IN THE COURT OF APPEALS OF THE STATE OF ALASKA

DENNIS RYAN KATCHATAG, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-13581 Trial Court No. 2UT-18-00143 CR MEMORANDUM OPINION No. 7077 — November 8, 2023

Appeal from the Superior Court, Second Judicial District, Nome, Romano D. DiBenedetto, Judge.

Appearances: Amanda Harber, 49th State Law LLC, Soldotna, under contract with the Public Defender Agency, and Samantha Cherot, Public Defender, Anchorage, for the Appellant. Seneca Theno Freitag, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Treg R. Taylor, Attorney General, Juneau, for the Appellee.

Before: Wollenberg, Harbison, and Terrell, Judges.

Judge HARBISON.

Following a jury trial, Dennis Ryan Katchatag was convicted of third-degree assault for recklessly placing another person (a state trooper) in fear of imminent

serious physical injury by means of a firearm.[1] The jury also found that the aggravating factor set out in AS 12.55.155(c)(13) applied because Katchatag knowingly directed his conduct at a law enforcement officer during the exercise of the officer's official duties. The superior court sentenced Katchatag to 5 years with 1 year suspended (4 years to serve).

Katchatag raises three arguments on appeal. First, Katchatag argues that the evidence at trial was insufficient to establish that he acted recklessly. Second, Katchatag claims that the evidence did not support the jury's finding that he knowingly directed his conduct at a law enforcement officer. Third, Katchatag contends that his sentence is excessive. For the reasons explained in this opinion, we reject Katchatag's sufficiency claims, but we agree that his sentence is excessive. We accordingly vacate the sentence and remand this case to the superior court for resentencing.

Background facts and proceedings

Because Katchatag challenges the sufficiency of the evidence supporting his conviction, we describe the evidence presented to the jury in the light most favorable to upholding the jury's verdict.[2]

Katchatag and his uncle, Timothy Katchatag, had an argument at the home they shared in Shaktoolik. After the argument became physical, Timothy Katchatag left the residence and told Katchatag that he was going to call the police. Timothy Katchatag contacted Alaska State Trooper Adam Hawkins, and reported that Katchatag had threatened him and hit him. Hawkins (who was not in Shaktoolik at the time) in turn contacted the acting village police officer, Michael Kulukhon, and asked Kulukhon to help with the investigation by speaking to Katchatag.

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[1] AS 11.41.220(a)(1)(A).

[2] *See Iyapana v. State*, 284 P.3d 841, 848-49 (Alaska App. 2012) (citing *Morrell v. State*, 216 P.3d 574, 576 (Alaska App. 2009)).

Kulukhon returned with Timothy Katchatag to the residence. With Timothy Katchatag's permission, Kulukhon, who was not wearing a badge or uniform, entered the residence and told Katchatag that the troopers wanted to speak with him. In response, Katchatag demanded that Kulukhon leave the house and physically escorted him down the stairs.

Kulukhon reported the situation to Trooper Hawkins, who then flew to Shaktoolik. Upon arriving in Shaktoolik, Hawkins went with Timothy Katchatag and Kulukhon to the residence to speak to Katchatag.

When the three men entered the residence through the front door, Katchatag was standing at the top of the stairs and was visible behind a half wall. Hawkins, who was wearing his uniform, announced himself as "Trooper Hawkins with the state troopers." Katchatag replied, "You're not welcome. . . You're not welcome at all."

Hawkins could see that Katchatag had the buttstock of a rifle against his face or shoulder, with the barrel pointed toward the floor. Hawkins asked him, "Can you show me your hands?" Katchatag replied, "No," and demanded that Hawkins leave. Hawkins then told Katchatag that he was "under arrest." But Katchatag did not put the gun down and instead replied, "Leave this house. Now." Hawkins then asked him, "What's in your hand, man?" Katchatag did not answer, but instead repeated, "Leave the house now."

Fearing that Katchatag would shoot him, Hawkins told Katchatag that he was "backing out." Katchatag — who was still holding the rifle and had not shown his hands — responded, "You better."

Hawkins then drew his own gun and told the other men, "He's got a rifle, so let's move out." As Hawkins, Kulukhon, and Timothy Katchatag backed toward the door, Hawkins again asked Katchatag to show his hands. Katchatag did not comply, and instead told Hawkins, "Don't you ever fucking come back here again."

As Hawkins, Kulukhon, and Timothy Katchatag were leaving the house, Katchatag ran down the stairs, unarmed. Once Hawkins realized that Katchatag was no longer carrying a rifle, he holstered his own gun and pulled out his Taser. Katchatag turned to go back up the stairs, but Hawkins tased him and then arrested him. When Hawkins subsequently recovered the rifle, it had a full magazine and a round in the chamber, and the safety was turned off.

Katchatag was charged with third-degree assault for recklessly placing Hawkins in fear of imminent serious physical injury by means of a firearm.[3] Katchatag was also charged with one count of fourth-degree assault of Kulukhon (for recklessly placing him in fear of imminent physical injury), one count of fourth-degree assault of Timothy Katchatag (for recklessly causing physical injury), and one count of weapons misconduct (for possessing a firearm while impaired by alcohol).[4] The matter proceeded to a jury trial.

At trial, Katchatag claimed self-defense and defense of property.[5] He testified that during the initial argument with his uncle, Timothy Katchatag had reached for kitchen knives and Katchatag feared he would try to kill him. Katchatag also testified that he was unaware that Kulukhon was a village police officer when Kulukhon arrived the first time. Instead, he thought that Kulukhon was there to "do something wrong" because Katchatag had heard that Kulukhon had assaulted his own family members and burglarized homes in Shaktoolik. Katchatag also testified that when Trooper Hawkins arrived, he thought Hawkins would try to come rushing up the stairs as Kulukhon had done earlier. Katchatag explained that he perceived Hawkins as "an uninvited intruder with a loaded weapon" and felt threatened by him.

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[3] AS 11.41.220(a)(1)(A).

[4] AS 11.41.230(a)(3), AS 11.41.230(a)(1), and AS 11.61.210(a)(1), respectively.

[5] AS 11.81.330 and AS 11.81.350, respectively.

The jury found Katchatag guilty of assaulting Hawkins, but not guilty of assaulting Kulukhon and Timothy Katchatag. The jury also acquitted Katchatag of the weapons misconduct charge. The jury then found the aggravating factor set out in AS 12.55.155(c)(13) — *i.e.*, that Katchatag knowingly directed his conduct at a law enforcement officer during the exercise of the officer's official duties.

Despite having no prior felony convictions, Katchatag received an aggravated sentence of 5 years with 1 year suspended (4 years to serve). This appeal followed.

The evidence presented at trial was sufficient to establish that Katchatag acted recklessly

Katchatag first argues that the evidence presented at trial was legally insufficient to establish that he acted with the culpable mental state required for the crime of third-degree assault — *i.e.*, that he acted recklessly. When we evaluate whether there was sufficient evidence to support a guilty verdict, we must view the evidence (and any inferences that could be reasonably drawn from that evidence) in the light most favorable to upholding the jury's verdict.[6] The evidence is sufficient if "a reasonable fact-finder could have concluded that the State's case was proved beyond a reasonable doubt."[7]

To establish that Katchatag committed third-degree assault, the State was required to prove that Katchatag recklessly placed Trooper Hawkins in fear of imminent serious physical injury by means of a firearm.[8] Under Alaska law, a person acts recklessly if they are:

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[6] *Iyapana*, 284 P.3d at 848-49 (citing *Morrell*, 216 P.3d at 576).

[7] *Johnson v. State*, 188 P.3d 700, 702 (Alaska App. 2008).

[8] *See* AS 11.41.220(a)(1)(A).

> aware of and consciously disregard[] a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that disregard of it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation.[9]

On appeal, Katchatag does not argue that the evidence was insufficient to establish that he placed Hawkins in fear of imminent serious physical injury. Rather, Katchatag argues that the evidence was insufficient to establish that he acted "recklessly." He claims that his conduct "was not a gross deviation from the standard of care that a reasonable person would observe after experiencing what Katchatag experienced that day." Having reviewed the record, we conclude that the evidence was sufficient to prove recklessness.

As a general matter, a person's mental state can often be shown only by circumstantial evidence.[10] Here, the evidence showed that when Trooper Hawkins entered the residence, Katchatag was standing at the top of the stairs, holding his rifle with the barrel pointed down. Hawkins announced that he was a trooper and then twice asked Katchatag to show his hands — actions that the jury could reasonably find showed his concern that Katchatag was armed. Instead of complying, Katchatag continued to hold the rifle and repeatedly told Hawkins to leave the residence. When Hawkins told Katchatag that he was leaving, Katchatag responded, "You better." Katchatag did not disarm himself and come downstairs until after Hawkins began backing out of the house.

This evidence was sufficient to establish that Katchatag was aware of and consciously disregarded a substantial and unjustifiable risk that his conduct was placing

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[9] AS 11.81.900(a)(3).

[10] *See, e.g.*, *Kangas v. State*, 463 P.3d 189, 192-93 (Alaska App. 2020).

Hawkins in fear of being shot, and that his disregard of that risk was a gross deviation from that of a reasonable person.

Katchatag argues that the facts of his case are similar to those in *Bahl v. State* — an unpublished case where we reversed the defendant's conviction for third-degree assault on a law enforcement officer because there was insufficient evidence of recklessness.[11]

But the facts of *Bahl* are materially different from the facts here. Bahl was walking down the stairs with a shotgun pointed at the ceiling when the troopers unexpectedly entered his residence.[12] Bahl did not have "time to arrive at a conclusion that he should take some step to assuage a fear of harm on the part of the troopers" because he was disarmed immediately after the troopers rounded the corner and encountered Bahl at the base of the staircase.[13]

By contrast, in this case, the jury heard evidence from which it could infer that Katchatag was aware that his actions would place Hawkins in fear of being shot. Unlike in *Bahl*, Katchatag had reason to anticipate Hawkins's arrival. Before Timothy Katchatag left, he told Katchatag that he was going to contact the police. When Kulukhon later appeared at the residence with Timothy Katchatag, Katchatag ordered Kulukhon to leave and physically escorted him from the house. During this exchange, Kulukhon informed Katchatag that the troopers wanted to talk to him, and when Hawkins later arrived at the house, Hawkins announced himself as a trooper.

In response, Katchatag — who was at the top of the stairs looking down at Hawkins in uniform — continuously held his rifle and refused to show his hands despite Hawkins's repeated requests to do so. Katchatag told Hawkins to leave

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[11] *Bahl v. State*, 2018 WL 2077845, at *5 (Alaska App. May 2, 2018) (unpublished).

[12] *Id.* at *3.

[13] *Id.* at *5.

numerous times, and Katchatag's refusal to put down the rifle eventually caused Hawkins to back out of the house. When Hawkins told Katchatag that he was leaving, Katchatag threatened Hawkins by responding, "You better."

We conclude that, when viewed in the light most favorable to upholding the verdict, the evidence presented at trial was sufficient to establish that Katchatag acted at least recklessly — *i.e.*, that he was aware of and consciously disregarded the risk that his conduct would place Hawkins in fear of imminent serious physical injury.

The evidence presented at trial was sufficient to establish that Katchatag knowingly directed his conduct at a law enforcement officer who was exercising his official duties

Katchatag next argues that there was insufficient evidence to support the jury's finding that the aggravating factor set out in AS 12.55.155(c)(13) applied — *i.e.*, that he knowingly directed his conduct at a law enforcement officer during the exercise of the officer's official duties. We reject this contention.

The evidence showed that, when Timothy Katchatag left the residence, he told Katchatag that he was going to contact the police. Then, when Timothy Katchatag returned to the residence with Kulukhon, Kulukhon told Katchatag that the troopers wanted to talk to him.

A few hours later, Trooper Hawkins arrived at the residence. Hawkins was wearing his uniform, and when he entered the residence, he immediately announced himself as "Trooper Hawkins with the state troopers." Katchatag admitted that he heard this announcement and that he recognized Hawkins's uniform. Katchatag then yelled at Hawkins, telling him to leave. And when Hawkins asked to see Katchatag's hands, Katchatag refused, again told him to leave, and continued holding the rifle. Even after Hawkins told Katchatag that he was under arrest, Katchatag remained at the top of the stairs holding the rifle.

Based on this evidence, a reasonable juror could find that Katchatag directed his conduct at Hawkins knowing that Hawkins was a law enforcement officer who was performing his duties.

The sentence imposed by the superior court is excessive

Katchatag's final argument is that his sentence is excessive. When we review an excessive sentence claim, we independently examine the record to determine whether the sentence is clearly mistaken.[14] Having reviewed the record in this case, we agree with Katchatag that his sentence for third-degree assault is excessive.[15]

Katchatag had nine prior misdemeanor convictions, but he was a first felony offender. As a first felony offender, Katchatag was subject to a presumptive range of 0 to 2 years, but the superior court was authorized to sentence Katchatag to a maximum of 5 years because the jury found an aggravating factor.[16]

In its sentencing remarks, the court reviewed the *Chaney* criteria.[17] The court found that Katchatag's prospects for rehabilitation were "quite guarded," and emphasized the need to specifically deter Katchatag. At the same time, however, the court noted that it had "seen many, many offenders with criminal backgrounds much more serious than Mr. Katchatag." And when the parties discussed the presentence report, the court disagreed with the presentence report writer's opinion that Katchatag was a "violent career criminal," stating that this "does not appear to be the case."

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[14] *State v. Korkow*, 314 P.3d 560, 562 (Alaska 2013); *McClain v. State*, 519 P.2d 811, 813-14 (Alaska 1974).

[15] AS 12.55.125(e)(1).

[16] AS 12.55.125(e); AS 12.55.155(c).

[17] *State v. Chaney*, 477 P.2d 441, 444 (Alaska 1970), *codified in* AS 12.55.005.

As for the seriousness of Katchatag's offense, the court found that Katchatag's offense was "quite serious." The court also suggested, however, that Katchatag's conduct might not have warranted a guilty verdict. The court stated that if Katchatag had not been so "defiant" during his trial testimony (*i.e.*, by defending his behavior and by referring to the trooper as an "armed insurgent"), Katchatag "might have stood a chance of getting a 'not guilty.'" This comment implied that the conduct underlying the offense was *not* particularly serious, or at least, not particularly aggravated.

The superior court's finding that Katchatag's offense was "serious" seemed to be based not on Katchatag's conduct generally but rather on the fact that Katchatag aimed these actions at a law enforcement officer. The court noted that Alaska had recently "suffered some tragic deaths of troopers and local police at the hands of very reckless, almost inexplicable conduct." The court went on to emphasize the role that police officers play in society in keeping the peace, stating: "That's why the job of a police officer is so important. That's why the seriousness of the offense cannot be understated." But aside from this generalized comment, the court did not engage in any comparison of Katchatag's specific charged conduct with the conduct and sentences imposed in similar cases.

The court ultimately imposed a sentence of 5 years with 1 year suspended (4 years to serve) — nearly the maximum sentence available for the offense. Based on our review of the record, the court's findings, and the sentences imposed in other comparable cases, we conclude that this sentence is excessive.

While the court was certainly entitled to consider the fact that the victim in this case was an Alaska State Trooper, this aggravating factor alone did not provide adequate support for the court's considerable enhancement of Katchatag's sentence.[18]

[18] *See Juneby v. State*, 641 P.2d 823, 838 (Alaska App. 1982) ("The mere proof of an aggravating or mitigating factor cannot be deemed sufficient, in and of itself, to justify an increase or decrease of a presumptive term. Increases or decreases of presumptive terms

Under AS 12.55.125(e), when a statutory aggravating or mitigating factor is proven, a sentencing court is authorized to impose a sentence outside of the presumptive range. However, courts have historically been "encouraged to take a 'measured and restrained approach' in the adjustment of presumptive sentences for both aggravating and mitigating factors so that the purposes of presumptive sentencing — enhancing reasonable uniformity and decreasing unjustified disparities — were not lost."[19]

In other third-degree assault cases involving similar (if not more egregious) conduct directed at law enforcement, defendants have received significantly lower sentences. For instance, in *Perotti v. State*, the defendant, who was awaiting sentencing for unrelated charges, tried to wrestle a rifle away from a correctional officer. He received a sentence of 1.5 years to serve.[20] In *Deckard v. State*, the defendant received a sentence of 3 years with 1 year suspended (2 years to serve) after he "pointed a gun at a passing vehicle and then later fired shots from outside his residence in the presence of several Alaska State Troopers."[21] And in *Goldsbury v. State*, the defendant received a sentence of 3 years to serve for pointing a gun at an officer and threatening a "shoot out."[22]

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should not be the automatic consequence when aggravating or mitigating factors are proved."), *modified on other grounds*, 665 P.2d 30 (Alaska App. 1983).

[19] *Martinez v. State*, 530 P.3d 1131, 1140 (Alaska App. 2023) (quoting *Juneby*, 641 P.2d at 833); *see also Frankson v. State*, 518 P.3d 743, 749 (Alaska App. 2022) (noting that presumptive terms were originally "intended as appropriate for imposition in most cases, without significant upward or downward adjustment" (quoting *Juneby*, 641 P.2d at 833)).

[20] *Perotti v. State*, 818 P.2d 700, 701 (Alaska App. 1991). In that case, Perotti was also convicted and sentenced for attempted escape.

[21] *Deckard v. State*, 2019 WL 12044034, at *1 (Alaska App. Sept. 18, 2019) (unpublished). Deckard was also sentenced for second-degree weapons misconduct, and he stipulated to two aggravating factors.

[22] *Goldsbury v. State*, 2001 WL 1477923, at *1 (Alaska App. Nov. 21, 2001) (unpublished). Goldsbury was also sentenced to a consecutive 1-year term for weapons

The sentence imposed in this case — 5 years with 1 year suspended (4 years to serve) — more closely resembles sentences imposed for assaultive conduct much more aggravated than Katchatag's actions.[23] Although Katchatag's conduct placed the trooper in fear of imminent serious physical injury, Katchatag did not fire the rifle, let alone point it at the trooper. While we conclude that the circumstances as a whole, when viewed in the light most favorable to the jury's verdict, are sufficient to show that Katchatag acted recklessly, his conduct is relatively less severe than other cases of third-degree fear assault under AS 11.41.220(a)(1)(A).

misconduct. In that case, three aggravating factors were proven, and the court found the defendant was a worst offender due to his criminal history.

[23] *See Shedlosky v. State*, 472 P.3d 1094, 1096, 1098-99 (Alaska App. 2020) (defendant received 5 years to serve for beating and punching his ex-girlfriend, plus two aggravating factors proved); *Lonis v. State*, 998 P.2d 441, 443, 448 (Alaska App. 2000) (defendant, a first felony offender with a history of assaults on active duty police officers, received a composite sentence of 5 years and 9 months with 2 years suspended (3 years and 9 months to serve) for DWI, failure to report an accident, and three counts of third-degree assault, after pointing a gun at and threatening to kill two police officers and injuring a woman who was in the house when he ran his car into it); *Pickard v. State*, 965 P.2d 755, 756-57 (Alaska App. 1998) (defendant, a first felony offender with four aggravators proved, received 5 years with 1 year suspended (4 years to serve) for repeatedly attempting to stab his ex-wife in the head and chest); *Morris v. State*, 2021 WL 2137767, at *1, *4 (Alaska App. May 26, 2021) (unpublished) (defendant received composite sentence of 7 years to serve for "two counts of third-degree recidivist assault and one count of witness tampering after [the defendant] struck his girlfriend multiple times, dragged another woman out of a car and beat her, and then, while he was in jail pending trial, called his girlfriend and asked her to provide false testimony about the incident"); *Gherman v. State*, 2018 WL 5733346, at *1-2 (Alaska App. Oct. 31, 2018) (unpublished) (defendant, a first felony offender, received 5 years with all but time served suspended (approximately 2.5 years) for threatening to kill his wife and daughter and firing gunshots into the wall and floor near them); *Harrison v. State*, 1998 WL 119459, at *1-2 (Alaska App. 1998) (unpublished) (defendant, a second felony offender with three aggravators proved, received composite sentence of 6 years with 3 suspended (3 years to serve) for third-degree assault and first-degree vehicle theft, after defendant pointed a handgun close to victim's face, expressly contemplated killing the victim, and punched the victim in the face).

"We have previously recognized the importance of a sentencing court's consideration of comparable cases when imposing sentence to ensure against unjustified sentencing disparity."[24] While we have not required a ritualistic comparison in every case, we have stated that:

> the absence of an explicit, on-the-record comparison of sentences imposed in similar cases is most problematic when we are unable to discern the basis for the trial court's sentencing decision — that is, when the record is so lacking in detail as to preclude meaningful appellate review, or when the sentence itself appears arbitrary or disproportionate when examined against other cases.[25]

Here, the court did not engage in this case comparison and made findings that were often contradictory in nature. While the court found that Katchatag's offense was "quite serious," the court also stated that a jury in that venue might have acquitted Katchatag if he had not been so defiant on the stand. In addition, while the court found that Katchatag's rehabilitative prospects were "quite guarded," it also rejected the notion that he was a violent career criminal, as suggested by the presentence report writer.

These findings undermine the court's imposition of an aggravated sentence —a sentence that is twice as long as the presumptive maximum (*i.e.*, 2 years), and four times as long as the sentence recommended by the presentence report writer (*i.e.*, 2 years with 1 year suspended). This is particularly true in light of a comparison to similar cases.

Having reviewed the record in this case and the sentences imposed for similar conduct in other cases, we conclude that the sentence imposed was

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[24] *Williams v. State*, 480 P.3d 95, 103 (Alaska App. 2021).

[25] *Id.*; *see also Fletcher v. State*, 532 P.3d 286, 309-10 (Alaska App. 2023) (explaining the importance of an on-the-record sentencing explanation and noting that appellate courts have not hesitated to remand a case for further explanation and/or resentencing).

disproportionate to Katchatag's conduct, and we vacate the sentence as excessive.[26] On remand, the superior court shall reconsider whether a departure from the presumptive range is warranted in this case. The court's sentencing decision shall take into consideration cases involving other offenders convicted of like crimes.

Conclusion

We VACATE Katchatag's sentence and REMAND this case for resentencing in light of the principles identified by this opinion. We otherwise AFFIRM the judgment of the superior court.

[26] *See West v. State*, 727 P.2d 1, 5 (Alaska App. 1986) (recognizing the importance of comparing the sentences imposed in similar cases and concluding, after conducting that review, that the sentence imposed by the trial court was excessive).