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IN THE COURT OF APPEALS OF THE STATE OF ALASKA

WILLIAM M. BAHL,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-11767
Trial Court No. 3KN-13-764 CR

MEMORANDUM OPINION

No. 6627 — May 2, 2018

Appeal from the Superior Court, Third Judicial District, Kenai,
Anna M. Moran, Judge.

Appearances: Laurence Blakely, Assistant Public Defender, and
Quinlan Steiner, Public Defender, Anchorage, for the Appellant.
Craig C. Sparks, Assistant District Attorney, Kenai, and Craig
W. Richards, Attorney General, Juneau, for the Appellee.

Before: Mannheimer, Chief Judge, Coats, Senior Judge,* and
Suddock, Superior Court Judge.**

Judge SUDDOCK, writing for the Court.
Senior Judge COATS, concurring in part and dissenting in part.

* Sitting by assignment made pursuant to Article IV, Section 11 of the Alaska Constitution and Administrative Rule 23(a).

** Sitting by assignment made pursuant to Article IV, Section 16 of the Alaska Constitution and Administrative Rule 24(d).

Based on an incident where troopers responded to a domestic dispute, a jury convicted William M. Bahl of two counts of third-degree assault: one count for placing his mother in fear that Bahl would shoot her with a handgun, and one count for placing a trooper in fear with a shotgun.

Bahl now challenges the sufficiency of the evidence to support these verdicts. We conclude that the evidence was insufficient to prove that Bahl posed an imminent threat to his mother, or that Bahl was reckless as to the possibility that troopers might enter the house and be placed in fear by his possession of a shotgun. Accordingly, we reverse Bahl's convictions.

Background facts and proceedings

In May 2013, Bahl was living with his mother Mary Bahl at her home in Sterling. Bahl had been living with his mother since 2010, after his wife left him when he started abusing alcohol. Until that time, Bahl had led a seemingly successful and healthy life — he had a master's degree in economics and was working as a teacher.

Approximately six months before the events in this case, Bahl started using “bath salts.” Bahl's cousin, Jeremy Larson, a recovering addict, thought that Bahl's behavior on bath salts was consistent with the effects of amphetamine-based drug usage: “[e]xcess energy, paranoia, start a million projects and never finish one, talkative, [not] eat[ing], [not] sleep[ing].”

Over time, Bahl's behavior become increasingly erratic. Bahl started seeing and hearing non-existent people. As a precaution, Mary removed most of the knives and guns in the house (those that she could find).

During the midmorning of May 23, 2013, Mary's cousin Ed Larson was at the house for a visit. Bahl thought that someone had removed gunpowder from cartridges in the house and had replaced the gunpowder with paper wadding. When

Larson opened a cartridge to debunk this theory, Bahl wanted to light the gunpowder on one of Mary's dishes. Mary objected, and Bahl became angry at her.

Bahl told Mary that he could do as he wished, because the house actually belonged to him; he contended that Mary had tricked his now-deceased father into deeding the house to her. Concerned by her son's behavior, Mary told Bahl that she intended to call the troopers, and she went outside.

In the meantime, Mary's brother-in-law Dennis Spindler had come over and was parked in the driveway. Mary told Spindler what was going on, and then Mary and Spindler called the trooper dispatch center. Mary explained that her son was on bath salts and was acting aggressively, and requested that a trooper come to the house in order to help her defuse the situation. Mary told the dispatcher that no weapons were involved.

As she discussed this situation further with family members, Mary went in and out of the house. At some point, Mary noticed that Bahl had placed a handgun in his waistband. When she re-entered the house at another time, the handgun was sitting beside a computer in the kitchen. Based on the presence of the handgun and Bahl's unstable behavior, Mary was concerned that someone could get hurt. She was "uncomfortable" and "uneasy" about the handgun; she was worried that the situation could escalate, and she felt like "anything could happen."

Mary's nephew Jeremy Larson came over to the house; Jeremy got along well with his cousin Bahl, and the family members hoped that Jeremy could calm Bahl down.

Around this time, State Trooper Jeremy Grieme arrived in his patrol vehicle. He parked at the end of Mary's driveway and telephoned Mary, who informed him that Bahl had a gun in the house. Grieme asked to speak with Bahl on the phone.

During the ensuing conversation, Bahl told Trooper Grieme that he was in a dispute with his mother over ownership of the property, and admitted that he had taken

bath salts and that he had a firearm. Grieme explained to Bahl that his family members thought he was behaving irrationally. Bahl stated that he would shoot “someone” if he found out that he had been defrauded by Mary, and that if a trooper tried to remove him from the residence, Bahl would have a right to shoot the trooper in the head. Grieme assured Bahl that he was not going to be asked to leave the property.

At the end of this conversation, Bahl handed the phone back to his mother. Grieme asked Mary to leave the house or to get Bahl to come outside to speak with him.

The family members decided that they needed to get the handgun out of the house in order for the troopers to have a safe in-person conversation with Bahl. Ed and Jeremy Larson kept Bahl talking — at that point Bahl was still fixated on the idea that his cartridges were filled with paper wadding — while a family member surreptitiously unloaded the handgun and then removed it from the house.

Learning of this, Grieme and two other troopers who had by then responded (Sergeant Truesdell and Lieutenant Gilmore) entered the house to talk to Bahl. But unbeknownst to Mary and the troopers, Bahl and Spindler had gone upstairs, because Bahl had told Spindler that he wanted to show him a shotgun.

As Bahl and Spindler came back downstairs with the shotgun, the troopers rounded a corner and encountered Bahl and Spindler several feet away, near the bottom of the stairs. Bahl was holding the shotgun by the barrel, with the barrel pointed toward the ceiling.

Spindler saw the troopers and immediately put his hand on the barrel of the shotgun to secure it. Bahl said, “Let go of my gun.” Spindler and Mary both observed a surprised expression on Bahl’s face when he saw the troopers.

Sergeant Truesdell lunged forward and grabbed the shotgun from Bahl’s hands. Bahl was immediately taken into custody.

The State charged Bahl with three counts of third-degree assault for recklessly causing fear of imminent serious physical injury in three victims: Mary Bahl (by means of the handgun), and Sergeant Truesdell and Trooper Grieme (by means of the shotgun).¹ As to Mary Bahl, the State's theory was that Bahl's behavior and statements while he was on bath salts, followed by his display of the handgun, caused Mary to reasonably fear imminent serious physical injury. As to the two troopers, the State's theory was that Bahl was recklessly indifferent to the possibility that troopers might enter the house and be placed in fear by his possession of a shotgun.

At trial, the State's witnesses testified to the facts described above. When the prosecutor asked Mary whether she believed that Bahl brought the handgun out to intimidate her, Mary testified as follows:

I don't know. I don't know. I don't know how his mind was working that day because it was just unrealistic. And my — I guess my — my thought when you bring a gun out is — and if you're on bath salts — and he never pointed it at anybody. He never, you know, verbally said anything to anybody, but my thought was that anything could happen. And that's why I tried to keep things calm and the people that were there were keeping things calm.

Mary repeatedly explained that she was worried that “anything could happen,” she was “concerned,” she “didn't want anything to escalate,” she was “uncomfortable,” and she “felt intimidated.” Mary testified that she recalled telling Trooper Grieme that by bringing a gun into the situation, Bahl was “trying to assert authority or a threat.” She added that she had felt “intimidated and that anything could happen. I guess that's the part where there could be a threat.” But she testified that Bahl never threatened her or pointed the gun at anyone.

¹ AS 11.41.220(a)(1)(A).

Ed Larson testified that the handgun was on the kitchen counter when he arrived at the house that morning. He testified that Bahl never picked the handgun up. Jeremy Larson testified similarly: that “[Bahl’s] attention wasn’t even on the gun.”

Sergeant Truesdell testified that when he entered the residence, he had only recently arrived on the scene and knew little other than that someone inside was on bath salts and that a gun was somehow involved. Truesdell was the first trooper to arrive at the stairs. When he saw Bahl and Spindler at the bottom of the stairs, both had their hands on the shotgun, and the shotgun’s barrel was pointed toward the ceiling. Truesdell lunged forward and grabbed the shotgun from Bahl’s hands. Truesdell testified that the shotgun was never pointed toward him or any other person. Trooper Grieme testified that he perceived a risk that he would be shot, but that Bahl made no oral threats to shoot anyone.

During his summation to the jury, the prosecutor argued that Bahl was reckless if he was “aware of and consciously disregarded a risk that, due to his conduct, people would fear being shot,” or that if Bahl was not consciously aware of such a risk, he was oblivious only due to bath salt intoxication.

The prosecutor contended that as Bahl descended the stairway, he was aware of a critical fact: that the troopers, whom he had threatened to shoot should they try to remove him, were about to enter the residence. The prosecutor reasoned that Bahl’s threat to harm any trooper trying to remove him from the house evidenced Bahl’s awareness that the troopers were, at that moment, present outside the house. According to the prosecutor, Bahl’s presumed knowledge that the troopers were at hand proved Bahl’s culpable mental state of recklessness when he descended the stairs with a loaded shotgun.

The prosecutor additionally argued that, because Bahl did not let go of the shotgun when Spindler placed his hand on the barrel to prevent Bahl from doing “anything crazy with it,” Bahl’s conduct also evidenced his reckless mental state.

As to Bahl’s mother, the prosecutor argued that Bahl knew (or would have known but for his intoxication) that his display of a handgun would put Mary in fear of imminent serious physical injury. The prosecutor pointed to the threatening statements that Bahl made to the trooper over the phone about shooting Mary if Bahl found out that she had defrauded him out of the house. The prosecutor argued that the element of a threat of imminent injury was proven by Mary’s testimony that she was afraid that “anything could happen,” and that unless Bahl was disarmed someone was going to get shot. The prosecutor told the jury that it was the jury’s role to decide “what’s imminent and what’s not.”

During his rebuttal argument, the prosecutor stated that the case was “all about [the] perception” of the officers and Mary Bahl that they would be shot. According to [the] prosecutor, “[T]hat’s enough [Because] the defendant’s actions ... caused those perceptions ..., he’s guilty of these offenses.”

After deliberating for over two full days and asking the trial court “the most questions” it had ever seen a jury ask, the jury finally returned a verdict. The jury found Bahl guilty of third-degree assaults of Mary Bahl and Trooper Grieme, and acquitted Bahl of third-degree assault and disorderly conduct as to Sergeant Truesdell.

Why we conclude that the evidence at trial was insufficient to convict Bahl of assaulting his mother

Bahl argues that the State presented insufficient evidence to convict him of third-degree assault of his mother. He contends that the State failed to prove that (a) Mary had a reasonable apprehension of harm, (b) any harm she apprehended was

imminent, and (c) Bahl was reckless as to whether his conduct would cause Mary to fear imminent serious physical injury.

Alaska Statute 11.41.220(a)(1)(A) provides that a person commits third-degree assault “if that person ... recklessly ... places another person in fear of imminent serious physical injury by means of a dangerous instrument.” “[A] person is ‘placed in fear’ of imminent injury if the person reasonably perceives or understands a threat of imminent injury.”²

We conclude that there is insufficient evidence that Mary was put in fear of an *imminent* physical assault. After Bahl stated that the house really belonged to him, Mary decided to call the troopers to ask for help in de-escalating the situation; at that point, no weapons were involved. It was only after the troopers were en route that Mary observed the handgun in Bahl’s waistband.

After Mary and then Bahl spoke with Trooper Grieme, the trooper informed Mary that Bahl had issued a conditional threat against her: if he went to the courthouse and determined that court documents revealed that she had fraudulently obtained title to the house that was rightfully Bahl’s, he might shoot her. While serious, this was not a threat to harm Mary at that time.

Bahl had at some point removed the handgun from his waistband and placed it on a kitchen counter. His cousin then distracted him in the living room by continuing their discussion about bullets. Witnesses testified that Bahl was paying no evident attention to the handgun and that family members quietly unloaded and removed it from the residence.

No testimony at trial indicated that Mary at that point feared that Bahl was about to shoot her. Instead, her concern was for what might happen should the troopers

² *Hughes v. State*, 56 P.3d 1088, 1090 (Alaska App. 2002).

enter the house while the handgun was still within Bahl's reach. Mary worried that if the troopers entered the house prematurely, there was a risk that someone could get shot.

But, as Mary knew, the troopers were in a holding pattern until she alerted them that the handgun had been removed and that it was safe for them to enter the house. Her worry thus centered on a future hypothetical situation involving the handgun that never came to pass — because both the troopers and the family recognized the risk and took steps to avoid it.

We accordingly conclude that, even construing the evidence in the light most favorable to the State, the State failed to produce sufficient evidence at trial to prove that Bahl subjected Mary to a threat of imminent harm with the handgun.

Why we conclude that the evidence at trial was insufficient to convict Bahl of assaulting Trooper Grieme

The prosecutor's main theory of its case against Bahl for assaulting the troopers was that Bahl knew that the troopers were outside the house and that their entry into the house was imminent. The prosecutor reasoned that knowing this, and knowing that he had recently threatened to shoot any trooper attempting to remove him from the house, Bahl acted with a reckless state of mind when he fetched the shotgun — because even if the troopers only saw him with a shotgun in a neutral position, they would fear for their lives.

In effect, the prosecutor's theory of the case rests on the premise that, when Bahl descended the stairway with the shotgun that he was discussing with his uncle, he was actually aware of and disregarded a substantial and unjustifiable risk that the troopers would arrive at any second and discover him armed. But the prosecutor's premise that Bahl knew that the troopers might arrive at any second is unsupported by the evidence at trial. Trooper Grieme never told Bahl that he was outside the house or

that his entry was imminent. And when Bahl threatened to harm any trooper attempting to remove him from the house, Grieme reassured Bahl that the troopers were not going to do that.

Even drawing all inferences from the evidence in favor of the jury's verdict, we find insufficient evidence that Bahl consciously disregarded a known risk that the troopers would suddenly appear and experience fright at his possession of a shotgun. The only evidence in the case was that, from Bahl's point of view, his encounter with the troopers as he descended the stairs with the shotgun was an unexpected occurrence, and not the realization of a risk that he was consciously aware of.

Alternatively, the State argues that Bahl should have let go of the shotgun the second that he realized that the troopers were present. But two witnesses testified to Bahl's surprised reaction at the arrival of the troopers. Simultaneously, his uncle placed his hand on the weapon, and a trooper then seized it. The evidence at trial did not support any conclusion that, during the exceedingly brief interval between Bahl's perception of the troopers and their seizure of his shotgun, Bahl had time to arrive at a conclusion that he should take some step to assuage a fear of harm on the part of the troopers.

Conclusion

We REVERSE the judgment of the superior court.

Senior Judge COATS, concurring in part and dissenting in part.

I agree with the opinion of the court that there was insufficient evidence to convict Bahl of third-degree assault against Mary Bahl.

But I disagree with the opinion of the court that there was insufficient evidence to support the jury's verdict that Bahl recklessly placed Trooper Grieme in fear of imminent serious physical injury by means of a dangerous instrument — the shotgun.

Bahl essentially argues that the potential risk that the troopers would enter his house was not a foreseeable result of his reckless behavior.

But Bahl must have been aware that he had created a situation where the troopers were required to intervene. Trooper Grieme had been informed that Bahl had consumed bath salts and was acting very erratically. And Trooper Grieme's conversation with Bahl certainly confirmed this observation. In particular, Grieme concluded that he needed to intervene by contacting Bahl and ensuring that Bahl and the people around him were safe.

But given Bahl's erratic behavior and specifically his threat that he would shoot the troopers in the head if they came to remove him from his property, the troopers needed to find a way to contact Bahl in a safe manner. Had the troopers just walked up to the door of Bahl's residence, there was a significant possibility that Bahl might think that they were there to remove him from the property, and that he might carry out his threat to shoot them. So the troopers worked with the family members to try to make sure that they could have an in-person conversation with Bahl without the risk of Bahl possessing a weapon. The troopers ultimately received assurances that Bahl did not have a weapon and were let into the house.

Unfortunately, Bahl had retrieved the shotgun by the time the troopers entered the house, setting up an extremely dangerous situation. Given Bahl's irrational

behavior, his possession of the shotgun, and his previous threats to shoot the troopers if they tried to remove him from his house, both Trooper Grieme and Sergeant Truesdell were ready to shoot Bahl when they saw him with the shotgun. But fortunately, Dennis Spindler had a grip on the shotgun and the troopers did not have a clear shot at Bahl. Sergeant Truesdell was able to step forward, grab the shotgun, and disarm Bahl.

Given Bahl's irrational behavior and his threats to shoot people, the troopers reasonably and justifiably intervened and tried to contact Bahl to alleviate a dangerous situation. And, had Bahl not been highly intoxicated on the bath salts, he would have anticipated that the troopers would perceive that they had no choice other than to contact Bahl to intervene in what appeared to be a serious domestic incident.

Furthermore, given the facts of this case, it was reasonable that the troopers would attempt to surreptitiously approach Bahl in the way they did in an attempt to avoid an armed confrontation. The fact that Bahl was surprised by the troopers' actions should not give him a defense to an assault which occurred because of a reasonable response by the troopers to Bahl's reckless actions.

When a person engages in a reckless activity, it is often difficult to predict exactly what harm will occur. But the fact that something unusual happens because of that person's actions does not constitute a defense. Bahl chose to arm himself with a loaded shotgun while he was extremely impaired and apparently unable to function rationally. Bahl must have known that his actions created a high risk that someone would be seriously hurt or at least placed in fear of imminent serious physical injury. There were many possibilities of how this might happen. Bahl could have tripped and discharged the shotgun. Or Bahl could have misperceived a situation and used the shotgun in what he perceived to be self-defense. Or someone could have become frightened and attempted to take the weapon from him. But the fact that predicting what could go wrong might be difficult should not constitute a defense.

In this particular case, what did happen appears to me to be foreseeable given the facts of this case. In my view, although Bahl was unlucky that the police plan to contact him while he was unarmed did not work, he was extremely lucky that his reckless actions did not result in him being shot by the troopers.

I therefore respectfully dissent.