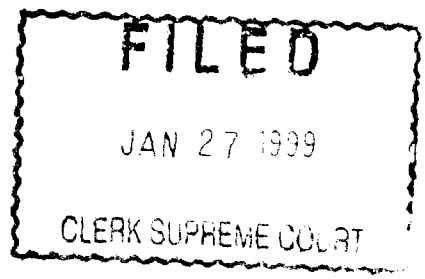
IN THE COURT OF APPEALS OF IOWA

No. 8-644 / 98-09
Filed January 27, 1999



STATE OF IOWA,

Appellee,

vs.

KEVIN KELLEY,

Appellant.

Appeal from the Iowa District Court for Black Hawk County, Todd A. Geer, Judge.

Kevin Kelley appeals from the judgment and sentence entered following his conviction of first-degree robbery. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and James G. Tomka, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Roxann M. Ryan, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Kasey Wadding, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Huitink, Streit, Vogel, and Mahan, JJ. Zimmer, J., takes no part.

STREIT, J.

Kevin Kelley appeals his conviction for robbery in the first degree, in violation of Iowa Code section 711.2. The State alleged Kelley had committed robbery while armed with a dangerous weapon. We affirm the conviction.

On March 9, 1996, Kelley robbed the Big 10 Mart, a convenience store in Waterloo, Iowa. He waited until the store had no customers, then displayed a knife to the clerk. He demanded money from the cash register, and received approximately $67. The knife involved in the incident was three inches long, and had a V-shaped blade which was about one and one-half inches in length. A jury found Kelley guilty of the crime charged.

Kelley filed a motion in arrest of judgment claiming the State failed to present sufficient evidence to show the knife in question was a dangerous weapon under section 702.7. The district court overruled the motion, finding there was sufficient evidence to create a jury question on the issue of whether the knife was a dangerous weapon. Kelley now appeals.

Under Iowa Rule of Criminal Procedure 18(8)(a), a motion for judgment of acquittal is to be granted whenever the evidence is insufficient to sustain a conviction for the charged offense. *State v. Geier*, 484 N.W.2d 167, 170 (Iowa 1992). The motion should be denied if the State has presented such evidence as could convince a rational trier of fact the defendant is guilty of the crime charged beyond a reasonable doubt. *Id.* at 170-171.

The term "dangerous weapon" is defined in section 702.7 as follows:

> A *"dangerous weapon"* is any instrument or device designed primarily for use in inflicting death or injury upon a human being or animal, and which is capable of inflicting death upon a human being when used in the manner for which is was designed. Additionally, any instrument or device of any sort whatsoever which is actually used in such a manner as to indicate that the defendant intends to inflict death or serious injury upon the other, and which, when so used, is capable of inflicting death upon a human being, is a dangerous weapon. Dangerous weapons include, but are not limited to, any offensive weapon, pistol, revolver, other firearm, dagger, razor, stiletto, switchblade knife, or knife having a blade exceeding five inches in length.

Under section 702.7, there are three methods by which an object may be deemed a "dangerous weapon": (1) it is designed primarily for use in inflicting death or injury, and is capable of inflicting death upon a human being; (2) it is actually used in a manner indicating the defendant intends to inflict death or serious injury, and is capable of inflicting death upon a human being; or (3) it is specifically listed as a dangerous weapon. *See State v. Tusing,* 344 N.W.2d 253, 255 (Iowa 1984).

Kelley testified the object in question here was an arrow, which was part of a souvenir keychain. The object, however, has a very sharply pointed V-shaped metal blade, which a person could not safely carry in a pocket. The appearance of the object shows it had a sharp metal blade and was designed primarily for use in inflicting death or injury.

In considering whether the weapon was capable of inflicting death, the actual intent of the user is not the issue. *Id.* Obviously, such a sharply-pointed object could

cause death to a human being. The knife could slice open an artery, causing a person to bleed to death. The knife could also be used to stab a person's vital organs, causing death.

We conclude there was sufficient evidence for the jury to find the object was a dangerous weapon due to its design. *See State v. Mitchell,* 371 N.W.2d 432, 434 (Iowa App. 1985). We affirm Kelley's conviction for first-degree robbery. Costs of this appeal are assessed to Kelley.

AFFIRMED.