

Court of Appeals, State of Colorado
Ralph L. Carr Judicial Center
2 East 14th Avenue
Denver, CO 80203

District Court, Weld County
The Honorable Thomas Quammen
2017CR430

PEOPLE OF THE STATE OF COLORADO,

Plaintiff-Appellee,

v.

KRISTIN MARIE FLYNN,

Defendant-Appellant.

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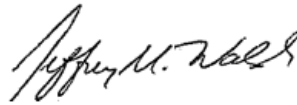
Case Number: 19CA318

OPENING BRIEF

CERTIFICATE OF COMPLIANCE

I hereby certify that this opening brief complies with all requirements of C.A.R. 28 and 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that this brief contains 3,702 words, which complies with the word limit set forth in C.A.R. 28(g).

THE WALSH LAW FIRM, LLC



Jeffrey M. Walsh

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STATEMENT OF ISSUES

1. The statute that defines the offense of Harboring a Minor requires that an offender intentionally fail to release the minor to the specific officer demanding release. Given this, did the Defendant here illegally harbor a minor by failing to release the minor to an officer other than the officer demanding release?

INTRODUCTION

This case involves a mother, the defendant, who rescued a runaway teen and brought her back home safely from Craig, Colorado to Greeley, Colorado. But instead of being thanked for this behavior, Defendant Kristin Flynn was arrested and charged with multiple felonies (including Kidnapping), and a misdemeanor (Harboring a Minor), the latter of which she was convicted at trial. This happened as punishment because Ms. Flynn, when going through Denver to return the teen home, had failed to call Denver Police (as she'd been ordered to do by Greeley authorities) so that the Denver Police could arrest the teen.

Generally, that's what this case is about – the fact that Kristin Flynn returned a troubled runaway teen to her family in Greeley instead of facilitating the teen's arrest by the Denver Police.

Legally, the case is about something more nuanced – whether Colorado law makes it a crime to disregard Officer A's order to release a runaway minor to Officer B.

Thus, this case is really one about statutory construction. And the statute at issue here is unambiguous. C.R.S. § 18-6-601(1)(a)(I) defines the offense of Harboring a Minor, and it requires that an offender intentionally disregard a lawful order to release a minor to the specific officer demanding release. It does not make it a crime, however, to disregard an order to release a minor to someone other than

the officer demanding release, which is what happened here – namely, a Weld County Sheriff’s deputy told Ms. Flynn to turn the teen over to the Denver Police, and she failed to obey that order because she thought it better to return the teen to her family first. Ms. Flynn was convicted of Harboring a Minor for this, but this conduct is not a crime under the Harboring a Minor statute.

To be clear, this case is not about an offender’s willful refusal to obey the law. It is instead about a well-intentioned mother who went out of her way to do the right thing, to rescue and return home safely a troubled, runaway teen.

No crime was committed here. To find otherwise would be to distort the language of a clear and unambiguous statute. To find otherwise would also be to punish the kind of good Samaritan behavior we ought to be rewarding.

STATEMENT OF THE CASE

A. The trial.

Defendant Kristin Flynn was originally charged with two counts of Kidnapping (a class 4 felony), Possession of a Controlled Substance (a class 4 drug felony), two counts of Harboring a Minor (a class 2 misdemeanor), and one count of Obstructing a Peace Officer (a class 2 misdemeanor). [CF, p. 28]. Before trial, the Kidnapping charges were dismissed. [CF, p. 168]. After trial, Ms. Flynn was acquitted on the possession charge and on one count of Harboring a Minor (related to her son, A.F.). But she was convicted of one count of Harboring a Minor

(related to her son's girlfriend, T.B.), and the charge of Obstructing a Peace Officer (based on resisting arrest). [CF, p. 189-193]. Ms. Flynn was sentenced to two years of probation. [R. Tr. 1/03/19, 17-18].

B. The facts.

In 2017, Defendant Kristin Flynn's seventeen year old son, A.F., and his seventeen year old girlfriend, T.B., ran away from home in Greeley, Colorado. The teens ran away because T.B. (while home alone when her parents were out of town) threw a party at her parents' house, which left the home in substantial disarray. To avoid the consequences, T.B. and A.F. stole T.B.'s mother's van and fled, taking with them the mother's three Pomeranian dogs (each worth \$7,000). [R. Tr. 9/4/18, p. 166 - 168].

The teens were missing for ten days, and no one could find them, not even law enforcement, which had listed the teens as runaways in a nationwide database. [R. Tr. 9/5/18, 29-30].

But the case was not without leads. Shortly after A.F. and T.B. fled, the authorities learned that the kids may have gone to Craig, Colorado, where T.B.'s biological father lived. Authorities in Craig then found T.B.'s mother's van in Craig, and they found the \$21,000 trio of Pomeranians barking inside a nearby apartment. T.B.'s mother then promptly drove five hours from Greeley to Craig to retrieve her van and the \$21,000 Pomeranians. But then she promptly returned to

Greeley without even looking for her daughter or A.F. This, despite the fact that she claimed her entire body “ached” over the teens’ disappearance. [R. Tr. 9/4/18, 157 - 159]; *See also* [R. Ex. 2, pdf p. 6].

After this, the case went cold. Weld County Sheriff’s Deputy Benito Sherman was the officer who took the initial runaway report. He worked the case for the first few days, but then he took off work for five days, during which time neither he nor any of his fellow law enforcement officers did any work on the case. Thus, by the time Deputy Sherman returned to work, nine days had passed since A.F. and T.B. had run away, and no one had been able to locate them. [R. Tr. 9/5/18, 60.22 - 62.20].

By this time, Defendant Kristin Flynn was nearly apoplectic with anxiety about where her son and his girlfriend were and whether they were safe. She was equally frustrated that the authorities didn’t appear to be do anything on the case. Moreover, she couldn’t understand how or why T.B.’s mother had driven all the way to Craig, had retrieved the missing van and the Pomeranian dogs, but had then failed to even look for the children. [R. Tr. 9/5/18, 56 - 57]; *see also* [R. Ex. 5, pdf. p. 12-13].

Thus, Kristin Flynn decided to take matters into her own hands. She decided to go to Craig to look for the kids herself, and she did so with the blessing of the Weld County Sheriff’s Department. Deputy Julio Sherman actually

encouraged her to go to Craig and to bring the kids home if she could find them.

[R. Tr. 9/5/18, 56 - 57].

Fortunately, on February 18, 2017, Kristin Flynn did find the missing teens in Craig. But getting them to come home with her was no simple task. T.B. had a warrant out for her arrest for unrelated matters and didn't want contact with law enforcement as a result. [R. Tr. 9/5/18, 66.20 – 67.7]. T.B. was also dealing with various mental health diagnoses, including bipolar disorder, PTSD, and borderline personality disorder. [R. Tr. 9/4/18, 174.20-24]. So the teens were not easy to deal with. They didn't want to go home to Greeley. They didn't want contact with the police. [R. Ex. 3, pdf. p. 7 (“Taleah forbidding me to go any further.”)] As a result, the situation was precarious because the teens were constantly at risk of ditching Ms. Flynn and fleeing again. [R. Tr. 9/5/18, 64.1- 65.15]. Ultimately, however, Ms. Flynn did succeed in getting the teens back to Greeley, but it took her 48 hours of begging, pleading, talking, listening, sympathizing, and generally offering all the compassion she could.

It was as a result of this 48-hour journey back to Greeley that Kristin Flynn ended up charged as a criminal in this case. According to the Weld County authorities, it simply took Ms. Flynn too long to get the kids home.

The specifics are as follows. On the evening of February 18, 2017, Ms. Flynn arrived in Denver and took A.F. and T.B. to a McDonalds. The kids went

inside while Ms. Flynn remained in the car. Ms. Flynn was then able to have a secret call with Deputy Sherman, during which they hatched a plan (because the kids were at risk of fleeing again) by which Ms. Flynn would drive the kids back to her house in Greeley, ostensibly to get a truck for them to flee in, and Deputy Sherman would be there to take custody of the kids, though unbeknownst to them. [Tr. 9/5/18, 63.5 – 65.23]. During this call, Deputy Sherman told Ms. Flynn to call Denver 911 if she couldn't get the kids to go with her to Greeley. During the next hour after this call, Ms. Flynn was not able to get the kids to leave the McDonalds, and after one hour, she spoke on the phone again with Deputy Sherman. Deputy Sherman was frustrated with Ms. Flynn because she hadn't yet left the McDonalds. He was also frustrated that she had not used private time (i.e. away from the kids) that she had in the last hour to secretly call 911 to facilitate the teens' arrest by the Denver Police. Deputy Sherman then told Ms. Flynn again that she needed to either return the kids to him in Greeley or, if she was unable to do so, she must secretly call 911 to facilitate the kids' arrest by the Denver Police. The call then ended. [Tr. 9/5/18, 73.25 – 75.18]. Later that night, at 9 p.m., Deputy Sherman called Ms. Flynn but was unable to reach her, so he left a voicemail for her (which there is no evidence she received)¹ stating that if she did not have the kids back to Greeley by 11 p.m. (2 hours later), he would issue a warrant for her arrest for

¹ Tr. 9/5/18, 65.24 – 66.14

harboring minors. By 11 p.m. Ms. Flynn still had not been able to get the kids to go with her back to Greeley. She also had not called Denver 911 as Deputy Sherman ordered her to do, so Deputy Sherman issued a warrant for her arrest. He requested the warrant on the evening of February 18, 2017. [R. Tr. 9/5/18, 38.3-14, 75.21 - 76.1]. Approximately 24 hours later, on the evening of February 19, 2017, Ms. Flynn was finally able to get A.F. and T.B. to T.B.'s mother's house in Greeley. Deputy Sherman arrived to the house shortly thereafter and arrested Ms. Flynn on the warrant he issued the night before based on Ms. Flynn's failure to call Denver 911 (given that she wasn't able to get the kids to go with her back to Greeley by 11 p.m. the night before). [R. Tr. 9/4/18, 173; R. Tr. 9/5/18, 40.18 - 46.7].

Ms. Flynn was ultimately charged with additional crimes because when she was arrested, she resisted, arguing that she had done nothing wrong. Then, after she was arrested, a search of her car (in which the teens had been passengers) yielded a pack of cigarettes with a small quantity of methamphetamine inside. As noted previously, Ms. Flynn was acquitted of possessing methamphetamine and of Harboring a Minor, as it related to her son. But she was convicted of Harboring a Minor, as it related to T.B., and she was convicted of Obstructing a Peace Officer.

SUMMARY OF ARGUMENT

The statute that defines the offense of Harboring a Minor requires that an offender knowingly provide shelter to a minor without the consent of the minor's parent/guardian, and that the offender intentionally "fails to release the minor to a law enforcement officer after being requested to do so by the officer." C.R.S. § 18-6-601(1)(a)(I) (emphasis added). *See* Appendix A. This language is unambiguous. It clearly states that an offender must fail to release the minor to the specific officer who has demanded release. But that's not what happened here. Here, Kristin Flynn was convicted because she failed to facilitate the arrest of T.B. by the Denver Police Department after being ordered to do so by Deputy Sherman from the Weld County Sheriff's Department. Thus, Kristin Flynn never failed to release the minor here to the specific officer (i.e. Deputy Sherman) who was demanding release. As such, she committed no crime under the Harboring a Minor statute, and her conviction fails for insufficiency of evidence.

ARGUMENT

I. Insufficient evidence existed to convict Ms. Flynn of Harboring a Minor because the alleged misconduct falls outside the scope of the Harboring statute.

A. Issue raised and ruled upon.

This sufficiency of the evidence claim is raised for the first time on appeal. This is permissible because the Colorado Supreme Court recently held that

“sufficiency of the evidence claims may be raised for the first time on appeal and are not subject to plain error review.” *McCoy v. People*, 442 P.3d 379, 385 (Colo. 2019).

B. Standard of Review.

The sufficiency claim here first necessitates interpretation of the statute that defines the offense of Harboring a Minor, C.R.S. § 18-6-601(1)(a)(I), to determine its scope. Once the scope of the statute is determined, the analysis must then turn to whether the alleged misconduct falls within the ambit of the statute. Both reviews should be conducted *de novo*. *Id.* at 391. (“Appellate courts should review unpreserved insufficiency claims *de novo* (i.e. in the same manner as if the claims were preserved), including when such claims involve preliminary questions of statutory construction.”).

C. Insufficient evidence existed to convict Ms. Flynn of Harboring a Minor.

1. Section (1)(a)(I) of the Harboring statute only makes it illegal to refuse to release a minor to the specific officer demanding release.

“In construing a statute, our primary purpose is to ascertain and give effect to the legislature’s intent. To do so, we look first to the language of the statute, giving its words and phrases their plain and ordinary meanings. We read statutory words and phrases in context, and we construe them according to the rules of grammar and common usage.” *Id.* at 395. “If the statute is unambiguous, then we need look no further. If, however, the statute is ambiguous, then we may consider

other aids to statutory construction, including the consequences of the given construction, the end to be achieved by the statute, and the statute's legislative history." *Id.*

Here, the relevant section of the Harboring statute is C.R.S. § 18-6-601(1)(a)(I), which requires (1) that an offender knowingly provide shelter to a minor without the consent of the minor's parent/guardian, and (2) that the offender intentionally "fails to release the minor to a law enforcement officer after being requested to do so by the officer." (emphasis added); *see also* Appendix A (full text of statute).

This language is unambiguous, so this court must give effect to the plain and ordinary meaning according to the rules of grammar and common usage. The operative word in the second element is the highlighted word "the," which modifies the word "a" in the previous phrase, "release the minor to a law enforcement officer." In other words, the phrase means that an alleged offender must intentionally fail to release the minor to *the* specific officer who has demanded release. If Officer A demands the release of the minor to himself, then it is illegal to intentionally fail to release the minor to Officer A. But, given how the statute is drafted, if Officer A demands the release of the minor to Officer B, then it is not illegal for someone to intentionally fail to release the minor to Officer

B. Put simply, the statute only authorizes a law enforcement officer to demand the release of a minor to him or herself, not to a different law enforcement officer.

Having now established the scope of Section (1)(a)(I) of the Harboring statute, we must turn to whether the alleged misconduct here falls within the scope of this section.

2. The alleged misconduct here falls outside the scope of Section (1)(a)(I) of the Harboring statute, so the alleged misconduct is not a crime pursuant to that section.

Kristin Flynn was charged and convicted of Harboring a Minor because, when she arrived in Denver with A.F. and T.B., she failed to call the Denver Police Department and to then facilitate the teens' arrest by Denver PD as she was ordered to do by Weld County Sheriff's Deputy, Julio Sherman.

The sequence of events that led to Ms. Flynn being charged are as follows.

1. On February 18, 2017, Ms. Flynn finds A.F. and T.B. in Craig. She texts T.B.'s mother at 2 a.m. that she has found the kids in Craig, CO. [R. Ex. 3, pdf p. 6].
2. Ms. Flynn is able to convince A.F. and T.B. to allow her to take them at least to Denver, but at 6:55 p.m. on February 18, 2017 (i.e. 17 hours after Ms. Flynn located the kids), Ms. Flynn texts T.B.'s mother that T.B. is "forbidding me to go any further." (i.e. further than Denver) [R. Ex. 3, pdf p. 7].

3. At some point on the evening of February 18, 2017 Ms. Flynn takes A.F. and T.B. to a McDonalds in Denver, and the kids go inside while Ms. Flynn remains in the car. Ms. Flynn is then able to have a secret call with Deputy Sherman, during which they hatch a plan (because the kids are not cooperating and might flee) by which Ms. Flynn will drive the kids back to her house in Greeley, ostensibly to get a truck for them to flee in, and Deputy Sherman will be there to take custody of the kids, though unbeknownst to them. [Tr. 9/5/18, 63.5 – 65.23].
4. Approximately one hour after the above call with Deputy Sherman, still on February 18, 2017, Ms. Flynn has not been able to get the kids to leave the McDonalds, and she speaks on the phone again with Deputy Sherman. Deputy Sherman is frustrated with Ms. Flynn because she hasn't yet left the McDonalds to head back to Greeley. He is also frustrated that she has not used private time (i.e. away from the kids) that she had in the last hour to secretly call 911 to have Denver Police come arrest the kids at the McDonalds. Deputy Sherman then tells Ms. Flynn that she needs to either return the kids to him in Greeley or, if she is unable to do this because the kids won't go with her, she must call 911 to facilitate the kids' arrest by the Denver Police. The call then ends. [Tr. 9/5/18, 73.25 – 75.18].

5. Later that night, at 9 p.m., Deputy Sherman calls Ms. Flynn but is unable to reach her, so he leaves a voicemail for her (which there is no evidence she received)² stating that if she does not have the kids back to Greeley by 11 p.m. (2 hours later), he will issue a warrant for her arrest for harboring minors. [R. Tr. 9/5/18, 38.3-14].
6. By 11 p.m. Ms. Flynn still has not been able to get the kids to go with her back to Greeley. She also has not called Denver 911 as Deputy Sherman ordered her to do, so Deputy Sherman issues a warrant for her arrest. He requests the warrant on the evening of February 18, 2017. [Tr. 9/5/18, 74.10 – 76.1].
7. Approximately 24 hours later, on the evening of February 19, 2017, Ms. Flynn is finally able to get A.F. and T.B. to T.B.'s mother's house in Greeley. Deputy Sherman arrives to the house shortly thereafter and arrests Ms. Flynn on the warrant he issued the night before based on Ms. Flynn's failure to call Denver 911 (given that she was unable to get the kids back to Greeley by 11 p.m. the night before). [R. Tr. 9/4/18, 173; R. Tr. 9/5/18, 40.18 - 46.7].

Thus, Ms. Flynn was charged and convicted of Harboring a Minor for disobeying a Weld County deputy's order to call 911 to facilitate the arrest of T.B.

² Tr. 9/5/18, 65.24 – 66.14

by the Denver Police. *See* [Tr. 9/5/18, 43.11-12 (Deputy Sherman telling Ms. Flynn why she's being charged with Harboring and stating, "I told you to call [Denver] 911 or contact me, come to the Sheriff's Office, but you didn't."); *see also* [Tr. 9/5/18, 38.3-14, 74.10 – 76.1]. But this conduct is not proscribed by the harboring statute, as noted above. This was tantamount to Deputy A ordering Ms. Flynn to release T.B. to Officer B (i.e. the Denver Police), an order the violation of which is not a crime under C.R.S. § 18-6-601(1)(a)(I). Thus, there was insufficient evidence to convict Ms. Flynn of Harboring a Minor, and her conviction for such must be vacated.

CONCLUSION

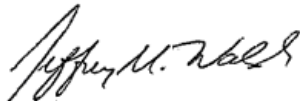
No good deed goes unpunished. That is the unfortunate theme of this case. Kristin Flynn rescued a deeply troubled runaway teenager and brought her back home safely. But she received no thanks for this good deed, only recriminations for failing to effect the rescue fast enough. She was then arrested and overcharged with serious felonies, like Kidnapping, charges that yielded a bond so high she spent a total of 52 days in jail awaiting trial. [CF, p. 279 (PSI)]. Fortunately, the Kidnapping charges were eventually dismissed because they were so grossly inappropriate. But Ms. Flynn was still tried and convicted of Harboring a Minor. Why? Because she didn't want to facilitate T.B.'s arrest by the Denver Police Department, as she was ordered to do by the Deputy Sherman of the Weld County

Sheriff's Department. Instead, she wanted to return T.B. to her family, which she did.

What crime was committed here? None. The Harboring statute simply does not proscribe what Kristin Flynn did (or failed to do). Therefore, her conviction should be reversed.

DATED: August 2, 2019.

Respectfully Submitted,
The Walsh Law Firm, LLC

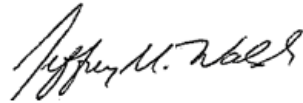


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CERTIFICATE OF SERVICE

I hereby certify that on August 2, 2019, a true and correct copy of the foregoing **OPENING BRIEF** was filed and served via ICCES on the below party:

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