

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

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PEOPLE OF THE STATE OF MICHIGAN,  
  
Plaintiff-Appellee,

UNPUBLISHED  
June 10, 2014

v

ANGEL DAWN MICHEAU,  
  
Defendant-Appellant.

No. 310471  
Delta Circuit Court  
LC No. 11-008508-FH

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Before: BECKERING, P.J., and RONAYNE KRAUSE and BOONSTRA, JJ.

PER CURIAM.

Defendant appeals as of right from her jury trial conviction of first-degree child abuse, MCL 750.136b(2). She was sentenced to serve 75 months to 15 years in prison. We affirm.

**I. PERTINENT FACTS AND PROCEDURAL HISTORY**

On April 11, 2011, defendant took her three-month old daughter to a walk-in clinic to address what she told staff was a diaper rash and congestion. The clinic doctor determined that the alleged rash looked more like a burn and sent the baby to the emergency room. At the emergency room, the baby's injuries were confirmed to be first- and second-degree burns. An emergency room nurse testified that the burn on the baby's back measured 23 centimeters by 12 centimeters. The baby also had approximately 12 various-sized blisters covering her buttocks and into her vaginal area. Her injuries were classified as serious and she needed immediate specialized attention. The baby was transported to St. Vincent's Hospital in Green Bay, Wisconsin, and from there to Milwaukee Children's Hospital.

Tera Ison, an emergency room nurse, testified that she assessed the baby in a triage room and marked the situation as triage level 2, which means it is "serious" and "needs immediate attention." Ison testified that defendant never cried and that she "seemed anxious." She also said she did not see much interaction between defendant and the baby and that defendant did not seem concerned about the baby's injuries. Another emergency room nurse, Elizabeth Harris, testified that defendant texted on her phone and did not appear attentive or as concerned as she should have been by the baby's injuries. Harris also testified that defendant made several statements throughout the visit. Defendant allegedly stated that she did not know how the burns

happened, that the burns must have occurred when Ronald Micheau (Micheau), her husband, gave the baby a bath,<sup>1</sup> that she was afraid the baby would be taken away from her now, that she was all alone now, that Ron was away for work and she could not get a hold of him, that she had to take care of the baby, that she had no money, that her phone did not work, and that she had lost her job because of the baby.<sup>2</sup>

Harris testified that the red on the baby's back measured 23 centimeters by 12 centimeters, that the ruptured blister on her left buttock measured 3½ centimeters by 3 centimeters, and that the ruptured blister on her right buttock measured 3 centimeters by 3 centimeters. There were also approximately 12 various-sized blisters on the baby's buttocks and into her vaginal area. Dr. Alice Swenson testified that the baby had first- and second-degree burns on her back and buttocks.

Swenson testified that the baby had several additional injuries. The baby had a bruise on her right cheek and her upper frenulum was disrupted. She also had a fairly new fracture to her right clavicle, two posterior left rib fractures, nine anterior front left rib fractures, six anterior front right rib fractures, and an older fracture to the ulna of her left arm. Swenson opined that the anterior rib fractures had likely occurred within the previous seven days and that the posterior rib fractures had likely occurred within a seven to ten day window. Medical tests showed that the baby did not bruise easily and that she had normal bones. Swenson opined that because the baby was a non-mobile infant she could not have caused the injuries herself. She opined that the posterior rib fractures were caused by front and back compression and that the anterior ribs could have been fractured by squeezing the baby or by a "very forceful direct blow."

Dr. Richard Hennila, an expert witness who did not treat the baby, opined that the baby's injuries were intentional. He based this opinion on the fairly uniform distribution of the burn that he believed could only have been created by dipping her in hot water or running hot water over her bare skin. He stated that if the water temperature was 149 degrees, the burn would have started within three to five seconds and then progressed.<sup>3</sup> He opined that a three-month-old baby would feel pain.

Micheau testified that he fought constantly with defendant. In particular, he indicated that he planned on returning to work at the Skerbeck Brothers Carnival, but that the job would require him to be gone for six months. He said that defendant fought with him all the time about work because she did not want him to go back. In contrast, defendant claimed she changed her mind on Micheau's returning to the carnival because they had no money, but she "still didn't

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<sup>1</sup> Drs. Kasetty and Piehler also testified that defendant stated that Micheau might have given the baby a bath.

<sup>2</sup> Defendant admitted that she made all the statements except the statement that she lost her job because of the baby. She explained that what she really said was that she lost her job because she was pregnant with the baby and fighting with Micheau all the time.

<sup>3</sup> The hot water temperature in defendant's apartment was measured and reached 149 degrees.

want him to go because I was afraid my daughter wouldn't remember him because he'd be gone for six months."

The day of the injury, April 11, 2011, was the first day that Micheau returned to work at the carnival. He testified that he woke up by 6:30 a.m., smoked a cigarette, made some coffee, changed the baby's diaper, fed the baby, and then put the baby in her playpen. He said he did not notice anything unusual about her "diaper area," that she was "perfectly fine," and that he did not run steam or give her a bath. He testified that he then kissed defendant and told her that he had to go to work and that the baby was congested. He did not hear about the baby's injuries until about 3:00 p.m.

Defendant gave several statements about what happened. At trial, she testified that she is a heavy sleeper and that Micheau woke up before she did that morning. She said that he placed the baby in her playpen, told her that the baby was congested, gave her a kiss, and left for work. Defendant said she realized that the baby was having trouble breathing, so she carried her into the kitchen, turned on the hot water and waited until it started steaming. She explained that, while cradling the baby, she used her hand to waft the steam toward the baby's face to ease her congestion, and that at some point she also boiled water on the stove in order to put moisture into the air. Defendant testified that the baby started to whine, so she fed and burped her and then put her back to sleep. While the baby was sleeping, she decided to clean the house. She testified that she had just finished filling the sink when she heard her daughter "scream." She explained later that the baby made the sound "when she peed, and that's when I heard this blood curdling scream and went and found out about the burns." Defendant said she ran to the baby, unbuttoned her "onesie" and noticed her back was red, and that she noticed more red and blisters when she took the baby's diaper off. Defendant said she got the baby ready to go to the hospital and that she received a ride from one of her friends.

Defendant gave almost the exact same account of events to Officer Eric LaFave the first time she spoke with him. She also told a similar version to Julie Stevenson, a child welfare worker.

After the baby was transferred to the children's hospital, LaFave gave defendant a ride back to her apartment. Defendant allowed him to look around her apartment. He collected a "onesie" with blood on it and also found a bloody baby wipe. Further, defendant demonstrated for him how she allegedly wafted the steam toward the baby. He then asked defendant to go to the police station and write out a statement. She agreed. At the police station, LaFave interviewed her again in the interview room. In the second interview, defendant gave almost the same exact statement again. After the interview, she wrote out a statement that contains only minor differences from her trial testimony. At the end of the statement she stated that "I think everything points to my husband Ronald Dean Micheau burning our little daughter . . . and trying to hide it. There are things that don't make sense [sic] from the time he had her until I had her."

Detective Todd Chouinard executed a search warrant on defendant's apartment on April 14, 2011. He testified that he had defendant demonstrate how she was holding the baby and that after her demonstration he told her that it did not "make sense." He showed her alternative ways that she could have been holding the baby and defendant allegedly told him that she did not think she was holding the baby that way but that it was possible. At one point he

showed her a position where the water would have been dripping on the baby. Defendant allegedly said “Oh, my God. I burned – burned my baby.”<sup>4</sup> Additionally, Sherry Carpenter, a foster care worker with the Department of Human Services (DHS), testified that defendant “freely” admitted that she had burned her baby.<sup>5</sup> However, Chouinard acknowledged that defendant never admitted that she intentionally burned the baby.

## II. OTHER ACTS EVIDENCE

Defendant first argues that the trial court erred in admitting other acts evidence and evidence of defendant’s own statements. This Court reviews the trial court’s admission of other acts evidence for an abuse of discretion. *People v Waclawski*, 286 Mich App 634, 670; 780 NW2d 321 (2009). “A court abuses its discretion when it chooses an outcome that is outside the range of reasonable and principled outcomes.” *Id.* Furthermore, the “determination whether the probative value of evidence is substantially outweighed by its prejudicial effect is best left to a contemporaneous assessment of the presentation, credibility, and effect of the testimony.” *Id.*

The trial court, in reliance on MCL 768.27b,<sup>6</sup> admitted evidence that defendant called her unborn baby an idiot, threatened to kill herself and her unborn baby, threw herself onto the ground while pregnant, and punched herself in the belly while she was pregnant. The trial court expressly found that the evidence was probative as to defendant’s intent and that the probative value was not substantially outweighed by the danger of unfair prejudice. Defendant argues the admission of the evidence was error because, although relevant, it was not evidence of domestic violence and was unduly prejudicial. Plaintiff concedes that evidence was improperly admitted under MCL 768.27b, because the acts alleged were not other acts of domestic violence within the meaning of the statute, and defendant’s statements were not “other acts” of any sort. Plaintiff contends, however, that the evidence was nonetheless admissible and properly admitted, and that there was no plain error.

Given plaintiff’s concession that the evidence was improperly admitted under MCL 768.27b, we need not address the issue, but hold that any error was harmless. The evidence of defendant’s other acts was relevant to show defendant’s intent and motive and would have been admissible under MRE 404(b), and because evidence of defendant’s statements was admissible under MRE 801(d)(2) as statements of a party-opponent. See *People v McLaughlin*, 258 Mich App 635, 652 n 7 (2003) (noting that we will not reverse a trial court decision when the lower court reaches the correct result even if for a wrong reason.)

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<sup>4</sup> At trial, defendant testified that Chouinard convinced her that she had burned her baby and that she had said “Oh, my God. I might have burnt my baby.”

<sup>5</sup> At trial, defendant asserted that she only thought she possibly caused the burns because Chouinard had convinced her that she had caused them.

<sup>6</sup> MCL 768.27b permits the introduction of other acts of domestic violence for any relevant purpose so long as it is not otherwise excluded under MRE 403.

Even if relevant, evidence may be excluded “if its probative value is substantially outweighed by the danger of unfair prejudice.” MRE 403. “All evidence offered by the parties is prejudicial to some extent, but the fear of prejudice does not generally render the evidence inadmissible. It is only when the probative value is *substantially outweighed* by the danger of unfair prejudice that evidence is excluded.” *People v Mills*, 450 Mich 61, 75; 537 NW2d 909, mod on other grounds 450 Mich 1212 (1995) (citations omitted; emphasis in original).

In this case, the evidence established that defendant threatened to harm her unborn baby when her husband was leaving her. In addition, at times defendant would actually try and inflict harm on her unborn baby by throwing herself to the ground or punching herself in the stomach with a closed fist. There was also testimony that she called her unborn baby an idiot, and that she stated she did not want the baby and did not care if she lost the baby. This testimony was highly probative because it went directly to defendant’s intent and motive with respect to the charge for which she stands convicted. Further, the unchallenged testimony presents the same basic facts as the challenged statements and conduct.

Finally, the trial court instructed the jury as follows:

Some of the testimony in this case might show that the defendant committed other bad acts. Remember that the defendant is not on trial for any of those acts. . . . You must find that the defendant committed the alleged act or less serious acts, or you must find the defendant not guilty.

The trial court thus instructed the jury that they must not convict defendant because of her other acts, but must find that defendant had committed the alleged acts that upon which the charge against her was based. Jurors are presumed to follow their instructions. *People v Mette*, 243 Mich App 318, 330-331; 621 NW2d 713 (2000). This instruction served to further reduce the danger of unfair prejudice to the defendant. See *People v Katt*, 248 Mich App 282, 309; 639 NW2d 815 (2001).

Under these circumstances, the probative value of the evidence was not “substantially outweighed by the danger of unfair prejudice.” MRE 403. The trial court therefore did not abuse its discretion in admitting it.

### III. JURY INSTRUCTIONS

Defendant next asserts that she was deprived of the right to a unanimous verdict when the jury instructions with regard to the charge of first-degree child abuse failed to identify which incident formed the basis of the conviction. To preserve this issue, defendant had to request a specific unanimity instruction or object to the trial court’s instructions on that basis. *People v Gadowski*, 232 Mich App 24, 30; 592 NW2d 75 (1998). Defendant did not do so. Indeed, when asked to comment on the instructions given, defendant, through counsel, stated that she had no objections. Thus, defendant waived the issue for review, thereby extinguishing any claim or error. *People v Carter*, 462 Mich 206, 216; 612 NW2d 144 (2000). In any event, the jury was instructed in accordance with the plain language of the child abuse statute, MCL 750.136b(2), and there is simply no evidence on this record that the jurors were confused or that they had

reason to disagree about the factual basis of defendant's guilt, see *People v Cooks*, 446 Mich 503, 524; 521 NW2d 275 (1994).

#### IV. OV 7

Next, defendant argues that the trial court erred in scoring offense variable (OV) 7 at 50 points. "Under the sentencing guidelines, the circuit court's factual determinations are reviewed for clear error and must be supported by a preponderance of the evidence." *People v Hardy*, 494 Mich 430, 439-440; 835 NW2d 340 (2013). "Whether the facts, as found, are adequate to satisfy the scoring conditions prescribed by statute, i.e., the application of the facts to the law, is a question of statutory interpretation, which an appellate court reviews de novo." *Id.*

OV 7 addresses aggravated physical abuse. MCL 777.37(1). Fifty points should be assessed if the "victim was treated with sadism, torture, or excessive brutality or conduct designed to substantially increase the fear and anxiety a victim suffered during the offense." MCL 777.37(1)(a). In this case, the trial court found defendant's conduct amounted to either sadism or excessive brutality.

Sadism is defined as "conduct that subjects a victim to extreme or prolonged pain or humiliation and is inflicted to produce suffering or for the offender's gratification." MCL 777.37(3); *People v Blunt*, 282 Mich App 81, 89; 761 NW2d 427 (2009). Here, the evidence showed that it was more likely than not that the baby was subjected to extreme pain. She received first- and second-degree burns, apparently when defendant held her under or immersed her in scalding hot water. The burns included ruptured blisters on her buttocks and approximately 12 various-sized blisters on her buttocks and into her genital area. She was given morphine a couple of times to address the pain. There was adequate evidence that she was subject to prolonged pain because the burn would only *start* about three to five seconds after the baby was forced into contact with the water. Moreover, defendant testified that the baby released a "blood curdling scream." Given that the jury found the burning was intentional and could rationally conclude that defendant held the baby in excessively hot water for at least several seconds, it can be inferred that the reason for burning the baby was to cause suffering. The trial court therefore did not err in finding adequate evidence of sadism. See *People v James*, 267 Mich App 675; 680; 705 NW2d 724 (2005).

The phrase "excessive brutality" is not defined by statute; this Court has defined it as requiring savagery or cruelty beyond the usual brutality of the crime. *People v Glenn*, 295 Mich App 529, 533; 814 NW2d 686 (2012), rev'd on other grounds sub nom *Hardy*, 494 Mich at 430 (2013). First-degree child abuse is defined as a defendant knowingly or intentionally causing serious physical or serious mental harm to a child. MCL 750.136b(2). Here numerous severe and painful burns were inflicted on an infant who, unlike an older child, could not physically attempt to avoid injury or even tell anyone what happened to her. Defendant's conduct was thus cruel and savage beyond what was necessary to sustain a conviction for first-degree child abuse. See *People v Wilson*, 265 Mich App 386, 397-398; 695 NW2d 351 (2005). The evidence supported a score of 50 points for OV 7 on the ground of excessive brutality.

#### IV. ALLEYNE CHALLENGE

Finally, in a supplemental brief, defendant argues that the trial court engaged in judicial fact-finding that increased her minimum sentence in violation of *Alleyne v US*, \_\_\_ US \_\_\_; 133 S Ct 2151; 186 L E 2d 314 (2013). This argument was rejected in *People v Herron*, 303 Mich App 392, \_\_\_; \_\_\_ NW2d \_\_\_ (2013), slip op at 6:

We hold that judicial fact-finding to score Michigan’s sentencing guidelines falls within the “wide discretion” accorded a sentencing judge “in the sources and types of evidence used to assist [the judge] in determining the kind and extent of punishment to be imposed within limits fixed by law.” [*Alleyne v United States*, 570 US \_\_\_, \_\_\_ n 6; 133 S Ct 2151; 186 L Ed 2d 314 (2013)], quoting *Williams v New York*, 337 US 241, 246; 69 S Ct 1079; 93 L Ed 1337 (1949). Michigan’s sentencing guidelines are within the “broad sentencing discretion, informed by judicial factfinding, [which] does not violate the Sixth Amendment.” *Alleyne*, 570 US at \_\_\_; 133 S Ct at 2163.

This Court is bound to follow *Herron*. MCR 7.215(J)(1). We accordingly reject defendant’s claim of error.

Affirmed.

/s/ Jane M. Beckering  
/s/ Mark T. Boonstra