IN THE COURT OF APPEALS OF IOWA

No. 1-522 / 10-1196
Filed October 5, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

RAMONE DONTE MOON,
Defendant-Appellant.

Appeal from the Iowa District Court for Linn County, Marsha M. Beckelman, Judge.

Ramone Moon appeals his judgment and sentence for four counts of first-degree robbery. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Patricia Reynolds, Assistant Appellate Defender, for appellant.

Ramone Donte Moon, Anamosa, appellant pro se.

Thomas J. Miller, Attorney General, Kyle P. Hanson, Assistant Attorney General, Jerry Vander Sanden, County Attorney, and Nicholas Maybanks, Assistant County Attorney, for appellee.

Heard by Sackett, C.J., and Vaitheswaran and Tabor, JJ.

VAITHESWARAN, J.

A jury found Ramone Moon guilty of four counts of first-degree robbery in connection with the theft of money from several individuals at a Cedar Rapids motel. On appeal, Moon asserts (1) the jury's findings of guilt were not supported by sufficient evidence, (2) the district court abused its discretion in denying his motion for a mistrial after a State witness testified to a matter outside the minutes of testimony, and (3) his trial attorney was ineffective in failing to object to some of the prosecutor's statements during closing arguments.

I. Sufficiency of the Evidence

In a pro se filing, Moon contends the evidence was insufficient to support the jury's findings of guilt. The State responds that Moon's motion for judgment of acquittal was too general to preserve error. We agree with the State.

A motion for judgment of acquittal does not preserve error where the specific elements that are challenged on appeal are not raised in the motion. *See State v. Crone*, 545 N.W.2d 267, 270 (Iowa 1996). At the close of the State's evidence, Moon's attorney moved for a "directed verdict of acquittal," on the ground "there is not adequate evidence of robbery . . . for these matters to go to the jury." At the close of all the evidence, he renewed the motion but simply asserted, "The State has failed to prove each and every necessary element of Robbery in the First Degree as to each of the four counts." Because Moon's attorney failed to identify the specific elements of the charges that he wished to contest, error was not preserved.[1]

[1] Moon does not raise any exception to this general error-preservation rule. *See State v. Truesdell*, 679 N.W.2d 611, 615–16 (Iowa 2004) (stating the failure of trial counsel to

II. Mistrial Motion

Moon moved for a mistrial after one of the women whose money was taken testified to events that were not included in the minutes of testimony. Specifically, the woman made oblique reference to a vehicle that picked Moon up from the parking lot of the motel following the robbery. The woman then stated the same vehicle picked Moon up from the courthouse following a deposition. Moon's attorney asserted that this testimony "makes it sound like an accomplice that was with him that night was picking him up from court, which we believe is not the case, and disproving it will be a trial of a whole bunch of other issues." The State responded, as it does on appeal, that "its obligation to provide Moon with a full and fair statement of anticipated testimony of each of its witnesses does not require . . . precision in composing expected testimony of each witness." The district court denied the mistrial motion but admonished the jury to disregard the statements.

Moon contends the motion should have been granted. We disagree. As the State correctly points out, the "minutes need not list each detail to which a witness will testify" as long as they provide a "defendant with a full and fair statement sufficient to alert him to the source and nature of the information against him." *State v. Ellis*, 350 N.W.2d 178, 181 (Iowa 1984); *see also* Iowa R. Crim. P. 2.5(3) (requiring that the minutes of testimony include a full and fair statement of witnesses' expected testimony). When the challenged minutes,

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preserve error at trial on the sufficiency of the evidence can support an ineffective-assistance-of-counsel claim); *see also State v. Williams*, 695 N.W.2d 23, 27 (Iowa 2005) (recognizing "an exception to the general error-preservation rule when the record indicates that the grounds for a motion were obvious and understood by the trial court and counsel").

though incomplete, put the defendant on notice of the necessity of further investigation of a witness's probable testimony, "reversal need not follow admission of matters they do not disclose." *State v. Musso*, 398 N.W.2d 866, 868 (Iowa 1987).

While the minutes of testimony in Moon's case did not disclose the challenged statements, those statements were fairly insignificant; a juror would have had to connect several dots to surmise from those statements that Moon had an accomplice. Additionally, the evidence was cumulative of testimony from Moon that he was brought to the motel by a friend. For these reasons, we are not convinced the testimony was prejudicial to Moon. *See State v. Braun*, 495 N.W.2d 735, 741 (Iowa 1993) ("We generally will not reverse on the ground of technical defects in procedure unless it appears in some way to have prejudiced the complaining party or deprived him or her of full opportunity to make defense to the charge presented in the indictment or information."). But, even assuming the testimony was prejudicial, the district court's admonishment to disregard it purged the trial of any taint. *See State v. Williamson*, 570 N.W.2d 770, 771 (Iowa 1997).

We conclude the district court committed no error in denying the mistrial motion.

III. Ineffective Assistance of Counsel

Moon contends his trial attorney was ineffective in failing to object to certain statements made by the prosecutor during his closing argument. His argument is based on case law that precludes a prosecutor from making remarks that "do not appear to be based on the evidence." *See State v. Williams*, 334

N.W.2d 742, 745 (Iowa 1983). While "[a] prosecutor 'is entitled to some latitude during closing argument in analyzing the evidence admitted in the trial,'" the prosecutor cannot express a personal opinion that is not based on a reasonable inference from the record. *State v. Graves*, 668 N.W.2d 860, 874 (Iowa 2003) (citation omitted).

The first challenged statement related to the testimony of one of the women who was robbed. After discussing that testimony, the prosecutor stated, "She testified herself, her demeanor on the stand was straightforward and honest to all the questions." Moon's attorney immediately objected arguing, "That's getting real close to vouching for a witness." The court overruled the objection, stating, "I don't think it stepped over the line."

We need not review this first statement under an ineffective-assistance-of counsel rubric, as Moon's attorney objected to the statement and obtained a ruling. Accordingly, we will review that ruling for an abuse of discretion. *See State v. Melk*, 543 N.W.2d 297, 301 (Iowa Ct. App. 1995).

A review of the transcript reveals the prosecutor based the statement "solely on the evidence." *Williams*, 334 N.W.2d at 744. Without belaboring the point, it is clear he did not base his statement on "knowledge of facts not possessed by the jury, counsel's experience in similar cases, or any ground other than the weight of the evidence at trial." *Id.* Accordingly, we conclude the district court did not abuse its discretion in overruling the objection.[2]

[2] Even if the prosecutor's isolated statement could be construed as expressing his own opinion on the witness's demeanor, immediately after the objection he told the jury "recall for yourself, talk about it amongst yourselves how these witnesses appeared."

We turn to the second challenged statement. Later in his closing argument, the prosecutor noted that a State witness honestly answered the defense attorney's questions about his criminal history. The prosecutor then opined, "[H]e was honest about it just like he was about all the questions that [defense counsel] asked him." Moon's defense attorney did not object to this statement. For that reason, we agree with Moon that it must be examined under an ineffective-assistance-of-counsel rubric, which requires a showing that counsel (1) breached an essential duty and (2) prejudice resulted. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984); *see also Graves*, 668 N.W.2d at 869 (setting forth analysis for ineffective assistance claim based on prosecutorial misconduct). While we normally preserve such claims for postconviction relief, we find the record adequate to decide the issue. *State v. Maxwell*, 743 N.W.2d 185, 195 (Iowa 2008).

On our de novo review, we are convinced Moon cannot establish a breach of an essential duty. *See Strickland*, 466 U.S. at 697, 104 S. Ct. at 2069, 80 L. Ed. 2d at 699 (stating a claim of ineffective assistance of counsel may be resolved on either ground). The prosecutor's statement made specific reference to the defense attorney's cross-examination of the State witness and the witness's forthright responses to questions about his criminal history. It is clear, therefore, that the prosecutor's statement was based on the evidence. *State v. Carey*, 709 N.W.2d 547, 556 (Iowa 2006) ("[M]isconduct does not reside in the fact that the prosecution attempts to . . . boost [the credibility] of the State's

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Placed in context, the disputed statement was not prejudicial. *See Williams*, 334 N.W.2d at 745.

witnesses; such tactics are not only proper, but part of the prosecutor's duty."). For that reason, we conclude Moon's attorney did not breach an essential duty in failing to object to the second statement, and his ineffective-assistance-of-counsel claim must fail.

We affirm Moon's judgment and sentence for four counts of first-degree robbery.

AFFIRMED.