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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0261**

State of Minnesota,
Respondent,

vs.

Michael Virgil Tahtinen,
Appellant.

**Filed January 22, 2013
Affirmed
Chutich, Judge**

St. Louis County District Court
File No. 69DU-CR-08-6902

Lori Swanson, Attorney General, Jennifer Coates, Assistant Attorney General, St. Paul, Minnesota; and

Mark S. Rubin, St. Louis County Attorney, Duluth, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Susan Andrews, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Hudson, Judge; and Chutich, Judge.

UNPUBLISHED OPINION

CHUTICH, Judge

A jury found appellant Michael Tahtinen guilty of first-degree manslaughter concerning the death of an 11-month-old infant. Tahtinen now challenges the conviction,

contending that the circumstantial evidence was insufficient to support the jury's guilty verdict. We conclude that sufficient evidence supports the jury's verdict, and we therefore affirm Tahtinen's conviction.

FACTS

Because this case centers on the sufficiency of the evidence, we recite the background facts in detail. Tahtinen and his wife, S.T., were good friends with their neighbors in Duluth, A.R. and D.R. A.R. often brought their children, 3-year-old N.R. and 11-month-old C.R., to Tahtinen's house or to a park to play with Tahtinen's two young girls.

In the afternoon of September 4, 2008, A.R. took both children to Tahtinen's house. Tahtinen and his wife were home with their children. At first the adults were outside, watching the children play on the swing set. A.R. testified that C.R. had not been feeling well that day—he was lethargic, had a fever, and was not as active as usual. A.R. and S.T. stripped C.R. down to his diaper to cool him off and decided to put him down for a nap.

S.T. set up a portable crib (playpen) in her and Tahtinen's bedroom. The playpen was at the foot of the bed in the small bedroom, only about 12 inches from a TV stand. The inside walls of the playpen were 24 inches high, and the top of the playpen was 30 inches from the floor. C.R. had been in similar playpens before, but had never climbed out of one. A very active child, C.R. often climbed on things, such as playground slides.

A.R. rocked C.R. while giving him a bottle, then laid him down in the playpen. A.R. and S.T. went into the basement to practice for their band rehearsal later that night. Tahtinen stayed upstairs to watch the children.

A.R. testified that she and S.T. had been practicing in the basement for about 25 minutes when Tahtinen brought C.R. down, wrapped in a blanket. The infant was all “snuggled up” on Tahtinen, and was a little bit fussy. Tahtinen told her that C.R. fell out of the playpen. A.R. testified that this news “didn’t shock [her] in the least considering how strong [C.R.] was.” A.R. removed the blanket and noticed some red marks on the right side of C.R.’s abdomen, from his chest area to just above his diaper. She testified that the red marks were not there when she laid him down for the nap. She also noticed that C.R. had a split bottom lip.

A.R. cuddled C.R. for a little while, and he started to look sleepy again. Tahtinen offered to take C.R. back upstairs and try to give him a bottle, to calm him down and put him to sleep again. A.R. and S.T. stayed downstairs and continued practicing for about 10 or 15 more minutes before they came upstairs.

A.R. testified that Tahtinen was in the shower when they got upstairs, and she did not hear C.R. so she assumed that he was sleeping and did not check on him right away. Tahtinen’s wife went to use the bathroom adjoining the master bedroom, where Tahtinen was taking a shower. Tahtinen told her that C.R. had fallen again. Tahtinen told her that after he heard the thud, he quickly jumped out of the shower, put C.R. back in the playpen, and went to finish his shower.

S.T. went to check on C.R., and testified that he was lying in the playpen on his stomach with his eyes closed. S.T. went outside and told A.R. that C.R. had fallen again, and soon after Tahtinen came out holding C.R., wrapped in a blanket. C.R. was pale, he was mumbling, his breathing was not right, and his lips were turning blue. C.R.'s eyes started rolling back into his head. S.T. called 911 and, while on the phone with the 911 operator, the adults unwrapped the blanket around C.R. and noticed little black bruises on his torso, which slowly started getting bigger. A.R. testified that the bruises were appearing before her eyes. S.T. told the 911 operator that C.R. fell out of the playpen twice and that he had bruising on his abdomen.

Firefighters responded to the 911 call within minutes. C.R. was "out of it," had poor color, and was not breathing. They noticed bruising across C.R.'s diaphragm area that "looked like just little blue dots." The firefighters began the recommended CPR for infants, performing compressions with two fingers on C.R.'s sternum. Arriving paramedics detected heart activity but were unable to feel a pulse, and continued CPR during the ride to the hospital.

At the hospital, Dr. Elizabeth Kelley, a pediatric critical care specialist, intubated C.R. and placed him on a ventilator. Dr. Kelley noted the bruises on C.R.'s torso, but could not diagnose the cause of his problem. Despite appropriate treatment and medication, C.R.'s condition never stabilized and he was in "irreversible shock." His heart stopped, and after 17 minutes of CPR, he was declared dead.

Dr. Donald Kundel, a pathologist, performed an autopsy on C.R. the next day. He noted the bruises on C.R.'s chest and stomach and observed that they were very deep,

extending through the skin and chest wall. C.R. did not have any broken ribs, which was not unusual because young children have very flexible ribs. After opening C.R.'s abdomen, Dr. Kundel found a massive hemorrhage in his abdomen and a "big tear in his liver." The tear was "three quarters of the way through [C.R.'s] liver about six centimeters on the surface, [and] extend[ed] also deep into the liver." C.R. also had bruising on and around his spleen, kidney, pancreas, and aorta. Dr. Kundel determined that the liver laceration and resulting blood loss caused C.R.'s death, and determined that the manner of death was homicide.

Two Duluth police investigators interviewed Tahtinen the same day as the autopsy. He denied hurting C.R. or causing any injury. Tahtinen told the investigators that when A.R. and S.T. went to the basement after laying C.R. down for his nap, Tahtinen made sure that the door to the bedroom was open and he went out on the patio to watch the other children, who were playing in the yard. After a short time, Tahtinen heard a thud and C.R. started screaming. He ran inside and saw C.R. lying face-down on the carpeted floor between the TV stand and the playpen. He believed that C.R. hit his face on something because he had a bloody lip. Tahtinen picked C.R. up, wrapped him in a blanket, and brought him downstairs to A.R.

After A.R. examined C.R., Tahtinen told the investigators that he took C.R. upstairs, rocked him and gave him a little bit of a bottle, then put him back down for a nap. He closed the door, and then went into the adjoining bathroom to take a shower. Tahtinen told police that, while he was in the shower, he heard another thud and heard C.R. crying again. He said that he "jumped out of the shower all soapy and walked into

the bedroom.” He saw C.R. on the floor again, in the same spot as the first fall. C.R. was more lethargic and Tahtinen said he picked him up, comforted him, laid him back down, and gave him his bottle. Tahtinen said he was only in the room for about 10 seconds before going back into the shower to rinse off. At that point, A.R. and S.T. came upstairs.

The state charged Tahtinen with second-degree murder and first-degree manslaughter in connection with C.R.’s death. After several lengthy continuances and delays, an 11-day jury trial began in September 2011. The state called the officers who responded to the 911 call, police investigators, C.R.’s mother and father, Tahtinen’s wife, Dr. Kelley, radiologist Dr. Marc Tsufis, and Dr. Kundel. The state also presented the expert testimony of Dr. Richard Kaplan, a national expert who specializes in child abuse pediatrics. The defense called Dr. David Posey, who specializes in forensic pathology. Tahtinen chose not to testify on his own behalf, although the state introduced the DVD of his September 5, 2008, interview with police and played the DVD for the jury.

The defense theorized that Tahtinen did not cause C.R.’s death, but rather that C.R.’s two falls from the playpen caused his liver injury. Further, the defense suggested that the falls caused a small liver laceration, and that the CPR compressions aggravated the injury. With the exception of Dr. Posey, the treating physicians and experts did not agree with this theory.

Dr. Kelley

Dr. Kelley, the emergency physician who treated C.R., testified that a 30-inch fall from a playpen would not have caused the kind of liver injury seen in C.R. She also

testified that the pattern of bruises on C.R.'s torso was not consistent with a fall and that if C.R. had fallen, he likely would not have had bruises, as he did, on both sides of his chest. Further, Dr. Kelley testified that if C.R. had fallen, he likely would have landed on his head rather than his chest.

Dr. Tsufis

The state also called Dr. Marc Tsufis, the radiologist who reviewed the results of C.R.'s CT scan taken while he was in the emergency room.¹ Dr. Tsufis testified, based on his professional experience, that liver lacerations are not common in children of C.R.'s age. Dr. Tsufis suggested that CPR could aggravate an existing liver laceration, but ultimately stated that he could not determine whether C.R.'s injury was accidental or non-accidental. Dr. Tsufis did not express an opinion on whether C.R.'s injury could have been caused by a 30-inch fall.

Dr. Kundel

Dr. Kundel, an experienced pathologist and medical examiner who has completed over 5,000 autopsies, determined that "this was an acute injury eight hours or less in duration" and that C.R.'s manner of death was homicide. He suggested that "a large force, a severe blow to [C.R.'s] abdomen" caused the liver injury. Dr. Kundel testified that, in C.R.'s case, the blow crushed his liver between the front of the body and the spine. He further testified that C.R.'s bruises were not consistent with a fall from the playpen, but would be consistent with someone stepping or stomping on C.R. Dr. Kundel testified that this type of severe trauma is similar to what he finds in car accidents. He

¹ The CT scan results are not relevant to the issue of causation of C.R.'s injury.

also stated that C.R.'s injuries could not have been caused by CPR, and it is "vanishingly rare" that CPR would cause a liver laceration.

Dr. Kaplan

Dr. Kaplan opined that C.R.'s liver injury occurred almost immediately before he began exhibiting symptoms. Dr. Kaplan suggested that C.R. would have been in overwhelming pain and would have gone into shock very quickly after such a serious liver injury. He testified that "after looking at all these injuries and taking them as a whole, I can't imagine [C.R.] doing well for more than a few minutes." Dr. Kaplan stated that the bruises on C.R.'s torso could not have been caused by a 30-inch fall from the playpen onto a carpeted floor. He testified that children usually land with their head when they fall, and he would not expect even a serious head injury from a fall from that height. Further, he opined that C.R.'s injury could have been caused by a high-force kick or stomp and that such blunt-force trauma would be exacerbated if the baby's back was supported (i.e., if C.R. was lying on a hard surface, such as the floor, when the blow was delivered).

Dr. Kaplan further testified that while CPR can cause rib injuries in small children, he did not believe that CPR caused C.R.'s liver laceration. He stated that it would be "exceedingly rare" for CPR to cause a liver laceration in an infant, but that "[n]othing is impossible in medicine." Dr. Kaplan also testified that it would be "very unlikely" that CPR aggravated an existing liver laceration. He stated that it was not impossible for two-finger CPR to result in a couple of bruises in the sternum area, but that he had never seen

any bruising in children or babies. He also testified that, assuming CPR was performed properly, it would not have caused the injuries found in C.R.'s other organs.

Dr. Posey

Dr. Posey is an independent medical examiner. He has extensive experience in forensic pathology and often serves as an expert witness at trial. Since 2003, Dr. Posey has testified exclusively for the defense in criminal cases.

On direct examination, Dr. Posey noted the pattern of bruises on the right side of C.R.'s chest, and testified that "those bruises are consistent with a fall from the [playpen]," and inconsistent with a foot or a shoe. Unlike in other cases of blunt-force trauma to children that Dr. Posey had seen, there was no shoe or foot pattern, or fist pattern, on the outside of C.R.'s body. He suggested that if C.R. was kicked, the injury would have been worse. Dr. Posey also testified that CPR *can* cause a laceration in the liver: "normally, it doesn't, but if it goes on for a prolonged period of time, anything can happen." He stated that the bruises on the left side of C.R.'s torso may have been caused by CPR. Dr. Posey ultimately told the jury that "the laceration that we've seen in this case was caused from a fall that may be exacerbated, that means lengthen[ed] and deepened, by CPR." Dr. Posey would have ruled C.R.'s death accidental.

Both Dr. Kaplan and Dr. Posey were asked about biomechanics, which is "taking an injury and trying to place . . . a number on it and say this is what forces were involved in the incident to cause the injury." Biomechanics is often used to help develop safety measures such as car seats and safety helmets. Dr. Kaplan testified that biomechanics concerning infants is total speculation because research is only conducted on dummies,

and that using biomechanics “to determine a certain type of injury was sustained by this amount of force” is not yet accepted in the medical community.

Dr. Posey, on the other hand, testified that the use of biomechanics is “absolutely” accepted within the engineering and/or forensic-pathology scientific community. Because of foundational issues, however, the district court limited Dr. Posey’s testimony on biomechanics to his opinion that C.R. was traveling 8.65 miles per hour when he fell from the top of the playpen to the floor. Dr. Posey admitted on cross-examination that any object that falls 30 inches would accelerate to 8.65 miles per hour, and this number was not unique to C.R.’s case. Dr. Posey testified generally that the impact of a person striking a solid surface at 8.65 miles per hour could result in damage to internal organs.

After deliberating for more than two days, the jury found Tahtinen not guilty of second-degree murder, but guilty of first-degree manslaughter—malicious punishment of a child. The district court sentenced Tahtinen to 103 months in prison and he now appeals, contending that the circumstantial evidence was insufficient to support the guilty verdict.

D E C I S I O N

“When we assess the sufficiency of the evidence, we determine whether the legitimate inferences drawn from the facts in the record would reasonably support the jury’s conclusion that the defendant was guilty beyond a reasonable doubt.” *State v. Pratt*, 813 N.W.2d 868, 874 (Minn. 2012). “[W]e view the evidence in the light most favorable to the state and assume that the jury believed the state’s witnesses and disbelieved contrary evidence.” *State v. Cooper*, 561 N.W.2d 175, 179 (Minn. 1997).

The verdict is given due deference because the jury was in the best position to weigh the evidence and determine the credibility of the witnesses. *Id.*

Minnesota law provides that a person is guilty of first-degree manslaughter if he “causes the death of another in committing or attempting to commit a violation of section 609.377 (malicious punishment of a child).” Minn. Stat. § 609.20(5) (2008). Malicious punishment of a child occurs when “[a] parent, legal guardian, or caretaker who, by an intentional act or a series of intentional acts with respect to a child, evidences unreasonable force or cruel discipline that is excessive under the circumstances.” Minn. Stat. § 609.377, subd. 1 (2008). The parties do not dispute that Tahtinen was C.R.’s caretaker at the time of the incident. Tahtinen contends that the evidence presented at trial does not support the jury’s finding that he caused C.R.’s death by using unreasonable force or cruel discipline.

Because no direct evidence showed that Tahtinen caused C.R.’s death, the evidence presented at trial was solely circumstantial. On review, we give greater scrutiny to convictions based on circumstantial evidence than those based on direct evidence, and “[c]ircumstantial evidence must form a complete chain that, in view of the evidence as a whole, leads so directly to the guilt of the defendant as to exclude beyond a reasonable doubt any reasonable inference other than guilt.” *Pratt*, 813 N.W.2d at 874 (quotation omitted). An appellant must show something more than mere conjecture to overturn a conviction based on circumstantial evidence. *State v. Lahue*, 585 N.W.2d 785, 789 (Minn. 1998).

Circumstances Proved

The first step in reviewing the sufficiency of circumstantial evidence is to identify the circumstances proved. *State v. Hanson*, 800 N.W.2d 618, 622 (Minn. 2011). In identifying these circumstances, “we defer to the jury’s acceptance of the proof of these circumstances as well as to the jury’s rejection of evidence in the record that conflicted with the circumstances proved by the State.” *Id.*; see also *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010) (“We recognize that the trier of fact is in the best position to determine credibility and weigh the evidence.”).

Applying this standard here, the circumstances proved include the following: Besides a slight fever, C.R. was a healthy child when he arrived at Tahtinen’s house that warm September afternoon. Although A.R. and S.T. were in the basement, Tahtinen was the sole adult in charge of C.R. while he napped. No other person besides Tahtinen interacted with C.R. while he was in the playpen. After being in Tahtinen’s care for approximately 40 minutes, C.R. had bruises on his torso, was very lethargic, and eventually stopped breathing. C.R. did not have any marks or bruises on his chest or torso before A.R. laid him down for a nap. Rather, A.R. noticed the red marks after C.R.’s first alleged fall from the playpen.

C.R. suffered a major liver laceration that led to serious internal bleeding and ultimately caused his death. C.R.’s injury occurred very shortly before he began exhibiting symptoms. The pattern of bruises on C.R.’s chest and the severity of his liver injury cannot be explained by a 30-inch fall from a playpen; rather, the bruises and injury suggest blunt-force trauma. C.R.’s injury was consistent with a high-force kick, punch,

or stomp. The bruises on C.R.'s chest appeared before any CPR was performed, and it would be “exceedingly” or “vanishingly” rare for CPR to cause a serious liver laceration.

Reasonable Inferences

Our second step in reviewing the sufficiency of circumstantial evidence is to “examine independently the reasonableness of all inferences that might be drawn from the circumstances proved,’ including inferences consistent with a hypothesis other than guilt.” *Hanson*, 800 N.W.2d at 622 (quoting *State v. Andersen*, 784 N.W.2d 320, 329 (Minn. 2010)). In this independent examination, “we give no deference to the fact finder’s choice between reasonable inferences.” *Andersen*, 784 N.W.2d at 329–30 (quotation omitted). “[T]he inquiry is not simply whether the inferences leading to guilt are reasonable. Although that must be true in order to convict, it must also be true that there are no other reasonable, rational inferences that are inconsistent with guilt.” *Id.* at 330 (quotation omitted).

Based on the circumstances proved, the jury clearly inferred that Tahtinen caused C.R.'s death by using unreasonable force. This inference is reasonable because Tahtinen was the only person with C.R. while he was napping, and besides a slight fever, C.R. was healthy when A.R. put him down for the nap. The jury could have reasonably inferred, as the state suggests, that C.R. fell out of the playpen and that Tahtinen used unreasonable force to get him to stop crying. Once A.R. noticed the red marks on C.R.'s chest, the jury could have inferred that Tahtinen volunteered to take C.R. back upstairs because he knew C.R. was injured and wanted to hide the injury from A.R. Further, Tahtinen wrapped C.R. in a blanket, when previous testimony established that it was a warm day and that

the adults had intentionally removed C.R.'s clothing to keep him cool. This action suggests that Tahtinen was trying to hide the red marks from A.R.

After closely scrutinizing the entire record, we see no other reasonable inference that is inconsistent with Tahtinen's guilt. Tahtinen suggests that it is reasonable to infer that the injury was caused by a fall, and perhaps exacerbated by the CPR chest compressions. Dr. Kelley, Dr. Kundel, and Dr. Kaplan, however, testified that C.R.'s injury could not have been caused by a 30-inch fall, and that it would be extremely rare for CPR compressions to cause or exaggerate a liver injury. Further, while Dr. Tsufis did not discount the possibility that C.R.'s death was accidental, he gave no opinion on whether the injury could have been caused by a fall.

Because of the guilty verdict, we can infer that the jury did not credit Dr. Posey's opinion as to the cause of C.R.'s injury. We must defer to the jury's credibility determinations and ability to weigh the evidence. *See State v. Cabrera*, 700 N.W.2d 469, 475 (Minn. 2005) ("It [is] up to the jury to judge the weight and credibility of the witnesses' testimony."); *State v. Hough*, 585 N.W.2d 393, 395 (Minn. 1998) ("A factfinder evaluates the credibility of witnesses and need not credit a defendant's exculpatory testimony."). The jury implicitly rejected the defense's theory, supported by Dr. Posey's testimony, that C.R.'s liver laceration was caused by a fall.

No other evidence presented at trial suggested any other reasonable theory as to how C.R. could have been injured so severely while in Tahtinen's care. We cannot reverse a conviction based on "mere conjecture." *Lahue*, 585 N.W.2d at 789. Therefore, we conclude that the circumstances proved are inconsistent with any rational hypothesis

other than Tahtinen's guilt. *Cf. Al-Naseer*, 788 N.W.2d at 478–79 (reversing the defendant's criminal-vehicular-homicide conviction because the circumstances proved were consistent with a reasonable inference other than guilt, i.e., that the defendant could have been asleep or unconscious and thus did not have actual knowledge that he hit a person).

Tahtinen points out that the state did not prove he had any motive to harm C.R.² While motive is not an element of first-degree manslaughter, “a motive helps form inferences from the circumstantial evidence, and adds credibility to the state's case.” *State v. Webb*, 440 N.W.2d 426, 431 (Minn. 1989). In this case, while lack of a motive arguably weakens the inference of Tahtinen's guilt, no other reasonable inferences can be drawn from the circumstances proved. Thus, the lack of motive cannot overcome our conclusion that only one reasonable inference, i.e., Tahtinen's guilt, can be drawn from the circumstances proved.

Affirmed.

² In closing argument, the state asserted that it did not need to prove motive because “motive in a child abuse case doesn't make any sense There's never a good reason to hurt a child”