

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

**State of West Virginia,
Plaintiff Below, Respondent**

vs) No. 11-0124 (Jefferson County 09-F-64)

**Jacqueline E. Reed,
Defendant Below, Petitioner**

FILED

July 6, 2011

RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Jacqueline E. Reed appeals her conviction for felony Child Neglect Resulting in Bodily Injury by a Parent, Guardian or Custodian, West Virginia Code § 61-8D-4(a). The State filed a timely response brief. Petitioner's co-defendant, Robert Scott Sencindiver, has filed a separate appeal.¹

This Court has considered the parties' briefs and the record on appeal. Pursuant to Rule 1(d) of the Revised Rules of Appellate Procedure, this Court is of the opinion that this case is appropriate for consideration under the Revised Rules. The facts and legal arguments are adequately presented in the parties' written briefs and the record on appeal, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules.

In 2008, petitioner and Mr. Sencindiver took two children into their home: C.C., a boy who was approximately fourteen to twenty months old during the time he was in petitioner's care, and M.C., the boy's three-year-old sister. The children's father, with whom Mr. Sencindiver worked, had been deported. The children's mother was incarcerated. The children resided with petitioner and Sencindiver for approximately five months.

¹ Mr. Sencindiver's appeal is docket number 11-0130.

Soon after the children's mother retrieved the children, she observed that C.C. had a dark rash with lesions on his genital area and inner thighs and bruising on his body. She also noticed that he could not sip through a straw. She took C.C. to a hospital, where it was determined that he had five broken ribs on his right side that were healing, a rash and sores on the inner thighs and genital area that were typical of healing burns, and a number of bruises in various stages of healing. A radiologist opined that C.C.'s rib fractures were probably two to four weeks old, but not more than four months old. Moreover, a forensic nurse who examined C.C. testified that C.C. had abrasions on his ankles that were a linear "wrap around configuration" and were the same diameter across the top of the ankle. The nurse opined that such abrasions are seen when a child is "tethered with something."

Petitioner and Mr. Sencindiver, who were tried together, denied neglecting C.C. They asserted that C.C. had a terrible diaper rash when he came to them, which they treated with over-the-counter products. They asserted that C.C. was adventurous and often accidentally bruised himself while playing. They asserted that C.C. likely broke his ribs when he climbed up and fell off of a sliding board. They asserted that after C.C. fell off of the sliding board, he simply resumed playing, thus they did not know he was injured. They argued that no other child in their home, including M.C., had any indications of injury or neglect.

Petitioner was indicted for two felonies: Child Neglect Resulting in Serious Bodily Injury by a Parent, Guardian or Custodian, West Virginia Code § 61-8D-4(b), and Conspiracy, West Virginia Code § 61-10-31. At trial, the jury found petitioner guilty of the lesser included felony offense of Child Neglect Resulting in Bodily Injury by a Parent, Guardian or Custodian, West Virginia Code § 61-8D-4(a). The jury found her not guilty of Conspiracy. She was sentenced to one year in jail, but the court then suspended that sentence and placed her on probation for three years. A term of her probation is that she serve weekends in jail during the first ninety days of the probationary period.

In this direct appeal, petitioner asserts that the circuit court committed reversible error by denying her motions to dismiss, for judgment of acquittal, and/or for new trial based upon insufficient evidence of the required elements of neglect or causation. The statute under which petitioner was convicted, Child Neglect by a Parent, Guardian or Custodian Resulting in Bodily Injury, West Virginia Code § 61-8D-4(a), makes it a felony if a custodian "shall neglect a child and by such neglect cause said child bodily injury[.]" "'Neglect' means the unreasonable failure by . . . any person voluntarily accepting a supervisory role towards a minor child to exercise a minimum degree of care to assure said minor child's physical safety or health." W.Va. Code § 61-8D-1(6).

Petitioner acknowledges that when taking the evidence in a light most favorable to the State, the jury could have reasonably found that a bodily injury *occurred* to C.C. during

petitioner's custody of him. However, petitioner argues there was absolutely no evidence that she *caused* any of the injuries or that she neglected the child. Both she and Mr. Sencindiver have maintained that all of C.C.'s injuries that they witnessed were accidents or injuries from play. Petitioner asserts that the jury was prejudiced against her because of inflammatory argument by the prosecutor that she had "tortured" the child. Petitioner argues that the jury effectively used a *res ipsa loquitur* standard to find her negligent. However, she argues that *res ipsa loquitur* is a civil standard that has no place in a criminal trial, where the State is required to prove all elements beyond a reasonable doubt. In response, the State argues that if a custodian allows abuse, or turns a blind eye to abuse, then she is guilty of neglect.

This Court applies a de novo standard of review to the denial of a motion for judgment of acquittal based upon the sufficiency of the evidence. *State v. LaRock*, 196 W. Va. 294, 304, 470 S.E.2d 613, 623 (1996). Moreover,

The function of an appellate court when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, is sufficient to convince a reasonable person of the defendant's guilt beyond a reasonable doubt. Thus, the relevant inquiry is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proved beyond a reasonable doubt.

Syl. Pt. 1, *State v. Guthrie*, 194 W. Va. 657, 461 S.E.2d 163 (1995).

Upon a review of the record, we find that petitioner does not meet her heavy burden of proving insufficiency of the evidence. The evidence shows that this young child suffered five broken ribs during the time he was in the care and control of petitioner. The forensic nurse opined that the healing sores on C.C.'s genitals and inner thighs resembled burns, and he had marks on his ankles that were consistent with having been tethered. The child had multiple bruises in various stages of healing. Petitioner asserts that C.C. had the redness and sores on his diaper area when the child first came to live with them, which means that the child suffered for five months without necessary care. The jury heard all of the evidence, including petitioner's and Mr. Sencindiver's testimony, and we do not find reversible error in the conviction for Neglect Resulting in Bodily Injury.

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: July 6, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman
Justice Robin Jean Davis
Justice Thomas E. McHugh

DISSENTING:

Justice Brent D. Benjamin
Justice Menis E. Ketchum