

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TAMMY LEE JEFFERSON,

Defendant-Appellant.

UNPUBLISHED

July 19, 2011

No. 297790

Kent Circuit Court

LC No. 09-010380-FC

Before: SAWYER, P.J., and WHITBECK and OWENS, JJ.

PER CURIAM.

After a jury trial, defendant Tammy Lee Jefferson was convicted of second-degree vulnerable adult abuse, MCL 750.145n(2), and felony murder, MCL 750.316(1)(b). Defendant appeals as of right. We affirm.

Defendant first argues that the evidence was insufficient to support both of her convictions. We disagree. We apply a de novo standard of review when reviewing a sufficiency of the evidence claim. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). We examine the evidence in a light most favorable to the prosecution to determine whether a rational juror could conclude that the essential elements of the crime were proven beyond a reasonable doubt. *Id.* We resolve evidentiary conflicts in favor of the prosecution. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999).

To prove that defendant committed the crime of second-degree vulnerable adult abuse, the prosecutor must establish the following elements beyond a reasonable doubt: (1) the defendant was a caregiver or other person with authority over a vulnerable adult; (2) the victim was a vulnerable adult; (3) the defendant committed a reckless act or reckless failure to act; and (4) the defendant's reckless act or inaction caused serious physical or mental harm to the victim. *People v DeKorte*, 233 Mich App 564, 567; 593 NW2d 203 (1999). A "reckless act or reckless failure to act" means "conduct that demonstrates a deliberate disregard for the likelihood that the natural tendency of the act or failure to act is to cause physical harm, serious physical harm, or serious mental harm." MCL 750.145m(p); see also *Id.* at 568. This Court has defined "deliberate disregard" as "a conscious decision to ignore the risk of harm that would flow from acting or failing to act." *People v Hudson*, 241 Mich App 268, 280; 615 NW2d 784 (2000). To establish the causation requirement, a prosecutor must prove that the defendant's reckless act or

inaction actually and proximately caused the victim's harm. *Id.* at 284-285, 285 n 9; *People v Zak*, 184 Mich App 1, 9-14; 457 NW2d 59 (1990).

In this case, there is no dispute that defendant was the victim's caregiver and that the victim was a vulnerable adult. Rather, defendant challenges the sufficiency of the evidence supporting the elements of recklessness and causation. Viewing the evidence in a light most favorable to the prosecution, we find that there was sufficient evidence to establish beyond a reasonable doubt that defendant recklessly failed to act, i.e., engaged in conduct demonstrating a deliberate disregard for the likelihood of serious physical harm that the victim would suffer as a result of her failure to act. *DeKorte*, 233 Mich App at 567-568. There was evidence that defendant did not bathe the victim and change the victim's diapers as necessary. The skin on the victim's buttocks was "sloughed off." Defendant and the victim's home smelled of urine and feces. The victim had bed sores on her back in 2007 and extensive bed sores at the time of her death in March 2009. From August 2008 until the time of her death, the victim suffered from vomiting and diarrhea. The victim weighed 116 pounds in 2007 and 65 pounds when she died, at which time the pathologist opined that the victim looked as if she had been starved. The victim's personality and appearance changed from "bubbly" to "sullen." Despite the victim's condition, defendant never took the victim to see a doctor. Defendant first rescheduled and then later missed a doctor's appointment that the Mary Free Bed clinic scheduled for the victim; defendant did not reschedule. And, defendant also missed other medical appointments scheduled for the victim. With respect to causation, we find that the prosecution presented sufficient evidence for a jury to conclude beyond a reasonable doubt that defendant's reckless inaction actually and proximately caused the victim serious physical harm. *Id.* at 567; *Hudson*, 241 Mich App at 284-285, 285 n 9. The pathologist concluded that the cause of the victim's death was severe neglect, i.e., she was not provided adequate nutrition and hygiene. The jury could conclude beyond a reasonable doubt that, but for defendant's failure to act for the benefit of the victim's health, the victim would not have died—the victim's bed sores, illness, and malnutrition would have been attended to. *Hudson*, 241 Mich App at 285. Moreover, the jury could likewise conclude that it was reasonably foreseeable that defendant's failure to act would cause the victim's death. *Id.* at 285 n 9.

We reject defendant's contention that she was not the actual and proximate cause of the victim's death because the victim suffered a severe brain injury as an infant, which shortened her life span and made her dependant on defendant. The pathologist testified that he would have expected the victim to live years beyond the date of her death if proper care was provided. Moreover, a defendant takes her victim as she finds her. *People v Brown*, 197 Mich App 448, 451-452; 495 NW2d 812 (1992). "[A]ny special susceptibility of the victim to the injury at issue does not constitute an independent cause exonerating defendant." *Id.* at 451.

We also conclude that there was sufficient evidence for a rational jury to find defendant guilty of felony murder. The elements of felony murder are (1) the killing of a human being (2) with the intent to kill, do great bodily harm, or 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 a felony specifically enumerated in MCL 750.316(1)(b). *People v Gayheart*, 285 Mich App 202, 210; 776 NW2d 330 (2009). Defendant only disputes the element requiring malice. In this case, defendant referred to the victim as "her job." As previously discussed, defendant never took the victim to a doctor

despite the victim's illness and deteriorating physical condition. And, defendant missed the victim's other medical appointments without rescheduling. Moreover, the evidence illustrated that defendant sheltered the victim from third parties, some of which were actively looking into the victim's well-being. For example, defendant did not respond to inquiries concerning the victim made by the Mary Free Bed clinic, adult protective services, and the victim's school. Defendant also lied to adult protective services about her and the victim's whereabouts. And, the neighbor of the defendant and the victim did not even know who the victim was. Given this evidence, a rational juror could have inferred from the facts and circumstances of the case that defendant acted with malice, i.e., that defendant intended to create a very high risk of death or great bodily harm for the victim and that defendant knew that death or great bodily harm was a probable result of her failure to seek appropriate medical treatment and properly care for the victim. *People v Nowack*, 462 Mich 392, 401; 614 NW2d 78 (2000); *Gayheart*, 285 Mich App at 210.

Next, defendant argues that the trial court erroneously admitted evidence of her son Michael's absences from school and evidence of how she cared for Michael after the victim's death. We review this evidentiary issue for an abuse of discretion. *People v Orr*, 275 Mich App 587, 588-589; 739 NW2d 385 (2007). A trial court abuses its discretion when it reaches a decision that falls outside the range of reasonable and principled outcomes. *Id.* Generally, "[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith." MRE 404(b)(1). However, such evidence may be admissible for non-character purposes under MRE 404(b)(1). To be admissible under MRE 404(b)(1), the evidence must be (1) offered for a purpose other than character or propensity; (2) relevant; and (3) the probative value of the evidence must not be substantially outweighed by the danger of unfair prejudice. *People v Knox*, 469 Mich 502, 509; 674 NW2d 366 (2004). Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." MRE 401. Undue prejudice is "an undue tendency to move the tribunal to decide on an improper basis." *People v Vasher*, 449 Mich 494, 502; 537 NW2d 168 (1995).

We find that the trial court did not abuse its discretion when it admitted the challenged evidence. The evidence was offered for a proper purpose. *Knox*, 469 Mich at 509. The evidence of Michael's absences from school showed intent, knowledge, and the absence of accident or mistake. MRE 404(b)(1). Like the victim, Michael was not attending school from September 2008 until the victim's death. Indeed, Michael's absences were unexcused. Similar to the victim's school, representatives from Michael's school had difficulty contacting defendant to obtain an explanation for his absences. The timing of Michael's absences corresponds to the time when the victim was ill and losing weight. These facts are significant because they indicate that defendant deliberately avoided contact with representatives of Michael's school—as she did with representatives of the victim's school and other people concerned for the victim—so that the school would not discover defendant's recklessness and the victim's physical condition. Thus, these acts illustrate (1) that defendant did not possess an innocent intent but, rather, knew of her reckless behavior and the harm it caused the victim and (2) that the victim's weight loss and illness were not an accident or mistake but the result of defendant's recklessness. MRE 404(b)(1); *People v VanderVliet*, 444 Mich 52, 79; 508 NW2d 114 (1993); *Hudson*, 241 Mich App at 280.

The evidence of defendant's manner of caring for Michael after the victim's death showed a common plan or scheme. MRE 404(b)(1). "[E]vidence of similar misconduct is logically relevant to show that the charged act occurred where the uncharged misconduct and the charged offense are sufficiently similar to support an inference that they are manifestations of a common plan, scheme, or system." *People v Sabin*, 463 Mich 43, 63; 614 NW2d 888 (2000). Defendant's care for Michael after the victim's death and defendant's care of the victim in the months before the victim's death shared sufficient common features to illustrate a common system, scheme, or plan of action. *Id.* at 65-66. Both situations involved: (1) defendant's care for the hygiene and cleanliness of her children; (2) children with special needs who depended on defendant for care; (3) a failure to bathe and change diapers; (4) the intervention of third parties who voiced their concerns to defendant; and (5) situations where defendant turned her attention to self-serving activities instead of caring for her disabled children. These common features illustrated a scheme or plan by defendant to deliberately neglect the health and well-being of her disabled children in order to participate in self-serving activities.

Both Michael's absences from school and defendant's care for Michael were relevant because they made the existence of defendant's reckless failure to act more probable than it would have been without the evidence. MRE 401; *Knox*, 469 Mich at 509. And, the probative value of the evidence of was not substantially outweighed by the danger of unfair prejudice. *Knox*, 469 Mich at 509. The evidence did not have "an undue tendency to move the tribunal to decide on an improper basis." *Vasher*, 449 Mich at 502. And, the trial court limited the danger of unfair prejudice by issuing a limiting instruction to the jury. *People v Pesquera*, 244 Mich App 305, 320; 625 NW2d 407 (2001).

Next, defendant argues that the trial court erroneously admitted the testimony of computer forensic expert Dr. Earl Fife. We review this unpreserved issue for plain error. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). At the outset, we find that defendant has abandoned any argument that the trial court erred in qualifying Fife as an expert in computer forensics because she has not presented an argument with respect to this issue in her appellate brief. *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998). Defendant's claim that Fife's testimony was unreliable under MRE 702, irrelevant under MRE 401 and MRE 402, and misleading under MRE 403 fails; even if we were to find that the trial court plainly erred in admitting Fife's testimony, defendant cannot demonstrate that the error affected the outcome of her trial. *Carines*, 460 Mich at 763. The jury would have still heard Steven Squires and Nicole Smith testify regarding defendant's computer use even if the trial court had suppressed Fife's testimony. Squires testified that defendant was a good mother until she got her computer. And, Smith testified that she told defendant that defendant's computer became more important to defendant than defendant's children. Moreover, there was significant evidence of defendant's failure to care for the victim.

For the same reasons, we reject defendant's final claim that defense counsel was ineffective for failing to both seek a pretrial hearing to suppress Fife's testimony and object to Fife's testimony during trial. Even if we were to find that defense counsel was deficient, defendant cannot demonstrate "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland v Washington*, 466 US 668, 694; 104 S Ct 2052; 80 L Ed 2d 674 (1984).

Affirmed.

/s/ David H. Sawyer
/s/ William C. Whitbeck
/s/ Donald S. Owens