

IN THE SUPREME COURT OF THE STATE OF MONTANA
SUPREME COURT CAUSE NO. DA 24-0343

STATE OF MONTANA,

Plaintiff and Appellee,

v.

LILA LYNN LORD

Defendant and Appellant

APPELLANT'S REPLY BRIEF

On Appeal from the Seventh Judicial District
Richland County, Montana Cause No. DC-42-2023-0078-IN
The Honorable Katherine Bidegaray (Now Justice Katherine M. Bidegaray)

Appearances

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APPELLANT'S REPLY BRIEF

FACTUAL MATTERS TO BE CLARIFIED

The facts of the case which are relevant to Appellant's position are set forth in *Appellant's Opening Brief*. Appellant will not expand on those facts. However, there are factual issues in the *Brief of Appellee* (hereinafter "*State's Br.*") for which factual information from the record needs to be presented to clarify what, exactly, was in the district court's record. Those issues will be addressed in this section.

The State claims Lord admitted to [law enforcement officers] that she was present at Entzel's home "when they were staging the burglary." The State further writes "Lord identified Entzel, Skaw, Laurie McGregor (McGregor), "somebody named Larry," and her daughter as individuals who were present at Entzel's residence during the staged burglary." *State's Br.* Pg. 8. This is not accurate and there is nothing in the record from any witness that says Lord admitted to being in the house "when they were staging the burglary." The section of the trial transcript to which the State cites for these statements contains the following testimony:

Q. So, what's the audio like in this recording?

A. It's extremely hard to hear.

Q. Um, in your interview with Ms.- in your interview with Ms. Lord, um, did she admit that she was at the residence with Chris that night during these events that we're talking about?

A. Yes, she did.

Q. Did she admit that she saw blood on the walls, or something that looked like blood?

A. Yes. That's what she described.

Q. K. Did she say anything about whether she believed the house had been robbed?

A. Yes, she did.

Q. And who all did Lila say she was with that night?

A. I believe she said that, uh, David Skaw was there, Chris was there, um, she identified Laurie McGregor being there as well, and then, um, later on, her daughter, and somebody named Larry, I believe.

Tr. Transcr. Pg. 184. While Lord admitted to law enforcement that she had been at the house on the night of the staged burglary, she did not admit that she was present during the staging the burglary. In fact, the recording presented during trial states as follows:

LEO: So they were already in the process of destroying the house when you...

Lord: I was under the... I was saying the house had already been robbed.

Tr. Ex. 2, 15:25-15:34. A statement that the house had already been robbed is not an admission that Lord was present during the staging of the burglary.

The State goes on to say “Lord admitted that she had been with Skaw that evening, and that she talked with Skaw about bringing Entzel’s boat to her residence.” *State’s Br.*, Pg. 8. The State then says Corporal Norby verified that Lord talked about Skaw “bring a boat to her house after the staged burglary.” *State’s Br.*, Pg. 9. The record does not support the State’s claim that there was a discussion between Lord and Skaw where Lord acknowledged the boat was Entzel’s boat or that Skaw brought it to her house in connection with the staged burglary. The trial transcript actually states that Lord admitted she talked with Shaw about bringing “**a boat**” to her house. There is no evidence anywhere that Lord discussed with Shaw that it was Entzel’s boat:

Q. K. And- and then also during your interview of the defendant, did she talk about David bringing a boat to her house after the staged burglary?

A. Yes, she did.

Tr. Transcr. 188:1-188:4. When asked if property had been brought to her house, Lord clarified that she thought the question meant stolen property and denied knowing of any stolen property being brought to her home:

LEO: After you went there, was there any property that showed up around your house or got brought around Plentywood

Lord: Not that I know of.

LEO: No boat tires, like that, nothin about a boat, nothing like that?

Lord: ...items stolen from the house

Tr. Ex. 2, 15:53-16:03. The recording is garbled, but it is clear that Lord understood the question to be whether any of the stolen property showed up at her house and that she didn't report the boat in response to law enforcement's questions because she didn't perceive it to be stolen. She admitted the boat was at her house. She did not admit she knew it to be stolen.

The State's brief appears to indicate that Lord and Skaw specifically discussed "bringing a boat to her house after the staged burglary." *State's Br.*, Pg. 10. In her interview, Lord admitted that talked with Shaw about bringing a boat to her house. This conversation occurred after the staged burglary. The recording does not support any conclusion that Shaw and Lord discussed the boat being a part of the staged burglary. In fact, Tr. Ex. 2, 15:53-16:03 indicates Lord did not perceive the boat to be property stolen from the house.

The State then advises the Court "There is no evidence that Entzel was an accomplice to this crime or even knew it had occurred until after the fact, when

Lord informed her that they had moved the boat because her boyfriend had damaged the tire on the trailer.” State’s Br., Pg. 12. This is not accurate. The State originally charged Lord with Conspiracy to Commit Tampering with or Fabricating Physical Evidence. The *Information* stated:

...Lord did purposefully and knowingly agree to assist in storing Chris Entzel’s boat and boat trailer at her residence, and Chris’ refrigerator and stored it at her residence where it could be hidden from law enforcement discovery during the investigation of the burglary report.

Information, Dkt. 3. In Lord’s *Motion to Dismiss*, Lord notes “The State alleges Lord agreed to assist the Entzel’s in their fraudulent scheme by agreeing to take possession of the refrigerator and by assisting them in storing the Entzel’s boat on her property in Plentywood.” *Motion to Dismiss*, Pg. 2, Dkt. 17. An *Amended Information* was filed, in which Lord was charged with Tampering with or Fabricating Physical Evidence and it was alleged:

...Lord, knowing an official investigation was our about to be instituted did purposely or knowingly remove Chris Entzel’s boat and boat trailer as well as Chris’ refrigerator, hiding it and stored it at her residence...

Amended Information, Pg. 2, Dkt. 31.

During trial, the State asked Entzel if he was “charged criminally with the incidents that took place at [her] house.” Entzel testified that she was and that she pled guilty. Tr. Transcr., 139:1-140:2. Entzel testified that she was charged with lying to the police and insurance fraud. Tr. Transcr. 148:5-148:8.

The record is replete with evidence that Entzel’s plan was that Shaw would take the boat and conceal it from law enforcement with knowledge that an official investigation was, or was about to be instituted, which are the same exact facts that support the tampering with evidence charge against Lord. Entzel was well aware

the crime of Tampering with Evidence was about to be committed and she and Skaw planned the staged burglary and insurance fraud.

In addition to the record in this matter being filled with evidence that Chris Entzle and David Shaw planned to remove the boat from Entzel's house and hide it from law enforcement, the Richland County Court records show that Entzel was charged with Tampering with or Fabricating Physical Evidence by Accountability and the State alleged:

Defendant, believing that an official investigation was about to be instituted, made an agreement which was executed with David Skaw, to remove and conceal a boat, boat trailer, and enclosed trailer from her property, then reported the items stolen to law enforcement and insurance.

State vs. Entzel, Information, Case No. DC-42-2023-074-IN, Richland County, Montana (Aug. 11, 2023).¹

These factual distinctions are crucial because there is no evidence in the record that Lord admitted to being at Entzel's home while the burglary was being staged. There was no evidence in the record that Lord ever said she and Skaw discussed that the boat belonged to Entzel. There was no evidence in the record that Lord ever admitted that she and Skaw discussed needing a place to store the boat in connection with the staged burglary. The record shows that Lord admitted to the boat being at her house, but that she denied knowing that it was part of the staged burglary. The record is filled with evidence that Entzel was an accomplice in the crime of Tampering with or Fabricating Physical Evidence.

¹ The *Information* in *State vs. Entzel* is not in the record in this matter. However, this Court is permitted to take judicial notice of filings in other court proceedings. *Stokes v. First. Am. Title Co. of Mont., Inc.* 2017 MT 275, ¶ 8. In *Stokes*, the appellant argued that appellee's citation to filings in other cases was not permissible. This Court rejected that argument stating "This Court may take judicial notice of other court proceedings." *Stokes*, ¶ 8.

ARGUMENT

I. The district court erred when it denied Lord’s proposed jury instruction number five and failed to instruct the jury that it must view the testimony of Chris Entzel with distrust.

The State’s argument, in short, is that the accountability instruction was not warranted because Entzel was not legally accountable for the offense. *State’s Br.*, Pgs. 15. The State’s argument that there is no factual evidence that Entzel was an accomplice is problematic given that the State charged Entzel with Tampering with Evidence by Accountability. *State vs. Entzel, Information*, Case No. DC-42-2023-074-IN, Richland County, Montana (Aug. 11, 2023).

The State claims “it is undisputed that Entzel was not aware that this crime had taken place until Lord informed her that they had to move the boat from her garage after her boyfriend damaged the trailer tire.” *State’s Br.*, Pg. 16. This is simply not accurate. The entire plan concocted by Entzel was that Entzel would allow her property to be taken and hidden from law enforcement, that Skaw would take the boat and conceal it from law enforcement and that these actions would be done so that Entzel could report a burglary to law enforcement and her insurance carrier. To argue that Entzel didn’t know the boat was taken and concealed from law enforcement ignores the plan Entzel formulated, a crucial component of which was that Entzel’s property would be hidden from law enforcement so that they would not find it during their investigation.

After arguing that Entzel had no idea the crime of Tampering with Evidence had been committed, the State argues Entzel’s testimony is corroborated because “Lord admitted to being at Entzel’s residence during the staged burglary.” *State’s Br.*, Pg. 17. Corporal Norby stated Lord admitted to being at the house during “these events that we’re talking about.” The sentence ambiguous in light of the dispute over whether Lord admitted to being at the house during the staging of the

burglary or whether she admitted to being at the house the night the burglary was staged but not during the staging. The recording of Lord's interview may be difficult to hear in parts, but Lord was always clear that she arrived at the house when it "had already been robbed."

LEO: So they were already in the process of destroying the house when you...

Lord: I was under the... I was saying the house had already been robbed.

Tr. Ex. 2, 15:25-15:34. If the State wanted a record that clearly stated Lord admitted to being at Entzel's house during the staging of the burglary, it was up to the State to make that clear in the record. The only thing that is undisputed is that Lord was at Entzel's house at some point during the night. That is not corroboration of Entzel's testimony.

The State's then argues Lord talked about Skaw "bringing a boat to her house after the staged burglary. *State's Br.*, Pg. 17. The implication that the discussion was about both the boat and the staged burglary is not correct. The discussion with Skaw about bringing the boat to Lord's house occurred after the staged burglary. There is no admission that Skaw and Lord discussed the boat being part of the staged burglary. Lord's recorded interview does not, as the State claims, corroborate Entzel's testimony.

Absent Entzel's testimony, the State's case is incredibly weak. A review of the Statement of Facts in the *State's Brief* shows just how heavily the State relied upon Entzel's testimony in pursuing a conviction against Lord and underscores why it is so important to have given the instruction that accomplice testimony is to be viewed with distrust. The State's argument that Entzel was not an accomplice is not supported by applicable case law.

When the State prosecutes one person “for the same crime for which the defendant is tried,” it is an acknowledgment that the person is an accomplice to the crime. *State v. Rose*, 1998 MT 342, ¶ 13. Under this circumstance, the person is an accomplice as a matter of law. *Rose*, ¶ 14. As Entzel was charged with the same crime, she was an accomplice as a matter of law.

It is proper to give the instruction even if the defendant claims innocence if the record contains what is considered accomplice testimony and the defendant asks for the instruction. In that circumstance, it is up to defense counsel to make a tactical decision as to whether to offer the instruction. If the instruction is offered, it is to be given. *State v. Johnson* (1992), 257 Mont. 157, Pg. 163, *overruled on other grounds*. In *State v. Johnson*, the defendant claimed he was not present at the scene of the crime. His attorney did not offer the jury instruction on accomplice testimony and, on appeal, he claimed ineffective assistance of counsel based on the attorney’s failure to request the instruction. This Court stated:

The record in this case disclosed significant accomplice testimony. **If the defendant had requested an instruction on accomplice testimony, then under the statute such instruction should have been given.**

Johnson, 257 Mont. at 162, *emphasis added*. The Court ultimately determined that it was not ineffective assistance not to offer it because the defendant asserted he was not present at the scene of the crime. The Court concluded that whether to offer the instruction in such a situation is a tactical decision that did not amount to ineffective assistance. Nonetheless, when there is evidence of an accomplice, the instruction is to be given if offered even when the defendant claims innocence. *Id.*

The Court has explained that someone is legally accountable, and an accomplice, when “either before or during the commission of an offense with the purpose to promote or facilitate the commission, the person solicits, aids, abets,

agrees or attempts to aid the other person in the planning or commission of the offense. Mont. Code Ann. § 45-2-302(3). *State v. Allen*, 2010 MT 214, ¶ 69.

Here, Entzel concocted the plan to stage a burglary and report the missing items to her insurance company. Inherent to that plan was that the items would be taken from her home and would then be concealed from law enforcement. Before the commission of the offense of Tampering with Evidence, Entzel made an agreement with Skaw that he would remove the boat from her property so she could report it to her insurance as stolen. She invited Skaw into her home and allowed him to take the boat. The record contains significant accomplice testimony.

Not only does the record contain accomplice testimony, the State charged Entzel with Tampering with or Fabricating Physical Evidence by Accountability and the facts alleged to support that charge were:

Defendant, believing that an official investigation was about to be instituted, made an agreement which was executed with David Skaw, to remove and conceal a boat, boat trailer, and enclosed trailer from her property, the reported the items stolen to law enforcement and insurance.

State vs. Entzel, Information, Case No. DC-42-2023-074-IN, Richland County, Montana (Aug. 11, 2023). The *Information* in *State vs. Entzel* is not in the record in this matter. However, this Court is permitted to take judicial notice of filings in other court proceedings when considering an appeal. *Stokes v. First. Am. Title Co. of Mont., Inc.* 2017 MT 275, ¶ 8. “This Court may take judicial notice of other court proceedings.” *Id.*

As the State charged Entzel for the same crime and the charge was based on identical facts as the charge against Lord, Entzel was an accomplice as a matter of law. Lord offered the instruction. According to *Johnson*, regardless of whether

Lord claimed innocence, the offered instruction should have been given. It was reversible error to refuse the instruction.

II. The district court erred when it denied Lord’s motion to allow Lawrence Pohl to testify via Zoom.

The State argues that the prosecution could not contact Pohl in the forty-eight hours before trial after his identity and phone number were disclosed. *State’s Br.*, Pg. 18. What the prosecutor actually said was “the officers were attempting to find out who this person was. They were unable to identify him by name.” Tr. Transcr. 6:10-6:12. Contrary to these statements, the State disclosed Pohl as a witness and it disclosed his full name. Law enforcement discussed Pohl with Lord during her recorded interview. The State filed its *Trial Exhibit and Witness List* on December 26, 2023 and, therein, disclosed Lawrence Joseph Pohl as a trial witness. *State’s Trial Exhibit and Witness List*, Pg. 2, Dkt. 14. It is nonsensical that the State can disclose Pohl as a trial witness and then claim surprise when it learns the defendant intends to call him. The State should not have been allowed to complain that it didn’t know the identity of the witness and hadn’t had sufficient opportunity to seek him out.

Nor can it legitimately be argued that refusal to allow his testimony was harmless error. The State appears to argue that Pohl’s only testimony would have been about how long Lord was at Entzel’s house. At the time of trial, it was argued that Pohl would testify about the time they left, which would “put in doubt the State’s contention that Lila was there helping stage the burglary.” Tr. Transcr. 6:4-6:6. The only witness who could state that Lord arrived at Entzel’s house around 6:00 or 7:00 was Entzel. The only person who indicated Lord was participating in staging the burglary was Entzel. Skaw testified that he didn’t know what time he got there. Tr. Transcr., 163:1-163:3. Entzel is the only person

who testified that when Lord arrived, they went to the garage and discussed the plan with the boat and that Lord was present. Tr. Transcr. 116:1-117:14. Skaw didn't remember if Lord was there for that conversation. Tr. Transcr. 163:12-163:24.

Contradicting Entzel's testimony about when Lord was at Entzel's house undercuts the only witness who can provide evidence that Lord knew the boat was part of the staged burglary. The State concedes that the verdict came down to a credibility decision between Lord and Entzel, saying "The jury found Entzel credible when she testified that she had informed Lord about what they planned to do with her boat and necessarily determined that Lord's denials were not credible." State's Br., Pg. 13.

Undermining the credibility of Entzel's testimony that she told Lord what they planned to do with the boat was crucial to establishing reasonable doubt and Pohl was the witness who could do that. Given the State's concession that the trial came down to a credibility issue between Lord and Entzel, it can hardly be argued the refusal to allow Pohl to testify was harmless error.

III. The district court erred when it denied Lord's motion for directed verdict because, as a matter of law, there was not sufficient evidence to corroborate the testimony of accomplice Chris Entzel.

The charge for which Lord was convicted was Tampering with Evidence and it was based on Lord storing Chris' boat in her garage for a few days when Skaw dropped it off with her. Lord moved to dismiss the charges on the basis that Entzel, the accomplice, was the only person who provided any testimony that Lord "purposely or knowingly" concealed the boat "with the purpose to impair its verity or availability in the proceeding or investigation." Mont. Code Ann. § 45-7-207.

The State concedes that the finding of guilty came down to the jury finding “Entzel credible when she testified that she had informed Lord about what they planned to do with her boat.” *State’s Br.*, Pg. 13. The State also concedes that the only disputed issue was whether Lord “knew that she was allowing Skaw to conceal Entzel’s boat to hide it from the ensuing investigation.” *State’s Br.*, Pg. 21. There is no evidence that corroborates Entzel’s testimony that Entzel told Lord the boat was to be taken as part of a scheme to commit insurance fraud.

The State alleged that Entzel, Laurie Marie McGregor, Jamie Marie Bailey, David Skaw, Jennifer Ellen Hernandez, Jason Ray Johnson, Lila Lord, Madison Lord and Lawrence Pohl were all involved in the staged burglary. And yet the State could not bring a single witness who corroborated Entzel’s testimony that when they were hanging out in the garage discussing the plan, Entzel told Lord that Skaw was going to take the boat, hide it, and Entzel was going to report it stolen to her insurance. Testimony of an accomplice is not sufficient to support a conviction and Lord’s motion to dismiss the charge at the close of evidence should have been granted.

CONCLUSION

Lord proffered an instruction ordering the jury to view the testimony of an accomplice with distrust. Entzel was charged with the same crime – Tampering with Evidence – based on the same facts. She was an accomplice and the instruction should have been given.

Lord presented Pohl, a witness disclosed by the State as a trial witness, as a witness who could undermine the credibility of Entzel’s testimony. It was reversible error not to allow Pohl to testify remotely when he was beyond subpoena power of the court, would not voluntarily travel to Sidney, Montana, was disclosed as a trial witness by the State.

The only evidence Lord knew the boat at issue belonged to Entzel and was part of a crime came from Entzel. The Court should have dismissed the charge of Tampering with Evidence at the conclusion of the State's case in chief due to insufficient corroborating evidence.

For the reasons stated herein, Lord respectfully asks the Court to reverse the decisions at issue herein and remand this case for a new trial.

Respectfully submitted this 21st day of August 2025.

HUGHES LAW, P.L.L.C.

/s/ Jacquelyn M. Hughes
Attorney for Appellant

APPELLANT'S CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Brief complies with Rule 11 of the Montana Rules of Appellate Procedure. In accordance with Rule 11(a), the required portions are double spaced and printed in Times New Roman, proportionately spaced, fourteen-point typeface, with a total word count of 3,972 as calculated by this party's word processing system.

/s/ Jacquelyn M. Hughes

CERTIFICATE OF SERVICE

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