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June 2, 2017
Carla Bender
4th District Appellate Court, IL

2017 IL App (4th) 160461-U

NO. 4-16-0461

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. CASE B. KEGLEY, Defendant-Appellant.	)	Appeal from Circuit Court of McLean County No. 15CF801 Honorable John Casey Costigan, Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Holder White and Pope concurred in the judgment.

ORDER

¶ 1 *Held*: The evidence presented at trial was sufficient to convict defendant of obstruction of justice.

¶ 2 Following a February 2016 bench trial, the trial court found defendant, Case B. Kegley, guilty of obstruction of justice in violation of section 31-4 of the Criminal Code of 2012 (Criminal Code) (720 ILCS 5/31-4 (West 2014)).

¶ 3 Defendant *pro se* appeals, arguing that the State failed to prove him guilty beyond a reasonable doubt. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In June 2015, the State charged defendant with aggravated driving under the influence of alcohol (DUI) (625 ILCS 5/11-501(a), (d)(1)(H) (West 2014)) and obstructing justice (720 ILCS 5/31-4 (West 2014)).

¶ 6 At a February 2016 bench trial, Officer Ronald Stoll of the Normal police department testified that in June 2015, defendant, who possessed an Ohio driver's license, was driving northbound on south Main Street in Normal, Illinois. Stoll, who was on patrol at that time, observed defendant traveling at a "high rate of speed." During the traffic stop that followed, Stoll noticed that defendant smelled of alcohol and spoke in a slurred, mumbled manner. Stoll asked defendant how much alcohol he had consumed, and defendant responded that he had not consumed any alcohol. Stoll returned to his squad car and performed a check on defendant's license. The results revealed that the State of Ohio had suspended defendant's license. Stoll then called for assistance, and Officer Joseph Benner responded.

¶ 7 Stoll returned to defendant's vehicle and asked defendant to exit and submit to field sobriety testing. Defendant asked whether he was under arrest, and Stoll responded that he was not. Defendant then told Stoll he would not exit his vehicle if he was not under arrest. Stoll responded, "Fine. You're under arrest. Get out of the car." As defendant exited his vehicle, Stoll noticed that defendant was unsteady on his feet, and his movements were slightly uncoordinated. During the horizontal gaze nystagmus test that Stoll had defendant perform, Stoll noticed that defendant swayed and wobbled back and forth. Based on his observations, Stoll opined that defendant failed that test, indicating intoxication. Stoll then asked defendant to recite the alphabet, which defendant did correctly. When Stoll asked defendant to recite the alphabet again, defend-

ant refused. At that point, defendant stated that he would not submit to any further tests and reiterated that he had not been drinking.

¶ 8 Stoll placed defendant under arrest for DUI and for driving with a suspended license. Stoll transported defendant to the Normal police station, where defendant was held in a "DUI processing room" and read the warning to motorists. During this warning, defendant was informed that he would receive a minimum 12-month suspension of his driver’s license if he refused to provide a sample to be tested for blood-alcohol content. When asked, defendant refused to give a breath sample. Thereafter, Stoll obtained a search warrant authorizing him to take a sample of defendant's breath, blood, or urine.

¶ 9 Stoll told defendant that he had a warrant to take a sample from defendant and read a portion of the warrant to defendant. Stoll asked defendant to provide a sample, but defendant refused. Stoll responded that defendant would be arrested for obstructing justice if he refused to comply with the warrant. Defendant stated he wished to consult an attorney and continued to refuse to comply with the warrant. Defendant was then read his rights as required by *Miranda v. Arizona*, 384 U.S. 436 (1966), and he completed an “alcohol influence report” with Stoll. (An "alcohol influence report" involves the police questioning a driver about issues related to when the driver last ate, slept, and if the driver had ingested medication.) After completing the report, defendant persisted in his refusal and was given a copy of the warrant before he was transported to the McLean County jail.

¶ 10 Benner testified about his involvement during Stoll's encounter with defendant. Benner was not directly involved in the administration of the sobriety tests but testified that he observed defendant swaying during the administration of the horizontal gaze nystagmus test.

After defendant was arrested and placed in Stoll's squad car, Benner conducted a vehicle inventory and discovered two open beer cans inside a pair of boots behind the center console. One of the cans had a blue liquid on the top, which Benner stated smelled like mint. Benner also discovered a bottle of blue mouthwash in defendant's vehicle. After completing the inventory, Benner took the beer cans and the blue mouthwash, along with some of defendant's personal effects, to Stoll at the Normal police department. Benner then assisted Stoll with paperwork and remained with defendant while Stoll obtained the search warrant. During this time, defendant initially told Benner that his friend put the beer cans in his vehicle. Defendant later told Benner that he had consumed the beers earlier in the week. Benner noted that (1) defendant's mood fluctuated from angry to pleasant, which, according to his training, indicates alcohol intoxication; and (2) defendant was slurring his speech during this conversation.

¶ 11 During defendant's February 2016 bench trial, the trial court observed the dash camera videos of the traffic stop. The court questioned whether police were required to serve a defendant with a warrant prior to the request to "search" him. The State provided supplemental briefing on that issue after trial. In its briefing, the State argued that police were not legally obligated to provide a copy of the search warrant prior to the search, so long as a copy was provided to the individual following the search.

¶ 12 In a March 2016 written order, the trial court found defendant (1) not guilty of DUI and (2) guilty of obstructing justice. As to the obstruction conviction, the court noted that "defendant intended to prevent the apprehension and obstruct the prosecution of himself by knowingly concealing his breath, blood, or urine even after a valid search warrant had been issued." The court added that defendant was not prejudiced by receiving a copy of the search war-

rant after the police requested defendant's compliance. The court sentenced defendant to 18 months of conditional discharge and assessed a $500 fine, along with court costs.

¶ 13 This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 A. Standard of Review

¶ 16 Ordinarily, when a defendant challenges the sufficiency of the evidence presented at trial, the relevant inquiry is whether, "viewing the evidence in the light most favorable to the State, *** any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt." *People v. Warren*, 2016 IL App (4th) 120721-B, ¶ 62, 55 N.E.3d 117. However, we review *de novo* challenges to the sufficiency of the evidence when the facts are undisputed and the defendant's guilt is a question of law. *In re Ryan B.*, 212 Ill. 2d 226, 231, 817 N.E.2d 495, 497-98 (2004); *People v. Smith*, 191 Ill. 2d 408, 411, 732 N.E.2d 513, 514 (2000). Defendant does not contest the facts adduced at trial in relation to his conviction for obstructing justice but instead asserts his actions do not constitute obstruction of justice. Thus, *de novo* is the proper standard of review in this case.

¶ 17 B. Sufficiency of the Evidence

¶ 18 Obstruction of justice occurs when an individual, "with intent to prevent the apprehension or obstruct the prosecution or defense of any person, *** 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). The State's theory rested on the premise that because defendant refused to give a breath sample, he knowingly concealed physical evidence. The trial court concluded that defendant intended to prevent the apprehension of physical evi-

dence and obstruct his own prosecution by knowingly concealing his breath "even after a valid search warrant had been issued."

¶ 19 Defendant argues that the State's evidence was insufficient for the five following reasons: (1) the breath sample he refused to give was contents of his person and therefore not physical evidence; (2) concealment requires an affirmative act; (3) the search warrant ordered Stoll to take a sample but did not order defendant to provide a sample; (4) his actions did not materially impede the collection of the evidence sought; and (5) "the trial court's admitted struggle to come to a belief that he was convinced beyond a reasonable doubt that defendant had violated the statute." Defendant also takes issue with the fact that he did not receive a copy of the warrant immediately after Stoll returned with the warrant, arguing, "[h]ow can a Defendant be convicted of violating an order with which he was not served and was given no opportunity to obey once he was served?"

¶ 20 The State argues defendant forfeited the argument that he had no duty to comply with the search warrant. We note defendant cites no authority supporting this argument. Contrary to defendant's claim, the warrant stated: "In accordance with the command of this Search Warrant, you are directed to provide no resistance to the taking of the samples directed by this search warrant." Regardless, we conclude defendant forfeited this argument because he failed to cite authority to support it. See Ill. S. Ct. R. 341(h)(7) (eff. Jan 1, 2016) (requiring arguments on appeal to be supported by "citation of the authority"). In addition, defendant cites no authority or instances in the record supporting his argument that his conviction should be reversed because the trial court struggled to believe he was guilty beyond a reasonable doubt of obstructing justice. Thus, we conclude he has forfeited that argument as well. See *id.* Further, defendant cites no

authority supporting his argument he should have received a copy of the warrant upon Stoll's return. The State cites *United States v. Grubbs*, 547 U.S. 90, 98-99 (2006), and *People v. Curry*, 56 Ill. 2d 162, 171, 306 N.E.2d 292, 297 (1973), for the proposition that a search warrant need not be given to the individual subject to the search at the beginning of the search but, instead, may be given to the individual at the end of the search. We conclude defendant has forfeited this issue by failing to cite authority supporting his claim. Ill. S. Ct. R. 341(h)(7) (eff. Jan 1, 2016).

¶ 21 To support his argument that his breath is part of his person and therefore not physical evidence, defendant cites *People v. Elsperman*, 219 Ill. App. 3d 83, 579 N.E.2d 22 (1991). In *Elsperman*, this court concluded that the defendant did not obstruct justice by attempting to hide from the police. *Id.* at 85-86, 579 N.E.2d at 23-24. This court reasoned that an individual's person is not "physical evidence" as contemplated by the obstruction of justice statute. *Id.* at 85, 579 N.E.2d at 23. Defendant's reliance on *Elsperman* is misguided. Defendant attempts to liken his refusal to give a breath sample to an attempt to hide from the police. While an individual's person is not physical evidence within the meaning of the obstruction of justice statute, a breath sample is physical evidence and, therefore, is implicated by the statute. See *People v. Carey*, 386 Ill. App. 3d 254, 266, 898 N.E.2d 1127, 1139 (2008) (constitutional right against self-incrimination applies only to testimonial or communicative evidence and not real or physical evidence such as a breath sample).

¶ 22 We reject defendant's argument that obstructing justice requires an affirmative act. *People v. Baskerville*, 2012 IL 111056, 963 N.E.2d 898, is directly on point, and the authorities cited by defendant holding otherwise are abrogated, to that extent, by the supreme court's holding in *Baskerville*. In *Baskerville*, the supreme court concluded that a physical act is

not necessary to obtain a conviction for obstruction of justice. *Id.* ¶ 29. To reach this conclusion, the court examined the definition of "obstruct," as follows:

> "At the time the statute was adopted, the dictionary defined 'obstruct' to mean '1: to block up: stop up or close up: place an obstacle in or fill with obstacles or impediments to passing *** 2: to be or come in the way of: hinder from passing, action, or operation: IMPEDE ***.' [Citation.] In turn, 'hinder' means 'to make slow or difficult the course or progress of' [citation], and 'impede' means 'to interfere with or get in the way of the progress of' [citation.] Applying the dictionary definition, it is evident that 'obstruct' encompasses physical conduct that literally creates an obstacle, as well as conduct the effect of which impedes or hinders progress." *Id.* ¶ 19.

This interpretation encompasses inactions or the refusal to act as well as affirmative acts. This is especially true where an individual has a duty to act in compliance with police requests, such as cases where, as here, a valid search warrant had been issued. Contrary to defendant's argument, the search warrant did impose a duty to act, *i.e.*, to give a sample of his breath, blood, or urine, and the warrant itself explicitly directed defendant to comply with the orders contained therein. In his brief, defendant provided an analogy to explain his position that inaction or silence does not constitute obstruction of justice. He argues that, where police have a warrant to search an individual's home, that individual is under no duty to disclose to the police the whereabouts of

the contraband sought. Nevertheless, such an individual *does* have a duty to allow police access to the home, just as defendant had the duty to allow Stoll access to take a breath sample.

¶ 23 Finally, defendant argues he did not materially impede collection of the evidence sought, citing *People v. Davis*, 409 Ill. App. 3d 457, 461, 951 N.E.2d 230, 233 (2011). We also reject this argument. Defendant's refusal to comply with the search warrant prevented the police from obtaining a sample of defendant's breath, blood, or urine—the evidence sought. Not only did defendant materially impede the collection of this evidence, his actions made the collection impossible.

¶ 24 Defendant provides another analogy on this point. He argues, where a police officer has a right to search an individual, that individual is under no obligation to remove or volunteer the contents of his pockets, and a conviction for obstructing justice cannot stand merely because the officer failed to reach into the individual's pockets and remove their contents. Defendant contends such an individual has not concealed the contents of his pockets, and therefore has not obstructed justice, by failing to volunteer the information. According to defendant, he did not conceal the evidence contained in his breath by refusing to volunteer a sample. Defendant's analogy fails for multiple reasons.

¶ 25 First, the search warrant imposed on defendant the duty to provide a breath, blood, or urine sample, and defendant's refusal to comply with that duty is not similar to remaining silent during a search. Second, defendant concedes in this analogy that the police officer has a right to access the pockets, which supports the fact that Stoll had a right to access defendant's person to take a sample of his breath, blood, or urine. Third, taking a sample of breath, blood, or urine is not similar to reaching into a person's pocket during a search, as reaching into a pocket is

not nearly as invasive as taking a sample of breath, blood, or urine. See *Carey*, 386 Ill. App. 3d at 261, 898 N.E.2d at 1134 ("[A] breath test is a minimal intrusion and a reasonable means to measure a suspect's blood-alcohol content."). By arguing the individual should not be penalized by the officer's failure to reach into the individual's pocket, defendant's analogy suggests Stoll should have obtained the breath, blood, or urine sample by force—an outcome defendant surely did not desire.

¶ 26 In sum, we conclude the evidence presented at the bench trial was sufficient to convict defendant of obstructing justice. The State offered evidence showing defendant knowingly concealed the physical evidence contained in his breath, even after being presented with a valid search warrant authorizing Stoll to obtain a breath sample.

¶ 27 III. CONCLUSION

¶ 28 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002 (West 2014).

¶ 29 Affirmed.