No. 127828

IN THE

SUPREME COURT OF ILLINOIS

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

REPLY BRIEF FOR DEFENDANT-APPELLANT

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ARGUMENT

This Court should maintain the clear rule at the heart of the double jeopardy clause—a bar against second trials for an offense after a reviewing court reverses the conviction due to insufficient evidence.

The State makes five basic arguments: 1) *Casler* is indistinguishable from the present case, 2) permitting retrial due to a "change in law" is like permitting retrial due to trial error, 3) federal courts have permitted retrial based on similar "changes in law," 4) *stare decisis* dictates that retrial should be permitted, and 5) retrial would not be futile. Each argument should be rejected by this Court.

1. There is a material difference between *Casler* and the present case.

As an initial matter, the State is incorrect in asserting that "*Casler* is materially indistinguishable" from this case. (St. Br. at 12) The State overlooks this Court's finding in *Casler* that "the record * * * clearly shows that the trial court categorically excluded any evidence related to the essential element of a material impediment." *People v. Casler*, 2020 IL 125117, ¶ 62. In a concluding paragraph, this Court again noted, "the trial court sustained the prosecutor's objection and excluded any evidence relating to the essential element of a material impediment, which prevented the jury from being instructed on that issue." *Id.* ¶ 69. "Incorrect receipt or rejection of evidence" is a classic example of trial error. *Id*. ¶ 57 (quoting *United States v. Burks*, 437 U.S. 1, 15 (1978)).

In contrast, in this case, there was no trial court ruling on material impediment. Without any court ruling barring relevant evidence, the State conceded that "proof of the third element (the material impediment element) was insufficient" and the appellate court agreed. *People v. Prince*, 2021 IL App (3d) 190440, ¶¶ 34, 41. Thus, while both *Casler* and this case involve appellate findings of insufficient evidence of a material impediment, only *Casler* involves

SUBMITTED - 21482243 - Carol Chatman - 2/15/2023 11:40 AM

a trial court ruling which barred evidence on the matter.

While this Court considered the possibility of retrial where insufficient evidence was due to a "change in law," it also found a related defect in the trial court's rulings in *Casler*. Therefore, this Court can and should narrowly interpret *Casler* to permit retrial only when there is a trial court ruling contrary to a subsequent "change in law" which impacted permissible evidence at trial.

2. The "change in law" exception to double jeopardy should not be adopted by this Court.

The State concedes, "the trial evidence was insufficient to prove beyond a reasonable doubt that defendant materially impeded the administration of justice." (St. Br. at 6). It also recognizes that double jeopardy "precludes [retrial] after a reviewing court has determined that the evidence introduced at trial was legally insufficient to convict." (St. Br. at 9)(citing *People v. Olivera*, 164 Ill. 2d 382 (1995)). Nonetheless, the State seeks retrial on the basis that the State's failure to provide sufficient evidence was due to a "change in law." (St. Br. at 9-12) But the State fails to adequately explain how retrial due to a "change in law" without an accompanying trial court ruling complies with *Burks v. United States*, 437 U.S. 1 (1978). (Op. Br. at 10-14)

Essentially, the State argues that, in this case, a prosecutor's unlitigated mistake in presenting its case should be categorized as "trial error" within the meaning of *Burks*. This Court should refuse this categorization. The distinction between trial error and a finding of insufficiency is significant as second trials are not permitted after a finding of trial error unless the reviewing court also finds there was sufficient evidence presented at the first trial. See *People v. Piatkowski*, 225 Ill. 2d 551, 565-67 (2007) (finding sufficient evidence to convict to avoid double jeopardy concerns before reversing due to a jury instruction error). When there

SUBMITTED - 21482243 - Carol Chatman - 2/15/2023 11:40 AM

is no trial court ruling impacting permissible evidence, any gap in the trial evidence was caused by a one-sided mistake by the prosecution with no input from either the court or the defense. In an adversarial system where the resources are on the side of the State, this is not the type of error that should permit a second trial for the same offense.

In considering how to categorize an unannounced mistake of law in the State's presentation of its case, this Court should return to the "deeply ingrained" motivation behind the double jeopardy clause—to prevent "the State with all its resources and power" from making "repeated attempts to convict an individual for an alleged offense." *Green v. United States*, 355 U.S. 184, 187 (1957). As recently as last year, the Supreme Court reiterated that the focus of the clause is on preventing successive prosecutions for the same offense. *Denezpi v. United States*, __ U.S. __, 142 S. Ct. 1838, 1844 (2022). To date, the Supreme Court has not wavered from this position.

The State cites *Casler*'s quotation of *Burks*, to provide a rationale for retrial when the State fails to provide sufficient evidence due to a so-called "change in law." (St. Br. at 10) The cited portion of *Burks* provides the rationale for permitting retrial in cases of "reversal for trial error, as distinguished from evidentiary insufficiency"—namely, reversal due to trial error "implies nothing with respect to the guilt or innocence of the defendant." *Burks*, 437 U.S. at 15. However, the *Burks* rationale was not intended to extend beyond traditional trial errors to correct other instances of ambiguities as to guilt or possible unfairness to the State. *Id.* at 11 n. 6 (explicitly rejecting any balancing of equities). Indeed, the *Burks* court reaffirmed that double jeopardy means affording "absolute finality to a jury's verdict of acquittal—no matter how erroneous its decision," before asking "how society has any greater interest in retrying a defendant when, on review, it is decided as a matter of law that the jury could not properly have returned a verdict of guilty." *Id.* at 16. Thus, *Burks* recognized the sacrosanct nature of

SUBMITTED - 21482243 - Carol Chatman - 2/15/2023 11:40 AM

appellate findings of insufficiency and maintained a hardline for purposes of the double jeopardy clause.

This Court has also upheld the sanctity of double jeopardy even in the face of potentially erroneous acquittals. In *Cooper*, this Court held that double jeopardy bars retrial even if an acquittal in a bench trial was due to the trial judge's mistake of law. *People v. Cooper*, 194 Ill. 2d 419, 429-30 (2000). In finding no exception to double jeopardy, this Court reiterated that the "fundamental nature of the double jeopardy clause is manifested" by its explicit extension to situations where the finding of insufficiency may be unfair to the State. *Id*. at 430. If double jeopardy does not permit retrial after a judge's possible mistake of law leads to acquittal due to insufficiency, why would it permit retrial after a prosecutor's mistake of law leads to an appellate court's finding of insufficiency?

In the present case, the appellate court did not reverse Prince's conviction because the trial court erred in ruling on evidence due to a mistake of law. It reversed because the evidence was insufficient to convict. This Court should reject the State's attempt to add a new question to the double jeopardy analysis—namely, was the State's failure to provide sufficient evidence based on a reasonable mistake by the prosecution.[1] Under the constitutional mandate of the double jeopardy clause, the finding of insufficient evidence should be respected whether it is made by a jury, in a directed verdict, or on appeal. Therefore, this Court should reject the proposed exception to *Burks* for findings of insufficiency caused by a so-called "change in law."

3. The State's definition of "change in law" is too broad and goes beyond what is used in any of the federal cases it cites.

It is important to recognize how broadly the State defines "change in law" in asking

[1] As will be discussed below, even if this question is added to the analysis, failing to prove a material impediment in 2019 should not be considered a reasonable mistake.

SUBMITTED - 21482243 - Carol Chatman - 2/15/2023 11:40 AM

this Court to permit a second trial if its failure to prove the charges at the first trial could be explained by a "change in law." (St. Br. at 7) The State argues that this Court changed the law on obstruction of justice when it decided *Casler* in 2020, despite *Casler* being decided years after *People v. Comage*, 241 Ill. 2d 139 (2011), *People v. Baskerville*, 2012 IL 111056, and *People v. Taylor*, 2012 IL App (2d) 110222. See (St. Br. at 8). This Court should not incorporate this broad definition of a "change in law" into the double jeopardy analysis.

It is the legislature, not the judiciary, that declares and defines what conduct constitutes a crime. *People v. Clark*, 2019 IL 122891, ¶ 22. The statute under which Prince was charged and convicted has not been amended since 2013, well before Prince's trial in 2019 and the *Casler* decision in 2020. 720 ILCS 5/31-4(a); (C.20,70,170); *Casler*, 2020 IL 125117. Indeed, the statutory definition of the crime has not meaningful changed since the 1970's. Public Act 77-2638. In *Casler*, this Court interpreted the meaning of "clear statutory language" that had been effect since 1973. *Casler*, 2020 IL 125117, ¶¶ 23-24, 31 (explaining that to "furnish" false information denotes providing *necessary* information). Thus, the crime of obstruction of justice by furnishing false information did not truly change after Prince's trial.

Next, the State is incorrect in claiming that it "had no reason to introduce evidence of a material impediment" and "could not have known" that such evidence would be required at the time of trial. (St. Br. at 8, 11) Even beyond the statutory language, when the State tried Prince, it had two opinions from this Court which had "long established that section 31-4 of the Criminal Code requires a showing of a material impediment." *Casler*, 2020 IL 125117, ¶¶ 33, 41 (explaining *Comage*, 241 Ill. 2d 139 (2011) and *Baskerville*, 2012 IL 111056, "construed together firmly establish[ed] that a defendant's acts must be a material impediment and must be proved in a prosecution for obstructing justice"). Additionally, the appellate court had explicitly applied *Baskerville* and *Comage* to require evidence of a material impediment to prove obstruction

SUBMITTED - 21482243 - Carol Chatman - 2/15/2023 11:40 AM

by furnishing false information under section 31-4(a). *Taylor*, 2012 IL App (2d) 110222, ¶¶ 11-17.

Illinois courts have recognized that reasonable criminal attorneys should know about developments at the appellate level that are relevant to their current cases. *People v. Mack*, 167 Ill. 2d 525, 533 (1995) (finding counsel was unreasonable in failing to preserve an issue "notwithstanding the absence of case law involving the precise defect at issue"); *People v. Cathey*, 2012 IL 111746, ¶¶ 28-29 (finding counsel was arguably unreasonable in failing to raise a frequently litigated matter of criminal law which had been addressed in appellate decisions at the time of trial and appeal); see also *People v. Coots*, 2012 IL App (2d) 100592, ¶¶ 17, 46, 50-54 (analyzing a line of cases from other jurisdictions to clarify the meaning of "delivery" and finding that reasonable defense counsel should have known to request a supplemental answer to a jury question on the term); *United States v. Abney*, 812 F.3d 1079, 1092 (D.C. Cir. 2016) (expecting reasonable counsel to pursue benefits "arising from available, reasonably probable interpretations" of a coming sentencing statute). When the State charged Prince in 2018, the question of whether the obstruction statutes required evidence of a material impediment had been twice addressed by this Court. *Comage*, 241 Ill. 2d 139; *Baskerville*, 2012 IL 111056. The legislature did not amend the obstruction statutes after this Court's interpretation, and the only appellate court to consider the precise type of obstruction at issue in this case had found that a material impediment was required. (Op. Br. at 18) (citing the rules of legislative acquiescence and lenity in interpreting criminal statutes); *Taylor*, 2012 IL App (2d) 110222, ¶¶ 11-17. Thus, the prosecutor below had good reason to produce any available evidence of a material impediment at Prince's trial.

The State offers little support for its argument that *Casler* was a surprise. (St. Br. at 15) It cites five cases to assert the prosecutor relied on "controlling law" by forgoing evidence

SUBMITTED - 21482243 - Carol Chatman - 2/15/2023 11:40 AM

of a material impediment, but none of the cases support this claim. (St. Br. at 15)

Neither of the cited supreme court cases discuss or analyze whether or not evidence of a material impediment was required. *People v. Ellis*, 199 Ill. 2d 28, 46-47 (2002) (reversing the appellate court's finding that the "exculpatory no" doctrine applies to Illinois obstruction offenses and remanding to the appellate court without analyzing sufficiency before both *Comage* and *Baskerville* were decided); *In re Q.P.*, 2015 IL 118569, ¶¶ 4-6, 23-27 (defining apprehension as charge specific for purposes of proving *mens rea* and finding the evidence sufficient to prove intent to avoid apprehension on a warrant where the minor gave false information before the officer drove him to a guardian's house and again before the officer drove him to the police station).

The cited appellate court cases analyze whether obstruction by furnishing false information requires proof of a material impediment, but they do not support the suggestion that a prosecutor in April of 2019 could not be expected to know to provide evidence of material impediment. Two of the cases cited by the State, *People v. Casler*, 2019 IL App (5th) 160035, and *People v. Gordon*, 2019 IL App (5th) 160445, were decided *after* Prince's trial. (St. Br. at 15) Thus, they could not have influenced the prosecutor's choice of proof.

The remaining case, *People v. Davis*, is distinguishable for two reasons. (St. Br. at 15) (citing *People v. Davis*, 409 Ill. App. 3d 457 (4th Dist. 2011)). First, *Davis* found that the defendant's false information did "impede" the officers' investigation despite distinguishing the material impediment language from *Comage*. *Davis*, 409 Ill. App. 3d at 462. More importantly, the appellate court in *Davis* did not have the benefit of the *Baskerville* decision which made clear that the *Comage* language was not limited to obstruction by "concealing evidence." *Casler*, 2020 IL 125117, ¶ 52. *Baskerville* was available at the time of Prince's trial, so there was no reason for the prosecution to fail to construe *Comage* and *Baskerville*

SUBMITTED - 21482243 - Carol Chatman - 2/15/2023 11:40 AM

together. Even if *Baskerville* only "firmly established" rather than "unequivocally construed" the meaning of obstruction, the State cannot explain why the rule of lenity would not lead a conscientious prosecutor to apply the interpretation of the statute benefitting the accused. *Casler*, 2020 IL 125117, ¶¶ 33, 41, 61; see (Op. Br. at 18) (citing *People v. Robinson*, 172 Ill. 2d 452 (1996)).

In short, a reasonable prosecutor would have known to provide evidence of a material impediment at Prince's trial. Permitting the State to claim ignorance in this case means letting the State hone its strategy whenever there is a term in a criminal statute which this Court has not specifically construed. This is the type of burden to citizens which the double jeopardy clause was meant to avoid. *Ohio v. Johnson*, 467 U.S. 493, 501 (1984).

None of the federal cases cited by the State permit retrial based on a prosecutor's one-sided mistake as to how a criminal statute should be interpreted. (St. Br. at 10-11) In *United States v. Robison*, the Eleventh Circuit permitted retrial where "the district court erroneously defined 'navigable waters' and made it clear to the parties far in advance of trial that it would continue to use its erroneous definition throughout the case." *United States v. Robison*, 505 F.3d 1208, 1225 (11th Cir. 2007). Thus, there was true trial court error directly related to the evidentiary insufficiency. In the rest of the cited cases, retrial was permitted if the prosecutor provided sufficient evidence under *then-binding* precedent. So the mistake in interpreting the statute was made, not by the prosecutor, but by the appellate or supreme court. (Op. Br. at 16-17) Thus, the mistake was one that could not fixed or ignored by *anyone* in the trial court.

For example, in *United States v. Harrington*, the Eighth Circuit permitted retrial where the Supreme Court had abrogated the Eighth Circuit's standard for causation for certain drug offenses after trial. *United States v. Harrington*, 997 F.3d 812, 817–18 (8th Cir. 2021). In *United States v. Houston*, the Supreme Court had abrogated the standard used by the Sixth Circuit to define "true threat" after trial. *United States v. Houston*, 792 F.3d 663, 667, 670 (6th Cir.

SUBMITTED - 21482243 - Carol Chatman - 2/15/2023 11:40 AM

2015). In *United States v. Weems*, the Supreme Court had abrogated the Ninth Circuit's holding on the *mens rea* required for certain financial crimes after trial. *United States v. Weems*, 49 F.3d 528, 530 (9th Cir. 1995). In *United States v. Gonzalez* and *United States v. Wacker*, the Supreme Court had abrogated the Seventh and Tenth Circuits' interpretation of the word "use" for a federal drug offense after trial. *United States v. Gonzalez*, 93 F.3d 311, 318 (7th Cir. 1996); *United States v. Wacker*, 72 F.3d 1453, 1463-1465 (10th Cir. 1996). Finally, in *United States v. Ford*, the Fourth Circuit permitted retrial after explicitly noting that the erroneous definition in question had been "binding on the district court" at the time of trial. *United States v. Ford*, 703 F.3d 708, 710 (4th Cir. 2013).

Interestingly, in *Wacker*, the Tenth Circuit reversed two convictions outright and remanded only one for retrial though all three offenses implicated the so-called "change in law" exception. *United States v. Wacker*, 72 F.3d 1453, 1463-1465 (10th Cir. 1996); (St. Br. at 11-12, 19). In *Wacker*, the defendants were convicted of three distinct counts of "using" a firearm during a drug trafficking offense—one premised on a firearm found in a bag in a camper, one premised on a firearm found in a filing cabinet in a home, and one premised on a defendant carrying a firearm on her person while working in the marijuana fields. *Id.* at 1463. At the time of trial, binding circuit law had defined "use," in relevant part, as "ready access" to a firearm. *Id.* After trial, the Supreme Court clarified that "use" required "active employment" of the firearm during and in relation to the drug offense. *Id.* But at trial, the jury had been instructed in accordance with the incorrect, broader definition of the term. *Id.* at 1464-65.

On appeal, the reviewing court found there was insufficient evidence of "active employment" for the convictions based on the firearm in a bag and in a file cabinet. *Id.* at 1463-64. It therefore reversed the convictions outright but it remanded for a new trial on the conviction premised on a defendant carrying a firearm. *Id.* at 1464-65. In support of this remedy for one of the three offenses, the Fourth Circuit explained that while the evidence showed the defendant

SUBMITTED - 21482243 - Carol Chatman - 2/15/2023 11:40 AM

carried the weapon, it was a close call to say whether it fit the more exacting definition of use. *Id*. at 1464. Witness testimony showed others knew the defendant carried the gun in the fields (which might show use), but that she wore long sleeves (which might indicate it was concealed such that it did not fit the narrower definition). The appellate court remanded so that a properly instructed jury could decide in the first instance whether the evidence met the narrower definition of use which should have been given to the jury. *Id*. at 1465-66. Thus, the *Wacker* court reversed outright where insufficient evidence was the clear grounds for reversal on the first two counts, while it remanded for a new trial due to a misleading jury instruction for the one offense which was supported by some witness testimony.

Here, the State admits that no rational trier of fact could have found that it provided sufficient evidence to convict. (St. Br. at 6) It does not matter what statutory interpretation the State wanted to apply or how precise the jury instruction was, because the evidence was not there. Further, unlike in many of the federal cases, the State was not following binding precedent in failing to produce this evidence. Indeed, a mindful prosecutor would have recognized what *Casler* recognized: that supreme court litigation had interpreted the obstruction statutes as requiring proof of an actual impediment. *Casler*, 2020 IL 125117, ¶ 33. Even if the prosecutor was personally unconvinced of the requirement, he or she would have known that the rule of legislative acquiescence and the rule of lenity both cut in favor of providing whatever evidence was available to permit conviction without needing to ask for a second trial on the same offense.

4. This Court should not invoke *stare decisis* to avoid narrowing or overruling the remedy analysis in *Casler*.

Next, the State invokes *stare decisis* to affirm the appellate court's remand for a new trial based on the remedy analysis in *Casler*. (St. Br. at 13) Given that *Casler* is distinguishable as noted in the opening brief and above, this Court can avoid the issue of *stare decisis* by clarifying that the *Casler* remedy requires an erroneous trial court ruling to permit retrial. See *supra* Part

SUBMITTED - 21482243 - Carol Chatman - 2/15/2023 11:40 AM

1; (Op. Br. at 13-14). This requirement would respect the fundamental protection of double jeopardy while also discouraging gamesmanship in testing the limits of criminal law through trials rather than motions in *limine.* (Op. Br. at 19)

Even if this Court finds that *stare decisis* concerns are raised in this case, there is good cause to depart from the remedy analysis in *Casler*. *People v. Manning*, 241 Ill.2d 319, 332 (2011); see also (Op. Br. at 19-20). *Stare decisis* "expresses the policy of the courts to stand by precedents and not to disturb settled points" of law. *People v. Caballes*, 221 Ill.2d 282, 313 (2006). But it is "not an inexorable command" that requires "adherence to the latest decision." *People v. Jones*, 207 Ill.2d 122, 134 (2003). Its ultimate aim is for the law to "develop in a principled, orderly fashion." *People v. Colon*, 225 Ill. 2d 125, 146 (2007).

This goal is not well-served by standing on recent decisions which are not yet enmeshed in the legal framework and represent a departure from well-worn analytical paths. For example, in *N.G.*, this Court overruled its own decision from two years prior because it had taken "the wrong analytical path" and failed to recognize the complications raised due to a competing line of precedent. *In re N.G.*, 2018 IL 121939, ¶¶ 75-76 (overruling *People v. McFadden*, 2016 IL 117424).

Like in *N.G.*, this Court is faced with a relatively recent decision which has had limited impact so far. Besides Prince's case, only two decisions from the Fifth District have remanded for a new trial based on the *Casler* remedy. *People v. Gordon*., 2021 IL App (5th) 160455-UB[2]; *People v. Powell*, 2020 IL App (5th) 170065-U, ¶ 26. On the other hand, three decisions have ended in outright reversal contrary to the remedy analysis in *Casler*. *People v. Bronson*, 2021 IL App (4th) 190164-U, ¶¶ 2-4, 32-33 (finding double jeopardy barred retrial for the same issue as *Casler* despite trial occurring in 2018); *People v. Ostrowski*, 2021 IL App (3d)

[2] In accordance with Rule 23, all unpublished cases are provided to this Court and the State in an appendix to this brief.

SUBMITTED - 21482243 - Carol Chatman - 2/15/2023 11:40 AM

170362-UB, ¶¶ 2, 4, 24-27 (outright reversing for the same offense as *Casler* though trial was concluded prior to *Casler* per *People v. Ostrowski*, 2020 IL App (3d) 170362-U, ¶¶ 2-4); *People v. Gotschall*, 2022 IL App (4th) 210256, ¶¶ 26-27, 29-31 (construing *Comage*, *Baskerville*, and *Casler* together to require a material impediment under another iteration of an obstruction statute but not remanding for a new trial despite the need to apply *Casler* to a slightly different context). Thus, the *Casler* remedy has not yet been enmeshed into the framework of Illinois law. If anything, Illinois courts appear hesitant to apply it.

Notably, the *Casler* remedy was itself a significant change from prior Illinois law which had never remanded for a retrial after an appellate reversal because a finding of insufficiency was accompanied by an interpretation of a statute by this Court. *People v. Skelton*, 83 Ill. 2d 58, 62-67 (1980) (affirming an outright reduction of armed robbery to simple robbery after clarifying that whether a toy gun is a "dangerous weapon" under the statute is not judged by a subjective test); *Comage*, 241 Ill. 2d at 149-51 (2011) (reversing outright after interpreting obstruction of justice by concealment to require proof of materiality); *Baskerville*, 2012 IL 111056, ¶¶ 35-39 (similar); *People v. Bradford*, 2016 IL 118674, ¶¶ 31-36 (reversing outright after interpreting "remain within" in the burglary statute as requiring proof that the accused exceeded the scope of their physical authority);*People v. Pearse*, 2017 IL 121072, ¶¶ 41-52 (reversing outright after interpreting SORA to not require re-registration of a home address after a hospital stay). In trying to find an orderly path forward, this Court must weigh the less-accepted remedy from *Casler* against the consistent history of reversing outright after a court's finding of insufficient evidence even when that finding is accompanied by a clarification of statutory language.

Stare decisis concerns are also less strong for matters decided before briefing by the parties. *Dir., Off. of Workers' Comp. Programs, Dep't of Lab. v. Greenwich Collieries*, 512 U.S. 267, 277 (1994) (recognizing an "answer to an ancillary and largely unbriefed question

SUBMITTED - 21482243 - Carol Chatman - 2/15/2023 11:40 AM

does not warrant the same level of deference we typically give our precedents"). This was true of this Court's double jeopardy analysis in *Casler* as the State never suggested retrial as a possibility. Appellee's Brief at 5-23, *People v. Casler*, 2020 IL 125117, (No. 125117), *available at* https://www.illinoiscourts.gov/courts/supreme-court/docket/march-2020. Without briefing, this Court did not have a core benefit of an adversarial system— two sides invested in researching and presenting their best analysis of the impacts of this Court's decision. *People v. Givens*, 237 Ill. 2d 311, 323–24 (2010)(discussing the importance of the principle of party presentation in the Illinois court system); *Greenlaw v. United States*, 554 U.S. 237, 243-45 (2008). Thus, this Court need not be constrained by the remedy analysis in *Casler*.

Finally, *stare decisis* does not shield decisions that "are unworkable." *Colon*, 225 Ill.2d at 145–46. The remedy analysis in *Casler* contains an internal tension that is not conducive to the orderly development of Illinois law. See *Casler*, 2020 IL 125117, ¶¶ 100-02 (Karmeier, J., *dissenting*) (recognizing that *Casler* both finds prior cases firmly establish the requirement of a material impediment while finding retrial is not barred because *Casler* itself represented a "change in law"). In interpreting the obstruction statute, this Court found that *Comage* and *Baskerville* "construed together * * * firmly establish" that obstruction of justice requires proof that the accused materially impeded the administration of justice. *Casler*, 2020 IL 125117, ¶¶ 41-42. Yet, in permitting retrial, this Court referred to its interpretation of the statute as a "change in law" which justified the State not providing evidence of a material impediment at trial. *Id*. ¶¶ 65-66.

As discussed above, this application of the term "change in law" for purposes of a double jeopardy analysis is far more expansive than the version adopted by federal appellate courts. See also (Op. Br. at 15-20). It would mean that even when the proper interpretation of a statute has been firmly established by construing two of this Court's decisions, there will still be room for argument on whether a successive trial would violate double jeopardy if this Court has

SUBMITTED - 21482243 - Carol Chatman - 2/15/2023 11:40 AM

not "unequivocally construe[d]" the precise word or application of a word at issue.

This definition of "change in law" will cause a flood of double jeopardy litigation every time an issue of statutory interpretation is raised—issues which arise often and are unlikely to abate as new crimes are defined and new technologies raise questions as to how old crimes apply. See, *e.g.*, Press Release RE: HB4383, May 18, 2022, *available at* https://www.illinois.gov/news/press-release.24921.html#:~:text=Chicago%2D%2D%20Governor%20JB%20Pritzker,called%20'ghost%20guns'%20statewide (noting Illinois is a "trailblazer" in passing legislation to ban so-called "ghost guns" which can be sold in parts and created by 3-D printers). Consider this Court's recent docket. This Court interpreted whether a criminal statute defining child pornography included morphed images. *People v. McKown*, 2022 IL 127683, ¶¶ 26-27. It settled a dispute over how "public property" is interpreted for purposes of the aggravated battery statute. *People v. Castillo*, 2022 IL 127894, ¶¶ 23-28, *reh'g denied* (Jan. 23, 2023). It interpreted "physical contact of an insulting or provoking nature" as requiring an objective, rather than subjective inquiry. *People v. Davidson*, 2023 IL 127538, ¶¶ 13-16. It has been asked to determine whether the term "public place of accommodation or amusement" includes the stoop of adjoined apartments. *People v. Vonzell Whitehead*, (No. 128051), *available at* https://www.illinoiscourts.gov/courts/supreme-court/docket/november-2022. Already, this Court is being asked to consider extending the *Casler* remedy based on how it interprets the *mens rea* requirement for possession of a defaced firearm. Appellee's Brief at 28-29, *People v. Andrew Ramirez*, (No. 128123).

Criminal appeals to this Court are by leave, so its docket contains but a fragment of the questions of statutory interpretation arising at the appellate level. The difficult questions about applying the *Casler* remedy will arise most often in the trial and the appellate courts. Will the State be able to seek a successive trial for the same offense whenever it loses an argument for statutory interpretation that has not been specifically rejected by this Court? Indeed, this

SUBMITTED - 21482243 - Carol Chatman - 2/15/2023 11:40 AM

Court may not be done definitively interpreting "material impediment" as the State still considers the term unexplained and undefined. (St. Br. at 17) Or will a prosecutor be expected to follow a published appellate court decision interpreting a statute in their own district? What about an interpretation adopted by every district but their own?

In deciding whether retrial offends double jeopardy, courts will have to draw the line between what requires a "new" interpretation of the statute and what is simply an application of the old interpretation to unusual facts. See, e.g., *People v. Hopkins*, 2020 IL App (1st) 181100, ¶¶ 14-17 (interpreting the term "railroad car" in the burglary statute to not include an affixed intermodal container). An amorphous standard for an exception to double jeopardy threatens to erode its protection over time.

Lower courts will face disputes over remedy after successful sufficiency challenges as well as double jeopardy challenges both before and after successive trials held on the basis of this case. Eventually, courts will face "changes of law" arising between the finding of guilt and the post-trial hearing—can the accused win a post-verdict motion for acquittal in the trial court or will the State be permitted to start a second trial on the same offense? See, e.g., *People v. Van Cleve*, 89 Ill. 2d 298, 303-07 (1982) (discussing the history of double jeopardy in Illinois in finding a post-verdict judgment of acquittal is not appealable). What if the law changes after the State has rested but before the defense has rested—will a motion for directed verdict still be treated as an acquittal? Will the force of the double jeopardy protection once again depend on whether it was the trial or the appellate court that found the evidence was insufficient in cases with a related "change in law"? *Burks*, 437 U.S. at 10-11 (finding appellate reversal due to insufficient evidence bars retrial to avoid a "purely arbitrary distinction" for defendants unlucky enough to have a trial court erroneously deny their motion for directed verdict).

These open questions will result in wasted resources, particularly when successive trials inevitably get reversed on double jeopardy grounds because the lower court was wrong

SUBMITTED - 21482243 - Carol Chatman - 2/15/2023 11:40 AM

about whether there was an actual "change in law" as required to permit retrial. For those charged, this will mean years of defending themselves against not one, but two (or maybe more) criminal trials as the State hones its statutory definition and trial evidence.

In sum, this Court should not rely on *stare decisis* to permit a second trial for Prince when it could narrowly interpret *Casler* as permitting retrial where reversal was due to a trial error on admissible evidence related to the evidentiary insufficiency. The exception to double jeopardy necessary to permit retrial in the present case would be far-reaching and difficult to apply. Even if this Court agrees with the federal courts that double jeopardy does not bar all retrials after a "change in law," it can avoid confusion in the lower courts by limiting the definition of "change in law" to an unanticipated change from binding precedent. As discussed above, a reasonable, conscientious prosecutor would have known to provide available evidence of a material impediment at Prince's trial, so there is no reason to now allow the State a second chance at marshaling such evidence against Prince.

5. Retrial would be a futile waste of resources in the present case.

In a footnote, the State attempts to distinguish the examples in the opening brief of reversals without remand due to the futility of retrial. (St. Br. at 16 n. 4) (citing Op. Br. at 21). According to the State, outright reversal was appropriate in those cases because "the reviewing court [could] determine definitively that a retrial would never result in a conviction because necessary evidence could not be introduced on remand." (St. Br. at 16 n. 4) The same is true in this case.

In the cases cited in the footnote, the courts could determine that the State lacked necessary evidence due to suppression of evidence on appeal. Here, the evidence at trial showed where and when the falsehood was uttered— after arrest and transport to a police station. As a result, this Court can definitively determine that the falsehood did not materially impede the administration of justice.

SUBMITTED - 21482243 - Carol Chatman - 2/15/2023 11:40 AM

The State cites cases that find an obstructive act was a material impediment based on how long it delayed an investigation, whether it continued or increased a threat to officer safety, and whether it created a risk of evidence spoilage. (St. Br. at 18-19) What the State fails to appreciate is that the evidence at trial made clear that no evidence is available to show any of those factors or otherwise prove a material impediment.

In Prince's case, the obstructive act was giving a false name and birthdate. (C.20) The State's law enforcement witnesses testified that Prince uttered the falsehood after he had already been handcuffed, arrested, and transported to the police station for booking. (R.252-54,256-57,271) At that point, the police were already independently verifying both Prince's name and his reason for sleeping at a house that he did not own so the falsehood had no impact.

Giving a false name created no risk of the destruction of evidence where Prince was not at the scene and was in custody at the police station. Moreover, there was no evidence to corrupt given that the arrest was not related to contraband. It was based entirely on Prince's interactions with law enforcement. According to testimony from three separate officers, the arrest occurred because Prince would not give officers the name and phone number of the homeowner to verify that he was allowed to be in the home and he tried to push past an officer to leave the room during questioning about his and the homeowner's identity. (R.233-34,244,252-54,269-70) The charged offense was not based on any of these interactions. (C.20); *Baskerville*, 2012 IL 111056, ¶¶ 33-36 (noting the charge was for making a specific false statement, not hiding a person or interfering with service of a citation).

Giving a false name at the police station also posed no threat to officer safety. It did not extend a late-night stop or otherwise require officers to spend longer than necessary isolated or exposed. *Cf. People v. Mehta*, 2020 IL App (3d) 180020, ¶ 35 (finding obstructive conduct created a delay "in a high-tension situation," namely, a late-night traffic stop in gang territory where the occupants may have had guns); *People v. Shenault*, 2014 IL App (2d) 130211, ¶

SUBMITTED - 21482243 - Carol Chatman - 2/15/2023 11:40 AM

22 (refusing an officer's commands during a traffic stop). Instead, officers were on their home turf and Prince was in their full, physical control at the time the falsehood was uttered. (R.256-57)

And the falsehood did not delay the investigation. The police were always going to fingerprint and book Prince regardless of what name he gave. Officer Jandura, who testified about hearing the falsehood at the station, was still at the scene when a supervisor told him to "go back to the station and try to find out who the subject was by fingerprinting." (R.254) As instructed before hearing any name, Jandura went to the station, fingerprinted Prince, and waited in booking for the prints to be processed. (R.256-58); *Bronson*, 2021 IL App (4th) 190164-U, ¶ 31 (briefly concealing evidence is not a material impediment). Though Prince waited until after he spoke to a supervisor to be fingerprinted, he was not charged with anything related to this request. (R.256-57)

In addition, Officer Meyers learned Prince's legal name from a Snapchat account which an emergency contact provided to Meyers at the scene. (R.270-71,274) Meyers then returned to the station where Prince was still in the booking process and Meyers heard Prince give the false name. (R.271,278) Thus, police already had a second source to discover Prince's legal name based on Meyers' interview at the scene. No charges were filed due to refusing to give a name at the scene. (C.20); see also *People v. Fernandez*, 2011 IL App (2d) 100473, ¶ 8 (noting the "almost uniformly held [principle] that an initial failure to provide basic identifying information is not criminal").

Furthermore, Prince's legal name was never going to end the investigation. Police wanted the name to confirm with the homeowner that he had permission to be at her house. (R.253) But officers did not reach the homeowner until 5:00 a.m.. (R.280) This was sometime after Meyers had conducted the on-scene interview that led to Prince's legal name, it was hours after Prince had been handcuffed for transport to the police station, and it was hours after the police had decided to fingerprint him to learn his identity. (R.247-54,280)

SUBMITTED - 21482243 - Carol Chatman - 2/15/2023 11:40 AM

In sum, the evidence at Prince's trial was exhaustive in providing the details of when and where the false name was given—namely, at the precinct when the police were already intent on booking Prince into jail. Given these facts, the falsehood offered no impediment to the administration of justice as even the State conceded. What the State fails to see is that no additional facts could change this analysis. Thus, a retrial would be futile.

Finally, the State did not respond to the citation to *People v. Campbell*, 224 Ill. 2d 80 (2006), where this Court forwent remand because the defendant had already completed their sentence. (Op. Br. at 20-21) Like in *Campbell*, Prince has fully served his sentence. Even without the futility, Illinois resources are better spent on something other than a second trial for giving a fake name while under arrest and at a police station.

CONCLUSION

The double jeopardy clause is a constitutional mandate standing between the might of the State and the people it serves. It should not be weakened by an exception for prosecutors who conduct trials under the least onerous interpretation of a criminal statute. This is particularly true when a reasonable prosecutor would have realized the likely need to prove a material impediment at the time of Prince's trial based on two supreme court opinions, an appellate court opinion, and the rules of lenity and legislative acquiescence. The expansive exception to double jeopardy necessary to permit retrial in this case will cause confusion and wasted resources at every level of the court system. On the other side of that confusion will be people forced to defend themselves repeatedly against criminal charges, with all the financial and emotional costs that brings. Prince has already fully served a sentence that he should not have served based on the trial that occurred. This Court should not permit retrial where the need for a second trial is unclear and where allowing it would mean undermining double jeopardy protections in Illinois.

SUBMITTED - 21482243 - Carol Chatman - 2/15/2023 11:40 AM

For the foregoing reasons, Shaquille Prince, defendant-appellant, respectfully requests that this Court remand the case to the lower court with instructions to enter a judgment of acquittal.

Respectfully submitted,

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SUBMITTED - 21482243 - Carol Chatman - 2/15/2023 11:40 AM

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 or words 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 20 pages.

/s/Maggie A. Heim
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SUBMITTED - 21482243 - Carol Chatman - 2/15/2023 11:40 AM

2021 IL App (5th) 160455-UB

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

NOTICE This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1). Appellate Court of Illinois, Fifth District.

The PEOPLE of the State of Illinois, Plaintiff-Appellee,

v.

Richard L. GORDON, Defendant-Appellant.

NO. 5-16-0455

08/24/2021

Appeal from the Circuit Court of Fayette County. No. 16-CF-141, Honorable M. Don Sheafor Jr., Judge, presiding.

ORDER

PRESIDING JUSTICE BOIE delivered the judgment of the court.

***1** ¶ 1 *Held*: The State presented insufficient evidence to convict the defendant of obstructing justice where the State failed to prove that the defendant furnishing false information to the police materially impeded his apprehension; the case is remanded for further proceedings without offending double jeopardy principles where the supreme court's decision in *People v. Casler*, 2020 IL 125117, changed the law posttrial by requiring the State to prove material impediment and the State had no reason to present evidence of material impediment prior to the change in the law.

¶ 2 After a jury trial, the defendant, Richard L. Gordon, was convicted of obstructing justice in violation of section 31-4(a)(1) of the Criminal Code of 2012 (720 ILCS 5/31-4(a)(1) (West 2016)), for providing police officers with false information, *i.e.*, a false name and date of birth when he was asked to identify himself. The defendant appealed his conviction and argued, among other issues, that the State presented insufficient evidence of his guilt because the State failed to prove that his furnishing false information materially impeded the ability of the police to apprehend him. In the defendant's direct appeal from his conviction, we affirmed his conviction, holding that a conviction of obstructing justice did not require proof that the defendant's conduct resulted in material impediment to the administration of justice. *People v. Gordon*, 2019 IL App (5th) 160455, ¶ 27. On January 27, 2021, the supreme court, in the exercise of its supervisory authority, directed us to vacate our judgment affirming the defendant's conviction and "consider the effect of [the supreme court's] opinion in *People v. Casler*, 2020 IL 125117, on the issue of whether the evidence was sufficient to support defendant's conviction for obstructing justice, and determine if a different result is warranted." *People v. Gordon*, No. 125537 (2021) (supervisory order). For the following reasons, after considering the supreme court's opinion in *Casler*, we conclude that a different result is warranted. We reverse the defendant's conviction for obstruction of justice and remand for further proceedings.

¶ 3 BACKGROUND

¶ 4 In the evening on June 21, 2016, a deputy with the Fayette County sheriff's office conducted a traffic stop of a vehicle driven by the defendant. The defendant told the officer that he did not have his driver's license with him, that his name was Bryan Lynn Watson, and that his date of birth was June 9, 1971. The officer and the county's dispatcher both ran the defendant's name and date of birth through their respective computer databases, which yielded no person with the name and date of birth given by the defendant. The officer then conducted a pat-down search of the defendant and recovered a wallet from the defendant's pocket. The wallet contained an Illinois identification card bearing the defendant's real name, Richard Gordon. The officer ran the defendant's real name through the database and determined that the defendant had an outstanding warrant and a revoked driver's license. The officer placed the defendant under arrest, and the State charged the defendant with multiple offenses stemming from the traffic stop including obstructing justice, which is the only offense at issue in this appeal.

***2** ¶ 5 The statute creating the offense of obstructing justice for furnishing false information provides that a "person obstructs justice when, with intent to prevent the apprehension or obstruct the prosecution or defense of any person, he *** knowingly *** furnishes false information." 720 ILCS 5/31-4(a)(1) (West 2016). At the defendant's trial, the circuit court instructed the jury to find the defendant guilty of obstructing justice if it found that the defendant knowingly furnished false information and that the defendant did so with the intent to prevent his apprehension. The circuit court

SUBMITTED - 21482243 - Carol Chatman - 2/15/2023 11:40 AM

did not instruct the jury that, before finding the defendant guilty, it must also find that the defendant's false information materially impeded his apprehension.

¶ 6 In his direct appeal from his conviction, the defendant argued that the State presented insufficient evidence to prove him guilty of obstructing justice because the State had failed to prove that his conduct of providing a false identification to the police materially impeded his apprehension. We disagreed with the defendant's argument, held that the State was not required to prove that the defendant materially impeded his apprehension, and affirmed the defendant's conviction. *Gordon*, 2019 IL App (5th) 160455, ¶ 27. In the exercise of its supervisory authority, the supreme court has now directed us to vacate our judgment affirming the defendant's conviction and reconsider the sufficiency of the evidence in light of *Casler*, 2020 IL 125117.

¶ 7 ANALYSIS

¶ 8 Prior to *Casler*, there was a split among the appellate court districts concerning whether a finding of "material impediment" was necessary to sustain a conviction for obstructing justice. *Id.* ¶¶ 43-53. The *Casler* court resolved this split of authority by holding that a conviction of obstructing justice under section 31-4(a)(1) "unequivocally" requires proof of material impediment. *Id.* ¶¶ 61, 69.

¶ 9 Similar to the defendant in the present case, the defendant in *Casler* had outstanding warrants and gave the police a false name when he was asked to identify himself, which the officers quickly realized was a false name. *Id.* ¶¶ 6-10. A jury convicted the defendant of obstructing justice for providing the false information with the intent of avoiding arrest on the outstanding warrants. *Id.* ¶¶ 3, 15-17, 62. The *Casler* court, however, reversed the defendant's conviction because the circuit court did not instruct the jury that, before convicting the defendant of obstructing justice, it must find that the defendant's conduct had "materially impeded the administration of justice." *Id.* ¶ 62.

¶ 10 The relevant facts of the present case are nearly identical to the facts in *Casler*. Here, the defendant had an outstanding warrant for his arrest, the defendant gave the police a false name and date of birth when the police asked the defendant to identify himself, and the police quickly determined that the identification information that the defendant gave them was false. Also similar to *Casler*, the jury that convicted the defendant of obstructing justice was never instructed to determine whether the defendant's false information materially impeded his apprehension. Accordingly, based on the supreme court's holding in *Casler*, we are obligated to reverse the defendant's conviction for obstructing justice.

¶ 11 In its supplemental brief, the State agrees that the defendant's conviction for obstructing justice must be reversed in light of the supreme court's *Casler* opinion. The State, however, argues that, instead of reversing the conviction outright, this court should remand this case to the circuit court for further proceedings on the obstructing justice charge. The defendant argues against a remand for further proceedings.

***3** ¶ 12 In *Casler*, after holding that the defendant's conviction must be reversed, the supreme court addressed the proper remedy in light of the double jeopardy protections in the fifth amendment to the United States Constitution and the Illinois Constitution. *Id.* ¶¶ 55-56. In remanding that case for further proceedings, the *Casler* court held that its decision in that case constituted a posttrial change in the law. The *Casler* court further held that "a second trial is permitted when a conviction is reversed because of a posttrial change in law." *Id.* ¶ 57.

¶ 13 In *Casler*, the supreme court concluded that "the State had no reason to introduce evidence regarding a material impediment requirement because, at the time of trial, [the supreme court] had not yet held that the government was required to prove that element with regard to the furnishing of false information." *Id.* ¶ 65. Therefore, the *Casler* court concluded, the State's failure to present evidence of a material impediment was "more akin to trial error than to the sufficiency of the evidence." *Id.* ¶ 66. The *Casler* court noted that "[t]he double jeopardy clause does not preclude retrial of a defendant whose conviction is overturned because of an error in the trial proceedings leading to the conviction." *Id.* ¶ 57. Instead, "where a reviewing court determines that the evidence presented at trial has been rendered insufficient only by a posttrial change in the law, double jeopardy concerns do not preclude the government from retrying the defendant." *Id.* ¶ 66.

¶ 14 Because its ruling in *Casler* constituted a posttrial change in the law, the supreme court in *Casler* remanded that case for further proceedings. In the present case, like *Casler*, the State had no reason to present evidence of material impediment at

SUBMITTED - 21482243 - Carol Chatman - 2/15/2023 11:40 AM

the defendant's trial; per *Casler*, material impediment was not an element of the offense at the time of the defendant's trial.

¶ 15 In his supplemental brief, the defendant suggests that the supreme court's remand in *Casler* was "questionable." However, we have no authority to reject the supreme court's express holding in *Casler*. "Once our supreme court has declared the law with respect to an issue, this court must follow that law, as only the supreme court has authority to overrule or modify its own decisions." *John Crane, Inc. v. Admiral Insurance Co.*, 2013 IL App (1st) 093240-B, ¶ 69. The supreme court in *Casler* remanded the proceeding in that case because the State had no reason to present evidence of material impediment at the defendant's trial. The supreme court expressly stated that its decision in *Casler* changed the law posttrial and, therefore, a retrial did not violate the defendant's double jeopardy rights. The supreme court's decision in *Casler* was a posttrial change in the law not only for the defendant in *Casler*, but also for the defendant in the present case. Therefore, we reject the defendant's request to ignore the supreme court's analysis set out in *Casler* which establishes that a remand for further proceedings is the proper remedy in this appeal.

¶ 16 CONCLUSION

¶ 17 For the foregoing reasons, we reverse the judgment of the circuit court and remand for further proceedings.

¶ 18 Reversed and remanded.

Justices Barberis and Vaughan concurred in the judgment.

All Citations

Not Reported in N.E. Rptr., 2021 IL App (5th) 160455-UB, 2021 WL 3772411

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2020 IL App (5th) 170065-U

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

NOTICE This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

Appellate Court of Illinois, Fifth District.

The PEOPLE of the State of Illinois, Plaintiff-Appellee,

v.

Ashlee POWELL, Defendant-Appellant.

NO. 5-17-0065

11/23/2020

Appeal from the Circuit Court of Johnson County. No. 14-CF-8, Honorable James R. Williamson, Judge, presiding.

ORDER

JUSTICE OVERSTREET delivered the judgment of the court.

***1** ¶ 1 *Held*: The defendant's conviction for obstructing justice is reversed where the State failed to prove the offense's material-impediment requirement; one of the defendant's two convictions for obstructing a peace officer is vacated as violative of the one-act, one-crime rule; the defendant's stipulated bench trial on the State's charge of retail theft was not tantamount to a guilty plea, and we have no jurisdiction to consider the defendant's sentence-credit claim.

¶ 2 Following a bench trial in the circuit court of Johnson County, the defendant, Ashlee Powell, was found guilty on one count of obstructing justice (count I), two counts of obstructing a peace officer (counts II and IV), and one count of retail theft (count III). She was subsequently ordered to serve an 18-month term of imprisonment and pay multiple fines and fees. On appeal, the defendant maintains that her convictions on counts I and III should be reversed and that her conviction on count II or count IV should be vacated. She further argues that she should have received monetary credit towards her fines for time spent in custody prior to sentencing. For the reasons that follow, we reverse the defendant's conviction on count I, vacate her conviction on count II, affirm her convictions on counts III and IV, and remand for further proceedings.

¶ 3 BACKGROUND

¶ 4 On January 10, 2014, the defendant drove her boyfriend's red Dodge Durango SUV to the Casey's General Store in Vienna, pumped $81 worth of gasoline into the Durango's fuel tank, and drove off without paying. A Casey's employee immediately reported the theft to Special Agent Marc Stram of the Illinois State Police, who was inside the store at the time. A vehicle pursuit ensued, and Stram followed the defendant as she turned from U.S. 45 onto Dutchman Lake Road. When Stram caught up with the defendant and activated his car's emergency lights and siren, the defendant did not pull over or slow down. Instead, "she accelerated to a dangerous speed and went around a green vehicle on Dutchman Lake Road." At that point, concluding that the pursuit had become too dangerous, Stram deactivated his lights and siren and proceeded to follow the defendant at a decreased rate of speed.

¶ 5 As Stram subsequently approached the intersection of Dutchman Lake Road and Tunnel Hill Road, he saw the defendant stopped at the stop sign. Before the defendant sped away, Stram was able to get close enough to see the Durango's rear license plate. A registration check revealed that the license plate was not truly the Durango's and had been issued to a blue Mercury passenger car.

¶ 6 Later the same day, the defendant was arrested in Williamson County after the Durango, bearing its actual license plates, was discovered parked behind a barn on West Borton Avenue in Creal Springs, where the defendant's boyfriend's mother lived. When the defendant was questioned about the gasoline theft at the Casey's, she admitted her guilt and acknowledged that she had put the Mercury's license plate on the rear of the Durango to avoid being identified. The defendant explained that the plate had come from a junkyard and that she knew that it would "come back" to a vehicle other than the Durango. The defendant also acknowledged that the Durango and the plate had been used in other drive-off thefts of gasoline.

***2** ¶ 7 In February 2014, the State filed an information charging the defendant with one count of obstructing justice (count I) (720 ILCS 5/31-4(a)(1), (b)(1) (West 2014) (Class 4 felony)), one count of obstructing a peace officer (count II) (*id.* § 31-1(a) (Class A misdemeanor)), and one count

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of retail theft (count III) (*id.* § 16-25(a)(1), (f)(1) (Class A misdemeanor)). Count I specifically alleged that "to prevent her arrest," the defendant "knowingly planted false evidence in that she drove her vehicle bearing another person's license plate on her vehicle to avoid being identified."

¶ 8 In April 2014, the cause proceeded to a preliminary hearing, where Stram testified as to the events that occurred on January 10, 2014. At the conclusion of the hearing, the defendant orally moved to dismiss count I, arguing that the conduct described therein should have been charged as a violation of the Illinois Vehicle Code. See 625 ILCS 5/3-703 (West 2014) ("Improper use of evidences of registration or certificate of title."). The trial court denied the defendant's motion to dismiss count I, finding that there was probable cause to sustain the charge.

¶ 9 In June 2014, the defendant filed a written motion to dismiss count I, again arguing that the conduct described therein should have been charged as a violation of the Illinois Vehicle Code. The motion further argued that the obstructing justice statute was unconstitutionally vague and that the facts alleged in count I did not properly state a charge of planting false evidence.

¶ 10 In July 2014, the State successively filed two amended informations that realleged counts I, II, and III and added an additional count of obstructing a peace officer (count IV). At a subsequent pretrial hearing, the State advised that count IV was filed as "an alternative theory" of count II.

¶ 11 In March 2015, the cause proceeded to a hearing on the defendant's motion to dismiss count I. In addition to reiterating her vagueness claim and her contention that the conduct alleged in count I should have been charged as a violation of the Illinois Vehicle Code, the defendant argued that even assuming that putting a "false license plate" on a vehicle constituted the planting of false evidence, there was no evidence that her act of affixing the Mercury's plate to the Durango had occurred in Johnson County. Advising that the plate had been placed on the Durango in Williamson County, the defendant argued that Williamson County was the proper venue for count I and that her act of merely driving with the plate in Johnson County was insufficient to support the State's charge.

¶ 12 In response, noting that a criminal statute is not required to define its proscribed conduct with "mathematical precision" (*People v. Holt*, 271 Ill. App. 3d 1016, 1026 (1995)), the State argued that the relevant language of the obstructing justice statute was sufficiently definite and readily understandable. The State further argued that even assuming that the defendant had actually placed the Mercury's license plate on the Durango in Williamson County, her act of obstructing justice was completed at the Casey's in Vienna and continued during Stram's subsequent pursuit of the Durango.

¶ 13 When denying the defendant's motion to dismiss count I, the trial court agreed that regardless of where the defendant had actually affixed the Mercury's plate to the Durango, the charged offense was consummated in Johnson County, where her intent to use the plate to steal gasoline without being apprehended was realized. See *People v. Kalwa*, 306 Ill. App. 3d 601, 614 (1999) ("If a crime is partly committed in one county and partly in another, venue is proper in either county.").

***3** ¶ 14 In June 2015, the cause proceeded to a stipulated bench trial, where the parties submitted an agreed written summary of the relevant facts of the case. The summary was signed by the parties and stipulated several specific facts, including the defendant's admissions that she had not attempted to pay for the gasoline she obtained and had attached the Mercury's plate to the Durango to make her more difficult to identify. The summary further stipulated that the defendant's act of affixing the plate to the Durango had occurred in Williamson County. By agreement, the trial court was also asked to consider Stram's testimony from the preliminary hearing, a video recording of the defendant's postarrest interview, and the Webster's dictionary's definition of the word "plant." The court was asked to take judicial notice of "everything" in the case file, including the parties' arguments from the previous hearings. The trial court advised that it would take the matter under advisement and would allow the parties to present their closing arguments at a later date.

¶ 15 In September 2015, the parties presented their closing arguments for the trial court's consideration, and the court advised that it had reviewed the video recording of the defendant's postarrest interview. During closing arguments, the State generally maintained it had proven the necessary elements of the charged offenses beyond a reasonable doubt. The State conceded, however, that counts II and IV should be merged.

SUBMITTED - 21482243 - Carol Chatman - 2/15/2023 11:40 AM

¶ 16 The defendant's closing argument focused on count I, and at the outset, counsel frankly advised the court that he was "not going to vociferously argue against" counts II, III, and IV. Counsel further advised that although the defendant was not admitting her guilt on counts II, III, and IV, she was conceding that the facts relevant to those charges were "not in dispute." Counsel stated that the defendant would "let the [c]ourt make up its own mind" as to those counts.

¶ 17 Asserting that "[p]utting an incorrect license plate on a vehicle is not obstructing justice," the defendant again maintained that the conduct charged in count I should have been charged as a violation of the Illinois Vehicle Code. The defendant reemphasized that even assuming that putting a "fake" license plate on a vehicle constituted the planting of false evidence, her act of attaching the Mercury's plate to the Durango occurred in Williamson County, as the parties had stipulated. With respect to count I's intent element, the defendant additionally argued that she had acted with the intent to deceive the employees at the Casey's in Vienna, "not the cops."

¶ 18 At the conclusion of the parties' closing arguments, the trial court found the defendant guilty on all four counts of the State's second amended information. When the court indicated that it would merge counts II and IV as the State had requested, the State asked that judgment and sentence be imposed on count IV.

¶ 19 On February 15, 2017, the cause proceeded to sentencing, where the trial court ultimately imposed an 18-month agreed sentence on the defendant's conviction on count I and concurrent 30-day sentences on counts II, III, and IV. The court further ordered the defendant to pay fines and fees collectively totaling more than $500. Notably, the State indicated that so long as the defendant received the agreed sentence of 18 months on count I, "[w]hatever the [c]ourt want[ed] to do on [the] misdemeanors [was] fine."

¶ 20 On February 16, 2017, the defendant filed a timely notice of appeal. We note that the defendant filed her appellant's brief in November 2018; the State filed its appellee's brief in November 2019; the defendant filed her reply brief in January 2020, and our supreme court issued its decision in *People v. Casler*, 2020 IL 125117, on October 28, 2020.

¶ 21 DISCUSSION

¶ 22 Count I

¶ 23 Section 31-4(a)(1) of the Criminal Code of 2012 (section 31-4(a)(1)) defines the offense of obstructing justice and, in pertinent part, states that "[a] person obstructs justice when, with intent to prevent the apprehension or obstruct the prosecution *** of any person, he or she knowingly *** [d]estroys, alters, conceals or disguises physical evidence, plants false evidence, [or] furnishes false information." 720 ILCS 5/31-4(a)(1) (West 2014). Here, count I charged the defendant with obstructing justice and alleged that "to prevent her arrest," the defendant "knowingly planted false evidence in that she drove her vehicle bearing another person's license plate on her vehicle to avoid being identified." We note that count I's specific language notwithstanding, the defendant does not dispute that the theory of guilt she defended against was that with the requisite intent, she obstructed justice by affixing the Mercury's plate to the Durango and then using the Durango to commit a drive-off theft of gasoline. Nor does the defendant claim that she was prejudiced by the variance between the charge's language and the proof adduced at trial. The defendant concedes, in fact, that before she drove the Durango to the Casey's in Vienna to commit the theft, she changed the vehicle's license plate to avoid being identified. She argues, however, that her conviction on count I must be reversed because the State failed to present any evidence that her conduct "materially impeded" her subsequent apprehension. We agree.

***4** ¶ 24 In *People v. Casler*, 2020 IL 125117, our supreme court "unequivocally" construed section 31-4(a)(1) to include a "material impediment requirement." *Id.* ¶¶ 61, 69. The *Casler* court thereby resolved the split among the appellate court districts as to whether a finding of "material impediment" was necessary to sustain a conviction for obstructing justice. See *id.* ¶¶ 43-53.

¶ 25 In *Casler*, when asked to identify himself, the defendant, who had outstanding warrants for his arrest, gave the police a name that they quickly realized was false. *Id.* ¶¶ 6-10. A jury convicted the defendant of obstructing justice for providing the police with the false name with the intent to prevent his arrest on the warrants, and this court affirmed his conviction on appeal. *Id.* ¶¶ 3, 15-17, 62. On appeal to the supreme court, however, the conviction was reversed because the jury was never tasked with considering whether the defendant's conduct had "materially impeded the administration of justice." *Id.* ¶ 62. After acknowledging that the State had no

SUBMITTED - 21482243 - Carol Chatman - 2/15/2023 11:40 AM

reason to introduce evidence regarding a material impediment requirement at the defendant's trial because *Casler* constituted a posttrial change in the law, the supreme court remanded the cause for further proceedings. *Id.* ¶¶ 65-67.

¶ 26 Here, *Casler* is controlling, and we agree with the defendant that her conviction on count I must be reversed because the State failed to present evidence that her use of the Mercury's license plate materially impeded the administration of justice. Like the *Casler* court, we recognize that the State had no reason to adduce such evidence at the defendant's trial because the material impediment requirement was not an element of the offense at the time. Nevertheless, the trial court was never asked to consider whether the defendant's use of the "false plate" materially impeded the administration of justice. Moreover, as the defendant observes, "it is not clear from the record how [she] was apprehended by the police." As previously indicated, the evidence at trial established that before the defendant finally eluded Stram, he was able to see the Durango's rear license plate, that a registration check revealed that the plate had been issued to a blue Mercury passenger car, and that later the same day, the defendant was arrested in Creal Springs after the Durango, bearing its actual license plates, was discovered parked behind a barn near her boyfriend's mother's house. Exactly when and how the police discovered the Durango or whether the defendant's use of the Mercury's plate frustrated their efforts to find her were matters never explored, however, and are presently unknown. Accordingly, on remand, if the State wishes to obtain a felony conviction on count I, the State must satisfy the material impediment requirement by proving that the defendant's use of the Mercury's plate materially impeded the administration of justice. In other words, the State must prove that the defendant's use of the plate materially impeded or hindered her apprehension or prosecution. See *Casler*, 2020 IL 125117, ¶¶ 31, 35, 39; *People v. Taylor*, 2012 IL App (2d) 110222, ¶ 17. The State can otherwise request that the trial court reduce the judgment entered on count I to reflect a conviction for the lesser-included offense of attempted obstruction of justice (see 720 ILCS 5/2-9(b) (West 2014) (" 'Included offense' means an offense which *** [c]onsists of an attempt to commit the offense charged[.]"); *Taylor*, 2012 IL App (2d) 110222, ¶ 19 (noting that where attempted obstruction of justice is charged, a court need not consider whether the defendant's conduct actually interfered with the administration of justice); *People v. Walton*, 378 Ill. App. 3d 580, 588 (2007) ("[A] judge presiding over a bench trial may convict a criminal defendant of an uncharged lesser-included offense *sua sponte*.")), the defendant's commission of which the State has already proven through undisputed facts. In any event, in accordance with *Casler*, we hereby reverse the defendant's conviction on count I and remand for further proceedings.

¶ 27 Counts II and IV

***5** ¶ 28 In pertinent part, count II of the State's second amended information alleged that the defendant committed the offense of obstructing a peace officer "by failing to stop her vehicle after Trooper Stram activated his emergency lights indicating she was required to stop." Count IV alleged that the defendant committed the same offense "by accelerating her vehicle after Trooper Stram indicated to her that she should stop her vehicle." On appeal, noting that during the proceedings below, the State conceded that counts II and IV should merge, the defendant argues that her convictions on both counts cannot stand under the one-act, one-crime rule. The State counters that convictions on both counts were proper because the charges were not based on precisely the same physical act. While the State's argument with respect to the charges might technically be correct, we agree with the defendant and conclude that the State is estopped from arguing that her convictions on counts II and IV should both be affirmed.

¶ 29 The one-act, one-crime rule "concerns the number of convictions obtainable based on a single act or a series of closely related acts." *People v. Hunter*, 2013 IL 114100, ¶ 21. The rule strictly prohibits convictions for multiple offenses that are based on "precisely the same physical act." *People v. Smith*, 2019 IL 123901, ¶ 13. " 'Act', when used in this sense, is intended to mean any overt or outward manifestation which will support a different offense." *People v. King*, 66 Ill. 2d 551, 566 (1977). Consequently, "when more than one offense arises from a series of incidental or closely related acts and the offenses are not, by definition, lesser included offenses, convictions with concurrent sentences can be entered." *Id.* Each of a victim's stab wounds, for example, can support a separate conviction and sentence without violating the one-act, one-crime rule. *People v. Crespo*, 203 Ill. 2d 335, 342 (2001). It is impermissible, however, for the State to treat closely related acts as a single offense in the trial court and then argue on appeal that the acts should be differentiated as multiple offenses. See *People v. Bishop*, 218 Ill. 2d 232, 245-46 (2006); *Crespo*, 203 Ill. 2d at 342-44. Allowing the State to do so would be "profoundly unfair" (*Crespo*, 203 Ill. 2d at 343), and like any party, the State is estopped from

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SUBMITTED - 21482243 - Carol Chatman - 2/15/2023 11:40 AM

advancing a position on appeal that is inconsistent with the position it adopted below (*People v. Franklin*, 115 Ill. 2d 328, 336 (1987); *In re Stephen K.*, 373 Ill. App. 3d 7, 25 (2007)).

¶ 30 Here, although the trial court found the defendant guilty on count II and count IV and theoretically could have entered judgment on both counts without violating the one-act, one-crime rule, the record demonstrates that the State never intended to obtain separate convictions and sentences on both counts. As previously noted, in July 2014, the State advised that it had added count IV to its amended informations as "an alternative theory" of count II, as opposed to a separate criminal act. Consistent with that position, when the parties presented their closing arguments in September 2015, the State conceded that counts II and IV should merge. When the trial court agreed to merge the counts, the State asked the court to enter judgment and sentence on count IV. By the time the cause proceeded to sentencing in February 2017, however, 17 months had passed, and the September 2015 discussions were apparently forgotten. As a result, the trial court entered judgment and sentence on both counts. In any event, because the State treated counts II and IV as a single offense in the trial court and requested that a final judgment be entered solely on count IV, we reject the State's attempt to differentiate the counts as multiple offenses on appeal and vacate the defendant's conviction on count II pursuant to Illinois Supreme Court Rule 615(b) (eff. Jan. 1, 1967). See *People v. James*, 2017 IL App (1st) 143036, ¶ 59.

¶ 31 Count III

¶ 32 Count III of the State's second amended information alleged that the defendant committed the offense of retail theft in that she "knowingly obtain[ed] unauthorized control over gasoline from [the] Vienna Casey's with the intent to permanently deprive Casey's of the gasoline." In the agreed summary of facts that the parties presented at the defendant's bench trial, the parties specifically stipulated that the defendant "never attempted to pay for the gasoline she obtained at Casey's General Store" and "drove away without paying for the gas." As previously indicated, at the defendant's trial, defense counsel advised the court that the defendant was not admitting her guilt on count III but that the relevant facts were "not in dispute."

***6** ¶ 33 On appeal, the defendant maintains that her stipulated bench trial on count III was tantamount to a guilty plea because defense counsel did not present a defense against count III, and the stipulated facts "contained all of the elements necessary to find [her] guilty of retail theft as alleged in count III." The defendant argues that her conviction on count III should therefore be reversed. See, *e.g.*, *People v. Davis*, 286 Ill. App. 3d 686, 690 (1997). We disagree.

¶ 34 A stipulated bench trial is tantamount to a guilty plea "when one of two conditions is met: (1) the State presents its entire case by stipulation *and* defendant fails to preserve a defense; *or* (2) the stipulation concedes that the evidence is sufficient to support a guilty verdict." (Emphases in original.) *People v. Clendenin*, 238 Ill. 2d 302, 324 (2010). Here, neither of these conditions were met. Although counsel acknowledged that the facts relevant to count III were not in dispute, he did not concede that the defendant acted with the requisite intent and did not concede that the facts were sufficient to support a guilty verdict. As noted, counsel stated that the defendant would "let the [c]ourt make up its own mind" as to whether she was guilty on count III. As a result, "defense counsel did not stipulate to the legal conclusion to be drawn from the evidence," and "the State still had to prove the defendant's guilt beyond a reasonable doubt." *People v. Horton*, 143 Ill. 2d 11, 21 (1991). Moreover, although counsel did not "vociferously argue against" count III, he nevertheless preserved a sufficiency-of-the-evidence defense by not conceding the defendant's guilt. See *People v. Foote*, 389 Ill. App. 3d 888, 895 (2009) (noting that the defendant's approach "signified his continued intent not to plead guilty"); see also *People v. Taylor*, 2018 IL App (2d) 150995, ¶ 11 (noting that "the nature of the defense does not matter so long as defendant actually preserved a defense"). Additionally, because the trial court was specifically asked to consider Stram's testimony from the preliminary hearing and the video recording of the defendant's postarrest interview, it cannot be said that the State presented its entire case through the parties' stipulated summary of facts. We also note that given the overwhelming evidence of the defendant's guilt, it was reasonable strategy for counsel to focus his efforts on count I, which was the only charged felony offense. See *Horton*, 143 Ill. 2d at 26; see also *People v. Weger*, 154 Ill. App. 3d 706, 710-11 (1987). In any event, we deny the defendant's request that her conviction on count III be reversed.

¶ 35 *Per Diem* Credit

¶ 36 A criminal defendant is entitled to credit against his or her sentence for each day spent in pretrial custody. 730 ILCS 5/5-4.5-100(b) (West 2014). Additionally, for each day spent

SUBMITTED - 21482243 - Carol Chatman - 2/15/2023 11:40 AM

in pretrial custody, a defendant is generally entitled to a *per diem* monetary credit towards any fines levied upon his or her convictions. 725 ILCS 5/110-14 (West 2014).

¶ 37 "Our supreme court has clarified that 'a defendant who is out on bond on one charge, and who is subsequently rearrested and returned to custody on another charge, is not returned to custody on the first charge [for the purposes of custody credit] until his bond is withdrawn or revoked.' " *People v. Nesbit*, 2016 IL App (3d) 140591, ¶ 44 (quoting *People v. Arnhold*, 115 Ill. 2d 379, 383 (1987)). "Once a defendant in that scenario withdraws or surrenders his bond, he is considered in custody on both offenses and earns credit against each for each day in custody." *Id.* (citing *People v. Robinson*, 172 Ill. 2d 452, 459-63 (1996)).

***7** ¶ 38 Here, the defendant was arrested on the charges in the present case on January 10, 2014, and was released on bond the same day. In March 2014, in Williamson County case number 14-CF-152, the defendant was arrested on an unrelated charge and ostensibly served 40 days in pretrial custody before she was released on bond in that case. Raising the issue as an ineffective-assistance-of-counsel claim, the defendant's final argument on appeal is that following her arrest in Williamson County, her trial attorney in the present case should have surrendered the bond she posted in January 2014 so that she would have received simultaneous custody credit towards the fines that the trial court ordered her to pay in the present case. The defendant asks that we remand her cause so that the trial court can calculate and apply the monetary credit that she contends she would have received but for counsel's alleged ineffectiveness. Even assuming *arguendo* that the defendant's claim is meritorious, however (see *People v. Nesbit*, 398 Ill. App. 3d 200, 215 (2010) (declining to address a similar claim where the record was silent as to whether the defendant and counsel had ever discussed the matter)), we are without jurisdiction to consider it due to the defendant's failure to raise it in the trial court.

¶ 39 During the pendency of the present appeal, our supreme court adopted and amended Illinois Supreme Court Rule 472 (eff. May 17, 2019) and thereby created a new procedure for the resolution of certain sentencing errors, including errors in "the calculation of presentence custody credit" and errors in "the application of *per diem* credit against fines." Ill. S. Ct. R. 472(a)(2), (3) (eff. May 17, 2019). Pursuant to Rule 472, the circuit court retains jurisdiction to correct such errors during the pendency of an appeal (Ill. S. Ct. R. 472(a)), and "[n]o appeal maybe taken by a party from a judgment of conviction on the ground of any sentencing error specified [in the rule] unless such alleged error has first been raised in the circuit court" (Ill. S. Ct. R. 472(c)). Rule 472 further provides:

> "In all criminal cases pending on appeal as of March 1, 2019, or appeals filed thereafter in which a party has attempted to raise sentencing errors covered by this rule for the first time on appeal, the reviewing court shall remand to the circuit court to allow the party to file a motion pursuant to this rule." Ill. S. Ct. R. 472(e).

¶ 40 Here, the defendant's appeal was pending as of March 1, 2019, and for the first time on appeal, she alleges a sentencing error covered by Supreme Court Rule 472. As a result, we have no jurisdiction to consider the claim, but on remand, the defendant can file a motion pursuant to Rule 472(e). See *People v. Williams*, 2020 IL App (1st) 163417, ¶¶ 90-94; *People v. Edwards*, 2020 IL App (1st) 170843, ¶ 27; *People v. Scott*, 2019 IL App (1st) 163022, ¶ 26.

¶ 41 CONCLUSION

¶ 42 For the foregoing reasons, we hereby reverse the defendant's conviction on count I, affirm the defendant's convictions on counts III and IV, vacate her conviction on count II, and remand for further proceedings.

¶ 43 Affirmed in part, reversed in part, vacated in part, and remanded.

Justices Moore and Boie concurred in the judgment.

All Citations

Not Reported in N.E. Rptr., 2020 IL App (5th) 170065-U, 2020 WL 6899481

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SUBMITTED - 21482243 - Carol Chatman - 2/15/2023 11:40 AM

2021 IL App (4th) 190164-U

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

NOTICE This Order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

Appellate Court of Illinois, Fourth District.

The PEOPLE of the State of Illinois, Plaintiff-Appellee,

v.

David L. BRONSON, Defendant-Appellant.

NO. 4-19-0164

FILED February 8, 2021

Appeal from the Circuit Court of Livingston County, No. 18CF35, Honorable Jennifer H. Bauknecht, Judge Presiding.

ORDER

JUSTICE HARRIS delivered the judgment of the court.

***1** ¶ 1 *Held*: The evidence was sufficient to convict defendant for unlawful possession of a hypodermic syringe. The evidence was insufficient to convict defendant for obstructing justice.

¶ 2 In December 2018, following a bench trial, defendant, David L. Bronson, was found guilty of obstructing justice (720 ILCS 5/31-4(a)(1) (West 2016)), unlawful possession of a hypodermic syringe (720 ILCS 635/1 (West 2018)), and possession of a controlled substance (720 ILCS 570/402(c) (West 2018)). On appeal, defendant argues his convictions for unlawful possession of a hypodermic syringe and obstructing justice should be reversed because the evidence presented by the State was insufficient to sustain his conviction. We affirm defendant's conviction for unlawful possession of a hypodermic syringe, reverse his conviction for obstructing justice, and remand his case for resentencing on his remaining convictions.

¶ 3 I. BACKGROUND

¶ 4 On February 2, 2018, the State charged defendant with one count of obstructing justice (720 ILCS 5/31-4(a) (West 2016)) and one count of unlawful possession of a hypodermic syringe (720 ILCS 635/1 (West 2018)). The State subsequently charged defendant with one count of possession of a controlled substance (720 ILCS 570/402(c) (West 2018)). Defendant's case proceeded to a bench trial in October 2018.

¶ 5 At defendant's trial, the State first presented testimony from Corporal Derek Schumm of the Pontiac Police Department. Corporal Schumm testified that, on January 31, 2018, he responded to a report of a possible drug overdose. Less than a minute after Corporal Schumm received the call, he arrived at the scene of the reported overdose. It had apparently occurred inside a parked van one block away from the police department's headquarters. Another officer arrived shortly thereafter. While the other officer tended to the overdose victim, Corporal Schumm spoke with a witness. According to Corporal Schumm, the witness told him of two other "persons of interest," a man and a woman who had "left the scene" prior to the officers' arrival. Officers then began looking for the two individuals.

¶ 6 Corporal Schumm testified that, minutes after the police began their search, Major Dan Davis, another Pontiac police officer, located defendant and a woman one block from the scene. Corporal Schumm joined Major Davis and the two questioned defendant "about the van and what had happened." According to Corporal Schumm, defendant "[i]nitially *** denied even being in the van." However, after Corporal Schumm confronted defendant with "what [he] had seen with the overdosing subject" and with the statement of the witness with whom he had spoken, defendant admitted he had been in the van and had left when the person started to overdose. After a search of defendant's person failed to reveal any evidence, Corporal Schumm asked defendant "about any disposal of possible evidence." According to Corporal Schumm, defendant at first "denied getting rid of anything after he left the van" but later admitted to disposing of "a couple of syringes and a spoon" along the north side of the church that was adjacent to the location where Corporal Schumm and Major Davis were questioning defendant. Defendant then led the officers to the place where he had dropped the items. The officers collected the hypodermic syringes and spoon and arrested defendant.

***2** ¶ 7 The State also called Major Dan Davis who testified consistently with Corporal Schumm. However, Major Davis added that defendant admitted to hiding the hypodermic syringes and spoon along the side of the church after he first saw Major Davis approach him in his squad car.

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¶ 8 After Major Davis testified, defendant's bench trial was continued on the State's motion. When the trial resumed, the State presented a laboratory report from the Illinois State Police Division of Forensic Services, the contents of which had been stipulated to by defendant. According to the report, residue on the spoon collected by officers tested positive for fentanyl. The State then rested.

¶ 9 Defendant testified on his own behalf. According to defendant, on January 31, 2018, he was walking near a church when he noticed "police everywhere and a drug dog and an ambulance." Defendant testified officers then approached him, told him they had discovered "the needles and the spoon," and began questioning him. Defendant denied that he had ever possessed the spoon or the hypodermic needles and denied that he had placed the items near the church. The defense then rested.

¶ 10 After closing arguments, the trial court found defendant guilty of all charges. Later, the court conducted a sentencing hearing at which it rendered an aggregate sentence for all three convictions of 24 months' probation, 40 hours' community service, and 180 days' imprisonment, which the court held in abeyance pending completion of his term of probation. The court subsequently denied defendant's motion for a new trial.

¶ 11 This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 On appeal, defendant argues his convictions for unlawful possession of a hypodermic syringe and obstructing justice should be reversed because the evidence presented by the State was insufficient to sustain his convictions.

¶ 14 "The State has the burden of proving beyond a reasonable doubt each element of an offense." *People v. Gray*, 2017 IL 120958, ¶ 35, 91 N.E.3d 876. When reviewing a claim that the State's evidence was insufficient to sustain a conviction, we must determine whether, "viewing the evidence in the light most favorable to the State, a rational trier of fact could have found the required elements of the crime beyond a reasonable doubt." *People v. Bradford*, 2016 IL 118674, ¶ 12, 50 N.E.3d 1112. Under this standard of review, we will only reverse a conviction where the evidence is "so improbable and unsatisfactory it creates a reasonable doubt as to defendant's guilt." *People v. Lewis*, 2019 IL App (4th) 150637-B, ¶ 79, 123 N.E.3d 1153.

¶ 15 A. The Evidence Was Sufficient to Convict Defendant for Possession of a Hypodermic Syringe

¶ 16 Defendant argues his conviction for unlawful possession of a hypodermic syringe should be reversed because the State failed to establish a necessary element of the offense. Defendant was charged with, and convicted of, violating section 635/1 of the Hypodermic Syringes and Needles Act. That section provides, in relevant part:

> "(a) Except as provided in subsection (b), no person *** shall have in his or her possession a hypodermic syringe, hypodermic needle, or any instrument adapted for the use of controlled substances or cannabis by subcutaneous injection.
>
> (b) A person who is at least 18 years of age may purchase from a pharmacy and have in his or her possession up to 100 hypodermic syringes or needles." 720 ILCS 635/1 (West 2018).

***3** ¶ 17 Defendant's argument that the State failed to prove him guilty of violating the Hypodermic Syringes and Needles Act is predicated on his interpretation of subsection 635/1(a). Defendant contends the clause "adapted for the use of controlled substances or cannabis by subcutaneous injection" not only modifies the word "instrument," but also modifies "hypodermic syringe" and "hypodermic needle." Accordingly, defendant argues, to sustain his conviction, the State was required to present evidence that he possessed a hypodermic syringe or needle adapted for the subcutaneous injection of a controlled substance or cannabis. The State disagrees with defendant's interpretation. Because the parties disagree whether possession of a hypodermic syringe, in the absence of evidence it has been adapted for the use of controlled substances or cannabis by subcutaneous injection, violates the Hypodermic Syringes and Needles Act, we must first construe the statutory language before addressing defendant's sufficiency of the evidence claim. See, *e.g.*, *Bradford*, 2016 IL 118674, ¶ 14.

¶ 18 The rules governing statutory construction are well-established. "The primary objective of statutory construction is to ascertain and give effect to the true intent of the legislature." *People v. Clark*, 2019 IL 122891, ¶ 18, 135 N.E.3d 21. "The best indication of this intent is the statutory

SUBMITTED - 21482243 - Carol Chatman - 2/15/2023 11:40 AM

language, given its plain and ordinary meaning. [Citation.] The words and phrases in a statute should be construed in light of other relevant provisions and not in isolation. [Citation.]" *Bradford*, 2016 IL 118674, ¶ 15. "We construe statutes as a whole, so that no part is rendered meaningless or superfluous." (Internal quotation marks omitted.) *People v. Diggins*, 235 Ill. 2d 48, 54, 919 N.E.2d 327, 331 (2009). In construing statutory language, we may consider "the reason for the law, the problems sought to be remedied, the purposes to be achieved, and the consequences of construing the statute one way or another." *People v. Gutman*, 2011 IL 110338, ¶ 12, 959 N.E.2d 621. "Where the language is plain and unambiguous, it must be applied without resort to further aids of statutory construction. [Citation.] Where the language is ambiguous, however, we may consider external sources, such as legislative history, in order to discern the intent of the legislature. [Citation.]" *Bradford*, 2016 IL 118674, ¶ 15. "The language of a statute is ambiguous if it is susceptible to more than one reasonable interpretation." *People v. Boyce*, 2015 IL 117108, ¶ 22, 27 N.E.3d 77.

¶ 19 Here, we find section 635/1 is not ambiguous. Considering the statute in its entirety, defendant's interpretation is unreasonable because it would render superfluous subsection 635/1(b), which provides an exception to the crime specified in subsection 635/1(a). See *People v. Fiumetto*, 2018 IL App (2d) 170230, ¶ 16, 109 N.E.3d 756. If, as defendant suggests, subsection 635/1(a) were only meant to prohibit possession of hypodermic syringes and needles that are adapted for the subcutaneous injection of controlled substances or cannabis, there would be no need for the exception contained in subsection 635/1(b), which authorizes possession of unaltered and unmodified hypodermic syringes and needles. Defendant's interpretation of subsection 635/1(a) would render the rest of the statute unnecessary. Instead, we interpret the statute to mean that, unless an exception exists, possession of hypodermic syringes and hypodermic needles is prohibited. We note this interpretation comports with case law and with the jury instruction applicable to section 635/1. See, *e.g.*, *People v. Johnson*, 174 Ill. App. 3d 726, 731, 528 N.E.2d 1356, 1360 (1988) ("In order to sustain a conviction for unlawful possession of a hypodermic syringe ***, the State must prove beyond a reasonable doubt that the defendant had knowledge of the presence of the syringe and was in immediate and exclusive control of it."); *People v. Hairston*, 86 Ill. App. 3d 295, 300, 408 N.E.2d 382, 386 (1980) ("[The defendant's] possession of the syringe alone presented a *prima facie* case of a violation of the statute making unlawful possession of a hypodermic syringe a crime."); Illinois Pattern Jury Instruction, Criminal, No. 17.37 (approved December 8, 2011) (stating a person commits the offense where he "knowingly has in his possession *[(a hypodermic syringe) (a hypodermic needle) (any instrument adapted for the use of a controlled substance or cannabis by subcutaneous injection)]*").

***4** ¶ 20 Even assuming, *arguendo*, that subsection 635/1(a) is ambiguous, as defendant suggests, we would still reject his interpretation. Defendant's construal of subsection 635/1(a) is based on a canon of construction utilized by the United States Supreme Court in *Paroline v. U.S.*, 572 U.S. 434 (2014). In that case, the Supreme Court, construing a different statute, wrote: "[w]hen several words are followed by a clause which is applicable as much to the first and other words as to the last, the natural construction of the language demands that the clause be read as applicable to all." (Internal quotation marks omitted.) *Id.* at 447. We do not believe this canon of construction is applicable to subsection 635/1(a) because the clause "adapted for the use of controlled substances or cannabis by subcutaneous injection" is not as applicable to the terms "hypodermic syringe" and "hypodermic needle" as it is to the word "instrument." As the State notes, hypodermic syringes and hypodermic needles are inherently adapted for the purpose of subcutaneously injecting substances into the body. A "hypodermic syringe" is defined as "a small syringe used with a hollow needle for injection of material into or beneath the skin" (Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/hypodermic% 20syringe (last visited Dec. 23, 2020)) and a "hypodermic needle" is defined as "a hypodermic syringe complete with needle" (Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/hypodermic% 20needle (last visited Dec. 23, 2020)). Thus, unlike the nondescript "instrument," the terms hypodermic syringe and hypodermic needle do not require the same descriptive qualifier to identify them as objects that are adapted to subcutaneously inject substances into the body. Applying the description "adapted for the use of controlled substances or cannabis by subcutaneous injection" to "hypodermic syringe" and "hypodermic needle" would therefore be redundant.

¶ 21 We agree with the State that, even if section 635/1 is ambiguous, applying the last antecedent rule provides the most reasonable interpretation of the statute. The last antecedent doctrine "provides that relative or qualifying words or phrases in a statute serve only to modify words or phrases which are immediately preceding. They do not

SUBMITTED - 21482243 - Carol Chatman - 2/15/2023 11:40 AM

modify those which are more remote." *People v. Davis*, 199 Ill. 2d 130, 138, 766 N.E.2d 641, 645 (2002). Applying the last antecedent rule here, the clause "adapted for the use of controlled substances or cannabis by subcutaneous injection" modifies only the word "instrument." As noted above, this interpretation resolves the conflict between subsections 635/1(a) and 635/1(b) that would result if, as defendant suggests, the clause modified "hypodermic syringe," "hypodermic needle," and "instrument."

¶ 22 We now turn to defendant's argument that the evidence was insufficient to establish the essential elements of unlawful possession of a hypodermic syringe. As stated above, section 635/1 requires that, to sustain a conviction, the State was only required to prove defendant possessed a hypodermic syringe. Under our case law, the State was also required to prove defendant possessed the hypodermic syringe knowingly. See *Johnson*, 174 Ill. App. 3d at 731. The State's evidence was sufficient to meet its burden. Viewed in the light most favorable to the prosecution, the evidence presented at trial showed defendant knowingly possessed the hypodermic syringes until he saw Major Davis approaching him at which time he disposed of the syringes next to a church. Thus, the evidence was sufficient to sustain defendant's conviction.

¶ 23 B. The Evidence Was Insufficient to Convict Defendant for Obstructing Justice

¶ 24 Defendant also argues his conviction for obstructing justice should be reversed because the State failed to establish a necessary element of the offense. Specifically, defendant claims his conviction should be reversed because "the State failed to present any evidence that [he] concealed evidence in a manner that materially impeded his prosecution." In support of his claim, defendant relies on *People v. Comage*, 241 Ill. 2d 139, 946 N.E.2d 313 (2011).

¶ 25 The offense of obstructing justice through concealment is set forth in section 31-4(a)(1) of the Criminal Code of 2012 (720 ILCS 5/31-4(a)(1) (West 2016)), which states as follows:

> "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 ***."

¶ 26 In *Comage*, our supreme court considered "whether certain physical evidence was 'concealed' within the meaning of Illinois' obstructing justice statute." *Comage*, 241 Ill. 2d at 140. In that case, police officers investigating a theft at a gas station encountered the defendant, who matched the description they had been given of the suspect. *Id.* at 142. Before the officers could question the defendant, he ran away from them and into a nearby parking lot. *Id.* When the officers ordered the defendant to stop, he did so and identified himself. *Id.* After initially cooperating with the police, the defendant again ran from the officers, who pursued him. *Id.* During the chase, the officers observed the defendant "reach into his pocket, pull out two rod-like objects that were five to six inches in length, and throw them over a six-foot-tall, wooden privacy fence" that abutted the parking lot. *Id.* The officers had a clear view of the defendant throwing the objects because the area was "well-lit with artificial lighting." (Internal quotation marks omitted.) *Id.* After the police secured the defendant, one of the officers walked around the other side of the fence and, within 20 seconds of searching, recovered a crack cocaine pipe and a push rod which were within 10 feet of where the defendant was apprehended. *Id.* at 142-43.

***5** ¶ 27 The defendant in *Comage* argued "the State failed to prove him guilty beyond a reasonable doubt of obstructing justice because he never concealed the crack pipe and push rod." *Id.* at 143. In its review of the obstructing justice statute, our supreme court noted, "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." (Emphasis in original and internal quotation marks omitted.) *Id.* at 149. The court then reasoned, "a defendant who places evidence out of sight during an arrest or pursuit has 'concealed' the evidence for purposes of the obstructing justice statute if, in doing so, the defendant actually interferes with the administration of justice, *i.e.*, materially impedes the police officers' investigation." *Id.* at 150. Ultimately, the court found, although the items defendant had thrown over the fence were "briefly out of the officers' sight," he did not materially impede the officers' investigation and, accordingly, did not conceal the items within the meaning of the statute. *Id.*

¶ 28 The supreme court recently reaffirmed its decision in *Comage*. In *People v. Casler*, 2020 IL 125117, ¶ 41, the supreme court extended the reasoning employed in *Comage*

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and held, regardless of whether a defendant is charged with obstruction of justice by concealing evidence or by providing false information, "a defendant's acts must be a material impediment and must be proved in a prosecution for obstructing justice." In *Casler*, the court cited with approval *People v. Taylor*, 2012 IL App (2d) 110222, 972 N.E.2d 753, which, although somewhat different from the present case, we find instructive.

¶ 29 In *Taylor*, a police officer testified he was on patrol when he observed the defendant, whom he recognized from previous interactions. *Id.* ¶ 3. The officer knew the defendant was wanted on a warrant. *Id.* After confirming the defendant's warrant was still active, the officer approached the defendant and asked him for identification because, although the officer was "pretty sure" of the defendant's identity, he was not positive. (Internal quotation marks omitted.) *Id.* ¶¶ 3-4. The defendant identified himself as "Keenan T. Smith." *Id.* ¶ 4. The officer ran this name through his computer system, which did not show that any such person existed. *Id.* The officer returned to the defendant who finally divulged his real name. *Id.* The officer arrested the defendant and then confirmed the defendant's identity by looking at the identification card he was carrying. *Id.*

¶ 30 On appeal, the defendant in *Taylor* argued "the evidence was insufficient to support his conviction for obstruction of justice, because the evidence showed that his conduct of initially giving [the officer] a false name did not materially impede the investigation." *Id.* ¶ 8. The reviewing court noted "the relevant issue in weighing a sufficiency-of-the-evidence challenge to a conviction for obstruction of justice is whether the defendant's conduct actually posed a material impediment to the administration of justice." *Id.* ¶ 17. The court found the defendant did not materially impede the officer's investigation by providing a false name because the entire encounter lasted only a few minutes and the defendant's actions did not significantly delay his arrest or pose a substantial risk that the officer would "mistakenly allow" the defendant to go free. *Id.* ¶¶ 17-18. The court ultimately reversed the defendant's conviction. *Id.* ¶ 19.

¶ 31 Based on the above authority, we find the State did not prove defendant here guilty of obstructing justice because it failed to establish his conduct materially impeded the police officers' investigation. Viewed in the light most favorable to the prosecution, the State's evidence established that, after defendant observed Major Davis approaching in his squad car, he hid two hypodermic syringes and a spoon outside of a church. Once police officers stopped defendant and began questioning him, he initially denied knowledge of the overdose incident and denied that he disposed of any contraband. The police searched defendant's person and did not discover any incriminating evidence. At trial, neither party asked the officers how long they questioned defendant before he confessed that he hid the items and revealed their location. However, even considering the evidence in the light most favorable to the State, it is doubtful it was more than a few minutes. We note that, as in *Taylor*, the entire exchange between defendant and the officers lasted only a short time and his actions did not significantly delay or otherwise hinder the police officers' investigation.

***6** ¶ 32 Accordingly, because no evidence was introduced that defendant's actions materially impeded the police officers' investigation, the State failed to establish an essential element of the offense of obstructing justice beyond a reasonable doubt and defendant's conviction must therefore be reversed.

¶ 33 Because the State's evidence was insufficient to sustain defendant's conviction for obstructing justice, we find defendant would be subject to double jeopardy if he were retried. For this reason, retrial of defendant is barred. See *People v. Williams*, 239 Ill. 2d 119, 133, 940 N.E.2d 50, 59 (2010) ("When a conviction is reversed based on evidentiary insufficiency, the double jeopardy clause precludes the State from retrying the defendant, and the only proper remedy is a judgment of acquittal."). Further, because the trial court issued an aggregate sentence for all three convictions, and we now reverse defendant's conviction for obstructing justice, remand for resentencing on the remaining two convictions is necessary. See, *e.g.*, *People v. Allen*, 288 Ill. App. 3d 502, 509, 680 N.E.2d 795, 801 (1997).

¶ 34 III. CONCLUSION

¶ 35 For the reasons stated, we affirm defendant's conviction for unlawful possession of a hypodermic syringe, reverse his conviction for obstructing justice, and remand his case for resentencing on his remaining convictions.

¶ 36 Affirmed in part, reversed in part, and remanded with directions.

Presiding Justice Knecht concurred in the judgment.

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Justice DeArmond specially concurred.

¶ 37 JUSTICE DeARMOND, specially concurring:
¶ 38 I reluctantly agree with both the disposition and the reasoning of the majority, considering our supreme court's holding in *Comage* and subsequent cases. As a matter of *stare decisis*, I accept the majority's application of *Comage* and *Taylor*, endorsed by the supreme court in *Casler*, because the majority is merely applying the law. Indeed, the majority correctly notes the *Comage* decision controls the issue of whether defendant can be found guilty of obstructing justice.

¶ 39 Like *Comage*, this case turns on whether the defendant "concealed" contraband. But the *Comage* decision's conclusion that a defendant's acts must be a material impediment to the administration of justice added an element absent from the statute. In *Comage*, finding the word "conceal" ambiguous and in need of judicial construction, the supreme court turned to dictionary definitions and case law (mostly from other jurisdictions) for a definition. *Comage*, 241 Ill. 2d at 144-48.

¶ 40 The fact patterns of almost all the cases upon which *Comage* relied are similar: police officers *observing* a defendant tossing drugs and finding the drugs in the location where a defendant was observed tossing them. As an example, in seeking to define "conceal," the court in *Comage* closely examined the Second District case, *In re M.F.*, 315 Ill. App. 3d 641, 647-50, 734 N.E.2d 171, 176-78 (2000), which, in turn, relied on out-of-state cases (*Vigue v. State*, 987 P.2d 204 (Alaska App. 1999); *Commonwealth v. Delgado*, 544 Pa. 591, 679 A.2d 223 (1996); *State v. Patton*, 898 S.W.2d 732 (Tenn. Crim. App. 1994); *Hollingsworth v. State*, 15 S.W.3d 586 (Tex. Ct. App. 2000); *Boice v. State*, 560 So.2d 1383 (Fla. App. 1990)). After analyzing these out-of-state cases and others, the *M.F.* court found the following common denominator:

> ***7** "It appears that, under the scenarios presented, the clear weight of authority from other states concludes that where a defendant merely drops, throws down, or abandons drugs in the vicinity of the defendant *and* in the presence and view of the police, this conduct does not constitute concealment that will support an evidence-tampering or obstruction charge, or a conviction that is additional to and separate from the ongoing possessory offense." (Emphasis added) *M.F.*, 315 Ill. App. 3d at 650.

¶ 41 Besides refusing to find "concealment" when drugs are abandoned in the vicinity of defendant and in view of the police, the Second District cautioned against applying "concealment" to possessory offenses where the concealed items are hidden on defendant's person (see *State v. Fuqua*, 303 N.J. Super. 40, 46, 696 A.2d 44, 47 (1997) (cocaine hidden in defendant's sock was not concealment)), reasoning that all illegal substances would be required to be carried in plain sight to avoid a sometimes more severe crime similar to obstructing justice. *M.F.*, 315 Ill. App. 3d at 649. The Second District's conclusion seems to ignore the fact that obstructing justice has a *mens rea* requirement, separate and distinct from merely having contraband in your pocket. Carrying an object is not necessarily concealing it to avoid apprehension or to thwart law enforcement.

¶ 42 Despite flaws in *M.F.*'s reasoning and its self-imposed limitation to its particular facts, the *Comage* court relied upon *M.F.* in concluding section 31-4, the obstructing justice statute (720 ILCS 5/31-4(a) (West 2006)), requires proof the defendant's actions of separating himself from the contraband "*actually* interferes with the administration of justice." (Emphasis in original.) *Comage*, 241 Ill. 2d at 149. In broadening this conclusion, *Comage* also looked at *People v. Brake*, 336 Ill. App. 3d 464, 783 N.E.2d 1084 (2003) (where obstructing justice was found when the defendant swallowed a bag of drugs despite the officer's attempt to stop him) and surmised that what compelled the decision in *Brake* and in similar "concealment" cases was not that the drugs were out of sight of the police officer, but that the "defendant had, in fact, materially impeded the officer's investigation." *Comage*, 241 Ill. 2d at 149. The *Comage* court ultimately held:

> "we have no disagreement with the proposition that a defendant who places evidence out of sight during an arrest or pursuit has 'concealed' the evidence for purposes of the obstructing justice statute if, in doing so, the defendant actually interferes with the administration of justice, *i.e.*, materially impedes the police officers' investigation." *Comage*, 241 Ill. 2d at 150.

¶ 43 The problem with *Comage*, though, is the new material-impediment element depends less on the defendant's conduct or intent and more on law enforcement's vision. In other words, whether a defendant's actions "materially impede" an arrest or investigation is based less on the actions or intent of a defendant, than on the experience, inexperience, or fortuitous circumstances of the investigating officer. As Justice Thomas aptly noted in his dissent in *Comage*:

SUBMITTED - 21482243 - Carol Chatman - 2/15/2023 11:40 AM

> "Looking at whether the evidence was actually recovered —or at how easily it was recovered—improperly shifts the statutory inquiry away from its rightful focus on defendant's actions at the time of the crime onto how quickly and competently police reacted to defendant's actions after the concealment had been completed." *Comage*, 241 Ill. 2d at 158-159 (Thomas, J., dissenting).

***8** ¶ 44 Before moving on, I must point out here that at least the *Comage* court continued to connect the act of concealment with "an arrest or pursuit"—something we do not have here. In our case, defendant was not confronted by police until *after* he left the scene and *after* he concealed, unobserved by police, the drugs. Had he not admitted hiding them and where they were located, they may have never been discovered. From all appearances, that constitutes an act of concealment with a clear intent to materially impede his prosecution.

¶ 45 Given the legislature's failure to address the judicial changes to the obstructing justice statute, our supreme court eventually doubled down on their interpretation in *Casler*, 2020 IL 125117, ¶ 41 ("Construed together, *Comage* and *Baskerville* firmly establish that a defendant's acts must be a material impediment and must be proved in a prosecution for obstructing justice."). In *Casler*, and earlier in *People v. Baskerville*, 2012 IL 111056, ¶ 39, 963 N.E.2d 898, the supreme court again found "material impediment" to be intended within the definition of not only obstructing justice but also obstructing a peace officer (720 ILCS 5/31-1(a) (West 2006)), as it applied to the furnishing of false information. The court explained its holding in the earlier cases was not intended to be limited to the concealment clause found in section 31-4(a)(1). Justice Karmeier's dissent in *Casler* accurately noted the distinction I believe exists in this present case when he identified what he considered the narrow holding of *Comage*. He discussed how the majority adopted the defendant's view that " 'because both the existence and location of the evidence were fully known to the officers[,] the evidence was not concealed' " when it concluded the defendant had not "concealed" the contraband in question. *Casler*, 2020 IL 125117, ¶ 93 (Karmeier, J., dissenting) (quoting *Comage*, 241 Ill. 2d at 144-45). As a result, the court's additional language adding the element of "material impediment" was, in his view, "merely *dicta*, entirely unnecessary after the determination that there was no concealment." *Casler*, 2020 IL 125117, ¶ 93 (Karmeier, J., dissenting). Though I agree completely with Justice Karmeier, I can acknowledge this view is entrenched as the minority viewpoint going forward.

¶ 46 The cases relied on by *Comage* and by *M.F.*, where the State could not prove the element of concealment, consist of police observing the defendant tossing an item and then retrieving it shortly thereafter. This amounts to mere abandonment, not concealment. That is not what happened here.

¶ 47 Here, defendant successfully completed the act of concealment before being confronted by the police. It was only after his admission that they were drawn to the location of the contraband. Surely, we are not to the point where, as long as a defendant readily admits his commission of the offense, he can no longer be prosecuted for it, since his admission resulted in his speedy apprehension and no "material impediment" to the investigation. What happened to the *mens rea* for obstruction by concealment, and was not the *actus reus* complete when he hid the drugs before being confronted by the police?

¶ 48 Though these facts differ from the *Comage* cases, the broad rule still applies. Indeed, what began as an effort to define "conceal" under the plain meaning of the statute has morphed into the "judicial grafting" Justice Karmeier referenced in his *Casler* dissent—adding an extra element of "materially impeding" to the offense of obstruction of justice which the state must now prove, although it exists nowhere in the statute. *Casler*, 2020 IL 125117, ¶ 91 (Karmeier, J., dissenting).

***9** ¶ 49 Because the legislature has not seen fit to address this issue since *Comage*, under the principle of legislative acquiescence, we must follow the law as it now stands. For these reasons, I specially concur.

All Citations

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2020 IL App (3d) 170362-U

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

Appellate Court of Illinois, Third District.

The PEOPLE of the State of Illinois, Plaintiff-Appellee,

v.

Ashley J. OSTROWSKI, Defendant-Appellant.

Appeal No. 3-17-0362

Order filed May 20, 2020

Appeal from the Circuit Court of the 14th Judicial Circuit, Henry County, Illinois, Circuit No. 15-CF-275, Honorable Jeffrey W. O'Connor, Judge, Presiding.

ORDER

PRESIDING JUSTICE LYTTON delivered the judgment of the court.

***1** ¶ 1 *Held*: The evidence was sufficient to prove defendant's guilt beyond a reasonable doubt.

¶ 2 Defendant, Ashley J. Ostrowski, appeals her conviction and sentence. She contends the evidence was insufficient to prove that she committed the offense of obstructing justice beyond a reasonable doubt. We affirm.

¶ 3 I. BACKGROUND

¶ 4 The State charged defendant with obstructing justice (720 ILCS 5/31-4(a)(1) (West 2014)). The charge alleged that defendant committed the offense in that she knowingly furnished false information to a police officer with the intent to prevent the apprehension of Hector Fontanez. The cause proceeded to a bench trial.

¶ 5 Patrol Sergeant Nicholas Welgat testified that he was dispatched to the scene of a trespass complaint. The complainant was the ex-girlfriend of Fontanez. She called the police because Fontanez failed to leave the residence. When Welgat arrived Fontanez was no longer at the residence. The complainant informed Welgat that Fontanez had left in a black Ford Taurus belonging to defendant. Welgat relayed the information to Officer Eric Peed. Welgat instructed Peed to go to defendant's residence to locate the vehicle.

¶ 6 Welgat later joined Peed at defendant's trailer. Welgat sat in his vehicle while he watched Peed speak with defendant in front of the trailer. Peed relayed to Welgat that defendant had told him that Fontanez had left the trailer already. Peed began to leave, but Welgat "advised him to go back to the residence as [he] believed [Fontanez] was, in fact, hiding inside the trailer." According to Welgat, after he gave the instruction to Peed, "[b]asically, we pulled right back in, and as we pulled up and walked up to the residence, Mr. Fontanez then walked out of the door."

¶ 7 Peed testified that he received the dispatch to attempt to locate Fontanez as a suspect in a criminal trespass complaint. While driving on 6th Street in Kewanee, Peed saw Fontanez driving a Ford Taurus in the opposite direction. Peed turned his vehicle around and attempted to locate the Taurus. Peed went to defendant's trailer, but the Taurus was not there. He remained in the area for several minutes, and eventually observed the Taurus in defendant's driveway. Peed knocked on the door of defendant's trailer. Defendant came out and met Peed on the porch. Peed told defendant that he wanted Fontanez to exit the trailer. Defendant told Peed that Fontanez had already left and that he was on his way to another friend's residence.

¶ 8 Next, Peed left defendant and advised Welgat that defendant told her that Fontanez was not in the trailer. Welgat told Peed to go back to defendant's trailer with him. When Peed and Welgat approached the trailer, defendant and Fontanez came outside and were both placed under arrest.

¶ 9 Defendant was interviewed at the police station by Welgat. During the interview, defendant stated she was in the vehicle with Fontanez when he drove to his ex-girlfriend's house. She stayed in the vehicle while he went inside. When he returned, Fontanez indicated to defendant that he had an argument with his ex-girlfriend. Welgat then asked defendant when they realized the police were looking for Fontanez. Defendant answered saying they had seen an officer while driving before returning to her trailer. She agreed with Welgat that both she and Fontanez had just entered her trailer when Peed arrived. Defendant also agreed that Fontanez did not want to come out initially. When defendant was asked about after Peed left,

SUBMITTED - 21482243 - Carol Chatman - 2/15/2023 11:40 AM

defendant responded, "I told [Fontanez] he had need to go talk to the police cause I kept asking him 'like what the hell did you do?' " When Welgat confronted defendant with lying to Peed, defendant responded, "When you guys came back though, I went in, straight into the house and told [Fontanez] he needed to call the police." Fontanez was also interviewed and when asked by Welgat why he did not exit the trailer initially he said "I just, you know, I don't want to go to jail" When Welgat then asked why Fontanez decided to come out when officers reapproached, Fontanez replied, "I don't know I was just scared, I guess."

¶ 10 II. ANALYSIS

***2** ¶ 11 On appeal, defendant argues that the evidence was insufficient to prove her guilty beyond a reasonable doubt of obstructing justice. Specifically, defendant contends that the State failed to prove that she knew that Fontanez was being investigated for a crime or that her false statement impeded the investigation. When viewing the evidence in the light most favorable to the prosecution, we find a rational trier of fact could have found defendant guilty of obstructing justice.

¶ 12 We note that under a challenge to the sufficiency of the evidence, " 'the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " (Emphasis in original.) *People v. Collins*, 106 Ill. 2d 237, 261 (1985) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). "When presented with a challenge to the sufficiency of the evidence, it is not the function of this court to retry the defendant." *Id.* Thus, "the reviewing court must allow all reasonable inferences from the record in favor of the prosecution." *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). "A conviction will be reversed only where the evidence is so unreasonable, improbable, or unsatisfactory that it justifies a reasonable doubt of the defendant's guilt." *People v. Belknap*, 2014 IL 117094, ¶ 67.

¶ 13 As charged in this case, a person obstructs justice when he or she knowingly furnishes false information "with the intent to prevent the apprehension or obstruct the prosecution or defense of any person." 720 ILCS 5/31-4(a)(1) (West 2014). Here, the information alleged defendant committed the offense in that she, with the intent to prevent the apprehension of Fontanez, knowingly furnished false information to the officers. Defendant asserts first that she did not have the required intent because the officers did not inform her they were investigating Fontanez. Second, defendant contends that even if this court finds that she did intend to prevent the apprehension of Fontanez, her lie as to his whereabouts did not materially impede the investigation.

¶ 14 In addressing defendant's first argument, that defendant lacked intent to commit the offense of obstructing justice, courts have found that "[i]ntent can rarely be proved by direct evidence because it is a state of mind." *People v. Witherspoon*, 379 Ill. App. 3d 298, 307 (2008). "Instead, intent may be inferred from surrounding circumstances and thus may be proved by circumstantial evidence." *Id.* "[I]nferences as to the defendant's mental state are particularly within the province of the jury" or, in this case, the trier of fact. *People v. Rodriguez*, 2014 IL App (2d) 130148, ¶ 56. Here, defendant argues that Peed never informed her of an investigation into Fontanez. Defendant reasons that because she was not aware of an investigation, she could not obstruct it.

¶ 15 The record reveals several facts that could lead a rational trier of fact to believe defendant was aware of the investigation into Fontanez. In light of her imputed knowledge, a rational trier of fact could conclude that defendant's actions were intended to prevent the apprehension of Fontanez and obstruct the investigation. See *Witherspoon*, 379 Ill. App. 3d at 307. In her interview, defendant admits that she was with Fontanez when he drove to his ex-girlfriend's house. When Fontanez returned to the vehicle, he told defendant that he had argued with his ex-girlfriend. After that, defendant indicated that she knew police were looking for Fontanez prior to returning to her trailer. Specifically, defendant referenced noticing an officer while driving back to her trailer. Moreover, immediately after lying to Peed that Fontanez was not at the trailer, defendant went directly to Fontanez and told him he needed to talk to the police and asked: " 'what the hell did you do?' " Given these facts, we find that a rational trier of fact could conclude that the State presented evidence that defendant knew the police were investigating Fontanez and lied about his whereabouts to impede the officers' investigation. See *id.*

***3** ¶ 16 Turning to defendant's second argument, she asserts that even if we find that she did possess the intent to prevent the apprehension of Fontanez, her lie did not materially impede the investigation. Defendant points out that there was only a momentary delay in finding Fontanez. Relying on this fact, defendant asserts that she did not "materially impede" the investigation.

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¶ 17 We have already held a rational trier of fact could conclude defendant knew officers were searching for Fontanez when she lied to the police about his whereabouts. When officers initially approached defendant's trailer, the purpose of the investigation at that point was to find Fontanez. Defendant told Peed he was at a friend's residence and Peed stepped away from the trailer to confer with Welgat. They discussed going to the other residence mentioned by defendant before deciding to reapproach defendant's trailer. Only then did defendant and Fontanez exit the trailer. The brief conversation between Peed and Welgat resulting in only a "momentary delay" of locating Fontanez does not negate the act of defendant. The very nature of lying about Fontanez's whereabouts created a high risk that the investigation would be compromised. See *People v. Davis*, 409 Ill. App. 3d at 462. We could speculate as to what would or could have happened if officers decided not to reapproach, but it does not matter. What defendant knew at the time she lied to police is sufficient to find her guilty beyond a reasonable doubt of obstructing justice. The "momentary delay" is not a factor because the crime occurred at the moment defendant lied. Defendant's lie did impede the investigation. She prevented the immediate apprehension of Fontanez.

¶ 18 In coming to this conclusion, we reject defendant's reliance on *People v. Comage*, 241 Ill. 2d 139 (2011), where our supreme court specifically dealt with defining the term "conceal" as it relates to tangible evidence and the obstructing justice statute. *Comage* concerns tangible evidence that cannot get up and walk away on its own. *Id.* Here, we have officers actively looking for a person whose whereabouts are unknown. The police were searching for Fontanez when defendant lied about his whereabouts. These facts are not comparable to a defendant emptying his pockets while fleeing police where police see this and later recover evidence of drugs or paraphernalia. *Id.* at 141-43.

¶ 19 III. CONCLUSION

¶ 20 The judgment of the circuit court of Henry County is affirmed.

¶ 21 Affirmed.

Justice Schmidt concurred in the judgment.

Justice McDade dissented.

¶ 22 JUSTICE McDADE, dissenting:

¶ 23 I respectfully dissent. Viewing the evidence in the light most favorable to the State, I cannot find it proved, beyond a reasonable doubt, that the defendant committed the offense of obstructing justice.

¶ 24 As charged in this case, a person obstructs justice when she knowingly furnishes false information "with the intent to prevent the apprehension or obstruct the prosecution or defense of any person." 720 ILCS 5/31-4(a)(1) (West 2014). In *People v. Comage*, 241 Ill. 2d 139, 149 (2011), our supreme court stated:

> "The subject addressed by section 31-4 is 'obstructing justice.' Obstruction of justice is an attempt to interfere with the administration of the courts, the judicial system, or law enforcement agencies. 'The phrase "obstructing justice" as used in connection with offenses arising out of such conduct means impeding or obstructing those who seek justice in a court or those who have duties or powers of administering justice in courts.' 67 C.J.S. Obstructing Justice § 1, at 67 (2002). 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.' " (Emphasis in original.)

***4** ¶ 25 The majority's analysis conveniently ignores the above quote's emphasized word: *actually*. While I do not condone defendant's behavior of lying to the police, her false statement did not "*actually* interfere[ ] with the administration of justice." *Comage*, 241 Ill. 2d at 149. Instead, it merely delayed Peed momentarily from finding Fontanez. Peed observed Fontanez driving the black Ford Taurus and ultimately found the vehicle parked outside defendant's trailer. Peed therefore likely believed that Fontanez would be found inside defendant's trailer. Despite her initial falsehood to Peed, Welgat also still believed that Fontanez was inside the trailer. When Peed informed Welgat of defendant's false statement, Welgat's immediate response was to instruct Peed to return to the trailer. When Welgat and Peed arrived at the trailer Fontanez was waiting outside. Unlike the majority, I would conclude that the exceedingly brief delay caused by defendant's false statement is insufficient to establish that defendant *actually* interfered with the investigation. *Comage*, 241 Ill. 2d at 149, see also *People v. Taylor*, 2012 IL App (2d)

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110222, ¶ 19 (holding that a false statement did not materially impede the administration of justice). I would therefore reverse defendant's conviction and vacate her sentence for obstructing justice.

All Citations

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2021 IL App (3d) 170362-B

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

Appellate Court of Illinois, Third District.

The PEOPLE of the State of Illinois, Plaintiff-Appellee,

v.

Ashley J. OSTROWSKI, Defendant-Appellant.

Appeal No. 3-17-0362

Order filed March 11, 2021

Appeal from the Circuit Court of the 14th Judicial Circuit, Henry County, Illinois, Circuit No. 15-CF-275, Honorable Jeffrey W. O'Connor, Judge, Presiding.

ORDER

JUSTICE LYTTON delivered the judgment of the court.

***1** ¶ 1 *Held*: The evidence was insufficient to prove defendant's guilt beyond a reasonable doubt.

¶ 2 The circuit court of Henry County found defendant, Ashley J. Ostrowski, guilty of obstructing justice. On appeal, defendant contends the evidence was insufficient to prove beyond a reasonable doubt that she committed the offense. A divided panel of this court initially found that the evidence was sufficient to prove defendant's guilt beyond a reasonable doubt. *People v. Ostrowski*, 2020 IL App (3d) 170362-U, ¶¶ 15-18. Defendant filed a petition for leave to appeal to the Illinois Supreme Court. Our supreme court denied defendant leave but entered a supervisory order directing us to vacate our judgment and consider the effect of the court's opinion in *People v. Casler*, 2020 IL 125117. *People v. Ostrowski*, No. 126207 (Ill. Jan. 27, 2021) (supervisory order). After reconsidering the matter, we conclude that the evidence was insufficient to prove defendant's guilt of obstructing justice beyond a reasonable doubt.

¶ 3 I. BACKGROUND

¶ 4 The State charged defendant with obstructing justice (720 ILCS 5/31-4(a)(1) (West 2014)). The charge alleged that defendant knowingly furnished false information to a police officer with the intent to prevent the apprehension of Hector Fontanez. The cause proceeded to a bench trial.

¶ 5 Patrol Sergeant Nicholas Welgat testified that he was dispatched to the scene of a trespass complaint. The complainant was the ex-girlfriend of Fontanez. She called the police because Fontanez failed to leave the residence. When Welgat arrived Fontanez was no longer at the residence. The complainant informed Welgat that Fontanez had left in a black Ford Taurus belonging to defendant. Welgat relayed the information to Officer Eric Peed. Welgat instructed Peed to go to defendant's residence to locate the vehicle.

¶ 6 Welgat later joined Peed at defendant's trailer. Welgat sat in his vehicle while he watched Peed speak with defendant in front of the trailer. Peed relayed to Welgat that defendant had told him that Fontanez had left the trailer already. Peed began to leave, but Welgat "advised him to go back to the residence as [he] believed [Fontanez] was, in fact, hiding inside the trailer." According to Welgat, after he gave the instruction to Peed, "[b]asically, we pulled right back in, and as we pulled up and walked up to the residence, Mr. Fontanez then walked out of the door."

¶ 7 Peed testified that he received the dispatch to attempt to locate Fontanez as a suspect in a criminal trespass complaint. While driving on 6th Street in Kewanee, Peed saw Fontanez driving a Ford Taurus in the opposite direction. Peed turned his vehicle around and attempted to locate the Taurus. Peed went to defendant's trailer, but the Taurus was not there. He remained in the area for several minutes, and eventually observed the Taurus in defendant's driveway. Peed knocked on the door of defendant's trailer. Defendant came out and met Peed on the porch. Peed told defendant that he wanted Fontanez to exit the trailer. Defendant told Peed that Fontanez had already left and that he was on his way to another friend's residence. When asked if he told defendant why he needed to speak with Fontanez, Peed said "I don't recall what I specifically told her."

***2** ¶ 8 Next, Peed left defendant and advised Welgat that defendant told her that Fontanez was not in the trailer. Welgat told Peed to go back to defendant's trailer with him. When Peed and Welgat approached the trailer, defendant and Fontanez came outside and were both placed under arrest.

SUBMITTED - 21482243 - Carol Chatman - 2/15/2023 11:40 AM

¶ 9 Defendant was interviewed at the police station by Welgat. During the interview, defendant stated she was in the vehicle with Fontanez when he drove to his ex-girlfriend's house. She stayed in the vehicle while he went inside. When he returned, Fontanez indicated to defendant that he had an argument with his ex-girlfriend. Welgat then asked defendant when they realized the police were looking for Fontanez. Defendant answered they had seen an officer while driving before returning to her trailer. She agreed with Welgat that both she and Fontanez had just entered her trailer when Peed arrived. Defendant also agreed that Fontanez did not want to come out initially. When Welgat asked defendant about the events that transpired after Peed left, defendant responded, "I told [Fontanez] he had need to go talk to the police cause I kept asking him 'like what the hell did you do?' " When Welgat confronted defendant with lying to Peed, defendant responded, "When you guys came back though, I went in, straight into the house and told [Fontanez] he needed to call the police."

¶ 10 Welgat also interviewed Fontanez. When Welgat asked why Fontanez did not exit the trailer when Peed initially approached, he said "I just, you know, I don't want to go to jail." When Welgat asked why Fontanez decided to come out when officers reapproached, Fontanez replied, "I don't know I was just scared, I guess."

¶ 11 Defendant and Fontanez testified for the defense. Defendant said that she and Fontanez were friends. Before Welgat and Peed arrived at her trailer, she and Fontanez drove to the home of Fontanez's former girlfriend. Defendant stayed in the vehicle while Fontanez entered his former girlfriend's home. When Fontanez returned, he indicated that he had gotten into a dispute with his former girlfriend. Defendant and Fontanez then returned to her trailer. When Peed arrived, defendant did not know where Fontanez was. Defendant told Peed that Fontanez went to Wally Garcia's house because "that's the only place [Fontanez] always went." Peed told defendant to tell Fontanez, if she saw him, that he needed to speak with him.

¶ 12 After Peed left, defendant went into her trailer, and Fontanez entered through the back door. Defendant told Fontanez that the police had been at the trailer. Defendant encouraged Fontanez to speak with the police, and when Peed and Welgat returned, Fontanez went outside to speak with them.

¶ 13 Fontanez testified that after he and defendant returned from his former girlfriend's house, he briefly went in and out of defendant's trailer. Fontanez then went to Garcia's house. Fontanez did not remember being at the trailer when Peed initially spoke with defendant.

¶ 14 The circuit court found defendant guilty of obstructing justice and sentenced her to 30 months' conditional discharge and 180 days in the county jail. Defendant appeals.

¶ 15 II. ANALYSIS

¶ 16 Defendant argues that the evidence was insufficient to prove her guilt beyond a reasonable doubt of obstructing justice. Specifically, the State failed to prove that she knew that Fontanez was being investigated for a crime or that her false statement impeded the investigation. We find the evidence insufficient to establish that defendant's false statement materially impeded the investigation.

***3** ¶ 17 In a challenge to the sufficiency of the evidence, " 'the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " (Emphasis in original.) *People v. Collins*, 106 Ill. 2d 237, 261 (1985) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). "When presented with a challenge to the sufficiency of the evidence, it is not the function of this court to retry the defendant." *Id.* Thus, "the reviewing court must allow all reasonable inferences from the record in favor of the prosecution." *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). "A conviction will be reversed only where the evidence is so unreasonable, improbable, or unsatisfactory that it justifies a reasonable doubt of the defendant's guilt." *People v. Belknap*, 2014 IL 117094, ¶ 67.

¶ 18 As charged in this case, a person obstructs justice when he or she knowingly furnishes false information "with the intent to prevent the apprehension or obstruct the prosecution or defense of any person." 720 ILCS 5/31-4(a)(1) (West 2014).

¶ 19 In *Casler*, 2020 IL 125117, ¶ 3, the State charged the defendant with, among other things, obstructing justice. The charge alleged that the defendant "knowingly, with the intent to prevent his arrest on warrants, provided false information to [the police] in that he said his name was Jakuta King Williams." *Id.* The trial evidence established

SUBMITTED - 21482243 - Carol Chatman - 2/15/2023 11:40 AM

that two police officers saw the defendant emerge from a hotel room, and then reenter the room and shut the door. The officers smelled the odor of burnt cannabis, knocked on the door, and another individual opened the door. The defendant was not in the living area of the hotel room, and one of the officers knocked on the closed bathroom door. An individual in the bathroom indicated that his name was "Jakuta King Williams." *Id.* ¶ 7. Dispatch was unable to locate an individual by that name. When the individual emerged from the bathroom, the officer recognized him as the defendant and remembered his name from a prior arrest. The officer asked the defendant if his name was Rasheed Casler. The defendant did not respond. The officer radioed the name Rasheed Casler to dispatch, and the dispatcher reported that that individual had an outstanding warrant. The officer placed the defendant under arrest. Subsequently, an officer found an Illinois identification card near the defendant's location with the name of Rasheed Casler on it.

¶ 20 The defendant testified that he was intoxicated when he opened the hotel room door, and he was trying to locate the bathroom. The defendant did not notice the officers in the hallway and found his way to the bathroom. When the officer knocked on the bathroom door, the defendant thought it was one his friends joking with him, so he said his name was "Jakuta King Williams." *Id.* ¶ 14. The defendant did not know the officers were outside the bathroom door, and he was not attempting to avoid being arrested by providing a false name. Defendant realized the officers were in the room when he was told to open the door.

¶ 21 A jury found the defendant guilty of obstructing justice. The appellate court affirmed the judgment of conviction finding that the defendant knowingly and with the intent to prevent his arrest on warrants, provided false information to the police. *People v. Casler*, 2019 IL App (5th) 160035, ¶¶ 23-25. The appellate court held the circumstantial evidence was sufficient to prove that the defendant intended to avoid apprehension and gave the officer a false name in an effort to do so. *Id.* ¶¶ 28-33. The court also held the State was not required to prove that the false name provided by the defendant materially impeded his arrest. *Id.* ¶ 49.

***4** ¶ 22 In the supreme court, the defendant argued his obstructing justice conviction required the State to prove beyond a reasonable doubt that the false information that he provided to the police materially impeded the administration of justice, and that the State did not prove that his conduct materially interfered with a police investigation. *Casler*, 2020 IL 125117, ¶ 20. After reviewing section 31-4(a) of the Criminal Code of 2012, the supreme court held, "in a prosecution for obstructing justice by furnishing false information, the State must prove that the false information materially impeded the administration of justice," and it reversed defendant's conviction. *Id.* ¶ 53.

¶ 23 Here, the information alleged defendant committed the offense of obstructing justice in that she, with the intent to prevent the apprehension of Fontanez, knowingly furnished false information to the officers. First, defendant argues that she did not have the required intent because the officers did not inform her that they were investigating Fontanez. Second, defendant contends that even if this court finds that she did intend to prevent the apprehension of Fontanez, her lie as to Fontanez's whereabouts did not materially impede the investigation.

¶ 24 For the sake of argument, we assume that a rational trier of fact could conclude that the State presented evidence that defendant knew the police were investigating Fontanez. However, we find that the State failed to prove that defendant's false statement materially impeded the officers' investigation. Peed observed Fontanez driving the black Ford Taurus and ultimately found the vehicle parked outside defendant's trailer. Then, Peed looked for Fontanez in defendant's trailer. Defendant's initial statement that she did not know where Fontanez was, but that he was likely at Garcia's house, caused Peed to momentarily leave defendant's trailer. Upon returning, Peed and Welgat observed Fontanez outside the trailer. From this evidence, we conclude that defendant's false statement did not materially impede the officers' investigation. See *id.* ¶ 40; see also *People v. Taylor*, 2012 IL App (2d) 110222, ¶ 19 (holding that a false statement did not materially impede the administration of justice).

¶ 25 In reaching this conclusion, we reject the State's argument that *People v. Davis*, 409 Ill. App. 3d 457 (2011) directs the outcome of this case. The State relies on *Davis* to argue that defendant completed the crime of obstructing justice when she lied to the officers. See *id.* at 462. However, in *Casler*, 2020 IL 125117, ¶ 53, the supreme court overruled *Davis*. Therefore, we conclude that the evidence was insufficient to prove that defendant materially impeded the officers' investigation and reverse her conviction for obstructing identification.

SUBMITTED - 21482243 - Carol Chatman - 2/15/2023 11:40 AM

¶ 26 III. CONCLUSION

¶ 27 The judgment of the circuit court of Henry County is reversed.

¶ 28 Reversed.

Presiding Justice McDade and Justice Schmidt concurred in the judgment.

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No. 127828

IN THE

SUPREME COURT OF ILLINOIS

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

NOTICE AND PROOF OF SERVICE

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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 15, 2023, 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 defendant-appellant in an envelope deposited in a U.S. mail box in Chicago, 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.

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