2014 IL App (3d) 120685-U

Order filed July 9, 2014

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2014

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois.
Plaintiff-Appellee,	)	Appeal No. 3-12-0685
v.	)	Circuit No. 11-CM-3167
LORENZO L. NEWMAN,	)	Honorable Carmen Goodman, Judge, Presiding.
Defendant-Appellant.	)	

JUSTICE SCHMIDT delivered the judgment of the court.
Justices Carter and McDade concurred in the judgment.

ORDER

¶ 1 *Held*: The State adduced sufficient evidence at trial to prove each and every element of the offense of endangering the life or health of a child beyond a reasonable doubt. Therefore, defendant's challenge to the sufficiency of the evidence must fail.

¶ 2 The State filed a criminal complaint against defendant, Lorenzo Newman, alleging he committed three counts of endangering the life or health of a child (720 ILCS 5/12-21.6 (West 2010)), a Class A misdemeanor. Following a bench trial, the circuit court of Will County found defendant guilty and sentenced him to 12 months' supervision, 50 hours of community service

and assessed $483 in fines, fees and costs. Defendant appeals, claiming the State failed to present sufficient evidence to prove each element of the offense charged beyond a reasonable doubt.

¶ 3 BACKGROUND

¶ 4 On October 7, 2011, the State filed a criminal complaint against defendant. The complaint alleged he endangered the life or health of M.M., "in that said defendant transported M.M. in an automobile without proper child restraints, in violation of" section 12-21.6 of the Criminal Code of 1961 (720 ILCS 5/12-21.6 (West 2010)). The complaint further alleged he also endangered the life or health of minors N.M. and J.E. in the same manner.

¶ 5 The matter proceeded to a bench trial at which Priscilla Soto testified. She indicated she lived in Bollingbrook for the past 12 years. The speed limit is 25 miles per hour on the residential street on which she lives. On the night of September 3, 2011, she was outside on her front lawn when she heard the sound of screeching tires and saw a vehicle spin out of control as it turned a corner. The vehicle hit a tree. She heard children screaming from inside the car, so she called the police and rushed toward the car.

¶ 6 Soto continued, noting that upon arriving at the car, she observed defendant sitting in the driver's seat. There were two children in the backseat of the car, one boy and one girl who "looked to be around five and ten." When asked if the children were wearing seatbelts, she stated that "it didn't look like they were." She did not observe any car seat or other restraining device for the children. Another neighbor removed the children from the car.

¶ 7 Officer James Albright of the Bolingbrook police department testified that he was on routine patrol the evening of September 3, 2011, when he received a call to respond to a car accident at approximately 7:46 p.m. Upon arrival, he observed a blue Chevrolet that had

"crashed" on the corner. He spoke to the driver of the vehicle, which the parties agree was the defendant.

¶ 8 Albright stated that defendant informed him that defendant had been driving the car and swerved to "avoid hitting something," but he could not identify what he swerved to avoid. Defendant informed Albright that his three cousins were in the vehicle. Defendant stated that "the two little ones were in the front seat and the older one was in the rear backseat passenger side." Defendant stated that the children were not in safety seats and had not been wearing seat-belts. Defendant also informed Albright that he knew the children should have been restrained.

¶ 9 Albright described the children in the front seat of the car as "short" and claimed they were "under counter height, which is normally 36 inches." The child in the back appeared to be between 8 to 12 inches taller than the other two. Neither of the front passengers had visible injuries, but the backseat passenger had a laceration on his right ear and knee, which Albright believed came from the glass that had broken during the accident.

¶ 10 The State rested after Albright's testimony. Defendant moved for a directed finding on the counts of endangering the life or health of a child. The trial court denied defendant's motion. The defendant presented no evidence and the matter proceeded to closing arguments.

¶ 11 During closing, defendant argued that the State had only established the petty offense of transporting a child without a proper child restraint. The trial court disagreed, stating that defendant crashed the car into a tree and admitted to the officer that the children should have been restrained. The court entered a finding of guilt on all three counts of endangering the life or health of a child.

¶ 12 The parties reached an agreed sentence of 12 months' supervision and 50 hours of community service work to benefit children's causes. The trial court accepted those terms and

entered an order imposing that sentence, adding $483 in fines, fees and costs. Defendant appeals.

¶ 13 ANALYSIS

¶ 14 At oral argument, defendant repeatedly discussed the allegations contained in the State's criminal complaint, claiming those allegations were simply inadequate to prove defendant guilty of endangering the life or health of a child. However, a review of defendant's arguments contained within his appellate briefs reveals no argument alleging deficiencies in the charging instrument. As such, we are left with defendant's sole claim on appeal that the State failed to adduce sufficient evidence at trial to prove him guilty of each and every element of the offense of endangering the life or health of a child (720 ILCS 5/12-21.6 (West 2010)) beyond a reasonable doubt. When faced with a challenge to the sufficiency of the evidence adduced at trial, we examine the evidence in the light most favorable to the prosecution to determine whether any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237 (1985); *People v. Cunningham*, 212 Ill. 2d 274 (2004).

¶ 15 We do not substitute our judgment for that of the trier of fact regarding the weight to be assigned evidence or the credibility of witnesses. *People v. Kotlarz*, 193 Ill. 2d 272 (2000). Section 12-21.6 of the Criminal Code of 1961 (the Code), states as follows:

> "(a) It is unlawful for any person to willfully cause or permit the life or health of a child under the age of 18 to be endangered or to willfully cause or permit a child to be placed in circumstances that endanger the child's life or health, except that it is not unlawful for a person to relinquish a child in accordance with the Abandoned

Newborn Infant Protection Act.[1]" 720 ILCS 5/12-21.6 (West 2010).

¶ 16 "A person violates the child endangerment statute when he or she 'willfully cause[s] or permit[s] the life or health of a child *** to be endangered or *** willfully cause[s] or permit[s] a child to be placed in circumstances that endanger the child's life or health.' " *People v Jordan*, 218 Ill. 2d 255, 270 (2006) (quoting 720 ILCS 5/12-21.6(a) (West 2002)). "Willful conduct is synonymous with knowing conduct." *Jordan*, 218 Ill. 2d at 270. " 'Conduct performed knowingly or with knowledge is performed willfully, within the meaning of a statute using the latter term, unless the statute clearly requires another meaning.' " *Id.* (quoting 720 ILCS 5/4-5(b) (West 2002)).

¶ 17 Therefore, "the State was required to prove that defendant knew he was endangering the life or health of" the children when he drove a car in which the children were riding unrestrained in such a manner as to cause it to crash into a tree. See *Jordan*, 218 Ill. 2d at 270. In *People v. Collins*, 214 Ill. 2d 206 (2005), our supreme court stated, "by its plain meaning, the term [endanger] refers to a potential or possibility of injury. The term does not refer to conduct that will result or actually results in harm, but rather to conduct that could or might result in harm." *Id.* at 215.

¶ 18 Defendant acknowledges that the State proved he drove a car in which the children were not wearing seatbelts or other restraining devices. He claims, however, that the State failed to put forth any evidence that doing so endangered the minors' lives or health. Specifically, defendant asserts there was no evidence that the three children's lives or health were in peril of probable harm merely because they were not properly restrained while defendant was driving.

¶ 19 Defendant notes there is an absence of case law interpreting section 12-21.6 of the Code, renumbered as current section 12C-5 (720 ILCS 5/12C-5(West 2012)), which analyzes whether

one can be guilty of endangering the life or health of a child merely by transporting them in a vehicle without proper restraints. The reason for this lack of authority, defendant asserts, is defendant's belief that this section of the Code should only be used to prosecute significant abuse or neglect.

¶ 20 Our review of the statute reveals only a handful of reported decisions analyzing it: *People v. Jordan*, 218 Ill. 2d 255 (2006), *aff'd in part and rev'd in part, People v. Jordan*, 354 Ill. App. 3d 294 (2004); *People v. Wilkenson*, 262 Ill. App. 3d 869 (1994); *U.S. v. Wise*, 556 F. 3d 629 (7th Cir. 2009); *People v. Melton*, 282 Ill. App. 3d 408 (1996); and *People v. Belknap*, 396 Ill. App. 3d 183 (2009).

¶ 21 In *Jordan*, the State charged defendant with endangering the life and health of a child when he knowingly and without legal justification left his child unattended in a motor vehicle with an outside temperature of 22º and a wind chill of 12º for approximately one hour. *Jordan*, 218 Ill. 2d at 259. At the time, section 12-21.6(b) of the Code contained "a rebuttable presumption that a person committed the offense if he or she left a child 6 years of age or younger unattended in a motor vehicle for more than 10 minutes." 720 ILCS 5/12-21.6(b) (West 2002). Our supreme court found the presumption contained within the statute unconstitutional. *Jordan*, 218 Ill. 2d at 266.

¶ 22 However, the *Jordan* court affirmed defendant's conviction, finding that "a rational trier of fact could have found that defendant knowingly endangered his infant daughter's life or health by leaving her unattended in his vehicle. Several factors bear upon that determination, including the setting where the vehicle was parked, the weather conditions, and the amount of time defendant left his daughter alone in the vehicle." *Id.* at 270.

¶ 23 The *Jordan* court continued, noting that "leaving a child unattended in a public place exposes the child to the danger posed by those in our society who may harm the child. We believe that too is a matter of common sense. It should also be obvious that the more populated the environment, and the longer the time the child is left alone, the greater the exposure to that danger." *Id*. at 271. In determining the State adduced sufficient evidence to allow a rational trier of fact to find that defendant endangered the life of the infant in violation of the statute, the *Jordan* court relied on its definition of "endanger" in *Collins* as we have noted above. Again, the *Collins* court stated, "by its plain meaning, the term [endanger] refers to a potential or possibility of injury. The term does not refer to conduct that will result or actually results in harm, but rather to conduct that could or might result in harm." *Collins*, 214 Ill. 2d at 215.

¶ 24 The *Jordan* court focused on the totality of the child's circumstances in the vehicle in making its determination. It noted that the outside temperature was in the 20s on the day of the incident but no testimony was offered as to the temperature inside the car. *Jordan*, 218 Ill. 2d at 271. The court continued, stating:

> "Weather conditions aside, it is an unfortunate fact of modern urban life that the more populated the area, the greater the likelihood that some ill will befall a young child who is left unattended in a public place. A young child unattended in a public setting is easy prey for social predators who may happen by. Legal reporters in our law libraries are rife with tragic examples confirming this observation. The danger is no less real because the actual occurrence of such an incident is a random event.
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> ***

> [L]eaving a child unattended in a public place exposes the child to the danger posed by those in our society who may harm the child. We believe that too is a matter of common sense. It should also be obvious that the more populated the environment, and the longer the time the child is left alone, the greater the exposure to that danger." *Id*. at 271.

¶ 25 In *Wilkenson*, the State charged defendant with child endangerment (720 ILC 150/4 (West 1992)), claiming that while defendant had " 'care of a child, [defendant], willfully caused the life of said child to be endangered, by holding a knife to the throat of said child.' " *Wilkenson*, 262 Ill. App. 3d at 872. Testimony indicated that after police were called to defendant's residence, they found defendant naked, holding a butter knife to the throat of a baby while screaming, " 'I have to kill this baby.' " *Id.* at 871. After the police convinced defendant to drop the knife, they grabbed the baby and separated it from the defendant. *Id*. Upon separation of the two, a wooden stick with metal studs and steel vice grips fell from defendant's arms. *Id*.

¶ 26 The *Wilkenson* defendant claimed that "merely holding a butter knife to the child did not endanger her life." *Id*. at 874. The court used Webster's Third New International Dictionary to help define the term "endanger", noting that the dictionary defines it as " 'bring[ing] in to danger or peril of probable harm' ", leading the court to state that "endangering the life of a child involves placing the child's life into danger of probable physical or mental damage whereas injuring the health of a child involves actually damaging, harming, or hurting that child's health." *Id*. at 874-75. The court concluded that holding a butter knife to the throat of a seven-month-old baby most certainly equates to endangering the life of the child. *Id*.

¶ 27 *U.S. v. Wise*, 556 F. 3d 629 (7th Cir. 2009), involved a felon being charged with possession of a firearm in violation of 18 U.S.C. § 922(g)(1). *Wise*, 556 F. 3d at 631. A four-year-old child found the felon's gun lying around the felon's house, fired the weapon, killing a two-year-old in the process. *Id*. The trial court sentenced the felon to 120 months' incarceration, adjusting the sentence upward from the sentencing guidelines based on a finding that the felon possessed a firearm "in connection with another felony offense": that being endangerment of a child resulting in death in violation of 12-21.6(a) of the Code. *Id*. (citing 720 ILCS 5/12-21.6(a) (West 2008)).

¶ 28 The *Wise* court found that "by carelessly leaving his loaded gun in a location accessible to children, [defendant] willfully caused or permitted the life of a child to be endangered, which, in this case, resulted in the death of the child." *Id*. at 632. As such, the *Wise* court found that sufficient evidence existed that Wise committed an offense separate from being a felon in possession of a firearm, that being the State felony of endangering the life or health of a child. *Id*. Therefore, it concluded the trial court did not err in its upward deviation from the sentencing guidelines. *Id*.

¶ 29 In *Melton*, five codefendants resided in an apartment in Chicago with their 19 children whose ages ranged from 17 months to 14 years old. *Melton*, 282 Ill. App. 3d at 411. Witnesses described the squalor like conditions as " 'barely fit for animals.' " *Id*. Defendants' claimed their convictions should be reversed, claiming the endangerment section of the Code mandated that the State prove "actual infliction of personal injury on the child." *Id*. at 417. The *Melton* court disagreed, finding that evidence "of actual injury is a requirement only under that portion of the endangerment statute regarding 'injuring the health' of a child. It is not a requirement under the

portion of the statute dealing with 'endangering the life' of a child." *Id*. (citing *Wilkenson*, 262 Ill. App. 3d at 874).

¶ 30 Finally, in *Belknap*, the State charged defendant with endangering the life or health of a child "in that defendant used illegal narcotics and failed to provide necessary care and medical attention for" the child. *Belknap*, 396 Ill. App. 3d 183. This court found that the State adduced sufficient evidence at trial to prove each and every element of the offense. *Id*. Evidence presented indicated defendant had been taking methamphetamine and had not slept for a few days when he hit the child in the head. *Id*. Medical evidence showed that the child had been hit in the head five times, with one of the bruises extending through the scalp to the child's occipital bone. *Id*. The child had been hit hard enough to cause bleeding in her brain and swelling of the brain, leading to the child's death. *Id*.

¶ 31 Returning to the case at bar, the State's argument for affirmation is straight forward: (1) the statute criminalizes endangering the life or health of a child; (2) *Jordan* defined the term "endanger" to mean actions which "could or might result in harm"; (3) defendant knew that he was transporting the children in a vehicle without proper restraints which could result in harm, especially given the manner in which defendant drove the vehicle; therefore, (4) when viewing the evidence in the light most favorable to the prosecution, defendant's sufficiency of the evidence challenge must fail. We agree.

¶ 32 We find defendant's argument lacking. Defendant asserts that "the State presented no evidence that Newman's act of transporting the children without seatbelts endangered them" and concludes that "the State failed to even posit a theory as to why the minors were in peril of probable harm." This argument seemingly suggests that the State was required to provide some type of expert analysis regarding the probability of harm of a child riding in a car properly

restrained versus one riding in a car without restraints. Our supreme court's decision in *Jordan* supports a contrary conclusion.

¶ 33 The *Jordan* court acknowledged the State presented no testimony at trial regarding the temperature within the car in which the children were left for an hour. *Jordan*, 218 Ill. 2d at 271. Nevertheless, the court found that merely leaving a child unattended in a public place exposed the child to "the danger posed by those in our society who may harm the child," which is "a matter of common sense." *Id.* The *Jordan* court went on to focus on the totality of the circumstances of the case, never mentioning any requirement of expert or other analysis commenting on the increased probability of harm. *Id.*

¶ 34 Similarly, using *Jordan* as a guide, we think it a matter of "common sense" that the longer a child rides in a car unrestrained "the greater the exposure to *** danger" exists. *Id.* Moreover, the State did not just adduce testimony that the children were endangered by being unrestrained, they were also endangered by the nature of defendant's driving.

¶ 35 Priscilla Soto testified she heard the sound of screeching tires and saw defendant's vehicle spin out of control as it turned a corner in her residential neighborhood. That vehicle then collided with a tree. While defendant claimed to Officer Albright that he swerved to avoid hitting something, defendant could not identify what he swerved to avoid hitting.

¶ 36 This testimony indicates defendant failed to keep proper control of his vehicle at a time he chose to drive with improperly restrained minors. Defendant drove the car in such a manner as to squeal the tires coming around a corner in a residential area causing it to collide with a tree. When viewing this evidence in the light most favorable to the prosecution, we cannot say that the State failed to adduce sufficient evidence to prove that defendant willfully caused the life or health of a child to be endangered.

¶ 37 Finally, we disagree with defendant's assertion that his conduct "fits squarely" into the petty offense, and only the petty offense, of improperly transporting a child as defined by the Illinois Motor Vehicle Code. (Motor Vehicle Code) (625 ILCS 25/4, 25/6 (West 2010)).

¶ 38 Section 25/4 of the Motor Vehicle Code states that a person transporting a child in this State "shall be responsible for providing for the protection of such child by properly securing him or her to an appropriate child restraint system." 625 ILCS 25/4 (West 2010). Failure to do so is a "petty offense punishable by a fine of $75." 625 ILCS 25/6(a) (West 2010).

¶ 39 Had defendant merely been pulled over by an officer for properly driving down the street while the minors were unrestrained, defendant's argument would be worthy of consideration. However, we are not presented with such facts. Defendant was not merely driving down the street with unrestrained minors but instead driving in such a manner to screech his tires and swerve off the road into a tree with unrestrained minors in the vehicle. Undoubtedly, such actions increased the probability of harm to the minors, endangering their life and health.

¶ 40 CONCLUSION

¶ 41 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

¶ 42 Affirmed.