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NO. 61462-2-I

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

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STATE OF WASHINGTON
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STATE OF WASHINGTON,

Respondent,

v.

MARILEA MITCHELL,

Appellant.

BRIEF OF RESPONDENT

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I. ISSUES

1. Was the evidence sufficient to establish S.A. was a child and a dependant person?

2. Was the evidence sufficient to support the finding that S.A. was a particularly vulnerable person, thereby justifying an exceptional sentence?

3. Even if the finding that S.A. was not particularly vulnerable does not support an exceptional sentence should the Court affirm based on the trial court's finding that the crime was an aggravated domestic violence offense?

4. Because community custody is not a sentencing option for criminal mistreatment, should the trial court be allowed to reconsider the amount of custody imposed under the exceptional sentence?

II. STATEMENT OF THE CASE

S.A. was born October 22, 2002. His biological mother is Christine Addington. His biological father is Danny Abegg. S.A. lived with Pam Taylor from the time that he was five months old

until shortly after his third birthday. While S.A. and his brother lived with Ms. Taylor, Ms. Addington took the boys from Ms. Taylor's care. Ms. Addington was addicted to drugs. During the time Ms. Addington had custody of S.A. and his brother, she did not feed them. As a result S.A. began hoarding food. Ms. Taylor turned S.A. over to his father in December 2005. S.A. weighed 38 pounds when he went to live with his father. RP 19-21, 146, 280-281, 288, Ex. 102, 103, 104¹.

The defendant, Marilea Mitchell, was Danny Abegg's girlfriend. The defendant and Abegg have a daughter, H.A., who was born in December, 2005. S.A. came to live with Abegg and the defendant shortly before H.A. was born. In December 2006, Marie Mitchell, the defendant's sister, had an argument with the defendant about S.A. Marie was very concerned about S.A.'s weight; she believed that he was too skinny or that he looked like he was being starved. Marie offered to help the defendant and Abegg get S.A. to a doctor. The defendant put her off, stating that they were working on getting medical coupons to pay for the doctor visit. Marie next saw S.A. in March 2007. At that time she called

¹ Copies of Exhibits 102, 103, and 104 are attached to the State's response.

CPS regarding S.A.'s condition. RP 22-26, 28, 41, 352, Ex 61, page 12.

On March 7, 2007 Deputies Pilgrim, Emery and Haunold responded to the defendant's apartment on a report from CPS that a boy may be starving and in need of medical attention. After repeated knocking, Abegg finally answered the door. When the officers told him why they were there, Abegg turned and went to a bedroom. The officers followed as Abegg was shutting the door to the bedroom. They went into the bedroom before the door was completely shut. There they saw S.A. in bed. Abegg was trying to put a shirt on him and help him sit up. S.A. smelled of urine. He was pale, emaciated, and had so little energy that he was unable to stand up on his own. RP 219, 229-239.

An aid unit was called to the apartment. Captain Hughes of the fire department responded. He noted that S.A.'s heart beat was slow and irregular. Captain Hughes had never seen a child as malnourished and emaciated as S.A. Captain Hughes believed S.A. was in danger of dying. RP 51-54, 68.

In the emergency room, Dr. Martin Maimon was called to consult on a course of treatment for S.A. Dr. Maimon is a pediatric and internal medicine specialist. Dr. Maimon noticed that S.A.'s

hair was sparse and thin, his internal temperature was 87.1 degrees, his abdomen was distended, and he weighed between 25 and 26 pounds. S.A.'s appearance was consisted with severe malnutrition. It was painful for S.A. to move his legs. Dr. Maimon concluded that S.A. was in a severely malnourished and life-threatening condition. RP 70-71, 78-89, Ex. 20, 21, 22. and 25.

While in the emergency room S.A. said that he was hungry. S.A. said that if he ate he would be punished by being required to stay in his bed or sleep in the bathtub. RP 75, 93.

S.A. was transferred to Children's Hospital. He was seen by child abuse specialist Dr. Rebecca Wiester on March 10. Dr. Wiester has twenty years experience working with abused children, but she had never seen a child as malnourished as S.A. In addition to the physical signs noted by Dr. Maimon, Dr. Wiester noted that S.A.'s bones lacked calcium, a condition also associated with malnutrition. She saw no fat and little muscle on his bones. He was so thin his sternum and coccyx were visible. These are bones that are normally not visible because they are covered with fat. Dr. Wiester noted that even moving the blanket on S.A.'s lower extremities was painful for him. Dr. Wiester concluded that S.A.'s condition was the result of protein and calorie malnutrition which

threatened his life. RP 136, 143-148, 159-164, 185-190, Ex. 26, 27, 28.

While at Children's Hospital S.A. expressed reluctance to eat when it was not dark out. He explained that he was only allowed to eat when it was dark out. Hospital staff members caught S.A. hoarding food. RP 184-186.

Police contacted the defendant. She told them that she gave S.A. two vitamins every day. She also said that when Abegg was at work she was responsible for feeding and caring for S.A. She claimed she fed him foods such as oatmeal, bananas, and peanut butter sandwiches. The defendant said S.A. always ate when she was at their home. Ex. 61, page 14, 19, 23, 26, 31.

The defendant claimed she did not notice anything unusual about S.A. up until about three days before he was taken to the hospital. Then she noticed that he appeared to have flu-like symptoms. Ex. 61, page 14-15. Doctors who examined S.A. believed that he had been suffering from malnutrition for a long time. That was in part because it would take a prolonged period of malnutrition for a person's body temperature to drop as low as S.A.'s. His wispy hair was another sign that he had been deprived of food for a long time. Dr. Weister noted that in one photograph

taken in December 2006 S.A.'s muscles appeared to be wasting just as they appeared in March 2007 RP 82, 156; Ex. 10

The defendant was charged with one count of Criminal Mistreatment in the First Degree with 5 aggravating factors. 1 CP 26-27. The court found the defendant guilty of the charge. It found two aggravating factors were proved and found beyond a reasonable doubt; (1) the victim was particularly vulnerable and (2) the crime was a domestic violence offense and was part of an ongoing pattern of abuse manifested by multiple incidents over a prolonged period of time. 1 CP 23-24. At sentencing the court ordered the defendant to serve an exceptional sentence of 96 months. The court also ordered the defendant to serve a period of community custody upon release from confinement. 1 CP 6-18.

III. ARGUMENT

A. THE EVIDENCE WAS SUFFICIENT TO SUPPORT THE CONVICTION.

The Legislature recognized the need to protect two categories of vulnerable people; dependent persons and children. RCW 9A.42.005. Dependant persons are defined as those people who are dependant on another person to provide the basic necessities of life either because he has a physical or mental disability or because of extreme advanced age. RCW

9A.42.010(4). Child is defined as a person under the age of 18. RCW 9A.42.010(3). A person who is entrusted with the physical custody of a child or dependant person, or who has assumed the responsibility to provide a dependant person with the basic necessities of life is guilty of criminal mistreatment first degree if she recklessly causes great bodily harm to a child or dependant person by withholding the basic necessities of life. RCW 9A.42.020(1).

The defendant argues the evidence was insufficient to convict her. Specifically she challenges the sufficiency of the evidence to prove she withheld the basic necessities of life to a dependant person.

Evidence is sufficient if, when viewing all the evidence in the light most favorable to the State, and drawing all reasonable inferences in the State's favor, any rational trier of fact could have found the defendant guilty beyond a reasonable doubt. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). When a defendant claims the evidence is insufficient to prove the elements of the crime, she admits the truth of the State's evidence and all inferences that could reasonably be drawn there from. State v. Theroff, 25 Wn. App. 590, 593, 608 P.2d 1254, affirmed, 95 Wn.2d

385, 622 P.2d 1240, abrogation on other grounds recognized in, State v. Ramos, 124 Wn. App. 334, 101 P.3d 872 (2004). The reviewing court defers to the trier of fact to resolve conflicts in the testimony, weigh the persuasiveness of the evidence, and assess the credibility of the witnesses. State v. Boot, 89 Wn. App. 780, 791, 950 P.2d 964, review denied, 135 Wn.2d 1015, 960 P.2d 939 (1998). Circumstantial evidence and direct evidence are equally reliable. State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). It is not necessary that the reviewing court be convinced beyond a reasonable doubt. State v. Smith, 31 Wn. App. 226, 228, 640 P.2d 25 (1982).

On appeal the court will uphold the trial court's findings of fact that are supported by substantial evidence. Seattle v. Megrey, 93 Wn. App. 391, 394, 968 P.2d 900 (1998). "Substantial evidence exists where there is a sufficient quantity of evidence in the record to persuade a fair-minded, rational person of the truth of the finding." State v. Hill, 123 Wn.2d 641, 644, 870 P.2d 313 (1994). The court will then determine whether the findings support the conclusions of law.

Here the trial court did not enter any actual "findings of fact." Rather it characterized as a finding of fact "that the defendant is

guilty beyond a reasonable doubt of the crime of Criminal Mistreatment in the first Degree as charged in the information.” Where the trial court has failed to enter adequate findings of fact the reviewing court will look to the trial court’s oral decision to determine whether the court’s verdict is supported by the evidence. State v. Bynum, 76 Wn. App. 262, 266, 884 P.2d 10 (1994), review denied, 126 Wn.2d 1012, 892 P.2d 1089 (1995).

The court found S.A. was a 4 year old boy during the charging period. This finding is supported by the evidence that S.A. was born on October 22, 2002. RP 288, 418. The evidence was sufficient to find S.A. was a child as defined by RCW 9A.42.010(3).

The trial court specifically found the defendant had assumed the responsibility to provide the basic necessities of life to S.A. 3 RP 418. This finding is supported by the defendant’s statement to police that she fed S.A. during the day while Danny Abegg was at work. Ex. 61, p 14, 23, 26, 31; RP 267.

The court also found S.A. and his brother J.A. had been taken from a foster home by their biological mother and deprived them of food while she used drugs. This event resulted in S.A. and J.A. hoarding food, which the defendant and Abegg were aware of. 3 RP 414-415. This finding is supported by evidence from CPS

reports that the boys developed an eating disorder as a result of Ms. Addington taking the boys and not feeding them. The defendant and Abegg were counseled by CPS workers on how to help the boys overcome their extreme fear that they would not be fed. Despite the counseling the defendant and Abegg continued to ground the boys and lock up food when the boys were caught taking food without permission. RP 280-283; Ex. 102, 103, 104.

The court also found S.A. suffered from extreme malnutrition. S.A. was described as emaciated. As a result of his condition S.A. was "metabolically unstable and couldn't walk". RP 416. These findings are supported by evidence from Officer Pilgrim that S.A. was not able to sit up or stand on his own when police checked on him. It was painful to move his legs when he was in the hospital. S.A. was soaked in urine when police first saw him, supporting the conclusion that he was unable to care for himself as a result of his weakened condition. Doctors who evaluated S.A. in the hours and days after he was taken out of Abegg and the defendant's home testified to the evidence supporting their conclusion S.A. was severely malnourished. S.A.'s body was shutting down bodily functions which were less important, such as growing hair, in order to keep more vital functions going. Even so

S.A.'s body temperature was ten degrees below normal. His heart rate was slow and irregular. His body was forced to take nutrients from his muscle and bone. The Court's findings support the conclusion that S.A. was not only a child, but was a dependent person as well.

The defendant argues that she was not charged with depriving a child with the basic necessities of life, and S.A. could not qualify as a dependent person. She rests this argument on the false premise that the statute precludes a person from inclusion in more than one class of vulnerable person.

To construe the meaning of a statute the Court begins with its plain language and ordinary meaning. State v. J.P., 149 Wn.2d 444, 450, 69 P.3d 318 (2003). Where the statute is unambiguous the legislative intent is apparent and no further construction is necessary. State v. Wilson, 125 Wn.2d 212, 217, 883 P.2d 320 (1994). The Court does not add words or clauses to an unambiguous statute when the legislature has not done so. State v. Delgado, 148 Wn.2d 723, 727, 63 P.3d 792 (2003).

A statute is ambiguous if it can reasonably be interpreted more than one way. State v. Base, 131 Wn. App. 207, 213, 126 P.3d 78 (2006). "However a statute is not ambiguous simply

because different interpretations are conceivable.” State v. Mullins, 128 Wn. App. 633, 642, 116 P.3d 441 (2005). A reviewing court is not required to discern any ambiguity by imagining a variety of alternative interpretations. Fraternal Order of Eagles, Tenino Aerie no. 564 v. Grand Aerie of Fraternal Order of Eagles, 148 Wn.2d 224, 240, 59 P.3d 655 (2002), cert. denied, 538 U.S. 1057, 123 S.Ct. 221, 155 L.Ed.2d 1107 (2003).

The statutes defining “dependant person” and “child” are not ambiguous. RCW 9A.42.020(4) defines a dependant person as (1) a person who (2) because of a physical or mental disability, or because of extreme advanced age, (3) is dependant on another to provide the basic necessities of life. There are certain categories of persons over the age of 18 which are presumed to be dependant persons (residents of nursing homes or adult family homes). However, nothing in the definitions precludes a finding that a person under the age of 18 is also a “dependant person.” The only criteria are that the person suffers from a physical or mental disability, which makes him dependant on another person for the basic necessities of life. The statute does not require an “either or” finding; a person may have physical and mental disabilities which

make him dependant on another, and the person may also be a child.

S.A. is a perfect example of a vulnerable person who is dependant on another for the basic necessities of life both because he is a child, and because he is a dependant person as defined by statute. S.A. was physically incapable of getting himself food or caring for himself in any way because he was unable to walk at least for some period of time before police found him. He also had a mental disability. S.A. had an eating disorder caused when his biological mother took him and did not feed him for several months. 2 RP 280-283. His eating disorder caused him to be dependant on the defendant and Abegg to ensure he got enough food to sustain him.

The defendant argues principles of statutory construction preclude finding a victim can fall into both categories. However these principles support finding a victim under the age of 18 may be both a "child" and a "dependant person" as defined by statute. Even if the Court were required to construe the statute to determine its meaning because it was ambiguous on this point the defendant's position should be rejected. When construing a statute the court will avoid a reading that results in an absurd result because it is not

presumed the legislature would have intended an absurd result. J.P., 149 Wn.2d at 450.

There are three categories of persons who have been defined to have a duty to provide the basic necessities of life. Two of those categories require an obligation to both children and dependant persons. A third category, "a person who has assumed the responsibility to provide" only creates a responsibility to a "dependant person". If the definition of "dependant person" excluded children, then a fiduciary duty would only extend to persons who are parents of the vulnerable person, persons entrusted with the physical custody of the vulnerable person, or persons employed to provide the basic necessities of life to vulnerable people. People who simply take on the responsibility to provide the basic necessities of life would only have a duty to adults, and not children, who are vulnerable because of a physical or mental disability. Children with physical or mental disabilities are likely the most vulnerable of all classes of persons protected by this statute. Given the legislative finding that "there is a significant need to protect children and dependent persons," RCW 9A.42.005, it is not likely the legislature would have provided no protection for this class of vulnerable people.

The statute is unambiguous. Children may be included in the definition of “dependant persons.” Even if ambiguous, the Legislature would not have intended that the most vulnerable would be excluded from its protection. The evidence was sufficient to support the charge.

B. THE EVIDENCE SUPPORTED THE EXCEPTIONAL SENTENCE.

1. The Record Supports The Court’s Conclusion That S.A. Was Particularly Vulnerable.

The trial court found that “[S.A.] was particularly vulnerable over and above the vulnerabilities one would normally find in a four-year-old.” RP 420. The court relied on evidence that when S.A. came to live in the defendant in his father’s home he came with issues regarding eating food and hoarding food. It was also based on evidence the defendant was aware of these problems because it had been discussed with her and Abegg by the Family Preservation Services worker, Mr. Simkins. RP 419-420.

The defendant challenges this finding. A challenge to findings supporting an exceptional sentence is reviewed under the “clearly erroneous” standard. State v. Law, 154 Wn.2d 85, 93, 110 P.3d 717 (2005). A trial court’s findings are clearly erroneous when there is no substantial evidence to support the trial court’s

conclusion. State v. Evans, 80 Wn. App. 806, 812, 911 P.2d 1344, review denied, 129 Wn.2d 1032, 922 P.2d 97 (1996).

When determining whether the evidence supports a finding of particular vulnerability the focus is on the victim. The question is whether the victim is more vulnerable to the offense than other victims and did the defendant know of that vulnerability? State v. Vermillion, 66 Wn. App. 332, 349, 832 P.2d 95 (1992), review denied, 120 Wn.2d 1030, 847 P.2d 481 (1993). The record supports the trial court's conclusion that S.A. was more vulnerable due to his eating disorder. His extreme fear that he would not get anything to eat set him apart from other adequately fed four year olds. His fear caused him to steal food and save it for future consumption.

His fear created a particular problem for him in the defendant's household. The CPS reports show that Abegg and the defendant were concerned about money. Although they repeatedly told the CPS worker they were working on the issues with S.A. and his brother, they also were reluctant to take steps to help the boys because they thought it would get "to (sic) expensive for them." Ex. 103.

The defendant argues this factor was not met because S.A.'s eating disorder was not a substantial factor in the offense. She cites three cases in support of her position. State v. Barnett, 104 Wn. App. 191, 202, 16 P.3d 74 (2001), State v. Serrano, 95 Wn. App. 700, 977 P.2d 47 (1999), and State v. Jackmon, 55 Wn. App. 562, 778 P.2d 1079 (1989). These cases do not support the argument that S.A.'s eating disorder was a substantial factor in the commission of the offense.

In Barnett the defendant appeared at the victim's home after he was served with a restraining order. She was alone at the time. He broke into her home and repeatedly assaulted her. She escaped and was recaptured by him twice before she escaped a third time with the assistance of two other men. The trial court found she was particularly vulnerable because she was alone in the house. The Court of Appeals rejected this finding because she was not particularly vulnerable, citing her repeated escapes. Additionally, she was not attacked because she was alone, but because she spurned him. Barnett, 104 Wn. App. at 204-205.

Unlike Barnett S.A. was not able to escape the defendant and his father. He was also not able to escape the scars inflicted on him by his mother's neglect causing him to constantly worry

about food. When S.A. helped himself to food the defendant and Abegg locked it up and grounded him. Ex. 103, 104. S.A.'s conduct brought on by his food issues directly resulted in the defendant and Abegg withholding food from him. In this respect this case is completely different from Barnett.

In Jackmon the defendant shot his former employer. The court found the victim particularly vulnerable because he had a broken ankle at the time. Because the victim was sitting down, facing away from the defendant when the defendant shot him the Court held it is unlikely the broken ankle rendered the victim any more vulnerable than an able bodied person. Jackmon, 55 Wn. App. at 567.

Unlike the victim in Jackmon S.A. was not subject to one incident of mistreatment. S.A. clearly feared he would be in trouble for eating, and voiced those fears to medical professionals. This fear could only exacerbate the issues S.A. had with food. S.A.'s fear could reasonably lead him to act out by hoarding food, causing the defendant and Abegg to withhold even more food from him. Unlike a normal well fed four year old, S.A.'s preoccupation with food fueled the very conduct the defendant and Abegg based their punishment on.

In Serrano the defendant shot the victim while the victim was thinning apples. The victim was in a caged platform suspended off the ground by a hydraulic lift. There was evidence that the defendant shot the victim because the victim was having an affair with the defendant's wife. The Court held the victim was certainly vulnerable but the record did not support the conclusion that his vulnerability was a substantial factor in the shooting. Serrano, 95 Wn. App at 712.

Unlike Serrano the only explanation for withholding food from S.A. was that he was hoarding food, and the defendant and Abegg thought putting food out for him was too expensive. Abegg's lack of emotional connection to S.A. made the crime that much easier to commit.

Contrary to the defendant's assertion S.A. was not equally vulnerable to any other four year old. He had severe emotional issues most people do not have. Those emotional issues contributed to the cycle of abuse he suffered over the months he was living with the defendant and his father. The trial court did not err when it concluded S.A. was particularly vulnerable.

2. The Trial Court Would Find Grounds For An Exceptional Sentence Either On The Basis Articulated By The Court.

The trial court found two alleged bases supported an exceptional sentence in the defendant's case. First that S.A. was particularly vulnerable or incapable of resistance. Second, that the offense involved domestic violence and it was part of an ongoing pattern of psychological or physical abuse of S.A. over a prolonged period of time. RP 419-421. The trial court then ruled "I am finding Factors 1 and 3 beyond a reasonable doubt, and I'm finding that either of those factors, independent of each other, would justify an exceptional sentence."

The defendant argues the trial court erred in finding S.A. was particularly vulnerable because the evidence did not support a conclusion that S.A.'s vulnerability was a substantial factor in the commission of the offense. She does not argue the court improperly found the second ground for her enhanced sentence. Nevertheless she argues that she is entitled to have her sentence reversed, and to be sentenced within the standard range.

When a reviewing court finds that one of multiple factors relied upon by the trial court to impose an exceptional sentence is improper it may affirm the sentence if it is satisfied that the trial

court would have imposed the same sentence had the judge considered only the valid reason. State v. Post, 118 Wn.2d 596, 616, 826 P.2d 172 (1992).

In Post the trial court imposed an exceptional sentence for first degree rape and burglary based on four grounds. Three of the four grounds were invalidated, either in the Court of Appeals or in the Supreme Court. The fourth ground, future dangerousness, was upheld. The Supreme Court upheld the exceptional sentence on that ground, rather than remanding for re-sentencing. The Court relied on the great weight the trial court put on finding certain factors that supported that ground when it affirmed. Post, 118 Wn.2d at 616-617.

Here the reviewing court can be satisfied the trial court would impose at least as great a sentence as it did even if the challenged ground is found to be unsupported by the record. The trial court relied heavily on the consequences of the defendant's conduct causing both physical and psychological injury to S.A. The court specifically relied on S.A.'s statement he was hungry, dreams of food, and fear of being caught eating. RP 420-421. If this Court finds victim vulnerability is not supported by the record then remand for re-sentencing within the standard range is not warranted.

Rather, consistent with the argument below, the Court should remand the case for re-sentencing permitting consideration of an exceptional sentence.

C. THE TRIAL COURT MAY NOT IMPOSE COMMUNITY CUSTODY AS PART OF A SENTENCE FOR CRIMINAL MISTREATMENT FIRST DEGREE.

The court is required to impose as a condition of sentence a term of community custody for certain specified offenses, including crimes against persons as defined in RCW 9.94A.411(2). RCW 9.94A.715(1). Criminal Mistreatment is not included in the list of offenses which define crimes against persons. Thus it may not be imposed as part of a standard range sentence. In re Leach, 161 Wn.2d 180, 163 P.3d 782 (2007).

Nor may it be imposed as part of an exceptional sentence. State v. Skillman, 60 Wn. App. 837, 809 P.2d 756 (1991). The trial court erred when it imposed community custody as a condition of the defendant's sentence for Criminal Mistreatment First Degree. The State concedes that the term of community custody was improperly imposed.

Where a court has made a sentencing error and it is unclear whether the court would have imposed the same sentence had the error not occurred the remedy is to remand to permit the trial court

to consider a sentence in light of the correct application of law. State v. Parker, 132 Wn.2d 182, 190, 937 P.2d 575 (1997).

Like the circumstances in Parker it cannot be said the trial judge would have imposed the same sentence had it been correctly advised. Rather, the court may believe that without the availability of community custody as a sentencing option the facts of the case justify a longer period of incarceration. The trial court should be given an opportunity to consider that option upon remand. In any event, the defendant is correct that she is entitled to credit for any time served pre-conviction, including time served on home detention. State v. Speaks, 119 Wn.2d 204, 829 P.2d 1096 (1992). This calculation is performed by the trial court. RCW 9.94A.505(6). Upon remand the trial court should be permitted to calculate the actual amount of credit for time served the defendant is due.

IV. CONCLUSION

For the forgoing reasons the State requests that the Court affirm the defendant's conviction. The State asks the Court to affirm the trial court's findings supporting the exceptional sentence. The State acknowledges the community custody provision of the sentence was improperly imposed. The State asks the Court to remand for re-sentencing to permit the trial court to consider

whether additional confinement time should be imposed in light of the unavailability of community custody as a sentencing option.

Respectfully submitted on November 20, 2008.

JANICE E. ELLIS
Snohomish County Prosecuting Attorney

By: 
KATHLEEN WEBBER WSBA #16040
Deputy Prosecuting Attorney
Attorney for Respondent



STATE'S EXHIBIT #10



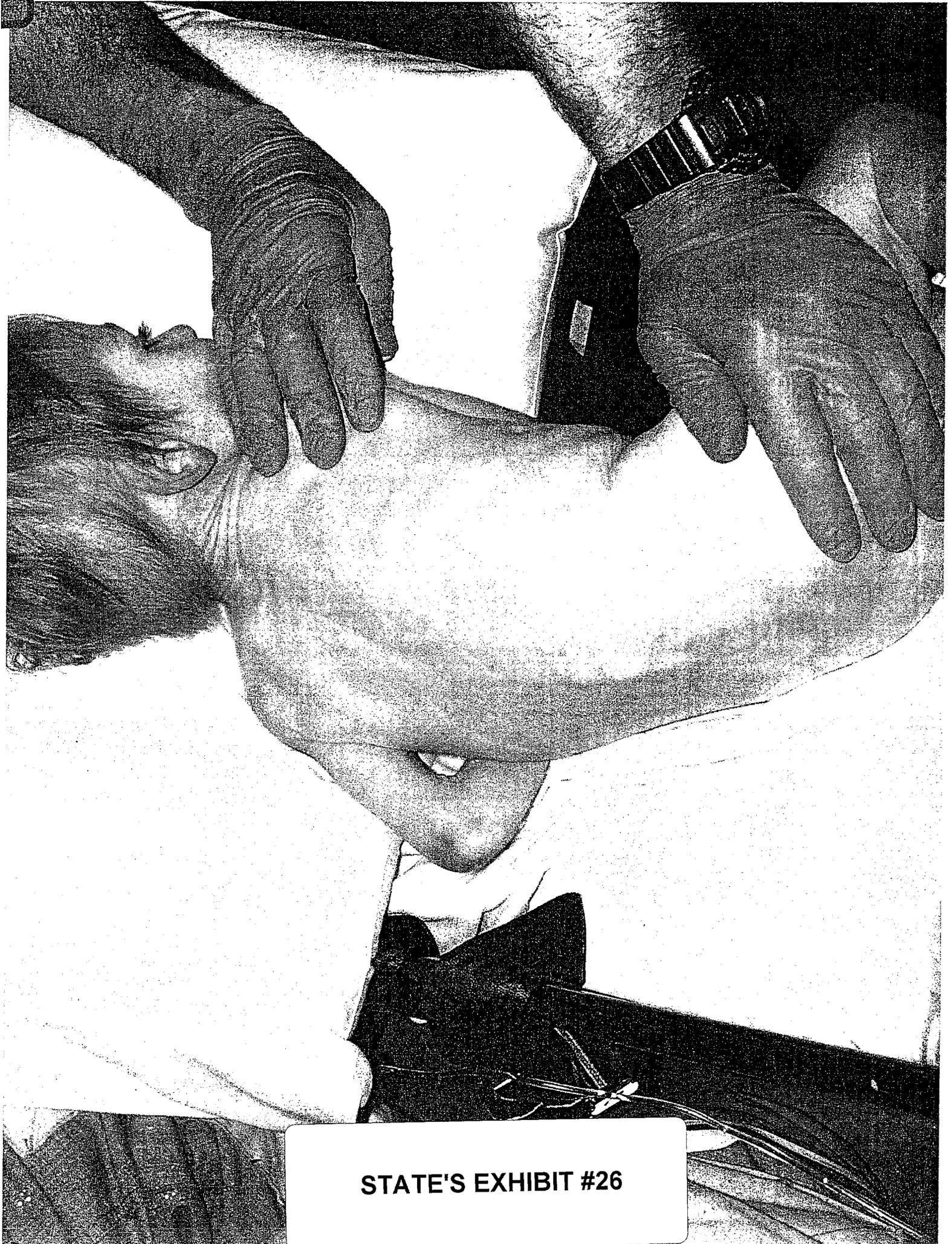
STATE'S EXHIBIT #20



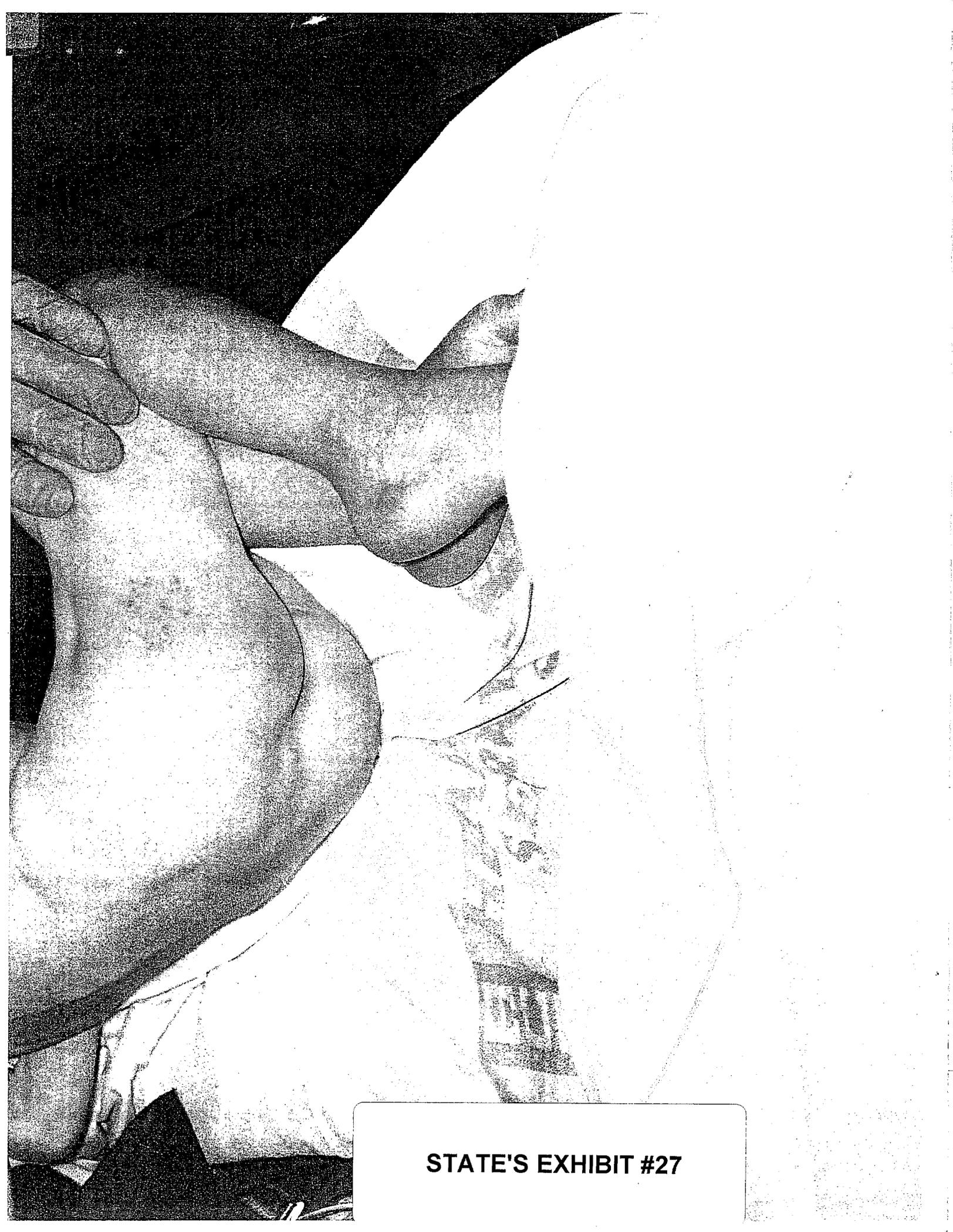
STATE'S EXHIBIT #21



STATE'S EXHIBIT #22



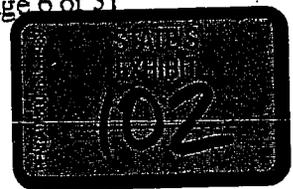
STATE'S EXHIBIT #26



STATE'S EXHIBIT #27



STATE'S EXHIBIT #28



SER History for Case ID: 65D6105300

SER ID: 10495653
User Name: NEFF, DEANNA (NEFD300)
Location: Children's Administration Office
Activity Type: Staffing - Other
Case ID: 65D6105300 - ABEGG, DANNY

Activity Date/Time: 08/09/2006 - 00:00
Create Date/Time: 08/09/2006 - 13:09

Referral ID: 1715655 - ABEGG, DANNY
Person ID: 1674238 - DANNY ABEGG
2553543 - SHAYNE ABEGG
2553545 - JOSEPH ABEGG
2915102 - HAYLEA ABEGG

SER Text

Social worker, Deanna Neff, spoke with Brad, FPS worker in regards to how the family is progressing. Brad said the family is doing much better. Brad said the largest issue for the boys have been the trauma they endured while they were with their mom. The boys have a severe fear of lack of food. Brad said they steal and horde food from the rest of the family. While the children were with their mother they would go for days without food; they never knew when the next time they would be getting something to eat. Brad said that he is working with Danny and his wife about the food problem. He said the family has agreed to leave food out all the time so the boys can eat at will—let them realize that there is always food available. Danny and his wife are working on parenting skills to help the boys with their food issues. Brad said Marylee is exhausted because their baby has been sick and keeping her up at night; she is receiving little sleep or rest due to being up during the day with the boys besides.

SER ID: 10501319
User Name: CARTER, LOUANN (ZALO300)
Activity Type: Supervisory/Administrative Review
Case ID: 65D6105300 - ABEGG, DANNY

Activity Date/Time: 08/10/2006 - 00:00
Create Date/Time: 08/10/2006 - 14:13

Referral ID: 1715655 - ABEGG, DANNY
Person ID: 1674238 - DANNY ABEGG
2553543 - SHAYNE ABEGG
2553545 - JOSEPH ABEGG
2915102 - HAYLEA ABEGG

SER Text

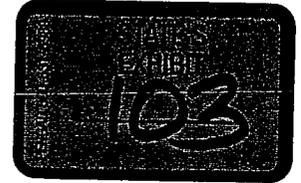
Case review: SW reports the family has to be out of their current home in 10 days. SW reported she instructed the family to search for housing. The Dept. has agreed to help the family w/the down-payment for housing assistance. SW reports family working w/FPS provider and doing well w/FPS provider and the children healthy and doing well. SW reports the only concern she has is the housing issue.

SER ID: 10512472
User Name: NEFF, DEANNA (NEFD300)
Location: Children's Administration Office
Activity Date/Time: 08/14/2006 - 00:00
Create Date/Time: 08/14/2006 - 15:32

STATE'S EXHIBIT #102

03/09/2007 9:24:26 AM

SER History for Case ID: 65D6105300



Activity Type: Parent - Bio/Adopt or Guardian Contact (Includes Face to Face)

Case ID: 65D6105300 - ABEGG, DANNY

Referral ID: 1715655 - ABEGG, DANNY

Person ID: 1674238 - DANNY ABEGG
1924701 - MARILEA MITCHELL
2553543 - SHAYNE ABEGG
2553545 - JOSEPH ABEGG

SER Text

Social worker received a phone call from Danny today asking about the voucher for rental assistance. This worker explained that there is one more person that needs to sign off on the request. This SW was told there should not be a problem. This SW told Danny that as soon as this worker heard than this worker would let him know.

SER ID: 10585060 Activity Date/Time: 08/31/2006 - 00:00
User Name: NEFF, DEANNA (NEFD300) Create Date/Time: 08/31/2006 - 15:29

Location: Children's Administration Office

Activity Type: Staffing - Other

Case ID: 65D6105300 - ABEGG, DANNY

Referral ID: 1731377 - ABEGG, DANNY

Person ID: 1674238 - DANNY ABEGG
1924701 - MARILEA MITCHELL
2553543 - SHAYNE ABEGG
2553545 - JOSEPH ABEGG
2915102 - HAYLEA ABEGG

SER Text

Social worker, Deanna Neff, spoke with Brad, FPS, concerning this family. Brad said they seemed to be doing really well. He said they are doing much better now that they are out of the old apartment and away from the mold. He said his only concern was Danny and Marilea both don't totally understand why the boys are still hoarding food. Brad said he tried to explain to them if they would leave food assessable for them all the time that eventually they would realize that there is going to be food when they are hungry and will stop stealing food. Brad said instead they ground the boys to their room and lock up the food when they get into it. He said they are afraid that it will get to expensive for them. This worker has an appointment set for the afternoon of 09/01/2006 to meet Marilea and the kids.

SER ID: 10660413 Activity Date/Time: 09/21/2006 - 00:00
User Name: NEFF, DEANNA (NEFD300) Create Date/Time: 09/21/2006 - 08:29

Location: Children's Administration Office

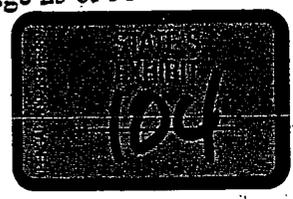
Activity Type: Alternate Intervention - Telephone Contact, Parent - Bio/Adopt or Guardian Contact (Includes Face to Face)

Case ID: 65D6105300

STATE'S EXHIBIT #103

03/09/2007 9:24:26 AM

SER History for Case ID: 65D6105300



Case ID: 65D6105300 - ABEGG, DANNY

Referral ID: 1759827 - ABEGG, DANNY

Person ID: 1674238 - DANNY ABEGG
1924701 - MARILEA MITCHELL
2553543 - SHAYNE ABEGG
2553545 - JOSEPH ABEGG
2915102 - HAYLEA ABEGG

SER Text

Transfer summary for Abegg
Last home visit: 30 Day face to face with children: 11/15/2006

Father: Mother: (Mother to Haylea)
Danny Abegg Marilea Mitchell
DOB: 01/26/80 DOB: 05/02/84
Non-Native Non-Native

Mother: (Mother to Shayne and Joseph)
Kristine Addington
DOB 06/28/81
Native: Tlingit/Kotzbue

This family is working with Brad Simkins, FPS (425-218-7060) for the second time. The previous case was set to close when the last referral came in for the excessive bruising on Joseph's ears and head. The father told three different stories as to what could have caused the bruising on his son's head. Finally the story everyone told was that Joseph fell while running after his friend on his way to school. Both Danny and Marilea have claimed that Joseph has severe behavioral problems and has a bad problem with lying; however, the school did not observe the same behaviors the parents were claiming he had. After the last referral Danny and Marilea decided it would be best to send Joseph to his grandmothers in California. Haylea and Shayne are currently still in the home. Joseph and Shayne were placed with Danny after their mother neglected them. They were subjected to living in a van with rarely any food. There were times the mother locked them in the van and would not let them out because she was afraid the state would remove them from her care if they were seen. Because of the limited food the boys, especially Joseph, developed an eating disorder and a problem with hoarding food.

The family is progressing with working with Brad for the second referral.

SER ID: 10932677 Activity Date/Time: 11/30/2006 - 00:00
User Name: NEFF, DEANNA (NEFD300) Create Date/Time: 11/30/2006 - 09:30
Location: Children's Administration Office
Activity Type: Contact - Collateral Contact, Parent - Bio/Adopt or Guardian Contact (Includes Face to Face)
Case ID: 65D6105300 - ABEGG, DANNY

Referral ID: 1759827 - ABEGG, DANNY
Person ID: 1674238 - DANNY ABEGG
1924701 - MARILEA MITCHELL
2553543 - SHAYNE ABEGG
2553545 - JOSEPH ABEGG