

Cite as 2023 Ark. App. 76
ARKANSAS COURT OF APPEALS
DIVISION III
No. CR-22-501

TYRA MCKELLAR

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered February 15, 2023

APPEAL FROM THE POINSETT
COUNTY CIRCUIT COURT
[NO. 56CR-18-371]

HONORABLE CINDY THYER, JUDGE

AFFIRMED

STEPHANIE POTTER BARRETT, Judge

Tyra McKellar was convicted by a Poinsett County Circuit Court jury of manslaughter and abuse of a corpse in the death of her one-month-old daughter (the “baby”).¹ She was sentenced to ten years’ imprisonment for the manslaughter conviction and five years’ imprisonment for the abuse-of-a-corpse conviction, with the sentences ordered to be served consecutively. McKellar argues on appeal that the circuit court erred in denying her motions for directed verdict on both charges. We affirm the convictions.

An appeal from the denial of a motion for directed verdict is treated as a challenge to the sufficiency of the evidence. *Arnold v. State*, 2018 Ark. 343, 561 S.W.3d 727. In reviewing a sufficiency challenge, we determine whether the verdict is supported by substantial

¹Tyra was originally charged with murder in the second degree, but the State amended its information to the lesser charge of manslaughter.

evidence, which is evidence of sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or the other, without resorting to speculation or conjecture. *Id.* The evidence is viewed in the light most favorable to the State, and only evidence supporting the verdict is considered. *Id.* Circumstantial evidence may provide a basis to support a conviction if it is consistent with the defendant's guilt and inconsistent with any other reasonable conclusion. *Baker v. State*, 2019 Ark. App. 515, 588 S.W.3d 844. Whether evidence excludes every other hypothesis is left to the jury to decide. *Id.* The credibility of witnesses is an issue for the jury and not the court. *Id.* The trier of fact is free to believe all or part of any witness's testimony and may resolve questions of conflicting testimony and inconsistent evidence. *Id.*

The evidence at trial revealed that on May 28, 2018, Tyra; her husband, Cody McKellar; Lacey Davis; and Davis's boyfriend, Jeremy Johnson, were at the McKellar house. Cody, Lacey, and Jeremy were smoking methamphetamine, and testimony indicated that Tyra snorted at least three lines of methamphetamine. Lacey, who was pregnant, was holding the baby. According to Cody, Tyra became upset that Lacey was using methamphetamine and told Lacey that she was not going to do that in her house; Lacey became upset at Tyra's remark, and she and Jeremy left between 10:00 and 11:00 p.m., leaving Cody and Tyra at the house with three of their four kids, including the baby. Cody testified that after Lacey and Jeremy left, he and Tyra went to bed with the kids, including the baby, and everything was fine.

The following morning, Lacey arrived at the home of Tasha McKellar, Cody's sister, who lived across the street from Tyra and Cody. Another of Cody's sisters, Christina Reid, went to Cody's house around ten o'clock that morning to borrow his lawnmower, but no one answered the door. Christina went around to the back of the house and looked into Tyra and Cody's bedroom window; she saw Cody and one of the older children asleep on the bed, but she did not see Tyra, and she was unable to wake Cody up.

Cody testified that Tyra woke him up that morning "freaking out," climbing out of the bed, hitting him on the leg, and saying she could not find the baby. He was initially confused because he had just woken up and was trying to understand what Tyra meant; he finally understood she was telling him that she could not find the baby, that the baby was not where she had laid her on the bed. Tyra called Tasha's house and asked if the baby was there; Tasha's boyfriend, Michael Vann, thought Tyra was asking if Lacey was at the house and told her yes. Tyra went to Tasha's house a short time later looking for the baby; when she was told the baby was not there, Tyra stated that if she was not there, then she was dead. Christina, Tasha, and Lacey ran to Tyra and Cody's house, with Tyra walking behind them. Christina asked Cody where the baby was; while Cody was looking for her, Christina asked the McKellars' two-year-old daughter if she had put the baby somewhere, to which the toddler responded that "mommy made baby be quiet."² Cody found the baby's lifeless body in the dryer; he did not remove her body, but he told Tasha not to look in the dryer. Tasha,

²No objection was made to Christina's testimony regarding her niece's statement.

thinking Cody told her to look in the dryer, yelled for someone to look there, and that is where Lacey found the baby, who was cold to the touch. Tyra took the baby out of the dryer, went outside, and began to perform CPR; she started telling Lacey that she “fucked up.” Tyra refused to give the baby to the first officer on the scene, eventually allowing her to be taken when an ambulance arrived; when the baby was removed from her arms, Tyra looked at the officer and said, “I screwed up.”

Cody testified that he did not know what happened to the baby or how she came to be in the dryer. He denied hurting her or placing her in the dryer.

Dr. Frank Peretti, the former associate medical examiner at the Arkansas State Crime Laboratory, testified that he found nonfold thickness burns over fifty to sixty percent of the baby’s body, including her face, torso, and extremities. He explained that nonfold thickness meant that the burns did not go through the underlying fatty tissues under the skin, that the burns were scald burns where the baby’s skin blistered and simply peeled off. He identified areas where the baby was burned, including the side of her face; her ear; her stomach, which was discolored green due to decomposition as a result of the high temperature inside the stomach; her extremities; her genitalia; and her back. Dr. Peretti testified that there was no evidence of drowning; he determined that the cause of death was thermal injuries due to being submerged in hot water; and he explained that the thermal injuries caused neurogenic shock, placing the baby in excruciating pain and causing her body to shut down, resulting in her death.

Tyra moved for a directed verdict on both charges at the close of the State's evidence. Regarding manslaughter, she argued that the State failed to prove that she caused the baby's death, and even if it could be proved that her actions were the cause, the State failed to prove that she acted recklessly instead of negligently. With regard to the charge of abuse of a corpse, Tyra argued that there was no evidence presented that the baby was dead when she was placed in the dryer, and there was no evidence that Tyra was the person who placed the baby in the dryer.

The State responded that as to the manslaughter charge, evidence was presented that Tyra had ingested three lines of methamphetamine, which affected her ability to sleep, and she was the person in the house awake during the night who had care and control of the children as Cody was asleep and could not be woken. The State pointed to the testimony that Tyra had become upset with Lacey for using methamphetamine while she was pregnant, which showed that she clearly understood the risk of using methamphetamine while being responsible for children. The State argued that with respect to the offense of abuse of a corpse, Tyra was the only person in the home that night who had care and control of the children and had the opportunity to place her baby in the dryer.

The circuit court, in denying the motions for directed verdict, also noted that Tyra had made statements that she "screwed up" and "f**ked up," which suggested guilt on her part. The defense rested without calling any witnesses and renewed the motions for directed verdict, which were again denied. The jury returned guilty verdicts on both counts, and Tyra filed a timely notice of appeal.

A person commits manslaughter if he or she recklessly causes the death of another person. Ark. Code Ann. § 5-10-104(a)(3) (Repl. 2013). Tyra first argues that, while she was one of two adults in the house, there was no evidence that her actions caused the baby's death. We disagree. Cody, the second adult in the house that night, testified that he did not hurt the baby or place her in the dryer and was only awakened the next morning by Tyra telling him that she could not find the baby. Furthermore, Tyra made several spontaneous statements to various people, telling Tasha, Christina, and Lacey that if the baby was not at Tasha's house, she was dead; stating to Lacey that she had "f**ked up" when the baby was found in the dryer; and telling the first responding police officer that she had "screwed up." Further, the McKellars' two-year-old daughter told Christina that "mommy made baby be quiet." Jurors are the finders of fact, and they determine the credibility of the witnesses. *Baker, supra*. This evidence, if believed, is sufficient to support a determination that Tyra was the person responsible for the baby's death.

Tyra also argues that even if she was determined to be responsible for the baby's death, there is no evidence she acted recklessly. We disagree. Intent can seldom be proved by direct evidence; jurors are allowed to draw upon their common knowledge and experience to infer it from the circumstances. *Albretsen v. State*, 2015 Ark. App. 33, 454 S.W.3d 232. Because of the obvious difficulty in ascertaining a defendant's intent, a presumption exists that a person intends the natural and probable consequences of his or her actions. *Id.* We hold that under these circumstances, substantial evidence supports that Tyra acted recklessly. A person acts recklessly with respect to attendant circumstances or a result of his or her conduct

when the person consciously disregards a substantial and justifiable risk that the attendant circumstances exist, or the result will occur. Ark. Code Ann. § 5-2-202(3)(A) (Repl. 2013). The risk must be of a nature and degree that disregard of the risk constitutes a gross deviation from the standard of care that a reasonable person would observe in the actor's situation. Ark. Code Ann. § 5-2-202(3)(B).

In the present case, Tyra did not challenge the assertion that she had used methamphetamine the night before the baby was discovered deceased in the dryer. The jury may conclude that Tyra deliberately placed herself in a condition that might make her incapable of caring for her baby by using methamphetamine, and she consciously disregarded the substantial and justifiable risk that placing the baby in scalding hot water would cause burns that could cause the baby's death, and such conduct constituted a gross deviation from the standard of care that a reasonable person would observe in the actor's situation. Therefore, we affirm the manslaughter conviction.

Tyra also argues that, with regard to her conviction for abuse of a corpse, the State failed to prove where the baby was killed, and without knowing where the death occurred, it is impossible to conclude that the baby's body was moved after death. She further argues that if the State proved the baby was moved after her death, it failed to show who moved the body.

A person commits abuse of a corpse if, except as authorized by law, he or she knowingly physically mistreats or conceals a corpse in a manner offensive to a person of reasonable sensibilities. Ark. Code Ann. § 5-60-101(a)(2)(A) (Repl. 2013). "In a manner

offensive to a person of reasonable sensibilities” means in a manner that is outside the normal practices of handling or disposing of a corpse. Ark. Code Ann. § 5-60-101(a)(2)(C)(i).

Tyra argues that while there was evidence the baby was submerged in scalding water, there was no evidence where that occurred, and therefore, it could not be proved that the baby was moved after death. She further argues that if it could be proved that the body was moved after death, the State failed to prove she was the person who moved the body. We find no merit in her arguments.

The evidence revealed the baby died from neurogenic shock caused by thermal burns from scalding hot water. The McKellars’ two-year-old daughter told her aunt that “mommy made baby be quiet.” The baby’s corpse was found concealed in a nonworking dryer. A jury is entitled to draw upon common sense and experience in reaching its verdict. *Williams v. State*, 2015 Ark. 316, 468 S.W.3d 776. Placing the baby’s body in the dryer clearly is outside the normal practices of handling or disposing of a corpse and is offensive to a person of reasonable sensibilities. See *Dougan v. State*, 322 Ark. 384, 912 S.W.2d 400 (1995) (stillborn baby wrapped in bloody sheets and placed in dumpster constituted physical mistreatment of a corpse). As for Tyra’s argument that the State failed to prove she was the person who placed the baby in the dryer, Cody, the only other adult in the house at the time, testified that he did not place the baby in the dryer. Jurors may use common sense and experience in reaching a verdict, *Williams, supra*, and jurors obviously believed Cody’s testimony.

Affirmed.

ABRAMSON and GRUBER, JJ., agree.

Benjamin W. Bristow, for appellant.

Leslie Rutledge, Att’y Gen., by: *Pamela Rumpz*, Sr. Ass’t Att’y Gen., for appellee.