Illinois Official Reports

Appellate Court

People v. Davidson, 2023 IL App (2d) 220140

Appellate Court Caption	THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. JAMES A. DAVIDSON, Defendant-Appellant.
District & No.	Second District No. 2-22-0140
Filed	March 31, 2023
Decision Under Review	Appeal from the Circuit Court of Kendall County, No. 20-CF-204; the Hon. Robert P. Pilmer, Judge, presiding.
Judgment	Reversed and remanded.
Counsel on Appeal	James E. Chadd, Thomas A. Lilien, and Anthony J. Santella, of State Appellate Defender's Office, of Elgin, for appellant. Eric C. Weis, State's Attorney, of Yorkville (Patrick Delfino, Edward R. Psenicka, and Adam J. Rodriguez, of State's Attorneys Appellate Prosecutor's Office, of counsel), for the People.
Panel	JUSTICE KENNEDY delivered the judgment of the court, with opinion. Justices Jorgensen and Schostok concurred in the judgment and opinion.

OPINION

¶ 1 Following a jury trial, defendant, James A. Davidson, was found guilty of two counts of endangering the life or health of a child, causing death (child endangerment) (720 ILCS 5/12C-5 (West 2020)), and one count of involuntary manslaughter (*id.* § 9-3) in the death of his stepdaughter, K.R., as a result of an overdose of olanzapine (an atypical antipsychotic medication used to treat schizophrenia and bipolar disorder). Defendant was sentenced to 12 years' imprisonment. On appeal, defendant argues that (1) the guilty verdicts for manslaughter and child endangerment are legally inconsistent as the offenses have inconsistent mental states, (2) the trial court abused its discretion in admitting excessive other-crimes evidence, and (3) the State failed to prove that defendant was the cause of K.R.'s death. For the following reasons, we reverse and remand for a new trial.

¶ 2 I. BACKGROUND

¶ 3 Defendant met K.R.'s mother, Courtny, in August 2014, shortly after K.R.'s birth on February 17, 2014. Defendant and Courtny were married on June 12, 2015, and then had a child together, J.D., who was born on October 26, 2016. At the time of K.R.'s death, K.R. was six years old and J.D. was three. The family lived with Courtny's mother, Suzanne, and brother, Christian, on Boulder Hill Pass in Kendall County. Courtny suffered from various physical and mental health issues for which she was prescribed different medications, including olanzapine. At 1:28 p.m. on July 2, 2020, defendant called 911 to report that K.R. was not breathing. K.R. was declared dead at the scene. Suzanne and Christian were out of town at the time, visiting family in Georgia. An autopsy and toxicology test were performed that showed that K.R.'s blood had extremely high levels of olanzapine. Defendant and Courtny were both charged in K.R.'s death.

¶ 4 Defendant was charged by indictment with one count of manslaughter (count I) and two counts of child endangerment (counts II and III). Counts I and II alleged that defendant had given K.R. olanzapine, and count III alleged that he had allowed her to have access to olanzapine. Prior to trial, the State filed a motion *in limine* seeking to admit evidence of other bad acts relating to the neglect of K.R. and J.D. This evidence included testimony of police officers, photographs showing the unsafe condition of the family home, testimony from a neighbor and K.R.'s psychologist from school regarding the neglect and lack of supervision of the children, and testimony from the children's primary care physician regarding the children's insufficient medical care at the hands of their parents. Over defendant's objection, the court granted the State's motion *in limine*.

¶ 5 The matter then proceeded to a jury trial on February 14, 2022. The following evidence was produced at trial.

¶ 6 A. Other-Crimes Evidence

¶ 7 Doctor Kinjal Kadakia testified as follows. She was K.R.'s physician and began treating K.R. shortly after she was born. Various people would bring K.R. for appointments, including Courtny, defendant, Suzanne, K.R.'s aunt, and family friends. Typically, when she visited, K.R. would be unbathed, with matted hair, a strong odor, and ill-fitting clothing.

¶ 8 Kadakia went on to describe various medical issues for which K.R. had visited her. In September 2015, K.R. had bed bug bites. In June 2017, K.R. had a cut on her hand from trying to open a juice box with a knife. In December 2018, Kadakia received a call from the Department of Children and Family Services (DCFS) that K.R. had suffered a second-degree burn and had been treated at a local hospital emergency room. K.R. was supposed to attend two follow-up appointments but never did. In July 2019, K.R. had scabies. At age six, K.R. had still not been toilet trained.

¶ 9 Kadakia described several instances in which the family failed to follow up on recommended medical treatments for K.R. The family told Kadakia that K.R. had been having seizures, and she recommended that they see a neurologist and have an EEG performed. In her treatment of K.R., Kadakia noticed that K.R. appeared to have a developmental delay and recommended that she see a psychologist and a psychiatrist. Because K.R. was having issues with snoring and urination and was suffering from daytime fatigue, Kadakia thought she might have sleep apnea and suggested an EEG sleep study. To her knowledge the family never followed up on any of these recommendations.

¶ 10 Kadakia specifically had concerns with some of defendant's conduct. At a visit with K.R. that was requested by DCFS, defendant and J.D. were also in attendance. J.D. had a large gash on her forehead, and Kadakia asked defendant what had happened. He replied that she had run into a door. She asked if J.D. had been taken to the ER, and defendant said she had not. Kadakia had expressed concerns about K.R.'s hygiene and defendant's discipline of the children. She observed him yelling at the children and "grab at them harshly." Defendant expressed to her how he could not handle K.R.'s behavior; she was too rambunctious, difficult to control, and because of her size, he could not hold her down or stop her from doing things. She would climb on things and not listen to his verbal commands.

¶ 11 Kadakia described how, although K.R. was well above the 95th percentile in weight, K.R. did not have any significant health issues. Defendant and Courtny explained that K.R. was overeating and seeking large amounts of food, and Kadakia recommended that she see a geneticist, an endocrinologist, and a nutritionist. K.R. missed several appointments with Kadakia and other specialists but did see a geneticist. A genetic panel was performed, but the geneticist did not find any diagnosable condition as a result. An MRI of K.R.'s brain was performed in October 2019, with no abnormal findings. K.R. also underwent a chest X-ray in October 2019 with no abnormal results. K.R. saw an endocrinologist who tested K.R.'s thyroid, which was functioning normally. They did not find any indications for K.R.'s weight gain apart from nutrition. K.R. was not born with a heart tumor, nor did she have any surgical history. No heart murmur was ever detected, and she was never tested for cardiomyopathy or an enlarged heart.

¶ 12 Brianna McKinley testified as follows: She was a school psychologist at Boulder Hill Elementary School, where K.R. had been a student. K.R. started kindergarten in fall 2019. In spring 2020, the school stopped having the students attend school in person due to the COVID-19 pandemic. McKinley would check in on students she considered to be "at risk," which included K.R. She saw K.R. daily during the time she attended school in person.

¶ 13 Sometimes K.R. would not have appropriate clothing for school. Her clothing would be too small, the soles of her shoes were worn through, and she would have no coat in colder weather. As to her clothes' cleanliness, they would be "[f]ull of fifth, they would be dirty, they would smell like cigarettes, musk, sour milk, feces." McKinley purchased clothes for K.R.,

including a winter coat. She was concerned about K.R.'s lack of appropriate clothing and reached out to DCFS.

¶ 14 The school was unable to get Courtny or defendant to attend parent-teacher conferences, and because there were a lot of concerns regarding K.R.'s well-being, McKinley set up a home visit. McKinley, K.R.'s teacher, and the assistant principal went to visit K.R.'s home. "The house was dirty, filthy. It had mold. There were two dogs that were like [*sic*] feces like stuck onto the dogs. Courtny welcomed us in. She had appeared to be slurring her words. She had a cigarette that was burning." McKinley was concerned about K.R.'s hair, as it was not brushed or washed. K.R. told her she got baths only on Tuesdays, so McKinley and the school nurse would do her hair every day. McKinley made at least eight calls to DCFS and had several conversations with Courtny regarding how to take care of K.R. A wellness tracker program was put into place, but things did not improve.

¶ 15 At 4:45 p.m., on July 2, 2020, McKinley was notified by a friend that a six-year-old had died in Boulder Hill Pass. McKinley "knew in [her] gut" that the child was K.R., and she drove to K.R.'s home. There were a lot of police, and she stood across the street with the family and neighbors. Defendant was there, and she overheard him say something about "returning her laptop" and "getting his Xbox." McKinley went to the hospital where K.R. was transported. J.D. was being examined at the emergency room. Due to COVID-19 protocols, McKinley could not enter the hospital. She saw defendant waiting outside the hospital on the sidewalk and overheard him refer to K.R. and J.D. as "demon children."

¶ 16 Monica Alexander lived next door to K.R. She had two children, aged eight and nine. Prior to K.R.'s death, she had not known any of the adults in K.R.'s home by name, but she had spoken to them, including defendant, about the children and the dogs. The Davidsons moved in during the spring or summer of 2019. As they were moving in, K.R. was chasing after a dog across the street, unsupervised. Alexander met K.R. and J.D. while they were playing in the backyard. K.R. and J.D. would often be outside alone. When they first moved in, they were outside almost every day. The children would play near or in the street by themselves, which prompted Alexander to call the police. After her calls to the police, the children were outside less often. She also saw the children playing outside alone during snowy winter weather, wearing only diapers and without shoes. During some of the times the children were playing outside alone, she could hear defendant's voice from inside the house. In June 2020, she saw K.R., J.D., and a boy around 9 or 10 years of age lighting bottle rockets and shooting them across the yard.

¶ 17 Deputy David Angerame of the Kendall County Sheriff's Office testified as follows. He was the first officer to arrive at the home following defendant's 911 call on July 2, 2020. When he got there, Courtny and defendant were standing outside the home. When Angerame entered the home, he smelled a horrendous odor of garbage, feces, and filth. He described it as the worst house, as to smell and condition, he had been to in his 24 years as an officer. There was garbage and feces throughout the home. J.D. was running around naked and looked dirty. When he entered the bedroom where K.R. was, he found her lying on her back, wearing only a diaper. K.R.'s mouth was bloody, and her skin had a purple color. The family got clothes for J.D. and went outside. Paramedics then arrived and later a Pizza Hut delivery driver. Angerame went outside and spoke to defendant, who told him that he had seen K.R. alive and breathing 10 minutes earlier. Defendant told him K.R. was not taking any medication.

¶ 18 Detective Mike Novak of the Kendall County Sheriff's Office testified as follows. When he arrived at the scene, police and firefighters were outside with the family. One of the firefighters told defendant that K.R. had died. Defendant was angry and crying. He kicked a lawn chair and punched the trunk of a car in the driveway. He tried to get into the house and had to be restrained. Still crying, defendant kneeled down on the front porch and hit his head against the siding of the house and the screen door. Novak got defendant's permission to search the home, and he proceeded to collect evidence and photograph the home. He described the home's conditions as the worst he had seen in his 14-year career in law enforcement.

¶ 19 Photographs of the home taken by Novak on July 2, 2020, were introduced into evidence. There were 94 in total, and they showed both the inside and outside of the home. The pictures showed the home to be filthy. Rotting food, garbage, and dirty diapers were strewn throughout the entire house. There were several knives in locations where the children could have accessed them. Household chemicals and cleaning agents were also left haphazardly where the children could access them. Outdoors, hedge trimmers and pruning shears were left out near the children's slide. The bathtub was filled with dirty bath water. None of the beds had sheets, and the mattresses were all stained.

¶ 20 In the room where K.R. died, there were prescription pill bottles on the floor and on top of a low dresser near where K.R.'s body was found. Notably, there were three bottles labeled "olanzapine" on the dresser, one of them being open. These were taken into evidence.[1] Another bottle labeled "olanzapine" was photographed in an adjacent nightstand, but it was not taken into evidence, as police failed to notice it at the time. There was a small combination safe on the dresser, but there were several items in front of it, which would have blocked easy access.

¶ 21 B. Defendant's and Courtny's Accounts

¶ 22 Courtny initially asserted her fifth amendment right against self-incrimination. See U.S. Const., amend. V. Over her objection, she was granted use immunity and testified as follows: In 2013, Courtny was in a relationship with a man by the name of Paul S. She became pregnant and gave birth to K.R. on February 17, 2014. She met defendant on a dating app in August 2014. Courtny and defendant were married on June 12, 2015. J.D. was born on October 26, 2016. Suzanne lived with Courtny and defendant. Suzanne had been in a motor scooter accident and had to have shoulder replacement surgery. Suzanne had also been diagnosed with breast cancer.

¶ 23 Courtny described her medical history as follows. When Courtny was 17 years old, she attempted suicide and was hospitalized at an inpatient facility. She was diagnosed with bipolar disorder, severe depression, anxiety, and manic episodes. At her heaviest, she weighed 320 pounds, and she had gastric bypass surgery when she was 17 years old. At the time of K.R.'s death, she weighed 90 pounds. She had had blood pressure issues for 10 years. Following the birth of K.R., she had a tear in her stomach and had to have surgery. She was hospitalized for seven weeks. After the birth of J.D., she had an infection and was treated with a wound vac. In 2017, she was diagnosed with Guillain-Barré syndrome, and as a result of the syndrome, she suffered from burning in her hands and feet and was unable to work. It also interfered with her

[1]Although these bottles were collected and taken into evidence, there was no testimony as to the contents of the bottles, if any.

ability to care for the children. She was prescribed lorazepam for anxiety and gabapentin for her neuropathy. For her blood pressure, she was prescribed midodrine. She was also prescribed risperidone but was not sure what it was for. She was prescribed Latuda for her bipolar disorder. Courtny was also prescribed olanzapine but did not remember what for. She believed it may have been for her bipolar disorder. She took it to help her sleep.

¶ 24 K.R. began exhibiting a weight problem at two years old. Courtny took her to Kadakia, who made referrals to specialists. Courtny followed up on some referrals, but on others, she did not. Aside from being overweight, K.R. had not been diagnosed with any health issues. K.R. began having behavioral issues when she was two years old. She would have temper tantrums and fits of rage. She did not like to listen, was stubborn, and wanted to do things her own way. K.R. would throw herself on the ground, hit walls, and scream for no apparent reasons. On one occasion, Courtny left her behind to get diapers from the store. When she came back, K.R. had put her head through the wall. She described this behavior to Kadakia, who said K.R. was just going through a phase. Courtny described K.R. as tough to handle and stated that her behavior drove her crazy.

¶ 25 Around age one, K.R. started having sleep issues. She would stay up almost all night and want to sleep all day. Courtny discussed this with Kadakia, who suggested giving K.R. melatonin. Courtny began giving K.R. two or three melatonin gummies to help her sleep. The gummies were kept in a childproof bottle on Suzanne's dresser. Courtny had seen K.R. open the bottle of gummies two or three times, despite the childproof cap. They had stopped giving K.R. the melatonin gummies around a month before her death because they were not working anymore. K.R. also suffered from night terrors and would wake up screaming, sometimes with her eyes closed, other times with them open. Courtny would try to talk to her while these incidents occurred, but K.R. would not respond. K.R. would have seizures, and she had one a few days before her death.

¶ 26 Courtny's and Suzanne's medication were kept in a lockbox in Suzanne's room. A couple months prior to K.R.'s death, Courtny had seen K.R. open one of the pill bottles. Suzanne was responsible for making sure Courtny took her medication, and when Suzanne was not home, defendant would be in charge. Defendant knew the combination for the lockbox.

¶ 27 The night before K.R. died, J.D. went to bed in her own room and K.R. was in Suzanne's room watching YouTube. Courtny did not notice pill bottles on the dresser or see defendant enter the room. K.R. was dressed only in a diaper. Courtny stayed in the room with K.R. for around half an hour watching YouTube, at which time K.R. fell asleep. Courtny left K.R. to sleep and went to lie down in her room. That night, Courtny had taken olanzapine, which she took to help her sleep. She had two prescriptions, one for 10 milligrams and another for 15 milligrams. She did not recall which one she took or how many she took.

¶ 28 At this point, defendant was downstairs. She did not hear defendant leave to go to work, and she did not check on K.R. until the next morning. She did not see defendant until he returned home from work. She did send him a text message regarding getting pizza for lunch. The next morning, J.D. ate breakfast around 8:30. K.R. did not come down to breakfast, and Courtny did not check on her. Defendant came home from work around noon. Courtny was in her bedroom with J.D. After defendant got home, he went to wake up K.R., and Courtny heard him say, "Oh my God, she's dead."

¶ 29 Detective Thomas Hagerty and Detective Kasey Stoch interviewed Courtny on August 6, 2020. Courtny denied that she told defendant she had given K.R. something to help her sleep

or that she told him to give K.R. something to help her sleep. Courtny also denied telling the police this on July 2, 2020. She otherwise claimed not to recall any details regarding her interview.

¶ 30 A redacted video recording of Courtny's interview was played for the jury. In that interview, Courtny first stated she was taking three prescription medications and did not list olanzapine among them. She first mentioned olanzapine after detectives showed her pictures of the medications discovered in Suzanne's room, which included the olanzapine. She said she had stopped taking olanzapine until about a month prior, when the doctor upped her dosage from 10 to 15 milligrams. The prescriptions for both dosages were still being filled. She stated that she would forget to put the bottles away after taking them but that the children did not touch them, especially K.R. Then she stated that Suzanne would sometimes give a sealed pill bottle to K.R. to bring to Courtny but K.R. never got into the pill bottles.

¶ 31 Regarding the night of July 1, 2020, Courtny said that she gave K.R. and J.D. a bath. Afterwards, the girls watched TV in Suzanne's room. J.D. fell asleep quickly, but K.R. did not go to bed until 3 a.m. or 4 a.m. Courtny went to bed around midnight. The next morning between 9 and 10 a.m., Courtny went to ask if K.R. wanted breakfast and she said, "No mommy, I'm still tired," and Courtny let her sleep because she had gone to bed late the night before.

¶ 32 Courtny initially denied giving K.R. any olanzapine. As the interview progressed, she admitted to giving K.R. one pill, then two, then possibly three. Courtny finally stated that she had given K.R. two pills around midnight to help her sleep and then another one around an hour later. She gave K.R. the 10 milligram tablets rather than the 15 milligram tablets. She said that, because it helped her sleep, she thought it would help K.R. sleep.

¶ 33 Regarding defendant, Courtny initially stated that K.R. was still awake around 3 a.m. or 4 a.m., and she told defendant to give K.R. something to help her sleep, believing he would give her the melatonin. As the interview progressed, she admitted to telling defendant she had given K.R. the olanzapine, or the pills that helped her sleep. Defendant then told her he was going to give K.R. something to help her sleep.

¶ 34 The 911 call defendant made at 1:28 p.m. on July 2, 2020, was played for the jury. He stated that K.R. was not breathing and her skin was turning colors. In that call, he said that, before he discovered her not breathing, she had been sleeping.

¶ 35 Defendant gave two interviews with police. The initial interview occurred the day K.R. died and was with Sergeant Kevin Vaclavik of the Kendall County Sheriff's Office. The second interview took place on August 6, 2020, and was with Detective Bryan Harl of the Kendall County Sheriff's Office. Both interviews were recorded and played for the jury.

¶ 36 In the initial interview, defendant stated the following. K.R. went to bed around 9 p.m. She woke up around 1:15 a.m. having a nightmare and came to defendant's bedroom. She lay down next to him but began screaming again. He then took her into Suzanne's bedroom because she was more comfortable sleeping in there. He checked on her before going to work around 7:30 a.m., and she was alive and moving. When he got home from work, she gave him a hug and went back to sleep. He then went to his bedroom to order lunch, and he heard K.R. and J.D. arguing. He got J.D. out of the room, and then, when he went back to check on K.R., she was cold as a rock. He flipped her over and heard a gargling sound. He saw blood coming out of her mouth and nose. He told Courtny to do CPR and called 911.

¶ 37 In the August 6, 2020, interview with Harl, defendant made the following statements. When asked if K.R. had any health problems, he stated she was born with a heart tumor and had issues with her tonsils.

¶ 38 Regarding the night of July 1, 2020, defendant stated that he went to bed around 9 p.m. When K.R. woke up around 3 a.m. screaming, he initially brought her to sleep next to him, but she began screaming again. He then took her to Suzanne's room, because she liked to sleep in there. He got up to get ready for work around 5 a.m. As he left for work, he checked in on K.R. and she was moving and making sleepy groans. Courtny checked in on her between 9 a.m. and 10 a.m., and K.R. told her that she was sleepy, so Courtny let her sleep. Defendant returned home between 1 p.m. and 1:30 p.m. He was scheduled to get off work at 12:15 p.m., but he stayed until 1:10 p.m. because another guy was running late. He stated that he ordered pizza for lunch. He heard J.D. and K.R. arguing, and he took J.D. out of the room to let K.R. sleep. K.R. was alive at the time. Shortly afterward, he went to check on K.R. again and found that she was cold and gurgling. She was lying on her stomach, and he flipped her over. He saw she was bleeding from the nose and mouth, and he called on Courtny to give CPR as he called police.

¶ 39 Defendant's story regarding whether he or Courtny gave K.R. olanzapine changed many times throughout the course of the interview. Initially he denied that he or Courtny had given her anything. When confronted with the fact that the toxicology report showed there was something in her system, defendant said he had given her one and a half Benadryl capsules mixed into cottage cheese after he put her in Suzanne's bedroom between 3 a.m. and 4 a.m. He said he had gone to Walgreens around 11 p.m. to get the Benadryl. Defendant then said that he was tired and maybe had mixed up the Benadryl with some of the pills from a bottle on the dresser. When confronted with the fact that there was no Benadryl in her system, defendant said he gave K.R. a Tic-Tac. In his final recitation, defendant stated he gave K.R. two white pills from a bottle on the dresser, mixed in her cottage cheese. Defendant insisted that he had not given her more than two olanzapine pills.

¶ 40 Christopher Mizura was defendant's boss at U-Haul and testified that on July 2, 2020, defendant worked at U-Haul from 7:45 a.m. to 12:14 p.m.

¶ 41 C. Medical Evidence

¶ 42 Doctor Kristin Escobar Alvarenga testified as follows. She performed an autopsy on K.R. at 7 p.m. on July 2, 2020. Alvarenga explained that when a person dies their heart stops beating and their blood stops circulating. Gravity then causes the blood to settle and pool where it is in the body, resulting in a red purple discoloration known as postmortem lividity. She explained that lividity can be used to determine time of death and the position a person was in at the time they died. A person who died face down would present lividity on the front of their body. She explained that lividity occurs within 30 minutes to four hours and becomes permanent within 12 hours.

¶ 43 Alvarenga examined photographs of K.R.'s body taken by Novak when he searched the home. Based on the lividity visible in those photographs, Alvarenga concluded that K.R. had died face down and that she had been dead for at least 30 minutes, but as the lividity was very pronounced, she had likely been dead for longer than 30 minutes.

¶ 44 When Alvarenga examined K.R.'s body at the coroner's office, K.R. was wearing only a soiled diaper. There were pieces of potato chips on her lower extremities. K.R. was 4 feet 6

inches in height and weighed 160 pounds. K.R. had been pronounced dead at 1:47 p.m. and was examined by Alvarenga at 7 p.m. Her body temperature was still warm. The lividity was also not fixed, which indicated that K.R. had died within the last 12 hours. Rigor mortis had set in, but it was breakable, which indicated that it was in the early process. Alvarenga explained that rigor mortis takes two to four hours to develop. K.R. had a red tinged liquid coming out of her nose and going across her face, which was typical of an overdose case. Alvarenga found a small bruise on K.R.'s right leg, but no other signs of injury.

¶ 45 In conducting her internal examination of K.R., Alvarenga found that K.R.'s brain was swollen, which happens when the brain does not have enough oxygen. K.R.'s heart was enlarged, but Alvarenga did not believe it had anything to do with K.R.'s death. There was nothing else remarkable about her internal examination.[2]

¶ 46 Alvarenga prepared blood samples for a toxicology report. She took blood from the femoral blood vessels in K.R.'s thigh and from K.R.'s heart. The toxicology report indicated that K.R. had olanzapine in the peripheral sample taken from her thigh in a concentration of 720 nanograms per milliliter. K.R.'s melatonin levels were within the normal limits of what a body would naturally produce on its own.

¶ 47 Alvarenga explained the process of postmortem redistribution, which is a change in a drug's concentration in the blood after death has occurred. The drug can be redistributed from other sources, like the liver, stomach, lungs, and muscle. This process can occur at different rates based on a number of factors, such as the location of the blood, the type of drug, and how long the person has been dead. To mitigate this, blood samples are taken from peripheral areas, which are less likely to be affected.

¶ 48 In Alvarenga's opinion, the amount of olanzapine in K.R.'s system was lethal. She testified that she was aware of three reported fatality cases involving olanzapine, with concentrations ranging from 800 to 4900 nanograms per milliliter. Those cases also involved adults, whereas K.R. was six years old. Alvarenga determined the cause of K.R.'s death to be olanzapine toxicity.

¶ 49 Olanzapine is a central nervous system depressant, which means that, in an overdose case, the person would stop breathing, causing the brain and other organs not to receive oxygen, leading to death. Death would not be expected soon after ingesting olanzapine; usually the person would become drowsy, sluggish, lethargic, would snore, and would then become nonresponsive.

¶ 50 On cross-examination, Alvarenga was asked if one pill of olanzapine would cause a concentration of 720 nanograms per milliliter, and she stated that it would not. When asked if two pills would cause such a concentration, she stated that she could not say, as there was no published reference value for a range of olanzapine following administration. The steady state equilibrium for someone prescribed olanzapine is about 150 nanograms per milliliter. When asked if it was possible that postmortem redistribution could cause the concentration of olanzapine in K.R.'s blood to rise from 50 nanograms per milliliter to 720, Alvarenga responded that it was theoretically possible but that postmortem redistribution does not typically involve such a drastic increase. Further, collecting a peripheral blood sample avoided any significantly increased concentration of olanzapine from postmortem redistribution. Alvarenga went on to say that, in her opinion, the concentration should have been greater than

[2]No testimony was presented as to K.R.'s stomach contents.

720 nanograms per milliliter, as olanzapine is unstable in storage and the blood sample was not tested until six days later.

¶ 51 The defense called James O'Donnell, an expert in the field of pharmacology, who testified as follows. O'Donnell explained the process by which drugs are absorbed by the body into the blood stream. He explained how a pharmacologist can predict the amount of a drug a person would be expected to have in their system, based on the person's weight and medical literature regarding the particular drug. He testified that, for a person who weighed 160 pounds and took 50 milligrams of olanzapine, the predicted amount of olanzapine in the person's system would be 45.9 milligrams. To achieve a level of 720 nanograms per milliliter would require between 50 and 100 10-milligram tablets with an average of 70 tablets.[3]

¶ 52 O'Donnell testified that postmortem redistribution is a process by which, after death, drugs that have been absorbed by other parts of the body can migrate to the blood stream, causing the concentration of the drug in the bloodstream to increase from what it was when the person died. This process is more likely to occur near organs and fat than muscle, and as such forensic pathologists typically take samples from peripheral sources. On cross-examination, he testified that a common side effect of olanzapine was weight gain.

¶ 53 Following closing argument, the jury was instructed on the law and given four verdict forms: a guilty and not guilty form for involuntary manslaughter and a general guilty and not guilty verdict form for child endangerment. After deliberating, the jury returned a guilty verdict for both manslaughter and child endangerment on February 16, 2022.

¶ 54 Defendant filed a motion to reconsider and/or motion for new trial on March 15, 2022. The trial court denied defendant's motion on April 15, 2022. Defendant was sentenced to 12 years' imprisonment on April 26, 2022. Defendant made an oral motion to reconsider, which was denied. Defendant timely appealed.

¶ 55 II. ANALYSIS

¶ 56 Defendant raises three issues on appeal: (1) whether the jury's verdicts of guilty on the manslaughter charge and the child endangerment charges were legally inconsistent, as manslaughter requires a reckless mental state whereas child endangerment requires a knowing mental state, (2) whether the trial court abused its discretion in admitting excessive other-crimes evidence, and (3) whether there was sufficient evidence to show defendant caused the death of K.R.

¶ 57 Defendant argues that he is entitled to a new trial because the jury returned legally inconsistent verdicts when it found him guilty of both knowing and reckless conduct for the same act.

¶ 58 As a preliminary matter, defendant acknowledges that trial counsel did not raise the issue of legally inconsistent verdicts, but he maintains that nevertheless we should review the issue under the doctrine of plain error. "Legally inconsistent verdicts present plain error, which is an exception to the general rule that issues not raised in defendant's motion for a new trial are waived." *People v. Mitchell*, 238 Ill. App. 3d 1055, 1058 (1992). Accordingly, we will review the issue for plain error.

[3]O'Donnell provided no explanation as to what literature he got the reference values from or what calculation he performed to arrive at this number.

¶ 59 " 'Legally inconsistent verdicts occur when an essential element of each crime must, by the very nature of the verdicts, have been found to exist and to not exist even though the offenses arise out of the same set of facts.' " *People v. Price*, 221 Ill. 2d 182, 188 (2006) (quoting *People v. Frieberg*, 147 Ill. 2d 326, 343 (1992)). "When offenses involve mutually inconsistent mental states, a determination that one mental state exists is legally inconsistent with a determination of the existence of the other mental state." *Id.* at 188-89. Our supreme court has repeatedly held that recklessness and knowledge are mutually inconsistent culpable mental states. *People v. Fornear*, 176 Ill. 2d 523, 531 (1997); *People v. Spears*, 112 Ill. 2d 396, 408 (1986); *People v. Hoffer*, 106 Ill. 2d 186, 195 (1985). When legally inconsistent verdicts have been entered, the appropriate remedy is to reverse the convictions and remand for a new trial. *Price*, 221 Ill. 2d at 194. Whether two verdicts are legally inconsistent constitutes a question of law, which is reviewed *de novo*. *Id.* at 189.

¶ 60 Involuntary manslaughter requires a reckless mental state (720 ILCS 5/9-3(a) (West 2020)), whereas the offense of endangering the life or health of a child requires a knowing mental state (*id.* § 12C-5(a)). Defendant argues that, because the charging documents alleged a single act or course of conduct—giving olanzapine to K.R.—the jury's verdicts were inconsistent in that they found that he both recklessly and knowingly gave olanzapine to K.R.

¶ 61 The State responds that defendant engaged in separate acts accompanied by separate mental states, which could support all the verdicts in a legally consistent manner. The State argues that the jury could have concluded that putting K.R. alone inside her grandmother's bedroom in close proximity to several bottles of olanzapine and giving her olanzapine pills for the purpose of making her sleep were knowing and intentional acts. Likewise, the jury could have concluded that defendant's conduct—allowing K.R. to go to sleep after learning that both he and Courtny had given K.R. olanzapine pills to make her sleep and later failing to investigate K.R.'s well-being the next morning—was reckless because defendant consciously disregarded the substantial and unjustifiable risk from K.R. having consumed olanzapine.

¶ 62 We disagree with the State's assertion that the jury could have found defendant guilty on these alternative bases. The manner in which a defendant is charged, and the jury is instructed, provides the essential framework for analyzing the consistency of jury verdicts. *Spears*, 112 Ill. 2d at 405.

¶ 63 Defendant was charged with one count of involuntary manslaughter and two counts of child endangerment. Count I alleged that defendant committed involuntary manslaughter when he "unintentionally and recklessly performed acts which were likely to cause death or great bodily harm to K.R., a family member, in that the defendant and one for whose conduct he is legally responsible gave K.R. several prescription Olanzapine pills in an amount that cause [*sic*] the death of K.R." Count II alleged that defendant committed child endangerment when he "knowingly caused the life of K.R., a child under the age of 18, to be endangered, in that said defendant gave K.R. several pills of prescription Olanzapine." Count III alleged that defendant committed child endangerment when he "knowingly permitted K.R., a child under the age of 18, to be placed in circumstances that endangered the life or health of K.R., in that said defendant allowed K.R. to have access to prescription Olanzapine pills."

¶ 64 The jury received the following instructions on involuntary manslaughter.

> "To sustain the charge of involuntary manslaughter, the State must prove the following propositions:

First Proposition: That the defendant performed the acts which caused the death of K.R.; and

Second Proposition: That the defendant performed those acts recklessly; and

Third Proposition: That those acts were likely to cause death or great bodily harm; and

Fourth Proposition: That K.R. was a family or household member of the defendant."

¶ 65 The jury received the following instructions on child endangerment.

"To sustain the charge of endangering the life or health of a child, the State must prove the following propositions:

First Proposition: That the defendant knowingly caused the life of K.R. to be endangered; and

Second Proposition: That the actions of the defendant were the proximate cause of the death of K.R.; and

Third Proposition: That at the time the defendant did so, K.R. was a child under the age of eighteen."

¶ 66 The jury returned a verdict of guilty on involuntary manslaughter and a single general verdict of guilty on the child endangerment charges. Under Illinois law, where an indictment contains several counts arising out of the same transaction and a general verdict of guilty is returned, the effect is that the defendant is guilty as charged as to each count to which the proof is applicable. *People v. Scott*, 148 Ill. 2d 479, 555 (1992). As such, the effect of the general verdict is that defendant was found guilty of counts II and III, *i.e.*, that he endangered K.R.'s life by giving her olanzapine and that he placed K.R. in circumstances that endangered her life and health by allowing K.R. to have access to olanzapine.

¶ 67 The State argues that it is possible that a single act may constitute separate criminal acts that may be performed with distinct mental states, and it cites *People v. Bustamante*, 334 Ill. App. 3d 515, 521 (2002), in support. In *Bustamante*, we found that a defendant who threw a beer bottle through the rear window of an occupied police car could be found to have knowingly caused harm to government property and recklessly endangered the safety of the officer. *Id.* As such, we must consider whether the criminal acts charged in count I are sufficiently distinct from those of counts II and III so that the jury could have found them to be performed with different mental states.

¶ 68 Defendant argues that the actions underpinning his convictions of both involuntary manslaughter and child endangerment are the same, *i.e.*, giving K.R. the olanzapine, and that the conduct could not be performed with distinct mental states. Defendant cites as persuasive authority our recent unpublished decision in *People v. Brodersen*, 2022 IL App (2d) 210230-U, in which we held that it was legally inconsistent to convict the defendant science teacher of both reckless conduct and child endangerment for the same act of pouring liquid nitrogen onto a single student, as they both involve mutually exclusive mental states of recklessness and knowledge. We agree with defendant that the jury in the instant case returned legally inconsistent verdicts.

¶ 69 We begin with counts I and II. While counts III alleged that defendant endangered K.R. by allowing her access to the olanzapine, counts I and II alleged the same conduct, described identically—namely, that defendant "gave K.R. several pills of prescription Olanzapine." The

jury was instructed that, to find defendant guilty of manslaughter, they must find that defendant recklessly performed acts that caused the death of K.R. and that those acts were likely to cause death or great bodily harm. To find defendant guilty of child endangerment, the jury was instructed that they must find that defendant knowingly endangered the life of K.R. and that his actions were the proximate cause of her death.

¶ 70 Our supreme court has repeatedly rejected arguments that knowledge "includes" the mental state of recklessness. See *Fornear*, 176 Ill. 2d at 531; *Spears*, 112 Ill. 2d at 408.

¶ 71 A person acts knowingly "when he or she is consciously aware that his or her conduct is of [the nature described by the statute defining the offense]." 720 ILCS 5/4-5(a) (West 2020). Whereas a person "acts recklessly when that person consciously disregards a substantial and unjustifiable risk that circumstances exist or that a result will follow" *Id.* § 4-6. "In general, a defendant acts recklessly when he is aware that his conduct might result in death or great bodily harm, although that result is not substantially certain to occur." *People v. DiVincenzo*, 183 Ill. 2d 239, 250 (1998), *abrogated on other grounds by People v. McDonald*, 2016 IL 118882.

¶ 72 " '[T]he term ["endanger"] refers to a potential or possibility of injury. The term does not refer to conduct that will result or actually results in harm, but rather to conduct that could or might result in harm.' " *People v. Jordan*, 218 Ill. 2d 255, 270 (2006) (quoting *People v. Collins*, 214 Ill. 2d 206, 215 (2005)). The likelihood of harm for the purposes of endangerment need not be great. *Id.* at 271. For instance, the risk that a child left unattended in a parked car might be preyed upon by a social predator or that a bullet fired into the air might fall and strike a person are circumstances that, though remote, are sufficient to establish endangerment. *Id.* To satisfy the requirements of involuntary manslaughter, the likelihood of harm must be more acute. *Cf. People v. Post*, 39 Ill. 2d 101, 105 (1968) ("Firing into the ground or into the air to frighten a marauder in order to keep him from returning is not, in our opinion, such a reckless act as to justify conviction of involuntary manslaughter."). As such, the distinction between acts that endanger life as opposed to acts that create a likelihood of death differ by the degree of risk.

¶ 73 Accordingly, with respect to counts I and II, the question becomes whether it was inconsistent for the jury to find that, in giving K.R. the olanzapine, defendant both (1) was consciously aware that by giving her the olanzapine pills he was engaging in conduct that had the potential or possibility of causing her death and (2) consciously disregarded a substantial and unjustifiable risk that giving her the pills might result in death or great bodily injury. The jury was not instructed that it could not return guilty verdicts on counts involving both knowing and reckless conduct.

¶ 74 Unlike *Bustamante*, the charged conduct in the instant case is directed at the same victim and the same harm and differs only as to the degree of risk to which defendant exposed K.R. See *Bustamante*, 334 Ill. App. 3d at 519 ("a finding that the defendant acted intentionally or knowingly contradicts a finding that the defendant acted recklessly but unintentionally"). Accordingly, the guilty verdicts on counts I and II were legally inconsistent.

¶ 75 Turning to count III, the conduct charged was distinct from count I and count II (allowing K.R. access to olanzapine as opposed to directly administering the olanzapine) and theoretically could be performed with different mental states. Nevertheless, reversal is required here. This court has held that where a defendant is convicted of two or more counts that are legally inconsistent and others that are not legally inconsistent, reversal and a new trial are required as to the legally inconsistent counts and the "counts related thereto." *Mitchell*, 238 Ill.

App. 3d at 1060. Because the jury's verdict on count III was delivered as part of a general verdict along with count II, it is related to the legally inconsistent count II and requires reversal and remand for a new trial.

¶ 76 While we have determined that the issue of inconsistent verdicts requires reversal and remand for a new trial on all counts, we must briefly address defendant's causation argument, as it challenges the sufficiency of the evidence and the failure to address the issue could risk subjecting defendant to double jeopardy. *People v. Taylor*, 76 Ill. 2d 289, 309 (1979). After thoroughly reviewing the evidence, we find that there was sufficient evidence on the issue of causation to support the guilty verdicts and therefore find no double jeopardy impediment to a new trial. The record contains evidence that K.R.'s cause of death was olanzapine toxicity, and there is no dispute that defendant administered some amount of olanzapine to K.R. in the hours before her death. However, we must make it clear that we have made no finding as to defendant's guilt that would be binding on the court on retrial. *People v. Porter*, 168 Ill. 2d 201, 215 (1995).

¶ 77 We need not reach the issue of whether the trial court abused its discretion in admitting the other-crimes evidence. However, the admission of 94 photographs of the crime scene, the majority of which depicted areas of the home other than where K.R. had died, was excessive and cumulative. The State's purposes could have been equally well served with fewer crime scene photographs and more focused other-crimes evidence than that which was ultimately allowed to go to the jury. See *People v. Cardamone*, 381 Ill. App. 3d 462, 497 (2008). On retrial, the trial court is directed to consider and assess the probative value versus the prejudicial effect of each exhibit. Likewise, the trial court is directed to assess whether sufficient foundation was laid as to which acts were attributable to defendant.

¶ 78 III. CONCLUSION

¶ 79 For the reasons stated, we reverse the judgment of the circuit court of Kendall County and remand for a new trial on all counts.

¶ 80 Reversed and remanded.