

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
October 18, 2011

v

MICHAEL ANTHONY GRIFFIN,

Defendant-Appellant.

No. 300254
Genesee Circuit Court
LC No. 10-026446-FC

Before: MURPHY, C.J., and TALBOT and MURRAY, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree felony murder (murder in the perpetration of first-degree child abuse), MCL 750.316(1)(b), and first-degree child abuse, MCL 750.136b(2). Defendant was sentenced to life imprisonment without the possibility of parole on the felony murder conviction, along with a concurrent prison sentence of 95 months to 15 years on the child abuse conviction. Defendant appeals as of right. We affirm.

Defendant's convictions arose following the death of his seven-month-old daughter Naviah Griffin. On September 30, 2009, Naviah was left solely in defendant's care while the child's mother, Alecia Patton, went to the store and stopped at a friend's home. Upon her return a few hours later, defendant met her at the door with Naviah nonresponsive in his arms. Defendant explained that she had fallen from a baby swing. Naviah was ultimately transported to the hospital by ambulance in critical condition. Testing revealed that Naviah was suffering from a large subdural hematoma. Naviah was transferred to the NICU with the hope that the swelling would subside on its own without the need for a craniotomy. Unfortunately, her condition worsened and she was taken to surgery. During the procedure, Naviah's brain swelled uncontrollably. In light of Naviah's condition, the removal of life support was authorized and she died.

Naviah's treating physicians concluded that the explanation for the cause of her injuries, i.e., a relatively short fall of less than two feet from a baby swing, was wholly inconsistent with the nature and extent of her injuries. While none of the testifying doctors could pinpoint the exact causative mechanism of the injuries, they concluded that the injuries evidenced "abusive head trauma," either by violent shaking or blunt force trauma or a combination of the two. The medical examiner concluded that Naviah's death was a homicide.

On appeal, defendant first argues that his convictions cannot stand because there was insufficient evidence presented at trial to establish first-degree child abuse, which served as the predicate felony for the felony murder charge. We disagree.

We review claims of insufficient evidence de novo. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). When ascertaining whether sufficient evidence was presented at trial to support a conviction, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515-516; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). This Court will not interfere with the trier of fact's role of determining the weight of the evidence or the credibility of witnesses. *Id.* at 514-515. Circumstantial evidence and reasonable inferences that arise from such evidence can constitute satisfactory proof of the elements of the crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). All conflicts in the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). We also note that, because of the difficulty in proving intent or the actor's state of mind, minimal circumstantial evidence is sufficient. *People v Fetterley*, 229 Mich App 511, 517-518; 583 NW2d 199 (1998).

With respect to the crime of first-degree child abuse, MCL 750.136b(2) provides that “[a] person is guilty of child abuse in the first degree if the person knowingly or intentionally causes serious physical or serious mental harm to a child.” In *People v Maynor*, 470 Mich 289, 295; 683 NW2d 565 (2004), our Supreme Court observed:

The plain language of the statute requires that to be convicted of first-degree child abuse, a person “knowingly or intentionally causes serious physical harm or serious mental harm to a child.” MCL 750.136b(2). The phrase “knowingly or intentionally” modifies the phrase “causes serious physical or serious mental harm to a child.” Thus, this language requires more from defendant than an intent to commit an act. The prosecution must prove that . . . the defendant intended to cause serious physical or mental harm to the child[] or . . . knew that serious mental or physical harm would be caused by [the act].

Defendant first contends that the evidence was insufficient because the prosecutor failed to establish the actual mechanism of injury. Defendant's argument necessarily assumes that there is a relevant difference between whether Naviah died from defendant severely shaking her or from defendant hitting her in the head (blunt force trauma). It does not matter, as both acts constitute abusive conduct directed at the child to inflict harm. And the medical testimony was abundantly clear that Naviah's injuries could not have been caused by a fall from the baby swing as claimed by defendant.

Defendant also maintains that the prosecution failed to show that he knowingly or intentionally caused serious physical or serious mental harm to the child. We disagree. The evidence revealed that Naviah had a significant subdural hemorrhage, a subarachnoid hemorrhage, uncontrollable brain swelling, and a retinal hemorrhage. Dr. Samantha O'Broin testified that the child's injuries were consistent with other patients that O'Broin had treated who had fallen from second story windows or who had been in car accidents. Dr. Brian Nolan

testified that you simply do not get the type of injuries that Naviah sustained from the fall described by defendant and that the damage to the child's brain required the infliction of significant force. Dr. Gregory Casey testified that Naviah's case was one of the worst cases he had ever seen. The deputy medical examiner who performed the autopsy testified that a fall of at least eight to ten feet would be necessary to cause veins in the brain to tear, and she also noted that rotational force is necessary to tear veins that run over the surface of the brain. Dr. Rudy Castellani testified that a traumatic brain injury causing subdural bleeding and brain swelling had occurred to an extent "incompatible with life." None of the doctors believed or opined that the injuries were consistent with a fall from the baby swing.

This medical testimony showed that the child had suffered a severe level of abuse, such that it could reasonably be inferred that defendant knowingly or intentionally caused the harm. Furthermore, there were admissions by defendant that he would occasionally "slap" Naviah in the head as a form of punishment, which indicates an intent to inflict harm upon her and/or knowledge of inflicting some degree of harm. Additionally, as acknowledged by defendant in his brief, he testified that he learned about shaken baby syndrome in school, so he would have been well aware of the injuries that a child could sustain from being shaken. Defendant appears to suggest that he could not have knowingly or intentionally caused harm to Naviah because there were no visible, external signs of injuries. This argument defies logic, as one would only be able to observe visible signs of injury, or the lack thereof, *after* commission of an assault.

Furthermore, there was a past incident in which the child supposedly rolled off the couch at five weeks old while solely in defendant's care that caused facial swelling and required a trip to the hospital. And there was evidence that Naviah supposedly fell out of the baby swing several times while solely in defendant's care, with defendant claiming that one of the falls resulted in bruising, even though there was medical testimony that deemed it unlikely that Naviah would have been able to work her way out of the swing and fall to the floor due to her developmental age. Dr. Castellani indicated that Naviah had suffered two separate brain injuries, as his examination revealed a previous subdural bleed that had resolved itself. Viewing this evidence in a light most favorable to the prosecution, a juror could reasonably infer that defendant had previously abused the child in a manner that caused injuries and therefore he intentionally or knowingly caused the harm that led to the charges brought here.

There was more than sufficient evidence to support the convictions, given the evidence that the child was okay when initially left in defendant's care, that defendant was the only person caring for the child at the time of the incident, that the child was unresponsive and later died directly after being in defendant's care, that the claimed mechanism of injury, a fall from a baby swing, was inconsistent with Naviah's injuries as reflected in the medical testimony, that the doctors opined that Naviah suffered abusive head trauma, that the injuries were severe, that there was past inferential evidence of abuse committed by defendant, and that defendant admitted to slapping the infant and knew about shaken baby syndrome. Accordingly, because defendant challenges the felony murder conviction on the theory that the predicate felony of first-degree child abuse was not shown by sufficient evidence, we find that there was sufficient evidence to support both convictions.

Defendant next argues that, under MRE 404(b) and MCL 768.27b, the trial court erred in allowing the admission of evidence regarding the alleged fall from the couch when Naviah was

five weeks old, the past instances in which the child allegedly fell from the baby swing, and regarding an incident in which defendant broke a window. The evidence was admitted pursuant to MRE 404(b) and MCL 768.27b.

In general, this Court reviews a trial court's decision regarding the admissibility of other-acts evidence for an abuse of discretion. *People v Crawford*, 458 Mich 376, 383; 582 NW2d 785 (1998). “However, decisions regarding the admission of evidence frequently involve preliminary questions of law, e.g., whether a rule of evidence or statute precludes admissibility of the evidence.” *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999). Questions of law are reviewed de novo. *Id.*

Pursuant to MRE 404(b)(1), “[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith.” Other-acts evidence, however, may 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[.]” Evidence of other acts may be admitted under MRE 404(b)(1) if: (1) the evidence is offered for a proper purpose, i.e., “something other than a character to conduct theory[.]” (2) the evidence is relevant under MRE 402, as enforced by MCR 104(b), “to an issue or fact of consequence at trial [.]” and (3) the probative value of the evidence is not substantially outweighed by its potential for undue prejudice under MRE 403. *People v VanderVliet*, 444 Mich 52, 74-75; 508 NW2d 114 (1993). MCL 768.27b(1) provides that “in a criminal action in which the defendant is accused of an offense involving domestic violence, evidence of the defendant's commission of other acts of domestic violence is admissible for any purpose for which it is relevant, if it is not otherwise excluded under Michigan rule of evidence 403.” Here, the charged offenses involved domestic violence and the prior acts at issue ostensibly involved domestic violence. MCL 768.27b(5)(a) and (b).¹

As can be gleaned by our discussion of the sufficiency argument, the other-acts evidence entailing falls from the couch and swing was relevant to whether defendant knowingly or intentionally caused serious physical or serious mental harm to the child. For purposes of MRE 404(b), the evidence was admissible to show intent and the absence of mistake or accident. For these same reasons, the other-acts evidence concerning falls was relevant for purposes of MCL

¹ Defendant’s claim that his prior conduct in breaking a window at Patton’s apartment should not have been admitted under MCL 768.27b because it did not qualify as an act of domestic violence is not persuasive. The definition of “domestic violence” for purposes of MCL 768.27b includes “activity toward a family or household member that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested.” MCL 768.27b(5)(a)(iv). The testimony established that defendant and Patton had an argument significant enough that Patton asked defendant to leave her home, that defendant broke the window within a day of that argument, and that Patton was present in the room when the window was broken. It would be reasonable for Patton to be frightened by defendant’s conduct.

768.27b. The theory of the defense presented at trial was that defendant had left his child unattended and unbuckled in a child swing and, while this carelessness had led to tragic consequences, he lacked the requisite intent to be convicted of the charged offense. The evidence that Naviah had been injured on other occasions while in defendant's sole care and that such injuries had been explained in an implausible way was relevant to counter this defense.

Defendant complains that there was no evidence connecting the fall from the couch to the medical evidence of the older subdural hemorrhage. However, this argument misses the point. Naviah's face was swollen and she was taken to the hospital because of the alleged couch fall, which occurred when defendant was alone with Naviah and under questionable circumstances considering the child's developmental age relative to movement ability. A juror could reasonably infer that the harm to Naviah was caused by abuse committed by defendant, which would in turn support, in conjunction with the medical evidence, a finding that he intended to harm or knowingly harmed Naviah on the date of her injury and death, as opposed to a mere accident occurring. Indeed, all of the prior "falls" greatly called into question the defense theory that Naviah simply fell from the baby swing. Moreover, assuming that Naviah did accidentally fall on all of these other prior occasions, the evidence would be relevant as bearing on the nature and cause of the injury that resulted in the child's death. With respect to the broken window, the evidence was relevant to showing defendant's violent tendencies and explosive anger, which would be permissible under MCL 768.27b. See *People v Pattison*, 276 Mich App 613, 619; 741 NW2d 558 (2007) (analyzing comparable statute MCL 768.27a and noting that "it allows what may have been categorized as propensity evidence to be admitted"). Additionally, while the other-acts evidence was prejudicial, just like most evidence introduced by a prosecutor is prejudicial, the probative value of the evidence was not substantially outweighed by the danger of *unfair* prejudice, MRE 403, for purposes of analysis under MRE 404(b) or MCL 768.27b.

Defendant also argues that the prosecutor engaged in misconduct by questioning defendant about his employment status. Defendant specifically argues that the challenged evidence was irrelevant and offered for an improper purpose. We disagree.

We review unpreserved claims of prosecutorial misconduct for plain error affecting the defendant's substantial rights. *People v Thomas*, 260 Mich App 450, 454; 678 NW2d 631 (2004). The test of prosecutorial misconduct is whether the defendant was denied a fair and impartial trial. *People v Dobek*, 274 Mich App 58, 63; 732 NW2d 546 (2007). Prosecutorial misconduct issues are decided on a case-by-case basis, and the reviewing court must examine the record and evaluate a prosecutor's remarks in context. *Thomas*, 260 Mich App at 454. "Generally, prosecutors are accorded great latitude regarding their arguments and conduct." *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995) (quotation omitted).

Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." MRE 401. This is a broad definition, allowing the admission of evidence that is helpful in throwing light on any material point. *People v Aldrich*, 246 Mich App 101, 114; 631 NW2d 67 (2001).

In addition, defendant correctly observes that evidence of a defendant's poverty or unemployment is generally not admissible to show motive because of its low probative value and

the risk that jurors may view such a defendant as a “‘bad man’--a poor provider, a worthless individual.” *People v. McLaughlin*, 258 Mich App 635, 665–666; 672 NW2d 860 (2003). However, evidence of a defendant's financial condition may be admissible in the circumstances of a particular case. *Id.*

Here, the evidence that defendant was unemployed and depended on others for his material needs was not presented to generally portray him as a bad or worthless person, but rather to show how it affected defendant's emotional status. In addition, this evidence was relevant because it was central to the prosecutor's theory of the case that defendant took out his frustration toward Patton on his daughter. Indeed, there was police testimony, confirmed by defendant, that defendant indicated during his interview with police that Patton should have returned sooner and that “none of us would be sitting here right now” if Patton had just gone to the store and come right back. Thus, the admission of evidence did not constitute error, much less plain error affecting defendant’s substantial rights.

Defendant finally argues that his conviction for first-degree child abuse must be vacated or run afoul of the Double Jeopardy Clause. We disagree.

Generally, double jeopardy issues constitute questions of law that we review de novo. *People v Calloway*, 469 Mich 448, 450; 671 NW2d 733 (2003). However, unpreserved double jeopardy issues are reviewed for plain error affecting a defendant’s substantial rights. *People v Meshell*, 265 Mich App 616, 628; 696 NW2d 754 (2005).

The Double Jeopardy clauses of the federal and state constitutions prohibit a criminal defendant from being placed twice in jeopardy for a single offense. US Const, Ams V, XIV; Const 1963, art 1, § 15; see also *People v Booker (After Remand)*, 208 Mich App 163, 172; 527 NW2d 42 (1994). In *People v Ream*, 481 Mich 223, 239-240; 750 NW2d 536 (2008), our Supreme Court held that the *Blockburger*² “same elements” test is applicable when a defendant is convicted of both felony murder and the underlying predicate felony. Here, each offense contains an element not found in the other, i.e., the killing of a human being as to felony murder but not required for first-degree child abuse, and causing serious harm to a child as to first-degree child abuse but not required for felony murder. A person can commit first-degree felony murder without committing first-degree child abuse and can commit first-degree child abuse without committing first-degree felony murder.³ Thus, defendant’s convictions and sentences do not violate Double Jeopardy protections.

² In *Blockburger v United States*, 284 US 299, 304; 52 S Ct 180; 76 L Ed 306 (1932), the United States Supreme Court held that multiple punishments are permissible so long as each of the crimes for which a defendant is convicted contains an element not found in the other conviction.

³ In *Ream*, 481 Mich at 241, the Court explained:

In the instant case, defendant was convicted of both first-degree felony murder and first-degree criminal sexual conduct, where the latter constituted the predicate felony for the felony-murder conviction. The killing of a human being is

Affirmed.

/s/ William B. Murphy
/s/ Michael J. Talbot
/s/ Christopher M. Murray

one of the elements of first-degree felony murder. Sexual penetration is one of the elements of first-degree criminal sexual conduct. First-degree felony murder contains an element not included in first-degree criminal sexual conduct, namely, the killing of a human being. Similarly, first-degree criminal sexual conduct contains an element not necessarily included in first-degree felony murder, namely, a sexual penetration. First-degree felony murder does not necessarily require proof of a sexual penetration because first-degree felony murder can be committed without also committing first-degree criminal sexual conduct. First-degree felony murder is the killing of a human being with malice while committing, attempting to commit, or assisting in the commission of *any* of the felonies specifically enumerated in MCL 750.316(1)(b). Therefore, unlike first-degree criminal sexual conduct, first-degree felony murder does not necessarily require proof of a sexual penetration. That is, it is possible to commit the greater offense [first-degree felony murder] without first committing the lesser offense [first-degree criminal sexual conduct]. Because first-degree felony murder and first-degree criminal sexual conduct each contains an element that the other does not, we conclude that these offenses are not the “same offenses” under either the Fifth Amendment or Const. 1963, art. 1, § 15, and, therefore, defendant may be punished separately for each offense. [Citations, alterations, and quotations omitted.]