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Court of Appeals
Division II
State of Washington
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NO. 53030-9-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

BEONKA DOTY,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR Clark COUNTY

The Honorable Gregory Gonzales, Judge

REPLY BRIEF OF APPELLANT

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A. ARGUMENT IN REPLY

THE TRIAL COURT DENIED DOTY A FAIR TRIAL BY ADMITTING IRRELEVANT AND UNFAIRLY PREJUDICIAL EVIDENCE REGARDING HER BEHAVIOR AFTER SEEKING MEDICAL TREATMENT FOR HER CHILD.

Appellant Beonka Doty was charged with criminal mistreatment based on allegations that she recklessly withheld medical treatment from her daughter prior to taking her to the hospital on December 23, 2016. CP 1. Her daughter was admitted to the hospital with a pilonidal abscess, and an incision and drainage was performed the following day. RP 229-30, 335, 341.

To convict Doty of criminal mistreatment in the second degree as charged in this case, the State had to prove Doty, acting recklessly, (a) created an imminent and substantial risk of death or great bodily harm to her child, or (b) caused substantial bodily harm to her child, by withholding a basic necessity of life. RCW 9A.42.030(1)¹; CP 1-2, 68. The issue at trial was whether Doty recklessly endangered her daughter by withholding medical treatment. Thus evidence of her conduct up to the point L.D. was admitted to the hospital was relevant to the charge.

¹ The criminal mistreatment statute was amended in 2017 to require a showing of criminal negligence rather than recklessness, but Doty was charged under the prior version of the statute.

The defense sought to exclude evidence that Doty was absent from the hospital during the procedure and on Christmas day, however, as irrelevant and highly inflammatory. Counsel argued that once the child was admitted to the hospital under the care of medical professionals, any alleged mistreatment ceased and Doty's conduct after that point was not relevant. The challenged evidence served only to show her as a thoughtless mother. RP 70, 87-89.

It is fundamental that a defendant should be tried based on evidence relevant to the crime charged, and not convicted because the jury believes he is a bad person who has done wrong in the past. *State v. Lough*, 125 Wn.2d 847, 853, 889 P.2d 487 (1995). ER 404(b) forbids evidence of other crimes, wrongs, or acts which establishes only a defendant's propensity to commit a crime. *State v. Foxhoven*, 161 Wn.2d 168, 175, 163 P.3d 786 (2007); *State v. Wade*, 98 Wn. App. 328, 333, 989 P.2d 576 (1999). The court's admission of irrelevant and unfairly prejudicial evidence regarding Doty's absence during the procedure and on Christmas day was an abuse of discretion which denied Doty a fair trial. *See* Br. of App. § C.1.

The State contends in its brief that Doty's behavior after she brought her daughter to the hospital was admissible because her conduct was a continuation of the crime charged. It argues that Doty's absence

from the hospital before L.D. was admitted and her non-response to medical staff's phone calls caused a delay in L.D.'s treatment tantamount to withholding healthcare. Br. of Resp. at 10. The State notes that Doty does not address the issue of her absence and non-response to calls in the brief on appeal. *Id.* n.3. The State's argument disregards the fact that Doty is not challenging the evidence to which it refers. The defense agreed at trial that evidence of Doty's behavior when she initially brought her daughter to the hospital, including her absence and failure to respond to phone calls, was relevant. RP 70-71.

Doty's challenge on appeal, as below, is to evidence that she was absent from the hospital during the procedure and afterwards, on December 24 through 26. *See* Br. of App. at 8-9; RP 75-76. Contrary to the State's suggestion, there is no evidence those absences caused any delay in treatment or could be construed as withholding medical care.

The State further argues that Doty's post-hospital conduct demonstrates that her initial delay in seeking treatment was not unwitting. Br. of Resp. at 11. It argues that because Doty left the hospital after being informed of the seriousness of her daughter's condition, it is more likely she disregarded the risk of harm when initially delaying seeking medical treatment. *Id.* This is a propensity argument. The State relies on evidence of Doty's other conduct to show she is the type of person to commit the

charged offense. Such inference is forbidden. *Foxhoven*, 161 Wn.2d at 175. There is no relevance to the fact that Doty left the hospital after L.D. was admitted, because she was charged with withholding medical treatment prior to L.D.'s admission to the hospital. Thus, the evidence should have been excluded.

Moreover, even relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. ER 403. This is part of the ER 404(b) analysis as well. *State v. DeVincentis*, 150 Wn.2d 11, 17, 74 P.3d 119 (2003). Evidence is unfairly prejudicial if it is more likely to arouse an emotional response than a rational decision by the jury. *State v. Cronin*, 142 Wn.2d 568, 584, 14 P.3d 752 (2000). That is the case here. The jury was presented with evidence Doty left her child alone in the hospital on Christmas. *See e.g.* RP 269, 300, 437, 670. While not serving to make any fact of consequence more or less likely, this evidence does portray Doty as a callous mother, creating the danger that the jury would find her guilty based on the conclusion she is the type of person who would commit the charged offense. *See Wade*, 98 Wn. App. at 336. The trial court abused its discretion in admitting this evidence, thereby denying Doty a fair trial.

B. CONCLUSION

For the reasons addressed above and in the Brief if Appellant,
Doty's conviction must be reversed.

DATED September 20, 2019.

Respectfully submitted,

GLINSKI LAW FIRM PLLC

A handwritten signature in cursive script, appearing to read "Catherine E. Glinski".

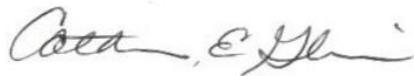
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Certification of Service by Mail

Today I caused to be mailed copies of the Reply Brief of Appellant
in *State v. Beonka Doty*, Cause No. 53030-9-II as follows:

Beonka Doty
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Vancouver, WA 98662

I certify under penalty of perjury of the laws of the State of Washington
that the foregoing is true and correct.



Catherine E. Glinski
Done in Manchester, WA
September 20, 2019

GLINSKI LAW FIRM PLLC

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