NO. 32730-2-III

COURT OF APPEALS, DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent,

v.

A. L.-A., Appellant.

BRIEF OF RESPONDENT

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II. STATEMENT OF THE CASE

The appellant, A. L.-A., was charged with first degree assault, felony harassment, and third degree malicious mischief. CP 42-3. The charges stem from the following facts:

On April 1, 2014, Yesenia Ayala was at home with two younger siblings, her 3-year-old brother and her 4-year-old sister, L.-A., when she found her brother crying on the floor. He told Yesenia that L.-A. had hit him. RP 20. Yesenia asked L.-A. why she hit him and L.-A. told her it was none of her business. RP 20.

Yesenia went to take a shower and took her brother with her. RP 20. L.-A. banged on the door and loudly ordered Yesenia to "open the fucking door." RP 21-2. She repeated this and at one point threatened to destroy Yesenia's things if she didn't open the door. RP 22. Yesenia let her in and L.-A. went in and out of the bathroom. RP 22.

Yesenia called her mom and asked her to come home quickly and control L.-A. RP 23, 88.

Her mom returned home and Yesenia informed her that L.-A. was hitting her 3-year-old brother for no reason. RP 25. Yesenia also told her mom that she didn't like L.-A. leaving condoms on her bed. RP 25. L.-A. got mad and started hitting Yesenia in the face and stomach. RP 25-6. Yesenia was seven months pregnant at the time. RP 26. Yesenia described her sister as being "really, really mad" at the time. RP 25.

L.-A. also threw a laptop and television that belonged to Yesenia. RP 30. In response, Yesenia threw L.-A.'s Xbox video game console. RP 34. At one point, L.-A. got a sharp kitchen knife and yelled that she wanted to kill Yesenia and also kill herself. RP 37, 39, 40, 57. While she was yelling that she wanted to kill Yesenia, she was swinging the knife around. RP 41. The knife was about seven inches in length. RP 39.

Yesenia pushed L.-A. in order to protect her mom. RP 41. Right after that, L.-A. cut Yesenia on her arm and ran out the door with the knife. RP 41, 47. Yesenia had a two- or three-inch long cut that was bleeding and stinging. RP 47, 75. Yesenia told her mom that L.-A. had cut her. RP 92.

L.-A. testified at trial. She admitted that she cut her sister but claimed that it was only with her fingernails. RP 128. L.-A. also admitted

to putting a knife to her throat and threatening to kill herself. RP 121. She said she was having a breakdown. RP 121. She claimed she never touched Yesenia with the knife. RP 125.

At trial, L.-A. was convicted of first degree assault and third degree malicious mischief. CP 57. The judge noted that he did not find L.-A. to be credible. RP 173. L.-A. was sentenced to an exceptional sentence below the standard range. CP 13. This appeal followed.

III. ARGUMENT

A. There was sufficient evidence to support the first degree assault conviction.

In reviewing a challenge to the sufficiency of the evidence, courts review the evidence in the light most favorable to the State to determine whether *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. State v. Green, 94 Wash. 2d 216, 221, 616 P.2d 628 (1980) (citing Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979)). The verdict will be upheld unless no reasonable jury could have found each element proved beyond a reasonable doubt. State v. Gentry, 125 Wn.2d 570, 596-97, 888 P.2d 1105 (1995).

A challenge to the sufficiency of the evidence admits the truth of the State's evidence and all inferences that can reasonably be drawn

therefrom. State v. Theroff, 25 Wn. App. 590, 599, 608 P.2d 1254, aff'd, 95 Wn.2d 385, 622 P.2d 1240 (1980). The evidence is interpreted most strongly against the defendant. Id. Evidentiary inferences favoring the defendant are not considered in a sufficiency of the evidence analysis. State v. Jackson, 62 Wn. App. 53, 58 n.2, 813 P.2d 156 (1991).

"In determining the sufficiency of the evidence, circumstantial evidence is not to be considered any less reliable than direct evidence." State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). Furthermore, circumstantial evidence may be used to prove any element of a crime. State v. Garcia, 20 Wn. App. 401, 405, 579 P.2d 1034 (1978).

Here, the definition of first degree assault, in pertinent part, is as follows:

> A person is guilty of assault in the first degree if he or she, with intent to inflict great bodily harm (a) assaults another with a...deadly weapon or by any force or means likely to produce great bodily harm or death...

RCW § 9A.36.011(a). This requires proof of the following elements:

> (1) That on or about (date), the defendant assaulted (name of person); (2) That the assault was committed ...with a deadly weapon or by a force or means likely to produce great bodily harm or death; (3) That the defendant acted with intent to inflict great bodily harm; and (4) That this act occurred in the State of Washington.

WPIC 35.02.

L.-A. challenges two elements on appeal: 1) intent to inflict great bodily harm and 2) the existence of a deadly weapon.

1. Viewing the evidence in the light most favorable to the State, a a rational trier of fact could have found that L.-A. had the intent to inflict great bodily harm.

Under RCW § 9A.08.010(1)(a), "[a] person acts with intent or intentionally when he or she acts with the objective or purpose to accomplish a result which constitutes a crime." Specific intent cannot be presumed, but it can be inferred as a logical probability from all the facts and circumstances of defendant's conduct. State v. Wilson, 125 Wn.2d 212, 217, 883 P.2d 320 (1994).

Here, the State had to prove that L.-A. had the intent to inflict "great bodily harm," which is defined by statue as follows:

> (c) "Great bodily harm" means bodily injury which creates a probability of death, or which causes significant serious permanent disfigurement, or which causes a significant permanent loss or impairment of the function of any bodily part or organ.

RCW § 9A.04.110(4).

L.-A. argues on appeal that "the State thus had to prove that [she] actually intended to kill her sister, Yesenia, or that she intended to inflict injuries so serious that they would create **a probability of death**."

(Appellant's brief at 8) (emphasis added). This is an incorrect statement of the law. Appellant omits two other parts of the definition of great bodily harm: 1) that which causes significant serious permanent disfigurement, or 2) that which causes a significant permanent loss or impairment of the function of any bodily part or organ. See RCW § 9A.04.110(4).

In this case, a trier of fact could properly find that L.-A. intended to inflict great bodily harm. First of all, the State established the L.-A. was mad, out of control, and had physically assaulted Yesenia prior to cutting her with the knife. Then L.-A. began destroying Yesenia's property. L.A. admitted that she was having a "breakdown." Her behavior escalated into her grabbing a knife, swinging it around, and threatening to kill both herself and Yesenia. In addition to her actions, L.A's verbal threat to kill Yesenia is telling of her intent. Viewing this evidence in a light most favorable to the State, including all reasonable inferences therefrom, a rational trier of fact could have found that L.-A. intended to inflict great bodily harm.

2. Viewing the evidence in the light most favorable to the State, a rational trier of fact could have found that the knife was a deadly weapon.

"Deadly weapon" includes:

> "any other weapon, device, instrument …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), WPIC 2.06.01. "Substantial bodily harm," which is referenced in the deadly weapon definition, means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or which causes a fracture of any bodily part." RCW § 9A.04.110(4)(b), WPIC 2.03.01.

Disfigurement is an injury to the appearance of a person. State v. Atkinson, 113 Wn. App. 661, 667, 54 P.3d 702 (2002). The presence of marks on the skin may indicate a temporary but substantial disfigurement. State v. Ashcraft, 71 Wn. App. 444, 455, 859 P.2d 60 (1993) (bruises that resulted from being hit by a shoe were "temporary but substantial disfigurement"); see also State v. Holmes, 106 Wn. App. 775, 781-82, 24 P.3d 1118 (2001).

L.-A. argues that there was insufficient evidence to prove that the knife was a deadly weapon. (Appellant's brief at 15). At issue is whether the knife, under the circumstances in which it was used, attempted to be used, or threatened to be used, was readily capable of causing at the least, temporary but substantial disfigurement. L.-A. argues that victim's injury was not "substantial." (Appellant's brief at 13). But the actual injury

inflicted is only one factor in deciding if a knife was readily capable of causing substantial bodily harm. See State v. Holmes, 106 Wn. App. 775, 781-82, 24 P.3d 1118 (2001).

In determining whether a weapon "is readily capable of causing death or substantial bodily harm," courts look to the circumstances under which it was used, including the intent and ability of the user, the degree of force, the part of the body to which it is applied, and the injuries actually inflicted. Holmes, 106 Wn. App. at 781-82; State v. Shilling, 77 Wn. App. 166, 171, 889 P.2d 948 (1995) (quoting State v. Sorenson, 6 Wn. App. 269, 273, 492 P.2d 233 (1972)).

In State v. Barragan, 102 Wn. App. 754, 761, 9 P.3d 942 (2000), a pencil was considered a deadly weapon when the defendant forcefully swung the pointed end at the victim's eye and stated, "You're gonna die." In State v. Holmes, the defendant held a utility knife, with the blade extended, at waist level inside of a grocery store. He told the manager to "come get me" or to "try and stop me," and he waved the knife at the manager before turning and leaving the store with groceries. 106 Wn. App. at 778. The manager was just a few feet away and was forced to step back. Id. at 782. The court found that the knife was a deadly weapon because it was readily capable of causing substantial bodily harm and easily accessible and readily available for use. Id.

Here, L.-A. manifested a ready willingness to use the knife to cause severe injury. She swung the open knife at Yesenia. While the blade only hit her arm, the potential for substantial bodily harm was great. Viewed in a light most favorable to the State, the evidence shows that L.-A. intended to sufficiently injure Yesenia. Importantly, L.-A. said she wanted to kill Yesenia. RP 37, 40, 57. A rational jury could find that she possessed the knife in such circumstances that the knife was readily capable of causing substantial bodily harm and thus, a deadly weapon.

L.-A. argues that there was no proof of scarring and that the cut was shallow and did not require medical intervention. (Appellant's brief at 11-12). However, Washington courts have not interpreted the statutory definition of deadly weapon to require proof of actual infliction of substantial bodily injury. See Holmes, 106 Wn. App. at 782 (determining utility knife was a deadly weapon despite fact no injury occurred). Instead, the proper inquiry is whether the evidence supports the conclusion that the weapon, "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) (emphasis added).

IV. CONCLUSION

For all the above reasons, the State asks that L.-A's conviction be affirmed. Viewing all the evidence in the light most favorable to the State,

a rational trier of fact could have found all of the essential elements beyond a reasonable doubt.

Respectfully submitted this 26th day of May, 2015,

TAMARA A. HANLON, WSBA 28345
Deputy Prosecuting Attorney

DECLARATION OF SERVICE

I, Tamara A. Hanlon, state that on May 26, 2015, by agreement of the parties, I emailed a copy of BRIEF OF RESPONDENT to Ms. Susan Wilk at wapoffice@washapp.org.

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 26th day of May, 2015 at Yakima, Washington.

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