

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

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