

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DIETRICK POPS also known as DIETRICK DEON  
POPS also known as DIETRICK POTTS,

Defendant-Appellant.

---

UNPUBLISHED

March 9, 1999

No. 199566

Ingham Circuit Court

LC No. 96-070443 FH

Before: Cavanagh, P.J., and Markman and Smolenski, JJ.

PER CURIAM.

Defendant appeals as of right his conviction by a jury of first-degree child abuse. MCL 750.136b; MSA 28.331(2). The court sentenced defendant to one year in prison and five years' probation. We affirm.

This case arose from defendant's abuse of his live-in girlfriend's thirteen-month-old daughter. The child was prescribed medication after a visit to the hospital for a cold and asthma attack, but her mother reported that she was otherwise feeling fine, playing and laughing when her mother left her in defendant's care in the afternoon of March 9, 1996. When the mother returned home in the early morning hours, defendant told her that the child had been vomiting black matter and would not eat; and the child appeared dazed, was unable to stand, and made moaning noises. Several hours later, the child vomited again and the mother called an ambulance. During surgery, the doctor found tears in her bowel and colon area, a bruised liver, lymph nodes that were torn out of place, and the abdominal cavity filled with old blood. He opined that the child had been kicked or punched four times between twenty-four and thirty hours earlier. After the child's injuries were ascertained, defendant accused the doctor of falsifying the injuries in order to get defendant in trouble, and threatened the doctor. He also expressed concern that "they're going to try and say I did it," and prayed with his girlfriend, "God forgive us. God forgive me for what I've done. Forgive everybody for what they've done." The child's mother subsequently told several different stories about when her child first started vomiting and the overall state of her health.

Defendant first argues that his motion for a directed verdict should have been granted because there was insufficient evidence to prove him guilty beyond a reasonable doubt. When reviewing a trial court's ruling on a motion for directed verdict, this Court views the evidence in the light most favorable to the prosecutor in order to determine whether a rational trier of fact could find that the elements of a crime were proven beyond a reasonable doubt. *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993). To prove defendant guilty of first-degree child abuse, the prosecutor had to show that defendant "knowingly or intentionally cause[d] serious physical or serious mental harm to a child." MCL 750.136b(2); MSA 28.331(2)(2). The only element disputed in the instant case was the identity of the person who harmed the child. The doctor who treated the victim established a time frame in which the injuries most likely occurred. Within that twenty-two hour time frame, defendant was the person with the greatest opportunity to harm the child; he was alone with the child for approximately seven to eight hours. During the remaining time period, although there were others with an opportunity to harm the child, defendant himself testified that he saw no one hurt her. Although the child's mother was alone with the child for a part of this time period, this was only after the child had already exhibited symptoms of her injuries. In addition, defendant requested that "God forgive me for what I've done" immediately after being confronted by the doctor with the nature of the child's injuries. Allowing for reasonable inferences to be drawn and taking the facts in the light most favorable to the prosecutor, *Jolly*, *supra* at 466, a reasonable trier of fact could have found defendant guilty beyond a reasonable doubt.

Defendant next argues that the trial court abused its discretion when it denied his motion for a new trial because the verdict was against the great weight of the evidence. *People v Daniel*, 207 Mich App 47, 50; 523 NW2d 830 (1994). In particular, defendant challenges the credibility of the doctor who testified at trial, arguing that his trial testimony conflicted with his preliminary examination testimony. However, "[w]here the evidence given is conflicting, it is for the jury to decide what weight to assess to the evidence." *People v Marji*, 180 Mich App 525, 529; 542 NW2d 835 (1989). Further, "it was for the jury to evaluate these discrepancies and determine the credibility of this testimony." *Id.* Thus, we will not solely evaluate the expert's credibility on this issue and will trust the abilities of the jurors on this issue. *People v Lemmon*, 456 Mich 625, 638; 576 NW2d 129 (1998). Based on the entire record, including defendant's opportunity to harm the child, his statements and behavior following diagnosis of the child's injuries, the medical opinions, and the condition of the child before and after being in defendant sole care, we conclude that the verdict was not against the great weight of the evidence and that the trial court did not abuse its discretion.

Affirmed.

/s/ Mark J. Cavanagh  
/s/ Stephen J. Markman  
/s/ Michael R. Smolenski