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Court of Appeals
Division I
State of Washington

71112-1

NO. 71112-1-I

IN THE COURT OF APPEALS – STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON
Respondent,

v.

LARRY 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 Larry Williams and his wife Carri from Ethiopia. Larry and Carri engaged in systematic punishment, deprivation and starvation of the two children. H.W. became malnourished and died of hypothermia after remaining outside on a cold rainy night after being accused of stealing food.

Larry Williams was convicted by a jury of Manslaughter in the First Degree of H.W. and Assault of a Child in the First Degree of I.W.

Williams challenges the manslaughter conviction claiming insufficiency of the evidence, ineffective assistance and instructional error. Given Williams participated in torture and starvation of his daughter, there was sufficient evidence for a rational trier of fact to find the defendant acted recklessly to convict him of manslaughter. Because Williams was not entitled to a proximate cause instruction for manslaughter and cannot establish prejudice, he cannot establish ineffective assistance for failure to seek a proximate cause instruction. In addition, the intervening superseding cause instruction properly referred to his acts or those of his wife.

Since the aggravating factors directed the jury to focus on Larry's conduct and actions, the exceptional sentence was not improperly based upon his wife's conduct as Larry contends.

Finally, Larry's contention that the manslaughter and assault

convictions must be reversed because of a violation of his right to presence and a public trial for peremptory challenges exercised at side bar fails given the Supreme Court's recent decision in *State v. Love*.

Thus, Larry Williams' convictions and sentence must be affirmed.

II. ISSUES

1. Where the testimony established that a defendant and his wife tortured his daughter by punishment, starvation and deprivation of shelter, was there sufficient evidence for a rational trier of fact to find the defendant engaged in reckless conduct which resulted in the death of his daughter?
2. Where the defendant was not entitled to a proximate cause instruction, could his attorney be ineffective for failing to seek the instruction?
3. Where the defendant was able to argue his theory of the case can he establish prejudice for failing to seek a proximate cause instruction?
4. Is a defendant entitled to an intervening superseding cause instruction for acts of an accomplice?
5. Did the intervening superseding cause instruction appropriately direct the jury to not consider acts of his accomplice as a superseding cause?
6. Where the jury was required to find aggravating factors based upon a defendant's conduct and actions, was the exceptional sentence properly focused on the defendant and not the accomplice?

7. Where peremptory challenges occurred at a side-bar conference, was there a closure resulting in a denial of the defendant's right to public trial?

8. Where peremptory challenges occurred at a side bar conference while the defendant was in court and had been present throughout trial, was there a violation of the defendant's right to presence?

III. STATEMENT OF THE CASE

1. Summary of Procedural History

On September 29, 2011, Larry Williams was charged with Homicide by Abuse and Assault of a Child in the First Degree for the death of malnourished 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 95-6.

On November 21, 2012, the information was amended to include a count of Manslaughter in the First Degree by recklessly causing the death of H.W. CP 10-1. As to the manslaughter, allegations of a domestic violence offense and aggravating factors under RCW 9.94A.535 for the purpose of an exceptional sentence were also charged. CP 11-2.

On July 22, 2013, jury selection commenced. 7/22/13 RP 2.¹ During jury selection, cause challenges occurred on the record, but peremptory

¹ 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.

challenges were addressed at a side-bar conference. CP Supp 2-5.²

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.

On September 9, 2013, the jury found Larry guilty of Manslaughter in the First Degree, and Assault of a Child in the First Degree. CP 314, 316. The jury was not able to agree on the greater charge of Homicide by Abuse. CP 313, 9/9/13 RP 195-6, 198-9. The jury returned a special verdict finding aggravating factors to Manslaughter in the First Degree. CP 319-20.

On October 29, 2013, the trial court imposed an exceptional sentence of 210 months for Manslaughter in the First Degree above the standard range of 78 to 102 months and a standard range sentence of 123 months for Assault of a Child in the First Degree. CP 371-2. The sentences for serious violent offenses ran consecutively under RCW 9.94A.589(1)(b). CP 372.

On October 29, 2013, Williams timely filed a Notice of Appeal to the Court of Appeals. CP 382.

2. Summary of Trial Testimony

i. Background, Adoption and Death

The Williams' had seven biological children³ in the family and in the

² The State relies upon the numbering used by the clerk although as designated, they were not numbered sequentially from prior documents. Therefore, the State refers to the documents as CP Supp.

home. 7/29/13 RP 17, 8/5/13 RP 18-19. H.W. and her brother I.W. had been born in Ethiopia. 7/29/13 RP 15, 17. They were adopted by Larry and Carri Williams and came to America in 2008. 7/29/13 RP 15, 17, 7/30/10 RP 155.

Dr. Carolyn Roesler was a medical practitioner in Australia who did volunteer 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 at an orphanage and saw H.W. for seven to eight months before H.W. left to America. 8/13/13 RP 81, 85-6, 121. The children at the orphanage had three meals a day with vegetables resulting in a balanced diet. 8/13/13 RP 87.

Roesler described H.W. as cooperative and very approachable. 8/13/13 RP 85. H.W. was happy, healthy and had a healthy size and stature for her age. 8/13/13 RP 87, 92-3. Roesler treated her one time for an upset stomach for overeating cheese brought by volunteers. 8/13/13 RP 90-2.

Roesler saw H.W. up until H.W. left to go to America. 8/13/13 RP 86. Roesler saw no evidence of malnutrition in H.W. 8/13/13 RP 98.

I.W. is deaf. 7/29/13 RP 14. I.W. was twelve years old at trial. 7/29/13 RP 15. I.W. was the only deaf family member although other Williams' family members had sign language proficiency. 7/29/13 RP 19. Larry worked at Boeing leaving from noon until around midnight. 8/5/13 RP

³ Joshua, Jacoby and Joseph are the oldest boys who are now over age eighteen. They will be referred to by their names. The other children presently remain under age eighteen and will be referred to by their initials.

21. I.W. was told school was bad and he and all the children were home-schooled by Carri. 7/29/13 RP 22, 8/5/13 RP 19, 8/15/13 RP 95.

Larry and Carri 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 Larry and Carri. 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. looked 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 104-5.⁴

⁴ 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.

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 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 spoke with Larry while on his way home from work saying H.W. was acting up. 8/6/13 RP 42, 110. Five to ten minutes later, Carri called Larry saying that H.W. was unresponsive and not breathing. 8/6/13 RP 42, 110-1. Larry told Carri to call 911. 8/6/13 RP 110-111. Carri called 911 and started CPR. 8/6/13 RP 111. When H.W. arrived at the hospital she had an abnormal heart rhythm called ventricular fibrillation. 8/8/13 RP 148. A normal heart rhythm was never restored. 8/8/3 RP 149-50, 152.

Contributing causes to her death by hypothermia included malnourishment. 7/30/13 RP 21-2. At death H.W. was abnormally thin. 7/30/13 RP 24, 27-8. She was 78 pounds and 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.

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

Prior to H.W.'s death, she and her adopted brother had been the subject of multiple punishments including physical abuse, isolation, dousing with cold water, humiliation, and food deprivation detailed below.

Physical assault: I.W. and the other biological children testified H.W. and I.W. were assaulted including being sprayed with a water hose and being hit with a belt, a hard wooden walking stick, another stick, a switch, a plastic stick, or 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. H.W. and I.W. were hit daily. 8/7/13 RP 13. They were hit by both Larry and Carri. 7/29/15 RP 28, 32, 38, 51, 8/7/13 RP 14, 8/19/13 RP 22, 25-6. H.W. got into some trouble the first year, but the second year was worse and the third year much worse. 8/19/13 RP 27.

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. He would try to stand up afterward but it was very painful. 7/29/13 RP 30. He was frequently hit on his back mostly by Larry, sometimes so hard that he could not move. 7/29/13 RP 38-9, 41-42.

Both Larry and Carry 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, 8/16/13 RP 114.

Food Deprivation: The punishments meted out to H.W. and I.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. Half the time, he did not get food. 8/13/13 RP 49. When food was served to H.W. and I.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. Other family members did not eat this kind of food. 8/1/13 RP 28.

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.

Sprayed with water: 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 often. 8/1/13 RP 14. Either Larry, Carri, or an older brother 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.

Isolation: I.W. described 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. I.W. and H.W. were also excluded from the Christmas celebrations after their first Christmas. 8/6/13 RP 27-8, 141-3. 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. H.W. at times was also prevented from speaking with family members for a day or two. 8/16/13 RP 157.

Sleeping arrangements: When I.W. first arrived, he slept in the same bedroom as the other boys. 7/29/13 RP 24. After a while, I.W. was forced to 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 or in the bathtub. 8/1/13 RP 17-8. If he wet his pants at night in bed, he stayed in his wet clothes until Larry came home and turned the cold shower on I.W. 8/1/13 RP 19. Larry left 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 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 as punishment. 8/1/13 RP 36, 40, 44-45, 47, 8/5/13 RP 44, 8/5/13 RP 188, 8/16/13 RP 49.

H.W. was also forced 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. 8/1/13 RP 38, 8/13/13 RP 45-46. H.W. did not have any blankets, pillows or sleeping bags with her when she was placed in the room. 8/1/13 RP 39. 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. Larry and Carri were the only ones who would let H.W. leave the room. 8/1/13 RP 46. 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, H.W. was forced to sleep in the closet 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. 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. 8/5/13 RP 35, 8/6/13 RP 19.

H.W.’s hair was cut off as punishment because she had cut the grass too short one time. 8/5/13 RP 57-8, 8/16/13 RP 73. 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, 8/16/13 RP 74, 204-5.

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, 137-9, 8/6/13 RP 31, Supp. CP. __ (Exhibit 51 at trial, supplemental designation of clerk’s papers pending). 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 Larry or Carri to do jumping jacks, or 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 33–5, 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.

iii. Acquaintance Observations

One of the Williams’ neighbors often saw H.W. and I.W. when they first arrived from Ethiopia. 7/29/13 RP 145-6. H.W. and I.W. seemed like normal happy-go-lucky kids. 7/29/13 RP 146. After a while the neighbor noticed that she did not see H.W. and I.W. as often as the other children. 7/29/13 RP 147. The neighbor said that at a later time she saw H.W. standing near the road with her hair cut off and not moving. 7/29/13 RP 148.

Another neighbor at first saw H.W. and I.W. frequently outside playing and walking with other family members. 8/7/13 RP 97. During the last year before H.W.'s death she did not see her out with other family members as often. 8/7/13 RP 98. She saw H.W. a couple of weeks before her death and saw that H.W. was thinner. 8/7/13 RP 99. At the time, H.W. was walking twenty to thirty feet behind the other family members and appeared sad or more serious. 8/7/13 RP 99-100.

A third neighbor saw H.W. and I.W. frequently out walking with other family members after they arrived, but rarely in the last year that they lived there. 8/7/13 RP 109-10. On one occasion, the neighbor saw H.W. walking about thirty feet behind the other family members. 8/7/13 RP 111.

A member of the church that the Williams' attended who grew up with sign language testified. 8/2/13 RP 122-3, 132. H.W. was described as quite chubby when she first arrived at the Williams' church. 8/2/13 RP 126. But H.W. became noticeably thin, losing about thirty pounds and looked really bad. 8/2/13 RP 126-7. H.W. was happy at first but that changed after she lost weight. 8/2/14 RP 127. The church member tried to chat with I.W. at church, but Larry would grab I.W. and take him away. 8/2/13 RP 127.

A piano teacher at the Williams' home described the relationship between Larry, Carri and their children. 8/2/13 RP 137-9. Carri taught from the bible that women are subject to their husbands who are considered to be

the head of the household. 8/2/13 RP 138-9. The women obey, submit to and encourage their husbands. 8/2/13 RP 139. The children should be trained to obey their parents. 8/2/13 RP 139. She recalled an incident where Larry told her to get her a towel and Carri quickly retrieved one. 8/2/13 RP 139.

iv. Testimony of the Williams' Family Members

Jacob Williams testified that the family generally got up at 9:30 a.m. and that Larry would be in charge of breakfast at 10:00 to 10:30 a.m. 8/15/13 RP 59-61. Larry went to work from noon to 12:30 on weekdays. 8/15/13 RP 61. Lunch was about 2:00 to 2:30 and was prepared by Joseph and C.W. 8/15/13 RP 61. Lunch was typically a sandwich with carrots and apples. 8/15/13 RP 61. School was about five to six hours a day. 8/15/13 RP 62. Carri was in charge of dinner which was around 7:30 to 8:30 p.m. 8/15/13 RP 62-3. Jacob confirmed that H.W. and I.W. at times were given frozen vegetables to eat outside. 8/15/13 RP 72. H.W. and I.W. also missed meals because of punishment for not doing what they were told. 8/15/13 RP 73. H.W. was forced to miss meals for up to a day or two. 8/15/13 RP 74. The rules that H.W. and I.W. broke were set down by both Larry and Carri. 8/15/13 RP 75-6. Jacob said in the last six months of her life, H.W. had to eat outside about twice a week. 8/15/13 RP 82. H.W. was also required to stay in the closet frequently in the last six months of her life. 8/15/13 RP 83.

The closet became her bedroom. 8/15/13 RP 83. On occasion, H.W. had to eat her meals in the closet. 8/15/13 RP 83.

Jacob testified wet sandwiches were also a form of punishment for H.W. and I.W. 8/15/13 RP 85. They were made by making a sandwich and pouring water on it. 8/15/13 RP 85. H.W. and I.W. were forced outside as punishment in all kinds of weather. 8/15/13 RP 86. The standard punishment for not telling the truth was ten spankings with the pipe or the belt. 8/15/13 RP 105. A switch, a glue stick and wooden spatula were also used. 8/15/13 RP 106, 109. After the first year there, H.W. was spanked daily and sometimes more than once a day. 8/15/13 RP 126. She was spanked for being disobedient. 8/15/13 RP 126. Jacob described that H.W. was very defiant and would do the opposite of what she was told to do. 8/15/13 RP 209. Larry would spank on the head. 8/15/13 RP 138. Jacob was also told to spank H.W. and I.W. by Larry and Carri. 8/15/13 RP 139.

Jacob testified H.W. was also put in the closet by both Larry and Carri and locked from the outside. 8/15/13 RP 131-3. There was no window in the closet and the light switch was outside. 8/15/13 RP 133. H.W. was taken out of the closet for meals and school work. 8/15/13 RP 134-5.

On the night H.W. died, Jacob went out and spanked H.W. at his mother's direction and ordered her to do sit-squats. 8/15/13 RP 144-5. Jacob

was told by Larry and Carri not to tell CPS or police about the shower room, closet or spanking. 8/15/13 RP 150.

Joseph testified that H.W. ate lunch the day she died. 8/15/13 RP 221. He also believed she had dinner outside. 8/15/13 RP 223. H.W. was outside for punishment. 8/16/13 RP 9. Joseph saw Carri spanking Hannah with a switch on the back of the legs. 8/15/13 RP 227-8.

Joseph recalled that Carri talked with Larry by phone while H.W. was outside. 8/16/13 RP 29. It was regular for Larry to call home while he was at work. 8/16/13 RP 29, 164. The conversation that Joseph recalled was not an argument. 8/16/13 RP 164. Joseph helped carry H.W. inside after H.W. had been covered by a sheet. 8/16/13 RP 25-6. Carri first checked for a pulse before calling Larry. 8/16/13 RP 25-6. Carri then got off the phone with Larry and called 911. 8/16/13 RP 26.

Joseph testified H.W. was punished for sneaking food at a time when her weight was up. 8/16/13 RP 44-5. Joseph noticed that H.W. had been losing weight prior to her death. 8/16/13 RP 120, 200.

Joseph agreed H.W. was spanked daily. 8/16/13 RP 191. H.W.'s behavior became worse over time. 8/16/13 RP 193. Larry and Carri were equal in terms of disciplining the children. 8/16/13 RP 34. In the last six months before she died H.W. was forced to eat outside two to three times per week. 8/16/13 RP 193.

Joshua Williams testified that Larry was the head of the household because he was the father. 8/27/13 RP 33. Joshua Williams testified the punishment for H.W. increased over time. 8/27/13 RP 32.

C.W. testified her father, Larry, worked five days a week and would go to work about noon, arriving back about eleven-thirty to midnight. 8/5/13 RP 21. Larry and Carri Williams were responsible for the discipline in the house. 8/5/13 RP 54. He would spank or use a belt. 8/5/13 RP 54. Larry Williams would assist C.W. and S.W. to make breakfast. 8/5/13 RP 110. H.W. would have breakfast outside. 8/5/13 RP 16.

S.W. caught H.W. taking food from the pantry at night. 8/6/13 RP 74-5. Larry heard and came in and sent S.W. back to bed and dealt with H.W. 8/6/13 RP 75-6. S.W. was scared for H.W. 8/6/13 RP 76.

J.W. testified H.W. and I.W. were spanked daily. 8/7/13 RP 12-3. Larry would use a belt on both H.W. and I.W. 8/7/13 RP 13. Larry would also make H.W. walk the line which required her to walk around the lines on the pickle ball court. 8/7/13 RP 21, 29.

Larry's brother-in-law described that Larry and Carri were on equal footing in the household. 8/9/13 RP 79. Larry's sister testified that she didn't even recognize H.W. in the casket because her head was shaved, she was very slender and her lips looked bigger which could have been since her face was more slender. 8/9/13 RP 100.

Carri testified that she and Larry agreed upon the rules and punishment consequences. 8/28/13 RP 106, 108. Larry agreed upon and used the same spoon, switch, glue stick and belt that Carri used to spank the kids with. 8/28/13 RP 114-5. They used the same procedures. 8/28/13 RP 118. Carri said that Larry set up the outside shower for H.W. 8/28/13 RP 135. Carri said it was Larry's idea to fore H.W. to sleep in the barn and she agreed. 8/28/13 RP 142. H.W. was punished for stealing junk food and sweets by being forced to sleep in the closet. 8/28/13 RP 145. The idea was Carri's but Larry agreed to it. 8/28/13 RP 146. Larry installed the lock. 8/28/13 RP 147. It was more often locked than not. 8/28/13 RP 147. Carri had H.W. stay in the closet during the day in the last three months before H.W. died. 8/28/13 RP 149. Carri claimed the longest that H.W. was in the closet was ten hours. 8/28/13 RP 151.

Larry also agreed to the punishment of serving cold and frozen food to H.W. and I.W. 8/28/13 RP 152-3. Wet sandwiches were also served including by Larry. 8/28/13 RP 153-4. H.W. was forced to miss meals due to her "oppositional behavior at the meal table." 8/28/13 RP 155. That began about nine months before H.W. died. 8/28/13 RP 155. Larry and Carri came up with the idea together. 8/28/13 RP 156. It was around that time when Carri noticed H.W. was losing weight. 8/28/13 RP 161.

On the day H.W. died, Carri said she spoke with Larry after H.W. had been outside in the dark and had stripped her clothes off. 8/28/13 RP 175. A few minutes later, after H.W. was laying on the ground, they brought H.W. inside to check for a pulse but could not find one. 8/28/13 RP 177-8. After first calling Larry, Carri then called 911. 8/28/13 RP 178.

Carri testified H.W. went outside around 3:00 p.m. and never asked for clothes or sought to come inside. 8/28/13 RP 186-7.

Carri also said she told her children not to talk to law enforcement about their spanking of H.W. and to falsely say that H.W. slept in the girl's room. 8/28/13 RP 210-1.

v. H.W.'s Medical Care and Cause of Death

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 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.

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. H.W.'s stomach contained only about a teaspoon of fluid and fragments of seeds or grains indicating she had not eaten in at least the prior three to six hours or longer. 7/30/13 RP 34-5. Selove determined H.W. died of hypothermia. 7/30/10 RP 21. Contributing factors included malnutrition. 7/30/10 RP 21. Selove saw injuries including bruising and scrapes. 7/30/10 RP 23, 25-6, 39-40, 42-3. Selove described linear marks of bruises and scrapes near 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.

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. Photographs also showed H.W.'s physical condition and loss of weight. Supp. CP.s __ (Exhibits 2, 3, 6, 8, 27, 28, 30, 51, 170 at trial, supplemental designation of clerk's papers pending).

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, 8/8/13 RP 102, 106. On her last visit to the doctor on April 1, 2009, she weighed one-hundred and eight pounds. 8/8/13 RP 106. She was in the 90th percentile. 7/29/13 RP 130. The family doctor never saw H.W. again. 8/8/13 RP 118.

On the date of her death on May 12, 2011, H.W. weighed between 76 and 80 pounds and was in the 5th percentile for BMI. 7/29/13 RP 75, 78, 8/8/13 RP 145, 152. Dr. Chalmers determined H.W. had been undernourished. 7/29/13 RP 76-7, 82. She was seriously underweight. 7/29/13 RP 78. Being so underweight can lead to cardiac arrhythmia and make one more susceptible to hypothermia. 7/29/13 RP 78, 82.

Dr. Rebecca Wiester is physician board certified in pediatrics and child abuse pediatrics with familiarity with hypothermia, malnourishment and starvation. 8/26/13 RP 8-9, 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. Starvation puts all of a person's systems at risk, particularly the cardiac system, blood volume and response to stress. 8/26/13 RP 3, 40-1. A starving person loses the ability to generate heat to keep themselves warm and has less of an insulating layer of fat and is at a much higher risk for hypothermia. 8/26/13 RP 31.

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 made more likely by starvation as a result of severe parental neglect. 8/26/13 RP 60-1.

vi. Expert Testimony Pertaining to Torture

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.

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. 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 when 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. 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 causing 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 torture by humiliation. 8/2/13 RP 38. The frequency and duration of these events all contributed to his opinion that H.W. and I.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. 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 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 as torture of H.W. 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.

vii. Defendant’s Statements and Testimony

At the hospital, Larry told a detective that while at work he checks in with the family several times during his shift. 8/2/13 RP 184, 186. He also said that he “knew [H.W.] was having one of her episodes that day.” 8/2/13 RP 184. Larry did not go into detail. 8/2/13 RP 184.

The day after the death when questioned by officers about marks seen on H.W.’s legs, Larry told officers about a switch that they used. 8/20/13 RP 108. He got the switch which he gave to the officers. 8/20/13 RP

108. They also discussed H.W.'s hygiene issues and Larry stated he and his wife were trying to work with H.W. on the issues. 8/20/13 RP 108. Larry said he believed H.W.'s health was good and her testing had been good lately. 8/20/13 RP 109.

A few weeks later when officers talked to Larry and Carri, they both said that H.W. had lied a lot and they felt equally disrespected by H.W. 8/20/13 RP 119-20. That day, Larry also said that he believed that H.W. was the healthiest of all the family, noting that all the others in the family got the swine flu, but that H.W. did not. 8/20/13 RP 121-2. The detective noted Larry's demeanor was stout or authoritative. 8/20/13 RP124. Carri's demeanor was as a follower. 8/20/13 RP 124

At the interviews of the Williams' children with a social worker, Larry and Carri wanted to be present. 8/2/13 RP 187-8. The children would often look to Larry and Carri as they were being asked questions. 8/2/13 RP 189.

At trial, Larry testified he considered himself the head of the household. 8/28/13 RP 24-5. He developed a parenting approach with Carri. 8/27/13 RP124. There were schedules prepared for the children. 8/27/13 RP 44. Larry began spanking H.W. in the middle of the second year. 8/27/13 RP 60. He spanked her in the same way as I.W. 8/27/13 RP 60. Spanking was to inflict pain. 8/27/13 RP 172. He spanked her for things he saw her do or felt

she deserved punishment for. 8/27/13 RP 63. Larry agreed with the practice of putting H.W. in the closet. 8/27/13 RP 99-100. In the months before H.W. died, Larry and Carri discussed the discipline techniques. 8/28/13 RP 23-4. Larry believed he came up with some of the ideas for discipline, but when questioned attributed all of them to Carri. 8/28/13 RP 41-2.

Larry prepared breakfast. 8/27/13 RP 45. In the last six months of H.W.'s life, she ate breakfast more often outside than not. 8/27/13 RP 174. Larry was there for and prepared breakfast. 8/27/13 RP 102-3, 174. Being sent outside was part of H.W.'s punishment. 8/27/13 RP 132. H.W. would eat outside while the rest of the family was inside. 8/27/13 RP 132-3. Larry saw H.W. and I.W. eating outside as punishment. 8/27/13 RP 133-4. Breakfast was not the only meal they ate outside. 8/27/13 RP 134. Larry was aware other meals were fed to them outside too. 8/27/13 RP 134. This occurred while Larry was there. 8/27/13 RP 134. Larry was also aware that H.W. regularly did not come back inside after having forced to have meals outside. 8/27/13 RP 135. Larry was present for dinner on the weekends and most of the nights over the last six months H. W. was fed frozen food. 8/27/13 RP 177. H.W. was disciplined for stealing food. 8/27/13 RP 178. Larry was also present when H.W. showered outside. 8/27/13 RP 136, 164. Larry was aware that H.W.'s hair was cut short as punishment for disobedience. 8/27/13 RP 166.

Larry denied that he noticed that H.W. had lost thirty pounds. 8/27/13 RP 185. He knew she lost weight, but did nothing. 8/27/13 RP 185.

On the night of H.W.'s death when Larry learned of H.W.'s behavior from Carri's first phone call, it did not surprise Larry. 8/27/13 RP 145-6.

IV. ARGUMENT

1. WHERE WILLIAMS PARTICIPATED IN THE PUNISHMENT AND STARVATION OF THE VICTIM WITH HIS WIFE, THERE WAS SUFFICIENT EVIDENCE TO SUPPORT RECKLESSNESS FOR MANSLAUGHTER IN THE FIRST DEGREE.

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).

The defendant was convicted of manslaughter in the first degree requiring proof of the following elements:

- (1) That on or about the 12th day of May, 2011, the defendant Larry Williams engaged in reckless conduct;
- (2) That [H.W.] died as a result of Larry Williams’, or his accomplice’s reckless acts; and
- (3) That any of these acts occurred in the State of Washington.

CP 286. The jury instructions also included the definition of reckless.

For the purposes of Manslaughter in the First Degree, a person is reckless or acts recklessly when he knows of and disregards a substantial risk that a death may occur and the disregard is a gross deviation from the conduct that a reasonable person would exercise in the same situation.

CP 287.

ii. Duty of Care for Dependent Child

Because the death here involved Larry’s own child, he owed a duty of care to her that had to be considered in evaluating he and his wife’s actions or inactions to address her weight loss and medical care. The jury

was given an instruction on that duty.

A parent of a dependent child, has a duty to provide the basic necessities of life. The parent also has the duty to provide medical care. The duty to provide medical care is activated at the time when an ordinarily prudent person, solicitous of welfare of his or her child and anxious to promote his/her recovery, would deem it necessary to call in medical assistance. If this duty is breached, the breach must be shown to be reckless to support first degree manslaughter.

CP 288.

This instruction was based upon case law that describes the parental duty which exists outside of statutory authority.

In *State v. Norman*, 61 Wn. App. 16, 26, 808 P.2d 1159, review denied, 117 Wn.2d 1018, 818 P.2d 1099 (1991), the jury found that Mr. Norman's failure to summon medical assistance for his son amounted to recklessness and he was convicted of first degree manslaughter. Washington has long recognized the parental duty to provide medical care for minor children. In *State v. Williams*, 4 Wn. App. 908, 915, 484 P.2d 1167 (1971), the court described this duty as a "natural duty existing independently of statutes" and went on to state: "We therefore hold that the violation of the parental duty to furnish medical care to a minor dependent child, the other elements of manslaughter being present, is a sufficient basis on which to rest a conviction of the crime of manslaughter"

State v. Morgan, 86 Wn. App. 74, 79-80, 936 P.2d 20 (1997).

In *State v. Williams*, a husband and wife were convicted of manslaughter for failing to treat a seventeen-month-old child allowing an abscessed tooth to lead to an infection causing gangrene, resulting in malnutrition, lowering the child's resistance and eventually producing

pneumonia. *State v. Williams*, 4 Wn. App. at 917-8. The condition was one which put the parents on notice that medical care was required and the convictions were affirmed. *State v. Williams*, 4 Wn. App. at 919.

In *State v. Norman*, the defendant was convicted for refusal to provide medical care for his ten-year-old son after the son began losing weight and was drinking water and urinating excessively. *State v. Norman*, 61 Wn. App. at 19. The defendant was a member of a religious group that urged prayer first before seeking medical care. Members of the church suspected diabetes, but care was not provided. The son was emaciated, weighed only forty-six pounds and died of untreated juvenile diabetes. *State v. Norman*, 61 Wn. App. at 20. The Court upheld the conviction holding that the instructions which required the jury to find the father acts created a substantial risk were proper.

Larry Williams's actions went beyond inaction, instead participating in deprivation and starvation resulting in the death of H.W.

iii. Larry's actions in control and inactions in failing to address H.W.'s weight loss and participation in torture was in disregard of a substantial risk that death may occur.

On appeal, as a trial, Larry focused entirely upon a different theory than upon which the State sought conviction. He focused just on his actions on the night of the death.

The State's theory as to Larry was based upon his participation in the deprivation and starvation of H.W. 9/5/13 RP 140-145. The State contended she died because of hypothermia, but was susceptible because of the significant weight loss that occurred. 9/5/13 RP 140.

Now, the cause of [H.'s] death was hypothermia. The hypothermia happened in part because [H.] was starved, and Larry was part of the starvation system that lead to [H.'s] hypothermia and her ultimate death. He caused her death as surely as if he were in the kitchen there, with Carri, watching [H.] die.

9/5/13 RP 141. The State also pointed out the precipitous drop in weight from the 80th percentile to the 5th percentile in weight. 9/5/13 RP 142.

But most significantly the State argued, they didn't provide her the care over her life which they had the duty to provide.

How do you decide if Mr. and Mrs. Williams just didn't care? And the way you decide is the same way you decide what other people are thinking. You look at how they're acting. Not just the day that [H.] died, but throughout the entire time frame that [H.W.] was being starved and deprived of food and the basic necessities of life.

How did they treat [H.]? They isolated her. They did not provide medical care for her after 2009. She had no office visits. They did not provide her with food. They barely provided her with shelter, in the form of a closet. Otherwise, she was outside in the elements. They didn't care about her.

9/5/13 RP 145.

Because the breach of the duty of care was in disregard of a substantial risk that H.W. would die, Larry Williams is guilty of

manslaughter. The testimony establishes Larry's participation in the deprivation and starvation of H.W. and his disregard of the evidence showing H.W. was losing substantial weight because of starvation.

Larry was engaged in the discipline scheme he created with Carri. 8/27/13 RP 44, 124. Larry participated by H.W. 8/27/13 RP 60. Larry agreed with putting H.W. in the closet. 8/27/13 RP 99-100. Larry was present for, was aware of and participated in the forced punishment of feeding H.W. outside which included frozen foods. 8/27/13 RP 102-3, 132, 134, 174 Larry was also aware that H.W. regularly did not come back inside after having forced to have meals outside. 8/27/13 RP 135.

Larry was fully aware that H.W. was losing weight but did nothing. 8/27/13 RP 185. And H.W.'s eventual death outside was after behavior and punishment that did not surprise Larry because she "was having one of her episodes that day." 8/27/13 RP 145-6, 184.

The manslaughter conviction is supported by the evidence.

2. SINCE THE CAUSATION INSTRUCTION WAS NOT REQUIRED AND THERE WAS NO PREJUDICE, WILLIAMS CANNOT ESTABLISH INEFFECTIVE ASSISTANCE.

To establish ineffective assistance such that a defendant's conviction must be overturned, the defendant must show that counsel's performance was deficient and that that deficiency prejudiced him. *State v. Lord*, 117

Wn.2d 829, 883, 822 P.2d 177 (1991). Trial counsel is presumed to have rendered adequate assistance. *Id.*

In context of a claim that trial counsel should have requested an instruction, the defendant must show that he was entitled to the instruction. *In re Pers. Restraint of Cross*, 180 Wn.2d 664, 718, 327 P.3d 660 (2014), citing *State v. Cienfuegos*, 144 Wn.2d 222, 227, 25 P.3d 1011 (2001); *State v. Powell*, 150 Wn. App. 139, 206 P.3d 703 (2009).

Larry Williams was not entitled to a proximate cause instruction. “Proximate Cause” refers to cause in fact, and not to legal causation. *State v. Dennison*, 115 Wn.2d 609, 624, 801 P.2d 193 (1990). “ ‘ Cause in fact refers to the “but for” consequences of an act - - the physical connection between an act and an injury.’ Cause in fact is generally left to the jury. When reasonable minds could reach but one conclusion, however, questions of fact may be determined as a matter of law.” *Dennison*, 115 Wn.2d at 624-625 (citations omitted). A trial court correctly refuses to give a proximate cause instruction where reasonable minds could only reach one conclusion. *Id.*

Here, but for the existing scheme of food deprivation and placing the children outside for punishment, H.W. would not be dead. Larry was a part of this punishment scheme. But for Larry’s acts, H.W. would not be dead.

If this Court determines that counsel's performance was constitutionally deficient, to prevail on appeal the defendant must show that he was prejudiced by the deficient performance⁵. "This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." *State v. Lord*, 117 Wn.2d 829, 883, 822 P.2d 177 (1991). "The defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Lord*, 117 Wn.2d at 883-884, quoting *Strickland v. Washington*, 466 U.S. 668, 694, 80 L.Ed.2d 674, 104 S.Ct. 2052 (1984).

The defendant has failed to establish prejudice because the jury instructions as a whole permitted the defense to argue their theory of the case and because there is no reasonable probability that the result of the trial would have been different if the instruction had been given. "Jury instructions satisfy the fair trial requirement when, taken as a whole, they properly inform the jury of the law, are not misleading, and permit the parties to argue their theories of the case." *State v. Morgan*, 123 Wn. App. 810, 814-815, 99 P.3d 411 (2004).

In *In re Pers. Restraint Cross*, 180 Wn.2d 664, 327 P.3d 660 (2014), the appellant failed to show prejudice where defense counsel was deficient in

⁵ Or this Court may decide to resolve the issue of prejudice at the outset and forgo a determination of deficiency. A finding of no prejudice would terminate the issue of deficiency. *Lord*, 117 Wn.2d at 883-884.

failing to request an instruction that the sentencing jury could consider lack of premeditation as a mitigating factor. The Court found that counsel was deficient under the circumstances of the case, but the defendant failed to show prejudice. “Cross could and did present evidence of lack of premeditation and that under the instructions given, jurors had an adequate vehicle for considering the evidence because they were broadly instructed to consider all mitigating factors.” *In re Pers. Restraint of Cross*, 180 Wn.2d at 719-720.

Here, the defense primary theory at closing argument was that if H.W. was malnourished due to starvation, and if she died of hypothermia, then Larry was not responsible because he did not participate in the starvation and he was not at home when H.W. was sent outside by Carri. Counsel also argued that Larry did not have the requisite state of mind for the manslaughter charge and pointed out the evidence that showed that Larry did care whether H.W. lived or died. 9/4/13 RP 99-102. Counsel concluded with arguments that the State did not prove H.W.’s age or that H.W. was tortured. 9/4/13 RP 102-118. Counsel then turned to the manslaughter charge and told the jury that “[t]he analysis of whether or not Larry - - Mr. Williams caused H.W.’s death is the same.” 9/4/13 RP 118. “[T]he causation issue for Manslaughter First Degree and Manslaughter Second Degree is the same as it is for Homicide by Abuse. So if you do not find Homicide by Abuse, that

Mr. Williams was the proximate cause of H.W.'s death, then you cannot find that under Manslaughter in the First Degree or Manslaughter in the Second Degree." 9/4/13 RP 119. Counsel pointed out that the other differences between the Homicide charge and the manslaughter charge is whether the State must prove a pattern and practice of torture and also that there is a different *mens rea*. 9/4/13 RP 119-120.

The State did not ever argue contrary to the defense argument that the State was not required to prove proximate cause. To the contrary, the State focused its arguments on why Larry's actions did cause H.W.'s death. The State's theory, however, was that the actions that led to H.W.'s death from hypothermia started about a year and a half prior to her death and those actions were the starvation of H.W. that led to her physical inability to withstand being outside in the cool and sometimes rainy weather for an extended period of time. "The facts before you are that she was too thin and that because of that, she did succumb to hypothermia at the time that she did. And the reason why she didn't have enough body fat is because the two defendants starved her. Both Mr. and Mrs. Williams were part of an inexorable chain of events that led to H.W.'s death from hypothermia." 9/5/13 RP 143.

The instructions that were given by the court, taken as a whole, were sufficient. The jury was instructed that the State had to prove beyond a

reasonable doubt that H.W. died **as a result of** Larry's acts. CP 286. The intervening act instruction is not specific to the homicide charge by its terms. While the defendant argues on appeal that this instruction was "infected" by the lack of a proximate cause instruction, the State disagrees. The defendant argues that the jury would have concluded that the intervening act instruction only applied to the homicide charge because it immediately followed the to-convict instruction and the proximate cause instruction. Br. App. at 31. However, the jury is instructed that the order of the instructions has no significance as to their relative importance and also to consider the instructions as a whole. CP 273. The jury is presumed to follow the court's instructions. *State v. Yates*, 161 Wn.2d 714, 763, 168 P.3d 359 (2007), quoting *State v. Grisby*, 97 Wn.2d 493, 499, 647 P.2d 6 (1982).

The defendant additionally fails to show prejudice in that he has not shown by a reasonable probability that he was harmed.

The evidence was overwhelming that the defendant was in partnership with his wife where they agreed that H.W. would be punished by, among other things, methodological deprivation of food that led to a BMI percentile drop from 90% to 5% over the course of two years and that left H.W. at 76 to 80 pounds at the time of her death. 7/29/13 RP 70, 8/8/13 RP 102, 106. The evidence was overwhelming that the defendant and his wife were in agreement that H.W. would be punished by putting her outside

on numerous occasions. It is the deprivation of food that led to H.W.'s susceptibility to death by hypothermia. The death by hypothermia was brought on by the starvation of H.W. Even had there been a proximate cause instruction as to the manslaughter, the result would have been the same.

On appeal, the defendant argues that prejudice is shown by the fact that the jury did not find the defendant guilty of the homicide by abuse but did find the defendant guilty of the manslaughter. The defendant deduces that it was the proximate cause instruction that made the difference. The jury was unable to reach a unanimous verdict on the homicide by abuse charge. The most likely scenario for the difference between the hung jury on the homicide charge and the conviction on the manslaughter charge is the difference in *mens rea*. For the homicide by abuse, the jury would have to find that Larry Williams did not care whether H.W. lived or died. The defense effectively presented evidence that the defendant did care, that he cared about H.W., and that he was upset after her death. Furthermore, while the defendant was part and parcel of the scheme of punishment that resulted in the starvation of H.W. and her ultimate death, the fact is that it was Carri Williams who left H.W. outside for hours on end. It makes sense that the jury would have agreed that the defendant recklessly disregarded the substantial risk of death attendant to the starvation by putting H.W. outside as punishment but would have had more difficulty agreeing that the

defendant actively manifested an extreme indifference to human life. The defendant has failed to meet his burden of showing this Court that he was prejudiced by the lack of the proximate cause instruction.

3. Given the accomplice instruction modified to address termination of complicity, the intervening superseding cause instruction given was appropriate.

i. Standard pertaining to adequacy of instructions.

The test for sufficiency of jury instructions is whether "they permit each party to argue his theory of the case, are not misleading, and when read as a whole, properly inform the trier of fact of the applicable law." *Rice*, 110 Wn.2d at 603 (citing *State v. Mark*, 94 Wn.2d 520, 526, 618 P.2d 73 (1980)).

State v. Clark, 143 Wn.2d 731, 771, 24 P.3d 1006 (2001).

For Berube's conviction as an accomplice to stand, the evidence must support a finding that she solicited, commanded, encouraged or requested Nielsen to commit the crime charged, or she must have aided or agreed to aid him in planning or committing it, knowing that her acts would either promote or facilitate the crime. See RCW 9A.08.020(3)(a) (requirements for accomplice liability). As an accomplice, Berube need not participate in or have specific knowledge of every element of the crime nor share the same mental state as the principal. *State v. Sweet*, 138 Wn.2d 466, 479, 980 P.2d 1223 (1999); *State v. Hoffman*, 116 Wn.2d 51, 104, 804 P.2d 577 (1991).

State v. Berube, 150 Wn.2d 498, 511, 79 P.3d 1144 (2003).

- ii. **The instructions given included an addition to the standard accomplice instruction for termination of complicity.**

The defense proposed an intervening superseding cause instruction which read as follows:

If you are satisfied beyond a reasonable doubt that the acts of the defendant were a proximate cause of the death, it is not a defense that the conduct of the deceased or another may also have been a proximate cause of the death. However, if a proximate cause of the death was a new independent intervening act of the deceased or another which the defendant, in the exercise of ordinary care, should not reasonably have anticipated as likely to happen, the defendant's acts are superseded by the intervening cause and are not a proximate cause of the death. An intervening cause is an action that actively operates to produce harm to another after the defendant's acts have been committed.

CP 231.

The trial court gave the State's proposed instruction which read as follows:

If you are satisfied beyond a reasonable doubt that the acts or omissions of the defendant or his [or her] accomplice were a proximate cause of the death, it is not a defense that the conduct of the deceased or another may also have been a proximate cause of the death.

However, if a proximate cause of the death was a new independent intervening act of the deceased or another which the defendant, or his [or her] accomplice in the exercise of ordinary care, should not reasonably have anticipated as likely to happen, the defendant's, or his [or her] accomplice's acts are superseded by the intervening cause and are not a proximate cause of the death. An intervening cause is an action that actively operates to produce harm to another after

the defendant's, or his [or her] accomplice's acts or omissions have been committed.

However, if in the exercise of ordinary care, the defendant or his [or her] accomplice should reasonably have anticipated the intervening cause, that cause does not supersede defendant's or his [or her] accomplice's original acts and defendant's or his [or her] accomplice's acts are a proximate cause. It is not necessary that the sequence of events or the particular injury be foreseeable. It is only necessary that the death fall within the general field of danger which the defendant or his [or her] accomplice should have reasonably anticipated.

CP 285, CP Supp. 99.⁶ The version provided by the trial court differed from the pattern instruction by including the words "or his accomplice" after each use of the word defendant. CP 285, 11 Wash. Prac., Pattern Jury Instr. Crim. WPIC 25.03 (3d ed. 2014). 8/3/14 RP PM 84-5. In comparison to the pattern instruction, the defense version had not included the third full paragraph and had removed the word "omissions" from the first and second paragraphs.

The defense objection to the use of the instruction and the trial court's ruling read as follows:

MS. TRUEBLOOD: And your Honor, I don't think there's any indication of omissions. I think it should properly just be acts. And I don't think adding the words "or accomplice" is proper. I think that even under accomplice liability, **if one person who was an accomplice terminates, and the accomplice does something else that they're not aware of and didn't know about, that that fits under this instruction.**

⁶ After each use of "his" the state's version included "or hers" which was subsequently removed because the separate instruction packet was prepared for Mr. Williams.

THE COURT: **Well, but that's covered by the accomplice instruction. Then they wouldn't be accomplice to that act.** All right. So it looks to me like the entire WPIC is the appropriate language here. This allows the jury to consider all the acts, omissions of both parties with respect to what happened, and decide whether there was something that took place that Mr. Williams should not be responsible for or not. So we will be giving the state's intervening superseding cause instruction and not L(7).

8/30/13 RP PM 85. The accomplice instruction addressed the limitation on complicity with the last full paragraph describing how an accomplice can terminate complicity.

A person is guilty of a crime if it is committed by the conduct of another person for which he or she is legally accountable. A person is legally accountable for the conduct of another person when he or she is an accomplice of such other person in the commission of the crime.

A person is an accomplice in the commission of a crime if, with knowledge that it will promote or facilitate the commission of the crime, he or she either:

- (1) solicits, commands, encourages, or requests another person to commit the crime; or
- (2) aids or agrees to aid another person in planning or committing the crime.

The word "aid" means all assistance whether given by words, acts, encouragement, support, or presence. A person who is present at the scene and ready to assist by his or her presence is aiding in the commission of the crime. However, more than mere presence and knowledge of the criminal activity of another must be shown to establish that a person present is an accomplice.

A person who is an accomplice in the commission of a crime is guilty of that crime whether present at the scene or not.

A person is not an accomplice if he or she terminates his or her complicity prior to the commission of the crime, and either gives timely warning to the law enforcement

authorities or otherwise makes a good faith effort to prevent the commission of the crime.

CP 282. The last paragraph of the instruction was a paragraph requested by the defense which was not part of the pattern instruction. 11 Wash. Prac., Pattern Jury Instr. Crim. WPIC 10.50 (3d ed. 2014).

iii. The instructions provided both sides the opportunity to argue their theory of the case.

As pointed out in the first argument section, the case presented significantly different theories of culpability. The State's theory was based upon Larry's participation in the deprivation and starvation of H.W. causing her to lose weight and be susceptible to death by a form of punishment that was standard practice at the house. The defense theory focused solely on the night in question, claiming that Larry had no idea that H.W. had lost significant weight and did not participate in the punishment that Carri meted out along with the other siblings.

To prove the manslaughter, the State had to prove that H.W. "died as a result of Larry Williams', or his accomplice's reckless acts." CP 286. The defense obtained the addition to the accomplice instruction that Larry could remove his culpability by terminating his complicity and make a good faith effort to prevent the crime CP 282.

Taken as a whole, Larry was able to rebut the State's theory by claiming that he was not a participant in the deprivation and starvation of

H.W. His primary theory was that he did not know the degree to which Carri was disciplining Carri and thus was not her accomplice.

Now, a person is an accomplice to a crime if -- and the first thing is, with knowledge that it will promote or facilitate the commission of the crime. Not any crime, but the specific crimes -- homicide, manslaughter, assault. And **so if Mr. Williams did not know that any of the things that he may have done to assist Carri or participate in the discipline, if he does not know that it will facilitate homicide, manslaughter, or assault, then he is not an accomplice. And I think the evidence is overwhelming that he did not know that.**

...

Now, just want to look at what the children say about this. You know, Larry -- Larry saw the tip of the iceberg. What was going on in the Williams home was this gigantic iceberg, and all Larry saw was the tip. He saw a little bit about a lot of things, but did not see the duration or the frequency or the severity, which are all the things that the torture experts talk about are important to find torture, because he wasn't home.

9/4/13 RP 142-3 (bold emphasis added).

Although Larry argues that adding the words "or his accomplice" makes the intervening superseding cause instruction meaningless, he argued that H.W.'s hypothermia was the intervening cause. 9/4/13 RP 89.

So when we talk about proximate cause and intervening cause, that even if Mr. Williams contributed to her overall caloric intake or lack thereof, that the hypothermia, which he had no knowledge of, no knowledge of a single factor of it, was an intervening cause of death, and therefore the malnutrition as to Mr. Williams was not the proximate cause of [H.]'ss death.

9/4/13 RP 89. This was consistent with the evidence defense presented that H.W. had remained outside without a coat and with the door unlocked and did not come inside despite repeated requests by Carri. 8/15/13 RP 199-202.

His other primary theory was that this was an accident.

This was like the perfect storm. This was a combination of naive parents, children with mental health issues, children with physical issues and bacterial infections like *H. pylori*, other unknown causes of disease that can't be ruled out, being a teenager and just the general obstinance that comes with that, with puberty -- it was all of they things collided at once. And that's how this terrible, tragic accident occurred.

But that's what it is. [H.]'s death was accidental. Neither Larry or Carri -- the state has not proved that either Larry or Carri saw and disregarded a substantial risk that [H.] would die, and certainly Larry didn't, because he wasn't home.

9/4/13 RP 155.

These arguments were not affected by the accomplice language added to the intervening superseding cause instruction.

And although Larry argues that the accomplice language was inappropriately added to the intervening superseding cause instruction thus preventing him from arguing that Carri's acts superseded his culpability, he provides no authority to support that position. Brief of Appellant at page 34. Given his parental duty of care, he cannot support that position.

In the case of *State v. Berube*, 150 Wn.2d 498, 511, 79 P.3d 1144 (2003), one co-defendant was convicted of homicide by abuse on the basis of

the fact that she disciplined the child, was aware of the actions of the other defendant and encouraged the discipline.

Berube was aware of Nielsen's severe physically abusive behavior toward Kyle, and even put Kyle into positions where Nielsen would assault him. Berube need not be aware of the elements of the crime of homicide by abuse. See *Sweet*, 138 Wn.2d at 479 ("It is not necessary for an accomplice to have specific knowledge of every element of the principal's crime."). It is enough that Berube knew her actions would promote the abuse and that she encouraged the abusive behavior.

There is ample evidence to support the accomplice liability instructions pertaining to Berube. Her actions promoted and/or facilitated the abuse suffered by Kyle, which eventually led to his death.

State v. Berube, 150 Wn.2d 498, 512, 79 P.3d 1144 (2003). Although *Berube* was a case of homicide by abuse the same analysis of complicity applies to the manslaughter given the parental duty of care.

Here Larry's actions promoted and facilitated the deprivation and starvation suffered by H.W. eventually leading to her death and the accomplice language was appropriately added to the intervening superseding cause instruction.

4. Since the aggravating factors found by the jury focused on the defendant's conduct, the exceptional sentence imposed was not based upon accomplice liability.

The jury here was asked to answer questions pertaining to aggravating factors. CP 310. The questions and the jury's answers read:

Question: Were Larry Williams and [H.W.] members of the same family or household?

Answer: yes (Write “yes” or “no”).

Question: Did Larry Williams’s conduct during the commission of the crime manifest deliberate cruelty to the victim?

Answer: yes (Write “yes” or “no”).

Question: Did Larry Williams know, or should he have known, that the victim was particularly vulnerable or incapable of resistance?

Answer: yes (Write “yes” or “no”).

Question: As to the defendant Larry Williams, was this offense an aggravated domestic violence offense?

Answer: yes (Write “yes” or “no”).

Question: Did Larry Williams use his position of trust to facilitate the commission of the crime?

Answer: yes (Write “yes” or “no”).

Question: As to the defendant Larry Williams, did the crime involve a destructive and foreseeable impact on persons other than the victim?

Answer: yes (Write “yes” or “no”).

CP 319-20.

In *State v. Hayes*, the supreme court addressed whether in a case of a financial offense based upon accomplice liability, the aggravating factor of a major economic offense must relate to the defendant’s conduct. *State v. Hayes*, 182 Wn.2d 556, 558, 563, 342 P.3d 1144 (2015). The question posed to the jury did not focus on the defendant’s conduct but instead on a general characterization of the offense.

The special verdict forms themselves asked the jury, “Was the crime a major economic offense or series of offenses?” Appellant's Clerk's Papers at 25.

State v. Hayes, 182 Wn.2d at 560.

We hold that for aggravating factors that are phrased in relation to “the current offense” to apply to an accomplice, the jury must find that the defendant had some knowledge that informs that factor. Because factors phrased in this way potentially permit imposing an exceptional sentence more broadly than would be consistent with the SRA, this finding of knowledge ensures that the defendant's own conduct formed the basis of the sentence.

State v. Hayes, 182 Wn.2d at 566 (emphasis added).

The jury was instructed on two factors phrased in relation to “the current offense,” not in relation to “the defendant.” In essence, the aggravating factors and special verdict form asked the jury about the nature of the offense, not about Hayes's role in it. It is this critical question that the jury's special verdict does not answer. Without a finding of knowledge that indicates that the jury found the aggravating factors on the basis of Hayes's own conduct, they cannot apply to Hayes.

State v. Hayes, 182 Wn.2d at 567.

Here the aggravating factors focused appropriately on the defendant's, Larry Williams', conduct. The questions read: “Did Larry Williams conduct...;”⁷ “As to the defendant Larry Williams...;” “Did Larry Williams use his position of trust...” CP 319-20. The only factor complained of which did not was the question about whether Larry and H.W. were members of the same family which was an undisputed fact.

Williams indicates that *Hayes* requires “that the jury must find the defendant had some knowledge that informs that factor.” Brief of Appellant

⁷ Williams acknowledges that the factor which read “[d]id Larry Williams know, or should he have known...” was adequate. Brief of Appellant at page 39.

at 38 citing *Hayes*. Williams suggests the aggravating factor must have the “same critical language” “requiring jurors to focus on Larry’s knowledge.” Brief of Appellant at 39. Thus, Williams contends each of the questions posed must include the critical word of knowledge. *Hayes* does not stand for that proposition. *Hayes* provides the questions must not ask generally “about the nature of the offense,” but about the defendant’s “role in it.” *State v. Hayes*, 182 Wn.2d at 567. The questions here focused on Larry’s role.

The case of *State v. Weller* interpreted *Hayes* the same way.

However, here there is no possibility that the jury found the aggravating factor for one of the Wellers based on the conduct of the other. Instead, for each charge of each defendant the jury was asked, “**Did the defendant's conduct** during the commission of the crime manifest deliberate cruelty to the victim?” *E.g.*, J. Weller CP at 151; S. Weller CP at 106 (emphasis added). And for each count the jury answered in the affirmative. Therefore, **the trial court's imposition of an exceptional sentence based on the deliberate cruelty aggravating factor was based on Jeffrey's and Sandra's own conduct, regardless of whether their convictions were based on accomplice liability.**

State v. Weller, 185 Wn. App. 913, 928, 344 P.3d 695, 704 rev. denied, ___ Wn.2d ___, ___ P.3d ___. (2015 Wash. LEXIS 797, #91406-1, July 8, 2015) (emphasis added).

The jury questions here properly focused on the defendant’s role. Thus, the aggravating factors were appropriately found.

5. The exercise of peremptory challenges at side bar conference did not violate the defendant's right to public trial or right to presence.

The report of proceedings shows that the peremptory challenges were done at sidebar conference at a time when all parties and jurors were in the courtroom after cause challenges were exhausted. 7/25/13 RP Supp. 70-1. The cause challenges were done orally on the record. CP Supp.⁸ 2-5, 75-80. Following the cause challenges, the trial court accepted peremptory challenges. CP Supp. 5. The clerk's minutes refers to the "judge's list" for those challenges. The judge's list shows peremptory challenges by both parties. CP Supp. 75-80. Neither party made a record of any objections to peremptory challenges. 7/25/13 RP Supp. 71.

The exercise of challenges on the record with peremptory challenges at side bar does not constitute a closure of the trial. *State v. Love*, ___ Wn.2d ___, ___ P.3d ___ (2015) (2015 Wash. LEXIS 810, #89619-4, July 16, 2015) (Slip. Op. at pages 11, 13).

Love also determined that peremptory challenges at side bar did not violate the defendant's right to presence. *State v. Love*, Slip. Op. at 12-13.

Williams' challenge to the method of exercise of peremptory challenges fails.

⁸ This is a supplemental designation. The State relies upon the numbering used by the clerk although as designated, they were not numbered sequentially from prior documents. Therefore, the State refers to the CP Supp.

V. CONCLUSION

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

DATED this 6th day of August, 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: United States Postal Service, ABC Legal Messenger Service, a true and correct copy of the document to which this declaration is attached: to: David B. Koch, addressed as Neilsen, Broman & Koch PLLC, 1908 E Madison Street, Seattle, WA 98122. 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 6th day of August, 2015.


KAREN R. WALLACE, DECLARANT

APPENDIX A

VRP TABLE

Volume refers to the titled provided by the Court reporter. In this case, Carri Williams previously had certain volumes prepared for her appeal in case #71193-8-I. When “Vol” is used that refers to those transcripts for her case. “Supp” refers the volumes prepared for Larry Williams case and includes extra portions of the transcripts not sought by Carri Williams. “App #” refers the designation used by Larry Williams. Where that column is blank below a transcript was prepared for Carri Williams and can be found in her file, but Larry Willaims has chosen not to refer to that transcript.

Date	Volume	App #	Hearing Description including witnesses
11/15/11	Vol 1		Pretrial Hearing (prepared for Carri Williams)
1/4/12	Vol 1		Pretrial Hearing (prepared for Carri Williams)
1/6/12	Vol 1		Carri’s NCO violation (prepared for Carri Williams)
2/8/12			3.5 stipulation Carri (prepared for Carri Williams)
2/17/12	Vol 1		Pretrial Hearing (prepared for Carri Williams)
3/14/12	Supp 10	1RP	
4/25/12	Vol 1		Defense motion to interview re: Carri’s second violation of NCO (prepared for Carri Williams)
5/11/12	Vol 1		Release hearing Carrie’s violation of NCO (prepared for Carri Williams)
7/25/12	Vol 1		Discussion of interviews of children (prepared for Carri Williams)
7/27/12	Vol 1		Omnibus and discovery/interview issues (prepared for Carri Williams)
12/13/12		3RP	Defense motion to examine Hana’s body Testimony of Bartelink and Wigren
8/17/12	Supp 4 (Vol 2)	2RP	Omnibus; MTC; misc discovery motions (prepared as Volume 2 for Carri)
10/24/12	Vol 2		Pretrial Hearing; motion exhume with testimony of Chalmers
11/28/12	Supp 4 (Vol 2)	2RP	Status, arraign on amended; various discovery issues
12/7/12	Supp 4 (Vol 2)	2RP	exhumation issues/order
12/13/12		3RP	

1/2/13	Supp 4 (Vol 2)	2RP	defense motion to continue; discovery issues; motion bill of particulars; exhumation issues
1/9/13	Vol 2		State's MTC; exhumation order
1/17/13	Supp 4 (Vol 2)	2RP	
4/4/13		3RP	status hearing
5/9/13		3RP	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	Supp 4 (Vol 3)	2RP	many motions including the mismanagement motions and charging issues and cousin issues
7/19/13	Vol 3		Status; MTC based on discovery issues
7/22/13 to 7/24/13:	Supp 1 (Vol 4)	5RP	Trial Commencement: Motions in Limine
7/22/13	Supp 5	4RP	Motions in Limine (prepared for Carri Williams)
7/23/13	Supp 6	6RP	Voir dire (not initially prepared for Carri Williams)
7/24/13	Supp 7	7RP	Voir dire (not initially prepared for Carri Williams)
7/25/13	Supp 8 (Vol 5)	8RP	Portions of this were prepared for Carri Willaims nad designated Voume 5 but voire dire was not prepared.
7/26/13 AM	Vol 6	9RP	
7/26/13 PM		37RP	Complete the voluminous motions in limine
7/29/13		10RP	Testimony Day 1: I.W., Motion for mistrial, Dr. Frances Chalmers Sara Willard
7/30/13		11RP	Testimony Day 2: Dr. Selove Gay Knutson Yohannes Kidane
7/31/13		12RP	Testimony Day 3: Julia Petersen (IW therapist)
8/1/13		13RP	Testimony Day 4: I.W., Donna Lenderman Beverly Davies John Hutson
8/2/13		14RP	Testimony Day 5: John Hutson Gena Miller Kay Starkovich Brian Kruick Rana Engleson Detective Dan Luvera

8/5/13		15RP	Testimony Day 6: Cara Williams Sarah Williams
8/6/13		16RP	Testimony Day 7: Sarah Williams Detective Dan Luvera I.W.
8/7/13:		17RP	Testimony Day 8: Jonathan Williams Detective Dan Luvera Partricia Barnts Debra Anderson Det. Kay Walker
8/8/13		18RP	Testimony Day 9: I.W. Dr. Harold Clark Dr. Janette Tomlinson Chief Chad Clark
8/9/13		19RP	Testimony Day 10: Dr. Gary Bell William Cheney Karolyn Cheney Tenassay Wondetsaddik
8/13/13		20RP	Testimony Day 11: I.W. Carolyn Roesler Katherine Porterfield
8/14/13		21RP	Testimony Day 12: Katherine Porterfield
8/15/13		22RP	Testimony Day 13: Katherine Porterfield Jacob Williams Joseph Williams
8/16/13		23RP	Testimony Day 14: Joseph Williams Julia Peterson Josephe Williams
8/19/13		24RP	Testimony Day 15: I.W. Joseph Williams Heidi Kennedy Rick Lemley Doug Walker Leanne King Dep Adams Detective Hagglund
8/20/13		25RP	Testimony Day 16: Trudy Wise Detective Hagglund Michael Duran

			Detective T. Luvera
8/21/13		26RP	Testimony Day 17: Sheila Jackson Detective Ely Detective T. Luvera
8/22/13		27RP	Testimony Day 18: Dr. Bledsoe Detective T. Luvera Defense witness – out of order: Dr. David Sweet -
8/23/13		28RP	Testimony Day 19: Defense witnesses – out of order: Dr. Katherine Taylor Audrey Anderson Mike Crane Kerina Crane
8/26/13		29RP	Testimony Day 20: Defense Case Begins: Dr. Rebecca Weister Bob Clark
8/27/13		30RP	Testimony Day 21: Joshua Williams Larry Williams
8/28/13		31RP	Testimony Day 22: Larry Williams Carol Miller Charlotte Miller George Miller Carrie Williams
8/29/13		32RP	Testimony Day 23: Dr. Haber Carri Williams
8/30/13 AM		33RP	Testimony Day 24: State’s Rebuttal Witness out of order: Katherine Taylor Defense witness: Carri Williams
8/30/13 PM		34RP	Testimony Day 25: Carri Williams Detective D Luvera
9/4/13		35RP	Closing Argument
9/5/13		36RP	Closing Argument
9/6/13		36RP	Jury questions
9/9/13		36RP	Motion for mistrial and Verdicts
10/29/13	Vol 6	37RP	Motion for Arrest of Judgment Sentencing – Begins at page 94 of volume