Frontier Justice for E.M.

BY FRANK GIBBARD

In 1899 there was no #MeToo movement and no Internet. Nor were there statutes to protect victims of sexual harassment. When an employee was mistreated by her boss, sometimes vigilante justice may have seemed the only form of justice available. The vigilantes in this case were several men who, armed with pistols, demanded financial and other restitution from an attorney they claimed had sexually abused one of their relatives. Not surprisingly, the attorney's response was to litigate the matter, and the dispute wound up in the Colorado Supreme Court. As the Court discovered, there were several sides to this story. In the end, the Court upheld the trial court's verdict for the attorney on equitable grounds, but the reader may be left with questions about what really happened.

The Attorney's Story: Extortion at Gunpoint

Arthur D. Bullis practiced law in the Hanchett Building in Idaho Springs. The upper story of this beautiful late Victorian building, built in 1890 by a wealthy mining magnate, featured stained glass windows with elegant arches.

Bullis's office on the upper floor overlooked the train station. On the morning of January 26, 1899, he watched the 10:45 train arrive. Two men he knew got off the train: George McClelland and Edward M. Sabin.[1] Sabin was a lawyer, originally from Wisconsin, who had been in practice in Denver for about five years. McClelland was a mining investor. His business with Bullis would soon become clear.

Bullis saw the men walk across the street toward his office. Sabin climbed the stairs and entered the office. Sabin and Bullis talked shop briefly about a pending case. Then Sabin left the room, and McClelland entered, accompanied by two other men: William and John Morris.[2]

The Morris boys were McClelland's brothers-in-law. The three men crowded into Bullis's office and closed the door. The Morris boys sat down. Bullis observed they were packing pistols.

McClelland handed Bullis a letter signed by E.M.[3] E.M. was Bullis's former stenographer. As it happened, she was also McClelland's sister-in-law. The letter was in McClelland's handwriting. It instructed Bullis to convey a one-fourth interest in certain mining claims to the Atlantic and Brighton Lode, located in Gilpin County, to McClelland. Allegedly, E.M. had recently deeded those claims to Bullis as security for sums he was supposedly going to pay on her behalf. Now, McClelland was going to make him deed them back.

After Bullis perused the letter, McClelland said he wanted to talk about E.M.[4] Bullis responded he had no objection provided they could do it "pleasantly and agreeably."[5] McClelland's response was neither pleasant nor agreeable. He told Bullis he wanted to frisk him first.[6]

Bullis replied he did not mind, provided McClelland extended to him the same courtesy. McClelland searched Bullis and found no guns. Then Bullis stated it was his turn to examine McClelland. The Morris boys found

this amusing. They laughed, and McClelland told Bullis to sit down.

Bullis tried to get up, but he was shoved back into his chair. McClelland came right to the point. "You have ruined [E.M.]," he said, "You need to pay her $5,000 and her mother $5,000."[7] Bullis protested this was impossible. Those sums represented nearly twice his net worth.

McClelland ignored his objections. He demanded Bullis's letterhead stationery and a bottle of ink. Bullis produced them. McClelland told him, "You do just as I tell you or you will never leave this office alive."[8] The Morris boys chimed in, "You bet you won't."[9]

Bullis wrote out a statement that McClelland dictated. In it, Bullis stated he'd engaged in a "forcible connection" with E.M. at the Windsor Hotel in Denver, against her will, and had threatened her that if she ever revealed the sexual assault, Bullis would send McClelland to the penitentiary.[10]

Sabin re-entered the room. His role in the affair now became clear. He was going to notarize certain documents Bullis would be forced to sign.

Sabin adhered to the notarial formalities. He asked Bullis if it was his signature on the statement about E.M. Bullis said it was, but it was not his free and voluntary act. He begged Sabin not to leave the room. Sabin said that he couldn't take sides. He notarized the document.

McClelland then made Bullis sign additional documents, including checks and promissory notes for large sums payable to E.M., her mother M.M., and others.[11] To secure payment on the promissory notes, Bullis was forced to sign a mortgage on his mining property and a chattel mortgage on his office furniture and law library. Finally, to add insult to injury, McClelland forced him to sign a statement addressed to his brother Masons at the Masonic Fraternity of Idaho Springs Lodge No. 26. In the statement, Bullis confessed that he had breached his Masonic duties.[12] Sabin signed this confession as a witness.

The mortgages were filed the next day with the Clear Creek County Clerk and Recorder. If the documents Bullis signed were enforced, and if his confessions were published, he would be ruined.

Bullis promptly sued McClelland, E.M., and others in Clear Creek County District Court. His complaint sought an injunction to prevent the defendants from publishing the statements he had signed at gunpoint; the return to him of these statements for destruction; that the defendants be prohibited from negotiating the checks or notes he had signed; the return of the checks and notes for destruction; and the return of the mortgages to him along with proper releases.

The Defendants' Story: A Guilty Man Repents

McClelland filed an answer to the complaint. He asserted that Bullis's statements and mortgages were voluntary and that he had not employed any threat or menace to get Bullis to sign them. He further asserted that Bullis owed him $550. In a cross-complaint, he alleged that he had paid $500 worth of E.M.'s hospital bills. Bullis had promised to pay these bills but had stopped payment on a check for them.

The defendants' side of the story was further expounded in the separate answer of E.M. and M.M. This answer was signed by Sabin as their attorney. (Notwithstanding Sabin's significant role in the proceedings as a witness to the contested documents, he was also serving as the defendants' attorney.) The separate answer asserted the notes and mortgages were legitimate and that Bullis had voluntarily signed them to atone for his criminal behavior.

It also contained many scandalous details about Bullis's boorish conduct. The answer stated that Bullis had sex with E.M., forcibly and without her consent. She became pregnant as a result of this encounter, and Bullis at first promised to support her. But then he managed to convince her that she would die if she had the child. Bullis paid for her to have an abortion. The operation permanently ruined E.M.'s health and left her unable to work. When M.M. learned of the pregnancy and abortion, it upset her so much that she was stricken with paralysis. Bullis signed the notes and mortgages to help care for E.M. and to help with M.M.'s hospital bills.

Her Story: A Denial

Two weeks after the answer was filed, however, E.M. filed a motion to strike her answer. She included an affidavit stating she had never agreed to employ Sabin or his firm to represent her. She stated "that said pretended joint answer was filed without her sanction, knowledge, or consent" and that it "contained many allegations which are untrue and entirely without foundation in fact."[13] E.M. denied she had been injured by Bullis as described in the answer, or that she had reached an agreement with him that he would compensate her for the alleged injuries.

The Trial

With this strange new cloud hovering over it, the case proceeded to trial. The defendants subpoenaed E.M. but did not call her as a witness. McClelland and the Morrises took the stand and denied issuing any threats to obtain the challenged documents from Bullis. After hearing all the evidence, the jury reached a verdict in favor of the defendants. Bullis filed a motion for a new trial.

The district court granted the motion. It found that some of its jury instructions had been erroneous, and that the resulting jury verdict had been erroneous as well. The court concluded that "all of the instruments mentioned in the complaint were made under duress and without consideration."[14] It entered judgment in favor of Bullis.

The Appeal: A Case of Unassailable Equities

The defendants raised several issues on appeal. First, they argued that the district court erred in disregarding the jury's verdict, and in entering judgment against them without giving them an opportunity to conduct a trial to the court. The Colorado Supreme Court rejected these contentions, reasoning that because the action was "purely equitable in nature . . . the verdict of the jury is merely advisory."[15] Because of this, "[t]he court may disregard it, and decide the issue for itself on the evidence produced."[16]

The Court further rejected defendants' argument that by agreeing to treat the action as legal rather than equitable, Bullis had agreed to be bound by the jury's verdict. The record did not support this argument. "[T]he fact that a jury was called to try the issues without objection upon [Bullis's] part, and the fact that the jury was sworn generally to try the issues and render a general verdict" did not mean Bullis agreed to treat the issue as legal rather than equitable, and did not make the jury's verdict binding rather than advisory.[17] The Court cited a large number of authorities that supported the trial court's right, sitting as a court of equity, to set aside the jury's advisory verdict.

The Court also rejected the argument that after the district court rejected the jury's verdict, it was obligated to hold a further evidentiary hearing before entering judgment in favor of Bullis. The Court reasoned that "[t]here is nothing to show that the defendants therein had any additional testimony to offer. If they did not have it, or having it, did not ask permission to present it, of course they were not in a position to complain."[18]

Nor could defendants complain that the district court erred in finding the jury instructions erroneous. They had failed to present the instructions to the Court for its review.

Defendants also argued that the district court's findings and decree in favor of Bullis were "unsupported by the weight of the evidence and unconscionable."[19] But in their answer to Bullis's complaint, M.M. and McClelland had failed to deny his allegations that the challenged checks, deeds, notes, and mortgages were made without consideration. And, after disavowing the answer filed on her behalf, E.M. had filed another separate answer in which she alleged "that she never received the note alleged in the complaint to have been made payable to her, and there was no consideration for the execution of the note or mortgage; that her codefendants were not authorized by her to demand or receive any such note or mortgage; and that all things done by her codefendants, in so far as the same purported to have been done in her behalf on her

account or for her benefit, were done without any request or license on her part."[20]

The purported victim had essentially disavowed defendants' entire case. Most important, she had denied that she had been injured as alleged in the documents Bullis signed, and "[i]f there was no injury, no recompense could be required."[21] The Court reasoned that the district court therefore correctly concluded that the documents had been issued without consideration.

As for duress, the fact that three witnesses (McClelland and the two Morrises) had testified there was no duress, and only one witness (Bullis) testified there was duress, did not justify a verdict against Bullis:

> If the rule is as contended for by [the defendants], three conspirators might at any time enter the office or domicile of an innocent man, and compel him, by force, threats, intimidation, or the like, to acknowledge that he was guilty of the most heinous offenses, or part with the most valuable property, and then when he, as soon as he was relieved from duress or intimidation, repudiates the entire transaction, and brings suit to recover that which he parted with, they, with one voice, can proclaim that no such thing occurred.[22]

Surely, the Court concluded, the mere fact that there were three witnesses against one did not require an unjust verdict against an innocent man.

The Court also found Bullis's account corroborated by the circumstances:

> [Bullis was] of mature years. He had a wife and a family, whom he was bound to protect. He had a lucrative practice as a lawyer and had accumulated some property. He was held in high repute among his neighbors and friends. . . . Yet, according to [defendants'] testimony, he willingly, freely, voluntarily, and graciously sacrificed his domestic happiness and his reputation as a decent citizen, and made [the transfers of his assets alleged in his complaint]—thus sacrificing the result of the labor of a lifetime, and all of this in reparation for an alleged injury to [E.M.], which she says and he says was never perpetrated. . . .[23]

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Finally, the Court rejected two evidentiary points raised by the defendants. It affirmed the trial court's grant of judgment in favor of Bullis.

Conclusion

The reader may be left with some questions about what really happened in this case. Surely, one might think, with all the smoke raised, there must have been some fire. The jury seems to have thought so. Could it be that the defendants, exclusive of E.M., invented a tale that she was assaulted, to frame an innocent lawyer and steal his property? Or is it more likely that Bullis did assault her, and for whatever reason (perhaps a sense of fear or embarrassment), she recanted her story? On the other hand, if he did assault E.M., is it likely Bullis felt so repentant that he voluntarily took actions to atone for it that would ruin his life? Maybe the real truth is something in between, or something else entirely. We will never know. The Supreme Court concluded that the district court judge, who heard all the evidence, was in the best position to render a verdict. Given the equitable nature of the action, that result may be unassailable. CL

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NOTES

1. The facts testified to by Bullis and others are available in a transcript of the 1899 trial, which is lodged in the Colorado Supreme Court file at the Colorado State Archives. *McClelland v. Bullis*, No. 4502 (Colo. 1899) ("Trial Tr."). The transcript pages are not individually numbered. My page references are to the Bates-stamped numbers on the left-hand margin of the transcript.
2. Trial Tr. at 209.
3. The transcript includes E.M.'s full name. But in its decision, the Colorado Supreme Court simply inserted a blank instead of her name to protect her privacy. Though everyone associated with this case is almost certainly dead, I have chosen to use her initials and those of her mother rather than disclose their full names.
4. *Id.* at 212.
5. *Id.*
6. *Id.*
7. *Id.* at 213.
8. *Id.*
9. *Id.*
10. *Id.* at 214. The statement read: "I Arthur D. Bullis of my own free will do hereby acknowledge that at the Windsor Hotel in Denver, on or about September 25, 1898, I attempted to have connection with [E.M.] but did not succeed. An emission took place, and from this I believe she became pregnant. I forcibly did this. I threatened to disgrace her and her family if she divulged this, and to send her brother-in-law to the penitentiary as a punishment for divulging my act." *Id.* at 241–42 (punctuation altered).
11. These checks and promissory notes were later identified in Bullis's complaint as (1) a check to Sabin for $1,000; (2) a check to McClelland for $500; (3) a check to W.S. Bagot for $250; (4) a check to George Atcheson for $250; (5) a promissory note in favor of E.M. for $2,100; and (6) a promissory note in favor of E.M.'s mother. *See McClelland v. Bullis*, 81 P. 771, 772 (Colo. 1905).
12. The statement read: "I Arthur D. Bullis hereby confess and acknowledge that I have violated my Masonic obligation, and have violated the purity of the family of a brother Master Mason." Trial Tr. at 239–40.
13. *McClelland*, 81 P. at 773.
14. *Id.*
15. *Id.* at 774.
16. *Id.*
17. *Id.*
18. *Id.* at 775.
19. *Id.* at 776.
20. *Id.*
21. *Id.*
22. *Id.*
23. *Id.* at 776–77.

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