

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TINA M. SPRINGER,

Defendant-Appellant.

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UNPUBLISHED  
September 5, 2000

No. 211364  
Wayne Circuit Court  
LC No. 97-004144

Before: Kelly, P.J., and Holbrook, Jr., and Griffin, JJ.

PER CURIAM.

Defendant was charged with two counts of first-degree child abuse, MCL 750.136b(2); MSA 28.331(2)(2), and one count of first-degree vulnerable adult abuse, MCL 750.145n(1); MSA 28.342A(n)(1). The charge of first-degree vulnerable adult abuse was dismissed at trial because the alleged victim did not appear, but the court allowed the prosecutor to amend that charge to assault with intent to commit great bodily harm less than murder, MCL 750.84; MSA 28.279. Following a trial, the jury found defendant guilty of two counts of the lesser offense of second-degree child abuse, MCL 750.136b(3); MSA 28.331(2)(3), and acquitted defendant on the assault charge. Defendant was sentenced to two concurrent terms of thirty-two to forty-eight months' imprisonment. She appeals as of right. We affirm.

Citing to MCR 2.613(c), defendant first argues that the trial court's findings of fact do not support her convictions of two counts of second-degree child abuse. This argument is completely without merit, given that this was a jury trial, not a bench trial. To the extent defendant is actually arguing that the evidence was insufficient to support the jury's verdict, we disagree. "When reviewing a claim regarding the sufficiency of the evidence, this Court examines the evidence in a light most favorable to the prosecution to determine if a rational jury could find that the essential elements of the offense were proved beyond a reasonable doubt." *People v Joseph*, 237 Mich App 18, 20; 601 NW2d 882 (1999).

The statute proscribing second-degree child abuse, MCL 750.136b(3); MSA 28.331(2)(3), provides:

A person is guilty of child abuse in the second degree if the person's omission causes serious physical harm or serious mental harm to a child or if the person's reckless act causes serious physical harm to a child. Child abuse in the second degree is a felony punishable by imprisonment for not more than 4 years.

After reviewing the record, we conclude that the prosecution adduced sufficient evidence at trial to support defendant's conviction for second-degree trial abuse. The two child victims both testified that defendant physically harmed them by striking them with an electrical cord and burning them with an iron. The children's accusations were supported by photographs depicting several scars on the children, as well as the testimony of an investigator with the Detroit Police Department's Child Abuse Unit. Although defendant denied causing the physical injuries to the children, it was for the jury to decide if defendant's explanation for the children's physical conditions was credible. *People v Velasquez*, 189 Mich App 14, 16; 472 NW2d 289 (1991).

Next, defendant claims that she was denied her constitutional right to confront the witnesses against her, US Const, Am VI; Const 1963, art 1, § 20, because the prosecutor did not produce the alleged victim of the assault with intent to commit great bodily harm less than murder charge. We disagree. The Confrontation Clause guarantees a criminal defendant the right to be present at all stages and to a face-to-face meeting with the witnesses against him. *People v Burton*, 219 Mich App 278, 287; 556 NW2d 201 (1996). The central purpose behind the Confrontation Clause is to ensure the reliability of evidence against the defendant by subjecting it to rigorous testing by cross-examination in front of the trier of fact. *People v Sammons*, 191 Mich App 351, 356; 478 NW2d 901 (1991). The Confrontation Clause does not apply where the prosecution fails to call certain witnesses that the defendant could have called to testify. *People v Cooper*, 236 Mich App 643, 659; 601 NW2d 409 (1999); *People v Lee*, 212 Mich App 228, 257; 537 NW2d 233 (1995).

Further, defendant fails to establish that given the circumstances of the case the prosecutor had a duty to produce this witness for trial. As the trial court noted, the victim was not listed as an endorsed witness on the prosecution's witness list. Under MCL 767.40a; MSA 28.980(1), the prosecutor was not required to call this witness at trial. *People v Burwick*, 450 Mich 281, 287-289; 537 NW2d 813 (1995). Moreover, defendant did not call the witness herself or request any assistance in locating the witness.

Affirmed.

/s/ Michael J. Kelly

/s/ Donald E. Holbrook, Jr.

/s/ Richard Allen Griffin