STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee, v TARAJEE SHAHEER MAYNOR, Defendant-Appellant.	FOR PUBLICATION April 8, 2003 9:15 a.m. No. 244435 Oakland Circuit Court LC No. 2002-185279-FC Updated Copy May 23, 2003

Before: Whitbeck, C.J., and Griffin and Owens, JJ.

OWENS, J.

Defendant Tarajee S. Maynor appeals by leave granted the circuit court's order granting the prosecution's motion to reinstate the charges, consisting of two counts of first-degree felony murder, MCL 750.316(1)(b), with the underlying felony being first-degree child abuse, MCL 750.136b(2). We affirm.

On June 28, 2002, defendant left her ten-month-old daughter and three-year-old son alone in a hot car for approximately 3-1/2 hours. When defendant returned to the car, she found both children dead in the back seat. The medical examiner determined that the cause of death was hyperthermia, or heat exposure, from being left in the hot car. The prosecution sought to bind defendant over on two counts of first-degree felony murder, with first-degree child abuse as the underlying felony. The district court ruled that first-degree child abuse was a specific-intent crime, and found that there was not probable cause to believe that defendant acted with the requisite intent. The district court further concluded that there was only probable cause for involuntary manslaughter. Accordingly, the district court bound defendant over on two counts of involuntary manslaughter.

The prosecution moved in the circuit court for reinstatement of the felony-murder charges. The circuit court granted the prosecutor's motion, holding that first-degree child abuse is a general-intent crime. The circuit court also found that there was probable cause to believe defendant had committed this offense, as well as second-degree murder. Thus, the court reinstated the felony-murder charges.

On appeal, defendant contends that the circuit court erred in ruling that first-degree child abuse is a general-intent crime. Ordinarily, the decision of the district court on a motion to bind over is reviewed for an abuse of discretion. *People v Stone*, 463 Mich 558, 561; 621 NW2d 702 (2001). However, we review this issue de novo because it involves a question of statutory interpretation. *Id.*

The first-degree child abuse statute, MCL 750.136b(2), provides as follows: "A person is guilty of child abuse in the first degree if the person knowingly or intentionally causes serious physical or serious mental harm to a child." Generally, a specific-intent crime requires a criminal intent beyond the act done, whereas a general-intent crime requires only the intent to perform the proscribed physical act. *People v Whitney*, 228 Mich App 230, 254; 578 NW2d 329 (1998).

In *People v Gould*, 225 Mich App 79, 86; 570 NW2d 140 (1997), we opined that first-degree child abuse was a specific-intent crime. However, in denying leave, our Supreme Court observed that our ruling "that first-degree child abuse is a specific-intent crime is dictum, in light of the panel's conclusion that, even under that standard, the circuit court did not err in denying the defendant's motion for directed verdict." *People v Gould*, 489 Mich 955 (1999). Accordingly, the *Gould* construction of the statute governing first-degree child abuse is not binding precedent. *People v Borchard-Ruhland*, 460 Mich 278, 286; 597 NW2d 1 (1999).

Nevertheless, we believe that our analysis in *Gould* was sound. In fact, we adopt the following portion of the *Gould* analysis as our own:

> The word "knowingly" is not defined in the statute. Unless defined in the statute, every word of the statute should be accorded its plain and ordinary meaning. MCL 8.3a; MSA 2.212(1); *People v Gregg*, 206 Mich App 208, 211; 520 NW2d 690 (1994). If a statute does not expressly define its terms, a court may consult dictionary definitions. *Id.*, pp 211-212.
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> Black's Law Dictionary (6th ed) defines "knowingly" as: "With knowledge; consciously; intelligently; willfully; *intentionally*" (emphasis supplied). Given the dictionary definition of the word "knowingly" and applying the plain and ordinary meaning of the word to the language of the statute, we conclude that "knowingly" as contained in the statute means the same thing as the word "intentionally." According to the dictionary definition, the words "knowingly" and "intentionally" are synonymous. [*Gould, supra*, 225 Mich App 84.]

We further note that, although Black's Law Dictionary (7th ed) does not define "knowingly," it does define "knowing" as "[h]aving or showing awareness or understanding; well-informed . . . deliberate; conscious." Similarly, Random House Webster's College Dictionary (2001) defines "knowing" in pertinent part as "conscious," "intentional," and "deliberate."

In support of its conclusion, the *Gould* panel also opined "that this Court has repeatedly concluded that a crime that is required to be committed 'knowingly' is a specific intent crime." *Gould, supra* at 85. We recently recognized that "'[w]ords typically found in specific intent statutes include "knowingly," "willfully," "purposely," and "intentionally."'" *People v Disimone*, 251 Mich App 605, 611; 650 NW2d 436 (2002), quoting *People v Davenport*, 230 Mich App 577, 579-580; 583 NW2d 919 (1998).

Moreover, we note that second-degree child abuse occurs if a person "knowingly or intentionally commits an act likely to cause serious physical or mental harm to a child regardless of whether harm results." MCL 750.136b(3)(b). Comparing first-degree child abuse with second-degree child abuse, it appears that our Legislature contemplated the situation where a person intended an act, but perhaps not the consequences of the act. Thus, second-degree child abuse is an example of a general-intent crime. *Whitney, supra* at 254. We must presume that our Legislature's decision not to include the "commits an act" language in the first-degree child abuse provision was intentional. *People v Rahilly*, 247 Mich App 108, 112; 635 NW2d 227 (2001), quoting *Farrington v Total Petroleum, Inc*, 442 Mich 201, 210; 501 NW2d 76 (1993). Given the dictionary definitions described above, as well as our Legislature's deliberate use of different phrases when defining first- and second-degree child abuse, we conclude that first-degree child abuse is a specific-intent crime. Therefore, the circuit court erred in ruling, as a matter of law, that first-degree child abuse is a general-intent crime.

However, we need not reverse the circuit court's reinstatement of the original charges if the circuit court correctly ruled that defendant could be charged with felony murder. Indeed, we may affirm where the court reaches the right result, albeit for the wrong reason. *People v Jory*, 443 Mich 403, 425; 505 NW2d 228 (1993).

Generally, a magistrate must bind a defendant over for trial if, at the conclusion of the preliminary examination, "there is probable cause to believe that a felony has been committed and that defendant committed it." *People v Carter*, 250 Mich App 510, 521; 655 NW2d 236 (2002). MCL 766.13. "Probable cause exists when there is a reasonable ground of suspicion supported by circumstances sufficiently strong to warrant a cautious person to believe that the accused is guilty of the offense charged." *Carter, supra* at 521.

As noted above, defendant was charged with felony murder, MCL 750.316. We have defined felony murder as follows:

> (1) the killing of a human being; (2) with the intent to kill, to do great bodily harm, or to create a high risk of death or great bodily harm with knowledge that death or great bodily harm was the probable result; (3) while committing, attempting to commit, or assisting in the commission of any of the felonies specifically enumerated in MCL 750.316 . . . . [*People v Hutner*, 209 Mich App 280, 282-283; 530 NW2d 174 (1995).]

In other words, felony murder is essentially second-degree murder, elevated by one of the felonies enumerated in MCL 750.316. See *People v Magyar*, 250 Mich App 408, 412; 648

NW2d 215 (2002). First-degree child abuse is one of the felonies enumerated in MCL 750.316(1)(b).

The elements of second-degree murder are: "(1) a death, (2) caused by an act of the defendant, (3) with malice, and (4) without justification or excuse." *People v Goecke*, 457 Mich 442, 463-464; 579 NW2d 868 (1998). "Malice is defined as the intent to kill, the intent to cause great bodily harm, or the intent to do an act in wanton and wilful disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm." *Id.* at 464. Here, there is no dispute that defendant caused the tragic death of her children. *Goecke, supra* at 463. In addition, there was no evidence indicating a justification or excuse for the killing. *Id.* As noted, malice includes "the intent to do an act in wanton and wilful disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm." *Id.* at 464. Among the evidence introduced during the preliminary examination was defendant's admission that she left her children unattended in a hot car for approximately 3-1/2 hours. Her act of leaving the children unattended was intentional, rather than accidental.[1] Accordingly, there was sufficient evidence that defendant's conduct fell within the definition of malice. *Id.* Consequently, we conclude that there was ample evidence to support a finding of probable cause for second-degree murder.[2] *Carter, supra* at 521.

Next, we must determine whether the prosecution presented sufficient evidence during the preliminary examination to support a finding of probable cause for first-degree child abuse. Having already concluded that the crime requires specific intent, the primary question is whether defendant specifically intended to seriously harm her children, MCL 750.136b(2). "Circumstantial evidence and reasonable inferences arising from the evidence are sufficient to support a bindover." *People v Terry*, 224 Mich App 447, 451; 569 NW2d 641 (1997). Moreover, if "there is credible evidence both to support and to negate the existence of an element of the crime, a factual question exists that should be left to the jury." *Id.*

Here, although defendant stated that she did not intend for the children to die, her self-serving statement obviously does not end the inquiry. Again, the evidence indicated that defendant left her children in a hot car for approximately 3-1/2 hours. In fact, regardless of the weather, leaving the children unattended in a car for such a long time raises considerable doubt with respect to whether she was merely negligent. Furthermore, defendant did not check on her children, although the evidence indicated that she left the salon to get herself something to eat and drink. In addition, although defendant's statement suggested that she might not have known that the children were at risk, it is worth noting that the evidence also suggested that she rolled down at least one of the car windows about an inch and a half. These acts belie her claim of

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[1] Second-degree murder is a general-intent crime. *Goecke, supra* at 464.

[2] Thus, for the same reasons, we conclude that the district court abused its discretion in finding that the evidence only supported involuntary manslaughter. *Stone, supra* at 561. At the very least, there was probable cause to support charges of second-degree murder.

ignorance of the risks.[3] Accordingly, there was sufficient circumstantial evidence from which a jury could infer the requisite intent for first-degree child abuse.[4] *Carter, supra* at 521. Consequently, we conclude that the circuit court did not err in reinstating the felony-murder charges. *Jory, supra* at 425.

Affirmed.

Griffin, J., concurred.

/s/ Donald S. Owens
/s/ Richard Allen Griffin

[3] It is questionable whether her claim of ignorance is even sufficient to defeat the rather obvious fact that hot weather makes cars very hot. The prosecution compellingly argued below that people know not to leave milk in their cars on hot days. Indeed, every new driver quickly learns that, on hot days, the temperatures inside a car will exceed the outside temperature in a relatively short period. In other words, it does not require a scientific background to know that cars get very hot on summer days. Nor is extensive medical knowledge required to realize that such temperatures are harmful to people, especially children. Thus, we believe a jury should appraise the veracity of defendant's statements regarding her knowledge of the risks, or lack thereof.

[4] At the very least, the issue of defendant's intent should be left to a jury. *Terry, supra* at 451.