

**IN THE COURT OF APPEALS OF IOWA**

No. 1-024 / 10-0645  
Filed February 23, 2011

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**PETER MENDOZA JR.,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Johnson County, Marsha Bergan,  
Judge.

Peter Mendoza Jr. appeals the district court's ruling denying him a new  
trial. **AFFIRMED.**

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

Thomas J. Miller, Attorney General, Sharon Hall, Assistant Attorney  
General, Janet M. Lyness, County Attorney, and Deborah Farmer Minot,  
Assistant County Attorney, for appellee.

Considered by Vaitheswaran, P.J., and Eisenhauer and Danilson, JJ.  
Tabor, J., takes no part.

**DANILSON, J.**

Peter Mendoza Jr. appeals, arguing the district court abused its discretion when it refused to grant him a new trial. Mendoza claims the weight of the evidence does not support a finding that he had the necessary intent to support his conviction for arson in the first degree in violation of Iowa Code sections 712.1 and 712.2 (2007). Considering the evidence in the record, including the testimony and credibility of the witnesses, we conclude the greater weight of the evidence supports the jury's verdict. Accordingly, we find the district court did not abuse its discretion in overruling Mendoza's motion for new trial under Iowa Rule of Criminal Procedure 2.24(2)(b)(6), and we affirm.

**I. Background Facts and Proceedings.**

On Memorial Day morning in May 2009, Mendoza and his friend, David Ward, were drinking and wandering the streets in Iowa City.<sup>1</sup> Around lunchtime, they walked down an alley. They passed three dumpsters set into a garage-type space<sup>2</sup> within the rear side of 332 South Linn Street, a mixed-use building near the University of Iowa.<sup>3</sup> The center dumpster was piled high with cardboard and paper. Ward testified that Mendoza, without saying a word, approached the center dumpster and set something on fire with his cigarette lighter.

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<sup>1</sup> Mendoza is Hispanic; Ward is African American.

<sup>2</sup> The dumpsters were set upon a concrete pad within the footprint of the building, similar to how single or double stall garages are commonly situated within the structure of a home. The concrete pad extended into the building approximately ten feet from the exterior of the building. The ceiling of the dumpster space was approximately twelve feet high and was constructed of a soffit material, with an electrical conduit above. The walls were masonry, and one side wall contained an open doorway directly into a rear entry to the building.

<sup>3</sup> The first floor of the building is commercial, and the top three floors are residential apartments primarily used by college students. The residential apartments are usually filled to capacity, and mainly house University of Iowa students.

Mendoza and Ward continued down the alley. Ward took out his cell phone and called his wife. Ward then called Leon DeBoer, director of a homeless shelter in Iowa City.<sup>4</sup> Ward reported to DeBoer that Mendoza had set a fire in the dumpster. DeBoer immediately called 911 to report the fire.

At that same time, Mark Kimler and Victor Janey were on their way to lunch at a nearby restaurant. Kimler drove into the alley to park. Kimler testified he saw two men (one Hispanic or white, one African American) “digging in the dumpsters.”<sup>5</sup> He stated that one of the dumpsters “appeared to be full of cardboard.” Kimler parked, and he and Janey got out of the car to walk toward the restaurant. Kimler glanced over to the dumpsters again and “saw smoke coming out of that center dumpster.” He took a closer look and saw flame. Kimler stated that “[n]o more than a minute or two” had passed since he saw the two men digging in the dumpsters. Kimler then saw the men walking up the alley away from the dumpsters and called 911 to report the fire.

Victor Janey testified that he also saw the two men and that it looked like “they were searching in the dumpster for something.” He stated that he looked back at the dumpsters on the walk to the restaurant and noticed “flames were leaping out of the center dumpster, maybe a foot or so high, enough to clearly see from it from that distance.” As Kimler called 911, Janey walked back toward the dumpsters and yelled at the two men as they walked the other way up the

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<sup>4</sup> Ward met DeBoer when his wife began staying at the homeless shelter. Because the shelter did not allow drugs or alcohol, Ward preferred to sleep under bridges or on the streets.

<sup>5</sup> Kimler testified that the Hispanic or white man was digging in the “center dumpster,” and the African American man was digging in the “northernmost dumpster.”

alley. He testified that he “didn’t really seem to catch their attention,” and he saw that the “African American man took out his cell phone . . . to make a phone call.”

Firefighters responded to the 911 calls shortly before 1:00 p.m. Firefighter Dan Bushner testified that he arrived to find a “huge black column of smoke” and “a large ball of flames” coming from the dumpsters. He stated the “flames were high enough out of the dumpster that they were actually rolling up over the edge” and impinging on a “bank of windows above the dumpsters.” Firefighter Bushner stated that his “initial concern was fire extension,” based upon the “height of the flames and the amount of heat and smoke coming off the fire.” Firefighters used a large hose “to have as much water as soon as possible” and were able to extinguish the fire “fairly quickly.”

The dumpsters had “severe damage” and were removed from the scene. Firefighters also pulled down damaged metal soffits and underlying insulation above the dumpsters. Firefighter Bushnell opined that the fire could have “very easily” spread from the dumpsters to the windows above the dumpster space, the door adjacent to the dumpster space, or through the electrical conduit. Fire Marshal John Grier investigated the fire and agreed with this assessment, and stated that the fire “had the potential to spread to the building itself.”

Iowa City Police Officer Mark Hewlett also responded to the scene. He received descriptions from witnesses Kimler and Janey of the two men they had seen digging in the dumpsters and walking away from the fire. He then contacted Ward by the cell phone number Leon DeBoer had provided to police. Ward informed Officer Hewlett that he and Mendoza had been at the dumpsters,

that Mendoza started the fire, and that the two were now on the porch at 216 Bloomington Street, approximately one-half mile away.

Officer Hewlett responded to 216 Bloomington Street and recognized the two men that matched the descriptions he received. The men identified themselves as Peter Mendoza and David Ward. Officer Hewlett questioned the men individually about the incident. Ward identified Mendoza as the person who started the fire; Mendoza denied any knowledge of the fire. Mendoza also denied having a lighter. Based on the information he had received, Officer Hewlett arrested Mendoza. He found a purple cigarette lighter in his pocket.

Officer Kevin Bailey interviewed Mendoza at the station. Mendoza repeatedly denied starting the fire. However, Mendoza told Officer Bailey that he saw smoke coming from the center dumpster as he walked by with Ward and became concerned because college students lived there and he did not want anyone to get hurt. He said he did not have a cell phone, but he had stopped at the nearby Kum & Go store and reported the smoke to a female clerk with French braids; because the clerk did not say anything or seem concerned, he bought a beer and left.

Officer Bailey recognized the store clerk Mendoza described as Naomi, a sales manager who had worked at Kum & Go for over seven years. Naomi testified that Mendoza "was a regular at the store," but could not remember whether Mendoza was in the store that particular day. She also stated that she did not remember anything "unusual happening" that day or that anyone coming in and saying something about a fire nearby.

Officer Bailey reviewed the Kum & Go surveillance video the following day. From the information he had received, Officer Bailey estimated that Mendoza would have been in the Kum & Go at approximately 12:55 p.m. On the video, Officer Bailey saw Naomi “running the register.” Despite reviewing “[o]ver an hour” of video footage, he did not identify Mendoza in the Kum & Go.<sup>6</sup>

On June 5, 2009, Mendoza was charged by trial information with arson in the first degree, a class B felony. He entered a plea of not guilty. On October 26, 2009, Mendoza filed a motion to suppress, alleging his statements to police officers after his arrest were not voluntary. On December 29, 2009, the district court granted the motion to suppress in part and ordered that Mendoza’s statements to police prior to his confession were admissible, but that his statements after his confession were inadmissible.<sup>7</sup>

Trial began on January 4, 2010. The court granted a mistrial on January 5, 2010, as a result of a witness’s reference to Mendoza’s prior bad acts. Mendoza filed a motion to dismiss, which the court denied. Mendoza’s second trial was held on February 8-10, 2010, with the jury returning a verdict of guilty of the offense of arson in the first degree.

On March 8, 2010, Mendoza filed a motion for new trial asserting, among other arguments, that the verdict was contrary to the law and the evidence. The State resisted the motion, and the court heard arguments on the motion on April 7, 2010. Defense counsel argued there was not sufficient evidence on the

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<sup>6</sup> The timer on the surveillance video was off by approximately an hour, but Officer Bailey worked with the Kum & Go manager and watched for “an extended period of time . . . to try to capture the time period in question.”

<sup>7</sup> Apparently Mendoza’s statements adjudged inadmissible were made in response to promises of leniency by law enforcement officers.

elements of identification, knowledge, and intent, and that witness David Ward was not credible. The court denied the motion, determining that “the greater weight of credible evidence does support the State and the verdict of the jury.” The court sentenced Mendoza to an indeterminate term of imprisonment not to exceed twenty-five years. He now appeals.

## **II. Scope and Standard of Review.**

The district court has broad discretion in ruling on a motion for new trial, and our review in such cases is for abuse of discretion. *State v. Nitchee*, 720 N.W.2d 547, 559 (Iowa 2006). The court may grant a new trial where a verdict rendered by a jury is contrary to law or evidence. *Id.* “Contrary to the evidence” means “contrary to the *weight* of the evidence.” *State v. Reeves*, 670 N.W.2d 199, 201 (Iowa 2003) (emphasis added). “Unlike the sufficiency-of-the-evidence analysis, the weight-of-the-evidence analysis is much broader in that it involves questions of credibility and refers to a determination that more credible evidence supports one side than the other.” *Nitchee*, 720 N.W.2d at 559. Our review of a weight-of-the-evidence claim “is limited to a review of the exercise of discretion by the trial court, not of the underlying question of whether the verdict is against the weight of the evidence.” *Reeves*, 670 N.W.2d at 203. The court should only exercise its discretion to grant a new trial “carefully and sparingly.” *State v. Taylor*, 689 N.W.2d 116, 134 (Iowa 2004).

## **III. Merits.**

Mendoza contends the district court erred in denying his motion for new trial when the weight of the evidence failed to establish he did intend to damage the building next to the dumpsters, or know that the fire in the dumpsters would

damage or destroy the building. Mendoza essentially argues that the State failed to prove all the elements in order for the jury to find him guilty of arson in the first degree. The marshalling instruction given to the jury instructed that the State had to prove the following elements beyond a reasonable doubt:

1. On or about the 25th day of May 2009, in Johnson County, Iowa, the defendant caused a fire in or near property.
2. The defendant intended to destroy or damage the property or knew the property would be destroyed or damaged.
3. The presence of one or more persons could be reasonably anticipated in or near the property that is the subject of the arson.

Jury Instruction No. 17; see *also* Iowa Code § 712.1(1), (2).

In support of his contention, Mendoza claims he had no motive to cause damage to or destroy 332 South Line Street, and he made no statements expressing his intent to do so; he had no “warped fascination” of burning a building; and there was no evidence the act was preplanned. Mendoza acknowledges that even if he “did not have an intent to damage or destroy this building,” his conviction “could be supported if [he] knew that his act would damage or destroy the building.” But Mendoza claims he “was not aware that his actions would damage or destroy the property next to the dumpsters.” Mendoza further asserts the evidence that he set the fire “was in conflict.”

Mendoza requested a new trial under Iowa Rule of Criminal Procedure 2.24(2)(b)(6). The district court was entitled to weigh the evidence and consider the credibility of the witnesses when deciding Mendoza’s motion. *State v. Maxwell*, 743 N.W.2d 185, 193 (Iowa 2008). If the court determined the verdict was contrary to the weight of the evidence and a miscarriage of justice may have occurred, it was within the court’s discretion to grant a new trial. *Id.* “Only in the



extraordinary case, where the evidence preponderates heavily against the verdict, should a district court lessen the jury's role as the primary trier of fact and invoke its power to grant a new trial." *Id.*; *State v. Shanahan*, 712 N.W.2d 121, 135 (Iowa 2006).

Here, there is credible evidence in the record to support the finding that Mendoza set the fire. Ward's statements that he witnessed Mendoza use his cigarette lighter to start cardboard on fire were corroborated by the testimony of witnesses Kimler and Janey in regard to their observations of a white or Hispanic man wearing black clothing digging in the middle dumpster within minutes of the start of the fire. Ward's testimony is further corroborated by his phone call to Leon DeBoer and DeBoer's call to 911. Officer Hewlett discovered Mendoza approximately one-half mile from the scene of the fire shortly after the incident. Mendoza was wearing black clothing and possessed a cigarette lighter. Mendoza's testimony that he reported the fire to the Kum & Go clerk was not corroborated or supported by the evidence.<sup>8</sup>

Further credible evidence exists to support the finding that Mendoza knew that property would be damaged or destroyed by the fire. Mendoza stated that he saw cardboard and blankets in the center dumpster. Kimler and Janey testified they saw Mendoza digging in the dumpster, indicating Mendoza was close enough to see the dumpster's contents and the surrounding garage-type space housing the dumpsters. During direct examination, in respect to

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<sup>8</sup> In any event, the fact that Mendoza allegedly reported the fire does little to weigh against a finding of his guilt.

Mendoza's knowledge of people in the vicinity, Officer Bailey was questioned concerning his discussions with Mendoza:

Q. [STATE] Did he indicate to you that he was concerned in any way when he saw the smoke? A. [OFFICER BAILEY] Yes.

Q. What did he say? A. That he was concerned about the college kids and the fire that—the fire could harm them.

Q. Did he tell you what he did after he saw the smoke?  
A. He walked north to Kum & Go and reported the smoke to a female clerk.

This evidence supports the finding that a reasonable person, and Mendoza, could reasonably anticipate the presence of one or more persons "in or near" the dumpster fire.

Although the evidence was not overwhelming, we agree the greater weight of the evidence supports the jury's determination of guilt. Accordingly, we conclude the district court did not abuse its discretion in overruling Mendoza's motion for new trial under rule 2.24(2)(b)(6).

**AFFIRMED.**