# STATE OF MICHIGAN

# COURT OF APPEALS

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| PEOPLE OF THE STATE OF MICHIGAN,<br><br>Plaintiff-Appellee, | UNPUBLISHED<br>December 28, 2010 |
| v | No. 294524<br>Kent Circuit Court |
| CHASTITY RACHEL CHIVIS,<br><br>Defendant-Appellant. | LC No. 08-003104-FH |

Before: MURRAY, P.J., and HOEKSTRA and SERVITTO, JJ.

PER CURIAM.

Following a jury trial, defendant was granted a delayed appeal from her conviction of second-degree child abuse. We affirm.

## I. FACTS

On the night in question, Melissa Ditter and Jeffrey Rice were in Ditter's bedroom when they heard defendant outside arguing with a male. They looked out of Ditter's window and observed defendant holding an infant, her daughter, and yelling, "If you love this baby, come say goodbye." Defendant, while holding the child under the arms and straight out in front of her, eventually yelled, "If you don't love this baby, then fuck this baby," and dropped the child, who landed on her feet on the sidewalk, then fell to her knees and down onto her face. Defendant started walking to her car, but Rice yelled out that he was "calling the cops," and defendant looked up and turned back around, picked up the child, and placed her in the car, before driving in reverse to where the male was standing. The male warned defendant that Rice, who had come outside, was obtaining her license plate number, and defendant drove away. Ditter called 911 and reported to the operator and the police that defendant "threw" the child on the ground.

The only injury found on a subsequent physical examination was a bruise on her forehead, but she had sustained that injury earlier in the day at daycare. Dr. Eugene Shatz, an expert in pediatrics and child abuse, testified that the likelihood that an infant would not sustain any injury from falling approximately four feet was 60 to 70 percent, because the initial impact was to the feet and knees, which were clothed, and not to the head, and that the likelihood of a "serious injury" was less than five percent. However, Dr. Shatz testified that the child should still be examined due to the possibility of serious injury. In response to the question whether it would "torment or bother a child that fell from [four feet]," Dr. Shatz responded, "I think it would be an unpleasant experience, yes." Defendant was convicted as noted.

## II. ANALYSIS

Defendant argues that the evidence was insufficient to support her conviction and that her conduct was not "cruel" as defined by the child abuse statute, MCL 750.136b. Challenges to the sufficiency of evidence are reviewed de novo. *People v Harrison*, 283 Mich App 374, 377; 768 NW2d 98 (2009). The Court reviews the evidence "in the light most favorable to the prosecution and determines whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt." *People v McKinney*, 258 Mich App 157, 165; 670 NW2d 254 (2003). Circumstantial evidence and the reasonable inferences drawn therefrom are sufficient to prove the elements of a crime. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). Questions of statutory interpretation are reviewed de novo. *People v Osantowski*, 481 Mich 103, 107; 748 NW2d 799 (2008).

> A person is guilty of child abuse in the second degree if any of the following apply:
>
> (a) The person's omission causes serious physical harm or serious mental harm to a child or if the person's reckless act causes serious physical harm or serious mental harm to a child.
>
> (b) The person knowingly or intentionally commits an act likely to cause serious physical or mental harm to a child regardless of whether harm results.
>
> (c) The person knowingly or intentionally commits an act that is cruel to a child regardless of whether harm results. [MCL 750.136b.]

The statute defines "cruel" as "brutal, inhuman, sadistic or that which torments." MCL 750.136b(1)(b). The prosecution argued at the beginning of trial that defendant was liable under subsections (b) and (c), but conceded after Dr. Shatz testified that subsection (b) was inapplicable. The trial court denied defendant's motion for a directed verdict as to subsection (c), and the jury was instructed as to that subsection.

Defendant first argues that the evidence does not support a finding that she "threw" her child, as alleged in the information, because the witnesses vacillated in their interpretations of what defendant actually did, and had she thrown the child, Dr. Shatz's testimony indicates that there would have been physical evidence of harm. However, defendant's argument is irrelevant where both witnesses clearly testified that defendant intentionally dropped or let go of the child, and Ditter clarified that she reported to the authorities that defendant "threw" the child because she was trying to convey that the act was intentional. The question is whether the intentional act in this case fits the definition of "cruel."

When "a statute supplies its own glossary, courts may not import any other interpretation but must apply the meaning of the terms as expressly defined." *People v Schultz*, 246 Mich App 695, 703; 635 NW2d 491 (2001). Although the statute defines the term "cruel," it does not expressly define the individual terms contained within the definition. However, "[u]nless defined in the statute, every word or phrase of a statute should be accorded its plain and ordinary meaning, taking into account the context in which the words are used . . . ." *People v Lange*, 251 Mich App 247, 253; 650 NW2d 691 (2002). "Brutal" is defined as, among other things, "savage; cruel; inhuman" and "harsh; severe." "Inhuman" is defined as "lacking sympathy, pity, warmth,

compassion, or the like; cruel; brutal; unfeeling." "Sadism" is defined as "pleasure in being cruel" or "extreme cruelty." "Torment" is defined as "to afflict with great, usually incessant or repeated bodily or mental suffering"; "to worry or annoy excessively; plague"; and "to throw into commotion; stir up; disturb." *Random House Webster's College Dictionary* (2000). The jurors were free to rely on the plain meanings of these terms. See *People v Knapp*, 244 Mich App 361, 377; 624 NW2d 227 (2001) (A trial court commits no error when it fails "to define a term which is generally familiar to lay persons and is susceptible of ordinary comprehension"). The evidence was sufficient to enable a reasonable juror to find beyond a reasonable doubt that defendant committed a cruel act where she intentionally dropped her eight-month-old baby several feet onto a wet sidewalk in March, started to leave the area without attending to the infant, and only returned when confronted by an eyewitness. The acts could be viewed as brutal or inhuman, or could have tormented the baby by "throw[ing] [her] into commotion," or "stir[ring] up" or "disturb[ing]" her well-being. This is particularly true given the fact that immediately before dropping the child, defendant told the father that if he didn't love the baby, "f---" the baby, and then walked away after dropping the child on the cement.

Defendant asserts that the only evidence related to whether defendant's act was cruel was Dr. Shatz's testimony that falling four feet "would be an unpleasant experience" for an eight-month-old child. Defendant argues that an "unpleasant experience" falls short of any possible definition of the word "torment" as required by the statute, that it is not clear whether Dr. Shatz was agreeing that the experience would "torment" or would "bother" the child, and that the court abused its discretion in ruling to send the issue to the jury when the decision was based upon an "unclear expert opinion." Again, whether defendant "tormented" the child was not the only issue before the jury.

The trial court did not instruct the jury to base its decision on "torment" or on Dr. Shatz's testimony alone. In ruling on the directed verdict motion, the court discussed the definitions of the terms "brutal" and "inhuman" and determined that "there is an argument to be made that – that there was no feeling with regard to the child's well-being, no normal human feeling," because "[n]o one would drop their child four feet," and that "[t]here's an argument to be made . . . also that this action tormented the child." The trial court properly allowed the jury to determine whether defendant committed a cruel act.[1]

To the extent defendant argues that the trial court erred in denying her motion for directed verdict because the prosecution presented insufficient evidence to satisfy the elements of the offense, for the reasons discussed above with regard to the sufficiency of the evidence, defendant's argument is without merit.

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[1] Defendant also argues that the jury was not "given the tools" to properly decide whether her conduct was "cruel." Although defendant does not elaborate on her argument, one could surmise that defendant is complaining that the jury was not further instructed on the meaning of "cruel." However, the court read the statutory definition of "cruel" to the jury and was not required to further instruct the jurors on the meaning of the term. *Knapp*, 244 Mich App at 377.

Affirmed.

/s/ Christopher M. Murray
/s/ Joel P. Hoekstra
/s/ Deborah A. Servitto