

2018 IL App (1st) 152881-U

No. 1-15-2881

Order filed June 13, 2018

Third Division

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 12 CR 16065
)	
KEISHA JONES,)	Honorable
)	William G. Lacy,
Defendant-Appellant.)	Judge, presiding.

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Justices Howse and Lavin concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's conviction for first-degree murder affirmed over her contention that the State failed to prove her guilty beyond a reasonable doubt.

¶ 2 Following a bench trial, the trial court found defendant Keisha Jones guilty of two counts of first degree murder (720 ILCS 5/9-1(a)(1), (a)(2) (West 2012)) for killing one-year old Iyonna Davis. The court merged the counts and sentenced defendant to 23 years' imprisonment. On

appeal, defendant contends that the State failed to prove her guilt beyond a reasonable doubt. We affirm.

¶ 3 At trial, Jonathan Davis testified that he had been dating defendant since 2007, and started living with her and her son, Karon, in 2009 or 2010. At one point in their relationship, he moved to Kankakee for work and, with another woman, fathered his daughter Iyonna, who was born on June 27, 2011. When Iyonna's mother could no longer care for her, Davis asked defendant if his daughter could live with them and she agreed. Davis worked at a laundromat at night. When he was at work, defendant would watch the children; when defendant was at school, Davis would watch them.

¶ 4 On July 28, 2012, Davis walked to Roseland hospital to have staples removed from his head. He left the house around noon, and Iyonna was in good condition and in the care of defendant when he left. He did not notice anything unusual about Iyonna before he left. Davis left the hospital sometime between 5:30 and 6:00 p.m., and went see to his brother, Terrell Timmons. Around 7:30 or 8:00 p.m., Davis received a call from defendant who was crying and telling him to hurry home because Iyonna was not breathing and an ambulance was on its way. He dropped his drink and started running towards his house when he saw his friend Chris who drove him home. When Davis arrived, Iyonna was in the back of an ambulance and the paramedics would not let him in the back with her. He rode in the front seat to Roseland Hospital. Davis sat in the waiting room for hours until he was informed that Iyonna had died. Defendant was there while they waited. She was crying, praying, and telling Davis she was sorry.

¶ 5 Davis and defendant returned to their home with Timmons. While there, Davis had an altercation with defendant. He asked her repeatedly what happened and she said she did not want to talk about it, and refused to give him any information. Davis then punched defendant “with all his might.” Timmons stopped him from attacking defendant with a piece of glass. Defendant called the police and Davis went to Timmons’ house.

¶ 6 On cross-examination, Davis testified that he was Iyonna’s primary caretaker during the day on Monday through Friday while defendant was at school. Defendant would return home by 6:00 p.m. and they both would watch the children at night. He never saw defendant punch or slam Iyonna, but occasionally she would slap Iyonna’s hand if the child touched something she should not have. Davis acknowledged that he was in charge of discipline in the house. He had only seen defendant be a good mother to Iyonna, and only saw her get mad when he would spend more time with Karon than with his own daughter. Iyonna had been learning to walk in the weeks leading up to her death, and she would sometimes fall down on the carpet. Davis never saw her fall off the bed. Iyonna had a cold the week before she died, for which Davis and defendant gave her cold medicine, but they did not bring her to a doctor. While she was sick, she would just lay around; but when she got better, she was back to her normal self. He denied telling police officers that she was not acting one hundred percent after the cold was gone.

¶ 7 Davis admitted to having a temper at a level of 6 on a 1-to-10 scale. He believed defendant was crying “fake tears” while at the hospital. He got mad at her because she would not tell him exactly what happened to his daughter. Their home did not have baby gates at the top or bottom of the stairs, but he testified that the children spent most of their time downstairs. They would sit downstairs with him while he played Playstation 3.

¶ 8 Christopher Wilson testified that he was working at a barbershop on 103rd Street on July 28, 2012. He saw Jonathan Davis coming down the street on foot and he seemed “nervous, agitated, terrified.” Davis asked for a ride to his house where his child was. When they arrived, Davis jumped out of the vehicle toward the ambulance before Wilson could even stop.

¶ 9 Jacob Anderson testified that he was a Chicago firefighter and the first to respond to assist Iyonna. When he walked in the front door, he heard someone screaming “up here, up here,” and went to a bedroom upstairs where he found defendant and Iyonna. Iyonna was on her back on the bed, with a plate of food on the bed. There was some vomit down the side of her mouth. Defendant said she had left the room, came back, and found the child in that condition. He believed that Iyonna had gotten into the food, vomited, and aspirated, so he checked her airway, breathing, and circulation. He noticed she was not breathing, her heart was not working and she had no pulse. He performed CPR until the ambulance pulled up. He then brought her out to the ambulance, where the paramedics could provide superior care, and she was taken to the hospital. He believed defendant seemed detached during the entire encounter. She was upset and crying, but not what he would have expected based on his previous experiences in cases involving babies.

¶ 10 Rosella Hutchinson testified that she was Davis and defendant’s neighbor. She saw an ambulance pull up to their house the night Iyonna died around 8:00 pm. She walked up to the house and saw medical personnel come out with a baby, and start working on her in the ambulance. Defendant was “just standing there” next to Hutchinson. Davis ran down the street saying “what’s wrong with my baby” and started pounding on the back of the ambulance. He was told he could sit in the front as they drove to the hospital. Defendant pulled her shirt over her

face and Hutchinson asked if she was going to the hospital. Defendant responded “everyone’s gone” and Hutchinson offered her a ride. Shortly after, another neighbor came up and said he would drive defendant to the hospital.

¶ 11 Chicago police sergeant Brian Forberg testified that he was the detective assigned to the Iyonna’s case. He arrived at Roseland Hospital to learn that she had passed away. Forberg examined her remains to look for any visible signs of injuries, and noted only a small bruise above her left eyebrow. He then spoke with Davis and defendant. Defendant gave Forberg and his partner, Detective Eberle, a walkthrough of her home and a description of what happened. Forberg did not note anything of significance. The assistant medical examiner in charge of the postmortem, Dr. Cheng, informed Forberg of the cause of death and a relevant timeframe. Forberg placed defendant under arrest on July 29, 2012, having learned that defendant and Iyonna were the only occupants of the home within the timeframe of the injuries.

¶ 12 Having learned that Davis had been out of the home shortly before noon on the day of Iyonna’s death until he was notified that something was wrong, Forberg spoke with Timmons, Roseland Hospital, and Wilson to confirm Davis’ whereabouts that day. Forberg was informed by the State’s Attorney’s Office that Tamira Smith had contacted the office and provided information, so he interviewed her. Dr. Goldschmidt, a medical examiner, told Forberg the symptoms of the head and brain injury would have manifested within two to six hours.

¶ 13 Dr. Ariel Goldschmidt, an assistant medical examiner in the Cook County Medical Examiner’s Office since 2010, testified as an expert in forensic pathology. He had conducted nearly 3000 autopsies in his career, with over 2000 being in his employment with Cook County. Dr. Goldschmidt performed an autopsy on Iyonna on July 29, 2012, which was documented in a

report of the postmortem exam. In his report, he noted multiple injuries including: a half-inch bruise on the left forehead, a quarter-inch bruise on the left upper eyelid, a one-inch scratch on the left temple, a half-inch scratch on the left cheek, .3-inch scratch on the left chin, a .2-inch bruise on the left side of the nose, a half-inch bruise on the right cheek, and a .2-inch bruise next to the right eye. While examining Iyonna's mouth, he noted torn frenulum on the top and bottom lips, an additional tear on the lower lip, a bruise on the inner aspect of the mucosae, and a half-inch laceration on the left and mid aspect of the gums of the lower lip. He noted bruises on the back of both ears, and patterned scars on her right arm that were more than a week old. Goldschmidt noticed a bruise on the back of the head he believed to be the result of blunt trauma. He called it a "goose egg" because it was a bruise that had a collection of blood underneath it, and it was normally caused by blunt force trauma.

¶ 14 During an internal examination, Dr. Goldschmidt noticed a small amount of bleeding at a level of the spine, but nothing else of note in the organ systems. There were multiple areas of bleeding and trauma in the scalp, but no fractures. He noted hemorrhages around the brain and saved the brain for further examination. He determined that there were injuries of different dates around the brain. There was an indication of older bleeding around the brain and then newer bleeding on the left side subdural layer and both sides on the subarachnoid layer. Goldschmidt stated the "goose egg" injury occurred within 48 hours of, and probably within 24 hours of Iyonna's death.

¶ 15 Dr. Goldschmidt denied making any definitive statement that the injury occurred within two to six hours of death, but "may have had a passing thought or comment." He diagnosed the trauma to Iyonna's head as blunt head trauma, which was abusive in nature. In his opinion, all of

the noted injuries occurred “within 48 hours, and probably within 24 hours” of the examination. Dr. Goldschmidt stated that, to a reasonable degree of medical certainty, the cause of death was blunt head trauma due to child abuse, and he ruled the manner of death a homicide. He stated that Iyonna’s injuries would not be from a fall because the totality of the findings and injuries would only be consistent with abusive trauma.

¶ 16 On cross-examination, Dr. Goldschmidt stated there was no evidence of bone fractures in the ribs, arms, or legs. He acknowledged that it was possible the spine injury was a postmortem artifact, lethargy is a symptom of head injuries, and head injuries may or may not result in an immediate showing of injury. He examined Iyonna for shaken baby syndrome, but ultimately concluded blunt force trauma was the cause of death.

¶ 17 Dr. Richard Grostern, an expert in ophthalmology and eye pathology, testified that he received Iyonna’s eyeballs from the Cook County Medical Examiner’s Office. He was asked to examine the eyeballs of deceased children if there were suspicions about their deaths. His task was to determine if major trauma was present, and he made his determinations without considering any other medical doctor’s opinions. Dr. Grostern determined that Iyonna’s right eye had hemorrhages around the optic nerve, and scattered around the retina. Her left eye had a similar look with a marked hemorrhage on the optic nerve, hemorrhages around the optic nerve, and widespread hemorrhages along the retina. These findings were consistent with major trauma having occurred.

¶ 18 Dr. Grostern could not say what exactly caused the trauma, but opined it had to have been “fairly big” to cause the kind of hemorrhage he observed. He testified that a toddler learning to walk and falling would not cause these hemorrhages and a fall down a set of stairs might cause

one or two, but not all of the hemorrhages. The injuries were inconsistent with CPR or other medical treatment, and inconsistent with a fall off a bed or another household accident. They were consistent with either violent shaking or violent intentional blunt trauma. Although it was very hard to tell the timing of the injuries, Dr. Grostern believed they occurred “somewhere within a couple of weeks leading up to” Iyonna’s death. He stated that hemorrhaging can occur contemporaneously with the trauma and continue for minutes or hours after. He believed these injuries would have occurred at the time of the trauma.

¶ 19 Tamira Smith testified that she attended Computer Systems Institute in July 2012, with defendant. The two shared a lunch table Monday through Friday during school, but had no real relationship. They had an altercation a week before the incident where the two almost fought, but it was deescalated before any physical contact occurred. Smith claimed that “some military guy flipped defendant on her face before she could attack.” She filled out an incident report with the school but never mentioned anything about a “military man” stopping defendant. They sat at the same lunch table every day and defendant would often talk about her family. She said she was married to Davis and he had cheated on her and had a baby with another woman. One day in February or March, while sitting with her friends and Smith, defendant said she did not like the baby, hated it, and was going to kill it. Smith told defendant that DCFS would get involved if that happened and defendant responded that she would say the mother dropped the baby off a week earlier with bruises on her. Smith called defendant a psycho and said she would go to jail for the rest of her life.

¶ 20 When Smith subsequently found out a baby died and defendant was involved, she searched defendant’s name on Google, got information off the internet, and called the State’s

Attorney's Office to report what she had overheard defendant say at lunch. Smith never told anyone at school, the police, or Davis about what defendant said at lunch. She had not reported it to the police at the time because she did not believe defendant would actually do it.

¶ 21 At the close of the State's case, defendant made a motion for directed finding, which was denied.

¶ 22 Dr. Mark Shuman, an associate medical examiner in Miami Dade County, Florida, testified as a qualified expert in forensic pathology for the defense. He had been board certified as a forensic pathologist for 15 years at the time of trial. He was contacted to consult on this case in 2013 by the Public Defender's office and paid \$300 per hour, with the maximum amount being \$3,000 per day when he was traveling. In order to form his opinion on this case, he reviewed the CV of Dr. Goldschmidt, the Chicago Fire Department report, the Roseland community Hospital records, the Chicago Police Department reports, and the Cook County Medical Examiner records, including 10 postmortem photos, 5 postmortem radiographs, 40 autopsy photos and 33 histologist slides from the time of the autopsy.

¶ 23 Dr. Shuman believed the cause of Iyonna's death to be blunt head injury, but he could not provide a conclusion as to how or when exactly the injury occurred. He believed that something striking her head caused the bleeding which eventually stopped her breathing. He believed the subdural hemorrhage was at least a week old, the subarachnoid hemorrhages were at least 72 hours old, and the scalp contusions were 24 hours or more old. In his opinion, the impact to the back of her head resulted in the most hemorrhaging in her brain, and was the most significant injury. Dr. Shuman stated this could have happened from a short distance fall and related several instances he was familiar with in which a child suffered a short fall, and later died from their

head injuries after not showing any symptoms. The symptoms of a head injury in children can be vague such as sleepiness, irritability, lack of appetite, and severe symptoms often do not occur for a day or so. However, he also stated that the injuries were suspicious for inflicted injury because there were “multiple impacts” but nobody had an explanation for them.

¶ 24 Dr. Shuman disagreed with Dr. Goldschmidt and believed the mouth injuries were the result of resuscitation efforts. His conclusion was that Iyonna died from blunt head injury, but he could not give a time. Dr. Shuman testified that although there was “fresh blood” present in the subdural and subarachnoid hemorrhages, this did not mean they were new injuries, because “fresh blood” could be present when they have been healing for up to two months. He believed the subdural hemorrhage was healing and at least a week old, while the subarachnoid hemorrhage was a few days old. However, he suspected these injuries occurred at the same time, “because they usually do.” He believed the scalp injury was a few hours old based on acute inflammation and the “goose egg” and accompanied hematoma was at least a couple hours old, but stated they could be older. Regardless of how the blunt force trauma occurred, Dr. Shuman believed that the older injuries would be considered a contributing factor to Iyonna’s death.

¶ 25 The trial court found defendant guilty on both counts of first degree murder. It found Davis a credible witness and found no evidence that he hurt Iyonna, and his “actions were consistent with a man who learned his baby girl had stopped breathing.” It found Smith a credible witness and stated that her testimony was not impeached in “any significant fashion.” As to the expert witnesses presented, the trial court found that there was no dispute between them that the cause of death was blunt head trauma. The trial court made a factual finding that the cause of death was blunt head trauma due to child abuse, and the manner of death a

homicide. It found Dr. Grostern and Dr. Goldschmidt more persuasive and credible beyond a reasonable doubt than Dr. Shuman. The court subsequently denied defendant's motion to reconsider or for a new trial, merged the counts, sentenced defendant to 23 years' imprisonment, and denied defendant's motion to reconsider sentence.

¶ 26 Defendant now appeals, arguing that the State failed to prove beyond a reasonable doubt that she was guilty of first-degree murder.

¶ 27 Where a criminal conviction is challenged based on sufficiency of the evidence, a reviewing court, considering all the evidence in the light most favorable to the prosecution, must determine whether any rational trier of fact could have found beyond a reasonable doubt the essential elements of the crime. *People v. Brown*, 2013 IL 114196, ¶ 48. This standard gives full play to the responsibility of the trier of fact to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. *People v. Howery*, 178 Ill. 2d 1, 38 (1997). Accordingly, a reviewing court will not substitute its judgment for that of the trier of fact on issues involving the weight of the evidence or the credibility of the witnesses. *People v. Cooper*, 194 Ill. 2d 419, 430-31 (2000).

¶ 28 The trier of fact is not required to disregard inferences that flow normally from the evidence or to seek all possible explanations consistent with innocence and elevate them to reasonable doubt. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009). Further, a criminal conviction may be based solely on circumstantial evidence, and the same standard of review will apply. *Brown*, 2013 IL 114196, ¶ 49. We will not reverse a criminal conviction merely because there is contradictory evidence or the defendant claims a witness is not credible. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). Rather, we will reverse a criminal conviction only when "the

evidence is so improbable or unsatisfactory that no rational trier of fact could have found defendant guilty beyond a reasonable doubt.” *Id.* at 229.

¶ 29 To sustain defendant’s conviction for first degree murder as charged, the State was required to prove that defendant intentionally or knowingly without lawful justification inflicted blunt force trauma on Iyonna and killed her. 720 ILCS 5/9-1(a)(1) (West 2012).

¶ 30 Viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found defendant guilty of first degree murder. The evidence established that Iyonna died from blunt force trauma to the head (testimony of Drs. Goldschmidt, Grostern, and Shuman), that she had been in good health prior to being left in the care of defendant on the day of her death (testimony of Davis), and defendant had made an outward threat regarding the child while at school (testimony of Smith).

¶ 31 Defendant argues that the State failed to prove her guilty of first degree murder where: (1) Tamira Smith was not a credible witness; (2) the experts’ opinions varied on the timing and potential cause of the fatal injury, and (3) Jonathan Davis took care of Iyonna for 7 of the 48 hours preceding her death. We disagree.

¶ 32 Defendant first argues that Tamira Smith was not a credible witness because she had been in an altercation with defendant a week prior to the incident, and the State failed to support her “impeached” testimony with alternative sources such as the other classmates who allegedly heard defendant’s threatening statements regarding Iyonna. Defendant relies on *People v. Smith*, 3 Ill. App. 3d 64, 67 (1971), to establish that the State’s failure to call these other witnesses gives rise to an inference that the other witnesses would have provided testimony that would damage the State’s case.

¶ 33 In *Smith*, the primary witness’ testimony was “contradictory, impeached, and hardly ‘complete in all respects.’ ” *Id.* Additionally, the record revealed the existence of 18 other witnesses and the State’s knowledge of their names and contact information that could have provided supporting testimony. Here, Tamira Smith’s testimony was impeached only on the contents of her school incident report in which she said a “military man” prevented defendant from attacking her during their altercation. The trial court found her credible and believed her testimony was “not impeached in any significant fashion.” Therefore, the inference that arose in *Smith* does not arise here. Additionally, we give proper deference to the trial court in assessing the credibility of witnesses because it was in a superior position to observe the testimony. *People v. Vaughn*, 2011 IL App (1st) 092834, ¶ 24. Smith’s testimony was not so improbable or unsatisfactory that a rational trier of fact could not find her credible.

¶ 34 Next, defendant argues that the State’s experts did not establish that the fatal injury was intentionally inflicted or occurred 24 to 48 hours before Iyonna’s death. She argues that the State’s expert testimony “left open the possibility that the most significant injury—a subdural hemorrhage—was the result of an accident.” However, the State’s witnesses and defendant’s own expert all agreed that the cause of death was blunt head trauma and that the manner of death was a homicide. Therefore, we agree with the trial court that the injuries were intentionally inflicted.

¶ 35 With regard to the timing of the fatal injury, Dr. Shuman testified that some of the injuries in Iyonna’s brain were at least a week old and a contributing factor to her death. However, he agreed that the large scalp injury, referred to as a “goose egg” by the State’s experts, was “probably the largest of the hematomas” and could be as new as a few hours old.

Dr. Goldschmidt testified that the injuries occurred within 48 hours of death and “probably within 24 hours of death.” The trial court found the State’s experts more persuasive and credible in regards to the differing opinions offered by both parties. We will not substitute our judgment for that of the trial court on questions involving the credibility of witnesses because it was in the best position to make these determinations. *People v. Wheeler*, 226 Ill. 2d 92, 114-15 (2007).

¶ 36 Circumstantial evidence established that the child was hurt while in defendant’s sole care. Defendant made comments regarding her desire to kill the child, and Iyonna was in good health when Davis left her in defendant’s care but died later that day from “homicide” blunt force trauma. It was a logical inference for the trial court to find that defendant was the person who intentionally inflicted the blunt force trauma to Iyonna, with the intent to kill the child. As the trial court stated, nothing in the evidence supports defendant’s insinuations that Davis caused injuries or that Iyonna suffered an accident. GG-15. The trier of fact is not required to disregard inferences that flow normally from the evidence or to seek all possible explanations consistent with innocence and elevate them to reasonable doubt. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009).

¶ 37 Defendant essentially asks this court to substitute its judgment for that of the trier of fact regarding the weight of the evidence and the credibility of the witnesses. This we will not do, where the evidence is not so improbable or unsatisfactory that it creates a reasonable doubt of defendant’s guilt. Taking the evidence in a light most favorable to the prosecution, we find that a rational trier of fact could have found defendant guilty of first degree murder beyond a reasonable doubt.

¶ 38 Affirmed.