

**IN THE COURT OF APPEALS OF IOWA**

No. 1-196 / 10-0800  
Filed April 27, 2011

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**JAYVONTAE DASHAWN BLAND-ROBERTSON,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Scott County, Mark D. Cleve,  
Judge.

Defendant appeals his first-degree robbery conviction. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, David Arthur Adams, Assistant  
Appellate Defender, and Cory McAnelly, Student Intern, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney  
General, Michael J. Walton, County Attorney, and William Ripley, Assistant  
County Attorney, for appellee.

Considered by Vaitheswaran, P.J., and Eisenhauer and Danilson, JJ.  
Tabor, J., takes no part.

**EISENHAUER, J.**

In March 2010, a jury convicted Jayvontae Bland-Robertson of first-degree robbery and eluding a police officer while speeding. Bland-Robertson appeals only the robbery conviction. We affirm.

**I. Background Facts and Proceedings.**

On the evening of September 5, 2009, a white Ford was stolen in Davenport. Around 10:00 or 11:00 p.m. on September 6, 2009, David Nienaber drank beer at a tavern in Davenport until closing time at 2:00 a.m. on September 7, 2010. Nienaber then drove around enjoying the 2005 Cadillac he had purchased eight days before. As he neared his house, he noticed the white Ford driving past him.

Nienaber parked his Cadillac in front of his house around 4:00 a.m. When he exited his car and turned around, Nienaber was confronted by Bland-Robertson and he noticed three or four other men nearby. Bland-Robertson told Nienaber: "We are taking your car." When Nienaber dissented, Bland-Robertson repeated his statement while lifting his shirt and revealing the handle and part of the barrel of a handgun in his waistband. After seeing the handgun, Nienaber gave Bland-Robertson his "keys and ran to my house and called 911." Nienaber testified: "Q. Now, the individual that threatened you with a gun, how good of a look did you get at him? A. I was face to face with him. I had a very good look."

Nienaber saw Bland-Robertson get into the Cadillac's driver's seat and drive away. The stolen white Ford, now with a flat tire and smashed windshield,

was left near Nienaber's house with three doors open, lights on, and engine running.

Shortly after the carjacking, Rock Island police spotted the Cadillac and began pursuit. Bland-Robertson drove across the bridge into Iowa and crashed. Bland-Robertson and one other young man fled the vehicle and were apprehended. When caught, Bland-Robertson did not have a gun.

Nienaber was brought to the crash scene and identified Bland-Robertson as the person who took his car. At trial Nienaber testified: "I was 100 percent confident that was him." Subsequently, Bland-Robertson's fingerprints were discovered on the stolen white Ford.

After the jury trial and conviction, the court denied Bland-Robertson's motion for a new trial. This appeal followed.

## **II. Motion for New Trial.**

Bland-Robertson claims the court erred in denying his motion for new trial, arguing "no reasonable fact-finder could make a determination that a gun existed." Bland-Robertson contends Nienaber's testimony was not credible because his description of the weapon varied. The State argues<sup>1</sup>: "[T]he lack of a consistent description would not . . . *necessarily* [show] the lack of a dangerous

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<sup>1</sup> The State also argues Bland-Robertson's motion for a new trial focused solely on Nienaber's identification of him as the robber and, therefore, "failed to preserve for review the issue whether the greater weight of the evidence supported a finding he possessed a dangerous weapon." We conclude the issue is preserved. At the hearing on the motion for new trial, Bland-Robertson argued:

Certainly Mr. Nienaber's recollection is as to a short, bald kid; changing back and forth as to whether this was a revolver silver in color or semi-automatic black in color. Those things are the primary basis for the motion for new trial . . . . We are asking the Court to examine the credibility of the evidence in this case.

weapon in [Bland-Robertson's] possession during the carjacking. . . . [I]n all of his statements to the investigating officers, Nienaber consistently described what he saw in [Bland-Robertson's] possession as a *handgun*."

Additionally, Officer Chisholm testified:

Q. Do you think it was possible that people jumped in or out of [the Cadillac] between 4:15 and 5:36? . . . A. My personal belief is that there [were] three people and that third person was dropped off somewhere in Rock Island before they were spotted by the police, and my personal belief is that the weapon probably went with that third person that exited in Rock Island.

Under the "weight of the evidence standard," the trial court weighs the evidence and considers credibility as it determines whether "a greater amount of credible evidence supports one side of an issue . . . than the other." *State v. Reeves*, 670 N.W.2d 199, 202 (Iowa 2003). While trial courts have wide discretion in deciding motions for new trial, such discretion must be exercised "carefully and sparingly" to insure the court does not "lessen the role of the jury as the principal trier of the facts." *State v. Ellis*, 578 N.W.2d 655, 659 (Iowa 1998). The trial court grants a new trial only in the "exceptional case" where "a miscarriage of justice may have resulted." *Reeves*, 670 N.W.2d at 202.

Our appellate review "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.* at 203. We do not "reweigh the evidence" nor "judge the credibility of the witnesses." *Id.* Rather, we determine whether the district court's ruling "is a clear and manifest abuse of discretion." *Id.*

The trial court explained its denial of Bland-Robertson's motion for new trial:

In weighing all of the evidence in this case, both the inculpatory and exculpatory and in making an assessment of the credibility of the witnesses and of the overall credibility of the evidence and applying that to the . . . weight of the evidence standard . . . the Court determines that the defendant is not entitled to a new trial . . . .

After our review of the record, we conclude the district court properly applied the weight-of-the-evidence standard and gave sufficient reasons for its denial of Bland-Robertson's motion for a new trial. We conclude the court acted well within its discretion.

**AFFIRMED.**