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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Appellee, v. LAWRENCE EDWARD MAUCHER, Appellant.	2 CA-CR 2011-0284 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20102865001

Honorable John S. Leonardo, Judge

AFFIRMED

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V Á S Q U E Z, Presiding Judge.

¶1 After a jury trial, Lawrence Maucher was convicted of disorderly conduct, a domestic violence offense, and was sentenced to an enhanced, mitigated 1.5-year term of imprisonment. On appeal, Maucher argues the trial court erred in refusing to instruct the jury on the presumption of reasonableness that applies when defending against someone entering a defendant's residence unlawfully pursuant to A.R.S. § 13-419. For the reasons stated below, we affirm.

Factual Background and Procedural History

¶2 We view the facts in the light most favorable to upholding Maucher's conviction. *See State v. Haight-Gyuro*, 218 Ariz. 356, ¶ 2, 186 P.3d 33, 34 (App. 2008). In August 2010, twenty-two-year-old W.M. lived with his parents, Maucher and J.M., at their home in Tucson. On the morning of August 10, W.M. had left the house to go to school when he received a text message from Maucher that read, "Where is my f---ing pistol." Although W.M. did not immediately respond, the following text messages were exchanged:

> Maucher: I was really hoping that you would respond to me because now I am going to have to shred your bedroom.
>
> W.M.: I don't have it. And don't go in my room. I'll come up there, I will beat the living hell out of you.
>
> Maucher: I will blow your f---ing head off with your own shotgun. Try me.
>
> W.M.: Good thing there[are] no bullets.
>
> Maucher: Yes, there are. I have got them, don't f--- with me.

¶3 Because the situation with Maucher had "escalated" to such an extent, W.M. returned home to "resolve it and bring it down." W.M. knocked on the front door, and as he opened it he saw Maucher sitting in a chair with a shotgun pointed toward the ground. As W.M. opened the door further, Maucher pointed the shotgun at him. W.M. said, "Don't shoot, put it down." Maucher replied, "Don't come in this house." Although W.M. testified he believed Maucher would shoot him if he entered the house, Maucher eventually pointed the barrel of the gun at the ceiling and "put[] the safety on." W.M. entered the house, took the shotgun from Maucher, and ejected three live rounds. W.M. then placed the gun and shells in the trunk of his car and left for school. Shortly thereafter, W.M. telephoned his mother at work, informing her of the incident.

¶4 J.M. tried to reach Maucher by telephone several times, but he did not answer. Maucher did, however, respond to J.M.'s text messages, stating he was looking for his pistol. J.M. left work intending to go home; however, she realized she was too afraid to go alone so she drove to her sister's house and called 9-1-1. Police officers who responded to the call escorted J.M. to the house.

¶5 There, Maucher was interviewed by a detective and initially stated he had pointed the shotgun at W.M. because he was afraid W.M. was going to beat him to death. But Maucher later admitted he was just trying "to scare the shit out of [W.M.] and [to] get [his] God-damn pistol back." He told the detective he gets really mad when his kids borrow his things and do not take care of them.

¶6 Maucher was charged by information with one count of aggravated assault involving the use of a deadly weapon or dangerous instrument, and the charge was designated a domestic violence offense. The jury found Maucher not guilty of aggravated assault, but found him guilty of the lesser-included offense of disorderly conduct and found the domestic violence allegation proven beyond a reasonable doubt. *See* A.R.S. § 13-2904(A)(6). He was sentenced as described above, and this appeal followed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A).

Discussion

¶7 Maucher contends the trial court erred in denying his request for a jury instruction on the presumption of reasonableness in § 13-419. He maintains that because he was convicted of disorderly conduct for recklessly handling, displaying, or discharging a deadly weapon or dangerous instrument, "[the jurors] could have found that . . . [he] was justified, not reckless, in displaying the weapon" if they had been instructed on the statutory presumption of reasonableness.

¶8 We review the trial court's ruling denying a jury instruction for an abuse of discretion, *State v. Wall*, 212 Ariz. 1, ¶ 12, 126 P.3d 148, 150 (2006), but the interpretation of a statute is a question of law we review de novo, *State v. Fell*, 203 Ariz. 186, ¶ 6, 52 P.3d 218, 220 (App. 2002). Jury instructions are viewed as a whole to determine if they "adequately reflect the law." *State v. Gallegos*, 178 Ariz. 1, 10, 870 P.2d 1097, 1106 (1994). And, "[a] trial court . . . does not err in refusing to give a jury instruction that is an incorrect statement of the law, does not fit the facts of the particular

case, or is adequately covered by the other instructions." *State v. Hussain*, 189 Ariz. 336, 337, 942 P.2d 1168, 1169 (App. 1997).

¶9 During the settling of the jury instructions, Maucher requested the following instruction:

> A person is presumed to reasonably believe that the threat of physical force or deadly force is immediately necessary for purposes of A.R.S. § 13-407 (use of physical force in defense of premises),[1] if the person knows or has reason to believe that the person against whom physical force or deadly force is threatened is unlawfully entering or has unlawfully entered and is present in the person's residential structure.
>
> A person is considered to have entered or remained unlawfully when such person's intent for enterin[g] or remaining is not licensed, authorized or otherwise privileged.
>
> A license to enter on real property is considered permission, usually revocable, to commit some act that would otherwise be unlawful.
>
> A mere demand by the owner of a private premise [sic] constitutes a lawful order and revocation of permission, for the purposes of criminal trespass.

[1]The state argues the proposed instruction's reference to A.R.S. § 13-407, defense of premises, would have confused the jury because Maucher did not raise that defense at trial. Rather, Maucher claimed his actions were justified as self-defense, A.R.S. § 13-404, and to prevent a crime, A.R.S. § 13-411, and the jury was adequately instructed on those defense theories. We agree the instruction as proposed would have been confusing. However, as Maucher points out, the presumption in § 13-419(A) also applies to other justification defenses, and the trial court could have modified the proposed instruction to refer to the appropriate defense theory. However, Maucher did not ask the trial court to modify the proposed instruction. We also conclude, under the circumstances here, that the instruction was not applicable in any event, and we therefore need not address whether the trial court should have corrected it sua sponte.

The trial court denied the request, finding other instructions "adequately cover[ed] the law involved."

¶10 Section 13-419(A) provides "[a] person is presumed to reasonably believe that the threat or use of physical force or deadly force is immediately necessary . . . if the person knows or has reason to believe that the person against whom physical force or deadly force is threatened or used is unlawfully or forcefully entering or has unlawfully or forcefully entered and is present in the person's residential structure." But the presumption does not apply if "[t]he person against whom physical force or deadly physical force was threatened or used has the right to be in or is a lawful resident of the residential structure . . . and an order of protection or injunction against harassment has not been filed against that person." § 13-419(C)(1).

¶11 Maucher does not dispute that W.M. lived at the residence with him and J.M. when the incident occurred,[2] or that an order of protection or injunction against harassment had not been filed against W.M. However, Maucher maintains he effectively had revoked W.M.'s permission to be in the house when he told him not to enter. And, based on that revocation, Maucher contends W.M. entered the residence unlawfully and Maucher therefore was entitled to the presumption of reasonableness under § 13-419(A).

¶12 Our primary goal in interpreting a statute is to effectuate the intent of the legislature. *State v. Ross*, 214 Ariz. 280, ¶ 22, 151 P.3d 1261, 1264 (App. 2007). We look first to the plain language of the statute as the best indicator of that intent and give

[2]Both W.M. and J.M. testified that W.M. had been residing at the house with J.M.'s and Maucher's permission when the incident occurred.

that language effect when it is clear and unambiguous. *Fragoso v. Fell*, 210 Ariz. 427, ¶ 7, 111 P.3d 1027, 1030 (App. 2005). We "will not read into a statute something which is not within the manifest intent of the legislature as reflected by the statute itself." *State v. Ritch*, 160 Ariz. 495, 497, 774 P.2d 234, 236 (App. 1989); *see also City of Phoenix v. Donofrio*, 99 Ariz. 130, 133, 407 P.2d 91, 93 (1965) ("[A] court will not inflate, expand, stretch or extend a statute to matters not falling within its expressed provisions.").

¶13 We conclude the language of § 13-419 is clear and unambiguous, and the legislature did not intend the § 13-419(A) presumption to apply when the defendant threatens or uses force against another resident and an order of protection or injunction against harassment has not been filed against the victim. *See* § 13-419(A), (C)(1). Because W.M. was a resident of the house, and there was no evidence that an order of protection or injunction against harassment had been filed against him, the presumption does not apply in this case. *See* § 13-419(C)(1).

¶14 Maucher argues this is "not a logical interpretation" of § 13-419. He claims that under this interpretation of the statute, if a houseguest was threatening a homeowner, the homeowner "would not be permitted to revoke the guest's license to be in the home . . . [and] defend himself without first obtaining an order of protection." We disagree. Even when the victim is another resident or had entered the premises lawfully, the defendant would be entitled to claim self-defense or that he acted to prevent a crime. And if those justification defenses were supported by the evidence, he would be entitled to jury instructions on those theories—he simply would not be entitled to the presumption contained in § 13-419(A).

¶15 To read § 13-419 as Maucher urges—to allow the presumption to apply when a lawful resident's permission to be in the residential structure has been revoked contemporaneously with an altercation—would require us to rewrite the statute, which we will not do. *See Ritch*, 160 Ariz. at 497, 774 P.2d at 236. If the legislature had intended the presumption to apply in that situation, it could have explicitly said so. Based on the plain language of § 13-419, the trial court did not err in denying Maucher's requested instruction.

Disposition

¶16 For the reasons set forth above, Maucher's conviction and sentence are affirmed.

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge