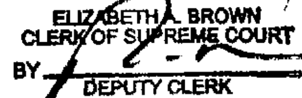
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GARRON AL HATHALE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 75503-COA



FILED

JAN 25 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY [signature]
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of child abuse or neglect. Fourth Judicial District Court, Elko County; Alvin R. Kacin, Judge.

First, appellant Garron Hathale contends insufficient evidence supported his conviction for child abuse or neglect because the State failed to prove that he acted willfully and that his conduct was nonaccidental. We disagree.

In reviewing the sufficiency of the evidence, the appellate court must decide, "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of a crime beyond a reasonable doubt." *Milton v. State*, 111 Nev. 1487, 1491, 908 P.2d 684, 686-87 (1995) (internal quotation marks omitted).

Pursuant to NRS 200.508(1), it is unlawful for a person to willfully cause "a child who is less than 18 years of age to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect *or* to be placed in a situation where the child may suffer physical pain or mental suffering as the result of abuse or neglect." (Emphasis added). Child abuse is a general intent crime. *Childers v. State*, 100 Nev. 280, 283, 680 P.2d



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598, 599 (1984). Thus, the term "willfully," as prescribed by NRS 200.508(1), is defined as an intent to do the act, rather than any intent to violate the law or to injure another person. *Id.*

In this case, the surveillance video captured Hathale intentionally punch Lee repeatedly and inadvertently punch Lee's minor child. Although Hathale did not intend to hit the minor child, NRS 200.508(1) only requires that Hathale intended to throw those punches, irrespective of the intended recipient. Further, Hathale's action undeniably placed the minor child in a situation where he suffered physical pain and may have endured mental suffering. Therefore, we conclude that, after reviewing the evidence in a light most favorable to the State, a rational fact-finder could have found Hathale guilty of child abuse or neglect beyond a reasonable doubt.

Second, Hathale contends that the sentence he received of 16 to 40 months in prison constituted cruel and unusual punishment because it was disproportional to the facts in this case. We disagree.

"A sentence within the statutory limits is not 'cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience.'" *Blume v. State*, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting *Culverson v. State*, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)). The sentence imposed is within the parameters of the relevant statute, NRS 193.130(2)(b), and Hathale does not challenge the constitutionality of the statute. In addition, Hathale's sentence of 16 to 40 months for child abuse does not shock our conscience. We therefore conclude that the sentenced imposed did not constitute cruel and unusual punishment. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_______________, A.C.J.
Douglas

_______________, J.
Tao

_______________, J.
Gibbons

cc: Hon. Alvin R. Kacin, District Judge
Elko County Public Defender
Attorney General/Carson City
Elko County District Attorney
Elko County Clerk