

FILED  
Court of Appeals  
Division II  
State of Washington  
10/2/2020 8:00 AM

No. 54103-3-II

IN THE COURT OF APPEALS, DIVISION II  
THE STATE OF WASHINGTON

---

STATE OF WASHINGTON,  
Respondent,

v.

GUANG ZHENG, et al.,  
Appellants.

---

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

Cause Nos. 18-1-01011-1 and 18-1-01012-0

The Honorable Kitty-Ann van Doorninck

---

REPLY BRIEF OF APPELLANT

---

JOHN M. SHEERAN  
Attorney for Appellant Zheng  
WSBA #26050

705 South Ninth Street, Suite 202  
Tacoma, Washington 98405  
(253)468-9794

TABLE OF CONTENTS

A. ARGUMENT IN REPLY ..... 1

    1. THE STATE HAS FAILED TO EXPLAIN  
    HOW THE STATUTE’S CLEAR LANGUAGE  
    OF RCW 18.108.035 IS INAPPLICABLE  
    TO APPELLANTS. ....1

    2. CONTRARY TO THE STATE’S ASSERTION,  
    THE MEDICAL FIELD IS REGULATED BY  
    RCW 18.130 .....3

B. CONCLUSION.. ..... 4

TABLE OF AUTHORITIES

Washington Supreme Court Decisions

*Martin v. Triol*, 121 Wash.2d 135, 847 P.2d 471 (1993) .....2  
*State v. Cann*, 92 Wash.2d 193, 595 P.2d 912 (1979).....1

Statutes

RCW 9A.08.....2  
RCW 18.71.....4  
RCW 18.108.035.....1, 2, 3  
RCW 18.130.040 .....3,4  
RCW 18.130.190 .....1, 2

A. ARGUMENT IN REPLY

1. THE STATE HAS FAILED TO EXPLAIN HOW THE STATUTE'S CLEAR LANGUAGE OF RCW 18.108.035 IS INAPPLICABLE TO APPELLANTS.

RCW 18.108.035 states:

The following penalties **must** be imposed upon an owner of a massage business or reflexology business where the unlicensed practice of massage therapy or reflexology has been committed:

(1) Any person who with knowledge or criminal negligence allows or permits the unlicensed practice of massage therapy or reflexology to be committed within his or her massage business or reflexology business by another is guilty of a misdemeanor for a single violation.

(2) Each subsequent violation, whether alleged in the same or in subsequent prosecutions, is a gross misdemeanor punishable according to chapter 9A.20 RCW.

Emphasis added.

It is not disputed that the appellants were the owners of Treat Your Feet. RP 65. Nor is it in dispute that Treat Your Feet was a massage business. The statute specifically states that “the following penalties *must* be imposed upon an owner of a massage business.” The Legislature has created a statute that is specific to owners, and the State is obligated to prosecute cases pursuant to the statutes created for specific circumstances. *State v. Cann*, 92 Wash.2d 193, 196, 595 P.2d 912 (1979).

If this court agrees with the State and concludes RCW 18.108.035 is not a more specific statute that is concurrent with the general statute of RCW 18.130.190(7), the State's argument nonetheless fails. The State concedes that appellants were charged as accomplices to the principles who were engaged in massage at Treat Your Feet. This means that the State alleged appellants were acting with knowledge. Washington's accomplice liability statute has a mens rea of "knowingly":

A person is an accomplice of another person in the commission of a crime if:  
(a) With knowledge that it will promote or facilitate the commission of the crime, he or she:  
(i) Solicits, commands, encourages, or requests such other person to commit it; or  
(ii) Aids or agrees to aid such other person in planning or committing it;

RCW 9A.08.020.

The legislature is presumed to know the law when it writes new law. *See Martin v. Triol*, 121 Wash.2d 135, 148, 847 P.2d 471 (1993)(Legislature presumed to have full knowledge of existing laws affecting matters upon which they act). As noted in appellants' opening brief, RCW 18.108.035 was written years after RCW 18.130.

Because appellants were charged as accomplices, and knowingly is the mens rea of accomplice liability, the more specific statute (RCW 18.108.035) that has a mens rea of knowingly applies. This is evident when taking note that RCW

18.130.190 is a strict liability crime, and the mens rea is only applicable in this case as a result of the appellants being charged as accomplices.

If the legislature wanted to hold massage business owners, who did not actually give massages liable for felony convictions, it would have left the mens rea of knowingly out of the newer RCW 18.108.035. If it had left knowingly out of RCW 18.108.035, and only included the mens rea of negligently in that statute, then the State could charge defendants who acted knowingly under RCW 18.130.190.

When the explicit punishment language of the statute is taken into account (“the following penalties must be imposed upon an owner”), along with the inclusion of the mens rea of “knowingly” it is clear that the legislature intended to punish owners of massage businesses pursuant to the penalty provisions of RCW 18.108.035.

## 2. CONTRARY TO THE STATE’S ASSERTION, THE MEDICAL FIELD IS REGULATED BY RCW 18.130

The State asserts that “medicine is not regulated by Chapter RCW 18.130.” This is simply incorrect. RCW 18.130.040(1) states: “This chapter applies only to the secretary and the boards and commissions having jurisdiction in relation to the professions licensed under the chapters specified in this

section.”

RCW 18.130.040(2)(b) states: “The boards and commissions having authority under this chapter are as follows: . . . (ix) The Washington medical commission as established in chapter 18.71 RCW governing licenses and registrations issued under chapters 18.71 and 18.71A RCW”. The Washington medical commission, established under RCW 18.71, regulates and licenses people who practice medicine. RCW 18.71.011.

## B. CONCLUSION

For the reasons outlined in appellant’s opening brief and this reply brief, the convictions must be overturned.

Dated: October 1, 2020

*John M. Sheeran*

---

John M. Sheeran, WSBA # 26050  
Attorney for Guang Zheng

## CERTIFICATE OF MAILING

I certify that on 10/1/2020, I caused to be placed in the mails of the United States, first class postage pre-paid, a copy of this document addressed to: Guang Zheng  
6588 Serenity Loop Rd NW  
Gig Harbor, WA 98335

*John M. Sheeran*

---

John M. Sheeran, WSBA # 26050

**LAW OFFICES OF JOHN SHEERAN**

**October 01, 2020 - 7:01 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 54103-3  
**Appellate Court Case Title:** State of Washington, Respondent v. Guang Zheng, et al., Appellants  
**Superior Court Case Number:** 18-1-01011-1

**The following documents have been uploaded:**

- 541033\_Briefs\_20201001185814D2170576\_3301.pdf  
This File Contains:  
Briefs - Appellants Reply  
*The Original File Name was Zheng Reply Brief.pdf*

**A copy of the uploaded files will be sent to:**

- PCpatcecf@piercecountywa.gov
- doug@kmhlaw.com
- teresa.chen@piercecountywa.gov
- william@crossborders.us
- william@fricklawfirm.info

**Comments:**

---

Sender Name: John Sheeran - Email: john.sheeran327@gmail.com  
Address:  
705 S 9TH ST STE 202  
TACOMA, WA, 98405-4622  
Phone: 253-468-9794

**Note: The Filing Id is 20201001185814D2170576**