

No. 91623-3

NO. 70711-6-I

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

ANDREA RICH,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY
THE HONORABLE MARIANE SPEARMAN

SUPPLEMENTAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

	Page
A. <u>INTRODUCTION</u>	1
B. <u>ARGUMENT</u>	2
C. <u>CONCLUSION</u>	6

TABLE OF AUTHORITIES

Page

Table of Cases

Federal:

Jackson v. Virginia, 443 U.S. 307,
99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979)..... 3, 5

Washington State:

State v. Goodman, 150 Wn.2d 774,
83 P.3d 410 (2004)..... 3

State v. Graham, 153 Wn.2d 400,
103 P.3d 1238 (2005)..... 1

Statutes

Washington State:

RCW 9A.36.050 1

A. INTRODUCTION

In her briefing to this Court, Andrea Rich argued that the State failed to prove that she committed the crime of Reckless Endangerment. She contended that the State provided insufficient evidence as to one element of that offense: that the defendant, through her reckless conduct, "created a substantial risk of death or serious physical injury to another person." RCW 9A.36.050. More precisely, Rich contended that evidence of driving while under the influence "alone" does not satisfy that element, and that evidence of speeding does not by itself necessarily constitute "driving in a reckless manner." BOA at 18. Comparing her case to State v. Graham, 153 Wn.2d 400, 103 P.3d 1238 (2005), in which that defendant purposefully swerved a car and killed a passenger, Rich argued that she had not driven erratically or dangerously.

At oral argument on January 8, 2015, a member of the panel appeared to believe that the State had impermissibly used evidence of Rich's reckless conduct as proof of substantial risk of death or serious injury in the crime of reckless endangerment, and that the State must offer separate and distinct proof for each of these elements. Rich did not raise this specific challenge in her briefing, and the State was thus not fully prepared to address it at

oral argument. Accordingly, the State submits this supplemental brief in order to assist the Court in its resolution of the issue raised by a member of its panel at the January 12, 2015 hearing.

B. ARGUMENT

The jury was instructed that, in order to convict Rich of reckless endangerment, the State had to prove each of the following beyond a reasonable doubt:

- (1) That on or about May 27, 2012, the defendant acted recklessly;
- (2) That such reckless conduct created a substantial risk of death or serious physical injury to another person; and
- (3) That this act occurred in the State of Washington

CP 40. The jury was also instructed that a person acts recklessly “when he or she knows of and disregards a substantial risk that a wrongful act may occur and his or her disregard of such substantial risk is a gross deviation from conduct that a reasonable person would exercise in the same situation.” CP 41.

The jury was further instructed that “[a] person commits the crime of driving under the influence when he or she drives a motor vehicle while he or she is under the influence of or affected by intoxicating liquor or while he or she has sufficient alcohol in her body to have an alcohol concentration of 0.08 or higher within two

hours after driving." CP 35. Finally, the jury was instructed:
"A separate crime was charged in each count. You must decide
each count separately. Your verdict on one count should not
control your verdict on any other count." CP 34.

Evidence is sufficient to support a conviction if, viewed in a
light most favorable to the State, it permits a rational trier of fact to
find the essential elements of the crime beyond a reasonable
doubt. State v. Goodman, 150 Wn.2d 774, 781, 83 P.3d 410
(2004). "This familiar standard gives full play to the responsibility of
the trier of fact fairly to resolve conflicts in the testimony, to weigh
the evidence, *and to draw reasonable inferences from basic facts to
ultimate facts.*" Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct.
2781, 2789, 61 L. Ed. 2d 560 (1979) (emphasis added).

Here, there was sufficient proof that Rich had engaged in
reckless conduct; namely, that she had operated a motor vehicle
while under the influence of intoxicating liquor. Rich admitted that
she was drunk. 2RP 194-95. Other witnesses testified to evidence
of her intoxication. 2RP 80-81, 116, 146-48, 169, 177. Her
operation of a motor vehicle disregarded a substantial risk that a
wrongful act may occur and deviated grossly from conduct that a
reasonable person would exercise in the same situation.

However, additional evidence existed to establish that Rich's reckless conduct created a substantial risk of death or physical injury to another. Rich was not simply driving by herself in someone else's car in an empty field or otherwise unoccupied minor side streets while intoxicated. Such conduct would have been reckless and could have resulted in damage to another's property. However, it would not have been constituted reckless endangerment because she was not creating a substantial *risk of physical injury to another*.

What distinguished Rich's behavior from being simply reckless was the fact that she operated this motor vehicle while not just drunk but heavily intoxicated to the point of severe incapacitation, with a BAC of .20, on a major public roadway at 8:00 p.m. with an 8-year-old child in the front seat, while travelling above the speed limit. This exposed that child, and any other motorist unfortunate enough to be on those roads at the same time, to a substantial *risk* of physical injury or death. The fact that this risk did not come to fruition does not mean that the risk did not *exist*.

The evidence demonstrated more than an unlawful blood alcohol level or physical signs of drinking. Rich was so significantly

incapacitated that she was incapable of coherent conversation and could not even pick up pieces of paper. 2RP 80-81, 110-18, 134, 146-48. She was so intoxicated that she loudly instructed her nephew to lie to the police even though he was right next to her, and could not comprehend that the police standing 20 feet away would hear her. A toxicologist testified that Rich's level of intoxication would have led to slowed brain activity, cognitive confusion, poor coordination, and delayed response time and judgment, all of which exposed others to a substantial risk of death or physical injury. 2RP 132-33, 138. In this state, Rich would have lacked the ability to react safely to unexpected, or even fairly routine, events on the road.

All of the above evidence allowed a jury "to draw reasonable inferences from basic facts to ultimate facts" and determine that Rich's decision to drive above the speed limit on a major public road in the early evening, with a BAC of more than twice the legal limit and a child in the front seat, while so severely incapacitated that she could not perform fairly basic functions, created a substantial risk of physical injury or death to another. Jackson v. Virginia, 443 U.S. 307, 319.

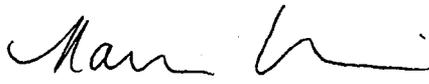
C. **CONCLUSION**

For all of the foregoing reasons, the State respectfully asks this Court to affirm Rich's conviction.

DATED this 13 day of January, 2015.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

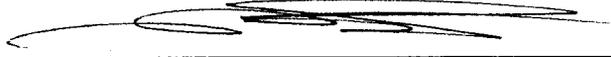
By:  _____

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Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to the attorneys for the appellant, RICHARD LECHICH, containing a copy of the Respondent's Motion to Submit Supplemental Brief of Respondent, in STATE v. ANDREA RICH, Cause No. 70711-6-1, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.



Name
Done in Seattle, Washington

01-13-15
Date