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**STATE OF MINNESOTA
IN COURT OF APPEALS**

A17-1712

A17-1713

State of Minnesota,
Respondent,

vs.

Beverly Nicole Burrell,
Appellant

Filed September 17, 2018

Affirmed

Reyes, Judge

Hennepin County District Court
File No. 27-CR-16-18602

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

Michael O. Freeman, Hennepin County Attorney, Kelly O'Neill Moller, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Craig E. Cascarano, Arthur James Waldon, Minneapolis, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Reyes, Judge; and Florey, Judge.

UNPUBLISHED OPINION

REYES, Judge

Appellant argues that the district court erred by applying the proximate-cause standard in convicting her of third-degree murder. She also argues that insufficient

circumstantial evidence supported a second, separate conviction of third-degree murder of a separate victim. We affirm.

FACTS

In September 2015, M.T. and his friend S.D. picked up M.T.'s fiancé, H.S., at the airport. On their way back to a hotel, they stopped at a restaurant parking lot to meet appellant Beverly Nicole Burrell and bought four bags of heroin from her. At the hotel, M.T. injected heroin into himself, vomited, and eventually passed out. H.S. called 911, police officers arrived, but all life-saving measures were unsuccessful, and M.T. died.

A medical examiner testified that M.T. died from mixed heroin and methamphetamine toxicity. The medical examiner testified that both methamphetamine and heroin played a role in causing M.T.'s death.

In January 2016, 20-year-old L.R., a recovering heroin addict, came back from a trip to Australia, and his parents picked him up at the airport. After arriving home, L.R. went out to meet his friend, W.C., another heroin addict. They met appellant together and bought four bags of heroin from her. L.R. eventually came back home. He went upstairs for a short time, started to behave strangely, became sick, and vomited. L.R. stayed at home for the rest of the evening and went to bed around 10:30 p.m.

The next morning, when L.R.'s mother left the house around 9:30 a.m., she heard L.R. snoring in his room. L.R.'s father stayed at home that morning and did not hear anybody leaving or entering the house after L.R.'s mother left. After L.R.'s mother returned, L.R.'s father entered L.R.'s room and found him lying unconscious on his bed. Efforts to resuscitate him failed, and L.R. died.

For each death, respondent State of Minnesota separately charged appellant with third-degree murder by selling, giving, or distributing a controlled substance pursuant to Minn. Stat. § 609.195(b) (2014). Appellant stipulated to joinder of these two charges and waived a jury trial. The district court held a bench trial, found appellant guilty of third-degree murder in both cases, and sentenced appellant to two consecutive sentences of 86 months. This appeal follows.

DECISION

I. The district court did not err by applying the proximate-cause standard in convicting appellant of third-degree murder of M.T.

Appellant first argues that the district court should have used the but-for cause standard instead of the proximate-cause standard in convicting appellant of third-degree murder for M.T.’s death. Appellant’s argument is misguided.

Appellant’s argument requires interpretation of Minn. Stat. § 609.195(b). We review the question of statutory interpretation *de novo*. *State v. Riggs*, 865 N.W.2d 679, 682 (Minn. 2015). We interpret a statute to “effectuate the intent of the legislature.” *State v. Jones*, 848 N.W.2d 528, 535 (Minn. 2014); *see* Minn. Stat. § 645.16 (2014). “If the Legislature’s intent is discernible from the statute’s plain and unambiguous language, the letter of the law shall not be disregarded under the pretext of pursuing its spirit.” *Riggs*, 865 N.W.2d at 682. A statute is ambiguous when its language is subject to more than one reasonable interpretation. *State v. Mauer*, 741 N.W.2d 107, 111 (Minn. 2007).

Minn. Stat. § 609.195(b) provides that “[w]hoever, without intent to cause death, *proximately causes* the death of a human being by, directly or indirectly, unlawfully selling,

giving away, bartering, delivering, exchanging, distributing, or administering a controlled substance . . . is guilty of murder in the third degree” (Emphasis added.) The proximate-cause language in section 609.195(b) is not ambiguous, and we have repeatedly applied the proximate-cause standard under that statute. See, e.g., *State v. Schnagl*, 907 N.W.2d 188, 196 (Minn. App. 2017), *review denied* (Minn. Feb. 28, 2018) (applying proximate-cause standard to determine whether person was guilty of third-degree murder under Minn. Stat. § 609.195(b)).

Appellant does not argue that the proximate-cause language is ambiguous. She instead argues that *Burrage v. United States*, 571 U.S. 204, 212, 134 S. Ct. 881, 888 (2014), where the United States Supreme Court held that a drug supplier is not liable when the drug is not the but-for cause of the victim’s death, is applicable here. But *Burrage* concerns a different statute, 21 U.S.C. § 841(b)(1)(C), which expressly applies the but-for cause language.¹

Here, Minn. Stat. § 609.195(b) plainly and unambiguously provides that the state must establish beyond a reasonable doubt that appellant “proximately cause[d]” the death of M.T. by selling heroin. Because the legislative intent is clear from the plain language of the statute, we end our analysis.

¹ That statute provides that a person who distributed or sold drugs “shall be sentenced . . . if death or serious bodily injury *results from* the use of such substance . . . to a term of imprisonment of not less than twenty years or more than life” 21 U.S.C. § 841(b)(1)(C) (emphasis added). The Supreme Court held that “phrases like ‘results from’ . . . require but-for causality.” *Burrage*, 571 U.S. at 212, 134 S. Ct. at 888.

II. The circumstantial evidence is sufficient to support appellant's conviction of third-degree murder of L.R.

Appellant next argues that insufficient circumstantial evidence supported the district court's determination that appellant was guilty of third-degree murder of L.R. We disagree.

When considering a claim of insufficient evidence, we review the record to determine whether the evidence, when viewed in the light most favorable to the conviction, is sufficient to allow the factfinder to reach a guilty verdict. *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012); *see also State v. Hofer*, 614 N.W.2d 734, 737 (Minn. App. 2000), *review denied* (Minn. Aug. 15, 2000) (“The standard of review for a claim of insufficient evidence is the same for non-jury and jury trials.”). However, we apply a heightened scrutiny if the state's case is based entirely on circumstantial evidence. *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010). Under this heightened scrutiny, “[c]ircumstantial evidence must form a complete chain that, in view of the evidence as a whole, leads so directly to the guilt of the defendant as to exclude beyond a reasonable doubt any reasonable inference other than guilt.” *State v. Taylor*, 650 N.W.2d 190, 206 (Minn. 2002).

We apply a two-step test under the circumstantial-evidence standard. *State v. Andersen*, 784 N.W.2d 320, 329 (Minn. 2010). The first step is to identify the circumstances proved. *Id.* In doing so, we defer to the factfinder's “acceptance of the proof of these circumstances and rejection of evidence in the record that conflicted with the circumstances proved by the State.” *Id.* (quotation omitted). The second step is to determine whether the circumstances proved are consistent with guilt and inconsistent with

any reasonable inference other than guilt. *State v. Silvernail*, 831 N.W.2d 594, 599 (Minn. 2013). The question is not simply whether the inferences that point to guilt are reasonable. *Id.* We do not give deference to the jury's choices between reasonable inferences but independently examine the reasonableness of all inferences that might be drawn from the circumstances proved as a whole. *Id.*

The circumstances proved here include the following: (1) after arriving back home from Australia, L.R. met with W.C., a friend of L.R.'s and a heroin addict, and together they met appellant and purchased four bags of heroin from her; (2) L.R. gave only a small portion to W.C.; (3) L.R. went upstairs for a short time when he came back home, he behaved strangely and vomited afterwards; (4) He went to bed around 10:30 p.m., and his mother heard him sleeping in his room at around 9:30 a.m. the following day; (5) L.R.'s father did not observe anyone enter or leave the house the morning of L.R.'s death, except for L.R.'s mother who left at 9:30 a.m. and returned at 11:30 a.m.; (6) L.R. was within earshot of his parents until he died; (7) W.C. did not pick up L.R. after their first trip to see appellant, and L.R. did not have a car; (8) L.R.'s parents always kept track of their car keys; (9) L.R.'s phone records revealed that L.R. did not contact anyone other than appellant to buy heroin for months before his death; and (10) appellant was L.R.'s sole heroin supplier for months before his death.

Considering the circumstantial evidence as a whole, *Andersen*, 784 N.W.2d at 332, a reasonable inference can be drawn that L.R. died from the heroin he purchased from appellant. Appellant does not dispute that this inference is reasonable and consistent with the circumstances proved.

Appellant argues, however, that another reasonable inference inconsistent with guilt can be drawn from the circumstances proved: that L.R. could have left the house to get more heroin from another dealer between the time he went to bed and the time he died. However, appellant does not provide any theory that would explain how L.R. could have gone to another dealer, why he would have gone to another dealer, and who that dealer could be. Appellant's inference is a mere conjecture, which is insufficient to overturn a conviction based on circumstantial evidence. *Al-Naseer*, 788 N.W.2d at 480. Therefore, sufficient circumstantial evidence supports appellant's conviction.

Affirmed.