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# IN THE
# COURT OF APPEALS OF INDIANA

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| C. I., | ) | |
| | ) | |
| Appellant-Defendant, | ) | |
| | ) | |
| vs. | ) | No. 49A02-0903-CR-233 |
| | ) | |
| STATE OF INDIANA, | ) | |
| | ) | |
| Appellee-Plaintiff. | ) | |

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Clark H. Rogers, Judge
Cause No. 49G17-0810-FA-233832

**September 23, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BARNES, Judge**

## Case Summary

C.I. appeals her three convictions for Class D felony neglect of a dependent.[1] We affirm.

## Issue

C.I. raises one issue, which we restate as whether there is sufficient evidence to support her convictions.

## Facts

At approximately 12:30 p.m. on October 13, 2008, C.I. drove to a busy McDonalds near an interstate in Indianapolis. C.I. left her three children, ages five, three, and ten months, alone in the car with the windows down, the sunroof open, and the doors unlocked while she went inside to get a refund from an earlier purchase. C.I. returned to the car and put the key in the ignition intending to utilize the drive-thru to buy lunch. C.I. decided she did not want to wait in the long line for the drive-thru and went back into the restaurant to buy lunch. C.I. left the children alone in the car again with the windows down, the sunroof open, the doors unlocked, and the key in the ignition.

During this time, Robert Shoulders arrived at the McDonalds and saw "one little kid on top of a windshield of a car, outside the car, climbing on it through the sunroof." Tr. p. 20. The child was "on the windshield of the car trying to climb back into the sunroof." Id. Another child was sitting in the driver's seat with the windshield wipers on. A baby was in the car seat in the backseat "screaming its head off." Id. Shoulders waited approximately five to seven minutes for someone to return, and when no one did

[1] We use initials in this case so as to avoid the identification of the children.

he went into the McDonalds and asked who had left children alone in a car. No one responded, and the manager was not aware of anyone's children being alone in a car. Shoulders ordered food and watched the car while he waited for it. While Shoulders was getting his food, C.I. went out to the car and came back in.

Shoulders was going to call 911 when he saw a police officer drive into the parking lot. Shoulders flagged down the police officer, who got out of his car and began to investigate. At the same time, C.I. came out of the restaurant. Receipts confirm that C.I. received a refund at 12:44 and placed an order at 12:59.

On October 16, 2008, the State charged C.I. with three counts of Class D felony neglect of a dependent. A bench trial was conducted, and C.I. was found guilty as charged. C.I. now appeals.

**Analysis**

C.I. argues there is insufficient evidence to sustain her convictions for Class D felony neglect of a dependent. 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 fact-finder'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 of a dependent, a Class D felony. Ind. Code § 35-46-1-4(a)(1). Our 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.

In this case, the State alleged that C.I. acted knowingly. A person engages in conduct knowingly if, when he or she engages in the conduct, he or she is aware of the high probability that he or she is doing so. I.C. § 35-41-2-2(b). 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.

C.I. likens her case to Scruggs, in which we reversed a neglect of a dependent conviction where a parent left her seven-year-old son home alone for three hours during the day while he was home sick from school. We rejected a per se rule that leaving a seven-year-old child home alone for any period of time constitutes neglect of a dependent

and reasoned, "Scruggs may have demonstrated bad judgment, but, again, the State has not proved beyond a reasonable doubt that she had a subjective awareness of a high probability that she had placed M.H. in a dangerous situation." Scruggs, 883 N.E.2d at 191.

C.I. also compares the facts of this case to those in Gross, in which Gross and Hartman played a "hostage game" with their children where they taped the children's wrists and ankles together with light construction tape and the children would compete to see who could break free first. This was a game the children enjoyed playing and was not intended to punish or confine the children. In reversing their convictions for neglect of a dependent, we concluded:

> Although the so-called "hostage" game strikes us as somewhat bizarre and not something many child development experts would condone, we conclude there is insufficient evidence that playing the game exposed B.H. and C.H. to a substantial, actual, and appreciable risk of mental or physical harm. Furthermore, given the circumstances of this case—that the taping was viewed as a game by Gross, Hartman, and the children, and that the tape would be removed if the children requested it—there is insufficient evidence that Gross and Hartman were subjectively aware of a high probability that B.H. and C.H. were endangered by the taping.

Gross, 817 N.E.2d at 310.

This case is distinguishable from Scruggs and Gross. Here, there is evidence from which the trial court could have inferred that C.I. was subjectively aware of a high probably that the children were endangered by the manner in which she left them alone in the car. Although C.I. testified she was not aware that she was placing her children in danger, she also testified that she "normally" would have gone through the drive-thru but

did not want to that day because she was running low on gas, suggesting that she knew she should not leave the children alone in the car. Tr. p. 30.

Further, Trooper Troy Sunier testified that the lack of adult supervision was a danger in and of itself and that the McDonalds was not in a safe area. Shoulders testified that he felt the children were in danger because of the semi drivers and "other people that come in there all day long." Id. at 25. C.I. left her three young children alone in an unlocked car in an "[e]xtremely busy" McDonald's parking lot during lunch time for approximately thirty minutes. Id. at 13. The doors were unlocked and the windows and the sunroof were "[a]ll the way" open. Id. at 7, 8. The children were not buckled in their seats. At one point one of the children was "on top of a windshield of a car, outside the car, climbing on it through the sunroof." Id. at 20. Adding to the danger, C.I. left the keys in the ignition of the car after she went back into the restaurant to purchase lunch. Shoulders saw one of the children in the driver's seat with the windshield wipers on. Without listing all of the dangers that the children faced, this evidence shows that they could have fallen from the car, been injured in the parking lot, or inadvertently started the car and put it into gear. It was within the trial court's prerogative to conclude that C.I. was aware of a high probability that her children had been placed in a situation that exposed them to actual and appreciable danger. We will not reweigh the evidence.[2]

[2] Our holding should not be construed as a per se rule that leaving a child alone in a car in and of itself constitutes felony neglect of a dependent. It is the totality of the evidence, not one isolated fact, that serves as the basis for C.I.'s convictions.

## Conclusion

The State proved that C.I. was subjectively aware of the high probability that the children were endangered. We affirm.

Affirmed.

NAJAM, J., and KIRSCH, J., concur.