

IN THE COURT OF APPEALS OF IOWA

No. 3-192 / 12-1436
Filed April 10, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

STEVEN JAYE NEUFELDT,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Brad McCall, Judge.

Steven Neufeldt appeals convictions for forgery, contending the district court erred by applying the wrong legal standard in ruling on his motion for a new trial. **CONVICTIONS CONDITIONALLY AFFIRMED; RULING ON MOTION VACATED; REMANDED WITH DIRECTIONS.**

Mark C. Smith, State Appellate Defender, and Shellie L. Knipfer, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Jean C. Pettinger, Assistant Attorney General, John Sarcone, County Attorney, and Olu A. Salami, Assistant County Attorney, for appellee.

Considered by Vaitheswaran, P.J., Mullins, J., and Miller, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2013).

MILLER, S.J.**I. BACKGROUND FACTS.**

A jury found the defendant, Steven Jaye Neufeldt, guilty of nine counts of forgery. Neufeldt filed a motion for new trial, supported by a memorandum of law. The motion asserted that the “verdict . . . is contrary to the law and evidence,” citing Iowa Rule of Criminal Procedure 2.24(2)(b)(6). The State filed a resistance to the motion. The district court heard arguments on the motion and resistance, overruled the motion, entered judgments of conviction, and sentenced Neufeldt to serve terms of imprisonment and to pay fines. Neufeldt appeals. He asserts the court erred by applying an incorrect standard in denying his motion for new trial. We conditionally affirm the convictions, vacate the ruling on the motion, and remand with directions.

II. SCOPE AND STANDARDS OF REVIEW.

Our scope of review is for correction of errors at law. Iowa R. App. P. 6.907. Our standard of review is for an abuse of discretion. *See State v. Nitchee*, 720 N.W.2d 547, 559 (Iowa 2006) (“The district court has broad discretion in ruling on a motion for a new trial,’ and thus our review in such cases is for abuse of discretion.”) (citing and quoting *State v. Reeves*, 670 N.W.2d 199, 202 (Iowa 2003)).

A motion for new trial asserting a verdict is contrary to evidence under Iowa Rule of Criminal Procedure 2.24(2)(b)(6) should be granted only if, after weighing the evidence and considering the credibility of witnesses, the court concludes the verdict is “contrary to the weight of the evidence” and a

miscarriage of justice may have occurred. *State v. Ellis*, 578 N.W.2d 655, 658-59 (Iowa 1998). The “weight of the evidence” refers to a determination that “a greater amount of credible evidence supports one side of an issue or cause than the other.” *Id.* at 658.

III. THE MOTION FOR NEW TRIAL.

Neufeldt contends the district court erroneously applied the “substantial evidence standard” to his motion for new trial. The State acknowledges that in its oral ruling on the motion for new trial the district court applied the “substantial evidence” standard. It argues, however, that in his written motion and again during the hearing Neufeldt “did not raise a claim amenable to a weight-of-the-evidence analysis.” It urges that Neufeldt’s claim was really a claim “that there was not sufficient evidence [on the element of knowledge] to support a conviction,” “there was no weight-of-the-evidence issue to address,” and the district court thus did not apply an incorrect standard.

Several facts shown by the record convince us that Neufeldt has the stronger side of the argument concerning the nature of his motion for new trial.

First, Neufeldt had moved for judgment of acquittal at the close of the evidence offered by the State, and had renewed the motion at the close of all the evidence, with the motion being overruled each time. Such a motion challenges the “sufficiency of the evidence” to sustain a conviction; the court does not pass upon the credibility of witnesses or weigh the evidence, and although the court considers all the evidence it views it in the light most favorable to the State. *State v. Hutchison*, 721 N.W.2d 776, 780 (Iowa 2006). A motion for judgment of

acquittal is a clearly and markedly different motion than a motion for new trial asserting a verdict is contrary to the weight of the evidence. See *Ellis*, 578 N.W.2d at 658 (noting that in considering a motion for a new trial on the ground a verdict is contrary to the evidence the court weighs the evidence and considers credibility of witnesses).

Second, Neufeldt's post-trial motion expressly stated it was a "Motion for New Trial," made "pursuant to Iowa R. Crim. P. 2.24(2)(b)(6)"; asserted the verdicts were "contrary . . . to evidence" and contrary to the "weight of the evidence"; and repeatedly cited and discussed *State v. Ellis* and its holdings concerning such a motion. In addition, Neufeldt's motion sought a new trial, not a judgment of acquittal. Further, the State's resistance to Neufeldt's motion for new trial recognized the terms and nature of the motion, noting that Neufeldt's motion claimed "the verdict is contrary to law and evidence presented at trial," and citing *State v. Ellis* for standards to be applied.

Third, in oral argument on the motion Neufeldt argued that "the standard for the court being able to grant a new trial, quite simply it is the weight of the evidence."

We recognize the Neufeldt did go on to argue that there was a "lack of evidence" concerning his knowledge the checks in question had been forged. We are convinced, however, that in view of the facts recited above concerning the express nature of the motion, the relief sought in the motion, the State's resistance acknowledging the nature of the motion, and the standard asserted by Neufeldt in oral argument on the motion, Neufeldt's oral argument did not change

the motion to something other than a motion for new trial based on a challenge to the weight of the evidence.

In ruling on the motion for new trial the district court stated that the standard to be applied was whether “substantial evidence in the record tends to support the verdict[s],” the court correctly defined “substantial evidence,” the court determined the verdicts were supported by “substantial evidence,” and the court therefore overruled the motion for new trial. Nothing in the record indicates the court weighed the evidence or considered the credibility of witnesses. We conclude the court applied an incorrect standard in addressing and ruling on the motion, and thus abused its discretion in denying the motion.

We conditionally affirm Neufeldt’s convictions and sentences, vacate the district court’s ruling on the motion for new trial, and remand for the limited purpose of having the court determine whether the verdicts are contrary to the weight of the evidence. The court shall do so on the basis of the existing record. If it denies Neufeldt’s motion, our affirmance of his convictions shall stand. If it does not, it must set the convictions aside and order a new trial. We do not retain jurisdiction.

CONVICTIONS CONDITIONALLY AFFIRMED; RULING ON MOTION VACATED; REMANDED WITH DIRECTIONS.