

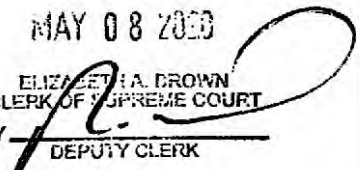
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GUSTAVO HERNANDEZ JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 74835-COA

FILED

MAY 08 2023

ELIZABETH A. GROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF AFFIRMANCE AND LIMITED REMAND TO CORRECT  
THE JUDGMENT OF CONVICTION*

Gustavo Hernandez Jr., appeals a judgment of conviction for second-degree kidnapping; child abuse, neglect or endangerment; aggravated stalking; and preventing or dissuading a witness from testifying or producing evidence. Eighth Judicial District Court, Clark County; Kerry Louise Earley, Judge.

Hernandez and Rebecca Rios met on a dating app in October 2015. Eventually, Hernandez moved in with Rios and her two daughters, ages five and six, and they lived together for approximately three to four months. Hernandez and Rios got engaged on Valentine's Day, 2016. Soon after the engagement, their relationship began to deteriorate.

In May, Rios sent Hernandez a text message explaining that they needed to talk about ending their relationship. When Hernandez arrived home, Rios took her daughters upstairs, and left them in a bedroom with an iPad so that they could watch a movie. Rios joined Hernandez but he became agitated while they talked and tried to leave the house. Rios followed Hernandez through a laundry room where Hernandez grabbed her by the shoulders and repeatedly slammed her body against a wall.

The couple then entered the garage where Hernandez picked up Rios and threw her onto the hood of a car, and then onto the ground. Hernandez then physically forced Rios into the vehicle and drove away, leaving the two children alone at the house.

While driving the vehicle, Hernandez told Rios that he was taking her to the desert where he was going to bury her. Hernandez then stopped at a gas station to fill up the gas tank. While Hernandez was outside of the car, Rios attempted to flee. However, she was grabbed by Hernandez who tried to force her back into the car. During the struggle, Rios was able to break free from Hernandez and escape. Hernandez then entered the car, and threatened to kill Rios' daughters if she did not get back in the car. Rios refused and Hernandez drove off in the direction of Rios' home.

Rios was able to get a ride to her house. She arrived approximately 30 to 40 minutes after being removed from the residence and saw Hernandez driving away from her home. Rios went inside and found her two daughters unharmed.

Hernandez was charged with first-degree kidnapping; child abuse, neglect, or endangerment; coercion; aggravated stalking; and preventing or dissuading a witness from testifying or producing evidence. A jury found Hernandez guilty of second-degree kidnapping; coercion<sup>1</sup>; child abuse, neglect or endangerment under NRS 200.508(1); aggravated stalking; and preventing or dissuading a witness from testifying or

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<sup>1</sup>We note that, after the jury convicted Hernandez of both coercion and second-degree kidnapping, the district court dismissed the coercion charge on the ground that convictions for both offenses were redundant and violated double jeopardy pursuant to *Blockburger v. United States*, 284 U.S. 299 (1932).

producing evidence. Hernandez received an aggregate sentence of 119 to 300 months.

On appeal, Hernandez contends that there was insufficient evidence to support the conviction of child abuse, neglect or endangerment pursuant to NRS 200.508.<sup>2</sup> Hernandez further argues that he did not have a duty of care for Rios' children because they are not his children. 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 the crime beyond a reasonable doubt." *Stewart v. State*, 133 Nev. 142, 144, 393 P.3d 685, 687 (2017) (emphasis and internal quotations omitted). "[I]t is the jury's function, not that of the [reviewing] court, to assess the weight of the evidence and determine the credibility of witnesses." *McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

Also, it is the responsibility of the appellant to present relevant authority and cogent argument, and this court need not consider claims that are not cogently argued or supported by relevant authority. *Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987). In this case, Hernandez contends that there was insufficient evidence to support a conviction of child abuse, neglect or endangerment pursuant to NRS 200.508. However, he has not adequately briefed this issue because he provides this court with no relevant authority to support any of the arguments made in his brief. Therefore, we need not address his arguments. Nevertheless, we do address them and conclude they are without merit.

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<sup>2</sup>Hernandez does not appeal any of his other convictions stemming from this incident.

Hernandez argues there is insufficient evidence to support his conviction because, prior to the dispute that led to the kidnapping, Rios escorted the children upstairs to a bedroom, and gave them an iPad on which to watch a movie while the couple discussed their relationship. Hernandez further argues that when the kidnapping occurred, the children were in the safety of their own home, and were not harmed or traumatized when they were left alone. Therefore, there is no evidence of child abuse, neglect or endangerment. Lastly, Hernandez argues that he did not have a statutory duty of care for the children because they are not his children. The State responds that the evidence established that Hernandez knowingly left the young children without proper care when he kidnapped Rios and that he did have a statutory duty of care for the children.<sup>3</sup>

A person is guilty of willful abuse, neglect or endangerment of child, as governed by NRS 200.508(1), when the person

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.

The district court instructed the jury that, “negligent treatment or maltreatment of a child occurs if a child . . . is without proper care, control and supervision.” In this case, the State did not have to prove that the children were injured; it is sufficient under NRS 200.508(1) to show that

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<sup>3</sup>Under NRS 432B.130, which is incorporated by NRS 200.508(2), “[a] person is responsible for a child’s welfare under the provisions of this chapter if the person is the child’s parent, guardian, a stepparent with whom the child lives, [or] an adult person continually or regularly found in the same household as the child . . . .” Hernandez was charged under NRS 200.508(1).

Hernandez willfully left the two young children alone without proper care, control and supervision. *See* NRS 200.508(4)(a); NRS 432B.140 (“Negligent treatment or maltreatment of a child occurs if a child . . . is without proper care, control or supervision . . .”). NRS 200.508(1)(a) requires a willful act as a prerequisite for finding guilt, and this court has defined willful act as an act done intentionally, not accidentally. *Batt v. State*, 111 Nev. 1127, 1131 n.3, 901 P.2d 664, 666 n.3 (1995). Further, this portion of the statute, by its plain terms, does not require a statutory duty of care. *See Newson v. State*, 135 Nev., Adv. Op. 22, at \*16, \_ P.3d \_\_, \_\_ (2020) (“NRS 200.508(1) imposes no requirement that [the defendant] be responsible for the children . . .”). Here, Hernandez was aware that the children were in the house when he kidnapped their mother. Hernandez also knew that the children had never been left alone prior to this incident, and even though the children were found unharmed, Hernandez caused the children to be placed in a situation where they *could* suffer physical pain or mental suffering. *See id.* Therefore, a rational jury could convict Hernandez of abuse, neglect or endangerment of child under NRS 200.508(1).

Our review of the judgment of conviction reveals a clerical error. The judgment of conviction states that Hernandez was convicted of first-degree kidnapping, however, he was convicted of second-degree kidnapping. We therefore remand this matter to the district court for the limited purpose of correcting this clerical error and entering a corrected judgment of conviction. *See* NRS 176.565. Accordingly, we

ORDER the judgment of conviction AFFIRMED and REMAND this matter to the district court for the limited purpose of correcting the judgment of conviction.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Kerry Louise Earley, District Judge  
Clark County District Attorney's Office  
Clark County Public Defender's Office  
Eighth District Court Clerk