

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

APPLICATION FOR FURTHER REVIEW

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QUESTION PRESENTED FOR FURTHER REVIEW

DID THE IOWA COURT OF APPEALS ERR WHEN IT FOUND THAT “BECAUSE URANGA’S ADMISSIONS ESTABLISHED THE ELEMENTS OF THE CRIME, THE LETTER DOCUMENTING THE GRACE PERIOD PROBABLY WOULD NOT HAVE CHANGED THE RESULT?”

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STATEMENT SUPPORTING FURTHER REVIEW

This case warrants further review because had the letter from the Sheriff to Uranga been available at trial, Uranga would not have needed to testify on his behalf, and thereby would not have made admissions to the jury that established the elements of the crime.

Additionally, a picture is worth a thousand words: The jury would have been able to see the emphasis in the letter to the effect that **“...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.”**

Furthermore, the jury would have had the best evidence that the Sheriff had granted Uranga a five day grace period.

STATEMENT OF THE CASE

Nature of the Case and the Proceedings Below

This is an Application for Further Review from a March 18, 2020 Iowa Court of Appeals Opinion affirming Joshua Kelly Uranga's conviction for failure to comply with sex offender registration requirements, in violation of Iowa Code Section Iowa Code §§ 692A.103, 108, and 111. The Court of Appeals found that newly discovered evidence in the form of a letter from the sheriff, documenting a grace period of five business days within which to appear at the sheriff's office, did not entitle Uranga to a new trial; that the letter probably would not have changed the result.

On January 27, 2017, the State filed a Trial Information charging 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). Uranga filed a Written Arraignment and Plea of Not Guilty as to all the charged offenses. (February 13, 2017

Written Arraignment; p. 1-2, App. 40-41). The district court set trial for March 28, 2017.

Verdicts for Count I and II were entered by the district court on May 2, 2018, whereby the jury found Uranga guilty of Count I, but not guilty of Count II. (May 2, 2018 Verdict Form, Count I and Verdict Form, Count II; App. 79-80).

On August 17, 2018, Uranga filed a Motion in Arrest of Judgment & Motion for New Trial/Set Aside Jury Verdict Based on New Evidence. (August 17, 2018 Motion; App. 130-132). On September 14, 2018, the district court denied the motion. (September 14, 2018 Order; App. 139-143). The district court sentenced 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. (October 10, 2018 Judgment & Sentence, p. 1-2; App. 152-153).

Uranga timely filed a Notice of Appeal on October 17, 2018. (October 17, 2018 Notice of Appeal; App. 155). On March 18, 2020, the Court of Appeals affirmed Uranga's conviction. Uranga timely filed this request for further review with this tribunal.

STATEMENT OF THE FACTS

Uranga had been classified as a Tier 3 sex offender, since 2014. Tier 3 sex offenders are required to appear at the sheriff's office in their county of principal residence, once every three months. Uranga had been on a specific three-month cycle: he was required to appear in person at the Boone County Sheriff's Office at some point during August, November, February, and May. See TrialTr. 85:18–23.

The sheriff's office used a form letter that notified offenders when they were in non-compliance and offered a grace period of five business days before the sheriff's office would file a criminal complaint.

For his November, 2016, appearance, Uranga did not appear in person until December 7, 2016. See TrialTr. 86:13–15; TrialTr. 95:3–98:15; TrialTr. 110:23–111:7. Although Uranga did not have a letter from the sheriff offering him the usual grace period for the November, 2016 appearance,

...Uranga testified to receiving this type of letter in the past. He stated he had “seen this notice before” “more than once,” and he was never charged when he came in within five business days. Boone County deputy sheriffs also testified to the five-business-day period. They voiced some equivocation on when the period began and what it meant.

State v. Uranga, (No. 18 -1777) (Iowa Ct.App. 3/18/20) at 5.

On July 31, 2018, a letter from the sheriff's office to Uranga dated December 2, 2016 was found in discovery material related to another of Uranga's criminal cases. This letter, signed by the Boone County Sheriff Gregg Elsberry, read as follows:

Dear Mr. Uranga,

In accordance to Iowa Code Section 692A.104, you MUST appear in person to register with the sheriff of each county where the offender has a residence, maintains employment or is in attendance as a student.

You were on the list to appear in our office to verify your registration information for the month of November.

At this time, you are 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.

Administrative Office hours are Monday-Friday, 8:00 a.m–4:30 p.m. Other than when the holidays are being observed.

If you receive this letter on a weekend or holiday, the next business day the administration office is open is when you should appear to bring your paperwork up to date.

(September 12, 2018 Post-Trial Hearing Exhibit D; App. 135).

Uranga's renewed his motion for new trial, arguing that the December 2, 2016 letter was newly discovered evidence that was critical to his defense and could have been presented at trial in his defense. See Motion (8/17/18); App. 130.

The district court determined the evidence was discovered after the verdict and could not have been discovered earlier in the exercise of due diligence. But the court concluded "the letter [was] not material" and the letter probably would not have changed the result.

State v. Uranga, (No. 18 -1777) (Iowa Ct.App. 3/18/20) at 3.

Uranga's subsequent conviction by the district court was affirmed by the Court of Appeals.

ARGUMENT

THE IOWA COURT OF APPEALS ERRED WHEN IT FOUND THAT "BECAUSE URANGA'S ADMISSIONS ESTABLISHED THE ELEMENTS OF THE CRIME, THE LETTER DOCUMENTING THE GRACE PERIOD PROBABLY WOULD NOT HAVE CHANGED THE RESULT."

Law:

Iowa Rules of Criminal Procedure 2.24(2)(b)(8) provides that the court may grant a new trial "[w]hen 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."

Analysis:

To prevail on a motion for new trial based on a claim of newly discovered evidence, Uranga must establish that the letter:

- (1) was discovered after the verdict,
- (2) could not have been discovered earlier in the exercise of due diligence,
- (3) is material to the issues in the case and not merely cumulative, and
- (4) probably would have changed the result of the trial.

State v. Jefferson, 545 N.W.2d 248, 249 (Iowa 1996). See also *Moon v. State*, 911 N.W.2nd 137, 151 (Iowa 2018).

The district court found that elements (1) and (2) above were met, *i.e.*, the letter was discovered after the verdict, and it could not have been discovered earlier in the exercise of due diligence. *State v. Uranga*, (No. 18 -1777) (Iowa Ct.App. 3/18/20) at 3. However, the court found that the letter was not material. *Id.* The Iowa Court of Appeals on the other hand found that elements (1), (2), and (3) above were met. *Id.*, at 6. However, the Court of Appeals found that the letter would probably not have changed the result because Uranga's admissions established the elements of the crime. *Id.*

The defense presents its case after the State rests. In determining whether or not to call witnesses and/or introduce other evidence, the defense relies on the strength, *vel non*, of the State's case. The decision to call a defendant in his own defense is perhaps the most difficult question a defense lawyer and the defendant have to answer. The defense lawyer has to think of issues such as, is the defendant likeable? Is he articulate? Will he become agitated, irritable, or nervous? Will he get confused by an artfully worded cross-examination questions and come off as incredible?

In this case, at the end of the State’s case, the only evidence somewhat favorable to Uranga was testimony from Boone County deputy sheriffs who testified about the grace period, but “...voiced some equivocation on when the period began and what it meant” *State v. Uranga*, (No. 18 -1777) (Iowa Ct.App. 3/18/20) at 5. Uranga therefore the only person¹ who could unequivocally testify to the existence of the sheriff’s grace period. He testified that “...he had “seen this notice before” “more than once,” and he was never charged when he came in within five business days.” *Id.*, at 5. But in so doing, he had to admit that he committed the crime by not appearing within statutory timeframes.

If the letter was available at trial, Uranga would not have needed to testify.

Additionally, the letter, “...signed by the county’s highest law enforcement officer, the sheriff”, (*Id.*), was worth a thousand words, especially the bolded sentence that: **“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**

¹ Perhaps Uranga could have called on other sex offenders who had enjoyed the same grace period to testify on his behalf. But perhaps that would have only made his case stinkier. See Doyle, Judge (concurring specially) “Pee-ew! This case stinks.” *State v. Uranga*, (No. 18 -1777) (Iowa Ct.App. 3/18/20) at 9.

SOR.” It was the best evidence of the existence of the grace period. It was tangible evidence that the jury could take back with them during deliberations. The jury would have had a chance to re-examine the bolded portion; to analyze the emphasis from their elected highest law enforcement officer, the sheriff; to see his handwritten signature on a letter that grants Uranga the grace period. The letter probably would have changed the outcome of the trial.

CONCLUSION

Uranga respectfully prays that this Court grant Further Review of the Iowa Court of Appeals decision, and upon further review, grant him a new trial.

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because the brief contains 1,618 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirement

s of Iowa R. App. P. 6.903(1)(f) because this brief has been prepared in a proportionately spaced typeface using Microsoft Word in Georgia 14 pt. font.

ATTORNEY’S COST CERTIFICATE

I certify that the cost of printing this brief was \$1.40.

CERTIFICATE OF SERVICE AND FILING

I hereby certify that on the 7th day of April, 2020, I will electronically file this Application for Further Review with the Clerk of the Supreme Court via the Appellate EDMS system

I further certify that on the 7th day of April, 2020, I will serve Appellant by mailing a copy of this Application for Further Review, U.S. postage paid, to:

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