IN THE SUPREME COURT OF THE STATE OF NEVADA

FROSTY LYNN BASHAW-PATCHIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 87470

FILED

MAY 19 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of child abuse causing substantial bodily harm. Third Judicial District Court, Lyon County; John Schlegelmilch, Judge.

Appellant Frosty Bashaw-Patchin's two-month-old son suffered multiple cardiac arrests and was transported to the hospital via Care Flight while under Bashaw-Patchin's supervision. Bashaw-Patchin was charged with child abuse causing substantial bodily harm and was found guilty after a jury trial. Bashaw-Patchin appeals the resulting judgment of conviction, challenging several evidentiary and trial procedure issues.

The State presented sufficient evidence to support the jury's verdict of guilt

Bashaw-Patchin contends that the State failed to present sufficient evidence that she willfully neglected or abused K.B.P., and that hypothermia caused his cardiac arrest. Evidence is sufficient to support a criminal conviction if "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt" when viewed in a light most favorable to the prosecution. *Belcher v. State*, 136 Nev. 261, 275, 464 P.3d 1013, 1029 (2020) (quoting *McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992)). "The jury's verdict will not be disturbed on appeal

when there is substantial evidence supporting it." *Brass v. State*, 128 Nev. 748, 754, 291 P.3d 145, 150 (2012).

We conclude that the State presented sufficient evidence on which a rational jury could find Bashaw-Patchin guilty of felony abuse or neglect of a child causing substantial bodily harm. First, as to abuse or neglect, the State presented evidence that after smoking marijuana throughout the day and night, Bashaw-Patchin placed K.B.P. in a car at about 3 a.m. Around 45 minutes later she found him unresponsive, and 911 was called. The responding officer administered CPR, as K.B.P. showed no signs of life. The State also presented evidence that temperatures on the night of the incident dipped to 55 degrees, that K.B.P. was dressed in a onesie, and that Bashaw-Patchin had covered K.B.P. with a small blanket. While Bashaw-Patchin claimed that she used three small blankets to cover K.B.P. and the car seat, she later found only one and other witness testimony supports that no blankets were used. On these facts, a rational trier of fact could conclude that Bashaw-Patchin willfully placed K.B.P. in the car without adequate warmth and supervision, causing him to be in a situation where he could suffer physical pain. *See* NRS 200.508(1) (defining child abuse, neglect, or endangerment); *Robey v. State*, 96 Nev. 459, 461, 611 P.2d 209, 210 (1980) (defining willful, as used generally in criminal statutes).

Second, as to substantial bodily harm, the State presented evidence that K.B.P. showed no signs of life when law enforcement arrived. K.B.P. was cold to the touch, his pupils were fixed and dilated, his skin was a grey or blue ashen color due to lack of oxygenated blood flow, and he was abnormally skinny. The Care Flight team recorded K.P.B.'s body temperature at 86 degrees. K.B.P. remained hospitalized for three weeks

and had to be on a ventilator for a portion of his stay. The hospital records reflect that, among other things, the baby suffered a "hypoxic ischemic brain injury [caused by deprivation of oxygen] including nystagmus [involuntary eye movement], seizures, and decreased LOC [level of consciousness]." On these facts, a rational trier of fact could conclude that K.B.P. suffered substantial bodily harm. NRS 0.060 (defining substantial bodily harm as injury that "creates a substantial risk of death . . . or[ ] causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ[,] . . . [or] [p]rolonged physical pain.")

The district court did not abuse its discretion in admitting certain evidence and improperly admitted evidence was harmless

Bashaw-Patchin complains that the district court abused its discretion in admitting certain evidence. *See McLellan v. State*, 124 Nev. 263, 267, 182 P.3d 106, 109 (2008) (reviewing "a district court's decision to admit or exclude evidence for an abuse of discretion"). First, Bashaw-Patchin argues that the drug evidence—Bashaw-Patchin's drug use and positive test result for amphetamines, methamphetamines, and marijuana— was irrelevant to the charge against her and thus inadmissible both as res gestae and as other act evidence. We disagree. The evidence of Bashaw-Patchin's drug use tends to establish that she placed her child in the car without ensuring that he was properly clothed and that she failed to properly supervise him because she was under the influence. This evidence was properly admitted as res gestae evidence because it was part of the same transaction—the same temporal and physical circumstances as the charged child abuse or neglect offense. *See Alfaro v. State*, 139 Nev. Adv. Op. 24, 534 P.3d 138, 149-150 (2023) (explaining that evidence that the defendant made the victim watch pornography was res gestae evidence because the defendant made the victim watch the pornography while

committing the charged acts and mimicked the acts in the pornography as she was watching it); NRS 48.035(3).

Second, Bashaw-Patchin challenges the admission of photos of the drugs and paraphernalia, evidence of her older children playing close to the drugs, and evidence that K.B.P. tested positive for meth at birth. While we agree that the photographs were likely cumulative and that the other children playing near the drugs and K.B.P's positive drug test were not relevant to the charged crime, we conclude the error in admitting this evidence was harmless in light of overwhelming evidence of Bashaw-Patchin's guilt. *See Harris v. State*, 134 Nev. 877, 882-83, 432 P.3d 207, 212 (2018) (for nonconstitutional errors, "reversal is only warranted if the error had substantial and injurious effect or influence in determining the jury's verdict."); *Allred v. State*, 120 Nev. 410, 415, 92 P.3d 1246, 1250 (2004) ("An error is harmless when it is clear beyond a reasonable doubt that a rational jury would have found the defendant guilty absent the error." (internal quotation marks omitted)).

Third, Bashaw-Patchin argues that the body camera footage depicting the first responder administering CPR should not have been admitted because any probative value was substantially outweighed by its unfairly prejudicial impact. We disagree. While the video is graphic, it helped establish the time of initial treatment and is highly probative of the substantial bodily injury element of the crime as it depicts K.B.P.'s emergent condition after Bashaw-Patchin removed him from the car where she had left him unattended. *Harris*, 134 Nev. at 880, 432 P.3d at 210 (holding that media depicting "a victim's injuries tend[s] to be highly probative and thus [is] frequently deemed admissible in criminal cases despite [its] graphic content."); *State v. Eighth Jud. Dist. Ct. (Armstrong)*,

127 Nev. 927, 933, 267 P.3d 777, 781 (2011) (noting the NRS 48.035(1) inquiry is not concerned with mere prejudice because "all evidence against a defendant will on some level 'prejudice' (i.e., harm) the defense."). Further, the footage helped establish that K.B.P. was underweight and not properly dressed, which tied into the State's claim that Bashaw-Patchin neglected K.B.P. by placing an underdressed small baby in a car without monitoring his condition.

To the extent that Bashaw-Patchin argues a single screenshot would have sufficed, this argument was not raised below and is therefore reviewed for plain error. *See Browning v. State*, 124 Nev. 517, 533, 188 P.3d 60, 71 (2008) (holding that the failure to object below generally waives an argument on appeal, absent plain error). We conclude Bashaw-Patchin has not shown that admitting the full video caused actual prejudice or a miscarriage of justice resulting in a grossly unfair outcome to meet the plain error standard, because the video accurately depicts K.B.P. and the State otherwise introduced overwhelming evidence of guilt. *Jeremias v. State*, 134 Nev. 46, 51, 412 P.3d 43, 49 (2018).

The district court did not abuse its discretion in allowing Dr. Dubansky's expert witness testimony

Bashaw-Patchin challenges the district court decision to allow Dr. Dubansky to testify as an expert, arguing that his testimony was improperly based on the assumption of facts and hearsay from police and medical reports. Reviewing for an abuse of discretion, *Perez v. State*, 129 Nev. 850, 856, 313 P.3d 862, 866 (2013), we perceive no reversible error here. Bashaw-Patchin identifies no bias in the medical reports Dr. Dubansky relied upon, nor does she identify any authority that supports her contention that the doctor could not base his opinion on such reports. *Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) ("It is appellant's

responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court."); *see also* NRS 50.285(2) (providing that experts may form opinions or inferences on facts or data that "need not be admissible in evidence"). Instead, Bashaw-Patchin's contention that Dr. Dubansky misrepresented K.B.P.'s medical records amounts to a disagreement with the expert's opinion, which does not render it inadmissible. Bashaw-Patchin cross-examined Dr. Dubansky, and it was the function of the jury to weigh the expert's testimony accordingly. *Cf. Leavitt v. Siems*, 130 Nev. 503, 510, 330 P.3d 1, 6 (2014) ("[E]ven if portions of [an expert's] testimony [are] speculative, it [i]s for the jury to assess the weight to be assigned to [the] testimony").

No evidence supported the jury instructions requested by the defense

A defendant is entitled to receive instructions on their theory of the case. *Id.* To receive an instruction, however, some evidence, no matter how weak or incredible, must support the theory. *Williams v. State*, 99 Nev. 530, 531, 665 P.2d 260, 261 (1983). If substantially covered by other instructions, the district court may refuse a jury instruction on the defendant's theory of the case. *Vallery v. State*, 118 Nev. 357, 372, 46 P.3d 66, 77 (2002).

First, Bashaw-Patchin argues the district court abused its discretion in declining to instruct the jury that the charges in the case "pertain to one child only," K.B.P., and to consider only evidence pertaining to K.B.P. We perceive no abuse of discretion in the court's decision as the instruction would have been confusing and duplicative, because the court gave other instructions informing the jury that the charge in this case only pertained to Bashaw-Patchin's conduct with K.B.P. *Crawford v. State*, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005) (reviewing jury instruction

challenge for an abuse of discretion); *Vallery*, 118 Nev. at 372, 46 P.3d at 77.

Next, Bashaw-Patchin challenges the court's decision not to give the following instruction: "A Defendant cannot be held criminally responsible for knowledge of medical risks which are neither readily apparent nor known to them." She argues that she was entitled to this instruction because the State's purported medical delay allegation was inescapable given the State's argument that this was an ongoing case of neglect. While the State presented evidence that K.B.P. was hypoglycemic at birth, and that Bashaw-Patchin did not recall when K.B.P. had last been medically checked, the State did not claim that the baby's injury was caused by a medical condition not readily apparent to Bashaw-Patchin. Instead, the record supports that the abuse or neglect charge was grounded on allegations that K.B.P. was an undersized 11-week-old baby who went into cardiac arrest because Bashaw-Patchin placed him in an environment where his body temperature dropped so low that his heart stopped beating. The district court did not abuse its discretion in declining to give this instruction. *Williams*, 99 Nev. at 531, 665 P.2d at 261.

The State did not commit prosecutorial misconduct

Bashaw-Patchin argues that several comments made by the State during its closing argument constitute misconduct. Our review is confined to plain error because Bashaw-Patchin did not object to these comments below. *Parker v. State*, 109 Nev. 383, 391, 849 P.2d 1062, 1067 (1993) (holding that a defendant must raise a timely objection and seek corrective instruction to preserve the issue of prosecutorial misconduct for appeal); *Valdez v. State*, 124 Nev. 1172, 1190-91, 196 P.3d 465, 477-78 (2008) (reviewing claims of prosecutorial misconduct for plain error when the defendant failed to preserve the matter). Bashaw-Patchin carries the

burden to demonstrate actual prejudice or a miscarriage of justice. *Green v. State*, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003); *Thomas v. State*, 120 Nev. 37, 47, 83 P.3d 818, 825 (2004) (holding that actual prejudice results where "a prosecutor's statements so infect[ ] the proceedings with unfairness as to make the results a denial of due process."). She has failed to carry her burden here.

First, the State's argument properly reflected Dr. Dubansky's opinion that no underlying medical conditions, such as hypoglycemia, contributed to K.B.P.'s medical episode. Second, the prosecutor's statement that Bashaw-Patchin "was missing appointments" was not improper when considered in context of the trial as a whole, and where the prosecutor accurately commented on testimony that Bashaw-Patchin had trouble getting K.B.P. to the doctor because of transportation issues and that she did not recall when she last took him to the doctor. *See Thomas*, 120 Nev. at 47, 83 P.3d at 825 ("[S]tatements should be considered in context, and a criminal conviction is not to be lightly overturned on the basis of a prosecutor's comments standing alone." (internal quotation marks omitted)). Finally, as to the State's closing statement that Care Flight took K.B.P.'s temperature and then stabilized him for transport, the Care Flight records list a temperature of 86.2 at 5:35 a.m.—the same time he was placed on the medical transport. Therefore, the State's argument that K.B.P.'s temperature was taken around the time of transport is supported by the record. As none of the challenged statements amount to misconduct, Bashaw-Patchin fails to demonstrate plain error.

Cumulative error does not warrant reversal

Bashaw-Patchin argues that cumulative error warrants reversal. Because, as set forth above, the only errors we perceive are harmless, we likewise perceive any cumulative error to be harmless. Even

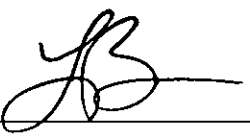
cumulatively, these errors do not warrant reversal because their cumulative effect remains harmless. *Pascua v. State*, 122 Nev. 1001, 1008 n.16, 145 P.3d 1031, 1035 n. 16 (indicating that "insignificant or nonexistent" errors do not warrant reversal for cumulative error); *see also Ennis v. State*, 91 Nev. 530, 533, 539 P.2d 114, 115 (1975) (observing that a defendant is entitled to a fair, but not perfect trial).

Consistent with the foregoing, we

ORDER the judgment of the district court AFFIRMED.[1]

_____, CJ.
Herndon

_____, J.
Lee



_____, J.
Bell

cc: Hon. John Schlegelmilch, District Judge
Hillewaert Law Firm
Attorney General/Carson City
Lyon County District Attorney
Third Judicial District Court Clerk

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[1]To the extent that Bashaw-Patchin has raised arguments on appeal that we did not specifically address, we are not persuaded that those arguments warrant reversal.