

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 BRIEF

John J. Sullivan
Sullivan Law Office, P.C.
619 S. Frederick, P.O. Box 409
Oelwein, Iowa 5066
Phone: 319-283-9266
Fax: 319-332-3635
Email: johnsullivanatty@aol.com
ATTORNEY FOR APPELLANT

FINAL BRIEF

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I did serve all parties to this appeal with one copy of the following Appellant's Brief by filing said brief in the EDMS system on the 29th day of January, 2021. The undersigned further certifies that he has served a copy of Appellant's Proof Brief by United States Mail on Kourtney Hall at the Fort Dodge Correctional Facility, Fort Dodge, Iowa.



John J. Sullivan AT0007619
Sullivan Law Office, P.C.
619 S. Frederick, P.O. Box 409
Oelwein, Iowa 50662
Phone: 319-283-9266
Fax: 319-332-3635
Email: johnsullivanatty@aol.com

CERTIFICATE OF FILING

I certify that on January 29, 2021, I will file this document with the EDMS system to the Clerk of the Supreme Court, Iowa Judicial Building, 1111 East Court Ave., Des Moines, Iowa 50319.



John J. Sullivan AT0007619
Sullivan Law Office, P.C.
619 S. Frederick, P.O. Box 409
Oelwein, Iowa 50662
Phone: 319-283-9266

TABLE OF CONTENTS

.....	
TABLE OF CONTENTS	3
TABLE OF AUTHORITIES	4
STATEMENT OF THE ISSUES PRESENTED FOR REVIEW	5
ROUTING STATEMENT	6
STATEMENT OF THE CASE.....	7
STATEMENT OF THE FACTS	8
ARGUMENT.....	10
CONCLUSION.....	28
COST CERTIFICATE.....	28
CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS.....	30

TABLE OF AUTHORITIES

Cases

<i>Iowa Supreme Court Attorney Disciplinary Bd. v. Gailey</i> , 790 N.W.2d 801 (2010)	11, 16
<i>State v. Ary</i> , 877 N.W.2d 686, 706 (Iowa 2016).....	24
<i>State v. Gibbs</i> , 239 N.W.2d 866, 867 (Iowa 1976).....	11
<i>State v. Halleck</i> , 308 N.W. 2d 56 (Iowa 1981).....	12, 17
<i>State v. Hamilton</i> , 309 N.W.2d 471, 479 (Iowa 1981)	16
<i>State v. Heard</i> , 636 N.W.2d 227, 229 (Iowa 2001)	10
<i>State v. Huston</i> , 825 N.W.2d 531, 536 (Iowa 2013).....	19, 22
<i>State v. Maghee</i> , 573 N.W.2d 1, 5 (Iowa 1997)	20, 22
<i>State v. Sallis</i> , 928 N.W.2d 140 (Iowa Ct. App. 2019).....	20, 22
<i>State v. Shanahan</i> , 712 N.W.2d 121, 135 (Iowa 2006)	25
<i>State v. Wickes</i> , 910 N.W.2d 554, 563–64 (Iowa 2018).....	24, 25

Statutes

Iowa Code Sec. 719.3(2).....	7, 16
Iowa Code Section 720.3	7, 11

Rules

Iowa R. Crim. P. 2.24(2)(b)(6)	24
Iowa R. Ev. 5.403	20, 22

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I.

WHETHER THERE WAS SUFFICIENT EVIDENCE TO SUPPORT A FINDING BY THE JURY THAT THE DEFENDANT SUBORNED PERJURY

II.

WHETHER THERE WAS SUFFICIENT EVIDENCE TO SUPPORT A FINDING BY THE JURY THAT THE DEFENDANT OBSTRUCTED PROSECUTION

III.

WHETHER THE DISTRICT COURT ERRED IN PERMITTING THE JURY TO VIEW THE VIDEO OF DEFENDANT RATHER THAN JUST LISTEN AS SAID VIDEO SHOWED THAT THE DEFENDANT WAS INCARCERATED AT THE TIME OF THIS OFFENSE

IV.

WHETHER THE DISTRICT COURT ERRED IN ALLOWING 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

V.

WHETHER THE DISTRICT COURT ERRED WHEN IT DENIED APPELLANT'S MOTION FOR NEW TRIAL AS THE JURY'S VERDICT WAS AGAINST THE GREATER WEIGHT OF THE EVIDENCE

ROUTING STATEMENT

**AS THIS MATTER DOES NOT MEET THE CRITERIA FOR
RETENTION IN THE SUPREME COURT, IT SHOULD BE
TRANSFERRED TO THE COURT OF APPEALS PURSUANT TO IOWA**

R. APP. P 6.1101(3)

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.

INSUFFICIENT EVIDENCE SUPPORTED A FINDING BY THE JURY THAT THE APPELLANT SUBORNED PERJURY

Error Preservation

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.

INSUFFICIENT EVIDENCE SUPPORTED A FINDING BY THE JURY THAT THE APPELLANT OBSTRUCTED PROSECUTION

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 DISTRICT COURT ERRED IN OVERRULING DEFENDANT'S MOTION IN LIMINE BY PERMITTING THE JURY TO VIEW THE JAIL VISIT RECORDINGS RATHER THAN LISTEN TO THE CONVERSATIONS

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 DISTRICT COURT ERRED IN ALLOWING 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 DISTRICT COURT ERRED IN 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 State does not have sufficient evidence that the Appellant suborned perjury or obstructed prosecution. The Appellant did not procure anything or provide an inducement to Emily Bowers in exchange for a false statement or to conceal a material fact. The Appellant did not provide an inducement to Emily Bowers in exchange for her to not follow a subpoena and attend a deposition. The Appellant did not make any statements or threats that would have encouraged or invited Emily Bowers to act in such a way that she would provide a false statement, conceal a material fact, or not appear for her deposition. The court's decision to play video as well as audio, in showing the Appellant to be incarcerated, as well as permitting the jury to view the conversation that took place subsequent to the deposition, was unfairly prejudicial to the Appellant. as such evidence was not relevant and caused unfair prejudice. The credible evidence in this matter supports a contrary verdict. These matters should be reversed and dismissed.

REQUEST FOR NONORAL SUBMISSION

Appellant requests that this matter be submitted without oral argument.

COST CERTIFICATE

I certify that the cost of printing Appellant's final proof brief was the sum of \$6.00.



John J. Sullivan

John J. Sullivan AT0007619
Sullivan Law Office, P.C.
619 S. Frederick, P.O. Box 409
Oelwein, Iowa 50662
Phone: 319-283-9266
Fax: 319-332-3635

**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME
LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE-STYLE
REQUIREMENTS**

1. This brief complies with the type-volume limitation of Iowa R. App. P.

6.903(1)(g)(1) or (2) because:

**[X] This brief contains 5,879 words, excluding the parts of the brief
exempted by Iowa R. App. I 6.903(1)(g)(1) or**

[] this brief uses a monospaced typeface and contains [state the number of] lines
of text, excluding the parts of the brief exempted by Iowa R. App. R

6.903(1)(g)(2).

2. This brief complies with the typeface requirements of Iowa R. App. P.

6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f)

because:

**[X] This brief has been prepared in a proportionally spaced typeface using
Times New Roman in 14 point typeface, or**

[] this brief has been prepared in a monospaced typeface using [state name and
version of word processing program] with [state number of characters per inch
and name of type style].



Signature

____ 01/29/2021 _____
Date