

[Cite as *State v. Young*, 2010-Ohio-5115.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93218

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

JACCARA YOUNG

DEFENDANT-APPELLANT

JUDGMENT:
REVERSED; CONVICTIONS VACATED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-520108

BEFORE: Celebrezze, J., McMonagle, P.J., and Dyke, J.

RELEASED AND JOURNALIZED: October 21, 2010

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FRANK D. CELEBREZZE, JR., J.:

{¶ 1} Defendant-appellant, Jaccara Young, appeals her convictions and sentence for two counts of endangering children. After a thorough review of the record and pertinent case law, we reverse and vacate appellant's convictions.

{¶ 2} On August 27, 2006, appellant, who was 17 at the time, gave birth to Roderick Robinson III ("the baby").¹ After a prolonged hospital stay, the baby was released to appellant, who lived with her mother, Catherine

¹This was appellant's fourth child.

Young. Also living in the home were appellant's three other children; appellant's two sisters, Britney and Marisa; and Britney's three children.

{¶ 3} Catherine Young testified that appellant refused to allow her to care for the baby because Catherine was the primary caregiver for appellant's three older children. Catherine testified that on October 18, 2006, the baby did not display any signs of illness. At approximately 10:30 p.m., appellant and her boyfriend, who was the baby's father, were outside the home engaging in a verbal altercation. According to Catherine, she went outside, told the couple to stop arguing, and then went to bed.

{¶ 4} The following morning, Catherine woke at 6:45 a.m. to wake appellant for school. Catherine heard appellant getting her older daughter ready for school. After falling back to sleep, Catherine again woke at 7:45 a.m. when appellant yelled that the baby was not breathing. Catherine jumped from bed, took the baby from appellant, and told her to call 911. Catherine attempted to resuscitate the baby until the paramedics arrived.

{¶ 5} Randall Priest, one of the paramedics dispatched to appellant's home, testified that when he arrived on the scene, the baby was in full cardiac arrest. After resuscitation efforts were unsuccessful, Priest attempted to intubate the baby. It was at this time that Priest noticed the baby's lower jaw bone and neck were stiff, signs that rigor mortis had set in. According to

Priest, this meant the baby had been dead for approximately one-and-a-half to two hours.

{¶ 6} When initially interviewed about the circumstances surrounding the baby's death, appellant told officials that she awoke in the middle of the night, fed the baby, placed the baby back in his bassinet, and went back to sleep. Catherine Young testified that she had asked appellant if she had slept with the baby on the night in question; however, appellant maintained that the baby slept in his bassinet.

{¶ 7} According to Catherine, in January 2007, appellant admitted that she had lied to the police with regard to where the baby slept the night he died. A few months after this admission, Catherine decided to question appellant further about how the baby died. Catherine testified that appellant told her she was sleeping when the baby began to cry. Appellant then admitted that she was so exhausted that she picked the baby up by the neck, laid him across her arm, and rolled on top of him in her bed.

{¶ 8} Timothy Lewicki, with the Cuyahoga County Board of Developmental Disabilities ("MRDD"), testified that in July 2007, Catherine Young brought appellant into his office to apply for benefits. Catherine then proceeded to tell Lewicki that appellant admitted to picking the baby up roughly, cradling him in her arm, placing her head on him, and using him like a pillow. According to Lewicki, he asked appellant if she understood

what her mother was saying and she responded affirmatively. Lewicki then contacted the police and relayed the information he had learned during his interview with Catherine and appellant.

{¶ 9} Dr. Joseph Felo, a forensic pathologist with the Cuyahoga County Coroner's Office, testified that he performed an autopsy on the baby. According to Dr. Felo, the baby had numerous injuries that were in various stages of healing. The cause of death, however, was "acute bronchopneumonia due to multiple (five) bilateral rib fractures due to blunt impact to thorax." When asked to explain this further, Dr. Felo stated, "Essentially, what that means is that this baby developed pneumonia which was the immediate cause of his death. Because of the rib fractures, that prevented the baby from breathing deep and coughing and preventing the pneumonia from developing, and those rib fractures were caused by impacts or impact to the chest."

{¶ 10} Appellant was indicted in a six-count indictment for one count of murder, one count of felonious assault, three counts of endangering children, and one count of obstructing official business. After a jury trial, she was found guilty of two counts of endangering children.² The remaining count of

²R.C. 2919.22(B)(2) and (B)(3). A violation of these provisions is ordinarily a third-degree felony. When the jury finds, however, that the victim suffered serious physical harm, a violation of either of these provisions is elevated to a second-degree felony. In this case, all twelve jurors signed a separate specification finding that the baby suffered serious physical harm; therefore, appellant was

endangering children was nolle; appellant was acquitted of all other charges.³

{¶ 11} Appellant was sentenced to eight years for endangering children in violation of R.C. 2919.22(B)(2) and four years for endangering children in violation of R.C. 2919.22(B)(3). The court ordered these sentences to be run consecutively to one another for an aggregate sentence of 12 years. This appeal followed.

{¶ 12} Appellant presents three assignments of error for our review. She first argues that her convictions were based on insufficient evidence. Second, appellant argues that her convictions were against the manifest weight of the evidence. Finally, appellant argues that she was improperly convicted and sentenced for allied offenses of similar import.

Law and Argument

{¶ 13} In her first assignment of error, appellant challenges the sufficiency of the evidence supporting her convictions. The Ohio Supreme Court has recognized that “[i]n determining whether the evidence is legally sufficient to support the jury verdict as a matter of law, ‘[t]he relevant inquiry

convicted and sentenced on two second-degree felonies.

³Although irrelevant to our analysis in this case, we find troublesome the fact that Catherine “confessed” on appellant’s behalf at the MRDD office, yet no one made an attempt to ascertain whether appellant was mentally competent to stand trial.

is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.” *State v. Robinson*, 124 Ohio St.3d 76, 2009-Ohio-5937, 919 N.E.2d 190, ¶34, quoting *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus.

{¶ 14} Appellant was convicted of endangering children in violation of R.C. 2919.22(B)(2) and (B)(3), which is ordinarily a felony of the third degree.

When the jury finds, as the jury did in this case, that the offender’s actions caused serious physical harm to the child, endangering children is a second-degree felony. R.C. 2929.22(E)(3).

{¶ 15} Appellant’s indictment specified that she violated R.C. 2919.22 on or about October 19, 2006, the date of the baby’s death. We do not dispute that, according to Catherine Young, appellant admitted to picking the baby up in a harsh manner and laying on him. Nonetheless, in order for appellant to be convicted of second-degree felony child endangerment, the jury had to find beyond a reasonable doubt that appellant’s actions caused serious physical harm to the baby. In fact, all twelve jurors signed a separate specification finding that appellant’s actions caused serious physical harm to Roderick Robinson III. We find this troublesome in light of the timeline of events presented by Dr. Felo’s testimony.

{¶ 16} Dr. Felo testified that the baby's injuries were consistent with someone rolling over on him, but he also testified that other actions could have caused these injuries. Dr. Felo unequivocally testified, however, that the baby's ribs were broken prior to the onset of pneumonia. (Tr. 409.) When first questioned about the age of the rib fractures, Dr. Felo testified, "Well, they are relatively fresh rib fractures based on their appearance on the examination of the ribs. When I looked at them underneath the microscope they are approximately 24 hours of healing, meaning they happened about 24 hours prior to the baby's death." (Tr. 407.) When asked whether CPR or other lifesaving attempts could have caused these injuries, Dr. Felo said, "Only if they were done 24 hours prior to the baby's death possibly." (Tr. 408.) Dr. Felo was then asked if there was a time range during which the baby's ribs were broken. He responded, "There is a range. 24 hours is the center of the range. It certainly is greater than four hours, but it could certainly be up to two days." (Tr. 408.)

{¶ 17} Dr. Felo then testified that the cause of the baby's death was "bronchopneumonia due to multiple (five) bilateral rib fractures due to blunt impact to [the] thorax.

{¶ 18} "* * *

{¶ 19} "Essentially, what that means is that this baby developed pneumonia which was the immediate cause of his death. Because of the rib

fractures, that prevented the baby from breathing deep and coughing and preventing the pneumonia from developing, and those rib fractures were caused by impacts or impact to the chest.” (Tr. 409.)

{¶ 20} Dr. Felo testified that the pneumonia would present itself anywhere from 4 to 24 hours prior to the baby’s death. (Tr. 410). When asked whether he made any further findings as to when the pneumonia began, based on the amount of fluid in the baby’s lungs, Dr. Felo stated that, “[b]ased on the extensive inflammation, which is the tissue reaction that I noted underneath the microscope, it certainly is closer to the 24-hour than the 4-hour time frame.”

{¶ 21} Finally, when asked whether the baby’s broken ribs could have been caused on the date of death, Dr. Felo stated, “They did not occur on the day of death.”

{¶ 22} Based on our review of Dr. Felo’s testimony, it is unequivocal that the pneumonia, which ultimately caused the baby’s death, did not occur until, at the very least, four hours prior to his death. Based on Dr. Felo’s testimony, the baby’s ribs had to be broken before the pneumonia set in. Based on this timeline, the only actions appellant admitted to, which were testified to have occurred on the date of the baby’s death, could not have caused the baby’s broken ribs or any of the other injuries the baby sustained.

{¶ 23} In order for appellant to be convicted of second-degree child endangerment, the jury was required to find that her actions caused serious physical harm to the child. R.C. 2919.22(E)(3).⁴ Even viewing the evidence in a light most favorable to the prosecution, it is apparent that the jury could not have legitimately found beyond a reasonable doubt that appellant's actions caused serious physical harm to the baby. As such, she could, at the very most, be convicted of third-degree child endangerment. Because appellant was convicted and sentenced on two second-degree felonies, her convictions were based on insufficient evidence and must be overturned.

{¶ 24} Our disposition of appellant's first assignment of error renders her remaining arguments moot, and thus we will not address them.

{¶ 25} Reversed; convictions ordered vacated.

It is ordered that appellant recover from appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

⁴R.C. 2919.22(E)(3) states: "If the offender violates division (B)(2), (3), (4), or (6) of this section, except as otherwise provided in this division, endangering children is a felony of the third degree. If the violation results in serious physical harm to the child involved, * * * endangering children is a felony of the second degree."

FRANK D. CELEBREZZE, JR., JUDGE

CHRISTINE T. McMONAGLE, P.J., CONCURS;
ANN DYKE, J., DISSENTS (WITH SEPARATE OPINION)

ANN DYKE, J., DISSENTING:

{¶ 26} I respectfully dissent. I would conclude that the state presented sufficient evidence that defendant caused serious physical harm to the infant and committed second-degree felony child endangerment. Moreover, I believe that the majority in fact applied a manifest weight of the evidence analysis in reversing this conviction.

{¶ 27} In undertaking a sufficiency of the evidence analysis, we must determine whether any rational trier of fact, viewing the evidence in a light most favorable to the prosecution, could have found the essential elements of the crime beyond a reasonable doubt. *State v. Thompkins*, 78 Ohio St.3d 380, 390, 1997-Ohio- 52, 678 N.E.2d 541.

{¶ 28} In this matter, defendant was convicted of endangering children under R.C. 2919.22(B)(2) and 2919.22(B)(3).

{¶ 29} These code provisions state:

{¶ 30} R.C. 2919.22

{¶ 31} “(B) No person shall do any of the following to a child under eighteen years of age or a mentally or physically handicapped child under twenty-one years of age:

{¶ 32} “* * *

{¶ 33} “(2) Torture or cruelly abuse the child;

{¶ 34} “(3) Administer corporal punishment or other physical disciplinary measure, or physically restrain the child in a cruel manner or for a prolonged period, which punishment, discipline, or restraint is excessive under the circumstances and creates a substantial risk of serious physical harm to the child[.]”

{¶ 35} Under R.C. 2919.22(E)(3), if the violation results in serious physical harm to the child, the offense is a felony of the second degree.

{¶ 36} In *State v. Surles*, Summit App. No. 23345, 2007-Ohio-6050, the court noted that the term “abuse,” as used in Section 2919.22(B)(2), means to “ill-use, maltreat; to injure, wrong or hurt.” The court additionally noted that the term “torture,” means “the infliction of severe pain or suffering; or acting upon violently in some way, so as to strain, wrench, distort, twist, pull or knock about.” The Court additionally noted that to treat a person “cruelly” means to “demonstrate indifference to or delight in another’s suffering or to treat severely, rigorously, or sharply.”

{¶ 37} Finally, the court noted that the culpable mental state is one of “recklessness.”

{¶ 38} In this matter, the majority has concluded that the convictions are not supported by sufficient evidence. The majority finds the convictions

“troublesome in light of the timeline of events presented by Dr. Felo’s testimony.”

The majority states:

{¶ 39} “Based upon our review of Dr. Felo’s testimony, it is unequivocal that the pneumonia, which ultimately caused the baby’s death, did not occur until, at the very least, four hours prior to his death. Based upon Dr. Felo’s testimony, the baby’s ribs had to be broken before the pneumonia set in. Based on this timeline, the only actions appellant admitted to, which were testified to have occurred on the date of the baby’s death, could not have caused the baby’s broken ribs or any of the other injuries the baby sustained.

{¶ 40} “* * * Even viewing the evidence in a light most favorable to the prosecution, it is apparent that the jury could not have legitimately found beyond a reasonable doubt that appellant’s actions caused serious physical harm to the baby. * * *”

{¶ 41} The state’s evidence included testimony from Dr. Felo, who testified that the rib fractures were consistent with a squeezing or impact type of injury such as appellant rolling over on the baby. Further, Dr. Felo opined that the pneumonia began 4 to 48 hours before the baby’s death. He set forth a range of time in which the rib fractures were caused, with 24 hours being at the center of the range. He concluded his direct testimony with the following statement:

{¶ 42} “The pneumonia would indicate the minimum of 4 hours on up to 24 hours based on the tissues that are present underneath the microscope.”

{¶ 43} This testimony is consistent with Catherine Young's testimony that defendant admitted, months later, that she was sleeping when the baby started crying. She was so tired and sleepy that she grabbed the baby by the neck, laid him across her arm, and continued to roll over and lay on top of him in her bed. According to Catherine, defendant lied to EMS and others because she was afraid.

{¶ 44} I would find sufficient evidence to support the convictions. Although Dr. Felo believed that the pneumonia began "closer to" 24 hours before death, rather than 4 hours before death, his later statements that it was "closer to" 24 hours does not negate the range set forth in his testimony. Further, although defendant reportedly told Cindy Carroll-Parkhurst that the baby was placed in the bassinet at 4:45 a.m. on October 19, 2006, the family told EMS that the baby was fed and put to bed at 3:00 a.m., and at trial, Catherine stated that she last saw the baby alive at 10:30 p.m. on the previous evening.

{¶ 45} Finally, I believe that the majority has undertaken a weighing of the evidence, and in so doing, has determined that the injuries occurred 24 hours before the baby's death, and that defendant's admitted conduct of endangering her baby as alleged by the state could only have occurred after his ribs were already broken.