STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
The Honorable D. Craig Brown, Circuit Court Judge

Appellate Case No. 2019-000540

THE STATE, Respondent,

v.

ROBERT W. MCCAFFERY, JR., Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial judge did not err in denying the Appellant's motions for directed verdict as there was substantial evidence presented from which Appellant's guilt could be fairly and logically deduced.

STATEMENT OF THE CASE

Appellant was indicted in January of 2015 for obstruction of justice. On March 4, 2019, a jury trial proceeded in Charleston County in front of the Honorable D. Craig Brown. At the jury trial the State was represented by Assistant Solicitors of the Ninth Circuit Solicitors' Office, Jennifer Shealy and Daniel Cooper. Christopher Lizzi represented the Appellant. At the conclusion of the trial, the jury found Appellant guilty of obstruction of justice. Judge Brown sentenced him to ten years' imprisonment.

STATEMENT OF FACTS

Appellant was married to Gayle McCaffery (Wife) for fourteen years. (R. 2). The couple lived in Charleston, South Carolina with their two minor children. (R. 2). Wife disappeared on March 18, 2012 and has not been seen since. (R. 6). Appellant was ultimately charged with obstruction of justice for interfering in law enforcement's investigation of Wife's disappearance. (R. 6).

On March 18, 2012, Appellant reported Wife missing at 5:19 p.m. (R. 11). Deputy Christopher Davis, of the Charleston County Sheriff's Office, arrived on scene at 5:46 p.m. on March 18, 2012. (R. 11). Appellant originally told Davis that he and Wife went out to eat on March 17, 2012 around 2:00 p.m. and returned home between 4 and 5 pm, where they got into a verbal altercation. (R. 14). Appellant said he went to their other home in Easley that night because he was "very emotional and distressed about his marriage and he wanted some space and to have time away." (R. 15). Appellant stated he left at 10:00 p.m. on March 17, 2012 and returned home at 6:30 a.m. on March 18. 2012. (R. 16). Appellant provided Davis a typed letter addressed to Appellant, that he found on the printer. (R. 17, 628). Davis completed a missing persons report and notified his supervisor. (R. 26).

Detective James Perkins arrived on scene and asked if he could search the house. (R. 161). Appellant denied Perkins entry and stated that he could not come inside of the house without a warrant. (R. 161). Appellant accompanied Perkins to the Sheriff's Office where he was interviewed. (R. 161). Appellant's statement to Perkins differed greatly from what Appellant initially told Davis. (R. 644). Appellant told Perkins that he, his wife, kids, and uncle, had dinner at the house. After having a verbal argument with Wife, Appellant drove to Travelers Rest, South Carolina to see Brandy Lee, a woman with whom he had been having an affair. (R. 172).

Appellant met Lee at a bar in Brevard, North Carolina on February 14, 2012. (R. 42). They exchanged numbers and met at a hotel later that night to engage in sexual relations. (R. 43). After that night, Appellant and Lee began a relationship where they saw each other every day. (R. 43). Appellant told Lee that he was separated from his wife and not living at home. (R. 44). Lee later discovered that Appellant was married and attempted to break off their relationship on or about March 6, 2012. (R. 58).

Appellant and Lee had a texting conversation on the night of March 16, 2012 leading into the morning of March 17, 2012. (R. 64). Lee told Appellant where she was going to be that night, to which Appellant responded at 8:22 a.m. on March 17, 2012 "could be late. I need to know how late they are open. Dinner with friends at 6:30 and I leave here if you want to see me." (R. 64). On the night of March 17, 2012, Appellant went to a bar in Travelers Rest to meet up with Lee, where she "blew him off". (R. 76). Appellant and Lee were texting throughout the early morning hours of March 18, 2012. (R. 635). In that conversation, Lee made a comment about Appellant's wife, to which Appellant responded at 2:22 p.m. "She left I found the kids alone when I got home. A bunch of other stuff is gone with just a note behind. So ass or not, me and the kids are alone now. I could use a friend right now not more shit." (R. 81, 635). When Lee stated that she did not believe Appellant, he responded at 4:51 p.m. "You do not have to. She is goNe and i have to move on and help the kids and try to help myself and i guess i guess i will get that fresh start after all. Just did not think it would b like this. House phone # is 843 556 7486 if you dont mind talking later." (sic) (R. 82, 635).

Lee cooperated with police and reached out to Appellant a few days after Wife was reported missing in an attempt to gather information from him. (R. 86). Appellant told Lee "the less she said about their relationship the better" and "maybe it would be a good idea if we say we

didn't have a relationship." (R. 113). Appellant wanted to meet with Lee and asked her if he could trust her and whether or not she would be wearing a wire when they met. (R. 116).

Appellant told Perkins that after meeting Lee in Travelers Rest, South Carolina he drove home and ultimately arrived in Charleston around 6:30 on the morning of March 18, 2012. (R. 178). Appellant indicated to Perkins that when he arrived home, Wife was missing. (R. 173). When questioned about why he waited so long to call police, Appellant indicated that he laid down for about an hour until the kids woke up and that he wanted to speak to his dad first. (R. 174). Appellant did not call any of Wife's friends or family to inquire about where she was. (R. 174). Appellant told Perkins that Wife "could be next door", but when asked if he checked, he said he did not. (R. 182).

The State hired Robert Leonard, an expert in the field of linguistics, to analyze the letter found by Appellant. (R. 436). After reviewing the letter and writing samples provided from both Wife and Appellant, Leonard concluded that there was a higher consistency between the letter and Appellant's writings rather than Wife's. In his defense, Appellant called Alan Perlman, his own expert in the field of linguistics. (R. 508). Perlman agreed that there are more similarities between Appellant's writing and the letter compared to Wife's writing, however that the similarities did not rise to a level to conclusively determine an author of the letter. (R. 523-25).

Ultimately, Appellant was arrested in 2014 for obstruction of justice during the investigation of his missing wife. (R. 191). Perkins testified that Appellant gave information that led police in a direction where it hindered them from being able to locate Wife quickly. (R. 191).

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. Butler, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014). "When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight." *Id.* As the South Carolina Supreme Court recently reiterated: "[W]hen ruling on a directed verdict motion, the trial court views the evidence in the light most favorable to the State and must submit the case to the jury if there is 'any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced.'" State v. Bennett, 415 S.C. 232, 236-37, 781 S.E.2d 352, 354 (2016) (quoting State v. Littlejohn, 228 S.C. 324, 89 S.E.2d 924 (1955)).

"Therefore, although the jury must consider alternative hypotheses, the court must concern itself solely with the existence or non-existence of evidence from which a jury could reasonably infer guilt." Id. "Accordingly, in ruling on a directed verdict motion where the State relies on circumstantial evidence, the court must determine whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt." Id. "If there is any direct evidence or any 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." State v. Cherry, 361 S.C. 588, 593, 606 S.E.2d 475, 477–78 (2004). "The appellate court may reverse the trial judge's denial of a motion for a directed verdict only if there is no evidence to support the judge's ruling." State v. Zeigler, 364 S.C. 94, 103, 610 S.E.2d 859, 863 (Ct. App. 2005).

ARGUMENT

The trial judge did not err in denying the Appellant's motions for a directed verdict as there was substantial evidence presented from which Appellant's guilt could be fairly and logically deduced.

Appellant maintains the trial judge erred by failing to grant a directed verdict because the State did not present any direct or substantial circumstantial evidence that his actions obstructed the administration of justice. Appellant contends that in order for one to be found guilty of obstructing the administration of justice, the State must prove that some sort of judicial proceeding exist at the time of the obstruction. Appellant argues that the State failed to present any evidence that Appellant's lies obstructed justice in any way. He further argues that the State failed to present substantial circumstantial evidence that Appellant authored the letter admitted as State's Exhibit 63 and even if Appellant had authored the letter, such conduct does not constitute obstruction of justice. (R. 628). Appellant's argument lacks merit as his chosen definition of "administration of justice" is far too narrow. The "administration of justice" is a broad term that encompasses conduct beginning at the time of the police investigation and runs through the end of the criminal case. Appellant's lies to police along with providing a letter allegedly written by Wife constituted acts which impeded the administration of justice. The jury could therefore rationally conclude Appellant prevented, obstructed, impeded, or hindered the administration of justice.

Ultimately, the question in this case 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. See State v. Robinson, 310 S.C. 535, 539, 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)).

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." MCANINCH, FAIREY & COGGIOLA, THE CRIMINAL LAW OF SOUTH CAROLINA 547 (6th ed. 2002). While the statute codified some acts that were previously prosecuted as common law obstruction of justice, the act is not completely comprehensive and some acts do not fall within the statutory scheme. See State v. Lyles-Gray, 328 S.C. 458, 464, 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 original). Under the 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, 567, 257 S.E.2d 748, 750-51 (1979) (quoting 67 C.J.S. Obstructing Justice §§2 and 3). "Obstructing justice is defined as either active interference with proceedings of a tribunal or investigation or an action or threat of action against those who would cooperate in the process of justice." 67 C.J.S. Obstructing Justice § 1. "Obstructing justice is defined at common law as any act which prevents, obstructs, impedes, or hinders public or legal justice." 67 C.J.S. Obstructing Justice § 2. In State v. Lyles-Gray, the Court affirmed a conviction for common law obstruction of justice stating conviction was supported by evidence that defendant, a police officer, knew shoplifter had placed stolen goods in defendant's car, that shoplifting suspect was defendant's child, that defendant failed to properly interview witnesses during the investigation and failed to turn over stolen merchandise. See State v. Lyles-Gray, 328 S.C. 458, 464, 492 S.E.2d 802, 805

(Ct. App. 1997). All of the actions done by defendant in this case were done during the investigation portion. This case stands contrary to Appellant's assertions that "the administration of justice involves a matter concerning the courts." (Initial Brief of Appellant). It has never been held that a judicial proceeding must be initiated for one to obstruct justice, and to hold so now would lead to results that are plainly absurd. See People v. Barbee, 681 N.W.2d 348, 351 (Mich. 2004) ("The investigation of crime is critical to the administration of justice. Providing a false name to the police constitutes interference with the administration of justice. . . .").

Under the 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, 567, 257 S.E.2d 748, 750-51 (1979) (quoting 67 C.J.S. Obstructing Justice §§2 and 3). Prevent is defined as "to keep (something) from happening" See NEW OXFORD AMERICAN DICTIONARY (3rd ed. 2010) p. 1384. Obstruct is defined as to "be or get in the way of". See NEW OXFORD AMERICAN DICTIONARY (3rd ed. 2010) p. 1212. Hinder is defined as "creating difficulties for (someone or something)". See NEW OXFORD AMERICAN DICTIONARY (3rd ed. 2010) p. 822. Impede is defined as "delay or prevent (someone or something) by obstructing them". See NEW OXFORD AMERICAN DICTIONARY (3rd ed. 2010) p. 871. Only one of those definitions need to be met for obstruction of justice to be found. Further when ruling on a directed verdict motion, the trial court views the evidence in the light most favorable to the State, and if there is **any** evidence reasonably tending to prove the guilt of the defendant, the appellate court must find that the trial court properly submitted the case to a jury. State v. Cherry, 361 S.C. 588, 593, 606 S.E.2d 475, 477–78 (2004). Here, the State gave an overwhelming amount of evidence for not only one act, but multiple acts by Appellant that obstructed justice.

First, the State introduced evidence that Appellant initially lied to Deputy Davis. He told Davis that he had eaten dinner out at around 2:00 p.m. and later that night traveled to the family's other home in Easley because he was emotional and distressed about his marriage and he wanted some space. The State provided evidence that this was a lie when Detective Perkins testified Appellant told him that he, his wife, kids, aunt and uncle ate dinner at the house and after a verbal altercation with Wife, Appellant drove to Travelers Rest to see a woman with whom he had a relationship. (R. 172). The State also introduced evidence that even before dinner and the altercation Appellant had with Wife, Appellant had already planned to go to Travelers Rest that night as he indicated in a text message to Lee. (R. 64, 635). This act of lying to Perkins obstructed justice by delaying the investigation. Further, Appellant advised Lee "the less she said about their relationship the better" and "maybe it would be a good idea if we say we didn't have a relationship." (R. 113). Appellant, although unsuccessful, intended to prevent police from knowing information that was relevant to their investigation. "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, 274 S.E.2d 110, 113 (1980).

The second act that Appellant did to intentionally obstruct justice was the amount of time that he waited to call the police. Although Appellant remained consistent in his statements of returning home at 6:30 a.m. to find his wife missing on the morning of March 18, 2012, he did not call the police to report her missing until almost twelve hours later at 5:15 p.m. on March 18, 2012. (R. 11). When questioned about why he waited so long to call the police he stated that he wanted to talk to his dad first. (R. 174). The State presented evidence that he spoke to his dad from 8:00 a.m. to 8:26 a.m. leaving roughly nine hours before he called the police. (R. 325). The State also introduced evidence that he did not make any calls to Wife's family or friends in the

area in an attempt to find her. (R. 174). Appellant did however, send two text messages to Lee before calling police indicating that Wife was gone. (R. 635). Appellant intentionally waited twelve hours from when he "discovered" Wife missing to when he called the police. These twelve hours were critical in the investigation into his missing wife. This intentional act of waiting to report her missing prevented police from beginning an investigation which thereby obstructed justice. Additionally, when police were finally notified that Wife was missing, Appellant refused to allow Detective Perkins into the home, where Wife was last seen, without a warrant. This intentional act of denying Perkins entrance, delayed the progress of the investigation, therefore obstructing justice.

Appellant also provided police a letter he stated was found on the printer. This letter was typed and addressed to Appellant. (R. 628). Police attempted to find the "Nikki" who according to the letter, she may have run off with. Throughout the investigation, police obtained all of Wife's electronic devices in an attempt to find communication with "Nikki" (R. 186, 307, 327, 363, 387, 418). After finding no trace of a person named "Nikki", police inquired further into the contents of the letter. The letter inferred that Wife had run away with Nikki, but Law Enforcement only revealed evidence that Wife wanted to fix her marriage with Appellant, not run from it. The State produced evidence of Wife texting Lee, the woman with whom Appellant was having a relationship, telling Lee to leave her husband alone that Wife wanted to fix her marriage. (R. 53). They also introduced testimony from Wife's friends and family that she wanted to fix her marriage. (R. 361-62, 384, 418). Evidence was introduced that Wife had rented a cabin for her and Appellant for the following weekend. (R. 239-41, 630). The State even produced an email from Wife to the pastor of her church seeking a marriage counselor. (R. 405).

Further, even if Wife did not want to remain in her marriage, police had no indication that Wife would just disappear. Evidence was shown that Wife owned the house that her family lived in and no money was owed on it. (R. 223). Wife had two sisters that lived in the same town as her. (R. 183). Wife was heavily involved in her children's lives and education and typically was the parent who communicated with the school. (R. 298). Wife had a consistent job working at the Citadel since 2004. (R. 353). At the time of the trial in 2019, there had been no activity in regards to her social security number, finances, or name. (R. 426-428). Nothing in Wife's life indicated that she would run off and leave her family, yet Appellant asserts that Wife left in the middle of the night leaving her two minor children at the house alone. (R. 644).

After investigating the validity and contents of the letter, police did not believe that Wife authored it. The State produced evidence from Wife's friends and family that the language in the letter did not match how Wife spoke. (R. 364, 376-78, 388, 411, 420-21). Many people went further than that and testified that she did not use profanity, including her sister, Helen Banach, who testified she had never heard her say a cussword. (R. 494). The State also produced a text message, written by Wife to Appellant, that used the word "heck" rather than using profanity, shortly after Wife learned of Husband's affair. (R. 303-05, 641). The State produced an expert, in the field of linguistics, who concluded that after reviewing writing samples from both Wife and Appellant, there was a higher consistency between Appellant's writing and the letter left behind. Appellant's own expert agreed that there were more consistencies between the Appellant's writing and the letter, but that it wasn't enough to conclusively determine that Appellant authored the letter. The State not only produced evidence that Wife was not the author of the letter, but also produced evidence that Appellant was the author. This intentional act of

fabricating a letter, led police to investigate in different directions, delaying the investigation, ultimately preventing police from conducting a genuine investigation at all.

The criminal investigation into the whereabouts of Wife is an important stage in the administration of justice. Appellant's actions during that investigation constituted an obstruction of justice. Appellant did not simply tell a mere lie to the police, he also attempted to convince another person to lie to police. Most importantly, he created a fictitious story that included a fictitious person in an attempt to interfere with Law Enforcement's investigation. All of the above leads to the natural conclusion that the trial judge properly denied Appellant's motion for directed verdict. In order to withstand Appellant's motion for directed verdict, the State merely needed to prove that evidence existed. It was up to the jury to determine the weight of that evidence. Appellant's conduct and deliberate misrepresentations to law enforcement could reasonably be interpreted as an action, designed to impede or prevent the investigation into his missing wife. Certainly the State presented sufficient evidence to allow a reasonable juror to find the Defendant guilty beyond a reasonable doubt. The trial judge properly denied Appellant's motion for directed verdict, as the jury was presented with substantial evidence of the elements of common law obstruction of justice. Appellant's conviction and sentence should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgments and convictions of the lower court should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent 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."

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