

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

January 1996 Term

No. 22979

**STATE OF WEST VIRGINIA,
Plaintiff Below, Appellee
V.
JEFFREY SCOTT LAROCK,
Defendant Below, Appellant**

**APPEAL FROM THE CIRCUIT COURT OF FAYETTE COUNTY
HONORABLE CHARLES M. VICKERS, JUDGE
NO. 93-F-38**

AFFIRMED

Submitted: February 27, 1996

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Dawn E. Warfield
Deputy Attorney General
Charles T. Berry
Law Student
Charleston, West Virginia
Attorney for Appellee

Michael E. Froble
Wooton, Wooton & Fragile
Beckley, West Virginia
Attorney for Appellant

JUSTICE CLECKLEY delivered the Opinion of the Court.

The defendant, Jeffrey Scott LaRock, appeals the June 16, 1994, order of the Circuit Court of Fayette County which denied his motion for judgment of acquittal or, in the alternative, for a new trial. The defendant was convicted by a jury of first degree murder and was sentenced to life imprisonment without mercy for the killing of his nineteen-month-old son, Joshua LaRock. The defendant does not deny that his actions caused his son's death; instead, at trial, the defendant

primarily argued there was insufficient evidence to establish the requisite premeditation and intent for a conviction of first degree murder. * * * *

I.
FACTUAL AND PROCEDURAL BACKGROUND

Ordinarily, we sketch the background, reserving more exegesis treatment of facts pending our discussion of specific issues. We give the facts of this case more detailed consideration because this appeal centers around the insufficiency of the trial evidence. The testimony at trial demonstrated the defendant subjected Joshua to a continued pattern of outrageous and atrocious acts of physical and mental abuse. The defendant allegedly hit Joshua in the stomach and face with his hands, he beat Joshua on the head and buttocks with a square stick that was two-feet, seven-inches long, and he would tie a rope or rag around the child's neck and would walk around with the child over his shoulder calling him names as a form of discipline.

The defendant's wife, Stephanie LaRock, testified that the family moved to West Virginia from Kansas the summer before Joshua died.¹ While in Kansas, Mrs. LaRock stated the defendant hit Joshua and their daughter, Renee, so the welfare department placed them on a six-month trial period. When they moved to West Virginia, they lived with relatives for a few months, but Mrs. LaRock said they were forced to leave when the defendant and his sister got into an argument over the defendant hitting Joshua too hard.² The LaRocks then moved into the house where Joshua died.

To explain the possible cause of a skull fracture which Joshua suffered about ten to fourteen days prior to his death, Mrs. LaRock testified the defendant threw the child from the living room into the bathroom causing Joshua to hit his head on the bath tub. Mrs. LaRock stated that after the incident Joshua would "just lay around [and] . . . wouldn't do nothing." Mrs. LaRock said they did not take Joshua to the doctor because the defendant insisted there was nothing wrong with him.

On the night Joshua was killed, the defendant, his wife, Joshua, and Renee,³ were at their house. Mrs. LaRock testified the defendant was attempting to get Joshua to eat and walk but he became furious apparently because Joshua would not cooperate. The defendant then began picking Joshua up "midway - to over his head" and dropping him from this height causing the child to hit his back and the back of his head against the floor. He dropped Joshua four or five times while calling

¹Joshua died on February 21, 1993.

²In his brief, the defendant states the record does not support the allegation that they left their relatives' house because the defendant hit Joshua too hard. However, Mrs. LaRock specifically said her sister-in-law "had seen [the defendant] hit my son too hard, and it led into an argument where she kicked him out of the home."

³Renee was two and one-half years old at the time.

him "a mother fucker[.]" Mrs. LaRock stated her husband stopped dropping Joshua when the child stopped crying.

The defendant testified the first thing he did after he stopped dropping Joshua was light up a cigarette,⁴ but he "went over to do what [he] could for him" after he realized the child was not moving. Mrs. LaRock said they both began CPR. Mrs. LaRock further stated that when she got up to go to a neighbor's house to call an ambulance,⁵ the defendant stopped her before she left the house and told her to move the high chair into the living room and say Joshua fell out of the chair.

Two neighbors came to help the LaRocks while they were waiting for the ambulance. When the first neighbor arrived on the scene, he stated Joshua was lying on a bed and the defendant was kneeling down beside him. The neighbor immediately began CPR, and the defendant assisted him. The neighbor recalls the defendant saying "come on, Josh, a couple of times" and telling his wife to pray. At some point, the neighbor remembers both the defendant and Mrs. LaRock standing beside the bed smoking cigarettes while he was giving Joshua CPR. The second neighbor testified that he helped keep "air out of the stomach" while the CPR was being performed and he drove the defendant to the hospital after the ambulance took Joshua.

The EMT who arrived on the scene with the ambulance stated that Joshua was in cardiac and respiratory arrest when she assessed him. At the hospital, the EMT asked what happened to Joshua, and the defendant told her "the baby was sitting in a high chair without a tray, and he [the defendant] was taking pictures to send to the grandparents. He said the baby was fidgeting around in the high chair, and he pitched forward, turned over in the air, and landed on his back." A paramedic who met the ambulance en route to the hospital testified that Mrs. LaRock told him a similar account of Joshua falling from the high chair.

Dr. John M. Johnson, the emergency room physician, examined Joshua and found he suffered a "massive skull fracture, which was recorded to be a three millimeter distraction and had several bruises to the torso and to the arms, which in [his] experience were inconsistent with a fall from a high chair." After resuscitation efforts failed, Joshua was pronounced dead. Dr. Johnson's "final diagnosis was traumatic arrest secondary to a closed head injury."

Shortly after Joshua arrived at the hospital, Janet Turner, a Social Service Supervisor for the Department of Health and Human Resources, was contacted to investigate suspected child

⁴ At oral argument, defense counsel insisted there was no evidence at trial that the defendant lit up a cigarette after he stopped dropping Joshua. However, on page 515 of the trial transcript, the defendant testified on direct examination: "Well, first, I didn't realize the damage that I had caused, and what I done was walk over and light a cigarette, and that's the first thing I done." (Emphasis added). On cross-examination, page 535 of the trial transcript, the defendant further indicated the first thing he did was light up a cigarette.

⁵ The LaRocks did not have a phone in their house.

abuse. She contacted the West Virginia State Police, and she and Corporal Mike Spradlin of the State Police went together to the hospital. After Ms. Turner spoke with Dr. Johnson, she went to the chapel area of the hospital to discuss the situation with the defendant and Mrs. LaRock. Ms. Turner said neither parent showed any remorse or regret after being told of the death of their son, and she found their response to be very inappropriate. Ms. Turner testified the defendant gave her "a rather elaborate story as to what happened" and told her how Joshua fell out of his high chair. While they were talking, Corporal Spradlin came to the chapel and said he wanted to speak privately with Mrs. LaRock so Mrs. LaRock left with him.

Ms. Turner testified that she continued to talk with the defendant and he complained about Joshua not listening, eating, walking, and learning as the defendant thought he should. He stated Joshua would scream and throw temper tantrums and he did not want to be around them and "stay[ed] cooped up in his room." The defendant told Ms. Turner he hit Joshua "too hard sometimes," but said he did not hit him that night. He also admitted hitting the child in the face the previous night and, on other occasions, hitting the child in the stomach and other places on his body.

Corporal Spradlin testified that Mrs. LaRock told him Joshua fell out of the chair as he was being photographed. He also spoke with the defendant who related a similar account of the incident. Corporal Spradlin asked if he could secure the high chair and film from the house, and the defendant and Mrs. LaRock agreed. Thereafter, Corporal Spradlin, Ms. Turner, the defendant, and Mrs. LaRock⁶ returned to the LaRock house. Corporal Spradlin took possession of the high chair and a roll of film. Neither the defendant nor Mrs. LaRock was taken into custody at that time. Corporal Spradlin stated he took the film to a local fast photo development shop and discovered there was nothing on the film.

The day following Joshua's death, the defendant contacted the State Police and said he wanted to discuss the situation. The defendant apparently was persuaded by relatives to confess. The defendant's brother-in-law took him to the barracks. The defendant told Corporal Spradlin that he lied at the hospital and he wanted "to set the record straight and take responsibility for the death of his son." The defendant signed a written confession, but the confession was ruled inadmissible at trial because, in part, the defendant repeatedly requested an attorney be present.

An autopsy was performed on Joshua by Dr. Irvin M. Sopher, the Chief Medical Examiner for the State of West Virginia. Dr. Sopher testified that Joshua had multiple bruises of varying ages. There were bruises on his face, his front torso, his back, and "extensive bruises" on his lower extremities. When Joshua's scalp was examined, Dr. Sopher also found "extensive additional bruises . . . only one of which was appreciated from the outside examination." He testified that the severe bruises on the child's scalp "would be indicative of approximately four or five separate impacts[.]" In addition, Dr. Sopher discovered a skull fracture and a related hemorrhage which occurred about ten to fourteen days prior to the child's death, and he found an acute subdural

⁶ Corporal Spradlin said Ms. Turner made arrangements for the surviving child to be placed in temporary foster care or a temporary shelter.

hematoma which occurred about the time of death. He opined Joshua died of an "acute craniocerebral injury, meaning head injury with a skull fracture and brain injury." He further testified that, based upon his training and experience, the injury Joshua sustained to his scalp would be inconsistent with a fall from a high chair. He said it was "a classic case of an abused child."

The defendant testified at trial and conceded he was a bad parent. He also did not deny hitting Joshua as a form of discipline and repeatedly picking up the child and dropping him on the day he died. When cross-examined about some of the specific incidents of abuse he was accused of committing, the defendant frequently replied that he either committed the act, possibly committed the act, or he did not remember. He also stated he would not dispute anything his wife said about him abusing Joshua. The defendant primarily asserted at trial that he did not intend to kill his son because he was in a state of "rage" at the time the incident occurred.

II. DISCUSSION

* * * *

Sufficiency of the Evidence

The defendant argues the trial court erred when it denied his motion for judgment of acquittal or, in the alternative, for a new trial because the State failed to sufficiently establish the elements of premeditation and deliberation for a first degree murder conviction. The defendant asserts he was in a "rage" and suffered from "diminished capacity" when he killed his son.

A convicted defendant who presses a claim of evidentiary insufficiency faces an uphill climb. The defendant fails if the evidence presented, taken in the light most agreeable to the prosecution, is adequate to permit a rational jury to find the essential elements of the offense of conviction beyond a reasonable doubt. Phrased another way, as long as the aggregate evidence justifies a judgment of conviction, other hypotheses more congenial to a finding of innocence need not be ruled out. We reverse only if no rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.

In State v. Guthrie, 194 W. Va. 657, 667-70, 461 S.E.2d 163, 173-76 (1995), we recently revised our standard of review when a criminal defendant challenges the sufficiency of the evidence in support of a jury verdict. We adopted, both generally and in cases with circumstantial evidence, the standard set forth by the United States Supreme Court in Jackson v. Virginia, 443 U.S. 307, 99 S. Ct. 2781, 61 L.Ed.2d 560 (1979).⁷ The Supreme Court held in Jackson that when reviewing a

⁷ Prior to Guthrie, the last time we addressed this issue was in State v. Starkey, 161 W. Va. 517, 244 S.E.2d 219 (1978). In Syllabus Point 1 of Starkey, we stated:

"In a criminal case, a verdict of guilt will not be set aside on the ground that it is contrary to the
(continued...)"

record in the light most favorable to the prosecution, an appellate court must determine whether "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." 443 U.S. at 319, 99 S. Ct. at 2789, 61 L.Ed.2d at 573. (Emphasis in original; citation omitted).

In adopting the Jackson standard, we retained a "highly deferential" and "strict" approach stating that "a jury verdict will not be overturned lightly"⁸ and concluded in Syllabus Point 1 of Guthrie:

"The function of an appellate court when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, is sufficient to convince a reasonable person of the defendant's guilt beyond a reasonable doubt. Thus, the relevant inquiry is whether, after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proved beyond a reasonable doubt."

By so holding, we overruled our prior cases⁹ which applied the requirement the State's evidence must exclude all other reasonable hypotheses of innocence in circumstantial evidence cases. 194 W. Va. at 668, 461 S.E.2d at 174. See Holland v. United States, 348 U.S. 121, 139-40, 75 S. Ct. 127, 137-38, 99 L.Ed. 150, 166 (1954); State v. Jenks, 61 Ohio St. 3d 259, 272, 574 N.E.2d 492, 502 (1991). We also recognized "there is no qualitative difference between direct and circumstantial evidence" and "[t]here should be only one standard of proof in criminal cases and that is proof beyond a reasonable doubt." 194 W. Va. at 669, 461 S.E.2d at 175.

Thus, when a criminal defendant undertakes a sufficiency challenge, all the evidence, direct and circumstantial, must be viewed from the prosecutor's coign of vantage, and the viewer must

(...continued)

evidence, where the state's evidence is sufficient to convince impartial minds of the guilt of the defendant beyond a reasonable doubt. The evidence is to be viewed in the light most favorable to the prosecution. To warrant interference with a verdict of guilt on the ground of insufficiency of evidence, the court must be convinced that the evidence was manifestly inadequate and that consequent injustice has been done."

⁸194 W. Va. at 667-68, 461 S.E.2d at 173-74.

⁹Citing State v. Robinette, 181 W. Va. 400, 383 S.E.2d 32 (1989); State v. Dobbs, 163 W. Va. 630, 259 S.E.2d 829 (1979); State v. Noe, 160 W. Va. 10, 230 S.E.2d 826 (1976).

accept all reasonable inferences from it that are consistent with the verdict.¹⁰ This rule requires the trial court judge to resolve all evidentiary conflicts and credibility questions in the prosecution's favor; moreover, as among competing inferences of which two or more are plausible, the judge must choose the inference that best fits the prosecution's theory of guilt. The trial court's disposition of a motion for judgment of acquittal is subject to our de novo review; therefore, this Court, like the trial court, must scrutinize the evidence in the light most compatible with the verdict, resolve all credibility disputes in the verdict's favor, and then reach a judgment about whether a rational jury could find guilt beyond a reasonable doubt.

Applying these straightforward rules to this case, we make short drift of the defendant's claim. Reduced to its essence and viewed in a light most favorable to the prosecution, we find overwhelming evidence in support of the jury's verdict. The evidence demonstrates the defendant had a pattern of committing extreme acts of brutality upon Joshua leading up to the night he killed him. On the night of the murder, the defendant was frustrated with Joshua and began dropping him. The defendant did not drop him just once but picked him up and dropped him four to five times. After the child stopped crying, the defendant lit up a cigarette showing his initial unconcern about the condition of his son and then, instead of permitting his wife to get immediate medical care for Joshua, the defendant stopped her as she was going to call an ambulance and made her move the high chair so he would have an explanation for what happened. At some point when a neighbor was attempting to give Joshua CPR, both parents were standing beside the bed smoking cigarettes. Ms. Turner testified that neither parent showed any remorse or regret after being told of the death of their son and she found their response to be very inappropriate.

Given these facts, the jury easily could conclude beyond a reasonable doubt the defendant acted with premeditation and deliberation when he murdered Joshua. The State certainly established sufficient evidence of first degree murder for the issue to be submitted to the jury, thereby, preventing a motion for acquittal¹¹ or, in the alternative, a new trial¹² to be granted on this basis. Moreover, we find no merit in the defendant's reliance on Syllabus Point 5 of Guthrie which states:

"Although premeditation and deliberation are not measured by any particular period of time, there must be some period between the formation of the intent to kill and the actual killing, which indicates the killing is by prior calculation and design. This means there must be an opportunity for some reflection on the intention to kill after it is formed."

¹⁰"[A] jury verdict should be set aside only when the record contains no evidence, regardless of how it is weighed, from which the jury could find guilt beyond a reasonable doubt." Syl. pt. 3, in part, Guthrie, supra.

¹¹ Rule 29(a) of the West Virginia Rules of Criminal Procedure provides that a judgment of acquittal should be granted "if the evidence is insufficient to sustain a conviction of such offense or offenses."

¹² Under Rule 33 of the West Virginia Rules of Criminal Procedure, a court "may grant a new trial to [a moving] defendant if required in the interest of justice."

The jury reasonably could have determined: (1) the defendant formulated his intent to kill Joshua long before the night the murder occurred given the extremely violent way he historically treated the child¹³; or (2) the defendant formulated his intent to kill Joshua the evening the child died because the defendant became frustrated with him. In both these scenarios, the defendant had ample opportunity to reflect upon his intent to kill--which most acutely is evidenced by the fact he dropped Joshua four to five times on the floor, proceeded to allow the child to lie on the floor unattended while he lit up a cigarette, and then prevented his wife from immediately contacting an ambulance.

In addition, as a practical matter, premeditation generally can be proved only by circumstantial evidence. Because the defendant's mental processes are wholly subjective, it is seldom possible to prove them directly. If premeditation is found, it must ordinarily be inferred from the objective facts. Accordingly, if one voluntarily does an act, the direct and natural tendency of which is to destroy another's life, it fairly may be inferred, in the absence of evidence to the contrary, that the destruction of that other's life was intended.

¹³ Although not an exclusive list, in note 24 of Guthrie, 194 W. Va. at 676, 461 S.E.2d at 182, we identified three categories of evidence which support a first degree murder conviction. These categories are:

"(1) 'planning' activity--facts regarding the defendant's behavior prior to the killing which might indicate a design to take life; (2) facts about the defendant's prior relationship or behavior with the victim which might indicate a motive to kill; and (3) evidence regarding the nature or manner of the killing which indicate a deliberate intention to kill according to a preconceived design." (Emphasis added).

The evidence clearly shows the defendant's prior relationship and behavior towards Joshua was exceedingly intolerant and hostile.