

**IN THE COURT OF APPEALS OF IOWA**

No. 2-1120 / 12-0477  
Filed January 9, 2013

**HEADLEY DIGSBY,**  
Applicant-Appellant,

**vs.**

**STATE OF IOWA,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Johnson County, Nancy A. Baumgartner, Judge.

Headley Digsby appeals the district court's denial of his application for postconviction relief. **AFFIRMED.**

John Bishop, Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General, Martha Trout, Assistant Attorney General, and Janet M. Lyness, County Attorney, for appellee.

Considered by Doyle, P.J., and Mullins and Bower, JJ.

**MULLINS, J.**

Headley Digsby was found guilty of robbery in the second degree. The fighting issue at trial was whether he assaulted the loss prevention officer after leaving the department store with jewelry he stole. He filed a postconviction relief (PCR) application alleging trial counsel as ineffective by failing to conduct an adequate investigation or call a witness for trial. On appeal Digsby asserts the witness could have testified he did not assault the loss prevention officer. He also claims he received ineffective assistance when counsel failed to object to the general intent jury instruction, as the crime of assault, underlying the robbery conviction, required a finding of specific intent. Digsby asserts this was confusing for the jury and counsel should have objected.

The State contends counsel's decision not to call the witness was trial strategy, and Digsby cannot prove the outcome would have been different had the witness been called. It also claims that while counsel could have objected to the jury instruction on general intent, his failure to object did not amount to ineffective representation as the jury was clearly instructed in the marshaling instruction that they needed to find specific intent. The State claims Digsby cannot establish prejudice on this claim.

The district court's opinion denying Digsby's PCR application addressed both of these issues thoroughly and correctly, finding even if Digsby could prove counsel was ineffective, he cannot prove he was prejudiced. We therefore affirm the district court's decision pursuant to Iowa Court Rule 21.29(1)(d) and (e).

**AFFIRMED.**