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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1968**

State of Minnesota,
Respondent,

vs.

Jennifer Ann Culver,
Appellant.

**Filed December 31, 2018
Reversed
Reyes, Judge**

Ramsey County District Court
File No. 62-CR-16-5774

Lori Swanson, Minnesota Attorney General, St. Paul, Minnesota; and

John J. Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney,
St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Gina Schulz, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Connolly, Judge; and Reyes,
Judge.

UNPUBLISHED OPINION

REYES, Judge

Appellant argues that her conviction must be reversed because insufficient evidence supported her conviction of deprivation of parental rights and, in the alternative, that the district court abused its discretion in admitting relationship evidence at trial. We reverse.

FACTS

The underlying facts of this case stem from a family court matter between appellant Jennifer Culver and D.E. After appellant and D.E. were in a brief relationship, appellant became pregnant with D.E.'s child, L. The relationship ended before L. was born in September 2012, and D.E. did not know that appellant was pregnant or had given birth to L. until approximately June 2013. D.E. eventually obtained court-ordered visitation rights.

In August 2016, the state charged appellant with one count of deprivation of parental rights during the time period of July 25 through August 8, 2016, under Minn. Stat. § 609.26, subd. 1(3) (2016). After a trial, the jury returned a verdict of guilty. This appeal follows.

DECISION

Appellant argues that the state failed to prove two elements of the offense: her intent and that her conduct amounted to “substantial” deprivation under the statute. Appellant contends the circumstances proved would lead the jury to reasonably infer an alternative hypothesis inconsistent with guilt.¹ We agree.

¹ Appellant filed a supplemental pro se brief, which we construe as a challenge to the sufficiency of the evidence. Because we address the sufficiency-of-the-evidence challenge raised in appellant's principal brief in the body of this opinion, we need not separately address appellant's pro se argument.

Under Minnesota Statutes, whoever intentionally “takes, obtains, retains, or fails to return a minor child from or to the parent in violation of a court order, where the action manifests an intent to substantially deprive the parent of rights to parenting time or custody,” may be charged with and convicted of a felony. Minn. Stat. § 609.26, subd. 1(3).

When a sufficiency-of-the-evidence claim involves the question of whether a defendant’s conduct meets the statutory definition of an offense, an appellate court is presented with a question of statutory interpretation that is reviewed de novo. *State v. Hayes*, 826 N.W.2d 799, 803 (Minn. 2013). The first step in a statutory interpretation analysis is to determine whether the statute’s language is ambiguous. *State v. Peck*, 773 N.W.2d 768, 772 (Minn. 2009). If it is unambiguous, we interpret the statute’s text according to its plain language. *State v. Struzyk*, 869 N.W.2d 280, 284-85 (Minn. 2015). Where the statute does not provide a definition of a word, we look to the plain meaning. *State v. Haywood*, 886 N.W.2d 485, 488 (Minn. 2016). To identify the plain meaning of a particular word used in a statute, it is appropriate to refer to the common usage of the word. *State v. Fitman*, 811 N.W.2d 120, 123 (Minn. App. 2012). The common definition of “substantial” is “[c]onsiderable in importance, value, degree, amount, or extent.” *The American Heritage Dictionary* 1213 (2d ed. 1985).

Intent is a product of the mind, based on inference, and is generally proven by circumstantial evidence. *State v. Cooper*, 561 N.W.2d 175, 179 (Minn. 1997). Therefore, the circumstantial-evidence analysis is appropriate here in determining whether the state proved the element of intent beyond a reasonable doubt. When reviewing a conviction based on circumstantial evidence, this court applies a two-step analysis. *State v. Harris*,

895 N.W.2d 592, 600-601 (Minn. 2017). The first step is to identify the circumstances proved “by resolving all questions of fact in favor of the jury’s verdict,” in deference to the jury’s credibility determinations. *Id.* at 600. Second, this court independently considers the “reasonable inferences that can be drawn from the circumstances proved.” *Id.* at 601. “To sustain the conviction, the circumstances proved, when viewed as a whole, must be consistent with a reasonable inference that the accused is guilty and inconsistent with any rational hypothesis except that of guilt.” *Id.*

The state proved the following circumstances at trial. Appellant denied D.E. parenting time on seven occasions: July 25, July 26, July 29, August 1, August 2, August 6, and August 8. On one of these occasions, she was home but still prevented D.E. from seeing L. The family court ordered that D.E.’s parenting time on Mondays, Tuesdays, and Saturdays was to begin on July 25 unless the parties reached a mutual agreement otherwise, despite appellant’s family wedding. Appellant and D.E. did not reach a mutual agreement. Appellant sent D.E. a message on July 25, approximately four hours before his scheduled parenting time, stating that L. would be unavailable for a week and a half due to the family wedding. D.E. responded that he may have been willing to work with appellant had she informed him of the conflict earlier. On August 5, appellant stated that she needed to leave town immediately due to a death in the family, the services were August 8 and August 9, and L. would not be available until after the services on Tuesday, August 9. Investigation showed that appellant’s son-in-law’s father died on July 27 and a funeral service was being held on Monday, August 8, in Minneapolis, Minnesota.

Based on the circumstances proved, there is a reasonable hypothesis that appellant intended to substantially deprive D.E. of parenting time. However, we also conclude that there is a reasonable hypothesis inconsistent with guilt, which is that appellant did not intend to *substantially* deprive D.E. of his parenting time, based on the plain meaning of the word. The circumstances do not indicate that appellant attempted to conceal L.'s whereabouts, she did not leave the state, the time period of the charged conduct was relatively short, and she let D.E. know why he could not pick up L. Moreover, the undisputed evidence presented by D.E. shows that appellant maintained regular communication with him. On multiple occasions, appellant indicated to D.E. that she would like to meet to reschedule the visits, and when D.E. did not acknowledge her willingness to reschedule visits, she suggested specific dates when he could begin makeup visits. He eventually agreed to meet to discuss makeup visits. Further, while the record shows a lack of transparency and complete candor on appellant's part, the family events did in fact occur, and the record does not indicate that appellant intended to keep L. from D.E. after these events were over. We do not condone appellant's behavior, but we conclude that the circumstances proved show that there is a reasonable hypothesis that appellant did not intend substantial deprivation.

A review of similar cases supports our conclusion that there is an alternative hypothesis inconsistent with guilt that can be inferred. Other cases involving Minn. Stat. § 609.26 indicate that substantial deprivation generally involves circumstances including a longer duration, concealing the child's whereabouts, a lack of communication, or leaving the state with the child. For example, in *State v. Andow*, a mother picked up her child from

the child's father for a two-hour visit and never returned, taking the child to North Dakota, and telling her sister to remove her belongings from her apartment and collect the security deposit, indicating that she had no plans to return. 386 N.W.2d 230, 231 (Minn. 1986). She was arrested 12 days later on a felony warrant. *Id.* In *State v. Niska*, the child's maternal grandparents moved with the child to Arizona without giving contact information to the father, preventing him from exercising parenting time. 514 N.W.2d 260, 262 (Minn. 1994). The child remained in Arizona, away from the father, for nearly five-and-a-half years. *Id.* In *State v. Smith*, a mother took the children out of the area and did not surrender to police for over a month, after the children had been reported missing. 656 N.W.2d 420, 421 (Minn. App. 2003). The circumstances of these cases establish an intent to substantially deprive a person of their rights to parenting time or custody. Such circumstances are lacking here.

Because we reverse based on insufficient evidence, we decline to address appellant's alternative arguments regarding the admission of relationship evidence.

Reversed.