FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

208

STATE OF IOWA,

Plaintiff-Appellee,

vs.

KEITH ORLAND LITTLE,

Defendant-Appellant.

8-341
87-776

Appeal from the Iowa District Court for Bremer County (No. CR 86217), J. W. Frye, Judge.

Defendant appeals his conviction of second-degree robbery. **AFFIRMED.**

Raymond Rogers, Acting Chief Appellate Defender, and James F. Whalen, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General; Mark J. Zbieroski, Assistant Attorney General; Lawrence A. Stumme, Bremer County Attorney; and Timothy M. Baldwin, Assistant Bremer County Attorney, for plaintiff-appellee.

Considered by Donielson, P.J., and Schlegel and Hayden, JJ.

DONIELSON, P.J.

Defendant appeals his jury conviction of second-degree robbery which resulted from a purse-snatching incident in a parking lot. He contends (1) the court erred in overruling his motion for a mistrial after four jurors made an unauthorized view of the scene and (2) the robbery charge was unsubstantiated because the victim was neither threatened nor assaulted.

On the evening of November 17, 1986, Ms. Viva Chestnut left the Pamida Store in Waverly and was getting into her car when a young man grabbed her purse and ran. She yelled for help and two women came to her aid. One woman pursued the purse-snatcher but could not catch him so another group of people were enlisted in the chase, and eventually they returned with the defendant. Ms. Chestnut, the victim, identified him as the man she had seen near the Pamida Store. The woman who helped chase the purse-snatcher also identified the defendant as the person she had followed. The State brought charges of second-degree robbery under Iowa Code sections 711.1(1) and 711.1(2). The defendant claimed mistaken identity, but a jury returned a verdict of guilty.

Our scope of review is for correction of errors at law. Iowa R. App. P. 4.

I. The defendant contends the trial court erred in overruling the defendant's motion for a new trial on the

ground of jury misconduct. The defendant alleged that certain jurors engaged in misconduct by conducting an unauthorized view of the scene and reporting their findings to the remaining jurors. The trial court found that the observations were unauthorized, but determined that no prejudice resulted and overruled defendant's motion.

The trial court has broad discretion in ruling on a motion for new trial based on jury misconduct. Moore v. Vanderloo, 386 N.W.2d 108, 118 (Iowa 1986). We will not find an abuse of discretion unless the trial court ruling was "clearly unreasonable under the attendant circumstances." State v. Sauls, 391 N.W.2d 239, 240 (Iowa 1986) (citing State v. Harrington, 349 N.W.2d 758, 761 (Iowa 1984)). There must be an affirmative showing of abuse, and this heavy burden rests upon the party complaining. State v. Gartin, 271 N.W.2d 901, 940 (Iowa 1978).

To determine whether a verdict can be impeached on the basis of jury misconduct, we apply the three-part test formulated in State v. Cullen, 357 N.W.2d 24, 27 (Iowa 1984).

> First, the evidence from the jurors must consist only of objective facts as to what actually occurred in or out of the jury room bearing on misconduct. Second, the acts or statements complained of must exceed tolerable bounds of jury deliberation by constituting jury misconduct. Third, and finally, it must appear the misconduct was calculated to, and it is reasonably probable it did, influence the verdict.

Sauls, 391 N.W.2d at 241 (citing Cullen, 357 N.W.2d at 27). This test can be applied regardless of the nature of the alleged jury misconduct. Sauls, 391 N.W.2d at 241.

The trial court correctly applied the Cullen three-part test as outlined in Sauls to the facts of this case. The affidavit of the juror satisfied the first element by establishing objective facts as to what occurred in and out of the jury room bearing on misconduct. Sauls, 391 N.W.2d at 242. The view of the scene was deemed improper, which satisfies the second element. Id. However, to be entitled to a new trial, defendant must also show he was prejudiced, that the misconduct was "calculated to, and with reasonable probability did, influence the verdict." Id. This is a difficult element to satisfy. Id.

The trial court compared the facts of this case to those in Sauls and found the knowledge acquired by the jurors by virtue of their unauthorized visit to the scene was within the realm of everyday experience and common knowledge. Therefore, there is no reasonable probability that such information affected the jury verdict. Id. We agree.

The objective facts show that some of the jurors had their driver go to the Pamida Store, drive the course the witness took, and stop in front so they could look through the window. This conduct was not a technical scientific experiment nor a situation where actual distances were measured.

Applying the appropriate legal standards to the facts of this case, we conclude there is no reasonable probability that the information gained through the juror misconduct affected the jury verdict. The trial court correctly applied the law to the facts of this case. Therefore, we conclude there was no abuse of discretion in denying defendant's motion for new trial.

II. Defendant also asserts that there was insufficient evidence to sustain a robbery conviction due to the State's failure to prove either that the defendant assaulted the victim or put her in fear of immediate serious injury. We disagree.

When reviewing the sufficiency of the evidence, we view the evidence in the light most favorable to the State. State v. Bass, 349 N.W.2d 498, 500 (Iowa 1984). The jury verdict is binding if supported by substantial evidence, together with all legitimate inferences arising reasonably and fairly from the evidence. State v. Jordan, 409 N.W.2d 184, 184-85 (Iowa 1987).

The record shows that the victim felt the purse-snatcher "grab" the purse when he "jerked" it from her possession. The victim testified that this touching and taking was not desired and was offensive and insulting to her. This evidence was sufficient to convince the jury that an assault had occurred when the purse was snatched.

Robbery is defined in Iowa Code section 711.1 (1987) as:

> A person commits a robbery when, having the intent to commit a theft, the person does any of the following acts to assist or further the commission of the intended theft or the person's escape from the scene thereof with or without the stolen property:
>
> 1. Commits an assault upon another.

An assault occurs when, without justification, a person does "any act . . . which is intended to result in physical contact which will be insulting or offensive to another, coupled with the apparent ability to execute the act." Iowa Code § 708.1(1).

The defendant intended to take the victim's purse away from her possession. She felt the "jerking, the grabbing." The assault statute does not require that the defendant actually touch the victim. The definition of assault may be satisfied by acts which "would indirectly cause the described pain, injury or physical contact, if that were the intended consequence." See State v. Spears, 312 N.W.2d 79, 81 (Iowa App. 1981) (quoting from J. Yeager & R. Carlson, 4 Iowa Practice, Criminal Law and Procedure, § 173 (West 1979)). It is apparent from the evidence that there was sufficient evidence for the jury to have found beyond a reasonable doubt that the defendant intended a theft and that he carried out his intent by taking the purse from the person of Viva Chestnut as well as assaulting her during the commission. Therefore, we find there was sufficient evidence in the record, and the trial

court was correct in overruling defendant's motion for judgment of acquittal.

AFFIRMED.