

**IN THE COURT OF APPEALS OF IOWA**

No. 8-334 / 07-1401  
Filed July 16, 2008

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**LAWRENCE JAY WILLIAMS,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Polk County, Joel D. Novak, Judge.

Lawrence Jay Williams appeals from his conviction of first-degree robbery.

**AFFIRMED.**

Mark C. Smith, State Appellate Defender, and David Adams, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Mary Tabor, Assistant Attorney General, John P. Sarcone, County Attorney, and Jaki Livingston, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Zimmer and Vaitheswaran, JJ.

**ZIMMER, J.**

Lawrence Jay Williams appeals from his conviction of first-degree robbery in violation of Iowa Code sections 711.1 and 711.2 (2005). He contends the evidence did not support a finding that the BB gun used in the robbery constituted a dangerous weapon. We affirm.

***I. Background Facts and Proceedings.***

On December 6, 2006, Williams entered a US Bank in Des Moines armed with what appeared to be an automatic weapon, later determined to be a toy gun. Williams pointed the gun at the tellers and demanded money. After collecting the money, Williams fled the bank.

On January 30, 2007, Williams entered the same bank armed with what appeared to be a handgun. Williams held the weapon up so the people in the bank could see it and again demanded money. After collecting money from the tellers, he fled the bank. Williams was arrested shortly after the robbery. He subsequently admitted he committed both robberies.

A police investigation revealed the weapon Williams used during the second robbery was a BB gun. The BB gun was sent to the Iowa Department of Criminal Investigations (DCI) criminalistics laboratory for evaluation, where criminalist Victor Murillo examined the weapon and identified it as a Crosman Stinger 36, 6 mm BB Airsoft pistol. Murillo issued a report. The report provided, in relevant part, that “[i]nformation from the manufacturer . . . indicated a fired BB from this pistol could cause serious injury particularly if the BB were to strike the eye.” The pistol has a removable clip for loading projectiles which can be fired at 191 feet per second.

On March 1, 2007, the State filed a two-count trial information against Williams along with the minutes of testimony. The first count charged Williams with first-degree robbery for the robbery that occurred in January 2007 with the BB gun. The second count charged Williams with second-degree robbery for the robbery that occurred in December 2006 with the toy gun. The first count was elevated to first-degree robbery on the basis that the BB gun used by Williams in the second robbery was a dangerous weapon.<sup>1</sup>

On March 9, 2007, Williams entered a plea of not guilty. On June 26, 2007, Williams filed a motion to sever trial of separate offenses, asserting that he would be unfairly prejudiced by being tried for both offenses at the same time. The following day, the State filed a resistance to this motion. A hearing on this motion was held on July 2, 2007. At that time, a ruling on the motion was delayed because Williams informed the district court that he was willing to enter pleas of guilty for both offenses. However, after a discussion with Williams about the voluntary and intelligent waiver of his rights, the court refused to accept Williams's pleas.

On July 3, 2007, Williams appeared again before the court and indicated he wanted to waive a jury trial and stipulate to a bench trial on the minutes of evidence. The following exchange took place:

THE COURT: So you understand what you are looking at, Mr. Williams, is a report from the state criminalist laboratory that basically establishes what—that this BB gun really, in essence, amounts to a dangerous weapon because its use could cause a serious injury or death as the statute requires. If this witness were

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<sup>1</sup> The minutes of testimony filed with the trial information indicated Murillo would testify the pistol displayed by Williams during the second robbery was a dangerous weapon.

called, that is what he would testify to. This is his report. Is that a fair statement, [counsel for the State]?

[COUNSEL FOR THE STATE]: Yes, Your Honor.

THE COURT: All right. Now, having all that information available to you, my question, Mr. Williams, is do you want to proceed now and waive the jury trial, stipulate to the Minutes of Testimony, including this report I have just been handed, and then let the Court—And I have reviewed the file and all the Minutes of Testimony—and then have the Court render a decision?

[WILLIAMS]: If we can get it done today.

Williams then filed a written waiver of jury trial and stipulation to minutes of evidence. During his conversation with the court, Williams acknowledged the evidence that would be presented to the court by stipulation was sufficient to support a guilty verdict on both of the charges against him. The court accepted Williams's waiver of his right to a jury trial, and the matter was then submitted to the district court for a trial on the minutes of testimony and the DCI criminalistics laboratory report. Williams did not present any evidence.

After considering the stipulated record, the court found Williams guilty of both of the offenses for which he was charged. The court specifically found the BB gun used by Williams during the second robbery was a dangerous weapon under the facts and circumstances of the case.

Thereafter, Williams filed a pro se motion, deemed a motion in arrest of judgment, asserting that the BB gun used was only a dangerous weapon if used to shoot a person in the eye. The motion came before the district court on August 6, 2007, at Williams's sentencing hearing. The court denied Williams's motion, again finding the BB gun constituted a dangerous weapon. The court then sentenced Williams to serve an indeterminate term of imprisonment not to exceed twenty-five years for the first-degree robbery conviction and ten years for

the second-degree robbery conviction. The sentences were ordered to run concurrent with each other.

Williams appeals from his conviction of first-degree robbery.

## ***II. Scope and Standards of Review.***

We review sufficiency of the evidence claims for the correction of errors at law, and we will uphold the verdict if substantial evidence supports it. *State v. Williams*, 695 N.W.2d 23, 27 (Iowa 2005). Evidence is substantial if it would convince a rational fact finder to “find guilt beyond a reasonable doubt.” *State v. Robinson*, 288 N.W.2d 337, 341 (Iowa 1980). When we determine the sufficiency of the evidence supporting a conviction, we consider all the evidence in the record, not just the evidence supporting the defendant’s guilt. *State v. Carter*, 696 N.W.2d 31, 36 (Iowa 2005). However, when we make this determination, we consider the evidence in the light most favorable to the State, and we include legitimate inferences and presumptions that may be reasonably deduced from the evidence in the record. *Id.*

## ***III. Discussion.***

Williams contends the evidence did not support a finding that the BB gun used in the second robbery constituted a dangerous weapon to support his conviction for first-degree robbery because the State failed to produce any evidence that the BB gun was capable of inflicting death upon a human being. Conversely, the State responds that the minutes of testimony combined with the DCI criminalistics laboratory report provide enough information for the district court to determine the BB gun Williams brandished at the bank met the dangerous weapon definition found in Iowa Code section 702.7. We agree.

In order to find Williams guilty of first-degree robbery, the State was required to prove, along with other elements not at issue here, that Williams was armed with a dangerous weapon. See Iowa Code §§ 711.1, .2. A “dangerous weapon” is defined as:

[A]ny 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, dagger, razor, stiletto, switchblade knife, or knife having a blade exceeding five inches in length.

Iowa Code § 702.7. Whether an item not listed in the statute is a dangerous weapon is a fact issue for the fact finder. See *State v. Dallen*, 452 N.W.2d 398, 399 (Iowa 1990) (concluding the State presented sufficient evidence to permit the jury to find a BB gun was a dangerous weapon); see also *State v. Tusing*, 344 N.W.2d 253, 254 (Iowa 1984) (holding “it is an issue for the fact-finder” whether brass knuckles are “capable of inflicting death” as required by the statutory definition of “dangerous weapons”); *State v. Ashland*, 259 Iowa 728, 730, 145 N.W.2d 910, 911 (1966) (explaining “[i]tems not specifically named [in the statute] might be factually found to be dangerous weapons,” but it was unnecessary to submit the question to the jury in this case because pistols and revolvers were specifically referred to in the statute as dangerous weapons); *State v. Brown*, 67 Iowa 289, 290, 25 N.W. 248, 249 (1885) (holding that the question of whether a piece of wood was a deadly weapon should be left to the jury to determine); *State v. Mitchell*, 371 N.W.2d 432, 434 (Iowa Ct. App. 1985)

(holding that evidence presented at trial was sufficient to allow the fact finder to decide nunchakus are dangerous weapons); see also *State v. Williams*, 352 N.W.2d 576, 579 (Neb. 1984) (holding that because “[a] pellet gun which discharges a BB shot by means of compressed gas or a spring is not a firearm,” it was not a per se deadly weapon within the meaning of the state statute, and the question of whether it was a deadly weapon must be decided by the trier of fact).

In the present case, Williams stipulated that the matter was to be decided based solely upon the minutes of testimony and the DCI criminalistics laboratory report, and Williams conceded that sufficient evidence existed to support findings of guilt on both counts. Williams now maintains the evidence was insufficient to establish the BB gun he used in the second robbery was a dangerous weapon because the DCI criminalistics laboratory report, asserted by Williams to be the only evidence presented as to the capabilities or dangers arising from the use of the BB gun, only stated the BB gun was capable of serious injury, not death. While it is true the report did not state the BB gun was capable of causing death to a human being, the minutes of testimony expressly state that Murillo would testify that the BB gun brandished by Williams in the second robbery was a dangerous weapon. When viewed in the light most favorable to the State, we believe the evidence is sufficient to support the district court’s conclusion that Williams committed first-degree robbery in violation of Iowa Code sections 711.1 and 711.2.

**AFFIRMED.**