NOT DESIGNATED FOR PUBLICATION

No. 124,268

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
*Appellee*,

v.

MICHAEL JOSEPH MONEY,
*Appellant*.

MEMORANDUM OPINION

Appeal from Butler District Court; DAVID A. RICKE, judge. Opinion filed April 28, 2023. Affirmed.

*Corrine E. Gunning*, of Kansas Appellate Defender Office, for appellant.

*Darrin C. Devinney*, county attorney, *Cheryl M. Pierce*, assistant county attorney, and *Derek Schmidt*, attorney general, for appellee.

Before HURST, P.J., BRUNS and SCHROEDER, JJ.

PER CURIAM: Michael Joseph Money was convicted by a jury of abuse of a child in violation of K.S.A. 2018 Supp. 21-5602(a)(3). At trial, the State presented evidence that he bound his 12-year-old son with electrical tape or a similar substance for approximately two hours and hit him multiple times with a piece of wood. Although Money does not believe his actions constituted abuse of a child, he does not deny that he committed these acts. The jury also convicted Money of possession of methamphetamine and possession of drug paraphernalia. However, he does not appeal those convictions. Finding no reversible error, we affirm Money's conviction for abuse of a child.

## FACTS

On the evening of January 29, 2019, Money informed the principal of his son's middle school that his 12-year-old son had confessed to stealing property and that it was located in his locker at school. The next morning, the principal checked the boy's locker for the stolen items but found nothing. The principal then called the boy into her office to talk to him about the allegations made by his father, and he told the principal that he did not have the stolen property.

During the conversation in the principal's office, the principal noticed the boy rubbing his arms and saw a sticky black substance around the boy's wrists. The principal asked him what was on his wrists, and he replied that it was from tape that his dad used to restrain him. The boy then showed the principal that he had the same sticky substance around his ankles. He also told the principal that he confessed to taking the property so that his father would stop hitting him. After the meeting ended, the principal immediately reported the suspected child abuse to the police.

Detective Scott Roberts of the El Dorado Police Department responded to the middle school and spoke with the school resource officer regarding the boy's statements. Detective Roberts then interviewed Money's son at the school, and he described having been restrained to a table by his father with black electrical tape for a lengthy period of time. He further indicated that while he was restrained on the table, his father hit him with a board on his back, buttocks, and the back of his legs. He told Detective Roberts that his father tied him up because he suspected him of stealing.

Detective Roberts observed redness around the boy's wrists. He also noticed black smudges around the boy's wrists and ankles. However, he did not see any evidence of bruising or other injuries. Following the interview, Detective Roberts took the boy and his two younger siblings into protective state custody. The three children were

transported to the Sunlight Child Advocacy Center where they were interviewed about the incident and the conditions in their home.

Money agreed to come into the police department for an interview with Detective Roberts. The interview was video recorded with Money's consent. The video was later admitted into evidence and played for the jury at trial. During the interview, Money told the detective that he had been having a lot of problems with his son stealing things and had tried a variety of things to get him to stop. After these efforts proved to be unsuccessful, Money decided to institute what he called a "scared straight" program with his son.

Money told Detective Roberts that part of the "scared straight program was to bind [his son's] arms and wrists with . . . [an] unknown rubbery substance that had fallen off of a KG&E truck that had driven by his front yard." Money also admitted hitting his son with a piece of wood. He explained that the board he used to strike his son "was approximately 100 years old, and splintered if it was barely hit on anything."

Money described restraining his son's wrists and ankles and threatening to swat him with the board. According to Money, his goal was to scare his son into thinking he was going to be hit with the board, but that he "hardly got a swat in." Money indicated that he understood there were lines he could not cross in punishing his son. Detective Roberts told Money that it would have been "okay" if he had just swatted his son. But that he was concerned about the allegation that the boy had been tied up and hit with a board.

On January 31, 2019, Rebecca Munger with the Sunlight Child Advocacy Center interviewed the 12-year-old and his siblings. During an interview, the boy confirmed that his father had tied him up with black electrical tape and had hit him more than 20 times with a large board. He told Munger that he was tied up for about two hours. Specifically,

the boy explained that the incident began around 4 p.m. when he got home from school and lasted until around 6 p.m. when his father had to get ready to go to a band concert for one of his other children.

During her interview, one of Money's other children told Munger that there was a camera in the room where her father had tied up her brother. She indicated that her father had covered the camera with his hat during the incident, and she said that her father had threatened to hit her brother more than 100 times, but he did not do so. She also reported that she knew about the black electrical tape used on her brother and saw her father tie him to a table and hit him with a board. Based on the information obtained by the police, a search warrant was obtained and the camera with a DVR was found. The data retrieved from the DVR corroborated the daughter's report that her father had covered the camera with his hat during the incident. During the search of Money's house, the police also seized a bag of methamphetamine and a glass pipe.

On April 30, 2019, the State charged Money with: (1) one count of abuse of a child based on cruel and inhuman corporal punishment; (2) possession of methamphetamine with intent to distribute; (3) possession of drug paraphernalia with intent to use; (4) criminal use of weapons; and (5) aggravated intimidation of a witness. The district court commenced a four-day jury trial on May 4, 2021. At trial, the district court dismissed the charges of possession of a weapon and aggravated intimidation of a witness.

During the trial, the State presented nine witnesses and introduced more than 30 exhibits that were admitted into evidence. These exhibits included the video of the police interview of Money, videos of the interviews of the 12-year-old boy and one of his siblings, and photographs showing the marks left on the boy's wrists and ankles the day following the incident. In addition, the exhibits included several items found in the home during the execution of the search warrant.

At trial, the boy testified that he had lied when he told the principal, Detective Roberts, and Munger that his father had hit him. He also testified about a letter he had written in which he claimed that he missed his father and wanted to go home. Further, the detective identified a photograph of a piece of wood and testified that Money had pointed it out and identified it as the wood he used to hit his son. After the State rested, Money exercised his right not to testify and presented no evidence at trial.

After considering the evidence presented at trial, the jury convicted Money of abuse of a child, possession of methamphetamine, and possession of drug paraphernalia. Subsequently, Money filed a motion for a new trial, which was denied by the district court. At Money's sentencing hearing, the district court denied his motion for dispositional departure but granted his motion for durational departure. Ultimately, the district court sentenced Money to 32 months in prison to be followed by 24 months of postrelease supervision.

Thereafter, Money filed a timely notice of appeal as to his abuse of a child conviction. He does not challenge his other two convictions.

## ANALYSIS

### *Issues Presented*

The parties have identified five issues on appeal. First, whether the district court erred by failing to give an unrequested jury instruction on the affirmative defense of appropriate parental discipline. Second, whether K.S.A. 2018 Supp. 21-5602 is unconstitutionally vague. Third, whether the prosecutor committed reversible error during her closing argument. Fourth, whether the State presented sufficient evidence to support Money's conviction for abuse of a child. Fifth, whether cumulative errors require reversal of Money's abuse of a child conviction.

*Parental Discipline Instruction*

Money contends that the district court erred in failing to give a jury instruction regarding the affirmative defense of parental discipline. It is undisputed that Money did not request that the district court give a parental discipline instruction to the jury. Because Money did not request a parental discipline instruction at trial, we review the district court's failure to give the instruction for clear error. K.S.A. 2022 Supp. 22-3414(3); *State v. Tahah*, 302 Kan. 783, Syl. ¶ 5, 358 P.3d 819 (2015).

A district court's failure to give a jury instruction is clearly erroneous only if the reviewing court is firmly convinced there is a real possibility the jury would have rendered a different verdict if the error had not occurred. K.S.A. 2022 Supp. 22-3414(3); *State v. Williams*, 308 Kan. 1439, 1451, 430 P.3d 448 (2018). In other words, Money has the burden on appeal to firmly convince us that the jury would have reached a different verdict had a parental discipline instruction been given. See *State v. Berkstresser*, 316 Kan. 597, 605, 520 P.3d 718 (2022) (citing *State v. Solis*, 305 Kan. 55, 65, 378 P.3d 532 [2016]). However, we need not reach the reversibility issue if we determine that the parental discipline instruction was not both legally and factually appropriate. *State v. McLinn*, 307 Kan. 307, 318, 409 P.3d 1 (2018).

K.S.A. 2022 Supp. 21-5108(c) provides:

> "A defendant is entitled to an instruction on every affirmative defense that is supported by competent evidence. Competent evidence is that which could allow a rational fact finder to reasonably conclude that the defense applies. Once the defendant satisfies the burden of producing such evidence, the state has the burden of disproving the defense beyond a reasonable doubt."

In *State v. Wade*, 45 Kan. App. 2d 128, 136-38, 245 P.3d 1083 (2010), this court recognized the affirmative defense of parental discipline in the context of battery.

Specifically, it was held that "the *affirmative defense* of parental discipline is based on an *objective standard*. It is a defense to the charge of battery if a parent's use of physical force upon a child was *reasonable and appropriate* and with the *purpose of safeguarding the child's welfare or maintaining discipline*." (Emphases added.) 45 Kan. App. 2d at 139. Accordingly, to be entitled to a parental discipline instruction, a defendant must show that the affirmative defense was properly raised below and that there is competent evidence in the record to allow an objectively rational fact-finder to conclude that his actions were "reasonable and appropriate" for "the purpose of safeguarding [a] child's welfare or maintaining discipline." 45 Kan. App. 2d at 139.

Under the circumstances presented in this case, even if we were convinced that the giving of a parental discipline instruction was factually supported—which we are not—Money would still need to show clear error. Although Money attempts to justify his actions by suggesting that he was using "Scared Straight" tactics on his son, we note that this program does not include physical restraint or hitting of the participants. See *Interest of D.D.S.*, No. 2021AP136, 2021 WL 1256704, at *6 n.2 (Wis. App. 2021) (unpublished opinion) ("Scared Straight is a program wherein a minor learns about and experiences prison life as a deterrent for engaging in unlawful behavior."). Regardless, we find the evidence presented in this case—including Money's own admissions—to be overwhelming.

A review of the record reveals that Money bound his 12-year-old son's wrists and ankles with black electrical tape or a similar substance for approximately two hours. In addition, the record established that while his son was restrained, Money hit him multiple times with a piece of wood. Money admits that he did these things to obtain a confession from his son about property he believed had been stolen. Likewise, the record reflects that Money placed his hat over a video camera so that the events were not recorded.

In light of this evidence, we are not firmly convinced that the jury would have reached a different verdict had they been instructed on the affirmative defense of parental discipline. Likewise, based on a review of the record as a whole, we find no reasonable possibility that the alleged instruction error affected the outcome of the trial. See *State v. Holley*, 313 Kan. 249, 256-57, 485 P.3d 614 (2021). In addition to the overwhelming evidence contained in the record, we find that the jury was properly instructed on the charge of abuse of a child.

The abuse of a child instruction given by the district court—which is consistent with PIK Crim. 4th 56.040 (2019 Supp.)—made clear that it was the State's burden to prove that Money "knowingly inflicted cruel and inhuman physical punishment" on his 12-year-old son. In the instruction, the district court also defined the term "'cruel'" to mean "pitiless or designed to inflict high degree of pain, utter indifference to, or enjoyment of the suffering of others." In addition, it defined "'inhuman'" to mean "not worthy of or conforming to the needs of human beings."

After considering the evidence, the jury unanimously found Money to be guilty of abuse of a child. In other words, the jury found that the State had fulfilled its burden to prove that Money had in fact "knowingly inflicted cruel and inhuman physical punishment" on his son. PIK Crim. 4th 56.040. Such a determination is far removed from the finding that Money was simply imposing "reasonable and appropriate" discipline. See *Wade*, 45 Kan. App. 2d at 139. Viewing the record as a whole, we find that the State has shown beyond a reasonable doubt that the alleged instructional error did not affect the outcome of the trial. Consequently, under the circumstances presented, we conclude that the district court's failure to give a parental discipline instruction was not clearly erroneous.

*Constitutionality of Child Abuse Statute*

Money also contends that the child abuse statute is unconstitutionally vague. Although Money cites to the current child abuse statute, the one in effect at the time of his crime of conviction was K.S.A. 2018 Supp. 21-5602(a)(3). This statute made it illegal to "knowingly . . . inflict[] cruel and inhuman corporal punishment" on "any child under the age of 18 years." In response, the State contends that the statute is not unconstitutionally vague and provides adequate notice of the prohibited conduct. In addition, the State points out that the Kansas Supreme Court has explicitly found that the challenged language conveys sufficient definiteness as to the type of conduct that the law prohibits.

Whether a statute is constitutional presents a question of law that is subject to unlimited review. *State v. Harris*, 311 Kan. 816, 821, 467 P.3d 504 (2020). In reviewing a statute enacted by the Kansas Legislature, we presume it is constitutional and must resolve all doubts in favor of the statute's validity. In other words, it is our duty to interpret a statute in a way that makes it constitutional if there is any reasonable construction that would maintain the Legislature's apparent intent. *State v. Gonzalez*, 307 Kan. 575, 579, 412 P.3d 968 (2018). As the party challenging the statute, Money has the burden of overcoming the presumption of constitutionality. 307 Kan. at 579.

A statute's language must convey a sufficient warning of the conduct proscribed when measured by common understanding and practice. *State v. Jenkins*, 311 Kan. 39, 52-53, 455 P.3d 779 (2020). To determine whether a statute is unconstitutionally vague, we apply a two-part test. First, we assess whether the statute gives adequate warning of the prohibited conduct. Under this step, we consider whether the statute provides a person of ordinary intelligence fair notice of the conduct that is prohibited. *State v. Bollinger*, 302 Kan. 309, 318, 352 P.3d 1003 (2015). Second, we determine whether the statute adequately guards against arbitrary and unreasonable enforcement. *Gonzalez*, 307 Kan. at

580 (citing *Bollinger*, 302 Kan. at 309); see *Johnson v. United States*, 576 U.S. 591, 595, 135 S. Ct. 2551, 192 L. Ed. 2d 569 (2015). Under the second step, a statute is vague if it fails to provide explicit standards for enforcement. *Grayned v. City of Rockford*, 408 U.S. 104, 108, 92 S. Ct. 2294, 33 L. Ed. 2d 222 (1972).

"'At its heart the test for vagueness is a commonsense determination of fundamental fairness.' *State v. Kirby*, 222 Kan. 1, 4, 563 P.2d 408 (1977)." *Bollinger*, 302 Kan. at 318. Here, Money was convicted of abuse of a child under K.S.A. 2018 Supp. 21-5602(a)(3), which provides: "(a) Abuse of a child is knowingly: . . . (3) inflicting cruel and inhuman corporal punishment upon any child under the age of 18 years." Although the child abuse statute has been amended over the years, it has contained a prohibition against "cruel or inhuman corporal punishment" for more than 50 years. See, e.g., K.S.A. 21-3609 (2007); K.S.A. 21-3609 (Ensley 1988); K.S.A. 1967 Supp. 38-714.

Addressing a prior version of the abuse of a child statute in *State v. Fahy*, 201 Kan. 366, 370, 440 P.2d 566 (1968), the Kansas Supreme Court held:

> "The statute conveys with sufficient definiteness what conduct is prohibited by law. Such conduct includes torture, beating or abusing a child or punishing a child cruelly or inhumanly. Because the statute sets up stringent standards does not make it unconstitutional. The statute prohibits the above acts and *such words as* torture, beat, abuse, *cruel punishment or inhuman punishment are hardly vague*." (Emphases added.)

As in the present case, the district court in *Fahy* provided definitions of these terms to the jury. The court reasoned that the "fact that the trial court sees fit to define the language used in a statute by governing case law or common dictionary meaning does not indicate indefiniteness." 201 Kan. at 370. The *Fahy* court concluded that the phrases used provide reasonable and definite standards to give notice of the prohibited conduct. Furthermore, our Supreme Court found that the words "cruel punishment" and "inhuman punishment" are sufficient to meet constitutional standards. 201 Kan. at 370.

Similarly, in *State v. Hupp*, 248 Kan. 644, 809 P.2d 1207 (1991), the Kansas Supreme Court faced a similar challenge to the vagueness of the abuse of a child statute. The statute in effect at the time of the crime prohibited "willfully torturing, cruelly beating or inflicting cruel and inhuman corporal punishment upon any child under the age of 18 years." K.S.A. 21-3609 (Ensley 1988). Once again, citing to the *Fahy* decision, our Supreme Court held that the terms used in the statute were not unconstitutionally vague. 248 Kan. at 656; see also *State v. Burton*, No. 114,791, 2016 WL 6822225, at *5 (Kan. App. 2016) (unpublished opinion) (noting that the Kansas Supreme Court has found that "the terms cruel and inhuman provide reasonable and definite standards, and common meanings that can be understood and contemplated by a jury").

In addition, the district court properly instructed the jury in this case that it was the State's burden to prove "cruel and inhuman physical punishment" beyond a reasonable doubt. The district court also provided the jury with a definition of the terms "cruel" and "inhuman" to provide further clarity. Like our Supreme Court, we do not find the term "cruel and inhuman corporal punishment" to be vague or to subject a defendant to arbitrary enforcement. The plain and unambiguous language of the abuse of a child statute is sufficient to provide notice that it is cruel and inhuman punishment—not reasonable parental discipline—that is prohibited.

In summary, even though the abuse of a child statute has been amended over the years, the terms "cruel and inhuman corporal punishment" have consistently been found by Kansas appellate courts not to be unconstitutionally vague and to convey sufficient definiteness of the type of conduct that the law prohibits. *Hupp*, 248 Kan. at 656; *Fahy*, 201 Kan. at 370. Moreover, Money has failed to persuasively argue that the various amendments to the organization of the abuse of a child statute over the years has resulted in unconstitutional vagueness. Consequently, we conclude that the abuse of a child statute gives persons of ordinary intelligence adequate notice of the type of conduct that is prohibited and adequately guards against arbitrary and unreasonable enforcement.

*Prosecutorial Error*

Next, Money contends that the prosecutor committed error in closing argument by inviting the jurors to put themselves in the position of Money's 12-year-old son. This type of argument—often referred to as a "golden rule" argument—is generally considered improper and may lead to reversible error. *State v. Carr*, 314 Kan. 615, Syl. ¶ 40, 502 P.3d 546 (2022). In response, the State candidly acknowledges that the argument was made in error. However, the State contends that the error did not prejudice Money's right to a fair trial.

In *State v. Sherman*, 305 Kan. 88, 109, 378 P.3d 1060 (2016), the Kansas Supreme Court articulated the test to be applied in determining prosecutorial error. Under the *Sherman* analysis, we use a two-step process to evaluate claims of prosecutorial error. First, we determine whether the alleged error "'falls outside the wide latitude afforded to prosecutors to conduct the State's case in a way that does not offend the defendant's constitutional right to a fair trial.' *State v. Chandler*, 307 Kan. 657, Syl. ¶ 6, 414 P.3d 713 (2018)." *State v. Thomas*, 311 Kan. 905, 910, 468 P.3d 323 (2020). If we decide that the prosecutor committed error, we then turn to the question of whether the error prejudiced the defendant's right to a fair trial. 311 Kan. at 910.

In evaluating this prejudice, we use

> "the traditional constitutional harmlessness inquiry demanded by *Chapman* [*v. California*, 386 U.S. 18, 87 S. Ct. 824, 17 L. Ed. 2d 705 (1967)]. In other words, prosecutorial error is harmless if the State can demonstrate 'beyond a reasonable doubt that the error complained of will not or did not affect the outcome of the trial in light of the entire record, *i.e.*, where there is no reasonable possibility that the error contributed to the verdict.' *State v. Ward*, 292 Kan. 541, Syl. ¶ 6, 256 P.3d 801, (2011), *cert. denied* [565 U.S. 1221] (2012)." *Sherman*, 305 Kan. at 109.

In other words, even if a prosecutor's actions are egregious, reversal of a jury's verdict is not an appropriate sanction if the actions are determined to satisfy the constitutional harmlessness test. 305 Kan. at 114. Similarly, K.S.A. 2022 Supp. 60-261 provides that no error at trial is grounds for granting a new trial or setting aside a jury's verdict "[u]nless justice requires otherwise." Based on our review of the record in this case, we do not find that Money's right to a fair trial was violated, nor do we find that justice requires us to reverse the jury's verdict.

Here, the State concedes that asking the jurors to imagine themselves to be a 12-year-old being punished by their father constituted error. As a result, we will focus on the issue of whether the error prejudiced Money's right to a fair trial. In making this determination, we take into consideration the context in which the argument was presented. Here, the record reveals that the improper statement was only a small part of the prosecutor's entire argument and was not repeated. We also note that Money did not contemporaneously object to the improper statement, nor did he raise this issue in his subsequent motion for a new trial. See *State v. Bodine*, 313 Kan. 378, 406, 486 P.3d 551 (2021) (the court may consider the presence or absence of an objection into its analysis).

Moreover, the argument was surrounded by the prosecutor reviewing the actual evidence presented during the trial. By the time the prosecutor presented her closing argument, the jury was well aware that Money had admitted to binding his 12-year-old son's wrists and ankles with electrical tape or a similar substance, hitting him with a piece of wood, and interrogating him about alleged stolen property. As such, the question was not what Money did to his 12-year-old son but whether his actions constituted cruel and inhuman punishment.

Jurors are presumed to follow the instructions they are given by the district court and to focus on the evidence actually presented during the course of the trial. *State v. Peppers*, 294 Kan. 377, 392, 276 P.3d 148 (2012). Here, the district court appropriately

instructed the jury that the "[s]tatements, arguments, and remarks of counsel . . . are not evidence. If any statements are made that are not supported by evidence, they should be disregarded." Likewise, the district court appropriately instructed the jurors that the State had the burden "to prove the defendant is guilty" and that they "must presume that he is not guilty unless you are convinced from the evidence that he is guilty." Further, the district court appropriately instructed the jurors that they "have a right to use common knowledge and experience" in rendering their verdict.

Based on our review of the record on appeal, we find that the improper statement made by the prosecutor did not prejudice Money's right to a fair trial under the circumstances presented. Again, the statement was made in the context of reviewing the evidence admitted at trial and shortly after the district court had properly instructed the jury on the law. The statement was also directly related to the elements of the crime that the State was required to prove. These elements specifically included the knowing infliction of cruel and inhuman punishment on a child less than 18 years of age. Moreover, both the district court and the prosecutor had just reminded the jury of these elements.

Given this context, we conclude the isolated improper statement made by the prosecutor did not prejudice Money's due process right to a fair trial and does not require reversal of the jury's verdict. See *Thomas*, 311 Kan. at 913; *State v. Lowery*, 308 Kan. 1183, 1212, 427 P.3d 865 (2018). In particular, we find that the State presented a significant amount of evidence—both direct and corroborating—to prove beyond a reasonable doubt that Money bound his 12-year-old son to a table with electrical tape or a similar substance for a lengthy period of time and struck him with a piece of wood while interrogating him. Also, the State presented evidence that Money placed a hat over a surveillance camera before binding and striking his son. In fact, Money admitted to most of these facts in his statement to the police and again at trial. Accordingly, in light of the substantial evidence presented by the State at trial as well as the district court's

instructions to the jury, we find that the State has proven beyond a reasonable doubt the improper statement made by the prosecutor during closing arguments did not affect the outcome in light of the entire record.

*Sufficiency of the Evidence*

Money next contends that the evidence presented by the State at trial did not support his abuse of a child conviction.

> "'When sufficiency of the evidence is challenged in a criminal case, the standard of review is whether, after reviewing all the evidence in a light most favorable to the prosecution, the appellate court is convinced a rational factfinder could have found the defendant guilty beyond a reasonable doubt. Appellate courts do not reweigh evidence, resolve evidentiary conflicts, or make witness credibility determinations.' [Citation omitted.]" *State v. Chandler*, 307 Kan. 657, 668, 414 P.3d 713 (2018).

It is only in rare cases where the testimony is so incredible that no reasonable fact-finder could find guilt beyond a reasonable doubt that a guilty verdict will be reversed. *State v. Torres*, 308 Kan. 476, 488, 421 P.3d 733 (2018).

As discussed above, the district court appropriately instructed the jury on the charge of abuse of a child in violation of K.S.A. 2018 Supp. 21-5602(a)(3). Specifically, it instructed the jury that the State must prove that Money "knowingly inflicted cruel and inhuman physical punishment to L.A.M." Once again, we note that this instruction is based on PIK Crim. 4th 56.040. In addition, the district court defined the term "cruel" to mean "pitiless or designed to inflict high degree of pain, utter indifference to, or enjoyment of the suffering of others." Further, the district court defined the term "inhuman" as "not worthy of or conforming to the needs of human beings." See *State v. Wilson*, 41 Kan. App. 2d 37, Syl. ¶¶ 7, 8, 200 P.3d 1283 (2008).

In support of his argument, Money points us to a 1978 case from the Maryland Court of Appeals—*Bowers v. State*, 283 Md. 115, 126, 389 A.2d 341 (1978)—for the proposition that "[s]o long as the chastisement was moderate and reasonable, in light of the age, condition and disposition of the child, and other surrounding circumstances, the parent or custodian would not incur criminal liability for assault and battery or a similar offense." Unfortunately, Money fails to point out that the Maryland court went on to explain that "a parent was not permitted under the common law to resort to punishment which would exceed 'that properly required for disciplinary purposes' or which would extend beyond the bounds of moderation. 'Excessive or cruel' conduct was universally prohibited." 283 Md. at 126; see also *Fabian v. State*, 235 Md. 306, 319, 201 A.2d 511 (1964) (the parental relationship is not a defense where the punishment "exceeds the bounds of due moderation").

Interestingly, although the *Bowers* case does not involve a sufficiency of the evidence issue, it does involve a challenge to the constitutionality of the Maryland abuse of a child statute in effect at that time. In finding the statute not to be unconstitutionally vague, the Maryland Court of Appeals looked to the common definitions of the terms "cruel" and "inhuman" and found that these terms have "a settled and commonly understood meaning." *Bowers*, 283 Md. at 125-26. Consequently, the *Bowers* case provides no support for Money's sufficiency of the evidence argument, but its holding is consistent with the holdings of Kansas appellate courts that our abuse of a child statute is not void for vagueness. See *Hupp*, 248 Kan. 644, Syl. ¶ 12; *Fahy*, 201 Kan. at 370; *Burton*, 2016 WL 6822225, at *5.

As previously discussed, the State presented significant—if not overwhelming—evidence upon which a rational jury could find beyond a reasonable doubt that Money knowingly inflicted cruel and inhuman physical punishment on his 12-year-old son on January 29, 2019. This evidence included Money's own admissions. Hence, viewing the

evidence in the light most favorable to the State, we conclude that the record contains sufficient evidence to support the jury's verdict.

*Cumulative Error*

Finally, Money contends that cumulative error deprived him of his right to a fair trial. Our review of a claim of cumulative error is unlimited. *State v. Ross*, 310 Kan. 216, 227, 445 P.3d 726 (2019). When there is no error or only a single error found, there can be no cumulative error. See *Gonzalez*, 307 Kan. at 598; *State v. Haberlein*, 296 Kan. 195, 212, 290 P.3d 640 (2012). But if we find multiple errors, we must determine whether the defendant's right to a fair trial was prejudiced. *State v. Taylor*, 314 Kan. 166, 173, 496 P.3d 526 (2021).

Here, we have expressly identified one error—that the prosecutor made an improper "golden rule" argument—but we found that this error was harmless. Even if we also assume that the district court erred in failing to give an unrequested jury instruction to the jury on the affirmative defense of parental discipline, we still do not find based on the totality of the circumstances that Money was denied the right to a fair trial. And, as we have previously found, the State has established beyond a reasonable doubt that the cumulative effect of the alleged errors did not affect the jury's verdict. Having concluded that Money received a fair trial, we affirm his abuse of a child conviction.

Affirmed.