistic patterns" in the documents known to be written by McCaffrey. Tr. 625, ll. 16-23. Therefore, Leonard concluded that between Appellant and McCaffrey it was more likely that Appellant had written the letter. Tr. 625, l. 24 – 626, l. 1.

In his defense, Appellant called Alan Perlman, who was qualified as an expert in forensic linguistics. Tr. 691, ll. 9-17. Perlman could not opine as to who authored the letter because there was some evidence to support that McCaffrey wrote the letter and some evidence to support that Appellant wrote the letter. Tr. 712, ll. 14-19. He asserted, "Based on [McCaffrey's] command of language as I have seen it in her public communications, she is capable of syntax and lexicon that I find in the Q-document [the letter]." Tr. 712, l. 20 – 713, l. 21.

ARGUMENT

The trial judge erred by failing to direct a verdict where the state failed to present any direct or substantial circumstantial evidence that Appellant obstructed justice.

Relevant Facts

After the state rested, Appellant moved for a directed verdict. Tr. 674, l. 4 – 675, l. 2. Defense counsel argued the state failed to present any evidence Appellant intentionally impeded the administration of justice. Counsel asserted Appellant voluntarily told the police where he went and what he did immediately before McCaffrey went missing. He also maintained that at the time Appellant made the statements, law enforcement was merely investigating a missing person not a criminal offense. Tr. 674, ll. 5-17. As far as the letter marked as State's Exhibit No. 63, counsel asserted Appellant never indicated who authored the letter. Rather, he merely stated he found the letter on the printer after he returned home. The state presented no evidence that this was not true. Tr. 674, l. 18 0 675, l. 2.

The state argued Appellant lied to Chris Davis when he initially reported McCaffrey missing by telling Davis he had gone to the family's second home in Easley. As far as the letter, the solicitor cited to Robert Leonard's expert testimony that it was more likely Appellant authored the letter than McCaffrey. She also relied on the testimony from McCaffrey's family and friends who maintained McCaffrey did not use foul language, like the language which appeared in the letter. The solicitor also claimed Appellant essentially said McCaffrey authored the letter since he asserted as true certain things referenced in the letter such as "he had squirreled away $110,000 from his wife and family as they fought financial problems . . . and that she had left for a person named Nikki." Tr. 675, l. 25 – 676, l. 6. The solicitor concluded

Appellant "did everything he could to thwart" the administration of justice during law enforcement's investigation of a missing person, his wife.

The trial judge ultimately denied the motion. The judge cited to James Perkins' testimony in which he claimed the allegedly false information Appellant provided to law enforcement "hindered" its ability to locate McCaffrey and in essence caused law enforcement to "chas[e] their tail so to speak." Tr. 677, ll. 13-18. The judge further cited to the lack of evidence supporting the existence of a safe, one hundred and ten thousand dollars, or an individual named Nicky as well as the time lapse from when Appellant returned home and ultimately called the police as reasons to deny the motion. Tr. 677, l. 18 – 678, l. 3. Lastly, the judge emphasized the letter marked and admitted as State's Exhibit No. 63. He maintained there was a question of fact for the jury to determine as to who authored the letter. Tr. 678, ll. 4-14.

Discussion

The trial judge erred by failing to direct a verdict where the state failed to present any direct or substantial circumstantial evidence that Appellant obstructed justice.

"The defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged." State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011) (citing State v. McHoney, 344 S.C. 85, 97, 544 S.E.2d 30, 36 (2001)). "However, if there is any direct or *substantial* circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury." Id. (citing State v. Pinckney, 339 S.C. 346, 349, 529 S.E.2d 526, 527 (2000)) (emphasis in original).

"A circuit judge should grant a directed verdict motion when the evidence merely raises a suspicion the accused is guilty." Id. (citing State v. Schrock, 283 S.C. 129, 132, 322 S.E.2d 450, 451-452 (1984)). "Suspicion implies a belief or opinion as to guilt based upon facts or

circumstances which do not amount to proof." State v. Buckmon, 347 S.C. 316, 322, 555 S.E.2d 402, 404-405 (2001) (State v. Lollis, 343 S.C. 580, 583, 541 S.E.2d 254, 256 (2001)).

In State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000), our Supreme Court held the trial judge erred in failing to direct a verdict where the only evidence presented against Mitchell was his fingerprint at the scene of the burglary. Likewise, in Lollis, Court directed a verdict of acquittal in Lollis's favor where the state presented no direct evidence that Lollis was involved in setting fire to his home. The circumstantial evidence against Lollis was that his wife admitted to the arson, he had placed valuables in storage prior to the fire, he possessed a key to the storage unit, and he allegedly had financial troubles. The Court found this evidence insufficient. Lollis, 343 S.C. at 584-585, 541 S.E.2d at 256-257.

In State v. Odems, 395 S.C 582, 720 S.E.2d 48 (2012), the Court held Odems was entitled to a directed verdict based upon a lack of substantial circumstantial evidence that Odems was involved in the burglary. Although Odems was in a car with other individuals who admittedly burglarized a home, the state failed to provide substantial circumstantial evidence that Odems was present during the home invasion. The witness who saw individuals at the home claimed she saw two, not three as were found in the car. Fingerprints collected from the stolen goods did not match Odems, but matched the other individuals in the car. One of the individuals who admitted his involvement claimed Odems was picked up after the burglary at a gas station. Id. at 588, 720 S.E.2d at 51.

In State v. Bostick, 392 S.C. 134, 141, 708 S.E.2d 774, 778 (2011), our Supreme Court held the prosecution failed to present substantial circumstantial evidence of Bostick's guilt. Rather, the state's evidence was capable of producing only a suspicion of Bostick's guilt. Id. Although the police found items belonging to the decedent in a burn pile behind the home of Bostick's mother, the Court held no evidence linked Bostick to the evidence in the burn pile and the prosecution

presented no testimony that Bostick had control over the burn pile. Id. at 137-141, 708 S.E.2d at 775-778. The other evidence presented against Bostick was that (1) he had a chemical pattern that matched gasoline on his shoes and gasoline was used to start the fire at the decedent's home, and (2) DNA from blood on Bostick's jeans excluded ninety-nine percent of the population, but the expert could not testify the DNA matched the decedent. Id. at 142, 708 S.E.2d at 778.

The state charged Appellant with common law obstruction of justice. R. *. The indictment alleged "[t]hat in Charleston County, South Carolina, on or about March 18, 2012, [Appellant] did intentionally prevent, obstruct, impede or hinder the administration of the justice, to wit: [Appellant] did willfully give the police false and/or misleading information regarding his wife's disappearance." R. *.

"Under common-law obstruction of justice, 'it is an offense to do *any* act which prevents, obstructs, impedes, or hinders the administration of justice.'" State v. Lyles-Gray, 328 S.C. 458, 464, 492 S.E.2d 802, 805 (1997) (quoting State v. Cogdell, 273 S.C. 563, 567, 257 S.E.2d 748, 750 (1979)) (emphasis in original). "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, 62, 271 S.E.2d 110, 113 (1980).

"All the offences which fall under the general head of 'obstructing justice' are considered to be of a very grave and high character, for the obvious reason that they strike at the very foundation of authority and government, and tend by the strong arm to defeat the administration of justice and to overthrow all peace and order." State v. Bowen, 17 S.C. 58, 60 (1882); See State v. Yarborough, 363 S.C. 260, 262, 609 S.E.2d 592, 593 (Ct. App. 2005) (prosecution for obstruction of justice where a lawyer offered an alleged victim five hundred dollars to drop charges against his client); State v. Caskey, 273 S.C. 325, 328, 256 S.E.2d 737, 738 (1979) (considering an obstruction of

justice charge where a lawyer and a magistrate conspired to dismiss charges in exchange for money). While the law is not entirely clear on what constitutes the obstruction of justice, some guidance regarding the character of conduct that would support such a charge is available:

> Attempts to suborn a witness to commit perjury or to prevent his giving evidence, are offences against public justice; and there can be no well founded reason why the fabrication of evidence not involving perjury, or the destruction and suppression of that which is good, should not equally be so; they are alike calculated to pervert the public justice of this country, and to do individual injustice.

State v. DeWitt, 2 S.C.L. (1 Hill) 282, 287 (1834).

In State v. Cogdell, our Supreme Court upheld Cogdell's convictions for twenty-one counts of obstructing justice where Cogdell, while Mayor of the Town of Landrum, failed to report traffic convictions to the highway department as required by law. Cogdell, 273 S.C. at 565, 257 S.E.2d at 749. The Court concluded that the failure of Cogdell to report the convictions prevented the imposition of the penalties mandated by statutory law of individuals convicted of certain traffic offenses. Id. at 566-567, 257 S.E.2d at 750. Thus, this intentional failure by Cogdell to report traffic violations, as the statute required, constituted the common law offense of obstruction of justice. Id. at 567, 257 S.E.2d at 750.

The Supreme Court found the evidence sufficient to deny a directed verdict for Lyles-Gray, a police officer with the City of Camden, for obstruction of justice, where there was evidence, including Lyles-Gray's conduct at the crime scene and her mishandling of evidence, that Lyles-Gray was on notice that her daughter was a suspect in a crime. Lyles-Gray, 328 S.C. at 466, 492 S.E.2d at 806-807. On December 2, 1994, Belk's store security observed two women who appeared to be shoplifting. Id. at 460-461, 492 S.E.2d at 803-804. The security officer saw one of the women go outside, place merchandise into a car, and return to the store. Id. at 461, 492 S.E.2d at 804. When the two women finally left the store, the security officer asked to look in the car. Id.

The women denied any knowledge of the car and claimed to be using a different car, into which they got and drove away. Id.

A check of the car revealed it belonged to a police officer, Lyles-Gray, who was the mother of one of the shoppers. Id. When Lyles-Gray went to get the car, the security officer attempted to talk to her, but Lyles-Gray refused, asking if the officer knew who she was and then informing the security officer of her status as a police officer. Id. at 462, 492 S.E.2d at 804. Lyles-Gray then prepared an arrest warrant for a third individual for the shoplifting incident. Id. The security officer learned of the arrest warrant for the third individual and refused to sign it because it was false. Id. at 462-463, 492 S.E.2d at 804-805. Additionally, the security officer explained Lyles-Gray never consulted with her about the arrest warrant prior to its preparation. Id.

As the shoplifting investigation progressed, Lyles-Gray was directed by an officer in charge of the investigation to turn over any evidence in her possession. Id. at 463, 492 S.E.2d at 805. Lyles-Gray never turned over any evidence to the officer. Id. Eventually, Lyles-Gray's daughter was charged with shoplifting. Id. When the daughter's case was called to trial, the state learned the daughter's lawyer had a sweater that was allegedly stolen from Belk. Id. The lawyer revealed that Lyles-Gray informed him that she had the sweater in her car and she gave it to the lawyer. Id.

In State v. Love, 275 S.C. 55, 271 S.E.2d 110 (1980), the Court confronted an obstruction of justice case involving a magistrate. One indictment alleged the magistrate promised to obtain a valid driver's license for an individual for five hundred dollars and that the magistrate obtained a driver's license for the individual, but the license was not valid. Id. at 61, 271 S.E.2d at 113. The other indictment alleged the magistrate promised to remove from the public record all references to the pending charge against the individual and prevent any prosecution of that charge by bribing the necessary public officials in exchange for five thousand dollars. Id.

The Court concluded there was sufficient evidence to submit the case to the jury. Id. at 62, 271 S.E.2d at 113. The evidence showed the magistrate "told a driver's license examiner that, if he could get a driver's license for [the individual], it would be beneficial to the examiner." Id. Thereafter, the magistrate gave the individual an invalid temporary driver's license. Id. The evidence also showed the magistrate asked an investigator working at the public defender's office if he knew anyone who could stop an indictment, and the magistrate admitted he had paid money to a public employee to help prevent the prosecution of the individual. Id.

In City of Charleston v. Mitchell, our Supreme Court confronted the interpretation of a city ordinance making it "unlawful for any person to assault, resist, hinder, oppose, molest, or interfere with any employee of the police department of the city, in discharge of official duties." 239 S.C. 376, 393, 123 S.E.2d 512, 520 (1961), rev'd on other grounds, 378 U.S. 551 (1964). In the height of the civil rights movement, individuals refused to leave a store despite being requested to do so by the manager and the police. Id. The police arrested the individuals. Id. The trial judge found them guilty of violating the city ordinance because the individuals interfered with the police officer in the discharge of his duties by refusing to leave the premises after being ordered to do so. Id. at 393-394, 123 S.E.2d at 520.

When interpreting the ordinance, the Supreme Court cited a North Carolina case regarding the definition of "interfere." Id. (citing State v. Estes, 185 N.C. 752, 117 S.E. 581 (N.C. 1923)). Estes was convicted "was convicted on an indictment charging that he unlawfully and willfully did resist, hinder, delay, obstruct and interfere with an officer of the board of health in the discharge of his duty as such." Id. The evidence at Estes' trial revealed he used abusive and profane language towards the officer but did not get up from his desk where he was seated

nor did he strike or offer to strike the officer and made no demonstration of violence whatever." Id.

The North Carolina court construed the word "interfere" to mean "to check or hamper the action of the officer, or to do something which hinders or prevents or tends to prevent the performance of his legal duty." Id. at 394-395, 123 S.E.2d at 521. The North Carolina court interpreted "obstruct" to mean "direct or indirect opposition or resistance to the lawful discharge of [an officer's] official duty." Id. at 395, 123 S.E.2d at 521. Using those definitions as guidance, the South Carolina Supreme Court concluded the civil rights protesters did not interfere with the police officer in the discharge of his official duty because their conduct was "merely inaction." Id.

Considering a resisting arrest conviction, the South Carolina Supreme Court explained that "[r]esisting arrest is one form of the common law offense of obstructing justice; and the use of force is not an essential ingredient of it." City of Columbia v. Bouie, 239 S.C. 570, 574, 124 S.E.2d 332, 333 (1962), rev'd on other grounds, 378 U.S. 347 (1964). According to the testimony of the arresting officer, "the only 'resistance' on Bouie's part was his failure to obey immediately the officer's order, with the result that the latter 'had to pick him up out of the seat.'" Id. Examining the facts before it, the Court concluded that the defendant's "momentary delay in responding to the officer's command [did not] amount[] to 'resistance' within the intent of the law." Id.

Here, the state's entire case was built upon the administration of justice being defined as a private citizen lying during a police investigation. Appellant is unaware of any case in South Carolina equating the two. Typically, the administration of justice involves a matter concerning the courts. As outlined above, it may involve bribing witnesses, bribing court officials related to

criminal charges, and falsifying police reports. The state failed to prove that any of Appellant's actions interfered with any matter before any court of law.

There is no dispute that Appellant initially lied to Deputy Chris Davis when he told Davis he had traveled to the family's second home in Easley the night before. However, Appellant admitted mere hours later to Detective Perkins that he had actually driven to Travelers Rest to see Brandy Lee. The state failed to present any evidence that Appellant's lie obstructed the administration of justice in any way. The state even failed to present any evidence that Appellant's lie hindered the investigation in any way.

The state also alleged that Appellant lied to law enforcement by asserting McCaffrey took a safe containing one hundred and ten thousand dollars from their home when she left. The state presented no direct evidence or substantial circumstantial evidence that this was not true. Even if Appellant had in fact lied about the safe, the state failed to present any evidence that Appellant's lie obstructed the administration of justice or hindered the investigation in any way.

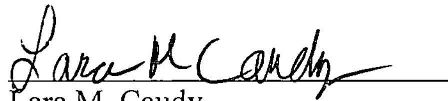
Moreover, the state failed to present substantial circumstantial evidence that Appellant authored the letter admitted as State's Exhibit No. 63. The state's expert, Robert Leonard, merely testified that between Appellant and McCaffrey, it was more likely that Appellant wrote the letter. However, as Alan Perlman testified, there was insufficient evidence to conclude that either of them authored the letter. Even if Appellant had authored the letter, such conduct does not constitute common law obstruction of justice in South Carolina, as evidenced by the case law outlined above, as it did not involve any matter pending before a court of law.

Consequently, the state failed to present any direct or substantial circumstantial evidence that Appellant did any act that had the intent to prevent, obstruct, impede, or hinder the administration of justice. Respectfully, this Court should direct a verdict of acquittal.

CONCLUSION

Appellant respectfully requests this Court direct a verdict of acquittal in favor of Appellant on the charge of obstruction of justice based upon the state's failure to present any direct or substantial circumstantial evidence of guilt.

Respectfully Submitted,



Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

This 31st day of January, 2020.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RECEIVED
JAN 31 2020
SC Court of Appeals

Appeal from Charleston County

Honorable D. Craig Brown, Circuit Court Judge

THE STATE,

RESPONDENT,

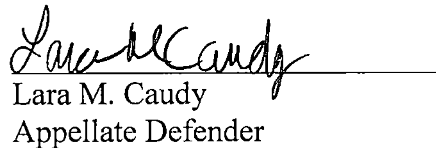
V.

ROBERT W. MCCAFFERY, JR.

APPELLANT

CERTIFICATE OF SERVICE

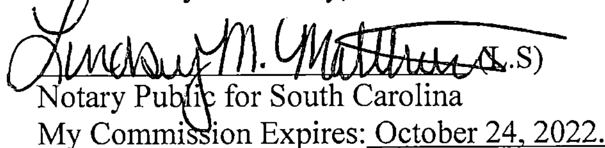
The undersigned hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon William M. Blitch, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Initial Brief of Appellant and Designation of Matter have been served on Robert W. McCaffrey, #379397, at Kirkland Correctional Institution, 4344 Broad River Road, Columbia, SC 29210, this 31st day of January, 2020.



Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me this 31st day of January, 2020.



(L.S)
Notary Public for South Carolina
My Commission Expires: October 24, 2022.