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### Rodriguez (Juan) v. State, 134 Nev. Adv. Op. 95 (Dec. 6, 2018) (en banc)

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## CRIMINAL LAW: BATTERY AS AN ENHANCEMENT STATUTE

### **Summary**

The Court held that NRS 200.481(2)(b) is not an enhancement statute and so a sentence for battery resulting in substantial bodily harm with a consecutive sentence for the older-person enhancement is not double sentencing.<sup>2</sup>

### **Background**

Rodriguez pleaded guilty to battery resulting in substantial bodily harm committed against an older person after striking the 68-year old victim, causing him to fall and incur brain damage. At sentencing, a consecutive term was imposed on Rodriguez for the older-person enhancement in addition to the sentence for the primary offense. This appeal followed.

### **Discussion**

The Court disagreed with Rodriguez's argument that two sentence enhancements were applied by the district court. The category of felony is determined by additional facts, including "the extent of any physical injury to the victim." Under NRS 200.481(2), battery receives misdemeanor treatment for cases with facts not meeting the requirements of the other categories.<sup>3</sup> Battery is treated as a category C felony when it results in substantial bodily harm.<sup>4</sup> The Court rejected Rodriguez's argument that NRS 200.481(2)(b) was an enhancement statute because substantial bodily harm increased the charge to a category C felony from a misdemeanor.

While no more than one enhancement can be applied to a primary offense,<sup>5</sup> the enhancements discussed relied on facts not part of that primary offense.<sup>6</sup> Enhancement statutes deal with circumstances surrounding the crime and not degrees within the offense.<sup>7</sup> The Court reasoned that when specific facts provide the basis for classifications within the primary offense statute, those facts are part of the primary offense statute and not a separate enhancement statute.<sup>8</sup> Therefore, an enhancement statute may still be applied.

### **Conclusion**

The Court affirmed the judgment of conviction, concluding that because NRS 200.481(2)(b) is not an enhancement statute Rodriguez's sentence for battery resulting in substantial bodily harm could receive the older-person enhancement.

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<sup>1</sup> By Jessica Story.

<sup>2</sup> NEV. REV. STAT. § 200.481(2)(b) (2017).

<sup>3</sup> NEV. REV. STAT. § 200.481(2)(a).

<sup>4</sup> NEV. REV. STAT. § 200.481(2)(b).

<sup>5</sup> NEV. REV. STAT. § 193.169(1) (2017).

<sup>6</sup> *Barrett v. State*, 105 Nev. 361, 365, 775 P.2d 1276, 1278 (1989); *Odoms v. State*, 102 Nev. 27, 34, 714 P.2d 568, 572 (1986); *Carter v. State*, 98 Nev. 331, 335, 647 P.2d 374, 377 (1982).

<sup>7</sup> *People v. Anderson*, 211 P.3d 584, 599 (Cal. 2009).

<sup>8</sup> *See Id.*