No. 127828

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. SHAQUILLE PRINCE, Defendant-Appellant.	)	On Appeal From the Appellate Court of Illinois, Third Judicial District, No. 3-19-0440. There on Appeal from the Circuit Court of the Twelfth Judicial Circuit, Will County, Illinois, No. 18-CF-194. The Honorable Daniel Kennedy, Judge Presiding.

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

KWAME RAOUL
Attorney General of Illinois

JANE ELINOR NOTZ
Solicitor General

KATHERINE M. DOERSCH
Criminal Appeals Division Chief

MITCHELL J. NESS
Assistant Attorney General
100 West Randolph Street, 12th Floor
Chicago, Illinois 60601
(773) 590-6934
eserve.criminalappeals@ilag.gov

Counsel for Plaintiff-Appellee
People of the State of Illinois

ORAL ARGUMENT REQUESTED

E-FILED
1/20/2023 9:45 AM
CYNTHIA A. GRANT
SUPREME COURT CLERK

TABLE OF CONTENTS

POINTS AND AUTHORITIES

NATURE OF THE CASE

Following a jury trial, defendant Shaquille Prince was convicted of obstructing justice in violation of 720 ILCS 5/31-4(a), C70, and the trial court sentenced him to 24 months of conditional discharge, C170.[1] The appellate court affirmed. A8-23. Defendant appeals from that judgment. No question is raised on the pleadings.

ISSUES PRESENTED FOR REVIEW

1. Whether the Double Jeopardy Clause bars a remand for a new trial where the evidence was found insufficient on appeal solely due to a post-trial change of law.

2. Whether remanding defendant's case for a new trial would not be futile because the People may provide additional evidence to prove defendant materially impeded his own apprehension.

JURISDICTION

Jurisdiction lies under Supreme Court Rules 315 and 612. On January 26, 2022, this Court allowed defendant's petition for leave to appeal.

STATEMENT OF FACTS

Defendant was charged with obstruction of justice in violation of 720 ILCS 5/31-4(a) for knowingly furnishing false information to police, thereby attempting to prevent his apprehension on an outstanding warrant. C6.

---

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

I. Trial

Defendant's jury trial began on April 2, 2019. R218. At trial, police officers Francisco Garcia and Jason Jandura testified that, shortly after 1 a.m. on the morning of January 25, 2018, they were dispatched to a home after its alarm activated. R228, 247, 266-67. Upon arrival, the officers inspected the home's doors and windows and noticed that a sliding door at the back of house was closed but unlocked. R228-29. Garcia opened the door, which re-triggered the home's alarm. R229.

Defendant then appeared in one of the back windows and told the officers that he did not live in the home. R229-30. The officers responded that they were investigating the alarm and asked defendant for his name and whether he had identification. R230, 249. Defendant refused to provide his name and told the officers that he did not have an ID. R230, 249. Eventually, defendant told the officers that "Jessica" owned the home, but that she was five hours away and that he would not try to contact her. R231, 250-51. Deciding that further investigation was necessary, the officers called for backup and entered the home. R231-32, 252. They asked defendant to provide his name or the homeowner's phone number, or to contact the homeowner himself, so they could verify that defendant had permission to be in the home, but defendant persisted in his refusal to provide any information. R232-33, 252. Instead, defendant attempted to leave the room,

at which point the officers placed defendant under arrest and transported him to the police station. R232-34, 252-54.

Officer Myers, who had arrived as backup, stayed at the scene after defendant was arrested. R266, 270. Within the next hour, R279-80, a neighbor arrived at the house and identified herself as Amanda Reeves, R270. Reeves stated that she knew defendant as "Sean." R274. Myers asked if Reeves knew of any social media accounts belonging to defendant, and Reeves pulled up a Snapchat account, from which Myers was able to infer that defendant's real name could be Shaquille Prince. *Id.* At some point after Myers finished his conversation with Reeves, Myers left the scene and went to the police station. R271.

Meanwhile, Officer Jandura went to the station to begin defendant's booking process. R255. First, Jandura attempted to capture defendant's fingerprints and take a booking photo, but defendant refused both. *Id.* When Jandura asked defendant his name, defendant said "Sean Williams," and told Jandura that his birthdate was June 7, 1989. R256. Officers ran the name through their database but "nothing came back." *Id.* Eventually, after speaking with a police supervisor, defendant allowed police to take his fingerprints and to photograph him, and police sent the fingerprints to the Illinois bureau of identification "to get an identification." R257.[2]

[2] Jandura was not sure how long defendant had been at the station before he finally consented to the capture of his fingerprints, but he testified that it was "more than minutes." R257.

At some point after he had finished speaking with Reeves, Officer Myers arrived at the police station and took over the investigation. R257, 271. Myers searched for the name Shaquille Prince on Google, trying to link the name with the surrounding towns. R275. When Myers searched for "Shaquille Prince, Bolingbrook," he was directed to the DuPage County Sheriff's website, on which Myers found a photo of Shaquille Prince — which looked like the still-unidentified defendant — and learned that Prince had an active warrant for his arrest in DuPage County. R276. Using the driver's license number listed on the sheriff's website for Shaquille Prince, Myers located an image of Prince's driver's license and determined "that was the subject we had in custody." R278.

Defendant testified at trial that he was at the home because he was dating the homeowner, Jessica Dickinson. R160-61. Dickinson and defendant spent the day together at her home before Dickinson left to spend the night with her parents; defendant stayed at the home for the night. R161-62. According to defendant, he set off the burglar alarm when he returned to the home at 1 a.m. R162. Defendant testified that he was compliant with police when they arrived, even providing them with his real name and Dickinson's phone number, and showing them his ID. R166-67. Defendant denied that he provided police with the false name "Sean Williams." R171.

After the close of evidence, in defining the offense of obstruction of justice for the jury, the trial court provided the following instruction:

> To sustain the charge of obstructing justice, the State must prove the following propositions:
>
> First proposition, that the defendant knowingly furnished false information.
>
> Second proposition, that the defendant did so with the intent to prevent the apprehension of Shaquille Prince.

R203; *see also*, C84, C87. The jury found defendant guilty, R212, C70, and on July 23, 2019, the trial court sentenced him to time served and 24 months of conditional discharge, C170.

II. Appellate Court Decision

The appellate court reversed defendant's conviction and remanded for further proceedings based on *People v. Casler*, 2020 IL 125117, which was issued in October 2020, while defendant's case was on appeal. A22. The appellate court explained that *Casler* had interpreted the obstruction of justice statute to include, as an element of the offense, that the charged obstructive act must "materially impede" the administration of justice. A19-20, 22. The court agreed with the parties that the trial evidence was insufficient to prove this element beyond a reasonable doubt. A22.[3] But because this element "was not made a required element under the law until

[3] The appellate court did, however, find the evidence sufficient in regards to the first two elements of the offense: that defendant knowingly furnished false information and did so with the intent to prevent his apprehension. A13-15.

approximately 18 months after the trial in [defendant's] case when [this Court] issued its decision in *Casler*," the appellate court found "that the appropriate remedy in this case, as in *Casler*, [wa]s to reverse defendant's conviction and remand for a new trial." A22 (citing *Casler*, 2020 IL 125117. ¶¶ 66-67).

ARGUMENT

The trial evidence was insufficient to prove beyond a reasonable doubt that defendant materially impeded the administration of justice. The proper remedy, though, is not to reverse defendant's conviction outright and enter a judgment of acquittal. Rather, as the appellate court held, the proper remedy is to remand for a new trial, just as this Court did in *Casler*. The Double Jeopardy Clause does not bar a retrial where, as here, any evidentiary insufficiency is caused by a post-trial change in law. And because the People may present additional evidence to prove the now-required element, a remand would not be futile. Accordingly, the Court should reverse defendant's conviction and remand for a new trial.

I. The Appellate Court Correctly Granted the Same Relief That This Court Granted in *Casler*: a Remand For a New Trial Due to the Post-Trial Change in Law.

A. *Casler* held that the proper remedy is to remand for a new trial.

The Double Jeopardy Clause does not bar a retrial where a reviewing court changes the law and, in doing so, causes an evidentiary insufficiency. *See Casler*, 2020 IL 125117, ¶ 57 ("[A] a second trial is permitted when a

conviction is reversed because of a posttrial change in law."); *id.* ¶ 66 ("Courts considering this issue agree that . . . double jeopardy concerns do not preclude the government from retrying the defendant."). Applying *Casler's* clear holding, this Court should remand defendant's case for a new trial. *See Vitro v. Mihelcic*, 209 Ill. 2d 76, 82 (2004) ("When a rule of law has once been settled, contravening no statute or constitutional principle, such rule ought to be followed.").

Casler establishes the appropriate remedy for defendant's case. *Casler* held — for the first time — that the obstruction of justice statute requires proof of a material impediment as an element of the offense. 2020 IL 125117, ¶ 65. Because the People had presented no evidence of a material impediment in obtaining Casler's conviction, this Court reversed the conviction. *Id.* ¶ 53. But the Court did not reverse the conviction outright and enter a judgment of acquittal. Rather, the Court remanded for a new trial. *Id.* ¶ 67.

Casler explained that "at the time of [Casler's] trial, this [C]ourt had not yet held that the government was required to prove th[e] [material impediment] element with regard to the furnishing of false information." *Id.* ¶ 65. Thus, "the State had no reason to introduce evidence regarding a material impediment requirement," and the evidence was sufficient under the jury instruction that was given because it was based on the law at the time of the defendant's trial. *Id.* Accordingly, the Court explained, "the error

that manifested at defendant's trial [wa]s . . . more akin to trial error than to the sufficiency of the evidence." *Id.* ¶ 66. Consequently, the appropriate remedy was to remand for a new trial. *Id.*

Recognizing the potential double jeopardy implications, the Court also explained that the Double Jeopardy Clause does not bar retrial when "a conviction is reversed because of a posttrial change in law," *id.* ¶ 57 (citations omitted), and held that because "any insufficiency in proof was caused by the subsequent change in the law and not the State's failure to present sufficient evidence[,] . . . double jeopardy concerns do not preclude the government from retrying the defendant," *id.* ¶ 66. In sum, *Casler* reversed the defendant's conviction because the material impediment element had not been proven and remanded for a new trial because the evidentiary insufficiency was due to a post-trial change in law. *Id.* ¶ 67.

This case is materially indistinguishable from *Casler*. As in *Casler*, the People "had no reason to introduce evidence regarding the material impediment requirement because, at the time of trial, this [C]ourt had not yet held that the government was required to prove that element with regard to the furnishing of false information." *Id.* ¶ 65. Defendant was tried in 2019, and *Casler* was not decided until 2020. Thus, as the appellate court correctly found, A15, under *Casler*, the appropriate remedy is to remand for a new trial, giving the People the opportunity to present sufficient evidence to convict in light of the post-trial change in law, 2020 IL 125117, ¶ 67; *see also*

People v. Gordon, 2021 IL App (5th) 160455-UB, ¶ 15 (applying *Casler* to reverse conviction and remand for new trial on obstruction of justice charge).

C. *Casler* correctly decided that the Double Jeopardy Clause does not bar retrials after a change of law and is indistinguishable from this case.

This Court's decision to hold that the Double Jeopardy Clause does not bar a retrial when "a conviction is reversed because of a posttrial change in law," *Casler*, 2020 IL 125117, ¶ 57, was correct. The Double Jeopardy Clause provides that "no person shall 'be subject for the same offence to be twice put in jeopardy.'" *Casler*, 2020 IL 125117, ¶ 56 (quoting U.S. Const., amend. V). While generally standing for the principle that an individual may not be tried twice, the clause distinguishes between types of retrials, and only "precludes the State from retrying a defendant after a reviewing court has determined that the evidence introduced at trial was legally insufficient to convict." *People v. Olivera*, 164 Ill. 2d 382, 393 (1995). In this circumstance, the double jeopardy prohibition works to protect defendants against "governmental oppression," *Lockhart v. Nelson*, 488 U.S. 33, 42 (1988), by refusing "the prosecution another opportunity to supply evidence which it failed to muster in the first proceeding," *Burks v. United States*, 437 U.S. 1, 11 (1978).

But the Double Jeopardy Clause does not bar the retrial of a defendant whose conviction was set aside on appeal for some other reason, such as "an error in the proceedings leading to the conviction." *Olivera*, 164 Ill. 2d at 393.

Remand for a new trial is appropriate in these circumstances because the reversal "'implies nothing with respect to the guilt or innocence of the defendant,' but is simply 'a determination that [he] has been convicted through a judicial process which is defective in some fundamental respect.'" *Casler*, 2020 IL 125117, ¶ 57 (quoting *Burks*, 437 U.S. at 15). In fact, permitting retrials in such cases "'serves both society's and criminal defendants' interests in the fair administration of justice,'" for "'it is at least doubtful that appellate courts would be as zealous . . . in protecting against the effects of improprieties . . . if they knew that reversal of a conviction would put the accused irrevocably beyond the reach of further prosecution.'" *Id.* ¶ 58 (quoting *Bravo-Fernandez v. United States*, 580 U.S. 5, 19 (2016)).

Applying these established principles, this Court and every federal circuit to consider the issue have held that double jeopardy does not bar retrial where a reviewing court determines that the trial evidence was insufficient due to a post-trial change in law. *See Casler*, 2020 IL 125117, ¶ 66 ("[c]ourts considering this issue agree that . . . double jeopardy concerns do not preclude the government from retrying the defendant."); *see also United States v. Harrington*, 997 F.3d 812, 817 (8th Cir. 2021) (double jeopardy does not bar retrial where change in law caused legal insufficiency); *United States v. Houston*, 792 F.3d 663, 670 (6th Cir. 2015) (same); *United States v. Ford*, 703 F.3d 708, 710 (4th Cir. 2013) (same); *United States v. Robison*, 505 F.3d 1208, 1225 (11th Cir. 2007); *United States v. Gonzalez*, 93

F.3d 311, 323 (7th Cir. 1996) (same); *United States v. Wacker*, 72 F.3d 1453, 1465 (10th Cir. 1995) (same); *United States v. Weems*, 49 F.3d 528, 531 (9th Cir. 1995) (same). As *Casler* recognized, 2020 IL 125117, ¶ 64, in such circumstances, the government cannot be faulted for failing to present sufficient evidence to "satisfy a standard which did not exist at the time of trial," *Wacker*, 72 F.3d at 1465. Moreover, a retrial would not implicate the concerns underlying the Double Jeopardy Clause because retrial "does not give the government the opportunity to supply evidence it 'failed' to muster at the first trial," *Weems*, 49 F. 3d at 531, but instead gives the government an opportunity to provide evidence it could not have known was required, *see Houston*, 792 F.3d at 670 (where evidentiary insufficiency resulted from change in law, "the government would not be seeking a second bite at the apple but a *first* bite"). Following *Casler* and applying the change of law rule, the appellate court here correctly remanded for a new trial.

Defendant argues that *Casler* is distinguishable from this case because a "trial error" occurred there, Def. Br. 14, and *Casler*'s holding that double jeopardy did not bar retrial was limited to the facts of that case, Def. Br. 15. Indeed, defendant suggests that the question whether to adopt "a 'change in law exception'" was not before this Court in *Casler* but is "squarely presented" here. Def. Br. 15. Defendant is incorrect: *Casler* is materially

indistinguishable, and this Court's decision to remand for a new trial in *Casler* dictates the same result here.

That the trial court limited Casler's attorney from asking questions about a material impediment was irrelevant to this Court's ultimate holding. As this Court explained, when a conviction is reversed as a result of a post-trial change in the law, the ground for reversal is "akin to trial error," 2020 IL 125117, ¶ 65, or "analogous to . . . procedural error," *id*. ¶ 57. In other words, *Casler* referred to "trial error" merely to explain that an insufficiency in proof that results from a post-trial change in law is similar to, and treated the same as, other trial or procedural errors for purposes of the double jeopardy analysis. *Id*. ¶ 66; *see also Wacker*, 72 F.3d at 1463, 1465 (where United States Supreme Court required additional proof on an element post-trial, remanding for new trial because "reversal [wa]s analogous to one based on trial error: the legal standard under which the jury was instructed and under which the government presented its proof was incorrect"); *Gonzalez*, 93 F.3d at 323 (similar). Consistent with precedent from other jurisdictions, *Casler* simply gave "a change in law the same effect as a trial error," *Ford*, 703 F.3d at 712, making "the setting aside of a conviction on this basis . . . equivalent to a trial-error reversal rather than to a judgment of acquittal," *Harrington*, 997 F.3d at 817.

To the extent that defendant suggests that *Casler* was wrongly decided, *see* Def. Br. 15 (noting that *Casler* decided double jeopardy issue

"without the benefit of briefing on the matter"), defendant is incorrect, for the reasons explained. Thus, *Casler* should be treated as stare decisis. As the Court has explained, under the doctrine of stare decisis, courts stand by precedents and do not disturb settled points of law. *People v. Manning*, 241 Ill. 2d 319, 332 (2011). Adhering to this doctrine "'ensure[s] that the law will not merely change erratically, but will develop in a principled and intelligible fashion," and "'enables both the people and the bar of this state to rely upon this court's decisions with assurance that they will not be lightly overruled.'" *Id.* (quoting *People v. Sharpe*, 216 Ill. 2d 481, 519 (2005)) (alterations omitted). Accordingly, this Court does not reconsider an established point of law "absent good cause," such as when a governing decision is "unworkable or badly reasoned." *Id.*; *see also In re Derrico G.*, 2014 IL 114463, ¶ 55 (prior decisions should not be reversed absent a "'special justification'") (quoting *Iseberg v. Gross*, 227 Ill. 2d 78, 94-95 (2007)).

Defendant identifies no good cause to overrule *Casler*. Contrary to defendant's suggestion that the Court did not fully consider the issue, Def. Br. 15, this Court reached its holding only after thoroughly assessing whether the law permitted a second trial, *see Casler*, 2020 IL 125117, ¶¶ 56-67, and expressly considering whether a second trial would "subject[ ] defendant to double jeopardy," *id.* ¶ 55. Moreover, the Court's decision to remand for a new trial was soundly reasoned and, the Court recognized, consistent with the unanimous holdings of courts in other jurisdictions that

permitting a retrial due to a post-trial change in law does not offend double jeopardy. *Id.* ¶¶ 66-67. Indeed, defendant cites no case that has concluded otherwise. Def. Br. at 15-20.

Nor is there any validity to defendant's alternative proposition, that this Court should limit *Casler*'s remedy to circumstances where a reviewing court overturns "controlling law," meaning, apparently, where an appellate court reverses existing precedent. Def. Br. 16. First, this Court rejected this same limitation in *Casler*. There, the Court recognized that it "had not yet held that the government was required to prove that [material impediment] element with regard to the furnishing of false information." 2020 IL 125117, ¶ 65. Thus, the Court knew that it was not reversing precedent but instead was resolving a question of first impression; nevertheless, the Court remanded for a new trial. Similarly, none of the federal circuits to have considered the issue have adopted defendant's proposed rule. To be sure, in *Weems*, the Ninth Circuit remanded for a new trial after the Supreme Court issued an opinion that overturned Ninth Circuit precedent, *see* Def. Br. at 17 (citing *Weems*, 49 F.3d at 53), but in deciding on this remedy, the Ninth Circuit did not suggest that the remedy applied only in such circumstances, *Weems*, 49 F.3d at 531. For good reason, because restricting the opportunity for retrial to such cases would make little sense: whether a reviewing court overturns existing precedent or answers a question of first impression, the

change of law has the same effect, i.e., to require evidence that previously "[t]he government had no reason to introduce." *Id*.

Defendant's argument also misapprehends what constitutes "controlling law." In essence, defendant argues that this Court should hold that double jeopardy does not preclude a retrial only when binding precedent prohibited prosecutors from introducing certain evidence. Def. Br. 17. But "controlling law" may also consist of precedent upholding convictions against sufficiency of the evidence challenges under prior precedent. In this case, for instance, Illinois courts had largely — until *Casler* — *not* required that the government prove a material impediment for an obstruction of justice conviction to stand. *See People v. Ellis*, 199 Ill. 2d 28 (2002) (considering whether the defendant obstructed justice without considering whether he materially impeded police); *In re Q.P.*, 2015 IL 118569 (same); *People v. Casler*, 2019 IL App (5th) 160035, ¶ 49 (declining to require that the prosecution prove a material impediment to sustain a conviction for furnishing false information), *rev'd* by *Casler*, 2020 IL 125117; *People v. Gordon*, 2019 IL App (5th) 160455, ¶ 27 (same); *People v. Davis*, 409 Ill. App. 3d 457, 458 (4th Dist. 2011) (same); *but see People v. Taylor*, 2012 IL App (2d) 110222, ¶ 19. That is why *Casler* refused to fault the government for failing to introduce such evidence. 2020 IL 125117, ¶ 65 ("the State had no reason to introduce evidence regarding a material impediment"). And, as in *Casler*,

there was no reason for the People to introduce such evidence at defendant's trial.

Because the evidence at defendant's trial was sufficient under the law in effect at the time and became insufficient only after this Court issued *Casler*, this Court should, consistent with *Casler*, reverse defendant's conviction and remand for a new trial.

II. Remand is Not Futile Because the State Could Present Additional Evidence to Establish the Now-Required Material Impediment Element.

In the final alternative, defendant asks this Court to reverse his conviction outright because, he argues, a remand would be futile, and a judgment of acquittal would be "a more just result." Def. Br. 20.[4] This Court should reject defendant's invitation to step into the shoes of the trier of fact and assess the People's evidence against a standard that the People "had no reason" to attempt to satisfy, *Casler*, 2020 IL 125117, ¶ 65, and instead give

[4] Notably, none of the cases defendant cites to argue for an outright reversal involve a change of law. Def. Br. at 21. Instead, as defendant's cases illustrate, outright reversal is generally reserved for cases in which a reviewing court suppresses evidence necessary to convict. *See People v. Trisby*, 2013 IL App (1st) 112552, ¶ 1 (declining to remand in possession case after first holding that evidence of possessed drug should have been suppressed); *People v. Staple*, 345 Ill. App. 3d 814, 821 (4th Dist. 2004) (same); *People v. Freeman*, 2021 IL App (1st) 200053, ¶ 14 (same); *People v. Elliot*, 314 Ill. App. 3d 187, 193 (2d Dist. 2000) (same); *People v. Smith*, 331 Ill. App. 3d 1049, 1051 (3d Dist. 2002) (same); *People v. Bozarth*, 2015 IL App (5th) 130147, ¶ 1 (declining to remand after first holding that evidence should have been suppressed in DUI case). In such cases, reversal is appropriate because the reviewing court can determine definitively that a retrial would never result in a conviction because necessary evidence could not be introduced on remand.

the People an opportunity to present evidence sufficient to meet the new standard. *See Houston*, 792 F.3d at 670 (noting that it would be inappropriate to "measure the evidence introduced by the government against a standard it did not know it had to satisfy and potentially prevent it from ever introducing evidence on that element").

Indeed, it would be particularly inappropriate for this Court to assume the role of a factfinder and weigh the previously presented evidence against the newly required material impediment element because the element is highly fact dependent. The Court first discussed this element in *People v. Comage*, 241 Ill. 2d 139 (2011), but the Court did not explain its contours beyond noting that a defendant must have "actually interfered with the administration of justice," *id.* at 150; *see id.* at 160 (Thomas, J., dissenting) ("the majority's standard . . . does not explain at what point an investigation would be impeded"). Similarly, in *People v. Baskerville*, 2012 IL 111056, the Court determined, based on the particular facts of that case, whether the defendant's conduct "impede[d] or hinder[ed]" law enforcement, *id.* at ¶ 29, without defining the material impediment element. And, in *Casler*, the Court did not expand on what constitutes a material impediment.[5]

[5] For his part, defendant does not suggest a definition of material impediment, instead merely asserting that his "actions were not a material impediment." Def. Br. at 21.

The lower courts have, as a result, considered whether the element is satisfied on a case-by-case basis, usually by considering the length of time the defendant's obstruction hindered an investigation. *See, e.g.*, *People v. Mehta*, 2020 IL App (3d) 180020, ¶ 32 ("There can be no doubt that the length of any delay or the brevity of any impediment is a factor, if not the primary factor, in determining whether a given defendant has materially obstructed the actions of police."); *People v. Bronson*, 2021 IL App (4th) 190164-U, ¶ 31 (no material impediment where "the entire exchange between defendant and the officers lasted only a short time").

But length of time is not dispositive. *See People v. Shenault*, 2014 IL App (2d) 130211, ¶ 22 (rejecting view "that the degree of obstruction is measured only by the amount of time necessary for a peace officer to overcome the defendant's conduct"). On the contrary, in some cases, a material impediment was found despite an obstructive act of short duration, such as where the act created a risk to officer safety. *See id.*; *Mehta*, 2020 IL App (3d) 180020, ¶ 35 (finding a material impediment where "the delay caused by defendant . . . was relatively small" but "occurred in a high-tension situation for the police."); *People v. Gotschall*, 2022 IL App (4th) 210256, ¶ 30 ("[A] defendant's conduct may be found to materially impede an authorized act of a peace officer, even if it causes only a brief delay, if it threatens officer safety."). In other cases, whether the defendant's conduct constituted a material impediment was assessed with reference to the degree of the

obstruction. *See People v. Coulter*, 2022 IL App (3d) 190781-U, ¶ 18 ("[D]efendant need not destroy all of the evidence to be guilty of obstruction, as the mere destruction of some evidence, at a minimum, prevented the State from weighing all of the methamphetamine to determine if a more serious charge was warranted."). Whether an obstructive act caused the State to incur significant additional expenses or devote resources that would not have otherwise been required also may be relevant to whether the material impediment element is established.

In sum, while the defendant's acts must create more than a de minimis obstruction, what conduct qualifies as a material impediment is a fact-specific determination, and "obstructive acts that may not create a material impediment in one set of circumstances may nevertheless create such an impediment in other circumstances." *Mehta*, 2020 IL App (3d) 180020, ¶ 33. Accordingly, given the fact-dependent nature of the inquiry and the fact that the People's initial presentation of the evidence was not aimed at satisfying this new standard, i.e., by proving how long defendant's actions impeded the officers, this Court should remand to allow the People the opportunity to prove the material impediment element through additional evidence at a retrial, and to argue to a jury that the totality of the circumstances of defendant's obstruction amounted to a material impediment. *See Wacker*, 72 F. 3d at 1465 (question of whether government could prove newly required element was "best left to the determination of a properly instructed jury"); *see*

also Jackson v. Virginia, 443 U.S. 307, 319 (1979) (court reviewing sufficiency of the evidence should impinge upon jury discretion only to guarantee the fundamental protection of the law).

CONCLUSION

This Court should affirm the appellate court's judgment.

January 20, 2023

Respectfully submitted,

KWAME RAOUL
Attorney General of Illinois

JANE ELINOR NOTZ
Solicitor General

KATHERINE M. DOERSCH
Criminal Appeals Division Chief

MITCHELL J. NESS
Assistant Attorney General
100 West Randolph Street, 12th Floor
Chicago, Illinois 60601
(773) 590-6934
eserve.criminalappeals@ilag.gov

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 20 pages.

s/Mitchell J. Ness
Mitchell J. Ness

CERTIFICATE 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 January 20, 2023, 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 address:

Maggie A. Heim
Assistant Appellate Defender
Office of the State Appellate Defender
First Judicial District
(312) 814-5472
1stdistrict.eserve@osad.state.il.us

Counsel for Defendant-Appellant

s/Mitchell J. Ness
MITCHELL J. NESS
Assistant Attorney General

E-FILED
1/20/2023 9:45 AM
CYNTHIA A. GRANT
SUPREME COURT CLERK