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IN THE
COURT OF APPEALS OF INDIANA

Chasity M. Becklehimer,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

June 24, 2022

Court of Appeals Case No.
21A-CR-1646

Appeal from the Adams Superior Court

The Honorable Samuel K. Conrad, Judge

Trial Court Cause No.
01D01-2008-F6-139

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Defendant, Chasity Becklehimer (Becklehimer), appeals her conviction and sentence for neglect of a dependent, a Level 6 felony, Ind. Code § 35-46-1-4(a)(1).[1]

[2] We reverse.

ISSUE

[3] Becklehimer presents five issues on appeal, one of which we find dispositive, and which we restate as follows: Whether the State presented sufficient evidence beyond a reasonable doubt to support her conviction for neglect of a dependent.

FACTS AND PROCEDURAL HISTORY

[4] In July 2020, Becklehimer resided with her husband and two children, J.K., aged thirteen, and C.D., aged four[2], in Decatur County, Indiana. On Friday, July 24, 2020, Becklehimer travelled to Pennsylvania to meet her husband who

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[1] We heard oral arguments in this case on May 24, 2022, at the Court of Appeals courtroom. We thank both counsel for their excellent advocacy.

[2] Becklehimer has two other children, an adult son and a fifteen-year-old son, who were not residing with her at the time of this Cause.

is a truck driver. Although she travelled with C.D., she left J.K. home alone. Prior to travelling, she gave J.K. a cell phone, $25, and ensured that the refrigerator was stocked with food. This was not the first time Becklehimer had left J.K. home alone. In fact, she had left him home alone on five separate overnights without any incidents. Among the rules J.K. had to follow when he was home alone was that he was not allowed to have friends over to the house, and J.K. was expected to call his grandfather (Grandfather) and step-grandmother (Grandmother) (collectively, Grandparents), who lived about five minutes away, if he needed anything, or to call 911 in case of an emergency.

[5] On Saturday, July 24, 2020, J.K. went to the neighborhood pool with his friend B.D.[3] J.K. informed B.D. that he was home alone for the weekend but did not invite him for a visit since it was against the rules put in place by Becklehimer. The following day, at about 11:30 p.m., J.K. spoke with Becklehimer on the phone. After he hung up, J.K. heard a tapping on his window. When he looked, he saw that it was B.D. and that B.D. was trying to open the window. Because J.K. knew that B.D. had a type of multi-tool with a pocketknife component, J.K. was frightened that B.D. would hurt him, and he called 911.

[3] The record is silent as to B.D.'s age, but the inference is that he is about the same age as J.K.

[6] At approximately 11:34 p.m., Officer Daniel Hunter (Officer Hunter) and another officer of the Decatur Police Department, arrived at Becklehimer's house. Upon arriving, the officers met B.D., and they ordered him to go home. The officers spoke with J.K. outside the residence and never entered J.K.'s home. Officer Hunter observed that J.K. was "breathing fast, his eyes were wide. Typically[,] signs [of] somebody [who] is frightened." (Transcript Conf. Vol. II, p. 103). Officer Hunter observed that J.K. was unharmed. J.K. identified Becklehimer as his mother, he stated that he had been "alone since Friday[,]" and that Becklehimer had travelled to Pennsylvania. (Appellant's App. Conf. Vol. II, p. 14). J.K., however, stated that Becklehimer had instructed Grandparents to check on him while she was away on her trip. J.K. claimed that he had not eaten a decent meal since Friday and had only been eating "snacks such as cereal in the mornings, chips, pop, [and] star crunches." (Appellant's App. Conf. Vol. II, p. 14).

[7] J.K. called Becklehimer, but she did not answer any of his seven phone calls. Because J.K. was unable to reach Becklehimer, the officers used J.K.'s phone to contact Grandmother. While on speaker, Grandmother expressed that she was unaware that J.K. was home alone. Moments later, Grandparents arrived at Becklehimer's home. Grandparents informed the officers that Becklehimer typically informs them of her travel plans when she leaves J.K. home alone. Grandparents were "shocked" that Becklehimer had left J.K. home alone without notifying them. (Appellant's App. Conf. Vol. II, p. 14). While talking to the officers, Grandparents recalled that J.K. had recently been left home

alone for one night when Becklehimer travelled to Tennessee. The officers allowed J.K. to leave his home and stay with Grandparents until Becklehimer returned. The officers also contacted the Department of Child Services and reported the incident.

[8] On August 3, 2020, the State filed an Information, charging Becklehimer with Level 6 felony neglect of a dependent. On July 14, 2021, the trial court conducted a jury trial. J.K. testified that Becklehimer had left for Pennsylvania on Friday and the incident with B.D. occurred on Sunday night. J.K. stated that he did not know why B.D. was tapping on his window but admitted that B.D. was probably "horsing around." (Tr. Conf. Vol. II, p. 94). Because he knew B.D. possibly carried a multi-tool on his person, he was frightened and dialed 911. J.K. testified that it was B.D.'s actions that made him afraid and not the fact that he was home alone. When asked if he was aware as to when Becklehimer would return from her trip, J.K. was unable to answer. Grandfather testified that, in the past, Becklehimer would advise him of her travel plans, but in this instance, he could not recall having been notified. At the close of the evidence, the jury returned a guilty verdict. On July 12, 2021, the trial court conducted a sentencing hearing. The trial court sentenced Becklehimer to two years, all suspended to probation.

[9] Becklehimer now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

[10] Becklehimer contends that the evidence is insufficient to sustain her conviction for neglect of a dependent, a Level 6 felony. Our standard of review upon a challenge to the sufficiency of the evidence is well-established: we do not reweigh the evidence or judge the credibility of witnesses. *McHenry v. State*, 820 N.E.2d 124, 126 (Ind. 2005). We examine only the probative evidence and reasonable inferences therefrom that support the conviction. *Lock v. State*, 971 N.E.2d 71, 74 (Ind. 2012). "[W]e affirm if there is substantial evidence of probative value supporting each element of the crime from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt." *Davis v. State*, 813 N.E.2d 1176, 1178 (Ind. 2004).

[11] "A person having the care of a dependent, whether assumed voluntarily or because of a legal obligation, who knowingly or intentionally . . . places the dependent in a situation that endangers the dependent's life or health . . . commits neglect of a dependent, a Level 6 felony." I.C. § 35-46-1-4(a)(1) (Neglect Statute). Becklehimer does not dispute that J.K. was a dependent in her care. She contends that she did not knowingly place J.K. in a situation that endangered his life or health by leaving him home alone for the weekend.

[12] "A person engages in conduct knowingly if, 'when he engages in the conduct, he is aware of a high probability that he is doing so.'" *Villagrana v. State*, 954 N.E.2d 466, 468 (Ind. Ct. App. 2011) (quoting Ind. Code § 35-41-2-2(b)). The *mens rea* under the Neglect Statute, requires the defendant to have a "'subjective

[] aware[ness] of a high probability that he placed the dependent in a dangerous situation.'" *Perryman v. State*, 80 N.E.3d 234, 250 (Ind. Ct. App. 2017) (quoting *Gross v. State*, 817 N.E.2d 306, 308 (Ind. Ct. App. 2004)). Our court has repeatedly held that the Neglect Statute "must be read as applying only to situations that expose a dependent to an 'actual and appreciable' danger to life or health." *Scruggs v. State*, 883 N.E.2d 189, 191 (Ind. Ct. App. 2008) (citing *Gross*, 817 N.E.2d at 308 (citing *State v. Downey*, 476 N.E.2d 121, 123 (Ind. 1985))), *trans. denied*. In *Scruggs*, we reiterated:

> [T]hat to be an "actual and appreciable" danger for purposes of the neglect statute when children are concerned, the child must be exposed to some risk of physical or mental harm that goes substantially beyond the normal risk of bumps, bruises, or even worse that accompany the activities of the average child. This is consistent with a "knowing" mens rea, which requires subjective awareness of a "high probability" that a dependent has been placed in a dangerous situation, not just any probability.

Scruggs, 883 N.E.2d at 191 (quoting *Gross*, 817 N.E.2d at 308). "'Because such a finding requires one to resort to inferential reasoning to ascertain the defendant's mental state, the appellate courts must look to all the surrounding circumstances of a case to determine if a guilty verdict is proper.'" *McMichael v.* State, 471 N.E.2d 726, 731 (Ind. Ct. App. 1984), *trans. denied*. 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." *Gross*, 817 N.E.2d at 309 (quoting *Downey*, 476 N.E.2d at 123).

[13] Becklehimer argues that the State did not prove beyond a reasonable doubt that she was subjectively aware of a high probability that she placed J.K. in a dangerous situation by leaving him alone for the weekend. In support of her claim, Becklehimer cites to two cases: *Scruggs* and *Thames v. State*, 653 N.E.2d 512, 517 (Ind. Ct. App. 1995).

[14] In *Scruggs*, Scruggs left her seven-year-old son, M.H., at home while she ran an errand. *Scruggs*, 883 N.E.2d at 190. When she returned approximately three hours later, M.H. was missing. *Id*. M.H. was later found safe at Scruggs' boyfriend's uncle's home, but Scruggs was charged and subsequently convicted of neglect of a dependent. *Id*. On appeal, this court concluded that the evidence was insufficient to establish Scruggs had a "subjective awareness of a 'high probability' that M.H. was placed in a dangerous situation when she left him home alone." *Id*. at 191. Even though M.H. was seven years old, Scruggs testified M.H. knew "not to mess with the stove or open the door or anything," and the State failed to present any evidence contradicting Scruggs' evidence that suggested M.H. was responsible enough to be home alone. *Id*. Because the only evidence presented suggested M.H. was responsible enough to be left at home, we concluded there was insufficient evidence that Scruggs was subjectively aware of a high probability that M.H. was placed in a dangerous situation. *Id*.

[15] In *Thames* we held that sufficient evidence was presented to support Thames' conviction of neglect of a dependent after Thames left his girlfriend's five-year-old daughter alone and the child wandered out of her home and was eventually

taken to the police department. *Thames*, 653 N.E.2d at 517. Although Thames was only a few houses away from the child, he was gone for several hours, and the child was found wandering the street. *Id*. We concluded Thames "was experienced at watching children and thus should have been subjectively aware of a high probability that he placed [the child] in a dangerous situation by leaving her at home." *Id*.

[16] Becklehimer argues that the circumstances surrounding her decision to leave her child alone is more similar to the mother's decision in *Scruggs* than the babysitter's decision to do so in *Thames*. She claims that besides being older and more mature than the five-year-old girl in *Thames*, "[J.K.] knew his mother was leaving and he agreed to stay home. [] He did not wake up to discover her gone unexpectedly." (Appellant's Br. p. 23). She contends that the State failed to present evidence that she had actual knowledge that she left J.K. in a dangerous situation, and adds that the State also failed to contradict her "characterization that [J.K.] was responsible" enough to be left alone like the child in *Scruggs*. (Appellant's Br. p. 23). She adds that if we uphold her conviction, it "would be tantamount to creating a per se rule that leaving a 13-year-old alone overnight constitutes neglect of a dependent, which is explicitly rejected in Scruggs." (Appellant's Br. p. 24).

[17] The State points out that we called *Scruggs* a "close case" when the child was left alone for three hours. *Scruggs*, 883 N.E.2d at 191. The State argues that while the child in *Scruggs* was much younger than J.K., J.K. was left alone for an entire weekend, and to "J.K.'s mind," for an "indefinite" time since J.K.

testified that he did not know when Becklehimer would return from her trip. (Appellee's Br. p. 14). The State directs us to the evidence that Grandparents were unaware that J.K. had been left alone for the weekend. The State adds that while *Scruggs* considered the evidence of the level of responsibility held by the child, a reasonable juror, who reflects the conscience of the community, could have reasonably concluded in this case that there is "some period of time beyond which leaving any child alone is criminal neglect and that period elapsed in this case." (Appellee's Br. p. 14). The State contends that if we are inclined to reverse Becklehimer's conviction, we would be "holding, as a matter of law, that leaving a thirteen-year-old child alone for two days is never criminal neglect and that such evidence could never suffice to support a neglect conviction." (Appellee's Br. p. 15).

[18] In *Scruggs*, 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 that "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. Like the holding in *Scruggs*, we likewise conclude that the State did not introduce evidence that Becklehimer was subjectively aware that she placed J.K. in a dangerous situation by leaving him alone for the weekend. Like in *Scruggs*, Becklehimer presented evidence that suggested thirteen-year-old J.K. was responsible enough to be left home alone, and the State did not introduce contradictory evidence. It is undisputed that thirteen-year-old J.K.

was more mature than the seven-year-old in *Scruggs* who "knew not to mess with the stove or open the door." *Scruggs*, 883 N.E.2d at 191. J.K. stated that he knew how to bathe himself and prepare his own meals using the microwave. J.K. testified that Becklehimer had left him with a cellphone, $25, and a refrigerator stocked with food. While he was free to go to the neighborhood pool on his own, there were certain things he was not allowed to do. J.K. was required to follow house rules, which dictated that no friends were allowed to visit when he was home alone. J.K. testified that when he was at the neighborhood pool with B.D., he informed B.D. that he was alone, but did not invite him to his house which would have been against house rules. J.K. stated that he did not know why B.D. was tapping on his window but stated that B.D. was probably "horsing around." (Tr. Conf. Vol. II, p. 94). J.K. was also responsible enough to contact the police when he perceived a danger.

[19] Ultimately, the burden rested with the State to prove that Becklehimer was subjectively aware of a high probability that she placed J.K. in a situation involving an actual and appreciable danger. In *Downey*, our supreme court stated that "[d]anger is the state of being exposed to harm. To endanger is to bring into danger." *Downey*, 476 N.E.2d at 123. "A parent is charged with an affirmative duty to care for his or her child." *Lush v. State*, 783 N.E.2d 1191, 1197 (Ind. Ct. App. 2003) (citing *Mallory v. State*, 563 N.E.2d 640, 644 (Ind. Ct. App. 1990)). "'Neglect is the want of reasonable care that is, the omission of such steps as a reasonable parent would take, such as are usually taken in the ordinary experience of mankind. . . .'" *White v. State*, 547 N.E.2d 831, 836 (Ind.

1989) (quoting *Eaglen v. State*, 249 Ind. 144, 231 N.E.2d 147, 150 (1967)). Becklehimer had provided J.K. with certain measures and structures. J.K. was prohibited from having friends over to the house, was required to call Grandparents, who lived five minutes away, if he needed anything, and was instructed to contact 911 if an emergency arose. Becklehimer also presented evidence that she had left J.K. alone, on five separate overnights, and J.K. was safe and no incident had occurred during those times. It appears that during those five times, Grandparents were aware that J.K. was alone and were available for him. J.K. testified that he was able to take care of himself during those five times, he did not "feel scared or lonely[,]" and he felt "perfectly fine" being left home alone. (Tr. Conf. Vol. II, p. 92). Grandfather testified that J.K. was responsible enough to be left home alone.

[20] As we stated in *Gross*, 817 N.E.2d at 311, "[t]here is admittedly a fine line between properly exercising the police power to protect dependents and improperly subjecting every mistake a parent may make in raising his or her child to prosecutorial scrutiny." While Grandfather stated that Becklehimer had failed to inform him that she would be away that weekend, the record shows that Becklehimer's omission was an isolated occurrence since she typically alerted Grandfather whenever she left J.K. home alone. Further, even though Becklehimer was in Pennsylvania for the weekend, and contrary to the State's assertion that Becklehimer had abandoned J.K. for an indefinite period, Becklehimer returned on Monday, and during her time away, she remained in contact with J.K. This is supported by the fact that Becklehimer had talked to

J.K. shortly before B.D. started tapping on J.K.'s window and she was subjectively unaware of B.D.'s actions. J.K. testified that it was B.D.'s actions that caused him to be afraid and it was not because he had been left home alone. J.K. also had a cell phone which he was required to use in case of an emergency. When an emergency arose, which it did in this instance, J.K. immediately contacted the police. Although J.K. knew to call Grandparents when he needed anything, Grandfather testified that J.K. informed him that he was frightened by B.D.'s actions and J.K. figured that "the best thing to do" in that scenario "was to call someone that might get there quicker . . . so he called the police." (Tr. Conf. Vol. II, p. 110). When the police arrived and met B.D., they ordered him to go home, and they did not contact his parents to report his actions. Officer Hunter observed that J.K. appeared frightened by B.D.'s action, but unharmed. Even though the police were unable to contact Becklehimer at that point, they contacted Grandparents who arrived moments later, and J.K. was released into their care.

[21] Looking at all the surrounding circumstances of this case, we agree with Becklehimer that the State failed to develop testimony from any of the witnesses it called to establish that by leaving J.K. alone for the weekend she was subjectively aware of a high probability that she would be exposing J.K. to a dangerous situation that would endanger his life or health. We therefore agree with Becklehimer that the State failed to prove the *mens rea* element of the crime. *See Martin v. Ohio*, 480 U.S. 228, 238 (1987). Accordingly, we reverse Becklehimer's conviction for Level 6 felony neglect of a dependent.

CONCLUSION

[22] Based on the foregoing, we conclude that there was insufficient evidence to sustain Becklehimer's conviction for Level 6 felony neglect of a dependent.

[23] Reversed.

[24] Robb, J. and Molter, J. concur