

NO. 46687-2-II

**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

DARRELL PARNEL BERRIAN, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Jerry Costello, Judge

No. 13-1-03133-9

Brief of Respondent

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Did the State provide sufficient evidence that defendant acted with intent to cause great bodily harm where it proved defendant plunged a knife deeply enough into the victim's chest to cause bleeding into the cavity surrounding his lungs?
2. Could the jury reasonably find defendant assaulted the victim with a deadly weapon where the evidence proved defendant stabbed the victim in the chest with a knife that vividly demonstrated its lethal capacity through the life threatening trauma it inflicted?

B. STATEMENT OF THE CASE.

1. Procedure

In August 2013, Darrell Berrian, hereinafter "defendant," was charged by information of first degree assault while armed with a deadly weapon. CP 1-2; RCW 9A.36.011(1)(a); RCW 9.94A.825; RCW 9.94A.530; RCW 9.94A.533. Defendant made a motion to dismiss at the end of the State's case raising the same challenge he now raises on appeal. Defendant claimed, as here, there was insufficient evidence of his intent to

inflict bodily harm or use of a deadly weapon. 4RP 61.¹ The trial court denied the motion ruling that given the location of the stab wound, a reasonable jury could conclude the intent of defendant was to cause great bodily harm or possibly death. 4RP 63.

The jury found defendant guilty as charged. CP 165–166; 4RP 129–130. Defendant was sentenced to a standard range sentence of 161 months, to run consecutively with the sentence he was already serving. CP 234; 4RP 146. Defendant filed a timely notice of appeal. CP 242.

2. Facts

On November 13, 2012, Tavaris Morriel was hanging out with his friends when they decided to walk to a local Texaco station to purchase beer. 3RP 70, 74. While he was at the Texaco, Morriel noticed the store clerk outside arguing with two men. 3RP 75. One of these men, who had dreadlocks at the time, was later identified as defendant. 3RP 120. Morriel went outside and tried to “diffuse the situation.” 3RP 76. Unfortunately, this resulted in a physical fight between Morriel and defendant. 3RP 76.

The two men fought, pulling each other to the ground. 3RP 78. Eventually, the fighting stopped, and defendant and the man he was with began to walk away. 3RP 78. Soon after, defendant ran up behind Morriel. 3RP 83. Defendant then plunged his knife into Morriel’s chest. 3 RP 83–

¹ The verbatim report of proceedings will be referred to by the volume number, RP, and the page number (#RP #).

84.² Morriel could not remember much about the knife, but he recalled it was a short “shank” about the size of his thumb. 3RP 86.

After being stabbed, Morriel went to the nearby apartment of his ex-girlfriend, Dyeshanae May. 3RP 89. May witnessed Morriel “holding his chest breathing heavily. There was blood all over his shirt, on his hands, his mouth was bloody.” 2RP 110. Morriel’s “eyes were rolling in the back of his head, and he just kept saying he thought he was going to die.” 2RP 112. Emergency personnel transported Morriel to the hospital. 3RP 91.

Dr. Michelle Strong, the trauma surgeon who initially treated Morriel, found bleeding around Morriel’s lung, which meant “the knife went deep enough” to cause muscular bleeding in the chest cavity. 2RP 77. Dr. Strong conducted various testing because she was concerned the knife had caused serious internal trauma. 2RP 75–76. The muscular bleeding was the only initial internal injury found. 2RP 76–77.

About a month after his initial treatment, Morriel returned to the hospital with breathing difficulty. 2RP 80. It was ultimately discovered Morriel’s breathing difficulty was caused by a blood clot induced thickening of his lungs attributable to the knife wound defendant inflicted. 2RP 80. Morriel underwent chest surgery to clean out the clot. 2RP 80. Dr.

² The testimony of various other witnesses differed with respect to how the fight occurred; however, relevant to this appeal, all witnesses describe the fight as ending with Morriel being stabbed in the chest. *See* 3RP 60; 3RP 162–163; 3RP 185–186.

Strong testified this type of wound could have been life threatening if the surgery had not been performed when it was. 2RP 80.

The injuries defendant inflicted had an enduring impact on Morriel's ability to breath. Initially, Morriel had such difficulty breathing, even walking was a difficult task. 3RP 93. Two years later, at the time of the trial, Morriel still could not breathe as deeply as he could before defendant stabbed him. 3RP 93. Morriel also sustained scars from the stabbing and subsequent surgery. 3RP 92–93.

The case remained unsolved until Pierce County Jail inmate Anthony Anderson disclosed defendant's responsibility for the stabbing to police. 2RP 142. Defendant told Anderson about an incident at a gas station where he stabbed a man who intervened in a fight defendant was having with another person. 2RP 161–162; 2RP 163; 2RP 167. Defendant admitted to cutting off his dreadlocks in an attempt to evade identification. 2RP 169. Morriel confirmed the accuracy of Anderson's account by identifying defendant as the man who stabbed him from an eight photograph police montage. 4RP 32.³

³ Detectives had conducted an earlier photo line-up, which is not relevant in this appeal. See 4RP 20–26.

C. ARGUMENT.

1. THE STATE PRESENTED SUFFICIENT EVIDENCE FOR THE JURY TO FIND DEFENDANT INTENDED TO CAUSE GREAT BODILY HARM WHEN HE PLUNGED A KNIFE DEEPLY ENOUGH INTO MORRIEL'S CHEST TO CAUSE BLEEDING AROUND HIS LUNGS.

For the court to find there was sufficient evidence on appeal it must determine, after viewing the evidence in the light most favorable to the State, any rational jury could have found the defendant guilty beyond a reasonable doubt. *State v. Green*, 94 Wn.2d 216, 220-22, 616 P.2d 628 (1980); *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). An insufficiency claim admits the truth of the State's evidence and all reasonable inferences which can be drawn from it. *State v. Thereoff*, 25 Wn. App. 590, 593, 608 P.2d 1254, *aff'd*, 95 Wn.2d 385, 622 P.2d 1240 (1980); *Salinas*, 119 Wn.2d at 201. Credibility determinations are for the trier of fact and cannot be reviewed on appeal. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). Circumstantial and direct evidence are considered equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

To convict defendant of first degree assault, the jury must have found the following elements were proved beyond a reasonable doubt:

- (1) That on or about November 13, 2012, the defendant assaulted Tavaris Morriel;
- (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.

CP 153 (emphasis added); RCW 9A.36.011.

A person acts with intent when he acts with the objective or purpose to accomplish a result constituting a crime. RCW 9A.08.010(1)(a). A person is presumed to intend the natural and probable consequences of his acts. *State v. Stroh*, 91 Wn.2d 580, 583, 588 P.2d 1182 (1979). “Evidence of intent . . . is to be gathered from all of the circumstances of the case, including not only the manner and act of inflicting the wound, but also the nature of the prior relationship and any previous threats.” *State v. Wilson*, 125 Wn.2d 212, 217, 883 P.2d 320 (1994) (quoting *State v. Ferreira*, 69 Wn. App. 465, 468, 850 P.2d 541 (1993) (citations omitted)). Although specific intent cannot be presumed, it can be inferred as a logical probability from the facts and circumstances. *Wilson*, 125 Wn.2d at 217 (citing *State v. Louther*, 22 Wn.2d 497, 502, 156 P.2d 672 (1945)).

“Great bodily harm” is defined as: “bodily injury that creates a probability of death, or that causes significant serious permanent disfigurement, or that causes a significant permanent loss or impairment of the function of any bodily part or organ.” CP 155; RCW 9A.04.110(4)(c). It has been previously recognized that stabbing someone in the chest or abdomen falls clearly within the conduct statutorily defined as “great

bodily harm.” *State v. Langford*, 67 Wn. App. 572, 587, 837 P.2d 1037 (1992); *State v. Huddleston*, 80 Wn. App. 916, 922, 912 P.2d 1068 (1996).

In *State v. Huddleston*, the court found evidence that the defendant “used a knife to stab or attempt to stab [the victims] in the back, chest or stomach” was sufficient to allow the jury to conclude both that the defendant “used force likely to produce great bodily harm, and that he acted with intent to inflict great bodily harm.” *Huddleston*, 80 Wn. App. at 922. Similarly, in *State v. Langford*, the court rejected the defendant’s insufficiency argument reasoning, “[the defendant’s] conduct here in stabbing [the victim] in the chest clearly falls within the statutory standard of conduct ‘likely to produce great bodily harm or death.’” *Langford*, 67 Wn. App. at 587 (citing RCW 9A.04.110(4)(c)).

The evidence adduced at trial supports the jury’s conclusion that defendant assaulted Morriel with the intent to inflict great bodily harm. Defendant purposefully plunged a knife into Morriel’s chest in retaliation for Morriel intervening in defendant’s fight with another person. Defendant could have stabbed Morriel anywhere, but he chose the chest—an area of many vital organs presenting a great danger of grave injury. Great bodily harm would be the natural and probable consequence of stabbing someone in the chest. See *Stroh*, 91 Wn.2d at 583. Defendant

intended to cause Morriel great bodily harm when he chose to stab a knife into Morriel's chest.

Defendant's intent to inflict great bodily harm is most dramatically manifested through the fact that he actually inflicted an injury severe enough to kill Morriel. Dr. Strong testified if Morriel had not returned to the hospital when he did, the wound could have been life threatening. 2RP 81. If the clot had not been cleaned out, it could easily have developed into a severe infection or caused pneumonia. 2RP 81. Morriel's lungs still do not expand to the extent they did before the stabbing. 3RP 93. Morriel is unable to take deep breaths. 3RP 93. As Dr. Strong explained, in a young person, "it takes a lot for them to not be able to have normal breathing." 2RP 78-79. Like the defendants in *Langford* and *Huddleston*, defendant used a knife to stab Morriel in the chest. Following the logic of these previous cases, that alone is sufficient to show defendant acted with intent to cause great bodily harm.

As the trial court aptly noted in denying defendant's half-time motion to dismiss:

There's really no dispute here that a knife wound was inflicted, given its location, a reasonable jury could conclude that the intent of the actor was to cause great bodily harm or possible death. That's a jury question.

4RP 63. Defendant's first degree assault conviction for subjecting his victim to a potentially lethal knife attack is well supported by the evidence, and it should be affirmed.

2. THE JURY REASONABLY FOUND DEFENDANT WAS ARMED WITH A DEADLY WEAPON WHEN THE KNIFE'S LETHAL CAPACITY WAS VIVIDLY DEMONSTRATED THROUGH THE LIFE THREATENING TRAUMA IT INFLICTED.

A challenge to the sufficiency of the evidence underlying a deadly weapon enhancement is reviewed in the same manner as the base offense, so the State's evidence is accepted as true and all reasonable inferences must be drawn in the light most favorable to the State. *State v. Hoeldt*, 139 Wn. App. 225, 228, 160 P.3d 55 (2007). There are two categories of deadly weapons: (1) weapons that are per se deadly, such as firearms; and (2) weapons that are readily capable of causing death or substantial bodily harm under the circumstances in which they are used. *State v. Holmes*, 106 Wn. App. 775, 781, 24 P.3d 1118 (2001) (citing *State v. Taylor*, 97 Wn. App. 123, 126, 982 P.2d 687 (1999)). For the latter, the determination is made based on the surrounding circumstances of its use. *State v. Thompson*, 88 Wn.2d 546, 548–549, 564 P.2d 323 (1977); *State v. Cobb*, 22 Wn. App. 221, 223, 589 P.2d 297 (1978).

The only evidence presented about the length of the knife was that it appeared to be about the size of Morriel's thumb. 3RP 86. Considering that is only a description of the part of the knife which was visible to Morriel, the length of the knife cannot be quantified with exactitude. A knife with a blade longer than three inches is per se a deadly weapon. RCW 9.94A.825. However, courts have recognized a knife with a blade of

less than three inches can be capable of producing death and is, in fact, likely to produce death if strategically used. *Thompson*, 88 Wn.2d at 549; *State v. Hall*, 40 Wn. App. 162, 168, 697 P.2d 597 (1985); *Cobb*, 22 Wn. App. at 223. The test is not the extent of the wounds actually inflicted, but whether the knife was capable of inflicting life threatening injuries. *Cobb*, 22 Wn. App. at 223. Even if the knife defendant plunged into Morriel's chest was less than three inches, a reasonable jury could find the knife was a deadly weapon.

In *State v. Thompson*, the Court held there was sufficient evidence for a jury to find a knife with a blade less than three inches was a deadly weapon where the assailant used a knife in a manner far less likely to inflict great bodily harm than defendant's method of assaulting Morriel. *Thompson*, Wn.2d at 550. In that case, the defendant held the knife against the neck of the victim, causing her to sustain a cut on her neck and bruises on her arm. *Id.* These circumstances, in which the knife could have been used to inflict life threatening injuries, were sufficient for the jury to find the defendant used a deadly weapon. *Id.* In stark contrast to holding a knife near a victim's neck, defendant plunged a knife into Morriel's chest, causing life threatening injuries.

The assault defendant committed was also more dangerous than one upheld as adequately proved in *State v. Cobb*, 22 Wn. App. at 223. Unlike defendant, Cobb did not actually inflict a life threatening injury

when he stabbed his victim in the chest with a knife shorter than three inches. *Id.* Nonetheless, the court found the knife's capability to inflict such injuries was sufficient, reasoning: "a stab to the chest, but for the fortuitous striking of the sternum or a rib, can inflict a penetrating wound to the chest cavity and endanger major structures." *Id.* Defendant actually did penetrate Morriel's chest cavity endangering the major structures.

Dr. Strong's testimony made it clear the resulting wound was capable of threatening Morriel's life. Dr. Strong described the area of the stab wound as "concerning because we always worry that that's right where your diaphragm is when you breathe." 2RP 75. Dr. Strong also explained what can appear to be an injury to the chest can "actually go all the way into the abdomen." 2RP 75. Dr. Strong immediately conducted a CT scan of Morriel's chest "because if you poke the lung with a knife, you can cause it to collapse." 2RP 75. After the CT scan, Dr. Strong conducted a laparoscopic procedure to look more closely for potential damage to the diaphragm and "make sure the knife had not penetrated into the abdomen." 2RP 76.

The wound defendant inflicted proved serious enough to endanger Morriel's life a second time when blood clots caused his lungs to thicken and restricted his breathing. 2RP 80. Dr. Strong said absent the second surgery, the wound would be life threatening because "it can turn to a severe infection and a pretty severe pneumonia." 2RP 81. Dr. Strong's

testimony provided ample reasons for the jury to find the knife used by defendant was capable of threatening Morriel's life.

Although the focus of the inquiry is on the capability of the weapon at issue to inflict life threatening injuries, it should be noted defendant actually used the knife in a way that made it capable of inflicting life threatening injuries. Morriel testified the knife used to stab him was about the size of his thumb. 3RP 86. The knife was stabbed into Morriel's chest, nearly penetrating deep enough to puncture his lung. 3RP 84; 2RP 75-76. The knife penetrated deep enough to cause bleeding in Morriel's chest cavity, which later required chest surgery. 2RP 77, 80. Given the knife's penetration into the victim's chest, an area of vital organs where injury can be deadly, and the injuries actually sustained, there was sufficient evidence presented for the jury to find defendant used a deadly weapon.

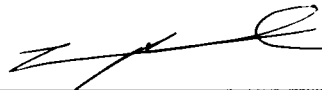
D. CONCLUSION.

The State presented sufficient evidence that defendant intended to inflict great bodily harm when he stabbed a knife into Tavaris Morriel's chest. Further, the State presented sufficient evidence that, although the

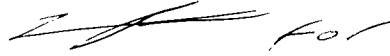
knife was potentially less than three inches, it was used in a manner that made it a deadly weapon. Therefore, the State respectfully requests this court affirm defendant's conviction.

DATED: April 29, 2015.

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The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

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