

NOTICE

Memorandum decisions of this Court do not create legal precedent. See Alaska Appellate Rule 214(d) and Paragraph 7 of the Guidelines for Publication of Court of Appeals Decisions (Court of Appeals Order No. 3). Accordingly, this memorandum decision may not be cited as binding authority for any proposition of law.

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

FLORENCE K. BASS,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-11510
Trial Court No. 3PA-11-2792 CR

MEMORANDUM OPINION

No. 6471 — May 17, 2017

Appeal from the Superior Court, Third Judicial District, Palmer,
Gregory Heath, Judge.

Appearances: Barbara Dunham, Assistant Public Advocate,
Appeals and Statewide Defense Section, and Richard Allen,
Public Advocate, Anchorage, for the Appellant. Nancy R.
Simel, Assistant Attorney General, Office of Criminal Appeals,
Anchorage, and Craig W. Richards, Attorney General, Juneau,
for the Appellee.

Before: Mannheimer, Chief Judge, Allard, Judge, and Suddock,
Superior Court Judge.*

Judge MANNHEIMER.

* Sitting by assignment made pursuant to Article IV, Section 16 of the Alaska Constitution and Administrative Rule 24(d).

Florence K. Bass appeals her conviction for first-degree hindering prosecution, AS 11.56.770(a).

Bass was convicted based on the fact that she lied to a state trooper who was investigating a motor vehicle accident. Bass lied to the trooper to conceal the fact that her husband had been driving their car when the accident occurred. The question presented in this appeal is whether, by lying to the trooper, Bass “rendered assistance” to her husband within the meaning of the hindering prosecution statute.

Recently, in *Silook v. State*, Alaska App. Opinion No. 2552, 2017 WL 1967352 (May 12, 2017), we addressed this issue in some detail. For much the same reasons that we reversed the hindering prosecution conviction in *Silook*, we reverse Bass’s conviction as well.

Underlying facts

Florence Bass’s husband, Bobby Bass, was driving a car that collided with another vehicle, causing injuries to the other driver. Florence was a passenger in the car at the time. Bobby, whose license was revoked, left the scene.

A state trooper arrived about 15 minutes later to investigate the accident. Bass told the trooper that she had been driving, and that her husband Bobby was at home (about four miles away). Bass conceded that there had been a second person in her car at the time of the collision, but she told the trooper that this second person had been a hitchhiker whose identity she did not know. Bass told the trooper that the hitchhiker had walked away, saying that he had to use the restroom, and she had not seen him since.

At trial, the state trooper testified that, from the start, he thought that Bass was lying to shield her husband. Because the trooper suspected that Bobby had been in the vehicle with his wife, he asked another trooper to e-mail him a photograph of Bobby

so that he could show this photograph to the other witnesses at the scene. When the trooper showed Bobby Bass's photograph to the witnesses, they identified the man in the photograph as having "a strong resemblance" to the man they had seen driving the car at the time of the collision.

Having received this confirmation from the other witnesses, the trooper again asked Bass where her husband was. She replied that he was at home. The trooper then told Bass directly that "[he] had a strong belief that Mr. Bass was in the vehicle, and that he had departed." Bass again denied that her husband had been with her, and she asserted that she had been driving the car.

The trooper contacted Bobby Bass about a week later. Bobby admitted that he had been in the car at the time of the accident, but he asserted that his wife had been driving the car, and that he had been a passenger.

Bass and her husband were tried together in the superior court. Bobby was convicted of driving while his license was suspended or revoked, and leaving the scene of an injury accident. Bass herself was convicted of first-degree hindering prosecution for lying to the trooper about whether her husband was in the car with her, and about who was driving.

Why we reverse Bass's conviction for hindering prosecution

Under AS 11.56.770, a person commits first-degree hindering prosecution if they "render assistance" to another person who has committed a felony. The phrase "renders assistance" is defined in subsection (b) of the statute. In its prosecution of Bass, the State relied on the third clause of this definition. This third clause of the statute declares that a person "renders assistance" if the person:

(3) provides ... the other person with money, transportation, a dangerous instrument, a disguise, or other means of avoiding discovery or apprehension[.]

In his summation to the jury at the close of Bass’s trial, the prosecutor quoted this subsection of the statute, and he asked the jurors to convict Bass under this subsection, based on the fact that Bass had lied to the state trooper:

Prosecutor: Florence Bass rendered assistance to [her husband] who had committed a crime, aware of a substantial probability that [her husband] had committed a crime, and ... intend[ing] to hinder the apprehension, prosecution, conviction, or punishment of [her husband].

If you look at [the third way of rendering assistance] — “provides ... that person with money, transportation, a dangerous instrument, a disguise, *or other means of avoiding discovery or apprehension.*” What did [Bass] do? She lied about it. She said he wasn’t even there — some other guy was there — [and] she lied about who was driving. All of that is rendering assistance.

(Emphasis added.)

But in *Silook*, we held that this subsection of AS 11.56.770 covers only the act of providing *tangible* assistance to a person who has committed a crime — *i.e.*, physical or material assistance, and not assistance by deceptive words. *Id.*, slip opinion at pages 10-12, 2017 WL 1967352 at *3-4.

Because the prosecutor asked the jurors to convict Bass under an invalid legal theory, we reverse her conviction.

Conclusion

The judgement of the superior court is REVERSED.