

No. 1-14-2475

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 13 CR 8937
	)	
MARCELLUS MITCHEM,	)	Honorable
	)	Frank G. Zelezinski,
Defendant-Appellant.	)	Judge Presiding.

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PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.  
Justices Cunningham and Delort concurred in the judgment.

**ORDER**

¶ 1 *Held:* Where the evidence was insufficient to prove beyond a reasonable doubt that the defendant did not have a relationship with the offender that is exempt under the concealing or aiding a fugitive statute, *i.e.*, that he was not the offender's husband, wife, parent, child, brother, or sister, the defendant's conviction is reversed.

¶ 2 Following a bench trial, the defendant, Marcellus Mitchem, was found guilty of the offense of concealing or aiding a fugitive and sentenced to two years in prison. On appeal, the defendant argues that the State did not prove beyond a reasonable doubt that the alleged fugitive, Tiffany Elkins, was an "offender" under the statute, that he knew she had committed an offense, and that he was not her husband, wife, parent, child, brother or sister. We find that the State

failed to prove at trial that Elkins was not the defendant's wife. Accordingly, for the following reasons, we reverse.

¶ 3 The defendant's conviction arose from the events of August 21 and 22, 2011. After his arrest, the defendant was charged with two counts of obstructing justice, Counts I and II, and two counts of concealing or aiding a fugitive, Counts III and IV. Count III alleged that, with the intent to prevent the apprehension of Elkins, the defendant harbored her by hiding her in a hotel room, and count IV alleged that, with the intent to prevent the apprehension of Elkins, he aided her by renting a hotel room for her.

¶ 4 Prior to opening statements, the State nolle prossed the two counts of obstructing justice and proceeded on the two counts for concealing or aiding a fugitive. Lieutenant Casey Erickson, from the Calumet City Police Department, testified that he was assigned to investigate a murder that took place on August 19, 2011, and which led to a suspect named Tiffany Elkins. On August 21, 2011, at 1:30 p.m., he went to the house where he learned that Elkins was living in Calumet City.

¶ 5 When Lieutenant Erikson first arrived, the defendant was in the front of the house. The defendant walked inside before he came back out to speak to Lieutenant Erikson, Investigator Daley and Commander Tim Murphy from the Burnham Police Department. Lieutenant Erikson asked the defendant if Elkins was at the residence, and the defendant responded that "his wife Tiffany was not at home." Lieutenant Erikson informed the defendant that he was investigating a shooting, that he was looking for Elkins, and that he needed to speak to her and an individual named Farris Washington. The defendant told Lieutenant Erikson that Elkins would speak to them at the police department when she arrived home. Lieutenant Erikson told the defendant that

if she needed a ride, they would make arrangements to transport her there. The defendant did not accept this offer, but said that "he would make sure that she was there." When asked whether the defendant indicated what relation, if any, Elkins was to him, Lieutenant Erikson answered, "He said that she was his wife."

¶ 6 Lieutenant Erikson waited at the police department for several hours, but by 10 p.m., Elkins had not arrived. During this time period, Lieutenant Erikson obtained an arrest warrant for Elkins for first degree murder and learned that Elkins was at a Days Inn Hotel in Lansing, Illinois. Thereafter, around midnight on August 22, 2011, Lieutenant Erikson, investigators from the South Suburban Major Crimes Task Force, and members of the Lansing Police Department went to that location.

¶ 7 When they arrived at the hotel, the Lansing police officers knocked on the door of room 268 and announced their office. Lieutenant Erikson heard a male and a female voice inside the room and told the defendant that they knew Elkins was inside, that they had an arrest warrant for her, and that he needed to open the door. The defendant did not open the door for 15 minutes. During this 15-minute period, Erikson observed the defendant move the curtain and look out of the window and there were periods of silence as well as conversation. After the defendant voluntarily opened the door, he and Elkins were both arrested.

¶ 8 Sunny Patel, the hotel manager for the Days Inn Hotel, testified that he was familiar with the paperwork required to check a guest in to the hotel, including the guest registration card, which contains the room number, check-in and check-out dates, time of check in, guest name, and the cost. Patel identified State's exhibit one as a hotel registration card and testified that the room listed was 268, that the check-in date was August 21, that the check-in time was 7:45 p.m.,

that the check-out date was August 22, and that the defendant's name was listed as the individual renting the room. Patel testified that the hotel requires a form of identification to check in to the hotel and that the photocopy of the driver's license presented at the time the room was rented was the same name on the guest registration card, which he identified as the defendant's name.

¶ 9 John Daley, a sergeant and detective for the Village of Burnham Police Department who was assigned to the Suburban Major Crimes Task Force, testified that he and Detective Kevin Rapaz interviewed the defendant at the Calumet City Police Department at approximately 1:05 p.m. on August 22, 2011. Before they interviewed the defendant, Detective Rapaz read him the pre-printed South Suburban Major Task Force *Miranda* sheet. The defendant indicated that he understood it, but that he did not want to sign it. After Detective Rapaz read the defendant his rights, he verbally agreed to give a statement and continued to speak with the officers for about five minutes before he invoked his rights and requested a lawyer.

¶ 10 Detective Daley told the defendant that they "were investigating a murder, and that his girlfriend by the name of Tiffany Elkins had been named as a suspect in the case." When Detective Daley asked the defendant why he was at the hotel, the defendant stated that he was with Elkins and that "they were trying to plan their next move." Detective Daley testified that neither he nor Detective Rapaz took notes or recorded this conversation because the defendant was not a suspect in the homicide. Detective Daley typed a report after the interview. The defendant's statement that they were at the hotel and "were trying to plan their next move" was not included in the report. The report included that the defendant stated in the interview that "they were figuring out where to go" and that the defendant "had been told that people were saying his girlfriend was involved in the shooting."

¶ 11 During closing argument, the prosecutor reviewed the facts of the case. As relevant to this appeal, the prosecutor noted that, when the police went to the defendant's home and informed him they were looking for Elkins, "He indicated to those officers 'that's my wife; she is not here.' " The prosecutor also argued that, during the 15-minute time period when the defendant was not responding to officers at the door of his hotel room, "he is in there with his wife or girlfriend or whoever she happens to be figuring things out."

¶ 12 The trial court found the defendant guilty of the offense of concealing or aiding a fugitive. In doing so, the court repeatedly referred to Elkins as the defendant's wife, concluding as follows:

"It was many pieces of evidence which the Court has here, but at this stage if you do put each and every one of those pieces together, this Court has no doubt that Mr. Mitchem knew that the police wanted his wife for the offense as they had indicated they were investigating. He took active means to take her out of the house, hide her in a hotel room, and took for that matter a period of time to even respond to the police who had a warrant."

¶ 13 The defendant filed a motion for a new trial, not raising the issue of his relationship to Elkins, which the trial court denied.

¶ 14 At the sentencing hearing, after the State argued in aggravation, the defendant's counsel stated as follows:

"As the Court even just stated, Marcellus Mitchem referred to Tiffany Elkins as his wife. Now, I did not cite an affirmative defense or allege as a defense that per the statute that Tiffany Elkins was his wife, because they were not legally married. Now, he,

obviously, and if we go to page, I believe, 6 of the PSI, family, marital, toward the bottom, Arian Elkins, 12 years old, a child of the defendant, who's [*sic*] mother is Tiffany knee [*sic*] Elkins. Had they legally married, the defendant would have a legal defense to this charge. I would ask that the Court take that into consideration in sentencing the defendant."

The trial court noted that Count IV merged into Count III and sentenced the defendant to two years in prison. In doing so, the trial court stated as follows:

"Looking at all factors in aggravation and mitigation here, I do also consider the fact, as the defense did note, that the victim here was his I guess you could call common-law wife, not legal wife but common-law wife, and considering the fact that certainly there is feelings to protect her as he could have had, but again, the Court looks at whether or not the law was violated here, and I did so find that."

¶ 15 On appeal, the defendant argues that the State did not prove that he was guilty of the offense of harboring or aiding a fugitive because it did not prove beyond a reasonable doubt that Elkins was an "offender" under the statute, that he knew that Elkins had committed an offense, or that he was not Elkins' husband, parent, child, or brother.

¶ 16 The "Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." *In re Winship*, 397 U.S. 358, 364 (1970). When reviewing the sufficiency of the evidence on appeal, the question is 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 crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979). The

reviewing court may reverse a conviction if the evidence is so unsatisfactory as to justify a reasonable doubt of the defendant's guilt or where proof of an element is wholly lacking. *People v. Robinson*, 2013 IL App (2d) 120087, ¶ 11. To sustain a conviction for an offense, all of its elements must have been proven beyond a reasonable doubt. *People v. Rankin*, 2015 IL App (1st) 133409, ¶ 15.

¶ 17 The offense of concealing or aiding a fugitive, as charged in this case, is defined by statute as follows: "Every person not standing in the relation of husband, wife, parent, child, brother or sister to the offender, who, with intent to prevent the apprehension of the offender, conceals his knowledge that an offense has been committed or harbors, aids or conceals the offender, commits a Class 4 felony." 720 ILCS 5/31-5(a) (West 2012). We find that the defendant's conviction for the two counts of concealing or aiding a fugitive must be reversed because the evidence presented at trial failed to establish that the defendant and Elkins were not in a relationship that is exempt under the statute defining the offense of concealing or aiding a fugitive. No direct evidence was presented at trial on the element of the defendant's relationship with Elkins. However, the record includes numerous references to Elkins as the defendant's "wife." The most telling of these was Lieutenant Erikson's testimony regarding his conversation with the defendant at his residence:

"Q. What questions were asked of this defendant in your presence?

A. We were—he was asked of him if Tiffany was at the residence.

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Q. Did he respond to that?

A. Yes.

Q. What did he say?

A. He said that his wife Tiffany was not at home.

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Q. Did the defendant indicate to you what relation, if any, Tiffany Elkins was to him?

A. He said that she was his wife."

¶ 18 Furthermore, not only did the State fail to prove at trial that Elkins was not the defendant's wife, or that he was not in a relationship with Elkins that is exempt under the statute, but also, at closing argument, the State actually described Elkins as the defendant's "wife."

¶ 19 The State argues that Detective Daley's testimony regarding his conversation with the defendant at the police station established that Elkins and the defendant were merely in a dating relationship. We disagree. Detective Daley testified as follows:

"Q. Okay. But before that happened can you tell the Court what the defendant said to you and what you said to him?

A. We told him we were investigating a murder, and that his girlfriend by the name of Tiffany Elkins had been named as a suspect in the case. We asked him his whereabouts, how long they have been at the hotel. We talked about which car he was driving, and where his car was. We asked about whose Lexus, and that was the point that he asked for an attorney."

We are mindful that there is no evidence that the defendant disputed Detective Daley's reference to Elkins as his girlfriend when Detective Daley made it and that the defendant did not object to this statement at trial. Nevertheless, we agree with the defendant that the State did not present



any evidence regarding the basis for Detective Daley's belief about the type of relationship that the defendant and Elkins had or why he referred to Elkins as the defendant's "girlfriend." The detective's testimony that he called Elkins the defendant's "girlfriend" does not constitute proof beyond a reasonable doubt of the relationship element of the charged offense. See *People v. Cadena*, 2013 IL App (2d) 120285, ¶¶ 16-18 (officer's testimony that a church building was an active church was insufficient to establish that fact because there was no evidence of how he knew that information and because the State failed to present testimony from a witness with personal knowledge of the church's status).

¶ 20 Finally, we note that, at the sentencing hearing, defense counsel acknowledged that the defendant was not legally married to Elkins. However, this admission came too late to support the defendant's conviction, as it is the State's burden at trial to prove every element of the offense beyond a reasonable doubt. See *People v. Mays*, 80 Ill. App. 3d 340, 344 (1980) (all elements of an offense must be pleaded and proved at trial).

¶ 21 Accordingly, we conclude that the State failed to prove beyond a reasonable doubt that the defendant was not the husband of the offender, Tiffany Elkins. Because we find that the State failed to prove that the defendant was not in a relationship that is exempt from the statute defining the offense of concealing and aiding a fugitive, we need not address the defendant's arguments that the State failed to prove beyond a reasonable doubt that Elkins was an "offender" under the statute or that he knew that she had committed an offense.

¶ 22 For the foregoing reasons, we reverse the judgment of the circuit court of Cook County.

¶ 23 Reversed.