NO. 32671-3-III
32672-1-III

COURT OF APPEALS, DIVISION III
STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

MICHELLE K. STAATS, and
ROBERT ANTHONY STAATS,
APPELLANTS

Appeal from the Superior Court of Grant County
The Honorable Evan E. Sperline

Cause Numbers 12-1-00468-7
and 12-1-00467-9

Brief of Respondent

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Does intravenous nutrition constitute "food" under RCW 9A.42.010(1)?

2. If it does, was there sufficient evidence to find beyond a reasonable doubt that defendants were guilty of criminal mistreatment in the second degree?

B. STATEMENT OF THE CASE.

1. Procedure

On September 5, 2012, the Grant County Prosecuting Attorney's Office ("State") charged Michelle K. Staats and Robert Anthony Staats ("defendants") with criminal mistreatment in the first degree,[1] criminal mistreatment in the second degree,[2] and misdemeanor possession of marijuana.[3] CP 1–2; 2CP 1–2.[4]

After defendants' cases were consolidated for trial, the parties moved to dismiss their criminal mistreatment charges as violating the Establishment and Free Exercise Clauses of the state constitution, as well as the First Amendment of the U.S. Constitution. CP 53–165. The court, under the Honorable Evan E. Sperline, considered briefing from both

[1] RCW 9A.42.020.
[2] RCW 9A.42.030.
[3] RCW 69.50.4014 (2012).
[4] Defendants' appeals have been consolidated for review. However, the clerk's papers for each appeal are paginated separately. The papers for both appeals are largely identical, so the State will refer to the papers filed in Robert Staats' case. If necessary, the State will refer to the clerk's papers in Michelle Staats' file as "2CP" in its brief.

parties and on June 19, 2013, denied the defense motion in a memorandum opinion. CP 181–97. Ultimately, the Staats' jointly sought review of that decision with this court, which denied discretionary review on September 18, 2013.

On April 21, 2014, defendants agreed to a stipulated facts bench trial. CP 249–51; 2CP 263. As part of that agreement, on May 21, 2014, the State amended Robert's charges to allege a single count of criminal mistreatment in the second degree with an alleged aggravating circumstance that the interests of justice would best be served with an exceptional sentence. CP 552–53. The State amended Michelle's charges to criminal mistreatment in the first degree, or in the alternative, criminal mistreatment in the second degree. 2CP 563–64.

The court considered extensive discovery for the trial. CP 252–549. On July 22, 2014, the court found both defendants guilty of criminal mistreatment in the second degree. CP 580. The court concluded defendants had withheld a basic necessity of life—food (i.e., "nutrition")—from the victim and thereby recklessly caused him substantial bodily harm. CP 580.

On July 22, 2014, the court sentenced both Robert and Michelle to six months of electronic home monitoring.[5] CP 585–86; 2CP 596. Defendants timely filed a notice of appeal on August 12, 2014. CP 615.

2. Facts

For over a year, defendants withheld necessary intravenous nutrition from their son, E.S. As a result, E.S. suffered from severe emaciation, malnourishment, rectal bleeding, hypothermia, dehydration, perianal skin ulcerations, and renal failure. Ultimately, E.S. entered cardiopulmonary arrest at only two and a half years old, and is now considered brain dead.

E.S. was born to Robert and Michelle Staats on August 14, 2009. He weighed 7 pounds, 2 ounces at birth.[6] CP 275. For at least the first six months of his life, E.S. grew like any other healthy baby boy, eventually reaching a weight of 21 pounds and 6 ounces. CP 486–88. By February 2011, however, E.S.' health began to decline. When he appeared in late March for a checkup with WIC, his weight had decreased 2.5 pounds. CP 322–23.

WIC referred E.S. to Dietician Amanda Cramer as a "high risk" case. Cramer visited with Michelle and E.S. and expressed concern over

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[5] Both defendants had offender scores of 0 with standard ranges of 6-12 months. CP 584 (Judgement and sentence, paragraph 2.3); 2CP 595.

[6] The measurements are taken from E.S.' file with Women, Infants, and Children (WIC).

E.S.' health. CP 323–25; CP 491 (WIC chart notes from R.D.). Cramer noted Michelle was "fairly opinionated about traditional medicine," and that "she [did] not agree with it at all." CP 325. Based on Michelle's ideologies, Cramer recommended E.S. see Doctor Elizabeth Trautman, a naturopath in Moses Lake. Michelle refused. CP 328.

Without bringing E.S. into WIC for further evaluations, Michelle reported to WIC in July and September that E.S. was recovering. WIC advised Michelle she needed to take E.S. to a medical professional on both occasions, and Michelle responded that she would "consider making an [appointment]," but later stated she did "not feel it [was] necessary and [was] working to treat [E.S.] homeopathically herself." CP 491–92.

On October 26, Michelle brought E.S. into WIC for a checkup—the first time he had physically been present at the clinic since March. CP 328–29, 492. He weighed 15 pounds, 3 ounces, and had shrunk from 31 inches to 29.5 inches in height. CP 486, 490. Cramer noted E.S. looked very thin, lethargic, malnourished, and generally very unhealthy. Cramer also observed his hair was falling out. She assessed E.S. would need to be hospitalized if not taken to a traditional medical doctor. CP 329.

The following day Cramer contacted Michelle and explained that she needed to seek medical treatment for E.S. due to his lack of improvement. Michelle disagreed that E.S. had shown a lack of

improvement over the last several months. She told Cramer that E.S. was getting better but had simply experienced a setback because of a cold and thrush. Cramer discussed the possibility of calling child protective services if E.S. did not receive medical care, which upset Michelle, so Michelle agreed to an appointment. CP 331, 493.

On October 31, E.S. had his initial visit with Dr. Trautman, whose first impression of E.S. was grim. She believed E.S. looked like a leukemia patient, and she was physically nauseated by his sickly appearance. She also had trouble drawing blood given his emaciated condition. She told Michelle that E.S. needed intravenous nutrition, not naturopathy, and refused to give Michelle a referral to another doctor because "naturopathic doctors do not see patients like this." CP 317–18. In Dr. Trautman's words: "The bottom line is he needed to be in a hospital. There's no one, there's no one that's gonna [*sic*] help him you know that cannot give him IV nutrition." CP 318. E.S. weighed 14 pounds, 13.5 ounces. CP 498.

The next visit with Dr. Trautman occurred on November 4. Robert and Michelle were both present. Dr. Trautman advised them that E.S. could easily die in his condition and that he needed immediate medical attention. Michelle explained that she would try to treat E.S. naturally. Dr. Trautman responded that naturopathic medicine was not appropriate given

the severity of E.S.' condition. Robert and Michelle nevertheless insisted that they would not seek other medical help.[7] CP 506.

During a final visit on November 14, Dr. Trautman admonished Michelle that E.S. needed to be in a hospital where he could receive intravenous nutrition. Again, Michelle refused, so the doctor informed Michelle there was nothing more she could do to help. CP 508.

Michelle cancelled all future appointments with WIC because she was not comfortable with bringing the sickly-looking E.S. out into public. CP 333–34. Instead, Michelle began researching other sources to help with E.S.' condition. Around this time she began consulting with a Chinese herbalist in San Francisco—Doctor Effie Poy Yew Chow—whom Michelle discovered on the internet. The consultations occurred over the phone and email, and Michelle felt that E.S. could feel positive energy and healing through the sessions.[8] CP 30–33.

E.S.' health reached its breaking point on the morning of May 9, 2012. E.S. suddenly stopped breathing and went into cardiopulmonary arrest. Emergency personnel arrived and defibrillated E.S. twice before detecting a faint pulse. They rushed E.S. to Samaritan Hospital in Moses Lake. CP 21.

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[7] Dr. Trautman's notes state, "*Parents* refuse to seek other medical help at this time." CP 506 (emphasis added).

[8] Michelle's emails with the herbalist are included in the file. *See* CP 529–49.

Doctor Michael Hauke, E.S.' attending emergency-room physician, observed E.S. appeared "severely cachectic, nutritionally starved . . . [and] unresponsive." The child's appearance gave Dr. Hauke the impression that E.S. had been in a "severe wasting condition of some sort for a[n] extended period of time." E.S.' skin was thin, pale, and waxen, and he had thin, sparse hair, sunken temples, a cachectic face, and sunken facial features. His chest was also sunken with prominent rib details. His kidneys had failed and he was bleeding from the rectum. CP 22. Additionally, Dr. Hauke noted there was "no initial indications of intact neurological response of any sort." CP 23.

At the hospital, Robert and Michelle both agreed to be interviewed by detectives from the Grant County Sheriff's Office. Robert told investigators that although he had health insurance through his employment, he and Michelle had utilized homeopathic remedies, vitamins, and supplements to aid E.S. as opposed to other remedies. He thought they had waited too long to bring E.S. to the hospital and wished they had done it sooner. CP 26–28.

Michelle similarly regretted not bringing E.S. to the hospital sooner, wishing she had a time machine to go back in time. She said she had relied on medical treatment (i.e., non-naturopathic remedies) in the past for serious situations like broken arms. She also conceded that Dr.

Chow recommended Michelle take E.S. to a hospital for intravenous nutrition based on his condition but she failed to do so. CP 29–34, 41–42.

Even though E.S. was nearing his third birthday, he weighed just more than a newborn child when medical personnel finally treated him: approximately 8 to 10 pounds. CP 21. He suffered irreparable brain damage as a result of his malnourishment. CP 579.

C. ARGUMENT.

1. INTRAVENOUS NUTRITION IS "FOOD" UNDER ITS PLAIN MEANING IN RCW 9A.42.010(1). CONTRARY INTERPRETATIONS WOULD LEAD TO ABSURD RESULTS.

Defendants' contention hinges on whether "intravenous nutrition" may constitute "food" under RCW 9A.42.010(1).

In Washington:

> (1) A parent of a child, . . . is guilty of criminal mistreatment in the second degree if he or she recklessly, as defined by RCW 9A.08.010, either (a) creates an imminent and substantial risk of death or great bodily harm, or (b) causes substantial bodily harm by withholding any of the basic necessities of life.

RCW 9A.42.030. The law further defines a "basic necessity 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." RCW 9A.42.010(1) (emphasis added).

In construing a statute, the court is to discern and implement the legislature's intent. *State v. Armendariz*, 160 Wn.2d 106, 110, 156 P.3d 201 (2007). The court looks first to the plain language of the statute and provides it its plain meaning. *Id.* It is an established rule of statutory construction, however, that absurd results should be avoided. *State v. Burke*, 92 Wn.2d 474, 478, 598 P.2d 395 (1979); *State v. Mohamed*, 175 Wn. App. 45, 52, 301 P.3d 504 (2013) ("'The 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 consequences.'" (internal citations omitted)).

In this case, the trial court concluded, as a matter of law, that "Michelle Staats and Robert Staats, and each of them, withheld from ELS one of the basic necessities of life, to wit, food." CP 580 (Conclusions of Law, 1). The court summarized its ruling, holding:

> What a parent is prohibited from withholding in this statute [are] basic necessities of life, and those are listed in state law and they consist of five things. Food, water, shelter, clothing, and medically necessary health care. That's—those are the five things. 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 recognize that Ms. Staats did all of these things to try and make sure that her child got proper nutrition. But that's what he didn't get. That's what didn't happen for this child is he didn't get proper nutrition. He didn't get enough food. . . . [W]hat 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.

RP 84. By failing to act on several medical professionals' advice, defendants withheld nutrition from E.S. and effectively starved him to death. The trial court properly defined "nutrition" as "food."

"Food" is unambiguously defined quite broadly. Defendants narrowly construe "food" to suggest that only solid edibles—which must be chewed and swallowed—qualify as "food" under RCW 9A.42.010(1). First, this hyper-technical construction overlooks commonsensical definitions for "food" and instead shifts the focus to how food may be ingested. Most of the definitions for "food" do not interpret the term so limitedly:

> **1 a :** 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; *also* **:** such food together with supplementary substances (as minerals, vitamins, and condiments) **2 :** nutriment in solid form **3 :** something that nourishes, sustains, or supplies.

Webster's New Collegiate Dictionary 447 (1977) (emphasis in original); *Webster's II New Riverside Dictionary* 494 (1984) (same); *see* http://www.merriam-webster.com/dictionary/food.[9] While "food" may be

[9] In their brief, defendants refer to the online Merriam-Webster definition of "food" but fail to include its full definition, which contains the broad interpretation outlined above.

interpreted to include nutriment in solid form, as defendants suggest, it primarily defines it broadly as material or something that nourishes.[10]

Intravenous nutrition constitutes "food" because it certainly qualifies as "something." And "nutrition," of course, "nourishes." It does not matter whether a person ingests the nutrition or receives it via injection. The trial court properly characterized intravenous nutrition as, what its name aptly calls it, "nutrition," which is "something that nourishes, sustains"—regardless of how that nutrition is introduced to the body.

A narrow interpretation of "food" ignores common, everyday scenarios where the term is unambiguously interpreted as "something that nourishes." For example, the trial court offered a helpful comparison:

> Again, with apologies for a silly example, suppose there's a parent who says my child can survive on one carrot a day. I'm gonna—I've studied it. I think carrots have all of the nutrition a child needs, one a day is enough. I honestly believe that, and the parent begins giving the child one carrot a day. And people say, you know, I don't think that's right. You should give him, you know, a hamburger once in a while. Nope. I believe one carrot a day is good enough. The child loses 20% of their body weight. What are you gonna do about that? You—this—what we're doing is not working. You've got to do something else. Nope. I'm gonna continue giving this child one carrot a day cause I believe that's what this child needs. The child now

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See Brief of Appellants at 9.

[10] "Nourishment," interestingly, is defined simply as "Food, nutriment." *Webster's New Collegiate Dictionary* 785 (1977). And "nutriment" is defined as "something that nourishes or promotes growth and repairs the natural wastage of organic life." *Id.* at 789.

> loses another 20% of body weight. What are you gonna do? I'm gonna keep giving this child one carrot a day cause I have great hopes that that's gonna do it. Well, nobody in this courtroom would be arguing about medical care. Everybody would be talking about adequate nutrition, food. And maybe we'd have these arguments from nutritionists about, well, one carrot a day should be enough or under our, you know, Eastern system, whatever, we think one carrot a day is enough. *But it would be not a question that a parent who allowed that to happen to a child, because of that feeding regime, deprived, withheld from the child, adequate food in violation of this statute.*
>
> Well, in the Court's view, that's what happened to this unfortunate child. Not because the parents intentionally starved the child, but because the parents clung to this—this approach that they knew was not adequately nourishing their child. . . . *During a time in his life when he should have been experiencing the fastest weight gain that we ever experience, he went from 21 pounds to 10. What was withheld from this child was adequate nutrition.*

RP 84–86 (emphasis added).

A strict interpretation of "food" would also lead to absurd results because it would exclude food like baby food, soups, and fruit smoothies, so long as a child does not "ingest, chew and swallow in turn."[11] Defendants' interpretation would exclude nutrient packets introduced via feeding tubes for those requiring permanent feeding assistance. This would result in uneven application of the criminal code, and it would penalize parents who withheld solid edibles from their children, but not those who withheld nutrition/food provided by feeding tube.

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[11] *See* Brief of Appellants at 10.

The more practical construction of "food" is supported by the legislative intent underlying the criminal mistreatment statutes:

> The legislature finds that there is a significant need to protect children and dependent persons, . . . from abuse and neglect by their parents, . . . to provide them with the basic necessities of life. 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. Therefore, it is the intent of the legislature that criminal penalties be imposed on those guilty of such abuse or neglect.

RCW 9A.42.005. The legislature intended to prevent parents or others caring for dependents from withholding the important nutrients a child needs to develop properly.

Finally, defendants' argument presents a false dichotomy: that under the facts of this case, intravenous nutrition must constitute either "food" or "medically necessary health care" under RCW 9A.42.010(1). But intravenous nutrition may be considered food even if it must be introduced via medical procedure. The trial court emphasized this point:

> [Medical professionals] may have said [E.S.] needs to go to a hospital but for what? IV nutrition. In other words, *he needs to get fed however you do that.* The—the whole idea of medical treatment came into this case I think because folks were saying he needs to be fed intravenously, if that's the only way you can get food in this child. And that makes us all think about hospitals and medical care because it's a—an intrusion into the body. But that's what these folks were being told.

RP 84 (emphasis added). The trial court understood the distinction between the means of introducing food to the body (e.g., injection) and interpreting actual intravenous nutrition as "food."

The trial court properly found that intravenous *nutrition*—not the procedure itself—was "food," and that the Staats deprived E.S. of that food/nutrition during the most critical time of his development. Food, in its most basic definition, is nutrition—not something that *must* be eaten, chewed, or swallowed.

2. THERE WAS SUFFICIENT EVIDENCE TO FIND BEYOND A REASONABLE DOUBT THAT DEFENDANTS WERE GUILTY OF CRIMINAL MISTREATMENT IN THE SECOND DEGREE.

In a challenge to the sufficiency of the evidence, the court must view the evidence in the light most favorable to the State to determine whether any rational trier of fact could find the essential elements of the crime beyond a reasonable doubt. *State v. Thomas*, 150 Wn.2d 821, 874, 83 P.3d 970 (2004). Challenging the sufficiency of the evidence admits the truth of the State's evidence and all reasonable inferences from it. *State v. Gerber*, 28 Wn. App. 214, 217, 622 P.2d 888 (1981). "[A]ll reasonable inferences *must* be drawn in favor of the State *and interpreted most strongly against the defendant.*" *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992) (emphasis added).

Circumstantial and direct evidence are considered equally reliable on review. *Thomas*, 150 Wn.2d at 874. Determinations regarding conflicting evidence or credibility are up to the trier of fact and not subject to review. *Id.*

In addition to the elements of criminal mistreatment in the second degree, outlined above,[12] the State had to prove defendants acted recklessly. "Recklessly" is defined as:

> A person is reckless or acts recklessly when he or she knows of and disregards a substantial risk that a wrongful act may occur and his or her disregard of such substantial risk is a gross deviation from conduct that a reasonable person would exercise in the same situation.

RCW 9A.08.010.

a. Robert Staats recklessly created an imminent and substantial risk of death or great bodily harm to E.S. by withholding food.

If intravenous nutrition constitutes food, then the evidence overwhelmingly supports the trial court's finding that Robert Staats committed criminal mistreatment in the second degree. First, Robert was present on November 4, 2011 when Dr. Trautman advised the Staats that E.S. needed immediate medical attention via intravenous nutrition. By this point, E.S. was almost two years old, and to both a WIC dietician and naturopathic doctor, he appeared "thin, lethargic, malnourished, and

[12] *See* Brief of Respondent, *supra*, at 8.

generally unhealthy," as well as "emaciated and pale, with poor hair growth." CP 576–77 (Findings of fact 13, 15).

Second, E.S.' condition must have been apparent to Robert, who recklessly ignored the severity of the risk of harm to E.S. The trial court considered the reckless nature of Robert's conduct, and concluded:

> [D]id the parents know of and disregard a risk that—a substantial risk that a harmful result would—would flow from that? Well, I don't think there's any question that they did. They're being told by WIC generally and by the nutritionist, and that's key to me because that's the issue here, by a nutritionist, this ain't working. . . . He needs intravenous feeding. You've got to go get him on an IV, and they didn't do it.
> . . . . I don't think there can be any doubt that under the circumstances and what this child and this family experienced, the parents knew that if they didn't get adequate nutrition in this child it would threaten serious bodily harm to the child.

RP 87.

Disregarding his child's emaciated condition, Robert—together with Michelle—opted to continue homeopathic remedies instead of seeking intravenous therapy as the doctor recommended. CP 577. This continued for another six months while E.S.' condition further deteriorated and until he entered cardiac arrest.

Third, Robert even admitted to detectives that he believed "the situation was scary and dangerous," and that he had "discussed it with Michelle after work each day." CP 579. Ultimately, however, he and his

wife—again and again—chose to withhold the recommended intravenous nutrition. The trial court expressly found as much: "During the relevant period encompassed by the foregoing findings, neither Michelle Staats nor Robert Staats took [E.S.] to a hospital or a licensed physician." CP 580 (Finding of fact 36).

Finally, there is no question that E.S. suffered great bodily harm by Robert's actions. He suffered irreparable brain damage, kidney failure, rectal bleeding, severe hypothermia and dehydration, cardiac arrest, and skin ulcerations. CP 578.

Considering the evidence in the light most favorable to the State, sufficient evidence supported the trial court's finding that Robert was guilty beyond a reasonable doubt.

b. Michelle Staats recklessly created an imminent and substantial risk of death or great bodily harm to E.S. by withholding food.

Sufficient evidence also supported the court's finding that Michelle was guilty of criminal mistreatment in the second degree. In addition to the findings outlined above for Robert, the trial court made other findings pertaining to Michelle's conduct withholding of the basic necessities of life from E.S.

From the get-go, Michelle waffled in indecision concerning whether to take E.S. to a doctor despite WIC's and other medical

professionals' recommendations. Cramer recommended Michelle take action *as early as March 2011*, just after E.S.' health began to decline. Instead, Michelle stopped bringing him into WIC and tried to excuse his absence until late October.

She was also present when Dr. Trautman advised the family that E.S. needed immediate medical care. CP 576–77. Michelle confessed that Dr. Trautman told her that E.S. could die in his condition. CP 579. Yet, afterward, Michelle stopped bringing E.S. to WIC in favor of pursuing telephone consultations with a qigong practitioner so that protective services would not get involved. CP 577–79.

E.S. succumbed to his malnourishment seven months later. Only after E.S. suffered a heart attack did Michelle claim that she would have brought E.S. to a hospital had she understood the situation more fully. *See* CP 579.

When considering the trial court's findings in the light most favorable to the State, a rational trier of fact would have found Michelle guilty of criminal mistreatment in the second degree beyond a reasonable doubt.

D. CONCLUSION.

Intravenous nutrition is "food" under RCW 9A.42.010(1). The definition of "food" expressly states that food is material or "something

that nourishes." Intravenous nutrition qualifies under that definition. Defendants' construe "food" too narrowly, selectively electing a single definition requiring food to be solid nutriment that must be ingested, chewed, and swallowed. This definition confuses the nature of food (e.g., a nourishing substance) with its means of ingestion (e.g., injection).

Robert and Michelle's conduct was reckless; they disregarded obvious risks—even the risk of death—associated with E.S.' condition. Despite his declining health, they withheld necessary *nutrition*, or food, from the child. And the child suffered great bodily harm as a result, including cardiopulmonary arrest, severe emaciation, malnourishment, hypothermia, dehydration, renal failure, perianal skin ulcerations, kidney failure, and brain damage.

The State respectfully requests this court to uphold defendants' convictions of criminal mistreatment in the second degree.

DATED: November 16, 2015.

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

STATE OF WASHINGTON, Respondent, vs. MICHELLE K. STAATS and ROBERT ANTHONY STAATS, Appellants.	)	No. 326713 & 326721 (consolidated) DECLARATION OF SERVICE

Under penalty of perjury of the laws of the State of Washington, the undersigned declares:

That on this day I deposited in the mails of the United States of America a properly stamped and addressed envelope directed to counsel for Appellants containing a copy of the Brief of Respondent in the above-entitled matter. A copy of said Brief of Respondent was also e-mailed to counsel for Appellants.

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Dated: November 16 2015.

Kaye Burns