

Courts and Law in Conflict

At times, a decision by one court based on case law fails to receive support or is extended by a higher court. A man appealed his conviction after a jury found him guilty of two first-degree burglary counts, two counts of possession of a weapon by a previous offender, one count of theft, and six habitual criminal counts based on prior felony convictions. The man was arrested after breaking into a home where he ransacked the residence and fled with approximately \$150 and a gun case containing two unloaded shotguns. One issue in the appeal was the definition of a “deadly weapon” related to the charge and subsequent conviction on first-degree burglary.

The legislative statute reads:

“Deadly weapon” means any of the following which in the manner it is used or intended to be used is capable of producing death or serious bodily injury:

- (I) A firearm, whether loaded or unloaded;
- (II) A knife;
- (III) A bludgeon;
- (IV) Any other weapon, device, instrument, material, or substance, whether animate or inanimate.

In this example, a state statute provides a definition of a deadly weapon; however, if the meaning of the statute is questioned by the accused, courts are given

the authority to interpret the legislature’s intent. An appellate court determined a shotgun was a deadly weapon based on prior court decisions—*stare decisis*. The court also determined that an unloaded shotgun is a deadly weapon. According to the written court opinion, “armed” was not defined by statute; however, case law requires that the deadly weapon be “easily accessible and readily available for use by the defendant for either offensive or defensive purposes.”

A state supreme court, however, interpreted the deadly weapon statute to mean that a firearm is not a deadly weapon per se. The higher court found that a firearm is a deadly weapon depending on how it is used or if the intent is to cause death or serious bodily injury.

In this case the burglar stole the unloaded guns and was leaving the house. In other cases, a burglar could have a deadly weapon with no intent to use it to cause death or serious bodily injury; consequently, the offender would not meet the criteria for first-degree burglary.

Think About It

This raises policy questions such as:

1. If the gun is unloaded, does that mean there is no intent to harm?
2. If a robber enters a store, points an unloaded weapon, and says, “Give me all your money,” would this be enough to show intent?