

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. 2008-513

SEP 4 2009

SEPTEMBER TERM, 2009

State of Vermont	}	APPEALED FROM:
	}	
	}	
v.	}	District Court of Vermont,
	}	Unit No.3, Washington Circuit
	}	
Merrill C. Bashaw, Sr.	}	DOCKET NO. 1506-12-06 Wncr

Trial Judge: Brian J. Grearson

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

Defendant appeals his jury conviction of aiding in the commission of a felony drug transaction in violation of 13 V.S.A. § 3 (“A person who aids in the commission of a felony shall be punished as a principal.”). We affirm.

Defendant was charged with aiding in the commission of a felony based upon his role in arranging a drug transaction that took place at his home on November 13, 2006. After the State presented its case at trial, defendant moved for judgment of acquittal, arguing that the State’s evidence was insufficient to establish his guilt beyond a reasonable doubt. The trial court denied the motion, and defendant testified in his defense, claiming that he had no intention of arranging a drug transaction. After the State rested, the attorneys made closing arguments, and the court instructed the jury, the jury returned a guilty verdict. On appeal, defendant argues that the State’s evidence was insufficient to demonstrate that he aided in the commission of a felony drug transaction.

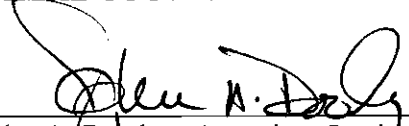
In considering defendant’s argument, we must determine whether “the evidence, viewed in the light most favorable to the State and excluding modifying evidence, fairly and reasonably supports a finding beyond a reasonable doubt that” defendant aided in the commission of a felony. State v. Martin, 2007 VT 96, ¶ 8, 182 Vt. 377. Evidence that is wholly dependent on conjecture or mere suspicion is insufficient to support a conviction, but circumstantial evidence that allows the fact-finder to draw rational inferences may serve as proof of a fact beyond a reasonable doubt. Id.

Evidence of presence at the scene, standing alone, is not enough to prove aiding in the commission of a crime; however, a person may be convicted of aiding in the commission of a crime, even if the person does not directly engage in any particular criminal act, as long as the evidence shows that the person’s presence was by design to render any necessary assistance or to encourage, incite, or procure the criminal act by the principal. State v. Mecier, 126 Vt. 260, 262 (1967). The trial court’s instructions, to which defendant did not object, were consistent with this law.

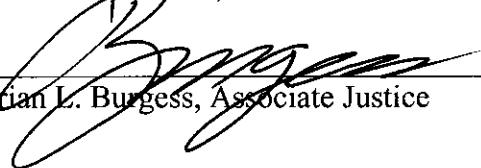
Here, the State presented evidence, through the testimony of police officers and the confidential informant (CI) involved in the sale, that: (1) the CI telephoned defendant and told him that she was attempting to contact a mutual friend to purchase heroin; (2) defendant told the CI that he would contact the mutual friend and find out when she would be going to his house; (3) defendant called the CI later and told her that the mutual friend was on her way to his house; (4) while the undercover officer and the CI were on route to defendant's home, defendant called the CI again and told her that because of a bad back he would not be meeting her at the front door as planned, but rather she should come in the open door and up the stairs to his bedroom; (5) when the CI arrived at defendant's home, she went up the stairs to his bedroom, as told, where she met defendant and the mutual friend; (6) the CI exchanged cash for heroin with the mutual friend as defendant watched the transaction from four or five feet away; and (7) the CI and the mutual friend then left defendant's home and went their separate ways. This evidence was sufficient for the jury to conclude that defendant intended to aid in the commission of the sale of heroin as, at minimum, a facilitator.

Affirmed.

BY THE COURT:

  
\_\_\_\_\_  
John A. Dooley, Associate Justice

  
\_\_\_\_\_  
Denise R. Johnson, Associate Justice

  
\_\_\_\_\_  
Brian L. Burgess, Associate Justice