

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DARNELL NICKLEBERRY,

Defendant-Appellant.

UNPUBLISHED
February 26, 2002

No. 228025
Wayne Circuit Court
LC No. 99-008140

Before: Smolenski, P.J., and Doctoroff and Owens, JJ.

MEMORANDUM.

Defendant appeals as of right from his bench trial conviction for third-degree child abuse. MCL 750.136b(5). We affirm.

Defendant's conviction arises out of the beating of his seven-year-old son in a supermarket parking lot. The child was endorsed as a witness, but the parties agreed in chambers that the child would not be called to testify. The child was dismissed after his mother testified. Defendant moved to adjourn trial and recall the child as a witness after his hearsay statements to a police officer were admitted as excited utterances. The trial court denied the motion, finding that defendant was aware that the statements might be admitted at the time he agreed to dismiss the child, and that it would hold the parties to their agreement. On appeal, defendant asserts that the court's ruling denied him the opportunity to confront his accusers and to present a defense. We disagree.

Defendant was aware of the potential admission of the excited utterance testimony at the time he agreed to dismiss the witness. A defendant may not waive an objection to an issue before the trial court then raise it as an issue in this Court. *People v Fetterley*, 229 Mich App 511, 520; 583 NW2d 199 (1998). "To hold otherwise would allow defendant to harbor error as an appellate parachute." *Id.* Furthermore, given the overwhelming evidence of defendant's guilt, we conclude that the child's testimony would not have affected the outcome of the trial.

Affirmed.

/s/ Michael R. Smolenski
/s/ Martin M. Doctoroff
/s/ Donald S. Owens