

## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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Joseph Jerral Adkins,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

December 27, 2022

Court of Appeals Case No.  
22A-CR-1317

Appeal from the Tippecanoe  
Circuit Court

The Honorable Sean M. Persin,  
Judge

Trial Court Cause No.  
79C01-2009-F6-1003

**Brown, Judge.**

[1] Joseph Jerral Adkins appeals his conviction for neglect of a dependent and asserts that the trial court erred in admitting a photograph and that the evidence was insufficient to sustain his conviction. We affirm.

### *Facts and Procedural History*

[2] On June 15, 2020, Officers Samuel Gawaluck and Matthew Santerre of the Lafayette Police Department received a request for a well-being check on a male reported to be sitting on the sidewalk or street with a baby in his lap. Upon arriving at the scene, they found Adkins seated on the curb in front of a neighbor's house with his legs extended into the roadway and his arms behind him. He had a crying infant in his lap, later identified to be his three-month-old daughter, A.S., whom Officer Santerre picked up and returned to her mother after locating her at a house down the street. Adkins initially appeared to be "falling asleep," and when he began speaking to the officers, "he was a little incoherent." Transcript Volume II at 72. He wore shorts but no shirt, stated that he was tired from working all day and had been trying to coax the baby to fall asleep, and could not tell Officer Gawaluck the address at which he lived because "everything looks the same." State's Exhibit No. 2 at 1:55-2:00. Adkins continued to appear to be almost falling asleep or swaying and losing focus throughout his discussion with Officer Gawaluck. The officers arrested Adkins and transported him to the hospital, where he was evaluated prior to being transported to jail. During the evaluation, Adkins occasionally lost focus, appeared to almost fall asleep, and had to be asked questions multiple times.

- [3] On September 28, 2020, Adkins was charged with Count I, neglect of a dependent as a level 6 felony; and Count II, public intoxication as a class B misdemeanor.
- [4] On April 12, 2022, the court held a jury trial at which Officer Gawaluck and Officer Santerre testified. According to Officer Santerre, when he first approached Adkins, “he was sort of rocked back,” and A.S.’s leg was partially underneath his leg “appearing to be crushed by [Adkins’s] leg.” Transcript Volume II at 93. He testified that the infant appeared to be in pain or uncomfortable. The court admitted, and the jury viewed, video recordings taken from Officer Santerre’s body camera labeled as State’s Exhibit Nos. 3 and 4 and a video recording taken from Officer Gawaluck’s body camera labeled as State’s Exhibit No. 2. Over Adkins’s counsel’s objection, the court admitted and published State’s Exhibit No. 1, which was a photograph or still image taken from State’s Exhibit No. 3. Officer Santerre testified that Adkins had slowed and slurred speech, moved slowly, and appeared off balance as if he might fall backward and that they took him to the hospital because “[w]hen individuals are impaired on substances . . . it’s jail policy that they be cleared . . . .” *Id.* at 101. Officer Santerre stated that, while hospital staff questioned Adkins, he told a nurse that he had possibly used oxycodone earlier that day or the previous day, he had to be repeatedly asked questions, and “[w]hen he would answer, he would answer the previous question that had already been asked and then he would have [to] be re-directed again.” *Id.* at 102. Pursuant

to the prosecution's request, the court provided State's Exhibit No. 1 to the jury during its deliberations.

- [5] The jury found Adkins guilty of neglect of a dependent as a level 6 felony and not guilty of public intoxication. The court sentenced Adkins to the Indiana Department of Correction for one and one-half years.

### *Discussion*

#### I.

- [6] The first issue is whether the trial court erred in admitting the photograph labeled as State's Exhibit No. 1. Adkins argues the photograph was unfairly prejudicial and that the court erred by permitting the jury to have the exhibit with it while deliberating.
- [7] The admission of photographic evidence is within the sound discretion of the trial court, and we review the admission of photographic evidence only for abuse of discretion. *Helsley v. State*, 809 N.E.2d 292, 296 (Ind. 2004) (citing *Corbett v. State*, 764 N.E.2d 622, 627 (Ind. 2002)). Photographs, as with all relevant evidence, may be excluded only if their probative value is substantially outweighed by the danger of unfair prejudice. *Id.* (citing Ind. Evidence Rule 403; *Corbett*, 764 N.E.2d at 627). Admission of cumulative evidence alone is insufficient to warrant a new trial. *Id.* An appellant must establish that the probative value of the evidence was outweighed by the unfair prejudice flowing from it. *Id.* "Photographs, even those gruesome in nature, are admissible if they act as interpretative aids for the jury and have strong probative value."

*Corbett*, 764 N.E.2d at 627. Evaluating whether an exhibit’s probative value is substantially outweighed by the danger of unfair prejudice is a discretionary task best performed by the trial court. *Helsley*, 809 N.E.2d at 296.

[8] Evidence is relevant if “it has any tendency to make a fact more or less probable than it would be without the evidence,” and “the fact is of consequence in determining the action.” Ind. Evidence Rule 401. Relevant evidence can be excluded “if its probative value is substantially outweighed” by the danger of unfair prejudice. Ind. Evidence Rule 403.

[9] The record reveals that the photograph depicted A.S.’s position under Adkins’s leg, her appearance suggesting that she was crying, and her position relative to Adkins, the curb, and the street. The photograph is a still image of one of the few moments in the recording in State’s Exhibit No. 3 depicting the interaction between Adkins and his child. Even if the photograph shows Adkins in an unfavorable light, we cannot say that it was not relevant to whether Adkins committed neglect of a dependent or that its probative value was substantially outweighed by the danger of unfair prejudice. *See Rice v. State*, 916 N.E.2d 962, 966-967 (Ind. Ct. App. 2009) (holding the court did not abuse its discretion in admitting autopsy photographs which could have helped the jury understand the testimony and sort out the issues). Further, the trial court admitted the body camera recordings without objection as State’s Exhibits Nos. 2 through 4, and those videos showed the entire encounter between the officers and Adkins. These recordings, which last more than fourteen minutes, show Adkins continually swaying back and forth, answering the wrong questions, losing his

train of thought, and struggling to stay awake. The officers testified as to their interactions with Adkins, and Officer Santerre’s testimony included a detailed description of Adkins’s position, how one of his legs partially covered A.S., her distress or discomfort, and Adkins’s behavior and appearance. Under these circumstances, we cannot say that the trial court abused its discretion in admitting the photograph.

[10] To the extent Adkins asserts that the trial court erred in providing the photograph to the jury during its deliberations, the Indiana Supreme Court has held that “the trial court should consider three factors in deciding whether to permit the jury to take a copy of the exhibits into the jury room,” which include: whether the material will aid the jury in a proper consideration of the case; whether any party will be unduly prejudiced by submission of the material; and whether the material may be subjected to improper use by the jury. *Thacker v. State*, 709 N.E.2d 3, 7 (Ind. 1999) (citing *Robinson v. State*, 699 N.E.2d 1146, 1150 (Ind. 1998)), *reh’g denied*. Also, the Court has held, in the context of the admission of photographs, that a defendant is not entitled to a sanitized presentation of the evidence. *See Reaves v. State*, 586 N.E.2d 847, 859 (Ind. 1992) (citing *Shelton v. State*, 490 N.E.2d 738, 743 (Ind. 1986)).

[11] As noted, the photograph was relevant to a determination of guilt. As to whether Adkins was unduly prejudiced by the submission of the photograph, the jury was already exposed to the body camera recordings of the interaction as well as the officers’ testimony regarding their interaction with Adkins. While Adkins argues that the photograph “would be subjected to improper use by the

jury as it was the only exhibit sent back” and “highlights one specific fraction of time,” Appellant’s Brief at 13, the court instructed the jury as follows: “You are the exclusive judges of the evidence, which may be either witness testimony or exhibits. In considering the evidence, it is your duty to decide the value you give to the exhibits you receive and the testimony you hear.” Appellant’s Appendix Volume II at 99. Considering the evidence as a whole and all information given to the jury, we are not persuaded the jury was unduly prejudiced by the court’s decision to make State’s Exhibit No. 1 available in the jury room.

## II.

[12] The next issue is whether the evidence is sufficient to sustain Adkins’s conviction for neglect of a dependent. When reviewing claims of insufficiency of the evidence, we do not reweigh the evidence or judge the credibility of witnesses. *Jordan v. State*, 656 N.E.2d 816, 817 (Ind. 1995), *reh’g denied*. We look to the evidence and the reasonable inferences therefrom that support the verdict. *Id.* The conviction will be affirmed if there exists evidence of probative value from which a reasonable jury could find the defendant guilty beyond a reasonable doubt. *Id.* It is well established that “circumstantial evidence will be deemed sufficient if inferences may reasonably be drawn that enable the trier of fact to find the defendant guilty beyond a reasonable doubt.” *Pratt v. State*, 744 N.E.2d 434, 437 (Ind. 2001).

[13] Ind. Code § 35-46-1-4(a) provides:

(a) A person having the care of a dependent, whether assumed voluntarily or because of a legal obligation, who knowingly or intentionally:

(1) places the dependent in a situation that endangers the dependent's life or health;

\* \* \* \* \*

commits neglect of a dependent, a Level 6 felony.

[14] The record reveals that, upon arriving at the scene, officers found Adkins seated on the curb with his legs extended into the roadway and his arms behind him. Officer Gawaluck “could hear the baby crying as [he] was walking up,” Adkins’s “legs were out in the street,” “one of the infant[']s legs was underneath his leg appearing to be crushed by [Adkins’s] leg,” Officer Santerre believed “the baby was in pain or uncomfortable,” Adkins “seemed unstable as if he might fall backwards,” “[h]is motor movements were slow, his speech was slurred,” and he appeared to be “impaired on substances.” Transcript Volume II at 72, 80, 101. Adkins could not initially indicate where he lived or remember his address. While at the hospital, Officer Santerre observed Adkins struggle to answer basic questions, he “had to be asked the same question over and over multiple times,” and he indicated to a nurse that he had used oxycodone. *Id.* at 102. Based upon the record, we conclude that evidence of



probative value was admitted from which a reasonable jury could find beyond a reasonable doubt that Adkins committed neglect of a dependent.<sup>1</sup>

[15] For the foregoing reasons, we affirm Adkins's conviction.

[16] Affirmed.

Altice, J., and Tavitas, J., concur.

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<sup>1</sup> To the extent Adkins argues the jury returned inconsistent verdicts, we note the Indiana Supreme Court has acknowledged this is one possible interpretation of such verdicts. *See Beattie v. State*, 924 N.E.2d 643, 648 (Ind. 2010) (“When a jury returns logically inconsistent verdicts, such a result could mean that it misunderstood its instructions.”). However, even if the verdicts were inconsistent, the jury was allowed to exercise lenity. *See id.* (noting “it is more likely that the jury chose to exercise lenity, refusing to find the defendant guilty of one or more additionally charged offenses, even if such charges were adequately proven by the evidence. Such right of a criminal jury to decline to convict is well recognized”).