

2017 IL App (2d) 161059-U
No. 2-16-1059
Order filed December 13, 2017

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

| | | |
|-------------------------|---|-------------------------------|
| THE PEOPLE OF THE STATE |) | Appeal from the Circuit Court |
| OF ILLINOIS, |) | of Du Page County. |
| |) | |
| Plaintiff-Appellee, |) | |
| |) | |
| v. |) | No. 15-CM-2550 |
| |) | |
| RONALD M. JUSTIN, |) | Honorable |
| |) | James D. Orel, |
| Defendant-Appellant. |) | Judge, Presiding. |

JUSTICE SPENCE delivered the judgment of the court.
Justices McLaren and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held:* The State failed to prove defendant guilty beyond a reasonable doubt of obstructing a peace officer, as his false statement, which the officer immediately disbelieved, did not materially obstruct the officer's investigation.

¶ 2 Following a bench trial, defendant, Ronald M. Justin, was convicted of obstructing a peace officer (720 ILCS 5/31-1(a) (West 2014)). He appeals, contending that (1) there was a fatal variance between the complaint's allegations and the proof at trial; and (2) the State did not prove beyond a reasonable doubt that his misstatements materially impeded the officer's investigation. We reverse.

¶ 3 Defendant was charged in a complaint alleging that he obstructed Officer Matt Bendicsen in the performance of an authorized act. The complaint alleged that defendant “dialed 911 to report a Domestic Battery and stated that his girlfriend left the scene, knowing that she was still in his apartment.”

¶ 4 At trial, Bendicsen testified that on August 1, 2015, he was dispatched to a report of a domestic battery. The dispatcher said that a man named “Ron” had reported that his girlfriend punched him in the face and subsequently left the premises. Bendicsen responded to the location, which was a three-story apartment building. Two other officers also responded. They gained entry by randomly ringing doorbells until someone let them in. They went to the third floor, where Officer David Thiede went door-to-door listening for arguing coming from one of the apartments. Outside apartment C1, Thiede heard a female voice say, “Why the ‘F’ did you call the police?” A male voice told her to be quiet. Thiede went to the stairwell and called to his partners, then returned to the door of apartment C1. It was quiet inside when he returned.

¶ 5 Defendant answered the door clad in only a towel, as if he had just gotten out of the shower. Defendant told Bendicsen that he was an attorney, that he was “fine,” and that his girlfriend had left. Bendicsen told defendant that he did not believe him and that he had “reason to believe” that a female was in the apartment. Bendicsen told defendant not to “further obstruct” him and told him to allow him to speak to the female. Defendant stepped aside and allowed the officer into the apartment. Once inside, Bendicsen told defendant to get dressed. He followed him into the bedroom, where he saw a Hispanic woman in her underwear sitting on the bed. He later identified her as Linda Montes.

¶ 6 Bendicsen testified that defendant impeded his investigation by stating that his girlfriend had left, thus interposing an obstacle to his investigation, because he could not complete a domestic-battery investigation without speaking with both parties.

¶ 7 On cross-examination, Bendicsen testified that he and his fellow officers arrived on the scene in a “[m]atter of minutes” after receiving the dispatch, because they drove with lights and sirens on. He learned from the dispatcher that defendant had said that “she had left,” but he never spoke with defendant directly before arriving at the apartment.

¶ 8 Defendant testified that he thought that Montes was going to leave the apartment and would be gone by the time he got out of the shower. He did not see her in the apartment before speaking with Bendicsen.

¶ 9 The court found defendant guilty. It found the officers’ testimony more credible than defendant’s, and thus it concluded that defendant lied to them. It further found that defendant was guilty of obstruction because he hindered their ability to speak with Montes. Defendant timely appeals.

¶ 10 Defendant first contends that a fatal variance existed between the complaint’s allegations and the proof at trial. He argues that the complaint alleged that he made a false statement to the 911 dispatcher, whereas Bendicsen’s testimony makes clear that he was found guilty on the basis of the statement made directly to the officer. Defendant also contends that he was not proved guilty beyond a reasonable doubt, because the evidence showed that he did not materially hinder Bendicsen’s ability to speak with Montes. Because it is dispositive, we consider defendant’s second issue first.

¶ 11 In reviewing the sufficiency of the evidence in a criminal case, we ask whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have

found the essential elements of the offense beyond a reasonable doubt. *People v. Davison*, 233 Ill. 2d 30, 43 (2009). To convict defendant, the State had to prove that defendant knowingly obstructed a peace officer who was performing an authorized act in his official capacity and that defendant knew that he was a peace officer. 720 ILCS 5/31-1(a) (West 2014).

¶ 12 In *People v. Baskerville*, 2012 IL 111056, two officers saw the defendant's wife, Christine Baskerville, driving. They recognized her and believed that her license was suspended. They followed her to her house. She got out and started walking toward the house. The officers, having confirmed their suspicions about her license, asked her to return to her car, but she continued walking into the house. The defendant then emerged and conversed with one of the officers. He said that he had been driving and that Christine was not home, then went back inside. When the defendant returned, he said that he did not know what was going on, because he had been at home during the incident. The defendant told the officer that he could go inside to look for Christine, but the officer declined.

¶ 13 The defendant was convicted of obstruction, but the appellate court reversed the conviction and the supreme court affirmed. The supreme court held that the defendant's false statement would have "legal significance" only if it actually impeded an official act that the officer was performing. *Id.* ¶ 35. Any momentary delay did not hinder the officer, as the defendant almost immediately went in the house, returned, and told the officer that he could search. *Id.*

¶ 14 In *People v. Taylor*, 2012 IL App (2d) 110222, when questioned by an officer, the defendant gave a false name. Despite this, the officer was " 'pretty sure' " that he recognized the defendant, who had an outstanding warrant. *Id.* ¶ 4. Applying *Baskerville*, we held that the

defendant's conduct was not a "material impediment" to the officer arresting the defendant, as the officer arrested the defendant "almost immediately" despite the false statements. *Id.* ¶ 17.

¶ 15 This case is practically indistinguishable from *Baskerville* and *Taylor*. Defendant's false statement that his girlfriend was not at home delayed Bendicsen only momentarily from speaking with her. This is true regardless of whether we consider the statement to the 911 dispatcher or the statement directly to Bendicsen as the offending statement. Undeterred by the initial falsehood, Bendicsen and the other officers proceeded directly to defendant's residence, with lights and sirens activated. Once there, the officers heard a female voice coming from defendant's apartment before they even knocked on the door. Thus, when defendant told Bendicsen that his girlfriend was not home, the officer immediately said that he did not believe him. This conversation with defendant lasted no longer than the conversations in *Baskerville* and *Taylor*, and it did not materially impede Bendicsen from checking on Montes.

¶ 16 The State insists that *Baskerville* and *Taylor* are distinguishable because this case involved a domestic battery and domestic batteries are inherently "volatile" situations. The State observes that Thiede heard voices arguing inside the apartment, and thus the officers were reasonably concerned for their own safety and that of the apartment's occupants.

¶ 17 The record does not support the State's assertion. Thiede testified that the yelling had stopped before the officers approached the apartment. When defendant answered the door, it appeared that he had just gotten out of the shower. Montes was sitting on the bed. Nothing in the record suggests that the situation was particularly volatile. Moreover, when asked directly how defendant's statement impeded him, Bendicsen never mentioned safety as a concern. He said only that he wanted to talk to Montes.

¶ 18 *People v. Davis*, 409 Ill. App. 3d 457 (2011), which the State cites, was decided before *Baskerville*. The court's focus on the risk that a defendant's false statement could compromise an investigation (*id.* at 462) appears inconsistent with *Baskerville*'s requirement that the conduct must actually materially hinder the investigation. In any event, it appears that the delay there was longer than that here. In *Davis*, the defendant allowed the officer to enter only after she went back inside to speak with her brother "a short time later." *Id.* at 459. Also, unlike here, there was no evidence that the officer immediately saw through the ruse. Thus, the defendant's misstatements did materially delay the investigation.

¶ 19 The judgment of the circuit court of Du Page County is reversed.

¶ 20 Reversed.