

IN THE
MISSOURI COURT OF APPEALS
SOUTHERN DISTRICT

STATE OF MISSOURI,)	
)	
Respondent,)	
)	
vs.)	No. SD 32109
)	
)	
PETER HANSEN,)	
Appellant.)	

APPEAL TO THE MISSOURI COURT OF APPEALS
SOUTHERN DISTRICT
FROM THE CIRCUIT COURT OF GREENE COUNTY, MISSOURI
THIRTY-FIRST JUDICIAL CIRCUIT, DIVISION THREE
THE HONORABLE DAN CONKLIN, JUDGE

APPELLANT’S STATEMENT, BRIEF AND ARGUMENT

Ellen H. Flottman, MOBar #34664
Attorney for Appellant
Woodrail Centre, 1000 West Nifong
Building 7, Suite 100
Columbia, Missouri 65203
Telephone (573) 882-9855, ext. 323
FAX (573) 884-4793
E-mail: Ellen.Flottman@mspd.mo.gov

INDEX

	<u>Page</u>
TABLE OF AUTHORITIES.....	2
JURISDICTIONAL STATEMENT.....	4
STATEMENT OF FACTS.....	5
POINTS RELIED ON	19
ARGUMENT	21
CONCLUSION	37
APPENDIX	

TABLE OF AUTHORITIES

	<u>Page</u>
<u>CASES:</u>	
<i>Buffington v. State</i> , 824 So.2d 576 (Miss. 2002)	26
<i>Doe v. Department of Health and Welfare</i> , 163 P.3d 209 26 (Idaho 2007)	26
<i>In re Winship</i> , 397 U.S. 358 (1970)	21, 28
<i>State v. Beach</i> , 329 S.W.2d 712 (Mo. 1959)	19, 20, 25, 35
<i>State v. Botts</i> , 151 S.W.3d 372 (Mo. App., W.D. 2004).....	21, 28
<i>State v. Brown</i> , 660 S.W.2d 694 (Mo. banc 1983)	19, 20, 25, 35
<i>State v. Fritsch</i> , 526 S.E.2d 451 (N.C. 2000)	25
<i>State v. Grim</i> , 854 S.W.2d 403 (Mo. banc 1993).....	21, 28
<i>State v. Jackson</i> 419 So.2d 837 (La. 1982)	26
<i>State v. Poehnelt</i> , 722 P.2d 304 (Ariz. App. 1985)	20, 35
<i>State v. Silvey</i> , 980 S.W.2d 103 (1998).....	19, 20, 22, 25, 29, 35
<i>State v. Whalen</i> , 49 S.W.3d 181 (Mo. banc 2001)	19, 21, 28
<i>Wilson v. State</i> , 570 S.E.2d 679 (Ga. App. 2002).....	25

CONSTITUTIONAL PROVISIONS:

U.S. Const., Amend. XIV	19, 20, 21, 28
Mo. Const., Art. I, Sec. 10.....	19, 20, 21, 28
Mo. Const., Art. V, Sec. 3	4

Page

STATUTES:

Section 477.060 4

Section 568.060 4, 19, 20, 22, 29

JURISDICTIONAL STATEMENT

Appellant, Peter Hansen, was convicted of two counts of child abuse, Section 568.060,¹ following a jury trial in the Circuit Court of Greene County. The Honorable Dan Conklin sentenced appellant to three years imprisonment, suspended execution of sentence, placed him on five years probation and ordered him to serve 100 days shock time in the county jail. As this appeal involves none of the issues reserved to the exclusive jurisdiction of the Missouri Supreme Court, jurisdiction lies in the Missouri Court of Appeals, Southern District. Article V, Section 3, Mo. Const. (as amended 1982); Section 477.060.

¹ Statutory citations are to RSMo 2000.

STATEMENT OF FACTS

Peter Hansen was raised in the Seventh Day Adventist Church (Tr. 1166). Seventh Day Adventists practice a vegetarian lifestyle (Tr. 1138). The church does not require vegetarianism, but encourages it, as well as two meals a day rather than three (Tr. 1138-1143). The members are encouraged to eat a wide variety of natural foods, to drink six to eight glasses of water a day, and to exercise (Tr. 1144-1148). Studies have shown that Seventh Day Adventists are longer lived than their peers due to their healthy lifestyle (Tr. 1150-1156).

Peter had two children, Nathan and Sierra, with his first wife, Danette (Tr. 1166-1167). Danette was slender as a child and gained weight after the children were born (Tr. 1168). She was 5'4" (Tr. 1168). Peter was 5'9" and weighed 140 pounds (Tr. 1168). Pictures of him as a child were introduced into evidence (Tr. 1183, Exs. L, M, N, O). He was always very lean and small (Tr. 1188).

Peter divorced Danette in 2005 (Tr. 1167). He married Mary, and after her death, married Melissa in 2009 (Tr. 1167). The family was evicted from their home in Springfield that April, and were rendered homeless (Tr. 1169). They were forced to live in their car for a couple of weeks, until their local congregation of the Seventh Day Adventist Church offered to let them live in the church buildings (Tr. 1027, 1061, 1082, 1169).

The family had little money, but continued to live by the principles of their church in that environment, eating mostly vegetables, grains, legumes and some fruit, two meals a day, drinking water and exercising (Tr. 1170-1178, 1198). They

had a small garden, and on special occasions such as Thanksgiving, they would have meat such as turkey (Tr. 1173-1181). The family ate a raw grain cereal soaked in water and served with fruit for breakfast every day (Tr. 476, 1192). They ate a lot of grains and nuts purchased in bulk (Tr. 476, 1198). The children were required to drink 64 ounces of water every day (Tr. 479, 1198).

Sierra did not like their diet, and complained about her food (Tr. 1189). They were always healthy, however, although they could not afford to go to doctors routinely (Tr. 1209-1210). The children were encouraged to be active and physically fit (Tr. 1207). They were home schooled, and belonged to the Path Finders, a Scouting-like organization which took them camping and provided other outdoor activities (Tr. 1201-1202). The children enjoyed bicycling and skateboarding; they did not have a television (Tr. 1203, 1208). They did not have money for sports or band or other extracurricular activities (Tr. 1205).

Living in the church fellowship hall provided its own challenges. Peter and Melissa used a small classroom for a bedroom, with an air mattress on the floor (Tr. 456). They put five-foot wall partitions between Nathan and Sierra in the main room, with an air mattress on either side for their sleeping arrangements (Tr. 456). They disciplined the children by taking away sweets and garnishes on their food, such as cheese or jelly – they referred to that as “restriction” (Tr. 1215-1216, 1218). When that did not work, the children were isolated from the rest of the family, sometimes within the walls of the partitions in the fellowship hall (mostly Sierra), and sometimes in one of the bathrooms (Tr. 1224-1228). Pictures of the

living arrangements showed a space that was neat and clean and well-organized (Exs. 22-32).

On the day before Thanksgiving, Springfield police accompanied a Children's Division investigator to the church at 5:46 p.m. on a call of possible child abuse (Tr. 320-324, 419-423, 576-583). It was a cool evening; Melissa Hansen answered the door of the fellowship hall building (Tr. 326-328, 424-425, 583). The church sanctuary building next to it was completely dark (Tr. 324, 326, 425).

Melissa said Sierra was in the partitioned area, and Peter and Nathan were out of town working on a construction project (Tr. 330-331, 584-585). The investigators went to the partitioned cubicle, where Sierra was sitting at a desk working (Tr. 332-337, 586). They asked Sierra about her living conditions and discipline (Tr. 343). Sierra said that she was disciplined for doing poorly on homework or misbehaving (Tr. 344). She thought her parents were too strict (Tr. 344). Her discipline was primarily isolation from the rest of the family, and on one occasion she had been spanked with a belt (Tr. 344). When they were isolated, Sierra was put in the cubicle and Nathan in a bathroom (Tr. 589).

Sierra told the investigators that another form of punishment was restriction, when they were not allowed luxury foods like fruit, or butter (Tr. 590). Their general diet was vegetables, tortillas, rice and beans (Tr. 590). If the food was bad, Sierra would not eat it (Tr. 590). She said she was often hungry (Tr. 590).

Sierra told the investigators that Nathan was in the building next door (Tr. 344-345). The investigators asked Melissa if Nathan was actually there, and Melissa led them to the sanctuary building (Tr. 346, 591). Melissa called to Nathan as they entered the building, which was heated to about 54 or 58 degrees (Tr. 349, 360, 426). Melissa led them to the bathroom (Tr. 351-352, 428, 592-593).

Nathan looked as if he had been sleeping (Tr. 594). He was dressed in flannel pajamas and a long sleeve t-shirt (Tr. 355, 595). He had an outdoor weight sleeping bag and a foam pallet and pillow on the floor of the bathroom, some books, utensils, and dishes (Tr. 352-355, 356-357, 429, 565, 594). The bathroom was about six by seven, or five by six (Tr. 359).² Nathan was polite and talkative, and did not seem scared (Tr. 360). He said that he came out of the bathroom to do his homework, but then he was supposed to go back (Tr. 397).

Peter arrived while the investigators were talking to Nathan; when they asked Peter about Nathan's isolation, he said "it's like a hole for a 14-year-old and I'm okay with that" (Tr. 362-363). He said the children were bad and had bad attitudes; they were being punished (Tr. 598). Pictures were taken of the home and the children (Tr. 364, Exs. 22-32, 38-46). The children were taken into protective custody and their parents were arrested; Nathan started to cry (Tr. 363-

² An officer testified that it did not look as if Nathan could stretch all the way out comfortably (Tr. 429).

364, 599-600). Peter was charged with four counts of abuse of a child and two counts of endangering the welfare of a child (L.F. 7-20).

The children were taken to Taco Bell and then to the emergency room (Tr. 600-601). At the ER, a Children's Division investigator gave them crackers and juice and donuts, and Sierra said she had eaten more that night than in the last five months (Tr. 795). A nurse practitioner reported that they were healthy but thin (Tr. 633-634, 639, 644). Nathan weighed 83 pounds, which was in the 5th percentile on the growth charts, and Sierra weighed 63 pounds, which was in the 10th percentile (Tr. 636, 639, 643).³ They reported they were fed twice a day (Tr. 642).

A pediatrician examined the children twenty-five days later (Tr. 904). Nathan weighed 96 pounds (Tr. 904). In July 2010, Nathan weighed 130 pounds and Sierra weighed 90 pounds (Tr. 912, 932). The doctor opined that from the pattern of growth, the children were receiving inadequate calories for appropriate weight gain and growth, although Sierra's growth chart showed a curve up the fifth percentile line rather than Nathan's growth spurt (Tr. 908-938). In his opinion, the children were not getting enough calories in the care of their parents (Tr. 942).

³ A CAC nurse weighed Sierra at 65 pounds and Nathan at 87 pounds (Tr. 837-842).

At trial, the CAC tape of Sierra's interview was played for the jury (Tr. 817-818, Ex. 53). Sierra described "lockdown" (Ex. 53 at 4:32). "We were not allowed to talk to anyone unless you had to get up to use the bathroom or get up and fill your water bottle, or something like that. There were these two walls behind me that I couldn't see anyone, and that was basically my lockdown." (Ex. 53 at 4:32). "Nathan's lockdown was first ... he would do his school. We had been locked in the bathroom, too. Not 'locked,' but put in the bathroom where we weren't allowed to come out. And we'd have to sit in darkness right after school was finished. After my brother was put in the bathroom, they decided that he should go into the church's furnace room to study, and he would go into the bathroom afterwards." (Ex. 53 at 4:57). "It was a punishment." (Ex. 53 at 5:30).

The last time she was in lockdown, "I had been in the bathroom, and my brother got in big trouble. So, they had me come out, and they put the walls behind me. I had already been in the bathroom ... I was going on my third week. After I had been put inside the walls, I was told no communication, and my brother was put in what we called 'the hole.' After that, they decided to put my brother outside. After being put in my area for a week, they decided to let me out. It was only for the weekend, though. Monday afternoon, I was put back in because I was struggling with some math and English. After I was put in the lockdown again, that next Wednesday is when they came." (Ex. 53 at 5:57).

"The bathroom was really small. I'm guessing it was probably 4x3. There was a toilet and sink in there so we could fill our water bottles. The second time I

was put in there, because I had been put in there once before and we had an okay week, then I was put back in. So, that time they let me open the door for the night so I could stretch out, but I was told that I had to wait until everyone went to bed. I had to try to stay awake until they all went to bed to open my door. After that they were letting me come out for Fridays and stuff so we could work together. My dad would take me and Nathan- my mom would be cleaning the church- either I would still be in the bathroom, or I'd be outside with dad working.” (Ex. 53 at 7:05).

“Most of the time, we would get a few minutes to go outside unless it was really cold or raining. We would take thirty minute breaks outside almost every day. What she was having me do, before I came out with the walls behind me, she would have me run around the house for thirty minutes without stopping. Until after I got out of the bathroom, what we call “the hole”, she let me ride my bike or run for the rest of the time.” (Ex. 53 at 7:52).

“I would get my papers slid under the door, unless it was our English book which was really fat. She would open the door, set it on the counter, and turn around and walk out, normally slamming the door. ... I would knock on the door and say I'm finished, and I'd slide it under the door or I'd open the door quickly and put it outside the door. After all my school work was done, I would have to turn the light off and sit there on the hard floor and think about what I had done. It got pretty cold in there.” (Ex. 53 at 8:32, 8:45).

“We were able to take our water bottle in the hole, and that was pretty much it, except for school work. And then we were supposed to clear everything out, and then at bedtime, we quickly come out and get our bedding and lay it out in the bathroom. We just had a sleeping bag and a mat under us.” (Ex. 53 at 10:48). “They would always make me eat in the dark. They would get the food and put it all together in a little plastic dish.” (Ex. 53 at 11:02). [What kind of food would you eat?] “Basically all that they ate.” (Ex. 53 at 11:16). [For breakfast] “we would have a raw green cereal that my dad made; it would have dried fruit in it that was all soaked and we could chew it. That was one of the main things that I particularly liked.” (Ex. 53 at 11:37).

“Dinner was the same. Oh, for breakfast, there would be jelly and toast and we’d have eggs ... cooked cereal almost all of the time. For supper, if they were making sweet potatoes, we weren’t allowed to have sweet potatoes [on restriction]. We had a Path Finders deal on Wednesday nights, so they would give us a sandwich that had sat in the oven. Other nights we’d just have their normal meal unless it had to do with a luxury or sweets. Normally we’d have homemade tortillas, but we wouldn’t be allowed to have any dairy products ... only on restriction. It would mainly be the cheese ...” (Ex. 53 at 11:57, 13:10). [Ever times that you would go to bed and still be hungry?] “There were a few times, but it was because we didn’t have the groceries to provide the food.” (Ex. 53 at 13:25).

“We were only allowed to take our jackets in [the hole], but that was an ‘if you do’ thing: If you have your jacket, you could, but if you didn’t, ‘sorry.’” (Ex. 53 at 9:58). “The boards [the cubicle walls] we just basically called my room because it was pretty much like a little room, but it wasn’t very big, of course. The day you guys came, this lady named Brenda came by and I think she already knew about it, but I don’t know. I was just staying in the little area, and she came and said hi to me.” (Ex. 53 at 24:49). “That day I had my math and stuff in there .. pretty much all we would have in there was maybe our water bottle.” (Ex. 53 at 24:49, 27:54).

Sierra and Nathan both testified at Peter’s trial. Sierra testified “the hole” was a small bathroom with a sink and toilet, where they would go if they lied or were disrespectful (Tr. 458). They would be in there all day and night, and do their schoolwork there (Tr. 460). Sierra was in there twice (Tr. 461). They had a sleeping bag and pillow, and the temperature was whatever the rest of the building was – she asked for a jacket and was given it (Tr. 461-463). She was allowed to open the bathroom door the second time she was in there, but she had to turn the light out when she was done with her homework and she did not have anything to entertain herself (Tr. 464-465). The first time Sierra was in the hole was for a week, and the second time for two weeks (Tr. 468-470). She was let out for PE, for chores in the garden, and for church (Tr. 471).

Sierra testified that they were mainly vegetarian, because they believed it was God’s law (Tr. 475). They had breakfast and supper, which was mostly

grains and fruit for breakfast and beans and salad for dinner, or sometimes toasted cheese sandwiches (Tr. 476). They drank four 24 ounce bottles of water a day (Tr. 479). If they were on restriction, they would get no sugary foods (Tr. 480).

Everyone in the family ate two meals a day; the only time Sierra went to bed hungry was when the family did not have much food at all (Tr. 459). There was always a bowl of fruit available – apples, oranges and bananas (Tr. 553). They ate a lot of tortillas and beans (Tr. 556). Sierra testified that she and Nathan were both pretty healthy, and their whole family was “skinny” (Tr. 563-564).

Nathan testified that he had been locked in the bathroom five or six times – it was called “the hole” (Tr. 678). He said the first time he was put in the bathroom was in the fellowship hall (Tr. 678). It was 5 x 4 with a sink and a toilet, and it was not big enough to lie down in (Tr. 679). He had to do his homework and sleep and eat in there (Tr. 679). After he was done with his homework he just had to sit and think, and they would turn off the light to save electricity (Tr. 680-681). He was usually allowed to turn on the light to eat (Tr. 681-682). He slept in the bathroom with a sleeping bag (Tr. 682). He was allowed to go outside and ride his bicycle or roller blade for fifteen to thirty minutes (Tr. 683). He was in there one day and a night; on a second occasion he was in there two days and two nights (Tr. 684).

When he was thirteen or fourteen he was put in the sanctuary bathroom, which was about the same size, but colder (Tr. 685-686). He was not allowed to keep his coat with him, and he had the sleeping bag only at night (Tr. 686).

Sometimes he did his homework in the bathroom, and sometimes in the sanctuary utility room (Tr. 687). The last time he was in there was one and a half to two weeks, when the police came and got him the day before Thanksgiving (Tr. 689). When he was done doing his homework in the utility room, he would go back to the bathroom and sit and think in the dark (Tr. 689). He was allowed out for physical activity for fifteen to thirty minutes a day (Tr. 690). Nathan testified that being in the hole made him “worried and angry.” (Tr. 694).

Nathan testified that the family was vegetarian – it was “in their religion” (Tr. 694). They mostly ate two meals a day; breakfast and supper (Tr. 694). They ate raw grains and cooked grains, and sometimes soy milk in the mornings (Tr. 695-697). When they were on restriction, they were not allowed to have sweets or extras like chips, dried fruit and salsa – this punishment was for disobedience or lying (Tr. 698).

Nathan said that his father and his grandfather were pretty skinny (Tr. 717). The entire family followed the same diet (Tr. 719). On a regular day, the family’s diet might include fruit, chips and salsa, candy, popcorn, tortillas, beans, rice, vegetables both fresh and canned, soy meat, cheese, yogurt, soy milk, pasta – lasagna or spaghetti (Tr. 759-763). The grains and vegetables and pasta, tortillas, beans and rice were never taken away on restriction (Tr. 764).

An investigator with the Springfield Police Department interrogated Peter (Tr. 860-863). A tape of the interview was introduced into evidence as State’s Exhibit 51 (Tr. 866-868). Peter agreed that he had put the children in isolation for

punishment, including confining Nathan to the bathroom (Ex. 51 at 5:13). Sierra was put behind panels in the fellowship hall to punish her for lying (Ex. 51 at 6:43, 7:02, 7:24). He denied withholding food from the children, saying that everyone ate two or three times a day, and his wife gave them “too much food; a big pile of high-quality, organic food.” (Ex. 51 at 7:45).

Several church members and friends of the Hansens testified about the family and the children (Tr. 1025-1027, 1036). They did some work for Donna Carnahan helping to remodel her kitchen, and she took the children out to lunch several times (Tr. 1027-1031). They never told her they wanted more, or said they did not get enough to eat at home (Tr. 1032). They ordered whatever they wanted (Tr. 1030).

Katheryn York was the associate director of the Path Finders club that the children attended (Tr. 1037). The club members were all vegetarian (Tr. 1041). They do a lot of hiking and camping (Tr. 1038). Nathan and Sierra never missed one, and did all the physical activities (Tr. 1040-1041). Pictures were introduced showing the children at the national camporee in August 2009 in Wisconsin (Tr. 1047-1049, Exs. D-K). Bobbie Jo Hartman would visit the family at the church quite often, and the children would be working on their school work (Tr. 1061-1063). A couple of weeks before Thanksgiving, Ms. Hartman took Nathan and Sierra on a fifteen mile bike ride, and had a hard time keeping up with the kids (Tr. 1064-1065). Richard Williams saw the children outside on their bikes the day

before the police came, which he remembered because the children invited him to Thanksgiving dinner (Tr. 1074-1076).

Geoffrey Haefel was a church member who dropped in to visit three or four times a month, and sometimes ate with the family (Tr. 1082-1084). He said “Melissa was always cooking” – brown rice casseroles with broccoli and onions and mushrooms – “that sort of thing” (Tr. 1084). He ate with them two or three times, and the children ate more than the adults (Tr. 1085). The living arrangements were meticulously clean, and there were nice dividers separating the living spaces (Tr. 1088).

Jodi Cooper interacted with the family on a weekly basis (Tr. 1102). She took Nathan and Sierra out on a food drive for the Path Finders with her own children (Tr. 1102-1105). They had a restriction on their sweets that day (Tr. 1105). They never indicated they were not getting enough to eat at home; they both looked healthy, happy and glowing (Tr. 1106, 1109, 1115). Gail Burnett also ate with the family on a couple of occasions – once was a cheese and broccoli casserole and the other time was chili (Tr. 1124-1125). The kids ate as much as they wanted (Tr. 1125). On one of those occasions, Sierra was in the bathroom because she was being punished for something, and Peter took her her dinner (Tr. 1127-1128).

The jury returned verdicts of guilty of abuse of Nathan for restricting him to the bathroom (Count I) and abuse of Nathan for restricting food from him

(Count II), but not guilty of Counts III, V and VI (L.F. 67-71, 1356-1358).⁴ On May 31, 2012, the Honorable Dan Conklin sentenced Peter to two concurrent terms of imprisonment of three years each, suspended execution of those sentences, and ordered him to serve 100 days shock time in the county jail (L.F. 76-77, Tr. 1362, 1387). Notice of appeal was filed June 8, 2012 (L.F. 78).

⁴ Count IV was mistried when the jury could not reach a verdict, and later dismissed (Tr. 1356-1357, 1362).

POINTS RELIED ON

I.

The trial court in overruling defense counsel’s motion for judgment of acquittal and sentencing Peter for abuse of a child (Count II), because this violated his right to due process of law guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, Section 10 of the Missouri Constitution, in that the state’s evidence failed to establish beyond a reasonable doubt that Peter knowingly inflicted cruel and inhuman punishment upon Nathan by restricting food from him.

State v. Silvey, 980 S.W.2d 103 (1998);

State v. Beach, 329 S.W.2d 712 (Mo. 1959) (citation omitted);

State v. Brown, 660 S.W.2d 694 (Mo. banc 1983);

State v. Whalen, 49 S.W.3d 181 (Mo. banc 2001);

U.S. Const., Amend. XIV;

Mo. Const., Art. I, Sec. 10; and

Section 568.060.

II.

The trial court in overruling defense counsel’s motion for judgment of acquittal and sentencing Peter for abuse of a child (Count I), because this violated his right to due process of law guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, Section 10 of the Missouri Constitution, in that the state’s evidence failed to establish beyond a reasonable doubt that Peter knowingly inflicted cruel and inhuman punishment upon Nathan by “restricting him to a cold bathroom without light, which was too small for [him] to stretch out, for hours at a time.”

State v. Silvey, 980 S.W.2d 103 (1998);

State v. Beach, 329 S.W.2d 712 (Mo. 1959);

State v. Brown, 660 S.W.2d 694 (Mo. banc 1983);

State v. Poehnelt, 722 P.2d 304 (Ariz. App. 1985);

U.S. Const., Amend. XIV;

Mo. Const., Art. I, Sec. 10; and

Section 568.060.

ARGUMENT

I.

The trial court in overruling defense counsel’s motion for judgment of acquittal and sentencing Peter for abuse of a child (Count II), because this violated his right to due process of law guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, Section 10 of the Missouri Constitution, in that the state’s evidence failed to establish beyond a reasonable doubt that Peter knowingly inflicted cruel and inhuman punishment upon Nathan by restricting food from him.

Standard of review

The due process clause protects a defendant against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged. *In re Winship*, 397 U.S. 358, 364 (1970). In reviewing a challenge to sufficiency of the evidence, this Court accepts as true all evidence and its inferences in a light most favorable to the verdict. *State v. Botts*, 151 S.W.3d 372, 375 (Mo. App., W.D. 2004). This Court disregards contrary inferences, unless they are such a natural and logical extension of the evidence that a reasonable juror would be unable to disregard them. *State v. Grim*, 854 S.W.2d 403, 411 (Mo. banc 1993). But this Court may not supply missing evidence, or give the State the benefit of unreasonable, speculative or forced inferences. *State v. Whalen*, 49 S.W.3d 181, 184 (Mo. banc 2001).

Abuse of a child

A person commits the crime of abuse of a child if he knowingly inflicts cruel and inhuman punishment upon a child less than seventeen years old. *State v. Silvey*, 980 S.W.2d 103 (1998); Section 568.060. Peter was charged in Count II of the information with committing child abuse by “restricting food” from his son, Nathan (L.F. 14).

The evidence at trial was that the Seventh Day Adventist church, of which the Hansens were members, practice a vegetarian lifestyle (Tr. 1138). The church does not require vegetarianism, but encourages it, as well as two meals a day rather than three (Tr. 1138-1143). The members are encouraged to eat a wide variety of natural foods, to drink six to eight glasses of water a day, and to exercise (Tr. 1144-1148). Studies have shown that Seventh Day Adventists are longer lived than their peers due to their healthy lifestyle (Tr. 1150-1156).

The Hansen family was homeless and was allowed to live in the local church (Tr. 1027, 1061, 1082, 1169). They had little money, but continued to live by the principles of their church in that environment, eating mostly vegetables, grains, legumes and some fruit, two meals a day, drinking water and exercising (Tr. 1170-1178, 1198). They had a small garden, and on special occasions such as Thanksgiving, they would have meat such as turkey (Tr. 1173-1181). The family ate a raw grain cereal soaked in water and served with fruit for breakfast every day (Tr. 476,1192). They ate a lot of grains and nuts purchased in bulk (Tr. 476, 1198). The children were required to drink 64 ounces of water every day (Tr. 479,

1198). They children were encouraged to be active and physically fit (Tr. 1207). They belonged to the Path Finders, a Scouting-like organization which took them camping and provided other outdoor activities (Tr. 1201-1202). The children enjoyed bicycling and skateboarding (Tr. 1203).

The children were sometimes disciplined by losing as privileges sweets and garnishes on their food, such as cheese or jelly – they referred to that as “restriction” (Tr. 590, 1215-1216, 1218). Their general diet was vegetables, tortillas, rice and beans (Tr. 590).

After the children were taken from the home, a nurse practitioner reported that they were healthy but thin (Tr. 633-634, 639, 644). Nathan weighed 83 pounds, which was in the 5th percentile on the growth charts (Tr. 636, 639, 643).⁵ They reported they were fed twice a day (Tr. 642).

A pediatrician examined the children twenty-five days later (Tr. 904). Nathan weighed 96 pounds (Tr. 904). In July 2010, Nathan weighed 130 pounds and Sierra weighed 90 pounds (Tr. 912, 932). The doctor opined that from the pattern of growth, the children were receiving inadequate calories for appropriate weight gain and growth, although Sierra’s growth chart showed a curve up the

⁵ A CAC nurse weighed Nathan at 87 pounds (Tr. 837-842). Peter was 5’9” and weighed 140 pounds (Tr. 1168). Pictures of him as a child were introduced into evidence (Tr. 1183, Exs. L-O). He was always very lean and small (Tr. 1188).

fifth percentile line rather than Nathan's growth spurt (Tr. 908-938). In his opinion, the children were not getting enough calories in the care of their parents (Tr. 942).

Nathan testified that the family was vegetarian – it was “in their religion” (Tr. 694). They mostly ate two meals a day; breakfast and supper (Tr. 694). They ate raw grains and cooked grains, and sometimes soy milk in the mornings (Tr. 695-697). When they were on restriction, they were not allowed to have sweets or extras like chips, dried fruit and salsa – this punishment was for disobedience or lying (Tr. 698).

Nathan said that his father and his grandfather were pretty skinny (Tr. 717). The entire family followed the same diet (Tr. 719). On a regular day, the family's diet might include fruit, chips and salsa, candy, popcorn, tortillas, beans, rice, vegetables both fresh and canned, soy meat, cheese, yogurt, soy milk, pasta – lasagna or spaghetti (Tr. 759-763). The grains and vegetables and pasta, tortillas, beans and rice were never taken away on restriction (Tr. 764).

Analysis

Peter Hansen was convicted of *knowingly inflicting cruel and inhuman punishment* on his son for feeding him the same healthy vegetarian diet that the entire family ate and for restricting him from treats as punishment. That Nathan was in the bottom five percent for weight of boys his age established nothing – so are one out of every twenty. The photos introduced into evidence look like a

healthy skinny child, who looks remarkably like the photos of his father at the same age (Exs. 36-40, L-O). Nothing the State adduced approaches “cruel and inhuman” punishment – let alone knowingly inflicting it. Even if Nathan was not getting enough to eat, “mere inattention or mistaken judgment resulting even in the death of another is not criminal unless the quality of the act makes it so.” *State v. Beach*, 329 S.W.2d 712 (Mo. 1959) (citation omitted).

The words “cruel and inhuman” have been held to have a settled common-law meaning, in general and common usage. *State v. Brown*, 660 S.W.2d 694, 698 (Mo. banc 1983). In reviewing whether the state has established cruel and inhuman punishment, a reviewing court does not have to dispense with common sense. *Silvey*, 980 S.W.2d at 107. The facts of *Silvey* itself involved paddling a child with a wooden paddle “like a ball bat” and striking the child’s bare buttocks “as hard as he could” numerous times, causing severe bruising. *Id.* This Court held that to rise to the level of cruel and inhuman punishment. *Id.*

Depriving a child of desserts and condiments while feeding him the same healthy vegetarian diet the rest of the family eats is not cruel and inhuman. Child abuse, manslaughter, and endangering convictions for this sort of charge are instead akin to literal malnutrition or intentional starvation. *See, State v. Fritsch*, 526 S.E.2d 451 (N.C. 2000) (seven-year-old weighed only 18 pounds at time of death, autopsy revealed that death was caused by “starvation malnutrition”); *Wilson v. State*, 570 S.E.2d 679 (Ga. App. 2002) (child severely malnourished, too weak to suck and had to be fed through a naso-gastric tube into his stomach,

and acquaintance of defendant testified that she had seen defendant feed her baby sugar water because she did not feel like “fooling with” the baby’s formula); *Buffington v. State*, 824 So.2d 576 (Miss. 2002) (child’s hair was falling out in patches due to malnourishment); *State v. Jackson* 419 So.2d 837 (La. 1982) (child had a markedly decreased subcutaneous fat content, a distended abdomen, as well as a marked non-responsiveness all of which indicated malnourishment for a period of some time); *Doe v. Department of Health and Welfare*, 163 P.3d 209 (Idaho 2007) (child had muscle wasting and was very weak, he lacked subcutaneous tissue, and his abdomen was protruding).

Compare those cases to this family’s life. The facts are not seriously in dispute – only their legal significance. Several church members and friends of the Hansens testified about the family and the children (Tr. 1025-1027, 1036). Donna Carnahan took the children out to lunch several times (Tr. 1027-1031). They never told her they wanted more, or said they did not get enough to eat at home (Tr. 1032). They ordered whatever they wanted (Tr. 1030).

Katheryn York was the associate director of the Path Finders club that the children attended (Tr. 1037). The club members were all vegetarian (Tr. 1041). They do a lot of hiking and camping (Tr. 1038). Nathan and Sierra never missed one, and did all the physical activities (Tr. 1040-1041). A couple of weeks before Thanksgiving, Bobbie Jo Hartman took Nathan and Sierra on a fifteen mile bike ride, and had a hard time keeping up with the kids (Tr. 1064-1065). Richard Williams saw the children outside on their bikes the day before the police came,

which he remembered because the children invited him to Thanksgiving dinner (Tr. 1074-1076).

Geoffrey Haefel was a church member who dropped in to visit three or four times a month, and sometimes ate with the family (Tr. 1082-1084). He said “Melissa was always cooking” – brown rice casseroles with broccoli and onions and mushrooms – “that sort of thing” (Tr. 1084). He ate with them two or three times, and the children ate more than the adults (Tr. 1085).

Jodi Cooper interacted with the family on a weekly basis (Tr. 1102). She took Nathan and Sierra out on a food drive for the Path Finders with her own children (Tr. 1102-1105). They had a restriction on their sweets that day (Tr. 1105). They never indicated they were not getting enough to eat at home; they both looked healthy, happy and glowing (Tr. 1106, 1109, 1115). Gail Burnett also ate with the family on a couple of occasions – once was a cheese and broccoli casserole and the other time was chili (Tr. 1124-1125). The kids ate as much as they wanted (Tr. 1125).

The State failed to prove Count II beyond a reasonable doubt. The jury even acquitted Peter on the same evidence on a similar charge as to Sierra – apparently because Nathan had a bigger growth spurt than she after they were removed from the home (Tr. 938). The charge was specious. This Court should reverse Peter’s conviction of abuse of a child under Count II and discharge him.

II.

The trial court in overruling defense counsel’s motion for judgment of acquittal and sentencing Peter for abuse of a child (Count I), because this violated his right to due process of law guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, Section 10 of the Missouri Constitution, in that the state’s evidence failed to establish beyond a reasonable doubt that Peter knowingly inflicted cruel and inhuman punishment upon Nathan by “restricting him to a cold bathroom without light, which was too small for [him] to stretch out, for hours at a time.”

Standard of review

The due process clause protects a defendant against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged. *In re Winship*, 397 U.S. 358, 364 (1970). In reviewing a challenge to sufficiency of the evidence, this Court accepts as true all evidence and its inferences in a light most favorable to the verdict. *State v. Botts*, 151 S.W.3d 372, 375 (Mo. App., W.D. 2004). This Court disregards contrary inferences, unless they are such a natural and logical extension of the evidence that a reasonable juror would be unable to disregard them. *State v. Grim*, 854 S.W.2d 403, 411 (Mo. banc 1993). But this Court may not supply missing evidence, or give the State the benefit of unreasonable, speculative or forced inferences. *State v. Whalen*, 49 S.W.3d 181, 184 (Mo. banc 2001).

Abuse of a child

A person commits the crime of abuse of a child if he knowingly inflicts cruel and inhuman punishment upon a child less than seventeen years old. *State v. Silvey*, 980 S.W.2d 103 (1998); Section 568.060. Peter was charged in Count I of the information with committing child abuse of Nathan by “restricting him to a cold bathroom without light, which was too small for [him] to stretch out, for hours at a time.” (L.F. 14). While this may not be the best parenting technique, it still does not rise to the level of cruel and inhuman punishment, and the conviction should be reversed.

In the church fellowship hall where the family lived, Peter and Melissa used a small classroom for a bedroom, with an air mattress on the floor (Tr. 456). They put five-foot wall partitions between Nathan and Sierra in the main room, with an air mattress on either side for their sleeping arrangements (Tr. 456). They disciplined the children by taking away sweets and garnishes on their food, and when that did not work, the children were isolated from the rest of the family, sometimes within the walls of the partitions in the fellowship hall and sometimes in one of the bathrooms (Tr. 1224-1228).

On the day before Thanksgiving, Springfield police accompanied a Children’s Division investigator to the church at 5:46 p.m. on a call of possible child abuse (Tr. 320-324, 419-423, 576-583). It was a cool evening; Melissa Hansen answered the door of the fellowship hall building (Tr. 326-328, 424-425,

583). The church sanctuary building next to it was completely dark (Tr. 324, 326, 425).

Melissa said Sierra was in the partitioned area, and Peter and Nathan were out of town working on a construction project (Tr. 330-331, 584-585). The investigators went to the partitioned cubicle, where Sierra was sitting at a desk working (Tr. 332-337, 586). They asked Sierra about her living conditions and discipline (Tr. 343). Sierra said that she was disciplined for doing poorly on homework or misbehaving (Tr. 344). She thought her parents were too strict (Tr. 344). Her discipline was primarily isolation from the rest of the family, and on one occasion she had been spanked with a belt (Tr. 344). When they were isolated, Sierra was put in the cubicle and Nathan in a bathroom (Tr. 589).

Sierra told the investigators that Nathan was in the building next door (Tr. 344-345). The investigators asked Melissa if Nathan was actually there, and Melissa led them to the sanctuary building (Tr. 346, 591). Melissa called to Nathan as they entered the building, which was heated to about 54 or 58 degrees (Tr. 349, 360, 426). Melissa led them to the bathroom (Tr. 351-352, 428, 592-593).

Nathan looked as if he had been sleeping (Tr. 594). He was dressed in flannel pajamas and a long sleeve t-shirt (Tr. 355, 595). He had an outdoor weight sleeping bag and a foam pallet and pillow on the floor of the bathroom, some books, utensils, and dishes (Tr. 352-355, 356-357, 429, 565, 594). The bathroom

was about six by seven, or five by six (Tr. 359).⁶ Nathan was polite and talkative, and did not seem scared (Tr. 360). He said that he came out of the bathroom to do his homework, but then he was supposed to go back (Tr. 397).

Peter arrived while the investigators were talking to Nathan; when they asked Peter about Nathan's isolation, he said "it's like a hole for a 14-year-old and I'm okay with that" (Tr. 362-363). He said the children were bad and had bad attitudes; they were being punished (Tr. 598).

Sierra described "lockdown" in a CAC interview (Ex. 53). "We were not allowed to talk to anyone unless you had to get up to use the bathroom or get up and fill your water bottle, or something like that. There were these two walls behind me that I couldn't see anyone, and that was basically my lockdown." (Ex. 53 at 4:32). "Nathan's lockdown was first ... he would do his school. We had been locked in the bathroom, too. Not 'locked,' but put in the bathroom where we weren't allowed to come out. And we'd have to sit in darkness right after school was finished. After my brother was put in the bathroom, they decided that he should go into the church's furnace room to study, and he would go into the bathroom afterwards." (Ex. 53 at 4:57). "It was a punishment." (Ex. 53 at 5:30).

The last time she was in lockdown, "I had been in the bathroom, and my brother got in big trouble. So, they had me come out, and they put the walls

⁶ An officer testified that it did not look as if Nathan could stretch all the way out comfortably (Tr. 429).

behind me. I had already been in the bathroom ... I was going on my third week. After I had been put inside the walls, I was told no communication, and my brother was put in what we called 'the hole.' After that, they decided to put my brother outside. After being put in my area for a week, they decided to let me out. It was only for the weekend, though. Monday afternoon, I was put back in because I was struggling with some math and English. After I was put in the lockdown again, that next Wednesday is when they came.” (Ex. 53 at 5:57).

“The bathroom was really small. I’m guessing it was probably 4x3. There was a toilet and sink in there so we could fill our water bottles. The second time I was put in there, because I had been put in there once before and we had an okay week, then I was put back in. So, that time they let me open the door for the night so I could stretch out, but I was told that I had to wait until everyone went to bed. I had to try to stay awake until they all went to bed to open my door. After that they were letting me come out for Fridays and stuff so we could work together. My dad would take me and Nathan- my mom would be cleaning the church- either I would still be in the bathroom, or I’d be outside w dad working.” (Ex. 53 at 7:05).

“Most of the time, we would get a few minutes to go outside unless it was really cold or raining. We would take thirty minute breaks outside almost every day. What she was having me do, before I came out with the walls behind me, she would have me run around the house for thirty minutes without stopping. Until after I got out of the bathroom, what we call “the hole”, she let me ride my bike or run for the rest of the time.” (Ex. 53 at 7:52).

“I would get my papers slid under the door, unless it was our English book which was really fat. She would open the door, set it on the counter, and turn around and walk out, normally slamming the door. ... I would knock on the door and say I’m finished, and I’d slide it under the door or I’d open the door quickly and put it outside the door. After all my school work was done, I would have to turn the light off and sit there on the hard floor and think about what I had done. It got pretty cold in there.” (Ex. 53 at 8:32, 8:45).

“We were able to take our water bottle in the hole, and that was pretty much it, except for school work. And then we were supposed to clear everything out, and then at bedtime, we quickly come out and get our bedding and lay it out in the bathroom. We just had a sleeping bag and a mat under us.” (Ex. 53 at 10:48). “They would always make me eat in the dark. They would get the food and put it all together in a little plastic dish.” (Ex. 53 at 11:02).

“We were only allowed to take our jackets in [the hole], but that was an ‘if you do’ thing: If you have your jacket, you could, but if you didn’t, ‘sorry.’” (Ex. 53 at 9:58). “The boards [the cubicle walls] we just basically called my room because it was pretty much like a little room, but it wasn’t very big, of course. The day you guys came, this lady named Brenda came by and I think she already knew about it, but I don’t know. I was just staying in the little area, and she came and said hi to me.” (Ex. 53 at 24:49). “That day I had my math and stuff in there .. pretty much all we would have in there was maybe our water bottle.” (Ex. 53 at 24:49, 27:54).

Sierra and Nathan both testified at Peter's trial. Sierra testified "the hole" was a small bathroom with a sink and toilet, where they would go if they lied or were disrespectful (Tr. 458). They would be in there all day and night, and do their schoolwork there (Tr. 460).

Nathan testified that he had been locked in the bathroom five or six times – it was called "the hole" (Tr. 678). He said the first time he was put in the bathroom was in the fellowship hall (Tr. 678). It was 5 x 4 with a sink and a toilet, and it was not big enough to lie down in (Tr. 679). He had to do his homework and sleep and eat in there (Tr. 679). After he was done with his homework he just had to sit and think, and they would turn off the light to save electricity (Tr. 680-681). He was usually allowed to turn on the light to eat (Tr. 681-682). He slept in the bathroom with a sleeping bag (Tr. 682). He was allowed to go outside and ride his bicycle or roller blade for fifteen to thirty minutes (Tr. 683). He was in there one day and a night; on a second occasion he was in there two days and two nights (Tr. 684).

When he was thirteen or fourteen he was put in the sanctuary bathroom, which was about the same size, but colder (Tr. 685-686). He was not allowed to keep his coat with him, and he had the sleeping bag only at night (Tr. 686). Sometimes he did his homework in the bathroom, and sometimes in the sanctuary utility room (Tr. 687). The last time he was in there was one and a half to two weeks, when the police came and got him the day before Thanksgiving (Tr. 689). When he was done doing his homework in the utility room, he would go back to

the bathroom and sit and think in the dark (Tr. 689). He was allowed out for physical activity for fifteen to thirty minutes a day (Tr. 690). Nathan testified that being in the hole made him “worried and angry.” (Tr. 694). Peter agreed that he had put the children in isolation for punishment, including confining Nathan to the bathroom (Ex. 51 at 5:13).

Even if this confinement was poor parenting, it was not cruel and inhuman punishment. As more fully discussed in Point I, “mere inattention or mistaken judgment ... is not criminal unless the quality of the act makes it so.” *State v. Beach*, 329 S.W.2d 712 (Mo. 1959) (citation omitted). The words “cruel and inhuman” have been held to have a settled common-law meaning, in general and common usage. *State v. Brown*, 660 S.W.2d 694, 698 (Mo. banc 1983). In reviewing whether the state has established cruel and inhuman punishment, a reviewing court does not have to dispense with common sense. *Silvey*, 980 S.W.2d at 107. The facts of *Silvey* itself involved paddling a child with a wooden paddle “like a ball bat” and striking the child’s bare buttocks “as hard as he could” numerous times, causing severe bruising. *Id.* This Court held that to rise to the level of cruel and inhuman punishment. *Id.*

In *State v. Poehnelt*, 722 P.2d 304 (Ariz. App. 1985), the defendant was convicted of child abuse where the child was frequently bound and gagged “hog-tied” in a hotel room when her parents went out. This case, however, is more akin to sending a child to his room for punishment. Because the Hansens were living in a church fellowship hall, they isolated the children in whatever way they could –

behind partitions, in a bathroom, in a furnace room. This was not cruel and inhuman punishment. They could have a jacket; they could have a sleeping bag and a mat; they could go out and ride their bikes and do their homework. Certainly, they did not like sitting in the dark and contemplating their transgressions. This does not make it child abuse.

The State failed to prove Count I beyond a reasonable doubt. The jury even acquitted Peter on the same evidence on a similar charge as to Sierra – apparently because Sierra was in a cubicle rather than a bathroom when the police arrived (Tr. 586, 591-593). This Court should reverse Peter’s conviction of abuse of a child under Count I and discharge him.

CONCLUSION

For the reasons presented, appellant respectfully requests that this Court reverse his convictions and discharge him.

Respectfully submitted,

/s/ Ellen H. Flottman

Ellen H. Flottman, MOBar #34664
Attorney for Appellant
Woodrail Centre, 1000 W. Nifong
Building 7, Suite 100
Columbia, Missouri 65203
Telephone: (573) 882-9855, ext. 323
FAX: (573) 884-4793
E-mail: Ellen.Flottman@mspd.mo.gov

Certificate of Compliance and Service

I, Ellen H. Flottman, hereby certify to the following. The attached brief complies with the limitations contained in Rule 84.06(b). The brief was completed using Microsoft Word in Times New Roman size 13 point font. Excluding the cover page, the signature block, this certificate of compliance and service, and appendix, the brief contains 8,649 words, which does not exceed the 31,000 words allowed for an appellant's brief.

On this 21st day of May, 2013, electronic copies of Appellant's Brief and Appellant's Brief Appendix were placed for delivery through the Missouri e-Filing System to Shaun Mackelprang, Assistant Attorney General, at Shaun.Mackelprang@ago.mo.gov.

/s/ Ellen H. Flottman

Ellen H. Flottman