

Abrams man not guilty of shooting at hunter on his land

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(Photo: USA TODAY NETWORK-Wisconsin)

An Abrams man was acquitted Friday of charges he pointed a rifle and fired at or near a man on his property in the fall of 2014.

The Oconto County jury deliberated just under two hours before finding Thomas Tate, 63, not guilty of first-degree recklessly endangering safety, a felony with a maximum 17½ year prison sentence, and pointing a firearm at another.

Tate and the alleged victim, Daniel Schenk, told differing stories about what occurred Oct. 11 on Tate's property during two-day trial before Judge Michael T. Judge.

Schenk said he'd been given permission in September to hunt on Tate's property, and had gone out that day to set bait and trail cameras when he encountered Tate. Schenk was in a four-wheeler, while Tate was driving a four-wheel cart with a roof and windshield.

Tate said he had withdrawn his permission a week earlier; Schenk denied he'd been told that.

Schenk testified that Tate mumbled something about "cutting his fence" before Tate shouldered the 30.06 rifle, aimed at him and fired.

Asked by defense attorney Raymond Dall'osto of Milwaukee if he saw Tate pull the trigger, Schenk said, "All I saw was it was pointing at me."

Dall'osto also asked Schenk if he had told Tate's wife after the incident that "we've found a way to get rid of you and send you back to Texas."

"I don't recall that," Schenk said.

Under questioning by Assistant District Attorney Robert Mraz, Tate testified Schenk walked around from his ATV, grabbed something with his right hand and put it behind his back, then quickly approached.

"He got in my face, called me every name in the book and spit on me," Tate said.

Tate said Schenk pushed him and he pushed back.

"I went to turn and put (the rifle) in the bed (of the car) and it went off," Tate said.

Tate, who said he was going out to target practice, admitted that he didn't check if the gun was loaded and whether the safety was off.

"I see nothing wrong with that," Tate said, because he was only going a short distance on his property.

Tate also testified he never pointed the rifle at Schenk and that it wasn't pointed at him when it went off, and that he did not intent to harm or shoot at Schenk.

"I pointed the butt of rifle toward him," Tate said.

During his closing argument, Mraz noted that Tate never told deputies that Schenk had confronted him, and that the loaded rifle and running into Schenk were no coincidence.

"He was there on purpose to confront Mr. Schenk, and tell him to get the hell off my property," Mraz said.

Mraz noted that shot, according to testimony, was only four feet away. People aren't allowed to take the law into their own hands, he said.

"Are you going to let people do that, are you going to let this type of activity occur in Oconto County?" Mraz asked the jury.

Dall'osto, in his closing argument, noted one of Tate's requirements of people who hunt on his property is leave their ATV by the house, so he and his wife know they're out there, for everyone's safety. Schenk had not.

"Mr. Tate didn't know he was in there," Dall'osto said.

He also discounted the coincidence cited by Mraz, noting "What testimony did you hear that there was some intent to go out there and do such a thing."

Dall'Osto also contended that Schenk's testimony was inconsistent. Schenk said Tate fired through the front of his cart, but when shown the windshield on a photo, Schenk said the windshield would partially open. While it did open, Dall'Osto said, it would not open to allow a shot in the manner Schenk described.

Were there multiple theories from Mr. Schenk on what happened, or was he trying at this point in time to make himself look better, that he wasn't coming up to confront Mr. Tate over this, over being found out, and have some words with him? Dall'Osto asked.

Schenk's 911 call has him saying he was driving away and pow, that's all I heard, and I got the hell out of there, Dall'Osto said. That's different than shouldering, aiming and firing.

Dall'Osto said an expert testified that the added energy of movement could cause the rifle to discharge even if safety is on, because of minor defects in the mechanism. But Mraz said the expert also tried to get the gun to misfire in a series of tests, but it never did.

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