IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	**No. 29482-0-III**
Respondent,	)	
	)	**Division Three**
v.	)	
	)	
MICHAEL A. PARKS,	)	**UNPUBLISHED OPINION**
	)	
Appellant.	)	
	)	

Kulik, C.J. — Michael Parks appeals his conviction for second degree assault, arguing that his conviction is not supported by sufficient evidence and, specifically, that the trial court erred by finding that a baseball bat is a deadly weapon. When viewed in a light most favorable to the State, the evidence is sufficient to find that Mr. Parks intentionally caused Jordan Gunlock to have a reasonable apprehension of bodily harm. Therefore, we affirm the conviction. And we conclude that Mr. Parks's use of a baseball bat constituted assault with a deadly weapon.

FACTS

On June 23, 2010, the victim, Jordan Gunlock, and his friend, Vanessa Garcia, were at Mr. Gunlock's home when Ms. Garcia received a telephone call and went outside. Upon returning into the house, Ms. Garcia indicated to Mr. Gunlock that Mr. Parks and three others were outside asking for Mr. Gunlock to come out so they could "check" him. Report of Proceedings (RP) at 27. A "check" is "basically [a] beat down." RP at 62. When Ms. Garcia went back outside, Mr. Gunlock locked her out of the house and armed himself with a knife. Both Ms. Garcia and Mr. Gunlock testified Mr. Parks had a bat, although neither one mentioned what Mr. Parks was doing with the bat. The group was yelling for Mr. Gunlock to come outside and "get [his] check." RP at 63. Due to the presence of the bat, Mr. Gunlock felt the group was there to put him in the hospital or kill him. He considered the possibility that Mr. Parks and the group might enter his house since all of the windows in the house were open.

When Sonia Perez, Mr. Gunlock's mother, pulled into the driveway, the group on the front lawn ran into a nearby van and drove away. After entering her house, Ms. Perez observed Mr. Gunlock in a "major adrenaline rush." RP at 41. She called the police. While Ms. Perez was standing outside her house discussing the incident with a police

officer, the van drove by the house again. Officer Zachary Fairley initiated a stop of the van. He identified Mr. Parks as one of the occupants, and found a full-size, red, metallic Easton bat in the van. Following a bench trial, Mr. Parks was convicted of second degree assault. He appeals.

ANALYSIS

"A claim of insufficiency admits the truth of the State's evidence and all inferences that can reasonably be drawn from it." *State v. DeVries*, 149 Wn.2d 842, 849, 72 P.3d 748 (2003). Evidence is sufficient if it allows a rational trier of fact to find that all elements of the crime have been proved beyond a reasonable doubt. *Id.*

A person is guilty of second degree assault when he or she "[a]ssaults another with a deadly weapon." RCW 9A.36.021(1)(c). "Assault" is not defined by the statute. Courts look to the common law definition of assault. *State v. Abuan*, 161 Wn. App. 135, 154, 257 P.3d 1 (2011). There are three common law definitions of assault: actual battery, attempted battery, and causing reasonable apprehension of bodily harm. *Id.* (quoting *State v. Elmi*, 166 Wn.2d 209, 215, 207 P.3d 439 (2009)). Since there was no actual or attempted battery, only the third definition of assault is implicated here.

Apprehension of Bodily Harm. Mr. Parks argues "'intent may be inferred from *pointing* a gun, but not from mere *display* of a gun.'" Appellant's Br. at 7 (quoting *State*

v. Ward, 125 Wn. App. 243, 248, 104 P.3d 670 (2004), *abrogated on other grounds by State v. Grier*, 171 Wn.2d 17, 246 P.3d 1260 (2011)). Mr. Parks contends the State failed to prove he made any threatening or menacing gestures with the bat or that he intended to cause reasonable apprehension of bodily injury. But, Mr. Gunlock and Ms. Garcia both testified that Mr. Parks showed up to Mr. Gunlock's house to "check" Mr. Gunlock. RP at 27, 62. Mr. Parks communicated this intention first to Ms. Garcia, who informed Mr. Gunlock, and later yelled for Mr. Gunlock to "[c]ome get [his] check." RP at 63. The State must prove only that Mr. Parks acted "with an intent or design to create in his victim's mind a reasonable apprehension of harm." *State v. Krup*, 36 Wn. App. 454, 458, 676 P.2d 507 (1984).

Both Ms. Garcia and Mr. Gunlock testified Mr. Parks had a bat. Mr. Gunlock locked himself in the house and armed himself with a knife. His mother testified that he was in a "major adrenaline rush" when she came home. RP at 41. Mr. Gunlock feared being put in the hospital or being killed. The windows of his house were open, facilitating access inside. When viewed in a light most favorable to the State, the evidence was sufficient for the trial court to find, beyond a reasonable doubt, that Mr. Parks intended to cause a reasonable apprehension of bodily harm in Mr. Gunlock.

Deadly Weapon. "Deadly weapon" is defined as any explosive or firearm, and includes any other device, "which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or substantial bodily harm." RCW 9A.04.110(6). This definition creates two classes of deadly weapons: explosives and firearms, which are per se deadly, and all other devices that may be deadly if, under the circumstances, they are readily capable of causing substantial harm. *State v. Taylor*, 97 Wn. App. 123, 126, 982 P.2d 687 (1999). If a device falls into the second category, it is a question for the trier of fact to determine whether the device is a deadly weapon. *Id.* Because commission of assault *with a deadly weapon* is an element of second degree assault, the State must prove the bat was a deadly weapon beyond a reasonable doubt. *State v. Simms*, 171 Wn.2d 244, 250, 250 P.3d 107 (2011).

A bat is not a deadly weapon per se; "thus, the inherent capacity and 'the circumstances in which it is used' determine whether the weapon is deadly." *State v. Shilling*, 77 Wn. App. 166, 171, 889 P.2d 948 (1995). "'Circumstances' include 'the intent and present ability of the user, the degree of force, the part of the body to which it was applied and the physical injuries inflicted.'" *Id.* "Ready capability is determined in relation to surrounding circumstances, with reference to potential substantial bodily

harm." *Id.* "There must be some manifestation of an intent to use a weapon in the second classification." *State v. Gotcher*, 52 Wn. App. 350, 354, 759 P.2d 1216 (1988). "RCW 9A.04.110(6) requires more than mere possession where the weapon in question is neither a firearm nor an explosive." *In re Pers. Restraint of Martinez*, 171 Wn.2d 354, 366, 256 P.3d 277 (2011).

Our Supreme Court has expressly approved the "totality of the circumstances" approach set forth in *Shilling* when deciding whether a non-per se weapon is deadly. *Martinez*, 171 Wn.2d at 367-68. The court specifically disapproved of an approach that relies on whether the weapon is potentially capable of causing great bodily harm. *Martinez*, 171 Wn.2d at 368 n.6 (citing *State v. Gamboa*, 137 Wn. App. 650, 154 P.3d 312 (2007)).

A make-shift spear was found not to be a deadly weapon under the circumstances it was used, where a prison inmate used it to stab a corrections officer through a six-by-eighteen inch opening in a cell door. *State v. Skenandore*, 99 Wn. App. 494, 500-01, 994 P.2d 291 (2000). The spear was made out of rolled paper affixed to a golf pencil. *Id.* at 496. The spear struck the officer in the chest as he was bent over, handing a sack breakfast to the inmate through an opening in the cell door. *Id.* at 496-97. The spear did not break the skin. *Id.* at 497. The inmate was charged with second degree assault; at

trial, the prosecutor argued that a sharpened pencil in the eye could cause substantial bodily injury. *Id.* at 497-98. The record did not reveal any evidence that the inmate was aiming for the officer's face, or that the inmate actually stabbed the officer anywhere in the face. *Id.* at 498 n.3.

Applying the *Shilling* factors, the court found insufficient evidence that the spear was a deadly weapon because the officer's face was not near the opening through which he was passing the inmate the sack breakfast; all blows landed on the officer's torso, well below his face; and the cell door separating the officer and the inmate restricted the spear's movement. *Id.* at 500. The court acknowledged the spear may have had potential to cause substantial bodily harm, but the surrounding circumstances inhibited the spear's potential to cause such harm in that case. *Id.*

A closer look at the totality of the circumstances shows that the bat was readily capable of causing harm. Mr. Gunlock remained in his house, behind a locked door. But Mr. Gunlock did testify that the windows of the house were open so Mr. Parks had access to Mr. Gunlock.

The facts are clear that Mr. Parks possessed a bat and stated his general intention to assault Mr. Gunlock. A bat would have been readily capable of causing death or substantial bodily harm if Mr. Gunlock had come outside or if Mr. Parks gained entry to

the home. It is difficult to imagine any other reason Mr. Parks possessed the bat other than for use in a physical altercation or as a tool of intimidation. Mr. Gunlock certainly apprehended Mr. Parks's use of the bat.

We conclude that sufficient evidence showed that Mr. Parks intentionally caused reasonable apprehension of bodily injury in Mr. Gunlock and the bat was a deadly weapon under the totality of the circumstances. We, therefore, affirm the conviction.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

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Kulik, C.J.

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Sweeney, J.

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Brown, J.