

NOTICE  
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2013 IL App (4th) 120272-U

NO. 4-12-0272

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED  
October 30, 2013  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
MONTRELL A. DAVIS,	)	No. 11CF268
Defendant-Appellant.	)	
	)	Honorable
	)	Charles McRae Leonhard,
	)	Judge Presiding.

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JUSTICE HARRIS delivered the judgment of the court.  
Justices Appleton and Knecht concurred in the judgment.

**ORDER**

¶ 1     *Held:* Evidence presented by the State was sufficient to prove defendant guilty beyond a reasonable doubt of obstructing justice.

¶ 2             Following a jury trial, defendant, Montrell A. Davis, was convicted of aggravated driving under the influence of alcohol (aggravated DUI) (625 ILCS 5/11-501(d)(1)(C) (West 2010)) and obstructing justice (720 ILCS 5/31-4(a) (West 2010)). The trial court sentenced him to concurrent prison terms of 10 and 5 years, respectively. He appeals, arguing the evidence was insufficient to prove him guilty of obstructing justice as specifically charged by the State. We affirm.

¶ 3                             I. BACKGROUND

¶ 4             On February 22, 2011, the State charged defendant with two counts of aggravated DUI (625 ILCS 5/11-501(d)(1)(H), (d)(1)(C) (West 2010)) and one count of obstructing justice

(720 ILCS 5/31-4(a) (West 2010)). Later, in January 2012, it additionally charged him with one count of aggravated driving with an alcohol concentration of 0.08 or more (625 ILCS 5/11-501(a)(1), (d)(1)(C) (West 2010)) and two counts of aggravated driving with a drug, substance, or compound in breath, blood, or urine (625 ILCS 5/11-501(a)(6), (d)(1)(H), (d)(1)(C) (West 2010)).

¶ 5 The charges against defendant stemmed from a motor vehicle accident that occurred on February 18, 2011, in Champaign, Illinois. In that accident, a vehicle occupied by defendant and his girlfriend, Calverlear Washington, who was eight months pregnant, collided with a vehicle being driven by Zheng Ni and carrying Zheng's wife, Xaiodong Chen, and the couple's young son, Ercheng Ni. The State alleged defendant was driving the vehicle occupied by him and Washington at the time of the accident and (1) was under the influence of alcohol, (2) the alcohol concentration in his blood or breath was 0.08 or more, (3) cannabis was in his system, (4) he did not possess a driver's license, and (5) the accident resulted in great bodily harm or permanent disability or disfigurement to Ercheng. With respect to the obstructing-justice charge, the State specifically alleged as follows:

"[D]efendant with the intent to prevent the prosecution of himself, knowingly furnished false information to Christopher Jenkins, a police officer, as to the identity of the driver involved in a personal injury accident namely: the Defendant denied being the driver of said vehicle."

¶ 6 On January 24, 2012, defendant's jury trial began. The State presented evidence showing the vehicle occupied by defendant and Washington went through a stop intersection and

struck the passenger side of the Ni's vehicle, causing serious injury to Ercheng. Following the accident, defendant and Washington both reported to police that Washington had been driving at the time of the accident. However, the State presented physical evidence that was inconsistent with those statements and which indicated defendant had been driving and Washington was a passenger in his vehicle. At trial, defendant acknowledged his intoxication at the time of the accident but his theory of defense was that Washington was driving when the accident occurred.

¶ 7 Evidence presented by the State included testimony from police officer Christopher Jenkins. Jenkins testified he was dispatched to the scene of the accident. Upon his arrival, he initially observed and made contact with Washington who indicated she had been driving one of the vehicles involved in the accident. Jenkins stated defendant appeared while he was speaking with Washington and said he had also been an occupant of that vehicle. Jenkins asked defendant for both defendant and Washington's driver's licenses. Defendant provided Jenkins with his State identification card and retrieved Washington's driver's license from the vehicle. The following colloquy occurred between Jenkins and the State:

"Q. Okay. And at that point the only information you had is that they both said she was driving?

A. That's right. Both of them were claiming that she was driving."

Additionally, Jenkins described defendant's report of how the accident occurred, stating as follows:

"[Defendant] said that they were on Clark Street. He said they were heading east on Clark Street. He said they were stopped at

the stop sign at Clark Street, and didn't see any oncoming traffic.

And then as he began to proceed in the intersection, out of nowhere the [Ni's vehicle] appeared and struck their vehicle."

¶ 8 The State also presented the testimony of police officer Mark Huckstep, who interviewed defendant following the accident. Huckstep's interview with defendant had been recorded and was played for the jury. The recording showed that, during the interview, defendant repeatedly denied he had been driving and, instead, asserted Washington was driving their vehicle when the accident occurred.

¶ 9 The record reflects, immediately prior to trial, one count of aggravated DUI and one count of aggravated driving with a drug, substance, or compound in breath, blood, or urine was dismissed on the State's motion. At the conclusion of defendant's trial, the jury returned guilty verdicts on all remaining counts.

¶ 10 On February 2, 2012, defendant filed a motion for a new trial. On March 22, 2012, the trial court denied defendant's motion and conducted his sentencing hearing. Following the hearing, the court sentenced defendant to concurrent sentences of 10 years in prison for aggravated DUI (625 ILCS 5/11-501(d)(1)(C) (West 2010)) and 5 years in prison for obstructing justice (720 ILCS 5/31-4(a) (West 2010)).

¶ 11 This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 On appeal, defendant challenges only his conviction for obstructing justice, arguing the State failed to prove him guilty of that offense as specifically alleged in the charging instrument. He contends the State alleged he furnished false information to Officer Jenkins but

only presented evidence sufficient to show he lied to Officer Huckstep. Defendant maintains his conviction for obstructing justice can not be based upon uncharged conduct, *i.e.*, providing false information to Huckstep, and must be vacated.

¶ 14 When reviewing a challenge to the sufficiency of the evidence, a reviewing court must determine "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt." *People v. Lloyd*, 2013 IL 113510, ¶ 42, 987 N.E.2d 386. "Under this standard, all reasonable inferences from the evidence must be allowed in favor of the State." *People v. Baskerville*, 2012 IL 111056, ¶ 31, 963 N.E.2d 898. "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." *People v. Siguenza-Brito*, 235 Ill. 2d 213, 225, 920 N.E.2d 233, 240-41 (2009).

¶ 15 The State has the burden of proving each element of a charged offense beyond a reasonable doubt. *People v. Johnson*, 2013 IL App (4th) 120162, ¶ 20, 986 N.E.2d 782. The Criminal Code of 1961 (Code) 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).

¶ 16 Initially, we disagree with defendant's contention that the State's evidence was

insufficient to show he furnished false information to Jenkins. At trial, the State presented evidence showing defendant was driving at the time of the accident, contrary to his assertions both at trial and following the collision. Defendant does not challenge the sufficiency of that evidence. Additionally, Jenkins testified for the State that he made contact and spoke with both Washington and defendant at the accident scene. Upon questioning by the State, Jenkins agreed that both defendant and Washington "were claiming that [Washington] was driving." A reasonable inference to be drawn from this evidence is that defendant gave Jenkins false information about who was driving at the time of the accident.

¶ 17 Defendant argues Jenkins' testimony that defendant was "claiming" Washington drove the car could have been based on information he obtained "second hand" from other police officers or Washington. However, such findings are not supported by the record. Jenkins' testimony fails to show he spoke with any other officer about the accident prior to speaking with defendant and Washington. Jenkins testified he "received a dispatch of an accident with injuries" and arrived on the accident scene "relatively quickly." Upon his arrival, he noted only that "[f]ire trucks had just pulled into the intersection." Jenkins testimony further showed the first person he spoke with at the scene was Washington who told him she had been driving a vehicle involved in the accident and needed medical attention. Fire personnel began attending to Washington while Jenkins then spoke with defendant.

¶ 18 Again, all reasonable inferences must be allowed in favor of the State. From Jenkins' testimony, the jury could reasonably infer defendant provided false information directly to Jenkins. Thus, the evidence, when viewed in the light most favorable to the prosecution, was sufficient to support defendant's conviction for obstructing justice as specifically alleged by the

State.

¶ 19           However, even absent evidence that defendant furnished false information directly to Jenkins, the evidence was sufficient to support his conviction for obstructing justice. As defendant notes "[w]here \*\*\* the statute defines the offense in general terms, a charge couched in the language of the statute is insufficient, and the facts which constitute the crime must be specifically set forth." *People v. Hughes*, 229 Ill. App. 3d 469, 473, 592 N.E.2d 668, 670 (1992). Here, defendant agrees the State sufficiently pled the offense of obstructing justice. However, he maintains that, because the State specifically named Jenkins in the charging instrument, it could only establish his guilt of the charged offense based upon evidence that defendant furnished false information to Jenkins.

¶ 20           "To vitiate a trial, a variance between allegations in a complaint and proof at trial " "must be material and be of such character as may mislead the accused in making his defense." ' (Citations). Where an indictment charges all essential elements of an offense, other matters unnecessarily added may be regarded as surplusage." *People v. Collins*, 214 Ill. 2d 206, 219, 824 N.E.2d 262, 269 (2005).

¶ 21           In challenging the sufficiency of the evidence against him, defendant essentially argues that a fatal variance existed between the charging instrument and the evidence at trial such that he was found guilty based upon uncharged conduct. Assuming the evidence failed to establish defendant furnished false information to Jenkins and a variance existed between the charging instrument and the evidence, that variance was not fatal.

¶ 22           As stated, an individual obstructs justice when he knowingly "furnishes false information" with the "intent to prevent the apprehension or obstruct the prosecution or defense

of any person." 720 ILCS 5/31-4(a) (West 2010). The specific individual to whom a defendant furnishes false information is not an essential element of obstructing justice. The case authorities defendant cites do not hold otherwise and are distinguishable from the present case. In particular, defendant relies heavily on *People v. Lyda*, 27 Ill. App. 3d 906, 912, 327 N.E.2d 494, 499 (1975), wherein the Second District held only that "physical evidence" was an essential element of obstruction of justice when a defendant is charged with destroying physical evidence and that element must be described with sufficient specificity.

¶ 23 The facts of this case are more similar to those presented in *People v. Montgomery*, 96 Ill. App. 3d 994, 998-99, 422 N.E.2d 226, 229-30 (1981), wherein the First District found no fatal variance between the charging instrument and the evidence at trial where the State charged the defendant with aggravated assault of a specific officer, Officer Romano, but the evidence at trial only supported a conviction based upon the assault of a different officer, Officer Crescenti. The court held " 'that a variance as to names alleged in a complaint or indictment, and those proved by evidence, is not regarded as material unless some substantial injury is done to the accused thereby.' " *Montgomery*, 96 Ill. App. 3d at 997, 422 N.E.2d at 229 (quoting *People v. Ferraro*, 79 Ill. App. 3d 465, 468, 398 N.E.2d 1001, 1004 (1979)). In so holding, the court determined the defendant failed to show he had been prejudiced by any discrepancy and stated as follows:

"[The defendant's] defense was not that he did not assault Officer Romano. Instead[,] he denied assaulting any officer with a gun. Had the complaint charged that he assaulted Officer Crescenti rather than Officer Romano, his defense would have remained



unchanged. Since the only issue he contested was whether he had a gun in his hand, the distinction between Officer Romano and Officer Crescenti could not have misled him in preparing his defense." *Montgomery*, 96 Ill. App. 3d at 998, 422 N.E.2d at 229-30.

¶ 24 Similarly, defendant in this case has failed to establish prejudice due to the alleged variance between the charge against him and the evidence presented by the State. As discussed, defendant's theory of defense was that Washington was driving at the time of the accident, not that he did not furnish information to any particular police officer. His theory of defense would have remained the same whether Jenkins or Huckstep was named in the information. The record shows the State's information set forth the essential elements of obstructing justice and adequately informed defendant of the nature of the charges against him. There is nothing in the record to suggest defendant suffered prejudice in the preparation of his defense.

¶ 25 Here, the record fails to reflect a variance between the charging instrument and the evidence at trial. Specifically, the State's evidence was sufficient to support defendant's obstructing-justice conviction based upon allegations that he furnished false information to Jenkins. However, even assuming a variance did exist as alleged by defendant, it was not fatal and did not warrant reversal of his conviction.

¶ 26 III. CONCLUSION

¶ 27 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we grant the State's request that defendant be assessed \$50 as costs for this appeal.

¶ 28 Affirmed.