2014 IL App (1st) 130707-U

FIRST DIVISION
December 22, 2014

No. 1-13-0707

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 12 C6 60232
	)	
ARTAVIA BRODANEX,	)	Honorable
	)	Thomas J. Carroll,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Delort and Justice Harris concurred in the judgment.

O R D E R

¶ 1 *Held*: Evidence at trial was sufficient to convict defendant beyond a reasonable doubt of concealing or aiding a fugitive where defendant lied to police about knowing the fugitive while he was in her apartment concealing himself in a refrigerator and her belief that such actions were necessary was unreasonable.

¶ 2 Following a jury trial, defendant Artavia Brodanex was convicted of concealing or aiding a fugitive and sentenced to two years' probation. On appeal, defendant contends that the State failed to prove beyond a reasonable doubt that she affirmatively concealed a fugitive. Defendant also argues that the evidence was insufficient to prove her intent to prevent a fugitive's

apprehension. Finally, defendant contends that the evidence was insufficient to disprove the affirmative defense of necessity. We affirm.

¶ 3 Defendant was charged by indictment with concealing or aiding a fugitive. The charge arose out of the arrest of defendant's boyfriend, James George, by a United States Marshal's task force at defendant's apartment on February 3, 2012. When officers arrived at the apartment, defendant denied knowing George and told the building's manager that he was not there.

¶ 4 At trial, Cook County police investigator Duffy testified that he arrived at defendant's apartment building around 7:30 a.m. on February 3, 2012. Duffy was part of a United States Marshal's task force comprised of about 10 uniformed officers seeking to arrest James George, believed to be defendant's boyfriend. Seven of the officers entered the building and went to defendant's apartment on the third floor. Duffy knocked on the door. Without opening the door, defendant asked who was there. Duffy said it was the police. He told defendant that they wanted to talk with her and to show her a picture. Duffy told her they were looking for James George. Defendant denied knowing George several times. After 10 minutes of conversation, defendant opened the door slightly, keeping the chain lock on. Duffy showed defendant a picture of George. She again denied knowing George and shut the door.

¶ 5 At 8:15 a.m., defendant's building manager, Nancy Taylor, arrived outside of the apartment. She spoke with the officers and then knocked on the door. Defendant allowed Taylor into the apartment. Twenty minutes later, defendant's grandmother and sister arrived. They entered the apartment along with two officers. After 10 minutes, Duffy and other officers entered. Defendant sat beside her grandmother and Taylor on the couch. She whispered in her grandmother's ear and her grandmother pointed towards the kitchen. The officers searched the

entire apartment, eventually finding George in the refrigerator. They arrested George and defendant. Duffy transported defendant to the Markham Courthouse lockup and advised her of her rights. Defendant "blurted out" that George was her boyfriend and had told her she did not have to open the door for the police without a search warrant. She also told Duffy that she was afraid to open the door because her cousin had been shot by police officers.

¶ 6 Nancy Taylor testified that she arrived at the apartment building that morning and saw multiple marked police cars and officers outside. She entered the building and went to the third floor where she found more officers. After speaking with them, she knocked on defendant's door. Defendant refused to open the door and said she would not let anyone into the apartment. Taylor asked if she could enter alone and defendant agreed. Taylor and defendant sat in the living room while Taylor tried to convince her to allow the officers into the apartment. Defendant refused multiple times. Taylor repeatedly asked if George was in the apartment, but defendant did not answer. After 10 minutes, defendant's grandmother and sister entered the apartment with a police officer. Her sister took defendant's six-year-old daughter down the apartment's hallway. Defendant whispered to her grandmother; the grandmother then pointed towards the kitchen and quietly said, "He's in there." Taylor again asked defendant to allow the officers to enter and defendant agreed.

¶ 7 Cook County police investigator Paul Martinez testified that he entered defendant's apartment with her grandmother, her sister and another officer. Once in the apartment, Martinez told defendant, "Enough is enough. Is James George here, yes or no?" Defendant did not reply. She then whispered to her grandmother, who pointed. Martinez ordered the task force to search

the apartment. He retrieved a ballistic shield from his car and gave it to one of the officers, and they approached the refrigerator. The officers found George inside.

¶ 8 Cook County police investigator Matthew Goral testified that he also spoke with defendant through her door. He showed defendant George's picture, and told her that George was wanted on four warrants for different offenses. Defendant said she did not know him and slammed the door. Investigator Duffy then tried to speak with her.

¶ 9 The State rested. Defendant moved for a directed verdict, and the court denied the motion.

¶ 10 Dorothy Brodanex, defendant's grandmother, testified on her behalf. The morning of the incident, defendant's sister called Dorothy and told her to go to defendant's apartment. When Dorothy entered the apartment with an officer, defendant was crying hysterically. Defendant was very afraid, so Dorothy knelt down beside her on the couch. Defendant whispered "He is in the refrigerator" into her ear. Dorothy then loudly told the officer, "She said he's not here," and pointed toward the refrigerator.

¶ 11 Defendant's older sister, Latoya Brodanex, testified that on February 3, defendant called Latoya. Latoya then went to defendant's apartment with their grandmother. When they entered the apartment they found defendant frightened and trembling. Defendant's daughter was crying. Latoya took her niece and went straight to her car. Two weeks earlier, Latoya had received a call from defendant. Defendant asked Latoya to come to her apartment. Defendant had fresh bruises. She took defendant to the Chicago Heights Police Department where defendant filed a police report against George.

¶ 12 Defendant testified that she was in her apartment with George and her daughter on the morning of February 3, 2012. Following a knock on the door, defendant asked who it was. When the police identified themselves, George jumped up and told defendant, "Don't open the door. Don't you open that damn door." Defendant asked him why and he told her, "They can't come in here. Don't you open that damn door. You open that door, it is going to be problems." Defendant thought George was going to hurt her. She then called her sister and asked her to come over. He began to take items from the refrigerator and hide them around the apartment. He then climbed into the refrigerator. Eventually, Taylor arrived. She asked defendant whether George was there, and defendant said he was not. Five minutes later, defendant's grandmother and sister entered the apartment with two officers. Her sister immediately took defendant's daughter out of the apartment. An officer then yelled, "Enough is enough," and defendant whispered to her grandmother that George was in the refrigerator. She told her grandmother to tell the officers. The officers never told defendant that they had arrest warrants for George, and defendant was unaware he had committed any offenses.

¶ 13 The parties presented arguments and the trial court instructed the jury. The jury returned a verdict of guilty. Defendant filed a motion for a judgment of acquittal or in the alternative a new trial. The trial court denied the motion and sentenced defendant to two years of probation and 240 hours of community service. Defendant appeals.

¶ 14 Defendant contends that the State failed to prove her guilty beyond a reasonable doubt of concealing or aiding a fugitive. Particularly, defendant argues that the State failed to sufficiently prove (1) that she harbored, aided, or concealed George; (2) that she intended to prevent his apprehension; and (3) that her actions were not necessary given George's threats. We first

address the standard of review for a challenge to the sufficiency of the evidence before discussing each element in turn.

¶ 15 Due process requires the State to prove each element of a conviction beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 278 (2004), citing *In re Winship*, 397 U.S. 358, 364 (1970). Once a defendant has sufficiently raised an affirmative defense, the prosecution must also disprove that defense beyond a reasonable doubt. *People v. Pegram*, 124 Ill. 2d 166, 173 (1988); *People v. Washington*, 326 Ill. App. 3d 1089, 1092 (2002). When reviewing the sufficiency of evidence, a reviewing court must decide "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." (Emphasis in original.) *Cunningham*, 212 Ill. 2d at 278, quoting *Jackson v. Virginia*, 443 U.S. 307, 313 (1979). A reviewing court will not overturn a guilty verdict unless the evidence is "so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt." *People v. Collins*, 214 Ill. 2d 206, 217 (2005).

¶ 16 Defendant first contends that the State failed to prove beyond a reasonable doubt that she harbored, aided, or concealed George. She argues that the State proved no affirmative act on which to base her conviction, and that she simply demonstrated her constitutional right to refuse to allow officers into her home. Defendant notes she did not assist George as he emptied the refrigerator or help him inside.

¶ 17 The State responds that it proved beyond a reasonable doubt that defendant affirmatively acted to harbor, aid, and conceal George. The State contends that defendant harbored George by permitting him to stay in her apartment and never informing the police that he was there.

Defendant affirmatively aided George, according to the State, when she stalled the police from entering her apartment until George had hidden himself. The State contends defendant concealed George when she lied to the officers about knowing him and later lied to Taylor about his presence.

¶ 18 In Illinois, a person is guilty of concealing or aiding a fugitive when the individual: (1) is not spouse, parent, child, brother or sister to the offender; (2) intends to prevent the offender's apprehension; (3) and conceals knowledge that an offense has been committed or harbors, aids or conceals the offender. 720 ILCS 5/31-5 (West 2010). The prosecution must also prove beyond a reasonable doubt that defendant knew the offender had committed an offense. *People v. Brogan*, 352 Ill. App. 3d 477, 494 (2004). Defendant does not challenge that she was not related to George or that she knew he was an offender.

¶ 19 In order to conceal a fugitive, a defendant must make "an affirmative act in connection with the concealment." *People v. Donelson*, 45 Ill. App. 3d 609, 612 (1977); *People v. Thomas*, 198 Ill. App. 3d 1035, 1037 (1990). The passive failure to share knowledge or come forward is not enough. *Thomas*, 198 Ill. App. 3d at 1037. The affirmative action on which a conviction rests need not be directed towards a police officer. *Brogan*, 352 Ill. App. 3d at 494-95 (stating that defendant's comments to hotel manager about offender's location and identity were affirmative acts connected to concealment). Therefore we must ask two questions: (1) did defendant commit an affirmative act and (2) was that act connected to concealment?

¶ 20 Illinois courts have repeatedly held that the failure to disclose information and the disclosure of incomplete information are passive, rather than affirmative acts. *See People v. Vath*, 38 Ill. App. 3d 389, 395 (1976); *Donelson*, 45 Ill. App. 3d at 612; *Thomas*, 198 Ill. App. 3d

at 1038. In *Vath*, the defendant's failure to disclose his knowledge of a homicide was held not to be an affirmative act within the meaning of the concealment of a homicidal death statute (Ill. Rev. Stat. 1975, ch. 38, par. 9-3.1 recodified as amended at 720 ILCS 5/9-3.4 (West 2010)). *Vath*, 38 Ill. App. 3d at 390. In *Donelson*, the defendant did not act affirmatively by failing to come forward with knowledge of a burglary. *Donelson*, 45 Ill. App. 3d at 610. In *Thomas*, the defendant accurately described an offender to police officers, but did not inform them that the offender was his cousin. *Thomas*, 198 Ill. App. 3d at 1037. The *Thomas* court held that the defendant did not act affirmatively in holding back information. *Id.* When a person speaks falsely, however, rather than remaining quiet, such a misrepresentation reaches "far beyond a passive nondisclosure" and constitutes an affirmative act. See *Brogan*, 352 Ill. App. 3d at 495. In *Brogan*, the defendant told an officer that he first saw the victim lying unresponsive on the floor, when witnesses testified that he had watched an individual choke the victim; the reviewing court held the misrepresentation to be an affirmative act. *Id.*

¶ 21 Defendant repeatedly denied knowing George to the officers. Contrary to defendant's denials, George was her boyfriend and she knew he was in the apartment. Clearly, defendant made a misrepresentation to the police. She did not merely fail to provide information and did not merely give incomplete information to the police. Defendant actively gave false information to the police. A rational trier of fact could conclude that those misrepresentations are each affirmative acts. We now must determine whether those denials are connected to the concealment of George.

¶ 22 The officers testified that they came to defendant's apartment looking for George. They informed defendant they were looking for George and that they sought to arrest him. Defendant,

knowing the officers were there for George and knowing George was in the apartment, denied knowing him. Implicit in that misrepresentation is the assertion that George was not in the home. Furthermore, defendant testified that she lied to Taylor by saying that George was not in the apartment. That statement was an affirmative misrepresentation which concealed George's location. This misrepresentation was not just the concealment of knowledge or a failure to come forward, but rather an active statement concealing George's location from someone. Therefore, we conclude that the jury could have rationally concluded that defendant's affirmative misrepresentations to the police were connected to concealing George's presence in the apartment.

¶ 23 Defendant argues that even if her misrepresentations constitute affirmative acts, they do not violate the statute because the police officers were not misled by them. Yet defendant cites no precedent on which to base this assertion. Defendant only notes that no officers testified that they were misled as to George's location. The plain language of the statute contains no requirement that the concealment be made to police officers or that the officers actually be misled. See 720 ILCS 5/31-5 (West 2010). The statute requires only that the act of concealment be *intended* to prevent apprehension, which we will address shortly.

¶ 24 Moreover, defendant's argument that police officers must be misled is contrary to *Brogan*. *Brogan* clearly states that the refusal to tell a person unrelated to the police where an offender had gone was an affirmative act in connection with concealment. *Brogan*, 352 Ill. App. 3d at 495. Defendant argues that *Brogan* is irrelevant because the defendant in that case committed several affirmative acts in concealing an offender. Yet the presence of other affirmative acts does not change the *Brogan* court's reasoning, nor was the reasoning dependent

on the other affirmative acts. See *Id.* (acts "were all 'affirmative acts' in connection with his concealment.")

¶ 25 Defendant also cites to *Thomas*, where this court stated that the *Thomas* defendant "could have denied any knowledge whatsoever" of the offender and not have violated the statute. See *Thomas*, 198 Ill. App. 3d at 1038. As the *Thomas* was entertaining hypothetical facts, the statement is *dicta*, and runs contrary to this court's later ruling in *Brogan*. See *Brogan*, 352 Ill. App. 3d at 494-95 (the defendant's refusal to identify offender he clearly knew was an " 'affirmative act' in connection with his concealment.") Moreover, contrary to the present case, the defendant in *Thomas* was interrogated in a police station away from the offender, and thus a denial of the offender's identity would not have had any connection to concealing the offender's location. See *Thomas*, 198 Ill. App. 3d at 1035.

¶ 26 Furthermore, as we find relevant Illinois law directs our decision, we need not consider the cases of other jurisdictions cited by defendant. *In re Estate of Walsh*, 2012 IL App (2d) 110938, ¶ 45. For the foregoing reasons, we find there a rational trier of fact could find beyond a reasonable doubt that defendant committed an affirmative act of concealment.

¶ 27 Defendant next argues that the state failed to prove beyond a reasonable doubt that she intended to prevent George's apprehension. Defendant argues that the evidence shows that she sought only to delay the officers in order to avoid harm from George.

¶ 28 The State responds that the evidence was sufficient to prove defendant's intent beyond a reasonable doubt. The State notes that defendant affirmatively lied several times, failed to disclose George's location to the officers and stalled the police until George was fully hidden.

¶ 29 At trial, the State was required to prove beyond a reasonable doubt that defendant acted "with intent to prevent the apprehension of the offender." See 720 ILCS 5/31-5 (West 2010). Intent may be proven by circumstantial evidence. *People v. Jones*, 334 Ill. App. 3d 420, 424 (2002). A defendant is presumed to intend the natural and probable consequences of his or her actions. *People v. Foster*, 168 Ill. 2d 465, 484 (1996).

¶ 30 There was ample evidence presented suggesting defendant intended to prevent George's apprehension. As already discussed, defendant implicitly told the officers that he was not in her apartment by denying that she knew George. Moreover, defendant explicitly lied about George's location to Taylor while she tried to convince defendant to cooperate with the police. If the officers had believed any of defendant's statements, the natural consequence is that they would have left, as they would be unlikely to find George in the apartment of a stranger. Therefore, the jury could have reasonably inferred that defendant intended the police to leave and fail to apprehend George.

¶ 31 Defendant further argues that she intended only to delay George's apprehension, rather than prevent it. She argues that the word "prevent" should be understood as meaning prevent an event permanently, as opposed to "delaying" an event for a non-permanent amount of time. Using this definition, defendant contends she did not intend to prevent apprehension, but rather intended only to delay apprehension. She notes that her intent to delay is clear because she eventually told the police where George was hiding once her daughter was safe. Even if we accept defendant's distinction between "preventing" and "delaying," this argument is unavailing. While defendant argues that her eventual disclosure is clear evidence that she only intended to delay apprehension until her daughter was safe, that explanation relies on the jury finding

defendant's testimony credible. Only defendant testified that she told her grandmother to inform the officers or that she was threatened by George. Investigator Duffy testified that defendant stated she did not open the door because she feared the police, not George. The jury could have found defendant's testimony not credible. The fact-finder is not required to search out all possible explanations and elevate them to the level of reasonable doubt. *People v. Hall*, 194 Ill. 2d 305, 332 (2000).

¶ 32 Even if the jury accepted defendant's testimony that she told her grandmother to inform the officers, defendant told her grandmother where George was hiding only *after* she had lied to the officers and Taylor. Although defendant may have changed her mind and eventually revealed George's location, a change of heart does not negate earlier completed activity. *People v. Steele*, 156 Ill. App. 3d 508, 510-11 (1987)("Once a crime has been completed, a defendant cannot attempt to undo what he has just done and escape punishment.")

¶ 33 Therefore, when taking the evidence in the light most favorable to the prosecution, we find that a rational fact-finder could have found beyond a reasonable doubt that defendant intended to prevent George's apprehension.

¶ 34 Finally, defendant contends that the State failed to prove the absence of necessity beyond a reasonable doubt. Defendant notes that George had abused her in the past and argues his threats that morning forced her to choose between two evils. She contends that she reasonably believed that delaying the officers was necessary to prevent George from harming her family.

¶ 35 The State responds that defendant failed to present sufficient evidence to establish a necessity defense. The State argues that defendant failed to show that there was an immediate threat, that she was not to blame in creating the situation, and that she reasonably believed her

conduct was the only available option. Alternatively, the State argues that it disproved the absence of necessity beyond a reasonable doubt.

¶ 36 A defendant bears the burden of presenting sufficient evidence to establish an affirmative defense of necessity before the State is required to disprove it beyond a reasonable doubt. *People v. Kite*, 153 Ill. 2d 40, 44 (1992). The threshold to meet is low. *Id.* at 45. Defendant must only show some evidence as to each element of the defense. *People v. Azizarab*, 317 Ill. App. 3d 995, 999 (2000).

¶ 37 By statute, a defendant claiming necessity must show (1) she reasonably believed her conduct was necessary to prevent an injury greater than the injury which might reasonably result from her own conduct and (2) she was not to blame for causing the situation. 720 ILCS 5/7-13 (West 2010). This court has found that a defendant must also show that the threat of harm is immediate and the defendant's conduct was the sole option to avoid injury. *Azizarab*, 317 Ill. App. 3d at 999-98. Defendant urges that we adopt the Third District's reasoning in *People v. Kucavik* and hold that defendant need not prove that her conduct was the only sole option. See *People v. Kucavik*, 367 Ill. App. 3d 176, 180 (2006). However, we find the State sufficiently proved an absence of necessity under either court's formulation as the evidence supports a finding that defendant's belief that she needed to stall the police was unreasonable.

¶ 38 Viewing the evidence in the light most favorable to the prosecution, a rational fact-finder could find beyond a reasonable doubt that defendant did not reasonably believe her conduct was necessary. As previously noted, defendant gave the only testimony that she was threatened by George. The jury was not required to accept defendant's testimony as to the threat as credible; however, even if defendant subjectively believed that the threat was real and immediate the jury

could have rationally found that delaying the police was not a reasonable response. Defendant stayed in the apartment with her daughter for an hour. She opened the door, spoke to the police, and allowed Taylor to enter, all without any repercussions from George. George was closed inside a refrigerator in a separate room. Yet defendant never left the apartment with her child. She never asked Taylor or the police for help. Taking the evidence in the light most favorable to the prosecution, the jury could rationally conclude that defendant unreasonably believed her actions were necessary. Therefore, we will not disturb the jury's implicit finding that the State disproved defendant's necessity defense beyond a reasonable doubt.

¶ 39 For the foregoing reasons, we find that the State sufficiently proved beyond a reasonable doubt that defendant affirmatively concealed a fugitive by denying she knew him and lying about his location, that she intended to prevent his apprehension, and that she did not act under necessity. Accordingly, the judgment of the circuit court of Cook County is affirmed.

¶ 40 Affirmed.