

IN THE SUPREME COURT OF IOWA

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STATE OF IOWA )  
 )  
 Appellee, )  
 )  
 v. ) SUPREME COURT 23-1375  
 ) (Linn)  
 Ronald E. COOLEY ) Linn County Case No.  
 ) FECR140568  
 )  
 Defendant/Appellant, )

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APPEAL FROM THE IOWA DISTRICT COURT  
FOR LINN COUNTY  
THE HONORABLE IAN THORNHILL  
DISTRICT COURTJUDGE

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APPELLANT'S APPLICATION FOR FURTHER REVIEW  
OF THE COURT OF APPEAL'S RULING FILED Jan.9,2025

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APPLICATION FOR FURTHER REVIEW

TMM/1/19/25

## **CERTIFICATE OF SERVICE**

On 19th day of Jan., 2025, 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. Washington, Mt. Pleasant, Ia, by U.S. Mail on Jan. 19, 2025.

/s/Thomas M. McIntee\_\_\_\_  
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## **QUESTIONS PRESENTED FOR REVIEW**

**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.**

**II. WHETHER THE TRIAL COURT ERRED BY DENYING THE DEFENDANT'S REQUESTED JURY INSTRUCTIONS, AND WHETHER THE JURY INSTRUCTIONS FAILED TO PROPERLY INFORM THE JURY IN EVALUATING WHETHER A REGISTRY VIOLATION OCCURRED?**

### **STATEMENT SUPPORTING FURTHER REVIEW**

1. The Iowa Court of Appeals erred by affirming the defendant's conviction, judgment and sentence by the Trial Court, in violation of his rights Iowa Constitution Art. V Sect 4, 6, 14, as well as under Article I Sect. 9 and 10 of the Iowa Constitution, and the 5<sup>th</sup> 6<sup>th</sup> and 14<sup>th</sup> Amendments to the U.S. Constitution.
2. 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 104, under the Iowa Constitution Art. V Sect 4, 6, 14, and pursuant to the doctrine of separation of powers.
3. 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 with the verification procedures conducted in person at the sheriff's office as described and mandated in detail in the statutory text.

4. 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.
5. The sheriff's unauthorized and unilateral actions violated the statute and prevented the mandatory statutory compliance verification procedures from being performed to protect Mr. Cooley., as well as the public.
6. 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.
7. In addition, there was no evidence establishing any authority granting or allowing Linn County or the Linn County Sheriff to unilaterally 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.
8. 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.
9. The marshalling instructions 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.

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## **STATEMENT OF THE CASE**

This is an appeal from the Order of Judgment for his conviction and sentence following a jury trial in Linn County case no. FECR140568.

The facts are fully set forth in Appellant's Final Brief and the opinion of the Court of Appeals attached hereto.

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 ) (TrTrialVol1p.32L4top.34L10)

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 Sect 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 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 (FECR140568) (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. 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 6th 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 Linn County 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 Linn County 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 Linn County District Court would clearly and 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

2. electronic form with offender's electronic signature

3. 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.

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.

**II. WHETHER THE TRIAL COURT ERRED BY DENYING THE DEFENDANT’S REQUESTED JURY INSTRUCTIONS, AND 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 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:

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. I find the in-person language is not required or applicable...

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....”).

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.

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 (Iowa 2000)).

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.

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.'"

The instructions were faulty in that they did not specify 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 a new trial in Linn County Case No. FECR140568.

### **ATTORNEY'S COST CERTIFICATE**

The undersigned certifies that the true cost of producing the necessary copies of the foregoing Brief and Argument was \$3.20, which has been fully paid by the undersigned counsel.

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