

IN THE COURT OF APPEALS OF IOWA

No. 1-297 / 10-1041
Filed June 15, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

BOBBY RAY KLINGER, SR.,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Karen A. Romano,
Judge.

Bobby Klinger appeals from the judgment and sentence entered on his
convictions for third-degree burglary. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Robert P. Ranschau,
Assistant Appellate Defender, for appellant.

Bobby R. Klinger, Sr., Newton, appellant pro se.

Thomas J. Miller, Attorney General, Kyle P. Hanson, Assistant Attorney
General, John P. Sarcone, County Attorney, and Susan Cox, Assistant County
Attorney, for appellee.

Considered by Vogel, P.J., Vaitheswaran, J., and Mahan, S.J.* Tabor, J.,
takes no part.

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

VOGEL, P.J.

Bobby Klinger appeals from the judgment and sentence entered on his convictions following a jury trial to the offense of burglary in the third degree as a habitual offender in violation of Iowa Code sections 713.1, 713.6A, and 902.8 (2009). He was sentenced to a term of imprisonment not to exceed fifteen years. Klinger contends the district court erred in overruling his motion for a new trial and abused its discretion in denying him substitute counsel.

I. Background Facts and Proceedings.

On January 30, 2010, Dawn Brown returned home to find an unfamiliar truck on her property. She did not recognize the woman standing next to the truck. A man emerged from Brown's outbuilding, who was later identified as Bobby Klinger. Klinger told Brown that he was "looking for snowmobiles," and asked if she recognized an address he claimed to be trying to locate. In the bed of the truck, Dawn saw a generator which looked like one of her husband's, and asked Klinger who owned the equipment. He stated that everything in the truck belonged to him. As Klinger and his female passenger drove off, Dawn memorized the license plate number. Still somewhat shaken by the encounter, Dawn entered the outbuilding through the office door. She then found an interior door leading from the office to the storage area ajar. She testified that although not usually locked, this door always remained closed in the winter. She also noticed the smell of cigarette smoke in that area; no one in her family smoked. Dawn called her husband, Dallas Brown, and then the police to report what had happened. She provided the license plate number of the truck, which lead the police to Klinger. Later, when Dallas returned home, he found the generator was

missing, and reported it to the police. Klinger was arrested and following a jury trial, convicted of third-degree burglary. Klinger appeals.

II. Standard of Review.

“We review for errors at law [Klinger’s] claim that the district court failed to apply the proper standard in ruling on the motion for new trial.” *State v. Wells*, 738 N.W.2d 214, 218 (Iowa 2007). We review the district court’s denial of substitute counsel for an abuse of discretion. *See State v. Webb*, 516 N.W.2d 824, 828 (Iowa 1994).

III. Motion for New Trial.

Klinger contends the district court erred in overruling his motion for a new trial. Iowa Rule of Criminal Procedure 2.24(b)(6) provides that the court may grant a new trial when the verdict is contrary to law or the evidence. Our supreme court has interpreted “contrary to . . . the evidence” as meaning “contrary to the weight of the evidence.” *State v. Ellis*, 578 N.W.2d 655, 659 (Iowa 1998); *see also Wells*, 738 N.W.2d at 219 (stating that in ruling on a motion for a new trial, the district court is to apply a weight-of-the-evidence standard). The weight of the evidence refers to a determination that a greater amount of credible evidence supports one side of an issue or cause than the other. *Ellis*, 578 N.W.2d at 658.

The district court found,

There is more than ample evidence to support the jury’s verdict in this case and there is very little evidence that would indicate that the jury could not have reached that conclusion. Virtually all the evidence that was submitted in the trial would indicate that Mr. Klinger committed the offense of which the jury found him guilty. The Court cannot find in weighing the evidence that the jury’s verdict should be set aside.

Dawn detailed the incident in her testimony, and the minor points Klinger raises on appeal do not compel a determination that the verdict must be seen as contrary to the evidence. See *State v. Shanahan*, 712 N.W.2d 121, 135 (Iowa 2006) (providing that 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). We conclude the district court did not abuse its discretion in overruling Klinger's motion for a new trial.

IV. Substitute Counsel.

Klinger asserts there was a breakdown in attorney-client communications, and the court abused its discretion in failing to grant his request for new counsel. Klinger further asserts pro se that a conflict of interest arose when he filed a complaint regarding his attorney with the Iowa Supreme Court Attorney Disciplinary Board.

When, as here, a defendant alleges a breakdown in attorney-client communications, the district court has an affirmative duty to conduct an inquiry into the allegations. *State v. Tejada*, 677 N.W.2d 744, 750 (Iowa 2004). However, the Sixth Amendment right to counsel does not guarantee a "meaningful relationship between an accused and his counsel." *State v. Lopez*, 633 N.W.2d 774, 778 (Iowa 2001) (citations omitted). Where a defendant represented by a court-appointed attorney requests the court appoint substitute counsel, sufficient cause must be shown to justify replacement. *Id.* at 778–79. "Sufficient cause includes a conflict of interest, irreconcilable conflict, or a complete breakdown in communication between the attorney and the defendant."

State v. Webb, 516 N.W.2d 824, 828 (Iowa 1994). A defendant must show prejudice when the court denies a motion for substitute counsel unless the defendant has been denied counsel or counsel has a conflict of interest. *Lopez*, 633 N.W.2d at 779. The decision to grant a motion for substitute counsel is a matter within the trial court's discretion. *Id.* at 778.

A hearing was held on April 29, 2010, following Klinger's motion for substitute counsel. During the hearing, Klinger's attorney testified that he had visited with Klinger "numerous times," spoken to Klinger's wife, conducted discovery, subpoenaed witnesses, and was prepared to take depositions the following week. The assistant county attorney, representing the State, confirmed that Klinger's attorney had contacted her requesting depositions and discovery material. Klinger's attorney also testified that in spite of Klinger's complaints, he was "ready, willing, and able to represent [Klinger]." The court denied the motion for substitute counsel, stating that Klinger's attorney would see that he receive a fair trial, and "make sure that your interests are represented."

On our review of the record, we conclude the district court did not abuse its discretion in denying Klinger's motion for substitute counsel, as Klinger failed to demonstrate sufficient cause to justify a replacement, or show that he was prejudiced by the denial of substitute counsel. There is no evidence the trial outcome would have been different, had Klinger been represented by a different attorney. See *Id.* at 781 (demonstrating that when the basis of a defendant's complaints had nothing to do with defense counsel's representation, a court does not abuse its discretion in denying a motion for substitute counsel).

AFFIRMED.