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Supreme Court orders new trial for Portales daycare operators convicted of child abuse

SANTA FE – The state Supreme Court today reversed the reckless child abuse convictions of a mother and daughter who provided daycare in Portales and left two children unattended in a hot car in July 2017. One girl died and another survived her injuries.

The Court ordered a new trial for Sandi and Mary Taylor.

In a split decision, the Court concluded that instructions to the jury about the conduct necessary for the defendants to have committed reckless child abuse “confused and misdirected the jury and allowed it to make a finding of guilt on a legally inadequate basis.”

The mother, Mary Taylor, and her daughter, Sandi, were each sentenced to 36 years in prison after a jury convicted them in 2019. The Supreme Court ordered them released from custody in 2020, pending the appeal of their case.

“The problem with the jury instructions used at Defendants’ joint trial arises from confusion and misdirection due to the unfortunate use of an inappropriate conjunctive term in the complex, essential-elements instructions that set out the course of conduct the jury was required to find in order to return guilty verdicts,” the Court wrote in an opinion by Justice Michael E. Vigil.

The Court’s majority agreed with the defense that the jury instruction’s “listing of the elements of essential conduct with an *and/or* conjunction provided for alternative ways for the jury to find that Defendants committed child abuse without requiring the jury to unanimously agree on any of those alternatives.”

“The confusion and misdirection stem from the use of a single *and/or* connector to separate and join no fewer than four distinct propositions for the jury’s consideration,” the Court’s majority wrote. “The term *and/or* has proved singularly unsuited to formulating clear and effective jury instructions, to the degree that our trial courts would be well-served to avoid its use in jury instructions altogether.”

The Taylors operated a licensed daycare out of their home, and had received training for caregivers on safety policies of the state Children, Youth and Families Department (CYFD). They transported a dozen children in two vehicles to a nearby park for lunch and playtime. When they returned, two girls – each less than two years old – were left in car seats in the SUV driven by Sandi Taylor. She later returned to the vehicle and found the children unresponsive.

The trial court instructed the jury that to convict the Taylors of reckless child abuse, it had to find that the defendants “did not follow the proper rules and procedures mandated by CYFD in conducting the care of [the Victims], *including* failing to do headcounts, driving [the Victims] without CYFD permission, failing to have [a] proper care giver to child ratio when [the Victims were] in [Defendants’] care, *and/or* failing to remove [the Victims] from a vehicle which resulted in [the Victims] being left unattended in that vehicle and exposed to unsafe temperatures for a period of time of approximately two hours and 40 minutes.”

Based on those instructions, the Court’s majority explained, “the jury was allowed to return guilty verdicts *solely* on one or more of Defendants’ alleged CYFD violations.”

As instructed, the jury could have convicted the Taylors for failing to obtain CYFD permission to transport the children in their personal vehicles, the majority wrote, but “this technical violation of the agency’s policies could not support a stand-alone finding that Defendants placed the Victims in any ‘direct line of danger.’”

The Court’s majority reversed a decision of the state Court of Appeals, which upheld the Taylors’ convictions. The majority concluded that a new trial would not violate the Taylors’ constitutional protections against double jeopardy.

In a dissenting opinion, District Judge James T. Martin disagreed that the jury instructions were wrong and justified overturning the Taylors’ convictions.

“Specifically, the district court instructed the jury that it must find the Defendants recklessly disregarded a ‘substantial and unjustifiable risk of serious harm’ by failing to follow CYFD procedures in caring for the Victims and/or failing to remove the Victims from the vehicle,” wrote Judge Martin, who was designated to participate in the case because of the recusal of a member of the Court.

“A reasonable juror can understand that the ‘and/or’ structure of the elements instruction simply provided alternative ways for the jury to unanimously agree on any event or events that resulted in the failure of Defendants to remove the Victims from the vehicle that exposed them to fatally high temperatures,” the dissenting opinion stated.

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To read the decision in *State v. Taylor*, No. S-1-SC-38818, please visit the New Mexico Compilation Commission's website using the following link:

<https://nmonesource.com/nmos/nmsc/en/item/522417/index.do>