

NOT DESIGNATED FOR PUBLICATION  
ARKANSAS COURT OF APPEALS  
DAVID M. GLOVER, JUDGE

DIVISION I

CACR07-510

December 12, 2007

ANGELA LEWIS		APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, SEVENTH DIVISION [CR 06-646]
	APPELLANT	
V.		HONORABLE BARRY A. SIMS, CIRCUIT JUDGE
STATE OF ARKANSAS		
	APPELLEE	AFFIRMED

Angela Lewis was convicted in a jury trial of kidnapping, battery in the first degree, and fleeing. On appeal, she argues that the trial court erred in denying her motions for directed verdict on all three offenses, and that the trial court also erred in enhancing her sentence for first-degree battery because it was committed in the presence of a child.<sup>1</sup> We affirm.

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<sup>1</sup>We note that at the end of the judgment and commitment order, the trial judge added, “Defendant must serve 60 months at 100% with no early release or good time, she must serve 300 months at 70% with no early release or good time, and she must serve 240 months at one half time minus good time; therefore, she must serve a minimum of 330 months before being eligible for transfer.” While we question the trial court’s authority to impose such parameters, *see* Arkansas Code Annotated section 12-29-201(Repl. 2003) and *Upton v. State*,

In *Turbyfill v. State*, 92 Ark. App. 145, 149-50, 211 S.W.3d 557, 559 (2005) (citations omitted), this court set forth our standard of review for challenges to the sufficiency of the evidence:

We treat a motion for directed verdict as a challenge to the sufficiency of the evidence. In our review of the evidence, we seek to determine whether the verdict is supported by substantial evidence. However, we consider only the evidence that supports the conviction without weighing it against other evidence that is favorable to the accused. If the evidence is of sufficient certainty and precision to compel a conclusion and pass beyond mere suspicion and conjecture, the evidence is substantial. Further, we do not weigh the credibility of the witnesses on appeal; such matters are left to the factfinder. A jury is not required to believe the defendant's version of events because he is the person most interested in the outcome of the trial. Also, because of the difficulty in ascertaining intent, it is presumed that a person intends the natural and probable consequences of his acts, and the factfinder may draw upon common knowledge and experience to infer the defendant's intent from the circumstances.

Joann LaRocca was tortured by Lewis and Lewis's boyfriend, Toriano Scott, because Scott believed that LaRocca had stolen his drugs. LaRocca was beaten so severely by Scott and Lewis with a board and a broomstick that her kidneys failed, was stabbed in the back of her left leg by Lewis, and was pistol whipped in the face by Scott. Scott also attempted to strangle her with a cord. In addition to these injuries, Lewis also poured boiling water over LaRocca's body, causing second-degree burns that subsequently converted to third-degree burns, and Lewis then poured bleach and Pine-Sol on LaRocca. LaRocca testified that Lewis wrote a note that said "I'm going to kill you" and showed it to LaRocca; that during the time Scott and Lewis were torturing her, she

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68 Ark. App. 84, 4 S.W.3d 510 (1999), we express no opinion on this issue as it was not raised on appeal.

never heard Scott threaten Lewis or tell her what to do; that when Scott told Lewis that he was through and that Lewis could do what she wanted, Lewis continued to hit her and pour scalding water on her; and that it was Lewis who caused most of the injuries.

LaRocca was able to escape when Scott and Lewis went to a bedroom to lie down. She fled next door for help, at which time the police were called. When the police arrived, LaRocca told them that she had been held against her will and tortured, and that there was a baby in the house about whom she was concerned. Testimony from Officer Matthew Thomas indicated that when officers went next door, they found Scott and Lewis running out the back door of the house; that Lewis never asked the officers for help; that Lewis never said that she was abused or forced to do anything by Scott; and that, in his opinion, Lewis was not remorseful at all. Detective Julie Rose testified that she took a statement from Lewis, that Lewis never said anything about Scott forcing her or threatening her to commit those crimes, and that in her opinion, Lewis was not remorseful. Rose said that Lewis was laughing during her statement, had a smile on her face when she was talking about what she did to LaRocca, and “pretty much took responsibility for pretty much everything and being the force behind it all [the torture.]”

LaRocca was treated at Baptist Hospital, Children’s Hospital, and UAMS. The medical evidence indicated that LaRocca’s kidney failure was consistent with her being beaten; that the kidney failure required that she be on dialysis for the rest of her life; and that the dialysis would decrease her life span. With regard to the burns, the nurse who treated LaRocca testified that she expected LaRocca to have scars from her third-degree

burns and that burn scars left painful, thick, itchy scars. She considered this incident to be a major health event for LaRocca.

After the State rested, Lewis moved for directed verdicts on all three offenses. As to kidnapping, Lewis argued that the State had failed to provide any evidence that she or an accomplice did anything to substantially interfere with LaRocca's liberty or that it was Lewis's purpose to inflict physical injury upon LaRocca or to terrorize her. Lewis also argued that LaRocca was left in a safe place because she was left untied on the couch and the door to the house was left open. As to battery in the first degree, Lewis argued that the State failed to provide any substantial evidence that she purposely did anything to cause serious physical injury to LaRocca. Lewis also argued that there was no evidence that any battery occurred in the presence of a child. Finally, Lewis argued that there was no evidence that she fled; rather, she was standing at the back door and "got down" when she was instructed to do so by the police. All of these motions were denied by the trial court.

Prior to trial, Lewis filed a notice of intent to raise duress as a defense. At trial, she testified about her poor upbringing and that she did not have anyone to help her "do the right things." Lewis said that she had two children, but one lived with her mother and one lived with her aunt. She stated that she met Scott in 2004, that she began living with him soon after she met him, and that Scott became possessive and had begun physically abusing her and locking her in rooms. Lewis did not deny that she and Scott tortured LaRocca, but said that she took part in the incident because she was scared of Scott and

feared for her life. She denied stabbing LaRocca or writing the note about killing LaRocca. She said that when the police arrived, she was standing in the back door; that she could not run out the door because her baby was in the house; and that she could not leave the baby. Lewis again stated that she would not have been involved in the torture of LaRocca if she had not been afraid of Scott and that she only did what he told her to do. After Lewis's testimony, the defense rested and renewed its directed verdict motions, which were again denied.

### *Kidnapping*

A person commits the offense of kidnapping “if, without consent, the person restrains another person so as to interfere substantially with the person’s liberty with the purpose of inflicting physical injury upon the other person [or] terrorizing the other person or another person.” Ark. Code Ann. § 5-11-102(a)(4) and (6) (Repl. 2006). A person acts purposely with respect to his conduct when it is his conscious object to engage in conduct of that nature or to cause the result. Ark. Code Ann. § 5-2-202(1) (Repl. 2006).

Lewis argues that the trial court erred in denying her motion for directed verdict on kidnapping because the State failed to provide sufficient evidence that she committed that offense due to the fact that she was acting under duress.

Arkansas Code Annotated section 5-2-208 (Repl. 2006) provides:

It is an affirmative defense to a prosecution that the actor engaged in the conduct charged to constitute an offense because the actor reasonably believed he or she was compelled to engage in the conduct by the threat or use of unlawful force

against the actor's person or the person of another that a person of ordinary firmness in the actor's situation would not have resisted.

A defendant is required to prove an affirmative defense by a preponderance of the evidence, and the question as to which way the evidence preponderates is primarily a jury question. *See Owens v. State*, 300 Ark. 73, 777 S.W.2d 205 (1989).

The jury did not find Lewis credible with respect to her claim of duress, as evidenced by its verdict. Lewis hit LaRocca with a board and a broomstick, and she poured boiling water, bleach, and Pine-Sol on her. LaRocca also testified that Lewis stabbed her with a knife. We hold that there is sufficient evidence to support the finding that Lewis kidnapped LaRocca.

Lewis also argues that she did not commit kidnapping, a Class Y felony, because she voluntarily released LaRocca alive and in a safe place, which is only a Class B felony in accordance with Ark. Code Ann. § 5-11-102(b)(2) (Repl. 2006). Lewis contends that she released LaRocca alive and in a safe place because LaRocca was not bound, was left on the couch while Lewis took Scott to their bedroom, and was able to escape. We disagree. First of all, LaRocca escaped, Lewis did not release her. Furthermore, the place where LaRocca was tortured, which Lewis contends was a safe place, was probably the most unsafe place for LaRocca to be, given that she was tortured for hours there and her captors were still in the house when she escaped. We disagree with Lewis's argument that LaRocca was released in a safe place.

#### *Battery in the First Degree*

“A person commits battery in the first degree if the person causes serious physical injury to another person under circumstances manifesting extreme indifference to the value of human life.” Ark. Code Ann. § 5-13-201(a)(3) (Repl. 2006). “Serious physical injury” is defined as “physical injury that creates a substantial risk of death or that causes protracted disfigurement, protracted impairment of health, or loss or protracted impairment of the function of any bodily member or organ.” Ark. Code Ann. § 5-1-102(21) (Repl. 2006).

Although she admits that LaRocca sustained serious physical injury, Lewis argues that the State failed to prove that she caused the serious physical injury under circumstances manifesting extreme indifference to the value of human life because the State failed to prove that her conduct created some risk of death, which is required to manifest extreme indifference to the value of human life. *See Harmon v. State*, 340 Ark. 18, 8 S.W.3d 472 (2000). Lewis argues that her case is similar to *Tigue v. State*, 319 Ark. 147, 889 S.W.2d 760 (1994), where our supreme court held that forcibly holding a child’s hands in hot water, causing third-degree burns, while constituting serious physical injury, was not life-threatening conduct and therefore the child was not injured under circumstances manifesting extreme indifference to human life. We disagree. LaRocca was beaten, stabbed, and strangled, and her kidneys were impaired to the extent that she now is on permanent dialysis. Lewis poured boiling water, bleach, and Pine-Sol onto LaRocca’s body, causing second-degree burns that converted to third-degree burns. Viewing the evidence in the light most favorable to the State, we hold that there was

sufficient evidence from which the jury could determine that Lewis's actions were under circumstances manifesting extreme indifference to the value of human life.

Lewis also argues that there was insufficient evidence to support a sentence enhancement because the battery was committed in the presence of a child. Arkansas Code Annotated section 5-4-702 (Repl. 2006) provides, "Any person who commits a felony offense involving ... battery ... may be subject to an enhanced sentence of an additional term of imprisonment of not less than one year and not greater than ten years if the offense is committed in the presence of a child." "In the presence of a child" is defined as "in the physical presence of a child or knowing or having reason to know that a child is present and may see or hear an act of ... battery ...." Ark. Code Ann. § 5-4-701(2) (Repl. 2006). Lewis admitted that her baby was in the house, but she argues that the baby was not physically present and was unable to witness what occurred. A review of the photographs entered into evidence reveals that the house was small and there were no doors to several of the rooms in the house. There was testimony from one of the police officers that when the child was found, she was in a room that had no door on the hinges. Lewis's argument ignores the fact that by definition the child does not have to be physically present in the room where the battery is occurring; rather, it is enough that a child is present and may hear the battery.

#### *Fleeing*

"If a person knows that his or her immediate arrest or detention is being attempted by a duly authorized law enforcement officer, it is the lawful duty of the person to refrain



from fleeing, either on foot or by means of any vehicle or conveyance.” Ark. Code Ann. § 5-54-125(a) (Repl. 2006). Although Lewis testified that she was simply standing at the back door of the house when the officers arrived, one of the officer’s testimony indicated that she was running out the back door. This was a credibility determination for the jury, which was not required to believe Lewis’s testimony.

Affirmed.

HEFFLEY and BAKER, JJ., agree.