

**Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.**

ATTORNEY FOR APPELLANT:

**DEBORAH MARKISOHN**  
Marion County Public Defender Agency  
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

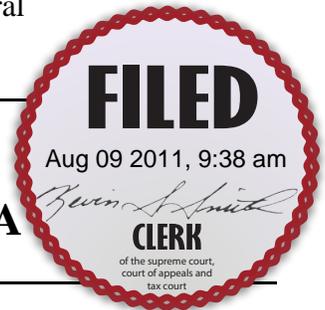
**GREGORY F. ZOELLER**  
Attorney General of Indiana

**JANINE STECK HUFFMAN**  
Deputy Attorney General  
Indianapolis, Indiana

---

**IN THE  
COURT OF APPEALS OF INDIANA**

---



DANIELLE GREEN, )  
 )  
Appellant-Defendant, )  
 )  
vs. ) No. 49A02-1101-CR-16  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Plaintiff. )

---

APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Kimberly J. Brown, Judge  
The Honorable Teresa A. Hall, Master Commissioner  
Cause No. 49G16-1005-FD-35395

---

**August 9, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BRADFORD, Judge**

Appellant-Defendant Danielle Green appeals from her convictions of two counts of Class D felony Neglect of a Dependent (“Neglect”).<sup>1</sup> Green contends that the trial court abused its discretion in denying her mistrial motion and in admitting certain evidence and that the State produced insufficient evidence to sustain her convictions. We affirm.

### **FACTS AND PROCEDURAL HISTORY**

At approximately 11:00 p.m. on May 2, 2010, Samantha Byers observed Green park in the lot of Fandango’s, a bar in Indianapolis. The surrounding area is a high crime area, with frequent police runs related to reports of illegal drug activity, prostitution, shots fired, persons shot, and robberies. Green parked approximately 150 to 200 feet from Fandango’s, in a spot where the car could not be seen from inside the bar, and walked into the bar. Approximately twenty minutes later, Byers noticed movement in the back seat of Green’s car and, upon investigation, discovered two children in the back seat. Byers waited approximately five minutes before walking away to inform a police officer conducting a nearby traffic stop about the children.

Indianapolis Metropolitan Police Lieutenant Mark McCardia arrived and found seven-year-old T.G. and four-year-old E.G. in the back seat of Green’s car. The children told Lieutenant McCardia that Green was their mother. After waiting approximately twenty minutes for Green to return to the car, Lieutenant McCardia called child protective services. Meanwhile, two other police officers walked to Fandango’s in an attempt to locate Green. Outside the entrance, the officers encountered Green, who denied being Danielle Green when

---

<sup>1</sup> Ind. Code § 35-46-1-4 (2009).

asked. The two officers searched inside Fandango's for Green to no avail. Approximately forty-five minutes to an hour after police arrived, Green was located in a nearby alley. Green at first again denied being Danielle Green, but finally admitted it. Green told a police officer, "I do it all the time. It was no big deal." Tr. p. 49.

On May 6, 2010, the State charged Green with two counts of Class D felony Neglect. On September 2, 2010, Green filed a motion in limine seeking, in part, to prevent the State from presenting evidence at trial that the location of her arrest was in a "high crime" or "known crime" area, which portion of the motion the trial court denied. Appellant's App. p. 34. On November 4, 2010, the day of trial, Green filed a supplemental motion in limine seeking to prevent the State from presenting evidence about what T.G. told police at the scene, which motion the trial court granted.

At trial, when Lieutenant McCardia was on the stand, Green's counsel asked him, "[W]hat were you talking to [T.G.] about?" Tr. p. 75. Lieutenant McCardia responded, "Oh we were asking like, how long mom had been in there, is this a normal thing? Things like that. Does this happen all the time, and...." Tr. p. 75. After Green's counsel stopped Lieutenant McCardia, the State requested a sidebar, at which it argued that Green had opened the door to testimony regarding what T.G. told police, and the trial court agreed. The following exchange then took place: "THE COURT: Officer, I do have a question from the jury. When you asked [T.G.] questions, what was [his] response to the question how often does this happen? OFFICER McCARDIA: Um, he responded it happened all the time." Tr. p. 78. Green requested a mistrial, which request the trial court denied. The jury found Green

guilty as charged. On December 17, 2010, the trial court sentenced Green to 545 days of incarceration for each Neglect conviction, with 345 days of each sentence suspended and the sentences to be served concurrently.

## DISCUSSION

### I. Whether the Trial Court Abused its Discretion in Denying Green's Mistrial Motion

Green's argument is essentially that the trial court erroneously concluded that she opened the door to the admission of T.G.'s statement to Officer McCardia about how often he was left in the car alone and that the admission of the statement warranted a mistrial.

We review a trial court's decision to deny a mistrial for abuse of discretion because the trial court is in "the best position to gauge the surrounding circumstances of an event and its impact on the jury." *McManus v. State*, 814 N.E.2d 253, 260 (Ind. 2004). A mistrial is appropriate only when the questioned conduct is "so prejudicial and inflammatory that [the defendant] was placed in a position of grave peril to which he should not have been subjected." *Mickens v. State*, 742 N.E.2d 927, 929 (Ind. 2001) (quoting *Gregory v. State*, 540 N.E.2d 585, 589 (Ind. 1989)). The gravity of the peril is measured by the conduct's probable persuasive effect on the jury. *Id.*

*Pittman v. State*, 885 N.E.2d 1246, 1255 (Ind. 2008).

Even if the trial court erroneously concluded that Green opened the door to the admission of T.G.'s statement, we cannot conclude that that admission placed her in a position of grave peril. At worst, T.G.'s statement was merely cumulative of her own statement to police, "I do it all the time." Tr. p. 49. "Erroneously admitted evidence which is cumulative of other, properly admitted evidence does not establish the prejudice required for reversal." *Davis v. State*, 520 N.E.2d 1271, 1274 (Ind. 1988) (citing *Campbell v. State*, 500

N.E.2d 174 (Ind. 1986)). The trial court did not abuse its discretion in denying Green's mistrial motion.

## **II. Whether the Trial Court Abused its Discretion in Admitting Certain Evidence**

Green contends that the trial court abused its discretion in admitting evidence tending to prove that the neighborhood in which Fandango's is located is a high crime area. Green appears to argue on appeal that such evidence should have been excluded pursuant to Indiana Evidence Rule 403, which provides: "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, or needless presentation of cumulative evidence." Specifically, Green contends that whatever probative value the "high crime area" evidence may have had, it was substantially outweighed by the danger of unfair prejudice to Green.

We cannot conclude that the trial court abused its discretion in admitting "high crime area" evidence. Evidence that a defendant is aware that a particular neighborhood is a high crime area strikes us as very relevant in the Neglect context, as it would pertain directly to the defendant's knowledge that she was placing a dependent in harm's way. Green suggests, however, that the evidence admitted did not establish that *she* knew the area around Fandango's to be a high crime area. Green's own testimony, however, suggests otherwise. Green testified that her uncle lived nearby, and, when asked if she was aware that it was a high crime neighborhood, replied that she had "seen the police around that area a lot when I

had went to visit.” Tr. p. 138. In our view, this tends to prove that Green was aware that the area around Fandango’s was a high crime area, and therefore admissible.

Moreover, other evidence that others knew the area around Fandango’s to be a high crime area can lead to inferences regarding Green’s knowledge. Inferences about an individual’s subjective state of mind are routinely drawn from the circumstances, regardless of whether that individual provides personal insight into his actual state of mind. *See, e.g., Goodner v. State*, 685 N.E.2d 1058, 1062 (Ind. 1997) (“Intent is a mental state, and the trier of fact must often infer its existence from surrounding circumstances when determining whether the requisite intent exists.”); *Jernigan v. State*, 612 N.E.2d 609, 613 (Ind. Ct. App. 1993), *trans. denied*. (“Because knowledge is a mental state of the actor, the trier of fact must resort to reasonable inferences based on the examination of the surrounding circumstances to reasonably infer its existence.”); *see also, McClain v. State*, 675 N.E.2d 329, 331 (Ind. 1996) (observing, with respect to Indiana Rule of Evidence 803(4) statements made for purposes of medical diagnosis, that declarant’s subjective belief may be inferred from the circumstances).

Byers described the area around her home as “[n]ot very good. There’s a lot of abandoned homes, prostitution. It’s a very bad area.” Tr. p. 41. Indianapolis Metropolitan Police Officer Grady Copeland described the neighborhood as “an area that’s a very high crime area for narcotics activity. A lot of prostitution, prostitution activity, as well as shots fired runs, person shot and robberies.” Tr. p. 91. Lieutenant McCardia testified that the area was “one of our higher crime areas.” Tr. p. 56. As a whole, the record indicates that it was

somewhat common knowledge that the area around Fandango's was a high crime area. We conclude that the jury was entitled to consider this circumstance as bearing on Green's knowledge of the area. The trial court did not abuse its discretion in allowing "high crime area" evidence.

### **III. Whether the State Produced Sufficient Evidence to Sustain Green's Convictions**

Green argues there is insufficient evidence to sustain her convictions for Neglect. When reviewing the sufficiency of the evidence to support a conviction, we consider only the probative evidence and reasonable inferences supporting the verdict. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). It is the factfinder's role to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. *Id.* We consider conflicting evidence in the light most favorable to the trial court's ruling. *Id.* We affirm the conviction unless no reasonable fact-finder could find that the elements of the crime were proven beyond a reasonable doubt. *Id.*

A person having the care of a dependent who knowingly or intentionally places the dependent in a situation that endangers the dependent's life or health commits Neglect, a Class D felony. Ind. Code § 35-46-1-4(a)(1). The Indiana Supreme Court has held that this statute "must be read as applying only to situations that expose a dependent to an 'actual and appreciable' danger to life or health." *Gross v. State*, 817 N.E.2d 306, 309 (Ind. Ct. App. 2004) (quoting *State v. Downey*, 476 N.E.2d 121, 123 (Ind. 1985)). The purpose of the Neglect statute is to authorize the intervention of the police power to prevent harmful

consequences and injury to dependents without having to wait for actual loss of life or limb. *Id.*

A person engages in conduct knowingly if, when she engages in the conduct, she is aware of the high probability that she is doing so. Ind. Code § 35-41-2-2(b) (2009). We have explained that the “knowing” mens rea requires subjective awareness of a high probability that a dependent has been placed in a dangerous situation, not just any probability. *Scruggs v. State*, 883 N.E.2d 189, 191 (Ind. Ct. App. 2008) (quoting *Gross*, 817 N.E.2d at 309), *trans. denied*. Because such a finding requires one to resort to inferential reasoning to ascertain the defendant’s mental state, we must look to all the surrounding circumstances of a case to determine if a guilty verdict is proper. *Id.*

We conclude that the State produced ample evidence to sustain Green’s convictions. The record indicates that, at approximately 11:00 p.m., Green left her two young children alone in a car parked 150 to 200 feet from Fandango’s and then went inside the bar. Green’s car could not be seen from inside Fandango’s. For approximately the next hour, there is no indication that Green made any attempt to check on her children. Moreover, the record indicates that Fandango’s was located in a high crime area and that Green was aware of that fact. We have little trouble concluding that evidence that a defendant left her children alone in a car, at night, in a high crime area for an hour is sufficient to sustain a finding that she knowingly or intentionally placed the dependents in a situation that endangered their life or health. Green points to evidence, primarily her own testimony, tending to prove that she did

not believe that she was placing her children in jeopardy. This is nothing more than an invitation to reweigh the evidence, however, one that we decline.

The judgment of the trial court is affirmed.

ROBB, C.J., and BARNES, J., concur.