IN THE COURT OF APPEALS OF IOWA

No. 6-524 / 05-0679
Filed October 25, 2006

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JAMES EDWARD WRIGHT, JR.,
Defendant-Appellant.

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

James Wright, Jr. appeals from his conviction for first-degree murder. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Robert P. Ranschau, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney General, John P. Sarcone, County Attorney, and Daniel Voogt and James Ward, Assistant County Attorneys, for appellee.

Considered by Huitink, P.J., and Vogel, J., and Beeghly, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2005).

VOGEL, P.J.

James Wright, Jr. appeals from the judgment entered upon his conviction for first-degree murder. We affirm.

Background Facts and Proceedings.

In December of 1999, Ollie Talton was arrested and charged with various federal drug offenses. He later pled guilty to these charges, and in an effort to reduce his sentence, Talton began cooperating with prosecutors, giving them information regarding other drug dealers, specifically Ronald "Uzi" Buchanan. After Talton was released from custody, an individual named David Hickman, who was then Talton's roommate, informed Buchanan and the defendant, James "Big Valley" Wright, who was Buchanan's associate in selling crack cocaine, about Talton's status as an informant.

On the evening of May 4, 2000, Wright, Buchanan, and Talton, along with approximately sixty others, were present at a Des Moines bar called the Hickman Pub. Also at the bar was Tommy Gowdy, who at one point entered the restroom to find two or three other men standing there. As Gowdy was using the urinal, he heard a gunshot followed by the sound of a body falling to the floor. Gowdy then turned, put his hands over his face, and started to leave the restroom. As he was leaving, he heard two more gunshots. Gowdy would later testify that the person who was holding the gun was "probably" Wright. Talton was the man who was shot and killed.

While later imprisoned at a federal facility in Memphis, Wright allegedly made certain admissions to other inmates as to his involvement in the shooting of Talton. Antonious Davis, who was serving a seventeen-year term on federal

drug charges, served in the same housing unit as Wright. In return for favorable treatment, he informed authorities that Wright had told him "he had to kill a hot motherf***r." The term "hot" was used to describe someone who had provided information to authorities. Davis also claimed that a few months following that conversation, Wright informed him that he had found out Talton was cooperating with federal authorities and that Wright and Buchanan had discussed the situation while at the Hickman Pub. Also, another inmate, Carlos Wardlow, claimed that Wright told him that "we" murdered Talton. However, he admitted Wright did not tell him who actually shot Talton.

Based on this information, the State charged Wright with first-degree murder, in violation of Iowa Code section 707.2(1) and (2) (1999). Following the presentation of evidence at trial, the court instructed the jury it could find Wright guilty if he either shot or aided and abetted in the shooting of Talton. The jury returned a verdict of guilty. After the court denied Wright's motion for new trial, it sentenced him to life imprisonment. Wright appeals.

Sufficiency of the Evidence.

Wright first maintains there was insufficient evidence to prove him guilty of first-degree murder. He claims he should not have been convicted as either a principal or an aider and abettor in the crime.

> We review sufficiency-of-the-evidence claims for correction of errors at law. We uphold a verdict if substantial evidence supports it. "Evidence is substantial if it would convince a rational fact finder that the defendant is guilty beyond a reasonable doubt." Substantial evidence must do more than raise suspicion or speculation. We consider all record evidence not just the evidence supporting guilt when we make sufficiency-of-the-evidence determinations. However, in making such determinations, we also view the "evidence in the light most favorable to the State, including

> legitimate inferences and presumptions that may fairly and reasonably be deduced from the record evidence."

State v. Quinn, 691 N.W.2d 403, 407 (Iowa 2005) (citations omitted).

Viewing the evidence in a light most favorable to the State, as we must, we conclude substantial evidence supports Wright's conviction for first-degree murder. First, according to Wright's own admission, he was present in the restroom when Talton was shot and killed. Both Buchanan and Wright were aware that Talton had become an informant for federal authorities and they were worried he was going to "set them up" or "snitch" on them. This supports a possible motive for Wright, in conjunction with Buchanan, to murder Talton. Furthemore, Tommy Gowdy testified that as he was hurrying out of the restroom after hearing the shots, he observed that Wright was "probably" holding the gun.

In addition, the testimony of the two jailhouse informants implicated Wright in Talton's murder. Altonious Davis and Carlos Wardlow both separately claimed that Wright had discussed the Talton murder with them, Davis reporting that Wright had to kill an informant and Wardlow reporting that Wright told him "we" murdered Talton. Such evidence was clearly sufficient to support the jury's finding that Wright either killed or aided and abetted Buchanan in the killing of Ollie Talton.

Weight of the Evidence.

As noted, the district court denied Wright's motion for new trial. Wright appeals from this ruling. A district court's ruling on a motion for a new trial is reviewed for an abuse of discretion. *State v. Ellis*, 578 N.W.2d 655, 658-59 (Iowa 1998). The standard to be applied in ruling on a motion for a new trial is

whether the jury's verdict is contrary to the clear weight of the evidence, which requires the court to make a determination of whether "a greater amount of credible evidence supports one side of an issue or cause than the other." *Id*. Credibility of witnesses is key in a weight-of-the-evidence determination. *State v. Reeves*, 670 N.W.2d 199, 207 (Iowa 2003). 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).

Our supreme court has admonished trial courts to exercise their discretion in ruling on motions for new trial "carefully and sparingly." *Ellis*, 578 N.W.2d at 659. Trial courts should invoke their power to grant a new trial only in exceptional cases where the evidence preponderates heavily against the verdict so that they do not diminish the jury's role as the principal trier of facts. *Id*. When the evidence is nearly balanced, or is such that different minds could fairly arrive at different conclusions, the district court should not disturb the jury's findings. *Reeves*, 670 N.W.2d at 203. Even if the district court might be inclined to render a different verdict than the jury, it must uphold that verdict in the face of mere doubts that it is correct. *Id*.

In arguing the court should have granted his motion for new trial, Wright specifically attacks the credibility of Gowdy, Davis, and Wardlow. He points out, among other things, that Gowdy was an alcoholic who had been drinking heavily on the day in question, that he was equivocal in his identification of Wright as the shooter, and that he only spoke with police for the first time one year after the shooting. He also notes that both Wardlow and Davis were fellow inmates of Wright and that they provided information on him to authorities in the expectation

of receiving a reduction of their respective sentences. As noted above, however, while credibility is central to the weight-of-the-evidence analysis, credibility calls are generally left to the trier of fact.

When viewing the testimony of Gowdy, Davis, and Wardlow individually and as isolated witnesses against Wright, certainly questions as to credibility become apparent. However, even considering those individual shortcomings, the wealth of incriminating evidence is sufficient to overcome any weakness in the evidence. Gowdy's testimony, at the very least, places Wright at the very scene of the crime at the moment it occurred. At the most, he is an eyewitness that places the murder weapon in Wright's hand following the shot that killed Talton. The two jailhouse informants, Wardlow and Davis, gave testimony that must be viewed in the context of their desire for favorable treatment in their sentences. However, both testified quite specifically as to Wright's admissions, including that Buchanan was involved and that Talton was a federal informant. Other than the obvious inference that Wright told them these stories, there is no indication in the record how either Davis or Wardlow could have received this information about Talton's killing and Wright's apparent involvement.

As the State notes, this is not a case which rested on the individual credibility of one or two witnesses. Rather, it was supported by such evidence as Wright's undisputed presence at the scene, his admissions to at least two individuals, and his apparent motive to quiet Talton. Appropriately heeding our supreme court's caution to sparingly grant motions for new trial, the district court denied Wright's motion. While certain credibility issues clearly exist, and other inconsistencies are apparent, we conclude this is not the "exceptional" case in

which the "evidence preponderates heavily against the verdict." *Ellis*, 578 N.W.2d at 659. We therefore affirm the court's ruling denying Wright's motion for new trial.

Motion for Mistrial.

During a break in Tommy Gowdy's testimony, he asked to use the restroom. As he did, the court made an off-the-record comment to the jury about the reason for having a deputy escort Gowdy. While the trial judge did not recall phrasing his comment as such, or even that any members of the jury had heard his comment, Wright's attorney complained that the court informed the jury the reason for the use of the deputy was so that Gowdy would not be "intimidated" or "threatened." Based on these comments, Wright moved for a mistrial, arguing that a reasonable interpretation of the comment was that Wright had threatened Gowdy. The court denied the motion. It thereafter admonished the jury to disregard his statement to the extent it implied that somebody threatened Gowdy. On appeal, Wright contends the court abused its discretion in denying his motion for a mistrial.

We review the court's ruling on this motion for an abuse of discretion. *See State v. Dixon*, 534 N.W.2d 435, 439 (Iowa 1995) ("A trial judge has considerable discretion to declare a mistrial after a procedural error has occurred during a trial and we will not reverse the court's decision absent a finding of abuse of discretion."). A mistrial is appropriate when "an impartial verdict cannot be reached" or the verdict "would have to be reversed on appeal due to an obvious procedural error in the trial." *State v. Piper*, 663 N.W.2d 894, 902 (Iowa 2003). When a criminal defendant asserts that a trial judge's comments prevented a fair

trial, we will engage in a balancing of the potential prejudice caused by the trial judge's comments and the overall fairness of the trial. *Dixon*, 524 N.W.2d at 441 (citing *United States v. Scott*, 36 F.3d 1458, 1464 (8th Cir. 1994)). Where the judge appears to have lost his or her appearance of neutrality, or appears to have accentuated and emphasized the prosecution's position, we will find the balance tipped adversely against the fairness of the trial. *See id*.

We conclude the trial court reasonably determined a mistrial was not required. First, immediately upon being informed of the possibly prejudicial statement, the court admonished the jury to disregard the statement, specifically informing the jury it was a misstatement to imply that any party or individual in the courtroom had threatened Gowdy. This quick admonition served to dispel any prejudice that may have occurred. *State v. Brown*, 397 N.W.2d 689, 699 (Iowa 1986). Furthermore, the comment itself was rather vague. The court did not express direct concern that anyone in particular had intimidated Gowdy. As such, the comment was insufficient to instill prejudice, the level of which would have required a mistrial.

AFFIRMED.