

STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. CUM-24-301

STATE OF MAINE,
Appellee

V.

GABRIEL MCKUSICK,
Appellant

ON APPEAL FROM THE
CUMBERLAND COUNTY UNIFIED CRIMINAL DOCKET

BRIEF OF APPELLEE

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PROCEDURAL HISTORY

A Cumberland County Grand Jury returned an Indictment on August 9, 2023, charging the Appellant with Criminal Threatening with a Dangerous Weapon, Class C; Creating a Police Standoff, Class E; and Refusing to Submit to Arrest, Class D, arising from an incident that occurred in Portland on June 23, 2023. Appendix (*hereinafter* A.) 3, 23-24. Trial was held in the Cumberland County Unified Criminal Court on May 29, 2024, and at the close of the State's case the Appellant moved for an acquittal on all charges. A. 9. The Trial Court denied this Motion, and the jury subsequently found the Appellant Not Guilty on the charges of Criminal Threatening with a Dangerous Weapon and Refusing to Submit to Arrest but returned a verdict of Guilty on the charge of Creating a Police Standoff. A. 9, 13. The Appellant renewed his Motion for a Judgment of Acquittal, which was denied on November 25, 2024. A. 11-12, 13, 25-29. This Appeal follows.

STATEMENT OF THE FACTS

On June 23, 2023, Portland Police officers were dispatched to Burger King on Forest Avenue for a male threatening with a gun. The victim told police that the Appellant came through the drive-thru with a gun and that he gestured to it while saying to her, "I'll get you later." The victim was extremely frightened and called police. His vehicle was described as a white sedan with Maine plates. When officers arrived, they saw this vehicle in the parking lot, parked halfway between Prompto Oil and Burger King. The Appellant was seated in the driver's seat and matched the description given of the suspect. Portland Police Officers Christopher Walles and Robert Gray conducted a high-risk motor vehicle stop. They told the Appellant to stop his car and toss the keys out the window, which he did, but he refused to exit the vehicle when instructed to do so. Other officers arrived. The Appellant still refused to get out of his

vehicle. Crisis negotiators and the Special Reaction Team then responded to the scene. OC spray (also known as pepper spray) and CS gas (also known as tear gas) were deployed into the Appellant's vehicle in an effort to make him exit his vehicle, to no avail. Eventually, a decision was made to approach the vehicle on foot, and officers finally were able to remove the Appellant from his vehicle and place him under arrest. Officers then searched his vehicle and located a loaded AR-15 rifle with two loaded magazines in the front seat.

The State presented evidence at trial which included the testimony of the victim and several police officers and a 40-minute video of just a portion of the police standoff.

The victim testified that the Appellant drove up to her drive-thru window at Burger King and ordered food. Trial Transcript (*hereinafter* T.T.) 17-19. He "flicked" the bottom of a gun in the passenger seat and stated to her, "I'll get you later." T.T. 19-20. She further testified that it so frightened her that she called police. T.T. 20.

Officer Christopher Walles testified that he arrived at the scene just after 7 P.M. T.T. 38-39. The Appellant was sitting in his vehicle in the parking lot. T.T. 40-41. When Officer Robert Gray arrived, he and Officer Gray initiated a high-risk motor vehicle stop of the Appellant's vehicle, which involved approaching the vehicle with weapons drawn and giving multiple verbal directives ordering him out of the car. T.T. 41. The Appellant refused at all times to do as he was ordered. T.T. 43. Officer Walles testified that after telling the Appellant to stop his car, turn the ignition off, throw the keys out the window, and exit his vehicle, the Appellant's car at one point rolled forward, then came to a stop. T.T. 43-44. He further testified that the time from when the Appellant's vehicle rolled forward and stopped until he was removed from his vehicle and placed under arrest was approximately 2-1/2 hours. T.T. 44. He

later testified that a decision was made to extract the Appellant from his car after 2-1/4-2-1/2 hours. T.T. 46-47.

Officer Jacob Webster testified that he arrived at the scene at 7 P.M. and spoke to witnesses and blocked traffic while there. T.T. 62. He assisted in the arrest of the Appellant. T.T. 66-68. He estimated that the standoff lasted an hour and a half to two hours. T.T. 64. He stated that he himself “covered down” on the Appellant’s vehicle “for about an hour, an hour and a half.” T.T. 65, 67.

Officer Zachary Theriault testified that he received a call to respond to an incident at Burger King at about 7:45 P.M. T.T. 76. He first went to the police department to retrieve his equipment, then went to the scene in one of the department’s armored vehicles. T.T. 76-77. The State entered into evidence video of his body-worn camera which captured approximately 40 minutes of the standoff, ending when the Appellant was taken into custody. T.T. 94. It demonstrates that the Appellant refused to exit his vehicle after being ordered to do so and that he was forcibly removed from his vehicle and placed under arrest only after negotiators failed to get him to exit his vehicle and only after officers deployed OC spray and CS gas into his vehicle. T.T. 85, 87-89. Officer Theriault further testified that from the time he fired the first round into the Appellant’s vehicle until the time he fired the last round into the Appellant’s vehicle, thirty minutes had elapsed. T.T. 90.

Officer John Nelson testified that he photographed the scene, including the interior of the Appellant’s vehicle, following the Appellant’s arrest. T.T. 107. Inside the Appellant’s vehicle on the passenger seat, he located an AR-15 rifle with two loaded magazines taped to it, giving the rifle the capability of making what he called a “speed reload.” T.T. 108-109.

STATEMENT OF THE ISSUES

- I. Whether the Trial Court erred in interpreting the word “barricade” in the statute which sets forth the crime of Creating a Police Standoff?**
- II. Whether the State presented evidence at trial sufficient to prove beyond a reasonable doubt each and every element of the crime of Creating a Police Standoff?**

ARGUMENT

- I. The Trial Court did not err in interpreting the word “barricade” in the statute which sets forth the crime of Creating a Police Standoff.**

Maine law provides that “a person is guilty of creating a police standoff if that person:

- A. Is in fact barricaded as a result of the person's own actions;
- B. Is or claims to be armed with a dangerous weapon;
- C. Is instructed by a law enforcement officer or law enforcement agency, either personally, electronically or in writing, to leave the barricaded location; and
- D. Fails in fact to leave the barricaded location within 1/2 hour of receiving the instruction...from a law enforcement officer or law enforcement agency.”

17-A M.R.S.A. §517.

The Trial Court denied the Appellant’s Motion to Acquit at the close of the State’s case and later denied the Appellant’s Renewed Motion for Judgment of Acquittal, concluding that “remaining in the car with his weapon after being ordered to exit constituted creating a barrier between himself and law enforcement and thus was a barricade.” A. 13, 20.

Statutory interpretation is a question of law that the Law Court must review de novo for errors of law. *State v. Gagne*, 2019 ME 7 ¶ 16, 199 A.3d 1179; *Daniels v. Tew Mac Aero Servs., Inc.*, 675 A.2d 984, 987 (Me.1996).

Our standard for interpreting statutory provisions is well established:

In interpreting these provisions, we first look to the plain language of the provisions to determine their meaning. If the language is unambiguous, we interpret the provisions according to their unambiguous meaning unless the result is illogical or absurd.

State v. Dubois Livestock, Inc., 2017 ME 223 ¶6, 174 A.3d 308; *Preti Flaherty Beliveau & Pachios LLP v. State Tax Assessor*, 2014 ME 6 ¶11, 86 A. 3d 30.

The statute at issue in this matter does not include a definition for the term “barricade.” “In considering the plain language of a statute, we construe any undefined words and phrases according to their common meaning.” *State v. Hall*, 2019 ME 126¶18, 214 A.3d 19, *citing State v. Murphy*, 2016 ME 5 ¶7, 130 A. 3d 401.

In determining the common meaning of the term “barricade,” one need only turn to the dictionary. “To barricade” means “to *block*, confine, or fortify with a barricade” (*emphasis added*). Webster’s II New Riverside Dictionary 58 (1984). A “barricade,” moreover, is defined as “a hastily constructed *barrier* or fortification” (*emphasis added*). *Id.* This Court must consider all of the evidence admitted at trial and may reach only one conclusion. By remaining inside his vehicle with doors closed and with a dangerous weapon in the passenger compartment, and by refusing to exit his vehicle after being ordered to do so by law enforcement officers, the Appellant prevented officers from placing him under arrest. The Appellant’s motor vehicle, combined with the presence of a dangerous weapon inside that vehicle which posed a threat of violence to himself or others, presented a barricade that prevented police officers from arresting the Appellant.

II. The State presented evidence at trial sufficient to prove beyond a reasonable doubt each and every element of the crime of Creating a Police Standoff.

The Appellant argues that the evidence presented at trial was insufficient to prove that he created a police standoff. The Appellant further argues that the police standoff, if in fact there

was one, did not last longer than thirty minutes after the Appellant was instructed by officers to exit his vehicle.

The Appellant first challenges the sufficiency of the evidence supporting the jury's verdict. All elements of a crime must be proved beyond a reasonable doubt at trial. 17–A M.R.S.A. §32. In this case, the Appellant was charged with the crime of Creating a Police Standoff. A person commits the crime of Creating a Police Standoff if he is barricaded as a result of his own actions; is or claims to be armed with a dangerous weapon; is instructed by law enforcement to leave the barricaded location; and fails to leave the barricaded location within ½ hour of receiving the instruction. 17-A M.R.S.A. §517.

The standard of review is well established:

When a defendant challenges the sufficiency of the evidence on appeal, we view the evidence in the light most favorable to the State to determine whether a fact-finder could rationally find beyond a reasonable doubt every element of the offense charged. The jury is permitted to draw all reasonable inferences from the evidence and is free to selectively accept or reject testimony presented based on the credibility of the witness or the internal cogency of the content.

State v. Perkins, 2014 ME 159 ¶13, 107 A.3d 636, 640, *citing State v. Hayden*, 2014 ME 31 ¶12, 86 A.3d 1221 (quotation marks and citation omitted); *see also State v. Miller*, 2018 ME 112 ¶11, 191 A.3d 356, 358.

Evaluating the witnesses' credibility and weighing the evidence are within the exclusive province of the fact-finder. *State v. Weaver*, 2016 ME 12 ¶14, 130 A.3d 978. The fact-finder "is permitted to draw all reasonable inferences from the evidence and is free to selectively accept or reject testimony based on the credibility of the witness or the internal cogency of the content." *State v. Perkins*, 2014 ME 159 ¶13, 107 A.3d 640 (*citations omitted*).

"When reviewing a judgment for sufficiency of the evidence, we view the evidence in the light most favorable to the State to determine whether the fact-finder could rationally have found

each element of the offense beyond a reasonable doubt. We defer to all credibility determinations and reasonable inferences drawn by the fact-finder, even if those inferences are contradicted by parts of the direct evidence.” *State v. Hall*, 2019 ME 126 ¶16, 214 A.3d 19, *citing State v. Hansley*, 2019 ME 35 ¶19, 203 A.3d 827.

The Appellant argues that the evidence admitted during the trial was insufficient to support the jury’s verdict. However, it is clear from the record that the evidence was sufficient to support his conviction for Creating a Police Standoff and that, if the jury credited the testimony of the State’s witnesses, as it was entitled to do, the jury rationally could find each element of the crime of Creating a Police Standoff beyond a reasonable doubt. Viewing the evidence in the light most favorable to the State, the record before this Court fully supports the jury’s finding that the Appellant committed the crime of Creating a Police Standoff.

The Appellant did barricade himself in his vehicle. Clearly, the fact that he was seated inside his vehicle, doors closed, all while known to be in possession of a dangerous weapon, prevented officers from gaining access to him. He was ordered to exit his vehicle but refused to do so for a period of time variously described as between an hour and a half and two and a half hours. The Appellant did refuse to exit his vehicle within thirty minutes after being ordered by law enforcement officers to do so, and as a result committed the crime of Creating a Police Standoff.

CONCLUSION

Considering all of the evidence in this case in the light most favorable to the State, a reasonable jury could conclude that the State had proven all of the elements of the crime of Creating a Police Standoff beyond a reasonable doubt. The Appellant barricaded himself inside his motor vehicle while armed with a dangerous weapon, and he refused to exit his motor vehicle

within thirty minutes after being instructed to do so. For all of the foregoing reasons, this Appeal should be denied in its entirety.

Dated: January 29, 2025

Deborah Chmielewski
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Bar No. 7774

CERTIFICATE OF SERVICE

I, Deborah A. Chmielewski, Assistant District Attorney for Cumberland County, certify that I have this date caused two copies of the foregoing Brief of Appellee to be served upon Appellant, Gabriel McKusick, by depositing them in the United States mail, postage pre-paid, addressed as follows:

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Dated at Portland, Maine, this 29th day of January, 2025.

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