STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1635
A13-1645

State of Minnesota,
Appellant,

vs.

Jamillia Roshana Hudson,
Respondent.

Filed February 24, 2014
Reversed and remanded
Larkin, Judge

Ramsey County District Court
File No. 62-CR-13-2315

Lori Swanson, Attorney General, St. Paul, Minnesota; and

John Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney, St. Paul, Minnesota (for appellant)

Mark D. Nyvold, Special Assistant Public Defender, Fridley, Minnesota; and

Neighborhood Justice Center, St. Paul, Minnesota (for respondent)

Considered and decided by Chutich, Presiding Judge; Worke, Judge; and Larkin, Judge.

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

LARKIN, Judge

Appellant State of Minnesota challenges the district court's dismissal of its charge against respondent of aiding an offender under Minn. Stat. § 609.495, subd. 1(a) (2012). The district court dismissed the charge for lack of probable cause and in furtherance of justice. Because the complaint establishes probable cause for the charge and the district court abused its discretion by dismissing in furtherance of justice, we reverse and remand.

FACTS

The state charged respondent Jamillia Roshana Hudson with aiding and abetting second-degree assault under Minn. Stat. §§ 609.222, subd. 1, .05, subd. 1 (2012), and aiding an offender under Minn. Stat. § 609.495, subd. 1(a). The criminal complaint alleges that after Hudson had been involved in a fight at an apartment building, she returned to the building in a vehicle, entered the building, and got her children. When Hudson came out of the building with her children, a male began to yell, pulled out a gun, and pointed it at an individual's face. Next, the man pointed the gun at another person and fired once in the direction of a parking lot. The man got into the vehicle in which Hudson arrived, and Hudson drove the vehicle away from the scene.

After ascertaining Hudson's identity and address, police officers went to her residence and saw a man and a woman exit the house. When the man and woman saw the officers' squad car, they went back into the house. Later, Hudson came out alone, and the officers spoke to her. She denied being at the apartment when the shooting

occurred. She said that only her children were inside the house, and she denied that anyone had come out of the house with her earlier. The officers eventually discovered Christopher Sean Daniels inside the residence and arrested him. Daniels provided a statement in which he admitted his involvement in the shooting. He referred to Hudson as his girlfriend and said that she had been involved in the fight at the apartment building. He admitted that he was at the apartment building and that he had a handgun. Daniels said that he fired the gun in the air for protection. He also told police that he got the gun from Hudson and gave it back to her after they left the apartment building.

Hudson pleaded guilty to aiding an offender, a felony-level offense, under a plea bargain that provided that the charge would be sentenced as a gross misdemeanor and the second-degree assault charge would be dismissed. At the sentencing hearing, the district court judge, sua sponte, dismissed the only remaining charge, aiding an offender, in furtherance of justice.[1] The state then filed another complaint, charging Hudson only with aiding an offender. The case was assigned to the same district court judge, who denied the state's notice to remove as untimely under Minn. R. Crim. P. 26.03, subd.

[1] A "district court [has] the authority to dismiss [a] case in the interests of justice pursuant to Minn. Stat. § 631.21 and pursuant to its inherent authority." *State v. Hart*, 723 N.W.2d 254, 259 (Minn. 2006). Section 631.21 authorizes a dismissal "in furtherance of justice." Minn. Stat. § 631.21 (2012). Throughout this opinion, we use the statutory phrase, "in furtherance of justice," instead of "interests of justice." The supreme court has noted that, "[a]lthough there is a technical difference between the phrase 'in furtherance of justice' from Minn. Stat. § 631.21 and 'in the interest of justice,'" it treats those phrases similarly. *Hart*, 723 N.W.2d at 258 n.7.

14(4)(c) (providing that a notice to remove "is not effective against a judge who already presided").[2]

Hudson moved to dismiss the aiding-an-offender charge for lack of probable cause and in furtherance of justice. At the motion hearing, the district court denied the state's request for additional time to brief the furtherance-of-justice issue, and it dismissed the charge for lack of probable cause and in furtherance of justice.

The state sought this court's discretionary review of the furtherance-of-justice dismissal (A13-1635) and filed a notice of appeal from the dismissal for lack of probable cause (A13-1645). This court granted discretionary review, consolidated the appeals, and ordered briefing of both the probable-cause and the furtherance-of-justice dismissals.

D E C I S I O N

I.

A district court "must determine whether probable cause exists to believe an offense has been committed and the defendant committed it." Minn. R. Crim. P. 2.01, subd. 4. "[T]he test of probable cause is whether the evidence worthy of consideration . . . brings the charge against the [defendant] within reasonable probability." *State v. Florence*, 306 Minn. 442, 446, 239 N.W.2d 892, 896 (1976) (quotation omitted). In determining questions of probable cause, the district court "must exercise an independent and concerned judgment addressed to this important question: Given the facts disclosed

[2] The state petitioned this court for a writ of prohibition to prevent that district court judge from handling the case. This court denied the petition, and the supreme court declined to review this court's decision.

by the record, is it fair and reasonable . . . to require the defendant to stand trial?" *Id.* at 457, 239 N.W.2d at 902.

A pretrial order dismissing a charge for lack of probable cause is appealable if the order is based on a legal determination. *State v. Ciurleo*, 471 N.W.2d 119, 121 (Minn. App. 1991); *see also* Minn. R. Crim. P. 28.04, subd. 1(1) (providing that the state may appeal as of right from any pretrial order, including a probable-cause dismissal based on questions of law). Under rule 28.04, subdivision 1(1), "whether the dismissal is based on a legal or a factual determination is a threshold jurisdictional question." *Ciurleo*, 471 N.W.2d at 121. This court will reverse a pretrial probable-cause dismissal "only if the state demonstrates clearly and unequivocally that the district court erred in its judgment and, unless reversed, the error will have a critical impact on the outcome of the trial." *State v. Trei*, 624 N.W.2d 595, 597 (Minn. App. 2001), *review dismissed* (Minn. June 22, 2001). Dismissal of a complaint based on a question of law satisfies the critical-impact requirement. *See State v. Diedrich*, 410 N.W.2d 20, 23 (Minn. App. 1987) (where dismissal of a complaint is based on errors of law, "further prosecution is effectively blocked").

The parties disagree regarding whether the district court's probable-cause dismissal is appealable. The state contends that the dismissal was based on a legal determination. Hudson counters that the dismissal was based on a factual determination that the complaint lacks sufficient information to establish probable cause and that the order is, therefore, not appealable. *See* Minn. R. Crim. P. 28.04, subd. 1(1) (providing

that a probable-cause dismissal is not appealable if it is "premised solely on a factual determination").

In dismissing for lack of probable cause, the district court reasoned that (1) evidence that Hudson "[drove] a vehicle that the [shooter] was in" was irrelevant to its probable-cause determination and (2) Hudson's false statement to the police about the shooter's presence in her residence was not the type of "affirmative act" that is necessary to establish a charge of aiding an offender.

Although Hudson is technically correct that the dismissal was based on the state's failure to include additional factual information in the complaint, that failure is material only because of the district court's underlying legal conclusions that evidence regarding Hudson's transportation of the shooter was irrelevant and that a charge of aiding an offender cannot be based on a false statement to the police. Because the probable-cause dismissal was based on those legal determinations, and not "solely on a factual determination," it is appealable. *See* Minn. R. Crim. P. 28.04, subd. 1(1).

We next determine whether the underlying legal determinations were erroneous. The offense of aiding an offender requires that an individual

> harbors, conceals, aids, or assists by word or acts another whom the actor knows or has reason to know has committed a crime . . . with intent that such offender shall avoid or escape from arrest, trial, conviction, or punishment, . . . [and] the crime committed or attempted by the other person is a felony.

Minn. Stat. § 609.495, subd. 1(a).

The complaint alleges that after Hudson was involved in a fight at an apartment building, Hudson returned to the building, entered the building, and got her children. The complaint states,

> When [Hudson] and her children left the apartment a black male began to yell, "Any b-tch out here can have it." The man kept yelling and pulled out a gun and pointed it in [an individual's] face. The man pointed the gun at another person then fired once in the parking lot's direction. The man got back into the car with the woman who was driving [i.e., Hudson] and they left.

At the motion hearing, the prosecutor argued, "[Hudson] is accused to have driven a vehicle that brought [the shooter], the co-defendant, to the scene. [He] discharged his firearm in the direction of several women and [Hudson] then got into the vehicle and drove [him] away." The district court responded:

> There's no evidence that [Hudson] was aiding and abetting in any way, and yet the [s]tate . . . argues that her driving a vehicle that the [shooter] was in somehow is relevant to the charge [of aiding an offender.] It's not.
>
> . . . .
>
> . . . She's not charged with aiding and abetting this shooting. She's charged with aiding an offender to avoid arrest, harboring or concealing. . . . I'm not going to consider evidence of . . . aiding an offender to commit the crime because she's not charged with that, and I find it completely irrelevant.

It is true that a person who has been *convicted* of aiding and abetting a crime under section 609.05, subdivision 1, cannot also be convicted of aiding an offender to commit that crime under section 609.495, subdivision 1(a). *State v. Leja*, 660 N.W.2d 459, 465-66 (Minn. App. 2003) (concluding that, as a matter of law, a defendant convicted of aiding second-degree murder could not also be convicted of aiding an offender), *aff'd as*

modified, 684 N.W.2d 442 (Minn. 2004). But *Leja* involved duplicative convictions: this court did not hold that the state improperly charged defendant with both aiding and abetting and aiding an offender. *See id*.

The district court here did not explain why evidence that Hudson drove the shooter away from the crime scene is relevant only to a charge of aiding and abetting the shooting and not to a charge of aiding the shooter to avoid arrest. Caselaw indicates that transporting a shooter away from the crime scene can constitute aiding and abetting, as well as aiding an offender. *See Holt v. State*, 772 N.W.2d 470, 483 (Minn. 2009) (stating that an individual "could have been charged with aiding an offender after the fact for his role in driving the getaway car . . ."); *State v. Pierson*, 530 N.W.2d 784, 788 (Minn. 1995) (stating that "factors such as defendant's presence at the scene of the crime, defendant's close association with the principal before and after the crime, defendant's lack of objection or surprise under the circumstances, and defendant's flight from the scene of the crime with the principal may reasonably support a conviction of the defendant as an accomplice" under an aiding-and-abetting theory). Thus, the district court erred in concluding that evidence that Hudson drove the shooter away from the crime scene was irrelevant to the probable-cause determination. *See* Minn. R. Evid. 401 (defining relevant evidence).

The complaint also states that, after investigating the shooting at the scene of the crime, the officers

> went to Hudson's address and saw a man and woman exit the house. When the two saw the squad car they stopped and went back inside . . . . Hudson eventually exited the house

> and officers made contact with her. [She] denied having a boyfriend and she denied being at the apartment building when the shooting happened. Hudson said only her children were inside the house and no one had walked outside the house with her earlier. . . .
>
> Officers eventually learned that Hudson's boyfriend was inside the residence. Officers removed the occupants from the house and arrested Hudson's boyfriend. . . .

The district court concluded:

> [Hudson] knew that there was a crime, I would presume by the facts of the case, that she knew about a shooting, and I would presume that she knew or had reason to know who had committed that shooting. But there has to be more than just failure to cooperate, failure to come forward with information. There has to be more than withholding, there has to be some affirmative act . . . .
>
> . . . .
>
> So what we have on the four corners of the complaint is [Hudson] stating [to the police] that she did not have a boyfriend, that there was no one else in her house . . . .
>
> . . . [T]he officers were confrontational and wanted some information from [Hudson], and she wasn't forthcoming. I do not think that rises to aiding an offender to avoid arrest. I do not think it rises to harboring or concealing. I don't believe there's probable cause for this charge.

In sum, the district court concluded that Hudson's false statement to the police did not aid the shooter to avoid arrest within the meaning of Minn. Stat. § 609.495, subd. 1(a), because it was not the type of "affirmative act" that is necessary under the statute. The district court reasoned that "[p]eople are not required to have conversations with the police besides their name and address. And [Hudson] was very clear that she did not want to participate, and that's her constitutional right." But the complaint does not indicate that Hudson merely withheld information or declined to speak with the police.

The complaint states that Hudson told the police that "only her children were inside the house," even though she knew that the shooter was also inside of her house and that the police were looking for him.

Moreover, the district court's view that lying to the police is the equivalent of declining to answer questions or withholding information and that such conduct is constitutionally protected lacks support in the law. *See Bryson v. United States*, 396 U.S. 64, 72, 90 S. Ct. 355, 360 (1969) ("A citizen may decline to answer the question [asked by the government], or answer it honestly, but he cannot with impunity knowingly and willfully answer with a falsehood."). In sum, the district court erred by concluding that Hudson's lie to the police was not an affirmative act adequate to support a charge of aiding an offender.

Having determined that the district court's probable-cause dismissal is properly before us on appeal, that evidence regarding Hudson's transportation of the shooter is relevant, and that a charge of aiding an offender can be based on Hudson's false statement to the police, we next determine whether there is probable cause for the offense of aiding an offender. We review a probable-cause dismissal based on a question of law de novo. *State v. Dunson*, 770 N.W.2d 546, 549 (Minn. App. 2009), *review denied* (Minn. Oct. 20, 2009). Our determination is limited to the allegations in the complaint, because neither party supplemented the complaint with additional information for the district court's consideration. *See Florence*, 306 Minn. at 457, 239 N.W.2d at 902 ("A carefully drawn and sufficiently detailed complaint made by an investigating officer and incorporating reliable hearsay could in some limited situations be adequate support for a

finding of probable cause, at least where the essential truth of the facts averred in the complaint is not contested. In the more usual situation, the complaint will and should be buttressed by the police report, including verified statements of witnesses whose observations form the basis for the complaint and, in addition, the results of disclosure and discovery procedures required by the rules.")

Hudson argues that probable cause was lacking because the police knew she was lying and eventually arrested the shooter at Hudson's house. But the aiding-an-offender statute does not require that efforts to aid an offender to avoid arrest be successful. Minn. Stat. § 609.495, subd. 1(a). Thus, Hudson's words and acts, and not whether the shooter actually avoided arrest, determine whether there was probable cause for the charge of aiding an offender.

The complaint alleges that Hudson drove the shooter away from the crime scene and lied to the police about his presence in her house when the police came looking for him. Those allegations show that Hudson assisted by word, another person whom she knew had committed a crime, with intent that the other person avoid or escape arrest. Thus, the evidence brings the charge against Hudson "within reasonable probability" and it is "fair and reasonable" to require Hudson to stand trial. *See Florence*, 306 Minn. at 446, 457, 239 N.W.2d at 896, 902. We therefore reverse the district court's probable-cause ruling.

II.

We next consider the district court's dismissal in furtherance of justice. Hudson argues that the dismissal is not appealable. *See* Minn. R. Crim. P. 28.04, subd. 1(1)

(stating that a pretrial order cannot be appealed if the court dismissed a complaint in furtherance of justice). By order of a special term panel, this court has already addressed and resolved that issue:

> Although there is no authority for an appeal of a dismissal [in furtherance of justice] under [Minn. Stat. §] 632.21, Minn. R. Civ. App. P. 105 provides for discretionary review in the interests of justice. . . .
>
> . . . Under the unique circumstances of this case, where the district court's dismissal was based on both a lack of probable cause and 'in furtherance of justice,' the state has demonstrated a 'compelling reason' why discretionary review [of the furtherance of justice dismissal] and consolidation are appropriate.

"No petition for rehearing shall be allowed in the Court of Appeals." Minn. R. Civ. App. P. 140.01; *see also In re Estate of Sangren*, 504 N.W.2d 786, 788 n.1 (concluding that Minn. R. Civ. App. P. 140.01 prohibits an attempt to reargue an issue decided at special term), *review denied* (Minn. Oct. 28, 1993). Because a special term panel of this court granted discretionary review of the furtherance-of-justice dismissal, we do not consider Hudson's arguments regarding whether the dismissal is properly before us on appeal.

We now turn to the merits of the dismissal.

> The court may order dismissal of [a criminal] action either on its own motion or upon motion of the prosecuting attorney and in furtherance of justice. If the court dismisses an action, the reasons for the dismissal must be set forth in the order and entered upon the minutes.

Minn. Stat. § 631.21. We review a dismissal in furtherance of justice for an abuse of discretion. *See Hart*, 723 N.W.2d at 259-60 (holding that the district court did not abuse its discretion by dismissing a complaint in the interests of justice).

Although section 631.21 provides authority for a district court to dismiss a criminal action in furtherance of justice, it does not provide a standard for such dismissals. The state argues that this court should adopt the standard that applies to a district court's decision to grant a stay of adjudication over the objection of the prosecutor. *See State v. Lee*, 706 N.W.2d 491, 496 (Minn. 2005) (affirming that "clear abuse of the prosecutorial charging function must be found by the court before it may order a stay of adjudication over the prosecutor's objection").

But in *Hart*, the supreme court refused to consider a suggestion that it "rule that the standard for a dismissal in the interest of justice is a 'clear abuse of the prosecutorial charging function' (the same as the standard for a stay of adjudication)," and it "expressly decline[d] to rule on what standard should be applied to 'interests of justice' dismissals." 723 N.W.2d at 259 n.10. Thus, the state's suggestion that this court "should hold that under *Hart* a case cannot be dismissed in the interests of justice unless there has been a 'clear abuse of the prosecutorial charging function'" would have us create new law in an area where the supreme court has explicitly declined to do so. *See Tereault v. Palmer*, 413 N.W.2d 283, 286 (Minn. App. 1987) (stating that "the task of extending existing law falls to the supreme court or the legislature, but it does not fall to this court."), *review denied* (Minn. Dec. 18, 1987). The state's proposed standard would also have us ignore the fact that *Hart* upheld a dismissal based on a prosecutor's failure to appear for a

hearing and not on an abuse of the prosecutor's charging function. 723 N.W.2d at 256, 259-60. For those reasons, we decline to adopt the state's proposed standard for dismissals in furtherance of justice.

Although section 631.21 does not provide a criterion for granting dismissals in furtherance of justice, it requires the district court to set forth its reasons for dismissal. Minn. Stat. § 631.21. In this case, the district court mentioned the potential collateral and criminal consequences to Hudson. Although the district court acknowledged that collateral consequences were "not enough . . . to dismiss a charge," it stated:

> I care and am concerned that [Hudson] has lost her job—I'm glad she's going to be reinstated . . . I have rarely seen a young person more actively involved in trying to raise her family on her own and being a responsible citizen. It was an unusual presentence investigation. But even ignoring the collateral consequences and simply looking at her behavior, and then the charge itself, and the criminal consequences of that charge, I do not have any sense that it furthers justice by going forward in any way.

Despite the district court's statement that it was "ignoring the collateral consequences," it appears that those consequences inappropriately influenced the district court's decision to dismiss. *See State v. Mendoza*, 638 N.W.2d 480, 484 (Minn. App. 2002) ("We conclude that consideration of a possible collateral consequence, which is beyond the control of the district court and which may or may not occur, is not a valid consideration in deciding whether to impose a presumptive sentence or to depart from the guidelines."), *review denied* (Minn. Apr. 16, 2002). Moreover, the potential criminal consequences were not an appropriate reason to dismiss. It is well settled that the judiciary has no inherent power to decide what conduct constitutes criminal conduct or

the appropriate range of punishment to be imposed for such conduct. *State v. Osterloh*, 275 N.W.2d 578, 580 (Minn. 1978). The power to define criminal conduct and the punishment for criminal acts rests with the legislature. *Id.*

The district court also stated, "I do not understand the . . . motivation by the prosecutor to pursue this particular case in this matter against a person with no criminal history and who works as hard as [Hudson] does. . . . [T]here seems to be some . . . vindictive motivation . . . to pursue a charge like this." The district court continued,

> [T]o have [Hudson] go through a year of this kind of behavior for simply not wanting to talk to the police is unconscionable to this [c]ourt. People are not required to have conversations with the police besides their name and address. And [Hudson] was very clear that she did not want to participate, and that's her constitutional right.

We discern no record support for the district court's view that the state's prosecution of Hudson is vindictive. The record does not indicate any reason to believe that the state would not similarly charge any other person who drove a shooter away from the scene of the crime and then lied to the police about the shooter's location. Thus, the district court's vindictive-prosecution theory lacks a basis in fact. In addition, the district court's reasoning was once again based on its mistaken view that Hudson merely declined to talk to the police, when in fact she lied to the police. In sum, the record does not support the district court's reasoning.

Because the district court's reasons for dismissal in furtherance of justice do not find support in law or in the record, the dismissal was an abuse of discretion. We

therefore reverse the district court's dismissal in furtherance of justice and remand for further proceedings.

Reversed and remanded.