

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2010-073

OCTOBER TERM, 2010

State of Vermont	}	APPEALED FROM:
	}	
	}	
v.	}	District Court of Vermont,
	}	Unit No. 2, Bennington Circuit
	}	
Cynthia Wilson	}	DOCKET NO. 275-3-08 Bncr

Trial Judge: David T. Suntag

In the above-entitled cause, the Clerk will enter:

Defendant appeals her jury conviction of being an accessory after the fact for encouraging her granddaughter to lie to police about the extent of defendant's boyfriend's unlawful sexual touching. On appeal, defendant argues that the court committed error in failing to grant acquittal on its own motion because the evidence of intent was insufficient to support the verdict. We affirm.

The following facts were presented at trial. At the time of the defendant's offense, defendant lived with her granddaughter, L.W., whom defendant has raised since infancy, and defendant's long-time boyfriend, Richard Beayon. In the summer of 2007, Beayon began touching L.W. inappropriately, including touching her buttocks and her breasts. L.W. testified that she did not reveal the abuse to her grandmother because she knew that her grandmother would not believe her. The touching had gone on for one or two months when L.W.'s cousin observed Beayon touch L.W.'s butt and reported this to her mother, L.W.'s aunt. The aunt confronted defendant and L.W. together, and L.W. told both of them about all of Beayon's actions, including how he touched her butt and her breasts. Defendant did not immediately contact the police.

L.W.'s aunt contacted the police based on what L.W.'s cousin had observed. A few days later, Detective Cole from the special victim's unit of the Bennington Police Department contacted defendant about speaking with L.W. Defendant, Beayon and L.W. were out of town on a camping trip, so defendant set up a time the following day to meet with Detective Cole. Later that same day, however, defendant brought both Beayon and L.W. to the Brattleboro Police Department to give statements. L.W. testified that, on the way there, defendant instructed her to tell the police that Beayon touched only her butt and she made L.W. practice her story. L.W. explained that defendant did this so that Beayon would not get into trouble. At the station, Beayon confessed to touching L.W.'s butt. Both L.W. and Beayon gave written statements that Beayon inappropriately touched L.W. Before leaving the station, defendant promised the interviewing officer that she would prevent any further contact between Beayon and L.W. In

fact, Beayon traveled with defendant and L.W. that day and the following day, and was at defendant's home for dinner a few days later.

L.W. met with Detective Cole and repeated her story that Beayon touched only her butt. L.W. testified that prior to this interview, her grandmother again coached her not to report details of Beayon's actions and just to tell police that he touched her butt. Due to concerns about Beayon continuing to be at defendant's house, L.W. was removed from defendant's home and placed first in a foster home, and later with an aunt. Beayon was charged with one count of lewd and lascivious conduct with a minor. Months later, during an interview with Beayon's probation officer as part of Beayon's pre-sentencing investigation, L.W. disclosed that Beayon had touched her breasts. The probation officer referred the matter to Detective Cole, who then interviewed L.W. for a second time. This time L.W. reported the full story, including that Beayon had touched her breasts skin to skin. Beayon was charged with a second count of lewd and lascivious conduct. He admitted the conduct and pleaded guilty to both charges.

Defendant was charged with obstruction of justice and accessory after the fact in violation of 13 V.S.A. § 5. Before trial, the obstruction charge was dismissed by the State. Following the State's case, defendant moved for judgment of acquittal, arguing that the evidence was insufficient to demonstrate that defendant had any prior personal knowledge of Beayon's criminal behavior. The court denied the motion, citing L.W.'s testimony that she told her grandmother that Beayon touched her breasts and that following this disclosure, defendant instructed her not tell the police about it.

On appeal, defendant argues that there was insufficient evidence to establish the element of intent—that is, that defendant acted with the conscious purpose of helping Beayon avoid punishment. In general, a motion for acquittal must be denied when in viewing the evidence in the light most favorable to the State and excluding any modifying evidence, “that evidence sufficiently and fairly supports a finding of guilt beyond a reasonable doubt.” State v. Grega, 168 Vt. 363, 380 (1998). Although defendant moved for judgment of acquittal at trial, the motion was made on other grounds. Therefore, to prevail on appeal here, defendant must demonstrate that the court was required to order acquittal on its own motion because the evidence of defendant's intent to help Beayon avoid punishment was “so thin that a conviction would be unconscionable.” State v. LaFlam, 2008 VT 108, ¶ 4, 184 Vt. 629 (mem.).

Looking at the evidence in the light most favorable to the State, we conclude that it was sufficient to support a finding of guilt beyond a reasonable doubt and the trial court did not err in declining to grant a judgment of acquittal on its own motion. “The element of intent, we have observed, is rarely proved by direct evidence; it must be inferred from a person's acts and proved by circumstantial evidence.” State v. Alexander, 173 Vt. 376, 386 (2002) (quotation omitted). Defendant's intent to protect Beayon was established by the following facts and circumstances: L.W. told defendant about Beayon touching L.W.'s breasts during L.W.'s first disclosure of Beayon's abuse at L.W.'s aunt's house; after this disclosure, defendant coached L.W. into omitting the breast touching from her initial statements to police; L.W.'s and defendant's initial statements coincided in their recitation of Beayon's acts; defendant continued to have contact with Beayon after reporting the crime and assuring police that he was out of their lives; defendant again instructed L.W. to not mention Beayon touching L.W.'s breasts before the interview with Detective Cole; and it was not until after L.W. was removed from defendant's care that she revealed Beayon's touching of her breasts. The jury could reasonably have

concluded from these facts that defendant acted with the conscious purpose of helping Beayon avoid severe punishment.

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Brian L. Burgess, Associate Justice