2013 IL App (4th) 120136-U

NO. 4-12-0136

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
March 14, 2013
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Ford County
KATHERINE J. MAHON,	)	No. 10CF31
Defendant-Appellant.	)	
	)	Honorable
	)	Stephen R. Pacey,
	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Knecht and Turner concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding the trial court's determination that defendant violated the terms of her conditional discharge was not against the manifest weight of the evidence.

¶ 2 In January 2011, defendant, Katherine J. Mahon, pleaded guilty to resisting a peace officer, and the trial court sentenced her to 12 months of conditional discharge. In May 2011, the State filed a petition to revoke defendant's conditional discharge, alleging defendant committed the offense of obstructing justice. Following an August 2011 hearing on the State's petition, the court revoked defendant's conditional discharge. In September 2011, the court resentenced defendant to 12 months of probation.

¶ 3 Defendant appeals, arguing the State failed to prove by a preponderance of the evidence that she obstructed justice.

¶ 4 We affirm.

¶ 5 I. BACKGROUND

¶ 6 In June 2010, the State charged defendant by information with one count of criminal damage to government supported property (720 ILCS 5/21-4(1)(a) (West 2010)) and one count of resisting a peace officer (720 ILCS 5/31-1 (West 2010)). In January 2011, defendant pleaded guilty to resisting a peace officer, a Class A misdemeanor, and the trial court sentenced her to 12 months of conditional discharge.

¶ 7 In May 2011, the State filed a petition to revoke defendant's conditional discharge, alleging defendant violated her conditional discharge by committing the offense of obstructing justice. In August 2011, a hearing on the State's petition to revoke commenced, at which the parties presented the following evidence.

¶ 8 James Kingston testified that on May 13, 2011, he stopped his vehicle at the corner of Chestnut and Taft in Paxton, Illinois. According to Kingston, Mike Widmer, who was driving a white truck with the words "Widmer Welding" on the side, turned in front of Kingston and "gave [him] the finger." Kingston called the police to report he had seen Widmer driving a vehicle and that Widmer did not have a driver's license. Kingston then followed Widmer to defendant's residence. Widmer entered defendant's home and "came back out almost immediately," with defendant following behind him. Defendant then drove off in the truck Widmer had been driving.

¶ 9 Officer Douglas Balk of the Paxton police department testified that on May 13, 2011, he was dispatched to defendant's home "[d]ue to a report of a male subject who had a revoked driving [license]." When Balk arrived, he observed Widmer and Kingston yelling at one

another outside of the home. Balk was told defendant left in Widmer's vehicle a couple of minutes prior to Balk responding to the call. Balk remained at defendant's home for approximately 30 minutes to an hour, during which time defendant returned on foot. Balk did not speak to defendant or arrest her that night, but Balk did arrest Widmer.

¶ 10 On this evidence, the trial court revoked defendant's conditional discharge. The court noted that although the vehicle was not admitted into evidence, "that [did not] mean that taking the vehicle from the scene [was] not obstructing."

¶ 11 That month, defendant filed a posttrial motion contending the State failed to prove by a preponderance of the evidence that defendant violated her conditional discharge. At a September 2011 hearing on defendant's motion, defense counsel argued that a conviction for driving with a revoked or suspended license depended on the legal ability to drive, not on the vehicle being driven. Thus, defense counsel contended that where a person's legal ability to drive could be proved without a vehicle, moving a vehicle could not constitute concealing evidence. The trial court denied defendant's motion. Thereafter, the court sentenced defendant to 12 months of probation.

¶ 12 Later that month, defendant filed a motion to reconsider sentence, which, following a November 2011 hearing, the trial court denied.

¶ 13 This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 On appeal, defendant contends the State failed to prove by a preponderance of the evidence that she obstructed justice. Specifically, defendant claims the State's evidence failed to establish by a preponderance of the evidence that she (1) intended to prevent Widmer's arrest or

(2) removed evidence that was "material" to Widmer's prosecution for driving while license revoked.

¶ 16 Initially, we note, defendant has completed her probation. Generally, an appeal is considered moot where the issues involved in the trial court no longer exist because intervening events have rendered it impossible to grant meaningful relief to the appellant. *In re J.T.*, 221 Ill. 2d 338, 349-50, 851 N.E.2d 1, 7-8 (2006). However, as the State concedes, the improper revocation of defendant's conditional discharge could have future sentencing ramifications and thus, under the collateral consequences exception, defendant's appeal is not moot. See *People v. Halterman*, 45 Ill. App. 3d 605, 608, 359 N.E.2d 1223, 1225 (1977) (concluding the defendant's appeal was not moot because "the fact that the defendant has had his probation revoked might be submitted to another judge for his consideration in sentencing the defendant if he has the misfortune of again being convicted of some crime."). Accordingly, we will address defendant's appeal on the merits.

¶ 17 At a hearing to revoke conditional discharge, the State carries the burden of proving a violation by a preponderance of the evidence. *People v. Smith*, 337 Ill. App. 3d 819, 822, 786 N.E.2d 1121, 1123 (2003). The preponderance standard is satisfied if the evidence establishes the allegation at issue is more probably true than not. *People v. Matthews*, 165 Ill. App. 3d 342, 344, 519 N.E.2d 126, 128 (1988). Before revoking a defendant's probation, due process requires a fair determination that the acts alleged in the revocation petition actually occurred. *People v. Strickland*, 211 Ill. App. 3d 183, 191, 569 N.E.2d 1202, 1207 (1991).

¶ 18 We will not overturn a trial court's revocation of conditional discharge on appeal unless it is contrary to the manifest weight of the evidence. *Smith*, 337 Ill. App. 3d at 822, 786

N.E.2d at 1123.

¶ 19 Section 31-4 of the Criminal Code of 1961 (Criminal Code) (720 ILCS 5/31-4 (West 2010)) provides as follows:

> "A person obstructs justice when, with intent to prevent the apprehension or obstruct the prosecution or defense of any person, he knowingly commits any of the following acts:
>
> (a) Destroys, alters, conceals or disguises physical evidence, plants false evidence, furnishes false information." 720 ILCS 5/31-4(a) (West 2010).

In enacting section 31-4 of the Criminal Code, "the legislature intended to criminalize behavior that *actually* interferes with the administration of justice." (Emphasis in original.) *People v. Comage*, 241 Ill. 2d 139, 149, 946 N.E.2d 313, 319 (2011).

¶ 20 Defendant first contends the State failed to prove defendant intended to conceal evidence and prevent Widmer's arrest. As part of her contention, defendant claims the State failed to show either Widmer or defendant knew Kingston called the police and accused Widmer of driving while his license was revoked. We disagree.

¶ 21 A defendant's intent to obstruct justice is established at the time of the incident, can be inferred from proof of the surrounding circumstances, and need not be proved by direct evidence. *People v. Hollingsead*, 210 Ill. App. 3d 750, 760-61, 569 N.E.2d 216, 223 (1991).

¶ 22 Here, the evidence at defendant's revocation of conditional discharge hearing established the following: (1) Kingston saw Widmer driving a white truck, (2) Kingston knew Widmer did not have a valid driver's license, (3) Widmer gave Kingston "the finger," (4)

Kingston reported Widmer to the sheriff's office, (5) Kingston followed Widmer to defendant's residence, (6) Widmer entered defendant's home and exited almost immediately thereafter, with defendant following, and (7) defendant drove away in Widmer's truck and later returned to her home on foot. As the State points out, the foregoing facts support an inference that, given the hostility between Kingston and Widmer and the fact that Kingston followed Widmer, Widmer expected Kingston would call the police to report his illegal driving. Moreover, defendant's act of moving Widmer's truck almost immediately after Widmer arrived at her home supports an inference that Widmer told defendant Kingston had or was going to contact the police. Thus, the trial court could reasonably infer that defendant intended to prevent Widmer's arrest.

¶ 23 As a corollary, defendant posits the trial court could not reasonably infer defendant intended to prevent Widmer's arrest for driving while his license was revoked (DWLR) because the evidence failed to establish Widmer's license was revoked or that police arrested Widmer for DWLR. However, Kingston testified he called the police after seeing Widmer, who "ha[d] no license," driving a van, and Balk testified he was dispatched "[d]ue to a report of a male subject who had a revoked driving." Balk also testified he took Widmer into custody on the night of the incident. All of the following support an inference that defendant moved Widmer's truck to prevent Widmer's arrest and prosecution for DWLR.

¶ 24 Next, defendant contends the State failed to prove defendant's act of moving Widmer's truck interfered with Widmer's arrest or prosecution because the State did not need Widmer's truck to prove Widmer drove with a revoked license.

¶ 25 Pursuant to section 6-303 of the Illinois Vehicle Code (625 ILCS 5/6-303(a) (West 2010)), a person is guilty of DWLR if he drives or is in actual physical control of a motor

vehicle on a highway in Illinois at a time when his license is revoked.

¶ 26 Initially, defendant contends to be guilty of obstructing justice, defendant needed to conceal evidence that was "material" to defendant's prosecution for DWLR. As the State points out, however, the language of Illinois' obstruction of justice statute refers only to the concealment of "physical evidence" and does not use the word "material." 730 ILCS 5/31-4(a) (West 2010). The cardinal rule of statutory construction is to ascertain and give effect to the legislature's intent, which is best indicated by giving the statutory language its plain and ordinary meaning. *Comage*, 241 Ill. 2d at 144, 946 N.E.2d at 315. Because the statute does not specify the concealed physical evidence must be "material," we will not read such a requirement into the statute.

¶ 27 In this case, the truck constituted physical evidence of Widmer's DWLR. Defendant correctly points out that to prove Widmer guilty of DWLR, the State needed only to present a certified copy of Widmer's driving abstract and Kingston's testimony that Widmer drove while his license was revoked. However, the existence of the truck would be relevant to the credibility of Kingston's testimony concerning what he witnessed on the day he called the police. Specifically, the presence of the vehicle would tend to support Kingston's testimony that he saw Widmer driving a white truck. Thus, the vehicle was relevant evidence as to whether Widmer was driving with a revoked license. See *People v. Gonzalez*, 142 Ill. 2d 481, 487-88, 568 N.E.2d 864, 867 (1991) (relevant evidence is evidence having any tendency to make the existence of a fact that is of consequence to the determination of an action more or less probable than it would be without the evidence).

¶ 28 Based on the foregoing, we conclude the trial court's finding that defendant

violated the terms of her conditional discharge was not against the manifest weight of the evidence.

¶ 29 III. CONCLUSION

¶ 30 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.

¶ 31 Affirmed.