



## **CERTIFICATE OF SERVICE**

On 29th day of Apr., 2024, 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 Ronald E. Cooley, Inmate No. 0205737, Mt. Pleasant Correctional Facility, 1200 N. Washingto, Mt. Pleasant, Ia, by U.S. Mail on Apr. 29, 2024.

/s/Thomas M. McIntee\_\_\_\_\_

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TMM/4/29/24

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## **STATEMENT OF THE ISSUES PRESENTED FOR REVIEW**

**I. WHETHER THE UNILATERAL CLOSING OF THE LINN COUNTY SHERIFF’S OFFICE RENDERED THE STATUTORY SCHEME IN 692A.104 INVALID AND UNCONSTITUTIONAL, IN VIOLATION OF SEPARATION OF POWERS DOCTRINE.**

**II. WHETHER THE TRIAL COURT ERRED IN DENYING THE MOTION FOR JUDGMENT OF ACQUITAL AND MOTION FOR DIRECTED VERDICT.**

**III. WHETHER THE JURY INSTRUCTIONS FAILED TO PROPERLY INFORM THE JURY IN EVALUATING WHETHER A REGISTRY VIOLATION OCCURRED?**

## **ROUTING STATEMENT**

The Court should transfer this case to the Court of Appeals because it raises issues that involve the application of existing legal principles. Iowa R. App. P. 6.903(2)(d) & 6.1101(3)(a).

## **STATEMENT OF THE CASE**

**Nature of the Case:** This is an appeal by the Defendant-Appellant, Ronald E. Cooley, from the judgment and sentence

imposed in Linn County Case No. FECR140568 following a jury trial resulting in a verdict finding the defendant guilty of Failure to Register as a Sex Offender, 2<sup>nd</sup> Offense in violation of Iowa Code 692A.103, and 692A.104 and 692A.111 ; and Habitual Offender under Section 902.8. D0174 (FECR140568) (Judgment and Sentence, filed 8-25-23)

**Course of Proceedings in the District Court:**

Ronald E. Cooley, was charged on 6-25-21, in a Trial Information D 0018 (FECR140568) with two Counts of Failure to Register as a Sex Offender, 2<sup>nd</sup> Offense, in violation of Iowa Code §§ 692A.103, and 692A.104 and 692A.111; and Habitual Offender under Section 902.8.

A jury trial was held commencing on 4-19-23 before District Judge Ian Thornhill. The jury found Mr. Cooley not guilty of this offense in Count I. D0141 FECR140568 (Forms of Verdict – Count 2, filed Apr. 21, 2023). The jury found Mr. Cooley guilty of the offense in Count II. (D0141) FECR140568 (Forms of Verdict – Count 1I, filed Apr. 21, 2023)



Following his conviction, Mr. Cooley filed a Motion for New Trial and Arrest of Judgment on 5-4-23. (D0148, D0147) FECR140568 (Motion) The State filed a Resistance to the Motions for New Trial and Arrest of Judgment on 5-11-23. (D0157) FECR140568 Mr. Cooley , argued that the jury's verdict was contrary to the law and the evidence.

The District Court denied his motions, and sentenced Mr. Cooley to incarceration for 5 years, which was enhanced to 15 years pursuant to the Habitual Offenderr statute. D0174 FECR140568 (Judgment and Sentence, filed 8-25-23)

Notice of Appeal was filed on 8-27-23.. D0177 FECR140568 (Notice of Appeal). The State Appellate Defender and court appointed counsel withdrew and Thomas M. McIntee was subsequently appointed as substitute counsel for Appeal on 9-18-23.

**Facts:** Ronald E. Cooley, was charged on 6-25-21, in a Trial Information D0018 (FECR140568) with two Counts of Failure to Register as a Sex Offender, 2<sup>nd</sup> Offense, in violation of Iowa

Code §§ 692A.103, and 692A.104 and 692A.111; and Habitual Offender under Section 902.8.

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(FECR140568) (Notice of Appeal). The State Appellate Defender  
and court appointed counsel withdrew and Thomas M.  
McIntee was subsequently appointed as substitute counsel for  
Appeal on 9-18-23.

Any additional relevant facts will be discussed below.

## ARGUMENT

### **I. WHETHER THE UNILATERAL CLOSING OF THE LINN COUNTY SHERIFF'S OFFICE APPROVED BY THE DISTRICT COURT RENDERED THE STATUTORY SCHEME IN 692A.104 INVALID AND UNCONSTITUTIONAL, IN VIOLATION OF SEPARATION OF POWERS DOCTRINE.**

**A. Preservation of Error:** Trial counsel objected to the district court's ruling that the closure of the Linn County Sheriff's Office was not fatal to the statute. The issue was raised prior to trial, again at trial, and then again by post-trial motion.

D0206 ; (FECR140568 ) (Tr Trial Vol 1 p. 32 L 4 to p. 34 L 10)  
D0206 (FECR140568) (Trial Tr. Vol. 2 p.126 L\*\* to p. 127 L \*\* )  
(D0207) (FECR140568) (Trial Tr. Vol. 3 p.82 L.8 to p.85 L.16)

Cooley specifically objected to the court's ruling that the closure of the Linn County Sheriff's Office was not fatal to the

statute. Cooley's requests and objections were denied. Error was preserved by said ruling by the court, entered over Cooley's timely objections. The Sheriff's office closure and the District Court's allowance violated the Constitutional requirement for proper legislative amendment to the penal statute in Section 692A, and the doctrine of separation of powers, under the Iowa Constitution Art. V Sections 4, 6, 14.

In *State v. Brimmer* 983 NW2d 247 (Iowa 2022) trial counsel objected to the district court's proposed closure of trial proceedings to the public due to COVID. The law is well-settled that a criminal defendant is constitutionally entitled to a public trial. "Of uncertain origin, but nevertheless deeply rooted in the common law, the right to public trial has long been regarded as a fundamental right of the defendant in a criminal prosecution." *State v. Lawrence*, 167 N.W.2d 912, 913 (Iowa 1969). The United States and the Iowa Constitutions guarantee the right to a public trial. U.S. Const. amend VI, XIV; Iowa Const. art. I, §10.

In this case the state through the Linn County Sheriff prevented the operation of the statutory scheme in Section 692A by closing the Sheriff's office to the public. The defendant was prevented from compliance by in-person reporting at the Sheriff's office, but was also denied the benefit of the compliance verification procedures mandated for the sheriff to perform as set forth in the statute.(692A)

**B. Standard of Review:** “A violation of separation of powers infringes upon a constitutional right; therefore, the court's review is de novo.” State v. Rees, 868 N.W.2d 881 (Iowa Ct. App. 2015) (citing State v. Schultzen, 522 N.W.2d 833, 835–36 (Iowa 1994).

C. Discussion: The burden is on the State to prove every fact necessary to constitute the offense with which a defendant has been charged. State v. Gibbs, 239 N.W.2d 866, 867 (Iowa 1976). To withstand a sufficiency of the evidence challenge, a jury's verdict of guilt must be supported by substantial evidence. State v. Hopkins, 576 N.W.2d 374, 377 (Iowa 1998). Substantial evidence means evidence which would convince a

rational fact finder that the defendant is guilty beyond a reasonable doubt. *State v. LeGear*, 346 N.W.2d 21, 23 (Iowa 1984). In determining if there is substantial evidence to support the charge, evidence must be viewed in the light most favorable to the State, and consideration must be given to all of the evidence, not just the evidence supporting the verdict. *Petithory*, 702 N.W.2d at 856-57. To suffice, the evidence presented must raise a fair inference of guilt on every element and do more than create speculation, suspicion, or conjecture. *State v. Hamilton*, 309 N.W.2d 471, 479 (Iowa 1981). Evidence that allows two or more inferences to be drawn, without more, is insufficient to support guilt. *State v. Truesdell*, 679 N.W.2d 611, 618–619 (Iowa 2004).

The evidence presented at trial was insufficient to establish that Cooley failed to notify the sheriff “within five business days” after changing his principal residence (Jury Instruction 15) . See also Iowa Code 692A.104 (2015).

692A.104 Registration process provides:

1. A sex offender shall 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, within five business days of being required to register under [section 692A.103](#) by providing all relevant information to the sheriff. A sheriff shall accept the registration of any person who is required to register in the county pursuant to the provisions of [this chapter](#).

2. A sex offender shall, within five business days of changing a residence, employment, or attendance as a student, appear in person to notify the sheriff of each county where a change has occurred.

The defendant was convicted of failure to comply with the sex offender registry under Iowa Code sections 692A.103; 692A.104; and 692A.111 (2015). The defendant argues the district court incorrectly interpreted Iowa Code section 692A.104.

a. Cooley argued under Iowa law, “a sex offender shall 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, within five business days of being required to register” and “a sex offender shall, within five business days of changing a residence, employment, or attendance as a student, appear in person to notify the sheriff of each county where a change has occurred.” ICA Sec. 692A.104(1)&(2); *State v. Coleman*, 907 N.W.2d 124 (Iowa 2018); *State v. Uranga*, 950 N.W.2d 239 (Iowa 2020).

The statute's mandatory directive to appear in person to register is clear and unmistakably unambiguous. This mandatory appearance at the Sheriff's office for the county of the sex offender's residence is the cornerstone of the legislature's statutory scheme, protecting not only the people, but also the registering offender, through strict compliance verification procedures conducted in person at the sheriff's office as described and mandated in detail in the statutory text.

These mandatory compliance verification procedures include:

1. current picture taken of offender to update registry, proof of appearance  
Sec. 692A.108
2. electronic form completed with electronic signature by offender, Sec.  
692A.108
3. hard copy of signed written registration form provided to the offender  
as proof of registration, Sec. 692A.108

The sheriff's unauthorized actions which violated the statute and prevented the mandatory statutory compliance verification procedures from being performed to protect Mr. Cooley., as well as the public.



b. In this matter, the defendant and defense witness, Kathy Lawrence, testified the defendant attempted to register in-person within 5-days of changing his residence and was unable to do so because the Linn County Sheriff Office was closed to the public. Also, the evidence demonstrated by the State's witness, Pam Kregel, as did the defendant, and defense witness, Kathy Lawrence, who all testified that the Linn County Sheriff did not allow in-person registration for the sex offender registry due to COVID and pursuant to a posted sign sex offenders were requested to contact the office by telephone.

Iowa law is clear on this issue that sex offenders shall appear in-person to register and the defendant attempted to comply with the statute to register in-person, due to the unilateral decision of Linn County Sheriff Office the defendant was not able to comply with the mandatory procedure dictated by the statute.

c. In addition, there was no evidence establishing any authority granting or allowing Linn County or the Linn County Sheriff to suspend, modify, or change the requirements of Sec. 692A.104(1)&(2). Notably, the record is void of any evidence that any other county sheriff closed their office in violation of Section 692A mandates.

d. The Dept. of Public Safety specifically precludes any authority to change, waive or suspend provisions of the statute as follows:

Pursuant to the provisions of rule 661—10.222(17A), the Department does not have authority to waive requirements established by statute. Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to the provisions of rule 661—10.222(17A).

e. Therefore, because the government of Iowa in and for Linn County/Linn County Sheriff Office unilaterally and unconstitutionally amended the Sex Offender Registry Statute thereby impeding the defendant in complying with the sex offender registry statute making it impossible for a jury or fact finder to find a violation of the registry in-person reporting requirement as unambiguously set forth in Section 692A.

f. The District Court Judge over-ruled the defendant's position and declared the Sheriff's closure of the office was not fatal to the statute: D0206 (FEER140568) (Trial Tr. Vol. 2 p.126 L22 to p. 127 L 13)

The Linn County Court stated,

“We've had a lot of discussion here, or at least argument about the language in the Code about showing up in person to register, and I think the evidence is undisputed that the Linn County Sheriff for a time period because of COVID closed down their office to personal visits from anybody outside of the office.

I don't find that it's fatal to the statute. That the requirement to register actually became less onerous, not more, on -- on, in this case, sex offenders, and the fact that the sheriff's office was not taking visitors doesn't negate the statutory requirement for sex offenders to register as a sex offender. It would be different if the Sheriff's office was closed and the charge was that Mr. Cooley or any Defendant called in and gave their address.”

In this case, the state provided no evidence of any amendment to section 692A waiving in-person registration, mandatory photographs of the offender, mandatory completion of the registration form and electronic signature of the offender, nor any provision relieving the state from the statutory obligation to provide the offender written proof of his registration, and his personal appearance at the sheriff's office per section 692A.

It is NOT the function, or authorization of the Linn County Sheriff or the Linn County District Court to fundamentally change, alter or amend the clearly unambiguous statutory text

of Section 692A mandating in-person reporting/registration including mandated compliance verification procedures to be specifically performed by the Linn County Sheriff. The sheriff's actions as a one man legislature clearly violate the separation of powers doctrine in violation of Art. V of the Iowa Constitution.

In *State v. Coleman*, 907 N.W.2d 124 (Iowa 2018), the Iowa Supreme Court declared,

“.... that the ambiguity should be construed against the State. Indeed, in *Maxwell v. Iowa Department of Public Safety*, we declared that ambiguities in the penal provisions of Iowa Code chapter 692A should be construed against the state. 903 N.W.2d 179, 183 (Iowa 2017).”

In *State v. Reiter* 601 N.W.2d 372, 373 (Iowa 1999) the Iowa Court noted, “In *Maxwell*, the statute must provide warning of the conduct prohibited, with doubt resolved in favor of the accused. See *State v. Reiter*, 601 N.W.2d 372, 373 (Iowa 1999) (per curiam).

In *State v. Maxwell*, 903 N.W.2d 179, 183 (Iowa 2017) the Iowa Court stated, “We must decide whether Maxwell was required to register as a sex offender before serving any time while free on bond during his appeal of the underlying conviction. Iowa Code chapter 692A is entitled “Sex Offender Registry.” We construe the statute “in light of the legislative purpose.” In *re A.J.M.*, 847 N.W.2d 601, 605 (Iowa 2014) (quoting *State v. Erbe*, 519 N.W.2d 812, 815 (Iowa 1994)). “[T]he purpose of the registry is protection of the health and safety of individuals, and particularly children, from individuals who, by virtue of probation, parole, or other release, have been given access to members of the public.” *State v. Iowa Dist. Ct.*, 843 N.W.2d 76, 81 (Iowa 2014). Criminal liability can be imposed on a sex offender who violates chapter 692A. See Iowa Code §692A.111(1) (“A sex offender who violates any requirement . . . commits an aggravated misdemeanor for a first offense and a class ‘D’ felony for a second or subsequent offense.”). We strictly construe the penal provisions of chapter 692A, requiring fair

..... warning of the conduct prohibited, with doubt resolved in favor of the accused. See *State v. Reiter*, 601 N.W.2d 372, 373 (Iowa 1999) (per curiam). We interpret chapter 692A “by considering all parts of the enactment.” *In re A.J.M.*, 847 N.W.2d at 605.

In *State v. Brimmer* 983 NW2d 247 (Iowa 2022) the Iowa Supreme Court found the District Court violated the defendant’s constitutional right to a public trial under the 6<sup>th</sup> amend, and Art. I Sec. 9 and 10 of the Iowa Constitution when the court had banned the public due to the covid pandemic.

The Court stated, “If we as a branch, failed to protect Brimmer’s rights, then we as a branch must own up to that failure. No solution to the COVID conundrum was ideal. But simply closing his trial to the public violated his constitutional rights, and that structural error entitles him to a new trial.

Likewise, in the case at bar the Linn County Sheriff with the subsequent blessing of the District Court created a structural error by eviscerating the statutory scheme of 692A.

In State v. Basquin 970 NW2d 643 (Iowa 2022) The Iowa constitution was designed to protect against tyranny. Our constitution provides:

The powers of the government of Iowa shall be divided into three separate departments—the legislative, the executive, and the judicial: and no person charged with the exercise of powers properly belonging to one of these departments shall exercise any function appertaining to either of the others, except in cases hereinafter expressly directed or permitted. Iowa Const. art. III, Three Separate Departments, § 1. See, e.g., Iowa Const. art. V, §§ 4, 6, 14.

The separation of powers doctrine prohibits a department of the government “from exercising ‘powers that are clearly forbidden’ to it,” “from exercising ‘powers granted by the constitution to another branch,’ ” and from “impair[ing] another in the performance of its constitutional duties.” Thompson, 954 N.W.2d at 410 (quoting *Klouda*, 642 N.W.2d at 260 (emphasis omitted)). “[E]ach department of government must be and remain independent if the constitutional safeguards are to be maintained.” *Id.* (quoting *Webster Cnty. Bd. of Supervisors v. Flattery*, 268 N.W.2d 869, 873 (Iowa 1978) (en banc)).

The Sheriff blatantly flouted the Sex Offender Registry Statute assuming the role of a one-man legislature in completely changing the essential statutory scheme by eliminating in-person reporting, and thereby also precluding the mandatory compliance verification procedures the

legislature had thoughtfully and carefully crafted to ensure an offender had proof of his appearance.

In *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S.Ct. 63 (2020) the U.S. Supreme Court declared that even in a pandemic, the Constitution can't be put away and forgotten.

In *State v. Showens* 845 N.W.2d 436, 441 (Iowa 2014). the Iowa Supreme Court opted to interpret 692A in a way to obviate any void for vagueness constitutional concerns, citing the Court's mandate to construe statutes where possible to avoid a constitutional infirmity. *State v. Walker* 804 NW2d 284 (Iowa 2011). See also *Simmons v. State Public Defender* 791 NW2d 69 (Iowa 2010) (if fairly possible a statute will be construed to avoid doubt as to its constitutionality)

The interpretation of Section 692A.104 by the Linn County Sheriff and the District Court would clearly unnecessarily render the statute unconstitutional by creating ambiguity where there is none in the statute given its mandatory and clearly unambiguous language.



The cornerstone of the statute is the mandatory personal appearance of the offender at the respective County Sheriff's Office. The sex offender's physical presence enables the sheriff to perform these mandatory verification procedures set forth in 692A, to-wit:

- a. current photo
- b. electronic form with offender's electronic signature
- c. production of hard copy of duly executed registration/report form, and delivery of copy to offender

These procedures protect the general population as well as the offender, by generating verifiable proof of compliance. The Linn County Sheriff's unilateral closure of the office eviscerated the statutory scheme's verification procedures and violated the obligations imposed on the sheriff under Section 692A.

692A.104 Registration process provides:

1. A sex offender shall 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, within five business days of being required to register under [section 692A.103](#) by providing all relevant information to the sheriff. A sheriff shall accept the registration of any

person who is required to register in the county pursuant to the provisions of [this chapter](#).

2. A sex offender shall, within five business days of changing a residence, employment, or attendance as a student, appear in person to notify the sheriff of each county where a change has occurred.

4. A sex offender who is required to verify information pursuant to the provisions of [section 692A.108](#) is only required to appear in person in the county where the principal residence of the offender is maintained to verify such information.

5. A sex offender shall, within five business days of the establishment of a residence, employment, or attendance as a student in another jurisdiction, appear in person to notify the sheriff of the county where the principal residence of the offender is maintained, about the establishment of a residence, employment, or attendance in another jurisdiction. A sex offender shall, within five business days of establishing a new residence, employment, or attendance as a student in another jurisdiction, register with the registering agency of the other jurisdiction, if the offender is required to register under the laws of the other jurisdiction. The department shall notify the registering agency in the other jurisdiction of the sex offender's new residence, employment, or attendance as a student in the other jurisdiction.

7. Except as provided in [subsection 8](#), the initial or subsequent registration and any notifications required in [subsections 1, 2, 4, 5, and 6](#) shall be by appearance at the sheriff's office and completion of the initial or subsequent registration or notification shall be on a printed form, which shall be signed and dated by the sex offender. If the sheriff uses an electronic form to complete the initial registration or notification, the electronic form shall be printed upon completion and signed and dated by the sex offender. The sheriff shall transmit the registration or notification form completed by the sex offender within five business days by paper copy, or electronically, using procedures established by the department by rule.

#### 692A.105 Additional registration requirements — temporary lodging.

In addition to the registration provisions specified in [section 692A.104](#), a sex offender, within five business days of a change, shall also appear in person to notify the sheriff of the county of principal residence, of any location in which the offender is staying when away from the principal residence of the offender for more than five days, by identifying the location and the period of time the offender is staying in such location.

692A.108 Verification of relevant information.

1. A sex offender shall appear in person in the county of principal residence after the offender was initially required to register, to verify residence, employment, and attendance as a student, to allow the sheriff to photograph the offender, and to verify the accuracy of other relevant information during the following time periods after the initial registration:

1. For a sex offender classified as a tier I offender, every year.
2. For a sex offender classified as a tier II offender, every six months.
3. For a sex offender classified as a tier III offender, every three months.

2. A sheriff may require a sex offender to appear in person more frequently than provided

in [subsection 1](#) to verify relevant information if good cause is shown. The circumstances under which more frequent appearances are required shall be reasonable, documented by the sheriff, and provided to the offender and the department in writing. Any modification to such requirement shall also be provided to the sex offender and the department in writing.

3. a. At least thirty days prior to an appearance for the verification of relevant information as required by [this section](#), the department shall mail notification of the required appearance to each reported residence of the sex offender. The department shall not be required to mail notification to any sex offender if the residence described or listed in the sex offender's relevant information is insufficient for the delivery of mail.

b. The notice shall state that the sex offender shall appear in person in the county of principal residence on or before a date specified in the notice to verify and update relevant information. The notice shall not be forwarded to another address and shall be returned to the department if the sex offender no longer resides at the address.

4. A photograph of the sex offender shall be updated, at a minimum, annually. The sheriff shall send the updated photograph to the department using procedures established by the department by rule within five business days of the photograph being taken and the department shall post the updated photograph on the sex offender registry's internet site. The sheriff may require the sex offender to submit to being photographed, fingerprinted, or palm printed, more than once per year during any required appearance to verify relevant information.

There is also no authority for the Dept. of Public Safety to alter the Registry Statute as the Dept. Rules set forth:

Pursuant to the provisions of rule 661—10.222(17A), the Department does not have authority to waive requirements established by statute. Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to the provisions of rule 661—10.222(17A).

In *State v. Maxwell* 903 N.W.2d 179, 183 (Iowa 2017). that the ambiguity should be construed against the State. Indeed, in *Maxwell v. Iowa Department of Public Safety*, we declared that ambiguities in the penal provisions of Iowa Code chapter 692A should be construed against the state. 903 N.W.2d 179, 183 (Iowa 2017).

(D0206) (FECR140568) (Tr Trial Vol 1 p. 32 L 4 to p. 34 L 10)

The defense counsel raised the in-person requirement prior to trial during Motion in Limine proceedings:

Prosecutor: So I believe -- if that argument is going to happen, that's a legal argument and I don't think that is appropriate to put in front of a jury. The

jury is here to decide the facts, not the law, so I don't believe it's an appropriate argument to say that no one could have violated the registry during COVID because they weren't allowed to physically go into the Linn County Sheriff's Department building.

THE COURT: If there's going to be some evidence that the Defendant attempted to register, we'll hear that evidence and see how that plays out, and then we'll have to deal with it at that time if there's some legal argument that's being made here or if there was -- it's a factual argument the Defendant didn't do what he was supposed to. We'll have to see how that plays out.

Mr. Van Daele, do you know of something in the law that says because of COVID protocols the registration requirement was either suspended or vacated during that period of time? I know of none.

MR. VAN DAELE: Your Honor, I know of none either. I'll just say I attempted to sort of brief this or try to prepare a motion along these lines. We did take the deposition -- discovery deposition of the Linn County Sheriff's representative who was in charge of it where it kind of leads to this understanding of how the -- COVID protocols at that time. So to answer your question, no, I'm not aware of any suspension of the rules or the requirements of the statute for the registry.

THE COURT: All right. So we won't have any argument that the Defendant was not required to register because of COVID. But if there is some factual circumstances that the evidence bears out that it had some affect on his attempt to register or something like that, we'll see how the facts play out. Because I could see how that could possibly be relevant, so we'll see where that goes.

Unfortunately, the trial Court erred by refusing to rule that 692A.104 required in person reporting by the offender, along with other mandatory verification procedures by the Sheriff. He embraced an unconstitutional interpretation of the statute allowing the Sheriff to act in clear violation of the Separation of Powers doctrine under Article V of the Iowa Constitution.

## **II. WHETHER THE TRIAL COURT ERRED IN DENYING THE MOTION FOR JUDGMENT OF ACQUITTAL AND MOTION FOR DIRECTED VERDICT.**

A. Preservation of Error: Cooley moved for a judgment of acquittal and later for Directed Verdict on grounds that the registry violation had not been established. (D0208) (FECR140568) (Tr Trial Vol 2 p.126 L 11 to p.127 L.25) and (D0207) (FECR140568) (Tr Trial Vol 3 p.75 L 11 to p. 76 L16; motion denied p.78 L.18-24) The motions for Judgment of

Acquittal and Motion for Directed Verdict and the Court's denials preserved error on the issue presented. *State v. Allen*, 304 N.W.2d 203, 206 (Iowa 1981) ( A motion for judgment of acquittal is a means for challenging the sufficiency of the evidence to sustain a conviction).

In the event this Court determines trial counsel's motion for judgment of acquittal was insufficient to preserve error for any reason, Cooley respectfully requests that this issue be considered under the Court's familiar ineffective assistance of counsel framework. See *State v. Tobin*, 333 N.W.2d 842, 844 (Iowa 1983).

B. Standard of Review: Where preserved for appellate review, challenges to the sufficiency of the evidence are reviewed for correction of errors at law. *State v. Petithory*, 702 N.W.2d 854, 856 (Iowa 2005). This is equally true where the question turns on issues of statutory interpretation. *State v. Johnson*, 528 N.W.2d 638, 640 (Iowa 1995).

Alternatively, to the extent this issue is considered under an ineffective assistance of counsel framework, review is de

novo. *Taylor v. State*, 352 N.W.2d 683, 684 (Iowa 1984). A defendant claiming a violation of his right to the effective assistance of counsel must establish: (1) counsel's performance fell below an objective standard of reasonableness and (2) counsel's deficient performance prejudiced the defense. *Id.* at 685.

As noted by our Supreme Court “[i]t would surely be ineffective... if... counsel failed to preserve a valid motion for judgment of acquittal” and the “prejudice prong would obviously be satisfied where acquittal would have resulted if trial counsel had preserved the motion.” *State v. Schories*, 827 N.W.2d 659, 664 (Iowa 2013).

Thus to prevail on a sufficiency of the evidence challenge raised under an ineffective-assistance rubric, a defendant need only establish that a properly made “motion [for judgment of acquittal] would have been meritorious.” *Id.*

C. Discussion: The burden is on the State to prove every fact necessary to constitute the offense with which a defendant has been charged. *State v. Gibbs*, 239 N.W.2d 866, 867 (Iowa



1976). To withstand a sufficiency of the evidence challenge, a jury's verdict of guilt must be supported by substantial evidence. *State v. Hopkins*, 576 N.W.2d 374, 377 (Iowa 1998). Substantial evidence means evidence which would convince a rational fact finder that the defendant is guilty beyond a reasonable doubt. *State v. LeGear*, 346 N.W.2d 21, 23 (Iowa 1984). In determining if there is substantial evidence to support the charge, evidence must be viewed in the light most favorable to the State, and consideration must be given to all of the evidence, not just the evidence supporting the verdict. *Petithory*, 702 N.W.2d at 856-57. To suffice, the evidence presented must raise a fair inference of guilt on every element and do more than create speculation, suspicion, or conjecture. *State v. Hamilton*, 309 N.W.2d 471, 479 (Iowa 1981). Evidence that allows two or more inferences to be drawn, without more, is insufficient to support guilt. *State v. Truesdell*, 679 N.W.2d 611, 618-619 (Iowa 2004).

The evidence presented at trial was insufficient to establish that Cooley failed to notify the sheriff "within five business

days” of his changing his principal... residence. (D\*\*\*\*)  
(FECR140568) (Jury Instruction 15). See also Iowa Code  
692A.104 (2015).

In determining whether there was sufficient evidence to sustain the jury’s verdict of guilt, this Court must first consider and determine what the criminal statute requires. *State v. Showens*, 845 N.W.2d 436, 441 (Iowa 2014).

The ultimate purpose of statutory interpretation is to give effect to legislative intent. *State v. Bower*, 725 N.W.2d 435, 442 (Iowa 2006). The statute must be considered as a whole. *State v. Iowa Dist. Ct. for Scott Co.*, --- N.W.2d ---, 2017 WL 242652, at 5 (Iowa 2017). If a statute is unambiguous, its plain meaning will be given effect. But if reasonable minds could differ or be uncertain as to the meaning of the statute, tools of construction are employed to resolve the ambiguity. *Id.* at \*4. In discerning legislative intent, “[t]he object of a law matters”, *Id.* at \*5, but courts “search for intent from what the legislature said, rather than what it should or might have said”, *State v. Reiter*, 601 N.W.2d 372, 373 (Iowa 1999).

“Practicality is also important” and courts “try to interpret statutes so they are reasonable and workable” and avoid absurd results. Iowa Dist. Ct., WL 242652, at 6. Additionally, “penal statutes must give fair warning of the conduct prohibited..., and are to be construed strictly, with doubt resolved in favor of the accused.” Reiter, 601 N.W.2d at 373 (citation omitted). If possible, statutory language will be construed “to sidestep a potential vagueness defect” or other constitutional infirmity. Showens, 845 N.W.2d at 441.

The instant case concerns the registration provisions specified in section 692A.104, a sex offender, within five business days of a change of principal residence, shall also appear in person to notify the sheriff of the county of principal residence.

An offender is not obligated to keep the sheriff apprised of his whereabouts or location at all times. His or her leaving the residence, even for an extended period of days, does not trigger an obligation to notify under the Chapter unless the offender either is ultimately away for more than five days (pursuant to

section 692A.105) or ultimately establishes a new or additional residence (pursuant to section 692A.104(2))4.

Registration or notification is practicable and workable by providing the offender a period of time (five business days) after the triggering condition is satisfied within which to register or notify – **something which must be done in person**. That is, the five-business-day clock for making notification generally starts running from fulfillment of the condition requiring notification – from the change of residence, change of employment, change of status as a student, etc. See Iowa Code §§ 692A.104(1)-(3), (5) (2015); 692A.105 (2015).

Under this interpretation of the statute, the evidence presented at trial was insufficient to establish that Coleman committed a registry violation.

Any interpretation creating ambiguity should be construed against the State such as in *Maxwell v. Iowa Department of Public Safety*, in which the Iowa Court declared that ambiguities in the penal provisions of Iowa Code chapter 692A should be construed against the state. 903 N.W.2d 179, 183

(Iowa 2017). As a result, following Maxwell , this Court should hold that the obligation to register in person is mandatory and clearly unambiguous.

When the legislature has not used express language delegating such discretionary power to the Sheriff this Court should be cautious about writing in such a new requirement under the banner of "ambiguity."

Citing State v. Iowa District Court , the Iowa Court points to the broad purpose of the sex offender registry to protect health and safety. 843 N.W.2d 76, 81 (Iowa 2014). But in the hands of the majority, the broad public purpose of the statute may be used to construe all ambiguities in the statute against criminal defendants. Yet, a few months ago in Maxwell , 903 N.W.2d at 183, we cited State v. Reiter , 601 N.W.2d 372, 373 (Iowa 1999) in narrowly construing a different ambiguity in Iowa Code chapter 692A. In Maxwell , the Iowa declared "[w]e strictly construe the penal provisions of chapter 692A." 903 N.W.2d at 183.

The clear conclusion is that the district court erred in its improper interpretation of the statute and in its instructions to the jury. Because there is not substantial evidence in the record that the defendant failed to attempt to comply by reporting in person at the Sheriff's office this Court should reverse the judgement of the district court.

Cooley respectfully requests that this Court reverse his conviction and remand this matter to the district court for entry of a judgment of acquittal.

**III. WHETHER THE JURY INSTRUCTIONS FAILED TO PROPERLY INFORM THE JURY IN EVALUATING WHETHER A REGISTRY VIOLATION OCCURRED?**

A. Preservation of Error: During the jury instruction conference, Cooley objected to the marshalling instruction (D0142) (FECR140568) (Jury Instruction 15) on grounds that the recitation of the statutory language was not complete without the statutory text that you have to register in person at the sheriff's office within five business days of changing your residence. (D0207) (FECR140568) (Trial Tr. Vol. 3 p.82 L.8 to p.85 L.16) as set forth below, along with the Court's refusal to change the proposed jury instructions:

THE COURT: Same question to you, sir. Do you have any objections either to the instructions that the Court has included or any instructions that you asked for that are not included?

MR. VAN DAELE: Yes, Your Honor. I would like to, I guess, make the request or at least objection to Instructions 14 and 15. I'll just sort of -- as it applies to both of them. Through the process of preparing jury instructions or the marshalling instructions on the Sex Offender Registry

violation for both counts, I believe the parties and the Court, we were referencing and relying on **State v. Uranga**, 950 NW2d 239, Iowa Supreme Court 2020 and **State v. Coleman**, 907 NW2d 124, Iowa Supreme Court 2018.

In both those cases I believe the State, Ms. Schulte, was able to obtain copies of the jury instructions for both those cases. I believe the case opinions reference those instructions and the reason why they were using them as a resource. Both of those cases and those instructions, Your Honor, specifically **Uranga**, under Instruction 16. I'll just paraphrase unless you want me to read the whole instruction into the record. Includes the requirement that the offender appears in person. They had a timeframe. I think it was specific to that case of once every three months.

And then in regards to **Coleman** -- well, in regards to **Uranga**, there was another Instruction 17 which then had an instruction about the legal duty to register, again to appear in person, and then there was a potential -- voluntary and potential failure to appear in person.

My point is, is that **Uranga** includes the in-person language and then the general timeframe that was relevant for the offender to be there that applied.

In regards to **Coleman**, similar language was included in its instruction but there wasn't two separate ones. There was Instruction 15, Paragraph 1, described a duty, and then in Paragraph 2 the failure to appear in person within five days of the change of location or change more than five days.

But my point, Your Honor, I believe that the cases that we were relying upon for our instructions included the personal appearance language with the relevant requirements for timeframe. I would request that those be -- the language "to appear in person and to appear within five days of a change of residence" should be included in our instructions to the jury.

THE COURT: Any other objections?

MR. VAN DAELE: No, Your Honor.

THE COURT: Thank you. Just one point of clarification. I believe you said the **Uranga** case was a Supreme Court case. It was not. It was a Court of Appeals case and it was a

table case, but just stating that for clarification on the record.

As far as the request for the in-person language, the Court specifically finds that the procedure that the Linn County Sheriff had in place at the time of the alleged offenses here, because of the COVID pandemic, made the registration process less onerous, not more onerous.

The State has not charged the Defendant with failing to appear in person. Count One alleges providing of a false address and Count Two alleges not updating the address. The State is not attempting to allege that the Defendant is guilty because he didn't appear in person. So I don't find that, given how these two offenses were charged and the state of the evidence, that in-person language is necessary.

I might have stated this on the record earlier, but the reverse would certainly be relevant. For example, if the State was attempting to allege that the Defendant did not appear in person and the fact that the sheriff's department had this other procedure in place would negate the criminality there, we don't have that situation. So I find the in-person language is not required or applicable, given the manner in which and the allegations under which the Defendant is charged in this case.

#### 692A.104 Registration process provides:

1. A sex offender shall 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, within five business days of being required to register under [section 692A.103](#) by providing all relevant information to the sheriff. A sheriff shall accept the registration of any person who is required to register in the county pursuant to the provisions of [this chapter](#).
2. A sex offender shall, within five business days of changing a residence, employment, or attendance as a student, appear in person to notify the sheriff of each county where a change has occurred.



Error was thus preserved on the claim that the court did not properly instruct the jury regarding the requirement to report in person at the Sheriff's office. See *State v. Ondayog*, 722 N.W.2d 778, 785 (Iowa 2006) (“[T]imely objection to jury instructions in criminal proceedings is necessary to preserve alleged error for appellate review....”). Alternatively, to the extent this Court concludes error was not properly preserved for any reason, Cooley respectfully requests that the issue be considered under the Court's familiar ineffective assistance of counsel framework. See *State v. Tobin*, 333 N.W.2d 842, 844 (Iowa 1983).

B. Standard of Review: Where preserved for appellate review, challenges to jury instructions are reviewed for correction of errors at law. *State v. Anderson*, 636 N.W.2d 26, 30 (Iowa 2001). Such instructional error is subject to harmless error analysis. *State v. Hanes*, 790 N.W.2d 545, 550 (Iowa 2010). Our appellate courts “presume prejudice and reverse unless the record affirmatively establishes there was no prejudice.” *Id.* at 551.

To the extent this issue is considered under an ineffective assistance of counsel framework, review is de novo. *Taylor v. State*, 352 N.W.2d 683, 684 (Iowa 1984). A defendant claiming a violation of his constitutional right to the effective assistance of counsel must establish: (1) counsel’s performance fell below an objective standard of reasonableness and (2) counsel’s deficient performance prejudiced the defense.

Prejudice is established by showing “a reasonable probability that, but for counsel’s unprofessional errors, the results of the proceeding could have been different.” *Strickland v. Washington*, 466 U.S. 668, 669, 104 S.Ct. 2052, 2055, 80 L.Ed.2d 674 (1984). A reasonable probability is one sufficient to undermine confidence in the outcome. *Gering v. State*, 382 N.W.2d 151, 153-54 (Iowa 1986).

C. Discussion: The district court “is required to ‘instruct the jury as to the law applicable to all material issues in the case....’” *State v. Marin*, 788 N.W.2d 833, 837 (Iowa 2010) (quoting Iowa R. Civ. P. 1.924). “[T]he court is not required to give any particular form of an instruction” but “must... give

instructions that fairly state the law as applied to the facts of the case.” Id. at 838. Additionally, “a court is required to give a requested instruction when it states a correct rule of law having application to the facts of the case and when the concept is not otherwise embodied in other instructions.” State v. Lyman, 776 N.W.2d 865, 876 (Iowa 2010)(quoting Herbst v. State, 616 N.W.2d 582, 585 (Iowa 2000)).

Trial counsel has a duty to know the applicable law, protect the defendant from conviction under a mistaken application of the law, and make sure the jury instructions correctly reflect the law. See State v. Goff, 342 N.W.2d 830, 837-38 (Iowa 1983); State v. Allison, 576 N.W.2d 371, 374 (Iowa 1998); State v. Hopkins, 576 N.W.2d 374, 379-80 (Iowa 1998).

The Jury was instructed by the district court as follows:

See Jury Instructions (D0142 ) (FECR140568)

### **INSTRUCTION NO. 15**

The State must prove all of the following elements of Sex Offender Registry Violation as charged in Count 2:

1. On or about April 14, 2021, in Linn County, Iowa, the Defendant was required to register as a sex offender with the Linn County Sheriff;

2. The Defendant knew, or reasonably should have known, of his duty to register as a sex offender; and
3. On or about April 14, 2021, the Defendant failed to provide his new address to the Linn County Sheriff as required within five business days of obtaining a new residence.

If the State has proved all of the elements, the defendant is guilty of Sex Offender Registry Violation under Count 2. If the State has failed to prove any one of the elements, the defendant is not guilty of Sex Offender Registry Violation under Count 2.

### **INSTRUCTION NO. 16**

“Principal place of residence” is defined as the residence of the offender if the offender has only one residence in this state. “Residence” means each dwelling or other place where a sex offender habitually resides, sleeps, or lives or will habitually reside, sleep, or live.

In *Rivera v. Woodward Res. Ctr.*, 865 N.W.2d 887, 892

(Iowa 2015) the Iowa Supreme Court declared,

"Jury instructions ‘must convey the applicable law in such a way that the jury has a clear understanding of the issues it must decide.’"

While counsel has no duty to raise an issue that has no merit, *State v. Dudley*, 766 N.W.2d 606, 620 (Iowa 2009), the fact that an issue is one of “first impression” does not excuse trial counsel’s failure to raise it, *State v. Westeen*, 591 N.W.2d 203, 210 (Iowa 1999). “In situations where the merit of a

particular issue is not clear from Iowa law, the test ‘is whether a normally competent attorney would have concluded that the question . . . was worth raising.’” *Millam v. State*, 745 N.W.2d 719, 721-22 (Iowa 2008) (quoting *State v. Graves*, 668 N.W.2d 860, 881 (Iowa 2003)).

See also *State v. Schoelerman*, 315 N.W.2d 67, 72 (Iowa 1982). Although trial counsel is not required to “be a ‘crystal gazer’” in predicting future changes in law, counsel does have a duty to “exercise reasonable diligence in deciding whether an issue is worth raising.” *Westeen*, 591 N.W.2d at 210 (internal quotation marks omitted). See also *Dudley*, 766 N.W.2d at 623 (counsel ineffective for failing to raise meritorious legal argument which was “worth asserting.”).

The instructions were faulty in that they did not specify the the statutory text that you have to register in person at the sheriff’s office within five business days of changing your residence.

The marshalling instruction did not adequately convey to the jury the elements of the offense. Namely, it failed to

accurately instruct the jury on the in-person reporting requirement, and also regarding the compliance verification procedures the statute requires the Sheriff department to perform. The instructions were faulty in that they did not inform the jury of how properly to evaluate whether a registry violation occurred: The error was not harmless. The defense and State argued to the jury differing theories of what the law required.

Defendant-Appellant Ronald Cooley respectfully requests that this Court reverse his conviction and judgment, and remand this matter to the district court for a new trial.

### **CONCLUSION**

For the above stated reasons, Defendant-Appellant Ronald Cooley respectfully requests this Court to reverse his conviction and sentence and remand this matter for entry of Judgment of Acquittal, or in the alternative for a new trial in Johnson County Case No. FECR140568.

**REQUEST FOR NONORAL SUBMISSION**

Counsel requests this case be submitted without oral argument.

Respectfully submitted,

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**ATTORNEY’S COST CERTIFICATE**

The undersigned certifies that the true cost of producing the necessary copies of the foregoing Brief and Argument was \$4.70, which has been fully paid by the undersigned counsel.

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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) because:

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