902666-6

Court of Appeal Cause No.44026-1-II

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent

v.

TERESA LYNN CLINE, Petitioner

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Teresa Lynn Cline asks this court to accept review of the Court of Appeals decision terminating review designed in Part B of this Petition.

B. COURT OF APPEALS DECISION

Petitioner requests that this court accept review of the published opinion issued by the Court of Appeals, Division II, on April 22, 2014. A copy of that decision is attached hereto as Appendix A, pages A 1-12.

C. ISSUES PRESENTED FOR REVIEW

On August 16, 2012, the Cowlitz County Prosecutor's Office charged Teresa Lynn Cline, hereinafter referred to as Teresa, with having committed the crime of Custodial Interference in the First Degree, in violation of RCW 9A.40.060 (3). A Knapstad motion was filed on behalf of Teresa, which contended that there was no evidence that Teresa either intended to deny access to the child by the father of the child, or that she intended to do so permanently or for a protracted period, as required by that statute. The trial court ruled in its written opinion granting the Knapstad motion, CP 22,

that although it appeared that the State may have sufficient evidence to show that Teresa had the intent to deprive the father of the child of contact with the child for some period of time, "I would find as a matter of law that two days, in the factual circumstances presented by the prosecuting attorney, and taking those facts in the light most favorable to the State, cannot constitute "a protracted period"." The court of appeals reversed the trial court's ruling, holding that under the circumstances of the case, a two day period could qualify as a "protracted period" for purposes of the statute. The court of appeals also denied Teresa's cross-appeal, rejecting her contention that there was no evidence of any criminal intent on her part to violate the statute.

The first issue presented for review, a matter of first impression involving statutory interpretation is whether the Court of Appeals committed an error in ruling that a period of two days can qualify as a "protracted period" for purposes of RCW 9A.40.060 (3)?

The second issue is whether there is any evidence, even when the evidence is construed in the light most favorable to the State, that Teresa had any unlawful intent to deprive the father of access to the child for any period of time?

D. STATEMENT OF THE CASE

This statement of the case is gleaned from CP 11 Affidavit of Jamie Nance, CP 12 Affidavit of Ranee Cline, CP 13 Affidavit of Rosemary Cline, and CP 16 Affidavit of State's attorney RE: material fact, which provide a more detailed description of the facts of this case. In CP 16, it is indicated that on June 6, 2012, Joel Galvino and Ranee Cline, the parents of BG, met with CPS for a "shared planning meeting/family team decision meeting", an "action plan" was put into effect that placed BG in Joel Galvino's care, and Ranee Cline was given supervised visitation with BG. Teresa Cline, who was present at the meeting, was named as one of the individuals who could supervise Ranee Cline during her visitation times with BG. On June 15, a CPS worker name Tresa Wiper was meeting with Joel Galvino at his residence and during that meeting, Ranee Cline and Teresa arrived at the residence. According to the affidavit of Ranee Cline, she confirms that she and Teresa went to Joel's house on June 15, contacted Ms. Wiper, and explained that she was there to pick up some of her stuff. Ranee had a meeting with Jamie Nance of PCAP scheduled for that day; she went inside the house, was holding her son, went outside, and observed Jamie Nance waiting outside with Teresa. She indicates that based on

signs of drug usage going on in the house, this was a dangerous place for her son, so she told Teresa with whom she was living to take BG home, which was a block away. She noted that Nance was standing right there and heard her make this statement to Teresa. She indicates that when Joel Galvino learned of what had happened, he was extremely angry, and that she was so scared, based on her previous experience with him, that she lied, telling him that she had not given Teresa permission to take BG home. The Affidavit of Jamie Nance, CP 11, reflects that she heard Wiper state that Ranee was upset because she thought her contacts with BG were being limited; Nance indicated that in her presence, Ms. Wiper informed Ranee that it was okay for her to have contact with BG as long as that contact was supervised. Nance indicates that later when Teresa, Ranee and she and BG were outside, Ranee told Teresa to take BG and get out of there.

According to the Affidavit of Rosemary Cline, CP 13, she is the mother of Teresa Cline, the grandmother of Ranee Cline, and the great-grandmother of BG. Her understanding was that on June 15, Ranee could have contact with BG as long as the contact was being supervised by family members. She indicates that on June 15, after she got off work around 4:00 p.m., she called Teresa and

asked her if she wanted to go to dinner at the Silver Cove Resort on Toutle Lake for dinner, and was told by Teresa she would like to go, that she had BG at her house and she was waiting for Ranee. Rosemary indicated the plan was to have a BBQ picnic for a few hours at the Lake, then she would be dropping off Teresa, Ranee and BG at Teresa's home, and then she would proceed home, a fairly routine activity for their family. According to CP 16, there was information that Rosemary Cline had previously requested visitation with BG for the entire weekend for a camping trip at Silver Lake. When Teresa was contacted by the police at the resort, she informed them that Ranee had requested her to take BG, and Ranee also confirmed to the police at that time that she had given Teresa permission to take BG. Nevertheless, Teresa was arrested and charged with violating of RCW 9A.40.060 (3).

E. WHY REVIEW SHOULD BE ACCEPTED

The petitioner requests that this court accept review of this case, pursuant to RAP 13.4 (b), since it involves a significant question of law regarding the interpretation of a statute of the State of Washington, an issue of first impression regarding the meaning of the term "protracted period" as it is used in RCW 9A.40.060 (3),

and consequently, the case also involves an issue of substantial public interest that should be determined by the Supreme Court.

In State v.Bauer 295 P 3rd 1227 Division II (2013), the court held that in order to prevail on a Knapstad motion, the defendant must show that there are no material facts in dispute and that the undisputed facts do not establish a prima facie case of guilt, citing State v. Knapstad 107 WA 2nd 346, 356, 729 P 2nd 48 (1986). A trial court may dismiss a criminal charge under Knapstad if the State's pleadings and evidence fail to establish prima facie proof of all elements of the charged crime, citing State v. Sullivan 143 WA 2nd 162, 171, 19 P 3rd 1012 (2001). The court indicated that it would uphold a trial courts dismissal of a charge on a Knapstad motion if no rational fact finder could have found the elements of the charged crime beyond a reasonable doubt, citing State v. O'Meara, 143 WA APP 638, 641, 180 P 3rd 196 (2008).

The evidence presented by the State at the trial court level, was to the effect that Rosemary intended to have her great grandchild over Father's Day weekend, and the State argued that somehow the defendant was complicit with that intent, CP 16, RP 13. Initially, it must be asserted that there is no evidence tthat Teresa was in any way involved with any plan on the part of

Rosemary Cline to have the child over the weekend on a camping trip at the Lake. The only evidence of any communication between them was that Rosemary contacted Teresa, invited her, BG and Ranee up to the resort for dinner with the intention of them returning home after dinner. In fact, the trial court quite cogently inquired why he should care about Rosemary's intent (RP 24, lines 23-24), noting that the charge was that Teresa took the child at the direction of a parent, meaning his mother Ranee (RP 16, lines 7-10) Nevertheless, for purposes of the Knapstad motion, the trial court considered whether, considering the evidence in the light most favorable to the State, a period of two days could constitute a "protracted period" for purposes of the statute. His ruling was that even taking the facts in the light most favorable to the State, a period of two days could not constitute a "protracted period" for purposes of that statute. In its published opinion, the court of appeals held that under the circumstances of this case, a weekend may constitute a "protracted period" for a 14 month old child within the meaning of RCW 9A.40.060 (3) and reversed that decision of the trial court. In its opinion, the court of appeals indicated that the issue of the definition of the term "protracted period" as it is used in the statute is an issue of first impression in the State of

Washington. On appeal to the court of appeals, petitioner had cited various statutes and case law that appeared to have some bearing on the issue, which are noted in the court of appeals decision, at A-9, but the court did not consider them to be dispositive.

In its decision, the court of appeals resorted to using statutory interpretation principals to determine the meaning of the term, "protracted period", noting on page 9, that a lot of those cases and statutes noted by the court dealing with the issue of a protracted period of time do demonstrate that the meaning of a "protracted period" is highly "context dependent". The petitioner would agree with that observation, since perhaps the most compelling consideration is the context in which the term "protracted period" is utilized in RCW 9A.40.060 (3), "....with intent to deprive the other parent from access to the child permanently or for a protracted period". The following cases set forth various rules of statutory construction, which are helpful in ascertaining the meaning of the term as it is used in proximity to the term "permanently" and they do lead to the conclusion that it is close to, or at least similar in meaning to the term "permanently".

In Manna Funding, LLC v. Kittitas County, 173 WA APP 879, 295 P3rd 1197 (2013), the court stated a number of rules of

statutory interpretation. The court indicated that statutory interpretation is a question of law that is reviewed de novo. Courts apply general principals of statutory construction in determining the meaning of statutory language, and if the language of the statute is plain and unambiguous, we derive its meaning from the language of the statute itself, citing Harmon v. Department of Social and Health Services, 134 WA 2nd 523, 530, 951 P2nd 770 (1998). Significantly, the court cited the rule that statutes are interpreted so that all language is given effect and no portion is rendered meaningless or superfluous. Watkin County v. City of Bellingham, 128 WA 2nd 537, 546, 909 P2nd 1303 (1996). The court also cited One Pacific Towers Homeowners Association v. HAL Real Estate Investment Inc., 148 WA 2nd 319, 330 61 P3rd 1094 (2002) for the proposition that a court "should interpret the meaning of terms in the context of the statute as a whole and consistently with the intent of the legislature" including a consideration of legislative history.

The requirement that the terms utilized in the statute must be considered in context with each other, suggests that the rule of statutory construction known as 'eiusdem generis', can be utilized to resolve this issue. This theory of statutory construction has been described variously in the case law. In Gallo v. Department of

Labor and Industries, 119 WA APP 49, 81 P3rd 869 (2003), the court described eiusdem generis as a canon of statutory construction that requires certain specific language to control more general terms that are utilized in the statute. In Lutz Tile v. Krech, 136 WA APP 899, 151 P3rd 219 (2007), the court stated that "the well-known canon of statutory construction known as eiusdem generis provides that when a general term is in sequence with specific terms, the general term is restricted to items similar to the specific terms. Caukil v. Labor and Industries, 142 WA 2nd 801, 808 136 WA APP at 903." In Dexheimer v. VCS Inc., 104 WA APP 464 17 P3rd 641 (2001), the court stated that "the statutory construction rule of eiusdem generis states "general terms, when used in conjunction with specific terms, should be deemed to incorporate only those things similar in nature or comparable to the specific terms". Beckman v. Department of Social and Health Services, 102 WA APP 687, 692, 11 P3rd 313 (2000).

This rule of statutory construction was utilized by this court in State v. Marohl, 170 WA 2nd 691 246 P3d 177 (2010), which involved an issue of first impression as to whether a casino floor on which the alleged victim sustained bodily harm after the defendant forced him to the ground was an "object or thing likely to produce

bodily harm for purposes of the third degree assault statute. This phrase is located in RCW 9A.36.031 which reads in relevant part ".... a weapon or other instrument or thing likely to produce bodily harm". The court cited a number of rules of statutory construction, and stated that "where general words follow specific words, "the general words are construed to embrace a similar subject manner" as the specific words under the eiusdem generis canon of statutory construction, citing Burns v. City of Seattle, 161 WA 2nd 129, 149, 164 P3rd 475 (2007), "....Specific terms modify or restrict the application of general terms where both are used in sequence. Thus, an instrument or thing likely to produce bodily harm" under RCW 9A.36.031 (1)(d) must be similar to a weapon." 171 WA 2nd at 699, 700.

Applying the above rules of statutory construction to the present case, we can see that the term "permanently" appears to qualify as the type of specific term referenced by the above case law, since there is certainly nothing equivocal about that term, and that the term "protracted period", which immediately follows upon the use of the specific term "permanently", appears to qualify as the more expansive, general term, as referenced in the above case law. That case law would appear to mandate that just as, for

instance, in State v. Marohl, supra, where the court was interpreting the portion of RCW 9A.36.031 (2) which reads "a weapon or other instrument or thing likely to produce bodily harm", to mean that such "instrument or thing" must be similar to a weapon, in our case, the term "protracted period" must be close in meaning to the term "permanently". Consequently, applying the above rules of construction to the interpretation of this term in the statute, the only reasonable conclusion is that the general term "protracted period" must mean a period of time similar or close in length to "permanently", the specific term in our statute.

In addition, we cannot forget the well-established rule in statutory construction of the rule of lenity, which assures adequate notice and thus due process concerning what conduct will be considered illegal, by requiring strict construction of penal statutes. Liporato v. United States 417 U.S. 419, 427, 105 S. Ct. 2084, 85 L.Ed. 2d 434 (1985). Petitioner submits that strict construction would not tolerate a statutory interpretation which conflates a period of two days with the concept of permanence.

In its decision, the court of appeals adopted "a lengthy or unusually long time under the circumstances" as a reasonable definition of "protracted period" for purposes of Washington's first

degree custodial interference statute, RCW 9A.40.060 (3). Appendix, page 9. In consideration of the applicable rules of statutory construction, petitioner would observe that this is not an unreasonable definition of the statutory term. However, when that definition is considered, in conjunction with the rules of statutory construction which require the conclusion that a "protracted period" of time is much closer to the "permanently" end of the time continuum, as opposed to the opposite end of the time continuum, where segments of time such as hours and days might be found, it cannot be reasonably concluded that a two day period of time would qualify as a protracted period of time for purposes of the statute.

Indeed, the court's ruling that a period of two days would qualify as a protracted period of time would effectively render that term to be quite meaningless. Allowing a two day period to stand as a protracted period of time, would mean that what the court of appeals is really saying is that the period of time sufficient to support such a charge could be permanently, as in forever, or 48 hours, whichever comes first. This would vitiate the court of appeals own definition of the term "protracted period", and also in the process, render the term "permanently" entirely superfluous,

since all that would be required to support the charge would be to show that the child was withheld from the parent for a couple of days; permanency need never be considered, according to that interpretation of the statute.

The court of appeals also supports its conclusion on page 10 of its decision by citing considerations that can be found nowhere in that statute. The court cites considerations such as that the baby was less than 14 months old, the father had been arguing over visitation with members of the mother's family, Ranee was only allowed supervised visitation, there were signs of instability in the child's care. Those observations may not be entirely valid, but it doesn't matter; the bottom line is that those considerations cannot possibly play any kind of role in a determination of the question which is at issue in this case, what is the meaning of the term "protracted period". In Densley v. Department of Retirement Systems, 162 WA APP 210, 173 P3rd 885 (2007), the court stated the following statutory rule; "statutory construction cannot be used to read additional words into the statute", citing State v. Chester 133 WA 2nd 15, 21, 940 P2nd 1374 (1997). 162 WA 2nd at 219. All of the above rules of statutory construction, as well as the court of appeals own definition of the term "protracted period", are

repudiated by entertaining these considerations, as cited by the court of appeals on page 10 of its opinion, as playing any kind of a role whatsoever in determining whether the two days in question in this case would qualify as a "protracted period". The only reasonable conclusion that can be reached in this case is that upon applying all applicable rules of statutory construction, and even employing the court of appeals own definition of the term, a period of two days could not possibly qualify under any circumstances as a "protracted period" for purposes of the statute, and that the trial court was entirely correct in reaching that conclusion. Consequently, the court of appeals decision to the contrary must be reversed.

II. THERE IS NO EVIDENCE THAT TERESA CLINE HAD ANY INTENTION OF VIOLATING RCW 9A.40.060(3).

It is the position of the petitioner that there is no evidence in this case that she was acting with the criminal intent necessary to constitute a violation of RCW 9A.40.060(3). In addressing that question, it would be appropriate to first ascertain from the evidence what Teresa's understanding would have been regarding Ranee's decision to tell her to take BG home with her when they were at the Gavino residence; would that have appeared to be legal

to someone in the position of Teresa at that time and place. While the court of appeals does not consider that to be significant, A-10, it is certainly important to give that consideration when attempting to ascertain whether there was any credible evidence that the petitioner had the requisite criminal intent with regard to the child at that time. It is apparent that although there had been discussion of an action plan, or a safety plan, that was organized by DSHS, this was obviously advisory in nature, of no legal force or effect. Consequently, it is clear that even while this plan was in effect, the legal rights of Ranee with regard to BG were not diminished in any way. Also, even according to that plan, at the time Ranee provided BG to her mother and asked her to take him home, it was apparent to everyone present, including Teresa and Ranee, that Ranee could be with the child as long as she had a supervisor, and Teresa was a named supervisor, according to that plan. Significantly, when Teresa heard Ms. Wiper inform Ranee that she could spend time with her son as long as she had an approved supervisor, and Teresa knew she was one of those supervisors, it would have been very clear to anyone in her position that Ranee was acting legally when she told Teresa to take BG to their home, so there is no factual basis for the contention that Teresa had any criminal intent.

It is clear that she saw her role as a supervisor for Ranee while she spent some time with her child, which she had just heard Ms. Wiper state was appropriate as long it was being supervised by her. There is simply no evidence in this case that would demonstrate any sort of criminal intent on her part.

The court of appeals also appears to give great weight to considerations of what Rosemary Cline and Ms. Waadevig had to say about what was going on; however, it is obvious that those communication, involved those two individuals, not Teresa. Also we do need to be mindful, as the trial observed, that Teresa was charged with assisting Ranee, not Rosemary, with depriving the father of contact with the child. Unfortunately, the court of appeals also chose to give weight to the fact that at one point in time, Ranee had made a statement to the effect that the petitioner had taken the child without permission, even though according to Nance's affidavit, this was clearly a lie, and Ranee had subsequently acknowledged to the police that it was a lie. Based on the pleadings, CP 16, it does not appear that even the prosecutor would dispute, that this was a lie. In view of these circumstances, this obvious lie that Ranee told about Teresa taking the child without permission, should never have been considered at

all in these deliberations. However, it should be remembered that even if somehow this assertion merited any considerations, it would not serve to advance Teresa's prosecution, since it would run directly contrary to the State's theory that her actions were undertaken on behalf of Ranee.

Consequently, the record in this case reflects that there is no evidence to support the contention that Teresa acted with any criminal intent to commit the crime as charged, and so the trial court should also have held as a matter of law that there was no evidence of any criminal intent on her part to deprive the father of the child of contact with the child, for any period of time. The court's ruling to the contrary, and the court of appeals decision confirming that ruling, should be reversed.

CONCLUSION

The petitioner respectfully requests that this court accept review, and rule that the petitioner's Knapstad motion should have been granted in its entirety, and that the charge against the petitioner should therefore be dismissed without prejudice.

Respectfully submitted,

JAMES K. MORGAN, WSBA# 9127
Attorney for Petitioner

APPENDIX

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Appellant/Cross-Respondent, v. TERESA LYNN CLINE, Respondent/Cross-Appellant.	No. 44026-1-II PUBLISHED OPINION

HUNT, P.J. — The State of Washington appeals the superior court's order granting Teresa Lynn Cline's *Knapstad*[1] motion and dismissing without prejudice the first degree custodial interference charge against her. The State argues that the superior court erred in concluding as a matter of law that there was no material dispute that Cline had intentionally taken the child with intent to deprive the child's father of contact for a "protracted period" (here, a full weekend) for purposes of the custodial interference statute.[2] Cline cross-appeals, arguing that, if we agree with the State, the State failed to establish a question of fact about whether she took the child with intent to deprive the father of contact. Holding that, under the circumstances here, a weekend may constitute a "protracted period" for a 14-month-old child within the meaning of RCW 9A.40.060(3), we reverse and remand for trial.

[1] *State v. Knapstad*, 107 Wn.2d 346, 729 P.2d 48 (1986).

[2] RCW 9A.40.060(3).

FACTS

I. CUSTODIAL INTERFERENCE

Joel Gavino and Ranee Cline are BG's[3] biological parents; Teresa Lynn Cline is Ranee Cline's[4] mother and, thus, BG's maternal grandmother. On June 6, 2012, when BG was almost 14 months old, the Department of Child and Family Services held a "Family Team Decision Meeting" with Gavino, Ranee, and other family members about BG's supervision and safety. Clerk's Papers (CP) at 20. This meeting resulted in a safety plan, which provided that BG would live with Gavino, that Ranee could have only supervised visits with BG because of her drug and/or methadone use, and that relatives could supervise these visits.

After this June 6 meeting, Cline and her mother, Rosemary Cline (BG's great grandmother) were apparently engaged in an ongoing dispute with Gavino about visitation with BG. Gavino refused Rosemary's request to take BG camping at Silver Lake on Father's Day weekend. On June 15, the Friday of Father's Day weekend, Child Protective Services (CPS) worker Tarassa Wiper conducted a home visit at Gavino's residence. Gavino expressed concern about the relatives' "reliability and trust worthiness" as supervisors for Ranee's visits with BG. CP at 20. Cline and Ranee arrived to pick up some of Ranee's personal items, and Ranee "request[ed] visitation." CP at 20. Wiper arranged for Ranee to have visitation with BG that Sunday evening with Gavino supervising.

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[3] To provide some confidentiality, we order that initials be used in the body of the opinion to identify the juvenile involved.

[4] Because several individuals involved in this case share Teresa Cline's last name, we refer to Teresa Cline's relatives by their first names to avoid confusion. We intend no disrespect.

At some point after Ranee and Gavino arrived, one of Gavino's neighbors saw Cline leave the house, move her car further down the street, return inside the house, walk back out of the house with BG about three minutes later, run from the house to her car, and drive away with BG. When they realized BG was gone, Gavino and Ranee unsuccessfully tried to contact Cline; and Gavino called 911. When the deputies arrived, Ranee denied having given Cline permission to take BG, and she supplied a written statement to that effect. Ranee also told the deputies that her grandmother, Rosemary, had requested visitation with BG that weekend to go camping at Silver Lake.

Meanwhile, Gavino's aunt, Diana Waadevig, engaged in a text message conversation with Rosemary. Waadevig texted Rosemary, "You might want to call [Cline] and tell her to return [BG] before she gets into trouble." CP at 35. Rosemary responded, "[T]his would of not came [sic] to this if you would of [sic] just let ranee [sic] and the family see him once in a while." CP at 37.

Deputies located Rosemary, Cline, Ranee, and BG at a campground near Silver Lake. Ranee told one deputy that she had not contacted the police to report that she had located BG because she was waiting for her phone to charge; despite her earlier denial, Ranee admitted that she had told Cline to take the child. After advising Cline of her *Miranda*[5] rights, the deputies questioned her. Cline told the deputies that she and Ranee had been upset to find someone from CPS at Gavino's house when they arrived and that Ranee had asked her (Cline) to take BG. Cline also provided the following written statement: "Ranee and I went to get cust[o]dy off [sic] [BG]." CP at 21. The deputies arrested Cline.

[5] *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

II. PROCEDURE

The State charged Cline with first degree custodial interference under RCW 9A.40.060(3). Cline's attorney filed a *Knapstad* motion, arguing there was no evidence that Cline had intended to deny access to BG or that she had intended to hold BG permanently or for a protracted period of time. In support of this motion, Cline filed the deputies' probable cause statements, documents supporting the probable cause statement, and three new affidavits from persons who had witnessed or played a part in Cline's taking BG.

The first affidavit was from Jamie Nance, a Parent-Child Assistance Program employee, who had been at Gavino's home on June 15 looking for Ranee to discuss a drug treatment program. Nance had overheard Ranee tell Cline "to take [BG] and get out of there." CP at 76. Ten to fifteen minutes later, after Nance had returned to her office, Ranee and Gavino arrived at Nance's office, where Ranee asked Nance whether she had seen Cline because "[Cline] took off with the baby." CP at 76. Having earlier heard Ranee tell Cline to take BG, Nance did not believe Ranee's statement.

The second affidavit was from Ranee. Ranee asserted that after she saw signs of drug use in Gavino's house, she told Cline to take BG "home." CP at 79. She believed that as long as her mother was present to supervise her (Ranee) with BG, it was approved under the safety plan. Ranee admitted that she had initially lied about not having told her mother to take BG; but she claimed that she had lied because Gavino was angry and she feared for her safety. Ranee stated that after a deputy dropped her at a friend's house, Rosemary had contacted her (Ranee), told her that she (Rosemary) was with Cline and BG, and invited her (Ranee) to go to Silver Lake with them; Ranee had accepted the invitation. Ranee further asserted that (1) she had intended to call

the sheriff's office to let them know she was with BG, but the deputies had arrived about 10 minutes after she got to Silver Lake and she did not have time to call; and (2) when the deputies arrived, she had told them "the truth" about having given Cline permission to take BG because the deputies had arrested Cline. CP at 80.

The third affidavit was from Rosemary. Rosemary stated that on the afternoon of June 15, she had called Cline and invited her to go to dinner with the family at the lake. Cline had accepted the invitation but told Rosemary that she was with BG at home, waiting for Ranee. Rosemary had then contacted and picked up Ranee, Cline, and BG and had taken them to the lake. Rosemary asserted that she had intended to bring everyone back to Cline's house after dinner, consistent with their family custom.

The State responded to Cline's motion that, taken in the light most favorable to the State, her submissions (1) established a question of fact about whether Cline had taken BG from Gavino for a "weekend-long camping trip," CP at 84; and (2) created a question of fact for the jury about whether the State could prove the "'protracted period" element of custodial interference. CP at 84 (quoting RCW 9A.40.060(3)).

The trial court granted Cline's *Knapstad* motion and dismissed the charge without prejudice. In its written order, the trial court stated:

> After considering all the evidence presented to this court at the time of the hearing of the Knapstad[(sic)] Motion in this matter, *it does appear that the State may have sufficient evidence to show that the defendant had the intent to deprive the father of the child of contact with the child for some period of time.* However, the statute requires that in order to be able to prove the charge of Custodial Interference in the First Degree against the defendant in this matter, the State would need to prove that the defendant intended to deprive the father of contact with the child either permanently, or for a protracted period of time. The State's position is that the defendant intended to deprive the father of contact with the child for a weekend. *I would find as a matter of law that two days, in the factual*

> *circumstances presented by the prosecuting attorney, and taking the facts in the light most favorable to the State, can not constitute "a protracted period."*
>
> Consequently, I am granting the defendant's Knapstad[(sic)] Motion, and the charge of Custodial Interference in the First Degree presenting pending against the defendant is dismissed without prejudice.

CP at 93-94 (emphasis added).

The State appeals. Cline cross-appeals.

ANALYSIS

I. STATE'S APPEAL

The State argues that the trial court erred in concluding that Cline's taking BG for a weekend was not "a protracted period" as used in the first degree custodial interference statute, RCW 9A.40.060(3). Br. of Appellant at 7. We agree with the State. This issue is one of first impression in Washington.

A. Standards of Review

We review de novo a trial court's dismissal of a criminal charge under *Knapstad*. *State v. Conte*, 159 Wn.2d 797, 803, 154 P.3d 194, *cert. denied*, 552 U.S. 992 (2007).

> Under *Knapstad*, a defendant may make a pretrial motion to dismiss a charge and challenge the State's ability to prove all of the elements of the crime. The trial court has the inherent power to dismiss a charge when the undisputed facts are insufficient to support a finding of guilt. *Knapstad*, 107 Wn.2d at 351. The court must decide "whether the facts which the State relies upon, as a matter of law, establish a prima facie case of guilt." *Knapstad*, 107 Wn.2d at 356-57.

State v. Montano, 169 Wn.2d 872, 876, 239 P.3d 360 (2010). We will uphold the trial court's dismissal of a charge under *Knapstad* if no rational finder of fact could have found beyond a

reasonable doubt the essential elements of the crime. *State v. Snedden*, 112 Wn. App. 122, 127, 47 P.3d 184 (2002), *aff'd*, 149 Wn.2d 914, 73 P.3d 995 (2003).[6]

We review questions of statutory interpretation de novo. *State v. Bunker*, 169 Wn.2d 571, 577-78, 238 P.3d 487 (2010). We interpret statutes to give effect to the legislature's intentions, beginning by examining the statute's plain language. *Bunker*, 169 Wn.2d at 578. In the absence of statutory definitions, we look to standard dictionary definitions. *State v. Watson*, 146 Wn.2d 947, 954, 51 P.3d 66 (2002) (citing *State v. Sullivan*, 143 Wn.2d 162, 175, 19 P.3d 1012 (2001)).

B. Definition of "Protracted Period"

RCW 9A.40.060(3) provides:

> A parent or other person acting under the directions of the parent is guilty of custodial interference in the first degree if the parent or other person intentionally takes, entices, retains, or conceals a child, under the age of eighteen years and for whom no lawful custody order or parenting plan has been entered by a court of competent jurisdiction, from the other parent with intent to deprive the other parent from access to the child permanently or *for a protracted period.*

(Emphasis added). Neither this statute and nor the rest of chapter 9A.40 RCW, however, define a "protracted period"; and no case law of which we are aware expressly defines a minimum period of time in this context. Thus, we use statutory interpretation principles to determine its meaning.

According to WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1826 (definition 2) (1993), to "protract" means "to draw out or lengthen in time or space: CONTINUE, PROLONG."

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[6] *See also State v. Olson*, 73 Wn. App. 348, 357 n.6, 869 P.2d 110 (1994) (noting similarity between standards of review for *Knapstad* motion and challenge to the sufficiency of the evidence), *review denied*, 124 Wn.2d 1029 (1994).

Because the term "prolonged" is a relative term, the dictionary definition alone does not answer the question of whether a prolonged period can, in some circumstances, be as short as a weekend in the context before us here. Thus, we turn to case law for clarification.

Washington courts have addressed first degree custodial interference cases involving time periods significantly longer than the weekend at issue here. But these cases neither address the meaning of "protracted period" nor establish the *minimum* amount time needed to constitute a "protracted period" in this statutory context.[7] The shortest time period discussed in any state or federal custodial interference case we could locate was an eight-day period; but even that case did not focus on the duration of the interference. *See People v. Obertance*, 105 Misc. 2d 558, N.Y.S.2d 475 (1980) (addressing a vagueness challenge to the "protracted period" element).[8] Other domestic relations and criminal statutes and cases also use the phrase "protracted period"; but similarly they do not define the minimum length of a "protracted period," and they involve

[7] *State v. Veliz*, 176 Wn.2d 849, 851-52, 298 P.3d 75 (2013) (defendant charged six days after taking child, whom defendant did not return for four months); *State v. Justesen*, 121 Wn. App. 83, 84-85, 86 P.3d 1259 (child concealed for 18 months), *review denied*, 152 Wn.2d 1033 (2004); *State v. Lund*, 63 Wn. App. 553, 555-56, 821 P.2d 508 (1991) (husband took child out of state with intent to keep the child to obtain a marital reconciliation, child recovered after 26 days), *review denied*, 118 Wn.2d 1028 (1992).

[8] *See also State v. Luckie*, 120 N.M. 274, 278-79, 901 P.2d 205 (1995), *cert. denied*, 120 N.M. 184 (1995) (vagueness challenge to "protracted period" language in custodial interference statute) (citing *Obertance*, 432 N.Y.S.2d at 476).

contexts quite distinct from the first degree custodial interference charged here.[9] Thus, these cases offer little guidance.

Nevertheless, although none of these cases or statutes expressly provide that a "protracted period" can be as short as a weekend, they do demonstrate that the meaning of "protracted period" is highly context-dependent. Some courts, for example, have defined "protracted period" in the custodial interference context as "'a lengthy or unusually long time *under the circumstances*.'" *State v. Luckie*, 120 N.M. 274, 279, 901 P.2d 205 (1995), *cert. denied*, 120 N.M. 184 (1995) (emphasis added) (quoting *Obertance*, N.Y.S.2d at 476). We further note that this context-dependent definition is consistent with our legislature's express purpose in promulgating the custodial interference statute: to protect children and custodial parents from non-custodial parental kidnapping. *See* 1984 FINAL LEGISLATIVE REPORT, 48th Wash. Leg., at 128-29. Against this backdrop, we adopt "a lengthy or unusually long time under the circumstances" as a reasonable definition of "protracted period" for purposes of Washington's first degree custodial interference statute, RCW 9A.40.060(3).

[9] *See* RCW 26.09.191(3)(f) (domestic relations statute allowing court to impose restrictions in parenting plan if "[a] parent has withheld from the other parent access to the child for a protracted period without good cause"); RCW 26.09.410(2) (domestic relations statute defining "relocate" as "a change in principal residence either permanently or for a protracted period of time"); *State v. Rotko*, 116 Wn. App. 230, 245, 67 P.3d 1098 (2003) (criminal mistreatment case addressing whether the "protracted nature of the offense" was "a factor necessarily included in the crime itself" and therefore could not be considered an aggravating sentencing factor when abuse occurred over child's entire 11-month lifetime); *State v. Vaughn*, 83 Wn. App. 669, 680, 924 P.2d 27 (1996) (addressing sophistication and planning exceptional sentencing factor, describing 11-month period that child rapist/kidnapper spent in victim's neighborhood before committing the crime as a "protracted period"), *review denied*, 131 Wn.2d 1018 (1996); *State v. Ross*, 71 Wn. App. 556, 861 P.2d 473, 883 P.2d 329 (1993), *review denied*, 123 Wn.2d 1019 (1994) (murder case discussing evidence of "protracted" struggle in context of deliberate cruelty aggravating sentencing factor).

C. Application of "Protracted Period" Definition

Applying this newly adopted definition, we next determine if the State established a question of fact about whether Cline intended to withhold BG for a "protracted period" in the context of the circumstances of this case. We hold that it did.

The statutory purpose of protecting the child undergirds any determination of whether a weekend was a "protracted period" under the circumstances. Here, the child was especially vulnerable, a baby less than 14 months old. Gavino, the parent with custody, was engaged in a long-running argument with members of the mother's family over visitation. Ranee, the child's mother, was allowed only supervised visitation because of her drug use. And Cline took the baby surreptitiously at Ranee's request, without Gavino's knowledge or consent. These circumstances showed instability in the child's care. Against this backdrop, a weekend *could* constitute "a protracted period" of time for a baby as young and dependent as BG. And a jury should decide whether Cline violated the statute under the facts and circumstances of this case.

Accordingly, we hold that (1) the State provided sufficient evidence to support this "protracted period" element, and (2) the trial court should have denied Cline's *Knapstad* motion to dismiss the first degree custodial interference charge before trial.

II. CLINE'S CROSS-APPEAL

In her cross-appeal, Cline argues that even if we hold that the State established this "protracted period" element, the evidence was not sufficient to show that she intended to deprive Gavino of access to BG. This argument fails.

Cline first asserts that there is no proof that she intended to deprive Gavino of access to BG because "Ranee, who clearly was the parent of the child who gave the child to [Cline], had

the legal right to do so." Br. of Resp't/Cross Appellant at 12-13. Cline misreads RCW 9A.40.060(3), which expressly applies to a person who takes a child *under the direction of a parent* with intent to deprive *the other parent* of access to the child ("for whom no lawful custody order or parenting plan has been entered by a court of competent jurisdiction"). RCW 9A.40.060(3). Because Ranee did not have the right to deprive Gavino of his access to BG,[10] that Cline acted under Ranee's direction did not absolve her of custodial interference as charged under this statute.

Cline next argues that the evidence showed only that Rosemary, not Cline, intended to take the child for the weekend. Again, taken in the light most favorable to the State, the evidence shows that (1) Rosemary requested the child for a family gathering that weekend, (2) Rosemary's response to Waadevig's text advising Rosemary to call Cline and to tell Cline to return the child suggested that Rosemary was aware of Cline's actions, and (3) the deputies later located Cline and BG at the family gathering at the lake. This evidence was sufficient to establish a question of fact about whether Cline intended to take deprive Gavino of his access to

[10] Contrary to Cline's argument, we stress that Ranee's independent legal right and access to BG were irrelevant. In addition, Cline incorrectly asserts that the evidence that Ranee "gave" her BG was "uncontroverted." Br. of Resp't/Cross Appellant at 13. Ranee's written and oral statements immediately after Cline took BG directly conflict with Cline's later statements and other evidence suggesting that Ranee "gave" BG to Cline.

BG that Father's Day weekend.

We reverse the superior court's dismissal of the custodial interference charge against Cline and remand for trial.

Hunt, J.
Hunt, P.J.

We concur:

Bjorgen, J.
Bjorgen, J.

Maxa, J.
Maxa, J.

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v TERESA L. CLINE, Petitioner	)))))))	No. 44026-1-II Cowlitz County No. 12-1-00627-7 CERTIFICATE OF MAILING

I, Karen Legette, certify and declare:

That on the 24th day of June, 2014, I deposited in the mails of the United States of America, a properly stamped and addressed envelope, containing a Petition for Review addressed to the following parties:

Supreme Court
Temple of Justice
P. O. Box 40929
Olympia, WA 98504-0929

Sue Baur
Prosecuting Attorney
Hall of Justice
312 SW First
Kelso, WA 98626

I certify under penalty of perjury pursuant to the laws of the State of Washington that the foregoing is true and correct.

DATED this 24th day of June, 2014.

Karen Legette

OFFICE RECEPTIONIST, CLERK

To: Karen Legette
Subject: RE: Teresa Cline

Rec'd 6/24/2014

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Karen Legette [mailto:klegette@qwestoffice.net]
Sent: Tuesday, June 24, 2014 3:33 PM
To: OFFICE RECEPTIONIST, CLERK
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State of Washington v. Teresa Cline / Court of Appeals #44026-4-II

Madam Clerk,

Please find attached hereto a copy of our Petitioner for Review in regards to the above entitled matter. The original along with the filing fee has been placed in today's mail.

Thank you for your attention to this matter.

Sincerely,
JAMES K. MORGAN
Attorney at Law

By:
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Legal Assistant to
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