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calculated the amount due as including interest at the 12-percent prejudgment interest rate after the date of judgment, we reverse, and remand for further proceedings in conformity with this opinion.

REVERSED AND REMANDED FOR FURTHER PROCEEDINGS.

STATE OF NEBRASKA, APPELLEE, V. DAVID J. CRAVEN, APPELLANT.

790 N.W.2d 225

Filed November 2, 2010. No. A-09-1230.

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. **Courts: Expert Witnesses.** Under Nebraska's *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993), and *Schafersman v. Agland Coop*, 262 Neb. 215, 631 N.W.2d 862 (2001), jurisprudence, the trial court acts as a gatekeeper to ensure the evidentiary relevance and reliability of an expert's opinion.
3. **Expert Witnesses: Appeal and Error.** The standard for reviewing the admissibility of expert testimony is abuse of discretion.
4. **Judgments: Words and Phrases.** An abuse of discretion occurs when a trial court's decision is based upon reasons that are untenable or unreasonable or if its action is clearly against justice or conscience, reason, and evidence.
5. **Courts: Expert Witnesses.** In determining the admissibility of an expert's testimony, a trial judge may consider several more specific factors that might bear on a judge's gatekeeping determination. These factors include whether a theory or technique can be (and has been) tested; whether it has been subjected to peer review and publication; whether, in respect to a particular technique, there is a high known or potential rate of error; whether there are standards controlling the technique's operation; and whether the theory or technique enjoys general acceptance within a relevant scientific community.
6. **Rules of Evidence: Expert Witnesses.** An expert's opinion is ordinarily admissible under Neb. Rev. Stat. § 27-702 (Reissue 2008) if the witness (1) qualifies as an expert, (2) has an opinion that will assist the trier of fact, (3) states his or her opinion, and (4) is prepared to disclose the basis of that opinion on cross-examination.
7. **Judgments: Juries: Witnesses.** The credibility of a witness is left to the jury's judgment, and no witness, expert or otherwise, should be permitted to give

an opinion that another mentally and physically competent witness is telling the truth.

8. **Appeal and Error.** One may not invite error and then complain of it.
9. **Criminal Law: Juries: Evidence: Appeal and Error.** In a jury trial of a criminal case, an erroneous evidentiary ruling results in prejudice to a defendant unless the State demonstrates that the error was harmless beyond a reasonable doubt.

Appeal from the District Court for Douglas County: JAMES T. GLEASON, Judge. Affirmed.

Thomas C. Riley, Douglas County Public Defender, Robert Marcuzzo, and Ashley Albertsen and Stephan Marsh, Senior Certified Law Students, for appellant.

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

INBODY, Chief Judge, and MOORE and CASSEL, Judges.

INBODY, Chief Judge.

I. INTRODUCTION

The defendant, David J. Craven, was charged in 2007 with one count of first degree sexual assault of a child under Neb. Rev. Stat. § 28-319.01 (Reissue 2008). The charges specified that Craven had subjected his daughter, E.C., to sexual penetration in March 2007. After a jury trial in Douglas County District Court, Craven was convicted and sentenced to 20 to 20 years' imprisonment. Craven now appeals to this court, assigning various errors regarding expert testimony as governed by *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993), and *Schafersman v. Agland Coop*, 262 Neb. 215, 631 N.W.2d 862 (2001); the denial of an offer of proof; the admission of certain testimony; and the refusal of the district court to allow him to impeach E.C.'s testimony.

II. STATEMENT OF FACTS

1. BACKGROUND

Craven, born in 1979, had been married to D.U., and a child, E.C., was born of the marriage in September 2003. Within approximately 2 years, the parties divorced, and E.C. remained

in D.U.'s custody. Craven exercised parental visitations on Wednesday evenings and every other weekend. Craven had visitation with E.C. on the weekend of March 16, 2007. That weekend's visit, as did all the visits, took place at Craven's parents' house, because he had experienced some financial difficulties and had been living with his parents since 2006.

On the evening of March 18, 2007, Craven took E.C. home and D.U. attempted to give her a bath. E.C. refused to take a bath and instead began to scream and cry. E.C. screamed, "[D]addy peed in my mouth" and "He thought I was a toilet." D.U. took E.C. to a doctor and also contacted law enforcement. Craven was interviewed by a detective and admitted that while in the shower with E.C., he put his penis in E.C.'s mouth for about 2 seconds and she choked on the water from the shower. Craven was arrested and charged with first degree sexual assault of a child.

2. Procedural History

(a) Motion in Limine/*Daubert* Hearing

On August 4, 2009, the State filed an amended motion in limine seeking to exclude the expert witness testimony of Dr. Scott Bresler regarding the proffer of his opinion about Craven's confession. Prior to that filing, Craven had also filed a motion in limine to exclude the admission of the transcript of an interview of E.C. at "Project Harmony," a facility which provides services to suspected victims of child abuse. The record indicates that the district court treated the hearing on the various motions of both Craven and the State as a hearing on a "Daubert slash [sic] in limine motion." See, *Daubert, supra*; *Schafersman, supra*.

At the hearing, Bresler testified that he was a professor at the University of Cincinnati's department of psychiatry, the clinical director for the Institute for Psychiatry and Law at that university's medical school, and the inpatient director of psychological services for that university's hospital. Bresler testified that he had a bachelor's degree and a master's degree in psychology from Columbia University; a master's degree and a Ph.D. in clinical psychology from Georgia State University; and postdoctoral education in forensic psychology,

neuropsychology, geriatrics, and clinical psychology. Bresler testified that he had previously worked both for the Douglas County Attorney and for defendants in Douglas County and had been declared an expert in psychology. Bresler also explained that he had an advanced certification for interrogation techniques and had undergone the same training as police officers in sexual abuse interrogations and interviews. Bresler further testified that he had authored a few academic publications, but not in the area of forensic interviewing techniques.

Bresler testified that he had been retained by Craven to evaluate Craven and testify regarding the interview of Craven conducted by police. Bresler testified that generally, in his evaluation process, he gathers information about the accused individual and any previous interaction of the individual with law enforcement in order to determine whether the individual has a psychological weakness or symptom. Bresler then testified that he views the tape of the individual's interview with police, analyzing the interrogation techniques used by law enforcement officers and watching the individual's reactions. Bresler testified that he also does an assessment of the individual consisting of personality and intelligence testing. Bresler explained that he utilizes specialized tools designed to look at the "construct" of individuals in order to determine who may be "more agreeable or more persuadable" in stressful situations, such as an interrogation. Bresler testified that he also administers a compliance test to individuals suspected of giving unreliable confessions and uses a suggestibility scale in his evaluations. Bresler testified that all of the above-mentioned tests have been generally accepted within the relevant scientific communities.

Bresler testified that his methodology for evaluating the reliability of confessions has been vetted in the scientific community and that specifically, a "White Paper" by "leading experts" had recently been published nationally discussing similar methodologies for assessing false confessions and police interrogations. Bresler indicated that in court cases such as the present case, he limits his opinion; Bresler explained that he does not give an ultimate conclusion as to whether or not the confession is false and instead leaves that determination for the judge or

jury. However, Bresler continued on to testify that the "White Paper" he had previously testified to was only a work in progress and was being published for peer review. Bresler testified that most of the research regarding false confessions and the use of these methodologies had taken place only in England and Iceland. Bresler testified that there is no known rate of error because there was no known baseline error and that he did not know the percentage of cases in which there actually had been false confessions.

When asked if the theories and methodologies used in his evaluation of false confessions were generally accepted within the relevant scientific community, Bresler testified that the methodologies had acceptance in the forensic psychology community but had their limitations due to a lack of baselines and ability to predict outcomes with any accuracy. On cross-examination, Bresler admitted that he had not testified in Nebraska regarding the false confessions methodology.

Bresler testified that in Craven's interview, there were aspects of the interrogation which he believed to have elements similar to those of other cases in which there had been false confessions, but that it was not his opinion that Craven's confession was actually a false confession. Bresler testified that his opinion was in effect to "caution" that some of the interrogation techniques had moved from persuasive to coercive. Bresler testified that his opinion was that he had "concerns that this may be an unreliable confession."

At the same hearing, Dr. Drew Barzman was also called to testify on behalf of Craven regarding his motion in limine to exclude the Project Harmony interview of E.C. Barzman testified that he was a child and adolescent psychiatrist at the Cincinnati Children's Hospital. Barzman testified that he attended medical school at the State University of New York at Buffalo and completed his residency at Duke University. Barzman testified that he had completed fellowships in forensic psychiatry and child and adolescent psychiatry and was board certified in both types of psychiatry. Barzman testified that he had published 20 peer-reviewed articles about child forensic interviewing for sexual abuse cases and was involved in training psychiatry student residents to conduct proper

forensic interviews with both child and adolescent sexual assault victims.

Barzman testified that he has had significant experience in assessing sexual assault and abuse allegations and has had the opportunity to assess interviews in child cases in Nebraska four times, the present case included. Barzman testified that the forensic interview process starts by setting ground rules, such as telling the truth, not just what the child may think the adult wants to hear. Barzman testified that the next step is discussing the importance of the truth versus a lie and of "pretend versus fantasy, what's real versus pretend." Barzman further testified that it is important to get a sense of how suggestible a child is in order to make a determination as to the reliability of the information elicited from the child, in order to ascertain whether the interviewer can push the child into a false statement. Barzman submitted to the court, without objection for purposes of that hearing, a report which recorded his observations of the March 26, 2007, Project Harmony interview of E.C., who was 3 years old at the time of the alleged incident and the interview.

Barzman testified that he observed several problems with the interview of E.C., including that the interviewer failed to orient E.C. with what was taking place and the purpose of the interview, that there was no invitation for a free narrative by E.C., that there was a lack of ground rules set by the interviewer, and that there was a lack of testing by the interviewer in relation to E.C.'s ability to understand "real versus pretend." Barzman testified that throughout the interview, which lasted approximately 15 minutes, it was clear that E.C. was bright, able to communicate, and able to sequence her stories, but he opined that the interviewer would cut E.C. off before expansive information could be elicited from open-ended questions. Barzman also indicated that there were several suggestive questions asked of E.C. regarding her taking a shower at Craven's house. Barzman testified that the interviewer also erred in asking multiple questions rather than asking one question at a time, because that form of questioning could be confusing for a 3-year-old. Barzman testified that the interviewer also asked the same question about whether

E.C.'s clothes were on or off in the shower several times, just changing the question a little bit, which may have given E.C. the impression that the interviewer wanted a different answer than she gave. Barzman further testified that the interviewer was eliciting positive and negative signs with each answer through body language which children respond to. Barzman then stated that based upon his experience and training, and to a reasonable degree of psychiatric certainty, it was his opinion that the reliability of the Project Harmony interview of E.C. was uncertain and there were significant flaws in the interview. Barzman testified:

> I'm saying that because of all the suggestive techniques and the other concerns that we talked about: ground rules and such, I — my role is not to say whether the abuse occurred or not. I can't say whether it's true or if the allegation is true or not. All I can do is evaluate the quality of the interview. And I felt that the quality of the interview was such that it's — it makes — it makes — it makes it such that the reliability of the information that was elicited is uncertain. We just don't know. I can't say whether it happened or it didn't happen.

Thereafter, the district court entered an order granting the State's motion in limine, specifically finding, "There is no peer reviewed accepted methodology to support the testimony of . . . Bresler. The court further finds that . . . Bresler's testimony would not provide the jury with any opinion, but would rather invade the province of the jury relating through the credibility of any witness." The court also overruled Craven's motion in limine.

(b) Jury Trial

On September 1, 2009, the matter came before the district court for a jury trial which lasted through September 3. E.C., who was 5 years old at that time, testified in open court that Craven was her father and that she did not see him anymore because he was "bad." E.C. explained that Craven was bad to her because he "yogurt peed in [her] mouth" while she was in the shower with him. E.C. testified that Craven had put his "pee-er" inside of her mouth. E.C. testified that she had not

told anyone but D.U., her mother, what had happened and that she was only 3 years old at that time.

On cross-examination, E.C. was questioned whether she remembered the interview that she had with Project Harmony, and the State objected based upon hearsay and improper impeachment. The district court sustained the objection, and the jury was removed so that Craven's counsel could make an offer of proof as to the interview for purposes of impeaching E.C.'s testimony based upon prior inconsistent statements; he argued that the conversation between E.C. and the interviewer was an out-of-court statement that was inconsistent with testimony given at trial. After the offer of proof was made, the objection was again sustained by the district court.

D.U. also testified at trial. D.U. testified that Craven was her ex-husband and E.C.'s father and that after the divorce, he had visitation with E.C. every other weekend and Wednesday nights. D.U. testified that she or Craven would bring E.C. from her home to Craven's parents' house on Friday nights and then back home on Sunday nights. D.U. testified that on the weekend in question, E.C. came home around 8 p.m. and D.U. proceeded with the normal bedtime schedule of giving E.C. a bath. D.U. testified that on this occasion, however, E.C. started screaming that she had already taken a shower with Craven and did not want another bath. D.U. explained that E.C. was crying and refused to take a bath, which was abnormal behavior for her. D.U. testified that E.C. did not want to be touched and screamed that Craven "thinks she's a toilet." D.U. went on to testify that E.C. told her, "Daddy peed in my mouth. He thinks I'm a toilet."

D.U. testified she put E.C. to bed that night and called Craven the next day, who told D.U. that he had taken a shower with E.C. and that he had been naked. D.U. took E.C. to the doctor and was also contacted by Project Harmony for an interview. D.U. testified that E.C.'s behaviors had changed entirely after her visitation with Craven on the weekend in question, with E.C. reverting completely back to diapers and not allowing anyone to touch her in the bath or to give her a bath. On cross-examination, D.U. admitted that she did not immediately contact the police on that Sunday night because she was in

shock and she was already going to the doctor the next morning for her younger daughter and figured that E.C. could talk to the doctor at that time. D.U. testified that after the doctor's appointment, she called Child Protective Services and then spoke with the police.

Sarah Spizzirri, a child victim sexual assault detective with the Omaha Police Department, testified that she had been with the police department for approximately 12 years and had had training at the police academy in addition to field training and various other types of training. Spizzirri testified that she had specifically been investigating child sexual assaults for 6 years and had received training specific to child abuse and interviewing the children and the suspects involved. Spizzirri testified that she had done approximately 500 interviews with suspects, 80 percent of which involved sexual assault allegations, and that approximately 70 percent of those involved children.

Spizzirri testified that in March 2007, she was assigned to sit in on E.C.'s interview. Spizzirri testified that she supervised a telephone call made by D.U. to Craven about the shower incident and also that she personally interviewed Craven at the police station. At trial, the State offered a recording of the telephone call and a video of the full interview of Craven at the police station, and both were received without objection. During Spizzirri's testimony, Craven also submitted a video of the full interview of E.C. at Project Harmony, which was received without objection and which Craven had previously filed a motion in limine to exclude. Both videos were played for the jury shortly after they were received.

On cross-examination of Spizzirri, several passages of the interview between her and Craven were read into the record by Craven's counsel, one of which included Spizzirri's statement, "'So that really concerns me. It concerns me about visitation. [Craven], I'm just being honest with you. [E.C. is] saying things that three-year-olds don't say.'" This passage was read out loud in the presence of the jury twice by Craven's counsel. On redirect, Spizzirri was asked what she meant by that statement, that what E.C. said could not "be made up by a three-year-old." Craven objected on grounds of foundation and speculation, but the objection was overruled by the district

court. Spizzirri explained by testifying, "What I meant by a three-year-old cannot make that up is — is just what I mean by it. It — it's not something that a three-year-old knows about. It's not something they can talk about and describe and demonstrate unless they've experienced it in their life."

The State rested its case, and Craven made an oral motion to dismiss, which was overruled. Craven called Barzman to the stand, and the district court announced that, as had been previously discussed with counsel, the expert testimony of Barzman would not be accepted, but Craven would have an opportunity to make an offer of proof. Craven indicated that there would be new material offered in addition to the testimony that was taken at the previous hearing. Barzman testified again about the information previously presented, including his critique of the interview of E.C. by Project Harmony. Barzman also testified about Spizzirri's statement about what a "three-year-old knows" and explained that there was no study showing that a child's demeanor indicates whether or not a statement given by the child was accurate. The district court ruled that Barzman would not be allowed to testify and found that the "scientific or specialized knowledge that . . . Barzman possesses and in which he is qualified really is not necessary to assist the jury in understanding the evidence or determining factual issues."

Craven then requested that he be allowed to call Bresler to the stand for an offer of proof regarding his expert testimony which had been excluded:

> [Craven's counsel]: I would like to also do an offer of proof on . . . Bresler and the interrogation, Judge.
>
> THE COURT: And as far as . . . Bresler — as far as . . . Bresler's offer of proof is concerned, do you intend to adduce anything in addition to what was adduced at the motion in limine hearing?
>
> [Craven's counsel]: Just slightly. About like we did with . . . Barzman. We've refined it a little bit.
>
> THE COURT: But is it based on the same expertise that was offered at that hearing?
>
> [Craven's counsel]: Yes, sir. I won't go into —

> THE COURT: Then I'm not even going to allow the offer of proof on . . . Bresler. The Court has previously ruled that the expertise he offered is not sufficient under the Daubert standards. And for the purpose of this offer of proof, the Court reiterates its ruling that, under the Daubert standards, he didn't meet those standards to be able to testify and, therefore, the offer of proof is for the Court's purposes not necessary.

Craven then called his mother and father to the stand, and they both testified generally as to the activities that Craven and E.C. participated in on the weekend of the incident and testified that after the shower on that Sunday night, E.C. continued to act the same as she had and played nicely until she had to leave. Both testified that E.C. ate dinner and played or watched television and did not exhibit any unusual behavior.

Craven also testified in his own behalf. Craven testified that at the time in question, he lived with his parents because he had lost his job and struggled with his finances. Craven testified that when E.C. would stay at his parents' house for his visitations, she would sleep in his room and he would sleep on a couch in another room. Craven testified that his visitation with E.C. had been irregular due to D.U.'s withholding visitation. Craven testified that on the particular Sunday in question, he and E.C. went to church in the morning and then spent the day playing outside. Craven testified that D.U. complained about how E.C. smelled after visitations because his parents smoked in the home and that as a result, he wanted to make sure E.C. was bathed before she was picked up. Craven indicated that it had been getting late in the day, so he decided to have E.C. shower in order to be ready in case D.U. arrived early and because he had not yet taken a shower. Craven testified that the shower was "unremarkable" in that he washed E.C.'s hair and body as he would any other time. Craven testified that he did not put his penis in E.C.'s mouth during the shower but had taken a shower with E.C. as a sort of revenge to show D.U. that she could not control him. Craven testified that when D.U. arrived to pick up E.C., E.C. did not want to leave with her.

Craven testified that he had no contact with D.U. for several days, until he was asked to come to the police department to "figure out what was going on" with E.C. Craven's counsel played the entire interview of Craven and Spizzirri to the jury again, stopping at various points to discuss with Craven the circumstances of statements he made and how he was feeling as he made those statements. Craven testified that he became angry during the interview because Spizzirri did not believe his denial of the allegation that he had put his penis in E.C.'s mouth and ejaculated.

During the interview of Craven, Craven admitted to the allegations several times, by stating that he had stuck his penis in E.C.'s mouth for about 2 seconds but not ejaculated and also by stating, "I put my penis in [E.C.'s] mouth and she choked on the water." Craven told Spizzirri that he put his penis in E.C.'s mouth for 2 seconds and that maybe it was his penis that choked her. Craven then said that E.C. looked confused and that he apologized to her. However, Craven testified that he did not think that any statement he made during that interview was an admission, because he thought he had to sign a piece of paper for it to be a confession. Craven testified that he had lied and had falsely confessed to Spizzirri. Craven testified that during the interview with Spizzirri, he blamed the incident on his father, his brother, or maybe a multiple personality disorder.

On September 3, 2009, at 12:35 p.m., the case was submitted to the jury, and after approximately 3 hours 30 minutes, the jury reached a unanimous verdict that Craven was guilty of first degree sexual assault of a child. Craven filed a motion for a new trial, which was denied, and the district court sentenced him to 20 to 20 years' imprisonment with 62 days' credit for time served. Craven has timely appealed to this court.

III. ASSIGNMENTS OF ERROR

Craven assigns that the district court erred in denying the admission of certain expert testimony in accordance with *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993), and *Schafersman v. Agland Coop*, 262 Neb. 215, 631 N.W.2d 862 (2001); in

denying an offer of proof; in allowing certain testimony to be given by Spizzirri; and in failing to allow him to impeach E.C.'s testimony through prior inconsistent statements.

IV. STANDARD OF REVIEW

[1] 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. Casillas*, 279 Neb. 820, 782 N.W.2d 882 (2010).

V. ANALYSIS

1. Admission of Expert Testimony

Craven's first two assignments of error are that the district court erred by failing to admit the expert testimony of Bresler and Barzman. Craven argues that the testimony of both individuals was sufficient to qualify them as experts in accordance with the *Daubert*/*Schafersman* standard and should have been admitted.

[2-4] Under Nebraska's *Daubert*/*Schafersman* jurisprudence, the trial court acts as a gatekeeper to ensure the evidentiary relevance and reliability of an expert's opinion. This gatekeeping function entails a preliminary assessment whether the reasoning or methodology underlying the testimony is valid and whether that reasoning or methodology properly can be applied to the facts in issue. *State v. Daly*, 278 Neb. 903, 775 N.W.2d 47 (2009); *State v. Robinson*, 272 Neb. 582, 724 N.W.2d 35 (2006), *abrogated on other grounds, State v. Thorpe*, 280 Neb. 11, 783 N.W.2d 749 (2010). The standard for reviewing the admissibility of expert testimony is abuse of discretion. *State v. Edwards*, 278 Neb. 55, 767 N.W.2d 784 (2009). An abuse of discretion occurs when a trial court's decision is based upon reasons that are untenable or unreasonable or if its action is clearly against justice or conscience, reason, and evidence. *State v. Daly, supra*.

[5] In determining the admissibility of an expert's testimony, a trial judge may consider several more specific factors that might bear on a judge's gatekeeping determination.

These factors include whether a theory or technique can be (and has been) tested; whether it has been subjected to peer review and publication; whether, in respect to a particular technique, there is a high known or potential rate of error; whether there are standards controlling the technique's operation; and whether the theory or technique enjoys general acceptance within a relevant scientific community. These factors are, however, neither exclusive nor binding; different factors may prove more significant in different cases, and additional factors may prove relevant under particular circumstances. *State v. Daly, supra*; *State v. Fernando-Granados*, 268 Neb. 290, 682 N.W.2d 266 (2004).

(a) Bresler

In his brief, Craven argues that he "has a right, according to *Buechler*, to have an expert testify as to his mental state during the interrogation and eventual confession." Brief for appellant at 27.

A close review of *State v. Buechler*, 253 Neb. 727, 572 N.W.2d 65 (1998), indicates that the defendant therein was convicted of murder in the first degree and use of a firearm to commit a felony. On appeal, one of the defendant's assignments of error addressed the admission of certain expert testimony, and he argued that the district court should not have excluded the expert testimony of a clinical psychologist about the circumstances under which the defendant confessed—specifically, testimony about his mental state and the effect thereof on his statements to law enforcement officers. *Id*. The Nebraska Supreme Court discussed the U.S. Supreme Court's decision regarding lay testimony in *Crane v. Kentucky*, 476 U.S. 683, 689, 106 S. Ct. 2142, 90 L. Ed. 2d 636 (1986), and the observation (which Craven specifically cites to in his brief) that if a jury cannot hear evidence of the circumstances under which a confession is obtained, "the defendant is effectively disabled from answering the one question every rational juror needs answered: If the defendant is innocent, why did he previously admit his guilt?"

In *Buechler*, a psychologist was prepared to render expert testimony that due to the defendant's incarceration prior to the

confession, he had been in the throes of a methamphetamine withdrawal, and that there were severe effects of withdrawal. The psychologist would have testified that as a result of the withdrawal, combined with other disorders, the defendant would have been very "suggestible, would waiver in his attitudes and beliefs, would process information haphazardly, and would often reach faulty conclusions." *Id.* at 736, 572 N.W.2d at 71. The facts in *Buechler* are remarkably distinguishable from the case at hand.

In the present case, the approximately 1-hour video of Craven's interview and confession was admitted into evidence and published to the jury without objection. Craven had not been previously incarcerated and was not suffering from any apparent condition. Craven had been called to the police station to discuss the situation regarding E.C. and came of his own accord. Furthermore, Bresler testified that the expert testimony he would have given to the jury, the methodology of reviewing false confessions, had been vetted, but a "White Paper" describing similar methodologies was a work in progress and was currently being published for peer review. Bresler testified that most of the research on these methodologies had taken place only in England and Iceland and that there was no known rate of error, no baseline error, and no known percentage of cases in which there had actually been false confessions. Bresler testified that the methodologies had acceptance in the forensic psychology community but had their limitations due to a lack of baselines and ability to predict outcomes with any accuracy.

Bresler testified that in this case, there were aspects of the interrogation which he believed to have elements similar to those of other cases in which there were false confessions, but that it was not his opinion that Craven's confession was actually a false confession. Bresler testified that his opinion was in effect to "caution" the jury that some of the interrogation techniques had gone from persuasive to coercive. Bresler testified that it was his expert opinion that he had "concerns that this may be an unreliable confession."

Upon our review of the testimony of Bresler, which Craven wished to present to the jury, it is clear that the theory

regarding false confessions was still being tested and subjected to peer review and publication, had no known rate of error, and had no specific standards to control its operation. Furthermore, the ultimate conclusion to be given to the jury by Bresler was not that of an "expert opinion" but merely a tool to assist the jury in its determination of the facts. See, also, *State v. Reynolds*, 235 Neb. 662, 457 N.W.2d 405 (1990) (court may exclude expert's opinion which is nothing more than expression of how trier of fact should decide case or what result should be reached on any issue to be resolved by trier of fact), *disapproved on other grounds, State v. Messersmith*, 238 Neb. 924, 473 N.W.2d 83 (1991). The jury had an opportunity to view the interview twice during the trial and to draw its own conclusions regarding the interview. Therefore, we find that the district court did not abuse its discretion by excluding the testimony of Bresler.

Craven has also assigned as error that the district court erred by not allowing him to make an offer of proof at the close of the State's case in chief as to the exclusion of Bresler's testimony. Craven contends that by not being allowed to make an offer of proof, he was hampered by the district court in preserving his argument to this court.

As discussed in the facts above, the district court denied Craven's request to call Bresler to the stand, after which denial Craven made an offer of proof:

> [Craven's counsel]: I would like to also do an offer of proof on . . . Bresler and the interrogation, Judge.
>
> THE COURT: And as far as . . . Bresler — as far as . . . Bresler's offer of proof is concerned, do you intend to adduce anything in addition to what was adduced at the motion in limine hearing?
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> [Craven's counsel]: Just slightly. About like we did with . . . Barzman. We've refined it a little bit.
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> THE COURT: Then I'm not even going to allow the offer of proof on . . . Bresler. The Court has previously ruled that the expertise he offered is not sufficient under

> the Daubert standards. And for the purpose of this offer of proof, the Court reiterates its ruling that, under the Daubert standards, he didn't meet those standards to be able to testify and, therefore, the offer of proof is for the Court's purposes not necessary.

This court has had the opportunity to carefully review the full record in this case, and having made the determination above that the district court did not abuse its discretion by excluding Bresler's testimony after a full hearing on the matter under *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993), and *Schafersman v. Agland Coop*, 262 Neb. 215, 631 N.W.2d 862 (2001), we need not address this assignment of error any further. See *Papillion Rural Fire Prot. Dist. v. City of Bellevue*, 274 Neb. 214, 739 N.W.2d 162 (2007) (appellate court is not obligated to engage in analysis which is not needed to adjudicate controversy before it).

(b) Barzman

Craven also asserts that the testimony of Barzman should have been admitted in order for Barzman to testify as to the reliability of E.C.'s interview at Project Harmony. Specifically, Barzman testified both at the motion in limine/*Daubert* hearing and during an offer of proof at trial that if allowed to testify at trial, he would opine to a reasonable degree of psychiatric certainty that the reliability of the interview of E.C. at Project Harmony was uncertain. The district court ruled that Barzman would not be allowed to testify and found that the "scientific or specialized knowledge that . . . Barzman possesses and in which he is qualified really is not necessary to assist the jury in understanding the evidence or determining factual issues." Craven contends that this testimony was vital to assist the jury in understanding certain flaws in the interview and why E.C. interviewed as she did.

[6] An expert's opinion is ordinarily admissible under Neb. Rev. Stat. § 27-702 (Reissue 2008) if the witness (1) qualifies as an expert, (2) has an opinion that will assist the trier of fact, (3) states his or her opinion, and (4) is prepared to disclose the basis of that opinion on cross-examination. *Smith*

v. Colorado Organ Recovery Sys., 269 Neb. 578, 694 N.W.2d 610 (2005).

[7] However, the Nebraska Supreme Court has made clear that the credibility of a witness is left to the jury's judgment and that no witness, expert or otherwise, should be permitted to give an opinion that another mentally and physically competent witness is telling the truth. *State v. Beermann*, 231 Neb. 380, 436 N.W.2d 499 (1989). See, also, *In re Interest of Kyle O.*, 14 Neb. App. 61, 703 N.W.2d 909 (2005) (trial court did not abuse its discretion by excluding letter from defendant's counselor opining that defendant was telling truth in denying allegations of sexual contact, because opinion of counselor regarding defendant's credibility was irrelevant); *State v. Doan*, 1 Neb. App. 484, 498 N.W.2d 804 (1993) (in prosecution for sexual assault of child, expert witness may not give testimony which directly or indirectly expresses opinion that child is credible or that witness' account has been validated).

In this case, Craven asserts that the testimony of Barzman would assist the jury in understanding the good and bad portions of the interview with E.C., which is essentially an attempt to assist the jury in determining the weight of that evidence and the credibility of E.C. Therefore, the district court did not abuse its discretion by excluding the expert testimony of Barzman, because his opinion regarding E.C.'s credibility was irrelevant.

2. Admission of Spizzirri's Statement

Craven contends that the district court erred by allowing Spizzirri to testify about E.C.'s Project Harmony interview, specifically by allowing Spizzirri's statement that E.C.'s statements were "not something that a three-year-old knows about."

On cross-examination of Spizzirri, several passages of the interview between her and Craven were read into the record by Craven's counsel, one of which included Spizzirri's statement, "'So that really concerns me. It concerns me about visitation. [Craven], I'm just being honest with you. [E.C. is] saying things that three-year-olds don't say.'" This passage was read out loud in the presence of the jury twice by Craven's counsel. On redirect, Spizzirri was asked by the prosecution what she

meant by that statement, that what E.C. said could not "be made up by a three-year-old." Craven objected on grounds of foundation and speculation, but the objection was overruled by the district court. Spizzirri explained by testifying, "What I meant by a three-year-old cannot make that up is — is just what I mean by it. It — it's not something that a three-year-old knows about. It's not something they can talk about and describe and demonstrate unless they've experienced it in their life."

[8] The problem with this assignment of error by Craven is twofold because even though generally, in Nebraska, it is improper for one witness to testify as to the credibility of another witness, Craven presented the statement and testimony to the jury on several occasions and did not object to them until the State questioned Spizzirri on redirect. The first mention of the statement was made by Spizzirri during her interview of Craven, the video of which was submitted into evidence by Craven and published to the jury. The second presentation of the statement at trial occurred when the statement was read into the record twice during Craven's cross-examination of Spizzirri. Then, as discussed above, it was only on redirect, when the State asked Spizzirri to explain the statement, that Craven then objected. One may not invite error and then complain of it. See *Davis v. State*, 51 Neb. 301, 70 N.W. 984 (1897), *disapproved on other grounds, Barber v. State*, 75 Neb. 543, 106 N.W. 423 (1906). This is what Craven has done by reading the exact statement to which he now objects into the record multiple times. This assignment of error is without merit.

3. Impeaching E.C.'s Testimony

Craven contends that the district court erred by not allowing him to impeach E.C.'s testimony at trial based upon her prior inconsistent statements made during the Project Harmony interview.

On cross-examination, Craven asked if E.C. knew anyone by the name of Chase, and she indicated that she did not. Craven made an offer of proof regarding the Project Harmony interview and E.C.'s statements contained therein, but was denied the opportunity to impeach E.C.'s testimony based upon

those statements. However, during the testimony of Spizzirri, Craven offered the video of the full interview of E.C. at Project Harmony into evidence (even after the previous motion in limine wherein Craven sought to exclude the interview entirely) and it was received without objection and published to the jury.

[9] Therefore, upon our review, even though Craven was not allowed to impeach E.C.'s testimony regarding statements she made during the Project Harmony interview, Craven submitted the interview and the jury had an opportunity to view both E.C.'s in-court testimony and statements made during the interview. Thus, we find that even if the trial court erred by excluding the impeachment at the time during which it sustained the State's objection during cross-examination of E.C., the error was harmless. In a jury trial of a criminal case, an erroneous evidentiary ruling results in prejudice to a defendant unless the State demonstrates that the error was harmless beyond a reasonable doubt. *State v. Ford*, 279 Neb. 453, 788 N.W.2d 473 (2010); *State v. Epp*, 278 Neb. 683, 773 N.W.2d 356 (2009). Harmless error exists when there is some incorrect conduct by the trial court which, on review of the entire record, did not materially influence the jury in reaching a verdict adverse to a substantial right of the defendant. *Id.* Craven's assignment of error is without merit.

VI. CONCLUSION

After a careful review of the lengthy testimony and record in this case, we find that the district court did not abuse its discretion in any of the assigned errors by Craven regarding the admission or exclusion of evidence, and we therefore affirm the judgment of the district court.

AFFIRMED.