

**ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOHN MAUZY PITTMAN, CHIEF JUDGE
DIVISION III**

CACR05-1182

September 27, 2006

REBECCA BAKER		APPEAL FROM THE JEFFERSON
	APPELLANT	COUNTY CIRCUIT COURT
		[NO. CR-2004-714-5]
V.		HON. ROBERT H. WYATT, JR.,
		JUDGE
STATE OF ARKANSAS		
	APPELLEE	AFFIRMED

The appellant, Rebecca Baker, was charged by information with the first-degree murder of three-year-old Ari'Yanna Jackson. After a jury trial, she was found guilty of that offense and sentenced to twenty years' imprisonment. On appeal, she argues that the trial court erred in denying her motion for a directed verdict and in admitting certain autopsy photographs into evidence. We affirm.

Motions for directed verdict are challenges to the sufficiency of the evidence. *Benson v. State*, 357 Ark. 43, 160 S.W.3d 341 (2004). In reviewing a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the verdict, considering only the evidence supporting the verdict, to determine whether the verdict is supported by substantial evidence, direct or circumstantial. *Woolbright v. State*, 357 Ark. 63, 160 S.W.3d

315 (2004). Substantial evidence is evidence forceful enough to compel a conclusion one way or the other beyond suspicion or conjecture. *Id.*

There was evidence tending to show that Ari'Yanna had been abused by appellant before her death. Ari'Yanna was examined for an abrasion on her labia a few days prior to her death by Dr. Lloyene Bruce-Reid, a pediatric specialist, who also observed multiple bruising on Ari'Yanna's leg and lower abdomen that was consistent with excessive whipping, perhaps with a belt. Dr. Maria Teresa Esquivel, a pediatrician with extensive experience in the area of child abuse, testified that she observed extensive unexplained bruising, and that skeletal x-rays of Ari'Yanna revealed cortical thickening and sclerosis in the long bones of her forearms that indicated child abuse. Dana Shavers, owner of Alphabet City Children's Care, testified that Ari'Yanna had attended her daycare when she was almost one year old. Ms. Shavers stated that appellant became romantically involved with Ari'Yanna's father shortly thereafter and that her father initially gave permission for appellant to pick the child up from daycare, but "then it kind of flip-flopped back and forth, she could and she could not." Ms. Shavers further testified that, beginning in February 2004, Ari'Yanna would cry and run to her if she saw appellant coming to pick her up. She further testified that Ari'Yanna was not reluctant to go with her father or anyone else. This behavior was so pronounced that Ms. Shavers talked to Ari'Yanna's father, but he still continued to permit appellant to pick Ari'Yanna up from daycare. Because she "thought something wasn't right," Ms. Shavers required both Ari'Yanna's father and appellant to sign a report

form on February 17, 2004, concerning the incidents. Ari'Yanna continued to attend the daycare and continued to be picked up by appellant until Ari'Yanna was withdrawn from the daycare in March 2004. Appellant resided with Ari'Yanna's father and acted as caretaker for Ari'Yanna after she was withdrawn from daycare.

Appellant took Ari'Yanna to the Jefferson Regional Medical Center on July 13, 2004. Ari'Yanna was comatose as a result of a five-inch skull fracture to the left side of her head and massive brain injuries. She was transferred to Arkansas Children's Hospital in Little Rock, where she died the following day. Appellant stated that she was caring for Ari'Yanna on July 13. Appellant testified that Ari'Yanna had fallen off her bicycle and hit her head, and that she had eaten pizza, played video games, and taken a nap before showing any symptoms some three hours after the injury. However, Dr. Charles Kokes, chief medical examiner for the Arkansas State Crime Laboratory, stated that Ari'Yanna's injuries were not consistent with a fall from a bicycle but were instead caused by a direct blow with a blunt object to the left side of her head delivered with sufficient force not only to fracture her skull but also to depress the skull considerably over an area from the forehead to the back of the head. Dr. Kokes stated that a fall from a bicycle would not have produced enough force to cause Ari'Yanna's skull fracture. He also testified that the injury was so severe that Ari'Yanna would necessarily have lost consciousness within minutes of the blow and that it would not have been possible for Ari'Yanna to have eaten pizza and played video games before doing

so. Based on Ari'Yanna's injuries and the lack of a credible explanation, he opined that her death was the result of a homicide.

The evidence in this case was circumstantial: Appellant was alone with Ari'Yanna for an extended period of time on July 13, 2004, and no one saw appellant deliver the fatal blow. Nevertheless, circumstantial evidence may support a murder conviction if it is consistent with the defendant's guilt and inconsistent with any other reasonable conclusion. *Coggin v. State*, 356 Ark. 424, 156 S.W.3d 712 (2004). Overwhelming evidence of guilt is not required in cases based on circumstantial evidence; instead, the test is one of substantiality. *Id.* To be substantial, circumstantial evidence must simply be consistent with appellant's guilt and inconsistent with any other reasonable conclusion. *Id.* Here, there was evidence that appellant had been physically abusing Ari'Yanna for some time prior to her death; that appellant had adequate opportunity to commit the murder; and that appellant's explanation of Ari'Yanna's injury was a medical impossibility. A defendant's improbable explanations of incriminating circumstances are admissible as proof of guilt. *Howard v. State*, 283 Ark. 221, 674 S.W.2d 936 (1984); *Edwards v. State*, 40 Ark. App. 114, 842 S.W.2d 459 (1992). We hold that the trial court did not err in denying appellant's motion for a directed verdict.

Appellant also argues that State's exhibits ten and twelve, photographs taken during the autopsy, should not have been admitted into evidence because the prejudicial effect of

the photographs outweighed their probative value. The well-established law regarding the admission of photographs was recently reiterated by the supreme court as follows:

The admission of photographs is a matter left to the sound discretion of the trial court. When photographs are helpful to explain testimony, they are ordinarily admissible. Further, the mere fact that a photograph is inflammatory or is cumulative is not, standing alone, sufficient reason to exclude it. Even the most gruesome photographs may be admissible if they assist the trier of fact in any of the following ways: by shedding light on some issue, by proving a necessary element of the case, by enabling a witness to testify more effectively, by corroborating testimony, or by enabling jurors to better understand the testimony. Other acceptable purposes are to show the condition of the victims' bodies, the probable type or location of the injuries, and the position in which the bodies were discovered. Absent an abuse of discretion, this court will not reverse a trial court for admitting photographs into evidence.

O'Neal v. State, 356 Ark. 674, 686, 158 S.W.3d 175, 184 (2004) (citations omitted).

It is true that the trial court is expected to carefully weigh the probative value of photographs against their prejudicial nature, and that we will reject the admission of inflammatory pictures where claims of relevance are tenuous and prejudice is great. *Newman v. State*, 353 Ark. 258, 106 S.W.3d 438 (2003). This, however, is not such a case. Although the photographs were indeed gruesome, they were used by Dr. Kokes to demonstrate the extent and location of the injuries and were instrumental to explain his testimony concerning the cause of death. Dr. Kokes demonstrated by these photographs that the location of the injuries displayed the *coup* pattern resulting from a blow rather than the *contrecoup* pattern that would be produced by a fall. The photographs therefore bore direct relevance to the key

issue in this case, the cause of Ari'Yanna's death, and we hold that the trial court did not abuse its discretion in admitting them into evidence.

Affirmed.

BIRD and NEAL, JJ., agree.