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Division III
State of Washington
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No. 37242-1-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON,

Respondent

v.

EDWARD RAYMOND CRUZ,

Appellant

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

NO. 19-1-00792-03

BRIEF OF RESPONDENT

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I. RESPONSE TO ASSIGNMENTS OF ERROR

- A. The State disagrees that there was insufficient evidence the victim of the assault was a health care provider.
- B. The State agrees with the defendant that boilerplate language in the Judgment and Sentence regarding paying supervision fees should be struck and a provision can be inserted that the legal financial obligations will not be satisfied out of funds subject to 42 USC 407 (a) (social security disability payments).

II. STATEMENT OF FACTS

There is no question the defendant assaulted Christopher Willette by pushing him: a police officer saw the push, a TV news reporter caught the assault on video, and Mr. Willette himself stated he saw the defendant shove him. RP 10/07/19 at 12, 18; RP 10/08/19 at 5; see Exhibit 1.

There is no question that Mr. Willette was acting as an emergency medical technician at the time. RP 10/08/19 at 6. He had responded to a park for a water rescue call. RP 10/08/19 at 4. He saw a gentleman on the far side of the river and went with some others in a boat to provide assistance. *Id.* Once back on the dock, they started walking to the ambulance when the defendant pushed him “out of nowhere.” RP 10/08/19 at 5.

The defendant waived a jury, and the only issue both at trial and on appeal is whether the State sufficiently proved Mr. Willette was a “health care provider” as defined in RCW 9A.36.031 (1)(i). CP 5. Concerning that issue, Mr. Willette testified he is employed by the City of Richland as a Firefighter/ Emergency Medical Technician, that he is a certified medical technician and his certification was valid on the date of the crime, July 3, 2019. RP 10/08/19 at 3. The trial court found the defendant guilty of Assault in the Third Degree and this appeal followed.

III. ARGUMENT

A. The State proved Mr. Willette was a health care provider under RCW 9A.36.031 (1)(i).

1. Standard on review:

To determine whether sufficient evidence supports a conviction, courts view the evidence in the light most favorable to the State and determine whether any rational fact finder could have found the elements of the crime beyond a reasonable doubt. Evidence sufficiency challenges admit the truth of the State’s evidence and all reasonable inferences that can be drawn from it. Reviewing courts defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. Following a bench trial, appellate review is limited to determining whether substantial evidence supports the findings of fact and, if so, whether the findings support the conclusions of law.

Substantial evidence is evidence sufficient to persuade a fair-minded, rational person of the finding's truth. *State v. Stewart*, 12 Wn. App. 2d 236, 239-40, 457 P.3d 1213 (2020).

2. Under the statutory scheme, it was a reasonable inference to conclude that Mr. Willette was certified as a health care provider under RCW 18.73.

The statute under which the defendant was charged, RCW 9A.36.031 (1)(i) states,

A person is guilty of assault in the third degree if he or she . . . (i) assaults a . . . health care provider who was performing his or her . . . health care duties at the time of the assault. For purposes of this subsection: . . . “health care provider” means a person certified under chapter 18.71 or 18.73 RCW who performs emergency medical services”

RCW 18.71 is titled “Physicians” and is not applicable. RCW 18.73 is titled “Emergency Medical Care and Transportation Services” and is applicable to Mr. Willette.

RCW 18.73.020, states the following

Supersession of Local Regulation.

The legislature further declares its intention to supersede all ordinances, regulations, and requirements promulgated by counties, cities and other political subdivisions of the state of Washington, insofar as they may provide for the regulation of emergency medical care, first aid, and ambulance services which do not exceed the provisions of this chapter; except that (1) license fees established in this chapter shall supersede all license fees of counties, cities and other political subdivisions of this state; and, (2) nothing in this chapter shall alter the provisions of RCW 18.71.200, 18.71.210, and 18.71.220.

Therefore, as an emergency medical technician of the City of Richland, State of Washington, Mr. Willette would have to be certified under RCW 18.73. The trial court was correct to conclude that Mr. Willette was certified as a health care provider. If the City of Richland outsourced its EMT services to a private business, which then hired Mr. Willette, the defendant would have a good point. But based on the Supersession provision, Mr. Willette had to be certified by the State of Washington in order to work as an EMT for the Richland.

It is also clear he meets the definition of a provider of “emergency medical service under RCW 18.73.030 (10): “‘Emergency medical service’ means medical treatment and care which may be rendered at the scene of any medical emergency or while transporting any patient in an ambulance to an appropriate medical facility, including ambulance transportation between medical facilities.”

The statutory licensing scheme also played a key role in *State v. Gray*, 124 Wn. App. 322, 102 P.3d 814 (2004) and is the reason the defendant’s reliance on that case is misplaced. The victim in *Gray* was a “nursing assistant.” *Id.* at 323. “Nursing assistant” is not defined in RCW 18.79 and the State does not grant a license to a nursing assistant. RCW 18.79 provides for the licensing of a “licensed practical nursing assistant,”

RCW 18.79.030 (3), a “registered nurse,” RCW 18.79.030 (1), and an “advanced registered nurse practitioner,” RCW 18.79.030 (2). “Nursing technicians,” which include individuals enrolled in a nursing program, are required to register, but are not licensed by the State. RCW 18.79.340.

B. The State agrees to modify the Judgment and Sentence regarding legal financial obligations.

Upon remand the State will propose to amend the Judgment and Sentence as follows: to strike item 7 from Section 4.2 (B) and insert a statement that “The LFOs ordered herein may not be satisfied out of any funds subject to 42 USC 407 (a).” The statement is consistent with *State v. Catling*, 193 Wn.2d 252, 264, 438 P.3d 1174 (2019).

4.2 Community Custody. RCW 9.94A.505, .702.

(A) The defendant shall serve up to 12 months in community custody

(B) While on community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution (service); (3) notify DOC of any change in defendant’s address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while on community custody; (6) not own, use, or possess firearms or ammunition; ~~(7) pay supervision fees as determined by DOC;~~ (8) perform affirmative acts as required by DOC to confirm compliance with the orders of the court; and (9) abide by any additional conditions imposed by DOC under RCW 9.94A.704 and .706. The defendant’s residence location and living arrangements are subject to the prior approval of DOC while on community custody.

Any LFOs ordered herein may not be satisfied out of any funds subject to 42 USC 407 (a).

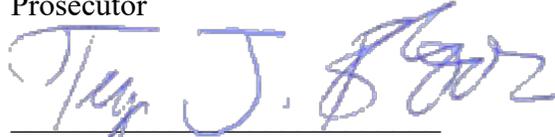
IV. CONCLUSION

The conviction should be affirmed. The State agrees to make the minor adjustments to the Judgment and Sentence regarding legal financial obligations.

RESPECTFULLY SUBMITTED on September 17, 2020.

ANDY MILLER

Prosecutor



Terry J. Bloor, Deputy

Prosecuting Attorney

Bar No. 9044

OFC ID NO. 91004

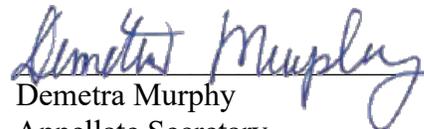
CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this day I served, in the manner indicated below, a true and correct copy of the foregoing document as follows:

Mary Swift
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Seattle, WA 98122

E-mail service by agreement
was made to the following
parties:
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Signed at Kennewick, Washington on September 17, 2020.


Demetra Murphy
Appellate Secretary

Appendices

Appendix A: RCW 9A.36.031 (1)(i)

Appendix B: RCW 18.73.020

Appendix C: RCW 18.73.030 (10)

Appendix D: RCW 18.79.030

Appendix E: RCW 18.79.340

Appendix A: RCW 9A.36.031 (1)(i)

RCW 9A.36.031**Assault in the third degree.**

(1) A person is guilty of assault in the third degree if he or she, under circumstances not amounting to assault in the first or second degree:

(a) With intent to prevent or resist the execution of any lawful process or mandate of any court officer or the lawful apprehension or detention of himself, herself, or another person, assaults another; or

(b) Assaults a person employed as a transit operator or driver, the immediate supervisor of a transit operator or driver, a mechanic, or a security officer, by a public or private transit company or a contracted transit service provider, while that person is performing his or her official duties at the time of the assault; or

(c) Assaults a school bus driver, the immediate supervisor of a driver, a mechanic, or a security officer, employed by a school district transportation service or a private company under contract for transportation services with a school district, while the person is performing his or her official duties at the time of the assault; or

(d) With criminal negligence, causes bodily harm to another person by means of a weapon or other instrument or thing likely to produce bodily harm; or

(e) Assaults a firefighter or other employee of a fire department, county fire marshal's office, county fire prevention bureau, or fire protection district who was performing his or her official duties at the time of the assault; or

(f) With criminal negligence, causes bodily harm accompanied by substantial pain that extends for a period sufficient to cause considerable suffering; or

(g) Assaults a law enforcement officer or other employee of a law enforcement agency who was performing his or her official duties at the time of the assault; or

(h) Assaults a peace officer with a projectile stun gun; or

(i) Assaults a nurse, physician, or health care provider who was performing his or her nursing or health care duties at the time of the assault. For purposes of this subsection: "Nurse" means a person licensed under chapter **18.79** RCW; "physician" means a person licensed under chapter **18.57** or **18.71** RCW; and "health care provider" means a person certified under chapter **18.71** or **18.73** RCW who performs emergency medical services or a person regulated under Title **18** RCW and employed by, or contracting with, a hospital licensed under chapter **70.41** RCW; or

(j) Assaults a judicial officer, court-related employee, county clerk, or county clerk's employee, while that person is performing his or her official duties at the time of the assault or as a result of that person's employment within the judicial system. For purposes of this subsection, "court-related employee" includes bailiffs, court reporters, judicial assistants, court managers, court managers' employees, and any other employee, regardless of title, who is engaged in equivalent functions; or

(k) Assaults a person located in a courtroom, jury room, judge's chamber, or any waiting area or corridor immediately adjacent to a courtroom, jury room, or judge's chamber. This section shall apply only: (i) During the times when a courtroom, jury room, or judge's chamber is being used for judicial purposes during court proceedings; and (ii) if signage was posted in compliance with RCW **2.28.200** at the time of the assault.

(2) Assault in the third degree is a class C felony.

[**2013 c 256 § 1**. Prior: **2011 c 336 § 359**; **2011 c 238 § 1**; **2005 c 458 § 1**; **1999 c 328 § 1**; **1998 c 94 § 1**; **1997 c 172 § 1**; **1996 c 266 § 1**; **1990 c 236 § 1**; **1989 c 169 § 1**; **1988 c 158 § 3**; **1986 c 257 § 6**.]

NOTES:

Effective date—1988 c 158: See note following RCW **9A.04.110**.

Severability—1986 c 257: See note following RCW **9A.56.010**.

Effective date—1986 c 257 §§ 3-10: See note following RCW **9A.04.110**.

Appendix B: RCW 18.73.020

RCW 18.73.020**Supersession of local regulation.**

The legislature further declares its intention to supersede all ordinances, regulations, and requirements promulgated by counties, cities and other political subdivisions of the state of Washington, insofar as they may provide for the regulation of emergency medical care, first aid, and ambulance services which do not exceed the provisions of this chapter; except that (1) license fees established in this chapter shall supersede all license fees of counties, cities and other political subdivisions of this state; and, (2) nothing in this chapter shall alter the provisions of RCW **18.71.200**, **18.71.210**, and **18.71.220**.

[**1986 c 259 § 118**; **1973 1st ex.s. c 208 § 2**.]

NOTES:

Severability—1986 c 259: See note following RCW **18.130.010**.

Appendix C: RCW 18.73.030 (10)

RCW 18.73.030

Definitions.

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Advanced life support" means invasive emergency medical services requiring advanced medical treatment skills as defined by chapter **18.71** RCW.

(2) "Aid service" means an organization that operates one or more aid vehicles.

(3) "Aid vehicle" means a vehicle used to carry aid equipment and individuals trained in first aid or emergency medical procedure.

(4) "Ambulance" means a ground or air vehicle designed and used to transport the ill and injured and to provide personnel, facilities, and equipment to treat patients before and during transportation.

(5) "Ambulance service" means an organization that operates one or more ambulances.

(6) "Basic life support" means noninvasive emergency medical services requiring basic medical treatment skills as defined in chapter **18.73** RCW.

(7) "Communications system" means a radio and landline network which provides rapid public access, coordinated central dispatching of services, and coordination of personnel, equipment, and facilities in an emergency medical services and trauma care system.

(8) "Council" means the local or regional emergency medical services and trauma care council as authorized under chapter **70.168** RCW.

(9) "Department" means the department of health.

(10) "Emergency medical service" means medical treatment and care which may be rendered at the scene of any medical emergency or while transporting any patient in an ambulance to an appropriate medical facility, including ambulance transportation between medical facilities.

(11) "Emergency medical services medical program director" means a person who is an approved medical program director as defined by RCW **18.71.205**(4).

(12) "Emergency medical technician" means a person who is authorized by the secretary to render emergency medical care pursuant to RCW **18.73.081** or, 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.

(13) "First responder" means a person who is authorized by the secretary to render emergency medical care as defined by RCW **18.73.081**.

(14) "Patient care procedures" means written operating guidelines adopted by the regional emergency medical services and trauma care council, in consultation with the local emergency medical services and trauma care councils, emergency communication centers, and the emergency medical services medical program director, in accordance with statewide minimum standards. The patient care procedures shall identify the level of medical care personnel to be dispatched to an emergency scene, procedures for triage of patients, the level of trauma care facility to first receive the patient, and the name and location of other trauma care facilities to receive the patient should an interfacility transfer be necessary. Procedures on interfacility transfer of patients shall be consistent with the transfer procedures in chapter **70.170** RCW.

(15) "Prehospital patient care protocols" means the written procedure adopted by the emergency medical services medical program director which direct the out-of-hospital emergency care of the emergency patient which includes the trauma care patient. These procedures shall be based upon the assessment of the patient's medical needs and what treatment will be provided for emergency conditions. The protocols shall meet or exceed statewide minimum standards developed by the department in rule as authorized in chapter **70.168** RCW.

(16) "Secretary" means the secretary of the department of health.

(17) "Stretcher" means a cart designed to serve as a litter for the transportation of a patient in a prone or supine position as is commonly used in the ambulance industry, such as wheeled stretchers, portable stretchers, stair chairs, solid backboards, scoop stretchers, basket stretchers, or flexible stretchers. The term does not include personal mobility aids that recline at an angle or remain at a flat position, that are owned or leased for a period of at least one week by the individual using the equipment or the individual's guardian or representative, such as wheelchairs, personal gurneys, or banana carts.

[**2015 c 93 § 5**. Prior: **2010 1st sp.s. c 7 § 25**; **2005 c 193 § 2**; **2000 c 93 § 16**; **1990 c 269 § 23**; **1988 c 104 § 3**; **1987 c 214 § 2**; **1983 c 112 § 5**; **1979 ex.s. c 261 § 1**; **1973 1st ex.s. c 208 § 3**.]

NOTES:

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW **43.03.027**.

Finding—2005 c 193: "The legislature finds that requiring all patients who need to travel in a prone or supine position but are medically stable, to be transported by ambulance can be overly restrictive to individuals with disabilities. These individuals frequently travel by means of reclining wheelchairs or devices commonly referred to as banana carts. Expanding travel options for these individuals will give them greater opportunities for mobility and reduce their costs of travel." [**2005 c 193 § 1**.]

Appendix D: RCW 18.79.030

RCW 18.79.030

Licenses required—Titles.

(1) It is unlawful for a person to practice or to offer to practice as a registered nurse in this state unless that person has been licensed under this chapter. A person who holds a license to practice as a registered nurse in this state may use the titles "registered nurse" and "nurse" and the abbreviation "R.N." No other person may assume those titles or use the abbreviation or any other words, letters, signs, or figures to indicate that the person using them is a registered nurse.

(2) It is unlawful for a person to practice or to offer to practice as an advanced registered nurse practitioner or as a nurse practitioner in this state unless that person has been licensed under this chapter. A person who holds a license to practice as an advanced registered nurse practitioner in this state may use the titles "advanced registered nurse practitioner," "nurse practitioner," and "nurse" and the abbreviations "A.R.N.P." and "N.P." No other person may assume those titles or use those abbreviations or any other words, letters, signs, or figures to indicate that the person using them is an advanced registered nurse practitioner or nurse practitioner.

(3) It is unlawful for a person to practice or to offer to practice as a licensed practical nurse in this state unless that person has been licensed under this chapter. A person who holds a license to practice as a licensed practical nurse in this state may use the titles "licensed practical nurse" and "nurse" and the abbreviation "L.P.N." No other person may assume those titles or use that abbreviation or any other words, letters, signs, or figures to indicate that the person using them is a licensed practical nurse.

(4) Nothing in this section shall prohibit a person listed as a Christian Science nurse in the Christian Science Journal published by the Christian Science Publishing Society, Boston, Massachusetts, from using the title "Christian Science nurse," so long as such person does not hold himself or herself out as a registered nurse, advanced registered nurse practitioner, nurse practitioner, or licensed practical nurse, unless otherwise authorized by law to do so.

[1997 c 177 § 1; 1994 sp.s. c 9 § 403.]

Appendix E: RCW 18.79.340

RCW 18.79.340**Nursing technicians.**

(1) "Nursing technician" means a nursing student employed in a hospital licensed under chapter **70.41** RCW, a clinic, or a nursing home licensed under chapter **18.51** RCW, who:

(a) Is currently enrolled in good standing in a nursing program approved by the commission and has not graduated; or

(b) Is a graduate of a nursing program approved by the commission who graduated:

(i) Within the past thirty days; or

(ii) Within the past sixty days and has received a determination from the secretary that there is good cause to continue the registration period, as defined by the secretary in rule.

(2) No person may practice or represent oneself as a nursing technician by use of any title or description of services without being registered under this chapter, unless otherwise exempted by this chapter.

(3) The commission may adopt rules to implement chapter 258, Laws of 2003.

[**2012 c 153 § 13; 2003 c 258 § 2.**]

NOTES:

Rules—2012 c 153: See note following RCW **18.360.005**.

Severability—Effective date—2003 c 258: See notes following RCW **18.79.330**.

BENTON COUNTY PROSECUTOR'S OFFICE

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