IN THE SUPREME COURT OF IOWA
Supreme Court No. 18–1777

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JOSHUA KELLY URANGA,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR BOONE COUNTY
THE HON. STEPHEN A. OWEN, DISTRICT ASSOCIATE JUDGE

APPELLEE'S BRIEF

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STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

I. The State thought a letter that was sent to Uranga about his ongoing failure to register as a sex offender no longer existed, but the State located it after trial. The letter was sent after Uranga had already failed to register, to notify him of his failure to register. Did the trial court err in denying his motion for new trial?

Authorities

United States v. Dunkel, 927 F.2d 955 (7th Cir. 1991)
DeVoss v. State, 648 N.W.2d 56 (Iowa 2002)
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Iowa R. Crim. P. 2.24(2)(b)

ROUTING STATEMENT

The State agrees with Uranga's routing statement. *See* Def's Br. at 6. The issue raised here can be addressed by applying established legal principles. Therefore, transfer to the Iowa Court of Appeals would be appropriate. *See* Iowa R. App. P. 6.1101(3)(a).

STATEMENT OF THE CASE

Nature of the Case

This is Joshua Kelly Uranga's direct appeal from conviction for failure to comply with sex offender registry requirements (1st offense), an aggravated misdemeanor, in violation of Iowa Code sections 692A.104 and 692A.108(1)(c) (2016). Uranga was tried before a jury (which acquitted him on a second count), convicted, and sentenced to a two-year term of incarceration, with applicable fines suspended. *See* Order (10/10/18); App. 152.

In this appeal, Uranga's only challenge is that the district court erred in denying his motion for new trial based on post-trial discovery of the existence of a letter that the sheriff's office sent to Uranga on December 2, 2016, to notify him that he was in non-compliance with the requirement that he appear in person sometime during November. Uranga's interrelated claims fail because the letter is not exculpatory.

Statement of Facts

Uranga had been classified as a Tier 3 sex offender, since 2014. *See* TrialTr. 29:8–30:6. Tier 3 sex offenders are required to appear at the sheriff's office in their county of principal residence, once every three months. *See* TrialTr. 21:20–22:2. Uranga was aware of that specific requirement and had complied with it for years. *See* TrialTr. 29:21–37:23; State's Ex. 1–5; App. 52–74; *cf.* TrialTr. 62:18–63:9. Uranga had been on a specific three-month cycle: he was required to appear in person at the Boone County Sheriff's Office at some point during August, November, February, and May. *See* TrialTr. 85:18–23.

Uranga was required to appear in person at the sheriff's office during November 2016. He did not do so. *See* TrialTr. 86:13–15; TrialTr. 95:3–98:15; TrialTr. 110:23–111:7. Uranga did not appear until December 7, 2016. *See* TrialTr. 91:16–92:17; State's Ex. 6; App. 75. By that point, he had failed to appear in November, as required.

Uranga argued that the law gave him a five-day grace period after the end of November, so he could still comply by appearing at the beginning of December. But that was incorrect—and the State's record-keeping witness explained why that was an incorrect view of the applicable law on cross-examination.

> **DEFENSE**: This is December of 2016. So he has five business days after November 30 to turn himself in or to report to the sheriff, correct?
>
> **CHERYL NOLAN**: For the in person verification?
>
> **DEFENSE**: In person verification according to subsection 104.
>
> **CHERYL NOLAN**: That's not correct.
>
> **DEFENSE**: Why not?
>
> **CHERYL NOLAN**: It's not correct because there's — unless there's a change, you have five business days to report any change. But for the verification process, you have to appear by the end of the month for whatever cycle month it is.
>
> **DEFENSE**: Does it say that has to be a change?
>
> **CHERYL NOLAN**: Well, shall appear in person to register with the sheriff where the offender has a residence, maintains employment or is in attendance in school within five business days of being required to register under section 103. So that's different than the in person verification.
>
> **DEFENSE**: So you're saying that the code does not say five days?
>
> **CHERYL NOLAN**: It says five days — five business days for making changes and after you have established your information. But there's another section here on your verification. Just a minute. I'll find that. It's in 692A.108.

See TrialTr. 42:2–43:20; *accord* TrialTr. 122:10–124:14. The sheriff's office had used a form letter that notified offenders when they were in non-compliance and offered a grace period of five days before the sheriff's office would file a criminal complaint, but that was just an exercise of enforcement discretion. *See* TrialTr. 117:3–25.

The jury was instructed on the failure-to-appear offense:

> The State must prove all of the following elements of Count I, Failure to Register, Failure to Appear:
>
> 1. Joshua Uranga had a known legal duty as a Registered Sex Offender to appear, in person, at the Sheriff's Office of Boone County for the month of November, 2016.
> 2. Joshua Uranga voluntarily and intentionally failed to appear in person at the Boone County Sheriff's Office in the month of November 2016.

Jury Instr. 17; App. 77–78. The jury convicted him on that charge.

Post-trial: The letter

Among other motions, Uranga filed a motion for new trial that alleged that the State had suppressed *Brady* material, in the form of the form letter that it printed for Uranga on December 2, 2016, which would have notified him that he was in noncompliance and would have instructed him to appear within five days. *See* Motion for New Trial (5/21/18) at 2–3; App. 90–91. The State replied: "The evidence at trial was that Mr. Uranga never actually received that letter. It was never offered into evidence, and I have yet to actually see it in this case." *See* MotionTr. (5/30/18) 11:25–12:8. The State also pointed out that it was not "suppressed" because witnesses testified to its contents, and the parties argued about the importance/non-importance of the letter while *agreeing* on its contents. *See* MotionTr. (5/30/18) 20:5–21:8.

The court asked Uranga's counsel: "If he's relying on the fact a letter was sent to him . . . , then wouldn't the letter have not been in the State's possession to produce?" Uranga's counsel replied that Uranga never got the letter, and that he was not really *relying* on it—rather, he had relied on "other notifications from the sheriff's office in the past" with similar language. *See* MotionTr. (5/30/18) 23:4–24:18. The court denied the motion about the letter because "it appears that as of the time of trial not to exist." *See* Order (6/28/18); App. 107.

That turned out to be incorrect, as the State later discovered. The State had an "open file" policy for giving discovery materials to attorneys with the public defender's office, and that involved giving them access to the same server/folders that the investigating agency had made available to the county attorney's office. *See* MotionTr. (9/12/18) 8:1–10:14. Uranga's attorney was given access to a folder with materials for Uranga's case in March 2017, a year before trial. There was a document in the electronic discovery folder labeled "Uranga 11-2016 noncompliance"—and the last page of that file was the missing letter. *See* MotionTr. (9/12/18) 11:9–13:8; Hearing Ex. 4; App. 133; Hearing Ex. D; App. 135. A screenshot of the folder showed that document had a "last modified" date of April 26, 2018—which

was before Uranga's trial. That document may have been added to the discovery document folder on April 26, 2018, or it may have been added *earlier* and renamed or modified in some other way on April 26, 2018. *See* MotionTr. (9/12/18) 11:6–23; Hearing Ex. 3A; App. 147; MotionTr. (9/12/18) 13:9–14. If Uranga's private attorney had requested any discovery materials that appeared to be missing when he took over representation from the public defender's office, the county attorney's office would have sent the missing materials or investigated the matter further. *See* MotionTr. (9/12/18) 14:17–15:21; *cf.* Initial Appearance Order (3/20/18); App. 45.

All of that information came out in litigation over Uranga's renewed motion for new trial, which he filed after he received the "missing" letter as part of a discovery file for another case. *See* Motion (8/17/18); App. 130. The court ruled that the letter was redundant:

> [A]t trial the parties presented their testimonial evidence and argument of the language supposedly contained in the actual letter. The court now has the actual letter in its possession for consideration. The court concludes that the prior presentation of the supposed language in the letter to the jury is irrelevant as the argument at trial conveyed the import and message of the actual letter sufficiently to the jury and the jury was properly instructed on the law by the court. As discussed further below, the court finds that submission of the actual letter to the jury probably would not have changed the result of the verdict.

Order (9/14/18) at 2; App. 140. The court noted other problems with the idea that Uranga deserved a new trial because of that letter, but it mostly focused on its determination that the letter was not material:

> [T]he court finds that the letter is not material. The defendant was in violation of the statute under which he was charged before the letter was sent. The burden to comply with the SOR law rests with the defendant. The defendant was not justified in relying on the letter as a defense at trial since the upshot of the letter from a defense perspective is to argue for the existence of a grace period which the Iowa Supreme Court ruled upon before trial and found no grace period existed. Further, there is no evidence to support the existence of any exigent circumstance by which the sheriff could have modified the statutory period of time in which the defendant was to appear at the Sheriff's office to fulfill his SOR registration requirements. The letter is not a statement of the law upon which the defendant would have been justified in relying upon in December 2016 or on May 1, 2018. The defendant seeks its use through a new trial for the purposes of jury nullification, and its use at trial in May 2018 would also have been legally incorrect in any defense.

Order (9/14/18) at 3; App. 141 (referring to *State v. Coleman*, 907 N.W.2d 124 (Iowa 2018)).

Additional facts will be discussed when relevant.

ARGUMENT

I. The trial court did not err in denying Uranga's motion for new trial. The letter was made available, it was cumulative with testimony that described its contents, and it could not have any effect on the jury's verdict.

Preservation of Error

Error was preserved when Uranga litigated this claim in his motion for new trial and the trial court rejected and overruled it. *See* Motion (8/17/18); App. 130; Order (9/14/18) at 2–3; App. 140–41; *accord Lamasters v. State*, 821 N.W.2d 856, 864 (Iowa 2012).

Standard of Review

The ruling denying the motion for new trial is reviewed for abuse of discretion. *See State v. Nitcher*, 720 N.W.2d 547, 559 (Iowa 2006); *State v. Adamson*, 542 N.W.2d 2, 13 (Iowa Ct. App. 1995).

Merits

To show the trial court erred in not granting a new trial based on newly discovered evidence, Uranga must establish that the letter:

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

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

The first problem is that the letter had been made available by April 26, 2018, at the very latest—it was part of the open/available discovery file before Uranga's jury trial. *See* MotionTr. (9/12/18) 11:6–23; Hearing Ex. 3A; App. 147. And Uranga's attorney never requested any discovery from the county attorney's office or alerted the office to the absence of the letter, which it presumably would have been able to find. *See* MotionTr. (9/12/18) 14:17–15:21. Uranga also did not establish that he sought the records from the sheriff's office. Because Uranga did not "exhaust the probable sources of information concerning his case" for this evidence—which he believed *did* exist—he did not exercise due diligence. *See State v. Compiano*, 154 N.W.2d 845, 850 (Iowa 1967) (quoting *Westergard v. Des Moines Ry. Co.*, 52 N.W. 29, 44 (Iowa 1952)). That already dooms his claim.

More importantly, the district court was correct that this letter was cumulative and could not have changed the result at trial. *See* Order (9/14/18) at 2–3; App. 140. The letter stated Uranga was "on the list to appear in our office to verify [his] registration information for the month of November," and it stated that he was *already* in "non-compliant status." *See* Hearing Ex. D; App. 135. By the time that letter was written on December 2, 2016, the crime was complete. *See*

Order (9/14/18) at 3; App. 141 ("The defendant was in violation of the statute under which he was charged before the letter was sent.").

Uranga argues that "[u]nder Iowa Code § 692A.108(5) and (6), the Sheriff's December 2, 2016 letter effectively functions as a modification of the timeframe by which [he] was required to appear in compliance with his SOR requirements." *See* Def's Br. at 9. But that defense was never argued at trial or raised before the district court, so it cannot be raised now. *See DeVoss v. State*, 648 N.W.2d 56, 60–62 (Iowa 2002). Moreover, any such waiver would require a showing of exigent circumstances under section 692A.108(5) or a showing that Uranga had appeared in person at the sheriff's office within 30 days of his required appearance in November under section 692A.108(6), which are wholly absent from the record and from Uranga's argument. *See* Iowa Code § 692.108(5)–(6). And if such a waiver were granted, this letter would not have been printed on December 2, 2016, since the sheriff's office would know Uranga had not yet failed to appear. Logically, this letter does not help Uranga—it demolishes his case.

Uranga argues that failure to provide this letter "prevented [him] from presenting such argument as a fact question for the jury" as to whether he complied with the instructions in the letter. *See* Def's

Br. at 9–10. But Uranga had already specifically affirmed that he never received the letter, and his argument was about reliance on *other* letters that he had already received. *See* MotionTr. (5/30/18) 23:4–24:18. Uranga presented that exact argument to the jury, using testimony about the typical contents of those form letters. *See* TrialTr. 114:24–115:23; TrialTr. 118:5–12; TrialTr. 119:21–121:22; TrialTr. 130:20–134:8; TrialTr. 178:4–8; TrialTr. 175:18–176:1. To prevail, Uranga must meet "the high standard of showing that the verdict probably would have been different." *See More v. State*, 880 N.W.2d 487, 510 (Iowa 2016). On this claim, he cannot even come close.

Uranga's *Brady* claim is flawed for the same reasons. The State did not suppress this evidence—it was on the discovery server and would have been found and provided, upon request. *See* MotionTr. (9/12/18) 14:17–15:21. And this evidence is not favorable to Uranga—to the contrary, it forecloses his only near-plausible defense.

Uranga's counsel's brief closes by referencing other parts of Rule 2.24(2)(b), and he asks this Court to grant relief under four different subsections of the rule. *See* Def's Br. at 15. This internal cross-reference points back to his block-quote of Rule 2.24(2)(b), describing situations where the district court may grant a new trial:

> (6) When the verdict is contrary to law or evidence.
>
> (7) When the court has refused properly to instruct the jury.
>
> (8) When the defendant has discovered important and material evidence in the defendant's favor since the verdict, which the defendant could not with reasonable diligence have discovered and produced at the trial. . . .
>
> (9) When from any other cause the defendant has not received a fair and impartial trial.

See Iowa R. Crim. P. 2.24(2)(b); Def's Br. at 11. But he makes no argument on any grounds other than newly discovered evidence. *See* Def's Br. at 11–15. This Court should not speculate as to what those arguments might have been. *See, e.g.*, *United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991) ("Judges are not like pigs, hunting for truffles buried in briefs.").

The evidence presented at trial was strong, and would only have been bolstered by this letter. Therefore, Uranga cannot establish that the court abused its discretion in denying his motion for new trial.

CONCLUSION

The State respectfully requests that this Court reject Uranga's challenge and affirm his conviction.

REQUEST FOR NONORAL SUBMISSION

This case should be set for nonoral submission. In the event argument is scheduled, the State asks to be heard.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

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