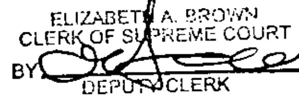
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

STEVEN JON MCLAUGHLIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 88142-COA

FILED

MAR 07 2025



ORDER OF AFFIRMANCE

Steven Jon McLaughlin appeals from a corrected judgment of conviction, entered pursuant to a jury verdict, of felony child abuse and misdemeanor domestic battery. Second Judicial District Court, Washoe County; David A. Hardy, Judge.

McLaughlin argues insufficient evidence supports his child abuse conviction because the State failed to prove beyond a reasonable doubt that the victim suffered physical pain or mental suffering as a result of abuse or neglect. When reviewing a challenge to the sufficiency of the evidence, we review the evidence in the light most favorable to the prosecution and determine whether "*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); *accord Mitchell v. State*, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008). "[I]t is the function of the jury, not the appellate court, to weigh the evidence and pass upon the credibility of the witness." *Walker v. State*, 91 Nev. 724, 726, 542 P.2d 438, 439 (1975).

C.M., his mother, and his brother testified that McLaughlin hit C.M. in the head, knocking him to the floor. C.M. explained the incident left him with a "good-size" knot or bulge on the side of his head that hurt after the adrenaline wore off. He further explained the bulge hurt for a day and went away after two days. C.M.'s mother, Carla[1], testified C.M. had a knot on his head that lasted about a week and a mark on his shoulder from hitting the couch as he fell that lasted five to seven days. Further, C.M.'s brother recorded McLaughlin striking C.M. in the head causing him to fall, and that video was played for the jury. The jury could have reasonably inferred from the evidence presented that McLaughlin caused C.M. to suffer unjustifiable physical pain or mental suffering as a result of a physical injury of a nonaccidental nature and thus that McLaughlin committed child abuse. *See* NRS 200.508(1) (defining the elements of child abuse); NRS 200.508(4)(a) (defining "abuse or neglect" in part as a physical injury of a nonaccidental nature); NRS 200.508(4)(d)(1) (defining "physical injury" to include a "[p]ermanent or temporary disfigurement"). Therefore, we conclude McLaughlin is not entitled to relief based on this claim.

McLaughlin also argues the prosecutor committed multiple instances of prosecutorial misconduct. When considering claims of prosecutorial misconduct, we consider whether the prosecutor's conduct was improper and, if so, whether the improper conduct warrants reversal. *See Valdez v. State*, 124 Nev. 1172, 1188, 196 P.3d 465, 476 (2008). We will not

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[1]Carla was the victim in the domestic battery count.

reverse a conviction if the prosecutor's misconduct amounts to harmless error. *Id.*

McLaughlin contends the prosecutor made comments during rebuttal argument that disparaged defense counsel and misstated the evidence and defense argument. "Disparaging remarks directed toward defense counsel have absolutely no place in a courtroom and clearly constitute misconduct," and comments that disparage legitimate defense tactics also constitute misconduct. *Butler v. State*, 120 Nev. 879, 898-99, 102 P.3d 71, 84-85 (2004) (internal quotation marks omitted). Although the prosecutor may not disparage defense counsel or legitimate defense tactics, comments which focus "on the truth of the defense's version of events" do not amount to misconduct. *Burns v. State*, 137 Nev. 494, 502, 495 P.3d 1091, 1101 (2021). In that vein, a "prosecutor may argue inferences from the evidence and offer conclusions on contested issues." *Miller v. State*, 121 Nev. 92, 100, 110 P.3d 53, 59 (2005) (internal quotation marks omitted); *see also Taylor v. State*, 132 Nev. 309, 324, 371 P.3d 1036, 1046 (2016) (stating that a prosecutor's comments expressing opinions or beliefs are not improper when they are reasonable conclusions or fair comments based on the presented evidence). This court considers statements alleged to be prosecutorial misconduct in context. *Byars v. State*, 130 Nev. 848, 865, 336 P.3d 939, 950-51 (2014).

First, McLaughlin contends it was improper for the prosecutor to comment in rebuttal argument that this was "the dumbest way to bring this case forward" and that the defense's argument "underscores what is wrong with the defendant and why it is criminal." During his closing

argument. McLaughlin called into question Carla's credibility based on the fact she was divorcing McLaughlin and wanted custody of the children, child support, and alimony. In context, the prosecutor's comments rebutted McLaughlin's challenge to Carla's credibility by arguing that, if Carla was lying at trial about what happened because she had "an ax to grind," there was a less "dumb" way to exact her revenge—by immediately reporting McLaughlin to law enforcement instead of waiting for C.M.'s brother to report the incident to his teacher. Further, the comments were not directed at counsel. Thus, neither comment disparaged defense counsel or a legitimate defense tactic. Therefore, we conclude these comments were not improper.

Second, McLaughlin contends it was improper for the prosecutor to comment that defense counsel made a "sort of minimizing argument" regarding C.M.'s injuries. In context, the prosecutor was rebutting McLaughlin's argument that C.M.'s injuries were "not the kind of physical injuries" that could support a child abuse conviction. Further, the comment did not disparage defense counsel or a legitimate defense tactic but was a comment on the state of the evidence regarding C.M.'s injuries. Therefore, we conclude this comment was not improper.

Third, McLaughlin contends it was improper for the prosecutor to comment on defense counsel asking the jury to forgive him for doing his job. This comment appears to have been made in response to defense counsel's statements to the jury that, although he did not endorse McLaughlin's conduct in the video, he still had a job to do by defending McLaughlin at trial. And following the prosecutor's comment, the

prosecutor correctly stated the issue was not whether he or defense counsel were doing their job but whether McLaughlin was criminally liable. In context, we conclude this comment was not improper.

Finally, McLaughlin contends the prosecutor improperly (1) argued that defense counsel was trying "to cloak this" as McLaughlin being "just a bad parent" and was suggesting "kids should be expected to be a little of a punching bag," (2) implied defense counsel was not being truthful, and (3) summarized the defense's argument as throwing the victim under the bus and claiming the victim had it coming. McLaughlin objected to these comments, the district court sustained the objections or directed the State to focus its comments on arguments and not defense counsel, and the prosecutor did not repeat the comments. Although these comments appear to have improperly disparaged defense counsel or legitimate defense tactics, *cf. Rose v. State*, 123 Nev. 194, 211, 163 P.3d 408, 419 (2007) (concluding the prosecutor's reference to the defense as "smoke and mirrors" was improper disparagement); *Butler*, 120 Nev. at 898-99, 102 P.3d at 84-85 (concluding that statements portraying the defense's presentation of evidence and defense tactics as a dirty technique and implying defense counsel acted unethically were improper), we conclude any error was harmless where the district court sustained the objections, the prosecutor moved on, and the evidence of McLaughlin's guilt was overwhelming.[2] *See*

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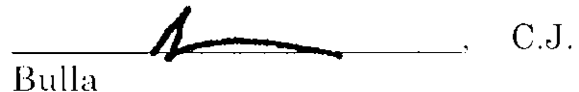
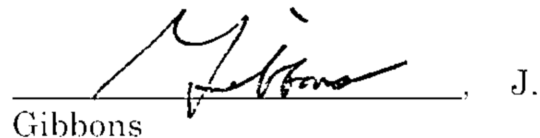
[2]In his opening brief, McLaughlin argues the above-alleged errors, "[v]iewed individually or cumulatively," warrant reversal. McLaughlin does not provide cogent argument regarding cumulative error. Therefore, we

Truesdell v. State, 129 Nev. 194, 203-04, 304 P.3d 396, 402 (2013) (determining that the prosecutor made improper comments but that the remarks were harmless where they were very limited and where the prosecutor immediately moved on after the district court sustained the defense's objection); *King v. State*, 116 Nev. 349, 356, 998 P.2d 1172, 1176 (2000) (noting "[e]ven aggravated prosecutorial misconduct may constitute harmless error" where there is overwhelming evidence of guilt). Accordingly, we

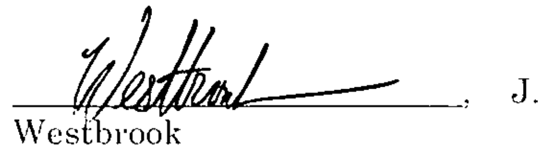
ORDER the judgment of conviction AFFIRMED.



_______________, C.J.
Bulla



_______________, J.
Gibbons



_______________, J.
Westbrook

cc: Hon. David A. Hardy, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

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need not consider it. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987).