

2021 National Legal Research Teach-In Kit

Research Instruction & Patron Services Special Interest Section
American Association of Law Libraries

State Statutes Assignment

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These activities were used in multiple sections of an asynchronous basic research course during the Fall of 2020. Included is the practice problem, the discussion board prompt, a screenshot of one of the discussion boards, and a partial sample answer.

For this weekly assignment the students were given a research problem. They then were directed to a discussion board prompt where they were asked to go to the free [Kialo website](#) and post pro and con arguments. The following week we posted a partial answer, which they then could use to compare their work. It also sped up the time involved for providing individual feedback.

To view the entire kit, please visit <URL for this year's kit: TBD>

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Name: _____

Basic Legal Research

In-class practice

Class 6 – State Statutes

Research Process & Partial Answer

Work on individually or in small group

1. Sam Surly was in the parking lot of a local supermarket in Laramie, Wyoming when he became engaged in an altercation with another shopper. He used his cane to repeatedly hit the other shopper. He caused bruising and lacerations to the shopper's arms and abdomen. He also broke the shopper's left wrist. The police were called to break up the fight. Did Mr. Surly commit a crime?
 - a. Find, cite and annotate the most relevant statutes. Your annotation should provide a summary in your own words of the law, and why it is relevant to the issues of Mr. Surly's case.
 - b. Find, cite and annotate at least 3 cases that deal with a situation similar to what Mr. Surly is facing. Your annotation should provide a summary in your own words of the law and why it is relevant to the issues of Mr. Surly's case.
 - c. What should Sam Surly be charged with and why? Can his crime be enhanced by considering a cane as a deadly weapon? (Be sure to walk through the analysis that led you to your conclusion.)

RESEARCH PROCESS

Initial Analysis	
Jurisdiction	Wyoming
Issue Statement	What crime is a person guilty of who uses his cane to hit another causing bodily injuries of bruising, lacerations and broken bones?
Key Facts	Fight in parking lot; used cane to cause injury; police had to break up fight
Search terms	Fight or altercation, bodily injuries of bruises, cuts & broken bones, crime, penalty
Proposed search strategy	Run keyword search on Westlaw in Wyoming state materials Browse secondary sources to get more information Narrow to statutes Look at case annotations Using one on point case, use digests to find more cases from same jurisdiction Update relevant statute(s) & cases through KeyCite

SAMPLE SEARCH SEQUENCE

On Westlaw: Narrow jurisdiction to Wyoming state materials

Run natural language search in global search bar: *crime man using cane to injure another causing bodily injury*

Browse secondary sources

- Item 6 on list is an ALR titled “Walking cane as deadly or dangerous weapon for purpose of statutes aggravating offenses such as assault and robbery.”
 - If you didn’t know to use *assault* as a search term, this would help.
 - This will also be helpful when you determine if his crime can be enhanced.
- Item 8 on list is a treatise, *Wharton’s Criminal Law §197 Aggravated assault or battery; degrees— Assault or battery with weapon*
 - Possibly helpful on getting background information
 - Possibly helpful when looking at crime enhancement
- Item 18 on list is another ALR “Cane as a deadly weapon”
 - Can look at to see if contains useful info
- Item 19 – Legal encyclopedia entry, C.J.S. Assault § 87 *Nature of Aggravated Assault*
 - Could read to get general background information on aggravated assault

Change filter on left to Statutes & Court Rules & browse

Statutes that look helpful

- Item 1 – Wyo. Stat. Ann. § 6-2-502 *Aggravated assault and battery; penalty*
 - Should use this, (a)(i) or (a)(ii) if think cane is deadly weapon – felony punishable by imprisonment for not more than 10 years
- Item 2 - Wyo. Stat. Ann. § 6-1-104 *Definitions*
 - *Deadly weapon* is defined in (a)(iv)
 - *Bodily injury* defined in (a)(i)
 - *Serious bodily harm* defined in (a)(x)
- Item 4 - Wyo. Stat. Ann. § 6-2-501 *Simple assault; battery; penalties*
 - Helpful to see how simple assault & battery are defined vs. aggravated assault & battery

Change filter on left to Cases

Item 4—*Conine v. State*, 2008 WY 146, 197 P.3d 156 (Note: Wyoming has universal case citations like Utah)

Item 8—*Thompson v. State*, 408 P.3d 756 (Wyo. 2018)

Ways to find more cases (or make sure that you haven’t missed any). You could:

1. Pull up the three statutes listed above and look at the Notes of Decisions tab to see if there are any cases in Wyoming defining what constitutes a deadly weapon.
 - a. E.g., Wyo. Stat. Ann. 6-2-502 - #6 in Notes of Decisions→Assault with dangerous or deadly weapon. This includes the Hill case; #13 in Notes of Decisions→Serious bodily injury. This includes the Conine case.

2. Use the digest to find cases. The Thompson case looks useful. Headnotes 7 & 8 in Thompson has topic Assault & Battery k91.6(2) *Dangerous or deadly weapons in general*. You could run a digest search to see if there are other Wyoming cases with headnotes that have this topic & key number. (As you look through the list, there are some cases you could cite, you also see the Conine case.) (Note that when you run a digest search for state cases, federal cases are also included. You don't need to look at them because most criminal law is a state issue.)
3. KeyCite the Conine case (by looking at the Citing References tab) and see what cases are listed from Wyoming. You could also narrow by headnote if there is a specific headnote in Thompson that is on point.
4. Look at the ALR (Cane as a deadly weapon) and see if any Wyoming cases are listed in the Table of Jurisdictions.

MOST RELEVANT SOURCES - ANNOTATED

Statutes

1. Wyo. Stat. Ann. § 6-2-502 (a)(i) or (a)(ii) (West, Westlaw through 2019 Gen. Legis. Sess).

This statute states that a person is guilty of aggravated assault and battery if he (a)(i) causes or attempts to cause serious bodily injury to another..." or (a)(ii) "attempts to cause, or intentionally or knowingly causes bodily injury to another with a deadly weapon." I will look at cases to determine if I can argue that using a cane is a deadly weapon.

If Surley is convicted of aggravated assault and battery, in (b) is says it is a "felony punishable by imprisonment for not more than ten years."

2. Wyo. Stat. Ann. § 6-1-104 (a)(iv) & (a)(x) (West, Westlaw through 2019 Gen. Legis. Sess).

This statute defines deadly weapon and serious bodily injury which are necessary in determining whether Mr. Surley can be charged under the aggravated assault and battery statute. In (a)(iv) Deadly weapon is defined in part as "other device, instrument... which in the manner it is used... is reasonably capable of producing death or serious bodily injury..." Surley's cane was used to hit the shopper and did cause injury. The definition of "serious bodily injury" in (a)(x) "means bodily injury which: (B) causes severe protracted physical pain; or (F) causes a significant fracture or break of a bone. Surley's victim sustained a broken wrist and cuts and bruising on his arms and abdomen.

3. Wyo. Stat. Ann. § 6-2-501 (West, Westlaw through 2019 Gen. Legis. Sess).

This statute defines simple assault and battery and gives the penalties which allows me to compare them to Mr. Surley's actions to see if Surley should be charged under this statute or the aggravated assault and battery statute. In (a) is says "a simple assault is where a person attempts to cause bodily injury to another" and in (b) a person commits batter if he "intentionally, knowingly or recklessly causes bodily injury to another person by use of physical force."

Cases

1. Conine v. State, 2008 WY 146, 197 P.3d 156.

In *Conine v. State*, the defendant used a frying pan to hit his victim in numerous places on his head and face. The court concluded that “the evidence was sufficient for a reasonable jury to find beyond a reasonable doubt the frying pan caused Cox bodily injury” and also that it was reasonable for a jury to find that “the frying pan was a deadly weapon” *Conine* at ¶ 10. In *Surley’s* case, he repeatedly hit a shopper with his cane, so much so that the shopper sustained a broken wrist and cuts and bruises to his/her face and abdomen. The altercation was such that it took the police to break up the fight. Based on the similarity between the cases, *Surley’s* cane could also be considered a deadly weapon capable of causing serious bodily injury.

Conine also stated that the frying pan could be a “deadly weapon” even if victim suffered only minor injuries stating that “statutes governing his conviction do not require that the weapon used on Cox in fact cause serious bodily injury; they only require that Cox incurred bodily injury caused by *Conine’s* use of an object which Was reasonably capable producing death or serious bodily injury.” The cane *Surley* used was reasonably capable of producing serious bodily injury.

2. Thompson v. State, 2018 WY 3, 408 P.3d 756.

The court stated in this case that weapons that can be used to violate the aggravated assault and battery statute are not just limited to guns or knives. They can include any instrument or device that is reasonably capable of producing death or serious bodily injury. *Thompson* at ¶32. *Surley’s* use of the cane is an instrument that is capable of producing serious bodily injury.

3. Hill v. State, 2016 WY 27, 371 P.3d 553.

The court in this case stated that the lack of a verbal threat is not necessary to prove aggravated assault and that a threat to use a deadly weapon “may be proven solely by a defendant’s actions...” *Hill* at ¶17. Like the *Hill* case, *Surley* did not make any verbal threats but his actions of hitting shopper with the cane seem to be sufficient to prove aggravated assault.

The *Conine* case should be cited to. There are other cases that could be used in addition to or instead of the *Thompson* and *Hill* cases.

Secondary Sources

You were not asked to find and locate secondary sources for this problem but below are some examples of what you would have found if you did.

1. Vitauts M. Gulbis, Annotation, *Walking Cane as Deadly or Dangerous Weapon for Purpose of Statutes Aggravating Offenses Such As Assault and Robbery*, 8 A.L.R. 4th 842 (2019).

This ALR is helpful because it lists and discusses cases where canes or walking sticks have been determined to be deadly under the definition of assault and robbery statutes. While it does not include Wyoming cases, the discussion reinforces my thoughts that *Surley* should be charged under the aggravated assault and battery charge.

2. 6A C.J.S. *Assault* §87 (2019).

This legal encyclopedia entry gives a general discussion of assaults and aggravated assaults which was helpful in giving me background information on the topic. I discovered aggravated assault has no definite common law meaning and that I need to look to the statutes for definitions.

What Should Mr. Surley Be Charged With and Why?

Based on the research you completed above you can now answer this question. Make sure you walk through the steps of your analysis that leads to your conclusion and support what you are saying by citing to a case or statute.

Mr. Surley should be charged with aggravated assault and battery under Wyo. Stat. Ann. § 6-2-502 (West, Westlaw through 2019 Gen. Legis. Sess) because

- The easiest route to prove this is to state that the cane should be treated as a deadly weapon. Provide the law from Wyo. Stat. Ann. § 6-2-502 (a)(ii) and the definition in Wyo. Stat. Ann. § 6-1-104. Discuss what cases have to add to the definition of deadly weapon, particularly the Conine case. Compare a cane to the examples you have provided through caselaw to establish the similarities. Compare the injuries in this case to the injuries in other cases with a deadly weapon. Discuss any other elements of Wyo. Stat. Ann. §6-2-502(a)(ii) that are needed to reach your conclusion.
- Alternatively, you could analyze the situation to see if there is serious bodily injury. You would need to cite to and use Wyo. Stat. Ann. § 6-2-502 (a)(i) and the definitions in Wyo. Stat. Ann. § 6-1-104 to explain what serious bodily injury means. Then discuss what courts have said about serious bodily injury – cover when the evidence is sufficient and when it is insufficient to support serious bodily injury. Compare and contrast what you found in the cases to the facts provided. Discuss any other elements of Wyo. Stat. Ann. § 6-2-502 (a)(i) that are needed to reach your conclusion.