71193-8

71193-8

NO. 71193-8-I

IN THE COURT OF APPEALS – STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON
Respondent,

v.

CARRI DARLENE WILLIAMS,
Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON, FOR SKAGIT COUNTY

The Honorable Susan K. Cook, Judge

RESPONDENT'S BRIEF

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I. SUMMARY OF ARGUMENT

H.W. and I.W. were adopted by Carri and Larry Williams from Ethiopia. Carri and Larry engaged in systematic punishment, deprivation and humiliation of the two children. H.W. died of hypothermia brought on by malnutrition and being forced to remain outside on a cold rainy night after being accused of stealing food.

Carri Williams was convicted by a jury of Homicide by Abuse, Manslaughter in the First Degree and Assault of a Child in the First Degree.

Williams' challenges fail. There was sufficient evidence for the jury to find her adopted daughter was under age sixteen and there was substantial bodily harm of the adopted son. The trial court did not abuse its discretion in refusing testimony of a single defense witness who would have testified to an age range similar to other experts and did not preclude the child being under age sixteen. The trial court did not abuse its discretion by striking the testimony of a witness brought from Ethiopia to testify, but was unavailable after testifying for further examination. The two comments during closing argument by the prosecutor using the word "I" were not personal opinions meriting mistrial. The trial court also did not abuse its discretion in admission of expert testimony of regarding torture. And finally, the terms "torture" and "extreme indifference to life" are not unconstitutionally vague.

For these reasons, Carri Williams' convictions must be affirmed.

II. ISSUES

1. Where the testimony included a physician who saw the deceased in Ethiopia opined the victim's age was there sufficient evidence by which a jury could find that the defendant's daughter was under age sixteen for the purpose of the homicide by abuse statute?

2. Where multiple experts provide an age range both below and above age sixteen, and two opine the deceased was under age sixteen, can a rational trier of fact find the deceased was under age sixteen?

3. Where the victim suffered a lasting scar from beating and was struck on the bottom of his feet causing significant pain and impairing his ability to walk, was there sufficient evidence by which a jury could find that the defendant's son suffered substantial bodily harm?

4. Where a late disclosed defense expert witness was at best only cumulative of other evidence of the child's age, did the trial court abuse its discretion by excluding the witness?

5. Did the trial court abuse its discretion by choosing to strike testimony of a witness who was unavailable to testify after further evidence came to light for which the defense wanted to examine the witness?

6. Did the prosecutor's brief comments during closing argument which were objected and stricken, merit reversal of the conviction?

7. Where the totality of the conduct overwhelmingly showed acts of

assault, isolation, food deprivation and humiliation, is the term "torture" unconstitutionally vague as applied?

8. Did the trial court abuse its discretion by permitting expert testimony on the issue of torture?

9. Where the conduct included acts that led to the victim dying of hypothermia in her own back yard, is the term "extreme indifference to human life" unconstitutionally vague as applied?[1]

10. Was error, if any, harmless beyond a reasonable doubt?

III. STATEMENT OF THE CASE

1. Summary of Procedural History

On September 29, 2011, Carri Williams was charged with Homicide by Abuse and Assault of a Child in the First Degree for the death by hypothermia of H.W. on May 12, 2011, and the injuries to H.W.'s younger brother I.W. from January 1, 2009 to May 12, 2011. CP 1-2, CP 21-4. Carri was charged and tried jointly with her husband, Larry Williams. CP 1, 215-6.

On July 22, 2013, jury selection commenced. 7/22/13 RP 2. [2] Testimony began July 29, 2013, and concluded August 30, 2013. 7/29/13 RP 14, 8/30/13 RP 27. Fifty-eight witnesses were called.

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[1] Carri also assigned error for denial of the defense "extreme indifference" instruction. No argument presented the denial was error. Br. App. at page 43.

[2] The State will refer to the verbatim report of proceedings by using the date followed by "RP" and the page number. For hearings where there are separate AM and PM proceedings, the reference will include that fact. The attached Appendix A contains a summary.

On September 9, 2013, the jury found Carri guilty of Homicide by Abuse, Manslaughter in the First Degree, and Assault of a Child in the First Degree. CP 362, 363, 365. The jury returned a special verdict finding a series of aggravating factors pertaining to Manslaughter in the First Degree. CP 369-70. The manslaughter conviction was vacated due to double jeopardy.

On October 29, 2013, the trial court imposed a sentence at the high-end of the range for Homicide by Abuse of 320 months and Assault of a Child in the First Degree of 123 months to run consecutively. CP 385.

On November 11, 2013, Williams timely filed a Notice of Appeal to the Court of Appeals. CP 392.

2. Summary of Trial Testimony

On May 12, 2011, H.W. died of hypothermia after being left outside in the cold at her parent's house in Sedro Woolley. 7/30/13 RP 21, 8/5/13 RP 67, 8/6/13 RP 39, 8/8/13 RP 177. H.W. and her brother I.W. had been born in Ethiopia. 7/29/13 RP 15, 17. They were adopted in 2008 by Carri and Larry Williams and came to America. 7/29/13 RP 15, 17, 7/30/10 RP 155. I.W. was about twelve years old at the time of trial[3]. 7/29/13 RP 15. I.W. is deaf. 7/29/13 RP 14. I.W. was the only deaf family member although other Williams family members had various degrees of sign language proficiency.

[3] Dr. Julia Bledsoe, a pediatrician, testified that a bone age analysis that was done on I.W. in 2012, reflected an age of eleven and a half years old, which was consistent with Dr. Bledsoe's observations of I.W. 8/22/13 RP 105, 108-109, 111.

7/29/13 RP 19. The Williams' had seven biological children in the family and in the home. 8/5/13 RP 18-19. Larry worked at Boeing and would leave the house at noon and return home around midnight. 8/5/13 RP 21.

Carri and Larry were in charge of "discipline" in the house. 8/5/13 RP 54. Sometimes the older brothers would "spank" I.W. and H.W. at the direction of Carri and Larry. 8/5/13 RP 61, 184, 187. Over the last year or two in the home, the punishments got worse. 7/29/13 RP 28.

On May 11, 2011, H.W. was outside of the home for most of the day and night. 8/5/13 RP 67, 8/6/13 RP 39, 8/8/13 RP 177. Carrie told C.W. (H.W.'s sister who was fourteen at trial) that H.W. had stolen food earlier in the day. 8/5/13 RP 18, 74. The weather was rainy and cold. 8/5/13 RP 74, 8/6/13 RP 96. H.W. got cold so Carri ordered her to do jumping jacks and standing and sitting exercises to keep warm. 8/6/13 RP 39-40, 8/7/13 RP 24. When H.W. stopped, Carri had two of the boys go outside and hit H.W. on the legs to force her to do them. 8/6/13 RP 40, 43-44.

C.W. was looking out the window to keep an eye on H.W. 8/5/13 RP 69, 104. C.W. saw Carrie hit H.W. on the back of her legs with the switch. 8/5/13 RP 139-40. Later H.W. began to either throw herself, or fall, to the ground outside on multiple occasions. 8/5/13 RP 68, 101. After that H.W. removed her clothing, and was nude, outside. 8/5/13 RP 104-5.

C.W. saw H.W. naked, lying face down near the patio and told Carri.

8/5/13 RP 70, 71. S.W. (H.W.'s sister who was thirteen at trial) looked out the window and saw H.W. lying face down on the ground. 8/5/13 RP 155, 8/6/13 RP 42. C.W. and Carri went out to check on H.W. 8/5/13 RP 71. They tried to pick her up to carry her in but she was too heavy. 8/5/13 RP 72. They went in the house to get a sheet to cover her nudity then told the older brothers to go carry her in. 8/5/13 RP 72.

Carri called Larry who was on his way home from work to tell him that H.W. was unresponsive and not breathing. 8/6/13 RP 42, 8/6/13 RP 110. Five to ten minutes earlier Carri had called to say H.W. was acting up. 8/6/13 RP 110. Larry told Carri to call 911. 8/6/13 RP 110-111. Carri called 911 and commenced CPR. 8/6/13 RP 111.

H.W. died from hypothermia suffered in her own back yard. 7/30/13 RP 21, 8/5/13 RP 67, 8/6/13 RP 39, 8/8/13 RP 177. Paradoxical undressing is a phenomenon often present since a person suffering from hypothermia has a false sensation of warmth causing them to disrobe 7/30/13 RP 81. At the time of her death H.W. was abnormally thin and malnourished. 7/30/13 RP 24, 27-8. She was 78 pounds at her height of 5 feet tall. 7/30/13 RP 27. She had marks to her body consistent with being beaten with implements. 7/30/13 RP 26, 44, 46-49, 54-55.

Prior to H.W.'s death, she and I.W. had been the subject of multiple punishments including physical abuse, isolation, dousing with cold water,

humiliation, and food deprivation detailed below.

i. Abuse and Torture of H.W. and I.W.

Physical assault: I.W. and the other biological children testified I.W. and H.W. were assaulted including being sprayed by a water hose, being hit with a belt, being hit with a hard wooden walking stick, being hit with another stick, being hit with a switch, being hit with a plastic stick, and being hit with a glue stick. 7/29/13 RP 24, 27, 51-2, 8/5/13 RP 26, 8/6/13 RP 148, 153, 8/7/13 RP 13. I.W. and H.W. were hit daily. 8/7/13 RP 13. They would be hit by both Carri and Larry. 8/7/13 RP 14, 8/19/13 RP 25-6.

I.W. testified Larry would "use a beating stick to beat us [him and H.W.]". 7/29/13 RP 22. I.W. was hit all over his body including his head, back, legs, and feet. 7/29/13 RP 28-29, 8/5/13 RP 136, 183-184. This happened often. 7/29/13 RP 2. They would have him lie down on the floor and hit the bottom of his feet really hard. 7/29/13 RP 29. This occurred often and was very painful. 7/29/13 RP 30. He would try to stand up afterward but it was very painful. 7/29/13 RP 30. He was also frequently hit on his back by mostly Larry, but also Carri. 7/29/13 RP 38-39. It was very painful. 7/29/13 RP 39. Sometimes he was hit so hard that he couldn't move. 7/29/13 RP 41-42. Around Christmas Larry hit I.W. on the top of his head "really hard" with the wooden walking stick causing I.W. to bleed. 7/29/13 RP 43-44.

Both Carri and Larry hit I.W. with the wooden walking stick and on

the bottom of his feet. 7/29/13 RP 28-29. Both also beat H.W., including hitting her on the bottom of her feet, the back of her legs, her bottom, and the top of her head. 7/29/13 RP 53, 8/5/13 RP 136, 185. According to one of the biological children, Carri did most of the hitting. 8/5/13 RP 187.

Sprayed with water: They were also punished by being hosed down with cold water from the indoor shower or with cold water from the outdoor water hose. I.W. had a problem with wetting his pants and as a result he was sprayed with the water hose. 7/29/13 RP 55-58, 8/7/13 RP 22. Whether it was day or night, if he wet his pants, he would be sprayed with cold water with the outdoor hose, or with cold water from the indoor shower. 8/1/13 RP 13-15, 8/5/13 RP 52. This happened a lot. 8/1/13 RP 14. Either Larry, Carri, or one of the three older brothers would spray I.W. 8/1/13 RP 15.

H.W. was also sprayed with the cold water from the outdoor hose by Larry, Carri, and the oldest three brothers. 8/1/13 RP 21. She would be sprayed while wearing clothes and had to keep the wet clothes on afterwards. 8/1/13 RP 22. H.W. had to shower in the backyard with a hose that was rigged up. 8/5/13 RP 52-54, 8/7/13 RP 22. Nobody else took showers outside or were sprayed with cold water. 8/1/13 RP 22, 8/5/13 RP 53.

Food Deprivation: The punishments meted out to I.W. and H.W. included extreme food deprivation. 7/29/13 RP 28, 8/1/13 RP 30, 8/5/13 RP 42. I.W. often felt hungry. 8/1/13 RP 28. When food was served to I.W. and

H.W., it was often partially frozen vegetables or cold leftovers. 8/1/13 RP 27-28, 8/6/13 RP 24-26. They were given wet sandwiches at lunch almost daily. 8/1/13 RP 29, 8/5/13 RP 138, 8/6/13 RP 27, 8/7/13 RP 18. Carri would make it wet or she would have one of the other kids make it wet. 8/6/13 RP 27. Other family members did not eat this kind of food. 8/1/13 RP 28.

Isolation: I.W. described to his therapist Julia Petersen that he rarely went out into the community. 7/31/13 RP 50. H.W. and I.W. were both excluded from holiday and birthday celebrations. 8/1/13 RP 104, 8/6/13 RP 28, 139, 141-147, 8/7/13 RP 33-34. At times H.W. would be required to stay outside and would not be allowed in the house to warm up. 8/1/13 RP 20.

Eat outside: I.W. and H.W. were often required to eat apart from the rest of the family, on the floor, a separate table, or outside. 8/1/13 RP 24, 25, 26, 8/5/13 RP 39, 8/6/13 RP 16, 28-29. H.W. often had to eat outside. 8/5/13 RP 39. This occurred even if it was snowing. 8/1/13 RP 26.

Not allowed to communicate: After the incident where I.W. was hit on the top of his head with a stick around Christmas, Larry and Carri told the other children they were not allowed to communicate with I.W. by sign language. 7/29/13 RP 46-7, 8/1/13 RP 54. It was a long time that people in the family were not allowed to communicate with I.W. 8/1/13 RP 56.

Sleeping arrangements: When I.W. first arrived, he slept in the same bedroom as the other boys. 7/29/13 RP 24. After some time, I.W. was

required sleep on the floor in the bedroom or in the shower room. 8/1/13 RP 16, 8/5/13 RP 43. He would have to sleep on the floor if he wet his pants. 8/1/13 RP 17. Sometimes he would have to sleep in the bathtub. 8/1/13 RP 18. If he wet his pants at night in bed, then he would have to stay in his wet clothes until Larry came home when Larry would turn the cold shower on I.W. 8/1/13 RP 19. Then Larry would leave I.W. in the tub to sleep. 8/1/13 RP 19. This happened many times. 8/1/13 RP 19. When required to sleep in the shower room, the light switch was outside, so I.W. was alone locked in a closed dark unlit room. 8/1/13 RP 37-38.

H.W. initially slept with the other girls in their bedroom. 7/29/13 RP 24, 8/5/13 RP 44. But then later was required by Larry and Carri to sleep on the floor of the shower room (where there was no sink or toilet), in a closet, or in the barn. 8/1/13 RP 36, 40, 44-45, 47, 8/5/13 RP 44, 8/5/13 RP 188.

H.W. was required to stay in a closet for extended periods of time both at night and during the day. 8/1/13 RP 46, 8/5/13 RP 49, 8/6/13 RP 15, 8/6/13 RP 17-18., 8/7/13 RP 16. This closet was two feet by four feet three inches. 8/7/13 RP 127. H.W. would be locked in the closet by either Larry or Carri. 8/13/13 RP 45-46. The closet was locked from the outside. 8/1/13 RP 47, 8/6/13 RP 14. The light switch for the closet was on the outside. 8/6/13 RP 14-15. Carri would read to H.W. inside of the closet. 8/6/13 RP 15. Carri also piped recordings of readings from the Bible into the closet. 8/7/13 RP

15, 20. The other children would not visit H.W. when she was in the closet. 8/6/13 RP 15. In the morning, Carri lead H.W. from the closet to eat breakfast outside. 8/6/13 RP 18. H.W. had to eat either in the closet or outside. 8/7/13 RP 16. If H.W. had to go to the bathroom, someone would have to lead her out to the outside Porta-Potty. 8/6/13 RP 18. By the time of her death, the closet was where H.W. would sleep every night. 8/6/13 RP 23.

Humiliation: H.W. was required to use a Porta-Potty that Larry and Carri put on the property specifically for H.W. 8/1/13 RP 48, 8/5/13 RP 35, 8/6/13 RP 18-19. One of the biological children said, H.W. was the only one who had to use the porta potty because, according to Carrie, H.W. "was touching the door [of the indoor bathroom] and stuff , and putting her hands that were dirty like all over." 8/5/13 RP 35. Carri was usually the one who took H.W. to the Porta Potty. 8/6/13 RP 19.

On more than one occasion, Carri cut off most of H.W.'s hair as punishment. 8/5/13 RP 58. And at least once, Carri required H.W. to wear only a towel around her waist with no pants underneath it. 8/1/13 RP 42.

Other punishment: Another punishment for H.W. would be to make her walk on the lines of a tennis or "pickleball" court outside the house. 8/1/13 RP 20, 8/5/13 RP 59, 8/6/13 RP 31. Carri and/or Larry would tell her to do this. 8/6/13 RP 137, 8/7/13 RP 21. Other times H.W. was required to stay outside and was not allowed in the house to warm up. 8/1/13

RP 20. When H.W. or I.W. was outside for punishment, if it was cold they were told by Carri or Larry to do jumping jacks, or a sitting and standing exercises to keep warm. 8/6/13 RP 33.

Reason for punishment: It was never clear what sort of acts on the part of I.W. and H.W. led to these "punishments" other than not doing what they were told to do, or if the Williams' thought I.W. or H.W. was lying to them, or if I.W. or H.W. took some food (referred to as "stealing" food). 7/29/13 RP 25-26, 28, 8/1/13 RP 117, 122, 8/2/13 RP 144, , 8/6/13 RP 74-75, 8/6/13 RP 82, 8/7/13 RP 28. While there was testimony that these children would lie, disobey, or be rebellious, there was very little ability for any witness to provide an example of an actual act of lying or disobedience. 8/6/13 RP 33 – 35, 8/6/13 RP 77, 8/7/13 RP 11. Punishments were for generic complaints of "rebelliousness". 8/1/13 RP 115, 8/5/13 RP 25. H.W. was punished for not writing her letters well enough 8/5/13 RP 34.

ii. H.W.'s Adoption, Age and Cause of Death

Dr. Carolyn Roesler was a medical practitioner in Australia who did pediatric work in Ethiopia starting in 2007. 8/13/13 RP 77, 90. Roesler met H.W. on her first trip to Ethiopia in December 2007 and saw her for seven to eight months before H.W. left to America. 8/13/13 RP 81, 85-6, 121. Based upon her observations, Roesler placed H.W. between age ten or eleven and in good health. 8/13/13 RP 87, 116, 146-7. Roesler examined H.W. for eye

lesions totaling four to six hours. 8/13/13 RP 89-90, 102. Roesler also observed H.W.'s interactions and behaviors in group settings for a minimum of up to fourteen hours. 8/13/13 RP 102, 148. Roesler figured the age at ten based upon thousands of examinations of children including Ethiopians since she met H.W. 8/13/13 RP 93. Roesler had seen H.W. without her top and saw no pubic hair suggesting no sign of sexual development. 8/13/13 RP 94-6. Her small frame was consistent with her age. 8/13/13 RP 96. Roesler saw no sign of malnutrition in H.W. 8/13/13 RP 98. Roesler identified H.W. from a video and noted the lesions for which she treated H.W. 8/13/13 RP 111-2.

Gay Knutson of Adoption Advocates International worked with the adoption agency that arranged adoptions from Ethiopia. 7/30/10 RP 141-4. Her agency placed H.W. 7/30/10 RP 146-7. H.W. had a video created for the adoption process in October, 2007. 7/30/10 RP 164-6, 169. The Williams family was sent the video. 8/7/09 RP 9. I.W. identifies H.W. on the video. 8/1/13 RP 35-6. In the video, H.W. identifies herself as age 9. Exhibit 218 at trial. (supplemental designation of clerk's papers pending).

Dr. Harold Clark was the Williams family physician. 8/8/13 RP 94-5. He first saw H.W. on August 18, 2008, shortly after her adoption. 8/8/13 RP 97. He testified to her doctor's visits and treatment until the last visit April 1, 2009. 8/8/13 RP 98-107. He also reviewed a couple records from Children's Hospital showing that she had been well. 8/8/13 RP 107-9.

Dr. Janette Tomlinson was the emergency physician who saw H.W. on her arrival at the hospital. 8/8/13 RP 143, 147. Tomlinson was informed of her situation from paramedics and knew it to be critical. 8/8/13 RP 147. The paramedics advised they had shocked H.W. seven times with no response. 8/8/13 RP 150. At the hospital they briefly continued treatment until H.W. was pronounced dead at 1:30 a.m. 8/8/13 RP 152.

Tomlinson did an examination of H.W. 8/8/13 RP 153. Tomlinson noted a contusion on her forehead and abrasions on both sides of her hips. 8/8/13 RP 154-5. Tomlinson also saw parallel red streaks on her thighs and bruising and abrasions at and below her knees. 8/8/13 RP 156. Carri Williams said that H.W. had been face planting on the law and was outside taking her clothes off. 8/8/13 RP 161. Carri also mentioned that after H.W. was naked, they had gotten a sheet and put over H.W. because her sons were going to help Carri drag H.W. into the house. 8/8/13 RP 165.

Dr. Daniel Selove, was the pathologist who performed the autopsy on H.W. within twelve hours of her death. 7/30/10 RP 14, 18-20. Selove determined H.W. died of hypothermia. 7/30/10 RP 21. Contributing factors included malnutrition and a bacterial condition. 7/30/10 RP 21. Selove saw a series of injures including bruising and scrapes. 7/30/10 RP 23, 25-6, 39-40, 42-3. Selove described linear marks of bruises and scrapes in the area of both knees. 7/30/10 RP 44-6. They were patterned injuries that appeared to have

been caused by a switch. 7/30/10 RP 46, 103. The legs had similar injuries. 7/30/10 RP 48-9. The injuries occurred within days of death. 7/30/10 RP 55. H.W. also had abrasions on her nose, forehead and temples. 7/30/10 RP 53-4. Those occurred minutes to hours before death. 7/30/10 RP 54-5. Selove had been told H.W. was thirteen years old and her physical appearance was consistent with that age. 7/30/13 RP 29.

Dr. Frances Chalmers is a pediatrician who was also a regional medical consultant for DSHS. 7/29/13 RP 62-3. Chalmers had experience and training regarding malnourishment. 7/29/13 RP 65-6. She reviewed medical files of H.W. from 2008 and 2009, charting H.W.'s weight over those two years. 7/29/13 RP 68-9, 72-4. When H.W. first arrived in this country she was of normal height and weight. 7/29/13 RP 70. Over her first year here she gained weight and went from 40th percentile to 80th. 7/29/13 RP 70. In 2009, she was in the 90th percentile. 7/29/13 RP 130.

On the date of her death in May, 2011, she weighed between 76 and 80 pounds and she was in the 5th percentile for BMI. 7/29/13 RP 75, 78. Dr. Chalmers determined H.W. had been undernourished. 7/29/13 RP 76-7, 82. She was seriously underweight at the time of her death. 7/29/13 RP 78. Being so underweight can lead to cardiac arrhythmia. 7/29/13 RP 78. It can also make one more susceptible to hypothermia. 7/29/13 RP 82.

Dr. Rebecca Wiester is physician board certified in pediatrics and

child abuse pediatrics. 8/26/13 RP 8-9. Wiester developed familiarity with hypothermia and malnourishment. 8/26/13 RP 20. Persons suffering from hypothermia can suffer a change in mental status, have erratic movements and in severe cases, take their clothes off. 8/26/13 RP 26.

Wiester reviewed records pertaining to H.W. and I.W. 8/26/13 RP 32-3. Wiester determined that both H.W. and I.W. had suffered from food restrictions. 8/26/13 RP 47-8, 56-8. Wiester's opinion was that H.W. had suffered from food deprivation, physical abuse, isolation and degrading treatment causing her to be left outside as a part of discipline causing hypothermia brought on by neglect and starvation. 8/26/13 RP 60-1.

Forensic anthropologist Dr. Katherine Taylor examined skeletal x-rays of H.W. after she was exhumed to determine age. 8/23/13 RP 10, 14. Thirty x-rays were taken. 8/23/13 RP 23. Taylor examined as many of the growth plates on the end of her bones throughout the body and look at them in total to determine age. 8/23/13 RP 30. Based upon an examination of the growth plates in multiple x-rays, she gave an opinion that H.W. was between ages thirteen and seventeen at the time of death. 8/23/13 RP 16-7, 41. Taylor determined the age as fifteen plus or minus two years. 8/23/13 RP 42.

Dr. Gary Bell is a dentist who specialized in forensic dentistry. 8/9/13 RP 7-8. Bell performed an age determination on the teeth of H.W. on January 18, 2013. 8/9/13 RP 20-1. Bell had been present when the body of

H.W. was exhumed. 8/9/13 RP 22. He evaluated her teeth several x-rays were taken to determine an age range. 8/9/13 RP 24-6. Based upon his examination he believed her age to be in the range between thirteen and eighteen, with the mean falling at age fifteen. 8/9/13 RP 32.

Defense called Dr. David Sweet, a forensic dentist, to testify regarding H.W.'s age based upon an analysis done of her teeth. 8/22/13 RP 11-2, 21, Sweet reviewed the x-rays taken by Dr. Bell. 8/22/13 RP 32. Sweet opined that he estimated, H.W.'s age based upon her teeth as sixteen and-a-quarter years plus or minus one and-a-half years. 8/22/13 RP 45-6.

Defense called radiologist Dr. Jordan Haber. 8/29/13 RP 9. Haber made age determinations based upon x-rays. 8/29/13 RP 16. Haber examined x-rays of the hands and wrists of H.W. 8/29/13 RP 19. Based upon an examination of the growth plates, he gave an opinion that H.W. was between ages fifteen and seventeen at death. 8/29/13 RP 18, 24, 41. Based on two images, Haber opined that H.W. was age fifteen at the time of death. 8/29/13 RP 32. Other images suggested ages fifteen or sixteen. 8/29/13 RP 36, 38, 40. He was confident her age was over fifteen, but that confidence of age became less the older he went from age fifteen. 8/29/13 RP 62.7 Haber had no prior similar experience with a deceased individual. 8/29/13 RP 95.

Larry Williams acknowledged that the date of birth for H.W. they used with the school district was July 19, 1997. 8/27/13 RP 187.

iii. Fact Pertaining to Serious Bodily Harm of I.W.

I.W. testified that when he came to this country from Ethiopia, he did not have any scars. 7/29/13 RP 43. Dr. Clark, the family physician, saw I.W. for the first time August 18, 2008. 8/8/13 RP 110. Clark saw no indication of bruising or marks on I.W. 8/8/13 RP 110, 130.

I.W. testified that he got a scar under his arm that was caused by Larry and Carri's beating him. 7/29/13 RP 49-50. Two years later at trial, I.W. showed that scar to the jury. 7/29/13 RP 50.

I.W. also testified that when he would try to stand up after having been beaten on the bottom of his feet, it was very painful. 7/29/13 RP 29-30. He further testified that sometimes he was hit so hard that he couldn't move. 7/29/13 RP 41-2.

Dr. Julia Beldsoe, the pediatrician who treated I.W. on October 25, 2012, noted the scars on I.W. which had been noted in a prior record from July of 2011. 8/22/13 RP 100, 104-5RP 107.

iv. Additional Acts Pertaining to Torture

Julia Petersen is a mental health therapist at Seattle Children's Hospital who treated I.W. after his removal from the Williams' family home. 7/31/13 RP 24-25, 28. Petersen diagnosed I.W. with Post Traumatic Stress Disorder (PTSD). 7/31/13 RP 59, 63.

I.W. told Petersen that Carri had hit him with a rod on his feet; that

Larry had hit him with a rod on the bottom of his feet and on his head and also used a belt and hurt him. 7/31/13 RP 42. I.W. told Petersen he would get wet peanut butter sandwiches to eat while standing in the cold outdoors. It was hard to swallow the sandwich because he didn't get anything to drink. 7/31/13 RP 75-76. He said he was often hungry and he and H.W. were punished for getting food from the kitchen or the pantry. 7/31/13 RP 76.

John Hutson is an expert in the field of torture, including methodologies of torture, and what types of conduct may constitute torture. 8/1/13 RP 133- 167, 8/2/13 RP 13-14. Hutson explained that torture may be a single event, but it may also be a series of events which, individually would not be torture, but taken together may be torture. 8/2/13 RP 16-7. For example, isolation and physical pain may constitute torture. 8/2/13 RP 17.

Hutson explained that torture has been defined by 48 of the United States as well as internationally. The commonality those definitions have are cruel, inhumane, and degrading treatment. 8/2/13 RP 17–9. Torture may be physical but it may also encompass pain and suffering which may be either or both physical and psychological. 8/2/13 RP 20. "[I]n fact, some of the most insidious and the most painful torture is sensory deprivation, isolation, you know, being away from others. Threats of torture is torture. Watching somebody else for whom you care be tortured is torture." 8/2/13 RP 20. A classic example of torture is to beat people on the bottom of their feet

because it makes it difficult to walk later and it is less visible. 8/2/13 RP 24. Another classic example is enforced nudity because it is degrading and humiliating. 8/2/13 RP 25. Cold is another example of torture, e.g. cold showers and showers outside. 8/2/13 RP 25. Factors to consider in determining whether something is torture is whether things are being done in combination, what the duration is, and what the physical, mental, emotional, and psychological well-being of the victim is. 8/2/13 RP 21.

Isolation occurred here when I.W. and H.W. were separated from the family in terms of eating meals, not celebrating birthdays, not celebrating Christmas, sleeping in the barn, or the shower, or the closet. This isolation is an aspect of torture because it makes it more difficult for the child to cope with the other things that are happening. 8/2/13 RP 25-6. Motivation for the torture acts is irrelevant. 8/2/13 RP 22-3. H.W.'s being forced to sleep in the closet was an act of torture in itself due to sensory deprivation due to no control over the light and sleep deprivation. 8/2/13 RP 26-7. Additionally, the closet was very small and did not allow H.W. the ability to stretch or comfortably move around. This can cause physical pain. 8/2/13 RP 27. H.W.'s head being shaved was a "demonstration of power, control, authority and, you know, I'm in charge, and you are under my – you are under my control." 8/2/13 RP 36. H.W.'s being required to use the porta-potty because she was "accused of being dirty and unsanitary" was an aspect of the torture

because of the humiliation. 8/2/13 RP 38. The frequency and duration of these events all contributed to a determination of whether the conduct as a whole constituted torture. 8/2/13 RP 39.

Hutson opined that both I.W. and H.W. were tortured. 8/2/13 RP 40.

Dr. Katherine Porterfield is a psychologist who specializes in the treatment of survivors of torture. 8/13/13 RP 163, 167. She assisted in setting up a clinic offering services to survivors of torture, including child survivors, and the criteria used for admittance to the clinic includes the criteria of the definition of torture as defined by the United Nations. 8/13/13 RP 170, 8/14/13 RP 13. Porterfield is an expert in the area of ascertaining whether an individual has been the victim of torture based on criteria to include whether the events experienced by the individual "involved severe pain or suffering or abuse that took place physically or psychologically." 8/14/13 RP 17.

Porterfield opined that the treatment that I.W. and H.W. endured at the hands of Larry and Carri Williams was "consistent with torture as it's defined by medical professional and others who deal with torture in [those] settings" and that that treatment "caused[ed] severe suffering, pain, anguish." 8/14/13 RP 17-18, 90.

Porterfield testified about two categories of treatment that would be consistent with torture. 8/14/13 RP 50. First was "[t]he systematic, planful, deliberate program of abusive, coercive treatment enacted upon the two

children." 8/14/13 RP 50. The second was "the fact that the components of the treatment involved mixtures, combinations of things done to them, psychological and physical things together that would then have a particularly damaging effect on them." 8/14/13 RP 50-51.

As far as the systematic nature of the treatment, Porterfield noted that "planfulness" of the "hitting or the isolating or the withholding food or the using the cold water" is consistent with systematized torture. 8/14/13 RP 52. Porterfield said what was inflicted on H.W. and I.W. was done more frequently and severely than the other children. 8/14/13 RP 52. This program of tortuous acts increased in severity and frequency until they occurred very frequently for about 6 to 12 months, up to the end of H.W.'s life. 8/14/13 RP 52-53. Regarding the second category, the combinations of things that were done to them, Porterfield explained that "it's really almost meaningless to pull out one thing or one threat and say, is that torture? In fact, what happens when a person is tortured is that there is this combination of methods used on them, and they involve both the physical and the psychological." 8/14/13 RP 54. For example, the combination of food deprivation and isolation would be quite distressing and damaging to a child. 8/14/13 RP 55.

In terms of techniques that arose to the level of torture for H.W., Porterfield pointed to prolonged and frequent isolation, sensory deprivation and cramped confinement, multiple events of assaults, food restriction and

alteration to render food less palatable, the use of cold water and outdoor "showers" which would be physically uncomfortable as well as humiliating for a teen girl to be outside naked showering under a hose 8/14/13 RP 56-62, 64-66. All of these acts would fall into the category of "severe pain or suffering caused to the individual by acts of another person." 8/14/13 RP 66. Additionally, the use of the porta-potty, the shaving of H.W.'s head, the forbidding of H.W.'s being spoken to, all constituted degrading and humiliating treatment. 8/14/13 RP 67-69.

As far as I.W., there were several techniques used on him that met the level of torture. These would include isolation, being hit repeatedly with multiple objects on multiple parts of his body, the cold water dousing due to toileting accidents, food deprivation and alternation. 8/14/13 RP 71-79.

Because I.W. survived, Porterfield was able to review his psychological data post-abuse and used that data to assist in determining whether his treatment was consistent with torture. 8/14/13 RP 80. Based on the data, Porterfield opined that as a result of the acts perpetrated on him by the Williams', I.W. suffered from post-traumatic stress disorder as well as depression. 8/14/13 RP 81, 89.

IV. ARGUMENT

1. There was sufficient evidence of age and substantial bodily harm.

i. Standards Pertaining to Sufficiency of Evidence

> Evidence is sufficient to support a conviction if, viewed in the light most favorable to the prosecution, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." *Salinas*, 119 Wn.2d 201. Circumstantial evidence and direct evidence are equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

State v. McNeal, 98 Wn. App. 585, 592, 991 P.2d 649 (1999).

> **Credibility determinations are for the trier of fact and are not subject to review.** *State v. Camarillo,* 115 Wn.2d 60, 71, 794 P.2d 850 (1990). **We must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence.** *State v. Walton,* 64 Wn. App. 410, 415-16, 824 P.2d 533, *rev. denied,* 119 Wn.2d 1011, 833 P.2d 386 (1992). **The trier of fact is free to reject even uncontested testimony as not credible as long as it does not do so arbitrarily**. *State v. Tocki,* 32 Wn. App. 457, 462, 648 P.2d 99, *rev. denied,* 98 Wn.2d 1004 (1982).

State v. Prestegard, 108 Wn. App. 14, 22-3, 28 P.2d 817 (2001)

> And "all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant." *Id.* The credibility of the witnesses is for the jury. *See State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990) .

State v. Perez, 166 Wn. App. 55, 60, 269 P.3d 372 (2012).

ii. Proof of age of H.W.

Reviewing the evidence in the light most favorably to the State, there was sufficient evidence for the jury to find that H.W. was under age 16 at the

time of her death.

> A person is guilty of homicide by abuse if, under circumstances manifesting an extreme indifference to human life, **the person causes the death of a child or person under sixteen years of age**, a developmentally disabled person, or a dependent adult, and the person has previously **engaged in a pattern or practice of assault or torture of said child, person under sixteen years of age**, developmentally disabled person, or dependent person.

RCW 9A.32.055(1) (emphasis added). The statute requires the victim to be under age sixteen, be developmentally disabled or dependent. Here, the State charged the defendant based upon the victim being under age sixteen. CP 1.

The sole witness on age who saw H.W. prior to her death was Dr. Carolyn Roesler. Roesler first saw H.W. December of 2007 and then for seven to eight months before she left to America. 8/13/13 RP 81, 85-6, 121. Roesler had seen H.W. without her top and saw no pubic hair suggesting no sign of sexual development. 8/13/13 RP 94-6. H.W.'s small frame was consistent with her age. 8/13/13 RP 96. Roesler saw no sign of malnutrition in H.W. 8/13/13 RP 98. Based upon her observations, Roesler placed H.W. between age ten or eleven. 8/13/13 RP 87, 116. H.W.'s interactions with other children were consistent with that age. 8/13/13 RP 102, 148. Roesler had done thousands of examinations on Ethiopian children since her examination of H.W. 8/13/13 RP 93.

The pathologist who did the autopsy indicated his observations were

consistent with the age of thirteen at the time of death. 7/30/13 RP 29.

Forensic dentist Dr. Gary Bell retained by the State evaluated H.W.'s teeth and took x-rays to determine an age range. 8/9/13 RP 24-6. Based upon his examination he believed her age to be in the range between thirteen and eighteen, with the mean falling at age fifteen. 8/9/13 RP 32.

Forensic anthropologist Dr. Katherine Taylor examined numerous growth plates on the end of H.W.'s bones throughout the body to determine age. 8/23/13 RP 30. She gave an opinion that H.W. was age fifteen years old, plus or minus two years. 8/23/13 RP 16-7, 41-2.

Defense called forensic dentist Dr. David Sweet, who reviewed x-rays taken by Dr. Bell. 8/22/13 RP 32. Sweet opined that he estimated, H.W.'s age based upon her teeth as sixteen and-a-quarter years plus or minus one and-a-half years. 8/22/13 RP 45-6.

Defense also called radiologist Dr. Jordan Haber who examined the H.W.'s growth plates. 8/29/13 RP 9, 16, 18. Based on his examinations of images he believed H.W. was over fifteen, but that confidence of age became less the older he went from age fifteen. 8/29/13 RP 62.7.

The Brief of Appellant essentially does a weighing of the evidence to argue that no rational trier of fact could have found that H.W. was under the age of sixteen at the time of her death. Br. App. at pages 15-18. Even though some witnesses placed her in an age range between thirteen and nineteen the

fact that the range includes an age above sixteen is irrelevant. The jury as the trier of fact actually hears and observes the witnesses giving the jury the power and authority to evaluate the witnesses as they testify. They are the sole judges of the weight of the testimony. Thus, they are free to disregard those witnesses and the range that exceeded age sixteen if they found the other testimony sufficiently compelling.

It would not have been unreasonable for the jury to have relied on Dr. Roesler who saw H.W. in Ethopia in 2007 and 2008 and believed H.W. to be between age ten and eleven. 8/13/13 RP 116. That would have placed H.W. between age thirteen and fourteen at time of her death. And Dr. Selove, the pathologist who performed the autopsy of H.W. believed the age of thirteen to be consistent with his observations. 7/30/13 RP

This Court cannot find as a matter of law that the weight of the other witness testimony so exceeded the testimony of Dr. Roesler and Dr. Selove, testimony that the jury's determination must be overturned.

Carri Williams' challenge to the sufficiency of the evidence of the age of H.W. at the time of her death must be denied.

iii. Proof of Substantial Bodily Harm of I.W.

Assault of a Child in the First Degree includes the element of substantial bodily harm. RCW 9A.36.120(1)(b). Substantial bodily harm is defined as bodily injury which:

> involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or which causes a fracture of any bodily part[.]

RCW 9A.04.110(4)(b). "We hold instead that the term "substantial," as used in RCW 9A.36.021(1)(a), signifies a degree of harm that is considerable and necessarily requires a showing greater than an injury merely having some existence. *State v. McKague*, 172 Wn.2d 802, 806, 262 P.3d 1225 (2011).

The State proved both temporary but substantial disfigurement and temporary but substantial loss or impairment of the function of any bodily part or organ as to I.W.

Contrary to defense claims regarding substantial disfigurement, I.W. testified that when he came to this country from Ethiopia, he did not have any scars. 7/29/13 RP 43. He testified the scar under his arm caused when Carri and Larry were beating him. 7/29/13 RP 49-50. Two years later at trial, I.W. showed that scar to the jury. 7/29/13 RP 50. While the other children and defense witnesses noted other marks on I.W.'s body (back and face) it was up to jury to decide if the marks (described as marks and dark circle things) did not match the described scar that was shown to the jury.

Regarding the loss or impairment of the function of any bodily part or organ, I.W. testified that it was very painful when he would try to stand up after having been beaten on the bottom of his feet. 7/29/13 RP 29-30.

Sometimes he was hit so hard that he couldn't move. 7/29/13 RP 41-2. Inability to move constitutes a loss or impairment of a bodily function.

In *State v. McKague,* the Supreme Court held that the victim's resulting facial bruising and swelling lasting several days, and the lacerations to his face, the back of his head, and his arm were severe enough to allow the jury to find that the injuries constituted substantial but temporary disfigurement. *State v. McKague*, 172 Wn.2d 802, 806, 262 P.3d 1225, 1227 (2011) *citing, State v. Hovig*, 149 Wn. App. 1, 5, 13, 202 P.3d 318, *rev. denied*, 166 Wn.2d 1020 (2009) (red and violet teeth marks lasting up to two weeks constituted substantial bodily injury), *State v. Ashcraft*, 71 Wn. App. 444, 455, 859 P.2d 60 (1993) (bruises from being hit by shoe were temporary but substantial disfigurement).

Here, I.W.'s injuries arose to a level from which a rational trier of fact could find substantial disfigurement.

2. The trial court exercised proper discretion in excluding an untimely disclosed defense witness whose opinion as to the child's age was at best cumulative of other evidence.

The uncontested timeline with regard to Dr. Eric Bartelink was set forth by the State in its Motion to Exclude Defense Witness, Supp. CP __.[4]

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[4] (Sub No. 272, Motion to Exclude from Larry Williams' Case, filed 2/25/15 supplemental designation of Clerk's Papers pending). This document along with the other supplemental designations below was part of the record in Larry Williams' case and

On January 14, 2013, H.W.'s body was exhumed for a forensic examination and testing of her bones and teeth. On January 25, 2013, the defense expert, forensic anthropologist Bartelink, received two molars of H.W. for forensic examination purposes. On April 4, 2013, the State provided the report of its odontology expert to the defense. On May 5, 2013, the State provided the report of its forensic anthropologist, to the defense. On May 9, 2013, the court ordered the State and the defense provide all expert materials to the opposing party two weeks prior to any expert interviews.

On June 7, 2013, the status hearing was held in this matter at which time the co-defendant filed a second amended witness list without Bartelink. On June 8, 2013, Bartelink, submitted the molars to Dr. Bruce Buchholz of the Lawrence Livermore National Laboratory for radiocarbon testing.

On July 16, 2013, numerous motions were argued and decided . On July 22, 2013, trial commenced. On July 23, 2013, Buchholz performed his testing of the molars. On August 9, 2013 (or August 11 – both dates are on the report), Bartelink authored a report summarizing Buchholz's findings.

On Sunday, August 11, at 11:52 p.m., the co-defendant emailed the prosecution Bartelink's written report noting they intended to call him as an expert to opine that H.W. was between 15 and 20 years at the time of death.

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considered by the trial court. It was filed in the present case so that it could be designated directly from this case, rather than sought to be transferred from the co-defendant's court file.

At the hearing on the State's Motion to Exclude Defense Witness on August 13, 2013, the court denied the motion finding that the need for the evidence arose only after the defense learned that H.W.'s uncle (Tenssay Woldetsaddik) would be testifying to an age certain at his defense interview June 18, 2013, and after the defense learned on June 24, 2013, that Dr. Roesler may be testifying regarding age. 8/13/13 RP 74. Prior to making its ruling the court asked questions regarding what the other experts would be testifying to, presumably considering the State's argument that Bartelink had nothing to offer that was different from any of the other experts that were testifying in this trial. 8/13/13 RP 58-60, 70-71.

In considering the evidence already before the jury regarding the possible age range of H.W. the court relied on the argument of defense counsel that Bartelink's testimony would be substantially different because he would testify that it would be impossible for H.W. to have been under the age of fifteen at the time of death. 8/13/13 RP 58, 70-71.

Counsel for Carri Williams never even had this witness on their witness list. They expressed a wish to call Dr. Bartelink after counsel for Larry Williams sought and obtained test results mid-trial and put the expert on their witness list. 8/13/13 RP 67.

The State renewed its motion to exclude Bartelink's testimony after a

mid-trial interview. Supp. CP __.[5]The trial court granted the State's motion.

> Dr. Bartelink is not going to testify. There were 2 reasons why I allowed him to testify in this case in spite of his late disclosure; Number 1, to rebut the testimony of Mr. Woldetsidik that [H.W.] was born on the date certain. I was told that Dr. Bartelink was going to say that it was scientifically impossible for her to have been born on that date or for her to have been 13 and that no other witness was going to testify that she could not be 13. None of that turns out to be the case. Woldetsidik is not being considered, so his testimony is no longer at issue. The jury is not going to consider it. Dr. Bartelink is not going to say it's a scientific impossibility for her to have been 13. He's going to say it's highly improbable, and there is another witness who said she couldn't be 13. The last odontologist that I heard from the Defense clearly testified to that, so we have another witness who's going to say it. Bartelink doesn't say it's scientifically impossible, and there's no testimony for the jury to consider that you no longer need to rebut, so there is no basis for me to overlook the late disclosure, which was what I initially asked you to address here but which never got addressed.

8/27/2013 RP 78-79.

Defense is obligated to disclose to the prosecuting attorney "the names and addresses of persons whom the defendant intends to call as witnesses at the hearing or trial, together with any written or recorded statements and the substance of any oral statements of such witness," on or prior to the omnibus hearing." CrR 4.7(b)(1); *State v. Kipp*, 171 Wn. App. 14, 31-33, 286 P.3d 68 (2012).

If a party violates a discovery rule or court order, "the court may

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[5] (Sub No. 273, Renewed Motion to Exclude from Larry Williams' Case, filed 2/25/15, supplemental designation of Clerk's Papers pending).

order such party to permit the discovery of material and information not previously disclosed, grant a continuance, dismiss the action or enter such other order as it deems just under the circumstances." CrR 4.7(h)(7)(i).

A permissible sanction for a discovery violation is exclusion of defense witness testimony. *State v. Hutchinson*, 135 Wn.2d 863, 881, 959 P.2d 1061 (1998). Where the violation involves the late disclosure of a witness, continuance is usually the appropriate remedy "to give the nonviolating party time to interview a new witness or prepare to address new evidence." *Id.* Where this remedy is not meaningful, however, exclusion of the witness may be appropriate. *Hutchinson*, 135 Wn.2d at 881-82.

> Exclusion or suppression of evidence is an extraordinary remedy and should be applied narrowly. Discovery decisions based on CrR 4.7 are within the sound discretion of the trial court, *State v. Yates*, 111 Wn.2d 793, 797, 765 P.2d 291 (1988), and the factors to be considered in deciding whether to exclude evidence as a sanction are: (1) the effectiveness of less severe sanctions; (2) the impact of witness preclusion on the evidence at trial and the outcome of the case; (3) the extent to which the prosecution will be surprised or prejudiced by the witness's testimony; and (4) whether the violation was willful or in bad faith. *Taylor*, 484 U.S. at 415 n. 19, 108 S.Ct. 646 (citing *Fendler v. Goldsmith*, 728 F.2d 1181, 1188-90 (9th Cir. 1983)).

Hutchinson, 135 Wn.2d at 883. Evaluation of the four factors stated in *Hutchinson* shows the trial court did not abuse its discretion.

Here, as to the first factor, there were no less severe sanctions than exclusion to protect the State's right to a fair trial. The trial was mid-way

through a trial lasting six weeks at the time of the disclosure of the witness. The other remedy of continuance of the trial was not available.

The second factor, the impact of preclusion of witnesses was not significant given similar testimony from the two defense and two State's experts. The two forensic dentists provided age ranges of thirteen to eighteen (State's) and sixteen and-a-quarter plus or minus one and-a-half years (defense). 8/9/13 RP 32, 8/22/13 RP 45-6. The two bone growth plate experts provided age ranges of fifteen plus or minus two years (State's) and fifteen to seventeen (defense). 8/29/13 RP 18, 24, 41

The third factor is the extent to which the prosecution will be surprised or prejudice. Given that the disclosure occurred mid-trial, it is self-evident that the State was surprised and prejudiced. The State had no opportunity to conduct a meaningful interview of the witness before the trial commenced.[6] After the midtrial interview of the defense witness[7] the State did not have adequate opportunity to interview the expert who did the actual testing whose data Bartelink interpreted and relied on. The State had no opportunity to attempt to obtain its own expert to review or rebut, to do its

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[6] The appellant states that the State had "opportunity pretrial to question him about his testing." Br. App. at page 27. The appellant fails to address how this opportunity would have had any value whatsoever since the testing had not been commenced, completed, or even anticipated. 8/13/13 RP 60-63.

[7] After the court's initial ruling that that the expert would be allowed to testify, the State did telephonically interview the witness.

own testing, or to review the testing procedures that were employed. The State had no opportunity to seek a *Frye* hearing with declarations from experts in the field. As in *Hutchinson*, the State was "prejudiced by the inability to counter the testimony with any affirmative evidence."

As to the fourth factor, bad faith or willfulness, there is no other explanation. The defense could have sought a continuance if the evidence could have excluded a certain age. The trial court found there was no good reason for the failure to disclose the witness. 8/28/13 RP 7.

It should be noted that the *Hutchinson* court does not require that the trial court make specific findings regarding the *Hutchison* factors on the record. In that case the Supreme Court itself reviewed the factors in finding that exclusion was the appropriate remedy. Here, while the trial court made no explicit findings, its findings are implicit in that the State made arguments based on the *Hutchinson* factors and the court found that, initially, the State's motion to exclude would be denied because the need for the witness came about based on recently discovered evidence and that the proposed testimony would definitively assert that it was impossible for H.W. to have been thirteen. 8/13/13 RP 74; 8/27/13 RP 77. In other words, the court found that the preclusion of the testimony would have been significant under the second *Hutchinson* factor. However, when it became clear that Bartelink's proposed testimony would not, in fact, preclude the possibility that H.W. was under

sixteen years of age, and when the testimony of the one witness who would have testified about a definitive age, then the preclusion of his testimony was not as significant because many other experts also testified to a date range which encompassed ages below and above sixteen.

Given the disclosure mid-trial the State had no chance to respond to complex expert testimony. The trial court did not abuse its discretion.

3. The trial court did not abuse its discretion by striking the witness testimony of a witness who had testified and was thereafter unavailable to be examined further about benefits received.

A reviewing court determines the denial of a motion for mistrial for abuse of discretion. *State v. Weber*, 99 Wn.2d 158, 166, 659 P.2d 1102 (1983).

> Our Supreme Court has stated that abuse of discretion will be found for a denial of a mistrial only when "'no reasonable judge would have reached the same conclusion.'" *Emery*, 174 Wn.2d at 765 (internal quotation marks omitted) (quoting *State v. Hopson*, 113 Wn.2d 273, 284, 778 P.2d 1014 (1989)). A trial court's denial of a mistrial motion will be overturned only when there is a substantial likelihood that the error affected the jury's verdict. *State v. Rodriguez*, 146 Wn.2d 260, 269-70, 45 P.3d 541 (2002). A mistrial should be ordered "'only when the defendant has been so prejudiced that nothing short of a new trial can insure that the defendant will be tried fairly.'" *Rodriguez*, 146 Wn.2d at 270 (quoting *State v. Mak*, 105 Wn.2d 692, 701, 718 P.2d 407 (1986)).

State v. Garcia, 177 Wn. App. 769, 776, 313 P.3d 422 (2013).

Tenassay Wondetsaddik was called by the State. 8/9/13 RP 133. He was from Ethiopia and claimed to be H.W.'s uncle. 8/9/13 RP 134. He was

living with H.W.'s father at the time of her birth. 8/9/13 RP 135. She was born in 1989 on the Ethopian calendar, eight years behind the European calendar. 8/9/13 RP 137. He recorded her birthdate in a family bible. 8/9/13 RP 150. He was extensively cross-examined. 8/9/13 RP 147-98.

At the end of his testimony he was released. 8/9/13 RP 199. Following his testimony, Wondetsaddik did not return to Ethiopia as expected under the visa he had been granted. 8/13/13 RP 51. Carri Williams sought information pertaining to the failure to return. 8/13/13 RP 51-2. The court granted the request for information. 8/13/13 RP 54. Defense already had Wondetsaddik's visa information. 8/13/13 RP 54. A motion for mistrial was pursued by Larry Williams' counsel, and Carri Williams joined in the motion but was "a little less worked up about it than Mr. Williams' counsel." 8/26/13 RP 13. The lesser remedy of striking the witness testimony was also sought. 8/26/13 RP 114. The allegation was that the prosecutor had arranged for a short trip to occupy the witness and provided clothing, and food for the witness after his testimony was completed. 8/26/13 RP 14-5.

The trial court noted the record supported only that Wondetsaddik had been provided lodging with an individual and a short trip before trial. 3/16/13 RP 16. Supp. CP __.[8] All other actions occurred after Wondetsaddik

[8] (Sub No. 271, Declaration of Richard Weyrich Filed in Larry Williams' Case, filed 2/25/15, supplemental designation of Clerk's Papers pending).

had testified. 3/16/13 RP 16, 116. The trial court believed the defense would have wanted to cross-examine Wondetsaddik and should have had the chance to question the witness further about the benefits he received had he remained available. 3/16/13 RP 117.

The trial court granted relief of striking the testimony of Wondetsaddik and instructing the jury to disregard it, the family Bible and the photograph of H.W. 3/26/13 RP 116-7.

Williams cites primarily to *State v. Escalona*, 49 Wn. App. 251, 742 P.2d 190 (1987) to support his claim that a mistrial was necessary and would have been granted if sought. In *Escalona*, the victim violated an order in limine by stating that the defendant "already has a record and had stabbed someone." *State v. Escalona*, 49 Wn. App. at 253. The reviewing court found this evidence of prior crimes statement extremely serious in light of the policy to admit such evidence under limited circumstances and for limited purposes. *Id.* at 255. The court also found the improper statement significant because of the limited credible evidence against the defendant. *Id.* As a result, the trial court should have granted a mistrial. *Id.* at 256.

As opposed to the situation in *Escalona*, where the evidence involved inadmissible character evidence based upon past conduct, here the evidence presented was as to age of the alleged victim. There were significant amounts of testimony in that regard from other sources. The jury

is presumed to follow instructions to disregard improper evidence. *State v. Russell*, 125 Wn.2d 24, 84, 882 P.2d 747 (1994), *cert. denied*, 131 L. Ed. 2d 1005, 115 S. Ct. 2004 (1995). The jury could ignore the testimony of the uncle and still fairly resolve the case.

Thus, this Court cannot find no reasonable judge in the same position would have reached the same conclusion.

4. The prosecutor's brief statements of personal opinion during closing argument which were objected to and stricken do not merit reversal of the conviction.

The prosecutor made two brief comments apparently of personal opinion during closing argument which were objected to and sustained. The trial court specifically instructed the jury to disregard.

i. The prosecutor's comments were minimal.

MR. WEYRICH: ...

> He was the one that approved of this isolation, putting them out there in the -- at the picnic table or at the kitchen table, I guess, at times. He said he never gave them bad food. The fact of the matter, I think the testimony is that he did give them leftovers. And what is the response? The response was that they stole. And I do take offense at the words --

MS. FORDE: Objection.
THE COURT: Sustained.
MS. FORDE: Prosecutorial misconduct.
THE COURT: The objection is sustained.
MS. FORDE: I would ask for a curative instruction, your Honor.
THE COURT: Ladies and gentlemen, you're instructed to disregard the statement about being offended. Go ahead.

9/4/13 RP 20.

> But now, if we determine that the lower trochanter was not fused, then the outlier that he was talking about is completely consistent, and further evidence that young H.W. was under the age of sixteen years.
>
> And we had sort a disagreement on the witness stand, and talking about whether you could blow things up because you would hurt this atlas. And I disagree, and --
>
> MS. FORDE: Objection, your Honor. Prosecutorial misconduct. He's again commenting on his opinion of the evidence.
>
> THE COURT: Sustained. Mr. Weyrich --
>
> MR. WEYRICH: Yes.
>
> MS. FORDE: And I would move for a curative instruction.
>
> THE COURT: Ladies and gentlemen, you're instructed to disregard the portion of the argument where Mr. Weyrich comments on his disagreement.
>
> MR. WEYRICH: This Dr. Haber indicated that he would never magnify any bones, and his reason was, is that would upset the gold standard.

9/4/13 RP 42-3. Larry Williams' counsel is the one who made the objections proceeded to move for a mistrial. 9/4/13 RP 60-1. Carri Williams' counsel did not make any objections at the time of arguments and only joined in the defense motion for mistrial. 9/4/13 RP 61. The trial court denied the motion for mistrial finding the remarks were brief. 9/4/13 RP 62. Carri Williams' counsel never objected at the time and only sought mistrial.

ii. Standard Pertaining to Prosecutorial Error In Closing argument.

A defendant who alleges improper conduct on the part of a prosecutor must first establish the prosecutor's improper conduct and,

second, its prejudicial effect. *State v. Pirtle*, 127 Wn.2d 628, 672, 904 P.2d 245 (1995), *State v. Furman*, 122 Wn.2d 440, 455, 858 P.2d 1092 (1993).

Allegations of prosecutorial misconduct[9] are "waived by failure to make an adequate timely objection and request a curative instruction." *State v. Swan*, 114 Wn.2d 613, 661, 790 P.2d 610 (1990). Allegations may be raised for the first time on appeal where the argument is so "flagrant and ill-intentioned, and the prejudice resulting therefrom so marked and enduring that corrective instructions or admonitions could not neutralize its effect." *Id.*

Here, Carri Williams did not object to the argument at the time, and therefore the misconduct must be so flagrant and ill-intentioned as to merit mistrial. Even if this Court were to apply the lesser standard of errors affecting a verdict, Carri Williams cannot establish misconduct.

To establish prosecutorial misconduct, the defendant must show the prosecutor's comments were improper and prejudicial. *State v. Gregory*, 158 Wn.2d 759, 858, 147 P.3d 1201 (2006). Comments are prejudicial only if there is "a substantial likelihood the misconduct affected the jury's verdict." *State v. Brown*, 132 Wn.2d 529, 561, 940 P.2d 546 (1997). Prejudicial error occurs when it is "clear and unmistakable" that the prosecutor improperly expressed personal belief, rather than argued an inference from the evidence.

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[9] The State uses the term "prosecutorial misconduct" because of the use as a term of art. It is a misnomer for prosecutorial mistakes. *State v. Fisher*, 165 Wn.2d 727, 740 n. 1, 202 P.3d 937 (2009).

State v. McKenzie, 157 Wn.2d 44, 54, 134 P.3d 221 (2006). A prosecutor commits misconduct by expressing a personal opinion about either a witness's credibility or a defendant's guilt or innocence. *State v. Reed*, 102 Wn.2d 140, 145-46, 684 P.2d 699 (1984) (prosecutor repeatedly calling the defendant a liar and defense witnesses not credible because they drove fancy cars and lived out of town).

iii. Neither comment would have affected the jury's verdict.

The first comment about the defendant's use of the word stole was about children were being punished for taking food. This comment was objected to and the jury was instructed to disregard the comment. The jury is presumed to follow the Court's instructions. *State v. Haq*, 166 Wn. App. 221, 265, 268 P.3d 997 *rev denied,* 174 Wn.2d 1004, 278 P.3d 1111 (2012).

The second comment might not have even been an expression of personal opinion because all the prosecutor got out was "And I disagree, and" before the objection was made. The prosecutor was describing a "disagreement that he had with a witness." The prosecutor could have been starting to recites his belief about what the testimony was, or could have been stating noting the disagreement. There was no opinion conveyed.

The trial court was in the best position to weigh the impact of the comments and declined to grant a new trial on that basis. 9/4/13 RP 62.

Carri Williams cites to the cases of *Glassman*, and *Boehning*. But

those cases were very different situations from the present case. *In re Pers. Restraint of Glasmann*, 175 Wn.2d 696, 286 P.3d 673 (2012) (slide show including alterations of Glasmann's booking photograph by addition of highly inflammatory and prejudicial captions constituted flagrant and ill-intentioned misconduct); *State v. Boehning*, 127 Wn. App. 511, 111 P.3d 899 (2005) (repeated reference to dismissed charge, excluded evidence and asking defendant to commit to child victim lying was flagrant misconduct). In contrast in *Dhaliwahl*, the Supreme Court held that comments related to the Sikh culture and choosing a "path" were not so flagrant and ill-intentioned as to merit mistrial and could have been cured with an objection. *State v. Dhaliwal*, 150 Wn.2d 559, 580, 79 P.3d 432 (2003).

The comments did not contribute to the verdict.

5. The terms "torture" and "extreme indifference to human life" are not unconstitutionally vague as applied.

The terms "extreme indifference to human life" and "torture" in the Homicide by Abuse Statute and the Assault of a Child in the First Degree statute are not unconstitutionally vague as applied to Carri William's actions.

i. Burden of proof of unconstitutionality as applied.

The party disputing the constitutionality of a statute bears the burden of proving that statute is unconstitutional beyond a reasonable doubt. *State v. Enquist*, 163 Wn. App. 41, 45, 256 P.3d 1277 (2011), *rev. denied*, 173 Wn.2d 1008, 268 P.3d 941 (2012); *State v. Lanciloti*, 165 Wn.2d 661, 672,

201 P.3d 323 (2009) (the burden applies to as written and as applied).

ii. Extreme indifference to human life

"Extreme indifference to human life" in the Homicide by Abuse statute means extreme indifference to the life of the victim. *State v. Edwards*, 92 Wn. App. 156, 164, 961 P.2d 969(1998). Extreme indifference is not unconstitutionally vague. "Extreme" means "very great" or "very intense" and "indifferent" means "looked upon as not mattering one way or another," or "regarded as being of no significant importance or value." *State v. Madarash*, 116 Wn. App. 500, 512, 66 P.3d 682 (2003).

iii. Torture

The term "torture" has the same definition where used in the crimes of assault in the second degree, assault of a child in the first degree, and homicide by abuse. *State v. Russell*, 69 Wn. App. 237, 245-246, 848 P.2d 743 (1993) *citing Spokane v. Douglass*, 115 Wn.2d 171, 180 n.5, 795 P.2d 693 (1990); *State v. Brown*, 60 Wn. App. 60, 65, 802 P.2d 803, 806 (1990).

Torture is not defined by statute. However, the Court in *Brown* held that "torture" was a term of common understanding sufficient to provide notice of what conduct is proscribed. *Brown*, 60 Wn. App. at 66. The Court also noted with approval the Oregon decision in *State v. Cornell*, 304 Ore. 27, 741 P.2d 501, 504 (1987), "that a fact-finder would not have unbridled discretion to apply the term, and that the word 'torture' provides notice, with

a reasonable degree of certainty, of what conduct is forbidden." *Brown*, 60 Wn.App. at 66, *citing Cornell*, 741 P.2d at 504.

The *Russell* court relied on *Brown* in holding that the statutory phrase "pattern or practice of torture" is not unconstitutionally vague under either the Fourteenth Amendment or Article 1, section 3§, of the Washington State Constitution. "The term 'torture' also may be commonly understood and 'provides notice, with a reasonable degree of certainty, of what conduct is forbidden.'" *Russell*, 69 Wn. App. at 247.

Torture, at its most basic, is the infliction of severe pain and suffering. These are terms of common understanding. That "some degree of vagueness is inherent in the use of language" and "a person cannot predict with complete certainty the exact point at which his actions would be classified as prohibited conduct" does not render the statute unconstitutional the exact point at which his actions would be classified as prohibited conduct. *Seattle v. Eze*, 111 Wn.2d 22, 27, 759 P.2d 366, 368 (1988).

The appellant argues that these terms are vague as applied to her because the acts committed by the appellant were no more than misguided parenting. Br. App. at 40. The appellant argues that *Russell* and *Brown* are not helpful because the acts in those cases were more "severe" than those committed by the appellant. "All of the actions of Ms. Williams were conducted as corporal punishment of one's child, which this State has

specifically authorized." Br. App. at 41.

Where the acts of the parent are so extended and egregious as to actually cause death, it is a difficult argument to make that a person of average understanding would not conceive that her actions could be tortuous. Where ongoing beatings, acts of isolation, deprivation and humiliation, extend for months upon months in a systemic fashion, the average person of common understanding would know that these acts constitute torture and that these acts extend far beyond what any normal person would consider to be lawful corporal punishment.

It is worth noting that the parental discipline statute applies to corporal, or physical, punishment. RCW 9A.16.100. It is not a shield to protect the appellant from the other acts of torture here including food deprivation, isolation and humiliation.

Williams fails to meet her burden of proving beyond a reasonable doubt that the terms complained of are unconstitutionally vague as applied.

6. The trial court did not abuse its discretion by permitting expert testimony pertaining to torture.

"Admission of expert testimony under ER 702 is reviewed for abuse of discretion, and we will not disturb the trial court's ruling if the reasons for admitting or excluding the testimony are fairly debatable." *In re Det. of Coe*, 160 Wn. App. 809, 818, 250 P.3d 1056 (2011), *citing, State v. Russell*, 125

Wn.2d 24, 69, 882 P.2d 747 (1994), *Miller v. Likins*, 109 Wn. App. 140, 147, 34 P.3d 835 (2001).

ER 702 provides for expert testimony if "specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue". "Expert testimony is helpful to the jury if it concerns matters beyond the common knowledge of the average layperson and is not misleading. 'Courts generally "interpret possible helpfulness to the trier of fact broadly and will favor admissibility in doubtful cases."'" *State v. Goth*, 163 Wn. App. 548, 564, 261 P.3d 183 (2011), *rev. denied*, 173 Wn.2d 1026, 272 P.2d 852 (2012), *quoting Moore v. Hagge*, 158 Wn. App. 137, 155, 241 P.3d 787 (2010) (*quoting Miller v. Likins*, 109 Wn. App. 140, 148 34 P.3d 835 (2001)), *State v. Jones*, 59 Wn. App. 744, 750, 801 P.2d 263 (1990). "A trial court's decision to admit expert testimony is reviewed for abuse of discretion." *State v. Kirkman*, 159 Wn.2d 918, 927, 155 P.3d 125 (2007) *citing State v. Ciskie*, 110 Wn.2d 263, 280, 751 P.2d 1165 (1988).

Williams argues that because "torture" is commonly understood, and that because a layperson could make a determination of what constituted torture, then expert testimony was not helpful to the jury. Br. App. at 45. However, this is not the criterion by which a determination of whether expert testimony should be allowed is judged.

The question is whether the expert's testimony would be helpful to a

jury. The experts here did not seek to define the term "torture." Rather they provided expert opinions on why the different acts perpetrated on the children, over time, constituted torture. The pulled "disparate pieces of evidence together ... 'into a coherent picture for the jury.'" *State v. Nelson*, 152 Wn. App. 755, 769, 219 P.3d 100 (2009).

In *Nelson*, a dog fighting expert was allowed to testify that based on the dogs' injuries and based on items found, in his opinion there was a dog fighting operation going on and the defendants were engaged in dog fighting. The Court of Appeals affirmed the admission of this evidence because the expert was helpful to the jury in pulling disparate pieces of evidence together "into a coherent picture for the jury." *Nelson*, 152 Wn. App. at 769. It was of no import that the opinion embraced the ultimate issue to be decided by the jury. *Nelson*, 152 Wn. App. at 767. *See also State v. Hayward*, 152 Wn. App. 632, 217 P.3d 354 (2009) (doctor's opinion as to whether an injury "would be a temporary but substantial loss or impairment of the function of a body part" was admissible).

"ER 702 allows experts to offer opinion testimony where it is helpful to the trier of fact and is informed by specialized knowledge, experience, or training." *Nelson*, *supra*. Here, the specialized knowledge of Dr. Porterfield and Mr. Hutson was admitted to assist the jury to understand why and how the acts alleged caused "severe pain, anguish, or suffering". The testimony

was helpful because the experts explained why certain acts were considered torturous when considering the combination of physical and mental effects of the acts and when considering the systemized. This case is not what one might typically think of as involving torture involving acts of extreme assault. Rather, the case presented subtle acts of torture occurring over a long period of time, as opposed to more "obvious" torture like that in *Russell* which involved a number of grievous bodily injuries.

The experts testified about the effects on the two victims of the various acts inflicted on them by Carri Williams providing context for the outcome. This was within the discretion of the trial court.

7. Any trial error is harmless beyond a reasonable doubt.

Where an error violates an evidentiary rule rather than a constitutional mandate, the error is not prejudicial unless it is reasonably likely that the outcome of the trial would have been materially affected had the error not occurred. *State v. Thomas,* 150 Wn.2d 821, 871, 83 P.3d 970 (2004). The improper admission of evidence is harmless error if the evidence is of minor significance in reference to the overall, overwhelming evidence as a whole. *Thomas,* 150 Wn.2d at 871, 83 P.3d 970.

Here, the claimed errors pertaining striking of the testimony of the uncle, claimed misconduct in closing argument and the admission of the expert testimony all constitute non-constitutional error. If this Court were to

find any of these situations present error, it is not reasonably likely that the outcome of the trial was materially affected given the other evidence of age and overwhelming evidence of torture and food deprivation.

If a trial error is of constitutional magnitude, prejudice is presumed and the State bears the burden of proving it was harmless beyond a reasonable doubt. *State v. Irby*, 170 Wn.2d 874, 886, 246 P.3d 796 (2011). The claimed error pertaining to exclusion of the late disclosed defense expert witness is subject to a constitutional harmless error analysis. Since at best the expert could have done would be to provide the age range of H.W. similar to that of the other four experts, this Court can be certain the error was harmless beyond a reasonable doubt.

V. CONCLUSION

For the foregoing reasons, Carri Williams' convictions for Homicide by Abuse and Assault in the First Degree must be affirmed.

DATED this 26th day of February, 2015.

SKAGIT COUNTY PROSECUTING ATTORNEY

By: _____

ERIK PEDERSEN, WSBA#20015
Deputy Prosecuting Attorney
Skagit County Prosecutor's Office #91059

DECLARATION OF DELIVERY

I, Karen R. Wallace, declare as follows:

I sent for delivery by: [X]United States Postal Service, [ ]ABC Legal Messenger Service, a true and correct copy of the document to which this declaration is attached: to: Thomas M. Kummerow, addressed as Washington Appellate Project, 1511 Third Avenue, Suite 701, Seattle, WA 98101 . I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Executed at Mount Vernon, Washington this 26th day of February, 2015.

Karen R Wallace

KAREN R. WALLACE, DECLARANT

APPENDIX A

VRP TABLE

Date	Volume	Hearing Description including witnesses
11/15/11	Vol 1	Pretrial Hearing
1/4/12	Vol 1	Pretrial Hearing
1/6/12	Vol 1	Carri's violation of NCO
2/8/12		3.5 stipulation Carrie
2/17/12	Vol 1	Pretrial Hearing
4/25/12	Vol 1	Defense motion to interview re: Carri's second violation of NCO
5/11/12	Vol 1	Release hearing Carrie's violation of NCO
7/25/12	Vol 1	Discussion of interviews of children
7/27/12	Vol 1	Omnibus and discovery/interview issues
12/13/12		defense motion to examine Hana's body Testimony of Bartelink and Wigren
8/17/12	Vol 2	Omnibus; MTC; misc discovery motions
10/24/12	Vol 2	Pretrial Hearing; motion exhume with testimony of Chalmers
11/28/12	Vol 2	Status, arraign on amended; various discovery issues
12/7/12	Vol 2	exhumation issues/order
1/2/13	Vol 2	defense motion to continue; discovery issues; motion bill of particulars; exhumation issues
1/9/13	Vol 2	State's MTC; exhumation order
4/4/13		status hearing
5/9/13		Larry's motion to compel discovery Relating to Hana's cousin and other things
6/7/13		status hearing Includes discussion on setting up interview with the cousin
7/16/13		many motions including the mismanagement motions and charging issues and cousin issues
7/19/13		status; MTC based on discovery issues
7/22/13:		Trial Commencement: Motions in Limine
7/23/13		Voir dire (not recorded)
7/24/13		Voir dire (not recorded)
7/25/13		Voir dire (not recorded), Continued Motions in limine
7/26/13		complete the voluminous motions in limine
7/29/13		Testimony Day 1: I.W., Motion for mistrial, Dr. Frances Chalmers Sara Willard

7/30/13		Testimony Day 2: Dr. Selove Gay Knutson Yohannes Kidane
7/31/13		Testimony Day 3: Julia Petersen (IW therapist)
8/1/13		Testimony Day 4: I.W., Beverly Davies John Hutson
8/2/13		Testimony Day 5: John Hutson Gena Miller Kay Starkovich Brian Kruick Rana Engleson Detective Dan Luvera
8/5/13		Testimony Day 6: Cara Williams Sarah Williams
8/6/13		Testimony Day 7: Sarah Williams Detective Dan Luvera I.W.
8/7/13:		Testimony Day 8: Jonathan Williams Detective Dan Luvera Partricia Barnts Debra Anderson Det. Kay Walker
8/8/13		Testimony Day 9: I.W. Dr. Harold Clark Dr. Janette Tomlinson Chief Chad Clark
8/9/13		Testimony Day 10: Dr. Gary Bell William Cheney Karolyn Cheney

		Tenassay Wondetsaddik
8/13/13		Testimony Day 11: I.W. Carolyn Roesler Katherine Porterfield
8/14/13		Testimony Day 12: Katherine Porterfield
8/15/13		Testimony Day 13: Katherine Porterfield Jacob Williams Joseph Williams
8/16/13		Testimony Day 14: Joseph Williams Julia Peterson Josephe Williams
8/19/13		Testimony Day 15: I.W. Joseph Williams Heidi Kennedy Rick Lemley Doug Walker Leanne King Dep Adams Detective Hagglund
8/20/13		Testimony Day 16: Trudy Wise (foster mom) Detective Hagglund Detective T. Luvera
8/21/13		Testimony Day 17: Sheila Jackson Detective Ely Detective T. Luvera
8/22/13		Testimony Day 18: Dr. Bledsoe Detective T. Luvera Defense witness – out of order: Dr. David Sweet -
8/23/13		Testimony Day 19: Dr. Katherine Taylor (Hana's age based on

		bones) Defense witnesses – out of order: Audrey Anderson Mike Crane Kerina Crane
8/26/13		Testimony Day 20: Dr. Rebecca Weister Defense Case Begins: Bob Clark
8/27/13		Testimony Day 21: Joshua Williams Larry Williams
8/28/13		Testimony Day 22: Larry Williams Carol Miller Charlotte Miller George Miller Carrie Williams
8/29/13		Testimony Day 23: Dr. Haber Carrie Williams
8/30/13 AM		Testimony Day 24: State's Rebuttal Witness out of order: Katherine Taylor Defense witness: Carrie Williams
8/30/13 PM		Testimony Day 25: Detective D Luvera
9/4/13		Closing Argument
9/5/13		Closing Argument
9/6/13		Jury questions
9/9/13		Motion for mistrial and Verdicts
10/19/13		Motion for Arrest of Judgment Sentencing