

NOTICE

This Order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

2024 IL App (4th) 230321-U
NOS. 4-23-0321, 4-23-0323 cons.

IN THE APPELLATE COURT
OF ILLINOIS

FOURTH DISTRICT

FILED
March 19, 2024
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	Boone County
PATRICIA A. WHITMORE,)	Nos. 21CF298
Defendant-Appellant.)	21TR4080
)	
)	Honorable
)	C. Robert Tobin III,
)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Presiding Justice Cavanagh and Justice Zenoff concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court (1) reversed defendant's conviction for obstructing justice in appellate court case No. 4-23-0321 as her refusal to submit to a blood draw pursuant to a search warrant did not constitute concealment of physical evidence under the Illinois Supreme Court's recent decision in *People v. Hutt*, 2023 IL 128170 and (2) dismissed defendant's appeal of her conviction for improper lane usage in appellate court case No. 4-23-0323 for failing to file an appellate brief addressing her conviction.

¶ 2 Following a January 2023 jury trial, defendant, Patricia A. Whitmore, was convicted of one count of obstructing justice (720 ILCS 5/31-4(a)(1) (West 2020)) in Boone County case No. 21-CF-298, which was docketed as appellate court case No. 4-23-0321, and one count of improper lane usage (625 ILCS 5/11-709(a) (West 2020)) in Boone County case No. 21-TR-4080, which was docketed as appellate court case No. 4-23-0323. We consolidated the two appeals on defendant's motion.

¶ 3 On appeal, in appellate court case No. 4-23-0321, defendant argues her conviction for obstructing justice based on her refusal to submit to a blood draw pursuant to a search warrant must be vacated where the refusal did not constitute obstruction under *People v. Hutt*, 2023 IL 128170, 220 N.E.3d 1088. Defendant failed to file a brief in support of her appeal of the improper lane usage conviction in appellate court case No. 4-23-0323. For the following reasons, we reverse defendant's conviction in case No. 4-23-0321 and dismiss defendant's appeal in case No. 4-23-0323.

¶ 4 I. BACKGROUND

¶ 5 On November 11, 2021, Boone County Sheriff's Deputy Shane Laga observed a white Buick crossing the center line and driving on the white fog line on Route 76. Laga conducted a traffic stop and interacted with defendant. Laga smelled alcohol on defendant's breath and observed signs of impairment. Defendant was arrested and charged with improper lane usage (625 ILCS 5/11-709(a) (West 2020)) and driving under the influence of alcohol (625 ILCS 5/11-501(a)(2) (West 2020)). After defendant refused to provide a breath sample at the jail, Laga obtained a search warrant for a sample of her blood. Defendant refused to comply with the blood draw. Defendant was charged the following day with obstructing justice (720 ILCS 5/31-4(a)(1) (West 2020)).

¶ 6 Following a January 9, 2023, jury trial, defendant was found guilty of improper lane usage and obstructing justice, but not guilty of driving under the influence of alcohol. On March 15, 2023, the trial court sentenced defendant to 30 months of conditional discharge and 60 days in jail on the obstructing justice conviction.

¶ 7 A timely notice of appeal was filed on April 5, 2023.

¶ 8 II. ANALYSIS

¶ 9

A. Appellate Court Case No. 4-23-0321

¶ 10 On appeal, defendant argues her conviction for obstructing justice based on her refusal to submit to a blood draw must be vacated where the refusal did not constitute obstruction under section 31-4(a)(1) of the Criminal Code of 2012 (Code) (720 ILCS 5/31-4(a)(1) (West 2020)). Specifically, defendant contends her refusal to submit to the blood draw did not constitute concealment of physical evidence for purposes of this offense based on the Illinois Supreme Court’s decision in *Hutt*. Defendant maintains while *Hutt* was not decided until after she was sentenced, it applies retroactively, thereby necessitating the reversal of her conviction.

¶ 11

1. *Hutt*

¶ 12 In *Hutt*, the defendant was charged with obstructing justice in connection with driving under the influence. *Hutt*, 2023 IL 128170, ¶ 3. The defendant refused to provide a breath sample. *Hutt*, 2023 IL 128170, ¶ 12. A judge granted a search warrant requiring the defendant to provide both blood and urine samples, but he did not comply. *Hutt*, 2023 IL 128170, ¶¶ 13-14. After a bench trial, the trial court found the defendant guilty of obstructing justice. *Hutt*, 2023 IL 128170, ¶ 15. Before the supreme court, the “[d]efendant’s primary argument concern[ed] whether his undisputed actions of not providing a blood or urine sample constituted concealment under the obstructing justice statute.” *Hutt*, 2023 IL 128170, ¶ 41. The court noted the two potential definitions of “conceal”: (1) “to prevent disclosure” and (2) “to place out of sight.” (Internal quotation marks omitted.) *Hutt*, 2023 IL 128170, ¶ 44. Ultimately, the court concluded the “preventing disclosure” definition of concealment “does not pertain to physical evidence.” *Hutt*, 2023 IL 128170, ¶ 49. The court also found the “place out of sight” definition of concealment inapplicable “under the facts of this case.” *Hutt*, 2023 IL 128170, ¶ 49. The court reasoned that “while defendant took no action to affirmatively comply with the search warrant,

he also took no action to place his blood or urine out of sight or hide either from view. Rather, defendant remained seated in the hospital laboratory with the police officers.” *Hutt*, 2023 IL 128170, ¶ 49. Having concluded the defendant’s actions “did not amount to concealment within the meaning of the obstructing justice statute,” the court reversed the defendant’s conviction. *Hutt*, 2023 IL 128170, ¶ 50.

¶ 13 *2. This Case*

¶ 14 Defendant challenges the propriety of her conviction on the basis her refusal to submit to the blood draw did not “constitute[] concealment within the meaning of the obstructing justice statute.” *Hutt*, 2023 IL 128170, ¶ 41. We review issues of statutory interpretation *de novo*. *Hutt*, 2023 IL 128170, ¶ 41. The State concedes defendant’s conviction cannot stand. For the following reasons, we accept the State’s concession.

¶ 15 In this case, we find neither definition of concealment applies to defendant refusing a blood draw for the same reasons the supreme court found them inapplicable in *Hutt*, 2023 IL 128170, ¶ 49. Here, as with the defendant in *Hutt*, by refusing to provide a blood sample, defendant “took no action to affirmatively comply with the search warrant” but “also took no action to place [her] blood *** out of sight or hide [it] from view.” *Hutt*, 2023 IL 128170, ¶ 49. Defendant’s refusal to submit to a blood draw required by a search warrant did not constitute concealment of physical evidence under section 31-4(a)(1) of the Code (720 ILCS 5/31-4(a)(1) (West 2020)). Consequently, defendant’s actions do not support a conviction for obstructing justice under section 31-4(a)(1).

¶ 16 The supreme court decided *Hutt* in May 2023. Defendant was convicted in January 2023 and sentenced in March 2023. The supreme court has stated its “decisions apply to all cases that are pending when the decision is announced, unless this court directs otherwise.”

People v. Granados, 172 Ill. 2d 358, 365, 666 N.E.2d 1191, 1194 (1996). Here, the supreme court gave no indication its decision in *Hutt* was to be applied prospectively only. See *People v. Corrie*, 294 Ill. App. 3d 496, 505, 690 N.E.2d 128, 134 (1998) (holding a supreme court case decided while the case at bar was pending on appeal applied to the present case where the supreme court did not direct the decision be prospective only). Therefore, under the circumstances of this case and pursuant to the general rule in *Granados*, we find *Hutt* applicable to the present case. Accordingly, for the reasons stated, defendant's conviction for obstructing justice is reversed.

¶ 17

B. Appellate Court Case No. 4-23-0323

¶ 18

Defendant appealed both her obstructing justice conviction (appellate court case No. 4-23-0321) and her improper lane usage conviction (appellate court case No. 4-23-0323). On defendant's motion, both appeals were consolidated. Subsequently, this court granted defendant's motion for an extension of time to file her brief in case No. 4-23-0323, but no brief was filed and no further extensions of time were sought. Although consolidated, defendant's brief in case No. 4-23-0321 failed to raise any issues or arguments relative to her improper lane usage conviction.

¶ 19

Because defendant failed to file a brief supporting her challenge of the improper lane usage conviction in appellate court case No. 4-23-0323, that appeal is dismissed. See *First Capital Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 131, 345 N.E.2d 493, 494 (1976) (holding a reviewing court has the inherent power to dismiss an appeal if the appellant's brief is not filed within the time prescribed by the rules).

¶ 20

III. CONCLUSION

¶ 21 For the reasons stated, we reverse defendant's conviction and sentence for obstructing justice and dismiss her appeal of her conviction for improper lane usage.

¶ 22 No. 4-23-0321, Reversed.

¶ 23 No. 4-23-0323, Dismissed.