

# Jury convicts Bremerton man in Fred Meyer parking lot shooting

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Law enforcement officers detain Robert Matthew Ostaszewski on Nov. 12, 2013, in the parking lot of the East Bremerton Fred Meyer. Ostaszewski was found guilty of assault and drive-by shooting on Friday.

Josh Farley

PORT ORCHARD — A Kitsap Superior Court jury decided Friday to acquit a Bremerton man of attempted murder for [shooting a homeless man](#) in the East Bremerton Fred Meyer parking lot in 2013, but convicted him of first-degree assault and drive-by shooting.

Robert Matthew Ostaszewski, 41, an ordnance disposal worker, testified he was acting in self-defense, as he had no doubt Joshua Johannessen was armed with a pistol when he approached Ostaszewski's van on Nov. 12, 2013.

Ostaszewski had been filming Johannessen and his girlfriend for an hour or more under the mistaken belief Johannessen had earlier made a comment about having a firearm to Ostaszewski's wife, who was a cashier at the department store.

Ostaszewski testified he was concerned for his wife's safety, and parked his van near the victim's vehicle and photographed him to gather information to pass on to police after his wife's shift ended.

Prosecutors painted him as a vigilante who provoked the confrontation based on "gossip and assumption." Prosecutors told jurors Ostaszewski nearly killed an innocent man who was down on his luck, because he fit the description of being "rough looking" and "unkempt."

Ostaszewski had been free on \$750,000 bail, but was handcuffed and taken to jail after the verdict. Judge Jennifer Forbes scheduled sentencing for March 30.

Although the jury acquitted him of the most serious charge, Ostaszewski will likely face a lengthy prison sentence. A firearm enhancement will tack five years onto the sentence he ultimately receives.

The jury of nine men and three women deliberated for about two and a half hours.

Johannessen testified he had become unnerved by Ostaszewski photographing him, and approached the van holding a cigarette in one hand and his car keys in the other. He had a pocketknife on him, but neither men claimed the knife was drawn.

The confrontation ended with Ostaszewski shooting Johannessen at point-blank range, hitting him in the neck. Johannessen was also struck in the wrist, and investigators believe Ostaszewski fired a third time. Security footage shows Johannessen running away and Ostaszewski giving chase after the first bullet struck. Ostaszewski testified he fired three times in succession, but Johannessen testified Ostaszewski continued firing as he was chasing him.

Paul Inouye, a trauma surgeon at Tacoma General Hospital, testified that doctors typically don't see patients with gunshot wounds to the neck.

“If a person is shot in the neck, very often they don’t come to us because they are dead in the field,” he said, calling Johannessen “quite lucky.”

Ostaszewski called 911 immediately after the shooting. He told dispatchers he shot a man who had been harassing him and that he felt threatened. When police arrived he declined to speak with investigators.

Ostaszewski’s attorney, John Henry Browne, said the split decision showed jurors took different views of each time the gun was fired.

“They forgave him for the first shot, not for the second two,” Browne said.

He added that Ostaszewski does not pose a threat to society.

“The last person who needs to go to prison is Bob,” Browne said, adding that he may appeal. “He’s Mr. Law and Order.”

Deputy prosecutors Kelly Montgomery and Philip Bacus presented the state’s case. Montgomery said her sense of the jury’s decision to acquit on the attempted first-degree murder charge was that they balked at the element that requires the state to prove premeditation.

“We just put what we believe happened and let the jury decide,” Montgomery said.

The shooting stemmed from an incident earlier in the day when a man made a comment to Ostaszewski’s wife, who was a cashier at the Fred Meyer. The man, who was not identified at trial, was asked if he had a discount card. He answered, “No, but I have a 9 mm.”

Michelle Ostaszewski did not call police, nor did other store employees.

However, Ostaszewski said he spoke to his wife and believed she was upset by the encounter. According to testimony, Michelle Ostaszewski told her husband about the

gun comment, gave a general description of the people involved, and relayed that other employees told her the person who made the comment was living in a black SUV in the parking lot.

Ostaszewski testified he was sure the person he was photographing was the person who made the comment to his wife, based on the description she gave him, and he had “no doubt” the man was armed with a pistol.

“When someone says they have a 9 mm to a cashier, or a bank teller, or a TSA agent, that pretty much spells it out,” Ostaszewski testified.

During his surveillance, Ostaszewski went inside the store and contacted his wife, but testified he did not show her the photographs he had taken on his phone to confirm it was the person who made the gun comment.

He testified he also did not tell her what he was doing because she would have been concerned for his safety.

“Obviously Mr. Ostaszewski was wrong in this case,” Browne said of Ostaszewski identification of Johannessen. “But that’s what he was told and that was his state of mind.”

Ostaszewski returned to the parking lot and positioned his vehicle facing Johannessen and continued to take photographs.

Eventually, Johannessen confronted Ostaszewski about filming him. Leading up to the confrontation, he gave Ostaszewski the middle finger, and used a profanity when asking why he was photographing him.

Both men testified they felt threatened, although the circumstances were disputed. Johannessen said Ostaszewski refused to say anything. Ostaszewski said he told Johannessen to stay back, but did not mention he was armed.

Johannessen said he saw two magazines on the passenger seat, which made him think he was about to be shot.

“I walked up to the wrong person,” Johannessen thought at the time, he testified. “I was totally scared for my life.”

He then told Ostaszewski if he shot him, he better kill him, because otherwise he would attack him.

Ostaszewski denied the two magazines were on the seat — investigators found them secured in the back of his van — and testified Johannessen told him to shoot and that he was going to attack him.

Ostaszewski testified Johannessen was so close he could smell his breath, and “he looked like he was on something.”

“I was scared out of my mind,” Ostaszewski said. “I believed he was the one who had the 9 mm.”

Ostaszewski then drew his pistol and shot Johannessen.