

STATE OF NEW HAMPSHIRE

**HILLSBOROUGH, SS.
NORTHERN DISTRICT**

SUPERIOR COURT

State of New Hampshire

v.

Alexandra Eckersley

Docket No. 216-2022-CR-03011

**ORDER ON DEFENDANT'S MOTION FOR JUDGMENT NOTWITHSTANDING THE
VERDICT OR, ALTERNATIVELY, MOTION FOR NEW TRIAL**

The defendant was convicted by a jury of one count of falsifying physical evidence (felony), one count of reckless conduct (enhanced misdemeanor), and one count of endangering the welfare of a child (misdemeanor). The jury found the defendant not guilty on two counts of felony second degree assault. The defendant now moves for a judgment notwithstanding the verdict (“JNOV”) or, alternatively, to set aside the verdict and grant a new trial. (Doc. 134.) The State objects. (Doc. 135.) For the reasons set forth herein, the defendant’s motion is DENIED.

Factual Background

The evidence presented at trial supports the following. Shortly after midnight on December 26, 2022, a male caller, later identified as George Theberge (“Theberge”), contacted 911. Theberge had built the tent the defendant lived in and stayed there with her sometimes. Theberge was with the defendant on the night that she delivered a baby in the tent. The defendant referred to Theberge as her boyfriend. Pamela Packard

answered the 911 call. Theberge quickly handed the phone to the defendant. The defendant reported that she was on Electric Drive near the trestle bridge by the west side arena and had given birth twice. She described that she was bleeding. Once Packard determined the location and nature of the call, she contacted Manchester Fire Department so they would send rescue out to assist. Packard remained on the line with the defendant for approximately twelve minutes. The defendant reported to Packard that she did not know she was pregnant and at various points said she was, "maybe one month along", "no more than three months", and "no chance I was nine months". The defendant informed Packard that the baby did not live. The defendant informed Packard that she left the baby where it was, and her boyfriend went back to it. The defendant informed Packard that one "lasted a minute" and one "died on the spot". Packard asked the defendant, "where is the fetus" and the defendant responded, "on the ground on the other side of the trestle". Packard told the defendant to stay where she was and gave her instructions to help stop the bleeding. Based upon the information provided to her, Packard believed the baby was not viable and provided instructions to the Fire Department as to the defendant's location. Packard testified that the defendant was in distress and scared.

The Fire Department and Manchester Police Department arrived at the defendant's location. At approximately 12:50 a.m., Officer Collins arrived. Upon arrival at the west side arena, he noted that members of the Manchester Fire Department and other officers were already on scene. The weather was extremely cold. Officer Vitale testified it was approximately 15 degrees. Officer Collins testified that the defendant identified herself. The defendant told Officer Collins that she did not know where the

baby was. She was directing the officers and members of the police department to search east of the arena. She was directing them 1 ½ to 2 minutes east of where they were at the arena. It was extremely dark, and Officer Collins was reliant on his flashlight in the search. The defendant informed Officer Collins that she was coming from a store on the east side, went through the woods, and the baby popped out. The defendant said her camp was west, over the Goffstown line. She said the baby was in the woods, not in the tent. She informed the police that her tent was on the west side across the trestle. She also informed Officer Collins that she heard the baby cry for about a minute, but also said the baby was not breathing and had no pulse. The defendant was described at various points as being “anxious”, “frantic”, “crying”, having “pressured or slurred speech”, and “pacing”. She was also described as “cooperative” and at times “calm.”

Lauren Barry is an EMT that initially arrived on scene at approximately 12:41 am. She attended to the defendant. Barry put the defendant in the ambulance where it was warm. Barry did an initial assessment. She asked the defendant if she wanted to go to the hospital. The defendant stated she did not want to go. Once the bleeding was stopped, the defendant walked with Barry and other first responders around the fields and up to the rail trail searching for the baby. Barry noted that the defendant was bleeding again. The defendant was brought to the ambulance a second time to address the bleeding. While in the ambulance she said she had the baby 1 – 2 minutes off the trail when she was on her way to the camp from the store. An EMT stated it was critical to find the baby. At that point, the defendant informed the EMT and police that the baby was in her tent. The defendant said she did not tell them earlier because she did not want to get yelled at. She also said that she did not want to get in trouble with her

boyfriend. Officer Collins testified it was approximately 30 minutes before the defendant informed them that the baby was in the tent. Officer Vitale testified he was informed the baby was in the tent at approximately 1:30 am. The defendant then led the officers to the tent. She moved quickly and said she knew exactly where she was going. Along the way, the officers saw blood in the woods and found the placenta. The defendant entered the tent with the officer where an officer saw the baby on the ground. The Officer noted that the baby was alive and moving. Officer Collins brought the defendant out of the tent. She questioned whether the baby was still moving, to which officer Collins said "no". The defendant was crying. Barry took the baby and wrapped it in a blanket. The baby was blue, ineffectively breathing, and cold to the touch. Barry moved swiftly. Barry and the baby were taken to CMC hospital by a fire truck. While being transported, the baby started moving his hands and opened his eyes. The baby was treated at CMC hospital. The child presently lives with the defendant and her mother.

Dr. Pelaprat also testified at trial that she conducted an evaluation of the defendant. Her evaluation included a records review of over 7400 pages of records from various residential placements, school records, hospitals, and service providers. She reviewed the police records and spoke to the defendant's family members. She testified to the defendant's significant mental health history, as well as a variety of developmental issues, and deficits in executive functioning. She also testified to the defendant's significant emotional dysregulation and deficits in daily living skills. She described that substance use, housing instability, and severe mental health conditions significantly impacted the defendant's daily functioning and that at the time of this incident the

defendant was in heightened emotional state and was not functioning as a typical person of her biological age.

Standards of Review

“The often-confused concepts of weight and sufficiency of the evidence are distinct and governed by different standards.” State v. Spinale, 156 N.H. 456, 463 (2007). “[S]ufficiency is a question of whether the [State] has met its burden of production at trial, while weight is a question of whether the [State] has appropriately carried its burden of persuasion.” Id. at 465 (quotation omitted).

“[O]n a motion for JNOV, where the trial court applies the sufficiency standard, the trial court upholds the jury’s verdict unless no rational trier of fact could find guilt beyond a reasonable doubt, considering all the evidence and all reasonable inferences therefrom in the light most favorable to the State.” Id. at 463 (cleaned up). In considering a motion for JNOV, the trial court “cannot weigh the evidence or inquire into the credibility of the witnesses, and if the evidence adduced at trial is conflicting, or if several reasonable inferences may be drawn, the motion should be denied.” Id. (quotation omitted). “[T]he question of whether a JNOV is required because of insufficient evidence is a question of law . . . [t]herefore, the trial court has little discretion when deciding whether to grant a motion for JNOV[.]” Id. at 464. The defendant bears the burden of demonstrating the evidence presented at trial was insufficient to prove guilt as a matter of law. Id.

“Although a verdict may be supported by sufficient evidence, a trial court may nevertheless conclude that the judgment is against the weight of the evidence.” State v. Fedor, 168 N.H. 346, 352 (2015) (quotation omitted). “The weight of the evidence is its weight in probative value, not the quantity or amount of evidence.” Id. (quotation omitted).

“The trial court’s assessment is basically a determination that a greater amount of credible evidence supports one side of an issue or cause than the other.” Id. (quotation omitted). However, “the jury verdict must be an unreasonable one before the trial court may set it aside.” Spinale, 156 N.H. at 466 (quotation and brackets omitted). “Thus, the trial court should exercise its discretion with caution and invoke its power to grant a new trial only in exceptional cases in which the evidence preponderates heavily against the verdict and where a miscarriage of justice may have resulted.” Id. (quotations omitted). “The trial court should not disturb the jury’s findings unless the jury clearly failed to give the evidence its proper weight.” Id.

Analysis

I. Motion for JNOV

The defendant argues that she is entitled to judgment notwithstanding the verdict because no rational trier of fact could find the defendant guilty of falsifying physical evidence because no rational jury could find that (1) the defendant believed that an investigation was pending and (2) that the defendant acted purposely. (Doc. 134 ¶ 12.) The defendant argues that multiple people told her she was not in trouble and they were just looking for the baby. She also contends that the evidence showed she was emotional, hysterical, and actively bleeding. The defendant also suggests that the evidence showed that she was worried about getting in trouble with Theberge, not the police.

While the facts pointed to by the defendant may support an inference that the defendant did not know an investigation was pending, additional facts suggest otherwise. There were numerous officials from the Manchester Fire Department,

Manchester Police Department, and EMTs on site looking for the baby. The defendant was repeatedly questioned by officials and first responders about the whereabouts of the baby. Police, fire officials, and EMTs searched the area themselves, as well as with the defendant, in order to locate the baby. Although there was testimony that the defendant was at varying times frantic, crying, anxious and upset, Lauren Barry also testified that she conducted an evaluation of the defendant's state of mind when the defendant indicated she did not want to go to the hospital. Barry testified that the defendant was able to give her name, the date, the current president, and answer additional questions. Although the defendant was told that she would not be in trouble, the State put forth sufficient evidence at trial to meet its burden of production at trial on the issue of whether the defendant was aware that an investigation was pending. On a motion for JNOV, the court cannot weigh the evidence and where more than one reasonable inference may be drawn, the motion must be denied. Spinale, 156 N.H. at 463. Here, there is conflicting evidence which the court would have to weigh. Therefore, the court does not find that these facts support a ruling in favor of a JNOV.

Similarly, the State put forth sufficient evidence to meet its burden on the issue of whether the defendant acted purposely. Here, the defendant's own statements as shown on the body worn camera footage and in her trial testimony reflect that the defendant knew where the baby was located. She stated that she knew but did not tell sooner for fear that she would be in trouble. Additionally, once the defendant decided to reveal the location of the baby, she told them where the baby was and walked quickly, without hesitation or confusion, directly to the tent. The State set forth sufficient

evidence to overcome a motion for judgment notwithstanding the verdict on the element of whether the defendant acted purposely.

Additionally, the defendant argues no rational jury could return a verdict of guilt beyond a reasonable doubt on the charge of reckless conduct: (1) because of the defendant's emotional and physical condition, and importantly, (2) because she thought the baby was dead. The defendant contends that because she thought the baby was dead she could not have "consciously disregarded a risk" that the baby could suffer a protracted injury. (Id. ¶ 13.)

Evidence was presented that in or about the early morning hours on December 26, 2022, the defendant had given birth in a tent and was bleeding extensively. When on the phone with the e-911 operator, Pamela Packard, the defendant was in distress, breathing heavy, and scared. She was, however, able to relay to Packard her location and information that she was bleeding. She was able to follow Packard's instructions and remained on the line with her for approximately 12 minutes. When the police arrived, the defendant was at times crying, frantic, and pacing. She was also, however, cooperative in giving her name and date of birth, and was able to relay the date, the name of the current president, and other information that suggested to EMTs that her mental state was clear enough to make her own decision to decline going to the hospital. The defendant also relayed to the 911 operator that she did not know she was pregnant, could not have been more than 3 months pregnant. However, she later told personnel on scene that she heard the baby cry. She also ultimately told the EMTs, fire, and police where the baby was and that she had not told them earlier because she did

not want to get into trouble. She took them directly to the baby once she disclosed the baby's location.

Based on these facts, the Court finds that the State put forth sufficient evidence to overcome the defendant's motion for a judgment notwithstanding the verdict on the argument that no rational trier of fact could find beyond reasonable doubt that the defendant "consciously disregard[ed] a substantial and unjustifiable risk that her conduct" could cause serious bodily injury to the baby. Although the defendant was experiencing physical and mental distress, there is evidence that she was aware of what was happening and her own actions. Additionally, although she informed those on scene that she believed the baby was dead, she also indicated that she heard the baby cry before she left it. The Court disagrees that no rational trier of fact could find that she consciously disregarded a substantial and unjustifiable risk after having heard the baby cry. Therefore, the motion for judgment notwithstanding the verdict regarding the reckless conduct charge is denied.

Finally, the defendant argues again that because she believed the baby was dead, no rational jury could return a guilty verdict on the charge of endangering the welfare of a child as, based on her testimony, she could not have purposely violated a duty of care. (*Id.* ¶13.) As set forth above, although the defendant states she believed the baby was not alive when she left it, the evidence admitted by the State at trial that the defendant heard the baby cry before she left it, and did not immediately notify first responders as to its whereabouts, is sufficient evidence to overcome a JNOV.

Accordingly, the motion to enter judgment notwithstanding the verdict is DENIED.

II. Motion to Set Aside Verdict

The Court now turns to the defendant's request to set aside the verdict and grant the defendant a new trial. The defendant contends a new trial is warranted because the only evidence of the defendant's knowledge about whether the baby was alive is her own testimony that she heard the baby cry briefly and that Theberge told her the baby had no pulse. The defendant testified that the heat was on when she left the tent and the only person to return to the tent after she left was Theberge. The defendant argues, therefore, that the evidence does not support a finding that under "the circumstances as she believed them to be" she acted with the "conscious object" to commit a crime and did not "consciously disregard a risk." (Id. ¶¶17, 18.)


Although the defendant does not expand on this argument with further specificity, the Court reads the defendant's motion to set aside the verdict as arguing that the weight of the evidence does not support the jury's finding that the defendant acted with the requisite *mens rea* on the charges on which she was convicted. The defendant points only, however, to her statement that she believed the baby was dead. Yet evidence was also presented that she heard the baby crying, that she led police on a search for the baby in areas where she knew the baby had not been born, that she did not inform the police or first responders where she had given birth for approximately 40 minutes, and that she stated she misled them about the baby's whereabouts because she did not want to get into trouble. Additionally, once she disclosed the baby's location, she did so without any confusion about the baby's location. In light of all of the evidence presented at trial, the Court does not find it was against the weight of the evidence for a jury to find that the

defendant “consciously disregarded a substantial and unjustifiable risk” with respect to the reckless conduct charge or that she did not have the “conscious object” to act, that is, that she “specifically intended or desired to bring about a particular result” on the falsifying physical evidence and endangering the welfare of a child charges. Put another way, given that the defendant testified that she heard the baby cry and led the police and first responders directly to where the baby was after they had been searching for approximately 40 minutes, it was reasonable for the jury to conclude that the defendant acted with the requisite *mens rea* for each charge on which it convicted her. See Spinale, 156 N.H. at 466.

A jury’s verdict must be an unreasonable one before the court may set it aside. Id. at 465. The court must exercise its discretion with caution and invoke its power to grant a new trial “only in exceptional cases in which the evidence preponderates heavily against the verdict” and “where a miscarriage of justice may have resulted.” Id. A trial court should not disturb the jury’s findings unless the jury clearly failed to give the evidence its proper weight. Id. The Court does not find that the jury did so here. Accordingly, the motion to set aside the verdict is DENIED.

SO ORDERED.

September 27, 2024
Date



Amy B. Messer
Presiding Justice

Clerk's Notice of Decision
Document Sent to Parties
on 09/30/2024