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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-000554-MR

ROXAN PHILLIPS

APPELLANT

v. APPEAL FROM WHITLEY CIRCUIT COURT
HONORABLE PAUL E. BRADEN, JUDGE
ACTION NO. 02-CR-00143

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: TACKETT AND VANMETER, JUDGES; MILLER, SENIOR JUDGE.¹

TACKETT, JUDGE: Roxan Phillips appeals from a judgment of the Whitley Circuit Court finding her guilty of four counts of abandonment of a minor and sentencing her to eighteen months' imprisonment, probated for five years. Roxan argues that her actions in leaving her children inadequately supervised while traveling with their father on long-haul truck trips did not

¹ Senior Judge John D. Miller sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

support the statutory elements of the charges. We disagree with Roxan's contention that leaving her children, aged five to thirteen, without proper adult supervision for weeks at a time did not demonstrate intent to abandon them merely because she always intended to return. Thus, the trial court's judgment is affirmed.

In September 2002, family service worker Tonya Ross investigated a complaint of four children abandoned in rural Whitley County. Arriving at the Phillips' residence, she found the children, aged thirteen, eleven, seven and five, alone except for the supervision of their fourteen year-old cousin. Their mother was in Texas, near the border of Mexico, and not due back for two weeks. The children were placed in foster care while workers attempted to contact Roxan. When reached by phone, Roxan said that she did not know why it was necessary to remove the children since her sister, Carol Phillips, was supposed to be caring for them. Carol denied telling Roxan she would watch the children after their first set of caretakers proved inadequate. Roxan and Jeff were both indicted on four counts of abandonment of a minor and tried jointly. Although Jeff was acquitted, Roxan was convicted and sentenced to eighteen months' imprisonment, probated for five years. This appeal followed.

Roxan argues that she was improperly convicted of abandonment under Kentucky Revised Statute (KRS) 530.040 which states as follows:

(1) A person is guilty of abandonment of a minor when, as a parent, guardian or other person legally charged with the care or custody of a minor, he deserts the minor in any place under circumstances endangering his life or health and with intent to abandon him.

Since she left money for the children to buy food, attempted to hire caretakers for them, and returned between trips for a day or two, Roxan contends that her children were not endangered and that the Commonwealth was unable to prove that she intended to abandon them. Roxan's trial counsel moved for a directed verdict of not guilty at the close of the Commonwealth's case and again at the close of the defense. The trial court denied both motions, and the jury convicted her after hearing testimony from Roxan, Carol, some of the children, a worker from their school and social services personnel among others. A motion for directed verdict may only be granted if the evidence, taken in the light most favorable to the Commonwealth, is insufficient to induce a reasonable person to believe the defendant's guilt beyond a reasonable doubt. Benham v. Commonwealth, 816 S.W.2d 186 (Ky. 1991). The standard of review is whether it would be clearly unreasonable for the jury to find guilt. Id.

Roxan and Jeff Phillips have four children together and were married when the first two were born. Sometime after their divorce, they began living together again, had two more children, and were still living together as a family at the time of the events underlying these charges. Jeff was working as a long-haul trucker, and Roxan became concerned that he might suffer a heart attack while on a trip. In 2002, Roxan decided to accompany Jeff on a two-week trip.

She first hired a pair of young adults to care for her four children. Carol, who lived next door to the children, told Roxan that she needed to come back home because the children were being left alone. According to Roxan's testimony, she fired the first pair of babysitters and hired Carol to take care of the children. Carol, on the other hand, testified that she told her sister she could not care for the children because she worked third shift. Although she began cashing checks from Roxan, Carol never spent the night with the children and claimed the money was being paid to her fourteen year-old daughter to watch them. Roxan's oldest daughter testified that they were often left alone even though their cousin was supposed to be watching them. Moreover, the girl said they often went without groceries because none of their adult relatives would take them to the store and they did not always have any way to contact their mother. Over a month before the children were placed in

foster care, Carol called Roxan and told her she needed to come home as neither she nor her teenage daughter could care for Roxan's children. Roxan refused saying that her fourteen year-old niece could take care of the children.

Dinah Smith, who volunteered at the children's school resource center, was asked by the oldest girl to help get them some food. The eleven year-old said they only had a check for \$30.00 and, after paying for gas, there was not enough money to buy food. Smith went to their home and found bugs, a stopped up toilet and lots of dirty dishes. The children said they did not have a number where their mother could be reached. Smith prepared a meal and gave the children her phone number in case they needed more help. They asked for food a second time that week. The following week, the children again called Smith to get them some food. Smith went to the home and prepared a meal. The two youngest children complained of hunger prompting Smith to report the situation to social services. Ross, going to the home to investigate on behalf of social services, found the children being watched by their fourteen year-old cousin. She was told that Roxan was in Texas. After their grandparents refused to take the children in, Ross removed them to a foster home that evening.

Roxan seems to misunderstand the concept of abandonment. She claims that the Commonwealth cannot prove

intent to abandon because it was never her plan to be gone permanently. While this argument might hold more weight in the context of a piece of property, young children require supervision and care on a day-to-day basis. The evidence showed that, during the month of July, Roxan was home twice for less than twenty-four hours each time. In August, she was home from the 22nd through the 26th before being gone until the children were removed from the home on September 19th. During much of this time there was no adult present in the home. Clearly, Roxan's children were abandoned from the beginning of July through the middle of September with the exception of a few days in August.

Roxan would also have us find that her children were not left in circumstances which endangered their lives or health during the periods of their abandonment. She points out that she made arrangements at the start for a pair of young adults to care for the children and left money, most of which went unused, for them to buy groceries. When the first pair of babysitters proved untrustworthy, Roxan claims she arranged for her sister to care for the children. Carol disputes ever agreeing to watch the children and claims instead that her fourteen year-old daughter provided their only supervision. Roxan admitted that she made no effort to return home after calling home on August 15th and finding the children alone. Further, she testified that

she knew Carol would not take the children to buy groceries, but she had hoped other adult relatives might help. Finally, Roxan acknowledged that her son had a history of medical and psychological problems and had been on Wellbutrin until recently. There was also evidence that the five year-old child missed a day of school because she was sick and that no one sought medical care for her. Roxan's son testified that the children were left alone at nights and that they could not have reached their parents in an emergency. Their Aunt Carol, who lived next door, often spent nights away from home with her boyfriend leaving their fourteen year-old cousin as the nearest person they could turn to for help. At least twice, the younger two children went hungry. Roxan has failed to show that the jury decision that her children were left in circumstances endangering their lives or health was unreasonable.

For the foregoing reasons, the judgment of the Whitley Circuit Court is affirmed.

ALL CONCUR.

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