

IN THE COURT OF APPEALS OF IOWA

No. 8-323 / 07-1010
Filed May 14, 2008

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MONTRELL DESHONE ANDERSON,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Jeffrey L. Harris, District Associate Judge.

Montrell Anderson appeals from the district court's denial of his motion for new trial. **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, Thomas J. Ferguson, County Attorney, and Joel Dalrymple, Assistant County Attorney, for appellee.

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

VAITHESWARAN, J.

A jury found Montrell Anderson guilty of third-degree sexual abuse. Iowa Code § 709.4 (2003). On appeal, Anderson contends the district court abused its discretion in denying his motion for new trial.

I. Background Proceedings

After the jury entered its finding of guilt, Anderson filed a combined motion in arrest of judgment and motion for new trial. He asserted “the verdict was contrary to evidence” and he did not receive “a fair and impartial trial.”

At the sentencing hearing, the district court began by addressing the combined motions. The court asked the defense attorney who was then representing Anderson to explain the grounds for the motion. The attorney stated:

[Anderson’s attorney] simply filed the document out of concern for preserving any of Mr. Anderson’s rights on appeal, making sure that any error was preserved on the motions for judgment of acquittal. We don’t have any additional argument to make on the document that was filed, and we would just ask the court to rule on it before we proceed.

The court ruled on the motions as follows:

The jury returned a verdict in approximately 50 minutes. The court finds that the state’s evidence presented substantial evidence on each of the elements of the offense of Sexual Abuse in the Third-Degree. The court specifically finds that the verdict was wholly consistent with the evidence, and under Rule 2.24(2), Iowa Rules of Criminal Procedure, that aspect of defense motion for a new trial is denied.

In its written sentencing order, the district court reiterated that it had previously denied “the defense motion for new trial and motion for arrest of judgment, pursuant to Rule 2.24(2) and Rule 2.24(3), respectively.”

II. Nature of Review

In ruling on a motion that asserts the “verdict is contrary to law or evidence” under Iowa Rule of Criminal Procedure 2.24(2)(b)(6), the court is to “weigh the evidence and consider the credibility of witnesses.” *State v. Ellis*, 578 N.W.2d 655, 658 (Iowa 1998). A verdict will be found “contrary to . . . the evidence” under Iowa R. Crim. P. 2.24(2)(b)(6) when it is “contrary to the weight of the evidence.” *Id.* at 659.

Generally, “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.” *State v. Reeves*, 670 N.W.2d 199, 203 (Iowa 2003). However, where a defendant files a motion under Rule 2.24(2)(b)(6) and the district court summarily denies the motion, the Iowa Supreme Court has stated “the district court must have found the jury’s guilty verdict was not contrary to the weight of the evidence.” *State v. Maxwell*, 743 N.W.2d 185, 193 (Iowa 2008). Under those circumstances, “we are allowed to review the record to determine whether a proper basis exists to affirm the district court’s denial of . . . [the] motion for new trial.” That review is for an abuse of discretion. *Id.*

Here, the district court first ruled on Anderson’s motion in arrest of judgment and decided that motion using a sufficiency-of-the-evidence standard.¹ The court next moved to Anderson’s new trial motion under Rule 2.24

¹ The court may have equated the motion in arrest of judgment with a motion for judgment of acquittal. If it did, this is not an issue on appeal. See *State v. Oldfather*,

(2)(b)(6) and stated the verdict “was wholly consistent with the evidence.” Because the court did not explicitly weigh the evidence, we apply the standard set forth in *Maxwell*.

III. Merits

On our review of the record, we are persuaded that the greater weight of the evidence supports the jury’s verdict. *Id.* The charge arose from assertions that nineteen or twenty-year-old Anderson performed sex acts with a twelve and thirteen-year-old child. The child testified in detail about the acts.

Anderson correctly points out that the child’s testimony was not entirely consistent with a police officer’s narration of the events as told to him by the child. However, the inconsistencies related only to the location of the first sex act and whether the child was hit during that act. There was no dispute that more than one sex act occurred and that the acts continued for approximately eighteen months. Based on this evidence, we conclude the district court did not abuse its discretion in denying Anderson’s motion for new trial based on Iowa Rule of Criminal Procedure 2.24(2)(b)(6).

AFFIRMED.

306 N.W.2d 760, 762 (Iowa 1981) (stating motion in arrest of judgment may not be used to challenge sufficiency of evidence); *State v. Deets*, 195 N.W.2d 118, 123 (Iowa 1972), *overruled on other grounds by State v. Walker*, 574 N.W.2d 280, 283 (Iowa 1988) (stating motion in arrest of judgment does not operate as acquittal). See also Iowa R. Crim. P. 2.24(3)(a) (“a motion in arrest of judgment is an application by the defendant that no judgment be rendered on a finding, plea, or verdict of guilty.”); (d) (“The effect of an order arresting judgment on any ground other than a defect in a guilty plea proceeding is to place the defendant in the same situation in which the defendant was immediately before the indictment was found or the information filed.”).