

State v. Robert Helmick

by Susan Elizabeth Reese

Case: *State v. Robert Helmick*

Defense Counsel: Kathleen Bergland

Defense Investigators: Kathy Dunleavy, with help from Cindy Borders

Court: Washington County Circuit Court

Judge: The Honorable D. Charles Bailey

Prosecutors: Christopher Lewman

Date: July 19-22, 2011

Charges: Assault IV as a felony (two counts), Strangulation (two counts)

Verdict: Not guilty on all charges

In late January Robert Helmick, a young man in his 20s, was on leave from two National Guard deployments in Iraq and Afghanistan. He was scheduled to return for another tour of duty. He was living with his girlfriend, Kayla Griess, who was pregnant with their child, in Forest Grove.

Mr. Helmick had served honorably—he received a Purple Heart after being wounded by a sniper. He had additional decorations, including a combat infantry badge. His initial post-deployment assessment from the Veterans Administration on August 31, 2010, reflected that he had participated in about fifty missions or convoys, he had been exposed to fire, he witnessed people injured and dying, and he cared for the wounded. At times he knew his life was in immediate danger, yet he had returned fire and inspected destroyed military vehicles. During his service he was exposed to two blast explosions, as well as a “chlorine gas cloud.” At one point, mortar rounds peppered his base, hitting as close as 60–70 meters away from him.

Mr. Helmick’s records after his deployment documented a long-standing sleep disorder: symptoms included irritability, nightmares, and the need for significant medication to assist in sleep. His testing also indicated post-traumatic stress syndrome, and in August of 2010 he was diagnosed with “anxiety disorder related to military service” by a psychology intern, although his biggest concern then was his sleep disorder.

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medicine wasn’t working. After an electronic communication by the psychologist to a VA psychiatrist, Mr. Helmick received a new prescription for Ambien. Not only did he not receive any counseling about the side effects of the drug, but the disclaimer concerning its use was for the wrong drug, amitriptyline instead of Ambien. He had not used it often, and when his girlfriend took it, she suffered hallucinations.

On the wintry night which resulted in this case, Mr. Helmick met a friend, another soldier who had served in Iraq, at Coco’s Tavern. That particular bar was the scene of a veteran’s suicide: a soldier had shot himself in the parking lot just over a month earlier. Mr. Helmick’s goal that night was to provide comfort to his friend. Certainly they spoke about the tragedy the previous month. They had some drinks, but both the police and servers at the tavern later stated that Mr. Helmick was not intoxicated.

When Mr. Helmick returned home, he and Kayla argued about his having gone out. He took one of his prescription Ambien tablets and went to sleep on the couch. The sound of the television woke him, and he heard Kayla calling 911 emergency services. He had no idea why she was doing so. Knowing that police were on the way, he went out to the deck to telephone his sergeant in the Guard on his cell phone. He had no memory of events Kayla described on the 911 call.

Kayla told 911 that she was concerned about Robert, that he had choked her in the bed, sat on her, and threatened to kill himself in front of her. He then got off the bed and said he was going somewhere else to kill himself. She told the emergency dispatcher, however, that she did not feel *she* was in danger. She was concerned for Robert. Later, she said she was following her own National Guard training concerning how to deal with a suicide.¹ In spite of the statements Kayla made to 911, the female arresting

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OCDLA Life Member **Susan Elizabeth Reese** practices law in Portland. She serves on OCDLA’s Education Committee.

OCDLA member **Kathleen Bergland** practices law in Portland.

OCDLA member **Kathy Dunleavy** is an investigator in Portland.

Cindy Borders is an investigator in Portland.

officer questioned her extensively about domestic violence. The officer noted a rash on Kayla's throat, which she took as evidence of strangulation. The police officer pressured Kayla to leave the apartment and to get a restraining order. Officers arrested Mr. Helmick; they took him to jail without any concern about his suicidal behavior. They were sure he was simply guilty of domestic violence.

The state charged Mr. Helmick with two counts of assault in the fourth degree and two counts of strangulation, claiming there had been two incidents that evening. The assault charges were alleged as felonies under the provision of the statute that enhances the crime if the offender knows that the woman assaulted is pregnant.

Defense Attorney Bergland quickly assembled a team of experts to help in Mr. Helmick's defense. They included Dr. Robert Julien, a psychopharmacologist; Dr. William Brown, a sociologist with expertise in military and veteran issues; Dr. Robert Stanulis, a neuropsychologist, and Linda Maddy, who worked with Veterans Justice Outreach. Ms. Maddy designed a treatment program for Mr. Helmick, and Judge Eric Butterfield modified his release conditions to allow him to participate. Though it was an outpatient program, it involved multiple treatments for substance abuse, anger management, and PTSD. The program kept him occupied all day, after which he was always in the care of a third party.

Dr. Brown and Dr. Stanulis evaluated Mr. Helmick and found no evidence of any earlier criminal problems or assaultive, domestic violence characteristics. They concluded that Mr. Helmick's behavior was best explained as a sleep disorder, a well-known side effect of Ambien.

With this background and in the context of Mr. Helmick's treatment program, Ms. Bergland consulted with a judge advocate general to determine what result in the case could allow Mr. Helmick to stay in the National Guard. She suggested to the district attorney's office that he be placed in a diversion program allowed under Senate Bill 999, sponsored by the Senate Committee on Veterans Affairs, with assistance from OCDLA's Jesse Barton, and passed by the 2010 Special Legislative session.² Ms. Bergland accepted Judge Butterfield's offer to be a settlement judge. The diversion program would have allowed Mr. Helmick to stay in the National Guard, to complete treatment, and to have the case dismissed at the conclusion of the program. Nonetheless, the district attorney was adamant that the case was one of domestic violence, so it was set for trial.

Ms. Bergland filed a notice that the defense would rely on claims of not guilty by reason of insanity, as well as diminished capacity.³ Although the statute allows the state, following the receipt of such notice, to require its own evaluation of the defendant, the prosecutor in this case chose not to do so. As a result, the only three experts who testified at trial were the defense experts.


The state's evidence consisted of Kayla Griess, testifying reluctantly but under subpoena. She said that Mr. Helmick had sat

on her and threatened suicide, but she denied that he had tried to strangle her. Indeed, the medical evidence was that the rash on her neck had occurred sometime earlier and had nothing to do with the incident involving Mr. Helmick. The state then offered the testimony of the arresting officer as impeachment: she claimed that Kayla told her that Mr. Helmick had strangled her. She also testified that she felt no need to take Mr. Helmick to a hospital, as he would get "adequate treatment" in the Washington County Jail.

After the state's case in chief, Judge Bailey suggested to the DA that a diversion be allowed under Senate Bill 999, and he offered personally to oversee Mr. Helmick's program. Again, the DA refused to exercise his discretion to allow this.

In the defense case, Dr. Julien testified that the side effects of Ambien would explain Mr. Helmick's lack of memory and that his behavior was a medical, not criminal, event. Dr. Stanulis corroborated this conclusion, as well as ruling out both domestic violence and intoxication as explanations for what occurred. Dr. Brown, a Vietnam veteran who teaches sociology at Western Oregon University, explained that returning veterans are no longer civilians, but always soldiers: "Once a warrior, always a warrior." He said that proper treatment required teaching them how to deal with the trauma they had suffered in wartime, not trying to force them to become "civilians" once again.

Mr. Helmick testified in his own defense, and Kayla testified that she was not frightened of him that evening or at any time. The defense also offered a photograph of Kayla in her National Guard uniform, carrying an M-16. She was a gunner with the Guard and had driven huge convoy trucks. Although she is tiny, she clearly knew how to protect herself if she felt threatened.

Closing arguments, instructions and deliberations occurred on the last day of trial. After roughly four hours, the jury returned Beautiful Words to Mr. Helmick on all counts. 

ENDNOTES

- ¹ Suicide rates have skyrocketed within the National Guard during the two recent wars. One study suggests that Oregon leads the nation in the number of suicides committed by returning National Guardsmen.
- ² This bill is designed specifically to assist returning veterans with first-time legal problems. It amends ORS 135.886 to allow a district attorney's diversion program to a veteran when it is "in the interests of justice and would benefit the defendant and the community" more than a criminal sanction.
- ³ Not guilty by reason of insanity involves a lack of capacity to understand the nature of the acts or to conform the conduct to the requirements of law. Diminished capacity involves a mental disease or defect which affects the intent which is an element of the crime. See ORS 161.295-300.