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10/08/2026 02:05 AM CDT

State of Nebraska, appellee, v. Brittany C. Cook, appellant.

___ N.W.3d ___

Filed September 4, 2026. No. S-24-863.

1. **Convictions: Evidence: Appeal and Error.** In reviewing a criminal conviction for sufficiency of the evidence, whether the evidence is direct, circumstantial, or a combination thereof, the standard is the same: An appellate court does not resolve conflicts in the evidence, pass on the credibility of witnesses, or reweigh the evidence; such matters are for the finder of fact. The relevant question 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.
2. **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.
3. **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.
4. **Evidence: Appeal and Error.** A trial court has the discretion to determine the relevancy and admissibility of evidence, and such determinations will not be disturbed on appeal unless they constitute an abuse of that discretion.
5. **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.
6. **Sentences: Appeal and Error.** An appellate court will not disturb a sentence imposed within the statutory limits absent an abuse of discretion by the trial court.

7. **Criminal Law: Minors: Intent: Words and Phrases.** Under Neb. Rev. Stat. § 28-707(1) (Cum. Supp. 2024), child abuse is committed if a person knowingly, intentionally, or negligently causes or permits a minor child to be "(a) [p]laced in a situation that endangers [the minor child's] life or physical . . . health; [or] (c) [d]eprived of necessary . . . care . . . ."
8. **Convictions: Minors: Intent: Words and Phrases.** For a conviction of intentional child abuse resulting in serious bodily injury, the offense must be committed knowingly and intentionally and result in the serious bodily injury of the minor child as defined in Neb. Rev. Stat. § 28-109 (Reissue 2016).
9. **Intent: Words and Phrases.** Intent is the state of the actor's mind when the actor's conduct occurs.
10. ____: ____. "Intentionally" means willfully or purposely, and not accidently or involuntarily.
11. ____: ____. The intent involved in conduct is a mental process and may be inferred from the conduct itself, the actor's language in reference to the conduct, and the circumstances surrounding an incident.
12. **Criminal Law: Words and Phrases.** The meaning of "knowledge" in a criminal action can vary with the context in which it is used, but it commonly imports a perception of facts requisite to make up a crime.
13. ____: ____. Knowledge, like intent, may be inferred from the circumstances surrounding the act.
14. ____: ____. In the context of Neb. Rev. Stat. § 28-308 (Reissue 2016), which also utilizes the "serious bodily injury" definition contained in Neb. Rev. Stat. § 28-109 (Reissue 2016), it is not necessary that the injury caused death, or serious permanent disfigurement or impairment of the function of any part or organ of the body, but only that it involved a substantial risk of producing those results.
15. **Criminal Law: Minors: Intent.** For a conviction of intentional child abuse resulting in death, the offense must be committed knowingly and intentionally and result in the death of such child.
16. ____: ____: ____. For a conviction of intentional child abuse resulting in death, it is not necessary to have intended the abuse to result in the child's death.
17. **Criminal Law: Minors: Intent: Proof.** For a conviction of intentional child abuse resulting in death, the State is required to prove, beyond a reasonable doubt, that (1) the defendant caused or permitted the victim to be (a) placed in a situation that endangered his or her life or physical health, (b) cruelly punished, or (c) deprived of necessary care; (2) he or she did so knowingly and intentionally; (3) at the time the

defendant did so, the victim was a minor child; and (4) the defendant's offense proximately caused the death of the victim.

18. **Pretrial Procedure: Evidence: Appeal and Error.** When a motion in limine to exclude evidence is overruled, the movant must object when the particular evidence which was sought to be excluded by the motion is offered during trial to preserve error for appeal.
19. **Evidence: Proof.** The bar for establishing evidentiary relevance is not a high one; it requires only that the probative value of the evidence be something more than nothing.
20. **Evidence: Words and Phrases.** Evidence is relevant if it tends in any degree to alter the probability of a material fact.
21. **Photographs.** A court may admit into evidence photographs of a victim to show the condition of the body, to show the nature and extent of wounds and injuries to it, and to establish intent.
22. **Criminal Law: Evidence.** A defendant cannot negate an exhibit's probative value through a tactical decision to stipulate.
23. ____: ____. The State is allowed to present a coherent picture of the facts of the crimes charged, and it may generally choose its evidence in so doing.
24. **Evidence: Words and Phrases.** Unfair prejudice means an undue tendency to suggest a decision based on an improper basis.
25. ____: ____. Unfair prejudice speaks to the capacity of some concededly relevant evidence to lure the fact finder into declaring guilt on a ground different from proof specific to the offense charged, commonly on an emotional basis.
26. **Evidence: Other Acts: Convictions.** When considering whether evidence of other acts is unfairly prejudicial, courts consider whether the evidence tends to make conviction of the defendant more probable for an incorrect reason.
27. **Criminal Law: Photographs.** Gruesome crimes produce gruesome photographs.
28. **Trial: Photographs.** When the State lays proper foundation, photographs that illustrate or make clear a controverted issue are admissible, even if gruesome.
29. ____: ____. The gruesome nature of photographs alone will not keep them from the trier of fact, so long as the probative value is not outweighed by the prejudicial effect.
30. **Effectiveness of Counsel: Proof: Appeal and Error.** When reviewing an ineffective assistance of counsel claim on direct appeal, the question is whether the record affirmatively shows that the defendant's trial counsel's performance was deficient and that the deficient performance actually prejudiced the defendant's defense.

31. **Effectiveness of Counsel: Proof.** A court may examine performance and prejudice in any order and need not examine both prongs if a defendant fails to demonstrate either.
32. ____: ____. To show deficient performance, the defendant must show that counsel's performance did not equal that of a lawyer with ordinary training and skill in criminal law.
33. ____: ____. To show prejudice, the defendant must demonstrate a reasonable probability that, but for counsel's deficient performance, the result of the proceeding would have been different.
34. **Proof: Words and Phrases.** A reasonable probability is a probability sufficient to undermine confidence in the outcome.
35. **Effectiveness of Counsel: Appeal and Error.** In determining whether there is a reasonable probability that any deficient performance of trial counsel would have resulted in a different outcome in the proceeding, an appellate court may properly consider the strength of the admissible evidence relating to the controverted issues in the case.
36. **Effectiveness of Counsel: Trial: Appeal and Error.** When reviewing claims of alleged ineffective assistance of counsel, trial counsel is afforded due deference to formulate trial strategy and tactics.
37. **Effectiveness of Counsel: Presumptions: Appeal and Error.** There is a strong presumption that counsel acted reasonably, and an appellate court will not second-guess reasonable strategic decisions.
38. **Constitutional Law: Criminal Law: Effectiveness of Counsel.** Ultimately, the federal Constitution guarantees criminal defendants only a fair trial and a competent attorney.
39. **Effectiveness of Counsel: Appeal and Error.** An ineffective assistance of counsel claim will not be addressed on direct appeal if it requires examination of facts not contained in the record.
40. **Effectiveness of Counsel: Postconviction: Records: Appeal and Error.** When a defendant's trial counsel is different from his or her counsel on direct appeal, the defendant must raise on direct appeal any issue of trial counsel's ineffective performance which is known to the defendant or is apparent from the record; otherwise, the issue will be procedurally barred in a subsequent postconviction proceeding.
41. **Effectiveness of Counsel: Proof: Appeal and Error.** When a claim of ineffective assistance of counsel is raised in a direct appeal, the appellant is not required to allege prejudice.
42. **Appeal and Error.** An alleged error must be both specifically assigned and specifically argued in the brief of the party asserting the error to be considered by an appellate court.

43. **Effectiveness of Counsel: Appeal and Error.** On direct appeal in a criminal case, claims of ineffective assistance of counsel must be both specifically assigned and specifically argued in the appellant's brief.
44. ____: ____. Assignments of error on direct appeal regarding ineffective assistance of trial counsel must specifically allege the conduct that is claimed to constitute deficient performance.
45. **Appeal and Error.** A generalized and vague assignment of error that does not advise an appellate court of the issue submitted for decision will not be considered.
46. ____. An assignment of error is specific when it addresses a specific issue that does not require additional information to understand precisely what the assignment attacks.
47. **Effectiveness of Counsel: Postconviction: Records: Appeal and Error.** An ineffective assistance of counsel claim is raised on direct appeal when the claim alleges deficient performance with enough particularity for (1) an appellate court to make a determination of whether the claim can be decided upon the trial record and (2) a district court later reviewing a petition for postconviction relief to recognize whether the claim was brought before the appellate court.
48. **Claims: Effectiveness of Counsel.** A claim of ineffective assistance of counsel insufficiently stated is no different than a claim not stated at all.
49. **Appeal and Error.** An argument that does little more than restate an assignment of error does not support the assignment, and an appellate court will not address it.
50. ____. Where an appellant's brief contains conclusory assertions unsupported by a coherent analytical argument, the appellant has failed to include a specific argument sufficient to raise a claim.
51. **Criminal Law: Rules of Evidence: Other Acts.** In a criminal case, Neb. Rev. Stat. § 27-404(1) (Cum. Supp. 2024) operates as a broad exclusionary rule of relevant evidence that speaks to a criminal defendant's propensity to have committed the crime or crimes charged.
52. **Rules of Evidence: Other Acts.** Under Neb. Rev. Stat. § 27-404(2) (Cum. Supp. 2024), 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.
53. ____: ____. Neb. Rev. Stat. § 27-404(2) (Cum. Supp. 2024) does not apply to evidence of a defendant's other crimes or bad acts if the evidence is inextricably intertwined with the charged crime.
54. ____: ____. Inextricably intertwined evidence includes evidence that forms part of the factual setting of the crime and evidence that is so

blended or connected to the charged crime that proof of the charged crime will necessarily require proof of the other crimes or bad acts.

55. ____: ____. Evidence of other crimes or bad acts is also inextricably intertwined with the charged crime if the other crimes or bad acts are necessary for the prosecution to present a coherent picture of the charged crime.
56. **Witnesses: Judgments.** The credibility of witnesses is a determination within the province of the trier of fact.
57. **Rules of Evidence: Testimony.** Because making credibility determinations is the role of the trier of fact, testimony that usurps that role is not helpful and thus is improper opinion testimony under Neb. Rev. Stat. §§ 27-701 and 27-702 (Reissue 2016). However, such comments upon the patently obvious generally pose little, if any, danger of prejudice.
58. **Sentences: Appeal and Error.** Where a sentence imposed within the statutory limits is alleged on appeal to be excessive, the appellate court must determine whether a sentencing court abused its discretion in considering and applying the relevant factors, as well as any applicable legal principles in determining the sentence to be imposed.
59. **Sentences.** In determining a sentence to be imposed, relevant factors customarily considered and applied are the defendant's (1) age, (2) mentality, (3) education and experience, (4) social and cultural background, (5) past criminal record or record of law-abiding conduct, and (6) motivation for the offense, as well as (7) the nature of the offense and (8) the amount of violence involved in the commission of the crime. The appropriateness of a sentence is necessarily a subjective judgment that includes the sentencing judge's observation of the defendant's demeanor and attitude and all the facts and circumstances surrounding the defendant's life.
60. ____. It is within the discretion of the trial court to impose consecutive rather than concurrent sentences for separate crimes, even when the crimes arise out of the same incident.
61. **Sentences: Appeal and Error.** The mere fact that a defendant's sentence differs from those which have been imposed on coperpetrators in the same court does not, in and of itself, make the defendant's sentence an abuse of discretion; each defendant's life, character, and previous conduct may be considered in determining the propriety of the sentence.
62. **Constitutional Law: Sentences: Statutes: Appeal and Error.** Once it is determined that the sentence prescribed by statute is constitutional and that the sentence imposed is within statutory limits, the issue in

> reviewing a sentence is not whether someone else in a different case received a lesser sentence, but whether the defendant in the subject case received an appropriate one.

Appeal from the District Court for Lancaster County: Kevin R. McManaman, Judge. Affirmed.

Candice C. Wooster and Sydney J. Clark, Senior Certified Law Student, for appellant.

Michael T. Hilgers, Attorney General, and P. Christian Adamski for appellee.

Funke, C.J., Cassel, Stacy, Papik, Freudenberg, Bergevin, and Vaughn, JJ.

Vaughn, J.

I. INTRODUCTION

Brittany C. Cook was convicted by a jury of intentional child abuse resulting in death, intentional child abuse resulting in serious bodily injury, and possession with the intent to deliver or delivery of a controlled substance within 1,000 feet of a school. On direct appeal, Cook assigns errors falling into the general categories of insufficiency of evidence, admission of gruesome photographs, ineffective assistance of counsel, and excessive sentences. For the following reasons, we affirm.

II. BACKGROUND

At approximately 4 p.m. on March 12, 2023, Cook brought her almost 2-year-old nonverbal son, R.R.Y., to the emergency room at a hospital in Lincoln, Nebraska. He was limp and "kind of grey" in color. R.R.Y. had multiple bruises in various stages of healing, swelling to his genital area, a swollen left leg, and abrasions. A CT scan revealed swelling of his brain, multiple broken ribs, and a lung contusion. R.R.Y. was transferred by helicopter to a hospital in Omaha, Nebraska,

and ultimately died from his injuries. Following his death, Cook was charged with intentional child abuse resulting in death, intentional child abuse resulting in serious bodily injury resulting from R.R.Y.'s leg injury, and possession with the intent to deliver or delivery of a controlled substance within 1,000 feet of a school.

1. Pretrial Proceedings

Prior to trial, Cook filed a motion in limine seeking to prohibit the State from introducing photographs of R.R.Y. "while alive, particularly any family pictures or photographs depicting his medical treatment and excluding certain autopsy photographs as gruesome and irrelevant." The district court denied the motion.

2. Jury Trial

Following R.R.Y.'s hospitalization, police conducted a series of interviews with Cook. Portions of these interviews were received into evidence at trial. The jury also heard testimony from several witnesses. Other evidence received included photographs, text messages, and internet searches. None of Cook's assignments of error on appeal relate to her drug conviction. Thus, we focus on the evidence at trial relevant to her conviction for intentional child abuse resulting in death and intentional child abuse resulting in serious bodily injury resulting from R.R.Y.'s leg injury.

(a) Evidence Regarding R.R.Y.'s Leg Injury

(i) Cook's Interviews

At the hospital, Cook told an officer that she had started dating Joshua Tackett in January 2023. During a later interview with Investigator Michael Barry, Cook explained that on "like the 9th or 10th" of February, while Cook was out running an errand, Tackett called and explained that, while holding R.R.Y., Tackett saw blood, passed out, and fell on R.R.Y.'s ankle. Cook disclosed she had witnessed Tackett

pass out at the sight of blood on a prior occasion. Cook told Investigator Barry that an icepack was put on R.R.Y.'s left ankle when Cook arrived home but she never took him to the doctor. She told Investigator Barry that within a few days after the injury, R.R.Y. was able to crawl. She told Investigator Barry that in the 2-week period following the leg injury, R.R.Y. was able to pull himself up to a standing position, bear weight, and climb into a rolling chair, but he never fully walked on his left leg again.

Explaining why she did not take R.R.Y. for medical treatment Cook stated Tackett had her convinced the injury was just a sprain. She also explained that R.R.Y.'s father has bad ankles and that she thought R.R.Y. had reinjured himself when he tumbled down the stairs, starting the healing process over.

(ii) Testimony of Cook's Aunt

At trial, Cook's aunt, Shari Pring, testified that in November 2022, she moved in with Cook to help her take care of the children. Pring testified that her friend Dawn Foreman also lived at Cook's residence "on and off." Pring testified that she was present when R.R.Y.'s leg was injured but had gone back to the bedroom to get ready to shower while Cook ran an errand. A minute later, Pring heard that R.R.Y. was crying and a "thud." Pring was told by Cook's oldest child that Tackett had fallen with R.R.Y. Tackett and Cook left with R.R.Y. The following day, when Cook arrived home with Tackett and R.R.Y., R.R.Y.'s leg was "a little swollen" and wrapped in an "ACE bandage." Pring asked Cook if she took R.R.Y. to a doctor. Cook told Pring that she had taken him to the doctor and that the doctor said it was a sprain. Cook had an icepack and told Pring that R.R.Y.'s leg was to be iced and elevated. Pring testified that R.R.Y. was given Tylenol but never had a cast. After the injury, R.R.Y. could no longer walk independently but would "scoot" on his bottom and "kind of drag that leg" and was eventually able to pull himself up against the couch and

walk while holding onto the couch. Pring testified that R.R.Y. would whine if his leg was hit on something and was crankier than before.

(iii) Testimony of Foreman and Messages

At trial, Foreman testified that she was at work when R.R.Y.'s leg was injured and had been staying at a friend's for a couple days. She testified that on February 18, 2023, she messaged Cook, asking if she could return to Cook's home. Messages between Cook and Foreman were admitted into evidence. Cook responded by text: "I would actually really appreciate it. Baby has a high ankle sprain. And can't even walk." Cook went on to message that she had received a message from her oldest child that Pring had not been up all day. Cook messaged Foreman that R.R.Y.'s leg was "so swollen" and that he had "so many bruises all over his body because [Cook's oldest child] ha[d] been taking care of him the last few days." Finally, Cook messaged Foreman: "There's [an] ice pack there and I've just been trying to keep his leg up. It's really sore. There's ibuprofen there that he is probably ready for."

(iv) Internet Searches

On February 18, 2023, between the hours of 9:21 a.m. and 3:22 p.m., internet searches were conducted on one of Cook's cell phones for "sign[s] of a fracture," "sign[s] of a sprain," "[s]prained knee," "can a spr[a]ined ankle make the leg swollen," "swollen bruisned [sic] leg and knee," "torn leg ligament," and "what's good for a high knee ankle sprain at home."

(v) Testimony of Sarah Boone

Boone, a nurse at the hospital in Lincoln, testified that she treated R.R.Y. on March 12, 2023. Boone testified that R.R.Y.'s left leg "didn't really look right. It was swollen and kind of laying weird, kind of out to the side."

(vi) Testimony of Dr. Suzanne Haney

On March 13, 2023, after R.R.Y. was hospitalized, he was first seen by a pediatrician specializing in child abuse,

Dr. Haney. Dr. Haney testified that R.R.Y. had swelling of his leg. She testified that he had a left tibia fracture that was "a spiral or oblique fracture" probably caused by a twisting injury and that the healing "[c]ertainly could be" consistent with an occurrence on February 16 through 18. Dr. Haney testified she would expect a child with this type of injury to cry, to not be able to bear weight or walk, and to probably get upset when he was moved.

When Dr. Haney was asked what sort of treatment is necessary for this type of fracture, Dr. Haney testified that it should be immobilized with a cast to keep it from moving, both for pain and to keep it from injuring any of the "soft tissue in that area." She opined that an "ACE bandage," icing, and elevating were not the recommended medical treatment for a break like R.R.Y.'s. When asked why, she testified that "one of the biggest things is making sure that it heals correctly, that it doesn't heal distracted. To keep the ends of the bone from injuring the soft tissue, it heals faster when you put a cast on it. And then finally, it reduces the amount of pain." Dr. Haney agreed that not treating this type of injury could mean it would not heal correctly and testified that this could result in a leg length discrepancy and corresponding limp. Finally, Dr. Haney agreed that not providing proper treatment would certainly lengthen the time that it would need to heal and that this could immobilize a child longer.

Dr. Haney further testified that R.R.Y. also had a metaphyseal fracture at the end of his left tibia. She testified that when the bone is subjected to excessive pulling or traction, a chip of bone "like that" breaks off, and that this type of fracture is almost only seen in abuse, with the exception of a few scenarios inapplicable to R.R.Y. She was unable to give a timeframe for this second fracture.

(vii) Testimony of Dr. Michelle Elieff

General and forensic pathologist Dr. Elieff performed R.R.Y.'s autopsy on March 20, 2023. Dr. Elieff testified that

R.R.Y. had swelling and bruising from the knee to the ankle area on the left leg and that an internal examination of the "larger shin bone" revealed

> an angled fracture that was healing and had a little gap between the broken parts of it, so was at an angle and it was healing. So there was a healing — what we call a callous. And the bones were still — you could see in the X ray and also with the naked eye, they were still separated a little bit.

Dr. Elieff stated that the fracture to the shaft of the bone was what had caused the swelling and that the bone was still separated but was in the process of healing. Dr. Elieff also noted the metaphyseal fracture to the growth plate of that same bone.

(b) Evidence Regarding R.R.Y.'s Death

(i) Cook's Interviews

Cook told Investigator Barry that the day after R.R.Y.'s leg injury, Cook noticed a bruise on the top of R.R.Y.'s left ear and scratches on his face. Cook disclosed to Investigator Barry that by February 18, 2023, she noticed R.R.Y. had a bruise on his right ear, additional bruising on his left ear, and fingermark-like bruises on his back and sides of his face. Cook told Investigator Barry that Tackett was "chalking it up to" R.R.Y.'s siblings being in R.R.Y.'s crib with him and Cook's oldest child babysitting while Pring slept and Cook was at work. According to Cook, the next couple weeks she worked a lot, Foreman watched R.R.Y., Tackett stayed at his house, and R.R.Y.'s bruises started to go away.

Cook informed Investigator Barry that on March 4, 2023, Cook and her four children, including R.R.Y., moved in with Tackett. According to Cook, Tackett was alone with the children often while Cook ran errands. Cook told Investigator Barry that Tackett smoked marijuana almost constantly and that Tackett's alcohol intake tripled during their relationship.

Cook stated that she does not "smoke that much." Cook confirmed that since they moved in with Tackett, R.R.Y.'s injuries reappeared, explaining it was "almost like a repeat of the same things, like the bruises, the scratches, like the bruises on the back, the scratches, the ears" but that "there wasn't as much as there, the first time as it was the second time."

Cook told Investigator Barry that on March 6, 2023, R.R.Y. had scratches on his neck. Cook told Investigator Barry that R.R.Y. also had "thick scratches" on his back at that time. Cook later explained that Tackett admitted R.R.Y. had gotten scratched on the neck when his shirt got caught while Tackett was removing it, but Cook stated:

> I don't know like that could be true because the scratches were like kind of back here then on the side of his neck and I feel like if you were taking the shirt like it would be caught right here and the only struggle you would have to have would be pulling it off the head.

After discussing R.R.Y.'s scratches and bruises, Investigator Barry asked Cook if she "start[ed] saying we should take [R.R.Y.] to the doctor, we should take him in." Cook responded:

> Uhm, not to him, to myself. I kind of started getting those gut feelings after I noticed like the bruises on his back and like the scratch on his back and then I noticed there was like another one fuller down like more down that's kind of when I like started getting those thoughts running through my head like is he—is he doing something to him like is he hurting him like is he telling me the truth like is—the baby just freaking out and like doing crazy stuff, throwing himself around to cause this stuff to happen or what.

Cook also told Investigator Barry that on March 7, 2023, she witnessed Tackett use his foot to push a crying R.R.Y. "on his butt," scooting him toward Cook, and that Tackett said to "just get that stupid ass kid away from me." Cook told

Investigator Barry that on March 8, R.R.Y caused a toy to hit himself in the eye, resulting in a small bruise.

During the March 16, 2023, interview, Cook explained that on March 9, R.R.Y. fell down the stairs, possibly reinjuring his leg and causing a small bruise above his left eye by his hairline. However, during the March 21 interview, Cook admitted that R.R.Y. never fell down the stairs and that she said he did because Tackett told her that when she took R.R.Y to the hospital, she needed a believable reason for his injuries.

When asked by Investigator Barry why she put R.R.Y. to sleep on a blanket the night of March 9, 2023, instead of in his playpen, Cook told Investigator Barry:

> [J]ust in case I mean, maybe if he did you know hit his head and have like a light concussion I know I just wanted him to be in a room with me just in case like whatever happened, you know, like I mean, and at that point. At that point I thought like not necessarily taking him to the hospital but like oh I should probably make him a doctor's appointment.

Cook stated that the following 2 days R.R.Y. was cranky, seemed more tired, and did not want to play a lot. Cook told Investigator Barry that on March 10, she ran multiple errands, and that at night, she and Tackett went to a casino while Foreman watched the children. However, Cook later admitted that the children had been left home alone on Friday and Saturday while she went to the casino.

Cook told Investigator Barry that on March 11, 2023, she noticed that R.R.Y.'s front left tooth was missing, which she found in his playpen, and that he had a "like oval shaped" injury on the back of his head, still wet with blood. Describing finding the missing tooth, Cook stated:

> I don't know part of me feels like I [maybe] found that later in the day maybe in the afternoon because I think I remember leaving and coming back and seeing the baby laying in the playpen. And I don't think I asked him anything about it but I think he just said nonchalantly

> something to me like uh I just went and laid him in there 'cause he was, you know, he wouldn't quit crying in the room. Uhm, and he acted tired and so maybe it was after he woke up from his nap and I went and got him out that I noticed his tooth.

Cook stated that Tackett told her R.R.Y. had probably injured himself while "freaking out" in his playpen. Cook told Investigator Barry that the tooth was not missing when she and Tackett arrived home from the casino the prior night. Cook explained she questioned whether R.R.Y. was being hurt or hurting himself and contemplated installing cameras.

When asked about R.R.Y.'s appetite that Saturday, after his nap and missing tooth, Cook told Investigator Barry that R.R.Y. was eating but "[n]ot as much." However, Cook told Investigator Barry that later that night, R.R.Y. was still drinking "bottles of milk or bottles of water," but "at this point he didn't really want to eat." Cook recalled R.R.Y.'s vomiting that same night. Cook also told Investigator Barry she noticed R.R.Y.'s right front tooth was chipped "somewhere in the beginning" of that same week and that, between March 7 and 10, 2023, she noticed a bruise spanning "pretty much the whole width" of his right arm. Cook stated that toward the end of that week, Tackett did not want her around R.R.Y., did not want her to touch R.R.Y., and did not want her to take R.R.Y. with her when she left the house.

Cook told Investigator Barry that during the early morning hours of March 12, 2023, after R.R.Y. was asleep, Cook went to a fast-food restaurant. Cook stated that Tackett was upset it had taken so long and that when she returned home, R.R.Y. had been moved from where he was sleeping in the hall to his crib in another room. Cook told Investigator Barry that Tackett threw food at her after becoming upset that his order was wrong. According to Cook, Tackett had "at least 4 double shooters" that day and was intoxicated when they went to bed. Cook said that she checked on R.R.Y. at 5 a.m. and that he moved in response to Cook's pulling his blanket.

Cook initially told Investigator Barry in an interview that R.R.Y. woke up crying the morning of March 12, 2023, and subsequently became unresponsive after a nap. However, during the same interview, she later admitted that R.R.Y. had not woken up crying and that she had slept until 11 a.m. and was then unable to wake him.

According to Cook, when she attempted to wake up R.R.Y., he was limp, and when she opened his eyes, he had no eye movement or dilation. Cook stated she bounced him on her knee and was "squeezing his cheeks a little bit. Like buddy come on. Like—like you gotta wake up. And he wasn't really doing anything. So I had [Tackett] get a wet washcloth. And I kind of rubbed it on [R.R.Y.'s] head, and on his face. And it still didn't do anything." Cook told Investigator Barry that she then lay with R.R.Y. for a couple of hours and was rubbing his back. Cook told Investigator Barry that R.R.Y. had a pattern injury on his nose and eye in the morning but that she did not see his pattern injury on his abdomen until she changed his diaper and noticed his penis injury. She later admitted she had noticed the penis injury between 11 a.m. and 1 p.m. According to Cook, Tackett did not want Cook to call an ambulance to the house and told Cook that R.R.Y. was responding to stimulation so she should wait until the next day to take him to the hospital to see if he woke up.

Cook told Investigator Barry that she left the house at approximately 3:30 p.m., dropped off two of her children at her friend's house, and then drove R.R.Y. to the hospital in Lincoln, with Cook's oldest child holding R.R.Y. in the back seat. When asked if there was a reason she did not initially tell the truth about when she was first unable to wake R.R.Y., she stated "because I waited too long to take him to the hospital." Cook admitted that Tackett, Cook, and her children were the only people with access to R.R.Y. between March 9, 2023, and his hospitalization.

Cook told Capt. Jake Dilsaver that "the biggest thought in [her] head is [Tackett] can't stand the fact that [R.R.Y.]

cries all the time unless" he is being held by Cook, and she agreed that he probably cries some of the time when Cook is gone.

When confronted about R.R.Y.'s appearance, Cook stated, "And believe me it's been in the back of my head and I just don't think I wanted to believe it." Cook went on to state that "looking at him every day with all of these bruises and I'm like my poor kid dude like this has never happened before." Cook elaborated that "this whole two years that he's been alive this hasn't happened until [Tackett] started coming around." Cook stated that "to be honest I didn't want to believe that he was doing that to my son, being mean to my son and that my son was being abused. But I was also really scared because [if Child Protective Services] takes my kids again I'll never get them back." During the March 12, 2023, interview, when asked how she could look at R.R.Y. yesterday and not think he had the "shit beat out of him," Cook stated, "I do . . . like the last five days. It's been in my head. Like every time I hear him cry and I'm not around. Every time I hear huge thuds."

When asked why she did not get R.R.Y. medical help in the day or two prior to March 12, 2023, Cook stated it was because she was scared and "didn't think anything was like seriously wrong. Like life threatening wrong and at the same time not wanting to believe that [her] child was being beat up." Cook went on to say that she overlooked her son's being hit out of fear of Child Protective Services (CPS). Cook also stated, "[W]ell if we wanna say that I knew well then yeah I knew. Deep down . . . I did know. But I never physically saw him do it."

When asked what her guilt was in all of this, Cook told Investigator Barry it was "[n]ot taking him when I should have, when I felt I should have." When asked when that was, she stated, "I felt like I should have . . . taken him when I knew it was unusual for somebody new to be around and all this stuff happening when it didn't happen before."

(ii) Testimony of Boone

Boone, a nurse at the hospital in Lincoln, testified that when she treated R.R.Y. on March 12, 2023, he "was kind of grey and not moving," and that he had multiple bruises. She testified that R.R.Y. came in breathing on his own but was ultimately intubated. Boone testified that R.R.Y. had bruising to his face and head, a bump on his head, his eye was swollen, and one of the undereye bruises was "patterned." He had bruising to both ears and bruising and scrapes through his hair. He had a mark on his neck and a lot of swelling to his genital area. Throughout his body, there were bruises in multiple stages of healing. There were also multiple abrasions.

(iii) Internet Searches

On March 10, 2023, at 3:13 p.m., an internet search was conducted on one of Cook's cell phones for "signs of a concussion"; at 3:14 p.m., a search was conducted for "signs of a concussion in a toddler"; and at 3:19 p.m., a search was conducted for "can my toddler sleep with a concussion." On March 11, at 11:08 a.m., an internet search was conducted for "can my toddler sleep with a concussion," and at 7:18 p.m., a search was conducted for "can my toddler sleep with a concussion."

On March 12, 2023, between the hours of 11:43 a.m. and 1:36 p.m., a variety of internet searches were performed on Cook's cell phone, including the following: "what does it mean if your jaw is locked while sleeping," "when you[']re] in a coma can you move and respond," "how can I help a passed out person awake," "can a person in a coma respond to being shook," "why would someone[']s abdom[e]n and penis be hard and swollen," and "what does it mean when your eyes won[']t dilate inight [sic]."

(iv) Testimony of Dr. Haney

Dr. Haney, who first examined R.R.Y. on March 13, 2023, testified that R.R.Y had "extensive bruising almost from

head to toe. Forehead, cheeks, ears, mouth, neck, front of the chest, his back. Pretty significant bruising on his genitalia. Swelling of his leg. . . . [L]ots and lots of bruising. Way more than we ever see with children who are just normally active." Dr. Haney testified that "[w]e don't see this number of injuries accidentally." There was also bruising at the very end of his penis and what appeared to be burns on the shaft and down at the base. She testified that R.R.Y. had a fatal brain injury and that by the time he arrived at the hospital in Omaha, there was no indication "his brain was working at all." She stated R.R.Y. had a subdural hematoma and retinal hemorrhaging. She opined that the most common cause of a subdural hematoma is "some sort of pretty significant trauma" and that in an infant or young child, the most common cause of retinal hemorrhages is "a rotational injury, such as shaken baby," but that it can also very rarely be seen with blunt force trauma.

Dr. Haney testified that immediately after suffering the brain injury, R.R.Y. would likely have been unresponsive, very difficult to wake, limp, and maybe vomiting, and certainly would not have wanted to eat or drink. She agreed that it would have been very apparent to whomever was taking care of him that he was not well. She testified that seeking medical care would have been the appropriate treatment. Dr. Haney testified further that medical care would have needed to be sought as soon as possible and that she did not know if the injury was "fatal from the beginning or not." She testified that R.R.Y. also had three healing rib fractures, a splenic laceration, a left tibial fracture, and a pulmonary contusion.

(v) Testimony of Dr. Elieff

The general and forensic pathologist, Dr. Elieff, determined that R.R.Y.'s cause of death was blunt force injuries to the head, torso, and extremities, with the head injury being the principal cause of death. Dr. Elieff opined that R.R.Y.'s

brain injuries were "more consistent with multiple instances of blunt force being applied to multiple areas."

(vi) Testimony of Cook's Friend

Cook's friend testified that she watched Cook's children, including R.R.Y., on March 8, 2023. Cook's friend noticed that R.R.Y. had a black eye but testified it was not a full black eye, "kind of just like a little crescent." Cook told her friend that R.R.Y. had hit himself with a dumbbell. Cook's friend did not notice any other injuries on R.R.Y. She confirmed that the black eye she saw on March 8 did not look like the black eyes she observed in the photographs of R.R.Y from the hospital in Lincoln.

Cook's friend testified that "because of the past CPS case, [Cook] was trying to figure out which hospital, I guess, would have been better at understanding." Cook's friend also testified that Cook dropped off two of her children at her friend's house before taking R.R.Y to the hospital. Cook's friend assumed, at first, that Cook went to a different Lincoln hospital that was closest to Cook's friend's house.

(vii) Testimony of Mildred Crumbley

Mildred Crumbley, an acquaintance of Cook, testified that at some point after 11:49 p.m. on March 11, 2023, Cook arrived at Crumbley's house. Cook stayed 45 minutes while a white man, Crumbley believed was probably Tackett, waited in the car. Cook told Crumbley R.R.Y. was also in the car but Crumbley testified Cook "may have said he wasn't feeling well or something like that." Crumbley's additional testimony will be discussed in the analysis.

(viii) Employment Testimony

A human resources business partner of the hospital where Cook had worked testified that Cook's last day of employment there was January 22, 2023. A Lincoln police officer testified that starting January 28, Cook and Tackett began advertising

marijuana sales online. Investigator Barry testified that Tackett also sold antique toys on social media.

3. Jury Verdicts and Sentencing

Following jury verdicts of guilty on all three counts, Cook was sentenced to consecutive terms of imprisonment of 70 years to life on count 1, intentional child abuse resulting in death, a Class IB felony under Neb. Rev. Stat. § 28-707(1) and (8) (Cum. Supp. 2024); 20 to 25 years on count 2, intentional child abuse resulting in serious bodily injury, a Class II felony under § 28-707(1) and (7); and 5 to 10 years on count 3, possession with the intent to deliver or delivery of a controlled substance within 1,000 feet of a school, a Class II felony under Neb. Rev. Stat. § 28-416(1), (2)(b), and (4)(a) (Cum. Supp. 2022). Cook appeals.

III. ASSIGNMENTS OF ERROR

Cook assigns, restated, that the district court erred by (1) holding there was sufficient evidence to support the jury's verdict of intentional child abuse resulting in death under § 28-707(1) and (8), (2) holding there was sufficient evidence to support the jury verdict of intentional child abuse resulting in serious bodily injury under § 28-707(1) and (7), (3) denying Cook's motion in limine and admitting gruesome photographs into evidence, and (4) abusing its discretion by imposing excessive sentences.

Cook also assigns that her counsel was ineffective. Cook assigns, restated, that counsel was ineffective for his failure to (5) question a key witness regarding the witness' involvement in an ongoing sexual misconduct lawsuit to attack the witness' credibility; (6) object to the State's request to admit evidence of other crimes, wrongs, or acts at the pretrial hearing and at trial; (7) object to the statements made by the State's witness, Crumbley; and (8) object to statements made by the State's witness, Investigator Barry, about Cook's truthfulness.

IV. STANDARD OF REVIEW

1. Sufficiency of Evidence

[1] In reviewing a criminal conviction for sufficiency of the evidence, whether the evidence is direct, circumstantial, or a combination thereof, the standard is the same: An appellate court does not resolve conflicts in the evidence, pass on the credibility of witnesses, or reweigh the evidence; such matters are for the finder of fact. *State v. Liech*, 320 Neb. 843, 30 N.W.3d 847 (2026). The relevant question 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. *Id.*

2. Admissibility of Evidence

[2-4] 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. Kruger*, 320 Neb. 361, 27 N.W.3d 398 (2025). 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. *Id.* A trial court has the discretion to determine the relevancy and admissibility of evidence, and such determinations will not be disturbed on appeal unless they constitute an abuse of that discretion. *State v. Price*, 320 Neb. 1, 26 N.W.3d 70 (2025).

[5] 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. Corral*, 318 Neb. 940, 20 N.W.3d 372 (2025).

3. Excessive Sentences

[6] An appellate court will not disturb a sentence imposed within the statutory limits absent an abuse of discretion by

the trial court. *State v. Hagens*, 320 Neb. 65, 26 N.W.3d 174 (2025).

Additional standards are set forth in our analysis.

V. ANALYSIS

Cook assigns errors falling into the general categories of insufficiency of evidence, admission of gruesome photographs, ineffective assistance of counsel, and excessive sentences.

1. Sufficiency of Evidence

Cook challenges the sufficiency of the evidence for her convictions of intentional child abuse resulting in death and intentional child abuse resulting in serious bodily injury.

(a) Intentional Child Abuse Resulting in Serious Bodily Injury

Cook was charged with and convicted of intentional child abuse resulting in serious bodily injury under § 28-707 due to R.R.Y.'s broken leg.

[7,8] As relevant here, under § 28-707(1) child abuse is committed if a person knowingly, intentionally, or negligently causes or permits a minor child to be "(a) [p]laced in a situation that endangers [the minor child's] life or physical . . . health; [or] (c) [d]eprived of necessary . . . care . . . ." For a conviction of intentional child abuse resulting in serious bodily injury, the offense must be committed knowingly and intentionally and result in the serious bodily injury of the minor child as defined in Neb. Rev. Stat. § 28-109 (Reissue 2016). See § 28-707(7).

As such, the State was required to prove beyond a reasonable doubt that (1) Cook caused or permitted R.R.Y. to be placed in a situation that endangered his life or physical health, or deprived him of necessary care; (2) she did so knowingly and intentionally; (3) at the time Cook did so, R.R.Y. was a minor child; and (4) as a result, R.R.Y. sustained a serious bodily injury. See *State v. Olbricht*, 294 Neb. 974, 885 N.W.2d 699 (2016).

On appeal, Cook argues that there was insufficient evidence to support that she acted knowingly and intentionally and that R.R.Y.'s leg injury was a serious bodily injury.

(i) Evidence of Intent Was Sufficient

[9-11] Intent is the state of the actor's mind when the actor's conduct occurs. *State v. Yah*, 317 Neb. 730, 11 N.W.3d 632 (2024). As the jury was correctly instructed, "intentionally" means willfully or purposely, and not accidently or involuntarily. See *State v. Rokus*, 240 Neb. 613, 483 N.W.2d 149 (1992). The intent involved in conduct is a mental process and may be inferred from the conduct itself, the actor's language in reference to the conduct, and the circumstances surrounding an incident. *Id.*

[12,13] The jury was instructed that "knowingly" means with knowledge or perception of facts requisite to make up the crime. The meaning of "knowledge" in a criminal action can vary with the context in which it is used, but it commonly imports a perception of facts requisite to make up a crime. *State v. Moore*, 317 Neb. 493, 10 N.W.3d 531 (2024). Knowledge, like intent, may be inferred from the circumstances surrounding the act. *Id.*

Cook argues that Tackett was the only witness to R.R.Y.'s leg injury and that his account of the injury was that while holding R.R.Y., Tackett had passed out and fallen on R.R.Y.'s ankle. Cook also argues that, at the time of R.R.Y.'s leg injury, there was no evidence that Cook knew it was unsafe to leave R.R.Y. in the care of Tackett and/or Pring. Cook also argues that evidence she lied to Pring about obtaining medical care does not demonstrate intent and is speculative and that Cook may have lied because she could not afford care, was embarrassed, and did not want to explain herself to Pring.

The State correctly argues it is not required to show that Cook caused R.R.Y.'s injuries—only that she deprived R.R.Y. of necessary care, the deprivation of which resulted in a protracted impairment of R.R.Y.'s leg.

As outlined in detail above, Cook received information that R.R.Y.'s leg had been injured the day it occurred. She treated his injury by wrapping it in a bandage, icing it, elevating it, and providing him with pain medication. A rational trier of fact could find that her internet searches on February 18, 2023, showed she was concerned about swelling and bruising and also demonstrated she was also aware the injury could possibly be a fracture or torn ligament. Cook's text message to Foreman on the same day referred to his leg as being "so swollen." Cook acknowledges that after the injury, R.R.Y. was eventually able to pull himself up to a standing position and bear weight but that he never fully walked on his left leg again. Additionally, when he was hospitalized on March 12, nearly a month after his injury, his leg was still swollen.

Despite Cook's concerns and R.R.Y.'s lingering symptoms, Cook never obtained medical care for R.R.Y., even after Pring asked her if she had. Instead, Cook chose to continue to treat the injury as a sprain. Based upon the substantial evidence presented to the jury, a rational trier of fact could conclude that Cook knew R.R.Y. needed medical care and intentionally deprived him of it.

Viewing this evidence in the light most favorable to the prosecution, we find it is sufficient to support that Cook had the intent necessary for a conviction of intentional child abuse resulting in serious bodily injury.

(ii) Evidence of Serious Bodily Injury Was Sufficient

[14] As the jury was instructed, "[s]erious bodily injury" is defined as "bodily injury which involves a substantial risk of death, or which involves substantial risk of serious permanent disfigurement, or protracted loss or impairment of the function of any part or organ of the body." See § 28-109(21). On appeal, Cook argues that there was a lack of evidence submitted to the jury that R.R.Y.'s leg injury satisfied the definition in § 28-109(21). In the context of Neb. Rev. Stat. § 28-308

(Reissue 2016), which also utilizes the "serious bodily injury" definition contained in § 28-109, this court has stated that it is not necessary that the injury caused death, or serious permanent disfigurement or impairment of the function of any part or organ of the body, but only that it involved a substantial risk of producing those results. See *State v. Pribil*, 224 Neb. 28, 395 N.W.2d 543 (1986).

Cook argues that the State's evidence showed only that R.R.Y. received his leg injury in the middle of February 2023 and other injuries "during a short time span in March 2023" and that his leg injury was "labeled a fracture," which Cook alleges is "commonly known to **not** be a serious injury." Brief for appellant at 23 (emphasis in original). Cook points to Dr. Haney's testimony that the injury was either a spiral or oblique fracture and that not treating this type of fracture "means it **could** heal incorrectly, which **could** lead to the individual having a leg length discrepancy and a limp." *Id*. (emphasis in original). However, Cook argues that there was no evidence submitted as to how long someone would have to wait to treat a fracture before those risks were apparent. Cook also argues that a lengthier healing period due to nontreatment does not equate to a substantial risk of impairment. Finally, Cook argues that conducting an internet search for symptoms prior to spending time and money for care is a universal experience and that "[i]t is not a stretch to imagine" Cook sincerely thought R.R.Y.'s leg injury was a sprain or other injury that could be treated at home and monitored for a period of time. *Id*. at 24.

The State argues the evidence demonstrated that the lack of medical care led to protracted impairment of R.R.Y.'s leg because he could not walk, which is an impairment of the function of a part of the body. Finally, the State argues that it was not required to show that R.R.Y. had a permanent disfigurement.

The evidence presented at trial, which was discussed in detail above, demonstrated that R.R.Y.'s leg injury occurred

in mid-February and that he was never again able to walk independently. When the nurse at the hospital in Lincoln saw R.R.Y. almost a month later, she noticed that his leg "didn't really look right" and was "out to the side." Dr. Haney testified that this type of fracture would be casted and that one of the reasons for doing so would be that "it heals faster when you put a cast on it." Finally, during R.R.Y.'s autopsy, it could be seen that although the injury had been healing, the bone was still separated.

Viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found the essential elements of intentional child abuse resulting in serious bodily injury, including that R.R.Y.'s leg injury was a serious bodily injury, beyond a reasonable doubt. Thus, Cook's assignment of error is without merit.

(b) Intentional Child Abuse Resulting in Death

[15,16] For a conviction of intentional child abuse resulting in death, the offense must be committed knowingly and intentionally and result in the death of such child. § 28-707(8). It is not necessary to have intended the abuse to result in the child's death. See *State v. Montoya*, 304 Neb. 96, 933 N.W.2d 558 (2019).

[17] As such, the State was required to prove, beyond a reasonable doubt, that (1) Cook caused or permitted R.R.Y. to be (a) placed in a situation that endangered his life or physical health, (b) cruelly punished, or (c) deprived of necessary care; (2) she did so knowingly and intentionally; (3) at the time Cook did so, R.R.Y. was a minor child; and (4) Cook's offense proximately caused the death of R.R.Y. See *Montoya, supra*.

On appeal, Cook does not dispute that R.R.Y. died of injuries sustained by abuse. Instead, Cook argues there was not sufficient evidence to prove beyond a reasonable doubt that she "knowingly" and "intentionally" caused or permitted him to be placed in a situation that endangered his life or

physical health, cruelly punished, or deprived of necessary care that resulted in his death.

Specifically, Cook argues that the evidence shows she did not cause R.R.Y.'s injuries and that she never actually saw Tackett cause injuries to R.R.Y. She also points to evidence that Tackett was purposely shielding R.R.Y. from her to hide the extent of his injuries and would lie to her about the cause of the injuries when she noticed them. While Cook admits her actions were reckless, she argues they do not rise to the level of willful and purposeful.

The State argues that "given the sheer number of injuries to R.R.Y., and the severity of those injuries, it defies common sense" to believe Cook could have been unaware of the abuse. Brief for appellee at 13. The State also argues that the evidence presented that Cook was initially dishonest about R.R.Y.'s falling down the stairs could be used by the jury to infer Cook was "covering up" for Tackett. *Id*. at 15.

As explained in detail above, as early as February 2023, Cook noticed bruises on R.R.Y. but still decided to move in with Tackett on March 4. She often left her children with him thereafter. In interviews, Cook stated that as early as March 6, she noticed that injuries again began to appear on R.R.Y. She began to question whether Tackett was hurting R.R.Y. As early as March 9, Cook had concerns R.R.Y. could have a concussion and thought she should probably make him a doctor's appointment. Cook initially stated this was due to a fall down the stairs, which she later admitted never occurred. She admitted that the following 2 days R.R.Y. was cranky, seemed more tired, and did not want to play a lot.

Internet searches conducted on Cook's phone on March 10 and 11, 2023, indicate concerns regarding a concussion. On March 11, she noticed R.R.Y. had a missing tooth and an injury on the back of his head. She questioned whether he was being hurt and even contemplated installing cameras. By that night, he was not wanting to eat and had vomited.

Instead of obtaining medical care for R.R.Y., Cook again left him in the care of Tackett.

The following morning, Cook was unable to wake R.R.Y. and noticed a pattern injury on his face. He was limp and had no eye movement or dilation, but instead of calling an ambulance or rushing him to a hospital, Cook tried various tactics to wake him and internet searches were performed on her phone. After several hours, she finally took him to the hospital, stopping to drop off two of her other children on the way. He arrived with multiple visible bruises and abrasions.

There was substantial evidence from which a rational trier of fact could conclude that Cook knew she was permitting R.R.Y. to be placed in a situation that endangered his life or physical health and depriving him of care and that she did so intentionally. This evidence includes Cook's own statements that "well if we wanna say that I knew well then yeah I knew. Deep down . . . I did know. But I never physically saw him do it" and that her guilt in all of this was "[n]ot taking him when I should have, when I felt I should have." Followed by Cook's explanation that "I felt like I should have . . . taken him when I knew it was unusual for somebody new to be around and all this stuff happening when it didn't happen before."

Viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found the essential elements of intentional child abuse resulting in death beyond a reasonable doubt. Thus, Cook's assignment of error is without merit.

2. Denial of Motion in Limine and Admission of Gruesome Photographs

Cook assigns the district court erred when it denied her motion in limine and admitted evidence of gruesome photographs.

(a) Procedural History

Prior to trial, Cook filed a motion in limine seeking to exclude certain photographs. The trial court overruled the

motion. During trial, Cook renewed her motion, seeking only to exclude the photographs from R.R.Y.'s autopsy marked as exhibits 173 through 177, arguing that they were not relevant and were cumulative and that any probative value was outweighed by the possibility of prejudice. The trial court overruled the renewed motion.

When exhibits 173 through 177 were offered into evidence during the forensic pathologist's testimony, Cook renewed her objections. The district court overruled the objections and admitted exhibits 173 through 177, stating that the photographs "show different angles," are not repetitive, show "different conditions during the autopsy," and show "things that are revealed during the autopsy," and that no internal photographs were in evidence. The district court went on to state that the State had the obligation to prove all elements and that the photographs were "highly probative" of "one of the major issues that is controverted in the case." Finally, the district court explained that if Dr. Haney's testimony were sufficient in all respects, there would have been no need for an autopsy, and that the autopsy was needed to see internal injuries. The district court determined that the probative value of the photographs was not substantially outweighed by any risk of unfair prejudice and committed to limiting the amount of time the photographs were displayed to the jury.

(b) Arguments

On appeal, Cook argues that the trial court erred by admitting exhibits 173 through 177 because they were not relevant and that, even if they were relevant, they should have been excluded under Neb. Rev. Stat. § 27-403 (Reissue 2016) because they were cumulative and any probative value was substantially outweighed by the danger of unfair prejudice.

Cook argues exhibits 173 through 177 were not relevant and were cumulative because at the time they were admitted, the State "had already called 22 witnesses" and had offered numerous photographs of R.R.Y. from before his injuries to

when he was hospitalized and received medical care, which included "photographs of nearly every injury on his body and x-rays of his internal injuries." Brief for appellant at 25. Cook further argues that R.R.Y.'s cause of death had already been established by a prior witness and that Dr. Haney had provided identification, explanations, and potential timelines of R.R.Y.'s external and internal injuries, leaving no remaining controverted issues that the autopsy photographs could have illustrated or made clear. Finally, Cook argues that the forensic pathologist could have testified about R.R.Y.'s autopsy and the timeline, nature, and extent of his injuries without the jury's being shown exhibits 173 through 177.

As to Cook's arguments that exhibits 173 through 177 were unduly prejudicial, Cook argues that even if the photographs were relevant, they should have been excluded because the probative value of the photographs was substantially outweighed by the danger of unfair prejudice. Specifically, she argues that because of their gruesome nature and because the subject was a young child, the photographs were more likely to inflame the passions of the jury. Cook argues she was prejudiced by the trial court's error in admitting the photographs because had the jury not seen them, it would have come to a different conclusion "due to a lesser degree of passion or anger towards Cook." Brief for appellant at 26.

The State argues the photographs were minimal in number and were not duplicative. The State also argues that Cook cannot negate the photographs' relevance by choosing not to dispute an issue or issues at trial because the State is allowed to present a coherent picture of the facts of the crimes charged, and it may generally choose its evidence in doing so.

[18] To the extent Cook's motion and broad assignment of error encompasses any other photographs, only the admissibility of the autopsy photographs in exhibits 173 through 177 will be discussed. See *State v. Huston*, 285 Neb. 11, 23, 824 N.W.2d 724, 734 (2013) ("[w]hen a motion in limine to exclude evidence is overruled, the movant must

object when the particular evidence which was sought to be excluded by the motion is offered during trial to preserve error for appeal").

(c) Resolution

Evidence which is not relevant is not admissible. Neb. Rev. Stat. § 27-402 (Reissue 2016). Under Neb. Rev. Stat. § 27-401 (Reissue 2016), "[r]elevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." However, even relevant evidence may be "excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." § 27-403. Cook's arguments that the photographs were inadmissible under § 27-402 because they were not relevant and Cook's arguments that the photographs should have been excluded under § 27-403 as cumulative will be analyzed together because they rely on the same evidence and arguments. For the reasons explained below, we find exhibits 173 through 177 relevant, not cumulative, and not unduly prejudicial.

(i) Photographs Were Relevant and Not Cumulative

[19-23] The bar for establishing evidentiary relevance is not a high one; it requires only that the probative value of the evidence be something more than nothing. *State v. Prince*, 320 Neb. 1, 26 N.W.3d 70 (2025). Evidence is relevant if it tends in any degree to alter the probability of a material fact. *Id*. A court may admit into evidence photographs of a victim to show the condition of the body, to show the nature and extent of wounds and injuries to it, and to establish intent. See *State v. Dubray*, 289 Neb. 208, 854 N.W.2d 584 (2014). A defendant cannot negate an exhibit's

probative value through a tactical decision to stipulate. *State v. Abdulkadir*, 286 Neb. 417, 837 N.W.2d 510 (2013). The State is allowed to present a coherent picture of the facts of the crimes charged, and it may generally choose its evidence in so doing. *Id.*

The photographs that comprise exhibits 173 through 177 demonstrate the extent of R.R.Y.'s internal and external injuries and are relevant to intent. Whether Cook's actions with respect to R.R.Y. were committed knowingly and intentionally was a controverted issue at trial, and none of the other photographs submitted to the jury show R.R.Y.'s injuries from the same date, healing stage, and angle as the autopsy photographs contained in exhibits 173 through 177. Thus, exhibits 173 through 177 were relevant and not cumulative. However, we must still determine if they should be excluded because the probative value of their admission is substantially outweighed by the danger of unfair prejudice.

(ii) Photographs Not Unfairly Prejudicial

[24-26] As explained above, relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice." § 27-403. Unfair prejudice means an undue tendency to suggest a decision based on an improper basis. *Prince, supra.* Unfair prejudice speaks to the capacity of some concededly relevant evidence to lure the fact finder into declaring guilt on a ground different from proof specific to the offense charged, commonly on an emotional basis. *Id*. When considering whether evidence of other acts is unfairly prejudicial, courts consider whether the evidence tends to make conviction of the defendant more probable for an incorrect reason. *Id*.

[27-29] The autopsy photographs reflect the gruesome nature of the crime and the extent of R.R.Y.'s injuries. This court has held that gruesome crimes produce gruesome photographs. See *State v. Boswell*, 316 Neb. 542, 5 N.W.3d 747 (2024). When the State lays proper foundation, photographs

that illustrate or make clear a controverted issue are admissible, even if gruesome. See *id*. The gruesome nature of photographs alone will not keep them from the trier of fact, so long as the probative value is not outweighed by the prejudicial effect. *Id*.

We cannot say it was an abuse of discretion for the district court to find that the photographs were relevant and that their probative value was not substantially outweighed by the danger of unfair prejudice or by the consideration of needless presentation of cumulative evidence. Thus, we find no error in the district court's admission of exhibits 173 through 177.

3. Ineffective Assistance of Counsel

Before addressing Cook's claims that she received ineffective assistance of trial counsel in multiple respects, we first set forth certain legal principles and procedural requirements that govern such claims on direct appeal.

(a) Legal Principles

[30,31] When reviewing an ineffective assistance of counsel claim on direct appeal, the question is whether the record affirmatively shows that the defendant's trial counsel's performance was deficient and that the deficient performance actually prejudiced the defendant's defense. *State v. Kruger*, 320 Neb. 361, 27 N.W.3d 398 (2025). A court may examine performance and prejudice in any order and need not examine both prongs if a defendant fails to demonstrate either. *Id.*

[32-35] To show deficient performance, the defendant must show that counsel's performance did not equal that of a lawyer with ordinary training and skill in criminal law. *Id.* To show prejudice, the defendant must demonstrate a reasonable probability that, but for counsel's deficient performance, the result of the proceeding would have been different. *Id.* A reasonable probability is a probability sufficient to undermine confidence in the outcome. *Id.* In determining whether there

is a reasonable probability that any deficient performance of trial counsel would have resulted in a different outcome in the proceeding, an appellate court may properly consider the strength of the admissible evidence relating to the controverted issues in the case. *Id.*

[36-38] When reviewing claims of alleged ineffective assistance of counsel, trial counsel is afforded due deference to formulate trial strategy and tactics. *Id.* There is a strong presumption that counsel acted reasonably, and an appellate court will not second-guess reasonable strategic decisions. *Id.* Ultimately, the federal Constitution guarantees criminal defendants only a fair trial and a competent attorney. *Id.*

[39] As mentioned above, on direct appeal, an appellate court only addresses claims of ineffective assistance of counsel that can be conclusively determined from the record. *Id.* The record on appeal is sufficient if it establishes either that trial counsel's performance was not deficient, that the appellant will not be able to establish prejudice as a matter of law, or that trial counsel's actions could not be justified as a part of any plausible trial strategy. *Id.* Conversely, an ineffective assistance of counsel claim will not be addressed on direct appeal if it requires examination of facts not contained in the record. *Id.*

(b) Procedural Requirements

[40,41] When a defendant's trial counsel is different from his or her counsel on direct appeal, the defendant must raise on direct appeal any issue of trial counsel's ineffective performance which is known to the defendant or is apparent from the record; otherwise, the issue will be procedurally barred in a subsequent postconviction proceeding. *Id.* When a claim of ineffective assistance of counsel is raised in a direct appeal, the appellant is not required to allege prejudice. *Id.*

[42,43] An alleged error must be both specifically assigned and specifically argued in the brief of the party asserting the error to be considered by an appellate court. *Id.* Claims

of ineffective assistance of counsel are no exception. *Id.* On direct appeal in a criminal case, claims of ineffective assistance of counsel must be both specifically assigned and specifically argued in the appellant's brief. *Id.*

[44-46] Assignments of error on direct appeal regarding ineffective assistance of trial counsel must specifically allege the conduct that is claimed to constitute deficient performance. *State v. Kruger*, 320 Neb. 361, 27 N.W.3d 398 (2025). A generalized and vague assignment of error that does not advise an appellate court of the issue submitted for decision will not be considered. *Id.* As we have recently explained, an assignment is specific when it addresses a specific issue that does not require additional information to understand precisely what the assignment attacks. *Id.*

[47-50] An ineffective assistance of counsel claim is raised on direct appeal when the claim alleges deficient performance with enough particularity for (1) an appellate court to make a determination of whether the claim can be decided upon the trial record and (2) a district court later reviewing a petition for postconviction relief to recognize whether the claim was brought before the appellate court. *Id.* A claim insufficiently stated is no different than a claim not stated at all. *Id.* An argument that does little more than restate an assignment of error does not support the assignment, and an appellate court will not address it. *Id.* Likewise, where an appellant's brief contains conclusory assertions unsupported by a coherent analytical argument, the appellant has failed to include a specific argument sufficient to raise a claim. *Id.*

For example, when the claim of ineffective assistance on direct appeal involves uncalled witnesses, it is sufficient that appellate counsel give on direct appeal the names or descriptions of any uncalled witnesses forming the basis of a claim of ineffective assistance of trial counsel. *Id.* But the appellate court does not need specific factual allegations as to what the person or persons would have said, which will not be found in the appellate record. *Id.*

(c) Cook's Claims

Cook assigns four separate errors for ineffective assistance of counsel. We address each separately.

(i) Failure to Attack Witness Credibility

Cook asserts that she received ineffective assistance of counsel because her trial counsel failed to question Captain Dilsaver regarding his involvement in an ongoing sexual misconduct lawsuit filed against the city of Lincoln in 2023 to attack his credibility. According to Cook, the complaint accused Captain Dilsaver of retaliating against a female sergeant following her complaint of sexual harassment and discrimination; sending unwanted sexual text messages to female dispatchers; and sending unwanted photographs of his genitals, while he was on duty and in uniform, to at least one female officer.

Cook argues that Captain Dilsaver was the investigator who conducted Cook's initial interview that was used to portray her as untruthful and that if trial counsel had questioned Captain Dilsaver about his involvement in the lawsuit to attack his credibility, the jury would not have trusted his police work and analysis, Cook's credibility would have been bolstered, and the jury would have come to a different decision.

The State argues that Cook's arguments fail because she does not explain how allegations of sexual misconduct relate to truthfulness; thus, absent this connection, the information could not have been used to cross-examine Captain Dilsaver. The State also argues that any failure was not prejudicial because Cook offers no explanation of how the lawsuit would have impacted his credibility and because his credibility was not relevant in the case as he was not a material witness to Cook's guilt or R.R.Y.'s abuse.

Neb. Rev. Stat. § 27-608 (Reissue 2016) provides, in relevant part:

> (1) The credibility of a witness may be attacked or supported by evidence in the form of reputation or

> opinion, but subject to these limitations: (a) The evidence may refer only to character for truthfulness or untruthfulness . . . .
>
> (2) Specific instances of the conduct of a witness, for the purpose of attacking or supporting his credibility, other than conviction of crime as provided in section 27-609, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness be inquired into on cross-examination of the witness (a) concerning his character for truthfulness or untruthfulness . . . .

In Cook's brief, she does not argue that the allegations contained in the sexual misconduct lawsuit relate to Captain Dilsaver's truthfulness or untruthfulness, as required by § 27-608 to be utilized to attack credibility. Additionally, even if his credibility was attacked, it does not negate the statements made by Cook. Finally, Cook does not specifically argue that any of the statements made by Captain Dilsaver were untruthful. If Captain Dilsaver was not untruthful, then attacking his credibility served no benefit. For these reasons, Cook's argument that trial counsel was deficient for not questioning Captain Dilsaver about the sexual misconduct lawsuit to attack his credibility does not demonstrate deficient performance.

(ii) Failure to Object to Evidence of Other Crimes, Wrongs, or Acts

Cook assigns she received ineffective assistance of counsel when trial counsel "failed to object to the State's Request to Admit Evidence of other Crimes, Wrongs, or Acts at the Pretrial Hearing and at Trial."

a. Background

Trial counsel filed a motion asking the State to disclose any intention to use evidence of other crimes, wrongs, or acts, and the State disclosed the intent to offer evidence of a

2021 incident where one of Cook's other children was unconscious after getting her head caught in a car window and Cook took her to the hospital, after picking up a third party. Cook was charged in this matter and found not guilty after a jury trial. The State also disclosed the intent to offer a second collection of evidence of CPS involvement with Cook's other children that the State asserted involved drugs and domestic violence. The State did not believe it necessary to get into the details of this second set of incidents.

The State argued these incidents were allowed under Neb. Rev. Stat. § 27-404 (Cum. Supp. 2024) as they were inextricably intertwined because Cook stated that fear of CPS involvement was a reason for her not taking R.R.Y. to the hospital sooner. Trial counsel did not object to the receipt of the exhibits at the hearing and failed to give any position on the State's intention to use the evidence at trial. The district court issued an order stating the purpose of the evidence was consistent with § 27-404(2).

On appeal, Cook takes issue with the evidence of prior acts that came in through exhibit 92, Captain Dilsaver's interview of Cook, without objection from trial counsel.

Cook does not specify what specific portions of exhibit 92 she claims are objectionable. However, a review of exhibit 92 reveals the following references to CPS:

- Cook explained that she did not want to believe R.R.Y. was being abused and that she was also really scared because "CPS takes my kids again I'll never get them back, they have already told me. . . . I don't want to lose my kids and I love my kids and I worked hard both times to get them back."
- When explaining why she did not get R.R.Y. medical help sooner, Cook stated, "I am so scared of the hospital calling — look."
- Cook stated, "I am already throwing it at myself. The fact that I overlooked my son being hit out of fear of CPS, like believe me I already know."

- Cook explained, "I know that I had a thought in the back of my head that something was going on. I know that I was scared to go to the hospital because of [them] taking my kids."
- When asked if there was anything she felt she should have done between Wednesday and the day of the interview, Cook stated: "[Y]eah, I feel like I should have sucked my fucking pride up and took him whether I was scared of CPS being called or not. My only concern is that I have done this twice already and the third time, this is not third times a charm, like this is probably it."
- In describing not getting treatment for R.R.Y.'s leg, Cook stated, "I know I should have taken him, I know I should have pushed my own fear I mean because . . . I didn't do anything wrong except for not tak[ing] him so, if CPS would have c[o]me, I would have just fought it and not had to worry about it again."
- Cook stated, "And yes, the fear of going to the hospital knowing he looks battered and having CPS come, I don't want to lose my kids. I have worked hard to get my kids back."

b. Resolution

On appeal, Cook argues that trial counsel was deficient for failing to object to exhibit 92 and that the statements should have been redacted from exhibit 92 because hearing the evidence caused the jury to believe that because Cook allegedly abused her children in the past, then she must have intentionally hurt R.R.Y., which was prejudicial to Cook. The State argues that it did not offer outside proof that CPS had previously removed Cook's children and that it was Cook that gave this involvement as part of her explanation for not obtaining earlier medical care for R.R.Y., resulting in the evidence regarding CPS being inextricably intertwined. The State also argues that Cook has failed to sufficiently assign and argue any claim related to her trial counsel's failure to object to evidence of other crimes, wrongs, or acts because she cited to only exhibit 92, which consists of a more than

2-hour interview and Cook does not specify which statements were objectionable or where these statements can be located in the record.

We agree that Cook's failure to cite which statements or which portions of exhibit 92 are objectionable makes it difficult to know exactly which statements she is referring to. However, Cook cites pretrial arguments and sections of the record that make it clear she is objecting to evidence of prior CPS involvement. Thus, this court will analyze the admissibility of these statements.

[51-53] In a criminal case, § 27-404(1) operates as a broad exclusionary rule of relevant evidence that speaks to a criminal defendant's propensity to have committed the crime or crimes charged. *State v. Wheeler*, 314 Neb. 282, 989 N.W.2d 728 (2023). Under § 27-404(2), 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. *State v. Logan*, 320 Neb. 554, 28 N.W.3d 510 (2025). 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. § 27-404(2). Section 27-404(2) does not apply to evidence of a defendant's other crimes or bad acts if the evidence is inextricably intertwined with the charged crime. See *State v. Ash*, 286 Neb. 681, 838 N.W.2d 273 (2013).

[54,55] We have explained that inextricably intertwined evidence includes evidence that forms part of the factual setting of the crime and evidence that is so blended or connected to the charged crime that proof of the charged crime will necessarily require proof of the other crimes or bad acts. *Logan, supra*. Evidence of other crimes or bad acts is also inextricably intertwined with the charged crime if the other crimes or bad acts are necessary for the prosecution to present a coherent picture of the charged crime. *Id.*

The references to prior CPS involvement contained in exhibit 92 are inextricably intertwined with the crimes Cook

was charged with relating to R.R.Y. because they are necessary to present a coherent picture of the events and decisions that comprised the crimes for which she was charged. Additionally, even if this court were to find the evidence not to be inextricably intertwined with the charged crimes, the evidence would still be admissible under § 27-404 as evidence of motive and/or intent. Counsel was not deficient in failing to object because an objection would not have been successful. For these reasons, Cook's argument that trial counsel was deficient for failing to object to the evidence of other crimes, wrongs, or acts regarding prior CPS involvement with Cook has no merit.

(iii) Failure to Object to Crumbley's Testimony

Cook's assignment of error alleges that "Cook received ineffective assistance of counsel when Trial Counsel failed to object to the statements made by the State's witness, . . . Crumbley." In her brief, Cook argues that Crumbley was permitted to ramble on, making "multiple inadmissible statements that were also extremely prejudicial to Cook," and that she offered "testimony akin to a nosey neighbor — a lot of opinions, but no evidence or foundation to back up any of those opinions." Brief for appellant at 31.

Cook's assignment of error does not specify what statements should have been objected to or even the basis or category of the objection. This assignment requires additional information to understand precisely which of Crumbley's statements or category of statements Cook attacks, and it is, thus, not specifically assigned. See *State v. Kruger*, 320 Neb. 361, 27 N.W.3d 398 (2025). On this basis alone, Cook's assignment fails.

(iv) Failure to Object to Investigator Barry's Credibility Testimony

Cook asserts that trial counsel was ineffective because Investigator Barry was permitted to testify at trial regarding

Cook's truthfulness without objection. In the argument section of her brief, Cook points to two specific instances as being improper. First, when Investigator Barry responded, "I felt like she struggled to be honest," when he was asked whether he felt Cook was honest with him when she was given the opportunity to be honest and speak freely during the March 16, 2023, interview. Second, Cook points to Investigator Barry's testimony that the reason behind interviewing Cook again on March 21 was "[t]o see if her story changes any — even more. Just give her one last opportunity to be truthful with me." Cook argues that this testimony was, in essence, Investigator Barry's referring to Cook's statements in her interview as untruthful.

The State argues that Investigator Barry's testimony was not in error because it was just an observation that Cook's statements had been contradicted by other statements made by her and by other evidence. The State further argues that even if Investigator Barry's testimony had been inadmissible, Cook was not prejudiced because the jury had the evidence before it and knew the reasons why Investigator Barry believed Cook was being dishonest. We agree.

[56,57] The credibility of witnesses is a determination within the province of the trier of fact. *State v. Rocha*, 295 Neb. 716, 890 N.W.2d 178 (2017). Because making credibility determinations is the role of the trier of fact, testimony that usurps that role is not helpful and thus is improper opinion testimony under Neb. Rev. Stat. §§ 27-701 and 27-702 (Reissue 2016). *Rocha, supra*. However, "[s]uch comments upon the patently obvious generally pose little, if any, danger of prejudice . . . ." *Butler v. State*, 292 Ga. 400, 407, 738 S.E.2d 74, 81 (2013).

During the interview on March 16, 2023, Cook told Investigator Barry that R.R.Y. fell down the stairs on March 9. During the interview on March 21, Cook admitted R.R.Y. never fell down the stairs. This inconsistency could be seen by the jury in its review of the interviews. Thus, Investigator

Barry's testimony that he felt Cook "struggled to be honest" at the March 16 interview and his implying untruthfulness by his statement that he interviewed Cook again on March 21 to allow her "one last opportunity to be truthful with [him]" were not prejudicial to Cook because they simply informed the jury that Cook had not been completely honest in her prior interview with Investigator Barry, which the jury could see for itself based on her admission at the March 21 interview. See *Butler, supra.* Any error in the failing to object to these statements would not result in a different outcome. See *Kruger, supra*.

Cook's assignment is without merit.

4. Excessive Sentences

Cook argues the district court's consecutive sentences of 70 years' to life imprisonment for intentional child abuse resulting in death and 20 to 25 years' imprisonment for intentional child abuse resulting in serious bodily injury are excessive and constitute an abuse of discretion. Cook does not challenge her sentence for possession with intent to deliver or delivery of a controlled substance within 1,000 feet of a school.

Specifically, Cook argues that her codefendant, Tackett, was sentenced to only 70 years' to life imprisonment for intentional child abuse resulting in death, despite that Tackett, not Cook, inflicted R.R.Y.'s injuries and that Tackett, unlike Cook, was not also charged with or convicted of intentional child abuse resulting in serious bodily injury. Cook argues the sentences fail to consider her case separately from Tackett's and ignore the evidence of the disparity between the culpability of Cook compared with that of Tackett. Cook requests that her sentences be vacated and remanded for imposition of lesser sentences. We disagree.

[58-60] Where a sentence imposed within the statutory limits is alleged on appeal to be excessive, the appellate court must determine whether a sentencing court abused its discretion in considering and applying the relevant factors, as well

as any applicable legal principles in determining the sentence to be imposed. *State v. Rejai*, 320 Neb. 599, 29 N.W.3d 225 (2026). It is undisputed that Cook's sentences fall within statutory limits. See Neb. Rev. Stat. § 28-105 (Cum. Supp. 2024). Thus, the question is whether the district court abused its discretion in the sentences it imposed. See *State v. Hagens,* 320 Neb. 65, 26 N.W.3d 174 (2025).

> In determining a sentence to be imposed, relevant factors customarily considered and applied are the defendant's (1) age, (2) mentality, (3) education and experience, (4) social and cultural background, (5) past criminal record or record of law-abiding conduct, and (6) motivation for the offense, as well as (7) the nature of the offense and (8) the amount of violence involved in the commission of the crime. . . . The appropriateness of a sentence is necessarily a subjective judgment that includes the sentencing judge's observation of the defendant's demeanor and attitude and all the facts and circumstances surrounding the defendant's life.

Rejai, 320 Neb. at 604, 29 N.W.3d at 230. Additionally, it is within the discretion of the trial court to impose consecutive rather than concurrent sentences for separate crimes, even when the crimes arise out of the same incident. See *State v. Geller*, 318 Neb. 441, 16 N.W.3d 365 (2025).

[61,62] This court has considered and compared sentences of codefendants, who were also coconspirators, in the excessive sentence analysis. See, *State v. Kruse*, 215 Neb. 408, 338 N.W.2d 781 (1983); *State v. Komer*, 213 Neb. 376, 329 N.W.2d 120 (1983). However, as this court has explained in more recent cases, the mere fact that a defendant's sentence differs from those which have been imposed on coperpetrators in the same court does not, in and of itself, make the defendant's sentence an abuse of discretion; each defendant's life, character, and previous conduct may be considered in determining the propriety of the sentence. See, *State v. Vance*, 240 Neb. 794, 484 N.W.2d 453 (1992); *State v. Boppre*,

234 Neb. 922, 453 N.W.2d 406 (1990); *State v. Spotted Elk*, 227 Neb. 869, 420 N.W.2d 707 (1988). This court recently held that once it is determined that the sentence prescribed by statute is constitutional and that the sentence imposed is within statutory limits, the issue in reviewing a sentence is not whether someone else in a different case received a lesser sentence, but whether the defendant in the subject case received an appropriate one. See *Rejai, supra*.

At sentencing, the district court acknowledged that a presentence investigation report (PSI) had been conducted and made available to counsel. The State requested that additional documents and two jail calls be added to the PSI, and Cook did not object. Cook argued at sentencing that her codefendant, Tackett, has a "far more extensive criminal history and much darker past" than Cook and had received 85 years' to life imprisonment. Cook also presented information on her "attending AA" and "over 200 classes" while incarcerated. Cook was given an opportunity to make a comment but relied instead on a letter attached to her allocution letter to serve as her comments to the district court. The district court addressed Cook and stated:

> I want to let you know the things I've considered in determining the appropriate sentence in this case. The laws of Nebraska require I examine certain things like your age, you're 32, you're a high school graduate, your social and cultural background, your past criminal record are outlined in the PSI. The motivation for the offenses, the nature of the offenses, and those are evident in the PSI and were evident throughout the trial.
>
> The presence of violence and the — I've considered these things. The disregard for the — what was happening to your son. I am taking into account the — your other minor children as well.

The district court went on to state that

> having regard for the nature and circumstance of the crimes and the history, character, [and] condition of

> [Cook], the Court finds that imprisonment of [Cook] is necessary for the protection of the public because the risk is substantial that, during any period of probation, [she] would engage in additional criminal conduct, because a lesser sentence would depreciate the seriousness of [her] crimes and promote disregard for the law.

The district court then imposed Cook's consecutive sentences of imprisonment outlined above.

This court also does not find persuasive Cook's argument that a lesser sentence should have been imposed upon her because she was also charged with and convicted of intentional child abuse resulting in serious bodily injury. It is within the purview of the prosecutor to determine what, if any, charges should be brought against a person accused of committing a crime. See *Polikov v. Neth*, 270 Neb. 29, 699 N.W.2d 802 (2005). Cook has cited no case law demonstrating that she is entitled to a reduction in the sentence for one crime for having committed multiple crimes.

The district court considered the appropriate and relevant sentencing factors and imposed sentences within the statutory limits. This court cannot find that the district court's sentences of 70 years' to life imprisonment for intentional child abuse resulting in death and 20 to 25 years' imprisonment for intentional child abuse resulting in serious bodily injury were an abuse of discretion.

IV. CONCLUSION

We have determined that sufficient evidence supports Cook's convictions, that the district court did not abuse its discretion in admitting the autopsy photographs, that Cook's sentences were not an abuse of discretion, and that Cook did not receive ineffective assistance of counsel. Thus, we affirm the judgment of the district court.

AFFIRMED.