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Court of Appeals
Division III
State of Washington
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No. 36763-1-III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON,

Respondent,

v.

DAVIEL CANELA,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR FRANKLIN COUNTY

SUPPLEMENTAL BRIEF OF APPELLANT

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A. SUPPLEMENTAL ASSIGNMENT OF ERROR

In violation of Daviel Canela's constitutional right to notice of the charged offense under article I, section 22 of the Washington Constitution, and the Sixth and Fourteenth Amendments to the United States Constitution, the charging document alleging attempted first degree murder was constitutionally deficient.

B. ISSUE PERTAINING TO SUPPLEMENTAL ASSIGNMENT OF ERROR

To provide notice to the defendant and to properly charge a crime, a charging document must include all the elements of the offense. For purposes of a charging document, an essential element of attempted first degree murder by means of premeditated intent is premeditation. The charging document in this case alleging attempted first degree murder failed to include the premeditation element. Is the charging document constitutionally deficient?

C. ARGUMENT

The charge for attempted murder in the first degree is constitutionally defective because the charging document omits the essential element of premeditation. The conviction for attempted murder must be reversed and the charge dismissed without prejudice.

To afford notice to a defendant of the nature and cause of the accusation, the State must include all the essential elements of the crime in

the charging document. State v. Kjorsvik, 117 Wn.2d 93, 97, 812 P.2d 86 (1991); Const. art. I, §§ 3, 22; U.S. Const. amends. VI, XIV. “An offense is not properly charged unless the information sets forth every essential statutory and nonstatutory element of the crime.” State v. Pry, 194 Wn.2d 745, 751, 452 P.3d 536 (2019). Additionally, the “manner of committing a crime is an element and the defendant must be informed of this element in the information in order to prepare a proper defense.” State v. Bray, 52 Wn. App. 30, 34, 756 P.2d 1332 (1988). The failure of a charging document to allege each essential element means the charging document fails to charge a crime and it must be dismissed. Pry, 194 Wn.2d at 752.

One means of committing murder in the first degree is “[w]ith a *premeditated* intent to cause the death of another person, he or she causes the death of such person or of a third person.” RCW 9A.32.030(1)(a) (emphasis added). In addition to premeditated intentional murder, the statute sets out two other means of first degree murder: extreme indifference murder and felony murder. RCW 9A.32.030(1)(b), (c). Criminal attempt is committed “if, with intent to commit a specific crime, he or she does any act which is a substantial step toward the commission of that crime.” RCW 9A.28.020(1).

In this case, the prosecution charged Mr. Canela in count I with attempted murder in the first degree using the following language:

ATTEMPTED MURDER IN THE FIRST DEGREE, [RCW 9A.28.020(1) AND 9A.32.030(1)(a)], A CLASS A FELONY, maximum penalty of LIFE and \$50,000, committed as follows:

That the said Daviel Davis Canela in the County of Franklin, State of Washington, on or about March 29, 2018, then and there, with intent to commit the crime of Murder in the First Degree, committed an act, to wit: did shoot the victim with a handgun, which was a substantial step toward that crime.

CP 9.

As this Court recently recognized, this language is constitutionally deficient because it fails to state that premeditation is an element of attempted first degree murder. State v. Murry, No. 35035-5-III, slip op. at 9-12, 2020 WL 3097321, at *4-5 (Wash. Ct. App. June 4, 2020). Our Supreme Court has held, at least for purposes of a charging document, premeditation is an element of attempted first degree murder. State v. Vangerpen, 125 Wn.2d 782, 791, 888 P.2d 1177 (1995); Murry, No. 35035-5-III, slip op. at 10-11, 2020 WL 3097321, at *4. The Supreme Court's decisions are binding on all lower Washington courts. State v. Gore, 101 Wn.2d 481, 486-87, 681 P.2d 227 (1984). Thus, the failure to include premeditation results in the charging document being constitutionally defective. Murry, No. 35035-5-III, slip op. at 19-11, 2020 WL 3097321, at *4-5.

As further explained by Murry, leaving out the premeditation element would create other problems because first degree murder is an alternative means crime that may be committed in three different ways. Slip op. at 11-12; 2020 WL 3097321, at 5. However, it is impossible to attempt murder by two of these means (extreme indifference murder and felony murder) because neither of these means requires proof of intent. Id. “Thus, a charging document that merely states that a defendant took a substantial step toward committing first degree murder would fail to state a crime unless premeditated murder was identified as the basis for the charge.” Id. at 12.

As in Murry the charging document in this case was constitutionally defective for failing identify the premeditation element. That the charging document identified the correct statutes is insufficient. Id. at 9 (citing Vangerpen, 125 Wn.2d at 787); accord City of Auburn v. Brooke, 119 Wn.2d 623, 634-35, 836 P.2d 212 (1992). Accordingly, this Court should reverse the conviction for attempted first degree murder and order the charge dismissed without prejudice to refile.

D. CONCLUSION

The conviction for attempted first degree murder should be reversed and the charge dismissed.

DATED this 15th day of June 2020.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Richard W. Lechich". The signature is written in a cursive style with a large initial "R".

Richard W. Lechich – WSBA #43296
Washington Appellate Project – #91052
Attorney for Appellant

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STATE OF WASHINGTON,)	
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RESPONDENT,)	
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v.)	NO. 36763-1-III
)	
DAVIEL CANELA,)	
)	
APPELLANT.)	

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SIGNED IN SEATTLE, WASHINGTON THIS 15TH DAY OF JUNE, 2020.


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