IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KRISTLE ANN WILSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67160

FILED

AUG 04 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a jury verdict of willfully endangering a child as a result of neglect. Second Judicial District Court, Washoe County; Lidia Stiglich, Judge.

Appellant Kristle Ann Wilson claims insufficient evidence supports her conviction because the State failed to prove she had the requisite criminal intent to willfully endanger the child as a result of neglect. We review the evidence in the light most favorable to the prosecution and determine whether a "rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Mitchell v. State*, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008).

The jury heard testimony that Wilson's baby weighed seven pounds and two ounces at birth, there were no complications from the

birth itself, and the mother and baby were discharged within the first day or two. Prior to leaving the hospital, Wilson was provided guidance on breast feeding, she seemed to reject the guidance, and she mentioned that all of her children needed a "low-protein formula, some sort of special formula."

Wilson regularly visited a nearby 7-Eleven to socialize with the store clerk, Kayla O'Donnell. Wilson first brought her baby to the store when he was about two weeks old. O'Donnell was able to hold the baby and during the two months that followed she noticed the baby was losing weight and felt skinny. O'Donnell asked Wilson whether she was aware of the baby's weight loss and if she was going to take him to a doctor. Wilson said she was aware of the baby's weight loss and she was waiting for the baby's insurance card to arrive before going to a doctor. Wilson also said she lacked transportation. O'Donnell offered to give her a ride, but something came up and the trip was cancelled. "A week to a month" later, O'Donnell, Wilson, and the baby went to Women, Infants, and Children (WIC) to get baby formula.

A WIC employee asked Wilson if the baby was born premature and called a doctor from the Health Access Washoe County (HAWC) clinic when Wilson said "no." The HAWC doctor said the baby was extremely thin and insisted they take him to an emergency room. When the baby was admitted to the Renown Regional Medical Center Emergency Room,

he was obviously emaciated. He had ribs sticking out, sunken eyes and cheek bones, and loose folds of skin that hung from his body. And, at four and a half months old, he weighed only seven pounds and one and a half ounces—less than the 14 to 15 pounds he should have weighed at that age and less than what he weighed on the day he was born. The hospital reported the emaciated child to the Sparks Police Department.

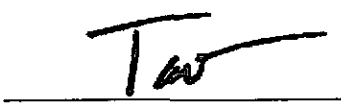
Detective Kevin Dach went to the hospital and spoke with Wilson. She said she noticed the baby's ribs showing two months earlier, she needed to use a different baby formula, and she started using Nutramigen two weeks ago. Wilson further said she did not get the new formula sooner because she suffered from a social anxiety disorder that prevented her from taking a bus and it was costly to take a taxi. She also said the Nutramigen formula was expensive. The police asked Doctor Catherine Wagoner, a board-certified child abuse pediatrician, to consult on the case. Doctor Wagoner diagnosed the baby's condition as a hypocaloric failure to thrive—he was starving because his mother was not adequately feeding him.

We conclude a rational juror could reasonably infer from this testimony that Wilson knew of the danger to her child, she acted unreasonably upon that knowledge by waiting two months before taking any action to protect her child, and her act of omission was willful. *See* NRS 200.508(1); *Smith v. State*, 112 Nev. 1269, 1276-77, 927 P.2d 14, 18

(1996) (discussing the state of mind that must exist to prove an offense under NRS 200.508), *abrogated in part on other grounds by City of Las Vegas v. Eighth Judicial Dist. Court*, 118 Nev. 859, 59 P.3d 477 (2002). It is for the jury to determine the weight and credibility to give conflicting testimony, and the jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports its verdict. *See Bolden v. State*, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981). Accordingly, we

ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Gibbons



_____, J.
Tao

_____, J.
Silver

cc: Hon. Lidia Stiglich, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk