

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

TAMRA JO COOK,

Appellant.

No. 42817-2-II

UNPUBLISHED OPINION

Quinn-Brintnall, J.— A jury found Tamra Cook guilty of attempted third degree assault. Cook appeals her conviction, arguing that it is not supported by sufficient evidence.¹ We affirm.

Evidence is sufficient if, when viewed in a light most favorable to the prosecution, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). “A claim of insufficiency admits the truth of the State’s evidence and all inferences that reasonably can be drawn therefrom.” *Salinas*, 119 Wn.2d at 201. Circumstantial and direct evidence are equally reliable.

¹ A commissioner of this court initially considered Cook’s appeal as a motion on the merits under RAP 18.14 and then transferred it to a panel of judges.

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State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). Because it is the trier of fact's responsibility to resolve credibility issues and determine the weight of the evidence, we defer to it on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990); *State v. Walton*, 64 Wn. App. 410, 415-16, 824 P.2d 533, *review denied*, 119 Wn.2d 1011 (1992).

On August 24, 2011, Cook presented to the emergency department at St. Joseph's Hospital because she was having problems seeing out of one eye and felt pressure on one side of her head. She was concerned because she had had an aneurism in her brain repaired in 2005. She was seen briefly by a nurse and a doctor. The nurse returned with a Tylenol. Cook asked for a second opinion from another doctor and the nurse left. But instead of another doctor examining her, registered nurse Laline Angus entered Cook's room with discharge instructions. Cook started to shake her head no and to say no. When Angus told her that she had been medically cleared for discharge, Cook "started pounding her fists on her lap and screaming that she wanted to see a real doctor." 2 Report of Proceedings (RP) at 11. When Angus said security would have to be called if she did not leave, Cook stood up and started waving her fists. In waving her arms around, Cook struck Angus in the right eye. At that point, the charge nurse, John Galvin, came into the room and told Cook to stop. Galvin positioned himself between Cook and Angus. Cook then "started flailing" at Galvin and "looked like she was trying to hit" him. 2 RP at 56. He pushed Cook toward the wall and restrained her until security arrived.

The State charged Cook with third degree assault for striking Angus and with attempted third degree assault for attempting to strike Galvin. At the end of the State's case, Cook moved

to dismiss, arguing that Angus and Galvin were discharging her and were not “performing . . . health care duties at the time of the assault,” as required for third degree assault under RCW 9A.36.031(1)(i). Clerk’s Papers at 13. The trial court denied her motion. The jury found Cook not guilty of the third degree assault of Angus but guilty of the attempted third degree assault of Galvin. The court denied Cook’s motion to arrest the judgment.

For the jury to find Cook guilty of attempted third degree assault under RCW 9A.36.031(1)(i), the State must prove beyond a reasonable doubt that Cook “assault[ed] a nurse, physician, or health care provider who was performing his or her nursing or health care duties at the time of the assault.” Under that statute, “‘nurse’ means a person licensed under chapter 18.79 RCW.” RCW 9A.36.031(1)(i). Cook argues that the State failed to present sufficient evidence that Galvin was “a person licensed under chapter 18.79 RCW.” But he testified that he is a registered nurse. Under RCW 18.79.030(1), only a person licensed to practice as a registered nurse in the State of Washington may use the title “registered nurse.” Therefore, Galvin’s testimony that he was a registered nurse was sufficient evidence that he was “a person licensed under chapter 18.79 RCW.” Cook’s reliance on *State v. Gray*, 124 Wn. App 322, 323-25, 102 P.3d 814 (2004), is misplaced because the victim of the assault in that case was a nurse’s assistant, not a licensed nurse and, under RCW 9A.36.031(1)(i), the State must prove additional elements when the victim of the assault is a health care provider other than a nurse or a physician.²

² For the same reason, Cook’s argument that her trial counsel was ineffective in not requesting a jury instruction based on *Gray* fails. Instruction 15 required the jury to find beyond a reasonable doubt that Galvin was a nurse.

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The State presented sufficient evidence for the jury to find Cook guilty of attempted third degree assault. We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

QUINN-BRINTNALL, J.

We concur:

HUNT, P.J.

VAN DEREN, J.