# MEMORANDUM DECISION




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IN THE
# COURT OF APPEALS OF INDIANA

Thaddious Robert Rice,
*Appellant-Defendant,*

v.

State of Indiana,
*Appellee-Plaintiff*

February 18, 2021

Court of Appeals Case No. 20A-CR-1193

Appeal from the Warrick Circuit Court

The Honorable Greg A. Granger, Judge

Trial Court Cause No. 87C01-1709-MR-434

**Vaidik, Judge.**

# Case Summary

[1] Thaddious Robert Rice was convicted of Level 1 felony neglect of a dependent and sentenced to forty years. He now appeals, raising numerous issues. We affirm.

# Facts and Procedural History

[2] Rice and Jordan Hughes started dating in late January or early February 2017. Shortly thereafter, they moved in together along with Jordan's son, Jaxson Wheeler. On March 1, Rice was charged with Level 3 felony rape (for an incident alleged to have occurred in July 2016) and released on bond. *See* No. 82C01-1703-F3-1174.

[3] On the morning of April 10, 2017, Jordan went to work and left ten-month-old Jaxson at home in the care of Rice, who was twenty-two. Jordan, Jaxson, and Rice lived in a second-floor apartment in Newburgh. Outside their apartment door, there were eight stairs leading down to a landing and then seven steps leading in the opposite direction the rest of the way down to the ground floor. *See* Exs. 9, 10. At the top of the stairs, twelve feet up from the ground floor, there was a ledge. *See id.*

[4] Around 12:24 p.m., Rice arrived at Deaconess Gateway Hospital in Newburgh with Jaxson in his car. Ex. 7. Jaxson was "unresponsive, unconscious and not breathing." Tr. Vol. III p. 218. Rice told an emergency-department nurse he had Jaxson in his car seat and lost his footing at the top of the stairs and "the

child consequently fell down the stairs[,] and he had fallen too." *Id.* Medical personnel started CPR and restored Jaxson's heartbeat at 12:34 p.m. Jaxson was then intubated and placed on a ventilator. At 1:18 p.m., Jaxson's temperature was measured as 90.4 degrees Fahrenheit, which was "abnormally low." Tr. Vol. IV p. 20. Jaxson was also acidotic with a low blood pH of 6.99. Dr. Jonathan Weyer, an ophthalmologist, examined Jaxson and determined he had bilateral retinal hemorrhages.

[5] At 1:52 p.m., Jaxson was transferred by ambulance to Deaconess Midtown Hospital in Evansville. There, a CAT scan showed a "severe traumatic brain injury," including a subarachnoid hemorrhage (blood in the brain) and a subdural hematoma (blood between the skull and the brain). Tr. Vol. III p. 246. Based on the severity of the brain injury, Jaxson's doctors did not expect a full recovery and suspected he was braindead.

[6] At Midtown, Jordan spoke to Rice about what happened to Jaxson. Rice said the key got stuck in the door and when he tried to pull it out, he tripped over the diaper bag and fell down the stairs. *Id.* at 207. Rice said he "hit the landing" and knocked himself out and when he "came to" he noticed Jaxson's car seat was upside down. *Id.* According to Rice, he flipped over the car seat and tried to give Jaxson CPR.

[7] The next day, April 11, while Jaxson was still alive but not expected to survive, Rice spoke to the police at the hospital. The interview was recorded. *See* Ex. 8b. Rice initially said he lost his footing at the top of the stairs while holding Jaxson

in the car seat, they both fell, and he dropped the car seat while attempting to catch his fall. Rice claimed he passed out from the fall and woke up at the bottom of the stairs to find Jaxson unresponsive and "paralyzed." *Id.* Rice said he did not call 911 but rather drove Jaxson to the hospital.

[8] After the police pressed Rice about his account of the incident, Rice became very emotional. Eventually, he said he placed Jaxson in his car seat on the ledge at the top of the stairs. Rice said he fell down the stairs and then saw Jaxson had fallen from the ledge. At the end of the interview, Rice apologized for changing his story. He explained he had been trying to impress Jordan's family by taking care of Jaxson and didn't know how he could tell them he set Jaxson on the ledge and he fell.

[9] On April 12, doctors told Jordan there was nothing left they could do for Jaxson, and Jaxson died that day. Steve Lockyear, the Vanderburgh County Coroner, went to the hospital to investigate Jaxson's death. The coroner encountered Rice in a hallway and asked to speak to him. Rice declined "on the advice of his attorney." Tr. Vol. IV p. 90. The coroner then tried to obtain information "from other sources." *Id.* At some point, Rice "waved" to the coroner to follow him down the hallway. *Id.* at 91. Rice then told the coroner he had been "carrying [Jaxson] in a car seat" and Jaxson "fell down a flight of stairs, hit the landing and then turned 180 degrees and then came back down the other side of the stairs." *Id.* at 127. The coroner "challenged" Rice's explanation, asking if Jaxson had fallen twelve feet over the ledge or down the stairs. *Id.* Rice, who "sob[bed]," maintained Jaxson had fallen down the stairs.

*Id.* at 130. The coroner asked Rice if he had shaken Jaxson. Rice denied shaking Jaxson except for "on the way to the hospital just to try and wake [him] up." *Id.* at 128.

[10] An autopsy was performed on April 13. The forensic pathologist determined Jaxson's cause of death was cerebral edema (brain swelling) due to subdural and subarachnoid hemorrhages caused by blunt-force trauma. Ex. 15, p. 27; Tr. Vol. IV p. 156. The pathologist also observed retinal hemorrhages, a hemorrhage to the thymus gland, an abrasion at the base of the neck, two parallel abrasions at the right base of the neck over the right shoulder, a hemorrhage on the surface of a rib near where it connected to the spine, a hemorrhage in the small intestine, two bruises on the scalp, and bruises on the buttocks. *See* Tr. Vol. IV pp. 137-39. Although the forensic pathologist couldn't say for certain Jaxson's injuries were caused by "shaken baby [syndrome]," he didn't think Rice's explanation of Jaxson falling down the stairs in his car seat was "a good explanation" for his severe injuries. *Id.* at 159, 166.

[11] Based on suspected child abuse, the hospital made a report to the Indiana Department of Child Services, which referred the case to Riley Hospital for Children. Dr. Tara L. Harris, a child-abuse pediatrician, reviewed Jaxson's medical records. She determined Jaxson's injuries "were the result of abuse and specifically abusive head trauma."[1] Tr. Vol. V p. 37. She observed Jaxson had

[1] According to Dr. Harris, "abusive head trauma" is the preferred terminology to "shaken baby syndrome." Tr. Vol. V p. 48.

"massive retinal hemorrhages in both of his eyes" and that "the pattern of retinal hemorrhages that Jaxson had with those multi-layers all the way to [the] periphery" "with the folding of the retina" is "almost exclusively see[n] in abusive head trauma" or "shaking of the head." *Id.* at 36-37. Dr. Harris further opined Jaxson's subdural and subarachnoid bleeding was not consistent with a fall down the stairs or a fall from twelve feet because the bleeding was too "spread out" and on both sides of the brain. *Id.* at 34, 57-58. Finally, Dr. Harris observed Jaxson's "well below normal" temperature of 90.6 degrees indicated he had been injured "for several hours" and it would have taken "a couple of hours at least" for his pH to drop from 7.4 to the "very abnormal" number of 6.99. *Id.* at 31-32.

[12] In September 2017, five months after Jaxson's death, the State charged Rice with murder and Level 1 felony neglect of a dependent resulting in death. A six-day jury trial began on February 25, 2020. Numerous witnesses testified for the State, including Jordan, many of the doctors and nurses who treated Jaxson, the coroner, and the child-abuse pediatrician. Specifically, Dr. Weyer, the ophthalmologist, testified over Rice's objection the injuries to Jaxson's eyes were not caused by falling down the stairs but rather by the "repetitive motion of [his] head going back and forth." *Id.* at 17. The coroner, over Rice's objection, testified about what Rice told him in the hallway at the hospital.

[13] The jury found Rice guilty of Level 5 felony reckless homicide as a lesser-included offense of murder and Level 1 felony neglect of a dependent resulting in death. The trial court entered judgment of conviction for the neglect count

only. At the sentencing hearing, the State noted the rape charge was still pending against Rice. In addition, the State presented evidence Rice had been charged with Level 4 felony sexual misconduct with a minor a couple weeks after Jaxson's death (for an incident alleged to have occurred in November 2016). *See* No. 82C01-1704-F4-2446. Rice testified he was "sorry" and that what happened to Jaxson was a "tragic accident." Tr. Vol. V p. 159. Defense counsel conceded the court could consider Rice's pending felony charges but asked the court to give them "very little weight" as Rice hadn't been convicted.[2] *Id.* at 165-66. The trial court found two aggravators: (1) Rice had the care, custody, and control of Jaxson and (2) he has a "history of criminal activity" and "criminal problems" as evidenced by his convictions for Class C misdemeanor illegal transport of alcohol by a minor and Class A misdemeanor driving while suspended as well as his pending felony charges. *Id.* at 171-72. The court found one mitigator: Rice expressed remorse. The court sentenced Rice to the maximum term of forty years.

[14] Rice now appeals.

[2] Jury trial is scheduled in the rape case for March 2021, and jury trial is scheduled in the sexual-misconduct case for April 2021.

# Discussion and Decision

## I. Statements to Coroner

[15] Rice contends the trial court erred in admitting his statements to the coroner in violation of his right to counsel under Article 1, Section 13 of the Indiana Constitution.[3] In support of his argument, Rice cites *Malinski v. State*, 794 N.E.2d 1071 (Ind. 2003). There, the defendant was arrested and in jail when his family, unknown to him, hired an attorney for him. When the attorney arrived at the jail, the police were interrogating the defendant. The attorney asked to speak to the defendant or stop the interrogation, but the jail said no. The defendant later moved to suppress his statements to the police, which the trial court denied. On appeal, our Supreme Court held "an **incarcerated** suspect has a right under [Article 1, Section 13] to be informed that an attorney hired by his family to represent him is present at the station and wishes to speak to him." *Id.* at 1079 (emphasis added). Nevertheless, the Court held the defendant knowingly, voluntarily, and intelligently waived his right to counsel because the police advised him of his right to counsel before interrogating him, and he waived it. *Id.* at 1080.

[16] *Malinski* does not help Rice. First, Rice was neither arrested nor in jail, and there was no attorney seeking to talk to him. Second, Rice was talking to the

[3] Article 1, Section 13 of the Indiana Constitution provides, "In all criminal prosecutions, the accused shall have the right . . . to be heard by himself and counsel."

coroner, who is statutorily charged with investigating certain deaths, not a police officer. *See* Ind. Code § 36-2-14-6; *Ackerman v. State*, 51 N.E.3d 171, 186 (Ind. 2016) (distinguishing between coroners, who investigate deaths, and law-enforcement officers, who investigate crimes). Because Rice has identified no Article 1, Section 13 right to counsel for questioning during a coroner's death investigation, the court did not err in admitting Rice's statements to the coroner.[4]

[17] Even if we concluded the trial court erred in admitting Rice's statements to the coroner, Rice would not be entitled to any relief. The story Rice told the coroner about Jaxson falling down the stairs is essentially the same story he told Jordan, the emergency-department nurse, and initially the police. *See Tobar v. State*, 740 N.E.2d 106, 108 (Ind. 2000) ("Evidence that is merely cumulative is not grounds for reversal.").

## II. Ophthalmologist's Testimony

[18] Rice next contends the trial court erred in admitting Dr. Weyer's testimony about the cause of Jaxson's retinal injuries in violation of Indiana Evidence Rule 702. Evidentiary rulings, including a decision to admit or exclude expert testimony, lie solely within the discretion of the trial court and will be reversed only for an abuse of discretion. *Summerhill v. Klauer*, 49 N.E.3d 175, 179 (Ind.

[4] Although Rice cites the federal constitution, he does not make any argument under it. Therefore, it is waived. *See* Ind. Appellate Rule 46(A)(8)(a).

Ct. App. 2015). Evidence Rule 702 governs the admissibility of testimony by expert witnesses:

> (a) A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue.
>
> (b) Expert scientific testimony is admissible only if the court is satisfied that the expert testimony rests upon reliable scientific principles

In addition, Indiana Evidence Rule 703 provides, "An expert may base an opinion on facts or data in the case that the expert has been made aware of or **personally observed**. Experts may testify to opinions based on inadmissible evidence, provided that it is of the type reasonably relied upon by experts in the field." (emphasis added).

[19] Rice doesn't dispute Dr. Weyer, a medical doctor and board-certified ophthalmologist, was qualified to testify about the **nature** of Jaxson's eyes injuries. Rather, he argues Dr. Weyer wasn't qualified to testify about the **cause** of his eye injuries because he did not "observe[] facts sufficient to validly form an opinion." Appellant's Br. p. 25. Not so. The record shows Dr. Weyer personally examined Jaxson at the hospital and took a video and photos of his eyes using special equipment. *See* Exs. 20-26. Dr. Weyer testified he has specific training and education that "certain types of bleeding" in the eye are related to certain types of injury or disease. Tr. Vol. V p. 12. Specifically, Dr. Weyer

testified a child involved in a car accident or fall would have retinal bleeding that is "few," "small," and "scattered" in the "very posterior part of the eye." *Id.* at 12-13. However, Dr. Weyer said Jaxson had "diffuse hemorrhages throughout both retina," which, according to the scientific "literature," is not consistent with a "severe fall" but rather repetitive shaking of the head. *Id.* at 16-17. This was a proper expert opinion based on Dr. Weyer's medical knowledge and the facts of this case, which would aid the trier of fact in determining the cause of Jaxson's death.

[20] Even if we concluded the trial court erred in allowing Dr. Weyer to testify about the cause of Jaxson's eye injuries, Rice would not be entitled to any relief. *See Tobar*, 740 N.E.2d at 108. The jury heard almost identical testimony from Dr. Harris, the child-abuse pediatrician. Specifically, she testified Jaxson had "massive retinal hemorrhages in both of his eyes" and that "the pattern of retinal hemorrhages that Jaxson had with those multi-layers all the way to [the] periphery" "with the folding of the retina" is "almost exclusively see[n] in abusive head trauma" or "shaking of the head." Tr. Vol. V pp. 36-37.

## III. Sufficiency of the Evidence

[21] Rice next contends the evidence is insufficient to support his conviction for Level 1 felony neglect of a dependent resulting in death. When reviewing sufficiency-of-the-evidence claims, we neither reweigh the evidence nor judge the credibility of witnesses. *Willis v. State*, 27 N.E.3d 1065, 1066 (Ind. 2015). We will only consider the evidence supporting the verdict and any reasonable

inferences that can be drawn from the evidence. *Id.* A conviction will be affirmed if there is substantial evidence of probative value to support each element of the offense such that a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. *Id.*

[22] To convict Rice as charged here, the State had to prove Rice, having the care of ten-month-old Jaxson, knowingly placed him in a situation that endangered his life or health, resulting in his death. Appellant's App. Vol. II p. 27; *see also* Ind. Code § 35-46-1-4(a)(1), (b)(3). Rice argues the State failed to prove his "failure to [seek] medical care resulted in [Jaxson's] death." Appellant's Br. p. 38. While neglect convictions are often based on a defendant's failure to seek medical care, *see Gross v. State*, 817 N.E.2d 306, 309 (Ind. Ct. App. 2004) ("Of the numerous cases that have addressed the sufficiency of the evidence for a child neglect conviction, most have involved fact patterns relating to a failure to seek medical care for an injured or ill child."), they don't have to be, *see, e.g.*, *Lindhorst v. State*, 90 N.E.3d 695, 702 (Ind. Ct. App. 2017). Here, the State's theory on the neglect count was Rice "shook" Jaxson "repeatedly, repeatedly, repeatedly, repeatedly, repeatedly." Tr. Vol. V p. 88. And the evidence supports this theory. Specifically, Dr. Harris testified Jaxson's injuries were caused by "abusive head trauma" from a shaking and were not consistent with a fall down the stairs or a fall from twelve feet. The evidence is sufficient to support Rice's neglect conviction.

# IV. Improper Aggravator

[23] Next, Rice contends the trial court improperly found as an aggravator he had the care, control, and custody of Jaxson because that fact is an element of his neglect conviction.[5] The State responds the trial court did not abuse its discretion in finding this to be an aggravator under *Robinson v. State*, 894 N.E.2d 1038 (Ind. Ct. App. 2008).[6] In that case, the defendant argued the trial court improperly found she had the care and custody of the victim as an aggravating factor because that fact is an element of neglect of a dependent. We determined the trial court went beyond merely relying upon an element of the crime to consider "the particularized circumstances of the crime," which included the fact the defendant was in a position of care over a completely defenseless and vulnerable newborn. *Id.* at 1043.

[24] Here, the trial court found Jaxson was similarly defenseless:

> But at the time you came into Jaxson's life you had two pending felonies, a Level 3 Felony, a Level 4 Felony and you were in his life for []close to three months. [N]ot your typical fatherly role model. Pastor Ruble said it well today, which applies to everybody in this Courtroom, our life is in God's hands. But on April 1[0]th of '17 Jaxson's life was in your hands. He was in a

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[5] Rice also argues the trial court erred in finding his pending felony charges as an aggravator. At the sentencing hearing, defense counsel conceded the court could consider his pending charges but asked the court to give them minimal weight. Because "the relative weight ascribed by the trial court to any aggravating and mitigating circumstances is no longer subject to our review," there is no merit to this argument. *Salhab v. State*, 153 N.E.3d 298, 304 (Ind. Ct. App. 2020).

[6] Rice did not file a reply brief to respond to the State's argument *Robinson* applies here.

> car seat. The car seat was meant to protect him. But you were there to protect him. You were more important than the car seat.

Tr. Vol. V p. 171. Based on *Robinson*, the trial court did not abuse its discretion in identifying this aggravator.

## V. Inappropriate Sentence

[25] Last, Rice contends his maximum sentence of forty years is inappropriate and asks us to revise it to the minimum sentence of twenty years. *See* Ind. Code § 35-50-2-4. Indiana Appellate Rule 7(B) provides an appellate court "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." "Whether a sentence is inappropriate ultimately turns on the culpability of the defendant, the severity of the crime, the damage done to others, and a myriad of other factors that come to light in a given case." *Thompson v. State*, 5 N.E.3d 383, 391 (Ind. Ct. App. 2014) (citing *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008)). Because we generally defer to the judgment of trial courts in sentencing matters, defendants must persuade us their sentences are inappropriate. *Schaaf v. State*, 54 N.E.3d 1041, 1044-45 (Ind. Ct. App. 2016).

[26] As for the nature of the offense, Rice points out that while his actions may have been reckless, they were not intentional. While many details of Jaxson's death are unclear, what is clear is Jaxson sustained multiple severe injuries in Rice's care. The forensic pathologist catalogued the following injuries to Jaxson:

subdural and subarachnoid hemorrhages, retinal hemorrhages, a hemorrhage in the thymus gland, an abrasion at the base of the neck, two parallel abrasions at the right base of the neck over the right shoulder, a hemorrhage on the surface of a rib near where it connected to the spine, a hemorrhage in the small intestine, two bruises on the scalp, and bruises on the buttocks. Dr. Harris testified Jaxson's injuries "were the result of abuse and specifically abusive head trauma." Tr. Vol. V p. 37. She observed Jaxson had "massive retinal hemorrhages in both of his eyes" and that "the pattern of retinal hemorrhages that Jaxson had with those multi-layers all the way to [the] periphery" "with the folding of the retina" is "almost exclusively see[n] in abusive head trauma" or "shaking of the head." *Id.* at 36-37. Dr. Harris further opined Jaxson's subdural and subarachnoid bleeding was not consistent with a fall down the stairs or a fall from twelve feet because the bleeding was too "spread out" and on both sides of the brain. *Id.* at 34, 57-58. Finally, the record shows Rice did not seek immediate medical care for Jaxson. According to Dr. Harris, Jaxson had been injured for several hours when he arrived at the hospital.

[27] Rice's character does not support a downward revision of his sentence. It is true Rice had only two misdemeanor convictions at the time of Jaxson's death; however, he was on bond for rape at the time. Although Rice said he was sorry at the sentencing hearing, he also claimed what happened to Jaxson was a "tragic accident." Rice has failed to persuade us his forty-year sentence is inappropriate.

[28] Affirmed

Brown, J., and Pyle, J., concur.