STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED February 12, 2009
v	No. 280884 Berrien Circuit Court
JONATHON DUANE ROSEBERRY, Defendant-Appellant.	LC No. 07-400361-FC

Before: Markey, P.J., and Murphy and Borrello, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of both first-degree felony murder based on the underlying predicate offense of first-degree child abuse, MCL 750.316(b), and second-degree murder, MCL 750.316(b).[1] Defendant was sentenced as an habitual offender, second offense, MCL 769.10, to life in prison. He appeals by right. We affirm.

Defendant's conviction arises from the death of Glenn Ferguson, a three-year-old boy. Ferguson was brought to the emergency room of Lakeland Hospital on January 15, 2007, after he vomited blood upon drinking some juice. Ferguson, who had been left in defendant's care for two consecutive days while his mother was at work, had been complaining of stomach pain the previous day, had been unable to eat, and had vomited repeatedly for two days. When Ferguson arrived at the emergency room, nurses and the primary physician providing care observed that he had bruises all over the outside of his body, that his stomach was firm and distended, and that his blood pH levels were extremely low. Ferguson was then transferred by helicopter to Bronson Methodist Hospital in Kalamazoo where he underwent emergency surgery by pediatric surgeon Dr. Michael Leinwand. Leinwand testified that the portion of Ferguson's small intestine called the jejunum had been "torn apart, almost completely severed in half." Leinwand also testified that Ferguson's duodenum had "a lot of hematoma, which is blood that's caught in the wall." In

[1] The second-degree murder conviction was vacated at sentencing because defendant was convicted of first-degree murder.

addition, Leinwand testified that Ferguson had a laceration on the peritoneal lining of the abdominal cavity and that there was a large blood clot in Ferguson's mesentery. Despite Leinwand's efforts, one hour following surgery, Ferguson died from his injuries.

When defendant was asked to explain Ferguson's injuries, he first told police that he had been engaging in "horseplay" with Ferguson. Upon learning of Ferguson's death, defendant then admitted that he "accidentally" punched Ferguson two times in the stomach. But while in jail awaiting trial, defendant admitted to a fellow inmate that he intentionally punched and kneed Ferguson in the stomach. Leinwand testified that in his expert opinion, Ferguson's internal injuries were caused by blunt force trauma to the abdomen. Leinwand's testimony parallels that of Dr. Stephen Cohle, a forensic pathologist who performed an autopsy on Ferguson's body. Cohle testified that he listed the cause of death as blunt-force trauma to the abdomen and classified the manner of death a homicide.

The only issue on appeal is whether there was sufficient evidence to prove defendant committed the underlying felony of first-degree child abuse. Specifically, defendant contends there was insufficient evidence to prove beyond a reasonable doubt that he "knowingly or intentionally caused serious physical harm" to Ferguson pursuant to MCL 750.136b(2). We disagree.

This Court reviews de novo a challenge to the sufficiency of the evidence. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). We construe the evidence in a light most favorable to the prosecution and consider whether there was sufficient evidence to justify a rational trier of fact in finding all of the elements of the crime beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). "Circumstantial evidence and reasonable inferences arising there-from can sufficiently establish the elements of a crime." *People v Schultz*, 246 Mich App 695, 702; 635 NW2d 491 (2001).

The elements of first-degree felony murder are:

> (1) the killing of a human being, (2) with the intent to kill, to do great bodily harm, or to create a very high risk of death or great bodily harm with knowledge that death or great bodily harm was the probable result [i.e., malice], (3) while committing, attempting to commit, or assisting in the commission of any of the felonies specifically enumerated in [the statute, including [first-degree child abuse]]. [*People v Carines*, 460 Mich 750, 758-759; 597 NW2d 130 (1999), quoting *People v Turner*, 213 Mich App 558, 566, 540 NW2d 728 (1995).]

First-degree child abuse, MCL 750.136b(2), requires that the prosecution show that defendant "intended to cause serious physical or mental harm to the [child] or that [defendant] knew that serious mental or physical harm would be caused [by his actions]." *People v Maynor*, 470 Mich 289, 295; 683 NW2d 565 (2004). Defendant does not challenge the fact that Ferguson's injuries were suffered while the child was in his care. Instead, he contends that he did not intend to seriously injure Ferguson and that he did not know that his actions would result in serious physical harm to Ferguson. This Court has held that with respect to the first-degree

child abuse statute, "'knowingly' . . . means the same thing as the word 'intentionally.'" *People v Gould*, 225 Mich App 79, 84; 570 NW2d 140 (1997). "An actor's intent may be inferred from all of the facts and circumstances, . . . and because of the difficulty of proving an actor's state of mind, minimal circumstantial evidence is sufficient." *People v Fetterley*, 229 Mich App 511, 517-518; 583 NW2d 199 (1998).

In the instant case, defendant's actions and words support a rational trier of fact in finding beyond a reasonable doubt that defendant had the requisite intent. Defendant admitted to police that he punched Ferguson two times in the stomach with a closed fist. Although defendant claimed the punches were accidental, extensive medical testimony supported a contrary conclusion, and defendant's own statements to a fellow jail inmate fully supported finding defendant acted with intent to seriously injure Ferguson. The fellow jail inmate testified that defendant indicated that he hit Ferguson "so he didn't grow up to be a pussy" and that, in order to toughen him up, defendant was "kneeing him and hitting him in his - - punching him in his stomach" and that defendant would "hit [Ferguson] with like a two piece combination . . . in his stomach." These statements, coupled with the fact that defendant told police Ferguson was a "mamma's boy," would allow a rational trier of fact to conclude that defendant had the intent to harm the three-year-old victim or knowledge that his actions in attempting "toughen" him up would seriously injure Ferguson. Moreover, defendant was aware that Ferguson had stomach problems since birth. The fact that defendant was aware of Ferguson's stomach problems, and yet still hit and kneed him in the stomach would allow a rational juror to conclude that defendant either intended to seriously injure Ferguson or had knowledge that his actions would seriously injure him.

Additionally, the severity and extent of Ferguson's injuries also support a rational trier of fact in finding beyond a reasonable doubt that defendant had the requisite intent. *People v Mills*, 450 Mich 61, 71; 537 NW2d 909 (1995). Dr. Leinwand described the internal injuries to a portion of Ferguson's small intestine by explaining that there was "almost a complete break [of the] intestine," which he classified as "about 90 percent transected" and stated "it's torn apart, or almost completely severed in half." In another portion of the small intestine, Dr. Leinwand testified that there was "a lot of hematoma which is blood caught in the wall." In addition, Dr. Leinwand found that Ferguson's mesentery had a blood clot and that there was a "laceration . . . [in] the peritoneal lining" of Ferguson's abdomen. Dr. Leinwand testified that in his expert opinion, the same blunt force trauma caused all of Ferguson's injuries, and he likened the injuries suffered to those that are caused by a "major car accident." Moreover, Dr. Leinwand testified that if a human blow were the cause of Ferguson's injury, it would have to have been "[a] very, very hard blow . . . or multiple blows . . . akin to a car accident." Dr. Leinwand referred to the situation as an "abdominal catastrophe." Dr. Cohle testified that the force needed to cause Ferguson's injuries would be "an adult size person striking this child either with a knee, fist or elbow, with I would say pretty much all of his or her force in the stomach." He testified that the only horseplay that would cause this type of injury would involve tossing a child "ten to 12 feet in the air and they land on . . . some kind of protruding object on the ground, like a rock."

A rational jury could conclude that when defendant, a grown man, hit and kneed three-year-old Ferguson with force similar to that of a car accident, 90% severed Ferguson's small intestine, and caused a hematoma, a laceration, and a blood clot in other portions of the

abdomen, he had intent to cause serious physical harm or knew that his actions would result in serious physical harm to Ferguson. *Maynor*, *supra* at 295.

Reviewing the evidence in a light most favorable to the prosecution, we find there was sufficient evidence to prove the challenged intent element of first-degree child abuse pursuant to MCL 750.136b(2). Therefore, the prosecution presented sufficient evidence to prove all of the elements of felony murder pursuant to MCL 750.316.

We affirm.

/s/ Jane E. Markey
/s/ William B. Murphy
/s/ Stephen L. Borrello