

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERESE ANNETTE MOLER,

Defendant-Appellant.

UNPUBLISHED

June 14, 2005

No. 253230

Jackson Circuit Court

LC No. 87-044047-FH

Before: Hoekstra, P.J., and Neff and Schuette, JJ.

PER CURIAM.

Defendant was charged with parental kidnapping, MCL 750.350a. Following a jury trial defendant was found guilty as charged. Defendant was sentenced to 90 days in jail and 5 years' probation. Defendant appeals by leave granted. We affirm.

I. FACTS

In September 1987, following a contentious divorce and custody dispute with her former husband, Joseph Mason, defendant left Michigan with their three-year old son, Jacob, and did not return to Michigan until February 2002. She was charged with parental kidnapping.

During the six-day trial, numerous witnesses testified on behalf of the prosecution and the defense. In the midst of divorce proceedings in 1987, defendant alleged that her now former husband was physically, emotionally, and sexually abusing Jacob. A team of professionals from the Family Assessment Clinic at the University of Michigan (the Clinic) was assigned to evaluate both the family and the allegations of abuse. The Clinic team was split on the question whether any abuse had occurred, resulting in a recommendation that Jacob be placed in temporary foster care until a more definitive determination could be made. Rather than allow Jacob to be placed in foster care with possible unsupervised visitation with his father, defendant took the child and left the state, not returning for fifteen years. Defendant testified that she took Jacob to protect him from what she believed was an immediate and actual threat of physical or mental harm, abuse, or neglect.

The trial court instructed the jury regarding the elements of the offense of parental kidnapping and the affirmative defense of protection of the child. Consistent with CJI2d 19.7, the court instructed the jury that the affirmative defense was an issue on which defendant had the burden of proof, and that "[i]n deciding whether the defendant has proved this defense, you should

consider all of the evidence admitted during trial. If the evidence supporting this defense outweighs the evidence against it, then you must find the defendant not guilty.” The jury convicted defendant.

II. STANDARD OF REVIEW

In reviewing a challenge to the sufficiency of the evidence in a criminal case, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, modified 441 Mich 1201 (1992). Questions of credibility and intent should be left to the trier of fact to resolve. *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999). Intent may be inferred from all the facts and circumstances, *People v Safiedine*, 163 Mich App 25, 29; 414 NW2d 143 (1987), and because of the difficulty of proving an actor’s state of mind, minimal circumstantial evidence is sufficient, *People v Fennell*, 260 Mich App 261, 270-271; 677 NW2d 66 (2004). Circumstantial evidence and the reasonable inferences which arise from the evidence can constitute satisfactory proof of the elements of the crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). All conflicts in the evidence must be resolved in favor of the prosecution. *People v Fletcher*, 260 Mich App 531, 562; 679 NW2d 127 (2004).

III. SUFFICIENCY OF THE EVIDENCE

Defendant argues that the evidence was insufficient to support her conviction of parental kidnapping. We disagree.

Here, the prosecution presented a substantial amount of evidence to demonstrate both that there was no proof that Jacob had been abused, and that even if Jacob had been abused there was no proof that Mason was the perpetrator of the abuse. Further, the prosecution presented evidence that defendant suffered from emotional and psychological problems, such as over-attachment and over-involvement issues and separation problems, and had subjected Jacob to emotional abuse, while Mason did not suffer from such defects. While defendant presented evidence contrary to this, given that all conflicts in the evidence must be resolved in favor of the prosecution, *Fletcher, supra* at 562, in this context this evidence must be found to overcome the evidence presented by defendant. Further, the prosecution presented evidence that defendant had a history of fleeing the state when unsupervised visitation was ordered. Intent may be inferred from all the facts and circumstances, *Safiedine, supra* at 29, and because of the difficulty of proving an actor’s state of mind, minimal circumstantial evidence is sufficient, *Fennell, supra* at 270-271.

The prosecution presented sufficient evidence to prove that defendant did not actually believe that a threat existed and that she, therefore, acted for some purpose other than to protect Jacob from an immediate and actual threat of physical or mental harm, abuse, or neglect. Although evidence tending to show that the threat was not actual is not dispositive on the issue of whether a reasonable bona fide belief existed, proof regarding the actuality of the threat can be used to infer the existence or non-existence of a bona fide belief, or the reasonableness of a bona fide belief.

This case hinged on whether the jury believed defendant when she asserted and presented evidence that she removed her son from Michigan because she actually believed that she was protecting the child from an immediate and actual threat of physical or mental harm, abuse, or neglect. In *People v Stewart*, 36 Mich App 93, 98, 193 NW2d 184 (1971), this Court stated that great deference should be given to the trier of fact because of the problems inherent in reviewing a cold transcript. The Court stated:

"When an appellate court is confronted with a challenge to the judgment of the trier of the facts, it will not easily be moved to overturn the judgment below. The trier of the facts, be it judge or jury, has had the opportunity to listen to the witnesses and observe their demeanor; he has had the opportunity to observe and evaluate the plethora of subjective and objective factors which together influence his opinion of the credibility of the witnesses. These factors do not survive in the stenographic transcription, we merely have a record of the words spoken at trial an incomplete record at best. For this reason, an appellate court is reluctant to overturn the judgment of the trier of fact and substitute its judgment, which must necessarily be based on an inadequate description of the factors which lead the trier of fact to reach its decision."

This is a very difficult case, a close call. As discussed previously, this case involved disturbing allegations about child molestation, sexual abuse and defendant forcing Jacob to ingest his own excrement. Nevertheless, to reverse the decision of twelve jurors who heard the testimony of witnesses and the arguments of the prosecution and defense counsel would be contrary to existing case law which proscribes appropriate appellate review of criminal cases.

The jurors had an opportunity to listen to defendant, observe her demeanor, evaluate and weigh her testimony, and to determine her credibility. Although defendant presented extremely disturbing allegations of abuse, the prosecution presented the jury with other evidence from which the jury could infer that defendant's motive for kidnapping her son was not to protect him from abuse. We find that a rational trier of fact could have found that the essential elements of this crime were proven beyond a reasonable doubt. *Wolfe, supra* at 515.

Affirmed.

/s/ Joel P. Hoekstra

/s/ Janet T. Neff

/s/ Bill Schuette