

**IN THE COURT OF APPEALS OF IOWA**

No. 9-270 / 08-0800  
Filed June 17, 2009

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

**vs.**

**BENJAMIN RAYMOND CRABB,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Des Moines County, Cynthia Danielson, Judge.

A defendant appeals from the judgment and sentence imposed on a plea of guilty to first-degree robbery. **AFFIRMED.**

William Monroe, Burlington, for appellant.

Thomas J. Miller, Attorney General, Darrel Mullins, Assistant Attorney General, Patrick C. Jackson, County Attorney, and Ty Rogers, Assistant County Attorney, for appellee.

Heard by Mahan, P.J., and Eisenhauer and Mansfield, JJ.

**MANSFIELD, J.**

Benjamin Crabb appeals from the judgment and sentence imposed on a plea of guilty to first-degree robbery in violation of Iowa Code section 711.1 (2007). Crabb contends the district court erred in denying his motions to merge Counts I and II of the information and to suppress his confession. The State responds that Crabb's challenges are waived because Crabb pled guilty and then failed to file a motion of arrest in judgment. Crabb urges that if there has been a waiver, then his trial counsel was constitutionally ineffective.

We affirm the judgment below. With respect to Crabb's merger argument, we believe no further development of the record is needed. Therefore, we reach the merits of that argument and hold the district court did not err in denying Crabb's motion to merge. Concerning the motion to suppress, we affirm and preserve the issue for possible postconviction relief proceedings.

**I. FACTS.**

On the night of December 12, 2007, the Des Moines County Sheriff's office responded to a report of a shooting that occurred during a robbery. Arriving at a mobile home owned by Tim Weyls Sr., they found that Tim Weyls Jr. (TJ) was sitting on a bed in his bedroom and had been shot in the shoulder. TJ's girlfriend was with him. She reported that two males had come into the bedroom and brusquely awakened them. She remembered hearing one of them say, "I shot TJ. Let's get the guns and go."

Tim Weyls Sr. was subsequently interviewed. Weyls had various bruises. Weyls stated that he was in his own bedroom of the trailer when he heard several individuals come through the front door without knocking. He entered the

living room and was sprayed with pepper spray. He confronted two smaller males, struggled with them, and was eventually able to hold them down. However, according to his deposition, at that point, two other males came into the living room and began striking him from behind. Weyl heard one of them say, “grab the gun, I shot TJ.” He let go of the two smaller males, and the entire group of four intruders ran out of the mobile home.

As the sheriff’s office conducted further investigation, their suspicions focused on Crabb. Crabb was a twenty-year-old high school graduate who had been recently released from the Oakdale Correctional Facility. Crabb knew TJ, had been trying to determine TJ’s whereabouts, and had been making statements to others regarding robbing TJ.

The following evening, December 13, Crabb was arrested. When the sheriff’s deputies entered the house where Crabb was found, there was an overwhelming odor of burnt marijuana. According to a witness in the house, Crabb and others in the house had been smoking “blunts” (marijuana cigars) prior to Crabb’s arrest. The sheriff’s deputies brought Crabb to the sheriff’s office, where Crabb was read his *Miranda*<sup>1</sup> rights and then questioned. The DVD shows Crabb as being agitated and concerned about going back to prison. In the course of questioning, Crabb admitted he had gone to the Weyl residence with a friend and two younger high school males with the intent of robbing TJ of his “dope.” Crabb acknowledged he had a pistol with him, and that the gun had gone off while he was striking TJ with it. Crabb also admitted subsequently fighting with TJ’s dad and then running out of the house.

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<sup>1</sup> *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

Crabb was charged in a three-count information. The first count charged robbery in the first degree on Tim Weyls Jr. (TJ), the second count charged robbery in the first degree on Tim Weyls Sr., and the third count charged burglary in the first degree.

Crabb filed a motion to merge Counts I and II. The district court denied the motion to merge, reasoning that Iowa law permitted more than one robbery to be charged if more than one assault had occurred. Crabb also filed a motion to suppress his confession. Crabb argued that his statements on the evening of December 13 were involuntary because he was intoxicated due to marijuana consumption. The district court denied the motion to suppress, specifically finding that, according to the DVD, Crabb appeared to be “fully engaged in the interview process.”

Two days after the motion to suppress was denied, on April 3, 2008, Crabb accepted the State’s plea offer. Pursuant to that offer, Crabb pled guilty to Count I, with Counts II and III to be dismissed. The State also agreed to recommend the sentence on Count I run concurrently with any parole revocation. Both parties requested immediate sentencing. The district court scheduled sentencing for April 7. The court also advised Crabb of his right to file a motion in arrest of judgment and that he would be waiving that right by requesting immediate sentencing. On April 7, Crabb appeared for sentencing. He again expressly waived his right to file a motion in arrest of judgment. The district court then sentenced Crabb pursuant to Iowa’s forcible felony provisions to a term of no more than twenty-five years to run concurrently with any sentences previously imposed. This appeal followed.

## II. ANALYSIS.

Crabb's initial contention on appeal is that the district court erred in denying his motion to merge Counts I and II. Crabb faces two obstacles even in getting to the merits of this issue. First, Count II was dismissed as part of the plea agreement where Crabb pled guilty to Count I. Thus, even if denial of Crabb's motion were error, it appears to be a moot point now. Second, Crabb did not file a timely motion to arrest judgment. This would normally mean his guilty plea to Count I is insulated from subsequent legal challenge.

To try to surmount these difficulties, Crabb argues that an allegedly improper threat of conviction on Count II led him to plead guilty to Count I pursuant to a plea bargain, and that his trial counsel was constitutionally ineffective in not filing a motion to arrest judgment. See *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984) (stating that in order to prevail on an ineffective-assistance-of-counsel claim, a defendant is required to show by a preponderance of the evidence that (1) counsel failed to perform an essential duty and (2) prejudice resulted). While ordinarily we would preserve the ineffective assistance argument for subsequent postconviction relief proceedings, in this instance we believe we can resolve the claim based on the present record. See *State v. Leckington*, 713 N.W.2d 208, 217 (Iowa 2006) (discussing that ordinarily ineffective-assistance-of-counsel claims are preserved for postconviction relief proceedings, but we consider the claim on direct appeal if the record is adequate). Upon our de novo review, we hold Crabb's trial counsel was not ineffective in failing to file a motion to arrest judgment in order to seek appellate review of denial of the motion to merge,

because the district court's ruling on the motion to merge was clearly correct. *Collins v. State*, 588 N.W.2d 399, 402 (Iowa 1998) (stating that we review ineffective-assistance-of-counsel claims de novo).

Crabb portrays the situation as one where there was only one "robbery," even though two people—Weyls Jr. and Weyls Sr.—were assaulted. Thus, in Crabb's view, only one offense could be charged. However, although we commonly think of robbery as a property crime, the gravamen of robbery is "commit[ting] an assault upon another" with the intent to commit theft or in furtherance of a theft. See Iowa Code § 711.1(1). Thus, where two different individuals are assaulted at different times, albeit in close succession, we believe this can constitute two distinct robberies. See, e.g., *People v. Borghesi*, 66 P.3d 93, 100-03 (Colo. 2003) (holding that the defendant's threatening two clerks, who were counting their employer's money at the single cash register, constitutes two aggravated robberies under Colorado law).

Crabb argues it would be "unjust" to allow sixteen robberies to be charged if a criminal robbed a store and fifteen bystanders maintained they felt threatened. Whatever the appropriate outcome in that case, it is not the same as this case. There was substantial evidence that Crabb was involved in conduct that injured TJ, and separate conduct that injured Weyl Sr. Could Crabb have been charged with two assaults under chapter 708? We think so. The same logic applies to charges of robbery under chapter 711. The district court did not err in denying Crabb's motion to merge, so Crabb was not prejudiced by his trial counsel's failure to pursue the matter further.

Next, Crabb argues that his December 13, 2007 confession should have been suppressed as involuntary due to the effects of marijuana intoxication. This argument is foreclosed by Crabb's subsequent guilty plea. See *State v. Sharp*, 572 N.W.2d 917, 918-19 (Iowa 1997) (finding a claim arising from the denial of a motion to suppress does not survive the entry of a guilty plea), *superseded by statute on other grounds as stated in Wyciskalla v. Iowa Dist. Ct.*, 588 N.W.2d 403, 406-07 (Iowa 1998). We affirm and preserve for possible postconviction proceedings Crabb's claim of ineffective assistance of counsel relating to suppression issues.

Finally, Crabb makes certain arguments in his pro se brief to this court. Specifically, he contends his attorney should not have waived a presentence report in his case—a waiver Crabb joined in personally on the record. Crabb also contends his attorney should have investigated his bipolar disorder. We affirm Crabb's judgment and sentence and preserve these claims for possible postconviction proceedings.

**AFFIRMED.**