

IN THE SUPREME COURT OF IOWA

STATE OF IOWA,)
)
 Plaintiff-Appellee,)
)
 v.) SUPREME COURT 18-1504
)
 CHAD RICHARD CHAPMAN,)
)
 Defendant-Appellant.)

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
HONORABLE SCOTT D. ROSENBERG, JUDGE

APPELLANT'S APPLICATION FOR FURTHER REVIEW
OF THE DECISION OF THE IOWA COURT OF APPEALS
FILED DECEMBER 18, 2019

MARTHA J. LUCEY
Assistant Appellate Defender
mlucey@spd.state.ia.us
appellatedefender@spd.state.ia.us

STATE APPELLATE DEFENDER'S OFFICE
Fourth Floor Lucas Building
Des Moines, Iowa 50319
(515) 281-8841 / (515) 281-7281 FAX

ATTORNEY FOR DEFENDANT-APPELLANT

CERTIFICATE OF SERVICE

On January 7, 2020, the undersigned certifies that a true copy of the foregoing instrument was served upon Defendant-Appellant by placing one copy thereof in the United States mail, proper postage attached, addressed to Chad Chapman, 5220 SE 8th, Des Moines, IA 50315.

APPELLATE DEFENDER'S OFFICE

/s/ Martha J. Lucey

MARTHA J. LUCEY

Assistant Appellate Defender

Appellate Defender Office

Lucas Bldg., 4th Floor

321 E. 12th Street

Des Moines, IA 50319

(515) 281-8841

mlucey@spd.state.ia.us

appellatedefender@spd.state.ia.us

MJL/lr/1/19

MJL/lr/03/19

MJL/lr/1/20

QUESTION PRESENTED FOR REVIEW

What is the proper remedy when the State fails to present sufficient evidence to prove beyond a reasonable doubt that an offense is sexually motivated: a remand to allow the State another opportunity to present evidence or to vacate the requirement to register as a sex offender?

TABLE OF CONTENTS

	<u>Page</u>
Certificate of Service	2
Questions Presented for Review	3
Table of Authorities	5
Statement in Support of Further Review	6
Statement of the Case	8
Argument	
When the State fails to present sufficient evidence to prove beyond a reasonable doubt that an offense is sexually motivated the proper remedy is not a remand to allow the State another opportunity to present evidence but to vacate the requirement to register as a sex offender	9
Conclusion	12
Attorney's Cost Certificate	13
Certificate of Compliance	14

TABLE OF AUTHORITIES

<u>Cases:</u>	<u>Page:</u>
State v. Allen, 348 N.W.2d 243 (Iowa 1984)	11
State v. Finney, 834 N.W.2d 46 (Iowa 2013).....	11
State v. Hopkins, 576 N.W.2d 374 (Iowa 1998)	11
State v. Keene, 630 N.W.2d 579 (Iowa 2001).....	11
State v. Mesenbrink, No. 15-0054, 2015 WL 7075826 (Iowa Ct. App. Nov. 12, 2015)	6, 9, 10
State v. Rigel, No. 16-0576, 2017 WL 936135 (Iowa Ct. App. March 8, 2017)	7, 10
State v. Royer, 632 N.W.2d 905 (Iowa 2001)	10
 <u>Court Rule:</u>	
Iowa R. Crim. P. 2.19(8).....	12

STATEMENT IN SUPPORT OF FURTHER REVIEW

The question raised in this case presents a substantial issue of first impression in Iowa and/or a substantial question of enunciating changing legal principles. Iowa Rs. App. P. 6.903(2)(d), 6.1101(2)(c), and 6.1101(2)(f). The State failed to present sufficient evidence that Chapman's offense was sexually motivated thereby requiring sex offender registration. What is the proper remedy when the State does not meet its burden?

The Iowa Supreme Court has not yet addressed Iowa Code section 692A.126. The Court of Appeals ordered a remand to allow the State a second opportunity to meet its burden of proof. Opinion, p. 7. This is consistent with two prior Court of Appeals cases. See State v. Mesenbrink, No. 15-0054, 2015 WL 7075826, at *5 (Iowa Ct. App. Nov. 12, 2015) ("Because the district court's determination that the offense was sexually motivated was not supported by proof beyond a reasonable doubt, we remand with directions for the district

court to enter an order to vacate the portion of its sentencing order requiring Mesenbrink to register as a sex offender.

Because it is possible that proof beyond a reasonable doubt could be shown, we also remand for further proceedings before a judge or jury in which the State might have an opportunity to establish that the crime of kidnapping in the second degree was sexually motivated.”); State v. Rigel, No. 16-0576, 2017 WL 936135, at *5 (Iowa Ct. App. March 8, 2017)(same). This Court should address the proper remedy when the State fails in its burden and the district court erroneously orders sex offender registration.

STATEMENT OF THE CASE

Chad Chapman was convicted of child endangerment in violation of Iowa Code sections 726.6(1)(a) and 726.6(7) (2017). The district court found, pursuant to Iowa Code section 692A.126, beyond a reasonable doubt it was a sexually motivated offense. Chapman was placed on the sex offender registry.

The Court of Appeals determined the State failed to present substantial evidence to prove sexual motivation. Opinion, p. 6. Yet, the Court of Appeals remanded for further proceedings before a judge or jury in which the State might have another opportunity to establish the crime was sexually motivated. Chapman seeks further review of the Court of Appeals' decision regarding the proper remedy.

ARGUMENT

When the State fails to present sufficient evidence to prove beyond a reasonable doubt that an offense is sexually motivated the proper remedy is not a remand to allow the State another opportunity to present evidence but to vacate the requirement to register as a sex offender.

Chapman challenges the Court of Appeals' mandate that the proper remedy when the prosecution failed in its burden to prove an offense was sexually motivated is another opportunity to present evidence. Opinion, p. 7. See State v. Mesenbrink, No. 15-0054, 2015 WL 7075826, at *5 (Iowa Ct. App. Nov. 12, 2015) ("Because the district court's determination that the offense was sexually motivated was not supported by proof beyond a reasonable doubt, we remand with directions for the district court to enter an order to vacate the portion of its sentencing order requiring Mesenbrink to register as a sex offender. Because it is possible that proof beyond a reasonable doubt could be shown, we also remand for further proceedings before a judge or jury in which the State might have an opportunity to establish that the crime of kidnapping in the

second degree was sexually motivated.”); State v. Rigel, No. 16-0570, 2017 WL 936135, at * 5 (Iowa Ct. App. March 8, 2017) (same). Because the determination is a finding of fact equivalent to a verdict, the matter should be treated similarly to lack of sufficient evidence in a trial.

In Mesenbrink and Rigel, the Court of Appeals cited State v. Royer, 632 N.W.2d 905, 909 (Iowa 2001) for authority to remand to give the prosecution a second chance to prove beyond a reasonable doubt the offense was sexually motivated. State v. Mesenbrink, 2015 WL 7075826, at *5; State v. Rigel, 2017 WL 936135, at *5. Royer involved the lack of a factual basis for a guilty plea to manufacturing methamphetamine. State v. Royer, 632 N.W.2d 905, 909 (Iowa 2001) (“On the record presented, there is clearly no factual basis for the plea under the first alternative. With respect to the second alternative, the record does not disclose an adequate factual basis for the plea, but we cannot state with certainty that such basis does not exist.”). The Supreme Court held that since a

factual basis may possibly exist under the second alternative, the proper mandate was to remand to allow the State to establish a factual basis for the original charge under the interpretation the Court had given the statute. Id. at 910. A factual basis is not proof beyond a reasonable doubt. State v. Finney, 834 N.W.2d 46, 50 (Iowa 2013). The plea taking court must “only be satisfied that the facts support the crime, ‘not necessarily that the defendant is guilty.’ ” State v. Keene, 630 N.W.2d 579, 581 (Iowa 2001)(other citations omitted).

The Court of Appeals correctly determined appellate review is for substantial evidence. Opinion, p. 3. This is the same standard used to determine whether a guilty verdict is supported by sufficient evidence. Cf. State v. Hopkins, 576 N.W.2d 374, 377 (Iowa 1998)(The jury’s findings of guilt are binding on appeal if supported by substantial evidence.); State v. Allen, 348 N.W.2d 243, 247 (Iowa 1984)(Substantial evidence is such evidence as would convince a rational trier of fact that the defendant is guilty beyond a reasonable doubt.).

If the State fails to present substantial evidence, the remedy is an acquittal. Iowa R. Crim. P. 2.19(8) (“The court on motion of a defendant or on its own motion shall order the entry of judgment of acquittal of one or more offenses charged in the indictment after the evidence on either side is closed if the evidence is insufficient to sustain a conviction of such offense or offenses.”). Likewise, when the State failed to carry its burden to prove by substantial evidence the offense was sexually motivated, the prosecution does not get a second bite of the apple. The proper remedy must be a remand to vacate the requirement that Chapman register as a sex offender.

CONCLUSION

Chad Chapman respectfully requests this Court grant this application for further review and remand to the district court for entry of an order which vacates the portion of the sentencing order requiring Chapman to register as a sex offender.

ATTORNEY'S COST CERTIFICATE

The undersigned, hereby certifies that the true cost of producing the necessary copies of the foregoing Application for Further Review was \$1.20, and that amount has been paid in full by the Office of the Appellate Defender.

MARTHA J. LUCEY
Assistant Appellate Defender

**CERTIFICATE OF COMPLIANCE WITH TYPEFACE
REQUIREMENTS AND TYPE-VOLUME LIMITATION FOR
FURTHER REVIEWS**

This application complies with the typeface and type-volume requirements of Iowa R. App. P. 6.1103(4) because:
[X] this application has been prepared in a proportionally spaced typeface using Bookman Old Style, font 14 point and contains 1,129 words, excluding the parts of the application exempted by Iowa R. App. P. 6.1103(4)(a).

/s/ Martha J. Lucey

Dated: 1/7/20

MARTHA J. LUCEY

Assistant Appellate Defender

Appellate Defender Office

Lucas Bldg., 4th Floor

321 E. 12th Street

Des Moines, IA 50319

(515) 281-8841

mlucey@spd.state.ia.us

appellatedefender@spd.state.ia.us