

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.

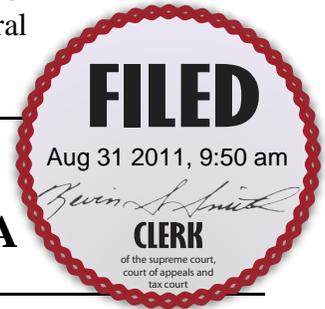
ATTORNEY FOR APPELLANT:

LEANNA WEISSMANN
Lawrenceburg, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

KATHERINE M. COOPER
Deputy Attorney General
Indianapolis, Indiana



**IN THE
COURT OF APPEALS OF INDIANA**

AIMEE COTTON,

Appellant- Defendant,

vs.

STATE OF INDIANA,

Appellee- Plaintiff,

)
)
)
)
)
)
)
)
)
)

No. 15A05-1101-CR-30

APPEAL FROM THE DEARBORN SUPERIOR COURT
The Honorable Sally Blankenship, Judge
Cause No. 15D02-0909-FD-179

August 31, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Chief Judge

Case Summary and Issue

Aimee Cotton¹ appeals her conviction of neglect of a dependent, a Class D felony. Cotton raises one issue for our review, which we restate as whether sufficient evidence supports the jury's finding that Cotton committed neglect of a dependent by depriving a dependent of education as required by law. Concluding the evidence is sufficient, we affirm.

Facts and Procedural History

Cotton is a single mother of S.S. and five other children, three of whom have special needs. Between 2007 and 2009, S.S. attended fifth and sixth grade at Aurora Elementary School in Dearborn County. During those years, S.S. exhibited attendance problems at school. S.S. was absent nineteen days during her fifth grade year, most of which were unexcused and occurred in the spring semester, and she was absent thirty-eight and one-half days during her sixth grade year, twenty-two and one-half of which were unexcused. Further, in the first semester of her seventh grade year, S.S. accumulated many more absences, ten of which were unexcused. The school attendance counselor sent multiple letters to Cotton and called her to discuss S.S.'s poor attendance. Cotton's only response came when she informed the attendance counselor that S.S.'s absences were the result of S.S. suffering from cramps, an explanation that had no accompanying medical documentation.

During this time, S.S.'s grades suffered. In fifth grade, during the fall semester, S.S. received all "A" and "B" grades. In the spring semester, coinciding with her increase

¹ We note that there is some confusion in the record and briefs regarding the spelling of the Appellant's first name. For the sake of consistency, we have used the version contained on our docket.

in absences, S.S. received a “D” for a grading term and a “D+” for a semester in social studies. S.S. also received several “C” grades in the spring semester. S.S.’s grades suffered even more substantially during her sixth grade year, when she received several “F” grades in English and reading, an “F” and two “D” grades in social studies, and several “D” grades in math. Despite her absences and grades, S.S. was “assigned” to seventh grade at the end of her sixth grade year.²

While S.S.’s grades may have suffered during this time, her standardized test scores on the Indiana Statewide Testing for Educational Progress (“ISTEP”) exam were above passing, and her scores on an evaluative test, produced by the Northwest Evaluation Association (“NWEA”), placed her yearly growth well above average. However, her performance on each declined as time went on from the fall of 2007 to the spring of 2009.

Two referrals were sent to the Dearborn Circuit Court’s probation department during the relevant school years, notifying them of S.S.’s high number of absences. Near the end of S.S.’s fifth grade year, the probation department sent Cotton a letter notifying her that if S.S. continued to be absent without excuse, an investigation would commence to determine if charges for truancy or neglect of a dependent should be filed against S.S. or Cotton, respectively. Cotton failed to respond to the probation department’s letter, and the case was turned over to the Aurora Police Department for further investigation.

The State ultimately charged Cotton with neglect of a dependent, a Class D felony. A jury found Cotton guilty of neglect of a dependent and the trial court sentenced her to

² Aurora Elementary School grade reports show three potential outcomes for a student at the end of an academic year. He or she can be promoted, retained, or assigned. While the evidence is unclear, it appears that a child moves on to the next grade if he or she is either promoted or assigned, but being promoted is more satisfactory than being assigned. See State’s Exhibit 4 at 2.

three years imprisonment, all of which was suspended, and three years probation. Upon the successful completion of all probation requirements, Cotton will be eligible to have the sentence converted to a Class A misdemeanor. Cotton now appeals her conviction.

Discussion and Decision

I. Standard of Review

Our standard for reviewing a sufficiency claim is well-settled:

When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling. Appellate courts affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

Drane v. State, 867 N.E.2d 144, 146-47 (Ind. 2007) (quotations, citations, and footnote omitted) (emphasis in original).

II. Neglect of a Dependent

To convict Cotton of educational neglect of a dependent, the State must prove beyond a reasonable doubt that Cotton, having the care of a dependent, knowingly or intentionally deprived the dependent of education as required by law. Ind. Code § 35-46-1-4(a)(4). This court shed light on the educational neglect of a dependent statute in Hamilton v. State, 694 N.E.2d 1171 (Ind. Ct. App. 1998). There, the only evidence

presented of educational deprivation was the dependent's excessive absences from school.³ Id. at 1173. We held:

[T]he Neglect of a Dependent statute requires the State to prove more than a child's failure to attend some type of school; the State must also prove that, as a result of the child's failure to attend school, the child failed to acquire the knowledge and training taught at the school.

Id. We went on to clarify that a child's violation of the compulsory attendance law could result in a child being deprived of knowledge and training, but evidence other than mere absences must be shown. Id.

Cotton argues that the State provided insufficient evidence to show that as a result of S.S.'s absences she was deprived of acquiring knowledge and training taught at her school. However, unlike Hamilton, where no evidence of deprivation was presented other than absences, here the State did produce evidence of S.S.'s failure to acquire the knowledge and training taught at school that could lead a reasonable fact-finder to find Cotton guilty beyond a reasonable doubt. Although S.S. was never held back in a grade during this time period and her standardized test scores did not fall below passing, S.S.'s grades suffered substantially during this time period and her standardized test scores declined. While Cotton is correct that grades alone are not the determinative factor, they are certainly a factor that could cause a reasonable fact-finder to determine that S.S. failed to acquire the knowledge and training taught at her school. We conclude that the State presented sufficient evidence to support Cotton's conviction of neglect of a dependent.

³ A parent's failure to send his or her child to school for the full term as required by law is a violation of Indiana's compulsory attendance law, a Class B misdemeanor, pursuant to Indiana Code section 20-33-2-28; -44(b).

Conclusion

Sufficient evidence supports Cotton's conviction of neglect of a dependent. Her conviction is therefore affirmed.

Affirmed.

BARNES, J., and BRADFORD, J., concur.