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No. 3--09--0787

Order filed May 24, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 12th Judicial Circuit Will County, Illinois
Plaintiff-Appellee,)	
v.)	No. 09--CM--61
JURRELL GILMORE,)	Honorable Edward F. Petka
Defendant-Appellant.)	Judge Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justice Schmidt concurred in the judgment.
Justice Holdridge specially concurred.

ORDER

Held: Defendant's conviction for attempt to obstruct justice was supported by sufficient evidence where a state trooper witnessed defendant swallowing a plastic bag that appeared to contain cocaine.

Defendant, Jurrell Gilmore, was charged with attempt to obstruct justice for allegedly swallowing a plastic bag containing cocaine. (720 ILCS 5/31--4(a), 5/8--4(a) (West

2008)). The trial court found defendant guilty and sentenced him to 360 days in jail. Defendant appeals, arguing that he was not proven guilty beyond a reasonable doubt because there was insufficient proof that the bag he swallowed contained cocaine. We affirm.

On January 8, 2009, the State filed a criminal complaint against defendant, alleging that defendant "knowingly concealed evidence" with the intent to prevent his prosecution for "Possession of a Controlled Substance, in that he swallowed a clear plastic bag containing a white powdery substance." Defendant waived his right to a jury trial, and the case proceeded to a bench trial on June 25, 2009.

Chad Martinez of the Illinois State Police testified that he pulled over defendant's vehicle on November 28, 2008, for speeding. When Martinez approached defendant's vehicle, defendant rolled the window down approximately four inches. Martinez asked defendant to roll the window down completely, so he could communicate with him. Defendant complied. Martinez requested defendant's driver's license and proof of insurance and asked defendant where he was going.

When defendant responded to Martinez's questions, Martinez detected a strong odor of an alcoholic beverage coming from defendant. Martinez also noticed that defendant's eyes were

glossy and bloodshot, his pupils were dilated, and his speech was mumbled. Based on his observations, Martinez asked defendant to exit his vehicle. Defendant did not comply but began rolling up his window. Martinez ordered defendant to roll down his window, but defendant refused. Defendant completely rolled up his window and answered his cell phone, which was ringing. Defendant then locked the doors to his vehicle. Martinez ordered defendant to unlock the doors, but defendant refused and began talking on his cell phone.

Next, Martinez observed defendant reach into the center console armrest area of his vehicle and retrieve a clear plastic bag containing a white powdery substance. Defendant placed the bag in his mouth, retrieved a beverage from the passenger floorboard, took a drink, and swallowed the bag. Before defendant swallowed, Martinez ordered him not to do so. Martinez then attempted to break the window to defendant's vehicle but was unsuccessful. After defendant swallowed the substance, he unlocked the doors and exited his vehicle. Martinez asked defendant what he swallowed. Defendant denied swallowing anything. Martinez visually inspected defendant's mouth and found nothing. After that, Martinez called for an ambulance.

Martinez testified that he received special training in drug identification and is an instructor of drug identification. He

has arrested approximately 100 to 150 individuals for possession of controlled substances. Based on his training and experience, he suspected that the white powdery substance defendant swallowed was approximately four grams of cocaine.

At the hospital, defendant was hooked up to an EKG and several other monitoring devices. Because of the monitoring devices, Martinez was only able to administer one field sobriety test to defendant. After defendant performed that test, Martinez placed defendant under arrest for driving under the influence. Martinez also issued defendant traffic citations for speeding and an unsafe tire.

At the hospital, defendant told Martinez that the substance he placed in his mouth was a mint. According to Martinez, the substance he saw defendant place in his mouth did not look like a mint.

The trial court found defendant not guilty of driving under the influence but guilty of attempted obstruction of justice, speeding and an unsafe tire. Thereafter, the trial court sentenced defendant to 360 days in jail with day for day credit, requiring him to serve a total of 180 days. Defendant filed a motion for new trial and a motion to reconsider sentence. The trial court denied both motions.

ANALYSIS

Defendant argues that the State failed to prove him guilty of attempt to obstruct justice because there was insufficient proof that the bag he swallowed contained cocaine.

"A person obstructs justice when, with intent to prevent the apprehension or obstruct the prosecution or defense of any person, he knowingly *** [d]estroys, alters, conceals or disguises physical evidence." 720 ILCS 5/31--4(a) (West 2008).

"A person commits an attempt when, with intent to commit a specific offense, he does any act which constitutes a substantial step toward the commission of that offense." 720 ILCS 5/8--4(a) (West 2008).

When considering the sufficiency of the evidence supporting a conviction, "our function is not to retry the defendant." *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). Rather, we must determine 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. *People v. Cunningham*, 212 Ill. 2d 274, 279 (2004). A valid conviction may be based entirely on circumstantial evidence. *People v. Weaver*, 92 Ill. 2d 545, 555 (1982).

"[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." *People v. Comage*, No. 109495, slip op. at 9 (Ill. Feb. 25, 2011). A defendant's act of swallowing a bag containing drugs constitutes evidence sufficient to support a conviction of obstruction of justice by concealment. *People v. Brake*, 336 Ill. App. 3d 464 (2003). Where an officer observes a defendant swallowing what appears to be a controlled substance, an obstruction of justice conviction will stand even if the substance is never recovered. *People v. Smith*, 337 Ill. App. 3d 819 (2003).

In *Smith*, the defendant argued that her conviction for obstruction of justice was not supported by the evidence because the State failed to prove that the white substance she swallowed in front of a police officer was a controlled substance. The court disagreed, explaining:

"A defendant's state of mind, however, can be inferred from proof of the surrounding circumstances. [Citation.] It is not necessary that defendant be actually charged with the underlying offense. [Citation.] 'The intent to obstruct an individual's defense is not negated by the fact that the suspect is subsequently not charged with a corresponding crime.'

[Citation.] The fact that an obstruction of justice is successful, the fact that it prevents the prosecution of the underlying offense, does not prevent the prosecution of the obstruction charge." *Smith*, 337 Ill. App. 3d at 825.

Here, a state trooper observed defendant swallowing a bag containing what appeared to be a controlled substance. Even though the substance was never recovered, the evidence was sufficient to establish defendant's intent to prevent her arrest for possession of a controlled or look-alike substance. See *Smith*, 337 Ill. App. 3d at 826 (Turner, J., specially concurring). The evidence was sufficient to prove beyond a reasonable doubt that defendant was guilty of attempt to obstruct justice.

The order of the Will County circuit court is affirmed.

Affirmed.

JUSTICE HOLDRIDGE, specially concurring:

I agree with the result reached by the majority. I write separately to highlight certain facts not relied upon by the majority which support the trial court's conclusion that the defendant knowingly attempted to destroy or conceal evidence with the intent to prevent his apprehension or obstruct his prosecution for a narcotics offense. As the majority correctly

notes, such intent may be inferred from the surrounding circumstances. *People v. Smith*, 337 Ill. App. 3d 819, 825 (2003); *People v. Hollingsead*, 210 Ill. App. 3d 750, 761-62 (1991). In this case, the defendant did not comply when Officer Martinez asked him to exit the vehicle. Instead, he began to roll up his window. When Martinez ordered the defendant to roll down his window, the defendant responded by rolling up the window completely, answering his cell phone, and locking the doors of his car. When Martinez ordered him to unlock the doors, the defendant refused. At that point, the defendant retrieved a clear plastic bag containing a white powdery substance from the armrest, placed the bag in his mouth, and took a drink. Martinez ordered the defendant not to swallow the bag, but the defendant disregarded Martinez's order and swallowed it. At that point, Martinez attempted to break the car window. After the defendant swallowed the bag, he unlocked the car doors and exited the vehicle. When Martinez asked him what he had swallowed, he denied that he had swallowed anything. He later changed his story and claimed that he had swallowed a mint.

These surrounding circumstances strongly suggest that the defendant knowingly and intentionally attempted to destroy or conceal evidence. The defendant openly defied Martinez's orders to exit the vehicle and locked Martinez out of the car until he

had swallowed the bag. He refused to let Martinez in the car, even when Martinez attempted to break the window. Immediately after he had swallowed the bag, however, the defendant unlocked the doors and exited the vehicle. Moreover, the defendant initially denied that he had swallowed anything and then later changed his story. Taken together, these facts suggest that the defendant was trying to conceal the contents of the bag from Martinez and/or destroy evidence that he believed could be used against him.

The fact that Martinez, who had extensive experience in identifying illegal narcotics, concluded that the bag appeared to contain cocaine provided additional evidence that bolstered the State's case. However, we need not and should not rely on this fact alone (as the majority appears to do). The additional surrounding circumstances provide substantial evidence that the defendant intentionally attempted to obstruct justice.