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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0606**

State of Minnesota,
Respondent,

vs.

Demetrius Charles Willis,
Appellant.

**Filed March 18, 2013
Affirmed
Cleary, Judge**

Ramsey County District Court
File No. 62-CR-11-717

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

John Choi, Ramsey County Attorney, Kaarin Long, Assistant County Attorney, St. Paul, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Suzanne M. Senecal-Hill, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Cleary, Presiding Judge; Hooten, Judge; and Smith, Judge.

UNPUBLISHED OPINION

CLEARY, Judge

Appellant was convicted of second-degree manslaughter under Minn. Stat. §§ 609.205(5), .05 (2008) for causing the death of two-year-old J.W. through willful

deprivation of necessary health care while being aided and abetted by another. Appellant contends that the evidence presented at trial was insufficient to support the jury's guilty verdict. We affirm.

FACTS

In September 2009, appellant Demetrius Charles Willis was living with his mother and her boyfriend in a duplex in Saint Paul. Appellant's mother and her boyfriend shared a bedroom on the first floor of the duplex, and appellant had his own room in the basement. At the time, appellant had been casually dating Jessica Caldwell (Caldwell) for a month or two. Caldwell had a son, J.W., who was two years old.

September 9 and 10, 2009

Around 4:00 p.m. on September 9, 2009, Caldwell and J.W. arrived together at the home of Caldwell's mother. J.W. and Caldwell's nephew played together in a truck in the driveway for 10–15 minutes and then J.W. walked into the house. At that time, Caldwell's mother thought J.W. "seemed fine."

Later that night, Caldwell and J.W. took the bus to appellant's duplex to spend the night with appellant. Video footage taken on the bus showed Caldwell and J.W. getting off the bus at 8:58 p.m. When Caldwell and J.W. arrived at the duplex shortly after 9:00 p.m., appellant took J.W. into his mother's bedroom, where J.W. gave appellant's mother's boyfriend a high-five, was not crying, was acting and walking normally, and was not pointing out any places that hurt. During this time, Caldwell left to get some food at the grocery store across the street. J.W. and appellant remained upstairs in the bedroom watching television with appellant's mother and her boyfriend until Caldwell

returned from the grocery store at approximately 9:30 p.m. Caldwell, J.W., and appellant then went to appellant's bedroom in the basement.

Around 10:30 p.m., appellant's friend arrived at the duplex. Appellant went upstairs to let his friend inside, and the two returned downstairs to appellant's bedroom. Appellant's friend observed that appellant, Caldwell, and J.W. were laying in the bed, watching a movie. According to appellant's friend, J.W. appeared to be peacefully asleep for the entire time that he was visiting. Appellant's friend did not hear J.W. whine, cry, or make any sounds from the time he arrived until he left at midnight.

According to a statement appellant gave to the police, after his friend left at midnight, appellant and Caldwell continued watching a movie and engaged in sexual intercourse. Around 2:00 a.m., while Caldwell and appellant were still having intercourse, J.W. woke up and started crying, which was normal for him. J.W. complained that his "belly" hurt. Appellant gave J.W. some water, and both appellant and Caldwell kissed J.W.'s stomach. Appellant said he was "trying to look out for" J.W. because J.W. had been sick with diarrhea all day. J.W. vomited at some point after waking up and appellant put J.W. by a fan to cool him off because he was sweating. Appellant claimed that he was not mad or upset that J.W. had woken up or that he had vomited. According to appellant, J.W. fell back asleep. Appellant checked on J.W. at least one more time, and told police that J.W. may have vomited at least one more time.

According to appellant's mother, at some point during the night, appellant came up to her bedroom from the basement, turned on the light, and woke her up to tell her that J.W. was vomiting. Later that night, appellant's mother again saw appellant in the

kitchen getting some water from the sink because J.W. was vomiting. When she saw him in the kitchen, appellant was holding J.W. on his hip.

At some point in the early morning on September 10, appellant and Caldwell woke up and realized that J.W. was not breathing. They called 911. Appellant carried J.W. upstairs, accidentally hitting J.W.'s head on the way. Appellant attempted CPR, even though he did not know how, by "push[ing] on [J.W.'s] stomach." When asked whether he was pushing hard, appellant told the officer he did not know, that "the adrenaline was rushing . . . I'm heavy-handed," and that "[a]ll I know is I was pushing trying to breathe."

Saint Paul police officer Zachary Nayman was dispatched to the duplex at 5:06 a.m. on September 10. When he arrived, he saw appellant in the doorway holding J.W. At that time, appellant told Nayman that J.W. had been sleeping, but that J.W. had woken up, was crying, vomited a small amount, and then was unresponsive. When the ambulance arrived, the paramedics found that J.W. was not breathing, his pupils were fixed and dilated, and he was without a pulse. The paramedics attempted to resuscitate J.W. and did not notice bruising on him at this time. Caldwell told paramedics J.W. had been vomiting all night. Nayman spoke with appellant's mother and her boyfriend and drove appellant and Caldwell to Children's Hospital. On the ride, appellant was very distraught and upset, but Caldwell was very calm.

A pediatric specialist received J.W.'s case around 7:00 a.m. At approximately 8:00 a.m., the specialist performed his initial examination on J.W. During the initial examination, the specialist noticed that J.W. had bruising on his abdominal cavity and had the impression that, although J.W. was now breathing with the assistance of a

ventilator, he had essentially died three hours earlier from a severe blunt force injury. The specialist spoke with Caldwell regarding whether to perform surgery to try to stop the bleeding. Caldwell chose to proceed with surgery, even though the specialist had indicated to her there was not a good chance of success. J.W. underwent surgery from approximately 8:45 to 10:30 a.m. When the specialist reported to Caldwell after the surgery, Caldwell was unemotional in a manner that, based on the specialist's prior experiences, was "bizarre." Following surgery, J.W.'s condition did not improve much, and he continued to deteriorate and suffer internal bleeding. Resuscitative efforts were stopped around 12:45 p.m.; J.W. was taken off the ventilator at 1:30 p.m.; and his official time of death was 2:00 p.m. on September 10. The cause of death was complications from blunt force chest and abdominal trauma.

A coworker of Caldwell's mother was at the hospital when J.W. was pronounced dead. According to the coworker, when appellant's mother was informed that J.W. had died, she "[s]tarted hollering and screaming, saying that [J.W.] was a precious baby, that [J.W.] was such a good baby, I told them something happened. I told them something was wrong with this baby." The coworker then hugged appellant's mother and smelled alcohol on her breath. Appellant's mother told the coworker that she had "told them to take the baby to the hospital, because she knew something was wrong with the baby." Appellant's mother testified that she did not recall ever telling appellant or Caldwell that they "should" have "taken [J.W.] to the hospital" at any time during the night of September 9–10.

In January 2011, an indictment was filed in Ramsey County District Court charging appellant with four counts of second-degree murder, two counts of first-degree manslaughter, and one count of second-degree manslaughter. Charges were filed against Caldwell at the same time.

A jury trial was held in September 2011. Appellant did not testify at trial. Caldwell was initially deemed unavailable to testify at appellant's trial, because she was to be tried in a week and a half on the same charges as appellant. Caldwell did take the stand outside the presence of the jury and asserted her Fifth Amendment right to remain silent.

At trial, the defense called a witness, N.M., who met Caldwell when they were both incarcerated at the Ramsey County Law Enforcement Center a few months before appellant's trial. N.M. characterized her relationship with Caldwell while they were incarcerated as "close." In July 2011, Caldwell spoke with N.M. about what happened to J.W. in the days leading up to his death. Caldwell first told N.M. that around September 7, she was on the bus with J.W. and he was "acting like a girl" and so she "chestized" him, explaining that she punched him on the chest and made him fall. Caldwell told N.M. that she thought J.W. could handle the hit to the chest because he was a boy and could "take" it.

Caldwell then told N.M. that on September 9, J.W. vomited twice before he and Caldwell arrived at appellant's duplex. Caldwell told N.M. that when J.W. vomited at the duplex she took him into the bathroom and "yanked him to the toilet" by grabbing his arm. This action made J.W. hit the toilet but Caldwell did not say how hard. Caldwell

also told N.M. that J.W. was whining and throwing up all night; that J.W. would not go to sleep; that appellant was helping J.W. all night; and that she did not get up to help appellant because she was tired from an interview she had earlier that day. Caldwell told N.M. that when she woke up at some point between 3:00 and 5:00 a.m., she saw J.W. on the floor, she thought he was blue, and she “knew he wasn’t breathing. [She] knew he was dead.”

J.W.’s injuries

The pediatric specialist who operated on J.W. described that J.W. had suffered several internal injuries, including “severe” cuts or lacerations to the liver; fractured or split major blood vessels and pancreas; and a torn splenic artery. The specialist testified that it was likely that all the injuries occurred at the same time, and that a child with J.W.’s injuries would likely have been hit in the mid-abdomen. The specialist also explained that a fractured pancreas is a fairly common injury in children who suffer a blunt force injury, such as that from a lap belt in a car crash or a handle bar in a biking accident. The medical examiner who conducted the autopsy on J.W. testified that if a hand had caused the internal injuries to J.W., multiple impacts or blows to the chest or abdomen using “severe force” would have been necessary. The pediatric specialist testified that it is possible for a child to survive injuries like those suffered by J.W. if treatment is received right away after the injury occurs or before the patient/child loses consciousness.

During surgery, the pediatric specialist encountered approximately a liter and a half of blood in J.W.’s abdominal cavity. The specialist testified that the amount of blood

“is a tremendous volume for a child that size.” The blood was fresh and, at the time of surgery, had probably been in J.W.’s abdominal cavity for six to eight hours, but not more than twelve. Some of the blood in J.W.’s abdomen came from transfusions he received once he arrived at the hospital. The fresh transfusion blood had mixed internally with J.W.’s blood, and the pediatric specialist was unable to distinguish between J.W.’s own blood and that which had come from transfusions.

J.W.’s likely symptoms

The state’s experts testified that, for children who sustain blunt-force injuries like those suffered by J.W., “they are going to have a lot of discomfort in . . . their abdominal wall . . . even with a little bit of bleeding, these kids are very symptomatic right after it happens.” Blood is very irritating to the lining of the abdominal cavity and causes a great deal of pain. The external symptoms exhibited by a child who is suffering from abdominal bleeding would depend on the rate of bleeding. If the bleeding is slow, the child would complain of a lot of abdominal pain, may complain of thirst, and would become lethargic and tired. As the slow bleeding continues, the child would pass out, and, if the bleeding is unstopped, the child’s heart would ultimately stop. A child that is bleeding more quickly would be unconscious “right away,” because the child would not be getting enough blood to their brain. Until the time a child with internal bleeding passes out, he would be crying “pretty vigorously.”

It was the medical examiner’s opinion that, immediately after suffering his injuries, J.W. would have been crying and inconsolable because he would have been in a lot of pain. It is also possible that J.W. would have been thirsty. Over time, as J.W.’s

internal bleeding progressed, J.W. would have gone into a type of shock that would have made him sweaty, pale, dizzy, nauseous, and potentially vomiting. The medical examiner opined that J.W. would have been going in and out of consciousness and would have been difficult to arouse. The medical examiner was unable to provide a timeline or timeframe for when J.W.'s symptoms would have presented because that would have required knowing when his injury occurred and how fast he bled into his abdominal cavity, which she did not know. The pediatric specialist testified that, in his opinion, blood would have been flowing to J.W.'s organs at a normal rate following his injuries for only a "short period of time . . . a few hours."

The medical examiner confirmed that a child can be "resilient" in terms of this particular kind of shock, and that depending on the injury, children can sustain a significant injury and then go through a period of seeming "okay" or being nonsymptomatic. Based on the injuries J.W. had sustained, he may have been able to walk and talk, but he would have "eventually" become unresponsive because of the process of bleeding into his stomach. Even though J.W. may have been able to walk and talk after sustaining his internal injuries, the pain would have been "ever present."

J.W.'s bruises

At the time the medical examiner performed the autopsy on J.W., he was exhibiting numerous bruises on his face, head, abdomen, chest, left arm, back, right arm, lower right leg, and the right side of his body. Appellant told police that Caldwell told him that there had been no bruises on J.W.'s abdomen earlier in the night of September 9 when she had given him a bath, and appellant also stated that he did not see any bruises

during the time he was giving J.W. CPR. One first-responder did not notice bruising on J.W.'s chest and abdomen area until they arrived at the hospital, and testified that none of the bruises would have been caused by the procedures carried out by the ambulance crew. A different first-responder testified that it was possible that the compressions used during initial efforts to resuscitate J.W. caused the bruising in the center of his chest. But it was unlikely that J.W.'s bruises were caused by the emergency care that was provided by medical professionals.

The medical examiner testified that J.W.'s bruises were, in her opinion, no older than 24 hours from the time of his death. The bruises on J.W.'s torso were, in her opinion, caused by "body parts, hands, fists that type of thing" and were "fresh . . . recent." The pediatric surgeon testified that "[b]ruises are very, very tricky. People spend a lot of time thinking and talking about bruises, but the reality is that you just can't put a time frame on a bruise. If somebody was convinced they could, I would question that."

Appellant was found guilty of second-degree manslaughter and was committed to the commissioner of corrections for 67 months, a downward durational departure from the applicable guidelines range of 84–117 months. This appeal follows.

D E C I S I O N

In considering a claim of insufficient evidence, this court's review is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, is sufficient to allow the jurors to reach the verdict that they reached. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). The reviewing

court must assume that the jury believed the state's witnesses and disbelieved any evidence to the contrary. *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). The jury's verdict will be upheld if, "giving due regard to the presumption of innocence and to the state's burden of proof beyond a reasonable doubt, [the jury] could have reasonably found the defendant guilty." *State v. Pierson*, 530 N.W.2d 784, 787 (Minn. 1995).

A conviction based on circumstantial evidence, as is the case here, warrants heightened scrutiny. *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010). The circumstances proved must be "consistent with the hypothesis that the accused is guilty and inconsistent with any rational hypothesis except that of guilt." *State v. Bias*, 419 N.W.2d 480, 484 (Minn. 1988). "Circumstantial 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).

Minnesota courts employ a two-step process when reviewing convictions based on circumstantial evidence. *State v. Andersen*, 784 N.W.2d 320, 329 (Minn. 2010). First, we "identify the circumstances proved." *State v. Stein*, 776 N.W.2d 709, 718 (Minn. 2010) (plurality opinion). In doing so, "we defer, consistent with our standard of review, to the jury's acceptance of the proof of these circumstances and rejection of evidence in the record that conflicted with the circumstances proved by the [s]tate." *Id.* We recognize that a jury is in the best position to determine credibility and weigh evidence. *State v. Moore*, 481 N.W.2d 355, 360 (Minn. 1992); *see also State v. Hough*, 585 N.W.2d

393, 396 (Minn. 1998) (“A fact finder evaluates the credibility of witnesses and need not credit a defendant’s exculpatory testimony.”).

Second, we “examine independently the reasonableness of all inferences that might be drawn from the circumstances proved, this includes inferences consistent with a hypothesis other than guilt.” *Andersen*, 784 N.W.2d at 329 (quotation omitted). In this independent examination, “we give no deference to the fact finder’s choice between reasonable inferences.” *Stein*, 776 N.W.2d at 716. “[T]he inquiry is not simply whether the inferences leading to guilt are reasonable. Although that must be true in order to convict, it must also be true that there are no other reasonable, rational inferences that are inconsistent with guilt.” *Id.* We “will not overturn a conviction based on circumstantial evidence on the basis of mere conjecture.” *State v. Lahue*, 585 N.W.2d 785, 789 (Minn. 1998).

Appellant was found guilty of second-degree manslaughter for causing the death of J.W. through neglect by willfully depriving the child of necessary health care, while being aided and abetted by another. Minn. Stat. §§ 609.205(5), .05. To sustain a conviction of second-degree manslaughter under section 609.205(5), the state must have proven that the convicted person “cause[d] the death of another . . . by committing or attempting to commit a violation of section 609.378 (neglect or endangerment of a child).” Under Minnesota’s child neglect or endangerment statute, neglect or endangerment occurs when a parent or caretaker “willfully deprives” a child of necessary health care when “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.”

Minn. Stat. § 609.378 (2008). A person is liable for aiding and abetting the crimes of another if that person “intentionally aids, advises, hires, counsels, or conspires with or otherwise procures the other to commit the crime.” Minn. Stat. § 609.05, subd. 1.

Caretaker

Appellant argues that the state failed to prove beyond a reasonable doubt that he was J.W.’s caretaker, and that the state therefore failed to prove he was guilty of neglect or endangerment of a child. The child neglect or endangerment statute broadly defines a caretaker as “an individual who has responsibility for the care of a child as a result of a family relationship or who has assumed responsibility for all or a portion of the care of a child.” Minn. Stat. § 609.376, subd. 3 (2008).

Circumstances proved at trial included that, during the evening of September 9 and into the early morning hours of September 10, Caldwell was tired from an interview and did not get up from bed to help take care of J.W. once he started crying, vomiting, and sweating. In response to J.W.’s complaints and symptoms, it was appellant that brought J.W. water, rubbed his back, put him in front of a fan in order to cool him down, and checked on him throughout the night. When J.W. became unresponsive, appellant attempted to perform CPR, even though he did not know how, and then carried J.W. upstairs after 911 was called.

These circumstances show that appellant “assumed responsibility for . . . a portion of” J.W.’s care. Minn. Stat. § 609.376, subd. 3. It is true, as appellant argues, that Caldwell was present throughout the time appellant assumed this caretaker role. Yet, the statute is broad and there is no authority which provides that a mother’s presence is a

defense. There are no reasonable inferences that can be drawn from the state's evidence that are inconsistent with a conclusion that appellant was a caretaker under Minn. Stat. § 609.376, subd. 3. Therefore, we conclude there was sufficient evidence to support the jury's finding that appellant was a caretaker under the child neglect or endangerment statute.

Willful deprivation of health care

The state was not only required to prove appellant had acted as J.W.'s caretaker, but also that appellant caused J.W.'s death by "willfully" depriving J.W. of necessary health care when appellant was "reasonably able to make the necessary provisions and the deprivation harm[ed] or [was] likely to substantially harm [J.W.]'s physical . . . health." Minn. Stat. § 609.378, subd. 1(a)(1). "Likely," as used here, means "more likely than not." *State v. Tice*, 686 N.W.2d 351, 351–52 (Minn. App. 2004), *review denied* (Nov. 16, 2004). Minnesota's child neglect statute treats "willfully" as "an aggravated form of negligence" similar to "intentionally." *State v. Cyrette*, 636 N.W.2d 343, 348 (Minn. App. 2001), *review denied* (Minn. Feb. 19, 2002). An actor has been willful, therefore, if he or she "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 which thus is usually accompanied by a conscious indifference to the consequences." *Id.* (quotation omitted).

When viewed in the light most favorable to the state, the following circumstances were proved at trial. Whatever caused J.W.'s bruises occurred sometime after 2:00 p.m. on September 9. J.W. did not have bruises on his abdomen when Caldwell gave him a

bath that evening. Bruises did not appear on J.W.'s abdomen until after he was brought to the hospital in the early morning hours of September 10. The day before he died, J.W. was acting "normal" throughout the afternoon and evening. From approximately 10:30 p.m. until at least midnight, J.W. was sleeping peacefully downstairs in appellant's bedroom at the duplex.

J.W.'s internal bleeding, which resulted from injuries caused by blunt force trauma, commenced sometime between approximately midnight and 2:00 a.m. on September 10.¹ Appellant and Caldwell were the only people with J.W. during that time. Between midnight and 2:00 a.m., appellant and Caldwell were awake together, either watching a movie or having sexual intercourse. The fresh bruises on J.W.'s torso were caused by "body parts, hands, fists that type of thing." If a hand had caused J.W.'s injuries, "severe force" would have been necessary. It was likely J.W. suffered the blunt-force trauma which resulted in his injuries all at once, as opposed to the trauma being cumulatively inflicted over a long period of time.

J.W.'s internal injuries were extensive, and he would have been in a lot of pain as a result. Medical experts opined that J.W.'s internal bleeding would have caused him to be vomiting, sweating, crying inconsolably, and possibly losing consciousness. Given the extent of J.W.'s injuries, normal blood flow to his organs would have lasted for only

¹ The state's medical expert opined at trial that the blood in J.W.'s abdomen had, at the time of the surgery performed from 8:45–10:30 a.m. on September 10, been present for 6–8 but no more than 12 hours. The earliest the bleeding could have started was approximately 9:00 p.m. on September 9. The bleeding most likely started between 1:00 and 3:00 a.m. on September 10. The state's evidence at trial was that J.W. was fine, normal, and not fussy until at least midnight, and that he was exhibiting symptoms by approximately 2:00 a.m. on September 10.

“short period of time . . . a few hours,” after the trauma occurred. Thereafter, J.W. would have lost consciousness. Paramedics were not called until approximately 5:00 a.m. on September 10. When paramedics arrived, J.W. had no pulse and was not breathing. Sometime during the nighttime or early morning hours of September 9–10, appellant’s mother had “told them something had happened . . . something was wrong with this baby.” She “told them to take the baby to the hospital.” Had J.W. received medical attention before becoming unconscious, he likely would have survived.

We must next determine whether the “reasonable inferences” that can be drawn from these circumstances proved are consistent with guilt, and inconsistent with any rational hypothesis other than appellant’s guilt. *See Andersen*, 784 N.W.2d at 331. Appellant argues that there was no evidence that he was aware of the extent of J.W.’s injuries, and instead he thought that J.W. was suffering from merely flu-like symptoms. As a result, appellant argues, he had no way of knowing that J.W.’s condition required immediate medical attention. Appellant also argues that his actions in response to J.W.’s flu-like symptoms were not those of a person who was trying to deprive a child of health care or who has a conscious indifference toward the health of a child.

These circumstances proved do not allow, as a reasonable inference, the conclusion that J.W. was suffering only flu-like symptoms. Such an inference would require us to reject medical testimony, which the jury obviously believed, that J.W. was in a great deal of pain and crying vigorously and inconsolably almost immediately after suffering the blunt force trauma that caused his internal bleeding to start sometime between approximately midnight and 2:00 a.m. The jury was free to accept the state’s

evidence that J.W. was exhibiting symptoms significantly more severe than those considered flu-like: J.W. was likely inconsolable, crying vigorously, and difficult to arouse; J.W. was in a lot of pain; J.W.'s symptoms were bad enough that appellant woke his mother to tell her J.W. was vomiting; and appellant's mother had "told them" J.W. needed to go to the hospital. The jury was free to conclude that appellant had greatly minimized the symptoms J.W. was exhibiting in the early morning hours of September 10.

Moreover, the circumstances proved do not allow the inference that appellant was unaware that J.W. needed medical attention. As an initial matter, the state was not required to prove that appellant was aware of the extent of J.W.'s injuries as appellant suggests, only that appellant willfully deprived J.W. of necessary health care. Even so, the jury was free to disregard as not credible appellant's claims that he did *not* know what happened to J.W., and to conclude that appellant was aware J.W. had been subjected to some form of trauma. If there is some other inference to be drawn from the circumstances proven, it would not be a reasonable or rational one. Appellant and Caldwell were the only two people with J.W. in appellant's basement bedroom when J.W.'s internal bleeding began sometime between midnight and 2:00 a.m. Both appellant and Caldwell were awake until at least 2:00 a.m., a time at which J.W. was already exhibiting symptoms. The fresh bruises on J.W.'s torso were likely caused by hands, fists, or body parts, and "severe force" would have been used.

If the jury believed that appellant knew what happened to cause J.W.'s injuries and still did not seek medical help in light of his symptoms, there is no reasonable

inference to be drawn except that appellant acted with indifference to obvious risks to J.W.'s health. Even if appellant was somehow unaware that J.W. had suffered some sort of trauma, J.W. went from sleeping peacefully to vomiting, crying inconsolably, sweating, and difficult to arouse within a *very* short amount of time. In spite of this fact, appellant delayed contacting medical professionals until a time at which J.W. had become completely unresponsive and was no longer breathing.

We conclude that the evidence is sufficient to support the jury's verdict that appellant, while acting as J.W.'s caretaker, deprived J.W. of necessary health care at a time when appellant was reasonably able to make necessary provisions, and where he knew or should have known it was more likely than not that failure to act would result in substantial harm to J.W. *See* Minn. Stat. § 609.378, subd. 1(a)(1). Because we find the state's evidence sufficient to prove that appellant was a caretaker and that he willfully deprived J.W. of necessary healthcare, we need not address whether appellant aided and abetted Caldwell in causing the death of J.W.

Affirmed.