

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PETER JAMES MCKELVEY,

Defendant-Appellant.

UNPUBLISHED
February 12, 2004

No. 244033
St. Clair Circuit Court
LC No. 02-000597-FH

Before: Schuette, P.J., and Meter and Owens, JJ.

PER CURIAM.

Defendant appeals as of right his conviction of first-degree child abuse, MCL 750.136b(2), entered after a jury trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's two-and-one-half-month-old daughter suffered severe and permanent brain damage after being left in defendant's care. Medical evidence established that the child's injuries were consistent with shaken baby syndrome and that the injuries could not have resulted from a simple fall. Defendant admitted shaking the child on two occasions, but maintained that he did not intend to harm her and did not know that his actions could severely harm her.

The jury found defendant guilty of first-degree child abuse. The trial court sentenced defendant to five to fifteen years in prison.

In reviewing a sufficiency of the evidence question, we view the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could conclude that the elements of the offense were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 513-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). We do not interfere with the jury's role of determining the weight of the evidence or the credibility of witnesses. *Id.* at 514-515. A trier of fact may make reasonable inferences from evidence in the record but may not make inferences completely unsupported by any direct or circumstantial evidence. *People v Vaughn*, 186 Mich App 376, 379-380; 465 NW2d 365 (1990).

A person is guilty of first-degree child abuse if he knowingly or intentionally causes serious physical or mental harm to a child. MCL 750.136b(2). First-degree child abuse is a specific intent crime. *People v Maynor*, 256 Mich App 238, 241-243; 662 NW2d 468 (2003), lv gtd july 3468 Mich 943 (2003).¹ To commit a specific intent crime, the offender must subjectively desire or know that the prohibited result would occur. *People v Gould*, 225 Mich App 79, 85; 570 NW2d 140 (1997). Specific intent can be proven from the facts and circumstances surrounding the incident. See *People v Beaudin*, 417 Mich 570, 575; 339 NW2d 461 (1983).

Defendant argues that the evidence was insufficient to support his conviction of first-degree child abuse. We disagree and affirm. The evidence showed that the child sustained serious and permanent brain damage and was rendered blind as a result of defendant's repeated acts of shaking her. According to the child's mother, defendant initially claimed after the first incident that the child had choked on some food, requiring him to perform CPR on her, but defendant later admitted to having shaken her. Additionally, defendant admitted that he lied about having called 911 after the first incident. The fact that defendant lied is evidence of a guilty mind. See *People v Dandron*, 70 Mich App 439, 442-445; 245 NW2d 782 (1976). At trial, defendant testified that after the first shaking incident, he stopped shaking the child because he noticed that she was having trouble breathing. The child became unresponsive after the shaking. Defendant indicated to the child's mother that he knew his actions were wrong at the time of the first incident. Nevertheless, defendant again shook the child and she again began experiencing breathing problems. After the second incident, the child was taken to the emergency room, where she was diagnosed with subdural hematomas. The evidence showed that on the second occasion defendant deliberately shook the child after having done so on a previous occasion during which she experienced severe breathing problems. Defendant testified that he did not intend to harm the child and that he did not realize his actions could cause physical harm to her; however, the jury was entitled to reject that testimony, *Maynor, supra* at 245; *Wolfe, supra* at 514-515, and to infer based on the circumstances that at least on the second occasion defendant knew that his actions would cause physical harm to the child. *Maynor, supra* at 245-246. The fact that defendant lacked specialized medical training did not mandate a conclusion that he could not have realized that his actions could result in severe physical harm to the child. Cf. *Gould, supra* at 87 (the defendant, an EMT, admitted that he knew that it was improper to shake a baby). Sufficient circumstantial evidence existed from which the jury could infer the requisite intent for first-degree child abuse. *Maynor, supra* at 245-246. The evidence, viewed in the light most favorable to the prosecution, supported defendant's conviction. *Wolfe, supra* at 513-515.

¹ Our Supreme Court's grant of leave to appeal is limited to the issue of whether it is sufficient to instruct the jury using the statutory language regarding intent, i.e., "knowingly or intentionally" causing serious physical or mental harm to a child, or whether the jury must also be instructed regarding specific intent. In this case, the trial court instructed the jury on specific intent.

Affirmed.

/s/ Bill Schuette
/s/ Patrick M. Meter
/s/ Donald S. Owens