

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LACOMBNIKE ANDERSON,

Defendant-Appellant.

UNPUBLISHED

October 30, 2007

No. 272914

Wayne Circuit Court

LC No. 06-000308-01

Before: Kelly, P.J., and Meter and Gleicher, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of first-degree child abuse, MCL 750.136b(2), and sentenced to 15 months to 15 years' imprisonment. She appeals as of right. We affirm.

Defendant's 22-month-old son was transported to Children's Hospital of Michigan on December 16, 2005. He was cold, stiff, and unresponsive. It was discovered that he had suffered old and new injuries that caused bleeding in his brain as well as a neck fracture. Defendant told investigating police officers and hospital personnel that the child was injured when he fell off a bed onto the floor. In a statement to the police, however, defendant admitted striking the child repeatedly during the previous few months and slapping him, whipping him, and hitting him on the back of his head on the day that he was hospitalized. Defendant also admitted that her boyfriend had whipped the child that day and that they had placed the child in the snow when he became unresponsive.

Defendant first argues that the trial court erred by failing to rule on the admissibility of her confession. We disagree. Appellate review of this issue was waived when defense counsel stated that she had no objection to the admission of defendant's statement to the police. *People v Carter*, 462 Mich 206, 219; 612 NW2d 144 (2000). In any event, because defendant did not preserve this issue for appellate review by raising it in the trial court, *People v Grant*, 445 Mich 535, 546; 520 NW2d 123 (1994), our review is limited to plain error affecting her substantial rights, *People v Carines*, 460 Mich 750, 763, 774; 597 NW2d 130 (1999). Reversal is thus warranted only if the error resulted in conviction despite defendant's actual innocence or if it seriously affected the fairness, integrity, or public reputation of judicial proceedings, independent of her innocence. *People v Knox*, 469 Mich 502, 508; 674 NW2d 366 (2004).

Defendant relies on *People v Neal*, 182 Mich App 368; 451 NW2d 639 (1990), in support of her argument that the trial court erred by failing to rule on the voluntariness of her statement to the police and thus determine whether the statement was admissible. Defendant's reliance on *Neal* is misplaced, however, because in that case, the defendant moved to suppress his statement to the police. *Id.* at 371. Here, defendant did not challenge the admissibility of her statement before or during trial. Although defense counsel questioned Investigator Barbara Simon regarding the circumstances of defendant's confession during trial, counsel did not seek to suppress the statement.

In *People v Ray*, 431 Mich 260, 269-273; 430 NW2d 626 (1988), our Supreme Court discussed whether a trial court is obligated to raise sua sponte the issue of the voluntariness of a defendant's statement to the police. There, the Court recognized that, in the absence of a defense challenge, a trial court is obligated to raise the issue on its own "where the factual situation itself raises a substantial question of voluntariness." *Id.* at 269, 271. Circumstances alerting a trial court to possible voluntariness concerns include a defendant's mental, emotional, or physical condition, physical and mental duress, and police threats. *Id.* at 269. A trial court's obligation to raise a voluntariness concern on its own, however, is "limited to those cases in which the evidence clearly and substantially reflects a question about the voluntary nature of a confession or implicates other due process concerns." *Id.* at 271.

Here, the evidence did not clearly and substantially reflect a question about the voluntary nature of defendant's confession. Defendant testified that she never told Investigator Simon that she had struck her child and that she did not read her statement before signing it. She maintained that Simon told her that if she signed the statement, she could leave and check on her son's condition. She further testified that she "wasn't in the right state of mind" because she was "worried about [her] baby." Simon, however, testified that defendant did not appear excited when she gave her statement and that she had calmed down considerably since Simon had seen her at the hospital earlier in the day. Simon denied telling defendant that she could leave if she provided a statement. Although defendant began crying at one point, she did not appear surprised or shocked when Simon shared with her the information she had learned from the child's doctor. After defendant gave the statement, Simon allowed her to read it and make changes to it. She directed defendant to sign her name after each answer if it was correct, and defendant did so. The trial court noted that defendant signed the statement more than 30 times. In addition, Simon testified that defendant initially told her that she did not know what had happened to the child because the child had been with his grandmother. Thereafter, defendant changed her story and admitted whipping the child.

Thus, contrary to defendant's argument, the evidence did not tend to show that defendant signed the statement without reading it in order to leave and check on her son. In addition, considering that defendant initially claimed that she did not know what had happened to the child because he was with his grandmother, it does not appear that defendant's emotional condition rendered her incapable of making a voluntary statement to the police. In short, the circumstances did not raise a substantial question concerning the voluntary nature of defendant's confession. *Ray, supra* at 269, 271. Accordingly, defendant has failed to establish plain error affecting her substantial rights.

Defendant next argues that the trial court should have suppressed her confession because it was involuntary. As with the previous issue, defendant waived appellate review of this issue

when defense counsel stated that she had no objection to the admission of defendant's statement to the police. *Carter, supra* at 219. Moreover, defendant has failed to show that the trial court's admission of the statement constituted plain error affecting her substantial rights. *Carines, supra* at 763, 774.

"A statement obtained from a defendant during a custodial interrogation is admissible only if the defendant voluntarily, knowingly, and intelligently waived [her] Fifth Amendment rights." *People v Akins*, 259 Mich App 545, 564; 675 NW2d 863 (2003). In *People v Cipriano*, 431 Mich 315, 334; 429 NW2d 781 (1988), our Supreme Court identified several factors to consider when determining whether a statement is voluntary, including:

age of the accused; his lack of education or his intelligence level; the extent of his previous experience with the police; the repeated and prolonged nature of the questioning; the length of the detention of the accused before he gave the statement in question; the lack of any advice to the accused of his constitutional rights; whether there was an unnecessary delay in bringing him before a magistrate before he gave the confession; whether the accused was injured, intoxicated or drugged, or in ill health when he gave the statement; whether the accused was deprived of food, sleep, or medical attention; whether the accused was physically abused; and whether the suspect was threatened with abuse.

"The ultimate test of admissibility is whether the totality of the circumstances surrounding the making of the confession indicates that it was freely and voluntarily made." *Id.*

Applying the above factors in the instant case, the totality of the circumstances indicates that defendant's confession was voluntary. Defendant did not appear to be deprived of food or under the influence of alcohol or drugs, and was not harmed in any way. Although Investigator Simon asserted that defendant told her that she had an 11th grade education, defendant testified that she only had a seventh grade education. Nevertheless, she was able to read the constitutional rights form aloud. Although defendant contends that her physical and mental state in particular rendered her confession involuntary, as previously discussed, it does not appear that her concern for her son's condition resulted in her making an involuntary confession. Investigator Simon denied telling defendant that she could leave if she signed the statement, and defendant had calmed down considerably since Simon observed her at the hospital earlier that day. Thus, under the totality of the circumstances, it does not appear that defendant's confession was involuntary. Accordingly, she has failed to show that its admission constituted plain error affecting her substantial rights.

Defendant next contends that, absent her confession, the prosecutor presented insufficient evidence to support her conviction. When determining whether sufficient evidence exists to support a conviction, we must view the evidence in the light most favorable to the prosecution and determine whether a rational fact-finder could conclude that the prosecutor proved every element of the offense beyond a reasonable doubt. *People v Sherman-Huffman*, 466 Mich 39, 40; 642 NW2d 339 (2002); *People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000). A reviewing court must draw all reasonable inferences and make credibility determinations in support of the jury verdict. *Id.* at 400. The elements of an offense may be proven by circumstantial evidence and reasonable inferences therefrom. *People v Solmonson*, 261 Mich App 657, 661; 683 NW2d 761 (2004).

To be convicted of first-degree child abuse, one must knowingly or intentionally cause serious physical or mental harm to a child. MCL 750.136b(2); *People v Maynor*, 470 Mich 289, 295; 683 NW2d 565 (2004). Because we have determined that defendant's confession was properly admitted, the trial court did not err by considering it in determining defendant's guilt. In her statement to the police, defendant admitted repeatedly striking the child and "whupping" him on the day that he was hospitalized. Further, the child's emergency room doctor testified that the child suffered old and new subdural hematomas and a fractured neck. He further opined that the child was in very critical condition and that the child's injuries were not consistent with falling off a bed onto the floor. The evidence, viewed in a light most favorable to the prosecution, was sufficient to sustain defendant's conviction.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Patrick M. Meter
/s/ Elizabeth L. Gleicher