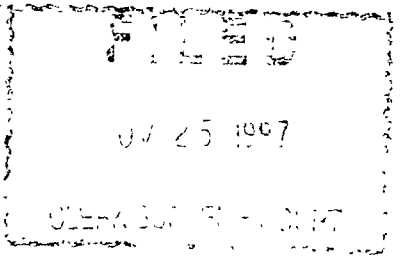
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IN THE COURT OF APPEALS OF IOWA



No. 7-505 / 96-1378

STATE OF IOWA,
Appellee,

vs.

ERNEST JUNIOR McNEAL,
Appellant.

Appeal from the Iowa District Court for Scott County, Max R. Werling, Senior Judge.

Defendant appeals from judgment and sentence entered for second-degree robbery. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Patricia Reynolds, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Robert P. Ewald, Assistant Attorney General, William E. Davis, County Attorney, and Donald E. Frank, Assistant County Attorney, for appellee.

Considered by Cady, C.J., and Huitink and Streit, JJ.

HUITINK, J.

Defendant Ernest Junior McNeal (McNeal) appeals his conviction for robbery in the second degree in violation of Iowa Code section 711.3 (1995). We affirm.

I. Background Facts and Proceedings.

The record contains evidence of the following: on December 6, 1995, at 8:30 a.m., three young males entered Barbara and Roosevelt Evans' bedroom of their home. A fourth man entered the room holding the Evans' twelve-year-old daughter. The men were all wearing dark clothes and had nylon stockings pulled over their heads. They each carried a handgun. One gun emitted a red laser beam; another gun appeared to be a .357 Magnum. The men demanded money and ransacked the home. They took two handguns from a closet and left. Barbara Evans then called the police.

Based on the license plate number of the getaway vehicle given to the police by Chris Mai, a garbage collector in the area at the time of the robbery, the police soon located the vehicle parked behind an apartment building. The police watched as McNeal left the building and drove away in the vehicle. The police stopped the vehicle and found a black Green Bay Packers stocking cap and a black nylon stocking. McNeal denied involvement in any robbery, stating he had spent the night at an apartment in the building. The police released McNeal after further questioning.

Further investigation revealed circumstantial evidence linking McNeal and his cousin, James McNeal (James), to the robbery. Three loaded nine millimeter handguns were found in an orange plastic bag at the house of Tasha Kerr, James'

girlfriend. Tasha's parents had seen James carry the bag into the house. One of the guns had the red laser feature and was later identified by Barbara Evans as matching a gun used in the robbery. Pursuant to a warrant, the police searched another apartment to which McNeal was connected. This search produced evidence including ammunition of the same type and brands used in the nine millimeter handguns, a number of .357 magnum rounds, a dark-colored Green Bay Packers sweatshirt matching McNeal's cap, a traffic citation issued to McNeal for a seatbelt violation, and a letter addressed to McNeal stating a warrant for his arrest had been issued for "number of lamps permitted/reckless driving/failure to have driver's license."

The jury convicted McNeal of second-degree robbery. McNeal was sentenced to a term of not more than ten years. On appeal, McNeal seeks a new trial citing error and the admission of prior crimes evidence and jury misconduct.

II. Scope of Review.

We review evidentiary issues for an abuse of discretion. *State v. Archivia*, 495 N.W.2d 364, 367 (Iowa App. 1992). In order to show abuse of discretion, one generally must show the court exercised its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *Id.*

We also review the district court's disposition of McNeal's motion for a new trial for an abuse of discretion. *State v. Weaver,* 554 N.W.2d 240, 244 (Iowa 1996).

III. Prior Crimes Evidence.

McNeal's traffic citation and the letter regarding the arrest warrant were admitted over McNeal's objection. McNeal argues the court erred in admitting evidence of his prior crimes. *See* Iowa R. Evid. 404(b).[1] We disagree.

The admissibility of evidence under rule 404(b) is determined by whether: (1) the evidence is relevant to establish a legitimate issue in the case (other than a general propensity to commit wrongful acts); and (2) there is clear proof the individual against whom the evidence is offered committed the prior crime. *State v. Schaffer*, 524 N.W.2d 453, 455 (Iowa App. 1994). Relevance is the tendency to make a consequential fact more or less probable. *State v. Plaster*, 424 N.W.2d 226, 231 (Iowa 1988). If the evidence is relevant, the court must then determine whether the danger of unfair prejudice substantially outweighs the probative value of the evidence. *State v. Casady*, 491 N.W.2d 782, 785 (Iowa 1992). *See* Iowa R. Evid. 403.[2]

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[1] Iowa R. Evid. 404(b):

> **Other Crimes, Wrongs, or Acts.** Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

[2] Iowa R. Evid. 403:

> **Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time.** Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

We find no abuse of discretion. This evidence was offered to connect McNeal to the apartment where evidence was found linking him to the December 6, 1995, robbery. Moreover, we do not believe any prejudice resulting from reference to McNeal's prior record of traffic offenses outweighs the probative value of this evidence.

IV. Motion for New Trial.

In McNeal's motion for a new trial, he alleged a co-worker of a juror informed his attorney that during deliberations another juror said "well, they're black, they're guilty," and the jury's discussions included the defendant's race. McNeal's request to subpoena jurors to verify these allegations was denied. The district court also determined that, even if true, the jury's conduct was insufficient to justify a rule 606(b)[3] inquiry into the validity of the verdict.

Generally, jurors are not competent to testify to any "matter or statements occurring in the course of [jury] deliberations." *Ryan v. Arneson*, 422 N.W.2d 491,

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[3] Iowa R. Evid. 606(b):

> **Inquiry Into Validity of Verdict or Indictment**. Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon his or any other juror's mind or emotions as influencing him to assent to or dissent from the verdict or indictment or concerning his mental processes in connection therewith, except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to bear upon any juror. Nor may his affidavit or evidence of any statement by him concerning a matter about which he would be precluded from testifying be received for these purposes.

495 (Iowa 1988)(citation omitted). A jury's verdict is protected from impeachment based on the internal workings of the jury, including "what parts of the record were or were not considered, the jurors' discussions, their motivation, mental or emotional reactions, their votes, or other evidence which seeks to show the decision was, or should have been, something other than what the verdict indicates." *State v. Rouse*, 290 N.W.2d 911, 916 (Iowa 1980)(citation omitted).

The district court has broad discretion in deciding whether claimed juror misconduct justifies a new trial. *State v. Jones*, 511 N.W.2d 400, 409 (Iowa App. 1993). To impeach a jury verdict the complaining party must establish all of the following:

> (1) [E]vidence from the jurors must consist only of objective facts as to what actually occurred in or out of the jury room bearing on misconduct; (2) the acts or statements complained of must exceed tolerable bounds of jury deliberation; and (3) it must appear the misconduct was calculated to, and with reasonable probability did, influence the verdict.

State v. Cullen, 357 N.W.2d 24, 27 (Iowa 1984). The *Cullen* court also stated post-deliberation statements by jurors "as to whether they were influenced by certain matters or to what degree they were influenced, are incompetent for the purpose of impeaching a verdict and must be ignored." *Id.* at 29.

We find the district court did not abuse its discretion in denying McNeal's request to subpoena the jurors for questioning or finding McNeal's allegations of racial bias did not justify relief under rule 606(b). McNeal's allegations of

misconduct implicate the internal workings of the jury. Rule 606(b) clearly proscribes impeachment of a verdict on the basis of such allegations. *See Jones,* 511 N.W.2d at 409 (citations omitted)(stating unlike external pressures on the decision-making process, the jury's internal workings inhere in the verdict and cannot be the basis of impeaching it).

We affirm the judgment of the district court.

AFFIRMED.