

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2017-067

NOVEMBER TERM, 2017

State of Vermont	}	APPEALED FROM:
	}	
v.	}	Superior Court, Caledonia Unit,
	}	Criminal Division
	}	
David Lauderbach	}	DOCKET NO. 486-7-16 Cacr
		Trial Judge: Thomas A. Zonay

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

Defendant appeals from his convictions by jury of domestic assault and providing false information to a police officer.* He argues that he was entitled to a judgment of acquittal on these counts. We affirm.

Defendant was charged with the crimes above after allegedly assaulting his girlfriend's daughter, R.S., who was twenty-two months old at the time, and then lying about the incident to police. The State presented evidence at trial that R.S.'s father contacted police after observing bruises on R.S.'s face. Defendant, mother, and R.S.'s grandmother told varying stories about the injuries. Initially, grandmother told father that R.S. had fallen and that she had been unable to catch her. Grandmother repeated this story to the police, but eventually admitted that she left the child alone with defendant and that the child had obvious marks on her face the following morning. Defendant and R.S.'s mother told grandmother at that time that R.S. had fallen off the couch and struck her face on the coffee table. Like grandmother, mother initially told police that grandmother was watching R.S. when she was injured, but then stated that R.S. had been left alone with defendant. Defendant first denied being present when R.S. was injured, then told police that grandmother was watching R.S. and that R.S. fell off the couch onto the coffee table. Defendant later said that he was in the home with grandmother, but he did not hear the child fall. Defendant subsequently admitted that he had lied about grandmother being there, saying that he did so to avoid creating "drama" with R.S.'s father.

The State presented expert testimony from two doctors who examined the child. One of the witnesses, Dr. Karyn Patno, was a child-abuse pediatrician who had extensive training in determining whether bruising in children was caused by accidental or nonaccidental means. Patno testified that R.S.'s injuries could not have been caused by a fall onto a coffee table. Given the multiple injury sites, Dr. Patno believed that the bruising was caused by nonaccidental means. The doctor who examined R.S. in the emergency room also testified. He too stated that the child's injuries were not consistent with falling onto a coffee table. He indicated that one possible cause

* Defendant was also convicted of violating a relief-from-abuse order, but he does not challenge this conviction on appeal.

for the bruising was that someone squeezed R.S.'s face very hard. Like Dr. Patno, he opined with a reasonable degree of medical certainty that the cause of the bruising was nonaccidental.

At the close of the State's case, defendant moved for a judgment of acquittal. He argued that the State's evidence showed a reasonable alternate explanation for the bruises on R.S.'s face—a fall onto the coffee table—and that the child's mother and grandmother believed that alternate explanation. Defendant also noted that there was no other eyewitness to the incident. As to the second charge, defendant asserted that he had lied to prevent “drama” involving R.S.'s father and not to deflect the investigation. The court denied the motion. The jury found defendant guilty of the charges. Defendant renewed his motion for judgment of acquittal, which the court denied. This appeal followed.

Defendant challenges the court's denial of his motion for a judgment of acquittal. According to defendant, the State's theory that he caused the bruising by grabbing R.S.'s face rested on conjecture. Defendant did not raise this argument below. As to the second charge, defendant argues that he simply went along with the story initiated by the child's mother and grandmother and that his intent was to keep the child's father from becoming upset.

On review, we consider “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.” State v. Delisle, 162 Vt. 293, 307 (1994) (quotation and alterations omitted). The evidence amply supports defendant's convictions here.

Putting aside preservation questions, the State did not need to prove that defendant caused the bruises by grabbing R.S.'s face to establish defendant's guilt of domestic assault. Instead, it needed to show that defendant recklessly caused bodily injury to R.S. by causing nonaccidental bruising to her face. See 13 V.S.A. § 1042. The State presented sufficient evidence to prove that the bruises were caused by nonaccidental means. See State v. Colby, 140 Vt. 638, 642 (1982) (recognizing that “guilt of a defendant in a criminal case may be proved by circumstantial evidence alone, if that evidence is otherwise proper”). Taken in the light most favorable to the State, and excluding modifying evidence, the State's evidence showed that the bruises on R.S.'s face occurred while defendant was home alone with the child, defendant and others lied about what happened to R.S., defendant said the injury occurred when she fell off the couch onto a table, and the State's expert witnesses indicated that the fall as described was inconsistent with the bruising that occurred. This evidence satisfied the State's burden.

To establish defendant's guilt on the second charge, the State needed to show that defendant knowingly gave false information to a law enforcement officer to deflect an investigation from himself or another person. See 13 V.S.A. § 1754(a). The false information at issue here was defendant's statement to police that grandmother was present when R.S. was injured. The jury here could reasonably find that, if a domestic assault had occurred, then defendant lied to avoid responsibility for it. Defendant acknowledged this possibility below, but contended below, and now on appeal, that it was more likely that he lied because he, grandmother, and mother, did not want to upset R.S.'s father. As the trial court explained, this argument rests wholly on the jury's credibility assessments and thus, a judgment of acquittal was inappropriate. We find no error in the trial court's denial of defendant's motion.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Marilyn S. Skoglund, Associate Justice

Karen R. Carroll, Associate Justice