STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 27, 2009
v	No. 286321 Kalamazoo Circuit Court
WALTER EARL WHITE, Defendant-Appellant.	LC No. 2007-000925-FH

Before: Murphy, P.J., and Meter and Beckering, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of second-degree child abuse, MCL 750.136b(3), and delivery of less than 50 grams of a controlled substance (cocaine), MCL 333.7401(2)(a)(iv). He was sentenced as an habitual offender, third offense, MCL 769.11, to 90 days in jail and three years' probation for both convictions. Defendant appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that the prosecution presented insufficient evidence that he acted recklessly and that his second-degree child abuse conviction should therefore be vacated. We disagree. Challenges to the sufficiency of evidence are reviewed de novo. *People v McGhee*, 268 Mich App 600, 622; 709 NW2d 595 (2005). "[A] court must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt." *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). "A person is guilty of child abuse in the second degree if . . . the person's reckless act causes serious physical harm . . . to a child." MCL 750.136b(3)(a). Whether an act is reckless is a question for the jury. *People v Edwards*, 206 Mich App 694, 696-697; 522 NW2d 727 (1994). Although "reckless" is not defined in the statute, this Court defined that term in the context of fourth-degree child abuse by reference to dictionary definitions to ascertain its plain, ordinary meaning. *People v Gregg*, 206 Mich App 208, 211-212; 520 NW2d 690 (1994).

Black's Law Dictionary (6th ed) defines "reckless" as:

> Not recking; careless, heedless, inattentive; indifferent to consequences. According to circumstances it may mean desperately heedless, wanton or willful, or it may mean only careless, inattentive, or negligent. For conduct to be "reckless" it must be such as to evince disregard of, or indifference to,

consequences, under circumstances involving danger to life or safety to others, although no harm was intended.

The Random House College Dictionary, Revised Edition, defines "reckless" as:

> 1. utterly unconcerned about the consequences of some action; without caution; careless . . . 2. characterized by or proceeding from such carelessness. [*Gregg*, *supra* at 212.]

Sufficient evidence was presented at trial from which a rational jury could conclude beyond a reasonable doubt that defendant was reckless and was acting in disregard of, or with indifference to, the consequences of his actions. First, there was sufficient circumstantial evidence from which the jury could reasonably conclude that defendant intentionally inflicted the child's injuries. "Circumstantial evidence and reasonable inferences drawn from it may be sufficient to establish the elements of a crime." *People v Fennell*, 260 Mich App 261, 270; 677 NW2d 66 (2004). "Minimal circumstantial evidence is sufficient to prove an actor's state of mind." *Id*. at 270-271. Defendant's account of the incident was not consistent with the injuries. Three physicians testified that the child's burns were inconsistent with burns caused by hot water coming from a showerhead or faucet. In addition, police found other injuries on the child's body that were consistent with his being struck. The police also found that the knobs on the bathtub faucet were difficult to turn, making it unlikely that the two-year-old child would be able to operate them. Moreover, a defendant's false exculpatory statements to police can be circumstantial evidence of his consciousness of guilt. *People v Dandron*, 70 Mich App 439, 442; 245 NW2d 782 (1976). Defendant initially lied to the police, asserting that he was not home when the burns occurred and that the child's mother was bathing him at the time of injury. Based on this evidence and inferences drawn from it, a rational jury could conclude beyond a reasonable doubt that defendant intentionally caused the injuries. Certainly, if defendant acted intentionally, a reasonable jury could conclude beyond a reasonable doubt that he acted in disregard of the consequences, under circumstances involving danger to the child, even if no harm was intended.

Furthermore, there was sufficient evidence from which a rational jury could conclude beyond a reasonable doubt that defendant acted recklessly, even under his own version of events, when he left the child in the bathtub unattended. Defendant knew that the bathtub faucet had been leaking a constant stream of hot water for at least two weeks before the child was injured. Defendant stopped the leak by keeping the plunger on the faucet engaged; however, when the plunger was engaged and the faucet was turned on, however slightly, water would immediately stream from the showerhead. Defendant also kept the water heater on the highest setting, stating it was the only way to get hot water. The police determined that when the water heater was set just lower than the highest setting, the hot water temperature was 154 degrees. Dr. Tammy Drew testified that exposure to 150-degree liquid for a few seconds would cause burns requiring medical attention. Defendant testified that he left the child unattended in the bathtub while he went downstairs to speak with Nate Moore, a yard worker. After speaking with Moore, defendant attended to his dirty dishes. He did not check on or supervise the child until he heard a scream. Defendant claimed he then ran upstairs and found the child sitting in the bathtub with the showerhead lightly running. Based on the above evidence and inferences drawn from it, a rational jury could conclude beyond a reasonable doubt that defendant was reckless by acting in

disregard of, or with indifference to, the consequences of his actions, under circumstances involving danger to the two-year-old child, even if no harm was intended.

Affirmed.

/s/ William B. Murphy
/s/ Patrick M. Meter
/s/ Jane M. Beckering