IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO: 00-10,575

VS :

TIMOTHY GOODREAU :

OPINION IN SUPPORT OF ORDER
IN COMPLIANCE WITH RULE 1925(A)
OF THE RULES OF APPELLATE PROCEDURE

Defendant appeals from the sentence imposed by this Court on July 3, 2001, after he was found guilty by a jury of endangering the welfare of children, simple assault, and recklessly endangering another person. The Defendant was sentenced to undergo incarceration in a state correctional institution for a minimum of ten (10) months and a maximum of twenty (20) months on the charge of endangering the welfare of children, and a consecutive minimum of eight (8) months and a maximum of sixteen (16) months on the charge of simple assault. The charge of recklessly endangering another person merged for the purposes of sentencing.

On appeal, Defendant asserts four areas for review. With regard to the trial, Defendant asserts that the verdict was against the weight and sufficiency of the evidence. With regard to the sentence, Defendant asserts that the Court erred in failing to give adequate weight to his prior mental health history, his age, and his prior record. The following is a summary of the evidence presented at the trial.

Holly Ritter testified that she and the Defendant have a child, born November 24, 1998. She and the Defendant broke off their relationship before the child was born. After her birth, Ms. Ritter received primary physical custody of the child. The Defendant

received weekend visitations. Ms. Ritter testified that before the Defendant picked up the child on Friday June 4, 1999, she was happy and playful in her walker. (N.T. 4/6/01, p. 9) Ms. Ritter noticed nothing out of the ordinary. Other occupants of the building also saw the child on that date. After bathing her, Ms. Ritter wrapped her in a towel and took her to others in the apartment building so that they could examine her and see that she was fine before leaving. (Id., p. 12)

Glenda and Karen Johnson, and Ann and Victor Koch, neighbors of Ms. Ritter at the time, all recalled seeing the child at approximately 11:00 a.m. that Friday. Victor Koch testified that Ms. Ritter had brought the child over that day "so everyone knew that the baby was fine before [she] left with her father." (Id., p. 62) The child contently played with others on the floor. They noticed nothing unusual about the child, and saw no visible bruising or injuries at that time. (Id., pp. 40,49,54,62)

Amy Knorr, [*hereinafter Ms. Knorr,]* the Defendant's girlfriend, testified that she was with the Defendant when he picked her up that Friday around 3:30 p.m.. (Id., p. 168) When they picked up the child, Ms. Ritter had told them that she thought the child was getting an ear infection, which had made her fussy. They took the child to Ms. Knorr's parent's residence that evening at approximately 7:30 p.m. for a birthday party.[1] Calvin and Donna Knorr testified that the child did seem unusually fussy at the time, but all thought that it was attributable to an ear infection.

After the party, Ms. Knorr, the Defendant, and the child stayed overnight at the residence of Ms. Knorr's sister, Julie Knorr. Julie Knorr testified that, aside from her fussiness, she noticed nothing unusual about the child that evening. She testified that

[1] On the way to Ms. Knorr's parent's residence, they stopped to change the child's diaper. Ms. Knorr testified that she noticed one, dime-sized bruise near the child's armpit at that time. (Id., pp. 168-169)

she was awakened on Saturday morning at 6:00 a.m. to an awful screaming from the child. She characterized it as a painful cry that woke her from her sleep. She looked across the hallway, and saw the Defendant approaching the crib the see what had happened. (Id., p. 161)

Ms. Knorr also recalled being awakened by the child on Saturday morning. She testified that the Defendant immediately went to get her. The Defendant changed her diaper and held her as Ms. Knorr went to get a bottle. The child fell back asleep at that time. They went back to Ms. Knorr's parent's residence for approximately an hour on Saturday. Ms. Knorr testified that at some point that morning, after noticing that the child was pulling her leg up, she did a nursing assessment on the child's leg. She did not observe any swelling at that time. (Id., p. 175) Donna Knorr also noticed that the child seemed fussy on that day, and when she stood her up, the child seemed to favor her right leg. She noticed no swelling or bruising at that time. (Id., p. 70) Ms. Knorr testified that the Defendant attempted to contact Ms. Ritter that day after they noticed the problem with the child's leg, but he was unable to reach her. (Id., p. 185)

The couple returned to Williamsport that afternoon. Ms. Knorr went to work from 5:00 p.m. until 10:00 p.m. that evening. The Defendant dropped her off and picked her up at her workplace. She testified that she noticed no change in the child from the time that she had left. (Id., p. 173) She testified that she and the Defendant took turns trying to console the child that evening. She testified that the Defendant had expressed frustration over the fact that he was not able to calm the child as he usually did. (Id., p. 183)

Ms. Knorr testified that she looked at the leg again on Sunday morning. She noticed no change. (Id., p. 184) At some point she also noticed a second dime-sized

bruise on her chest.[2] The couple theorized that the mark could have been caused by the child's dumbbell shaped rattle. (Id., p. 187) Ms. Knorr also called her mother for her opinion. Donna Knorr testified that when she spoke with her daughter that Sunday morning, she encouraged them to take her into the emergency room. At that time, she overheard the Defendant state that he couldn't take the child to the hospital because he did not have her medical card. (Id., p. 73)

A short time later, Ms. Knorr overheard the Defendant calling Ms. Ritter. The Defendant requested that Ms. Ritter meet them at the hospital to have the child looked at. Ms. Ritter had responded that she would take care of it, since the child had a previously scheduled doctor's appointment for the following day. (Id., p. 186) They dropped the child off at Ms. Ritter's residence a short while later. When the Defendant pointed out their concerns with the leg and the marks on her chest, Ms. Ritter did not seem concerned. (Id., pp. 187-188) Ms. Ritter testified that the child was happy and smiling at the time. Ms Knorr testified that Ms. Ritter seemed to be rushing them to leave. (Id., p. 188) Ms. Ritter testified that the Defendant seemed to be rushing to leave as they dropped off the child. (Id., p. 12)

Ms. Ritter testified that after the Defendant left, she immediately laid the child on a bed and examined her. She believed that the child's left leg was swollen. She was also concerned with the bruise on her chest. She went to her neighbor's residence to show them the child. The neighbors testified that the child was visibly distressed, and

[2] Corporal R. Mark Lusk, a detective with the Old Lycoming Township Police Department, testified that he had the opportunity to interview Amy Knorr in his investigation. In the interview, Ms. Knorr had indicated that on Saturday morning, while still at the residence of her parents, she had conducted an assessment of the child's leg. She looked for discoloration, bruising, and swelling. She indicated to Corporal Lusk that she noticed nothing out of the ordinary at that time. (Id., p. 216) She had further indicated that she did a similar assessment of the child the following morning. She still noticed nothing concerning the leg at that time, but she did notice a small dime sized bruise under the child's right arm. (Id., p. 220)

they saw swelling in her leg. Ms. Ritter dressed the child, and her boyfriend, Les Barger[3], took them to the emergency room.

Dr. Barry Specter, an emergency medicine physician at Williamsport Hospital, was the first to see the child that Sunday afternoon. Dr. Specter is certified by the American Board of Emergency Medicine, both in adult emergency medicine and subspecialty in pediatric emergency medicine. Dr. Specter examined the x-rays of the child, and located a fracture to the fourth rib and other non-displaced fractures to the fifth, sixth, and seventh ribs on the left. He testified that the coloring of the bruising on her skin indicated to him that the injury was less than 24 hours old.[4] (Id., p. 124) Dr. Specter testified that he suspected that the injury had occurred from a squeezing motion, and that the marks corresponded with the position fingers would have been placed. (Ibid) Dr. Spechter testified that this type of injury in a non-ambulatory child is an indication of child abuse. (Id., p. 132)

Dr. Craig Stabler, an orthopedic surgeon, testified that he treated the child for the injury to her leg following this incident. He testified that the x-rays taken in the emergency room showed three separate fractures to the left leg. He testified that in his opinion, significant force would have been required to cause such an injury. (Id., p. 93) Additionally, he testified that he believed that the injuries were caused by two different mechanisms, the lower fractures caused by a twisting action, the upper caused by a

[3] On cross-examination Ms. Ritter acknowledged that at the time of this incident she had been living with her boyfriend, Les Barger. Ms Ritter also admitted that approximately a week prior to this incident, Lycoming County Children and Youth became involved with the family after it was reported that Mr. Barger had used inappropriate physical discipline on the child. (Id., p. 34) The Department of Children and Youth had recommended at that time that Mr. Barger not be left alone with the child. (Ibid) Ms. Ritter testified that Mr. Barger had not been at the residence on Friday, and although he was at home when the child was returned on Sunday, he was not left alone with the child.

[4] On cross-examination, Dr. Spechter agreed that although "yellowing" generally occurs shortly after twenty-four hours, in some cases the changes in color do not occur for several days. Therefore, the absence of yellowing in this case was not necessarily indicative of the bruise being less than twenty-four hours old.

direct blow. (Id., p. 94) He testified that in his opinion he believed that the injury had occurred within one week to ten days of when she was brought into the emergency room. He testified that a child with this type of fracture would have showed immediate signs of distress and swelling[5].

The leg was placed in a cast for a period of six weeks. Dr. Stabler also commented that the x-rays showed rib fractures, but that they are not generally treated and usually heal uneventfully. (Id., p. 98) Dr. Stabler testified that the fact that there were multiple fractures in such a short segment of the leg and that there were different mechanisms of injury raised a suspicion of intentional abuse.

Dr. Danielle Boal, the Chief of Pediatric Radiology at Hershey Medical Center was called on behalf of the Defense. She testified that she reviewed the June 6, 1999, June 7, 1999, and July 7, 1999 x-rays of the child, sent to her by the Commonwealth. She testified that in her opinion, all three of the fractures were buckle transverse fractures. She explained that bones in children "are somewhat softer so they sort of wrinkle and bend and can buckle unlike the bones in us older folks where you get a more of a sharp fracture." (Id., p. 196) She testified that she did not agree with the characterization of the fracture as a "twisting or spiral fracture." She testified that judging from the x-ray, she believed that the fractures were five days or less in age.

She further testified that the fractures to the ribs were "fairly acute" fractures, indicating to her that they were less than four or five days in age. (Id., p. 197) Dr. Boal testified that in viewing the x-rays, there were several things that concerned her. She testified that there were indications that the child could have had a condition causing

[5] On cross-examination, Dr. Stabler was asked whether the injury could have resulted from the type of fall suffered by the child the weekend before this incident, as it was described by Donna Knorr. Although he could not rule it out, Dr. Stabler indicated that the child would have been in immediate distress from this injury, and he did not believe the child would have been without symptoms for over a week. (Id., p. 104)

abnormal fragility of the bones. She further noticed that several of the vertebral bodies were a little bit flatter than normally seen, causing concern that there was compression or deformity of the vertebral bodies. (Id., p. 200) Other, incidental findings were ligament laxity, a "flexible flat foot one side, and the hips were a little bit laterally displaced." (Ibid.) She testified that she recommended that the child be seen by a geneticist to rule out whether the child had osteogenesis imperfecta, or the condition causing abnormally fragile bones.

She testified that one of the things that led her to conclude that there may have been something out of the ordinary in this case was the fact that the fractures in the lower extremities were not the typical "bucket handle or corner fractures that you see on long bones that are classic, absolutely classic for abuse, these fractures were not at the very end of the bone they were up a little bit higher on the shaft . . ." (Id., p. 210)

Trial Issues

Weight of the Evidence

The Defendant first alleges that the verdict was against the weight of the evidence. The Court does not agree. The test for determining whether the verdict is against the weight of the evidence, is not whether the Court would have decided the case in the same way, but whether the verdict of the jury is so contrary to the evidence as to shock one's sense of justice and make the award of a new trial imperative so that right may be given another opportunity to prevail. Commonwealth v. Whiteman, 336 Pa.Super. 120, 485 A.2d 459 (1984).

Instantly, there was evidence from the child's mother and neighbors in their apartment that the child showed no outward sign of injury before leaving for a weekend of visitation with her father. The child showed no visible sign of injury until she was

returned Sunday morning, after having been left alone with the Defendant for several hours the previous evening. Furthermore, there was evidence that the Defendant felt frustrated that the child was fussy and at not being able to quiet and console the child. There were two physicians who testified that the fractures to the leg and ribs (caused from a squeezing motion) in a non-ambulatory child are an indication of child abuse. The Court would find, based on the evidence presented that a verdict of guilty on the charges of simple assault and endangering the welfare of children does not shock one's sense of justice so that the award of a new trial is imperative so that right may be given another opportunity to prevail.

Sufficiency of the Evidence

Defendant next challenges the sufficiency of the evidence for the offences. The standard for reviewing the sufficiency of the evidence in a criminal case is whether, viewing the evidence admitted at trial in the light most favorable to the Commonwealth and drawing all reasonable inferences in the Commonwealth's favor, there is sufficient evidence to enable the trier of fact to find every element of the [crime] charged beyond a reasonable doubt." Commonwealth v. Passarelli, 789 A.2d 708 (Pa.Super. 2001), *citing* Commonwealth v. Vining, 744 A.2d 310, (Pa.Super., 2000).

Applying the foregoing standard, in order to have found the Defendant guilty of simple assault, the Commonwealth must have proven beyond a reasonable doubt that the Defendant attempted to cause or intentionally, knowingly or recklessly causes bodily injury to another. 18 Pa.C.S. § 2701(a)(1).

A person is guilty of endangering the welfare of children if he is supervising a child under 18 years of age, and knowingly endangers the welfare of the child by violating a duty of care, protection or support. 18 Pa.C.S.A. § 4304(a)

"Knowingly" is defined in the crimes code as:

> (2) A person acts knowingly with respect to a material element if of an offense when:
>
> (i) if the element involves the nature of his conduct or the attendant circumstances, he is aware that his conduct is of that nature or that such circumstances exist; and
>
> (ii) if the element involves the result of his conduct, he is aware that it is practically certain that his conduct will cause such a result.

18 Pa.C.S.A. § 302(b)(2)

Instantly, when reviewing the evidence in the light most favorable to the Commonwealth, there was testimony presented that the child was content, and showed no signs of injury before leaving with the Defendant for a weekend of visitation. Aside from the injury to her leg, Ms. Knorr testified that upon receiving the child Friday evening, she noticed one, dime-sized bruise on her chest. On the second day of her visitation, after the Defendant had been left alone with the child for hours the evening before, Ms. Knorr observed additional bruising to her chest. The medical testimony indicated that the bruising to the chest corresponded with the placement of fingers to the chest, and that the injuries were likely caused from a squeezing motion. Ms. Knorr had further testified that after she returned from work that Saturday evening, the Defendant expressed frustration over the child's fussiness.

The medical testimony also revealed that the injury to the child's leg was likely the result of more than one impact; a forceful direct blow causing the upper fracture, and a twisting action causing the lower fractures. The medical testimony further revealed that a child suffering this type of fracture would have showed immediate signs of distress. According to the testimony presented, the child did not show serious outward signs of distress until Sunday morning, when it was also observed that the leg

appeared swollen. The Court would find that conduct producing such injuries could not have been designed to protect, care, or support the child. The Court would therefore conclude that the evidence was sufficient to sustain the Defendant's conviction for simple assault and endangering the welfare of children.

Sentencing Issue

The Defendant last asserts that the Court erred in failing to give adequate weight to his age, his prior record, and his prior mental health history. The Court disagrees. In deciding on an appropriate sentence for the Defendant, the Court considered many factors, including the ranges in the sentencing guidelines, and the age and mental health history of the Defendant.

42 Pa.C.S. § 9721 provides the standards to apply in determining the appropriate sentence for a defendant. Subsection (a) of the statute provides:

> (a) the court shall follow the general principle that the sentence imposed should call for confinement that is consistent with the protection of the public, the gravity of the offense as it relates to the impact on the life of the victim and on the community, and the rehabilitative needs of the defendant. The court shall also consider any guidelines for sentencing adopted by the Pennsylvania Commission on Sentencing and taking effect pursuant to section 2155 (relating to publication of guidelines for sentencing). In every case in which the court imposes a sentence for a felony or misdemeanor, the court shall make as a part of the record, and disclose in open court at the time of sentencing, a statement of the reason or reasons for the sentence imposed.
> . . .
>
> 42 Pa.C.S. § 9721

In the instant case, the Court considered the sentencing guidelines in determining the appropriate period of incarceration for the Defendant. The standard

guideline range of a five-point offense[6], for a Defendant with a prior record score of 4[7], is nine (9) to sixteen (16) months. The guideline range for a three-point offense[8] for a Defendant with a prior record score of 4, is three (3) to fourteen (14) months. The Court therefore found the sentence imposed in this case of ten (10) to twenty (20) months on the charge of endangering the welfare of a child and eight (8) to sixteen (16) months to be appropriate, considering the Defendant's age and mental health history. The Court further recommended that a smaller state facility be selected, considering the Defendant's mental and educational background. The Court therefore rejects Defendant's argument.

Dated:

By The Court,

Nancy L. Butts, Judge

xc: Kenneth Osokow, Esquire, DA
William Miele, Esquire, PD
Honorable Nancy L. Butts
Law Clerk
Gary Weber, Esquire
Judges

[6] The charge of endangering the welfare of children, 18 Pa.C.S.A. 4304, a misdemeanor of the first degree has an offense gravity score of 5.
[7] The Defendant's prior record included a felony robbery.
[8] The charge of simple assault, 18 Pa.C.S.A. 2701, a misdemeanor of the first degree has an offense gravity score of 3.