

IN THE COURT OF APPEALS OF IOWA

No. 9-481 / 08-1435
Filed July 22, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JAMES MICHAEL COLEMAN,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, George L. Stigler, Judge.

A defendant appeals his conviction for forgery. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Patricia Reynolds, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sharon Hall, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Kimberly A. Griffith, Assistant County Attorney, for appellee.

Considered by Mahan, P.J., and Eisenhauer and Mansfield, JJ.

MANSFIELD, J.

James Coleman appeals his conviction for forgery in violation of Iowa Code section 715A.2 (2007). He asserts that the district court erred in denying his motion for new trial. We affirm.

I. Background Facts and Proceedings.

Coleman worked for R.J. Meyers Company, a contractor based in Vinton, as a seasonal laborer in 2006 and 2007. As part of the regular course of business, R.J. Meyers would occasionally give employees filled-in checks with which to purchase supplies for the company. Meyers's checkbook was typically kept in his office or in the glove box of his truck when he was on a jobsite. The truck and the glove box were unlocked. The jobsites were closed to the public. Meyers testified he had never given an employee a blank check. Furthermore, he noted that one check had gone missing on or about August 13, 2007.

In early January 2008, Salana Scarborough, Jessica Ogden, and Markaye Cox were sharing an apartment in Waterloo. They were behind on the rent and were facing eviction if they could not pay \$470. Coleman was dating Cox at the time and was often at the apartment. According to Cox, Scarborough, and Ogden, Coleman said he could help them with the rent using a check he had from his boss for emergencies.

The next day, January 7, 2008, Coleman and Scarborough went to Coleman's parents' house to obtain the check. Scarborough testified that she completed the amount of the check (\$800), made it payable to "John Smith," and endorsed the back of the check to herself—all as directed by Coleman.

According to Scarborough, Coleman filled out the date himself. A handwriting expert later confirmed that the date was in Coleman's handwriting. The signature on the front of the check could not be attributed to anyone because, according to the expert, it had been scribbled quickly in an attempt to obscure the handwriting. In the memo line Scarborough indicated that the check was for a "pay advance," again at Coleman's direction. Scarborough understood that Coleman would receive the balance of the funds after the overdue rent had been paid.

Later that day, Scarborough attempted to cash the check at a Wells Fargo Bank branch in Waterloo. The bank declined Scarborough's request because it was a third-party check. At some point, the group decided Scarborough should deposit the check at an ATM. Scarborough did so. She then tried the next day (January 8) to withdraw cash in person at the Wells Fargo branch, based on the prior ATM deposit. A bank manager became suspicious and contacted the bank in Vinton that had issued the check. That bank then called Meyers, its customer, who explained that the check had been missing since August 2007. The Waterloo police were alerted, and Scarborough's Wells Fargo account was closed.¹

Scarborough was charged with forgery. She pled guilty, but her sentencing was postponed until after Coleman's trial. Cox and Ogden were not charged, although they also testified against Coleman. Before Cox's deposition, Coleman wrote Cox from jail as follows:

All you need to say is that, that whole day I was at the apartment with you and Jess [Ogden] until Salana [Scarborough] asked you and Jess to go to the bank with her to cash a check. I staid [sic] at

¹ None of the bank employees testified to seeing Coleman in the bank either day.

the apt. and all she told you about the check is that a friend had loaned her the money for rent. I knew nothing about the check until the police came and took me to the station and questioned me. I will handel [sic] the rest.

At the close of evidence, Coleman moved for a judgment of acquittal. That motion was denied, and the jury found Coleman guilty. Coleman then filed a combined motion for judgment of acquittal and motion for new trial, wherein he argued that the evidence was “insufficient” to find him “guilty beyond a reasonable doubt,” particularly in light of the rule that accomplice testimony must have independent corroboration. See Iowa R. Crim. P. 2.21(3).² His counsel elaborated at the hearing as follows:

Yes, my client believes there is not enough evidence. There has been no evidence that he signed anything on the check. . . . There was no evidence other than the testimony of co-defendants, that the check came from my client, Mr. Coleman, and so we would request that the court order a new trial on that—or a judgment of acquittal.

The court responded:

Mr. Coleman, in terms of the level of corroboration of a co-defendant’s testimony or an accomplice’s testimony, the corroboration does not have to be very great. In this instance the evidence is clear that you were the only person working for your employer, that your accomplices had never been to the job site and if that check turned up missing and later in your possession, you’re the only person who reasonably could have taken it. Additionally, there is evidence to support a finding that you were involved in the signing of that check, giving directions and the like, and so your motion for a judgment of acquittal and motion for a new trial . . . will be overruled.

² Iowa Rule of Criminal Procedure 2.21(3) provides:

A conviction cannot be had upon the testimony of an accomplice or a solicited person, unless corroborated by other evidence which shall tend to connect the defendant with the commission of the offense; and the corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof.

Coleman appeals. Coleman apparently now concedes that the evidence was sufficient to convict him but that the trial court erred in denying his motion for new trial, because the verdict was against the weight of the evidence. He also argues that the district court erred in applying a “sufficiency of the evidence” test to his motion for new trial.

II. Standard and Scope of Review.

The district court has “wide discretion in deciding motions for new trial.” *State v. Ellis*, 578 N.W.2d 655, 659 (Iowa 1993); see also Iowa R. App. P. 6.14(6)(c) (“In ruling upon motions for new trial the district court has a broad but not unlimited discretion in determining whether the verdict effectuates substantial justice between the parties.”). We reverse only where the district court has abused that discretion. *State v. Reeves*, 670 N.W.2d 199, 202 (Iowa 2003). To establish such reversible error, the State must show the district court exercised its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *Id.*

III. Analysis.

Coleman argues that the district court erroneously applied a “sufficiency of the evidence” test to *both* the motion for judgment of acquittal *and* the motion for new trial. In Coleman’s view, when the district court ruled on the motion for new trial, it should have expressly determined whether the verdict was “contrary to the weight of the evidence.” *Ellis*, 578 N.W.2d at 659. This alleged oversight, in Coleman’s view, necessitates at least a remand for the district court to apply the correct legal standard.

If any fault exists here, it rests with Coleman's counsel and not the district court. Coleman's arguments did not distinguish between the motion for judgment of acquittal and the motion for new trial. Coleman simply argued the evidence was "insufficient" and, accordingly, one of the two motions should be granted. Just as Coleman's counsel did not separate the two motions in her advocacy, the district court did not do so in its ruling. We are then left with two choices: Either we can hold Coleman waived his motion for new trial by failing to argue it adequately, or we can hold the district court was quite familiar with the differing standards applicable to the two post-trial motions, and applied them, but like Coleman's counsel, did not expressly describe those differences.

We believe the second approach better comports with reality. Experienced trial judges rule on these kinds of motions frequently and are very familiar with what the law requires. Absent a clear showing that the district court did not apply the correct legal standard on a motion for new trial, we believe the appellate court should presume that the district court followed the law. See, e.g., *State v. Wells*, 738 N.W.2d 214, 219 (Iowa 2007) (finding the district court applied the correct standard in denying a motion for new trial when the court said during the sentencing hearing that it would "stand by" the rulings it made during trial). Thus, we now turn to whether the district court abused its discretion in its implicit determination that the verdict was not against the weight of the evidence. We believe the district court did not. We keep in mind the supreme court's admonition that "[e]xcept in the extraordinary case where the evidence preponderates heavily against the verdict, trial courts should not lessen the jury's

role as the primary trier of facts and invoke their power to grant a new trial.” *State v. Shanahan*, 712 N.W.2d 121, 135 (Iowa 2006).

Setting aside the testimony of the three women, there was substantial evidence of Coleman’s guilt. He worked for A.J. Meyers, likely knew about the blank checks, and was one of a limited group of people who had access to them. The check in question disappeared at a time when Coleman was working there. Coleman’s handwriting was identified on the check. Coleman’s girlfriend was indisputably one of the beneficiaries of the check. Coleman then wrote a letter to the girlfriend from jail telling her to testify that he (Coleman) knew nothing about the check. The letter, however, concedes that Coleman was at the women’s apartment at the time the effort was made to cash the check.

Moreover, while one might regard all three women as potential accomplices, this only means their testimony needs some corroboration to convict Coleman; it does not mean it should be disregarded in ruling on the motion for new trial. True, there were some conflicts in their stories. However, the overall gist of their testimony was clear: Coleman had obtained a blank check from his employer that was filled in and used to pay their back rent. A reasonable jury could even have found the discrepancies somewhat heightened the credibility of these witnesses. It would be surprising if each of these young and clearly nervous women had exactly the same recollection of events, particularly with respect to matters such as who came up with the idea of depositing the check in an ATM. Accordingly, we hold the district court did not

abuse its discretion in denying Coleman's motion for new trial. For the foregoing reasons, we affirm the judgment below.

AFFIRMED.