

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 : **CR-118-2014**
 v. :
 :
 :
 LATOYA MONIQUE FAULKS, : **CRIMINAL DIVISION**
 Defendant :

OPINION AND ORDER

On September 22, 2014, after a non-jury trial, this Court found the Defendant guilty of Endangering Welfare of Children (EWOC)¹ and Leaving an Unattended Child in a Motor Vehicle.² On December 1, 2014, the Defendant filed a timely post-sentence motion. An argument on the motion was held on December 19, 2014.

I. Background

A. Nicole Hart's Testimony

On December 5, 2013, Nicole Hart (Hart) was in the Family Dollar store on West Fourth Street in Williamsport, Pennsylvania. The Defendant walked into the store, asked where the lightbulbs were located, and then walked towards the back of the store. Hart exited the store and saw an infant in a car, which was parked in a handicapped spot close to the store's door. The car was running, and nobody other than the infant was in the car. It was cold, and a window of the car was about halfway down. Hart waited three minutes and then called the police, who arrived just as the Defendant was exiting the store. Hart testified that the car could not be seen by a person either walking around the store or waiting at the store's checkout.

¹ 18 Pa.C.S. § 4304(a)(1).

² 75 Pa.C.S. § 3701.1(a).

B. Officer Jennifer Bowers' Testimony

Jennifer Bowers (Bowers) is an officer with the Pennsylvania College of Technology Police Department. On December 5, 2013, Bowers was dispatched to the Family Dollar store on West Fourth Street. Bowers testified that the store is located in an area that has had multiple shootings, drug deals, burglaries, thefts, and other violent crimes. When she arrived at the Family Dollar, Bowers saw the Defendant exiting the store. Bowers asked the Defendant if she had a baby in her car, and the Defendant said that she did. Bowers saw a sleeping infant in a car seat in the back seat of the Defendant's car, which was parked in a handicapped spot. The keys were in the car, and the car was unlocked and running. The driver's side window was halfway down. The outside temperature was 50 degrees Fahrenheit. The Defendant said that she was the mother of the baby, who was five months old. She told Bowers that she was in the store for two minutes.

Bowers reviewed footage from the store's security camera. According to Bowers, the footage showed the Defendant entering the store at 9:14 A.M. and walking towards the back of the store. Bowers testified that a person would not be able to see the Defendant's car while purchasing lightbulbs. The Defendant exited the store at 9:23 A.M.

C. The Defendant's Testimony

The Defendant testified that it was very cold on December 5, 2013. Her five-month old child had a temperature of 101 degrees, so she went to the store to buy medicine for the child. The Defendant parked in a handicapped spot, went into the store, and left her sleeping child in the car. She left the child in the car because she did not want him to get sicker. The Defendant left the car running with the heat on and the driver's window down, so she could reach into the

car and unlock the door when she came back. She bought lightbulbs, wipes, and medicine for the child.

D. Arguments

In her motion, the Defendant argues that Commonwealth did not present sufficient evidence that (1) she was aware that her child was in circumstances that threatened the child's physical welfare and (2) she failed to act or took lame actions that could not reasonably be expected to be effective to protect her child. The Defendant makes the following arguments to support her insufficiency argument. It is not relevant that the Defendant's child was in a high crime area. The Commonwealth presented evidence that the area has a high number of drug crimes, thefts, and shootings, but it did not present evidence that the area has a high number of carjackings or kidnappings, which are more relevant. Most crimes occur at night, but the Defendant went into the store around 9:00 in the morning. The Defendant spent only nine minutes in the store. The child was in the back seat and was wearing a coat. The temperature in the car was appropriate because the car was running with the heat, but the window was down to prevent overheating. The car was in a handicapped spot, so the Defendant could quickly access it.

The Commonwealth counters that because the car was running and a window was down, the car could have easily been used by a person looking to flee after drug crimes and shootings, which can happen at any time. In addition, it argues that cold air was entering the car because the window was down. Finally, the Commonwealth argues that the Defendant could not see the car because she went to the back of the store.

II. Discussion

“[T]o support a conviction under the EWOC statute, the Commonwealth must establish each of the following elements: ‘(1) the accused is aware of his/her duty to protect the child; (2) the accused is aware that the child is in circumstances that could threaten the child’s physical or psychological welfare; and (3) the accused has either failed to act or has taken action so lame or meager that such actions cannot reasonably be expected to protect the child’s welfare.’”

Commonwealth v. Wallace, 817 A.2d 485, 490-91 (Pa. Super. 2002) (quoting Commonwealth v. Mackert, 781 A.2d 178, 187 (Pa. Super. 2001)). “[I]t is the awareness by the accused that his violation of his duty of care, protection and support is ‘practically certain’ to result in the endangerment to his children’s welfare, which is proscribed by the [EWOC] statute.” Id. at 492.

In Commonwealth v. Mack,³ the Pennsylvania Supreme Court discussed the EWOC statute:

The purpose of juvenile statutes, as the one at issue here, is basically protective in nature. Consequently these statutes are designed to cover a broad range of conduct in order to safeguard the welfare and security of our children. Because of the diverse types of conduct that must be circumscribed, these statutes are necessarily drawn broadly. It clearly would be impossible to enumerate every particular type of adult conduct against which society wants its children protected. We have therefore sanctioned statutes pertaining to juveniles which proscribe conduct producing or tending to produce a certain defined result rather than itemizing every undesirable type of conduct.

The common sense of the community, as well as the sense of decency, propriety and the morality which most people entertain is sufficient to apply the statute to each particular case, and to individuate what particular conduct is rendered criminal by it.

359 A.2d at 772 (quoting Commonwealth v. Marlin, 305 A.2d 14, 18 (Pa. 1973)).

“A parent invites substantial peril when leaving a child of such tender years alone in a motor vehicle that is out of the parent’s sight, no matter how briefly.” Dep’t of Children &

³ 359 A.2d 770 (Pa. 1976).

Families, Div. of Child Prot. and Permanency v. E.D.-O., 82 A.3d 330, 334-35 (N.J. Super. Ct. App. Div. 2014).

Here, the Defendant left her infant unattended in a car for about ten minutes. Hart testified that the car could not be seen by a person walking around the store or waiting at the checkout. Bowers testified that a person purchasing lightbulbs would not be able to see the car. Because the Defendant knew nobody else was in the car, she was aware that her child was in circumstances that could threaten the child's welfare. Because the Defendant left her child unattended in the car, the Defendant failed to act to remove her child from the threatening circumstances.

III. Conclusion

Because the Defendant knew that she was leaving her child unattended in the car, the evidence was sufficient to support EWOC.

ORDER

AND NOW, this _____ day of March, 2015, based upon the foregoing Opinion, it is ORDERED and DIRECTED that the Defendant's Post-Sentence Motion is hereby DENIED. Pursuant to Pennsylvania Rule of Criminal Procedure 720(B)(4), the Defendant is hereby notified of the following: (a) the right to appeal this Order within thirty (30) days of the date of this Order; (b) the right to assistance of counsel in the preparation of the appeal; (c) if indigent, the right to appeal in forma pauperis and to proceed with assigned counsel as provided in Pennsylvania Rule of Criminal Procedure 122; and (d) the qualified right to bail under Pennsylvania Rule of Criminal Procedure 521(B).

By the Court,

Nancy L. Butts, President Judge