FILED

DEC 16 2015

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By

No. 32671-3-III & 32672-1-III

(Consolidated)

COURT OF APPEALS

DIVISION III

OF

THE STATE OF WASHINGTON

STATE OF WASHINGTON

Appellee/Plaintiff,

v.

MICHELLE K. STAATS & ROBERT ANTHONY STAATS,

Appellants/Defendants

Reply Brief of Appellants

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I. **Argument on Reply**

Evidence did not support a finding that the Staats withheld "food" from their son, ES.[1]

The State frames the issue as whether "'intravenous nutrition' may constitute 'food' under RCW 9A.42.010(1).'" Brief of Respondent (Response) at 8. It does not.

The State criticizes the definitions of "food" set out in the Brief of Appellants, noting that it "fail[s] to include its full definition." Response at 10. Reliance on the "often attributive" definition of "food," however, is consistent with the rules of statutory construction.

Where a word is undefined in a statute, courts must look to the commonly understood meaning the word. *State v. Jackson*, 137 Wn.2d 712, 728-29, 976 P.2d 1229 (1999). In *Jackson*, the Supreme Court

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[1] Without record citation, the State portrays ES as "now considered brain dead." Response at 3. The record does not support this assertion. The closest reference in the record to brain death is a letter from Dr. Blessings stating, "[a] May 29, 2012 EEG was consistent with no brain activity and possible brain death. A follow-up globally abnormal" EEG (June 11, 2012) indicated ongoing severe cerebral dysfunction. An MRI of Elijah' s brain from May 16, 2012 suggests ischemia versus a metabolic disease, with delayed myelination suggesting a chronic component to the abnormality seen. A follow -up MRI of his brain from May 29, 2012 showed evolution of anoxic /hypoxic ischemic injury." CP 6-7. ES's condition is described as "hypoxic ischemic brain injury, which he will never recover from" by Dr. Blessing, and ES was diagnosed with "hypoxic- ischemic brain injury" by Dr. McDonald. CP 7 and 45. While the brain injuries to ES are extremely severe and permanent, none of the medical doctors conclusively ruled ES as "brain dead."

concluded that the Court of Appeals "properly relied on Webster' s Third New International Dictionary to determine that the *most common meaning* of the term 'shelter' is 'something that affords protection from the elements'" in a prosecution for criminal mistreatment. *Id.* (citing *Jackson,* 87 Wn.App. 801, 807, 944 P.2d 403 (1997) (emphasis added) (citing Webster' s Third New International Dictionary 2093 (1986)). Here, the most common meaning and "often attributive" definition of the word "food" is "the things that people and animals eat." *See,* http://www.merriam-webster.com/dictionary/food; and Brief of Appellants at 9.

Furthermore, the State's rationale is undermined by the Supreme Court's decision in *In Re Guardianship of Grant*, 109 Wn.2d 545, 747 P.2d 445 (1987), amended sub nom., *Matter of Guardianship of Grant*, 757 P.2d 534 (Wash. 1988). In *Grant*, the Supreme Court was asked to determine whether the "withholding of feeding by artificial means should be evaluated in the same manner as any other *medical procedure*" in a case involving a patient who was mentally unable to make a decision on whether to withhold life support measures on her own. 109 Wn.2d at 562-63 (emphasis added). The Supreme Court held that "the right to have life sustaining treatment withheld extends to all artificial procedures," including intravenous feeding. *Id.* at 563.

The medical procedure relevant to this case was addressed in *Grant*. *Grant* addressed withholding of a life supporting medical treatments that included administration of "intravenous feeding," i.e., "artificial nutrition and hydration." *Id.* at 559 and 563.

Administering IV nutrition is not "food." IV nutrition is a medical procedure that artificially administers nutrition. *Id.*

In upholding the Court of Appeals definition of "shelter" under RCW 9A.42.10(1) in *Jackson*, the Supreme Court wrote:

> The Court of Appeals' determination as to the meaning of "shelter" is further buttressed by the doctrine of *noscitur a sociis*. Under this doctrine "the meaning of words may be indicated or controlled by those with which they are associated." *Ball v. Stokely Foods, Inc.*, 37 Wash.2d 79, 87–88, 221 P.2d 832 (1950). Further, under that doctrine "[i]t is ... familiar policy in the construction of terms of a statute to take into consideration the meaning naturally attaching to them from the context, and to adopt the sense of the words which best harmonizes with the context." *McDermott v. Kaczmarek*, 2 Wash.App. 643, 648, 469 P.2d 191 (1970) (quoting 50 Am.Jur. Statutes § 247 (1944)). We agree with the Court of Appeals that when one looks at the term "shelter" in light of the words surrounding it in RCW 9A.42.010(1) (i.e., "food, water ... clothing, and medically necessary health care") it is clear that the Legislature did not mean for it to encompass the protection of a child from the criminal act of a third person. Rather, it was referring to a parent's duty to take affirmative acts to provide the basic necessities of life for his or her children.
>
> Finally, even if we assume that the term "shelter" is ambiguous in that it is susceptible to more than one interpretation, we are required under the rule of lenity to adopt the interpretation most favorable to the defendant.

> *See State v. Roberts*, 117 Wash.2d 576, 586, 817 P.2d 855 (1991); *State v. Dunn*, 82 Wash.App. 122, 128, 916 P.2d 952, review denied, 130 Wash.2d 1018, 928 P.2d 413 (1996). Accordingly, for the reasons stated above, we reject the State's contention that "shelter," as found in RCW 9A.42.010, encompasses the notion of protection of a person from the criminal act of a third person.

Jackson, 137 Wash. 2d at 729.

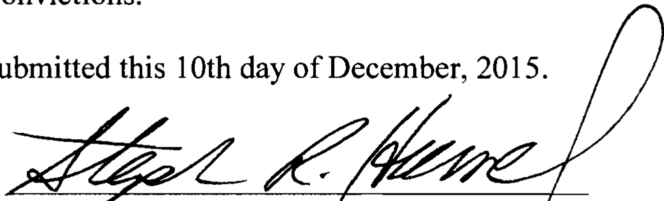
In this case, the Legislature outlawed a parents withholding of "food" from a child. It also outlawed a parents withholding of "medically necessary health care." RCW 9A.42.010(1). Nothing in the enactment of RCW 9A.42.010(1) clearly indicates that the Legislature meant to include the IV nutrition medical procedure as "food" in the definition of "basic necessities of life." Indeed, the Supreme Court in *Grant* recognized that intravenous feeding is "different from typical ways of providing nutrition." *Grant*, 109 Wn.2d at 550.

The commonly understood definition of food is those "things people eat." In this case, the Staats gave ES food to eat. Any ambiguity in the definition of "food" in RCW 9A.42.010(1) here must be resolved in favor of the Staats. *Jackson*, 137 Wn.2d at 729-30.

II. Conclusion.

The trial court's finding that Michelle and Robert Staats withheld food from their son, ELS, and its conclusion that they are guilty of criminal mistreatment in the second degree for withholding food is not supported by sufficient evidence. Therefore, this Court is requested to reverse each of their convictions.

Respectfully submitted this 10th day of December, 2015.



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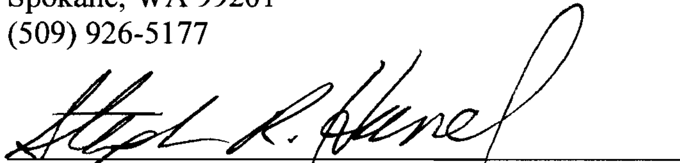

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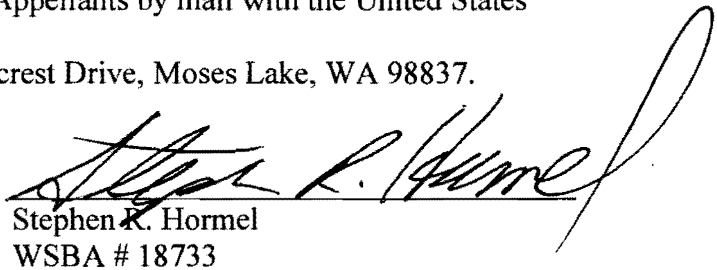
CERTIFICATE OF SERVICE

I certify that on December 10, 2015, by agreement, I electronically served a copy of the foregoing Reply Brief of Appellants on: Garth Dano, Grant County Prosecuting Attorney, and Keil Willmore, Deputy Prosecuting Attorney at kburns@grantcountywa.gov; I served by mail with the United States Postal Service a copy of same on Douglas Phelps, WSBA # 22620, Phelps and Associates, PS, 2903 North Stout Road, Spokane, WA 99206, and I further served Michelle K. Staats and Robert A. Staats the Reply Brief of Appellants by mail with the United States Postal Service at 3879 Shorecrest Drive, Moses Lake, WA 98837.



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