

IN THE IOWA SUPREME COURT OF IOWA

SUPREME COURT NO. 19-1616

STATE OF IOWA,
Plaintiff-Appellee,

v.

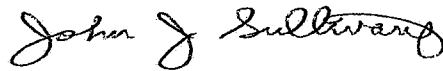
KOURTNEY SHONTEZ HALL,
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT
OF POLK COUNTY
THE HONORABLE ROBERT HANSON, JUDGE

APPELLANT'S AMENDED APPLICATION FOR FURTHER REVIEW

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On June 11, 2021, I, the undersigned, did serve within Appellant's amended Application for Further Review via EDMS to the Clerk of the Iowa Supreme Court and on all other parties to this appeal. The undersigned further certifies that he has served a copy of Appellant's amended Application for Further Review on Kourtney Hall at Iowa Department of Corrections Rockwell City facility via United States Postal Service.



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STATEMENT OF ISSUES PRESENTED FOR FURTHER REVIEW

- 1. Whether the Court of Appeals erred when it found that substantial evidence supported the jury's findings that Appellant suborned perjury.**
- 2. Whether the Court of Appeals erred when it found that substantial evidence supported the jury's findings that Appellant obstructed prosecution.**
- 3. Whether the Court of Appeals erred when it found that the Trial Court did not abuse its discretion in admitting video evidence of Appellant's jail calls.**
- 4. Whether the Court of Appeals erred when it found that the Trial Court did not abuse its discretion in denying the Appellant's motion for new trial.**

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**STATEMENT SUPPORTING FURTHER REVIEW
THE SUPREME COURT SHOULD CONSIDER THIS MATTER FOR
THE FOLLOWING REASONS**

I. THE COURT OF APPEALS HAS DECIDED A SUBSTANTIAL QUESTION OF CONSTITUTIONAL LAW OR AN IMPORTANT QUESTION OF LAW THAT HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THE SUPREME COURT IN THAT THE TERM “INDUCEMENT” REQUIRES A SPECIFIC DEFINITION WITH REGARDS TO THE CRIMES OF SUBORNING PERJURY AND OBSTRUCTING PROSECUTION.

II. THE COURT OF APPEALS HAS DECIDED A SUBSTANTIAL QUESTION OF CONSTITUTIONAL LAW OR AN IMPORTANT QUESTION OF LAW THAT HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THE SUPREME COURT IN THAT APPELLANT’S DUE PROCESS RIGHTS WERE VIOLATED WHEN THE TRIAL COURT PERMITTED VIDEO OF THE DEFENDANT IN JAIL, AND ANY CURATIVE INSTRUCTION WOULD NOT OVERCOME THE UNFAIR PREJUDICE TO DEFENDANT

STATEMENT OF THE CASE

On May 8, 2019, Kourtney Hall was charged with two counts of suborning perjury, in violation of Iowa Code Sec. 720.3, based upon 2 separate conversations that he had on May 5, 2020 with Emily Bowers. Complaints, Trial Information and Minutes of Evidence. App. 5-16. On May 16, 2020, the State filed the Trial Information and Minutes charging Hall with two counts of suborning perjury. Trial Information and Minutes of Evidence, App. 11-16. On July 30, 2019, the Trial Information was amended to add two counts of Obstructing Prosecution, in violation of Iowa Code Sec. 719.3(2), based upon the same set of operative facts. Amended Trial Information, App. 18.

On August 7, 2019, this matter proceeded to jury trial. Trial Transcript, p. 1. On August 8, the jury found Hall guilty on all four counts. Order filed August 8, 2019, App. 21. On September 19, 2019, Hall filed a motion for new trial. Motion, App. 24. On September 20, 2019, the date of sentencing, the court denied the motion for new trial and sentenced Hall to a prison term of five years on each count of suborning perjury and a prison term of two years on each count of obstructing prosecution, all counts running consecutive for a fourteen year prison term. Order dated September 20, 2019, App. 32. On September 20, 2019, Hall filed a notice of appeal. Notice of Appeal, App. 37.

STATEMENT OF THE FACTS

On May 3, 2019, Emily Bowers was subpoenaed to appear for a deposition on May 6, 2019 in a Polk County criminal proceeding regarding Kourtney Hall. Trial Transcript I, p. 36, State's Ex. 4, App., 20. Emily and Hall were in a relationship. Trial Transcript I, p. 35. Emily had material information regarding the identity of clothing Hall may have been wearing at the time of a criminal offense. Trial Transcript I, p. 36. At the time of the deposition, Hall was incarcerated in the Polk County Jail. Trial Transcript I., p. 28. On May 5 and 6th, 2019, Emily and Hall visited via the jail's audio/video visiting system on three separate occasions, twice before the deposition and once subsequent to the deposition. Trial Transcript I, p. 29-31. All visits were recorded. *Id.*, State's Exhibits 1 – 3. Among the topics of conversation was a discussion about church. Trial Transcript I, p. 38. Prior to the deposition, Hall had asked if Emily was going to church and discussed her attending Lent services the week prior. Trial Transcript I, p. 45. Emily interpreted this conversation to mean that Hall did not want her to attend the deposition. Trial Transcript I, p. 38, 42. Bowers did attend the deposition and provided truthful testimony. Trial Transcript I, p. 44. Bowers and Hall visited after the deposition. Trial Transcript, Trial Transcript I, p. 48. Bowers testified that Hall was upset with her testifying at the deposition. *Id.*

However, the topic of conversation was mainly about what to do next because they would be apart for some time. Trial Transcript II, p. 15, State's Ex. 33. At trial, Bowers testified that Hall never threatened her to testify or not testify. Trial Transcript II, p. 4. Hall never procured anything of benefit for Bowers. Trial Transcript II, p. 4. Hall never directly told Bowers to not go to the deposition. Trial Transcript II, p. 5. Hall never told Bowers that if she didn't go, something would happen. Trial Transcript II, p. 5. Hall never spoke to Bowers about what would or wouldn't happen to their relationship if she did or did not testify at depositions. Trial Transcript II, p. 8. Hall never threatened the relationship in any way and never said that he would end the relationship because she showed up at depositions. Trial Transcript II, p. 9. In fact, the parties were still discussing their relationship, love and future at the visits, even though she said that they had broke up three months prior, and that the only reason they stopped having jail visits was that it was prohibited by the State. Trial Transcript II, p. 8, 17-18. Further, Hall never told Bowers that it would be better if she didn't attend depositions. Trial Transcript II, p. 10. Hall Never told Bowers to lie, never told her to appear at depositions and lie, never told her to withhold statements or information from the State and never told her to lie or withhold information from law enforcement. Trial Transcript II, p. 10. Further, Hall never told Bowers to not tell the truth while under oath. *Id.* Hall never made any threats or promises to Bowers related

to her decision to go or not go to depositions. *Id.* Hall never induced Bowers to lie or not show up for depositions. Trial Transcript II, p. 11. Hall told her to just not go to church, which Bowers interpreted as do not go to depositions. *Id.* After this matter was submitted to the jury, Hall was found guilty on all charges. Trial Transcript II, p. 67-68. On September 20, 2019, Hall was sentenced to fourteen years in prison. Sentencing Order, App. , 32.

ARGUMENT

I.

THE COURT OF APPEALS ERRED IN UPHOLDING THE JURY'S FINDING THAT THE APPELLANT SUBORNED PERJURY AS THERE IS INSUFFICIENT EVIDENCE TO DEMONSTRATE THAT APPELLANT INDUCED AN ACT

Appellant preserved error in this matter by making a motion for judgment of acquittal at the close of the state's evidence and renewed at the close of all evidence seeking acquittal of all charges on basis on insufficient evidence at trial. Trial Transcript II, p. 27, 40.

Standard of Review

The Court reviews challenges to the sufficiency of the evidence supporting a guilty verdict for correction of errors at law. *State v. Heard*, 636 N.W.2d 227, 229 (Iowa 2001). A verdict is upheld if substantial record evidence

supports it. *Id.* Evidence is substantial if it would convince a rational fact finder that the defendant is guilty beyond a reasonable doubt. *Id.* The Court reviews the evidence in the light most favorable to the State, including legitimate inferences and presumptions that may fairly and reasonably be deduced from the evidence in the record. *Id.* The court considers all the evidence in the record, not just the evidence that supports the verdict. *Id.*

The State must prove every fact necessary to constitute the crime with which the defendant is charged. *State v. Gibbs*, 239 N.W.2d 866, 867 (Iowa 1976). The evidence must raise a fair inference of guilt and do more than create speculation, suspicion, or conjecture. *State v. Hamilton*, 309 N.W.2d 471, 479 (Iowa 1981).

Argument

There was insufficient evidence to support the jury's verdict that defendant suborned perjury. Iowa Code Section 720.3 reads as follows:

A person who 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, commits a class "D" felony.

There are few cases discussing Iowa Code Sec. 720.3 or its definitions, but one case that is instructive is *Iowa Supreme Court Attorney Disciplinary Bd. v. Gailey*, 790 N.W.2d 801 (2010). In *Gailey*, the Supreme Court found an

inducement was made where an attorney offered his son's wife a favorable dissolution settlement in their marital dissolution proceeding if she testified in a certain manner in her son's criminal case.

State v. Halleck, 308 N.W. 2d 56 (Iowa 1981), also provides some instruction. In *Halleck*, the Supreme Court found inducement where a party made an offer to pay someone restitution in an attempt to improperly influence a victim-witness's testimony.

Further, the definitions of "procure" and "induce" contained within Iowa Criminal Jury Instruction 2000.7, are instructive and defines the terms "procure" and "induce" as follows:

2000.7 Suborning Perjury - Definition - Procure - Induce. "Procure" means to initiate or bring about an event; to cause something to be done; to contrive or acquire. "Induce" means to offer something of benefit or value or a reason which would influence, persuade, coax, encourage or invite a person to act.

In this matter, unlike the *Gailey* and *Halleck* cases, there is no record evidence that Hall offered any money or other type of inducement to Bowers in exchange for making a false statement, or for shading her testimony, or for concealing material facts at the May 6, 2019 deposition. There is no record evidence that Kourtney Hall procured or offered any inducement to Emily Bowers with the specific intent for Emily to either make a false statement, influence her testimony, or conceal a material fact at the May 6, 2019 deposition.

To the contrary, Bowers clearly testified that Hall did not procure or induce her to make any false statement, to lie, or to improperly influence her testimony, or conceal a material fact. Trial Transcript II, pp. 4 – 11. Additionally, there is no evidence demonstrating that Hall offered to initiate or bring about an event, or that he would cause something to be done, or that he would acquire or contrive something for Bowers in exchange for false testimony at her deposition. He never asked her to make any false statement at the deposition. Trial Transcript, p. 9-11 . He never asked her to conceal any material fact at the deposition. Trial Transcript, p. 9-11 . Even if you could interpret his statements regarding Emily not going to church to believe that he was asking Emily not to appear for the deposition, a request to not appear at a deposition is not specifically requesting her to give a false statement or to conceal a material fact under oath. Further, Bowers said that she was just “going along with” the conversation. *Id.* She said she interpreted the conversation to mean depositions. *Id.* Even if Hall meant depositions, the request to not “go to church” was just that – a request. No inducement was made to Bowers in exchange for a specific request to not attend the deposition.

There is also no evidence that Hall offered Bowers something of benefit or value or a reason which would influence, persuade, coax, encourage or invite Bowers to act. Bowers testified that Hall did not offer her anything for any

testimony. Trial Transcript, p. 9-11 . There is no evidence that Hall made any threatening remarks that could have influenced, persuaded, coaxed, encouraged or invited Bowers to make a false statement or conceal a material fact. In fact, Bowers testified that Hall never made any threats towards her regarding her appearance at the deposition. Trial Transcript, p. 9-11.

The crux of the State's "inducement" argument was that Hall offered "value" and influence by discussing the possibility of marriage and family with Bowers at a future point, and that Bowers valued marriage. Even assuming that this idea could qualify as "value" for purposes of inducement, there is no evidence that Hall offered a specific "inducement" or promise of marriage in exchange for Bowers giving false testimony at deposition or in exchange for Bowers' concealing material facts at deposition. To the contrary, marriage and family were discussed by the parties many times before this situation, so the idea that Hall's discussion of plans of marriage at this time as an inducement to Bowers to provide false testimony or to conceal material facts, if it were even plausible, does not hold water because said discussion was no different than the parties' marriage discussions at prior times.

The state presents no evidence that Hall gave or made any specific procurement or inducement to Emily Bowers in exchange for her to provide a false statement or to conceal a material fact at her deposition. He never asked her

to make a false statement and never asked her to not tell or hide the truth. The State has not presented sufficient evidence of suborning perjury and these counts should be dismissed.

II.

THE COURT OF APPEALS ERRED IN UPHOLDING THE JURY'S FINDING THAT THE APPELLANT OBSTRUCTED PROSECUTION AS THERE IS INSUFFICIENT EVIDENCE TO DEMONSTRATE THAT APPELLANT INDUCED AN ACT

ERROR PRESERVATION

Appellant preserved error in this matter by making a motion for judgment of acquittal at the close of the state's evidence seeking acquittal of all charges on basis on insufficient evidence at trial. Trial Transcript, p. 27, 40.

Standard of Review

The Court reviews challenges to the sufficiency of the evidence supporting a guilty verdict for correction of errors at law. *State v. Heard*, 636 N.W.2d 227, 229 (Iowa 2001). A verdict is upheld if substantial record evidence supports it. *Id.* Evidence is substantial if it would convince a rational fact finder that the defendant is guilty beyond a reasonable doubt. *Id.* The Court reviews the evidence in the light most favorable to the State, including legitimate inferences and presumptions that may fairly and reasonably be deduced from the evidence in the record. *Id.* The court considers all the evidence in the record, not just the evidence that supports the verdict. *Id.*

The State must prove every fact necessary to constitute the crime with which the defendant is charged. *State v. Gibbs*, 239 N.W.2d 866, 867 (Iowa 1976). The evidence must raise a fair inference of guilt and do more than create speculation, suspicion, or conjecture. *State v. Hamilton*, 309 N.W.2d 471, 479 (Iowa 1981).

Argument

There was insufficient evidence to support the jury's verdict that Hall obstructed prosecution. Iowa Code Section 719.3(1) reads as follows:

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:

1. Destroys, alters, conceals or disguises physical evidence which would be admissible in the trial of another for a public offense, or makes available false evidence or furnishes false information with the intent that it be used in the trial of that case.
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.

There are few cases discussing Iowa Code Sec. 719.3 or its definitions, but an analogous case that is instructive is *Iowa Supreme Court Attorney Disciplinary Bd. v. Gailey*, 790 N.W.2d 801 (2010). In *Gailey*, the Supreme Court found an inducement was made where an attorney offered his son's wife a favorable dissolution settlement in their marital dissolution proceeding if she testified in a certain manner in her son's criminal case.

State v. Halleck, 308 N.W. 2d 56 (Iowa 1981), also provides some guidance. In *Halleck*, the Supreme Court found inducement where a party makes an offer to pay someone restitution in an attempt to improperly influence a victim-witness's testimony.

Further, while Iowa Code Section 719.3 does not define the term "induces", Iowa Criminal Jury Instruction 2000.7, is instructive and defines the terms "procure" and "induce" as follows:

2000.7 Suborning Perjury - Definition - Procure - Induce. "Procure" means to initiate or bring about an event; to cause something to be done; to contrive or acquire. "Induce" means to offer something of benefit or value or a reason which would influence, persuade, coax, encourage or invite a person to act.

Emily Bowers was under subpoena to attend a deposition regarding Kourtney Hall's criminal matter. State's Exhibit 4, App., 20. Unlike the *Gailey* and *Halleck* cases, there is no record evidence that Hall offered payment of any money or other type of inducement to Bowers in exchange for her to not appear at the deposition. There is no record evidence that Hall made any inducement to Emily Bowers in exchange for her to leave the state, hide, or fail to appear when subpoenaed. In fact, Bowers testified herself that Hall never provided any inducement to Bowers in exchange for her not appearing at the deposition and also testified that Hall never specifically asked her to not appear for the deposition. Trial Transcript II, p.9-11. Bowers testified that Hall just talked to her

about not attending church. Trial Transcript I, 38, 42. The State argued that church was a code word for the deposition. Even assuming that that is true, the fact that Hall asked Bowers not to attend a deposition is nothing more than a request. No inducement was made by Hall to Bowers in exchange for a specific request to not attend the deposition.

There is no evidence that Hall induced Bowers to not appear after being subpoenaed. There is no evidence that Hall offered to induce, procure or give Bowers anything in exchange for her not appearing at the deposition. There is no evidence that Hall made any threatening remarks that could have influenced, persuaded, coaxed, encouraged or invited Bowers to not appear for the deposition. In fact, Bowers testified that Hall made no threats regarding Bower appearing at the May 6, 2019, deposition during the conversations that took place prior to the deposition. State's Exhibits 1 and 2, Trial Transcript II, p.9-11. In fact, Bowers testified that Hall did not make any threatening remarks to her. Trial Transcript II, 9-11 . Once again, the crux of the State's "inducement" argument was that Hall discussed the possibility of marriage with Bowers at a future time, and that Bowers valued marriage. Even assuming that a discussion of future plans for marriage could qualify as "value" for purposes of inducement, there is no evidence that Hall offered an "inducement" of a specific promise of marriage in exchange for Bowers to not appear at the deposition. In fact, Bowers testified

herself that Hall never provided her an inducement in exchange for not appearing at the deposition, nor did Hall ever specifically ask her to not attend the deposition. Trial Transcript, p. 9-11 .

There is not one shred of evidence presented by the State that Hall offered an inducement to Bowers to not obey the subpoena and the obstruction of prosecution charges should be dismissed.

III.

THE COURT OF APPEALS ERRED WHEN IT FOUND THAT THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN ADMITTING VIDEO EVIDENCE OF APPELLANT'S JAIL CALLS.

Error Preservation

Appellant preserved error in this matter by making a motion in limine prior to jury trial, and in making objection during trial, and in filing a motion for judgment of acquittal at the close of the state's evidence seeking acquittal of all charges on basis on insufficient evidence and renewing said motion at the close of the evidence at trial. Trial Transcript II, p. 27, 40.

Standard of Review

The Supreme Court reviews evidentiary rulings for abuse of discretion.”
State v. Huston, 825 N.W.2d 531, 536 (Iowa 2013). The court finds an abuse of

discretion ...“only when the party claiming such shows that the court exercised the discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable.” *State v. Maghee*, 573 N.W.2d 1, 5 (Iowa 1997); *State v. Sallis*, 928 N.W.2d 140 (Iowa Ct. App. 2019).

Argument

In this matter, the defendant made an oral motion in limine seeking to prevent the State from publishing the video portion of the jail visits between Hall and Bowers. The defendant relied upon rule 5.403 for the exclusion of any video testimony. The court denied the motion and denied the objection during the trial.

Iowa R. Ev. 5.403 provides as follows regarding evidence:

The 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.

In this matter, the State had an audio/video of the conversations between Kourtney Hall and Emily Bowers that took place while Hall was at the Polk County jail. The court’s decision to permit the state to play the video of the conversation with the audio was unfairly prejudicial to Hall. There was no reason for the jury to know that Hall was incarcerated. The State would have been able to present the evidence without the video portion and still have the complete conversations. Any nonverbal observations of Hall were not relevant as these

charges deal with verbal statements which can be observed without video. The State's ability to publish the video showing Hall in custody confused the issues in the case and amounted to evidence of other wrongs or acts that should have been excluded as being irrelevant. The State could have played the audio alone. This case should have and could have been presented without the video evidence. Any probative value of the video portion of the state's exhibit was substantially outweighed by danger of unfair prejudice or confusion of issues. This case, if not dismissed, should be remanded for a new trial.

IV.

THE COURT OF APPEALS ERRED WHEN IT FOUND THAT THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN PERMITTING STATEMENTS OF THE DEFENDANT TO BE PUBLISHED TO THE JURY WHERE SAID STATEMENTS WERE MADE SUBSEQUENT TO THE ALLEGED CRIMINAL ACT AS THEY WERE NOT RELEVANT, AND EVEN IF THEY WERE RELEVANT, THERE PROBATIVE VALUE WAS SUBSTANTIALLY OUTWEIGHTED BY UNFAIR PREJUDICE

Error Preservation

Hall preserved error in this matter by making an oral motion in limine prior to jury trial, and in making objection during trial, and in filing a motion for judgment of acquittal at the close of the state's evidence seeking acquittal of all charges on basis on insufficient evidence and renewing said motion at the close of the evidence at trial. Trial Transcript, p. 27, 40.

Standard of Review

The Supreme Court reviews evidentiary rulings for abuse of discretion.” *State v. Huston*, 825 N.W.2d 531, 536 (Iowa 2013). The court finds an abuse of discretion ...“only when the party claiming such shows that the court exercised the discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable.” *State v. Maghee*, 573 N.W.2d 1, 5 (Iowa 1997); *State v. Sallis*, 928 N.W.2d 140 (Iowa Ct. App. 2019).

In this matter, Hall made an oral motion in limine seeking to exclude State’s Exhibit 3, which was the audio/video recording of the jail visit that occurred between Hall and Bowers after Bowers’ deposition on May 6, 2020. Hall relied upon rule 5.403 for the exclusion of any video testimony. The Court denied the motion and denied the objection during the trial. Trial Transcript I, 11, 30.

Iowa R. Ev. 5.403 provides as follows regarding evidence:

The 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.

The State had an audio/video recording of three visits that took place between Hall and Emily Bowers during May 5 and 6, 2019 at the Polk County

jail. The third visit, on May 6, 2019, occurred after Emily Bowers attended her deposition.

There was no reason for the Court to admit State's Exhibit 3, which was the recording of the parties' third visit. This visit occurred after the deposition. Trial Transcript II, p.13 . There was no reason to admit this exhibit and publish it to the jury. The elements regarding crimes of suborning perjury and obstructing prosecution have only to do with statements and inducements made prior to the time a statement will be made in some proceeding that is under oath. In this matter, that proceeding was a deposition. There was no reason to play any conversation that took place after the deposition. The fact that Hall was unhappy or upset because Bowers appeared at the deposition fulfills no part of the elements of any of the crimes charged. See Trial Transcript II, 13-17. The statements made should have been excluded as not relevant.

The court's decision to admit State's Exhibit 3 was unfairly prejudicial to Hall. There was no reason to play the subsequent conversation except to prejudice Hall and play upon the passions of the jurors. Any probative value of the portion of the state's exhibit regarding conversations subsequent to the deposition was substantially outweighed by danger of unfair prejudice or confusion of issues. This case, if not dismissed, should be remanded for a new trial.

V.

**THE COURT OF APPEALS ERRED WHEN IT UPHELD THE
THE DISTRICT COURT ORDERIN OVERRULING HALL’S MOTION
FOR NEW TRIAL AS THE JURY VERDICTS WERE CONTRARY TO
THE GREATER WEIGHT OF THE EVIDENCE**

Error Preservation

Hall preserved error regarding this issue as he filed a motion for new trial subsequent to trial and prior to sentencing.

Standard of Review

The Supreme Court reviews rulings on motions for new trial asserting a verdict is contrary to the weight of the evidence for an abuse of discretion.” *State v. Wickes*, 910 N.W.2d 554, 563–64 (Iowa 2018).

Argument

The district court abused its discretion in overruling Hall’s motion for new trial because the jury’s verdict is contrary to the weight of the evidence in this case.

A district court may grant a motion for new trial “[w]hen the verdict is contrary to law or evidence.” Iowa R. Crim. P. 2.24(2)(b)(6). “A verdict is contrary to the weight of the evidence only when ‘a greater amount of credible evidence supports one side of an issue or cause than the other.’ ” *State v. Ary*, 877 N.W.2d 686, 706 (Iowa 2016) (quoting *State v. Shanahan*, 712 N.W.2d 121, 135

(Iowa 2006)). The district court reaches this determination by applying the weight-of-the-evidence standard, which requires the district court to decide “whether ‘a greater amount of credible evidence’ suggests the verdict rendered was a miscarriage of justice.” *Id.* This standard is broader than the sufficiency-of-the-evidence standard because it allows the district court to examine the witnesses’ credibility, yet more demanding since it only provides the district court the opportunity to grant a motion for new trial where there is more evidence to support the alternative verdict than the rendered verdict. *Id.* Given this exacting standard, a district court should only grant a motion for new trial “in the extraordinary case in which the evidence preponderates heavily against the verdict rendered.” *State v. Wickes*, 910 N.W.2d 554, 563–64 (Iowa 2018)

This case is that extraordinary case in which the greater weight of credible “evidence preponderates heavily against the verdict rendered.” The credible evidence in this case, as it relates to suborning perjury and obstructing prosecution, clearly reflects more support for the alternative verdict than the verdict given.

As it relates to suborning perjury, the credible evidence presented clearly demonstrate that Hall did not make any procurement or make any inducement to Emily Bowers in exchange for Bowers to make a false statement, to conceal a

material fact, or to change or influence Bowers' testimony at the deposition. Bowers clearly testified that Hall did not procure or induce her to make any false statement, to lie, or to improperly influence her testimony, or conceal a material fact. Trial Transcript II, pp. 4 – 11. Additionally, there is no evidence demonstrating that Hall offered to initiate or bring about an event, or that he would cause something to be done, or that he would acquire or contrive something for Bowers in exchange for false testimony at her deposition. Further, Hall never asked her to make any false statement at the deposition. Trial Transcript II, 4 - 11, 14-16 . Hall never asked her to conceal any material fact at the deposition. Trial Transcript II, Id. . Even if you could interpret his discussions regarding going to church to believe that he has asking Emily not to appear for the deposition, a request to not appear at a deposition is not specifically requesting her to give a false statement or to conceal a material fact under oath.

There is also no credible evidence that Hall offered Bowers something of benefit or value or a reason which would influence, persuade, coax, encourage or invite Bowers to act. Bowers testified that Hall did not offer her anything for any testimony. Trial Transcript II, Id. . Bowers also testified that Hall never made any threatening remarks that could have influenced, persuaded, coaxed, encouraged or invited Bowers to make a false statement or conceal a material fact. Trial Transcript II, Id. . Bowers further testified that Hall never made any

threats towards her regarding her appearance at the deposition. Trial Transcript II, Id. .

With regard to the charges of obstructing prosecution, the credible evidence demonstrates that there was no inducement made by Hall to Bowers in exchange for her to not appear for depositions. Trial Transcripts II, Id. . Hall offered Bowers nothing. The parties discussed marriage and family. Trial Transcript II, Id. . A discussion of marriage and family was not an inducement. Hall discussed not going to church. Trial Transcript II, Id. . Bowers said that she was just “going along with” the conversation. Id. She said she interpreted the conversation to mean depositions. Id. Even if Hall meant depositions, the request to not “go to church” was just that – a request. No inducement was made to Bowers in exchange for a specific request to not attend the deposition.

The credible evidence shows that Hall did not ask Bowers to make any statements, did not ask her to lie, did not ask her to conceal testimony. The credible evidence shows that Hall did not provide any inducement to Bowers in exchange for her to not appear at the deposition. The credible evidence does not meet the elements of either statute, the verdict was against the greater weight of the evidence, and if this matter is not dismissed it should be in the very least remanded for new trial.

CONCLUSION

The Appellant respectfully asserts that the Court of Appeals erred in affirming the trial Court and would request that the Supreme Court accept further review of this matter.

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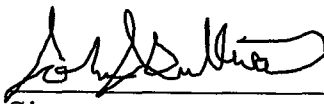
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IN THE COURT OF APPEALS OF IOWA

No. 19-1616
Filed May 12, 2021

STATE OF IOWA,
Plaintiff-Appellee,

vs.

KOURTNEY SHONTEZ HALL,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Robert B. Hanson,
Judge.

Kourtney Hall appeals his judgment and sentence for two counts of
suborning perjury and two counts of obstructing prosecution. **AFFIRMED.**

John J. Sullivan of Sullivan Law Office, P.C., Oelwein, for appellant.

Thomas J. Miller, Attorney General, and Linda J. Hines, Assistant Attorney
General, for appellee.

Considered by Vaitheswaran, P.J., and Greer and Schumacher, JJ.

VAITHESWARAN, Presiding Judge.

Kourtney Hall appeals his judgment and sentence for two counts of suborning perjury and two counts of obstructing prosecution. He challenges (1) the sufficiency of the evidence supporting the jury's findings of guilt; (2) the admission of video evidence; and (3) the denial of his new trial motion.

I. Sufficiency of the Evidence

Hall argues “[t]here was insufficient evidence to support the jury’s verdict that [he] suborned perjury” and “obstructed prosecution.” “In evaluating the sufficiency of the evidence, we consider whether ‘the finding of guilt is supported by substantial evidence in the record.’” *State v. Ernst*, 954 N.W.2d 50, 54 (Iowa 2021) (citation omitted).

A. Suborning Perjury

The jury was instructed the State would have to prove the following elements of suborning perjury:

1. On or about the afternoon [and evening] of May 5th, 2019, the defendant reasonably believed that [a woman] would be placed under oath to make a statement of fact.
2. The defendant “procured” or offered an “inducement” to [the woman] with the “specific intent” that she then conceal “material” facts known to her.

The jury was further instructed, “‘Procure’ means to initiate or bring about an event; to cause something to be done; to contrive or acquire,” and, “‘Induce’ or ‘inducement’ means to offer something of benefit or value or a reason which would influence, persuade, coax, encourage or invite a person to act.”

A reasonable juror could have found the following facts. A woman who once dated Hall had multiple virtual visits with him while he was housed at the Polk

County Jail. The woman was an important witness in another criminal case involving Hall. She was subpoenaed to have her deposition taken in that case. She testified she “was pretty stressed out, but [she] wasn’t going to go against the law and not do it, you know, because [Hall] was [her] boyfriend at the time.” She understood she “could get in trouble by the law” if she did not show up.

The day before the deposition, the woman had two video visits with Hall. During the first visit, which was recorded and admitted, Hall made the following statements:¹

Just because you don’t go to church doesn’t mean that you’re gonna go to jail or anything is going to happen to you, you know what I’m saying. Like obviously, you didn’t go to church last week and nothing happened, you know what I’m saying. So if you don’t go to church this week, nothing will happen Like, you know like, people try to scare you and stuff like that and tell you that something bad will happen to you and blah blah this just cuz you don’t go to church, you know what I’m saying.

. . . .

I’m being honest, nothing will happen to you. You know those religious people, they crazy, you know. They are just, oh my god so religious They think everyone is going to hell. I don’t want to go to hell. You know what I’m saying. But just because you don’t go to church does not mean, you didn’t go to church last week on Lent Friday. You know. So why would you get in trouble if you didn’t go this Sunday.

. . . .

Listen so I went to court on Friday and since nobody, you already know, everything, they said they have to drop a charge, and then they said if the same thing happens on Monday, then everything gets [] dropped. I am so [] excited. So don’t say anything, you know what I’m saying, I’m just telling you, like it is amazing. And I know you are not gonna go to church, I know you aren’t gonna go to church so, but this means you don’t go to church, doesn’t mean you are going to hell. I want you to remember that.

. . . .

¹ The video was not formally transcribed. We have informally attempted to capture the gist of the conversation.

Look you haven't done anything in your entire life . . . they are not gonna just gonna clink clink. You are not going to hell.

. . . .

I would never let anything happen to you. You know how I am. If that was the case, I would be like go to church, go to church, you know what I'm saying. . . . I'd be damned if I let anything happen to you, except for me being gone, I guess I did let that happen, that makes me feel bad. I feel like a piece of shit, you know what I'm saying. I been missing you man. I miss you a lot. You are like so [] like you look like one of those Laguna Beach girls over there.

. . . .

You have never been to church right, but see, why if you haven't been to church now, why start, you know, why would you start, that's all I'm saying. It's happened to me before, and you know I'm not going to church, and nothing ever happened to me and I had a little bit of a record.

. . . .

I'm just telling you my personal experience, and everybody in here, you know where I'm at. Nothing, when you don't go to church, nothing happens, you know what I'm saying. Like it's just a fact. It's a fact.

. . . .

I'm just excited, like Monday, tomorrow, if everything goes [] good, I will be [] home. Quick as hell. . . . [I]f everything goes good . . . I'll be coming home.

. . . .

Then I get to [] be with the person I love the most. . . . And make up. Can I just kiss and make up please. Can you allow me to do that? Please, just please. I'm being honest. You remember what somebody else told you about church and what happened. . . . Listen you didn't go to church last week and nothing happened right.

During a second visit on the same day, Hall said:

Where's the first place you want to go when we get out? That's what I think about.

. . . .

You aren't going to church tonight are you? . . . Babe, stop doing that, don't scare me like that. Listen, I promise you, I don't know how many different ways, how many different people have to tell, I even talked to the CO about it, and he said everything is cool. And I don't really, [expletive] the CO, I trust my lawyer.

. . . .

Everything will be fine babe, stop worrying about it. Get a good night sleep. . . . I'll be home soon . . . you will be good. I promise. You know I would never let anyone hurt you . . . it hurts

my heart every day. That's why I'm trying to do everything so I make sure I'm home with you. Like even.

....
It's easy as hell, I don't know why you are tripping. . . . I've already talked about this . . . I hate I have to reiterate myself over and over again. You didn't go to Sunday last week and nothing happened to you. . . . I don't understand.

....
Listen, it doesn't matter, babe, you still had it, and you didn't go. . . . It doesn't matter. Nothing happened, just like nothings gonna happen when you didn't go to church today, you know what I'm saying. I don't know why you are tripping.

....
I shouldn't have to understand . . . I told you my experience, and nothing [] happened to me. I'm telling you other people's experience you know about going to church . . . and nothing happened. But I don't understand why you don't believe me. . . . I don't understand, what do I have to do? . . . [Y]ou should not be crying, this should be like . . . oh ya tomorrow I'm gonna have a good day at [] court and I'm gonna be [] out asap. And I'm gonna be able to see you. It's just not that hard.

....
Please, just please don't be selfish. Please. You got to go to a concert, you got to spend time with your family the whole weekend, spend time with your family, and you are over here crying and nothing is going to happen to you. It doesn't make any sense to me. Nothing happened to you before, and nothing is gonna happen now.

....
Just please, you know what I'm saying, I want to see you, I miss you, . . . I miss holding you, I miss laying with you, I miss kissing you, everything will be fine. That's what you should be worried about . . . you need to worry about what's it is going to be like when I'm out there with you . . . are we are having fun, going out to eat . . .

During a third visit, recorded a day after the deposition, Hall made the following statements:

I don't know what you want me to say. I'm scared to say anything. I got new charges. . . . The reason I'm so upset is cuz I love you more than you love me. You don't love me, you know what I'm saying. . . . No . . . you don't.

Hall also said the woman "spit in [his] face." He told her he had "three more new [] charges" and was "going to the joint."

At trial on the suborning perjury charges, the woman said Hall's repeated references to "church" were uncharacteristic of past conversations. It was her impression that Hall "was trying to get [her] not to go to the deposition."

The woman had the same impression when Hall brought up church in the second conversation. She testified that the two had discussed marriage and children, topics that were "very important to" her. She said she "was very emotional" and "[i]t just really upset [her]." Specifically, she had concerns about her relationship with Hall if she went to the deposition. In her words, "the way he was saying 'Don't go, don't go,' kind of made me think, 'Okay. If I do go, I'm going to upset him.' So that was the thoughts in the back of my head." She acknowledged that if she upset him, she would likely not have a future with him because "he would probably think that [she] betrayed him." She agreed that she felt guilt-tripped by Hall.

In describing the third conversation after the deposition, the woman testified Hall "was very upset with [her], very upset, very angry, kind of acting like it was [her] fault for everything." She agreed Hall wanted her to conceal information. Although the woman admitted Hall did not explicitly threaten her or promise any benefit if she did not go to the deposition, she testified he "placed pressure on [her] to not go to [the deposition]" and there was an implied threat that their relationship would be at risk if she attended. She said the consequence of attending the deposition was reflected in the third video, in which Hall accused her of not loving him. She agreed it made her feel guilty and bad.

The woman's trial testimony together with the three videos constitute substantial evidence in support of the elements of suborning perjury. Although

Hall is correct that he did not offer the woman money, he was not required to do so under the definition of inducement. In the alternative, the definition permitted proof that Hall provided “a reason which would influence, persuade, coax, encourage or invite a person to act.” A reasonable juror could have found this prong was satisfied. We affirm the two findings of guilt for suborning perjury.

B. Obstructing Prosecution

The jury was instructed the State would have to prove the following elements of obstructing prosecution:

1. On or about the afternoon [or evening] of May 5th, 2019, the defendant “induced” [a woman], a witness with knowledge “material” to the defendant’s criminal case to fail to appear when subpoenaed.
2. The defendant’s act was done with “specific intent” to obstruct prosecution of Kourtney Hall.

A reasonable juror could have found Hall did just that. Without belaboring the point, we are persuaded that substantial evidence supports the jury’s findings of guilt for two counts of obstructing prosecution.

II. Video Exhibits

“The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of . . . unfair prejudice.” Iowa R. Evid. 5.403; see *State v. Buman*, 955 N.W.2d 215, 221 (Iowa 2021). “Weighing probative value against prejudicial effect ‘is not an exact science,’ so ‘we give a great deal of leeway to the trial judge who must make this judgment call.’” *State v. Thompson*, 954 N.W.2d 402, 408 (Iowa 2021) (quoting *State v. Putman*, 848 N.W.2d 1, 10 (Iowa 2014)). Our review is for an abuse of discretion. *State v. Williams*, 929 N.W.2d 621, 628 (Iowa 2019).

Hall argues the three jail videos were unfairly prejudicial.² Specifically, he contends “[t]here was no reason for the jury to know that [he] was incarcerated,” “[a]ny nonverbal observations of [him] were not relevant as these charges deal with verbal statements which can be observed without video,” and “[t]he State could have played the audio alone.”

It is true the videos depicted Hall in jail. But the court instructed the jury to “make no inference as to the fact that the defendant was accused of another crime or that the defendant was in the State’s custody.” The instruction mitigated the prejudicial effect of the jail setting. See *State v. Plain*, 898 N.W.2d 801, 815 (Iowa 2017).

As for the nonverbal content in the videos, that content was highly relevant to all four charges. Hall was clearly aware the calls were being recorded, and he used facial expressions to signal the importance of his request. For example, at one juncture, he looked directly into the camera and blinked repeatedly. He had strikingly different facial expressions in the first two videos, when he was attempting to cajole the woman into not attending the deposition, as compared to the third video, when he was explaining the consequences of her attendance.³ Audio alone obviously would not have captured those expressions. See *State v. Davis*, No. 19-0929, 2021 WL 616148, at *11 (Iowa Ct. App. Feb. 17, 2021) (finding no abuse of discretion in the district court’s admission of bodycam video where the

² The State raises an error-preservation concern with respect to the third video. We are not persuaded by that argument.

³ Hall argues the third video should not have been admitted because the “[t]he visit occurred after the deposition.” True, but the video was highly probative because it depicted Hall’s displeasure with the woman for attending the deposition.

district court noted that “the video in itself [could] be remedied with an instruction” and “the circumstances” were “a big part of the State’s case”).

We conclude the district court did not abuse its discretion in admitting the videos.

III. New Trial Motion

Hall argues “[t]he district court abused its discretion in overruling [his] motion for new trial because the jury’s verdict is contrary to the weight of the evidence in this case.” “In contrast to a motion for new trial brought under the sufficiency-of-the-evidence standard, a motion for new trial brought under the weight-of-the-evidence standard essentially concedes the evidence adequately supports the jury verdict.” *Ernst*, 954 N.W.2d at 60 (citation omitted). “A new trial is appropriate under a weight-of-the-evidence challenge only in the extraordinary case in which the evidence preponderates heavily against the verdict rendered.” *Id.* (citation and internal quotations omitted).

After quoting the weight-of-the-evidence standard, the district court ruled as follows:

[T]he 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 and 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 that the defendant was tried for. The evidence clearly supports the rendered verdict. So the motion for new trial is denied.

We discern no abuse of discretion in the district court’s ruling.

We affirm Hall's judgment and sentence for two counts of suborning perjury and two counts of obstructing prosecution.

AFFIRMED.



IOWA APPELLATE COURTS

State of Iowa Courts

Case Number
19-1616

Case Title
State v. Hall

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