

Cite as 2022 Ark. App. 422  
**ARKANSAS COURT OF APPEALS**  
DIVISION III  
No. CR-22-104

ASHLEY SMITH

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered October 26, 2022

APPEAL FROM THE PULASKI  
COUNTY CIRCUIT COURT, SIXTH  
DIVISION  
[NO. 60CR-16-743]

HONORABLE LEON JOHNSON,  
JUDGE

AFFIRMED

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**STEPHANIE POTTER BARRETT, Judge**

Ashley Smith (“Ms. Smith”) appeals the order of conviction in the Pulaski County Circuit Court of battery in the first degree and the sentence of 180 months in the Arkansas Department of Correction, arguing the circuit court erred in admitting the testimony of a medical diagnosis of child abuse and erred in denying her motion for a directed verdict. We affirm.

Around noon on January 24, 2016, Ms. Smith’s minor child, a two-year-old son, received severe burns to his forearm, thighs, buttocks, genitals, lower legs, and feet that required hospitalization and skin grafts. On February 29, 2016, a felony information was filed against Ms. Smith for battery in the first degree, and a trial began on September 1, 2021.

Mr. Coats, the minor child's father, testified that Ms. Smith called him, claiming to have chest pains requiring transportation to the hospital. When he arrived, he found that the minor child had burns and was told by Ms. Smith that the child had received medical attention but had taken off his bandages. However, about fifteen minutes later, he called 911 because he "couldn't understand what really happened to [Minor Child]." The 911 call was received around 6:30 p.m. and was responded to by Captain James Reed of the Little Rock Fire Department.

Captain Reed testified the call he received was for a panic attack Ms. Smith was having. Upon arriving he found Ms. Smith lying on the kitchen floor and unresponsive to verbal commands. He was informed of the minor child's injuries by Mr. Coats and observed burns that went "up into the legs and around the waist area as well." Captain Reed testified that when he began assessing Minor Child, Ms. Smith became oriented and alert and stood up from the kitchen floor. Minor Child was taken to Arkansas Children's Hospital via ambulance, where he received treatment for the next fifteen days.

Detective Wade Neihouse testified to Ms. Smith's interview at Arkansas Children's Hospital, which was also played for the jury, in which Ms. Smith stated she was running a bath for herself while Minor Child watched television, she left the room to get clothing and heard Minor Child crying. She then found him "kicking and screaming" in the bath water and she "yanked" him out of the bathtub. Ms. Smith admitted the water was very hot. She stated she didn't call an ambulance for Minor Child because she was afraid to talk to a social worker, stating, "I don't have time for DHS, I really don't." Ms. Smith's testimony at trial

reflected the same version of events she described to Detective Neihouse during the interview.

Dr. Rachel Clingenpeel testified as one of the minor child's treating physicians at Arkansas Children's Hospital and also as an expert in the field of pediatrics and the subspecialty of child-abuse pediatrics without objection. She stated Minor Child had significant burn injuries requiring inpatient hospitalization in the burn unit so that he could get ongoing specialty care. She explained Minor Child required debridement and a skin graft. Dr. Clingenpeel made a medical diagnosis of child physical abuse after examining Minor Child and observing he had "multiple injuries that had required multiple mechanisms to occur and were actually of multiple ages." She stated the history Ms. Smith provided was not consistent with the appearance of the burns; rather, the injuries were consistent with what is known as a force-immersion burn or immersion into hot water. She explained Minor Child's burns reflected an absence of movement, and by looking at the distribution of his burns, she was able to determine he was not moving or was not able to freely move at the time he was burned.

Ms. Smith argues that under Arkansas Rule of Evidence 403, the testimony of Dr. Clingenpeel's medical diagnosis of child abuse should not have been admitted because (1) it was unfairly prejudicial; (2) it was confusing to the jury; and (3) a mechanism of injury had to first be established. She further argued that it was erroneous to deny her motion for directed verdict.

Although it is Smith's last argument on appeal, we must first address the directed-verdict ruling, which is treated as a sufficiency-of-the-evidence argument, for the purposes of double jeopardy. *Lewondowski v. State*, 2022 Ark. 46, 639 S.W.3d 850; *Clemons v. State*, 2010 Ark. 337, 369 S.W.3d 710. In reviewing a challenge to the sufficiency of the evidence, our standard of review is whether the jury's verdict is supported by substantial evidence. *Costner v. Adams*, 82 Ark. App. 148, 121 S.W.3d 164 (2003). This court views the evidence in the light most favorable to the State, considering only the evidence that supports the guilty verdict. *Jordan v. State*, 356 Ark. 248, 254, 147 S.W.3d 691, 694 (2004). A criminal defendant's intent or state of mind is seldom capable of proof by direct evidence; therefore, intent may be inferred from the facts and circumstances of the particular case. *Harper v. State*, 359 Ark. 142, 194 S.W.3d 370 (2004). The evidence, whether direct or circumstantial, is sufficient to support a conviction if it compels a conclusion and passes beyond mere suspicion or conjecture. *Hall v. State*, 361 Ark. 379, 383, 206 S.W.3d 830, 833 (2005).

To prove first-degree battery, the State was required to prove Ms. Smith knowingly caused injury to Minor Child under circumstances manifesting extreme indifference to the value of human life. Ark. Code Ann. § 5-13-201(a)(9) (Supp. 2021). Here, Ms. Smith argues that without resorting to sheer speculation, there was not sufficient evidence to establish she had the requisite criminal intent. We disagree. Evidence presented at trial in support of the guilty verdict included the fact that the minor child was in the sole care of Ms. Smith. During Ms. Smith's interview at Arkansas Children's hospital, she stated that around noon, she ran the bath, which was admittedly very hot, and went to get pajamas while the minor child was

watching television. Suddenly, she heard the minor child screaming and hollering and found him in the bathwater “going crazy, like he was tossing and tumbling [and] rolling over” when she “yanked” him out of the tub. However, Dr. Clingenpeel testified that the minor child had multiple injuries of multiple ages and that the appearance of his burns was consistent with a known pattern of abusive burns called forced-immersion burns. She explained that the child’s burns reflected an absence of movement that are expected when a person comes in contact with a hot liquid. Accidental burns are characterized by an appearance of movement of both the hot liquid and the patient. The minor child’s pattern of burns indicated that he was “in a seated position with his buttocks against a non-conducting surface [with] his knees bent.” There were also symmetrical waterline marks on both lower legs that would not have occurred if the child had not been held forcefully in a constricted position. Ms. Smith’s versions of the events were not consistent with the medical evidence. The trier of fact is free to believe all or part of any witness’s testimony and may resolve questions of conflicting testimony and inconsistent evidence. *Terry v. State*, 2020 Ark. 202, at 4, 600 S.W.3d 575, 579. Furthermore, the delay of almost seven hours before seeking treatment for the minor child showed a consciousness of guilt that supported the State’s case. *Hyatt v. State*, 2018 Ark. 85, at 12, 540 S.W.3d 673, 680. Therefore, we find that there is sufficient evidence to support the verdict, and the circuit court did not err in denying the motion for directed verdict.

The appellant next argues that under Arkansas Rule of Evidence 403, the testimony of Dr. Clingenpeel’s medical diagnosis of child abuse should not have been admitted because

(1) it was unfairly prejudicial; (2) it was confusing to the jury; and (3) a mechanism of injury had to first be established. We review evidentiary rulings using an abuse-of-discretion standard and will not reverse absent a showing of error and resulting prejudice. *Clay v. State*, 2019 Ark. App. 356, 584 S.W.3d 270. An abuse of discretion occurs when the circuit court acts arbitrarily or groundlessly. *Biggs v. State*, 2016 Ark. App. 125, 487 S.W.3d 363. The circuit court maintains the discretion to admit evidence. *Rayburn v. State*, 2018 Ark. App. 84, 542 S.W.3d 882. However, even if the evidence is relevant, it may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. Ark. R. Evid. 403.

We find no merit to Ms. Smith's argument that it was unfairly prejudicial for the circuit court to permit a medical expert to testify that Minor Child's injuries were consistent with a diagnosis of child abuse. Dr. Clingenpeel was declared by the circuit court without objection to be an expert in both the field of general pediatrics and the subspecialty of child-abuse pediatrics. Dr. Clingenpeel's expert opinion as Minor Child's treating physician was that the injuries she observed were consistent with child abuse. This opinion does not mandate a legal conclusion by the jury. Arkansas law allows testimony that may embrace the ultimate issue so long as it does not mandate a legal conclusion. *Bryles v. State*, 2015 Ark. App. 688, at 5, 577 S.W.3d 555, 558. We hold the circuit court's decision to admit testimony of a medical diagnosis of child abuse was not unfairly prejudicial and, thus, not an abuse of discretion.

Ms. Smith next argues it was erroneous to permit the diagnosis of child abuse because it could easily be conflated with conduct that manifests an extreme indifference to the value of human life and therefore confusing to the jury. Although the legal standard for battery in the first degree is whether the defendant engaged in conduct that created a risk of serious physical injury under circumstances manifesting extreme indifference to the value of human life, Smith's argument is not developed, nor does it explain how the diagnosis could be confused with the legal standard. Furthermore, Smith does not cite any legal authority for her proposition. We will not reverse when a point on appeal is unsupported by convincing argument or sufficient citation to legal authority. *Coger v. State*, 2017 Ark. App. 466, 529 S.W.3d 640; *Ressler v. State*, 2017 Ark. App. 208, 518 S.W.3d 690; *Watson v. State*, 2015 Ark. App. 721, 478 S.W.3d 286; *Devries v. State*, 2019 Ark. App. 478, at 6, 588 S.W.3d 139, 143.

Finally, we find no merit in Ms. Smith's argument that a mechanism of injury had to be established before a diagnosis of child abuse was given. Once again, Ms. Smith fails to cite any legal authority that the mechanism of injury had to be established before a diagnosis could be given and we will not reverse a point on appeal that is unsupported by legal citation. See *Coger, supra*. Furthermore, Dr. Clingenpeel testified to the mechanism of Minor Child's injuries when she described the injuries as forced-immersion burns. We find no error in the circuit court's admission of the medical diagnosis.

Affirmed.

HARRISON, C.J., and MURPHY, J., agree.

*Willard Proctor, Jr., P.A.*, by: *Willard Proctor, Jr.*, for appellant.

*Leslie Rutledge, Att’y Gen., by: Pamela Rumpz, Sr. Ass’t Att’y Gen., for appellee.*