

IN THE COURT OF APPEALS OF IOWA

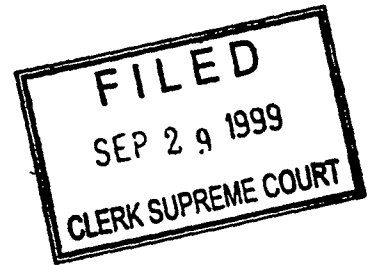
No. 1999-179 (9-403) / 98-1083

Filed September 29, 1999

STATE OF IOWA,
Plaintiff-Appellee,

vs.

LINDA KAY BLAKELY,
Defendant-Appellant.



Appeal from the Iowa District Court for Cerro Gordo County, Brian H. McKinley, Judge.

Linda Blakely appeals from her convictions of involuntary manslaughter and child endangerment resulting in serious injury. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Dennis D. Hendrickson, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Julie H. Brown and Douglas D. Hammerand, Assistant Attorneys General, Paul L. Martin, County Attorney, and Gregg R. Rosenblatt, Assistant County Attorney, for appellee.

Heard by Streit, P.J., and Vogel and Zimmer, JJ.

000180

VOGEL, J.

Linda Blakely appeals from her convictions of involuntary manslaughter and child endangerment resulting in serious injury. As we find substantial evidence existed to support the jury's verdict, we affirm.

Background facts. On the evening of January 17, 1997, Blakely took her infant son, Dalton, with her to friend Pamela Wendell's home in Mason City. Blakely and Wendell had a few drinks that evening, and Blakely ended up staying overnight. Blakely slept on a couch in the living room; Dalton slept nearby in his car carrier. When Blakely and Wendell woke the next morning, Dalton was not breathing. Wendell attempted CPR and an ambulance was summoned. Dalton was pronounced dead at the hospital.

Blakely admitted to police and hospital staff that she had "lost her cool" during the night when Dalton became fussy, and had shaken him hard and bumped his head against the wall. After an autopsy and further investigation, Blakely was charged with first degree murder and child endangerment resulting in serious injury. A jury convicted Blakely of involuntary manslaughter and child endangerment resulting in serious injury. She now appeals.

I. Sufficiency of the evidence. Blakely claims the State failed to prove that she acted "in a manner likely to cause death," and that she "intentionally used unreasonable force that resulted in physical injury or was intended to cause serious injury." Without proof of these elements, she concludes that the court erred in denying her motion for judgment of acquittal and there is insufficient evidence to support her convictions of

involuntary manslaughter and child endangerment. *See* Iowa Code § 707.5(2) (involuntary manslaughter); Iowa Code § 726.6(2) (1997) (child endangerment resulting in serious injury).

On appeal of a denial of a motion for judgment of acquittal we review the record in the light most favorable to the State and are bound by the jury verdict unless there is no substantial evidence to sustain it. *See State v. Eldrenkamp*, 541 N.W.2d 877, 882 (Iowa 1995); *State v. Peck*, 539 N.W.2d 170, 172 (Iowa 1995). "Evidence is substantial if it could convince a rational fact finder that the defendant is guilty beyond a reasonable doubt. Direct and circumstantial evidence are equally probative." *State v. Bayles*, 551 N.W.2d 600, 608 (Iowa 1996). However, evidence which merely raises suspicion, speculation, or conjecture is insufficient. *Id.* Our review is on error. I. R. App. P. 4.

The fighting issue at trial was whether Dalton died as a result of being shaken and bumped against the wall by Blakely or died of other causes. Blakely called four forensic pathologists to testify on this issue at trial. Two of those pathologists, Drs. Plunkett and Rose, opined that Dalton had died from Sudden Infant Death Syndrome (SIDS); Drs. Stephens and Case could not express an opinion as to the cause of death. The State called two pathologists, both of whom concluded that the manner of death had been homicide. Dr. Betz, who had performed Dalton's autopsy, observed blood and hemorrhaging throughout Dalton's brain and opined that Dalton had suffered an acute closed head injury with trauma to his head. Dr. Bennett, then State Medical Examiner, observed bleeding and microscopic tears in Dalton's brain. Dr. Bennett testified that he

believed Dalton died from a forceful, closed head injury, consistent with slammed or shaken baby syndrome.

Blakely's argument focuses on the fact that the defense experts resolutely contradicted the State's experts. However, both the prosecution and defense thoroughly examined each expert on their methods of diagnosis and the experts' particular experience and expertise in forensics. It was the jury's task to determine the credibility of the various witnesses and weigh the testimony elicited. *See State v. Weaver*, 405 N.W.2d 852, 855 (Iowa 1987); *State v. Allen*, 348 N.W.2d 243, 247 (Iowa 1984); *State v. Taylor*, 516 N.W.2d 38, 41 (Iowa App. 1994).

In addition to the medical testimony, Investigator Frank Stearns testified that Blakely had admitted to "losing her cool," shaking Dalton hard, and bumping him against the wall. Two nurses from the hospital also testified that Blakely had told them she had shaken Dalton and that his head had struck the wall. Finally, the jury had the opportunity to view Blakely's videotaped confession as to her actions on the night of Dalton's death. Taking the evidence in the light most favorable to the State, we conclude the court did not err in overruling Blakely's motion for judgment of acquittal and substantial evidence supports the jury's verdicts.

Having considered all issues properly before us on appeal, we hereby affirm the convictions and sentences of Linda Blakely.

AFFIRMED.

000183