

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Christopher M. Lee,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

December 22, 2022

Court of Appeals Case No.
22A-CR-1770

Appeal from the Decatur Superior
Court

The Honorable Matthew D.
Bailey, Judge

Trial Court Cause No.
16D01-2202-F5-198

Crone, Judge.

Case Summary

- [1] Christopher M. Lee appeals his conviction, following a jury trial, for level 5 felony assisting a criminal. He contends that the State presented insufficient evidence to support his conviction. Finding the evidence sufficient, we affirm.

Facts and Procedural History

- [2] Lee began dating Jessica Brackett a few days after he was released from prison in December 2021. Although the relationship was originally sexual, the couple decided to be just friends. On February 11, 2022, a warrant was issued for Brackett's arrest on a charge of level 1 felony child molesting. Indianapolis Metropolitan Police Department and United States Marshal's Office Task Force Officer Marc Campbell was assigned to locate and arrest Brackett.
- [3] On February 22, 2022, Lee and Brackett were at a friend's trailer after having spent the night there. Officer Campbell received a tip that Brackett was at the trailer, so five officers were dispatched to the trailer to try to apprehend her. Officers knocked and announced, "United States Marsha[1] Service" and "Jessica Brackett[,] if you're in there come out." Tr. Vol. 3 at 25. Officer Campbell could hear a female inside the house speaking on the telephone saying, "Hey, the police are here, and/or they come to get me." *Id.* at 29.
- [4] Lee opened the door, stepped outside, and pulled the door mostly closed behind him. An officer asked Lee if Brackett was inside, and Lee responded, "No." *Id.* at 25. Lee was "being very abrasive" with the officers, and because Officer Campbell could hear a lot of commotion coming from inside the trailer,

including hearing what he believed was Brackett's voice, he then also asked Lee if Brackett was inside. *Id.* at 26. Officer Campbell informed Lee that if he were lying, there would be "other issues[.]" *Id.* Lee shook his head in the negative.

[5] While talking with Lee, Officer Campbell saw a "shadow" move by the crack in the door that he could tell was Brackett's, and he again loudly announced, "United States Marsha[l's], Jessica Brackett come to the front door with your hands up." *Id.* Officer Campbell pushed the door open, and Brackett was standing there with her hands in the air. Both Brackett and Lee were arrested.

[6] The State charged Lee with level 5 felony assisting a criminal, and further alleged that he was a habitual offender. Following a jury trial, the jury found Lee guilty as charged. The trial court sentenced Lee to a three-year term, enhanced by three years based upon the habitual offender finding, with two years suspended to probation. This appeal ensued.

Discussion and Decision

[7] Lee challenges the sufficiency of the evidence to support his conviction. In reviewing a claim of insufficient evidence, we do not reweigh the evidence or judge the credibility of witnesses, and we consider only the evidence that supports the judgment and the reasonable inferences arising therefrom. *Bailey v. State*, 907 N.E.2d 1003, 1005 (Ind. 2009). It is "not necessary that the evidence 'overcome every reasonable hypothesis of innocence.'" *Drane v. State*, 867 N.E.2d 144, 147 (Ind. 2007) (quoting *Moore v. State*, 652 N.E.2d 53, 55 (Ind. 1995)). "We will affirm if there is substantial evidence of probative value such

that a reasonable trier of fact could have concluded the defendant was guilty beyond a reasonable doubt.” *Bailey*, 907 N.E.2d at 1005.

[8] Indiana Code Section 35-44.1-2-5 provides that “[a] person not standing in the relation of parent, child, or spouse to another person who has committed a crime or is a fugitive from justice who, with intent to hinder the apprehension or punishment of the other person, harbors, conceals, or otherwise assists the person commits assisting a criminal, a Class A misdemeanor.” The offense is a level 5 felony if the person assisted has committed a level 1 felony. Ind. Code § 35-44.1-2-5(a)(2).

[9] “[T]he assisting a criminal statute was intended to apply to people who did not actively participate in the crime itself, but who did assist a criminal after he or she committed a crime.” *Hauk v. State*, 729 N.E.2d 994, 999 (Ind. 2000). To convict a person for assisting a criminal, the State is not required to prove that the person who was assisted was prosecuted for and convicted of the crime. *Jacobs v. State*, 148 N.E.3d 1175, 1179 (Ind. Ct. App. 2020); *see* Ind. Code § 35-44.1-2-5(b) (providing that it is not a defense that the person assisted has not been prosecuted for or convicted of the offense). “The only mental element the State must prove in order to support a conviction for assisting a criminal is intent to hinder the assisted party’s apprehension or punishment[.]” *Jones v. State*, 22 N.E.3d 877, 881 (Ind. Ct. App. 2014).

[10] As this Court has explained,

To prove intent to hinder the assisted party's apprehension or punishment, the State is required to prove that the assisting party had reason to believe that the assisted person was subject to apprehension or punishment. Proof of such intent may be established by circumstantial evidence. However, the statute contains no requirement that the person assisting the criminal have knowledge of the level or type of felony the assisted person has committed, or that a felony has been committed at all. For purposes of the assisting a criminal statute, harbor means to shelter, to give refuge, to lodge, care for and protect; conceal means to hide, secrete, to keep out of sight, or prevent the discovery of; and assist contemplates some positive, affirmative act intended to help or aid someone to escape arrest, capture or punishment.

Jacobs, 148 N.E.3d at 1179 (citations and quotation marks omitted).

[11] Here, the State presented evidence that when officers came to the trailer to apprehend Brackett, Lee attempted to conceal her presence. Despite knowing the officers' announced intention to arrest Brackett, Lee twice lied about Brackett being inside the trailer, and he stood directly in front of the door, impeding the officer's ability to get to Brackett. Brackett testified that she knew that she had a warrant out for her arrest on charges that she committed the crime of level 1 felony child molesting, and that Lee was also aware of the warrant. Officer Patrick Graue testified that Brackett told him that she had informed Lee that she had a warrant out for her arrest. Officer Robert Goodfellow further testified that Brackett told him that Lee knew "that she was wanted" and "that she was ... in the house." Tr. Vol. 3 at 110.

[12] Based upon the evidence presented, the jury could reasonably infer that Lee had reason to believe that Brackett was subject to apprehension or punishment and that he harbored, concealed, or otherwise assisted her with the intent to hinder that apprehension or punishment. Accordingly, the State presented sufficient evidence to prove, beyond a reasonable doubt, that Lee committed the crime of assisting a criminal.

[13] Lee focuses on the statutory enhancement of his crime from a class A misdemeanor to a level 5 felony and erroneously argues that, to support that enhancement, the State was required to prove beyond a reasonable doubt that Brackett indeed committed a level 1 felony. However, as already noted above, the statute does not require proof beyond a reasonable doubt (such as a conviction) that the assisted person actually committed a crime, in this case a level 1 felony. It is enough here that the State presented evidence that the charged crime that Brackett was subject to apprehension or punishment for committing was a level 1 felony. Lee's conviction for level 5 felony assisting a criminal is affirmed.

[14] Affirmed.

May, J., and Weissmann, J., concur.