IN THE COURT OF APPEALS OF IOWA

No. 7-595 / 06-1537
Filed October 12, 2007

STATE OF IOWA,
Plaintiff-Appellee,

vs.

NASSRENE HASHEMI TOROGHI,
Defendant-Appellant.

Appeal from the Iowa District Court for Story County, Thomas R. Hronek, Judge.

Nassrene Hashemi Toroghi appeals her judgment and sentence for first-degree harassment. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Robert Ranschau, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Cristen Douglass, Assistant Attorney General, Stephen Holmes, County Attorney, and Daniel Rothman, Assistant County Attorney, for appellee.

Considered by Mahan, P.J., and Miller and Vaitheswaran, JJ.

VAITHESWARAN, J.

Nassrene Hashemi Toroghi appeals her judgment and sentence for first-degree harassment. Iowa Code § 708.7(1)(b), (2) (2005). She contends the district court abused its discretion in (1) denying her motion for new trial and (2) declining to grant her request for a deferred judgment.

I. Hashemi Toroghi asserted the jury's verdict was contrary to the law or the evidence. *See* Iowa R. Crim. P. 2.24(2)(*b*)(6). In ruling on the motion, the district court applied the correct standard, stating review involved "[a] consideration of whether the greater amount of credible evidence supports one conclusion as opposed to another." The court also correctly noted that the discretion to grant a new trial on this ground is to be invoked only in exceptional cases. *See State v. Ellis*, 578 N.W.2d 655, 658 (Iowa 1998).

The court then ruled as follows:

> Admittedly, the verdict rests substantially upon the testimony of the complainant, Tami R. Anderson, who testified the defendant, while reaching into her pocket, stated she had a weapon and threatened to kill Ms. Anderson and her children. The defendant and her witnesses denied any such threats occurred.
>
> In addition, evidence tended to establish that the witness Anderson failed to make clear to investigating peace officers that Anderson had more than one contact with the defendant over the course of the interaction between the witness and the defendant.
>
> Having had an opportunity, as did the jury, however, to hear and observe the testimony of Anderson, the defendant and the defendant's witnesses, the court concludes a greater amount of credible evidence supported entry of the verdict of guilty in this matter and the testimony in support of the information was not so lacking in credibility as to not support the guilty verdict.

Our 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." *State v. Reeves*, 670 N.W.2d 199, 203 (Iowa 2003). We discern no abuse.

II. The district court is to consider several statutorily enumerated factors before entering a deferred judgment. Iowa Code § 907.5. The court did so, stating:

> A period of probation is clearly appropriate to monitor the defendant's behavior in the community. A deferral of judgment is not, however, appropriate, in light of the defendant's previous conviction for theft, the serious nature of the offense and the necessity to imprison Ms. Hashemi as well as others who are similarly situated, and the community's concern about offenses of this type. The court and community can appreciate how people don't always get along. But, there is a big difference between having a dispute with somebody else in the community and threatening to kill them and their families. No civilized community can permit this behavior. The court does conclude that a short period of incarceration in the county jail is appropriate to impress upon this defendant the seriousness of this behavior and to give her an opportunity to see what it would be like to be incarcerated for a substantial longer period of time. Hopefully this will foster her rehabilitation.

We discern no abuse of discretion in this ruling. *State v. Thomas*, 547 N.W.2d 223, 225 (Iowa 1996) (stating abuse may be found when sentencing court "exercises its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable.").

AFFIRMED.