

COA Opinion: In the statute criminalizing tampering with evidence, “official proceeding” means a proceeding that is “considered by a judicial official authorized to hear evidence under oath.”

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In [*People v Kissner*](#), the Court of Appeals affirmed defendant’s convictions of tampering with evidence, MCL 750.483a(6)(a), and attempted obstruction of justice, MCL 750.92. In a previous case defendant was convicted of burning real property. After he had exhausted all his appellate rights in that case, he filed a motion for relief from judgment with the trial court. In his motion he alleged that the presiding judge should have disqualified himself because defendant had previously been involved in a romantic relationship with the judge’s daughter. Defendant submitted a signed affidavit stating the same. Based on the affidavit, defendant was charged with and convicted by jury of tampering with evidence and attempted obstruction of justice. Defendant appealed his convictions arguing that there was insufficient evidence to convict him.

With regard to his tampering of evidence conviction, defendant acknowledged that the affidavit was false, but argued he did not offer it as evidence at an “official proceeding” as required by MCL 750.483a(5)(b). The Court of Appeals noted that “official proceeding” is defined as “a proceeding heard before a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under other, including a referee, prosecuting attorney, hearing examiner, commissioner, notary, or other person taking testimony or deposition in that proceeding.” It also observed that proceeding is broadly defined and encompasses the entirety of a lawsuit, from its commencement to its conclusion. It reasoned the false affidavit was offered as evidence at an “official proceeding” because the judge was authorized to hear evidence under oath and defendant commenced the proceeding by filing his motion for relief from judgment and concurrently submitting the affidavit.

As to defendant’s attempted obstruction of justice conviction, defendant argued that he should not have been convicted because “attempt” offenses do not exist at common law. The Court of Appeals concluded that this argument lacked merit because attempt offenses do exist at common law. See *People v Youngs*, 122 Mich 292, 293; 81 NW 114 (1899). The Court also determined that there was sufficient evidence to convict defendant because defendant interfered with the orderly administration of justice by moving for a new trial based on a false affidavit.