

Order

Michigan Supreme Court
Lansing, Michigan

March 27, 2019

Bridget M. McCormack,
Chief Justice

158013

David F. Viviano,
Chief Justice Pro Tem

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

Stephen J. Markman
Brian K. Zahra
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh,
Justices

v

SC: 158013
COA: 336673
Ingham CC: 15-000754-FH

XUN WANG,
Defendant-Appellant.

On order of the Court, the application for leave to appeal the May 10, 2018 judgment of the Court of Appeals is considered. We direct the Clerk to schedule oral argument on the application. MCR 7.305(H)(1). The appellant shall file a supplemental brief within 42 days of the date of this order addressing: (1) whether the statutory exception in MCL 333.16294 is an element of the offense for which the prosecutor has the burden of proof, see *People v Rios*, 386 Mich 172 (1971); but see *People v Langlois*, 325 Mich App 236 (2018); (2) if the statutory exception is an element of the offense, whether the Court of Appeals erred in holding that the evidence was sufficient to sustain the defendant's conviction under MCL 333.16294 and specifically, whether the Court of Appeals erred in concluding that the defendant's actions were consistent with the practice of medicine and therefore could not be delegated to her under MCL 333.16215; and (3) if the statutory exception is not an element of the offense, whether defense counsel was ineffective for failing to raise a delegation defense and bring the relevant statutory provisions to the trial court's attention. In addition, the appellant shall address whether the evidence was sufficient to sustain the defendant's convictions under MCL 400.607(1), and specifically whether the evidence was sufficient to show that the defendant was in possession of facts under which she was aware or should have been aware that her conduct was substantially certain to cause the payment of a Medicaid benefit. See MCL 400.602(f).

In addition to the brief, the appellant shall electronically file an appendix conforming to MCR 7.312(D)(2). In the brief, citations to the record must provide the appendix page numbers as required by MCR 7.312(B)(1). The appellee shall file a supplemental brief within 21 days of being served with the appellant's brief. The appellee shall also electronically file an appendix, or in the alternative, stipulate to the use of the appendix filed by the appellant. A reply, if any, must be filed by the appellant within 14 days of being served with the appellee's brief. The parties should not submit mere restatements of their application papers.

The Prosecuting Attorneys Association of Michigan, the Criminal Defense Attorneys of Michigan, the Michigan Health & Hospital Association, the Michigan Osteopathic Association, and the Michigan State Medical Society are invited to file briefs amicus curiae. Other persons or groups interested in the determination of the issues presented in this case may move the Court for permission to file briefs amicus curiae.



a0320

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

March 27, 2019

A handwritten signature in black ink, appearing to read "Larry S. Royster", is written over a horizontal line.

Clerk