

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2013 IL App (3d) 110574-U

Order filed May 9, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of the 14th Judicial Circuit,
Plaintiff-Appellee,)	Henry County, Illinois,
)	
v.)	Appeal No. 3-11-0574
)	Circuit No. 10-CF-115
)	
SETH T. MOWBRAY,)	Honorable
)	Charles H. Stengel,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE CARTER delivered the judgment of the court.
Justices Holdridge and Lytton concurred in the judgment.

ORDER

- ¶ 1 *Held:* The State proved beyond a reasonable doubt the defendant's guilt of aggravated battery of a child and two counts of endangering the life or health of a child.
- ¶ 2 The defendant, Seth T. Mowbray, was convicted of one count of aggravated battery of a child (720 ILCS 5/12-4.3(a) (West 2010)) and two counts of endangering the life or health of a child (720 ILCS 5/12-21.6(a) (West 2010)). The trial court sentenced the defendant to a total of six years of imprisonment. On appeal, the defendant argues that the evidence was insufficient to

prove beyond a reasonable doubt his guilt of the three offenses. We affirm.

¶ 3

FACTS

¶ 4 On April 12, 2010, the defendant was charged by information with one count of aggravated battery of a child and two counts of endangering the life or health of a child. Count I alleged that the defendant knowingly caused great bodily harm to J.M. Count II alleged that on or about January 13, 2010, the defendant willfully caused or permitted the health of J.M. to be endangered by failing to seek medical attention for J.M. after the defendant broke J.M.'s right arm. Count III alleged that on or about January 16, 2010, the defendant endangered the health of J.M. when he did not immediately take J.M. from Kewanee hospital to OSF St. Francis Medical Center (St. Francis) in Peoria for further treatment and did not allow J.M. to be transported by ambulance to said hospital. On May 24, 2011, the case proceeded to a bench trial.

¶ 5 Amanda Robinson testified that the defendant was the father of her child, J.M. The defendant, Robinson, and J.M. shared an apartment in January 2010. However, the week before January 16, 2010, the defendant and Robinson were separated, and Robinson and J.M. lived at her aunt's house. Robinson's mother and her two cousins also lived in the house. At the time, J.M. was approximately three months old.

¶ 6 Around January 12 or 13, J.M. spent the night with the defendant. Robinson noted that J.M. was in good health before the visit. The next day, the defendant returned J.M. to Robinson's care. Robinson noticed that J.M. was crying in his car seat and cried more when she picked him up. She observed that J.M. was unable to move his right arm. Robinson's mother said that J.M. should be taken to the hospital. Robinson contacted the defendant, and he did not want to take J.M. to the hospital. Later, the defendant brought Robinson and J.M. back to his apartment. At

that time, J.M. did not seem to be bothered by the injury, but he did not move his arm. On January 16, 2010, Robinson and the defendant took J.M. to Kewanee hospital because J.M. still was not moving his right arm.

¶ 7 Robinson testified that at Kewanee hospital, a doctor said that J.M. needed to be transported to a hospital in Peoria by ambulance for further care. The defendant opposed the ambulance transfer because there was only room for one person to ride with J.M., and he wanted to be present with Robinson and J.M. during the drive. The defendant elected to drive J.M. to Peoria. Later, he left Kewanee hospital with Robinson and J.M. As they left, Robinson thought they were driving to Peoria, but the defendant returned to their apartment. The defendant told Robinson that his car could not make it to Peoria, and he was going to wait until morning to call his grandparents for a ride.

¶ 8 At the apartment, Robinson was awoken by a police officer at 5 a.m. Robinson heard the defendant tell the police officer that he was going to find a ride to Peoria, and the officer responded that if the defendant did not arrange a ride, he would take J.M. and arrest the defendant and Robinson.

¶ 9 At the Peoria hospital, Robinson learned that J.M. had a broken arm and fractured ribs. Robinson asked the defendant if he knew how the injuries occurred. Initially, the defendant had no explanation. However, after an interview with the police on January 19, 2010, the defendant told Robinson that he had dropped J.M. in the kitchen.

¶ 10 On cross-examination, Robinson testified that she met with Detective Gary Moore on January 19, 2010. Robinson told Moore that she thought J.M.'s injury was caused when she put him in his snowsuit or in a car seat. Robinson noted that the defendant did not "always have

patience with [J.M.]" Robinson denied injuring J.M.'s arm. She also did not see the defendant break J.M.'s arm.

¶ 11 Kimberly Rotz testified that she was Robinson's mother. In January 2010, Rotz lived with Robinson and J.M. Before J.M. was taken to Kewanee hospital, the defendant kept J.M. overnight at his apartment. Prior to this visit, J.M. was uninjured and acted normally. The next morning, the defendant brought J.M. back. At first, Rotz did not notice that J.M. was injured. However, Robinson gave J.M. a bath, and J.M. screamed as she tried to put his shirt on. Rotz thought J.M. was injured when she or Robinson dressed J.M. in his snowsuit or when one of them put him in his car seat. Rotz noticed that J.M. screamed again while she was caring for him, and she contacted Robinson. The next day, the defendant came over. The defendant put J.M. in his snowsuit, and J.M. started screaming. Rotz told the defendant that J.M. was hurt and to take him to the hospital. The defendant seemed reluctant to take J.M. to the hospital, and he returned to his apartment with J.M. and Robinson. Two days after Rotz noticed J.M.'s injury, the defendant and Robinson took J.M. to the hospital.

¶ 12 Pamela Rosenberg testified that she was a registered nurse at Kewanee hospital. She was present when the defendant and Robinson were notified that J.M. needed to be transported by ambulance to the hospital in Peoria. The defendant responded that he did not want J.M. to go by ambulance to the hospital. The defendant seemed nervous and guarded. Rosenberg recalled that Robinson was not involved in the conversation about transporting J.M. by ambulance.

¶ 13 James Lindbom testified that he was a physician at Kewanee hospital. On January 16, 2010, he evaluated J.M. and determined that J.M. needed to see a pediatric orthopedic specialist at St. Francis hospital in Peoria because of the lack of movement in his right arm. Lindbom

noted that this symptom was typically a sign of a serious underlying injury. Lindbom remembered that the defendant was "hypervigilant" and overly concerned and refused an ambulance transfer. Lindbom placed J.M.'s arm in a splint and told the defendant and Robinson that J.M. needed to be seen by a specialist that night. However, Lindbom noted that J.M. was in stable condition that did not necessitate an ambulance transfer. Later that night, Lindbom learned that J.M. had not been transported to St. Francis.

¶ 14 Officer Roy Carpenter testified that on January 17, 2010, at 1:50 a.m. he was directed to conduct a welfare check on J.M. to determine if he had been taken to a Peoria hospital. Carpenter first went to the defendant's apartment, but he received no answer. After several hours of searching, Carpenter returned to the defendant's apartment at 5 a.m. Carpenter observed a car in the parking lot that matched the description of the defendant's vehicle. Carpenter again knocked on the door but received no answer. Carpenter procured a master key, which he used to enter the apartment. Carpenter announced his presence, and the defendant came down the stairs. The defendant advised Carpenter that J.M. was upstairs. As Carpenter asked additional questions, the defendant began to yell and he said " '[m]y son is OK. There's nothing wrong with him. The fucking doctors at Kewanee Hospital are fucking crazy, and he's not going to the hospital.' " Carpenter advised the defendant that he needed to make arrangements to have J.M. transported to the Peoria hospital or he and Robinson would be arrested for child neglect. The defendant eventually contacted his grandmother, who drove J.M., the defendant, and Robinson to Peoria.

¶ 15 The defendant also told Carpenter that he did not immediately take J.M. to the Peoria hospital because he did not have money to buy gas or food, and his car did not have good tires.

When Carpenter advised the defendant that J.M. could have been transported to Peoria by ambulance, the defendant replied that he would not allow Robinson to go anywhere without him. During this discussion, Robinson sat quietly with J.M. Robinson agreed with the defendant that J.M. did not need to go to the hospital.

¶ 16 Kay Lynn Saving testified that she was a pediatrician at St. Francis in Peoria. On January 17, 2010, she examined J.M. Saving noted that J.M. exhibited bruising on his face, left knee, right leg and buttocks. The defendant attributed J.M.'s facial bruising to dropping a bottle on his head or the result of striking his head off the toys in his walker. Saving opined that it would be very unusual for a child to be bruised in such a manner.

¶ 17 Saving also stated that J.M. had an x-ray of his arm and skeletal survey of his body. The skeletal survey revealed that J.M. had a bucket-handle fracture to his right humerus and three fractured ribs on his right side. Saving opined that a bucket-handle fracture results from the forceful pulling, jerking or jerking and twisting of the bone, for example, "using the arm as a lever to shake a child or slam a child against an object." This injury was not consistent with dropping a child. The arm injury likely occurred several days to a week before the time the x-ray images were taken. The injury was also inconsistent with twisting the child's arm to put him in a snowsuit or car seat. Additionally, Saving noted that the injuries to J.M.'s ribs were not the result of a fall. The rib injuries likely occurred 7 to 14 days before the x-ray images. Saving concluded that the injury to J.M.'s arm was not the result of an accident. The delay in seeking medical treatment also indicated that this was not a case of accidental trauma.

¶ 18 Teresa JoAnn Rowe testified that she was a certified pediatric nurse at St. Francis. She cared for J.M. during his hospital stay in Peoria. Rowe was concerned about the interaction she

observed between the defendant and J.M. In particular, she noted that after she put a gown on J.M. and handed him back to Robinson, the defendant took J.M. from Robinson. The defendant held J.M. with his right arm behind his back, and J.M. screamed. The defendant's "stepmom said, '[p]erhaps he's screaming because of the way you are holding him.' " The defendant was "very defensive and said, 'I always hold him this way.' " Rowe brought some toys for J.M. to play with, and the defendant responded " '[o]h, good, you brought him some toys. Now we don't have to hold him.' " Rowe also became concerned when she saw J.M. in the hospital crib with the side rail down and a bottle propped in his mouth. Rowe warned the defendant and Robinson that J.M. could fall out of the crib, and he could choke or suffer an ear infection as a result of the bottle being propped up.

¶ 19 Moore testified that he interviewed the defendant on January 19 and 20, 2010. The interviews were video and audio recorded. The State introduced both recordings into evidence. On January 19, 2010, the defendant explained to Moore that J.M. might have been injured as he tried to manipulate his arm while putting him into the car seat or while they were trying to put his snowsuit on. The defendant also stated that he had two sets of grandparents that were capable of taking J.M. to Peoria, but he was not comfortable calling them late at night.

¶ 20 On January 20, 2010, Moore received a voice mail message from the defendant indicating that he had lied during the previous interview, and that he knew how J.M.'s arm had been broken. Moore conducted a second interview. The defendant stated that he dropped J.M. on the kitchen floor while preparing a bottle for him. At the time, the defendant was alone with J.M. The defendant stated that the incident occurred while he and Robinson were separated on approximately January 14, 2010. The defendant thought that J.M. might have incurred the rib

injury in the same fall. The defendant reported that he did not take J.M. to the hospital immediately after the fall because he did not notice that J.M. was injured. The defendant speculated that the bruise on J.M.'s face might have occurred when he dropped a bottle on J.M.'s head or when J.M. would thrust his head at the toys that were attached to his swing or walker.

¶ 21 The defendant elected not to testify, and the case proceeded to closing arguments. The court found the defendant guilty of aggravated battery of a child and two counts of endangering the life or health of a child. In its ruling, the court found that (1) J.M.'s injuries were not accidental or self-inflicted, (2) it was uncontradicted that the defendant made the decision not to take J.M. to the hospital, and (3) J.M. was in the defendant's exclusive care, and afterwards Robinson noticed the injury to J.M.'s arm. The court also noted that the medical evidence proved that J.M.'s injuries were not consistent with the explanations offered by the defendant. The court sentenced the defendant to a total of six years of imprisonment. The defendant appeals.

¶ 22

ANALYSIS

¶ 23

I. Aggravated Battery of a Child

¶ 24 The defendant argues that the State failed to prove his guilt of aggravated battery of a child beyond a reasonable doubt because the evidence showed that other people had access to J.M., and the evidence failed to establish that the defendant caused any of the injuries.

¶ 25 When presented with a challenge to the sufficiency of the evidence, it is not our function to retry the defendant. *People v. Sutherland*, 223 Ill. 2d 187 (2006). Instead, we must determine, after viewing the evidence in the light most favorable to the prosecution, if any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Beauchamp*, 241 Ill. 2d 1 (2011).

¶ 26 To convict a defendant of aggravated battery of a child, the State must prove beyond a reasonable doubt that the defendant was 18 years of age or older, and he intentionally or knowingly, and without legal justification, caused great bodily harm to a child under the age of 13 years. 720 ILCS 5/12-4.3(a) (West 2010). In determining a defendant's guilt, the trier of fact need not be satisfied beyond a reasonable doubt as to each link in the chain of circumstances, but all of the evidence taken together must satisfy him or her beyond a reasonable doubt of the accused's guilt. *People v. Campbell*, 146 Ill. 2d 363 (1992). The trier of fact is not required to disregard inferences which flow normally from the evidence before it, nor must it search out all possible explanations consistent with innocence. *Id.* As a court of review, we shall not substitute our judgment for that of the trier of fact unless the inference accepted by the trier of fact was inherently impossible or unreasonable. *People v. Marcotte*, 337 Ill. App. 3d 798 (2003).

¶ 27 Here, the evidence was sufficient to prove beyond a reasonable doubt the defendant's guilt of aggravated battery of a child. Testimony from Robinson and Rotz established that J.M. was in good health before he spent the night with the defendant. After J.M.'s return to Robinson's care, Robinson and Rotz noticed that J.M.'s right arm was injured. Saving testified that J.M. had bruising throughout his body, three broken ribs, and a fractured arm. Her testimony also indicated that these injuries were not incurred accidentally, and that the time of the arm injury coincided with the date that J.M. was in the defendant's care.

¶ 28 Additionally, the defendant's behavior throughout the incident showed his consciousness of guilt. In particular, the defendant refused to have J.M. taken by ambulance to Peoria for urgent medical care, and he was described as nervous and guarded at that time. Carpenter testified that when he went to the defendant's apartment, the defendant did not answer the door

and he arranged a ride only after Carpenter threatened to make an arrest. Rowe noted that the defendant was very defensive when she corrected the way he was holding J.M. Moore testified that the defendant admitted that he lied about how the injury had occurred. Lastly, Saving reported that the delay in seeking treatment was not typical in cases of accidental injury.

¶ 29 Viewing these facts in the light most favorable to the prosecution, we hold that the trial court reasonably inferred that the defendant intentionally or knowingly caused great bodily harm to J.M.

¶ 30 II. Endangering the Life or Health of a Child

¶ 31 The defendant argues that the evidence was insufficient to convict him of endangering the life or health of a child because there was no showing that his delay in taking J.M. to Kewanee hospital potentially injured or exacerbated J.M.'s injury.

¶ 32 To sustain a conviction of endangering the life or health of a child, the State must prove beyond a reasonable doubt that the defendant willfully caused or permitted the life or health of a child to be endangered or willfully caused or permitted a child to be placed in circumstances that endanger the child's life or health. 720 ILCS 5/12-21.6(a) (West 2010).

¶ 33 Under the child endangerment statute, the term endangerment refers to a potential or possibility of injury. *People v. Jordan*, 218 Ill. 2d 255 (2006). The term does not refer to conduct that results in harm, but to conduct that could or might result in harm. *Id.*

¶ 34 In the present case, the evidence was sufficient to support the defendant's convictions for endangering the life or health of a child beyond a reasonable doubt. Count II of the information alleged that the defendant endangered J.M.'s health when he did not seek medical attention after breaking J.M.'s arm. Robinson's testimony established that J.M. was in discomfort after he

stayed with the defendant, and he did not move his arm. J.M. was later found to have a broken arm and several fractured ribs. It was not unreasonable for the trier of fact to conclude that a delay in seeking treatment for J.M. exposed him to potential harm.

¶ 35 Count III of the information charged that the defendant had endangered J.M.'s health when he refused an ambulance transport and did not immediately drive J.M. from Kewanee hospital to St. Francis for further treatment. Lindbom's testimony established that J.M.'s inability to move his arm was a sign of a serious underlying injury that required further care on the night of J.M.'s visit to Kewanee hospital. The defendant disregarded this instruction and delayed seeking further care until Carpenter threatened him with arrest. This evidence established that J.M.'s injury was severe and could potentially worsen as a result of the failure to seek evaluation by the specialist. Therefore, the trial court could reasonably infer that the defendant's delay in transporting J.M. to St. Francis potentially could have resulted in further injury.

¶ 36

CONCLUSION

¶ 37 For the foregoing reasons, the judgment of the circuit court of Henry County is affirmed.

¶ 38 Affirmed.