

STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

Supreme Court
No. 160264

v

Court of Appeals
No. 337120

CODIE LYNN STEVENS,

Lower Court
No. 15-041275-FH

Defendant-Appellee.

**PLAINTIFF-APPELLANT'S REPLY TO DEFENDANT-APPELLEE
STEVENS'S SUPPLEMENTAL BRIEF**

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Argument

I. Throughout this case, the prosecution has maintained that defendants were culpable under an “intentional act” theory, MCL 750.136b(3)(b). This theory was presented to the jury at trial and the evidence supported defendants’ convictions under it.

MCL 750.136b(3) provides, in relevant part, that a person is guilty of child abuse in the second degree in the following circumstances:

(a) The person’s omission causes serious physical harm or serious mental harm to a child or if the person’s reckless act causes serious physical harm or serious mental harm to a child.

(b) The person knowingly or intentionally commits an act likely to cause serious physical or mental harm to a child regardless of whether harm results.

Defendant Stevens first contends on appeal that she was charged only with violating Subdivision (a).¹ This is inaccurate. The felony information did not indicate that defendants were charged only under Subdivision (a) of MCL 750.136b(3), but rather that defendants’ actions were “contrary to MCL 750.136b(3)-(4),” i.e., the second-degree child abuse statute generally. The description of the offense in the information encompassed *both* MCL 750.136b(3)(a) *and* (b) and specifically referenced the “intentional act” provision of Subdivision (b), stating that defendants “knowingly and intentionally commit[ed] an act likely to cause serious physical or mental harm to a child” Felony Information, 6/3/15. Defendant Stevens incorrectly asserts that the prosecutor only pursued a theory of criminal culpability under Subdivision (a) of MCL 750.136b(3) and that only the “omission” and “reckless

¹ Defendant Stevens’s supplemental brief, p 12.

act” theories were at issue before the jury.

Defendant Stevens argues that the prosecutor’s theory at trial was premised only upon defendants’ “failure to take action and provide medical care for [the] child,” and that the prosecutor relinquished any intentional act theory under MCL 750.136b(3)(b) during opening argument.² This inaccurately describes the People’s theory at trial and the prosecutor’s opening argument. In his opening argument, the prosecutor stated the following:

[T]his opening statement is for me to tell you what I intend to prove, what evidence you can expect, here. But I want to tip you off right now, what I will not prove, in this case, in the People’s case, when we are calling our witnesses, and before we—evidence, and before we rest, *we will not prove that the skull fracture or a particular broken arm or rib or a particular brain bleed or the resulting fluid buildup from that bleed or a particular retinal hemorrhage in one or the other of the eyes was specifically caused by him or her.*

If the evidence, in this case, could show an intentional act by one or both of them, the criminal charge would be a higher degree. It wouldn’t be second degree, it would first degree; it would be intentionally-caused child abuse or injury. [App 5b [174-175] (emphasis added).]

Read in context, the prosecutor’s statement that he would not be able to prove an “intentional act” referenced the idea that he would be unable to prove that defendants *intentionally caused the child’s injuries*, a showing requiring to prove first-degree child abuse.³ See Tr, 5/5/16, 38, attached (“The People aren’t claiming that there is intentional damage done[.]”). Neither the information nor the prosecutor

² Defendant Stevens’s supplemental brief, p 13.

³ See MCL 750.136b(2) (“A person is guilty of child abuse in the first degree if the person knowingly or intentionally causes serious physical harm or serious mental harm to a child.”).

at trial ever foreclosed the possibility that defendants could be culpable under an “intentional act” theory pursuant to Subdivision (b) of MCL 750.136b(3). The defense attorneys recognized this theory was in play at trial. See Tr 5/5/16, 42-43, attached (“The Information is drawn, essentially these alternatives . . . they have three theories, alternatives here. . . . The third is act likely to cause serious physical harm. Defendant knowingly or intentionally did an act likely to cause serious physical harm to Roegan Krukowski, regardless of whether such harm resulted.”). An “intentional act” theory under Subdivision (b), along with the prosecution’s “reckless act” and “willful abandonment” theories under Subdivision (a), was presented before the jury at trial. See App 219-220a [145-146].

Defendant Stevens contends that her conviction could not be sustained under a “reckless act” theory because the prosecutor only alleged that she failed to seek appropriate medical treatment for the infant, and a failure to seek medical care is an omission, not an act.⁴ Defendant does not address, however, why her acts of lying to a medical professional and then seeking chiropractic care for the infant, which was recommended by the pediatrician only based upon the lie Stevens told, could not be used to sustain her conviction under a reckless act theory. Additionally, defendant does not address why these same acts, as well as her act of giving the child bottles of water following a known head injury, would be insufficient to sustain her conviction under the intentional act theory, MCL 750.136b(3)(b), presented before the jury.

⁴ Defendant Steven’s supplemental brief, pp 13-15.

II. Defendants' convictions should be affirmed under a willful abandonment theory.

Defendant Stevens next contends that her conviction under a willful abandonment theory could not be sustained because she *did* seek medical treatment for Roegan after his fall—she went to see Dr. Elvira Dawis with Roegan for a regularly scheduled appointment on February 9, two days after the fall.⁵ This fact, though, is insufficient to relieve defendants of criminal culpability under a “willful abandonment” theory for two reasons. First, defendants made no effort to seek out treatment for Roegan immediately after or because of the fall. Then, at the infant’s regularly scheduled check-up two days later, Stevens hid from the pediatrician the fact that the fall occurred. Defendants make much of the fact that Stevens testified at trial that she *did* inform Dr. Dawis about the bathtub fall, but Dr. Dawis testified that Stevens expressly denied any fall (App 65a [25-26]). And Dr. Dawis even went so far as to write in her notes for the appointment that “mom denies any fall” (App 65a [26]). The jury was free to credit Dr. Dawis’s testimony and to discredit Stevens’s. See *People v Young*, 472 Mich 130, 143; 693 NW2d 801 (2005) (“Fundamentally, it is the province of the jury to assess the credibility of witnesses.”).

Defendant Stevens argues that the rule of lenity should apply and prevent defendants’ convictions under a willful abandonment theory. “The rule of lenity requires that ambiguities in penal statutes be resolved against the imposition of harsher punishments.” *People v Smith*, 423 Mich 427, 446; 378 NW2d 384 (1985).

⁵ Defendant Stevens’s supplemental brief, p 16.

This rule, however, “applies only in the circumstances of an ambiguity, or in the absence of any firm indication of legislative intent.” *People v Wakeford*, 418 Mich 95, 113-114; 341 NW2d 68 (1983). “A provision is not ambiguous because reasonable minds can differ regarding the meaning of the provision. Rather, a provision of the law is ambiguous only if it ‘irreconcilably conflict[s]’ with another provision, or when it is equally susceptible to more than a single meaning.” *People v Gardner*, 483 Mich 41, 50 n 12; 753 NW2d 78 (2008) (cleaned up).

The People in their supplemental brief did not suggest that the statutory phrase “willful abandonment” in MCL 750.136b(1)(c) is ambiguous because it irreconcilably conflicts with another statutory provision or is equally susceptible to more than one meaning. And defendant Stevens does not make any argument to support that the statutory language is ambiguous as this Court has defined that concept. The rule of lenity therefore does not apply.

Finally, defendant Stevens contends that the People improperly relied on the child endangerment statute, MCL 750.135, and the caselaw attendant thereto, to support their definition of “willful abandonment.” This misunderstands the People’s argument. In their supplemental brief on appeal, the People noted that there is caselaw from this Court and the Michigan Court of Appeals interpreting the term “abandonment” in the context of the child endangerment statute, MCL 750.135. However, the People then argued that these definitions should *not* control in the context of MCL 750.136b(1)(c) because the statutory language in the two statutes is entirely distinct. Defendant Stevens does not otherwise challenge the People’s

interpretation of the statutory phrase “willful abandonment.”

Summary and Relief Sought

The People respectfully ask this Court to reverse the decision of the Court of Appeals. Alternatively, if the Court concludes that the People are not entitled to the relief they seek, we would ask the Court to consider issuing an opinion that affirms the decision of the Court of Appeals, but clarifies the scope of the second-degree child abuse statute.

Respectfully submitted,

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Dated: September 16, 2020



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ATTACHMENT

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF SAGINAW

PEOPLE OF THE STATE OF MICHIGAN,

vs.

File No. 15-041274-FH-3
VOLUME VI of VII

DANE RICHARD KRUKOWSKI,

Defendant.
_____ /

PEOPLE OF THE STATE OF MICHIGAN,

vs.

File No. 15-041275-FH-3
VOLUME VI of VI

CODIE LYNN STEVENS,

Defendant.
_____ /

JURY TRIAL

BEFORE THE HONORABLE JANET M. BOES, CIRCUIT JUDGE

Saginaw, Michigan - May 5, 2016

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1 more. And that's really all that the People are
 2 claiming, and you'll get that by hearing the instructions
 3 from the court.
 4 The People aren't claiming that there is
 5 intentional damage done, the way you would if you haul
 6 off and hit somebody with your fist, or hit them over the
 7 head with a club, or took the baby and threw the baby
 8 against the bathtub. That would be intentional. Child
 9 abuse first degree. That's not what you have to decide.
 10 You have to decide, as parents, did they have an
 11 obligation which they abandoned? In other words, an
 12 act -- an omission to do something you have to do. Which
 13 parents have to do. That's why you have the parent/child
 14 relationship and those duties. All the people who have
 15 to step in the role of parents who don't do the job
 16 understand their duties, CPS, the police, the doctors,
 17 they behave in a way that protects the child.
 18 Codie and Dane didn't. Fearful of CPS, fearful
 19 of them getting in between them and their baby, fearful
 20 of being told how to raise their baby, perhaps fearful of
 21 losing their baby as you are heard Codie Stevens say when
 22 she was under oath. It's the last time I saw the baby.
 23 They chose to do the home doctoring, the home
 24 remedy. That was reckless. That's like that lady on the
 25 car commercial where the car -- the crash happens in slow

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1 motion, showing her daughter in the back, look at this
 2 picture I got. Look, somebody tweeted me this or texted
 3 me this. Crash. That's reckless. What she did and what
 4 he did is even more reckless than that TV example I just
 5 mentioned. What they did was knowing the injury had
 6 happened, because it's visible either the 7th or the 8th
 7 of February. They took no action. And by the way they
 8 acted, that's a choice. That's an act. We are going to
 9 put cold stuff on this baby's head. We are not going to
 10 not take the baby in. This is what we are going to do.
 11 And that's an intentional act that could lead to
 12 injuries.
 13 That's second-degree, in its various theories
 14 and various forms. It doesn't matter, as the court will
 15 instruct you, if six of you say it's a reckless act, and
 16 four of you say in the jury room it's more like the
 17 person, they abandoned their duty -- let me do my math
 18 right. Three of you say it's an intentional act, they
 19 acted intentionally in a way that could lead to injuries,
 20 even if they don't occur, they could lead to injuries.
 21 You don't have to be unanimous about which theory of
 22 child abuse second-degree is proven, as long as all agree
 23 that at least one of them is proved. How could you not
 24 conclude that from the evidence in this case? Thank you.
 25 THE COURT: All right. Mr. Bush?

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1 MR. BUSH: May it please the court, counsel,
 2 members of the jury.
 3 Well, when the state accuses a citizen of a
 4 crime and that citizen pleads not guilty, says I didn't
 5 do it, this is where we end up, in front of a jury of
 6 other citizens, sworn as you are, to decide the case on
 7 the law and the evidence, and in so doing we operate
 8 under what's known as the presumption of innocence. You
 9 heard about that a long time before you got summoned for
 10 jury service.
 11 That concept is included in the instructions
 12 that the court will give you after the arguments are
 13 through. In fact, it was in the instructions that you
 14 already -- the preliminary instructions you already
 15 heard. But I'd like to just take a moment to give you my
 16 perspective on that phrase, concept, as Codie Stevens'
 17 representative in this case.
 18 The rule says that the accused is presumed to
 19 be innocent, unless and until that presumption is
 20 overcome by proof beyond a reasonable doubt of each and
 21 every element of any charge brought against the accused.
 22 The concept of proof beyond a reasonable doubt,
 23 as I say, is included in the jury instructions, but it
 24 may be one of those things that you -- you know it when
 25 you see it, when you -- but you can't define it. And I'd

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1 say simply that if you're convinced of something beyond a
 2 reasonable doubt, you're as sure as a human being can be.
 3 Maybe nothing's a hundred percent in life, but beyond a
 4 reasonable doubt, you gotta be certain.
 5 That rule, if you think about it, is there to
 6 protect all of us against false accusations, mistakes,
 7 and overreaching on the part of the state, and it does
 8 protect us against those things so long as jurors apply
 9 it. And I'm speaking hypothetically now, but you, once
 10 you -- these arguments and you've received your final
 11 instructions, you retire to a jury room and you
 12 deliberate in private. And what goes on in that jury
 13 room you never have to talk about to anybody at any time.
 14 You could theoretically, or hypothetically, take that
 15 rule and throw it out. Say, jeez, something bad happened
 16 here, but why don't we just get this over with, get on
 17 with it, bring in a conviction and move on.
 18 The problem of course with that is that, today,
 19 Codie Stevens is sitting in that chair. Tomorrow, it
 20 could be any one of the rest of us, or somebody that we
 21 care about, and with another jury and facing some charge,
 22 and if you throw the rule out in this case, the next jury
 23 can do it in the next case, the next jury after that.
 24 Pretty soon it doesn't exist anymore, and nobody's
 25 protected against false accusations, mistakes, and

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1 overreaching by the state.
 2 That same instruction is given in any criminal
 3 case, from disturbing the peace to first-degree murder,
 4 because that's the cornerstone of our system. And on
 5 behalf of defendant Codie Stevens, I am requesting, as I
 6 have a right to and obligation to, members of the jury,
 7 the application of that rule, first and foremost. No
 8 more, maybe, but for sure no less than that.
 9 The prosecutor, the prosecution requests that
 10 you second-guess a judgment call made by my client back
 11 in February of 2015. And that request is made on the
 12 basis of another request, which is that you speculate on
 13 what happened back during the week of February 14th to
 14 February 22nd, the date that Roegan was taken to the
 15 hospital.
 16 The information in the case alleges that the
 17 offense charged occurred on or about February 7th, 2015,
 18 to February 22nd, 2015, and alleges that my client did
 19 cause serious physical harm and/or knowingly or
 20 intentionally commit an act likely to cause serious
 21 physical or mental harm to a child, by failing to seek
 22 medical treatment after significant trauma which resulted
 23 in further or exacerbated physical injury or
 24 deterioration of the child's health and/or intentionally
 25 causing physical trauma. That information is drawn,

1 essentially these alternatives -- alternative theories
 2 that the prosecutor mentioned towards the end of his
 3 argument, and involving an allegation, allegations, of,
 4 that you decide, either abandonment of the child -- they
 5 have three theories, alternatives here. These, you know
 6 you'll get these in writing, but the first is
 7 abandonment, that the defendant willfully abandoned
 8 Roegan Krukowski and third that, as a result, Roegan
 9 Krukowski suffered physical harm, serious physical harm.
 10 Second is reckless act. Defendant did some
 11 reckless act -- this is from the jury instruction --
 12 consisting of treating Roegan Krukowski with inadequate
 13 home remedy for an obvious head injury, rather than
 14 seeking professional medical treatment.
 15 The third is act likely to cause serious
 16 physical harm. Defendant knowingly or intentionally did
 17 an act likely to cause serious physical harm to Roegan
 18 Krukowski, regardless of whether such harm resulted. The
 19 intentional act alleged consists of treating Roegan
 20 Krukowski with inadequate home remedy for an obvious head
 21 injury, rather than seeking professional medical
 22 treatment.
 23 So, as alleged in the information at least, the
 24 case began on the 7th of February when, there on Colony
 25 Drive, during a bath, Mr. Krukowski lost control of

1 Roegan and he hit his head on the side of a bathtub.
 2 He summoned my client upstairs, she went
 3 upstairs, they both looked after the child at that time
 4 and decided to wait. They talked with my client's
 5 mother, and they had an appointment already scheduled for
 6 that coming Monday, February 9th, with Dr. Dawis who was
 7 their pediatrician. Dr. Dawis had treated their
 8 daughter, Ella, previously.
 9 My client indicated under oath on the stand
 10 that she, Ella being her first child, she had been taken
 11 to the emergency room maybe five, six times for various
 12 things, and that that experience, apparently together
 13 with what medical knowledge she had acquired at this Ross
 14 Medical Institute, at least gave her some indication or
 15 confidence that she could handle what had happened there
 16 and at least wait until the appointment with Dr. Dawis.
 17 The implication being, as I think you can conclude, that
 18 perhaps some of the visits that Ella made to the
 19 emergency room maybe, maybe all of them, weren't really
 20 necessary, and that that was in my client's mind at this
 21 time.
 22 At any rate, they kept the appointment with
 23 Dr. Dawis and -- who measured the child's head and who
 24 did this maneuver, slapping the table and so forth. The
 25 main -- the current problem being, at that time at least,

1 vomiting and that there was a formula problem,
 2 apparently. And my client had delivered the child on
 3 December 6th by Cesarean, as she has described, and that,
 4 at least in her memory, was a rough delivery. She
 5 indicated that after the delivery, the child's head was
 6 black and blue, and we've got Exhibit 26 which you can
 7 have access to in the jury room and it depicts his head
 8 basically right after the birth. You can consider it in
 9 making a judgment on her testimony regarding this birth.
 10 At any rate, Dr. Dawis, back five days after
 11 the birth, examined Roegan and at that time there was a
 12 vomiting issue, and but the doctor diagnosed him as a
 13 well child. And her general instructions were to call
 14 her any time, I think she testified she's available 24/7,
 15 and her advice to her patients, general advice to her
 16 patients, was come and see me before you go to the
 17 emergency room. She testified to that.
 18 Well, going back to February the 9th, she
 19 referred my client and the child to the chiropractic
 20 clinic down the road, which apparently that's a routine
 21 with Dr. Dawis, she does that routinely. Although she
 22 testified, as I recall, that she didn't know what they
 23 did down there, she says, what action the chiropractors
 24 took, but this was certainly not her first referral of a
 25 patient down there, and she referred them for an exam