

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

HENRAE WOODARD,

Defendant-Appellant.

UNPUBLISHED

March 20, 2003

No. 237361

Wayne Circuit Court

LC No. 99-012182

Before: Cooper, P.J., and Murphy and Kelly, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of second-degree murder, MCL 750.317, and first-degree child abuse, MCL 750.136b(2). He was sentenced to twenty-five to fifty years' imprisonment on the murder conviction and forty-seven months to fifteen years' imprisonment on the child abuse conviction. Defendant appeals as of right. We affirm.

This case arises out of the death of the eighteen-month-old son of defendant's girlfriend. The defense attempted to place the blame for the child's death on the girlfriend. At the time of the death, defendant and his girlfriend had been living together for about three weeks, along with the girlfriend's four children.¹ Often, defendant would babysit the children while his girlfriend worked, and on the day of the child's death, October 20, 1999, defendant was at the home watching three of the children, including the victim. At about 9:30 a.m., defendant called 911 requesting immediate medical assistance. Emergency personnel quickly arrived at the home and found the victim unconscious. Paramedics administered CPR; however, the victim could not be resuscitated. The victim was transported to a hospital emergency room where doctors further tried, unsuccessfully, to save the child's life. The victim was pronounced dead at 9:55 a.m.

Defendant gave police multiple stories concerning the child's death. He first told an officer that he placed the child in the bathtub, with water running, while defendant left to iron some clothes. When defendant returned to the bathtub, he found the child slumped over. Subsequently, defendant told police that his girlfriend had taken the oldest daughter to school, and he was assisting the two other daughters in getting ready for the day, while the victim was

¹ This included three daughters under the age of six and the victim; defendant was not the father of any of the children.

lying awake in bed. The girlfriend then returned home for a short time and began helping to dress one of her daughters. Defendant's girlfriend then left the home after first checking on the victim, who was sleeping at the time. The victim arose from bed, and defendant changed his diaper and then proceeded to place the child in the bathtub while defendant went to further assist the daughters. Defendant heard the victim trying to get out of the tub, and defendant went into the bathroom and told the victim to sit, which the child did. Defendant again left the bathroom and a few minutes later returned to find the victim slumped over in a sitting position.

When police asked defendant about a burn mark on the victim's chest and chin, defendant explained that the injuries had occurred a week or two earlier when the victim was accidentally burned by a hairdryer while one of the daughters and the victim were playing around with it. The day after the child's death, the medical examiner's office determined that the child had not drowned, but instead had been beaten to death. Confronted with this information, defendant told police that he had heard a bump while the victim was in the bathtub, and when defendant returned to the bathroom, the child's whole body was jerking.

In subsequent interviews, faced with an officer's disbelief of his story, defendant admitted that he had pushed the child into the tub, causing the child to hit the right side of his head on the tub. Defendant claimed that he acted out of frustration because he was so busy trying to get things done.

Defendant's girlfriend (child's mother) testified that, besides quickly peeking in on the child while he slept on the morning of his death, she had not seen him since the night before when she bathed him and put him to bed. She denied ever hitting, cutting, or burning the child, and she also stated that the burns on the child were caused by the children playing with the hairdryer.² Defendant's girlfriend believed that defendant was good with the children, and she had never seen him strike any of the children. The girlfriend did note what appeared to be minor injuries to the victim that were apparent after defendant moved in; however, she accepted defendant's claims that the causes were accidental. The girlfriend acknowledged that the Family Independence Agency (FIA) had temporarily removed her children from the home a couple months prior to the death because of suspicious bruises on the arm and leg of her oldest daughter. She acknowledged whipping her daughter with a belt, and the children were placed with a grandparent for a month before returning to the home when the case was closed. At the time, which was before defendant moved in, there were no other visible injuries to the children. Besides the FIA involvement after the death and the incident described above, there had been no other referrals.

The emergency room doctor, who treated the child on the day of the death, testified that, besides head trauma that killed the child, the child had suffered bruises and abrasions to the forehead; abrasions to the neck, back, buttocks, and feet; bruises to the back of the arms; possible burn scars on the buttocks; and burns to the chest and chin that looked as if hot liquid had been spilled on the child.³ The burns were not consistent with a hairdryer injury. The doctor testified

² She did not witness the incident but instead relied on defendant's account of what occurred.

³ The doctor had treated the victim a few weeks earlier for a forehead laceration that was consistent with a fall, which was the explanation given to the doctor; he saw no other injuries
(continued...)

that some of the injuries could have been caused by accident; however, he opined that physical abuse was the cause. He stated that symmetrical injuries to the feet were indicative of abuse.

The medical examiner, who conducted the autopsy, testified that the cause of death was cerebral edema (brain swelling) caused by multiple blunt trauma to the head. Subcutaneous hemorrhaging caused the brain to swell. Because the hemorrhaging was extensive, the medical examiner concluded that numerous blows were involved and that the child was beaten to death. The edema was not caused by a fall, push, or slap because there was too much swelling. The medical examiner opined that the child's injuries were consistent with someone propelling the child repeatedly against a wall. He further testified that the child had four fractured ribs that appeared to be a few weeks old, plus injuries consistent to those identified by the treating emergency room physician.

An expert in pediatric neurosurgery testified that the victim could not conceivably have died under the circumstances described by defendant. She testified that although it was possible that the child could have lingered a few hours after suffering the blows that caused death, he would have appeared listless, lethargic, and dazed; all of which would be readily apparent. Defendant's statements to police indicated that the child was behaving normally on the morning of his death. The doctor further testified that it was unlikely the child remained conscious for very long after the assault.

An expert witness called by the defense testified that brain swelling could occur over a long period of time, even weeks, and if the swelling evolved slow enough, the victim's behavior might change very little. However, the doctor opined that most likely, the death occurred within an hour of the injury.

An FIA worker, who had investigated the death for purposes of removing the children from the home, testified that defendant's girlfriend told him that she was only aware of three marks on the victim's body. The worker testified that the girlfriend cooperated with him and the investigation at first, but she became uncooperative when her children were placed in foster care. The following colloquy occurred during the prosecutor's cross-examination of the FIA worker.

Q. And, as [a] result of your investigation into this case, sir, you reviewed the previous case file on [the girlfriend]; correct?

A. Correct.

Q. All right. And isn't it true, sir, that you discovered that in the entire history of these children's lives there was only one minor incident involving her daughter Were any other reports made against her?

A. That was the only report.

Q. And that had been several months prior; correct?

(...continued)

that day after a thorough examination. Defendant had not yet moved into the home.

A. Correct.

Q. No reports made against her ever involving injuries to [the victim]?

A. That's correct.

Q. And no evidence that you discovered that she had anything to do with the death of [the victim]?

A. That's correct.

Q. In fact, the kids were taken away for failure to protect from Mr. Woodard; right?

[At this point, defense counsel objected and a sidebar discussion was held off the record; the prosecutor then continued the questioning.]

Q. I'm sorry. As I asked you . . ., the children were removed as a result of her failure to protect the children, specifically [the victim], from the actions of Mr. Woodard; correct?

A. Correct.

Subsequently, defendant placed an objection on the record to the above referenced testimony, arguing that the jury might infer that defendant had been found guilty in a prior proceeding. Defendant moved for a mistrial. The trial court denied the motion, ruling that there was ample evidence in the case from which the jury could render its decision, that the statement had already been testified to by defendant's girlfriend, and that, although it was unfortunate that Mr. Woodard's name was incorporated into the questioning, the ground was insufficient to require a mistrial.

On appeal, defendant's sole argument is that the trial court denied defendant due process of law by allowing the prosecutor to present evidence that created the impression that the FIA had already concluded that defendant was guilty and his girlfriend was not.

"This Court reviews for an abuse of discretion the trial court's decision to admit or exclude evidence and will reverse only where there is a clear abuse of discretion." *People v McCray*, 245 Mich App 631, 634-635; 630 NW2d 633 (2001), citing *People v Starr*, 457 Mich 490, 494; 577 NW2d 673 (1998). The denial of a motion for mistrial is reviewed for an abuse of discretion. *People v Manning*, 434 Mich 1, 7; 450 NW2d 534 (1990). Mistrials should only be granted for an irregularity that prejudices the rights of the defendant and impairs his or her ability to get a fair trial. *People v Haywood*, 209 Mich App 217, 228; 530 NW2d 497 (1995).

We find that the trial court did not abuse its discretion in allowing the evidence and in denying the motion for a mistrial, and further, assuming error, it was harmless.

Initially, we note that, contrary to defendant's assertion on appeal, defendant's girlfriend had earlier testified, without objection, that her children were removed from the home following her son's death based on her failure to protect them. Further, defendant's direct examination of

the FIA worker opened the door for the prosecutor to elicit the testimony in dispute. We reiterate that defendant sought to place blame on his girlfriend for the child's death. With that in mind, the FIA worker was questioned on direct examination regarding the FIA investigation, defendant's girlfriend's failure, in part, to cooperate in the investigation, physical marks on the body of the victim, and the lack of gas and electricity in the home. This was clearly an attempt to leave the jury with the impression that the FIA had removed the children because of some abuse on the part of defendant's girlfriend.

The right to cross-examination includes the right to attempt to elicit responses that tend to contradict, weaken, modify, elucidate, or explain the testimony given by the witness on direct examination. *People v Bell*, 88 Mich App 345, 349; 276 NW2d 605 (1979), quoting *People v Dellabonda*, 265 Mich 486, 499-500; 251 NW 594 (1933). The evidence concerning the basis of the FIA investigation, i.e., failure to protect, was therefore admissible to explain or elucidate the witness' testimony given on direct examination and to contradict or weaken any suggestion that the FIA believed that defendant's girlfriend was directly involved in abusing and killing the victim.

Moreover, the disputed evidence did not indicate any conclusive findings by the FIA that defendant alone was responsible for the child's death. Additionally, assuming error, it was harmless because the evidence overwhelmingly indicated defendant's guilt, where he repeatedly lied to police regarding the circumstances of the crime, the forensic testimony placed the injuries in a time frame consistent with defendant's interaction with the child, defendant admitted to somewhat assaulting the child causing the child to strike his head, and where there was a lack of evidence showing any involvement by defendant's girlfriend in inflicting the fatal blows. MCL 769.26; *People v Lukity*, 460 Mich 484, 495; 596 NW2d 607 (1999). There is no basis to reverse defendant's convictions.

Affirmed.

/s/ Jessica R. Cooper
/s/ William B. Murphy
/s/ Kirsten Frank Kelly