

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAMIEN D. DRAPER,

Defendant-Appellant.

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UNPUBLISHED

February 6, 2001

No. 207169

Oakland Circuit Court

LC No. 95-137977-FC

Before: Markey, P.J. and McDonald and K. F. Kelly, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree felony-murder, MCL 750.316; MSA 28.548, and first-degree child abuse, MCL 750.136b; MSA 28.331(2). He was sentenced to life imprisonment without parole for the first-degree murder conviction and ten to fifteen years' imprisonment for the first-degree child abuse conviction. He appeals by right. We affirm defendant's first-degree murder conviction, but vacate the first-degree child abuse conviction.

Defendant's convictions arise from the death of a four-year-old child who died after sustaining serious physical injuries. Defendant and his wife, Shirikiana Draper, were tried separately for causing the child's death.<sup>1</sup>

Defendant's first claim is that the evidence was insufficient to support his conviction for first-degree child abuse. We disagree. In reviewing the sufficiency of the evidence, this Court views the evidence in the light most favorable to the prosecutor and determines whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992); *People v Petrella*, 424 Mich 221, 268-270; 380 NW2d 11 (1985). A conviction for first-degree child abuse requires proof that a person knowingly or intentionally caused serious

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<sup>1</sup> In *People v Draper*, unpublished opinion per curiam of the Court of Appeals, issued February 7, 1997 (Docket No. 189423), this Court affirmed Shirikiana Draper's conviction of first-degree felony murder, but vacated her conviction of first-degree child abuse.

physical mental harm to a child. MCL 750.136b(2); MSA 28.331(2)(2); *People v Gould*, 225 Mich App 79, 87; 570 NW2d 140 (1997).

Here, evidence was presented that the four-year-old child was whipped with a cord that left scars and wounds on her body. Further, the evidence showed that the child was beaten until she was unconscious. The doctors who treated the child concluded that she was a battered child who died as a result of a recent head injury. At trial, defendant admitted that he and his wife disciplined the child by hitting her on the back or behind, or kicking her. Defendant also admitted that he shook the child until her eyes rolled back into her head, and she lost consciousness. According to the medical examiner, the subdural bleeding and bruising on the front and back left side of the victim's brain was caused by being shaken and being hit on the head. The victim was brought to the hospital in a severe comatose state from the beatings. The doctors who treated the child observed numerous external injuries on her body, including a fresh bruise on her chest and linear markings on her legs that were consistent with blows from a belt or cord. Viewed most favorably to the prosecution, the evidence was sufficient to enable a rational trier of fact to infer beyond a reasonable doubt that defendant intentionally caused serious physical harm to the victim.

Next, the trial court did not err in denying defendant's motion for a new trial on the basis of his claim that a juror failed to disclose a matter on voir dire that affected his ability to act impartially. A trial court's decision to grant or deny a motion for new trial is reviewed for an abuse of discretion. *People v Daoust*, 228 Mich App 1, 16; 577 NW2d 179 (1998). In this case, while the affidavits establish that a co-worker discussed the case with one of the jurors approximately two years before trial, mentioning that the defendant's wife was the co-worker's cousin, the juror had no recollection of the conversation and was unaware at the time of trial that the instant case involved a matter that was discussed with the co-worker two years earlier. Under these circumstances, defendant has failed to establish either actual prejudice or that the juror would have been successfully challenged for cause. Therefore, the trial court did not abuse its discretion in denying defendant's motion for a new trial. MCR 6.431(B); *Daoust, supra* at 8; *People v Graham*, 84 Mich App 663, 666-669; 270 NW2d 673 (1978).

We agree with defendant that the constitutional prohibition against double jeopardy requires that the first-degree child abuse conviction be vacated because it served as the predicate felony for the felony-murder conviction. *People v Wilder*, 411 Mich 328, 352; 308 NW2d 112 (1981); *People v Jankowski*, 408 Mich 79, 96; 289 NW2d 674 (1980). Accordingly, the first-degree child abuse conviction is vacated.

Finally, defendant claims that his statement to the police should have been suppressed because it was obtained after he unequivocally invoked his right to remain silent. This Court previously considered this issue in a prior appeal, concluding that the statement was admissible. *People v Draper*, unpublished opinion per curiam of the Court of Appeals, issued February 7, 1997 (Docket No. 188113), lv den 454 Mich 906 (1997). The prior decision constitutes the law

of the case as to this issue, thereby precluding further consideration. *People v Kozyra*, 219 Mich App 422, 433; 556 NW2d 512 (1996).

We affirm in part and vacate in part.

/s/ Jane E. Markey

/s/ Gary R. McDonald

/s/ Kirsten Frank Kelly