IN THE COURT OF APPEALS OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Appellant,
vs.
PAUL BUZZ BENJAMIN,
Respondent.

No. 91335-COA

FILED

MAY 11 2026

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY [signature]
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting a pretrial petition for a writ of habeas corpus filed on May 12, 2025. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

Respondent Paul Buzz Benjamin was charged with one count of child abuse, neglect, or endangerment, a felony. The State alleged that Benjamin willfully caused the victim, H.B., to either suffer unjustifiable physical pain or mental suffering as the result of abuse or neglect, or be placed in a situation where he may have suffered physical pain or mental suffering as the result of abuse or neglect. The State proceeded on a "negligent treatment or maltreatment" theory of abuse or neglect, arguing Benjamin left H.B. home alone with an unsecured firearm in the residence that H.B. could access. The justice court conducted a preliminary hearing and bound Benjamin over to the district court.

Thereafter, Benjamin filed a pretrial petition for a writ of habeas corpus, arguing the State failed to present sufficient evidence that he was criminally negligent or that he had placed H.B. in a dangerous situation. The State filed a return, arguing that it did not have to demonstrate Benjamin was criminally negligent and that it presented

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sufficient evidence Benjamin committed child abuse, neglect, or endangerment. Benjamin filed an answer to the State's return, and after holding a hearing, the district court granted the petition and dismissed the charge. The State now appeals the district court's order.[1]

A defendant may be bound over for trial if the evidence at the preliminary hearing is sufficient to establish probable cause that a crime was committed by the defendant, and a finding of probable cause may be based on slight or marginal evidence. *Sheriff v. Burcham*, 124 Nev. 1247, 1257-58, 198 P.3d 326, 332-33 (2008). "A district court's decision to grant a pretrial habeas petition for lack of probable cause will stand absent a showing of substantial error." *State v. Devries*, 140 Nev., Adv. Op. 82, 561 P.3d 42, 45 (2024) (cleaned up).

To sustain the charge, the State had to present evidence that Benjamin willfully caused H.B. to either (1) suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect, or (2) be placed in a situation where H.B. may have suffered physical pain or mental suffering as the result of abuse or neglect. NRS 200.508(1); *see also Clay v. Eighth Jud. Dist. Ct.*, 129 Nev. 445, 451, 305 P.3d 898, 902 (2013) (recognizing that "NRS 200.508(1) . . . sets forth alternative means of committing the offense"). As relevant to this case, "abuse or neglect" includes "negligent treatment or maltreatment of a child . . . as set forth in . . . NRS 432B.140 . . . , under circumstances which indicate that the child's health or welfare is harmed or threatened with harm." NRS 200.508(5)(a). In turn, "[n]egligent treatment or maltreatment of a child occurs if a child . . . is without proper care, control or supervision . . . ." NRS 432B.140.

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[1]This appeal stands submitted without further briefing or oral argument. *See* NRS 34.575(3).

After review, we conclude the district court did not substantially err in dismissing the case for lack of probable cause. As previously stated, a charge of felony child abuse, neglect, or endangerment is permissible only where a defendant has "willfully caused" a child to suffer harm or to be placed in a situation where they may have suffered harm. NRS 200.508(1). The "willfully caused" element requires not only that a defendant act intentionally, *see Smith v. State*, 112 Nev. 1269, 1276, 927 P.2d 14, 18 (1996), *abrogated on other grounds by City of Las Vegas v. Eighth Jud. Dist. Ct.*, 118 Nev. 859, 59 P.3d 477 (2002), but that the defendant have actual knowledge that they were, through their abuse or neglect, causing a child to suffer harm or to be placed in a situation where they may suffer harm, *cf. Vallery v. State*, 118 Nev. 357, 367, 369, 46 P.3d 66, 74, 75 (2002) (holding "[t]he phrase 'willfully causes or permits' [in a prior elder abuse and neglect statute] contemplates *actual knowledge of a situation which requires action* (or a denial of permission) in order to prevent harm to an older person" (emphasis added)).[2]

At the preliminary hearing, the State presented evidence that Benjamin was in a relationship with H.B.'s mother and that, at the time of the offense on October 4, 2023, H.B. lived with his mother, his siblings, and Benjamin. The State presented evidence that Benjamin left a loaded handgun in a bag, within a backpack, on the top shelf of the primary

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[2]For this reason, we conclude the district court erred to the extent it read a "criminal negligence" standard into NRS 432B.140 in a seeming attempt to ensure defendants are not subject to criminal penalties for "simple negligence." *Cf. Cornella v. Just. Ct.*, 132 Nev. 587, 595-600, 377 P.3d 97, 103-06 (2016) (holding Nevada's misdemeanor vehicular manslaughter statute, which permits a conviction based on "simple negligence," does not violate due process).

bedroom closet; while home alone, H.B., who was 15 years old at the time of the offense, heard what he believed were gunshots outside and searched the home for a firearm for approximately 15 minutes before finding Benjamin's handgun; and H.B. accidentally fired the gun at a wall. The State also presented evidence that H.B. suffered from several mental health issues, that H.B. had previously engaged in self-harming behaviors, and that in April 2022, H.B. retrieved a gun from his mother's safe with the intent to kill his biological father and then himself (gun incident).

While this evidence may have been sufficient to establish probable cause to believe Benjamin was negligent in leaving a loaded and unsecured firearm in the house, it was insufficient to establish Benjamin had *actual knowledge* that he was causing H.B. to suffer unjustifiable physical pain or mental suffering or that he was placing H.B. in a dangerous situation when he left H.B. home alone for approximately 30 to 40 minutes. As previously discussed, the handgun was not left in an open or obvious manner, and it was only discovered after 15 minutes of deliberate searching. The State did not present any evidence indicating Benjamin knew or had reason to believe H.B. would enter the primary bedroom closet if left home alone for such a short time, let alone that H.B. would search the closet's contents for a firearm. Moreover, the evidence showed that Benjamin discussed gun safety with H.B. and that the previous gun incident occurred approximately one and one-half years prior to the incident in question, before Benjamin resided with H.B.

Although the State presented evidence that H.B. suffered from mental health issues and that Benjamin was aware, at least to some extent, of H.B.'s mental health issues, the State did not present any evidence indicating Benjamin believed that H.B. was having a mental health episode

or that H.B.'s mental health issues would otherwise cause H.B. to search for a firearm at the time of the offense.[3] Indeed, the evidence indicated H.B. spontaneously searched for the firearm on the day in question because he heard gunshots outside and wanted to be prepared to confront the situation.

We agree with the district court that the State's theory, if permitted to continue on the facts presented, "would extend child neglect liability . . . far beyond what the statute is meant to criminalize." This conclusion does not negate or eliminate other avenues for protecting children, such as NRS 202.300(5) (prohibiting a person from negligently storing or leaving a firearm at a location under their control if they know or have reason to know that there is a substantial risk that a child may obtain the firearm and providing a misdemeanor penalty), or a petition alleging a child is in need of protection pursuant to NRS Chapter 432B, *cf. Dawson v. Eighth Jud. Dist. Ct.*, No. 92113-COA, 2026 WL 1179091 (Nev. Ct. App. Apr. 29, 2026) (Order Denying Petition for a Writ of Mandamus) (concluding the district court did not manifestly abuse its discretion in determining a parent neglected her child where the parent failed to prevent child access to a firearm and the child then ran away and attempted to commit suicide with that firearm after leaving a suicide note in the home and the parent did not notify authorities until the following day about the missing child and missing gun). While our conclusion does not preclude other factual scenarios from meeting the necessary standard for felony child abuse, neglect, or endangerment, we conclude it is not met here.

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[3]For example, the State did not present any evidence that H.B. was depressed or having suicidal tendencies on the day in question, that H.B. was not taking his medications, or that Benjamin was aware of any such issues regarding H.B.'s mental state when he left H.B. home alone.

For the foregoing reasons, neither the evidence presented nor the reasonable inferences that may be drawn therefrom indicate Benjamin *willfully caused* H.B. to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect or to be placed in a situation where H.B. may have suffered physical pain or mental suffering as the result of abuse or neglect. Having concluded the State failed to present sufficient evidence of the requisite intent, we conclude the district court did not substantially err in dismissing the case for lack of probable cause, and we

ORDER the judgment of the district court AFFIRMED.

_______________________, C.J.
Bulla

_______________________, J.
Gibbons

WESTBROOK, J., dissenting:

If I were sitting as a juror on this case, and tasked with deciding beyond a reasonable doubt whether Benjamin, in fact, committed the crime of child abuse, neglect, or endangerment, I might very well join my colleagues and vote to acquit him of that crime based on the evidence that has been presented thus far. However, "[a]t a preliminary examination . . . the issue of guilt or innocence of the accused is not involved" and "[t]he evidence need not be sufficient to support a conviction." *Kinsey v. Sheriff*, 87 Nev. 361, 363, 487 P.2d 340, 341 (1971). Because I believe the State presented sufficient evidence at the preliminary hearing for Benjamin to stand trial on the charge of child abuse, neglect, or endangerment, I respectfully dissent.

As the majority recognizes, the State's burden at this stage of the proceedings is not onerous when compared to its ultimate burden at trial—the State need only present slight or marginal evidence "that an offense has been committed and that the defendant[ ] committed it." *Sheriff v. Burcham*, 124 Nev. 1247, 1257, 198 P.3d 326, 332 (2008) (quotation marks omitted). In satisfying this burden, "[t]he State is not required to negate all inferences which might explain [the accused's] conduct, but only to present enough evidence to support a reasonable inference that the accused committed the offense." *Id.* at 1258, 198 P.3d at 333 (quotation marks omitted). And although we review a district court's decision to grant a pretrial habeas petition for "substantial error," that standard must be considered in the context of the State's burden: "[i]f the State meets its burden to show probable cause that the defendant committed the charged crime, it is substantial error for a district court to grant a pretrial habeas petition." *State v. Devries*, 140 Nev., Adv. Op. 82, 561 P.3d 42, 46 (2024).

Here, the State charged Benjamin under the theory that he willfully caused H.B. to be placed in a situation where H.B. may have suffered physical pain or mental suffering by leaving H.B. without proper care, control, or supervision. *See* NRS 200.508(1), (5)(a); NRS 432B.140. At the preliminary hearing, the State did not simply present evidence that Benjamin left a 15-year-old child home alone with a loaded and unsecured firearm in the house. Rather, it presented specific evidence regarding H.B.'s mental health history and prior actions, and it can reasonably be inferred from this evidence that H.B. was placed in a situation where he may have suffered physical pain or mental suffering when he was left home alone with a loaded and unsecured firearm in the house.

In particular, the State presented evidence indicating that (1) H.B. suffered from several mental health issues, including autism, post-traumatic stress disorder, attention deficit hyperactivity disorder, insomnia, general anxiety disorder, and major depressive disorder, and had gone to inpatient care facilities approximately *50 times* in his life; (2) H.B. had previously engaged in self-harming behaviors and had previously attempted to commit suicide *six times*; (3) in April 2022, H.B. had retrieved a gun from his mother's safe with the intent to kill his biological father and then himself; (4) as a result of that incident, H.B. stayed at a long-term mental health care facility from April 2022 to May 2023; (5) on the day of the incident, H.B. repeatedly informed the 9-1-1 operator that he was mentally unstable; and (6) H.B. informed Child Protective Services after the incident that he did not feel safe in the home when there were weapons in the home.

Notably, the majority does not conclude that the evidence was insufficient to establish probable cause to believe Benjamin placed H.B. in

situation where H.B. may have suffered physical pain or mental suffering when he left H.B. home alone under the circumstances discussed above. Rather, the majority concludes only that the State failed to present sufficient evidence that Benjamin *willfully caused* H.B. to be placed in such a situation, *i.e.*, that Benjamin had actual knowledge that he was placing H.B. in such a situation when he left H.B. home alone.[4] *See Smith v. State*, 112 Nev. 1269, 1276, 927 P.2d 14, 18 (1996), *abrogated on other grounds by City of Las Vegas v. Eighth Jud. Dist. Ct.*, 118 Nev. 859, 59 P.3d 477 (2002); *cf. Vallery v. State*, 118 Nev. 357, 367, 369, 46 P.3d 66, 74, 75 (2002). Given the State's reduced burden of proof at the preliminary hearing stage, I disagree.

The State presented evidence indicating Benjamin owned the firearm and backpack in which it was found; thus, it can reasonably be inferred that Benjamin was aware a loaded and unsecured firearm was in the house when he left H.B. home alone. The State also presented evidence that Benjamin was aware of H.B.'s mental health issues and aware of the April 2022 incident where H.B. retrieved a firearm from his mother's safe with the intent to kill his biological father and himself. I note that H.B. was discharged from a year-long stay at a mental health care facility only about five months prior to the events underlying the instant charge. Even more, the State presented evidence that the knives in the home were kept in a locked toolbox, presumably due to H.B.'s history of self-harm. *See Sheriff v. Shade*, 109 Nev. 826, 830, 858 P.2d 840, 842 (1993) (recognizing that a court should consider the evidence "and the reasonably drawn inferences from the

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[4]I agree with the majority's conclusion that the district court erred by reading a "criminal negligence" standard into NRS 432B.140. *See* Majority order *ante* at 3 n.2.

evidence" in determining whether there is probable cause to support charges). From all this, one can reasonably infer that Benjamin knew he was placing H.B. in a dangerous situation when he left H.B. home alone with a loaded firearm that H.B. could, and ultimately did, access.[5]

I recognize additional evidence was presented that may indicate Benjamin did not willfully cause H.B. to be placed in a situation where he may have suffered physical pain or mental suffering, such as evidence that the firearm was not left out in the open. And in the event of a trial, that evidence could ultimately convince a jury not to convict Benjamin of this crime. However, as previously stated, at a preliminary hearing, "the State is not required to negate all inferences which might explain [the accused's] conduct," *Devries*, 140 Nev., Adv. Op. 82, 561 P.3d at 45-46, and "if an inference of criminal agency can be drawn from the evidence it is proper for the magistrate to draw it," *see Sheriff v. Potter*, 99 Nev. 389, 391, 663 P.2d 350, 352 (1983).

That the evidence may be insufficient to sustain a conviction is irrelevant at this stage of the proceedings; the only consideration before this court is whether the State established, by at least slight or marginal evidence, probable cause to believe Benjamin committed child abuse, neglect, or endangerment. *See Sheriff v. Milton*, 109 Nev. 412, 414, 851 P.2d 417, 418 (1993); *Sheriff v. Hodes*, 96 Nev. 184, 186, 606 P.2d 178, 180 (1980). Although the State's evidence may be just that—slight or marginal—such a showing is sufficient to establish probable cause so as to preclude dismissal

[5]Although the State did not present evidence that H.B. sought the firearm with the intent to harm himself, such a showing was not required to sustain the charge in this matter. *See Clay v. Eighth Jud. Dist. Ct.*, 129 Nev. 445, 453-54, 305 P.3d 898, 904 (2013).

at this stage.[6] Accordingly, I would reverse the district court's order and remand this matter for further proceedings.

__________________________, J.
Westbrook

cc: Hon. Joseph Hardy, Jr., District Judge
Attorney General/Carson City
Clark County District Attorney
Clark County Public Defender
Eighth District Court Clerk

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[6]The majority suggests that other avenues for protecting children may be available in this matter, such as a criminal charge filed pursuant to NRS 202.300(5), which prohibits the negligent storage of a firearm, or a petition alleging a child is in need of protection pursuant to NRS Chapter 432B. I note that the presence or availability of such other avenues has no bearing on whether the State has established probable cause to support the charge of child abuse, neglect, or endangerment in this case. *See United States v. Armstrong*, 517 U.S. 456, 464 (1996) ("In the ordinary case, so long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, *and what charge to file* or bring before a grand jury, generally rests entirely in his discretion." (emphasis added) (internal quotation marks omitted)); *see also Hernandez v. State*, 118 Nev. 513, 523, 50 P.3d 1100, 1107 (2002) (rejecting a defendant's contention that a charge under Nevada's kidnapping statute violated due process where a more specific charge could have been pursued because the statutes were not in conflict and the prosecutor had discretion in their charging decision).