

[Cite as *State v. Ely*, 2009-Ohio-6772.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	No. 09AP-138
v.	:	(C.P.C. No. 07CR01-686)
	:	
Brandy M. Ely,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on December 22, 2009

Ron O'Brien, Prosecuting Attorney, and *John H. Cousins, IV*,
for appellee.

Yeura R. Venters, Public Defender, and *David L. Strait*, for
appellant.

APPEAL from the Franklin County Court of Common Pleas

KLATT, J.

{¶1} Defendant-appellant, Brandy M. Ely, appeals from a judgment of conviction and sentence entered by the Franklin County Court of Common Pleas. Because appellant's convictions are not against the manifest weight of the evidence, we affirm.

{¶2} At approximately 5:48 p.m. on October 11, 2006, appellant brought two and one-half year old Brooklyn Branham to Doctors West Hospital in Columbus, Ohio. Appellant identified herself as Brooklyn's mother.¹ She told the doctors that Brooklyn fell

¹ Appellant was not Brooklyn's mother. Appellant's boyfriend, Edwin Smith, was the father of Brooklyn and appellant's two-year old son, Evontre.

down a flight of stairs. Dr. Tracy Rahall was working in the hospital's emergency room that night. Dr. Rahall observed that Brooklyn had no pulse, was not breathing, and was cold to the touch. Her pupils were fixed and dilated, a response typical of someone already dead. Brooklyn had significant signs of trauma, including extensive bruising on her face and head as well as her buttocks and vaginal areas.

{¶3} Medical personnel attempted to resuscitate Brooklyn, but she never regained consciousness. Brooklyn was pronounced dead at 6:19 p.m.

{¶4} After Brooklyn died, Dr. Rahall questioned appellant about how Brooklyn was injured. Appellant told her that she was at home with her two-year old son and Brooklyn. She called for the children to come downstairs and heard a thud. She found Brooklyn at the bottom of the stairs, stiff and in a seizure. Appellant said she picked Brooklyn up and immediately drove her to the hospital. Appellant lived about two miles from the hospital.

{¶5} Detective John Weis of the Columbus Police Department also questioned appellant at the hospital. Appellant initially identified herself to Weis as Brooklyn's mother.² Appellant told Weis that she was at home with her son and Brooklyn. She had cooked hot dogs for the kids and had called for them to come downstairs to eat. Appellant told Weis that she found Brooklyn at the base of the stairs with foam coming out of her mouth. Brooklyn's lips and/or face were turning blue. Appellant said she immediately took Brooklyn to the hospital.

² During a subsequent interview with Weis at the hospital, appellant admitted that her name was not Teresa Branham. She told Weis that she identified herself as Brooklyn's mother to facilitate faster medical attention for Brooklyn due to previous instances in which she had trouble obtaining medical assistance for Brooklyn because she was not her mother.

{¶6} Detective Weis and other detectives searched appellant's home the night of October 11, 2006. None of the detectives observed any sign that hot dogs had been prepared.

{¶7} On October 12, 2006, Dr. Tae An performed an autopsy of Brooklyn's body. His autopsy identified many bruises on Brooklyn's face, head, legs, buttocks, and pubic area. Brooklyn also had a large area of subgaleal hemorrhage, blood under the scalp but on top of the skull, in the back of her head. Brooklyn also sustained a large, complex skull fracture on the right side of her skull. The fracture caused damage to Brooklyn's brain and a subdural hemorrhage, or bleeding between the brain and the dura surrounding the brain. Dr. An determined that Brooklyn died from craniocerebral injuries due to blunt trauma and ruled the death a homicide.

{¶8} As a result of Brooklyn's death, a Franklin County Grand Jury indicted appellant with one count of murder in violation of R.C. 2903.02, one count of felonious assault in violation of R.C. 2903.11, and two counts of endangering children in violation of R.C. 2919.22. Appellant entered not guilty pleas to the charges and proceeded to a trial. Appellant waived her right to be tried by a jury and, instead, elected to be tried by the trial court.

{¶9} At trial, it was not disputed that appellant and her two-year old son were the only people with Brooklyn when she sustained her injuries. Thus, the central question at trial was what caused Brooklyn's injuries. Appellant claimed that Brooklyn's injuries occurred when she accidentally fell down the stairs in appellant's home. In support of this theory, appellant presented the testimony of Dr. Jan Leestma. He opined that Brooklyn's death was caused by brain damage that occurred when Brooklyn's head hit the hard floor

at the base of the stairs. Appellant also presented testimony from a number of witnesses indicating that she loved and interacted well with Brooklyn.

{¶10} The state alleged that Brooklyn's injuries were not caused by a fall but, instead, were caused by blunt force trauma inflicted by appellant. The state also alleged that appellant lied when she claimed that she immediately brought Brooklyn to the hospital after the alleged fall. In support of its theory that Brooklyn's injuries were not caused by a fall, the state offered the testimony of two experts.

{¶11} Dr. An testified that the large number of bruises on Brooklyn's body, and the location of the bruises, were unusual for a fall down the stairs, and that it would be very unusual to sustain such a large and complex skull fracture from the type of fall described by appellant.

{¶12} Dr. William Cox, a forensic pathologist and neuropathologist with the Franklin County Coroner's Office, also testified that Brooklyn's injuries were not consistent with a fall down the stairs. First, he testified that Brooklyn did not have bruises on projection points, such as the forehead, nose, chin, elbows and knees, where you would expect to see bruises from a fall down the stairs. Second, he testified that falls down stairs do not normally lead to skull fractures because stairs are a broad-based object. An impact with such an object distributes the energy broadly over the skull and would, therefore, reduce the probability of a fracture. Such a fall also would normally lead to contusions opposite the point of impact, due to the movement of the brain inside the skull resulting from the impact. Dr. Cox did not observe any such contusions in Brooklyn's skull. Dr. Cox concluded that Brooklyn's injuries were indicative of blunt force trauma, such as a punch with a fist. The complex skull fracture, as well as the brain damage

underneath the fracture, indicated to Dr. Cox that a blow was delivered and concentrated to that narrow area.

{¶13} In support of its theory that appellant lied about the length of time between the alleged fall and when appellant brought Brooklyn to the hospital, the state offered the testimony of Dr. Rahall. Dr. Rahall testified that appellant told her she brought Brooklyn to the hospital within minutes of her fall. However, Dr. Rahall opined that a number of her physical findings regarding Brooklyn's body were inconsistent with that timeline. First, Dr. Rahall stated that Brooklyn was already cold to the touch when she examined her at the hospital. In her experience, a decedent's body is still somewhat warm to the touch within an hour of the traumatic event causing the death. Second, Dr. Rahall testified that Brooklyn's bruises, swelling, the amount of bleeding inside her head and blood pooling in her back were too well developed for the injuries to have occurred in the timeframe described by appellant. Those manifestations usually take longer than the period of time alleged by appellant. Third, Dr. Rahall testified that Brooklyn's blood gases were profoundly acidic. She testified that the reason for this increased acid would be the body's production of lactic acid, an event that occurs when a patient starts to die. Dr. Rahall testified that she has never seen such a high level of acidosis in someone who supposedly sustained such a recent traumatic event. Dr. Rahall opined that the results of her physical examination of Brooklyn's body were not consistent with appellant's claim that she brought Brooklyn into the hospital immediately after her fall.

{¶14} The trial court found appellant guilty as charged, except for one endangering children count. In its oral decision, the trial court noted that "the Defendant's conduct and the nature of the victim's injuries are overwhelming circumstantial evidence of the Defendant's guilt." (Tr. Vol. VII, 2.) The trial court noted that appellant initially lied

to hospital staff and police. The trial court also believed that Brooklyn's injuries and the condition of her body when she was examined at the hospital were not consistent with appellant's version of events. Finally, the trial court discounted Dr. Leestma's opinion because he was unable to reconcile certain physical findings with his conclusion. The trial court did not know "by what means these offenses were carried out. * * * [B]ut [did not] have any doubt that the Defendant was responsible." (Tr. Vol. VII, 5-6.) The trial court sentenced appellant accordingly.

{¶15} Appellant appeals and assigns the following error:

Appellant's convictions are against the manifest weight of the evidence.

{¶16} The weight of the evidence concerns the inclination of the greater amount of credible evidence offered to support one side of the issue rather than the other. *State v. Brindley*, 10th Dist. No. 01AP-926, 2002-Ohio-2425, ¶16. When presented with a challenge to the manifest weight of the evidence, an appellate court, after " 'reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the [trier of fact] clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.' " *State v. Thompkins* (1997), 78 Ohio St.3d 380, 387 (quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175). An appellate court should reserve reversal of a conviction as being against the manifest weight of the evidence for only the most " 'exceptional case in which the evidence weighs heavily against the conviction.' " *Id.*

{¶17} A defendant is not entitled to a reversal on manifest weight grounds merely because inconsistent evidence was presented at trial. *State v. Raver*, 10th Dist. No. 02AP-604, 2003-Ohio-958, ¶21. The trier of fact is free to believe or disbelieve all or any

of the testimony. *State v. Jackson* (Mar. 19, 2002), 10th Dist. No. 01AP-973; *State v. Sheppard* (Oct. 12, 2001), 1st Dist. No. C-000553. The trier of fact is in the best position to take into account inconsistencies, along with the witnesses' manner and demeanor, and determine whether the witnesses' testimony is credible. *State v. Williams*, 10th Dist. No. 02AP-35, 2002-Ohio-4503, ¶58; *State v. Clarke* (Sept. 25, 2001), 10th Dist. No. 01AP-194. Consequently, an appellate court must ordinarily give great deference to the fact finder's determination of the witnesses' credibility. *State v. Covington*, 10th Dist. No. 02AP-245, 2002-Ohio-7037, ¶28; *State v. Hairston*, 10th Dist. No. 01 AP-1393, 2002-Ohio-4491, ¶74.

{¶18} Appellant argues that her convictions are against the manifest weight of the evidence because her expert witness testified that Brooklyn's injuries were sustained in an accidental fall. We disagree.

{¶19} Appellant's expert witness did testify that Brooklyn died from the consequences of a fall down a flight of stairs. However, the state's expert witness, Dr. Cox, testified that the injuries Brooklyn sustained were not consistent with a fall down the stairs but, rather, were consistent with blunt force trauma. Dr. An also testified that the location and number of bruises on Brooklyn's body, and the severity of her skull fracture, were unusual for the type of fall described by appellant. A conviction is not against the manifest weight of the evidence simply because inconsistent evidence was presented at trial. *Raver*. Neither is a conviction against the manifest weight of the evidence because the trier of fact believed the state's version of events over the appellant's version. *State v. Gale*, 10th Dist. No. 05AP-708, 2006-Ohio-1523, ¶19; *State v. Williams*, 10th Dist. No. 08AP-719, 2009-Ohio-3237, ¶17. Here, the trial court believed the testimony of Dr. An and Dr. Cox in concluding that Brooklyn's injuries were caused by blunt force trauma and

not a fall down the stairs. Such a determination is within the province of the trial court, as the trier of fact, and we will not second-guess that determination. *State v. DeHass* (1967), 10 Ohio St.2d 230, paragraph one of the syllabus.

{¶20} Moreover, the trial court did not lose its way by discounting Dr. Leestma's opinion. First, Dr. Leestma did not examine Brooklyn's body. He only reviewed autopsy pictures. Second, although Dr. Leestma opined that Brooklyn sustained her injuries from a fall down a flight of stairs, he could not reconcile that conclusion with several significant findings regarding the condition of Brooklyn's body. Dr. Leestma had no explanation for the presence of bruises on Brooklyn's pubic area if she had fallen down stairs. Further, Dr. Leestma opined that such a high-energy fall would have necessitated Brooklyn to be "catapulted" onto the floor from near the top of a 13-step flight of stairs. (Tr. Vol. V, 95.) Dr. Leestma admitted that Brooklyn had more than nine bruises on her body. Dr. Leestma also admitted that the complex nature of Brooklyn's skull fracture would not normally result from a fall down the stairs. He also agreed that Brooklyn's head injuries could have occurred from a blow to the head. (Tr. Vol. V, 124.)

{¶21} A careful reading of Dr. Leestma's testimony indicates that his conclusion was premised on the assumed fact that Brooklyn actually fell down a flight of stairs. Specifically, he testified that he had been provided "historical information" that Brooklyn and another child fell down a flight of stairs. (Tr. Vol. V, 28, 41.) His analysis progressed from that assumed fact. However, as Dr. Leestma conceded, it would be "troublesome" if the history he relied on was not accurate. (Tr. Vol. V, 77-78.)

{¶22} There also was significant evidence tending to cast doubt on appellant's version of events. Appellant told hospital workers and the police that she brought Brooklyn to the hospital immediately after she fell down the stairs. However, Dr. Leestma

could not explain Dr. Rahall's observation that Brooklyn was already cool to the touch when she presented at the hospital. Neither could he explain the quick development of Brooklyn's bruises or the amount of hemorrhaging already in Brooklyn's scalp if she had been brought directly to the hospital after the fall. Dr. Leestma explained that it would normally take longer than one hour for these injuries to manifest themselves. Similarly, Dr. Leestma could not explain how Brooklyn's blood could have pooled so quickly. These findings tend to indicate that appellant lied about bringing Brooklyn to the hospital immediately after the alleged fall. Additionally, appellant told police that she cooked hot dogs for the kids before calling them downstairs. The detectives that searched appellant's apartment the night Brooklyn died found no evidence supporting appellant's assertion that she had prepared hot dogs.

{¶23} In light of the testimony from Dr. An and Dr. Cox, and the inconsistencies between appellant's version of events and the physical condition of Brooklyn's body, the trial court did not lose its way by finding appellant guilty. Accordingly, appellant's convictions are not against the manifest weight of the evidence. Appellant's assignment of error is overruled, and we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

McGRATH and CONNOR, JJ., concur.
