

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHELLE DENISE HALL,

Defendant-Appellant.

UNPUBLISHED

August 23, 2005

No. 253247

Oakland Circuit Court

LC No. 03-189783-FH

Before: Saad, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

Defendant appeals by right from her convictions of two counts of third-degree child abuse, MCL 750.136b(5). She was sentenced to six months in jail, with credit for one day served, on each count. We affirm.

Defendant argues that there was insufficient evidence to convict her of third-degree child abuse. We disagree. In reviewing whether there was sufficient evidence to support a conviction, we review the evidence de novo, in the light most favorable to the prosecution, to determine whether a rational fact finder could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999).

Defendant's argument is based on her claim that none of the injuries the children suffered were particularly serious (none required hospitalization or otherwise affected their lifestyle), that any "spankings" were purely disciplinary and not meant to hurt the children, and that none of their permanent scars were caused by her "discipline." There is, however, no requirement that the injury be serious for a person to be convicted of third-degree child abuse. Rather, third-degree child abuse is defined by the child abuse statute as a "person knowingly or intentionally caus[ing] physical harm to a child." MCL 750.136b(5). "Physical harm" is, in turn, defined as "any injury to a child's physical condition." MCL 750.136(1)(e). Defendant admitted that she not only hit the children with a belt, but also that she knew she hurt them and left belt marks. These facts are similar to those of *People v Sherman-Huffman*, 466 Mich 39, 41; 642 NW2d 339 (2002), in which the Court found evidence of extensive bruising and a nose bleed was sufficient to support a conviction of third-degree child abuse. Thus, we conclude that there was sufficient evidence that defendant physically harmed the children to support her convictions.

Defendant also suggests that we construe the meaning of "physical harm" in the child abuse statute by reference to the no-fault automobile insurance act. However, because the

statute's definition of "physical harm" is clear and unambiguous, judicial construction is neither necessary nor allowed. *People v Weeder*, 469 Mich 493, 497; 674 NW2d 372 (2004). Moreover, we do not believe that any definitions in the civil no-fault act have any relevance to the criminal child abuse statute, nor has defendant provided us any legal support for her argument.

There is an exception in the child abuse statute that allows a parent or guardian (or certain other persons) to "reasonably discipline a child, including the use of reasonable force." MCL 750.136b(7). But this exception does not include repeated beatings with a belt and extension cord to a child's arms, legs, back, and even face, to the point where there are multiple, permanent scars. We need not address the outer limits of "reasonable discipline" under the statute where it has been so "plainly exceeded." *Sherman-Huffman*, *supra* at 42.

Defendant's claim that there is insufficient evidence linking the scars to her "discipline" of the children is also without merit. Defendant admitted in her testimony that she hit her children with a belt, that she knew this caused marks, and that she knew this hurt them. A reasonable factfinder could conclude that defendant's attempt to characterize the scars as those caused by normal childhood activities was not credible given a doctor's testimony that the appearance and shape of the scars were consistent with being struck by a belt or an extension cord. Defendant's claim that any marks from beatings with a belt came from the children's father, who did not have custody at the time, is also not consistent with her own admissions. Additionally, since the scars themselves are enough to indicate abuse, it is the factfinder's duty to resolve conflicting evidence as to who was responsible for them by weighing the witnesses' credibility and assessing the evidence. *People v Daoust*, 228 Mich App 1, 17; 577 NW2d 179 (1998).

In sum, we conclude sufficient evidence existed to support defendant's convictions of two counts of third-degree child abuse. When viewed in the light most favorable to the prosecution, the evidence, including defendant's admissions, easily supports finding beyond a reasonable doubt that defendant knowingly or intentionally caused physical harm to her children that was beyond the scope of reasonable discipline.

Defendant also argues that her trial counsel's effectiveness fell below an objective standard of reasonableness, denying her a fair trial. We disagree. An ineffective assistance of counsel claim should be raised by a motion for a new trial or an evidentiary hearing. *People v Snider*, 239 Mich App 393, 423; 608 NW2d 502 (2000). Defendant here made neither request; consequently, our review of defendant's claim is limited to the existing record. *Id.*

Defendant argues his trial counsel erred by not calling an expert medical witness to "refute" the prosecution's strongest evidence, the medical testimony regarding the nature and severity of the children's injuries. Defendant claims that if an effective defense medical expert had neutralized this evidence, it would have so undermined the prosecution's case that it would have changed the result of the trial.

A defendant must satisfy a two-pronged test to show ineffective assistance of counsel: (1) that counsel's performance was below an objective standard of reasonableness under professional norms, and that (2) there is a reasonable probability that but for counsel's errors, the result would have been different, and the result that did occur was fundamentally unfair or

unreliable. *People v Riley (After Remand)*, 468 Mich 135, 140; 659 NW2d 611 (2003). Further, Defense counsel has wide discretion in matters of trial strategy, and “the defendant must overcome a strong presumption that counsel’s performance constituted sound trial strategy.” *Id.*; *People v Pickens*, 446 Mich 298, 325; 521 NW2d 797 (1994). An appellate court will not second-guess matters of strategy or use the benefit of hindsight when assessing counsel’s competence. *Id.* at 330; *People v Rockey*, 237 Mich App 74, 76-77; 601 NW2d 887 (1999).

Trial counsel’s decision as to whom to call as a witness at trial is a matter of trial strategy. And, as indicated above, there is a strong presumption in favor of counsel regarding such matters. *Id.* Substantial evidence of abuse was admitted at trial, including defendant’s admitting that she hit the children with belts and cords leaving them scarred. Even if an expert could have been located to testify as defendant suggests, in light of all the other evidence, it is highly unlikely such testimony would have changed the outcome of the trial. This was not a case that hinged on the prosecution’s expert testimony. The trial court admitted into evidence photographs of the children’s injuries. The injuries themselves were of an obvious, repeated, and linear nature. Numerous linear-shaped scars are enough for even a layperson to conclude that they were caused by whipping with an object like a belt or an extension cord. And if the scars really were caused by such whippings, which the evidence strongly indicates, it is more probably than not that any medical expert would likely come to the same conclusion and testify accordingly. In sum, defendant has failed to overcome the presumption of effective assistance of counsel. *Id.*

We affirm.

/s/ Henry William Saad
/s/ Joel P. Hoekstra
/s/ Jane E. Markey