

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. 2020-104

APRIL TERM, 2021

State of Vermont v. Gracie Caslani*	}	APPEALED FROM:
	}	
	}	Superior Court, Orleans Unit,
	}	Criminal Division
	}	
	}	DOCKET NO. 415-8-17 Oscr
		Trial Judge: Scot L. Kline

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

Defendant challenges her jury conviction for unlawful trespass in violation of 13 V.S.A. § 3705(d). She argues that the evidence was insufficient to support the verdict and that she established the elements of a necessity defense. We affirm.

The following evidence was presented at trial. Complainant testified that she met defendant through defendant’s boyfriend, who stopped in to purchase rabbit pellets from complainant at the store where she works. Complainant and the boyfriend struck up a conversation, and as a result, defendant agreed to give complainant ten rabbits. Complainant went to defendant’s house to pick up the rabbits. While there, she gave defendant her address. A few days later, defendant called complainant at work to see how the rabbits were. Complainant returned home after work and found that the rabbits, which had been in her kitchen, were gone. Defendant called complainant the next day and stated that she had gone into the house and taken the rabbits back. Complainant testified that she had not given defendant permission to enter her home. Complainant had told defendant that if she wanted to visit the rabbits, she could call complainant to make arrangements, but defendant had not done so. After taking the rabbits, defendant went to complainant’s home several more times, beeped her car horn, and hollered at complainant and her neighbors. Complainant contacted the police.

A Vermont State Trooper interviewed defendant. She told him that she had gone to the house to check up on the rabbits and decided to take them. She said that no car was in the driveway when she went to the house. She said that she entered the house through the front door, which was ajar, and a second door, and after looking around, inspecting some pill bottles and finding depression medication, she discovered a dog in a crate, and then left with the rabbits. Defendant acknowledged to the trooper that during a phone conversation she had been told not to go on the property and that she couldn’t check on the rabbits.

Defendant testified that she gave complainant the rabbits because complainant was involved in 4-H. She told complainant that if the animals didn’t adapt, weren’t fed, or “something wasn’t right,” she would take them back. Defendant testified that a couple of days after complainant took the rabbits, she called complainant and said she wanted to come over and see them. Complainant

gave defendant her address and said she could come over anytime. Defendant denied that complainant had asked her to call in advance to set up a time to see the rabbits.

Defendant testified that when she went to complainant's home, she found the mother rabbit outside. She was upset to find the rabbit pale and limp. She took the rabbit home and fed her several bowls of food and water. She returned to complainant's property two days later and walked around looking for the baby rabbits. Complainant's car was in the driveway. She heard moaning and believed complainant might be ill. She entered the house through a door that was ajar. The source of the moaning turned out to be a dog, which was crated. Next to the dog were seven of the baby rabbits. Defendant took the rabbits home with her.

Defendant did not move for judgment of acquittal after the evidence was closed or following the verdict. She requested an instruction on the affirmative defense of necessity, which the court gave. The jury found defendant guilty of felony unlawful trespass. She was sentenced to six-to-twelve months, all suspended, with eighty hours of community service. This appeal followed.

On appeal, defendant argues that the evidence was insufficient to support the jury's verdict. Specifically, defendant argues that the State failed to prove that she knew that she was not licensed or privileged to enter complainant's home. See 13 V.S.A. § 3705(d) ("A person who enters a dwelling house, whether or not a person is actually present, knowing that he or she is not licensed or privileged to do so shall be imprisoned for not more than three years or fined not more than \$2,000.00, or both."). Defendant concedes that she did not raise this argument below, but argues that the trial court committed plain error in failing to enter judgment of acquittal on its own motion after the evidence was closed.

"Plain-error analysis requires us to consider whether these are exceptional circumstances where a failure to recognize error would result in a miscarriage of justice, or where there is glaring error so grave and serious that it strikes at the very heart of the defendant's constitutional rights." State v. Yoh, 2006 VT 49A, ¶ 39, 180 Vt. 317 (quotation omitted). We will correct a plain error if there is in fact an error, the error is obvious, it results in prejudice to the defendant, and it seriously affects the fairness or integrity of the judicial proceedings. Id.

In this case, we conclude that there is no error, let alone plain error. "A court must move for acquittal by its own motion only when the record reveals that the evidence is so thin that a conviction would be unconscionable." State v. LaFlam, 2008 VT 108, ¶ 4, 184 Vt. 629 (mem.). "No acquittal is required when the evidence, taken in the light most favorable to the State, and disregarding any modifying evidence, sufficiently and fairly supports a finding of guilt beyond a reasonable doubt." Id.

We have explained that the knowledge element of 13 V.S.A. § 3705(d) establishes a subjective standard; "[i]t is not sufficient for the State to show that defendant should have known he was not licensed or privileged to enter the dwelling." State v. Fanger, 164 Vt. 48, 52 (1995). However, we have also recognized that "[i]ntent is rarely proved by direct evidence; it must be inferred from a person's acts and proved by circumstantial evidence." Id. (quotation omitted). In this case, there was sufficient evidence to support an inference that defendant knew she did not have permission to enter complainant's house. Complainant testified that she had not given defendant permission to enter her home. She also denied agreeing that defendant could take the rabbits back at any time if defendant felt they were being neglected. She gave defendant her address, but this fact alone did not necessarily amount to permission for defendant, a person whom she had just met, to enter her house at any time. To the contrary, complainant testified that she told defendant to call and set up a time if she wanted to see the rabbits. Complainant's testimony was

corroborated by the trooper’s testimony that defendant acknowledged to him that she had been told not to go on the property and that she could not check on the rabbits. The trooper did not recall defendant saying that complainant had agreed that she could go check on the rabbits at any time. Based on this evidence, a reasonable jury could conclude that defendant knew that she did not have permission to enter complainant’s home.

Defendant argues that she testified that she believed that she had permission to go into complainant’s home to check on the rabbits. This argument goes to the weight of the evidence, rather than its sufficiency. It was up to the jury to decide whether to believe defendant’s explanation of her intent. See State v. Hinchliffe, 2009 VT 111, ¶ 22, 186 Vt. 487 (stating that credibility of witness and weight of evidence are matters which are entirely within province of jury); Fanger, 164 Vt. at 54 (“[W]here defendant has explained his intent, and there is evidence negating that explanation, the inference can be drawn that defendant knew he did not have a license or privilege to enter so that the case should not have been dismissed.”). Under these circumstances, we conclude that the court did not commit error in failing to enter judgment of acquittal on its own motion.

Defendant alternatively argues that the court committed plain error in failing to enter judgment of acquittal on its own motion because she established the elements of a necessity defense by a preponderance of the evidence. Again, we see no error. To prove the affirmative defense of necessity, a defendant must establish that (1) there was an emergency situation that was not the defendant’s fault, (2) the emergency was so imminent and compelling as to raise a reasonable expectation of harm to the defendant or those defendant was trying to protect, (3) there was no reasonable opportunity to avoid the injury without doing the criminal act, and (4) the injury threatened by the emergency was sufficiently serious to outweigh the criminal wrong. State v. Cram, 157 Vt. 466, 469 (1991). The basis for defendant’s claim that she acted out of necessity is her testimony that she entered complainant’s house to investigate a moaning sound, which she thought might be coming from complainant. Whether this evidence was sufficient to establish the elements of a necessity defense turned in part on whether the jury found defendant to be credible. See Hinchliffe, 2009 VT 111, ¶ 22. Further, defendant’s version of events was not completely unchallenged: defendant claimed that complainant’s car was in the driveway, while complainant and the trooper testified that it was not. It was up to the jury to resolve this conflicting evidence. Id.; see also State v. Stanko, 936 N.W.2d 353, 363 (Neb. 2019) (“An affirmative defense is established as a matter of law only if there are no factual issues remaining to be resolved by the trier of fact.”). Because the viability of the necessity defense turned on defendant’s credibility, a matter within the province of the jury, the court did not err in failing to enter judgment of acquittal on this basis.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Beth Robinson, Associate Justice

Karen R. Carroll, Associate Justice