IN THE SUPREME COURT OF THE STATE OF NEVADA

ERIC CHU,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83824

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of first-degree murder. Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.

Appellant Eric Chu was convicted of felony murder, with child abuse as the predicate offense, for the death of his 10-month-old daughter, J.C. On January 23, 2018, Chu, J.C.'s primary caretaker, called J.C.'s mother, Raelene Jemison, at work and reported that J.C. had a seizure in the bathtub and had hit her head. J.C. had previously suffered other seizures, which only Chu witnessed, and Jemison was in the process of finding a neurologist, concerned that J.C. had inherited Jemison's childhood epilepsy. Accounts differ as to what happened next – Jemison testified that Chu told her J.C. seemed "fine," Chu told police he immediately started worrying about the pace of J.C.'s breathing – but the parties agree that Chu waited several hours before calling an ambulance. First responders could not revive her, and J.C. was taken first to Summerlin Hospital, then to University Medical Center, where she died.

Chu was indicted for any willful, deliberate, and premeditated acts, or acts committed during the perpetration or attempted perpetration of child abuse, between March 18, 2017, and January 23, 2018, a period spanning J.C.'s entire life. At trial, three medical experts from diverse

fields independently concluded that J.C. died from blunt force trauma to the head and not, as Chu contended, from an accidental fall following a seizure in the bathtub. One of those experts, a neuropathologist, testified that the only incidents that could have produced J.C.'s injuries were a fall from a multi-story building or a high-speed car crash. Each expert also noted a rib fracture that pre-dated J.C.'s fatal injuries, which one expert deemed "classic" in child abuse cases. Three treating practitioners described J.C.'s injuries upon admission to the hospital, including visible bruising, extensive cranial injuries, and neural and retinal hemorrhages. Jemison's testimony established that J.C. was unbruised and acting normally when she left for work that morning, and that Chu had exclusive control over J.C. until J.C. was taken to the hospital by ambulance. Jemison also testified that Chu normally took care of J.C. and her twin brother during the day while she was at work.

Chu identifies three issues on appeal, none of which has merit. First, Chu claims that the date range in the indictment was too broad to provide adequate notice of the charges against him. When a defendant challenges the sufficiency of a charging document for the first time on appeal, as Chu does, he is subject to a reduced standard wherein this court will uphold the indictment "unless it is so defective that by no construction . . . can it be said to charge the offense for which the defendant was convicted." *Laney v. State*, 86 Nev. 173, 178, 466 P.2d 666, 670 (1970) (internal quotations omitted). Here, the indictment clearly "charge[d] the offense for which" Chu was convicted because the fatal injury must have occurred sometime within J.C.'s ten-month lifespan. Furthermore, as Chu appears to concede, the two experts who testified at the grand jury proceeding only discussed injuries "within close temporal proximity to

[J.C.]'s death," which gave Chu sufficient notice to prepare his defense. *See Vincze v. State*, 86 Nev. 546, 549, 472 P.2d 936, 938 (1970) (holding there is no error if a grand jury transcript "clearly reveals the facts upon which the [S]tate intended to base its claim and gave sufficient notice to appellant to enable him to prepare his defense"). Therefore, we reject Chu's challenge to the State's indictment.

Second, Chu argues that the expert testimony presented by the State was either cumulative because the six medical experts "testified largely to the same information" or misleading because "they each had differing opinions" about the timeline of J.C.'s injuries. We review a district court's decision to admit evidence for an abuse of discretion. *Mclellan v. State*, 124 Nev. 263, 267, 182 P.3d 106, 109 (2008). And as Chu acknowledges, the defense "did not object to the cumulative, misleading and confusing expert testimony" in district court, so plain error review applies. *See Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48 (2018) (stating that that to establish plain error, "an appellant must demonstrate that: (1) there was an 'error'; (2) the error is 'plain,' meaning that it is clear under current law from a casual inspection of the record; and (3) the error affected the defendant's substantial rights").

Per NRS 48.035(2), relevant evidence may be excluded if its probative value is substantially outweighed by the "needless presentation of cumulative evidence." The expert testimony at Chu's trial was not cumulative. Each medical expert either practiced a different discipline or tended to J.C. at a different phase of her treatment. *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. . . . Testimony of a second physician in a different area of medical expertise also

is not cumulative."). Furthermore, expert testimony is less likely to be cumulative on a determinative issue – here, J.C.'s cause of death. *See Shallow v. Follwell*, 554 S.W.3d 878, 883 (Mo. 2018) (finding 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 omitted)); *cf. 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 and complex medical testimony").

Chu also posits that minor variations in expert testimony regarding the cause of J.C.'s death and the timing of her fatal injuries rendered the testimony confusing and misleading, in violation of NRS 48.035(1). But that statute does not require perfect alignment between experts; it prohibits evidence that "introduces extraneous or ancillary issues" or "mislead[s] the jury into giving it more weight than it is worth." 2 *Jones on Evidence* § 11:15 (7th ed. 1994). Testimony at Chu's trial focused on the timing and cause of J.C.'s death. Disagreement between experts on those central issues did not "interfere with the jury's factfinding process," *id.*, but was endemic to it. Furthermore, the experts *were* aligned on key facts. All three non-treating medical experts agreed that J.C. died of head trauma that could have only been inflicted intentionally or by accidents far more severe than a bathtub fall, and which occurred within 48 hours of her hospitalization. Therefore, we conclude that Chu fails to establish error, much less plain error, in the admission of expert testimony at trial.

Third, Chu argues that jury instructions nos. 20 (felony murder) and 24 (child abuse) are "confusing" and "at odds" and together allowed the jury to convict him of murder even if J.C.'s death was accidental

and not the product of child abuse. Again, Chu acknowledges that plain error review applies because the defense "did not object to the instructions" in district court. Chu's argument regarding a conflict between jury instructions on felony murder and child abuse is foreclosed by *Coleman v. State*, 130 Nev. 229, 244, 321 P.3d 901, 911 (2014) (holding that instructions on the two crimes "accurately informed the jury that, while the killing can be accidental, the physical injury to the child (the child abuse) must be nonaccidental"). Therefore, we conclude that Chu's claim of instructional error fails plain error review.

Chu also suggests a fourth issue—that the district court abused its discretion in allowing the State to introduce evidence of J.C.'s preexisting rib fracture without attribution to Chu, effectively circumventing the procedural requirements for prior-bad-act evidence. Implicit in this argument is the so-called "doctrine of objective chances," which asks when and under what conditions physical evidence of prior injuries can be admitted against a defendant in a prosecution for child abuse. *See* 1 Edward J. Imwinkelried, *Uncharged Misconduct Evidence* § 4:3 (2017). This common law doctrine continues to fuel commentary. *See* Hillel J. Bavli, *An Objective-Chance Exception to the Rule Against Character Evidence*, 74 Ala. L. Rev. 121, 141-43 (2022) (describing the ongoing debate). Because Chu failed to adequately frame and brief this issue or respond to the State's arguments, however, we decline to address it. *See* NRAP 28(a)(6) (requiring statement of issues); *Mazzan v. Warden*, 116 Nev. 48, 75, 993 P.2d 25, 42 (2000) ("Contentions unsupported by specific argument or authority should be summarily rejected on appeal."); *Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (stating that "[i]t is appellant's responsibility to present relevant authority and cogent argument; issues not

so presented need not be addressed by this court"). And because Chu has not demonstrated that any of his claims undermine the validity of his conviction, we

ORDER the judgment of conviction AFFIRMED.

Cadish, J.
Cadish

Pickering, J.
Pickering

Bell, J.
Bell

cc: Hon. Tierra Danielle Jones, District Judge
Monique A. McNeill
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk