STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED January 22, 2004
v	No. 244219 Ingham Circuit Court
VANISSHA LAKE WALKER, Defendant-Appellant.	LC No. 01-077752-FH

Before: O'Connell, P.J., and Wilder and Murray, JJ.

PER CURIAM.

Defendant appeals as of right from her jury-trial conviction of three counts of second-degree child abuse, MCL 750.136b(3). Defendant was sentenced as an habitual offender, second offense, MCL 769.10, to concurrent sentences of 36 to 72 months' imprisonment on each count. We affirm.

Defendant alleges that there was insufficient evidence to convict her of Count 3, second-degree child abuse, with respect to her youngest son. This Court reviews a claim of insufficient evidence arising from a criminal trial "in the light most favorable to the prosecution and determines whether a rational finder of fact could find the essential elements of the crime were proven beyond a reasonable doubt." *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). When reviewing the sufficiency of evidence in a criminal case, "circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime." *People v Allen*, 201 Mich App 98, 100; 505 NW2d 869 (1993). "It is for the trier of fact, not the appellate court, to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded to those inferences." *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). And critically, this Court will not "interfere with the jury's role of determining the weight of the evidence or the credibility of witnesses." *People v Wolfe*, 440 Mich 508, 514; 489 NW2d 748, amended 441 Mich 1201 (1992).

To have convicted defendant of second-degree child abuse under MCL 750.136b(3), the prosecutor must have proven three elements beyond a reasonable doubt:

> (1) defendant had care or custody of the child when the abuse allegedly happened;

(2) defendant knowingly or intentionally committed an act likely to cause serious physical or mental harm to a child regardless of whether the harm results;

Or, defendant knowingly or intentionally committed an act that is cruel to a child regardless of whether harm results;

Or, defendant's omission caused serious physical harm or serious mental harm to a child, or defendant's reckless act caused serious physical harm to a child;

(3) And, the child was under the age of eighteen.

Defendant's only argument is that there was insufficient evidence to prove the second element – committing an act or omission that was cruel or that was likely to cause serious mental or physical harm to the child regardless whether the harm actually resulted.

Defendant correctly asserts that the Family Independence Agency worker, Colin Parks, made no mention, during his testimony, regarding the child. The most that could be taken from Parks's testimony was evidence of the belt that he found in defendant's home and of the pillow and blanket on the staircase in the basement. This evidence was circumstantial at best.

Also, the testimony of Sue Hurlburt, the Child and Family services caseworker, is devoid of any mention of the child. Hurlburt's testimony mainly focused on defendant's two older children, as well as defendant herself. In the case of Hurlburt's testimony, it is even more unclear what inferences the jury could have made regarding the alleged abuse of the youngest child.

However, the remaining witnesses' testimony provided circumstantial evidence from which the jury could have drawn reasonable inferences that the child suffered physical or mental abuse. *Allen, supra.*

Steven Guertin, M.D., a pediatric child abuse expert, admitted that there was not the same amount or type of evidence of abuse regarding the youngest child as there was of the two older children. However, the doctor also clearly stated that this did not mean that the child had never been abused. Dr. Guertin also admitted that when he interviewed him, the child related that defendant had struck him in the back, neck, and foot. The jury could have inferred from Dr. Guertin's testimony that physical evidence did not result from all cases of child abuse.

The strongest testimony for the prosecution came from the child's older sister. The sister stated that both her younger brothers had been hit with a hand or a shoe and locked in the basement. The girl also related a story when she and her two brothers were all locked in the basement and had been banging on the door until defendant finally let them out.[1] The jury could

[1] In conjunction with this testimony, Dr. Sharon Hobbs testified that being locked in a dark basement was problematic for these children.

have found the girl to be the most credible of defendant's children, not just because of her age, but also because of her detailed testimony.[2] The jurors could have based their belief that the youngest boy was locked in the basement or hit by defendant on the girl's testimony alone. Although it appears from the record that she was somewhat inconsistent in her testimony regarding certain matters, it is this Court's duty "not [to] interfere with the jury's role of determining the weight of the evidence or the credibility of witnesses." *Wolfe, supra* at 514.

When reviewing a claim of insufficient evidence, the "standard of review is deferential: a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict." *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). Therefore, we find it probable that the jury found the girl's and Dr. Guertin's testimony most credible. Furthermore, the jury could have inferred from Dr. Hobbs' testimony that being locked in the basement, in the manner that these children were, was sufficient to constitute severe mental distress. These inferences, when viewed in the light most favorable to the prosecution, were sufficient to support the jury's finding that defendant was guilty of second-degree child abuse beyond a reasonable doubt.

Affirmed.

/s/ Peter D. O'Connell
/s/ Kurtis T. Wilder
/s/ Christopher M. Murray

[2] Indeed, evidence existed which would have allowed the jury to disbelieve the testimony of both the child and his older brother that the child had never been struck.