



J. Christopher Sargent appeals his conviction for Obstruction of Justice,<sup>1</sup> a class D felony. Sargent presents as the sole issue on appeal the sufficiency of the evidence supporting his conviction.

We affirm.

On February 19, 2008, Sargent was charged with battery resulting in bodily injury to a pregnant woman, a class C felony. The alleged victim was his live-in girlfriend, Heather Nibarger.<sup>2</sup> At a pretrial hearing on August 15, the trial court scheduled Sargent's jury trial for September 25, 2008. Sargent was being held on the battery charge in the Jay County Jail pending trial. While incarcerated, Sargent spoke with Nibarger on a daily basis. These telephone conversations were recorded, as are all inmate calls at the facility.

On August 15, after learning of the trial setting, Nibarger left the couple's home in Dunkirk to stay with her mother in Elkhart. Following her move, Nibarger continued to have regular communication with Sargent. Two particular telephone conversations are relevant to this case. These both occurred on the evening of August 23 and were initiated by Sargent calling Nibarger at her mother's home.

During the conversations, Sargent indicated that he wanted/needed her to "refuse the subpoena", "get gone", "play f\*\*\*ing duck and dodge", and "[c]ross the state line." *Appellant's Appendix* at 105, 106, 116, and 117, respectively. He explained: "If you show up, I'm f\*\*\*ed. If they get you and f\*\*\*ing make you show up, I'm still f\*\*\*ed. Because

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<sup>1</sup> Ind. Code Ann. § 35-44-3-4(a)(2)(B) (West, Westlaw through 2009 1st Special Sess.)

<sup>2</sup> Nibarger recanted her statement to police two days after the reported battery.

nothing you say or do is going to f\*\*\*ing help me. The only other thing that's going to help me is if you don't f\*\*\*ing come and you disappear." *Id.* at 121. He went on to explain: "You just have to f\*\*\*ing disappear. Leave the state.... That's the only way...that you will not be able to testify, is to leave state [sic]. Then they can't f\*\*\*ing, they won't extradite you back across the f\*\*\*ing state line to face the f\*\*\*ing misdemeanor charge." *Id.*

When Sargent instructed Nibarger to look into writing the prosecutor to say that she was not going to accept a subpoena and show up for trial, the following colloquy occurred:

[Nibarger]: Yea. I've done wrote them one.

[Sargent]: No you didn't. You told them if you have any further questions contact me at this number or this number. You didn't say I refuse too [sic]. You said, I will be sticking by my statement and I will do anything accordingly.

[Nibarger]: Okay. I understand. I see what you are talking about the difference now.

[Sargent]: *That's what I meant you to do the first time.*

*Id.* at 105 (emphasis supplied).

On August 25, the State issued a subpoena for Nibarger's appearance at the battery trial on September 25. Service was unsuccessfully attempted at the couple's residence in Dunkirk. Thereafter, on evening of August 30, Nibarger called the Dunkirk Police Department and informed two different officers that she was not accepting the subpoena. When one of the officers attempted to persuade her otherwise, Nibarger refused to change her mind and would not tell him where she was staying, indicating simply that she was on vacation. Nibarger successfully avoided the subpoena but was subsequently charged and convicted of obstruction of justice.

On October 8, 2008, the State charged Sargent with obstruction of justice for aiding, inducing, or causing Nibarger to obstruct justice. Following a jury trial, Sargent was found guilty of this offense. He now appeals, challenging the sufficiency of the evidence.

Our standard of review for challenges to the sufficiency of evidence is well settled.

When considering a challenge to the sufficiency of evidence to support a conviction, we respect the fact-finder's exclusive province to weigh conflicting evidence and therefore neither reweigh the evidence nor judge witness credibility. *McHenry v. State*, 820 N.E.2d 124 (Ind. 2005). We consider only the probative evidence and reasonable inferences supporting the verdict, and “must affirm ‘if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt.’” *Id.* at 126 (quoting *Tobar v. State*, 740 N.E.2d 109, 111-12 (Ind. 2000)).

*Gleaves v. State*, 859 N.E.2d 766, 769 (Ind. Ct. App. 2007).

In this case, the State prosecuted Sargent on the theory of accomplice liability. Under this theory, one who knowingly or intentionally aids, induces, or causes a crime is equally as culpable as the one who commits the actual crime. *See* Ind. Code Ann. § 35-41-2-4 (West, Westlaw through 2009 1st Special Sess.). The Indiana statute governing accomplice liability establishes it not as a separate crime, but merely as a separate basis of liability for the crime charged. *See Hampton v. State*, 719 N.E.2d 803 (Ind. 1999). Further, “in order to sustain a conviction as an accomplice, there must be evidence of the defendant's affirmative conduct, either in the form of acts or words, from which an inference of a common design or purpose to effect the commission of a crime may be reasonably drawn.” *Peterson v. State*, 699 N.E.2d 701, 706 (Ind. Ct. App. 1998)

In the instant case, the evidence is clearly sufficient to establish that Sargent aided

and/or induced Nibarger to commit obstruction of justice by avoiding service of the subpoena.<sup>3</sup> As set forth above, in his discussions with Nibarger, Sargent emphasized the need for her to disappear and avoid being forced to testify at his battery trial. He explained to her how she should go about avoiding process, noting that she had not followed his directions correctly in the past. Although Nibarger indicated at trial that she acted solely of her own volition in refusing the subpoena, the jury was free to question her credibility in this regard. In light of the taped telephone conversations, there was ample evidence to support the jury's verdict. *See Workman v. State*, 23 N.E.2d 419, 420 (Ind. 1939) (“one who counsels or advises the commission of a crime...may be charged, tried, convicted, and punished exactly as though he were the principal who actually committed the crime”).

Judgment affirmed.

KIRSCH, J., and ROBB, J., concur.

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<sup>3</sup> As charged, obstruction of justice is “knowingly or intentionally in an official criminal proceeding...avoid[ing] legal process summoning [the person] to testify”. I.C. § 35-44-3-4(1)(2)(B).