

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SARAH SUSANNE WOODHULL,

Defendant-Appellant.

UNPUBLISHED

April 21, 2009

No. 283999

Tuscola Circuit Court

LC No. 07-010158-FH

Before: Borrello, P.J., and Murphy and M. J. Kelly, JJ.

PER CURIAM.

Defendant appeals as of right her jury conviction of second-degree child abuse. See MCL 750.136b(3). The trial court sentenced defendant to 5 years' probation with 1 year in prison. The trial court ordered six months of the prison sentence to be deferred to the end of the probationary period. On appeal, we must determine whether defendant was deprived of a fair trial when the prosecution's expert physician testified that defendant's stepson's injuries were caused by "excessive use of force for discipline." We conclude that, even if it were error to admit this statement, it would not warrant relief. For that reason, we affirm. We have decided this appeal without oral argument under MCR 7.214(E).

In order to convict defendant of second-degree child abuse, the prosecution had to prove—in relevant part—that defendant knowingly or intentionally committed an act that was likely to cause serious physical harm to a child regardless of whether harm results. MCL 750.136b(3)(b). Serious physical harm is "any physical injury to a child that seriously impairs the child's health or physical well-being, including, but not limited to, brain damage, a skull or bone fracture, subdural hemorrhage or hematoma, dislocation, sprain, internal injury, poisoning, burn or scald, or severe cut." MCL 750.136b(1)(f). In this case, the prosecution alleged that defendant committed second-degree child abuse when she struck her stepson, Andrew, on the buttocks with a belt. Specifically, the prosecution alleged that defendant struck Andrew with the belt with the knowledge or intent that it would likely cause serious physical harm to him.

At trial, Andrew described the incident at issue. Andrew testified that before school on the day in question he was at home with defendant and his siblings when defendant became angry and ordered him to his room. Andrew stated that defendant became angry because he selected the wrong cereal bowl for breakfast. He stated that after he went to his room, he bent over his bed "because I already knew I was going to get spanked." He said defendant then came into his room and spanked him 15 to 20 times with a belt. He stated that, although defendant

struck him on his butt, the tip of the belt struck him on the front of his right leg as well. Andrew stated that it hurt and continued to hurt after he arrived at school.

At school, Andrew said he had a “little bit” of trouble walking and limped. He also said that it hurt to sit. Andrew testified that he was crying. Andrew’s teacher testified that she saw Andrew in the hall before class and that he was crying. Andrew stated that he told his teacher about the events of that morning and that he later was called to the office and talked to somebody about his leg and that one of the teachers took pictures of his bruises. A therapist at Andrew’s school testified that Andrew had bruises on his “entire buttock area, down the back of his thigh, down the back of his leg, pretty close to his knee.”

Although the prosecution did not have to prove that Andrew actually suffered serious physical harm, see MCL 750.136b(3)(b), the prosecution called Dr. Anita Vanderstelt to testify about the nature and extent of Andrew’s injuries. Vanderstelt testified that she examined Andrew on the day after the incident at issue. She stated that Andrew had more than 14 bruises on his body. She indicated that she was most concerned about two bruises: a bruise on the front of his thigh that was six centimeters in diameter and had linear marks that were deep purple and another deep bruise on Andrew’s buttocks.

Vanderstelt indicated that the injury to Andrew’s leg was a hematoma, which meant that blood had collected under the skin. She described the bruise as being “bogy,” which she explained means it felt “squishy.” She also said this injury was warm to the touch and could have been infected. She stated that the bruise was severe and that she was worried enough to order an x-ray to determine if Andrew had suffered broken bones.

Vanderstelt also testified that the injuries were not consistent with an accidental injury, but were consistent with belt marks. Vanderstelt identified the pictures she took that day, but explained that the pictures did not convey the “intensity of the colors that I saw that day.” She also noted that Andrew was still limping as a result of the injuries on the day of the examination.

Towards the end of Vanderstelt’s direct examination, the prosecution attempted to get Vanderstelt to express an opinion as to how severe the bruises were by comparison to the other bruises she had seen throughout her career. Defendant’s trial counsel repeatedly objected to the prosecution’s attempted questioning in this regard based on relevancy. After the prosecutor rephrased the question, Vanderstelt opined that it would take a “larger amount of force” to get the bruises she observed. The prosecutor then tried to get Vanderstelt to clarify the amount of force used:

Q. In your expert opinion, was this excessive force used?

[Defendant’s Counsel]: Objection, Your Honor. I think that’s asking for a legal conclusion, which is not appropriate. I mean, she can—she can say what she deems the force to be that caused the injury, but I don’t think she can give a legal opinion as to whether or not it was excessive or not.

THE COURT: I—I think we’re trying to put words in her mouth. Why don’t you ask her what her opinion is? I mean, you know, you’re—you’re—

BY [The Prosecutor]:

Q. What is your opinion as to the amount of force that was used?

A. May I refer to my impression in my notes?

THE COURT: If that—I gather you need to refresh your recollection.

THE WITNESS: No. I just—my impression in my note was excessive use of force for discipline.

THE COURT: There you go.

[The Prosecutor]: Thank you.

On the surface, this testimony appears to implicate defendant's purported motive in striking Andrew with the belt and whether the force used was reasonable. See MCL 750.136b(7); *People v Sherman-Huffman*, 466 Mich 39, 42; 642 NW2d 339 (2002). And if the testimony were elicited for that purpose, it would be improper. See *Downie v Kent Products, Inc*, 420 Mich 197, 204-206; 362 NW2d 605 (1984) (noting that expert's may offer opinions on ultimate issues to be decided by the trier of fact where the expert has a proper foundation for the opinion); *Maiden v Rozwood*, 461 Mich 109, 130 n 11; 597 NW2d 817 (1999) (stating that an expert's opinion does not extend to legal conclusions). However, we do not agree that this was the purpose behind the prosecutor's question and do not agree that the witness was attempting to offer an opinion on these issues. When read in the context of the previous series of questions and the discussions that occurred after objection, it is clear that the prosecutor was attempting to get the witness to quantify the amount of force used. And this was a proper subject for expert testimony. Indeed, defendant's trial counsel recognized as much. Further, although the witness testified that the force used was "excessive," when read in context, we conclude that she was in fact trying to quantify the amount of force rather than express a value judgment about whether the discipline was reasonable. Hence, there was no error.

Nevertheless, even if the witness' testimony were improper, it would not warrant relief. Assuming that defendant's trial counsel's properly preserved this issue by objection, in order to warrant relief, defendant must demonstrate that the error resulted in a miscarriage of justice—that is, defendant must demonstrate that the error undermined the reliability of the verdict. *People v Lukity*, 460 Mich 484, 495; 596 NW2d 607 (1999). In order to determine whether the error undermined that reliability of the verdict, this Court must evaluate the error in "the context of the untainted evidence to determine whether it is more probable than not that a different outcome would have resulted without the error." *Id.*

In the present case, defendant's trial counsel did not dispute that Andrew was spanked on the day in question and did not dispute the nature and extent of Andrew's more serious injury—the bruise to his leg. Instead, defendant's trial counsel argued that the jury could not find beyond a reasonable doubt that the more serious injury occurred on the day Andrew was "spanked for the cereal bowl" and could not be certain about who did the spanking and what method was used. Specifically, defendant's trial counsel suggested that the nature of the more serious injury was indicative of being hit with the belt buckle and that the testimony showed that defendant held

onto the belt buckle when she spanked Andrew—whenever that spanking might have been. For that reason, defendant’s trial counsel argued that the jury must conclude that defendant did not cause the more serious injury. Based on this argument, the fact that Andrew was spanked after the cereal bowl incident in order to discipline him was not at issue.¹ Hence, Vanderstelt’s testimony that she thought the injuries were inflicted “for discipline” could not have prejudiced defendant’s defense. Likewise, defendant’s trial counsel never argued that the injury to Andrew’s leg was the result of reasonable disciplinary measures. Therefore, Vanderstelt’s opinion that the force was “excessive” as to that injury also did not prejudice defendant’s defense because her argument was that she did not cause that injury.²

Finally, the prosecution presented overwhelming evidence of defendant’s guilt. In addition to Andrew’s testimony that defendant spanked him 15 to 20 times with a belt, a caseworker with the Department of Human Services testified that she interviewed defendant on the day at issue. The caseworker testified that defendant admitted that she spanked Andrew with a belt because he used his sister’s cereal bowl. Defendant also told the caseworker that she held the belt buckle in her hand and that her hand was bruised as a result. The caseworker also testified that defendant knew that there were already bruises on Andrew’s buttocks. These admissions, when taken in light of Andrew’s testimony and the testimony by the school staff who talked with and observed Andrew on the day at issue, overwhelmingly supports the conclusion that defendant repeatedly struck Andrew with a belt on the buttocks and that she did so knowing that it was likely to cause serious physical injury. Defendant knew that Andrew was already suffering from bruising and despite this she hit him with such force that she bruised her own hand while gripping the belt buckle. Thus, even if the jury were to completely disregard the existence of the more serious injury to Andrew’s leg, the proofs fully established that defendant violated MCL 750.136b(3)(b). Given the totality of the untainted evidence, we cannot conclude that it was more probable than not that a different outcome would have resulted without the error. *Lukity*, 460 Mich at 495.

There were no errors warranting relief.

Affirmed.

/s/ Stephen L. Borrello

/s/ William B. Murphy

/s/ Michael J. Kelly

¹ Defendant’s trial counsel stated in closing that “[c]learly he [Andrew] was spanked on March 14th, 2005. There’s nothing on this record that says he wasn’t spanked Now, what’s somewhat confusing is what method was used and who did it.” Defendant’s trial counsel also stated that whether Andrew “should have been spanked for the cereal bowl, that’s not an issue.”

² Even if defendant had argued that she used reasonable force to discipline Andrew, see MCL 750.136b(7), she would not be entitled to relief. Given the undisputed evidence about the nature and extent of Andrew’s injuries, which included photographs, no reasonable jury could conclude that the force that caused the injuries was reasonable: “Wherever the outer limits of ‘reasonable discipline’ are to be drawn, given the injuries inflicted by the force used in this matter, they were plainly exceeded.” *Sherman-Huffman*, 466 Mich at 42.