IN THE COURT OF APPEALS OF IOWA

No. 0-268 / 99-1430
Filed May 31, 2000

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MICAELA GARCIA,
Defendant-Appellant.

FILED
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CLERK SUPREME COURT

Appeal from the Iowa District Court for Scott County, Jack F. Broderick, Judge.

The defendant appeals her conviction of truancy, third offense. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and James G. Tomka, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Mary Tabor, Assistant Attorney General, William E. Davis, County Attorney, and James Cosby, Student Legal Intern, for appellee.

Considered by Streit, P.J., and Zimmer and Hecht, JJ.

ZIMMER, J.

Micaela Garcia appeals her conviction of truancy, third offense, in violation of Iowa Code sections 299.5A and 299.6 (1997). We affirm.

The defendant's thirteen-year-old son, Jesse Garcia, missed all or a portion of forty-three out of sixty days in the first semester of the 1998-99 school year at Bettendorf Middle School. Micaela initiated only two calls to the school to explain these absences. The principal arranged a mediation session with Jesse and Micaela. On October 16, 1998, the defendant, her son, and the principal signed an attendance contract in which Micaela agreed to "ensure that Jesse attended school everyday through the balance of the first semester" and call the school when he would be absent. Just three days later, Jesse was again late to school. A juvenile court liaison officer also had to pick up Jesse from home on October 23 and 26. This pattern continued through the end of the fall semester.

On February 17, 1999, the State filed a trial information charging Micaela with truancy. The parties stipulated this was her third offense. A jury trial commenced on July 26, 1999. Defendant's motions for acquittal were denied. The jury returned a guilty verdict that same day. On August 19, 1999, Garcia was sentenced to thirty days in jail, with all thirty days suspended. Garcia now appeals, challenging the sufficiency of the evidence to support her conviction.

I. Scope and Standard of Review. We review sufficiency-of-the-evidence claims for errors at law. *State v. Chang*, 587 N.W.2d 459, 461 (Iowa 1998). The standards applied in such a review are well established:

> The jury's findings of guilt are binding on appeal if supported by substantial evidence. . . . In deciding whether there is such substantial evidence, we view the record evidence in the light most favorable to the State. . . . Substantial evidence is such evidence

> as could convince a rational fact finder that the defendant is guilty beyond a reasonable doubt. . . .

State v. Query, 594 N.W.2d 438, 445 (Iowa App. 1999) (citations omitted). We do not make an independent determination of "whether the evidence established guilt beyond a reasonable doubt"; rather, we determine the legal sufficiency of the evidence to support the verdict. *State v. Anderson,* 517 N.W.2d 208, 211 (Iowa 1994). We give consideration to all the evidence, not just evidence supporting the verdict. *State v. Paul,* 602 N.W.2d 764, 768 (Iowa 1999).

II. Sufficiency of the Evidence. Instruction No. 12 informed the jury the State had to prove the following elements of truancy:

> 1. That a minor child of the defendant, Micaela Garcia, between the ages of six and sixteen has not been attending either an accredited public or private school or has not been receiving competent private or home instruction.
> 2. That the minor child has not been excused by any legal authority from attending school or receiving private or home instruction.
> 3. That the defendant did enter into a mediation agreement with the Bettendorf School District in which she agreed to see that her minor child would attend school on a daily basis unless excused by a written doctor's or school nurse's excuse.
> 4. That the minor child of the defendant has failed to attend school and that *the defendant has not made a reasonable effort to cause the child to attend school.* . . .

(emphasis added). Garcia disputes the sufficiency of the evidence to support the conclusion that she did not make reasonable efforts to cause Jesse to attend school.

We find substantial evidence to support the jury's guilty verdict. Garcia did not make reasonable efforts to get Jesse to school. Testimony revealed Jesse suffers from a behavioral disorder and could be stubborn. However, Rod Moeller, a juvenile court officer, also testified Jesse was capable of following

directives. At the request of the principal, Moeller went to the Garcia home several times to pick up Jesse only to find Jesse still asleep. Micaela was usually home but her only effort to awaken her son at those times was to yell upstairs. Moeller testified he got Jesse out of bed by physically going in the boy's bedroom, waking him up, and saying "enough's enough, get up, let's go." Moeller testified getting Jesse to school was the biggest issue and once there, his behavior was fine.

One of Garcia's own witnesses provided strong evidence Garcia did not make reasonable efforts to ensure her son's attendance at school. Rose Garcia, the defendant's niece, testified that she cared for Jesse during a month-long period when his mother was out of the state. She stated that although Jesse was stubborn at times and due to this trait they were twenty to thirty minutes late on occasion, she was always able to get him out of bed and to the school. When they were going to be late, she always called the school to let the staff know the situation. On the other hand, Micaela called the school only two times out of forty-three truancies during the semester in question. Rose was successful in getting Jesse to school, demonstrating it was far from a herculean task.

It appears defendant expected the system to transport her son to school and secure his attendance. Her efforts started with calls to the school to "come pick him up." The school has over 1,000 students and cannot be expected to provide a taxi service for one student. When school officials declined to perform the service, Garcia imposed upon the Bettendorf police to take Jesse to school. After more than a dozen trips, the police also informed defendant it was not their job to get her son to school. Micaela then turned to family or friends for rides or

help. Nothing indicates Micaela rode along with Jesse or took him into the school to make sure he was not running off. The record reveals little personal effort on the defendant's part to ensure Jesse's attendance.

Defendant also claimed that Jesse got violent with her when she tried to rouse him in the morning. Jesse himself testified he never became physical with his mother. The jury was free to reject the defendant's version of events. *See, e.g., State v. Plaster,* 424 N.W.2d 226, 233 (Iowa 1988). Micaela also claimed she called the school nurse twice and asked her to come to the house to verify Jesse's illness. The school had no record of these calls. Our standard of review does not permit us to reassess the witnesses' credibility. We examine only the legal *sufficiency* of the evidence. We conclude the jury was justified in finding Garcia did not make reasonable efforts to cause Jesse to attend school.

AFFIRMED.