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# STATE OF NEBRASKA, APPELLEE, V. JOHN J. CHAVEZ, APPELLANT.

793 N.W.2d 347

Filed February 4, 2011. No. S-10-270.

1. **Rules of Evidence.** In proceedings where the Nebraska Evidence Rules apply, the admissibility of evidence is controlled by the Nebraska Evidence Rules; judicial discretion is involved only when the rules make discretion a factor in determining admissibility.
2. **Rules of Evidence: Appeal and Error.** Where the Nebraska Evidence Rules commit the evidentiary question at issue to the discretion of the trial court, an appellate court reviews the admissibility of evidence for an abuse of discretion.
3. **Rules of Evidence: Other Acts: Appeal and Error.** It is within the discretion of the trial court to determine relevancy and admissibility of evidence of other wrongs or acts under Neb. Evid. R. 403 and 404(2), Neb. Rev. Stat. §§ 27-403 and 27-404(2) (Reissue 2008), and the trial court's decision will not be reversed absent an abuse of discretion.
4. **Criminal Law: Motions for New Trial: Appeal and Error.** In a criminal case, a motion for new trial is addressed to the discretion of the trial court, and unless an abuse of discretion is shown, the trial court's determination will not be disturbed.
5. **Criminal Law: Convictions: Evidence: Appeal and Error.** When reviewing a criminal conviction for sufficiency of the evidence to sustain the conviction, the relevant question for an appellate court is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.
6. **Convictions: Evidence: Appeal and Error.** Regardless of whether the evidence is direct, circumstantial, or a combination thereof, an appellate court, in reviewing a criminal conviction, does not resolve conflicts in the evidence, pass on the credibility of witnesses, or reweigh the evidence.
7. **Rules of Evidence: Other Acts.** Neb. Evid. R. 404(2), Neb. Rev. Stat. § 27-404(2) (Reissue 2008), prohibits the admission of other bad acts evidence for the purpose of demonstrating a person's propensity to act in a certain manner. But evidence of other crimes which is relevant for a purpose other than to show the actor's propensity is admissible under rule 404(2).
8. **Evidence: Words and Phrases.** Evidence that is offered for a proper purpose is often referred to as having a "special" or "independent" relevance, which means its relevance does not depend upon its tendency to show propensity.
9. **Rules of Evidence: Other Acts: Appeal and Error.** An appellate court's analysis under Neb. Evid. R. 404(2), Neb. Rev. Stat. § 27-404(2) (Reissue 2008), considers (1) whether the evidence was relevant for some purpose other than to prove the character of a person to show that he or she acted in conformity therewith; (2) whether the probative value of the evidence is substantially outweighed by its potential for unfair prejudice; and (3) whether the trial court, if requested, instructed the jury to consider the evidence only for the limited purpose for which it was admitted.

10. **Verdicts: Juries: Appeal and Error.** In a harmless error review, an appellate court looks at the evidence upon which the jury rested its verdict; the inquiry is not whether in a trial that occurred without the error a guilty verdict would surely have been rendered, but, rather, whether the guilty verdict rendered in the trial was surely unattributable to the error.
11. **Witnesses: Juries: Appeal and Error.** The credibility and weight of witness testimony are for the jury to determine, and witness credibility is not to be reassessed on appellate review.

Appeal from the District Court for Scotts Bluff County: RANDALL L. LIPPSTREU, Judge. Affirmed.

Richard L. DeForge, Deputy Scotts Bluff County Public Defender, for appellant.

Jon Bruning, Attorney General, and George R. Love for appellee.

HEAVICAN, C.J., WRIGHT, CONNOLLY, GERRARD, STEPHAN, MCCORMACK, and MILLER-LERMAN, JJ.

MILLER-LERMAN, J.

## I. NATURE OF CASE

John J. Chavez (Chavez) appeals his conviction for intentional child abuse resulting in the death of his daughter. He claims that the district court for Scotts Bluff County erred when it allowed evidence of prior injuries to the victim into evidence and when it overruled his motion for new trial. He also claims that there was not sufficient evidence to support his conviction. Because we determine there was no reversible error, we affirm.

## II. STATEMENT OF FACTS

Aubrey Chavez (Aubrey), born December 24, 2008, was the daughter of Chavez and Tammy Rood. Aubrey was born prematurely; she was not released from the hospital until January 14, 2009, but she was healthy and doing well when she was released. On the morning of April 20, Rood discovered that Aubrey was not breathing. Rood attempted to revive Aubrey and summoned an ambulance. Aubrey was taken to a hospital, where she was pronounced dead.

Later in the day on April 20, 2009, both Chavez and Rood were interviewed separately by Scottsbluff police detective

Robert Rader. Chavez initially told Rader that he had not done anything to harm Aubrey. Later, Chavez admitted that he had shaken Aubrey once and possibly twice in order to calm her down because she was crying, but stated that the shaking was gentle and that he had no intention of harming her and did not think the shaking had caused her any harm.

Chavez was arrested and charged with knowing and intentional child abuse resulting in death, a Class IB felony under Neb. Rev. Stat. § 28-707(6) (Reissue 2008). In the same information, Chavez was charged with possession of methamphetamine, possession of drug paraphernalia, and possession of marijuana, 1 ounce or less. The district court for Scotts Bluff County sustained Chavez' motion to sever the possession charges from the child abuse charge. Pursuant to a plea agreement, Chavez pled no contest to possession of methamphetamine in exchange for the State's dismissal of the other two possession charges and the State's agreement not to use the plea or evidence of drug possession for impeachment purposes in the child abuse trial.

Prior to trial on the child abuse charge, the State filed a motion and notice of its intent to present evidence pursuant to Neb. Evid. R. 404, Neb. Rev. Stat. § 27-404 (Reissue 2008), which relates generally to the admission of evidence of other crimes, wrongs, or acts. The State noted its intent to present evidence of injuries inflicted upon Aubrey prior to the date of her death. The State asserted that it would offer such evidence for the purpose of proving intent or the absence of mistake or accident. Following a hearing, the district court concluded that "[e]vidence that Aubrey was a battered child would be helpful to the jurors on the issues of intent and the absence of mistake or accident" and that the testimony of Drs. Peter Schilke and Timo Quickert would be relevant to such issues. The court further concluded that evidence that Chavez had caused a bruise to Aubrey's forehead in March 2009 was more probative than unfairly prejudicial or confusing. In the same order, the court sustained Chavez' motion in limine regarding evidence of his prior convictions or prior criminal investigations but overruled the portion of Chavez' motion in limine which sought to exclude evidence of Aubrey's autopsy

photographs and evidence of injuries she suffered prior to April 20, 2009.

Schilke performed an autopsy on Aubrey on April 21, 2009, and testified at trial. Various objections to the testimony were overruled. Schilke opined to a reasonable degree of medical certainty that the cause of Aubrey's death was a blunt force head injury consistent with shaking and impact occurring within a couple of hours of her being found not breathing. The autopsy also revealed numerous remote injuries, including rib fractures; a bruise to the scalp; hemorrhaging of the brain, optic nerve, and retina; a break of the left arm; and other remote injuries to the brain. Schilke opined that the remote injuries were consistent with inflicted injuries extending over a number of weeks.

Regarding the specifics of the autopsy, Schilke noted that, other than the obvious broken arm, there were not any other obvious external injuries to Aubrey's body. Aubrey's chest examination revealed 11 old rib fractures. Schilke stated that ribs three through nine on the right side were fractured. The old fractures were identifiable because fractured bone, in repairing itself, leaves a callus, while normal bone is smooth. There was also recent hemorrhaging in the chest wall on the right side near ribs four through seven and on the left side near rib seven. Hemorrhaging was present in the back near the spine.

Schilke testified that he observed a bruise on Aubrey's forehead. The bruise appeared to be recent. Schilke stated that Aubrey showed acute, or recent, subdural hemorrhaging on the top of her head on both the right and left sides of her brain. She also had acute as well as older hemorrhages in the subarachnoid layer covering her brain. In the brain itself, she displayed both acute and older injuries. Aubrey's eyes showed acute hemorrhaging of the retina and optic nerve.

Schilke explained that a shearing injury results from a type of force applied to the brain, as in shaking a baby, which tears the connective tissue in the brain and that other signs of this force are subdural and subarachnoid hemorrhaging. Schilke stated to a reasonable degree of medical certainty that Aubrey's cause of death was "blunt force head injuries." Schilke also opined to a reasonable degree of medical certainty that Aubrey

did not have skull fractures and that the injuries to her brain were caused by a sudden change in force which caused tearing in the brain. Aubrey's acute injuries were consistent with the timeframe of 6 to 8:45 a.m. on April 20, 2009, when she was found not breathing. The trial court instructed the jury as to the limited purpose of the evidence regarding Aubrey's prior injuries.

Quickert, a radiologist, reviewed x rays and CT scans taken of Aubrey and testified at trial. Quickert stated that he found evidence of rib fractures in differing stages of healing that were weeks to months old, additional rib fractures that were hours to days old, a right wrist fracture that was weeks to months old, a left thigh fracture, and shearing and other trauma injuries to the brain that were both recent and more remote in time. Quickert opined to a reasonable degree of medical certainty that the injuries to Aubrey's brain were consistent with "shaken baby syndrome" or a traumatic shearing injury and that her more remote injuries were consistent with recurring trauma and "battered child syndrome."

At trial, the court overruled Chavez' objections to the receipt of evidence regarding injuries inflicted on Aubrey prior to April 20, 2009, and objections related to the form and content of the findings and opinions of Schilke and Quickert. With regard to those doctors' testimony, the court gave limiting instructions to the effect that evidence of injuries to Aubrey prior to the date of her death was received for the limited purpose of helping the jury decide issues of intent and absence of mistake or accident and that the jury must consider the evidence for only those limited purposes and for no other. The court overruled Chavez' objections to certain of Schilke's opinions on the basis that the opinions were not stated with a sufficient degree of certainty or specificity to support an expert opinion.

The State presented testimony of other witnesses, including Rader, who testified regarding his investigation of Aubrey's death. In connection with Rader's testimony, the court admitted into evidence and played for the jury a video recording of Rader's interview with Chavez on April 20, 2009, in which Chavez admitted shaking Aubrey once or twice but asserted that the shaking was gentle.

Rood testified that Chavez was the father of two of her children—Aubrey and an older brother. Rood's oldest son had a different father. At the time of Aubrey's death, Rood and Chavez lived together with the three children. Aubrey was born prematurely on December 24, 2008, and stayed in the hospital for 3 weeks after her birth. Rood stayed at home to care for Aubrey at first but returned to work on February 10, 2009. Aubrey was generally cared for by Rood, Chavez, or Rood's mother.

Over Chavez' objection, Rood testified that one time prior to April 20, 2009, she returned home from working overnight and noticed a bruise on Aubrey's forehead and that when Rood asked Chavez about the bruise, he told her that Aubrey had fallen off a bed. Rood testified that at that time, Aubrey was at a stage of development where she was not able to roll over. The court gave a limiting instruction regarding use of evidence regarding this prior injury in which it instructed the jury that this evidence should be considered only for intent and absence of mistake or accident.

With respect to the events surrounding Aubrey's death, the testimony indicates that Rood and the family went to bed at about 11 p.m. on April 19, 2009. Aubrey slept well at first, but beginning around 1 a.m. on April 20, she woke up from time to time crying and upset. Rood attempted to keep Aubrey settled until approximately 5:30 a.m., when Rood started getting ready for work. While Rood was getting ready, Chavez was awake and Rood heard Chavez tell Aubrey, who was still crying, to "shut up." Rood noticed Chavez had put Aubrey into a chair Rood referred to as a "bouncer." When Rood left for work at approximately 5:45 a.m., Chavez was in bed with his head covered, wearing earphones and listening to an audio player. Aubrey was sitting in the bouncer and was calm and awake and looking at Rood.

Rood returned home from work at about 7:30 a.m. Chavez was getting ready for work. Aubrey was still in the bouncer and looked like she was asleep. Rood prepared breakfast for the two older children. Chavez left, shortly after Rood returned home, in order to go to work and to take Aubrey's oldest brother to school. Her other brother finished breakfast, and Rood and he went to a bedroom to watch cartoons while Aubrey was still

in the bouncer, appearing to be asleep. About a half hour later, Rood checked on Aubrey and realized that she was pale, which was a change from earlier. Rood pulled Aubrey out of the bouncer and noticed that she was limp and appeared "lifeless." Rood called the 911 emergency dispatch service and attempted to revive Aubrey. Rood denied that she had ever shaken Aubrey or done anything to injure her.

After the State rested its case, Chavez moved to dismiss, arguing that there was insufficient evidence that he intentionally abused Aubrey or that his actions caused her death. The court overruled the motion, stating that there was circumstantial evidence from which the jury could make a finding of guilt.

Chavez presented a defense that included testimony by his father, mother, and brother generally to the effect that Chavez was a loving and caring father. The theory of Chavez' defense was an absence of intent or that Aubrey's death was caused by accident or mistake. After he rested his case, Chavez renewed his motion to dismiss, and the court again overruled the motion.

The jury found Chavez guilty of intentional child abuse resulting in death, and the court entered judgment based on the jury's verdict. The court denied Chavez' motion for new trial, in which he asserted, inter alia, that the verdict was not supported by sufficient evidence and that the court erroneously admitted evidence of injuries Aubrey sustained prior to the date of her death. The court sentenced Chavez to imprisonment for 40 years to life on the conviction for intentional child abuse resulting in death and ordered that his sentence of imprisonment for 12 to 24 months for possession of methamphetamine be served concurrently with the child abuse sentence.

Chavez appeals his conviction.

## III. ASSIGNMENTS OF ERROR

Chavez claims, summarized and restated, that the district court erred when it (1) admitted evidence of injuries Aubrey sustained prior to the date of her death and (2) overruled his motion for new trial, in which he had claimed that the evidence of Aubrey's injuries prior to her death had been wrongly admitted and that there was not sufficient evidence to support his conviction for intentional child abuse resulting in death.

## IV. STANDARDS OF REVIEW

[1,2] In proceedings where the Nebraska Evidence Rules apply, the admissibility of evidence is controlled by the Nebraska Evidence Rules; judicial discretion is involved only when the rules make discretion a factor in determining admissibility. *State v. Epp*, 278 Neb. 683, 773 N.W.2d 356 (2009). Where the Nebraska Evidence Rules commit the evidentiary question at issue to the discretion of the trial court, we review the admissibility of evidence for an abuse of discretion. *Id.*

[3] It is within the discretion of the trial court to determine relevancy and admissibility of evidence of other wrongs or acts under Neb. Evid. R. 403, Neb. Rev. Stat. § 27-403 (Reissue 2008), and rule 404(2), and the trial court's decision will not be reversed absent an abuse of discretion. *State v. Baker*, 280 Neb. 752, 789 N.W.2d 702 (2010).

[4] In a criminal case, a motion for new trial is addressed to the discretion of the trial court, and unless an abuse of discretion is shown, the trial court's determination will not be disturbed. *State v. Alford*, 278 Neb. 818, 774 N.W.2d 394 (2009).

[5,6] When reviewing a criminal conviction for sufficiency of the evidence to sustain the conviction, the relevant question for an appellate court is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *State v. Robinson*, 278 Neb. 212, 769 N.W.2d 366 (2009). Regardless of whether the evidence is direct, circumstantial, or a combination thereof, an appellate court, in reviewing a criminal conviction, does not resolve conflicts in the evidence, pass on the credibility of witnesses, or reweigh the evidence. *Id.*

## V. ANALYSIS

### 1. Evidence of Prior Injuries

#### (a) Admission of Evidence of Prior Injuries Revealed Upon Autopsy Was Not Error

Chavez claims that the evidence related to prior injuries as seen in the autopsy was erroneously admitted. The district court allowed the evidence for the limited purpose of showing

intent and absence of mistake or accident under rule 404(2). We find no error in this ruling.

Rule 404(2) provides:

> Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he or she acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

[7-9] Rule 404(2) prohibits the admission of other bad acts evidence for the purpose of demonstrating a person's propensity to act in a certain manner. But evidence of other crimes which is relevant for a purpose other than to show the actor's propensity is admissible under rule 404(2). See, *State v. McPherson*, 266 Neb. 734, 668 N.W.2d 504 (2003); *State v. Aguilar*, 264 Neb. 899, 652 N.W.2d 894 (2002). Evidence that is offered for a proper purpose is often referred to as having a "special" or "independent" relevance, which means its relevance does not depend upon its tendency to show propensity. *State v. Aguilar, supra*; *State v. Sanchez*, 257 Neb. 291, 597 N.W.2d 361 (1999). An appellate court's analysis under rule 404(2) considers (1) whether the evidence was relevant for some purpose other than to prove the character of a person to show that he or she acted in conformity therewith; (2) whether the probative value of the evidence is substantially outweighed by its potential for unfair prejudice; and (3) whether the trial court, if requested, instructed the jury to consider the evidence only for the limited purpose for which it was admitted. *State v. Epp*, 278 Neb. 683, 773 N.W.2d 356 (2009); *State v. Floyd*, 277 Neb. 502, 763 N.W.2d 91 (2009).

The portion of the evidence revealed upon autopsy to which Chavez refers on appeal concerns injuries to Aubrey prior to the incident surrounding her death. This evidence is not an integral part of the crime charged and, because it is extrinsic to the crime, is covered under rule 404(2). See *State v. McPherson, supra*.

This case involves a conviction for intentional child abuse resulting in death. The evidence in the case recited above

showed that Aubrey's caregivers included Chavez, Rood, and Rood's mother. The evidence showed extensive remote injuries to Aubrey which were characterized in the record as indicative of battered child syndrome.

In *Estelle v. McGuire*, 502 U.S. 62, 112 S. Ct. 475, 116 L. Ed. 2d 385 (1991), the U.S. Supreme Court concluded that evidence that an infant victim suffered from battered child syndrome was admissible as relevant to establish intent or absence of accident. The Court stated:

> The demonstration of battered child syndrome "simply indicates that a child found with [serious, repeated injuries] has not suffered those injuries by accidental means." . . . Thus, evidence demonstrating battered child syndrome helps to prove that the child died at the hands of another and not by falling off a couch, for example; it also tends to establish that the "other," whoever it may be, inflicted the injuries intentionally. When offered to show that certain injuries are a product of child abuse, rather than accident, evidence of prior injuries is relevant even though it does not purport to prove the identity of the person who might have inflicted those injuries. . . . [Where the defendant is charged with intentional child abuse resulting in death, the prosecutor is] required to prove that [the victim's] death was caused by the defendant's intentional act. Proof of [the victim's] battered child status helped to do just that; although not linked by any direct evidence to [the defendant], the evidence [in *Estelle v. McGuire*] demonstrated that [the victim's] death was the result of an intentional act by *someone*, and not an accident. . . . We conclude that the evidence of prior injuries presented at [the defendant's] trial, whether it was directly linked to [the defendant] or not, was probative on the question of the intent with which the person who caused the injuries acted.

*Estelle v. McGuire*, 502 U.S. at 68-69 (citations omitted).

The district court admitted the evidence of Aubrey's prior injuries on the basis of *Estelle v. McGuire* and other authorities and at trial gave a limiting instruction regarding the testimony

pertaining to Aubrey's remote injuries and the battered child syndrome testimony.

Chavez was charged with an intentional crime. The evidence was admitted under the framework of rule 404(2); it was not excludable propensity evidence, but, instead, went to intent and absence of mistake or accident. We have considered the admission of this evidence under our abuse of discretion standard of review, *State v. Baker*, 280 Neb. 752, 789 N.W.2d 702 (2010), and by reference to *Estelle v. McGuire, supra*. We determine that the district court did not abuse its discretion when it admitted for limited purposes evidence of Aubrey's prior injuries consistent with battered child syndrome.

### (b) Admission of Evidence Regarding March 2009 Forehead Injury Was Harmless

Chavez specifically claims error with respect to the admission of evidence that Aubrey's forehead was injured in March 2009 while he was the sole caregiver. He argues that evidence of this incident was likely to be seen by the jury for the improper purpose of propensity evidence and thus cause the jury to see him as a bad person or that he acted in conformity with prior bad conduct and intentionally caused the death of Aubrey on April 20. Assuming without deciding that evidence of the March 2009 forehead injury was erroneously admitted, we conclude that its admission was harmless beyond a reasonable doubt. See *State v. Poe*, 276 Neb. 258, 754 N.W.2d 393 (2008), *cert. denied* 555 U.S. 1109, 129 S. Ct. 914, 173 L. Ed. 2d 127 (2009).

[10] In a harmless error review, an appellate court looks at the evidence upon which the jury rested its verdict; the inquiry is not whether in a trial that occurred without the error a guilty verdict would surely have been rendered, but, rather, whether the guilty verdict rendered in the trial was surely unattributable to the error. *State v. Morrow*, 273 Neb. 592, 731 N.W.2d 558 (2007), *disapproved on other grounds, State v. McCulloch*, 274 Neb. 636, 742 N.W.2d 727 (2007). We conclude that the jury would have reached the same verdict regardless of whether the

evidence of the injury to Aubrey's forehead in March 2009 was received into evidence.

The evidence described earlier in this opinion established that Aubrey's death was the result of shaken baby syndrome and that Chavez, as sole caregiver, had shaken her during the relevant timeframe. The evidence showing battered child syndrome tended to negate Chavez' defense of mistake or accident or lack of intent, to the extent that it showed that Aubrey's death "was the result of an intentional act by *someone*, and not an accident." See *Estelle v. McGuire,* 502 U.S. 62, 69, 112 S. Ct. 475, 116 L. Ed. 2d 385 (1991). Even if the evidence of the March 2009 injury to Aubrey by Chavez had not been admitted, the jury would have reached the same verdict of guilty. We determine that the admission of evidence regarding the March 2009 injury, if error, was harmless.

### 2. Denial of Motion for New Trial

In a criminal case, a motion for new trial is addressed to the discretion of the trial court, and unless an abuse of discretion is shown, the trial court's determination will not be disturbed. *State v. Alford*, 278 Neb. 818, 774 N.W.2d 394 (2009).

#### (a) The District Court Did Not Err When It Denied Chavez' Motion for New Trial Based on Admission of Prior Injuries

Chavez claims that the district court erred when it denied his motion for new trial based on his argument that admission of evidence of Aubrey's prior injuries was error. We reject this assignment of error.

We have considered above the admission of evidence related to injuries suffered by Aubrey prior to the incident of the crime charged. We have concluded that the district court did not abuse its discretion when it admitted testimony showing Aubrey was a victim of battered child syndrome and that if it erred when it admitted evidence that Chavez injured Aubrey's forehead in March 2009, such admission was harmless error. Thus, we conclude that the district court did not abuse its discretion when it denied Chavez' motion for new trial based on purported erroneous admission of prior injury evidence.

### (b) The District Court Did Not Err When It Denied Chavez' Motion for New Trial Based on Insufficient Evidence

Chavez claims that the district court erred when it denied his motion for new trial based on a claim of insufficient evidence. We reject this assignment of error.

When reviewing a criminal conviction for sufficiency of the evidence to sustain the conviction, the relevant question for an appellate court is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *State v. Robinson*, 278 Neb. 212, 769 N.W.2d 366 (2009). Regardless of whether the evidence is direct, circumstantial, or a combination thereof, an appellate court, in reviewing a criminal conviction, does not resolve conflicts in the evidence, pass on the credibility of witnesses, or reweigh the evidence. *Id.*

Chavez was convicted of intentional child abuse resulting in death, a Class IB felony under § 28-707(6). Under § 28-707(1), a person is guilty of child abuse "if he or she knowingly, intentionally, or negligently causes or permits a minor child to be . . . [p]laced in a situation that endangers his or her life or physical or mental health [or to be d]eprived of necessary . . . care." Section 28-707(6) provides that child abuse is a Class IB felony "if the offense is committed knowingly and intentionally and results in the death of such child." In this case, the State charged in the information that Chavez committed the offense knowingly and intentionally and that the offense resulted in Aubrey's death.

Through the testimony of Rood, the State presented evidence that Chavez was the sole caregiver of Aubrey at the relevant time. Chavez told Rader he shook Aubrey. Through the testimony of medical experts, there was evidence that Aubrey's cause of death was shaken baby syndrome. Other properly admitted evidence tended to negate Chavez' defense of lack of intent or, alternatively, mistake or accident.

[11] We have stated that the credibility and weight of witness testimony are for the jury to determine, and witness credibility is not to be reassessed on appellate review. *State v. Archie*,

273 Neb. 612, 733 N.W.2d 513 (2007). If the jury believed the testimony of Rood, Rader, and the doctors, such evidence supported Chavez' conviction. Although there was also evidence which might have called each witness' credibility into question, that assessment was for the jury. Viewing the evidence in the light most favorable to the State, it is clear that the jury believed the testimony of the foregoing witnesses and did not believe Chavez' testimony with regard to the incident and to matters where the witnesses' testimony conflicted with that of Chavez. When reviewing a criminal conviction for sufficiency of the evidence, we, as an appellate court, do not pass on the credibility of witnesses. See *State v. Branch*, 277 Neb. 738, 764 N.W.2d 867 (2009). Considering the testimony of Rood, Rader, and the doctors, the jury, as the trier of fact, could reasonably have found the essential elements of knowing or intentional child abuse resulting in death beyond a reasonable doubt based on the evidence.

We conclude that the evidence was sufficient to support Chavez' conviction for intentional child abuse resulting in death. Therefore, the district court did not abuse its discretion when it denied Chavez' motion for new trial on this basis.

## VI. CONCLUSION

We conclude that testimony of Aubrey's injuries prior to the crime charged, which injuries showed battered child syndrome, was properly admitted and that admission of evidence regarding the March 2009 forehead injury, if error, was harmless. We conclude the district court did not abuse its discretion when it denied Chavez' motion for new trial based on evidentiary rulings and purportedly insufficient evidence. The evidence was sufficient to support Chavez' conviction for intentional child abuse resulting in death. We therefore affirm Chavez' conviction.

AFFIRMED.