

IN THE COURT OF APPEALS OF IOWA

No. 0-124 / 09-1024
Filed April 8, 2010

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MARVIN JACKSON, JR.,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Todd A. Geer,
Judge.

The defendant appeals from his convictions for intimidation with a weapon
with intent and carrying weapons. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and David Arthur Adams,
Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney
General, Thoms J. Ferguson, County Attorney, and Joel Dalrymple, Assistant
County Attorney, for appellee.

Considered by Vogel, P.J., Eisenhauer, J., and Miller, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

VOGEL, P.J.

Marvin Jackson, Jr. appeals the district court's denial of his motion for new trial following jury verdicts of guilty on the charges of intimidation with a weapon with intent in violation of Iowa Code section 708.6 (2005) and carrying weapons in violation of Iowa Code section 724.4(1).

Both before the district court and on appeal, Jackson challenged the witnesses' testimony as to the identity of the gunman. The district court, applying the *Ellis* standard of whether the verdicts were contrary to the weight of the evidence, denied Jackson's motion. *State v. Ellis*, 578 N.W.2d 655, 658-59 (Iowa 1998). Iowa Rule of Criminal Procedure 2.24(2)(b)(6) gives the district court authority to grant a new trial, and the *Ellis* case details the conditions under which such should be granted. *Id.* at 659. The district court reviewed the testimony, having previously denied Jackson's motion for judgment of acquittal. We review for abuse of discretion. *State v. Maxwell*, 743 N.W.2d 185, 193 (Iowa 2008).

While the sister of the victim could not see a gun in Jackson's hand, she did testify and demonstrate for the jury that she saw Jackson holding his hands out in a manner described as being parallel to the ground. She then heard several gunshots being fired, while Jackson was running towards the victim. We agree with the district court's conclusion that the verdict was not contrary to the weight of the evidence. We therefore affirm the district court pursuant to Iowa Court Rule 21.29(1)(b), (d), and (e).

AFFIRMED.