

No. 125117

IN THE

SUPREME COURT OF ILLINOIS

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

REPLY BRIEF FOR PETITIONER-APPELLANT

JAMES E. CHADD
State Appellate Defender

ELLEN J. CURRY
Deputy Defender

DANIEL R. JANOWSKI
Assistant Appellate Defender
Office of the State Appellate Defender
Fifth Judicial District
909 Water Tower Circle
Mt. Vernon, IL 62864
(618) 244-3466
5thdistrict.eserve@osad.state.il.us

COUNSEL FOR PETITIONER-APPELLANT

E-FILED
2/25/2020 1:27 PM
Carolyn Taft Grosboll
SUPREME COURT CLERK

ADDITIONAL POINTS AND AUTHORITIES

I. The term “furnish” in the obstructing justice statute should be read to include “material impediment.”	1
720 ILCS 5/17-3(a)(1)	1
720 ILCS 5/32-2	1
<i>In re Q.P.</i> , 2015 IL 118569	2
<i>Cates v. Cates</i> , 156 Ill. 2d 76 (1993)	2
<i>People v. Haywood</i> , 118 Ill. 2d 263 (1987)	3
<i>Aurora Pizza Hut, Inc. v. Hayter</i> , 79 Ill. App. 3d 1102 (1st Dist. 1979)	1
II. <i>Comage</i> should be extended to the furnishing of false information in the obstructing justice statute.	
18 U.S.C. § 1001	5
<i>Brogan v. United States</i> , 522 U.S. 398 (1998)	5
<i>People v. Gutman</i> , 2011 IL 110338	6
<i>People v. Haywood</i> , 118 Ill. 2d 263 (1987)	4
III. Mr. Casler’s giving of a false name did not materially impede the officer’s investigation.	
	7

REPLY BRIEF FOR PETITIONER-APPELLANT

I. The term “furnish” in the obstructing justice statute should be read to include “material impediment.”

Like Mr. Casler (Def. Op. Br. 11-12), the State begins its analysis by discussing the ordinary meaning of the word “furnish,” but instead, argues that no material impediment is required. S. Br. 5-7. To highlight its argument, the State substitutes the dictionary definition into the statute. S. Br. 7 (“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.”). This is too simplistic a substitution and ignores an important part of the definition. A better substitution would include the full meaning of the word: “A person obstructs justice when, with intent to prevent the apprehension or obstruct the prosecution or defense of any person, he or she knowingly . . . provides or supplies necessary or useful false information.” (See Def. Op. Br. 12 defining “furnish” as “to supply, provide, or equip with whatever is necessary or useful[.]”)

Seeing this nonsensical substitution (useful false information) underscores the legislature’s choice of the word “furnish” when it could have used another verb, such as “make.” For example, the legislature uses “make” when one “makes a false statement” in the perjury statute (720 ILCS 5/32-2) or “makes a false document” in the forgery statute. 720 ILCS 5/17-3(a)(1); see S. Br. 14. Therefore, something different must have been intended. See *Aurora Pizza Hut, Inc. v. Hayter*, 79 Ill. App. 3d 1102, 1105-06 (1st Dist. 1979) (“An elementary canon of statutory

construction teaches us that where the legislature uses certain words in one instance, and different words in another, different results were intended.”) And that intent was material impediment.

Within this context, the State claims that this Court has already determined the meaning of the word “furnish.” S. Br. 7. This Court in *In re Q.P.*, cited by the State, examined the meaning of “apprehension” under the obstructing justice statute in order to determine whether “a person already apprehended [can] act with the intent to prevent his apprehension[.]” 2015 IL 118569, ¶ 1. While the opinion does state 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[.]” (*Id.* at ¶ 25) the meaning of “furnish” was not at issue. No explanation was offered on the meaning of “furnish” nor any analysis conducted on whether the false information was “furnished.” It was offered as an aside to explain what was required to maintain a conviction for obstructing justice. This makes the statement dictum and not binding authority. See *Cates v. Cates*, 156 Ill. 2d 76, 80 (1993).

The State goes on to argue that the plain meaning of “furnish” does not suggest reliance upon the information or evidence provided, only that it be given. (S. Br. 8) In illustrating this, the State gives the example: “Adam shall furnish oranges to Bob[.]” The example was intended to show that oranges only need to be given to Bob, not relied upon by Bob. See S. Br. 8. But this analogy is inaccurate. As this Court has held before, “[i]n giving effect to legislative intent, the court should consider, in addition to the statutory language, the reason for the law,

the problems to be remedied, and the objects and purposes sought.” *People v. Donoho*, 204 Ill. 2d 159, 171-72 (2003) (citing *People v. Haywood*, 118 Ill. 2d 263, 271 (1987)). Therefore, without knowing why the oranges must be furnished, what problem is to be remedied by supplying oranges, or the purpose for furnishing oranges, the intent cannot be discerned.

The State also argues that the maxim of *noscitur a sociis* is unpersuasive. S. Br. 8-9. Taking the State’s argument *arguendo*, that the material impediment requirement for the word “conceal” is only applicable to the first clause of the statutory subsection (“[d]estroys, alters, conceals or disguises physical evidence”), that clause must then be used to understand the other two clauses of the statute: “plants false evidence” and “furnishes false information[.]” 720 ILCS 5/31-4(a)(1). Since the character of the first clause has been modified by this Court’s holding in *Comage* defining “conceal” to include a material impediment, the other two clauses are then influenced by the modification of the first. They are all contained in the same subsection of the same statute. In other words, all three clauses contained in subsection (a)(1) should be read through the material impediment lens.

II. *Comage* should be extended to the furnishing of false information in the obstructing justice statute.

The State next turns to *Comage* to state that its “underlying logic does not extend to obstruction of justice for furnishing false information.” S. Br. 11. Mr. Casler readily admits that the *Comage* decision turned on the definition not of “furnish” but of “conceal.” However, that misses a vital holding of *Comage*: this Court’s determination of the legislature’s intent in enacting the obstructing justice statute. This is a vital finding because, “[i]n giving effect to legislative intent, the court should consider, in addition to the statutory language, the reason for the law, the problems to be remedied, and the objects and purposes sought.” *Donoho*, 204 Ill. 2d at 171-72 (*citing People v. Haywood*, 118 Ill. 2d 263, 271 (1987)). While the State discusses the plain meaning of “furnish” at length (S. Br. 6-11), it is silent as to the reason for the law, the problems to be remedied, and the objects and purposes sought. *See* Def. Op. Br. 13-14. This Court has answered this already: “Thus, in enacting section 31-4, the legislature intended to criminalize behavior that *actually* interferes with the administration of justice, *i.e.*, conduct that ‘obstructs prosecution or defense of any person.’” *People v. Comage*, 241 Ill. 2d 139, 149 (2011).

Discussing policy, the State claims that this Court was understandably concerned in *Comage* that minor possessory offenses would become felonies because the evidence wasn’t in plain view. S. Br. 13. This Court should likewise be concerned about false information given to officers that has no discernable impact on an investigation becoming felony obstruction of justice. The State argues that “[u]nlike 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.” S. Br. 13.

The State here downplays the “active and intentional choice” of “merely possess[ing] evidence that is not in plain view[.]” There is a reason the evidence is not in plain view. The minors who hide cigarettes when officers approach do so because they want to prevent a prosecution: their own. *Cf. Comage*, 241 Ill. 2d at 148. A defendant possessing evidence not in plain view made an active and intentional choice to do so in order to prevent his own arrest. More defendants would hold contraband in plain view if it weren’t for their fear of being arrested. These situations are more similar than not.

A more enlightening example would be a defendant who gets pulled over after exceeding the speed limit. If he tells the officer that he wasn’t speeding even though he knew he was, under the State’s reading, a felony has been committed. The driver has just intended to obstruct his prosecution by “furnishing” false information. Without the material impediment rule, the concern for minor offenses becoming felonies is just as present with “furnish” as with “conceal.”

The State next turns to arguing that “furnish” does not need to include a material impediment to avoid an absurd result as argued in Mr. Casler’s opening brief. S. Br. 15-20. Part of this analysis analogizes *Brogan v. United States*, 522 U.S. 398 (1998). S. Br. 19-20. The most important distinguishing factor in *Brogan* is that it concerns 18 U.S.C. § 1001. *Brogan*, 522 U.S. at 400. That statute outlaws, in part, the “make[ing of] any false, fictitious or fraudulent statements or representations[.]” It does not concern the “furnishing” of false information, but

the “making” of false statements. So little to no weight can be given to its holding. Secondly, “[a] federal court’s construction of a federal statute is not binding on Illinois courts in construing a similar state statute.” *People v. Gutman*, 2011 IL 110338, ¶ 17. Therefore, its holdings are not precedential.

III. Mr. Casler's giving of a false name did not materially impede the officer's investigation.

Finally, the State argues that even if a material impediment is required, no such impediment occurred. As a preliminary matter, the State claims Mr. Casler has forfeited this argument because he failed to develop it in his opening brief. S. Br. 20-21. This is not the case. Mr. Casler claims that his "conduct did not truly interfere with the administration of justice." D. Op. Br. 14. Why make this claim? Because officer Draper knew the false name was a lie (D. Op. Br. 3; T.266), Draper recognized Mr. Casler from a previous arrest (D. Op. Br. 4; T.366), and, at most, 24 minutes passed from initial knock to arrest. D. Op. Br. 4; T.235. This is also argued in showing that a material impediment requirement is necessary to avoid an absurd result since the officers did not believe the false name. D. Op. Br. 15. Additionally, this argument was raised in Mr. Casler's Petition for Leave to Appeal to this Court (pg. 4-5, 7-9), and in both of his briefs in the Fifth District below.

Again, Mr. Casler requests this Court overturn his conviction because his giving of the false name did not materially impede the officer's investigation. This is similar to the defendant's conduct in *People v. Taylor*, 2012 IL App (2d) 110222, and Mr. Casler's conviction should likewise be overturned.

CONCLUSION

For the foregoing reasons, Rasheed Casler, petitioner-appellant, respectfully requests that this Court reverse his conviction.

Respectfully submitted,

ELLEN J. CURRY
Deputy Defender

DANIEL R. JANOWSKI
Assistant Appellate Defender
Office of the State Appellate Defender
Fifth Judicial District
909 Water Tower Circle
Mt. Vernon, IL 62864
(618) 244-3466
5thdistrict.eserve@osad.state.il.us

COUNSEL FOR PETITIONER-APPELLANT

CERTIFICATE OF COMPLIANCE

I certify that this reply brief conforms to the requirements of Rules 341(a) and (b). The length of this reply brief, excluding pages contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 8 pages.

/s/Daniel R. Janowski
DANIEL R. JANOWSKI
Assistant Appellate Defender

No. 125117

IN THE

SUPREME COURT OF ILLINOIS

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

NOTICE AND PROOF OF SERVICE

Mr. Kwame Raoul, Attorney General, 100 W. Randolph St., 12th Floor, Chicago, IL 60601, eserve.criminalappeals@atg.state.il.us;

Mr. Patrick D. Daly, Deputy Director, State's Attorneys Appellate Prosecutor, 730 East IL Hwy 15, Ste. 2, Mt. Vernon, IL 62864, 05dispos@ilsaap.org;

Mr. Michael C. Carr, Jackson County State's Attorney, 1001 Walnut St., 3rd Floor, Murphysboro, IL 62966-0730, statesattorney@jacksoncounty-il.gov;

Mr. Rasheed Casler, 1404 North Robert A. Stalls, Carbondale, IL 62901

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On February 25, 2020, the Reply Brief was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the petitioner-appellant in an envelope deposited in a U.S. mail box in Mt. Vernon, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Reply Brief to the Clerk of the above Court.

/s/ Debra Zurliene
LEGAL SECRETARY
 Office of the State Appellate Defender
 909 Water Tower Circle
 Mt. Vernon, IL 62864
 (618) 244-3466
 Service via email will be accepted at
5thdistrict.eserve@osad.state.il.us