

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARCELLUS LAMER GREEN, JR.,

Defendant-Appellant.

UNPUBLISHED
February 12, 2009

No. 279519
Wayne Circuit Court
LC No. 07-007120-01

Before: Gleicher, P.J., and K.F. Kelly and Murray, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions of torture, MCL 750.85, assault with a dangerous weapon, MCL 750.82, and possession of a firearm during the commission of a felony, MCL 750.227b. The trial court sentenced defendant to concurrent terms of 10 to 20 years' imprisonment for the torture conviction, two to four years' imprisonment for the felonious assault conviction, and a consecutive term of two years in prison for the felony-firearm conviction. We affirm.

I. Factual History

Defendant and the victim shared a dating relationship for over a year. At the time of the assault, defendant resided in the victim's home. During the afternoon of March 12, 2007, defendant entered the victim's bedroom and began questioning her regarding her other intimate relationships. Initially, the victim denied any such liaisons. The victim testified that defendant then began to strike her with his fist, prompting the victim to provide defendant with the names of other individuals. The beating did not cease. Instead, defendant continued to question and strike the victim, including in her vagina, which resulted in a bloody discharge.

Defendant also retrieved a handgun, cocked it and placed it at the victim's head, threatening to kill her and her family. While striking the victim with his fist, defendant removed the ammunition clip from the gun and forced it down the victim's throat. Defendant removed the clip from the victim's throat and placed it in her anus. Defendant briefly left the bedroom and returned with two kitchen knives. While sitting on the bed next to the victim, defendant began to heat the knife blades with a lighter. Defendant indicated he planned to continue questioning the victim, and threatened to put the knife into her throat or vagina if he did not believe her responses. After heating the knife blades, defendant placed the blades on the victim's inner right thigh and right hip. Defendant then forced the victim to engage in intercourse despite her verbal

refusals. When defendant arose and dressed he told the victim to get on her knees and began cutting her hair with the knife. Defendant then retrieved scissors from another area of the home and continued to cut the victim's hair.

At trial, the prosecutor introduced into evidence photographs of the victim's injuries showing bruising on her hips, arm, back, and chest. Photographs also showed a laceration to the victim's throat from the gun clip insertion and burn marks on her inner right thigh and hip. The police verified finding a knife and sections of the victim's hair in a trash can at her residence, and two gun clips and some loose rounds in the bedroom.

II. Standard of Review

This Court reviews de novo a challenge to the sufficiency of the evidence in a criminal case. Evidence is viewed in the light most favorable to the prosecution to determine whether a rational trier of fact could find that all essential elements of the prosecution's case were proven beyond a reasonable doubt. *People v Aldrich*, 246 Mich App 101, 122; 631 NW2d 67 (2001). Defendant also challenges the prosecutor's charging decision, which we generally review pursuant to an "abuse of power" standard. An abuse of power exists only if the prosecutor makes a charging decision for reasons that are unconstitutional, illegal, or ultra vires. *People v Barksdale*, 219 Mich App 484, 487-488; 556 NW2d 521 (1996).

III. Analysis

Defendant first asserts that insufficient evidence supported his conviction of torture because there was no evidence of serious bodily injury. Pursuant to MCL 750.85,

(1) 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.

Subsection (2)(c) defines "great bodily injury" as encompassing 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.

Under subsection (3), a victim need not have suffered pain for torture to exist.

"[T]he goal of judicial interpretation of a statute is to ascertain and give effect to the intent of the Legislature." *People v Pasha*, 466 Mich 378, 382; 645 NW2d 275 (2002). If the language is clear and unambiguous, courts must apply it as plainly written. *Id.* "When terms are not expressly defined by statute, a court may consult dictionary definitions. Words should be given their common, generally accepted meaning, if consistent with the legislative aim in

enacting the statute.” *People v Spann*, 250 Mich App 527, 530; 655 NW2d 251 (2002) (citations omitted).

Defendant mistakenly contends that the prosecution presented no evidence of internal injuries, poisoning, scalding, severe cuts, or multiple puncture wounds. According to defendant, the absence of this proof required the prosecution to demonstrate that the victim had sustained a “serious” burn. However, a photograph admitted at trial evidenced a laceration of the victim’s throat. This photograph constituted sufficient evidence to establish that defendant’s act of forcing the gun clip into the victim’s throat resulted in an internal injury. Consequently, we need not address whether the burns inflicted by defendant on the victim met the statutory criteria of “serious burns or scalding.”

Defendant additionally avers that the prosecution abused its discretion by charging him with torture, rather than assault with intent to cause great bodily harm. “The prosecution is given broad charging discretion. The prosecutor has discretion to bring any charges supported by the evidence.” *People v Nichols*, 262 Mich App 408, 415; 686 NW2d 502 (2004) (citations omitted). Thus, we exercise a very narrow scope of review over the prosecutor’s charging decisions. *Barksdale, supra* at 487. Contrary to defendant’s assertions on appeal, the test for prosecutorial overcharging is not whether the prosecutor’s decision was “unduly harsh” or failed to meet the requirements of the statute. *Id.* at 489. Rather, a prosecutor is deemed to have abused her discretion only if “a choice is made for reasons that are ‘unconstitutional, illegal, or ultra vires.’” *Id.* at 488, quoting *People v Morrow*, 214 Mich App 158, 161; 542 NW2d 324 (1995). Defendant has failed to demonstrate, or even allege the existence of, any evidence that the prosecutor abused his power with regard to his charging decision under the torture statute. Because “it would be a violation of the separation of powers for a court to second-guess whether a prosecutor has a ‘rational basis’ or ‘good reason’ for bringing charges under one applicable statute rather than another applicable statute,” this Court will not question that decision. *Barksdale, supra* at 488-489.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ Kirsten Frank Kelly
/s/ Christopher M. Murray