

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICKY LEN WHITESIDE JR.,

Defendant-Appellant.

UNPUBLISHED

December 22, 2020

No. 350040

Kent Circuit Court

LC No. 18-005223-FC

Before: FORT HOOD, P.J., and SAWYER and SERVITTO, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of first-degree murder (felony murder), MCL 750.316(1)(b); and first-degree child abuse, MCL 750.136b(2). The trial court sentenced defendant to life without the possibility of parole for the felony murder conviction and 240 to 360 months' imprisonment for the first-degree child abuse conviction. We affirm.

This case arises from the death of a two-year-old child, LA. In April 2018, Shaniqua Strickland (LA's mother), LA, and defendant (her boyfriend of approximately six months) were residing at a motel. On the last Saturday in April 2018, LA stayed overnight at her great-grandmother, Florine Guyton's, house. According to Guyton, during the visit, LA indicated that her sides hurt, she was dragging one leg, and she was acting as if she were in pain. LA also told Guyton that her chest hurt, that defendant punched her in her chest, and that defendant had hurt her. Guyton testified at trial that she had seen defendant hit LA very hard, on her bare bottom, before and warned him not to do it again.

On late Sunday evening, April 29, 2018, Strickland picked LA up from Guyton's home and, according to Guyton, she told Strickland that LA was in pain. Strickland told her that LA and some other children had been playing and that LA had fallen a couple times while playing.

Strickland testified that after picking LA up, she returned to the motel with LA, where defendant was waiting. Strickland put LA to bed and went to the store for 20-30 minutes, leaving LA in defendant's care. While Strickland was gone, guests in the motel room next to hers heard a "major scream" and "shrill" that sounded like a child being hurt. When Strickland returned to the

motel, LA was unresponsive, and defendant was holding LA in his arms. The room was destroyed, and LA's bed was broken. Strickland called 911.

When Kent County Sheriff Deputies arrived, defendant had LA in his arms, and she was wearing just a diaper. LA was not breathing and did not have a pulse. Defendant was calm and helped the deputies administer CPR. LA did not breathe while deputies worked on her, but she did throw up, and they made sure that she could receive air flow. Deputies also administered an automatic defibrillator. First responders arrived and started performing CPR on LA. A paramedic confirmed that LA was not breathing and did not have a pulse. Paramedics worked on LA for 24 minutes but were unable to gain a pulse or get her breathing again. First responders then took LA to the hospital in the early morning hours of April 30, 2018.

Dr. Christopher Benner, the Pediatric Emergency Medicine Doctor at Helen Devos Hospital, testified that he treated LA when she was brought to the hospital on April 30, 2018. Dr. Benner found many injuries on LA, which he described as follows:

So the final diagnosis, which comes as part of the patient summary discharge at the end of hospital care, are listed as cardiac arrest—cause unspecified, traumatic subdural hemorrhage, brain death, cerebral edema, fracture or break of the superior rim of the pubis, which is a portion of the pelvis, other fracture of unspecified thoracic vertebrae, anoxic brain damage—meaning without oxygen—child physical abuse suspected, laceration of the liver, unspecified degree, retinal hemorrhage on both sides, fracture of unspecified metatarsal bone, which is a bone in the left foot. And a Glasgow Coma Scale^[1] from three to eight.

LA passed away on May 2, 2018.

Dr. Stephen Cohle, a forensic pathologist who conducted the autopsy of LA, testified that his external findings included multiple bruises to LA's back, buttocks, many areas of her face and head, and a scrape on LA's head. Dr. Cohle's internal exam revealed tears both inside and outside of LA's liver, hemorrhages within and around her adrenal glands, and hemorrhages around her intestines and abdomen, which were all consistent with blunt force trauma. According to Dr. Cohle, the hemorrhage color indicated that the injury was recent and likely occurred within the prior two to three days.

The internal examination of LA's head showed bruising between the scalp and the skull on both the right and left side. Dr. Cohle testified that within the cranial cavity, there was hemorrhage over each half of the brain, and there was a subdural hemorrhage between the outermost covering of the brain, and the brain itself. Additionally, there was hemorrhage beneath the middle covering of the brain called a subarachnoid hemorrhage predominantly over the back of the head. There was also retinal hemorrhage in the back part of both eyes, which was consistent with severe blunt

¹ The Glasgow Coma Scale is used to quantify meaningful brain activity on a numerical scale and help predict a patient's outcome. LA scored a 3 out of 15, which is the lowest possible number.

force trauma. Dr. Cohle testified that LA's head injuries would have occurred "immediately prior" to LA going unconscious.

Dr. Cohle's determination of LA's cause of death was the cranial cerebral trauma, or head injury, and the manner of her death was homicide. In Dr. Cohle's opinion, LA would not have appeared normal after receiving the head injury, and she would likely have been unconscious quickly. In the vast majority of child trauma cases, the brain trauma is immediately onset and would be immediately noticeable. Dr. Cohle also pointed out that it would be "virtually unheard of" to receive this type of fatal injury from a fall, and there was no medical evidence to indicate any type of severe fall. LA's fatal injuries were instead consistent with "punching or slamming."

In an interview with a detective, Strickland admitted to disciplining LA a few times. Strickland described the discipline as when she had to "pop" LA and may have "lost it a few times" with LA. Strickland also described setting down LA hard in a chair as a form of discipline. When detectives interviewed defendant, Strickland was eventually brought into the interview room, and defendant apologized and said that it was an "accident" and that he pushed LA. Defendant admitted to punching LA, and he admitted that she went unconscious after he pushed her. Defendant then walked through the events, describing how he "grabbed her," "pushed her," was "hitting her," and was shaking LA. Defendant admitted to bending LA's bed but said that it happened when he knelt down.

Ultimately, the jury convicted defendant of felony murder and first-degree child abuse. Defendant now appeals.

On appeal, defendant argues that he is entitled to a new trial because there was insufficient evidence presented to support his convictions. We disagree.

A challenge to sufficiency of the evidence invokes the rights to due process of law. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). This Court reviews a challenge to the sufficiency of the evidence by reviewing the evidence de novo. *People v Meissner*, 294 Mich App 438, 452; 812 NW2d 37 (2011). In doing so, we view the evidence in a light most favorable to the prosecution to determine whether the crime's elements were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

Felony murder is found under the first-degree murder statute and is defined as murder committed in the perpetration of, or attempt to perpetrate one of many enumerated crimes, including first-degree child abuse. MCL 750.316(1)(b). A defendant is guilty of first-degree child abuse if the defendant knowingly or intentionally causes serious physical harm or serious mental harm to a child. MCL 750.136b(2). With respect to that statute, our Supreme Court has stated that, "the phrase 'knowingly or intentionally' modifies the phrase 'causes serious physical or serious mental harm to a child.' Thus, this language requires more from defendant than an intent to commit an act." *People v Maynor*, 470 Mich 289, 295; 683 NW2d 565 (2004). The statute further defines "serious physical harm" as including "brain damage, a skull or bone fracture, subdural hemorrhage or hematoma . . . [or] internal injury" MCL 750.136b(1)(f). "Circumstantial evidence and reasonable inferences that arise from such evidence can constitute satisfactory proof of the elements of the crime. All conflicts in the evidence must be resolved in

favor of the prosecution.” *People v Kanaan*, 278 Mich App 594, 619; 751 NW2d 57 (2008) (internal citation omitted).

Here, we are satisfied that the evidence, did, in fact, establish that defendant committed the charged acts and that such acts caused LA’s death. Medical testimony presented at trial showed that when LA was brought to the hospital, her body was riddled with injuries, from bruises and bone fractures to bleeding and damaged internal organs. These injuries certainly qualify as “serious physical harm, as defined in MCL 750.136b(1)(f). Further, Dr. Cohle explained how LA’s head injury would have caused her to go unconscious almost immediately. Dr. Cohle and Dr. Benner both explained that LA’s most severe injury was the head injury, which ultimately lead to cardiac arrest and her cause of death. Finally, both medical experts testified that these injuries were consistent with blunt force trauma. In fact, LA’s injuries were consistent with “punching or slamming.”

Defendant admitted to pushing and hitting LA, which is consistent with the medical testimony. Defendant was the last person with LA while she was still conscious. Not only did LA become unconscious while left alone with defendant, but defendant admitted that she went unconscious after he pushed her. While Strickland was gone, neighbors heard the child scream, and when Strickland returned, defendant was holding the nonresponsive child. The jury heard defendant’s admission that he caused LA to go unconscious, along with the medical testimony stating that the fatal injury rendered her unconscious. When viewing the evidence in a light most favorable to the prosecution, this was more than sufficient evidence for the jury to conclude that defendant caused the fatal act. See *Kanaan*, 278 Mich App at 619.

Next, defendant argues that he did not have the requisite “specific intent” needed for first-degree child abuse. “Because it is difficult to prove an actor’s state of mind, the prosecution may rely on minimal circumstantial evidence to prove that the defendant had the required mental state.” *People v McFarlane*, 325 Mich App 507, 516; 926 NW2d 339 (2018).

In this case, the evidence that defendant’s abuse caused the fatal injury was enough to establish the necessary specific intent. See *id.* Guyton’s testimony explained that defendant had caused injuries to LA before, which sheds light on his intent and infers his prior knowledge of abuse. The expert medical testimony explained that the injuries were likely from blunt force trauma and abuse and explained how the brain injury would have been caused by something much more severe than an average fall. The jury could have reasonably inferred and found that the blunt force trauma was intended to cause serious injury because defendant was frustrated with LA when she was crying. We “must make every reasonable inference from [the] testimony in favor of the verdict.” *Id.* at 514. And the jury could have inferred “from the violence of the act that [defendant] either intended to cause her serious injury or knew that it was likely to do so.” *Id.* at 516-517. Therefore, defendant’s conduct evidenced the requisite specific intent with respect to the child abuse charge. See *id.* at 516.

Defendant next makes a *corpus delecti* argument by stating that his confession was not corroborated by the evidence. In this case, defendant’s statements can be corroborated from the submitted evidence. Defendant admitted to losing his “cool” for a second and described telling LA to close her mouth because she was crying. Defendant also described how LA hit her head and went unconscious. Defendant walked through the events of how he “grabbed her,” “pushed

her,” was “hitting her,” and was shaking LA. These admissions match up with the injuries and the evidence, including that the motel room was “destroyed,” and LA’s bed was broken.

The remainder of defendant’s arguments are based on the credibility of the witnesses and evidence submitted to the jury. However, this Court must not interfere with the fact-finder’s role in deciding the weight and credibility to give to a witness’s testimony—no matter how inconsistent or vague that testimony might be. *People v Lemmon*, 456 Mich 625, 637; 576 NW2d 129 (1998). Defendant’s specific challenges to Guyton’s and Strickland’s testimonies were presented to the jury and because the jury had the option to hear all this evidence and nevertheless entered a guilty verdict, defendant’s argument fails.

Affirmed.

/s/ Karen M. Fort Hood

/s/ David H. Sawyer

/s/ Deborah A. Servitto