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ONE MINUTE BRIEF

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NUMBER: 2019-01 **DATE:** 01-07-19 **BY:** Devallis Rutledge **TOPIC:** PC § 245

ISSUE: When does the assaultive use of weapons or force violate PC § 245?

A recent decision of the California Supreme Court held that **in the circumstances of that case**, the way the minor **used** a dull butter knife in an attack against her sister's protected legs did not violate PC § 245(a)(1). *In re B.M.* (2018) ___ Cal.5th ___, 2018 WL 6802197. Although two legal newspapers reported on the ruling under headlines that read, "Butter knife not a deadly weapon" and "Butter Knife, Used to Slash at Woman, Wasn't a Deadly Weapon" (which might lead a reader to believe that **as a matter of law**, a butter knife can *never be* a "deadly weapon" under PC § 245), that was not the court's holding.

"We hold, consistent with settled principles, that for an object to qualify as a deadly weapon **based on how it was used**, the defendant must have used the object **in a manner not only capable of producing but also likely to produce death or great bodily injury.**" Slip opn. at p. 1. Because B.M. had used the butter knife only to "slice" at the victim's legs (which were covered by a blanket the knife did not penetrate) and was not used against the victim's exposed head, face or neck, the court concluded that the **manner** in which the implement was **used** did not present a likelihood of death or GBI. Slip opn. at p. 6.

The court neither held nor suggested that a butter knife could not *be* used in such a way as to render it a "deadly weapon." In fact, the court approvingly cited to other cases finding a variety of objects to have constituted "deadly weapons," based on the manner in which they were used as creating a likelihood of death or GBI. Slip opn. at p. 7, citing to *In re D.T.* (2015) 237 Cal.App.4th 693, 696 (**pocketknife** used in a stabbing motion); *People v.*

Page (2004) 123 Cal.App.4th 1466, 1469 (sharp **pencil** held to the neck); and *People v. Simons* (1996) 42 Cal.App.4th 1100, 1106 (**screwdriver** waved in a menacing manner).

Other cases have also held various objects to have qualified as “deadly weapons,” **based on how they were used**—e.g., *People v. Koback* (2018) 25 Cal.App.5th 323, 333 (lunging with a **car key**); *People v. Golde* (2008) 163 Cal.App.4th 101, 109-10 (**vehicle** driven at the victim); *People v. Nealis* (1991) 232 Cal.App.3d Supp.1, 6 (trained attack **dog**); *In re Jose R.* (1982) 137 Cal.App.3d 269, 276 (**apple** with imbedded pin offered to the teacher); *People v. Helms* (1966) 242 Cal.App.2d 476, 486-87 (holding a **pillow** over the victim’s face); *People v. White* (1963) 212 Cal.App.2d 464, 465 (large **rock** to the head); and *People v. Russell* (1943) 59 Cal.App.2d 660, 665 (facial stabbing with a **fingernail file**).

- Some objects, such as dirks and blackjacks, are designed for the very purpose of inflicting death or GBI and so “*have been held to be deadly weapons as a matter of law.*” *People v. Aguilar* (1997) 16 Cal.4th 1023, 1029.

- “[A] ‘deadly weapon’ ... must be an object **extrinsic to the human body**. Bare hands or feet, therefore, **cannot be deadly weapons**” within the meaning of PC § 245(a)(1). *Id.*, at 1034. However, “*the use of hands or fists alone may support a conviction of assault by means of force likely to produce great bodily injury*” as prohibited by PC § 245(a)(4) (or by PC § 245(c), where the victim is an on-duty peace officer or firefighter). *Id.*, at 1028.

- There are **9 different ways** to charge and punish the § 245 offenses referred to by the shorthand descriptor “ADW,” depending on the kind of weapon or force used and the status of the victim. Compare PC § 245(a)(1), 245(a)(2), 245(a)(3), 245(a)(4), 245(b), 245(c), 245(d)(1), 245(d)(2) and 245(d)(3). The punishment range, and any sentence enhancements for use of a deadly weapon, may both depend on the particular means of assault, so the appropriate charging sections must be selected. See, e.g., *People v. Brunton* (2018) 23 Cal.App.5th 1097, 1106-07 (vacating a duplicative conviction, sentence and enhancement).

BOTTOM LINE: Assault with a deadly weapon under PC § 245(a)(1) may depend on the manner in which an object is used, considering the likelihood of resultant death or GBI. Aggravated assaults committed by beating, kicking, etc., may be considered under PC § 245(a)(4) or 245(c).

(Emphases added and citations omitted in some quoted material.)

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