

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
October 16, 2012

v

OLEANDO MARVELL BUCHANAN,

Defendant-Appellant.

No. 307436
Kent Circuit Court
LC No. 10-011265-FH

Before: SAAD, P.J., and WHITBECK and M. J. KELLY, JJ.

PER CURIAM.

Defendant Oleando Marvell Buchanon appeals by right his jury conviction of first-degree child abuse. MCL 750.136b(2). The trial court sentenced defendant to serve 32 months to 15 years in prison. Because we conclude that there were no errors warranting relief, we affirm.

I. BASIC FACTS

Defendant had a son with his girlfriend, A.W. The child was approximately two months old on the day at issue. On that day, A.W. left the child with defendant. She testified that their son appeared normal and healthy before she left. When she returned approximately two hours later, she found defendant with their son in the back of an ambulance. Defendant told her that the child had had a seizure and needed to go to the hospital.

Dr. N. Debra Simms testified that she examined the child and discovered that he had a number of significant injuries: he had a fractured skull, subdural hemorrhaging, retinal hemorrhaging, three fractured ribs, and a fractured tibia. Dr. Simms evaluated the child's medical history and ruled out birth trauma or an underlying disease as potential causes. She determined that the injuries were not accidental. She stated that the child's head injuries were caused by "abusive head trauma."

Dr. Simms further testified that the injuries appeared to have occurred within 8 to 72 hours before the child was brought to the hospital. From the severity of his injuries, she opined that the child would not have appeared normal had he already had the injuries before being left in defendant's care. Dr. Simms explained that he would have displayed signs of his injuries immediately; he would have been "fussy, irritable, in pain, possibly vomiting, possibly not feeding well."

Defendant testified at trial that his son appeared normal. He said that he took a brief nap after giving the child a bottle and woke to find him coughing. After the child began to shake, he called for help. Defendant denied causing the child's injuries.

II. SUFFICIENCY OF THE EVIDENCE

A. STANDARD OF REVIEW

Defendant first argues that there was insufficient evidence to support his first-degree child abuse conviction; specifically, he argues that there was no evidence to support the conclusion that he was the one who caused the child's injuries. When reviewing a challenge to the sufficiency of the evidence, this Court examines the "record evidence de novo in the light most favorable to the prosecution to determine whether a rational trier of fact could have found that the essential elements of the crime were proved beyond a reasonable doubt." *People v Roper*, 286 Mich App 77, 83; 777 NW2d 483 (2009).

B. ANALYSIS

Defendant does not dispute that his son had serious injuries. Instead, he argues that there was insufficient evidence for a rational jury to conclude that he caused the injuries. Although he acknowledges that Dr. Simms testified that the child must have suffered the injuries on that day because he would not have appeared normal with the injuries, defendant contends that this testimony is unreliable and insufficient to establish that he caused the injuries.

In order to convict defendant as charged, the prosecution had to prove that defendant caused serious physical harm to the child and that he did so intentionally. MCL 750.136b(1)(f), (2); *People v Yost*, 278 Mich App 341, 356; 749 NW2d 753 (2008) (stating that identity is an element of every offense). Here, the prosecutor presented evidence that defendant was alone with the two-month old child and that the child appeared normal and healthy just before being left with defendant. Dr. Simms testified that the child's injuries were not consistent with accidental injuries and that she would not have expected a child who suffered such severe injuries to appear normal. From this evidence a reasonable jury could find that the child was not injured until after he was left with defendant and that the injuries were not accidental—that is, it could infer that defendant caused the injuries. See *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999) (noting that circumstantial evidence and reasonable inferences arising from circumstantial evidence can be used to establish the offense). Moreover, a reasonable jury could infer from the evidence concerning the severity of the injuries that defendant intended to cause them. *People v Pena*, 224 Mich App 650, 659-660; 569 NW2d 871 (1997). Consequently, there was sufficient evidence from which a rational jury could find that defendant committed the offense of first-degree child abuse.

Defendant's argument concerning Dr. Simms' credibility is also without merit. Defendant claims that Dr. Simms could not properly state with certainty that the child would appear normal and, as such, her testimony must be rejected as incredible. However, Dr. Simms did not testify that the child could not have appeared normal; rather, she testified that she expected he would not have appeared normal. The jury was free to reject this testimony or accept it and make any reasonable inferences that might follow from it; and this Court will not

second-guess that decision. *People v Lemmon*, 456 Mich 625, 637; 576 NW2d 129 (1998) (stating that “[i]t is the province of the jury to determine questions of fact and assess the credibility of witnesses.”).

III. EVIDENTIARY ERRORS

A. STANDARD OF REVIEW

Next, defendant contends that the trial court abused its discretion and denied him his right to present a defense by excluding evidence that A.W.’s mother had made a false report to Child Protective Services that another child was injured while in his care after the events at issue. This Court reviews a trial court’s evidentiary decisions for an abuse of discretion. *People v McDaniel*, 469 Mich 409, 412; 670 NW2d 659 (2003).

B. ANALYSIS

Defendant contends that he should have been permitted to introduce the evidence of the false report to show that A.W.’s mother was biased against him. A.W.’s mother testified at trial that when multiple family members were present, defendant “showed [a] caring and loving side as a father, but when it was just himself, [A.W.], and I, it wasn’t the same.” The trial court excluded the evidence that A.W.’s mother made a report to Child Protective Services for two reasons. First, it ruled that defendant could not introduce extrinsic evidence to prove bias. Second, it ruled that the evidence was inadmissible under MRE 403.

Generally, all relevant evidence is admissible. MRE 402. Nevertheless, relevant evidence “may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” MRE 403. Here, the evidence that A.W.’s mother filed a report against defendant with Child Protective Services was—at best—minimally relevant to show that she held a bias against defendant. Although he characterizes her report as a “false report of child abuse”, the evidence showed that Child Protective Services determined that the report was unfounded; thus, a reasonable jury could find that she made the report in good faith. Given the tenuous probative value of this evidence, we cannot conclude that the trial court abused its discretion when it refused to permit its admission. There was a substantial danger that the jury would determine that her report must have been false simply because Child Protective Services could not substantiate the report. See *People v Crawford*, 458 Mich 376, 398; 582 NW2d 785 (1998).

Moreover, even if we were to conclude that the trial court erred when it excluded this evidence, we do not agree that the error would warrant relief. There was strong evidence that the child suffered his injuries while under defendant’s sole care. Given that evidence, the fact that A.W.’s mother’s testimony was secondary to the prosecutor’s case, and the weakness of the evidence as impeachment evidence, we conclude that any error was harmless. *People v Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999).

IV. IMPARTIAL JURY

Next, defendant contends that he was denied his right to trial before a fair and impartial jury. The record reveals that a juror informed the trial court that someone attempted to intimidate him. The juror told the trial court that her deliberations would not be affected by the intimidation. The trial court asked if either the prosecutor or defendant's lawyer wished to make a record and defendant's lawyer responded: "I don't think that's necessary at this time, your Honor." Rather, defendant's lawyer suggested that the trial court might want to "admonish everybody" in the courtroom "when more people" were there. By affirmatively stating that he did not wish to make a record and suggesting instead that the trial court admonish the members of the public, we conclude that defendant's lawyer effectively agreed with the trial court's handling of the juror intimidation. As such, he waived any claim of error. *People v Carter*, 462 Mich 206, 215-216; 612 NW2d 144 (2000). Nevertheless, even if he had not waived this claim of error, defendant would not be entitled to relief because he failed to "establish that these extraneous influences created a real and substantial possibility that they could have affected the jury's verdict." *People v Budzyn*, 456 Mich 77, 89; 566 NW2d 229 (1997).

V. SENTENCING

Finally, defendant contends that the trial court erred by scoring offense variable (OV) 3 at 25 points. Under MCL 777.33(1)(c), the trial court must score 25 points if it finds that "[l]ife threatening or permanent incapacitating injury occurred to a victim." The trial court scored 25 points under OV 3 because it found, by a preponderance of the evidence, that the child suffered life threatening injuries. Given the severity of his injuries and the evidence that he was hospitalized for 12 days, the trial court did not clearly err when it found that the child suffered life threatening injuries. See *People v Osantowski*, 481 Mich 103, 111; 748 NW2d 799 (2008). Although there was no medical testimony that the injuries were life threatening, medical testimony is not required to prove that a victim suffered life threatening injuries under MCL 777.33(1)(c). *People v McCuller*, 479 Mich 672, 697 n 19; 739 NW2d 563 (2007).

There were no errors warranting relief.

Affirmed.

/s/ Henry William Saad
/s/ William C. Whitbeck
/s/ Michael J. Kelly