

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D18-5308

MARLYNN STILLIONS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Okaloosa County.
Michael A. Flowers, Judge.

June 8, 2020

ROWE, J.

Marlynn Stillions, an elementary school teacher, appeals her convictions for three counts of child abuse without causing great bodily harm based on incidents involving a three-year-old student. Stillions argues that the trial court erred in instructing the jury, admitting certain testimony, and denying her motion for judgment of acquittal. We affirm in all respects and write only to explain why the trial court properly denied the motion for judgment of acquittal.

Facts

Stillions was a teacher in a pre-kindergarten program for children with disabilities. The alleged victim was three years old

when he enrolled in the pre-K program and was assigned to Stillions' class. The child was nonverbal and on the autism spectrum. Stillions taught the child for two years while he was enrolled in the program. During this time, the child's father observed an increase in the child's aggressiveness and stated that the child was reluctant to go to school.

While the child was still a student in Stillions' class, witnesses reported three separate incidents involving Stillions and the child. The first incident was in the school's lunchroom. A school custodian saw Stillions using her knee to force the child to move backwards by repeatedly forcing her knee into the child's torso. The custodian saw Stillions kneeling the child three or four times. Each time the child bounced backwards and backed away as Stillions advanced. The custodian was concerned and alerted the principal.

The second incident was also in the lunchroom. A teacher's aide saw Stillions standing in a doorway near the exit of the lunch line. The child approached the doorway to exit the lunch line. But Stillions stuck her foot out and tripped him. The child fell forward onto the tile floor, dropped his tray, and started crying. The aide heard the impact from the child hitting the floor. She was concerned that the child was injured. The aide said that Stillions did not offer to help the child or console him. Instead, Stillions told him to pick up the tray.

The third incident was in the school's courtyard. A teacher's aide heard Stillions call for a "code yellow" on the walkie-talkie. The code meant that staff trained in de-escalation techniques needed to be on alert. The aide looked out her classroom window and saw Stillions and the child standing on opposite sides of a tree. Stillions was trying to catch the child, and the child was trying to evade her. The child was laughing. After failing to catch the child, Stillions pushed him and he fell to the ground. Stillions then called a "code red" and reported that the child was attacking her. A code red meant that staff needed to respond immediately. But the aide never saw the child attack Stillions. The child began crying when he fell. The aide was concerned that the child was injured.

The child's father reported the incidents to law enforcement. And Stillions was charged with three counts of child abuse. The case went to trial and the State presented testimony from the school employees who witnessed the three incidents. Defense counsel moved for a judgment of acquittal at the close of the State's case. He argued that there was insufficient evidence to submit to the jury on child abuse because the victim suffered no physical injuries and no reasonable person would believe that the alleged conduct would have caused physical injury. The motion was denied.

Stillions then testified in her own defense. As for the first incident, she stated that she saw the child running around the lunchroom. She followed the child to block him from obstacles that could hurt him. She denied kneeling him. She claimed that the child ran toward her, so she blocked him with her leg, and he ran into her leg. Stillions was concerned that the child would charge and bite her because he had done so in the past.

Stillions then recounted the second lunchroom incident. When she saw students from her class trying to leave the lunchroom, she stood at the threshold of the door and blocked the doorway with her foot. She was trying to be a visual reminder that none of the students, including the child, should leave the area. But despite her position at the door, the child ran toward her leg, tripped, and spilled his tray. Stillions said she asked the child to pick up his tray after he fell because she was holding three trays in her hands and had a bag on her shoulder.

As for the incident in the courtyard, Stillions explained that her class was walking back to the classroom after lunch when the victim ran into the courtyard. Stillions chased the child and told him to stop. He did not stop. Instead, he ran toward her and then ran away from her. She characterized it as a "cat and mouse" situation. Stillions called for a code yellow because there were tripping hazards in the area where the child was running. Stillions testified that the child acted as if he would allow her to pick him up, but he pinched her on a nerve and ran off again. She characterized the pinch as an attack and called in a code red because she was hurt. Stillions said that the next thing she knew,

she and the child were on the ground. She could not recall how they ended up there. The defense concluded its case.

Stillions' counsel renewed the motion for judgment of acquittal. He argued that no evidence showed that the child suffered any physical injury and it was unreasonable to believe that Stillions' actions would have caused any injury to the child. The trial court denied the motion.

The jury found Stillions guilty as charged. She was sentenced to seven years in prison. This timely appeal follows.

Standard of Review

We review a trial court's ruling on a motion for judgment of acquittal de novo. *Moran v. State*, 278 So. 3d 905, 908 (Fla. 1st DCA 2019). If competent, substantial evidence establishes every element of the crime, then judgment of acquittal is improper. *Id.* We construe the evidence in the light most favorable to the State. *Holmes v. State*, 278 So. 3d 301, 304 (Fla. 1st DCA 2019).

Analysis

Stillions argues that the trial court erred when it denied her motion for judgment of acquittal because there was no evidence that the child was physically injured, and it was unreasonable to believe that Stillions' actions could have caused injury to the child.

To prove the charged offense, the State had to show that Stillions knowingly and willfully abused the victim by committing an intentional act that could reasonably be expected to result in physical or mental injury to the victim and that the victim was under eighteen years old. § 827.03(1)(b)2., Fla. Stat. (2016); Fla. Std. Jury Instr. (Crim) 16.3.

Stillions argues that she was entitled to acquittal because the child was not physically injured. That argument fails because the plain language of the child abuse statute does not require physical injury. Rather, the statute defines child abuse as “[a]n intentional act that *could reasonably be expected* to result in physical or mental injury to a child.” § 827.03(1)(b)2., Fla. Stat. (2016)

(emphasis added). Thus, actual injury is not required. *Zerbe v. State*, 944 So. 2d 1189, 1193 (Fla. 4th DCA 2006) (holding that the offense of child abuse under subsection (b) does not require proof of actual injury); *Clines v. State*, 765 So. 2d 947, 948 (Fla. 5th DCA 2000) (“As amended, the statutory offense of child abuse is no longer limited to actual physical or mental injury inflicted on a child. It now includes ‘any intentional act that could reasonably be expected to result in physical or mental injury to a child.’”).

Even so, Stillions argues that she was still entitled to a judgment of acquittal because her actions could not reasonably be expected to cause physical injury to the victim. We disagree. Viewed in a light most favorable to the State, the evidence was sufficient to go to the jury. In the first incident, a witness saw Stillions kneeling the child in his torso with enough force that he bounced backwards. And she saw Stillions knee the child three or four times. Stillions’ acts seemed dangerous enough that the witness reported it to the principal.

In the second incident, Stillions admitted that she used her foot to block the child from leaving the lunchroom. The child tripped and fell onto the tile floor. The impact of the fall caused a loud noise. The child cried after the fall. In the third incident in the courtyard, the witness saw Stillions pushing the child hard enough that he fell to the ground. This occurred in an area that Stillions described as dangerous and containing many hazards. The child began crying when he hit the ground.

When viewed in a light most favorable to the State, the testimony on the three incidents provides competent, substantial evidence to establish that Stillions’ intentional actions could reasonably be expected to cause injury. While Stillions’ version of the events conflicted with the testimony by the State’s witnesses, resolution of this case requires a credibility determination. And a jury, not the court, must make that determination. *Corbett v. State*, 267 So. 3d 1051, 1057 (Fla. 1st DCA 2019) (“Because conflicts in the evidence and the credibility of the witnesses have to be resolved by the jury, the granting of a motion for judgment of acquittal cannot be based on evidentiary conflict or witness credibility.”) (quoting *Hitchcock v. State*, 413 So. 2d 741, 745 (Fla. 1982)). Thus, the case was properly submitted to the jury.

The order denying the motion for judgment of acquittal is
AFFIRMED.

WINOKUR and NORDBY, JJ., concur.

*Not final until disposition of any timely and
authorized motion under Fla. R. App. P. 9.330 or
9.331.*

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