

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MARIE ANDRE,	§	
	§	No. 180, 2003
Defendant Below,	§	
Appellant,	§	
	§	
v.	§	Court Below: Superior Court
	§	of the State of Delaware
STATE OF DELAWARE,	§	in and for Kent County
	§	
Plaintiff Below,	§	Cr. I.D. No. 0207008526
Appellee.	§	

Submitted: September 16, 2003
Decided: December 19, 2003

Before **HOLLAND, BERGER** and **JACOBS**, Justices.

ORDER

This 19th day of December, on consideration of the briefs of the parties, it appears to the Court that:

1) Marie Andre appeals from her conviction, following a jury trial, of endangering the welfare of a child. She argues that she is entitled to a new trial because, in its rebuttal argument, the State equated “neglect” with negligence.

2) Marie was the legal guardian of her nine year old nephew, Rudgerry Romain. On July 11, 2002, Andre checked into a room at the Dover Howard Johnson’s Motel with Romain and her three children. Apparently, she went to the motel because she was trying to avoid having to appear in Family Court to testify against Roosevelt

Emile, the father of two of her children. On Saturday, July 13, 2002, after the charges against Emile had been dismissed, Marie, Emile and Marie's three children drove to Wilmington to go shopping for luggage. Romain was asked to join them, but he did not want to go shopping. Shortly after everyone else departed, Romain went to the motel swimming pool and drowned. The police searched for Andre for several hours and finally reached her on her cell phone at 11:00 p.m.

3) A person is guilty of the felony, endangering the welfare of a child, when, "[b]eing a parent [or] guardian ... of a child less than 18 years old the person ...[i]ntentionally does or fails to do any act, with the result that the child becomes a neglected child...."¹ The term "neglect" is defined:

"Neglect" means threatening or impairing the physical, mental or emotional health and well-being of a child through inadequate care or protection, nontreatment or abandonment by the child's custodian or other person in whose temporary custodial care the child is left, when such custodian or other person has the ability and financial means to provide adequate care or protection, but does not or will not do so....²

4) In his closing argument, Andre's counsel argued that her one act of leaving Romain unattended was negligence, but did not "rise to the level of knowingly or intentionally... and therefore you (the jury) cannot find her guilty." In response, the prosecutor said:

¹Del. Code Ann. tit. 11, §1102(a)(2001).

²Del. Code Ann. tit. 11, § 1103(c)(2000).

[Andre's counsel] does not say in his argument that she was not – that she was entirely blameless. He says she was negligent, negligent in leaving the child alone. The State submits to you is very similar to neglecting him, leaving him ...

At that point, Andre's counsel objected and, after fairly lengthy arguments outside the presence of the jury, the trial court sustained the objection. The court told the jury to disregard the prosecutor's comments about negligence being similar to neglect. The court explained that "negligence" is not an element of the crime and then read to the jury the statutory definition of "neglect."

5) Andre argues that, because the "neglect" issue was the heart of the case, the trial court's curative instruction could not adequately overcome the prejudice she suffered. We disagree. This was not a close case and the trial court's prompt and complete curative instruction mitigated any prejudice that may have been caused by the prosecutor's incomplete statement about negligence.³

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

BY THE COURT:

/s/ Carolyn Berger
Justice

³See *Hughes v. State*, 437 A.2d 559 (Del. 1981).