

**FIRST DIVISION
BARNES, P. J.,
MARKLE and HODGES, JJ.**

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August 25, 2026

In the Court of Appeals of Georgia

A26A0890. BARROS v. THE STATE.

BARNES, Presiding Judge.

A jury found Cledir Mendes Barros guilty of second-degree cruelty to children, and Barrows appeals, challenging the sufficiency of the evidence. He also contends that the trial court erred in denying his request to charge on the lesser included offense of reckless conduct and that his trial counsel rendered ineffective assistance. For the reasons discussed below, we find the evidence was sufficient to sustain the verdict, but that the trial court's failure to charge the jury on reckless conduct requires reversal.

Construed in favor of the verdict,¹ the evidence shows that Barros was born in Cape Verde, but moved to the United States as a child. He returned to Cape Verde

¹ *Jackson v. Virginia*, 443 U. S. 307 (99 SCt 2781, 61 LE2d 560) (1979).

in 2009 where he met his future wife, Natiela. In 2011, Natiela gave birth to a child, T. B. After Natiela moved to the United States, Barros began a relationship with another woman who gave birth to S. B. Barros then returned to the United States in 2014, and he married Natiela in 2015. Natiela gave birth to two more children, L. B. and C. B. When S. B. was three, she came to live with Barros and Natiela in the United States.

In the fall of 2023, S. B. attended Harbins Elementary in Gwinnett County. She was described as a sweet child who was academically gifted. However, teachers at the school noticed that S. B. sustained multiple injuries. She had stitches in her forehead, a bandage on her chin, a cut to her lip, an injured arm, and she was seen limping. When a teacher asked S. B. about one injury, she responded “My mom said to say I had an accident.” The teacher was concerned, and she reported the incident to the school’s counselor, who reported it to the Department of Family and Children Services (“DFCS”).

In October of 2023, S. B. began having behavioral issues at school. In November, the school notified Natiela — who was the adult who communicated with the school — about the behavioral issues. In response, Barros withdrew S. B. from

school. One of S. B.'s teachers spoke with Barros to reassure him that the school would work with S. B. on any behavioral issues, and Barros responded that he was withdrawing S. B. for "religious reasons," that she "was possessed by demons," and that her biological mother "was projecting demons" on her. He explained that S. B. was his "punishment" because she had been born out of wedlock and that she had been causing trouble in his marriage. He thus planned to have Natiela home school S. B.

Also in November, DFCS contacted the family to investigate the report they had received from S. B.'s school. Although L. B. reported to DFCS that her mother had slapped S. B. in the face and caused bruising, Barros denied that there was any mistreatment of S. B. in the home. He did, however, admit to one instance in which Natiela "lost her cool" after S. B. lied and hit her in the back, causing her to fall and hit her lip. DFCS did not pursue the case further.

On January 30, 2024, Barros — who worked as a truck driver — was driving on I-75 when he received a call from Natiela at 12:41 PM telling him that she had killed S. B. Barros then drove to the family home, which took over an hour. After discovering S. B.'s corpse wrapped in a blanket, Barros called 911 and reported an

unconscious person. By the time paramedics arrived, however, rigor mortis was setting in. A subsequent autopsy showed that S. B. had been beaten so badly about the back and neck with a rolling pin that she bled out internally.

Barros was arrested and charged with second-degree murder and two counts of cruelty to children. The State, however, only prosecuted one count of second-degree cruelty to children, and the trial court directed a verdict on the other two counts.² The jury found Barros guilty of that charge. Following the denial of his motion for new trial, Barros appeals.

1. In his first enumeration of error, Barros argues that the evidence was insufficient to establish the offense of second-degree cruelty to children. We disagree.

On appeal, . . . this Court does not weigh the evidence and does not judge the credibility of the witnesses. Conflicts in the testimony of the witnesses, including the state's witnesses, are a matter of credibility for the jury to resolve. We solely determine whether the evidence was sufficient to sustain the verdict. As long as there is some competent evidence, even though contradicted, to support each fact necessary to make out the State's case, the jury's verdict will be upheld.

² The other two counts were predicated on Barros's failure to call 911 immediately. The evidence shows, however, that S. B. was already dead at that time.

Wells v. State, 309 Ga. App. 661, 663 (1) (710 SE2d 860) (2011) (citation modified).

Under OCGA § 16-5-70 (c), “[a]ny person commits the offense of cruelty to children in the second degree when such person with criminal negligence causes a child under the age of 18 cruel or excessive physical or mental pain.” Our Supreme Court has recognized that cruelty to children is a crime involving criminal negligence, and criminal negligence is either an act or a failure to act, which demonstrates a willful, wanton, or reckless disregard for the safety of others who might reasonably be expected to be injured. *Johnson v. State*, 341 Ga. App. 425, 430 (1) (801 SE2d 294) (2017).

According to Barros, the evidence was insufficient to show either that his conduct caused S. B.’s physical and mental pain or that and his conduct was willful, wanton or reckless as to constitute criminal negligence. Barros was charged with second-degree cruelty for withdrawing S. B. from school to be home-schooled by Natiela. And there was ample evidence from which a jury could conclude that Barros knew that Natiela was abusive towards S. B. Not only did S. B. suffer injuries, which Barros would have seen, he was clearly aware of the DFCS investigation into suspected abuse. During this investigation, he conceded he had seen Natiela strike S.

B. after losing “her cool,” causing the child to fall and hit her lip. Under these circumstances, a jury could find Barros was criminally negligent by withdrawing his child from school to spend the school day with someone he knew to be abusive. See *Johnson*, 341 Ga. App. at 430 (1) (conviction upheld based on evidence that defendant left her young children at home with a space heater, which caught fire killing one child and injuring another); *Pierre-Louis v. State*, 329 Ga. App. 55, 57 (763 SE2d 513) (2014) (conviction sustained where evidence showed defendant failed to intervene to prevent injury to his child); *Kain v. State*, 287 Ga. App. 45, 46 (1) (650 SE2d 749) (2007) (evidence sufficiently supported conviction where parent’s lack of supervision lead to child’s death).

2. In his second enumeration of error, Barros argues that the trial court committed reversible error in failing to give a jury charge on reckless conduct. Although Barros requested the charge, the State argued that the charge was inapplicable given Barros’s defense that he had no knowledge that Natiela was abusing S. B.

A written request to charge a lesser included offense must always be given if there is any evidence that the defendant is guilty of the lesser included offense. But a request to charge must be legal, apt, and precisely

adjusted to some principle involved in the case and be authorized by the evidence. Further, when the evidence shows completion only of the greater offense, it is unnecessary for the trial court to charge on the lesser offense. Whether the defendant has presented sufficient evidence to warrant a requested charge is a question of law.

Baughcum v. State, 379 Ga. App. 611, 617 (2) (930 SE2d 573) (2026) (punctuation omitted).

As the Supreme Court has recognized, “reckless conduct may be a lesser included offense of cruelty to children, if the harm to the child resulted from criminal negligence rather than malicious or willful conduct.” *Shah v. State*, 300 Ga. 14, 19 (2) (793 SE2d 81) (2016) (quotation marks omitted). In *Shah*, the Supreme Court reversed a mother’s conviction for first-degree child cruelty based on the trial court’s failure to give a requested charge on reckless conduct. That case involved allegations that a mother had willfully and maliciously harmed her newborn, who died of dehydration. Because there was evidence that the mother had left her child with her 14-year-old sibling, the Supreme Court determined that a jury could conclude the death was caused by the mother’s negligent reliance on a teenaged caregiver rather

than her willful failure to provide sustenance and thus a charge on reckless conduct was required. *Id.* at 20-21 (2) (a).

Here, like in *Shah*, there is some evidence from which jurors could have determined that Barros was guilty of reckless conduct rather than cruelty to children. Reckless conduct is defined as the conscious disregard of a substantial and unjustifiable risk. See OCGA § 16-5-60 (b). Given Barros's testimony that he was only aware of a single incident in which Natiela struck S. B. and that he subsequently forbade corporal punishment, a properly instructed jury could have found that Barros's conduct in leaving S. B. with Natiela demonstrated a conscious disregard of a substantial risk within the meaning of OCGA § 16-5-60 (b) rather than second-degree cruelty to children. And because a requested charge on a lesser included offense must be given if there is any evidence that a defendant is guilty of the lesser offense, the trial court committed reversible error in failing to charge the jury on reckless conduct. See *Shah*, 300 Ga. at 21-23 (2) (b); see also *Jonker v. State*, 376 Ga. App. 344, 348-49 (2) (918 SE2d 616) (2025) (trial counsel rendered ineffective assistance in failing to request reckless conduct charge in prosecution for first-degree cruelty to children).

3. In his final enumeration of error, Barros contends that he received ineffective assistance of counsel. In light of our holding in division 2, we need not reach this claim of error.

Judgment reversed. Markle and Hodges, JJ., concur.