IN THE
SUPREME COURT OF MISSOURI

STATE OF MISSOURI,	)	
	)	
Respondent,	)	
	)	
vs.	)	No. SC94210
	)	
	)	
PETER HANSEN,	)	
Appellant.	)	

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

APPELLANT'S SUBSTITUTE REPLY BRIEF

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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. This cause was transferred by this Court after opinion by the Southern District Court of Appeals; therefore this Court has jurisdiction. Rule 83.04 and Article V, Section 9, Mo. Const. (as amended 1976).

[1] Statutory citations are to RSMo 2000.

STATEMENT OF FACTS

Appellant adopts and incorporates by reference the Statement of Facts from his original brief.

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.

Respondent's brief focuses several pages on public policy – analyzing generally whether withholding food from a child can constitute child abuse (Resp. br. 22-27). But of course it can; both respondent and appellant have cited myriad cases in which withholding food has risen to the level of knowingly inflicting cruel and inhuman punishment. That does not answer the question before this Court: under the facts of this case, did Peter Hansen knowingly inflict cruel and inhuman punishment upon Nathan by restricting food from him. The answer is no.

Respondent notes that appellant has not cited any case in which a conviction for child abuse under Section 568.060 has been reversed for insufficient evidence, and cites many of the cases appellant has cited where appellate courts have rejected sufficiency challenges (Resp. br. 22). Respondent

takes appellant to task for discussing all of the cases in which the actions of the defendant were *worse* than appellant's (Resp. br. 22). But that is actually the point. It is noteworthy that respondent has similarly not cited any cases in which the level of discipline involved in this case has resulted in a conviction of child abuse.[2]

Furthermore, appellant is aware of several Missouri cases in which the state's overcharging "bad parenting" has resulted in the reversal of convictions for endangering the welfare of a child. *See,* ***State v. Johnson***, 344 S.W.3d 884 (Mo. App., E.D. 2011) (evidence that defendant left her three children at the park in the care of their thirteen-year-old sister while defendant went to the emergency room did not support conviction of endangering welfare of child); ***State v. Wilson***, 920 S.W.2d 177 (Mo. App., W.D. 1996) (evidence that defendant did not seek medical treatment for child with multiple bruises and bite injuries did not support

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[2] Respondent lists a number of facts from the record in support of its position, including that Nathan ate the same items on restriction as he did on other occasions except for dried fruits, cheese, chips and salsa (Resp. br. 16, citing Tr. 699-700); and that Nathan was never given ice cream (Resp. br. 18, citing Tr. 697). Respondent also misstates the record in discussing "the family's normal, two- or three-meals-per-day, low-calorie vegetarian diet" (Resp. br. at 8), when it was clear from the transcript that the family typically ate two meals a day and three meals were exceptional (Tr. 694-698).

conviction of endangering welfare of child); ***State v. Hunter***, 939 S.W.2d 542 (Mo. App., E.D. 1997) (evidence that defendant forced six-year-old child to drink small glass of malt liquor did not support conviction for endangering welfare of child). *See also,* ***State v. Riggs***, 2 S.W.3d 867 (Mo. App., W.D. 1999) (conviction of involuntary manslaughter reversed where defendant left her four-year-old and two-year-old playing on steps of mobile home; two-year-old drowned in pond 80 feet away). This is, in fact, a national trend. http://www.cnn.com/2014/07/31/living/florida-mom-arrested-son-park/ ; http://www.slate.com/blogs/xx_factor/2014/07/15/debra_harrell_arrested_for_letting_her_9_year_old_daughter_go_to_the_park.html .

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."

Again, the question is factual: was this cruel and inhuman punishment such that the issue should have properly gone before a jury? Respondent asserts that being confined to a cold bathroom with a sleeping bag with breaks for study and exercise is sufficient. The evidence in this case does not bear this out.

Appellant refers this Court to the "bad parenting" cases cited in Point I, *supra*. In ***State v. Johnson***, 344 S.W.3d 884 (Mo. App., E.D. 2011), the Court of Appeals reversed a conviction of endangering the welfare of a child where a police officer similarly thought children were not dressed warmly enough for the conditions. The police officer testified that the children were left at the park in light jackets with no hats and gloves for several hours in the mid-thirties; one of the children testified it was in the mid-fifties. ***Id.*** at 886, n. 2. As noted in Point I,

Ms. Johnson had left her children at the park under the care of their thirteen-year-old sister for several hours while she went to the emergency room. ***Id***. at 885.

In reviewing whether the state has established cruel and inhuman punishment, this Court does not have to dispense with common sense. ***State v. Silvey***, 980 S.W.2d 103, 107 (Mo. App., S.D. 1998). This Court should reverse Peter's convictions 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,

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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, and this certificate of compliance and service, the brief contains 1,137 words, which does not exceed the 7,750 words allowed for a reply brief.

On this 3rd day of September, 2014, an electronic copy of Appellant's Substitute Reply Brief was served through the Missouri e-Filing System on Evan Buchheim and Todd Smith, Assistant Attorneys General.

/s/ Ellen H. Flottman

Ellen H. Flottman