

IN THE UTAH COURT OF APPEALS

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State of Utah,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Plaintiff and Appellee,	)	
	)	Case No. 20040925-CA
v.	)	
	)	
Kenneth Lee Doportto,	)	F I L E D
	)	(October 27, 2005)
	)	
Defendant and Appellant.	)	<span style="border: 1px solid black; padding: 2px;">2005 UT App 455</span>

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Third District, Salt Lake Department, 041901478  
The Honorable J. Dennis Frederick

Attorneys: Debra M. Nelson, Salt Lake City, for Appellant  
Mark L. Shurtleff and Jeanne B. Inouye, Salt Lake  
City, for Appellee

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Before Judges Billings, Davis, and Orme.

ORME, Judge:

The Utah Code provides that "[a] person commits aggravated robbery" when, "in the course of committing robbery," that person "uses or threatens to use a dangerous weapon as defined in Section 76-1-601." Utah Code Ann. § 76-6-302(1)(a) (2003) (emphasis added). Section 76-1-601's definition of "Dangerous weapon" includes "any item capable of causing death or serious bodily injury." Id. § 76-1-601(5)(a) (2003). Defendant Kenneth Doportto does not contest that an automobile may meet the definition of a dangerous weapon in some instances. Instead, his contention is that the statutory language "uses . . . a dangerous weapon" conveys a requirement that he must have intended to use his vehicle as a dangerous weapon, which intent, he argues, was not proven by the State.

Our analysis, then, centers on the proper interpretation of section 76-6-302. "When we interpret statutes, our primary goal is to give effect to the legislature's intent in light of the purpose the statute was meant to achieve. We therefore look first to the statute's plain language." Evans v. State, 963 P.2d 177, 184 (Utah 1998) (citation omitted). Only if the plain language "can reasonably be understood to have more than one meaning" must we look beyond the plain language. Id.

In arguing that the plain language of the statute requires intent, Doporto's brief quotes definitions of "use" from the dictionary to argue that the term "requires a conscious intent to 'act with' or 'employ' an item" and not "mere possession or having control of" the item. He is correct that the aggravating factor is not met by simple possession of a dangerous weapon; rather, the State must prove that the dangerous weapon was employed in the commission of the crime. The aggravating factor here, however, was not that Doporto merely possessed or had control of a car while driving away from the robbery, but that he employed the car as a dangerous weapon in his flight from the crime. So long as he employed the item as a dangerous weapon, the statutory element is met--he need not have had the subjective intent to use his car as a weapon rather than merely as a mode of transportation.

Nor does intent even dictate whether the car qualifies as a dangerous weapon. "The essential question, when an object which is not dangerous per se is alleged to be a dangerous weapon used in an armed robbery, is whether the object, as used by the defendant, is capable of producing serious bodily harm." 67 Am. Jur. 2d Robbery § 5 (2003) (emphasis added). Thus, when Doporto employed his car in a way that made it "capable of producing serious bodily harm," the State was not required to prove he intended such harm.

Indeed, Doporto apparently confuses intent with purpose. The statute only requires the latter, stating that the use of the dangerous weapon must be "in the course of committing robbery." Utah Code Ann. § 76-6-302(1)(a). Doporto used his car as a dangerous weapon for the purpose of fleeing from the scene of the robbery, and such purpose is sufficient. See id. § 76-6-302(3) (defining "in the course of committing a robbery" as any act that "occurs in an attempt to commit, during the commission of, or in the immediate flight after the attempt or commission of a robbery"). See also State v. Suniville, 741 P.2d 961, 964 (Utah 1987) ("The issue, under [section 76-6-302], is not what was intended by defendant or what impression was made on the victim, but what was used.").<sup>1</sup>

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<sup>1</sup>The Suniville interpretation was in reference to a previous version of section 76-6-302 that included the use of certain facsimiles among the aggravating factors. See State v. Suniville, 741 P.2d 961, 962 (Utah 1987). The "facsimile" language has since been removed and incorporated into the definition of a dangerous weapon, see Utah Code Ann. § 76-1-601(5)(b) (2003), and section 76-6-302 has been expanded to also cover the threatened use of a dangerous weapon, see id. § 76-6-302 (2003), likely in response to the Suniville Court's

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Moreover, an interpretation of "use" that requires intent would lead to bizarre results in application. See Millett v. Clark Clinic Corp., 609 P.2d 934, 936 (Utah 1980) ("[S]tatutory enactments are to be so construed as to render all parts thereof relevant and meaningful, and . . . interpretations are to be avoided which render some part of a provision nonsensical or absurd."). First, the definition of "Dangerous weapon" also provides that under certain circumstances "a facsimile or representation of" a dangerous weapon will fulfill the definition. Utah Code Ann. § 76-1-601(5)(b) (2003). If "use" required an intent to harm, however, this part of the definition would be nearly impossible to prove, as one using a facsimile of a dangerous weapon would ordinarily not have the intent to seriously injure another, for the very reason that a fake weapon is typically incapable of such harm. Second, the Legislature has decided that it is aggravated robbery to "use[] or threaten[] to use" a dangerous weapon. Id. § 76-6-302(1)(a) (emphasis added). Thus, even if the perpetrator of the robbery did not intend to hurt another, the mere threat of using a dangerous weapon is enough. We doubt the Legislature intended to hold those who only threaten to use a dangerous weapon and those who use a facsimile of a dangerous weapon guilty of aggravated robbery, while excusing one, such as Doportto, who actually uses an item as a dangerous weapon in the commission of a robbery, but who may not consciously intend to harm another.

Affirmed.

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Gregory K. Orme, Judge

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WE CONCUR:

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Judith M. Billings,  
Presiding Judge

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James Z. Davis, Judge

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<sup>1</sup>(...continued)  
interpretation rejecting threats as satisfying the aggravating requirement. The language regarding "use" of the weapon, however, has remained unchanged by the Legislature.