IN THE SUPREME COURT OF IOWA
Supreme Court No. 19-1616

STATE OF IOWA,
Plaintiff-Appellee,

vs.

KOURTNEY SHONTEZ HALL,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
THE HONORABLE ROBERT B. HANSON, JUDGE

APPELLEE'S BRIEF

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ROUTING STATEMENT

This case can be decided based on existing legal principles. Transfer to the Court of Appeals would be appropriate. Iowa R. App. P. 6.1101(3).

STATEMENT OF THE CASE

Nature of the Case

The defendant, Kourtney Hall, appeals the judgment and sentence imposed for his convictions of two counts of suborning perjury and two counts of obstructing the prosecution in violation of Iowa Code sections 720.3 and 719.3(2). He contends the evidence was insufficient to support his convictions, that the district court erred in admitting certain evidence, and that the district court erred in denying his motion for a new trial.

Course of Proceedings

The State accepts Hall's course of proceedings as adequate and essentially correct. Iowa R. App. P. 6.903(3).

Facts

On May 3, 2019, a Friday, Polk County Detective Christopher Vesey provided deposition testimony in a criminal case in which Hall was the defendant; Hall was present. Trial Tr. (Vol. 2) p. 19, line 20-p. 20, line 2. During Detective Vesey's sworn deposition testimony he

referenced Emily Bowers, Hall's girlfriend at the time of the events surrounding the criminal case. Trial Tr. (Vol. 2) p. 23, lines 21-25 p. 25, lines 8-15. Detective Vesey's testimony made it evident that Bowers was an important witness in Hall's criminal case. Trial Tr. (Vol. 1) p. 36, lines 9-22, (Vol 2) p. 22, line 22-p. 23, line 20, p. 25, lines 16-25.

Also on May 3, 2019, Bowers received subpoena to appear at a deposition scheduled for Monday, May 6, 2019. Trial Tr. (Vol. 1) p. 37, lines 4-19. At approximately 12:45 on Sunday, May 5, 2019, Bowers visited with Hall through an iWeb connection at the Polk County Jail, where he was in custody. Trial Tr. (Vol. 1) p. 28, line 22-p. 29, line 8, line 21-p. 30, line 6, p. 35, lines 19-p. 36, line 8, p. 28, lines 16-18, Exhibit 1. Bowers visited with Hall again in the evening of May 5, 2019 and on May 6, 2019. Exhibits 2 and 3. Each of these visits were recorded pursuant to the policy of the Polk County Jail. Trial Tr. (Vol. 1) p. 29, lines 11-20, Exhibits 1, 2, and 3.

Based upon the iWeb visits, on May 16, 2019, the State filed a trial information charging Hall with two counts of suborning perjury. Trial Information; App. 11. On July 30, 2019, the State amended the trial information to additionally charge Hall with two counts of

obstructing the prosecution. Amended Trial Information; App. 18. Hall pleaded not guilty. Arraignment.

The jury found Hall guilty of all counts. Order Re: Jury Verdict and Presentence Investigation and Bond; App. 21. Hall filed a combined motion in arrest of judgment and motion for new trial urging that the verdict was contrary to the weight of the evidence. Motion for New Trial and Motion in Arrest of Judgment; App. 24. The State resisted. Resistance to Motion for New Trial; App. 27.

The district court denied Hall's motion for new trial. Sentencing Tr. p. 7, line 10-p. 9, line 13. It sentenced him to two terms of imprisonment not to exceed five years for his suborning perjury convictions and to two terms of imprisonment not to exceed two years for his obstruction convictions; it ordered the terms run consecutively. Sentencing Order; App. 32.

Additional facts will be set forth below as relevant to the State's argument.

ARGUMENT

I. There Was Sufficient Evidence to Support the Jury's Verdict Finding Hall Guilty of Suborning Perjury Beyond a Reasonable Doubt.

Preservation of Error

The State agrees that Hall preserved error on this issue by moving for a judgment of acquittal and by obtaining the district court's ruling on the issue. Trial Tr. (Vol. 2) p. 27, line 18-p. 28, line 25, p. 37, lines 8-25, p. 40, line 19-p. 41, line 14. *See State v. Schories*, 827 N.W.2d 659, 664 (Iowa 2013), as corrected (Feb. 25, 2013) (noting "that in order to preserve error on a motion to acquit, the defendant must specifically identify the elements for which there was insufficient evidence").

Standard of Review

Review of a challenge to the sufficiency of the evidence is on assigned error. *State v. McPhillips*, 580 N.W.2d 748, 753 (Iowa 1998). The reviewing court will uphold the denial of a motion for judgment of acquittal if there is substantial evidence in the record to support the defendant's conviction. *Id.* at 752. Substantial evidence is evidence that could convince a trier of fact that the defendant is guilty of the crime charged beyond a reasonable doubt. *State v. Crone*, 545 N.W.2d 267, 270 (Iowa 1996). In determining whether

there is sufficient evidence, the court considers all the evidence. *State v. Robinson*, 288 N.W.2d 337, 340 (Iowa 1980). However, the court views the evidence in a light most favorable to the State and makes all reasonable inferences that may be drawn from the evidence. *McPhillips*, 580 N.W.2d at 752.

Merits

Hall argues district court erred in denying his motion for judgment of acquittal on the charges of suborning perjury. The offense of suborning perjury is committed when a person

> procures or offers any inducement to another to make a statement under oath or affirmation in any proceeding or other matter in which statements under oath or affirmation are required or authorized, with the intent that such person will make a false statement, or who procures or offers any inducement to one who the person reasonably believes will be called upon for a statement in any such proceeding or matter, to conceal material facts known to such person, . . .

Iowa Code § 720.3.

Instructions 13 and 14 provided:

> The State must prove both of the following elements of suborning perjury:
>
> On or about the afternoon [evening] of May 5, 2019, the defendant reasonably believed that Emily Bowers would be placed under oath to make a statement of fact.

> The defendant 'procured' or offered an 'inducement' to Emily Bowers with the 'specific intent' that she conceal 'material' facts known to her.

App. --. The jury was also instructed that

> 'Procure' means to initiate or bring about an event; to cause something to be done; to contrive or acquire.
>
> 'Induce' or 'inducement' means to offer something of benefit or value or a reason which would influence, persuade, coax, or invite a person to act.

Instruction 17; App. --. Hall maintains the evidence was insufficient to prove he procured or induced Bowers to conceal material facts.

The State presented ample evidence from which a jury could find that Hall induced Bowers to conceal material facts beyond a reasonable doubt. Hall had learned of the significance of Bowers' testimony when he heard Detective Vesey's deposition testimony. Bowers received a subpoena on Friday, May 3, 2019, to appear at a deposition on Monday, May 6, 2019. Trial Tr. (Vol. 1) p. 37, lines 1-5. Therefore, when Bowers visited with Hall on May 5, 2019, he tried to persuade her that she should not attend her deposition. Trial Tr.(Vol. 1) p. 36, lines 12-22, line 24-p. 38, line 1.

Bowers believed she would get in trouble if she failed to appear at the deposition on May 6, 2019. Trial Tr. (Vol. 1) p. 38, lines 2-17.

Hall told Bowers she should not go to "church" and that she would not be in any trouble if she did not go. Because Hall and Bowers were not religious and never attended church, the meaning of Hall's repeated requests that Bowers *not* go to church made her certain he was "trying to get me not to go the deposition on May 6 to give my testimony." Trial Tr. (Vol. 1) p. 38, lines 22-24, p. 39, lines 1-5.

In the video of their first conversation in the afternoon of May 5, 2019, it is apparent that Hall blinked his eyes in a manner that indicated his statements about "church" had special meaning. Exhibit 1. Hall's request to Bowers was unmistakable; he used visual clues because he was aware his conversation was being monitored and recorded.

Bowers' angst about whether she should appear at "church" was evident in both videos from May 5, 2019. At trial, Bowers explained that she dated Hall for approximately nine months; they had talked about getting married and having children together.[1] Trial Tr. (Vol. 1) p. 39, lines 18-23, p. 40, lines 7-12. Bowers testified that both

[1] Bowers had been in love with Hall but at the time of trial, they were no longer a couple. Trial Tr. (Vol. 1) p. 40, lines 11-17.

marriage and children were important to her. Trial Tr. (Vol. 1) p. 39, line 24-p. 40, line 6.

Bowers understood that if she went to the deposition, she would not have a future with Hall. Trial Tr. (Vol. 1) p.43, line 17-p. 44, line 9. Bowers understood the underlying message in Hall's request to not go to "church" was that he wanted her to conceal any incriminating evidence she could offer; this could be accomplished if she did not appear at her deposition. Trial Tr. (Vol. 1) p. 48, lines 22-24.

Further evidence of Hall's intent to induce Bowers is found in her conversation with him around 9:00 a.m. on May 6, after she had appeared at the deposition. Trial Tr. (Vol. 1) p. 37, lines 1-7. Hall was very upset with Bowers and made her feel as though she had betrayed him; he barely looked at her. Trial Tr. (Vol. 1) p. 48, lines 7-16, Exhibit 3.

On appeal, Hall appears to argue that his attempt to induce Bowers to conceal material facts had to be overt and literal. However, the subtle and coded manner in which Hall spoke to Bowers spoke volumes. "An effort to persuade by appeals to love or to friendship or to sympathy may be as successful as efforts to persuade by means of force, threats or bribery. The former may, possibly, fail in more

instances than the latter but that does not alter their character as corrupt attempts to secure false testimony and corrupt attempts to impede and obstruct justice." *In re Oxiles*, 29 Haw. 323, 333 (1926).

It was not necessary that the State prove Hall induced Bowers through a financial offer. Hall induced Bowers by letting her know that she would not be in trouble if she failed to appear at the deposition and that he would go free if she did not appear at the deposition; therefore, they would continue their relationship if she did not appear at the deposition. In the context of their relationship, Hall's entreaties were sufficient evidence of inducement to conceal material facts and to support his convictions of two counts of suborning perjury.

II. There Was Sufficient Evidence to Support the Jury's Verdict Finding Hall Guilty of Obstruction of Prosecution Beyond a Reasonable Doubt.

Preservation of Error

The State agrees Hall preserved error on this issue by moving for a judgment of acquittal and by obtaining a ruling on the issue. Trial Tr. (Vol. 2) p. 27, line 18-p. 28, line 25, p. 37, lines 8-25, p. 40, line 19-p. 41, line 14. *See Schories*, 827 N.W.2d at 664.

Standard of Review

Review of a challenge to the sufficiency of the evidence is on assigned error. *State v. McPhillips*, 580 N.W.2d 748, 753 (Iowa 1998). The reviewing court will uphold the denial of a motion for judgment of acquittal if there is substantial evidence in the record to support the defendant's conviction. *Id.* at 752. Substantial evidence is evidence that could convince a trier of fact that the defendant is guilty of the crime charged beyond a reasonable doubt. *State v. Crone*, 545 N.W.2d 267, 270 (Iowa 1996). In determining whether there is sufficient evidence, the court considers all the evidence. *State v. Robinson*, 288 N.W.2d 337, 340 (Iowa 1980). However, the court views the evidence in a light most favorable to the State and makes all reasonable inferences that may be drawn from the evidence. *McPhillips*, 580 N.W.2d at 752.

Merits

Hall next argues the district court erred in denying his motion for judgment of acquittal on the charges of obstruction of prosecution. Iowa Code section 719.3 prohibits

> [a] person who, with intent to prevent the apprehension or obstruct the prosecution or defense of any person, knowingly does any of

> the following acts, commits an aggravated misdemeanor:
>
> [. . .]
>
> 2. Induces a witness having knowledge material to the subject at issue to leave the state or hide, or to fail to appear when subpoenaed.

Hall maintains the State did not present sufficient evidence that he induced Bowers to fail to appear and that he had the intent to obstruct.

Instructions 15 and 16 provide:

> The State must prove both of the following elements of Obstructing a Prosecution:
>
> On or about the afternoon [evening] of May 5, 2019, the defendant 'induced' Emily Bowers, a witness with knowledge 'material' to the defendant's criminal case to fail to appear when subpoenaed.
>
> The defendant's act was done with 'specific intent' to obstruct prosecution of Kourtney Hall.

App. ____. The jury was also instructed that

> 'Procure' means to initiate or bring about an event; to cause something to be done; to contrive or acquire.
>
> 'Induce' or 'inducement' means to offer something of benefit or value or a reason which would influence, persuade, coax, or invite a person to act.

Instruction 17; App. --.

As for evidence that Hall induced Bowers, the evidence set forth in the previous division applies with equal force to the crime of obstructing the prosecution. *See* Division I. The State also presented ample evidence that Hall intended to obstruct the prosecution.

In both State's Exhibits 1 and 2, which were the conversations that occurred prior to Bowers' deposition, Hall repeatedly talked to Bowers about being able to get out of jail and come home. Hall told Bowers that if she doesn't go to "church," it would be a good day tomorrow. Hall stressed he would be free from criminal prosecution if Bowers did "not going to church" and that he was depending upon her to free him. Because Hall was well-aware that Bowers' testimony was essential in his pending criminal case, he believed her absence at the deposition would redound to his benefit. Hall sweet-talked Bowers as he discussed the couple's future together and mused about recreational and business activities following his release from jail.

Evidence of Hall's expectation about what would happen if Bowers failed to appear at her deposition is also found in Exhibit 3. Once Hall knew Bowers obeyed her subpoena, his demeanor changed drastically. Hall's expression and words conveyed to Bowers that she

had disappointed him. Hall barely looked into the camera as he talked to Bowers and accused her of not loving him as much as he loved her. Hall also complained about the jail conditions and his dashed hope to help family members if he were released. It is accurate to describe Hall as "laying a guilt trip" on Bowers. *See* Exhibit 3.

The video evidence, as well as Bowers' testimony, prove that Hall induced Bowers not to appear at the deposition for which she was subpoenaed, and it proves he did so with the intent to obstruct his prosecution.

III. The District Court Did Not Abuse Its Discretion in Admitting Exhibits 1, 2, and 3.[2]

Preservation of Error

The State agrees that Hall preserved error on this issue, generally, by objecting to the admission of the three videos of his conversations with Bowers at the jail and by obtaining the district court's ruling on his objection. Trial Tr. (Vol. 1) p. 8, line 20-p. 9, line 17, p. 11, lines 5-12. *See State v. Manna*, 534 N.W.2d 642, 644 (Iowa

[2] This division of the State's brief addresses Issues III and IV of Hall's brief.

1995) ("issues must be presented to and passed upon by the district court before they can be raised and decided on appeal").

However, on appeal Hall seeks to also argue that the district court abused its discretion in admitting Exhibit 3 on the basis that this video occurred after Bowers had given her deposition. Hall did not distinguish Exhibit 3 for this reason in the district court; therefore, to the extent he supplements this issue, he has failed to preserve error.

Standard of Review

This court "generally review[s] evidentiary rulings for abuse of discretion." *Williams v. Hedican*, 561 N.W.2d 817, 822 (Iowa 1997); accord *State v. Bugely*, 562 N.W.2d 173, 177 (Iowa 1997) (applying abuse of discretion standard in reviewing admission of other crimes evidence). "An abuse of discretion occurs when the trial court exercises its discretion 'on grounds or for reasons clearly untenable or to an extent clearly unreasonable.'" *State v. Rodriquez*, 636 N.W.2d 234, 239 (Iowa 2001) (quoting *State v. Maghee*, 573 N.W.2d 1, 5 (Iowa 1997)).

Merits

Hall argues the district court abused its discretion in admitting the videos of his conversations with Bowers into evidence because the prejudicial effect of the videos outweighed the probative value of them pursuant to Iowa Rule of Evidence 5.403.

Rule 5.403 provides that a "court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." "Whereas 'relevancy' is the tendency to make a consequential fact more or less probable, "probative value" gauges the strength and force of that tendency. *State v. Plaster,* 424 N.W.2d 226, 231 (Iowa 1988).

"Rule 403 does not provide protection against all evidence that is prejudicial or detrimental to one's case; it only provides protection against evidence that is unfairly prejudicial." *Id.* Rather, evidence is unfairly prejudicial if it

> appeals to the jury's sympathies, arouses its sense of horror, provokes its instinct to punish, or triggers other mainsprings of human action may cause a jury to base its decision on something other than the established propositions in the case. The appellate court

> may conclude that "unfair prejudice" occurred because an insufficient effort was made below to avoid the dangers of prejudice, or because the theory on which the evidence was offered was designed to elicit a response from the jurors not justified by the evidence.

Plaster, 424 N.W.2d. at 231-32 (quoting 1 J. Weinstein & M. Berger, *Weinstein's Evidence* ¶ 403[03], at 403–33—40 (1986)).

Hall contends that the video evidence was unfairly prejudicial to him because the jury could see he was in jail. He maintains that his conversations with Bowers could easily have been presented to the jury through audio alone to mitigate the prejudice.

However, as the State argued at trial, the video permitted the jury to observe "certain physical cues that the defendant sends," to Bowers. Trial Tr. (Vol. 1) p. 9, line 21-p. 10, line 4. The State accurately explained this to the jury in its opening statement:

> So much of what we say isn't just the words we're using. It is how we say it. I don't know if the record can emphasize that I used some emphasis on that. "It's how we say it." Our context, our tone, our enthusiasm, and our facial expressions are all critical. Watch for the energy level of the defendant. Watch for the energy level of Emily Bowers. Pay attention to what they talk about what are their topics of conversation.
>
> I mentioned expressions. There's going to be one key moment that will help us understand

> what the defendant meant, and it's a very particular facial expression that is to send a code.

Trial Tr. (Vol. 1) p. 25, lines 7-18.

To fully understand the communication between Hall and Bowers, it was critical for the jury to view their body language. An audio of their conversations would not have sufficed to convey the underlying meaning of Hall's request that Bowers "not go to church." Similarly, an audio of their conversations would not have revealed Bowers' struggle with Hall's request, and thus the criminal purpose of it, nor would the audio show the dramatic difference in Hall's attitude towards her between May 5 and May 6, 2019.

Hall separately contends the district court abused its discretion in admitting State's Exhibit 3, the video of the conversation between Bowers and Hall on May 6, 2019, because it had no probative value. Hall maintains this conversation was not relevant to the charges because the alleged criminal conduct occurred prior to the May 6, deposition.

The conversation Hall and Bowers had on May 6, 2019, was relevant and probative of Hall's intent to induce Bowers not to appear at her deposition. In watching Exhibit 3, the jury could see and hear

Hall's disappointment in Bowers for her decision to appear at the deposition; in Hall's comments it is manifest that he expected something else from Bowers. Exhibit 3 is akin to other type of evidence of "guilty knowledge" that is routinely admitted at criminal trials.

Even if the district court abused its discretion in admitting the videos rather than just the audio of the conversations, Hall does not "assert the alleged error in this case assumes constitutional dimensions." *State v. Trudo*, 253 N.W.2d 101, 107 (Iowa 1977). Therefore, "to determine whether a ruling on admission of evidence was prejudicial" the reviewing court asks whether "it sufficiently appear that the rights of the complaining party have been injuriously affected by the error or that he has suffered a miscarriage of justice? *Id.*

The videos were not all bad for Hall; in them he is often kind to Bowers and displayed some amount of charm. Moreover, the jury was already aware that Hall had been charged of a crime; therefore, viewing Hall in jail was consistent with a fact the jury had been told--he had been charged in another criminal case. Trial Tr. (Vol. 1) p. 20,

line 21-p. 21, line 3. Any error in the admission of the videos did not result in a miscarriage of justice.

The district court did not abuse its discretion in admitting Exhibits 1, 2, and 3.

IV. The District Court Did Not err in Denying Hall's Motion for New Trial.

Preservation of Error

The State agrees Hall preserved error on this issue by filing a motion for new trial and by obtaining the district court's ruling on the motion. Motion for New Trial, Sentencing Tr. p. 8, line 24-p. 9, line 13.

Standard of Review

"A district court is given 'unusually broad discretion' in ruling on a motion for a new trial based on newly discovered evidence." *State v. Jefferson,* 545 N.W.2d 248, 249 (Iowa 1996) (quoting *State v. Miles*, 490 N.W.2d 798, 799 (Iowa 1992)).

Merits

Hall argues the district court erred in denying his motion for new trial. He maintains the verdict was contrary to the weight of the evidence.

Pursuant to Iowa Rule of Criminal Procedure 2.24(2)(b)(6), the district court may grant a new trial "[w]hen the verdict is contrary to law or evidence." The Iowa Supreme Court has cautioned that "'the power to grant a new trial on this ground should be invoked only in exceptional cases in which the evidence preponderates heavily against the verdict.'" *State v. Ellis,* 578 N.W.2d 655, 659 (Iowa 1998) (quoting 3 Charles A. Wright, Federal Practice and Procedure § 553, at 245-48 (2d ed.1982)).

In ruling upon "a motion for new trial based on the ground that the verdict was contrary to the weight of the evidence, the district court must 'weigh the evidence and consider the credibility of the witnesses.'" *State v. Scalise,* 660 N.W.2d 58, 65-66 (Iowa 2003) (quoting *Ellis*, 578 N.W.2d at 658). "The court is not to approach the evidence from the standpoint "most favorable to the verdict." *Id.* "Rather, the court must independently consider whether the verdict is contrary to the weight of the evidence and that a miscarriage of justice may have resulted." *Id.*

In denying Hall's motion for new trial, the district court correctly found:

> In this case, in the Court's view, the evidence preponderates heavily in favor of the verdict

> rendered. The Court listened to the evidence and recalls it distinctly, and there was considerable evidence, direct and circumstantial, supporting each and every element of the crimes that were charged that the defendant was tried for.
>
> There is no question in this case that it's even close, even a close call, even anywhere like that. In this case there is plenty of evidence supporting each and every element of every charge the defendant was tried for. The evidence clearly supports the rendered verdict.

Sentencing Tr. p. 8, line 24-p. 9, line 13.

"The credibility of witnesses is for the factfinder to decide except those rare circumstances where the testimony is absurd, impossible, or self-contradictory." *State v. Neitzel*, 801 N.W.2d 612, 624 (Iowa Ct. App. 2011). The jury observed Hall's criminal conduct on the videos, and Bowers' found testimony credible. *See State v. Thornton*, 498 N.W.2d 670, 673 (Iowa 1993) ("The jury is free to believe or disbelieve any testimony as it chooses and to give weight to the evidence as in its judgment such evidence should receive.").

Because the evidence was not contrary to the jury's verdict, the district court did not err in denying Hall's motion for new trial.

CONCLUSION

For all the reasons set forth above, the State respectfully requests this Court affirm Hall's convictions of suborning perjury and obstruction of prosecution.

REQUEST FOR NONORAL SUBMISSION

The State believes that this case can be resolved by reference to the briefs without further elaboration at oral argument.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

- This brief has been prepared in a proportionally spaced typeface using Georgia in size 14 and contains **4,251** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

Dated: February 12, 2021

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