

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs August 27, 2024

FILED

10/07/2024

Clerk of the  
Appellate Courts

**STATE OF TENNESSEE v. TANYA ILIC**

**Appeal from the Criminal Court for Bradley County**  
**No. 19-CR-336A Andrew M. Freiberg, Judge**

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**No. E2023-01322-CCA-R3-CD**

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Following a bench trial on April 8, 2022, Defendant, Tanya Ilic, was found guilty of one count of aggravated child abuse. Defendant was sentenced to sixteen years and six months of confinement at a rate of 100 percent service. On appeal, Defendant contends the evidence is legally insufficient to sustain her conviction. After review, we affirm the judgment of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed**

MATTHEW J. WILSON, J., delivered the opinion of the court, in which ROBERT L. HOLLOWAY, JR., and ROBERT H. MONTGOMERY, JR., JJ., joined.

Claiborne H. Ferguson, Memphis, Tennessee, for the appellant, Tanya Ilic.

Jonathan Skrmetti, Attorney General and Reporter; Katherine Orr, Assistant Attorney General; Stephen Hatchett, District Attorney General; April Romeo and Joe Hoffer, Assistant District Attorneys General, for the appellee, State of Tennessee.

**OPINION**

**I. Factual and Procedural History**

This case arises from injuries sustained by the twenty-month-old female victim, M.D.<sup>1</sup> On August 21, 2019, the Bradley County Grand Jury indicted Defendant and her

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<sup>1</sup> It is the policy of this court not to use the names of minor victims, so we will use her initials out of respect for her privacy.

mother, Vera Fiedorkijevic, on one count of aggravated child abuse and, in the alternative, one count of aggravated child neglect. Prior to trial, the State agreed to sever the co-defendants without objection, and the cases proceeded independently.<sup>2</sup> After the trial court granted the State's motion to amend the indictment to correct a drafting error, Defendant elected to proceed with a bench trial in April 2022.

The victim was born in September 2017. On May 27, 2019, the victim was transported by ambulance to the hospital after Defendant, her foster mother, called 911 to report that the victim was having a seizure. At the hospital, personnel found the victim covered in bruises, with an adult-size handprint on her inner thigh, ligature marks on her neck that looked very new, and symptoms of traumatic brain injury. While there, the victim underwent lifesaving surgery to address two subdural hematomas that were causing her brain to herniate. These injuries presented without any other accompanying injuries to her skull. According to expert testimony at trial, the trauma to her brain was equivalent to falling from two stories high onto a hard surface.

The victim had been placed in Defendant's home six months prior in December 2018, as part of the Tennessee foster care system. Following the victim's initial placement with Defendant, Child Protective Services Investigator Heather Lutes observed the victim and did not notice any obvious signs of trauma or abuse. Five days thereafter, Kelly Dockery, a sexual assault nurse examiner, conducted a routine physical exam of the victim and found no evidence of any injury or abuse.

On May 26, 2019, the day before the victim's hospitalization, the victim attended the nursery school at South Cleveland Church of God. The nursery director, Julie Ann Garrod, said she saw no bruises or injuries on the victim's entire body while she was changing the victim's diaper.

Paramedic Tara Carpenter responded to Defendant's 911 call. Upon entering the home, Ms. Carpenter found the victim lying on her back looking up towards the ceiling with her arms by her side. The victim was very pale and completely drenched in water. Ms. Carpenter testified that "her clothes were very neatly placed . . . there was just something off with the initial presentation of here [sic] when we got there." Due to the victim's slow and lethargic movements, Ms. Carpenter assessed that she was coming out of a seizure. Defendant told Ms. Carpenter that the victim did not have a medical history, was not taking any medication, did not have allergies, and that she was running through the kitchen when she fell and had a seizure.

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<sup>2</sup> In our review of the record, the disposition of Ms. Fiedorkijevic's charges is unclear and neither party addressed this issue in their briefs. We note that Ms. Fiedorkijevic's counsel appeared at Defendant's trial to advise the court that Ms. Fiedorkijevic wished to voluntarily testify under oath and that he had advised her of her Fifth Amendment rights against self-incrimination prior to her testimony.

Upon assessing the victim, Ms. Carpenter found her to be covered in bruises. As Ms. Carpenter was placing the victim on the stretcher, she additionally noticed an adult-size handprint on her inner thigh and ligature marks on her neck that “looked very new.” Defendant came to the ambulance and Ms. Carpenter asked her to explain the bruises on the victim’s body. In response, Defendant “became kind of irritated and grabbed the top of the baby’s head and just started jerking it back and forth . . . asking . . . what bruises are you talking about[?]” Defendant’s reaction prompted Ms. Carpenter to tell Defendant to leave the ambulance.

On the way to the hospital, the victim continued to seize. She was inconsolable and her heart rate fluctuated between racing and slowing—a sign of traumatic brain injury. Finding that the victim was dehydrated, Ms. Carpenter was forced to drill an intraosseous needle into the victim’s femur when she was otherwise unable to place an IV in a vein.<sup>3</sup> After the procedure, the victim had such a violent seizure that she displaced the needle that was in her leg and her left pupil was blown out, indicating a herniation in the brain.

Pediatric radiologist Dr. Michael Steiner examined the victim upon her arrival at the Children’s Hospital at Erlanger. The victim immediately underwent lifesaving brain surgery. Dr. Steiner testified about scans performed on the victim while she was hospitalized. Dr. Steiner found that the victim was suffering from bilateral subdural hematomas, which were causing herniation of the brain. He explained that, based on the brightness of the blood visible in the scans of the victim’s head, the newest hematoma was caused between one and five days before she was admitted to the hospital. However, Dr. Steiner pointed out that the varying brightness of the blood could indicate that there were multiple instances of trauma up to three months before the instant emergency. He testified that he could “confidently say [the injuries were] not from birth trauma” and that the victim could not have caused her own hematomas through falling while walking, “unless it was from a very significant height.” In response to the State’s question of what caused the victim’s injuries to a “reasonable degree of medical certainty,” Dr. Steiner concluded that the hematomas were caused by “non-accidental abusive head trauma.”

Defendant arrived at the hospital after the victim’s transport. While there, Defendant was interviewed by Detective Marshall Hicks of the Bradley County Sheriff’s Department. The interview was recorded and made an exhibit at trial. In that interview, Defendant claimed that the victim had been walking in front of her in the kitchen when she tripped and fell. When Defendant went to check on her, she saw that the victim’s eyes had rolled back into her head and that she was unconscious. To revive the victim, Defendant

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<sup>3</sup> Ms. Carpenter further explained that an intraosseous needle is a last-ditch effort to medicate a patient via drilling into the bone marrow with a power tool when a vein is otherwise inaccessible.

stated that she ran water from the kitchen faucet over her head and hit the victim's back and buttocks. When the detective asked about the bruising on the victim's body, Defendant replied that she may have hit the victim harder than she realized and that "when [M.D.] lost consciousness, I kind of went crazy." Defendant further stated that the victim was "very unstable" and in the past had gone to bed without bruises but could bruise herself during the night.

Dr. John Heise, an expert in pediatric child abuse, testified that he examined the victim on May 28, 2019, in the pediatric intensive care unit. He testified that when the victim entered the hospital, she had a subdural hematoma causing her brain to be "kind of pushed out of the skull because there's so much pressure," in a manner that was "incompatible with life." Dr. Heise explained that there was no way the victim could have caused her own injuries, regardless of her unsteadiness on her feet or any alleged developmental delay. To cause this level of brain injury from a fall, the victim would have needed to fall from a second-story landing onto a hard surface, in which case her skull would have fractured. Dr. Heise concluded that the victim's bruising indicated physical abuse and that she was suffering from "sudden impact syndrome," which he agreed was commonly known as shaken baby syndrome. He stated that he knew "for a fact" that the victim was abused. Dr. Heise determined that, based on the "timing of the events and the sequence and the rapidity of it and the significance, the abuse probably occurred . . . hours to a couple of days from when" he examined her on May 28.

Defendant's husband, Novia Ilic, testified that he had observed physical and developmental issues with the victim shortly after her placement with Defendant. In Mr. Ilic's experience with raising two other daughters, he claimed the victim was "quite delayed." He found the victim to have an irregular head shape, unable to feed herself akin to his daughters at a like age, and to be behind on speaking and walking. In response to her perceived issues, Mr. Ilic said he and Defendant notified the victim's caseworker who helped the victim receive in-home services from speech, occupational, and physical therapists.

Ms. Fiedorkijevic testified similarly regarding the victim's developmental issues. Ms. Fiedorkijevic described the victim as "very sick," "totally deformed," and without the "strength to sit up" or walk on her own. She also claimed that the victim had difficulty eating and "did not know what a bottle of milk was."

Ms. Fiedorkijevic was the only other adult at the home when the victim was hospitalized. She said she had visited Defendant and the victim "many times" and on May 27, 2019, she arrived at Defendant's home around 10:15 a.m. Upon Ms. Fiedorkijevic's arrival, Defendant was giving the victim a bath and then placed the victim in her highchair to give her breakfast. She said Defendant left to bathe herself and came back shortly

thereafter to take the victim to dress her. At this time, Ms. Fiedorkijevic said she went to the home's entryway to put her shoes on and help Defendant's other children in doing so. Ms. Fiedorkijevic claimed that Defendant then came out of the room yelling that the victim was having a seizure. She said she saw Defendant holding the victim, who was foaming at the mouth and unconscious. When the victim did not awake, Ms. Fiedorkijevic stated that she and Defendant "slapped on her legs to wake her up." When the victim did not respond, Ms. Fiedorkijevic "told [Defendant] to put some cold water on her and [Defendant] did so, but at the time [Defendant] was already calling 911."

Defendant became a witness on her own behalf. According to Defendant, on the day the victim was hospitalized, Defendant and Ms. Fiedorkijevic were the only adults home with the victim, and Mr. Ilic was at work. Contrary to her mother's testimony, the older foster children were not home but in temporary "respite care" with another foster family. Ms. Fiedorkijevic arrived at Defendant's home at approximately 10:15 a.m., just a short time after the victim had woken up. Defendant described the victim as being "extra shaky" that morning and prone to "falling." Defendant claimed that after breakfast she and the victim were walking to the bedroom to get the baby dressed when the victim fell and became inconsolable. Defendant said that once they had continued into the upstairs bedroom, she turned to face the closet to pick out an outfit while the victim was behind her, and she heard a thump. Defendant said she did not turn around until a minute later and saw the victim lying flat on her back with her eyes rolled to the back of her head. Defendant claimed that she thought the victim was pretending to be limp. However, when Defendant began to pick the baby up, the victim fell forward limp, and Defendant realized the victim was ill. She said she ran to Ms. Fiedorkijevic for help while carrying the victim. Defendant testified that the victim was foaming at the mouth, so she began hitting the victim on the back to see if she was choking. Ms. Fiedorkijevic told Defendant to call 911 and to run cold water over the victim. Defendant testified that she did so. The 911 operator instructed Defendant to place the victim on the ground and when Defendant did, the victim regained consciousness after about a minute.

Finally, pediatric neurologist Dr. Joseph Scheller testified as an expert for Defendant. Dr. Scheller explained that as a twenty-month-old child, it was doubtful that the victim would suffer from shaken baby syndrome because of the increased development of the neck muscles and the difficulty of another person to generate enough force to violently shake a baby of her weight. He further testified that given the amount of the victim's bruising, it was less likely that she was a victim of abuse because those injuries would generally be accompanied by internal organ injuries and broken bones. Rather, Dr. Scheller said, some of the victim's bruising was likely caused by Defendant's panicked attempt to revive the victim, during the victim's seizures in the ambulance, or during surgery.

The trial court found Defendant guilty of aggravated child abuse, and as such, did not address the alternative count of aggravated child neglect. At a subsequent sentencing hearing, the court imposed a sentence of sixteen years and six months of imprisonment, to be served at a rate of 100 percent.<sup>4</sup>

## II. Analysis

### A. Standard of Review

On appeal, the Defendant asserts that the evidence is insufficient to support her conviction for aggravated child abuse. Specifically, she contends that the State failed to establish: (1) the victim's injuries were caused by abuse as opposed to the victim's underlying medical conditions or accident; (2) Defendant knowingly caused serious bodily injury to the victim; and (3) the identity of the perpetrator as Defendant.<sup>5</sup> The State responds that the evidence of the injuries to the victim was sufficient to prove that the Defendant was guilty of abuse of the victim. We agree with the State.

Our standard of review for a sufficiency of the evidence challenge is “whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (emphasis in original); *see also* Tenn. R. App. P. 13(e). Questions of fact, the credibility of witnesses, and weight of the evidence are resolved by the fact finder, and as such this court will not reweigh the evidence. *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997). This rule applies to findings of guilt based upon direct evidence, circumstantial evidence, or a combination of both direct and circumstantial evidence. *State v. Pendergrass*, 13 S.W.3d 389, 392-93 (Tenn. Crim. App. 1999) (citing *State v. Dykes*, 803 S.W.2d 250, 253 (Tenn. Crim. App. 1990)). Our standard of review in evaluating sufficiency of the evidence challenges “is the same whether the conviction is based upon direct or circumstantial evidence.” *State v. Dorantes*, 331 S.W.3d 370, 379 (Tenn. 2011) (quoting *State v. Hanson*, 279 S.W.3d 265, 275 (Tenn. 2009)) (internal quotation marks omitted).

A finding of guilt, whether by a jury or a trial judge, removes the presumption of innocence and replaces it with a presumption of guilt. *Bland*, 958 S.W.2d at 659; *see also State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982). On appeal, the defendant bears the burden of proving why the evidence was insufficient to support the conviction *Id.* On appeal, the “State must be afforded the strongest legitimate view of the evidence and all

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<sup>4</sup> Defendant raises no sentencing issues on appeal.

<sup>5</sup> We have reordered Defendant's issues for clarity.

reasonable inferences that may be drawn therefrom.” *State v. Vasques*, 221 S.W.3d 514, 521 (Tenn. 2007).

### B. Aggravated Child Abuse

As charged in this case, “[a] person commits the offense of aggravated child abuse . . . who commits child abuse, as defined in § 39-15-401(a) . . . and: (1) The act of abuse . . . results in serious bodily injury to the child.” Tenn. Code Ann. § 39-15-402(a)(1). Child abuse occurs when “[a]ny person . . . knowingly, other than by accidental means, treats a child under eighteen (18) years of age in such a manner as to inflict injury.” Tenn. Code Ann. § 39-15-401(a). Serious bodily injury means bodily injury that involves:

- (A) A substantial risk of death;
- (B) Protracted unconsciousness;
- (C) Extreme physical pain;
- (D) Protracted or obvious disfigurement;
- (E) Protracted loss or substantial impairment of a function of a bodily member, organ or mental faculty; or
- (F) A broken bone of a child who is twelve (12) years of age or less[.]

Tenn. Code Ann. § 39-11-106(a)(36)(2019).

“[A] defendant’s mental state is rarely subject to proof by direct evidence[.]” *State v. Brown*, 311 S.W.3d 422, 432 (Tenn. 2010) (citing *State v. Inlow*, 52 S.W.3d 101, 105 (Tenn. Crim. App. 2000)). “[I]t is within the authority of the [factfinder] to infer the defendant’s intent, and, therefore, whether the defendant acted ‘knowingly,’ ‘from surrounding facts and circumstances.’” *Brown*, 311 S.W.3d at 432 (first quoting *State v. Lowery*, 667 S.W.2d 52, 57 (Tenn. 1984); and then citing *Inlow*, 52 S.W.3d at 105).

In addition to proving the statutory elements of any crime, “[t]he State has the burden of proving the identity of the defendant as the perpetrator beyond a reasonable doubt.” *State v. Coyne*, No. E2020-01655-CCA-R3-CD, 2022 WL 414355, at \*13 (Tenn. Crim. App. Feb. 11, 2022), *perm. app. denied*. (Tenn. June 9, 2022). Indeed, the “[i]dentity of the perpetrator is an essential element of any crime.” *State v. McLawhorn*, 636 S.W.3d 210, 237 (Tenn. Crim. App. 2020) (citation and internal quotation marks omitted). As with other elements, “[i]dentity may be established by circumstantial evidence alone.” *State v. Miller*, 638 S.W.3d 136, 158 (Tenn. 2021), *perm. app. denied* (Oct. 3, 2022); *State v. Lewter*, 313 S.W.3d 745, 748 (Tenn. 2010) (“The identity of the perpetrator is an essential element of all crimes and may be established solely on the basis of circumstantial evidence.”).

Here, the evidence supports that aggravated child abuse occurred rather than an accident. Ms. Garrod saw the victim's entire body at the nursery school the day before the events, and the child had no injuries. When the paramedic got to the home the next day, the child was covered in bruises. The paramedic said that the victim's clothes were "neatly placed," which was incompatible with an accident. At the hospital, the victim was diagnosed with two subdural hematomas, including one that "was incompatible with life." Dr. Heise said there was no way the victim could have caused her own injuries, despite the victim's difficulties walking and developmental delays, saying he knew "for a fact" the baby was abused. Dr. Steiner stated the victim's head injuries could not have been caused by birth trauma and that the victim could not have caused her hematomas through falling while walking. Both Dr. Heise and Dr. Steiner testified that the severity of these injuries was akin to falling from a significant height and required life-saving surgery. Significantly though, the victim did not have a fractured skull that would usually accompany such a fall. As a result, the two doctors who examined the victim in the hospital concluded that the victim suffered from shaken baby syndrome. In their opinions, the victim was abused within a few days of her hospital visit. To the extent that Dr. Scheller offered a different opinion as to what could have caused the victim's injuries, the trial court was free to reject Dr. Scheller's testimony. This was the factfinder's prerogative, and we will not disturb the trial court's findings on this issue. *See Bland*, 958 S.W.2d at 659.

The trial court, as the factfinder, was also free to accept that the medical evidence supported abuse rather than injuries the victim sustained during resuscitation attempts and medical treatment. *See State v. Lovin*, No. E2002-01231-CCA-R3-CD, 2003 WL 22462532, at \*6 (Tenn. Crim. App., Oct. 31, 2003) (concluding that the evidence was sufficient to sustain a felony murder by aggravated child abuse conviction when the medical evidence showed that victim died from head injuries resulting from violent shaking and internal bleeding due to blunt force trauma; and the jury rejected defendant's claim that he had only gently shaken victim's leg). Further, the differences between Defendant's statements immediately after the event and her trial testimony weigh against any accident. In Defendant's initial statements to the paramedic and the detective, Defendant claimed that the victim was running in front of her in the kitchen when she tripped and began seizing. At trial, Defendant said the victim was following behind her in an upstairs bedroom when she heard a thump and turned around to find the victim on the ground. These inconsistent accounts of how the victim's injuries occurred detracted from her credibility. *See State v. Hurtado*, No. M2014-00180-CCA-R3-CD, 2014 WL 7417763, at \*29 (Tenn. Crim. App., Dec. 30, 2014). In *Hurtado*, the defendant's credibility was called into question when she gave multiple, inconsistent accounts for the causes of the child abuse victim's injuries. Factfinders "are tasked with assessing the credibility of trial witnesses and are generally free to reject, in whole or in part, the testimony of any witnesses. As often stated, it is the province of the [factfinder] to assess the credibility of



the witnesses, weigh the evidence, and resolve disputed issues of fact.” *Id.* (citing *State v. Leach*, 148 S.W.3d 42, 53 (Tenn. 2004)).

Much of the same evidence supports that Defendant acted knowingly in injuring the victim. Defendant admitted that she had struck the victim, stating she had gone “crazy” and may have hit the victim harder than she realized. Additionally, Defendant’s unusual reaction to the paramedic’s questioning supports the State’s case, especially when Defendant “grabbed the top of the baby’s head and just started jerking it back and forth.” Also, the expert testimony as to the timing and significance of the victim’s injuries support the trial court’s verdict. *See State v. Huse*, No. M2019-02087-CCA-R3-CD, 2021 WL 1100758, at \*13 (Tenn. Crim. App. Feb. 10, 2021) (evidence was sufficient to sustain aggravated child abuse conviction where an expert testified that it was impossible that the victim’s injuries occurred while he was a patient at the hospital, that he died within minutes to a couple of hours of receiving his injuries, and two experts testified that the injuries were non-accidental); *see also State v. Maze*, No. M2004-02091-CCA-R3-CD, 2006 WL 1132083, at \*15 (Tenn. Crim. App. Apr. 28, 2006) (in a shaken baby case, “[i]ntent is seldom proved by direct evidence and may therefore be deduced by the trier of fact from the nature and character of the offense and from all of the circumstances surrounding the offense.”) *perm. app. denied* (Tenn. Aug 28, 2006). All of the surrounding facts and circumstances of the offense support the trial court’s verdict.

Additionally, as to Defendant’s argument that the evidence was insufficient to show “her identity as the perpetrator,” we respectfully disagree. Defendant’s statements and testimony placed her in control of the victim immediately before the victim was hospitalized. Defendant admitted that she and Ms. Fiedorkijevic were the only adults at the home when they called 911. Ms. Fiedorkijevic said the same thing, and both said Defendant, not Ms. Fiedorkijevic, was alone with the victim when she seized. The evidence that Defendant was the only one with the victim when the injuries occurred supports that Defendant was the perpetrator of the abuse. *See State v. Williams*, No. E2004-00355-CCA-R3-CD, 2005 WL 941021, at \*10 (Tenn. Crim. App., Apr. 22, 2005) (evidence showed the defendant was the only person with the victim before she was admitted to hospital with severe brain injuries, that defendant admitted he “jerked” or “yanked” the victim up, and that the only medical explanation was that the child had been shaken), *perm. app. denied* (Tenn. Oct. 24, 2005). The victim was under Defendant’s care and appeared uninjured the day before her hospitalization. This evidence is sufficient because the identity of the perpetrator “may be established solely on the basis of circumstantial evidence.” *Lewter*, 313 S.W.3d at 748.

### III. Conclusion

Viewed in the light most favorable to the State, we conclude that the evidence was sufficient to support Defendant's conviction for aggravated child abuse. Based on the foregoing reasoning and authorities, we affirm the judgment of the trial court.

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MATTHEW J. WILSON, JUDGE