

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES BUCHANAN,

Defendant-Appellant.

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UNPUBLISHED

July 26, 2005

No. 254340

Kent Circuit Court

LC No. 03-000043-FH

Before: Hoekstra, P.J. and Jansen and Kelly, J.J.

PER CURIAM.

In this case arising from allegations that defendant physically abused his ten-year-old daughter, defendant appeals as of right his conviction of third-degree child abuse, MCL 750.136b(5) for which the trial court sentenced him to one year of probation.<sup>1</sup> We affirm but remand for correction of the judgment of sentence.

Defendant first argues that the trial court erred in excluding evidence of the victim's prior violent acts. We review the trial court's decision to exclude evidence for an abuse of discretion. *People v Layher*, 464 Mich 756, 761; 631 NW2d 281 (2001). An abuse of discretion exists when an unprejudiced person, considering the facts on which the trial court acted, would conclude that there was no justification or excuse for the ruling made. *People v Tate*, 244 Mich App 553, 559; 624 NW2d 524 (2001).

Defendant argues on appeal that evidence of the victim's prior violent acts should have been admitted under MRE 404(b), which provides:

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, or absence of mistake or accident when the same is material,

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<sup>1</sup> The judgment of sentence correctly indicates defendant's conviction as "child abuse third," but incorrectly indicates the MCL citation as MCL 750.136b(4). The correct citation for third-degree child abuse is 750.136b(5).

whether such other crimes, wrongs, or acts are contemporaneous with, or prior or subsequent to the crime charged in the case.

To be admissible under MRE 404(b), evidence must be offered for a proper purpose, must be relevant, and its probative value must not be substantially outweighed by its potential for unfair prejudice. *People v Knox*, 469 Mich 502, 509; 674 NW2d 366 (2004).

Defendant asserts that evidence of the victim's prior violent acts was critical to his self-defense theory. However, defendant does not discuss how this is a proper purpose under MRE 404(b) nor does he cite any caselaw supporting his assertion that this is a proper purpose under MRE 404(b).<sup>2</sup> Even if this was one of the proper purposes listed in MRE 404(b), which it is not, defendant would still have to demonstrate how this is a proper purpose by applying the appropriate caselaw to the facts of his case. "An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claim nor may he give only cursory treatment [of an issue] with little or no citation of supporting authority." *People v Matuszak*, 263 Mich App 42, 59; 687 NW2d 342 (2004), quoting *People v Watson*, 245 Mich App 572, 587; 629 NW2d 411 (2001). Because defendant has failed to demonstrate to this Court that the evidence was proffered for a proper purpose under MRE 404(b), there is no basis for us to conclude that the trial court abused its discretion in excluding this evidence.

Defendant next argues that the trial court erred by not instructing the jury that third-degree child abuse is a specific intent crime. We disagree. We review de novo claims of instructional error. *People v Kurr*, 253 Mich App 317, 327; 654 NW2d 651 (2002).

MCL 750.136b(5), requires that the defendant "knowingly or intentionally" cause harm to the victim. The need to distinguish between "specific" and "general" intent is not required as long as the jury is instructed that it must find that defendant either knowingly or intentionally caused the harm. *People v Maynor*, 470 Mich 289, 295-297; 683 NW2d 565 (2004). Accordingly, the trial court's refusal to instruct the jury on "specific intent" was not erroneous.

Defendant also argues that the trial court erred in denying his motion for directed verdict because there was insufficient evidence to convict him of third-degree child abuse. Again, we disagree. When reviewing a trial court's decision on a motion for a directed verdict, we review the record de novo to determine whether the evidence, viewed in the light most favorable to the prosecution, could persuade a rational trier of fact that the essential elements of the crime charged were proved beyond a reasonable doubt. *People v Aldrich*, 246 Mich App 101, 122; 631 NW2d 67 (2001). This Court does not determine witness credibility in reviewing a trial court's ruling on a motion for directed verdict. *People v Schultz*, 246 Mich App 695, 702; 635 NW2d 491 (2001).

As noted above, a person is guilty of third-degree child abuse if the person knowingly or intentionally causes physical harm to a child. MCL 750.136b(5). The victim's mother testified that the victim had a boot print on her chest, a bruise on her back, and a handprint on her neck.

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<sup>2</sup> Although it appears that the evidence might have been admissible under MRE 405(b), defendant has not presented any argument to this effect on appeal.

The victim's brother testified that defendant yelled at the victim, grabbed her by the hair, and took her into the bedroom. The victim herself testified that defendant got mad at her, grabbed her by the hair, and that she was falling and stumbling as defendant pulled her into the bedroom. He then pushed her down on the floor and told her to shut up. She kept crying. Defendant then left the bedroom, came back, and told her to shut up again, she did not, so he smacked her on the top of her head. The victim further testified after she yelled at defendant to let go of her brother, and told him "I hate you," defendant turned around, grabbed her by the throat, and picked her up about eight inches off the ground. He then brought her back into the bedroom and dropped her on a bed frame. She was crying and tried to get up, but defendant stepped on her chest to hold her down. Viewing all of the evidence in the light most favorable to the prosecution, a rational jury could conclude that defendant knowingly or intentionally caused physical harm to the victim.

Affirmed and remanded for correction of the judgment of sentence.

/s/ Joel P. Hoekstra  
/s/ Kathleen Jansen  
/s/ Kirsten Frank Kelly