NOVA SCOTIA COURT OF APPEAL
Citation: *R. v. Taylor*, 2024 NSCA 50

Date: 20240426
Docket: CAC 523451
Registry: Halifax

Between:

Miranda Lynn Taylor

Appellant

v.

His Majesty the King

Respondent

Judge: The Honourable Justice Anne S. Derrick

Appeal Heard: April 10, 2024, in Halifax, Nova Scotia

Subject: **Criminal law. Jury Charge. Accessory after the fact to murder. Wilful blindness. *R. v. Kienapple*, [1975] 1 S.C.R. 729.**

Summary: The appellant was convicted by a jury of offences under s. 240 (accessory after the fact to murder) and s. 423.1(1)(b) of the *Criminal Code* (intimidation of justice system participants – two Crown witnesses). While her boyfriend was awaiting trial for first degree murder, the appellant agreed to post on Facebook two pages from his disclosure that contained information about incriminating statements the witnesses had given to police. The jury was obviously satisfied the appellant, knowing or being wilfully blind to the fact that her boyfriend had committed murder, had posted the disclosure for the purpose of intimidating the witnesses from testifying at his trial. To have convicted the appellant of being an accessory after the fact to murder, the jury had to have been satisfied the appellant had been endeavouring to assist her

boyfriend escape the legal consequences of what he had done. The appellant only appealed her conviction under s. 240.

Issues: (1) Did the trial judge err in his instructions to the jury on s. 23 of the *Criminal Code* (accessory after the fact)?
(2) Did the trial judge err in his instructions to the jury on wilful blindness?
(3) Did the trial judge err in finding *R. v. Kienapple* did not apply?

Result: Appeal allowed in part. The appellant's convictions under s. 423.1(1)(b) of the *Criminal Code* are stayed as is the sentence imposed in relation to them. Her appeal from conviction under s. 240 is dismissed. The trial judge committed no error in his jury instructions in relation to s. 23 of the *Criminal Code* (which defines accessory after the fact to an offence) on what constitutes providing assistance for the purpose of helping a principal "escape" the legal consequences of what they have done. Nor did the judge err in his instructions on wilful blindness. *Kienapple* should have been found to apply to stay the s. 432.1(1)(b) convictions.

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Judges:	Bourgeois, Fichaud, Derrick, JJ.A.
Appeal Heard:	April 10, 2024, in Halifax, Nova Scotia
Held:	Appeal allowed in part, per reasons for judgment of Derrick, J.A.; Bourgeois and Fichaud, JJ.A., concurring
Counsel:	Zebedee Brown, for the appellant Glenn A. Hubbard, for the respondent

Reasons for judgment:

Introduction

[1] On December 8, 2022, following a jury trial, Miranda Taylor was convicted of three offences committed while she was the girlfriend of Kaz Cox, who was in custody awaiting trial for first degree murder. Ms. Taylor's convictions were the result of her involvement in assisting Mr. Cox after he had been charged.

[2] Mr. Cox was charged in November 2019 with shooting Triston Reece to death on July 26, 2019. The evidence indicated Mr. Reece, aged 19, was in a relationship, possibly exploitative, with Mr. Cox's teenage daughter, T. Mr. Reece was shot while seated in a car at the end of the driveway where T. lived with her mother, Rulla Cox, Kaz Cox's estranged wife. Evidence that tied Mr. Cox to the murder included a car owned by Jason Weagle, who was Mr. Cox's friend and employer. Both Rulla Cox and Jason Weagle gave statements to the police.

[3] The appellant was charged that, between July 26, 2019 and February 1, 2020, at or near Halifax, N.S., she:

- Did without lawful authority, intending to provoke a state of fear in Rulla Cox, a justice system participant, reveal the identity of Rulla Cox on social media contrary to s. 423.1(1)(b) of the *Criminal Code*.
- Did without lawful authority, intending to provoke a state of fear in Jason Weagle, a justice system participant, reveal the identity of Jason Weagle contrary to s. 423.1(1)(b) of the *Criminal Code*.
- Was unlawfully an accessory after the fact to murder contrary to s. 240 of the *Criminal Code*.

[4] The appellant advanced three grounds of appeal: (1) the jury was not correctly instructed on s. 23 of the *Criminal Code* (accessory after the fact);(2) the jury was not correctly instructed on wilful blindness; and (3) the trial judge did not properly apply the principles of *R. v. Kienapple*[1] and the prohibition against multiple convictions for the same criminal offending.

[5] The trial judge, Justice John Bodurtha, found *Kienapple* did not apply in the appellant's case, and consequently did not stay her convictions under s. 423.1(1)(b) as she had argued he should.

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[1] [1975] 1 S.C.R. 729.

[6] These reasons explain why I have concluded the trial judge erred in his conclusion that *Kienapple* did not apply. I would allow the appeal to that extent. I find no error in his instructions to the jury and would dismiss those grounds of appeal.

Facts

[7] The respondent captured the essential facts in this appeal in its factum:

> The basis for the [appellant's] convictions rested on the fact that the Appellant received confidential disclosure from…Kaz Cox (who was later tried and convicted of murder) before then posting the disclosure on-line for the purpose of intimidating witnesses and preventing them from testifying truthfully at Mr. Cox's upcoming trial.[2]

[8] Additional detail will be helpful in contextualizing the convictions.

[9] By the time Triston Reece was murdered in July 2019, the appellant and Mr. Cox had been in an intimate relationship for several months. She was 21. Mr. Cox was 41. The relationship lasted approximately a year until about March or April 2020. It was in full bloom when Mr. Cox was charged with first degree murder in November 2019.

[10] The appellant had first met Mr. Cox about ten years earlier and was friends with Rulla Cox and the Cox's two daughters, T. and B.

[11] Shortly after the Reece murder, Bridgewater police arrested Mr. Cox on firearms and drugs charges. In September 2019 he applied for bail. The appellant testified at the bail hearing, offering to be Mr. Cox's surety and post $1000 in cash. In cross-examination at her trial, the appellant acknowledged the money was coming from Jason Weagle.

[12] Kaz Cox's application for bail was denied. He remained in custody and he and the appellant communicated primarily by telephone.

[13] Evidence at the appellant's trial revealed the extent of her telephone contact with Mr. Cox who was on remand either at Northeast Nova Correctional Facility or Central Nova Scotia Correctional Facility. There were hundreds of calls which the police obtained access to under a warrant.

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[2] Respondent's factum, at para. 2.

[14] Detective Constable Jennifer Lake testified as the sole Crown witness at the appellant's trial. She was the lead investigator for the Reece murder. She provided the following evidence, relevant to this appeal:

- Disclosure from the Kaz Cox murder investigation was provided by police to the Crown on December 20, 2019.
- On January 17, 2020, D/Cst. Lake learned some of the disclosure had been posted to Facebook accounts controlled by the appellant.
- The posted disclosure referred to statements provided to police by "two very important witnesses" to the case—Rulla Cox and Jason Weagle.
- In the criminal culture, witnesses who speak to the police are labelled "rats" and often face consequences for doing so.

[15] D/Cst. Lake's testimony also included a description of the evidence investigators expected Rulla Cox and Jason Weagle to provide:

> So, Rulla Cox, in particular, she provided a witness statement to police, and in that statement…she gave information that was very important to substantiating our evidence that we were collecting against Kaz Cox in the murder of Triston Reece, and in particular…what she could tell us was that, on the day of the homicide, not to get into the whole thing, but the background of what she says is that she was in the home, Kaz Cox pulls up in the suspect vehicle, honks a horn to alert her to come out, and tells her to change the plate on the car he was driving.
>
> She changes…she goes into the home, gets a plate, brings it out and changes the plate on the car while he stays in the car. She confirmed to police that he was in that car and that she did this. This was all captured on Metro Transit video, and you can see Rulla changing the plate, so we have that. We played it for her, she confirmed that was what was happening that day.
>
> It was very important for us that she placed him in that vehicle, because we had a ton, I would say, of supporting evidence that that actual vehicle was the suspect vehicle that was used in the homicide.
>
> …
>
> Jason Weagle owned it, and he lent it. He confirmed to police in his statement to police that he lent it to the Cox family the day before the homicide, and that they often used it, but that they did in fact have it that day…Jason Weagle confirmed that that was his vehicle, that he did lend it to the Cox family, and then he also confirmed that, hours after the homicide, he was telephoned by Rulla Cox to say that he needed to get rid of the vehicle, that the vehicle was gone and he needed to

> report it stolen, and he did…We confirmed that he did, in fact, report it to police and to insurance that it was stolen.

[16] It was D/Cst. Lake's evidence that a few hours after the homicide, the Weagle vehicle was found burning in rural Nova Scotia.

[17] The two pages of disclosure posted by the appellant to Facebook were police reports containing the details of the Rulla Cox and Jason Weagle statements and concerning a burned-out vehicle believed to be connected to the Reece murder. The appellant admitted at her trial that she had received the pages from the jail by mail and had posted them on Facebook.

[18] At the appellant's trial the jury were provided with 14 "jail" calls between her and Mr. Cox. This was a sampling of what D/Cst. Lake described as "probably hundreds" of calls the appellant had with Mr. Cox. They occurred in the period of November 30, 2019 to January 30, 2020. Ten calls were played for the jury during D/Cst. Lake's direct examination. In the calls, the appellant and Mr. Cox discuss the posting on Facebook of the two pages of his disclosure.

[19] The calls revealed an active campaign by Mr. Cox and the appellant to distribute the two police occurrence report pages on the Rulla Cox and Jason Weagle statements on Facebook accounts in Kaz Cox's name:

- In the January 16, 2020 call the appellant tells Mr. Cox she has "the papers". She said she would post them and share and "tag" Rulla Cox. Mr. Cox tells her the screen shots of "those papers" have to capture the "whole picture". The "whole picture" includes the headings for the documents: "HRM Police General Occurrence Hardcopy with the file number and "Murder, First Degree". This was to ensure it was clear the postings were of authentic documents from the investigation. Mr. Cox told the appellant to send "it right to Rulla too" to which the appellant responded: "I'll tag Rulla. That's how I tag people I don't like". Mr. Cox said: "You need the whole picture…post it on mine and tag…and it's going to get hot."

- In a subsequent call on January 16, 2020, the appellant relays to Mr. Cox the Facebook messages that have been received in response to the posted disclosure. She sends back messages in accordance with Mr. Cox's instructions. Mr. Cox notes: "It did just what it was supposed to do, ruffles everyone's feathers".

- During a January 17, 2020 call, Mr. Cox and the appellant talk about a former partner of Mr. Cox with whom he shares a daughter. Mr. Cox is nervous about her. The appellant says maybe Rulla "got to her". The appellant notes approvingly that the Facebook posting has 13 "shares".

- In calls on January 20, 2020, Mr. Cox reports to the appellant that Rulla has left a message for his lawyer that she did not say what the police alleged in the disclosure and was going to get hold of "the cop". Mr. Cox indicated Rulla is worried about retaliation. He tells the appellant his lawyer told him he was not supposed to post the disclosure. He says he knew it was wrong to post the disclosure, adding: "If I could have got the guy I would have done worse to him". In response to the appellant not showing sufficient enthusiasm about Rulla's recantation, Mr. Cox tells her he called because he thought it was good news. The appellant says it is good news but would be better news if he was getting a divorce. Mr. Cox replies: "It's very good news for me" to which the appellant responds: "It is very good".

- In a January 22, 2020 call, the appellant recites names associated with Facebook messages and Mr. Cox instructs her on whether to accept them or not. This process is repeated in a call on January 28.

- In their call on January 26, 2020, Mr. Cox suggests the appellant go to his Facebook account and look at his friend requests. He says: "Obviously I am not guilty". He tells her she should re-post the disclosure pages. The appellant recommends Mr. Cox wait until "you get your friends up…wait until you have more people".

- In calls on January 30, 2020, the appellant and Mr. Cox discuss who to send the disclosure postings to. The appellant recites a name and Mr. Cox instructs her whether to add it or not. She asks him to indicate what he wants her to say in response to various messages.

[20] The trial judge's sentencing decision encapsulated aspects of the "jail" calls between the appellant and Kaz Cox. For example:

> [12] On January 16, 2020, Ms. Taylor posted excerpts of the police disclosure on Facebook. These excerpts showed that Rulla Cox and Jason Weagle had given statements to the police in the murder investigation. Ms. Taylor "tagged" Rulla Cox in the Facebook posts to draw attention to the fact that Rulla Cox and Jason

> Weagle had cooperated with police in the investigation and to ensure that Rulla Cox was aware of the disclosure that had been posted.
>
> [13] These Facebook posts were seen, commented on and shared by numerous contacts of Kaz Cox and Ms. Taylor. In several phone calls from January 16 to January 30, 2020, Ms. Taylor and Kaz Cox discussed the online reactions of the public to the Facebook posts. Rulla Cox's online reactions to the posts and the name-calling by others of Rulla was of particular interest to Ms. Taylor and Kaz Cox.
>
> [14] On January 20, 2020, Kaz Cox told Ms. Taylor that Rulla Cox had left a phone message for his lawyer about the disclosure being posted and that Rulla told the lawyer that she was worried about the safety of her family. According to the lawyer, in the phone message Rulla denied telling police what is shown in the posted disclosure and said that she'd be getting in touch with the police about it. Ms. Taylor and Kaz Cox characterized this to each other as "very good news".
>
> [15] In that same phone call, Kaz Cox told Ms. Taylor that his lawyer said publicizing the disclosure is illegal. They laughed about whose idea it was to post the disclosure and, when Ms. Taylor pointed out that Kaz Cox may be charged with posting the disclosure, he told her that an intimidation charge is better than a murder conviction.
>
> [16] Despite being specifically told that it is illegal to share the disclosure material and that Rulla Cox was worried about her family's safety, Ms. Taylor changed the name on Kaz Cox's Facebook account from "Gibby Cox" to "Kaz Cox" to attract more friends and attention and then re-posted the disclosure excerpts.

[21] The appellant testified in her own defence. She said she had been manipulated by Mr. Cox whom she believed loved and cared for her. She said Mr. Cox denied committing the murder. She said it seemed to her he was innocent. She said she didn't think Mr. Cox wanted the disclosure posted to scare Rulla Cox into not testifying. When asked in cross-examination what she had been thinking at the time, she said:

> I don't know, I don't think I was really thinking of it at all or paying much attention. That's why I wasn't really responding that much.

[22] In the "jail" calls the jury would have heard the appellant engage actively in the exchanges about the disclosure and the information Mr. Cox shared about how Rulla Cox had reacted to it. The appellant did not hesitate to push back against suggestions Mr. Cox made, including of a sexualized nature. She talked back to him and emphatically told him "no" when she did not want to do something. It was

her idea to hold off on re-posting the disclosure until Mr. Cox had more people to share it with.

[23] The disclosure posted by the appellant contained the police report of Mr. Cox's arrest on November 15 for the first degree murder of his daughter, T.'s, boyfriend. The report indicates Mr. Cox was interviewed and noted the following:

> At 2308 hours D/Cst. Blencowe asked why the accused requested to see the interview [T.] gave, the accused states: "I wanted to see if it was all worth it. I am not even talking about this charge, I am talking about my kids." At 2249 hours the accused refers to the deceased as a "fucking n-----" and continues to say he got off easy.

[24] Mr. Cox and the appellant had a "jail" call on December 9, 2019. Mr. Cox had been advised the disclosure was now available on a thumb drive and he would be given access to it at the jail. He tells the appellant he is anxious to see what Rulla "and the pizza maker" (a reference to Jason Weagle) said in their statements. He was also interested in the statement of his daughter, T., saying: "There's going to be [T.'s] statement, Rulla's statement, Weagle's statement, the bus video". The appellant tells him: "I can't wait to hear what they say in their statements".

Standard of Review

[25] The appellant and respondent agree the standard of review for each ground of appeal is correctness.

Ground #1 Did the trial judge err in his instructions to the jury on s. 23 of the *Criminal Code* (accessory after the fact)?

[26] The appellant argues the trial judge should not have instructed the jury she could be convicted as an accessory after the fact on the basis she was trying to help Kaz Cox "escape the legal consequences of what he had done". She says this suggested too wide a scope for what constitutes the offence of being an accessory after the fact by assisting a principal to "escape".

[27] Section 23(1) defines the meaning of "accessory after the fact" as:

> An accessory after the fact to an offence is one who, knowing that a person has been a party to an offence, receives, comforts or assists that person for the purpose of enabling that person to escape.

[28] The offence of being an accessory after the fact, codified in s. 240 of the *Criminal Code*, is indictable and carries a maximum punishment of imprisonment for life.

[29] In the relevant portion of the trial judge's instructions to the jury on accessory after the fact he stated:

> The *actus reus* of this offence requires the accused to have "received, comforted or assisted" the principal offender or offenders. The accused must have done this for the purpose of enabling the offender or offenders to escape. Acts which merely have the effect of assisting the offender or offenders to escape are not sufficient. The actions taken by the accused must have been carried out for the purpose of enabling the principal offender or offenders to escape.
>
> Even if an accused had more than one purpose in carrying out his actions, it will suffice **if one of his purposes is the desire to help the principal or principals to evade justice.**
>
> To decide whether Miranda Taylor provided assistance to Kaz Cox, you should consider what Miranda Taylor did or did not do, how Miranda Taylor did or did not do it, and what Miranda Taylor said or did not say about it.
>
> All these things and the circumstances in which they happened may help you decide whether Miranda Taylor provided assistance to Kaz Cox. All of you do not have to agree on the same kind of assistance, as long as each of you is satisfied beyond a reasonable doubt that Miranda Taylor provided assistance to Kaz Cox.
>
> Use your good common sense.
>
> Please refer to all the evidence that I have addressed in these jury instructions in relation to count one and two in considering whether Miranda Taylor provided assistance to Kaz Cox.
>
> If you are not satisfied beyond a reasonable doubt that Miranda Taylor provided assistance to Kaz Cox, you must find Miranda Taylor not guilty of being an accessory after the fact to murder. Your deliberations would be over.
>
> If you are satisfied beyond a reasonable doubt that Miranda Taylor provided assistance to Kaz Cox, you must go on to consider the next question.
>
> **Did Miranda Taylor provide assistance for the purpose of helping Kaz Cox escape? This element has to do with Miranda Taylor's state of mind, her purpose in providing assistance for Kaz Cox. Did Miranda Taylor provide assistance to Kaz Cox to help him get away, avoid arrest or prosecution; in other words, to escape the real consequences of what he had done?**
>
> **The word "escape" in s. 23 of the *Criminal Code* not only includes helping someone to physically "get away", but also helping someone to escape prosecution or punishment.**

> What is important here is Miranda Taylor's purpose, not the effect of what she did. Crown counsel must prove beyond a reasonable doubt that Miranda Taylor did what she did for the purpose of helping Kaz Cox escape. Whether Miranda Taylor's conduct actually did help Kaz Cox escape may help you decide what Miranda Taylor's purpose was in giving assistance, but Crown counsel does not have to prove that what Miranda Taylor did actually achieved that purpose.
>
> [e*mphasis added*]

[30] The appellant says the judge's instruction was wrong and "without precedent in Canadian law". In her submission, s. 23 supports a much narrower meaning that criminalizes conduct more directly related to the commission of the offence. She used the example of *R. v. Hadi*, where a Mr. Mohamed was found guilty of being an accessory after the fact for disposing of evidence used in the armed robbery of a jewellery store.[3] She says in her factum that:

> 25. Published decisions overwhelmingly, perhaps universally, involve actions of the accessory that were intended to help the principal offender avoid apprehension by aiding his or her literal escape, or avoid punishment by concealing the offence, destroying evidence or misleading police. After the offence has been detected, investigated, and after the principal offender has been apprehended, indicted and brought to justice, interference in the trial process is normally met with criminal charges of intimidating a witness (s. 139(3)(a) and s. 423.1), committing perjury (s. 131), fabricating evidence (s. 137), influencing a juror (s. 139(3)(b)), accepting a bribe as a witness or juror (s. 139(3)(c)), or obstructing justice in any other manner (s. 139(2)).
>
> 26. In the case under appeal, the Crown argued for a novel interpretation of section 23 that erases this longstanding distinction between interference with the investigation and interference in the trial. The Crown's position was that anybody who knowingly helped a known murderer avoid conviction is an accessory after the fact.

[31] In the appellant's submission, because she did not interfere with the detection or investigation of the murder, nor the apprehension of Mr. Cox or bringing him to justice, she could not be convicted as an accessory after the fact. She says that once Mr. Cox was charged, s. 240 no longer applies as it prohibits conduct that assists a principal to evade the police dragnet.

[32] At the appellant's trial, the trial judge relied on *R. v. D.G.H.*[4] where an accessory after the fact conviction was based on the accessory kicking snow over

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[3] 2022 ONSC 2903.
[4] 2009 SKPC 34.

blood that was left at the scene of the murder, and helping "a little bit" to push the body into the river. That case involved assistance intended to lessen the chances the principal would be discovered:

> [45] Each of the acts of pushing the body into the river and kicking snow over the blood were in fact done for the purpose of concealing evidence of a crime. This had the effect of assisting A.B. and C.D. to escape detection.[5]

[33] The judge in *D.G.H.* then considered the meaning of "escape" as used in s. 23 of the *Criminal Code* and cited a statement from the Supreme Court of Canada decision in *R. v. Paradis*.[6]

[34] In *R. v. Paradis* the accessory drove the principal home some time after she had committed the stabbing. The Supreme Court recited without criticism the trial judge's instructions to the jury on s. 23:

> Being a witness to a crime is not everything: the fact of witnessing a crime does not automatically make a witness an accomplice or an accessory after the fact. The witness must come within the scope of s. 23; beyond knowing that someone committed a crime, he must have received or comforted or assisted that person for the purpose of enabling that person to escape. **To escape means to escape justice, not to escape by running or in some other way**.[7]
>
> [*emphasis added*]

[35] The appellant correctly points out that the witness who drove Ms. Paradis home helped her escape the police by providing transportation away from the scene. The appellant says it is conduct of this nature that is captured by s. 240.

[36] However, as the respondent notes, there is nothing in the definition under s. 23 that limits liability under s. 240 to assisting a principal to escape from the scene or to disposing of evidence that could be helpful to the investigation.

[37] The *Paradis* and *D.G.H.* cases do not represent the outer limits of conduct that can constitute assisting a principal to escape. They are particular examples—the more typical ones—of accessory after the fact conduct. However, the appellant has not shown where, in the *Criminal Code* or caselaw, there is a limitation on the ambit of s. 240. There is nothing to indicate that once a principal has been charged, assistance provided to escape conviction cannot attract liability as an accessory

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[5] 2009 SKPC 34.
[6] [1978] 1 S.C.R. 264 (*Paradis*).
[7] *Paradis*.

after the fact. The offence of being an accessory is not limited to efforts to assist the principal slip past the investigative net.

[38] In *R. v. Dagenais*,[8] the conduct of the accessory occurred before murder charges were laid but was intended to thwart an eventual prosecution and trial process. Joshua Barreira and Chad Davidson had been involved in a homicide. Their respective girlfriends, Jennifer Dagenais and Ashley Dore-Davidson, entered into marriages with them to gain the advantage of spousal testimonial immunity.[9] Ms. Dagenais was a witness to the Davidson marriage. She was prosecuted and convicted as an accessory after the fact to murder but on the basis of her role as a witness to that marriage.

[39] The Ontario Court of Appeal found Ms. Dagenais' conviction was based on a theory of liability—the witness-as-accessory—that was not founded in the evidence and never advanced at trial. As a result, the court substituted an acquittal. However, in doing so, the court did not disagree with the trial judge's interpretation of s. 23(1) as including Ms. Dagenais' marriage to Barreira having been intended to frustrate the Crown's eventual prosecution of him. Her contrived marriage satisfied the requirements for establishing the offence of being an accessory after the fact: she simply had not been prosecuted on that basis.

[40] The *Dagenais* court found no problem with Ms. Dagenais having been charged as an accessory after the fact to murder, noting that the case against her:

> [42]…depended on proof that Joshua Barreira was guilty of murder; that she knew or was wilfully blind to his being a party to murder; and that she assisted him in trying to escape justice.

[41] In posting Kaz Cox's disclosure, the appellant actively participated in a course of action designed to assist him to escape a successful prosecution. Disseminating the disclosure via Facebook was a strategy that had the objective of influencing the conduct of "two very important" Crown witnesses. It was "very good news" when one of those witnesses, Rulla Cox, showed signs of recanting her statements about Mr. Cox's activities on the day of the murder.

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[8] 2018 ONCA 63.

[9] Ms. Dagenais' belief that marriage would forestall being compelled to testify against her husband was incorrect. S. 4(2) of the *Canada Evidence Act*, R.S.C. 1985, c. C-5 provides that: "No person is incompetent, or uncompellable, to testify for the prosecution by reason only that they are married to the accused".

[42] There may be cases, where the conduct such as that in *Dagenais* or in the appellant's case, could result in a charge such as obstruction of justice. That does not lead to a conclusion s. 23(1) is limited to assisting a principal escape from falling into the investigative net. Nor can it be said, as the appellant has suggested, that there is a distinction between burning bloody clothing or disposing of a murder weapon and posting disclosure for the purpose of deterring a witness from testifying. In each example, the accessory is endeavouring to compromise or eliminate the evidence that could connect the principal to the crime, assisting them in escaping justice.

[43] There are other offences in the *Criminal Code* with which the appellant could have been charged. She identified these in her factum, as noted earlier in paragraph 29 of these reasons. The fact she was charged and prosecuted under s. 240 is not a decision this Court should be reviewing. Whether a charge laid by police is prosecuted is a matter of prosecutorial discretion. The decision to prosecute the appellant as an accessory after the fact to murder as opposed to one of the offences referred to in her factum, such as obstruction of justice, is not to be second-guessed by this Court.[10]

[44] The contentious part of the trial judge's jury charge on accessory after the fact to murder was his direction to the jury that the question they had to consider was whether the appellant provided assistance to Kaz Cox "to help him get away, avoid arrest or prosecution; in other words, to escape the real consequences of what he had done". The jury knew that when the disclosure was posted, Kaz Cox had already been arrested and charged. The posting of the disclosure was designed to thwart his prosecution by deterring Rulla Cox and Jason Weagle from testifying in accordance with their police statements. The strategy was intended to actively undermine the prosecution case and assist Mr. Cox "escape the real consequences of what he had done".

[45] Judging by the reported cases, the offence of accessory after the fact to murder usually involves assistance to escape being ensnared by the police investigation. However, the appellant has not established the offence is circumscribed by the principal falling into the hands of investigators and being charged. We are not aware of any Canadian court making this pronouncement. There is no justification for reading-in such a limitation where none is found in the language of the *Criminal Code*.

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[10] *R. v. Anderson*, 2014 SCC 41, at pp. 40-46.

[46] I find on the facts of this case the trial judge's charge to the jury on the elements to be proven for the charge of accessory after the fact to murder was without error. The appellant was properly convicted of being an accessory after the fact to murder. I would dismiss this ground of appeal.

Ground #2 – Did the trial judge err in his instructions to the jury on wilful blindness?

[47] In support of this ground of appeal, the appellant focuses on several concerns. She says:

- The trial judge suggested to the jury there was evidence the appellant knew Kaz Cox had murdered Triston Reece when there was "no evidence [she] had personal knowledge of the homicide or access to any other source of information about it".[11] The appellant testified she was not aware of the murder until Mr. Cox was arrested in November 2019 and that he professed his innocence to her.

- Crown counsel's jury address "muddied the waters" on the issue of wilful blindness.

- Notwithstanding the trial judge "correctly" telling the jury "that wilful blindness involves a deliberate decision to avoid the truth", he made "several comments that were capable of compounding the confusion caused by Crown counsel."[12]

[48] I will address each of these complaints although in reverse order.

[49] The trial judge's instructions on wilful blindness were in aid of the jury's assessment of an essential element of the accessory after the fact offence. He said:

> For you to find Miranda Taylor guilty of being an accessory after the fact to murder, Crown counsel must prove each of these essential elements beyond a reasonable doubt:
>
> (i) That Kaz Cox committed first degree murder;
>
> (ii) That Miranda Taylor knew that Kaz Cox committed first degree murder:

[11] Appellant's factum, at para. 40.
[12] Appellant's factum, at para. 41.

(iii) That Miranda Taylor provided assistance to Kaz Cox, and;

(iv) That Miranda Taylor provided assistance for the purpose of helping Kaz Cox to escape.

…

Did Kaz Cox commit first degree murder? Crown counsel has to prove that Kaz Cox committed first degree murder. This is admitted by Defence counsel. You must go on to the next question.

…

Did Miranda Taylor know that Kaz Cox committed first degree murder? This element involves knowledge, a state of mind, Miranda Taylor's state of mind. Crown counsel must prove beyond a reasonable doubt that Miranda Taylor knew that Kaz Cox committed first degree murder.

To "know" something is to be aware of it at the time you do the things that are alleged to be an offence. "Knowledge" includes not only sure knowledge that Kaz Cox committed first degree murder, but also good reason to believe that Kaz Cox may have done so.

You may, for example, be satisfied that Miranda Taylor knew for sure that Kaz Cox had done what the laws says amounts to the offence of first degree murder. Or you may be satisfied that Miranda Taylor knew she should have checked to see if Kaz Cox had done what the law says amounts to the offence of first degree murder, but deliberately failed to ask, because she did not want to know the truth.

When the Crown proves the existence of a fact in issue, and knowledge of that fact is a component of a fault requirement of the crime charged, wilful blindness as to the existence of that fact is sufficient to establish a culpable state of mind. Liability based on wilful blindness is subjective.

Wilful blindness refers to a state of mind which is aptly described as "deliberate ignorance". Actual suspicion, combined with a conscious decision not to make enquiries which could confirm suspicion, is equated in the eyes of the criminal law with actual knowledge; both are subjective, and both are sufficiently blameworthy to justify the imposition of criminal liability.

Wilful blindness applies where the accused not only had a suspicion, but virtually knew the critical fact and intentionally declined to secure that knowledge. For instance, wilful blindness arises where a person who has become aware of the need for some enquiry, declines to make the enquiry because they do not wish to know the truth. They would prefer to remain ignorant.

The culpability and recklessness[13] is justified by consciousness of the risk, and by proceeding in the face of it. While in wilful blindness, it is justified by the

[13] The transcription of the trial judge's charge says "culpability and recklessness" but his written charge provided to the jury for their deliberations says "culpability in recklessness".

> accused's fault in deliberately failing to enquire, when they know there is reason for enquiry.
>
> In any case, if you are satisfied beyond a reasonable doubt that Miranda Taylor knew that Kaz Cox had done what the law says amounts to the offence of first degree murder, or knew she should have checked to see whether Kaz Cox had done what the law says amounts to the offence of first degree murder, but deliberately failed to ask because she did not want to know the truth, this essential element has been proven.
>
> All of you do not have to agree on the same basis of Miranda Taylor's knowledge or awareness, as long as each of you is satisfied beyond a reasonable doubt of either of them.

[50] The trial judge would have slipped into error if he had ended his instruction on wilful blindness with, "Knowledge includes not only sure knowledge that Kaz Cox committed first degree murder, but also good reason to believe that Kaz Cox may have done so". The *mens rea* for accessory after the fact to murder required more than for the appellant to have "good reason to believe" Kaz Cox had committed first degree murder. But the trial judge did not stop there. As I have noted he made a very clear distinction between recklessness which "good reason to know" may suggest, and wilful blindness. To reiterate, he said:

> The culpability in recklessness is justified by consciousness of the risk, and by proceeding in the face of it. While in wilful blindness, it is justified by the accused's fault in deliberately failing to enquire, when they know there is reason for enquiry.

[51] The trial judge's charge on wilful blindness after his statement about "good reason to know" went into considerable, careful detail about the law as articulated in *R. v. Briscoe* where the Supreme Court of Canada held:

> Wilful blindness does not define the *mens rea* required for particular offences. Rather, it can substitute for actual knowledge whenever knowledge is a component of the *mens rea*. The doctrine of wilful blindness imputes knowledge to an accused whose suspicion is aroused to the point where he or she sees the need for further inquiries, but deliberately chooses not to make those inquiries.[14]

[52] The trial judge properly referred to wilful blindness as "deliberate ignorance" and the wilfully blind being aware of the need for some inquiry and, rather than inquiring, preferring to remain ignorant. The judge proceeded from his charge on the law of wilful blindness to a review of the evidence relevant to the

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[14] 2010 SCC 13, at para. 21.

appellant's knowledge, and the appellant's responses to the questions she was asked in the witness box.

[53] Not only do I not find reversible error in the trial judge's charge on wilful blindness, I am not satisfied the appellant's argument about Crown counsel's jury address grounds a viable complaint.

[54] The essence of the appellant's complaint is the Crown's statement to the jury that wilful blindness is:

> …exactly what you think it is; you know, you stick your head in the sand and you go: La la la la la la, I'm not listening to anything on the outside. And I'm not going to make any enquiries. That's kind of like the plain view of it, in our view at least.

[55] The criticism by the appellant of Crown counsel's comments in his jury address falls wide of the mark. I find the comments, while simplistic, not so discordant with the legal principles to constitute a distraction from the trial judge's charge. More significantly however is this: it was agreed by the parties the jury was to follow the trial judge's instructions on the law. The Crown emphasized this with the jury at the start of his address, saying the "ultimate authority" on the law was the trial judge, and "if there's any difference in my interpretation of the law…you're to follow his final instructions". As for wilful blindness, Crown counsel told the jury near the end of his address that the trial judge would tell them "exactly what it means…" Indeed, he said this just before his "stick your head in the sand" remarks.

[56] And the trial judge was explicit about the jury's obligations to follow his instructions on the law. He told them:

> Your second duty[15] to accept all the rules of law that I tell you apply in this case. Even if you disagree with or do not understand the reasons for the law, you are required to follow what I say about it. You are not allowed to pick and choose among my instructions on the law, and you must not consult other sources or substitute your own views about what the law is, or what it should be.

[57] Finally, on this point, I note the jury asked no questions during their deliberations. There is nothing to support the argument they may have been

[15] The trial judge had told the jury their first duty was "to decide what are the facts in this case".

confused. We are to trust they were faithful to their oath and their obligation to follow the trial judge's charge on the law.[16]

[58] The last aspect of the appellant's argument on wilful blindness relates to her claim there was no evidence she knew Kaz Cox murdered Triston Reece. She says there was nothing to have given her any suspicion he had done so and for her to then have deliberately chosen not to inquire. How could she inquire she asks—as D/Cst. Lake testified Crown disclosure is not accessible to a member of the public. The appellant says she could not have conducted an inquiry to satisfy herself that Mr. Cox did not commit the murder.

[59] However, as the respondent notes, there is no authority for the proposition that not having the means available to verify or allay suspicions removes wilful blindness as a basis for liability. As held by the Ontario Court of Appeal in *R. v. Duong*:

> …Liability [on the basis of wilful blindness] turns on the decision not to inquire once real suspicions arise and not on the hypothetical result of inquiries which were never made. Where an accused chooses to make no inquiries, preferring to remain "deliberately ignorant", speculation as to what the accused would have learned had he chosen to make the necessary inquiries is irrelevant to the determination of the blameworthiness of that accused's state of mind.[17]

[60] In this case, the appellant had a ready source for information – Kaz Cox. The "jail" calls indicate extensive discussions about the disclosure. Furthermore, the appellant had the two pages of disclosure, one of which, as I noted earlier, contained statements made to police by Mr. Cox. The appellant could have probed Mr. Cox about those statements. She chose not to.

[61] In cross-examination, the appellant agreed with the Crown that when she re-posted the disclosure in January 2020 (a "jail" call has her discussing it with Mr. Cox) she "most likely" saw on it that Mr. Cox had been charged with murder and that after being arrested herself, Rulla Cox had been released from police custody.

[62] The appellant also acknowledged in her testimony that when she posted the disclosure, she was familiar with the ethos of criminal culture that violence can be meted out against "rats", that is, people who cooperate with the police.

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[16] *R. v. Corbett*, [1988] 1 S.C.R. 670, at para. 35.
[17] [1989] 39 O.R. (3d) 161, at page 12.

[63] The circumstantial evidence amply supported attributing wilful blindness to the appellant. The disclosure she posted contained information that:

- Rulla Cox had given a statement to police that on the afternoon of July 26, 2019, Kaz Cox had directed her to switch the licence plate on the car he was driving.
- Rulla Cox confirmed to police Kaz Cox had been the driver.
- The police General Occurrence Report, one of the two pages of disclosure the appellant posted, indicated the vehicle used in the homicide on July 26 was located in a burned out condition that night.
- The burned car was registered to Jason Weagle. The police believed Mr. Weagle had made a false insurance claim.
- Jason Weagle had reported to police and the insurance company that his car had been stolen. In a statement he provided to police he said he was asked to get rid of the vehicle. The information about the burned car and Mr. Weagle was in the disclosure the appellant posted.

[64] There is nothing to support an argument that the jury failed to understand and apply the trial judge's instructions on wilful blindness. They deliberated for just under three hours and did not ask for any clarification of the law or replaying of evidence. I am satisfied they obviously rejected the appellant's testimony and accepted she had been wilfully blind to the fact that Kaz Cox had murdered Triston Reece.

[65] The trial judge correctly instructed the jury on wilful blindness. The circumstantial evidence amply supported the appellant was wilfully blind. I would dismiss this ground of appeal.

Ground #3 – Did the trial judge err in finding *Kienapple* did not apply?

[66] The appellant says that, pursuant to the principles in *Kienapple*, the trial judge should have stayed the appellant's two convictions for intimidation of justice system participants as those convictions arose out of the same matter as the accessory after the fact to murder conviction.

[67] The respondent submits the offences contain separate and distinct legal elements. That was the view of the trial judge who found on the basis of the principles in *R. v. Kienapple*,[18] *R. v. Prince*,[19] and *R. v. F. (C.G.)*[20] there was no legal nexus between the ss. 423.1(1)(b) (intimidation of justice system participants) and s. 240 (accessory after the fact) offences.

[68] In determining whether *Kienapple* applies to stay a conviction, it is necessary to first determine whether there is a sufficient factual nexus between the charges. This was no issue in the appellant's case: the factual nexus between the s. 423.1(1)(b) and s. 240 offences was accepted. The trial judge acknowledged this in his reasons.

[69] The controversy that led to the appeal of the trial judge's *Kienapple* ruling relates to the question of whether there was a legal nexus between the offences. Were the offences "two different matters", totally separate one from the other and not alternative one to the other"? There was one act of posting the disclosure to Facebook but were there distinct "delicts, causes or matters which would sustain separate convictions"?[21]

[70] In his sentencing decision,[22] the trial judge commented on the appellant's purpose for posting the disclosure:

> [17] At the time, Ms.Taylor knew that cooperating with police was frowned upon by friends, family and associates of Kaz Cox involved in the criminal world, and that exposing Rulla Cox and Jason Weagle in this way would be noticed by friends, family and associates of Kaz Cox. She knew that this would have the effect of intimidating Rulla Cox and Jason Weagle and would discourage their further cooperation with police. This was done for the purpose of helping Kaz Cox escape the consequences of murdering Triston Reece.

[71] The trial judge viewed the seriousness of the s. 240 offence as related to the harms or risk of harm to the administration of justice. That harm or risk "manifested from the attempt to dissuade key Crown witnesses from testifying…"[23]

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[18] [1975] 1 S.C.R. 729.
[19] [1986] 2 S.C.R. 480 (*Prince*).
[20] 2003 NSCA 136.
[21] *Prince* note 19, at para. 23.
[22] *R. v. Taylor*, 2023 NSSC 143 (*Taylor*).
[23] *Taylor*, at para. 57.

[72] The trial judge determined that *Kienapple* did not apply:

> [93] The central dispute is whether the requisite legal nexus is met in this case. The Crown argues in their written submissions that "each offence has essential elements that are not present in other [...] the legal nexus requirement is not satisfied". The Defence argues in their written submissions that the legal nexus is met given that both offences have the same societal interest and both are "offences against the administration of justice".
>
> [94] The Supreme Court of Canada elaborated in *Prince* at para. 36 that the legal nexus will be sufficient where there is "no additional and distinguishing element that goes to guilt contained in the offence for which a conviction is sought to be precluded by the *Kienapple* principle".
>
> [95] Determining this issue typically involves assessing the essential elements of the subject offences. For instance, in *McLeod v Law Society of British Columbia*, 2022 BCCA 280, the Court considered a hearing panel's application of the *Kienapple* principle, providing instructive procedure excerpted at paras. 104 and 114:
>
> > 104 [...] the panel should then have reviewed the Citation and rules in question in order to ascertain what the essential elements were, and whether there was any distinguish element applicable to the second breach.
> >
> > ...
> >
> > 114 [...] the requisite legal nexus for the operation of the *Kienapple* principle was missing. This is because there were essential elements in allegation 2(a) that were distinct from, and additional to, those in allegation 1(b).
>
> [96] Considering whether different verdicts could result is an additional method for determining the absence of a sufficient legal nexus. For instance, the New Brunswick Court of Appeal recently applied this framing in *ML c R*, 2021 NBCA 27 at para 17:
>
> > [...] it is possible to be guilty of sexual assault and not sexual interference. When that is not the case, the necessary legal nexus between the offences exists, and they are substantially the same.
>
> [97] In relation to the first offence in this case, sections 23(1) and 240 of the *Criminal Code* state:
>
> > **Accessory after the fact**
> >
> > 23(1) An accessory after the fact to an offence is one who, knowing that a person has been a party to the offence, receives, comforts or assists that person for the purpose of enabling that person to escape.
> >
> > **Accessory after fact to murder**

> 240 Every one who is an accessory after the fact to murder is guilty of an indictable offence and liable to imprisonment for life.

[98] The three elements required for proof of this offence are helpfully laid out in Tremeear's Annotations, section 240 *Criminal Code* Commentary:

> 1. D (accessory) received, comforted or assisted P (principal);
>
> 2. D did so with the knowledge that P was a party to murder, and
>
> 3. D did so for the purpose of enabling P to escape liability therefor.

[99] In relation to the second offence, section 423.1(1)(b) and (3) state:

> **Intimidation of a justice system participant or a journalist**
>
> 423.1(1) No person shall, without lawful authority, engage in any conduct with the intent to provoke a state of fear in
>
> (b) a justice system participant or military justice system participant in order to impede him or her in the performance of his or her duties [...].
>
> 423.1(3) Every person who contravenes this section is guilty of an indictable offence and is liable to imprisonment for a term of not more than fourteen years.

[100] As summarized in Tremeear's, section 423.1 *Criminal Code* Commentary:

> The external circumstances of this crime are established by proof beyond a reasonable doubt of the absence of lawful authority, coupled with any conduct.
>
> The mental element consists of the additional intent to provoke a state of fear in a defined group, or a member of such a group, in order to impede them in some aspect of their conduct, or to impede the administration of criminal justice. The intent need not be successful.

[101] These two offences require different legal elements. The s. 423 offence requires additional and distinguishable mental elements from the s. 240 offence, in particular the specific intent of provoking fear towards a defined group. These elements are not substantially the same, nor are the distinctions without difference: the elements of the offences are substantively different. Moreover, (and as a result of these distinctions) a person could be found guilty of one offence while not the other.

[102] In conclusion, the legal nexus is not met in this case and the *Kienapple* principle does not apply.

[73] The problem I have with the trial judge's *Kienapple* analysis is this: if a conviction for being an accessory after the fact to murder could only lie against an accused who had assisted the principal evade detection and avoid being arrested

and charged, then a subsequent act of posting disclosure[24] to intimidate Crown witnesses would truly be a distinct criminal transaction. But, as I have discussed, the appellant's posting of the disclosure constituted an offence under s. 240 and under s. 423.2(1)(b). The posting was how the appellant, the accessory after the fact to murder, attempted to assist Kaz Cox, the principal, escape justice. There are no additional elements to the s. 240 offence and I do not see how an accused, in the circumstances of this case, could be found guilty of one offence and not the other.

[74] The offences in this case are not like the offences of armed robbery and use of a firearm in the commission of an indictable offence (*R. v. Krug*) or hunting out of season and hunting at night with lights (*R. v. McKinney*). Separate "delicts" were identified in those cases and *Kienapple* did not apply.[25] In *Krug*, the Supreme Court of Canada explained that one offence required that the firearm be used, "an act not necessarily encompassed in being armed with it", a separate offence. The inapplicability of *Kienapple* was upheld. "In short, to be convicted of an offence under s. 83 [use of a firearm in the commission of an indictable offence] it was necessary to prove that the accused did something beyond what is required to establish the offence under s. 302(d) [robbery]".[26]

[75] I find the s. 240 offence subsumed the s. 423.1(1)(b) offences. The appellant assisted Kaz Cox as an accessory by posting the disclosure to intimidate the Crown witnesses. There was one delict. To be convicted of the s. 423.1(1)(b) offences, it was not necessary to prove the appellant did something beyond what was required to establish the s. 240 offence. The appellant intended to assist Kaz Cox escape the consequences of what he had done by frightening the Crown witnesses into recanting their incriminating statements to the police.

[76] It cannot be said here that the appellant was "guilty of several wrongs" requiring that she be held accountable for multiple offences.[27] Parliament has created different offences in enacting s. 240 and s. 423.1(1)(b). However, there is nothing to indicate Parliamentary intent "to add extra punishment when both offences can be proven".[28] In the appellant's case, the same "cause, matter or delict" underpinned all three charges. Both the s. 240 offence and the s. 423.1(1)(b)

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[24] Disclosure is only made available to an accused once charges are laid. "…initial disclosure should occur before the accused is called upon to elect the mode of trial or to plead" (*R. v. Stinchcombe*,[1991] 3 S.C.R. 326, at para. 28).
[25] *R. v. Krug*, [1985] 2 S.C.R. 255 (*Krug*); *R. v. McKinney*, [1979] M.J. No. 42 (C.A.), at para. 16.
[26] *Krug*, at para. 17.
[27] *Prince* note 19, at paras. 24 and 31.
[28] *Prince* note 19, at para. 37.

offences were enacted to protect the integrity of the justice system and ensure that wrong-doers are not able to escape the consequences of their actions.

[77] I find *Kienapple* should have applied in the appellant's case. Consequently, I would stay the convictions under s. 423.1(1)(b) and the sentence imposed in relation to them.

Disposition

[78] I would allow the appeal to the limited extent of reversing the trial judge's *Kienapple* determination. I would stay the appellant's convictions under s. 423.1(1)(b) of the *Criminal Code*. Her conviction under s. 240 is upheld.

Derrick, J.A.

Concurred in:

Fichaud, J.A.

Bourgeois, J.A.