NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2011 KA 0576

STATE OF LOUISIANA

VERSUS

CHARISSA TARIEL WILLIAMS

Judgment Rendered: November 9, 2011.

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On Appeal from the
19th Judicial District Court,
in and for the Parish of East Baton Rouge
State of Louisiana
District Court No. 01-08-0197

The Honorable Todd W. Hernandez, Judge Presiding

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* * * * *

BEFORE: CARTER, C.J., PARRO AND HIGGINBOTHAM, JJ.

Parro, J., concurs.

CARTER, C.J.

The defendant, Charissa Tariel Williams, was charged by bill of information with two counts of cruelty to a juvenile, violations of Louisiana Revised Statutes Annotated section 14:93. Count 1 was based on the negligent handling of Lortab; count 2 was based on shaking a child. The defendant pled not guilty to the charges and waived her right to a jury trial. Following a bench trial, the defendant was adjudicated guilty on both counts. The defendant was sentenced to ten years at hard labor on each count, with the sentences to run concurrently. The trial court suspended all but five years of the sentence on each count and ordered that upon her release, the defendant was to be placed on active, supervised probation for five years, with special conditions of probation. The defendant filed a motion to reconsider sentence, and following a hearing, the trial court granted the motion. The trial court suspended the balance of the sentences previously imposed and ordered that the defendant be placed on active, supervised probation for five years as to each count, with special conditions of probation, including a four-year sentence of home incarceration.

The defendant appeals, designating three assignments of error. For the following reasons, we affirm the convictions and sentences.

FACTS

On January 4, 2008, after midnight, the defendant and her mother brought the defendant's six-year-old son, D.W., to the Baton Rouge General Hospital because he kept vomiting and was not acting like his normal self. Upon examination, a doctor determined D.W. had a virus and sent the family

home without further treatment. The defendant put D.W. to bed in her parents' bedroom.

Several hours later, about 5:00 a.m., the defendant and her father brought D.W. to the Ochsner Hospital emergency room in Baton Rouge because D.W. was not responding at home and was having trouble breathing. A urine drug screen was performed, and D.W. tested positive for opiates. Doctors resuscitated D.W. and inserted a breathing tube into his lungs. D.W. was then transported by ambulance to the pediatric emergency room at Our Lady of the Lake Hospital (OLOL). After being treated by Dr. Glenn Borne, D.W. was sent to OLOL pediatric intensive care unit, where he was later pronounced dead.

Dr. Borne testified at trial that D.W. had essentially presented dead at Ochsner Hospital. When D.W. arrived at OLOL, he was not breathing on his own and had no brain function. Dr. Borne examined D.W.'s eyes and observed severe retinal hemorrhaging (bleeding in the back of the eyes), which is always indicative of a severe head injury. A C.T. scan of D.W.'s brain revealed massive amounts of blood in the cranial cavity and skull. There also were massive amounts of bruising and bleeding in D.W.'s brain. D.W. then underwent a C.T. angiogram of the skull, which allowed Dr. Borne to digitally reconstruct all the blood vessels in the brain. Based on the results of this test, which showed no abnormal vessels, Dr. Borne ruled out a stroke or aneurysm as the cause of the bleeding.

When asked if he had an opinion as to the cause of the injury to D.W.'s brain, Dr. Borne responded:

> Just—I have—I have no reservations or doubt after doing this for as long as I have to say that this is nonaccidental. This is

> not an incidental finding. This is not—this is not a child who fell and hit his head or who had a—a normal amount of—of injury to his brain . . . . [W]e get all the pediatric trauma, basically, from New Orleans to Lake Charles. We see trauma every night. I work all nights. When we see pediatric trauma, we see kids every night in horrific car accidents—you know, through the windshield, severe injuries, amputated limbs, everything that you can imagine. This is the worst intracranial bleed I've seen in twenty-two years.

When asked if the type of injury D.W. had could be caused by a parent shaking a child profusely, Dr. Borne stated, "It would have to be extreme, persistent, and—and way over the top." Dr. Borne further opined that a newborn baby is particularly susceptible to injuries from being shaken; however, in a six-year-old child such as this, who has normal musculature, "[i]t would take an extreme amount of force by a much stronger person repetitively to cause this amount of bleeding." Dr. Borne reiterated that D.W.'s injuries were not the result of an accident.

Dr. Gilbert Corrigan, the pathologist who performed the autopsy on D.W., concluded that the cause of D.W.'s death was pneumonia and the manner of his death was natural. Dr. Corrigan's autopsy report noted acute cerebral and pulmonary edema and that D.W.'s drug screen was positive for opiates.

Dr. Borne did not agree with Dr. Corrigan's conclusion that pneumonia was the cause of death. Dr. Borne explained that prolonged resuscitation can cause pneumonia-like symptoms:

> And one of the things that happens is, is that the lining of the lungs become leaky. And as you resuscitate a child, even for twenty-five or thirty minutes, what happens is you start having change, microscopic changes in any child who's resuscitated for any longer period of time. Any child who has a prolonged resuscitation of over twenty-five, thirty minutes, you'll see changes that are not unlike pneumonia. But this child on presentation had, you know, chest x-rays and other things done,

> and there was no evidence of pneumonia at all. In any child for any circumstance, be it dying in a house fire, be it from an automobile accident, if you have a prolonged resuscitation, you will see microscopic evidence of—of the findings that he described in his pathology report.

In regard to the positive urine drug screen for opiates, Dr. Borne testified that it would not be normal practice for D.W. to have received opiates at Ochsner Hospital. Further, there would have been no need to give D.W. an opiate, which suppresses pain, because as a child in arrest, D.W. had no perception of pain. Dr. Borne further explained that Lortab is an opiate and that a six-year-old would not be prescribed a Lortab tablet, which is a relatively strong narcotic.

When questioned about the presence of opiates in D.W.'s urine, the defendant responded that she had taken one-half of a Lortab pill for menstrual pain and placed the other half of the pill on top of the television in her bedroom.[1] The defendant testified that she had no idea D.W. might have taken the half of the Lortab pill until someone at the hospital told her that D.W. had opiates in his system. She maintained that she did not intentionally give Lortab to D.W. The defendant further testified that when D.W. was unresponsive at home, she shook him a couple of times to evoke a response, but it was never a "long, hard shake." While she admitted to shaking him "a little," the defendant had no explanation for what might have caused the bleeding inside of D.W.'s head.

Detective Len Starnes with the East Baton Rouge Parish Sheriff's Office interviewed the defendant twice on the day of D.W.'s death. Detective Starnes testified the defendant told him that when she noticed the

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[1] The defendant's mother had the prescription for the Lortab pills.

Lortab pill was missing, she thought nothing of it and that she had simply misplaced it. Later, however, she stated that D.W. may have taken the pill. She also told Detective Starnes that she may have shaken D.W. too hard, but it would have been an accident. When asked how long she shook D.W., the defendant responded that she could not say how long it was. She acknowledged slapping D.W. while trying to get him to respond.

ASSIGNMENT OF ERROR NO. 1

In her first assignment of error, the defendant argues the evidence was insufficient to support the conviction on the first count of cruelty to a juvenile. Specifically, the defendant contends the State did not prove that negligent handling of Lortab resulted in unjustified pain and suffering by D.W. The defendant does not contest the conviction on the second count of cruelty to juveniles (inflicting unjustified pain and suffering by shaking D.W.).

A conviction based on insufficient evidence cannot stand, as it violates due process. *See* U.S. Const. amend. XIV; La. Const. Ann. art. I, § 2. The standard of review for the sufficiency of the evidence to uphold a conviction is whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *State v. Ordodi*, 06-0207 (La. 11/29/06), 946 So. 2d 654, 660; *see* La. Code Crim. Proc. Ann. art. 821B. The *Jackson* standard of review, incorporated in Article 821, is an objective standard for testing the overall evidence, both direct and circumstantial, for reasonable doubt. *State v. Patorno*, 01-2585 (La. App. 1 Cir. 6/21/02), 822 So. 2d 141, 144. When

analyzing circumstantial evidence, Louisiana Revised Statute Annotated section 15:438 provides that the factfinder must be satisfied that the overall evidence excludes every reasonable hypothesis of innocence. *Patorno*, 822 So. 2d at 144.

Louisiana Revised Statutes Annotated section 14:93 provides in pertinent part:

> A. Cruelty to juveniles is:
>
> (1) The intentional or criminally negligent mistreatment or neglect by anyone seventeen years of age or older of any child under the age of seventeen whereby unjustifiable pain or suffering is caused to said child . . . .

The term "intentional" as used in Louisiana Revised Statutes Annotated section 14:93 refers to general criminal intent to mistreat or neglect and does not require an intent to cause the child unjustifiable pain or suffering. *State v. Booker*, 02-1269 (La. App. 1 Cir. 2/14/03), 839 So. 2d 455, 459, *writ denied*, 03-1145 (La. 10/31/03), 857 So. 2d 476. Criminally negligent mistreatment or neglect of a juvenile exists when, although neither specific nor general intent is present, there is such disregard of the interest of the juvenile that the defendant's conduct amounts to a gross deviation below the standard of care expected to be maintained by a reasonably careful person under like circumstances. *Booker*, 839 So. 2d at 459; *see* La. Rev. Stat. Ann. § 14:12. Criminal negligence can be found from a defendant's gross disregard for the consequences of her actions. *State v. Woods*, 44,491 (La. App. 2 Cir. 8/19/09), 16 So. 3d 1279, 1288, *writ denied*, 09-2084 (La. 4/9/10), 31 So. 3d 380.

The defendant argues that her leaving a half pill of Lortab in a place where D.W. had access to it was accidental and did not amount to criminal

negligence. The defendant further argues that there is no evidence that ingestion of one-half of a Lortab pill caused D.W. unjustifiable pain or suffering.

In the following exchange on direct examination, Dr. Borne discussed the effects that one-half of a Lortab pill would have on a six-year-old:

> Q. If half of a Lortab was left on a table and, admittedly, was in reach of a six year old and the six year old had taken that Lortab, what affect [sic] would that have had on a six year old?
>
> A. I doubt—I doubt very seriously if any adult would have noticed the difference. He maybe had—maybe would have become a little bit more drowsy, he might have fallen asleep watching cartoons on T.V. He would not have been noticeably different in his behavior or actions.

The defendant and her mother both testified regarding D.W.'s behavior just before and when he was at the Baton Rouge General Hospital. D.W. was beyond drowsy or sleepy. The defendant described D.W. as not being "himself." In addition to vomiting, D.W. was not talking, and the defendant was unable to wake him. The defendant testified that she tried "to see what was wrong, like, shaking him a little bit then, trying to, you know, make him wake up and talk to me." When at the hospital, D.W. was described as "flimsy" or unable to stand unassisted. The defendant testified that she was unable to get D.W. to open his eyes. D.W.'s grandmother further described him as "sloopy droopy" when the emergency room nurse stood him up. D.W.'s grandmother asked the emergency room doctor to perform a urine or blood test because D.W. was "never like on drugs."

In determining the sufficiency of the evidence supporting a conviction, an appellate court must preserve the factfinder's evidence-weighing role by reviewing all of the evidence in the light most favorable to

the prosecution. *State v. Strother*, 09-2357 (La. 10/22/10), 49 So. 3d 372, 378 (*per curiam*). The relevant question is whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt based on the evidence presented at trial. *Strother*, 49 So. 3d at 378. In cases relying on circumstantial evidence, when a factfinder reasonably rejects the hypothesis of innocence presented by the defendant, the hypothesis falls, and the defendant is guilty unless there is another hypothesis that raises a reasonable doubt. *Strother*, 49 So. 3d at 378.

The trial court had a full and fair opportunity to consider the defendant's hypothesis of innocence (that the child ingested only one-half of a Lortab tablet accidently left on a television). Viewing the evidence in a light most favorable to the State, and according due weight to the credibility determinations made by the factfinder, we conclude the trial court reasonably rejected the defendant's hypothesis of innocence and found the defendant guilty of Count 1, cruelty to a juvenile through the negligent handling of Lortab, whereby unjustifiable suffering was cause to D.W. An appellate court errs by substituting its appreciation of the evidence and credibility of witnesses for that of the factfinder and thereby overturning a verdict on the basis of an exculpatory hypothesis of innocence presented to, and rationally rejected by, the factfinder. *See State v. Calloway*, 07-2306 (La. 1/21/09), 1 So. 3d 417, 418 (*per curiam*).

This assignment of error is without merit.

ASSIGNMENT OF ERRORS NOS. 2 and 3

In her second assignment of error, the defendant argues she did not knowingly and intelligently waive her right to a jury trial. Specifically, the defendant notes that the trial court was aware, based on a pretrial motion filed by the State, that two of the defendant's other children had died while under the defendant's care. According to the defendant, the trial court, before accepting the jury trial waiver, should have informed the defendant that a jury would not hear any evidence regarding the deaths of her other children since the trial court had ruled that such evidence was inadmissible. In her third assignment of error, the defendant argues ineffective assistance of counsel because, based on the aforementioned, defense counsel should not have advised the defendant to waive her right to a jury trial.

A claim of ineffectiveness of counsel is analyzed under the two-pronged test developed by the United States Supreme Court in *Strickland v. Washington*, 466 U.S. 668 (1984). In order to establish that her trial attorney was ineffective, the defendant must first show that the attorney's performance was deficient, which requires a showing that counsel made errors so serious that he was not functioning as counsel guaranteed by the Sixth Amendment. *State v. Serigny*, 610 So. 2d 857, 859 (La. App. 1st Cir. 1992), *writ denied*, 614 So. 2d 1263 (La. 1993). Secondly, the defendant must prove that the deficient performance prejudiced the defense. *Serigny*, 610 So. 2d at 859. This element requires a showing that the errors were so serious that the defendant was deprived of a fair trial; the defendant must prove actual prejudice before relief will be granted. *Serigny*, 610 So. 2d at 859-60. It is not sufficient for defendant to show that the error had some

conceivable effect on the outcome of the proceeding. *Serigny*, 610 So. 2d at 860. Rather, she must show that, but for the counsel's unprofessional errors, there is a reasonable probability the outcome of the trial would have been different. *Serigny*, 610 So. 2d at 860. Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *State v. Robinson*, 471 So. 2d 1035, 1038-39 (La. App. 1st Cir.), *writ denied*, 476 So. 2d 350 (La. 1985).

The defendant's argument regarding an invalid waiver of the right to a jury trial is meritless. Both the United States Constitution and the Louisiana Constitution expressly guarantee a criminal defendant the right to a jury trial. U.S. Const. amend. VI; La. Const. Ann. art. I, §§ 16-17. However, some criminal defendants may, pursuant to statute, waive this constitutionally guaranteed right, provided the waiver of the right is knowingly and intelligently made. La. Code Crim. Proc. Ann. art. 780A. *State v. Hebert*, 08-0003 (La. App. 1 Cir. 5/2/08), 991 So. 2d 40, 47, *writs denied*, 08-1526 (La. 4/13/09), 5 So. 3d 157 and 08-1687 (La. 4/13/09), 5 So. 3d 161. A valid waiver of the right to a jury trial must be established by a contemporaneous record setting forth an apprisal of that right followed by a knowing and intelligent waiver by the accused. *Hebert*, 991 So. 2d at 47. Waiver of this right is never presumed. *Hebert*, 991 So. 2d at 47. However, prior to accepting a jury trial waiver, the trial court is not obligated to conduct a personal colloquy inquiring into the defendant's educational background, literacy, and work history. *Hebert*, 991 So. 2d at 47.

Over a month after the defendant was arraigned,[2] the following jury trial waiver colloquy took place:

> Mr. LeBlanc [defense counsel]: Judge . . . May it please the court, your Honor, my—with discussions with my client, we will—she will waive a jury trial and be tried by the—by yourself.
>
> Mr. Brooks [prosecutor]: We would ask that colloquy be done and recorded for the record, and then we're going to ask for a September 25 date . . . .
>
> The Court: All right. Ma'am, raise your hand and be sworn.
>
> [The defendant was sworn.]
>
> Q. All right. Ma'am, you have understand [sic] you have a constitutional right to a trial.
>
> A. (No verbal response).
>
> Q. You understand that you may waive that right and have your case tried by the court in lieu of a jury trial.
>
> A. Yes.
>
> Q. And you've talked to your lawyer about that and you understand that?
>
> A. Yes.
>
> Q. And at this time you wish to withdraw your right to a jury trial and have jury case [sic] tried by me; is that correct?
>
> A. Yes, sir.
>
> The Court: All right. So noted.

On the day of trial, prior to the first witness being called, the trial court again addressed with the defendant her desire to waive a jury trial:

> Q. Ms. Williams, you're represented by Mr. LeBlanc. Mr. LeBlanc is present with you today and you've had the opportunity to review with your lawyer your right to a trial by jury; is that correct?

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[2] The defendant was arraigned May 6, 2008. The waiver of jury trial colloquy was held June 16, 2008.

A. Correct.

Q. And you've indicated a desire to waive your right to have your case tried by a jury and have your case tried by me; is that correct?

A. Yes, sir.

Q. All right. And you still wish to do that today?

A. Yes, sir.

The record indicates that the trial court twice advised the defendant of her right to a trial by jury. The record further indicates that the defendant conferred with her defense counsel about her right to have her case tried by a jury, that the defendant understood this right, and that she wished to waive the right. Regarding the trial court's knowledge of the deaths of the defendant's two other children, the trial court was under no obligation to inform the defendant that a jury would not hear any testimony about the deaths of her other two children when accepting her waiver of the right to a jury trial. Further, before adjudicating the defendant guilty, the trial court stated that it issued to itself the standard jury instructions that would have been provided to a jury had the case gone to a jury trial. The trial court is presumed to know the law and, as such, would not have considered the deaths of the defendant's other two children when determining the defendant's guilt or innocence. *See State v. Pizzalato*, 93–1415 (La. App. 1 Cir. 10/7/94), 644 So. 2d 712, 714, *writ denied*, 94–2755 (La. 3/10/95), 650 So. 2d 1174. Moreover, our jurisprudence is replete with instances in which the same judge who hears a defendant's *Prieur*[3] motion presides over the

[3] *State v. Prieur*, 277 So. 2d 126 (La. 1973).

defendant's trial. Accordingly, the right to a jury trial was validly waived in the instant matter.

Regarding her ineffective assistance of counsel claim, the defendant contends defense counsel should not have advised her to waive a jury trial because a jury would not have heard the highly prejudicial information about the deaths of her other two children. According to the defendant, the error of defense counsel "resulted in prejudice so great as to undermine confidence in the outcome."

The defendant's assertion is meritless. The defendant presumes that the trial court, in its adjudication of guilt, was prejudiced by its knowledge of the deaths of the defendant's other two children. Nothing in the record supports this presumption. More importantly, the very information the defendant suggests would not have been heard by a jury was brought out and discussed at some length at the trial in the instant matter. Thus, had the instant trial been a jury trial, the jury would have heard the details concerning the deaths of the defendant's other two children. During its case, defense counsel called the defendant to the witness stand. During her direct examination, the defendant stated, "You know, I already lost two children." Thus, the defendant "opened the door" for the prosecutor to address this issue with the defendant on cross-examination. The prosecutor elicited from the defendant testimony about the ages of her other two children, when they were born, and how they allegedly died. The prosecutor also cross-examined Evelyn and Fred Williams, the defendant's mother and father, about the untimely deaths of the defendant's other two children. Moreover, the interviews of the defendant by Detective Starnes, which were contained

on two DVDs, were introduced into evidence at the trial without objection. In the first interview, the defendant talked about the deaths of her other two children. She told the detective their names, ages, and how they died.

We are thoroughly convinced that the defendant's decision to waive her right to a trial by jury did not contribute to the verdicts. Even assuming deficient performance on the part of defense counsel for not advising the defendant to elect a trial by jury, the defense was not prejudiced by the allegedly deficient performance. The defendant has failed to make the required showing of sufficient prejudice and, as such, her claim of ineffective assistance of counsel must fall.

These assignments of error are without merit.

CONCLUSION

Finding the plaintiff's assignments of error have no merit, we affirm the convictions and sentences on Counts 1 and 2.

CONVICTIONS AND SENTENCES ON COUNTS 1 AND 2 AFFIRMED.