

WY Teton County District
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Title 6 Crimes and Offenses

December 1977

pistol's fully loaded cartridge clip may not have been pushed into locked position. *Shafsky v. State*, 526 P.2d 60 (Wyo. 1974).

Defendant's conviction of aggravated assault and battery by jury is sufficiently sustained by evidence that defendant carried gun, fired it, got more shells for it and reappeared with it, as against defendant's testimony that he acted in self-defense. *State v. Schloredt*, 57 Wyo. 1, 111 P.2d 128 (1941).

Whether weapon was dangerous or deadly weapon was jury question. — Whether an automatic pistol in which fully loaded cartridge clip may not have been inserted into a locked position was a dangerous or deadly weapon for prosecution for assault while armed with a dangerous or deadly weapon was a jury question. *Shafsky v. State*, 526 P.2d 60 (Wyo. 1974).

It is for the jury to decide whether or not the weapon was dangerous or deadly upon the evidence as it appears in the record. *Evanson v. State*, 546 P.2d 412 (Wyo. 1976).

Weapon considered deadly. — A weapon, when used in a manner capable of producing and likely to produce death or great bodily injury, is a deadly weapon. *Evanson v. State*, 546 P.2d 412 (Wyo. 1976).

A loaded pistol is a dangerous and deadly weapon. *Evanson v. State*, 546 P.2d 412 (Wyo. 1976).

Failure to give instruction on greater offense held harmless. — Where defendant was not convicted of an assault and battery with intent to kill, but of a crime of lower degree under this section, the failure to give an instruction on the greater offense is perfectly harmless. *State v. Woodward*, 69 Wyo. 262, 240 P.2d 1157 (1952).

Failure to give self-defense instruction not error. — In prosecution for aggravated assault and battery the failure to give a self-defense instruction was not error, and it would not have

been proper to instruct the jury in that particular area of the law as it would have been an abstract statement of the law and might well have tended to prejudice the defendant and deprive him of his defense. *Mewes v. State*, 517 P.2d 487 (Wyo. 1973).

When gun considered loaded for purpose of jury instruction. — A gun may be considered loaded for purpose of jury instruction under this section when its magazine contains live cartridges which may be instantly transferred to the firing chamber by the mere operation of a lever. *Shafsky v. State*, 526 P.2d 60 (Wyo. 1974).

Where penalty assessed by court is much less than that warranted by section, the sentence is not excessive and there are no grounds for interfering with it. *State v. Woodward*, 69 Wyo. 262, 240 P.2d 1157 (1952).

Award of damages. — Amount of punitive damages for assault and battery is largely within trial court's discretion. *Wilson v. Hall*, 34 Wyo. 465, 244 P. 1002 (1926).

In an action for assault and battery, a judgment awarding \$100.00 actual damages and \$400.00 exemplary damages held not excessive. *Williams v. Campbell*, 22 Wyo. 1, 133 P. 1071 (1913).

Punitive damages of \$1,000.00 in addition to \$500.00 actual damages was not unauthorized assessment for wanton assault and battery. *Wilson v. Hall*, 34 Wyo. 465, 244 P. 1002 (1926).

Applied in *Porter v. State*, 440 P.2d 249 (Wyo. 1968); *Duran v. State*, 546 P.2d 434 (Wyo. 1976).

Quoted in *Horn v. State*, 554 P.2d 1141 (Wyo. 1976).

Cited in *Hurst v. State*, 519 P.2d 971 (Wyo. 1974); *Hays v. State*, 522 P.2d 1004 (Wyo. 1974); *Hicklin v. State*, 535 P.2d 743 (Wyo. 1975).

Am. Jur. 2d and C.J.S. references. — 6 Am. Jur. 2d Assault and Battery §§ 48 to 55.

6A C.J.S. Assault and Battery §§ 72 to 80.

§ 6-4-507. Killing unborn child, causing miscarriage, etc., by assault or assault and battery on pregnant woman.

Whoever unlawfully kills an unborn child, or causes a miscarriage, abortion or premature expulsion of a fetus, by any assault or assault and battery willfully committed upon a pregnant woman, knowing her condition, is guilty of a felony and shall be imprisoned in the penitentiary not more than fourteen (14) years. (Laws 1890, ch. 73, § 19; R.S. 1899, § 4955; C.S. 1910, § 5794; C.S. 1920, § 7071; R.S. 1931, § 32-206; C.S. 1945, § 9-207; W.S. 1957, § 6-71; Laws 1971, ch. 108, § 1.)