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## Rodriguez v. State, 133 Nev. Adv. Op. 110 (Dec. 28, 2017)

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CRIMINAL LAW: DEADLY WEAPON

**Summary**

The Court determined that both the inherently dangerous and the functional definitions apply to “deadly weapon,” and that the use of the functional definition does not go against the legislature’s intent in NRS 200.481.

**Background**

Daniel Rodriguez stabbed a 66 year-old man with a screwdriver in the neck, requiring hospitalization. Rodriguez was arrested and charged with battery with the use of a deadly weapon. Rodriguez contended that a screwdriver does not constitute a deadly weapon throughout the pre-trial process. However, the district court denied his motion to dismiss and proceeded to trial. At trial, Rodriguez and the State each submitted jury instructions with differing definitions of “deadly weapon”. Rodriguez submitted an “inherently dangerous” definition: “[a] deadly weapon is any instrument which, if used in the ordinary manner contemplated by its design or construction, will, or is likely to cause a life-threatening injury or death.” And the State submitted a “functional” definition: “[a] ‘deadly weapon’ is defined as any weapon, device, instrument, material or substance which, under the circumstances in which it is used, is attempted to be used or threatened to be used, is readily capable of causing substantial bodily harm or death.”

The jury convicted Rodriguez of battery with the use of a deadly weapon after receiving the State’s jury instruction. Rodriguez appealed, arguing the district court abused its discretion because the jury instruction did not accurately reflect the “deadly weapon” definition according to NRS 200.481(2)(e).

**Discussion**

Rodriguez cited NRS 200.481(2)(e) as evidence that the legislature intended to apply an inherently dangerous definition to “deadly weapon”. However, the Court reasoned that Nevada caselaw endorses both the inherently dangerous definition and the functional definition. For example, *Zgombic v. State* applied a functional definition: “virtually any object can constitute a ‘deadly weapon,’ so long as it is used in a ‘deadly manner.’”<sup>2</sup> Under this broad definition, a screwdriver used to stab someone in the neck qualifies as a deadly weapon. In contrast, *Hutchins v. State* applied an inherently dangerous definition: a deadly weapon is inherently dangerous if intended by nature or design to be used to cause injury.<sup>3</sup> Under this narrow definition, a screwdriver is not a deadly weapon because it was designed to be used as a tool, not to cause injury.

Therefore, Rodriguez argued that at the very least, the legislature’s intent is ambiguous, and the Court should apply the rule of lenity in his favor. First, the Court looked at the plain meaning of “deadly weapon” in NRS 200.481 to determine the legislature’s intent. However, the plain meaning could not be determined because the statute does not expressly define “deadly weapon”. Next, the Court analyzed the legislature’s understanding of a “deadly weapon” at the

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<sup>1</sup> By Natice Locke.

<sup>2</sup> 106 Nev. 571, 573, 798 P.2d 548, 549 (1990).

<sup>3</sup> 110 Nev. 103, 111, 867 P.2d 1136, 1141 (1994).

time the statute was drafted. The legislature enacted NRS 200.481 in 1971, and at that time, both the functional and inherently dangerous definitions were established in Nevada caselaw. So ultimately, a deadly weapon is one that is deadly either in nature, or because it is capable of being used in a deadly manner.<sup>4</sup>

It is presumed that the legislature was familiar with the competing definitions of “deadly weapon” in Nevada caselaw and drafted the statute to reflect that understanding. The legislature intended “deadly weapon” to be interpreted broadly. Since ambiguity was not an issue, the Court refused to apply the rule of lenity. Therefore, the district court did not abuse its discretion.

## **Conclusion**

Historically, the Court has relied upon both the functional and inherently dangerous definitions of “deadly weapon.” Therefore, the district court did not abuse its discretion by giving jury instructions using a functional definition. The Court affirmed Rodriguez’s conviction for battery with the use of a deadly weapon.

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<sup>4</sup> State v. Napper, 6 Nev. 113, 115 (1870).