State of Iowa v. Zachary Paul Koehn

2020 | Cited 0 times | Court of Appeals of Iowa | November 4, 2020

IN THE COURT OF APPEALS OF IOWA

No. 18-2216 Filed November 4, 2020

STATE OF IOWA, Plaintiff-Appellee,

vs.

ZACHARY PAUL KOEHN, Defendant-Appellant.

Appeal from the Iowa District Court for Chickasaw County, Richard D. Stochl, Judge.

The defendant challenges his convictions of murder in the first degree and child endangerment resulting in death. AFFIRMED.

John W. Hofmeyer III, Oelwein, for appellant.

Thomas J. Miller, Attorney General, and Darrel Mullins, Assistant Attorney General, for appellee.

Considered by Bower, C.J., May, J., and Potterfield, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2020). POTTERFIELD, Senior Judge.

Zachary Koehn was convicted of murder in the first degree and child endangerment resulting in death. Both convictions involve his approximately four-

month-old son, S.K. On appeal, Koehn challenges those convictions, asserting

(1) there is insufficient evidence to support the convictions; (2) the jury should not

have been instructed it could infer malice from the commission of child

endangerment resulting in serious injury; (3) his first-degree murder conviction

should have merged into the child- and (4) the court abused its discretion in admitting

I. Background Facts and Proceedings.

S.K. was born on May 1, 2017, and reported dead on August 30 almost

four months later. T lein, performed

an autopsy on August 31. He opined with a reasonable degree of medical certainty

dehydration, and an infection of E. coli that entered his body through his skin where

it broke down due to the fact that S.K. sat in his own feces and urine for a number

of days. Dr. Timothy Huntington, who has a Ph.D. in entomology (the study of

insects), consulted on the case because of the flies found on and around S.K. Dr.

Huntington testified the flies in question are scuttle flies, which are attracted to

urine, feces, and other bodily fluids. Based on the various stages of life of the

scuttle fly that Dr. Huntington was able to observe, he opined that the initial

infestation began around August 20 or 21. Dr. Huntington testified, to a reasonable

since the initial infestation, the maggots and flies would not remain. In other words, because it would take nine to thirteen days afte the state in which Dr. Huntington observed them, and he estimated it would take a

day for the flies to find and reach the food source i.e. the feces and urine diaper, S.K. had been sitting in that diaper and clothing in his swing for

approximately ten to fourteen days.

Koehn was charged with murder in the first degree and child endangerment

resulting in death. He entered a plea of not guilty, and a six-day jury trial took place

in October and November 2018.

At trial, Koehn did not challenge the evidence regarding the cause and

manner by which Harris, was the primary caretaker of S.K. and his two-year-old sibling, N.K. It was

agreed in their family that Koehn was generally not responsible for changing

diapers or feeding the children with a bottle. Koehn testified he was working

outside the home seventy to eighty hours per week and was unaware that Harris

stopped providing care for S.K. He stated he wa originally assumed S.K. died from sudden infant death syndrome. Koehn testified

ld have

changed his diaper and fed him a bottle.

The State introduced evidenc the State provided evidence of the small size of in,

or the smell caused by the feces and urine S.K. sat in for one to two weeks. Koehn originally told police he heard S.K. cry around 6:00 a.m. on the morning of August

statements he later

walked back, testifying he must have dreamed those things. He also originally said

he played with S.K. in bedroom one day before and that S.K. had interacted

with him normally, grabbing onto his fingers and holding on. When asked whether

it was possible or probable that S.K. was able to interact with Koehn in this way on

August 29, Dr. Klein testified,

There are possibilities that someone can there are natural reflexes that babies have that when we put certain stimuli in. I think a normal interaction, though, as far as being able to make eye contact or follow your eye or have some sort of that engagement, given how dehydrated, malnourished and infected the child was, I would expect the child would have been noninteractive with a person who was trying to interact with them.

At trial, Koehn then testified he had his days mixed up due to working nights and

he had last seen S.K. alive on August 28. There was also testimony that Koehn

And Koehn told his friend,

Jordan Clark, about his daughter and often talked about N.K. But Clark, who saw

in July 2017, was unaware that S.K. existed until after he learned of his death.

The jury convicted Koehn as charged. At sentencing, the court determined

conviction for first- rule. Koehn was

sentenced on only the first-degree murder charge, for which he received the

mandatory sentence of life in prison.

Koehn appeals. II. Discussion.

A. Substantial Evidence.

1. First-Degree Murder. Koehn challenges the sufficiency of the evidence

supporting his conviction for murder in the first degree. 1 The State has the burden

to prove every element of the crimes with which Koehn was charged. See State

v. Armstrong, 787 N.W.2d 472, 475 (Iowa Ct. App. 2010). The jury was instructed

that to convict Koehn of first-degree murder, it had to find:

1. During the timeframe of August 4, 2017, through and including August 30, 2017, the [Koehn] killed S.K. 2. S.K. was under the age of 14. 3. [Koehn] did so with malice aforethought. 4. [Koehn] was committing the offense of child endangerment as defined in Instruction No. 22. extreme indifference

to human life.

Additionally, the jury was instructed that child endangerment, as included in the

[Koehn] committed child endangerment if he, as

the parent of S.K., intentionally committed a series of acts using torture or cruelty

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caregiver of their children and so it was her inaction that led to the death of S.K.

not being met and his own failure to meet those needs was unintentional, we arguments. But to the extent that Koehn seems to suggest that, because there

was an agreement within his family that Harris would be the primary caretaker for the child, he is relieved of his parental and legal responsibility to provide care to the child, we note he cites no authority for such a proposition, and we do not consider it further. Cf. Iowa Code § 232.2(6)(g) (2017) (defining a child in need of minimal degree of care in supplying the child with adequate food, clothing, or

allowing the State to intercede in such cases). that resulted in bodily injury to S.K. the instructions.

In reviewing whether substantial evidenc review for errors at law. See id. Id. favorable to the State, including making legitimate inferences and presumptions

that may Id.

He acknowledges the State only had to show his actions caused or directly

contributed to S.K. death but maintains this burden of proof was not met because

, dehydrated, or intentionally

claim that family agreed would primary caretaker. Koehn testified as much at trial.

He also showed a general awareness of the feeding and diaper changing young

children require and stated he would have fed or changed S.K. if only he knew

testimony. See State v. Hall claims that the jury was not required to accep

a living room, kitchen, one bathroom, and two bedrooms, which were directly off the living room and which shared a wall with one another. No point in the home was very far from the place S.K. was found dead in a bedroom, sitting in a swing, facing a wall, while a quilt covered the only window in the warm room. Koehn indicated that he was unaware what was happening in the home even though he told because he worked seventy to eighty hours per week. But it was undisputed he hours did not show he worked fourteen-hour shifts every day. Additionally, for the weekend from the early morning hours of August 25 until he returned to work on the night of the August 27. Based on the logs of when he weighed the truck he drove as he left and returned to the plant, Koehn drove his truck for approximately four hours August 27-28, approximately nine hours August 28-29, and approximately nine hours August 29-30. Even with the additional time he had to spend at work before and after the weigh-ins, in the five days prior to S.K. being reported dead, Koehn worked less than twenty-five hours.

Other statements made by Koehn to support his lack of awareness were also called into question. Koehn initially told police that he heard S.K. cry around 6:00 a.m. on August 30 and then heard Harris go in and feed him. After it became clear this was untrue, Koehn testified he probably dreamed this. He also testified he played with S.K. on August 29 and S.K. clutched his fingers. Dr. Klein opined S.K. would not have been interactive on August 29. Koehn amended his original

statement, claiming that working nights causes him to confuse his dates and that

he actually played with S.K. on August 28. Koehn, who claimed to have such a

was soaked through with urine and feces and had also soaked the clothing and blankets stuffed around him in the swing. Koehn stated he noticed the smell,

on August 28, and only noticed the

smell again after S.K. was found dead on August 30. S.K. was almost exactly the

same weight at death as he was at birth. Pictures of S.K. in his swing after he was

reported dead show an emaciated child. When asked how he did not know S.K.

was not being fed if he was spending time with S.K., Koehn testified that while he

did interact with S.K., he never turned the overhead light on in the bedroom

Viewing the evidence in the light most favorable to the State, Koehn was

ted

death. During that time, nor diaper were ever changed and

he was never taken out of the swing in his room. The smell of his unchanged

diaper and the flies on and around him were apparent especially in close

caring. There is substantial evidence for the jury to conclude that Koehn was

aware Harris had stopped feeding and caring for S.K. and yet Koehn chose to do

nothing an intentional withholding of the food and care S.K. needed to live.

Next, Koehn argues there was not substantial evidence for the jury to find

malice aforethought. The jury was instructed malice could be inferred from the

commission of child endangerment resulting in death. And child endangerment

if [Koehn], as the parent of S.K., intentionally committed a series

of acts using torture or cruelty that resulted in bodily injury to S.K. common, lay definition. See State v. Thompson, 570 N.W.2d 765, 768 (Iowa 1997) During its closing argument,

Again, there is substantial evidence in the record to support a finding Koehn was

aware that S.K. was not fed, had not had his diaper changed, and was left siting in

his swing looking to

remedy this, in spite of the fact that he knew what care children require and had

the necessary supplies formula, bottles, diapers, and clean clothing available

These same

facts support the finding Koehn manifested an extreme indifference to human life.

the first degree.

2. Child Endangerment Resulting in Death. Koehn also challenges the

sufficiency of the evidence supporting his conviction for child endangerment

resulting in death. To convict Koehn of this charge, the jury was instructed it had

to find:

1. Between the dates of August 4, 2017 and August 30, 2017, [Koehn] was the father of S.K. 2. S.K. was under the age of fourteen years. 3. [Koehn] willfully deprived S.K. of the necessary food, water,

4. [Koehn] was reasonably able to provide food, water, health care or supervision to S.K. 5. As a result, S.K. suffered substantial physical harm. 6. S.K. died as a result of the substantial physical care.

Koehn challenges the evidence to support a finding he willfully deprived

S.K. of necessary food, clothing, and health care. In doing so, he reiterates his

argument he was unaware Harris stopped caring for S.K. But we have already concluded substantial evidence supports a finding Koehn knew S.K. needed his

needs to be met by someone else, that no one else was doing it, and that Koehn

available supplies in the home to feed or change S.K. is enough to infer that Koehn

willfully withheld the necessary food and clothing from S.K.

Substan resulting in death.

B. Jury Instruction.

The jury was instructed that while it had to find Koehn acted with malice

ce [could]

be inferred from the commission of child endangerment resulting in death on appeal, Koehn argues it was improper to instruct the jury it could infer malice.

And he claims that without the impermissible inference, there is not substantial

evidence in the record to support a finding of malice aforethought.

repeatedly held that timely objection to jury instructions in criminal prosecutions is

necessary in order to pres State v.

Taggart Id. (citation omitted).

ry was instructed without objection, the jury instruction

becomes the law of the case for the purposes of reviewing the sufficiency of the

State v. Banes, 910 N.W.2d 6354, 639 (Iowa Ct. App. 2018). We note that in the section of his appellate brief regarding error preservation

extent that error was not preserved on the jury instruction issue, the court should

reach the issue on ineffective assistance of counsel or preserve this issue for

ineffective assistance of counsel but does not cite authority or develop an

argument further. This reference is inadequate for us to consider his claim under

the exception to error preservation, so we preserve his claim for possible

postconviction-relief proceedings. 2 See State v. Harris, 919 N.W.2d 753, 754

ineffective-assistance claim in the appellate

brief was insufficient to allow its consideration, the court of appeals should not

consider the claim, but it should not outright reject it.).

C. Merger.

Koehn maintains his conviction for murder in the first degree should have

merged into his conviction for child endangerment resulting in death. In other

was preserved through his motion in arrest of judgment and subsequent argument

to the court, but this is disingenuous.

[child endangerment] should merge with

Count I [murder in the first degree]. A judgment entered on both counts violates

2 amended Iowa Code section 814.7 (Supp. 2019), which prevents us from

considering claims of ineffective assistance on direct appeal, took effect on July 1, 2019. Iowa Code § 701.9, and also v issue at the sentencing hearing, which is The following took place:

DEFENSE: I just have a question. I believe the parties have agreed that the B felony

merges with the THE COURT : Pursuant to the one-homicide rule DEFENSE: Yep. THE COURT: there will be no adjudication on the child endangerment. DEFENSE: Obviously ineloquent I am at

this time. The court has no discretion whatsoever in the sentence so we have nothing further.

This argument has not been preserved, and we do not consider it. See Meier v.

Senecaut

appellate review that issues must ordinarily be both raised and decided by the

D. Admission of Evidence.

Finally, Koehn challe In this section of his appellate brief, Koehn complains about statements made by the State during its opening and testimony to which he never objected. Any alleged issues as related to that evidence has not been preserved for our review, and we do not consider it. Additionally, in the section on error preservation, Koehn again makes a passing reference to ineffective assistance of extent that objection was not made to the highly emotion 3 Without setting out the applicable law, citing authority, or developing an argument under the framework of ineffective assistance, any claim under that framework is not adequately developed for our review. If he wishes, Koehn can bring those claims in an action for postconviction relief.

Even regarding the evidence that Koehn did object to, the record before us is minimal at best. Koehn

We

do not have a record of any hearing that was held regarding this motion. In the

The court has not seen any of the proposed photographs nor does the court know how many photographs the State intends to offer. However, photographs of the child at the scene and of the autopsy are relevant and so long as not overdone, admissible. The photographs are undoubtedly gruesome and unpleasant but that fact does not make them inadmissible.

At trial, when the State moved to admit exhibits 100 through 118 photographs

Koehn now challenges

3 appellate attorney had access to the same record we do. It is not difficult to ascertain when Koehn lodged an objection and when he sat silently and allowed evidence to be admitted without challenge

at trial. Counsel should be more diligent in determining what claims have been preserved in making arguments on appeal. becomes meaningless. See

appellate review, with references to the places in the record where the issue was

raised and decided Like at trial, Koehn does not challenge the admission of any specific photo.

He has not narrowed down which he believes crossed the line as cumulative or

too prejudicial. While photographs of small, dead children are likely to elicit

cause they

are gruesome, as these pict State v. Hickman, 337 N.W.2d 512, 515 16 (Iowa 1983). The question is whether

the pictures were relevant. See id.; see also relevant if . . . [i]t has any tendency to make a fact more or less probable than it

would be without the evidence; and . . . [t]he fact is of consequence in determining

Generally, pictures of S.K. as he was found in the swing were

relevant. It showed the jury what S.K. looked like at the time emaciated and

how he had been left to sit for days on end in a swing, facing a wall in a dark

and clothing were soiled. The jury could use this information And the

photos that included maggots and various life cycle of the scuttle flies were needed

by the entomologist, Dr. Huntington, to form an opinion how long S.K. had been

sitting in his soiled diaper. His opinions, and the photographs he relied upon to

form them, were necessary for the State to show the length of time S.K. had been

left to sit in his room without being moved, fed, or changed. This information was

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As we cannot say none of the photos taken of S.K. after his death or during

the autopsy were relevant and Koehn has not specifically challenged the

admission of any one photograph, the district court did not abuse its discretion in admitting the challenged evidence. See State v. Helmers, 753 N.W.2d 565, 567

(Iowa 2008) (providing that evidentiary rulings are generally reviewed for an abuse

of discretion).

III. Conclusion.

Having considered formulated to enable review, we affirm his convictions for murder in the first degree

and child endangerment resulting in death. We preserve any claims of ineffective

assistance for possible postconviction-relief proceedings.

AFFIRMED.