

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

Court of Appeals of New Mexico
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STATE OF NEW MEXICO,

Plaintiff-Appellee,



Mark Reynolds

v.

No. A-1-CA-42740

STEPHANIE REYES,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY

Clara Moran, District Court Judge

Raúl Torrez, Attorney General

Santa Fe, NM

Eric Orona, Assistant Solicitor General

Albuquerque, NM

for Appellee

Bennett J. Baur, Chief Public Defender

Maria A. Pomorski, Assistant Appellate Defender

Santa Fe, NM

for Appellant

MEMORANDUM OPINION

DUFFY, Judge.

{1} Defendant Stephanie Reyes challenges her conviction for first-degree child
abuse resulting in great bodily harm, contrary to NMSA 1978, Section 30-6-1(D)(1)
(2009), based on evidence that she “recklessly cause[d] or permit[ted] rib and/or
radial fractures” to her eight-week-old infant son, R.J. On appeal, Defendant argues:

(1) the State presented insufficient evidence to support the conviction; (2) the district court erred by including “or permitted” in the jury instructions; (3) the district court erred by allowing the State to question Defendant regarding her medical marijuana use; and (4) the district court erred by concluding Defendant’s offense was a serious violent offense. We affirm Defendant’s conviction, but reverse and remand for reconsideration of the serious violent offense designation.

DISCUSSION

I. Sufficiency of the Evidence

{2} Defendant argues the State presented insufficient evidence to support her conviction for first-degree child abuse under a “caused or permitted” endangerment theory. *See* § 30-6-1(D)(1) (providing that “[a]buse of a child consists of a person knowingly, intentionally or negligently, and without justifiable cause, causing or permitting a child to be . . . placed in a situation that may endanger the child’s life or health”). In reviewing this issue, we refer to and apply the well-established standard of review for sufficient evidence. *See, e.g., State v. Montoya*, 2015-NMSC-010, ¶¶ 52-53, 345 P.3d 1056. “The jury instructions become the law of the case against which the sufficiency of the evidence is to be measured.” *State v. Soto*, 2025-NMSC-051, ¶ 12, 580 P.3d 781 (alterations, internal quotation marks, and citation omitted).

{3} The jury was instructed that to convict Defendant of child abuse resulting in great bodily harm, the State had to prove beyond a reasonable doubt that Defendant “caused or permitted rib and/or radial fractures to [R.J.] by applying force to his ribs and/or his arm.” “Our courts have repeatedly stated that ‘causing’ and ‘permitting’ child abuse are distinct theories, one premised upon active abuse (causing), the other upon the passive act of allowing the abuse to occur (permitting).” *State v. Nichols*, 2016-NMSC-001, ¶ 32, 363 P.3d 1187 (internal quotation marks and citation omitted). “[O]rdinarily these theories must be charged in the alternative, unless it is not clear who actually inflicted the abuse, but the evidence shows beyond a reasonable doubt that the defendant either caused the abuse or permitted it to occur.” *Id.* (internal quotation marks and citation omitted). This circumstance typically arises “when the evidence shows that a child was abused in the presence of two or more caregivers, one who actually inflicted the abuse while the other stood by, passively permitting the abuse to take place.” *Id.*; see *State v. Leal*, 1986-NMCA-075, ¶ 13, 104 N.M. 506, 723 P.2d 977 (“Since abuse will frequently occur in the privacy of the home, charging a defendant with ‘causing or permitting’ may enable the state to prosecute where it is not clear who actually inflicted the abuse, but the evidence shows beyond a reasonable doubt that the defendant either caused the abuse or permitted it to occur.”). Defendant argues the State failed to present sufficient evidence to support either alternative. Based on our review of the evidence, we

1 conclude the State presented sufficient evidence to support the jury's finding that
2 Defendant caused or permitted the charged abuse of R.J.

3 {4} The State presented the following evidence at trial. On December 17, 2019,
4 Defendant and Robert Jackson brought their infant son, R.J., to the emergency room
5 at Presbyterian Hospital after they discovered a large bump on R.J.'s head. Doctors
6 at Presbyterian ordered a CAT scan and imaging study of R.J. and, based on the
7 results, transferred R.J. to the University of New Mexico Hospital (UNMH) because
8 the extent of his injuries required a higher level of care.

9 {5} Dr. Mark Mabray, an expert in radiology and neuroradiology and a
10 neuroradiologist at UNMH, testified that he was the interpreting physician for R.J.'s
11 radiology imaging. In addition to R.J.'s head injuries, Dr. Mabray testified that R.J.'s
12 imaging showed multiple rib fractures. He explained that R.J.'s initial skeletal
13 survey (a set of X-ray images of all the bones in the body) taken on December 17,
14 2019, and R.J.'s follow-up skeletal survey taken on January 6, 2020, both showed
15 multiple rib fractures. Dr. Mabray further noted that the rib fractures in R.J.'s
16 January 6, 2020 skeletal survey were healing fractures based on the enlarged calluses
17 visible on the bones. Dr. Mabray explained that as rib fractures heal, they form a
18 callus, and thus the fractures become easier to see as they heal over the course of
19 weeks. Dr. Mabray also explained that new fractures can be pretty hard to see,

1 particularly in infants, because their bones are not as well developed and not as
2 dense.

3 {6} Dr. Leslie Strickler, an expert in general pediatrics and child abuse pediatrics
4 and the head of the Child Abuse Response Team (CART) at UNMH, testified that
5 she performed an initial CART consultation and physical exam of R.J. at UNMH on
6 December 17, 2019, and then completed her medical evaluation of R.J. during a
7 scheduled follow-up visit at the CART clinic on January 6, 2020. Dr. Strickler
8 explained that she conducted interviews with Defendant and Mr. Jackson to obtain
9 R.J.'s medical, family, and social history, and she reviewed R.J.'s medical records
10 going back to his birth. She also reviewed all of R.J.'s December 17, 2019 imaging,
11 including his skeletal survey, and noted that the images of R.J.'s left forearm
12 indicated there was a fracture to his radial bone at some point that had since gone
13 through a healing process. She testified that the fracture likely happened weeks prior
14 to when the imaging was done. Dr. Strickler stated that a radial fracture in an infant
15 of R.J.'s age is typically caused by the application of force, with the most common
16 type being compressive force that buckles the bone, and that infants' long bones are
17 not easy to fracture since they are more pliable and less rigid.

18 {7} Dr. Strickler also testified that the imaging of R.J.'s ribs showed multiple rib
19 fractures, primarily on the front and side of R.J.'s rib cage, that were in various
20 phases of healing. Dr. Strickler stated that the classic mechanism for causing such

1 rib fractures would be compression, or rather force applied broadly to the chest that
2 squeezes the ribs to the point beyond what they can tolerate. Dr. Strickler clarified
3 that she would not expect even minor injuries such as bruising in infants as young
4 as R.J. because infants that young are not sufficiently mobile, coordinated, or strong
5 enough to engage in any activities that could cause an injury of any significance to
6 their bodies. She also stated that she would not attribute the radial fracture and rib
7 fractures to the birthing process based on the perceived timing of the injuries.
8 Additionally, Dr. Strickler explained that an infant of R.J.'s age would exhibit pain
9 as a result of rib fractures or a radial fracture, and that pain would be expressed by
10 crying and discomfort or distress during any manipulation of the body, such as when
11 changing the baby's clothing or pulling their arm through a sleeve. For these reasons,
12 Dr. Strickler stated that she would expect a caretaker to recognize something was
13 wrong with R.J. or that he was unwell based on the change in his behavior from the
14 pain and discomfort of the various fractures.

15 {8} Dr. Strickler diagnosed R.J. with physical abuse and neglect. She also noted
16 in her diagnosis that it was evident R.J. experienced traumatic injuries on more than
17 one occasion. Also, significantly, Dr. Strickler explained that R.J. was doing much
18 better when she saw him for a second evaluation on January 6, 2020, that no new
19 acute fractures were discovered in his repeated skeletal survey taken on that date,

1 and that he had been in the care of his maternal great aunt in the weeks in between
2 his two evaluations.

3 {9} Mr. Jackson, R.J.'s father, also testified at Defendant's trial. He disclosed to
4 the jury that he had also been charged regarding R.J.'s injuries, but he had accepted
5 a plea deal in which he pleaded guilty to three counts of third-degree child abuse for
6 recklessly permitting abuse. Mr. Jackson testified that he, Defendant, and R.J. had
7 lived together from the time R.J. was born on October 19, 2019, until the time that
8 he and Defendant took R.J. to the hospital in December 2019. He explained that
9 during most of that eight-week period, he worked Monday through Friday, 8:00 a.m.
10 to 5:00 p.m., and while he worked, R.J. was in the care of Defendant, who was not
11 working. According to Mr. Jackson, no adult other than Defendant cared for R.J.
12 alone during the months of October through December 2019. Mr. Jackson stated that
13 he was "never . . . home alone with [R.J.] ever." Mr. Jackson testified that Defendant
14 was the one who typically got up with R.J. in the middle of the night. He also told
15 the jury that, prior to R.J.'s hospitalization, he had witnessed Defendant "acting
16 rough" with R.J. For example, Mr. Jackson explained that when Defendant was
17 stressed out, she would be "quick to act" and "if she [went] to pick [R.J.] up, she
18 picked him up quick or she would pull him up by his arms to pick him up when he
19 [was] laying on his back." Mr. Jackson also said that Defendant was initially hesitant

1 to take R.J. to the hospital after they discovered the large bump on his head because
2 she was worried R.J. would be taken away from them.

3 {10} Viewed in the light most favorable to the jury’s verdict, the foregoing
4 evidence supports a finding that Defendant either “caused” or “permitted” R.J.’s rib
5 or radial fractures. The evidence established that R.J. lived with and was in the
6 exclusive care of Defendant and Mr. Jackson. Defendant was R.J.’s primary
7 caregiver and the only adult R.J. was ever alone with from the time he was born until
8 the time he was hospitalized in December 2019. Based on this evidence, Defendant,
9 or Mr. Jackson with Defendant present, would have had the best opportunity to
10 inflict abuse on R.J. *See Soto*, 2025-NMSC-051, ¶ 22 (“Evidence that the defendant
11 had the best opportunity to inflict the injury may support a guilty verdict for child
12 abuse resulting in death.” (alteration, internal quotation marks, and citation
13 omitted)).

14 {11} Additionally, the medical expert testimony established that R.J.’s rib and
15 radial fractures were very likely caused by a nonaccidental application of force on
16 multiple occasions, and the injuries had occurred in the weeks before December 17,
17 2019, meaning during a time when only Defendant or Mr. Jackson had access to R.J.
18 Further, Mr. Jackson’s testimony that Defendant roughly handled R.J. allowed the
19 jury to reasonably infer that Defendant was capable of inflicting abuse and that
20 Defendant’s hesitancy to take R.J. to the hospital meant she had knowledge of past

1 abuse. *See State v. Garcia*, 2016-NMSC-034, ¶ 24, 384 P.3d 1076 (stating that when
2 reviewing the sufficiency of the evidence, appellate courts must “draw every
3 reasonable inference in favor of the jury’s verdict”). The evidence also indicated that
4 R.J. would have shown signs that he was in pain from the rib or radial injuries during
5 those weeks leading up to his hospitalization and those signs would have been
6 noticeable to Defendant as his primary caregiver. Lastly, the evidence that R.J.’s
7 condition improved and no new injuries were discovered in the weeks between
8 December 17, 2019, and January 6, 2020—a time when R.J. was no longer in
9 Defendant or Mr. Jackson’s care—allowed the jury to infer R.J.’s injuries were a
10 result of Defendant’s or Mr. Jackson’s conduct. All of this evidence supports a jury
11 finding that Defendant either “caused” or “permitted” R.J.’s rib or radial fractures.
12 Similarly, the evidence supports a jury finding that Defendant “permitted” abuse
13 since Defendant would have noticed R.J.’s change in behavior and signs of pain or
14 bruising from the injuries over the period of weeks and thus would have known Mr.
15 Jackson, the only other adult with opportunity to abuse R.J., had inflicted injuries
16 and she allowed it to continue by not reporting it or removing R.J. from Mr.
17 Jackson’s care. The foregoing evidence was sufficient to allow the jury to reasonably
18 conclude that Defendant caused or permitted the abuse.

19 {12} To the extent Defendant relies on *State v. Leidy*, 2023-NMCA-073, ¶¶ 9-12,
20 536 P.3d 548, and *Leal*, 1986-NMCA-075, to suggest that the foregoing evidence

1 was not sufficient to support the “permitted” alternative, we disagree. Unlike in *Leal*
2 and *Leidy*, the State offered medical testimony establishing a window of weeks in
3 which R.J.’s rib and radial fractures occurred, and that rib or radial injuries in a child
4 of R.J.’s age are indicative of nonaccidental injuries or abuse. As well, the State
5 offered evidence that Defendant was R.J.’s primary caregiver during this period,
6 would have seen signs of R.J.’s injuries, and would have known Mr. Jackson was
7 the cause, but failed to act. *Cf. Leidy*, 2023-NMCA-073, ¶ 12 (“Without evidence as
8 to when the injury occurred, the jury was required to speculate who was or might
9 have been with the child when they were injured.” (alterations, internal quotation
10 marks, and citation omitted)). Accordingly, neither *Leidy* nor *Leal* compel a different
11 outcome here.

12 {13} For the above reasons, we conclude Defendant’s conviction for child abuse
13 resulting in great bodily harm was supported by sufficient evidence.

14 **II. The Inclusion of “or Permitted” in the Jury Instruction Was Not Error**

15 {14} Defendant additionally argues that the district court should not have included
16 the “permitted” theory of child abuse in the jury instruction because there was no
17 evidence to support this theory. *See* UJI 14-615 NMRA. The district court concluded
18 there was enough evidence presented at trial for both a caused or permitted theory
19 to be included in the instruction under *Leal*. As UJI 14-615 use note 3 makes clear,
20 “both alternatives may be given in the same instruction if the evidence supports a

1 finding beyond a reasonable doubt that the defendant either ‘caused or permitted’
2 child abuse.” To the extent Defendant claims there was no evidence that that she
3 “permitted” abuse in this case, she effectively reiterates the sufficiency argument
4 addressed in the previous section of this opinion. Because we have concluded there
5 was evidence to support the jury’s determination on either alternative, we conclude
6 the district court did not err by including the “permitted” alternative in the jury
7 instruction here.

8 **III. The District Court Did Not Err in Allowing the State to Question**
9 **Defendant About Her Use of Medical Marijuana**

10 {15} Defendant argues that the district court erred by allowing the State to impeach
11 her about her use of medical marijuana while breastfeeding under Rule 11-608(B)(1)
12 NMRA, which authorizes “cross-examination inquiry into specific instances of a
13 witness’s prior conduct if the specific instances are probative of the witness’s
14 character for truthfulness.” *State v. Lymon*, 2021-NMSC-021, ¶ 47, 488 P.3d 610;
15 *see* Rule 11-608(B)(1). “We review evidentiary decisions of the district court for an
16 abuse of discretion.” *State v. Patterson*, 2017-NMCA-045, ¶ 6, 395 P.3d 543.

17 {16} At trial, Defendant testified in her own defense and stated on direct
18 examination that she did not harm R.J.:

19 Defense Counsel: So, Miss Reyes, I just asked you if you had noticed
20 anything out of the ordinary or anything wrong with
21 R.J., what would you have done?

1 Defendant: Out of the ordinary? I would have, I would have
2 gotten him medical attention. If he needed medical
3 attention. If I knew somebody was harming him, I
4 would have stopped it. I would have reported it.

5

6 Defense Counsel: Did you permit anyone to harm your baby?

7 Defendant: Of course not.

8 Defense Counsel: Miss Reyes, did you harm your baby?

9
10 Defendant: No.

11

12 Defense Counsel: And just to be very, very clear . . . did you hurt R.J.?

13 Defendant: I did not.

14 {17} After the defense passed the witness, the State requested a bench conference
15 and asked for leave to impeach Defendant's statement that she never harmed R.J. by
16 introducing evidence that Defendant had used marijuana while breastfeeding R.J.,
17 despite being told by doctors that using marijuana while breastfeeding posed a risk
18 of neurodevelopmental harm to a baby. Defense counsel objected to the State's
19 request, arguing there was no evidence that R.J. was harmed by Defendant's
20 marijuana use. Defense counsel also argued that Defendant's statement was referring
21 to physical injuries, such as those at issue in this case, and not developmental harms.
22 The district court allowed the State to question Defendant about her marijuana use,

1 but on a very limited basis to mitigate the potential for prejudice. The State then
2 proceeded to cross-examine Defendant as follows:

3 State: You testified on direct that you never harmed R.J.,
4 correct?

5 Defendant: Correct.

6 State: You testified that you never let anyone else harm R.J.,
7 correct?

8 Defendant: Correct.

9 State: You were advised when R.J. was born that continuing to
10 take medical marijuana while breastfeeding could lead to
11 attention and neurodevelopmental issues for R.J., right?

12 Defendant: Yes.

13 State: But you continued to breastfeed R.J. anyway?

14 Defendant: Yes.

15 {18} As in the district court, Defendant argues on appeal that the State's questions
16 about her marijuana use were improper under Rule 11-608(B) because there was no
17 indication that R.J. was harmed by it. Defendant also argues the evidence was highly
18 prejudicial since it injected information about Defendant's drug use.

19 {19} We understand the district court to have considered both of these arguments
20 at trial before reaching its decision to admit the evidence under Rule 11-608(B), and
21 we perceive no abuse of discretion in the decision for the following reasons. First,
22 the district court determined Defendant's statements that she would never harm R.J.
23 or allow anyone to harm R.J. were broad in nature and encompassed not just physical

1 harms but a range of harms. The district court agreed with the State that Defendant,
2 by making these broad claims, opened the door to be impeached by evidence that
3 she knowingly exposed R.J. to a risk of neurodevelopmental harm. Since such
4 evidence would undermine the credibility of Defendant’s statements, it is probative
5 of her character for truthfulness. *See Lymon*, 2021-NMSC-021, ¶ 47 (“Whether a
6 trial court abused its discretion under Rule 11-608(B) depends on . . . the relevancy
7 of the act of misconduct to truthfulness.”). This determination is supported by the
8 record and logic. *See State v. Rojo*, 1999-NMSC-001, ¶ 41, 126 N.M. 438, 971 P.2d
9 829 (explaining a district court’s ruling amounts to an abuse of discretion when it is
10 “clearly untenable or not justified by reason” (internal quotation marks and citation
11 omitted)). As well, the district court took steps to address the potential for prejudice
12 by limiting the State’s questions to prescribed medical marijuana in order to avoid
13 any suggestion that Defendant was recreationally using marijuana, and the State’s
14 ensuring inquiry was relatively brief. *See Lymon*, 2021-NMSC-021, ¶ 47. For all of
15 these reasons, we conclude the district court’s decision did not constitute an abuse
16 of discretion.

17 **IV. The District Court’s Serious Violent Offense Designation Was Not**
18 **Supported by Findings and Requires Remand**

19 {20} Lastly, Defendant argues the district court improperly designated her
20 conviction as a serious violent offense under the Earned Meritorious Deductions Act

(EMDA), NMSA 1978, § 33-2-34 (2025), without making findings required by New Mexico law. Upon review, we agree with Defendant.

{21} “The EMDA provides that prisoners convicted of serious violent offenses may earn only four (as opposed to thirty) days per month of good time credit for time served in our state prisons.” *State v. Branch*, 2018-NMCA-031, ¶ 55, 417 P.3d 1141. Defendant’s conviction for first-degree child abuse pursuant to Section 30-6-1(D) is listed in Section 33-2-34(N)(4)(o) of the EMDA—a discretionary category of offenses that may be classified as a serious violent offense “when the nature of the offense and the resulting harm are such that the court judges the crime to be a serious violent offense.” Section 33-2-34(N)(4)(o) (2025).¹ “In order to designate the conduct of a particular defendant as a serious violent offense under the discretionary category, the district court must determine that the crime was committed in a physically violent manner either with an intent to do serious harm or with recklessness in the face of knowledge that one’s acts are reasonably likely to result in serious harm.” *State v. Solano*, 2009-NMCA-098, ¶ 10, 146 N.M. 831, 215 P.3d 769 (internal quotation marks and citation omitted). This requirement, known as the *Morales* standard, does not “require specific language from the district court.” *State v. Cooley*, 2003-NMCA-149, ¶ 18, 134 N.M. 717, 82 P.3d 84. However, a district

¹ Prior to the 2025 amendment, this section was enumerated as § 33-2-34(L)(4)(o).

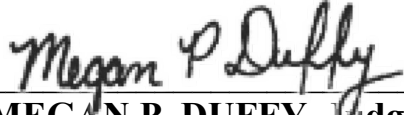
1 court must make express findings to support its serious violent offense
2 determination, *see Branch*, 2018-NMCA-031, ¶ 56, and those findings must be
3 consistent with the *Morales* standard. *See Cooley*, 2003-NMCA-149, ¶ 18 (“It is
4 sufficient for the district court to make findings consistent with the *Morales*
5 standard.”); *State v. Scurry*, 2007-NMCA-064, ¶ 6, 141 N.M. 591, 158 P.3d 1034
6 (same). Importantly, “the standard is not whether there is sufficient evidence in the
7 record to support the district court’s unexplained conclusion. The standard is a bright
8 line that requires the district court to explain its conclusions.” *Branch*, 2018-NMCA-
9 031, ¶ 57 (internal quotation marks and citation omitted).

10 {22} Defendant notes, and the State appears to concede, that the district court did
11 not make any oral or written factual findings to support designating Defendant’s
12 conviction as a serious violent offense. *See Branch*, 2018-NMCA-031, ¶ 58 (holding
13 a judgment and sentencing that “contains only the same run-of-the-mill
14 explanation—‘due to the nature of the offense and the resulting harm’” is inadequate
15 under our legal standard). Therefore, we reverse the district court’s designation of
16 Defendant’s child abuse conviction as a serious violent offense and remand to the
17 district court to consider whether the offense was a serious violent offense and, if so,
18 to enter findings in accordance with the *Morales* standard. *See State v. Loretto*, 2006-
19 NMCA-142, ¶ 21, 140 N.M. 705, 147 P.3d 1138.

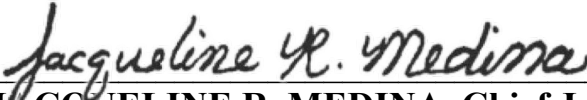
1 **CONCLUSION**

2 {23} We affirm Defendant's conviction but remand to the district court for further
3 proceedings and reconsideration of whether the child abuse conviction is a serious
4 violent offense under the EMDA.

5 {24} **IT IS SO ORDERED.**

6 
7 **MEGAN P. DUFFY, Judge**

8 **WE CONCUR:**

9 
10 **JACQUELINE R. MEDINA, Chief Judge**

11 
12 **KRISTOPHER N. HOUGHTON, Judge**