2016 IL App (2d) 2131304-U
No. 2-13-1304
Order filed July 6, 2016

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. DURAN JOHNSON, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Winnebago County. No. 11-CF-699 Honorable Gary V. Pumilia, Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Justices Jorgensen and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly entered judgments against defendant on charges of first degree murder, concealment of homicidal death, and intimidation, where the direct and circumstantial evidence proved defendant's guilt beyond a reasonable doubt.

¶ 2 Defendant, Duran Johnson, appeals from convictions of first degree murder, concealment of homicidal death, and intimidation following a bench trial in the death of Melanie Grant's three-year old daughter. Defendant contends on appeal that none of the three charges was proven beyond a reasonable doubt. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant began living with Melanie Grant in 2010. Grant had three daughters, KG, KH, and TH, who, at the time of the offenses, were ten, four and three years old, respectively. Within months of moving in, defendant joined Grant in disciplining the children. They would make the decision together when to punish the girls. Defendant introduced two new punishments. "Stretch it out" meant the girls' holding a push-up position on the floor, usually for five to ten minutes, sometimes with phone books tied to their backs. "Walk it out" required the girls to walk between the dining room and front room holding telephone books above their heads. The girls were also made to stand in the corner with telephone books on their heads. If they dropped the books, defendant would slam the books on their heads.

¶ 5 "Stretch it out" sometimes lasted all day and after dinner until bedtime. Defendant and Grant spanked the girls with a belt over their clothes if they fell while doing "stretch it out" or if they urinated on themselves while sleeping. When the girls were on punishment, they ate Ramen noodles three times a day and "maybe a baloney or peanut butter and jelly sandwich." They were given a cup of water with meals. KH was frequently on punishment because she had a bladder problem and would wet herself in bed; if she wet herself while on punishment, she would be whipped with a belt, over and under her clothes, anywhere on her body, and the punishment would be extended. These punishments would last for several days, if not weeks or months.

¶ 6 KH died on or about March 17, 2011. In the days immediately preceding her death, KH did not seem to KG to be herself. Her body was bruised, she was "really sore," she did not say much, and she was moving "really slow." During that March time frame, the girls were in punishment for nearly all of at least one day, and on that day KH received numerous whacks with a belt. Also, during that time, if KH fell doing "stretch it out," defendant would pick her up

by the ears and squeeze her ribs with his hands until she screamed. Defendant would also rub KH's sore feet with the bristles of a hairbrush, making her scream. Once, shortly before KH died, defendant ordered KG to whip KH with a belt. KG complied because if she did not, she was "going to get in trouble," and she "was scared."

¶ 7 Around March 12 and 13, 2011, Grant noticed KH was not as energetic as usual. When Grant returned home from the store on March 16, KH had a "huge green knot" on her forehead, a black eye, some bruises on her ears, and marks all over her body. Defendant told Grant that KH had fallen and hit her head on a vent. Rather than calling 911 or taking KH to a doctor, Grant put ice and a cold butter knife on KH's forehead to try to reduce the swelling.

¶ 8 Around the time of KH's death, Grant was angry with KH but did not want to whip her too much so, instead, made her do "stretch it out." Each time KH fell, Grant squeezed her belly harder and told her to get up. It was possible, Grant said, that she squeezed KH's stomach so hard that she could not breathe and passed out.

¶ 9 On March 17, Grant could not read KH's temperature or tell if she was breathing; she could not find a pulse. When KG got home from school, she listened for KH's heartbeat. KG could not hear a heartbeat, but lied and said she could because she did not want her mother to be upset. Grant and defendant put Pedialyte in a syringe and massaged it down KH's throat since KH was not swallowing. This was done five or six times that day. KH was then wrapped in blankets, and her cold body was placed near a heating vent.

¶ 10 On March 18, Grant called 911. She and defendant had agreed to tell the police that KH fell down the basement stairs. Grant lied to the police because she was afraid of losing her children. Grant also told the police she thought KH may have died on March 16.

¶ 11 The medical expert witnesses agreed that KH died on March 16th or 17th. An autopsy revealed the cause of death to be "multiple physical abuse," meaning that "she was beaten enough until she finally died." The forensic pathologist calculated that approximately 47.5 per cent of KH's body surface was "injured, bruised, scraped, or scratched." The pooling of blood in the subcutaneous spaces and the coloration of the bruises demonstrated that the vast majority of KH's injuries were inflicted at the same time, hours before the time of death. The pathologist noted that poor nutrition, hygiene neglect, and medical neglect also contributed to KH's death, the cause of which he identified as "fatal child abuse syndrome."

¶ 12 Before trial, Grant entered into an agreement with the State to testify against defendant. In exchange for her testimony, the murder charges against her were dismissed. She pleaded guilty to aggravated battery to a child and endangering the life or health of a child resulting in death. She received consecutive sentences of twenty and two years. Defendant was convicted of first degree murder (720 ILCS 5/9-1(a)(2) (West 2013)), concealment of homicidal death (720 ILCS 5/9-3.4(a) (West 2013)), and intimidation (720 ILCS 5/12-6(a)(1) (West 2013)) and was sentenced to consecutive prison terms of fifty years, two years, and ten years, respectively.

¶ 13 In announcing its decision, the court found that both defendant and Grant were responsible for KH's death and were accountable for each others' actions based on the "unimpeachable evidence that they acted together in conducting the discipline of the children and that included the discipline which led to the death of the child."

¶ 14 II. ANALYSIS

¶ 15 Defendant challenges his convictions of guilt on the ground that they were not proven beyond a reasonable doubt. When reviewing a challenge to the sufficiency of the evidence, this court considers whether, viewing the evidence 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. (Emphasis in original.)' " *People v. Wheeler*, 226 Ill. 2d 92, 114 (2007), quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). "This standard of review applies 'regardless of whether the evidence is direct or circumstantial [citation], and regardless of whether the defendant receives a bench or jury trial [citation].' " *Id.*, quoting *People v.Cooper*, 194 Ill. 2d 419, 431 (2000). We will not retry a defendant when considering a sufficiency of the evidence challenge. *Id.* The trier of fact is best equipped to judge the credibility of witnesses, and its credibility findings are entitled to great weight.

¶ 16 For the following reasons, we affirm each of defendant's convictions.

¶ 17 A. First Degree Murder

¶ 18 Section 9-1(a)(2) of the Criminal Code (720 ILCS 5/9-1(a)(2) (West 2013)) provides:

> "(a) A person who kills an individual without lawful justification commits first degree murder if, in performing the acts which cause the death:

¶ 19 * * *

> (2) he knows that such acts create a strong probability of death or great bodily harm to that individual or another[.]"

¶ 20 Direct and circumstantial evidence reasonably supports a finding that a defendant was guilty of first degree murder beyond a reasonable doubt if it shows that: "(1) defendant or someone for whose conduct he was legally responsible performed acts that caused [the victim's] death; and (2) when defendant or someone for whose conduct he was legally responsible performed those acts, he intended to kill or do great bodily harm to [the victim], knew his acts would cause [the victim] to die, or knew his acts created a strong probability that [the victim] would die or suffer great bodily harm." *People v. Wheeler*, 226 Ill. 2d 92, 120-21 (2007).

¶ 21 For first-degree murder, it is unnecessary to directly prove that defendant had the intent to murder or do great bodily harm; all that needs to be shown is that defendant voluntarily and willfully committed an act, the natural tendency of which was to cause death or great bodily harm. *People v. Bennett*, 329 Ill. App. 3d 502, 512 (2002). The mental state with which an act is committed may be inferred from the act itself and the surrounding circumstances. *Id.* A defendant can be convicted solely on circumstantial evidence, and the trier of fact does not have to be satisfied beyond a reasonable doubt as to each link in the chain of circumstantial evidence. *People v. Milka*, 211 Ill. 2d 150, 178 (2004); *People v. Chatman*, 381 Ill. App. 3d 890, 905 (2008).

¶ 22 In this case, the trial court relied largely on circumstantial evidence in determining that defendant committed first degree murder. As the court observed, "no one act caused the death of the child, no one blow," yet all of the physicians agreed that "she was beaten to death." The uncontradicted evidence established beyond a reasonable doubt that both parents deliberately subjected KH to a brutal regimen of punishment. Moreover, defendant and Grant acted in concert, each accountable for the acts of the other. See *People v. Fernandez*, 2014 IL 115527, ¶ 13 (2014) ("Under the common-design rule, if two or more persons engage in a common criminal design or agreement, any acts in the furtherance of that common design committed by one party are considered to be the acts of all parties to the design or agreement and all are equally responsible for the consequences of the further acts.")

¶ 23 Defendant's actions, if anything, created an even stronger probability of death or great bodily harm to KH than did Grant's. According to the evidence, near the end of her life, both defendant and Grant made KH hold a push-up position for hours on end, beat her with a belt, squeezed her ribs or middle with their hands until she screamed, and fed her inadequate

nourishment. Defendant alone, however, slammed phone books on KH's head, pulled her by the ears, and brushed the bottom of her sore feet with the bristles of a hairbrush. Only defendant was present when KH received the injuries to her face and ears that he attributed at first to KH's falling on a vent and that he and Grant later tried to pass off to the police as KH's falling down the basement stairs.

¶ 24 Contrary to defendant's assertion, it was not necessary for the court to identify a specific act of defendant that caused KH's death or defendant's whereabouts at the precise time KH died. Rather, defendant and Grant were accountable for each other's acts, and it is sufficient that all the circumstantial evidence taken as a whole satisfied the trier of fact beyond a reasonable doubt of defendant's guilt. *People v. Jones*, 105 Ill. 2d 342, 350 (1985); *People v. Gomez*, 215 Ill. App. 3d 208, 216 (1991).

¶ 25 Defendant's conviction of first degree murder was properly entered.

¶ 26 B. Concealment of a Homicidal Death

¶ 27 Section 9-3.4(a) of the Criminal Code (720 ILCS 5/9-3.4(a) (West 2013)) provides:

> "Concealment of homicidal death. (a) A person commits the offense of concealment of homicidal death when he or she knowingly conceals the death of any other person with knowledge that such other person has died by homicidal means."

¶ 28 "Homicidal concealment requires (i) an affirmative act of concealing a death and (ii) knowledge that the person died by homicidal means." *People v. Mueller*, 109 Ill. 2d 378, 388 (1985). For purposes of the statute, " 'conceal' means the performing of some act or acts for the purpose of preventing or delaying the discovery of a death by homicidal means." 720 ILCS 5/9-3.4(b-5).

¶ 29 The expert medical testimony established that KH died on Wednesday, March 16, or Thursday, March 17, 2011. Grant and defendant did not call 911 until Friday, March 18. On Thursday, Grant could not get a temperature reading or tell if KH was breathing; KG could not hear a heartbeat. Five or six times on Thursday, Grant and defendant massaged Pedialyte down KH"s throat, as KH was not swallowing. Also, on the day before they called 911, defendant and Grant wrapped KH's cold body in blankets and placed it near a heating vent. When the police arrived on Friday, defendant and Grant initially lied to them, saying that KH had fallen down the basement stairs.

¶ 30 Defendant argues that the evidence supports Grant's testimony that she was trying to help or revive KH. The trial court drew a different inference from the same evidence: "the child died before Thursday, at least before Thursday morning when the parties awoke. There's no evidence that the child had any signs of life after that point in time. With the changes the body had to go through, it's impossible to believe that they did not know she had passed over. Based on the actions they took, there's no doubt they were trying to conceal her death, at least for a period of time." The court also noted that it had "grave reservations" about Grant's credibility as a witness.

¶ 31 "In weighing evidence, the trier of fact is not required to disregard inferences which flow normally from evidence before it [citation], nor need it search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt [citation]." *People v. Campbell*, 146 Ill. 2d 363, 380 (1992). "Further, where the evidence presented is capable of producing conflicting inferences, the matter is best left to the trier of fact for proper resolution." *Id*.

¶ 32 Here, the inference drawn by the trial court that defendant and Grant concealed the homicidal death of KH is reasonable and supported by direct and circumstantial evidence. Accordingly, defendant's conviction for concealment of homicidal death was properly entered.

¶ 33 C Intimidation

¶ 34 Section 12-6(a)(1) of the Criminal Code (720 ILCS 5/12-6(a)(1) (West 2013)) provides:

> "(a) A person commits intimidation when, with intent to cause another to perform or to omit the performance of any act, he or she communicates to another, directly or indirectly by any means, a threat to perform without lawful authority any of the following acts:
>
> (1) Inflict physical harm on the person threatened or any other person [***.]"

¶ 35 Shortly before KH died, defendant ordered ten-year-old KG to whip KH with a belt when she fell while doing "stretch it out." KG complied, testifying that if she did not, she was "going to get in trouble," and she "was scared." Defendant argues on appeal that evidence of a threat was lacking and, therefore, defendant's intimidation conviction was improperly entered. Defendant specifically notes that there was no evidence that he had ever beaten KG, her punishments did not always involve physical harm, and "KG testified that she did not even remember what [defendant] said to her."

¶ 36 The trier of fact may look to the context in which a threat arose when determining whether the threat was credible. *People v. Kirkpatrick*, 365 Ill. App. 3d 927, 930 (2006). The intent to intimidate may be deduced by the fact finder from the surrounding circumstances of the offense. *People v. Byrd*, 285 Ill. App. 3d 641, 647. "When the circumstances are such that the threat of physical harm can be inferred, it is unnecessary that the defendant state exactly how he

proposes to harm the victim." (Internal quotation marks and citation omitted.) *People v. Peterson*, 306 Ill. App. 3d 1091, 1100 (1999).

¶ 37 In this case, the threat of physical harm by defendant, including beatings, was an everyday presence in 10-year-old KG's life. When asked what would happen in her home if she did not do what she was told to do, KG responded, "[t]hen I would get in trouble." When KG or her sisters got into trouble in the context of carrying out a physical punishment, such as "stretch it out," they were beaten. KG said she "was scared" when defendant told her to whip KH. KG's mother regularly whipped her with a belt, and she had seen defendant whip both of her sisters with a belt for failure to properly execute a punishment. Given the circumstances surrounding defendant's exchange with KG, we believe his telling her to whip KH had "a reasonable tendency to create apprehension that the originator will act according to its tenor." *Peterson*, 306 Ill. App. 3d at 1100. Accordingly, we hold that defendant's intimidation conviction was properly entered.

¶ 38 III. CONCLUSION

¶ 39 For the reasons stated, the judgment of the circuit court is affirmed.

¶ 40 Affirmed.