

**IN THE COURT OF APPEALS OF IOWA**

No. 3-1044 / 12-2177  
Filed January 9, 2014

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

**vs.**

**COREY DARNELL MOORE,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Black Hawk County, David F. Staudt, Judge.

Corey Moore appeals his convictions for robbery in the first degree, assault causing serious injury, and possession with intent to deliver marijuana while in the immediate possession of a firearm. **AFFIRMED.**

Amanda DeMichelis of DeMichelis Law Firm, P.C., Chariton, for appellant.

Thomas J. Miller, Attorney General, Bridget A. Chambers, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Brian Williams, Assistant County Attorney, for appellee.

Heard by Vogel, P.J., and Mullins and McDonald, JJ.

**VOGEL, P.J.**

Corey Moore appeals his convictions for robbery in the first degree, in violation of Iowa Code section 711.2 (2011); assault causing serious injury, in violation of Iowa Code section 708.2(4); and possession with intent to deliver marijuana while in the immediate possession of a firearm, in violation of Iowa Code section 124.401(1)(d) and (e). Moore asserts four claims on appeal: (1) the court erred in not submitting a jury instruction as to whether one witness was an accomplice; (2) there is insufficient evidence supporting his convictions; (3) Moore was denied his constitutional right to a jury trial and unanimous verdict due to the district court's admonition the jury should not remain hung; and (4) trial counsel was ineffective for failing to object to the jury instruction naming accomplices and the introduction of a gun into evidence. Because we find Moore did not preserve error on his jury-instruction claim, substantial evidence supports his convictions, there is an insufficient record to decide Moore's verdict-urging instruction argument, and he cannot establish prejudice with regard to his ineffective-assistance-of-counsel claims, we affirm.

**I. Factual and Procedural Background**

At trial, the jury could have found the following facts. In 2010, Belinda Robinson became acquainted with Alonzo Henderson through Facebook. Henderson owned a restaurant in Waterloo and invited Robinson to move into his trailer in Cedar Falls and work in his restaurant. Robinson did so, but Henderson became physically abusive and did not pay Robinson for her work in the restaurant.

Due to their acquaintance, Robinson was aware Henderson was a drug dealer and that he was soon to receive a large quantity of marijuana and some quantity of cocaine. At trial, Robinson testified the plan was to rob Henderson of the drugs and “for [Henderson] to get roughed up and if need be then to use duct tape if they had to, but just basically to rough him up.” Robinson included in the plan Jacque Dukes, Crystal Cooper, and Lamario Stokes. Moore is a friend of Dukes and joined in the scheme not long before its commission. Robinson was not aware Moore was intending to participate until the day of the robbery.

On January 26, 2011, the marijuana delivery was made to Henderson’s residence. Henderson brought in two men to help with the drugs, William McNealy and Ryan Harper. Shortly after the delivery, Robinson drove Harper’s car to buy cigarettes and plastic bags, and later met up with Dukes, Stokes, Cooper, and Moore at a nearby motel. While there, they decided to lure McNealy and Harper away from the trailer by telling them Robinson had run out of gas in the Hy-Vee parking lot. The group left Harper’s car in the Hy-Vee parking lot and drove back to the trailer in Dukes’s car. Robinson made the call, then the group watched as Harper and McNealy left the trailer.

Once Harper and McNealy were gone, Moore, Dukes, and Stokes went into Henderson’s trailer. Robinson and Cooper waited in the car. All three men were dressed in black and wore covers over their faces. Henderson testified he was in the kitchen when three people dressed in black kicked in the door to his trailer, though he could not discern their race or gender. Two of the intruders were holding guns and pointing them at Henderson. Henderson further testified the marijuana was clearly visible on the kitchen counter.

Henderson then walked into his bedroom. One of the intruders followed him, and after Henderson turned around, hit him in the head with the gun. The two began to wrestle, and a second intruder came into the room and pointed the second gun at Henderson while the first person backed out of the bedroom. The first intruder stumbled, and Henderson attempted to knock the gun out of his hand. The second intruder then opened fire, shooting Henderson once in the arm—after which the bullet penetrated the abdomen—and once in the leg. All three intruders then left the trailer with the drugs. Henderson went into the living room and looked outside but could not see in which direction the intruders went.

Stokes also testified at trial, stating Henderson was on the couch when he, Dukes, and Moore entered through the unlocked front door. Stokes testified he could see the marijuana on the kitchen island and that Moore was the one who shot Henderson. He further testified the entire group left with the marijuana.

Robinson testified that as the group was driving back to Cedar Rapids, she, Dukes, and Cooper were speaking to each other and texting on their phones. Cooper testified Moore told the group Henderson was “talkin’ a lot of crap” so Moore shot Henderson in the leg and arm, and Dukes claimed he hit Henderson in the head with his gun. However, during the struggle, Dukes dropped the gun.

The group drove to the apartment of Moore’s girlfriend, Bridget Johnson, where they divided up the marijuana. Johnson testified Moore told her he had robbed someone in the Cedar Rapids area and that during the robbery there was a struggle and he shot someone in the leg.

The police were called to Henderson's home the same day. Two spent casings were found at the scene. While the gun that fired the bullets was not recovered, police found a pistol in a bedroom, though it had a bent magazine that would not allow it to fire. Marijuana residue was found throughout the trailer, and there was a trail of marijuana leading out the door.

On September 13, 2011, the State filed a trial information charging Moore with robbery in the first degree, burglary in the first degree, willful injury causing serious injury while in the immediate possession and control of a dangerous weapon, and possession of marijuana with intent to deliver and/or conspiracy to possess marijuana with intent to deliver while in the immediate possession or control of a firearm. Trial began October 9, 2012. Robinson, Cooper, and Stokes testified as part of their plea agreements. On October 12, the jury returned guilty verdicts to the robbery, willful injury, and possession of marijuana counts, and an acquittal on the burglary count. Moore was sentenced on November 21, 2012, to twenty-five years on the robbery count, and five years on the possession and willful injury counts.<sup>1</sup> Moore appeals, asserting four bases of error.

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<sup>1</sup> Moore was charged with robbery in the first degree, in violation of Iowa Code sections 711.1 and 711.2; burglary in the first degree, in violation of Iowa Code section 713.3; willful injury causing serious injury, in violation of Iowa Code section 708.4; and possession of a controlled substance with intent to deliver, in violation of Iowa Code section 124.401(1)(d) and (e). The jury convicted Moore of the robbery count, the lesser included offense of assault causing serious injury, and the possession with intent count. Moore was sentenced to twenty-five years on the robbery conviction, to run concurrently with his five year sentence on the possession conviction, and five years on the assault conviction, to run consecutively to his other term of incarceration.

## II. Whether the Jury Instruction was Proper

Moore contends the district court erred in submitting jury instruction number thirty-four that stated: “The court has found that Lamario Stokes, Belinda Robinson, and Crystal Cooper were accomplices and you must consider them accomplices,” but did not name Bridget Johnson as an accomplice. Moore argues whether or not Johnson was an accomplice was a question of fact for the jury to decide. The State argues Moore did not preserve error.

“The doctrine of error preservation has two components—a substantive component and a timeliness component.” *State v. Krogmann*, 804 N.W.2d 518, 523 (Iowa 2011) (holding a one-page resistance that stated there was no legal basis for the State’s actions did not properly preserve error with respect to the defendant’s constitutional claims). To preserve error on appeal, the party must first state the objection in a timely manner—that is, at a time when corrective action can be taken—in addition to the basis for the objection. *Id.* at 524. The court must then rule on the issue. *Lamasters v. State*, 821 N.W.2d 856, 864 (Iowa 2012). “If the court’s ruling indicates that the court *considered* the issue and necessarily ruled on it, even if the court’s reasoning is ‘incomplete or sparse,’ the issue has been preserved.” *Id.* (quoting *Meier v. Senecaut*, 641 N.W.2d 532, 540 (Iowa 2002)).

Here, appellate counsel concedes trial counsel did not object to jury instruction number thirty-four. Therefore, the district court did not consider the argument now presented on appeal, that is, whether Johnson’s accomplice status was a jury question such that a different instruction could have been given. Consequently, we decline to review the merits of this issue on appeal. See *State*

*v. Fountain*, 786 N.W.2d 260, 262 (Iowa 2010) (noting a party must object to a jury instruction to preserve error).

### **III. Whether Sufficient Evidence Exists to Sustain Moore's Convictions**

Moore next asserts the district court erred by denying his motion for judgment of acquittal and new trial because there is not sufficient corroborating evidence supporting his co-conspirators' testimony. Therefore, he argues, as a matter of law, sufficient evidence does not support the jury's guilty verdicts. The State responds Moore failed to preserve error on the grounds of corroborating accomplice testimony.

To preserve error on appeal, the defendant must make a motion for judgment of acquittal. *State v. Grosvenor*, 402 N.W.2d 402, 406 (Iowa 1987). Our review is then limited to the specific grounds and issues argued in this motion. See *State v. Chertz*, 328 N.W.2d 320, 321 (Iowa 1982); see also *State v. Dickerson*, 313 N.W.2d 526, 529 (Iowa 1981) (holding that, because the defendant did not argue the issue of whether sufficient evidence supported the accomplices' testimony in district court, he waived the argument on appeal).

Here, at the close of the State's case, Moore argued that "we don't believe the State has offered sufficient evidence that would rise to the level where the jury should even be able to consider whether the State has proved its case beyond a reasonable doubt. We therefore ask for judgment of acquittal." The district court then overruled the motion, stating the evidence produced by the State was sufficient for the court to submit to the jury each offense charged. The motion was renewed without elaboration at the close of the evidence, and the court denied it on the same grounds. Moore's motion for new trial stated: "The

Defendant believes the verdict was contrary to law and evidence, and believes he was prejudiced by the Court's earlier adverse rulings."

This record does not show Moore raised the issue before the district court of whether the evidence was sufficient to support the testimony of his accomplices. Therefore, he did not preserve error on appeal, and we decline to address the merits of this specific claim.

To the extent Moore is raising a sufficiency of the evidence argument in general, he preserved error by moving for judgment of acquittal. See *Grosvenor*, 402 N.W.2d at 406. We review challenges to the sufficiency of the evidence for correction of errors at law. *State v. Quinn*, 691 N.W.2d 403, 407 (Iowa 2005). We view the record in the light most favorable to the non-moving party, that is, the State, and make all legitimate inferences and presumptions that may be reasonably deduced from the evidence. *Id.* If substantial evidence supports the verdict, we will affirm. *Id.* Evidence is substantial if it would convince a reasonable trier of fact the defendant is guilty beyond a reasonable doubt. *Id.* Circumstantial evidence is just as probative as direct evidence. *State v. O'Connell*, 275 N.W.2d 197, 205 (Iowa 1979).

To establish the crime of robbery in the first degree, the State must prove that, while perpetrating a robbery, Moore purposefully inflicted or attempted to inflict serious injury,<sup>2</sup> or was armed with a dangerous weapon. See Iowa Code § 711.2. A robbery is committed when the defendant, with the intent to commit a theft, assaults another person. See *id.* § 711.1. Willful injury occurs when the defendant assaults the victim with the intent to cause serious injury, and the

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<sup>2</sup> Moore stipulated to the fact Henderson suffered a serious injury.



victim in fact suffers a serious injury. *Id.* § 708.4; see also *State v. Hickman*, 623 N.W.2d 847, 851–52 (Iowa 2001) (holding the crimes of robbery and willful injury merge).<sup>3</sup>

To prove possession with intent, the defendant must manufacture, deliver, or possess with the intent to manufacture or deliver a controlled substance, or conspire with another to manufacture, deliver, or possess with the intent to manufacture or deliver a controlled substance. See Iowa Code § 124.401. When the defendant possesses a firearm in connection with this offense, he shall be sentenced to two times the term otherwise imposed by law. *Id.*

Upon review of the record, sufficient evidence exists to support Moore's convictions. With regard to the willful injury and robbery counts, Stokes was present when Moore shot Henderson; Cooper testified Moore admitted to shooting Henderson in the leg and arm; Stokes testified "[Dukes] came out walkin' briskly, stood to the side and that's when [Moore] shot." Furthermore, Johnson testified Moore and his co-conspirators came to her apartment with a large quantity of marijuana. Sometime later she heard him admit to having robbed and shot someone. There were also cell phone records and video surveillance corroborating the testimony of Moore's co-conspirators. Additionally, a gun was found at the scene of the crime, which coincides with Cooper's testimony she heard Dukes say he dropped the gun during the commission of the offense after a struggle, and Henderson was hit in the head with what he

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<sup>3</sup> Although the convictions of robbery and assault in this case should likely merge, the issue was not raised on appeal, and therefore, we may not reach the merits of this potential claim.

believed was a gun. While not the gun used to fire on Henderson, it does provide proof a gun was used in connection with the robbery.

With respect to the possession with intent charge, the testimony of Johnson, Henderson, Robinson, Cooper, and Stokes that a large quantity of marijuana was stolen from Henderson, as well as the trail of marijuana and debris around Henderson's residence, provides additional support for the necessary elements. Therefore, sufficient evidence exists to support each count of conviction, and we affirm.

#### **IV. Whether Moore Received a Constitutionally Sufficient Jury Trial**

Moore next claims his constitutional right to a trial by jury and a unanimous verdict was denied because the district court refused to accept the fact that at one point the jury was hung. Moore asserts:

[T]he Court spoke sternly at the jury about making a decision and when a woman said she wanted to go home, told said woman that she would be held in contempt if she left and needed to get back in there and reach a verdict. The woman was seen to be crying in the hallway.

The State responds Moore has not preserved error because there is no record of what transpired, which waives this claim. Furthermore, there was no objection on the record as to any supplemental oral instruction the court may have given the jury.

We agree with the State there is an inadequate record. After approximately fourteen hours of deliberation, the jury foreperson sent a note to the court stating the jury was hung and they did not believe deliberating any longer would change the outcome. The court then engaged in an off-the-record discussion with the jury, and within another one to two hours, the jury reached its

verdicts. The only report we have to review is Moore's characterization of what he observed.<sup>4</sup> Given that "[i]t is a defendant's obligation to provide [the reviewing] court with a record affirmatively disclosing the error relied upon," *State v. Mudra*, 532 N.W.2d 765, 767 (Iowa 1995), we agree with the State there is an inadequate record for us to consider Moore's claim. Therefore, we decline to reach the merits of Moore's argument.

#### **V. Ineffective Assistance of Counsel**

Moore's final claim asserts he received ineffective assistance of counsel because trial counsel failed to object to both jury instruction number thirty-four naming the accomplices and the introduction of the gun at trial. With respect to his jury instruction claim, he asserts counsel breached an essential duty by not objecting, and Moore was prejudiced. In support of this argument, he asserts the entire case rested on Johnson's testimony, and if she were considered a co-conspirator, he would likely have been acquitted. Regarding the gun admitted at trial, Moore argues counsel failed in an essential duty by not objecting to an otherwise inadmissible piece of evidence and that Moore was prejudiced by this failure because the jury was allowed to consider plainly prejudicial evidence. The State responds counsel did not fail in an essential duty and Moore cannot establish prejudice on either claim.

A defendant may raise an ineffective-assistance claim on direct appeal if the record is adequate to address the claim. *State v. Straw*, 709 N.W.2d 128, 133 (Iowa 2006). We may either decide the record is adequate and issue a

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<sup>4</sup> Moreover, Moore failed to make a record of this verdict-urging instruction under either Iowa Rule of Criminal Procedure 2.25 or Iowa Rule of Appellate Procedure 6.806, and thus, we have no record upon which to review this claim.

ruling on the merits, or we may choose to preserve the claim for postconviction proceedings. *Id.* We review ineffective-assistance-of-counsel claims de novo. *Id.* To succeed on this claim, the defendant must show, first, that counsel breached an essential duty and, second, that he was prejudiced by counsel's failure. *Id.* It is the defendant's burden to prove both prongs by a preponderance of the evidence, and if the defendant fails to establish prejudice, his claim may be disposed of on that prong alone. *State v. Maxwell*, 743 N.W.2d 185, 195–96 (Iowa 2008).

With regard to Moore's claim counsel was ineffective for failing to object to the jury instruction stating Robinson, Cooper, and Stokes were accomplices—but not Johnson—he has failed to establish prejudice. Regardless of whether Johnson could be considered an accomplice, there was a great deal of corroborating evidence to support the testimony of Moore's co-conspirators. These include various cell phone records and video surveillance showing Robinson at Hy-Vee, which corroborates her testimony the group left a car in the Hy-Vee parking lot. There were also sales records from Wal-mart where a small digital scale was purchased, as well as the presence of a gun and marijuana residue in Henderson's residence. Furthermore, there was the testimony of the victim, Henderson, as to what occurred, including the gunshot wounds he suffered and the gash on his head from being struck with a gun, as well as the timing of the 911 call Henderson placed shortly before the group arrived at Johnson's residence with the marijuana. This is all sufficient evidence supporting the co-conspirators' testimony.

Moreover, this corroborating evidence does not need to be particularly strong or confirm every material fact to which the accomplice testified; rather, “[a]ny corroborative evidence tending to connect the defendant to the commission of the crime . . . is sufficient.” *State v. Doss*, 355 N.W.2d 874, 879–80 (Iowa 1984). Thus, there is enough evidence corroborating the testimony of Moore’s co-conspirators, and even if Johnson were to be considered a co-conspirator, Moore’s convictions could still be sustained. Therefore, Moore cannot establish prejudice, and his ineffective-assistance claim fails.

Moore also failed to show counsel breached an essential duty by not objecting to the admission of the gun, bullets, and magazine. The items were found at the scene of the crime in Henderson’s residence. Moreover, there was a great deal of testimony concerning the guns used during the commission of the robbery. Therefore, the gun, bullets, and magazine found at the scene were relevant, and their relevance was not outweighed by potential prejudice to Moore. See Iowa R. Evid. 5.402, 5.403; *Graber v. City of Ankeny*, 616 N.W.2d 633, 637–38 (Iowa 2000). Moore also appears to raise a foundation issue by stating “[n]o evidence was produced for who owned the weapon and it was made clear it was NOT the weapon used to shoot the victim,” but no authority is cited to support a foundation contention, so this issue is waived. See Iowa R. App. P. 6.903(2)(g)(3). Thus, trial counsel did not breach an essential duty by failing to raise a meritless objection, and we reject Moore’s ineffective-assistance claims.

Having considered all of Moore’s claims properly preserved for appeal, we affirm his convictions.

**AFFIRMED.**