FEB 26 1979
CLERK SUPREME COURT

211

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Appellee,	)	Filed February 22, 1979
vs.	)	
RANDI ALLAN KING,	)	728 / 61406
Appellant.	)	

Appeal from Boone District Court - James C. Smith, Judge.

Defendant appeals his conviction of the crime of robbery with aggravation, alleging insufficiency of the evidence and misconduct by the judge and jury. Affirmed.

Charles Deppe and James C. Twedt, of Brekken, Deppe & Twedt, Story City, for Appellant.

Thomas J. Miller, Attorney General of Iowa and William R. Armstrong, Assistant Attorney General, for Appellee.

Heard by Oxberger, C. J., and Snell, Carter and Johnson, JJ. Donielson, J., takes no part.

PER CURIAM

The defendant, Randi Allan King, appeals from his conviction of the crime of robbery with aggravation in violation of § 711.2, The Code 1975. Defendant asserts the trial court erred in refusing his motions for a directed verdict and motion for a new trial on the grounds that insufficient evidence had been presented to support the charge and that the trial court erred in refusing defendant's motion for a new trial based upon evidence of jury and judicial misconduct. We affirm the trial court's rulings on both matters.

I. Concerning the defendant's first contention that his motions for a directed verdict were improperly overruled, the Iowa Supreme Court has held that "the cause in a criminal action should be submitted to the jury and the court should not direct a verdict of acquittal if there is any substantial evidence reasonably tending to support the charge." State v. Overstreet, 243 N.W.2d 880, 883 (Iowa 1976); State v. Graham, 221 N.W.2d 258, 259-60 (Iowa 1974); State v. Bell, 223 N.W.2d 181, 184 (Iowa 1974). Furthermore, in determining the propriety of the trial court's ruling on a motion for a directed verdict, the reviewing court views the evidence in a light most favorable to the State and all reasonable inferences tending to support the verdict are accepted. Overstreet, supra; Graham, supra; Bell, supra.

In this case, substantial evidence existed to support the charge against the defendant. The State's evidence included testimony of Lisa Tiller, a witness to the crime, that defendant was the robber and was armed, and testimony of Harold Backous, who saw a man approach the station immediately prior to the robbery, that defendant was that man. The State also presented evidence of .38 caliber shells and pistol wire brush discovered in defendant's car; Lisa had identified the weapon used in the crime as a .38. Furthermore, defendant's alibi defense was weakened by the testimony of David Groff, who stated that defendant did not arrive at the Cave Inn Lounge until a time after the time of the robbery. The State was also able to show through the testimony of Chief of Police Don Hart that Lee Stuart Hitt, Jr., the man defendant attempted to implicate as the robber, was not arrested because he had an alibi that was checked and because Lisa told police that Lee Hitt was not the robber. This evidence, taken together, was enough to raise the fair inference that defendant was guilty of the crime charged.

Although the defendant presented evidence to negate this inference of guilt,

a court reviewing a ruling on a motion for a directed verdict need consider only that evidence which would support the verdict. State v. Sheffey, 234 N.W.2d 92, 96 (Iowa 1975). It can be said, though, that in this case the defendant's evidence did not make it manifestly apparent that the defendant was not the guilty party; rather, the evidence served only to create questions of fact to be resolved by the jury. State v. Dahlstrom, 224 N.W.2d 443, 448 (Iowa 1974). The trial court, therefore, properly denied defendant's motion for a directed verdict of acquittal.

The trial court's denial of defendant's motion for a new trial was, likewise, proper. We note that the trial court has wide discretion in ruling upon a motion for a new trial and only upon a showing of clear and obvious abuse will reversal be justified. State v. Sheffey, 234 N.W.2d 92, 98 (Iowa 1975); State v. Little, 164 N.W.2d 81, 83 (Iowa 1969). Furthermore, in an appeal challenging the sufficiency of the evidence to sustain a jury verdict, the Iowa Supreme Court has stated:

> [the] court views all evidence in a light most favorable to the state and accepts as established all reasonable inferences tending to support the jury's action. It is necessary to consider only the supporting evidence whether contradicted or not. It is for the fact finder, not us, to resolve questions of fact and determine the credibility of witnesses. Thus, a finding of guilt by the trier of fact is binding on this court unless we find it is without substantial support in the record or is clearly against the weight thereof.

State v. Overstreet, 243 N.W.2d 880, 884 (Iowa 1976).

The question on review, then, is not whether there is substantial evidence to support a finding of innocence contrary to the jury's verdict, but whether there is substantial evidence to support the jury's determination of guilt. A reviewing court will substitute its own judgment only when the evidence which the jury has relied upon is inherently or patently incredible. See State v. DeRaad, 164 N.W.2d 108, 112 (Iowa 1969). The facts above indicate that there existed substantial evidence from which the jury could reasonably infer guilt. The trial court, thus, did not abuse its discretion in overruling defendant's motion for a new trial.

II. The defendant further maintains that the trial court erred in denying his motion for a new trial on the grounds of jury and judicial misconduct. The following facts serve as the basis of defendant's contention. The trial of the defendant's case came to a close and the cause was submitted to the jury on Friday, August 19, 1977. The jury deliberated and reached a verdict of guilty that evening. The bailiff notified the court that a verdict had been reached.

Approximately an hour or two later, the trial judge was notified by the jury foreman, Mr. Walton, concerning a problem with the verdict. The foreman asked if the jury's verdict was final and the judge informed him that it was not and that a determination of its finality would be made in open court.

When court reconvened on Monday, the trial judge informed those present that a verdict had been reached on Friday and that the foreman had contacted him concerning a problem with the verdict. The court then asked if a unanimous verdict had been reached, to which the foreman replied that the jury had talked it over that morning and that a verdict of guilty had been reached. Defense counsel polled the jury; each member of the jury replied that this was his or her verdict. The court then told the jury that if there was anybody who did not agree with the verdict as read, they should stand and say so. No one stood and the jury was excused.

At the time of sentencing, the defendant introduced into evidence affidavits signed by two members of the jury, Mr. Walton and Mrs. Magani, saying that the verdict did not represent their views and that they had been coerced by other jurors to vote "guilty" so that the jury could be dismissed for the weekend. Mrs. Magani also stated that she was under the impression she could not change the verdict, that defendant did not receive a fair trial, and that the verdict was not the result of a fair expression of opinion on the part of all the jurors. Defendant moved for a new trial on the basis of these affidavits. Over the objection of the prosecutor, the court allowed the evidence but refused the defendant's motion. We affirm the court's denial of the motion for a new trial.

"Jurors ordinarily cannot impeach their verdict." State v. King, 256 N.W.2d 1, 12 (Iowa 1977). Furthermore, while a juror can state by affidavit what actually took place in the jury room, that same juror may not, by affidavit, testimony, or otherwise, say what influenced the jury in reaching its decision since such showing inheres in the verdict. State v. Brown, 253 Iowa 658, 671, 113 N.W.2d 286, 294 (1962); State v. Jackson, 195 N.W.2d 687, 690 (Iowa 1972). The Iowa Supreme Court further explains:

> Accordingly it may not be shown in such manner, to avoid the verdict, that a juror did not assent to it, misunderstood the court's instructions or the testimony, was unduly influenced by statements of fellow jurors, was mistaken in his calculations or judgment, or other matters resting alone in the juror's breast. These all inhere in the verdict. (Emphasis added).

Brown, supra at 671, 113 N.W.2d at 294; State v. Berch, 222 N.W.2d 741, 747-48 (Iowa 1974).

Thus, in this case, these two jurors may not impeach the jury's verdict by affidavits saying they did not assent to it. Furthermore, the record clearly shows that the trial court provided ample opportunity for these jurors to repudiate the verdict. Neither did. State v. Smith, 240 N.W.2d 693, 696 (Iowa 1976). No error occurred in denying defendant's motion for a new trial.

Finally, defendant's contention that the trial judge acted improperly is without merit. When approached by Foreman Walton and asked whether the verdict was final, the trial judge responded it was not. At that point, it became the jury's responsibility to cure any problems with the verdict. When the jury returned Monday morning, the matter was considered further. Informing defense counsel of the foreman's dilemma would not have aided the jury in its task. In court, defense counsel was able to poll the jury; all jurors stated they agreed with the verdict. Furthermore, when given the opportunity by the court to disagree with the verdict, all jurors remained silent. After these proceedings, defense counsel was given ample time to prepare a record. In no way did the trial judge act improperly or unfairly. See State v. Larmond, 244 N.W.2d 233, 235 (Iowa 1976).

AFFIRMED.