

NOT DESIGNATED FOR PUBLICATION

No. 124,497

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,  
*Appellee,*

v.

TYANA D. CLARK,  
*Appellant.*

MEMORANDUM OPINION

Appeal from Sedgwick District Court; BRUCE C. BROWN, judge. Opinion filed March 24, 2023.  
Affirmed.

*Michael P. Whalen*, of Law Office of Michael P. Whalen, of Wichita, for appellant.

*Lance J. Gillett*, assistant district attorney, *Marc Bennett*, district attorney, and *Derek Schmidt*, attorney general, for appellee.

Before GREEN, P.J., HURST, J., and TIMOTHY G. LAHEY, S.J.

PER CURIAM: Tyana D. Clark appeals her conviction for abuse of a child under the age of six. She argues that the trial court improperly instructed the jury and that the State presented insufficient evidence to convict her. Because the jury instructions were correct and the State's evidence was sufficient, we affirm Clark's conviction.

## FACTS

The State charged Clark with abuse of a child under the age of six years, in violation of K.S.A. 2019 Supp. 21-5602(a)(1), for conduct directed at her boyfriend's four-year-old daughter E.A.M. The State also charged Clark with battery of her boyfriend's seven-year-old son E.K.W., in violation of K.S.A. 2019 Supp. 21-5413(a)(2), and criminal damage to property, in violation of K.S.A. 2019 Supp. 21-5813(a)(1).

At trial, E.M.M. testified that Clark was his girlfriend, and they were living together in Wichita on September 20, 2019. E.M.M. had his seven-year-old son E.K.W. and his four-year-old daughter E.A.M. in the home with them that night. E.M.M. picked up E.A.M. from her mother the day before and saw no injuries on her body.

E.M.M. took both children to meet with Clark, who was at a friend's house for a birthday party. E.M.M. left his children at the birthday party with Clark before going to his friend's house. E.M.M. stopped by his home at midnight to pick up his phone charger. Clark was in E.M.M.'s home with his children, who were asleep. Clark planned to leave the children with her mother so that she could go out, and E.M.M. went back out with his friends.

E.M.M. went to a bar in Wichita. Clark called him, sounding agitated and intoxicated, demanding to know where he was. Clark came to the bar to meet up with E.M.M. After meeting, E.M.M. went to the bathroom. When he came back out, Clark was face-to-face, "almost kissing," with a man on the patio. After Clark walked away from the man, E.M.M. approached him and asked what Clark had said to him. The man explained that Clark was hitting on him, saying that she had a man in the bar but did not care because this other man was "fine," and she wanted "to mess with" him tonight.

After hearing this, E.M.M. headed back to the bar. Clark intercepted him. E.M.M. testified that Clark started "flippin' out," "trippin'," and "cussin'." E.M.M. went to the bar, got his friend, paid his tab, and left. E.M.M. went out to his truck with Clark following, yelling, and trying to prevent him from leaving. After E.M.M. got in his truck, he heard something hit the truck loudly. When he looked back, he saw Clark picking up a rock from the gravel parking lot and throw it at his truck.

Around 1:30 a.m., E.M.M. arrived back at his apartment building, but stopped at a friend's first floor apartment before going home. Clark showed up at this apartment and E.M.M. testified that Clark hit and kicked the apartment door while yelling. E.M.M. left the apartment by the back window and drove to another friend's house. After staying away for two hours, E.M.M. returned to his downstairs neighbor's apartment. By this point, Clark was no longer outside the apartment, banging on the door. Instead, she was inside the downstairs neighbor's apartment. They continued to argue, and Clark told E.M.M. that she had brought the children back from her mother's house.

E.M.M. went upstairs to his apartment and saw that his children were there, in bed. E.M.M. was angry because Clark drove his children to the apartment from Clark's mother's house, after she had been drinking. He told Clark to leave, and she did, but not before damaging his truck by hitting it and scratching it with her keys.

In the morning, Clark came back to the apartment between 10:30 a.m. and 11 a.m. By this time, the children were out of bed and when E.A.M. saw Clark, she turned to her dad with "this spooked look on her face." He noticed bruising on E.A.M.'s face and asked her what happened. E.A.M. said that she did not know and that she thought she fell. E.M.M. took pictures of E.A.M.'s face. The pictures showed marks, scratches, and bruising on E.A.M.'s face, as well as what looked to her father like a bite mark. Clark said, "I love you, [E.A.M.], you okay." But E.A.M. gave Clark a strange look, which E.A.M.'s father noticed. He took both children in his truck and left.

The children told their father that none of the kids at the birthday party had hurt them. E.K.W. eventually said that Clark caused the injuries to E.A.M. E.A.M. confirmed what her older brother said—that Clark had hit her.

E.A.M. told her father that Clark grabbed her by her neck, slammed her face first on the floor, then slapped her and bit her. E.K.W. confirmed that he saw Clark choke, hit, and bite his younger sister. E.K.W. also told his father that Clark grabbed him by the neck too and slammed him down because he was not changing into his pajamas or other clothing fast enough. E.M.M. asked his children why Clark hurt them and whether Clark said anything. E.K.W. told his father that Clark said nothing, and he did not know why Clark did it. E.K.W. said that Clark was quiet while driving them home.

E.M.M. called the police and reported the incident. He talked to a uniformed officer and took the children to the Exploited and Missing Children's Unit (EMCU). E.A.M.'s mother took E.A.M. and E.K.W. to the hospital to get checked for additional injuries. An EMCU officer interviewed both children.

E.K.W. was nine years old when he testified at trial. E.K.W. confirmed that he told his father what happened, but he did not remember talking to the police at his school. E.K.W. testified that he did not see Clark injure E.A.M. but did hear what was happening. When E.K.W. saw photos of his sister's injuries, he testified that he had not seen what caused the injuries. But he stated that Clark and E.A.M. were the only ones in the room when the injuries happened. E.K.W. testified that he did not tell his dad that he saw Clark bite E.A.M., clarifying that "my sister told him that." E.K.W. testified that he told police that he saw Clark hit E.A.M. with a hand and with a pink belt. E.K.W. described how Clark grabbed him by the neck and threw him down. E.K.W. testified that Clark was mad at E.A.M. because she put her backpack down in the wrong place.

On cross-examination, E.K.W. acknowledged that the incident had occurred a long time ago and that a lot of his memory was based on what he talked to other people about.

E.A.M. was six years old when she testified at trial. E.A.M. identified Clark as the person who hit her, stating she was four years old when it happened. E.A.M. identified injuries in a photograph of her face. E.A.M. stated that Clark made the marks, including scratching E.A.M.'s nose with her fingernails. E.A.M. said that Clark caused the bruise on her face when Clark pulled her off the bed, hitting her face on the floor. E.A.M. also testified that the photos showed marks on her neck caused by Clark scratching her. E.A.M. stated that when Clark grabbed her neck she could not breathe, and she tried to pull away from Clark. E.A.M. also claimed that Clark bit her elbow but denied that Clark bit her on the face. E.A.M. testified to not understanding why Clark hurt her, stating, "All I did was set my backpack down and then she got mad at me." E.A.M. denied that Clark hit her anywhere else on her body and did not recall Clark hitting her with a pink belt or spanking her.

On cross-examination, E.A.M. stated that she talked to a lot of people about the incident and agreed that it was difficult to distinguish between what happened versus what people told her happened. She agreed that it was easier for people to tell her the answers rather than come up with the answers on her own. And she agreed that she would have preferred that someone else testified or answered the attorneys' questions for her.

Officer Randy Gorges was the responding officer who arrived at E.M.M.'s parent's home when E.M.M. called the police. Gorges photographed injuries to E.A.M.'s elbow, face, neck, and head, including an apparent bite mark on her right cheek. E.K.W. told Gorges that Clark picked up E.A.M. by the neck, slammed her down, and bit her. E.K.W. also told Gorges that Clark picked him up and slammed him down because a drawer was not closed.

When E.A.M.'s mother took the children to the hospital, they met with a forensic nurse, Wendy Hartman. Hartman asked E.A.M. if she knew why she was at the hospital and E.A.M. said it was because Clark bit her face. E.A.M. told Hartman that Clark came into the room and hit, choked, and bit her. Hartman testified that she saw bruising and a pattern injury on E.A.M.'s face which was shaped like a bite mark. E.A.M. also told Hartman that the back of her head hurt. Hartman stated that the back of E.A.M.'s head felt spongy because of blood collected between the skull and the scalp, which typically happens when someone's head hits the floor, or the hair is pulled.

Hartman performed a head-to-toe examination on E.A.M. She documented injuries with photos and on body diagrams. The diagrams showed bruises, scratches, and abrasions, most of which were on E.A.M.'s face and head. E.A.M. told Hartman that the bruising at her hairline was from Clark pulling on her braids. Hartman photographed petechiae inside E.A.M.'s mouth and bruising to her jawline, injuries consistent with E.A.M.'s report of Clark strangling her. E.A.M.'s right ear had injuries typically caused by a blow to the head or sometimes by pinching. Scratches on E.A.M.'s neck were consistent with strangulation—the types of scratches typically caused either by a perpetrator or by a victim trying to remove whatever is choking her. Hartman also documented minor injuries such as abrasions, scratches, and bruising on E.A.M.'s chest, back, right arm, legs, and left buttock.

Dr. Katherine Melhorn, a pediatrician and board-certified expert in child abuse, conducted a case review of E.A.M.'s injuries. Based on her review of the photographs that Hartman took, Melhorn testified that E.A.M.'s injuries were inflicted injuries rather than accidental. Melhorn explained that E.A.M.'s bruises were in patterns and locations not normally seen on children. She stated that ear bruising is characteristic of a child being slapped on the side of the head, or the head impacting on something else and the ear getting crushed between the skull and whatever is striking the ear. According to Melhorn, the linear marks and abrasions on the sides of E.A.M.'s neck and the significant

bruising along her jawline were consistent with E.A.M. being strangled. Melhorn also testified that the pattern marking on E.A.M.'s cheek was an adult bite mark.

Clark's mother and Clark's friend testified for the defense. Each one said they saw no injuries on the children before Clark took them. Clark also testified on her own behalf. She denied harming the children in any way.

The jury found Clark guilty on all three counts. The trial court sentenced Clark to 41 months in prison.

Clark timely appeals.

#### ANALYSIS

*Did the trial court err in instructing the jury?*

The narrow question in this issue is the meaning of the word "torture." Clark argues that the legal definition of torture differs from the common understanding of torture, thus the trial court clearly erred by not defining torture in the jury instructions. The State argues that the issue is insufficiently briefed because Clark does not state what instruction the trial court should have used. Alternatively, the State argues that Clark cannot show clear error.

When analyzing jury instruction issues, appellate courts follow a three-step process: (1) determining whether the appellate court can or should review the issue, in other words, whether there is a lack of appellate jurisdiction or a failure to preserve the issue for appeal; (2) considering the merits of the claim to determine whether error occurred below; and (3) assessing whether the error requires reversal, in other words, whether the error can be deemed harmless. *State v. Holley*, 313 Kan. 249, 253, 485 P.3d

614 (2021); see also K.S.A. 2022 Supp. 22-3414(3) ("No party may assign as error the giving or failure to give an instruction . . . unless the party objects thereto before the jury retires to consider its verdict . . . unless the instruction or the failure to give an instruction is clearly erroneous.").

At the second step, appellate courts consider whether the instruction was legally and factually appropriate, using an unlimited standard of review of the entire record. 313 Kan. at 254. In determining whether an instruction was factually appropriate, courts must determine whether there was sufficient evidence, viewed in the light most favorable to the defendant or the requesting party, that would have supported the instruction. 313 Kan. at 255.

Whether a party has preserved a jury instruction issue affects the appellate court's reversibility inquiry at the third step. 313 Kan. at 254. When a party fails to object to a jury instruction before the trial court, an appellate court reviews the instruction to determine if it was clearly erroneous. K.S.A. 2022 Supp. 22-3414(3). For a jury instruction to be clearly erroneous, the instruction must be legally or factually inappropriate and the court must be firmly convinced that the jury would have reached a different verdict if the erroneous instruction had not been given. *State v. Crosby*, 312 Kan. 630, 639, 479 P.3d 167 (2021).

The party claiming clear error has the burden to show both error and prejudice. *Crosby*, 312 Kan. at 639.

When the parties offer a variety of competing reasons why the requested instruction was or was not factually appropriate, the appellate court bypasses that step of the analysis and moves straight to the harmlessness inquiry. *State v. Salary*, 301 Kan. 586, 598-99, 343 P.3d 1165 (2015).



When a party asserts an instruction error for the first time on appeal, the failure to give a legally and factually appropriate instruction is reversible only if the failure was clearly erroneous. *State v. Butler*, 307 Kan. 831, 845, 416 P.3d 116 (2018). The "clearly erroneous" principle is not a standard of review, i.e., a framework for determining whether error occurred. *State v. Williams*, 295 Kan. 506, 511, 286 P.3d 195 (2012). Instead, it supplies a basis for determining if an error requires reversal of a conviction. 295 Kan. at 516; see *State v. Lewis*, 299 Kan. 828, 856, 326 P.3d 387 (2014).

Appellate courts consider jury instructions as a whole, without focusing on any single instruction in isolation, to determine if they properly and fairly state the applicable law or if it is reasonable to conclude that they could have misled the jury. *State v. Buck-Schrag*, 312 Kan. 540, 553, 477 P.3d 1013 (2020).

Our Supreme Court "strongly recommend[s] the use of PIK instructions, which knowledgeable committees develop to bring accuracy, clarity, and uniformity to instructions." *Butler*, 307 Kan. at 847.

Clark argues that the legal definition of torture differs from the common lay understanding of the word and, thus, the trial court should have defined torture for the jury. The trial court instructed the jury as follows:

"In Count One, the defendant is charged with Abuse of a Child. The defendant pleads not guilty.

"To establish this charge, each of the following claims must be proved:

1. The defendant knowingly tortured or cruelly beat [E.A.M.].
2. [E.A.M.] was less than 6 years old.
3. This act occurred on or about the 21st day of September, 2019, in Sedgwick County, Kansas.

"The State must prove that the defendant acted knowingly. A defendant acts knowingly when the defendant is aware of the nature of her conduct that the State complains about or of the circumstances in which she was acting."

Clark argues that the trial court clearly erred by not defining torture, although she concedes that she did not request a definition. She also acknowledges that the Pattern Instructions for Kansas (PIK) do not define the term torture. Clark notes that trial courts are not required to define a word in the jury instructions unless the commonly understood lay definition differs from the legal definition, citing *State v. Patton*, 33 Kan. App. 2d 391, 397, 102 P.3d 1195 (2004). She contends that the lay understanding of torture does not match the legal definition and, therefore, the trial court should have defined torture.

While PIK Crim 4th 56.040 (2019 Supp.) (Abuse of a Child) does not define torture, the Notes on Use cite the definition of torture from *State v. Wilson*, 41 Kan. App. 2d 37, 200 P.3d 1283 (2008). In *Wilson*, the defendant requested that the trial court define torture as "to inflict intense pain to body or mind for purposes of punishment." 41 Kan. App. 2d at 39. The trial court instructed the jury as the defendant requested, and this court did not hold that the instruction was error. 41 Kan. App. 2d at 39.

Clark argues for the same definition, citing *State v. Bruce*, 255 Kan. 388, 394, 874 P.2d 1165 (1994) (holding that torture means "[t]o inflict intense pain to body or mind for purposes of punishment"). While Clark provides the correct definition, her argument is devoid of authority for the idea that this definition is mandatory and failing to give the definition constitutes clear error.

What then, do we know? We know that we must not fail to observe that trial courts have properly defined the word "torture" when called upon to do so. For example, in *State v. Mercer*, 33 Kan. App. 2d 308, 101 P.3d 732 (2004), the State requested a definition for torture. The trial court instructed the jury that torture means "to inflict

intense pain to body or mind for purposes of punishment or for sadistic pleasure." 33 Kan. App. 2d at 315. This court held that the trial court properly instructed the jury, committing no error. 33 Kan. App. 2d at 317.

While the defendant in *Mercer* argued that defining torture is clear error, Clark argues the reverse—that not defining torture is clear error. *Mercer* shows that a trial court may define torture for the jury. But Clark fails to cite any authority requiring a trial court to define torture for the jury. Or, to put this another way, Clark makes an undue assumption. Here, she maintains that since the *Bruce* court defined the word torture, our courts have given only one aspect of the complete definition of the term torture. Thus, she argues that failure to properly define the word torture is clear error.

But Clark's argument is based on an undue assumption that trial courts are required to define the term torture in cases like hers. So, she impliedly assumes that the trial courts must properly define the word torture in all cases when it is used. But there is no such requirement on trial courts to do this. Indeed, the trial court here followed the PIK in instructing the jury. The PIK does not include the definition of torture, and the trial court did not define torture. No party requested a definition for torture. And Clark provides no sound basis that the definition of torture is legally required. So, there is no legal basis for Clark's argument.

Also, the State correctly argues that Clark fails to explain how differences in definitions could have misled the jury. Clark states that the definition given in *Bruce* only includes one purpose for inflicting pain. 255 Kan. at 394 (holding that torture means "[t]o inflict intense pain to body or mind for purposes of punishment"). But Clark gives definitions from dictionaries which include other purposes for inflicting pain, such as extracting a confession or information, coercion, or sadistic meaning. The purpose of extracting a confession, for example, is not part of the legal definition of torture from *Bruce*, but it is part of the lay understanding of torture. Thus, Clark argues that a jury

could wrongfully convict a defendant if the jury believed she inflicted pain for some purpose other than punishment. But she fails to explain how this jury could have believed that Clark inflicted pain on E.A.M. for another purpose, for example, to extract a confession.

Clark's argument falls short of the mark. Indeed, the record is devoid of any recitation of essential facts which would support Clark's argument. The failure to support a point with pertinent authority or failure to show why a point is sound despite a lack of supporting authority or in the face of contrary authority is like failing to brief the issue. *State v. Meggerson*, 312 Kan. 238, 246, 474 P.3d 761 (2020). Also, Clark does not provide any citation to any authority to show that a trial court must (not may) instruct the jury on the definition of torture. And she does not show how a mismatch in definitions could have misled the jury in her case. Thus, she fails to show clear error—that the jury would have reached a different verdict if the jury had been instructed on the definition of torture.

Because Clark has failed to show that the trial court clearly erred, we affirm.

*Did sufficient evidence support Clark's conviction?*

Clark also attacks the sufficiency of the State's evidence. She asserts that there was no reliable evidence involving either punishment or a beating.

"When the sufficiency of the evidence is challenged in a criminal case, we review the evidence in a light most favorable to the State to determine whether a rational factfinder could have found the defendant guilty beyond a reasonable doubt. An appellate court does not reweigh evidence, resolve conflicts in the evidence, or pass on the credibility of witnesses." *State v. Aguirre*, 313 Kan. 189, 209, 485 P.3d 576 (2021).

"This is a high burden, and only when the testimony is so incredible that no reasonable fact-finder could find guilt beyond a reasonable doubt should we reverse a guilty verdict. [Citations omitted.]" *Meggerson*, 312 Kan. at 247.

Clark makes two arguments about sufficiency of the evidence. She notes that the State needed to convince the jury beyond a reasonable doubt that she either: (1) tortured or (2) cruelly beat E.A.M. to convict her of abuse of a child. Thus, she first argues that the State failed to show evidence of torture and next argues that the State failed to show a beating.

### *Torture*

Her first argument—that the State failed to provide sufficient evidence of torture—is an extension of her argument about jury instructions on the definition of torture. The definition of torture from *Bruce* and from *Wilson* is the following: "to inflict intense pain to body or mind for purposes of punishment." *Bruce*, 255 Kan. at 394; *Wilson*, 41 Kan. App. 2d at 39.

Clark argues that the State failed to show that punishment was the purpose of the pain inflicted on E.A.M. Her argument fails for two reasons. First, she asks this court to reweigh the evidence and, second, the State is not required to show punishment.

Clark argues that the evidence presented should not have convinced the jury that Clark punished E.A.M. She points out that in police interviews directly after the incident, both children told police that they did not know why Clark inflicted pain on E.A.M. Clark notes that it was not until trial, two years after the incident, that E.K.W. first explained why Clark hit his little sister—saying it was to punish her for not putting away her backpack properly. Clark criticizes E.K.W.'s testimony as "not highly reliable at trial," pointing to inconsistencies. But appellate courts do not reweigh evidence or determine

witness credibility. *Aguirre*, 313 Kan. at 209. The question of E.K.W.'s reliability is a jury question, one which this court does not revisit from reading a cold transcript. To the extent that Clark asks this court to reweigh evidence, she asks for relief which is not available on appeal.

The second reason Clark's argument fails is that the State does not need to show that Clark inflicted pain for purposes of punishment. Clark's assertion that the State needs to show punishment comes from her misreading of *Bruce*. Donald E. Bruce argued that the jury should have been instructed on voluntary intoxication as a defense to child abuse by means of willful torture. The *Bruce* court discussed whether torture required specific intent, making a voluntary intoxication instruction potentially appropriate. Clark focuses on the fact that the *Bruce* court, on its way to holding that torture does not require specific intent, mentioned the Black's Law Dictionary definition. Clark accurately states that the *Bruce* court only excerpted part of the Black's definition: "[t]o inflict intense pain to body or mind for purposes of punishment," but the *Bruce* court omitted the following language: "or to extract a confession or information, or for sadistic pleasure" from the definition. Compare *Bruce*, 255 Kan. at 394 with *Torture*, Black's Law Dictionary 1490 (6th ed. 1990). From this starting point, Clark draws an erroneous conclusion.

Clark asserts that the *Bruce* court deliberately omitted the purposes of sadism and extracting a confession or information. Thus, she concludes that the only purpose for inflicting pain that fits the legal definition of torture is punishment. But this reading of *Bruce* neglects the preceding sentence where the *Bruce* court notes that the dictionary definition "indicates that torture is the infliction of pain as a means of punishment *or coercion*." (Emphasis added.) 255 Kan. at 394. And in *Mercer*, this court approved the State-requested definition that torture means "'to inflict intense pain to body or mind for purposes of punishment *or for sadistic pleasure*.'" (Emphasis added.) 33 Kan. App. 2d at

315. In short, Kansas appellate courts have approved jury instructions which defined torture, but without giving a prescriptive definition that trial courts must use.

Clark provides no case where an appellate court has required a specific definition of torture or indeed any definition at all. Also, Clark has not provided a citation showing a definition of torture which was rejected as either too broad or too narrow. Clark takes one definition mentioned in *Bruce*, a definition which is not required—and which she did not request—and holds that up as the standard which the State needed to meet. She simply concludes that the legal definition of torture is limited to pain inflicted for punishment purposes and punishment only. The citations provided do not support this assumption. The State did not need to show punishment and, even if it did, this court would need to reweigh the evidence to hold that the State insufficiently demonstrated a punishment purpose. For both reasons, Clark's argument must fail.

### *Beating*

Clark's second argument about the sufficiency of the evidence is that the State failed to show that Clark beat E.A.M. Clark again surveys dictionaries for varying definitions, this time for the words "beat" and "beating." She argues that the State presented evidence which may qualify to show "battery" but fell short of the evidence required to show a beating. Because Clark creates a too-narrow, hyper-technical definition of beating not supported by citation, we affirm her conviction.

In an almost mirror-image of Clark's argument on jury instructions for torture, she notes that the trial court did not define beat or beating for the jury. Thus, she argues that this court should ignore Black's Law Dictionary definition of beat: "In the criminal law and the law of torts, with reference to assault and battery, the term includes *any unlawful physical violence offered to another.*" (Emphasis added.) Black's Law Dictionary 154

(6th ed. 1990). Clark asserts that the jury's lay understanding, not the legal meaning, of beat or beating must control the State's evidentiary burden.

To establish the jury's lay understanding, Clark cites several general-purpose dictionaries which she contends establish a definition of beat, unlike the legal dictionary which she argues this court must ignore. From these lay dictionaries, Clark pulls out a sense of the word beat, defining it as "to strike someone repeatedly" or "the hitting of someone with multiple blows." Clark then concludes that the State needed to show evidence of multiple strikes or blows to show that she beat E.A.M.

Clark argues that the evidence presented at trial showed that E.A.M. was choked, scratched, and thrown to the floor, but there was no evidence that E.A.M. received multiple blows. Clark argues that E.A.M.'s own testimony conclusively shows that Clark did not strike or hit E.A.M., but instead took actions which might qualify as battery rather than the hits or strikes needed to fit the definition of a beating.

The first reason that Clark's argument fails is that it is unsupported. Clark asserts that without a strike or blow, there cannot be the multiple strikes or blows needed to show a beating. But Clark provides no citation to show that each act—choking, scratching, throwing someone to the floor, or biting someone on the face—is not a strike or a blow.

Clark notes that our Legislature chose not to use the word battery in K.S.A. 2019 Supp. 21-5602(a)(1), instead opting for the word beating. She infers that our Legislature intended that only acts of multiple strikes or blows could qualify as a beating under this definition. Then, she leaps to the assumption that our Legislature intended for the actions of this case—for example, pulling or pushing someone to the floor—to not qualify as strikes or blows. She also assumes that the jury's lay understanding of a strike or blow would not include, for example, throwing someone to the floor. This is an unsafe



assumption. See *strike*, Webster's New World College Dictionary 1437 (5th ed. 2014) (defining the transitive verb at 4 as follows: "to cause to come into violent or forceful contact; specif., *a*) to cause to hit something [to *strike* one's head on a beam]"). Clark assumes without citation that causing E.A.M.'s head to hit the floor would not qualify as a strike. Her definition of strike is unsupported by caselaw and undermined by at least one dictionary.

In summary, Clark defines the words "strike" and "blow" narrowly enough that her actions fall outside the scope of those terms. Then she builds on that foundation to argue that the State did not show strikes or blows, especially the multiple strikes or blows needed to establish the element of a beating. Her foundation is shaky because she provides no citation and no reasoning to accept her definitions of strike and blow. And she provides only reasoning without citation to accept her definition of a beating. Clark's argument fails because she provides this court with no citations to accept her myopic definitions of the key terms.

The second reason Clark's argument fails is that she asks this court to reweigh the evidence. Even if this court accepted Clark's narrow definitions of strike and blow, the State provided the jury with evidence of multiple strikes and blows which would fit those definitions. Clark herself seems to acknowledge that a slap would qualify as a strike or blow but dismisses evidence of a slap as "speculative testimony." Clark's argument relies on reframing the evidence provided at trial so that each act does not resemble a strike or a blow.

For example, Clark does not address whether hitting someone's head against the floor constitutes a blow. Instead, she focuses grammatically on the preceding act as follows: "[E.A.M.] said that the cause of the bruise on her face occurred when Clark *pulled her off the bed*, onto the floor, where she hit her head." (Emphasis added.) Thus,

Clark asserts that the act of pulling on someone is not a strike or a blow, while dodging the question of whether hitting someone's head on the floor is a strike or a blow.

Clark also points to testimony and interviews with E.A.M. and E.K.W., noting inconsistencies. But the State correctly argues that the evidence of E.A.M.'s injuries shows a beating. Even if this court disregarded the statements of the children, the expert testimony and accompanying exhibits show that E.A.M. was struck more than once. Both the forensic nurse and the pediatrician explained that the injury to E.A.M.'s right ear was consistent with a strike or a blow to the ear. And the spongy portion of E.A.M.'s scalp indicated a blow to the head, whether the impact was with a hand, the floor, or other object.

Thus, even if the bite to E.A.M.'s face does not qualify as a strike or blow by the definitions Clark offers, the evidence shows that E.A.M. was struck at least twice. Clark asks this court to discount the direct evidence of E.A.M. and E.K.W. saying that Clark struck E.A.M. The reliability of witnesses is a jury question. But even if this court could disregard witness testimony, the State presented circumstantial evidence of multiple strikes or blows. A conviction of even the gravest offense can be based entirely on circumstantial evidence. *State v. Pattillo*, 311 Kan. 995, 1003, 469 P.3d 1250 (2020). The evidence of the injuries to E.A.M., and the expert testimony related to those injuries, was sufficient for the jury to find that Clark beat E.A.M., even under Clark's narrow definition of a beating.

Because the State met its evidentiary burden, we affirm Clark's conviction.

For the preceding reasons, we affirm.