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Court of Appeals
Division III
State of Washington
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NO. 37242-1-III

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON,

Respondent,

v.

EDWARD CRUZ,

Appellant.

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

The Honorable Carrie Runge, Judge

REPLY BRIEF OF APPELLANT

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A. ARGUMENT IN REPLY

Neither the statutes nor the case law cited by the prosecution establish that an EMT in Washington can only be certified under chapter 18.73 RCW.

The prosecution cites the suppression provision, RCW 18.73.020, in an attempt to argue Willette had to be certified under chapter 18.73 RCW “in order to work as an EMT for the [City of] Richland.” Br. of Resp’t, 3-4. Not so.

Contrary to the prosecution’s claims, RCW 18.73.020 merely establishes a floor for regulating emergency medical care (much like, for instance, the Fourth Amendment establishes a floor for unreasonable searches and seizures, with the states free to guarantee greater protection). RCW 18.73.020 specifies the legislature’s intent to supersede all local regulations only “insofar as” they “do not exceed the provisions of this chapter.”¹ Thus, the suppression provision does not prohibit local regulations from *exceeding* chapter 18.73 RCW, except for license fees. Nothing in

¹ RCW 18.73.020 also applies only to local regulations “promulgated by counties, cities and other political subdivisions *of the state of Washington.*” (Emphasis added.) Of course, Willette never testified he was certified by the State of Washington, only that he was a certified EMT. 2RP 3-10.

the text of RCW 18.73.020 establishes EMTs must be certified pursuant to that chapter.

Indeed, another provision of chapter 18.73 RCW suggests just the opposite. As Cruz pointed out in his opening brief, RCW 18.73.030(12) defines an EMT to include a person authorized, “under the responsible supervision and direction of an approved medical program director, to participate in a community assistance referral and education services program established under RCW 35.21.930 if the participation does not exceed the participant’s training and certification.” Br. of Appellant, 8. By the plain language of this definition, an EMT can include a person not certified under chapter 18.73 RCW. Notably, the prosecution does not address this definition of EMT in its response brief.

Cruz has no quibble with the prosecution’s point that Willette was providing emergency medical services, as defined by RCW 18.73.030(10). Br. of Resp’t, 4. But the relevant question is whether Willette was certified under chapter 18.73 RCW, an essential element of third degree assault of a health care provider. State v. Gray, 124 Wn. App. 322, 325, 102 P.3d 814 (2005). The

definition of emergency medical services, or whether Willette was providing such services, does not answer that question.

The prosecution's attempt to distinguish Gray is unpersuasive and, furthermore, incorrect. The nursing assistant in Gray testified she was certified by the State of Washington. 124 Wn. App. at 325. The prosecution acknowledges chapter 18.79 RCW provides for certification of licensed practical nursing assistants, just like chapter 18.73 RCW provides for certification of EMTs. Br. of Resp't, 4. Yet the Gray court still found insufficient evidence that the nursing assistant "was indeed certified under Title 18 RCW," as required by RCW 9A.36.031(1)(i). Gray, 124 Wn. App. at 325.

The prosecution seems to suggest the nursing assistant in Gray may have actually been a nursing technician, a role that does not require certification. Br. of Resp't, 5. But such an interpretation is at odds with the nursing assistant's testimony that she was certified by the State. Gray, 124 Wn. App. at 325.

Willette's testimony falls short even of the inadequate testimony in Gray. Willette did not testify he was certified *by the State of Washington*—as the nursing assistant did in Gray—only

that he was a certified EMT. 2RP 3. Under the controlling decision in Gray, this is inadequate to establish Willette was “a person *certified under chapter 18.71 or 18.73 RCW* who performs emergency medical services.” RCW 9A.36.031(1)(i) (emphasis added). Particularly so where chapter 18.73 RCW does not provide for the exclusive means of EMT certification. See RCW 18.73.030(12) (defining EMT).

Accordingly, there is insufficient to sustain Cruz’s conviction for third degree assault of a health care provider, where the prosecution failed to prove Willette was a health care provider within the meaning of RCW 9A.36.031(1)(i).

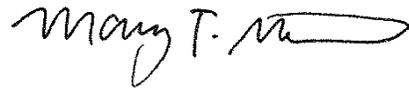
B. CONCLUSION

For the reasons discussed here and in the opening brief, this Court should reverse Cruz’s conviction for insufficient evidence and remand for dismissal of the charge with prejudice. Alternatively, this Court should accept the prosecution’s concession to amend the judgment and sentence, striking community supervision fees and specifying Cruz’s legal financial obligations may not be satisfied from his federal SSI.

DATED this 21st day of September, 2020.

Respectfully submitted,

NIELSEN KOCH, PLLC

A handwritten signature in black ink, appearing to read "Mary T. Swift". The signature is written in a cursive style with a horizontal line extending from the end of the name.

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