

**FILED**

**AUG 09 2011**

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

No. 29529-0-III

IN THE COURT OF APPEALS, DIVISION III,  
OF THE STATE OF WASHINGTON

---

THE STATE OF WASHINGTON

Respondent

v.

MICHAEL EUGENE HAZELMYER

Appellant

---

BRIEF OF RESPONDENT  
STATE OF WASHINGTON

---

Ms. Shadan Kapri  
Senior Deputy Prosecuting Attorney  
Stevens County  
Attorney for Respondent

Stevens County  
Prosecuting Attorney's Office  
215 S. Oak Street  
Colville, WA  
(509) 684-7500

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I.

ASSIGNMENTS OF ERROR

1. The Information failed to allege all the elements of the offense of Harassment-Threats to Kill.

II.

ISSUES PRESENTED

1. Whether the words in the charging documents reasonably appraised the Accused of the elements of the crime charged Harassment – Threats to Kill.

III.

STATEMENT OF THE CASE

The State of Washington through the Prosecuting Attorney's Office charged Mr. Michael E. Hazelmyer of the crimes Harassment – Threats to Kill and Second Degree Criminal Trespass on March 25, 2010. (Clerk's Papers 1 – 2)

The documents charging him with these crimes specifically stated:

## COUNT 1

By the way of this Information, the Prosecuting Attorney accuses you of the crime of HARASSMENT – THREATS TO KILL, Count 1, which is a violation of RCW 9A.46.020(1)(a)(i) and (2)(b), the maximum penalty for which is five (5) years imprisonment or \$10,000 fine, or both pursuant to RCW 9A.46.020(2)(b) and RCW 9A.20.021(1)(c), plus restitution, assessments and court costs, in that you, on or about a period of time between November 29, 2009 and November 30, 2009, in the State of Washington, did then and there knowingly and without lawful authority, threaten to kill another immediately or in the future, and by words or conduct placed the person threatened in reasonable fear that the threat would be carried out.

## COUNT 2

Further and by way of this Information, the Prosecuting Attorney accuses you of the crime of CRIMINAL TRESPASS IN THE SECOND DEGREE, Count 2, which is a violation of RCW 9A.52.080(1), the maximum penalty for which is ninety (90) days in jail or \$1,000 fine, or both, pursuant to RCW 9A.52.080(2) and RCW 9A.20.021(3), plus restitution, assessments and court costs, in that you, on or about November 29, 2009, in the State of Washington, did then and there knowingly enter or remain unlawfully in or upon the premises of another located at 3982 Highway 231, Springdale, Washington.

(CP 1 – 2)

After a trial in front of the Honorable Allen C. Nielson, the court found Mr. Hazelmyer guilty of the crime Harassment – Threats to Kill and not guilty of Criminal Trespass. (CP 63-65) This appeal follows that bench trial. (CP 83 – 102)

#### IV.

#### ARGUMENT

##### A. THE CHARGING DOCUMENTS REASONABLY APPRAISED THE ACCUSED OF THE ELEMENTS OF THE CRIME CHARGED HARASSMENT – THREATS TO KILL.

Although Mr. Hazelmyer may challenge the sufficiency of the information for the first time on appeal, Appellate Courts liberally construe the document in favor of its validity. *State v. Kjorsvik*, 117 Wash.2d 93, 105-06, 812 P.2d 86 (1991). The Appellate Courts consider “(1) whether the necessary facts appear in any form, or by fair construction can be found, in the charging document; and, if so, (2) whether the defendant nonetheless suffered actual prejudice as a result of the ineloquent, vague, or ambiguous charging language.” *State v. Laramie*, 141 Wash. App. 332, 338, 169 P.3d 859, (2007).

Such liberal construction removes any incentive to refrain from challenging an alleged defective information before or during trial, when a successful objection would result in only an amendment to the information. *Kjorsvik*, 117 Wash.2d at 103, 812 P.2d 86 (quoting 2 W. LAFAVE & J. ISRAEL, CRIMINAL PROCEDURE § 19.2, at 442 & n.36 (1984)). Moreover, it reinforces the primary objective of the essential elements rule, which is to provide constitutionally required notice to a Defendant in a criminal case of the crimes charged against him/her which must be defended in a court of law. *State v. Davis*, 119 Wash.2d 657, 661, 835 P.2d 103 (1992)

The goal of proper and fair notice is met where construction of the charging document in a common sense approach “would reasonably apprise an accused of the elements of the crime charged.” *Kjorsvik*, 117 Wash.2d at 109, 812 P.2d 86.

Here, it is clear that the charging documents provided Mr. Hazelmyer with a reasonable explanation of the elements of the charged crime against him. (CP 1- 2) “The failure to allege specific facts in an information may render the charging document vague, but it is not constitutionally defective.” *State v. Laramie*, 141 Wash. App. 332, 338, 169 P.3d 859, (2007); *State v. Leach*, 113 Wash.2d 679, 686-87, 782 P.2d 552 (1989).

The elements for the crime of Harassment – Threats to Kill under RCW 9A.46.020 are as followed:

- (1) A person is guilty of harassment if:
  - (a) Without lawful authority, the person knowingly threatens:
    - (i) To cause bodily injury immediately or in the future to the person threatened or to any other person; or
    - (2)(a) Except as provided in (b) of this subsection, a person who harasses another is guilty of a gross misdemeanor.
  - (b) A person who harasses another is guilty of a class C felony if any of the following apply...
    - (ii) the person harasses another person under subsection (1)(a)(i) of this section by threatening to kill the person threatened or any other person

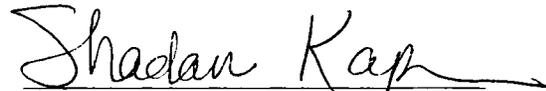
Based upon statutory authority the accused was given proper notice of the charged crime against him. (CP 1 – 2) *State v. Laramie*, 141 Wash. App. 332, 338, 169 P.3d 859, (2007); RCW 9A.46.020.

V.

CONCLUSION

Based upon the legal arguments above, the conviction after a bench trial for Harassment – Threats to Kill should be affirmed. *State v. Laramie*, 141 Wash. App. 332, 338, 169 P.3d 859, (2007); RCW 9A.46.020.

Dated this 5<sup>th</sup> day of August, 2011.



Shadan Kapri WSBA # 39962  
Senior Deputy Prosecuting Attorney  
Stevens County  
Attorney for Respondent

**Affidavit of Certification**

I certify under penalty of perjury under the laws of the State of Washington, that I mailed a true and correct copy of the foregoing Brief of Respondent to the Court of Appeals, Division III, 500 N. Cedar Street, Spokane, WA 99201, and mailed to Susan Marie Gasch, Gasch Law Office, P.O. Box 30339, Spokane, WA, 99223 and to Mr. Michael Hazelmyer, P.O. Box 484, Springdale, WA, 99173 on August 5, 2011.

A handwritten signature in cursive script that reads "Shadan Kapri". The signature is written in black ink and is positioned above the printed name and title.

Shadan Kapri,  
Senior Deputy Prosecuting Attorney