OLR RESEARCH REPORT

September 26, 2012 2012-R-0426

OLR BACKGROUNDER: STATE V. MAURICE M.

By: Katherine Dwyer, Legislative Analyst II

SUMMARY

In *State v. Maurice M.* (303 Conn. 18), the defendant was charged with a violation of his probation for allegedly committing the crime of risk of injury to a child. In this case, a two-year old child escaped out the back door of his house while his father was watching television. The child was nearly struck by a car when he tried to cross a busy street.

The Connecticut Supreme Court considered whether the defendant's conduct violated the portion of the risk of injury statute that punishes a person for willfully or unlawfully causing or permitting a child under age 16 to be placed in a situation in which the child's (1) life or limb is endangered, (2) health is likely to be injured, or (3) morals are likely to be impaired (CGS § 53-21(a)(1)).

The court adopted the following list of factors to consider whether conduct such as the defendant's violates the risk of injury statute:

1. the gravity and character of the possible risks of harm;

2. the degree of the parent's accessibility;

3. the length of time of the abandonment;

4. the child's age and maturity;

5. the protective measures the parent took; and

6. any other circumstance relevant to the question of whether the defendant's conduct was criminally negligent.

After considering these factors, along with the totality of the circumstances, the court overruled the Appellate Court's decision affirming the trial court's probation revocation.

FACTS OF THE CASE

On November 26, 2006, a motorist discovered a two-year old child, wearing only a diaper, crawling on the side of the road. The motorist and another concerned driver retrieved the child from the street. They asked the child where he lived and when he did not respond, they called the police.

The responding police officer began canvassing the neighborhood in an attempt to locate the child's home. The defendant, Maurice M., emerged from his home to claim the child approximately 10 to 15 minutes after the officer arrived at the scene. Maurice explained to the officer that he was the only caretaker present for the child and the child's eight-year-old brother. The boys had been playing together while Maurice was in the living room lying on the couch watching television. Maurice concluded that the child had exited the house from the back door. The older child at some point informed Maurice that the younger child was missing. Maurice searched the house and then went outside, where he found the child in the motorists' custody. The officer arrested Maurice, who was on probation, and charged him with risk of injury to a child (CGS § 53-21).

PROCEEDINGS BELOW

On October 19, 2007, the trial court, following a violation of probation hearing, found that Maurice had violated the risk of injury statute. The court revoked his probation and sent him to prison to complete the unexecuted portion of his one year sentence.

In his appeal, Maurice claimed that the trial court improperly concluded that the state met the burden of proof (a preponderance of the evidence) to revoke his probation. The appellate court affirmed the trial court's decision. It reasoned that the revocation hearing testimony

sufficiently established that Maurice had acted "with reckless disregard for a situation that was inimical to the physical welfare of his child" (303 Conn. at 24). Maurice appealed this decision to the Connecticut Supreme Court.

SUPREME COURT MAJORITY OPINION

The trial court determined that Maurice violated the portion of the "risk of injury to a child" statute which makes it a class C felony for an individual to willfully or unlawfully cause or permit any child under age 16 to be placed in a situation in which the child's (1) life or limb is endangered, (2) health is likely to be injured, or (3) morals are likely to be impaired (CGS § 53-21(a)(1)).

The court adopted a nonexclusive list of factors for consideration in risk of injury cases where the main charge is inadequate supervision by a parent in the home. The list, which was originally articulated in a Virginia Court of Appeals opinion, includes:

1. the gravity and character of the possible risks of harm;
2. the degree of the parent's accessibility;
3. the length of time of the abandonment;
4. the child's age and maturity;
5. the protective measures the parent took; and
6. any other circumstance relevant to the question of whether the defendant's conduct was criminally negligent.

The court stated that these factors, along with consideration of the totality of the circumstances, led it to overturn the appellate court's decision that the state had met its burden of proof at the probation revocation hearing.

Risk of Harm and Time of Abandonment

In terms of the "gravity and character of the possible risks of harms" and the "length of time of the abandonment," the court noted that the defendant lived about 100 feet from a town road with heavy traffic at times. There was no child safety device on the back door. The trial court could have estimated, based on the facts of the case, that the child was unsupervised for 25-30 minutes. However, there was no evidence in the

record indicating (1) how much of that unsupervised time the child spent inside the house or (2) the length of time between when Maurice was told the toddler was missing and when he arrived outside where the toddler was located.

Child's Age and Maturity

In terms of "the child's age and maturity," the court noted that the child was only two years old. The court stated that though younger children need heightened supervision, some factors may mitigate this need, including the existence of protective measures, an older child's presence, a parent's accessibility, and the child's behavioral history.

In this case, the 8-year-old child was playing with the younger child, the parent was in the house in close proximity to the back door, and there was no evidence suggesting that the younger child often misbehaved or attempted to escape from home.

Protective Measures

In terms of "protective measures taken by the parent," the court noted that, though the responding police officer observed no safety devices on the back door, the trial court inferred that the door also lacked a lock. Since there was no evidence to support this inference, the court found that it was erroneous. The court also noted that there was no evidence regarding how the back door opened, if there was a screen door in addition to the back door, and whether or not the older child had helped the two-year-old exit the home. According to the court, the trial court had insufficient evidence relative to the ease with which the toddler may have exited the home.

Other Circumstances

The court reiterated that the toddler was playing with an older child in close physical proximity to his father. The court also noted that (1) the child had never left the house before under these circumstances, (2) the eight-year-old had demonstrated at least a minimum level of responsibility, and (3) there was no evidence to suggest that the toddler often misbehaved, was less prone to follow instructions, or otherwise would have been more at risk for escaping from the home than a typical child his age. The court concluded that there was insufficient evidence to establish that the child's escape was a reasonably foreseeable result. It

further concluded that there was insufficient evidence to establish that Maurice's failure to supervise the child while at home showed a reckless disregard for the consequences of that conduct in violation of (CGS § 53-21(a)(1)).

DISSENTING OPINION

Justice Palmer and Chief Justice Rogers dissented from the majority opinion. The dissenters argued that "every one of the factors that the majority identifies…militates in favor of the trial court's conclusion" (*Id.* at 46-47).

They argued that the majority had incorrectly evaluated the evidence using the wrong burden of proof. In probation hearings, the burden of proof is "a preponderance of the evidence", which is lower than "beyond a reasonable doubt." The dissenters contend that the majority erroneously used the latter burden of proof and this resulted in the wrong conclusion.

KD:tjo