

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARCELLOUS DAVONE GALAVIZ,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 79341-COA

**FILED**

**JUN 10 2020**

*ORDER OF AFFIRMANCE*

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

Marcellous Davone Galaviz appeals from a judgment of conviction, pursuant to a jury verdict, of child abuse causing substantial bodily harm with use of a deadly weapon. First Judicial District Court, Carson City; James E. Wilson, Judge.

On July 17, 2018, Asozena Bradford took her four-month-old baby, J.B., to the Carson Tahoe Hospital after discovering burns on his head, arm, and genitals.<sup>1</sup> Dr. Daniel Shocket examined J.B., determined that the burns could be thermal in nature (i.e., burns that resulted from touching a heated object), and recommended that J.B. be transported to the Shriners Hospitals for Children Burn Unit at the University of California, Davis, for treatment because of the severity of the burns.

The Carson City Sheriff's Department assigned Detective Salvador Acosta to investigate. During an interview with Detective Acosta, Bradford confirmed that Galaviz was her boyfriend and that on July 17 she had left J.B. in Galaviz's care while she was at work. Detective Acosta also interviewed Galaviz. During that interview, Galaviz confirmed that J.B. was in his care on July 17 and claimed that he noticed a burn on J.B.'s arm immediately after J.B. awoke from a nap. Galaviz, however, denied that he

---

<sup>1</sup>We do not recount the facts except as necessary to our disposition.



was responsible for any of the burns and instead attributed the burns to an evil spirit.<sup>2</sup>

With Bradford's permission, Detective Acosta searched her and J.B.'s residence in an attempt to locate what might have caused J.B.'s burns. Detective Acosta did not find anything in the area where J.B. was sleeping that could have burned J.B., nor did he find any knives or metal objects in the house that appeared to have been recently heated or burned.

Around the time that J.B. was discharged from Shriners, Galaviz asked Bradford whether she had grabbed everything out of J.B.'s diaper bag. Specifically, he inquired about his pocketknife, which he had apparently misplaced. Bradford searched the diaper bag and discovered the pocketknife that Galaviz had previously described. When she opened the knife, she noticed that the tip appeared burnt and that the blade's shape was consistent with J.B.'s burn marks. Bradford notified law enforcement and surrendered the knife as potential evidence.

The State charged Galaviz with child abuse causing substantial bodily harm with the use of a deadly weapon. At trial, Bradford testified about her conversation with Galaviz related to the knife, and how she recovered the knife from J.B.'s diaper bag shortly after that conversation. The State presented additional evidence at trial as well, including the knife that was recovered from the diaper bag and Dr. Shocket's testimony, which addressed J.B.'s injuries. After a three-day trial, the jury returned a guilty verdict. The district court sentenced Galaviz to a term of 60 to 150 months

---

<sup>2</sup>Prior to trial, Galaviz received a psychiatric evaluation and was found competent to stand trial by district court after receiving reports from two physicians at Lake's Crossing Center.

with a consecutive weapon enhancement sentence of 24 to 60 months, for an aggregate prison term of 84 to 210 months. This appeal followed.

On appeal, Galaviz challenges only the imposition of the deadly weapon enhancement. First, Galaviz argues that NRS 193.165(6)(a) is inapplicable because the knife was not used in the ordinary manner contemplated by its design. Second, Galaviz contends that subsection (b) is also inapplicable because the knife was not an instrument taken out of its normal context and used in a 'deadly' manner. In other words, Galaviz suggests that insufficient evidence supports the deadly weapon component of his conviction. We disagree and therefore affirm.

When reviewing the sufficiency of the evidence, this court must decide, "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." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *see also Origel-Candido v. State*, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998). It is the jury's role, not the reviewing court, "to assess the weight of the evidence and determine the credibility of witnesses." *McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992). Thus, "a verdict supported by substantial evidence will not be disturbed by [this] court." *Id.* Moreover, "circumstantial evidence alone may support a conviction." *Hernandez v. State*, 118 Nev. 513, 531, 50 P.3d 1100, 1112 (2002).

Under NRS 193.165(6), a deadly weapon is defined as "(a) [a]ny 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 "(b) [a]ny weapon, device, instrument, material or substance which, under the circumstances in which it is used, . . . is readily capable of causing

substantial bodily harm or death.”<sup>3</sup> The former is known as the inherently dangerous definition, while the latter is referred to as the functional definition or functional test. *See, e.g., Rodriguez v. State*, 133 Nev. 905, 908, 407 P.3d 771, 773 (2017) (explaining that “[a]s early as 1870, this court defined objects as ‘deadly weapons’ if they satisfied *either* the inherently dangerous *or* the functional test”).

We first address Galaviz’s argument that NRS 193.165 is inapplicable because “the knife . . . was not used in the ordinary manner contemplated by its design.” In other words, he argues that because the knife was not used to “cut,” “stab[ ],” or “slice,” the statute should not apply. However, this argument focuses on subsection (6)(a) and ignores the plain language of subsection (6)(b). NRS 193.165(6)(b) clearly articulates that when a person uses “[a]ny weapon, device, instrument, material or substance” in a manner that “is readily capable of causing substantial bodily harm or death,” that person is subject to the deadly weapon enhancement, irrespective of the weapon’s inherent lethal (or nonlethal) capabilities. (Emphasis added.)

Here, the record indicates that Galaviz heated the blade of a knife and then used the heated blade to burn J.B. in multiple locations on his body. Dr. Shocket testified that J.B. presented at the hospital with burns on his arm and genitals, among other places. Dr. Shocket testified specifically that J.B. had burns “on [his] foreskin” and “the glands [sic] of the penis,” as well as “the head of the penis . . . and also on [his] scrotum.” Dr. Shocket also described the injuries as second-degree burns, “which tend[ ] to be very

---

<sup>3</sup>Substantial bodily harm is defined as either: “Bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ”; or “[p]rolonged physical pain.” NRS 0.060(1) and (2).



painful,” and that they were consistent with thermal burns. Moreover, Dr. Shocket noted that the burns on J.B.’s genitals would have been “more painful [than the other areas]” because that area of the body has more blood vessels and nerve endings and is therefore more sensitive. Based on this record, we conclude that the application of the deadly weapon enhancement under NRS 193.165 was proper. This evidence, when viewed in the light most favorable to the prosecution, is more than sufficient to support the deadly weapon enhancement under NRS 193.165. Thus, we conclude that any rational jury could have found Galaviz guilty beyond a reasonable doubt.


Next, we address Galaviz’s second argument that prosecuting him under NRS 193.165 was improper because the knife in this case was not “some sort of instrument taken out of its normal context and used in a ‘deadly’ manner, as anticipated by subsection [(6)](b).” This argument, too, is unpersuasive as it mischaracterizes the statute’s plain language and requirements, and our decision is an alternative basis to affirm the judgment of conviction. Subsection (6)(b) of NRS 193.165 defines deadly weapon as “[a]ny weapon, device, instrument, material or substance which, under the circumstances in which it is used . . . is readily capable of causing substantial bodily harm or death.”

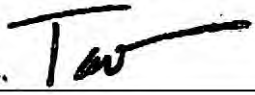
The phrases “[a]ny weapon” and “under the circumstances in which it is used” are certainly broad enough to capture inherently dangerous weapons that are used in an unintended manner, if that unintended manner is capable of causing substantial bodily harm or death—a proposition that finds support in our jurisprudence. *See, e.g., State v. McNeil*, 53 Nev. 428, 436, 4 P.2d 889, 890 (1931) (“[W]e can easily conceive of many circumstances in which a given weapon could be equally deadly in many ways, regardless of the purpose for which it is mainly intended to be used.”); *State v. Napper*,

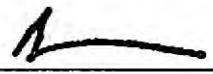
6 Nev. 113, 115 (1870) (defining deadly weapon as "a weapon deadly either in its nature, or capable of being used in a deadly manner"); *see also Rodriguez*, 133 Nev. 905, 407 P.3d 771.

Furthermore, the statute does not require that the instrument be "taken out of its normal context and used in a 'deadly' manner . . . ." Indeed, NRS 193.165(6)(b) merely requires that "[a]ny weapon, device, instrument, material or substance" be used in a manner that is capable of causing *substantial bodily harm* or death. Here, as discussed above, the knife was used in a manner that *caused substantial bodily harm* to J.B. Moreover, Galaviz's narrow interpretation of the statute is not supported by the text of the statute or any relevant authority. *Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) ("It is appellant's responsibility to present relevant authority and cogent argument."). For the foregoing reasons, we

ORDER the judgment of conviction AFFIRMED.<sup>4</sup>

  
\_\_\_\_\_, C.J.  
Gibbons

 \_\_\_\_\_, J.  
Tao

 \_\_\_\_\_, J.  
Bulla

<sup>4</sup>To the extent that Galaviz challenges the validity of the charging document as it pertains to the deadly weapon enhancement, we reject this argument, as the charging document was not questioned before or during trial. *See Larsen v. State*, 86 Nev. 451, 456, 470 P.2d 417, 420 (1970) ("If the sufficiency of an indictment or information is not questioned at the trial, the pleading must be held sufficient unless it is so defective that it does not, by any reasonable construction, charge an offense for which the defendant is convicted."); *cf. United States v. Mechanik*, 475 U.S. 66, 73 (1986) (holding that "the petit jury's verdict rendered harmless any conceivable error in the charging decision . . .").

cc: Hon. James E. Wilson, District Judge  
John E. Malone  
Attorney General/Carson City  
Carson City District Attorney  
Carson City Clerk