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OKANOGAN COUNTY  
SUPERIOR COURT  
OKANOGAN COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR OKANOGAN COUNTY

\* \* \* \* \*

STATE OF WASHINGTON,

Plaintiff,

vs.

GARNET JA LEA SWEZEY  
GREGORY PHILLIP SWEZEY,

Defendant

No. 12-100045-8; ~~12-1-00044-0~~

MEMORANDUM OPINION DENYING  
MOTION TO DISMISS

THIS MATTER is before the court on defendant's consolidated motion to dismiss murder in the second degree, felony murder charges pending against each of them. Specifically, they contend that Washington law, specifically RCW 9A.42.020 Criminal Mistreatment 1<sup>st</sup> degree, as applied to the facts of their cases violates their constitutional rights of equal protection of the law. Chelsea Korte, Attorney at Law, and Douglas Webber, Attorney at Law, represented the defendants while Karl Sloan, Okanogan County Prosecuting Attorney, represented the state. After reviewing the oral arguments of counsel presented on April 17, 2012 and the written materials submitted, the court now renders this Memorandum Opinion denying defendant's motion.

FACTS AND SUBSTANTIVE LAW

On March 18, 2009, the defendant's son died as a result of a burst appendix. See Defendant's Memorandum of Authorities at Page 1. Both Mr. and Mrs. Swezey are members of *The Church of the First Born* denomination relying upon faith healing rather than traditional medical intervention for medical care. *Id.* No medical attention was sought by the defendants. *Id.* On February 2, 2012, the state of Washington charged the defendants in count one with

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murder in the second degree—felony murder, with the underlying alleged felony crime being Criminal Mistreatment in the first degree pursuant to RCW 9A.42.020(1), which states:

A parent of a child, the person entrusted with the physical custody of a child or dependent person, a person who has assumed the responsibility to provide to a dependent person the basic necessities of life, or a person employed to provide to the child or dependent person the basic necessities of life is guilty of criminal mistreatment in the first degree if he or she recklessly, as defined in RCW 9A.08.010, causes great bodily harm to a child or dependent person by withholding any of the basic necessities of life.

“[B]asic necessities of life” are defined in RCW 9A.42.010(1) as “food, water, shelter, clothing, and medically necessary health care, including but not limited to health-related treatment of activities, hygiene, oxygen, and medication.”

Because of their religious beliefs, Mr. and Mrs. Swezey contend legislative findings set forth in RCW 9A.42.005 provide them immunity from prosecution when, as applied, the law removes from them any duty of providing or obtaining any medically necessary health care. That statute provides:

The legislature finds that there is a significant need to protect children and dependent persons, including frail elder and vulnerable adults, from abuse and neglect by their parents, by persons entrusted with their physical custody, or by persons employed to provide them with the basic necessities of life. The legislature further finds that such abuse and neglect often takes the forms of either withholding from them the basic necessities of life, including food, water, shelter, clothing, and health care, or abandoning them, or both. Therefore, it is the intent of the legislature that criminal penalties be imposed on those guilty of such abuse or neglect. It is the intent of the legislature that a person who, in good faith, is furnished Christian Science treatment by a duly accredited Christian Science practitioner in lieu of medical care is not considered deprived of medically necessary health care or abandoned. Prosecutions under this chapter shall be consistent with the rules of evidence, including hearsay, under law.

While not defined in RCW 9A.42, the term “Christian Science practitioner” is included in the definition of “practitioner” as defined in RCW 26.44.020(16) to mean

a person *licensed by this state* to practice podiatric medicine and surgery, optometry, chiropractic, nursing, dentistry, osteopathic medicine and surgery, or medicine and surgery or to provide other health services. *The term "practitioner" includes a duly*

*accredited Christian Science practitioner.* A person who is being furnished Christian Science treatment by a duly accredited Christian Science practitioner will not be considered, for that reason alone, a neglected person for the purposes of this chapter. (Emphasis added)

Such practitioners are subject to licensing and reporting requirements of state law. These requirements are based on the state-identified need to provide protection to children and others not capable of helping themselves.

The facts before the court in these cases presents evidence of defendants as “members” of their church; however, they offer no other basis upon which to conclude that defendants are practitioners in the same class for which the legislature established a good faith exception to the otherwise stated duty of care. Indeed, there is no showing or offer of proof of any license granted them by the state of Washington; no evidence of any training as an accredited practitioner; no evidence they are subject to mandatory reporting under RCW 26.44.030(1)(a). The record before the court offers no evidence of defendants as other than individuals of the congregation of a church and parents of their son Zakk.

#### OPINION AND COURT DECISION

The defendants argue RCW 9A.42.005 is unconstitutional because, as applied to them, it denies them equal protection of the law: since Christian Science practitioners are exempt from prosecution when they furnish treatment in lieu of medical care, the defendants claim the same immunity for following their religious beliefs and not seeking medical care. The state suggests this motion involves Establishment Clause questions and argues the law does nothing to restrict freedom of religious beliefs but, properly, restricts actions done in the name of religion that the state may otherwise properly regulate. Ultimately, the court views this as an equal protection

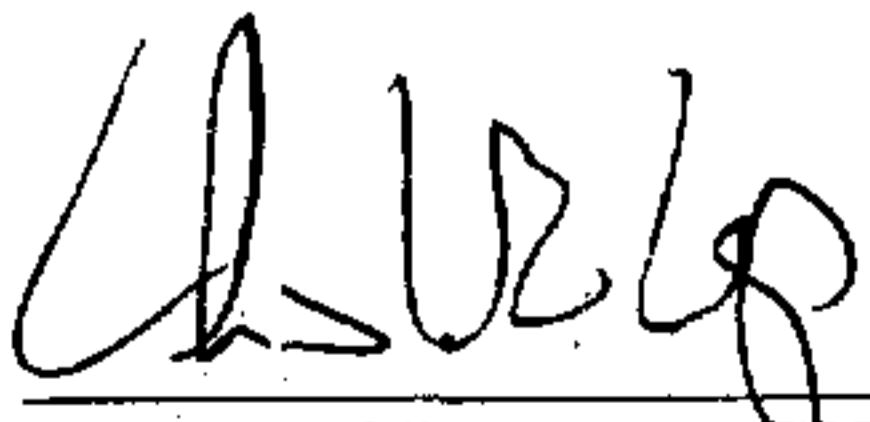
argument (and similarly a “privileges and immunities” issue under Article 1, Section 12 of the Washington state constitution) but denies defendant’s motion.

From the evidence presented, the defendants fail to establish they are similarly situated to Christian Scientist practitioners. Consequently, the court looks to the language of the entire statute, as cited above. RCW 9A.42.020 entrusts *parents* who have custody of a child to provide for their care as that is defined. As parents, Mr. and Mrs. Swezey are treated no differently than similarly situated people who have children or are entrusted with caring for someone dependent upon them; the law treats them equally—they are not members of any suspect class. Under the lengthy analysis in *Andersen vs. King County*, 158 Wn.2d 1 (2006), where persons are not part of a suspect class law and no fundamental right is implicated, a statute need only have a rational basis to be valid.

Given the legislative findings in RCW 9A.42.005, this court rules the statute serves to legitimately protect the interests of children and those other persons who for various reasons are unable to fend for themselves. The statute is not arbitrary and there is a rational basis for its existence. As applied to defendants, there is no equal protection violation under the United States constitution and no Article 1, Section 12 violation under the Washington state constitution.

Defendant’s motion to dismiss is denied and the matter remains set for trial. The court does not rule herein whether removal of the Christian Scientist exemption is an acceptable, alternative remedy since defendants failed to establish any similarity to that group.

Dated this 20<sup>th</sup> day of April, 2012.

  
CHRISTOPHER E. CULP  
SUPERIOR COURT JUDGE