

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEANNINE MARIE NYIES,

Defendant-Appellant.

UNPUBLISHED

October 16, 2008

No. 278245

Jackson Circuit Court

LC No. 06-003888-FC

Before: Hoekstra, P.J., and Cavanagh and Zahra, JJ.

PER CURIAM.

A jury convicted defendant of torture, MCL 750.85, and first-degree child abuse, 750.136(b)(2). The trial court sentenced defendant to 12 to 30 years' imprisonment for the torture conviction, and eight to 15 years' imprisonment for the first-degree child abuse conviction, to be served consecutively. Defendant appeals of right. We affirm.

Defendant's sole argument on appeal is that insufficient evidence supports her conviction for torture. She specifically argues there was no direct or circumstantial evidence that she had inflicted great bodily injury upon her six-year-old son. We disagree. In reviewing a sufficiency challenge, we must review the evidence de novo in the light most favorable to the prosecution to decide whether or not a rational trier of fact could have found that the elements of the crime were established beyond a reasonable doubt. *People v Odom*, 276 Mich App 407, 418; 740 NW2d 557 (2007). Great deference is given to the jury's credibility determinations. *People v Unger*, 278 Mich App 210, 228-229; 749 NW2d 272 (2008).

Defendant testified at trial that, on August 6, 2006, around noon, that she returned home from work and noticed her six-year old son (the victim) "walking on his toes," with his arms raised. Defendant punished him by making him stand on his toes in a corner for an hour. An hour or two later defendant's live-in boyfriend, Ian Anderson (Anderson), arrived. After Anderson arrived, the victim began "walking on his toes" again and defendant ordered him back into the corner for an hour. The victim "couldn't make it through the hour" and defendant, upon Anderson's encouragement, spanked him. Then Anderson began to spank the victim with a spatula. Defendant testified that she observed Anderson spank the victim over 50 times with the spatula. Defendant admitted that she also spanked the victim with a spatula, but "less than 50 times." She admitted that the spanking began after the victim had been in the corner for up to three hours and that the spanking continued over the course of an hour. She admitted that the spankings intensified progressively over the four-hour period. At some point defendant and

Anderson duct-taped and tied a scarf to the victim's arms to keep them raised. Defendant admitted that she grabbed the victim's hair to gain his attention. She admitted that the victim had fallen and struck his head on base molding.

Defendant and Anderson then duct-taped his hands behind his back and put him in an unlit basement for four hours. She admitted that she noticed that around 10:00 p.m. (August 6, 2006) that the victim's buttocks was blistered from the spanking.

In days following the above events, defendant took Alexander to Target where they visited with defendant's friend, Shirley Headley (Headley). Headley noticed that Alexander was very quiet, did not smile, kept his arms down at his side and did not move around a lot. Headley also noticed lumps on Alexander's arms and bruises on his face. When asked to "show [her] six" (a reference to his age), Alexander could not lift his arm. When Headley asked how Alexander had been injured, defendant said that he had fallen down the stairs. Headley stated that defendant told her that she had taken Alexander to the hospital. Headley testified that she was concerned about Alexander's injuries and called a co-worker, who is defendant's aunt, because she felt that the boy's injuries were inconsistent with a fall down the stairs. Police were soon informed and investigated the victim's welfare.

As a result of the incident, the boy suffered bruising to his arms and face, severe tenderness in his left arm, a laceration to the scalp and two large, oozing wounds to the buttocks, so severe that they were consistent with burns. The victim was hospitalized for seven days, given morphine for pain, and given intravenous antibiotics to combat a significant infection caused by the lesions becoming infected.

The Michigan torture statute provides in part as follows:

A person who, with the intent to cause cruel or extreme physical or mental pain and suffering, inflicts great bodily injury or severe mental pain or suffering upon another person within his or her custody or physical control commits torture and is guilty of a felony punishable by imprisonment for life or any term of years.

(2) As used in this section:

* * *

(c) "Great bodily injury" means either of the following:

(i) Serious impairment of a body function as that term is defined in section 58c of the Michigan vehicle code, 1949 PA 300, MCL 257.58c.

(ii) One or more of the following conditions: internal injury, poisoning, serious burns or scalding, severe cuts, or multiple puncture wounds. [MCL 750.85(1), (2)(c).]

We conclude that sufficient evidence was presented to allow a jury to conclude beyond a reasonable doubt that the victim sustained a serious visible disfigurement. In *Minter v City of*

Grand Rapids, 480 Mich 1181, 747 NW2d 229 (2008), our Supreme Court reversed this Court's decision finding the "majority erred in reversing the circuit court's order granting the defendants' motion for summary disposition regarding the plaintiff's closed head injury and scar." The Court expressly accepted the reasons stated in the dissent, which provided, in regard to the scar, that:

The seriousness of a scar "depends on its physical characteristics rather than its effect on [a] plaintiff's ability to live a normal life." The undisputed evidence, which is comprised of the color photographs of the scar, reveal a 13 millimeter scar above plaintiff's eyebrow that is only slightly lighter in color than plaintiff's skin tone. Additionally, plaintiff testified that it "itches" and, when she frowns, it bothers her. And, even though plaintiff stated that she was "somewhat" embarrassed about her scar, she has to date foregone the option of corrective surgery. More importantly, a plaintiff's embarrassment and sensitivity about her appearance are a subjective reaction to a condition that must be objectively judged by the trial court, and do not always create a question of fact. Thus, the trial court did not err in concluding that plaintiff's scar did not constitute a "permanent serious disfigurement."

Here, consistent with the above paragraph, we conclude there was sufficient evidence presented for a rational jury to find that the victim's scars were serious and permanent. Testimony at trial revealed that there were "large areas of denuded skin with eschar, which is unhealthy scarring – thick scar tissue – over the buttocks. They were an irregular round shape on the order of around six inches in diameter on each buttocks," which is approximately 17 squares inches of scarring on each buttock. Further, there was testimony that, "[t]he skin was actually – the top layers of skin are actually missing; much like what would happen if you were scalded by hot water and the top layers of the skin peeled off." There was testimony that, "eschar is an unhealthy sort of scar tissue, kind of thick, often white-sort-of-colored scar tissue that starts to develop a few days after that kind of injury." There was evidence that if not treated, "at best, very severe scarring. It would be lifetime; at worst, overwhelming infection and death." We conclude sufficient evidence was presented, including pictures, for a rational jury to conclude that the victim suffered serious permanent scars.

We further conclude that sufficient evidence was presented to show that the victim sustained great bodily injury. A reasonable trier of fact could readily have concluded that the victim suffered "severe cuts" under MCL 750.85(2)(c)(ii). The noun "cut" is defined to mean "the result of cutting; a stroke or blow, as with a knife or whip." *Random House Webster's College Dictionary* (1997). The definition of "cutting" includes "to strike sharply, as with a whip." *Random House Webster's College Dictionary* (1997). The medical experts unanimously testified that the victim had wounds or lesions on his buttocks that were so severely denuded that they resembled severe burns. Additionally, the victim had sustained a laceration of his scalp that required corrective surgery. A rational jury could have decided that the testimony of the medical experts was credible and inferred that injuries were the result of being repeatedly struck with a flat instrument and thus a "cut" for purposes of the torture statute. Further, the severity of the wounds is evident from the record.

Furthermore, we hardly need reiterate the all above facts to conclude there exists evidence that the victim endured severe mental pain or suffering. Rather, we need only mention

that the victim, a six-year-old, endured several hours of defendant and Anderson taking turns spanking him with a flat object while ordered to stand in a corner on his tip toes with his arms raised. Unable to comply after being struck over 100 times, blistering, sore, falling down, bleeding from his head, defendant and Anderson tied the victim's hands behind his back and stored him in an unlit basement four hours. Then, more concerned with authorities discovering the obvious abuse, defendant failed to seek treatment for the victim while his wounds became infected. A rational jury could readily conclude that the victim suffered severe mental pain or suffering.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Mark J. Cavanagh
/s/ Brian K. Zahra