SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1968-15T2

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JOSEPH R. RIOS, a/k/a
JOSEPH R. MONTEZ, and
JOSEPH RICARDO RIOS,

Defendant-Appellant.

Submitted July 18, 2017 — Decided May 25, 2018

Before Judges Ostrer and Leone.

On appeal from Superior Court of New Jersey, Law Division, Burlington County, Indictment No. 15-03-0210.

Jill R. Cohen, attorney for appellant.

Scott A. Coffina, Burlington County Prosecutor, attorney for respondent (Alexis R. Agre, Assistant Prosecutor, of counsel and on the brief).

The opinion of the court was delivered by

LEONE, J.A.D.

Defendant Joseph R. Rios appeals his December 9, 2015 judgment of conviction for hindering his prosecution by giving false information that his name was Joseph R. Montez. We affirm.

I.

A grand jury indicted "Joseph R. Rios" and "Juan A. Ferrer, Jr." with third-degree burglary, N.J.S.A. 2C:18-2(a)(1); third-degree attempted theft by unlawful taking, N.J.S.A. 2C:5-1(a) and N.J.S.A. 2C:20-3(a); third-degree resisting arrest by flight, N.J.S.A. 2C:29-2(a)(2); and fourth-degree criminal mischief, N.J.S.A. 2C:17-3(a)(1).[1] The indictment also charged defendant with third-degree hindering his own apprehension, prosecution, conviction, or punishment by giving false information to a law enforcement officer, N.J.S.A. 2C:29-3(b)(4).

Defendant was tried for third-degree burglary, third-degree attempted theft by unlawful taking, and an amended charge of fourth-degree hindering.[2] The State called four witnesses: the resident of an apartment in the Borough of Palmyra; Palmyra Sergeant Timothy Leusner; Cinnaminson Patrol Officer Garrett

[1] Ferrer pled guilty to third-degree burglary and fourth-degree resisting arrest by flight. We affirmed his judgment of conviction. State v. Ferrer, No. A-2474-15 (App. Div. Aug. 21, 2017).

[2] The charge of criminal mischief was dismissed by the prosecutor before trial, and the charge of resisting arrest by flight was dismissed by the court during trial.

McLaverty; and Palmyra Detective Shawn Benedict. Their testimony included the following facts.

In the pre-dawn hours of October 5, 2014, the Palmyra police department received a 9-1-1 call from a person stating that his residence was being burglarized by three males wearing masks, one carrying a gun. He told the police he was in Philadelphia but could see the burglary in progress using his home video surveillance system, which was linked to his smartphone.[3]

Sergeant Leusner and Patrolman Michael Ludlow were dispatched to the residence and arrived at 4:56 a.m. They stopped outside to observe the situation. Leusner saw no one on the street, but through the windows he could see flashlights moving around in the residence. Leusner called dispatch asking for more officers because there were suspects still inside the residence.

Ten to twelve officers from Palmyra and the surrounding jurisdictions responded to Palmyra's "mutual aid call," and set up a perimeter around the residence. Officer McLaverty was stationed in front of the residence. He saw the front door open and two males run out. Officers, including McLaverty, yelled for the males to "freeze" and "stop," but the males ignored the commands.

[3] The police were not able to recover any video from the system.

Officer McLaverty lost sight of one male, but never lost sight of the second male, who ran past him wearing dark clothing and a ski mask. McLaverty chased the second male as he ran away from the residence through a parking lot, around other houses, and over a fence. The male was halfway over a second fence when McLaverty caught up and tackled him to the ground. McLaverty handcuffed the male but did not question him, get his name, or see his face enough to recognize him. A patrol vehicle arrived and McLaverty placed the male in the vehicle.

The resident returned to his residence and saw a police officer holding a masked man on his neighbor's lawn. Sergeant Leusner did not see the males leave the residence, but he saw a "shadow" running with an officer in pursuit. Later, he heard a report that two suspects were in custody. He returned to the Palmyra police station and saw the two individuals who had been taken into custody, including defendant, whom he described as "Mr. Rios" and identified in court. Leusner signed a complaint-warrant "for Mr. Rios."

Palmyra Detective Benedict came to the station to interview "the two subjects that they had in custody at the time." The jury

saw a portion of the video of Benedict's interview of defendant.[4] The transcript states the interview began:

> Q. You can just grab a seat right there. What's um . . . what's your full name?
>
> A. Joseph.
>
> Q. Joseph?
>
> A. Yeah.
>
> Q. Okay.
>
> A. Montez.
>
> Q. What is it?
>
> A. MONTEZ.
>
> Q. You got a middle initial or anything like that?
>
> A. R.
>
> Q. R? What's your date of birth?

Defendant gave a date of birth, address, and cell phone number.[5]

After the video was played, the prosecutor asked Detective Benedict if he had "recognize[d] the individual shown on the

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[4] The video could not be located by the time the case was on appeal, but a transcript was provided at our request.

[5] Benedict then gave defendant his rights under Miranda v. Arizona, 384 U.S. 436 (1966). Defendant said he was not willing to talk, and the interview ended. It appears this portion of the interview was edited out before the video was played to the jury.

screen," and Benedict responded "Joseph Rios." Benedict testified that on the tape he asked defendant for his name and he responded "Montos, Joseph Montos."[6] The prosecutor then asked Benedict to point out "Mr. Rios" in court, and Benedict identified defendant.

Detective Benedict testified that after the interview he went back to the scene to take photographs. He found alarm systems ripped off the wall with the wires cut, a still-lit flashlight in a sink, cabinets and drawers open, and a pillowcase stuffed with valuables laying on the floor. An Audi vehicle with the keys inside was discovered around the corner from the residence. When the prosecutor asked Benedict to identify a photo of the vehicle, Benedict replied: "It's the Audi vehicle of Mr. Rios."

The State introduced photographs of the Audi, the residence, and the neighborhood, and then rested. Defense counsel made a motion for a directed verdict of acquittal, which the court denied. The defense did not present evidence.

The jury acquitted defendant of burglary and attempted theft, but convicted him of hindering. Defense counsel made motions for a new trial and a judgment of acquittal, which the court denied. On December 4, 2015, defendant was sentenced to 364 days in jail,

[6] We assume "Montos" was a mis-transcription of "Montez."

fines, and penalties. The court declined a stay, and we denied bail pending appeal.

Defendant appeals, arguing these points:

> I. THERE IS NO EVIDENCE IN THE RECORD THAT THE DEFENDANT JOSEPH RIOS IS NOT ALSO KNOWN AS JOSEPH MONTEZ.
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> II. THERE IS NO EVIDENCE THAT JOSEPH RIOS INTENDED TO GIVE FALSE INFORMATION TO THE POLICE WITH PURPOSE TO HINDER HIS OWN APPREHENSION OR PROSECUTION FOR THE CRIME OF BURGLARY, A THIRD-DEGREE CRIME.
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> III. THE JURY VERDICT SHEET SHOULD HAVE INCLUDED THE DEGREE OF THE CRIME OR OFFENSE TO WHICH THE SECTION APPLIES AND FAILURE OF THE VERDICT SHEET TO SPECIFY THE DEGREE OF THE CRIME MAKES THE GREATEST DEGREE OF THIS CRIME A DISORDERLY PERSON'S OFFENSE.

II.

Defendant's first two points challenge the sufficiency of evidence. We must hew to our standard of review. Appellate courts "review the record de novo in assessing whether the State presented sufficient evidence to defeat an acquittal motion". State v. Dekowski, 218 N.J. 596, 608 (2014). The "well-established standard for determining the sufficiency of the evidence," State v. Wilder, 193 N.J. 398, 406 (2008), was set forth in State v. Reyes, 50 N.J. 454, 459 (1967):

> whether, viewing the State's evidence in its entirety, be that evidence direct or circumstantial, and giving the State the benefit of all its favorable testimony as well

> as all of the favorable inferences which reasonably could be drawn therefrom, a reasonable jury could find guilt of the charge beyond a reasonable doubt.

A defendant is guilty of hindering if he gave "false information to a law enforcement officer" "with purpose to hinder his own detention, apprehension, investigation, prosecution, conviction or punishment for an offense." N.J.S.A. 2C:29-3(b), (b)(4).

A.

Defendant first argues that there was insufficient evidence that he gave a false name. Detective Benedict testified, and the transcript of the video confirmed, that when he interviewed defendant, defendant identified himself as Joseph R. Montez. The jury could reasonably infer that giving that name to the detective was "giv[ing] false information to a law enforcement officer" if there was evidence defendant's name was Joseph Rios. N.J.S.A. 2C:29-3(b)(4).

There was some testimony that defendant's name was Joseph Rios. Sergeant Leusner identified defendant as one of the individuals taken into custody, stated "with Mr. Rios I had just minor contact," and prepared a complaint-warrant "for Mr. Rios." Detective Benedict testified the person shown in the video of the

interview was "Joseph Rios" and "Mr. Rios," and identified defendant as the person he interviewed as "Mr. Rios."

Detective Benedict also testified he recognized a photo as depicting "the Audi vehicle of Mr. Rios."[7] However, when the prosecutor asked Benedict if he made efforts to ascertain who the registered owner of the Audi was, Benedict responded "I didn't, another officer did."

We are concerned that this brief testimony by Sergeant Leusner and Detective Benedict was the only evidence before the jury that defendant's name was Rios. There was no evidence before the jury showing why Benedict and Leusner believed defendant was named Rios, or why Benedict believed the Audi was owned by Rios. During deliberations, the jury asked: "Was a name given prior to interview?" and "Were fingerprints taken prior to interview?"

However, "[i]n deciding whether a judgment of acquittal is warranted, the court 'is not concerned with the worth, nature or extent (beyond a scintilla) of the evidence, but only with its

[7] Defense counsel objected there was no evidence the car belonged to "Joseph Rios." The trial court told the prosecutor it might permit Detective Benedict's testimony if he could make a factual connection, but if not it would sustain the objection. The prosecutor told the court that the discovery included documents for the trade-in of a Honda for the Audi by Joseph Rios, the registration, and a photo of the VIN number which they researched, and that Benedict's report said it was learned the Audi was registered to Joseph Rios. The prosecutor said he would ask what efforts were made to identify the owner of the Audi.

existence, viewed most favorably to the State[.]'" State v. Zembreski, 445 N.J. Super. 412, 431 (App. Div. 2016) (quoting State v. Kluber, 130 N.J. Super. 336, 342 (App. Div. 1974) (citing Dolson v. Anastasia, 55 N.J. 2, 5 (1969))); see Perez v. Professionally Green, LLC, 215 N.J. 388, 407 (2013). The officers' testimony provided the jury with more than a scintilla of evidence it could and did credit to find defendant's name was Rios.

Indeed, it was not really contested that defendant's name was Rios. In her opening to the jury, defendant's counsel identified defendant as "Mr. Rios sitting there on trial," consistently referred to defendant as "Mr. Rios," discussed his arrest near "Mr. Rios's car," and asked the jury to "find Mr. Rios not guilty." In her summation to the jury, she referred to defendant as "Joseph Rios" and "Mr. Rios." She stated "[t]he only thing we really know for sure in this case is that Joseph Rios was in the area" because, "number one, I conceded it, I told you that; and, number two, his car was there; and three, he was obviously taken in for questioning." "The only thing we know about the questioning is that although I've called him Joseph Rios and other people have called him Joseph Rios, when he was apprehended in that case or

taken into custody, he gave the name of Joseph R. Montez" for unknown reasons.[8]

Given the testimony that defendant's name was Rios, the jury could reasonably infer that he gave the false information that his name was "Montez" for the purpose of hindering his own prosecution, conviction, or punishment. Defendant had been arrested and taken to the police station, and was being questioned by a police detective. In those circumstances, as the trial court found, "it was a permissible inference for a jury to conclude that he gave a false name" in the hope of making his prosecution or conviction harder, or his sentence lower.[9]

Defense counsel argued to the jury: "I think you can tell that Mr. Rios is of Hispanic descent and I think everyone knows that . . . they have three names, they have their mother's name,

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[8] Further, when the trial court questioned defendant out of the jury's presence to determine whether he wanted to testify, he was sworn in as "Joseph Rios," responded to questions and instructions addressed to "Mr. Rios," and did not contest that the numerous prior burglary convictions of "Mr. Rios" were his convictions. At sentencing, defendant similarly responded to "Mr. Rios" and explained details of a prior conviction of "Mr. Rios." Because these facts were unknown to the jury, they are not evidence, but they place defendant's claim in context.

[9] For example, defendant could have believed giving the name "Montez" might prevent the police and prosecutor from connecting him either with the car found around the corner from the burglarized residence, or with his prior criminal record of burglaries.

they have their birth name." However, no evidence to that effect was before the jury. Even if defendant had testified that "Joseph R. Montez" stood for "Joseph Rios Montez," the jury would not have been required to believe him. "In reviewing such motions, a court 'may not consider any evidence adduced by the defense in determining if the State had met its burden as to all elements of the crime charged.'" State v. Samuels, 189 N.J. 236, 245 (2007) (citation omitted). Thus, the State's evidence defendant's name was Joseph Rios was sufficient to establish that fact.

B.

Second, defendant argues the State failed to introduce sufficient evidence that he knew he was being charged with the third-degree crime of burglary. "Hindering ranges from a disorderly persons offense to a third-degree offense, depending on the degree of the offense the defendant seeks to avoid." State v. D.A., 191 N.J. 158, 170 (2007).

> [T]he offense . . . is a crime of the third degree if the conduct which the actor knows has been charged or is liable to be charged against him would constitute a crime of the second degree or greater. The offense is a crime of the fourth degree if such conduct would constitute a crime of the third degree. Otherwise it is a disorderly persons offense.
>
> [N.J.S.A. 2C:29-3(b).]

The burglary here was a third-degree offense. N.J.S.A. 2C:18-2(a)(1), (b). Thus, defendant was properly convicted of fourth-degree hindering if there was evidence showing defendant's knowledge at the time of the interview that "the conduct" for which he was "charged or is liable to be charged" would constitute burglary. N.J.S.A. 2C:29-3(b). There was evidence from which the jury could reasonably draw a chain of inferences leading to that conclusion.

First, there was the testimony from the resident watching the burglary using his home security camera, from Sergeant Leusner about seeing the flashlights through the windows, and from Detective Benedict detailing the condition of the residence, including the dropped flashlight and discarded pillowcase full of valuables. That constituted ample evidence the residence was being burglarized by two or three persons. Second, Officer McLaverty testified two males ran from the residence and ignored the officers' commands to stop, and that the second male was wearing a mask, ran to escape from the officer, jumped a fence, and tried to jump another. That supported a reasonable inference the second male was one of the burglars. Third, McLaverty's testimony he arrested that male and put him in a patrol vehicle, and the resident's testimony he saw another male arrested on the residence's front lawn, supported the testimony of Leusner and

Benedict that defendant was one of two males arrested for the burglary.

Thus, the evidence supported a reasonable inference defendant had been burglarizing the residence. In denying defendant's motion for a directed verdict on the burglary charge, the trial court noted that it "hardly ever had a case with more evidence that there's a burglary going on," and that "the jury can make that reasonable inference that the person that McLaverty tackled is the one [Detective] Benedict interviewed."

That remains true though the jury ultimately acquitted defendant of burglary under the "proof beyond a reasonable doubt" standard. "Inferences need not be established beyond a reasonable doubt." State v. Tindell, 417 N.J. Super. 530, 549 (App. Div. 2011). "[A] jury may draw an inference from a fact whenever it is more probable than not that the inference is true; the veracity of each inference need not be established beyond a reasonable doubt in order for the jury to draw the inference." State v. Kittrell, 145 N.J. 112, 131 (1996) (citation omitted).

As a result, it was a reasonable inference defendant knew he was liable to be charged with burglary. Defendant notes Detective Benedict did not tell him he was being questioned for burglary, or the degree of the offense. However, it is sufficient if there was "conduct which the actor knows . . . is liable to be charged

against him." N.J.S.A. 2C:29-3(b). Nothing in the hindering statute requires a defendant to know not only the conduct but also the degree of the offense. Such a requirement would make the statute inapplicable unless the defendant was well-versed in the law or well-informed by the arresting officers. That would defeat one of the purposes of the statute: to prohibit hindering even before "apprehension," ibid., and indeed "at any point prior to a defendant forming a belief that an official action has been or is about to be instituted." D.A., 191 N.J. at 169.

Defendant stresses that the jury chose not to convict him of burglary. However, "N.J.S.A. 2C:29-3(b)(4) 'does not require that defendant actually be charged with an offense or that a conviction be successful' for a defendant to be criminally liable for hindering an investigation or prosecution for committing the underlying offense in order to be guilty." State v. Young, 448 N.J. Super. 206, 222 (App. Div. 2017). "Regardless of whether defendant actually committed the offense for which he was under investigation at the time he spoke to police, he violated the statute by giving a false statement to the police during the course of their investigation." Id. at 223.

C.

The State's evidence on defendant's name and his connection to the burglary was less a road to conviction than stepping stones,

requiring inferential leaps where the State arguably could have supplied direct evidence. Nonetheless, those inferences could be reasonably drawn from the evidence. Thus, like the trial court, we conclude that "'giving the State the benefit of all its favorable testimony and all the favorable inferences drawn from that testimony, a reasonable jury could find guilt [of hindering] beyond a reasonable doubt.'" See Dekowski, 218 N.J. at 608 (citation omitted). "The evidence presented at trial required the court to allow the jury to determine whether defendant was guilty of the [hindering] offense. Once the jury made its determination, the court did not commit any error . . . by not dismissing defendant's conviction on the hindering charge." Young, 448 N.J. Super. at 223.[10]

[10] We note the trial court also denied defendant's motion for a new trial claiming the verdict was against the weight of the evidence. A trial court may not "set aside the verdict of the jury as against the weight of the evidence unless, having given due regard to the opportunity of the jury to pass upon the credibility of the witnesses, it clearly and convincingly appears that there was a manifest denial of justice under the law." R. 3:20-1. The court "conclude[d] that a reasonable jury would have been able, with this evidence, to conclude that [defendant] met the elements of hindering, [including] that [he] knew that [he] might be charged with burglary."

"The trial court's ruling on such a motion shall not be reversed unless it clearly appears that there was a miscarriage of justice under the law." R. 2:10-1. "There is no 'miscarriage of justice' when '"any trier of fact could rationally have found beyond a reasonable doubt that the essential elements of the crime

III.

Defendant next argues the verdict sheet should have specified the degree of the offense whose "detention, apprehension, investigation, prosecution, conviction or punishment" he was accused of hindering (the hindered offense). N.J.S.A. 2C:29-3(b). However, at the charge conference, the trial court discussed the jury instructions and the verdict sheet and asked counsel if there were "[a]ny issues with anything related to the jury charge instructions in any way?" Defense counsel replied "No." It was not until sentencing that defendant first claimed the verdict sheet was erroneous.

Because "[d]efense counsel did not object to the charge or the verdict sheet," "the issue arises as a matter of plain error under Rule 2:10-2." State v. Harvey, 151 N.J. 117, 153 (1997). Defendant must show that any error or omission in the verdict sheet was "of such a nature as to have been clearly capable of

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were present."'" State v. Jackson, 211 N.J. 394, 413-14 (2012) (citations omitted) (terming this "an extraordinarily lenient standard of review"). "[T]he appellate court must weigh heavily the trial court's 'views of credibility of witnesses, their demeanor, and [its] general "feel of the case."'" State v. Carter, 91 N.J. 86, 96 (1982) (alterations in original) (citation omitted). Even where "the State's evidence [i]s 'equivocal,' . . . a reviewing court should not overturn the findings of a jury merely because the court might have found otherwise if faced with the same evidence." State v. Afanador, 134 N.J. 162, 178 (1993). In any event, defendant does not appeal that ruling.

producing an unjust result[.]'" State v. Galicia, 210 N.J. 364, 386 (2012) (quoting R. 2:10-2). Defendant has not carried his burden to show such prejudice. See State v. Weston, 222 N.J. 277, 295 (2015).

The verdict sheet stated that defendant was charged with burglary of a structure, attempted theft of property worth between $500 and $75,000, and with hindering, but did not state the degree of any offense or name the hindered offense. "[T]o facilitate the determination of the grade of the offense," the verdict sheet should have identified "the factual predicate for an enhanced sentence," namely that the hindered offense was the charged burglary. R. 3:19-1(b). A verdict sheet should "direct the jury's attention to specific issues relating to the grade of the offense in conjunction with a general verdict." Pressler & Verniero, Current N.J. Court Rules, cmt. 2.1 on R. 3:19-1 (2018) (quoting Report of the Criminal Practice Committee, 107 N.J.L.J. Index Page 441 (1981)).

However, defendant cannot show prejudice. As the trial court found in denying a new trial, its jury instructions identified burglary as the hindered offense. "When there is an error in a verdict sheet but the trial court's charge has clarified the legal standard for the jury to follow, the error may be deemed harmless," even if the verdict sheet omits an element of the crime. Galicia,

210 N.J. at 387 (citing State v. Gandhi, 201 N.J. 161, 195-98 (2010)). "Where we conclude that the oral instructions of a court were sufficient to convey an understanding of the elements to the jury, and where we also find that the verdict sheet was not misleading, any error in the verdict sheet can be regarded as harmless." Gandhi, 201 N.J. at 197 (citing State v. Reese, 267 N.J. Super. 278, 287-89 (App. Div. 1993)).

The trial court's oral jury instructions set forth the elements of third-degree burglary and fourth-degree hindering, without stating the degrees.[11] The instructions informed the jury that one of "the essential elements" of hindering was "the defendant knew that he could or might be charged with burglary." The court then stated: "The first element that the State must prove beyond a reasonable doubt is that the defendant must have known that he could or might be charged or was liable to be charged with burglary." After describing the second element, giving false information to a law enforcement official, the court stated: "The third element that the State must prove beyond a reasonable doubt

[11] The written jury instructions may have specified the degree. The trial court stated that "right in the instruction when you turn to the page on burglary it says count one, burglary, in the third degree." However, we decline to rely on this statement because the written instructions were not provided to us, and because the court instructed the jury "do not rely on the subheadings in the written instructions."

is that the defendant acted with the purpose of hindering his detention, apprehension, investigation, prosecution, conviction or punishment for burglary."

The trial court's instruction followed the model jury charge, including by inserting "burglary" where the model jury charge instructs the hindered "(offense)" should be inserted. Model Jury Charge (Criminal), "Hindering One's Own Apprehension or Prosecution (N.J.S.A. 2C:29-3b)" [Model Hindering Charge] at 1 (revised May 12, 2014). Thus, the court "submitted to the jury" the hindered "offense," "along with definitions of the elements" of the burglary offense. Id. at 1 & n.1.

As discussed above, the hindering statute does not require defendant to know the degree of the hindered offense but only "the conduct" which with he might be charged. N.J.S.A. 2C:29-3(b). Similarly, it was sufficient that the jury knew the hindered offense without spelling out its degree. "The grading of the offense is dependent upon a defendant's conduct and the nature of the underlying charge." Young, 448 N.J. Super. at 223 n.12.

Importantly, defendant was only charged with hindering "burglary." While burglary can be a second-degree crime in specified circumstances not charged here, "[o]therwise burglary is a crime of the third degree." N.J.S.A. 2C:18-2(b). As defendant was charged with hindering the lowest degree of burglary,

there was no "issue regarding what degree of crime defendant knew that [defendant] had been or would likely be charged with [which] must be submitted to the jury." Model Hindering Charge at 1 n.1.

Thus, the "oral instructions of [the] court were sufficient to convey an understanding of the elements [of fourth-degree hindering] to the jury," Gandhi, 201 N.J. at 197, because they told the jury it could not convict defendant of hindering unless it found the hindered offense was burglary, which is a third-degree crime.

Moreover, "the verdict sheet was not misleading." Ibid. It stated: "Defendant Joseph R. Rios is charged that on or about October 5, 2014 in Palmyra Borough, he did with purpose to hinder his own apprehension, prosecution, conviction, or punishment, give false information to a law enforcement officer," and asked the jury to indicate whether it found him guilty or not guilty. Nothing in the verdict sheet contradicted the trial court's instructions that the jury had to find that defendant knew "that he could or might be charged or was liable to be charged with burglary," and that he acted to hinder his apprehension, prosecution, conviction or punishment "for burglary." Cf. Galicia, 210 N.J. at 387 (finding prejudice where the verdict sheet told the jury not to consider passion/provocation manslaughter and the jury had no written copy of the oral

instructions); State v. Reed, 249 N.J. Super. 41, 50 (App. Div. 1991) (finding prejudice where the verdict sheet gave the jury no opportunity to find passion/provocation manslaughter), aff'd in part & rev'd in part on other grounds, 133 N.J. 237 (1993).

Further, the trial court provided the jurors with written copies of its instructions to guide them in the jury room. See Reese, 267 N.J. Super. at 289 (finding concerns about the verdict sheet were "dissipated by the fact that the judge's instructions as to the law were also reduced to writing and in the jury room"). The court also instructed the verdict sheet was "not evidence" and was just "to be used to report your verdict." See Model Jury Charge (Criminal), "Criminal Final Charge Part 4" (Deliberations to Jury Questions) (revised January 14, 2013). The court added the verdict sheet "just" lists the three charges and "simply asks what your answer to those would be, guilty or not guilty." See Reese, 267 N.J. Super. at 287 (finding no error where "the judge intended to focus the jury's attention on the verdict sheet for the recordation of its verdict, not for the sequence of its deliberations or the elements of the offense").

Moreover, the trial court "encouraged the jury to present any questions of law arising during deliberation to the court for clarification." See Gandhi, 201 N.J. at 197-98. Finally, "[t]he record does not provide any basis on which we could reasonably

conclude that the jury did not understand the instruction on" hindering and burglary. Id. at 197.

Therefore, under Gandhi, "any error in the verdict sheet can be regarded as harmless." Id. at 197-98 ("hold[ing] that the verdict sheet's failure to use the [statutory] word 'repeatedly' with reference to the course of stalking conduct" . . . did not constitute reversible error"). Defendant has certainly failed to show plain error. See State v. Vasquez, 265 N.J. Super. 528, 547 (App. Div. 1993).

For similar reasons, we reject defendant's claim under Apprendi v. New Jersey, 530 U.S. 466 (2000). In Apprendi, the United States Supreme Court invalidated a New Jersey statute that effectively "turn[ed] a second-degree offense into a first-degree offense" based on a judicial finding of motive. Id. at 494. The Court held that "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." Id. at 490.

Here, the jury was instructed it could find defendant guilty only if it found he knew "that he could or might be charged or was liable to be charged with burglary," and that he acted to hinder his apprehension, prosecution, conviction or punishment "for burglary." Because the hindered offense of burglary as a matter

of law was a third-degree offense, N.J.S.A. 2C:18-2(b), the jury by its guilty verdict found every fact which determined that defendant's hindering conviction was a fourth-degree offense with a statutory maximum sentence of eighteen months. N.J.S.A. 2C:29-3(b); N.J.S.A. 2C:43-6(a)(4).[12]

We also reject defendant's claim that the trial court sua sponte should have charged the jury with the lesser-included offense of disorderly-person hindering. Disorderly-person hindering could only apply if the hindered offense was fourth-degree offense or less, and burglary was a third-degree offense. Defendant has not identified a lesser hindered offense that was "'clearly indicated'" by the record. State v. Alexander, __ N.J. __, __ (2018) (slip op. at 12) (citation omitted). "The 'clearly indicated' standard does not require trial courts either to 'scour the statutes' . . . , or '"to meticulously sift through the entire record'" to find a lesser-included offense, and no lesser hindered offense "'jump[s] off the page'" here. Id. at __ (slip op. at 13) (citation omitted).

Affirmed.

[12] Although burglary can be a second-degree offense under certain circumstances, N.J.S.A. 2C:18-2(b)(1)-(2), those circumstances were not charged here, only third-degree burglary was charged, and his sentence of 364 days was not "greater than that allowed by the jury verdict" for fourth-degree hindering. See State v. Natale, 184 N.J. 458, 482 (2005).