

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

**ENTRY ORDER**

VERMONT SUPREME COURT  
FILED IN CLERK'S OFFICE

SUPREME COURT DOCKET NO. 2008-380

**JUL 20 2009**

JULY TERM, 2009

State of Vermont	}	APPEALED FROM:
	}	
	}	
v.	}	District Court of Vermont,
	}	Unit No. 3, Franklin Circuit
	}	
David B. Reynolds	}	DOCKET NO. 431-4-08 Frer

Trial Judge: Michael S. Kupersmith

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

Defendant appeals his conviction, following a jury trial, of attempting to elude a police officer, negligent operation of a motor vehicle, and violation of a condition of release. We affirm.

The charges stemmed from an incident occurring on the morning of April 18, 2008, when a deputy sheriff observed a young man in his twenties illegally operating an all-terrain vehicle (ATV) on a public highway. When the officer activated his blue lights and began to pursue the ATV, the ATV operator accelerated and attempted to elude the officer. After pursuing the ATV at high speeds for some time, the officer backed off for safety reasons but continued to follow the ATV. Shortly after losing sight of the ATV, the officer stopped to ask a local resident if she had seen the vehicle. The resident pointed toward a neighbor's house, where the officer saw a man get off the ATV and go around to the side of the garage. Within a few minutes, the owner of the home arrived and allowed police to enter the house to look for the operator of the ATV. They found defendant lying down in a bedroom. Defendant denied that he was the operator of the ATV.

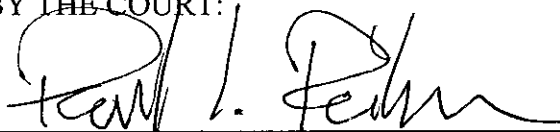
At trial, the deputy sheriff described the clothes that the ATV operator was wearing and stated that he got a good look at the operator because he had on an open-faced helmet. The officer testified that he was certain that the operator was defendant even though the operator had reddish-orange hair, and defendant at the time of trial had brown hair. The officer also testified that he found in the garage of the house the helmet and backpack that the operator had been wearing, and that he found in the attic of the home the jacket that the operator had been wearing. The neighbor corroborated some of the officer's testimony regarding the operator's appearance, including his reddish-orange hair. The girlfriend of the homeowner's son, who had been in the home at the time of the incident, testified that defendant was the operator of the ATV and had hidden the jacket in the attic. She also testified that defendant had dyed reddish-orange hair at the time of the incident. Following the close of evidence, defendant moved for judgment of acquittal, arguing that the State had failed to prove beyond a reasonable doubt the identity of the

person operating the ATV. The court denied the motion, and the jury convicted defendant of attempting to elude police, negligent operation, and violating a condition of release.

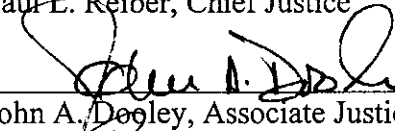
On appeal, defendant argues that the State failed to establish the requisite element of identity beyond a reasonable doubt. We find no merit to this argument. There was ample evidence, including the testimony of the deputy sheriff and the girlfriend of the homeowner's son, identifying defendant as the operator of the ATV. The sole basis for defendant's argument is that the girlfriend admitted on cross-examination that she did not like defendant and did not want him around her family. The jury heard all of the testimony, including the girlfriend's statement that she did not like defendant. The girlfriend's statement did not foreclose the jury from finding her testimony credible, and that testimony, along with that of the officer, was more than sufficient to establish beyond a reasonable doubt defendant's identity as the operator of the ATV. See State v. Delisle, 162 Vt. 293, 307 (1994) (noting that standard for reviewing denial of motion for judgment of acquittal is whether evidence, when viewed most favorably to State and excluding any modifying evidence, fairly and reasonably tends to show guilt beyond reasonable doubt).

Affirmed.

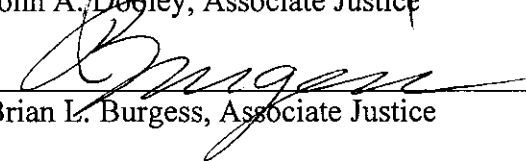
BY THE COURT:



Paul L. Reiber, Chief Justice



John A. Dooley, Associate Justice



Brian L. Burgess, Associate Justice