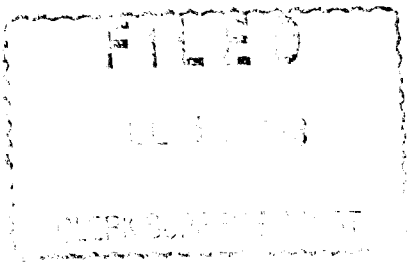
IN THE COURT OF APPEALS OF IOWA

No. 8-269 / 97-0481
Filed July 31, 1998

STATE OF IOWA,
Appellee,

vs.

BRYAN EDWARD JASA,
Appellant.



Appeal from the Iowa District Court for Woodbury County, Dewie J. Gaul, Judge.

On appeal from his conviction for first-degree robbery, defendant claims the district court erred in overruling his motion for a new trial based upon jury misconduct. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and John P. Messina, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Karen Doland, Assistant Attorney General, Thomas S. Mullin, County Attorney, and Lisa Krigsten, Assistant County Attorney, for appellee.

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

PER CURIAM

On appeal from his conviction for first-degree robbery, defendant, Bryan Jasa, claims the district court erred in overruling his motion for a new trial based upon jury misconduct. We affirm by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

Jasa entered a convenience store and attacked the store clerk with a large butcher knife, inflicting numerous stab wounds. Jasa later confessed the planning, preparation, and actual stabbing were part of a "murder fantasy" he had. He also admitted his intent to take money from the store safe.

Jasa was charged with attempted murder, first-degree robbery, assault while participating in a felony causing serious injury, willful injury, and going armed with intent. He conceded he had committed all of the offenses except robbery. His theory of defense was that he had been acting out a murder fantasy or obsession and had acted solely with the intent to commit murder and did not have any intent to commit a theft.

A jury found Jasa guilty on all counts. Jasa filed a motion for a new trial alleging jury misconduct. He claimed the jury became aware of extraneous information about the punishment for first-degree robbery and the effect a conviction on that count would have on the total amount of time he would serve. The district court heard evidence on the defendant's motion for new trial, found no misconduct, and denied the motion.

Jasa appeals from his robbery conviction, claiming he was prejudiced by jury misconduct because the horrifying circumstances of the case made the jury inclined to do whatever it could to insure he was locked up for the longest time possible.

We review denial of motions for a new trial for an abuse of discretion. *Doe v. Johnston*, 476 N.W.2d 28, 35 (Iowa 1991). The district court has considerable discretion in determining whether to grant or refuse a new trial based on jury misconduct. *Moore v. Vanderloo*, 386 N.W.2d 108, 118 (Iowa 1986) (citing *Pease v. Zazza*, 295 N.W.2d 43, 49 (Iowa 1980)). "'In order to justify a new trial on the basis of misconduct of jurors it must appear the misconduct was calculated to, and it is reasonable probable it did, influence the verdict.'" *Id.* (quoting *In re Estate of Cory*, 169 N.W.2d 837, 845 (Iowa 1969)). In other words, it must appear there is a reasonable probability the misconduct influenced the verdict. *3 S Inc., Co. v. Zarek*, 504 N.W.2d 153, 155 (Iowa App. 1993).

In reviewing the exercise of discretion, we will not interfere unless it is abused. In order to constitute abuse, "it must appear that it was exercised on grounds or for reasons, clearly untenable, or to an extent clearly unreasonable." *Gunson v. Williams*, 242 Iowa 916, 919, 48 N.W.2d 809, 810 (Iowa 1951). The defendant first must prove extraneous information came into the jury room:

> When there is proof that extraneous material has reached the jury room, the party seeking reversal on a misconduct claim must prove "that the misconduct was calculated to, and with reasonable probability did, influence the verdict." *State v. Johnson*, 445 N.W.2d 337, 342 (Iowa 1989). The impact of the misconduct is to be judged objectively by the

> trial court in light of all the allowable inferences brought to bear on the trial as a whole. *Id* at 341. (urging "common sense" evaluation in light of issues, evidence, and witness demeanor); *Urseth v. City of Dayton*, 680 F. Supp. 1084, 1089 (S.D. Ohio 1987) (court's task is to determine whether extraneous information would prejudice an "objective, 'typical juror'").

Doe v. Johnston, 476 N.W.2d 28, 35 (Iowa 1991). The district court does not consider any juror's statement:

> 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 the jury's attention or whether any outside influence was improperly brought to bear upon any juror.

Iowa R. Evid. 606(b).

Jasa did not demonstrate extraneous information about punishment reached more than one juror, who testified she did not mention it. Jasa did not carry his burden to demonstrate any extraneous information was even considered by the jury or that it affected the verdict. Because the district court properly did not consider what the jurors said during deliberations unless it concerned extraneous information brought into the jury deliberations, we conclude the court did not abuse its discretion in denying Jasa's motion for a new trial.

AFFIRMED.