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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2006-533

FEBRUARY TERM, 2008

State of Vermont	}	APPEALED FROM:
	}	
v.	}	District Court of Vermont,
	}	Unit No. 3, Franklin Circuit
	}	
Jason J. Douglas	}	DOCKET NO. 175-3-06 Frcr
		Trial Judge: Ben W. Joseph

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

Defendant appeals from his conviction of burglary, kidnapping, and cruelty to animals following a bench trial. He argues that there was insufficient evidence to support his convictions. We affirm.

The following evidence was presented at trial. In September 2003, at least five masked intruders entered the victim's home while she was watching television. One of them shot her dog in the leg. At some point, a gun was placed in the victim's mouth as well. The victim was hit over the head with a gun, and she was taken upstairs, where she was bound and blindfolded. Someone stood over her with a shotgun while the others ransacked the house. The victim heard the intruders mention the names "Doug" and "Ed"; she also heard them state that they were looking for marijuana. The victim testified that she believed the incident was related to an earlier incident where several individuals, including someone named Eric Kline, attempted to steal marijuana plants from her property.

Three individuals who were involved in the burglary testified for the State. Nathan Tibeault testified that defendant told him that defendant's uncle, Douglas Barratt, knew a place where they could find marijuana plants, and that if Tibeault wanted to be involved, all he needed to do was drive the others to the location. Tibeault agreed, and on the evening in question, a group of approximately seven people met at Barratt's home. They drove in two cars to the victim's home, and Tibeault testified that he, Barratt, and another individual waited in the car while the rest of the participants went through the woods to find the marijuana plants. They communicated with each other via walkie talkies. Tibeault heard what sounded like a gunshot, and Barratt got on his walkie-talkie and asked what had happened. Someone responded that they were in the house and that nobody was home. Tibeault drove up to the victim's house and Barratt got out and went into the house. Tibeault later saw defendant exit the house and take off his ski mask. Shortly thereafter, Tibeault, defendant, and Barratt drove away. In the car, defendant stated that he had almost been attacked by a dog in the house and that he shot at it. When they arrived at Barratt's house, the others were already there and they had emptied out a bag that contained various items such as coins and jewelry. Barratt also had a bag of marijuana.

Carmen Pariseau testified that on the evening in question, she went to Barratt's house at the request of her boyfriend, John Vincellette. Defendant, Tibeault, and the others were there, and they were talking about going to a woman's home, where Barratt had been before, to steal money and marijuana. Pariseau saw several guns at Barratt's house. She drove to the victim's house with several others while Tibeault drove with defendant, Barratt, and another individual. When they arrived, the parties discussed their plan. Defendant and others exited the car, and got something out of the trunk. Pariseau saw defendant put on a ski mask. Pariseau testified that she later heard several gunshots. Sometime thereafter, Barratt went into the house. After a while, the parties exited the house and returned to Barratt's house where they divided up the stolen marijuana. When Pariseau asked Vincelette about the gunshot, he told her that defendant had shot the victim's dog. Pariseau also testified that she had told police that defendant was bragging about shooting a dog and that he shot the dog because it would not stop barking. Defendant also bragged about hitting the victim in the head and tying her up.

Vincellette also testified for the State. He indicated that he had been at Barratt's house on the evening in question with defendant, Tibeault and others. The parties discussed the fact that the victim had marijuana at her house, but Vincellette stated that he did not remember any plan about stealing the marijuana. Vinvellette nonetheless testified that the group, including Pariseau, later headed to the victim's house in two separate cars. Vincellette stated that he stayed in the car and that he saw the others take a bag out of the trunk. He did not see anything else. Later, the parties returned to the car carrying bags. Vinvellette stated that he saw defendant and Barratt go through the front door of the victim's house, apparently meaning that they had exited through the front door. Vincellette testified that Barratt later told him that they had gone in and taken "some weed and stuff." Vincellette saw a handgun on the counter at Barratt's house, which he believed belonged to defendant because defendant picked it up as he was leaving.

At the close of the State's case, defendant moved for a directed verdict, which the court denied. Barratt then testified for the defense. Barratt indicated that he and Eric Kline had once attempted to steal marijuana plants from the victim and they had been chased off of the property at gunpoint. He testified that on the evening in question, he and Vincellette, but not defendant, went back to steal the plants. According to Barratt, Vincellette got out of the car with a shotgun, then later radioed Barratt to come and pick him up. The group later divided up the stolen marijuana. At the close of the evidence, the court found defendant guilty of the charges against him. It found that there was overwhelming evidence, including circumstantial evidence and defendant's admissions, to show that defendant shot the dog, hit the victim in the head, and participated in the robbery. Defendant appealed.

On appeal, defendant argues that there was insufficient evidence to prove his guilt. He notes that the victim was unable to identify any of the intruders, and he complains that while there was testimony that he was present when the crime was planned and that he rode to the victim's house, no one testified that they saw him enter the victim's house. He also states that no two version of events presented by the State's witnesses were the same, and that the other participants in the crime were not credible because they were trying to minimize their own culpability and protect themselves. Defendant further maintains that although Vincellette's testimony was not particularly helpful to the State's case, the trial court failed to properly establish that Vincellette was a competent witness. Finally, defendant questions the truthfulness of Pariseau's testimony, noting that she admitted at trial that she had been convicted of a crime, and she acknowledged that some of her trial testimony differed from her initial statements to police.

On review of the denial of a motion for judgment of acquittal, "we look at evidence presented by the State, viewed in light most favorable to State and excluding modifying evidence, to determine whether evidence sufficiently and fairly supports findings of guilt beyond a reasonable doubt." State v. Wiley, 2007 VT 13, ¶ 12. Guilt "may be proved by circumstantial evidence alone, if that evidence is proper and sufficient in itself." State v. Paradis, 146 Vt. 345, 347 (1985) (citation omitted). As we have explained, "[t]he standard of proof does not change with the nature of the evidence: whether the evidence is direct or circumstantial[,] the facts necessary to establish the elements of a crime must be proved beyond a reasonable doubt. . . . And this proof of facts includes reasonable inferences properly drawn therefrom." Id. (citation omitted).

As the trial court found, there was ample evidence in this case to support defendant's guilt beyond a reasonable doubt for each of the charged crimes. See 13 V.S.A. § 1201(a) (a person is guilty of burglary if he enters any building knowing that he is not licensed or privileged to do so, with the intent to commit petit larceny); id. § 2405(a)(1)(C) (person commits crime of kidnapping if he knowingly restrains another person with the intent to inflict bodily injury upon the restrained person or place the restrained person in fear that any person will be subjected to bodily injury); id. § 352(2) (person commits cruelty to animals if he cruelly mutilates an animal). As recounted above, there was testimony that defendant was involved in planning the burglary, and that he was present at the scene of the crime. He was seen putting on a ski mask after exiting the car near the victim's residence, and he was observed exiting the victim's residence, taking the ski mask off. Certainly, one can reasonably infer from the evidence that prior to exiting the house, defendant entered it. Defendant admitted to others that he hit the victim, tied her up, and shot the victim's dog. While defendant argues that the trial court should not have credited the testimony of the other participants in the burglary, "[i]t is axiomatic in this state that the trier of fact is given the sole determination of the weight of the evidence, the credibility of witnesses, and the persuasive effect of the testimony." State v. Merchant, 173 Vt. 249, 257 (2001) (citation omitted). We reject defendant's assertion that it would have been impossible for a reasonable fact finder to parse out the truth from the testimony offered at trial. Finally, as defendant acknowledges, Vincelette's testimony was of minimal importance to the State's case. Defendant identifies no prejudicial error that resulted from the admission of this testimony, and thus, even assuming the testimony was admitted in error, any error was harmless. See V.R.Cr.P. 52(a) ("[a]ny error . . . which does not affect substantial rights shall be disregarded.").

Affirmed.

BY THE COURT:

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John A. Dooley, Associate Justice

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Denise R. Johnson, Associate Justice

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Marilyn S. Skoglund, Associate Justice