

IN THE COURT OF APPEALS OF IOWA

No. 6-1058 / 06-1212
Filed March 14, 2007

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MONTRELL DESHAWN ANDERSON,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, James Bauch,
Judge.

Montrell Anderson appeals the district court's ruling denying him a new trial after the primary witness recanted her testimony. **AFFIRMED.**

Patricia Reynolds, Acting State Appellate Defender, and Robert P. Ranschau, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Christen Douglass, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Joel Dalrymple, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Huitink and Mahan, JJ.

SACKETT, C.J.

Montrell Anderson was charged and convicted of burglary in the first degree and sexual abuse in the second degree in violation of Iowa Code sections 713.3 and 709.3 (2005). He appeals challenging the district court's refusal to grant him a new trial after the primary witness recanted her testimony. He contends he was denied a fair trial because of false testimony. We affirm.

BACKGROUND. Anderson was accused of entering an apartment without permission and sexually abusing the woman there. She testified for the State at trial that she and Anderson had a relationship, and he had lived in her apartment for some time but had no current right to be there. She testified he entered the apartment through an unlocked door, pushed her around, sexually abused her, and forced her to have intercourse with him.¹

Into the trial, after her initial testimony, she apparently had some contact with Anderson's family and learned that he could serve sixty years if found guilty of the offenses charged. She apparently wanted to return to the witness stand. The judge subsequently questioned her about her feelings concerning the length of the sentence, and she said she believed it was too long. She was also questioned about whether her earlier testimony was the truth, and she said it was.

After the jury found Anderson guilty, she wrote a letter recanting her initial trial testimony. Among other things, she said at the time in question she and Anderson got in a heated fight, he did not force her to do anything, and she let

¹ There was other testimony to support a finding that she and the defendant were fighting, but the primary evidence supporting the elements of the crimes charged was dependent on her testimony.

him make love to her. She said she and Anderson had a relationship, he had some of his things at her apartment, and he always came home to sleep with her. She related she was used by the Waterloo Police Department to frame Anderson and put him away for years, and she was threatened with perjury if she told the truth. She also stated she first saw certain evidence in the courtroom and believed it had been tampered with to frame Anderson.

Anderson filed a motion for new trial contending, among other things, that the victim had recanted her testimony and filed an affidavit indicating she had lied at trial in a number of ways.

A hearing was held. The woman said she could not recant her testimony when testifying before the judge at trial because the county attorney told her she could be charged with perjury. She testified what the county attorney told her also had an effect on her testimony the first day of trial. She related that during the trial she was on Paxil and Vicodin, the medications affected her ability to think clearly and tell the truth, and she was scared and mentally unstable because of an earlier surgery.

The district court also heard testimony from an investigator for the Waterloo Police Department who testified that the victim assisted in every way with the investigation, maintained she wanted to pursue the investigation, and gave no indication she had any problems with him. He said she continued to assist willingly to pursue the charges and wanted to go forward. The investigator related she came from Illinois willingly for the trial. He related on the second day of trial she expressed concern to him and the prosecutor about the sentence, and that she was going to change her testimony to reduce the sentence. The

investigator said she was threatened with perjury if she changed her testimony and the possibility was explained to her.²

The district court, after hearing the evidence, found on the day the event occurred it was reported by neighbors who gave recorded statements. He noted the victim had given two statements to the police, one of which was videotaped, and pictures of her were taken. The court found the issue of her testifying differently did not come up until the second day of trial and never until that time did she say her testimony was not true, that she was lying, or that someone was threatening her. The court noted she came voluntarily from Illinois to testify. Furthermore, there was nothing on the first day of trial that would have indicated she was under the influence of medication or not understanding what was going on. While recognizing that perhaps she took pain medication, the court did not find it impacted her ability to hear and answer questions. The court also found her testimony credible on the second day, and while she tried to minimize its impact and help the defendant, the court found she appeared to be in full control and knew what was happening.

STANDARD OF REVIEW. “Recantation of trial testimony is viewed with suspicion, and the trial court has broad discretion in looking to the whole record to determine if defendant had a fair trial. We reverse only for an abuse of discretion.” *State v. Folck*, 325 N.W.2d 368, 377 (Iowa 1982) (citing *State v. Taylor*, 287 N.W.2d 576, 578 (Iowa 1980)); *State v. McGhee*, 280 N.W.2d 436, 442 (Iowa 1979), *cert. denied* 444 U.S. 1039, 100 S. Ct. 712, 62 L. Ed. 2d 674 (1980). A witness’s recantation of her testimony does not necessarily entitle the

² The issue of whether she did not testify under threat of prosecution is not raised and we do not address it.

defendant to a new trial. *State v. Frank*, 298 N.W.2d 324, 328 (Iowa 1980). The trial court “must make its decision based on the facts of the whole trial and those in conjunction with the motion.” *Id.* at 329.

ANALYSIS. Anderson points out the following testimony at trial, which casts suspicion on the witness’s initial trial testimony and supports her recanted version. Her roommate and Anderson’s mother testified that Anderson basically lived with the witness and had free access to the house. On the evening before the incident, the witness went out and throughout the evening would text message Anderson telling him of her love for him. In testifying for the State, she said Anderson did not have a key to the house, but when testifying for the defense she testified she had given him one. After the incident, she went to a friend’s house across the street. The friend ultimately called the police, but the witness did not want her to. The friend was to testify, “she didn’t really know if it was really rape or she didn’t really know if it was just rough sex because he was mad at her and it was just a little bit harder than what he usually is or she didn’t really know.”

The State points out the following evidence supports the witness’s initial testimony. A paramedic testified the witness told him she was strangled, hit, poked, and forced to have sex, and she was shook up. He saw injuries on her neck that were fresh. Anderson’s DNA was on swabs taken from the witness during compilation of the rape evidence kit. She denied being on medication during trial.

Courts look at the entire set of circumstances and view recantations of testimony with suspicion. *Folck*, 325 N.W.2d at 377; *State v. Tharp*, 372 N.W.2d

280, 282 (Iowa Ct. App. 1985). We have considered the evidence that contradicts the witness's initial testimony and supports her recanted version. We note that evidence of her being shook up and injured, while supporting her initial testimony, also supports her recanted testimony that she and Anderson had a serious fight. From the written record, it is not entirely clear when the witness was telling the truth.

However,

a person “convicted of a crime should not be granted a new trial unless the trial court is satisfied that the testimony of a material witness was false or mistaken, and unless a jury might reach a different conclusion without such testimony.”

Frank, 298 N.W. 2d at 329 (quoting *State v. Compiano*, 261 Iowa 509, 517, 154 N.W.2d 845, 849 (1967)). The trial court was in the best position to assess her credibility. See *Tharp*, 372 N.W.2d at 282.

AFFIRMED.