

Fifth Circuit Court of Appeal
State of Louisiana

No. 26-KP-269

STATE OF LOUISIANA

versus

NAYELI MATAMOROS-MURILLO

ON APPLICATION FOR SUPERVISORY REVIEW FROM THE TWENTY-FOURTH JUDICIAL
DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 25-3979, DIVISION "M"
HONORABLE SHAYNA BEEVERS MORVANT, JUDGE PRESIDING

August 25, 2026

STEPHEN J. WINDHORST
JUDGE

Panel composed of Judges Stephen J. Windhorst,
Timothy S. Marcel, and Michael P. Mentz, Pro Tempore

AFFIRMED

SJW
TSM
MPM



COUNSEL FOR DEFENDANT/RELATOR,
NAYELI MATAMOROS-MURILLO

Ivan A. Orihuela

WINDHORST, J.

Defendant, Nayeli Matamoro, seeks supervisory review of her misdemeanor convictions and sentences for two counts of child desertion. For the following reasons, we affirm defendant's convictions and sentences.

PROCEDURAL HISTORY

On September 11, 2025, the Jefferson Parish District Attorney's Office filed a bill of information charging defendant, Nayeli Matamoro, with two counts of child desertion involving two different children, in violation of La. R.S. 14:93.2.1. Defendant pled not guilty on October 6, 2025.

After a trial on December 10, 2025, the trial judge found defendant guilty as charged on both counts. On December 15, 2025, the trial judge sentenced defendant to six months in parish prison on each count, to be served concurrently. The trial judge suspended the sentences and placed defendant on active probation for eight months.

EVIDENCE AT TRIAL

At trial, the State first presented the testimony of Detective Shayne Lerouge with the Gretna Police Department, who found the children unsupervised. Detective Lerouge testified that on August 5, 2025, during daylight hours, he was canvassing the area near 16th Street and Huey P. Long Avenue in Gretna when he saw a small child running unsupervised in an open field. Detective Lerouge stopped the child and put her in his police unit. He stated that an older man flagged him down and identified a house on Huey P. Long Avenue as the child's residence. Detective Lerouge found another child outside of the residence. Both children were unharmed. Detective Lerouge explained that there were no adults near the house, but there was "an older man tucked behind the house."

Detective Lerouge stated that he was not equipped with a body camera, but another officer was wearing one. Detective Lerouge testified regarding their

conversation with defendant with footage from that camera. Defendant answered the door and explained that she was babysitting while the children's parents were in the hospital. Defendant told the police she had been in the bathroom.

Gretna Police Department patrol officer Arianna Heard also testified regarding the incident. She confirmed that a detective located two unattended children "in the middle of the street" that were believed to be in harm's way. Officer Heard testified that by the time she arrived, the detective had taken the children into custody, so she did not personally see them in danger. Officer Heard also confirmed that defendant was not the children's mother, and that defendant had said she was using the bathroom when the children left the residence. Officer Heard ultimately arrested defendant.

The children's father, Reynaldo Barro-Garcia, testified at the trial. He testified that defendant previously lived with him, but they were never married. Mr. Garcia explained that he lives with and shares five children with another woman. Mr. Garcia identified two of his children as W.V.G., who was three years old at the time of trial, and K.V.G., who was seven years old at the time of trial. He recalled that in August 2025, he and his "wife" were at the hospital having their fifth baby while defendant and her mother watched the other four children for two days. Mr. Barro-Garcia did not pay them to babysit. He testified that he called them because he trusted them, but they had not previously watched the children.

Mr. Barro-Garcia explained that on the day of the incident, while defendant was in the restroom, W.V.G. opened the door and went out. Mr. Barro-Garcia provided that W.V.G. is used to playing outside in the field and followed another child to the field when the detective saw him. He testified that the police and defendant called and told him in August 2025, while he was at the hospital, that the police found two of his children outside unsupervised. The police asked him to return to the house. Mr. Barro-Garcia testified that when he arrived home, W.V.G.

and K.V.G. were at home and unharmed. He did not take them to a hospital or to counseling after this incident.

Mr. Barro-Garcia acknowledged that the Department of Children and Family Services evaluated the children's living conditions at their home and found that everything was okay. He explained that the children have gotten out of the house on their own before and that he allows them to play in the field. Mr. Barro-Garcia testified that he had no reason to believe that defendant acted intentionally.

LAW and ANALYSIS

Defendant asserts that the evidence at trial was insufficient to support the child desertion convictions and seeks to have her convictions reversed.

In reviewing the sufficiency of the evidence, an appellate court must determine that the evidence, whether direct, circumstantial, or a mixture of both, viewed in the light most favorable to the prosecution, was sufficient to convince a rational trier of fact that all of the elements of the crime have been proven beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); State v. Martin, 24-233 (La. App. 5 Cir. 2/26/25), 406 So.3d 702, 713-14. The standard of review for determining the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. State v. Garrison, 19-62 (La. App. 5 Cir. 4/23/20), 297 So.3d 190, 203, writ denied, 20-00547 (La. 9/23/20), 301 So.3d 1190. When addressing the sufficiency of the evidence, consideration must be given to the entirety of the evidence, including inadmissible evidence that was erroneously admitted, to determine whether the evidence is sufficient to support the conviction. State v. Reed, 24-329 (La. App. 5 Cir. 4/2/25), 413 So.3d 1166, 1177, writ denied, 25-561 (La. 9/10/25), 415 So.3d 1277.

Circumstantial evidence consists of proof of collateral facts and circumstances from which the existence of the main fact can be inferred according to reason and common experience. State v. Salvant, 24-205 (La. App. 5 Cir. 3/19/25), 411 So.3d 74, 88, writ denied, 25-485 (La. 9/16/25), 416 So.3d 473. Circumstantial evidence, if believed, is evidence which tends to prove a fact, from which the fact sought to be proven may be reasonably and logically inferred. When circumstantial evidence is used to prove the commission of the offense, La. R.S. 15:438 states, “assuming every fact to be proved that the evidence tends to prove, in order to convict, it must exclude every reasonable hypothesis of innocence.”

On appeal, the appellate court must evaluate the evidence in a light most favorable to the State and determine whether the possible alternative hypothesis is sufficiently reasonable that a rational juror could not have found proof of guilt beyond a reasonable doubt. State v. Robertson, 22-363 (La. App. 5 Cir. 3/29/23), 360 So.3d 582, 590. This deference to the fact finder does not permit a reviewing court to decide whether it believes a witness or whether the conviction is contrary to the weight of the evidence. State v. Martin, 406 So.3d at 714.

The trial court convicted defendant of two counts of child desertion. La. R.S. 14:93.2.1 A states:

Child desertion is the intentional or criminally negligent exposure of a child under the age of ten years, by a person who has the care, custody, or control of the child, to a hazard or danger against which the child cannot reasonably be expected to protect himself, or the desertion or abandonment of such child, knowing or having reason to believe that the child could be exposed to such hazard or danger.

In considering the elements required for child desertion, the trial court found the testimony clearly established that the children were under the age of ten (10) and defendant had care, custody and control of them on the day of the incident. As to defendant’s statement that she was in the bathroom when the children were outside, the trial court found that there was nothing to suggest defendant did anything at all

to confirm that these four young children under her care, custody, and control, had stayed inside the house, and ignored the fact that two of the four children in her charge were nowhere to be found in the house. Lastly, as to the hazard or danger against which a child cannot reasonably be expected to protect himself, the trial court concluded that the children playing in the street and in an empty field with no adult watching presented the risk that someone could have kidnapped them.

The relevant elements of child desertion in this case are (a) the intentional or criminally negligent exposure of a child, (b) under the age of ten, (c) by a person who has the care, custody, or control of the child, (d) to a hazard or danger against which the child cannot reasonably be expected to protect himself or herself. La. R.S. 14.93.2.1 A.

First, the record shows that the two children were under the age of ten at the time of the incident. The trial transcript indicates that at the time of trial on December 10, 2025, the children were three and seven. Thus, at the time of the incident on August 5, 2025, the children were under the age of ten and fell within the protection of the statute.

Second, trial testimony established that defendant had care, custody, and control of the two children on August 5, 2025. Defendant told Detective Lerouge she was babysitting the children while the parents were in the hospital. Mr. Barro-Garcia, the children's father, also testified that in August 2025, when he and his wife were in the hospital, defendant and her mother were watching his children.

Third, the record also supports the conclusion that the children were exposed to a hazard or danger against which the children could not be reasonably expected to protect themselves. Detective Lerouge discovered one child unsupervised in an open field near Huey P. Long Avenue and 16th Street in Gretna, Louisiana, and a second child near the street outside the children's residence on Huey P. Long Avenue. There are multiple risks to which these children were exposed due to being

left unattended in this area. Risks such as kidnapping, being hit by a passing car, otherwise injuring themselves, and/or being taken advantage of by another adult in the area certainly existed. Considering these risks, we find this element was satisfied.

Finally, we consider whether defendant's conduct in allowing these children to leave the house unattended and play in an open field and near the street amounts to criminal negligence. Criminal negligence exists when, although neither specific nor general criminal intent is present, there is such disregard for the interest of others that the offender's conduct amounts to a gross deviation below the standard of care expected to be maintained by a reasonably careful person under like circumstances. La. R.S. 14:12. Ordinary negligence does not equate to criminal negligence; the State is required to show more than a mere deviation from the standard of ordinary care. State v. Redell, 22-457 (La. App. 5 Cir. 4/26/23), 361 So.3d 1153, 1163, writ denied, 23-734 (La. 2/6/24), 378 So.3d 752.

In evaluating the evidence in a light most favorable to the State, we find the record supports the conclusion that defendant had such disregard for the children that her conduct amounted to a gross deviation below the standard of care expected to be maintained by a reasonably careful person under like circumstances. Due to the young age of these two children, defendant had assumed an obligation to ensure that they remained supervised and safe. A reasonably careful person in like circumstances would not have allowed two young children to play alone near the street or in an open field in a very public and unprotected area.

In addition, the trial court found defendant's claim that she was in the bathroom an inadequate defense and concluded that defendant had ignored the children's absence from the house. A reviewing court cannot substitute its appreciation of the evidence and the credibility of witnesses for that of the factfinder and overturn a verdict based on an exculpatory hypothesis of innocence presented

to, and rationally rejected by, the jury. State v. Salvant, 24-205 (La. App. 5 Cir. 3/19/25), 411 So.3d 74, 88, writ denied, 25-485 (La. 9/16/25), 416 So.3d 473.

Accordingly, viewing the evidence in the light most favorable to the State, we find the evidence sufficient to convict defendant of two counts of child desertion.

ERROR PATENT

Defendant requests an error patent review. This court has conducted an error patent review in a misdemeanor appeal. State v. Jones, 12-640 (La. App. 5 Cir. 10/30/13), 128 So.3d 436, 443. We have therefore reviewed the record for errors patent according to La. C.Cr.P. art. 920; State v. Oliveaux, 312 So.2d 337 (La. 1975); and State v. Weiland, 556 So.2d 175 (La. App. 5 Cir. 1990).

The trial court suspended defendant's sentences and placed defendant on probation but reserved the right to run defendant's sentences consecutively if defendant violated her probation. Under La. C.Cr.P. art. 493.1, the trial court cannot sentence defendant in this case to more than six months imprisonment. Whenever two or more misdemeanors are joined in accordance with Article 493¹ in the same indictment or information, the maximum aggregate penalty that may be imposed for the misdemeanors shall not exceed imprisonment for more than six months or a fine of more than one thousand dollars, or both. La. C.Cr.P. art. 493.1. Because the two misdemeanors were charged in the same bill, the aggregate sentences imposed cannot exceed six months imprisonment. Any greater sentence would be illegal, so the two terms of imprisonment for six months may not be ordered to be served consecutively.

La. C.Cr.P. art. 882 A provides that, "An illegal sentence may be corrected at any time by the court that imposed the sentence or by an appellate court on review."

¹ La. C.Cr.P. art. 493 states:

Two or more offenses may be charged in the same indictment or information in a separate count for each offense if the offenses charged, whether felonies or misdemeanors, are of the same or similar character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan; provided that the offenses joined must be triable by the same mode of trial.

An appellate court is authorized to correct an illegal sentence when the exercise of sentencing discretion is not involved. State v. Durapau, 01-511 (La. App. 5 Cir. 10/30/01), 800 So.2d 1052, 1054. Therefore, should defendant violate her probation, defendant's six-month sentences on counts one and two shall be and will remain concurrent, and not consecutive, terms of imprisonment. The trial court's reservation of discretion to order that the sentences be served consecutively is ordered removed from the minute entry.

Based on the transcript, after sentencing, the trial court made no reference to defendant's right to seek post-conviction relief and did not inform defendant of the period for filing post-conviction relief.² La. C.Cr.P. art. 930.8. In this situation, the appellate court may resolve this issue by informing the defendant of the applicable time period for seeking post-conviction relief in its opinion. State v. Hatén, 24-588 (La. App. 5 Cir. 9/24/25), 423 So.3d 118, 126. Accordingly, by way of this opinion, we advise defendant that no application for post-conviction relief, including applications which seek an out-of-time appeal, shall be considered if filed more than two years after the judgment of conviction and sentence has become final under the provisions of La. C.Cr.P. arts. 914 or 922.

DECREE

For the reasons assigned, we affirm defendant's convictions and sentences. We order that the trial court's reservation of discretion to order that the sentences be served consecutively be removed from the minute entry.

AFFIRMED

² Although the sentencing minute entry indicates the court advised defendant of the time period in La. C.Cr.P. art. 930.8, where there is a discrepancy between the transcript and the minute entry, the transcript prevails. State v. Lynch, 441 So.2d 732, 734 (La. 1983).

SUSAN M. CHEHARDY
CHIEF JUDGE

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JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
JOHN J. MOLAISSON, JR.
SCOTT U. SCHLEGEL
TIMOTHY S. MARCEL

JUDGES



FIFTH CIRCUIT
101 DERBIGNY STREET (70053)
POST OFFICE BOX 489
GRETNA, LOUISIANA 70054
www.fifthcircuit.org

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(504) 376-1498 FAX

NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED
IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY
AUGUST 25, 2026 TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES
NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

A handwritten signature in blue ink, reading "Curtis B. Pursell", is written over a horizontal line.

CURTIS B. PURSELL
CLERK OF COURT

26-KP-269

E-NOTIFIED

24TH JUDICIAL DISTRICT COURT (CLERK)
HONORABLE SHAYNA BEEVERS MORVANT (DISTRICT JUDGE)
IVAN A. ORIHUELA (RELATOR) THOMAS J. BUTLER (RESPONDENT)

MAILED

NO ATTORNEYS WERE MAILED