

IN THE SUPREME COURT OF IOWA
Supreme Court No. 17-0085

STATE OF IOWA,
Plaintiff–Appellee,

vs.

LEE SAMUEL CHRISTENSEN,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR EMMET COUNTY
THE HON. DAVID A. LESTER, JUDGE

APPLICATION FOR FURTHER REVIEW
(Iowa Court of Appeals Decision: April 18, 2018)

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QUESTION PRESENTED FOR REVIEW

Does *State v. Webster*, 865 N.W.2d 223 (2015) instruct an appellate court that it is free “to disagree with the district court’s key fact-findings” on a motion for new trial based on juror misconduct?

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STATEMENT SUPPORTING FURTHER REVIEW

The Iowa Court of Appeals adopted a new standard of review for rule-based juror misconduct claims. *State v. Christensen*, No. 17-0085, 2018 WL 1865353 (Iowa Ct. App. Apr. 18, 2018). Through de novo review, the Court of Appeals replaced the district court's fact-findings with its own to reverse and remand Lee Christensen's second-degree murder conviction.

This Court should grant further review because the Court of Appeals is internally conflicted on the standard of review required by *State v. Webster*, 865 N.W.2d 223 (Iowa 2015), for rule-based juror misconduct claims. Iowa R. App. P. 6.1103(1)(b)(4). On April 18, 2018, the Court of Appeals issued two opinions involving rule-based juror misconduct and bias claims. Both opinions relied on *Webster* but each identified different standards of review. *See State v. Silva*, No. 17-0802, 2018 WL 1858294 (Iowa Ct. App. April 18, 2018) (citing the text to require an abuse of discretion standard); slip op. at *4-5 (citing footnote 4 to require a de novo standard of review for the district court's fact-findings). This case was a per curiam opinion with a dissent. This split in decisions and among the judges shows

confusion over *Webster* and what level of deference that appellate courts must give the district court in rule-based juror claims.

This Court should also grant further review because the Court of Appeals decided an issue of broad public importance. Iowa R. App. P. 6.1103(1)(b)(4). Iowa’s appellate courts have traditionally respected the district court’s powerful role in fact-findings for rule-based juror misconduct claims by using an abuse of discretion standard. Until now. “If the facts and circumstances of this case—unsubstantiated rumors of possible disturbances directed at no one in particular posted on Facebook—were enough to establish an entitlement to new trial, no murder case could be tried in any community, let alone a smaller community.” Slip op. at *26 (McDonald, J., dissenting). This Court must reaffirm the importance of deference the district court on appellate review. The State asks this Court to grant further review.

STATEMENT OF THE CASE

Nature of the Case:

The State seeks further review of a decision of the Court of Appeals. Iowa R. App. P. 6.1103.

Course of Proceedings and Facts:

The defendant shot and killed 19-year-old Thomas Bortvit. Slip op. at *2; Trial Tr. I p. 38, lines 20-22. His defense was to admit that he killed the victim, but that it was not a premeditated act. *See* Trial Tr. I p. 35, lines 9-12 (“Men and women of the jury, there is no question that Lee Christensen killed Thomas Bortvit, but he did not, he did not, commit murder in the first degree.”).

The jury was selected following two full days of voir dire. *See generally* Jury Selection Transcripts. After a six-day trial, the jury convicted the defendant of the lesser-included crime of second-degree murder. Verdict; App. 23.

Christensen filed a motion for new trial and argued that the jury had considered social media information that influenced the jury verdict. Motion for New Trial; App. 24, 27. The district court conducted a hearing and took sworn testimony from all twelve jurors. Ruling; App. 33. Based on the record evidence and credibility

findings from evaluating the jurors' demeanors and testimony, the district court made the following findings of fact in a 20-page order:

1. "[O]ne or possibly two jurors" may have viewed social media *or* heard from family or friends about the rumor of a riot. Ruling; App. 50.
2. The riot rumor did not involve a threat of violence against the jury itself. Ruling; App. 50.
3. One juror made a single statement about the riot rumor in the presence of some jurors. Ruling ("[T]heir testimony further confirms that the statement was made only once."); App. 46.
4. The jurors knew before deliberations that no matter what verdict they reached, some people in the community would be upset. Ruling; App. 39.
5. The juror made this statement *after* the jurors had decided the verdict. Ruling; App. 45–46.

Inherent in the district court's findings was that it did not find credible two jurors who testified inconsistently with these findings. The district court denied the motion for new trial. Ruling; App. 51.

The defendant appealed and, among other issues, challenged the district court's decision not to grant a new trial based on juror misconduct. *See* Appellant's Br. 17-30. The State argued in its brief there was substantial evidence to support the district court's fact-findings based on the jurors' testimony. *See* Appellee's Br. at 18-24.

The court of appeals recognized this case had the same procedural posture as *Webster*, but deviated from *Webster*. Slip op. at *4-5. Based on footnote 4 of *Webster*, the court of appeals determined that it should conduct de novo review of the district court's fact findings because the district court had relied on rule 2.24 and the rule had a "constitutional undergirding." *Id.* at *5.

The Court of Appeals—based on its review of a cold record—"disagree[d] with the district court's key fact-findings." Slip op. at *5. In particular, the court emphasized juror testimony that the district court did not find credible. Slip op. at *7-8. The court then discredited the district court's record-supported findings that there was no reasonable probability that the rumor influenced this jury's lesser-included verdict of second-degree murder. Slip op. at *13.

The State seeks further review.

ARGUMENT

I. The Court of Appeals Improperly Adopted De Novo Review for a Rule-Based Juror Misconduct Claim.

Preservation of Error and Waiver:

Error is preserved on rule-based challenge of juror misconduct. However, error is not preserved on a constitutional claim, because the district court did not rule upon a constitutional claim. *See Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) (issues must be both raised and decided to preserve error); Ruling; App. 40–41 (not ruling on a constitutional claim); slip op. at *5 (finding a constitutional claim waived).

Standard of Review:

Abuse of discretion is the standard of review for rule-based juror misconduct claims. *State v. Webster*, 865 N.W.2d 223, 231 (Iowa 2015).

Merits:

In footnote 4 of the *Webster* opinion, this Court mused, “There is a question of the proper standard of review regarding fact-finding performed by the district court in the context of a motion for new trial.” *State v. Webster*, 865 N.W.2d 223, 231 n.4 (Iowa 2015). This footnote caused the Court of Appeals to diverge from precedent. The

question of whether to defer to trial courts' fact-finding on rule-based juror-misconduct claims is long-settled and should be reaffirmed by this Court.

As this Court has recognized for decades, abuse of discretion is the standard of review for a claim raised under the rules of criminal procedure. *See, e.g., State v. McNeal*, 897 N.W.2d 697, 703–04 (Iowa 2017) (determining whether the district court abused its discretion for finding good cause under Rule 2.33(2)(b) to set trial past the speedy trial deadline); *State v. Clark*, 464 N.W.2d 861, 864 (Iowa 1991) (recognizing the standard of review is abuse of discretion for the district court's decision not to grant a motion for separate trials under former rule 6(4)(b)); *State v. Harding*, 216 N.W. 756, 757 (Iowa 1927) (relying on section 13830 of the 1924 Code to state that “[t]he court is vested with discretion in determining whether a juror is disqualified, and there is no reversible error, unless abuse of discretion in shown”). This Court applied abuse of discretion to a rule-based juror misconduct claim in *Webster* with little discussion or equivocation. *Webster*, 865 N.W.2d at 231.

The Court's footnote in *Webster* does not obscure this settled question. The footnote cited only two cases, one from Iowa and one

from West Virginia. *Id.* at 231 n.4. Neither case suggests ambiguity for how appellate courts review district-court fact-finding in this context. The Iowa case was a motion-to-suppress challenge under the Fourth Amendment and the Iowa Constitution that reaffirmed that even in de novo review, the district court’s fact findings deserve deference. *State v. Hoskins*, 711 N.W.2d 720, 725 (Iowa 2006). The West Virginia case applied a clearly erroneous standard to the district court’s fact findings, citing to another case that recognized a trial court’s ruling “is entitled to great respect and weight.” *State v. Dellinger*, 696 S.E.2d 38, 42 (W.Va. 2010) (citing *State v. Vance*, 535 S.E.2d 484, 487 (W.Va. 2000)). Both confirm—rather than undermine—the deference this Court has always given to record-supported fact-findings from the district court.

Deference to the district court is not a whim. The district court has the institutional advantage in these credibility-based jury misconduct or jury intrusion claims. Slip op. at *24 (McDonald, J., dissenting). “District courts regularly preside over trials and have better developed the skills necessary to evaluate the facts and circumstances of the particular case with respect to the conduct of the trial.” *Id.* Usually, “[t]he district court judge is a member of the local

community and has his finger on the pulse of the community of which the jury is merely a microcosm.” *Id.* Juror misconduct and juror bias claims depend heavily on the district court’s observations.

The jury’s verdict matters, and appellate courts do not lightly overturn a verdict. *See Webster*, 865 N.W.2d at 233 (“[A] jury verdict has been rendered after a lengthy trial and we have no desire to start again for trifles. As has been often said, the accused is not entitled to a perfect trial, but only a fair trial.”). Yet this decision equates the appellate court’s role to that of the district court—without the benefit of the observations the district court had.

As a consequence, the Court of Appeals rejected the district court’s record-supported fact findings and substituted its own:

- The district court found only one or two jurors may have viewed social media *or* heard from family or friends about the rumor of a riot. Ruling; App. 50. But the Court of Appeals castigated all jurors for “blatant disregard of the district courts’ unambiguous admonition to refrain from the use of social media during trial.” Slip op. at *6–7.

- The district court found the riot rumor did not involve a threat of violence against the jury. Ruling; App. 50. The Court of Appeals determined “outside forces were disseminating information designed to influence the verdict.” Slip op. at *13.
- The district court found someone made a single statement about the riot rumor. Ruling; App. 46. But the Court of Appeals intimated the jurors had a significant discussion about the rumor. Slip op. at *7.
- The district court found the jurors asked for an escort to their cars after the verdict because they knew community members would be upset with them “no matter what verdict they reached.” Ruling; App. 39. No juror mentioned a Facebook comment as the reason to request an escort. Ruling; App. 39. But the Court of Appeals decided “[t]hat most of the jurors were so concerned about their safety that they asked for additional security” because of the threat of a public disturbance if they did not find Christensen guilty. Slip op. at *12.

Most jarring was the court of appeals' rejection of the district court's fact-findings on the timing that the jurors learned of the rumor. Every juror but one denied that he or she heard information prior to the jury reaching its verdict. Ruling; App. 44; Slip op. at *31 (McDonald, J., dissenting). The one juror testified that while she heard the rumor prior to the verdict, she considered it "ridiculous" and did not share the rumor with the other jurors. Ruling; App. 44. For the remaining jurors, the district court's factual finding was "that these particular jurors testified they were unaware of the information until after the jury had already decided the case." Ruling; App. 44. Three jurors recalled no mention of a rumor, five jurors testified they heard the rumor after the jury reached a verdict, and two jurors did not recall the exact timing. Ruling; App. 37–39. The district court noted one juror's testimony did not align with the record. Ruling; App. 38. The district court judge spoke to every one of these jurors. The judge heard their voices before deciding "there is simply no proof" that any juror discussed or considered the rumor during deliberations. Ruling; App. 44.

Yet the Court of Appeals rejected these record-supported fact-findings to decide the jurors considered the rumor during

deliberations. Slip op. at *13–14. To do so, it improperly construed the phrase “during deliberations” to include while the jury was standing in the hallway with the verdict decided. *See State v. Lass*, 228 N.W.2d 758, 771 (Iowa 1975) (analyzing alleged jury misconduct during deliberations and recognizing “[j]urors undoubtedly discuss a variety of subjects in *considering cases*” (emphasis added)); *Blacks Law Dictionary* 492 (10th ed. 2014) (defining deliberation as “[t]he act of carefully considering issues and options before making a decision or taking some action”). Here the decision was made. Ruling; App. 44 (“[T]he Court concludes there is simply no proof that any statements about the possibility of a public disturbance. . .were ever discussed or considered by the jury during their deliberations.”); Slip op. at *31 (McDonald, J., dissenting) (“[T]hat legal proposition does not change the factual finding that these particular jurors testified they were unaware of the information until after the jury had already decided the case.”).

The Court of Appeals adopted an inappropriate standard of review in an area of law that gives great deference to the district court’s fact-findings. It then rejected the district court’s record-supported fact-findings. The Court of Appeals’ opinion undermines

the district court's role in rule-based juror misconduct claims and its opinion should be vacated.

CONCLUSION

The State respectfully requests this Court grant the application for further review, vacate the Court of Appeals opinion, and affirm the defendant's conviction.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because:
 - This brief contains **2,300** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.1103(4)
2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because:
 - This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Georgia font, size 14.

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