

FILED
United States Court of Appeals
Tenth Circuit

PUBLISH

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

September 9, 2026

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

No. 24-7093

MASON ANTHONY WILSON,

Defendant - Appellant.

Appeal from the United States District Court
for the Eastern District of Oklahoma
(D.C. No. 6:23-CR-00062-KWR-1)

Jonathan D. Reppucci, Reppucci Law Firm, P.C., Denver, Colorado, for Defendant - Appellant Mason Anthony Wilson.

Linda A. Epperley, Assistant United States Attorney (Christopher J. Wilson, United States Attorney with her on the brief), Muskogee, Oklahoma, for Plaintiff - Appellee United States of America.

Before **MATHESON**, **EBEL**, and **CARSON**, Circuit Judges.

EBEL, Circuit Judge.

When his two-month-old daughter was discovered to have a litany of severe, unexplained injuries only days after he became her sole, primary caregiver, Defendant Mason Anthony Wilson was charged with child abuse and child neglect.

After a two-day trial, which included testimony from a child abuse and neglect specialist, multiple law enforcement officials, and his wife, Wilson was convicted on both charges. He now challenges those convictions, raising several arguments, many of which are raised for the first time on appeal. Because some of his arguments were waived, and those that were not either lack merit or had no impact on the outcome of his trial, we AFFIRM.

I. BACKGROUND

A. Charged conduct

In February 2022, Appellant Mason Wilson had a baby, B.W., with Bailey Henson, who also had another child of her own. Henson was an employee at a credit union, but for two months after B.W.'s birth, Henson stayed home to care for B.W. along with Wilson. No issues arose in these two months. Then, on April 11, Henson returned to work, leaving Wilson to care for B.W. during the day.

Within the next three days, Henson noticed a bruise on B.W.'s cheek and a scratch on B.W.'s arm. She decided not to take B.W. to the hospital immediately because they already had a scheduled check-up on April 14. She asked Wilson about the cheek bruise, to which he initially responded that he was holding B.W. and B.W. "slung her head back and had hit her face on" Wilson's chest and collarbone, and potentially his necklace. (Record on Appeal ("ROA") v.3 65.) On April 14, Wilson took B.W. to the pediatrician's checkup along with his father-in-law. The pediatrician said they needed to go to the hospital. Ms. Henson met them at the

pediatrician's office and they drove to the hospital together. The pediatrician alerted the Oklahoma Department of Human Services ("DHS").

Further examination revealed other extensive injuries. B.W. had ten broken bones, including five broken ribs, a proximal ulnar fracture in her left arm, and corner metaphyseal fractures on her right tibia, left tibia, and left femur. B.W. had injuries on both ears. B.W. had bruising on her face, arms, fingers, neck, buttocks, wrist, back, and stomach. B.W. had scratches on her body, including a scar on her forearm and a mark above her vagina. Henson again asked Wilson how these injuries occurred, and this time Wilson said that B.W. had fallen off the bed. Later, Wilson said he lightly "stepped on her." Dist. Ct. Mem. Op. & Order (July 31, 2024) at 2. He also asked Henson to say she rolled over onto B.W. to "take heat off" him. (ROA v.5 156.)

Both Wilson and Henson were interviewed by Dr. Christine Beeson, a specialist in child abuse and neglect. Henson told Dr. Beeson that B.W. had hit her face on Wilson's collarbone and fallen off the bed, based on what Wilson had told her. Separately, Wilson told Dr. Beeson that B.W. had fallen off the bed. Dr. Beeson concluded that B.W.'s injuries were not consistent with the explanations provided. Rather, the several distinct bone breaks suggested multiple direct blows and forceful pulls or yanks in the previous five days. The bruising on each ear suggested multiple forceful hits because of the difficulty of bruising ears and the different planes of the injuries. The cheek bruise and abdominal bruise suggested forceful events because babies' cheeks and stomachs do not bruise easily. A linear

bruise on B.W.'s wrist suggested "a direct blow or a squeeze-type injury." (ROA v.3 181.) The scratches suggested someone other than B.W. scratched her because two-month-olds cannot scratch their own neck. A subconjunctival hemorrhage below B.W.'s left eye also suggested a direct blow.

Wilson was also interviewed by James Poffel, a sergeant with the local police department, Abram Springer, a child welfare specialist at DHS, and Ashley Chavez, an FBI special agent. Wilson continued to state that the cheek bruise was the result of B.W. hitting her face on his collarbone, though he could not explain the other injuries.

B. Trial.

Wilson was indicted via federal grand jury in the Eastern District of Oklahoma on one count of Child Abuse in Indian country and one count of Child Neglect in Indian country, in violation of 21 Okla. Stat. § 843.5(A) & (C) and 18 U.S.C. §§ 1151 and 1153, based on Wilson's membership in the Cherokee Nation.

During the two-day trial, the prosecution called several witnesses, including Dr. Beeson, Henson, Poffel, and Springer. Dr. Beeson was brought as an expert witness, while the other three were brought as lay witnesses. The defense called one witness, Wilson's great-uncle, who testified as to Wilson's character.

Prior to trial, the prosecution disclosed Dr. Beeson's testimony as follows:

1. Dr. Beeson will testify to all aspects of her knowledge, training, and experience in the area of child physical abuse and neglect and child abuse and neglect examinations, in particular:
 - a. Her education, background, training, and experience;

- b. Her knowledge and experience in the area of child physical abuse and neglect;
 - c. Her knowledge of all aspects of human anatomy, the mechanism of injuries in child physical abuse, and the injuries sustained as a result of child physical abuse; and
 - d. Her knowledge regarding the importance of history, her experience in obtaining history from parents and/or potential perpetrators, and all factors used to determine between accidental or non-abusive trauma and abusive trauma.
2. Dr. Beeson will testify regarding her involvement in this case, in particular:
 - a. Her observation and examination of the victim in this case;
 - b. Her review of the records, reports, photographs, medical records, medical history, etc., regarding the victim;
 - c. Her knowledge regarding the victim's injuries, including expected levels of pain sustained by the victim; and
 - d. Her medical diagnosis of child physical abuse
3. The bases for Dr. Beeson's opinion include:
 - a. Her education, training, experience, and knowledge;
 - b. Her observation and examination of the victim in this case;
 - c. John M. Leventhal et al., *Fractures in young children: distinguishing child abuse from unintentional injuries*, 147 Am. J. Diseases of Children 87 (1993);
 - d. Naomi F. Sugar et al., *Bruises in infants and toddlers: those who don't bruise rarely bruise*, 153 Arch. Ped. Adolesc. Med. 399 (1999);
 - e. David L. Chadwick et al., *Annual risk of death resulting from short falls among young children: less than 1 in 1 million*, 121 Pediatrics 1213 (2008).

ROA v.1 21–22 (Gov't's Notice of Intent to Offer Expert Test.). Wilson sought a Daubert¹ hearing to discuss Dr. Beeson's testimony as to the pain B.W. experienced. The district court ultimately limited Dr. Beeson's testimony on B.W.'s pain. Wilson raised two other objections to Dr. Beeson's testimony at trial: 1) that her medical diagnoses of child abuse and neglect were invading the province of the jury to reach a legal conclusion as to child abuse and neglect, and 2) that her statements relating to

¹ Daubert v. Merrell Dow Pharms., Inc., 509 U.S. 579 (1993).

what she would expect a parent to do based on B.W.'s injuries were invading the province of the jury, apparently because jurors are aware of parental expectations in the event of injuries and it was suggestive of Wilson's mens rea.

Henson testified to seeing the cheek bruise after returning to work and that Wilson had told her "different things" about the origin of the bruise. (ROA v.5 134.) Henson conveyed the different stories that Wilson had told her regarding the injuries. Henson said that at some point during her interactions with Wilson, "I asked him not to lie to me again." (ROA v.3 86.)

Springer testified that during his interview with Wilson, Wilson attributed the facial bruises to B.W. hitting her face on his collarbone. Springer said it was common for child abusers to minimize the victim's injuries. Defense counsel objected when the prosecution asked for an example, and the district court sustained the objection as approaching expert testimony. Springer then testified, without objection, that it was common for child abusers to proffer accidental causes, including falling off the bed.

Poffel testified to his interviews with Wilson and Henson and his review of the records in the case. Poffel testified that in his experience, ear bruises are "almost always indicative of child abuse." (*Id.* at 241.) Poffel also testified that, when interviewing a potential perpetrator, it is an indicator of dishonesty if their explanations are not consistent with the injuries, and that perpetrators often minimize the abuse. Defense counsel objected that this was approaching expert testimony, but the court overruled the objection. Poffel also stated that perpetrators often offer

accidental causes of injuries. Finally, he said it is an indicator of dishonesty if someone gives different explanations to different people.

In closing, the prosecution stated that “All the United States needs to prove is that when the defendant drew his hand back to hit B.W., or when he yanked on her legs, or squeezed her chest, or pinched her ears, his actions were not an accident.” (Id. at 297.) The prosecution referred to Wilson’s innocent explanations of the injuries as “a stupid story.” (Id. at 312.) Finally, the prosecution said Wilson “needs to be held accountable for his actions” and “whether or not B.W. gets justice [is] in your hands.” (Id. at 305, 317.)

The jury entered a guilty verdict on both charges. Wilson moved for a new trial, saying the verdict was contrary to the weight of the evidence and the prosecution had violated Federal Rule of Criminal Procedure 16(a)(1)(G) by insufficiently disclosing in its expert witness disclosure that Dr. Beeson would testify as to the modality of B.W.’s injuries, not just that the injuries were non-accidental. The district court denied Wilson’s motion and sentenced him to 120 months in prison.

II. STANDARD OF REVIEW

We review evidentiary issues that were objected to below for abuse of discretion. United States v. Bycroft, 174 F.4th 814, 817 (10th Cir. 2026), petition for cert. filed (U.S. Aug. 6, 2026) (No. 26-5242). “A district court abuses its discretion in admitting evidence if that admission represents ‘a clear error of judgment or exceed[s] the bounds of permissible choice in the circumstances.’” Id. (alteration in original) (quoting Gilbert v.

Cosco, Inc., 989 F.2d 399, 402 (10th Cir. 1993)). Conversely, issues that were not objected to below are reviewed for plain error. United States v. Poterbin, 162 F.4th 1254, 1266 (10th Cir. 2025). To establish plain error, there must be 1) an error, 2) that is plain, 3) that affects the defendant’s substantial rights, and 4) that “substantially affects the fairness, integrity, or public reputation of judicial proceedings.” Id. (internal quotation marks omitted). Yet, if the appellant “fails to make a plain-error argument on appeal, we ordinarily deem the issue waived . . . and decline to review the issue at all—for plain error or otherwise.” United States v. Dermen, 143 F.4th 1148, 1205 (10th Cir. 2025) (quoting United States v. Leffler, 942 F.3d 1192, 1196 (10th Cir. 2019)), cert. denied, 146 S. Ct. 1622 (2026). Because some of Wilson’s arguments on appeal were preserved and others were not, we will address each with the accompanying discussion below.

III. DISCUSSION

Wilson raises three main grounds for reversing his conviction. First, he argues that multiple aspects of Dr. Beeson’s expert testimony were impermissible. Second, Wilson argues that the lay witnesses testified improperly. Third, Wilson raises several statements from his trial that he claims constituted prosecutorial misconduct. If none of the arguments raised individually warrant reversal, he also asserts that we should vacate

his conviction on cumulative error. None of Wilson's arguments, including cumulative error, merit reversal.

A. Dr. Beeson's Testimony

Wilson takes issue with three aspects of Dr. Beeson's testimony. We will address each in turn.

a. Diagnoses of child abuse and neglect

Wilson argues that the district court abused its discretion by permitting Dr. Beeson to testify that she had diagnosed B.W. with child abuse and child neglect. It appears that Wilson's main concern is that the medical terms "child abuse" and "child neglect" mirror the legal terms used in his charges. At trial, when Dr. Beeson was asked about her diagnoses, Wilson's counsel objected that "we're definitely getting into the province of the jury." (ROA v.3 203.) By stating that she had diagnosed B.W. with child abuse and neglect, the argument goes, Dr. Beeson was telling the jury what verdict to reach. Because Wilson preserved his objection below, we review for abuse of discretion. We conclude that the district court did not abuse its discretion by permitting Dr. Beeson's testimony.

Dr. Beeson's diagnoses were permissible. First, Dr. Beeson did not conclude that Wilson had committed child abuse or neglect; rather, she diagnosed B.W. with child abuse and neglect. That would leave the question of who caused B.W.'s injuries to the jury. Second, Dr. Beeson's medical diagnosis of child neglect required only a failure to "provide medical attention for bruising to a two-month-old." (ROA v.3 202); see United States v. Keys, 638 F. Supp.3d 1282, 1291 (E.D. Okla. 2022)

(opinion testimony stating that “a failure to provide needed medical care, where . . . it is clear to any reasonable person that a child needs medical care” is diagnosable as “child medical neglect”). But a conviction for child abuse or neglect under 21 Okla. Stat. § 843.5 requires a finding of willfulness or malice. 21 Okla. Stat. § 843.5(A), (C). Nothing in Dr. Beeson’s testimony spoke to the perpetrator’s willfulness in abusing or neglecting B.W. It is possible to be abusive and neglectful negligently, recklessly, or knowingly. See Ibarra v. Holder, 736 F.3d 903, 911, 915 (10th Cir. 2013) (recognizing different *mentes rea*e required for child abuse and neglect across states and civil and criminal contexts). So, the jury still had to make the additional inferences that Wilson caused B.W.’s injuries and that he acted willfully or maliciously. See United States v. Collins, No. 23-CR-144-JFH-1, 2023 WL 6842251, at *4 (E.D. Okla. Oct. 17, 2023) (unreported) (collecting cases).

Additionally, courts are familiar with medical testimony that speaks in similar terms as legal distinctions but with different standards. For example, courts often permit testimony as to a defendant’s mental competency, sanity, and even motivation. See United States v. Austin, 981 F.2d 1163, 1164–65 (10th Cir. 1992) (permitting testimony of medical diagnosis of sanity); United States v. Dotson, 817 F.2d 1127, 1132 (5th Cir. 1987) (“[E]xpert’s summary merely explained his analysis of the facts indicating willful evasion, and did not . . . directly embrace the ultimate question of whether Dotson did in fact intend to evade income taxes.”), vacated in part on other grounds on rehearing, 821 F.2d 1034, 1035 (5th Cir. 1987) (per curiam); United States v. Cox, 826 F.2d 1518, 1520, 1524 (6th Cir. 1987) (permitting medical

testimony of defendant’s mental illness and its effect on him at the time of the offense). Since Dr. Beeson’s testimony did not stipulate an element of the crime—i.e., willfulness—this testimony was permissible. Cf. Fed. R. Evid. 704(b). And the prosecution made clear to the jury that “a medical diagnosis [is] not a factual legal conclusion as the jury will be asked to make.” (ROA v.3 203.) It “only supplie[s] the factfinder with data from which it could draw the ultimate legal conclusion.” Cox, 826 F.2d at 1525.

Dr. Beeson’s testimony was permissible, and thus the district court did not abuse its discretion by admitting it. Additionally, concerns with the terminology used at trial are best remedied by seeking clarification below, not seeking reversal on appeal.

b. Parental expectations testimony

Wilson next argues that it was improper for the district court to permit testimony regarding Dr. Beeson’s parental expectations—here, in the form of Dr. Beeson’s statements that she would expect a parent to seek medical attention based on the bruising to B.W.’s cheek. Wilson, on appeal, raises three distinct issues with the parental expectations testimony: 1) that it invaded the province of the jury, which he objected to at trial, 2) that it was not reliable nor relevant, which he did not object to at trial, and 3) that it was insufficiently disclosed in the prosecution’s Rule 16 notice, which he did not object to below. We review the first for abuse of discretion and the latter two for plain error.

i. The testimony did not invade the province of the jury

First, Wilson argues that Dr. Beeson's testimony invaded the province of the jury because parental expectations are "within the juror's common knowledge and experience." Aplt. Br. 18; United States v. Rodriguez-Felix, 450 F.3d 1117, 1123 (10th Cir. 2006). We disagree.

During her testimony, Dr. Beeson had been discussing why a bruise on a baby's cheek is particularly concerning, because a baby's cheek is soft and fleshy without much bony structure underneath and therefore difficult to bruise, suggesting a great deal of force was necessary to cause the injury. The prosecution then asked: "But you're a very highly trained, skilled pediatrician who is board certified in two areas. What if it's just a parent who doesn't have any fancy degrees? Do you expect that parent to provide medical attention for their baby in that condition?" (ROA v.3 201.) The context, then, suggests that the purpose of the question was to ascertain whether it is neglectful for such an injury to go unreported, even though the knowledge of why the injury was particularly troubling was enhanced by her specialized training and experience.

We do not think it is clearly within the common knowledge and experience of a jury that a cheek injury for a baby is particularly troubling, nor what they would expect a parent to do if confronted with a cheek injury. The fact that such an injury is rare makes it less likely that the jury would have experience with this situation. So, Dr. Beeson's testimony was useful for the jury to understand that the injury,

though perhaps more innocuous to a lay person than a child neglect specialist, should still prompt a parent to seek medical attention.

Wilson also suggests that commenting on parental expectations was a “thinly veiled comment on Wilson’s mens rea.” Apl’t Br. 19. For the same reason that Wilson’s argument relating to the medical diagnoses discussed above fails, this argument fails, too. Expert testimony is impermissible if the expert states “the final conclusion” that the jury must make at trial. United States v. Goodman, 633 F.3d 963, 970 (10th Cir. 2011) (internal quotation marks omitted). Here, that is “the very mental state at issue in the case—the defendant’s mens rea when he committed the crime.” Id. But an expert can discuss mental states at a more general level, not specific to the defendant. For example, prosecutors can ask “hypothetical questions mirroring the fact patterns of the trial case . . . when the answering testimony still allows the fact finder to make an additional inference as to whether the defendant had the mental state or condition constituting an element of the crime charged.” Id. In Goodman:

The government did not ask the experts to give their opinions as to Goodman’s legal sanity. Rather, the prosecution posed hypothetical facts that mirrored the charged robberies and asked the experts whether the hypothetical robber’s actions were consistent with the behavior of someone with PTSD. The jury still needed to make an additional inferential step to determine whether or not Goodman was legally insane.

Id. The same can be said here. Dr. Beeson stated what she would expect a parent to do in a hypothetical situation. Of course, that left the final question to the jury of whether Wilson himself was willfully neglectful in failing to seek medical care for

B.W. based on her injuries. Rather than preventing a witness from dictating what verdict a jury should reach, Wilson seemingly wishes to prevent witnesses from providing testimony that a jury could use to inform its verdict.

ii. The testimony was relevant and reliable

Second, Wilson argues that Dr. Beeson’s testimony was neither reliable nor relevant. Wilson argues that his objection at trial preserved his objection on these grounds, but we are not persuaded: his objection raised only the invasion of the province of the jury, which is a different argument. In fact, as to relevance, we find the suggestion that the testimony was irrelevant to be contradictory to the prior suggestion that the testimony usurped the role of the jury. Therefore, the failure to raise a separate objection would render this argument unpreserved, and we would review for plain error—and given his failure to brief plain error, it would be waived. That said, even on an abuse of discretion standard, Wilson’s arguments fail.

The evidentiary test for relevance is that the testimony has “any tendency to make a fact. . . of consequence in determining the action” “more or less probable.” Fed. R. Evid. 401(a), (b). Seeing as Wilson has already argued the testimony invaded the province of the jury, we do not see how the testimony could also be irrelevant: if the testimony had no bearing on a fact of consequence, it could hardly be said to infringe on the jury’s role. In any event, given the relation to a diagnosis of medical neglect, we find the testimony was relevant.

Wilson also argues that Dr. Beeson was not qualified to share her parental expectations because she is not a “psychologist, counselor, social worker,

parent/child investigator, parenting teacher, or any other type of parenting specialist.”

Aplt. Br. 17. But Wilson continues to state that she has “extensive and impressive qualifications as a medical doctor and a child abuse and neglect pediatrics expert.”

Id. Inherent to this specialty is knowledge of medical issues that have gone unreported that a reasonable person would know need medical attention. See Keys, 638 F. Supp. 3d at 1293 (finding “‘medical child neglect’ . . . where . . . it is clear to any reasonable person that a child needs medical care”); cf. United States v. Clark, 981 F.3d 1154, 1159 (10th Cir. 2020) (discussing child welfare specialist’s allegations of neglect based on failure to seek dental care for rotting teeth, failure to seek medical intervention for impacted bowel, failure to see optometrist for vision issues, and failure to seek medical attention for “history of defecating on himself”). To make a neglect diagnosis, a doctor would have to be knowledgeable as to what injuries should be brought to the attention of a doctor for treatment. Therefore, Dr. Beeson would seemingly be qualified to remark on whether she would expect a parent to seek medical attention for their baby’s injury. See Keys, 638 F. Supp. 3d at 1288 (permitting testimony that parent sought medical treatment and placed child in hospice care for illness that would not normally call for such care). Again, we conclude that Dr. Beeson’s testimony was permissible, so the district court did not abuse its discretion nor plainly err in admitting it.

iii. Wilson waived his argument that the prosecution's Rule 16 disclosure was insufficient as to parental expectations

Third, Wilson argues that Dr. Beeson's testimony should have been excluded because it was not properly disclosed in the prosecution's Rule 16 notice. Again, Wilson did not object below, and thus on appeal we would review for plain error. But Wilson's briefs did not argue plain error, so this argument is waived.

To be sure, Wilson did take issue with some aspects of the Rule 16 notice below. He sought a Daubert hearing on Dr. Beeson's testimony relating to the pain B.W. would have experienced, and after the jury entered its verdict, he moved for a new trial based in part on the Rule 16 notice being insufficient because it failed to disclose that she would testify as to the specific modality of B.W.'s injuries—i.e., that the injuries were likely caused by direct blows or yanking motions. Neither related to parental expectations, so Wilson needed to argue plain error on appeal.

Wilson's opening brief is at times unclear on the appropriate standard of review for each issue raised. Rather than stating the standard of review when discussing an argument, the brief lays out the general standards for preserved and unpreserved objections. Then, it describes the district court as having erred "reversibly and/or plainly" or having "erred and abused its discretion" for a general category of testimony. Aplt. Br. 9, 16. In fact, Wilson states that, because he "objected to Beeson's testimony regarding 'parental expectations' and 'medical diagnoses,' the Court's review of these errors is for harmfulness." Id. at 25. What this fails to address is that Wilson only objected on certain grounds at trial: invasion

of the province of the jury. That is insufficient to capture his current Rule 16 argument.

Wilson's reply brief attempts to sidestep this omission. It states that the government misunderstands the structure of the opening brief and points to its catch-all discussion of standards of review in general, then the description of the alleged errors, and then a discussion of how all complained-of aspects of Dr. Beeson's testimony as a whole would meet the plain-error standard. Conspicuously absent from the five-page discussion of plain error that Wilson points to is any reference to Rule 16, any indication as to whether he had objected below as required by 10th Cir. R. 28.1(A), and any analysis of how that alleged error was plain.

Because Wilson did not preserve this objection and his appellate briefs fail to properly address the issue on plain error review, the claim is waived.

c. Commenting on credibility

Wilson's final argument with respect to Dr. Beeson's testimony is that she impermissibly commented on his credibility as a witness. Wilson recognizes on appeal that he failed specifically to object on these grounds below, so we review for plain error. We conclude that there was no error in permitting Dr. Beeson's testimony.

During Dr. Beeson's testimony, the prosecution asked her whether B.W.'s injuries were consistent with hitting her face on someone's collarbone, her mother rolling over on her, falling off of a bed, or being lightly stepped on. Dr. Beeson said the injuries were inconsistent with those explanations. Dr. Beeson explained that

injuries of the severity present in B.W.’s case were more likely caused by several forceful yanking actions and direct blows. Dr. Beeson also said the injuries were unlikely to have been caused by B.W. because at two months old, babies are not mobile and, therefore, are typically unable to cause injuries to themselves. Wilson now argues that this testimony was “in form and function” a comment on his credibility, which he says is impermissible. Aplt. Br. 23. Wilson is mistaken.

Typically, expert witnesses are not permitted to “go so far as to usurp the exclusive function of the jury to weigh the evidence and determine credibility.” United States v. Hill, 749 F.3d 1250, 1260 (10th Cir. 2014) (quoting United States v. Samara, 643 F.2d 701, 705 (10th Cir. 1981)). This precludes testimony that “does nothing but” vouch for or cast doubt on another witness’s credibility and, therefore, does not “assist the trier of fact” in its credibility determinations. United States v. Charley, 189 F.3d 1251, 1267 (10th Cir. 1999) (en banc). That is not the case here. Dr. Beeson never commented on Wilson’s credibility. Rather, Dr. Beeson was explaining her diagnosis and rebutting any innocent explanation for B.W.’s injuries. Courts have consistently recognized that “[a] doctor can . . . summarize the medical evidence and express an opinion that the evidence is consistent or inconsistent with the victim’s allegations.” United States v. Whitted, 11 F.3d 782, 785 (8th Cir. 1993); see also Charley, 189 F.3d at 1264 (allowing doctor to “inform the jury of characteristics in sexually abused children and describe the characteristics the alleged victim exhibits” (quoting Whitted, 11 F.3d at 785)). The fact that this may have impacted Wilson’s credibility in the eyes of the jury is of no moment. If an accident

investigator stated that damage to a car and skid marks on the road could only have been caused by a car driving well above the speed limit and a defendant claimed to be driving below the speed limit, this may indeed lower the jury's estimation of the defendant's credibility. But this would not be grounds to exclude the accident investigator's testimony and, in fact, represents only an effort to "assist the trier of fact" in its credibility determinations.

To be sure, when a medical finding can be explained equally by abuse or an innocent explanation, a doctor's "unconditional opinion," Charley, 189 F.3d at 1266, that he or she believes "abuse has in fact occurred is ordinarily neither useful to the jury nor admissible." Whitted, 11 F.3d at 785. That is because to believe the victim was abused, the doctor "had to believe [the victim's] statements" and doctors are "not qualified to judge . . . truthfulness." Id. at 786. Therefore, the doctor is "merely vouching for the credibility of the child complainants." Charley, 189 F.3d at 1266. Again, that is not the case here. Dr. Beeson's testimony spoke to symptoms and their causes, which rendered innocent explanations unlikely; it was not judging a party's truthfulness nor choosing the victim's account over an equally plausible explanation. There was no error, let alone plain error, in permitting the testimony.

B. Lay Witness Testimony

Next, Wilson challenges multiple aspects of Springer's and Poffel's testimony, as well as one aspect of Henson's testimony. We will first address his argument that

Springer and Poffel gave improper expert testimony, and then we will address his argument that all three impermissibly commented on his credibility.

a. Expert testimony

Wilson argues that both Springer and Poffel, despite being admitted as lay witnesses, at times offered what was in effect expert testimony. Wilson objected to statements by both below, so we review for abuse of discretion. The district court overruled the objection as to Poffel and sustained the objection as to Springer; nevertheless, Springer went on to make further similar statements that the district court allowed without further objection. We conclude that, though the witnesses may have approached the line of expert testimony, any error would have been harmless.

Lay witness opinion testimony is limited to statements that are “(a) rationally based on the witness’s perception; (b) helpful to clearly understanding the witness’s testimony or to determining a fact in issue; and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.” Fed. R. Evid. 701. Meanwhile, expert opinion testimony admitted via Rule 702 is meant to cover specialized knowledge, and experts must demonstrate that they are qualified to provide such opinions. Here, both Poffel and Springer were offered as lay witnesses who had interviewed Wilson and would testify as to their interactions with him.

Yet, both Springer and Poffel made statements that appeared to be the result of specialized knowledge. Specifically, Springer stated that in his experience interviewing suspects, child abusers often proffer innocent explanations for the child’s injuries, minimize the extent of the injuries, and minimize their involvement

in those injuries. Similarly, Poffel said that it is common for perpetrators of child abuse to minimize the child's injuries. Because "opinion testimony premised on the officer's professional experience as a whole is expert testimony," United States v. Cristerna-Gonzalez, 962 F.3d 1253, 1259 (10th Cir. 2020), Poffel and Springer's statements may have crossed this line. See United States v. Beierle, 810 F.3d 1193, 1203 (10th Cir. 2016) (Hartz, J., concurring) ("A law-enforcement officer's opinion based on police training and the experience of conducting hundreds of interviews easily fits that description."). On the other hand, "observations [that] are common enough and require . . . a limited amount of expertise," may be appropriate as lay witness testimony. James River Ins. Co. v. Rapid Funding, LLC, 658 F.3d 1207, 1214 (10th Cir. 2011) (quoting United States v. VonWillie, 59 F.3d 922, 929 (9th Cir. 1995)). Whether the observations at issue can be characterized as such is not entirely clear. "[T]he government concedes that a fraction of the answers did cross the line between Fed. R. Evid. 701 and 702." Aple. Br. 35.

That said, we need not conclusively determine whether the challenged statements were admitted in error because they were substantially similar to statements made by Dr. Beeson, who was admitted as an expert. (See ROA v.3 154-56 (saying it is "[v]ery common" for suspected child abusers to offer accidental explanations and minimize their involvement, and that it is concerning if a parent's retelling of a child's medical history changes).) Therefore, even if Poffel's and Springer's statements were excluded, the jury still would have heard the same things.

Wilson, then, was not prejudiced by the admission of Poffel's and Springer's challenged testimony.

Finally, the last asserted ground of potentially errant expert testimony was Poffel's testimony that when a suspect tells multiple different stories, it likely means they are lying. This does not qualify as specialized knowledge. The fact that "the changing of his story during the course of the interview" indicates dishonesty is a "fairly obvious and commonly understood issue[] of veracity." Hill, 749 F.3d at 1262 ("The reason the issue of credibility 'belongs to the jury' is that jurors 'are presumed to be fitted for it by their natural intelligence and their practical knowledge.'" (quoting Aetna Life Ins. Co. v. Ward, 140 U.S. 76, 88 (1891))). As such, this testimony was not errant expert testimony, nor was Wilson unfairly prejudiced by its admission.

b. Commenting on credibility

Similar to his argument with respect to Dr. Beeson's testimony, Wilson argues that Poffel, Springer, and Henson all impermissibly commented on his credibility. Wilson argues that, though plain error review is appropriate for Henson, his objections to the testimony of Springer and Poffel also preserved an objection that they were commenting on his credibility, so we should review for abuse of discretion. We conclude that there was no error, so it is ultimately irrelevant which standard we apply to Poffel and Springer's testimony.

At trial, Henson said Wilson changed his story about B.W.’s injuries, and after the first time she “asked him not to lie to [her] again.” (ROA v.3 86.) Meanwhile, Poffel and Springer stated that Wilson’s story about B.W.’s injuries changed, and that they believe inconsistent stories are indicative of falsity. Wilson argues that these statements violate Federal Rule of Evidence 608, which he states prevents witnesses from testifying about specific instances of dishonesty. Wilson is mistaken.

First, Rule 608 contains no such limitation. Rule 608’s prohibition on extrinsic evidence “applies only when the sole reason for proffering that evidence is to attack or support the witness’ character for truthfulness.” Fed. R. Evid. 608, Committee Notes on Rules—2003 Amendment. The rule “leaves the admissibility of extrinsic evidence offered for other grounds of impeachment (such as contradiction, prior inconsistent statement, bias and mental capacity) to Rules 402 and 403.” *Id.* “[M]ost courts do not view contradiction of one witness’s testimony by other witnesses as an attack on character.” United States v. Martinez, 923 F.3d 806, 817 (10th Cir. 2019) (quoting Weinstein’s Fed. Evid. § 608.12[4][a]). The witnesses here were not testifying about Wilson’s character for truthfulness via specific conduct; rather, they were testifying about that specific conduct for the purpose of demonstrating that he was contradicting himself at the time. This has nothing to do with his character for truthfulness. For example, Henson’s statement that at one point she told Wilson “not to lie to [her] again” was not meant to paint Wilson as a liar in general, it was historical evidence suggesting that the stories he was telling her about B.W.’s injuries were not believable to her at the time. (See ROA v.3 86.); Kauz v. United States, 188 F.2d 9, 10 (5th Cir. 1951) (“The mere fact

that a witness is contradicted by other evidence in the case does not constitute an attack upon his reputation for truth and veracity.”).

Second, Poffel and Springer were not commenting on Wilson’s credibility as a witness. Rather, similar to Dr. Beeson, they simply testified to historical facts that suggested Wilson was not credible, such as his changing story. This is not improper. See United States v. Kepler, 74 F.4th 1292, 1318 (10th Cir. 2023) (“Mr. Kepler tries to frame the questions as seeking lay testimony from Mr. Kepler about the credibility of other witnesses. But they more accurately reflect the prosecution’s efforts to show that Mr. Kepler’s account was at odds with the testimony of others.”).

The lay witness’ testimony was not improper, and thus the district court did not abuse its discretion nor plainly err by admitting it.

C. Prosecutorial Misconduct

Wilson also highlights several examples of what he argues constituted prosecutorial misconduct. Because he did not object below, we review for plain error, to determine whether any resulted in a miscarriage of justice. See United States v. Hernandez-Muniz, 170 F.3d 1007, 1011 (10th Cir. 1999). We conclude that none of the issues Wilson raises were plainly improper, so we need not consider the effect they had on the outcome of the trial. See United States v. Christy, 916 F.3d 814, 824 (10th Cir. 2019).

a. “A stupid story”

In closing, the prosecution referred to Wilson’s argument that B.W.’s injuries were caused by falling off the bed, Wilson accidentally stepping on B.W., and B.W.

hitting Wilson’s collarbone as “a stupid story.” (ROA v.3 312.) Wilson asserts that it was prosecutorial misconduct to characterize his case as “stupid.” Though perhaps an unwise choice of words, this does not rise to the level of prosecutorial misconduct.

Prosecutors should refrain from “[m]ethods designed to arouse prejudice, passion and use of invective.” United States v. Coppola, 479 F.2d 1153, 1163 (10th Cir. 1973). That said, colorful language used to describe a defendant’s argument is less concerning than colorful language used to describe defendants themselves. See United States v. Robinson, 978 F.2d 1554, 1566–67 (10th Cir. 1992) (permitting prosecutor’s comments that defendant’s testimony consisted of “lies” because it “would have been perceived only as commentary on the implausibility of the defendant’s story” while recognizing “a prosecutor would be well advised to avoid directly accusing a defendant of lying” (quoting United States v. Garcia, 818 F.2d 136, 143–44 (1st Cir. 1987))); Williams v. Borg, 139 F.3d 737, 745 (9th Cir. 1998) (“He did not say the man was ‘trash’; he said the argument was. A lawyer is entitled to characterize an argument with an epithet as well as a rebuttal.”).

Further, while this court has said that prosecutors should not share their own opinion on the outcome of a case, it is permissible to do so when the comment is “based on the evidence in the case.” United States v. Harris, 956 F.2d 279 (Table), 1992 WL 33210, at *8 (10th Cir. Feb. 1, 1992) (unpublished).² For that reason, in Harris, we determined it was permissible, albeit inappropriate, to say “[o]f all the

² Unpublished cases are not binding precedent, but we may consider them for their persuasive value. See Fed. R. App. P. 32.1(a); 10th Cir. R. 32.1(A).

preposterous and outlandish remarks that I ever heard in my life, asking you to return a verdict of not guilty . . . just about leads that list.” Id. (quotation omitted). The statement here, which only spoke to possible innocent explanations, does not even go this far. And the statements were grounded in the evidence, supported by Dr. Beeson’s testimony that the innocent explanations were inconsistent with B.W.’s injuries.

While we surely do not condone the use of such language by the prosecution, it was not so flagrant as to warrant reversal. See United States v. Davis, 15 F.3d 1393, 1402–03 (7th Cir.1994) (concluding “prosecutor’s references to [defendant’s] case as ‘hogwash,’ ‘trash,’ and ‘garbage’ . . . did not deprive [defendant] of a fair trial”). In United States v. Jackson, the Seventh Circuit said

[t]he prosecutor labelled the defendant’s testimony as “hogwash, absolute garbage, B.S. and crap.” That kind of street talk will seldom if ever be appropriate for a United States Attorney to use in a federal court We do not find these government final arguments to be reversible in the context of this case although some were close to the line. However, we do not recommend the government’s arguments serve as a model to be followed.

61 F.3d 906 (Table), 1995 WL 431352, at *3 (7th Cir. July 20, 1995)

(unpublished). Referring to specific testimony as “stupid” falls short of the mark to reverse, as well.

b. “Held accountable” and “gets justice”

Wilson argues it was improper for the prosecution to state, in closing, that the jury should “get[] justice” for B.W. and hold Wilson “accountable” for his conduct. (ROA

v.3 305, 317.) He says that the prosecution implied the jury had a civic duty to convict Wilson, which is improper. Thornburg v. Mullin, 422 F.3d 1113, 1134 (10th Cir. 2005). Yet, Wilson’s characterization of the prosecution’s closing is misleading.

The prosecution here did not say the jury had a civic duty to convict. Rather, the prosecution said that the jury should hold Wilson accountable and that whether B.W. gets justice was in their hands. This is analogous to language that this court held permissible in Thornburg itself, when the prosecutor told the jury that “[j]ustice must run in this case for three victims” and the defendant “has got to be told what he did was wrong.” Id. (quotation, emphasis omitted) (“We see little, if any, impropriety.”).

Further, some of the prosecution’s comments were made only on rebuttal closing in response to defense counsel’s own closing arguments, which affirmatively raised the concept of civic duty and accountability, only to rebut them. Wilson asks us to find prosecutorial misconduct when the defense counsel raised civic duty, and the prosecution never mentioned it, simply because the prosecution did not go out of their way to explain for a second time that the jury has no civic duty to convict. We decline to do so. Christy, 916 F.3d at 825 (“[W]hen a prosecutor has responded to a defense counsel’s arguments, courts grant more leeway.”).

c. Implying facts beyond the evidence

Wilson also argues that it was prosecutorial misconduct when, in closing, the prosecution stated that “[a]ll the United States needs to prove is that when the defendant drew his hand back to hit B.W., or when he yanked on her legs, or squeezed her chest, or pinched her ears, his actions were not an accident.” (ROA v.3 297.) He argues that the

evidence was only that B.W.'s injuries were consistent with such violent conduct and that it had not been proven that he had been the perpetrator of the injuries. Therefore, Wilson argues that the prosecution misstated the evidence by suggesting he had in fact done so. We disagree.

This court has said that “the Government is entitled to a reasonable amount of latitude in drawing inferences from the evidence during closing arguments.” United States v. Hammers, 942 F.3d 1001, 1016 (10th Cir. 2019) (internal quotation marks omitted). Here, the prosecution was not implying that there was direct evidence that Wilson had “yanked on her legs, or squeezed her chest, or pinched her ears.” The prosecution acknowledged that there was no direct evidence that Wilson had done so, but then directed the jury to use their common sense to deduce his guilt from the circumstantial evidence that Wilson could not explain the injuries that occurred in his care. In other words, the prosecution was stating its case: that, connecting the dots of the evidence presented, this is the picture that emerges. Kepler, 74 F.4th at 1320 (“Although some of these statements used arguably emotional or inflammatory language, they accurately summarized the evidence, and Mr. Kepler has not shown that they were plainly improper” when “the prosecutor was asking the jury to draw [a] reasonable inference.”).

Unsurprisingly, defense counsel stated in closing, “[d]id he purposely try to hurt his child? I submit to you that he didn’t. That if he did anything, it was an accident.” (ROA v.5 407.) Likewise, defense counsel asserted “[h]e didn’t realize that she had any injuries to be worried about.” (Id. at 422.) Just as defense counsel

was permitted to say that Wilson had not engaged in these acts, the prosecution was allowed to state that he had. That is the basic operation of closing arguments in an adversarial trial system.

To be sure, the prosecution in closing cannot distort the record. For example, this court found it improper for a prosecutor to state “the travel agent says ‘you here in town on business?’ and [the defendant] snickers and says ‘kinda,’ as if it’s no big deal, kinda, snicker, snicker” when “[t]here was no testimony or other evidence that [the defendant] laughed or otherwise made light of his actions.” Le v. Mullin, 311 F.3d 1002, 1020 (10th Cir. 2002) (per curiam) (cleaned up). Similarly, it was improper when “the District Attorney said that [an individual] was then under investigation” without any “basis in the record warranting such a statement.” Marks v. United States, 260 F.2d 377, 383 (10th Cir. 1958). That is not the case here. Rather, the prosecution “focused on the factual inferences the jury could draw from the physical evidence,” which suggested that B.W.’s injuries were caused by multiple direct blows and yanks while in Wilson’s sole care. Kepler, 74 F.4th at 1320. This does not constitute prosecutorial misconduct.

d. Eliciting improper witness testimony

The last argument Wilson raises is that it was prosecutorial misconduct to elicit the witness testimony that he alleges was impermissible, as discussed above. Because we conclude that none of that testimony itself was obviously errant, we also conclude that it was not misconduct to elicit that testimony.

In sum, the prosecution's comments and questions do not rise to the level of prosecutorial misconduct, when considered separately or together.

D. Cumulative Error

Finally, Wilson argues that if reversal is not warranted by any of the individual alleged errors, then we should reverse because of the cumulative effect of these errors. The only possible error identified, however, was the testimony of Poffel and Springer that may have crossed the line into expert testimony. Because we have already concluded that these statements were harmless, and there is no other error to accumulate, Wilson's cumulative error argument necessarily fails.

IV. CONCLUSION

None of the issues Wilson raises with his trial merit reversal. Therefore, we AFFIRM Wilson's convictions.