IN THE SUPREME COURT OF THE STATE OF NEVADA

SHEVHUAN IMANI MILLER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85462

FILED
AUG 30 2024
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
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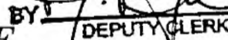

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of first-degree murder and child abuse, neglect or endangerment resulting in substantial bodily harm. Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.

Following a 911 call, five-year-old victim J.R. was found by paramedics with no signs of life. Appellant Shevhuan Miller was with her. At the hospital, J.R. was extensively bruised, had a low body temperature, and was pronounced dead.

J.R. lived with her father Richard Davis and Miller. Miller participated in four interviews with detectives in which she detailed the events preceding J.R.'s death. Miller's explanation remained constant: J.R.'s injuries were caused by a scuffle with unknown children; J.R. ate dinner and was acting normally the night after the scuffle; J.R. was inhaling water in the bath; Miller found J.R. in the bath on her stomach with her head to the side and needed to lift J.R. from the bath; Miller checked on J.R. approximately three times the next morning, and J.R. was responsive and/or seemingly fooling Miller by pretending to be unresponsive but was later cold, not moving, and unresponsive; Miller called Davis before calling 911; and Miller performed CPR on J.R. that resulted in water and mucus

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being expelled from J.R.'s mouth and nose. Evidence suggested that Miller was home with J.R. the entire time and that Davis was not home during the supposed scuffle or when Miller called 911.

Miller was charged with first-degree murder and six counts of child abuse, neglect or endangerment resulting in substantial bodily harm. A jury found her guilty on all counts; however, the district court granted Miller's motion to dismiss five of the child abuse counts.

Miller's police interview statements

The district court did not err by denying Miller's motion for a Jackson v. Denno *hearing*

Miller argues the district court should have held a hearing under *Jackson v. Denno*, 378 U.S. 368 (1964), and allowed her to challenge the voluntariness of her confession. We review a district court's decision to deny a *Jackson v. Denno* hearing for an abuse of discretion. *Cf. Olivares v. State*, 124 Nev. 1142, 1148, 195 P.3d 864, 868 (2008) (reviewing pretrial decision not to hold a competency hearing for abuse of discretion). We conclude the district court did not err by finding that Miller failed to provide a sufficient basis for a *Jackson v. Denno* hearing because Miller's motion contained no factual allegations of coercive police activity and thus did not sufficiently allege an involuntary confession. *See Guynes v. State*, 92 Nev. 693, 695, 558 P.2d 626, 627 (1976) (emphasis added and omitted) (concluding "[a] *Jackson* hearing is required *only* when the defendant challenges the voluntariness of his confession"). Accordingly, the district court did not abuse its discretion by denying Miller's request.

Miller's Fifth Amendment rights were not violated

Miller argues her Fifth Amendment rights were violated across four police interviews. *See Miranda v. Arizona*, 384 U.S. 436 (1966).

We review de novo whether an interviewee is in custody, *Casteel v. State*, 122 Nev. 356, 361, 131 P.3d 1, 4 (2006), and whether *Miranda* rights have been voluntarily waived, *Mendoza v. State*, 122 Nev. 267, 276, 130 P.3d 176, 181 (2006). We review findings that a waiver was knowing and intelligent for clear error. *Id.*

Unless a *Miranda* admonition has been provided, "statements made during custodial interrogation are inadmissible at trial." *State v. Taylor*, 114 Nev. 1071, 1081, 968 P.2d 315, 323 (1998). To determine if an individual is in custody, "the pertinent inquiry is whether a reasonable person in the suspect's position would feel at liberty to terminate the interrogation and leave." *Rosky v. State*, 121 Nev. 184, 191, 111 P.3d 690, 695 (2005) (internal quotation marks omitted). To validly waive *Miranda* rights, one's waiver "must be voluntary, knowing, and intelligent." *Mendoza*, 122 Nev. at 276, 130 P.3d at 181. "A waiver is voluntary if, under the totality of the circumstances, the confession was the product of a free and deliberate choice rather than coercion or improper inducement." *Id.* at 276, 130 P.3d at 181-82 (internal quotation marks omitted). "[A] waiver may be inferred from the actions and words of the person interrogated." *Id.* at 276, 130 P.3d at 182.

At the start of Miller's first and fourth interviews, she was given the *Miranda* admonition. In both instances, she assented that she understood her rights and agreed to talk about the events. No evidence supported that Miller did not understand the rights or that it was not her free choice to waive them. Thus, under the totality of the circumstances, we conclude that Miller's waivers were voluntary, knowing, and intelligent. Moreover, that Miller was 23 years old and had no previous experience with

the criminal justice system does not render the waivers invalid.[1] *See Anderson v. State*, 109 Nev. 1129, 1133, 865 P.2d 318, 320 (1993) (concluding defendant's waiver was valid when he indicated he understood his rights and agreed to talk, despite contentions "that he was young, had no experience with the criminal justice system, and had been drinking prior to the interview"). Accordingly, we conclude there was no *Miranda* violation with regard to Miller's first and fourth interviews.

Miller was not given a *Miranda* admonition during her second or third interview. Less than two hours after her first interview ended, Miller initiated the second interview. The second interview took place at the hospital and lasted about forty minutes. Miller's third interview took place at her apartment and lasted about fifteen minutes, and she indicated she would participate in it knowing it was voluntary. During both the second and third interviews, the police did not place her under arrest or use strong-arm tactics, and the atmosphere of the questioning was not overall police-dominated. Thus, we conclude that a reasonable person would have felt at liberty to terminate the interrogations and that Miller was not in custody during her second or third interview. *See, e.g.*, *Taylor*, 114 Nev. at 1082, 968 P.2d at 323 ("An individual is not in custody for purposes of *Miranda* where police officers only question an individual on-scene regarding the facts and circumstances of a crime or ask other questions during the fact-finding process or where the individual questioned is merely the focus of a criminal investigation." (citation omitted)). Accordingly, we

[1]To the extent that Miller argues she was deprived of due process because her statements were involuntary, we similarly conclude her argument is without merit.

conclude that there was no *Miranda* violation during Miller's second or third interview. In sum, we conclude there was no *Miranda* violation across Miller's four interviews.

Evidentiary issues

We review "a district court's decision to admit or exclude evidence for an abuse of discretion. However, failure to object precludes appellate review . . . unless it rises to the level of plain error," *Mclellan v. State*, 124 Nev. 263, 269, 182 P.3d 106, 110 (2008) (footnote and internal quotation marks omitted), and we determine that it "affected the defendant's substantial rights," *Green v. State*, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003) (internal quotation marks omitted). "For an error to be plain, it must, at a minimum, be clear under current law." *Gaxiola v. State*, 121 Nev. 638, 648, 119 P.3d 1225, 1232 (2005) (internal quotation marks omitted).

The text message was authenticated

Miller contends that the State failed to properly establish foundation for, and the authorship of, a text message from a phone used by her that stated, "Your child is the devil." We conclude the State did not need to proffer the purpose for which the text message was being offered or provide evidence of the message's authorship because Miller did not object. *See Rodriguez v. State*, 128 Nev. 155, 162, 273 P.3d 845, 849 (2012) (concluding where the admission of a text message is challenged, the proponent must authenticate it and support its admission). Accordingly, we conclude the district court did not plainly err by admitting the text message.

The text message was not hearsay

Miller argues the unobjected-to text message was inadmissible hearsay because the State could not prove that Miller possessed the phone

when the message was sent or that Miller composed or sent the message. We conclude the statement was admissible as a statement of a party opponent because the text message was attributed to Miller and was offered against her. *See* NRS 51.035(3)(a) (providing that "'[h]earsay' means a statement offered in evidence to prove the truth of the matter asserted unless . . . [t]he statement is offered against a party and is . . . [t]he party's own statement"). Accordingly, we conclude that Miller has not shown that the message was hearsay and that the district court did not plainly err by admitting the evidence.

The admitted evidence was not unfairly prejudicial

Text message

Miller contends that the text message was not relevant to J.R.'s injuries, the cause of death, or Miller's alleged role in J.R.'s death because it was sent one week before J.R.'s death and that even if it were relevant, its probative value was far outweighed by the danger of unfair prejudice. We conclude the text message was relevant because Miller was charged with first-degree murder by child abuse and child abuse, neglect, and endangerment resulting in substantial bodily harm and a message sent one week before J.R.'s death in which Miller stated that J.R. was the devil is suggestive of her motive or intent. *See* NRS 48.015 ("'[R]elevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence."). We conclude, however, that the message did not play a determinative role in the jury's verdict because it was a single text message in the context of a seven-day jury trial. *See Foster v. State*, 116 Nev. 1088, 1096, 13 P.3d 61, 66 (2000) (concluding probative value not substantially outweighed by unfair prejudice when "[l]ittle time

was expended in presenting the evidence, and so no argument [could] be made that the jury's focus was disproportionately trained to this incident rather than to the charged crime"). Accordingly, we conclude the probative value of the message was not substantially outweighed by the danger of unfair prejudice, and the district court did not plainly err by allowing for its admission.

Autopsy photographs

Miller argues that the photographs admitted of J.R.'s autopsy offered little relevant evidence and were exceedingly disturbing, upsetting, and prejudicial. We conclude that Miller is estopped from raising this issue on appeal because she stipulated to admission of the photographs. *See Carter v. State*, 121 Nev. 759, 769, 121 P.3d 592, 599 (2005) ("A party who participates in an alleged error is estopped from raising any objection on appeal.").

Sufficient evidence supported Miller's convictions

To review for sufficiency of the evidence, we must determine "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." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *see also Origel-Candido v. State*, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998). "[T]he weight and sufficiency of the evidence are questions for the jury, and its verdict will not be disturbed upon appeal if there is evidence to support it." *Azbill v. State*, 88 Nev. 240, 252, 495 P.2d 1064, 1072 (1972).

First-degree murder

Miller argues that the State failed to prove beyond a reasonable doubt that she killed J.R. through willful, deliberate, and premeditated

murder or by means of child abuse.[2] "Murder is the unlawful killing of a human being . . . [w]ith malice aforethought." NRS 200.010(1). The nature of the injuries can "circumstantially establish[ ] the malice requirement." *Graham v. State*, 116 Nev. 23, 29, 992 P.2d 255, 258 (2000). First-degree murder includes murder committed in the perpetration of child abuse. NRS 200.030(1)(b). "'Child abuse' means physical injury of a nonaccidental nature to a child under the age of 18 years." NRS 200.030(6)(b).

We conclude that the evidence presented sufficed for a rational trier to find the elements of first-degree murder by child abuse beyond a reasonable doubt. Malice was circumstantially established by the uncontroverted medical evidence that J.R. died due to fatal blunt force trauma injuries that were inflicted through multiple strikes contemporaneously. *See Graham*, 116 Nev. at 25, 29, 992 P.2d at 256, 258 (concluding malice was circumstantially established when the injuries administered to the infant victim included those "caused by blunt force trauma" (internal quotation marks omitted)). Additionally, the necessary proof of child abuse was satisfied by J.R.'s injuries and Miller's explanations to detectives including drowning, CPR, and the scuffle with children that were disproven through the medical evidence. *See id.* at 25, 992 P.2d at 256 (concluding the necessary proof of child abuse was satisfied by the victim's injuries and the defendant's false explanations). The jury had the opportunity to weigh Miller's theory that Davis inflicted the injuries and found Miller guilty of first-degree murder beyond a reasonable doubt.

[2]The jury did not indicate upon which theory of murder it based the conviction. We analyze the issue under a felony-murder theory of child abuse and note that if sufficient evidence supports any of the provided theories, it warrants upholding the conviction.

Accordingly, we conclude there was sufficient evidence to support the jury's determination that Miller was guilty of first-degree murder.

Child abuse, neglect or endangerment

Miller contends that sufficient evidence did not support a conviction for child abuse, neglect or endangerment. A person is guilty of abuse, neglect, or endangerment of a child if that 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.

NRS 200.508(1). "'Abuse or neglect' means physical or mental injury of a nonaccidental nature, . . . negligent treatment or maltreatment of a child under the age of 18 years, . . . under circumstances which indicate that the child's health or welfare is harmed or threatened with harm." NRS 200.508(4)(b). "'Physical injury' means" either "[p]ermanent or temporary disfigurement . . . or . . . [i]mpairment of any bodily function or organ of the body." NRS 200.508(4)(d). In relevant part,

> [n]egligent treatment or maltreatment of a child occurs if a child . . . is without proper care, . . . or lacks . . . medical care or other care necessary for the well-being of the child because of the faults or habits of the person responsible for the welfare of the child or the neglect or refusal of the person to provide them when able to do so.

NRS 432B.140.

The State presented evidence that Miller knew J.R. was limp and potentially unconscious after the bath, suggesting that Miller knew J.R. needed care. Despite this knowledge, Miller put J.R. down for bed and laid

down herself before checking on J.R. a final time. Even when Miller knew something was wrong after noticing J.R. was not moving, unresponsive, and had very cold hands, Miller contacted Davis before calling for medical care. The medical examiner testified that J.R. was likely laying around for a period of time after her injuries were inflicted. Miller's delay in procuring medical treatment for J.R. almost certainly caused J.R. physical pain when considering the extent of J.R.'s injuries and that J.R. died by blunt force trauma. Thus, the evidence suggests Miller should have known J.R. needed medical attention when she pulled J.R. from the bath, Miller unreasonably delayed in procuring medical care, and J.R. suffered unjustifiable physical pain as a consequence of the delay. *See Rice v. State*, 113 Nev. 1300, 1309, 949 P.2d 262, 268 (1997) (concluding evidence supported the neglect conviction where the defendant "knew or should have known that the infant" needed medical care, unreasonably delayed seeking it, and the delay caused unjustifiable physical pain or mental suffering), *abrogated on other grounds by Rosas v. State*, 122 Nev. 1258, 147 P.3d 1101 (2006). The jury was able to weigh Miller's alternative explanation before finding Miller guilty. Accordingly, viewing the evidence in the light most favorable to the State, we conclude that the evidence was sufficient because a rational trier could have found the elements of child abuse, neglect or endangerment beyond a reasonable doubt.

The district court did not err in instructing the jury

Two-reasonable-interpretations instruction

Miller argues that her proposed jury instruction regarding evidence susceptible to two possible interpretations was improperly rejected because it was an accurate statement of law and because its language was not covered by other instructions. We "review a district court's decision to

give a particular instruction for an abuse of discretion or judicial error." *Jackson v. State*, 117 Nev. 116, 120, 17 P.3d 998, 1000 (2001). In *Bails v. State*, we examined whether the district court is required to give an instruction about evidence being susceptible to two reasonable interpretations "when all of the evidence is circumstantial in character." 92 Nev. 95, 96-97, 545 P.2d 1155, 1155-56 (1976). We held "that it is not error to refuse to give the instruction" when "the jury is properly instructed regarding reasonable doubt." *Id.* at 97, 545 P.2d at 1156. Miller's proposed instruction was almost identical to the instruction used in *Bails*, and the jury was properly instructed on reasonable doubt. Accordingly, we conclude the district court's decision not to give the instruction was not an abuse of discretion.

Acceleration instruction

Miller argues the district court erred by providing a jury instruction that addressed situations where a defendant may have accelerated or hastened the death of an injured victim. Miller did not object. The failure to object to a jury instruction typically "precludes appellate review," although we may review for plain error. *Green*, 119 Nev. at 545, 80 P.3d at 95. In *State v. Sala*, we concluded, regarding cause of death, that "it was sufficient if, from the evidence, it was proven that the injuries inflicted by the second series of beatings were of such a nature that, in their nature and probable consequence, they would produce death, or at least materially contribute to and accelerate same." 63 Nev. 270, 290, 169 P.2d 524, 533 (1946), *overruled on other grounds by Litteral v. State*, 97 Nev. 503, 634 P.2d 1226 (1981). The instruction Miller contends was plain error closely reflects language relied on in *Sala*. Thus, it is not clear that the

acceleration instruction constituted error. Accordingly, we conclude that the district court did not plainly err by giving the instruction.

The State did not commit prosecutorial misconduct warranting reversal

To assess prosecutorial misconduct, we first "determine whether the prosecutor's conduct was improper." *Valdez v. State*, 124 Nev. 1172, 1188, 196 P.3d 465, 476 (2008). If so, we determine whether the improper conduct requires reversal. *Id.* If an appellant objected and the error is nonconstitutional, we review for harmless error by assessing whether "the error substantially affects the jury's verdict." *Id.* at 1189-90, 196 P.3d at 476-77.

"Citizens" comment

Miller contends that the State committed misconduct by inflaming jurors by implying that they owed the public a duty to return guilty verdicts. We conclude that the following comment unnecessarily implicated community standards: "It's your turn to go back into that deliberation room and tell [Miller] you know the truth. You know she is responsible, and the citizens of Clark County are not going to stand for the death of five-year-old [J.R.]." The comment appears to be a blatant attempt to inflame the jury by informing them that they have a duty to the community to convict Miller. *See Collier v. State*, 101 Nev. 473, 479, 705 P.2d 1126, 1130 (1985) (alteration in original) (internal quotation marks omitted) (concluding it is misconduct for a prosecutor to "blatantly attempt to inflame a jury by urging that, if they wish to be deemed moral and caring, then they must approach their duties in anger and give the community what it needs"), *modified by Howard v. State*, 106 Nev. 713, 800 P.2d 175 (1990). Thus, we conclude the comment was misconduct. Reviewing for nonconstitutional error, we determine that the prosecutor's statement did

not substantially affect the jury's verdict given the evidence of Miller's guilt, including the nature of J.R.'s injuries, the medical evidence that contradicted Miller's explanations for J.R.'s injuries, and evidence that Miller knew J.R. needed medical attention but unreasonably delayed in procuring assistance. Accordingly, we conclude the prosecutorial misconduct was harmless error.

Demeanor comments

Miller contends that the prosecutor misstated the evidence during the State's rebuttal closing argument by claiming that she was unemotional, casual, and not upset regarding J.R.'s injuries and death. We conclude that each comment the State made about Miller's demeanor referred to evidence presented to the jury and amounted to an inference drawn from the evidence. *See Truesdell v. State*, 129 Nev. 194, 203, 304 P.3d 396, 402 (2013) (concluding a prosecutor may "assert inferences from the evidence and argue conclusions on disputed issues"). Thus, we conclude the State's comments about Miller's demeanor were not prosecutorial misconduct.

In sum, because the challenged comments about Miller's demeanor do not amount to misconduct, they do not cumulate with the improper "citizens" comment. Because the error from the "citizens" comment was harmless, we conclude reversal for prosecutorial misconduct is not warranted.

Miller's convictions do not violate double jeopardy

Miller argues that her convictions for murder and child abuse, neglect or endangerment violate double jeopardy and redundancy principles. We review a double jeopardy claim de novo. *Davidson v. State*,

124 Nev. 892, 896, 192 P.3d 1185, 1189 (2008). "The Double Jeopardy Clause protects against . . . multiple punishments for the same offense." *Jackson v. State*, 128 Nev. 598, 604, 291 P.3d 1274, 1278 (2012); *see* U.S. Const. amend. V; Nev. Const. art. 1, § 8(1). Unless the Legislature has indicated otherwise, "the *Blockburger* test is employed." *Jackson*, 128 Nev. at 611, 291 P.3d at 1282; *see Blockburger v. United States*, 284 U.S. 299, 304 (1932). "The *Blockburger* test inquires whether each offense contains an element not contained in the other; if not, they are the same offence and double jeopardy bars additional punishment and successive prosecution." *Jackson*, 128 Nev. at 604, 291 P.3d at 1278 (internal quotation marks omitted).

Miller was charged with and convicted of first-degree murder and six counts of child abuse, neglect or endangerment resulting in substantial bodily harm. The district court granted Miller's motion to dismiss five of the child abuse convictions as being duplicative of the murder conviction. It is unclear under which theories the jury found Miller guilty. Even under the theory most similar to child neglect, however, we conclude there is no double jeopardy violation. Specifically, we determine that convictions of first-degree murder by child abuse and child neglect are not the same offense under *Blockburger*. *Compare* NRS 200.030(1)(b) (defining murder committed in the perpetration of child abuse and requiring malice aforethought), *and* NRS 200.030(6)(b) (requiring "physical injury of a nonaccidental nature"), *with* NRS 200.508(1) (requiring "suffer[ing] unjustifiable physical pain or mental suffering . . . or to be placed in a situation where the child may suffer physical pain or mental suffering").

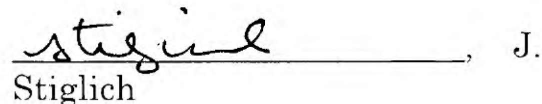
Accordingly, we conclude Miller has not shown that relief is warranted in this regard.[3]

Cumulative error does not warrant reversal

Miller argues that reversal is warranted based on cumulative error. When there is a sole error, there is nothing to cumulate. *Lipsitz v. State*, 135 Nev. 131, 139 n.2, 442 P.3d 138, 145 n.2 (2019). The single error was the State's comment invoking community standards, which was harmless. Thus, we conclude that Miller has not shown cumulative error.

Accordingly, we

ORDER the judgment of conviction AFFIRMED.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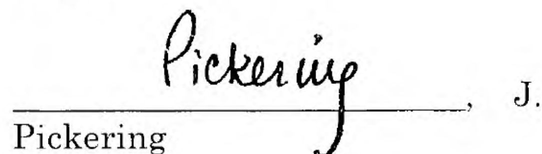
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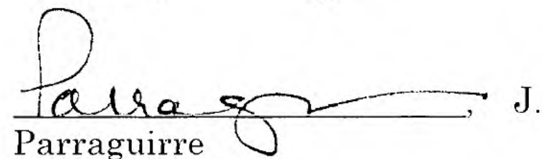
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Parraguirre

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

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[3]We decline Miller's invitation to revisit our redundancy doctrine.