



In the Missouri Court of Appeals Eastern District

DIVISION IV

STATE OF MISSOURI,)	No. ED97595
)	
Respondent,)	Appeal from the Circuit Court
)	of St. Louis County
vs.)	
)	Honorable Colleen Dolan
SHARNIQUE N. JONES,)	
)	
Appellant.)	FILED: October 2, 2012

Introduction

Sharnique Jones (“Jones”) appeals from the trial court judgment following her conviction by a jury of second-degree murder, second-degree assault, and endangering the welfare of a child. Jones argues on appeal that the trial court erred in overruling her motion for judgment of acquittal because there exists insufficient evidence to support the offenses for which she was convicted. Jones also contends that the trial court committed plain error in admitting Jones’s statement into evidence. Because the trial court committed plain error in admitting evidence of Jones’s statement without establishing *corpus delicti*, we reverse and remand the judgment to the trial court with regard to the conviction for second-degree murder. We affirm the judgment of the trial court in all other respects.

Factual and Procedural History

Viewed in the light most favorable to the verdict, the evidence at trial established the following. Jones gave birth to her daughter Shaquir on January 3, 2008. Between January 3 and April 7, 2008, Jones brought Shaquir to the hospital 13 times for a variety of health concerns. Medical staff generally described Shaquir as apparently healthy and counseled Jones regarding proper feeding, safe-sleeping positions, and community resources for new mothers. On April 7, 2008, Jones became “overwhelmed” and “frustrated” because Shaquir would not stop crying. Jones placed Shaquir facedown on a pillow and left the room with the intention of committing suicide. Jones changed her mind about attempting suicide when several family members arrived. When Jones returned to the bedroom 15 to 20 minutes after leaving, Shaquir was still facedown on the pillow and was not breathing. Jones called 911, but first responders were not able to resuscitate Shaquir.

Jones gave birth to her son Demond on January 18, 2009. Two days later, Jones brought Demond to the hospital reporting that he was jaundiced. The hospital admitted Demond for malnutrition and marginal dehydration and began a feeding program. Demond ate appropriately during his stay at the hospital. Jones became upset with the hospital feeding program for Demond, accused hospital staff of trying to force-feed Demond, and checked him out of the hospital against medical advice. Hospital staff provided Jones with instructions on proper feeding. Three days later, Jones admitted Demond to the hospital again after reporting that he had stopped breathing and had turned blue. Jones later admitted that she had been watching television with Demond facedown in her lap and had stopped paying attention to him. Jones stated that when she returned her attention to Demond, his face was pressed into a burp rag and

he was not breathing. The hospital referred the matter to Children's Division, which took protective custody of Demond.

Detective Harolton Clayborn ("Det. Clayborn") of the St. Louis County Police Department was assigned to investigate a possible neglect case regarding Demond. Det. Clayborn contacted Jones, who agreed to come to police headquarters to answer questions about Demond. Jones was placed in an interview room where she signed a Miranda rights warning and waiver form. Jones told Det. Clayborn that she had missed several feedings with Demond and that she felt that the hospital had attempted to force-feed Demond. Jones also brought up Shaquir's death. After Det. Clayborn expressed skepticism about the cause of Shaquir's death, Jones confessed that she had become frustrated with Shaquir's crying, and had placed her facedown on a pillow. Jones said she left Shaquir unattended for 15 to 20 minutes, after which she discovered Shaquir had stopped breathing.

Jones was charged with the second-degree murder of Shaquir, first-degree assault against Demond, and endangering the welfare of a child related to Demond. After a trial, a jury found Jones guilty of second-degree murder, second-degree assault, and first-degree endangering the welfare of a child. This appeal follows.

Points on Appeal

In her first point on appeal, Jones argues that the trial court erred in denying her motion of acquittal on the charge of second-degree murder because insufficient evidence exists in the record that Jones acted with the knowledge that her conduct would result in Shaquir's death. In her second point on appeal, Jones contends that the trial court erred in denying her motion of acquittal on the charge of endangering the welfare of a child because insufficient evidence exists that she acted with the knowledge that her actions would create a substantial risk to Demond's

life. In her third point on appeal, Jones asserts that the trial court erred in denying her motion of acquittal on the charge of second-degree assault because insufficient evidence exists that she acted recklessly toward Demond. In her final point on appeal, Jones avers that the trial court plainly erred in admitting her out-of-court statement regarding Shaquir's death.

Standards of Review

In examining the sufficiency of evidence, we are limited to a determination of whether there is sufficient evidence from which a reasonable jury could have found the defendant guilty beyond a reasonable doubt. State v. Chaney, 967 S.W.2d 47, 52 (Mo. banc 1998), citing Jackson v. Virginia, 443 U.S. 307, 319 (1979). The appellate court may not act as a "super juror" with veto power. Id. Rather, the reviewing court gives great deference to the trier of fact and accepts as true all of the evidence favorable to the State, including favorable inferences drawn from the evidence, and disregards all evidence and inferences to the contrary. Id. We will affirm the trial court's judgment if, upon viewing the evidence and inferences in favor of the verdict, there is sufficient evidence from which a reasonable jury could have found the defendant guilty on each element of the charge beyond a reasonable doubt. Id.

We review plain error under Rule 30.20,¹ and we will affirm unless we find that the trial court committed an error that caused manifest injustice or a miscarriage of justice. Rule 30.20. Under plain error review, the movant must demonstrate that the trial court committed an error that is "evident, obvious, and clear" and that such error resulted in a "manifest injustice or miscarriage of justice." State v. Roper, 136 S.W.3d 891, 900 (Mo. App. W.D. 2004). If the movant has carried the burden of producing an error that facially produced manifest injustice or a miscarriage of justice, we will consider whether the claimed error did in fact cause manifest

¹ All rule references are to Mo. R. Crim. P. 2011.

injustice or a miscarriage of justice. State v. Baumruk, 280 S.W.3d 600, 607-08 (Mo. banc 2009).

Discussion

We will first address the points on appeal out of order as our resolution of Point Four eliminates our need to address the arguments raised by Jones in Point One.

I. The trial court plainly erred admitting Jones’s out-of-court statement.

In Point Four on appeal, Jones argues that the trial court erred when it admitted evidence of Jones’s out-of-court statement regarding the second-degree murder of Shaquir without proof of *corpus delicti*. Jones acknowledges that her final point may be reviewed only for plain error because she did not raise this objection at trial.

We review for plain error under Rule 30.20 and will affirm unless we find that the trial court committed an error which caused manifest injustice or a miscarriage of justice. Rule 30.20. Under plain error review, the movant must demonstrate that the trial court committed an error that is “evident, obvious, and clear” and that such error resulted in a “manifest injustice or miscarriage of justice.” State v. Roper, 136 S.W.3d 891, 900 (Mo. App. W.D. 2004). If the movant has carried the burden of producing an error that facially produced manifest injustice or a miscarriage of justice, we will consider whether the claimed error did in fact cause manifest injustice or a miscarriage of justice. State v. Baumruk, 280 S.W.3d 600, 607-08 (Mo. banc 2009).

The rule of *corpus delicti* bars the admission of extrajudicial confessions by a defendant absent independent proof of the commission of an offense. State v. Madorie, 156 S.W.3d 351, 355 (Mo. banc 2005). *Corpus delicti* prevents the admission of confessions where there is an absence of even slight facts tending to support the confession. Id. The existence of independent

facts tending to establish the defendant's guilt are not required to be presented prior to the admission of evidence of the defendant's confession to the underlying crime. Id. In a homicide case, the *corpus delicti* requires proof of the death of the victim and evidence that the criminal agency of another person caused the death. State v. Hayes, 347 S.W.3d 676, 681 (Mo. App. E.D. 2011).

Jones contends that the trial court erred when it admitted her statement into evidence because her statement was the only evidence at trial that Shaquir's death resulted from criminal agency. We agree.

We acknowledge that the amount of corroborating evidence allowing the admission of an out-of-court statement may be minimal. "[I]f a confession is made which permits the State to discover corroborating evidence of the particular crime confessed, the corroborating evidence does not need to be sufficient, independent of the confession, to establish complete proof that the crime has been committed." State v. Warren, 141 S.W.3d 478, 490 (Mo. App. E.D. 2004), citing State v. Goodwin, 352 S.W.2d 614, 621 (Mo. banc 1962). Moreover, "[i]f there is evidence of corroborating circumstances independent of the confession, which tends to prove the offense by confirming matters related in the confession, both the corroborating circumstances and the confession may be considered in determining whether or not the *corpus delicti* has been established." State v. Sardeson, 220 S.W.3d 458, 470-71 (Mo. App. S.D. 2007), citing State v. Daggett, 170 S.W.3d 43-44 (Mo. App. S.D. 2005). Following this guidance, we turn to the facts presented by the record.

Here, Chief of Police Ricky Collins (Chief Collins) was the first person to respond to Jones's home after she dialed 911. Chief Collins found Shaquir laying on an adult bed near pillows and not breathing. Chief Collins did not testify that Shaquir was laying facedown in the

pillows. Chief Collins could not recall Shaquir's position on the bed when he first saw her. The only evidence provided by Chief Collins that may be considered suggestive that Shaquir's death was the result of criminal agency is his testimony that he referred the case to the St. Louis County Police Department for further criminal investigation because Jones's behavior at the time of Shaquir's death was suspicious.

At trial, pathologist Doctor Michael Graham (Dr. Graham) testified as to Shaquir's cause of death. Dr. Graham testified that he initially determined Shaquir's cause of death to have been the result of a seizure disorder. However, following Jones's statement, he changed the cause of death to suffocation. Dr. Graham testified that Jones's statement provided context to the circumstances of Shaquir's death, which changed his conclusion as to the cause of death. Dr. Graham also testified that his conclusion arose from the facts that seizure disorders are rarely fatal and suffocation was consistent with the other medical evidence. Notably, Dr. Graham did not conduct any additional medical tests or discover any evidence beyond Jones's statement that caused him to change his opinion of Shaquir's cause of death.

In State v. Sardeson, the Southern District addressed the issue of *corpus delicti* under similar circumstances. 220 S.W.3d 458 (Mo. App. S.D. 2007). In Sardeson, the defendant confessed that on the night in question he had become angry with his five-month-old son as his son was crying on his bed. Id. at 463. The defendant testified that he then pressed his elbow into his son's back and neck, pressing the child facedown into the bedding until the child suffocated. Id. An autopsy revealed injuries to the child's face, skull, and ribs which were consistent with the defendant's statement. Id. at 462. On appeal, the defendant challenged the admissibility of his statement on grounds that the State had failed to establish *corpus delicti*. Rejecting the defendant's argument, the court explained:

The record reveals the following facts confirming that Victim died in the manner related in Defendant's statement: the medical examiner testified that Victim died from asphyxiation; Defendant was present when Victim died; there was a history of Victim suffering from physical abuse; there were three fresh bruises on Victim's back; Victim suffered a rib fracture near the time of his death; and Victim had internal hemorrhaging beneath the connective tissue of his chest cavity. Considering the corroborating circumstances together with Defendant's confession, we find that the State met its burden in establishing the *corpus delicti* of homicide.

Id. at 471.

Here, not only is there lacking the type of corroborating evidence present in Sardeson, but we find in the record no independent evidence to corroborate the facts admitted by Jones in her statement. Chief Collins's testimony only establishes that Shaquir was discovered on a bed and that Jones was in the house at the time. Unlike Sardeson, the record contains no medical evidence or testimony of any injury to Shaquir that independently corroborates Jones's statement as to the manner of death. The only evidence in the record that could be considered corroborating evidence is the testimony of Dr. Graham as to Shaquir's cause of death. Had Dr. Graham initially found Shaquir's cause of death to be suffocation, our inquiry would likely end. But he did not. Although Dr. Graham testified at trial that the cause of death was suffocation, the record is equally clear that Dr. Graham initially concluded that Shaquir died from a seizure disorder. Dr. Graham's later revised opinion as to cause of death was directly attributed to Jones's statement and, importantly, was not based on other medical evidence. The record does not point to any subsequently discovered medical evidence, or even Dr. Graham's review of prior medical records, which could serve as adequate corroboration of criminal agency. The evidence before us leaves but one inescapable conclusion: that without Jones's statement, the cause of Shaquir's death would have remained listed as seizure disorder. Without independent evidence tending to prove that Shaquir's death was the result of criminal agency, the State failed

to establish *corpus delicti*. Accordingly, the trial court erred in admitting Jones's testimony. See Madorie, 156 S.W.3d at 355.

To reverse under plain error review, we must also find that the trial court's error resulted in manifest injustice or a miscarriage of justice. Baumruk, 280 S.W.3d at 607-08. Here, the erroneous admission of Jones's statement was sufficiently prejudicial to create manifest injustice. As already described, Jones's statement provided the overwhelming majority of the evidence against Jones on the charges of first-degree and second-degree murder of Shaquir. Absent the statement, the jury would have heard evidence that Chief Collins found Shaquir laying on a bed not breathing, that Jones was present, and that Chief Collins believed that Jones had acted suspiciously. The jury also would have heard evidence that Dr. Graham found the cause of death to be suffocation, but had previously determined the cause of death to be seizure disorder. Without Jones's statement, it is highly questionable that Jones would have been convicted of second degree murder. Because the erroneously admitted statement significantly strengthened the State's case against Jones, the admission of Jones's statement created manifest injustice sufficient to find the presence of plain error. We therefore reverse the judgment of the trial court entering conviction against Jones for the second-degree murder of Shaquir and remand this matter for trial. Point granted. Because we reverse Jones's conviction on the grounds set forth in Point Four of her appeal, we do not address the issues raised by Jones in Point One.

II. The record contains sufficient evidence to support the convictions for first-degree endangering the welfare of a child and second-degree assault.

A. First-degree endangering the welfare of a child

In her second point on appeal, Jones argues that insufficient evidence exists to support her conviction of endangering the welfare of her child Demond because the record lacks sufficient evidence of intent.

The offense of first-degree endangering the welfare of a child occurs if the accused “knowingly acts in a manner that creates a substantial risk to the life, body, or health of a child less than seventeen years old.” Section 568.045². In determining whether the accused knowingly created a substantial risk to the life, body, or health of the child, this Court examines the totality of the circumstances. State v. Burrell, 160 S.W.3d 798, 802 (Mo. banc 2005). The knowledge or intent of the accused may be proven by direct evidence and reasonable inferences drawn from the circumstances surrounding the incident. Id.

The evidence in this case is sufficient for a reasonable jury to find that Jones knew that she created a substantial risk to Demond when she neglected to feed him. On January 24, Jones removed Demond from hospital care against medical advice after he had been admitted earlier for malnutrition. Jones signed a form stating that Demond’s discharge subjected him to a risk of “[d]ehydration, starvation, neurologic disorders, or death.” Doctor Kondis testified that Jones was educated about the importance of proper feeding. Doctor Robert Paschall also testified that hospital staff counseled Jones regarding proper feeding, but that Jones reacted with hostility toward them. Lasissa Zguta, a licensed clinical social worker who was referred to Jones, testified that she and a variety of medical staff expressed concerns directly to Jones that she was underfeeding Demond. Despite these warnings, Jones missed six feedings between January 19 and 20, and five feedings between January 25 and 26. We find this evidence is sufficient for a reasonable jury to conclude that Jones understood the importance of regular feedings, and was aware that neglecting to feed Demond during the time frame in question created a substantial risk to his life and health. Point denied.

² All statutory references are to RSMo. Cum. Supp. (2009)

B. Second-degree assault

In her third point on appeal, Jones contends that the record contains insufficient evidence to support her conviction of second-degree assault of Demond. Again, Jones argues that the record contains insufficient evidence of the requisite intent. A conviction of second-degree assault requires that the accused act recklessly with a conscious disregard for a substantial and unjustified risk, which constitutes a gross deviation from the standard of care that a reasonable person would have exercised in the same situation. Section 562.016.4

After reviewing the record, we find that sufficient evidence was presented at trial allowing a jury to find beyond a reasonable doubt that Jones acted with the intent required to establish second-degree assault. Although the State prosecuted Jones for first-degree assault on the theory that Jones knowingly and non-fatally suffocated Demond, the jury was also instructed on the lesser-included offense of second-degree assault, which required the jury to find that Jones had acted recklessly when she non-fatally suffocated Demond. Det. Clayborn testified that Jones told him that she had placed Demond facedown in her lap, and that Jones said that she stopped paying attention to Demond while watching television. Det. Clayton further testified that Jones had confessed that when she turned her attention back to Demond, he was facedown in the burp rag, not breathing, and that his face had turned blue. The State also produced expert medical testimony through Doctor Janice Ophoven that a child who was suffocating would not change colors until the child's breathing was restricted for at least a minute or longer. Construing all inferences favorably to the verdict, the record contains sufficient evidence from which a jury could reasonably find that Jones acted recklessly when she placed her few-week-old infant facedown in a burp rag, and left that child unattended long enough for the child to stop breathing and turn blue. Point denied.

Conclusion

With regard to the count of murder in the second degree, because the trial court erred in admitting Jones's statement into evidence without the required proof of *corpus delicti*, we reverse that portion of the judgment of the trial court and remand that matter for trial. Finding no other error, the judgment of the trial court is affirmed in all other respects.


Kurt S. Odenwald, Judge

Lawrence E. Mooney, J., Concur
Patricia L. Cohen, J., Concur