

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

AMEER JACOBS,

Defendant-Appellant.

UNPUBLISHED

June 28, 2002

No. 232004

Wayne Circuit Court

LC No. 99-006419

Before: Neff, P.J., and Griffin and Talbot, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of second-degree murder, MCL 750.317. Defendant was sentenced to fifteen to twenty-five years' imprisonment, and now appeals as of right. We remand for further findings of fact.

Defendant was charged with first-degree murder for the death of his infant son. At the conclusion of the proofs, the trial court made the following findings of fact:

On June 8th, 1999, Jameel Jacobs was an infant of approximately one month old, having been born May 12th, 1999. The defendant, Ameer Jacobs was the father of Jameel Jacobs and the custodial parent, along with Soo Kim, the mother of the infant.

On June 8th, 1999, Jameel Jacobs was in good health. During the early morning hours of June 8th, 1999 Ameer Jacobs removed Jameel from the crib and took the infant into the living room of the apartment number 304 located at 741 Seward Street in the City of Detroit, County of Wayne, State of Michigan.

While in the living room at the Seward location, the defendant knowingly or intentionally inflicted multiple blunt force trauma to the head of Jameel Jacobs. After the infant stopped breathing, a call was placed by the defendant to EMS. An EMS team arrived at the apartment and attempted to resuscitate [sic] the infant. Following the attempts the infant was conveyed immediately to Henry Ford Hospital in Detroit by the EMS personal [sic] in the mobile unit. On June 11th, 1999, Jameel Jacobs died from the blunt force trauma.

Jameel Jacobs brain has [sic] swollen and he had retinal hemorrhage. The manner of death was homicide. The cause of Jameel Jacobs death was blunt force trauma.

The court did hear testimony about two prior allege [sic] falls of Jameel on the stairs and in the kitchen of the apartment. However the court does not find that testimony credible and also find [sic] even if it were credible, those falls did not contribute to the death of Jameel Jacobs.

The defendant on June 9th, 1999 made a statement to the Detroit Police and admitted that he intentionally struck Jameel in the head on June 8th, 1999. When the defendant struck Jameel Jacobs he acted in a wanton and willful disregard for the likelihood that the natural tendency of his conduct was to cause death or great bodily harm.

As a conclusion of law in view of the forgoing finding of fact, the defendant is guilty of the lesser included offense of second degree murder and violation of MCLA 750.317. And that conclusion is in accordance with the People versus Woods, 416 Mich 581 at page 627, a 1982 decision of the Michigan Supreme Court. [Emphasis added.]

Defendant argues that the trial court erred in finding that he admitted to striking the victim on June 8, 1999 and in concluding that his striking of the victim was the direct cause of the victim's death. A trial court's findings of fact in a bench trial are reviewed for clear error and its conclusions of law are reviewed de novo. *People v Swirles (After Remand)*, 218 Mich App 133, 136; 553 NW2d 357 (1996); *People v Connor*, 209 Mich App 419, 423; 531 NW2d 734 (1995). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire record is left with the definite and firm conviction that a mistake was made. *Swirles (After Remand)*, *supra*.

We agree with defendant that the trial court clearly erred in finding that defendant admitted to striking the victim on June 8, 1999. The record indicates that defendant admitted to police that he struck the victim on June 4, 1999. However, we conclude that further findings are necessary to facilitate full review of this issue.

MCR 6.403 provides that when trial by jury has been waived, the court "must find the facts specially, state separately its conclusions of law, and direct entry of the appropriate judgment. The court must state its findings and conclusions on the record or in a written opinion made a part of the record." MCR 6.403. *People v Johnson (On Rehearing)*, 208 Mich App 137, 141; 526 NW2d 617 (1994). MCR 2.517(A)(1). The sufficiency of findings "must be reviewed in the context of the specific legal and factual issues raised by the parties and the evidence." *People v Porter*, 169 Mich App 190, 193; 425 NW2d 514 (1988).

The trial court found that on the morning of June 8, 1999, defendant took the victim from his crib and into the living room, where defendant fatally abused the victim. It is unclear from the record whether the court's conclusion was based on its erroneous finding that defendant admitted to striking the victim on June 8, or whether it was based on other evidence. Both defendant and Kim testified that defendant was in the living room with the child when defendant

noticed that the child was limp and had stopped breathing. Dr. Ernest Brtha testified that the victim's injuries were consistent with child abuse and were not consistent with a fall. The doctor testified that the sheering injuries which the victim sustained could only have been caused by a violent shaking of the victim. Dr. Young A. Chung testified that the victim died of blunt force injuries to the head. Dr. Chung opined that the victim's injuries did not result from an accident, and determined that the death was a homicide. Although the trial court found that the victim's injuries were not caused by a fall, the court did not specifically address the medical evidence that described the severity of victim's injuries. Accordingly, we are unable to discern what weight, if any, the court gave to the medical evidence. In other words, it is unclear whether the trial court misspoke regarding the date that defendant admitted to striking the victim, and the court implicitly found that defendant abused the victim on June 8, or whether the court's conclusion that defendant inflicted the fatal abuse was based on the erroneous finding that defendant admitted to striking the victim on June 8, 1999.

We remand for further findings of fact. We reserve consideration of defendant's remaining issue on appeal until such findings have been provided.

Remanded. We retain jurisdiction.

/s/ Janet T. Neff
/s/ Richard Allen Griffin
/s/ Michael J. Talbot