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. 2018-283

JANUARY TERM, 2019

State of Vermont v. Darren A. Defoe*	}	APPEALED FROM:
	}	
	}	Superior Court, Franklin Unit,
	}	Criminal Division
	}	
	}	DOCKET NO. 1414-11-17 Frcr
		Trial Judge: Martin A. Maley

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

Defendant appeals from his conviction for baiting a deer following a bench trial. He argues that the evidence does not support his conviction. We affirm.

In November 2017, defendant was charged with "tak[ing] deer by using bait" in violation of 10 V.S.A. App. § 37-10. A game warden testified at trial, as did defendant. Defendant moved for a judgment of acquittal at the close of the State's case, which the court denied. The court found defendant guilty and made the following findings on the record. In 2017, a complainant notified the game warden of a suspected bait pile, made of corn, on what the warden believed to be the complainant's property. With the complainant's help, the warden located the bait pile. There was no reason for the corn to be in the forested area where it was found. Based on circumstantial evidence and the warden's training and experience, the court concluded that the bait was placed there purposefully to attract deer.

After learning that the bait pile was not on the complainant's property, the warden obtained a search warrant. He returned to the property during hunting season and again found the bait pile. While the warden was standing near the bait pile, defendant ordered him off the property. At the time, defendant was in a temporary tree stand with a bow and a so-called nocked arrow, ready to shoot any deer in the area; he was wearing full camouflage gear. The court found it clear that defendant was in the process of hunting and that he was attempting to "take" a deer within the meaning of the statute. See id. § 19a-3.15 (defining "take" to include "hunting . . . and all lesser acts, . . . whether they result in the taking [of an animal] or not"). Bait had been placed in the area with the intention of attracting wildlife. While the court did not find beyond a reasonable doubt that defendant placed the bait there, it was persuaded, based upon the warden's credible testimony, that defendant knew the bait was there and that he used the bait for the purpose of taking a deer, which was illegal. Defendant had a clear line of sight within 20 to 30 yards of the bait site. In fact, this was the only line of sight from the tree stand where defendant was found. The warden described it as an ideal location and a very easy shot. The court concluded that this circumstantial evidence established defendant's guilt beyond a reasonable doubt. This appeal followed.

Defendant argues that the court erred in denying his motion for a judgment of acquittal. He asserts that, aside from the warden's testimony, there was no evidence to show that he knew the corn was there. He maintains that one cannot infer that he knew the bait was there based on his intent to take a deer in the bait area. According to defendant, the State's case rests on a mere suspicion of guilt rather than proof beyond a reasonable doubt.

We review the trial court's ruling on defendant's motion for judgment of acquittal using the same standard as the trial court. Viewing the "evidence in the light most favorable to the State," and "excluding any modifying evidence," we must determine if the evidence "is sufficient to fairly and reasonably convince a trier of fact that the defendant is guilty beyond a reasonable doubt." State v. Davis, 2018 VT 33, ¶ 14. A defendant's guilt "may be proved by circumstantial evidence alone, if that evidence is proper and sufficient in itself." State v. Kerr, 143 Vt. 597, 603 (1983). As we have explained, "[t]he law is not so naive that it permits its violators to hide behind 'speculation and conjecture' in the presence of sufficient facts and circumstances to justify an inference of guilt." Id. "The standard of proof is the same whether the evidence is direct or circumstantial: the facts necessary to establish the elements of a crime must be proved beyond a reasonable doubt. And this proof of facts includes reasonable inferences properly drawn therefrom." Id.

We find the evidence here sufficient to show, beyond a reasonable doubt, that defendant took "deer by using bait" in violation of 10 V.S.A. App. § 37-10. As recounted above, the warden found a bait pile in the same location both before and during hunting season. The fact that the complainant initially had to lead the warden to the bait pile is of no moment, both because it is modifying evidence and because the warden had no difficulty finding the bait pile again during hunting season. The court as factfinder could reasonably credit the warden's testimony that the bait was likely placed in the forest purposefully to attract deer. On the day in question, the warden found defendant, dressed in camouflage gear, sitting in a tree stand with a bow and nocked arrow, ready to shoot. The only clear line of sight was to the bait site twenty-five to thirty yards away, and it was "an extremely easy shot." Given the warden's testimony about the placement of the tree stand, which was oriented to the bait site, and the fact that defendant was looking toward the bait pile with an arrow nocked on his bow, the trial court as factfinder could reasonably conclude beyond a reasonable doubt that defendant was taking deer using bait.

The State's case does not rely on defendant's mere presence at the scene, as defendant asserts. Instead, the court could infer defendant's guilt from the evidence outlined above that defendant was using bait to take a deer.

We note that other courts have reached similar conclusions under similar circumstances. See, e.g., Redding v. State, 458 S.E.2d 168, 169 (Ga. Ct. App. 1995) (finding evidence sufficient to sustain conviction for hunting over baited field where ranger found defendant with loaded firearm, surrounded by boot tracks matching his boots, standing near approximately twenty pounds of clearly visible shelled corn spread on ground, and ranger testified that one could readily shoot deer in baited area from deer stand from which defendant claimed to be hunting); Commonwealth v. Harsch, 71 Pa. D. & C.2d 25, 28-30 (Ct. Common Pleas 1975) (upholding conviction for use of bait to attract deer where wardens found bait pile near where deer had been shot, as well as other bait piles, and each pile "was in a clear line of fire from where defendant stood at the tree," and defendant "clearly took advantage of the fact that the discarded produce was accessible to the deer").

The court did not err in denying defendant's motion for a judgment of acquittal.

Affirmed.

BY THE COURT:

Marilyn S. Skoglund, Associate Justice

Beth Robinson, Associate Justice

Karen R. Carroll, Associate Justice