2019 IL App (1st) 170767-U

FOURTH DIVISION
May 2, 2019

No. 1-17-0767

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IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. WILLIAM PRUENTE, Defendant-Appellant.	)))))))))	Appeal from the Circuit Court of Cook County. No. 16 CR 15491 Honorable Matthew Coghlan, Judge Presiding.

JUSTICE BURKE delivered the judgment of the court.
Presiding Justice McBride and Justice Gordon concurred in the judgment.

ORDER

Held: We affirmed defendant's convictions based on our determination that sufficient evidence showed that he knowingly gave false, material testimony; his codefendant was not acquitted on identical evidence; and defendant's false testimony impeded the administration of justice.

¶ 1 Following a bench trial, defendant William Pruente was convicted of perjury, official misconduct, and obstruction of justice arising out of testimony he provided at a suppression hearing in a criminal case. He was sentenced to 30 months' felony probation and 250 hours of community service. On appeal, defendant raises several challenges to the sufficiency of the

evidence, arguing that (1) the State failed to prove that his testimony was factually false and material, as required for a showing of perjury; (2) his codefendant was acquitted on identical evidence; and (3) the State failed to prove that defendant's testimony impeded the administration of justice. For the reasons that follow, we affirm.

¶ 2 I. BACKGROUND

¶ 3 On June 6, 2013, defendant (a Chicago police officer), along with other officers from Chicago Police Department (CPD) and Glenview Police Department (GPD), conducted surveillance of suspected narcotics dealings by Joseph Sperling in Glenview, Illinois. Defendant conducted a traffic stop and arrested Joseph Sperling for possession of cannabis shortly after he left his home. In the ensuing criminal case, *People v. Sperling*, Case No. 13 CR 14796, tried before Judge Catherine Haberkorn, Sperling filed a motion to quash arrest and suppress evidence, alleging that he was the subject of an illegal search and seizure. Sperling alleged that he did not commit a traffic violation and the officers lacked reasonable suspicion that he had committed a crime when they detained him.

¶ 4 At the March 31, 2014, hearing on the motion to suppress, defendant and his codefendants—fellow Chicago police officer James Padar and Glenview police officer James Horn—testified. Judge Haberkorn granted the motion to suppress and the charges were dismissed. Defendant and his codefendants were later charged by indictment with perjury, obstruction of justice, and official misconduct based on testimony they provided at the hearing. At the joint bench trial, the court entered a directed finding of not guilty as to Horn, acquitted Padar at the close of the evidence, but found defendant guilty on all counts.

¶ 5 A. Hearing on the Motion to Suppress in *People v. Sperling*[1]

¶ 6 At the hearing, Sperling testified that at approximately 2:57 p.m. on June 6, 2013, he left his home in Glenview and was pulled over by a marked Glenview police car. Sperling testified that he did not committed any traffic violations. He was approached by defendant, who "immediately took me out of the car, arrested me, and put me in the backseat of the Glenview squad [car]." Defendant did not ask for Sperling's name or driver's license. Sperling testified that defendant reached through the open driver's side window, unlocked the door, pushed Sperling's hand away as Sperling held his license and insurance card, and opened the driver's door. Sperling testified that defendant locked him in the backseat of the police car and did not ask for consent to search his vehicle. Sperling did not tell defendant that there was anything in his vehicle. Sperling observed officers searching his vehicle and they recovered a black bag containing cannabis from the back seat. Sperling testified that he had placed the bag underneath the passenger seat when he left his house. He testified that his vehicle was parked inside his garage and the garage door was closed.

¶ 7 The State presented the testimony of several arresting officers. Chicago police officer Vince Morgan testified that he was observing Sperling's residence at approximately 2:57 p.m. when Sperling exited the front door of the house and entered a gold colored Ford Taurus, which was parked in the drive port. Morgan observed Sperling open the passenger's side door and place a black bag in the rear backseat area. Sperling drove away and turned left onto Blackthorn. Morgan informed his fellow officers. The next time he observed Sperling was after the traffic stop. Morgan observed defendant and Horn by Sperling's vehicle. He believed he heard defendant ask Sperling if there "was anything in the car that shouldn't belong in the car."

[1] The transcript of the hearing on the motion to suppress was introduced in its entirety at defendant's criminal trial.

Morgan believed Sperling stated there "was a little weed in the back seat." Morgan observed defendant recover a bag from Sperling's vehicle. On cross-examination, Morgan clarified that he did not recall whether Sperling made the statement about the drugs while he was still in the vehicle. Morgan testified that defendant spoke to Sperling for less than one minute before Sperling exited the car. Defendant then searched the vehicle, found the bag, and placed Sperling in Horn's vehicle.

¶ 8 Chicago police sergeant Padar was a team supervisor and surveillance officer in the narcotics investigation in Glenview on June 6, 2013. Padar testified that the officers met behind a bank about a half an hour before surveillance began to formulate a plan to follow Sperling's vehicle; Glenview officers Horn and sergeant Theresa Urbanowski were present. The GPD officers were asked to assist; Padar did not recall them being asked to assist specifically with a traffic stop. During surveillance, Padar was stationed a few streets from Sperling's residence in a covert vehicle. Padar observed Sperling turn his Ford Taurus from Redbud Lane onto Blackthorn. Padar observed Sperling turn from Blackthorn onto Sequoia without using a turn signal. Padar alerted Horn and defendant to the traffic violation. He observed defendant and Horn make a traffic stop. Padar observed defendant exit the passenger side of Horn's vehicle and approach the driver's side of Sperling's vehicle. Padar observed defendant and Sperling engage in conversation, then the door opened and Sperling exited the Ford Taurus and defendant led him to the rear of the vehicle. Padar testified that Horn remained with Sperling while defendant walked directly to the rear passenger's side of the Ford Taurus, opened the door, and retrieved a black backpack. Defendant opened the bag, put it down, then placed Sperling in handcuffs. Padar did not hear the conversation between defendant and Sperling. Padar left the scene after Sperling was placed in handcuffs.

¶ 9 Defendant testified that during the narcotics surveillance, he was in Horn's marked Glenview police car. He testified that shortly before 3 p.m., he received a radio communication from Morgan that Sperling had left his house carrying a black bag. Defendant later received a radio communication from Padar stating that Sperling failed to use his turn signal. Defendant testified that Horn then stopped Sperling's vehicle. Defendant had not personally observed Sperling fail to signal.

¶ 10 Defendant testified that he approached the driver's side of Sperling's vehicle and observed that the windows were down and there was a black bag in the back seat behind the passenger's seat. He asked Sperling for his driver's license and insurance. Defendant testified that it took Sperling approximately 30 seconds to produce his license and then more time to find his insurance; he believed Sperling searched in the glovebox. Defendant testified that as he waited, he "detected a strong odor or cannabis coming from inside that vehicle." Defendant asked Sperling if there was any cannabis in his vehicle, and Sperling responded there was a small amount in the black backpack in the back. After Sperling gave him the driver's license, defendant walked Sperling to the back of the vehicle, where Horn detained Sperling. Defendant went to the passenger's side, opened the door, and retrieved the black bag, inside of which he observed suspected cannabis. Defendant then placed Sperling under arrest, issued *Miranda* rights, and placed him in the back of Horn's police car.

¶ 11 Horn, called by Sperling's counsel, testified that he was summoned to meet with Urbanowski and defendant behind a bank at 12:34 p.m. on June 6, 2013. The Chicago officers wanted Horn's assistance so the departments could communicate and to have a marked police vehicle. He denied that the Chicago police officers requested assistance specifically with a traffic stop. The officers discussed possible scenarios that could occur. Horn did not observe Sperling

commit the traffic violation. Horn testified that, after he pulled Sperling over, defendant approached the driver's side of Sperling's vehicle while Horn approached the passenger side. Horn testified that defendant asked Sperling for a driver's license and insurance card. Horn believed Sperling provided these documents, but he did not recall witnessing Sperling hand them to defendant. Horn confirmed that defendant asked Sperling if he had anything in the vehicle, and Sperling admitted that he had cannabis. Horn testified that, to the best of his recollection, defendant asked Sperling where it was, and Sperling informed him that it was in the black bag behind the front passenger seat. Horn testified that defendant spoke with Sperling for approximately one minute before defendant asked Sperling to exit the vehicle. Horn stood with Sperling behind the vehicle. Horn testified that, to the best of his recollection, defendant then went to the rear passenger's side and retrieved the bag. After that, Sperling was handcuffed and placed in Horn's vehicle. Horn testified that his vehicle was equipped with a camera, but he did not know what happened to any video footage that may have been recorded from the stop.

¶ 12 Called by Sperling's attorney, Urbanowski testified that on June 6, 2013, she was assigned as patrol supervisor and to assist the CPD. She met with the Chicago officers behind a bank and was asked to assist in a potential traffic stop. She positioned her vehicle four blocks from Sperling's address. When she was notified of the traffic stop, she activated her emergency lights and drove to that location. When she pulled up, Sperling was standing behind his vehicle with Horn and defendant and he was not handcuffed. She exited her vehicle and approached Sperling's vehicle while defendant walked to the passenger's side, opened the door, and retrieved a black bag. Urbanowski testified that defendant opened the bag and then handcuffed Sperling.

¶ 13 Urbanowski further testified that her police vehicle was equipped with a video camera which should activate automatically, but she did not know whether a recording from her vehicle existed. Prompted by Sperling's attorney, Urbanowski identified the video recording from her police vehicle from the traffic stop, which was then played in court. The video showed that as Urbanowski arrived at the scene, defendant and Horn were exiting Horn's police vehicle and defendant approached the driver's side of Sperling's vehicle. Defendant immediately had Sperling exit the vehicle, promptly handcuffed him, patted him down, and then placed him in Horn's vehicle. Defendant returned to Sperling's vehicle and first searched the rear driver's side and then the rear passenger's side. After viewing the video, Urbanowski admitted that her previous testimony was false.

¶ 14 In closing argument, the Assistant State's Attorney (ASA) Jennifer Dillman noted that the State had never received Urbanowski's patrol car video and she was unaware of its existence. Sperling's attorney argued that the video showed that all of the officers lied. Judge Haberkorn granted the motion to suppress and the State *nolle prossed* the case against Sperling. Judge Haberkorn characterized the officers' conduct as "outrageous," found that all the officers had lied on the stand, and there was a conspiracy to lie. Judge Haberkorn found that they had lied regarding "who approached first, as to whether or not [Sperling] was handcuffed, as to whether or not he was asked for his driver's license and there was a conversation first." The judge held that "[m]any, many, many, many times they all lied."

¶ 15 B. Criminal Charges Against Defendant and Fellow Officers

¶ 16 Defendant was charged by indictment in 2015 with five counts of perjury (720 ILCS 5/32-2(A) (West 2014)), two counts of official misconduct (720 ILCS 5/33-3(B) (West 2014)); and one count of obstruction of justice (720 ILCS 5/31-4(a)(1) (West 2014)) based on the

testimony he gave at the motion to suppress hearing. Codefendants Horn and Padar were similarly charged in separate counts. Defendant's indictment specifically alleged that he committed perjury in testifying specifically as follows: (1) he approached the driver's side of the vehicle and asked Sperling for his license and insurance, Sperling provided the driver's license after about thirty seconds and then searched his glove box for another 15 to 20 seconds to find his insurance, (2) while Sperling remained in the vehicle, defendant asked Sperling if he had any cannabis in his car, and Sperling voluntarily admitted there was a small amount of cannabis in a black bag in the back; (3) after Sperling gave his driver's license to defendant, Sperling exited the vehicle and walked to the back of the car where Horn detained him, defendant walked around to the back passenger's side, opened the door, and retrieved the bag; (4) when defendant had Sperling exit the vehicle, defendant escorted Sperling to the rear of his vehicle but Sperling was not in handcuffs; and (5) defendant went directly to the rear passenger's side and retrieved a black bag, opened the bag, saw it contained a large bag of cannabis, informed Sperling that he was being arrested for cannabis, issued *Miranda* warnings, handcuffed him, and put him in Horn's car.

¶ 17 In count 18, the State alleged that defendant committed obstruction of justice. Counts 12 and 15 alleged that defendant committed official misconduct when he committed the offenses of perjury and obstruction of justice.

¶ 18 C. Bench Trial

¶ 19 At the joint bench trial of defendant, Horn, and Padar, ASA Dillman testified that she was assigned the Sperling case on the same date of the suppression hearing. At that time, she had defendant's narcotics division supplementary report, the preliminary hearing transcript in which defendant testified, Horn's police report, and an arrest report. Based on her review of Sperling's

motion and these materials, she surmised the issues at the hearing would be whether the police made a pretextual stop of Sperling and whether Sperling actually admitted to having controlled substances in the car. Before the hearing, she prepped officers Morgan, Padar, Horn, Kaldis, and defendant in her office and provided them the police reports to review; she gave the preliminary examination transcript to defendant because he was the only one who testified at the preliminary hearing.

¶ 20 Dillman testified that during the hearing, the officers were in a waiting room near the courtroom. Dillman testified that prior to Urbanowski's testimony, Dillman was unaware of the existence of a video recording. She had not noticed the defense's subpoena for video in the State's file until during the hearing. There was a motion to exclude witnesses during the hearing, so she did not ask the other officers about the video.

¶ 21 Urbanowski testified at defendant's trial as a witness for the State. She testified that all GPD vehicles are equipped with video cameras that start recording automatically. She testified that the video uploads onto a server whenever the vehicle is near the police station. Urbanowski identified the video recording from her patrol vehicle from June 6, 2013, which was placed in evidence. She also identified still photographs taken from the video.

¶ 22 Urbanowski testified that on June 6, 2013, her commander requested she attend a meeting in his office with officers from the CPD, including defendant. She had never previously worked with the Chicago officers. She learned of defendant's narcotics investigation of Sperling, who was in possession of a large amount of cannabis and was preparing to sell it to defendant's confidential informant. Urbanowski testified that the Chicago officers wanted a marked police vehicle available as they were in unmarked vehicles and in an unfamiliar jurisdiction. The officers planned to observe Sperling and stop his car if he committed a traffic violation.

Urbanowski also testified that "there was talk that there was enough probable cause to stop his car based on the information from the confidential informant."

¶ 23 Urbanowski later met with defendant behind a bank. Defendant was on his cellular telephone and he informed Urbanowski that he was speaking with the confidential informant. She testified that Horn was summoned to the meeting behind the bank because she requested another Glenview officer in a marked vehicle and Horn was the closest officer. Defendant rode with Horn so the departments could communicate. Urbanowski arrived at the location where Sperling was stopped within 10 to 12 seconds of being notified. Urbanowski observed defendant approach Sperling's vehicle and Horn was standing in front of his patrol car. Ubanowski testified that when she exited her squad car, which was approximately three to five feet from Sperling's car, she smelled "the strong odor of cannabis." She could not recall exactly when the cannabis was recovered.

¶ 24 Urbanowski testified that the only report she reviewed before the hearing on the motion to suppress was Horn's report. She testified that Horn related that the ASA thought the issue would be whether the stop was pretexual. Dillman briefly spoke with the officers in the hallway outside the courtroom and Urbanowski told Dillman what she remembered from the stop. The subject of a police vehicle video never came up. While the officers waited in the room next to the courtroom during the hearing, defendant stated that the traffic stop was not needed because there was enough probable cause based on the confidential informant. Urbanowski testified that after defendant left the room to testify, he returned and knocked on the door and stated, "just so you know, they have video."

¶ 25 Urbanowski testified that after Sperling's attorney played the video, she admitted that her initial testimony was false. Urbanowski was not charged with perjury because she corrected her

testimony at the hearing. Urbanowski testified that, prior to being shown the video from her vehicle, she testified truthfully to the best of her recollection.

¶ 26 The State entered into evidence a copy of Sperling's motion, the transcript of the suppression hearing, defendant's narcotics supplementary report, the video recording from Urbanowski's vehicle, still photographs from the recording, the CPD arrest report, and Horn's report.

¶ 27 Defendant's supplementary report was approved and signed by Padar. In the report, defendant stated that his division "formulated a plan to conduct surveillance on Sperling's residence in Glenview in regards to narcotics being sold by a subject known to R/Os as SPERLING, Joseph *** Team A-4 used fixed and mobile surveillance in the area ***. The report recounts that defendant observed Sperling leave his residence with the black bag and drive away, and further states that Sperling

> "failed to signal going W/B on Seqioua [*sic*]from Blackhorn where subject failed to use turn signal. Enforcement Officers Pruente *** and HORN *** curbed subjects vehicle for a minor traffic violation R/Os conducted the traffic stop and asked subject for his license and insurance, during traffic stop R/Os could smell a strong odor of cannabis coming from subject's vehicle. R/O asked subject SPERLING if he had any cannabis in his vehicle and he replied he had a small amount in the black bag behind the passenger seat. R/O Pruente *** had subject exit the vehicle and was detained by PO. Horn. R/O Pruente recovered the black bag and found it to contain a large ziplock bag that contained a large amount of cannabis. R/O then placed subject under arrest and subject was advised of his Miranda rights."

¶ 28 At the close of the State's evidence, all three defendants moved for a directed finding, asserting, *inter alia*, that the State had not shown that the allegedly perjured statements were false, material, or that the officers made them knowing they were false, as the officers were merely slightly mistaken about the sequence of events during the stop.

¶ 29 The trial court denied the motion as to defendant and Padar, but granted the motion as to Horn. The court determined that Horn was not a part of the CPD's narcotics investigation, had no prior relationship with the Chicago officers, was present merely to assist another jurisdiction, had only limited involvement in the traffic stop, did not interact with Sperling or conduct a search, and Horn's police report was consistent with the video recording of the stop and did not show an intent to deceive. The trial court found that Horn testified ten months after the incident and his testimony showed that he did not have a clear recollection of the details of the stop; he prefaced his testimony with "I believe" or "I would imagine" in answering questions and he did not recall whether Sperling tendered his license and insurance. The court concluded that Horn had relied on defendant's supplementary report when he testified. The court found that the State had not shown that Horn knew his answers were false, and given his accurate police report, limited involvement, and lack of memory, the court granted the motion for a directed verdict of acquittal.

¶ 30 Defendant admitted into evidence copies of his cell phone records from June 5 and 6, 2013, showing multiple conversations with the confidential informant.

¶ 31 Defendant and Padar presented the testimony of ASA Michael Falagario, who served as first chair in Sperling's case. Falagario testified that shortly before the hearing began, he spoke with the officers briefly outside of the courtroom and he recalled that one of the officers indicated that there was a confidential informant. Falagario testified that he did not know about the video beforehand.

¶ 32 In closing, the State adopted its prior argument opposing the motions for a directed finding and further asserted that defendant's supplementary report failed to mention a confidential informant at all and showed that the officers intended to rely on the traffic stop to support the arrest and seizure of evidence.

¶ 33 Defendant's counsel also adopted her previous arguments and reiterated that defendant's allegedly false testimony was not material, the State failed to show that he knew his statements were false, and he was merely impeached on minor details.

¶ 34 The trial court found that Padar did not conduct the traffic stop and did not appear on the video recording until after the search of Sperling's vehicle, so it was unclear how much of the stop he observed. The trial court found that Padar later approved and signed, as the supervisor, defendant's report, but it was unknown how much scrutiny he gave the report. Padar testified consistently with defendant's report. The trial court determined that any discrepancies between Padar's testimony and the video were not material as Padar did not testify to any interactions with Sperling, admissions by Sperling, or whether there was a request to see his driver's license. The trial court found Padar not guilty.

¶ 35 With respect to defendant, the trial court found that the evidence showed defendant had information from a confidential informant that Sperling was in possession of narcotics and defendant planned to execute a pretextual stop. The trial court found that the evidence showed that defendant pulled Sperling over, immediately removed him from the vehicle, handcuffed him, patted him down, placed him in the police car, and then searched the vehicle. The trial court found that defendant's report was intended to protect the confidential informant and provide an independent legal basis for the stop. The trial court found that the issue at the suppression hearing was whether the search passed constitutional muster, and defendant's "false statements

went directly to that issue and they are therefore material. And having conducted the stop, prepared the report, the evidence is strong that he knew his testimony was false." The trial court found defendant guilty of all charges. He was sentenced to 30 months' felony probation.

¶ 36 Defendant filed a motion to reconsider and a motion for a new trial, which were denied. Following sentencing, defendant filed a timely appeal.

¶ 37 II. ANALYSIS

¶ 38 A. Standard of Review

¶ 39 "[T]he State carries the burden of proving beyond a reasonable doubt each element of an offense." *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224-25 (2009) (citing *Jackson v. Virginia*, 443 U.S. 307, 315-16 (1979)). "Where a criminal conviction is challenged based on insufficient evidence, a reviewing court, considering all of the evidence in the light most favorable to the prosecution, must determine whether any rational trier of fact could have found beyond a reasonable doubt the essential elements of the crime." *Id.* (citing *Jackson*, 443 U.S. 318-19). "A criminal conviction will not be set aside unless the evidence is so improbable or unsatisfactory as to create a reasonable doubt of the defendant's guilt." *Id.* at 225.

¶ 40 B. Perjury Convictions

¶ 41 Defendant contends that the State failed to prove beyond a reasonable doubt that any of his alleged perjurious statements were factually false or material to the issues presented in the suppression motion, and thus his convictions for perjury cannot stand. In addition, defendant contends that his conviction of official misconduct must also be reversed because it was premised on a finding that he committed perjury.

¶ 42 To prove that a defendant committed the offense of perjury, the State must show that "(1) the defendant gave statements under oath or affirmation in any type of matter where the law

requires an oath or affirmation; (2) the statements were false; (3) the statements were material to the issue or point in question at the proceeding in which the false statements were made; and (4) the defendant did not believe the statements to be true." *People v. Acevedo*, 275 Ill. App. 3d 420, 423 (1995). See also 720 ILCS 5/32-2(a) (West 2014).

¶ 43 1. Materiality

¶ 44 As we previously set forth, the indictments alleged defendant made numerous perjurious statements concerning his interactions with Sperling during the traffic stop. However, defendant asserts that all of these statements were immaterial to the outcome of the suppression hearing because, based on his testimony that he detected the odor of cannabis as he waited for Sperling to locate his license and insurance, defendant had legal authority to detain Sperling and search his vehicle. Defendant contends that the only plausibly material statement at issue is defendant's testimony that he asked Sperling if he had anything in the vehicle and Sperling admitted to being in possession of cannabis.

¶ 45 "The test of materiality for an allegedly perjured statement is whether the statement tends to prove or disprove an issue in the case." *Acevedo*, 275 Ill. App. 3d at 423. "A statement is material when it did influence, or could have influenced, the trier of fact." *Id.* (citing *People v. Davis,* 164 Ill. 2d 309, 316 (1995) (McMorrow, J., concurring); *People v. Briddle*, 84 Ill. App. 3d 523, 527 (1980)). See *People v. Baltzer*, 327 Ill. App. 3d 222, 227 (2002) (A statement is material "if it influenced, or could have influenced, the trier of fact in its deliberations on the issues presented to it."). "The materiality issue is a question of law for the court." *People v. Olinger*, 245 Ill. App. 3d 903, 907 (1993).

¶ 46 With the foregoing in mind, we must examine defendant's statements in light of whether they "could or would" influence the trier of fact in its deliberation of the issues presented in

Sperling's motion to suppress. "The issue at the suppression hearing was whether the police violated the defendant's fourth amendment rights by subjecting him to an illegal search." *People v. Rutledge*, 257 Ill. App. 3d 769, 771 (1994). The focus is on the "legality of the police conduct and not the guilt of the defendant." *Id*. Sperling's motion alleged that the search and seizure were illegal, that Sperling did not commit a traffic violation, and that the officers lacked reasonable suspicion that he had committed a crime when they detained him.[2] Dillman testified that before the hearing, she believed that the issues would involve whether the police made a pretextual stop of Sperling based on the traffic violation and whether he actually admitted to having controlled substances in his car.

¶ 47 An initial traffic stop may expand to an investigative detention "if the officer discovers specific, articulable facts which give rise to a reasonable suspicion that the defendant has committed, or is about to commit, a crime." *People v. Ruffin*, 315 Ill. App. 3d 744, 748 (2000). "An investigative detention may last no longer than is reasonably necessary to effectuate its purpose." *Id.* at 749. "Reasonableness is measured in objective terms by examining the totality of the circumstances." *People v. Moss*, 217 Ill. 2d 511, 518 (2005). Further, "[a]n officer may search a defendant for evidence of criminal activity if there is probable cause to do so." *People v. Stout*, 106 Ill. 2d 77, 87 (1985). "Probable cause exists when the totality of the facts and circumstances known to the officers is such that a reasonably prudent person would believe that the suspect is committing or has committed a crime." (Internal quotation marks omitted.) *People v. Lobdell*, 2019 IL App (3d) 180385, ¶ 12. An officer's actions are viewed objectively and do not depend on the actual or subjective beliefs of the officer involved. *People v. Wear*, 229 Ill. 2d 631, 644 (2008).

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[2] We note that the State did not allege that defendant committed perjury concerning the reason for the traffic stop, as he was not the officer who viewed the traffic infraction. See *People v. Juarbe*, 318 Ill. App. 3d 1040, 1049 (2001) (investigatory stop is proper if there is reasonable suspicion of criminal activity).

¶ 48 As previously set forth, Sperling testified that defendant immediately removed him from his vehicle, arrested him, placed him in the back of the police car, and did not ask for his driver's license or insurance first. Sperling testified that defendant reached through his window and unlocked the door and opened it. Sperling testified that defendant did not ask for consent to search his vehicle and he did not admit to defendant that he had anything in his vehicle.

¶ 49 In contrast, defendant's testimony presented an entirely different version of events: he asked Sperling for his license and insurance and waited almost one minute for Sperling produce these items; he detected the strong odor of cannabis while he waited; he asked Sperling if there was any cannabis in the vehicle, and Sperling voluntarily admitted there was a small amount in a bag in the backseat; after Sperling gave him his license, defendant had Sperling exit the car and led him to the rear of the car, where Horn detained him; defendant immediately went to the passenger's side, retrieved the black bag, and observed it contained suspected cannabis; he handcuffed Sperling and placed him in Horn's vehicle. Defendant's supplementary report reflects the same sequence of events.

¶ 50 The video evidence contradicted defendant's testimony and corroborated Sperling's testimony. The video demonstrated that defendant did not initially engage Sperling in conversation while Sperling remained in his vehicle, or wait one minute by the driver's side window for Sperling to produce his license and insurance. Rather, the video clearly showed that defendant approached Sperling's vehicle, immediately opened the door, had Sperling exit the vehicle, handcuffed him, performed a brief pat-down, and placed Sperling in the rear of Horn's police vehicle. The video further showed that defendant did not immediately go to the rear passenger side of Sperling's vehicle and retrieve a black bag. Rather, defendant returned to the

driver's side, opened the rear driver's side door, and searched inside, but emerged without any bag in hand. He then went to the rear passenger side door, opened it, and searched inside.

¶ 51 Accordingly, defendant's perjured statements were material to whether Sperling's arrest and search was legal under the totality of the "facts and circumstances" analysis. That is, defendant's actions, statements, and interactions with Sperling during the entire encounter were material in determining whether they had a "natural tendency to influence the trier of fact on the issue or point in question" or "*would or could* influence the trier of fact in its deliberations on the issues presented to it." ' (Internal quotation marks omitted). (Emphasis added). *Rutledge*, 257 Ill. App. 3d at 771. Whether defendant requested Sperling's license and insurance first and waited, whether defendant immediately extracted Sperling from the vehicle, whether Sperling voluntarily admitted that he possessed cannabis, whether Sperling was arrested before his vehicle was searched and the cannabis discovered, all constituted material questions with respect to whether defendant had a reasonable basis to detain Sperling and search his vehicle. There was a clear relationship between defendant's statements and the issues in the suppression case. *Acevedo*, 275 Ill. App. 3d at 423. The entire encounter was material to the suppression issue because the existence of probable cause depended on the totality of circumstances at the time of arrest.

¶ 52 Defendant contends that, regardless of his other statements, his detection of the odor of cannabis provided probable cause to detain Sperling and search his vehicle. "[D]istinctive odors can be persuasive evidence of probable cause." *Stout*, 106 Ill. 2d at 87. See *In re O.S.*, 2018 IL App (1st) 171765, ¶ 26 ("Illinois courts have repeatedly recognized that the distinctive smell of burning cannabis emanating from a vehicle will provide police officers familiar with and trained

in the detection of controlled substances with probable cause to search a vehicle and all persons seated therein.").

¶ 53 Although the detection of the odor of cannabis may provide an officer with probable cause to support a search, the fact that defendant detected the odor of cannabis cannot be viewed in a vacuum. A probable cause analysis nevertheless requires attention to "the totality of the facts and circumstances known to the officers." *Lobdell*, 2019 IL App (3d) 180385, ¶ 12. Defendant's testimony regarding the odor of cannabis was given in conjunction with other testimony which was specifically found to be false. That is, defendant testified that he asked Sperling for his license and insurance, waited nearly one minute for Sperling to produce these documents, and detected the odor of cannabis while he waited. In light of the other evidence directly contradicting defendant's statements, this obviously called into question not only the truth of defendant's statements that he detected cannabis and Sperling admitted possessing cannabis, but also whether defendant had the opportunity to detect the smell of cannabis, at all, given his immediate removal of Sperling from the vehicle.

¶ 54 Although defendant argues that the State did not charge him with perjury regarding his testimony that he smelled cannabis, we observe that it would be difficult to prove the absence of an odor an officer claimed to smell from a police vehicle video recording. Regardless, the essential point is that the video evidence cast doubt on *all of* defendant's testimony, whether or not included in the perjury charges, including that he detected the odor of cannabis, and vitiated the legal basis of the search and seizure.

¶ 55 Defendant argues that Judge Haberkorn's findings gave no indication that any particular statement controlled the result and the judge merely found the officers incredible. When analyzing whether the perjured statements were material, "[t]his is an objective analysis and does

not depend on proof that [the allegedly perjurious] testimony actually influenced this particular judge." *People v. Powell*, 160 Ill. App. 3d 689, 695-96 (1988). As noted, a statement is material "when it did influence, *or could have influenced*, the trier of fact." (Emphasis added). *Acevedo*, 275 Ill. App. 3d at 423.

¶ 56 In making this assertion, defendant relies heavily on *Taylor v. Police Bd. of City of Chicago*, 2011 IL App (1st) 101156. We find *Taylor* inapposite. *Taylor* involved an appeal from an administrative agency's disciplinary hearing, in contrast to the present case involving a criminal prosecution. In *Taylor*, the officer pressed criminal charges against his second wife for harassment. *Id.* ¶ 7. At her trial, the officer testified on cross-examination that he never appeared in court in the divorce proceedings involving his first wife. *Id.* The CPD later brought disciplinary proceedings against the officer alleging that he violated department regulations in committing perjury in testifying that he was not present at the divorce hearing. *Id.* ¶ 9. The Police Board found the officer guilty. *Id.* ¶ 12. On appeal from the administrative proceeding, the defendant argued that the perjury charge must fail because his testimony at his second wife's harassment trial was not proven knowingly false or material. *Id.* ¶ 26. This court observed that the administrative perjury finding presented a mixed question of law and fact subject to the "clearly erroneous" standard of review, which is distinguishable from the circumstances here. *Id.* ¶ 33. The court concluded that whether the officer had appeared in the divorce proceeding of his first wife had no bearing on whether his second wife was guilty of harassment. *Id.* ¶ 38. The court also rejected the Board's argument "that materiality is demonstrated when the false statements can be said to have impacted the witness's credibility." *Id.* ¶ 47. Whether the officer "was present at his divorce prove-up was not material to any issue or point in question in the underlying criminal harassment proceeding." *Id.* ¶¶ 44, 46-47.

¶ 57 In contrast to *Taylor*, defendant's alleged perjured testimony regarding his actions, statements, and observations during the traffic stop and search did not merely constitute tangential facts bearing on defendant's credibility in the suppression hearing. Rather, defendant's statements at the suppression hearing squarely addressed factual and legal issues at play in the hearing, that is, whether Sperling was subjected to an illegal search and seizure. Unlike the circumstances in *Taylor*, the statements did not serve as mere impeachment of credibility on a peripheral matter. They related directly to what actually occurred during the stop and whether the police action complied with the law. Judge Haberkorn did more than merely determine that defendant was not a credible witness. The materiality of all of defendant's statements was reflected in Judge Haberkorn's finding that the officers specifically lied about "who approached first, as to whether or not [Sperling] was handcuffed, as to whether or not he was asked for his driver's license and there was a conversation first." The judge's ruling was influenced by all of the statements that the State subsequently included in the perjury charges in that, more than finding defendant was incredible, the judge found that the actions and statements which defendant testified to occurring in support of a lawful search and seizure, did not actually occur, and thus granted the motion to suppress.

We additionally observe that the *Taylor* court relied in part on the definition of "materiality" set forth in *People v. Glanton,* 33 Ill. App. 3d 124, 146 (1975) (quoting *People v. Lewis,* 22 Ill. 2d 68, 71 (1961)): "In order to constitute perjury the testimony involved must be shown 'by clear, convincing and satisfactory evidence to have been * * * material to the issue tried and not merely cumulative but probably to have controlled the result.' " The issue in *Glanton* was whether the State suborned perjury by presenting false testimony in the defendant's murder trial. *Glanton,* 33 Ill. App. 3d at 146. Similarly, in *Lewis,* 22 Ill. 2d at 71, the issue was

whether the petitioner presented substantial evidence that his conviction was obtained by perjured testimony. Thus, these cases did not involve perjury as the underlying charge, but the use of perjured testimony in another person's trial, and the question presented was whether the perjured testimony controlled the result in the other person's trial. Accordingly, to the extent that *Taylor* relied on *Glanton* and *Lewis* in defining and analyzing materiality as an element of the criminal offense of perjury, we find it inapposite. As previously set forth, the materiality component of the criminal offense of perjury is not whether a statement was outcome determinative, but whether it "would or could" influence the trier of fact as to the issues presented. *Acevedo*, 275 Ill. App. 3d at 423; *Briddle*, 84 Ill. App. 3d at 527.

¶ 58 Both defendant, the State, and the *Taylor* court find support in *People v. Rutledge*, 257 Ill. App. 3d 769, 771 (1994). In *Rutledge,* the court reversed the defendant's perjury conviction upon concluding that his false statement at his suppression hearing (that he did not possess cocaine) was immaterial, despite being relevant to his credibility, because the issue at the suppression hearing was whether he was subjected to an illegal search. *Id.* at 769-71.

¶ 59 In contrast to the defendant's statements in *Rutledge*, and as we explained, *supra*, defendant's false testimony here was material to Judge Haberkorn's determination of whether the police search was reasonable and supported by probable cause. Defendant's testimony regarding his actions, statements, and observations during the traffic stop "influenced, or could have influenced, the trier of fact" (*Baltzer*, 327 Ill. App. 3d at 227) and had a "natural tendency to influence the trier of fact on the issue or point in question." (Internal quotation marks omitted.) *Rutledge*, 257 Ill. App. 3d at 771. See *People v. Toner*, 55 Ill. App. 3d 688, 693-94 (1977) (although reversing perjury conviction on other grounds, court found that the defendant's grand jury testimony regarding operations of his police unit to determine if it practiced selective

enforcement of the law during sporting events and whether defendant or others indirectly or directly received money from businesses and parking lots around sports stadiums was material in his perjury trial as to whether defendant received money from specific parking lot owners); *Acevedo*, 275 Ill. App. 3d at 423 (defendant's false testimony during a murder trial in which he denied telling officers that accused came to his house shortly after victim was shot was material as to whether the accused was near the murder scene, which was an issue in the murder case regardless of whether the accused presented an alibi defense).

¶ 60 2. False Statements

¶ 61 Defendant next maintains that the State failed to prove the falsity of what he claims was the only plausibly material statement from his testimony, that Sperling admitted to possessing cannabis.

¶ 62 "The evidence required to support a conviction for perjury is sufficient if presented by the direct testimony of only one witness if it is confirmed or corroborated by other evidence of material circumstances tending to establish the falsity of the alleged perjured statement." *People v. Harrod*, 140 Ill. App. 3d 96, 103 (1986). In proving that a defendant committed perjury in knowingly making a false, material statement, "the prosecution need not establish which statement is false." 720 ILCS 5/32-2(b) (West 2014).

¶ 63 Defendant claims that the only evidence supporting the State's allegation that his statements were false was Sperling's testimony at the suppression hearing. Defendant argues that the police car video and the testimony by defendant, Morgan, Padar, and Horn contradict Sperling's testimony and thus no rational trier of fact could have found that defendant's statement was false.

¶ 64 However, "the fact finder need not accept the defendant's version of events as among competing versions." *People v. Ortiz*, 196 Ill. 2d 236, 267 (2001). In ruling on the motion to suppress in Sperling's case, the trial court specifically found that *all* the officers had lied on the stand. Additionally, Dillman testified that all of the officers reviewed the same materials, including defendant's police report, before testifying at the suppression motion, which could explain why they gave similar testimony. Regardless, "this court is not required to search out all possible explanations consistent with innocence or be satisfied beyond a reasonable doubt as to each link in the chain of circumstances." *People v. Wheeler*, 226 Ill. 2d 92, 117-18 (2007). Rather, "we must ask, after considering all of the evidence in the light most favorable to the prosecution, whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt."

¶ 65 The State admitted ample evidence to support a finding of guilt on the perjury charges, including the transcript of the motion to suppress, which contained Sperling's testimony. As previously detailed, Sperling's testimony directly contradicted defendant's testimony in several major respects. In addition, Urbanowski's testimony and the video recording from Urbanowski's vehicle showed that defendant's testimony was false. *Harrod*, 140 Ill. App. 3d at 103. Like the other officers, Urbanowski initially provided testimony consistent with defendant's narrative, but later admitted that her initial testimony was false. The video showed, contrary to defendant's testimony, that defendant immediately removed Sperling from the vehicle, handcuffed him, conducted a pat-down, placed him in the back of Horn's vehicle, searched the rear driver's side of Sperling's vehicle, and then the rear passenger's side. Judge Haberkorn and the trial court here both concluded that the video recording corroborated Sperling's testimony and was inconsistent with defendant's testimony.

¶ 66 Defendant maintains that the video shows defendant and Sperling engaging in a conversation before Sperling exits the vehicle. The trial court specifically found that the video showed defendant immediately removed Sperling from the vehicle and did not engage in a conversation or wait while Sperling searched for his license and insurance. In analyzing defendant's arguments, we are mindful that "in a bench trial, it is for the trial judge, sitting as the trier of fact, to determine the credibility of witnesses, to weigh evidence and draw reasonable inferences therefrom, and to resolve any conflicts in the evidence." *Siguenza-Brito*, 235 Ill. 2d at 228. "A reviewing court will not reverse a conviction simply because the evidence is contradictory ([citation]) or because the defendant claims that a witness was not credible." *Id.* Defendant's dispute relates to what interpretation and weight to give the video evidence, which constitutes a question of fact clearly meant for the trier of fact to resolve. Defendant had the opportunity to argue this theory at his bench trial, and the trier of fact rejected it. Under the postural stance of this appeal, it is not our role to draw our own inferences from a cold record. Even so, we have reviewed the video evidence and find it consistent with the trial court's findings.

¶ 67 In addition, the evidence was sufficient to establish that defendant knew his testimony was false, rather than being merely mistaken about a few inconsequential details. Knowledge of the falsity may be inferred. *Toner*, 55 Ill. App. 3d at 694. The evidence demonstrated that it was primarily defendant's narcotics investigation, he was requesting the assistance of the GPD, and he spoke with his confidential informant numerous times on the date of Sperling's traffic stop. Defendant was the arresting officer. Defendant authored the supplementary report on the date of the arrest. It is apparent from his report that he did not intend to rely on his confidential informant or the detection of the odor of cannabis to support the legality of the stop, seizure, or

search. Despite being authored on the same day, the report never mentioned the confidential informant. Defendant's testimony and report painted the picture of an ideal lawful search and seizure, but the video evidence contradicted both. Considering all of the evidence in the light most favorable to the State, a rational trier of fact could have determined beyond a reasonable doubt that defendant knowingly provided false testimony in an attempt to establish a legal basis for the search and seizure or to obfuscate defendant's own failure to abide by proper procedure in conducting the search.

¶ 68 Considering that we find sufficient evidence supported defendant's perjury convictions, we likewise reject his contention that his conviction of official misconduct, which was based on the commission of perjury, should be reversed.

¶ 69 C. Co-Defendant's Acquittal

¶ 70 Defendant next argues that all of his convictions should be reversed because the trial court acquitted Horn of the same offenses based on the same trial evidence, raising a reasonable doubt about defendant's guilt.

¶ 71 In general, the rule followed in Illinois "is that the failure of a jury to convict one co-defendant does not raise a reasonable doubt as to the guilt of the other co-defendants." *People v. Stock*, 56 Ill. 2d 461, 465 (1974). Where a defendant urges that such an inconsistent verdict raises a reasonable doubt as to his own guilt, "it must be shown that the evidence given against all of the defendants is identical in all respects." *Id.* Our courts have found that "acquittal of one or two or more jointly indicted defendants is no reason why the other defendant cannot be convicted." *Id.* Courts have reasoned that inconsistent verdicts may result from "the nature of the particular offense charged, or from the relationship shown to have existed between the parties." *Id.*

¶ 72 We disagree with defendant's contention that Horn was acquitted on "identical" evidence. The trial court's findings illustrate the differences between the evidence of defendant's guilt and Horn's lack of guilt. As the trial court determined, Horn was not involved in the CPD narcotics investigation, he did not have a prior relationship with the Chicago officers, he assisted on a limited basis, he was summoned by Urbanowski when the officers met behind the bank shortly before the traffic stop because he was in the vicinity and was in a marked vehicle, and he did not interact with Sperling or conduct a search. In contrast, the trial evidence showed that defendant was more involved in the narcotics investigation than Horn: defendant was the officer in constant communication with the confidential informant, defendant had a meeting at the Glenview police station beforehand to discuss his investigation and plan to make a traffic stop and Horn was not present at this meeting, defendant was the arresting officer, and defendant testified at the preliminary examination in Sperling's case.

¶ 73 The court further determined that Horn's testimony at the suppression hearing showed that Horn lacked a clear recollection of the incident ten months prior. The trial evidence supports this determination. Horn testified that he "believed" Sperling provided a license and insurance, but he did not "recall if I witnessed him hand those." When asked if Sperling admitted to defendant that he possessed cannabis, Horn testified, "to the best of my recollection, yes." He similarly indicated that, to the best of his recollection, Sperling was detained after defendant questioned him about the cannabis. The trial court found that Horn relied on defendant's report in testifying, which is possible considering that Dillman provided all of the officers with defendant's report. The trial court found that Horn's police report was actually consistent with the video recording and showed no intent to deceive. As such, the trial court found that the

evidence failed to establish beyond a reasonable doubt that Horn knowingly made false statements.

¶ 74 Accordingly, we find that the verdicts were not inconsistent as the evidence showed that defendant and Horn played significantly different roles in the Sperling case.

¶ 75 D. Obstruction of Justice Conviction

¶ 76 In his final contention, defendant challenges the sufficiency of the evidence with respect to his conviction of obstruction of justice.

¶ 77 Pursuant to section 31-4(a)(1),

> "(a) A person obstructs justice when, with intent to prevent the apprehension or obstruct the prosecution or defense of any person, he or she knowingly commits any of the following acts:
>
> (1) Destroys, alters, conceals or disguises physical evidence, plants false evidence, [or] furnishes false information." 720 ILCS 5/31-4(a)(1) (West 2014).

¶ 78 Here, the indictment charged that defendant obstructed justice when he testified at the motion to suppress as follows:

> "on June 6, 2013, after he handed Sperling off to Officer Horn, he went directly to the rear passenger's side door, opened that door, immediately got the bag, opened the bag, saw it contained a large bag of cannabis and then walked back and told Sperling he was being arrested for cannabis, gave him his Miranda rights, handcuffed him, and put him in Officer Horn's car, knowing that information was false."

¶ 79 Defendant argues that the State failed to prove he obstructed justice because he did not actually interfere with Sperling's defense as the charges against Sperling were dismissed.

¶ 80 Our supreme court has stated that "obstructing justice" for purposes of section 31-4 means "an attempt to interfere with the administration of the courts, the judicial system, or law enforcement agencies." *People v. Comage*, 241 Ill. 2d 139, 149 (2011). In *Comage*, the court rejected the contention that a brief concealment of evidence constituted obstruction of justice, reasoning that the legislature intended section 31-4 "to criminalize behavior that *actually* interferes with the administration of justice, *i.e.,* conduct that "obstructs prosecution or defense of any person." *Id.* The *Comage* court explained that a defendant "conceals" evidence for purposes of section 31-4 if his actions "actually interfere with the administration of justice, *i.e.,* materially impede[] the police officers' investigation." *Id.* at 150.

¶ 81 Defendant relies on *People v. Taylor,* 2012 IL App (2d) 110222. In that case, the State alleged that the defendant obstructed justice—his own arrest—by giving the officer a false name and claiming he did not have identification. *Id.* ¶ 9. Following our supreme court's precedent, the Second District concluded that "the relevant issue in weighing a sufficiency-of-the-evidence challenge to a conviction for obstruction of justice is whether the defendant's conduct actually posed a material impediment to the administration of justice." *Id.* ¶ 17 (citing *Comage*, 241 Ill. 2d at 149, and *People v. Baskerville,* 2012 IL 111056, ¶ 35 (reversing the defendant's conviction of obstruction of a peace officer for lying to officer about whereabouts of his wife after she was stopped for a traffic violation; the court found that the false statement was only legally significant if it "actually impeded an act of the officer was authorized to perform," and it did not hinder the officer from executing the traffic stop)). Applying that standard to the facts in *Taylor*, the court found that the defendant's initial giving of a false name and claiming not to have

identification did not "materially impede" the officer's arrest of the defendant. *Id.* The court reasoned that the encounter lasted only a few minutes, the officer was "pretty sure" of the defendant's identity, the officer arrested the defendant before viewing his identification and the defendant responded to the officer speaking his name. *Id.* The court found that the defendant's false statements did not deter the officer from arresting him, and the short delay the officer took to check the false name in his computer database "did not significantly delay the arrest." *Id.* "Thus, applying the same standard used in *Comage* and *Baskerville,* [the defendant's] false statements did not actually interfere with or materially impede the police investigation." *Id.*

¶ 82 The present case is distinguishable from *Taylor*. Defendant's false testimony did not result in merely a short delay of a few minutes. Rather, his statements—including those given in his police report—resulted in the arrest of Sperling beginning of June 6, 2013, through the date of the suppression hearing on March 31, 2014, and institution of felony criminal charges against Sperling. Defendant's false testimony was calculated to ensure the prosecution of Sperling continued beyond the motion to suppress hearing. Had it not been for Sperling's attorney astute request for the police car video and presentation at the hearing, Sperling may well have gone on to be criminally convicted and incarcerated based on defendant's false statements. Despite defendant's contention that he could not have obstructed justice because the charges against Sperling were ultimately dismissed, "[t]he offense of obstruction of justice is not dependent on the outcome of the prosecution alleged to have been obstructed." *People v. Gray*, 146 Ill. App. 3d 714, 716 (1986). Accordingly, we find there was sufficient evidence to establish beyond a reasonable doubt that defendant's false testimony "materially impeded" Sperling's defense. *Comage*, 241 Ill. 2d at 149; *Taylor,* 2012 IL App (2d) 110222, ¶ 17.

¶ 83 Defendant also asserts that the obstruction of justice charge did not allege that he furnished false information regarding whether he smelled cannabis or whether Sperling admitted he had cannabis, which he contends were the only relevant statements involved in the motion to suppress, and defendant's other statements could not have impeded Sperling's defense in any material way. As we have already rejected this same argument in relation to his perjury charges, *supra*, we similarly find it unavailing as to the obstruction of justice charge.

¶ 84 III. CONCLUSION

¶ 85 For the reasons stated above, we affirm the trial court's verdict of guilty on all charges against defendant.

¶ 86 Affirmed.