

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Felicia A. Nelson,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

November 3, 2023

Court of Appeals Case No.
23A-CR-312

Appeal from the Lake Superior
Court

The Honorable Natalie Bokota,
Judge

Trial Court Cause No.
45G02-2109-F5-476

Memorandum Decision by Judge Bailey
Judges Tavitas and Kenworthy concur.

Bailey, Judge.

Case Summary

- [1] Felica Adrianna Nelson appeals her conviction, following a jury trial, for assisting a criminal, as a Level 5 felony.¹ The only issue she raises is whether the State presented sufficient evidence to support the conviction. We affirm.

Facts and Procedural History

- [2] Nelson met David Cotto, also known as “Bapo,” on April 19, 2021, and the two quickly entered into a romantic relationship. Tr. v. IV at 63. Nelson lived in a home in Gary with her three children. Andrew Lukacek lived in a home across the street from Nelson and her children. Cotto did not like Lukacek and told one of Nelson’s sons that Cotto would “shoot up” Lukacek’s house if he ever saw Nelson’s car parked there. Tr. v. VII at 14.
- [3] On the evening of September 10, 2021, Nelson and Cotto went to a football game with Nelson’s two sons while Nelson’s daughter remained at the home of Nelson’s parents. After the game, Cotto, Nelson, and her sons went to Cotto’s house in Gary to eat dinner. Nelson then left Cotto’s house to meet some friends for drinks. Nelson and her friends drove to Tavern at the Oaks, a bar close to Nelson’s home. Nelson and her friends drank alcohol in the bar parking lot as they waited for Lukacek to arrive and sell them cocaine.

¹ Ind. Code § 35-44.1-2-5(a)(2).

[4] At approximately 11:30 p.m., Cotto drove himself and Nelson's sons to Nelson's home. When Cotto discovered that Nelson was not at her home, he was "mad" and asked Nelson's sons if they knew where Nelson was. Tr. v. VI at 174. Nelson's sons stated that Nelson was probably at the Tavern at the Oaks. Cotto drove himself and Nelson's two sons to the bar and pulled up behind Nelson's vehicle that was parked in the bar parking lot. Nelson was sitting in the driver's seat of her car, and Cotto walked up to her to speak with her while the children waited in Cotto's vehicle. Cotto then returned to his vehicle and began to drive away from the parking lot. However, at that point Lukacek arrived in the parking lot and approached Nelson's vehicle. Cotto saw Lukacek, stopped his car and exited it, walked up to Lukacek, and shot Lukacek with a gun owned by Nelson. Cotto then drove away, took Nelson's sons back to Nelson's home, and drove away from that home.

[5] Nelson remained in the parking lot and attempted to administer cardiopulmonary resuscitation (CPR) to Lukacek. Meanwhile, Nelson's two sons walked back to the Tavern at the Oaks to try to find Nelson. When they arrived, they observed Lukacek on the parking lot ground with a sheet over his body. The children then saw Nelson, who was crying, and they hugged her. Nelson's mother, Veronica Sanchez, then arrived at the scene and found Nelson and her sons. Although an officer told Sanchez not to leave, she drove away with Nelson and her sons.

[6] As Sanchez was driving, Nelson was on her cell phone. Sanchez believed Nelson was speaking with Cotto. Nelson said, "I want to be where you're at."

Tr. v. V at 166. Nelson gave Sanchez directions on where to drive, until they arrived at a location where Cotto was waiting. Nelson and her sons exited Sanchez's vehicle, and Sanchez drove away.

[7] Cotto, Nelson, and Nelson's sons then went to a hotel. One of Nelson's sons overheard a conversation between Cotto and Nelson in which "[t]hey wanted to say that a black person did it." Tr. v. VI at 188. Nelson told her sons to "lie about the shooting" and "not to tell anyone." *Id.* at 237. Cotto left the hotel after the first night. Approximately four days later, Nelson drove with her two sons and her daughter to Nelson's sister's house in Georgia, where Nelson left the children. Nelson then drove to Florida to meet up with Cotto.

Approximately two days later, Cotto and Nelson arrived in Georgia to pick up Nelson's children, and they all drove back to Indiana. On the way to Indiana, they stopped in Tennessee, where Cotto and Nelson became engaged to marry.

[8] At some time in or around September 2021, Nelson drove Cotto's vehicle to the home of her former aunt by marriage, Carolyn Bernal, and parked the car in front of Bernal's house.² Nelson told Bernal that Bernal's grandson, who lived with Bernal, was buying the vehicle. Bernal stated that she did not want Nelson to leave the vehicle in front of Bernal's home, but Nelson did so anyway.

When the police subsequently executed a subpoena to retrieve the vehicle from

² Bernal testified on December 9, 2022, that Nelson left the car at Bernal's home "probably about a year and two months, three months" prior to the date of Bernal's testimony. Tr. v. VII at 91.

Bernal's property, they informed Bernal that the vehicle had been "involved in a homicide." Tr. v. VII at 96.

[9] On September 24, 2021, law enforcement officers executed an arrest warrant for Nelson and Cotto at Nelson's home. Nelson answered the front door and came out of the house as instructed by the officers. As Officer John Artibey passed by Nelson on his way into her home, he asked her "several times" if there was anyone else in the house, and Nelson said "no one." Tr. v. VIII at 37. The officers announced their presence at the front door but heard nothing from inside the home. The officers then entered the home and made "numerous announcements" of their presence, but initially found no one there. *Id.* at 38. Officer Artibey noticed a chair underneath an attic access point in a back bedroom of the home. Officer Artibey then announced that he had a K-9 police dog and stated "come on out[, i]f I send the dog, you'll be bit." *Id.* The officers then heard movement from above, and "a foot came through the bathroom ceiling." *Id.* at 39. Cotto then came down from the attic and was taken into custody. Both Cotto and Nelson were arrested.

[10] The State charged Nelson with assisting a criminal, as a Level 5 felony. At Nelson's jury trial, the State admitted into evidence and played for the jury State's Exhibit 113, which was an audio recording of a telephone call Cotto made to Nelson on September 26, 2021, when Cotto was incarcerated and Nelson had been released on bond. In the recorded conversation, Cotto asked Nelson if she knew where it went wrong, to which Nelson replied, "the car." State's Ex. 113 at 7:07-7:15. Cotto also stated the evidence against him

included “the lies” from one of Nelson’s sons. *Id.* at 3:05. Cotto later repeated that Nelson’s son was lying, to which Nelson responded, “I can fix that.” *Id.* at 7:20-7:30.

- [11] The jury found Nelson guilty as charged, and the court sentenced her to four years of incarceration, with two and a half of those years served through Community Corrections and the remaining time suspended to probation. This appeal ensued.

Discussion and Decision

- [12] Nelson contends that the evidence is insufficient to support her assisting a criminal conviction. Our standard of review in a sufficiency of the evidence claim is clear:

[W]e examine only the probative evidence and reasonable inferences that support the verdict. We do not assess witness credibility, nor do we reweigh the evidence to determine if it was sufficient to support a conviction. Under our appellate system, those roles are reserved for the finder of fact. Instead, we consider only the evidence most favorable to the trial court ruling and affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt.

Lock v. State, 971 N.E.2d 71, 74 (Ind. 2012) (citations and quotation marks omitted).

- [13] To prove Nelson committed the crime of assisting a criminal, as a Level 5 felony, the State was required to show beyond a reasonable doubt that Nelson:

(1) harbored, concealed, or otherwise assisted, (2) Cotto,³ (3) with “intent to hinder the apprehension or punishment” of Cotto. Ind. Code § 35-44.1-2-5(a)(2). Nelson admits that she “harbored” Cotto in her home at the time of his arrest. Appellant’s Br. at 9. However, she contends that the State failed to provide sufficient evidence that she did so with the intent to hinder Cotto’s apprehension or punishment.

[14] “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,” which may be established by circumstantial evidence. *Jacobs v. State*, 148 N.E.3d 1175, 1179 (Ind. Ct. App. 2020) (citation omitted). The evidence established that Nelson witnessed Cotto shoot and kill Lukacek. Following the shooting, Nelson cried and attempted CPR on Lukacek. Nelson’s son subsequently overheard Nelson and Cotto agree to say that a black person committed the crime, and Nelson told her children to lie about the shooting. During the jail call between Cotto and Nelson, Nelson said she could “fix” her son’s testimony against Cotto. State’s Ex. 113 at 7:20-7:30. While Cotto was in jail, Nelson drove his vehicle to her former aunt’s home and left it there. And Nelson lied to officers when they asked her if anyone else was in her home, knowing Cotto was in the attic.

³ The State also had to prove that Cotto was not Nelson’s “parent, child, or spouse” and that Cotto committed the crime of murder. *Id.* However, neither of those facts are in dispute.

[15] The jury reasonably inferred from these facts that Nelson knew Cotto was subject to apprehension or punishment because she witnessed Cotto shoot and kill Lukacek, and then Nelson took steps to hide Cotto's crime by agreeing to blame it on someone else, asking her children to lie, attempting to hide the vehicle Cotto drove when he shot Lukacek, and lying to officers about Cotto's whereabouts. There was sufficient evidence to support Nelson's conviction, and her contentions to the contrary are impermissible requests that we reweigh the evidence and/or judge witness credibility.

[16] Affirmed.

Tavitas, J., and Kenworthy, J., concur.