

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LACHANTE NICOLE MOBLEY,

Defendant-Appellant.

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UNPUBLISHED

January 13, 2005

No. 250698

Jackson Circuit Court

LC No. 03-001319-FC

Before: Jansen, P.J., and Murray and Donofrio, JJ.

PER CURIAM.

Defendant was charged with three criminal counts: (1) open murder in violation of MCL 750.316, (2) felony murder arising out of the perpetration or attempted perpetration of child abuse in the first degree in violation of MCL 750.316(1)(b), and (3) child abuse in the first degree in violation of MCL 750.136b(2). Following a jury trial, defendant was acquitted of second-degree murder under count 1, was found guilty of felony murder under count 2, and found guilty of first-degree child abuse under count 3. Defendant was sentenced to life in prison without parole. Defendant now appeals as of right. Because we do not find any of defendant's arguments persuasive, we affirm.

This case arose out of the death of defendant's four-year-old son, Le'Marquis Hereford. On December 19, 2002, a man later identified as Anwar Benin<sup>1</sup> walked into the emergency room of Foote Hospital carrying Hereford. Benin told the nurse that Hereford was not breathing and that he thought the child had been beaten. After beginning CPR and removing the child's shirt, the nurse noticed bruising all over his chest. At some point Hereford's mother, defendant, entered the emergency room. Defendant denied knowing what happened to Hereford. After twenty minutes of treatment, physicians were able to get a pulse from Hereford. Hereford had obvious signs of trauma including bruising along the entire length of his sternum down to his abdomen, as well as a distended abdomen. Hereford was diagnosed with full cardiac and respiratory arrest with signs of blunt trauma to the chest and back as well as severe anemia from blood loss. Hereford later died.

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<sup>1</sup> Benin was found not guilty of murder by a separate jury, and no verdict was reached regarding the child abuse charge. Thereafter, Benin pleaded guilty to a second-degree child abuse charge and was sentenced to 24 to 48 months in prison.

An autopsy revealed bruises on Hereford's forehead, the center of his chest, the right side of his abdomen, on the center of his back and on the small of his back. There was also bruising on his small intestine and a tear in Hereford's liver that was believed to be the cause of death, and the mechanism of death was blood loss. There was testimony that the tear was likely caused by a "striking-like impact to the upper abdomen" that could have come from a punch or kick.

Upon police questioning, after first stating that Hereford had been at daycare, defendant admitted that she had "whooped" and "hit" her son on the Tuesday before he died for lying about soiling his pants. When asked about the "whooping," defendant stated that she hit Hereford periodically with the back of her hand but motioned by pounding her palm with a balled fist. She said that she had disciplined Hereford three times on Tuesday for soiling himself and that this included a hit to the chest. She also stated that Benin, whom defendant and Hereford resided with, also disciplined Hereford. Defendant stated that she had asked Benin to help her with Hereford's bed-wetting and lying because she thought that a male figure would have better success with Hereford. Defendant did not notice anything wrong with Hereford on Wednesday except that he said, "ouch, my chest hurts," when she gave him a hug. When she woke Hereford on Thursday morning he did not appear right and looked weak. Benin later transported Hereford to the hospital while defendant was at work.

At trial, after the prosecution rested, defendant moved for a directed verdict on all counts on the ground that the prosecution failed to present evidence sufficient to meet its burden. The trial court granted a directed verdict with respect to first-degree premeditated murder under the open murder count and denied the motion with respect to the remaining counts. The jury found defendant not guilty of second-degree murder, guilty of felony murder, and guilty of first-degree child abuse. At sentencing, defendant's counsel noted that sentencing defendant under both felony murder and first-degree child abuse would violate double jeopardy. Accordingly, the trial court vacated the first-degree child abuse verdict and sentenced defendant to mandatory life without parole. Subsequently, defendant moved for a new trial on two occasions, and both times, the trial court denied the motion. This appeal followed.

Defendant first argues that as a result of the inherent inconsistency between the felony murder conviction and the second-degree murder acquittal, the verdict was rendered ambiguous and therefore, a new trial should be granted on the felony murder and second-degree murder charges, with the second-degree murder charge presented to the jury as a lesser-included offense of felony murder.

During the sentencing hearing, defendant failed to object to the jury verdict on the ground that it was so ambiguous as to be void. Therefore, that portion of the issue is not preserved. However, defendant's second motion for a new trial stated an argument that the jury verdict was impermissibly inconsistent, and, at oral argument on the matter, the trial court dealt with the issue of an inconsistent verdict at some length. Therefore, the inconsistent verdict issue was properly raised before the trial court and preserved for our review.

Whether the jury verdict was so ambiguous as to be void or impermissibly inconsistent is a question of law. Even though the ambiguous verdict portion of the issue was not properly preserved below, we will address it because the issue is necessary to a proper determination of the case. *People v Grant*, 445 Mich 535, 553; 520 NW2d 123 (1994). This Court reviews de novo questions of law. *Bennett v Weitz*, 220 Mich App 295, 299; 559 NW2d 354 (1996).

An uncertain jury verdict may be grounds for relief. *People v Ullah*, 216 Mich App 669, 683; 550 NW2d 568 (1996), citing *People v Smith*, 383 Mich 576; 177 NW2d 164 (1970). However, “a jury verdict is not void for uncertainty if the jury’s intent can be clearly deduced by reference to the pleadings, the court’s charge, and the entire record.” *People v Rand*, 397 Mich 638, 643; 247 NW2d 508 (1976), amended 399 Mich 1040 (1977). In *Ullah*, this Court found a similar claim to be without merit because the “jury’s verdict may be clearly deduced by reference to the record, . . . and is clearly shown by the written verdict form.” *Ullah, supra*, at 684. Here, the written verdict form clearly lists the various counts and has an ‘x’ in the box for not guilty of second-degree murder, an ‘x’ in the box for guilty of felony murder, and an ‘x’ in the box for guilty of first-degree child abuse. Furthermore, the trial court polled each member of the jury to ask him or her if he or she agreed with the verdict and each responded affirmatively. The verdict form and the record both unambiguously indicate that defendant is guilty of felony murder and first-degree child abuse while not guilty of second-degree murder. Because the jury’s verdict can be clearly deduced from the record, it is not void for ambiguity.

Although the verdict is not void for ambiguity, it does appear to be inconsistent. The jury found defendant guilty of felony murder, but not guilty of second-degree murder. Because felony murder is second-degree murder with an added element, see *People v Carter*, 395 Mich 434, 437; 236 NW2d 500 (1975), the jury essentially found defendant guilty of second-degree murder on one count and not guilty of second-degree murder on another count. This is inconsistent. Thus, we are called upon to address whether this inconsistency requires a new trial with respect to the affected counts.

Historically, an inconsistent verdict would be grounds for reversal. *People v Crown*, 75 Mich App 206, 214-215; 254 NW2d 843 (1977), rev’d on other grounds 417 Mich 908 (1983). However, our Supreme Court has ruled that juries are not required to return consistent verdicts. *People v Lewis*, 415 Mich 443, 448; 330 NW2d 16 (1982); *People v Vaughn*, 409 Mich 463, 464; 295 NW2d 354 (1980). Although, in *Lewis*, our Supreme Court noted that an inconsistent verdict could be the result of jury confusion, and if jury confusion caused the inconsistent verdict, the inconsistency taints the affected portions of the verdict requiring a new trial on those charges. *Lewis, supra*, at 450 n 9. Therefore, an inconsistent verdict will not automatically result in a reversal, but rather will result in a mistrial when the inconsistency can be shown to be the result of either: (1) an impermissible jury compromise, or (2) the result of jury confusion. A defendant must offer evidence, other than the inconsistency itself, indicating that the jury was confused or engaged in impermissible compromise. *People v McKinley*, 168 Mich App 496, 510-511; 425 NW2d 460 (1988).

In the instant case, there is no evidence the jury engaged in an impermissible compromise or was confused to the point that the verdict was tainted. Defendant has not shown something more than the verdict itself to demonstrate the jury was confused or engaged in impermissible compromise requiring a new trial. Since defendant has provided no additional evidence that the inconsistency was the result of either confusion or compromise, a new trial is not warranted.<sup>2</sup>

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<sup>2</sup> By way of example, evidence of juror questions, requests for reinstruction, or any other inquiry including, but not limited to, questions regarding specific instructions, legal terms, or definitions  
(continued...)

Defendant next argues that the trial court abused its discretion by not granting a new trial because the jury verdict was against the great weight of the evidence. The trial court's decision regarding a motion for a new trial is reviewed for an abuse of discretion. *People v Jones*, 236 Mich App 396, 404; 600 NW2d 652 (1999). An abuse of discretion exists when the denial of the motion was manifestly against the clear weight of the evidence. *People v Abraham*, 256 Mich App 265, 269; 662 NW2d 836 (2003).

A trial court may only grant a new trial on the basis that the great weight of the evidence is against the verdict if "the evidence preponderates heavily against the verdict so that it would be a miscarriage of justice to allow the verdict to stand." *People v Lemmon*, 456 Mich 625, 627; 576 NW2d 129 (1998). The trial court may not grant a new trial on this basis simply because it disagrees with the credibility assessments of the jury. *Id.* "[U]nless it can be said that directly contradictory testimony was so far impeached that it was deprived of all probative value or that the jury could not believe it, or contradicted indisputable physical facts or defied physical realities, the trial court must defer to the jury's determination." *Id.* at 645-646 (internal citations and quotations omitted.) In addition, this Court will give "substantial deference to the trial court's determination that the verdict is not against the great weight of the evidence." *Campbell v Sullins*, 257 Mich App 179, 193; 667 NW2d 887 (2003).

Defendant essentially argues that there was no direct evidence that she struck the blow that killed Hereford and that there was no evidence that she aided or abetted Benin in striking the fatal blow. The jury heard a plethora of evidence in this case. Mobley initially told the police that she "whooped" and "hit" Hereford on Tuesday, two days before his death. Mobley demonstrated the type of blow by balling up her fist and striking the palm of her hand. She also stated that she disciplined Hereford three times on that Tuesday before he died, including a blow to the chest. However, defendant later contradicted these admissions to the police, including a denial that she ever hit Hereford at all. Mobley also told police that she gave permission to Benin to discipline Hereford. And that she knew Benin struck his kids inappropriately, but still recruited his help in disciplining Hereford for wetting himself and lying about it. On the other hand, the jury also heard evidence that Benin said that he did not intend to kill Hereford and that he admitted to being heavy-handed. They also heard that Benin told two court officers that Mobley had nothing to do with Hereford's death.

After reviewing the record we conclude that a reasonable jury could choose to believe that Mobley told the truth when she admitted to hitting Hereford and described "whooping" him, and disbelieve the statements attributed to Benin. Or, the jury could have believed that defendant knowingly procured, and thus aided and abetted, Benin to use excessive force to discipline Hereford. As such, the evidence was balanced and could go in either direction "such that different minds would naturally and fairly come to different conclusions," and in cases where the evidence can go either way, "the judge may not disturb the jury findings although his judgment might incline him the other way." *Lemmon, supra*, 456 Mich 644. The evidence against defendant's guilt in no way preponderated against the weight of the evidence that supported the guilty verdict, and so a new trial was not warranted. *Id.* at 627.

(...continued)

may be additional evidence that an inconsistent verdict was the result of either confusion or compromise. The record is devoid of any such jury activity in the present case.

Next, defendant argues that the trial court erred when it failed to instruct the jury that the second-degree murder charge was a lesser-included offense under the felony-murder count and that it could only convict defendant of one count under a multi-count charge involving lesser-included offenses. Defendant did not object to the jury instructions during trial. Indeed, after participating in the creation of the jury instructions, defense counsel was asked if there were “[a]ny other requests, instructions or objections to one’s I’ve indicated I’m inclined to give?” to which he answered “no your honor.” In addition, after the final instructions were presented the trial court again asked defendant’s counsel directly if there was “[a]nything else on the instructions,” to which he replied “[w]e are satisfied, your Honor.” Thus defendant waived any objection to the jury instructions as presented. *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000). When a defendant waives his right, there is no error to review. *Id.* at 219. Since defendant’s counsel waived any objection to the jury instructions, under *Carter* there is no error for this Court to review.

Finally, defendant argues that because there was insufficient evidence to prove the intent element of first-degree child abuse, the felony-murder conviction based upon the first-degree child abuse must be dismissed. This Court reviews de novo challenges to the sufficiency of the evidence. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001).

When reviewing a sufficiency of the evidence claim in a criminal case, “this Court views the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could have found the essential elements of the crime were proved beyond a reasonable doubt.” *People v Moorer*, 262 Mich App 64, 76-77; 683 NW2d 736 (2004). “Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of a crime.” *Id.* at 77.

Felony murder is essentially second-degree murder with the added element that the murder occurred during the commission of an enumerated felony, of which first-degree child abuse is one such felony. *People v Maynor*, 256 Mich App 238, 243-244; 662 NW2d 468 (2003). Thus, the prosecution must prove each element of second-degree murder beyond a reasonable doubt and then must also prove each element of first-degree child abuse beyond a reasonable doubt.

Defendant contests the sufficiency of the evidence that she committed first-degree child abuse. A person is guilty of first-degree child abuse if he or she (1) knowingly or intentionally (2) causes serious physical or serious mental harm to a child. *Maynor, supra*, 256 Mich App at 240. A person is defined to include a “child’s parent or guardian or any other person who cares for, has custody of, or has authority over a child . . . .” MCL 750.136b(1)(d). Mobley is Hereford’s mother and gave Benin permission to discipline Hereford, who was on occasion left in his care. Consequently, both Mobley and Benin meet the definition of “person” for first-degree child abuse. The statute also defines serious physical harm as “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). Since Hereford died of internal injuries, the injury he suffered plainly meets the definition of serious physical harm. The only remaining element is whether Mobley knowingly or intentionally caused the serious physical harm to Hereford or that she aided and abetted Benin’s commission of the same crime.

First-degree child abuse is a specific-intent crime. *Maynor, supra*, 256 Mich App at 241. “Generally, a specific-intent crime requires a criminal intent beyond the act done, whereas a general-intent crime requires only the intent to perform the proscribed physical act.” *Id.* at 240. Thus, a person “who specifically intended to cause serious physical or mental harm to a child may be convicted of first-degree child abuse.” *People v Gould*, 225 Mich App 79, 87; 570 NW2d 140 (1997). Mobley admitted that she had “whooped” and “hit” Hereford throughout the day. When demonstrating how she “whooped” Hereford, she balled up her fist and pounded her palm. Likewise, the nature of the injury is such that it had to have been caused by a fairly strong blow. From these facts alone, a jury could find beyond a reasonable doubt that Mobley struck Hereford and that she did so with force sufficient to infer that she intended to cause serious physical harm to Hereford.

In addition, a jury could have found beyond a reasonable doubt that Mobley aided and abetted Benin’s commission of first-degree child abuse. Aiding and abetting means any assistance rendered to the perpetrator of a crime including support and encouragement. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). Mobley gave permission to Benin to discipline Hereford, knew that Benin struck his kids inappropriately but still recruited his help in disciplining Hereford. Given these facts, the jury could infer that Mobley recruited Benin with the intent that he would use his disciplining methods on Hereford or encouraged him to do so and thus could have found Mobley guilty of first-degree child abuse on an aiding and abetting theory.

Consequently, there was sufficient evidence presented to the jury such that the jury could find beyond a reasonable doubt that Mobley was guilty of first-degree child abuse and second-degree murder and therefore that she was guilty of felony murder.

Affirmed.

/s/ Kathleen Jansen  
/s/ Christopher M. Murray  
/s/ Pat M. Donofrio