

IN THE COURT OF APPEALS OF IOWA

No. 2-488 / 11-0639
Filed July 25, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

LANCE CAPREE BROOKS,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Bruce B. Zager (trial) and Thomas N. Bower (sentencing), Judges.

Defendant appeals his convictions of first-degree robbery and first-degree burglary with a dangerous weapon enhancement. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Rachel C. Regenold, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Jean C. Pettinger, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Joel Dalrymple, Assistant County Attorney, for appellee.

Considered by Eisenhauer, C.J., and Potterfield and Mullins, JJ. Bower, J., takes no part.

EISENHAUER, C.J.

Lance Capree Brooks appeals from the judgment and sentence entered upon his convictions of first-degree robbery (a class “B” felony) and first-degree burglary (a class “B” felony), with a dangerous weapon enhancement under Iowa Code section 902.7 (2009) (providing mandatory minimum sentence—forcible felony involves dangerous weapon). Brooks asks us to overrule precedent and declare an inoperable, unloaded weapon is not a dangerous weapon as a matter of law.

The facts relevant to this appeal are not in dispute. Brooks, along with two other men, committed the crimes. One perpetrator was armed with a Bryco Adams 9mm handgun. At trial, a Waterloo police officer testified there was no magazine or ammunition in the gun, the trigger assembly was not functioning, and a DCI report indicated a magazine spring did not work. Brooks claims the trial court should not have instructed the jury the handgun was a dangerous weapon as a matter of law. Rather, he argues the “character of the instrument is so altered by its nonfunctioning state that it should be a fact question for the jury to decide.”

Review of challenges to jury instructions is for the correction of errors at law. *State v. Hanes*, 790 N.W.2d 545, 548 (Iowa 2010).

Iowa Code section 702.7 defines “dangerous weapon” 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 it 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, or other firearm

....

Being armed with a dangerous weapon was one of the elements the State had to prove for a conviction of robbery in the first degree and was one of two alternatives for an element the State had to prove for a conviction of burglary in the first degree. See Iowa Code sections 711.2 (robbery), 713.3(b) (burglary). Jury Instruction No. 21 stated: "You are instructed that a Bryco Adams 933 Jennings 9mm semiautomatic handgun is, by law, a dangerous weapon."

Our precedent establishes the State need not prove a handgun used during a robbery was loaded and in working order. *State v. Nichols*, 276 N.W.2d 416, 417 (Iowa 1979). The Iowa Supreme Court has concluded the statutory phrase "capable of inflicting death upon a human being when used in the manner for which it was designed" refers to the category of weapons at issue, not the condition of the particular weapon used. See *id.* The *Nichols* court held "the State is not required to establish that a pistol was loaded at the time of the offense to prove its character as a dangerous weapon in a prosecution for robbery in the first degree." *Id.* Pointing to the "capable of inflicting death" language in the statutory definition of "dangerous weapon," the *Nichols* court noted "[n]o one could seriously contend that a pistol lacks this characteristic." *Id.* In 1981, the court reiterated the *Nichols* principles, stating the "working condition should never be an issue where the instrument employed has the character of a dangerous weapon." *State v. Hemminger*, 308 N.W.2d 17, 20 (Iowa 1981) (ruling State was not required to demonstrate revolver used in robbery was

operable); *accord McLaughlin v. U.S.*, 476 U.S. 16, 17 (1986) (holding unloaded gun is a “dangerous weapon” within meaning of federal bank robbery statute).

The court committed no error in instructing the jury.

AFFIRMED.