MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Alyson Stephen,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

September 15, 2023

Court of Appeals Case No. 22A-CR-02392

Appeal from the Madison Circuit Court 1

The Honorable Angela W. Sims, Judge

Trial Court Cause No. 48C01-1905-MR-001122

Memorandum Decision by Judge Paul A. Felix
Judges Crone and Brown concur.

Felix, Judge.

Statement of the Case

[1] On August 18, 2022, a jury convicted Alyson Stephen ("Stephen") of neglect of a dependent resulting in death, a Level 1 Felony. The trial court sentenced Stephen to a total of 35 years. Stephen now appeals her conviction and presents two issues for our review, which we restate as follows:

1. Whether the evidence presented at trial was sufficient to support Stephen's conviction.
2. Whether admission of testimony regarding Stephen's demeanor during an interview with police officers was fundamental error.

[2] We affirm.

Facts and Procedural History

[3] On November 1, 2016, Stephen had her third child, Ryder. (Tr. Vol. 1 at 207–09; Tr. Ex. Vol. 1 at 69.) A few months later, Stephen married Jacob Wootton ("Wootton"), with whom she shares her fourth child. (Tr. Vol. 1 at 211–22.)

[4] On January 11, 2018, Stephen called the police to report a domestic disturbance in her home. (Tr. Vol. 1 at 157, 165.) Stephen told the responding officer that she and Wootton were arguing when Wootton kicked the crib that Ryder was in, causing a screw to come loose. (Tr. Vol. 1 at 160–61, 164–65.) The responding officer reported the incident to the Department of Child Services ("DCS"). (Tr. Vol. 1 at 161.)

[5] On January 12, 2018, a DCS worker spoke with Stephen and Wootton about the January 11 incident and helped them create a safety plan to keep the

children safe. (Tr. Vol. 1 at 165–68.) This safety plan included instructions for Wootton to leave the home if an argument between him and Stephen began to escalate so that the children would not be exposed to further arguments or domestic violence. (*Id.* at 168.)

[6] On March 20, 2018, Stephen called the police to report a domestic disturbance in her home. (Tr. Vol. 1 at 172.) Stephen told the responding officer that Wootton was "freaking out on" the children for "dragging their toys out" and smacked one of her children on the head with a plastic toy gun. (Tr. Ex. Vol. 1 at 35–36; Tr. Vol. 1 at 174.) Stephen stated this resulted in an argument between her and Wootton, during which Wootton held Stephen up against the wall, smacked her, and was likely going to headbutt her if she had not stopped him. (Tr. Ex. Vol. 1 at 36–37.)

[7] At least one of Stephen's children saw the March 20 incident occur. (Tr. Ex. Vol. 1 at 43–44.) That child also told the responding officer that Wootton had made holes in the ceiling of the children's room and "keeps putting hands on my mom." (Tr. Ex. Vol. 1 at 36–40.) Before leaving the residence, the responding officer provided Stephen with information about Alternatives, an organization that assists victims of domestic abuse. (Tr. Vol. 1 at 177–78.)

[8] Shortly thereafter, a DCS worker spoke with Stephen about the March 20 incident. (Tr. Vol. 1 at 192–93.) They also discussed the January 11 incident. (*Id.* at 196.) The DCS worker and Stephen made a safety plan primarily

focused on Stephen not having contact with Wootton and abiding by a no contact order that was in place. (*Id.* at 197–98.)

[9] Approximately a month after the March 20 incident, Stephen filed for divorce from Wootton. (Tr. Vol. 1 at 222–23; Tr. Ex. Vol. 1 at 49–53.) On May 22, 2018, Stephen was granted custody of the child she shares with Wootton, while Wootton was given supervised parenting time. (Tr. Vol. 1 at 229; Tr. Ex. Vol. 1 at 54–55.)

[10] On July 30, 2018, DCS received a report from Alternatives about a domestic violence incident between Stephen and Wootton that resulted in injury to one of the children. (Tr. Vol. 2 at 8–9.) The report alleged that Wootton kicked in Stephen's front door, battered her, and busted Ryder's lip. (Tr. Vol. 2 at 11.) Stephen's mother testified at trial that she had to replace Stephen's door and doorjamb after Wootton kicked it in, that Wootton "threw [Stephen] around in front of the kids," and that neither she nor Stephen reported the incident to police or DCS. (Tr. Vol. 1 at 226, 230–31.) When speaking about this incident with a DCS worker, Stephen denied it occurred and stated she had not had contact with Wootton since late March. (Tr. Vol. 2 at 10–11.)

[11] At approximately 3:40 p.m. on October 26, 2018, Stephen left her children in the care of Wootton while she went to work. (Tr. Vol. 2 at 99, 104; Tr. Ex. Vol. 1 at 63–64, 73.) At 4:13 p.m., first responders were dispatched to Stephen's residence for a child who was unconscious and not breathing. (Tr. Vol. 1 at 244; Tr. Vol. 2 at 72.) When they arrived two to three minutes later, Ryder was

unresponsive, not breathing, and cold to the touch. (Tr. Vol. 1 at 244, 249; Tr. Vol. 2 at 74, 106.) Wootton told police officers that Ryder fell in the bathtub. (Tr. Vol. 2 at 2, 125.)

[12] Ryder was first taken to a local hospital where his injuries were photographed, (Tr. Vol. 2 at 117–18, 126–27), before being transported to the pediatric intensive care unit at Riley Hospital for Children in Indianapolis, (*id.* at 131, 139). Doctors diagnosed Ryder with major diffuse brain trauma. (Tr. Vol. 2 at 122–23, 142–44.)

[13] Ryder also had numerous other injuries, including a human bite mark on his right cheek, an abrasion nearly all the way around his neck that indicated possible strangulation, and bruises in a variety of colors on his ears, back, stomach, thighs, and buttocks. (Tr. Vol. 1 at 249–50; Tr. Vol. 2 at 75, 102–03, 118–21, 150–51, 227; Tr. Ex. Vol. 1 at 168–74.) Doctors concluded that Ryder's injuries were likely the result of non-accidental trauma and were inconsistent with a fall in the bathtub. (Tr. Vol. 2 at 125–26, 146–47, 150–51.)

[14] Ryder was declared braindead on October 29, 2018. (Tr. Vol. 2 at 167–68.) Two days later, the Marion County Coroner's Office determined Ryder's cause of death to be multiple blunt force injuries and his manner of death to be homicide. (Tr. Vol. 2 at 233–34.)

[15] On November 1, 2018, police officers interviewed Stephen at the Elwood Police Department. (Tr. Vol. 2 at 158, 178.) A week later, the State charged Stephen with neglect of a dependent resulting in death as a Level 1 felony pursuant to

Indiana Code Sections 35-46-1-4(a)(1) and 35-46-1-4(b)(3). (App. Vol. 2 at 26–29.) On August 18, 2022, a jury found Stephen guilty of this charge. (Tr. Vol. 3 at 39.)

Discussion and Decision

Issue One: Sufficiency of the Evidence[1]

[16] "Sufficiency-of-the-evidence arguments trigger a deferential standard of appellate review, in which we 'neither reweigh the evidence nor judge witness credibility, instead reserving those matters to the province of the jury.'" *Owen v. State*, 210 N.E.3d 256, 264 (Ind. 2023) (quoting *Brantley v. State*, 91 N.E.3d 566, 570 (Ind. 2018)), *reh'g denied* (Aug. 17, 2023). The jury's verdict "comes before us with a presumption of legitimacy, and we will not substitute our judgment for that of the fact-finder." *Thacker v. State*, 62 N.E.3d 1250, 1251 (Ind. Ct. App. 2016) (citing *Binkley v. State,* 654 N.E.2d 736, 737 (Ind. 1995), *reh'g denied*).

[17] Reversal of a conviction based on sufficiency of the evidence is appropriate only if "no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." *Morgan v. State*, 22 N.E.3d 570, 573 (Ind. 2014) (quoting *Lock v. State*, 971 N.E.2d 71, 74 (Ind. 2012)). The evidence need not "overcome every reasonable hypothesis of innocence"; rather, the evidence is sufficient if

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[1] Stephen's brief on this issue does not meet the requirements of Indiana Appellate Rule 46(A)(8)(a) to the extent she failed to support her argument with relevant citations to the Appendix or parts of the Record on Appeal on which she relied. (Appellant's Br. 8–10.) Nevertheless, we will address the merits of her claim.

"an inference may reasonably be drawn from it to support the verdict." *Lock*, 971 N.E.2d at 74 (citing *Drane v. State*, 867 N.E.2d 144, 147 (Ind. 2007)).

[18] To convict Stephen of neglect of a dependent as a Level 1 felony, the State had to prove beyond a reasonable doubt that

1. Stephen had the care of Ryder;
2. Stephen knowingly or intentionally placed Ryder in a situation that endangered Ryder's life or health;
3. at the time the neglect occurred
    a. Stephen was at least eighteen years of age, and
    b. Ryder was less than fourteen years of age or had a mental or physical disability; and
4. the neglect resulted in the death of Ryder.

Ind. Code § 35-46-1-4(a)(1), (b)(3) (effective July 1, 2018).

[19] On appeal, Stephen argues that the State failed to establish that she *knowingly* placed Ryder in a situation that endangered his life or health. (Appellant's Br. at 9.) We cannot agree.

[20] Indiana Code section 35-41-2-2(b) provides that "[a] person engages in conduct 'knowingly' if, when [s]he engages in the conduct, [s]he is aware of a high probability that [s]he is doing so." Further, within the context of Indiana Code section 35-46-1-4(a), "knowingly" is "that level where the accused must have been subjectively aware of a high probability that [s]he placed the dependent in a dangerous situation." *Harris v. State*, 163 N.E.3d 938, 954 (Ind. Ct. App.) (quoting *Armour v. State*, 479 N.E.2d 1294, 1297 (Ind. 1985)), *trans. denied*, 169 N.E.3d 1118 (Ind. 2021). "Because such a finding requires resort to inferential

reasoning to ascertain the defendant's mental state, we must look to all the surrounding circumstances of a case to determine if a guilty verdict is proper." *Id.* (citing *Burden v. State*, 92 N.E.3d 671, 675 (Ind. Ct. App. 2018)).

[21] The evidence shows that nine months prior to Ryder's death, Stephen was present when Wootton kicked Ryder's crib, causing a screw to come loose while Ryder was in the crib. (Tr. Vol. 1 at 157–65.) Seven months before Ryder's death, Stephen was present when Wootton hit one of her other children with a toy gun and when at least one of her children witnessed Wootton hold her up against a wall and smack her. (Tr. Vol. 1 at 172–78; Tr. Ex. Vol. 1 at 35–44.) Stephen was also present when one of her other children told a police officer that Wootton hit Stephen and put holes in the ceiling of the children's room. (*Id.*) At least two months before Ryder's death, Stephen was present when Wootton kicked in her front door and allegedly busted Ryder's lip. (Tr. Vol. 2 at 8–11; Tr. Vol. 1 at 226, 230–31.) Throughout this time, Stephen had created several safety plans with DCS to keep her children safe from Wootton and a no contact order was in place between the two. (Tr. Vol. 1 at 165–68, 192–98.)

[22] The jury also heard testimony from Ryder's doctors about the extent and nonaccidental nature of Ryder's injuries, and it was shown photos of Ryder's injuries taken while Ryder was in the hospital, (Tr. Vol. 2 at 126–31; Tr. Ex. Vol. 1 at 168–76), and at his autopsy, (Tr. Vol. 2 at 228–33; Tr. Ex. Vol. 1 at 175–88). Although several of the doctors testified that bruises cannot be accurately dated based on color alone, the jury was free to infer that the various

colors of Ryder's bruises indicated ongoing abuse about which Stephen would have known. (Tr. Vol. 2 at 121, 233.)

[23] The jury heard and saw all this evidence, weighed it as it deemed best, and rendered a guilty verdict. We will not reweigh this evidence on appeal. Furthermore, based on this evidence, a reasonable factfinder could infer that Stephen was aware of a high probability that she placed Ryder in a dangerous situation. Therefore, there is sufficient evidence to support Stephen's conviction for neglect of a dependent as a Level 1 felony.

Issue Two: Fundamental Error

[24] At trial, Jason Brizendine, the Chief of Police of the Elwood Police Department, provided the following testimony about Stephen's November 1, 2018 interview, which he primarily observed from a separate room in real time:

> STATE: [W]hile you were watching the interview, did you notice anything about Alyson[Stephen]'s body language that was of note to you?
>
> BRIZENDINE: Yes, toward the end of the interview . . . , I actually joined in with Detective Gosnell for a short period of time, at the end, and . . . there was different characteristics that you could notice during an interview when people are direct and honest with you, they're looking at you straight, you know, ahead, and sometimes when they're not, they're blinking their eyes, making different motions like that. I did observe some of that during the interview.

(Tr. Vol. 2 at 160.)

[25] As Stephen acknowledges in her brief, her trial counsel did not object to this testimony. (Appellant's Br. at 11.) This failure to object at trial is a procedural default which precludes consideration of this issue on appeal unless Stephen can demonstrate that admitting Chief Brizendine's testimony was fundamental error under Indiana Rule of Evidence 103(e). *See Matter of Eq.W.*, 124 N.E.3d 1201, 1214 (Ind. 2019) (citing *Jewell v. State*, 887 N.E.2d 939, 942 (Ind. 2008)).

Evidence Rule 103(e) states: "A court may take notice of a fundamental error affecting a substantial right, even if the claim of error was not properly preserved." Reviewing an issue for fundamental error is an "extremely narrow" review and is available only when (1) "the record reveals a clearly blatant violation of basic and elementary principles," (2) "the harm or potential for harm cannot be denied," and (3) "the violation is so prejudicial to the rights of the defendant as to make a fair trial impossible." *Matter of Eq.W.*, 124 N.E.3d at 1214–15 (quoting *Jewell*, 887 N.E.2d at 942).

[26] Stephen argues that Chief Brizendine's testimony was inadmissible under Indiana Rule of Evidence 704(b) as opinion testimony regarding "whether a witness has testified truthfully." (Appellant's Br. at 11.) We cannot agree.

[27] The Indiana Supreme Court has held that a police officer's testimony summarizing a defendant's "mode of answering questions" during an interview is generally not inadmissible pursuant to Evidence Rule 704(b), especially when the jury was shown a video of the interview in its entirety. *Satterfield v. State*, 33 N.E.3d 344, 354 (Ind. 2015).

[28] Here, Chief Brizendine testified that certain behaviors may indicate that a person is not telling the truth and that Stephen exhibited some of those behaviors during the November 1 interview. Chief Brizendine did not testify that Stephen was untruthful. In other words, Chief Brizendine's testimony was merely a description of Stephen's body language during the November 1 interview. Additionally, the State played the video recording of Stephen's November 1 interview for the jury. (Tr. Vol. 2 at 183, 185.) Admitting Chief Brizendine's testimony was not in violation of Evidence Rule 704(b) and thus cannot constitute fundamental error.

[29] In sum, there was sufficient evidence from which the jury could have determined that Stephen knowingly endangered Ryder by leaving him with Wootton, and Chief Brizendine's testimony about Stephen's behavior during a police interview was not inadmissible commentary on Stephen's truthfulness. We therefore affirm Stephen's conviction.

Affirmed.

Crone, J., and Brown, J., concur.