

IN THE SUPREME COURT OF THE STATE OF NEVADA

PHILIP A. HENDERSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 53860

**FILED**

JUL 30 2010

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count each of child abuse and neglect with substantial bodily harm and child abuse and neglect. Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

Sufficiency of the evidence

Appellant Philip A. Henderson contends that insufficient evidence was adduced to support the jury's verdict. When viewed in the light most favorable to the State, however, the evidence is sufficient to establish guilt beyond a reasonable doubt as determined by a rational trier of fact. See Jackson v. Virginia, 443 U.S. 307, 319 (1979); Mitchell v. State, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008).<sup>1</sup>

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<sup>1</sup>In a related argument, Henderson contends that his conviction for child abuse and neglect is a gross misdemeanor and not a felony because the language in the information conforms to NRS 200.508(2)(b)(1). Henderson failed to object below to the information and our review of the issue reveals that no plain error occurred. See NRS 178.602 ("Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court."); State v. Hughes, 31 Nev. 270, 272-73, 102 P. 562, 562 (1909) (once the principle of waiver attaches, an  
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Trial testimony indicated that at the time the 2-year-old victim sustained his injuries, he was living in Henderson's home and, according to the older brother of the victim, Henderson took care of the child "the most." In a voluntary statement given to an abuse and neglect specialist, Henderson stated that the victim called him "daddy." The victim's mother testified that after the injuries occurred, the victim's behavior in Henderson's presence changed and he seemed afraid. Although the victim's injuries significantly worsened over a period of several days and he appeared to be in pain, medical attention was not sought until he was returned to the care of his grandmother. According to the grandmother, the victim informed her on three separate occasions after the injuries were discovered that Henderson hurt him.

Dr. Jay Fisher, the treating pediatric emergency physician, testified that the injuries "were nonaccidental," resulted in a prolonged period of physical pain, and due to the amount of force needed to create such trauma, could not have been inflicted by the victim's 7- and 12-year-old brothers or Henderson's dog. Henderson admitted to the abuse and neglect specialist that the victim's extensive injuries "scared me to death," and, "I mean to this day I mean I, I don't know why I didn't take him to the hospital."

It is for the jury to determine the weight and credibility to give conflicting testimony, and a jury's verdict will not be disturbed on appeal

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*... continued*

information will be sufficient "unless it is so defective that by no construction, within the reasonable limits of the language used, can it be said to charge the offense for which the defendant was convicted").

where, as here, substantial evidence supports the verdict. See NRS 200.508(1)(a)(2), (1)(b)(1); NRS 0.060; McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992); Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981); see also Buchanan v. State, 119 Nev. 201, 217, 69 P.3d 694, 705 (2003) (circumstantial evidence alone may sustain a conviction).

Motion to suppress/custodial interrogation

Henderson contends that the district court erred by denying his motion to suppress statements he made to an abuse and neglect specialist without the benefit of Miranda warnings. Miranda v. Arizona, 384 U.S. 436, 444-45 (1966). A district court's decision to admit or suppress evidence based on an alleged Fifth Amendment violation involves mixed questions of fact and law. Rosky v. State, 121 Nev. 184, 190, 111 P.3d 690, 694 (2005). We review a district court's factual findings supporting its ruling on whether a custodial interrogation occurred for clear error, but review de novo its ultimate determination of whether a person was in custody and entitled to Miranda warnings. Casteel v. State, 122 Nev. 356, 361, 131 P.3d 1, 4 (2006). Here, the district court conducted a hearing, considered the totality of the circumstances—including, among other things, witness testimony, the site of the interrogation, whether the objective indicia of arrest were present, and the length and form of the questioning—and found that Miranda warnings were not required because Henderson was not subject to a custodial interrogation. See Rosky, 121 Nev. at 191-92, 111 P.3d at 695; State v. Taylor, 114 Nev. 1071, 1082 n.1, 968 P.2d 315, 323 n.1 (1998). We agree and conclude that the district court did not err by denying Henderson's motion to suppress.

### Motion in limine/hearsay

Henderson contends that the district court erred by denying his motion in limine and allowing inculpatory statements made by the 2-year-old victim to be admitted at trial through the testimony of his grandmother pursuant to NRS 51.385. Henderson also argued below that the statements' "prejudicial effect clearly outweighs the probative effect." We review a district court's decision to admit evidence pursuant to NRS 51.385 for an abuse of discretion. See Pantano v. State, 122 Nev. 782, 790-91, 138 P.3d 477, 482-83 (2006). NRS 51.385(1) states, in part, that a child-victim's statements describing physical abuse are admissible at trial if the victim is unable to testify and the district court conducts a hearing and finds that the time, content, and circumstances surrounding the statements provided "sufficient circumstantial guarantees of trustworthiness." Here, the district court conducted a hearing and found that the victim's statements to his grandmother were spontaneous, that he was not subject to repetitive questioning, had no motive to fabricate, used age-appropriate terminology, and appeared to be in a stable mental state. See NRS 51.385(2). The district court rejected Henderson's arguments and found that the statements were trustworthy, reliable, and thus, admissible. We agree and conclude that the district court did not abuse its discretion by denying Henderson's motion in limine.

### Expert testimony

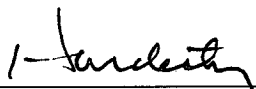
Henderson contends that the district court abused its discretion by allowing the State's expert witness in pediatric emergency medicine, Dr. Jay Fisher, to testify about matters beyond his scope of knowledge. Henderson specifically challenges Dr. Fisher's opinion that

the victim's injuries were nonaccidental and that such trauma could not have been caused by the victim's young brothers or Henderson's dog.


We will not reverse a district court's decision regarding the admission of expert testimony absent an abuse of discretion. Grey v. State, 124 Nev. 110, 120 n.17, 178 P.3d 154, 161 n.17 (2008); see also NRS 50.275 (expert's testimony may be admitted "[i]f scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue"); NRS 50.295 ("Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact."). Here, the district court overruled Henderson's objections and our review of the record reveals that Dr. Fisher did not testify to matters beyond his scope of expertise. Therefore, we conclude that the district court did not abuse its discretion. We further note that Henderson had an opportunity to cross-examine Dr. Fisher and attack his opinion and credibility. See Singleton v. State, 90 Nev. 216, 219, 522 P.2d 1221, 1222-23 (1974) (holding that cross-examination casting doubt on source relied upon by expert was proper).

Having considered Henderson's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Pickering

cc: Hon. Elissa F. Cadish, District Judge  
Mario D. Valencia  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk