

IN THE SUPREME COURT OF IOWA

Case No. 18-1777

Boone County No. AGCR111118

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JOSHUA KELLY URANGA,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT

IN AND FOR BOONE COUNTY

HONORABLE STEPHEN A. OWEN, JUDGE

APPELLANT'S FINAL BRIEF

ANDREW J. BOETTGER – AT0001046
Hastings, Gartin, & Boettger, LLP
409 Duff Avenue
Ames, IA 50010-6395
TEL 515-232-2501
FAX 515-232-2525
EMAIL andyboettger@amesattorneys.com

ATTORNEY FOR DEFENDANT-APPELLANT

CERTIFICATE OF SERVICE AND FILING

I, ANDREW J. BOETTGER, hereby certify that on the 22nd day of July, 2019, I will electronically file *Appellant's Final Brief* with the Clerk of the Supreme Court via the Appellate EDMS system and via said system electronically serve the following parties:

Iowa Attorney General
Criminal Appeals Division
1305 E. Walnut, Hoover Bldg.
Des Moines, IA 50319

I further certify that on the 22nd day of July, 2019, I will serve Defendant-Appellant by mailing a copy of *Appellant's Final Brief*, U.S. postage paid, to Joshua Kelly Uranga, 1726 1/2 E. Mamie Eisenhower, Boone, IA 50036.

/s/ Andrew J. Boettger
ANDREW J. BOETTGER AT0001046
Hastings, Gartin & Boettger, LLP
409 Duff Avenue, Ames, IA 50010
T: 515-232-2501
F: 515-232-2525
E: andyboettger@amesattorneys.com

TABLE OF CONTENTS

	<u>Page</u>
Proof of Service	2
Certificate of Filing	2
Table of Contents	3
Table of Authorities	4-5
Statement of Issue Presented for Review.....	5
Routing Statement.....	6
Statement of the Case	7-9
Statement of the Facts	9-11
Argument of Issue	11-16
Conclusion	17
Request for Oral Argument	17
Certificate of Compliance	17
Cost Certificate.....	18

TABLE OF AUTHORITIES

<u>Cases:</u>	<u>Page:</u>
<i>Brady v. Maryland</i> , 373 U.S. 83, 87 (1963)	15
<i>Cornell v. State</i> , 430 N.W.2 nd 384, 385 (Iowa 1988).....	16
<i>Jones v. State</i> , 479 N.W.2d 265, 274 (Iowa 1991).....	15
<i>Moon v. State</i> , 911 N.W.2 nd 137, 145 (citation omitted).....	16
<i>Powers v. State</i> , 911 N.W.2 nd 774, 782 (Iowa 2018)	12
<i>Schmidt v. State</i> , 909 N.W.2 nd 778, 795 (Iowa 2018).....	11
<i>State v. Jefferson</i> , 545 N.W.2 nd 248, 249 (Iowa 1996)	15
<i>State v. Jones</i> , 817 N.W.2 nd 11, 22 (Iowa 2012).....	16
<i>State v. Lunesford</i> , 428 N.W.2 nd 314, 315 (Iowa App. 1988).....	16
<i>State v. Smith</i> , 573 N.W.2 nd 14, 21 (Iowa 1997)	15
 <u>Statutes & Court Rules:</u>	
Iowa Code § 692A.103	7
Iowa Code § 692A.104	13
Iowa Code § 692A.105	12
Iowa Code § 692A.108	7, 10, 12, 13
Iowa Code § 692A.111	7
Iowa Code § 692A.112	7

Iowa R. Crim. P. 2.24(2)(b)(6) 11, 17

Iowa R. Crim. P. 2.24(2)(b)(7) 17

Iowa R. Crim. P. 2.24(2)(b)(8) 12, 17

Iowa R. Crim. P. 2.24(2)(b)(9) 11, 15, 17

STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

***DID THE DISTRICT COURT ERR IN DENYING
DEFENDANT’S MOTION FOR JUDGMENT OF ACQUITTAL
AND MOTION FOR NEW TRIAL WHERE EXCULPATORY
EVIDENCE WAS PRODUCED AFTER TRIAL?***

Cases, Statutes, and Authorities Pertaining to Issue:

Jones v. State, 479 N.W.2d 265, 274 (Iowa 1991)

State v. Smith, 573 N.W.2nd 14, 21 (Iowa 1997)

State v. Jefferson, 545 N.W.2nd 248, 249 (Iowa 1996)

Brady v. Maryland, 373 U.S. 83, 87 (1963)

Cornell v. State, 430 N.W.2nd 384, 385 (Iowa 1988)

State v. Jones, 817 N.W.2nd 11, 22 (Iowa 2012)

Moon v. State, 911 N.W.2nd 137, 145 (citation omitted)

Schmidt v. State, 909 N.W.2nd 778, 795 (Iowa 2018)

State v. Lunesford, 428 N.W.2nd 314, 315 (Iowa App. 1988)

Powers v. State, 911 N.W.2nd 774, 782 (Iowa 2018)

Statutes & Court Rules:

Iowa Code § 692A.103

Iowa Code § 692A.104

Iowa Code § 692A.108

Iowa Code § 692A.111

Iowa Code § 692A.112

Iowa R. Crim. P. 2.24(2)(b)(6)

Iowa R. Crim. P. 2.24(2)(b)(7)

Iowa R. Crim. P. 2.24(2)(b)(8)

Iowa R. Crim. P. 2.24(2)(b)(9)

ROUTING STATEMENT

As this matter involves a question of applying existing legal principles, pursuant to rule 6.1101(3), transfer to the Court of Appeals appears appropriate.

STATEMENT OF THE CASE

Nature of the Case & Course of Proceedings Below:

This is an appeal brought by Appellant, Joshua Kelly Uranga, in the wake of his having been found guilty of failing to appear in his county of principal residence to verify his relevant information in November 2016 to comply with Sex Offender Registry (SOR) requirements under Iowa Code §§ 692A.103, 108, and 111.

On December 13, 2016, the Boone County Sheriff's Department issued a number of criminal complaints against Mr. Uranga. The State filed Trial Information and Minutes of Testimony in support of the same on January 27, 2017, charging Mr. Uranga with Count I, Failure to Comply with Sex Offender Registry Requirements, First Offense, an Aggravated Misdemeanor, in violation of Sections 692A.103, 692A.108, and 692A.111 of the Iowa Code and Count II, Failure to Comply with Sex Offender Registry Requirements, First Offense, an Aggravated Misdemeanor, in violation of Sections 692A.103, 692A.112, and 692A.111 of the Iowa Code. (January 27, 2017 Trial Information; p. 1, App. 15). On February 13, 2017, Defendant filed Written Arraignment and Plea of Not Guilty as to all

charged offenses in the State's Trial Information. (February 13, 2017 Written Arraignment; p. 1-2, App. 40-41).

On February 13, 2017, the District Court issued a Record of Arraignment and Order Setting Pretrial Conference and Jury Trial. (February 13, 2017 Record of Arraignment; App. 42). Trial was set for March 28, 2017.

Verdicts for Count I and II were entered by the Court on May 2, 2018, whereby the jury found the Defendant guilty of Count I, Failure to Register, Failure to Appear, and Not Guilty of Count II, Failure to Register, Residency Requirement (May 2, 2018 Verdict Form, Count I and Verdict Form, Count II; App. 79-80). On October 10, 2018, Judgment and Sentencing was entered on the Guilty Verdict as to Count I. The court sentenced Mr. Uranga to be committed to the Director of the Iowa Department of Corrections for an indeterminate term not to exceed two years, with credit for time served. The defendant's fine of \$625 and the 35% surcharge were suspended. The Court found the defendant able to reimburse the State for court appointed attorney fees and the defendant was subject to the submission of DNA profiling (October 10, 2018 Judgment & Sentence, p. 1-2; App. 152-153).

Post-trial, on August 17, 2018, a Motion in Arrest of Judgment & Motion for New Trial/Set Aside Jury Verdict Based on New Evidence was filed. (August 17, 2018 Motion; App. 130-132). On September 14, 2018, said Motion was denied by the District Court. (September 14, 2018 Order; App. 139-143). Mr. Uranga was sentenced on October 10, 2018. (October 10, 2018 Judgment & Sentence; App. 152).

Mr. Uranga timely filed a Notice of Appeal with the Court on October 17, 2018. (October 17, 2018 Notice of Appeal; App. 155).

STATEMENT OF THE FACTS

The relevant facts on appeal are as follows:

Evidence, in the form of testimony, was presented at trial that a letter, purportedly from the Boone County Sheriff's Office, existed, however "[t]he actual letter was not introduced into evidence as it appears that as of the time of trial not to exist." (June 28, 2018 Order re: Motion in Arrest of Judgment, p. 1, Para. 4; App. 107).

On July 31, 2018, despite the Defendant's prior good faith request for discovery in this case on January 18, 2018 (see January 18, 2017 Appearance and Motion for Mandatory Discovery; App. 12-

13), the “nonexistent” letter was found in discovery material related to a different case of the Defendant, in Boone County Case No. AGCR111900 (September 25, 2018 Exhibit 3A; App. 147). This letter, dated December 2, 2016, and signed by Boone County Sheriff Gregg Elsberry, informed Defendant that he was in “non-compliant status” and required to “appear in our office within 5 business days of receipt” of the letter or “be charged with the offense of Failing to Comply with SOR.” (September 12, 2018 Post-Trial Hearing Exhibit D; App. 135).

Under Iowa Code § 692A.108(5) and (6), the Sheriff’s December 2, 2016 letter effectively functions as a modification of the timeframe by which Mr. Uranga was required to appear in compliance with his SOR requirements.

On December 7, 2016, Defendant reported to the Boone County Sheriff’s Department, within the 5 business day requirement of said letter to avoid prosecution. (May 2, 2018 State’s Trial Exhibit 6, p. 1; App. 75).

The State’s failure to disclose the December 2, 2016 Sheriff’s letter prevented Defendant from presenting that specific tangible evidence that he had registered in compliance with SOR requirements

as administered by the Sherriff and prevented the Defendant from presenting such argument as a fact question for the jury.

The “newly discovered” letter would have served as exculpatory evidence on its face, with a strong probability of proving Mr. Uranga’s compliance with the statutorily required reporting as modified by the Boone County Sheriff in application by way of his letter notice system had it been available at trial.

ARGUMENT OF THE ISSUE

DID THE DISTRICT COURT ERR IN DENYING DEFENDANT’S MOTION FOR JUDGMENT OF ACQUITTAL AND MOTION FOR NEW TRIAL WHERE EXCUPLATORY EVIDENCE WAS PRODUCED AFTER TRIAL?

PRESERVATION OF ERROR / STANDARD OF REVIEW

The Iowa Constitution permits freestanding claims of actual innocence. *Schmidt v. State*, 909 N.W.2d 778, 795 (Iowa, 2018) (holding further that such claims are available even to those that pled guilty).

Iowa Rule of Criminal Procedure 2.24(2)(b)(6) through 2.24(2)(b)(9) state in relevant part the following reasons to grant a new trial in a criminal cause:

When the verdict is contrary to law or evidence.
When the court has refused properly to instruct the jury.
When the defendant has discovered important and material evidence in the defendant's favor since the verdict, which the defendant could not with reasonable diligence have discovered and produced at trial. A motion based upon this ground shall be made without unreasonable delay and, in any event, within two years after final judgment, but such motion may be considered thereafter upon a showing of good cause. When a motion for a new trial is made upon the ground of newly discovered evidence, the defendant must produce at the hearing, in support thereof, the affidavits of testimony of the witness by whom such evidence is expected to be given, and if time is required by the defendant to procure such affidavits or testimony, the court may postpone the hearing of the motion for such length of time as, under all circumstances of the case, may be reasonable.

DISCUSSION

In claims involving evidence discovered since the verdict, this necessarily includes evidence discovered between the verdict and sentencing that speaks to the credibility of the complaining witness. Iowa R. Crim P. 2.24(2)(b)(8). *Powers v. State*, 911 N.W.2nd 774, 782 (Iowa 2018).

The Iowa Code § 692.A108(5) states “The Sheriff may make a reasonable modification to the date requiring a sex offender to make an appearance based on exigent circumstances including man-made or natural disasters. The sheriff shall notify the department of any modification using procedures established by the department by rule.”

Further, Iowa Code § 692A.108(6) states, “A waiver of the next immediate in-person verification pursuant to this section may be granted at the discretion of the sheriff, if the sex offender appears in person at the sheriff’s office because of changes to relevant information pursuant to section 692A.104 or 692.105, and if the in-person verification pursuant to this section is within thirty days of such in-person appearance. If a waiver is granted, the sheriff shall notify the department of granting the waiver.”

In both subsections, the Iowa Code equips the Sheriff with the authority to modify the implementation of the statutory requirements to register a sex offender.

Mr. Uranga submits that this after-acquired evidence in the form of the Sheriff’s December 2, 2016 letter is critical to his defense and would likely alter the outcome of the case at trial.

In support with Mr. Uranga’s assertion that this letter is exculpatory and requires a new trial, note key elements of Exhibit D (referenced in the Motions as Exhibit “A” but filed by the Clerk as Exhibit D”) of the Defendant’s Motion in Arrest of Judgment & Motion for New Trial / Set Aside Jury Verdict Based on New Evidence

(Count I) filed August 17, 2018 (August 17, 2018 Exhibit D referenced in Motions as Exhibit “A”; App. 133):

- The November 2016 letter is clearly dated December 2, 2016.
- The November 2016 letter states in bold: “At this time, you are in non-compliant status. If you do not appear in our office within 5 business days of receipt of this letter, you will be charged with the offense of Failing to Comply with the SOR.”
- This letter is signed by the Boone County Sheriff, Gregg Elsberry.

The allowance and waiver by the Sheriff’s Office through this newly discovered letter means that Mr. Uranga would have been able to argue to the jury that he registered within the time outlined by the allowance/waiver.

December 2, 2016 is a Friday, (see August 17, 2018 Exhibit E referenced in Motions as Exhibit “B” but filed by Clerk as Exhibit E; App. 134). Both December 3rd and December 4th are non-business days (the letter indicates the office is not open on those days). (August 17, 2018 Exhibit D; App. 133). Mr. Uranga registered with the

Sheriff's Office on Wednesday, December 7, 2016. (May 2, 2018 State Trial Exhibit 6; App. 75). Even counting December 2, 2016 as the first business day, Mr. Uranga registered with the Sheriff's Office within 5 business days per the instructions outlined in the Sheriff's letter.

A new trial should be granted when for any cause showing that the defendant has not received a fair and impartial trial. Iowa R. Crim. P. 2.24(2)(b)(9).

In a parallel situation, a post-conviction relief applicant, when seeking a new trial, must show: (1) that the evidence was discovered after the verdict; (2) that it could not have been discovered earlier in the exercise of due diligence; (3) that the evidence is material to the issues in the case and not merely cumulative or impeaching; and (4) that the evidence probably would have changed the result of the trial. *Jones v. State*, 479 N.W.2d 265, 274 (Iowa 1991)). A defendant must establish all four elements. See *State v. Smith*, 573 N.W.2d 14, 21 (Iowa 1997) (discussing the third and fourth elements); *State v. Jefferson*, 545 N.W.2d 248, 249 (Iowa 1996) (discussing only the first two elements).

Under *Brady v. Maryland*, 373 U.S. 83, 87 (1963), "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." A Brady violation occurs when the State withholds material evidence, which is favorable to the accused. See *Cornell v. State*, 430 N.W.2d 384, 385 (Iowa 1988). "Favorability in the context of Brady means that had the prosecution disclosed the suppressed evidence and had the defense used such evidence effectively, 'it [might have made] the difference between conviction and acquittal.'" *Moon v. State*, 911 N.W.2d 137, 145 (citation omitted). "Evidence is material when 'there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.'" *State v. Jones*, 817 N.W.2d 11, 22 (Iowa 2012) (citation omitted).

Finally, the court has discretion to grant a new trial based on fair trial considerations. *State v. Lunesford*, 428 N.W.2nd 314, 315 (Iowa App. 1988).

CONCLUSION

Under each of the 4 subsections of Iowa R. Crim. P. 2.24(2)(b) cited above, Mr. Uranga is entitled to a new trial on Count I of the State's Trial Information.

This Court should reverse the judgment entry and remand to the District Court for a new trial on Count I.

REQUEST FOR ORAL ARGUMENT

Should the Court deem it beneficial to grant oral argument, Appellant respectfully requests an opportunity to be heard.

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 font in 14 point and contains 2,030 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1) or

[] this brief has been prepared in a monospaced typeface using _____ in _____ and contains _____ lines of text, excluding the parts of the brief exempted by Iowa R. App. P.

ATTORNEY'S COST CERTIFICATE

I hereby certify that the actual amount paid for printing of the foregoing Appellant's Proof Brief and Request for Oral Argument was the sum of \$4.50, exclusive of service tax and postage.

Hastings, Gartin & Boettger LLP,

/s/ Andrew J. Boettger

ANDREW J. BOETTGER AT0001046

Hastings, Gartin & Boettger, LLP

409 Duff Avenue, Ames, IA 50010

T: 515-232-2501

F: 515-232-2525

E: andyboettger@amesattorneys.com