

COURT OF CRIMINAL APPEALS OF TENNESSEE

Gunter v. State

499 S.W.2d 954 (Tenn. Crim. App. 1973) · Decided April 27, 1973

SUMMARY

The court affirmed William Gunter’s conviction for assault and battery after he slashed at another person with a knife and severely injured a two-year-old child who was being held by that person. The court held that the evidence supported the verdict under the rule that an unintended injury caused during an unlawful act may constitute assault and battery, and it rejected the defendant’s unpreserved challenge to the prosecutor’s closing argument.

CASE DETAILS

COURT	Court of Criminal Appeals of Tennessee
WRITING FOR THE COURT	Walker, Presiding Judge; Russell, J.; O'Brien, J.
JURISDICTION	Tennessee
DECIDED	April 27, 1973
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed in error from his conviction for assault and battery following a jury trial.
STANDARD OF REVIEW	The court reviewed whether the evidence preponderated against the verdict and in favor of the defendant's innocence. It also reviewed the asserted closing-argument error for preservation and demonstrated prejudice.
PRECEDENTIAL VALUE	Published intermediate appellate opinion
PARTIES	William Gunter v. State of Tennessee

TOPICS

- criminal procedure
- evidence
- appellate procedure
- preservation of error

PRACTICE AREAS

- criminal law
- criminal procedure
- appellate practice

QUESTIONS PRESENTED

1. Whether the evidence preponderated against Gunter's conviction for assault and battery when the child was unintentionally injured while Gunter was unlawfully attacking other persons.
2. Whether the assertedly inflammatory closing argument warranted a new trial when no contemporaneous objection was made and the argument was not included in the bill of exceptions.

HOLDINGS

1. A defendant who, while engaged in an unlawful act that is malum in se, unintentionally injures another person is guilty of assault and battery when the injury is a natural or probable consequence of the unlawful act; lack of intent to injure the particular person does not excuse the conduct.
2. The asserted error in the prosecutor's closing argument did not warrant a new trial because the argument was not included in the bill of exceptions, no good cause was shown to add it, and no objection was made at trial.

KEY QUOTATIONS

"If a personal injury is unintentionally done another by one who is engaged in an unlawful act, he is not necessarily excused on the ground of accident." (955)

"If the act is a crime and malum in se, and the injury is a natural or probable consequence of the act, he is guilty of assault and battery." (955)

FACTUAL BACKGROUND

Gunter went to the trailer home of his ex-wife, where her adult son struck him in the eye. Later, while riding in a car with the son and several children, Gunter pulled a knife and slashed at the son and his ex-wife. The son's two-year-old child, who was sitting in the son's lap, was severely cut, although the evidence showed Gunter did not intend to cut the child. Gunter also claimed that the district attorney general improperly emphasized the child's injury during closing argument, but no objection was made and the argument was not included in the bill of exceptions.

PROCEDURAL HISTORY

A Williamson County jury convicted Gunter of assault and battery for cutting a child during an altercation and imposed a \$1,000 fine and 11 months and 29 days in jail. Gunter challenged the sufficiency and weight of the evidence and sought relief based on the district attorney general's closing argument. The Court of Criminal Appeals overruled all assignments of error and affirmed the judgment.

DISPOSITION

affirmed

CASES CITED

- Saunders v. State, 208 Tenn. 347, 345 S.W.2d 899
- King v. State, 157 Tenn. 635, 11 S.W.2d 904

- Turner v. State, 188 Tenn. 312, 219 S.W.2d 188

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