

## SUMMARY STATEMENT

*State v. Brandon Tyler Bahr*

Docket No. 44311

Brandon Tyler Bahr appeals from the judgment entered upon the jury verdicts finding him guilty of first degree murder, grand theft, and petit theft. First, Bahr asserts the district court committed instructional error by incorrectly instructing the jury on the premeditation element of first degree murder. Bahr specifically challenges the court's response to the following question from the jury during deliberations: "Is the verbalization of a threat 'I'm going to kill you,' the same as the decision to kill?" The court answered: "This is for you to decide as the jury." Whether Bahr's verbalization of a threat to kill the victim was, under the circumstances, the same as making a decision to kill him was a question for the jury to resolve because the intent of the accused is a question of fact for the jury to determine. Moreover, even if this Court were to assume the court's response to the jury's question was error, the error was harmless because there was sufficient evidence introduced at trial--even excluding the threat--to support the jury's finding that Bahr was guilty of first degree murder. Thus the court did not err.

Second, Bahr challenges the sufficiency of evidence supporting his grand theft conviction. Bahr argues that he took the gun only intending to scare his victim and to return the gun when he returned home. He also asserts that he was going to return the gun even after he shot the victim and threw the gun into the bushes, but was unable to return to the site of the shooting and retrieve the gun due to his arrest. However, the State presented substantial evidence upon which a reasonable trier of fact could have found that the prosecution sustained its burden of proving the essential elements of grand theft beyond a reasonable doubt. Thus, Bahr failed to show that he is entitled to an acquittal on the grand theft charge.