

21-6218  
No. \_\_\_\_\_

**ORIGINAL**

IN THE  
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.  
FILED  
**NOV - 2 2021**  
OFFICE OF THE CLERK

MATTHEW MANUEL BARNETT— PETITIONER  
(Your Name)

vs.

THE PEOPLE OF THE STATE OF COLORADO— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

**Supreme Court, State of Colorado Case No. 21SC30**

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Matthew Manuel Barnett DOC#184882

(Your Name)

Delta Correctional Center 11363 Lockhart Rd.

(Address)

Delta, CO, 81416

(City, State, Zip Code)

970-874-7614

(Phone Number)

### **QUESTION(S) PRESENTED**

In this case of first impression, Colorado Supreme Court denied certiorari affirmed a conviction upheld by the Court of Appeals stating that an employee of Comcor Inc. a private corporation was a "public servant" in this prosecution for attempting to influence a public servant in violation of Colorado Revised Statues 18-8-306(2016)? I pray to you ladies and gentlemen of the US Supreme Court to grant this Writ of Certiorari..

## **LIST OF PARTIES**

[X] All parties appear in the caption of the case on the cover page.

[ ] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

[ ] For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix \_\_\_\_\_ to the petition and is

[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

**[X] For cases from state courts:**

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

[X] reported at Barnett v. People, 2021 Colo. LEXIS 708; or,  
[ ] has been designated for publication but is not yet reported; or,  
[X] and is unpublished.

The opinion of the Colorado Appeals \_\_\_\_\_ court appears at Appendix B to the petition and is

[X] reported at People v. Barnett, 2020 Colo. App. LEXIS 2013; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

## JURISDICTION

For cases from federal courts:

The date on which the United States Court of Appeals decided my case was \_\_\_\_\_.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from state courts:

The date on which the highest state court decided my case was 16<sup>th</sup> Day of August. A copy of that decision appears at Appendix A.

A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a)

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED:

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## STATEMENT OF THE CASE

### **A. Procedural history in the trial court:**

I Matthew Barnett was charged with attempt to influence a public servant Colo. Rev. Stat. § 18-8-306 (F4) and forgery (Colo. Rev. Stat. § 18-5-102(1)(e) (F5). After trial, a jury found me guilty of attempting to influence a public servant and deadlocked on the forgery charge which was dismissed before sentencing.

I have maintained my innocence the entire time. After the prosecution rested I moved for acquittal based on the fact that the Government failed to supply evidence to support the finding that Comcor, Inc. was a government entity. [TR, 4/30/19, p200:12-16]. The court denied the motion. [TR, 4/30/19, p202:14-25].

### **B. Summary of relevant evidence.**

Robert Koski, an investigator for the district attorney's office, was asked to investigate Barnett's GPS tracking monitor April 2017. [TR, 4/30/19, pp. 138:23-140:2, p. 141:2-4] He learned that it had been turned off on December 23, 2016 [TR, 4/30/19, p.140:3-5] One of Barnett's bond conditions was that he was to be on GPS monitoring. [TR, 4/30/19, p. 140:22-25]

Koski was present at a court hearing on December 23, 2016, on Barnett's case. [TR, 2/30/19, p. 141:5-22] No modification was made in the bond conditions at the December 23 hearing. [TR, 4/30/19, p. 142:17-22]

Comcor gave a document reflecting amended bond conditions to Koski [TR, 4/30/19, pp 143:19-145:21, EX (trial), p. 5 (Exh. 1)] The document referenced Judge David Shakes who was the judge to whom Barnett's case had been assigned. [TR 4/30/19 p. 146:3-6]

Andrey Williams, the EMS supervisor at Comcor was monitoring GPS tracking devices on December 23, 2016 [TR, 4/30/19, pp. 158:7-159:19] Barnett was not a client of Williams, but Barnett's case worker was off from work that day, so Williams handled Barnett's case. [TR, 4/30/19, pp. 159:233-160:1]

Williams explained that if a client disconnected, or self-terminated, a monitor, Comcor would receive an alert and tell the court. [TR, 4/30/19, pp. 160:8-161:8] "When someone is terminated [from monitoring], they come in with documentation from the court saying their sentence or what you have been – their obligation was completed, and then we take the monitor off them ourselves." [TR, 4/30/19, p. 160:17-21]

According to Williams, Barnett came to Comcor, with documentation indicating that he had been released by the court. [TR, 4/30/19, pp. 162:2-163:1]; EX (trial), p. 5 (Exh.1)] Exhibit was given to Williams. [TR, 4/30/19, pp. 162:18-163:1]

A couple of weeks later, someone from the district attorney's office wanted information from Williams. [TR, 4/30/19, pp. 166:25-167:5] He was also contacted by Judge Shakes' clerk who asked why Barnett was off GPS monitoring. [TR, 4/30/19, p. 162:8 2-6] She asked Williams to e-mail the document presented to Comcor. [TR, 4/30/19, pp. 168:22-24]

Gwen Prater, a court clerk assigned to Judge Shakes, said Barnett was on GPS tracking as a condition of bond that this condition was still being monitored. [TR, 4/30/19, p. 181:14-17] Comcor said that he was terminated on December 23, 2016. [TR, 4/30/19, pp. 181:21-182:1] The Comcor representative told Prater that Comcor terminated GPS monitoring because Barnett came in with documentation which said it was terminated. [TR, 4/30/19, p.182:10-14] Comcor provided a copy of the document which it was given to discontinue GPS monitoring. [TR, 4/30/19, p.183:14-20; EX (trial) p. 5 Exh. 1)]

Prater said that Exhibit 1 indicated that Judge Shakes authorized discontinued GPS monitoring, but Prater knew that the judge had not issued such an order. [TR, 4/30/19, pp.183:17-184:8] She added that the exhibit was not even the type of order usually issued to end monitoring. [TR, 4/30/19, p.184:9-12]

Sheri Porter, another division clerk, testified that she was aware that Barnett was to be monitored through GPS, and that she was unaware of any order from the judge terminating the GPS monitoring. [TR, 4/30/19, pp. 189:10-190:11]

Judge David Shakes was familiar with Barnett. [TR, 4/30/19, pp. 194:24-195:15] Barnett was ordered on GPS monitoring as a condition of bond; the court did not terminate that condition. [TR, 4/30/19, pp. 195:23-196:9] In April 2017, Judge Shakes learned that GPS monitoring had terminated. [TR, 4/30/19, p.195:10-14] Exhibit 1 was not created by Judge Shakes or by anyone at his direction. [TR, 4/30/19, p. 195:18-24]

### **C. The panel's decision:**

The appellate panel determined that based on the language of C.R.S § 18-8-306, an employee of an organization such as Comcor is a “public servant” performing a government function in this type of situation. *People v. Barnett*, 2020 COA 167, ¶¶ 12-19.

The division reached this conclusion by acknowledging that the definition of “public servant” was “any officer or employee of the government, whether elected or appointed, any person participating as an advisor, consultant, process server, or otherwise in performing a *governmental function*. (emphasis in original) *Barnett*, 2020 COA 167, ¶ 12. Comcor employees were not officers or employees of the government. *Barnett*, 2020 COA 167, ¶ 13.

However, the definition of “government” included any corporation or other entity established by law to carry out any *governmental function*. (emphasis in original) *Barnett*, 2020 COA 167, ¶ 14. Since monitoring those on pretrial services GPS monitoring was a governmental function, in this case Comcor was a corporation or other entity performing a governmental function. *Barnett*, 2020 COA 167, ¶ 15.

Because the panel erred in its statutory construction of C.R.S § 18-1-901(3)(i) (definition of “public servant”) and C.R.S. § 18-1-901(3)(o) (definition of “government”) I seek review of the Court of Appeals’ decision by the Supreme Court of the United States of America.

## REASONS FOR GRANTING THE PETITION

**In this case of first impression, the Court of Appeals incorrectly held that an employee of Comcor, a private corporation, was a “public servant” in this prosecution for attempting to influence a public servant in violation of C.R.S. § 18-8-306.**

**A. The panel reached its decision by ignoring the substantial difference between a public corporation and a private corporation.**

The division reached its conclusion that Comcor employees were “public servant” by looking at the definition of “public servant” under C.R.S. § 18-1-901(3)(i), admitting that a Comcor employee was not a government “officer or employee” but that, based upon the second part of the definition, a Comcor could be considered a public servant because Comcor was a “corporation or other entity established by law to carry out a government function.”

The problem with this analysis is that Comcor, more formally known as Community Corrections of the Pikes Peak Region, Inc.” [EX (motions hearing), pp3-4], was a not-for-profit corporation established in October 1983 under the Colorado non-profit corporation statute by private individuals “to serve as a community correctional facility and program for the 4<sup>th</sup> Judicial District.” *Id.*

While the corporation was going to contract to provide services and programs to the Fourth Judicial District and would tailor those services and programs to meet the criteria required under C.R.S § 17-27-101 *et seq.*, the corporation was not “established by law.” Community Corrections of the Pikes Peak Region, Inc. was no more a corporation established by law than any other privately-established non-profit corporation (such as the Laboratory to combat Human Trafficking, Energy Outreach Colorado, Volunteers for Outdoor Colorado, to name but three examples) set up through the office of the Secretary of State pursuant to C.R.S. § 7-122-101, *et seq.* C.R.S. § 7-122-101 sets out the framework for private incorporators to set up a corporation but the statute does not establish the corporation *per se*.

The distinction between public and private corporations is an important one and has been recognized by the Colorado Supreme Court.

“Private nonprofit corporations are corporations formed by private individuals for a public purpose in which, no part of the income or profit of which is distributable to its members, directors or officers. Colo. Rev. Stat. § 7-20-102(10) (1986). Ultimate control of the corporation is vested in the members or the directors through their power to vote. Colo. Rev. Stat. § 7-23-106(3) (1990). In contrast, public corporations are created as subdivisions of the state as an expedient device to carry out the functions of government.”

Colorado Ass'n of Public Employees v. Board of Regents of University of Colorado, 804 P.2d 138, 139, 1990 Colo. LEXIS 899, \*1, 14 BTR 1717 (Colo. December 24, 1990)

Comcor was incorporated as a private corporation. It was not established by law (i.e., legislatively) in the same way a public corporation might be established. The division misread C.R.S. § 18-1-901(3)(o) to include private, not-for-profit corporations in the definition of corporations established by law.

**B. Application of the rules of statutory construction demonstrates that C.R.S. § 18-8-306 does not apply to employees of private businesses.**

In addition to use of the modifier “established by law” following the word “corporation,” application of the rules of statutory construction leads to the conclusion that C.R.S. § 18-1-901(3)(i) does not apply to privately-owned corporations.

“Words and phrases should be read in context and construed according to the rules of grammar and common usage.” C.R.S. § 2-4-101. The phrase “corporation established by law to carry out any governmental function” follows the words, “United State, state, county, municipal or other political unit.” These are levels of government and their use modify the term “corporation or other entity.”

The statute which I was charged with violating – attempt to influence a public servant- is housed in Article 8 of Title 18. Article 8 is entitled, “offenses – Governmental Operations.” And article 5 which includes “Offenses Involving Fraud”).

“When determining the meaning of a particular statute, it is necessary to consider the relationship of that statute to the other legislative provisions concerning the same subject matter, especially when the statute in question is part of a comprehensive legislative program. *Colorado General Assembly v Lamm*, 700 P.2d 508, 518 (Colo. 1985).” *Lucero v. Climax Molybdenum Co.*, 732 P.2d 642, 645 (Colo. 1987). The provision of the article which covers offenses involving governmental operations should only apply to governmental entities, not private corporations.

The word “corporation” must be read along with the rest of C.R.S. § 18-1-901(3)(i) which describes governmental entities. “When a statute is clearly part of a comprehensive regulatory scheme, the scheme should be construed to give consistent, harmonious, and sensible effect to all its parts. [Citations omitted]” *Shipley v. People*, 45 P.3d 1277, 1278 (Colo. 2002)

Extending the scope of C.R.S. § 18-8-306 to circumstances and situations in which someone is alleged to have deceived a private entity – even if the expansion is limited only to those private corporation who are doing business with,

or for, the state – opens the door to prosecutions in cases which were probably never contemplated by the drafters of C.R.S. § 18-8-306.

If the General Assembly wishes to extend the criminal prohibition against attempting to influence public servants to the private individuals working for private entities performing services for which the state or local government has contracted, the legislature is free to do so. But that has not been done. And it was not the role of the Court of Appeals to blur any further the lines between public and private actors.

Finally, *People v Rediger*, 416 P.3d 893 (Colo. 2018), is instructive. In *Rediger*, the question was whether an alleged victim was a “public employee” under C.R.S. § 18-9-110(1). The Supreme Court noted that the statue did not define “public employee” but there was a definition for “public servant” which was deemed similar term and as such, instructive. *Rediger*, 416 P.3d at 899.

The *Rediger* Court held that a “public employee” means a person who works in the service of a governmental entity under an express or implied contract of hire, under which the governmental entity has the right to control the details of the person’s work performance.” *Rediger*, 416 P.3d at 899.

The Court went on to note, “We are not persuade otherwise by the People’s assertion that the General Assembly intended the phrase ‘public employee’ to capture any employee who serves a governmental function, whether or not a governmental entity actually employs that person.” Id.

### **C. Other Jurisdictions have rejected the notion that employees of private corporations or entities are public servants.**

New Jersey appellate courts have limited the term “public servant” to agents of governmental entities and have excluded employees of private corporations even when they have been performing governmental functions.

NJ ST 2C: contains the definitions used in the New Jersey Code of Criminal Justice. NJ ST 2C:27-1(g) defines “public servant” as “any officer or employee of government, including legislators and judges, and any person participating as a juror, advisor, consultant, or otherwise, in performing a governmental function, but the term does not include witnesses.” The New Jersey definition is similar to the Colorado definition.

In *State v Mason*, 355 N.J. Super. 296, 810 A.2d 88 (NJ Sup. Ct. App. Div., 2002), the court held that the term “public servant”, as used in the criminal offense of official misconduct, did not include employees of a private, non-profit corporation providing education services. The court acknowledged that the employees of private corporations were providing education services is a governmental function but rejected the argument that their doing so turned them into public servant.

To be sure, the options available to local public schools and to the parents of our learning disabled students to secure a free and appropriate public education are limited; facilities like Archway fill an important role in providing

an education for a population that might otherwise be ill-served through our traditional public schools. But the services that those private educational facilities provide, albeit at public expense, are limited by contract and governed by the terms of those contracts. Moreover, the private facilities of this type are also subject to oversight and regulation by the Department of Education. Nonetheless, they remain private entities providing a service for a fee and governed by contracts subject to annual renewal the entities that perform these services are private organizations and not governmental agencies or their functional equivalent.

*State v. Mason*, 810 A.2d 88, 91

The State of New Jersey acknowledged that there were some prior cases in which private actors were considered public officials based on the nature of the roles performed but drew a line between private actors performing regulatory functions of enforcing regulation in the name of the state, and those who are performing an act or service limited by contract.

"We note as well the analogous reasoning of our state and federal courts in decisions addressing state action. As the Supreme Court of the United States has held, "[a]cts of such private contractors do not become acts of the government by reason of their significant or even total engagement in performing public contracts." *Rendell-Baker v. Kohn*, 457 U.S. 830, 841, 102 S. Ct. 2764, 2771, 73 L. Ed. 2d 418, 427 (1982).

*Mason*, 355 N.J. Sup. Ct. at 304, 810 A.2d at 92.

*Rendell-Baker* is also instructive. Former teachers and vocational counselor at a non-profit, privately-operated school for maladjusted high school students brought a civil rights suit against the school for violation of their constitutional rights. Citing to *Blum v Yaretsky*, 457 U.S. 991, 102 S. Ct. 2777, 73 L.Ed.2d 534 (1982), in which the Supreme Court held that a privately-owned nursing home did not become a state actor because the derived substantial amount of its revenue from Medicaid, the Court stated:

"The School, like nursing homes, is not fundamentally different from many private corporations whose business depends primarily on the contracts to build roads, bridges, dams, ships, or submarines for the government. Acts of such private contractors do not become acts of the government in performing public contracts."

*Rendell- Baker*, 457 U.S. at 840-841.

"Private nonprofit corporations are corporations formed by private individuals for a public purpose . . . In contrast, public corporations are created as subdivisions of the state as an expedient device to carry out the functions of government."

*Va. Office for Prot. & Advocacy v. Stewart*, 563 U.S. 247, 273, 131 S. Ct. 1632,

179 L. Ed. 2d 675 (2011) (Roberts, C.J., dissenting) ("[P]rivate entities are different from public ones: They are private.");

While Community Corrections of the Pikes Peak Region, Inc., also known as Comcor, may derive all its income from its contract with the Fourth Judicial District, that fact does not convert Comcor into a government entity.

I feel emphasis being private community corrections organizations which I can only assume are like private prisons citing a following 42 U.S.C.S. § 1983 claim: On certiorari, the Supreme Court affirmed. In an opinion by Breyer, J., joined by Stevens, O'Connor, Souter, and Ginsburg, JJ., it was held that the two guards in question were not entitled to qualified immunity from the prisoner's 1983 suit, because--in the context of the case at hand, in which a private firm, which was systematically organized to assume the major lengthy administrative task of managing an institution with limited direct supervision by the government, undertook that task for profit and potentially in competition with other firms--an examination of history and of the purposes underlying government-employee immunity revealed nothing special enough about the job itself that would warrant providing these private prison guards with a governmental immunity.

*Richardson v. McKnight*, 521 U.S. 399, 401, 117 S. Ct. 2100, 2102, 138 L. Ed. 2d 540, 545, 1997 U.S. LEXIS 3866, \*1, 70 Empl. Prac. Dec. (CCH) P44,784, 97 Cal. Daily Op. Service 4813, 97 Daily Journal DAR 7889, 11 Fla. L. Weekly Fed. S 64 (U.S. June 23, 1997)

Mr. Williams instructed me on Thursday December 22 to bring my monitor in on the following day Friday the 23rd of December he said there was an order in his system as he looked across the desk at me from behind his computer monitor. He omitted this statement from his testimony and continued to perpetrate the fraudulent story. I was sent to Comcor as a condition added to my bond conditions so in fact Mr. Williams was essentially an extension of my agreement with Dave Woods a "bail bondsman" in Colorado Springs. ROGER W. TITUS, UNITED STATES DISTRICT JUDGE opined "Moreover, bail bondsmen are not considered state actors unless they are working in concert with law enforcement officers." *Collins*, 790 A.2d at 664-65; *Rendell-Baker v. Kohn*, 457 U.S. 830, 838, 102 S. Ct. 2764, 73 L. Ed. 2d 418 (1982).

*Roberts v. United States*, 399 F. Supp. 2d 650, 655, 2005 U.S. Dist. LEXIS 27599, \*14 (D. Md. October 31, 2005)

## APPENDIX

The petitioner respectfully submits the following as an appendix to this petition:

**Appendix A:** Slip opinion is case captioned: *The People of the State of Colorado, Plaintiff-Appellee, v Matthew Manuel Barnett, Defendant-Appellant*, Colorado Supreme Court Case No. 21SC30 Judgment affirmed August 16, 2016 decision without published opinion Petition for Writ of Certiorari denied. En Banc.

*Barnett v. People*, 2021 Colo. LEXIS 708, \*1, 2021 WL 3713862 (Colo. August 16, 2021)

**Appendix B:** Slip opinion is case captioned: *The People of the State of Colorado, Plaintiff-Appellee, v Matthew Manuel Barnett, Defendant-Appellant*, Colorado Court of Appeals Case No. 19CA1056 published opinion dated December 3, 2020.

*People v. Barnett*, 2020 Colo. App. LEXIS 2013, \*1, 490 P.3d 1000, 1001, 2020 WL 7062695 (Colo. Ct. App. December 3, 2020)

## CONCLUSION

For the forgoing reasons, the Supreme Court should grant the petition for a Writ of Certiorari and review the decision of the Supreme Court of Colorado.

Respectfully submitted,

Matthew Manuel Barnett  
Matthew Manuel Barnett

Date: 2<sup>nd</sup> Day of November 2021