

FILED

10/24/2017
COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

**No. 326713 & 326721
(Consolidated)**

COURT OF APPEALS

DIVISION III

OF

THE STATE OF WASHINGTON

STATE OF WASHINGTON

Respondent/Plaintiff,

v.

MICHELLE K. STAATS & ROBERT ANTHONY STAATS,

Appellants/Defendants

Brief of Appellants

Attorney for Appellant Robert Anthony Staats
Stephen R. Hormel, WSBA # 18733
Hormel Law Office, L.L.C.
421 West 1st Avenue
Spokane, WA 99201
(509) 926-5177

Attorney for Appellant Michelle K. Staats
Douglas Phelps, WSBA #22620
Phelps & Associates, PS
2903 N. Stout Rd.
Spokane, WA 99206
(509) 892-0467

TABLE OF CONTENTS

I. Introduction 1

II. Assignments of Error

 No. 1 1

 No. 2 1

 No. 3 2

Issue Pertaining to Assignments of Error

 No. 1 2

 Whether there is sufficient evidence to support the trial court’s
 conclusion that the defendants are guilty of criminal mistreatment
 in the second degree under a theory that the defendants withheld
 “food” from their child

III. Statement of the Case 2

IV. Summary of Argument 6

V. Argument 7

VI. Conclusion 12

TABLE OF AUTHORITIES

United States Supreme Court Cases

Jackson v. Virginia, 443 U.S. 307 (1979) 7

Washington State Cases

City of Seattle v. Winebrenner, 167 Wn.2d 451, 219 P.3d (2009) 11

In re Post Sentencing Review of Charles,
135 Wn.2d 239, 955 P.2d 798 (1998) 11

State v. Berg, 181 Wn.2d 857, 337 P.3d 314 (2014) 8

State v. Green, 94 Wn.2d 216, 616 P.2d 628 (1980) 7

State v. Hescock, 98 Wn.App. 600, 989 P.2d 1251 (1999) 11, 12

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

State v. Mitchell, 169 Wn.2d 437, 237 P.3d 282 (2010) 6, 9

State v. Rattana Keo Phuong, 174 Wn.App. 494, 299 P.3d 37 (2013) 7

State v. Staats, Nos. 318516 & 318524 (Consolidated) 5

Constitutional Provisions

United States Constitution, First Amendment 5

Washington State Constitution, Article I, § 11 5

Other Authority

RCW § 9A.42.005 5

RCW § 9A.42.010(1) 1, 2, 6, 8, 9, 10

RCW § 9A.42.030 1, 4, 8

Publications

http://www.oxforddictionaries.com/us/definition/american_english/food 9

<http://dictionary.cambridge.org/dictionary/british/food> 9

<http://www.merriam-webster.com/dictionary/food> 9

http://www.oxforddictionaries.com/us/definition/american_english/eat 9

<http://dictionary.cambridge.org/dictionary/british/eat> 10

<http://www.merriam-webster.com/dictionary/eat> 10

<http://www.mayoclinic.org/tests-procedure/home-parental-nutrition-program/care-at-mayo-clinic/treatment/prc-20013226> 10

I. INTRODUCTION

Robert and Michelle Staats appeals their convictions to Second Degree Criminal Mistreatment pursuant to RCW 9A.42.030 after a stipulated facts trial held before the Honorable Evan E. Sperline in the Superior Court of Washington for Grant County. Judge Sperline found that Robert and Michelle Staats were the biological parents of ELS, born of December 14, 2009. The judge concluded that the Staats withheld from ELS a basic necessity of life as defined in RCW 9A.42.010(1). Specifically, Judge Sperline concluded that Robert and Michelle Staats withheld “food” from ELS, thereby, creating an imminent and substantial risk of death or great bodily harm, and recklessly caused ELS substantial bodily harm. This appeal challenges whether sufficient evidence existed to support Judge Sperline’s finding of guilt on the conclusion that the Staats withheld “food” from their son, ELS.

II. Assignments of Error and Issue

a. Assignments of Error

No. 1 The trial court erred in concluding that Michelle and Robert Staats withheld “food” from their child, ELS. CP 1209.

No. 2 The trial court erred when it concluded that by Michelle and Robert Staats’ withholding of nutrition (i.e., food) from ELS, they recklessly created a an imminent and substantial risk of death or great

bodily harm to ELS, and recklessly caused substantial bodily harm to ELS CP 1209.

No. 3 The trial court erred in concluding that Michelle and Robert Staats were guilty of criminal mistreatment in the second degree by withholding “food,” a basic necessity of life, from their son, ELS. CP 1209.

b. Issue Pertaining to Assignments of Error

No. 1 Whether there is sufficient evidence to support the trial court’s conclusion that the defendants are guilty of criminal mistreatment in the second degree under a theory that the defendants withheld “food” from their child. Assignment of Errors 1, 2 and 3.

III. STATEMENT OF THE CASE

Michelle and Robert Staats appeal their convictions to Second Degree Criminal Mistreatment in violation of R.C.W. § 9A.42.030. The convictions were entered by the Honorable Evan E. Sperline, Grant County Superior Court, following a stipulated facts trial. CP 881-1178, 1204-10.

The Staats are the parents of five minor children. At the time the events in this case, the four oldest children were well adjusted and healthy. CP 902-03, 1024-25. The Staats’s youngest child, ELS, was fed from

birth with the same food regimen that Ms. Staats used for her four oldest children. CP 1139.

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

Concerned about the weight loss, Michelle Staats consulted employees of the Women, Infants and Children (WIC) program about ELS's food aversion. CP 904-05. Eventually, WIC told Ms. Staats that she should take ELS to the doctor or WIC would have to call CPS. CP 920-21. Instead of taking ELS to a doctor of medicine, Ms. Staats took ELS a naturopathic doctor. *Id.* This doctor informed Ms. Staats that ELS needed IV Nutrition Therapy, and demanded that ELS be taken to the hospital. CP 907. Rather than seek medical intervention at the hospital, the Staats "turn[ed] to prayer" to help ELS regain his health. CP 911, 1140. Ms. Staats then sought health care advice from an East Asian doctor, a Qigong practitioner in San Francisco, California. CP 912-13. This doctor also suggested that ELS be taken to the hospital for IV feeding. CP 913, 1140. Throughout this entire time, Ms. Staats continued to feed ELS food in an attempt to nurture him back to health, she conducted research and prayed for ELS's good health. CP 90-02, 905-

06, 911, 913, 936-37, 981-83, 1005-08, 1014, 1017-18, 1020, 1068, 1102, 1122, 1123, & 1140.

Just before his third birthday, ELS suffered a heart attack. CP 9-10. ELS was severely emaciated, and grossly underweight. CP 9. Ms. Staats called 911 and kept ELS alive by applying CPR until emergency medical personnel arrived at her home. CP 9. ELS remains in need of 24 hour health care. Doctor Blessing, the State's medical expert rendered an opinion that ELS's cardiac arrest was primarily caused by "sever malnutrition, and that this degree of malnutrition [was] the result of medical neglect." CP 1111

The State charged the Staats with Criminal Mistreatment in both the First and Second Degree. CP 1-3.¹ In order to commit the offense of Criminal Mistreatment, a parent or guardian of a child must be found to have withheld a basic necessity of life from the child. "Basic necessities of life' means food, water, shelter, clothing, and medically necessary health care, including but not limited to health-related treatment or activities, hygiene, oxygen, and medication." R.C.W. § 9A.42.010(1).

Consistent with Dr. Blessing's opinion, the State maintained that the Staats violated the statute by withholding "medically necessary health

¹ The State also charged the Staats with Possession of Marijuana, however, this charged is not relevant to the appeal and were ultimately dismissed due to the stipulated facts trial.

care” for refusing to take ELS to the hospital for intravenous feeding (IV Nutrition). CP 1111; RP 57, 59-60, 62, 77-78, 80. The Staats defended their charges based on the State’s theory throughout the proceedings that they allegedly withheld from ELS “medically necessary health care.” RP 1-46, 63-76.²

The State never maintained that the Staats withheld food from ELS throughout the proceedings. RP 1-46, 57-62, 76-81. At the stipulated facts trial, the trial court concluded this case did not involve a withholding of “medically necessary health care.” RP 84. Instead, the trial court concluded that the Staats were guilty of Criminal Mistreatment in the Second Degree for withholding “food.” CP 1209 (“Michelle Staats and Robert Staats, and each of them, withheld from ELS one basic necessity of life, to wit, food.”). During its oral pronouncement, the trial court stated:

There has been a great deal of investment in this case in the question that circulate around it - getting or choosing not to get medical care ... I’m always hesitant to use a perspective

² During the pretrial proceedings, the Staats filed a motion to dismiss Counts 1 and 2. They challenged the statutory exemption from prosecution for parents or guardians who “withheld medically necessary health” from a child if a duly accredited physician from the Christian Science faith was utilized to treat the child, claiming the exemption violated the First Amendment to the United States’ Constitution and Article 1, § 11 of the Washington State Constitution. *See*, R.C.W. § 9A.42.005. The trial court denied the motion to dismiss, and a petition for discretionary review filed by the Staats was denied by this Court. *See*, *State v. Staats*, No. 318516 & 318524.

of the case that is not argued by either side ... I don't believe this case is about medical care....

...
This child did not suffer this terrible injury because of health care being withheld. He suffered it because he starved. The parent's conduct withheld food from this child. *Now I know that Ms. Staats did all of these things to try to make sure that her child got proper nutrition.* But that's what he didn't get. That's what didn't happen for this child is he didn't get proper nutrition. He didn't get enough food.

RP 84 (emphasis added).

Facts admitted for the stipulated facts trial establish that the Staats did not deprive ELS of food, nor did they withhold food from him.

Contrary to the trial courts conclusion, the facts establish that Ms. Staats continued to give ELS food throughout the ordeal. Therefore, the Staats' convictions do not rest on sufficient facts. The convictions should be reversed.

V. SUMMARY OF ARGUMENT.

Food is not defined in R.C.W. § 9A.42.010(1). The Washington State Supreme Court holds that courts may rely on dictionary definitions when terms are undefined in a statute. *State v. Mitchell*, 169 Wn.d 2d 437, 237 P.3d 282 (2010).

The common definition of "food" is things or substances that people eat. To eat is commonly defined as to "put (food) into the mouth and chew and swallow it."

Intravenous nutrition feeding (IV Nutrition) is a medical procedure that replaces the manner in which people eat food. The Staats did not withhold food from ELS. If anything, the Staats did not seek the necessary health care that would have replaced ELS's eating of the food, with medically administered IV Nutrition. By convicting the Staats based solely on the theory that they withheld food from ELS, their convictions must be reversed since the evidence was insufficient to support a conclusion that the Staats withheld food from ELS. Any ambiguity in the definition of "food" must be resolved in favor of the Staats.

V. ARGUMENT.

The Washington State Supreme Court has held:

The purpose of the sufficiency inquiry is to "ensure that the trial court fact finder 'rationally appl[ied]' the constitutional standard required by the due process clause of the Fourteenth Amendment, which allows for conviction of a criminal offense only upon proof beyond a reasonable doubt." *State v. Rattana Keo Phuong*, 174 Wash.App. 494, 502, 299 P.3d 37 (2013) (alteration in original) (quoting *Jackson v. Virginia*, 443 U.S. 307, 317–18, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979)). "In other words, the Jackson standard is designed to ensure that the defendant's due process right in the trial court was properly observed." *Id.* Accordingly, to assess the sufficiency of the evidence of [an offense] this court considers "whether, after viewing the evidence most favorable to the State, any rational trier of

fact could have found the essential elements of [that offense] beyond a reasonable doubt.” *Green II*, 94 Wash.2d at 221–22, 616 P.2d 628 (emphasis omitted).

State v. Berg, 181 Wn. 2d 857, 867, 337 P.3d 310, 314 (2014). Appellate courts “take the State’s evidence as true, and [appellate] review is de novo.” *Berg*, 181 Wn.2d at 867.

The Staats were convicted of the offense of Second Degree Criminal Mistreatment pursuant to 9A.42.030. The pertinent elements of that criminal offense are as follows: (1) “A parent of a child ... is guilty of criminal mistreatment in the second degree if he or she recklessly, as defined in 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.” R.C.W. § 9A.42.030. “Basic necessities of life’ means food, water, shelter, clothing, and medically necessary health care, including but not limited to health-related treatment or activities, hygiene, oxygen, and medication.” R.C.W. § 9A.42.010(1).

The trial court concluded that the Staats deprived ELS a basic necessity of life by withholding “food.” CP 1209. The question presented on appeal is whether the State proved by sufficient evidence beyond a reasonable doubt that the Staats withheld “food” from ELS.

Where statutory terms are left undefined by the Legislature, the Washington State Supreme Court holds that courts may rely on dictionary definitions of the undefined terms. *State v. Mitchell*, 169 Wn.d 2d 437, 237 P.3d 282 (2010). Food is not defined in R.C.W. § 9A.42.010(1).

The Oxford dictionary defines “food” as “[a]ny nutritious substance that people or animals eat or drink ... in order to maintain life and growth.”³ Similarly, the Cambridge English Dictionary defines “food” as “something that people and animals eat ... to keep them alive.”⁴ Merriam-Webster’s dictionary recognizes that the often attributed definition of food is “the things that people and animals eat.”⁵

The Oxford dictionary defines “eat” as to “[p]ut (food) into the mouth and chew and swallow it.”⁶ The Cambridge Dictionary definition

³ See, http://www.oxforddictionaries.com/us/definition/american_english/food.

⁴ See, <http://dictionary.cambridge.org/dictionary/british/food>.

⁵ See, <http://www.merriam-webster.com/dictionary/food>.

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

of “eat” is identical.⁷ Merriam-Webster states that “eat” means “to take in through the mouth as food: ingest, chew and swallow in turn.”⁸

The records submitted by the parties for the stipulated facts trial establish that Ms. Staats gave ELS food and ELS ate food throughout this ordeal. CP 900-02, 905-06, 911, 913, 936-37, 981-82, 1005-08, 1014, 1017-18, 1020, 1068, 1102, 1122, 1123, & 1140. The problem was not that ELS was deprived of food.

ELS needed nutrition introduced by a medical procedure, IV Nutrition. Members of WIC and the health care providers insisted that Ms. Staats seek medicare care, including the need for the administration of IV Nutrition. CP 901, 907, 913. IV Nutrition may be administered at home when overseen by medical professionals, called “parenteral nutrition.”⁹ If anything, the Staats could be said to have withheld medically necessary health care.¹⁰ They did not withhold food from ELS.

⁷ See, <http://dictionary.cambridge.org/dictionary/british/eat>

⁸ See, <http://www.merriam-webster.com/dictionary/eat>.

⁹ See, <http://www.mayoclinic.org/tests-procedure/home-parental-nutrition-program/care-at-mayo-clinic/treatment/prc-20013226>.

¹⁰ The Staats do not concede that they are guilty of withholding medically necessary health care, but maintain that the only viable theory of culpability the State could rest its prosecution on would be an alleged withholding of medically necessary health care from R.C.W. § 9A.42.010(1), not a withholding of “food.”

If there exists any ambiguity in what is meant by “food” in R.C.W. § 9A.42.010(1), then that ambiguity must be resolved in favor of the Staats. *See, City of Seattle v. Winebrenner*, 167 Wn. 2d 451, 462, 219 P.3d 686 (2009). For a statute that is ambiguous, “the rule of lenity requires [courts] to interpret the statute in favor of the defendant absent legislative intent to the contrary.” *Id.* (quoting *State v. Jacobs*, 154 Wash.2d 154, 601, 115 P.3d 281 (citing *In re Post Sentencing Review of Charles*, 135 Wash.2d 239, 249, 955 P.2d 798 (1998))).

Here, the common dictionary definition of food is things, substance, or something people eat. Eating is taking food in by the mouth, chewing and swallowing the food. The Staats provided food to ELS for him to eat throughout the relevant time period.

Contrary to the trial court’s conclusion, the evidence is not sufficient to find beyond a reasonable doubt that Michelle and Robert Staats withheld “food” from ELS. Therefore, the conviction must be reversed.

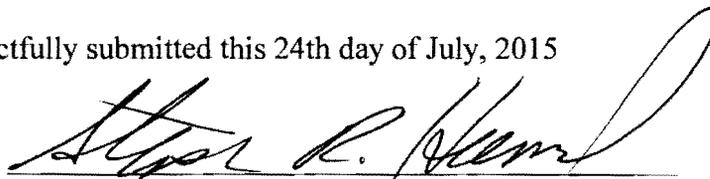
Finally, the absence of any alternate theory of culpability from the criminal mistreatment provisions in the trial court’s conclusions of law precludes the State from seeking a conviction on any other alternate theory of culpability contained in the statute. *See, State v. Hescok*, 98 Wn.App. 600, 611, 989 P.2d 1251 (1999); CP 1209. When a conviction is

reversed for insufficient evidence, retrial is prohibited by the Double Jeopardy Clause. *Id.*

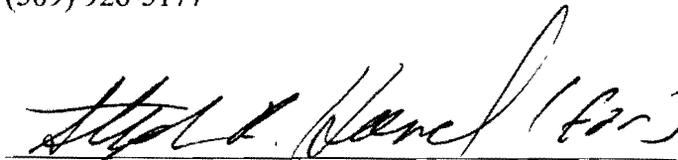
VI CONCLUSION.

The trial court's conclusion that Michelle and Robert Staats withheld food from their son, ELS, is not supported by sufficient evidence beyond a reasonable doubt. Therefore, the Staats are not guilty of Second Degree Criminal Mistreatment. This Court is requested the reverse each of their convictions.

Respectfully submitted this 24th day of July, 2015



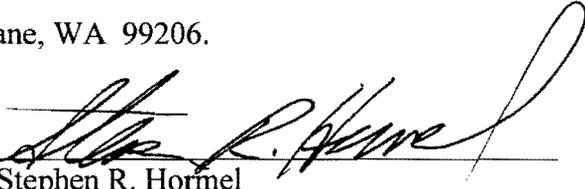
Attorney for Appellant, Robert Anthony Staats
Stephen R. Hormel, WSBA # 18733
Hormel Law Office, L.L.C.
421 West 1st Avenue,
Spokane, WA 99201
(509) 926-5177



Attorney for Appellant, Michelle K. Staats
Douglas Phelps, WSBA # 22620
Phelps and Associates, PS
2903 North Stout Road
Spokane, WA 99206
(509) 892-0467

CERTIFICATE OF SERVICE

I certify that on July 24, 2015, I mailed a copy of the foregoing Brief of Appellant to: Garth Dana, Grant County Prosecuting Attorney, at 32 C Street N.W., Post Office Box 37, Ephrata, WA 98823 on July 24, 2015; and Douglas Phelps, WSBA # 22620, Phelps and Associates, PS, 2903 North Stout Road, Spokane, WA 99206.


Stephen R. Hormel
WSBA # 18733