Supreme Court No.: 93001-5
Court of Appeals No.: 72960-8-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

ABDIRAHMAN SAKAWE,

Petitioner.

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER AND THE DECISION BELOW

Abdirahman Sakawe, petitioner here and appellant below, requests this Court grant review pursuant to RAP 13.4(b)(1), (2) of the decision of the Court of Appeals, Division One, in *State v. Sakawe*, No. 72960-8-I, filed February 29, 2016. A copy of the opinion is attached as Appendix A.

B. ISSUES PRESENTED FOR REVIEW

1. Should the Court grant review where the decision below conflicts with case law holding a knife can be a deadly weapon only if the State proves, by examining the manner and circumstance of its use, the knife is readily capable of causing death or substantial bodily harm? *Compare, e.g.*, RCW 9A.04.110(6); *In re Pers. Restraint of Martinez*, 171 Wn.2d 354, 256 P.3d 277 (2011); *State v. Shilling*, 77 Wn. App. 166, 171, 889 P.2d 948 (1995) *with* Appendix A at 4.

2. Should the Court grant review where the trial court found Mr. Sakawe had not produced sufficient evidence that he lacked the capacity to form the intent to assault in contravention of case law interpreting a defendant's right to have the State prove elements of the charged offense beyond a reasonable doubt?

C. STATEMENT OF THE CASE

Abdikadir Elmi found Abdirahman Sakawe, a man he did not know, in the kitchen of the Seattle home Mr. Elmi shared with his siblings and mother. 10/8/14 RP 74, 77, 80. Mr. Sakawe was not wearing shoes or a shirt, and a torn shirt was covering his face. *Id.* at 78. Mr. Elmi confronted Mr. Sakawe and asked why Mr. Sakawe was in his home; Mr. Sakawe's only response was to ask, "Where is your dad?"[1] *Id.* at 77, 82, 89. The men began struggling in the living room, and Mr. Elmi's screaming drew the attention of one of his brothers who helped him subdue Mr. Sakawe. *Id.* at 77, 82-84, 130.

Mr. Sakawe, however, returned to the kitchen where he picked up a bread knife. 10/8/13 RP 77, 100. Mr. Elmi ran at Mr. Sakawe and grabbed the knife as Mr. Sakawe swung it at him or his brother. Id. at 77-78, 84, 86-87. Mr. Elmi's other brother arrived, and the three men were able to hold Mr. Sakawe. *Id.* at 78. When they let Mr. Sakawe go, he went out the back door and jumped off the balcony. *Id.* at 78. Mr. Elmi called the police. *Id.* at 105.

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[1] Mr. Elmi's father did not live at the house, but was there that evening because Mr. Elmi's mother was out of the country. 10/8/14 RP 80.

With the assistance of a K-9 dog, Seattle Police officers soon located Mr. Sakawe sleeping underneath a table on the deck of a neighboring house. 10/9/14 RP 48-50, 55-56, 66-67. As Mr. Sakawe was transported by the police to jail, he made bizarre statements, giggled and laughed inappropriately. Finding of Fact 8; 10/13/14 RP 85, 88, 93; Ex. 7 (No. 5096@2014060815439 and No. 5096@2014060815440); Ex. 8 (No. 5096@2014060834937 and No. 5096@2014060834939).[2]

The King County Prosecutor charged Mr. Sakawe with first degree burglary and two counts of second degree assault with deadly weapon enhancement allegations. CP 6-7. At a bench trial, Mr. Sakawe argued his conduct was not criminal due to involuntary intoxication and, in the alternative, diminished capacity. CP 13; 10/14/15 RP 19-20.

Psychologist Robert Deutsch opined that Mr. Sakawe was in a delusional state at the time of the incident and could not appreciate his own actions. 10/13/14 RP 31-33, 45, 95; Ex. 19 at 5-6. Mr. Sakawe had been homeless and had not had adequate sleep or nourishment prior

[2] Exhibits 7 and 8 contain the video and audio recordings from four different patrol cars that responded to Mr. Elmi's 911 call. The recordings from two cameras in the car that transported Mr. Sakawe from the scene to the Regional Justice Center are labeled number 5096.

to his arrest; he had also smoked marijuana with acquaintances and reacted strangely. 10/13/14 RP 33-34, 39, 59-60; Ex. 19 at 4, 5-6. Dr. Deutsch suspected Mr. Sakawe's delusional state was triggered by the ingestion of marijuana laced with PCP. 10/13/14 RP 64-64; Ex. 19 at 5-6.

The trial court found Mr. Sakawe not guilty of first degree burglary and guilty of the lesser-included offense of criminal trespass in the first degree. Findings of Fact 9-13; Conclusion of Law 3. The court found Mr. Sakawe guilty of second degree of assault of Mr. Elmi, with a deadly weapon enhancement, but not guilty of second degree assault of his brother Abdikhadar. Findings of Fact 14-16; Conclusions of Law 4-6.

The court reasoned that Mr. Sakawe's actions did not show he entered or remained in the Elmi residence with the intent to commit a crime, but that Dr. Deutsch's testimony did not establish that Mr. Sakawe could not form "the rudimentary intent necessary for a trespass or an assault." Finding of Fact 12. The court also concluded that the defense had not proved by a preponderance of the evidence that Mr. Sakawe's intoxication was involuntary. *Id.*

On appeal, Mr. Sakawe argued the State failed to produce sufficient evidence that Mr. Sakawe committed assault by use of a deadly weapon and the court improperly assigned Mr. Sakawe the burden of disproving specific intent. Division One of the Court of Appeals affirmed in an unpublished opinion. Appendix A.

D. ARGUMENT

1. The decision below conflicts with other decisions by finding that the State proved use of a deadly weapon where the manner of use did not enable substantial bodily harm.

Where the State alleges assault based on "a deadly weapon," it can rely on a knife only if it proves the knife allegedly used "is readily capable of causing death or substantial bodily harm." RCW 9A.04.110(6). Mere possession of such a knife is insufficient to prove this deadly weapon element. *In re Pers. Restraint of Martinez*, 171 Wn.2d 354, 366, 256 P.3d 277 (2011). The manner and circumstance of the use are also critical to determining whether the element has been satisfied. *Id.* at 366-68. "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." *State v. Shilling*, 77 Wn. App. 166, 171, 889 P.2d 948 (1995).

Here, neither the knife itself nor the circumstances in which it was used substantiate this element beyond a reasonable doubt. First, outside of the context, the knife standing alone was not readily capable of causing death or substantial bodily injury. It lacked a sharp point. Findings of Fact 9; Ex. 11. When Mr. Elmi grabbed the blade, he was not cut. Finding of Fact 5. While there was testimony that the knife was used by Mr. Elmi's family to cut bread and meat, the State did not elicit more specific testimony about the type of meat or bread it could cut or how recently it had been sharpened. Resp. Br. at 1; 10/8/14 RP 100.

Moreover, even if the saw-like knife could be used as a deadly weapon, the circumstances in the light most favorable to the State do not amount to a deadly weapon. Intent is one of the circumstances our courts should consider. *Shilling*, 77 Wn. App. at 171. According to the trial court, Mr. Sakawe wielded the knife in an attempt to leave, not with intent to kill or even harm. Finding of Fact 11.

Mr. Elmi's injuries also do not support a deadly weapon finding: he was able to grab hold of the blade and ended up with only a scratch on his face and some skin on his hand got snagged. Finding of Fact 5; Exhibit 3; 10/8/14 RP 84, 102. Even in the light most favorable to the

State, the evidence did not show Mr. Sakawe's "present ability" supported the knife being used as a deadly weapon. *Shilling*, 77 Wn. App. at 171.

With regard to the manner of use, there is no evidence that the degree of force used or the distance between the individuals was such that Mr. Sakawe could have inflicted substantial bodily injury with his swings. The actual injuries sustained militate against that conclusion. Further, given the knife's likeness to a saw, and apparently a dull one, it would have to be used in a very particular manner to b readily capable of causing death or substantial bodily harm. The evidence does not bear that out. Thus the Court of Appeals conclusion that evidence that the knife was used by the family to cut meat was sufficient to show ready capability of inflicting substantial bodily harm ignores the circumstances of use. *See* Appendix A at 4.

In *Shilling*, a bar glass was held to have ready capability to cause substantial bodily harm under the circumstances. 77 Wn. App. at 172. There, the defendant admitted the glass could be a deadly weapon but challenged whether it was so used in that case. *Id.* The Court of Appeals pointed to key facts showing its use as a deadly weapon: the victim was struck from behind on the back of the head, the force of the

blow knocked the victim's glasses off, glass shards flew as far as 15 feet away, the victim suffered lacerations requiring stitches, glass was imbedded in the victim's head, and "[e]xpert testimony established that a blow to the head using the glass could fracture the nose and/or cause lacerations requiring stitches and producing permanent scarring." *Id.* at 172.

In comparison, the evidence here was lacking. The State did not present expert testimony to support its argument that under the circumstances the knife could have caused substantial bodily injury. Further, Mr. Elmi was barely injured throughout the encounter. *See* Ex. 3; 10/8/14 RP 84, 102. The knife lacked a sharp point. Exhibit 11; Finding of Fact 9. Mr. Sakawe was found only to have swung in the direction of Mr. Elmi, not to have actually made forceful contact against the skull like in *Shilling*. Here, under settled case law, the State did not prove the direction, distance or the degree of force used.

In light of the rounded-tip knife and the manner in which it was used, the State did not prove beyond a reasonable doubt that it was readily capable of inflicting death or substantial bodily harm, requiring the conviction be reversed and dismissed. *State v. Skenandore*, 99 Wn. App. 494, 501, 94 P.2d 291 (2000).

This Court should accept review to resolve the conflict with the above-cited Supreme Court and Court of Appeals cases and reverse the conviction for insufficient evidence. RAP 13.4(b)(1), (2).

2. The Court should grant review because the trial court placed the burden on Mr. Sakawe to disprove the specific intent element, which the State was required to prove beyond a reasonable doubt.

To satisfy its burden on assault, the State was required to show more than that Mr. Sakawe intentionally grabbed a knife in order to flee. *See, e.g.*, *State v. W.R.*, 181 Wn.2d 757, 761-62, 336 P.3d 1134 (2014). The State had to prove Mr. Sakawe had the specific intent to create a reasonable apprehension of harm or to cause bodily injury. *State v. Byrd*, 125 Wn.2d 707, 713, 887 P.2d 396 (1995); *State v. Abaun*, 161 Wn. App. 135, 154-55, 257 P.3d 1 (2011). Despite this specific intent, the court called the necessary intent "rudimentary." Finding of Fact 12. Further indicating a lack of specific intent, the trial court also found "that Mr. Sakawe only assaulted Mr. Elmi in the course of seeking to extricate himself from a situation he understood as little as everyone else present." Finding of Fact 11. Thus, the trial court failed to hold the State to its burden both because it assigned the burden to Mr. Sakawe and because it required the State to prove only a lesser form of intent.

Diminished capacity is a mental condition not amounting to insanity that prevents the defendant from forming the mental state necessary to commit a crime. *State v. Warden*, 133 Wn.2d 559, 564, 947 P.2d 708 (1997); *State v. Furman*, 122 Wn.2d 440, 454, 858 P.2d 1092 (1993).

> [D]iminished capacity allows a defendant to negate the culpable mental state element of a crime "by showing that a given mental disorder had a specific effect by which his ability to entertain that mental state was diminished."

State v. Stumpf, 64 Wn. App. 522, 525, 827 P.2d 294 (1992) (emphasis added) (quoting *State v. Gough*, 53 Wn. App. 619, 622, 768 P.2d 1028, *rev. denied*, 112 Wn.2d 1026 (1989)); *State v. Marchi*, 158 Wn. App. 823, 835, 243 P.3d 556 (2010); *accord State v. Nuss*, 52 Wn. App. 735, 739, 763 P.2d 1249 (1988) ("A claim of diminished capacity merely negates one of the elements of the alleged crime; it is not an affirmative defense.").

Similarly, voluntary or involuntary intoxication is a "factor the jury may consider in determining if the defendant acted with the specific mental state necessary to commit the crime charged." *Furman*, 122 Wn.2d at 454; *accord State v. Coates*, 107 Wn.2d 882, 899, 735 P.2d 64 (1987); RCW 9A.16.090. This rule is applicable to both

voluntary and involuntary intoxication. *State v. Mriglot*, 88 Wn.2d 573, 576, 564 P.2d 784 (1977) ("If a defendant is so intoxicated (voluntarily or involuntarily) as to be unable to form the requisite intent, he cannot be guilt of a specific intent crime."); *State v. Corwin*, 32 Wn. App. 493, 497, 649 P.2d 119 (1982). Diminished capacity and intoxication defenses may overlap. *See Furman*, 122 Wn.2d at 454 (diminished capacity defense based upon interaction between defendant's mental illness and use of marijuana); *State v. Griffin*, 100 Wn.2d 417, 419, 680 P.2d 265 (1983) (defendant suffered from schizophrenia and chronic alcoholism).

As this Court recently explained in *W.R.*, a defense negates an element where the two cannot coexist. *W.R.*, 181 Wn.2d at 765. This describes the relationship between diminished capacity and mens rea. When a person lacks the ability to form the requisite mental state, he by definition cannot have the culpable mental state. For example:

> [w]herever, "intent" as defined in RCW 9A.08.010(a) is an element of a crime, it may be challenged by competent evidence of a mental disorder that causes an inability to form "intent" at the time of the offense.

State v. Edmon, 28 Wn. App. 98, 104, 621 P.2d 1310 (1981). Just as consent negates forcible compulsion, diminished capacity negates intent.

The State must always bear the burden of disproving a defense that necessarily negates an element of the charged offense. *W.R.*, 181 Wn.2d at 764. Thus, the court was required to put the burden on the State to prove the absences of diminished capacity.

The trial court, however, placed the burden of proof on Mr. Sakawe to prove that he lacked the capacity to form the intent to assault Mr. Elmi. Finding of Fact 12. In addressing Mr. Sakawe's alternative defenses of involuntary intoxication and diminished capacity, the court found that Mr. Sakawe had not proved involuntary intoxication or that he was incapable of forming the intent to commit assault or criminal trespass:

> Dr. [R.] Eden Deutsch, Ph.D., testified to the opinion that, on the night in question, Mr. Sakawe was under the influence of a controlled substance and that would appear to be the case. However, the Court could no more find that Mr. Sakawe was incapable of forming the rudimentary intent necessary for a trespass or assault than it could find – on the testimony of Dr. Deutsch alone – that a preponderance of the evidence supported a conclusion that the intoxication was involuntary.

Finding of Fact 12.

In addition to placing the burden of proving lack of intent on Mr. Sakawe, the court's finding reflects the court misunderstood the intent required to prove second degree assault. The "rudimentary

intent" reference in Finding of Fact 12 appears to refer to the intent to do the act which underlies the assault, grab a knife, rather than the specific intent to create a reasonable apprehension of harm or to cause bodily injury as required by Washington law. *See Byrd*, 125 Wn.2d at 713; *Abaun*, 161 Wn. App. at 154-55. No other findings address the required specific intent, thus indicating the trial court misunderstood the specific intent required to be guilty of second degree assault.

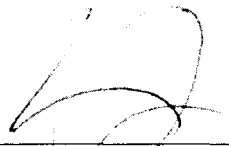
The trial court violated Mr. Sakawe's constitutional right to due process when it placed the burden on the defense to prove that he did not have the intent to cause a reasonable apprehension of harm or to cause bodily harm. This Court should accept review of this issue because the Court of Appeals opinion is in conflict with appellate court decisions interpreting Mr. Sakawe's constitutional due process right to have the State prove beyond a reasonable doubt every element of the charged offense. RAP 13.4(b)(1), (2); U.S. Const. amend. XIV.

E. CONCLUSION

This Court should grant review because the Court of Appeals decision conflicts with decisions of this Court and the Court of Appeals.

DATED this 25th day of March, 2016.

Respectfully submitted,



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APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. ABDIRAHMAN S. SAKAWE, Appellant.	)	No. 72960-8-I DIVISION ONE UNPUBLISHED OPINION FILED: February 29, 2016

BECKER, J. — Convicted of assault in a bench trial, appellant Abdirahman Sakawe challenges the trial court's finding that he used a deadly weapon. He also claims that when he raised a defense of diminished capacity, the court did not hold the State to its burden of proving he acted with the specific intent necessary to prove assault. Finding no error, we affirm.

According to the trial court's unchallenged findings of fact, Abdikadir Elmi was watching television late one night when he heard a noise in the kitchen. As he opened the kitchen door, Elmi saw a stranger who was later identified as Sakawe. Sakawe grabbed Elmi by the neck and forced him onto a sofa. Elmi's brother rushed into the room and pulled Sakawe off Elmi.

Sakawe went into the kitchen and picked up a serrated knife with a blade six inches in length. He "flailed with it" towards Elmi.[1] In wresting the knife away from Sakawe, Elmi grabbed the blade. This left visible marks on his hand, although no laceration. No one was seriously injured in the brief scuffle. Sakawe ran outside and jumped off the balcony. Police soon tracked him to a nearby yard with the aid of a police dog.

The State charged Sakawe with burglary in the first degree and two counts of assault in the second degree for assaulting another person "with a deadly weapon." See RCW 9A.36.021(1)(c). The case was tried to the court in October 2014.

The court found Sakawe not guilty of the burglary charge and guilty of the lesser included offense of first degree criminal trespass. The court found him guilty of the count of deadly weapon second degree assault related to Elmi and not guilty of the other count related to Elmi's brother. Sakawe appeals.

The first issue is the sufficiency of the evidence to prove that the serrated knife was a deadly weapon. "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Evidence is sufficient to support a conviction if, viewed in the light most favorable to the prosecution, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. State v. Thomas, 150 Wn.2d 821, 874, 83 P.3d 970 (2004).

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[1] Finding of Fact 5.

According to the statutory definition, an explosive or a firearm is a deadly weapon per se. A deadly weapon can also be any other instrument readily capable of causing death or substantial bodily harm "under the circumstances in which it is used":

> "Deadly weapon" means any explosive or loaded or unloaded firearm, and shall include any other weapon, device, instrument, article, or substance, including a "vehicle" as defined in this section, 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). The circumstances of a weapon's use include the intent and present ability of the use, the degree of force, the part of the body to which it was applied, and the physical injuries inflicted. State v. Skenandore, 99 Wn. App. 494, 499, 994 P.2d 291 (2000).

In Skenandore, the defendant, locked in a prison cell, managed to strike an officer through a portal in the cell door through which the officer was delivering a meal. The defendant's instrument was a homemade spear about three feet long, made out of rolled up writing paper bound with dental floss and affixed to a golf pencil. Skenandore, 99 Wn. App. at 496. The spear did not tear the officer's shirt or break his skin. The defendant's conviction on a charge of deadly weapon second degree assault was reversed for insufficient evidence that the pencil-tipped spear was a deadly weapon:

> The record did not reflect that Jones' face was near the cuff port such that the spear could have struck his eye; rather, the evidence was that Jones was looking through a higher vertical window off to the side as he served Skenandore breakfast through the cuff port. Moreover, the three blows all landed on Jones' upper torso, well below his head. The cell door that separated Jones and Skenandore, together with the small opening of the low cuff port,

> about one-third of the way from the floor, restricted the spear's movement.

Skenandore, 99 Wn. App. at 500. The surrounding circumstances "inhibited the spear's otherwise potential, but unproven, ready capability to inflict substantial bodily harm." Skenandore, 99 Wn. App. at 500.

Sakawe argues that like in Skenendore, there was insufficient evidence to prove that the knife he used to attack Elmi had the potential to inflict substantial bodily harm under the circumstances in which it was used. But unlike in Skenendore, Sakawe's range of motion was not limited in a way that prevented him from striking Elmi in the head, face, or eye. During the scuffle in which Sakawe tried to get away, he brandished the knife at Elmi. Elmi was able to disarm Sakawe by grabbing the blade. Sakawe's argument emphasizes that the knife did not have a point and it left no lacerations on Elmi's skin. But, the testimony that the family used the knife to cut meat is sufficient evidence to support a finding that it was readily capable of inflicting substantial bodily harm in these circumstances. It was lucky for Elmi that he did not get seriously hurt. The court did not err in determining that Elmi committed assault with a deadly weapon.

The second issue is whether the trial court failed to hold the State to its burden of proving the required mental state for assault.

An officer who was dispatched to the scene where Sakawe was found testified that he "seemed real groggy" and "kind of drunk maybe." While being transported to jail, Sakawe asked some rational questions and some questions that were bizarre.

Sakawe announced before trial that his defense would be involuntary intoxication. Sakawe did not testify. He called a psychologist, Dr. Robert Deutsch, as an expert witness. Deutsch offered his opinion that Sakawe was in a delusional state during the incident because he had recently ingested intoxicants, the impacts of which were exacerbated by lack of sleep, food, and shelter for several days.

Sakawe argued that evidence of his delusional state proved a complete defense that excused him from criminal responsibility because he did not know the nature and quality of his acts or that his acts were wrong—in other words, that his intoxication was so extreme it equated with temporary insanity. See State v. Mriglot, 88 Wn.2d 573, 576, 564 P.2d 784 (1977). Sakawe did not, however, offer any evidence of force or fraud as would be necessary to prove his intoxication was in fact involuntary. See State v. Stacy, 181 Wn. App. 553, 571, 326 P.3d 136, review denied, 335 P.3d 940 (2014). ("Involuntary intoxication is intoxication caused by force or fraud." As the State pointed out in closing argument, there was "no substantive evidence in this case that the defendant unknowingly ingested anything."

Sakawe responded in his closing argument by offering voluntary intoxication as an alternative theory that would give the court the option of finding diminished capacity rather than total loss of capacity to distinguish right from wrong: "In the alternative, if the court finds that this was a voluntary intoxication, then the standard becomes that Mr. Sakawe did not have the specific—have the capability to form the specific intent of the charges—of the crimes that the State

has charged." Voluntary intoxication does not excuse the criminality of an act, but it can render the defendant incapable of forming the specific intent necessary for conviction of a crime. Stacy, 181 Wn. App. at 569.

Unlike insanity or involuntary intoxication, a claim of diminished capacity is not an affirmative defense. It merely seeks to negate one of the elements of the alleged crime. State v. Stumpf, 64 Wn. App. 522, 525, 827 P.2d 294 (1992). When a defense negates an element of a crime, it violates due process to place the burden of proof on the defendant. State v. W.R., 181 Wn.2d 757, 765, 336 P.3d 1134 (2014). Here, the burden remained on the State to prove all elements of the crime beyond a reasonable doubt, and that burden included disproving Sakawe's claim of diminished capacity. See W.R., 181 Wn.2d at 763-64, 766-67.

Sakawe contends that the trial court erroneously placed upon him the burden of proving that he lacked the specific intent element of assault. He claims this is evident from the court's refusal to find him capable of "forming the rudimentary intent necessary" for an assault. In finding of fact 12, the court agreed with Dr. Deutsch that, on the night in question, Sakawe was under the influence of a controlled substance.

> However, the court could no more find that Mr. Sakawe was incapable of forming the rudimentary intent necessary for a trespass or assault than it could find—on the testimony of Dr. Deutsch alone—that a preponderance of evidence supported a conclusion that the intoxication was involuntary.

Sakawe interprets the above sentence as a statement by the court that Sakawe did not meet his burden of proving he was incapable of forming the necessary intent. We do not read the sentence as assigning a burden of proof to Sakawe.

The court simply stated that it could not find that Sakawe was incapable of forming the necessary intent.

The specific intent needed to prove second degree assault is the intent "either to create apprehension of bodily harm or to cause bodily harm." State v. Byrd, 125 Wn.2d 707, 713, 887 P.2d 396 (1995). Sakawe contends the use of the word "rudimentary" shows that the court thought the only specific intent required was the intent to do the act of assault, i.e, picking up the knife. Again, we disagree. Neither the word "rudimentary" nor anything else in the record suggests that the court was unaware of the law. The word "rudimentary" accurately reflects the ease with which the specific intent to cause harm or fear of harm can be inferred from evidence of a knife attack.

In short, finding of fact 12 does not support Sakawe's argument that the trial court failed to hold the State to its burden of proof. Finding of fact 14 states that the State "has proven beyond a reasonable doubt that, in brandishing the bread knife at Abdikadir Elmi, the defendant intentionally assaulted him with a deadly weapon." This express determination by the trial court shows the correct placement of the burden of proof on the State to prove all elements of the crime.

Affirmed.

Becker, J.

WE CONCUR:

Dwyer, J.

Cox, J.

DECLARATION OF FILING AND MAILING OR DELIVERY

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Date: March 25, 2016

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