

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

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NEW HAMPSHIRE
SUPREME COURT

2018 NOV 20 P 3:23

No. 2018-0031

State of New Hampshire

POSTED
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v.

Edward G. Proctor

Appeal Pursuant to Rule 7 from Judgment
of the Rockingham County Superior Court

REPLY BRIEF FOR THE DEFENDANT

Thomas Barnard
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(15 minutes oral argument)

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I. THE EVIDENCE WAS INSUFFICIENT TO PROVE THAT PROCTOR UNDERTOOK EMPLOYMENT INVOLVING THE CARE, INSTRUCTION OR GUIDANCE OF A CHILD.

In his opening brief, Proctor argues, among other things, that RSA 632-A:10, I, does not prohibit individuals with a qualifying conviction from hiring a minor teenager. DB* 10-12. The State argues, among other things, that even if Proctor is correct on this point, he still violated the statute. SB 14. According to the State:

It is clear that [Proctor] undertook employment when he agreed to provide landscaping services to the residence in Nor[th]wood. It is also clear that, as part of that employment, he hired [Bergeron], who he not only supervised, but drove to the work site. As a result, by undertaking the yard work, he assumed the care, instruction and guidance of [Bergeron].

SB. 14.

The record, however, does not indicate that anyone paid Proctor to perform landscaping services at the Northwood location. Bergeron testified that he performed yard work at “one of [Proctor’s] friend’s businesses,” T 31, which he later testified was in Northwood, T 73. There was no evidence that Proctor received any compensation for performing yard work at his friend’s business. Thus, there was no evidence that Proctor undertook employment in relation to that activity.

* Citations are as follows:
“DB” refers to the Proctor’s opening brief;
“SB” refers to the State’s brief;
“T” refers to trial, held on October 31, 2017.

Even if it is assumed that Proctor's friend hired Proctor to perform yard work at his business, there is no evidence that Proctor anticipated hiring a minor teenager at the time he undertook that employment.

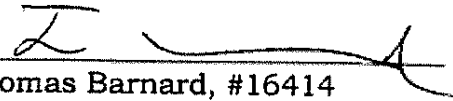
Even if it is assumed that Proctor's friend hired Proctor, and that Proctor, at the time he was hired, anticipated hiring a minor teenager, the statute still would not be satisfied. As Proctor argued in his opening brief, performing yard work is not an activity that, by its nature, provides access to children. DB 12-15.

CONCLUSION

WHEREFORE, Edward Proctor respectfully requests that this Court reverse.

Undersigned counsel requests fifteen minutes oral argument.


Respectfully submitted,

By 
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CERTIFICATE OF SERVICE

I hereby certify that two copies of the foregoing reply brief have been mailed, postage prepaid, to:

Elizabeth Woodcock
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Thomas Barnard

DATED: November 21, 2018