

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket Nos. 37677/37678

STATE OF IDAHO,)	2011 Unpublished Opinion No. 620
)	
Plaintiff-Respondent,)	Filed: September 15, 2011
)	
v.)	Stephen W. Kenyon, Clerk
)	
VALERIE JEAN SCATES,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
_____)	

Appeal from the District Court of the First Judicial District, State of Idaho, Kootenai County. Hon. John T. Mitchell, District Judge.

Judgments of conviction for two charges of harboring a wanted felon, affirmed.

Molly J. Huskey, State Appellate Public Defender; Eric D. Fredericksen, Deputy Appellate Public Defender, Boise, for appellant. Eric D. Fredericksen argued.

Hon. Lawrence G. Wasden, Attorney General; John C. McKinney, Deputy Attorney General, Boise, for respondent. John C. McKinney argued.

SCHWARTZMAN, Judge Pro Tem

In these consolidated appeals, Valerie Jean Scates appeals from her judgments of conviction for two charges of harboring a wanted felon. For the reasons set forth below, we affirm.

I.

BACKGROUND

On August 13, 2008, a felony warrant for the arrest of Freddie Hall was issued by the Washington State Department of Corrections. Scates and Hall had been in a relationship together for about twenty years and had recently married. Months after the arrest warrant was issued, Officer Uhrig was informed that Hall was living in a residence in Post Falls with Scates and her mother. On May 1, 2009, Officer Uhrig drove by the residence and saw a person who he thought might be Hall sitting in a vehicle. The officer stopped the vehicle for a minor traffic violation and determined that the driver was Scates, not Hall. After explaining the reason for the

stop, Officer Uhrig informed Scates there was a felony warrant out for Hall's arrest and if Hall was found with her, she would be arrested for harboring a wanted felon. Scates indicated that she understood this information.

On May 16, 2009, Officer Uhrig drove to the Post Falls residence and saw a pickup in the driveway with a male inside who had long hair in a ponytail, which fit Hall's description. The officer called for backup assistance and parked his vehicle down the street. When a second officer arrived at the location, he and Officer Uhrig approached the house on foot from different sides. Officer Uhrig noticed the garage door had been closed and the male was no longer inside the pickup. He then heard a door from the garage to the back yard open and close. Officer Uhrig illuminated the area with his flashlight and yelled "Hey, Freddie." Hall yelled in the direction of the house and ran inside, down the stairs to the basement. Officer Uhrig chased Hall into the house, but noticed that Hall grabbed a wooden object as he ran into the basement and decided to back out of the house for safety reasons. The officers called for additional assistance and set up a perimeter around the house. Officer Uhrig saw Scates through a window of the house wave at the officers and then pull the window blinds closed. After maintaining the perimeter for about thirty minutes, the officers decided to vacate the area. On June 12, 2009, a criminal complaint was filed against Scates charging her with harboring a wanted felon, Idaho Code § 18-205, on the May 16 date. After a preliminary hearing was held and testimony presented, Scates was bound over to the district court.

On August 7, 2009, Officer Hunt responded to a domestic dispute call at the Post Falls residence. A neighbor called and reported that he saw a man with long hair and no shirt arguing with a lady. When officers arrived at the residence, Scates' mother gave them permission to search her home. Officer Hunt briefly questioned Scates about the incident and Scates told him that it was just her arguing with her female friend and that there was no male involved. During the search of the house, Officer Hunt noticed a door to the basement. Officer Hunt asked Scates' mother if they could go down into the basement to see if anyone was injured during the domestic dispute and she gave permission to do so. Officer Hunt attempted to open the basement door, but someone on the other side pulled it shut. Officer Hunt then looked toward the back of the residence and saw a male with long hair and no shirt fleeing therefrom. The male, identified as Hall, was arrested. Scates was again charged with harboring a wanted felon on August 7, 2009.

The State filed a motion for joinder of the two cases of harboring a wanted felon and the cases were joined for trial. After a jury trial, Scates was convicted of both charges. Scates appeals her convictions, which have been consolidated on appeal.

II.

DISCUSSION

A. Sufficiency of the Evidence

Scates asserts there was insufficient evidence to convict her of harboring a wanted felon on May 16, 2009. Specifically, Scates argues that the evidence was insufficient to prove beyond a reasonable doubt that she willfully harbored and protected Hall, elements required by I.C. § 18-205(2).¹

Appellate review of the sufficiency of the evidence is limited in scope. A judgment of conviction, entered upon a jury verdict, will not be overturned on appeal where there is substantial evidence upon which a reasonable trier of fact could have found that the prosecution sustained its burden of proving the essential elements of a crime beyond a reasonable doubt. *State v. Herrera-Brito*, 131 Idaho 383, 385, 957 P.2d 1099, 1101 (Ct. App. 1998); *State v. Knutson*, 121 Idaho 101, 104, 822 P.2d 998, 1001 (Ct. App. 1991). We will not substitute our view for that of the jury as to the credibility of the witnesses, the weight to be given to the testimony, and the reasonable inferences to be drawn from the evidence. *Knutson*, 121 Idaho at 104, 822 P.2d at 1001; *State v. Decker*, 108 Idaho 683, 684, 701 P.2d 303, 304 (Ct. App. 1985). Moreover, we will consider the evidence in the light most favorable to the prosecution. *Herrera-Brito*, 131 Idaho at 385, 957 P.2d at 1101; *Knutson*, 121 Idaho at 104, 822 P.2d at 1001.

Idaho Code § 18-205 states in pertinent part: “All persons are accessories who, having knowledge that a felony has been committed: . . . (2) Harbor and protect a person who committed such felony or who has been charged with or convicted thereof.” In order to implicate I.C. § 18-205(2), an individual must harbor a convicted or wanted felon, and the harboring must be in concert with the protection of the convicted or wanted felon. The statute does not criminalize the act of protecting a felon for a reason unrelated to the felony. *State v. Lampien*, 148 Idaho 367, 372-73, 223 P.3d 750, 755-56 (2009) (holding that I.C. § 18-205(2) was implicated because the

¹ Scates makes this argument only with regard to the May 16 incident and not in regard to the one on August 7. Therefore, we address only the former incident in relation to the sufficiency of the evidence argument.

defendant harbored and protected the harboree precisely because he was wanted in relation to two felonies for which he had previously been convicted). Therefore, the protection must be related to the felony the harboree committed. *Id.*

Scates argues that even if the jury could have found she was harboring Hall because she was aware of Hall's presence in her basement when the officers surrounded her house, there is no evidence that she protected Hall in any way. To "protect" means "to cover or shield from that which would injure, destroy, or detrimentally affect." *Webster's Third New International Dictionary*, 1822 (1976). Scates allowed Hall to stay in her home after she was specifically informed that he was a wanted felon. Indeed, Officer Uhrig advised Scates on May 1, 2009, that there was a felony warrant out for Hall's arrest and if Hall was found with her, she would be arrested for harboring a wanted felon. In addition, Scates testified that she was aware the police were at her residence on May 16; she looked at them through a window of the residence, gestured by waving, and pulled the window blinds shut, thereby preventing officers from observing activity inside. Furthermore, one of the detectives testified that he talked to Scates about the May 16 incident two days after it occurred. The recording of the conversation indicates that when he questioned her about had happened, Scates stated, "when you guys came the other night, we waited 'til it was safe for him to go and he left on foot." The detective responded by pointing out that Scates knew the police were looking for Hall and knew that Hall was at her residence, to which Scates replied, "I know, I know." The record reflects that Scates harbored Hall in order to protect him from being taken into custody on the felony warrant; the harboring was in concert with the protection of Hall. *See Lampien*, 148 Idaho at 372-73, 223 P.3d at 755-56. Therefore, there was sufficient evidence in the record to convict Scates, beyond a reasonable doubt, of harboring a wanted felon under I.C. § 18-205(2).

B. Double Jeopardy

Scates next asserts that her protection against double punishment under the Double Jeopardy Clauses of the United States and Idaho Constitutions was violated because she was convicted of two charges of harboring a wanted felon when her actions only amounted to one continuous act.² Initially, Scates acknowledges that no objection was made in the district court

² Scates does not claim the Double Jeopardy Clause of the Idaho Constitution provides any broader protection than that of the United States Constitution. Therefore, we will analyze this

to bringing two charges of harboring a wanted felon against her. Nevertheless, she argues that her double jeopardy claim is properly before this Court because the outcome was fundamental error.

The applicable analysis to unobjected fundamental error is set forth in *State v. Perry*, 150 Idaho 209, 245 P.3d 961 (2010), where our Supreme Court stated:

If the alleged error was not followed by a contemporaneous objection, it shall only be reviewed by an appellate court under Idaho's fundamental error doctrine. Such review includes a three-prong inquiry wherein the defendant bears the burden of persuading the appellate court that the alleged error: (1) violates one or more of the defendant's unwaived constitutional rights; (2) plainly exists (without the need for any additional information not contained in the appellate record, including information as to whether the failure to object was a tactical decision); and (3) was not harmless.

Id. at 228, 245 P.3d at 980. Scates argues fundamental error applies because the two charges and convictions for harboring a wanted felon violated her unwaived constitutional right to protection against double jeopardy.

Compliance of a prosecution with the constitutional protection against being placed in jeopardy twice is a question of law over which we exercise free review. *State v. Santana*, 135 Idaho 58, 63, 14 P.3d 378, 383 (Ct. App. 2000). The Double Jeopardy Clause of the United States Constitution provides that no person shall "be subject for the same offense to be twice put in jeopardy of life or limb." The Clause affords a defendant three basic protections. It protects against a second prosecution for the same offense after acquittal, a second prosecution for the same offense after conviction, and multiple criminal punishments for the same offense. *Schiro v. Farley*, 510 U.S. 222, 229 (1994); *State v. McKeeth*, 136 Idaho 619, 622, 38 P.3d 1275, 1278 (Ct. App. 2001). With only the last protection being at issue here, determining "[w]hether a course of criminal conduct constitutes a single or multiple offenses depends on whether or not the conduct constituted separate, distinct and independent crimes and requires an inquiry into the circumstances of the conduct and consideration of the intent and objective of the actor." *Miller v. State*, 135 Idaho 261, 267, 16 P.3d 937, 943 (Ct. App. 2000) (internal quotations omitted).

claim under the Double Jeopardy provisions of the United States Constitution. See *State v. Talavera*, 127 Idaho 700, 703, 905 P.2d 633, 636 (1995).

Therefore, in order to show a constitutional error based on multiple punishments, Scates must demonstrate that the two offenses were based on one continuous course of conduct.

Scates' argument is without merit because she failed to show her actions amounted to one continuous act. Scates was charged for the May 16, 2009, incident well before the August 7 incident occurred. Indeed, a preliminary hearing for the May 16 charge was held on July 28. Then on August 7, over two and one-half months after the first incident, the second incident occurred and Scates was again charged with the crime. This was more than enough time to constitute a clear separation and break from the first charge.

Accordingly, Scates has not established that she was denied her unwaived constitutional right against double jeopardy. Her two convictions for harboring a wanted felon were based on conduct that constituted two separate, distinct, and independent crimes--separated by on-going criminal proceedings on the first offense--and not a continuous course of conduct. *See Miller*, 135 Idaho at 267, 16 P.3d at 943.

III.

CONCLUSION

Scates has failed to establish there was insufficient evidence to convict her for the May 16, 2009, incident. Moreover, Scates failed to establish that the two charges and convictions for harboring a wanted felon violated her unwaived constitutional right to protection against double punishment. Accordingly, Scates' judgments of conviction for two charges of harboring a wanted felon are affirmed.

Judge LANSING and Judge MELANSON **CONCUR.**