IN THE COURT OF APPEALS OF IOWA

No. 6-679 / 05-1584
Filed September 21, 2006

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JOHN LAWRENCE BLOUSE,
Defendant-Appellant.

Appeal from the Iowa District Court for Muscatine County, Patrick J. Madden, Judge.

John Blouse appeals following his conviction for delivery of methamphetamine as a habitual offender. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Stephan J. Japuntich, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, Gary Allison, County Attorney, and Alan R. Ostergren, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Vaitheswaran, J., and Robinson, S.J.*

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

VAITHESWARAN, J.

The State charged John Blouse with delivery of methamphetamine as a habitual offender. Iowa Code §§ 124.401(1)(c)(6), 902.8 (2005). Blouse waived a jury trial. Following the State's case, Blouse moved for a judgment of acquittal, essentially asserting that the evidence was insufficient to establish the elements of the crime. The district court denied the motion and Blouse proffered witnesses on his behalf. At the close of the evidence, the court found the State's evidence more persuasive and, based on that evidence, found Blouse guilty as charged. The court subsequently denied Blouse's motion in arrest of judgment and for new trial and sentenced him to a term of imprisonment.

On appeal, Blouse contends the district court: (1) erred in denying his motions for judgment of acquittal and arrest of judgment and (2) used the wrong standard in ruling on his motion for new trial.

I. Rulings on Motions for Judgment of Acquittal and Arrest of Judgment

Blouse argues the district court erred in denying his motions for judgment of acquittal and arrest of judgment because, in his view, "the evidence was insufficient to prove the elements of the offense . . . ." We review challenges to the sufficiency of the evidence for errors of law. *State v. Millsap*, 704 N.W.2d 426, 430 (Iowa 2005).

The district court set forth the elements of the charged crime as follows:

> 1. That on or about the 12th day of March, 2005, the defendant delivered methamphetamine.
>
> 2. The defendant knew the substance he delivered was methamphetamine.

The court went on to make fact findings supporting these elements. The record contains sufficient evidence to support these fact findings. *See State v. Frake*, 450 N.W.2d 817, 818 (Iowa 1990). Specifically, a confidential informant working with the Muscatine Police Department agreed to make a controlled purchase of methamphetamine from his friends, Angela Bermel and Galen Zabienski. Police wired him for sound and gave him funds to purchase the drugs. The informant arrived at the Bermel/Zabienski residence between 12:30 and 1:00 a.m. Bermel told him they were waiting for the drugs to arrive. Approximately a half-hour later, Blouse arrived with his girlfriend, Bonnie West. According to the informant, Blouse "pulled out the [methamphetamine] from his pocket." The informant counted out $80 for .45 grams. He testified he tried to give the money to Bermel, but she indicated the money should be given to Blouse.

The district court "accept[ed] as true" the informant's testimony that Blouse removed the methamphetamine from his pocket in response to an earlier phone call from Bermel. The court further found that Blouse "[o]bviously" knew the drug was methamphetamine. The court, as fact-finder, was entitled to weigh the evidence in this fashion. *Id*.

We recognize there was contradictory evidence in the record. Testifying for the defense, Bermel stated she used Blouse and West "as a guise" because she did not want the informant to believe she typically sold methamphetamine from the house. She stated she, not Blouse, sold the drugs to the informant. [1]

[1] Prior to testifying, Bermel pled guilty to selling one-half gram of methamphetamine to the informant.

West, she explained, simply stopped by to purchase a computer, and Blouse, who was West's boyfriend, came along.

West also testified for the defense. She denied any knowledge of a drug deal and stated Blouse did not provide drugs or receive money. She also emphasized that she came to Bermel's house to purchase a computer for $150.

The district court found that Bermel's version of events did not "pass the blush test." The court reasoned,

> There simply was no reason offered why the [confidential informant] would indicate Blouse had the drugs in his pocket if Bermel is the one who supplied the drugs. The [confidential informant] would have been in the same cooperative position with law enforcement had it been Bermel who supplied him with the drugs. He got nothing out of identifying the wrong person as the one who delivered the meth.
>
> The [confidential informant] had no reason to implicate Blouse falsely.

As for West, the court stated her testimony that "she and Blouse went to Bermel's house in the very early morning hours to purchase a computer is not credible." The court noted the absence of any evidence that West and Blouse took the computer with them or, indeed, that they purchased the computer.

Just as the district court was free to weigh the evidence, the court was free to assess credibility in this fashion and to reject testimony found to be not credible. *Id.* at 819. For this reason, we reject Blouse's present assertion that the informant was "simply not a credible witness." For the same reason, we reject the other evidentiary discrepancies cited by Blouse, most of which were thoroughly discussed by the district court.

We conclude the district court did not err in denying Blouse's motions for judgment of acquittal and arrest of judgment.

II. Denial of New Trial Motion

Blouse next contends the district court applied an incorrect standard in ruling on his new trial motion. Although his motion did not cite a specific rule-based ground for reversal, he essentially argued that the verdict was contrary to the evidence. *See* Iowa R. Crim. P. 2.24(2)(*b*)(6). All agree that the district court was required to apply a "weight of the evidence" standard in assessing this argument. *See State v. Ellis*, 578 N.W.2d 655, 657-59 (Iowa 1998).[2]

Although the district court judge did not cite *Ellis*, it is apparent from his on-the-record comments, that he weighed the evidence and considered the credibility of witnesses, as prescribed. *Id.* The judge stated he did not believe the defense witnesses and did believe the informant. He reiterated that there was no reason for the informant to lie about who supplied the drugs and he again credited the informant's testimony that Blouse took the methamphetamine out of his pocket. The court concluded,

> You're asking me as a matter of law as the judge to overturn my decision as the fact finder, and I just don't – I don't have any reason to do that based on what I believed happened at trial. I simply believed the confidential information and I did not believe Mr. Blouse's witnesses.

We conclude the court did not apply the incorrect standard in ruling on Blouse's new trial motion.

AFFIRMED.

[2] In arguments before the district court, the prosecutor mentioned *Ellis*.