

SUMMARY STATEMENT
State of Idaho v. Bryan Ray Palmer
Docket No. 50548

Bryan Ray Palmer appeals from his judgment of conviction for two counts of aggravated assault and one count of burglary. Palmer lived in his camper located on Roger Painter's property. According to Painter and Mary Lang, a woman living in Painter's house at the time of the incident, Palmer came to the house demanding to see Lang and made verbal threats that he was going to shoot her. After pushing his way through the front door, Palmer and Painter engaged in a physical altercation. Palmer grew increasingly agitated, continued to make threats to shoot Lang, and attempted to hit Painter. At some point while Painter was grabbing Palmer, Palmer drew a handgun and fired it next to Painter's left ear. The shot went into the ceiling. Painter did not see the gun until after it was fired. After the shot, Palmer eventually calmed down while Painter walked him out of the house and told Palmer to leave. Meanwhile, Lang had left through her bedroom window and called the police. Palmer left the house and returned to his camper where he was arrested later that night. Palmer was charged with, and convicted of, two counts of aggravated assault with a firearm, one for assault against Painter and the other against Lang, as well as burglary.

On appeal, Palmer argued the evidence for aggravated assault against Painter was insufficient because Painter did not see the gun until after it was fired and therefore Painter could not have had a well-founded fear of imminent harm related to the weapon. The Court of Appeals held that the aggravated assault charge included the act of firing the gun as part of Painter's well-founded fear of imminent harm. During Painter's testimony, he stated that as soon as the gun was fired, he then knew Palmer had a weapon and became concerned that Palmer might use it on him next. The Court held Palmer had failed to show the evidence admitted at trial was insufficient to sustain the conviction of aggravated assault against Painter.

Palmer also argued that certain statements made by Painter were improperly excluded during Palmer's testimony and should have been admitted under the excited utterance exception to the rule against hearsay. The Court held the statements by Painter did not satisfy the excited utterance exception and had already been admitted through the testimony of one of the responding officers. Palmer failed to demonstrate reversible error in the exclusion of Painter's statements. The Court affirmed Palmer's convictions.

***This summary constitutes no part of the opinion of the Court but has been prepared
by court staff for the convenience of the public.***