

Note: In the case title, an asterisk () indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

ENTRY ORDER

SUPREME COURT DOCKET NO. 2018-380

AUGUST TERM, 2019

State of Vermont v. John Bosco*	}	APPEALED FROM:
	}	
	}	Superior Court, Orleans Unit,
	}	Criminal Division
	}	
	}	DOCKET NO. 626-11-17 Oscr
		Trial Judge: Robert R. Bent

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

Defendant appeals his conviction for burglary following a jury trial. On appeal, defendant argues that the evidence was insufficient to demonstrate that he entered the dwelling and intended to permanently deprive the owner of her property. We affirm.

The following facts were presented at trial. The victim testified that a few days before November 2, 2017, a young man, who appeared to be “strung-out,” came to her door and asked to borrow baking soda so he could bake cookies. She could not positively identify defendant as the man who came to her door that day. On November 2, 2017, she took her dog for a walk and did not lock the door. When she returned home, she immediately noticed her laptop computer was missing. She notified her landlord and the police. The victim’s landlord also rented an apartment to defendant. Defendant’s window faces the victim’s apartment. The landlord thought that defendant had taken the laptop. Newport Police Department Officer Jacobs investigated the burglary. When he arrived, he spoke with the victim and the victim’s landlord. The victim’s landlord notified police that she suspected defendant.

The landlord thought there was a way to get the computer back. The landlord contacted defendant’s father and arranged a meeting at a house in Newport. Defendant and his father met with the landlord at the house and the landlord saw defendant leave the house with the laptop.

The three then met Officer Jacobs in a parking lot. In answer to questioning by officer Jacobs, defendant admitted that he had been to the victim’s apartment previously to borrow baking soda and had taken the computer. He stated that he took the computer to a friend’s to hold onto for a while and when he retrieved it the computer was destroyed. On cross examination, Officer Jacobs explained that defendant did not actually say he took the computer; rather, he shook his head yes in answer to the question of whether he took the laptop from the home where he got the baking soda. Police returned the laptop to the victim, but the hard drive had been removed and replaced.

Following the State’s case, defendant moved for judgment of acquittal. Defendant argued that the State’s evidence was insufficient to prove beyond a reasonable doubt that defendant intended to permanently deprive the victim of her property. The court denied the motion, concluding that there was sufficient circumstantial evidence for the jury to conclude that defendant intended to not to return the

laptop. The jury found defendant guilty. Following the trial, defendant filed a renewed motion for acquittal arguing that the evidence did not show that defendant entered the victim's residence or that he intended to permanently deprive her of property. The court again denied the motion, explaining that defendant's intent was supported by circumstantial evidence and defendant's identity was supported by both circumstantial evidence and defendant's admission through a head nod. Defendant filed this appeal.

On appeal, defendant argues that the evidence was insufficient to establish guilt beyond a reasonable doubt. "We will affirm a trial court's denial of a motion for acquittal where, viewing the evidence in the light most favorable to the State, there is sufficient evidence to convince a reasonable trier of fact that all the elements of the crime have been proven beyond a reasonable doubt." State v. McAllister, 2008 VT 3, ¶ 13, 183 Vt. 126 (quotation omitted); see V.R.Cr.P. 29. The factfinder is not limited to direct evidence and may use circumstantial evidence to "draw rational inferences to determine whether disputed ultimate facts occurred." Id. (quotation omitted). "[A] judgment of acquittal is proper only if the prosecution has failed to put forth any evidence to substantiate a jury verdict." State v. Couture, 169 Vt. 222, 226 (1999).

Here, there was sufficient evidence to demonstrate defendant's identity as the person who took the laptop. Officer Jacobs testified that when he questioned defendant, defendant nodded affirmatively that he had entered the apartment and taken the computer. Defendant asserts that this evidence was speculative and therefore could not be relied upon by the jury. Defendant's argument goes to the weight of the evidence and not its sufficiency. It was up to the jury to decide the credibility of Officer Jacobs and how much weight to accord his testimony. State v. Hinchliffe, 2009 VT 111, ¶ 22, 186 Vt. 487 (explaining that witness credibility and weight of evidence are "matters which are entirely within the province of the jury"). Officer Jacobs's testimony, if believed, along with other circumstantial evidence were sufficient to prove beyond a reasonable doubt that defendant entered the apartment and took the computer.

Defendant next asserts that the State presented insufficient evidence to show that defendant intended to permanently deprive the victim of her computer. He contends that the evidence showed, at most, that he took the computer and brought to another person's house to hold for a while and then returned it the same day. In evaluating a motion for acquittal, we view the evidence in the light most favorable to the State. When so viewed, the evidence showed that defendant entered the victim's apartment, defendant took the victim's laptop, defendant returned the laptop only after his father was contacted, and the laptop was damaged when returned. This evidence was sufficient for the jury to conclude beyond a reasonable doubt that defendant took the laptop with the intent of permanently depriving the owner of it.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Marilyn S. Skoglund, Associate Justice

Beth Robinson, Associate Justice