IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	**No. 29529-0-III**
	)	**(consolidated with**
Respondent,	)	**No. 29603-2-III)**
	)	
v.	)	
	)	
MICHAEL EUGENE HAZELMYER,	)	
	)	
Appellant.	)	
_____	)	**Division Three**
In re the Personal Restraint Petition of:	)	
	)	
MICHAEL E. HAZELMYER,	)	
	)	
Petitioner.	)	**UNPUBLISHED OPINION**

Korsmo, J. — By appeal and by personal restraint petition (PRP), Michael Hazelmyer brings various challenges to his felony conviction for harassment. The challenges are without merit. Therefore, we affirm the conviction and dismiss the PRP.

FACTS

This case arises from a longstanding property dispute involving an easement. Mr.

Hazelmyer and Shawn Mattix are neighbors. Mr. Hazelmyer accesses his property from an easement road that crosses the Mattix[1] property. The two men have a history of disputes concerning the easement road. One argument between the two men occurred November 29, 2009. In the course of that encounter, Mr. Mattix showed Mr. Hazelmyer a stun gun.

Mr. Hazelmyer reported the incident that day to the Washington State Patrol (WSP). He talked with communications officer George Neal via telephone; the call was recorded by WSP. Mr. Hazelmyer told Neal that he did not believe the Springdale town marshal would address his complaint. He told the officer that he would take his ".303 out there . . . if this guy keeps playing this game I'm going to—I will. You know? It's—I have no other recourse." Concerned about potential escalation, the communications officer sent an email to WSP supervisor Sergeant Chan St. Clair.

After listening to the recording, Sergeant St. Clair called Mr. Hazelmyer the following day. He told an agitated Mr. Hazelmyer that WSP had no jurisdiction over the matter and that any investigation would have to be conducted by the town marshal. Mr. Hazelmyer became more agitated and launched an obscenity-laced tirade during which he

[1] Mr. Mattix's mother, Ms. Siemers, is the property owner.

referenced the marshal as a "town clown." He confirmed to the sergeant that he did own a .303 British rifle. He repeated several times that, "I'll take him down," or "I guess I'm going to have to take him down." He did not expressly indicate who he was threatening to shoot.

Mr. Mattix petitioned for a civil protection order on December 3. Mr. Hazelmyer did the same thing on December 23. The two cases were consolidated and the trial court ultimately entered mutual restraining orders.

The Springdale Town Marshal had been alerted to the conversations by WSP. He eventually contacted Mr. Mattix and another neighbor, Mr. Wolff, and obtained statements from them. The prosecutor filed one count of felony harassment—based on a threat to kill theory—and one count of criminal trespass. The charging document referenced the conversations of November 29 and 30, but did not specify the victim of the harassment count.

The matter eventually proceeded to bench trial. The trial judge found Mr. Hazelmyer guilty of harassment, but acquitted him on the trespass charge. He was sentenced to 90 days in jail; 30 of the days were allowed to be converted to community service. Mr. Hazelmyer timely appealed to this court.

Prior to sentencing, Mr. Hazelmyer filed a pro se motion for a new trial along with a request for new appointed counsel to represent him. The trial court denied the request for a new attorney. It struck the pro se motion with leave to renote it. The motion was never renoted for argument.

The trial court permitted Mr. Hazelmyer to remain out of custody pending appeal, but revoked the release when Mr. Hazelmyer plowed the easement and created snow berms that blocked Mr. Mattix's driveway. The court set bond for the appeal and entered a condition that Mr. Hazelmyer personally not plow or maintain the easement.

After the modification of relief conditions, Mr. Hazelmyer filed a PRP. This court consolidated it with the direct appeal. Mr. Hazelmyer also filed a Statement of Additional Grounds (SAG) in support of the appeal.

ANALYSIS

The appeal presents the sole issue of whether the charging document was defective in failing to name a victim of the harassment count. The PRP reiterates the arguments made in the motion for a new trial. We will address the two documents separately.

Charging Language. The appeal focuses on the sufficiency of the charging document, contending that the Information was defective by failing to name Mr. Mattix

as the person being threatened. We conclude that the document did state an offense and was not constitutionally defective.

A charging document must state the elements of the alleged crime in order to give the accused an understanding of the crime charged. "All essential elements of a crime, statutory or otherwise, must be included in a charging document in order to afford notice to an accused of the nature and cause of the accusation against him." *State v. Kjorsvik*, 117 Wn.2d 93, 97, 812 P.2d 86 (1991). When challenged for the first time after a verdict has been returned, courts will liberally construe the document to see if the necessary facts can be found. If not, the charge will be dismissed without prejudice. Even if the charge is stated, a defendant who shows prejudice from "inartful" pleading also receives a dismissal of charges without prejudice. *Id*. at 105-106.[2]

Mr. Hazelmyer did not challenge the charging document until this appeal. Thus, the liberal construction standard applies here. *Id.* He contends that the standard is easily met because the victim's name was not included in the charging language and there is no way to infer a name from the charging document. While we agree that there would be no basis in the charging document for determining the name of the harassment victim, Mr.

[2] Appellant does not contend that the charging document was "inartful."

Hazelmyer has not established that the victim's name is a required element of the charge.

Mr. Hazelmyer relies upon *City of Seattle v. Termain*, 124 Wn. App. 798, 103 P.3d 209 (2004), and *State v. Clowes*, 104 Wn. App. 935, 18 P.3d 596 (2001). Those cases involved, respectively, the crimes of violating a domestic violence order and interfering with the reporting of a crime of domestic violence. As explained in *Termain*, because the terms of the domestic violence order defined the scope of criminal liability, it was necessary to at least identify the order that had been violated in order to prove the violation. 124 Wn. App. at 804. In *Clowes*, the court reasoned that the crime of interfering with the reporting of a crime of domestic violence could not be defined without either identifying the victim *or* the underlying crime that could not be reported. 104 Wn. App. at 942.

Those cases involved specific defects that were more critical to the definition of the crimes involved than the identity of the crime victim—the methodology of the commission of the respective offenses was undiscoverable without more specific information in the charging document. Here, the charging document identified the dates of the offense and the methodology—threats to kill another person. This is more detail than the defective charging documents in *Termain* and *Clowes*.

This case is closer factually to *State v. Plano*, 67 Wn. App. 674, 838 P.2d 1145 (1992). There the charging document had not identified the victim of an assault. The court concluded that the name of an assault victim is not an essential element of the crime of fourth degree assault. *Id*. at 679-680. As in *Plano*, we conclude that the identity of the person threatened is not an essential element of the offense.[3] An accused is already told by the Information *what* he is alleged to have done; the identity of the person threatened is likely known to him. In those rare instances where the identity is unknown and is necessary to the defense, the issue can be easily addressed by requesting a bill of particulars. CrR 2.1(c).

The charging document was not constitutionally defective.

Pro Se Issues. Mr. Hazelmyer has filed both a SAG in support of the appeal and a PRP. The SAG argues that the evidence was insufficient to support the conviction.[4] The PRP presents varied claims that also were included in the motion for a new trial. We will address the evidentiary sufficiency claim first.

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[3] Because the prosecutor is going to need to produce the victim at trial to prove the "fear" element of harassment, there is no reason why the victim should not be named in the charging document.

[4] It also includes an argument concerning the motive for the prosecution which is also presented in the PRP. We will address that issue in conjunction with our discussion of the PRP.

Well settled rules govern review of a challenge to the sufficiency of the evidence. The reviewing court does not weigh evidence or sift through competing testimony. Instead, the question presented is whether there is sufficient evidence to support the determination that each element of the crime was proven beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 61 L. Ed. 2d 560, 99 S. Ct. 2781 (1979); *State v. Green*, 94 Wn.2d 216, 221-222, 616 P.2d 628 (1980). The reviewing court will consider the evidence in a light most favorable to the prosecution. *Id.*

Mr. Hazelmyer concentrates his challenge on whether the victim truly had a well founded fear of being killed. He points out that charges were not filed until months after the incident and after the civil restraining orders had issued. From these facts, he concludes Mr. Mattix did not have a reasonable, well-founded fear that the threats would be carried out. The trier-of-fact disagreed. It is not this court's job to reweigh the evidence; as noted, our sole function is to determine whether there was evidence to support the factfinder's decision. There was. The threats themselves, to use a .303 rifle and to "take him down" adequately conveyed the intent to kill. In light of the troubled relations between the parties, the trial judge could conclude that these were a true threat to kill and that Mr. Mattix's fear was genuine and reasonable.

The evidence was sufficient to support the conviction.

The PRP presents several distinct challenges, but the same standard of review applies to them all. The burdens imposed on a petitioner in a PRP are significant. Because of the significant societal costs of collateral litigation often brought years after a conviction and the need for finality, relief will only be granted in a PRP if there is constitutional error that caused substantial actual prejudice or if a nonconstitutional error resulted in a fundamental defect constituting a complete miscarriage of justice. *In re Pers. Restraint of Woods*, 154 Wn.2d 400, 409, 114 P.3d 607 (2005). It is the petitioner's burden to establish this "threshold requirement." *Id.* To do so, a PRP must present competent evidence in support of its claims. *In re Pers. Restraint of Rice*, 118 Wn.2d 876, 885-886, 828 P.2d 1086, *cert. denied*, 506 U.S. 958 (1992). If the facts alleged would potentially entitle the petitioner to relief, a reference hearing may be ordered to resolve the factual allegations. *Id.* at 886-887.

This PRP fails to satisfy these heavy burdens and the specific challenges can be summarily addressed. The PRP is styled on the trial court's denial of the pro se motion for a new trial. However, the trial court never ruled on the motion.[5] For that reason, and

[5] Because he was represented by counsel, Mr. Hazelmyer had no basis for bringing the pro se motion and the trial court cannot be faulted for ignoring it.

because a PRP is an independent action rather than merely a vehicle for a second appeal, we must consider whether the allegations of the PRP establish an entitlement to relief rather than whether they show the trial court erred in dealing with the new trial motion.

The PRP first alleges that trial witnesses conversed with each other outside the courtroom in violation of the trial court's directive that witnesses not talk to each other. The PRP does not establish how this nonconstitutional error resulted in a complete miscarriage of justice. It does not argue that witnesses provided information unknown to the defense in discovery or otherwise suggest how the proceedings were so significantly tainted to justify a new trial.

The second allegation is that the prosecutor failed to ensure an adequate investigation before charging, citing to the charging standards of the Sentencing Reform Act of 1981, RCW 9.94A.411. However, by its terms the charging standards do not create substantive or procedural rights for the accused. *See State v. Lee*, 69 Wn. App. 31, 33-34, 847 P.2d 25, *review denied*, 122 Wn.2d 1003 (1993). Thus, even if there had been an inadequate investigation (and the record does not reflect that there was), it is not a basis for relief.

The third allegation is that an improper motive was behind the charges. He once

again complains that Mr. Mattix waited to bring charges until after the civil matter was litigated. This allegation founders upon the fact that only the prosecutor, not the victim, can file felony charges. Victims do not file charges in Washington. That power is left to the county prosecutor. Even if Mr. Mattix had an improper motive (and once again the record does not support the allegation), it was of no moment because the county prosecutor was the person who decided whether (and when) to file charges.[6]

The fourth allegation is that the trial court erred in denying a defense request for a continuance once it granted the prosecutor's pretrial motion to admit evidence of another incident involving Mr. Hazelmyer. A trial court's continuance ruling is reviewed for abuse of discretion. *State v. Downing*, 151 Wn.2d 265, 272, 87 P.3d 1169 (2004). Discretion is abused when it is exercised on untenable grounds or for untenable reasons. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971). The PRP does not establish any abuse of discretion. In particular, it identifies no specific harm to the defense that would have been remedied by an extended period of preparation.[7]

[6] This allegation also ignores the ironic fact that it was Mr. Hazelmyer's telephone calls to the WSP that initiated the investigation, not the defendant's earlier confrontation with the victim.

[7] There also could be no prejudice because the trial court's findings do not refer to the evidence giving rise to the continuance request, which suggests it was of no particular importance to the verdict.

The final allegation is a claim that the revised release conditions were vague and confusing. In particular, Mr. Hazelmyer complains about perceived inability to plow the easement. The petition does not explain why any problem with a release condition would invalidate the conviction, which is the remedy sought. Because there is no connection between the alleged deficiency and the desired remedy, this allegation is meritless. The condition also is not vague. The condition expressly directs Mr. Hazelmyer to have someone else conduct maintenance on the easement. It also provides that Mr. Hazelmyer is not to engage in snow removal; it does not prohibit him from hiring someone else to do so. This condition is reasonable in light of Mr. Hazelmyer's misuse of the easement in order to annoy his neighbors. It also is very clear. It is not vague.

The PRP falls so far short of meeting its burdens that we need not direct a reference hearing concerning the factual allegations. Accordingly, the PRP is dismissed.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

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Korsmo, J.

WE CONCUR:

_____ _____

Kulik, C. J. Sweeney, J.