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**Nov 29 2021**

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to the Court of Appeals  
Appeal from Horry County  
R. Markley Dennis, Jr., Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

SIDNEY STCLAIR MOORER,

PETITIONER

APPELLATE CASE NO. 2020-001434

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REPLY BRIEF OF PETITIONER

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SUSAN B. HACKETT  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR PETITIONER

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## ARGUMENT IN REPLY

The Court of Appeals erred by affirming the trial judge's denial of Petitioner's directed verdict motion based upon its conclusion that Petitioner's lies and omissions to police constituted obstruction of justice where the undisputed evidence showed no change in the police investigation as a result and no impact on any judicial proceedings.

The state asks this Court to expand the definition of obstruction of justice to encompass any interaction with law enforcement in which a suspect in a criminal case lies, misspeaks, or omits information. This expansive definition will result in an arrest for obstruction of justice for almost every encounter between a police officer and a criminal suspect. The state's request for such an expansive definition must fail.

Just as the state was desperate at trial to convict Petitioner, the state remains desperate on appeal to preserve the conviction. In its very first footnote, the state improperly references testimony that was not competent evidence for consideration by the jury, and therefore, not competent evidence for consideration by the trial judge when considering the directed verdict motion. See BOR at 3-4 n.1. As the information in the footnote was not considered by the trial judge, it is not proper for consideration by this Court when reviewing the trial judge's decision.

Footnote five continues to show the state's desperation. Danny Furr, a police officer, told the jurors that Petitioner said he had not *talked* to Elvis in weeks. Defense counsel impeached Furr with a police report indicating that Petitioner told Furr he had not *seen* Elvis in weeks. Respondent disparaged defense counsel's impeachment in a footnote. See BOR at 5 n.5. Disingenuously, Respondent twice noted the report was prepared by an officer other than Furr. See BOR at 5 n.5. What Respondent neglected to explain or even acknowledge was that the report was *verified by Danny Furr himself*. See R. 1077. Had Furr had any problems with the report, he had ample

opportunity to express those problems through the verification process. Furr found no need to change the report when he reviewed it on December 20, 2013, at 4:58 a.m., which was less than three hours after Furr spoke to Petitioner.

Deceptively, the state remarked – in a footnote – that “Earlier, Moorner admitted he was familiar with Elvis’s car, which was always visibly parked in the same spot outside of her residence whenever she was home.” BOR at 8 n.14. This suggests that Petitioner was not only familiar with Elvis’s car, but that he was familiar with her residence and where she parked her car at her residence. The record does not support these statements. While Elvis’s roommate claimed Elvis always parked in the same spot and Petitioner admitted he was familiar with Elvis’s car, there was no evidence whatsoever that Petitioner was even aware of where Elvis lived. State’s Exhibit #8 (Petitioner informing the police that he was not sure where Elvis lived).

While accusing Petitioner of misleading the police, the state attempts to mislead this Court asserting Petitioner “knowingly and intentionally lied to detectives ... with the express[ed] intent of instructing that investigation by misleading the detectives.” BOR at 16. The state presented no evidence of Petitioner’s expressed intent. In fact, Petitioner never expressed what his intent was when he misspoke to police. Furthermore, the state alleged Petitioner misled the police about “a critical piece of information – his initiation of contact with the missing woman by payphone just hours before she suddenly vanished.” BOR at 16. Yet, the state offered no explanation of why this information was “critical.” Prior to speaking to Petitioner, the police were aware that Elvis received a phone call from a payphone, and the police suspected Petitioner was the caller, as demonstrated by their questioning of Petitioner. State’s Exhibit #8. There was no explanation offered at trial or on appeal as to why the identity of the caller was critical information.

Inexplicably, the state spends two pages of its brief arguing the South Carolina legislature has not abolished the common law offense of obstruction of justice. BOR at 18-19. Petitioner never argued the legislature abolished obstruction of justice either expressly or implicitly. Petitioner concedes the common law offense of obstruction of justice is alive and well in South Carolina.

The state's citation to State v. Needs, 333 S.C. 134, 146, 508 S.E.2d 857, 863 (1998) is misleading. BOR at 22. The state claims in a parenthetical that this Court concluded "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." BOR at 20, 22. A closer look at Needs reveals the deception of the parenthetical. Needs' girlfriend initially provided an alibi for Needs to the police. State v. Needs, 333 S.C. 134, 141, 508 S.E.2d 857, 860 (1998). Later, she admitted to lying to the police about the alibi and explained that Needs actually confessed to her. Id. She then changed her statement again by claiming that Needs' confession was a hypothetical. Id. Later, at a pretrial hearing, the girlfriend recanted her statements about Needs' confession and claimed he was with her at the time of the murder. Id. She also provided a diary entry describing the evening she spent with Needs. Id. at 142, 508 S.E.2d at 860.

At the time of trial, the girlfriend testified against Needs, claiming her testimony during the pretrial hearing was false and that the diary was fake. Id. She did so after the state indicted her for obstruction of justice, accessory after the fact of a felony, and misprision of a felony. Id. at 144, 508 S.E.2d at 862. On appeal, Needs argued the judge should have dismissed the indictments against him because the state engaged in misconduct by charging the girlfriend with crimes after she testified in Needs' favor at the pretrial hearing. Id. at 145, 508 S.E.2d at 862.

Needs argued these charges were improper attempts to intimidate the girlfriend. *Id.* This Court held the prosecutor had not engaged in misconduct because the prosecutor had probable cause to believe the girlfriend “had committed *one or more of the indicted crimes.*” *Id.* (emphasis added). Needs’ girlfriend did more than simply lie to the police during the investigation.

Although Petitioner initially denied making the call from the payphone to Elvis, Petitioner admitted to making the call – within seconds of his initial denial. Nevertheless, the state argued Petitioner’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 Moorer and prevented or delayed his arrest and prosecution for any involvement he had in whatever criminal actions caused Elvis to suddenly disappear without a trace.

BOR at 23. These statements are bold and without factual support. Not once during the trial did the state present a shred of evidence that Petitioner “possessed information concerning Elvis’s disappearance.” Again, the state claims that the payphone call was “obviously a subject of critical importance to the investigation,” but provides no explanation of why the payphone call was “obviously” “of critical importance.” The state also failed to explain why the police would have shifted their investigation from Petitioner if he were not the caller.

The state faults Petitioner for “not personally provid[ing] any answers in his brief as to what intentions he believes are inferable from his conduct.” BOR at 25. Petitioner is not required to answer any questions posed by the state, and Petitioner is not required to personally explain his intent. People lie to the police for any number of reasons – some people do not want to get

involved, some people fear others finding out what they have told the police, still others fear unrelated consequences, such as being deported.

Curiously, the state maintains on appeal – as it did at trial – that Petitioner actually succeeded in obstructing justice because the police had to conduct an actual investigation. BOR at 28-29. According to the state, had Petitioner not lied to the police about the payphone call, which he corrected within seconds, the police simply would have believed everything he told them and not investigated one bit of it. In other words, in order to get the police to conduct a thorough investigation, someone has to be caught telling a lie. The absurdity of this reasoning is obvious.

Petitioner respectfully requests this Court direct a verdict of acquittal on the charge of obstruction of justice because the state failed to present any direct or substantial circumstantial evidence of the offense. Admittedly, Petitioner lied to the police when he denied calling Elvis from a payphone. However, within seconds, Petitioner told the police he had called Elvis from the payphone. Petitioner's lie, which was quickly followed by the truth, could not have been given with the intent to obstruct justice. No one could imagine that justice would be obstructed by someone lying to police about a phone call only to tell the truth within a matter of seconds.

**CONCLUSION**

Petitioner respectfully requests this Court direct a verdict of acquittal on the offense of obstruction of justice.



Susan B. Hackett  
Appellate Defender

ATTORNEY FOR PETITIONER

This 29<sup>th</sup> day of November, 2021.