

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SAMUEL ARTHUR COURTLAND,

Defendant-Appellant.

UNPUBLISHED

December 16, 2008

No. 276206

Ingham Circuit Court

LC No. 06-000532-FC

Before: Saad, C.J., and Fitzgerald and Beckering, JJ.

PER CURIAM.

A jury convicted defendant of first-degree felony murder, MCL 750.316(1)(b), with regard to the murder of two-year-old Jalyn Daniel, and second-degree child abuse, MCL 750.136(b)(3), with regard to the abuse of seven-year-old Sydney Johnson.¹ The trial court sentenced defendant to life imprisonment for the felony murder conviction, and as an habitual offender, MCL 769.10, to a prison term of 36 to 72 months for the second-degree child abuse conviction. Defendant appeals as of right. We affirm.

Defendant argues that the prosecution failed to present sufficient evidence to support the felony murder conviction. In determining whether sufficient evidence has been presented to sustain a conviction in a criminal case, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational finder of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Odom*, 276 Mich App 407, 418; 740 NW2d 557 (2007). “[C]ircumstantial evidence and reasonable inferences may be sufficient to prove the elements of a crime,” *People v Tanner*, 469 Mich 437 445 n 6; 671 NW2d 728 (2003). *People v Harmon*, 248 Mich App 522, 524; 640 NW2d 314 (2001). The credibility of a witness is an issue for the finder of fact. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

A person is guilty of first-degree felony murder when the murder is “committed in the perpetration of, or attempt to perpetrate . . . child abuse in the first degree.” MCL 750.316(1)(b).

¹ The jury also convicted defendant of first-degree child abuse, MCL 750.136(2), but this charge, being the predicate felony for the felony murder charge, was dismissed by the court at sentencing.

First-degree child abuse is committed “if the person knowingly or intentionally causes serious physical or serious mental harm to the child.” MCL 750.136(b). Defendant argues the prosecutor failed to present sufficient evidence to support a finding that defendant knowingly or intentionally caused Jalyn serious physical harm. Intent can be inferred from circumstantial evidence including the act, means, or manner employed to commit the offense. *People v Hawkins*, 245 Mich App 439, 458; 628 NW2d 105 (2001). Because of the difficulty of proving an actor’s state of mind, minimal circumstantial evidence is all that is needed to support a finding that a defendant acted with a specific intent. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999).

Here, the circumstantial evidence of defendant’s intent to cause Jalyn physical harm is more than minimal. There is not only direct testimony about observed physical abuse, there is also compelling medical testimony to support the verdict. See *People v Howard*, 226 Mich App 528, 550; 575 NW2d 16 (1997). Jalyn’s siblings testified that defendant repeatedly beat Jalyn with a belt on several occasions. In addition, Cynthia Daniel, the mother of both Jalyn and Sydney, testified that Jalyn was burned with a household iron while under defendant’s care. The postmortem medical examination revealed severe injuries, some of which were the result of repeated inflictions of blunt force. Jalyn also suffered third-degree burns, hemorrhaging in the brain, dead skin cells, loss of pigmentation in the feet, almost complete bruising on the legs, and internal hemorrhaging. The record establishes that defendant repeatedly physically abused Jalyn, and it is reasonable to conclude from the evidence that the abuse was intentional.

Defendant also argues that his right to offer a defense was unconstitutionally restricted when the trial court excluded rebuttal testimony by a friend of Daniel, who was prepared to testify that Daniel spoke with her son Sydney some time in the fall of 2005 at the boy’s school. Defense counsel offered this testimony as impeachment or rebuttal evidence in response to Daniel’s testimony that the last time she saw Sydney was at the hearing where her parental rights were terminated.

Daniel’s contact with Sydney after the termination of parental rights does not constitute a bad act “probative of truthfulness or untruthfulness.” MRE 608(b)(1). Further, “MRE 608(b) generally prohibits impeachment of a witness by extrinsic evidence regarding collateral, irrelevant, or immaterial matters.” *People v Spanke*, 254 Mich App 642, 644; 658 NW2d 504 (2003). Extrinsic evidence is “[e]vidence that is calculated to impeach a witness’s credibility, adduced by means other than cross-examination of the witness.” Black’s Law Dictionary (8th ed). And while the proffered rebuttal does rebut Daniel’s testimony about when she last had contact with Sydney, defense counsel solicited the denial during his cross-examination of Daniel. “[A] denial cannot be elicited on cross-examination simply to facilitate the admission of new evidence.” *People v Figgures*, 451 Mich 390, 401; 547 NW2d 673 (1996).

Defendant also asserts that the trial court erred by denying his motion to sever the count of second-degree child abuse against Sydney. MCR 6.120 provides as follows:

- (A) The prosecuting attorney may file an information or indictment that charges a single defendant with any two or more offenses. Each offense must be stated in a separate count. Two or more informations or indictments against a single defendant may be consolidated for a single trial.

(B) On its own initiative, the motion of a party, or the stipulation of all parties, except as provided in subrule (C), the court may join offenses charged in two or more informations or indictments against a single defendant, or sever offenses charged in a single information or indictment against a single defendant, when appropriate to promote fairness to the parties and a fair determination of the defendant's guilt or innocence of each offense.

(1) Joinder is appropriate if the offenses are related. For purposes of this rule, offenses are related if they are based on

(a) the same conduct or transaction, or

(b) a series of connected acts, or

(c) a series of acts constituting parts of a single scheme or plan.

(2) Other relevant factors include the timeliness of the motion, the drain on the parties' resources, the potential for confusion or prejudice stemming from either the number of charges or the complexity or nature of the evidence, the potential for harassment, the convenience of witnesses, and the parties' readiness for trial.

(3) If the court acts on its own initiative, it must provide the parties an opportunity to be heard.

(C) On the defendant's motion, the court must sever for separate trials offenses that are not related as defined in subrule (B)(1).

"MCR 6.120(B) is a codification of our Supreme Court's decision in" *People v Tobey*, 401 Mich 141; 257 NW2d 537 (1977). *People v Abraham*, 256 Mich App 265, 271; 662 NW2d 836 (2003). In *Tobey*, our Supreme Court provided the following guidance:

The commentary accompanying the [ABA] Standards [relating to joinder and severance] explains that "same conduct" refers to multiple offenses "as where a defendant causes more than one death by reckless operation of a vehicle." "A series of acts connected together" refers to multiple offenses committed "to aid in accomplishing another, as with burglary and larceny or kidnapping and robbery." "A series of acts * * * constituting parts of a single scheme or plan" refers to a situation "where a cashier made a series of false entries and reports to the commissioner of banking, all of which were designed to conceal his thefts of money from the bank. [*Tobey, supra* at 151-152.]

Plaintiff argues that joinder was proper under MCR 6.120(B)(1)(c). The hypothetical provided in *Tobey* to describe when acts are part of a single scheme or plan describes the situation where the "acts are constituent parts of a plan in which each act is a piece of the larger plan." *People v Sabin (After Remand)*, 463 Mich 43, 63; 614 NW2d 888 (2000). The charged acts in the present case are more like the situation where acts are found to be "sufficiently similar

to support an inference that they are manifestations of a common plan, scheme, or system.” *Id.* This latter situation is not comparable with the hypothetical set forth in *Tobey*, which discusses the existence of a *single* plan as opposed to a *common* plan.

However, the charged acts do constitute a “series of connected acts.” MCR 6.120(B)(1)(b). The victims were siblings and a part of the same household. Also, defendant used threats and brutal beatings to exercise dominance and create an environment of fear, allowing him to continue to abuse the children over time. In sum, the charged acts were “multiple offenses committed to aid in accomplishing another.” *Tobey, supra* at 151-152.

Additionally, it was not necessary to sever the related offenses to generally promote fairness. The evidence of the abuse of Sydney was logically relevant and thus admissible under *Sabin*. Cf. *People v Girard*, 269 Mich App 15, 18-19; 709 NW2d 229 (2005). Further, the trial court properly instructed the jury to “consider each crime separately in light of all the evidence in the case.” “It is well established that jurors are presumed to follow their instructions.” *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998).

Defendant argues lastly that his due process rights were violated by prearrest delay. Long delays before a defendant is arrested can deprive him of his due process rights and require dismissal of charges. *People v Marion*, 404 US 307, 324-326; 92 S Ct 455; 30 L Ed 2d 468 (1971). Defendant points to changes in Daniel’s version of events between the time when the police began the investigation and the time when he was finally arrested. However, discrepancies in Daniel’s version of events were sufficiently addressed at trial. Defendant also argues that the trial depended largely on the memories of the children testifying as to whether it was defendant or Daniel that inflicted the injuries. However, “[a] general claim that the memories of witnesses have suffered is insufficient to demonstrate prejudice.” *People v Musser*, 259 Mich App 215, 220; 673 NW2d 800 (2003); see also *Tanner, supra* at 414-415 (“Actual prejudice is not established by general allegations or speculative claims of faded memories, missing witnesses, or other lost evidence.”). Defendant was not prejudiced by any prearrest delay.

Affirmed.

/s/ Henry William Saad
/s/ E. Thomas Fitzgerald
/s/ Jane M. Beckering