

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2003-226

MAY TERM, 2004

	}	APPEALED FROM:
	}	
State of Vermont	}	District Court of Vermont, Unit No. 3, Essex Circuit
	}	
v.	}	
	}	
Lisa Burt	}	DOCKET No. 106-10-02 ExCr
	}	
	}	Trial Judge: Hon. M. Kathleen Manley
	}	

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

Defendant Lisa Burt appeals a jury verdict convicting her of knowingly aiding in the concealment of stolen property whose value exceeded \$500.00 in violation of 13 V.S.A. ' 2561(b). She argues that the trial court erred in denying her motion for judgment of acquittal because there was insufficient evidence to prove her guilt beyond a reasonable doubt. We affirm.

The State presented the following evidence at trial. On February 24, 2002, defendant and three youths, one of whom was her son, discussed burglarizing a neighboring residence. The youths broke into the home and removed several guns, including two handguns and several rifles. They brought the stolen property back to defendant= s home. Defendant indicated that she wanted to keep one of the handguns, a .38 revolver, so she took the gun and placed it in her dresser drawer. The group then discussed what they should do with the remaining items; defendant suggested that they be sold. The items were wrapped in a blanket and hidden in defendant= s garage. Later that evening, one of the youths was confronted about the burglary outside of defendant= s home. Shortly thereafter, defendant took the gun from her drawer and asked one of the youths to hide it for her. The youth hid both revolvers inside a wall of defendant= s home.

Early the next morning, defendant drove two of the youths to a turnout where they A dumped@ the stolen guns down the side of a steep hill. The three then returned to defendant= s home where defendant instructed them not to tell anyone what they had done. Police later recovered the missing rifles and a leather holster for one of the missing revolvers from the hillside but they did not find the two missing handguns. The handguns were not found in a search of defendant= s home. The State presented evidence that the combined value of the .38 revolver and one of the stolen rifles was approximately \$730.00.

At the close of the State= s case, defendant moved for a judgment of acquittal, arguing in part that because the handguns had not been recovered, and because she had not committed the last act concealing the handguns inside the wall of her home, the value of the .38 revolver could not be included in the total value of the guns. According to defendant, even if the charge of aiding in the concealment of stolen property could stand with respect to one of the recovered rifles, the value of that rifle was less than \$500.00 so the charge could not be a felony. The court denied the motion after concluding that there was sufficient evidence for the jury to find beyond a reasonable doubt that all of the guns, including the handguns, could have been thrown over the embankment, which satisfied the requirement that the value of the property exceed \$500.00. After the jury returned a guilty verdict, defendant filed a post-verdict motion for judgment of acquittal, or alternatively, a new trial. The court denied both motions, finding that the evidence sufficiently and fairly supported a verdict of defendant= s guilt beyond a reasonable doubt. The court rejected defendant= s argument that, because the handgun was not recovered at the dump site, someone else must have aided in its concealment. It also

rejected the contention that directing someone to conceal handguns was not an A act.@ This appeal followed.

On appeal, defendant argues that the court erred in denying her motion for judgment of acquittal because the evidence was insufficient to prove that she aided in the concealment of stolen property having a value of more than \$500.00. According to defendant, in finding the State= s evidence sufficient, the court included in its consideration the statements that she made directing one of the youths to hide the handguns. Defendant asserts that, because the jury was not instructed as such, and because we must assume that the jury followed the court= s instructions, it could not have convicted her based on her statements to the youth. Defendant further argues that, assuming her instruction to hide the guns constituted an act under 13 V.S.A. ' 2561(b), the State would have needed to elect which act constituted the charged crime. Defendant maintains that the jury could have found her guilty only if they found that she drove the youths to dispose of the guns. Assuming this is the case, defendant argues that there was no evidence that would support a finding beyond a reasonable doubt that the handguns were thrown over the embankment with the other stolen items.

When reviewing the trial court= s denial of a V.R.Cr.P. 29 motion for judgment of acquittal, we must determine A whether, taking the evidence in the light most favorable to the state and excluding modifying evidence, the state has produced evidence fairly and reasonably tending to show the defendant guilty beyond a reasonable doubt.@ State v. Carrasquillo, 173 Vt. 557, 559 (2002) (mem.) (brackets, internal quotation marks, and citation omitted).

To establish that defendant aided in the concealment of stolen property, the State needed to prove A beyond a reasonable doubt some act or conduct on the part of defendant that assist[ed] the thief in converting the property to his own use or which render[ed] its discovery by the owner more difficult.@ State v. Foster, 139 Vt. 454, 455 (1981); see also State v. Paradis, 146 Vt. 345, 347-48 (1985) (same). To sustain the felony charge, the State needed to prove that the value of the stolen property exceeded \$500.00. Even assuming, as defendant argues, that the jury based its guilty verdict on her act of dumping the stolen guns over an embankment, we conclude that the evidence fairly and reasonably tends to show defendant= s guilt beyond a reasonable doubt. As previously noted, the State presented evidence that defendant hid one of the stolen handguns in her dresser drawer and allowed the remaining items to be hidden in her garage. On the morning following the burglary, she drove two of the youths to a pullout, where the stolen guns were dumped down the side of a steep hill. Police found a handgun holster lying outside of and beside the bundle of recovered rifles. A search of defendant= s home did not uncover the missing handguns. The jury could reasonably infer that defendant dumped the handguns along with the other stolen goods. See Paradis, 146 Vt. at 347 (proof of facts includes reasonable inferences properly drawn therefrom). The State= s evidence showed that the value of one of the stolen rifles and one of the stolen handguns exceeded \$500.00. Thus, because the State produced evidence that fairly and reasonably tends to show defendant= s guilt beyond a reasonable doubt, we find no error in the trial court= s denial of defendant= s Rule 29 motion.

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice