

IN THE SUPREME COURT OF THE STATE OF NEVADA

DARRELL CRANEY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 41442

FILED

DEC 02 2004

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. R. [Signature]*  
CHIEF DEPUTY CLERK

ORDER AFFIRMING IN PART, VACATING IN PART, AND  
REMANDING FOR A NEW SENTENCING HEARING

Appellant Darrell Craney appeals from a judgment of conviction, pursuant to a jury verdict, of one count each of robbery with use of a deadly weapon and battery with intent to commit a crime. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge. The district court sentenced Craney to serve a minimum of four years and a maximum of ten years for count 1, battery with intent to commit a crime. It also sentenced Craney as a habitual criminal, pursuant to NRS 207.010, to a minimum of ten years and a maximum of life, plus an equal and consecutive minimum of ten years and a maximum of life for use with a deadly weapon, pursuant to NRS 193.165(1), for Count 2, robbery with use of a deadly weapon.

Initially we note that the sentence imposed for count 2, robbery with use of a deadly weapon, was in error. We have held that “[a] district court may not enhance a primary offense under both NRS 193.165 and NRS 207.010.”<sup>1</sup> In Odoms v. State, the defendant received a sentence enhancement, pursuant to NRS 207.010, as a habitual criminal, and the

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<sup>1</sup>Odoms v. State, 102 Nev. 27, 34, 714 P.2d 568, 572 (1986).

district court imposed an additional enhancement under NRS 193.165(1) because the defendant used a deadly weapon during the commission of the crime.<sup>2</sup> We reversed the defendant's sentence and concluded "the sentencing court may either enhance the sentence for the primary offense pursuant to NRS 193.165 for the use of a deadly weapon, or, alternatively, the court may enhance the sentence under the habitual criminal statute."<sup>3</sup>

Because Craney received sentence enhancements under both NRS 207.010 and NRS 193.165(1), we vacate the sentences and remand for a new sentencing hearing under Odoms. Even though we have vacated the sentences, we will still address Craney's appeal concerning his eligibility for sentencing under NRS 193.165.

Whether a "BB gun" qualifies as a deadly weapon under NRS 193.165

Craney asserts that the Nevada Legislature did not intend a BB gun to be classified as a deadly weapon or a firearm, and thus, his actions did not justify the additional enhancement for use of a deadly weapon. Because this is a question of statutory construction, this court applies a de novo standard of review.<sup>4</sup> NRS 193.165 describes the requirement for a sentence enhancement when a defendant uses a deadly weapon during the commission of a robbery. NRS 193.165 states, in pertinent part, that "any person who uses a firearm or other deadly weapon . . . in the commission of a crime shall be punished by imprisonment in the state prison for a term equal to and in addition to the term of imprisonment prescribed by statute for the crime." NRS

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<sup>2</sup>Id. at 33, 714 P.2d 572.

<sup>3</sup>Id. at 34, 714 P.2d 572.

<sup>4</sup>Moore v. State, 117 Nev. 659, 661, 27 P.3d 447, 448 (2001).

193.165(5)(b) provides one definition of a deadly weapon, stating that a deadly weapon is “[a]ny weapon, device, instrument . . . which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing substantial bodily harm or death.”

We conclude that Craney’s BB gun falls within the NRS 193.165(5)(b) statutory definition of a deadly weapon. Craney ultimately used the BB gun as a bludgeon during his attack upon Officer Hardman. Under the circumstances, the BB gun was an instrument readily capable of causing or threatening substantial bodily harm. Therefore, Craney’s BB gun fits squarely within the statutory definition of a deadly weapon for the purpose of sentence enhancement, and his contention is without merit.

Sufficiency of the evidence

Craney also argues that there was insufficient evidence to support the jury’s finding that he used a deadly weapon during the commission of the robbery. For questions concerning sufficiency of the evidence, this court considers “whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.”<sup>5</sup> We also note that circumstantial evidence alone may sustain a conviction.<sup>6</sup>

We conclude that any rational trier of fact could have found, beyond a reasonable doubt, that Craney’s BB gun was a deadly weapon and that he used it during the commission of the robbery. Officer


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<sup>5</sup>Mason v. State, 118 Nev. 554, 559, 51 P.3d 521, 524 (2002) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)).

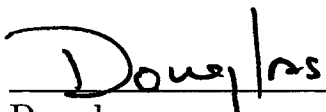
<sup>6</sup>See Buchanan v. State, 119 Nev. 201, 217, 69 P.3d 694, 705 (2003).

Hardman testified that Craney approached him with a BB gun and demanded his keys and wallet. At the time, Officer Hardman was not sure whether the BB gun was a firearm. Regardless, as noted, Craney used the BB gun as a bludgeon to hit Officer Hardman. Accordingly, Craney's actions satisfy NRS 193.165 and in particular, NRS 193.165(5)(b).

Accordingly, we ORDER the judgment of conviction AFFIRMED in part, VACATED in part, and REMANDED for a new sentencing hearing.

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Douglas

cc: Hon. Stewart L. Bell, District Judge  
Clark County Public Defender Philip J. Kohn  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk