

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT LEO BROYLES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45173

FILED

JAN 10 2006

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of battery with the use of a deadly weapon. Third Judicial District Court, Lyon County; Archie E. Blake, Judge. The district court sentenced appellant Robert Leo Broyles to serve a prison term of 22 to 96 months and ordered him to pay restitution in the amount of \$9,366.42.

First, Broyles contends that the district court erred in instructing the jury as to what constitutes a deadly weapon. The district court's deadly weapon instruction consisted of the language found in NRS 193.165(5)(a) and (b), which provides that either the inherently dangerous weapon test or the functional test may be used to determine whether an instrument is a deadly weapon.¹ Broyles argues that the jury should have

¹The district court's instruction stated that

A Deadly Weapon is defined as:

(a) Any instrument which, if used in the ordinary manner contemplated by its design and construction, will or is likely to cause substantial bodily harm or death; or

continued on next page . . .

been instructed that the proper test is the inherently dangerous test as described in Zgombic v. State.² However, we have previously stated that the functional test is properly used for determining whether a weapon qualifies as deadly weapon when, as here, the use of a deadly weapon is an element of the crime.³ Accordingly, we conclude that the district court did not err in instructing the jury on the functional test.

Second, Broyles contends that the district court erred by denying his proposed instruction.⁴ The district court has broad discretion in settling jury instructions and its decisions will not be disturbed absent

... continued

(b) Any weapon, device, instrument, material or substance 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.

²106 Nev. 571, 798 P.2d 548 (1990).

³Id. at 574, 798 P.2d at 549-50; see also NRS 200.481 (defining battery and providing the sentencing guideline for battery with the use of a deadly weapon).

⁴Broyles's proposed instruction stated:

Ladies and Gentlemen of the Jury you are further instructed that with respect to Instruction ____, paragraph (a) the following items are not deadly weapons as matter[s] of law:

An Automobile is not a Deadly Weapon

A Hammer is not a Deadly Weapon

You may consider this only as it relates to your decision as to whether or not the pool cue is a deadly weapon with respect to paragraph (a) of Instruction ____.

an abuse of discretion or judicial error.⁵ The district court found that the proffered instruction was not a correct statement of the law as it applied to this case. We agree. Broyles's proposed instruction was based on our holdings in Smith v. State⁶ and Kazalyn v. State.⁷ These cases defined deadly weapons for purposes of the sentence enhancement statute, and did not define deadly weapons for purposes of proving an element of a crime.⁸ Accordingly, we conclude that the district court did not abuse its discretion by denying the proposed instruction.

Third, Broyles contends that there was insufficient evidence adduced at trial to prove that the pool cue was a deadly weapon. The standard of review for a challenge to the sufficiency of the evidence to support a criminal conviction is “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.”⁹ Here, the jury heard testimony that Broyles deliberately approached his victim from behind and struck him on the head with the thick end of a weighted pool cue. Broyles swung the pool cue with so much force that it broke and the victim fell to the ground. The victim was

⁵Jackson v. State, 117 Nev. 116, 120, 17 P.3d 998, 1000 (2001).

⁶110 Nev. 1094, 881 P.2d 649 (1994).

⁷108 Nev. 67, 825 P.2d 578 (1992), overruled in part by Byford v. State, 116 Nev. 215, 994 P.2d 700 (2000).

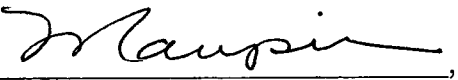
⁸See Smith, 110 Nev. at 1101-02, 881 P.2d at 653-54; Kazalyn, 108 Nev. at 76, 825 P.2d at 584.

⁹McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)).

knocked unconscious and sustained a head wound, which bled profusely and had to be treated with stitches and staples. The victim continues to suffer from migraine headaches as a result of the battery. We conclude that a rational juror could reasonably infer from the evidence presented that the pool cue as used by Broyles was readily capable of causing substantial bodily harm or death.

Having considered Broyles's claims and concluded that they lack merit, we

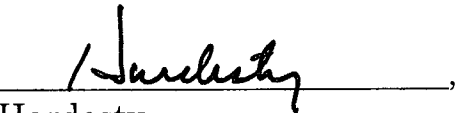
ORDER the judgment of conviction AFFIRMED.

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

cc: Hon. Archie E. Blake, District Judge
Law Office of Kenneth V. Ward
Lyon County Public Defender
Attorney General George Chanos/Carson City
Lyon County District Attorney
Lyon County Clerk