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SUPREME COURT
STATE OF WASHINGTON
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No. 97850-6
COA No. 48672-5-II

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

CYNTHIA SUE MILLER,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR THURSTON COUNTY

The Honorable Carol Murphy Judge
Cause No. 13-1-01891-1

ANSWER TO PETITION FOR REVIEW

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A. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.

1. Whether Miller's Petition for Review provides a basis for which review is appropriate pursuant to RAP 13.4.

B. STATEMENT OF THE CASE.

For purposes of this Answer to the Petition for Review, the State relies on the Statement of the Case included in the State's Brief of Respondent in the Court of Appeals, No 48672-5-II, and the facts included in the Unpublished Opinion of the Court of Appeals, No. 48672-5-II at 2-9.

C. ARGUMENT.

This Court will accept review when the decision of the Court of Appeals conflicts with a decision of the Supreme Court, RAP 13.4(b)(1); conflicts with a published opinion of the Court of Appeals, RAP 13.4(b)(2); raises a significant question of law under the Washington or the United States Constitutions, RAP 13.4(b)(3); or involves a substantial public interest that should be determined by the this Court, RAP 13.4(b)(4). None of the grounds for review listed in RAP 13.4(b) apply to the decision at issue in this case.

1. The Court of Appeals' decision does not conflict with existing case law, rather the Court of Appeals applied existing case law regarding sufficiency of the evidence in making its ruling.

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).

“. . . the critical inquiry on review of the sufficiency of the evidence to support a criminal conviction must be not simply to determine whether the jury was properly instructed, but to determine whether the record evidence could reasonably support a *finding of guilt beyond a reasonable doubt*. (Cite omitted.) This inquiry does not require a reviewing court to determine whether *it* believes the evidence at trial established guilt beyond a reasonable doubt. “Instead, the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any rational trier of fact* could have found the essential elements of the crime *beyond a reasonable doubt*. (Cite omitted, emphasis in original.)

State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980).

“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. at 201. Circumstantial evidence and direct evidence are equally reliable, and criminal intent may be inferred from conduct where “plainly indicated as a matter of logical

probability.” State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

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). This Court 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 (1992). It is the function of the fact finder, not the appellate court, to discount theories which are determined to be unreasonable in light of the evidence. State v. Bencivenga, 137 Wn.2d 703, 709, 974 P.2d 832 (1999).

The Court of Appeals applied the settled principles of law in its decision. Unpublished Opinion, at 10-14. It is clear that sufficient evidence supported the trial court’s findings of guilt. Miller’s argument that the decision of the Court of Appeals conflicts with the decisions of this Court, the Ninth Circuit Court of Appeals and the United States Supreme Court regarding the sufficiency of the evidence for assault of a child cites only two cases, State v. Kiser, 87 Wn. App. 126, 940 P.2d 308 (1997), a Division I case from the Court of Appeals, and In re Dependency of H.S., 188 Wn.

App. 654, 356 P.3d 202 (2015), a Division III case from the Court of Appeals.

State v. Kiser was a jury unanimity case. 87 Wn. App. 126. Nothing in its analysis conflicts with the decision of the Court of Appeals in this case. In re Dependency of H.S. held that the trial court had applied an incorrect legal standard regarding abuse or neglect under RCW 13.34.030(6)(b). 188 Wn. App. at 657. The case does not conflict with any of the analysis of the Court of Appeals in this case.

The general contention in Miller's Petition for Review is that the "Court of Appeals' determination of facts" was erroneous is inherently flawed. Petition for Review at 6. The trial court properly made factual determinations and credibility determinations and the Court of Appeals properly reviewed those findings in determining that substantial evidence supported the trial court's conclusions of law. There was no error in the trial court or the Court of Appeals.

2. The Court of Appeals decision did not conflict with other decisions regarding the applicability of the deliberate cruelty aggravating factor.

As the Court of Appeals noted, the record supported the trial court's finding that Miller's conduct exceeded that which was required to prove the elements of the offenses. Unpublished

Opinion, at 20. The facts elicited at trial in this case were particularly egregious. Miller argues that the Court of Appeals decision is contrary to this Court's decision in State v. Ferguson, 142 Wn.2d 631, 645, 15 P.3d 1271 (2001); however, a review of that decision reveals that the analysis of the Court of Appeals was in fact consistent with the opinion of this Court.

Miller also points to State v. Crutchfield, 53 Wn. App. 916, 771 P.2d 746 (1989), which this Court disapproved of in State v. Chadderton, 119 Wn.2d 390, 396, 832 P.2d 481 (1992). The decision of the Court of Appeals does not conflict with the law as it has been settled by this Court. Finally, Miller cites to State v. Clinton, 48 Wn. App. 671, 741 P.2d 52 (1987). The decision of the Court of Appeals does not conflict with that decision. The decision of the Court of Appeals properly found that the evidence at trial supported the trial court's finding of deliberate cruelty. Unpublished Opinion at 19-20. Miller has provided no basis for this Court to accept review.

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D. CONCLUSION.

Miller has failed to provide any basis for this Court to accept review pursuant to RAP 13.4. The State respectfully requests that review be denied.

Respectfully submitted this 12th day of December, 2019.

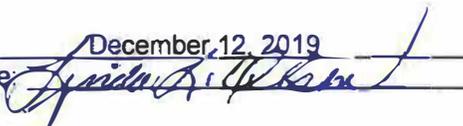


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DECLARATION OF SERVICE

I hereby certify that on the date indicated below I electronically filed the foregoing document with the Clerk of the Court using the Appellant's Court Portal utilized by the Washington State Supreme Court, which will provide service of this document to the attorneys of record.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Olympia, Washington.

Date: December 12, 2019
Signature: 

THURSTON COUNTY PROSECUTING ATTORNEY'S OFFICE

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