

NOTICE
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2013 IL App (5th) 110347-U

NO. 5-11-0347

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Jefferson County.
)	
v.)	No. 99-CF-235
)	
RODERICK OATS,)	Honorable
)	Terry H. Gamber,
Defendant-Appellant.)	Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.
Justices Welch and Wexsten concurred in the judgment.

ORDER

- ¶ 1 *Held*: Where the criminal indictment charging the defendant with the crime of obstructing justice was deficient, the conviction must be reversed.
- ¶ 2 The defendant, Roderick Oats, appeals from a conviction for obstructing justice which involved a traffic stop during which he provided the officer with his brother's name and date of birth.

FACTS

¶ 3

¶ 4 According to trial testimony, early in the morning of July 21, 1999, a Mount Vernon police officer, Kenneth Emshoff, stopped a vehicle. Officer Emshoff stopped the vehicle because he observed an improperly restrained young child inside the vehicle. Upon approaching the vehicle, the officer asked the driver to provide his identification and insurance cards. Having neither card, the driver identified himself to the officer as a Jonathon Oats. He stated that his date of birth was August 25, 1982. Jessica Garcia was a

passenger in the car that night. "Jonathon Oats" was ticketed that morning for driving an uninsured vehicle and for failing to properly restrain a child. While Jonathon Oats was an actual person with that stated birth date, Officer Emshoff later learned that Jonathon was not the driver.

¶ 5 The next evening, Jonathon Oats and his father, Edward Oats, went to the Mount Vernon police station. At the station, Edward showed Officer Emshoff the two traffic citations issued to Jonathon Oats and advised the officer that his son, Jonathon, had not been the driver on that night, but that another son, Roderick, had been driving. Officer Emshoff looked at a photograph of Roderick Oats and concluded that the two brothers did not look alike and that the driver had, in fact, been Roderick Oats. That same evening, Officer Emshoff interviewed the passenger, Jessica Garcia, who confirmed that Roderick Oats had been the driver.

¶ 6 Officer Emshoff checked Roderick's driver's license status and determined that his license was suspended,¹ but he could not remember if Roderick was ticketed for that offense, and the official police report did not indicate that Roderick's license was suspended. The police report also did not indicate that Jonathon Oats and his father Edward Oats provided

¹None of the records, nor the charges, contain any mention that Roderick Oats's driver's license was suspended in July 1999. The defendant's attorneys contend that they were not prepared to defend against this allegation at trial. Attached to the defendant's posttrial motion was a letter from the Illinois Secretary of State's Office dated August 6, 2008, stating that there were no stops or holds on Roderick S. Oats's driver's license as of July 21, 1999. Assuming that the driver of the vehicle stopped that night was Roderick Oats, why he provided his brother's name as his own identity is not known.

information at the police station the day after the original tickets were issued.

¶ 7 Roderick Oats was arrested in a matter of a few days after the initial July 21, 1999, traffic stop. He was charged with obstructing justice by providing false identifying information to the officer. The record does not contain any traffic charges simultaneously filed against Roderick Oats for improperly restraining a child, driving an uninsured vehicle, and/or driving with a suspended driver's license.

¶ 8 The case went to trial in 2007 before a jury. The only State witness was Officer Emshoff. He testified that he was a new officer in 1999 and the details left out of his report were due to his lack of experience at that time. In addition to not putting the details about his discussion with Roderick's father and brother, and whether the defendant was ticketed for driving on a suspended license, Officer Emshoff also neglected to detail the facts about the unrestrained child. He testified that he had no independent recollection of the child's age or how he had been able to determine that the child was not properly restrained. Edward Oats also testified at the trial. He stated that he read a newspaper article that Jonathon Oats had received two traffic tickets. He took Jonathon to the police station because Jonathon had an alibi for the time stated that the tickets were issued—Jonathon had been at home that evening and was watching television with his brother, Roderick. This testimony was obviously inconsistent with Officer Emshoff's testimony about what Jessica Garcia and Edward Oats told him in 1999. Edward Oats denied that he was fabricating this story in his trial testimony in order to keep Roderick from being convicted.

¶ 9 At the conclusion of the evidence, the jury deliberated and found Roderick guilty of obstructing justice by giving a false name to a police officer.

¶ 10 Roderick was sentenced 3½ years later on May 5, 2011. By this time, Roderick was living in Memphis, employed as an events security guard, was raising two daughters, and planned to return to college to finish his degree. From the presentence investigation, the

court learned that Roderick had been charged with a series of fairly minor crimes between 1997 to 2001. However, he had not been in criminal trouble since his 2007 trial. The trial court sentenced Roderick to 18 months' conditional discharge.

¶ 11 From his conviction and sentence, Roderick appeals.

¶ 12 **LAW AND ANALYSIS**

¶ 13 On appeal, the defendant argues that his conviction should be reversed. He contends that the charging instrument was flawed and did not specify what crime he obstructed by providing the false identification. Additionally, he argues that merely providing a false name and birth date when requested by an officer does not constitute obstruction of justice. The defendant also argues that the conviction must be reversed because the testimony of Officer Emshoff should not have been believed. Alternatively, he seeks reversal because the evidence did not support the State's contention that he provided a false identity to Officer Emshoff for the purpose of preventing his apprehension for another offense. Finally, the defendant argues that his trial counsel was ineffective for failing to impeach Officer Emshoff with evidence that his driver's license was not suspended in July 1999.

¶ 14 **Sufficiency of the Charging Instrument**

¶ 15 **Standard of Review**

¶ 16 If the charging instrument does not adequately state the offense charged, the defect can be attacked at any time as the defect triggers due process concerns. *People v. Alvarado*, 301 Ill. App. 3d 1017, 1022, 704 N.E.2d 937, 941 (1998) (citing *People v. Scott*, 285 Ill. App. 3d 95, 98, 673 N.E.2d 1152, 1153-54 (1996)). When the sufficiency is challenged in the trial court, the court must examine the instrument to determine if it is in strict compliance with the statutory pleading requirements. *Id.* at 1022-23, 704 N.E.2d at 941 (citing *Scott*, 285 Ill. App. 3d at 99, 673 N.E.2d at 1154; 725 ILCS 5/111-3(a) (West 1996)). If the indictment is found insufficient, the indictment must be dismissed. *People v. Cuadrado*, 214

Ill. 2d 79, 87, 824 N.E.2d 214, 219 (2005).

¶ 17 When the charging instrument is attacked for the first time on appeal, the standard of review requires that we determine whether the document contained sufficient information to have apprised the defendant of the precise offense charged with enough specificity to permit preparation of his defense and to seek to bar further prosecution arising out of the same conduct by pleading this conviction. *People v. Pujoue*, 61 Ill. 2d 335, 339, 335 N.E.2d 437, 440 (1975); *People v. Gilmore*, 63 Ill. 2d 23, 29, 344 N.E.2d 456, 460 (1976); *People v. Vanzandt*, 287 Ill. App. 3d 836, 842, 679 N.E.2d 130, 134 (1997). The supreme court advises us to consider whether the defect prejudiced the defendant in preparing his defense. *People v. Thingvold*, 145 Ill. 2d 441, 448, 584 N.E.2d 89, 91-92 (1991).

¶ 18 The Indictment

¶ 19 Section 31-4(a) of the Criminal Code of 1961 (720 ILCS 5/31-4(a) (West 1998)) sets forth the crime of obstruction of justice. In relevant part, the section states:

"A person obstructs justice when, with intent to *** obstruct the prosecution
*** of any person, he knowingly commits any of the following acts:

(a) *** furnishes false information[.]"

As the court stated in *People v. Alvarado*, the term "prosecution" has been statutorily defined to mean " 'all legal proceedings by which a person's liability for an offense is determined, commencing with the return of the indictment or the issuance of the information, and including the final disposition of the case upon appeal.' " *Alvarado*, 301 Ill. App. 3d at 1022, 704 N.E.2d at 941 (quoting 720 ILCS 5/2-16 (West 1996)). The term "offense" is defined as " 'a violation of any penal statute of this State.' " *Id.* (quoting 720 ILCS 5/2-12 (West 1996)).

¶ 20 The defendant argues that the charging instrument in this case was invalid because it contained no description of any particular prosecution for an offense that the defendant

allegedly obstructed by furnishing the false information. *Alvarado*, 301 Ill. App. 3d at 1023, 704 N.E.2d at 941.

¶ 21 In *People v. Alvarado*, two cases were consolidated for appeal. Lorenzo Alvarado and Michael A. Gonzalez were both charged with obstructing justice with the intent to avoid prosecution for providing false identification information. *Id.* at 1019, 704 N.E.2d at 938. The charges stemmed from violations of a Crystal Lake smoking ordinance which made it illegal to smoke if under the age of 18. *Id.* at 1020, 704 N.E.2d at 939. The officer approached a group of four young people who were witnessed smoking cigarettes, to inquire as to their ages. *Id.* Both Alvarado and Gonzalez provided the officer with incorrect dates of birth. *Id.* The next day, the officer determined that both boys had lied to him. *Id.* Both defendants asked the trial court to dismiss the charges, alleging that the criminal informations were fatally deficient. *Id.* at 1021-22, 704 N.E.2d at 940. The trial court dismissed both cases and the appellate court affirmed. *Id.* at 1021, 704 N.E.2d at 940.

¶ 22 In analyzing the attack on the charging instrument, the court stated:

"The purpose of the charging instrument is to inform the accused of the nature of the charges against him so as to enable him to prepare his defense. [Citation.] It is not sufficient that an information merely set forth the name of the offense and cite the statute which defines the offense; the charging instrument must give notice of the elements of the charge and particularize it with allegations of the essential facts to enable the accused to prepare a defense which, if successful, would bar further prosecution for the same offense. [Citation.]" *Id.* at 1023, 704 N.E.2d at 941.

The court in *Alvarado* explained that obstruction of justice for furnishing false information is an offense "defined in general terms," and thus, the crime must be spelled out with specific facts constituting the crime charged. *Id.* (citing *People v. Yarbrough*, 162 Ill. App. 3d 748, 750, 516 N.E.2d 607, 608-09 (1987)). In analyzing the facts in which both

defendants provided false dates of birth, the court concluded that the information did "not describe any particular prosecution for any identifiable offense that the defendant is alleged to have obstructed by furnishing the false information regarding his date of birth." *Id.* Neither information alleged any facts about the Crystal Lake smoking ordinance which formed the basis for the officer's request for identifying information. The court held that the information is deficient when it contains no allegations or references to a specific impending apprehension for a charge, or a prosecution for a specific offense. *Id.*

"The lack of specificity in this case raises serious due process and double jeopardy concerns. The information in each case before us is so vague as to be virtually incomprehensible except with respect to the element of providing false information to a peace officer—conduct that by itself does not strictly constitute an offense under the obstructing justice statute." *Id.*

¶23 We turn to the language of the July 26, 1999, information by which the defendant was charged with obstructing justice. The indictment alleged:

"RODERICK S. OATS committed the offense of OBSTRUCTING JUSTICE in that said defendant, with the intent to prevent the prosecution of Roderick S. Oats, knowingly furnished false information to Ken Emshoff, a police officer, as to the identity of Roderick S. Oats, in that he related to the officer that his name was Johnathan G. Oats and his date of birth was August 25, 1982 ***."

¶24 While the indictment allegations in this case do follow the general statutory language for the crime of obstructing justice, the indictment is lacking in any specificity as to the crime the defendant was seeking to avoid by provision of false identity information. The crime of obstructing justice to avoid criminal prosecution is unique. As stated earlier, mere recitation of the name of the offense with citation to the statute is not enough. *Alvarado*, 301 Ill. App. 3d at 1023, 704 N.E.2d at 941. The information must provide factual and

particular elements of the crime, which would enable the defendant to mount a defense. *Id.*

¶ 25 Despite the fact that the defendant raises this issue for the first time on appeal, we conclude that the indictment was insufficient and the defendant was thereby prejudiced. Just as in *Alvarado*, the charging instrument gave the defendant no notice of any identifiable offense that the defendant is alleged to have obstructed. *Alvarado*, 301 Ill. App. 3d at 1023, 704 N.E.2d at 941. Without knowing the underlying crimes that the defendant sought to avoid by giving Officer Emshoff his brother's name and date of birth, the defendant did not have the ability to prepare his defense for this case or for future prosecutions arising out of the same conduct.

¶ 26 The resulting prejudice is underscored by the fact that Officer Emshoff testified at trial that he checked the defendant's driver's license status and determined that his license was suspended. However, Officer Emshoff could not remember if the defendant was ticketed for that offense, and the police report makes no mention of a suspension. The defendant's claim of surprise in his inability to defend against this allegation is bolstered by a letter from the Secretary of State's office filed as part of the defendant's posttrial motion, indicating that the defendant's license was not suspended at the time in question.

¶ 27 Based upon the insufficient indictment and resulting prejudice, we conclude that the defendant's conviction must be reversed.

¶ 28 **OTHER ISSUES**

¶ 29 Because our decision on this issue is decisive, we do not reach the other issues raised by the defendant in this appeal.

¶ 30 **CONCLUSION**

¶ 31 For the foregoing reasons, the judgment of the circuit court of Jefferson County is hereby reversed.

¶ 32 Reversed.