

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0794**

State of Minnesota,
Respondent,

vs.

Donovan L. Davis, Jr.,
Appellant.

**Filed August 5, 2008
Affirmed
Toussaint, Chief Judge**

Mille Lacs County District Court
File No. CR-06-1982

Lori Swanson, Attorney General, John B. Galus, Assistant Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

Janice S. Kolb, Mille Lacs County Attorney, Mille Lacs County Courthouse, 525 Second Street Southeast, Milaca, MN 56353 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Bradford S. Delapena, Special Assistant Public Defender, Post Office Box 40418, St. Paul, MN 55104 (for appellant)

Considered and decided by Peterson, Presiding Judge; Toussaint, Chief Judge; and Kalitowski, Judge.

UNPUBLISHED OPINION

TOUSSAINT, Chief Judge

Appellant Donovan L. Davis, Jr. challenges the sufficiency of the evidence upholding his conviction of second-degree assault, arguing that the baseball bat he used to commit the assault did not constitute a “dangerous weapon” as defined by statute. Because we conclude that appellant used a “dangerous weapon” and the evidence was therefore sufficient to support his conviction of second-degree assault, we affirm.

DECISION

After a jury trial, appellant was found guilty of second-degree assault as well as the lesser-included charge of fifth-degree assault. Appellant argues that the jury relied on insufficient evidence to conclude that the baseball bat, in the manner in which he used it to repeatedly strike the legs of his victim, C.M., constituted a “dangerous weapon.” Appellant claims that he did not use a “dangerous weapon” because he did not hit C.M. as hard as he could have, did not aim for a vital body part, and attenuated his blows. He also contends that the severity of C.M.’s injuries should have weighed in favor of a jury finding that the baseball bat did not constitute a “dangerous weapon.” Appellant requests that we reverse his conviction of second-degree assault and remand for sentencing on his conviction of fifth-degree assault.

Because there are no factual disputes in this case, it turns on statutory interpretation as to appellant’s second-degree assault conviction, which is a question of law that we review de novo. *State v. Coauette*, 601 N.W.2d 443, 445 (Minn. App. 1999), review denied (Minn. Dec. 14, 1999). “The objective of statutory interpretation is to

ascertain and effectuate the intent of the legislature.” *Id.*; *see also* Minn. Stat. § 645.16 (2004).

Appellant was convicted of second-degree assault in violation of Minn. Stat. § 609.222, subd. 1 (2004): “Whoever assaults another with a *dangerous weapon*” (Emphasis added.) An “assault” is “the intentional infliction of . . . bodily harm upon another.” Minn. Stat. § 609.02, subd. 10(2) (2004). A “dangerous weapon,” as relevant here, is a “device or instrumentality that, *in the manner it is used or intended to be used*, is calculated or likely to produce death or *great bodily harm*.” *Id.*, subd. 6 (2004) (emphasis added). “Great bodily harm” is statutorily defined as “bodily injury which creates a high probability of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or *other serious bodily harm*.” *Id.*, subd. 8 (2004) (emphasis added). Because C.M. did not suffer “permanent disfigurement” or “permanent or protracted loss or impairment of the function of any bodily member or organ” as a result of her injuries, the issue then becomes whether appellant used or intended to use the baseball bat in a manner calculated or likely to cause “serious bodily harm,” a term not defined by statute.

Ordinary objects can be transformed into dangerous weapons based on the manner in which they are used during an assault. *Coauette*, 601 N.W.2d at 447. In other cases defining “dangerous weapon” for the purposes of second-degree assault, we have held that a beer bottle thrown and hitting a victim’s head; a board three feet long, two inches wide, and three quarters of an inch thick; a pool cue swung like a baseball bat; and a defendant’s boots were all used as dangerous weapons. *See State v. Cepeda*, 588 N.W.2d

747, 749 (Minn. App. 1999) (beer bottle); *State v. Trott*, 338 N.W.2d 248, 252 (Minn. 1983) (board); *State v. Upton*, 306 N.W.2d 117, 117-18 (Minn. 1981) (pool cue); *State v. Mings*, 289 N.W.2d 497, 498 (Minn. 1980) (boots), *review denied* (Minn. Mar. 25, 1980).

If a defendant has the “intent to harm” his victim with an ordinary object, then courts may treat the object as a dangerous weapon in the manner it was used. *See Coquette*, 601 N.W.2d at 448. Here, the record indicates that appellant intended to harm C.M. when he repetitively hit her legs with the baseball bat; the attack was not an accident. Appellant used the bat in a manner calculated to cause “serious bodily harm” to C.M. It is true that appellant could have done more damage or could have focused his attack on C.M.’s head or vital areas using more forceful blows, but he points to no authority that states that for an object to be a “dangerous weapon,” the defendant must aim it at the victim’s head or vital areas and use forceful blows. Appellant used the baseball bat in a manner calculated to cause C.M. serious bodily harm when he struck her legs repeatedly with enough force to cause immediate redness, bruising, raised welts, and more-lasting injuries such as the temporary inability to walk and persistent burning sensations that caused C.M. to seek medical treatment.

Appellant argues that the fact that C.M.’s injuries were not severe should have weighed in favor of a jury conclusion that he did not strike C.M. in a manner calculated to cause her “great bodily harm,” and therefore the baseball bat should not have been deemed a “dangerous weapon.” But because “bodily injury is not an element of second-degree assault,” a weapon can be dangerous “even if the victim does not suffer great bodily harm.” *State v. Davis*, 540 N.W.2d 88, 91 (Minn. App. 1995), *review denied*

(Minn. Jan. 31, 1996); *State v. Basting*, 572 N.W.2d 281, 285 (Minn. 1997) (explaining that whether object constitutes dangerous weapon does not depend on nature or severity of victim's injuries). The record supports the jury's conclusion that appellant struck C.M. in a manner calculated to cause her "serious bodily harm," and the evidence was sufficient for the jury to have convicted appellant of second-degree assault for striking C.M. with a "dangerous weapon."

Affirmed.