

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
LARRY D. VAUGHT, JUDGE

DIVISION I

CACR06-927

June 13, 2007

LLOYD LEE HOLT

APPELLANT

APPEAL FROM THE JOHNSON
COUNTY CIRCUIT COURT
[CR-03-164]

V.

STATE OF ARKANSAS

APPELLEE

HON. JOHN S. PATTERSON,
CIRCUIT JUDGE

AFFIRMED

A Johnson County jury convicted appellant Lloyd Lee Holt of negligent homicide, a class A misdemeanor, and false imprisonment in the second degree, a class A misdemeanor, and sentenced him to a fine of \$1000 and twelve-months incarceration on each conviction, to run concurrently. On appeal he challenges the sufficiency of the evidence to establish that he falsely imprisoned and negligently caused the death of his ten-year-old daughter, Molly Holt, who burned to death while chained to her bed.¹ He specifically argues that because the State failed to prove that he actually placed the shackles on his daughter and that his daughter's death was caused by fire, not by the restraints, there was insufficient evidence to support either of his convictions. We disagree and affirm.

¹ The Arkansas Supreme Court affirmed his wife's conviction for first-degree false imprisonment in a separate case. *Dick v. State*, 364 Ark. 133, ___ S.W.3d ___ (2005).

On the evening of November 9, 2003, the home of Lloyd Holt and his wife, Teresa Dick, burned. John Wood testified that he and his wife were out that night and observed Holt, Dick, and two children walking up the road. According to Wood, he pulled up and offered Holt the use of a cell phone. Holt responded that the authorities had already been called and that there was “nobody else in the house, that the house was so far gone there was nothing else to do.” Wood testified that after one of the children expressed concern about Molly, Holt assured the child that Molly “left last night.” Wood then gave Holt and his family a ride to Holt’s brother’s home.

Kim Parrish, the dispatcher for the sheriff’s office, testified that—contrary to Holt’s assurance to Wood—the first call received relating to the fire at the Holt home was placed at 12:30 a.m., by Holt’s sister-in-law, Nicki Holt. Further testimony established that when firefighters arrived at the scene, a skull was discovered under a metal bed frame, and the sheriff’s office was called to assist in the investigation. Chief Deputy Jerry Dorney, of the Johnson County Sheriff’s Department, testified that he observed a small metal bed frame and the remains of a body partially underneath the bed frame. He also testified that he discovered two padlocks sticking out of the rubble. He further stated that “there were bones before the chain and after the chain,” which indicated that the leg was through the chain with the padlocks attached. Dorney characterized the chain as a “dog chain.” Forensic anthropologist Elayne Pope testified that the victim was underneath the bed as opposed to being on top, because the chain was not draped over the top of the bedframe.

Although the body (which was later identified as Molly) was almost entirely consumed

by the fire, there was a residue of tissue at the hips that allowed testing of blood. From the samples obtained, Dr. Stephan Erickson, the state-medical examiner, testified that the primary cause of death was smoke and soot inhalation resulting in high carbon monoxide in Molly's system. He opined that the child was alive at the time of the fire.

Dick testified that Molly required supervision twenty-four hours a day, seven days a week, due to severe and aggressive behavioral problems. This testimony was corroborated at trial by Molly's special-education teacher and the school's principal. According to Dick, in order to protect their other children from Molly and Molly from herself, Dick and Holt sat down and discussed chaining Molly after the use of a rope failed because Molly kept untying it. They decided that a method that would prohibit her from getting out of her bed was best. Dick also noted that the key to the padlock was kept on top of the refrigerator and that Molly was routinely chained after she fell asleep and unchained before she woke up.

Dick admitted that—on the night of the fire—she, not Holt, had chained Molly to the bed. She further testified that on a few occasions Holt expressed concern with her decision to chain Molly and that he was unaware that Molly was chained on the night of the fire. As to the events relating to the fire, Dick stated that she awoke to Molly screaming and she and Holt attempted to get to Molly's bedroom at the front of the house, but the room was aflame, and they could not reach her. She testified that Holt was throwing water in Molly's room and then inquired if Molly was chained—and if so—to get him the key. According to Dick, after Holt determined that Molly was beyond help, he went out a window so that Dick could hand

the two younger children to him. After the younger two children were safe, she escaped through a window, and the family then left to go to a neighbor's house.

Deputy Dorney testified that Holt claimed he smelled something burning on the night before the fire, went into Molly's room to investigate, and noticed that she had put a piece of paper in the space heater. Dorney also testified regarding a series of letters that Holt had written while incarcerated. The letters contain a series of differing explanations for the crime. In one letter, Holt admitted that following the fire all he did was "lie about everything." In another, he accuses Dick of intentionally setting the fire with gasoline and matches as part of a lover's-triangle plot. Yet another verison stated that he retrieved the key and was on his way to free Molly, but he dropped it and could not recover it. Holt also detailed another scenario, stating that he knew Molly was restrained but the fire was too advanced to save her, so he took on the task of getting the others out safely.

John Holt (appellant's cousin) testified that he had visited Holt's home on several occasions. One time, he noticed a chain dog leash with a hook on it. In response to an inquiry about the chain, Holt explained that they used it to restrain Molly because she was uncontrollable and that she was prone to starting fires.

Finally, Sergeant Kim Warren testified that as part of her investigation into the Holt fire she interviewed Holt on November 10, 2003. She noted that at the time of the interview she did not observe any injuries or burns on Holt. He told her that he had fallen asleep but was startled awake around 11:00 p.m. or 11:30 p.m. by Dick's screams for help. During the interview, Holt claimed that he attempted to get to Molly's room, but the smoke and flames

were overwhelming. Further, Holt told Warren that he told Wood, the concerned neighbor, that everything was all right because there was nothing that anyone could do. He also acknowledged that he was aware that Molly was restrained on the night of the fire (because he had asked Dick if she had restrained Molly) but that he knew nothing about any chains being used. He further claimed to have no prior knowledge of the chaining practice.

On appeal Holt argues that there was insufficient evidence to support his conviction for negligent homicide because he “never applied the chain to Molly.” A person commits negligent homicide if he or she negligently causes the death of another person. Ark. Code Ann. § 5-10-105 (Repl. 2006). It is not necessary that the actor be fully aware of a perceived risk and recklessly disregarded it to have acted criminally negligently. *Hunter v. State*, 341 Ark. 665, 19 S.W.3d 607 (2000). It requires only a finding that the actor should have been aware of the risk under the circumstances and that his failure to perceive it was a gross deviation from the care a reasonable, prudent person would exercise under those circumstances. *Id.*

The series of letters Holt wrote relating to his knowledge of the crime are contradictory yet compelling. In several of these letters he admits that he knew about the chains and searched for a key. Also, Dick testified that she and Holt had discussed the logistics of the chaining and together reached a decision as to how best to place the chain on the bed. Holt’s cousin, John Holt, confirmed that Holt knew about the chaining. Further, Holt’s neighbor’s testimony relating to Holt’s behavior immediately after the fire established that Holt acted suspiciously. Further, both parents testified that Molly had a propensity for setting fires and had attempted to set one as recently as the night before the fire. Thus, the evidence

established that Holt was acutely aware of the risk of fire and of the fact that Molly was being chained at night. Based on these two factors, we are satisfied that Holt’s gross deviation from the care he owed his daughter was negligence of criminal proportion.

Further, Holt’s proximate cause defense—that because Molly was killed by the event of fire, not by the act of restraint—is unavailing. The independent intervening cause (fire) was not of a substantial degree to eliminate Holt’s culpability. The intervening cause must be such that the injury would not have been suffered except for the act or effect of the intervening agent totally independent of the acts constituting the primary negligence. *Jenkins v. State*, 60 Ark. App. 122, 959 S.W.2d 427 (1998). Although Molly died of smoke inhalation and carbon-monoxide poisoning, the fire alone was insufficient to cause her death. The reality remains that all others safely exited the home, and, but for the fact that she was tied up, she too would have had an opportunity to flee the fire.

Next we turn our attention to Holt’s argument that there was insufficient evidence to support his false-imprisonment conviction, which is essentially the same as his negligent homicide argument—that there was no evidence showing that he “knowingly” restrained Molly because he was not the one who actually shackled her to the bed. He also argues alternatively that he had lawful authority (as Molly’s parent) to chain her to the bed at night.²

A person commits false imprisonment in the second degree if, without consent and without lawful authority, the person knowingly restrains another person so as to interfere with

² Our supreme court has disposed of Holt’s alternative “authority” argument in his wife’s companion appeal. *See Dick v. State*, 364 Ark. 133, ___ S.W.3d ___ (2005) (finding that the act of chaining exceeded the scope of parental authority).

the other person's liberty. Ark. Code Ann. § 5-11-104 (Repl. 1997). There is ample evidence to show that Holt—at the very least—knew that Molly was being restrained nightly, thereby establishing his liability as an accomplice to negligent homicide. That same liability establishes that he is culpable for the underlying act of restraint—false imprisonment.

Accordingly, we find that there was sufficient evidence presented to support both the negligent homicide and false-imprisonment convictions.

Affirmed.

BIRD and BAKER, JJ., agree.