

**FILED**  
**Feb 06, 2013**  
Court of Appeals  
Division III  
State of Washington

No. 307204

IN THE COURT OF APPEALS OF THE  
STATE OF WASHINGTON

DIVISION III

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STATE OF WASHINGTON,

Respondent,

vs.

DION TARIES JORDAN BAKER,

Appellant.

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APPEAL FROM THE SUPERIOR COURT  
OF YAKIMA COUNTY, WASHINGTON

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THE HONORABLE SUSAN L. HAHN, JUDGE

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BRIEF OF RESPONDENT

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I. ASSIGNMENTS OF ERROR

A. ISSUES PRESENTED BY ASSIGNMENTS OF ERROR.

1. Whether the information charging Dion Baker with the reckless endangerment inaccurately advised the defendant that the maximum penalty for that crime was 364 days in jail and up to a \$5000 fine, so as to preclude a knowing and intelligent decision as to whether to exercise his right to a trial?
2. Whether there was sufficient evidence supports Mr. Baker's conviction for reckless endangerment, when testimony demonstrated that he threw a bag of garbage at a moving vehicle?

B. ANSWER TO ASSIGNMENTS OF ERROR.

1. The information was accurate. The statutory maximum for the offense of reckless endangerment is 364 days of confinement, a sentence the court could have imposed with a finding of manifest injustice. That a juvenile local sanctions disposition was the *standard* disposition does not render the defendant's decision to proceed to trial, instead of engaging in plea bargaining, involuntary.

2 Sufficient evidence supported the conviction for reckless endangerment, as both the subjective and objective component of recklessness were demonstrated on the record.

## II. STATEMENT OF THE CASE

The State is satisfied with the statement of facts contained in the opening brief of the Appellant, though the State will supplement that narrative herein. RAP 10.3(b).

## III. ARGUMENT

### **1. The information was not erroneous or misleading, and the Appellant was not prejudiced by the advisement that he faced a statutory maximum sentence of 364 days.**

It is well-settled in Washington that all the 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); Const. art. 1, s. 22; U.S. Const. amend. 6; CrR 2.1(a). *See, also* State v. Leach, 113 Wn.2d 679, 689, 782 P.2d 552 (1989).

The rule is no different for juvenile offenders:  
An information shall be a plain, concise, and definite written statement of the essential facts constituting the offense charged. It shall be signed by the prosecuting attorney and conform to chapter 10.37 RCW.  
RCW 13.40.070(4).

RCW 10.37.052 in turn provides that:

The indictment or information must contain –

(1) The title of the action, specifying the name of the court to which the indictment or information is presented and the names of the parties;

(2) A statement of the acts constituting the offense, in ordinary and concise language, without repetition, and in such manner as to enable a person of common understanding to know what is intended.

As Mr. Baker did not challenge the information until he appealed following his conviction after a bench trial, the standard of review on appeal is a liberal one in favor of the validity of the charging document: “(1) do the necessary facts appear in any form, or by fair construction can they be found, in the charging document; and if so, (2) can the defendant show that he or she was nonetheless actually prejudiced by the inartful language which caused a lack of notice?” Kjorsvik, 117 Wn.2d at 105-06.

This case is somewhat unique in that Baker is not challenging the sufficiency of the charging document as to notice of the nature and cause of the accusations against him, but asserts on appeal that the advisement that the maximum punishment for the offenses charged was up to 364 days for reckless endangerment, or in the alternative 90 days for disorderly conduct,

was erroneous and misleading such that it denied him the ability to make an intelligent decision as to whether or not to go to trial.

At the heart of this issue is the distinction which must be drawn between the standard disposition for an offense, which is determined under the Juvenile Justice Act, and the statutory maximum for that offense. The statutory maximum as stated on Mr. Baker's information was, in fact, correct.

Mr. Baker correctly points out that pursuant to RCW 13.40.0357, the gross misdemeanor of reckless endangerment would be a class "E" offense, and the standard range would be local sanctions: 0-30 days in detention, 0-12 months of community supervision, 0-150 hours of community restitution, and no more than \$500 in fines.

However, a local sanctions disposition falls under Option A of the juvenile sentencing standards. Under Option D of RCW 13.40.0357, the juvenile court can impose a disposition outside the standard range, if it determines, with appropriate findings, that a disposition under the other statutory options would "effectuate a manifest injustice" pursuant to RCW 13.40.160(2).

There is, of course, a limit to the confinement time which can be imposed in a manifest injustice disposition, and that is the statutory maximum:

In no case shall the term of confinement imposed by the court at disposition exceed that to which an adult could be subjected for the same offense.

RCW 13.40.160(11)

The statutory maximum for a gross misdemeanor is 364 days in confinement. RCW 9A.20.021(2)

Therefore, the court could have imposed 364 days of confinement, but no more, *if* the court had found that a manifest injustice disposition was warranted.

The information therefore was correct, and Mr. Baker was entitled to know that this was the maximum amount of time for which he could be confined. It was a potential consequence of his conviction. *See, State v. Weyrich*, 163 Wn.2d 554, 556-57, 182 P.3d 965 (2008).

Mr. Baker was represented by court appointed counsel, and he makes no claim that his attorney was ineffective for failing to negotiate a plea agreement on his behalf, or that he was not told what kind of disposition he faced if the court imposed local sanctions. The court did elect to impose local sanctions disposition which included two days of confinement in any event. **(CP 10-13)** Mr. Baker exercised his right to an

adjudicatory hearing, and received a standard range disposition; he has not shown just how he was prejudiced by this outcome.

**2. There was sufficient evidence to support the conviction.**

Evidence is sufficient to support a conviction if, viewed in the light most favorable to the prosecution, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). “A claim of insufficiency admits the truth of the State’s evidence and all inferences that reasonably can be drawn therefrom.” Id. Circumstantial evidence and direct evidence are equally reliable. State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

Credibility determinations are not subject to review. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). An appellate court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. State v. Walton, 64 Wn. App. 410, 415-16, 824 P.2d 533, *review denied*, 119 Wn.2d 1011, 833 P.2d 386 (1992).

In reviewing the sufficiency of the evidence, an appellate court need not be convinced of guilt beyond a reasonable doubt, but must determine only whether substantial evidence supports the State’s case.

State v. Galisia, 63 Wn. App. 833, 838, 822 P.2d 303, *review denied* 119 Wn.2d 1003, 832 P.2d 487 (1992).

Here, the juvenile court heard the following testimony: Robin Myers was driving on a section of Ahtanum Road where the speed limit was 50 miles per hour. He saw the respondent running toward the roadway, and believed that Baker was coming onto the roadway. **(3-23-12 RP 9-11)**

As a result, Mr. Myers applied his brakes, and moved toward the oncoming lane. An oncoming truck, some 100 feet away from Mr. Myers “stood on the horn” in response. **(3-23-12 RP 12)** Upon first hearing that something had hit the side of his vehicle, Mr. Myers initially believed he might have hit Mr. Baker himself. **(3-23-12 RP 12)**

Mr. Phelps, a passenger in Mr. Myers’ vehicle, saw Mr. Baker throw the sack with a sideways throwing motion. **(3-23-12 RP 21)**

Indeed, a person is “guilty of reckless endangerment when he or she recklessly engages in conduct . . . that creates a substantial risk of death or serious physical injury to another person.” RCW 9A.36.050(1)

The definition of recklessness is found at RCW 9A.08.010(1)(c): “[a] person is reckless or acts recklessly when he knows of and disregards a substantial risk that a wrongful act may occur and his disregard of such

substantial risk is a gross deviation from conduct that a reasonable man would exercise in the same situation.”

That statutory definition, then, has been described as having both an objective and subjective component. State v. R.H.S., 94 Wn. App. 844, 847, 974 P.2d 1253 (1999), *cited in* State v. Graham, 153 Wn.2d 400, 408, 103 P.3d 1238 (2005).

There is nothing in the record below to suggest that Baker could not subjectively apprehend the risks associated with hurling an object into traffic traveling at 50 miles per hour, and in fact hitting Myers’ vehicle. He need not have possessed a sophisticated understanding that throwing the bag where he did would create a risk, and a substantial one, that he could cause an accident. Further, a reasonable person would not engage in such behavior.

The State would submit that the facts present here are more like those in Graham, where the court found that a young driver knew the risks of driving a motor vehicle in a fast or unsafe manner. Graham, 153 Wn.2d at 408-09. Here, the court correctly concluded that Mr. Baker knew the risks of introducing a hazard into traffic. **(RP 31-34)**

#### IV. CONCLUSION

Based upon the foregoing arguments, this Court should affirm the conviction, as the issues raised on appeal are without merit.

Respectfully submitted this 6<sup>th</sup> day of February, 2013

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#### ***Certificate of Service***

I, Kevin G. Eilmes, hereby certify that on this date I served copies of the foregoing upon counsel for the Appellant, and the Appellant by depositing a copy in the U.S. Mail.

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Dated at Yakima, Washington this 6<sup>th</sup> day of February, 2013.

