

ARKANSAS COURT OF APPEALS

DIVISIONS I & II

No. CACR07-948

LAKEELA WEBB

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered December 31, 2008

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
[NO. CR 05-3424]

HONORABLE JOHN W.
LANGSTON, JUDGE

SUPPLEMENTAL OPINION UPON
DENIAL OF REHEARING

DAVID M. GLOVER, Judge

LaKeela Webb was convicted by a Pulaski County jury of the offenses of negligent homicide and second-degree endangering the welfare of a minor. On September 24, 2008, this court reversed and remanded this case for a new trial, holding that the trial court erred in denying her motion to suppress evidence removed by Maumelle police officers in an illegal search.

It was implicit in the court's opinion that the removal of evidence in the illegal search was not harmless error. This is the point the State raises in its Petition for Rehearing. We now say it explicitly.

PITTMAN, C.J., MARSHALL and VAUGHT, JJ., agree.

HEFFLEY and BAKER, JJ., dissent.

SARAH J. HEFFLEY, Judge, dissenting. I am in full agreement with Judge Baker and join in her dissenting opinion. Even without the plastic bag and DNA evidence confirming that the bloody substance found on the bag came from the child, there is overwhelming evidence of appellant's guilt as to both offenses, such that the admission of the bag and DNA analysis was rendered harmless beyond a reasonable doubt.

A person commits negligent homicide if she negligently causes the death of another person. Ark. Code Ann. § 5-10-105(b)(1) (Repl. 2006). A person acts negligently with respect to attendant circumstances or as a result of her conduct when the person should be aware of a substantial and unjustifiable risk that the attendant circumstances exist or the result will occur. Ark. Code Ann. § 5-2-202(4)(A) (Repl. 2006). A person commits the offense of endangering the welfare of a minor in the second degree if she knowingly engages in conduct creating a substantial risk of serious harm to the physical or mental welfare of another person known by the person to be a minor. Ark. Code Ann. § 5-27-206(a)(1) (Repl. 2006).

This case concerns the death of a healthy and thriving infant. The evidence plainly shows that appellant left her two-month-old son, who required feeding every two to four hours, alone in his crib upwards of eleven hours. Judge Baker is correct to say that this evidence in and of itself establishes appellant's guilt of both offenses. However, there is other compelling evidence in the record, exclusive of the bag officers removed from the crib, that further demonstrates appellant's guilt. Appellant told several persons that the child had a plastic bag over his face when she found his lifeless body. Appellant told an officer that she kept plastic bags in the crib, and the father of the child confirmed that appellant used the crib for

storage. I submit that it is criminally negligent and endangers the welfare of a child to leave a child home alone for an extended period of time with dangerous objects in the crib.

In my view, the bag seized by the officers and the DNA evidence were not particularly damning. There was other evidence revealing the presence of a plastic bag. There was also independent evidence that the child had blood on his face, and the probative value of the blood on the bag and the DNA evidence was greatly diminished by the medical examiner's testimony that the blood flowed from the child post mortem. I am also mindful that appellant gave various accounts concerning the events in question, and a jury can consider and give weight to any false, improbable and contradictory statements made by a defendant to explain suspicious circumstances. *Ewing v. State*, 85 Ark. App. 411, 155 S.W.3d 715 (2004).

I would affirm appellant's convictions because the illegally seized evidence was harmless beyond a reasonable doubt.

KAREN R. BAKER, Judge, dissenting. I would grant the State's petition for rehearing, consider the State's harmless error argument, and affirm.

Illegally obtained evidence that is erroneously admitted is subject to the constitutional harmless-error analysis. *Schalski v. State*, 322 Ark. 63, 907 S.W.2d 693 (1995) (citing *Fahy v. Connecticut*, 375 U.S. 85, (1963)). To conclude that a constitutional error is harmless, and does not mandate reversal, this court must conclude beyond a reasonable doubt that the error did not contribute to the verdict. *Baird v. State*, 357 Ark. 508, 182 S.W.3d 136 (2004) (citing *Riggs v. State*, 339 Ark. 111, 3 S.W.3d 305 (1999)). The question then for this court to determine is, if we excise from the evidence the plastic bag seized illegally from the baby's crib, does the remaining evidence show beyond a reasonable doubt that appellant committed negligent homicide and second-degree

endangering the welfare of a minor? *See Riggs v. State*, 339 Ark. 111, 3 S.W.3d 305 (1999) (citing *Chapman v. California*, *supra*). As in *Riggs*, I conclude that it does.

The jury had before it testimony from James Burks, Brittany Robinson, Officer Hicks, and Detective Cone that appellant told each of them that she found the infant in his crib with the plastic bag over his face. While appellant's versions of what happened to the infant varied to some degree, the common thread in each of her stories was the plastic bag. Cheryl Rutledge, appellant's mother, testified she was unable to assist appellant with keeping the infant that weekend because she planned to be out of town during that time. James Burks testified that he and appellant made plans to "hook up" the night the infant died. He testified that early in the evening, he and appellant attended separate parties. After several hours, appellant dropped by the party Burks was attending to get money from him for the hotel room, where they would later meet. At approximately 2:00 or 3:00 am, Burks left his party and met appellant at the hotel room where they stayed until approximately 1:00 pm the next day. Burks understood that the infant was in appellant's mother's care.

After appellant returned home from her evening out, she called Burks to tell him she "had done something really bad," "that she had left [the infant] at the house the whole time [they] were gone," and that the infant "had suffocated." Rather than taking the child to the hospital, appellant drove with the infant from her home in Maumelle to her mother's home in Sherwood. Brittnay Robinson, who was at appellant's mother's home when appellant arrived, testified that there was "no life in [the infant]" and "[h]e had blood on his face." Even if the trial court had granted the motion to suppress, there was ample evidence properly introduced at trial to sustain her convictions. *See Criddle v. State*, 338 Ark. 744, 1 S.W.3d 436 (1999).

Pursuant to the negligent-homicide statute codified at Arkansas Code Annotated section 5-

10-105(b)(1) (Repl. 2006), a person commits negligent homicide if she “negligently causes the death of another person.” A person acts negligently with respect to attendant circumstances or as a result of his or her conduct when the person should be aware of a substantial and unjustifiable risk that the attendant circumstances exist or the result will occur. Ark. Code Ann. § 5-2-202(4)(A) (Repl. 2006). The risk must be of such a nature and degree that the actor’s failure to perceive the risk involves a gross deviation from the standard of care that a reasonable person would observe in the actor’s situation considering the nature and purpose of the actor’s conduct and the circumstances known to the actor. Ark. Code Ann. § 5-2-202(4)(B). Under the negligent-homicide statute, even without evidence of the infant suffocating on a plastic bag, appellant may still have been convicted of negligent homicide for leaving her two-month-old unattended in a crib in her home for approximately eleven hours while she attended a party and met the baby’s father at a hotel for an overnight outing.

For the foregoing reasons, I would grant the State’s petition for rehearing and affirm appellant’s convictions for negligent homicide and second-degree endangering the welfare of a minor on the basis that the erroneous admission of the plastic bag was harmless.

HEFFLEY, J., joins.