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Handy v. State

Pepper Spray May be Classified as a Deadly or Dangerous Weapon Under Robbery with Deadly Weapon Statute

By Michelle Owens

In a case of first impression, the Court of Appeals of Maryland held that, as a matter of law, pepper spray or mace may be considered a deadly or dangerous weapon under the robbery with deadly weapon statute. *Handy v. State*, 357 Md. 685, 745 A.2d 1107 (2000). Furthermore, the court determined that there was sufficient evidence for a jury to find, as a matter of fact, that a defendant's spraying of pepper spray into a person's eyes, causing substantial pain and injury during the course of a robbery, constituted robbery with a deadly weapon. In so holding, the intent of the legislature to prevent criminals, including robbers, from using pepper spray or mace in an open manner with an intent to injure victims is illustrated in this case.

Harry Sparks ("Sparks"), an employee of the United States Postal Service, was approached by the petitioner, Mark Handy ("Handy"), while delivering mail on his usual route. Handy inquired into whether or not Sparks had any change of address cards. After Sparks responded in the negative and proceeded along his route, Handy suddenly sprayed Sparks in the eyes with pepper spray and wrestled Sparks to the ground. Handy then fled with Sparks's mailbag.

Handy was convicted by a jury

in the Circuit Court for Baltimore City of robbery with a dangerous or deadly weapon, robbery, and wearing and carrying a weapon openly with intent to injure. Handy appealed to the Court of Special Appeals of Maryland, which affirmed the circuit court's judgment. The Court of Appeals of Maryland granted certiorari and affirmed, but upon a slightly different analysis.

The court began its analysis by considering whether pepper spray or mace may constitute a dangerous or deadly weapon for purposes of proving the crime of robbery with a dangerous or deadly weapon. The court firmly rejected the court of special appeals's conclusion that such issue was to be resolved by the trier of fact. *Id.* at 690, 745 A.2d at 1109. The court explained that the issue of whether an object can be considered a dangerous or deadly weapon under the appropriate test is a matter of law for the court to decide. Subsequently, whether the criminal use of a deadly or dangerous weapon actually occurred becomes a factual matter to be determined by a trier of fact. *Id.* at 690-91, 745 A.2d at 1109-10.

The court of appeals addressed the questions of law properly before it by looking to the statute that Handy allegedly violated, Art. 27, Section 488 of Maryland Code (1957, 1996 Repl. Vol.). *Id.* at 691, 745 A.2d at

1110. The robbery with deadly weapon statute provides, in pertinent part, that one "is guilty of a felony when convicted of robbery or attempted robbery with a dangerous or deadly weapon." *Id.* Because the statute is worded in the disjunctive, the court held, the State need not prove that the weapon is dangerous *and* deadly, but instead, need only prove that a weapon is dangerous *or* deadly. *Id.*

The court next examined the issue of what constitutes a dangerous or deadly weapon under section 488. In *Brooks v. State*, 314 Md. 585, 552 A.2d 872 (1989), the court adopted the "objective test," in which to be deadly or dangerous a weapon must be inherently of that character or must be used or useable in a manner that gives it that character. *Id.* at 691-92, 745 A.2d at 1110 (quoting *Brooks v. State*, 314 Md. 585, 552 A.2d 872 (1989)). Previous cases have determined that the term "dangerous or deadly weapon" encompasses those objects which are inherently dangerous or deadly, or that may be used in a dangerous or deadly manner; for example, an unloaded pistol and a starter's pistol. *Handy*, 357 Md. at 692-93, 745 A.2d at 1111 (citing *Wallace v. Warden*, 226 Md. 670, 174 A.2d 435 (1961)); *Jackson v. State*, 231 Md. 591, 191 A.2d 432

(1963)).

In light of such cases, the court recognized the development of a three-part objective test, only one part of which needs to be met, in deciding whether a weapon used to commit a robbery is dangerous or deadly. *Id.* at 693, 745 A.2d at 1111. This three-part objective test dictates that an instrument is “deadly or dangerous” under section 488 when: (1) the instrument is designed or used in the course of destroying, defeating, or injuring an enemy; (2) the instrument is immediately useable to inflict serious or deadly injury; or (3) the instrument is actually used in way to inflict serious or deadly injury. *Id.*

Maryland courts have never been presented with the question of whether pepper spray could fall under the first category of weapons. Therefore, the court of appeals summarized case law from other jurisdictions holding that pepper spray, as a matter of law, may be a dangerous or deadly weapon. *Id.* at 696, 745 A.2d at 1113. For example, the Michigan Court of Appeals in *People v. Norris*, held that pepper spray was a dangerous weapon under Michigan’s statute due to the seriousness of the injuries that resulted from the weapon, such as extreme eye pain and irritation, burning sensations, and breathing difficulties. *Id.* at 696-97, 745 A.2d at 1113 (citing *People v. Norris*, 236 Mich. App. 411, 600 N.W.2d 658 (1999)). Consequently, the Court of Appeals of Maryland found pepper spray to be an instrument designed to injure an enemy, and thus it fits within the first category of the

Brooks test. *Id.* at 699, 745 A.2d at 1114. In addition to finding that pepper spray fits within the first category, the court of appeals opined that instead of measuring the extent of actual injury, the mere potential for bodily harm suffices in order for the spray to be characterized as a deadly or dangerous weapon. *Id.*

The court went on to examine pepper spray as a dangerous or deadly weapon under the second and third categories of the applicable test, namely, whether pepper spray was immediately useable to inflict serious or deadly injury, and whether the spray was in fact actually used to inflict such harm. *Id.* In the instant case, the use of pepper spray on Sparks caused him to suffer a temporary blinding and a painful burning sensation to his eyes for several hours. *Id.* at 700, 745 A.2d at 1115. As such, the second and third parts of the *Brooks* test were satisfied as well.

The court concluded that, after applying the objective test as set forth in *Brooks*, the issue of whether an object may constitute a dangerous or deadly weapon is a question of law for a court to decide. The court held, as a matter of law, that the use of the pepper spray constituted use of a dangerous or deadly weapon while in the course of committing a robbery. Additionally, the court held that the jury had sufficient evidence to determine that Handy, as a matter of fact, used pepper spray in a dangerous or deadly manner. The evidence presented at trial supported the State’s contention that Handy sprayed

Sparks in the face with the pepper spray causing substantial injury to the victim while committing a robbery.

With this holding, the Court of Appeals of Maryland has established a clear standard for trial courts to use when examining objects under the robbery with deadly weapon statute. In determining whether an object may be characterized as a deadly or dangerous weapon, trial courts must perform a comprehensive scrutiny, which includes separating those issues of law from those of fact. Whether or not an object may constitute a dangerous or deadly weapon will depend upon the nature of the object itself as well as how the object is actually used. For example, the legislature did intend to prevent criminals from using pepper spray or mace in a manner that combined an intent to injure while in the course of committing a robbery; however, the legislature did not intend to prevent citizens from protecting themselves by wearing pepper spray or mace in a concealed fashion.

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