

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DERRICK EUGENE KNOX,

Defendant-Appellant.

UNPUBLISHED

February 16, 1999

No. 202740

Ingham Circuit Court

LC No. 96-070529 FH

Before: Griffin, P.J., and McDonald and White, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of third-degree child abuse, MCL 750.136b(4); MSA 28.331(2)(4). The trial court sentenced defendant to fifteen to twenty-four months' probation. We affirm.

This case stems from injuries received by defendant's eight-year-old son when defendant allegedly struck him repeatedly with a belt. Defendant's primary defense was that his son fabricated the claim in an attempt to be allowed to live with his mother because he found his father too strict. Defendant did not deny that his son was injured, but contended that someone else, probably his son's babysitter, inflicted the injuries.

Defendant's sole claim of error is that the lower court erroneously excluded the testimony of two witnesses that could have supported his defense. We review the trial court's decision to admit or exclude evidence for an abuse of discretion. *People v Ullah*, 216 Mich App 669, 673; 550 NW2d 568 (1996).

Defendant sought to introduce the testimony of a doctor who was expected to testify regarding alleged psychological evaluations of defendant's son, claiming that this testimony would have helped the jury understand his son's and his ex-wife's motives to lie. Neither the prosecution nor the court were provided with any information regarding this witness except his last name. MRE 103(a)(2). Defendant's son testified directly that he wanted to live with his mother and that he did not like the strict discipline in his father's home. Thus, the doctor's testimony, at best, would have been merely cumulative and far less significant than the victim's own admission. With regard to defendant's ex-wife,

defendant contended that the doctor might be able to provide information regarding the family structure, indicating to the jury that defendant's ex-wife might not be credible. Because defendant's ex-wife's testimony was insignificant in light of the substantial evidence of defendant's guilt, any error in this regard was harmless.

Defendant also sought to introduce the testimony of his son's teacher, claiming that her testimony would have helped the jury understand his son's character and the degree of discipline necessary to control his son's behavioral problems.¹ Defendant asserted that the teacher's testimony would have supported his claim that his son exaggerated his "beating," and that any corporal punishment inflicted was merely reasonable discipline. The victim's testimony regarding his injuries was far less detailed and graphic than the videotape evidence, photographs, and testimony from police, protective services, and medical personnel. The jury's duty was to determine whether the alleged discipline was reasonable. MCL 750.136b; MSA 28.331(2); *People v Hicks*, 149 Mich App 737, 745; 386 NW2d 657 (1986). The victim's behavior in school was irrelevant to this issue. *People v Mills*, 450 Mich 61, 67; 537 NW2d 909, modified on other grounds 450 Mich 1212 (1995).

Defendant also claimed that his son's teacher would have testified regarding the victim's truthfulness. There was no suggestion in the lower court that the teacher was expected to testify regarding the victim's *reputation* for truthfulness in the community. MRE 608. However, assuming that she would have, any error in excluding her testimony was harmless beyond a reasonable doubt. *People v Anderson (After Remand)*, 446 Mich 392, 404-406; 521 NW2d 538 (1994); *People v Graves*, 458 Mich 476, 482; 581 NW2d 229 (1998). Logistically, it would have been difficult, if not impossible, for someone else to have inflicted the injuries within the available window of time indicated by the evidence. Further, defendant admitted to two witnesses, including a police officer, that *he* had inflicted the injuries. There is no indication that the outcome of this case would have been different if the jury had heard that the victim had a reputation for untruthfulness.

The trial court did not abuse its discretion in determining that neither the doctor's nor the teacher's testimony would have been relevant to a material issue in the case. However, even if the trial court erred, any error in excluding the testimony was harmless.

Affirmed.

/s/ Richard Allen Griffin

/s/ Gary R. McDonald

/s/ Helene N. White

¹ The first mention of this teacher was at the end of the first of a two-day trial. No challenge was made regarding whether it would have been proper to allow defendant to amend his witness list at such a late date.