

OPINION

The appellant, Jimmy J. Davis, was convicted by a Knox County jury of one (1) count of misdemeanor assault, and the trial court sentenced him to eleven (11) months and twenty-nine (29) days in the county jail.¹ On appeal, the appellant challenges the sufficiency of the evidence for his conviction for misdemeanor assault. After thoroughly reviewing the record before this Court, we affirm the trial court's judgment.

I.

On May 4, 1997, four (4) month old Dakota Davis was admitted to the East Tennessee Children's Hospital intensive care unit. The appellant, Dakota's father, brought him to the hospital because he stopped breathing. Once doctors admitted Dakota to the ICU, they observed that his efforts at breathing were strained and irregular. The child had a linear bruise over his right eye and another bruise under the eye. Further, a "CAT scan"² indicated bleeding around the child's brain. Dakota remained unconscious for approximately four (4) days, until his physicians pronounced him dead on May 8. .

Sharon Truxall, the victim's mother, testified at trial that she and the appellant were married at the time of the incident. When their son, Dakota, was born on January 13, 1997, he was two (2) months premature. Due to medical problems, the baby had to be hospitalized for most of his life. On May 4, Truxall, the appellant and their two children were having a typical day at home. Truxall left her children in the care of her husband when she went to work at 4:30 p.m. Dakota was sleeping on the couch and had no unusual bruises or injuries when

¹ When the jury returned its verdict of guilt, the appellant, after receiving pretrial jail credit, had served his sentence.

² Computed Axial Tomography.

Truxall left. At approximately 6:00 p.m., Truxall received a telephone call at work informing her that her son had stopped breathing and was being transported to the Children's Hospital.

When Truxall arrived at the hospital, the appellant told her that he discovered the baby unconscious on the floor in the bedroom. The appellant assumed that the child had fallen off the bed. Although the appellant suggested that the child had moved himself to the side of the bed, Dakota could not crawl, roll or turn on his own due to his age.

A CAT scan revealed retinal hemorrhaging, blood around the child's brain and significant amounts of swelling in the brain. The child had a linear bruise over his right eye and a bruise under that eye. Treating physicians testified at trial that the extensive retinal hemorrhaging, and the hemorrhaging and swelling in the brain were symptomatic of "shaken baby syndrome." Dr. Joel Sanner, a pediatric anesthesiologist intensivist at Children's Hospital, described "shaken baby syndrome" as "a non-accidental, purposeful shaking – rapid shaking that causes disruption of the blood vessels and causes bleeding around the brain into the eye." Further, the doctors believed that the bruising on the child's eye was caused by a significant direct blow to his face.

Dr. Frances Patterson performed the autopsy on Dakota's body. Dr. Patterson determined that the child's cause of death was sepsis and cerebral edema. However, the doctor opined that the child stopped breathing "because he was shaken and had severe damage to his central nervous system."

The appellant testified on his own behalf at trial. He stated that after his wife left for work on May 4, he put Dakota on the bed in the appellant's bedroom. He then placed pillows around the baby to keep him from moving. The appellant testified that he went into the next room for some time, and when he returned to check on his son, noticed that the baby was lying on the floor "motionless." Because the baby was not breathing, the appellant shook him. He then tried to revive his son with cold water and performed CPR. The appellant stated that, when his efforts failed, he took his son to the hospital. He acknowledged that he

shook Dakota twice, but did not know how hard he shook the child. The appellant could offer no explanation for the bruising on the child's face.

The appellant was charged with aggravated child abuse; however, the jury found him guilty of simple assault, a Class A misdemeanor. The trial court sentenced him to eleven (11) months and twenty-nine (29) days in the county jail. From his conviction for simple assault, the appellant now brings this appeal.

II.

The appellant argues that the evidence is insufficient to sustain the jury's finding of guilt for simple assault. He contends that his conviction was based solely upon circumstantial evidence, and because that circumstantial evidence was not "inconsistent with his innocence," the evidence was insufficient as a matter of law to support the verdict.

When an accused challenges the sufficiency of the evidence, this Court must review the record to determine if the evidence adduced during the trial was sufficient "to support the findings by the trier of fact of guilt beyond a reasonable doubt." Tenn. R. App. P. 13(e). This rule is applicable to findings of guilt predicated upon direct evidence, circumstantial evidence or a combination of direct and circumstantial evidence. State v. Brewer, 932 S.W.2d 1, 19 (Tenn. Crim. App. 1996).

It is well-settled that a criminal offense may be established exclusively by circumstantial evidence. State v. Hailey, 658 S.W.2d 547, 552 (Tenn. Crim. App. 1983); State v. Lequire, 634 S.W.2d 608, 614 (Tenn. Crim. App. 1981). Further, to support a conviction based upon circumstantial evidence alone, the facts and circumstances "must be so strong and cogent as to exclude every other reasonable hypothesis save the guilt of the defendant." State v. Crawford, 225 Tenn. 478, 470 S.W.2d 610, 612 (1971).

In determining the sufficiency of the evidence, this Court does not reweigh or reevaluate the evidence. State v. Cabbage, 571 S.W.2d 832, 835 (Tenn.

1978). Nor may this Court substitute its inferences for those drawn by the trier of fact from circumstantial evidence. Liakas v. State, 199 Tenn. 298, 305, 286 S.W.2d 856, 859 (1956). To the contrary, this Court is required to afford the state the strongest legitimate view of the evidence contained in the record as well as all reasonable and legitimate inferences which may be drawn from the evidence. State v. Tuttle, 914 S.W.2d 926, 932 (Tenn. Crim. App. 1995). “A guilty verdict by the jury, approved by the trial judge, accredits the testimony of the witnesses for the State and resolves all conflicts in favor of the theory of the State.” State v. Grace, 493 S.W.2d 474, 476 (Tenn. 1973). Questions concerning the credibility of the witnesses, the weight and value to be given the evidence as well as all factual issues raised by the evidence are resolved by the jury as the trier of fact. State v. Tuttle, 914 S.W.2d at 932.

Because a verdict of guilt removes the presumption of innocence and replaces it with a presumption of guilt, the accused has the burden in this Court of illustrating why the evidence is insufficient to support the verdict returned by the trier of fact. State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982); State v. Grace, 493 S.W.2d at 476.

III.

In the present case, the victim’s mother testified that she left her son in the appellant’s care at 4:30 p.m. when she went to work. Her son was resting on a couch and had no unusual bruises or injuries at the time. Approximately one and one-half (1 ½) hours later, she received a telephone call informing her that her baby was being transported to Children’s Hospital because he was not breathing.

Doctors at the hospital observed that Dakota’s face was bruised above and below his right eye. Testing indicated retinal hemorrhaging and bleeding and swelling around the child’s brain, symptoms of “shaken baby syndrome.” Treating physicians testified at trial that the baby’s injuries resulted from purposeful, severe, violent shaking. In addition, Dakota had bruises above and

below his right eye. Doctors opined that the bruising was caused by a significant blow to the face.

Three physicians testified at trial that the child's injuries could not have been caused by falling from a bed onto a carpeted floor, as the appellant suggested. Dr. Karsten Gammeltoft, a pediatric neurologist at Children's Hospital, determined that Dakota lost consciousness immediately after his injury. Dr. Gammeltoft testified that falling from a bed onto a carpeted floor would not cause the child to lose consciousness immediately. Furthermore, Dr. Joseph Childs, a pediatric intensivist at Children's Hospital, opined that it would take a greater amount of force than falling from a bed to create the amount of bruising and swelling on the child's face. Moreover, Dr. Childs concluded that, due to Dakota's age and level of development, he could not have moved himself to the edge of the bed and rolled off.

The appellant testified that he left his son on a queen-sized bed, and when he returned, Dakota was lying unconscious on the floor. He acknowledged that he shook his son twice but could not recall how vigorously he shook Dakota. The appellant could give no explanation as to the cause of the bruising and swelling on the victim's face.

A person commits the offense of simple assault when he "intentionally, knowingly or recklessly causes bodily injury to another." Tenn. Code Ann. § 39-13-101(a)(1). After viewing the evidence in the light most favorable to the state, we conclude that there is overwhelming evidence from which a rational trier of fact could find that the appellant caused bodily injury to his son.

This issue has no merit.

IV.

After a thorough review of the record before this Court, we conclude that the evidence is sufficient to support the appellant's conviction for simple assault. Accordingly, the judgment of the trial court is affirmed.

JERRY L. SMITH, JUDGE

CONCUR:

JOSEPH M. TIPTON, JUDGE

THOMAS T. WOODALL, JUDGE