

FIRST DISTRICT COURT OF APPEAL  
STATE OF FLORIDA

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No. 1D16-2314

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STATE OF FLORIDA,

Appellant,

v.

CHRISTOPHER LEE PERKINS,

Appellee.

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On appeal from the Circuit Court for Bradford County.  
Richard B. Davis, Jr., Acting Circuit Court Judge.

April 23, 2018

PER CURIAM.

AFFIRMED.

B.L. THOMAS, C.J., and JAY and M.K. THOMAS, JJ., concur.

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*Not final until disposition of any timely and  
authorized motion under Fla. R. App. P. 9.330 or  
9.331.*

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Pamela Jo Bondi, Attorney General, Virginia Chester Harris,  
Assistant Attorney General, Tallahassee, for Appellant.

Michael Ufferman of Michael Ufferman Law Firm, P.A.,  
Tallahassee, for Appellee.

IN THE CIRCUIT COURT OF THE  
EIGHTH JUDICIAL CIRCUIT, IN  
AND FOR BRADFORD COUNTY, FLORIDA

STATE OF FLORIDA,

CASE NO.: 04-2015-CF-000395  
DIVISION: FELONY

VS.

CHRISTOPHER PERKINS,  
Defendant.

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**ORDER GRANTING DEFENDANT'S MOTION FOR JUDGMENT OF ACQUITTAL**

THIS CAUSE came before this Court on the Defendant's Motion for Judgment of Acquittal and Renewed Motion for Judgment of Acquittal, filed on March 17, 2016, pursuant to Florida Rule of Criminal Procedure 3.380(c). Having presided over the trial and reviewed the motion, the arguments of the parties, the record, and applicable law, this Court finds as follows:

**PROCEDURAL HISTORY**

On August 3, 2015, the Defendant was charged by felony information with one count Aggravated Child Abuse and one count Neglect of a Child Causing Great Bodily Harm. On February 17, 2015 and February 18, 2015, a jury trial was held. Before the close of evidence, the Defendant moved for a judgment of acquittal. This Court reserved ruling on the motion. Having been tried by a jury, the Defendant was found not guilty of Aggravated Child Abuse, and guilty of Neglect of a Child Causing Great Bodily Harm.

**FACTS**

The facts presented at trial that went undisputed are as follows:

1. On or about July 3, 2015, the Defendant, the child, the child's sibling, and mother of the child, Heather Holland, traveled to a car dealership in order for the Defendant to purchase a new vehicle.
2. Defendant was in the car dealership for several hours while Heather Holland, and her two children remained in the vehicle while Defendant completed paperwork related to the purchase.
3. After the car dealership, Heather Holland departed one way with one child and the Defendant departed with the other child (alleged victim), to his place of work, the National Guard Armory.

4. The National Guard Armory was being rented out for a family reunion and Defendant was scheduled to close down and secure the premises, as part of his duties as an active full time member of the Guard.

5. It is not unusual for children to be brought to the National Guard Armory, in fact, State and Defense witness, Jeremy Rhoden, stated that he brings his own children on the premises and allows them to play at the National Guard Armory. Further, Defense witness, Chadwick Winston stated that he allows his children to play around the Humvees.

6. Defendant drove to the National Guard Armory, a secure setting, with the child and parked in the parking lot right outside his office.

7. Defendant performed several acts of care in order to make sure the child was safe. Defendant parked a few feet away from his office and was only going to be in his office for a few minutes.

8. Further, Defendant inquired if the child wanted to accompany him into work. However, the child did not want to go with Defendant since he was playing video games.

9. Defendant left the child in his booster seat and left the child's seatbelt buckled.

10. Defendant is thirty-three years old and has no minor children of his own and is relatively inexperienced in caring for children. Defendant reasonably believed that it was safe for the child to be unattended for a short amount of time.

11. Defendant was in his place of work for approximately five minutes. When the Defendant walked out towards the parking lot, he noticed that his vehicle door was open and the child was no longer in his vehicle.

12. Defendant searched the National Guard Armory in the dark for approximately ten to fifteen minutes, in which he finally found the child hiding underneath a military grade Humvee.

13. Defendant called the child's name several times in order to get the child to come out from underneath the undercarriage of the Humvee but the child did not listen. Defendant then got on the ground and tried to coax the child out from underneath the Humvee, with no avail.

14. For approximately ten minutes, the Defendant tried to grab the child in order for the child to come out from underneath the Humvee. During this ten minute struggle, the child was moving constantly underneath the undercarriage to avoid the Defendant's reach.

15. Defendant observed the child stand up underneath the Humvee, and smack his head on the undercarriage.

16. Defendant called Heather Holland after the alleged incident and advised her of what happened. Defendant took the child home to Heather Holland, where she observed the child and did not believe that the child needed medical assistance.

17. After the child was left in the sole custody of Heather Holland for approximately a three hour period before deciding to take the child to the hospital, the Defendant did not have any further contact with the child.

18. Heather Holland testified at trial that she typically uses a plastic kitchen spoon to discipline her children when they misbehave.

19. During the child's hospital visit, Nurse Alexandra Shunick, diagnosed the child's injuries as a result of child abuse. At trial, Ms. Shunick testified that bruises cannot be "time stamped" or even "date stamped."

20. No testimony was presented by the State that would prove that the alleged injuries were more than simple and mere bruising.

21. Further, no explanation was provided by the State that showed/proved that Defendant committed negligence and/or Defendant caused the injuries to occur.

22. There was no testimony/evidence that established that the child received the injury during the time or even the date that Defendant had exclusive care and custody of the child.

### ANALYSIS

The Defendant requests a judgment of acquittal pursuant to Florida Rule of Criminal Procedure 3.380(c). The defense argues that the motion that the judgment of acquittal should be granted for the following reasons: 1) the State did not rebut Defendant's reasonable hypothesis of innocence in a case based solely on circumstantial evidence; and 2) the State did not offer any evidence to prove the element of great bodily harm. In moving for judgment of acquittal, the defendant must admit all facts in evidence adduced and every conclusion favorable to state reasonably inferred from evidence. *Dixon v. State*, 691 So. 2d 515, 516 (Fla. 1st DCA 1997) (citing *Anderson v. State*, 504 So.2d 1270, 1271(Fla. 1st DCA 1986)). When relying on circumstantial evidence, the State is not required to rebut conclusively every possible variation of events, but only to introduce competent evidence inconsistent with defendant's theory of events. *Id.* (citing *State v. Powell*, 636 So.2d 138 (Fla. 1st DCA 1994)). In other words, the State must present competent evidence establishing each element of the charged offense. *Baugh v. State*, 961 So. 2d 198 (Fla. 2007). "Courts should not grant a motion for judgment of acquittal unless the evidence is such that no view which the jury may lawfully take of it favorable to the opposite party can be sustained under the law." *Lynch v. State*, 293 So. 2d 44 (Fla.

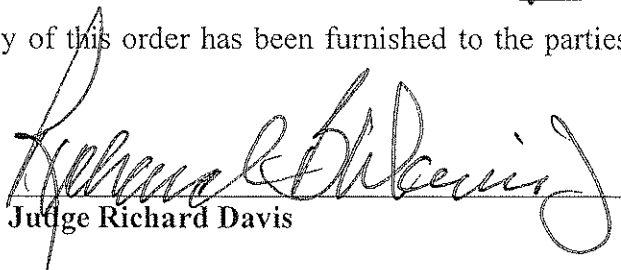
1974). The trial court shall enter a judgment of acquittal only if the court is of the opinion that the evidence is insufficient to warrant a conviction. See Fla. R. Crim. P. 3.380(a).

Having considered the motion, the arguments of the parties, and the evidence introduced at trial, the Court finds that the Defendant's Judgment of Acquittal must be **GRANTED**. In order to prove Neglect of a Child Causing Great Bodily Harm the State must show that the Defendant: (1) Willfully failed or omitted to provide the victim with the care, supervision, and services necessary to maintain the victim's physical or mental health; (2) caused great bodily harm to the victim; (3) was the caregiver for victim; (4) the victim was under the age of 18 years. Here, the State failed to present evidence from which the jury could reasonably infer that the victim's injuries were caused by the Defendant's actions. See *Dixon*, 691 So. 2d at 516. The circumstantial evidence introduced at trial was not inconsistent with the Defendant's hypothesis of innocence, and therefore, the motion for judgment of acquittal is granted. *Id.* The State failed to present competent evidence inconsistent with Defendant's theories of events. Furthermore, the State failed to prove the essential element of great bodily harm. *Nguyen v. State*, 858 So. 2d 1259, 1260 (Fla. 1st DCA 2003). Because the evidence is insufficient to warrant a conviction, the motion for judgment of acquittal is hereby granted. See Fla. R. Crim. P. 3.380(a).

Accordingly, it is

**ORDERED AND ADJUDGED** that the Defendant's Motion for Judgment of Acquittal is hereby **GRANTED**.

**DONE AND ORDERED** at Starke, Bradford County, Florida, this 13<sup>th</sup> day of April, 2016. A true and correct copy of this order has been furnished to the parties listed below.

  
Judge Richard Davis

cc: ✓Office of the State Attorney  
✓David Taylor, P.A.