IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Appellant,
vs.
RONNIE JOHN WOOLEY,
Respondent.

No. 41110

FILED

AUG 2 6 2003

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY [signature]
CHIEF DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a pre-trial order of the district court dismissing two counts of an indictment against respondent Ronnie John Wooley. The State argues on appeal that the district court erred in dismissing one count of battery on an officer and one count of battery with the use of a deadly weapon. Specifically, the State contends that the district court erred in concluding as a matter of law that (1) when Wooley drove his vehicle into a vehicle occupied by a police officer, Wooley did not use force or violence "upon the person of another" sufficient to support a charge of battery pursuant to NRS 200.481, and (2) a motor vehicle is not a deadly weapon. We conclude that the State's arguments have merit.

FACTS

On April 30, 2002, Paiute Tribal Police Officer Dean Lauer testified before a grand jury that he stopped Wooley's vehicle because it had an expired registration placard in its window.

Wooley was initially cooperative. However, when Wooley gave Officer Lauer false information about his identity, and was asked to step out of his vehicle, Wooley sped away, weaving through traffic as he fled.

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Officer Lauer returned to his patrol vehicle and pursued Wooley. Las Vegas Metropolitan Police Officer J. Hendricks, who was driving a patrol vehicle on the other side of the road, observed the situation, and also began pursuit of Wooley.

Both Officer Lauer and Officer Hendricks pursued Wooley, with their sirens on and lights flashing. During this pursuit, Wooley lost control of his vehicle, causing it to spin 180 degrees around, so that it was directly facing Officer Lauer's vehicle. Officer Hendricks drove behind Wooley's vehicle, and Officer Lauer drove up to approximately 20 feet from Wooley.

While Officer Lauer was still inside his patrol vehicle, Wooley accelerated and drove into the front of Officer Lauer's vehicle. The airbags in Officer Lauer's vehicle deployed, and it "came around along the backside" of Officer Hendricks's vehicle. Wooley attempted to exit his vehicle, but was arrested before he had an opportunity to do so. Officer Lauer suffered no short or long-term injuries from the crash.

Officer Lauer was the only witness to testify at the grand jury proceedings, which occurred about one week after the incident. Thereafter, the grand jury returned a true bill. On May 8, 2002, the Stated filed an indictment, which was subsequently amended, charging Wooley with one count of battery on an officer pursuant to NRS 200.481(2)(d)—a gross misdemeanor, one count of battery with the use of a deadly weapon pursuant to NRS 200.481(2)(e)—a felony, and one count of failing to stop on the signal of a police officer pursuant to NRS 484.348(3)—a felony.

Wooley moved to dismiss the battery counts, contending that there was no use of force or violence "upon the person" of Officer Lauer by Wooley as required for the crime of battery, and that a motor vehicle was not a deadly weapon. Following a hearing, the district court ruled that, as a matter of law, there was no use of force or violence "upon the person" of Officer Lauer and that a motor vehicle is not a deadly weapon. The district court granted Wooley's motion to dismiss. The State now appeals.

DISCUSSION

Resolution of this appeal involves statutory interpretation, which is a question of law subject to this court's independent review.[1]

1. Battery on an officer charge

The State contends that the district court erred in dismissing the charge of battery on an officer under NRS 200.481(2)(d). Specifically, the State contends that the facts established a sufficient use of force or violence upon Officer Lauer's person to support a charge of criminal battery.

Wooley contends that the district court properly dismissed the battery charge because there was no actual contact with Officer Lauer—only his patrol vehicle. Wooley adds that extending the definition of a person under NRS 200.481 to the exterior of a motor vehicle leads to absurd results.

NRS 200.481(1)(a) defines a battery as "any willful and unlawful use of force or violence upon the person of another." NRS

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[1]State v. Kopp, 118 Nev. ___, ___, 43 P.3d 340, 342 (2002).

200.481(2)(d) provides further that it is a gross misdemeanor to commit battery upon an officer performing his duty where the defendant knew or should have known that the person was an officer.

Although this court has not previously addressed the precise points at issue, the case law of other jurisdictions provides guidance. In particular, the State has called our attention to the Idaho Supreme Court's decision in State v. Townsend[2] and the Florida Supreme Court's decision in Clark v. State.[3]

In Townsend, the defendant rammed his pick-up truck into his wife's vehicle while the two vehicles were traveling on a road at approximately 35 miles per hour. As a result of the defendant's actions, the wife was jostled about inside her vehicle as it was forced off of the road. The defendant was charged and convicted of committing an aggravated battery against his wife pursuant to Idaho Code § 18-903—Idaho's criminal battery statute,[4] which provided that

> A battery is any:
>
> (a) Willful and unlawful use of force upon the person of another; or
>
> (b) Actual, intentional and unlawful touching or striking of another person against the will of the other; or

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[2]865 P.2d 972 (Idaho 1993).

[3]783 So.2d 967 (Fla. 2001).

[4]IDAHO CODE § 18-903 (Michie 1997).

(c) Unlawfully and intentionally causing bodily harm to an individual.

Although the defendant's conviction was later vacated and remanded on other grounds, in its opinion, the Idaho Supreme Court recognized that "the use of a motor vehicle to intentionally strike another occupied motor vehicle may constitute battery."[5] The court reasoned that the willful use of force on another person required for a battery charge "may be committed indirectly through an intervening agency which the defendant set in motion," and that whatever physical disturbance was implicitly necessary to support the charge was present under the facts of the case.[6]

In Clark, the defendant intentionally crashed his truck into the bumper of another vehicle that was blocking his exit from an area, spinning the vehicle around.[7] A jury found the defendant guilty of violating Florida Statute §784.03—Florida's criminal battery statute,[8] which provided in pertinent part that

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[5]Townsend, 865 P.2d at 977-78.

[6]Id. 976-77.

[7]Clark, 783 So.2d at 967-68. We note that the State cites to the Florida District Court of Appeals decision in Clark v. State, 746 So.2d 1237 (Fla. Dist. Ct. App. 1999). That opinion was later affirmed by the Florida Supreme Court.

[8]FLA. STAT. ANN. § 784.03(1)(a) (West 2000).

(1)(a) The offense of battery occurs when a person:

1. Actually and intentionally touches or strikes another person against the will of the other; or

2. Intentionally causes bodily harm to another person.

. . . .

The Florida Supreme Court eventually affirmed the defendant's conviction on appeal and recognized that "the question of whether an object is sufficiently closely connected to a person such that touching or striking the object would be a battery on that person will depend upon the circumstances of each case and is generally . . . a question of fact for the jury."[9] The court added that there is a "sufficient connection between a vehicle and a person where there is evidence of the touching required for a battery, such as the impact of the vehicle contact 'spun' the occupant of the vehicle."[10]

Although NRS 200.481 is more analogous to Idaho's battery statute than Florida's statute, we conclude that the facts and the reasoning of both Townsend and Clark are instructive and applicable to the case before us. Neither Townsend nor Clark support the proposition, however, that the use of force or violence upon the exterior of a vehicle constitutes *per se* contact upon the person inside that vehicle. This is

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[9]Clark, 783 So.2d at 968.

[10]Id. at 969.

because the crime of battery is an offense against the person—not property.[11]

Rather, in our view, the focus of the inquiry should be whether sufficient force or violence was inflicted upon the person inside the vehicle as a result of application of such force or violence to the exterior of the vehicle. The question must be asked: How intimately connected was the occupant to vehicle?[12] Both of the courts in Townsend and Clark held that this intimate connection is established when the occupant is jostled or the vehicle is spun as a result of contact with the exterior of the vehicle.[13]

Simple contact with the exterior of a vehicle that happens to be occupied, however, is not enough. To hold otherwise may lead to the absurd result of someone being charged with criminal battery for having *de minimus* contact with the exterior of an occupied motor vehicle when the occupant is left undisturbed.

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[11]See RESTATEMENT (SECOND) TORTS § 18 (1965) (stating that a battery is an "offense to the dignity involved in the unpermitted and intentional invasion" of the person).

[12]See id. ("[T]he ordinary man might well regard a horse upon which he is riding as part of his personality, but a passenger in a public omnibus or other conveyance would clearly not be entitled so to regard the vehicle merely because he was seated in it.").

[13]See Townsend, 865 P.2d at 976-77; Clark, 783 So.2d at 969; see also Wingfield v. State, 816 So.2d 675 (Fla. Dist. Ct. App. 2002); Tift v. State, 88 S.E. 41 (Ga. Ct. App. 1916).

Here, evidence presented by the State to the grand jury through the testimony of Officer Lauer established that the air bags in Officer Lauer's patrol vehicle were deployed when it was hit by Wooley's vehicle. Officer Lauer also testified that his vehicle "came around along the backside" of Officer Hendrick's vehicle after the collision. Thus, there was evidence that Officer Lauer's vehicle was spun around as a result of this contact. Although the evidence showed that Officer Lauer fortunately sustained no serious injuries, we conclude that the evidence nonetheless supports a reasonable inference that Wooley's conduct inflicted sufficient force or violence upon the person of the officer to sustain the charge of battery.[14] Therefore, we conclude that the district court erred in its interpretation of NRS 200.481 and in dismissing the charge of battery upon an officer as a matter of law. The evidence is sufficient to entitle the State to present its case to the trier of fact.

2. Motor vehicle as a deadly weapon

The State also contends on appeal that the district court erred when it dismissed the count of battery with the use of a deadly weapon under NRS 200.481(2)(e). The district court concluded that that a motor vehicle is not a deadly weapon as a matter of law. In doing so, it appears that the district court applied the inherently dangerous test.

The State contends that the issue of whether a motor vehicle is a deadly weapon in this case is an issue of fact to be determined by a

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[14]See State v. Boueri, 99 Nev. 790, 796, 672 P.2d 33, 36 (1983) (stating that probable cause may be based on slight or marginal evidence).

trier of fact applying the functional test. Wooley argues, however, that the district court properly applied the inherently dangerous test and further contends that the district court has the discretion to apply either the inherently dangerous test or the functional test to determine if something is a deadly weapon.[15]

The State and Wooley cite to NRS 193.165(5), which codified both deadly weapon tests, to support their arguments. Neither the State nor Wooley, however, recognize that NRS 193.165(3) provides that its enhancement provisions are not applicable to cases where the use of a deadly weapon is an element of the crime charged.

Here, Wooley was charged with violating NRS 200.481(2)(e), which provides that it is a felony to commit battery with the use of a deadly weapon. The use of a deadly weapon is an element of the crime charged—the enhancement provisions of NRS 193.165 do not apply.

We stated in Zgombic v. State[16] that the functional test is properly applied when a deadly weapon is an element of a crime and that this "is the interpretation generally followed in Nevada." Codification of

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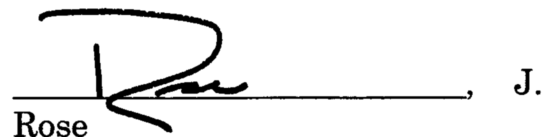
[15]Wooley cites to our footnote in Thomas v. State, 114 Nev. 1127, 1146 n.4, 967 P.2d 1111, 1123 n.4 (1998), where we stated that "[e]ither test may be used . . . ." However, Wooley misconstrues our statement in Thomas by contending that it stands for the proposition that one deadly weapon test may be applied to the exclusion of the other. The plain language of NRS 193.165(5) requires that both tests be applied in enhancement cases. See Hernandez v. State, ___ Nev. ___, ___, 50 P.3d 1100, 1110 (2002).

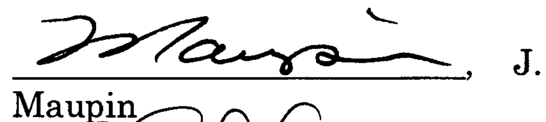
[16]106 Nev. 571, 574, 798 P.2d 548, 550 (1990).

the two tests in NRS 193.165 did not impact this portion of Zgombic. Therefore, we conclude that the district court erred in determining that a motor vehicle is not a deadly weapon as a matter of law.[17] Since the use of a deadly weapon is an element of the crime charged, and must be proven beyond a reasonable doubt, whether Wooley's vehicle constituted a deadly weapon is a question of fact to be decided by a trier of fact applying the functional test. Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.



_________________________, J.
Rose



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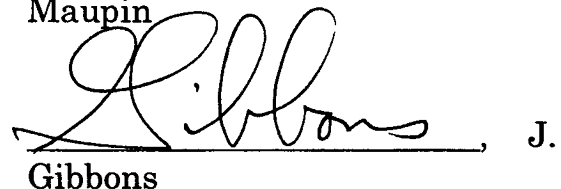

_________________________, J.
Gibbons

cc: Hon. John S. McGroarty, District Judge
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Jonathan E. MacArthur
Clark County Clerk

[17]We note that the district court correctly held that a motor vehicle is not a deadly weapon as a matter of law under the inherently dangerous test. See Kazalyn v. State, 108 Nev. 67, 825 P.2d 578 (1992).