

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LINCOLN J. TAYLOR,

Defendant-Appellant.

UNPUBLISHED

July 24, 2001

No. 222698

Wayne Circuit Court

LC No. 97-007325

Before: White, P.J., and Sawyer and Saad, JJ.

PER CURIAM.

Defendant appeals from his bench trial conviction for first-degree child abuse, MCL 750.136b(2). The trial court sentenced defendant to serve 10 to 15 years in prison. We affirm the conviction and sentence.

Defendant contends the trial court erred when it denied defendant's motion for a directed verdict of acquittal. We disagree.

When reviewing a trial court's denial of a motion for directed verdict, this Court reviews "the record de novo and consider[s] the evidence presented by the prosecution in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime charged were proved beyond a reasonable doubt." *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999).

The elements of first-degree child abuse require the prosecution to prove that (1) a person who had responsibility for or care of a child (2) knowingly or intentionally (3) caused serious physical or mental harm to the child. *People v Gould*, 225 Mich App 79, 87; 570 NW2d 140 (1997). Defendant asserts that neither the second nor the third element was proved beyond a reasonable doubt. However, the intent to hit, burn, or otherwise injure the victim may be reasonably inferred from the testimony regarding defendant's abuse of the victim,. See *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). The victim's sister testified that defendant burned the victim with a cigarette lighter and beat her with plunger sticks and extension cords. The sister stated that defendant "held [the victim] down and put the cigarette lighter to her butt." She further testified that defendant slammed the victim's head into the kitchen counter twice and that defendant "took his fingernails and stuck them into [the victim's] face" and neck. The repeated nature of these attacks and the fact that defendant held the victim

down so that he could burn her indicate that defendant intended to harm her. Thus, viewing the evidence in the light most favorable to the prosecution, there was sufficient evidence for a rational trier of fact to find that defendant intended to cause serious physical harm.

Furthermore, regarding the third element, the examining doctor testified that the victim had multiple wounds on her foot, and scars on her neck, leg, face, around her ear and on her back and buttocks. An injury to the inside of the victim's upper lip was less than two days old and was consistent with an injury received by being punched in the face. Thus, viewed in the light most favorable to the prosecution, there was evidence to support the finding that the victim suffered serious physical harm. Defendant is not entitled to relief on this basis.

Defendant also contends that the first-degree child abuse statute is unconstitutionally vague and overly broad. We decline to address this issue because defendant failed to raise it before the trial judge. *People v Hubbard (After Remand)*, 217 Mich App 459, 483; 552 NW2d 493 (1996).

Defendant's final contention on appeal is that his sentence was disproportionate. We again disagree.

Although there are no guidelines applicable to defendant's offense, all sentences are subject to review under the proportionality standard which requires that a sentence imposed by a trial court be proportionate to the seriousness of the circumstances surrounding both the offense and the offender. *People v Weathersby*, 204 Mich App 98, 114; 514 NW2d 493 (1994). Defendant contends that his 10- to 15-year sentence was disproportionate because the trial court failed to take into account the mitigating factors presented by defendant during sentencing and contained in the PSIR which, if considered, would have inclined the court to impose a lesser sentence. Because the trial court considered the PSIR when it sentenced defendant and correctly concluded that the information in that report largely weighed against defendant, and because of the violent nature of the offense, defendant's sentence is not disproportionate.

Although defendant says that he (1) was employed for more than one year before his offense; (2) had been paying child support to his own children, and, (3) helped his grandparents take care of their home, defendant fails to acknowledge several factors which weigh against him. Defendant does not acknowledge that, as reflected in the PSIR, he was awaiting trial on separate charges of embezzlement and misdemeanor domestic assault while on trial in the instant case. Subsequent offenses are properly considered when imposing sentence. *People v Oliver*, 242 Mich App 92, 98; 617 NW2d 721 (2000). He was also convicted of fourth-degree fleeing and eluding while awaiting trial in this matter. Thus, defendant has a criminal history. Also, defendant, while not charged for absconding on bail, apparently disappeared for two years after he was released on bail. Alleged criminal behavior, for which a defendant is neither charged nor convicted, may be included in a PSIR for a judge's consideration when imposing sentence. *People v Coulter (After Remand)*, 205 Mich App 453, 456; 517 NW2d 827 (1994). Furthermore, the nature of this crime was particularly heinous. The victim was a two-year-old girl who was subjected to extensive and severe beatings and injuries in the presence of her sisters. The trial court did not abuse its discretion when it sentenced defendant to 10 to 15 years in prison.

Affirmed.

/s/ Helene N. White
/s/ David H. Sawyer
/s/ Henry William Saad