

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BILLY BRESHEARS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71774

FILED

NOV 14 2017

ENZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Billy Breshears appeals from a judgment of conviction entered pursuant to a jury verdict of twelve counts of child abuse, neglect, or endangerment. Eighth Judicial District Court, Clark County; James M. Bixler, Senior Judge.

Breshears claims insufficient evidence supports his convictions because none of the witnesses testified they saw him harm the three-year-old victim and the only evidence that he harmed the victim came in through “intrinsically unreliable hearsay evidence of what [the victim] said happened.”¹ We review the evidence in the light most favorable to the prosecution and determine whether “any rational trier of fact could have

¹Breshears does not challenge the admissibility of the hearsay evidence—just its sufficiency. We note the district court conducted a NRS 51.385 hearing and found the victim’s statements to his grandmother, the Child Protective Services Investigator, and the Forensic Interview Specialist were admissible. We further note the victim’s statements to his pediatrician were admissible under NRS 51.115.

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found the essential elements of the crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 319 (1979).

The jury heard the following testimony. The victim’s grandmother testified she observed bruises all over the victim’s body, she asked the victim what happened, the victim replied “my daddy,” and the victim balled his hand into a fist and punched the side of his face. Child Protective Services Investigator Nicole Miller testified she and the victim were discussing SpongeBob when the victim spontaneously told her “Daddy punched me” and balled up his fist and made a motion to his face, his stomach, and his thigh. Forensic Interview Specialist Elizabeth Espinoza testified the victim said his daddy punched his face and demonstrated the punch by rolling his right hand into a fist and moving it toward his face. And Dr. Marella Hudkins, a pediatrician, testified she gained a rapport with the victim, asked him what happened, and he responded “Daddy hit me” and gestured by balling his hand into a fist and moving in an upward motion toward his chin.²

We conclude a rational juror could reasonably infer from this evidence Breshears caused the victim to suffer unjustifiable physical pain as a result of abuse. See NRS 200.508(1). It is for the jury to determine the weight and credibility to give conflicting testimony, and the jury’s verdict will not be disturbed on appeal where, as here, sufficient evidence supports its verdict. See *Bolden v. State*, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981).

²The jury also heard jailhouse recordings of phone calls between Breshears and his girlfriend, in which Breshears allegedly admitted he abused the victim.

Breshears also claims the district court erred by denying his motion for a new trial based on newly discovered evidence. During sentencing, Breshears proffered photographs of himself which he claimed were not available at the time of the trial. He argued the photographs would support a theory of defense that he was physically unable to harm his child due to injuries he had previously sustained. And he made an oral motion for a new trial.

To prevail on a motion for a new trial based on newly discovered evidence, the defendant must show the evidence is

newly discovered; material to the defense; such that even with the exercise of reasonable diligence it could not have been discovered and produced at trial; non-cumulative; such as to render a different result probable upon retrial; not only an attempt to contradict, impeach, or discredit a former witness, unless the witness is so important that a different result would be reasonably probable; and the best evidence the case admits.


Mortensen v. State, 115 Nev. 273, 286, 986 P.2d 1105, 1114 (1999) (quoting *Sanborn v. State*, 107 Nev. 399, 406, 812 P.2d 1279, 1284-85 (1991)). We review the district court's decision to grant or deny a new trial motion for abuse of discretion. *Servin v. State*, 117 Nev. 775, 792, 32 P.3d 1277, 1289 (2001).

The district court found Breshears had received photographs depicting his injuries with his discovery and therefore the information was available during the discovery process and a theory of defense based on his injuries could have been pursued at that time. The record supports the

district court's findings, and we conclude it did not abuse its discretion by denying Breshears' motion for a new trial.

Having concluded Breshears is not entitled to relief, we
ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Chief Judge, Eighth Judicial District Court
Hon. James M. Bixler, Senior Judge
Sanft Law, P.C.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk