

**IN THE COURT OF APPEALS OF IOWA**

No. 8-907 / 07-1450  
Filed December 31, 2008

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

**vs.**

**RAMON LAMONT PRICE,**  
Defendant-Appellant.

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

Price appeals from his first-degree and second-degree robbery convictions. **AFFIRMED IN PART; SENTENCE VACATED IN PART.**

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

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney General, John P. Sarcone, County Attorney, and, Michael Hunter, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Mahan and Miller, JJ.

**VOGEL, P.J.**

Ramon Price appeals from his convictions of one count of first-degree robbery in violation of Iowa Code sections 711.1 and 711.2 (2005) and two counts of second-degree robbery in violation of Iowa Code sections 711.1 and 711.3. Our review is for corrections of errors at law. Iowa R. App. P. 6.4.

Price challenges the sufficiency of the evidence as to his first-degree robbery conviction arguing the State had failed to prove the two and one-eighth inch pocket knife he was armed with was a dangerous weapon. “A person commits robbery in the first degree when, while perpetrating a robbery, the person purposely inflicts or attempts to inflict serious injury, or is armed with a dangerous weapon.” Iowa Code § 711.2. 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, dagger, razor, stiletto, switchblade knife, or knife having a blade exceeding five inches in length.

Iowa Code § 702.7.

In order to review this claim, Price was required to preserve the alleged error. *State v. Houts*, 622 N.W.2d 309, 311-12 (Iowa 2001) (“Issues not raised in the district court will not be considered on appeal.”). In district court Price did not challenge whether the knife was a “dangerous weapon,” but rather only challenged whether a weapon was used. Thus, Price did not preserve error. See *State v. Crone*, 545 N.W.2d 267, 270 (Iowa 1996) (motion for judgment of

acquittal does not preserve error where there was no reference to the specific grounds argued on appeal); *State v. Geier*, 484 N.W.2d 167, 170-71 (Iowa 1992) (motion for judgment of acquittal does not preserve error where there was no reference to the grounds in district court).

However, had error been preserved, we would conclude the State proved the pocket knife Price used to threaten an employee of a Family Dollar Store in order to secure the contents of the store's cash register, was a dangerous weapon. Upon submission of the evidence, the jury was to decide whether the State had proved the elements of the crime charged and may use their common sense in determining whether the knife was capable of causing death. See *State v. Stevens*, 719 N.W.2d 547, 552 (Iowa 2006) ("Jurors are not expected to lay aside matters of common knowledge or their own observation and experience of the affairs of life, but may give effect to such inferences as common knowledge or their personal observation and experience may reasonably draw from the facts directly proved." (citations omitted)). Thus, Price's conviction for first-degree robbery was supported by sufficient evidence.

Price also argues that the district court erred in assessing a ten dollar Drug Abuse Resistance Education (DARE) surcharge pursuant to Iowa Code section 911.2 to each of his robbery convictions. The State concedes robbery is not included in the crimes listed in section 911.2 as being subject to the DARE surcharge. Thus, we vacate this portion of Price's sentence.

**AFFIRMED IN PART; SENTENCE VACATED IN PART.**