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**S.C. SUPREME COURT**

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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

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THE STATE,

Respondent,

vs.

SIDNEY MOORER,

Petitioner.

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**BRIEF OF RESPONDENT**

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## **STATEMENT OF ISSUE ON CERTIORARI**

Did the Court of Appeals err by affirming the trial judge's denial of Moorer's directed verdict motion based upon its conclusion Moorer's lies and omissions to police constituted obstruction of justice when the undisputed evidence showed no change in the police investigation as a result and no impact on any judicial proceedings?

## **COUNTER-STATEMENT OF ISSUE ON CERTIORARI**

Did the Court of Appeals somehow err by affirming the trial judge's ruling denying Moorer's directed verdict motion when the evidence and testimony presented during trial supported a rational and logical conclusion Moorer committed common law obstruction of justice by knowingly lying to detectives in an effort to hinder and obstruct their investigation into the sudden disappearance of a missing young woman?

## STATEMENT OF THE CASE

In February of 2014, Petitioner Sidney Moorer was arrested for common law obstruction of justice—along with several other charges—in connection to the sudden disappearance of a young woman named Heather Elvis. In March of 2014, the Horry County Grand Jury indicted Moorer for one count of common law obstruction of justice. On August 28, 2017, a jury trial was commenced in the Horry County Court of General Sessions with the Honorable R. Markley Dennis, Jr., circuit court judge, presiding. At the conclusion of the three-day trial, the jury convicted Moorer as indicted. Following the verdict, the trial judge sentenced Moorer to a ten-year term of imprisonment. Moorer then timely filed and perfected an appeal.

On appeal, the Court of Appeals—following briefing—issued an unpublished opinion unanimously affirming Moorer’s conviction. State v. Moorer, Op. No. 2020-UP-198 (S.C. Ct. App. filed July 1, 2020). Thereafter, Moorer petitioned the Court of Appeals for rehearing, and the petition was denied. Moorer then filed a petition for a writ of certiorari in the Supreme Court, and that petition was granted on August 6, 2021.

## STATEMENT OF FACTS

On the evening of December 17, 2013, Heather Elvis, a twenty-year-old hostess employed at the Tilted Kilt restaurant located near her home in Myrtle Beach, South Carolina, went on a date with Steven Schiraldi, whom she knew from high school. (R. p. 19; pp. 207-208; p. 218; pp. 220-221; p. 228, p. 235; p. 238; p. 984). At the conclusion of the date, Schiraldi dropped Elvis off at her apartment, they made plans to see each other again the next day, and the two parted ways for the night. (R. pp. 215-216; pp. 220-221).

Subsequent to that, Elvis—while at her home—received a call from a payphone located outside a gas station in Myrtle Beach at approximately 1:33 a.m. in the early morning hours of December 18, and the call lasted for nearly five minutes. (R. p. 72; pp. 114-115; p. 201; pp. 333-334). By his own later admission, the call was placed by Petitioner Sidney Moorner, a married man who had previously performed maintenance at Elvis's place of employment and who had also been engaged in a several-months-long relationship with her that lasted until late October or early November of that year. (R. p. 80; p. 92; pp. 100-102; p. 109; p. 132; p. 135; pp. 194-199; p. 208; State's Ex. # 8 (Interview Recording)).

Within minutes of the payphone call ending, Elvis called her best friend and roommate, Brianna Warrelmann, who was not at the residence because she had left for an out-of-town trip a few days earlier. (R. p. 72; p. 208; p. 211; p. 215). At that time, Elvis was extremely emotional and crying hysterically, and Elvis proceeded to tell Warrelmann about why she was so upset. (R. pp. 212-213). What Elvis recounted angered Warrelmann, and Warrelmann responded by encouraging Victim to just go to sleep.<sup>1</sup> (R. pp. 212-213; p. 215).

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<sup>1</sup> Although Warrelmann was later not permitted to testify about the specific contents of her conversation with Elvis in front of the jury during trial, information appearing in the appellate

After speaking with Warrelmann, Elvis began calling the payphone that had been used by Moorer, and she placed nine calls to it between 2:29 a.m. and 3:05 a.m. (R. pp. 73-75). In addition to that, Elvis also sent a number of text messages between 2:21 a.m. and 2:42 a.m., including to the payphone's number, to Schiraldi, and to Warrelman. (R. pp. 84-86). Then, at 3:16 a.m., Elvis began calling Moorer's phone directly. (R. pp. 75-76; p. 86). In total, Elvis called his phone six times between 3:16 a.m. and 3:41 a.m., and one of those calls—a call placed at 3:17 a.m.—lasted for over four minutes.<sup>2</sup> (R. pp. 75-77; pp. 80-81). Ominously, the call placed at 3:41 a.m. would prove to be the last one ever made from Elvis's phone.<sup>3</sup> (R. p. 80).

On the next day—December 19, 2013, Elvis's vehicle was found abandoned at a boat landing, which led the Horry County Police Department to begin an investigation into her whereabouts.<sup>4</sup> (R. pp. 18-19; p. 326). Early on in that investigation, Corporal Danny Furr went to the Tilted Kilt in an effort to find Elvis, and, upon doing so, he received information that led him to Moorer. (R. pp. 18-19). Based on that, the officer called Moorer, which resulted in the two speaking by phone later that day. (R. pp. 20-21). During their conversation, Moorer initially claimed he had not spoken with Elvis in six weeks and further asserted he had only last

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record indicates Warrelman was advised Moorer had told Elvis he left his wife and wanted to be with Elvis. (R. p. 213; p. 1077).

<sup>2</sup> At the time of the calls made at 3:16 a.m. and 3:17 a.m., Elvis was in the vicinity of her residence. (R. p. 334).

<sup>3</sup> Elvis's last four calls, which were placed between 3:38 a.m. and 3:41 a.m., were not answered and, instead, were routed to Moorer's voicemail system. (R. pp. 76-77; p. 80; pp. 350-352; p. 906). Based on that, it was not possible to confirm whether anyone was in physical possession of Moorer's phone at the time those calls came in. (R. pp. 350-352).

<sup>4</sup> Peachtree Landing, which was the location where Elvis's vehicle was found, was located down the road from Moorer's residence. (R. pp. 349-350). When Elvis's phone was used the last four times on the night of her disappearance, it was in the vicinity of Peachtree Landing. (R. p. 334).

done so to tell her to stop contacting him.<sup>5</sup> (R. p. 21). However, later in that same conversation, Moorer shifted his account and asserted he had, in fact, spoken with Elvis on the preceding night. (R. p. 21). As a result of that inconsistency, Corporal Furr decided to dispatch officers to speak with Moorer in person. (R. pp. 21-22; p. 40; p. 54).

Thereafter, Officer Brian Scales—along with another officer, Officer Kenneth Canterbury—headed to Moorer’s residence and began speaking with him outside at approximately 2:12 a.m. on the morning of December 20.<sup>6</sup> (R. p. 40; p. 46; p. 54; p. 56; p. 1077; State’s Ex. # 1 (Interview Recording)). During the ensuing brief conversation, the officers questioned Moorer to see if he had any information about Elvis’s whereabouts, and Moorer reported he had last spoken with her a day or two earlier.<sup>7 8</sup> (R. pp 57-58; State’s Ex. # 1). He further indicated he had previously been in a relationship with her, he had ended that relationship towards the end of October of that year, and he had not had any contact with her until she began calling him the other night. (State’s Ex. # 1). Additionally, Moorer claimed he last sent a text message to Elvis a month earlier and allowed one of the officers to look at his phone to verify the

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<sup>5</sup> During trial, defense counsel sought to impeach Corporal Furr, who was by that time a sergeant, with a report prepared by another officer indicating Moorer initially stated he had not *seen*—as opposed to talked to—Elvis in six weeks. (R. p. 17; pp. 32-33). However, Corporal Furr insisted Moorer had initially told him he had not talked with Elvis in the preceding six weeks despite what was contained in the other officer’s report. (R. p. 31; p. 35).

<sup>6</sup> By the time of trial, Officer Scales was a detective, but he was working as a patrol officer in December of 2013. (R. pp. 39-40).

<sup>7</sup> In total, the officers were at Moorer’s residence for just over twenty minutes. (R. p. 47; pp. 53-54; State’s Ex. # 1). During the course of the conversation, Moorer went into his residence several times, and he asked the officers to leave almost immediately after coming back outside the final time. (R. p. 43; p. 57; State’s Ex. # 1).

<sup>8</sup> Notably, while speaking with Moorer, Officer Scales warned him there would be consequences if he was providing false information because doing so would hinder their investigation. (R. p. 50; State’s Ex. # 1).

information contained on it. (R. pp. 52-53; p. 1081; State's Ex. # 1). Beyond that, Moorer denied having any idea where Elvis currently was located, asserted he had worked until 2:00 a.m. on the date Elvis contacted him, and stated he was in bed with his wife when he received the call. (State's Ex. # 1). Furthermore, he alerted the officers Elvis may have dated an individual who delivered beer to the Tilted Kilt. (R. p. 61; State's Ex. # 1).

Later that same day, Detective Jeff Cauble was assigned to investigate Elvis's disappearance based on the suspicious circumstances involved, and he did so along with Detective Jonathan Martin.<sup>9</sup> (R. pp. 63-64; p. 108; pp. 119-121; p. 123; p. 152). As part of their investigation, they obtained both Elvis's and Moorer's phone records, learned about that payphone call that had been placed to Elvis on the date of her disappearance, obtained surveillance footage capturing the payphone call being placed, and discovered Elvis had been in contact with Moorer on that same date.<sup>10</sup> (R. pp. 64-66; p. 72; p. 76; pp. 86-87; p. 124).

In light of what they uncovered, the detectives asked Moorer to come speak with them at the police station, and Moorer met with them around 3:00 p.m. or 3:30 p.m. later that day. (R. p. 87; pp. 89-91; pp. 121-122; p. 124). During the ensuing conversation, Moorer discussed his whereabouts on the night of December 17 and the morning of December 18, indicated he worked that night doing maintenance at multiple restaurants, asserted he was accompanied by his wife the entire night, and explained his wife accompanied him everywhere he went since she found out about his relationship with Elvis around the end of October. (R. p. 91; p. 131; State's Ex. # 8). He further indicated he finished working that night around 12:30 a.m. to 1:00 a.m., went to

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<sup>9</sup> By the time of trial, Detective Martin was a sergeant. (R. p. 63). Meanwhile, by the same time, Detective Cauble no longer worked for the Horry County Police Department. (R. p. 119).

<sup>10</sup> Although it was able to be obtained, the footage of the payphone call was of poor quality. (R. p. 98; p. 109; pp. 293-295).

get gas and buy a pregnancy test for his wife afterwards, and then proceeded to have sex with his wife in several parking lots throughout the area. (State's Ex. # 8). Following that, Moorer indicated he was at home in his bed with his wife when he spoke to Elvis around 3:00 a.m. or 4:00 a.m. (State's Ex. # 8). Likewise, he discussed his relationship with Elvis and asserted it began in September after Elvis initiated contact with him. (R. p. 142; State's Ex. # 8). He further denied ever going to Elvis's apartment and alleged he did not know specifically where she lived. (R. p. 158; State's Ex. # 8).

As the conversation continued, Moorer claimed he had no idea why Elvis had called him that night and indicated the call he received from her was his first phone contact with her on that date. (State's Ex. # 8). At that point, one of the detectives queried Moorer about whether he had used a payphone that night, and Moorer responded "nope" before questioning whether payphones even still existed. (R. p. 92; pp. 100-101; State's Ex. # 8). Following that response, the detective noted a payphone at a specific gas station was used to call Elvis on the date of her disappearance, indicated they had obtained surveillance footage of the call, and again asked Moorer whether he had called Elvis. (R. p. 92; p. 98; State's Ex. # 8). Once again, Moorer stated no, but he quickly followed that response by stating "maybe" and then finally admitting he had, in fact, used the payphone to call Elvis.<sup>11 12</sup> (R. p. 92; p. 98; pp. 101-102; p. 149; State's

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<sup>11</sup> Even though Moorer's *actual* response to being expressly asked about whether he called Elvis from a payphone on the date of her disappearance was to immediately tell a lie and deny having done so, defense counsel illogically later suggested to the jury the only reason Moorer did not reveal he had called Elvis from the payphone even earlier than he eventually did following his false statements on the matter was because he had not expressly been asked about making any payphone calls during his initial law enforcement contact with Corporal Furr. (R. p. 427).

<sup>12</sup> Ultimately, Moorer's admission about making the payphone call was helpful to the investigators because the quality of the surveillance footage was so poor, but, notably, Moorer was *not* aware of the quality of the footage at the time of his eventual admission because he was

Ex. # 8). Based on Moorer's conflicting responses, the detective advised Moorer he needed to start back over again. (State's Ex. # 8).

Upon being confronted on his obvious lie, Moorer admitted instigating the renewed phone contact with Elvis and—for the first time—now asserted he did so because she had begun leaving notes on his vehicle starting in early December when he was at work.<sup>13</sup> (R. pp. 135-136; State's Ex. # 8). He also indicated he was “almost positive” he saw Elvis driving on the road his residence was located on at some unspecified point. (R. pp. 143-144; p. 156; State's Ex. # 8). Due to that, Moorer claimed he called her on that date to get her to leave him alone and believed it was an opportunity to “stop it.” (R. p. 135; p. 145; State's Ex. # 8). However, Moorer further conceded Elvis had *not* left a note on his vehicle that night, which meant he was the first one to initiate any form of contact on that date. (R. pp. 135-136; State's Ex. # 8).

Following the interview, the officers continued investigating Elvis's disappearance over the course of the next several months and, as part of that investigation, attempted to corroborate the information provided by Moorer. (R. p. 92; p. 123). By doing so, they discovered Moorer had been near both Elvis's residence and a restaurant named Longbeard's, which were both locations at which Elvis had been on the night she went missing.<sup>14</sup> (R. pp. 133-134; p. 160; pp. 337-342; State's Ex. # 20 (Call Detail Records Analysis)). Likewise, they found out Moorer's communications with Elvis were extensive and began several months earlier than Moorer had

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informed of—but not shown—the footage prior to finally admitting the truth. (R. p. 92; p. 98; pp. 108-109; p. 111; pp. 293-295).

<sup>13</sup> Later on during trial, Warrelmann testified Elvis at first had a difficult time following her break-up from Moorer but was doing fine by December, was happy by then, and was starting to date other people. (R. p. 210). Notably, that testimony was corroborated by Jessica Cooke, Elvis's manager at the Tilted Kilt. (R. p. 238).

<sup>14</sup> Earlier, Moorer admitted he was familiar with Elvis's car, which was always visibly parked in the same spot outside her residence whenever she was home. (R. p. 217; State's Ex. # 8).

claimed.<sup>15</sup> (R. p. 142; pp. 197-199). They also investigated Moorer's claims regarding notes left on his vehicle by Elvis and discovered Moorer had obtained a new truck shortly after his relationship with Elvis ended that was an entirely different color than the one he previously had during the course of the relationship. (R. p. 136; pp. 140-142; pp. 270-271; pp. 277-279; pp. 932-981). Beyond that, they ascertained Elvis's phone had never connected to the cell tower that provided service to Moorer's residence despite Moorer's claim he thought she had been repeatedly driving by his home, and they further learned Moorer had deleted numerous text messages he exchanged with Elvis from his phone.<sup>16</sup> (R. pp. 143-144; p. 147; p. 156; pp. 202-203; p. 206; p. 265; pp. 334-335).

Tragically, despite law enforcement's efforts, Elvis was never located. (R. p. 151). However, as a result of what occurred during the investigation, Moorer was arrested—along with his wife—in February of 2014 for a number of offenses, including obstruction of justice. (R. pp. 147-148; p. 186; p. 1086). Subsequent to that, Moorer was indicted for common law obstruction of justice, and he proceeded forward to trial. (R. pp. 1100-1101).

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<sup>15</sup> Regarding those communications, there were 411 contacts between Moorer's and Elvis's phones between the middle and end of July 2013. (R. p. 197). Of those contacts, only 198 were outgoing calls from Elvis's phone. (R. p. 198). In August of 2013, there were 564 contacts between Moorer's and Elvis's phones. (R. p. 198). Of those, 351 were initiated from Moorer's phone while 213 were initiated from Elvis's. (R. p. 198). In September of 2013, there were 553 contacts between Moorer's and Elvis's phones. (R. p. 198). Of those, 345 were initiated from Moorer's phone and 208 were initiated from Elvis's. (R. p. 198). In October of 2013, there were 517 contacts between Moorer's and Elvis's phones. (R. p. 199). Of those, 318 were initiated from Moorer's phone and 199 were initiated from Elvis's. (R. p. 199). Finally, in November of 2013, there were 64 contacts between Moorer's and Elvis's phones. (R. p. 199). Of those, 40 were initiated from Moorer's phone and 24 were initiated from Elvis's, and the last one occurred on November 5. (R. p. 199; pp. 266-267). Significantly, after the last contact in November, there were no further phone communications between the two until Moorer called Elvis from the payphone in the early morning hours of December 18, 2013. (R. p. 80; pp. 267-268; p. 272).

<sup>16</sup> Amongst the messages deleted, Moorer erased one sent to him by Elvis on November 3, 2013, in which Elvis told him she thought he was "a little obsessed" with her. (R. p. 927).

During trial, the evidence and testimony uncovered during the law enforcement investigation into Elvis's disappearance was presented to the jury along with evidence and testimony regarding Moorer's actions and whereabouts around the time Elvis went missing, Moorer's conduct during his interactions with the officers attempting to locate Elvis, and Moorer's efforts to mislead their investigation. (R. pp. 17-35; pp. 39-61; pp. 63-189; pp. 192-228; pp. 235-239; pp. 241-279; pp. 281-368; pp. 912-931; pp. 982-1076; State's Ex. # 1; State's Ex. # 8; State's Ex. # 20). Through that testimony and evidence, the jurors heard Moorer's various statements to investigators, including the false statements he—by his own admission—made after he had already been directly advised by Officer Scales lying would have consequences because it would be a hindrance to the investigation. (R. p. 50; p. 92; p. 98; p. 100; p. 109; pp. 144-145; State's Ex. # 1; State's Ex. # 8).

In addition to that, testimony was presented about the impact of Moorer's false statements and other acts on the investigation. (R. pp. 21-23). More specifically, Corporal Furr indicated he would have personally gone to speak with Moorer and also would have referred the matter to the investigative unit sooner had Moorer been candid and truthful during their conversation. (R. pp. 21-23). Similarly, Detective Martin explained Moorer's untruthful statements required them to follow up on all the information he had provided, noted a single lie could lead to an entire statement being questioned, and indicated officers could have potentially acted more quickly if Moorer had revealed the payphone call earlier instead of initially lying about. (R. p. 92; pp. 95-98; pp. 101-103; p. 109). Likewise, Detective Cauble explained the multiple versions of events Moorer provided to officers required them to verify which—if any—were true since they all obviously could not be, and he indicated Moorer's misstatements and partial admissions hindered and impeded the investigation as a result. (R. p. 122; pp. 131-133;

pp. 149-150; p. 163; p. 180; pp. 188-189). As support for his claim, Detective Cauble noted it took investigators several months to figure out which parts of Moorer's statements were true and false, and he indicated multiple officers from multiple agencies, including SLED, the Myrtle Beach Police Department, and the Horry County Sheriff's Office, were involved in that time-consuming process. (R. pp. 140-141; p. 148).

Beyond that, Donald Demarino, who knew Moorer and was related to Moorer's wife, testified about an interaction he had with Moorer after Elvis went missing. (R. pp. 372-373). Through his testimony, Demarino recounted he spoke privately with Moorer during a family visit to Moorer's home that occurred just after Moorer and his wife were released from pre-trial detention.<sup>17</sup> (R. pp. 373-375). Significantly, during that conversation, Demarino stated Moorer showed him a gray flip-style phone and revealed something to him on the phone that demonstrated Moorer "knew more about Heather Elvis after she went missing." (R. p. 375). After that, Demarino indicated he left Moorer's residence and did not reveal what he had been shown until he disclosed it to a detective who contacted him while he was "locked up." (R. pp. 375-376; pp. 378-379).

Following the presentation of that testimony and evidence, the State rested, and defense counsel moved for a directed verdict on the charge of common law obstruction of justice, which he characterized as "kind of murky." (R. p. 382; p. 384). As support for the motion, defense counsel claimed the evidence did not "add up" to the offense when viewed in a light most favorable to the State, the investigation into Elvis's disappearance would have been conducted regardless of whether Moorer gave a statement, the charged offense was unconstitutionally

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<sup>17</sup> On cross-examination, defense counsel sought to impeach Demarino's credibility by eliciting testimony establishing he had previously been convicted of burglary a number of years earlier and had been to jail ten to fifteen times throughout his life. (R. p. 376).

vague, all the South Carolina cases addressing the offense related to court officials as opposed to private citizens, and the administration of justice for purposes of the offense solely “ha[d] to do with the court officers.” (R. pp. 384-385; pp. 392-394). Upon considering the matter, the trial judge suggested he may have been inclined to grant the motion if the only evidence was Moorer’s inconsistent statements about whether he did or did not make the payphone call. (R. p. 390). However, he noted “there [we]re other things” presented and, as a result, appeared to indicate he believed it was appropriate for the jury to decide both what Moorer’s intent was in connection to his communications with law enforcement and whether his actions were impeding under the circumstances involved. (R. pp. 386-392). Accordingly, the trial judge denied the directed verdict motion. (R. p. 395).

After the motion was denied, the defense rested, and the parties presented their closing arguments to the jury.<sup>18</sup> (R. pp. 397-441). Following that, trial judge instructed the jurors on the applicable law. (R. pp. 442-458). Through his instructions, the trial judge explained Moorer was presumed innocent and was not required to prove his innocence, advised the jurors on the State’s burden of proving Moorer’s guilt for all the elements of the indicted offense beyond a reasonable doubt, discussed the differences between direct and circumstantial evidence, indicated suspicion

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<sup>18</sup> During the solicitor’s closing argument, the solicitor argued Moorer was guilty of the charged offense based on his intentional and deliberate efforts to mislead the investigation into Elvis’s disappearance. (R. pp. 398-423). As support for that position, the solicitor noted Moorer omitted key details from the moment he first came into contact with law enforcement in connection to the investigation, showed officers his phone without revealing all the information that had already been deleted from it, initially lied to officers about his use of the payphone, and was misleading about his whereabouts around the time of Elvis’s disappearance. (R. pp. 399-414; pp. 416-418; p. 423). Conversely, during defense counsel’s closing argument, defense counsel began his remarks by accusing the solicitor of being “dishonest” and “slippery” and suggesting she was a “[l]iar, liar, pants on fire.” (R. p. 424). Defense counsel then proceeded to concede Moorer lied to officers during his interview at the police station but asserted it was nevertheless “[his] opinion” nothing was obstructed or hindered by Moorer’s lies. (R. pp. 432-433). To support that, he contended the officers never did anything in their investigation that “they weren’t going to do.” (R. p. 434).

of guilt was not sufficient to convict, provided guidance on the requirement for criminal intent, and alerted the jurors their verdict had to be a unanimous one. (R. pp. 444-446; p. 451; pp. 454-455; p. 457). Furthermore, the trial judge instructed the jurors on the elements of common law obstruction of justice as follows:

As I mentioned to you, the defendant in this case is charged with the offense of obstruction of justice. In order to receive a verdict of guilty, the State must prove beyond a reasonable doubt that Mr. Moorer committed an act which prevented, obstructed, impeded or hindered the administration of justice. The defendant does not need to succeed in the efforts to obstruct justice. It is enough if some act is done in furtherance of the attempt to obstruct justice.

The State must also prove beyond a reasonable doubt that the defendant did this act with the intent to obstruct justice. Now, criminal intent is a necessary element of this crime, and it has to be established just as all other aspects beyond a reasonable doubt.

(R. p. 454).

At the conclusion of trial judge's jury instructions, the case was submitted to the jury.<sup>19</sup> (R. pp. 458-459). After a little less than an hour of deliberations, the jury reached a unanimous verdict and convicted Moorer as indicted.<sup>20</sup> (R. p. 460). Thereafter, defense counsel renewed his motion for a directed verdict while also moving for a new trial, and the trial judge rejected both motions. (R. pp. 462-463). The trial judge then sentenced Moorer to a ten-year term of imprisonment for his crime. (R. p. 475; p. 1102).

Subsequently, Moorer appealed, arguing the trial judge erred by refusing to grant the motion for a directed verdict. (App'x pp. 1-2). On appeal, the Court of Appeals rejected

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<sup>19</sup> Neither the solicitor nor defense counsel raised any objections to the trial judge's jury instructions. (R. p. 458).

<sup>20</sup> Prior to reaching a verdict, the jurors asked to be reinstructed on obstruction of justice, and— with the consent of counsel—the trial judge provided them with a printed copy of the portion of the jury charge covering obstruction of justice in response. (R. p. 459; pp. 1097-1099).

Moorer's argument and unanimously affirmed his conviction. (App'x pp. 1-3). In doing so, the Court of Appeals concluded Moorer's directed verdict motion was properly denied because substantial circumstantial evidence reasonably tending to prove his guilt for common law obstruction of justice was presented during trial. (App'x p. 2). As support for that conclusion, the Court of Appeals summarized the pertinent evidence as follows:

At trial, Sergeant Danny Furr testified that when he and Moorer spoke on the phone on December 19, 2013, Moorer changed his story about when he last spoke with Elvis and failed to mention that he called her from a pay phone and spoke with her more than once. Sergeant Jonathan Martin and Detective Jeff Cauble testified that Moorer first denied, but then admitted, that he called Elvis from a pay phone on December 18, 2013—but not until after Detective Cauble informed Moorer that they had surveillance video of the caller using the pay phone. Detective Cauble also testified that when he asked Moorer where he was on December 17-18, 2013, Moorer failed to mention that he was at or near Elvis's residence or Long Beard's restaurant. The State's expert in cellular technology and historical record analysis testified that Moorer's cellphone records showed he was at or near the following locations between 9:29 p.m. on December 17 and 1:40 a.m. on December 18, 2013: (1) the bar where Elvis worked, (2) Elvis's residence, (3) Long Beard's restaurant, (4) Walmart, and (5) the pay phone from which Elvis received a call. Finally, Donald Demarino testified that Moorer showed him "something" on a gray flip phone that indicated Moorer knew more about Elvis's disappearance than he told the police.

(App'x p. 2). Viewed in a light most favorable to the State as required, the Court of Appeals determined that evidence was sufficient to establish Moorer's guilt for the all the elements of the charged offense, which it accurately noted only required the State to establish Moorer did an act in furtherance of an endeavor to prevent, obstruct, impede, or hinder the administration of justice but—pursuant to established South Carolina law—did *not* require proof of Moorer's actual success in his effort to obstruct. (App'x pp. 2-3).

## STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). On appeal from the denial of a directed verdict, the appellate court must view the evidence and all reasonable inferences in the light most favorable to the State. State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must affirm the trial judge's ruling. State v. Cherry, 361 S.C. 588, 593-594, 606 S.E.2d 475, 478 (2004); see State v. Jenkins, 222 S.C. 359, 360-361, 72 S.E.2d 829, 829 (1952) ("It is not the function of [the appellate] court to pass upon the weight of the evidence, but only to determine its sufficiency to support the verdict[.]"); see also State v. Herndon, 430 S.C. 367, 373, n. 6, 845 S.E.2d 499, 502, n. 6 (2020) ("As an appellate court, we must be careful not to weigh the evidence."). In other words, "unless there is a total failure of evidence tending to establish the charge laid in the indictment, the trial judge's ruling upon a motion for a directed verdict must stand absent an error of law." State v. Nix, 288 S.C. 492, 496, 343 S.E.2d 627, 629 (Ct. App. 1986); see Crawford v. United States, 375 F.2d 332, 334 (D.C. Cir. 1967) ("It is not the function of appellate judges to weigh the evidence and decide that if they had doubts other reasonable persons were compelled to have the same doubts. If that were the test the jury of twelve would be relegated to the very low grade function of secondary fact finders."); United States v. Lowery, 306 F.2d 133, 135 (4th Cir. 1961) ("It is not the function of [the appellate court] to determine guilt or innocence."); State v. Brown, 360 S.C. 581, 594, 602 S.E.2d 392, 399 (2004) ("[A]n appellate court does not sit as a factfinder in a criminal case and should avoid resolving cases in a manner which appears to place the appellate court in the jury box.").

## ARGUMENT

**The Court of Appeals correctly affirmed the trial judge’s ruling denying Moorer’s directed verdict motion because the evidence and testimony presented during trial supported a rational and logical conclusion Moorer committed common law obstruction of justice by knowingly lying to detectives in an effort to hinder and obstruct their investigation into the sudden disappearance of a missing young woman.**

Moorer contends the Court of Appeals erred by affirming the trial judge’s denial of his directed verdict motion on the common law obstruction of justice charge. In support of that contention, Moorer maintains no direct or substantial circumstantial evidence was presented establishing he did any act with an intent to prevent, obstruct, impede, or hinder the administration of justice as required to establish the charged offense. To the contrary, when viewed in a light most favorable to the State as required, the evidence and testimony presented during trial established Moorer knowingly and intentionally lied to detectives during the course of an investigation into a young woman’s sudden disappearance with the express intent of obstructing that investigation by misleading the detectives in regard to a critical piece of information—his initiation of contact with the missing woman by payphone just hours before she suddenly vanished. From that, a reasonable factfinder could rationally conclude Moorer committed an act in furtherance of an endeavor to obstruct the administration of justice, which was all that was necessary to establish the offense of common law obstruction of justice pursuant to South Carolina law. Accordingly, the trial judge committed no error by denying Moorer’s directed verdict motion, and the Court of Appeals correctly affirmed the trial judge’s ruling on appeal. Moorer’s conviction for common law obstruction of justice should be affirmed.

### **A. Proper Test for Analyzing a Directed Verdict Motion Challenging the Sufficiency of the Evidence**

When presented with a motion for a directed verdict challenging the sufficiency of the evidence presented, the question before the trial judge is simply whether any rational juror could

find the essential elements of the crime beyond a reasonable doubt from the evidence viewed in a light most favorable to the State. State v. Bennett, 415 S.C. 232, 237, 781 S.E.2d 352, 354 (2016); see Jackson v. Virginia, 443 U.S. 307, 319 (1979) (“[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.”). In resolving that question, the trial judge must be concerned solely with the existence or non-existence of evidence and is not permitted to personally weigh the evidence, decide credibility issues, or resolve conflicts in the testimony or evidence presented. Harvey v. Strickland, 350 S.C. 303, 308, 566 S.E.2d 529, 532 (2002); see State v. Long, 325 S.C. 59, 62, 480 S.E.2d 62, 63 (1997) (“When ruling on a motion for a directed verdict, the trial judge is concerned with the existence of evidence, not its weight.”).

Significantly, if there is *any* direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused or from which guilt may be fairly or logically deduced, the trial judge should deny a directed verdict motion and submit the case to the jury. State v. Robinson, 310 S.C. 535, 538, 426 S.E.2d 317, 319 (1992); see State v. Littlejohn, 228 S.C. 324, 329, 89 S.E.2d 924, 926 (1955) (“[O]n a motion for direction of verdict, the trial judge is concerned with the existence or non-existence of evidence, not with its weight; and, although he should not refuse to grant the motion where the evidence merely raises a suspicion that the accused is guilty, it is his duty to submit the case to the jury if there be any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced.”). By doing so under such circumstances, the trial judge correctly avoids improperly encroaching upon the jury’s exclusive role to find the facts, weigh the evidence, evaluate witness credibility, and resolve any evidentiary conflicts that may have arisen during

trial. See Jackson, 443 U.S. at 319 (“[The directed verdict] 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.”).

### **B. Obstruction of Justice in South Carolina**

Obstruction of justice—or obstructing justice—has long been recognized as a common law offense in South Carolina. State v. Cogdell, 273 S.C. 563, 567, 257 S.E.2d 748, 750 (1979). At its most basic, “obstruction of justice” is defined as “[i]nterference with the orderly administration of law and justice, as by giving false information to or withholding evidence from a police officer or prosecutor, or by harming or intimidating a witness or juror.” Black’s Law Dictionary 1183 (9th ed. 2009). Notably, it can be committed in a wide variety of ways, and the many means by which it can be carried out are all “considered to be of a very grave and high character” because “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).

In our state, some acts that are obstructive of justice when committed have been statutorily outlawed by our legislature through the enactment of various provisions of law. See, e.g., S.C. Code Ann. § 16-9-320 (making it unlawful for a person “knowingly and wilfully to oppose or resist a law enforcement officer in serving, executing, or attempting to serve or execute a legal writ or process or to resist an arrest being made by one whom the person knows or reasonably should know is a law enforcement officer, whether under process or not”); S.C. Code Ann. § 16-9-340 (making it unlawful for a person “by threat or force” to “intimidate or impede a judge, magistrate, juror, witness, or potential juror or witness, arbiter, commissioner, or member of any commission of this State or any other official of any court, in the discharge of his

duty as such” or “destroy, impede, or attempt to obstruct or impede the administration of justice in any court”). Notably though, the General Assembly has so far elected to create statutory offenses to address only some—but not all—of the different forms obstructive conduct can take and, in doing so, has chosen solely to supersede what was codified.<sup>21</sup> S.C. Code Ann. § 16-9-380; see State v. Lyles-Gray, 328 S.C. 458, 464, 492 S.E.2d 802, 805 (Ct. App. 1997) (recognizing the General Assembly codified “various” common law crimes related to obstruction of justice but did *not* codify or supersede all of the them); see also State v. Prince, 316 S.C. 57, 66, 447 S.E.2d 177, 182 (1993) (“Common law offenses are not abrogated simply because there is a statutory offense proscribing similar conduct. Rather, it is presumed that no change in common law is intended unless the Legislature explicitly indicates such an intention by language in the statute.” (citations and internal quotations omitted)). As a result, the common law offense of obstruction of justice continues to exist in South Carolina to guard against the many *other* means by which justice can be obstructed or hindered that are not expressly covered by any statutory provisions. Lyles-Gray, 328 S.C. at 465, 492 S.E.2d at 806; see also Black’s Law Dictionary 1183 (9th ed. 2009) (“The goal, —to proscribe every willful act of corruption, intimidation or force which tends in any way to distort or impede the administration of law either civil or criminal—has been very largely attained, partly by aid of legislation. Any punishable misdeed of such a nature which is not recognized as a distinct crime, is usually called obstruction of justice, or obstructing justice—a common-law misdemeanor.” (citation and internal quotations omitted)).

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<sup>21</sup> Significantly, when our legislature has actually wanted to abolish common law offenses in the past, it has clearly and unmistakably done so. See, e.g., Act No. 273, § 7, 2010 S.C. Acts & Joint Resolutions (“The common law offenses of assault and battery with intent to kill, assault with intent to kill, assault and battery of a high and aggravated nature, simple assault and battery, assault of a high and aggravated nature, aggravated assault, and simple assault are abolished for offenses occurring on or after the effective date of this act.”).

Pursuant to South Carolina law, the offense of common law obstruction of justice occurs when an individual does “*any act which prevents, obstructs, impedes, or hinders the administration of justice.*” Cogdell, 273 S.C. at 567, 257 S.E.2d at 750 (emphasis added); cf. State v. Cassatly, 225 A.2d 141, 145 (N.J. Super. Ct. App. Div. 1966) (“Under the common law it was a misdemeanor to do any act which prevents, obstructs, impedes, or hinders the due course of public justice.”). Historically, in our state, the offense—despite being one that has not been addressed in many published appellate decisions—has been found to properly apply to: (1) acts committed by both public officials and private citizens alike; and (2) acts affecting both pre-trial criminal investigations and actual court-related proceedings. Compare Cogdell, 273 S.C. at 567, 257 S.E.2d at 750 (concluding a mayor could properly be found guilty of obstruction of justice for failing to report traffic convictions as required); and State v. Caskey, 273 S.C. 325, 328, 256 S.E.2d 737, 738 (1979) (affirming an obstruction of justice conviction arising out of a scheme in which an attorney and magistrate colluded to dismiss a pending criminal charge in exchange for payment); with State v. Needs, 333 S.C. 134, 146, 508 S.E.2d 857, 863 (1998) (concluding probable cause existed to support Needs’s girlfriend being charged with multiple offenses, including obstruction of justice, because evidence showed she lied to and concealed information from law enforcement officers during the course of a murder investigation); State v. Hess, 279 S.C. 525, 530-531, 309 S.E.2d 741, 743-744 (1983) (affirming a conviction for obstruction of justice that arose from acts Hess committed during the course of an undercover law enforcement investigation into *possible* criminal activity); State v. Singleton, 430 S.C. 546, 553-554, 846 S.E.2d 361, 365 (Ct. App. 2020) (affirming the conviction of a private citizen found guilty of obstruction of justice for knowingly and intentionally lying to law enforcements officers conducting a criminal investigation); and Lyles-Gray, 328 S.C. at 466-467, 492 S.E.2d at 806-

807 (affirming an obstruction of justice conviction involving acts committed by a law enforcement officer during the course of investigation into a crime committed by her daughter). Critically, common law obstruction of justice has also been recognized as an offense that is complete upon the commission of some act “in furtherance of the endeavor” to obstruct justice, and, as a result, “[s]uccess in the effort to obstruct justice” is *not* a necessary component for it to be established. State v. Love, 275 S.C. 55, 62, 271 S.E.2d 110, 113 (1980); see William Shepard McAninch et al., The Criminal Law of South Carolina 460-461 (6th ed. 2013) (recognizing “the definition of the substantive offense [of common law obstruction of justice] encompasses some anticipatory conduct” such that actual success in the effort to obstruct justice is not necessary for the offense to be established).

**C. Sufficiency of the Evidence Establishing Moorner’s Guilt for Common Law Obstruction of Justice**

In the case sub judice, Moorner—based on the evidence and testimony presented—knew law enforcement officers were conducting an investigation into the sudden disappearance of a young woman he had recently spoken to multiple times, and the fact officers came to Moorner’s home to speak with him around 2:00 a.m. could have left no doubt about the urgent nature of that investigation. Early on in his interactions with law enforcement, Moorner—who, according to one witness, possessed information about Elvis *after* she disappeared—was also directly advised lying to the officers would result in consequences because doing so would serve to hinder the investigation. Despite receiving that warning, Moorner proceeded to do it anyway and lied during an interview with detectives about Elvis’s disappearance. And, the subject matter of Moorner’s lie was not something insignificant or easily forgotten. It was a critical and unforgettable event that occurred just two days earlier—his *self-initiated* contact with Elvis *by payphone* on the very date she suddenly and completely vanished mere hours after the call was made. Taking things

even further, Moorner did not just deny placing the call, but he disingenuously questioned whether payphones—a type of phone he had personally used less than seventy-two hours earlier—were still in existence. Following that, Moorner only revealed what really occurred as to the payphone call after he was led to believe the detectives were in possession of surveillance footage that could demonstrate the untruthfulness of his already-made false statement, and, even then, Moorner still again denied making the call one more time before finally and reluctantly revealing the truth.

From those facts, a reasonable and rational factfinder could find Moorner guilty beyond a reasonable doubt of all the necessary elements of common law obstruction of justice pursuant to South Carolina law. Initially, regarding the actus reus component of the offense, making false statements to a law enforcement officer engaged in an ongoing investigation—the exact type of conduct Moorner indisputably engaged in—has previously been recognized in our state to be an act that can obstruct the administration of justice and support a common law obstruction of justice charge. See Needs, 333 S.C. at 146, 508 S.E.2d at 863 (finding there was probable cause to believe Needs’s girlfriend committed “one or more of the indicted crimes”—which included obstruction of justice—based on evidence that showed she “concealed information and lied to investigators to protect” Needs during the course of an investigation); Singleton, 430 S.C. at 554, 846 S.E.2d at 365 (“Although the police eventually arrested Gregg, Singleton’s actions in lying to the police about Gregg and falsely accusing Barrett impeded and delayed the administration of justice.”); cf. People v. Barbee, 681 N.W.2d 348, 351 (Mich. 2004) (“Law enforcement officers are an integral component in the administration of justice, regardless of whether they are operating directly pursuant to a court order. . . . The investigation of crime is critical to the administration of justice.”); Cassatly, 225 A.2d at 145-146 (rejecting the contention common law

obstruction of justice “requires that at the time of commission of the act charged there must be pending a proceeding before a court or a grand jury” and instructing “one who knowingly and willfully impedes a lawfully conducted investigation by police of a crime, whether or not a formal charge has been made or a grand jury proceeding begun, can be prosecuted for the crime of obstructing justice”). In fact, by engaging in such conduct, Moorner committed an act that constituted the very dictionary definition of obstruction of justice. See Black’s Law Dictionary 942 (9th ed. 2009) (defining “obstruction of justice as “[i]nterference with the orderly administration of law and justice, *as by giving false information to or withholding evidence from a police officer* or prosecutor, or by harming or intimidating a witness or juror” (emphasis added)). Meanwhile, regarding the mens rea component of the offense, Moorner’s conduct supported a reasonable and rational inference he expressly *intended* to obstruct the administration of justice by making the false statements to the detectives because: (1) he possessed information concerning Elvis’s disappearance; (2) he had been expressly warned telling lies would hinder law enforcement’s investigation into the matter; (3) he was well aware his false statements about the payphone call were not remotely truthful; (4) those statements concerned one of Elvis’s last communications shortly before she went missing, which was obviously a subject of critical importance to the investigation; and (5) if accepted as true by the officers, the false statements could have potentially shifted the focus of the investigation away from Moorner and prevented or delayed his arrest and prosecution for any involvement he had in whatever criminal actions caused Elvis to suddenly vanish without a trace.<sup>22</sup> See State v. Haney,

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<sup>22</sup> Subsequent to his trial on the common law obstruction of justice charge, Moorner was, in fact, prosecuted for and convicted of kidnapping and conspiracy to kidnap in connection to Elvis’s disappearance, and those convictions are the subject of a separate appeal that currently remains pending before the Court of Appeals. Appellate Records for State v. Sidney Stclair Moorner,

257 S.C. 89, 91, 184 S.E.2d 344, 345 (1971) (“Absent an admission by the defendant, proof of intent necessarily rests on inference from conduct.”); see also State v. Owens, 293 S.C. 161, 167, 359 S.E.2d 275, 278 (1987) (explaining an individual’s sudden disappearance in a manner inconsistent with personal habits and relationships can establish the disappearance “was the result of death caused by criminal act”). Therefore, in light of the evidence and testimony establishing Moorer’s actions and accompanying criminal intent, a reasonable factfinder could have rationally found beyond a reasonable doubt Moorer knowingly and intentionally committed an act “in furtherance of [an] endeavor” to prevent, obstruct, impede, or hinder the administration of justice, which was all that was necessary to constitute the offense of common law obstruction of justice in our state. Love, 275 S.C. at 62, 271 S.E.2d at 113; see State v. Reid, 393 S.C. 325, 329, 713 S.E.2d 274, 276 (2011) (“To prove attempt, the State must prove that the defendant had the *specific intent* to commit the underlying offense, along with some *overt act*, beyond mere preparation, in furtherance of the intent.”). Under such circumstances, Moorer’s directed verdict motion had to be denied. See State v. Al-Amin, 353 S.C. 405, 411, 578 S.E.2d 32, 35 (Ct. App. 2003) (recognizing the trial judge is “required” to submit a case to the jury when substantial evidence is presented reasonably tending to prove the guilt of the accused or from which the accused’s guilt may be fairly and logically deduced), overruled on other grounds by State v. Broadnax, 414 S.C. 468, 779 S.E.2d 789 (2015).

In arguing to the contrary, Moorer concedes he indisputably lied to the detectives during the course of their investigation into Elvis’s sudden disappearance. He further acknowledges this Court has previously instructed success in an effort to obstruct justice is not necessary to establish the offense of common law obstruction of justice, which can instead be established

through proof of some act done in furtherance of an endeavor to obstruct. Following that, Moorer appears to challenge to the sufficiency of the evidence based on two separate contentions: (1) there was purportedly no evidence Moorer possessed the requisite criminal intent needed to support a conviction for common law obstruction of justice when he lied to the detectives; and (2) there was supposedly no evidence Moorer's lies hindered law enforcement's investigation or interfered with any judicial proceedings.

Turning to the first of his appellate contentions, Moorer—in challenging the sufficiency of the evidence of his intent—incorrectly maintains no evidence was presented to establish he had any intent to hinder the police officers' investigation or obstruct the administration of justice when he made his false statements. But if Moorer's intent was *not* to hinder or mislead the investigation into Elvis's disappearance—and, by extension, obstruct the administration of justice—through his act of providing untruthful information to the detectives about his contact with Elvis mere hours before she vanished, what was his intent in doing so? Certainly, his act was not purposeless. Nevertheless, in challenging the sufficiency of the evidence of his intent, Moorer has not personally provided any answers in his brief as to what intentions he believes are inferable from his conduct. Significantly, the likely reason Moorer has not done so is the *only* truly sensible inference that can be drawn from his act of providing false information to the detectives about a critical piece of information—his initiation of the first contact that occurred between himself and Elvis shortly before she disappeared—was he possessed an intent to hinder their investigation by attempting to prevent them from learning that key fact, which, based on the very nature of payphones, was something that could only realistically be proven with a statement from either Moorer or the missing woman the detectives were trying to find, the testimony of a knowledgeable eyewitness who fortuitously happened to observe a payphone call made at 1:33

a.m., or the existence of surveillance footage that both captured the call and was of sufficient quality to be useful for identification purposes. See State v. Tuckness, 257 S.C. 295, 299, 185 S.E.2d 607, 608 (1971) (“The intent with which an act is done denotes a state of mind, and can be proved only by expressions or conduct, considered in the light of the given circumstances. Intent is seldom susceptible to proof by direct evidence and must ordinarily be proven by circumstantial evidence, that is, by facts and circumstances from which intent may be inferred.” (citation omitted)); cf. Haney, 257 S.C. at 92, 184 S.E.2d at 345 (explaining larcenous intent can be inferred from a person’s act of breaking into and entering a building at night because human experience justifies an assumption such an unlawful entry was *not* purposeless). Supporting the reasonableness of such an inference, Moorer made his false statements *after* he had already been directly advised lying would hinder the investigation, and he *only* revealed the truth when the detectives led him to believe they were already in possession of surveillance footage that could refute the statements he had just made. See Tuckness, 257 S.C. at 299, 185 S.E.2d at 608 (recognizing intent can be inferred from the circumstances involved). And, Moorer’s attempt to prevent the detectives from learning that key fact supported a conclusion Moorer believed it would be damaging to his own interests if they did so, which itself suggested guilty knowledge concerning Elvis’s disappearance. See State v. Pittman, 137 S.C. 75, \_\_\_, 134 S.E. 514, 526-527 (1926) (recognizing guilt can properly be inferred from an act of uttering false exculpatory statements). Based on that, there was, in fact, evidence presented from which a reasonable and rational factfinder could conclude Moorer’s intent in providing false information to the officers was to mislead their investigation and obstruct the administration of justice, and, therefore, Moorer’s case was properly submitted to the jurors to permit them to decide what inferences to actually draw on the issue of intent. See State v. Meggett, 398 S.C. 516, 527, 728 S.E.2d 492,

498 (Ct. App. 2012) (“[W]hether a defendant possessed the requisite intent at the time the crime was committed is typically a question for jury determination because, without a statement of intent by the defendant, proof of intent must be determined by inferences from conduct.”); cf. Wilson v. State, 583 S.E.2d 243, 577 (Ga. Ct. App. 2003) (concluding Wilson’s act of providing a false name and social security number to officers investigating a break-in for which Wilson was later convicted of burglary was sufficient to authorize the jury “to find that this misinformation was intentional and hindered the officers in their investigation”).

Turning to the second of his appellate contentions, Moorer—despite acknowledging success in an effort to obstruct justice is not necessary to establish the offense of common law obstruction of justice pursuant to South Carolina law—seems to suggest a directed verdict should have been granted in his case based on the purported absence of evidence establishing his lies had an *actual* impact on the investigation or any judicial proceedings. But, as Moorer himself has recognized, the commission of act in furtherance of an endeavor to obstruct justice is sufficient to constitute common law obstruction of justice in our state. Love, 275 S.C. at 62, 271 S.E.2d at 113. And, there are very good policy reasons for why actual success is not and should not be required in South Carolina. Critically, any act committed with the intention of obstructing justice carries some potential to harm the administration of justice, and there is simply no logical reason to reward an individual whose efforts to obstruct were not as successful as the individual had hoped they would be. See Brogan v. United States, 522 U.S. 398, 402 (1998) (“[S]ince it the very *purpose* of an investigation to uncover the truth, any falsehood relating to the subject of the investigation perverts that function. It could be argued, perhaps, that a *disbelieved* falsehood does not pervert an investigation. But making the existence of this crime turn upon the credulousness of the federal investigator (or the persuasiveness of the liar) would be exceedingly

strange; such a defense to the analogous crime of perjury is certainly unheard of.” (footnote omitted)); State v. Legnosky, 27 So. 3d 794, 797-798 (Fla. Dist. Ct. App. 2010) (“The focus . . . should be on whether the defendant’s false statements were *intended* to hinder the police officer in the exercise of his duties, not on whether the defendant’s ruse achieved its intended result. . . . To hold otherwise would punish a defendant only if the police officer actually believes a defendant’s ‘lies,’ while exonerating or rewarding a defendant if the police officer does not believe his ‘lies.’ This result would be illogical.”); cf. State v. Reed, 695 N.W.2d 315, 323 (Wis. 2005) (“Obstruction occurs where a person knowingly gives false information to the officer with intent to mislead the officer in the performance of his or her duty. Concluding otherwise not only unwarrantedly strays from the clear language of the obstructing statute, it encourages people to lie to police. We cannot, as a matter of good public policy, condone this.” (internal quotations omitted)). As a result, the evidence presented regarding Moorner’s intentional efforts to obstruct justice through his lies warranted the submission of his case to the jury regardless of how successful those efforts ultimately proved to be. See Love, 275 S.C. at 62, 271 S.E.2d at 113 (“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.”).

However, even assuming evidence of Moorner’s acts being successful was actually needed to establish his guilt for common law obstruction of justice, such evidence was, in fact, presented during the course of his trial. Specifically, based on the testimony of the officers, Moorner’s false statements to the detectives required law enforcement officers from multiple agencies to go through the time-consuming process of verifying the accuracy of *everything* he told them because his act of lying about one matter suggested he was also likely lying about everything

else.<sup>23</sup> See Pittman, 137 S.C. at \_\_\_, 134 S.E. at 526-527 (noting the existence of the maxim “*falsus in uno, falsus in omnibus*”); Black’s Law Dictionary 679 (9th ed. 2009) (explaining “*falsus in uno, falsus in omnibus*” means “false in one thing, false in all” and defining the “*falsus in uno* doctrine” as “[t]he principle that if the jury believes that a witness’s testimony on a material issue is intentionally deceitful, the jury may disregard all of that witness’s testimony”); cf. Marsh v. State, 761 P.2d 915, 916-917 (Okla. Crim. App. 1988) (concluding evidence establishing Marsh willfully gave a false statement to an investigating officer before subsequently admitting the truth the next day was sufficient to support a jury finding Marsh delayed or obstructed the officer’s investigation). Thus, notwithstanding the fact the making of *any* false statement about a subject under investigation carries the potential to pervert an investigation, there was evidence presented during Moorer’s trial from which a reasonable and rational factfinder could conclude Moorer’s actions hindered or obstructed justice due to the delays they caused to the investigation into Elvis’s alarming disappearance. See Brogan, 522 U.S. at 402 (explaining any false statement concerning the subject of the investigation perverts the investigation’s very function); Duke v. State, 423 S.E.2d 427, 428 (Ga. Ct. App. 1992) (concluding “lying with the intent of misdirecting [an officer] as to the performance of his official duties can certainly constitute a hinderance” and instructing “[w]hether or not appellant’s lie had the effect of hindering or obstructing the officers in making the arrest *was for the tri[e]r of fact to decide*” (emphasis added)); see also New Oxford American Dictionary 822 (3rd ed. 2010) (defining “hinder” as “create difficulties for (someone or something), resulting in delay or

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<sup>23</sup> Notably, one of the detectives explained to Moorer *during the interview* his misstatements would require them to undertake efforts to ascertain what did and did not really happen out of the things he had described. (State’s Ex. # 8).

obstruction”); New Oxford American Dictionary 871 (3rd ed. 2010) (defining “impede” as “delay or prevent (someone or something) by obstructing them”).

Accordingly, since there was evidence from which a rational factfinder could have found the essential elements of the charged offense beyond a reasonable doubt, Moorer’s case had to be submitted to the jury to allow it to carry out its role. See Bennett, 415 S.C. at 236-237, 781 S.E.2d at 354 (“[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.” (emphasis added and citation and internal quotations omitted)); see also State v. Cheeks, 401 S.C. 322, 328, 737 S.E.2d 480, 484 (2013) (“It is always for the jury to determine the facts, and the inferences that are to be drawn from these facts.”); cf. Singleton, 430 S.C. at 554, 846 S.E.2d at 365 (finding Singleton’s directed verdict motion on a common law obstruction of justice charge was properly denied based on evidence tending to prove Singleton’s lies obstructed the administration of justice by temporarily preventing an arrest, hindering an investigation into an attempted murder, and causing another person to be wrongly indicted and jailed). Therefore, the trial judge did exactly what he was required to do by denying Moorer’s directed verdict motion, and the Court of Appeals correctly affirmed that ruling on appeal. See State v. Gracely, 399 S.C. 363, 371-372, 731 S.E.2d 880, 884 (2012) (“When reviewing the denial of a motion for directed verdict, this Court employs the same standard as the trial court by viewing the evidence and all reasonable inferences in the light most favorable to the non-moving party. The trial court will only be reversed when there is no evidence to support the ruling below.” (citations omitted)); see also Cavazos v. Smith, 565 U.S. 1, 2 (2011) (“[I]t is the responsibility of the jury—not the court—to decide what conclusions

should be drawn from evidence admitted at trial. A reviewing court may set aside the jury's verdict on the ground of insufficient evidence only if no rational trier of fact could have agreed with the jury. . . . Because rational people can sometimes disagree, the inevitable consequence of this settled law is that judges will sometimes encounter convictions that they believe to be mistaken, but that they must nonetheless uphold.”). Moorer’s conviction for common law obstruction of justice should be affirmed.

**CONCLUSION**

For all the foregoing reasons, it is respectfully submitted the decision of the Court of Appeals and the judgment and conviction of the trial court should be affirmed.

Respectfully submitted,

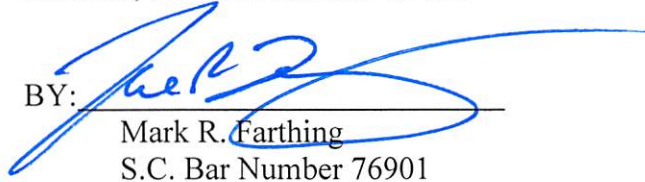
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ATTORNEYS FOR RESPONDENT

October 25, 2021

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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

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THE STATE,

Respondent,

vs.

SIDNEY MOORER,

Petitioner.

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**CERTIFICATE OF COUNSEL**

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The undersigned certifies this 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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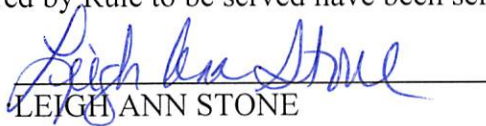
**PROOF OF SERVICE**

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I, Leigh Ann Stone, certify that I have served the within Brief of Respondent on Petitioner by sending an electronic copy via email to the address listed in AIS for the following individual:

Susan B. Hackett, Esquire  
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I further certify that all parties required by Rule to be served have been served.  
This 25th day of October, 2021.

  
LEIGH ANN STONE  
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## Leigh Ann Stone

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**From:** Leigh Ann Stone  
**Sent:** Monday, October 25, 2021 4:31 PM  
**To:** Hackett, Susan  
**Cc:** Mark Farthing; William Blich; Kasperski, Katriel  
**Subject:** The State v. Sidney Moorer (2020-001434)  
**Attachments:** Moorer.BOR (02797026xD2C78).PDF

Good Afternoon Ms. Hackett,

Attached please find a copy of the Brief of Respondent in The State v. Sidney Moorer (2020-001434). Bound copies will be sent shortly.  
This brief will be submitted to the South Carolina Supreme Court today via the AIS One Drive System.

If you will, please reply to confirm receipt.

Thank you!

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