STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0315

State of Minnesota,
Respondent,

vs.

Jessica Lynn Maack,
Appellant.

Filed December 24, 2018
Reversed
Hooten, Judge

Douglas County District Court
File No. 21-CR-17-1047

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

Chad M. Larson, Douglas County Attorney, David M. Classen, Assistant County Attorney, Alexandria, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Renée Bergeron, Special Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Hooten, Judge; and Klaphake, Judge.*

S Y L L A B U S

Mere knowledge that another person is storing methamphetamine paraphernalia in a private bedroom of a child's home is insufficient to support a conviction of engaging in

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

the activity of storing methamphetamine paraphernalia in a child's home under Minn. Stat. § 152.137, subd. 2(a)(4) (2016).

O P I N I O N

HOOTEN, Judge

In this appeal from her conviction of storing methamphetamine paraphernalia in a child's residence, appellant argues that there is insufficient evidence to prove beyond a reasonable doubt that she engaged in the activity of storing any methamphetamine paraphernalia. Minn. Stat. § 152.137, subd. 2(a)(4) (2016). Appellant also argues that the district court erred in denying her motion for judgment of acquittal and convicting her of a charge that the state dismissed in a plea agreement. We reverse.

FACTS

In June 2017, when appellant Jessica Lynn Maack and her two children had nowhere else to live, they stayed in her mother-in-law's home. Maack's husband, who is the father of her two children, owed a local drug dealer thousands of dollars for drugs. To pay off his debt, Maack's husband, who permanently lived in his mother's home, allowed the dealer to live in the basement rent-free. The dealer lived in the home for about ten months, but he was in and out of jail during that time. Maack knew that when the dealer stayed there, he continued to deal drugs out of his basement bedroom.

After receiving anonymous complaints about short-term traffic coming in and out of the home, the police performed a "garbage pull" at the residence. In the garbage, police found drug paraphernalia and items that tested positive for methamphetamine. Relying on that evidence, the police obtained a search warrant and searched the home. The following

people were present at the time of the search: Maack and her two children, the dealer and two of his children, and a female adult and one of her children (who were also temporarily living there). The police found methamphetamine and drug paraphernalia in the dealer's private bedroom in the basement. The police also found marijuana and a marijuana pipe in Maack's bedroom upstairs.

Maack admitted to the police that she once took a hit from a methamphetamine pipe in the dealer's bedroom. She told the police that she attempted to find a better home for her children but that it was difficult because she earned only $10.50 an hour and had nowhere else to go. She told police that she refused to get involved in the drug-dealing business and hoped to save enough money to permanently move away from her mother-in-law's home.

The state charged Maack with four counts: fifth-degree methamphetamine possession, Minn. Stat. § 152.025, subd. 2(1) (2016); storage of methamphetamine paraphernalia in a child's residence, Minn. Stat. § 152.137, subd. 2(a)(4); petty misdemeanor possession of a small amount of marijuana, Minn. Stat. § 152.027, subd. 4(a) (2016); and petty misdemeanor possession of drug paraphernalia, Minn. Stat. § 152.092(a) (2016). Later, the state dismissed count one, fifth-degree methamphetamine possession. Pursuant to a plea agreement, Maack pleaded guilty to possession of a small amount of marijuana and the state agreed to dismiss the possession of drug paraphernalia charge. The only remaining count, engaging in the activity of storing methamphetamine paraphernalia in a child's residence, was tried to a jury.

After closing arguments, Maack moved for judgment of acquittal, arguing that the state failed to prove that she knowingly stored methamphetamine paraphernalia because she did not exercise any control over the paraphernalia found in the dealer's bedroom. The district court denied the motion, and the jury found Maack guilty. The district court entered convictions on three counts: storing methamphetamine paraphernalia in a child's residence, petty misdemeanor possession of a small amount of marijuana, and petty misdemeanor possession of drug paraphernalia. This appeal follows.

ISSUE

Was a mother's mere knowledge that a drug dealer may be storing methamphetamine paraphernalia in his private bedroom in the home where she and her children lived sufficient to prove that she was guilty of engaging in the storage of methamphetamine paraphernalia under Minn. Stat. § 152.137, subd. 2(a)(4)?

ANALYSIS

Maack argues that there was insufficient evidence to prove beyond a reasonable doubt that she engaged in storing methamphetamine paraphernalia in a home where she lived with her children. She argues that mere knowledge that paraphernalia is being stored does not amount to engaging in the activity of storing methamphetamine paraphernalia under Minn. Stat. § 152.137, subd. 2(a)(4). Her argument is two-fold: whether knowledge is sufficient for a conviction under subdivision 2(a)(4), and whether the evidence that she knew paraphernalia was stored in the home and used it on one occasion is sufficient to convict her of engaging in the activity of storing the paraphernalia.

A sufficiency-of-the-evidence argument that turns on the meaning of the criminal statute presents a question of statutory interpretation that we review de novo. *State v.*

Henderson, 907 N.W.2d 623, 625 (Minn. 2018). When interpreting statutes, we aim to "ascertain and effectuate the Legislature's intent." *State v. Struzyk*, 869 N.W.2d 280, 284 (Minn. 2015). The first step is to "determine whether a statute's language, on its face, is ambiguous." *Henderson*, 907 N.W.2d at 625. To determine if a statute is ambiguous, we give words and phrases their ordinary meaning. *Lapenotiere v. State*, 916 N.W.2d 351, 357 (Minn. 2018). A statute is ambiguous when the language is subject to more than one reasonable interpretation. *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000). If the statute is unambiguous, then we apply the plain meaning of the language used in the statute. *State v. Hayes*, 826 N.W.2d 799, 804 (Minn. 2013). "A rule of strict construction applies to penal statutes, and all reasonable doubt concerning legislative intent should be resolved in the favor of the defendant." *State v. Colvin*, 645 N.W.2d 449, 452 (Minn. 2002).

Minnesota law provides, "No person may knowingly engage in any of the following activities in . . . the residence of a child[:] . . . storing any methamphetamine paraphernalia." Minn. Stat. § 152.137, subd. 2(a)(4). The interpretation of this statute is one of first impression. Because the terms "engage in" and "storing" are not defined by the statute, we first address whether there is an ordinary usage of these terms, which provide the terms' plain meanings. *See Occhino v. Grover*, 640 N.W.2d 357, 359 (Minn. App. 2002), *review denied* (Minn. May 28, 2002). "And ordinary usage may be determined with the aid of dictionary definitions." *State v. Larson*, 895 N.W.2d 655, 658 (Minn. App. 2017), *review denied* (Minn. July 18, 2017). "Engage" means "[t]o employ or involve oneself; to take part in; to embark on." *Black's Law Dictionary* 646 (10th ed. 2014). It also has the

meaning "[t]o involve oneself or become occupied; participate." *The American Heritage Dictionary of the English Language* 591 (5th ed. 2011). The verb to "store" means "[t]o keep (goods, etc.) in safekeeping for future delivery in an unchanged condition" (*Black's Law Dictionary* 1646 (10th ed. 2014)) and "[t]o reserve or put away for future use" (*The American Heritage Dictionary of the English Language* 1720 (5th ed. 2011)).

Using these definitions, we conclude that the statute is not ambiguous and the plain meaning of Minn. Stat. § 152.137, subd. 2(a)(4), prohibits a person from participating and taking part in the activity of keeping methamphetamine paraphernalia for future use in a child's residence. The statute specifically requires proof that a person be engaged in, and not merely aware of, the unlawful activity occurring in a child's home.[1] Based on our conclusion that participation is required to meet the statutory definition of storing methamphetamine paraphernalia, we conclude that mere knowledge that another person is storing paraphernalia in a private bedroom of the home does not meet the statutory definition.

Having decided that participation in the activity of storing methamphetamine paraphernalia is required under the statute, we turn to the question of whether the evidence was sufficient to support Maack's conviction. We undertake a "painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the

[1] A different analysis would ensue under Minn. Stat. § 152.137, subd. 2(b) (2016), which states, "No person may *knowingly cause or permit* a child or vulnerable adult to inhale, be exposed to, have contact with, or ingest methamphetamine, a chemical substance, or methamphetamine paraphernalia." (Emphasis added.) Maack's knowledge that methamphetamine paraphernalia was stored in the home might be more indicative of guilt under this subdivision, but the state did not charge her under this subdivision.

conviction, was sufficient" to support the conviction. *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012) (quotation omitted). We assume that "the jury believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Caldwell*, 803 N.W.2d 373, 384 (Minn. 2011) (quotation omitted). We will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offense. *Ortega*, 813 N.W.2d at 100.

In this case, the state relied heavily on circumstantial evidence. When reviewing a conviction based on circumstantial evidence, we apply a two-step analysis. *State v. Harris*, 895 N.W.2d 592, 600 (Minn. 2017). The first step is to identify the circumstances proved by resolving all questions of fact in favor of the jury's verdict and in deference to the jury's credibility determinations. *Id.* at 600. Second, we "independently consider the reasonable inferences that can be drawn from the circumstances proved." *Id.* at 601. At the second step, we give no deference to the jury's reasonable inferences. *State v. Fox*, 868 N.W.2d 206, 223 (Minn. 2015). If the circumstances proved when viewed as a whole are "consistent with a reasonable inference that the accused is guilty and inconsistent with any rational hypothesis except that of guilt," then we sustain the conviction. *Harris*, 895 N.W.2d at 601.

The circumstances proved that implicate Maack include: she knew that the dealer dealt drugs out of his private bedroom in the basement, she used a methamphetamine pipe in the home on one occasion, her lock (which was still in its package) was found in the

dealer's bedroom, and she entered the dealer's room during the search to find clothes for his children.

When viewed as a whole, the circumstances proved do not preclude a reasonable inference that Maack did not participate in the activity of storing methamphetamine paraphernalia in the home. The state contends that a reasonable inference can be drawn from the circumstances proved that Maack engaged in storing methamphetamine paraphernalia because she had dominion and control over the paraphernalia when she used a methamphetamine pipe in the home. We find this unpersuasive.

The state offers no controlling caselaw to support its argument. In order to conclude that the circumstances proved are inconsistent with any rational hypothesis except that of guilt, we would need to conclude that momentary possession and use of a methamphetamine pipe before handing it off to another person amounts to "storing" it. We cannot conclude this. Maack admits that she took a hit from a methamphetamine pipe that the dealer and a group of people passed around in the dealer's bedroom. Simply being handed a pipe, taking a hit, and passing it to the next person does not amount to *storing* the pipe. This would yield a result unsupported by the language of the statute. Use of another's methamphetamine pipe on one occasion does not support a reasonable inference that she had dominion and control over the methamphetamine paraphernalia found in the dealer's private bedroom.

The state contends that based on the following circumstances proved we should find sufficient evidence that Maack had dominion and control over the paraphernalia: (1) when the police asked Maack to locate items for all of the children, she went into the dealer's

bedroom, and (2) the police found a lock that belonged to Maack in the dealer's bedroom. Both instances fail to support a reasonable inference that she was engaged in the activity of storing methamphetamine paraphernalia in the dealer's bedroom. First, because the children were being removed from the home, Maack went into the dealer's bedroom during the search to find items for the dealer's children that would presumably be found in that room. Second, Maack told police that she wanted the dealer to lock his bedroom door to keep the children away from his drug-dealing business and left the lock there for that purpose.

The state's evidence only supports the reasonable inference that Maack was familiar with the home and her housemates and that she desired to keep the children safe in the limited capacity she could. The state presented no evidence that Maack shared the bedroom with the dealer, that she had any ownership interest or control over who could live in her mother-in-law's house, or that the dealer's bedroom was not a private space. Instead, the evidence consists solely of Maack's awareness of the paraphernalia in the home and her fleeting use of it. Because mere knowledge that methamphetamine paraphernalia is being stored in the home and limited use of the paraphernalia is insufficient to convict a person under Minn. Stat. § 152.137, subd. 2(a)(4), we reverse Maack's conviction.

D E C I S I O N

Where there was no evidence that Maack had an ownership interest in the home or control over who could live there, her knowledge that another person stored methamphetamine paraphernalia in a private bedroom of the home where she lived with her children is insufficient to convict her of engaging in the activity of storing

methamphetamine paraphernalia under Minn. Stat. § 152.137, subd. 2(a)(4). Additionally, because the record shows and the parties agree that count four had been dismissed pursuant to a plea agreement, we reverse Maack's conviction on count four, petty misdemeanor possession of drug paraphernalia.

Reversed.