

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 19-0428

STATE OF MONTANA,

Plaintiff and Appellant,

v.

TYLER EDWARD GIFFIN,

Defendant and Appellee.

BRIEF OF APPELLANT

On Appeal from the Montana Eleventh Judicial District Court,
Flathead County, The Honorable Amy Eddy, Presiding

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STATEMENT OF THE ISSUE

Did the district court err in granting Giffin's motion to dismiss the criminal endangerment charge based on Giffin's argument that the State failed to identify in the charging documents a specific victim from Giffin shooting gun rounds through a hotel room window and into a parking area?

STATEMENT OF THE CASE

On June 24, 2019, the State moved for leave to file an Information charging Tyler Edward Giffin with criminal endangerment under Mont. Code Ann. § 45-5-207(1). (D.C. Doc. 1.) In the affidavit in support of its motion, the State set forth the following fact establishing probable cause to believe that Giffin had committed the offense of criminal endangerment:

On June 22, 2019, [an] officer with the Kalispell Police Department responded to a report of a possible gunshot at the Outlaw Inn on Highway 93, within Flathead County. Officer Smith spoke with Michael Slaughter who stated he heard what sounded like a gunshot and observed a hole in the window of the room below his. Slaughter also reported he heard similar sounds the night before.

Officers observed blinds of the downstairs unit had a gunshot-like pattern of holes and the glass was broken out of the window. Officers Smith, Bain, and Clackler made contact with David Giffin and TYLER EDWARD GIFFIN at the room. TYLER EDWARD GIFFIN stated that he was the person who fired the gun. David stated that TYLER EDWARD GIFFIN is a drug user and he was hallucinating when he fired a shotgun at the window. David also stated the night before TYLER EDWARD GIFFIN fired a revolver

into a wall. Another person in the unit also stated TYLER EDWARD GIFFIN was hallucinating.

Officer Smith noted that rounds exited the window towards the parking area and into an unoccupied unit of the building. The parking area outside the window is commonly used by the occupants of the Outlaw Inn.

(D.C. Doc. 1 at 3.)

The district court granted the State's motion for leave to file an Information charging Giffin with criminal endangerment. (D.C. Doc. 2.) On June 24, 2019, the State filed an Information charging Giffin with criminal endangerment under Mont. Code Ann. § 45-5-207(1). (D.C. Doc. 3.)

On July 9, 2019, Giffin filed a motion to dismiss of the criminal endangerment charge, arguing that there were no facts establishing probable cause that he had committed the offense of criminal endangerment. (D.C. Doc. 13, attached as App. A.) Giffin noted the offense of criminal endangerment "requires that the Defendant's conduct created a 'substantial risk of death or serious bodily injury to another.'" (App. A at 2.) Giffin then stated:

Here, the affidavit [in support of motion for leave to file an Information] alleges that the fired round went through a parking lot and into an unoccupied unit. The affidavit concedes that no people were in harms way in the unoccupied unit. The affidavit fails to allege that people were actually in the parking lot at the time of the offense. The State has not alleged any specific victim or that any specific person was in danger from the Defendant's alleged actions. The State of Montana is prosecuting the Defendant on these grounds. None of the facts set forth in the charging documents conclude that another was actually subjected to a substantial risk of death or serious bodily

injury by the alleged acts of the Defendant. These facts do no justify probable cause to cite the Defendant with criminal endangerment. Therefore, the Court should grant the Defendant's motion to dismiss this matter.

Id. Giffin cited no case law in support of his argument.

On July 10, 2019, the day after Giffin filed his motion to dismiss and before the State could file a response, the district court issued an order granting the motion. (D.C. Doc. 14, attached as App B.) The district court's order provided no legal analysis or authority for dismissing the criminal endangerment charge. The district court's order consisted of the following two sentences:

THIS CAUSE having come before this Court upon the Defendant's Motion to Dismiss, the Court finds good cause to GRANT said Motion.

WHEREFORE, IT IS HEREBY ORDERED: The charge of criminal endangerment in violation of § 45-5-207 M.C.A. is dismissed with prejudice.

(App. B.)

The State timely filed a Notice of Appeal on July 25, 2019. (D.C. Doc. 15).

STATEMENT OF THE FACTS

The facts supporting the criminal endangerment charge are set forth in the affidavit in support of the State's motion for leave to file an Information. (D.C. Doc. 1 at 3.) The State has presented those facts in its Statement of the Case.

SUMMARY OF THE ARGUMENT

The State did not have to identify a specific victim of Giffin's conduct to charge Giffin with criminal endangerment. The district court erred in granting Giffin's motion to dismiss.

ARGUMENT

I. Standard of review

The district court's granting of a motion to dismiss is a question of law which this Court reviews *de novo*. *State v. White Bear*, 2005 MT 7, ¶ 5, 325 Mont. 337, 106 P.3d 516.

II. There was probable cause to charge Giffin with criminal endangerment and the district court erred in granting the motion to dismiss the criminal endangerment charge.

The statutory requirements governing the filing of an Information and the supporting affidavit are set forth in Mont. Code Ann. § 46-11-201, which provides:

(1) The prosecutor may apply directly to the district court for permission to file an information against a named defendant. If the defendant named is a district court judge, the prosecutor shall apply directly to the supreme court for leave to file the information.

(2) An application must be by affidavit supported by evidence that the judge or chief justice may require. **If it appears that there is probable cause to believe that an offense has been committed by**

the defendant, the judge or chief justice shall grant leave to file the information, otherwise the application is denied.

(Emphasis added.)

As this Court has explained, “[t]he sufficiency of charging documents is established by reading the information together with the affidavit in support of the motion for leave to file the information.” *State v. Elliot*, 2002 MT 26, ¶ 26, 308 Mont. 227, 43 P.3d 279. Also, the supporting affidavit does not have to make out a prima facie case that the defendant committed an offense. A mere probability that the defendant committed the offense is sufficient. *Id.*

Montana Code Annotated § 45-5-207(1) defines the offense of criminal endangerment and it provides:

A person who knowingly engages in conduct that creates a substantial risk of death or serious bodily injury to another commits the offense of criminal endangerment. This conduct includes but is not limited to knowingly placing in a tree, log, or any other wood any steel, iron, ceramic, or other substance for the purpose of damaging a saw or other wood harvesting, processing, or manufacturing equipment.

Here, in its order granting Giffin’s motion to dismiss, the district court did not set forth any legal analysis or authority for granting the motion and dismissing the criminal endangerment charge. (App. B.) Presumably, the district court accepted the argument that Giffin asserted in his motion. Giffin argued that there were no facts establishing probable cause that he committed the offense of criminal endangerment because the State’s affidavit in support of the Information failed to

allege that any specific victim was in danger from Giffin firing rounds from a gun through a hotel room window and into a parking area. (App. A.) Giffin's argument that the State had to identify a specific victim of his conduct in the affidavit to charge him with criminal endangerment is unpersuasive. *State v. Bell*, 277 Mont. 482, 923 P.2d 524 (1996).

In *Bell*, the State charged Bell with two counts of criminal endangerment and one count of criminal possession of dangerous drugs. *Id.*, 277 Mont. at 484, 923 P.2d at 525. The first count of criminal endangerment stemmed from Bell speeding away from Deputy Sheriff Gary Seder in his truck while Deputy Seder was holding on to Bell and the truck door. *Id.*, 277 Mont. at 484-85, 923 P.2d at 525. The second count of criminal endangerment involved Bell's high-speed drive through Hardin as he was pursued by Deputy Seder. *Id.*

The jury found Bell not guilty of the first count of criminal endangerment, guilty of the second count of criminal endangerment and guilty of criminal possession of dangerous drugs. *Id.*, 277 Mont. at 485, 923 P.2d at 535. Bell moved the district court for judgment notwithstanding the verdict or a new trial. *Id.* The district court set aside the second count of criminal endangerment and replaced it with a guilty verdict for the misdemeanor offense of reckless driving. The district court changed the verdict because the court determined that the State had not proven an element of criminal endangerment. *Id.* The district court "stated 'no

evidence was presented by the prosecution indicating that an identified person had been placed in substantial risk of death or serious bodily injury by the defendant's actions.'" *Id.*, 277 Mont. at 485, 923 P.2d at 526. The State appealed the district court's decision. *Id.*

This Court reversed the district court's decision, rejecting the district court's conclusion that identification of a particular victim is an element of the offense of criminal endangerment. *Id.*, 277 Mont. at 486-87, 489-90, 923 P.2d at 526, 528. In rejecting the district court's conclusion, this Court set forth the statutory definition of criminal endangerment in Mont. Code Ann. § 45-5-207(1) and then stated:

The second sentence of § 45-5-207, MCA, sets out an example of criminal endangerment in which there is no identified victim. Someone who knowingly places a "spike" in a tree creates a risk to an unknown, unidentified logger or mill worker. Much like driving 80 mph down a city street, "spiking" has the potential of endangering a person who happens to come into contact with the dangerous object. In a prosecution for spiking trees, it is sufficient that the State prove that the spike was "placed" for the purpose of damaging a saw. It is not necessary that the State prove that the tree was actually sawed or that an identifiable person was endangered or injured by the spike. Additionally, the criminal endangerment statute does not require proof that the defendant intended to injure another. Rather, it requires that the State prove that the defendant "knowingly" engaged in conduct and that the conduct created a *substantial risk* of death or serious bodily injury to another.

Id., 277 Mont. at 486-87, 923 P.2d at 526.

This Court also noted that the legislative history as well as its decisions in *State v. Smaage*, 276 Mont. 94, 915 P.2d 192 (1996) and *State v. Brown*, 270 Mont. 454, 893 P.2d 320 (1995), supports a conclusion that the identification of a specific victim is not an element of criminal endangerment. *Bell*, 277 Mont. at 489, 923 P.2d at 528. This Court specifically stated:

We take this opportunity to clarify our holding in Brown. Although Brown involved both unidentified and identified potential victims, **we now hold that no specific victim need be identified to find a defendant guilty of criminal endangerment.** Given the clear language of the statute which specifically includes conduct (tree spiking) involving unidentified victims, the legislative history which provides examples of drunk drivers and poisoned aspirin, neither of which necessarily require identified victims, and our holdings in Smaage and Brown, we hold that the District Court erred in concluding that the identification of a particular victim is an element of the offense of criminal endangerment.

Id. (Emphasis added.)

Here, the district court erred in adopting Giffin's argument that the State was required to allege in the charging documents that a specific victim or person was in danger as a result of Giffin shooting through a hotel window and into the parking area outside of his hotel room. *Bell*, 277 Mont. at 489, 923 P.2d at 528.

The affidavit in support of leave to file an Information stated that Giffin fired gunshots at and through a hotel room window while Giffin was hallucinating. (D.C. Doc. 1 at 3.) The affidavit also stated that Giffin fired a revolver into the wall. The affidavit provided the gun rounds exited the window towards a parking area

and into an unoccupied unit of the building. *Id.* The affidavit noted that the “parking area outside the window is commonly used by the occupants of the Outlaw Inn.” *Id.* By shooting out the window of a hotel room and into the hotel parking area, Giffin “knowingly engage[d] in conduct that create[d] a substantial risk of death or serious bodily injury to another.” Mont. Code Ann. § 45-5-207(1). The State’s charging documents provided probable cause to believe that Giffin committed the offense of criminal endangerment. Mont. Code Ann. § 46-11-201(2); *Elliot*, ¶ 26,

The district court erred in granting Giffin’s motion to dismiss.

CONCLUSION

This Court should reverse the district court’s order granting Giffin’s motion to dismiss and the State should be allowed to restart its prosecution of Giffin for criminal endangerment.

Respectfully submitted this 9th day of January, 2020.

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By: /s/ Micheal S. Wellenstein
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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 2,186 words, excluding certificate of service and certificate of compliance.

/s/ Micheal S. Wellenstein

MICHEAL S. WELLENSTEIN

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APPENDIX

On Appeal from the Montana Eleventh Judicial District Court,
Flathead County, The Honorable Amy Eddy, Presiding

Motion to Dismiss, Cause No. DC 19-176A

dated July 9, 2019App. A

Order to Dismiss, Cause No. DC 19-176A

dated July 10, 2019App. B

CERTIFICATE OF SERVICE

I, Micheal S. Wellenstein, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 01-09-2020:

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