

IN THE COURT OF APPEALS OF IOWA

No 6-701 95-1928

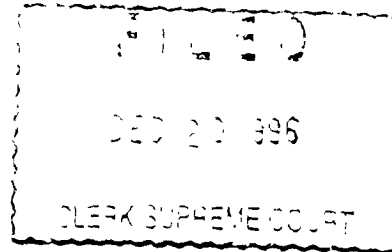
STATE OF IOWA,

Plaintiff-Appellee,

vs.

KELLY JO SKILLIN,

Defendant-Appellant.



Appeal from the Iowa District Court for Louisa County, John C. Miller, Judge.

Defendant appeals from judgment and sentence entered, following jury trial, for child endangerment resulting in serious injury. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Patricia Reynolds, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, and David L. Matthews, County Attorney, for appellee.

Heard by Habhab, P.J., and Cady and Huitink, JJ.

HUITINK, J.

Defendant Kelly Jo Skillin appeals her conviction for Child Endangerment Resulting in Serious Injury in violation of Iowa Code Section 726.6(1) and 726.6(2) (1995). We affirm.

The charges against Skillin arose out of the following evidence: During an unannounced home visit on March 31, 1995, social worker Kelly Noble noticed dark crescent-shaped bruises on the face of Skillin's youngest child, Jessica, born April 19, 1993. Upon examining the child, the social worker also discovered a bruise on Jessica's back and an abrasion on her ear. Skillin explained that the child had been falling down frequently on furniture and toys. She also expressed the concern that Jessica may have leukemia because she bruised easily and was experiencing hair loss.

Jeanine Krueger, Skillin's sister, testified at trial that on March 17, 1995, she drove Skillin and Jessica to see their family physician concerning Jessica's ear infection and the bruises on her face. Krueger recalled noticing the bruises herself around that time.

Skillin missed an April 4th appointment with Dr. Malinda Smith, a pediatrician, due to lack of transportation. Noble visited Skillin the following day and expressed concern over the missed appointment. On April 10th, Skillin, due to a home emergency, missed an appointment with a dermatologist in Iowa City regarding Jessica's hair loss. Noble rescheduled her appointment for April 14th with Dr. Smith. On that date, Dr. Smith discovered an ear infection in both of Jessica's ears, some

hair loss, a laceration on her upper lip, and multiple bruises, including bruising on her face under her eye and on one cheekbone extending above her ear. The doctor also observed bruising on her right side, upper thigh and upper arms. Skillin explained the laceration as being the result of a fall on a metal bed frame and explained the facial bruise as being the result of a fall on a toy. Dr. Smith's tests produced no sign of blood abnormalities and after a second visit, the doctor concluded Jessica had no neurological problems. She indicated to Skillin that although ear infections can affect balance, the bruising experienced by the child was not consistent with that caused by simple falls.

On April 16, 1995, Krueger and her husband David saw Jessica again. They expressed concern over the persistent facial bruising and the split lip. Skillin responded by stating that Jessica had an equilibrium problem that was causing her to fall. The Kruegers received a call a few days later from Jessica's babysitter informing him that Skillin's boyfriend, Deon Walker, was beating the child. At trial, Skillin's son David testified that when Skillin was not home, her live-in boyfriend would hit Jessica in the face and legs and toss her up in the air.

On April 18, 1995, the social worker received an anonymous call from a man reporting that Jessica had bruises all over her body and looked like "she had been put through a meat grinder." The caller indicated Skillin's boyfriend was abusing the child. Upon receipt of this call, the Family Preservation Program initiated an investigation.

Loria Fulton, a family preservation specialist, visited the Skillin home and noticed a bruise on Jessica's left cheek. The next day she discovered a large bruise and a knot on Jessica's forehead, two black eyes, bruises along her jaw line, side and thigh, and a cut on her top lip. Once again, Skillin explained that the injuries were the result of falls off furniture and falls onto different toys.

On April 20, 1995, Skillin took Jessica to see Dr. Smith who noticed new bruises on Jessica's cheek, under her eye, around her chin and neck, and on the middle of her chest. Dr. Smith concluded the new bruises were more consistent with being struck by a hand or fist and being grabbed on the arms and neck rather than with falling down on objects. Later that day, the social worker removed Jessica from Skillin's home and placed her in foster care per the order of the juvenile court.

Jessica was examined on April 20th by child abuse expert Dr. Randell Alexander. In addition to the bruising noted by Dr. Smith and Loria Fulton, he also noted bruising on her ear and the scalp behind her ear. Dr. Alexander testified at trial that in his opinion, the injuries were inconsistent with simple falls but rather were caused by multiple blows at different angles with either an open hand or fist, and by forcefully grabbing Jessica's arms. He further opined that the injuries were high velocity injuries, meaning the blows came at a high speed and impacted Jessica's face multiple times.

Skillin was convicted of Neglect of a Dependent Child for which she received five years probation pursuant to a deferred judgment, and Child Endangerment Resulting in Serious Injury for which she was sentenced to ten years imprisonment.

Skillin appeals asserting the evidence was insufficient to support the conviction for Child Endangerment Resulting in Serious Injury. She also argues her trial counsel was ineffective for failing to move for judgment of acquittal on the grounds that the State failed to establish the child suffered a serious injury.

I. Sufficiency of Evidence.

Skillin argues the evidence presented at trial was insufficient to establish that she knowingly acted in a manner that created a substantial risk to Jessica's physical health or safety or that she knowingly permitted the continuing physical abuse of her daughter.

We review claims of insufficient evidence for errors at law. Iowa R. App. P. 4. A verdict of guilty is binding on appeal unless there is no substantial evidence in the record to support it, or it is clearly against the weight of the evidence. *State v. Schrier*, 300 N.W.2d 305, 306 (Iowa 1981). Substantial evidence means evidence that could convince a rational trier of fact the defendant is guilty beyond a reasonable doubt. *Id.* In determining the sufficiency of evidence, we view the record in a light most favorable to the State. *State v. Robinson*, 288 N.W.2d 337, 340 (Iowa 1980). All evidence is considered, not simply the evidence supporting the verdict. *Id.*

Iowa Code Section 726.6 (1995) reads as follows:

A person who is the parent, guardian, or person having custody or control over a child or a mentally or physically handicapped minor under the age of eighteen, commits child endangerment when the person does any of the following:

a. Knowingly acts in a manner that creates a substantial risk to a child or minor's physical, mental, or emotional health or safety.

....

e. Knowingly permits the continuing physical or sexual abuse of a child or minor. . . .

Iowa Code § 726.6 (1995).

Upon review of the record, we find sufficient evidence for the jury to infer that Skillin knowingly acted in a manner that created a substantial risk to Jessica's physical health or safety and also that she knowingly permitted the continuing physical abuse of her daughter. Testimony at trial indicated that Jessica exhibited severe facial bruising as early as March 17th. She continued to develop new bruises as observed by the social workers, medical professionals, and Skillin's sister and her husband. She also sustained a serious cut above her lip.

As early as April 14th, Skillin was alerted to the true nature of Jessica's injuries when Dr. Smith explained to her that Jessica's bruising could not be the result of simple falls. Dr. Smith testified "My suspicions have been discussed with [the] mother." Therefore, the testimony describing Jessica as an active child prone to accidents or the evidence of her ear infections and hair loss do not tend to negate the evidence demonstrating Skillin's knowledge of the actual circumstances surrounding Jessica's injuries. Throughout the next six days following the appointment with Dr.

Smith, social workers and members of Skillin's family noticed new injuries to Jessica's face and inquired about the source of the wounds. Despite already being informed to the contrary by Dr. Smith, Skillin continued to claim the bruising and the cut above Jessica's lip were the result of falls brought on by her ear problems and also by the possibility of a blood disorder.

As to the physical appearance of the bruises, the social worker testified that when she made an unannounced visit on March 31, she was "shocked" and "overwhelmed" by what she observed. At trial, Skillin herself described the bruises as "hideous," like a "mask," and that her daughter "looked like someone had just beaten her to death." The anonymous caller who contacted Kelly Noble on April 18th reported that Jessica looked like "she had been put through a meat grinder." The photographs of Jessica admitted as exhibits at trial confirm the severity and nature of the damage inflicted upon her face and body.

We conclude the evidence supports the inference that Skillin knowingly created a substantial risk of danger to Jessica's health and safety and that she knowingly permitted the continuing physical abuse of her daughter. Accordingly, we affirm on this issue.

II. Ineffective Assistance of Counsel.

Skillin argues her trial counsel failed to perform an essential duty by not moving for judgment of acquittal on the basis that the State failed to prove that the child suffered a serious injury.

Where the record on direct appeal is not adequate to permit us to resolve the issue, we preserve the defendant's claim for postconviction proceedings so the facts may be so developed. *State v. Koenighain*, 356 N.W.2d 237, 238 (Iowa App. 1984). This also gives the trial counsel the opportunity to explain his or her conduct. *State v. Coil*, 264 N.W.2d 293, 296 (Iowa 1978). We conclude there is an inadequate record for us to adjudicate Skillin's claim without counsel's explanation for his performance at trial. We therefore preserve her ineffective assistance of counsel claim for a later proceeding.

AFFIRMED.