STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1273

State of Minnesota,
Respondent,

vs.

Casey Jo Oldenburg,
Appellant.

Filed June 1, 2010
Affirmed
Peterson, Judge

Mille Lacs County District Court
File No. 48-CR-07-2101

Lori Swanson, Attorney General, Tibor M. Gallo, Assistant Attorney General, St. Paul, Minnesota; and

Janice S. Jude, Mille Lacs County Attorney, Milaca, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Melissa V. Sheridan, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Shumaker, Presiding Judge; Klaphake, Judge; and Peterson, Judge.

U N P U B L I S H E D O P I N I O N

PETERSON, Judge

In this sentencing appeal, appellant argues that because her role in concealing a crime was not more serious than that of other similar offenders, the district court abused

its discretion in ranking her offense of aiding an offender at severity level nine. We affirm.

FACTS

In investigating the disappearance of L.W., who was last seen on April 29, 2007, police learned that L.W. had told a friend that he was going to meet with Jeremy Hull about money that L.W. believed Hull had stolen from L.W. Police also learned that a telephone call had been made to the credit union where L.W. had an account attempting to transfer money from L.W.'s account. The call was made from the landline at Hull's apartment.

Police learned that someone who identified himself as L.W. had bought a motorcycle and an insurance policy to cover both the motorcycle and a pickup truck registered to L.W. Three employees at the motorcycle shop identified Hull as the person who had bought the motorcycle. On May 2, 2007, police stopped Hull while he was driving L.W.'s truck and arrested him.

In L.W.'s truck, officers found two shovels that looked like they had been recently purchased and used. Officers were able to trace the shovels to the store where they had been purchased. An officer reviewed in-store video-surveillance tapes and saw an individual who appeared to be Hull buying two shovels. L.W.'s DNA was on one of the shovels. Officers also learned that a person using L.W.'s identification had rented a skidster loader on May 1, 2007. On May 4, 2007, in a gravel pit near Hull's former residence, officers saw an area of fresh digging, a burn site, and track impressions

between the fresh digging and the burn site. Human remains were found in a shallow grave and at the burn site.

A police investigator interviewed appellant Casey Jo Oldenburg. Appellant identified Hull as "a friend" and denied living with him. Appellant told the investigator that she had no idea what Hull had been doing during the previous week.

During a search of appellant's parents' residence, investigators found a notebook in a junked vehicle. The notebook contained many writings outlining personal problems and concerns. The writer referred to the recipient of the writing as Casey. L.W.'s name, address, and telephone number were written on one of the pages, and one of the writings outlined a plan to go to L.W.'s home and stab him and then cover up the crime by making it look as though L.W. had moved.

On May 8, 2007, appellant gave a statement to police. She admitted that Hull was her boyfriend and that she often stayed at his apartment. She admitted seeing the writing about the plan to stab L.W. in his sleep. She stated that Hull was the writer and that she had discussed the plan with him before the weekend of April 27, 2007, but that she did not believe he was serious. At about 9:00 p.m. on April 29, 2007, Hull told appellant that he had strangled L.W. and had a new identity. On April 30, 2007, appellant drove Hull to the store where he bought the shovels, and then Hull drove L.W.'s truck, with appellant following in her car, to a gas station to buy diesel fuel to burn L.W.'s body. While Hull bought the fuel, appellant went to an adjacent restaurant to buy a sandwich. Appellant was present when Hull removed L.W.'s body from the truck. She used one of the shovels to help dig the grave and gathered wood to put on L.W.'s body as it burned. The body

did not burn completely, so Hull covered it with dirt and left it for the night. The next day, Hull reported to appellant that he had rented a bobcat and buried the body deeper. Appellant received a text message from Hull that said "LOL he is deep!" Appellant responded with a text message that said "Good, everything go ok."

Appellant admitted to police that on May 2, 2007, she removed from Hull's apartment the notebooks with Hull's writings, L.W.'s cell phone, a computer tower, and other items. At that time, appellant knew that Hull had been arrested, and the apartment had already been sealed by police prior to execution of the search warrant. Appellant burned L.W.'s cell phone on a dirt road, so her fingerprints would not be found on it and to eliminate any tracking device contained in the phone.

Hull was convicted of first-degree murder for killing L.W. Appellant was charged with aiding an offender as an accomplice after the fact/obstructing investigation, in violation of Minn. Stat. § 609.495, subd. 3 (2006). Appellant pleaded guilty to the charged offense.

At the plea hearing, appellant admitted that the allegations in the complaint, which included the substance of appellant's statements to police, were essentially true. Appellant admitted lying in her first statement to police. Appellant testified that when she brought appellant to buy the shovels and followed him to the gas station and gravel pit, she did not believe that Hull had killed L.W. and thought that he had stolen "something big" because Hull had a history of committing many thefts. Appellant testified that after seeing L.W.'s body, she stayed at the gravel pit because she was

scared. After leaving the body at the gravel pit, appellant went with Hull to his apartment, and the two of them showered together. Appellant went to work the next day.

Appellant admitted that before L.W.'s murder, she knew that Hull had outstanding warrants for his arrest and was trying to get a new identity. Appellant knew that shortly before L.W.'s murder, Hull had tried to adopt the identities of two deceased persons. Appellant was with Hull at a courthouse when Hull ran into a problem trying to assume the identity of a deceased person whose printed birth certificate said that the named person was deceased. Appellant testified that she helped Hull try to get a new identity because he owed her $18,000 to $20,000, and he needed to go to work to pay her back.

The district court assigned a severity level of nine to appellant's offense and sentenced her to an executed term of 86 months in prison. Appellant moved for reconsideration of the severity level assigned to her offense. The district court affirmed the assignment of severity level nine. This appeal followed.

D E C I S I O N

"When unranked offenses are being sentenced, the [district court] shall exercise [its] discretion by assigning an appropriate severity level for that offense and specify on the record the reasons a particular level was assigned." Minn. Sent. Guidelines II.A (2006). The Minnesota Supreme Court has held that when assigning a severity level to unranked offenses, the district court may take into consideration several factors, including:

> the gravity of the specific conduct underlying the unranked offense; the severity level assigned to any ranked offense whose elements are similar to those of the unranked offense;

> the conduct of and severity level assigned to other offenders for the same unranked offense; and the severity level assigned to other offenders who engaged in similar conduct. No single factor is controlling nor is the list of factors meant to be exhaustive. Thus, while the sentencing court has discretion in sentencing for unranked offenses, information from the Sentencing Guidelines Commission on other offenders sentenced on the same or similar offenses can help guide the exercise of that discretion.

State v. Kenard, 606 N.W.2d 440, 443 (Minn. 2000) (footnote omitted). This court reviews a district court's severity-level determination using an abuse-of-discretion standard. *State v. Bertsch*, 707 N.W.2d 660, 666 (Minn. 2006).

Appellant was convicted of aiding an offender after the fact/obstructing investigation, in violation of Minn. Stat. § 609.495, subd. 3, which states:

> Whoever intentionally aids another person whom the actor knows or has reason to know has committed a criminal act, by destroying or concealing evidence of that crime, providing false or misleading information about that crime, receiving the proceeds of that crime, or otherwise obstructing the investigation or prosecution of that crime is an accomplice after the fact . . . .

Appellant relies on *Kenard* to argue that the district court abused its discretion in assigning severity level nine to her offense. In *Kenard*, the supreme court held that the district court abused its discretion in assigning severity level seven to the same offense of which appellant in this case was convicted. *Kenard*, 606 N.W.2d at 441. In distinguishing Kenard's conduct from cases in which severity levels of seven and eight had been assigned,[1] the court noted that in the other cases, the offender was either present

[1] Since *Kenard* was decided, a new severity level seven was added for the felony DWI offense, and offenses previously at level seven or higher were moved up one level. *See*

at the time of the underlying offense, participated to some degree in the underlying offense, or readily participated in covering up the underlying offense. *Id.* at 445. In contrast, Kenard was not present during and did not participate in the murder. *Id.* Also, she did not choose to become involved in concealing the murder, but rather she walked into her own home with two young children to find blood on the walls and floor and took steps to hide the murder from her 4-year-old son. *Id.* Appellant's conduct was significantly different from Kenard's conduct.

Gravity of appellant's conduct

The district court found:

> [Appellant] saw a note written by Mr. Hull outlining his plan to go up to Little Falls and stab the victim to death in his bed. . . . Mr. Hull told [appellant] that she didn't have to worry anymore, that he had a new identity, and that he had strangled [L.W.]. After Mr. Hull told her this, [appellant] took Mr. Hull . . . to buy shovels and they sent each other text messages back and forth while in the store. One message from [appellant] asked Mr. Hull if he had found anything to dig with. After purchasing the shovels, [appellant] followed Mr. Hull, who was driving the victim's truck, from St. Cloud to Foreston, stopping first in Foley so that Mr. Hull could buy diesel fuel to burn the body. While Mr. Hull was getting the fuel, [appellant] . . . ordered them both some sandwiches. When they reached Foreston, she rode in the truck with Mr. Hull to the burn site where she helped gather firewood to burn the body and threw the wood on the fire.
>
> [Appellant] had multiple opportunities to leave but chose not to. She knew that Mr. Hull purchased a new Harley-Davidson motorcycle with the victim's checking account funds. She knew that he purchased a new i-pod as well, and was present in the apartment when Mr. Hull was

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Taylor v. State, 670 N.W.2d 584, 587 n.3 (Minn. 2003) (explaining change to sentencing guidelines).

> downloading music onto the new i-pod. [Appellant] had multiple opportunities to call the police before and after [L. W.] was killed, but chose instead to help Mr. Hull dispose of the victim's body. Mr. Hull also sent her letters instructing her to hide more of the victim's funds in a paypal account, so that they would have money available when he was released from jail. [Appellant] was actively involved not only in the disposition of the body, but in hiding evidence from police and hiding the victim's money from the police so they could use it at a later date.
>
> . . . [Appellant] spoke with several different police officers and lied repeatedly. She broke the police tape to Mr. Hull's apartment to take evidence . . . to hide from the police.

Severity level assigned to ranked offenses with similar elements

The *Kenard* court explained that the ranked offense most similar to aiding an offender under Minn. Stat. § 609.495, subd. 3, is aiding an offender under Minn. Stat. § 609.495, subd. 1(a) (aiding an offender in avoiding or escaping from arrest), a severity-level-one offense. 606 N.W.2d at 443-44. The court then stated:

> The primary differences between subdivision 1 and subdivision 3 of Minn. Stat. § 609.495 are that subdivision 3's application is limited to certain enumerated offenses while subdivision 1 is not so limited; and that subdivision 3 provides that those convicted thereunder may be sentenced to up to one-half of the statutory maximum of the aided offense. Obviously, the legislature considers convictions under subdivision 3 more serious than those under subdivision 1.

Severity level assigned for same offense

In *In re Welfare of C.H.*, No. C0-02-900, 2003 WL 457233, at *1 (Minn. App. Feb. 5, 2003), a conviction under Minn. Stat. § 609.495, subd. 3, was assigned a severity level eight. *C.H.* is distinguishable from this case in that C.H. was present during a murder, but C.H. had less involvement in covering up the crime. *See id.* at *3 (discussing

gravity of conduct underlying offense). Also, the facts in *C.H.* do not indicate that the offense was planned. *See id.* at *1 (discussing facts underlying offense). Here, appellant was aware of Hull's plans to obtain a new identity and his writing about a plan to kill L.W., and appellant was involved in disposing of L.W.'s body. *See also State v. Skipintheday*, 704 N.W.2d 177, 179-80 (Minn. App. 2005) (severity level eight assigned to conviction under Minn. Stat. § 609.495, subd. 3, when defendant was present during shooting, directed getaway driver, told another witness not to say anything, hid murder weapon, and lied to police), *aff'd* 717 N.W.2d 423 (Minn. 2006).[2]

Severity level for similar conduct

The district court found:

> The sole reason for [appellant's] actions, according to the defense, are after the fact and involved being thrust into a situation where someone she loved had committed an offense she did not think he was capable of doing. But the defense does not address the numerous times the defendant lied to investigators, it does not address the breaking of the police tape to take evidence which occurred a significant time after the initial disposal of the body, it does not address the vast involvement [appellant] had with the disposition of the body, it does not address the fact that she took and destroyed the victim's cell phone so that the police would not be able to connect it to either her or Mr. Hull, nor does it address the continued hiding of evidence such as funds taken from the victim and placed in a paypal account for safekeeping so that [appellant] and Mr. Hull would have money after the legal issues were completed. In addition, the defense ignores the fact that [appellant] helped Mr. Hull in his attempt at a new identity by accompanying him to the Meeker County Courthouse, telling a courthouse employee that Mr. Hull was

[2] Although *C.H.* is unpublished and the severity-level assignment was not challenged in *Skipintheday*, the opinions are being cited for comparison purposes. *See Kenard*, 606 N.W.2d at 444-45 (citing district court cases for comparison purposes).

> in fact a different person she knew to be deceased. [Appellant] was highly invested in Mr. Hull finding a new identity. She admitted that he owed her roughly $20,000 and she was hoping he could pay her back once he had a new identity.

After considering the factors identified in *Kenard*, we conclude that the district court did not abuse its discretion in assigning severity level nine to appellant's offense.

Affirmed.