STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1001

State of Minnesota,
Respondent,

vs.

Timothy Thomas Ogris,
Appellant.

Filed December 29, 2009
Affirmed
Schellhas, Judge

Ramsey County District Court
File No. 62-K0-06-004191

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

Susan Gaertner, Ramsey County Attorney, Mitchell L. Rothman, Assistant County Attorney, 50 West Kellogg Boulevard, Suite 315, St. Paul, MN 55102 (for respondent)

Bradford Colbert, Legal Assistance to Minnesota Prisoners, Zorislav Leyderman (certified student attorney), 875 Summit Avenue, Room 254, St. Paul, MN 55105 (for appellant)

Considered and decided by Minge, Presiding Judge; Schellhas, Judge; and Harten, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

SCHELLHAS, Judge

Appellant seeks reversal of his conviction of aiding an offender, arguing that the district court erred by (1) denying his requested jury instruction, (2) not giving the jury a curative instruction regarding respondent's witness's violation of a pre-trial order, and (3) denying his motion for acquittal. We affirm.

FACTS

Respondent State of Minnesota charged appellant Timothy Thomas Ogris with aiding an offender on probation, parole, or supervised release in violation of Minn. Stat. § 609.495, subd. 1(b) (2006). The offender was Kara Olson, for whom an arrest warrant was outstanding on September 11, 2006, for allegedly violating conditions of her probation for second-degree assault.

Before trial, appellant asked the district court to instruct the jury about the elements of aiding an offender by using CRIMJIG 24.11, pertaining to aiding an offender under Minn. Stat. § 609.495, subd. 1(a).[1] The state opposed the use of CRIMJIG 24.11 and asked the court to instruct the jury using CRIMJIG 24.14 and 24.15, which provide instructions for aiding an offender under Minn. Stat. § 609.495, subd. 1(b), the statute under which appellant was charged.[2] The district court instructed the jury using CRIMJIG 24.14 and 24.15.

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[1] *See* 10A *Minnesota Practice*, CRIMJIG 24.11 (2006).

[2] *See* 10A *Minnesota Practice*, CRIMJIG 24.14 (2006) (defining crime); 10A *Minnesota Practice*, CRIMJIG 24.15 (2006) (stating elements of crime).

The first witness at the trial, Ramsey County Deputy Sheriff Bruce Meagher, testified that on September 11, 2006, he and his partner, Sergeant Craig Palmer, received a bench warrant for the arrest of Kara Olson. The bench warrant had "PO Julie Paul" written on it, and Meagher testified that this meant Julie Paul was Kara Olson's probation officer. When the prosecutor asked Meagher, "So this is a warrant issued by a Ramsey County judge for Kara Olson because of a probation violation for assault in the second degree," he answered, "Correct."

Meagher and Palmer investigated the location of Kara Olson and went to an address of an up-and-down duplex in St. Paul. Meagher encountered appellant at a side door to the duplex that served as an entrance to the upstairs apartment. Meagher told appellant that he was looking for Kara Olson and appellant said that she had moved to Minneapolis. Meagher told appellant that he had a felony warrant for Kara Olson's arrest and asked about the nature of appellant's relationship to Kara Olson. Appellant said that Kara Olson was his girlfriend and asked about the nature of the warrant. Meagher told appellant that the warrant was for "PV assault two." Meagher testified that "PV" means "probation violation." Appellant told Meagher that he would not lie to him and that Kara Olson lived in Minneapolis.

At Meagher's request, appellant opened the front door to the duplex building for Palmer. To do so, appellant went into the apartment, exited the interior front door of the apartment, and then opened the main front door to the building. Palmer, having observed someone walk past the apartment door inside the apartment, asked appellant whom that person might be. Appellant said that he did not know and that Kara Olson was not in the

building. After Palmer entered the building and searched one area for Kara Olson, appellant again told him that Kara Olson was not there.

When Palmer asked appellant to let him into the upper unit of the duplex, he said that he had locked himself out and that the unit's resident, "Judy," was passed out drunk on vodka. When Meagher told appellant that he and Palmer needed to talk to Judy, appellant reiterated that Judy was passed out drunk on the couch. Palmer then went to the upper unit door and pounded loudly. A woman identified as Judy Olson opened the door immediately. Palmer told her he had a felony warrant for Kara Olson's arrest. Palmer detected no signs that Judy Olson was under the influence of alcohol or had been drinking. Judy Olson said that she had just returned home and she was not sure if Kara Olson was there or not. She did not object to Palmer's entering the home to search for Kara Olson. Appellant again stated that Kara Olson was not home and was at her home in Minneapolis.

When Palmer searched Judy Olson's apartment for Kara Olson, appellant told Judy Olson that Palmer did not have a right to search without a search warrant and that she should order him to leave. Judy Olson said he could search. Appellant stated again that Kara Olson was not at the house, and added, "I wouldn't lie to you." Palmer found Kara Olson in a bedroom closet and placed her under arrest. Palmer also arrested appellant and transported him to the Ramsey County Law Enforcement Center. Palmer testified that during the transport, appellant said: "You would lie too to protect your girlfriend."

After Palmer's testimony, the state rested and appellant moved for a directed verdict.[3] The district court denied the motion.

In his defense, appellant offered Kara Olson's testimony given at appellant's *Florence* hearing.[4] Her testimony was read into the record because she was unavailable at the time of trial. Kara Olson testified, among other things, that she resided at a prison, was in prison because of "Second Degree Assault with a probation violation," and was arrested for the violation on September 11, 2006. She testified that she did not know appellant "that well," had known him for "[a] couple of weeks" before September 11, 2006, and never had any conversations with him about the second-degree assault or being on probation.

Appellant testified that he met Kara Olson about two weeks before September 11, 2006, did not get to know her very well in the two-week period, and never had a conversation with her about her criminal record, probation, or parole. He denied seeing Kara Olson before he spoke with Meagher and testified that Judy Olson told him that Kara Olson was not there and would be calling. He also denied telling officers that Kara Olson lived in Minneapolis, stating, "I never made the statement that she was in Minneapolis except for what her mother had told me, that she [sic] in Minneapolis. I never said she moved to Minneapolis." On cross-examination, appellant testified that

[3] What used to be called a directed verdict is now properly termed a motion for a judgment of acquittal. *See* Minn. R. Crim. P. 26.03, subd. 17(1) ("Motions for directed verdict are abolished and motions for judgment of acquittal shall be used in their place.").

[4] A defendant may move for dismissal of the complaint for lack of probable cause that the defendant committed the offense charged, and this type of hearing "has come to be called a *Florence* hearing based on the case of *State v. Florence*, 306 Minn. 442, 239 N.W.2d 892 (1976)." *State v. Koenig*, 666 N.W.2d 366, 370 n.2 (Minn. 2003).

Judy Olson had not passed out on September 11, 2006, and that he never told officers that she had. Appellant admitted that he knew what a parole violation was and that an abbreviation for parole violation was "PV."

After the conclusion of Meagher's testimony, the district court stated on the record, outside the presence of the jury, that appellant had informed him of a concern raised by certified student attorney Christina Moriarty, who worked with the public defender's office. The court explained that it ordered sequestration on the record as follows:

> Okay, as to some typical preliminary matters, [I] will sequester all witnesses. I'll ask [the prosecutor] to make sure that she advises, if there are multiple police officers, to make sure they don't discuss this matter at any time before or after their testimony unless all of the testimony is done. And even then, it's dangerous because we might have rebuttal testimony.

Moriarty then testified that while she was outside the courtroom, she overheard a conversation between Palmer and Meagher and that one statement had "really caught" her attention and she did not think it was proper. She heard one officer say to the other, "When I went down to search the lower part, then came outside to talk to you, I went back around—I went back around outside, right?" The other officer said, "Yep." Shortly after that, the officer who said "yep" arrived at the courtroom to testify.

The district court expressed concern about the conversation, and appellant asked for a curative instruction to the jury "about what happened, that there has been some collusion between these witnesses in direct opposition to what your order was on this case." Alternatively, appellant asked that Palmer be excluded from testifying. The court

took testimony from Meagher and Palmer about the conversation and denied appellant's requests for relief.

The jury found appellant guilty of aiding an offender. This appeal follows.

D E C I S I O N

I. Jury Instructions on Charged Offense

Appellant argues that the district court should have instructed the jury based on CRIMJIG 24.11, because the terms "harbor" and "conceal" must be defined for the jury. "A refusal to give a requested jury instruction lies within the discretion of the trial court." *State v. Daniels*, 361 N.W.2d 819, 831 (Minn. 1985). "No error results from a refusal to instruct where the evidence does not support the proposed instruction and no abuse of discretion is shown." *Id.* "A trial court's refusal to give a jury instruction constitutes an abuse of discretion if the evidence warrants such an instruction," and "in deciding whether a specific jury instruction should be given, a reviewing court must view the evidence in the light most favorable to the party requesting the instruction." *Turnage v. State*, 708 N.W.2d 535, 545-56 (Minn. 2006).

The general rule is that while "the elements of the crime should be explained . . . detailed definitions of the elements to the crime need not be given in the jury instructions if the instructions do not mislead the jury or allow it to speculate over the meaning of the elements." *Peterson v. State*, 282 N.W.2d 878, 881 (Minn. 1979). "Words of common usage within the ordinary understanding of a juror need not be defined by the court." *State v. Heinzer*, 347 N.W.2d 535, 537 (Minn. App. 1984), *review denied* (Minn. July 26, 1984).

Appellant argues that the meaning of harbor and conceal is not within the ordinary understanding of a juror. Under CRIMJIG 24.11, "'To harbor a person' means to furnish the person with shelter or food in such circumstances that the person is aided in avoiding detection by lawful authority." 10A *Minnesota Practice*, CRIMJIG 24.11. And under CRIMJIG 24.11, "'To conceal a person' means to make it more difficult for the person to be found." *Id.* *Black's Law Dictionary* defines "harboring" as "[t]he act of affording lodging, shelter, or refuge to a person, esp. a criminal or illegal alien." *Black's Law Dictionary* 733 (8th ed. 2004). *The American Heritage Dictionary* defines "harbor" as "[t]o give shelter to." *The American Heritage Dictionary* 798 (4th ed. 2006). *Black's Law Dictionary* defines "concealment" as "[t]he act of refraining from disclosure; esp., an act by which one prevents or hinders the discovery of something; a cover-up" and "[t]he act of removing from sight or notice; hiding." *Black's Law Dictionary* 306 (8th ed. 2004). *The American Heritage Dictionary* defines "conceal" as "[t]o keep from being seen, found, observed, or discovered." *The American Heritage Dictionary* 381 (4th ed. 2006). The definitions of harbor and conceal found in CRIMJIG 24.11 and the dictionaries are very similar and present a close call about whether their meanings are not within the ordinary understanding of a jury. But we conclude that their meanings are within the ordinary understanding of a jury and that the district court therefore did not err by declining to define the terms for the jury.

But even if the district court erred by not defining harbor and conceal for the jury, respondent is correct that any failure to instruct on these definitions was harmless. "An error in jury instructions is harmless if it can be said beyond a reasonable doubt that the

error had no significant impact on the verdict." *State v. Edwards*, 717 N.W.2d 405, 413 (Minn. 2006). Here, any error was harmless because the prosecutor relied principally on the use of the word "helping" rather than harbor or conceal, and helping is conduct that falls within the plain and ordinary meaning of "aid."

Both parties rely on dictionaries to define "aid," acknowledging that no statute or decision defines aid for these purposes. "A statute must be construed according to its plain language." *Munger v. State*, 749 N.W.2d 335, 338 (Minn. 2008). When a statute is unambiguous, this court must follow "the letter of the law." *Id.* (quoting Minn. Stat. § 645.16 (2006)). "A court construes technical words in a statute according to their technical meaning and other words according to common and accepted usage." *State v. Taylor*, 594 N.W.2d 533, 535 (Minn. App. 1999). Because there is no technical meaning attributed to "aid," we look to the word's common and accepted usage. *Black's Law Dictionary* defines "aid and abet" as "[t]o assist or facilitate the commission of a crime, or to promote its accomplishment." *Black's Law Dictionary* 76 (8th ed. 2004). *The American Heritage Dictionary* defines "aid" as "[t]o help or furnish with help, support, or relief" and "[t]he act or result of helping; assistance." *The American Heritage Dictionary* 36 (4th ed. 2006).

Because the state relied principally on aiding Kara Olson and no particular definition of "aid" was required, and because the evidence was sufficient to support a finding that appellant aided Kara Olson, we conclude that even if the district court erred by declining to further define harbor or conceal, such error was harmless.

II. Curative Instruction

"A refusal to give a requested jury instruction lies within the discretion of the trial court." *Daniels*, 361 N.W.2d at 831-32. "No error results from a refusal to instruct where the evidence does not support the proposed instruction and no abuse of discretion is shown." *Id.* "A trial court's refusal to give a jury instruction constitutes an abuse of discretion if the evidence warrants such an instruction," and "in deciding whether a specific jury instruction should be given, a reviewing court must view the evidence in the light most favorable to the party requesting the instruction." *Turnage*, 708 N.W.2d at 545-56.

"Prejudice resulting from violation of a sequestration order must be shown." *State v. Erdman*, 383 N.W.2d 331, 334 (Minn. App. 1986), *review denied* (Minn. Apr. 24, 1986). In *State v. Johnson*, for example, one witness violated a sequestration order by making statements to other witnesses who were waiting to testify, and the defendant argued that the witness's testimony should have been excluded. 324 N.W.2d 199, 201 (Minn. 1982). The supreme court rejected the argument because there was no indication that the statements were made in an attempt to influence or did influence testimony. *Id.*

Here, appellant argues that Meagher and Palmer intended to influence each other's testimony, that credibility was a central issue, that the importance of credibility makes the violation of the court's order particularly important, and that the district court therefore abused its discretion by not giving the requested curative instruction. But the district court heard testimony about the conversation and concluded that a curative instruction was not necessary. The only allegedly improper statement testified to by Moriarty was

when one officer said to the other, "When I went down to search the lower part, then came outside to talk to you, I went back around—I went back around outside, right?" The other one said, "Yep."

After hearing Meagher and Palmer testify regarding the conversation, the district court stated that there was nothing to support a conclusion that the witnesses inappropriately got together to conform their testimony in a dishonest way or a way that would lead to one changing his recollection "based on the other's wishes." While the pre-testimony conversation violated the court's sequestration order, the evidence did not establish that Meagher and Palmer tried to tailor their testimony or ensure that they were going to testify consistently. In addition, no evidence showed that the conversation covered critical facts in the case, such as appellant's statements to the officers at various points in the evening. The district court did not err by concluding that the evidence did not warrant a curative instruction that witnesses had colluded in violation of the court's order.

III. Motion for Judgment of Acquittal

Appellant next argues that the district court erred by denying his motion for a judgment of acquittal. "A motion for acquittal is procedurally equivalent to a motion for a directed verdict." *State v. Slaughter*, 691 N.W.2d 70, 74 (Minn. 2005). "The test for granting a motion for a directed verdict is whether the evidence is sufficient to present a fact question for the jury's determination, after viewing the evidence and all resulting inferences in favor of the state." *Id.* at 74-75. On review, an appellate court asks if the evidence was sufficient to support the conviction, an inquiry which considers "whether,

under the facts in the record and any legitimate inferences that can be drawn from them, a jury could reasonably conclude that the defendant was guilty of the offense charged." *State v. Tscheu*, 758 N.W.2d 849, 857 (Minn. 2008). Though the motion for acquittal was made at the close of the state's evidence, on appeal this court considers whether the evidence as a whole was sufficient to support the conviction. *See id.* at 857 n.7 (stating, "we have held that where a defendant chooses to introduce evidence after his motion for judgment of acquittal has been denied, we consider the 'whole record'" and "are not limited to just that evidence introduced by the State").

Appellant was charged with aiding an offender under Minn. Stat. § 609.495, subd. 1(b). The statute provides:

> Whoever knowingly harbors, conceals, or aids a person who is on probation, parole, or supervised release because of a felony level conviction and for whom an arrest and detention order has been issued, with intent that the person evade or escape being taken into custody under the order, may be sentenced to imprisonment for not more than three years or to payment of a fine of not more than $5,000, or both.

Minn. Stat. § 609.495, subd. 1(b).

Appellant argues that respondent failed to prove three elements: (1) Kara Olson was on probation, parole, or supervised release; (2) appellant knew that Kara Olson was on probation, parole, or supervised release; and (3) appellant harbored, concealed, or aided Kara Olson with the intent that Kara Olson evade arrest or escape being taken into custody.

A. Kara Olson's Probationary Status

Kara Olson testified that she was in prison because of "Second Degree Assault with a probation violation," and that she was arrested for the violation on September 11, 2006. In his testimony, Meagher answered, "[c]orrect," when asked, "So this is a warrant issued by a Ramsey County judge for Kara Olson because of a probation violation for assault in the second degree." Palmer testified that the bench warrant was for a probation violation. Based on this evidence, a jury could reasonably conclude that Kara Olson was on probation, parole, or supervised release at the time of appellant's offense.

B. Appellant's Knowledge

Knowledge for purposes of Chapter 609 means that the actor believes that a specified fact exists. Minn. Stat. § 609.02, subd. 9(2) (2006). The evidence related to appellant's knowledge that Kara Olson was on probation, parole, or supervised release includes that Meagher told appellant that he had a felony warrant for Kara Olson's arrest and, when appellant asked what the warrant was for, Meagher told him "PV assault two." Appellant admitted that he knew what a parole violation was and that an abbreviation for parole violation was "PV." This evidence was sufficient for the jury to reasonably conclude that appellant believed that Kara Olson was on probation.

C. Harbor, Conceal, or Aid

Appellant argues that words or statements, even dishonest ones, are insufficient to sustain a conviction under Minn. Stat. § 609.495, subd. 1(b). To support his argument, appellant relies on: (1) a difference in statutory language between clauses (a) and (b) of

section 609.495, subdivision 1; (2) language in CRIMJIG 24.11 stating that the mere withholding of information is not harboring or concealing; and (3) federal precedent.

1. Clause (a) and Clause (b)

Clause (a) of subdivision 1 states:

> Whoever *harbors, conceals, aids, or assists by word or acts* another whom the actor knows or has reason to know has committed a crime under the laws of this or another state or of the United States with intent that such offender shall avoid or escape from arrest, trial, conviction, or punishment, may be sentenced to imprisonment for not more than three years or to payment of a fine of not more than $5,000, or both if the crime committed or attempted by the other person is a felony.

Minn. Stat. § 609.495, subd. 1(a) (2006) (emphasis added). Clause (b) of subdivision 1 provides:

> Whoever knowingly *harbors, conceals, or aids* a person who is on probation, parole, or supervised release because of a felony level conviction and for whom an arrest and detention order has been issued, with intent that the person evade or escape being taken into custody under the order, may be sentenced to imprisonment for not more than three years or to payment of a fine of not more than $5,000, or both.

Minn. Stat. § 609.495, subd. 1(b) (emphasis added).

Appellant argues that the reference to "words" in clause (a) and not in clause (b) means that words are sufficient under only clause (a). We reject this argument. The language added to clause (a), which the legislature did not add to clause (b), did not cover words alone, it covered assistance "by word or acts." Based on appellant's reasoning, assistance by word or acts would not suffice to show guilt of aiding an offender under clause (b). Such a result would be absurd. "When reviewing a statute, we assume that

the legislature does not intend . . . absurd or unreasonable results." *State v. Koenig*, 666 N.W.2d 366, 372 (Minn. 2003).

2. CRIMJIG 24.11

Appellant also cites CRIMJIG 24.11, which covers the elements of aiding an offender under Minn. Stat. § 609.495, subd. 1(a). *See* 10A *Minnesota Practice*, CRIMJIG 24.11 (2006). Included in CRIMJIG 24.11 is that "[t]he mere withholding of information as to the whereabouts of a person is not harboring, concealing, or aiding under this statute. An affirmative act of assistance is required." *Id.* Appellant cites CRIMJIG 24.11 in support of his argument that words are insufficient to create criminal liability under subdivision 1(b). But CRIMJIG 24.11 is not patterned after the crime of which appellant is convicted, and its relevance as to what will satisfy the elements of that crime is therefore diminished. In addition, respondent's argument that the withholding of information is irrelevant in this case is persuasive because respondent did not rely on the mere withholding of information; it relied on appellant's giving the officers false information.

3. Similar Federal Crimes

Appellant cites federal precedent for the rule that false statements or withholding information are insufficient to establish harboring or concealment. He relies principally on *United States v. Foy*, 416 F.2d 940 (7th Cir. 1969). In *Foy,* the defendant was convicted of harboring and concealing a person from arrest in violation of 18 U.S.C. § 1071, which criminalized harboring or concealing certain persons in certain circumstances. 416 F.2d at 940-41. In *Foy*, there was no evidence that the defendant told

the offender to hide; the issue was whether the defendant's statements that he had not seen the offender and did not know the offender's whereabouts were sufficient. *Id.* at 941. The court stated that "the false statement of the defendant that he did not know where [the offender] was, without any further acts of concealment, did not impose a real barrier to the discovery of [the offender]." *Id.* The court concluded, "While there are many negative or passive acts which would fall within the statutory prohibition, we do not think that a failure to disclose the location of a fugitive is the type of assistance contemplated by 'harbor and conceal' as used in § 1071." *Id.*

Respondent points out the clear distinction between this case and *Foy*: the criminal statute in *Foy* did not include "aid[ing]" an offender. Respondent cites other federal precedent that addresses the difference between harboring and concealing and providing aid, namely *United States v. Shapiro*, 113 F.2d 891 (2nd Cir. 1940). In *Shapiro*, which was cited in *Foy*, 416 F.2d at 941, the court addressed a criminal statute that could be violated either by harboring and concealing a person subject to an arrest warrant *or* by directly or indirectly aiding, abetting, or assisting an escape from custody. 113 F.2d at 892. The *Shapiro* court stated that "[a]ny aid whatever in the escape of a person under arrest is forbidden; but the language which prohibits conduct preventing the discovery and arrest of a fugitive is not similarly broad. There the acts forbidden are to 'harbor or conceal.'" *Id.* The court explained, "These are active verbs, which have the fugitive as their object," and which had been interpreted to require "some physical act tending to the secretion of the body of the offender." *Id.* at 892-93 (quotation omitted). *Shapiro* shows that aiding an offender is broader than harboring and concealing an

offender. Here, the crime at issue includes aiding an offender, and appellant's reliance on *Foy* is therefore unpersuasive.

Because aiding an offender is sufficient to create criminal liability under Minn. Stat. § 609.495, subd. 1(b), the issue here, for purposes of assessing the sufficiency of the evidence, is whether the jury could reasonably conclude that appellant's conduct fell within the meaning of "aid" as used in Minn. Stat. § 609.495, subd. 1(b).

We conclude that the evidence was sufficient to support a finding that appellant aided Kara Olson by helping her attempt to evade detection. Appellant's argument that the district court erred by denying his motion for a judgment of acquittal therefore fails.

Affirmed.