No. 125117

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	) On Appeal from the Appellate Court of Illinois, Fifth Judicial District, No. 5-16-0035
Plaintiff-Appellee,	)
v.	) There on appeal from the Circuit Court of the First Judicial Circuit, Jackson County, Illinois, No. 15 CF 228
RASHEED CASLER,	) The Honorable Kimberly Dahlen,
Defendant-Appellant.	) Judge Presiding

BRIEF AND ARGUMENT FOR PLAINTIFF-APPELLEE PEOPLE OF THE STATE OF ILLINOIS

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ORAL ARGUMENT REQUESTED

POINTS AND AUTHORITIES

NATURE OF THE CASE

A jury convicted defendant of obstruction of justice in violation of 720 ILCS 5/31-4(a), and the circuit court sentenced him to 90 days of imprisonment and 24 months of probation. C107-109.[1] The Illinois Appellate Court, Fifth District, affirmed. *People v. Casler*, 2019 IL App (5th) 160035. Defendant appeals from that judgment. No question is raised on the pleadings.

ISSUES PRESENTED FOR REVIEW

1. Whether the plain meaning of "furnish" in 720 ILCS 5/31-4(a)(1) includes "material impediment."

2. Whether this Court's decision in *People v. Comage*, 241 Ill. 2d 139 (2011), extends to obstruction of justice for furnishing false information.

3. Whether defendant's actions materially impeded the police officers.

JURISDICTION

Jurisdiction lies under Supreme Court Rules 315 and 612. On September 25, 2019, this Court allowed defendant's petition for leave to appeal. *People v. Casler*, 132 N.E.3d 294 (Ill. Sept. 25, 2019) (table).

[1] Citations to the common law record, report of proceedings, and defendant's brief appear as "C__," "T__," and "Def. Br. __," respectively.

STATUTE INVOLVED

§ 31-4. Obstructing justice.

(a) A person obstructs justice when, with intent to prevent the apprehension or obstruct the prosecution or defense of any person, he or she knowingly commits any of the following acts:

(1) Destroys, alters, conceals or disguises physical evidence, plants false evidence, [or] furnishes false information[.]

720 ILCS 5/31-4(a)(1).

STATEMENT OF FACTS

Shortly before 1:00 a.m. on March 6, 2015, Carbondale Police Officers Guy Draper and Blake Harsy were conducting a routine foot patrol at a local hotel. T224-25. As Officer Draper walked down a hallway, the door to room 210 opened quickly and a "black male emerge[d] from the hotel room." T226. Upon seeing Draper, this individual retreated into the room and slammed the door. *Id.* Draper recognized the individual from prior interactions, but due to the brevity of the encounter, he was not sure who the individual was. T226-27. Draper later identified defendant as the individual who opened the door. T227.

As the door shut, the officers detected the scent of marijuana coming from the room, and Draper knocked on the door at approximately 12:51 a.m. T228, T235. After a brief delay, a female opened the door. T229. Draper observed the layout of the room and that four individuals, two men and two women, were inside. T231. However, Draper did not see defendant. T231. Draper called for backup, T236-37, while Officer Harsy took the woman who

claimed to be the registered hotel guest out into the hallway to speak with her. T354.

Because the room's bathroom door was closed, and because Draper had previously witnessed individuals use hotel bathrooms to hide from police or destroy evidence, Draper — while standing in the hotel room doorway — called out that anyone in the bathroom should identify themselves. T231-32. Defendant responded that he was using the bathroom, but did not provide his name. T231. Draper asked again for the individual using the bathroom to identify himself. *Id.* This time, defendant stated that his name was "Jakuta King Williams." T233. Concerned that defendant might be destroying or hiding evidence, Draper told defendant that he should not flush the toilet. *Id.* Draper then asked defendant for identification, and defendant falsely replied through the closed door that he did not have identification and that he was from Virginia. T233-34.

Relying on defendant's statement that his name was Jakuta King Williams, the officers relayed that name to dispatch and were told that no record existed of an individual by that name. T234. At that point, Draper knew that defendant was lying, and he ordered defendant to open the bathroom door, telling him that he would not leave until defendant was identified. T233-34, 265-66. Defendant eventually opened the door, and Draper recognized him from a previous arrest as Rasheed Casler. T236, 265. Draper then asked defendant, "Are you sure you're not Rasheed Casler?" *Id.*

Defendant did not respond. T266. Draper relayed the name Rasheed Casler to dispatch, who informed Draper of an outstanding warrant for defendant's arrest. T236. Defendant was arrested without incident at 1:15 a.m. T235, T267. Defendant's Illinois identification card was subsequently found in a search of the hotel room. T239.

Defendant was charged with obstructing justice, in violation of 720 ILCS 5/31-4(a), for "knowingly, with the intent to prevent his arrest on warrants, provid[ing] false information to [Officer] Draper." C10-11. A jury convicted him, C59, and he was sentenced to 90 days of imprisonment and 24 months of probation, C107-09.

On appeal, defendant argued first that the State failed to prove that he intended to prevent his arrest when he gave the false name. *Casler*, 2019 IL App (5th) 160035, ¶ 26. The appellate court held that a reasonable jury could have inferred his intent to do so. *Id.* ¶ 33. Defendant additionally argued that his conviction should be reversed because his actions did not materially impede Officer Draper. *Id.* ¶ 37. The appellate court disagreed that the State was required to show material impediment and thus did not decide whether defendant's actions did so. *Id.* ¶ 49.

ARGUMENT

This Court should affirm the appellate court's judgment. First, the plain meaning of "furnish" in 720 ILCS 5/31-4(a)(1) does not support a material impediment requirement because that word means "to provide or

supply." Second, the Court's decision in *Comage* is inapplicable, given that this Court was tasked with determining only the plain meaning of the word "conceal." Finally, even if this Court does require a material impediment, defendant's actions did materially impede Officer Draper's investigation.

II. The Term "Furnish" in 720 ILCS 5/31-4(a)(1) Cannot Reasonably Be Read to Include "Material Impediment."

Under 720 ILCS 5/31-4(a)(1), a person obstructs justice when, "with the intent to prevent the apprehension or obstruct the prosecution or defense of any person, he or she knowingly . . . furnishes false information." Thus, the crime has two elements: (1) furnishing false information (2) with the intent to prevent the apprehension or obstruct the prosecution or defense of a person.

Defendant does not argue either that he did not lie to Officer Draper, or that he did not intend to prevent his apprehension and prosecution. *See* Def. Br. 6 (arguing only that he did not "furnish" false information).[2] Nor could he, as the appellate court noted, given that defendant's actions — hiding in a bathroom after he saw the officers coming, lying about both his identity and his lack of identification, and failing to respond after Officer Draper recognized him and recalled his real name — all support the inference

[2] Defendant disputes that the State proved he had the requisite intent to prevent his apprehension, but develops no argument in support. Def. Br. 15 n.2. Defendant therefore forfeits this contention. *See In re Marriage of Bates*, 212 Ill. 2d 489, 517 (2004) (declining to consider issue when party failed to provide adequate basis for relief).

that defendant intended to prevent his apprehension on the outstanding warrant.

Instead, defendant argues that he is not guilty of obstruction because he did not materially impede Draper's investigation. *Id.* However, the obstruction of justice statute has only two elements, neither of which requires proof of material impediment of an investigation. The plain language of the statute requires only that a defendant provide false information with the *intent* to prevent his apprehension, not that he actually succeed in doing so. This Court should decline defendant's request to read into the definition of "furnish[]" the unrelated requirement that he have "materially impeded" an investigation.

The definition of "furnish" presents a question of statutory interpretation that is reviewed *de novo*. *People v. Donoho*, 204 Ill. 2d 159, 172 (2003) (citing *Paris v. Feder,* 179 Ill. 2d 173, 177 (1997)). "The cardinal rule of statutory construction is to ascertain and give effect to the true intent of the legislature," and "[t]he best evidence of legislative intent is the language used in the statute itself, which must be given its plain and ordinary meaning." *Paris*, 179 Ill. 2d at 177. "When the language of a statute is clear and unambiguous, it must be applied without resort to other aids of construction." *Abruzzo v. City of Park Ridge*, 231 Ill. 2d 324, 332 (2008) (citing *Murray v. Chicago Youth Ctr.*, 224 Ill. 2d 213, 235 (2007)). In fact, "'[t]here is no rule of construction which authorizes a court to declare

that the legislature did not mean what the plain language of the statute imports.'" *Franzese v. Trinko*, 66 Ill. 2d 136, 139-40 (1977) (quoting *Western Nat'l Bank of Cicero v. Vill. of Kildeer*, 19 Ill. 2d 342, 350 (1960)).

Because the term "furnish" is not defined, this Court assumes that "the legislature intended the term to have its ordinary and popularly understood meaning." *People v. Diggins*, 235 Ill. 2d 48, 55 (2009). "Furnish" is defined as "to provide or supply with what is needed, useful, or desirable." *Webster's Third New Int'l Dictionary* 923 (1961); *accord Gem Elecs. of Monmouth, Inc. v. Dep't of Revenue*, 183 Ill. 2d 470, 478 (1998) (relying on this definition of "furnish"); *see also People v. Comage*, 241 Ill. 2d 139, 144 (2011) (noting that obstruction of justice statute was adopted in 1961 and using dictionary from that year to determine meaning of "conceal"). Webster's goes on to explain that "furnish is a general term indicating supplying and providing." *Webster's Third New Int'l Dictionary* at 924. When this dictionary definition is substituted into the statute, the natural and plain reading becomes: "A person obstructs justice when, with intent to prevent the apprehension or obstruct the prosecution or defense of any person, he or she knowingly . . . supplies or provides false information." Indeed, this Court has already construed the obstruction statute using this very definition. *See In re Q.P.*, 2015 IL 118569, ¶ 25 (stating that "the obstruction of justice statute is violated when a person knowingly *provides false information* with the intent to prevent his seizure or arrest on a criminal charge") (emphasis added).

Defendant's reading of "furnish" to require that the defendant have materially impeded an investigation stretches the plain meaning too far. He concedes that "[u]pon first reading, furnish does not seem to indicate much more than 'to provide.'" Def. Br. 12. Yet defendant argues that the dictionary's use of the words "necessary" and "useful" changes the definition of "furnish" because these words "suggest[] a reliance upon" the thing furnished. *Id.* Defendant then, in a logical leap, equates "reliance" with "material impediment," to conclude that false information is not "furnished" unless it materially impedes an investigation. *Id.* But even if "furnish" implies that the thing furnished is "necessary," it does not follow that "furnish" "suggests a reliance upon" the thing provided. If, for example, a statute stated: "Adam shall furnish oranges to Bob," it does not follow that Bob must rely on the oranges, only that it was necessary for Adam to furnish oranges to Bob. Here, the legislature has defined what needs to be furnished to constitute obstruction: false information. The plain meaning is clear, and the legislature did not intend for that plain meaning to carry the unexpressed, additional requirement of "material impediment."

Defendant's reliance on the statutory construction maxim *noscitur a sociis* is equally unpersuasive. Def. Br. 12-13. Under this canon of construction, "[t]he meaning of questionable words or phrases in a statute may be ascertained by reference to the meaning of words or phrases associated with it." *Diggins*, 235 Ill. 2d at 56 (citation and internal

quotations omitted). But this canon is inapplicable here, because the word "furnish" is separated from the word "conceal." The statute reads "[d]estroys, alters, conceals or disguises physical evidence, plants false evidence, furnishes false information[.]" 720 ILCS 5/31-4(a)(1). The canon might be applicable to destroys, alters, conceals, and disguises, as those terms are all listed together to describe an action upon "physical evidence." *See Corbett v. Cty. of Lake*, 2017 IL 121536, ¶¶ 31-32 (using the canon to construe words from the list of "hiking, riding, fishing or hunting trail."). But furnish, while in the same section, is clearly distinct from those words. Not only is it separated from that run of words, it is also qualified differently, referring not to an action upon "physical evidence" but instead to "false information." And, in any event, *noscitur a sociis* is inapplicable when a word's meaning is clear. *People v. R.J. Reynolds Tobacco Co.*, 2011 IL App (1st) 101736, ¶ 26. Here, as discussed, the plain meaning of "furnish" is unambiguous.

Moreover, even if this Court found *noscitur a sociis* to be applicable, the doctrine is not invariable, and notwithstanding the doctrine "[a] 'word may have a character of its own not to be submerged by its association.'" *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 860–61 (1984) (quoting *Russell Motor Car Co. v. United States*, 261 U.S. 514, 519 (1923)). Nothing requires a court "to construe every term in a series narrowly because of the meaning given to just one of the terms." *Gustafson v. Alloyd Co.*, 513 U.S. 561, 586 (1995) (Thomas, J., dissenting) (citing *Russell Motor*

Car Co., 261 U.S. at 519). This is particularly true when "[t]he substantive connection, or fit" between various terms "is not so tight or so self-evident" to "'rob' any one of them 'of its independent and ordinary significance.'" *Graham Cty. Soil & Water Conservation Dist. v. U.S. ex rel. Wilson*, 559 U.S. 280, 288 (2010) (quoting *Reiter v. Sonotone Corp.*, 442 U.S. 330, 338–339 (1979). Such is the case here, as concealing and furnishing are near opposites of one another; one meaning "to hide" and one meaning "to provide." Accordingly*, noscitur a sociis* should not be relied on to overcome the clear dictionary definition of "furnish."

Ultimately, defendant maintains that "only conduct which *actually* interferes with the administration of justice should be outlawed." Def. Br. 14. But that is not the statute the legislature wrote, and reading a "material impediment" requirement into the word "furnish" conflicts with the ordinary definition of that word, effectively adding a requirement to the obstruction statute that is not supported by its plain language. Had the General Assembly intended to require that the false evidence the defendant furnished "materially impede" an investigation, it could have, and presumably would have, said so directly. *See People v. Ellis*, 199 Ill. 2d 28, 40 (2002). Because this Court has a duty "not [to] depart from the plain language . . . by reading into it exceptions, limitations, or conditions that conflict with the express legislative intent," this Court should decline defendant's request to read a

"material impediment" requirement into the obstruction statute. *Barnett v. Zion Park Dist.*, 171 Ill. 2d 378, 389 (1996).

III. There is No Reason to Disregard the Plain Meaning of Furnish and this Court Should Therefore Decline to Require a Material Impediment.

A. *Comage* should not be extended to obstruction for furnishing false information.

Defendant relies heavily on *Comage*, going so far as to assert that its core holding "must be extended to furnishing false information." Def. Br. 6. However, *Comage* is clearly distinguishable, and its underlying logic does not extend to obstruction of justice for furnishing false information.

In *Comage*, this Court was tasked with defining "conceal" as that word is used in the obstruction of justice statute. Comage fled from police and ran about 30 yards before he was arrested. *Comage*, 241 Ill. 2d at 142. During a brief foot chase, police observed Comage reach into his pocket, pull out two small objects, and throw them over a privacy fence. *Id.* After the officers detained Comage, one of them walked to the other side of the fence, where he quickly recovered the items, which turned out to be crack cocaine paraphernalia. *Id.*

In deciding whether Comage "concealed" the evidence in violation of the obstruction statute, this Court looked to the dictionary definition and also considered the legislative intent behind prohibiting concealment. This Court determined that a defendant must do more than simply abandon evidence; he

or she must sufficiently conceal the evidence so that the concealment "materially impedes" a police officer's investigation. *Id.* at 149-50.

Comage should not be used to supersede the plain meaning of "furnish." First, because *Comage* interpreted an entirely different word ("conceal"), it sheds no light on the meaning of the unrelated word "furnish." *See Casler*, 2019 IL App (5th) 160035 at ¶ 44 ("*Comage* . . . was decided within the parameters of the supreme court's sole mission to determine the meaning of the word 'conceal.'"); *People v. Davis*, 409 Ill. App. 3d 457, 462 (4th Dist. 2011) ("Unlike *Comage*, where the supreme court was addressing what it meant to conceal evidence under the obstructing-justice statute, this case involves knowingly furnishing false information to the police."). As this Court explained, the dictionary defines "conceal" as (1) "to prevent disclosure or recognition of: avoid revelation of: refrain from revealing: withhold knowledge of: draw attention from: treat so as to be unnoticed;" and (2) "to place out of sight: withdraw from being observed: shield from vision or notice." *Comage*, 241 Ill. 2d at 144. Given that the definition of "conceal" starts with "to *prevent* disclosure or recognition," it makes sense that this Court found "conceal" to necessarily imply some success in the concealment. "Furnish," on the other hand, means "to provide or supply." *Webster's Third New International Dictionary* 923. There is no implication in the definition beyond the requirement that an individual provide. Thus, "furnish" means

the opposite of "conceal," and *Comage*'s definition of conceal sheds no light on the meaning of "furnish."

Further, the rationale underlying the Court's decision to define the crime of obstructing justice by concealing evidence in *Comage* as including an element of success is inapplicable to the crime of furnishing false information. In *Comage*, this Court expressed concern that "[t]o construe the word 'conceal' [to require only that the defendant placed the evidence out of sight] would mean that essentially every possessory offense where the contraband is not in plain view would also constitute the felony offense of obstructing justice." *Id.* at 148. The Court was understandably concerned that minor possessory offenses — such as underage cigarette possession — would become felony obstruction offenses simply because the evidence was not in plain view. But the same concern is not implicated when a defendant furnishes false information. Unlike a defendant who merely possesses evidence that is not in plain view, a defendant who furnishes false information necessarily makes an active and intentional choice to try to obstruct an investigation or prevent an arrest. Thus, reading in a "material impediment" requirement to the obstruction statute's prohibition against furnishing false information is not necessary to avoid sweeping in myriad instances of minor misconduct.

Moreover, furnishing false information and concealing physical evidence are distinct acts, and there is good reason to prohibit the former without regard to whether the act is successful. Furnishing false information

is akin to perjury or forgery. In Illinois, a person commits perjury when "under oath or affirmation . . . he or she makes a false statement, material to the issue or point in question, knowing the statement is false." 720 ILCS 5/32-2. In other words, one commits perjury by intentionally lying under oath about a material fact. It does not matter whether the fact finder is deceived by the lie; instead, the offense of perjury is complete upon the lie being told. The legislature clearly considered the substantial harms caused by perjury, and determined that the most effective deterrent is the criminalization of the lie itself without regard to the success of the lie.

The same is true of Illinois's forgery statute, 720 ILCS 5/17-3(a)(1), which provides that "[a] person commits forgery when, with intent to defraud, he or she knowingly . . . (1) makes a false document or alters any document to make it false and that document is apparently capable of defrauding another." Because "[t]he gist of forgery is the intent to defraud," *People v. Brown*, 2013 IL 114196, ¶ 38, "'it is immaterial to the crime of forgery whether any one was in fact defrauded," *People v. Christison*, 396 Ill. 549, 551 (1947) (internal quotations omitted); thus, "[t]he crime of forgery is complete with the making of a false instrument," *id.* Accordingly, like perjury, forgery is committed upon the completion of the act, without regard to the effectiveness of the act, because it is the very intent which the legislature seeks to deter.

Clearly, the legislature has determined that the harms that stem from certain acts — such as lying under oath or defrauding with false documents — are so disruptive to society and our system of justice that criminalization cannot depend on the success of the act. So too with furnishing false information to law enforcement. As the appellate court noted in *Davis*, unlike "momentarily" placing evidence out of sight, "when . . . [a] defendant furnishes false information, the potential that the investigation will be compromised is exceedingly high." 409 Ill. App. 3d at 462. Thus, like perjury and forgery, the act of furnishing false information impedes the proper functioning of the justice system, and prohibiting it without regard to its success furthers the valid legislative objective to deter it at its outset. *See, e.g.*, *Geisberger v. Vella*, 62 Ill. App. 3d 941, 944 (2d Dist. 1978) ("It is the public policy of this and all other states to encourage public cooperation with law enforcement officials"); *People v. Remias*, 169 Ill. App. 3d 309, 311 (3d Dist. 1988) (noting that "a criminal statute which prohibits giving a false name to a police officer, is more likely to encourage honest responses from the outset of police questioning").

B. Applying the plain meaning of "furnish" does not produce absurd results.

There is no merit to defendant's argument that a material impediment requirement is necessary to avoid absurd results and harmonize the obstruction statute with other like statutes. Def. Br. 15-19.

Defendant first argues that, absent a material impediment requirement, there would be no difference between obstruction of justice for furnishing false information and attempting to do so. Def. Br. 15-16. But defendant's argument rests on the false premise that, whenever the legislature creates a crime, it necessarily creates a separate (and less serious) offense of attempt to commit that crime. Consider again the crime of perjury. The General Assembly determined that it does not matter whether a fact finder is deceived by a lie; instead, perjury is completed upon the lie being told. Thus, there is no attempted perjury; either the lie is told or it is not. Similarly, forgery is committed upon the completion of the making of a false document. Accordingly, there is no attempted forgery; either a false document is created or it is not. Just so here: either false information is provided or it is not. Accordingly, as the appellate court has explained, the crime "may be completed at the moment such false information is provided." *Davis*, 409 Ill. App. 3d at 462. Thus, the fact that there is no room for attempt is irrelevant, and is consistent with other crimes of this nature.

Defendant also argues that a material impediment requirement is necessary to harmonize the obstruction of justice statute with other obstruction-based statutes. Def. Br. 16-17. On the contrary, those statutes confirm that this Court should not interpret the word "furnish" to require a material impediment. For instance, defendant cites 720 ILCS 5/31-4.5(a) (obstructing identification), which makes it a misdemeanor for a person

under arrest or detention, or who witnessed a crime, to "intentionally or knowingly furnish[] a false or fictitious name, residence address, or date of birth to a peace officer." Defendant argues that this statute is violated "whether the officer is impeded or not." Def. Br. 16. The State agrees. The statute's plain language, including the operative word "furnish," does not require that the information provided materially impede an officer. The only requirement is that the defendant have intentionally furnished a false name, address, or date of birth. And there is no indication that the legislature intended the word "furnish" to have a different meaning in the obstructing identification statute than in the neighboring obstruction of justice statute; this Court should therefore give them the same definition.

Nevertheless, defendant seems to suggest that the obstruction of justice statute should be read to require proof of material impediment because obstruction of justice is a felony offense, while obstructing identification is a misdemeanor. Def. Br. 16-17. Not only does this ignore the accepted definition of "furnish," it also fails to take into account that the legislature reasonably could have decided to punish obstruction of justice more harshly than obstructing identification. The obstructing identification statute is limited to individuals who are under arrest, detained, or being questioned as a witness to a criminal offense, and does not require a *mens rea* beyond intentionally or knowingly providing false identification. The obstruction of justice statute, on the other hand, applies to any individual

who provides false information *with* the intent to "prevent the apprehension or obstruct the prosecution or defense of any person." 720 ILCS 5/31-4. The legislature could reasonably have concluded that the obstruction of justice statute prohibits more culpable conduct, as it is more serious to lie with the intent to assist someone in evading justice than to merely provide false identification. The legislature's classification of one as a misdemeanor and the other as a felony presumably reflects that fact.

Defendant's reliance on the statute prohibiting obstructing a peace officer is similarly misplaced. Def. Br. 17 (discussing 720 ILCS 5/31-1(a)). That statute makes it a misdemeanor to "knowingly resist[] or obstruct[] the performance by one known to the person to be a peace officer," but does not define what constitutes "obstruction." 720 ILCS 5/31-1(a). In *People v. Baskerville*, this Court held that an individual who provides false information obstructs a peace officer only if "the misinformation interposes an obstacle that impedes or hinders the officer and is relevant to the performance of his authorized duties." 2012 IL 111056, ¶ 29. Defendant contends that it would be incongruent to require a material impediment under the obstructing a peace officer statute but not under the obstruction of justice statute. Def. Br. 17. However, *Baskerville* is inapposite, because the Court there was tasked with deciding whether providing false information violated the obstructing a police officer statute, or whether, as the defendant argued, only physical acts constituted obstruction. 2012 IL 111056, ¶ 17, 24-25. This required the

Court to define the word "obstruct," *id.* ¶ 17, which the Court determined "encompasses physical conduct that literally creates an obstacle, as well as conduct the effect of which impedes or hinders progress," *id.* ¶ 19. Because "obstruct" is not limited to physical acts, this Court held that the statute extended to false statements, so long as they "interpose[] an obstacle that impedes or hinders the officer." *Id.* ¶¶ 29, 38. By contrast, the resolution of this case depends on the definition of "furnish," not "obstruct." Thus, *Baskerville* has no application here.

In short, declining to add a material impediment requirement to the obstruction of justice statute does not produce absurd results. Rather, doing so would produce absurd results. On this point, *Brogan v. United States*, 522 U.S. 398 (1998), is instructive. In *Brogan*, the United States Supreme Court considered the scope of 18 U.S.C. § 1001, which prohibits "knowingly and willfully . . . mak[ing] any false, fictitious or fraudulent statements or representations" concerning "any matter within the jurisdiction of any department or agency of the United States." The defendant argued that the statute covered only statements that "pervert governmental functions." *Brogan*, 522 U.S. at 401-02. The Supreme Court rejected this argument, explaining that "making the existence of this crime turn upon the credulousness of the federal investigator (or the persuasiveness of the liar) would be exceedingly strange," and noting that "the analogous crime of perjury" includes no such limitation. *Id.* at 402. The same reasoning applies

here. Accordingly, this Court should not depart from the plain language of the obstruction statute and require a material impediment.

IV. Even If a Material Impediment Is Required, Defendant's Actions Materially Impeded His Arrest on the Outstanding Warrant.

Even if this Court were to find that a material impediment is required (and it should not), the Court should affirm the appellate court's judgment because the record establishes that defendant materially impeded Officer Draper's investigation and his own apprehension. Although the appellate court did not reach this issue, this Court may affirm the lower court's judgment "on any basis contained in the record." *Beacham v. Walker*, 231 Ill. 2d 51, 61 (2008); *see also Leonardi v. Loyola Univ. of Chicago*, 168 Ill. 2d 83, 97 (1995) ("As a reviewing court, we can sustain the decision of a lower court on any grounds which are called for by the record, regardless of whether the lower court relied on those grounds and regardless of whether the lower court's reasoning was correct.").

As an initial matter, defendant has forfeited any argument that his actions did not constitute a material impediment because he failed to develop an argument in his opening brief on this point, stating only that "Mr. Casler's conduct did not truly interfere with the administration of justice." Def. Br. 14. *See* Sup. Ct. R. 341(h)(7) (stating that arguments "shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on;" and that "points not argued

are forfeited and shall not be raised in the reply brief, at oral argument, or on petition for rehearing.").

Regardless, defendant's actions did materially impede his own apprehension. Draper knocked on the hotel room door at 12:51 a.m. T235. He ordered defendant to identify himself shortly thereafter. T232. Defendant responded only that he was using the bathroom. *Id.* Upon again being asked to identify himself, defendant provided a false name, and falsely claimed that he did not have identification with him. T233-34. Believing that defendant provided his correct name, the officers relayed that name to dispatch, but were informed that no record existed for such a person. T234. At that point, Draper ordered defendant to open the door. *Id.* When defendant opened the door, Draper recognized him (from prior encounters) as Rasheed Casler. T236. Though defendant never told Draper his real name, Draper provided defendant's name to dispatch and learned that he had an outstanding warrant. T237. Defendant was not arrested until 1:15 a.m., approximately 24 minutes after the officers first knocked on the hotel room door.[3] T234.

[3] Defendant misdescribes Officer Harsy's testimony on this point. Def. Br. 4. Harsy did not say that the entire encounter took ten minutes. Harsy explained that it took him about ten minutes to find and speak with the manager and then return to the hotel room. T362-63. However, Harsy did not leave to speak with the manager until after he had spoken with the woman who claimed to be the registered hotel guest. T354.

This Court has not decided what qualifies as a "material impediment." The Court's finding in *Comage* that the defendant's act of throwing the contraband over a privacy fence did not materially impede the officer's investigation was limited to the facts of that case. *See Comage*, 241 Ill. 2d at 160 (Thomas, J., dissenting) ("Moreover, the majority's standard . . . does not explain at what point an investigation would be impeded."). Nor did the *Baskerville* Court define what constitutes a material impediment under the obstructing a peace officer statute. Nevertheless, prior decisions make clear that the passage of time is a significant factor in the analysis. In *Comage*, for example, this Court found that an officer who spent twenty seconds searching for items that the defendant threw was not materially impeded in his investigation. *Id.* at 150. Similarly, in *People v. Kotlinski*, 2011 IL App (2d) 101251, the appellate court held that an individual who declined to follow an officer's commands for 21 seconds did not obstruct a peace officer. *Id.* at ¶ 48-50. Here, by contrast, in furnishing false information, defendant prevented Draper from learning about the warrant and arresting defendant for 24 minutes. Further, not only did defendant delay his arrest for 24 minutes, he also delayed the officers from pursing their original investigation into the suspected illegal drug usage. This amounts to a material impediment. *See People v. Ostrowski*, 394 Ill. App. 3d 82, 98-99 (2d Dist. 2009) (affirming defendant's conviction for obstructing a peace officer because the record

showed that defendant had resisted arrest for between three and four minutes).

Indeed, the evidence that defendant materially impeded Officer Draper's investigation and his own arrest is particularly compelling here because defendant's acts of furnishing false information not only delayed his own apprehension but also increased and prolonged the risk of harm to Officer Draper. Draper was at the hotel investigating potential drug crimes in the early hours of the morning, and he was outnumbered by the four individuals in the hotel that he could see and at least one (defendant) that he could not. Thus, this case is distinguishable from *People v. Taylor*, 2012 IL App (2d) 110222, where the officers already knew the defendant's identity and that he had an outstanding warrant for his arrest, and approached defendant on a public street, outnumbering him two to one. *Id.* at ¶ 3-4. Accordingly, even if this Court requires a material impediment for furnishing false information, defendant's actions did materially impede his apprehension.

CONCLUSION

This Court should affirm the judgment of the appellate court.

February 11, 2020

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RULE 341(c) CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 23 pages.

s/Mitchell J. Ness
Mitchell J. Ness

PROOF OF SERVICE

Under penalties as provided by law pursuant to 735 ILCS 5/1-109, the undersigned certifies that the statements set forth in this instrument are true and correct. On February 11, 2020, the **Brief of Plaintiff-Appellee People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, which provided notice to the following registered email addresses:

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Additionally, upon its acceptance by the Court's electronic filing system, the undersigned will mail thirteen copies of the Brief and Appendix to the Clerk of the Supreme Court of Illinois, Supreme Court Building, 200 East Capitol Avenue, Springfield, Illinois 62701.

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