

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

JOHN TAYLOR GAYDEN,

Appellant,

v.

Case No. 5D14-2853

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed November 6, 2015

Appeal from the Circuit Court
for Orange County,
Greg A. Tynan, Judge.

Matthew R. McLain, of Brownstone, P.A.,
Winter Park, for Appellant.

Pamela Jo Bondi, Attorney General,
Tallahassee, and Lori N. Hagan, Assistant
Attorney General, Daytona Beach, for
Appellee.

EVANDER, J.

After a jury trial, John Gayden was convicted of aggravated battery with a deadly weapon and aggravated assault with a deadly weapon. The “deadly weapon” in question was a handgun. On appeal, Gayden raises two issues, only one of which merits discussion. Gayden contends that the trial court erred when it denied his motion for judgment of acquittal on the aggravated battery charge because the State failed to

demonstrate that the handgun constituted a “deadly weapon,” given the manner in which it was used during the commission of the battery. We disagree.

It is unnecessary to discuss the complete history of the adverse relationship between Gayden and the victim. It is sufficient to observe that the victim testified that during a confrontation between the two, Gayden removed a handgun from the trunk of his car, placed the barrel of the gun against the victim’s chest, and pulled the trigger. When a bullet failed to discharge, the victim fled and immediately contacted law enforcement. The victim, a former military police officer, advised police that the handgun was either “a .380 or baby .9 millimeter.” Shortly thereafter, police located a loaded .380 handgun¹ in the spare tire compartment of Gayden’s car’s trunk after receiving his consent to search the vehicle.

At trial, Gayden disputed the victim’s version of events and specifically denied ever retrieving a handgun from his vehicle. The jury found Gayden guilty as charged on both the aggravated battery and aggravated assault charges. The jury also made a special finding that Gayden possessed a firearm during the commission of both offenses.

We reject Gayden’s argument that his aggravated battery conviction must be set aside because there was no evidence that the handgun expelled a projectile or was used as a bludgeon.² Section 784.045, Florida Statutes (2012), provides, in pertinent part:

¹ A Florida Department of Law Enforcement firearms technician testified that the firearm was functional and that there were several possible reasons why the loaded handgun may have failed to expel a projectile when Gayden pulled the trigger.

² We find Gayden’s reliance on *O’Meara v. State*, 125 So. 3d 871 (Fla. 4th DCA 2013), to be misplaced. In *O’Meara*, the defendant pointed a gun at the victim, and then used the weapon as a bludgeon—causing a bruise and laceration on the victim’s forehead. 125 So. 3d at 871. Our sister court upheld O’Meara’s conviction for aggravated battery with a deadly weapon, concluding that a firearm could still be a deadly weapon

Aggravated Battery.

(1)(a) A person commits aggravated battery who, in committing battery:

....

2. Uses a deadly weapon.

This court has defined “deadly weapon” to mean: (1) an instrument that will likely cause death or great bodily harm when used in the ordinary and usual manner contemplated by its design, or (2) an object that is used or threatened to be used in a way likely to produce death or great bodily harm. *Michaud v. State*, 47 So. 3d 374, 376 (Fla. 5th DCA 2010); *see also Brown v. State*, 86 So. 3d 569, 571 (Fla. 5th DCA 2012).

Here, the State presented evidence that Gayden committed a battery by placing the handgun against the victim’s chest without the victim’s consent. Gayden used or threatened to use the handgun in a way likely to produce death or great bodily harm. Furthermore, the handgun was likely to cause death or great bodily harm when used in the ordinary and usual manner contemplated by its design. *See, e.g., State v. Williams*, 10 So. 3d 1172, 1174 (Fla. 3d DCA 2009) (“A firearm is, by definition, a deadly weapon because it is designed to expel a projectile by the action of an explosive which is likely to cause death or great bodily injury. If the firearm is discharged or it is used to put the

when used as a bludgeon to strike an individual. *Id.* at 873-74. The Fourth District Court’s failure to discuss whether O’Meara’s pointing of the weapon at the victim prior to striking her was an alternative basis to affirm O’Meara’s conviction is not supportive of Gayden’s argument.

victim in fear to commit an aggravated assault or a robbery, it is a deadly weapon as a matter of law.”).

AFFIRMED.

PALMER and ORFINGER, JJ., concur.