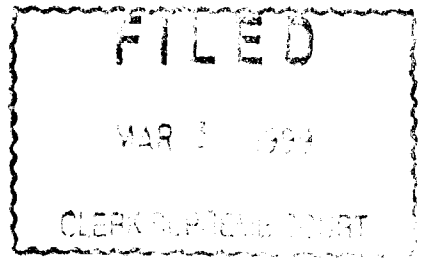
IN THE COURT OF APPEALS OF IOWA

No. 9-067 / 97-1827
Filed March 31, 1999



STATE OF IOWA,
Appellee,

vs.

RANAE NOBLE,
Appellant.

Appeal from the Iowa District Court for Polk County, Richard G. Blane, II, Judge.

Ranae Noble appeals from her conviction for neglect of a dependent person in violation of Iowa Code section 726.3 (1997). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Shellie L. Knipfer, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Julie H. Brown, Assistant Attorney General, John P. Sarcone, County Attorney, and Melodee Hanes, Assistant county Attorney, for appellee.

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

STREIT, P.J.

Ranae Noble appeals her conviction and sentence for neglect of a dependant person. Noble contends there was insufficient evidence she exposed a child to a hazard or danger. Because we find sufficient evidence supports the jury's conviction, we affirm.

Noble was a home day care provider to nine-month-old Austin Tiffany from January 6 through February 5, 1997. On February 5, Cheri Tiffany brought Austin to day care at around 9:00 a.m. He was not fussy or crying. When Cheri picked up Austin at 4:45 p.m., Austin was sleeping, which was unusual. When Noble brought Austin out to his mother he was screaming loudly. He continued to scream, with intermittent periods of sleep, until 9:00 p.m. when Cheri took him to the emergency room.

An x-ray revealed a fracture through Austin's tibia and fibula. The emergency room physician testified the fracture was a result of child abuse and under the facts presented to him the injuries occurred while under Ranae's care.

Noble was charged and convicted of child endangerment in violation of Iowa Code section 726.6(1)(a) and neglect of a dependent person in violation of Iowa Code section 726.3. She appeals the conviction for neglect of a dependent person arguing there was insufficient evidence she exposed Austin to an already existing danger, as required by the statute.

Our standard of review for claims of insufficient evidence is well established. We review such claims for errors at law. Iowa R. App. P. 4.; *State v. Nichols,* 572 N.W.2d 163, 163 (Iowa App. 1997). A verdict of guilty is binding on appeal unless no substantial evidence in the record exists to support it, or it is clearly against the weight of the evidence. *State v. Forsyth*, 547 N.W.2d 833, 834 (Iowa App. 1996). Substantial evidence means evidence that could convince a rational trier of fact the defendant is guilty beyond a reasonable doubt. *State v. Maghee,* 573 N.W.2d 1, 10 (Iowa 1997).

In determining the sufficiency of the evidence, we view the record in a light most favorable to the State. *State v. Milner,* 571 N.W.2d 7, 10 (Iowa 1997). All evidence is considered, not merely the evidence supporting the verdict. *State v. Walker*, 538 N.W.2d 316, 319 (Iowa App. 1995). Direct and circumstantial evidence are equally probative. Iowa R. App. P. 14(f)(16). Although a jury verdict can rest on circumstantial evidence, the evidence must raise a fair inference of guilt as to each element of the crime. *State v. Casady*, 491 N.W.2d 782, 787 (Iowa 1992).

Iowa Code Section 726.3 provides:

> A person who is the father, mother, or some other person having custody of a child, or of any other person who by reason of mental or physical disability is not able to care for the person's self, *who knowingly or recklessly exposes such person to a hazard or danger against which such person cannot reasonably be expected to protect such person's self* or who deserts or abandons such person, knowing or having reason to believe that the person will be exposed to such hazard or danger, commits a class "C" felony.

(Emphasis added). Noble argues the State's evidence was insufficient to convict under this statute because the State proved only that Noble directly caused harm to Austin; not that she exposed him to harm.

Noble's argument is without merit. Our supreme court has held that exposing a child to a person, when that person is a hazard or a danger, is sufficient to convict under the statute. *See State v. Caskey*, 539 N.W.2d 176, 178 (Iowa 1995)(driving car while intoxicated with children in car exposed them to the hazard of injury or death and conviction under 726.3 upheld). The fact that two statutes provide different criminal penalties for essentially the same conduct does not allow Noble to escape the clear language of either statute. *State v. Caskey*, 539 N.W.2d 176, 177 (Iowa 1995).

Noble knew she was a danger to children in her day care. Five complaints had been registered against her for physical abuse of children with Child Net, a training program for child care providers. She had complained about her home day care stating she was "very stressed" and "couldn't take it anymore." Despite this, she took Austin into her home. By doing so, Noble knowingly exposed Austin to her own tendency to abuse children; a danger from which Austin could not reasonably be expected to protect himself.

Sufficient evidence supports Noble's conviction under section 726.3 for neglect of a child. Her conviction and sentence are affirmed.

AFFIRMED.