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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. 10 CR 11239
)	
PAWEL DZIADKOWIEC,)	Honorable
)	Timothy Joseph Joyce,
Defendant-Appellant.)	Judge, presiding.

JUSTICE COBBS delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Lavin concurred in the judgment.

ORDER

¶ 1 *Held:* Evidence sufficient to convict defendant of aggravated battery of a child.

¶ 2 Following a bench trial, defendant Pawel Dziadkowiec was convicted of aggravated battery of a child and sentenced to 14 years' imprisonment. On appeal, defendant contends that the evidence was insufficient to convict him beyond a reasonable doubt. For the reasons stated below, we affirm.

¶ 3 Defendant was charged with attempted first degree murder and aggravated battery of a child for, on or about February 17, 2010, allegedly causing great bodily harm and permanent disability to Szymon Dziadkowiec by striking him about the head and body while Szymon was less than 13 years old.

¶ 4 At the 2014 trial, Detective Gregory Auguste testified that, on February 18, 2010, he was assigned to investigate how Szymon came to be injured. He went to the hospital that day, where he saw Szymon and met with the physicians who treated him. At trial, Auguste authenticated that various photographs accurately depicted how Szymon looked at the time, including visible injuries. He learned that Szymon's parents – defendant and Theresa Dziadkowiec – had brought him to the hospital. He interviewed defendant several times, and also interviewed Theresa and defendant's brother Maciej Dziadkowiec. In an interview in defendant's home, defendant demonstrated how Szymon was injured by falling from the couch onto toys on the hardwood floor in the living room. Auguste returned to defendant's home after his investigation led him to believe the kitchen was relevant. He saw that the kitchen had a hardwood floor, metal sink, and granite or marble counters.

¶ 5 Several police officers testified to attending interviews of defendant by Detective Auguste. One interview was in defendant's home late on the day of the incident, and the others were at the police station two days, five days, and in March about a month after the incident. In these interviews, defendant gave a consistent account of the incident. Szymon was on the couch when defendant briefly left the room to get a diaper. He heard a fall and returned to find Szymon crying and on his back on the floor where toys were strewn about. He took Szymon to the kitchen and put a damp towel on his forehead. His wife entered the room upon hearing the commotion, asked defendant what happened, and took Szymon to the hospital, with defendant

following in another car. Defendant could not explain the extent of Szymon's injuries, except to surmise that Szymon's two-year-old brother "sometimes plays rough with the baby" as he had just a few days before the incident. However, after being told in the March interview that Szymon had bruising and skull fractures on both sides of his head, defendant gave a different account. Wanting to warm up some milk for Szymon, defendant took him into the kitchen. He was holding Szymon in his arms, as he put the milk into hot water, when Szymon cried, moved, and fell from his arms. He unsuccessfully tried to stop Szymon's fall with his leg. He phoned his wife and told her that Szymon fell from the couch and was "not responding." When she came home, she took Szymon to a physician.

¶ 6 Pediatrician Dr. Anna Ignaczewski testified that Szymon was her patient from a few days after his birth in late 2009, and she examined him several times each year. He was generally healthy when born. Dr. Ignaczewski made a routine examination of Szymon on February 15, 2010, when he was about four months old. He was healthy, with no bruises or visible injuries and nothing wrong with his eyes or ears. During the exam, Szymon received vaccinations by injection and orally. His mother was present for the exam and did not have to restrain him, hold him "unusually," or hold his jaw open to administer the vaccinations because he was too young to anticipate the injections and readily accepted the oral vaccine drops.

¶ 7 When Dr. Ignaczewski last examined Szymon in October 2013, he had paralysis on his left side, with his left arm in a splint, left leg in a brace, and impairment to his left eye. He also had "delayed" speech development. He was receiving therapy for these injuries since he was in intensive care during his February 2010 hospitalization, and Dr. Ignaczewski was not aware of Szymon suffering any other injury. While she did not treat Szymon during his hospitalization, she was apprised of his injuries by the emergency room physician, and she opined that the

described injuries caused his present disabilities. Dr. Ignaczewski testified that Szymon has cerebral palsy, explaining that it is a general term for various conditions and can arise from a birth injury. However, Szymon had no symptoms of cerebral palsy in Dr. Ignaczewski's February 2010 exam, which at that early age would have manifested as a lack of muscle tone such as an inability to hold up one's head. While she did not perform any specific tests for cerebral palsy in February 2010, she emphasized that Szymon was a very healthy baby.

¶ 8 After being examined by the parties and accepted by the court as the State's expert witness in pediatrics and child abuse, Dr. Amanda Fingarson testified that she reviewed Szymon's medical records from his February 2010 hospitalization and formed a medical opinion concerning his injuries. Brought to the hospital on February 17 "after reportedly falling off of a couch," he required a ventilator to breathe properly. Scans showed "a comminuted skull fracture in the right parietal bone" of his skull, "a large subdural hematoma underneath that fracture site" that encompassed most of the right side of his brain, and bleeding between the hemispheres of his brain. (Dr. Fingarson explained that a comminuted fracture is a complex fracture into multiple pieces, and a subdural hematoma is bleeding under the dura or outer layer of the brain.) The right side of his brain was more swollen than the left side, and various areas of his brain had infarcts or ischemia; that is, they were deprived of blood. Szymon was having seizures and was given anti-seizure medication. There was blood in his ears, hemorrhages in the retina of his right eye, and bruises on his neck, abdomen and right buttocks. He had "abnormalities" in his ribs suggesting – but not proving to Dr. Fingarson's certainty – a healed rib fracture.

¶ 9 Dr. Fingarson explained that comminuted skull fractures in a child under four months old is "typically seen with higher-energy events" and thus "unexpected with a short fall." A fall would typically result in a simple linear fracture rather than Szymon's complex skull fracture.

Szymon's brain injuries were also "unexpected" for a short fall, and his head injuries were "not consistent" with a short fall, even onto concrete. Instead, his injuries were consistent with blunt force trauma. The retinal hemorrhaging in his right eye has "a strong association in general [with] abusive head trauma" due to rapid acceleration and deceleration. When asked if she could determine when the injuries occurred, she replied that "really pinning down the timing is largely reliant on the history provided by people around the baby." The injuries to Szymon's head were in a linear pattern consistent with having been inflicted by some implement, in contrast to the more irregular injury patterns from accidental injuries. The bruising of his buttocks and abdomen was notable because these are "relatively protected" areas, and she attributed the former to blunt force trauma. Dr. Fingarson reached a medical opinion as a pediatrician that Szymon's injuries were the result of physical abuse; that is, "at least one episode of a physical assault or abuse." He was "close to death" without proper treatment when brought to the hospital. The ischemia or tissue damage in his brain was only partially reversible: the dead brain tissue would not revive, but living tissue around it could compensate to some degree. It was "very likely" but not certain that he would have long-term disability from his injuries.

¶ 10 Bruising to Szymon's jaw was on the underside, an area "more protected and difficult to bruise." When asked if this bruising could have been caused by holding his mouth open to receive an oral vaccination, Dr. Fingarson noted that "there is very little that needs to be done" with such young children as "you just need their mouth open enough to be able to put this very tiny capsule of liquid medication in and squeeze it into their mouth." When asked if she had heard of a child as young as Szymon having his jaw pried open to administer oral vaccination, she answered "I haven't but it also wouldn't account for the location of this particular bruising" because applying pressure there would close rather than open one's mouth. While Szymon had a

cervical collar on his neck as part of his treatment, the bruising to his neck was not caused by the collar. His injuries were not consistent with falling from the couch in his home onto the toys strewn on the floor, nor with falling from about five feet onto the wooden kitchen floor, nor with a two-year-old sitting upon or “rough housing” with Szymon. The records showed that Szymon was brought to the hospital by his parents rather than an ambulance, and thus the records did not address what care or handling he received before he reached the hospital.

¶ 11 Dr. Fingarson was asked about the theory of defense expert Dr. John Plunkett “that short falls are much more damaging and potentially fatal than most practitioners would agree.” She replied that his theory is not widely accepted in the medical community. She agreed that Szymon’s eye injuries could have resulted from a fall as Dr. Plunkett opined, but a fall would not have explained all of his bruises nor his brain damage. She disagreed with Dr. Plunkett’s opinion that Szymon’s neck bruising was from the cervical collar, whether or not applied correctly, and with his description of Szymon’s complex skull fracture as a simple fracture. She would not expect Szymon’s eye injuries from a family history of hemophilia or other blood-clotting disorders, and “extensive” testing of Szymon for such disorders was negative or “normal.”

¶ 12 Following arguments, the court denied defendant’s motion for a directed finding.

¶ 13 Defendant’s brother Maciej Dziadkowiec testified that, on the day of the incident, he accompanied defendant and Szymon in defendant’s car on a trip to a cemetery. Maciej was in the front seat while Szymon was in a rearward-facing baby seat in the back seat of the car. While at the cemetery, Maciej and defendant took turns leaving the car to visit a grave, each for about 15 minutes. While Maciej was in the car, Szymon made no noise and was asleep to the best of his knowledge. After the cemetery visit, defendant dropped Maciej at his home. Maciej did not look

at Szymon's face during the trip, but saw that defendant checked on Szymon during the trip. Defendant did not seem upset or angry during the trip.

¶ 14 Theresa Dziadkowiec, defendant's wife and Szymon's mother, testified that she went to church and then lunch while defendant, Szymon, and Maciej went to the cemetery. Theresa's other son, Sebastian, was at a friend's house. She saw Szymon only briefly before she left for church. When she returned home at about 2 p.m., she went directly to the washroom. She saw defendant changing Szymon just before she entered. After a few minutes, she heard a fall and Szymon crying. She exited the washroom to see defendant holding Szymon, who looked sleepy or lethargic. They were standing between the living room and kitchen. She asked defendant what had happened, and he replied that Szymon fell from the couch. She noticed toys on the floor near the couch. She phoned her pediatrician but nobody answered, so she drove Szymon to the hospital in her car, in a baby seat. Defendant did not accompany them in her car because he had to pick up Sebastian later, but he arrived at the hospital in his car right after them. Szymon was a "very active baby" before the incident and was not fussy at the time, though he was earlier in life. Theresa had taken him for a pediatric examination two days before the incident. He received vaccinations during the exam, and Theresa had to hold his legs during the injections and hold his face during the oral shot. However, she did not notice any bruising on Szymon between the exam and the incident.

¶ 15 On cross-examination, Theresa admitted that she told Detective Auguste that she fed Szymon on the morning of the incident, at which time she did not notice anything remarkable and he did not cry. She did not recall receiving a voicemail from defendant before she returned home informing her that "something" happened to Szymon, but her phone had been turned off. She had planned to take Szymon to the pediatrician rather than the hospital but the pediatrician

returned her earlier calls and told her to take Szymon to the hospital. Since the incident, the left side of Szymon's body "has a weakness," he has a brace on his left leg, and he receives therapy.

¶ 16 After being examined by the parties and accepted by the court as the defense expert witness in child abuse, Dr. John Plunkett testified that he reviewed Szymon's medical records and formed a medical opinion concerning his injuries. Based on his study of "the biomechanics of infant head injury," he concluded that Szymon's injuries, and in particular his head injuries, could have been caused by a short fall of about four feet. They were consistent with Szymon falling as defendant held him, and it was possible but less likely that the injuries were caused by falling from a couch. He opined that knowledge of the biomechanics of injury causation arises from being a biomechanical engineer, rather than a forensic pathologist or pediatrician. In particular, a pediatrician is concerned with healing injuries rather than determining their causes. He read and disagreed with Dr. Fingarson's opinion of the cause of Szymon's injuries. He agreed that Szymon had a fractured skull, subdural hematoma under the fracture, brain swelling on the right side, and retinal hemorrhaging of the right eye. He disagreed with her description of the skull fracture as comminuted and complex, describing it instead as curved but linear. He attributed bruising on Szymon's face and ears, including the jaw bruising, to the cervical collar. The rib anomaly was not from a rib fracture. He opined that the swelling of Szymon's right eye was caused separately from his skull injury. He attributed the retinal hemorrhaging to the increase in intracranial pressure indicated by the brain swelling, rather than a separate injury indicative of child abuse. The only injury Dr. Plunkett could not explain was the buttocks bruising.

¶ 17 On cross-examination, Dr. Plunkett admitted that retinal hemorrhaging is usually a sign of abuse, although it would typically be bilateral rather than in one eye. He also admitted that a

skull fracture, subdural hematoma, and retinal hemorrhaging could be a sign of abuse. He admitted that the jaw bruising could be from gripping the throat. When asked about Szymon's ear injury, and being shown photographs of his ear, Dr. Plunkett testified that "I have no idea what that is" and thus could not opine as to its cause. In sum, when asked if Szymon's injuries could have been caused by an assault or attack as Dr. Fingarson opined, he admitted that it was possible. Szymon's injuries were unlikely to have been caused by a two-year-old sitting on him or playing roughly with him. Dr. Plunkett admitted that he is not a biomechanical engineer, though he took undergraduate classes in engineering physics and studied with biomechanical engineers years later. He admitted that biomechanical engineering experiments could not be performed on living humans, though experiments were conducted with human skulls. He acknowledged that studies of short falls by children concluded that few children suffered skull or brain injuries, but distinguished these studies as not specifically addressing infants falling on their heads onto a hard surface, as here.

¶ 18 Following closing arguments, the court found defendant guilty of aggravated battery of a child and not guilty of attempted first degree murder. The court found the testimony of Dr. Ignaczewski and the police officers credible, noting that defendant gave two different accounts of the incident. The court noted that the opinions of Drs. Fingarson and Plunkett were "at considerable loggerheads" and found Dr. Fingarson's testimony more credible. One basis for the court's conclusion was that Dr. Plunkett attributed certain bruising to the cervical collar while the photographs showed that the cervical collar indentations or marks were inconsistent with the bruising.

¶ 19 Defendant filed a post-trial motion arguing in detail that the evidence was insufficient to convict. Following arguments, the court denied the motion. Defendant was then sentenced to 14 years' imprisonment.

¶ 20 On appeal, defendant contends that the evidence was insufficient to convict him, and in particular that the State failed to prove (a) that he intentionally or knowingly caused great bodily harm to Szymon, and (b) that Szymon's injuries were the result of child abuse when the "trial court's finding of abuse was based solely on its credibility assessment of the testimony of two dueling experts."

¶ 21 On a claim of insufficiency of the evidence, we must determine whether, taking 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. *People v. Bradford*, 2016 IL 118674, ¶ 12. It is the responsibility of the trier of fact to weigh, resolve conflicts in, and draw reasonable inferences from the testimony and other evidence, and it is better equipped than this court to do so as it heard the evidence. *Id.*; *In re Jonathon C.B.*, 2011 IL 107750, ¶ 59. We do not retry the defendant; that is, we do not substitute our judgment for that of the trier of fact on the weight of the evidence or credibility of witnesses. *Bradford*, ¶ 12. The trier of fact need not be satisfied beyond a reasonable doubt as to each link in the chain of circumstances; instead, it is sufficient if all the evidence taken together satisfies the trier of fact beyond a reasonable doubt of the defendant's guilt. *Jonathon C.B.*, ¶ 60. The trier of fact is not required to disregard inferences that flow normally from the evidence, nor to seek all possible explanations consistent with innocence and elevate them to reasonable doubt, nor to find a witness was not credible merely because the defendant says so. *Id.* A conviction will be reversed only where the evidence is so

unreasonable, improbable, or unsatisfactory that a reasonable doubt of the defendant's guilt remains. *Bradford*, ¶ 12.

¶ 22 At the relevant time, a person committed the offense of aggravated battery of a child if he was at least 18 years old when he “intentionally or knowingly, and without legal justification and by any means, cause[d] great bodily harm or permanent disability or disfigurement to any child under the age of 13 years.” 720 ILCS 5/12-4.3(a) (West 2010). A defendant's intent or knowledge are rarely susceptible of direct proof and may be established by circumstantial evidence; that is, evidence supporting an inference that the defendant had the requisite intent or knowledge. *People v. Hernandez*, 2017 IL App (2d) 150731, ¶ 22; *People v. White*, 2016 IL App (2d) 140479, ¶ 37; *People v. Jones*, 2014 IL App (3d) 121016, ¶ 28. For example, false exculpatory statements are probative of a defendant's consciousness of guilt. *Jones*, ¶ 32.

¶ 23 Here, taking the evidence in the light most favorable to the State as we must, we cannot conclude that a rational trier of fact could not have found that defendant intentionally or knowingly caused great bodily harm to Szymon. The evidence was overwhelming that Szymon was healthy until the day in question when he was entrusted to defendant's care and was not healthy thereafter. His pediatrician testified at length to his good health only two days prior. The testimony of defendant's brother and wife corroborates Szymon's good health earlier on the day in question and that defendant was alone with Szymon for a significant amount of time. It is undisputed that defendant's wife found Szymon to be ill or injured upon returning home and brought him to the hospital, where the nature and scope of his injuries was documented.

¶ 24 As to the basis for finding that Szymon's injuries were the result of child abuse, it is proper (as noted above) for a trier of fact to find one witness more credible than another and base its conclusions on that credibility determination. The court had evidentiary grounds for finding

Dr. Fingarson more credible than Dr. Plunkett: the court made its own assessment of Szymon's injury photographs, and heard Dr. Ignaczewski's testimony that Szymon's mother did not hold him forcefully or unusually during the examination as Dr. Plunkett implied. Moreover, it was not the court's credibility assessment of Dr. Fingarson alone that supported its findings. The court noted that defendant gave the police two different accounts of how Szymon came to be injured. Defendant could not have been merely mistaken as to whether Szymon fell from the couch or from defendant's arms in the kitchen, so at least one of his accounts had to be false. Dr. Fingarson's expert testimony allowed the court to reach a reasonable conclusion that neither of defendant's accounts was true.

¶ 25 As to the evidence of defendant's knowledge or intent to cause great bodily harm to Szymon, we find sufficient evidence for a rational trier of fact to infer such intent or knowledge. The nature and extensive scope of Szymon's injuries – established from the testimony of Drs. Ignaczewski and Plunkett as well as Dr. Fingarson – tend to support an inference of such intent or knowledge. Dr. Fingarson's expert opinion was that Szymon's severe injuries were not the result of accident but abuse or an attack, and Dr. Plunkett concurred that his injuries could have resulted from an attack. Lastly, defendant's consciousness of guilt may be inferred from his contradictory exculpatory accounts.

¶ 26 Accordingly, we affirm the judgment of the circuit court.

¶ 27 Affirmed.