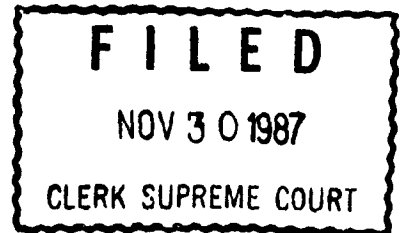


IN THE COURT OF APPEALS OF IOWA



STATE OF IOWA,

)

Plaintiff-Appellee,

)

Filed November 30, 1987

vs.

)

7-400
86-1577

391

BRADLEY J. POSPISAL,

)

Defendant-Appellant.

)

Appeal from the Iowa District Court for Pottawattamie County (No. 20150) - J. C. Irvin, Judge.

Defendant appeals from his conviction of first-degree robbery and second-degree theft. **AFFIRMED.**

Charles L. Harrington, Appellate Defender, and James R. Huff, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General; Ann E. Brenden, Assistant Attorney General; E. A. Westfall, County Attorney; and Richard J. Houser, Assistant County Attorney, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson, and Sackett, JJ.

SACKETT, J.

Defendant, Bradley J. Pospisal, appeals from his conviction of first-degree robbery and second-degree theft. See Iowa Code §§711.1, .2, 714.1(1), .2(1) (1985). Defendant argues the trial court abused its discretion in overruling his motion for new trial based upon alleged juror misconduct. See Iowa R. Crim. P. 23(2)(b)(2).

In order for juror misconduct to warrant a new trial, defendant must show (1) objective facts as to what actually occurred bearing on misconduct, (2) the acts complained of exceed the tolerable bounds of jury deliberation, and (3) the misconduct was calculated to, and with reasonable probability did, influence the verdict. See State v. Powell, 400 N.W.2d 562, 564 (Iowa 1987).

Defendant was charged with first-degree robbery for taking a man's wallet and car while threatening him with a knife. Robbery in the first degree occurs when the perpetrator of the robbery is armed with a dangerous weapon. See Iowa Code §711.2. Any knife is considered a dangerous weapon if the blade is three inches or longer in length. See Iowa Code §702.7. Additionally, a knife of any length that is actually used in such a manner as to indicate the defendant intends to inflict death or serious injury, and that, when so used, is capable of inflicting death, is a dangerous weapon. Id.

The victim testified he believed the knife used at the time of the robbery was at least three inches in length. A codefendant testified the knife he saw at the time of the robbery was a regular pocketknife.

Before the conclusion of the deliberations, Juror L. L. measured the length of her husband's pocketknife at home. She did not report the measuring on the results thereof to the other jurors.

Juror D.B. measured the blades of three pocketknives during an evening break at his home. He found that two had blades three inches or longer and

one had a blade shorter than three inches. Juror D.B. related this information to at least one other juror before the jury reached its verdict.

Defendant argues the misconduct of these two jurors so prejudiced his trial that the verdict must be set aside.

A trial court has broad discretion in matters involving alleged juror misconduct, and an abuse of that discretion will not be found unless the action of the trial court is clearly unreasonable under the circumstances. Powell, 400 N.W.2d at 565.

We conclude defendant has failed to show with reasonable probability the jurors' conduct influenced the verdict. L.L. did not report her findings; D.B.'s findings were inconclusive. The act of measuring their own pocketknives, which constitutes unauthorized juror experimentation, involves a matter within the realm of common knowledge. See, e.g., State v. Sauls, 391 N.W.2d 239, 242 (Iowa 1986) (configuration of bucket automobile seats and amount of space between them within realm of everyday experience and common knowledge; State v. Houston, 209 N.W.2d 42, 44 (Iowa 1973) (nighttime visibility); Long v. Gilchrist, 251 Iowa 1294, 1299, 105 N.W.2d 82, 85 (1960) (safety when driving at a speed of seventy-five miles an hour). Thus, there is no reasonable probability the extrinsic evidence regarding the blade-length of various pocketknives affected the jury's verdict defendant is guilty of robbery in the first-degree. See Sauls, 391 N.W.2d at 242-43.

The trial court did not abuse its discretion in overruling defendant's motion for new trial.

AFFIRMED.