

**IN THE COURT OF APPEALS OF IOWA**

No. 9-521 / 08-0864  
Filed September 2, 2009

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

**vs.**

**RAMON MONTRESS SEALS,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Black Hawk County, Richard D. Stochl, Judge.

Defendant appeals his convictions for first-degree robbery and assault causing serious injury. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and E. Frank Rivera, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Joel Dalrymple, Assistant County Attorney, for appellee.

Considered by Vaitheswaran, P.J., Eisenhauer, J., and Zimmer, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

**ZIMMER, J.**

The defendant, Ramon Seals, appeals his convictions of first-degree robbery and assault causing serious injury. He contends the evidence was insufficient to support his convictions and argues he should have been granted a new trial because of jury misconduct. Because we find no merit in the issues raised by the defendant, we affirm his convictions.

**I. Background Facts and Proceedings**

Brandt Clark and Rondell Cropp became acquainted while they were both in the Black Hawk County Jail. They agreed Clark would sell Cropp marijuana. After their release, they made arrangements to exchange a quarter pound of marijuana for \$1200 at Clark's house in Waterloo on January 12, 2006.

On that day, Cropp had discussions with Ramon Seals, Rayshawn McClarity, Antonio Hardy, and Tyler Webber about stealing some marijuana. The men went to the home of Tyrone Thompson to pick up Cropp's sawed-off shotgun, and Cropp told Thompson he was going to go rob somebody. Hardy appeared as a witness for the State at trial and testified Seals went into Thompson's house with Cropp.

Seals and the others left Thompson's house and drove to the vicinity of Clark's house on Kingsley Street. McClarity also appeared as a witness for the State and testified he understood they were going to steal somebody's marijuana and they had a plan to rob somebody. Hardy testified Seals had a sawed-off shotgun on his lap in the car during the drive to Clark's residence.

The men parked near Clark's house. Webber remained in the car while Cropp went into Clark's home. Seals, McClarity, and Hardy left the car and went

into the backyard. They put bandanas over their faces and put the hoods of their jackets over their heads, tying them tightly, so that only their eyes were visible.<sup>1</sup>

While Seals, McClarity, and Hardy were waiting in Clark's backyard, James Shower and his fiancé, Joanie Highsmith, drove up. Shower was Clark's cousin, and they intended to pay Clark a visit. As Shower and Highsmith were walking up to the house, three men approached them. One of the men said "Give me your stuff." One of the men said, "Get his stuff," and two of the men approached Shower and reached into his pocket. Shower started tussling with the two men. One of the men then struck Shower in the face. Hardy ran away at that point.

The man who was doing the talking pulled out a gun, went over to Highsmith, pointed the gun at her, and threatened to kill her. Both Shower and Highsmith begged the man not to kill her because she was pregnant. The man then turned and shot Shower. The two men then ran away. As Highsmith helped Shower to Clark's house, Cropp came out and said, "Which way did they go?" He then ran away.

Shower's body was hit with 120-130 shotgun pellets. He was hospitalized for two weeks and endured several surgical operations. He experienced loss of strength and permanent numbness in one of his arms. The parties stipulated that Shower sustained a serious injury.

Seals, McClarity, and Hardy met up at the car, and Webber drove them away. While in the car, Seals warned McClarity and Hardy, "You better not say

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<sup>1</sup>Hardy testified he did not have a bandana and thus did not place one over the bottom of his face. James Showers and Joanie Highsmith testified, however, that all three men they encountered had bandanas on their faces.

nothing.” Webber then dropped off Seals. Cropp called Webber and the others from a convenience store, and they came to get him. Seals’s former girlfriend, Jaimy Hansel, testified she was at the home of Seals’s sister that evening when Seals arrived and said, “I just shot somebody.”

Seals was charged with robbery in the first degree, in violation of Iowa Code section 711.2 (2005), and willful injury, in violation of section 708.4. The State alleged Seals either directly committed the crimes, or knowingly aided and abetted other persons in the commission of the crimes. McClarity and Hardy testified for the State against Seals. Officer Rob Camarata of the Waterloo Police Department testified concerning his investigation of the case.

At a noon recess during the trial, one of the jurors (McGriff) attended a luncheon meeting of the Exchange Club. During the meeting, Officer Camarata was honored as the Waterloo Police Officer of the Year for 2007. McGriff told the court attendant this information when he returned to court. The trial judge questioned McGriff, and he stated he had not shared the information with the other jurors. The court overruled Seals’s motion for a mistrial but determined that McGriff should be removed as one of the jurors, and an alternate juror should be used.

The trial then resumed. At the close of the State’s evidence Seals made a general motion for acquittal based on the insufficiency of the evidence. The court denied that motion. Seals introduced evidence that his sister’s boyfriend, Johnny Caldwell, was a friend of Cropp. A day or two before the robbery Caldwell got into an argument with Seals or his brother. Caldwell testified Cropp had asked

him to take part in the robbery, but he could not go because he was waiting for his girlfriend to come home.

The jury returned a verdict finding Seals guilty of first-degree robbery and the lesser-included offense of assault causing serious injury. In response to special interrogatories, the jury found Seals was not armed with a dangerous weapon during the commission of either crime. Later, Seals acknowledged he was a habitual offender for purposes of sentencing.

Seals filed a motion for new trial, claiming several of the jurors were aware Officer Camarata had been named the Waterloo Police Officer of the Year. At a hearing on the motion, four jurors said they were aware of this fact. The jurors did not state they heard of the matter from McGriff. The district court denied the motion for new trial, finding, “[t]here is not a reasonable probability that discussion of the award influenced the verdict.”

Seals was sentenced to a term of imprisonment not to exceed twenty-five years on the first-degree robbery charge, and a term not to exceed fifteen years on the assault causing serious injury charge, to be served consecutively. Seals appeals his convictions.

## **II. Sufficiency of the Evidence**

Seals first contends there was insufficient evidence in the record to support his convictions. He asserts there is not sufficient evidence to show he knew the intentions of his codefendants, or that he knew a gun was going to be used. He points out that the jury specifically found he did not have possession or control of a dangerous weapon.

The State claims Seals failed to preserve error on this claim because he made only a general motion for judgment of acquittal. “To preserve error on a claim of insufficient evidence for appellate review in a criminal case, the defendant must make a motion for judgment of acquittal at trial that identifies the specific grounds raised on appeal.” *State v. Truesdell*, 679 N.W.2d 611, 615 (Iowa 2004). A defendant must identify in the district court the specific elements of the charge that were insufficiently supported by the evidence. *State v. Greene*, 592 N.W.2d 24, 29 (Iowa 1999). We conclude Seals has failed to preserve the specific claims he now raises on appeal concerning the sufficiency of the evidence.<sup>2</sup>

In the alternative, Seals asserts that if error was not preserved on his claims regarding the sufficiency of the evidence, then he received ineffective assistance of counsel. We review claims of ineffective assistance of counsel de novo. *State v. Bergmann*, 600 N.W.2d 311, 313 (Iowa 1999). To establish a claim of ineffective assistance of counsel, a defendant must show (1) the attorney failed to perform an essential duty and (2) prejudice resulted to the extent it denied defendant a fair trial. *State v. Shanahan*, 712 N.W.2d 121, 136 (Iowa 2006). Absent evidence to the contrary, we assume the attorney’s conduct falls within the wide range of reasonable professional assistance. *State v. Hepperle*, 530 N.W.2d 735, 739 (Iowa 1995).

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<sup>2</sup>We recognize there is an exception to the general rule of error preservation regarding the specificity of a motion for judgment of acquittal where the grounds for the motion were obvious and understood by the court and counsel. See *State v. Williams*, 695 N.W.2d 23, 27 (Iowa 2005). In this case, however, the grounds for the general motion for judgment of acquittal were not obvious. We conclude that in order to preserve the specific claims of insufficiency of the evidence Seals raises on appeal, he would have needed to file a more specific motion for judgment of acquittal.

We turn then to the question of whether Seals received ineffective assistance due to his trial counsel's failure to file a more specific motion for judgment of acquittal. We determine that even if such a motion had been filed, it would not have been successful. A motion for judgment of acquittal will be denied if there is substantial evidence in the record to support the conviction. *State v. Williams*, 695 N.W.2d 23, 27 (Iowa 2005).

In order to convict a defendant on the theory of aiding and abetting, the State must prove beyond a reasonable doubt the defendant assented to or approved of a criminal act either by active participation in it or by in some manner encouraging it prior to or at the time of its commission. *State v. Pearson*, 547 N.W.2d 236, 242 (Iowa Ct. App. 1996). A party's participation in a crime may be "inferred 'from circumstantial evidence including presence, companionship or conduct before and after the offense is committed.'" *State v. Brown*, 466 N.W.2d 701, 703 (Iowa Ct. App. 1990) (quoting *State v. Miles*, 346 N.W.2d 517, 520 (Iowa 1984)). For the reasons that follow, we conclude the evidence was sufficient to support the jury's verdicts.

During the afternoon of the day of the crime, there were two telephone contacts between Seals's phone and Rondell Cropp's phone. Several hours later, Seals was present at the residence of Danette Seals when Cropp and Crawford discussed doing a "lick," which is a theft of a large amount of money or drugs. Seals decided to participate after Crawford said he did not want to go. The jury also heard evidence that Seals was with Cropp when Cropp stopped at Bud Thompson's house to get a shotgun. Hardy testified that Seals went into Thompson's house with Cropp.

Seals was in the vehicle with Cropp, McClarity, Hardy, and Webber when there was a discussion that they were going to steal someone's marijuana. McClarity testified he understood they were going to take somebody's marijuana and not pay for it. McClarity also answered affirmatively to the question, "[Y]ou guys were sitting in the car, and you have this plan to rob somebody?" Hardy testified that Cropp told them they were "supposed to snatch a sack." Seals was in the vehicle with Cropp and the others when the group traveled to Clark's house. The jury heard testimony that Seals had a sawed-off shotgun on his lap in the car, and the weapon appeared to be Cropp's shotgun. Furthermore, Seals's own witness, Caldwell, testified he had been approached about participating in a robbery. A few hours after the shooting, and again the following morning, Seals made statements to Jaimey Hansel admitting his involvement in the planning of the robbery and describing the shooting of Shower. We conclude there was sufficient evidence in the record to permit the jury to conclude Seals was aware the men he was with intended to commit crimes.

Seals argues there was not sufficient evidence in the record to show he was aware of the presence of the gun, or that a gun was going to be used. It is clear this crime involved the use of a gun. Hardy testified Seals had the gun in the car before the crime and he held it on his lap. Hardy's testimony provides sufficient evidence to show Seals was aware there was a gun present and that the gun might be used in the commission of the crimes that were planned.

We conclude Seals has not shown he received ineffective assistance due to counsel's failure to file a more specific motion for judgment of acquittal. There was sufficient evidence in the record to support the jury's verdict finding Seals



aided and abetted in the crimes of first-degree robbery and assault causing serious injury. There was evidence Seals was aware of the plans to commit crimes, was aware a gun was involved, and actively participated in the crimes. Even if counsel had articulated different grounds for the motion for judgment of acquittal, the court would have denied the motion because there was sufficient evidence in the record to support the convictions. See *State v. Lane*, 743 N.W.2d 178, 183 (Iowa 2007).

### **III. Jury Misconduct**

Seals next contends the district court should have granted his motion for a new trial based on juror misconduct. Seals claims he was prejudiced because several jurors were aware Officer Camarata, who testified during the trial, had been named the Waterloo Police Officer of the Year. He asserts this information bolstered the credibility of Officer Camarata, and that of those witnesses whose statements he discussed as part of his testimony regarding his investigation.

A claim of jury misconduct is reviewed for an abuse of discretion. *State v. Wells*, 629 N.W.2d 346, 352 (Iowa 2001). In order to be granted a new trial based on jury misconduct, a party must show (1) the acts complained of exceed the tolerable bounds of jury deliberation and (2) the misconduct was calculated to, and with reasonable probability did, influence the verdict. *State v. Proctor*, 585 N.W.2d 841, 845 (Iowa 1998). A determination of juror misconduct must be based on objective facts, and not mere speculation. *State v. Piper*, 663 N.W.2d 894, 910 (Iowa 2003).

The district court determined that discussion among the jurors concerning the award to Officer Camarata did not exceed the tolerable bounds of

deliberation. The court found, “The jury discussed the award not on the basis of the credibility of Camarata but rather on the basis of why the previous juror was excused.” The court also determined that discussion of the award was not calculated to influence the verdict. The court concluded, “There is not a reasonable probability that discussion of the award influenced the verdict.” Upon careful review of the record, we find no reason to disagree with the trial court’s conclusions.

The district court did not abuse its discretion by denying Seals’s motion for a new trial based on jury misconduct. The discussion about the award was not calculated to influence the verdict, and there is no reasonable probability that it did influence the verdict.

We affirm Seals’s convictions for first-degree robbery and assault causing serious injury.

**AFFIRMED.**