**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A17-0031**

State of Minnesota,
Respondent,

vs.

Joveda Marie Edwards,
Appellant.

**Filed December 11, 2017**
**Affirmed**
**Peterson, Judge**

Anoka County District Court
File No. 02-CR-15-3988

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

Anthony C. Palumbo, Anoka County Attorney, Nicholas M. Jannakos, Assistant County Attorney, Anoka, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Leslie J. Rosenberg, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Peterson, Judge; and Halbrooks, Judge.

**U N P U B L I S H E D  O P I N I O N**

**PETERSON**, Judge

Appellant challenges her gross-misdemeanor conviction of neglect of a child, arguing that there was insufficient evidence to support the conviction. We affirm.

## FACTS

D.W. was born on July 20, 2014, to a 15-year-old developmentally disabled mother, who was also an untreated sex offender. Hennepin County assigned a social worker and appointed a guardian ad litem (GAL) for the child.

The social worker, the child's doctor, and the child's daycare provider had concerns about the mother's ability to safely care for the child, and D.W. was removed from his mother's home and placed first at a shelter and later at a nonrelative foster home. In November 2014, the child was placed with appellant Joveda Marie Edwards, a cousin of the child's grandmother.

Between his removal from his mother's home and his placement with appellant, the child had some minor illnesses, but, at a checkup on October 9, 2014, the child's weight was within normal range for a child of his age. At a second visit on October 23, 2014, the child had lost four ounces of weight, but the nurse practitioner believed that was due to his respiratory illness. The GAL visited the child in the nonrelative foster home and stated that he was "doing very well . . . [h]e was very loved and well taken care of there." She said "he appeared to be a healthy, content baby who was starting to explore his surroundings."

During her first visit to appellant's home after the child was placed there, the social worker thought that D.W. seemed healthy. Appellant did not interact with the child; he lay on the floor, or the social worker held him. Appellant told the social worker that the child "was a very spoiled baby, he wanted to be held all the time," but the child was "feeding off a bottle and doing well and eating fine." The GAL visited the child in appellant's home in

November and had no "significant concerns" about the child's "physical appearance" at that visit.

The social worker and the GAL visited appellant's home in December. The social worker thought that the child's legs were "pretty skinny," but appellant told her that was a family trait. The child had started to roll over; the social worker thought that he was a little "fussy" and "wanted to be held," but appellant did not respond to those cues. Appellant repeated that D.W. was "a spoiled baby and wanted to be held all the time, . . . and she didn't want to spoil him." Appellant told the social worker that she was feeding the child formula.

At her December visit, the GAL noted that appellant had "minimal interaction" with the child, in contrast with the previous foster parent. At this visit, appellant told the GAL that the child was "a very greedy baby and a spoiled baby and that he had been spoiled by the previous foster parent." Appellant said that the baby "wanted constant attention and she didn't feel that was good for him"; "he fussed if left alone too much"; and "he wanted to eat all the time." Appellant indicated that "he was too greedy and was going to get too fat." The GAL testified that appellant said she was giving the baby water. When the GAL appeared shocked and told appellant that was not right, appellant denied giving him water. At this visit, the GAL was more concerned about the child because he did not seem to have grown since the last visit.

The GAL visited a third time on January 22, 2015, with the social worker. The social worker testified that the child was "very, very thin" and "[h]is development had regressed." The child could not lift his head or roll over. Appellant told the social worker

that the child was feeding well and she would have to stop him because he ate all the time. The social worker thought that the child "looked malnourished" and his face "looked dull and very dim." She could feel all of his ribs and vertebrae. When the social worker questioned appellant about feeding, appellant said that she could tell when the child was full because his belly was hard and she could "hear the water sloshing around." When questioned about that statement, appellant said she "meant milk, not water." Appellant said she gave the child bottles of water to satisfy his sucking needs. She had not started the child on solid food despite being told that it was fine to do so.

When the GAL walked in on January 22, she thought the child "must be very, very ill," and for a split second, she thought he was dead. She described the child as "thin," and said "his limbs were just flaccid and there was just no reaction in his face." When she picked him up, the child "felt like he was hollow like a hollow doll, he was that thin." She could feel "every one of his vertebrae," and "[h]e was skeletal." He would not return her gaze.

At the end of this visit, the GAL and the social worker decided that the child either had to be seen by a doctor immediately or removed from the home. The social worker asked appellant to take the child to the doctor, but appellant refused to do so because she had another commitment that evening and did not want to alter her schedule; she also refused to let the social worker take the child. The social worker and her supervisor told appellant that she had to get medical care for the child or he would be removed from her home, and appellant said "that was fine."

On January 23, the social worker met appellant and the child at a medical clinic, and appellant gave the child and two trash bags full of his belongings to the social worker. The child was placed in a new foster home, where he "gained weight," "started making progress again developmentally," and "became more engaged."

The doctor who examined the child on January 23 testified that appellant told him that she was concerned because the child was irritable and had trouble sleeping. The child "appeared very thin," and his motor strength was not normal. The child's weight was below the zero percentile for his age, or "well below normal." The doctor considered a number of things: (1) the child had been within normal weight range, but was now below normal; (2) the child fit the diagnosis for failure to thrive, which means that his physical growth was abnormal; (3) the failure-to-thrive diagnosis appeared to arise when the child was under appellant's care; (4) the child's newborn metabolic screen was normal; and (5) the child was not suffering from an illness at the examination. The doctor decided that "the most likely explanation" for the child's failure to thrive was "extrinsic factors" or "inadequate calorie intake." He wrote that the child did not seem to have an illness or an infection, but he was "severely underweight and appeared malnourished."

Appellant was charged with neglect of a child. The district court made specific findings about the child's condition while under appellant's care and in foster care. The court then found that appellant willfully deprived the child of "necessary food and health care appropriate to the child's age," appellant was reasonably able to provide food and health care, and "the deprivation harmed or was likely to substantially harm the child's

physical, mental or emotional health." Based on these findings, the district court entered a guilty verdict. This appeal followed.

## D E C I S I O N

Appellant was convicted for violating Minn. Stat. § 609.378, subd. 1(a)(1) (2014), which provides:

> A parent, legal guardian, or caretaker who willfully deprives a child of necessary food, clothing, shelter, health care, or supervision appropriate to the child's age, when the parent, guardian, or caretaker is reasonably able to make the necessary provisions and the deprivation harms or is likely to substantially harm the child's physical, mental, or emotional health is guilty of neglect of a child and may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than $3,000, or both.

Appellant argues that the circumstantial evidence that D.W. lost weight while under her care but was fine after he was removed from her home "was insufficient to prove beyond a reasonable doubt that appellant was feeding the infant water instead of milk causing failure to thrive." But it was not necessary to prove that feeding D.W. water, instead of milk, caused D.W.'s failure to thrive, and the district court did not find that feeding D.W. water, instead of milk, caused the failure to thrive. The district court found that appellant willfully deprived D.W. of necessary food and, by doing so, harmed or was likely to substantially harm D.W.'s health.

The district court's findings of fact included that appellant "talked about giving the Child bottles filled with water" and "said that she had been giving the Child bottles of water when the Child was fussy." The district court also found that the doctor who examined D.W. on January 23 "gave the Child a diagnosis of Failure to Thrive." But the district

court did not find that feeding D.W. water, instead of milk, caused the failure to thrive. The district court did not even find that appellant fed D.W. water, instead of milk; it simply found that appellant gave D.W. bottles of water. The district court's conclusion that appellant violated Minn. Stat. § 609.378, subd. 1(a)(1), was not based on a determination that feeding D.W. water, instead of milk, caused the failure to thrive.

Appellant also argues that the state failed to prove why D.W. lost weight. To prove a violation of Minn. Stat. § 609.378, subd. 1(a)(1), the state needed to show that appellant willfully deprived D.W. of necessary food that she was reasonably able to provide and that the deprivation harmed or is likely to substantially harm D.W.'s physical, mental, or emotional health. When considered in light of these elements of the offense, appellant's argument appears to be that the state failed to prove that D.W. lost weight because appellant deprived him of necessary food.

We agree with appellant that there is not sufficient direct evidence to prove that she deprived D.W. of necessary food. But we conclude that the circumstantial evidence is sufficient to prove that D.W. lost weight because appellant deprived him of necessary food.

> When the direct evidence of guilt on a particular element is not alone sufficient to sustain the verdict, . . . , we apply a heightened two-step standard, which we have called the circumstantial evidence standard of review. In the first step, we identify the circumstances proved by the State. We defer at this stage to the jury's acceptance of the State's evidence and its rejection of any evidence in the record that is inconsistent with the circumstances proved by the State. After identifying the circumstances proved, we move on to the second step, which requires us to determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis other than guilt. We do not defer to the jury at this stage, but rather we independently examine

> the reasonableness of all inferences that might be drawn from the circumstances proved, including inferences consistent with a hypothesis other than guilt. If a reasonable inference other than guilt exists, then we will reverse the conviction.

*Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017) (quotations and citations omitted). We view the circumstances proved as a whole. *State v. Harris*, 895 N.W.2d 592, 598 (Minn. 2017). When determining whether the evidence is sufficient to sustain a conviction, we review a criminal bench trial the same as a jury trial. *State v. Hough*, 585 N.W.2d 393, 396 (Minn. 1998).

Appellant waived her jury-trial rights and was tried by the district court. The district court made the following relevant findings of fact: (1) while in nonrelative foster care, there were no issues with the child's nutrition or weight; (2) when the child was first placed with appellant, the child appeared to be doing well; (3) at a visit in December 2014, the child appeared to be skinny; the child was on the floor and wanted to be held; appellant mentioned giving the child bottles of water; (4) at the January 22, 2015 visit, the child was very thin and the social worker could feel his ribs and individual vertebrae; the child was weak, could not lift his head, turn over, or grasp the social worker's finger; (5) the physical condition of the child was "easily seen" and appellant "should have seen that the [c]hild was in distress"; (6) appellant told the social worker and the GAL that she gave the child bottles of water when he was fussy and that she had not started him on soft foods; (7) the doctor who examined the child on January 23, 2015, said that his weight was "extremely below normal growth," his motor skills were below normal, nothing during the physical exam explained "a cause for the zero percentile growth," the metabolic screen done at birth

did not raise any concerns, and the child had no infections; (8) the doctor diagnosed the child with failure to thrive; (9) the doctor opined that diarrhea would not have resulted in significant weight loss; (10) when appellant requested a letter from the doctor stating that he had no concerns about the child, the doctor wrote a letter indicating that the child was "severely underweight . . . [but] had no illness or infection"; and (11) once removed from appellant's home, the child "gained weight and his ribs and vertebrae were no longer prominent," and he "flourished" in a new foster home.

When viewed as a whole, these circumstances are inconsistent with any rational hypothesis other than that D.W. lost weight while in appellant's care because appellant deprived him of necessary food. D.W. was not underweight when he was placed in appellant's care. Soon after being placed in appellant's care, D.W. began losing weight, and, eventually, he became severely underweight. Medical examinations did not identify an illness or condition that caused D.W. to lose weight. When D.W. was removed from appellant's home and placed in a foster home, he gained weight.

Appellant argues that even if D.W. did not eat enough food to maintain his weight, the evidence was insufficient to prove that she willfully deprived D.W. of necessary food. In the context of Minn. Stat. § 609.378, subd. 1(a)(1), "willfully" means "conduct that is negligent, but that is so far from a proper state of mind that it is treated in many respects as if it were so intended." *State v. Cyrette*, 636 N.W.2d 343, 348 (Minn. App. 2001) (quotation omitted), *review denied* (Minn. Feb. 19, 2002). This standard is higher than "ordinary civil negligence." *State v. Tice*, 686 N.W.2d 351, 355 (Minn. App. 2004), *review denied* (Minn. Nov. 16, 2004). In *Cyrette*, this court reasoned that "willfully" means "that

the actor has intentionally done an act of an unreasonable character in disregard of a known or obvious risk that was so great as to make it highly probable that harm would follow" and that such a state of mind "is usually accompanied by a conscious indifference to the consequences." 636 N.W.2d at 348 (emphasis omitted) (quotation omitted).

The district court found that, in December 2014, D.W. appeared to be skinny, and on January 22, 2015, D.W. was very thin and weak, could not lift his head, turn over, or grasp the social worker's finger, and the social worker could feel his ribs and individual vertebrae. The district court also found that D.W.'s physical condition was "easily seen" and appellant should have seen that D.W. was in distress. These circumstances are inconsistent with any rational hypothesis other than that D.W.'s weight loss was apparent to anyone who saw him and that appellant was aware of his weight loss. In spite of her awareness of the weight loss, appellant did not provide D.W. with enough food to stop the weight loss, and the weight loss continued. Failing to provide enough food to stop the weight loss was an act of an unreasonable character in disregard of the obvious risk that D.W.'s weight loss was so great as to make it highly probable that harm would follow. We, therefore, conclude that the evidence was sufficient to prove that appellant willfully deprived D.W. of necessary food.

**Affirmed.**