

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2013 KA 0604

STATE OF LOUISIANA

VS.

CHARLOTTE STAGGS

Judgment Rendered: NOV 01 2013

On Appeal from
19th Judicial District Court,
In and for East Baton Rouge Parish,
State of Louisiana
Trial Court No. 10-09-0936, Sec. III

The Honorable Michael R. Erwin, Judge Presiding

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Attorney for Plaintiff/Appellee,
State of Louisiana

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Attorney for Defendant/Appellant,
Charlotte Staggs

BEFORE: WHIPPLE, C.J., WELCH, AND CRAIN, JJ.

CRAIN, J.

Charlotte Staggs and a co-defendant were charged by bill of information with one count of second degree cruelty to a juvenile, a violation of Louisiana Revised Statute 14:93.2.3.¹ After a jury trial, the defendant was found guilty as charged and sentenced to forty years at hard labor. We affirm the conviction and sentence.

FACTS

On August 23, 2009, the defendant's twenty-month-old stepson, H.S., was rushed to Our Lady of the Lake Hospital in Baton Rouge with a reported history of possible ingestion of an acetone-based fingernail polish remover.² The attending emergency room pediatric physician, Dr. Ashley Saucier, initially stabilized H.S. by establishing an artificial airway and intubating him. She then performed a head-to-toe examination and observed lesions on the child's lips and nose, bruising to his head and back, and circumferential bruising on his upper arms and wrists. H.S. weighed only fifteen pounds, which fell below the third percentile for his age, and a blood test revealed that he was dehydrated and progressing toward renal failure. A fork burn was subsequently discovered on his leg that appeared to be first-degree and second-degree in severity.

Dr. Saucier testified that acetone ingestion would not cause slowing of renal function and that H.S.'s physical condition would have resulted from "a process over weeks to months, not – not just over hours to days." She also confirmed that the circumferential bruising to the back of H.S.'s hands, wrist and arm were not consistent with an injury sustained in a fall as reported by the parents. With respect to the fork burn, the shape and degree of the burn confirmed that the fork

¹ The co-defendant was Steven Staggs, defendant's husband. Prior to trial, the trial court granted defendant's motion to sever and ordered separate trials.

² In accordance with Louisiana Revised Statute 46:1844W, the victim and other minor children named herein are referenced only by their initials.

had been completely pressed down on H.S.'s leg, and Dr. Saucier was "99.999 percent certain this was not accidental." During the course of his five-day hospitalization, H.S. gained over four pounds, a twenty-six percent increase in his body weight; and within six months, his weight increased to twenty-eight pounds, placing him in the fiftieth percentile. The increase in weight from nutrition led Dr. Saucier to conclude that H.S.'s previous condition was environmental, meaning something was being withheld from the child, rather than organic, such as an illness.

Kristi Rabalais, a pediatric nurse who treated H.S. during his hospitalization, testified that she treats patients H.S.'s age and younger on a monthly basis who have been abused or neglected; and, in her opinion, H.S. "looked as if he had been abused" and "had the most physical bruising, scratching, [and was one of the most] underweight patients that I've seen that lived through his injuries."

H.S.'s maternal grandfather, Terry Reardon, testified that he noticed and inquired about bruising on H.S., and the defendant responded that H.S. "falls down a whole lot." He instructed the defendant to take the child to a doctor and she agreed to make an appointment, but there was no evidence at trial to indicate that an appointment was ever made. The evidence also established that H.S.'s half sister and stepbrother were healthy children.

The State also introduced evidence at trial that H.S. was the beneficiary of an annuity that had been created with the proceeds from a settlement stemming from his biological mother's accidental death. Lindsey Leavoy, an attorney involved in the structuring of the settlement, testified that the annuity payments would begin when H.S. became eighteen years old; however, in the event of H.S.'s death, the money would be paid to his father, Steven Staggs, the defendant's husband and a co-defendant. H.S.'s maternal grandmother, Nancy Hoyt, is the fiduciary of the annuity, and his grandfather, Terry Reardon, testified about

numerous occasions where the defendant approached him about the possibility of transferring control of the annuity because she wanted a new house, car and private schooling for her two biological children.

The defendant testified that H.S. would “fall more frequently than” other children and “bruise[d] easily.” She also stated that H.S. would sometime become angry and “throw himself on the floor, and on a few occasions, actually bite his hand” or bang his head on the floor. When presented with photographs of H.S.’s condition on the day of his admission to the hospital, the defendant dismissed the bruising and other marks as either insect bites or the result of innocent falls while playing. With respect to the circumferential bruising on H.S.’s wrists, the defendant only offered that when her husband would “discipline the boys . . . he would . . . grab them by the wrist and pick them up to whip their bottoms.” She also described the fork burn as an accident that occurred while H.S. was eating.

By a unanimous verdict, the jury found the defendant guilty as charged of second degree cruelty to a juvenile. The trial court sentenced the defendant to forty years at hard labor and gave her a period of one year to ask for reconsideration of the sentence.

ASSIGNMENT OF ERROR

In her sole assignment of error, the defendant alleges that her sentence of forty years at hard labor for second degree cruelty to a juvenile is constitutionally excessive in light of her youth and lack of a criminal history.

A thorough review of the record indicates that the defendant’s attorney below did not make a written or oral motion to reconsider her sentence. Although defense counsel stated at the sentencing that the defense “*would* file a motion to reconsider sentence” (emphasis added), the record does not reflect that any such motion was actually filed or otherwise presented to the trial court. Under Louisiana Code of Criminal Procedure articles 881.1E and 881.2A(1), the failure

to make or file a motion to reconsider sentence precludes the defendant from raising an objection to the sentence on appeal, including a claim of excessiveness. See *State v. Felder*, 00-2887 (La. App. 1 Cir. 9/28/01), 809 So. 2d 360, 369, *writ denied*, 01-3027 (La. 10/25/02), 827 So. 2d 1173. Accordingly, the defendant is procedurally barred from having the instant assignment of error reviewed in this appeal. *Felder*, 809 So. 2d at 369; *State v. Duncan*, 94-1563 (La. App. 1 Cir. 12/15/95), 667 So. 2d 1141, 1143 (*en banc per curiam*). We note, however, that the trial court allowed the defendant a period of one year within which to file a motion to reconsider sentence. Therefore, in the event the defendant files a timely motion to reconsider the sentence, she may thereafter appeal any adverse ruling on such motion to this court.

REVIEW FOR ERROR

This court routinely reviews the record for errors discoverable by a mere inspection of the pleadings and proceedings without inspection of the evidence under Louisiana Code of Criminal Procedure article 920(2). After reviewing the record, we have discovered no such errors.

CONVICTION AND SENTENCE AFFIRMED.