

IN THE COURT OF APPEALS OF IOWA

No. 0-673 / 10-0033
Filed November 10, 2010

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DEAN THOMAS O'REGAN,
Defendant-Appellant.

Appeal from the Iowa District Court for Sioux County, James D. Scott,
Judge.

Defendant claims there was insufficient evidence to support his conviction
for child endangerment. **AFFIRMED.**

Curtis Krull of Krull Law Firm, L.L.C., Orange City, for appellant.

Thomas J. Miller, Attorney General, Thomas Andrews, Assistant Attorney
General, Coleman McAllister, County Attorney, and Jared R. Weber, Assistant
County Attorney, for appellee.

Considered by Vaitheswaran, P.J., and Eisenhauer and Danilson, JJ.
Tabor, J., takes no part.

DANILSON, J.

Dean O'Regan was charged with two counts of child endangerment, in violation of Iowa Code section 726.6(1)(a), (7) (an aggravated misdemeanor), and one count of domestic abuse assault, in violation of section 708.2A(1), (3)(b) (2007). Prior to trial, the child endangerment charge involving O'Regan's older son, Reilley, was dismissed based upon his age. After a jury trial, O'Regan was found not guilty on the domestic abuse assault charge and guilty on the child endangerment charge involving his younger son, Shane. O'Regan appeals, contending the evidence was insufficient to support his conviction. Because we believe O'Regan's actions involving Shane in a thirty-minute standoff with law enforcement officers provides sufficient evidence that O'Regan had knowledge he was creating a substantial risk to the child's physical, mental, or emotional health or safety, we affirm.

Discussion.

On Father's Day, June 21, 2009, O'Regan spent time with his four children. A confrontation occurred when O'Regan returned the children to the home of his ex-wife (the children's mother) later that day.¹ Four law enforcement officers responded to his ex-wife's 911 call. The officers found O'Regan mid-argument with his ex-wife, standing in the middle of an isolated gravel road outside the residence holding the hands of his sons, eleven-year-old Shane and fourteen-year-old Reilley, at his sides. The four officers circled O'Regan and the boys, attempted to calm O'Regan down, and asked him to let the boys go.

¹ The couple was divorced and had a history of domestic violence. In 2007, O'Regan entered an *Alford* plea to serious assault-domestic abuse charges, and a no-contact order extending for five years to the year 2012 was entered by the court.

O'Regan grasped the boys' hands and led the officers in an unarmed standoff for the next thirty minutes. During the standoff, the younger boy, Shane, was crying and upset. O'Regan refused to let the boys go, used profanities, and became "verbally aggressive," and "thr[e]w the children either in front or behind him" when the officers approached.

We review challenges to the sufficiency of the evidence supporting a guilty verdict for correction of legal error. Iowa R. App. P. 6.907; *State v. Isaac*, 756 N.W.2d 817, 819 (Iowa 2008). The jury's findings of guilt are binding on appeal if the findings are supported by substantial evidence. *State v. Leckington*, 713 N.W.2d 208, 213 (Iowa 2006). Substantial evidence is evidence that could convince a rational trier of fact that a defendant is guilty beyond a reasonable doubt. *Id.* When reviewing a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the State, including legitimate inferences and presumptions which may fairly and reasonably be deduced from the evidence in the record. *Id.*

Jury instruction number thirteen was the marshalling instruction. At the close of trial, O'Regan requested the court modify instruction thirteen to strike the word "physical" from the third element. The court overruled the request, determining the State had evidence to support a finding of physical risk. O'Regan has not sought review of the propriety of the jury instructions. Therefore, the jury instructions became the law of the case for purposes of our review of the record for sufficiency of the evidence. See *State v. Canal*, 773 N.W.2d 528, 530 (Iowa 2009). Instruction number thirteen stated the elements of child endangerment as follows:

1. On or about the 21st day of June, 2009, the defendant was the parent of Shane O'Regan.
2. Shane O'Regan was under the age of fourteen years.
3. The defendant acted with knowledge that he was creating a substantial risk to Shane O'Regan's physical, mental, or emotional health or safety.

The parties stipulated to the first two elements.

Viewing the evidence in the light most favorable to the State, we find the State presented substantial evidence from which a rational jury could find O'Regan acted with knowledge that he was creating a substantial risk to Shane's physical, mental, or emotional health or safety. Although O'Regan and the officers were not armed, a thirty-minute standoff with four law enforcement officers on an isolated gravel road is clearly beyond the normal stressors that children experience and was potentially dangerous to anyone in close proximity. We acknowledge there is some conflict in the testimony of the officers who were at the scene, but it is for the jury to judge the credibility of the witnesses and weigh the evidence. *State v. Williams*, 695 N.W.2d 23, 28 (Iowa 2005).

When we view the evidence in a light most favorable to the State, we conclude the jury could have determined from the evidence that O'Regan held the law enforcement officers at bay while holding on to the hands of Shane and his brother, "whipped [the children] around in a dangerous fashion," and refused to release them notwithstanding the instructions of the officers. Some of the officers also testified that O'Regan was "yelling and screaming continually" and used profanity as he resisted his arrest for a violation of a no-contact order. One officer recalled hearing Shane ask his father to please not swear. Efforts to calm O'Regan down were not successful. Ultimately, the officers physically grabbed

and wrestled with O'Regan to effectuate his arrest. Several witnesses testified that during the standoff Shane "appeared to be scared" and was "crying and upset."

Under the facts of this case, a reasonable juror could determine O'Regan acted with knowledge that he was creating a substantial risk to the child's physical, mental, or emotional health or safety. We conclude substantial evidence supports O'Regan's conviction for child endangerment.

We affirm O'Regan's conviction and sentence for child endangerment in violation of Iowa Code section 726.6(1)(a) and 726.6(7).

AFFIRMED.