COURT OF APPEALS OF VIRGINIA

Present: Judges Coleman, Willis and Senior Judge Hodges
Argued at Norfolk, Virginia

JULIE HARRIS, S/K/A
JULIE JOY HARRIS

v. Record No. 1201-96-1

COMMONWEALTH OF VIRGINIA

MEMORANDUM OPINION* BY
JUDGE WILLIAM H. HODGES
JUNE 17, 1997

FROM THE CIRCUIT COURT OF THE CITY OF HAMPTON
Wilford Taylor, Jr., Judge

Charles E. Haden for appellant.

Leah A. Darron, Assistant Attorney General (James S. Gilmore, III, Attorney General, on brief), for appellee.

Julie Harris appeals the decision of the circuit court finding her guilty of one count of felony child neglect in violation of Code § 18.2-371.1(A). Harris contends that there was insufficient evidence to prove that she willfully permitted injury to her child. We affirm the decision of the trial court.

Code § 18.2-371.1(A) provides:

> Any parent, guardian, or other person responsible for the care of a child under the age of eighteen who by willful act or omission or refusal to provide any necessary care for the child's health causes or permits serious injury to the life or health of such child shall be guilty of a Class 4 felony. For purposes of this subsection, "serious injury" shall include but not be limited to (i) disfigurement, (ii) a fracture, (iii) a severe burn or laceration, (iv) mutilation, (v) maiming, (vi) forced ingestion of dangerous substances, or (vii)

*Pursuant to Code § 17-116.010 this opinion is not designated for publication.

life-threatening internal injuries.

"On appeal, we review the evidence in the light most favorable to the Commonwealth, granting to it all reasonable inferences fairly deducible therefrom." Martin v. Commonwealth, 4 Va. App. 438, 443, 358 S.E.2d 415, 418 (1987). So viewed, the evidence established that, beginning January 12, 1995, appellant was aware that Tyler was suffering from a series of injuries while in her husband's care. From January 12, 1995 until appellant took the child to the emergency room on February 20, 1995, appellant's son suffered bruises, tender limbs, and swollen lips. X-rays indicated that the three-month-old child had incurred five "chip fractures or avulsion fractures" of his arms and legs, "caused by rotational wrenching type of injury about the joint." The extent of healing of the injuries indicated that some had occurred several weeks earlier while others occurred within hours or days.

Mary Hinkle provided day care for appellant's son three or four hours a day, five days a week. Hinkle testified that on January 12, 1995, appellant and her husband pointed out a bruise on Tyler's head which appellant explained was caused when Tyler rolled off a waterbed while in her husband's care. Towards the end of January, Hinkle noticed that the child was not using his right arm. In mid-February, he screamed when she tried to straighten his left leg. During that same period in mid-February, the child arrived at day care with a swollen lip.

Appellant told Hinkle that her husband did not want her to take the child to the emergency room because he was afraid he would be put in jail.

While appellant contends that the evidence was insufficient to prove her guilt beyond a reasonable doubt, we find that the evidence demonstrated that she knew her son was at risk but, by "omission or refusal" to act, allowed the abuse to continue for a period of weeks. Inaction when action was necessary to protect the health and well-being of her child was culpable and was precisely the type of behavior the section was designed to criminalize. It was appellant's duty to protect her son from abuse which the evidence showed she knew was taking place.

Therefore, there was sufficient credible, competent evidence to prove beyond a reasonable doubt that, by her willful omission, appellant permitted her child to suffer serious injuries, in violation of Code § 18.2-371.1(A).

For the reasons stated, we affirm the decision of the trial court.

Affirmed.