

## IN THE IOWA DISTRICT COURT IN AND FOR POWESHIEK COUNTY

STATE OF IOWA,  Plaintiff, v.  CRISTHIAN BAHENA RIVERA,  Defendant.	CASE NO. FECR010822  RULING ON DEFENDANT'S MOTION FOR NEW TRIAL AND IN ARREST OF JUDGMENT
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**I. STATEMENT OF THE CASE**

Cristhian Bahena Rivera was convicted of Murder in the First Degree on May 28, 2021, following a trial by jury. On July 8, 2021, Defendant filed a Motion for New Trial and Motion in Arrest of Judgment. A supplemental Motion for New Trial was filed July 14, 2021. Hearing on Defendant's Motions was held on July 27, 2021. The State was represented by Assistant Attorney General Scott Brown and Poweshiek County Attorney Bart Klaver. The Defendant appeared personally with his attorneys of record, Chad and Jennifer Frese. Interpreters Americo Maldonado and Francisco Melendez were sworn-in prior to the commencement of the hearing. Evidence was received and the matter was submitted.

**II. ISSUE**

Is Defendant entitled to a new trial based upon the grounds in his Motion for New Trial and/or Motion in Arrest of Judgment?

**III. FINDINGS OF FACT**

1. On May 28, 2021, a jury returned a verdict finding the Defendant guilty of Murder in the First Degree. At that time, sentencing was set for July 15, 2021.

2. On July 8, 2021, the Defendant filed a Motion for New Trial arguing he is entitled to a new trial based upon newly discovered evidence, alleged error in the jury instructions, and that the verdict was contrary to the weight of the evidence. Defendant simultaneously filed a Motion in Arrest of Judgment asserting that no judgment could be rendered on the verdict based upon the whole record.
3. On July 13, 2021, Defendant filed a Motion to Compel seeking information he claimed was necessary to prove a *Brady* violation and prove entitlement to a new trial. The Court denied the Motion to Compel in a written order filed July 16, 2021. The Court ruled that it had authority to compel discovery after a conviction for limited purposes, but that Defendant's request for information was overbroad, lacked a nexus, and would amount to a fishing expedition.
4. On July 14, 2021, Defendant filed a Supplemental Motion for New Trial alleging further newly discovered evidence in the form of a *Brady* violation.
5. The State filed a written resistance to the Defendant's Motion on July 14, 2021, and supplemental resistance on July 27, 2021. Defendant then filed a reply brief on July 14, 2021.
6. Further facts set forth at the hearing on July 27, 2021, will be set forth and developed in the analysis.

#### IV. PRINCIPLES OF LAW

1. Iowa Court Rule 2.24 concerns post-trial motions in criminal case. A motion for new trial, based upon newly discovered material evidence may be brought under Rule 2.24(2)(8). It is a fundamental cornerstone of our legal system that everyone is entitled to a fair trial.

*State v. Compiano*, 261 Iowa 509, 154 N.W.2d 845 (Iowa 1967). However, a fair trial does not mean a perfect trial. *Id.* In deciding a motion for new trial, the “district court is entitled to weigh the evidence and consider the credibility of the witnesses.” *State v. Maxwell*, 743 N.W.2d 185, 193 (Iowa 2008).

2. The necessary elements a defendant must prove to be entitled to a new trial based upon newly discovered evidence are: 1) the evidence was discovered after the verdict; 2) the evidence could not have been discovered earlier in the exercise of due diligence; 3) the evidence is material to the issues in the case and not merely cumulative or impeaching, and 4) the evidence probably would have changed the result of the trial. *Origer v. State*, 495 N.W.2d 132, 139 (Iowa Ct. App. 1992).
3. In looking at whether evidence would probably change the result of trial, courts look to whether the evidence is more likely than not to have resulted in a different outcome. *State v. Adamson*, 542 N.W.2d 12 (Iowa Ct. App. 1995). Motions for new trials based upon newly discovered “are not favored and should be closely scrutinized and granted sparingly.” *State v. Kramer*, 231 N.W.2d 874, 881 (Iowa 1975).
4. In *Brady v. Maryland*, the United States Supreme Court held that “suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.” 373 U.S. 83, 87 (1963). A defendant must prove by a preponderance of the evidence that 1) the prosecution suppressed evidence; 2) the evidence was favorable to the defendant; and 3) the evidence was material to the issue of guilt. *DeSimone v. State*, 803 N.W.2d 97 (Iowa 2011).

5. Prosecutors have “a duty to learn of any favorable evidence” known by the government, and to disclose the evidence regardless of whether it has been requested. *Id.* Evidence is not suppressed under *Brady* “if the defendant either knew or should have known of the essential facts permitting him to take advantage of the evidence.” *Id.* at 103 (quoting *Harrington v. State*, 659 N.W.2d 509, 522 (Iowa 2003)). Courts are unlikely to find a lack of diligence unless defense counsel are aware of potentially exculpatory nature of the evidence and its existence. *Id.* (citing *United States v. Griggs*, 713 F.2d 672, 674 (11th Cir.1983)).
6. Evidence is favorable when “disclosed and used effectively, it may make the difference between conviction and acquittal” and includes both exculpatory and impeachment evidence. *Id.* at 105 (quoting *United State. Bagley*, 473 U.S. 667, 676 (1985)).
7. Under *Brady*, evidence is material when “there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.” *Id.* at 105 (citing *Bagley*, 473 U.S. at 682). “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Id.* Put another way, “the question is whether the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict.” *Id.* (quoting *Harrington*, 659 N.W.2d at 523). In determining material, the court is to consider the totality of the circumstances. *Aguilera v. State*, 807 N.W.2d 249 (Iowa 2011).
8. A motion for new trial based upon a claimed issue in the jury instructions may be granted only when the court “misdirected the jury in a material matter of law or has improperly instructed the jury.” *State v. Lindsey*, 302 N.W.2d 98, 101 (Iowa 1981). However, when

the record shows a specific instruction was not requested or if no objections were made prior to submission, any error is deemed waived. *Parsons v. Brewer*, 202 N.W.2d 49 (Iowa 1972).

9. A verdict “is contrary to the weight of the evidence only when a greater amount of credible evidence supports one side of an issue or cause than the other.” *State v. Ary*, 877 N.W.2d 686, 706 (Iowa 2016). To decide whether a verdict is contrary to the weight of the evidence, the court may examine the credibility of witnesses and evidence, and must determine whether “the more credible evidence supports one side than the other.” *Maxwell*, 743 N.W.2d at 193 (quoting *State v. Nitcher*, 720 N.W.2d 547, 559 (Iowa 2006)). The Iowa Supreme Court has stated that “only in the extraordinary case, where the evidence preponderates heavily against the verdict, should a district court lessen the jury’s role as the primary trier of fact and invoke its power to grant a new trial.” *Id.* (citing *State v. Shanahan*, 712 N.W.2d 121, 135 (Iowa 2006)).
10. A motion in arrest of judgment, pursuant to Rule 2.24(3), functions as an application asserting that no judgment be rendered on a finding, plea, or verdict of guilty, and may be granted only when on the whole record no legal judgment can be pronounced. *State v. Stennett*, 220 Iowa 388, 260 N.W.2d 732 (Iowa 1935).

## V. ANALYSIS

### A. Motion for New Trial and Motion in Arrest of Judgment filed July 8, 2021

The Court begins with the Motion for New Trial based upon the alleged confession of Gavin Jones heard and reported by Arne Maki. As stated above, the Defendant bears the burden of proving 1) the evidence was discovered after the verdict; 2) the evidence could not have been

discovered earlier in the exercise of due diligence; 3) the evidence is material to the issues in the case and not merely cumulative or impeach; and 4) the evidence probably would have changed the result of the trial. *Origer*, 495 N.W.2d at 139.

The parties agree that Maki reported the confession he allegedly was told by Jones to the Iowa Department of Corrections of May 26, 2021, as Maki was then in custody by the IDOC. The information was then relayed to the Assistant Attorney General Scott Brown who shared it with the defense counsel. There is no official record of what exactly was communicated to defense counsel or how defense counsel chose to react to the information. However, in their filings regarding the present Motion, both parties submit to the Court that the State offered to use its resources to investigate the matter further, but defense counsel took the view that the alleged confession was inconsistent with the testimony of the Defendant, which was heard by the jury just prior. The record clearly reflects, no request for a continuance was ever made. Also received by law enforcement on May 26, 2021, was a report made by Lyndsey Voss stating that Gavin Jones had confessed to killing Mollie Tibbetts to her in early May 2021.

After trial, the State provided two reports providing further details about Maki's and Voss's statements to law enforcement. In their Motion, defense counsel acknowledges that the State did provide the information about the statements to the defense counsel prior to the jury returning a verdict. However, they argue the information that was received post-verdict differed from that what was communicated pre-verdict. The State argues the information was substantially similar.

The first element the Defendant must prove is that the evidence was discovered after the verdict. Defendant argues that the information received during trial was only complete with the post-verdict information, and thusly, the evidence was not truly "discovered" until after the verdict

was returned by the jury. Regarding the Maki report, it is uncontested that the information that a person in custody had reported being told a confession was told to the defense counsel. Further, it is clear to the Court that enough details of the alleged confession were shared with defense counsel for them to recognize the alleged confession was inconsistent with the Defendant's testimony. Defense counsel may not have had every detail of the alleged confession until receiving the report after trial; it is clear enough to the Court that defense counsel did have the core information that an individual had confessed to killing Mollie Tibbetts and some details of the alleged murder with which to compare to Defendant's testimony. Therefore, the Court finds the Defendant has failed to prove the first element regarding the Maki matter.

Regarding the Voss report, the defense asserts they were not aware of the report until after the verdict. The State contends the defense had the information during trial alongside the Maki statements. Again, the lack of official record as to what was told to the defense obfuscates the Court's analysis. The defense's Motion alleges Voss's interviews with law enforcement occurred in the afternoon and late afternoon on May 26. While the timing of those interviews make it unlikely the information was presented to the defense with the Maki statements, which were made in the early afternoon, it is Defendant's burden to prove the information was obtained after the verdict was returned on May 28. The Court finds the Defendant has not carried his burden to prove the first element regarding the Voss matter.

Assuming *arguendo*, the Maki and Voss reports were not discovered until after the verdict was returned and could not be discovered in due diligence, the Court finds the alleged confession of Gavin Jones would not have changed the result of the trial. Defendant, in his Motion, greatly downplays the discrepancies between his testimony at trial and the account that Maki reports he

was told by Jones. For example, the specific details about how Mollie Tibbetts was murdered are vastly different. At the hearing, Maki recalls that Jones said he stabbed Mollie Tibbetts in the basement of the “trap house” and then wrapped her body in a tarp before pinning the murder on the Defendant. However, at trial, the Defendant testified that two individuals came to his residence, forced him to drive into Brooklyn and follow Mollie while she was running, and then wait in the car while one of them killed Mollie. Defendant also testified that it was he who took the body of Mollie Tibbetts out of his car trunk and placed the body in the cornfield where she was eventually recovered.

Had both versions of events been presented at trial, the jury would have had to make a credibility determination not between the State’s witnesses and those of the defense, which is a typical scenario, but between the Defendant and his own witness. While the Court cannot say for certain what would have happened if the alleged confession of Jones been presented at trial, it is reasonable to conclude that the jury would have decided either Jones or the Defendant was not being truthful. The aspects of Jones’s confession that align with Defendant’s testimony are minor in comparison with the numerous divergences.

Voss’s affidavit states that Gavin Jones told her “that Mexican shouldn’t be in jail for killing Molly Tibbets. I killed her.” Voss also stated that Jones was high on methamphetamine at the time he made the statement. The Court concludes that statement alone could have bolstered the Defendant’s testimony; however, Jones’s drug use would certainly have undermined his credibility as a witness. Further, if the additional statements Jones allegedly made confessing to the murder of Mollie were presented at trial, and bolstering effect would be negated due to the inconsistencies. Therefore, the Court finds the statements of Jones would probably not change the result of the trial,



and Defendant has not successfully proven entitlement to a new trial based upon newly discovered evidence.

The Defendant also seeks a new trial based upon the Court's instruction regarding reasonable doubt. Defendant argues the Court's decision to not use the uniform instruction is in error and so prejudicial as to deny him due process. Defendant has not argued or shown that the instruction given by the Court "misdirected the jury in a material matter." *Linsey*, 302 N.W.2d at 101. Further, as the State points out, the instruction given by the Court has been approved by the Iowa Supreme Court in *State v. Frei*, 831 N.W.2d 70 (Iowa 2013) (overruled on other grounds.).

The final grounds for new trial Defendant argues in his primary motion is that the guilty verdict was contrary to the weight of the evidence. In reviewing the evidence and testimony provided at trial, the Court finds the verdict was not contrary to the weight of the evidence. In this case, the evidence does not preponderate heavily against the verdict, and the Court finds no reason to disturb the jury's verdict.

Defendant has also filed a Motion in Arrest of Judgment based in large part upon the arguments made in the Motion for New Trial. As the Court has found the Defendant is not entitled to a new trial, the Court sees no reason judgment cannot be rendered, as the whole record would support pronouncement of said judgment.

#### **B. Supplemental Motion for New Trial filed July 14, 2021**

Defendant filed a Supplemental Motion seeking a new trial based upon an alleged *Brady* violation. Defendant argues an intricate account of events and individuals alleged to be involved in sex trafficking are related to the prosecution of the Defendant, and that the State failed to turn

this information over to the defense. The first element to be proven for a *Brady* violation is that the prosecution suppressed evidence. It is uncontested that the State did not disclose any of the James Lowe investigation to the defense. The State; however, did share the contents of interviews and tips that were received during the course of Mollie's disappearance, which the defense has now filed in part to demonstrate that the possibility of sex trafficking being involved. In reviewing the records and testimony before it, the Court determines the State did not suppress evidence regarding sex trafficking generally, but did suppress evidence of the James Lowe investigation.

Next, it must be proven that the evidence was favorable to the Defendant. Favorable evidence is that if "disclosed and used effectively, [it] may make the difference between conviction and acquittal." *DeSimone*, 803 N.W.2d at 105. It is a common strategy in murder cases for the defense to proffer alternative suspects to create reasonable doubt in the minds of the juror. In this case, there was no eyewitness testimony. The Court thinks evidence of a kidnapping that happened near Brooklyn could be favorable, as it would have provided an alternative suspect.

The final element of a *Brady* violation is the Defendant must prove the evidence was material to the issue of guilt. Evidence is material when "there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *Id.* The Defendant has offered little to no argument as to the reasonable probability of a different result at trial. The Court has reviewed the arguments of the parties and the records, and finds that Defendant has failed to prove materiality. Providing an alternative suspect is only a useful strategy when it is believable that the alternative suspect could have committed the offense. There has been no evidence that James Lowe had any connection to Mollie Tibbetts or to the Defendant. Defense counsel asserts the connection between Mollie Tibbetts's murder and Lowe is the alleged

confession of Jones in which he identifies a 50-year old trafficker. However, apart from defense counsel, no party has ever asserted that James Lowe is that individual. The Court also questions whether the Lowe evidence would have survived a relevance challenge at trial under Iowa Court Rules 5.401 and 5.403. Defendant's trial strategy included casting doubt onto other individuals, such as Dalton Jack and Ron Pexa. It is doubtful that adding another possible suspect, one with no apparent ties besides being in the same county as Mollie, would have a reasonable probability of change the result of trial. Further, the James Lowe investigation would not explain how the Defendant led law enforcement to Mollie Tibbetts's body or how her blood was found in the Defendant's car trunk.

Defendant argues the Lowe investigation evidence supports and is supported by the alleged confession of Jones as reported by Maki and Voss. The Court disagrees. As stated above, the alleged confession is significantly at odds with the statements and testimony of the Defendant, and the evidence offered at trial. The addition of evidence of an unrelated investigation alongside a dubious and divergent alleged confession would likely have confused the issues for the jury. The Court finds there is no reasonable probability of a different outcome at trial had the information been disclosed to the defense. Therefore, the Court finds Defendant has failed to establish a *Brady* violation.

## VI. CONCLUSIONS OF LAW

Defendant is not entitled to a new trial based upon the grounds in his Motion for New Trial and/or Motion in Arrest of Judgment.

**VII. ORDER**

**IT IS THEREFORE ORDERED** the Defendant's Motions for New Trial and Motion in Arrest of Judgment are overruled and denied. Sentencing is set for August 30, 2021 at 1:30 p.m. Sentencing will take place at the Poweshiek County Courthouse, Montezuma, Iowa.



State of Iowa Courts

**Case Number**  
FECR010822  
**Type:**

**Case Title**  
STATE OF IOWA VS RIVERA, CRISTHIAN BAHENA  
OTHER ORDER

So Ordered

A handwritten signature in blue ink that reads "Joel D. Yates".

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Joel D. Yates, District Court Judge,  
Eighth Judicial District of Iowa

Electronically signed on 2021-08-02 15:21:14