

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BIENVENIDA ARGAWANON TRUMBLA,

Defendant-Appellant.

UNPUBLISHED

October 27, 2005

No. 256361

Wayne Circuit Court

LC No. 04-000875-01

Before: Talbot, P.J., and White and Wilder, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of second-degree child abuse, MCL 750.136b(3), and was sentenced to three years' probation, with the first twelve months to be served in jail. Defendant appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's sole argument on appeal is that the evidence presented by the prosecution was insufficient to support her conviction. The basis of defendant's argument is that the prosecution failed to prove that defendant either caused or knew about the child's injuries. Therefore, any failure to seek medical treatment could not constitute an "omission" for purposes of satisfying an element of the crime.¹ We disagree.

The standard of review for a sufficiency of the evidence claim is articulated in *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992): "[W]hen determining whether sufficient evidence has been presented to sustain a conviction, a court must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt."

The Court also added in *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000):

¹ MCL 750.136b(3)(a) states in pertinent part that "[a] person is guilty of child abuse in the second degree if . . . [t]he person's omission causes serious physical harm . . . to a child or if the person's reckless act causes serious physical harm to a child."

The standard of review is deferential: a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the [fact-finder's] verdict. The scope of review is the same whether the evidence is direct or circumstantial. Circumstantial evidence can constitute satisfactory proof of the elements of a crime.

Defendant gave a statement to the police in which she claimed that, at approximately 10:00 a.m., on Monday, April 29, 2002, the decedent, defendant's seventeen-month-old foster child who she was in the process of adopting, fell down the basement stairs. She put ice on a bump on his head, gave him a bath and put him down for a nap. When defendant's husband came home, he discovered that the decedent was not breathing and his lips were blue. The decedent was transported to the hospital where he was pronounced dead at 1:34 P.M.

At trial, the prosecution called two expert witnesses, the assistant medical examiner, who performed the autopsy on the decedent, and a pediatric neurosurgeon. Both testified that the decedent died as a result of at least four blunt force blows to the head, which caused bleeding on the brain. According to both doctors, the pattern and mechanics of the decedent's injuries were not consistent with a fall down the stairs, and they were not self-inflicted. They stated that the medical evidence was not consistent with defendant's version of events. They also noted that when the decedent was presented to the emergency room at 1:10 P.M. on April 29, his body temperature was eighty-nine degrees. That lead them to believe that the decedent had died sometime between 6:00 A.M. and 7:00 A.M. on the morning of April 29.

In its findings of fact, the trial court found that the decedent died from at least four blows to the head, which were suffered between 4:00 A.M. and 6:00 A.M. The injuries were not caused by a fall. Based on those findings and that the decedent's body temperature was eighty-nine degrees when he was admitted to the hospital, the court found that defendant's statement was not believable. The court also found that defendant was reckless in leaving the decedent alone while he was awake, since the injuries would clearly have been noticeable and should have caused the defendant to seek medical treatment. Because defendant admitted seeing the decedent's injuries, defendant's failure to seek medical treatment also constituted an omission, which caused serious physical harm to the decedent.

Viewing the evidence in a light most favorable to the prosecution, and finding that the trial court made reasonable inferences based on the facts of record, *Nowack, supra*; *Wolfe, supra*, we conclude that there was sufficient evidence to justify a reasonable trier of fact in finding defendant guilty beyond a reasonable doubt of second-degree child abuse.

Affirmed.

/s/ Michael J. Talbot
/s/ Helene N. White
/s/ Kurtis T. Wilder