

No. 1-11-0486

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 07 CR 20511
	)	
DOROTA OPALINSKA,	)	Honorable
	)	Diane Gordon Cannon,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE REYES delivered the judgment of the court.  
Presiding Justice Lampkin and Justice Gordon concurred in the judgment.

**ORDER**

¶ 1 *Held:* Where the evidence is sufficient to sustain defendant's conviction for perjury and obstruction of justice, the decision will be affirmed; mittimus corrected to reflect conviction on counts 1 and 3.

¶ 2 Following a bench trial, defendant Dorota Opalinska was found guilty of perjury and obstruction of justice, then sentenced to 30 months of intensive probation. On appeal, defendant contends that the State failed to prove her guilty of either offense beyond a reasonable doubt. For the reasons that follow, we affirm the decision of the trial court and correct the mittimus.

¶ 3

### BACKGROUND

¶ 4 Defendant's convictions arose from statements she made to police, the State's Attorney's Office, and a grand jury, relative to the investigation of the murder of her mother, Irena Opalinska. On June 18, 2007, defendant discovered her mother's body in a bathtub inside her mother's condominium at 6505 North Nashville, in Chicago (the condominium). Defendant's husband, William Chabon, was subsequently charged with Irena's murder.

¶ 5 At trial, Chicago police detective Dino Amato testified that on June 18, 2007, he assisted in the investigation of Irena's death. After examining the scene that afternoon, he spoke with defendant alone at Area Five headquarters and questioned her about the time frame leading up to her discovery of the body. She related that she and Chabon married in Las Vegas on June 9, 2007, returned to Chicago on June 12, and stayed with Chabon's family in Lockport, Illinois. They visited Irena the evening of June 13, 2007, and informed her of their marriage. This upset Irena, but she eventually calmed down and defendant and Chabon returned to Lockport. On June 15, 2007, defendant attended classes at Northeastern University, after which she returned to Lockport, and remained there the entire evening watching movies with Chabon's sister. She stayed in Lockport the next two days as well, and unsuccessfully tried to reach Irena by telephone.

¶ 6 Defendant also told him that Chabon picked her up from school at approximately 11:50 a.m. on Monday, June 18, 2007, and, after a brief stop to eat, they proceeded to the condominium. There, defendant noticed the Sunday paper in front of the door, which worried her, and upon entering, they discovered Irena's body in a bathtub. Detective Amato also interviewed Chabon, then drove defendant and Chabon back to the condo.

¶ 7 Chicago police detective Adam Katz testified that he spoke with defendant on June 18, 2007, and she described the circumstances surrounding the discovery of Irena's body. He next

spoke with defendant on September 5, 2007, at which time, police had DNA evidence and telephone records implicating Chabon in Irena's murder. After speaking with Detective Katz at Area Five regarding events leading up to June 18, 2007, defendant agreed to speak with assistant State's Attorney (ASA) Mark Hitt. She then gave an oral statement, which ASA Hitt transcribed in the detective's presence, and ASA Hitt read through it with defendant, allowing her to make any necessary corrections. After that, defendant, Detective Katz and ASA Hitt all signed the statement.

¶ 8 Detective Katz then read defendant's statement into the record. In pertinent part, defendant related that in early June 2007, she lived with her mother, Irena, who did not approve of Chabon. Defendant married Chabon in Las Vegas on June 10, 2007, without telling Irena, and returned to Chicago on June 11 or 12, 2007. Defendant and Chabon visited Irena on June 13, 2007, who became upset after being told of the marriage. Defendant and Chabon left in Irena's vehicle and went to the house of Chabon's friend "Brian" in Romeoville, Illinois, where they spent the evening.

¶ 9 Defendant further related that she apologized to Irena on the telephone the following day and agreed to visit her on June 18, 2007. On Friday, June 15, 2007, Chabon drove defendant to school in Irena's vehicle, then picked her up from there that afternoon and drove her to the house in Romeoville. At that time, Chabon drove Irena's vehicle using a set of keys which included the keys to Irena's condominium. Chabon told her he would return in a few hours after running errands, but he did not return until 8 p.m., and she had trouble reaching him on his cell phone prior to that time. According to defendant, Chabon did not know anyone on the northwest side of Chicago, aside from herself and Irena, and would have no reason to be alone in that area between 2 p.m. and 8 p.m. on June 15, 2007.

¶ 10 On June 16, 2007, defendant was alone at Brian's house until Chabon arrived at 4:30 p.m. He told her that, if asked, she should tell police he was with her all day and night on Friday, June 15, 2007. On Monday, June 18, 2007, Chabon, picked her up from school about 11:40 a.m., and insisted on stopping to eat before proceeding to the condominium. When they arrived about 12:30 p.m., they observed the Sunday paper outside the door, which was unusual. Inside the condominium, they found Irena's body in a bathtub, so Chabon called 911. As they waited for police and paramedics to arrive, Chabon once again told her that, if asked, she should tell police she had been with him all day and night on June 15, 2007, and she began to suspect that Chabon had killed Irena.

¶ 11 Defendant also stated that she no longer had cell phone service and that Chabon was keeping her from talking to detectives and failed to tell her about calls from them. During one call from police for which she was present, Chabon told her to lie and tell them that Irena drank regularly, but she refused to do so and told police Irena was not a drinker. Chabon told defendant when this is all over, he would tell her what happened to Irena, whether it was "a suicide or heart attack or whatever, " and she now believed he killed Irena.

¶ 12 Detective Katz further testified that he examined telephone records, which showed that a call was placed from Irena's land line on June 15, 2007, at a time when Irena was at work. On September 7, 2007, he spoke with Jenny Jerzak, to whom that call was placed, and she confirmed that defendant was at the condominium at the time she spoke with defendant on June 15, 2007. On cross-examination, Detective Katz testified that Chabon was in custody, but not charged, after defendant was at Area Five on September 5, 2007.

¶ 13 Chicago police sergeant Clark Hajdu testified that the investigation into Irena's death continued throughout the summer of 2007. On the evening of September 6, 2007, he and his partner investigated conflicts in defendant's story and asked her about her conversation with

Jerzak on June 15, 2007. Defendant told them she had not been honest with police at the beginning of the investigation and now wanted to tell the truth. She then stated that on the morning of June 15, 2007, Chabon drove her to school in Irena's vehicle, after which she removed the keys to the condominium from the key ring, and attended classes. About 11:30 that morning, she took public transportation to the condominium, and spoke with Jerzak from there that afternoon.

¶ 14 Chicago police detective Tim McDermott testified that, in the course of investigating Irena's death, he and his partners made daily, unsuccessful, phone calls to defendant and Chabon, and on June 29, 2007, he and two other detectives spoke with defendant at Irena's wake. When asked about their inability to contact her, defendant stated that she had been unable to charge her cell phone because the charger was at the condominium, which was inaccessible due to the coroner's seal. Detective McDermott asked defendant if Chabon had relayed messages police had left with him, and she responded that he had not. Chabon then arrived, and Detective McDermott explained that their cooperation was vital to reaching a conclusion in the investigation.

¶ 15 About 4:45 p.m. on September 5, 2007, Detective McDermott spoke with defendant at Area Five and asked about Chabon, who police could now link to Irena's murder. Defendant told him that shortly after Irena's wake, Chabon told her that he thought he knew what happened to Irena and would tell her about it later. Defendant had planned to tell detectives about this at some point in time. When asked about June 15, 2007, defendant told him that she had briefly spoken with Irena that day and agreed to visit her on Monday, June 18, 2007, but she did not tell him that she had been at the condominium that day. Defendant also told him that, after Irena's death, Chabon twice told her that, if asked, she should tell police she had been with him all day on June 15, 2007.

¶ 16 Detective McDermott further testified that on September 6, 2007, he learned of the information placing defendant in the condo on June 15, 2007, and, at this point, police believed Irena had been murdered in the evening hours on that date. Detective McDermott and Sergeant Hajdu spoke with defendant on September 6, 2007, at the condominium, where she was living with Chabon, and confronted her with this new information. Defendant told them "something to the effect" that she had not been entirely truthful in their previous conversation and wanted to explain herself. Detective McDermott corroborated Sergeant Hajdu's testimony regarding the substance of defendant's explanation, and added that defendant did not tell them that Chabon was also at the condo on June 15, 2007.

¶ 17 The State then presented a stipulation that, if called, Jenny Jerzak would testify that about 1:44 p.m. on June 15, 2007, she received a call from defendant from the telephone listed at the condominium, but the call was disconnected. She then called defendant several minutes later at the same number and spoke with defendant, who was still at the condominium. The parties further stipulated that, if called, ASA Tracy Stanker would testify that on September 6, 2007, she questioned defendant before the grand jury, where defendant stated that on Friday, June 15, 2007, she attended school, that Chabon picked her up from there in the afternoon, and they both went to a friend's house in Romeoville.<sup>1</sup> ASA Stanker would further testify that defendant did not admit she was at the condominium at any time on June 15, 2007. The State then rested its case and the defense presented a stipulation that Irena's employment records indicate that she left work at 3:43 p.m. on June 15, 2007.

¶ 18 Defendant testified that she has a learning disability for which she received accommodations at school, and that she has difficulty following directions in her everyday life,

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<sup>1</sup> Although defendant's grand jury transcript was attached to this stipulation and admitted into evidence, it is not included in the record on appeal.

such as with cooking. She further testified that on June 13, 2007, she and Chabon visited Irena to inform her of their marriage, and, although Irena was angry, she got over it. On Monday, June 18, 2007, she and Chabon returned to the condominium and found Irena's body.

¶ 19 Defendant also testified that she gave a handwritten statement at Area Five in the early morning hours of September 6, 2007, testified before the grand jury later that day, and two detectives visited her that evening and asked if she had been at the condominium on June 15, 2007. Although defendant had been there on that day, she acknowledged that she had testified otherwise at the grand jury. She did not realize she had been at the condominium that day until detectives told her about the telephone records, which reminded her of the conversation with Jerzak, and she now recalled that she had been there to clean out the fish bowl and to pack clothes.

¶ 20 On cross-examination, defendant testified that she was never held back in school, that she graduated from high school, and attended college until her mother's death. Although she was at the condominium on June 15, 2007, she initially told police and the ASA that she had not been there. Defendant stated that on June 15, 2007, she attended classes then took the bus to the condominium and let herself in with a key. She cleaned the fish bowl, packed clothes, then spoke with Jerzak around 2 p.m. from the land line in the unit, and, during the conversation, called Irena a "fucking bitch" for not getting along with Chabon. Chabon arrived at the condominium sometime after 2 p.m., briefly spoke with Jerzak on the telephone, then transported her suitcase to the vehicle. She could not recall what happened after that point on that day, including where she went or if Chabon went with her. Her next recollection from that time period was discovering Irena's body on June 18, 2007.

¶ 21 Defendant further testified on cross-examination that she and Chabon discussed the lies they would tell police about the day of Irena's murder and that she knew she had given police an

alibi for Chabon, sending them on a "wild goose chase." On the evening of September 5, 2007, she knew that she had been at the condominium the day of the murder, but did not tell police, ASA Hitt, or the grand jury. She acknowledged that she had lied each of those times to protect herself and Chabon and to prevent police from doing their job. When confronted with the information from Jerzak, she knew the police knew that she lied.

¶ 22 On re-direct, defendant testified that on September 6, 2007, she told police she had been confused on dates, not that she had not been entirely truthful. She testified that she was not with Chabon the evening of June 15, 2007, and, when she spoke with police on June 18, 2007, she did not know that she had been in the condominium three days earlier. Her memory was refreshed by detectives who told her they had proof she had been in the condominium that day.

¶ 23 After closing arguments, the court cited witness credibility in finding that the State had met its burden of proof beyond a reasonable doubt, and that defendant was "guilty as to count I, perjury to the Cook County grand jury, and count II, obstruction of justice in lying to the police[.]" The court denied defendant's subsequent motion to reconsider, noting that the evidence was "overwhelming," and sentenced her to 30 months' intensive probation. On appeal, defendant contends that the evidence was insufficient to sustain her conviction of either offense.

¶ 24 ANALYSIS

¶ 25 The standard of review on a challenge to the sufficiency of the evidence 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. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). This standard applies to all criminal cases, whether the evidence is direct or circumstantial, and acknowledges the responsibility of the trier of fact to determine the credibility of the witnesses, to weigh the evidence and draw reasonable inferences therefrom, and to resolve any conflicts in the evidence. *People v. Campbell*, 146 Ill. 2d 363, 374-

75 (1992). A reviewing court will not reverse a conviction unless the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant's guilt. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009).

¶ 26 Perjury occurs where a person "under oath or affirmation, in a proceeding or in any other matter where by law such oath or affirmation is required, [] makes a false statement, material to the issue or point in question, which [s]he does not believe to be true." 720 ILCS 5/32-2(a) (West 2006). A person commits obstruction of justice where, with intent to prevent the apprehension or obstruct the prosecution of any person, she knowingly "destroys, alters, conceals or disguises physical evidence, plants false evidence, [or] furnishes false evidence[.]" 720 ILCS 5/31-4(a) (West 2006). Intentionally providing false information is at the root of both offenses, and here, the State proved that defendant lied when she stated that she was not at the condominium on June 15, 2007, thereby committing perjury under oath before the grand jury, and obstruction of justice in relation to Chabon's prosecution.

¶ 27 In addressing the perjury conviction, we are mindful that "the burden is on the questioner to pin the witness down to the specific object of the questioner's inquiry." *People v. Wills*, 71 Ill. 2d 138, 147 (1978), quoting *Bronston v. United States*, 409 U.S. 352, 360 (1973). Here, however, our review is limited by the fact that a complete transcript of her grand jury testimony is not in the record on appeal. The record on this issue consists of one page of her grand jury testimony which was attached to her motion for a new trial, and does not include the entirety of her testimony regarding her whereabouts on June 15, 2007. Since we do not have a complete transcript, we are not privy to all of the questions that the prosecutor asked her before the grand jury on this subject or how they were phrased, and, therefore, must resolve any doubts arising from this incompleteness against defendant. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984).

¶ 28 That said, after viewing the evidence presented in the light most favorable to the prosecution (*Siguenza-Brito*, 235 Ill. 2d at 224), we find it sufficient to sustain defendant's convictions for perjury and obstruction of justice. At trial, the parties stipulated to the substance of defendant's grand jury testimony, during which defendant described her whereabouts on June 15, 2007, and did not admit that she was at the condominium at any time that day. During her own testimony, defendant did not attempt to rebut this representation, and instead admitted that she knew she had been in the condominium on the day of the murder, and that she had lied to police, ASA Hitt, and the grand jury in order to protect herself and Chabon and to prevent police from doing their job. Although during re-direct examination defendant attributed her statements to confusion as to dates and lapses in memory, it was the responsibility of the trial court, as trier of fact, to assess witness credibility and resolve any conflicts in testimony. *Campbell*, 146 Ill. 2d at 375. Here, the trial court resolved the credibility issue in favor of the State, finding that it had met its burden of proof beyond a reasonable doubt as to both offenses.

¶ 29 Based on the evidence presented, we conclude that it was not unreasonable for the trial court to conclude that defendant intentionally gave false information to the grand jury regarding her whereabouts on the day of her mother's murder (*Jackson*, 232 Ill. 2d at 281), thus establishing her guilt of perjury.

¶ 30 The trial evidence further demonstrated that, in the course of the ongoing murder investigation, defendant was questioned by police and ASA Hitt about her whereabouts on June 15, 2007, the date of the murder, and defendant repeatedly and knowingly provided false information. Defendant's misrepresentations concerning her whereabouts on the day of Irena's murder commenced on June 18, 2007, after she discovered Irena's body in the condominium and first spoke with police, and they continued throughout the summer, and included those in her handwritten statement to ASA Hitt. They ended only after she was confronted with information

placing her in the condominium on June 15, 2007, at which point she acknowledged that she had not been honest from the beginning of the investigation.

¶ 31 Defendant's testimony that she lied about her whereabouts on the day of the murder in order to prevent police from completing their investigation belies her prior contentions that she never stated that she was not at the condo on June 15, 2007, and that she did not harbor an intention to obstruct Chabon's prosecution. Intent need not be proved by direct evidence, and can be inferred from proof of surrounding circumstances. *People v. Jackiewicz*, 163 Ill. App. 3d 1062, 1065 (1987). Here, the evidence shows that, at the time of Irena's murder, defendant was angry with her mother for objecting to Chabon, and their recent marriage. Defendant testified that she had no recollection of what transpired after 2 p.m. on June 15, 2007, which the trial court found incredulous given such a crucial time period.

¶ 32 Additionally, defendant's false information impacted the investigation and Chabon's prosecution, as illustrated by the length of the investigation and defendant's own testimony that she knew she had provided an alibi for Chabon, which side-tracked the investigation. Defendant, however, argues that she could not have hindered Chabon's prosecution given that he was already in custody at the time she gave her written statement. Defendant fails to acknowledge that she provided false information regarding her whereabouts, prior to that point in time. Moreover, defendant does not cite, nor are we aware of, any authority mandating once a person is taken into custody, a witness can furnish false information relating to their prosecution without being held accountable therefor. Nor does the fact that defendant's handwritten statement contains negative information about Chabon insulate her from the impact caused by the false information she furnished to police and the ASA.

¶ 33 Taken as a whole, and viewed in the light most favorable to the State, we find that the evidence was sufficient for the trial court to reasonably conclude that defendant furnished false

information to police and ASA Hitt with the intent to obstruct Chabon's prosecution. *People v. Davis*, 409 Ill. App. 3d 457, 461-62 (2011).

¶ 34 Finally, as the State points out, there appears to be a discrepancy between the ruling as announced by the court, and what is reflected in the common law record regarding the specific obstruction of justice counts on which defendant was convicted.

¶ 35 In count 2 of the indictment, defendant was charged with obstruction of justice in that she furnished false information to the Cook County State's Attorney's Office, and in count 3, that she had furnished the same false information to the Chicago police department. In announcing its ruling at the close of evidence, the trial court stated that it found defendant guilty of "count 2, obstruction of justice in lying to the police." That description corresponds to the charge in count 3, rather than count 2; however the common law record and the written order entered on August 23, 2010, identifying defendant's convictions, reflect that: "Deft found guilty on cts 1, 2."

¶ 36 Where the sentence reflected in the common law record conflicts with the sentence imposed by the trial judge, as reflected by the report of proceedings, the report of proceedings will control. *People v. Peeples*, 155 Ill. 2d 422, 496 (1993). Here, we find that the report of proceedings reflects that defendant was found guilty of count 3, obstruction of justice in lying to the police, and, pursuant to our authority under Supreme Court Rule 615 (b)(1) (eff. Jan. 1, 1967), we order the mittimus to be corrected to reflect her conviction on counts 1 and 3.

¶ 37 We, therefore affirm the judgment of the circuit court of Cook County, and correct the mittimus.

¶ 38 Affirmed; mittimus corrected.