

IN THE COURT OF APPEALS OF IOWA

No. 7-593 / 06-1498
Filed November 29, 2007

STATE OF IOWA,
Plaintiff-Appellant,

vs.

TOMMY LEE JOHNSON,
Defendant-Appellee.

Appeal from the Iowa District Court for Polk County, Don Nickerson,
Judge.

The State appeals from the order granting Tommy Johnson a new trial on
charges of first-degree burglary and willful injury causing serious bodily injury.

AFFIRMED.

Thomas J. Miller, Attorney General, Robert Ewald and Mary Tabor,
Assistant Attorneys General, John P. Sarcone, County Attorney, and Jim Ward,
Assistant County Attorney, for appellant, State.

Alexandra Nelissen of Nelissen & Juckette, P.C., Des Moines, for
appellee.

Heard by Sackett, C.J., and Vaitheswaran and Baker, JJ.

BAKER, J.

The State appeals from the district court's order granting a new trial following Tommy Johnson's convictions for first-degree burglary and willful injury resulting in serious injury. We affirm.

Background Facts and Proceedings.

Johnson was found guilty following a jury trial in July of 2005. At trial, Teresa Seeley testified generally regarding Johnson's alleged assault of Eddie Gablurel in Seeley's apartment. While sentencing was continued awaiting transcription of the trial testimony, Johnson requested and was granted funds for the retention of a private investigator. On April 18, 2006, Johnson filed an amended motion for new trial asserting the discovery of new evidence. Johnson would later present to the court an affidavit from Seeley stating that she gave inaccurate testimony at trial based on pressure that she would otherwise lose her children.

A hearing was subsequently held, at which Seeley testified. In pertinent part, she testified that she consented to Johnson entering her apartment, that the assault took place *outside* of her apartment, and that Gablurel may have been the aggressor in the fight. Following that hearing, the court granted Johnson's motion for new trial. The State was granted discretionary review of this order by our supreme court, and the case was transferred to this court.

Scope of Review.

We review a district court's ruling on a motion for new trial for abuse of discretion. *State v. Reeves*, 670 N.W.2d 199, 202 (Iowa 2003). To establish an abuse of discretion, the appellant must show the district court exercised its

discretion on grounds or for reasons untenable or clearly unreasonable. *Id.* The district court has broad discretion in ruling on a motion for new trial. *Id.* We are “slower to interfere with the grant of a new trial than with its denial.” Iowa R. App. P. 6.14(6)(d).

Motion for New Trial.

A motion for new trial based on witness recantation is generally considered a motion based on newly discovered evidence. *State v. Compiano*, 154 N.W.2d 845, 849 (Iowa 1967). Such motions are not favored in the law and should be closely scrutinized and granted sparingly. *Id.* But, “[i]t is ‘important for the orderly administration of criminal justice that findings on conflicting evidence by trial courts on motions for new trial based on newly discovered evidence remain undisturbed except for most extraordinary circumstances’” *Id.* (citing *United States v. Johnson*, 327 U.S. 106, 111, 66 S. Ct. 464, 466, 90 L. Ed. 562, 565 (1946)).

“[O]ne 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.”

Compiano, 1454 N.W.2d at 850.

Credibility of witnesses is key in this determination. *Reeves*, 670 N.W.2d at 207. Determinations of credibility are in most instances left for the trier of fact, who is in a better position to evaluate witnesses. *State v. Weaver*, 608 N.W.2d 797, 804 (Iowa 2000). We give great weight to a district court’s credibility findings. *State v. O’Shea*, 634 N.W.2d 150, 156 (Iowa Ct. App. 2001).

In an early hearing on the motion for new trial, prior to the hearing at which Seeley would eventually testify, the court stated:

The focus is whether or not [Seeley] told the truth at trial because, once again, I was very nervous and—I was not impressed with her testimony at trial because at one point she indicated that various people had come in from outside of the house and then all of a sudden she indicated that she had told Mr. Johnson that he couldn't come in.

And I thought her testimony at trial was contradictory My concern is perjured testimony at trial, for whatever reason, so I want to get to the bottom of that.

Thus, even prior to hearing Seeley's testimony, the court indicated it had serious doubts as to her credibility and the truthfulness of her trial testimony.

In its subsequent order granting the new trial, the court noted its observation that during her trial testimony, Seeley "appeared confused and reluctant" regarding her testimony that Johnson did not have permission to enter her apartment. The court found her recanted testimony at the new trial hearing to be more credible. The court also found significance in Seeley's demeanor and appearance while testifying at the new trial hearing. It specifically noted her reluctance to make eye contact with the assistant county attorney, and it opined that it felt "Seeley was relieved to have the full attention of the Court and attempting to correct her trial testimony."

After careful review, we cannot say the decision to grant a new trial was "untenable" or "clearly unreasonable," and thus we conclude the district court did not abuse its discretion on this issue. *Reeves*, 670 N.W.2d at 202-203. This is precisely the type of discretionary call our law places in the prerogative of the trial court. We therefore affirm.

AFFIRMED.