NOTICE
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2018 IL App (4th) 160493-U

NO. 4-16-0493

FILED
June 28, 2018
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. CHET SELIGA, Defendant-Appellant.	))))))))	Appeal from the Circuit Court of Ford County No. 14CF83 Honorable Matthew J. Fitton, Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Justices Holder White and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed in part and reversed in part, finding the State failed to prove defendant committed the offense of obstructing justice. The court also remanded for resentencing.

¶ 2 In December 2014, the State charged defendant, Chet Seliga, with the offenses of obstructing justice, unlawful possession of cannabis, and driving under the influence of alcohol (DUI). Defendant filed a motion to dismiss the obstructing justice charge, which the trial court denied. In April 2016, a jury found defendant guilty of obstructing justice and unlawful possession of cannabis but not guilty of DUI. The court sentenced him to 18 months' probation.

¶ 3 On appeal, defendant argues he did not commit the offense of obstructing justice. We affirm defendant's cannabis conviction, reverse defendant's obstructing justice conviction, and remand for resentencing.

¶ 4 I. BACKGROUND

¶ 5 In December 2014, the State charged defendant with single counts of obstructing justice (count I) (720 ILCS 5/31-4(a) (West 2014)) and unlawful possession of cannabis (count II) (720 ILCS 550/4(a) (West 2014)). In count I, the State alleged defendant committed the Class 4 felony offense of obstructing justice in that he, with the intent to obstruct the prosecution of himself, knowingly concealed physical evidence from Ford County Sheriff's Deputy Jason Buckner in that he concealed cannabis by throwing it from his vehicle. In count II, the State alleged defendant committed the Class C misdemeanor offense of unlawful possession of cannabis in that he knowingly possessed not more than 2.5 grams of a substance containing cannabis. The State apparently charged defendant with DUI (625 ILCS 5/11-501(a)(2) (West 2014)) by way of the arresting officer's citation, but a copy has not been included in the record.

¶ 6 In May 2015, defendant filed a motion to dismiss the charge of obstructing justice pursuant to section 114-1(8) of the Code of Criminal Procedure (Procedure Code) (725 ILCS 5/114-1(8) (West 2014)), alleging the charge failed to state an offense. Relying on *People v. Comage*, 241 Ill. 2d 139, 946 N.E.2d 313 (2011), defense counsel argued defendant did not materially impede the officer's investigation and he did not conceal the plastic Baggie of cannabis within the meaning of the obstructing justice statute.

¶ 7 At the hearing, defendant testified he was stopped by the police on the evening of December 14, 2014. Prior to being stopped, he threw a "small bag of cannabis" out the driver's side window. He then stopped his car "partially down the block." An officer came up to the window, said he stopped defendant for a traffic violation, and mentioned he saw defendant throw something out the window. Defendant denied throwing anything out the window. When defendant exited the vehicle, the officer handcuffed him and put him in the backseat of the squad car. The officer "then backed up, retrieved the cannabis," and performed field sobriety tests on

defendant.

¶ 8 Defense counsel argued defendant abandoned the evidence but did not conceal it within the meaning of the obstructing justice statute. Without concealment on defendant's part, counsel asked the trial court to dismiss the charge.

¶ 9 The State argued defendant was "making a factual argument that essentially the facts of this case don't meet the burden of proof beyond a reasonable doubt for the offense of obstructing justice," which is "what a trial is for." Instead, concerning the motion to dismiss before the trial court, the State argued the charging instrument set forth the elements of obstructing justice.

¶ 10 The trial court noted defendant did not file a motion to suppress. Instead, he filed a motion to dismiss, "stating the charge does not state an offense." After reading count I in the information, the court found the State set forth the elements of the offense and denied the motion to dismiss.

¶ 11 Prior to trial, defense counsel filed a motion to suppress a videotape of the stop and defendant's statements. The trial court denied the motion.

¶ 12 In April 2016, defendant's jury trial commenced. Deputy Buckner testified he was on patrol on December 14, 2014, at approximately 9:30 p.m. when he observed a gray four-door vehicle with no rear registration plate light, a violation of the Illinois Vehicle Code. He followed the vehicle and observed the driver fail to signal a turn. Buckner activated his emergency lights, but the vehicle continued. He then observed "the driver of the vehicle throw what appeared to be a plastic [Baggie] out of the driver's window." Approximately two blocks later, the vehicle came to a stop.

¶ 13 Buckner approached the car and observed defendant in the driver's seat. Buckner

"could smell a strong odor of cannabis coming from inside the vehicle and smelled a strong odor of an alcoholic beverage coming from inside the vehicle." He also stated the eyes of both defendant and his passenger "were red and watery." Buckner stated the female passenger "was very highly intoxicated" and defendant "was unsteady on his feet." After placing defendant and the passenger in his squad car, he backed up "about a block and a half" to retrieve the Baggie that had been thrown out the window of the vehicle. Buckner found the Baggie in the roadway.

¶ 14 Buckner proceeded to perform field sobriety tests on defendant and, given the results, Buckner was of the opinion defendant was under the influence of alcohol. Defendant denied having any knowledge of the Baggie being thrown out the window. Buckner arrested defendant.

¶ 15 Michelle Dierker, a forensic scientist with the Illinois State Police, testified she weighed the State's exhibit No. 1, a plastic bag of plant material, and found it weighed 1.6 grams. Dierker's test also revealed the presence of cannabis.

¶ 16 In the defense case, Andrew Graf testified he and defendant worked on a truck until approximately 10:15 p.m. on December 14, 2014. They then decided to go to the Cabery Bar and Grill to get a pizza and arrived at approximately 10:45 p.m. At the bar, they each had a beer. During that time, Graf observed an "extremely intoxicated" woman fall "out of her chair backwards." Defendant helped up the woman and then proceeded to give her a ride home because "she could barely walk." When defendant did not return, Graf left and eventually observed him "in handcuffs."

¶ 17 Defendant testified he was "beat" from working all day long on December 14, 2014. After starting his second beer at the bar, he decided to take the woman home. While driving to her house, defendant threw the Baggie out the window. He denied being drunk.

¶ 18 On cross-examination, defendant stated he threw the Baggie of cannabis out of the car when Buckner turned on his flashing lights. Defendant stated he did not want to be caught possessing the cannabis.

¶ 19 Following defendant's testimony, defense counsel moved for a directed finding on count I, arguing the ruling in *Comage* foreclosed a finding of guilt on the offense of obstructing justice. The trial court found factual differences between *Comage* and the case before it, noting the evidence in this case involved an item thrown from a moving vehicle. Believing defendant threw out the cannabis in an attempt to conceal the evidence from Buckner, the court denied the motion for a directed finding. Following closing arguments, the jury found defendant guilty on counts I and II and not guilty of DUI.

¶ 20 In May 2016, defendant filed a motion for judgment notwithstanding the verdict or for a new trial, claiming "[i]t was error for the court to refuse to dismiss the obstruction of justice charge by distinguishing the facts in this case from the facts in *Comage*." Defendant also argued he did not materially impede Buckner's investigation and "it was error to charge him with obstruction of justice." Defendant asked the trial court to reverse his conviction and remand for a new trial.

¶ 21 The trial court denied the motion. Thereafter, the court sentenced defendant to 18 months' probation, ordered him to serve 122 days in jail, required him to perform 100 hours of community service, and ordered him to pay various fines and fees. This appeal followed.

¶ 22 II. ANALYSIS

¶ 23 In the case *sub judice*, the issue before this court is not entirely clear. In the issue section of his brief, defendant asks whether he obstructed justice by throwing a plastic bag containing 1.6 grams of marijuana out of the car window, in plain sight of the police, prior to

being stopped. In his argument, defendant cites the obstructing justice statute (720 ILCS 5/31-4 (West 2014)) and *Comage* and sets forth some facts pertinent to his case. He then argues "it was error to charge and convict him of this crime." In his conclusion section, defendant asks this court to "reverse the trial court's decision and dismiss the Obstruction of Justice Charge, or remand the cause for a new trial. It was error for the court to refuse to dismiss the charge, by erroneously distinguishing the facts in this case from the facts in *People v. Comage*."

¶ 24 In its brief, the States contends "the question of whether defendant's conduct actually impeded or obstructed Deputy Buckner or whether defendant was guilty of concealment beyond a reasonable doubt is not before this court." Instead, the State argues "defendant only challenges the validity of the trial court's ruling on his motion to dismiss the charges and presents no argument that he was not guilty beyond a reasonable doubt."

¶ 25 In his reply brief, defendant states he "challenged the sufficiency of the allegations in the complaint and the sufficiency of the evidence presented at trial." He then asks this court "to reverse the trial court's decision outright on the Obstruction of Justice Charge or remand the case for a new trial with instructions to follow the decision in *Comage*."

¶ 26 The lack of clarity of the precise issue on appeal is due in large part to defendant's failure to set forth the applicable standard of review. Illinois Supreme Court Rule 341(h)(3) (eff. Nov. 1, 2017) requires an appellant to "include a concise statement of the applicable standard of review for each issue, with citation to authority, either in the discussion of the issue in the argument or under a separate heading placed before the discussion in the argument." Different standards of review may apply depending on the issues raised. For example, if defendant's appeal is premised on questioning the sufficiency of the State's evidence presented at his jury trial, the appropriate standard of review asks " 'whether, when 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.' " *People v. Ngo*, 388 Ill. App. 3d 1048, 1052, 904 N.E.2d 98, 102 (2008) (quoting *People v. Singleton*, 367 Ill. App. 3d 182, 187, 854 N.E.2d 326, 331 (2006)). In contrast, if defendant questions the trial court's decision denying his motion to dismiss the charge of obstructing justice, we review *de novo* whether the complaint complies with the statutory requirements. See *People v. Terry*, 342 Ill. App. 3d 863, 868, 795 N.E.2d 1028, 1031 (2003). Likewise, determining the meaning of a word in the obstructing justice statute is a matter of statutory construction requiring *de novo* review. See *Comage*, 241 Ill. 2d at 144, 946 N.E.2d at 315-16. After careful consideration of the briefs, we conclude defendant is challenging the sufficiency of the State's evidence on the obstructing justice charge, and we will confine our analysis to that issue.

¶ 27 In setting forth the offense of obstructing justice, section 31-4(a)(1) of the Criminal Code of 2012 (720 ILCS 5/31-4(a)(1) (West 2014)) states as follows:

> "(a) A person obstructs justice when, with intent to prevent the apprehension or obstruct the prosecution or defense of any person, he or she knowingly commits any of the following acts:
>
> (1) Destroys, alters, conceals or disguises physical evidence, plants false evidence, furnishes false information[.]"

¶ 28 In *Comage*, 241 Ill. 2d at 141, 946 N.E.2d at 314, police officers were investigating a gas station theft and observed the defendant matching the description of the suspect. Officers stopped the defendant, conducted a warrant check, and asked him questions. *Comage*, 241 Ill. at 141-42, 946 N.E.2d at 314-15. As the dispatcher radioed information to the

officers, the defendant took off running. *Comage*, 241 Ill. 2d at 142, 946 N.E.2d at 315. Officers gave chase and saw the defendant take two objects out of his pocket and throw them over a six-foot wooden fence. *Comage*, 241 Ill. 2d at 142, 946 N.E.2d at 315. The officers recovered a crack pipe and a push rod within 20 seconds of looking for it and approximately 10 feet from where the defendant was apprehended. *Comage*, 241 Ill. 2d at 143, 946 N.E.2d at 315.

¶ 29 A jury found the defendant guilty of obstructing justice. *Comage*, 241 Ill. 2d at 143, 946 N.E.2d at 315. The defendant filed a motion for judgment notwithstanding the verdict or, in the alternative, for a new trial, which the trial court denied. *Comage*, 241 Ill. 2d at 143, 946 N.E.2d at 315. The appellate court, with one justice dissenting, affirmed. *Comage*, 241 Ill. 2d at 143, 946 N.E.2d at 315.

¶ 30 On appeal to the supreme court, the defendant argued the State failed to prove him guilty beyond a reasonable doubt because he never concealed the crack pipe and push rod. *Comage*, 241 Ill. 2d at 143, 946 N.E.2d at 315. The supreme court reversed the conviction, holding the word "conceal" in section 31-4(a) was not intended to encompass a brief removal of evidence from the view of police officers. *Comage*, 241 Ill. 2d at 148, 946 N.E.2d at 318.

> "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.' " *Comage*, 241 Ill. 2d at 149, 946 N.E.2d at 319 (quoting 67 C.J.S. *Obstructing Justice* § 1, at 67 (2002)).

The 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.) *Comage*, 241 Ill. 2d at 149, 946 N.E.2d at 319. The court also stated "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, 946 N.E.2d at 319. Considering the facts before it, the court found, "[a]lthough the items were briefly out of the officers' sight, defendant did not materially impede the officers' investigation" and he did not conceal them within the meaning of the statute. *Comage*, 241 Ill. 2d at 150, 946 N.E.2d at 319.

¶ 31 We find the facts in this case similar to those in *Comage*. Here, Deputy Buckner observed defendant throw "what appeared to be a plastic [Baggie] out of the driver's window." After stopping the vehicle and placing defendant and his passenger in the squad car, Buckner backed up "about a block and a half" and found the plastic bag in the roadway. There is no indication that Buckner had great difficulty in finding the plastic bag or that it took him an inordinate amount of time to do so. Buckner indicated it took him 10 seconds to back up to the location where the cannabis was found. Although the plastic bag was briefly out of Buckner's sight, as defendant did not stop for approximately two blocks, defendant did not materially impede Buckner's investigation, since the bag was easily found shortly after the stop. As defendant did not "conceal" the bag of cannabis within the meaning of the obstructing justice statute, the State failed to prove him guilty of that offense beyond a reasonable doubt. Because we are reversing defendant's obstructing justice conviction, and as defendant does not challenge his cannabis conviction, we remand for resentencing on the Class C misdemeanor offense.

¶ 32 III. CONCLUSION

¶ 33 For the reasons stated, we affirm defendant's conviction for unlawful possession of cannabis, reverse his conviction for obstructing justice, and remand for resentencing.

¶ 34 Affirmed in part and reversed in part; cause remanded.