No. 93303-1

THE SUPREME COURT OF THE

STATE OF WASHINGTON

State of Washington,
Respondent/Plaintiff

v.

Robert Anthony Staats, and Michelle K. Staats,
Petitioners/Defendants

From a Decision of the Washington State Court of Appeals, Division 3

PETITION FOR REVIEW

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TABLE OF CONTENTS

A. Identity of Petitioners 1

B. Decision 1

C. Issues Presented for Review 2

D. Statement of the Case 3

E. Argument Why Review Should be Accepted 8

F. Conclusion 15

Certificate of Service 16

Appendix 17

TABLE OF AUTHORITIES

Case Authority

Dep't of Ecology v. Campbell & Gwinn,
146 Wn.2d 1, 9, 43 P.3d 4 (2002) 11

State v. Jacobs,
154 Wn.2d 596, 600, 115 P.3d 281 (2005) 11

State v. Ervin,
169 Wn.2d 815, 820, 239 P.3d 354 (2010) 11

State v. Evans,
177 Wn.2d 186, 298 P.3d 724 (2013) 8,12,13,14,15

State v. Van Woerden,
93 Wn. App. 110, 116, 967 P.2d 14 (1998) 13

Statutes

RCW § 9A.42.005 5

RCW § 9A.42.010 . . . . . *passim*

RCW § 9A.42.030 1,3,5

Rules of Appellate Procedure

RAP 13.4 8

Secondary Resources

Merriam-Webster's Collegiate Dictionary
487 (11th ed. 2003) 7

http://dictionary.cambridge.org/dictionary/british/eat 6

http://dictionary.cambridge.org/dictionary/british/food 6

http://www.merriam-webster.com/dictionary/eat 7

http://www.merriam-webster.com/dictionary/food 6,7

http://www.merriam-webster.com/dictionary/intravenous 7

http://www.oxforddictionaries.com/us/
definition/american_english/eat 6

http://www/oxforddictionaries.com/us/
definition/american_english/food 6

A. IDENTITY OF PETITIONERS

Robert Anthony Staats and Michelle K. Staats, husband and wife, ask this Court to accept review of the attached Unpublished Opinion of the Division 3 of the Washington State Court of Appeals affirming their convictions for criminal mistreatment in the second degree pursuant to RCW 9A.42.030. Appendix at 1-15.

B. DECISION

In the Unpublished Opinion, filed May 24, 2016, the Court of Appeals affirmed Michelle and Robert Staats' convictions for criminal mistreatment in the second degree. Appendix at 15. The Court of Appeals affirmed the trial court's finding that the Staats withheld "food" from their toddler son, ELS, even though the Staats continually gave their son food during the period of time relevant to the charges. ELS's had an aversion to the food the Staats were feeding him and his failure to thrive eventually resulted in severe malnutrition causing ELS to suffer a cardiac arrest and brain damage. Both the trial court and the Court of Appeals recognized that the Staats were giving ELS food to eat, nonetheless, the trial court convicted them for their failure to seek medical intervention to administer intravenous nutrition. Both the trial court and Court of Appeals concluded that intravenous nutrition constituted "food" under the definition of "basic necessities of life" in RCW 9A.010(1). The statute contains no definition of "food." *Id.*

The Staats' maintain that the generally understood definition of "food," is something you eat, take in by the mouth. They maintain that this is the definition of "food" that should have governed the trial court and Court of Appeals when determining whether there was sufficient evidence to find that the Staats withheld the "basic necessity of life," "food." from ELS pursuant to RCW § 9A.42.010(1).

The Court of Appeals recognized this commonly understood definition of food, but chose to include in the definition of "food" the administration of intravenous nutrition. Appendix at 12 . Neither the enabling statute, nor the legislative history define "food," nonetheless, the Court of Appeals adopted a broad definition, stating "[w]e, therefore, broadly define 'food' as including the receipt of nutrition intravenously, not just eating through one's mouth [and held] that 'food' encompasses life-sustaining IV nutrition." Appendix at 12.

By adopting this broad definition, the Court of Appeals violated the historical and constitutional prohibition on judicial legislation. The Court of Appeals' decision ran afoul of decisions from this Court regarding a courts' responsibility when interpreting ambiguous criminal statutes under rule of lenity.

C. ISSUES PRESENTED FOR REVIEW

1. Whether the plain meaning of "food" in RCW 9A.42.010(1) in the definition of "basic necessities of life" in prosecutions for criminal

mistreatment includes the medical procedure, the administration of intravenous nutrition.

2. Whether the Court of Appeals violated the principles of the rule of lenity, including the concerns relating to separation powers, laid down by this Court in previous decisions by defining "food" under 9A.42.010(1) to include a medical procedure, the administration of intravenous nutrition.

D. STATEMENT OF THE CASE

Michelle and Robert Staats appealed their convictions to second degree criminal mistreatment in violation of RCW § 9A.42.030 to Division 3 of the Court of Appeals. The convictions were entered by the Honorable Evan E. Sperline, Grant County Superior Court, following a stipulated facts trial. CP 881-1178, 1204-10. In an Unpublished Opinion, Division 3 of the Court of Appeals affirmed their convictions. Appendix 1-15.

The Staats are the parents of five minor children. At the time the events in this case, the four oldest children were well adjusted and healthy. CP 902-03, 1024-25. The Staats's youngest child, ELS, was fed from birth with the same food regimen that Ms. Staats used for her four oldest children. CP 1139.

Unlike the four oldest children, ELS suffered from a severe aversion to solid foods that were introduced to him at the age of one. ELS was unable to keep solid foods down. CP 897, 900, 911, 1005-07.

Michelle Staats consulted employees of the Women, Infants and Children (WIC) program about ELS's food aversion. CP 904-05. Eventually, WIC told Michelle Staats that she better take ELS to the doctor or WIC would have to call CPS. CP 920-21. Instead of taking ELS to a medical doctor, Michelle Staats took ELS a naturopathic doctor. Id. This doctor also informed both the Staats that ELS needed IV Nutrition Therapy, and demanded that ELS be taken to the hospital. CP 907. Rather than seek medical help at the hospital, Michelle Staats sought advice from an East Asian doctor, a Qigong practitioner in San Francisco, California. CP 912-13. This doctor also suggested that ELS be taken to the hospital for IV nutrition. CP 913, 1140. Throughout this entire time, the Staats continued to feed ELS food in an attempt to nurture him back to health. Michelle Staats continued to research and the family prayed for ELS's good health. CP 90-02, 905-06, 911, 913, 936-37, 981-83, 1005-08, 1014, 1017-18, 1020, 1068, 1102, 1122, 1123, & 1140.

Just before his third birthday, ELS suffered a heart attack. CP 9-10. ELS was severely emaciated, and grossly underweight. CP 9. Michelle Staats called 911 and kept ELS alive by applying CPR until emergency medical personnel arrived at her home and transported him to the hospital. CP 9.

ELS remains in need of 24 hour health care. Doctor Blessing, the State's medical expert, submitted his opinion that ELS's cardiac arrest was

primarily caused by "severe malnutrition, and that this degree of malnutrition [was] the result of medical neglect." CP 1111.

The Staats elected to proceed to trial on stipulated facts to preserve an issue relating to the Christian Science exemption found in RCW § 9A.42.005. The Staats moved to dismiss the Information based on the unconstitutionality of this Christian Science exemption that prohibits prosecution of parents whose children are treated by a duly accredited Christian Science practitioner in lieu of seeking medical care. Such child "is not considered deprived of medically necessary health care..." *Id.* The motion to dismiss the Information was denied in the trial court. A motion for discretionary review filed during the trial court proceedings was denied by the Court of Appeals.

After receiving closing arguments in the stipulated facts trial, the trial court acquitted the Staats on the theory that they withheld "medically necessary health care" from ELS. The trial court, however, convicted the Staats for withholding "food" based on their failure to seek the medical help for the administration of intravenous nutrition for ELS.

"A parent of a child ... is guilty of criminal mistreatment in the second degree if he or she recklessly ... (b) causes substantial bodily harm by withholding any of the basic necessities of life." RCW 9A.42.030(1). "Basic necessities of life" is defined as "*food*, water, shelter, clothing, and medically necessary health care, including but not limited to health-related

treatment or activities, hygiene, oxygen, and medication." RCW § 9A.42.010(1) (emphasis added).

This Petition centers on what is meant by "food." "Food" is not defined in RCW § 9A.42.010(1).

The Court of Appeals recognized that "food" is commonly understood to mean "something people eat," the definition the Staats maintain applies to § 9A.42.010(1) in determining whether they withheld "food" from ELS. Appendix at 10. The Oxford Dictionary defines "food" as "[a]ny nutritious substance that people or animals eat or drink ... in order to maintain life and growth."[1] Similarly, the Cambridge English Dictionary defines "food" as "something that people and animals eat ... to keep them alive."[2] Merriam-Webster's dictionary recognizes that the often attributed definition of food is "the things that people and animals eat."[3]

The Oxford dictionary defines "eat" as to "[p]ut (food) into the mouth and chew and swallow it."[4] The Cambridge Dictionary's definition

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1 *See*, http://www/oxforddictionaries.com/us/definition/american_english/food.

2 *See*, http://dictionary.cambridge.org/dictionary/british/food.

3 *See*, http://www.merriam-webster.com/dictionary/food.

4 *See*, http://www.oxforddictionaries.com/us/definition/american_english/eat.

of "eat" is identical.[5] Merriam-Webster states that "eat" means "to take in through the mouth as food: ingest, chew and swallow in turn."[6]

The Court of Appeals, however. concluded that "food" has other broader definitions such as "material consisting essentially of protein, carbohydrate, and fat used in the body of an organism to sustain growth, repair, and vital processes and to furnish energy,"[7] found in the Merriam-Webster's Collegiate Dictionary 487 (11th ed. 2003). Appendix at 11-12. The Court of Appeals failed to include in this broader definition that "food" is a "nutriment in solid form."[8] Intravenous nutrition is not a "nutriment in sold form."

The definition of "intravenous" is "through, in, or into a vein: entering the body through a vein."[9] Thus, the generally understood meaning of food as "something people eat," does not align with the medical process of administering intravenous nutrition. The Washington State legislature has not clearly and unambiguously included the medical procedure of administering intravenous nutrition in what it meant by "food" in RCW § 9A.42.010(1).

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5 *See*, http://dictionary.cambridge.org/dictionary/british/eat.

6 *See*, http://www.merriam-webster.com/dictionary/eat.

7 *See*, http://www.merriam-webster.com/dictionary/food.

8 *Id.*

9. *See*, http://www.merriam-webster.com/dictionary/intravenous.

The Court of Appeals's concluded there are two definitions of food. It describes these differing definitions as "narrow" and "broad." Appendix at 11-12. However, the court dismissed application of the rule and lenity in a footnote, stating, "[t]he rule of lenity is applied only "if there is no contrary legislative intent,"" thus, implying that the generally understood definition of "food" applies only if it is shown that the legislature intended that intravenous nutrition not be included in the definition of "food.". Appendix at 12. This rationale runs afoul of this Court's directives.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED.

This Petition involves an issue of substantial public interest that should be determined by the Supreme Court pursuant to RAP 13.4(b)(4). It is urged that the Court determine whether the "plain meaning" of "food" in RCW 9A.42.010(1) encompasses the medical procedure of the administration of intravenous nutrition. It is the Staats's contention is does not.

In addition, it is urged that the Court determine if the Court of Appeals's application of the rule of lenity conflicts with the principles laid down by this Court in *State v. Evans*, 177 Wn.2d 186, 298 P.3d 724 (2013) and review is appropriate pursuant to RAP 13.4(b)(1).

1. The "plain meaning" of "food" in RCW 9A.42.010(1) does not encompass the administration of intravenous nutrition.

The debate over what "food" is intended to mean in the Court of Appeals's Unpublished Opinion is a red herring.

The State could not prove the Staats failed to give ELS food. He was provided food. CP 90-02, 905-06, 911, 913, 936-37, 981-83, 1005-08, 1014, 1017-18, 1020, 1068, 1102, 1122, 1123, & 1140.

ELS's illness stemmed, not from a failure of the Staats to give him food, but rather, from their failure to seek medical treatment for an ailment that did not allow ELS to maintain nutrition from the food he was given to eat. In this instance, the State could have proved Robert and Michelle Staats failed to provide medically necessary health care to ELS by failing to seek medical help for the administration of intravenous nutrition.[10]

The statutory structure of RCW 9A.42.010(1) sets forth two sets of terms that define what constitutes "basic necessities of life." The first set of terms signals a legislative intent to include a narrow set of terms within the definition of the "basic necessities of life." The second set establishes a broader, catchall, term in the definition of the "basic necessities of life."

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10 The trial court acquitted the Staats on the theory they withheld medically necessary health care. Thus, the only issue in this Petition is whether the convictions can be sustained on the theory that they withheld "food" from ELS.

This is evidenced by the fact that the first set of terms in the definition of "basic necessities of life" are specific and narrow, i.e., "food, water, shelter and clothing." RCW 9A.42.010(1). Each item is specific and narrow in scope and they are easily understood.

However, the second set contains terms that are broader in scope and in application, i.e., "medically necessary health care, including but not limited to health-related treatment or activities, hygiene, oxygen, and medication." *Id.* What is medically necessary health care?

The term "medically necessary health care" is incredibly broad, and appears to cover anything within the medical scope, including the administration of intravenous nutrition, dental care, mental health care or whatever a medical provider says is necessary to sustain life. This is borne out by the statute itself.

After defining "[b]asic necessities of life." using a set of narrow terms, "food, water, shelter, [and] clothing, RCW 9A.42.010(1) then includes a broader, catchall, provision, "medically necessary health care, *including but not limited to* health-related treatment or activities, hygiene, oxygen, and medication." RCW 9A.42.010(1) (emphasis added). To be sure, the fact that the legislature chose to use the phrase "including but not limited to" means that this second set in the definition of "basic necessities of life" was intended to apply broadly and intended cover conduct not covered by the more narrow set of terms preceding it.

When this Court interprets a statute, the "objective is to determine the legislature's intent." *State v. Ervin*, 169 Wn.2d 815, 820, 239 P.3d 354 (2010) (quoting *State v. Jacobs*, 154 Wn.2d 596, 600, 115 P.3d 281 (2005)). Thus, "if the meaning of a statute is plain on its face,'" this Court "'give[s] effect to that plain meaning.'" *Ervin*, 169 Wn.2d at 820 (citing *Jacobs*, 154 Wn.2d at 600 (quoting *Dep't of Ecology v. Campbell & Gwinn*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002)).

If the legislature intended for the medical administration of intravenous nutrition to constitute "food," the legislature could have simply used the term "nutrition," instead of "food" in the first set of the definition of "basic necessities of life." Instead, the legislature created the second broader set within its definition of "basic necessities of life," i.e.," medically necessary health care" that encompasses a broader scope of conduct that surely includes a withholding of the medical help necessary to administer intravenous nutrition. RCW 9A.42.010(1).

In this case, it was established that ELS's illness stemmed from a failure of his body to accept food and to convert the food he was given into nutrition. He required a medical procedure to survive—intravenous nutrition. RCW 9A.42.010(a) is plain on its face. The failure to seek intravenous nutrition from a qualified medical health provider falls under the second broader set of the "basic necessities of life" in the statute, i.e., "medically necessary health care." *Id.*

The Court of Appeals's decision so far departs from the "plain meaning" and commonly understood definition of "food" that review from this Court is sought to promote the substantial public interest in having criminal statute applied and interpreted in the manner envisioned by the legislation in enacting the law. It is, therefore, urged that the Court accept review for this reason.

2. The Court of Appeals's application of the rule of lenity conflicts with the Court's decision in *State v. Evans*.

The fact that the trial court and the Court of Appeals grappled with the definition of "food" in order to sustain the Staats' convictions brings to the forefront of this Petition the application of the rule of lenity. Here, the Court of Appeal misapplied applicable case law from this Court relating to the rule.

The overarching principle when applying the rule of lenity is that courts may "interpret an ambiguous penal statute adversely to the defendant *only if* statutory construction 'clearly establishes' that the legislature intended such an interpretation." *Evans*, 177 Wn. 2d at 192-93, 298 P.3d at 728 (emphasis added). "If more than one interpretation of the plain language is reasonable, the statute is ambiguous, and we must then engage in statutory construction." Id. The methodology for analyzing the rule of lenity is summarized as follows:

> interpretation of a penal statute will be either the only reasonable interpretation of the plain language; or, if there is no single reasonable interpretation of the plain language, then whichever interpretation is clearly established by statutory construction; or, if there is no such clearly established interpretation, then whichever reasonable and justifiable interpretation is most favorable to the defendant.

Evans, 177 Wash. 2d at 193-94, 298 P.3d at 728.

The Court of Appeals's analysis rested entirely on one generalized statement - the "rule of lenity is applied only "[i]f there is no contrary legislative intent." Appendix at 12 n. 4 (citing *State v. Van Woerden*, 93 Wn. App. 110, 116, 967 P.2d 14 (1998)). The Court of Appeals essentially dismissed the rule of lenity, and in doing so, applied the rule in a fashion that is opposite from how this Court holds the rule is applied.

The Court of Appeals's single statement that the rule applies only if "there is no contrary legislative intent" means that the rule applied in this case only if the Staats' could show that the legislature did not intend that the administration of intravenous nutrition be included in the definition of "food." This single statement runs contrary to this Court's holding in *Evans*. Under *Evans*, the administration of intravenous nutrition may be included in the definition of "food" "*only if*" it is clear that the legislature intended it to be included. *Evans*, 177 Wn. 2d at 192-93, 298 P.3d at 728 (emphasis added). There is not clear intent.

The commonly understood definition of food as "things people eat" is the only reasonable interpretation of "food." Including intravenous nutrition as "food" takes the definition out of the realm of the everyday understanding since intravenous nutrition is accomplished only by use of a medical procedure.

If there is an ambiguity in whether intravenous nutrition is included in the definition of "food," such ambiguity must be resolved in the Staats's favor. The Court of Appeals's decision takes the commonly understood definition "food," "things people eat," and adds intravenous nutrition to the definition. Nothing in the legislative history and nothing from the plain language of § 9A.42.010(a) clearly establish that the legislature intended to include in the intravenous medical procedure used to administer nutrition in the definition of "food."

The principles underlying the rule of lenity dictate against the Court of Appeals' methodology. This Court wrote:

> [r]equiring a relatively greater degree of confidence when resolving ambiguities within penal statutes against criminal defendants helps further the separation of powers doctrine and guarantees that the legislature has independently prohibited particular conduct prior to any criminal law enforcement.

Evans, 177 Wn.2d at 193, 298 P.3d at 728.

Here, the Court of Appeals's decision runs afoul both principles. First, the Court of Appeals has written into § 9A.42.010(1) that "food" includes a medical procedure used to administer nutrition. Adding this to the statute is contrary to the concept of the separation of powers. *Evans*, 177 Wn.2d at 193, 298 P.3d at 728.

Secondly, the Court of Appeals' decision usurps the guarantee to Washington's citizens that "the legislature has independently prohibited particular conduct prior to any criminal enforcement." *Id.* Therefore, this Court is urged to accept review of the Court of Appeals decision that departs from this Court's decision in *Evans.*

F. CONCLUSION

Based on the foregoing, it is requested that the Court grant review pursuant to RAP 13.4(b)(1) and (b)(4), and reverse the Michelle and Roberts Staats' convictions for criminal mistreatment in the second degree.

Respectfully submitted this 23rd day of June, 2016

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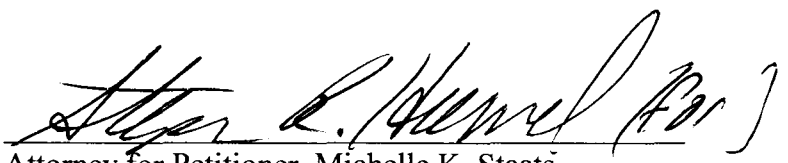

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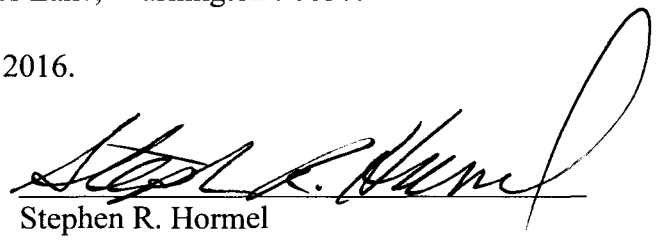
CERTIFICATE OF SERVICE

I certify that on this date, I mailed a copy of the foregoing Motion for Discretionary Review with Appendix to: Garth Dano, Grant County Prosecuting Attorney, and Kiel Willmore, Deputy Prosecuting Attorney, at 32 C Street N.W., Post Office Box 37, Ephrata, WA 98823 on August 13, 2013; and on this date, I mailed said document with appendix to Douglas Phelps, Phelps and Associates, PS, 2903 North Stout Road, Spokane, WA 99206.

I further certify that, on this date, I mailed said document with appendix to the Petitioners, Michelle K. Staats and Robert A. Staats, at 3879 Shorecrest Drive, Moses Lake, Washington 98837.

Dated this 23rd day of June, 2016.



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Appendix

FILED
May 24, 2016
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON, Respondent, v. MICHELLE K. STAATS, Appellant.	)	No. 32671-3-III (consolidated with No. 32672-1-III) UNPUBLISHED OPINION
STATE OF WASHINGTON, Respondent, v. ROBERT A. STAATS, Appellant.	)	

LAWRENCE-BERREY, J. — Michelle Staats and Robert Staats were convicted of second degree criminal mistreatment of their infant son, ELS.[1] They argue there is insufficient evidence that they withheld food from ELS. For the reasons set forth below,

[1] We use initials to protect the privacy rights of minors.

we hold that intravenous (IV) nutrition is "food," and that "withholding" includes providing an insufficient amount. We determine there is sufficient evidence the Staats withheld food from ELS and affirm their convictions.

FACTS

ELS was born to the Staats in December 2009, weighing seven pounds and two ounces. Like the Staats four other children, ELS was born at home. The Staats believe in natural medicine, and Michelle[2] distrusts modern medicine and hospitals. When ELS was approximately one, the Staats began to introduce him to solid foods. However, ELS developed a behavioral aversion to solid foods, which eventually caused him to gag and vomit at the sight of solid food. Michelle continued to breast feed ELS, but his weight began to decrease. The Staats believed ELS's food aversion was caused by various medical issues and digestive problems, and attempted to treat him with naturopathic and alternative medicine.

The Staats participated in the Women, Infants, and Children (WIC) program. Based on ELS's weight loss, WIC classified the case as "high risk." Clerk's Papers (CP) at 587, 952, 1205. WIC dietician Amanda Cramer met with Michelle and ELS multiple times throughout 2011. Ms. Cramer suggested that Michelle take ELS to a doctor to

[2] Throughout this opinion, we will sometimes refer to the defendants by their first names for clarity and readability.

evaluate his weight loss. Michelle indicated she would take ELS to Dr. Elizabeth Trautman, a naturopathic practitioner, if ELS's condition did not improve. In August 2011, Michelle reported that ELS weighed 17 pounds and 8 ounces. Around this time, ELS developed thrush, which worsened his ability to eat solid food. Nevertheless, Michelle reported ELS weighed 18 pounds in the beginning of September, and 20 pounds near the end of September. Michelle told WIC that ELS was gaining weight because of natural remedies.

On October 26, 2011, Michelle took ELS to a WIC appointment. ELS's weight was 15 pounds and 3 ounces, he looked very malnourished and lethargic, and his hair was falling out. Michelle told Ms. Cramer that ELS was having difficulty eating because of thrush, but she was giving ELS breast milk and vegetable broth. Michelle agreed to thicken the vegetable broth, attend follow-up appointments with WIC, and to contact Dr. Trautman if ELS did not begin to gain weight. The next day, Ms. Cramer told Michelle she would refer the matter to Child Protective Services (CPS) if Michelle did not take ELS to a medical professional.

On October 31, 2011, Michelle took ELS to an appointment with Dr. Trautman. ELS weighed only 14 pounds and 13.5 ounces, and Dr. Trautman noted that he looked emaciated. Dr. Trautman later told detectives that when she first saw ELS "he looked

like he was a leukemia patient." CP at 941. On November 4, 2011, Dr. Trautman met with both Robert and Michelle, and told them ELS had a serious condition that could be fatal if not properly treated. Although Dr. Trautman expressed that naturopathic care was not appropriate for ELS, the Staats indicated they would continue alternative remedies. WIC called Michelle around this time, and Michelle misinformed WIC that Dr. Trautman was satisfied with the Staats' home remedies.

Michelle continued to take ELS to Dr. Trautman through early November 2011. Although ELS gained a few ounces, by November 14, 2011, Dr. Trautman told Michelle that ELS needed to be hospitalized to receive nutrition intravenously. A report provided by Dr. Trautman to detectives indicated she told the Staats that ELS "'could die easily in this state,'" but "'Michelle is insistent that she will only use natural means at this time. . . . I advised Michelle again that [ELS] needed to be in the hospital where he could receive IV nutrition.'" CP at 917.

Despite Dr. Trautman's strong advice, the Staats did not take ELS to a hospital to receive IV nutrition. Instead, Michelle contacted a California based Qigong[3] practitioner, Dr. Effie Poy Yew Chow Ph.D. Dr. Chow never physically examined ELS, and Michelle

[3] "Qigong (pronounced chee gong) is a five-thousand-year-old form of Chinese energy healing for the body, mind and spirit." CP at 971. It focuses primarily on rhythmic breathing and meditation.

only consulted with Dr. Chow via telephone and e-mail. Michelle believed that Qigong was helping ELS; however, Michelle later told detectives that Dr. Chow also recommended that ELS receive IV nutrition. WIC called Michelle in late November 2011. Michelle informed WIC that ELS was still improving, but she agreed to come in for an appointment on February 24, 2012.

Two days before the February 2012 WIC appointment, Michelle canceled because she thought ELS did not look healthy enough to be taken out in public. In April 2012, ELS's condition worsened and he became unable to walk. The Staats continued to pray and research alternative medical remedies. By early May 2012, Robert felt the situation was becoming scary and dangerous. However, the Staats still did not take ELS to a hospital.

ELS suffered cardiopulmonary arrest on May 9, 2012. The Staats called 911, and emergency medical personnel were able to resuscitate ELS. In the emergency room, ELS presented as unresponsive, severely cachectic, emaciated, and obviously malnourished. Further, ELS's skin was thin and pale, his hair was sparse, his temples were sunken in, and his ribs protruded from his chest. At 29 months old, ELS weighed only 10 pounds. The emergency room physician diagnosed ELS with cardiopulmonary arrest, severe malnourishment, severe dehydration, severe hypothermia, and renal (kidney) failure.

ELS was airlifted to Sacred Heart Medical Center in Spokane. Detectives interviewed the Staats at Sacred Heart. Robert told detectives that he wished he and Michelle would have taken ELS to the hospital sooner. Robert further indicated that he tried to force the issue of medical intervention, but Michelle was resistant. Michelle told detectives she had been giving ELS vegetable broth and breast milk for nutrition. Michelle also stated she had to progressively thin the vegetable broth puree so ELS would not gag. In the interview, Michelle also indicated that she regretted not bringing ELS to the hospital sooner.

ELS was subsequently transferred to a long-term care facility. ELS has no brain activity. The malnutrition-induced cardiopulmonary arrest caused ELS to suffer the "devastating hypoxic ischemic brain injury, which he will never recover from." CP at 938.

The State charged both Michelle and Robert with criminal mistreatment in the first degree, criminal mistreatment in the second degree, and possession of less than 40 grams of marijuana. After unsuccessfully moving to dismiss the charges, the Staats agreed to a stipulated-facts bench trial. As part of the agreement, the State amended Robert's and Michelle's charges. The State amended Robert's charges to second degree criminal mistreatment, with an alleged aggravating circumstance that allowed the State to argue

for one day beyond the high end of Roberts' 12-month standard sentencing range. The State amended Michelle's charges to criminal mistreatment in the first degree, or in the alternative, criminal mistreatment in the second degree. In the original and the amended charges, the State specified that the mistreatment occurred on and between April 1, 2011, and May 9, 2012. During the bench trial, the State argued the Staats withheld medical treatment from ELS.

The trial court found both Michelle and Robert guilty of criminal mistreatment in the second degree. During the ruling, the trial court explained:

> There has been a great deal of investment in this case in the questions that circulate around it—getting or choosing not to get medical care. . . . I'm always a little hesitant to use a perspective of the case that is not argued by either side. . . . I don't believe this case is about medical care. . . .
>
> . . . This child did not suffer this terrible injury because of health care being withheld. He suffered it because he starved. The parents' conduct withheld food from this child. Now I know that Ms. Staats did all of these things to try to make sure that her child got proper nutrition. But that's what he didn't get. . . . He didn't get enough food. . . . Did it happen because he had an underlying disease or medical condition? We don't know. But what we do know is that the professionals who looked at him said he needs food. Now they said that in a different way. They may have said he needs to go to a hospital but for what? IV nutrition. In other words, he needs to get fed however you do that.

Report of Proceedings (RP) at 83-84. The trial court further stated, "What was withheld from this child was adequate nutrition." RP at 86. The trial court entered the following conclusions of law:

> 1. Michelle Staats and Robert Staats, and each of them, withheld from ELS one of the basic necessities of life, to wit, food.
> 2. Michelle Staats and Robert Staats, and each of them, by withholding nutrition (i.e., food) from ELS recklessly created an imminent and substantial risk of death or great bodily harm to ELS; and, recklessly caused ELS substantial bodily harm.

CP at 591, 1209. The trial court sentenced Michelle and Robert to six months of electronic home monitoring. Pursuant to agreement by the parties, the sentences were stayed pending this appeal.

On appeal, the Staats argue that there is insufficient evidence that they withheld food from ELS. Their argument has two components. First, the Staats argue that IV nutrition is not food. Second, they argue that because they continually fed ELS throughout the nearly 12-month charging period, there is no evidence they withheld food.

ANALYSIS

A. *Standard of review*

The State must prove, beyond a reasonable doubt, every essential element of the crime charged. *State v. Mitchell*, 169 Wn.2d 437, 442, 237 P.3d 282 (2010); *accord In re*

Winship, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970). On a challenge to the sufficiency of the evidence, this court views the evidence in the light most favorable to the State, and asks whether any rational trier of fact could have found the essential elements of the charged crime beyond a reasonable doubt. *State v. Homan,* 181 Wn.2d 102, 105, 330 P.3d 182 (2014). "Specifically, following a bench trial, appellate review is limited to determining whether substantial evidence supports the findings of fact and, if so, whether the findings support the conclusions of law." *Id.* at 105-06. Evidence is substantial if it is sufficient to persuade a fair-minded person of the truth of the asserted premise. *Id.* at 106. Unchallenged findings of facts, along with findings of fact supported by substantial evidence, are verities on appeal. *Id.* Conclusions of law are reviewed de novo. *Id.* Finally, "[t]he label applied to a finding or conclusion is not determinative; we 'will treat it for what it really is.'" *The-Anh Nguyen v. City of Seattle,* 179 Wn. App. 155, 163, 317 P.3d 518 (2014) (quoting *Para-Med. Leasing, Inc. v. Hangen,* 48 Wn. App. 389, 397, 739 P.2d 717 (1987)).

B. *Whether there is sufficient evidence that the Staats withheld food from ELS*

Both Michelle and Robert were found guilty of criminal mistreatment in the second degree. "A parent of a child . . . is guilty of criminal mistreatment in the second degree if he or she recklessly . . . (b) causes substantial bodily harm by withholding any

of the basic necessities of life." RCW 9A.42.030(1). In turn, RCW 9A.42.010(1) defines "basic necessities of life" as "food, water, shelter, clothing, and medically necessary health care, including but not limited to health-related treatment or activities, hygiene, oxygen, and medication." The findings and intent provision of chapter 9A.42 RCW states:

> The legislature finds that there is a significant need to protect children . . . from abuse and neglect by their parents . . . . The legislature further finds that such abuse and neglect often takes the forms of either withholding from them the basic necessities of life, including food, water, shelter, clothing, and health care, or abandoning them, or both.

RCW 9A.42.005.

The Staats argue that the evidence is insufficient to support their convictions for criminal mistreatment in the second degree because the evidence does not establish they withheld food from ELS. The Staats argue: (1) intravenous nourishment is not "food," and (2) they did not "withhold" food from ELS because they provided some food to ELS throughout the charging period.

1. Intravenous nourishment is "food"

"Food" is not defined in chapter 9A.42 RCW. The Staats argue that "the common dictionary definition of food is things, substance, or something people eat. Eating is taking food in by the mouth, chewing and swallowing the food." Br. of Appellant at 11.

This court reviews issues of statutory interpretation de novo. *Mitchell*, 169 Wn.2d at 442. The "purpose when interpreting a statute is to determine and enforce the intent of the legislature." *State v. Alvarado*, 164 Wn.2d 556, 561-62, 192 P.3d 345 (2008). "Where the meaning of statutory language is plain on its face, [this court] must give effect to that plain meaning as an expression of legislative intent." *Id.* at 562. To determine the plain meaning of an undefined term, this court may look to the ordinary definition of the term in a standard dictionary. *State v. Fuentes*, 183 Wn.2d 149, 160, 352 P.3d 152 (2015); *accord State v. Jackson*, 137 Wn.2d 712, 728-29, 976 P.2d 1229 (1999). Further, "'[t]he rule of statutory construction that trumps every other rule' is that 'the court should not construe statutory language so as to result in absurd or strained consequence.'" *State v. Mohamed*, 175 Wn. App. 45, 52, 301 P.3d 504 (2013) (internal quotation marks omitted) (quoting *Davis v. Dep't of Licensing*, 137 Wn.2d 957, 971, 977 P.2d 554 (1999)). Reading a statute so as to avoid absurd results focuses on common sense. *Alvarado*, 164 Wn.2d at 562.

In our review of various dictionary definitions of "food," we note that "food" is defined narrowly or broadly. Narrowly defined, "food" is something that is eaten; it goes into the mouth, is chewed, and is then swallowed. Broadly defined, "food" provides nourishment to the body. As an example of the broad definition, "food" is defined as

"material consisting essentially of protein, carbohydrate, and fat used in the body of an organism to sustain growth, repair, and vital processes and to furnish energy." MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 487 (11th ed. 2003).

Therefore, we must determine whether the narrow or the broad definition of "food" best effects the legislative goal. Here, the legislative goal goes beyond providing the child with food to eat. It extends to keeping a child alive. This goal is evidenced by the legislature's focus on providing a child with the "basic necessities of life." In those circumstances where the process of eating is insufficient to sustain a child's life, we believe that the legislature intended that a child's life be sustained nevertheless. We therefore broadly define "food" as including the receipt of nutrition intravenously, not just eating through one's mouth. We hold that "food" encompasses life-sustaining IV nutrition.[4]

2. "Provision" implies an *adequate* provision

The Staats argue that they did not withhold food from ELS, as they continued to feed him throughout the nearly 12-month charging period. Indeed, ELS did not starve

[4] The Staats argue that the rule of lenity requires this court to interpret the definition of "food" in their favor. The rule of lenity is applied only "[i]f there is no contrary legislative intent." *State v. Van Woerden*, 93 Wn. App. 110, 116, 967 P.2d 14 (1998). As explained above, the legislative intent establishes that "food" extends to nutrition, even when a child is not capable of receiving nutrition by eating.

quickly in a few weeks; rather, because he was given some food, it took months for his starvation to be sufficiently acute to result in a cardiopulmonary arrest and permanent brain damage. The Staats imply that the provision of any food, even inadequate, does not constitute criminal mistreatment. In making this argument, the Staats would create a hole so large in the statute that it would leave it without meaning: A thimble of water a day for thirst, a pair of socks in winter for warmth, or a cardboard box for shelter. We refuse to construe the word "withhold" so literally. Rather, a person "withholds" food, water, shelter, clothing, and medically necessary health care whenever the amount provided is so deficient that it results in the child suffering substantial bodily harm.

3. Sufficiency of the evidence

The Staats challenge their convictions based on the two arguments refuted above. They do not challenge any of the trial court's findings of fact. "Where there are findings of fact, as in a bench trial, unchallenged findings of fact are verities on appeal. Review is then limited to determining whether the findings of fact support the conclusions of law." *State v. A.M.*, 163 Wn. App. 414, 419, 260 P.3d 229 (2011) (citations omitted).

Here, the findings indicate that early in 2011, ELS developed an aversion to solid foods, and his weight began to drop. The trial court also found that in November 2011, a naturopathic practitioner told Michelle and Robert that ELS had a serious condition that

could be fatal if not properly treated. Finding of fact 19 establishes that shortly thereafter, the naturopathic practitioner told Michelle that ELS needed to be hospitalized in order to receive IV nutrition. However, instead of taking ELS to the hospital for IV nutrition, the Staats turned to Qigong as ELS starved. Six months after Dr. Trautman's warning to the Staats, ELS suffered malnourishment induced cardiopulmonary arrest, leaving him with permanent and significant brain damage. The record indicates the Staats only successfully gave ELS vegetable broth puree and breast milk during this timeframe. The unchallenged findings of fact, along with the evidence presented at the bench trial, support the trial court's finding (labeled as a conclusion) that the Staats "by withholding nutrition (i.e., food) from ELS recklessly created an imminent and substantial risk of death or great bodily harm to ELS; and, recklessly caused ELS substantial bodily harm." CP at 591, 1209.

Although the Staats were attempting to treat ELS through natural alternatives, their good intentions do not negate ELS's permanent and significant injury that resulted from him not receiving adequate food (i.e., nutrition) when IV therapy was available. *See State v. Williams*, 4 Wn. App. 908, 918-19, 484 P.2d 1167 (1971). "'Parents may be free to become martyrs themselves. But it does not follow they are free, in identical circumstances, to make martyrs of their children before they have reached the age of full

and legal discretion when they can make that choice for themselves.'" *State v. Norman*, 61 Wn. App. 16, 23, 808 P.2d 1159 (1991) (quoting *Prince v. Massachusetts*, 321 U.S. 158, 170, 64 S. Ct. 438, 88 L. Ed. 645 (1944)). Sufficient evidence supports the Staats' convictions.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Lawrence-Berrey, J.

WE CONCUR:

Fearing, C.J.

Siddoway, J.