

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs June 26, 2007

STATE OF TENNESSEE v. LETHA DOTSON
Appeal from the Circuit Court for Rhea County
No. 16534 J. Curtis Smith, Judge

No. E2006-02784-CCA-R3-CD - Filed August 15, 2007

Following a jury trial in Rhea County Circuit Court, the defendant was convicted of contributing to the delinquency of a minor, a Class A misdemeanor, and sentenced to eleven months, twenty-nine days in jail, with the defendant to serve eleven days in the county jail and the remainder of the sentence on probation. The defendant appeals, contending that the trial court should have dismissed the indictment and issued a judgment of acquittal at the close of the state's proof based on insufficient evidence to support her conviction and that the trial court erred in charging her with criminal responsibility for the conduct of another. After reviewing the record, we conclude that the defendant's issues are without merit and affirm the judgment of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court
Affirmed**

D. KELLY THOMAS, JR., J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J., and THOMAS T. WOODALL, J., joined.

J. Shannon Garrison, Dayton, Tennessee, for the appellant, Letha Dotson.

Robert E. Cooper, Jr., Attorney General and Reporter; Cameron L. Hyder, Assistant Attorney General; J. Michael Taylor, District Attorney General; William Dunn, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

At trial, Amber Dugger testified that she spent the evening of May 11, 2005, at the residence of a friend, Jessica Iles. Dugger, Iles, and Iles's sister Ashley missed their school bus, so Dugger called the defendant, Letha Dotson, and asked for a ride to school. The defendant, the defendant's daughter Brandy, and another child, Amber Arthur, then stopped by the Iles residence and picked up the three girls. As the defendant and the five girls proceeded to school, Arthur produced a marijuana cigarette, lit it, and began smoking it. Arthur, Dugger, and Brandy Dotson then took turns smoking the cigarette; the Iles sisters did not smoke the cigarette. According to Dugger, the defendant did not give the cigarette to Arthur, and the defendant told the girls to put out the cigarette "plenty of times," but the defendant did not attempt to stop the

car or take the cigarette away from the girls. Dugger stated that the smoking went on for about five minutes before one of the girls put out the cigarette. Upon entering the school, Dugger said she was “high,” and she believed that Arthur and Brandy Dotson were high as well.

Dugger testified that shortly after the five girls entered school, a staff member sent them to the office of the assistant principal, Mr. Messimer. The three girls who smoked the cigarette were expelled from school, but the Iles sisters were allowed to remain in school. The school contacted the girls’ parents; Amber Dugger’s mother, Kathy Dugger, took her daughter to the chambers of the local juvenile court judge, James W. McKenzie. Amber Dugger was given a drug test, and she tested positive for marijuana. Amber Dugger’s testimony was reiterated by the testimony of her mother Kathy and that of the two Iles sisters, who testified that as the three girls who had smoked the marijuana cigarette entered the school, they were giggling and “acting funny.”

ANALYSIS

On appeal, the defendant argues that the trial court erred in refusing to dismiss the indictment and grant a motion for judgment of acquittal at the close of the state’s proof and that the trial court erred in charging the jury with criminal responsibility for the conduct of another. The defendant argued these issues at trial; however, the defendant did not file a motion for a new trial. The Tennessee Rules of Criminal Procedure state that a motion for new trial shall be made “within thirty days of the date the order of sentence is entered.” Tenn. R. Crim. P. 33(b). This provision is mandatory, and the time for filing may not be extended. Tenn. R. Crim. P. 45(b). Because the defendant did not raise these issues in a motion for new trial, the issues are waived on appeal, see Tenn. R. App. P. 3(e), and the defendant may only argue that the evidence produced at trial was insufficient to support her conviction. Although she does not directly raise this issue on appeal, we conclude that the evidence was sufficient for a rational jury to find the defendant guilty of contributing to the delinquency of a minor beyond a reasonable doubt.

An appellate court’s standard of review when the defendant questions the sufficiency of the evidence on appeal is “whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979) (emphasis in original). The appellate court does not reweigh the evidence; rather, it presumes that the jury has resolved all conflicts in the testimony and drawn all reasonable inferences from the evidence in favor of the state. See State v. Sheffield, 676 S.W.2d 542, 547 (Tenn. 1984); State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978). Questions regarding witness credibility, conflicts in testimony, and the weight and value to be given to evidence were resolved by the jury. See State v. Bland, 958 S.W.2d 651, 659 (Tenn. 1997). A guilty verdict removes the presumption of innocence and replaces it with a presumption of guilt, and on appeal the defendant has the burden of illustrating why the evidence is insufficient to support the jury’s verdict. Id.; State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982).

Tennessee Code Annotated section 37-1-156(a) provides:

Any adult who contributes to or encourages the delinquency or unruly behavior of a child, whether by aiding or abetting or encouraging the child in the commission

of an act of delinquency or unruly conduct or by participating as a principal with the child in an act of delinquency, unruly conduct or by aiding the child in concealing an act of delinquency or unruly conduct following its commission, commits a Class A misdemeanor, triable in the circuit or criminal court.

The trial court also gave the following jury instruction:

Criminal responsibility for conduct of another. The defendant is criminally responsible as a party to the offense of contributing to the delinquency of another if the offense was committed by the defendant's own conduct or by the conduct of another for which the defendant is criminally responsible, or both. Each party to the offense may be charged with the commission of an offense. The defendant is criminally responsible for an offense committed by the conduct of another if having a duty imposed by law or voluntarily undertaken to prevent commission of the offense and acting with the intent to promote or assist its commission the defendant fails to make a reasonable effort to prevent the commission of the offense.

Before you find the defendant guilty of being criminally responsible for the charged offense committed by the conduct of another, you must find that all the essential elements of that offense had been proven by the State beyond a reasonable doubt.

In this case, the evidence shows that although the defendant did not supply the marijuana cigarette, she ultimately did nothing to stop the three children in her car, including her own daughter, from smoking it. During the approximately five minutes the cigarette was being smoked in the defendant's car, she repeatedly told the girls to put out the cigarette, but she did not stop the car or try to take the cigarette away from them. In fact, she provided a place for the girls to smoke the marijuana insulated from exposure to the public and law enforcement. The defendant allowed the three girls who had been smoking the cigarette to walk into the school building, despite the fact that the girls were giggling and appeared to be "acting funny." Additionally, one of the girls ultimately tested positive for marijuana. After reviewing the evidence, we conclude that a rational trier of fact could reasonably find beyond a reasonable doubt that the defendant committed the offense of contributing to the delinquency of a minor.

CONCLUSION

Upon consideration of the foregoing and the record as a whole, the judgment of the trial court is affirmed.

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D. KELLY THOMAS, JR., JUDGE
