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Summary of Hobbs v. State, 127 Nev. Adv. Op. No. 18

Christopher Scott Connell
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CRIMINAL LAW – ASSAULT AND BATTERY

Summary

An appeal from a judgment of conviction, by way of jury verdict, for battery and injury to other property.

Disposition/Outcome

The Supreme Court of Nevada affirmed that spitting on another person constitutes a battery under NRS 200.481. The Court further held that the enhanced felony sentence for the appellant under NRS 200.481(1)(c) was erroneous because the State did not sufficiently establish the existence or constitutionality of his prior domestic battery misdemeanor convictions.

Factual and Procedural History

Timothy Lee Hobbs (“Hobbs”) entered a salon where his ex-girlfriend Patricia McClain (“McClain”) was having her nails done, and became enraged that she was spending money on her appearance. The two got in an argument, and Hobbs left. Hobbs shortly returned to the salon, spit in McClain’s face, then went outside and threw a rock through her car windshield.

Hobbs was charged with domestic battery and injury to other property. Because Hobbs had two prior domestic battery misdemeanors, the State moved to elevate the current offense to a felony under NRS 200.485, which would result in a habitual criminal enhancement pursuant to NRS 207.010.² Hobbs filed a writ of *habeas corpus*, arguing that spitting did not satisfy the elements of battery under NRS 200.481.³ The district court dismissed the petition and found that spitting constituted battery under NRS 200.481.⁴ At trial, a jury found Hobbs guilty of battery and injury to other property.⁵

During sentencing, the State moved to convict Hobbs as a habitual felon and entered in six copies of Hobbs’ prior felony convictions, but did not mention his prior domestic battery misdemeanor convictions, or present evidence of the constitutional validity of these convictions. Hobbs was sentenced to 10 to 25 years in prison for domestic battery and 1 year for injury to other property, to run concurrently. Hobbs appealed the sentence.⁶

¹ By Christopher Scott Connell

² NEV. REV. STAT. § 200.485 is Nevada’s domestic battery statute. NEV. REV. STAT. § 200.485(1)(c) states that a third conviction for domestic battery within seven years is a class C felony and shall be punished as provided in NEV. REV. STAT. § 193.130. A habitual criminal enhancement under NEV. REV. STAT. § 207.010 carries a maximum term of life in prison.

³ NEV. REV. STAT. § 200.481 defines battery as “any willful and unlawful use of force or violence upon the person of another.”

⁴ *Hobbs v. State*, 127 Nev. Adv. Op. No. 18, at 3 (May 19, 2011).

⁵ *Id.*

⁶ *Id.*

Discussion

Spitting on another constitutes the “use of force or violence” required for a battery under NRS § 200.481

The Supreme Court of Nevada reviews questions of statutory interpretation *de novo*.⁷ NRS 200.481 defines battery as “any willful and unlawful use of force or violence upon the person of another.” The statute does not include physical pain or harm as an element of battery. The Court interpreted the statute to mean that any “force... directed against a person or thing” satisfies the language used in NRS 200.481. Moreover, this interpretation is within the common law definition of battery.

The Court further held that California case law, which says that “only a slight unprivileged touching is needed to satisfy the force requirement of a criminal battery,” supports this statutory interpretation.⁸ Furthermore, other California cases have held that “spitting” and “throwing urine in a person’s face” constitutes battery.⁹

Therefore, the Court found the language in NRS 200.481 to be clear; battery is “the intentional and unwanted exertion of force upon another.” Harm, injury, or discomfort are not elements of battery for the purposes of the statute.

The State failed to establish the requisite prior domestic battery misdemeanor convictions to enhance Hobbs’ current offense to a felony

Second, the Court held that the State had a due process burden to “prove each element of a sentence enhancement beyond a reasonable doubt or to make an affirmative showing of the constitutional validity of the prior misdemeanor convictions.”¹⁰ Under Nevada’s domestic battery statute, a third offense within seven years shall be enhanced to a class C felony pursuant to NRS 193.130. However, NRS 200.485(1)(c) states that “the facts concerning a prior offense must be... proved at the time of sentencing....”¹¹ Therefore, the State has the burden of “proving each element of a sentence enhancement beyond a reasonable doubt.”¹² A conviction is constitutionally valid when “counsel was present ...[or] validly waived, and ... the spirit of constitutional principles was respected in the prior misdemeanor proceedings.”¹³

Here, the State indicated it would seek an elevated sentence if Hobbs was convicted. The State also presented evidence of the prior misdemeanor convictions during the preliminary hearing in justice court, but did not present this evidence or establish its constitutional validity at the district court sentencing. The prior offences presented in the justice court had the limited and

⁷ *Id.* at 4.

⁸ *People v. Ausbie*, 20 Cal. Rptr. 3d 371, 375 n.2 (2004).

⁹ *People v. Hamilton*, 200 P.3d 898, 953-54 (Cal. 2009); *People v. Pinholster*, 824 P.2d 571, 622 (Cal. 1992).

¹⁰ *Hobbs v. State*, 127 Nev. Adv. Op. No. 18, at 9, n. 4 (May 19, 2011) (citing *Phipps v. State*, 111 Nev. 1276, 1280, 903 P.2d 820, 823 (1995)).

¹¹ NEV. REV. STAT. § 200.485(1)(c) (2007).

¹² *Hobbs v. State*, 127 Nev. Adv. Op. No. 18, at 9, n. 4 (May 19, 2011) (citing *Phipps v. State*, 111 Nev. 1276, 1280, 903 P.2d 820, 823 (1995)).

¹³ *Hobbs v. State*, 127 Nev. Adv. Op. No. 18, at 10 (May 19, 2011) (citing *Dressler v. State*, 107 Nev. 686, 697, 819 P.2d 1288, 1295 (1991)).

confined role of determining probable cause.¹⁴ Transferring exhibits from justice court to district court was insufficient to prove the “existence and constitutional validity” of the prior misdemeanor convictions, and the State therefore did not satisfy its burden for elevated sentencing. Therefore, the criminal enhancement from a misdemeanor battery to a felony battery, along with the associated habitual offender sentencing, was invalid.¹⁵

Conclusion

Spitting is the “use of force or violence” and therefore constitutes battery under NRS 200.481. However, the State did not prove the existence and constitutional validity of the appellant’s prior domestic battery convictions, which are necessary elements to enhance a criminal verdict of misdemeanor to a felony under Nevada’s habitual criminal statute.

¹⁴ *Id.*

¹⁵ *Id.* at 11.