IN THE COURT OF APPEALS OF IOWA

No. 3-351 / 12-0957
Filed May 30, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CHRISTOPHER DIXON,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Thomas G. Reidel, Judge.

Christopher Dixon appeals from judgment and sentences entered upon his convictions of delivery of a controlled substance. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Bradley M. Bender, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, Michael J. Walton, County Attorney, and Melisa K. Zaehringer, Assistant County Attorney, for appellee.

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

DANILSON, J.

Christopher Dixon appeals from judgment and sentences imposed upon his convictions for three counts of delivery of a controlled substance (cocaine), in violation of Iowa Code section 124.401(1)(c) (2011). He asserts there is insufficient evidence to support the convictions and that the district court erred in denying his motion for new trial. After considering the trial record, we conclude that there is sufficient evidence to support the guilty verdicts. Furthermore, we find the district court did not abuse its discretion in overruling Dixon's motion for a new trial under Iowa Rule of Criminal Procedure 2.24(2)(b)(6). We affirm.

I. Background Facts.

Twice in 2009, and once in 2010, Davenport narcotics officers Brian Morel and Gilbert Proehl used the same confidential informant (CI) to engage in controlled buys targeting Christopher Dixon. According to the officers' testimony, they employed the same strategy on each occasion: after searching the CI and finding no drugs or money, they affixed a recording device to him, provided him with $160 in pre-recorded money, and instructed him to purchase cocaine from Dixon at his suspected residence. The CI was under constant surveillance by undercover police officers while traveling to and from the officers' car and the target residence. The residence itself was similarly watched. Directly after each of the three controlled buys, the officers once again searched the CI and retrieved drugs from him. No other items were found on the CI after any of the controlled buys.

Dixon was charged with three counts of delivery of a controlled substance. After the State's presentation of evidence Dixon moved for a judgment of acquittal on each charge, contending the evidence submitted was not sufficient to support a finding that he delivered cocaine on any of the three dates alleged by the State. The court denied the motion. At the conclusion of the trial Dixon made a motion for a new trial, arguing the verdicts were against the weight of the evidence. The district court denied the motion.

Dixon raises two issues on appeal. He asserts that the evidence provided at the district court was insufficient for the jury to convict him of any of the criminal offenses. He also maintains the district court abused its discretion in denying his motion for new trial.

II. Standard of Review.

We review challenges to the sufficiency of evidence for errors at law. *State v. Sanford*, 814 N.W.2d 611, 615 (Iowa 2012). We review the evidence "in the light most favorable to the State, including all reasonable inferences that may be deduced from" it to determine whether the finding of guilt is supported by substantial evidence and should be upheld. *Id*. Evidence is substantial if it would convince a rational fact-finder of the defendant's guilt beyond a reasonable doubt. *Id*.

The district court has broad discretion when ruling on motions for a new trial in which the defendant alleges the verdict is contrary to the weight of the evidence and we review its decision for an abuse of that discretion. *State v. Nitcher*, 720 N.W.2d 547, 559 (Iowa 2006). The weight-of-the-evidence standard

differs from the sufficiency-of-the-evidence standard in that the district court does not view the evidence from a standpoint most favorable to the government. *State v. Taylor*, 689 N.W.2d 116, 134 (Iowa 2004). Rather, the court weighs the evidence and considers the credibility of the witnesses. *Id*. While it has the discretion to grant a new trial where a verdict rendered by the jury is contrary to law or evidence, the court should do so only "carefully or sparingly." *Id*. In our review, we limit ourselves to the question of whether the trial court abused its discretion; we do not consider the underlying question of whether the verdict is against the weight of the evidence. *State v.* Reeves, 670 N.W.2d 199, 203 (Iowa 2003).

III. Discussion.

A. Sufficiency of Evidence.

At trial the State had the burden to prove beyond a reasonable doubt both that Dixon delivered cocaine on the three dates alleged in the trial information and that Dixon knew it was cocaine he was delivering. Dixon contends the district court erred in denying his motion for a judgment of acquittal; he relies on the following facts: none of the State's witnesses were able to testify that they personally saw him deliver the cocaine to the CI, the recordings do not show the delivery, the CI did not testify nor was disinterested, the only evidence connecting Dixon to the residence is the fact that the utilities were in the name of a known acquaintance, other individuals were present in the residence at the time of the alleged deliveries by Dixon, and none of the prerecorded buy monies were recovered by law enforcement officers.

While much of the evidence presented by the State was circumstantial, in our review of the sufficiency of the evidence, "we find circumstantial evidence equally as probative as direct." *State v. Meyers*, 799 N.W.2d 132, 138 (Iowa 2011).

When reviewing the evidence in the light most favorable to the State, a jury could reasonably infer that the CI did meet with Dixon and purchase cocaine from him at each of the three meetings. The State provided evidence that the CI acquired the cocaine as a result of three controlled buys. He was thoroughly searched before and after each of the controlled buys. Each time it was determined he had no drugs on his person before the meeting, but he provided cocaine to the narcotics officers after leaving the targeted residence. We do not agree with Dixon that a search before a controlled buy requires a strip search.

The State also presented evidence that it was Christopher Dixon who sold the cocaine to the CI. Officers Morel and Proehl testified Dixon resided at the targeted residence. They confirmed that the utilities for the residence were in the name of a woman with a known association to Dixon. Audio and video of the three meetings provide images of Dixon in the house and snippets of conversations between the CI and an individual named "Chris." The district court concluded:

> Under buy number one that occurred September 21, 2009, on the video recording you can observe an individual that was identified as Christopher Dixon. Additionally, you can hear that person's voice.
>
> In regards to buy number two and number three, the Court does not recall being able to see Mr. Dixon, nor does anyone identify his voice, but the Court believes that would be a jury question in the sense that the jurors have seen Mr. Dixon and

> heard his voice in buy number one, and it will be their—it will be a fact question for them to determine whether they think they can hear his voice also in buy number two and buy number three."

We also note that the CI asks for "Chris" on the recordings upon entering the house for buys number one and two. Each controlled buy took approximately two minutes.

Although the State relied on circumstantial evidence to meet its burden, "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." *Id*. We acknowledge that the testimony of the CI and the recovery of the prerecorded buy monies may have bolstered the State's case. However, viewing the evidence in a light most favorable to the State, a reasonable jury could infer that Dixon did deliver cocaine to the CI at the meetings. "When the testimony is disputed or if undisputed, when different inferences may be drawn from it, the question is one of fact for the jury." *State v. Martin*, 274 N.W.2d 348, 349 (Iowa 1979.

Based on our review of the evidence in the record, we conclude the district court properly denied Dixon's motion for judgment of acquittal for all three offenses because substantial evidence existed at the time of the close of the State's evidence.

B. Weight of the Evidence.

Error was satisfactorily preserved by Dixon's oral objection when he requested that the district court grant a new trial on grounds the verdicts were against the weight of the evidence. Dixon asserts the trial court abused its

discretion in denying his motion for new trial. In support of his contention, Dixon attempts to poke holes in the State's case by challenging the State's proof that he delivered the cocaine to the CI. He emphasizes that the CI did not testify at trial and that officers Morel and Proehl never personally witnessed him deliver the controlled substance. He also suggests the CI could have already had the cocaine in his possession without the officers' knowledge since they did not strip-search him before any of the controlled buys.[1] We reject this suggestion—the district court is not to disturb the jury's verdict "against any mere doubt of its correctness." *See Reeves*, 670 N.W.2d at 203.

In this case the State did present credible evidence to show that Dixon knowingly delivered cocaine to the CI on the three enumerated occasions. Directly preceding each controlled buy the officers searched the CI and did not find any drugs on his person before sending him into the targeted residence. He then entered the targeted residence and met with "Chris." Immediately afterward the CI delivered cocaine to the police officers waiting outside the residence.

"Except in the extraordinary case, where the evidence preponderates heavily against the verdict, trial courts should not lessen the jury's role as the primary trier of facts and invoke their power to grant a new trial." *State v. Shanahan*, 712 N.W.2d 121, 135 (Iowa 2006). This is not such a case. The district court did not abuse its discretion in overruling Dixon's motion for new trial as it related to all three offenses. We affirm.

AFFIRMED.

---

[1] Officer Morel testified that standard protocol does not permit officers to perform strip searches on confidential informants.