

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2017-054

SEPTEMBER TERM, 2017

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|-------------------|---|-------------------------------|
| State of Vermont | } | APPEALED FROM: |
| | } | |
| v. | } | Superior Court, Rutland Unit, |
| | } | Criminal Division |
| | } | |
| Nicole VanGuilder | } | DOCKET NO. 1157-8-15 Rdcr |

Trial Judge: Cortland T. Corsones

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

Defendant appeals her misdemeanor conviction, following a jury trial, of selling stolen property, in violation of 13 V.S.A. § 2561(b). She contends that the State’s evidence was insufficient to establish beyond a reasonable doubt that she knew the property she sold was stolen. We affirm.

When the claim of error is that the evidence was insufficient to support the conviction, “[w]e will affirm the conviction if the evidence, when viewed in the light most favorable to the State, fairly and reasonably supports the finding of guilt beyond a reasonable doubt.” State v. VanDusen, 166 Vt. 240, 242-43 (1997) (quotation omitted) (deciding appeal from conviction of possession of stolen property following court trial after defendant waived jury trial); see State v. Delisle, 162 Vt. 293, 307 (1994) (stating that standard of review on appeal from denial of “motion for judgment of acquittal is whether the evidence, when viewed in the light most favorable to the State and excluding any modifying evidence, fairly and reasonably tends to convince a reasonable trier of fact that the defendant[] [is] guilty beyond a reasonable doubt” (quotation omitted)). “The test is the same whether the evidence is direct or circumstantial.” VanDusen, 166 Vt. at 243.

At trial, complainant testified that on June 25, 2015, the day of the theft and recovery of a PlayStation video game system he had purchased approximately six months earlier from his employer Walmart for between \$350 and \$400, he ran into a woman whom he had dated years earlier and whom he still considered to be a friend. According to complainant, the friend asked him if she could come to his home for a while to await a ride. He agreed and she followed him back to his residence. While the two were in his bedroom, complainant agreed to allow the friend to use his PlayStation. The friend remained in his room when complainant left to work an afternoon shift from two to six o’clock. Complainant returned home after his shift to find his bedroom door locked. When no one responded to his knocking, he kicked the door in and discovered his friend gone and the PlayStation missing. Complainant called GameStop, a video games shop, and learned that earlier in the day the shop had purchased a PlayStation matching his system. He then called the police to report the theft and the sale of the stolen property to GameStop.

An employee of GameShop testified that at approximately 2:25 p.m. that same day, twenty-five minutes after complainant had begun his work shift, he purchased a PlayStation from a woman whom he later identified at trial as defendant. The employee testified that defendant was with another woman, but that he only spoke to defendant, who was holding the PlayStation. He further testified that he obtained government identification from defendant for verification purposes and entered the information in the shop's computer at the time of the transaction. According to the employee, during defendant's conversation with him, she stated that she knew nothing about the PlayStation and that it belonged to an ex-boyfriend who had moved out of "our" house. Defendant told the employee that the ex-boyfriend had left the PlayStation in their residence "a couple months" earlier. The employee stated that the transaction felt "weird" because of the way the two women would at times talk to each other and then come back to the counter. When asked why he bought the PlayStation if he felt the situation was not right, the employee stated that the shop's policy was to take anything, even if believed to be stolen, because the shop required the seller's identifying information in case the property turned out to be stolen.

The investigating officer testified that complainant's friend was arrested and prosecuted for the theft of complainant's PlayStation. Complainant testified that he had never met and did not know defendant, and that he had not given his friend, defendant, or any other person permission to sell the PlayStation.

At the close of the State's case, defendant moved for judgment of acquittal, arguing that there was insufficient evidence demonstrating that she knew the PlayStation was stolen. After the court denied the motion, the defense rested without calling any witnesses.

On appeal, defendant reiterates her argument that the State failed to establish beyond a reasonable doubt that she knew the PlayStation was stolen at the time she sold it. Defendant states that the State never established any relationship between defendant and complainant's friend and presented no evidence that the woman with defendant at the time she sold the PlayStation was defendant's friend. She describes the State's evidence as creating mere suspicion that required the jury to bridge evidentiary gaps by engaging in speculation as to whether she knew the PlayStation was stolen. See State v. Durenleau, 163 Vt. 8, 12-13 (1994) (stating the jury is permitted to make logical inferences from evidence, but evidence and inferences "must add up to more than mere suspicion" because "the jury cannot bridge evidentiary gaps with speculation").

We conclude that the evidence presented by the State, viewed most favorably to the State, was sufficient to establish beyond a reasonable doubt that defendant knew the PlayStation was stolen at the time she sold it. This case is similar to VanDusen, where we upheld a conviction for possession of stolen property, notwithstanding the defendant's claim that the State's evidence was insufficient to demonstrate beyond a reasonable doubt that he knew the subject property was stolen. Noting that the factfinder found the defendant not to be credible in explaining how he came to be in possession of the stolen property, we stated:

Although defendant is not required to explain his possession of stolen goods, an explanation shown to be contrived and false can be taken as evidence of guilty knowledge. The court found that defendant offered conflicting statements about where he obtained the stolen [property] and how long the [property] was in his possession. Having found that defendant's statements were deceitful, the [factfinder] could properly infer from other evidence that defendant knew or believed the [property] was stolen.

VanDusen, 166 Vt. at 243 (quotation and citations omitted).

The same is true here. Less than an hour after complainant's PlayStation was stolen by his female friend, defendant sold it to the shop employee, telling him that the PlayStation had belonged to an ex-boyfriend before he moved out of their residence a couple of months earlier. These were obviously false statements that the jury could have reasonably inferred were intended to conceal the true origin of the property. Defendant's deceitfulness, coupled with her odd behavior in communicating with the woman who accompanied her to the shop just a short time after defendant's female friend stole the property from defendant's bedroom, constituted sufficient circumstantial evidence for the jury to conclude beyond a reasonable doubt that defendant knew the property was stolen.

Affirmed.

BY THE COURT:

Paul L. Reiber, Associate Justice

Marilyn S. Skoglund, Associate Justice

Beth Robinson, Associate Justice