STATE OF MINNESOTA
IN COURT OF APPEALS
A10-2158

State of Minnesota,
Respondent,

vs.

Laura Marie Wilkinson,
Appellant.

Filed September 6, 2011
Affirmed
Muehlberg, Judge[*]

Dakota County District Court
File No. 19HA-CR-09-2315

Lori Swanson, Attorney General, St. Paul, Minnesota; and

James C. Backstrom, Dakota County Attorney, Nicole E. Nee, Assistant County Attorney, Hastings, Minnesota (for respondent)

Jeffrey C. Dean, Jeffrey Dean Law Office, Minneapolis, Minnesota (for appellant)

Considered and decided by Stoneburner, Presiding Judge; Larkin, Judge; and Muehlberg, Judge.

[*] Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

MUEHLBERG, Judge

Appellant Laura Marie Wilkinson appeals from her six malicious-punishment-of-child convictions arising out of a child-abuse investigation that started when doctors discovered 13 bone fractures in six-month-old B.S. Appellant was convicted based on her admissions to police that, on multiple occasions while babysitting B.S., she squeezed, swung like a monkey, jerked, and gripped B.S. tightly, because she was frustrated by B.S.'s crying. Appellant argues that her statements to police should have been suppressed and that insufficient evidence supports her convictions. We conclude that appellant's statements to police were voluntarily made in a noncustodial setting and were therefore constitutionally admissible at her trial. We also conclude that the evidence supports that appellant abused B.S. on six separate occasions. We affirm.

FACTS

M.S. (mother of B.S.) and D.S. (father of B.S.) had their first child in December 2006, and their second child, B.S., in September 2008. B.S. was born healthy. At her early checkups, B.S.'s doctor confirmed that B.S. was "doing everything she should be." When M.S. returned to work after maternity leave, D.S.'s cousin, appellant Laura Marie Wilkinson, began to care for B.S. and her sister Monday through Thursday from 7 a.m. to 4 p.m.

Soon after appellant began caring for B.S., M.S. began to notice changes in the child. B.S. was not rolling over and would scream if she was on her belly. And she would continue screaming until M.S. picked her up. B.S. would let out "a blood-curdling

scream" when M.S. would lift her legs to change her diaper. When D.S. left for work in the mornings, as he gave B.S. to appellant, B.S. would immediately start crying "like screaming," and would only stop when he took her back. The crying would start up again when he gave her back to appellant so he could go to work.

On Friday, April 17, 2009, B.S. had her sixth-month well-baby check. Her pediatrician, Dr. Kristine Foslien checked her ears, mouth, and nose, wiggled her legs, and said that everything seemed fine. M.S., feeling that something was wrong, told her that when she changes B.S.'s diaper, B.S. screams. She showed the doctor how she holds B.S.'s legs, and B.S. screamed. Dr. Foslien decided to take x-rays. She immediately noticed a broken bone in the x-ray and directed M.S. to take B.S. to the University of Minnesota Children's Hospital for a full-body examination.

B.S. underwent numerous tests, which ultimately revealed 13 fractures in locations that were "unusual" for accidental injuries, triggering a police investigation. The fractures were near the ends of bones, a location that has "long been recognized to be associated with abusive injury." They occur "when kids get jerked, twisted, [or] pulled," not when a baby falls. The healing patterns of the fractures were consistent with numerous separate child-abuse acts.

At 1 a.m. on Saturday, Detective Stefanie Bolks went to the hospital, spoke to each parent separately, and put a police hold on B.S. so that neither parent could be alone with her. She later spoke with B.S.'s physician, and contacted the other two adults who watched B.S: her paternal grandfather and appellant. After speaking with B.S.'s parents, appellant became Detective Bolks's prime suspect.

Detective Bolks met appellant at her apartment at around 4 p.m. and spoke to her in the hallway. The 13 minute conversation was recorded and later played for the jury. In it, Detective Bolks stated, "You look at me and you tell me the truth. I know that you caused the injuries to [B.S.]." And appellant replied, "Yea, fine." And Detective Bolks said, "I want you tell [to] me how you caused those injuries. I want to know what you did so I can tell the doctor, okay." And appellant said, "Can we do this at 7?" Detective Bolks said they could.

Appellant met Detective Bolks at the police station in Eagan as scheduled. They talked for one hour in a small interview room. The interview was videotaped and later played for the jury. During the interview, appellant admitted that she was often frustrated with B.S. because B.S. would not stop crying. Appellant admitted that on five or six occasions, she was "intense" with B.S. She "squeeze[d] her," and pulled her legs "a little hard," in fact "too hard," when she changed her diaper. When asked about B.S.'s fractured wrists, appellant admitted that they may have been caused by her "swinging [B.S.] like a monkey," and "doing that too hard too." Detective Bolks asked if it was safe to say she was "being rough with [B.S]." And appellant responded, "Yes." Near the end of the interview, appellant stated, "I guess I don't know why it all fell on [B.S.] cuz I don't do this to my nephew. I would kill myself for my nephew. I would lay down in traffic for him. I just—I guess I just don't know why it's different."

Detective Bolks continued her investigation. B.S. went home from the hospital on Sunday morning with a cast on each leg. After B.S. was released, she suffered no more bone fractures. M.S. took a six-week leave of absence from work to care for the girls.

After that, they stayed at their grandmother and grandfather's house during the day while the parents were at work. The casts were removed in two weeks and B.S.'s doctor declared she was "healing up just fine." Her doctor checked B.S.'s progress again in May and July, and she continued to heal. At her nine-month well-baby check in July, "[s]he was happy and smiling and cooing and talking and rolling over and trying to stand up on things to chase her big sister." By January 2010 she was walking and running, interacting with her sister, eating solid foods, and drinking from a sippy cup. And at the July trial, she was described as very smart, well spoken for her age, and happy. Between the times her leg casts were removed and the trial, B.S. occasionally fell into furniture, "bonk[ed]" into things, fell, and wrestled with her sister, but she never broke bones doing so.

Appellant was charged with seven counts of malicious punishment of a child, Minnesota Statutes section 609.377 (2008), each based on unique combinations of the placement of the bone fractures and the estimated dates of injury. Before trial, appellant moved to suppress the statements she made in her apartment-hallway and police-station interviews. The district court denied her motion. A jury convicted appellant of six of the seven counts of malicious punishment. Appellant moved for a directed not-guilty verdict and for a new trial, and both motions were denied. She was sentenced to 42 months in prison. She appeals.

D E C I S I O N

I.

When reviewing pretrial orders on motions to suppress evidence, we independently review the district court's findings to determine, as a matter of law, whether the district court erred in its decision to suppress or not suppress the evidence. *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). In doing so, we accept the district court's findings regarding the circumstances of the interviews unless they are clearly erroneous. *State v. Zabawa*, 787 N.W.2d 177, 182 (Minn. 2010).

Appellant first argues that the district court erred by denying her pretrial motion to suppress evidence of her statements to police, which she claims were involuntary and custodial. We first address her claim that her statements were not voluntary. The requirement that statements to police be voluntary is rooted in the Due Process Clause of the Fourteenth Amendment. *Zabawa*, 787 N.W.2d at 182. So if a statement is not voluntary, it cannot be used in trial. *Id.* The burden is on the state to establish by a preponderance of the evidence that a statement was voluntary. *Id.*

In concluding that the statements were voluntary, the district court made the following findings regarding the circumstances of the interviews:

> Officer Bolks neither lied, nor used any stress inducing techniques to obtain a confession from [appellant]. Officer Bolks was very calm during questioning, never raised her voice, never threatened to charge defendant with a crime nor did she physically intimidate [appellant]. . . .
> . . . [Appellant] was told multiple times she was not under arrest. . . .
> . . . While it is true that Officer Bolks was aware of [appellant's] personal problems, they did not have an impact

> on the voluntariness of [appellant's] confession because Officer Bolks was made aware of these issues after the confession by [appellant]. . . .
> It is the judgment of this court that [appellant] is competent. [She] is 31 years old, a high school graduate and has taken some classes at the college level. . . . It was clear from viewing the videotape . . . that [appellant] understood the seriousness of the situation when after she admitted to her actions of abuse with the minor child she began to cry and expressed remorse.

We first address whether any of these findings are clearly erroneous. Appellant impliedly challenges the district court's findings relating to the hallway interview by making the following assertions to support her theory that her statements were involuntary: (1) Detective Bolks showed up at appellant's apartment unannounced; (2) she "implicitly threatened" appellant with arrest; (3) she "impliedly promised" that B.S. would remain on police hold until appellant explained B.S.'s fractures; (4) she "denied" appellant "access to her family" during the questioning; (5) she knew appellant's father recently died and that she had a history of depression; and (6) appellant did not know her rights. Because some of these assertions run contrary to the district court's findings, we begin by addressing the findings challenged by these assertions.

Appellant claims that Detective Bolks knew of appellant's fragile condition prior to the interview, contrary to the district court's finding that she did not. The district court's finding is not clearly erroneous. The record is unclear as to whether appellant's mother told Detective Bolks about her daughter's vulnerability. At the omnibus hearing Bolks just agreed that "Ms. Wilkinson" shared that she was depressed. In context, Bolks is talking about appellant, not mom. Appellant also claims that Detective Bolks

"implicitly threatened" her with arrest, challenging the district court's findings that appellant was told she was not under arrest. The district court's finding that appellant was told she was not under arrest is not clearly erroneous. The transcript of the interview confirms it. Finally, appellant alleges the interview was unannounced, challenging the district court's findings that Detective Bolks did not use stress-inducing tactics. But undisputed evidence shows that Detective Bolks called ahead and left a voicemail with appellant, which appellant heard. So despite appellant's assertions to the contrary, the district court's findings are supported. We will therefore defer to them as we address whether her statements were voluntary.

To determine if a statement was voluntarily made, the district court looks to the totality of the circumstances and examines "whether police actions, together with the other circumstances surrounding the interview were so coercive, manipulative, and overpowering that the defendant was deprived of [her] ability to make an independent decision to speak." *Zabawa*, 787 N.W.2d at 182. "Relevant factors include the defendant's age, maturity, intelligence, education, experience, and ability to comprehend." *Id.* The ultimate question is whether a defendant's will was overborne at the time she made the statement. *Id.*

The record shows that, at most, Detective Bolks empathized with appellant. This might have been a tactic, but police are allowed to employ tactics. *Id*. at 184. Police "must . . . be allowed to encourage suspects to talk," and "empathetic tactics that prod suspects to speak with [police] and cooperate" are upheld. *Id.* (quotations omitted). Although appellant asked Detective Bolks if she could take her mother to the interview,

and Detective Bolks responded that it would be better if they spoke alone, Detective Bolks' response was reasonable. Appellant is a 31-year-old, competent adult, and the conversation was sensitive in nature. Appellant was treated no differently than B.S.'s parents, who were also privately interviewed. The fact that Detective Bolks wanted to interview appellant alone did not make appellant's statements involuntary.

We next address appellant's claim that the district court erred by finding that her statements at the police station were given in a noncustodial setting. This finding is crucial because in custodial interrogations, *Miranda* warnings are required, *State v. Rosse*, 478 N.W.2d 482, 484 (Minn. 1991) (citing *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602 (1966)), and none were given here. Whether a warning is required depends on whether the suspect is "in custody." *Id.* A person is in custody if, "based on all the surrounding circumstances, a reasonable person under the circumstances would believe that he or she was in police custody of the degree associated with formal arrest." *State v. Thompson*, 788 N.W.2d 485, 491 (Minn. 2010) (quotation omitted). We defer to the district court's factual findings regarding the circumstances surrounding the police interview, unless they are clearly erroneous, and we review de novo the district court's legal determination about custody. *State v. Vue*, 797 N.W.2d 5, 11 (Minn. 2011).

We first note that the district court's factual findings regarding the police interview are supported by the evidence. The district court found:

> [Appellant] was asked, not ordered or threatened, to meet Officer Bolks at the Eagan Police Department for questioning; an offer which [appellant] accepted. [Appellant] was told multiple times she was not under arrest and told one time that she would be allowed to leave after the

> interviews. . . . [Appellant] could have gotten up at any time and left as the door was not locked.

We rely on these findings and evidence in the record consistent with these findings to address whether appellant was in custody.

Whether appellant was in custody depends on weighing several factors:

> Factors indicative of custody include (1) the police interviewing the suspect at the police station; (2) the suspect being told he or she is a prime suspect in a crime; (3) the police restraining the suspect[']s freedom of movement; (4) the suspect making a significantly incriminating statement; (5) the presence of multiple officers; and (6) "a gun pointing at the suspect." . . . But the mere fact that an interrogation occurs at the police station does not by itself require a determination that the questioning was custodial in nature. . . .
>
> Alternatively, factors that may indicate the suspect is not in custody include (1) questioning the suspect in his or her home; (2) law enforcement expressly informing the suspect that he or she is not under arrest; (3) the suspect's leaving the police station without hindrance; (4) the brevity of questioning; (5) the suspect's ability to leave at any time; (6) the existence of a nonthreatening environment; and (7) the suspect's ability to make phone calls.

Id. at 11 (quotation omitted). Here, three factors weigh in favor of a conclusion that appellant was in custody: she was at the station; she knew she was the prime suspect; and she was making incriminating statements. *See id.* But three of the factors weigh against a conclusion of custody: appellant's freedom of movement was not restrained; there was only one, plain-clothed officer; and no weapons were drawn. *See id.* Additionally, five of the seven circumstances tending to show a defendant was *not* in custody were present: appellant was expressly told she was not under arrest; she left the interview without hindrance; the one-hour interview was fairly brief; she was able to leave at any time (and

her car, in which she drove herself to the police station, was there); and the room, although small, was nonthreatening: it was a neutral color, contained a framed painting and books, and was furnished with a round table and chairs. *See id.* We conclude that the balance tips in favor of the factors indicating appellant was not in custody, and a *Miranda* warning was therefore not required.

The district court did not err by admitting appellant's statements to police.

II.

Appellant also challenges her convictions by arguing that the evidence is insufficient to support them. We review to determine whether the evidence is sufficient as a matter of law to support a defendant's convictions. *See Bernhardt v. State*, 684 N.W.2d 465, 476 (Minn. 2004). In doing so, we view the evidence in the light most favorable to the verdict and consider "whether, given the facts in the record and the legitimate inferences that can be drawn from those facts, a jury could reasonably conclude that the defendant was guilty of the offense charged." *Id.* at 476–77 (quotation omitted). Appellant makes two arguments regarding her sufficiency-of-the-evidence claim, which we address in turn. First, she argues that the state failed to prove that B.S. was abused or that she abused B.S. because "compelling" evidence suggests that B.S. suffered from rickets, a bone-weakening disease; second, appellant argues that the evidence fails to establish six separate incidents of abuse supporting each of the six convictions.

We first address appellant's claim that the state failed to prove that B.S. was abused and that appellant inflicted the abuse. To obtain a conviction of felony malicious

punishment of a child, the state must prove beyond a reasonable doubt that the defendant is "[a] parent, legal guardian, or caretaker who, by an intentional act or a series of intentional acts with respect to a child, evidences unreasonable force or cruel discipline that is excessive under the circumstances," resulting in substantial bodily harm to the child. Minn. Stat. § 609.377, subds. 1, 5.

Appellant's convictions are supported by both direct and circumstantial evidence. A defendant's admissions, whether direct or implied, are considered direct evidence to support a conviction. *State v. Weber*, 272 Minn. 243, 254, 137 N.W.2d 527, 535 (1965). Appellant made numerous admissions to the police that support the finding of guilt. She admitted to police that she caused the injuries in order to stop B.S. from crying. She admitted to being "intense" with her, squeezing her, pulling her legs "too hard," swinging her "too hard" "like a monkey," and being "rough" with her. Appellant's admissions were corroborated by medical evidence: one doctor testified that B.S.'s injuries were consistent with the type of rough handling that appellant described and four doctors concluded that B.S.'s injuries were most likely caused by abuse.

Appellant's convictions were also supported by circumstantial evidence. Circumstantial evidence, although more heavily scrutinized on appeal, is entitled to the same weight as direct evidence. *State v. Bauer*, 598 N.W.2d 352, 370 (Minn. 1999). The circumstantial evidence that appellant abused B.S. includes the following: appellant cared for B.S. Monday through Thursday from 7 a.m. to 4 p.m., before appellant started caring for B.S., B.S.'s check-ups were normal, whenever appellant held B.S., B.S. screamed, after appellant stopped caring for B.S., all of B.S.'s injuries healed and B.S. did not suffer

any more bone fractures. Both direct and circumstantial evidence prove that B.S. was abused and that appellant was the abuser.

Despite this evidence, appellant argues that "compelling" evidence that B.S. had rickets necessitates reversal of her convictions. But in reviewing sufficiency-of-the-evidence cases, the court is required to reject evidence that conflicts with the verdict. *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). The only evidence that B.S. *may have* had rickets was proffered by appellant's expert witness, Dr. Janice Ophoven, who only stated that she could not rule out that B.S. suffered from weak bones. But in our review, we assume the jury disregarded her opinion as unreliable. *See id*. And we assume the jury believed the state's expert witnesses, who all testified that they believed B.S.'s injuries were caused by abuse, not a bone deficiency. In view of the evidence, the jury could reasonably conclude beyond a reasonable doubt that appellant was guilty. Her malicious punishment convictions are sufficiently supported.

We now turn to appellant's argument that insufficient evidence supports six separate convictions of malicious punishment. The jury based the six counts of malicious punishment on evidence of unique combinations of the locations and types of injuries and the estimated age of those injuries: (1) two rib fractures, three to four weeks old; (2) one femur fracture, older than two weeks; (3) two femur fractures (left and right leg), two weeks old; (4) two below-the-shoulder arm fractures (left and right arm), two weeks old; (5) one left arm fracture, two weeks old; and (6) one wrist fracture. We conclude that the state proved each of these convictions beyond a reasonable doubt.

First, as for the total number of incidents, appellant admitted to police that she "was rough" with B.S. on at least five or six occasions, which is direct evidence of guilt. She also described separate acts constituting punishment, for example, squeezing, swinging, pulling, and yanking B.S., all to stop her from crying. In addition to her admissions, the state put forth medical evidence through expert doctors and x-ray exhibits supporting the injuries and dates of the injuries indicated in each verdict form. Dr. Glen Siedel opined as to the causes of some of the injuries, for example saying, "posterior rib fractures . . . imply a squeezing injury," and the femur fractures "imply twisting and bending against the normal motion of a joint." Dr. Mark Hudson also testified about the causes of the injuries, for example stating that the location of the rib fractures occur "when a child is violently squeezed around the chest," the upper arm fractures are caused by a "child getting jerked, shaken, [or] pulled around by their upper extremities or their arms," and the wrist fractures are caused by "a twisting or pulling on that arm." Dr. Hudson also confirmed through testimony that the medical evidence is consistent with six separate acts of abuse. Appellant's own admissions, combined with medical evidence that the injuries occurred at different times, and the various locations of the injuries all over B.S.'s body, provide enough evidence for the jury to conclude beyond a reasonable doubt that appellant maliciously punished B.S. on six separate occasions as indicated by the verdicts.

Affirmed.