

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

CHRISTOPH FREDERICK VANDERLEEK,

Defendant-Appellee.

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UNPUBLISHED  
November 6, 2008

No. 282989  
Alpena Circuit Court  
LC No. 07-001520-FH

Before: Beckering, P.J., and Borrello and Davis, JJ.

MEMORANDUM.

Plaintiff appeals as of right, challenging defendant's prison sentence of 26 months to 15 years for first-degree child abuse, MCL 750.136b(2). We affirm. This case has been decided without oral argument pursuant to MCR 7.214(E).

"This Court reviews a sentencing court's scoring decision to determine whether the trial court properly exercised its discretion and whether the record evidence adequately supports a particular score." *People v McLaughlin*, 258 Mich App 635, 671; 672 NW2d 860 (2003). Questions of statutory interpretation are reviewed de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). Further, "[a] scoring decision will be upheld if there is any evidence to support it." *People v Kegler*, 268 Mich App 187, 190; 706 NW2d 744 (2005).

Plaintiff argues that the trial court erred in scoring offensive variable 7 (OV 7) at zero points, instead of 50 points, because the evidence showed that defendant had treated the three-month-old victim with excessive brutality. There are only two possible scores for OV 7—zero points or 50 points. *People v Cline*, 276 Mich App 634, 652; 741 NW2d 563 (2007). Fifty points should be given if the "victim was treated with sadism, torture, or excessive brutality or conduct designed to substantially increase the fear and anxiety a victim suffered during the offense." MCL 777.37(1)(a). Zero points should be given if the victim was not "treated with sadism, torture, or excessive brutality or conduct designed to substantially increase the fear and anxiety a victim suffered during the offense." MCL 777.37(1)(b). While the statute defines "sadism," the statute does not define "excessive brutality."

The trial court did not abuse its discretion in scoring zero points for OV 7 because it was reasonable for the court to find there was not *excessive* brutality. The evidence on the partial record showed the victim had bruises around her eyes, under her chin, on her lower back, on the front of her legs, below her knees, and on her left arm. The victim also had a broken femur,

acute and/or subacute subdural hematoma, and may have had broken ribs. While defendant claims that the head injury was caused when he tripped while holding the baby, he did admit to causing bruises and the possible rib injury when squeezing the baby in trying to quiet it from crying and fussing, and causing the leg injury when he “reefed” the baby’s leg in frustration after a changing table broke. First-degree child abuse is defined as “the person knowingly or intentionally caus[ing] serious physical or serious mental harm to a child.” MCL 750.136b(2). It can fairly be said that any crime against a child is necessarily brutal; however, that would mean that any time a child is the victim of child abuse, OV 7 must be scored at 50 points. Against this background, it was reasonable for the trial court to effectively conclude that only conduct at the far end of the spectrum of first-degree child abuse should be considered “excessively brutal” for purposes of OV 7.

Affirmed.

/s/ Jane M. Beckering  
/s/ Stephen L. Borrello  
/s/ Alton T. Davis