

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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KA 17-02137

PRESENT: SMITH, J.P., LINDLEY, MONTOUR, GREENWOOD, AND DELCONTE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ERICA L. BELL, DEFENDANT-APPELLANT.

JULIE CIANCA, PUBLIC DEFENDER, ROCHESTER (BRADLEY E. KEEM OF COUNSEL),
FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (MARTIN P. MCCARTHY, II,
OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Monroe County Court (Christopher S. Ciaccio, J.), rendered November 8, 2017. The judgment convicted defendant upon a nonjury verdict of murder in the second degree and manslaughter in the first degree.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed.

Memorandum: Defendant appeals from a judgment convicting her upon a nonjury verdict of murder in the second degree (Penal Law § 125.25 [4]) and manslaughter in the first degree (§ 125.20 [4]). Defendant's conviction stems from her conduct in punching her boyfriend's three-year-old child three times in the abdomen with enough force to perforate the bowel. Although the child displayed symptoms of serious illness, she was not taken to a hospital until at least two days after her symptoms started. Despite lifesaving measures provided at the hospital, the child succumbed to her injuries.

Defendant contends that, with respect to the conviction of murder in the second degree, the evidence is legally insufficient to establish circumstances evincing a depraved indifference to human life or that she recklessly engaged in conduct that created a grave risk of death or serious physical injury to the child. Viewing the evidence in the light most favorable to the People (*see People v Delamota*, 18 NY3d 107, 113 [2011]; *People v Contes*, 60 NY2d 620, 621 [1983]), we conclude that the evidence is legally sufficient to establish defendant's guilt of depraved indifference murder (*see generally People v Bleakley*, 69 NY2d 490, 495 [1987]). To establish that defendant was guilty of depraved indifference murder of a child, the People were required to establish two states of mind: "at the time the crime occurred, defendant had a mens rea of 'utter disregard for the

value of human life,' . . . [and] a second mens rea [of] . . . recklessness as to a grave risk of serious physical injury or death" (*People v Barboni*, 21 NY3d 393, 400 [2013]).

Sometime after the assault of the victim by defendant, the victim became pale and listless, would not eat or drink, and vomited numerous times. Despite the urging of multiple people for defendant and her boyfriend to get medical attention for the child, they failed to do so until it was too late. Defendant told people that the child merely had the flu, and even urged her boyfriend to wait to take the child for medical treatment. "Given defendant's knowledge of how the injuries were inflicted and [her] failure to seek immediate medical attention . . . until it was too late," we conclude that there is sufficient evidence for the factfinder to determine that "defendant evinced a wanton and uncaring state of mind" (*id.* at 402; see *People v Hall*, 182 AD3d 1023, 1027 [4th Dept 2020], *lv denied* 35 NY3d 1045 [2020]; see also *People v Best*, 202 AD2d 1015, 1017 [4th Dept 1994], *affd* 85 NY2d 826 [1995]), i.e., an utter disregard for the value of human life. There is also sufficient evidence for County Court to conclude that defendant, by forcefully striking the child and then failing to obtain medical attention for her, consciously disregarded the substantial and unjustifiable risk that death or serious physical injury would result (see *Barboni*, 21 NY3d at 404-405; *Best*, 202 AD2d at 1016-1017; *People v Jamison*, 45 AD3d 1438, 1439 [4th Dept 2007], *lv denied* 10 NY3d 766 [2008]).

Defendant further contends that, with respect to the conviction of manslaughter in the first degree, the evidence is legally insufficient to establish that she intended to cause physical injury to the child. We reject that contention. A factfinder "is entitled to infer that a defendant intended the natural and probable consequences of [their] acts" (*People v Bueno*, 18 NY3d 160, 169 [2011]) and, here, the court could have rationally inferred that defendant intended to cause physical injury to the child when she punched her three times.

Viewing the evidence in light of the elements of the crimes in this nonjury trial (see *People v Danielson*, 9 NY3d 342, 349 [2007]), we conclude that the verdict is not against the weight of the evidence (see generally *Bleakley*, 69 NY2d at 495). Defendant testified that her boyfriend inflicted the injuries upon the victim and that she lied and said that she was the perpetrator only to protect him. The court was in the best position to assess the credibility of the witnesses, and we perceive no reason to reject the court's credibility determinations (see *People v Broomfield*, 134 AD3d 1443, 1444 [4th Dept 2015], *lv denied* 27 NY3d 1129 [2016]).

Finally, the sentence is not unduly harsh or severe.