

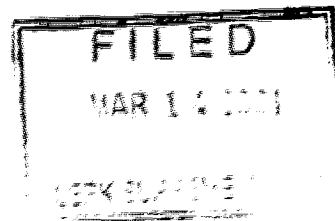
IN THE COURT OF APPEALS OF IOWA

No. 0-748 / 00-0481
Filed March 14, 2001

STATE OF IOWA,
Plaintiff-Appellant,

vs.

VALERIE LYNN REEVES,
Defendant-Appellee.



Appeal from the Iowa District Court for Clinton County, Mark J. Smith,
Judge.

The State appeals from the district court order on remand from the court of appeals granting the defendant's motion for new trial on her conviction for second-degree murder. The State maintains the court erred in concluding the State was required to prove opportunity for deliberation in addition to the use of a dangerous weapon in order to establish malice aforethought. **AFFIRMED.**

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney General, and Michael E. Wolf, County Attorney, for appellant.

Jon M. Kinnamon and Jerald Kinnamon, Cedar Rapids, for appellee.

Considered by Sackett, C.J., and Streit, Mahan and Vaitheswaran, JJJ.,
and Habhab, S.J.

Senior judge assigned by order pursuant to Iowa Code § 602.9206 (2000).

SACKETT, C.J.

Defendant-Appellant Valerie Lynn Reeves was convicted of second-degree murder following the September 29, 1997 shooting death of Eugene Malone. Subsequent to defendant's conviction she appealed to this court. *State v. Reeves*, No. 1999-345 (9-598) / 98-1684, slip op. (Iowa Ct. App. December 27, 1999). We determined that the district court had erred in considering defendant's motion for a new trial by failing to determine whether defendant's conviction was supported by the weight of the evidence as directed in *State v. Ellis*, 578 N.W.2d 655, 658 (Iowa 1998). On remand the district court granted a new trial. The State now appeals, claiming the district court's ruling granting a new trial was unreasonable because it was based on an error at law. We affirm.

Eugene Malone was found dead in his pickup truck on September 29, 1997. He had been shot four times with a 10 millimeter Glock handgun. He had bullet wounds in his right side, right shoulder, right cheek and the back of his head. Defendant was apprehended and charged with the murder several days later.

The facts at trial showed that defendant hitchhiked from her home in Illinois to Sabula, Iowa, on September 28, 1997. She carried a loaded 10-millimeter Glock handgun. Before arriving in Sabula, she stopped in Morrison, Illinois, the evening of the 28th and consumed beer, four cans by her account. Upon arriving in Sabula she went to a bar to drink and to inquire about lodging. At the bar she drank more alcohol and bought a six-pack of beer to take with her at closing time. Around closing time she and Malone left, went to Malone's mother's home, and then left from there in his pickup. Defendant testified that it

was while the two were in his pickup that Malone began assaulting her. She shot and killed him, firing the gun six times and hitting him four. The defendant then spent the next day and a half "walking and wandering" until a police officer found her alongside a road outside of Andover, Iowa, on September 30.

Further facts are stated in the district court's ruling on the motion for a new trial. The court said the following:

The victim was first shot under the armpit indicating that he was reaching for the Defendant, the second shot struck the victim's shoulder, the third shot struck the victim's face, and the fourth shot struck the victim in the back of the head indicating that the gun had continued to rise as the Defendant shot rather than the Defendant having to reacquire the target each time the gun was discharged. The fact that this incident took place on a dark country road in Clinton County facing the opposite direction from where the Defendant wished to be taken, that being Clinton, Iowa; the fact that there was no robbery or attempt to take the vehicle of the victim; the fact that these parties did not know each other prior to the Defendant coming into the bar where she met the victim; the fact that the Defendant did not attempt to hitchhike or immediately flee the scene to return to Illinois but wandered aimlessly around the countryside where she was then picked up in broad daylight by a Sheriff's deputy as Defendant walked down the county road; and the fact that the Defendant appeared to have defecated in her pants either during or shortly after the incident all supports her testimony given at the trial.

The State contends that the district court's decision to grant a new trial is based on an erroneous legal conclusion as well as an erroneous interpretation of the facts. In its challenge to the court's legal conclusion, the State specifies that the district court defined erroneously the elements required for an inference of malice in second-degree murder:

Malice aforethought can be inferred from the use of a deadly weapon but must be accompanied by an opportunity to deliberate. [T]here must be something more than the use of the dangerous weapon to support malice aforethought.

The State claims that in a second-degree murder case such as this one, malice can be inferred solely through the use of a deadly weapon. The State argues that the opportunity to deliberate language applies in a first-degree murder case, but it is not required for the malice inference in a second-degree murder case.

The standard of review for an award or a denial of a motion for new trial is for abuse of discretion. *State v. Atley*, 564 N.W.2d 817, 821 (Iowa 1997). Generally the decision whether to grant a new trial rests within the sound discretion of the trial court, and that decision will not be disturbed on appeal unless the complaining party carries the heavy burden of proving that the trial court abused its discretion and prejudice resulted therefrom. *State v. Lindsey*, 302 N.W.2d 98 (Iowa 1981). Error of law may amount to abuse of discretion. *Farley v. Glanton*, 280 N.W.2d 411, 415 (Iowa 1979).

A person who kills another person with malice aforethought either express or implied commits murder. Iowa Code § 707.1 (1999). Malice is an element of all murders under section 707.1. *State v. Love*, 302 N.W.2d 115 (Iowa 1981).

Malice, in homicide cases called malice aforethought, is “that condition of mind which prompts one to do a wrongful act intentionally, without legal justification or excuse.” . . . The use of a deadly weapon, *accompanied by an opportunity to deliberate, even for a short time*, is evidence of malice.

Id. at 119 (emphasis added).

[*Evidence of a prior*] confrontation, along with the evidence that [the victim] was shot with a handgun, supports a finding of malice aforethought. *State v. Artzer*, 609 N.W.2d 526, 530 (Iowa 2000) (emphasis added).

We conclude that the district court did not commit an error at law in its determination that the State, when seeking to demonstrate an inference of

malice, was required to show 1) that the defendant used a deadly weapon; and 2) that the defendant had the opportunity to deliberate. The district court correctly applied the law of *Love*, 302 N.W.2d at 119. Its ruling that an inference of malice must include an opportunity to deliberate as well as the use of a deadly weapon, therefore, is not an error at law. *Id.*; *State v. Brown*, 589 N.W.2d 69, 75 (Iowa Ct. App. 1998); and *State v. Taylor*, 516 N.W.2d 38, 41 (Iowa Ct. App. 1994)¹

Next we turn to the State's contention that the trial court erred by finding the verdict to be against the weight of the evidence. On December 12, 1999, we reversed the jury's conviction of this defendant and remanded the matter to the district court to reconsider her motion for a new trial using the weight-of-the-evidence standard set forth in *State v. Ellis*, 578 N.W.2d 655 (Iowa 1998). Using this standard, the district court determined that the guilty verdict was against the weight of the evidence and ordered a new trial.

¹ It is important to note, however, that the precise requirements for an inference of malice remain unsettled in Iowa law. Many Iowa cases have allowed an inference of malice solely through the use of a deadly weapon; they have not expressly required an opportunity to deliberate, particularly in the case of second-degree murder. See *Artzer*, 609 N.W. 2d at 530; *State v. Whiteside*, 272 N.W.2d 468, 472 (Iowa 1978). See also *State v. Elam*, 328 N.W.2d 314, 317 (Iowa 1982); *State v. Smith*, 242 N.W.2d 320, 326 (Iowa 1976); *State v. McCollum*, 151 N.W.2d 519 (Iowa 1976). These cases, however, do not expressly negate (or in *Artzer*, even impliedly negate) the requirement of an opportunity to deliberate when making the inference. In *Artzer* the Iowa Supreme Court states, citing *Whiteside*, that malice can be inferred from the use of a weapon. 609 N.W.2d at 530. In its analysis, however, it reasons, "[Evidence of a prior] confrontation, along with the evidence that [the victim] was shot with a handgun, supports a finding of malice aforethought." *Id.* Although in its statement of the law the Iowa Supreme Court does not require anything but a weapon for an inference of malice, its factual analysis includes evidence of a prior confrontation as a seemingly essential element of that same inference. The law in this area is uncertain. The district court had valid legal support for its ruling. We cannot find, therefore, that it committed an error at law.

Trial courts have wide discretion in deciding motions for a new trial. *Ellis*, 578 N.W.2d at 659. Discretion is accorded in this area because of the trial court's proximity to the trial process: "[T]he trial court is in as good or better position than the appellate court to make a determination in accordance with the demands of justice." *Lindsey*, 302 N.W.2d 98, citing *State v. Gartin*, 271 N.W.2d 902, 910 (Iowa 1978). We do not reweigh the facts. Rather, we review for abuse of discretion. *Pratt v. Piper*, 500 N.W.2d 716 (Iowa Ct. App. 1993). In order to show an abuse of discretion, we must show that the court exercised its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *Id.* Our court is slower to interfere with the grant of a new trial than with its denial. Iowa R. App. P. 14(f)(4).

We defer to the trial court's determination that the verdict was against the weight of the evidence. On a motion for a new trial, a [trial] court may weigh the evidence and consider the credibility of witnesses. See Charles A. Wright, *Federal Practice and Procedure* § 553, at 245-248 (2ed. 1982). Given the fact that the trial court tried this case, it was in a much better position than we are to evaluate the credibility of the defendant, especially with respect to determining whether the defendant acted with malice. The defendant's testimony indicates that she may have been sufficiently threatened by the decedent so as to have had legal justification for using deadly force against him. Circumstantial evidence supports her testimony: the erratic pattern of bullet holes on the victim's body supports her contention that the shooting was a reaction rather than a deliberate action; the remote location of the defendant and the victim at the time of the shooting -- on a county road in Clinton county facing away from the direction the

defendant had wanted to go -- supports her claim that she was in a threatening situation and may have been held against her will; the distinctly unsuspicious manner in which the defendant conducted herself after the shooting, wandering around in broad daylight and throwing her clothes and weapon where they could be easily discovered, also supports the theory that the defendant in this case was a victim rather than an instigator. Additionally, her testimony indicates that she could have been sufficiently intoxicated before the shooting and disoriented during the shooting to make her unable, even for a moment, to deliberate. Whether the above conclusions must follow necessarily from the facts is irrelevant to our analysis. The trial court made these conclusions, and it was in a better position than we are to evaluate the evidence. The conclusions are logical and supported by the record. They are clearly not untenable or unreasonable, which are the only grounds upon which we would reverse the trial court's decision to award the defendant a new trial.

Having deferred to the trial court's weighing of the facts, we nevertheless issue it a word of caution. Under *Ellis*, trial courts must exercise carefully and sparingly their discretion to decide motions for new trial based on the ground that the verdict of conviction is contrary to the weight of the evidence. *Ellis*, 578 N.W.2d at 659. Failure to heed this admonition would lessen the role of the jury as the principal trier of the facts and would enable the trial court to disregard at will the jury's verdict. *Id.* A trial court's role is not that of an additional juror with veto-power. If the evidence supports the jury verdict, whether or not the trial court agrees with it, the jury verdict stands. The purpose for granting a new trial based on the weight of the evidence is to avoid a miscarriage of justice in cases

in which the evidence preponderates heavily against the verdict. *Id.* at 658-9, citing Wright, *Fed. Prac. & P.*, at 245-8. That is, a trial court fills the role of what is commonly referred to in case law as the “thirteenth juror” only insofar as it is necessary to prevent an injustice when the evidence simply does not support the jury verdict. Barring that situation, the twelve-member jury maintains its role as final arbiter of the facts.

We affirm the trial court order granting the defendant’s motion for a new trial.

AFFIRMED. Streit, J. dissents.

STREIT, J. (dissenting)

I respectfully dissent.

The majority has astutely stated the applicable law:

Under *Ellis*, trial courts must exercise carefully and sparingly their discretion to decide motions for new trial based on the ground that the verdict of conviction is contrary to the weight of the evidence. Failure to heed this admonition would lessen the role of the jury as the principal trier of the facts and would enable the trial court to disregard at will the jury's verdict. A trial court's role is not that of an additional juror with veto-power. If the evidence supports the jury verdict, whether or not the trial court agrees with it, the jury verdict stands. The purpose for granting a new trial based on the weight of the evidence is to avoid a miscarriage of justice in cases in which the evidence preponderates heavily against the verdict. That is, a trial court fills the role of what is commonly referred to in case law as the "thirteenth juror" only insofar as it is necessary to prevent an injustice when the evidence simply does not support the jury verdict. Barring that situation, the twelve-member jury maintains its role as final arbiter of the facts.

(Citations omitted.)

This, however, is not a case "in which the evidence preponderates heavily against the verdict" or in which "the evidence simply does not support the jury verdict." Reeves was carrying a concealed and loaded 10 millimeter Glock pistol. Before shooting Malone, Reeves had to reach into her bag, arm herself, and disengage the pistol's three safeties—all while Malone was allegedly attacking her. She then had to pull the pistol's trigger six separate times. Four of Reeves' gunshots hit Malone; her shot to the back of his head killed him.

Reeves' actions after shooting Malone are also incriminating. She left Malone in his truck and discarded the clothes she was wearing in a ditch. She threw her bag and pistol into a creek. And, for roughly thirty hours, she avoided detection from the dogs, planes, helicopters, and other searchers who were scouring the Iowa countryside.

Given this evidence, the district court abused its discretion when it found "the weight of the credible evidence does not support the verdict by the jury for Second Degree Murder." Accordingly, I would reverse the court's order granting Reeves a new trial.