

2012 IL App (2d) 111002-U
No. 2-11-1002
Order filed December 19, 2012

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Kane County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 10-CF-969
)	
RICARDO ROBLEDO-ESPINO,)	Honorable
)	Patricia Piper Golden,
Defendant-Appellant.)	Judge, Presiding.

PRESIDING JUSTICE BURKE delivered the judgment of the court.
Justices McLaren and Hudson concurred in the judgment.

ORDER

¶ 1 *Held:* The State proved defendant guilty beyond a reasonable doubt of aggravated battery of a child, as the substantial force that was necessary to inflict the infant victim's serious injuries, coupled with defendant's attempt to hide the incident, supported the inference that he was aware that his conduct was practically certain to cause the victim great bodily harm.

¶ 2 Following a bench trial, defendant, Ricardo Robledo-Espino, was found guilty of two counts of aggravated battery of a child (720 ILCS 5/12-4.3(a) (West 2010)). The victim of the battery, L.S., is defendant's wife's infant daughter. After defendant was found guilty, he filed a motion for a new

trial, arguing that the State failed to prove beyond a reasonable doubt that he knowingly caused L.S. great bodily harm. The trial court denied the motion and sentenced defendant to 90 months' imprisonment after merging the two counts for sentencing purposes. Defendant moved the trial court to reconsider the sentence, the court denied the motion, and this timely appeal followed. On appeal, defendant admits that he caused injury to L.S., but he claims that, because the State did not establish that he "knowingly caused [L.S.] great bodily harm," his conviction must be reversed. We affirm.

¶ 3 The evidence that was presented at defendant's bench trial, which includes almost 700 pages of testimony, may be summarized as follows. In September 2009, defendant met Stephanie Sunderlage Robledo, who was about three months' pregnant with L.S. at that time.¹ Although Stephanie wanted to put L.S. up for adoption, defendant convinced her not to do so. Defendant eventually moved in with Stephanie and her five-year-old daughter. Defendant, who helped care for his siblings and cousins when they were infants, provided and cared for Stephanie's family and was present when L.S. was born on February 16, 2010. According to Stephanie, defendant, their friends, and other family members, defendant doted on, loved, and cared deeply for L.S., who was, by all accounts, a very happy child.

¶ 4 On April 3, 2010, Stephanie left the home for a short time, placing defendant in charge of L.S. and L.S.'s five-year-old sister. While L.S. was napping in a baby swing in defendant's and Stephanie's bedroom, defendant was playing a video game with the five-year-old. Defendant heard L.S. cry, went into the bedroom, and took L.S. out of the swing. Defendant put L.S. on the bed, but L.S. continued to cry. Defendant grabbed L.S. by her calves and, according to defendant, he gently

¹Stephanie and defendant got married on April 7, 2011, after defendant was charged with these offenses.

and slowly pulled her toward him about four feet. L.S. started crying more, so, according to defendant, he began gingerly moving L.S.'s legs in a bicycling-type motion. When L.S. cried even harder, defendant indicated that he opened L.S.'s legs and blew on her stomach. This caused L.S. to cry more loudly than she had before. Although defendant testified that he would "never intentionally hurt [L.S.]," he also stated that, given the timbre and intensity of L.S.'s crying, he thought that he had "probably hurt her."

¶ 5 After the April 3, 2010, incident, defendant noticed that L.S.'s behavior had changed. Specifically, he observed that she started crying more, and, in particular, she would cry more when her left leg was moved. Despite the change in L.S.'s demeanor, defendant did not tell Stephanie about what had happened on April 3, 2010. Defendant explained that "[he] didn't tell Stephanie what had occurred because [he] felt bad for what had happened."

¶ 6 On April 7, 2010, Stephanie was attempting to nurse L.S., and L.S. was "very uncomfortable." Stephanie examined L.S. and discovered that her left calf was swollen and hard. After talking with defendant, Stephanie called her pediatrician's office. Because L.S. was exhibiting no other symptoms, such as a fever, vomiting, or diarrhea, the pediatrician's office told the couple they could wait and bring L.S. to the office the next day.

¶ 7 On April 8, 2010, defendant and Stephanie took L.S. to the pediatrician's office. Jamie Price, the physician's assistant who saw L.S. that day, observed that L.S.'s left leg was bigger than her right. Price noted that L.S. was "inconsolable and crying." When Price attempted to manipulate L.S.'s leg, the pitch and volume of L.S.'s screaming would increase. Given L.S.'s condition, Price wrote a referral for L.S. to go to the emergency room "immediately."

¶ 8 Defendant and Stephanie took L.S. to the emergency room at Sherman Hospital. Dr. Linda Widmer examined L.S. at Sherman and spoke to Stephanie and defendant. The couple told Dr. Widmer that L.S. had been crying more, especially when they changed her diaper, and that she was moving her legs less. Given what the couple told Dr. Widmer, X-rays were taken of L.S.'s legs.

¶ 9 Dr. Dalia Gvildys, a diagnostic radiologist, reviewed those X-rays. Although Dr. Gvildys did not observe any fractures or bone abnormalities in the X-rays when she first saw them, she noticed a subtle fracture to L.S.'s right leg while reviewing the X-rays in court. Further, Dr. Gvildys testified that she is not a pediatric radiologist and has very little experience reviewing X-rays of children under one.

¶ 10 After Dr. Gvildys reviewed the X-rays, Dr. Widmer applied a splint to L.S.'s left leg and discharged L.S. from Sherman because no fractures were observed. Dr. Widmer indicated that, if fractures were seen, especially bucket-handle fractures, she would not have allowed L.S. to go home, because, among other things, "a bucket-handle fracture [is] a sign of possible child abuse." When L.S. was discharged from Sherman, Stephanie and defendant were advised to take L.S. to an orthopedist at Loyola Medical Center.

¶ 11 On April 11, 2010, before the couple took L.S. to the orthopedist, defendant, who had been left alone with L.S., was lying on his bed with L.S. next to him. When attempting to get off of the bed, defendant pushed down on L.S.'s right leg. As with the April 3, 2010, incident, defendant did not tell Stephanie about doing this until much later.

¶ 12 On April 14, 2010, the couple took L.S. to Loyola Medical Center, where they saw Dr. Teresa Cappello, a pediatric orthopedic surgeon. Dr. Cappello examined L.S. and spoke to Stephanie and defendant, who seemed concerned about L.S. The couple denied that there was any type of trauma

that could have caused injury to L.S. An examination of L.S. revealed that L.S., who was “alert,” “interactive,” “in no distress,” “very cooperative,” and “moved both legs well,” had a swollen left leg. Dr. Cappello ordered more X-rays, which Dr. Jennifer Lim-Dunham, an expert in pediatric radiology, reviewed in addition to the X-rays taken at Sherman.

¶ 13 Based on a review of those X-rays, Dr. Lim-Dunham determined that L.S. incurred one fracture to her right leg and two “pretty obvious” bucket-handle fractures to her left leg. Dr. Lim-Dunham explained that bucket-handle fractures, which occur at the ends of developing bones of children and especially infants, are “seen frequently in cases of child abuse when there has been a twisting or pulling force on the bone.” Dr. Lim-Dunham later elaborated that, in her experience, she has “never seen” bucket-handle fractures in a child as young as L.S. “other than in the setting of child abuse” and, given that L.S. incurred more than one fracture, it was more suggestive that L.S. was abused. In describing the amount of force that would be needed to inflict a bucket-handle fracture, Dr. Lim-Dunham asserted that the fracture could not be self-inflicted, incurred during birth, caused by accident, or the result of properly handling an infant. Rather, “a high degree of force and a sort of twisting and pulling motion on the extremities” is needed to cause that type of fracture.

¶ 14 Dr. Lim-Dunham prepared a report, which was forwarded to Dr. Cappello. Dr. Cappello reviewed that report in addition to all of the X-rays and concluded that L.S.’s injuries did not result from an accident. Dr. Cappello spoke to Stephanie and defendant about her findings and recommended that they go to Loyola’s emergency room immediately. Dr. Cappello told the couple that, if they did not make it to the emergency room in a timely manner, she would have to contact the police.

¶ 15 Instead of going to Loyola's emergency room, the couple, with Dr. Cappello's knowledge, took L.S. to Children's Memorial Hospital later in the day on April 14, 2010. L.S. remained at Children's until April 19, 2010. During that time, X-rays were taken of L.S. Dr. Francis Prendergast, an expert in pediatric radiology, reviewed those X-rays in addition to the X-rays taken at other facilities and found four fractures that could have been incurred in one incident. Three of those fractures, which were characterized as bucket-handle fractures, were observed in L.S.'s left leg. Dr. Prendergast explained that bucket-handle fractures are seen only in children, result only from "significant force," and are common in children who have been physically abused. In the right leg, Dr. Prendergast observed one buckle fracture. Buckle fractures, in contrast to bucket-handle fractures, result from angulation or compression force as opposed to a pulling force. Given L.S.'s injuries and a comprehensive review of the X-rays, Dr. Prendergast opined that it was "highly unlikely" that L.S.'s fractures were self-inflicted, resulted from birth trauma, were caused by some accident, resulted from a bone disease, or were incurred by someone pushing on the leg to get out of a bed. However, Dr. Prendergast testified that the injuries could have been caused by someone pulling on L.S.'s legs and that, as noted previously, to sustain that type of injury, the pulling on and rotation of the legs would have to have been "significant."

¶ 16 Also during L.S.'s stay at Children's, Dr. Emalee Flaherty, an expert in pediatrics and child-abuse pediatrics, examined L.S. and talked to Stephanie and defendant. When Dr. Flaherty initially spoke to the couple, neither one of them told Dr. Flaherty about any trauma that could have caused injury to L.S. Dr. Flaherty's exam of L.S. revealed that L.S.'s left leg was bigger than her right and that she could move her right leg better than her left. These observations were consistent with what one sees in a child who has bucket-handle fractures. Dr. Flaherty testified that bucket-handle

fractures, which are asymptomatic and occur in young infants, result from a “severe type of force” that is not seen in “normal infant handling” and can best be diagnosed after reviewing X-rays. When Dr. Flaherty was told that defendant had told the police that L.S.’s injuries could have been caused by defendant pulling L.S. to him while she was lying on the bed, Dr. Flaherty said that such actions could have caused L.S.’s injuries, but that, consistent with “normal human nature,” “[defendant] minimized the amount of force that went into *** the injuries.” Given the fact that fractures are rare in young infants, Dr. Flaherty testified that fractures, and in particular bucket-handle fractures, seen in young infants “have a high specificity for child abuse.” Later, after Dr. Flaherty learned from the police that defendant had caused the injuries after he allegedly tried to comfort L.S. when she would not stop crying, Dr. Flaherty became even more concerned, because, even though she did not know whether crying would frustrate defendant, “crying is the number one trigger for child abuse in a child [L.S.’s] age.” Given all of this, including the fact that three and possibly five fractures were detected in L.S.’s legs, Dr. Flaherty testified that her “best medical opinion is that [L.S.’s] injuries were caused by child abuse.”

¶ 17 When L.S. was at Children’s, Stephanie and defendant talked to a number of people. At no time before April 16, 2010, were any of these professionals to whom the couple spoke told about the incident that occurred on April 3, 2010. However, on April 14, 2010, defendant did tell Stephanie that he might have hurt L.S. when, in attempting to get off the couple’s bed on April 11, 2010, he pushed down on L.S.’s right leg. Stephanie and defendant alerted the police, two social workers, and Dr. Flaherty about this possible cause of L.S.’s injuries. Dr. Flaherty concluded that that type of pressure would not cause the injuries L.S. sustained.

¶ 18 On April 16, 2010, defendant contacted a representative from the Department of Children and Family Services. Defendant told the representative that he needed to talk about something he had done that may have caused L.S.'s injuries. Based on that statement, the representative contacted the Elgin police department. Officer David Baumgartner, a detective with the Elgin police department, went to speak with defendant at Children's. In the statement defendant gave to Officer Baumgartner, defendant described what had happened on April 3, 2010. In relaying what had happened, defendant told the officer that he "used more force than [he] should have when [he] pulled [L.S.] towards [him.]" Defendant also told the officer that, although he felt he was responsible for L.S.'s injuries, he never intended to harm L.S.

¶ 19 Based on this evidence, the trial court found defendant guilty of two counts of aggravated battery of a child. In reaching that conclusion, the court noted that it had to decide whether the evidence established that defendant, who cared a great deal for L.S., "knowingly" harmed L.S., which necessarily required the court to consider circumstantial evidence. That circumstantial evidence included the medical testimony that the fractures L.S. sustained to her legs are "highly characteristic of child abuse" and are not seen in infants except in cases of child abuse. Moreover, the court observed that the doctors testified that these types of injuries do not occur accidentally, were not caused by any malady from which L.S. suffered, and did not result from defendant attempting to hoist himself out of bed. Rather, the court found that the injuries were inflicted during the April 3, 2010, incident that defendant waited to tell anyone about until April 16, 2010. Because defendant was not forthcoming about the April 3, 2010, incident and repeatedly minimized the amount of force he used when the injuries occurred, the court found defendant incredible.

¶ 20 At issue in this appeal is whether defendant was proved guilty beyond a reasonable doubt of aggravated battery of a child. In evaluating an attack on the sufficiency of the evidence, we do not retry the case. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). Instead, we defer to the trial court's determinations of the credibility of the witnesses, the weight of their testimony, and the reasonable inferences drawn from the evidence. *People v. Steidl*, 142 Ill. 2d 204, 226 (1991). We deem the evidence sufficient if, viewing it in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Perez*, 189 Ill. 2d 254, 265-66 (2000).

¶ 21 A defendant commits aggravated battery of a child when, among other things, the defendant is 18 years old or older and knowingly, and without legal justification, causes great bodily harm to a child under 13 years old. 720 ILCS 5/12-4.3(a) (West 2010). Here, as noted previously, no issue is raised concerning defendant's age, L.S.'s age, or the fact that defendant caused L.S.'s injuries. Rather, we are asked to review only whether defendant *knowingly* harmed L.S.

¶ 22 A defendant knowingly causes a result when he is consciously aware that the result is practically certain to be caused by his conduct. 720 ILCS 5/4-5(b) (West 2010). In assessing whether a defendant acted with knowledge, we note that a defendant is presumed to intend the probable consequences of his actions and need not admit that he acted knowingly. *People v. Lind*, 307 Ill. App. 3d 727, 735 (1999). Whether a defendant acted knowingly often must be inferred from circumstantial evidence. *People v. Hall*, 273 Ill. App. 3d 838, 843 (1995). Circumstantial evidence is proof of certain facts and circumstances from which the trier of fact may infer other connected facts that human experience dictates usually and reasonably follow. *People v. Grathler*, 368 Ill. App. 3d 802, 808 (2006). Such circumstantial evidence may include an examination of the nature of the

victim's injuries and any disparity between the defendant's and the victim's sizes and strength. *Lind*, 307 Ill. App. 3d at 735.

¶ 23 The sole limitation on the use of circumstantial evidence is that the inferences drawn from the evidence must be reasonable. *Grathler*, 368 Ill. App. 3d at 808. "Circumstantial evidence is sufficient to sustain a conviction if it satisfies proof beyond a reasonable doubt of the elements of the crime charged." *People v. Gomez*, 215 Ill. App. 3d 208, 216 (1991). That is not to say that each link in the chain of circumstances must be proved beyond a reasonable doubt. *Id.* Rather, it is sufficient if all the circumstantial evidence taken together satisfies the trier of fact beyond a reasonable doubt that the defendant is guilty. *Id.*

¶ 24 Here, we believe that that threshold has been met. First, defendant, an adult, admitted that, when he was allegedly trying to comfort L.S., a 6½-week-old baby, on April 3, 2010, he probably used more force than was necessary. At the time, L.S. was crying and was not comforted by anything that defendant did. Although no evidence affirmatively indicated that defendant was frustrated or angered in any way by L.S.'s crying, Dr. Flaherty, an expert in child-abuse pediatrics, specifically testified that a child's crying is the main reason young children are harmed. Second, five doctors suggested or specifically testified that a baby as young as L.S. would not sustain bucket-handle fractures in the absence of abuse. In elaborating on that conclusion, three doctors described that the amount of force needed to cause that type of injury was significant and would not occur during normal handling of an infant. Given defendant's admission, which he did not relay to anyone until almost two weeks after L.S. was injured, in addition to the vast amount of medical testimony indicating that the type of injury L.S. sustained would not have occurred by accident, we must

conclude that the State proved beyond a reasonable doubt that defendant knowingly caused L.S.'s injuries.

¶ 25 In reaching this conclusion, we agree with the reasoning employed in *People v. Rader*, 272 Ill. App. 3d 796 (1995). There, the defendant, who was loving and caring toward other children, testified that he never intended to harm his 4½-month-old son. *Id.* at 798, 800-01. However, the evidence established that the son's injuries were severe and permanent, consistent with shaken baby syndrome, and could have been caused only by severe and repetitive shaking. *Id.* at 804-05. Additionally, the baby's severe injuries were inconsistent with the defendant's version of what transpired when his son was harmed, which suggested that the defendant was attempting to hide the truth from the police because he knew his acts were dangerous when performed on a baby. *Id.* at 805. Based on the severity of the baby's injuries, the court concluded that a rational trier of fact could infer that the defendant must have known that there was a substantial probability that the defendant's actions could harm his son. *Id.*

¶ 26 Here, as in *Rader*, a rational trier of fact could infer defendant's guilt from the disparity in L.S.'s and defendant's sizes, strength, and ages; the fact that L.S.'s fractures would not have been sustained in the absence of substantial force being applied to her legs; and the fact that defendant's recounting of the events that led to L.S.'s injuries – that he slowly pulled L.S. four feet across a bed and gingerly bicycled her legs – was completely inconsistent with L.S.'s injuries. This, as in *Rader*, suggests that defendant was attempting to hide the truth from authorities precisely because he knew that his actions were dangerous to L.S.

¶ 27 Defendant claims that he was not proved guilty beyond a reasonable doubt because several people testified about how he doted on L.S. and cared a great deal about her. We agree with

defendant that the record supports the fact that defendant generally was very caring toward L.S. However, the fact that, in general, defendant doted on L.S. does not mean that, on April 3, 2010, he did not knowingly cause injury to L.S. Because the evidence established that, on April 3, 2010, defendant used substantial force that was necessary to inflict L.S.'s serious injuries, we must conclude that defendant was proved guilty beyond a reasonable doubt of aggravated battery of a child.

¶ 28 For these reasons, the judgment of the circuit court of Kane County is affirmed.

¶ 29 Affirmed.