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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1134**

State of Minnesota,
Respondent,

vs.

Tara Teresa Behl,
Appellant.

**Filed May 13, 2013
Affirmed in part and remanded
Schellhas, Judge**

Hennepin County District Court
File No. 27-CR-11-33659

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Susan L. Segal, Minneapolis City Attorney, Dawn Knutson, Assistant City Attorney, Minneapolis, Minnesota (for respondent)

William M. Ward, Hennepin County Public Defender, Kellie M. Charles, Assistant Public Defender, Minneapolis, Minnesota (for appellant)

Considered and decided by Johnson, Chief Judge; Schellhas, Judge; and Hooten, Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges her convictions of theft and receiving stolen property, arguing that the district court erroneously instructed the jury and imposed sentences for

both offenses when they arose out of the same behavioral incident. Because the district court's jury instructions were not erroneous, we affirm in part. Because Behl's convictions arose out of a single behavioral incident, we remand to the district court for vacation of one of Behl's sentences.

FACTS

In the early morning hours of August 20, 2011, E.H. was walking home with several friends after celebrating a friend's birthday. E.H. was carrying a brown leather backpack, which contained her wallet, makeup, and other personal belongings.¹ Near the intersection of Lyndale and Franklin Avenues in Minneapolis, one of E.H.'s friends kicked some construction cones, after which two women from across the street yelled at E.H. and her friends; E.H. yelled back; the two women crossed the street; one woman punched E.H.; and E.H. and her friends fought with the two women. When the Minneapolis police arrived, people disbursed, and E.H. was then unable to locate her backpack.

When Minneapolis Police Officers Anna Hansen and Oscar Martinez-Gavina arrived at the scene, they encountered a group of people screaming the following: someone had taken a purse, someone had been assaulted, and a group of people had gone to a vehicle in a parking lot across the street. Officers Hansen and Martinez-Gavina pulled into the parking lot and observed people inside the vehicle ducking their heads down. The officers approached the vehicle and made contact with the driver and

¹ At trial, the parties and the district court used the words backpack and purse interchangeably. To accurately reflect the record, we too, use both terms.

passengers. Appellant Tara Behl was seated in the rear passenger seat with three purses beside her. Officer Hanson asked Behl to whom the purses belonged, and Behl said that the black purse belonged to Kelly, whose last name she did not know, and that the other two, one pink and white and one brown, were hers. The brown purse actually belonged to E.H.

Respondent State of Minnesota charged Behl with theft and receiving stolen property in violation of Minn. Stat. §§ 609.52, .53 (2010). The district court instructed the jury on the elements of the two charged offenses and, over Behl’s objection, included the word “conceals” in the definitions of theft and receiving stolen property:

Theft, Taking Property of Another, defined. The statutes of Minnesota provide[] that whoever intentionally and without claim of right takes, *conceals*, or retains possession of movable property of another without the other’s consent and with the intent to permanently deprive the owner of possession of the property is guilty of a crime.

....

Receiving Stolen Property, defined. The statutes of Minnesota provide that whoever possesses or *conceals* property, knowing or having reason to know the property was stolen, is guilty of a crime. Receiving Stolen Property, elements. The elements of receiving stolen property are, first, the brown leather backpack/purse in question was stolen. This means that the brown leather backpack/purse was taken by someone without the consent of the owner and with the intention of depriving the owner permanently of possession of the brown leather backpack/purse; second the defendant possessed or concealed the brown leather backpack/purse; third, the defendant knew or had reason to know the brown leather backpack/purse was stolen; fourth, the defendant’s act took place in the City of Minneapolis, Hennepin County, State of Minnesota.

(Emphasis added.) *Cf.* 10 *Minnesota Practice*, CRIMJIG 16.01, 16.47, 16.48 (2006) (providing substantively similar definitions for offenses of theft and receiving stolen property).

The jury found Behl guilty of both offenses, and the district court sentenced Behl on both offenses concurrently as follows: 60 days in the Hennepin County workhouse, execution of 55 days stayed for 1 year on the conditions that Behl remain law abiding and serve 5 days in the workhouse or Sentence to Serve program. This appeal follows.

D E C I S I O N

Jury Instructions

District courts are given “broad discretion and considerable latitude in choosing the language of jury instructions.” *State v. Milton*, 821 N.W.2d 789, 805 (Minn. 2012) (quotation omitted). “Absent an abuse of that discretion, [an appellate court] will not reverse a district court’s decision on jury instructions.” *Id.*

Behl objected to the district court’s inclusion of “conceals” in its instructions to the jury. “A properly objected-to instructional error regarding an element of an offense requires a new trial only if it cannot be said beyond a reasonable doubt that the error had no significant impact on the verdict.” *State v. Koppi*, 798 N.W.2d 358, 364 (Minn. 2011) (quotations omitted). We therefore consider whether the court’s use of “conceals” in instructing the jury on the elements of theft and receiving stolen property was error. “A jury instruction is in error if it materially misstates the law. Jury instructions must be viewed in their entirety to determine whether they fairly and adequately explain the law of the case.” *State v. White*, 684 N.W.2d 500, 509 (Minn. 2004) (citation omitted).

Behl asserts two bases to support her argument that the district court's use of "conceals" was error: (1) the evidence did not support using "conceals" because "to conceal something, it has to be out in the open or not hidden and then at some point hidden," and when the backpack was in the vehicle with the doors closed, it was out in the open; and (2) using "conceals" in the elements of both offenses was prejudicial and confusing to the jury because the jury could not have found Behl guilty of only one offense. Although Behl argued in her brief that the district court's use of "conceals" constituted a fundamental error of law, Behl orally withdrew that argument, arguing instead that the court abused its discretion by using "conceals" in the jury instructions. Behl's argument is unavailing.

A person commits the offense of theft, in relevant part, when she "intentionally and without claim of right takes, uses, transfers, *conceals* or retains possession of movable property of another without the other's consent and with intent to deprive the owner permanently of possession of the property." Minn. Stat. § 609.52, subd. 2(a)(1) (emphasis added). A person commits the offense of receiving stolen property when she "receives, possesses, transfers, buys or *conceals* any stolen property or property obtained by robbery, knowing or having reason to know the property was stolen or obtained by robbery." Minn. Stat. § 609.53, subd. 1 (emphasis added).

Viewing the instructions as a whole, the district court did not err by including "conceals" when instructing the jury on the definitions of the offenses of theft and receiving stolen property. The statutory definitions of the offenses include "conceals." Minn. Stat. §§ 609.52, subd. 2(a)(1), .53, subd. 1; *see State v. Vance*, 734 N.W.2d 650,

656 (Minn. 2007) (“It is well settled that jury instructions must define the crime charged and explain the elements of the offense to the jury.”). The district court therefore did not materially misstate the law. Moreover, the state presented evidence that would permit a finding that the backpack was “concealed”: Officers Hansen and Martinez-Gavina observed people ducking down in a vehicle with the doors closed; Officer Hansen observed Behl seated in the back passenger seat with a brown purse beside her; Behl told the officer that the brown purse was hers; and the brown purse belonged to E.H.

Sentencing

Behl argues, and the state concedes, that because the offenses arose out of a single behavioral incident, one of the sentences must be vacated. Neither party suggests which sentence should be vacated. Generally, when “a person’s conduct constitutes more than one offense under the laws of this state, the person may be punished for only one of the offenses.” Minn. Stat. § 609.035, subd. 1 (2010). If a defendant therefore commits multiple offenses against the same victim during a single behavioral incident, the defendant may be sentenced for only one of those offenses. *State v. Ferguson*, 808 N.W.2d 586, 590–91 (Minn. 2012). Because the parties agree that Behl’s offenses arose out of a single behavioral incident, we remand to the district court for vacation of one of Behl’s sentences.

Affirmed in part and remanded.