

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Appeal from Horry County
The Honorable R. Markley Dennis, Circuit Court Judge
On Petition for Writ of Certiorari to the Court of Appeals
Appellate Case No. 2020-001434

THE STATE,

Respondent,

v.

SIDNEY ST. CLAIR MOORER,

Petitioner.

**RETURN TO PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS**

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Did the Court of Appeals properly affirmed the circuit court's denial of Petitioner's directed verdict motion because there was ample evidence in the record from which a reasonable juror could find Petitioner acted with the intent to prevent, obstruct, impede, and hinder the investigation into the disappearance of Heather Elvis?

STATEMENT OF THE CASE

On March 4, 2014, the Horry County Grand Jury indicted Petitioner 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 led him to contact Petitioner by telephone. Petitioner did not answer, and Sgt. Furr left a message. (Record on Appeal [R.], pp. 17-20).

When Petitioner 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, Petitioner changed his story and stated he had talked to Heather the night before (December 18). Petitioner 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 Petitioner’s story, Sgt. Furr sent an officer out to Petitioner’s residence to interview him in person. Sgt. Furr testified if Petitioner had told him about the payphone call and the two conversations, he would have gone to Petitioner’s residence himself to interview Petitioner, 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. Petitioner also did not tell Sgt. Furr he had seen Heather within the last six weeks. (R., pp. 20-23, 35).

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 Petitioner's residence to ask Petitioner about a missing person, and they arrived at Petitioner's residence at approximately 2:11 a.m. Petitioner 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. Petitioner 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 Petitioner that Heather's phone records showed over 300 text messages between his phone and Heather's phone in the previous month. Petitioner denied sending Heather any text messages. (R., pp.39-61)¹

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. (R. pp. 63-67, 476-633).

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 Petitioner's phone five times between 3:16 a.m. and 3:41 a.m., with one call lasting over four minutes. (R., pp. 67-81). 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 call from the payphone. (R., pp. 81-86).

¹State's Exhibit 1 (DVD) was transported to the Court of Appeals for consideration.

Sgt. Martin assisted in obtaining Petitioner's phone records, which he received during the afternoon of December 20th, just before he and another investigator interviewed Petitioner at the Police Department. (R., pp. 86-88, 634-907).

During the interview, Petitioner'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, Petitioner finally admitted he 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, but he destroyed the notes. Sgt. Martin testified Petitioner'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. (R., pp. 89-111).²

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. 119-123). When he and Sgt. Martin talked to Petitioner 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, Petitioner continued to assert he had not seen Heather since they broke up in October 2013. After Petitioner was advised there was a video from the payphone

² State's Exhibit 8 [Interview Recording] was transported to the Court of Appeals for consideration.

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). (R., pp. 119-123).

Mr. Cauble testified that after Petitioner's interview, law enforcement learned Petitioner had not been truthful regarding his whereabouts on December 17th and 18th. Through Petitioner'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 Petitioner was truthful about and what he lied about until mid-February 2014, approximately two months after Heather disappeared, and Petitioner's failure to provide truthful information regarding his communications with Heather on December 18th hindered the investigation into her disappearance. He also testified Petitioner's failure to be totally truthful required investigators to get Petitioner's detailed phone records, Petitioner's wife's phone records, Petitioner'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 Petitioner had given truthful information when he originally spoke with investigators. (R., pp. 123-189).

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 Petitioner's phone. In August 2013, there were 564 contacts between Heather's phone and Petitioner's phone, with 213 out-going calls from Heather to Petitioner, and 351 in-coming calls from Petitioner 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. (R., pp. 192-200, 912-918).³

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 Petitioner's home. (R., pp. 201-204).

Heather's roommate testified Petitioner 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 Petitioner 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. (R., pp. 207-214, 215-218).

Jessica Cooke testified she was the manager at a restaurant where Heather worked during the time she was involved with Petitioner. During that time, she only saw Petitioner driving a white truck. (R., pp. 235-240).

Detective Will Lynch of the North Myrtle Beach Police Department testified he conducted a forensic examination of Petitioner'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 Petitioner's wife's phone, which revealed text messages between

³State's Exhibit 9 [Phone Record Breakdown] was transported to the Court of Appeals for consideration.

Petitioner and his wife at approximately 4:37 a.m. on the 18th. None of the text messages between Heather's and Petitioner's phones included information regarding a black truck. (R., pp. 241-273).

The sales manager of a Ford dealership testified he was personally involved in the sale of a Ford truck to Petitioner. The dealership records reflected Petitioner traded a white Ford F150 truck for a black Ford F150 truck on November 8, 2013. (R., pp. 274-279, 932-948).

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 Petitioner arriving at the store at 1:13 a.m., on December 18, 2013, and leaving at approximately 1:21 a.m. (R., pp. 281-291).⁴

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 he was able to obtain was poor quality, and the person making the call could not be identified from the video. (R., pp. 292-301).⁵

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 Petitioner's phone records from December 2013, to analyze the locations of both

⁴State's Exhibit 16 [Video] was transported to the Court of Appeals for consideration.

⁵State's Exhibit 17 [Video] was transported to the Court of Appeals for consideration.

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 Petitioner, 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 Petitioner's residence. (R., pp. 302-335).

Melson also analyzed Petitioner's phone records for December 17-18, 2013. Between 10:13 a.m. and 9:15 p.m. on December 17th, Petitioner's activity remained in the vicinity of his residence. From 9:29 p.m. through 11:06 p.m., Petitioner'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. and remained there 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 Petitioner's residence. (R., pp. 335-371).

Donald Demario testified he was related to Petitioner's wife, and he had known Petitioner most of his life. He stated he was at Petitioner's house after Heather was reported missing, and he spoke with Petitioner outside the house. During their conversation, Petitioner showed him a gray flip phone, and something he saw on the phone indicated Petitioner knew more about Heather after she disappeared. (R., pp. 372-375).

At the close of the State's case, Petitioner 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." Petitioner 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 Petitioner 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 Petitioner made a "misstatement" during the discussions with law enforcement, which he corrected, but the jury could conclude Petitioner's misstatement impeded the investigation.⁶ The judge further noted the jury could find Petitioner 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 Petitioner withheld information relevant to the investigation. Considering the

⁶Petitioner contends the trial judge "explained" that the State's evidence was a "misstatement." (Petition, p. 15). 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 Petitioner's statements, or Petitioner's intent when making them. (R., p. 387-388). A mere "misstatement" implies a lack of intent, and the trial judge made no such implication. Further, Petitioner's contention the trial judge indicated "the state should have charged Petitioner with misprision of a felony, not obstruction of justice," grossly misrepresents the trial judge's statement. (Petition, p. 15, n. 9). 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 Petitioner's actions did constitute a crime, even if he believed another charge would have been appropriate.

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. (R., pp. 384-395).

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

By unpublished opinion filed July 21, 2020, the Court of Appeals affirmed the circuit court's denial of Petitioner's directed verdict motion and Petitioner's conviction because "substantial circumstantial evidence existed reasonably tending to prove [Petitioner's] guilt." State v. Moorer, Op. No. 2020-UP-198 (S.C. Ct. App. Filed July 1, 2020) (2020 WL 3572015 at *1). By Order filed September 28, 2020, the Court of Appeals denied Petitioner's Petition for Rehearing. Petitioner now seeks review of the Court of Appeals decision.

ARGUMENT

The Court of Appeals properly affirmed the circuit court's denial of Petitioner's directed verdict motion because there was ample evidence in the record from which a reasonable juror could find Petitioner acted with the intent to prevent, obstruct, impede, and hinder the investigation into the disappearance of Heather Elvis.

Petitioner asserts the Court of Appeals erred in affirming the circuit court's denial of his directed verdict motion 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 only 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. He further claims the case presents novel issues that warrant consideration by this Court. Contrary to Petitioner's assertions, the Court of Appeals **correctly utilized and applied the standard directed verdict framework to the particular facts of this case, and there are no novel issues warranting this Court's consideration.**

A. Court of Appeals Analysis

In support of its holding affirming the circuit court ruling, the Court of Appeals referenced specific evidence supporting denial of Petitioner's directed verdict motion. That evidence included: 1) Sgt. Furr testified that during his telephone conversation with Petitioner on December 19th, Petitioner changed his story about the last time he spoke with Heather, and did not reveal he called Heather from a payphone on the 18th and spoke to her more than once; 2) Sgt. Martin and Det. Cauble testified Petitioner originally denied he called Heather from a payphone on December 18th, and then admitted he did call her from the payphone, but only after Det. Cauble told Petitioner they had a surveillance video of the caller at the payphone; 3) Det.

Cauble testified that when he asked Petitioner where he was on December 17th – 18th, Petitioner did not reveal he had been at or near Heather’s residence and a restaurant she was at on the 18th; 4) the State’s expert testified Petitioner’s cellphone records revealed Petitioner was at or near multiple significant locations on the evening of December 17th through early morning on December 18th, including Heather’s place of employment, Heather’s residence, the restaurant Heather ate at on the 17th, Walmart, and the payphone used to call Heather on the 18th; and 5) Demario’s testified Petitioner showed him something on a cellphone indicating Petitioner knew more about Heather’s disappearance than he had told the police. Viewing the evidence in the light most favorable to the State, the Court of Appeals concluded the State presented substantial circumstantial evidence reasonably tending to prove Petitioner “lied and omitted relevant information during his several interviews with law enforcement, and therefore was guilty of common –law obstruction of justice.” Moorer, 2020 WL 3572015 at *1.

B. Directed Verdict Standard

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).

C. Obstruction of Justice

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 over 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 Petitioner 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 Petitioner had not lied. In other words, his efforts to prevent, obstruct, impede or hinder the investigation into Heather's disappearance by shifting the focus

from him and his wife were unsuccessful. The Lyles-Gray analysis belies Petitioner'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, Petitioner engaged in a course of conduct designed to impede a criminal investigation.⁷ Critically, Lyles-Gray stands for the proposition that, contrary to Petitioner'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).

Significantly, when the legislature codified portions of common law obstruction of justice, the statute was entitled "Interference with Judicial Process," which indicates the statute was only intended to codify common law obstruction of justice to the extent the conduct interfered with a "judicial process," and all other obstruction of justice conduct was still covered by the common law offense. Therefore, an on-going judicial process is **not** necessary for a defendant to be convicted of common law obstruction of justice

Petitioner'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. Petitioner's interpretation

⁷Petitioner's consistent pattern of lying to the police about his communications with Heather on the last day she was seen or heard from certainly supports the conclusion he acted with the intent to obstruct the administration of justice.

would encourage criminal defendants to deliberately sabotage any investigation by law enforcement believing it may lead to their exoneration, and their obstruction is conduct for which they could not be punished.

Petitioner'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. Petitioner only told the truth about his call to Heather from the payphone **after** the investigators confronted him with the knowledge there was a surveillance video of the person making the call.⁸ 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, regardless of the original lie's impact on the investigation.

Second, Petitioner's argument would require prosecutors to prove a negative. Law enforcement officers have to follow the information provided, and as officers testified in this case, Petitioner's admitted lies required resources and time to corroborate or contradict the rest of his statements. It is impossible to know, much less prove, what additional information or evidence law enforcement might have been able to pursue in the critical early stages of Heather's case if Petitioner had simply told the truth about his contacts with her. For instance, armed with the truth, law enforcement might have been able to pursue other leads and establish probable cause for warrants to search Petitioner's and his wife's home and/or vehicles. Further,

⁸At 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 Petitioner they knew he was the person on the video, but apparently believing he would be identified by the video, Petitioner admitted making the call.

with the passage of time required to investigate the validity of Petitioner's 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, as discussed above, Petitioner'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.⁹ 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. 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 time of the crime, to the inception of a criminal investigation, and through the adjudication of a particular defendant's case.

⁹Petitioner 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)).

Therefore, to hold that a judicial proceeding must be initiated **before** a person can obstruct justice would lead to patently absurd results.

Much of Petitioner's argument boils down to 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 this Court - the propriety of the Court of Appeals affirming the circuit court's denial of Petitioner's directed verdict motion. In other words, was there any direct or substantial circumstantial evidence from which the jury could have found Petitioner lied to obstruct justice during the investigation into Heather's disappearance?

While the circuit court 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>.¹⁰ 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 circuit court found, there were several aspects of the evidence presented from which the jury could find Petitioner's lies, or "misstatements," were intended to impede law enforcement's investigation of him (and possibly his wife) as a suspect in Heather's disappearance. One such piece of evidence was Demario's testimony he saw something on the

¹⁰According 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#>). The words are certainly neither novel nor outside the scope of an ordinary juror's experience and knowledge.

phone Petitioner showed him indicating Petitioner had withheld information from law enforcement.¹¹ (R., pp.386-395).

In addition to the evidence the circuit court referenced as supporting a jury verdict beyond a reasonable doubt, the evidence also established Petitioner lied about Heather leaving notes on his truck as a premise for the payphone call on December 18th. All the evidence indicated Petitioner drove a white truck while he was involved with Heather, and did not even own a black truck until well after he allegedly 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 Petitioner had traded in the white truck for a black one, or that she had even been around Petitioner's home after he traded the white truck. Therefore, she could not have left notes on his truck in the days leading up to the payphone call.

The circuit court'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 circuit court properly denied Petitioner's directed verdict motion. In order to withstand the motion, the State had to present evidence from which a reasonable juror could conclude Petitioner'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.

¹¹Petitioner boldly claims his lies actually forced law enforcement "to conduct a more thorough investigation." (Petition, p. 22). If lying to law enforcement improves an investigation, every criminal defendant can, and should, 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.

The jury was presented with substantial circumstantial evidence of the elements of common law obstruction of justice, and the issues Petitioner raises are not novel or unique such that intervention by this Court is warranted. The circuit court properly denied Petitioner's directed verdict motion, the Court of Appeals properly affirmed the circuit court's ruling, and the Petition for Writ of Certiorari to the Court of Appeals should be denied.

CONCLUSION

Based on the foregoing, the State respectfully submits the Petition for Writ of certiorari to the Court of Appeals should be denied.

Respectfully submitted,

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