IN THE COURT OF APPEALS OF IOWA

No. 3-886 / 12-0661
Filed November 20, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ZACHARY JAMES CONNELL,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Marsha A. Bergan, Judge.

Defendant appeals his convictions for first-degree murder and child endangerment resulting in death. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.**

Murray W. Bell of Murray W. Bell, P.C., Davenport, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Scott D. Brown and Becky S. Goettsch. Assistant Attorneys General, and Michael J. Walton, County Attorney, for appellee.

Heard by Doyle, P.J., and Tabor and Bower, JJ.

BOWER, J.

Zachary James Connell appeals from jury verdicts finding him guilty of first-degree murder and child endangerment resulting in death. *See* Iowa Code §§ 707.1, 707.2, 726.66(1), (4) (2009). On appeal, Connell contends the district court erred in (1) denying his motion for new trial, (2) limiting cross-examination of A.B.'s mother, and (3) limiting direct examination of an Iowa Department of Human Services investigator. Applying our "one-homicide" rule, we affirm his conviction for first-degree murder, annul the judgment and sentence for child endangerment resulting in death, and remand for resentencing to eliminate the sentence for child endangerment resulting in death.

I. Background Facts and Proceedings

Connell and Vanessa Baldwin became friends in 2008 after Baldwin enlisted in the military, and they were both in the military police. Connell's service involved deployments to Iraq and Italy. Baldwin and Connell began a romantic relationship in December 2009. Baldwin and her children, four-year-old daughter R.B. and three-year-old son A.B., lived in Montana. Connell lived with them during his visits from Davenport, Iowa. Baldwin described her relationship with Connell as "picture perfect" in Montana. In fact, while she was in Montana she was supportive of him adopting her children.

In 2010 Baldwin and Connell decided she would move her family to Davenport in the summer to live with Connell. When Baldwin was absent for military training in June 2010, her children stayed with Connell in Iowa. No one else lived with the two adults and two children in their apartment.

Baldwin testified after she moved to Iowa, their relationship "gradually" changed and Connell "wasn't the same person [as] when we were living in Montana." In Iowa, Connell became very controlling and strict. It "started to feel like we just didn't matter as much to him." Baldwin felt isolated from her family and friends.

Connell took over the discipline of Baldwin's children. At first he had the kids "standing in the corner" or maybe gave a "spanking." Baldwin testified: "And then he used military type of punishments." A.B. disliked meat, and Connell tried to force him to eat it. Connell discouraged Baldwin from taking A.B. to the doctor for treatment of digestive problems, stating she was overreacting and A.B. wanted attention.

In late September A.B. started attending preschool on Tuesday, Wednesday, and Thursday mornings. Typically, Baldwin would take A.B. to school at 9:00 a.m. and Connell would pick him up around 11:45 a.m. Mary Ann Johnson, one of A.B.'s teachers, had been a school psychologist for fourteen years before her preschool position. She described A.B. as quiet, hesitant, well behaved, and very thin.

Early in October, Baldwin started working at a Hy-Vee store. On Tuesday, October 5, 2010, A.B. vomited, was not feeling good, and did not attend preschool. On Wednesday, A.B. returned to preschool, and teacher Johnson observed him eat "a little bit" at snack time and shed quiet tears afterwards as the group danced around the room during the thirty minutes of circle time before

leaving for home. Johnson testified she mentioned A.B.'s tears to "whoever picked him up."

On Thursday, October 7, A.B. participated in preschool activities and Johnson did not note anything of concern "until he seemed excited to go to snack and he did not eat very much. And after snack, we had tears again, more tears. [A.B.] appeared more distressed than" he was on Wednesday. Johnson testified she observed "huge little elephant tears running down his checks." Based on A.B.'s tears, Johnson asked if he wanted to go home, and he replied, "No." Due to the extent of emotional distress Johnson sensed, she then asked him if "anybody ever hurt him." Johnson testified A.B. either said no or shook his head no. Johnson assured A.B. "if anybody ever did hurt him, he could tell us; that he was in a safe place."

Preschool teacher Michelle Andrews testified A.B. was "a sweet boy" who was very thin. On Thursday, October 7, Andrews observed A.B. becoming very emotional and really sad after the 10:40 snack time. Later, A.B. was crying as he was putting on his coat. Andrews testified she gave him Kleenex and asked him why he was crying. A.B. did not say anything. Andrews asked A.B. if he wanted to go home, and he said, "No." Andrews asked why, and A.B. did not respond.

On the following Tuesday morning, October 12, A.B. was happy and looking forward to preschool. A.B. was not hungry but he was thirsty. Baldwin gave him a drink, drove him to preschool, and returned to the apartment. About one hour later, at 10:00 a.m., the preschool called Baldwin and told her A.B. was not feeling well and possibly had an upset tummy. Baldwin thought about A.B.'s

stomach gas issues and told the preschool his gas pains tend to go away. The preschool and Baldwin agreed to have A.B. continue at the preschool and the staff would "watch how he did."

Baldwin left for work around 10:40 a.m. for her 11:00 a.m. shift. Connell and four-year-old R.B. remained in the apartment. On that day Baldwin worked as a cashier and was not allowed to have her cell phone with her while working.

Johnson testified to the remainder of A.B.'s preschool day. When A.B. did not appear to get better and would not play, preschool staff asked if he wanted to go home. A.B. said, "No." At snack time, A.B. drank his juice quickly, asked for more, and then put his head down. Johnson told A.B. she needed to call his mother and he should go home. He again said, "No." When Johnson could not reach Baldwin, she called Connell to come for A.B. While Johnson and A.B. waited for Connell, A.B. sat on her leg with his eyes shut, quietly whimpering. Johnson noticed A.B.'s abdomen felt "hard" but testified it was not distended.

When Connell arrived at the preschool, Johnson saw him poke A.B. in the tummy and say "something about toughen up." Johnson told Connell: "I don't think he's faking. I think he really doesn't feel well." According to Johnson, Connell replied: "Well, I just thought perhaps you tend to coddle them here." Johnson recommended A.B. be seen by a doctor if he did not improve soon. Connell was "chatty" and told Johnson "there hadn't been a man in their life for over a year and until he came into the picture, and so he'd been trying to toughen him up and do manly things with him."

On the way to the apartment, Connell stopped at the Hy-Vee store where Baldwin was working to tell her A.B. was sick and going home. The Hy-Vee videotape played during trial shows Connell and A.B. walking into the store around 11:40 a.m. A.B. greeted his mother. When they exit, Connell is carrying A.B.

At 1:05 p.m. that afternoon, Connell sent Baldwin a text message about A.B. drinking bath water. The State's examination of Connell's laptop computer showed that between 1:51 p.m. and 2:31 p.m., Connell performed internet searches on baby health issues. After a gap in internet activity, at 4:48 p.m. Connell searched for ways to commit suicide. Baldwin's 6:08 p.m. call to Connell's phone went to his voice mail.

A few minutes after 6 p.m. on October 12, Connell entered the hospital emergency room and told the registrar: "My girlfriend's son is in the car and he's dead." Connell was visibly upset and looked like he might vomit. Nurse Leonard accompanied Connell to his car and determined A.B. was dead. Nurse Leonard asked Connell for an explanation. Connell told her that he "had picked the child up from school; that he wasn't feeling well; that he gave him some medicine and put him down for a nap; and then he [lay] down and had a nap himself; and when he woke up from his nap, the child was not breathing."

Nurse Leonard asked another nurse to call the police and hospital security. At trial, she testified she observed A.B.'s "distended abdomen" and thought, "blunt trauma." Leonard explained: "Because a child would not present with a distended abdomen like that unless there is some injury underneath."

During his two-minute ride to the police station, several times Connell stated to the officer who was driving: "I don't want my father to find out about this." Connell's father works at the Scott County courthouse. When the police went to the couple's apartment, they found four-year-old R.B. there alone. The Iowa Department of Human Services (DHS) took custody of R.B.

At 7:00 p.m. Baldwin got off work and went home. She was told by Officer Hutcheson the police "were investigating a death investigation involving her son." The officer observed she "immediately broke down, hyperventilating." Officer Hutcheson drove Baldwin to the hospital where Connell had taken A.B.

At the hospital Detective Noonan interviewed Baldwin and observed her demeanor—"she seemed to be in shock a little bit." Detective Noonan testified he again had to tell Baldwin that her son was dead. In response to questions, Baldwin stated Connell treated both children alike, she had no concerns with the way he treated them, and he was a father figure for them. Baldwin stated Connell did not strike or spank the kids. At trial, Baldwin explained she made the statements because she was in shock. "I wanted to see my son . . . . At that point I thought he was okay; that I would go in there and he would be okay."

Baldwin was taken to the police station and allowed to meet with Connell. Baldwin embraced Connell and did not act with animosity toward him. Baldwin asked Connell if he was coming home with her.

Baldwin went home with Connell's father, who testified she asked him twice at the police station and once as they were leaving if Connell was coming with them. He consistently stated Connell was not joining them and he observed

Baldwin start crying in response to his last negative answer. Baldwin testified "of course" she was crying as they left the police station, but she did *not* tell Connell's father she was crying because Connell was not joining them on the trip home.

At the police station that evening, Detective Noonan observed ligature marks on Connell's neck and scratches on his wrists and asked about them. Connell responded he had tried to kill himself after he found A.B. dead. Connell described the children to Detective Noonan. A.B. didn't want to play soccer; he was lazy and would rather sleep in bed all day. R.B. was the opposite, she was a leader. Connell described A.B. as a gassy kid who would get bloated easily and who had issues with eating—liking pasta but not meat.

Connell told Detective Noonan the day's timeline. Connell picked up A.B. around 11:00 a.m. after the preschool called. Connell stated the preschool teacher with A.B.—Johnson—told him "there was nothing to worry about" and also A.B. is not faking and does not feel well. Connell assumed the teacher was coddling A.B. Connell asked A.B. if he was tough and asked if his stomach hurt. A.B. told Connell he was tough and his stomach did not hurt. A.B. also told Connell he could walk.

Connell told Detective Noonan that after the trip to Hy-Vee, he gave A.B. "about two tablespoons" of children's medicine at the apartment. Connell examined A.B. and found his stomach and an area around his ribs to be bloated. Both places were hard from what Connell believed to be gas. Connell told the detective he attempted to alleviate A.B.'s gas problems by pushing on his

stomach and by using a bicycle-pedaling-type motion on his legs to try to get the gas to come out. After this, Connell saw A.B. burp and pass a little gas.

Connell continued the timeline—A.B. was not hungry when Connell brought him home, so Connell gave him some Boost and Gatorade, followed by a little Pepto-Bismol. A.B. was thirsty and drank about a quart of liquid. Between noon and 2:00 p.m., Connell gave A.B. some Triaminic to help him sleep and put him on the bed. Later in the interview, Connell remembered he also gave A.B. a bath before putting him in bed. While Connell was using the computer, he heard A.B. burping and gagging. Connell then moved A.B. to the floor so he wouldn't throw up on the bed. Connell took a nap while A.B. was resting on the floor and, at this time, R.B. was watching television in a different room.

Connell told Detective Noonan the next thing he remembers is R.B. waking him up between 4:00 and 5:00 p.m. to take a phone call. When Connell saw that A.B. was cold and stiff and had thrown up, he attempted CPR. Connell stated that when A.B. remained unresponsive, he attempted suicide. Connell wrapped A.B. in a blanket and drove to the hospital. Connell told R.B. to "go play in the room" while he was gone. Finally, Connell stated he did not call 911 because A.B. "was already dead."

When Baldwin was questioned the next day—Wednesday, October 13—she did not express concerns regarding Connell's treatment of A.B. Baldwin stated she was not aware of any hitting or striking of her children by Connell.

Two days after A.B. died, on Thursday, October 14, Detective Dinneweth interviewed Baldwin at the police station. Baldwin admitted to Detective

Dinneweth that Connell used harsh discipline tactics on A.B. and she saw Connell striking A.B. twice in the abdomen with his forearm before A.B.'s death.

The State filed a two count trial information charging Connell with murder in the first degree and child endangerment resulting in death. The State's written motion in limine objected to "the defense asking any questions of, or seeking any information from, any witness regarding the CINA action involving [R.B.] and Vanessa Baldwin subsequent to the death of [A.B.] on October 12, 2010."

In December 2011 the court conducted a hearing on pending motions. Defense counsel did not file a response to the State's motion. After the State's argument at hearing, defense counsel replied: "With regard to any [DHS] involvement with Vanessa here, other than" Vanessa Baldwin's statements to a victim counselor, those statements having been referred to in a juvenile court proceeding, "we don't have any intention of delving into that . . . [and] I have no objection—no intention of going to the DHS information of involvement." With that understanding between the attorneys, the court did not make a written ruling. Subsequently, the State presented its case under the belief no inquiry would be made by defense counsel as to Baldwin's involvement with DHS.

In January 2012, trial by jury commenced. Baldwin's neighbor, Linda Kline, testified Baldwin was quiet and submissive around Connell and he seemed to be in control of the relationship. Baldwin would not talk to or look at Kline when Connell was with her. Rather, Baldwin "would always look down and keep walking."

Baldwin testified she and her daughter were no longer living in Iowa and they lived with Baldwin's mother. Baldwin stated she observed Connell issuing military type punishments and using his foot to push or shove A.B. on a number of occasions. Specifically, Connell forced A.B. to run, to hold plank positions, and to do wall-sits without a chair "for minutes." Connell pushed and slapped A.B., called him names, and told him to toughen up. Baldwin testified A.B. "was never good enough and he tried so hard to be a big boy and be strong like Zach wanted." Further, when Baldwin talked to Connell about his discipline of A.B., he accused her of babying her son. On some occasions "he would get angry and leave. Sometimes it seemed to make him [angrier] and make things worse. It just depended upon the day." Baldwin testified she did not leave and return to Montana because she was scared.

Baldwin stated in September she sought help from Connell's father about Connell's anger. Baldwin testified early in September she asked him a couple of vague questions, followed by a specific question later in September. Connell's father testified Baldwin approached him "on at least one occasion about how to deal with Zach's anger problems."

At some point before Baldwin started working at Hy-Vee, she awoke to A.B. crying and went to his room. She testified to seeing Connell over A.B. pushing him, yelling at him, and hitting him in the abdomen with his forearm. Baldwin yelled at Connell to stop and Connell "was startled. He didn't know I was there. He got up and left the apartment." Baldwin also testified when she confronted Connell about his hitting A.B. with his forearms in the bedroom,

Connell agreed his behavior was out of line and too much for a three-year-old. Connell promised Baldwin he would never do it again.

No one informed Baldwin about the injuries A.B. had suffered "until probably a week" after he died. Baldwin stated from birth to death, A.B. did not exhibit any signs of excessive bleeding, bloody noses or bloody stools, or really bad skin rashes or irritations.

During cross-examination Baldwin agreed that when she was first questioned at the hospital, she stated Connell did not strike or spank her children. Baldwin agreed that when questioned at the police station the next day, she stated she was not aware of any hitting or striking of her children by Connell. Defense counsel then asked: "Now, on the night of the 12th . . . you are aware that the [DHS] took [R.B.]?" The court sustained the prosecutor's relevancy objection and the jury was dismissed.

Defense counsel argued his question went to Baldwin's *motive* to testify falsely and counsel expected a DHS worker to testify "it is not unusual to tell parents that if they continue to protect the person [the DHS] believes is the perpetrator, the parents may not get their children back" because the "DHS can't trust" the parent to protect them. "I cannot establish that that was specifically told to" Baldwin. "I can establish that on October 14, prior to Ms. Baldwin saying anything inculpatory about Zach Connell . . . Detective Dinneweth told [her] he did not see a future including" Baldwin, her daughter, and Connell.

The court found the question surprising due to defense counsel's statement at the pretrial hearing that he had no intention of bringing out the DHS

information. Defense counsel replied his question did not refer "to the CINA, but I do believe I'm entitled to show motive, so I've changed my position. I'm entitled to show that [Baldwin] has motive to falsify, whether it involves the CINA proceeding or not." The State argued defense counsel conceded the issue during the pretrial hearing, and the question is "completely improper." The court upheld the State's objection.

Baldwin continued testifying on cross-examination. She agreed she sought counseling after A.B.'s death and agreed it would be important to tell the counselor the truth. Baldwin acknowledged a letter[1] and agreed she told the counselor (1) there was only one time Baldwin witnessed a punishment from Connell she disagreed with, (2) neither child indicated they were afraid of Connell, and (3) because the children were not fearful, she had no reason to believe they were in danger in Connell's care.

On redirect, Baldwin clarified the children did not seem fearful because "my children are strong" and also explained they had to be perfect for Connell. Baldwin clarified the "one time" referenced in the letter is what "happened in the bedroom where Zach was hitting [A.B.] with his forearm." Further, it "stands out" in her memory. Baldwin clarified Connell promised her he would never do it

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[1] Prior to trial, the court cited to *Davis v. Alaska*, 415 U.S. 308, 319-20 (1974), and ruled the information in a March 14, 2011 letter authored by Baldwin's victim counselor is relevant and material evidence for Connell's right of confrontation. The court also concluded the probative value of the information outweighs any harmful effect and the information can be obtained by reasonable means from Baldwin. Therefore, "nothing in the protective order prohibits [defense counsel] at trial, from examining [Baldwin] concerning her alleged prior statements in [the letter] authored by [the counselor]."

again and that was why she was willing to leave Connell in charge of R.B. and A.B. while she worked.

Defense counsel asked if Baldwin thought of the event that "stands out" during Detective Noonan's questioning about physical hitting and striking on the night of October 12. Baldwin stated: "All I was concerned about was seeing [A.B.] at that time. I wanted to know what had happened to my child." Defense counsel then asked why the event didn't "stick out" the next day? Baldwin replied: "I was scared."

Defense counsel called Detective Dinneweth as a witness to describe his questioning technique during the October 14 interview in which Baldwin first told the authorities of Connell's harsh discipline. The detective testified he did not mislead Baldwin at any time and used the questioning technique of being "a little tougher" while pressing Baldwin to provide more information. As part of this technique, Detective Dinneweth suggested to Baldwin that he "did not see a future for her and Mr. Connell and [R.B.] together." The detective suggested Baldwin had not done anything wrong, but he wanted to know whether Connell "used disciplinary tactics she had not told [him] about." Also, Detective Dinneweth suggested Connell had hit A.B. in punishment in ways Baldwin had not described to anyone.

Defense counsel also called the DHS investigator, Good, who declined to testify unless ordered to do so by the court under Iowa Code section 235A.15, which states:

> 1. . . . [T]he confidentiality of all child abuse information shall be maintained, except as specifically provided by this section.

> 2. Access to report data and disposition data subject to placement in the central registry . . . is authorized only to the following persons or entities:
>
> . . . .
>
> (d) Report data and disposition data, and assessment data to the extent necessary for resolution of the proceeding, relating to judicial and administrative proceedings as follows:
>
> . . . .
>
> (2) To a district court upon a finding that data is necessary for the resolution of an issue arising in any phase of a case involving child abuse.

The court ruled "[n]o authorization is provided under Iowa Code section 235A.15(2)(d)(2)" and explained:

> The court now also considers Defendant's constitutional rights to present evidence and to confront the State's witnesses. The court finds Defendant's constitutional rights are not violated for the reason that Defendant has not been precluded from presenting his defense or from confronting witness by confidentiality laws of Iowa or by limine agreements made with the State.

The court identified evidence already in the record: (1) a DHS worker was called to the apartment when the police found R.B. there on October 12, (2) R.B. was taken from the apartment by a DHS worker, (3) R.B. is now living with Baldwin, (4) Baldwin's meeting with Connell at the police station, and (5) other statements Baldwin made to authorities before she testified at trial. Also, the court noted defense counsel will be allowed "to call and examine a knowledgeable witness regarding the ordinary and general protocol of DHS without reference to specific DHS actions relating to [R.B.]." Also, "Ms. Good shall provide testimony . . . but she shall not testify about a specific case as the court does not find specific case data necessary for the resolution of an issue arising in any phase of a specific case involving child abuse."

Defense counsel questioned DHS investigator Good regarding a hypothetical case in which a mother resides with a boyfriend and several children. In the hypothetical case, after investigation, Good formulates an opinion the boyfriend is abusing one child. Good testified in those situations, she would have "issues arise about whether there is a concern the mother will protect the other children." Also:

> Q. And, in general, have you had occasion, in no specific case, but would you tell the mother you got to decide between the children and [the] boyfriend or something to that effect? A. . . . The Department's not directed for them to make choices, but what is strongly encouraged is that you need to protect your children and if you don't, the Department will do what's best for your children to make sure they are safe.
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> Q. But do you say to them we're not clear that we trust you to protect your children if you're siding with the boyfriend? A. Yes.
>
> . . . .
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> Q. Have you ever told a mother you're concerned she won't protect her children if she sides with the boyfriend? A. Yes.

On cross-examination by the prosecutor, Good testified:

> Q. You don't threaten parents that they need to give a certain story or you'll take away their kids; do you? A. Absolutely not.

The State's expert, forensic pathologist Dr. Nashelsky performed an autopsy and thereafter opined the cause of A.B.'s death was blunt force injuries caused by deep penetrating pressure to the abdomen and the manner of death was homicide. Dr. Nashelsky described his observations of tearing in the intestinal areas and additional damage to the pancreas, heart, liver, and left lung.

The defense expert, forensic pathologist Dr. Shaker, disagreed and opined the cause of A.B.'s death was a compromised immune system along with

chronic inflammation that had damaged his pancreas, heart, liver, and left lung. Dr. Shaker concluded A.B. suffered from Wiskott-Aldrich Syndrome.

The State's rebuttal witnesses disputed several of Dr. Shaker's conclusions. The jury returned guilty verdicts on both counts. Connell filed a combined "new trial" and "in arrest of judgment" motion. The district court, using the "weight-of-the-evidence" standard for analysis of the new trial motion, denied both motions. This appeal followed.

II. Scope and Standards of Review

A district court may grant a new trial when the verdict is contrary to the weight of the evidence. *State v. Adney*, 639 N.W.2d 246, 252 (Iowa Ct. App. 2001). This standard requires the district court to determine whether "a greater amount of credible evidence supports one side of an issue or cause than the other." *Id*. (quoting *State v. Ellis*, 578 N.W.2d 655, 658 (Iowa 1998)). On appeal, our review "is limited to a review of the exercise of discretion by the trial court, not the underlying question of whether the verdict is against the weight of the evidence." *State v. Reeves*, 670 N.W.2d 199, 203 (Iowa 2003). Accordingly, we review Connell's claim for an abuse of trial court discretion.

We review Connell's evidentiary challenges "for an abuse of discretion." *State v. Stone*, 764 N.W.2d 545, 548 (Iowa 2009). To the extent Connell is raising a constitutional claim, our review is de novo. *State v. Schaer*, 757 N.W.2d 630, 633 (Iowa 2008).

III. Denial of New Trial Motion

For both charges, the State had to prove Connell inflicted the injuries on A.B. and those injuries caused his death. *See* Iowa Code §§ 707.1, 707.2, 726.6(1), (4). On the murder charge, the State also had to prove Connell acted with malice aforethought and "under circumstances showing [Connell's] extreme indifference to human life." *See id*. §§ 707.1, 707.2. On the child endangerment charge, the State had to prove Connell "knowingly acted in a manner which created a substantial risk to the physical" health or safety of A.B. *See id*. § 726.6(1)(a), (4).

Connell seeks a new trial and raises two "weight-of-the-evidence" challenges—the evidence supporting causation, and *if* A.B. was abused, the evidence identifying the abuser's identity.

A. Cause of Death. Connell contends the pathologist who conducted the autopsy, Dr. Nashelsky, incorrectly diagnosed the cause of death to be blunt force trauma to the abdomen. He points out Dr. Nashelsky testified there was no external bruising or injuries to the body. Connell asserts Dr. Shaker, who testified after examining both A.B.'s medical history and Dr. Nashelsky's autopsy report, is more credible. Dr. Shaker opined the tearing injuries likely resulted from the use of improper "tooth" forceps during the autopsy on the small and large intestine tissue. Dr. Shaker stated A.B.'s tissue was decomposing at an accelerated rate due to the RSV virus, and decomposition makes tissue easy to tear. Dr. Shaker concluded A.B.'s injuries to tissue are "postmortem artifacts" or caused by "the process of human interaction" after death.

Dr. Shaker also opined A.B. died because he, similar to his cousin, suffered from Wiskott-Aldrich Syndrome, an inherited immune deficiency. Connell argues this syndrome explains why A.B. was having problems at preschool on the morning of October 12. Dr. Shaker testified the bone marrow smear from the autopsy supports her diagnosis. On cross-examination, Dr. Shaker conceded the primary symptom of Wiskott-Aldrich Syndrome is bleeding (nose, gums, bowels, eczema).

The State argues the credible medical evidence supports Dr. Nashelsky's conclusion that the cause of A.B.'s death is blunt force trauma. Dr. Nashelsky testified A.B.'s abdomen was distended and filled with blood; the injury liberated him of one-half of his blood volume.

Dr. Harre, an expert witness for the defense, attended the autopsy, spoke with the parents, spoke with A.B.'s Montana doctor, and testified although A.B. had a long history of respiratory issues and tested positive for RSV, he had no RSV symptoms at death. Dr. Harre also testified she observed Dr. Nashelsky to dissect "carefully," and the following exchange occurred:

> Q. Did you witness Dr. Nashelsky tear the intestines of [A.B.]? A. No.
>
> Q. Did you witness him tear [A.B.'s] mesentery [attached to the intestines]? A. No.
>
> Q. Were you present for Dr. Shaker's assertion that A.B.'s intestines were ripped or injured as a part of the autopsy? A. Yes.
>
> Q. And what is your reaction or opinion regarding that? A. I did not see any inappropriate or aggressive interaction with the tissues.

Dr. Harre also testified on cross-examination that after her review of A.B.'s medical records and her interviews, she saw no evidence/history of immune, bleeding (nose, gum, eczema), or genetic disorders.

The State also highlights the rebuttal medical evidence. Hematopathologist Dr. Holman testified she is familiar with Wiskott-Aldrich Syndrome and bone marrow smears do not assist in making any type of determination "definitively" regarding that syndrome. Dr. Holman also disagreed with Dr. Shaker's statement the megakaryocytes in A.B.'s bone marrow were abnormal and instead found: A.B.'s "megakaryocytes had normal morphology and they were normal in number." Dr. Holman admitted the megakaryocytes could appear normal and still not be operating properly.

Dr. Klein, whose experience includes conducting approximately 200 autopsies on children, testified Dr. Shaker's statement the RSV virus accelerates tissue decomposition is not something he had observed. Further, Dr. Klein stated: "I'm not aware of RSV increasing the rate of decomposition."

Dr. Klein opined the injuries to A.B.'s pancreas, liver, and left lung are consistent with blunt force trauma rather than an infectious process. Dr. Klein agreed with Dr. Nashelsky's opinion on the tissue lacerations and explained a pathologist typically would note any accidental error or injury in the autopsy report. Dr. Klein concluded, *even if* A.B. had Wiskott-Aldrich Syndrome, the syndrome would not explain the *extent* of A.B.'s injuries: "[T]he lacerations, especially the lacerations that we saw in that large loop of bowel, Wiskott-Aldrich Syndrome is not going to mimic that which is caused by blunt force injury."

After our review of the record, we find the trial court did not abuse its discretion in denying Connell's new trial motion based, in part, on the court's conclusion: "In particular, the State's medical witnesses were far more credible than the defendant's medical witness."

B. Identity of Abuser. Connell argues the "only evidence" he "would cause any injuries to A.B." on the afternoon of October 12 "came solely from the testimony of Vanessa Baldwin" about his harsh discipline. Connell contends Baldwin's trial testimony lacks credibility due to her inconsistent statements regarding his treatment of her children and her behavior towards him at the police station on the night of A.B's death. Connell asserts Baldwin had a motive to change her story about his discipline after Detective Dinneweth pressed her to provide more information while suggesting he "did not see a future with her, and [R.B.], and Connell together." Connell argues Baldwin's later statements are not credible but were necessary if she wanted to secure the return of her daughter.

The State responds there is "ample corresponding evidence" of Baldwin's statements. Baldwin's neighbor testified she observed Connell to be controlling. Connell's father admitted Baldwin had questioned him about his son's anger. Two of A.B.'s preschool teachers testified he was sad and reluctant to go home. Teacher Johnson observed Connell poke A.B. in the tummy and tell him to "toughen up," and she also testified Connell told her that he had been trying to "toughen up" A.B. and do "manly things" with him. Similarly, Connell told Detective Noonan he suspected the teachers "coddled" A.B., and upon his arrival at the preschool he asked A.B. if he was tough. Connell also told Detective

Noonan he "pushed" on A.B.'s stomach at the apartment and "used a bicycle motion with his legs to try to get" gas out. Connell's attempts at suicide instead of calling 911 can also be viewed as awareness of guilt. Further, the injuries discovered and explained by the State's medical experts after the autopsy are consistent with the method in which Connell abused A.B.

The State also asserts Baldwin's inconsistent statements about Connell's treatment of her children are understandable and due to her shock at learning her son was dead. Finally, the State contends Baldwin acted reasonably in seeking comfort and support from the person she loved on the evening of her son's death.

While trial courts have wide discretion in deciding motions for new trial, such discretion must be exercised "carefully and sparingly" to insure the court does not "lessen the role of the jury as the principal trier of the facts." *Ellis*, 578 N.W.2d at 659. Thus, a trial court grants a new trial only in the "exceptional case" where "a miscarriage of justice may have resulted." *State v. Reeves*, 670 N.W.2d 199, 202 (Iowa 2003). On our appellate review, we do not "reweigh the evidence" nor "judge the credibility of the witnesses." *Id*. at 203. Rather, we determine whether the district court's ruling "is a clear and manifest abuse of discretion." *Id*. Here, the district court ruled "the court also finds that Ms. Baldwin's testimony, including her cross-examination testimony, led her to be a credible witness" and the jury verdict is supported by the weight of the evidence.

We first note it is undisputed Connell had sole custody over A.B. during the time period at issue and the State's credible medical evidence proved A.B.'s

multiple internal tearing injuries would have caused death quickly. The autopsy findings are also consistent with the type of blows Baldwin witnessed Connell inflict on A.B.'s abdomen with his forearms shortly before A.B.'s death. The autopsy findings and the expert testimony show A.B. had previously suffered other internal injuries consistent with blunt force trauma. After our review of the record, we conclude the district court properly applied the weight-of-the-evidence standard and acted well within its discretion.

IV. Cross-Examination Limitation—Baldwin

Connell contends the court abused its discretion by sustaining the State's relevancy objection and preventing him from cross-examining Baldwin about the DHS's investigation involving R.B. Connell asserts this evidence would attack Baldwin's credibility and show Baldwin had a strong motive to change her story about how Connell treated her children "in order to help secure the return of [R.B.] to her custody." Connell also contends the court's ruling violated his Sixth Amendment right to present a defense and right to confront witnesses through cross-examination.

The State responds that even assuming *arguendo* the court abused its discretion in refusing to allow defense counsel to directly ask Baldwin whether the DHS had threatened her with losing custody of her daughter if she continued to support Connell, no prejudice resulted and the court's ruling is not a violation of the Confrontation Clause.

The Sixth Amendment to the United States Constitution guarantees the right of a defendant in a criminal prosecution to confront adverse witnesses.

Davis v. Alaska, 415 U.S. 308, 315 (1974). The primary interest secured by the Confrontation Clause is the right of cross-examination. *Id*. (holding state's policy protecting anonymity of juvenile offenders must yield to a defendant's right to show the bias of an adverse witness). "Cross-examination is the principal means by with the believability of a witness and the truth of his testimony are tested." *Id.* at 316. The "right of a criminal defendant to impeach a witness by showing bias or interest is well-established." *State v. Runyan*, 599 N.W.2d 474, 477 (Iowa Ct. App. 1999). Our primary concern is whether any error by the trial court resulted in prejudice to Connell. *See id*.

After our review of the record, we conclude the trial court's ruling does not require a reversal of Connell's convictions. The State's case against Connell was very strong. Defense counsel vigorously cross-examined prosecution witnesses and clearly focused the jury's attention on the inconsistencies in Baldwin's statements and the disagreements among medical experts. The defense theory that Baldwin was motivated to change her testimony concerning Connell's abuse of A.B. due to her feeling threatened with the loss of custody of R.B. was strongly suggested and presented to the jury by defense counsel's questions to both the DHS worker and Detective Dinneweth. Accordingly, we conclude the district court did not abuse its discretion, violate Connell's constitutional rights, or prejudice Connell by limiting defense counsel's cross-examination of Baldwin.

V. Direct Examination of DHS Investigator

The State agrees the issue of having DHS employees testify at trial concerning DHS employee conversations with Baldwin following A.B.'s death was raised before trial and during trial. Connell presented DHS employee Good as a defense witness. The March 2, 2012 court ruling denying Connell's motion for a new trial reassessed the issue of the court's limits on DHS employee testimony:

> Indeed, Ms. Good testified unequivocally that when she investigates a case involving child abuse by a boyfriend perpetrated on one child in a home, concerns arise regarding whether the mother will protect other children in the home. Ms. Good testified that she will say to the mother that Ms. Good, or DHS, will not be sure that the mother can be trusted to care for the other children if the mother sides with an abusive boyfriend.
>
> In reviewing this particular evidentiary matter again . . . the court continues to believe [the] evidentiary ruling relating to Ms. Good's testimony was the correct ruling under the law of the case and the Iowa statute and did not violate [Connell's] due process rights.

On appeal, Connell argues the court's ruling declining to order Good to testify under the statute about the specific child abuse investigation that followed A.B.'s death was an abuse of discretion and a violation of his right to present a defense. *See* Iowa Code § 235A.15(2)(d)(2).

The State first argues the legislature did not intend for the testimony sought by Connell to fall within the statutory exception. *See id*. Alternatively, the State argues the court correctly found no constitutional violation.

First, we note Connell has not cited any Iowa case law supporting his argument the statute authorizes the testimony he sought in the circumstances of this case. Second, our review shows defense counsel questioned witnesses

about: Baldwin's inconsistent statements of Connell's treatment of her children; Baldwin's demeanor toward Connell at the police station; the interview techniques used by Detective Dinneweth during the interview in which Baldwin first revealed Connell's abusive behavior; Baldwin's statements to her counselor about Baldwin only disagreeing with Connell as to "one incident" of Connell's punishment of A.B., and general DHS procedures and statements to mothers in situations where the DHS employee suspects the boyfriend is harming one child in a home with more than one child. Therefore, Connell's defense theory—Baldwin was not credible and changed her story due to suggestions by both Detective Dinneweth and DHS employees about the likelihood or unlikelihood of R.B. remaining in her custody—was, *in fact*, presented to the jury.

Because the strong medical evidence *directly* supported testimony about Connell's pattern and practice of abuse and because it is undisputed Connell was the *only* caretaker both before and during the time A.B. died, even if the court had allowed Connell's counsel to cross-examine the DHS investigator more specifically, any resulting evidence would have limited value. The court's exclusion of this testimony does not undermine or call into question our confidence in the jury's verdict. Accordingly, we decline to reverse Connell's convictions on this ground.

VI. Sentences

Connell was sentenced to incarceration for life on count I, first-degree murder, and to an indeterminate term of incarceration not to exceed fifty years on count II, child endangerment resulting in death. The court ordered the sentences

to run concurrently, with credit for time served, and also ordered Connell to pay victim restitution, court costs, and correctional fees.

Recently, in *State v. Fix*, 830 N.W.2d 744, 746 (Iowa Ct. App. 2013), we stated: "Under Iowa law, when a defendant is convicted of separate homicide counts involving a single victim, judgment can be entered and sentence can be imposed for only one homicide offense." After reviewing Iowa statutes and case law, we concluded child endangerment resulting in death "constitutes a homicide offense" and also ruled a violation of the "one-homicide rule is an illegal sentence." *Fix*, 830 N.W.2d at 749 (recognizing the "one-homicide rule guards against multiple punishments for a single slaying") (citing *State v. Wissing*, 528 N.W.2d 561, 567 (Iowa 1995)).

Applying the *Fix* principles to the sentences imposed herein, we conclude Connell's sentences are illegal under the "one-homicide" rule. We annul the judgment and sentence on Connell's conviction for child endangerment resulting in death and remand for resentencing to eliminate the sentence for that offense.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.