

IN THE COURT OF APPEALS OF MARYLAND

No. 69

September Term, 1995

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STATE OF MARYLAND

v.

SUSAN HOPE PAGANO

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Murphy, C.J.  
Eldridge  
Rodowsky  
Chasanow  
Karwacki  
Bell  
Raker,

JJ.

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OPINION BY MURPHY, C.J.

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Filed: January 16, 1996

The issue in this case is whether lying to a police officer during an investigation and before the initiation of judicial proceedings and instructing others to do the same constitutes an obstruction of justice under Maryland Code (1957, 1992 Rep. Vol., 1995 Supp.) Article 27, § 26. That section provides: Intimidating or corrupting jurors, etc.; obstructing justice.

If any person [1] by corrupt means or by threats or force endeavors to influence, intimidate, or impede any juror, witness, or court officer of any court of this State in the discharge of his duty, or [2] by corrupt means or by threats or force obstructs, impedes, or endeavors to obstruct or impede the due administration of justice therein, he is liable to be prosecuted, and on conviction to be punished by fine not exceeding \$10,000, or by imprisonment not exceeding 5 years, or both, according to the nature and aggravation of the offense.

(emphasis added).

## I

According to the agreed statement of facts, Amy Haslup is a student who suffers from cerebral palsy. She is confined to a wheelchair and has little control over her body. She is blind and has the mental capacity of an infant.

Susan Pagano was Amy's teacher at the Ruth Parker Eason School in Glen Burnie, Maryland. On December 10, 1993, Pagano placed Amy in a storage closet after she "fussed" when a teacher's aide tried to remove her coat. Amy remained in the closet for over three hours. Pagano then called Amy's father who sent relatives to bring Amy home. When Amy's father and relatives noticed a red mark, scratches, and blood on Amy's arms, they brought her to the hospital. The attendant physician in the emergency room concluded that the marks on Amy's arms could not have been self-inflicted and

reported the possible child abuse to the Anne Arundel County Police.

Pagano told her two teacher's aides to lie to the police and not mention the marks on Amy's arms or Pagano's putting Amy in a closet. On December 20, 1993, the police interviewed Pagano. She denied having any knowledge of Amy's injuries and stated that nothing unusual happened that day. The teacher's aides also lied to the police.

When one of the aides threatened to tell the truth, Pagano admitted to the principal that she had lied and told her aides to lie. On January 3, 1994, Pagano told the police she did not report Amy's injuries because she was afraid of Amy's father. She subsequently admitted that she put Amy in a closet and that she had lied and told her aides to lie to the police.

Pagano was indicted in the Circuit Court for Anne Arundel County for the common law crime of misconduct in office and for obstruction of justice. Pagano filed a motion to dismiss both counts of the indictment. At the June 8, 1994 hearing on Pagano's motion before Judge Chester Goudy, Pagano argued that a person can be charged with obstruction of justice only if there is a judicial proceeding pending and that obstructing or impeding a police investigation, absent such a judicial proceeding, cannot constitute obstruction of justice under Article 27 § 27.<sup>1</sup>

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<sup>1</sup> In 1994, § 27 was renumbered and is now § 26. Ch. 712 of the Acts of 1994. Throughout this opinion, we will refer to the

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current and prior forms of the obstruction of justice statute as §