

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2003-361

AUGUST TERM, 2004

	}	APPEALED FROM:
	}	
State of Vermont	}	District Court of Vermont, Unit No. 2, Bennington Circuit
	}	
v.	}	
	}	
Ronald L. Veach	}	DOCKET NO. 1566-11-00 Bncr
	}	
	}	Trial Judge: David A. Howard
	}	

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

Defendant was charged with aiding and abetting retail theft and contributing to the delinquency of a minor. The jury acquitted him on the aiding and abetting charge, but found defendant guilty of contributing to the delinquency of a minor. Defendant appeals his conviction, arguing that it is inconsistent with the jury's acquittal on the first charge. We affirm.

Viewed in the light most favorable to the verdict, the record reveals the following facts. Defendant and his twelve-year old niece S.T. went to the Hannaford Supermarket in Bennington in November 2000. The pair spent approximately nine minutes in the store looking at teen magazines. The store's surveillance system videotaped the pair as S.T. opened a magazine, tore out a page, folded the page up and put it in her pocket. Defendant was standing right next to S.T. at the time. Shortly after S.T. pocketed the page, defendant opened up another magazine, removed a poster from the magazine and showed it to S.T. Defendant returned the magazine to the shelf after placing the poster back inside.

Defendant and S.T. were stopped by a store security officer who had been watching them from the security control room. Later, when confronted by an investigating police officer, S.T. admitted to stealing a number of magazine pages that day. Defendant claimed that he was unaware that S.T. was stealing as they stood together flipping through magazines. The State charged defendant with one count of aiding and abetting retail theft and one count of contributing to the delinquency of a minor.

Before submitting the case to the jury, the court held a charge conference, a portion of which was on the record. At the conference that was recorded, defense counsel raised a single objection to the charge on contributing to a minor's delinquency. He asked for an instruction that quoted the relevant statute, 13 V.S.A. ' 1301. Defense counsel argued that the jury instructions must make clear that defendant's mere presence during S.T.'s unlawful acts was not enough to convict him of contributing to S.T.'s delinquency. The court's instructions told the jury that it must find that defendant intended to contribute to S.T.'s delinquency and that his presence at the scene alone was insufficient for a conviction. After the court gave the instructions, defense counsel objected, stating, "I just would renew the objections that I've made on the record today." The jury returned a verdict of not guilty on the aiding and abetting charge, but it convicted him on the contributing charge. Defendant took the present appeal.

On appeal, defendant claims that he cannot be guilty of contributing to S.T.'s delinquency if he did not aid and abet her in the act of stealing the magazine posters. Defendant argues that "Given the court's [jury] instructions, if [defendant] did not aid and abet [S.T.] in stealing the pages from the magazine, he simply could not have contributed to her

delinquency. This argument is essentially a challenge to the court's instructions to the jury, which defendant failed to preserve through a specific objection on the record after the jury charge. See V.R.Cr.P. 30 (error may not be based on jury charge unless defendant objects, before jury deliberations, stating distinctly the matter to which he objects and the grounds for his objection). Defendant did not argue at trial that the instructions erroneously allowed the jury to convict him of the second charge if it found him not guilty of the first. We will not fault the trial court for a challenge that defendant never made to the trial court through a clear objection. See State v. Massey, 169 Vt. 180, 188-89 (1999) (explaining that cryptic or nebulous objections to jury charge are inadequate to comply with V.R.Cr.P. 30); State v. Jones, 160 Vt. 440, 448 (1993) (holding that failure to object to undisclosed witness at trial waived claim on appeal). Accordingly, defendant has not demonstrated reversible error.

Defendant also claims that the court should have granted his motion for judgment of not guilty notwithstanding the verdict. Defendant made his motion orally, and the court directed him to file a written motion within ten days. No written motion was filed on defendant's behalf, however. We will not consider defendant's challenge to the court's decision because defendant abandoned his claim by not filing his motion in writing within the time the trial court prescribed. Having failed to demonstrate reversible error, defendant's conviction must, therefore, be affirmed.

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice