

IN THE SUPREME COURT OF IOWA

STATE OF IOWA

Plaintiff-Appellee,

v.

PAULA COLE

Defendant-Appellant

Supreme Court No. 22-1581

APPEAL FROM THE IOWA DISTRICT COURT
FOR BLACK HAWK COUNTY
HONORABLE PATRICK WEGMAN, JUDGE

APPELLANT'S REPLY BRIEF AND ARGUMENT

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CERTIFICATE OF SERVICE

On the 24th day of May, 2023, the undersigned certifies that a true copy of the foregoing instrument was served upon Defendant-Appellant by placing one copy thereof in the United States mail, proper postage attached, addressed to Paula Cole, 808 Walnut St., Waterloo, IA 50703.

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. Ms. Cole's actions did not create a substantial risk.

Authorities

Iowa Code § 726.6(1)(d) (2023)

Denial of Critical Care, Iowa Dep't of Health & Hum. Servs, found at <https://hhs.iowa.gov/child-abuse/what-is-child-abuse/denial-of-critical-care> (last visited May 10, 2023)

State v. Swift, No. 22-0231, 2023 WL 2674091, at *1 (Iowa Ct. App. Mar. 29, 2023)

Authorities

II. Ms. Cole did not knowingly act in a manner that created a substantial risk to the children.

State v. Folkers, 941 N.W.2d 337, 340 (Iowa 2020)

State v. Crawford, 972 N.W.2d 189, 199 (Iowa 2022)

STATEMENT OF THE CASE

COMES NOW the Defendant-Appellant, pursuant to Iowa R. App. P. 6.903(4), and hereby submits the following argument in reply to the State's proof brief filed on or about May 4, 2023. While the defendant's brief adequately addresses the issues presented for review a short reply is necessary to address certain contentions raised by the State.

ARGUMENT

I. Ms. Cole's actions did not create a substantial risk.

Ms. Cole was charged with violating Iowa Code § 726.6(1)(a) and (8), and the State alleged that she knowingly acted in a manner that created a substantial risk to her children's physical, mental, or emotional health or safety. (Trial Information) (App. pp. 4-5). Iowa Code § 726.6 criminalizes other types of child endangerment including denial of care. See Iowa Code § 726.6(1)(d) (2023). For a conviction under that statute, a child must be substantially harmed through the parent, guardian, or caretaker's

deprivation of food, clothing, shelter, healthcare or supervision. Id. (emphasis added).

The Iowa Department of Health and Human Services created a series of questions to help parents determine when it is safe to leave a child home alone. Denial of Critical Care, Iowa Dep't of Health & Hum. Servs, found at <https://hhs.iowa.gov/child-abuse/what-is-child-abuse/denial-of-critical-care> (last visited May 10, 2023). These questions are

Does the child have any physical disabilities? Could the child get out of the house in an emergency? Does the child have a phone and know how to use it? Does the child know how to reach the caretaker? How long will the child be left home alone? Is the child afraid to be left home alone? Does the child know how to respond to an emergency such as fire or injury?

Id.

When reviewing these questions, it is clear that Ms. Cole believed that she could safely leave her children home alone. There was no evidence that her children had physical disabilities. While Q was diagnosed with autism, there is no

evidence that he was physically disabled by this. (Jury Trial, 86:10-12). While Q did have difficulties during the 911 call, the miscommunication seems to have been the result of the operator's difficulty hearing Q. (State's Ex. C, 0:39-0:50). At one point the 911 operator asked Q if his neighbor hit him and Q sounded confused. (State's Ex. C, 1:43-1:48). Q was not crying or upset during this phone call and was able to answer the operator's questions. (State's Ex. C).

Officer Bram, C, and D indicated that the children had a cellphone and the children knew how to use it. (Jury Trial, 40:13-18; 96:2-10; 103:18-104:6). Both C and D knew that they could reach Ms. Cole by calling her on that phone. (Jury Trial, 96:2-10; 103:18-104:6). The evidence indicated that Ms. Cole would not be gone long because she was going to the store to get diapers in the middle of the day. (Jury Trial, 53:15-23; 40:8-12).

There is no evidence the children would be afraid to be left alone. Clearly, the children knew that they could go to the

neighbor if they had any problems because they did. (Jury Trial, 59:4-8; 66:11-19; 101:9-17). Q demonstrated that he knew how to call 911 because he used his neighbor's phone to dial 911, even though Wheeler did not believe the situation warranted a 911 call. (Jury Trial, 65:1-6). Wheeler testified that the primary purpose of calling 911 was to help Q calm down. (Jury Trial, 64:21-65:6).

Officer Bram got Ms. Cole's phone number from C, which demonstrates that the children knew how to get in touch with their mother. (Jury Trial, 41:3-7). D had previously watched his siblings. (Jury Trial 101:9-17). There was no evidence that he was unwilling to watch his siblings and there was no evidence presented that similar problems occurred when he babysat.

State v. Swift is not analogous to this case whatsoever. In Swift, the defendant dropped her six year old child off in a parking lot next to his daycare at 4 PM in December. State v. Swift, No. 22-0231, 2023 WL 2674091, at *1 (Iowa Ct. App.

Mar. 29, 2023). The parking lot was busy and there were two heavily trafficked streets next to the parking lot. Id. The child did not have a phone and was not wearing a coat. Id. His mother expected him to wait there for an hour and a half at dusk before his father would come and get him. Id. A stranger saw the six year old and took him inside the daycare where his father was called. Id. The child was visibly distraught and remained distraught until his father arrived. Id.

This is nothing like the case at hand. The Iowa Court of Appeals indicated that there was a difference when a child was left out alone in public versus “the safety of [their] own home.” Id. at *2. Here, Ms. Cole’s children were left in the safety of their own home while Ms. Cole left in the middle of the day to pick up diapers for her infant. (Jury Trial, 53:15-23; 40:8-12). The risks to a child outside without a coat in December in Iowa and a child walking around barefoot outside her home in July are unquestionably distinctive.

Here the evidence demonstrated that while C was outside she remained mostly near the stoop and she stayed in Wheeler’s eyesight. (Jury Trial, 61:17-23; 64:8-13). There was no evidence about the parking lot to support a conclusion that it was heavily trafficked, was regularly busy, was busy while she was outside, or that it even had cars in it. The State did not present any evidence about the location of the apartment—that it was near a busy street or near a park. C did not run away and none of the children were hurt, crying, or upset. (Jury Trial, 39:15-19; 39:24-40:2; 63:20-25). These facts do not demonstrate that Ms. Cole put her children at a substantial risk of harm.

II. Ms. Cole did not knowingly act in a manner that created a substantial risk to the children.

In order to establish that Ms. Cole knowingly placed her children in substantial risk of harm, there needed to be evidence that “the prohibited result may reasonably be expected to follow from the circumstances presented.” State v. Folkers, 941 N.W.2d 337, 340 (Iowa 2020). This requires that

the State provide evidence to demonstrate that Ms. Cole reasonably expected her children to get into an argument before she left the house.

The evidence the State presented did not demonstrate that the children tended to argue while D babysat. D had previously babysat his siblings seemingly without issue. (Jury Trial, 101:9-17). While there was evidence that C was having some difficulties with her brothers, there was no evidence that demonstrated they frequently got in fights, C threatened to run away, or that their disagreements were a common occurrence.

“Knowingly” means that Ms. Cole must have understood she was creating a risk before she acted. Folkers, 941 N.W.2d at 340. Because the State did not present substantial evidence demonstrating that the result was reasonably expect to follow when Ms. Cole left the house, there was insufficient evidence.

CONCLUSION

There was insufficient evidence to find that Ms. Cole committed child endangerment even when viewing the evidence in the light most favorable to the State. The State did not present sufficient evidence to show that Ms. Cole actually created a substantial risk to any of her children or that she did so knowingly. Therefore, Ms. Cole requests that her conviction be vacated and remanded for an entry of dismissal. State v. Crawford, 972 N.W.2d 189, 199 (Iowa 2022).

ATTORNEY'S COST CERTIFICATE

The undersigned, hereby certifies that the true cost of producing the necessary copies of the foregoing Brief and Argument was \$1.76, and that amount has been paid in full by the Office of the Appellate Defender.

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATIONS, TYPEFACE REQUIREMENTS AND TYPE-STYLE REQUIREMENTS

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) because:

[X] this brief has been prepared in a proportionally spaced typeface Bookman Old Style, font 14 point and contains 1,266 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

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