

A05-2423

**STATE OF MINNESOTA  
IN SUPREME COURT**

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State of Minnesota,

Respondent,

Vs.

Timothy Kenbert Engle,

Appellant.

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**RESPONDENT'S BRIEF AND APPENDIX**

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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## LEGAL ISSUE

Proof of intent to discharge the firearm is not necessary to establish guilt of a charge of reckless discharge of a firearm within a municipality. Judge Stephenson found Appellant guilty of reckless discharge because Appellant had his firearm in a position where he knew or should have known of the danger of discharge. Does the statute require proof of intent to discharge the weapon?

Judge Stephenson ruled that proof of guilt of a charge of reckless discharge of a firearm under Minn. Stat. § 609.66, subd. 1a(a)(3) does not require proof of intent to discharge the firearm. The Court of Appeals affirmed that ruling.

Authority: *State v. Cole*, 542 N.W.2d 43 (Minn. 1996)

*State v. Wiltgen*, 737 N.W.2d 561 (Minn. 2007)

*State v. Zupetz*, 322 N.W.2d 730 (Minn. 1982)

Minn. Stat. § 609.66, subd. 1a (a)(3).

## **STATEMENT OF THE CASE AND FACTS**

This is an appeal from conviction for reckless discharge of a firearm after a trial to the court before the Honorable George T. Stephenson in the District Court in the Second Judicial District, Ramsey County. Appellant Timothy Kenbert Engle waived a jury trial. Judge Stephenson's oral findings and conclusions as reported on pages 703-711 of the transcript are attached in the Appendix to this brief at A-1 to A-9.

The Court of Appeals affirmed the conviction, holding that the prosecution had no due process duty to investigate to find conceivably exculpatory evidence, that there was sufficient evidence to support the conviction, and that the prosecution was not required to show that appellant intentionally discharged the firearm to prove a violation of the statute prohibiting reckless discharge of a firearm within a municipality, Minn. Stat. § 609.66, subd. 1a(a)(3). A copy of the slip opinion from the Court of Appeals is attached in the Appendix at A-10 to A-27.

By Order filed August 7, 2007, this Court granted review on the reckless discharge issue (which will also resolve the sufficiency of evidence issue), but denied review on the due process issue.

## FACTS

Alan Walker was employed as a security guard for Wolf Security on November 2, 2003, and was on duty in the early morning hours at a housing complex located at [REDACTED] in St. Paul, Minnesota. Transcript page 232. (There are three consecutively paginated volumes of transcript from the pretrial and trial proceedings. Citations hereafter will be in the form "T <x>.") Walker went to a parking lot to investigate suspicious activity that he had observed with a video camera. T 236. He found and watched a man—later identified as H [REDACTED] M [REDACTED]—in a car until M [REDACTED] got out of the car with a stereo in his hands. T 210, 236, 380. Walker had drawn his Taser, and took M [REDACTED] to the security office to check out M [REDACTED]'s story that he was fixing a family member's stereo. T 237.

Walker was unable to find a tenant roster when in the building and called for a backup officer. T 242. Walker intended to show the backup officer what Walker had seen on the video. T 243. Appellant Timothy Engle was the backup officer who went to the location. T 242. Appellant told M [REDACTED] to sit down in the office while the two officers went behind the counter to find and look at the portion of the recording. T 381, 421. Appellant told M [REDACTED] that he was going to call the police, so M [REDACTED] ran out of the office because he did not want to be arrested. T 382, 409, 421.

M [REDACTED] ran around the building to the stolen car he had driven to the lot. T 377-79. Two friends were in the car. T 382. He got into the car, started it and backed out of the space it was in. T 383. The security guards were running up

and yelling for him to stop or they would shoot. *Id.* The officers had their weapons drawn as they approached the car. T 247, 253, 590. Appellant had a permit and carried a 9 mm Glock Model 17 handgun while on duty. T 321, 363. M■■■■ put the car in park and raised his hands. T 383, 595.

Appellant went to the driver's door, opened it, and reached in to pull M■■■■ out. T 383, 626. Appellant intended to pull M■■■■ out of the vehicle face down. T 626. Appellant, though right-handed, carried the firearm in his left hand because he is left-eye-dominant and shoots left-handed. T 591. With the firearm in his left hand, Appellant grabbed M■■■■ by the T-shirt and pulled him out of the car. T 383, 591. M■■■■, however, ended up partially on top of Appellant on the ground, with M■■■■ on top of Appellant's knees, face down. T 383-384, 554, 596. Appellant testified that M■■■■ turned and somehow lunged at Appellant as he came out of the car, and signed an affidavit claiming that M■■■■ grabbed the gun. T 596, 620. Appellant admitted, however, that he did not know how the firearm discharged at the moment it did. T 622.

Appellant's firearm discharged; the projectile hit M■■■■ in the back, going into his spine and causing paralysis. T 375.

## ARGUMENT

Whether the statute prohibiting reckless discharge of a firearm within a municipality requires proof that the defendant intended to discharge the firearm is a question of statutory interpretation that is reviewed de novo on appeal. *State v. Wiltgen*, 737 N.W.2d 561, 570 (Minn. 2007). When construing a statute, the goal of the appellate court is to ascertain and effectuate the intent of the legislature. *Id.*; *citing* Minn. Stat. § 645.16. The Court must give a plain reading to the statute, construing sections together. *Id.* at 570-71. Words should be given their plain meaning. *Id.*

Appellant concedes in his brief that the plain language of the subsection of the statute applicable to the charge filed against him does not explicitly require proof of intent to discharge the firearm. *See Appellant's Brief* page 21. The relevant language reads: [whoever] “recklessly discharges a firearm within a municipality.” Minn. Stat. § 609.66, subd. 1a(a)(3). The language is in sharp contrast with the immediately preceding subsection, which reads: [whoever] “intentionally discharges a firearm under circumstances that endanger the safety of another.” Minn. Stat. § 609.66, subd. 1a(a)(2). The difference between “reckless” and “negligent” behavior is one of kind rather than degree. *State v. Zupetz*, 322 N.W.2d 730, 733 (Minn. 1982). “The reckless actor is *aware* of the risk and disregards it; the negligent actor is *not aware* of the risk but should have been aware of it.” *Id.* at 733-34.

The statute is designed to reach behavior where an individual was “aware of and consciously disregarded a substantial risk that ... would result from the manner in which he handled a gun.” *State v. Cole*, 542 N.W.2d 43, 52 (Minn. 1996). The statute is designed to apply to situations similar to those confronting Appellant at the time he held H [REDACTED] M [REDACTED] at gunpoint. Appellant was trained in firearms use and safety and therefore was aware of and consciously taking a substantial risk that harm would result by grabbing a criminal suspect with one hand while holding a loaded gun with his finger on the trigger in his other hand.

There is no doubt that the firearm that was discharged was in Appellant’s hand when it discharged, and that the discharge occurred in the City of St. Paul, a municipality. Appellant contended that he should not be held criminally liable because the discharge was not intentional. The prosecution did not contend that appellant intended to discharge the firearm.

“Reckless” refers to the risk created, not the mental intent which resulted in an act which produced fear or injury.” *State v. Cole*, 542 N.W.2d 43, 52 (Minn. 1996) (internal quotation marks omitted). The state was not required to show that Appellant intended to discharge the firearm, but that an examination of the circumstances shows that Appellant “consciously disregarded a substantial risk [of harm that] would result from the manner in which he handled a gun.” *Id.*

Appellant had the firearm in his left hand, with a round in the chamber ready to fire, when he reached into the car with his right hand intending to pull H [REDACTED] M [REDACTED] out of the car face down onto the ground. T 626. Because

Appellant was not in control of himself or the situation, he fell backward onto the ground with M████ on top of Appellant's knees, and M████ was shot.

- M████ was following orders.
- M████ had stopped the car and raised his hands. There was no indication that M████ would not continue to follow orders, even though Appellant claimed that the person in the back seat of the car was not following orders.
- Appellant did not tell M████ to turn off the car, even though he might have.
- Appellant did not tell his fellow security officer to get into position to cover him, even though Walker would certainly have followed any orders.
- Appellant did not tell Walker to remove M████ from the car while Appellant covered Walker.
- Appellant did not simply tell M████ to get out of the car and go down on the ground.
- Appellant reached for M████ without holstering his firearm.
- Appellant did not even remove his finger from the trigger.

Appellant was trained in firearms safety. By attempting to grab a criminal suspect with his dominant hand while at the same time keeping his finger on the trigger of a firearm with his left hand, appellant was "aware of and consciously disregarded a substantial risk that ... would result from the manner in which he handled a gun." *State v. Cole*, 542 N.W.2d at 52. The substantial risk of harm was realized when appellant's firearm discharged and injured H████ M████.

Judge Stephenson ruled that proof of intent to discharge the firearm was not necessary. That ruling was correct. He held that the reckless act was “having the weapon positioned so that it could be discharged and cause harm while extracting Mr. M [REDACTED] from the car.” Transcript page 711, Appendix page A-9. The Court of Appeals decision affirmed that ruling. *State v. Engle*, 731 N.W.2d 852, 861 (Minn. Ct. App. 2007), Appendix page A-24. Appellant “chose to initiate a physical tussle with one hand while holding in the other a loaded semiautomatic handgun without the safety switch engaged; and [] did so while maintaining his finger on the trigger.” *Id.* at 860-61; A-24.

It is reasonable to conclude that a person trained in firearms safety is aware that choosing to initiate a struggle with another with one hand while holding a loaded gun in the other is consciously disregarding a substantial risk of harm. Appellant was therefore held guilty for reckless discharge of his firearm.

Respondent State of Minnesota asks this Court to affirm the rulings of the lower courts and to affirm the conviction.

## CONCLUSION

Appellant Timothy Kenbert Engle, employed as a security guard and authorized to carry a firearm, attempted to pull a suspect out of a car with his right hand while holding his firearm at the ready in his left hand with his finger on the trigger. The firearm discharged while the suspect was being pulled out of the car. The trial court and the Court of Appeals held that proof that appellant intended to discharge the firearm was not necessary. The lower courts held that Appellant consciously took an unreasonable risk of harm by his act, and was therefore guilty of reckless discharge of a firearm when the firearm discharged. Respondent State of Minnesota asks this Court to affirm the ruling that proof of intent to discharge the firearm was not necessary, and to affirm the conviction.

Dated: 24 September 2007

Respectfully submitted;



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