

SOUTH DAKOTA SUPREME COURT

State v. Foote

930 N.W.2d 650 (S.D. 2019) · Decided June 19, 2019

SUMMARY

The South Dakota Supreme Court considered whether a Taser qualifies as a dangerous weapon under South Dakota law and whether sufficient evidence supported Foote’s aggravated-assault convictions. The court held that a Taser is a stun gun and therefore a dangerous weapon by statutory definition, and that the evidence supported the jury’s finding that Foote attempted to use it in a manner likely to cause serious bodily harm. The convictions were affirmed.

CASE DETAILS

COURT	South Dakota Supreme Court
WRITING FOR THE COURT	Chief Justice Gilbertson; Justice Kern; Justice Jensen; Justice Salter
JURISDICTION	South Dakota
DECIDED	June 19, 2019
DISPOSITION	affirmed
PROCEDURAL POSTURE	Foote appealed from convictions for two counts of aggravated assault against a law enforcement officer, challenging the denial of his motion for judgment of acquittal and the sufficiency of the evidence.
STANDARD OF REVIEW	The denial of a motion for judgment of acquittal is proper when the State presents evidence that, if believed by the jury, may reasonably support a guilty verdict. Sufficiency of the evidence is reviewed de novo, viewing the evidence and favorable inferences in support of the verdict without resolving evidentiary conflicts, assessing witness credibility, or reweighing the evidence.
PRECEDENTIAL VALUE	published opinion
PARTIES	Foote v. State of South Dakota

TOPICS

- criminal procedure
- evidence
- statutory interpretation
- burden of proof

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to establish that the Taser was a dangerous weapon under South Dakota law.
2. Whether the evidence was sufficient to establish that Foote attempted to use the Taser to cause bodily injury to the law enforcement officers.
3. Whether the circuit court erred by denying Foote's motion for judgment of acquittal.

HOLDINGS

1. A Taser is a type of stun gun, and any stun gun is a dangerous weapon by statutory definition; therefore, the State was not required to prove that this particular Taser was designed or used in a manner likely to inflict death or serious bodily harm.
2. The evidence and favorable inferences permitted the jury to find beyond a reasonable doubt that Foote attempted to use the Taser in a manner likely to inflict serious bodily harm on the officers.

KEY QUOTATIONS

"From the language of the statute any stun gun is, by definition, a dangerous weapon, and a Taser is a type of stun gun." (930 N.W.2d at 652)

"From our review, the jury could have concluded Foote attempted to use the Taser in a manner likely to inflict serious bodily harm upon the officers." (930 N.W.2d at 653)

FACTUAL BACKGROUND

Parole Agent Mike Stolley and Deputy Sheriff Greg Swanson went to a residence to execute an arrest warrant for Foote, who was on parole. During a struggle after Foote attempted to flee, Foote grabbed a deputy's Taser, pointed it at the deputy's face, and caused it to deploy repeatedly, producing electrical shocks. After gaining control of the Taser, Foote pointed it at Agent Stolley's chest and jabbed him with it. Expert testimony indicated that a Taser can cause serious bodily injury or death depending on how it is used.

PROCEDURAL HISTORY

A jury found Foote guilty of two counts of aggravated assault against a law enforcement officer under SDCL 22-18-1.1 and SDCL 22-18-1.05. The circuit court denied his motion for judgment of acquittal. The South Dakota Supreme Court reviewed the sufficiency challenges and affirmed the convictions.

DISPOSITION

affirmed

CASES CITED

- State v. Carter, 2009 S.D. 65, ¶ 44, 771 N.W.2d 329, 342
- State v. Abdo, 518 N.W.2d 223, 227 (S.D. 1994)
- State v. Jucht, 2012 S.D. 66, ¶ 18, 821 N.W.2d 629, 633

OPINION

PER CURIAM.

[¶8.] Foote was found guilty of two counts of aggravated assault against a law enforcement officer in violation of SDCL 22-18-1.1 and SDCL 22-18-1.05. Aggravated assault occurs when "[a]ny person... [a]ttempts to cause, or knowingly causes, bodily injury to another with a dangerous weapon[.]" SDCL 22-18-1.1(2). Foote claims the State presented insufficient evidence to prove he possessed a dangerous weapon.

More specifically, he argues a Taser is not a dangerous weapon because it was not calculated or designed to cause serious bodily injury or death and it was not used in a manner that was likely to inflict death or serious bodily harm. [¶9.]

The Legislature has defined a dangerous weapon to be "any firearm, stun gun, knife, or device, instrument, material, or substance, whether animate or inanimate, which is calculated or designed to inflict death or serious bodily harm, or by the manner in which it is used is likely to inflict death or serious bodily harm[.]" SDCL 22-1-2(10) (emphasis added). From the language of the statute any stun gun is, by definition, a dangerous weapon, and a Taser is a type of stun gun.

See SDCL 22-1-2(50) (defining "Stun gun"). Therefore, contrary to Foote's argument, we need not determine whether a Taser is calculated or designed to cause serious bodily injury or death or whether Foote used the Taser in a manner that was likely to inflict death or serious bodily harm.

The State presented sufficient evidence that Foote used a dangerous weapon-a stun gun. [¶10.] Foote, however, further contends that insufficient evidence exists to establish beyond a reasonable doubt that he attempted to use the Taser to cause bodily harm to Agent Stolley or Deputy Swanson. He contends there is no evidence establishing his intent and neither Deputy Swanson nor Agent Stolley suffered serious injuries.

In his view, the evidence established he merely acted in an effort to get away and avoid being arrested. [¶11.] At trial, the State presented testimony from two witnesses regarding whether a Taser can cause serious bodily harm in the manner used by Foote. Jeffery Hill, an instructor on the "Taser platform" since 2010, explained that a person can receive an electrical shock by coming into contact with the wires after the Taser deploys and can continue to receive an electrical shock if the trigger is held continuously or depressed again.

In regard to Deputy Swanson's Taser, Hill testified that it produced eighteen seconds of electrical shock after the probes deployed into the couch. In Hill's opinion, this type of continuous exposure

to conductive electronic weapons could cause cardiac arrest. He also opined that a Taser deployed while *653pointed at someone's face would "cause severe damage." [¶12.]

Don McCrea is an instructor with the Division of Criminal Investigation and is certified in the mechanics and use of a Taser. He testified that Deputy Swanson's Taser is a type of "stun gun" because "it is [a] conductive electronic weapon.... It sets up a major neurological interface,... and people cannot operate properly, and it sends their muscles into overload and spasms and creates quite a bit of pain."

He explained that depending on how the weapon is used, it can cause death. And according to McCrea, it "[m]ost certainly" can cause serious bodily injury. He further opined that pointing the Taser at someone's face and pulling the trigger "would be considered deadly force[.]" [¶13.] Agent Stolley and Deputy Swanson also testified. According to Deputy Swanson, after Foote grabbed the Taser (although at the same time as the deputy), he pointed the barrel at the deputy's face.

Deputy Swanson explained that Foote held the Taser "three or four inches away from [his] face[.]" Although Deputy Swanson grabbed the barrel and "pushed it toward the center of the couch," he was "in fear that [Foote] would figure out how to get the safety off and shoot [him] with it." Eventually the safety did deactivate and the Taser deployed causing Deputy Swanson to experience electrical shocks and become immobilized.

He claimed that Foote kept pulling the trigger, which caused him to continue to be immobilized. He further claimed that once Foote obtained full control of the Taser, he pointed it at Agent Stolley's chest. [¶14.] Agent Stolley similarly testified that once Foote had full control of the Taser, he pointed it at the agent's chest and "jabbed" him in the chest.

Agent Stolley could not experience an electrical shock because of his bulletproof vest; however, Agent Stolley claimed he was not aware of that fact. He believed Foote desired to stun him. Agent Stolley also testified that he had observed Foote point the Taser at Deputy Swanson's face, but that the deputy was able to bat it away before it deployed. [¶15.] From our review, the jury could have concluded Foote attempted to use the Taser in a manner likely to inflict serious bodily harm upon the officers.

Because the State's evidence and all favorable inferences drawn therefrom support a rational theory of guilt, we affirm Foote's convictions. [¶16.] Affirmed. [¶17.] GILBERTSON, Chief Justice, and KERN, JENSEN, and SALTER, Justices, concur.