IN THE COURT OF APPEALS OF IOWA

No. 2-421 / 11-0301
Filed July 25, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

RICHARD ROBERT MUTCHLER,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, David L. Christensen, Judge.

Defendant appeals from his conviction for first-degree robbery challenging the sufficiency of the evidence, the denial of his motion for a mistrial based upon prosecutorial misconduct, the denial of his challenge for cause of a juror, and the effectiveness of his trial counsel. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Stephan J. Japuntich, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney General, John P. Sarcone, County Attorney, and Jeffrey K. Noble and Michael T. Hunter, Assistant County Attorneys, for appellee.

Considered by Vaitheswaran, P.J., and Doyle and Danilson, JJ.

DOYLE, J.

Richard Mutchler appeals from his conviction for robbery in the first degree, in violation of Iowa Code sections 711.1 and 711.2 (2007). He contends the evidence was insufficient to support the first-degree robbery conviction; the district court erred in denying his motion for a mistrial based upon prosecutorial misconduct; the district court erred in denying his challenge for cause of a juror; and his trial counsel were ineffective. We affirm his conviction and preserve his pro se claims of ineffective assistance of counsel for possible postconviction relief proceedings.

***I. Background Facts and Proceedings*.**

From the evidence produced at trial, the jury could have found the following facts. Sam Heard owns a thrift shop in Des Moines. Dave Neal was a known drug dealer and occasionally worked for Heard at his shop.

On July 9, 2008, Mutchler, a crack-cocaine user, drove to Heard's shop and stopped in the driveway. Mutchler asked Heard where Neal was. Heard told Mutchler he had not seen Neal. Mutchler said he would wait for Neal. Heard told Mutchler that loitering on his property was not allowed. In response, Mutchler took off his shirt, flexed his muscles, and replied that he was "an awfully big fellow for [Heard] to be ordering around." Mutchler also told Heard he would "whoop [Heard's] ass for [him]" if Heard kept "talking to [him] like that." Mutchler then went next door and sat on the front steps. He left after Heard called 911.

Mutchler eventually found Neal. Mutchler obtained and smoked some crack, and he also drank a few beers. Later that day, Mutchler, then a passenger

in Charlene Ann Gordon's car, returned to Heard's shop looking for Neal. Heard and a friend were sitting on the shop's front steps. Heard told Mutchler that Neal was not there and that Mutchler should not come around anymore. Mutchler got out of the car, headed toward Heard, and stated he was "going to kick [Heard's] ass." In answer, Heard lifted his shirt, revealing a pistol in his waistband. Heard pulled out the gun and pointed it at Gordon's side of the car. Gordon became frightened, and she and Mutchler drove off.

The next day, Mutchler smoked more crack and drank more alcohol. He also made several visits to Heard's shop, again looking for Neal. Heard continued to usher Mutchler away from his shop, and at times, the two became confrontational. One time, Mutchler got down on his knees and asked Heard to forgive his behavior, to which Heard replied, "I forgive you, but you still can't loiter here." Mutchler then left.

Thereafter, Heard left his shop to run errands. When he returned, Mutchler was there looking for Neal. After parking his truck, Heard again told Mutchler that he could not loiter at his shop. Mutchler stated that Neal had sold him a bicycle from the shop and implied Neal was around the area. Heard was unclear as to what had transpired between Neal and Mutchler regarding the bicycle, so he allowed Mutchler to hang around to wait for Neal.

Heard continued about his business while Mutchler waited. Heard went to his three-stall garage on the property and opened two of its garage doors without problem; the third door came off of its track. Heard went and got a tire iron. While holding the door up, Heard tried to knock the roller back into the track with

the tire iron. Mutchler then came over to him and offered to help. Mutchler told Heard to hold the door, and Heard gave him the tire iron to hit the door. They were unsuccessful in getting it back into the track, and Heard stated he would get a heavier hammer out of his truck.

While Heard was bent over retrieving the hammer from inside his truck, Mutchler struck Heard in the head with the tire iron. Mutchler continued to strike Heard with the tire iron, and he tried to stab Heard in the head with its beveled end. The two struggled. Mutchler told Heard that he wanted to kill him. Mutchler asked Heard if he had any money. Heard said he had about thirty dollars and threw his wallet on the ground. Mutchler asked for the keys to Heard's truck, and Mutchler took the keys and the wallet and left in Heard's truck. Heard then called 911.

Mutchler was in two hit-and-run collisions after fleeing in Heard's truck. Mutchler stopped at a gas station and sold Heard's truck to a stranger for around forty dollars. Police later found Mutchler walking along a Des Moines street and took him into custody at gunpoint; Mutchler was volatile, aggressive, and angry. At the police station, Mutchler was hostile and agitated, fighting with an officer at one point.

Heard suffered numerous injuries, including losing a tooth. Fifteen staples were required to close the wound to his head from the tire iron. He had other serious cuts requiring stitches.

On August 8, 2008, the State filed its trial information charging Mutchler with first-degree robbery and other charges not relevant here. Ultimately, the

State and Mutchler reached an agreement that the robbery charge would be severed and tried separately from the other charges. Following a jury trial, Mutchler was found guilty as charged.

Mutchler now appeals.

***II. Discussion*.**

On appeal, Mutchler contends (1) the evidence was insufficient to support the first-degree robbery conviction because the State failed to prove two elements of robbery; (2) the district court erred in denying his motion for a mistrial based upon prosecutorial misconduct; (3) the district court erred in denying his challenge for cause of a juror; and (4) and his trial counsel rendered ineffective assistance for several reasons.

***A. Sufficiency of the Evidence*.**

Our review of Mutchler's motion for judgment of acquittal "requires us to examine the sufficiency of the evidence supporting the jury's guilty verdict." *State v. Nitcher*, 720 N.W.2d 547, 556 (Iowa 2006). We review Mutchler's challenge to the sufficiency of the evidence for correction of errors at law, and we will uphold the jury's verdict if it is supported by substantial evidence. *Id*. Evidence is considered substantial if a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. *State v. Casady*, 597 N.W.2d 801, 804 (Iowa 1999). We consider all the evidence in the light most favorable to the State, drawing all reasonable inferences. *State v. Milom*, 744 N.W.2d 117, 120 (Iowa Ct. App. 2007). The evidence must "raise a fair inference of guilt as to each essential element of the crime," and must not raise only suspicion,

speculation, or conjecture. *State v. Speicher*, 625 N.W.2d 738, 741 (Iowa 2001) (citing *Casady*, 597 N.W.2d at 787).

"Inherent in our standard of review of jury verdicts in criminal cases is the recognition that the jury was free to reject certain evidence, and credit other evidence." *Nitcher*, 720 N.W.2d at 556 (quoting *State v. Anderson*, 517 N.W.2d 208, 211 (Iowa 1994)). "A jury is free to believe or disbelieve any testimony as it chooses and to give as much weight to the evidence as, in its judgment, such evidence should receive." *State v. Liggins*, 557 N.W.2d 263, 269 (Iowa 1996). The "very function of the jury is to sort out the evidence and 'place credibility where it belongs.'" *State v. Thornton*, 498 N.W.2d 670, 673 (Iowa 1993) (citation omitted). The "credibility of witnesses is for the factfinder to decide except those rare circumstances where the testimony is absurd, impossible, or self-contradictory." *State v. Neitzel*, 801 N.W.2d 612, 624 (Iowa Ct. App. 2011).

At trial, the jury was instructed the State had to prove all of the following elements to find Mutchler guilty of first-degree robbery:

> 1. On or about July 10, 2008, [Mutchler] had the specific intent to commit a theft.
> 2. To carry out his intention or to assist him in escaping from the scene, with or without the stolen property, [Mutchler] assaulted [Heard].
> 3. Mutchler either
> a. Purposely inflicted or attempted to inflict a serious injury on [Heard]; or
> b. Was armed with a dangerous weapon.
> 4. [Mutchler] was not acting with justification.

See also Iowa Code §§ 711.1, .2. Mutchler contends the State failed to prove the above elements 1, that he had the specific intent to commit a theft, and 3b, that the tire iron was a dangerous weapon.

***1. Dangerous Weapon*.**

Under Iowa Code section 702.7,

> any instrument or device designed primarily for use in inflicting death or injury upon a human being or animal, and which is capable of inflicting death upon a human being when used in the manner for which it was designed. *Additionally, any instrument or device of any sort whatsoever which is actually used in such a manner as to indicate that the defendant intends to inflict death or serious injury upon the other, and which, when so used, is capable of inflicting death upon a human being, is a dangerous weapon.* Dangerous weapons include, but are not limited to, any offensive weapon, pistol, revolver, or other firearm, dagger, razor, stiletto, switchblade knife, or knife having a blade exceeding five inches in length.

(Emphasis added.) Because a tire iron is neither listed as a dangerous weapon per se, nor is it designed primarily for use in inflicting death or injury, we must determine whether there is sufficient evidence to show the tire iron was used in a manner to indicate Mutchler intended to inflict death or serious injury upon Heard, and whether the tire iron was capable of causing death.

We consider whether the defendant "objectively manifests to the victim" his intent "to inflict serious harm upon the victim." *State v. Ortiz*, 789 N.W.2d 761, 766–67 (Iowa 2010) (discussing "dangerous weapon in manner used"). Furthermore, we may consider practical experience in making a determination of whether an instrument is capable of causing death. *Id*. at 767. Accordingly, a dangerous weapon "can encompass almost any instrumentality under certain circumstances." *State v. Greene,* 709 N.W.2d 535, 537 (Iowa 2006) (recognizing a stick, stone, or hoe could meet the definition "according to the manner in which it is used"); *see also State v. Jones*, No. 09-0146, 2011 WL 5444091, at *4–5 (Iowa Ct. App. Nov. 9, 2011) (finding there was sufficient evidence the fork used

by Jones was a dangerous weapon), *vacated in part on other grounds by State v. Jones*, ___ N.W.2d ___, ___, 2012 WL 2628614, at *1 (Iowa 2012) (letting "the opinion of the court of appeals stand as the final decision" of the supreme court on the finding the fork was a dangerous weapon); *Ortiz*, 789 N.W.2d at 767 ("Practical experience tells us that a box cutter or utility knife when so intended is capable of inflicting death."); *see also, e.g.*, *Clue* (Paramount Pictures 1985) (revealing, in ending B, that Mrs. Peacock killed Mr. Boddy with a candlestick in the hall).

Mutchler complains there was insufficient evidence as to this element because no testimony was presented specifically declaring a tire iron to be a dangerous weapon. Mutchler does not cite, nor do we find, any authority requiring such specific evidence.[1] Here, the tire iron itself was admitted into

[1] Although the Iowa Supreme Court has not had the occasion to consider whether a tire iron as used by a defendant was a "dangerous weapon," we note that a tire iron is clearly capable of causing death. *See, e.g.*, *State v. Ragland*, 812 N.W.2d 654, 656 (Iowa 2012) ("[T]he victim] died after . . . codefendant . . . struck [the victim] once in the head with a tire iron."); *see also United States v. Matchopatow*, 259 F.3d 847, 849–50 (7th Cir. 2001) (describing murder in which defendant killed victim by striking her on head with tire iron); *People v. Fisher*, 44 Cal. Rptr. 302, 306 (Cal. Dist. Ct. App. 1965) ("Used as defendants used them, the tire irons were perfectly capable of inflicting mortal wounds."). Moreover, tire irons have been found to be dangerous or deadly weapons in other jurisdictions. *See, e.g.*, *State v. Marshall*, 33 A.3d 297, 305 (Conn. App. Ct. 2011) ("[T]he court reasonably determined that the defendant was armed with a dangerous instrument, here a tire iron, when he committed the burglary. . . ."); *S.P.M. v. State*, 66 So. 3d 317, 318 (Fla. Dist. Ct. App. 2011) ("S.P.M. wielded a tire iron, which was the deadly weapon utilized in the aggravated assault charge."); *Maynard v. State*, 490 N.E.2d 762, 764 (Ind. 1986) (holding defendant's use of a tire iron qualified the tire iron as a "dangerous or deadly weapon."); *State v. Holt*, 917 P.2d 1332, 1339 (Kan. 1996) ("The evidence shows that the defendant entered the homes with a dangerous weapon, a tire iron, and inflicted bodily harm with that tire iron after entering the residences."); *State v. Richardso*n, 896 So. 2d 257, 264 (La. Ct. App. 2005) ("The crowbar used in the instant case was clearly a dangerous weapon, because, in the manner used, it was calculated or likely to produce death or great bodily harm."); *People v. Saunders*, 738 N.Y.S.2d 785, 786 (N.Y. App. Div. 2002) ("[D]efendant inflicted blows to the victim's head with a tire iron, causing open wounds that required

evidence, and Heard testified that Mutchler beat him over the head with it while stating he was going to kill him. Based upon this evidence, a reasonable jury could find Mutchler used the tire iron in a manner which objectively indicates he intended to inflict death or serious injury on Heard and, when used to strike and stab Heard in the head, the tire iron was capable of killing Heard. We affirm on this issue.

2. Theft.

A defendant commits theft when he "[t]akes possession or control of the property of another, or property in the possession of another, with the *intent to deprive the other thereof*." Iowa Code § 714.1(1) (emphasis added). When the property taken is a vehicle, the "intent to deprive the other thereof" element of theft requires a showing that the defendant had "an intent to *permanently* deprive the owner of his property." *State v. Schminkey*, 597 N.W.2d 785, 789 (Iowa 1999). This "requires a determination of what the defendant was thinking when [the] act was done." *Id*. Because a defendant's intent "is seldom capable of being established with direct evidence," "the facts and circumstances surrounding the act, as well as any reasonable inferences to be drawn from

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stitches. The tire iron was 'readily capable of causing . . . serious physical injury' and thus under the circumstances in which it was used constituted a dangerous instrument." (citations omitted)); *Commonwealth v. Scullin*, 607 A.2d 750, 753 (Pa. Super. Ct. 1992) (holding that the tire iron "became a deadly weapon at the moment [the defendant] threw it in the direction of the ultimate victim."). One court has specifically found the factual issue of whether a tire iron was a "deadly weapon" could be resolved by a jury either "by a description of the weapon and its use, even though the weapon is not in evidence," or "by viewing the weapon admitted into evidence even though it is not described," the latter of which happened in the instant case. *See State v. Gonzales*, 517 P.2d 1306, 1307 (N.M. Ct. App. 1973).

those facts and circumstances, may be relied upon to ascertain the defendant's intent." *Id*.

Here, Mutchler struck Heard numerous times in the head with a tire iron and threatened to kill him. Mutchler then asked for the keys to Heard's truck. He got Heard's wallet and left in Heard's truck without permission. Mutchler then sold the truck to a stranger for a nominal amount. The fact that Mutchler did not follow the formalities of Iowa's requirements for selling a vehicle (e.g., failing to give the stranger a bill of sale or a certificate of title) has no relevance to Mutchler's intent to sell, and accepting in return, money for property that he did not own. From the evidence presented a trial, a reasonable jury could easily conclude Mutchler intended to permanently deprive Heard of his property. We therefore affirm on this issue.

B. Motion for Mistrial.

On appeal, Mutchler asserts the district court erred in failing to grant his motion for mistrial based upon prosecutorial misconduct. We review the district court's ruling on Mutchler's motion for mistrial for an abuse of discretion. *State v. Thornton*, 498 N.W.2d 670, 676 (Iowa 1993). A trial court has broad discretion in ruling on a motion for mistrial. *State v. Brown*, 397 N.W.2d 689, 699 (Iowa 1986). This is because the trial court is in a better position than this court "to gauge the effect of the matter on the jury." *State v. Waters*, 515 N.W.2d 562, 567 (Iowa Ct. App. 1994).

***1. Reference to Time in Custody*.**

Mutchler first challenges the State's questioning during his cross-examination in this exchange:

> Q. You have been in custody since this robbery happened, right? A. That's correct.
> Q. And you know that while you are at the Polk County jail your phone calls are monitored. A. Yes.
> . . . .
> Q. You explained to your mother [over the phone] how you got charged with this crime, didn't you? A. Mm-hmm.
> . . . .
> Q. "[Heard] pulled a gun on me, so he got dealt with. There's no two ways around that." Your words [to your mother], right? A. Right.

Mutchler contends the State engaged in prosecutorial misconduct by co-opting Mutchler "into admitting that a robbery occurred" and inappropriately referring to Mutchler's time in custody, asserting that both instances were so grossly prejudicial a new trial was warranted.

We agree with the State that Mutchler's first argument concerning admitting a robbery occurred was not preserved for our review, as the issue was not objected to on this ground nor raised in Mutchler's motion for new trial. *See State v. Mitchell*, 757 N.W.2d 431, 435 (Iowa 2008) ("[W]e will only review an issue raised on appeal if it was first presented to and ruled on by the district court."). We therefore do not address it, and move to his second issue concerning the reference to his time in custody.

In order to prove prosecutorial misconduct, Mutchler must prove there was misconduct and the misconduct resulted in prejudice to such an extent to deny him a fair trial. *State v. Graves*, 668 N .W.2d 860, 869 (Iowa 2003). "Thus, it is

the prejudice resulting from misconduct, not the misconduct itself, that entitles a defendant to a new trial." *Id*.; *State v. Piper*, 663 N.W.2d 894, 913 (Iowa 2003). Several factors are considered when determining whether prejudice resulted from the misconduct, including: (1) the severity and pervasiveness of the misconduct, (2) the significance of the misconduct to the central issues in the case, (3) the strength of the State's evidence, (4) the use of cautionary instructions or other curative measures, and (5) the extent to which the defense invited the misconduct. *Graves*, 668 N.W.2d at 869.

The district court concluded after it ruled on Mutchler's objection to the questioning at trial that

> [t]here was no specific reference to any length of time. It could be construed that "since" means at any time since the crime up until this date in time [Mutchler] may have been in custody.
>
> Also, there will be a jury instruction which will be given to the jury which states, in part, "This presumption of innocence requires you to put aside all suspicion which might arise from the arrest, charge, or the present situation of the defendant." And that is a stock instruction.

The jury was so instructed.

Upon our review of the record, we do not find the prosecutor's question to be unduly prejudicial. Here, the alleged misconduct was not so pervasive as to undermine the confidence of the verdict, given the overwhelming evidence against Mutchler. The questioning was relatively brief and leading, and the question did not reference any length of time. Prejudice usually results from persistent efforts to inject prejudicial matter before the jury rather than isolated prosecutorial misconduct. *See State v. Anderson*, 448 N.W.2d 32, 34 (Iowa 1989). Moreover, the jury was instructed as to Mutchler's presumption of

innocence and to put aside its suspicions. "There is a general presumption that a jury follows its instructions." *State v. Glaus*, 455 N.W.2d 274, 278 (Iowa Ct. App. 1990). In light of these facts, we conclude Mutchler failed to show prejudice sufficient to require a new trial on this claim of misconduct by the State. We accordingly affirm the judgment of the district court as to this issue.

2. Attempt to Shift Burden of Proof.

Mutchler also argues the State engaged in prosecutorial misconduct when it "attempted to shift the burden of proof to [Mutchler] during the testimony of . . . [an expert in the analysis of bloodstain patterns]." Specifically, on Mutchler's cross-examination of this expert, the expert was asked why he had not tested Heard's clothes from the day of the incident, to which the expert responded that the lead detective had not requested the testing. On redirect by the State, the following occurred:

> Q. You are not the only blood spatter expert around, are you? A. No, sir.
> Q. So if the defense wanted to have somebody review Mr. Heard—
> [MUTCHLER'S COUNSEL]: Objection, Your Honor. That is burden shifting. We have no obligations here.
> THE COURT: Sustained.

In its ruling on Mutchler's motion for a new trial, the district court concluded "[t]he State did not improperly shift the burden to [Mutchler]. The question to the State's witness was asked during redirect examination. [Mutchler] made a timely objection to the question, which was sustained by the court, and the jury was admonished to disregard the matter."

Upon our review of the record, we agree. The court quickly sustained the question before any testimony was given, and the jury was admonished. And,

throughout the case, the jury was repeatedly instructed the State had the burden of proof in this case, and we presume the jury follows the court's instructions. *Glaus*, 455 N.W.2d at 278. We do not find the prosecutor's question to be unduly prejudicial, and we conclude Mutchler failed to show prejudice sufficient to require a new trial on this claim of misconduct by the State. We accordingly affirm the judgment of the district court as to this issue. Because we find no misconduct, we need not address Mutchler's constitutional claims.

***C. Denial of Challenge for Cause of Juror*.**

While being transported from the jail to the courthouse prior to his trial, Mutchler attempted to escape from custody. During voir dire, a prospective juror indicated that he was a Polk County employee who had investigated Mutchler and had knowledge concerning Mutchler's escape attempt. Specifically, the prospective juror had viewed the video taken during the escape attempt, and he later inspected the police vehicle from which Mutchler allegedly escaped. The prospective juror acknowledged that he worked with the Polk County Attorney's Office regularly in his job capacity, but he affirmed he could still be fair in determining what happened in the case. The prospective juror stated he would listen to the evidence and would make a decision based upon the evidence he heard only and based upon the instructions the court would give him, and he stated he would not reveal anything that he might know about Mutchler to anyone, even if he were directly confronted about it. Mutchler requested the prospective juror be struck for cause, explaining that the parties had excluded, by agreement, "any references to the escape in this particular trial. As [the

prospective juror] already [had] knowledge of that escape attempt . . . it [put] him in a position of . . . having more information than the average juror." Mutchler asserted that the juror's additional knowledge of Mutchler would create an unfair prejudice to Mutchler. The State resisted, and the court denied Mutchler's request to strike the juror.

Here, Mutchler contends the district court erred in refusing to strike the juror based upon the juror's employment with Polk County, which we do not address because Mutchler did not raise the issue before the district court. *See Mitchell*, 757 N.W.2d at 435. Mutchler also asserts the court erred in refusing to strike the juror based upon the juror's extraneous knowledge of Mutchler.

We review a district court's denial of a challenge for cause under an abuse of discretion standard. *State v. Mitchell*, 573 N.W.2d 239, 239–40 (Iowa 1997). The court is vested with broad discretion when ruling on a challenge for cause. *State v. Tillman*, 514 N.W.2d 105, 107 (Iowa 1994). In order to show the court abused its discretion in denying a challenge for cause, Mutchler must show "(1) an error in the court's ruling on the challenge for cause; and (2) either (a) the challenged juror served on the jury, or (b) the remaining jury was biased as a result of the defendant's use of all the preemptory challenges." *Id*. at 108.

Mutchler used a preemptory challenge to strike the juror. Pursuant to *State v. Neuendorf*, 509 N.W.2d 743, 747 (Iowa 1993), the "partiality of a juror may not be made the basis for reversal in instances in which that juror has been removed through the exercise of a preemptory challenge." There is no evidence, and Mutchler does not assert, the jury that did serve was not impartial. We

therefore conclude the district court did not abuse its discretion in denying Mutchler's challenge for cause.

Mutchler argues for reversal of *Neuendorf* and *Tillman* because "by mandating automatic reversal in cases wherein a defendant is forced to use a preemptory strike in a situation would protect the deliberation process while ensuring that defendants are able to procure neutral and detached juries." It is not in this court's purview to consider such a claim. *See State v. Eichler*, 83 N.W.2d 576, 578 (1957) (noting it is the prerogative of the supreme court, as the court of last resort in our state, to determine the law); *accord McElroy v. State*, 703 N.W.2d 385, 393 (Iowa 2005).

***D. Ineffective Assistance*.**

***1. Jury Instructions*.**

Mutchler next asserts he was denied the effective assistance of counsel when his trial counsel failed to request that the jury instruction defining theft include the "intent to permanently deprive" language discussed above. *See Schminkey*, 597 N.W.2d at 789 (requiring a showing of an "intent to deprive the other thereof" when the theft is of a vehicle). We review his ineffective-assistance-of-counsel claims de novo. *State v. Ondayog*, 722 N.W.2d 778, 783 (Iowa 2006). "Although claims of ineffective assistance of counsel are generally preserved for postconviction relief proceedings, we will consider such claims on direct appeal where the record is adequate." *State v. Horness*, 600 N.W.2d 294, 297 (Iowa 1999).

To establish a claim of ineffective assistance of counsel, a defendant must prove (1) counsel failed to perform an essential duty and (2) prejudice resulted to the extent it denied the defendant a fair trial. *State v. Maxwell*, 743 N.W.2d 185, 195 (Iowa 2008). Mutchler must prove both elements, or his claim will fail. *Ledezma v. State*, 626 N.W.2d 134, 142 (Iowa 2001). We presume counsel is competent, and miscalculated trial strategies and mere mistakes in judgment normally do not rise to the level of ineffective assistance. *Millam v. State*, 745 N.W.2d 719, 721 (Iowa 2008). Trial counsel has no duty to raise an issue that has no merit. *Graves*, 668 N.W.2d at 881. To prove prejudice, Mutchler must show there is a reasonable probability that, but for counsel's errors, the result of the case would have been different. *Ledezma*, 626 N.W.2d at 143. While ineffective-assistance-of-counsel claims are generally preserved for postconviction relief proceedings, we will address his claim concerning the jury instruction, as we find the record adequate to do so. *Graves*, 668 N.W.2d at 869.

Mutchler claims counsel were ineffective for failing to object to the court's jury instruction defining theft with the "permanent deprivation" language. The district court has a duty to ensure the jury understands the issues and the law applicable to the case. *State v. McCall*, 754 N.W.2d 868, 872 (Iowa Ct. App. 2008). The court must define the crime, but need not define every word in an instruction if the words are of ordinary usage and generally understood. *State v. Hoffer*, 383 N.W.2d 543, 548 (Iowa 1986). "[H]owever, technical terms or legal terms of art must be explained." *State v. Kellogg*, 542 N.W.2d 514, 516 (Iowa 1996).

Even assuming without deciding that Mutchler's counsel had a duty to request the additional language, Mutchler cannot demonstrate the requisite prejudice. *See State v. Oetken*, 613 N.W.2d 679, 686 (Iowa 2000). Even if an instruction including the additional language had been given, based on the evidence presented, including the evidence that Mutchler sold Heard's vehicle, we do not find there is a reasonable probability the result of the trial would have been different. *See State v. Heacock*, 521 N.W.2d 707, 710 (Iowa 1994). Because Mutchler cannot establish he suffered prejudice, his claim must fail.

***2. Pro se Claims*.**

Finally, Mutchler asserts numerous ineffective-assistance claims pro se. We find the record is not adequate to address his pro se claims and accordingly preserve those claims for further postconviction relief proceedings. *Graves*, 668 N.W.2d at 869.

***III. Conclusion*.**

Because a reasonable jury could conclude, based upon the evidence presented at trial, that the tire iron was a dangerous weapon and that Mutchler had an "intent to permanently deprive" Heard of his vehicle, we find sufficient evidence supported Mutchler's conviction for robbery in the first degree and accordingly find no error in the district court's denial of his motion for judgment of acquittal. Additionally, we affirm the district court's denial of Mutchler's motion for mistrial because we find the State's alleged misconduct was not unduly prejudicial and Mutchler failed to show he was prejudiced by the alleged misconduct. The district court did not abuse its discretion in denying Mutchler's

challenge of a prospective juror for cause. Finally, we find Mutchler cannot establish he was prejudiced by his counsel's failure to request additional language be included in the theft definition jury instruction, as the inclusion of the language would not have changed the outcome of his trial. We therefore affirm Mutchler's conviction and sentence, and we preserve his pro se ineffective-assistance-of-counsel claims for possible postconviction relief proceedings.

AFFIRMED.