

IN THE COURT OF APPEALS OF IOWA

No. 8-161 / 07-1200
Filed March 26, 2008

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DAVID WILLOCK,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, George L. Stigler, Judge.

David Willock appeals from the district court's denial of his motion for new trial following his convictions for kidnapping, burglary, and robbery. **AFFIRMED.**

John J. Bishop, Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General, Robert P. Ewald, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Linda Fangman, Assistant County Attorney, for appellee.

Considered by Huitink, P.J., and Zimmer and Miller, JJ.

ZIMMER, J.

David Willock appeals from the district court's denial of his motion for new trial following his convictions for first-degree kidnapping in violation of Iowa Code sections 710.1(3), (4) and 710.2 (2003), first-degree burglary in violation of section 713.3, and first-degree robbery in violation of section 711.2. He claims the district court abused its discretion in denying his motion because the jury's verdict was contrary to the weight of the evidence presented at trial. We affirm.

I. Background Facts and Proceedings.

The record reveals the following facts. Shortly after midnight on October 16, 2002, Sami Stamatiades awoke when she heard a loud noise in her Waterloo home. Three men with guns came into her bedroom. They were wearing dark clothing, ski masks with "the eye and the mouth hole," and gloves. One of the intruders was around six feet tall, "a lot larger, broader shoulders, lighter comple[xion], bigger lips." The other intruders were shorter, "one quite small" and "then one an average build, but skinnier."

The intruders asked Stamatiades if there was anyone else in the house. She told them her two children were home. They asked where the children were, and she pointed to her daughter's bedroom. The intruders used duct tape to restrain Stamatiades's children and left them upstairs. They then duct-taped Stamatiades's mouth, hands, and ankles and carried her downstairs to the living room. The largest intruder watched Stamatiades while the other two went upstairs and ransacked her belongings. The two men came back downstairs and

began yelling at her, "Where is it?"¹ They told her that she "better get" two men named Lamont Horton and Alonzo Quinn to come to her house.

Horton was Stamatiades's former boyfriend. He had been at her residence the night prior to the incident. Stamatiades's friend, Lindsay Bakken, was dating Quinn. Horton and Quinn were drug dealers. The intruders told Stamatiades that they were at her residence because Horton and Quinn had sold them bad drugs.

Stamatiades told the men that Quinn was at Bakken's nearby residence and gave them the address. She also gave them Horton's telephone number, and they attempted to call him from her house phone. They became upset when Horton did not answer, so Stamatiades convinced them to let her call Horton and leave him a message. Before she called Horton, she heard one of the intruders in the kitchen drinking something from her refrigerator. She asked for a glass of water, and one of the intruders brought her some in a Mickey Mouse mug.

When Horton did not respond to the message Stamatiades left for him, the men beat and sexually assaulted her. They left her residence with cash, a leather computer bag, and jewelry. One of them returned briefly and asked for directions to Bakken's house. After he left, Stamatiades freed herself and called the police.

Detective Scott Lake interviewed Stamatiades immediately following the incident. She gave the detective a physical description of each of the intruders, but she did not tell him that she recognized any of them. However, later that

¹ The police discovered a large quantity of cocaine at Stamatiades's residence the next morning.

same day, Stamatiades told her uncle, brother, and Bakken that she believed one of the intruders was Willock. She told Bakken, “You know, I might have been through a big ordeal, but I just swear to you it sounded just like Dave’s voice.”

Stamatiades knew Willock because Bakken was dating him. Bakken had brought Willock to Stamatiades’s house on October 5, 2002. Stamatiades gave Willock a tour of her home while Bakken finished getting ready.

DNA testing was performed on the water jug present in Stamatiades’s refrigerator on October 16 and the Mickey Mouse mug she used to drink out of during the incident. Willock’s DNA was present on both. Law enforcement officials also discovered a Wal-Mart receipt from October 15, 2002, showing purchases of duct tape and ski masks during a search of the home that Willock shared with his brother, Richard, in Iowa City.²

Willock was charged with two counts of kidnapping, two counts of burglary, and two counts of robbery. Following a jury trial, he was found guilty of all the charges. Willock appealed, and we reversed the judgment and sentences.³ We remanded the case for a new trial. See *State v. Willock*, No. 03-1944 (Iowa Ct. App. Dec. 22, 2004).

² The police found the receipt on a dresser in Richard’s bedroom. The duct tape was the same brand as some of tape used to restrain Stamatiades and her children. Richard testified that he bought the duct tape to pack items from his failed clothing store. However, the State introduced evidence that Richard had been locked out of his clothing store by the building’s landlord before he bought the duct tape. Richard also testified that he bought the ski masks, which had eye and nose holes, for children on a fifth and sixth grade football team that he coached, but he could not remember any of their names during cross-examination by the State.

³ Willock was charged with first-degree kidnapping, first-degree burglary, and first-degree robbery for the October 16, 2002 incident involving Stamatiades. In the same trial

Following the second trial, a jury found Willock guilty of first-degree kidnapping, first-degree burglary, and first-degree robbery. Willock appealed. We conditionally affirmed his convictions and remanded the case to the district court to allow the court to rule on Willock's motion for new trial using the weight-of-the-evidence standard. See *State v. Willock*, No. 06-0343 (Iowa Ct. App. March 14, 2007). On remand, the district court concluded "the weight of the evidence is against granting [Willock's] Motion for New Trial."

Willock appeals. He claims the district court abused its discretion in denying his motion for new trial because the jury's verdict was contrary to the weight of the evidence presented at trial.

II. Scope and Standards of Review.

The district court has broad discretion in ruling on a motion for new trial. Iowa R. App. P. 6.14(6)(c); *State v. Reeves*, 670 N.W.2d 199, 202 (Iowa 2003). We therefore review the court's ruling on a motion for new trial for an abuse of discretion. *State v. Maxwell*, 743 N.W.2d 185, 193 (Iowa 2008).

III. Discussion

Iowa Rule of Criminal Procedure 2.24(2)(b)(6) provides that the district court may grant a defendant a new trial when the verdict is contrary to law or the evidence. In *State v. Ellis*, 578 N.W.2d 655, 659 (Iowa 1998), our supreme court held "contrary to . . . the evidence" means "contrary to the weight of the

information, he was also charged with second-degree kidnapping, first-degree burglary, and first-degree robbery for an incident that occurred on October 26, 2002, involving two different victims. All of the charges were tried together at his first jury trial. We reversed, concluding the charges stemming from the October 16 incident should have been severed from the charges for the October 26 incident. See *State v. Willock*, No. 03-1944 (Iowa Ct. App. Dec. 22, 2004).

evidence.” 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. In ruling on a motion for new trial under a weight-of-the-evidence challenge, the trial court “may weigh the evidence and consider the credibility of witnesses.” *Id.*

A verdict may be set aside and a new trial granted if the trial court determines the verdict is contrary to the weight of the evidence and that a miscarriage of justice may have resulted. *Id.* at 658-59. Our supreme court has cautioned, however, that “[o]nly 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.” *Maxwell*, 743 N.W.2d at 193. Thus, where “the evidence is nearly balanced, or is such that different minds would naturally and fairly come to different conclusions thereon,” the court “has no right to disturb the findings of the jury, although his own judgment might incline him the other way.” *Reeves*, 670 N.W.2d at 203.

Willock’s arguments on appeal essentially request that we reweigh the evidence presented at trial. Our review of a weight-of-the-evidence claim, however, “is limited to a review of the exercise of discretion by the trial court, not of the underlying question of whether the verdict is against the weight of the evidence.” *Id.* For the reasons that follow, we do not believe Willock has established that the court in this case “exercised its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable” in denying his motion for new trial. *Id.* at 202.

Upon reviewing the evidence and considering the credibility of the witness, the district court found a greater amount of credible evidence supported the guilty verdicts. The court noted that Stamatiades told three individuals less than four hours after the attack that Willock was “one of the three black masked men who broke into her home.” Two of those individuals testified at trial. Although Stamatiades initially told Detective Lake that Willock was not one of the intruders, she later told him Willock’s eyes, skin color, voice, and lips made her think that he could have been one of the attackers. The district court also noted that, as evidenced by the Wal-Mart receipt, Willock’s brother, Richard, “purchased duct tape and ski masks on the date of this event and duct tape and ski masks were used in the commission of this crime.” The court concluded the receipt therefore established that Willock “had access to these items or similar items.”

The district court determined “[t]he DNA evidence is really what seals Mr. Willock’s fate.” DNA testing revealed that Willock’s DNA was present on both the water jug and the Mickey Mouse mug. Although Willock claimed he drank some water from a water jug in Stamatiades’s refrigerator while he was at her house on October 5, 2002, Stamatiades and Bakken both testified they were with Willock the entire time he was there and he did not go into the kitchen to get something to drink. Furthermore, the State introduced evidence that indicated Stamatiades most likely purchased that jug of water on October 9, 2002, four days after Willock was present in her home with Bakken.

The opposing evidence cited by Willock simply does not preponderate heavily against the verdict. The district court considered and rejected his

arguments regarding this evidence, finding the jury could have reasonably reached different conclusions from the evidence. See *Reeves*, 670 N.W.2d at 203 (stating the court cannot “disturb the findings of the jury” when the evidence is “such that different minds would naturally and fairly come to different conclusions thereon”).

Willock also points to the testimony of his brother and three other individuals that placed him at a bar called The Press Box in Iowa City the night of the attack on Stamatiades. The jury, however, was free to believe or disbelieve any of the testimony and to give weight to the evidence as in its judgment such evidence should receive. *State v. Thornton*, 498 N.W.2d 670, 673 (Iowa 1993); see also *Ellis*, 578 N.W.2d at 659 (stating that although trial courts “have wide discretion in deciding motions for new trial,” they must “exercise this discretion carefully and sparingly” so that “the role of the jury as the principal trier of the facts” is not lessened).

We conclude the district court did not abuse its discretion in denying Willock’s motion for new trial. This is not a case “in which the evidence supporting a guilty verdict is so scanty, or the evidence opposed to a guilty verdict so compelling, that the verdict can be seen as contrary to the evidence.” *State v. Adney*, 639 N.W.2d 246, 253 (Iowa Ct. App. 2001).

IV. Conclusion.

We conclude the district court did not abuse its discretion in denying Willock’s motion for new trial. We therefore affirm his convictions and sentences.

AFFIRMED.