

The Supreme Court of Ohio

CASE ANNOUNCEMENTS

February 8, 2022

[Cite as *02/09/2022 Case Announcements #2, 2022-Ohio-364.*]

APPEALS NOT ACCEPTED FOR REVIEW

2021-1186. State v. Lewis.

Cuyahoga App. No. 108463, 2020-Ohio-5265.

Fischer, J., dissents and would accept the appeal on proposition of law No. I.

Donnelly, J., dissents, with an opinion joined by Stewart, J.

Stewart, J., dissents and would accept the appeal on all propositions of law.

Brunner, J., dissents and would accept the appeal on proposition of law Nos. II and III.

DONNELLY, J., dissenting.

{¶ 1} The facts of this case are tragic. It is difficult to read them without feeling great sympathy for tiny, abused A.D., the victim in this case. It is sad to think of how slow and painful her death must have been, and it is heart-rending to know that none of her potential will be realized. Nothing can change what happened to A.D. It is possible, however, that this court is making this tragic situation even worse by permitting the conviction and imprisonment of a man who did not cause A.D.'s death.

{¶ 2} What is missing in this case is evidence that appellant, Deonte Lewis, did anything to harm A.D. Although it is obvious that A.D. was abused, all of the evidence of that abuse relates to her mother. No evidence suggests that Lewis abused A.D. But appallingly, it is also clear that he did not do anything to help A.D.

{¶ 3} Because this court declines to accept jurisdiction in this case, we do not have the trial- and appellate-court records before us. Accordingly, I must rely on the facts as stated by the Eighth District Court of Appeals below. The court of appeals described the facts as follows:

Lewis was charged with one count of aggravated murder, one count of murder, one count of felonious assault, one count of permitting child abuse, three counts of child endangering, and one count of tampering with evidence in connection with the death of four-year-old A.D. A.D.'s mother, Sierra Day ("Sierra"), was charged as a codefendant in the indictment. Lewis pleaded not guilty and asked the trial court to sever his case from Sierra's, arguing that a joint trial would compromise his ability to confront and cross-examine witnesses and deprive him of a fair trial. The trial court denied the motion, and the cases were tried together.

A.D. was born on September 2, 2013. Following A.D.'s birth, Sierra and A.D. lived with A.D.'s father, Mickhal Garrett ("Garrett"). Sierra and Garrett were not married, and they ended their relationship when A.D. was less than two years old. Sierra obtained custody of A.D., and Garrett paid child support.

In January 2016, Sierra and A.D. moved to the Harbor Crest Apartments in Euclid, Ohio. Garrett had custody of A.D. for visitation on weekends "almost every other week." Garrett testified that during a visit in September 2017, he and his fiancée discovered bruises on A.D.'s chest and lower back. Garrett asked A.D. about the bruises, and A.D. told him, "Mommy pushed me up the stairs." Garrett took photographs of the bruises, which were admitted into evidence, and reported the bruises to Cleveland police. Garrett also discovered that A.D. had a loose tooth that was starting to rot. Garrett confronted Sierra about the bruises and the tooth, but Sierra was unable to provide an explanation for the injuries. Thereafter, Sierra obtained a temporary protection order against Garrett to prevent him from visiting A.D.

Sierra's brother, Isaiah Day ("Isaiah"), and her sister, Erica Johnson ("Johnson"), testified that Sierra became romantically involved with Lewis in July 2017. Multiple witnesses testified they believed Lewis lived with Sierra because

they were together every day. Before Sierra started dating Lewis, A.D. regularly saw relatives on her maternal side of the family, and she acted like an ordinary child. After Sierra became involved with Lewis, Sierra became estranged from her family and A.D. became withdrawn and stopped acting like a normal child. Johnson testified that she also noticed that A.D. was becoming smaller. She explained: “I thought maybe that just had something to do with her getting taller; you know, when toddlers grow, they slim out a little bit. She was getting littler and littler to the point you can see the extension of her stomach sticking out, so to speak.”

Several child-care workers who cared for A.D. at the Harbor Crest Day Care Center testified that A.D. was “energetic,” “outgoing,” and a “happy little girl” when they first met her in late 2016 and early 2017. One daycare worker, April Goode, described her as “verbal,” meaning she could tell someone when she needed to go to the bathroom. Goode also stated that A.D. “interacted fine with other children.” However, A.D.’s behavior and demeanor changed over time. Johnson testified that A.D. came to her daughter’s birthday party on July 30, 2017, but A.D. did not interact with the other children. Johnson explained: “It was a normal kid party. Everyone was having fun. We adults were, you know, watchin’ the kids and they were playin’ in the pool and chasing each other, just havin’ fun, and [A.D.] was just pretty much off to herself, not really interactin’ with the other kids.”

Daycare workers at Harbor Crest Day Care Center noticed that A.D. often came to school with bruises and scratches. Tamira Finley testified that they started making observation reports every time they saw a new injury because they noticed that A.D. had “too many bumps and bruises.” Whenever a childcare worker noticed a new bruise or scratch, she would question A.D. about it, and A.D. would invariably say that “Mommy did it,” or “Mommy hit me, Mommy hurt me.”

On May 15, 2017, A.D. came to the Harbor Crest Day Care Center with a scrape across her face. Michelle Marshall, one of the child-care workers, asked Sierra what happened to A.D. Sierra told Marshall that A.D. fell at the park. After Sierra left the building, Marshall asked A.D. if she fell at the park, and A.D. replied, “Mommy pushed me.” Seeking clarification, Marshall asked A.D. if Mommy

pushed her down the slide. A.D. explained, “Mommy pushed me down the steps.” Marshall recorded her observations in an internal observation report maintained at the daycare facility.

Three days later, on May 18, 2017, A.D. complained to Marshall that her head hurt. Marshall examined her head and discovered blood blisters on her head and dried blood in her ear. As usual, Marshall inquired as to what happened, and A.D. replied: “Mommy hit me, Mommy hurt me.” Marshall and the daycare director called the police to report suspected child abuse. EMS transported A.D. to Euclid Hospital, and Marshall, who followed in her own car, joined A.D. at the hospital. The emergency room physician suggested A.D.’s head was bleeding because her braids were too tight. However, A.D. repeated over and over that her mother caused the injury.

As previously stated, Sierra and Lewis began dating in July 2017, and thereafter, Sierra’s family saw less of A.D. According to Isaiah, Lewis was “possessive” of Sierra. Isaiah also believed that A.D. did not like Lewis. Isaiah testified that one day, in February 2018, he and Sierra were “hangin’ out” at a friend’s house for the evening. In the midst of conversation, Sierra mentioned that A.D. could not walk. Later that night, Lewis joined the party, and Isaiah noticed that he was nervous “[l]ike he did something.” Isaiah was concerned for A.D.’s safety and decided to go to Sierra’s apartment to check on her.

Isaiah testified that Lewis and Sierra were both present in the apartment when he came to check on A.D. under the pretext of a visit. He brought a bottle of Bacardi Silver and socialized for a while in the living room before asking about A.D. Thereafter, Isaiah found A.D. laying in her bed in her bedroom. Isaiah explained: “So I go I open the door. I see [A.D.]. She layin’ on the bed. And it dawn on me, like, she says she can’t walk. She was just layin’ down like this. Her nickname Na Na, I said, ‘Na-Na,’ she layin’ like this, she turn her head like this, ‘Uncle Isaiah, Uncle Isaiah.’ I’m like ‘You cool, you cool?’ She like, ‘Yeah, yeah.’ Everythin’ just seemed pretty cool. I’m like, well, she can’t walk, I’m figurin’ her ankle hurts or somethin’ like that.” Thereafter, Isaiah went to the kitchen and asked

Sierra how A.D. was doing. Sierra told him that everything was fine, but indicated that A.D. was not eating much.

On March 11, 2018, Lewis called 911 to report that A.D. was “unresponsive.” Nathan Lupah, a Euclid firefighter and paramedic who responded to the call, testified that Lewis opened the door to the apartment when he arrived. When Lupah entered the apartment, he found A.D. on the floor underneath an air conditioner that was running. Lupah testified: “I remember thinking this is odd because it’s cold outside” and noticed that the “wind was blowing on [A.D.]” Robert Swope and Chris Wilson, of the Euclid Fire Department, also attended to A.D. at the scene. They noticed a strong smell of bleach upon entering the apartment, and Lieutenant Wilson discerned a smell of decomposition emanating from A.D.’s mouth while he was performing CPR. The paramedics also noticed that A.D.’s jaw and body were stiff with rigor mortis. According to Dr. Joseph Felo, a forensic pathologist in the Cuyahoga County Medical Examiner’s Office, rigor mortis develops quickly and generally disappears within a day and a half after death.

Officer Nicholas Edington of the Euclid Police Department also responded to the 911 call. He testified that Lewis identified himself as A.D.’s stepfather. Edington interviewed Sierra, who told him that A.D. stopped eating and became sick after the family went to Red Lobster the previous Thursday. Sierra also told Edington that earlier that morning, A.D. fell off the toilet and hit her head. Sierra claimed she found A.D. on the ground unresponsive.

EMS took A.D. to Euclid Hospital. Meanwhile, Euclid police obtained a search warrant to search Sierra’s apartment. Lewis provided police with a key to the apartment. Detective Phil Tschetter testified that he took photographs of A.D.’s bed because it had no sheets, no pillow, and no bedding, except a single fleece blanket. He also noticed that the mattress smelled strongly of urine.

Detective Jennifer Krocak, the lead homicide detective, listened to a recording of Lewis’s 911 call to police. When asked whether Detective Krocak made any observations while listening to the call, she stated: “I noticed that there was no excitement in the voices of the callers. Both the defendants had spoken

during that call. There was no panic; it was very flat. It wasn't what I would expect for a medical emergency of a four-year-old having stopped breathing. Heidi Hobart, the 911 dispatcher, authenticated the recording of the 911 call and testified that she had been on the phone with Lewis for three minutes and 53 seconds before he mentioned that the child was not breathing.

Detective Krocak authenticated photographs of A.D.'s body that were taken at Euclid Hospital. She described A.D.'s body as "extremely emaciated" and "skeletal." She testified that there were obvious signs of trauma and abuse, including a deep dark bruise over an entire eye that was swollen shut. There was also a one-inch laceration above the eyelid. A.D. had burns on her lower extremities and bruises on her body.

Krocak reviewed videos and other evidence extracted from Lewis and Sierra's phones and found a video of Sierra and Lewis having sex at 3:28 p.m. on March 10, 2018, the day before A.D. was found dead. Detective Krocak also identified a surveillance video from a nearby Chipotle, showing Lewis and Sierra purchasing burrito bowls on March 10, 2018, at 6:34 p.m. Despite these videos, Krocak concluded, based on the evidence in her investigation, that only Lewis and Sierra had access to A.D. at the end of her life.

Dr. Felo performed the autopsy on A.D.'s body. Dr. Felo estimated that A.D. had been dead for a day and a half at the time of the autopsy. Dr. Felo described A.D. as "severely malnourished" and weighing only 26 pounds. Her skin was loose because she had lost muscle and fat below the skin. Dr. Felo observed that A.D. had a bruise on the right side of her forehead that was approximately one week old, and a black eye that she sustained two days before her death. A.D. also had some abrasions on her left arm and back. Some skin had "sloughed off" her lower legs and feet, and she had bed sores on her lower legs.

An internal examination revealed that A.D. developed a subdural hematoma, or blood clot, in the brain following blunt trauma to the left side of her head. The brain injury caused pressure to build on A.D.'s brain, which caused her to have a stroke. Dr. Felo estimated that the stroke would have occurred somewhere between two weeks and three months before A.D.'s death. The injury also caused

a lack of oxygen in the brain that caused the back part of the brain to die. The back part of the brain controls muscle coordination. Dr. Felo explained that if A.D. could walk after the back part of her brain had died, her gait would have been clumsy and uncoordinated.

According to Dr. Felo, A.D.'s body slowly withered away after the stroke because brain damage and starvation caused her organs to deteriorate. Her lungs were collapsed because they were not taking deep breaths. Her pancreas was digesting itself because she was not eating. Dr. Felo also found acute hemorrhagic gastrophy, i.e., the formation of stomach ulcers, caused by excessive stomach acid and no food.

Dr. Felo opined that a lay person would have known that A.D. was dying because she was unable to walk for a period of time due to her injuries. Moreover, her gaunt face and emaciated body made it obvious that she was dying. Dr. Felo explained that A.D. gradually declined, having less and less appetite and becoming more and more lethargic over time. A.D.'s ability to use motor and cognitive skills also would have gradually diminished until the time of her death.

The jury found Lewis guilty of one count of aggravated murder, one count of murder, one count of felonious assault, one count of permitting child abuse, three counts of child endangering, and one count of tampering with evidence. The court sentenced him to life in prison with eligibility for parole after 20 years. Lewis now appeals his convictions.

(Footnotes and record citations omitted and brackets sic.) 2020-Ohio-5265, ¶ 3-23.

{¶ 4} Lewis was convicted of aggravated murder, a violation of R.C. 2903.01(C), which states that “[n]o person shall purposely cause the death of another who is under thirteen years of age at the time of the commission of the offense.” A.D. was under the age of 13, so the only issue was whether Lewis purposely caused her death. A person acts purposely “when it is the person’s specific intention to cause a certain result.” R.C. 2901.22(A).

{¶ 5} The court of appeals affirmed the conviction, stating that Lewis had done “nothing to help [A.D.],” had “made concerted efforts with Sierra to conceal A.D.’s plight,” “never told police there was an injured child in the apartment,” had “neglected to tell the dispatcher that she

had stopped breathing until he had been on the phone for almost four minutes,” and had “further concealed the harm done to A.D. when he falsely told police that she became ill after dining at a Red Lobster a few days before she died.” 2020-Ohio-5265 at ¶ 28. Based on this evidence, the court concluded that Lewis had “collaborated with Sierra in purposely causing [A.D.’s] death.” *Id.*

{¶ 6} Without the benefit of a full record to review, it is difficult to draw conclusions as to the propriety of Lewis’s conviction. But I am not sure that the litany of Lewis’s inactions, some of which occurred after A.D. was already dead, is sufficient evidence upon which to conclude that he specifically intended to cause her death. The state might also be troubled in that regard. In addressing that issue in its memorandum in response to Lewis’s request for this court to hear his appeal, the state has not made a substantive argument but instead has merely quoted the same facts from the court of appeals’ opinion quoted above. Whether the state considers the court of appeals’ resolution of the issue to be so obviously correct that no explanation is necessary, so vexing that there is no way to defend the conclusion, or something else, is unknown. The bottom line is that the state has neither explained nor defended the conclusion that was reached by the court of appeals.

{¶ 7} There is nothing admirable about Deonte Lewis’s behavior in this case. At a minimum, he acted with extreme callousness. But it is unclear to me whether he purposely caused A.D.’s death through his inactions, and this court should examine the issue and provide guidance to lower courts that will address similar issues in the future. Therefore, I would accept Lewis’s appeal to consider his second proposition of law, which concerns the sufficiency of the evidence supporting his conviction for aggravated murder.

{¶ 8} I am also concerned that Lewis and A.D.’s mother were tried together. Lewis moved to have their trials severed and has argued that severance should have been granted because the evidence of prior acts of abuse that was admitted at trial was admissible against A.D.’s mother but was not admissible against him. The court of appeals summarily rejected this argument: “[B]ecause this evidence applied only to [A.D.’s mother’s] case, it could not have affected the outcome of Lewis’s case.” 2020-Ohio-5265 at ¶ 68.

{¶ 9} Given the horrific nature of A.D.’s abuse by her mother and A.D.’s related death, it is difficult to defend such an unexplained conclusion. And, once again, the state has not even tried to do so here. In addressing the severance issue, the state has merely recited boilerplate law

concerning the necessity of joinder or severance and concludes that “the Eighth District held that the trial court did not err when the trial court chose not to sever the cases.” The quoted statement is indeed true, but the interests of justice cry out for an explanation as to why joinder was permissible, which neither the court of appeals nor the state has provided. Therefore, I would accept Lewis’s appeal to also consider his third proposition of law, which concerns whether his trial should have been severed from that of A.D.’s mother.

{¶ 10} I would accept jurisdiction over Lewis’s appeal to consider his second and third propositions of law. I dissent.

STEWART, J., concurs in the foregoing opinion.
