

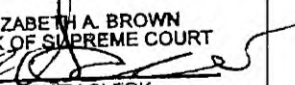
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DWAYNE DAVID POPE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 88803-COA

FILED

APR 23 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Dwayne David Pope appeals from a judgment of conviction, following a jury verdict, of eight counts of child abuse or neglect and one count of domestic battery.¹ Seventh Judicial District Court, White Pine County; Steven L. Dobrescu, Judge.

On February 21, 2023, during a snowstorm, Pope and his wife, Amanda Rambeau, moved into a three-bedroom trailer with their nine minor children.² That night, Pope left the trailer and later returned intoxicated, at which point he got into a physical altercation with his eldest son, B.R., in the living room. During the incident, Pope pushed B.R. and began throwing objects around the room. When Rambeau attempted to intervene, Pope pushed her to the ground, injuring her tailbone. Shortly afterward, T.P. entered the room, and Pope pushed her to the ground. The children present in the living room during this incident were B.R., T.P.,

¹Pope does not challenge the judgment of conviction related to the count of domestic battery.

²The children are referred to by their initials as follows: B.R., A.P. (born in 2006), N.R., T.P., E.P., G.P., A.P. (born in 2015), L.P., and I.P. (an infant). To differentiate between the two children with the initials A.P., they will be identified as the younger A.P. and the older A.P.

N.R., and the older A.P.; the other children, E.P., L.P., G.P., and the younger A.P., were in the back bedrooms, along with I.P., who was asleep. Thereafter, T.P. fled to a nearby neighbor's residence, where she was later joined by Rambeau, while B.R. escaped to a different neighbor's residence. The neighbors then called law enforcement. Meanwhile, Pope remained inside the trailer with the remaining seven children. At some point, Pope pushed N.R. to the floor.

Two officers responded to the calls to law enforcement, first approaching the neighbor's residence where B.R. was located, and spoke with him. Body camera footage shows B.R. informing police that Pope was drunk and had pushed him and tried to kill Rambeau and that Pope was still in the trailer with his siblings. The footage also shows police approaching the trailer, while N.R., G.P., and the younger A.P. are seen leaving from the back of the trailer. Despite the snowstorm, the younger A.P. was not wearing a shirt. The officers entered the trailer and encountered L.P., who was standing in the doorway, crying and pointing toward one of the back rooms. Upon entering the back room, the officers saw Pope standing in front of the older A.P. in the corner, striking her across the face. Thereafter, Pope was arrested, and Rambeau and the children provided statements to the police, which were captured on body camera footage, describing how Pope was intoxicated and had hurt Rambeau and several of the children.

At issue here, the State charged Pope with eight counts of child abuse or neglect. Count I alleged that Pope committed child abuse or neglect by pushing B.R. or battering Rambeau in his presence.³ Count II

³In using the word "presence" in the criminal complaint, the State was indicating that the children were in the trailer when Pope battered Rambeau, rather than implying they directly witnessed the incident.

alleged that Pope committed child abuse or neglect by striking the older A.P. in the face or battering Rambeau in her presence. Count III alleged child abuse or neglect on grounds that Pope pushed T.P. or battered Rambeau in her presence. Count IV alleged child abuse or neglect based on Pope hitting N.R. or battering Rambeau in his presence. Counts V-VIII alleged that Pope committed child abuse or neglect resulting in unjustifiable physical pain or mental suffering to G.P.; L.P.; the younger A.P.; and I.P., the infant, by battering Rambeau in their presence.⁴

The case proceeded to a four-day jury trial in January 2024, where Rambeau, B.R., T.P., N.R., G.P., and the older A.P. testified but either recanted their initial statements to the police, stating that Pope never harmed anyone, or said they could not remember their original statements. Nevertheless, the jury also heard testimony from the responding police officers regarding what was initially reported to them about Pope's violence, and the body camera footage was admitted into evidence. Additionally, the State presented expert testimony from Faye Cavender, a social worker, and Dr. Amanda Haboush-Deloye, a clinical worker, on the effects of domestic violence, child abuse, neglect, and the behaviors of both victims and perpetrators. Both experts testified about why victims of domestic violence might recant their initial statements to police and explained that the behaviors of several of the children, as seen in the body camera footage, were consistent with those who have experienced mental suffering and emotional trauma. The jury ultimately convicted Pope on all counts of child abuse or neglect. Pope now appeals.

⁴It is unclear why the State did not pursue child abuse or neglect charges for Pope's treatment of E.P., since the record shows she was also present during the incident.

On appeal, Pope raises three issues. First, Pope argues that counts V-VIII stem from a single act of abuse or neglect, as each of the four children involved were merely present during the altercation, meaning his actions should only support one conviction, not four. Second, Pope argues that the evidence on counts V-VIII was insufficient to prove the children endured mental suffering, as they did not witness him battering Rambeau, and that simply witnessing such actions does not constitute child abuse or neglect. Third, Pope argues that the trial was tainted by Cavender's and Dr. Haboush-Deloye's prejudicial expert testimony, which was cumulative and not based on reliable methodology. We address each of Pope's arguments in turn.

Whether Pope's convictions on counts V-VIII were improperly redundant

Although double jeopardy is often discussed in the context of redundant convictions, this case instead involves a question of statutory interpretation, as Pope expressly challenges counts V-VIII solely on the grounds that they are impermissibly redundant, making a double jeopardy analysis unnecessary. *See Wilson v. State*, 121 Nev. 345, 356, 114 P.3d 285, 293 (2005) ("When a defendant receives multiple convictions based on a single act, this court will reverse *redundant convictions* that do not comport with legislative intent." (emphasis added) (quoting *Ebeling v. State*, 120 Nev. 401, 404, 91 P.3d 599, 601 (2004) (further internal quotation marks omitted))).

Statutory interpretation presents a question of law we review de novo. *Firestone v. State*, 120 Nev. 13, 16, 83 P.3d 279, 281 (2004). "[A] court should normally presume that a legislature did not intend multiple punishments for the same offense absent a clear expression of legislative intent to the contrary." *Talancon v. State*, 102 Nev. 294, 300, 721 P.2d 764, 768 (1986). Criminal statutes must be strictly construed and resolved in favor of the defendant. *Anderson v. State*, 95 Nev. 625, 629, 600 P.2d 241,

243 (1979). Nevertheless, “[w]hen a statute is unambiguous it should be given its plain meaning.” *Firestone*, 120 Nev. at 16, 83 P.3d at 281.

Pope was convicted on four counts of child abuse or neglect, counts V-VIII, for battering Rambeau in the presence of G.P.; L.P.; the younger A.P.; and I.P., the infant, pursuant to NRS 200.508(1). NRS 200.508(1) provides:

A person who willfully causes *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 [is generally guilty of a category B felony].

(Emphases added.) NRS 200.508(1), by its terms, intends to address harm inflicted on each individual child, whether through physical abuse, neglect, or emotional suffering, thereby supporting separate charges for each victim. The statute criminalizes willful harm inflicted upon “a child,” meaning that the law protects each child as an individual and ensuring that every child victim’s unique experience of abuse warrants independent legal action rather than being aggregated with others. By criminalizing willful acts that cause unjustifiable physical pain or mental suffering to a child, the statute ensures that every instance of harm is treated as a distinct offense. As a result, when an offender abuses multiple children, the law recognizes each child’s suffering separately, justifying separate charges for each victim.

While Pope’s abuse may have been part of a single sequence of events, his actions harmed each child in different ways, as each was exposed to his violent behavior. *See Galvan v. State*, 98 Nev. 550, 555, 655 P.2d 155, 157 (1982) (“[A] course of conduct resulting in harm to multiple victims gives rise to multiple charges of the same offense.”). G.P., L.P., the younger A.P., and I.P. were in the trailer when Pope, intoxicated and throwing things around the home, was physically abusive toward Rambeau, creating

an environment of fear and emotional distress for these children because they were placed in a situation where they might have experienced physical pain and mental suffering. Given that the Legislature drafted NRS 200.508(1) to address harm inflicted on each individual child, we conclude that Pope's convictions based on G.P., L.P., the younger A.P., and I.P. each being present during this violent incident are not improperly redundant.

Whether Pope's convictions on counts V-VIII were unsupported by sufficient evidence

Pope also argues there was insufficient evidence to convict him on counts V-VIII, as G.P.; L.P.; the younger A.P.; and I.P., the infant who was sleeping, did not witness the altercation, and hitting another parent in front of children does not constitute negligent treatment or maltreatment under NRS 432B.140.

The evidence to support a conviction is insufficient if "the prosecution has not produced a minimum threshold of evidence upon which a conviction may be based, even if such evidence were believed by the jury." *Evans v. State*, 112 Nev. 1172, 1193, 926 P.2d 265, 279 (1996) (emphasis omitted). When evaluating a challenge to the sufficiency of the evidence, this court reviews the evidence in the light most favorable to the prosecution and determines whether "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); accord *Mitchell v. State*, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008).

"Based on NRS 200.508(4)(a) and the statutes referenced therein, NRS 200.508(1) criminalizes five different kinds of child abuse or neglect: (1) nonaccidental physical injury, (2) nonaccidental mental injury, (3) sexual abuse, (4) sexual exploitation, and (5) negligent treatment or maltreatment." *Clay v. Eighth Jud. Dist. Ct.*, 129 Nev. 445, 452, 305 P.3d 901, 903 (2013). Negligent treatment or maltreatment is implicated in this

case, which for purposes of NRS 200.508, is defined in NRS 432B.140. Under NRS 432B.140, “negligent treatment or maltreatment” of a child occurs “if a child has been subjected to harmful behavior that is terrorizing, degrading, painful or emotionally traumatic.” Additionally, no showing of physical or mental injury is required to establish negligent treatment or maltreatment. *See* NRS 432B.140.

Although G.P., L.P., the younger A.P., and I.P. did not directly witness Pope harming Rambeau, the Nevada Supreme Court has ruled that criminal liability under NRS 200.508(1) will attach “if the defendant placed the child in a situation where the child *may* suffer physical pain or mental suffering as the result of the negligent treatment or maltreatment.” *Newsom v. State*, 136 Nev. 181, 189-90, 462 P.3d 246, 253 (2020) (quoting *Clay*, 129 Nev. at 454, 305 P.3d at 904). Thus, we disagree with Pope that his actions could not constitute negligent treatment or maltreatment under NRS 432B.140.

His physical abuse of Rambeau in the trailer created a situation where children could suffer unjustifiable physical pain or mental suffering. The body camera footage evidence shows several children fleeing the trailer in active distress. In that footage, Rambeau and the children also provided statements immediately following Pope’s arrest, informing the police that Pope had physically harmed Rambeau by pushing her to the ground and causing injuries to her tailbone. Rambeau and the children later recanted their initial statements at trial, but the State presented expert testimony on the psychological and emotional factors that often cause victims of domestic violence and child abuse to retract their allegations, and this court views the facts in the light most favorable to the prosecution. *See Origel-Candido v. State*, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).

Although the record indicates that Pope did not physically harm G.P., L.P., the younger A.P., and I.P., he knew they were in the trailer at

the time he harmed Rambeau. The record, including body camera footage, shows that G.P. and the younger A.P. were fleeing from the trailer in the middle of a snowstorm, while L.P. was crying in the doorway as police arrived. With respect to I.P., who was asleep, she was still in a dangerous situation, as the record indicates that Pope was highly intoxicated and had been physically violent. Moreover, Dr. Haboush-Deloye opined that even if a child appears to be asleep, they may still be in a situation where they may experience mental suffering due to the stress of the environment, explaining that children do not need to directly witness domestic violence to be traumatized—indeed, even an infant in a separate room can suffer mental suffering or emotional trauma, which may later manifest as developmental delays or behavioral issues.⁵

Thus, substantial evidence supports that Pope placed G.P., L.P., the younger A.P., and I.P. in a situation where they faced the risk of physical harm or emotional distress due to Pope's violent, drunken outburst, and physical abuse of Rambeau, supporting Pope's convictions under NRS 200.508(1). *See Newsom*, 136 Nev. at 189-90, 462 P.3d at 253; *see also Colchester v. Lazaro*, 16 F.4th 712, 718 (9th Cir. 2021) ("Spousal violence may also establish a grave risk of harm to the child, particularly when it occurs in the presence of the child." (internal quotation marks omitted)).

Whether the district court abused its discretion by admitting expert testimony from both Cavender and Dr. Haboush-Deloye

Pope challenges the expert testimony of Cavender and Dr. Haboush-Deloye on two grounds. First, he argues that the testimony was

⁵Haboush-Deloye was seemingly concerned about the possibility of an infant waking up to hear "fighting, yelling, screaming" without knowing how to process it, which she suggested could place the child in a situation where they "may" experience mental suffering.

needlessly cumulative and did not assist the jury in understanding the evidence. Second, he contends that the testimony was not based on reliable methodology, as it was solely derived from body camera footage.

We review a district court's admission of testimony, including expert testimony, for an abuse of discretion. *Archanian v. State*, 122 Nev. 1019, 1029, 145 P.3d 1008, 1016 (2006); *Mulder v. State*, 116 Nev. 1, 12-13, 922 P.2d 845, 852 (2000). In line with this standard, "the admissibility of expert testimony is a matter for the sound discretion of the trial judge." *Townsend v. State*, 103 Nev. 113, 119, 734 P.2d 705, 709 (1987).

To be admissible, expert testimony must "assist the trier of fact to understand the evidence or to determine a fact in issue." *Hallmark v. Eldridge*, 124 Nev. 492, 498, 189 P.3d 646, 650 (2008) (quoting NRS 50.275) (setting forth the three requirements for expert testimony to be admissible). "The 'assistance' requirement has two components: whether the testimony is (1) relevant and (2) the product of reliable methodology." *Perez v. State*, 129 Nev. 850, 858, 313 P.3d 862, 867 (2013) (citing *Hallmark*, 124 Nev. at 500, 189 P.3d at 651).

Pope does not challenge Cavender's and Dr. Haboush-Deloye's testimony on the grounds of relevance but argues that it was unfairly prejudicial because it was cumulative. See NRS 48.035(2) ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by considerations of . . . needless presentation of cumulative evidence.").

Each expert offered similar opinions on whether the children experienced mental suffering or emotional trauma after reviewing the body camera footage, but they had different credentials and approached the issue from their respective areas of expertise in clinical psychology and social work, and the district court properly made findings at trial to reflect these differences. See 75 Am. Jur. 2d *Trial* § 260 (2018) ("[T]estimony will not be

considered cumulative if the experts are not so similar in their credentials and approach to the issues.”). Furthermore, expert testimony is less likely to be considered cumulative on a key issue—here, whether the children experienced mental suffering due to abuse or neglect—particularly in light of the disputed evidence regarding Pope’s actions.⁶ See *Freeman v. Davidson*, 105 Nev. 13, 15, 768 P.2d 885, 887 (1989) (holding that expert testimony was not cumulative because the “case involve[ed] sharp factual contradictions”); see also *Shallow v. Follwell*, 554 S.W.3d 878, 883 (Mo. 2018) (noting that evidence is not “cumulative when it goes to the very root of the matter in controversy or relates to the main issue, the decision of which turns on the weight of the evidence” (internal quotations marks omitted)). Therefore, the district court did not err in finding that each expert’s testimony was not cumulative.

Next, Pope argues that Cavender’s and Dr. Haboush-Deloye’s testimony regarding each child’s “mental suffering” was not based on a reliable methodology, stating that the bulk of the State’s questions focused on whether the children’s behavior was consistent with the statutory requirement of “mental suffering,” yet the experts did not use any scientific methodology to answer these questions, but instead relied on body camera footage.

⁶For example, the events of that night were disputed at trial when Rambeau and the children recanted their statements to the police. With no other witnesses present before the police arrived, expert testimony on why victims might recant provided context to the key issue of whether Pope was violent that night. Additionally, Pope has questioned whether several of the children could have experienced mental suffering merely from being present during domestic violence in the home, and both experts provided context from their respective backgrounds explaining why the children could.

In determining whether an expert's opinion is based upon reliable methodology, the Nevada Supreme Court has outlined the following five factors for district courts to consider:

whether the opinion is (1) within a recognized field of expertise; (2) testable and has been tested; (3) published and subjected to peer review; (4) generally accepted in the scientific community (not always determinative); and (5) based more on particularized facts rather than assumption, conjecture, or generalization.


Hallmark, 124 Nev. at 500-01, 189 P.3d at 651-52 (footnotes omitted). However, the Nevada Supreme Court has held that the above factors are not exhaustive but rather “may be afforded varying weights and may not apply equally in every case.” *Perez*, 129 Nev. at 860, 313 P.3d at 869 (quoting *Higgs v. State*, 126 Nev. 1, 20, 222 P.3d 648, 660 (2010)).


In this case, considering the applicable factors, Cavender's and Dr. Haboush-Deloye's testimony regarding whether the children's behavior was consistent with mental suffering was based on their recognized fields of expertise. *See, e.g., State v. Jaquez*, 856 N.W.2d 663, 666 (Iowa 2014) (“We allow an expert witness to testify generally that victims of child abuse display certain demeanors.”); *State v. Myers*, 359 N.W.2d 604, 610 (Minn. 1984) (allowing expert testimony explaining “puzzling aspects of the child's conduct and demeanor which the jury could not otherwise bring to its evaluation of [the victim's] credibility”). Further, their testimony was based on particularized facts, as Cavender drew on her direct experience with child abuse victims to analyze the children's behaviors in the body camera footage, while Dr. Haboush-Deloye applied her research and clinical expertise to interpret the psychological implications of these same behaviors, each offering insights specific to the case rather than generalizing. Moreover, Dr. Haboush-Deloye testified that her research had been published in approximately 20 peer-reviewed articles. While not all

the *Hallmark* factors apply to these experts, we cannot conclude that the district court abused its discretion by allowing Cavender and Dr. Haboush-Deloye to testify about whether the children's behavior was consistent with mental suffering based on the body camera footage in accordance with NRS 200.508(1). See *Perez*, 129 Nev. at 860, 313 P.3d at 869. Accordingly, we

ORDER the judgment of conviction AFFIRMED.⁷


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Steve L. Dobrescu, District Judge
Nevada State Public Defender's Office
Attorney General/Carson City
White Pine County District Attorney
White Pine County Clerk

⁷Insofar as Pope raises arguments that are not specifically addressed in this order, we have considered the same and conclude they do not present a basis for relief.