

IN THE COURT OF APPEALS OF IOWA

No. 7-843 / 06-2022
Filed November 29, 2007

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DENISE MARIE BACK,
Defendant-Appellant.

Appeal from the Iowa District Court for Hancock County, Jon Stuart
Scoles, Judge.

Defendant-appellant appeals from her conviction of possession of
methamphetamine and possession of marijuana. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Jason Shaw, Assistant
State Appellant Defender, for appellant.

Thomas J. Miller, Attorney General, Christen Douglass, Assistant Attorney
General, and Karen R. Kaufman Salic, County Attorney.

Considered by Sackett, C.J., Vaitheswaran and Baker, JJ.

SACKETT, C.J.

Defendant-appellant, Denise Black, appeals from her conviction of possession of methamphetamine and possession of marijuana. She contends the scope of the evidence reviewed in a challenge to the sufficiency of the evidence in a motion for judgment of acquittal does not comply with the language of Iowa Rule of Criminal Procedure 2.19(8). She also contends the court erred in its ruling on her motion for judgment of acquittal made at the close of the State's evidence. We affirm.

Both offenses charged require proof "the defendant" did the prohibited act. During the State's presentation of evidence, no witness identified the person in the courtroom as the defendant, Denise Black. The witnesses provided testimony of the address of the residence searched and that it was Denise Black's residence. At the close of the State's evidence, defense counsel moved for judgment of acquittal in part because "the State has failed to prove that the individual sitting by me is the defendant. There is no testimony of any ID whatsoever." The court ruled:

[W]ith respect to identification of the defendant, the court believes that goes to a jury issue. Certainly you can argue to the jury that there is a reasonable doubt as to whether this person in the courtroom is the person who was living at that residence, and identified the person and so forth and so on. The jury—you know, one can argue it would have made a better record by the State if they had one or more people say, yeah, that's the woman that was there that day, but I don't think it's a requirement. And certainly you're free to argue to the jury it's not the same person. However, the court does not believe that that's grounds for a directed verdict.

Defendant then presented evidence by her own testimony. The first thing she did was identify herself as Denise Black. She also identified her residence

and admitted it was the home searched pursuant to the warrant as testified to in the State's case.

The motion for judgment of acquittal was renewed at the close of evidence and denied. The jury found the defendant guilty.

We review rulings on motions for judgment of acquittal for correction of errors at law. *State v. Corsi*, 686 N.W.2d 215, 218 (Iowa 2004). "In evaluating the evidence, we consider all the evidence in the record, and we view it in the light most favorable to the jury's verdict." *State v. Hutchison*, 721 N.W.2d 776, 780 (Iowa 2006).

Defendant first contends our scope of reviewing "all the evidence in the record" conflicts with the language of rule 2.19(8), which provides in pertinent part, "If a defendant's motion for judgment of acquittal at the close of the evidence offered by the prosecuting attorney is not granted, the defendant may offer evidence without having waived the right to rely on such motion." Defendant contends the rule means a defendant can "rely on such motion" in considering the sufficiency of the evidence at the time the motion was made. Our supreme court has considered the same challenge and rejected it. *State v. Holderness*, 293 N.W.2d 226, 229-30 (Iowa 1980).

Defendant made a motion for directed verdict at the end of the State's evidence and again at the end of all the evidence. Under prior law this was the required practice; if a defendant made his motion at the end of the State's case, the court overruled it, and the defendant introduced evidence, the motion was waived. To preserve error the defendant had to make another motion at the end of all the evidence, and the court then considered all the evidence.

Present rule [2.19(8)] of the Rules of Criminal Procedure states, however:

The court on motion of a defendant or on its own motion shall order the entry of judgment of

acquittal of one or more offenses charged in the indictment after the evidence on either side is closed if the evidence is insufficient to sustain a conviction of such offense or offenses. If a defendant's motion for judgment of acquittal at the close of the evidence offered by the prosecuting attorney is not granted, the defendant may offer evidence without having waived his or her right to rely on such motion.

Under this rule, when the defendant moves for a directed verdict at the end of the State's evidence, the court must grant the motion if the evidence is insufficient to sustain a conviction. But if the court overrules the motion and the defendant introduces evidence, two questions arise: (1) must the defendant renew the motion at the end of the evidence as under prior law? and if not, (2) what evidence does the appellate court (and trial court) consider in determining whether the evidence is sufficient to convict the defendant the evidence in the record when the State originally rested or when both parties rested?

As to the first question, rule [2.19(8)] clearly states that the defendant does not waive the motion by introducing evidence. Hence we will no longer have cases in which a defendant fails on appeal because he overlooked renewing his motion at the end of all the evidence. Thus he may rely on his unrenewed motion in posttrial motions and on appeal. As to the second question, however, we would have an artificial situation if a court had to close its eyes to part of the evidence which was in fact introduced. Although we recognize that some courts hold the other way, we adhere to the rule that a court considers all the evidence which is in the record. We thus consider both the State's and defendant's evidence here.

Id. (citations omitted). The court quoted a South Dakota case with approval.

Defendant did not rest upon his motion, but presented evidence after denial thereof and rebuttal evidence was introduced by the state. The denial of a motion for directed verdict for failure of proof is not reversible error if proof is afterwards supplied by either party. The introduction of evidence by defendant is not deemed a waiver of the motion. This court, however, considers all the evidence in determining whether denial of the motion was reversible error.

State v. Olson, 161 N.W.2d 858, 859-60 (S.D. 1968).

Following *Holderness*, we find no merit in defendant's first argument.

Defendant also contends the trial court erred in ruling on her motion made at the close of the State's evidence. We find no reversible error. *See id.* ("The denial of a motion for directed verdict for failure of proof is not reversible error if proof is afterwards supplied by either party.").

AFFIRMED.