

IN THE SUPREME COURT OF THE STATE OF DELAWARE

STEPHANIE WALLS,)
) No. 69, 2003
 Defendant Below,)
 Appellant,) Court Below: Superior Court
 v.) of the State of Delaware in
) and for New Castle County
)
 STATE OF DELAWARE,) Cr. A. Nos. IN01-04-0533
) and IN00-09-2077
 Plaintiff Below,)
 Appellee.)

Submitted: September 16, 2003
Decided: October 6, 2003

Before **VEASEY**, Chief Justice, **HOLLAND**, and **STEELE**, Justices.

ORDER

This 6th day of October 2003, upon consideration of the briefs of the parties, it appears to the Court as follows:

1. Defendant-Appellant Stephanie Walls was an approved foster parent charged with the custody of 2 ½ month-old Nicholas Trusello. After having Nicholas in her care for less than a week, Walls called the New Castle County Paramedics to resuscitate him after he was found in cardiac arrest on the floor of her home. Trusello was taken to an emergency room and diagnosed with a traumatic brain injury resulting from shaking trauma. Later tests revealed that Trusello suffered from shaken baby syndrome on at least one occasion before being placed with Walls. Walls was arrested and charged with Assault by Abuse

or Neglect,¹ and Endangering the Welfare of a Child.² She was convicted of both offenses, and sentenced to four and half years at Level V.

2. Before trial, Defendant moved to dismiss the indictment alleging Assault by Abuse or Neglect on the grounds that the required element of “abuse” had inconsistent statutory definitions. During the prayer conference, the trial judge proposed eliminating the statutory references to “negligent treatment” and “physical injury.” After Walls objected, the trial judge first explained that he had the authority to redact a statute in order to maintain its constitutionality. Further, the trial judge opined that “telling the jury about negligent treatment in terms of the facts as presented is unnecessary and potentially misleading.”³ The trial judge also added the term “serious physical injury” to the definition of “abuse” in order to harmonize it with the injury element of the criminal statute.

3. Walls argues on appeal that the offense of Assault by Abuse or Neglect contains contradictory elements.⁴ She contends that the trial judge erred

¹ 11 Del.C. § 615 (a) (1).

² 11 Del.C. § 1102 (a) (1)a.

³ Appellee Brief at 10.

⁴ 11 Del.C. § 615 (*et seq*) Assault by abuse or neglect; class B felony. (emphasis added)

(a) A person is guilty of assault by abuse or neglect when the person recklessly causes serious physical injury to a child:

(1) Through an act of abuse and/or neglect of such child; or

(2) When the person has engaged in a previous pattern of abuse and/or neglect of such child.

(b) For the purposes of this section:

(1) ...

(2) ***"Abuse" and "neglect" shall have the same meaning as set forth in § 1103 of this title.***

by revising the applicable language of the statute because a statute may not be revised or reworded by a court in order to make it conform to the court's interpretation of the statute's intended effect.⁵ Walls further argues that a trial judge's attempt to reconstruct a statute encroaches on separation of powers because the General Assembly, not the courts, should correct overly broad statutory language.

4. Here, the statutory provisions are *in pari materi*; therefore, they must be read together, and, if necessary, be harmonized to produce consistency.⁶ Here, the trial judge properly harmonized the ambiguity in the statutes defining the offense of Assault by Abuse or Neglect and the definition of "abuse."⁷ By redacting the statute and eliminating the words "negligent treatment," the trial judge clarified an otherwise potentially misleading jury instruction. Negligent treatment of Trusello was not at issue in this case, and thus the trial judge neither erred nor prejudiced Walls when he removed the phrase from the instruction. The trial judge approached the issue practically and gave effect to the legislative intent clearly evidenced in the statute.

⁵ *Reno v. American Civil Liberties Union*, 521 U.S. 844, 884-885 (1997).

⁶ *See Snyder v. Andrews*, 708 A.2d 237, 242 (Del. 1998).

⁷ As set forth in 11 *Del.C.* §1103: (a) "Abuse" means causing any physical injury to a child through unjustified force as defined in § 468(1)(c) of this title, torture, negligent treatment, sexual abuse, exploitation, maltreatment, mistreatment or any means other than accident.

5. Finally, the trial judge did not err by resolving an ambiguity in the type of injury required for abuse, “by bumping up the definition of ‘physical injury’ in abuse to ‘serious physical injury’ ...”⁸ In doing so, the trial judge simplified a potentially misleading charge that would have instructed the jury to find guilt where a perpetrator caused both “*serious physical injury to a child*” and “*any physical injury to a child.*” The practical effect of this instruction required the State to prove a higher standard of “serious physical injury,” and thus eliminated the basis for Walls to claim unfair prejudice. Accordingly, the trial judge committed no legal error nor could the ruling unfairly prejudice Walls when it resulted in a higher burden on the State before there could be a finding of guilt.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is, AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Justice

⁸ Appendix A-31