ATTORNEY FOR APPELLANT:

JUNE E. BULES
Plymouth, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

THOMAS D. PERKINS
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

MARIE GRAHAM,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 50A03-0707-CR-352
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARSHALL SUPERIOR COURT
The Honorable Robert O. Bowen, Judge
Cause No. 50D01-0601-FC-2

December 21, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Marie Graham appeals her convictions of two counts of battery with a deadly weapon[1] and conspiracy to commit the same.[2] We affirm.

FACTS AND PROCEDURAL HISTORY

On December 26, 2005, Steven Powell and Douglas Miller were having dinner at Sloane's in Argos. Robert Graham entered the restaurant, pulled a baseball bat out from under his coat and hit Miller twice. Robert then hit Powell twice. The second time, Powell wrested the bat from Robert, and it flew behind the bar. Robert kicked and hit Powell while Powell tried to restrain him.

Marie entered Sloane's shortly after Robert and began yelling, "Get him, Robert. Get him, Robert." (Tr. at 26-27.) Marie started choking Powell and hitting him from behind with her hands. She also hit Miller with her hands and attempted to hit people with chairs. Eventually, Marie yelled, "Let's get out of here," and she and Robert ran out the back door. (*Id*. at 40.) Robert ran off down an alley, and Marie drove away.

Powell recognized Marie and Robert because he had encountered them a few days before. Earlier on December 26, Powell had seen the Grahams' car drive by his place of employment. He saw that car pull up to Sloane's immediately before Robert entered.

After a bench trial on February 6, 2007, Marie was found guilty of conspiracy and two counts of battery with a deadly weapon, all Class C felonies.

---

[1] Ind. Code § 35-42-2-1(a)(3).

[2] I.C. § 35-41-5-2.

DISCUSSION AND DECISION

Marie argues the evidence was insufficient to find her guilty of conspiracy to commit battery with a deadly weapon. Further, she argues that because there was no evidence she used a deadly weapon, the battery convictions cannot stand unless a conspiracy was proven.[3] In reviewing the sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of witnesses. *Dinger v. State*, 540 N.E.2d 39, 39 (Ind. 1999). We consider the evidence most favorable to the verdict, along with all reasonable inferences, to determine whether a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. *Id*. at 39-40.

"A person conspires to commit a felony when, with intent to commit the felony, he agrees with another person to commit the felony." Ind. Code § 35-41-5-2(a).

> The State is not required to establish the existence of a formal express agreement to prove a conspiracy. "'It is sufficient if the minds of the parties meet understandingly to bring about an intelligent and deliberate agreement to commit the offense.'" An agreement can be inferred from circumstantial evidence, which may include the overt acts of the parties in furtherance of the criminal act. With regard to the intent element, we note that to determine whether the defendant had the requisite intent to commit the crime alleged, "'[t]he trier of fact must usually resort to circumstantial evidence or reasonable inferences drawn from examination of the circumstances surrounding the crime.'"

Weida v. State, 778 N.E.2d 843, 847 (Ind. Ct. App. 2002) (citations omitted).

Marie argues there is no evidence she knew Robert used or intended to use a bat, and she therefore could not have conspired to commit battery with a deadly weapon.

[3] Marie does not contend Robert did not use a bat or that a bat is not a deadly weapon.

However, the State is not required to prove an agreement to aggravating circumstances such as the use of a deadly weapon as long as they are the natural and probable consequences of the conspiracy. *Sherwood v. State*, 702 N.E.2d 694, 699 (Ind. 1998).

Sherwood was convicted of conspiracy to commit robbery as a Class B felony based on a co-defendant's use of a handgun. Our Supreme Court held:

> As the Court of Appeals established in *Phares v. State*, 506 N.E.2d 65 (Ind. Ct. App. 1987), and this Court adopted in *Smith v. State*, 549 N.E.2d 1036 (Ind. 1990), defendant may be convicted of conspiracy, enhanced by some aggravating circumstance such as the use of a deadly weapon, even though the State has not alleged or proved that the defendant agreed to the aggravating circumstance. For example, in *Phares*, the court concluded that the State need not allege or prove an agreement to inflict the resulting injury since the injury was "a natural and probable consequence of the planned robbery and was done in furtherance of the conspiracy." 506 N.E.2d at 69-70. Similarly, in *Smith*, this Court found that the State was not required to show that the conspiracy included an agreement to use a firearm and to intentionally injure another. 549 N.E.2d at 1038. It was sufficient to prove the underlying conspiracy and the natural and probable consequences of the conspiracy simply flow therefrom. *Id*.

Sherwood, 720 N.E.2d at 699.

Powell recognized the Grahams and their car. He knew their car had passed by his place of work, and he saw it pull up to Sloane's right before Robert entered. Powell testified Robert began swinging the bat shortly after he entered and Marie entered Sloane's shortly after Robert. There was no testimony about Marie's location when Robert was swinging the bat, but several witnesses indicated these events occurred within a short period of time. This evidence, along with Marie's comments during the fight, suggests the Grahams were engaged in a planned and concerted attack on Powell and Miller.

The evidence favorable to the verdict supports a finding Marie conspired to commit battery. Therefore, she "is criminally liable for everything done by [her confederate] which flows incidentally from the natural consequences of the criminal act, even though it was not intended as part of the original plan or whether [she was] present at the time the act occurred." *Smith*, 549 N.E.2d at 1038. As Marie herself attempted to hit people with chairs, we cannot say Robert's actions were beyond the natural consequences of their conspiracy to commit battery. Because the evidence is sufficient to find her guilty of conspiracy to commit battery with a deadly weapon, she is also liable for the batteries Robert committed.

Affirmed.

CRONE, J., and DARDEN, J., concur.