1978 S.C. Op. Atty. Gen. 40 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-25, 1978 WL 27414

Office of the Attorney General

State of South Carolina
Opinion No. 78-25
February 10, 1978

***1** An attempt by a public officer improperly to influence an officer of a subordinate law enforcement agency to reduce a previously charged criminal offense to a lesser related or unrelated offense would constitute obstruction of justice.

Director
S.C. Court Administration

QUESTION:

Would an attempt by a public official (not the prosecuting officer) to influence an officer of a subordinate law enforcement agency to reduce a previously charged criminal offense to a lesser related or unrelated offense constitute an obstruction of justice?

AUTHORITIES:

State v. Messervy, 258 S.C. 110, 187 S.E.2d 524;

Green v. City of Bennettsville, 197 S.C. 313, 15 S.E. 334;

67 C.J.S. Obstructing Justice, Section 7, pp. 52 and 53;

Martin v. U.S., 166 F.2d 77, 79 (C.A.4 1948).

DISCUSSION:

The question above arises most frequently in connection with a widespread problem in this State, to wit: The use of the influence inherent in their positions by mayors, city councilmen and other public officials, in effort to persuade police officers, who are acting as prosecutors in magistrates' or municipal courts to reduce the criminal offense charged in a particular case to a lesser-included offense, an unrelated offense, or to drop prosecution altogether.

Generally, a law enforcement officer or policeman is considered a member of "[a]n organized civil force for maintaining order, preventing and defecting crime and enforcing the laws." Green v. City of Bennettsville, supra. In South Carolina, an officer's law enforcement duties may be very broad, encompassing a spectrum of responsibility ranging from the initial detection of crime to its prosecution. For instance, a law enforcement officer will often play the duel role of both arresting officer and prosecutor in cases involving traffic offenses heard in magistrates' and municipal courts. This responsibility was recognized by the Supreme Court in State v. Messervy, supra.

In common law offense of obstructing justice is defined as the act of "impeding or obstructing those who seek justice in a court, or those who have duties or powers of administering justice therein." 67 C.J.S. Obstructing Justice § 7, p. 52. The offense may be committed by "improperly or corruptly attempting to influence, intimidate or impede any officer, juror,

or witness in any court, in the discharge of his duty." Id., at p. 53. The gravaman of the offense is the corrupt attempt to influence an officer in the discharge of his duty to testify or prosecute. It makes no difference whether the attemp was successful or, in this instance, whether the lesser offense was related or unrelated to the offense charged or even whether the actor was a public official. The offender need only attempt improperly to influence the subordinate law enforcement officer in his exercise of his discretion or responsibility.

***2** The term "corruptly" is typically defined under these circumstances as that of an improper motive, and that motive may be caused by the desire to aid someone else or it may be caused by the hope of precuniary reward or benefit. Martin v. United States, supra. Persons found to be obstructing justice need not be actuated by any more than a desire to aid or benefit another person.

CONCLUSION:

It follows, therefore, that an attempt by a public officer improperly to influence an officer of a subordinate law enforcement agency to reduce a previously charged criminal offense to a lesser related or unrelated offense would constitute obstruction of justice.

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