

IN THE COURT OF APPEALS OF IOWA

No. 3-791 / 12-1671
Filed September 18, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CASEY LEE PINEGAR,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Robert A. Hutchison,
Judge.

The defendant appeals his conviction for delivery of a controlled substance, alleging the evidence was insufficient to convict and the verdict was against the weight of the evidence. **AFFIRMED.**

Susan Stockdale, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Elisabeth Reynoldson, Assistant Attorney General, John Sarcone, County Attorney, and Stephan Bayens, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Danilson and Tabor, JJ.

TABOR, J.

Casey Lee Pinegar appeals his conviction for delivery of methamphetamine. He argues the evidence presented at trial was insufficient to find him guilty. He also argues the jury's verdict was contrary to the weight of the evidence. Because we defer to the jury's assessment of credibility on the sufficiency issue and because the district court did not abuse its discretion in denying the motion for new trial, we affirm his conviction.

I. Background Facts and Proceedings

On February 23, 2012, Trevor Terry, who was working with law enforcement, contacted Casey Pinegar and arranged to purchase an "eight ball" (approximately 2.5 grams) of methamphetamine. Des Moines Police Officers Chris Hardy and Robert Hoelscher provided Terry with \$350 in serialized bills to complete the purchase. Terry recalls putting the money in his boot. The officers also searched Terry to ensure he had no drugs or other money on him.

The officers then drove Terry to a sandwich shop to meet Pinegar. They saw Terry get into the passenger side of a car driven by a man later identified as Pinegar. The officers followed the car until it arrived at Pinegar's apartment. Pinegar and Terry went into the apartment. When Pinegar asked for the cash, Terry could not find the \$350. Terry began to search for the money. Pinegar handed Terry a flashlight and told him to look outside. Terry testified he believed the money may have fallen out of his boot and Pinegar may have picked up the cash and "pocketed it". Terry called Officer Hoelscher. Pretending to be his brother, Hoelscher told Terry to leave his phone on speaker so he could hear

what was happening. Terry said Pinegar agreed to “front him” two grams of methamphetamine, meaning “take this and then pay me back.”

While watching the apartment, the officers noticed a man with dreadlocks walk into the building. Over the speaker phone, they then heard another male voice in the apartment. Pinegar asked Terry to step out into the hallway. Pinegar allowed Terry back into the apartment when the other man left. That same man returned and gave money to Pinegar saying Pinegar had paid too much. Pinegar then gave Terry approximately two grams of methamphetamine. But because it was not the \$350 worth of methamphetamine Pinegar agreed to front, Terry testified Pinegar also gave him sixty dollars. Terry testified he left the apartment with two grams of methamphetamine and three twenty-dollar bills. The officers discovered the sixty dollars was part of the serialized money given to Terry.

The officers later arrested Pinegar for delivery of a controlled substance. From jail Pinegar made phone calls purportedly regarding the incident to a female friend and to his mother. The court admitted recordings of these phone calls into evidence. In one phone call, Pinegar describes the events that took place during the transaction. In another, he says his arrest was from February when he was “playing around a little bit.” In another phone call, he referred to specific places in his apartment and asked the female friend to “get that stuff out of there” because people would be coming to search.

A jury found Pinegar guilty. Pinegar stipulated he was a second or subsequent offender and an habitual offender. The court denied Pinegar’s

motion for a new trial, and sentenced him to no more than forty-five years in prison. Pinegar must serve at least one-third of that sentence before he is eligible for parole. He now appeals that conviction.

II. Scope and Standard of Review

We review of claims of insufficient evidence for correction of errors at law. Iowa R. App. P. 6.907; *State v. Brubaker*, 805 N.W.2d 164, 171 (Iowa 2011). The jurors' finding of guilt is binding on appeal if supported by substantial evidence. *State v. Enderle*, 745 N.W.2d 438, 443 (Iowa 2007). Substantial evidence exists to support a verdict when the record reveals evidence that could convince a rational trier of fact a defendant is guilty beyond a reasonable doubt. *Brubaker*, 805 N.W.2d at 171. We consider all of the evidence in the record in the light most favorable to the verdict and make all reasonable inferences that may fairly be drawn from the evidence. *Id.* But "it is the State's 'burden to prove every fact necessary to constitute the crime with which the defendant is charged, and the evidence presented must raise a fair inference of guilt and do more than create speculation, suspicion, or conjecture.'" *Id.* (quoting *State v. Kemp*, 688 N.W.2d 785, 789 (Iowa 2004)).

The district court had broad discretion to rule on the new trial motion. See *State v. Nichter*, 720 N.W.2d 547, 559 (Iowa 2006). We only reverse when the court abuses that discretion. *Id.* Our supreme court has cautioned trial courts that failure to use this discretion "carefully and sparingly" will "lessen the role of the jury as the principal trier of the facts and would enable the trial court to disregard at will the jury's verdict." *State v. Ellis*, 578 N.W.2d 655, 659 (Iowa

1998); see *State v. Shanahan*, 712 N.W.2d 121, 135 (Iowa 2006) (reserving grant of new trial for “extraordinary case” where evidence “preponderates heavily” against the verdict).

III. Analysis

A. Was There Sufficient Evidence To Find Pinegar Guilty Of Delivery Of A Controlled Substance?

Pinegar asserts the State presented insufficient evidence to support a guilty verdict. He is particularly concerned about the credibility of Terry’s testimony.

To prove Pinegar was guilty of delivery of methamphetamine the State had to show: 1) On or about the 23rd day of February 2012, the defendant or someone he aided or abetted delivered a controlled substance, and 2) Pinegar knew the substance delivered was methamphetamine. The court also instructed the jury on the definition of aiding and abetting.

A jury is free to believe or disbelieve any testimony it chooses. *State v. Thornton*, 498 N.W.2d 670, 673 (Iowa 1993). The jury in this case heard from five members of the Des Moines Police Department who were involved in the case. The officers testified to searching Terry before the controlled drug buy, following the car to Pinegar’s apartment, hearing part of the encounter over the speaker phone, and retrieving the methamphetamine and cash after Terry left Pinegar’s apartment.

The jury also heard from Terry. The jurors were able to assess his demeanor and determine whether they believed him. They also heard

incriminating and corroborative phone conversations initiated by Pinegar from the Polk County jail. Viewed in the light most favorable to the jury's verdict, we find the State presented sufficient evidence to convict.

B. Did The District Court Exercise Sound Discretion In Denying Pinegar's Motion For A New Trial?

"Contrary to the evidence" means contrary to the weight of the evidence. *Ellis*, 578 N.W.2d at 659. The "weight of the evidence" refers to "a determination [by] the trier of fact that a greater amount of credible evidence supports one side of an issue or cause than the other." *Id.* at 658 (quoting *Tibbs v. Florida*, 457 U.S. 31, 37-38 (1982)). This is a more stringent standard than the sufficiency of the evidence standard. *Nguyen v. State*, 707 N.W.2d 317, 327 (Iowa 2005). The district court should only grant a new trial "in exceptional cases in which the evidence preponderates heavily against the verdict." *Ellis*, 578 N.W.2d at 659.

This is not the exceptional case. As noted above, Pinegar rests his argument on Terry's credibility. The court had an opportunity to hear Terry and determine whether to believe his version of events. It also had the opportunity to hear the testimony of the five officers and the incriminating phone calls made by Pinegar. The evidence taken as a whole does not tilt the scale away from the verdict. The court did not abuse its discretion when denying Pinegar's motion for a new trial.

AFFIRMED.