

IN THE IOWA DISTRICT COURT FOR POWESHIEK COUNTY

STATE OF IOWA, v. CRISTHIAN BAHENA RIVERA, Defendant.	Plaintiff.	NO. FECR010822 STATE'S RESISTANCE TO DEFENDANT'S MOTION FOR NEW TRIAL
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COMES NOW the State of Iowa, by and through Scott D. Brown, Assistant Attorney General; and Bart Klaver, Poweshiek County Attorney, and for its Resistance to Defendant's Motion for New Trial states:

1. The Defendant was convicted of Murder in the First Degree by a Scott County Jury. Sentencing will be held on a future date in Poweshiek County District Court.
2. The Defendant has filed a Motion for New Trial claiming a new trial should be granted based on newly discovered evidence, that the Court erred in giving the reasonable doubt instruction proposed by the State, and that the verdict is contrary to the weight of the evidence.
3. The State resists the defendant's motion on each of the three claims.

Newly Discovered Evidence – Legal Standard
4. The Defendant claims that information learned from "inmate" Arne Maki, "inmate 2," Gavin Jones, and "reporting party" Lyndsey Voss constitutes newly discovered evidence and the basis for a new trial. Generally, the claim is that Gavin Jones admitted to Maki that he was responsible for Mollie Tibbetts' death. This statement was made while both were incarcerated in the Keokuk County jail in November of 2020. Further, the claim is that information from Lyndsey Voss corroborates this claim based on a statement Jones made to her at some point after Mollie Tibbetts' death. Voss and Maki are connected through their mutual acquaintance of Gavin Jones.
5. It should be noted that the information from Maki and Voss concerning Mollie Tibbetts and Gavin Jones and others was made known to investigators with the Mount Pleasant Correctional Facility and the Iowa Division of Criminal Investigation on

May 26, 2021. It was agents of the State that first learned of the information and, regardless of its lack of credibility, promptly provided it to the defense on the same day. This particular issue will be discussed in more detail below.

Further Legal Authority

6. Iowa Rule of Criminal Procedure 2.24(2)(b)(8) authorizes the Court to grant a new trial “[w]hen 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.” A motion for new trial on the basis of newly discovered evidence should be granted only where the evidence “(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.” *Smith*, 573 N.W.2d at 21 (quoting *State v. Jefferson*, 545 N.W.2d 248, 249 (Iowa 1996)).

7. The showing of diligence required “is that a reasonable effort was made.” *State v. Compiano*, 261 Iowa 509, 519, 154 N.W.2d 845, 850 (1967). The defendant is “not called upon to prove he sought evidence where he had no reason to apprehend any existed.” *Id.* (quoting *Westergard v. Des Moines Ry.*, 243 Iowa 495, 503, 52 N.W.2d 39, 44 (1952)). However, a defendant “must exhaust the probable sources of information concerning his case; he must use that of which he knows, and he must follow all clues which would fairly advise a diligent man that something bearing on his litigation might be discovered or developed.” *Id.* (emphasis in original) (quoting *Westergard*, 243 Iowa at 503, 52 N.W.2d at 44). “Many, perhaps most, newly discovered evidence claims must be rejected on the basis of the second standard (could not have been discovered earlier in the exercise of due diligence).” *Miles*, 490 N.W.2d at 799.

8. As a general rule, a defendant is not entitled to a new trial on the basis of newly discovered evidence where the defendant was aware of the evidence prior to the verdict but made no affirmative attempt to obtain the evidence or offer the evidence into the record. Thus, in *State v. Jefferson*, we affirmed the district court’s denial of the defendant’s motion for new trial where the defendant learned of the evidence during trial but took no affirmative action to get the evidence in the record prior to the jury returning

its verdict. 545 N.W.2d at 251. We explained the defendant must seek out evidence of which he was aware to “prevent the defendant from gambling on a defense verdict while holding back his grounds for a new trial in case the jury returned a verdict of guilty.” *Id.* at 250. Similarly, in *State v. Compiano*, we affirmed the district court's denial of the defendant's motion for new trial where the defendant learned of potential new evidence during trial but did not seek a continuance to investigate the matter. See 261 Iowa at 520, 154 N.W.2d at 851. We affirmed the trial court's finding that “due diligence had not been shown.” *Id.* at 519, 154 N.W.2d at 851. We explained the rationale of the rule was to bring finality to the criminal trial and to avoid unfair gamesmanship, stating, “Courts are aware that, unless a movant is required to show timely due diligence in the discovery of new evidence, his newly discovered evidence might be withheld as trial strategy to obtain a second trial if needed.” *Id.* at 518, 154 N.W.2d at 850. *State v. Uranga*, 950 N.W.2d 239, 243 (Iowa 2020).

Claim of Newly Discovered Evidence Procedurally Barred

9. The defendant was aware of or had reason to be aware of the evidence he now claims is newly discovered. On May 26, 2021, in the afternoon, after the defense concluded their case, the information from inmate Maki and Voss relating to Jones and others being involved in Mollie Tibbetts' death was brought to the attention of the State who immediately brought it to the attention of the defense. Law enforcement that had been provided the information met with the defense attorneys along with the prosecutors in the jury room on the third floor of the Scott County Courthouse. The information relating to the claims that Jones and others being involved in Mollie's disappearance and death including the information that she was abducted, bound, and kept at a secondary location and that she was killed by a person other than the defendant was presented to the defense. At the time the information was provided to the defense, prosecutors offered to request a suspension of the trial and to deploy agents from DCI to the Mt. Pleasant Correctional Facility to follow up on the information provided by inmate Maki. This request would have necessarily included interviewing or following up with any other persons associated with the claim. The State left it completely to the discretion of the defense as to whether or not they wanted law enforcement to pursue the lead provided by the

investigators at the Mt. Pleasant Correctional Facility. The defense informed the undersigned that the information was inconsistent with their client's testimony indicating that it was not worth pursuing. Shortly after trial, two reports were provided to the defense detailing Maki's and Voss's statement to police. The information in the reports was substantially the same as what was provided to the defense prior to the end of the trial.

Apparently, they now regret the decision to not pursue the information from Maki and Voss. The information they claim forms the basis for their new trial motions is not newly discovered. The information was not discovered after the verdict and could have been discovered earlier in the exercise of due diligence. The decision to decline further pursuit of the other information brought to the State and the defense's attention through Arne Maki and Lyndsey Voss and any information that is related to it is more properly addressed in post-conviction relief in the context of an ineffective assistance of counsel claim. *State v. Trane*, 934 N.W.2d 447, 464 (Iowa 2019).

10. Although the claimed newly discovered evidence relates to the issues in the case since it concerns the death of Mollie Tibbetts, it cannot be said that it probably would have changed the result of the trial. As detailed below, the information is wholly different than the testimony of the defendant and would have most certainly caused his testimony to be further questioned. It would make no sense for the defense to offer the testimony of the defendant and then offer a different version of events that contradicts his testimony. Even though there were additional details learned after the verdict, the core of the information provided by Maki and Voss was known by the defense prior to the end of trial. Certainly enough for them to make an informed decision as to whether or not the information should be pursued before the end of trial. Based upon the knowledge possessed by the defense prior to the rendering of any verdict it should be deemed that the defense waived any claim to a new trial based upon newly discovered evidence.

Merits of Newly Discovered Evidence Claim

11. The only substantiated material fact consistent with that of the defendant from Maki or Voss is that Molly Tibbetts was murdered. In all other respects the information provided by Maki and Voss is completely unsupported by other evidence

learned in the investigation and offered at trial and is completely opposed to the testimony provided by the defendant. The defendant claims in paragraph 40 of their motion that the information provided by Maki and Voss "does not fit neatly into the defendant's account of the events....". More appropriately stated, the information provided by Maki and Voss is grossly inconsistent with the testimony of the defendant and is wholly different from the physical evidence and the circumstances discovered by the investigation and presented by the State and the defense at trial.

12. If the information from Maki and Voss is to be considered on the merits, such information invites many questions. The answers to these questions defeat any claim made by Jones that he or anyone associated with him was the killer of Mollie Tibbetts and show any account offered by Maki or Voss is unbelievable.

a. *Why does the defendant testify in the manner he did at trial if anything provided by Maki and Voss is accurate?* The defendant testified that masked men appeared at his residence without a vehicle, forced him to use his vehicle, found Mollie running on a roadway, confronted her while the defendant was driving, abducted her by stashing her in the trunk of his Malibu, and forced him to drive Mollie and the unknown men directly to the cornfield. The unknown men stabbed Mollie to death and forced the defendant to take Mollie into the cornfield. Mysteriously the two masked men disappear and leave the vehicle with the keys and also leave both the defendant's and Mollie's cell phones. The defendant's testimony never mentions a secondary location or any period of time between the abduction and the cornfield and also fails to mention anything concerning any other person being involved.

i. None of the defendant's testimony is remotely similar to the information provided by Maki and Voss. If Maki's and Voss's information is accurate, the defendant's testimony as well as his earlier statement to police would have been that he did not know what happened to Mollie and that he had no knowledge of her whereabouts. Instead, he repeatedly confessed to causing her death and led law enforcement to her body.

b. *How would the Defendant have been able to guide investigators to the body of Mollie Tibbetts located in a cornfield in a remote portion of Poweshiek County*

if he was simply a person to blame by Jones and others? Investigators had been looking for Mollie Tibbetts from July 19, 2018, until August 21, 2018. She was found 423 feet from the roadway in a corn field. She was found only after the defendant was taken into the cornfield and pointed out her location. If what Maki and Voss report is accurate, the defendant would have no knowledge of Mollie's whereabouts, and he would have been incapable of leading investigators to her location.

c. *How and why would the defendant describe a confrontation with Mollie Tibbetts on 385th Avenue east of Brooklyn?* If only relationship the Defendant has to the "real killers" is a patsy to later blame for Tibbetts' murder, then he would have no knowledge of her location when she was running on 385th Avenue. Tibbetts' running route was verified by a surveillance video that captured Tibbetts running in Brooklyn just after 7:45 p.m. on July 18, 2018, an eyewitness who knew Tibbetts and observed her running on 385th Avenue in a pink jogging bra and black shorts – the same clothing she was found to be wearing when her body was recovered. Tibbetts' location was further corroborated by cell phone data evidence retrieved and analyzed by investigators. This evidence corroborated the Defendant's admissions to police during his interview at the sheriff's office.

d. *How does the blood of Mollie Tibbetts find its way into the trunk of the black Chevy Malibu exclusively operated by the defendant if Jones and others killed her?* No person identified by Maki or Voss connects Jones or any other person with the defendant or his vehicle. The defendant never reports to any person and never tells investigators that his vehicle was stolen, missing, or knowingly used by any other individual. If any part of the information provided by Maki or Voss is accurate, then no blood would be found in the Malibu since Jones and others had no access to the it. There is no other information provided by either Maki or Voss concerning how Tibbetts would have been transported to the cornfield. There is no known connection between Jones, or any person associated with him, and the defendant and no information connecting Jones or anyone else to the defendant's black Malibu.

e. *Why would a person trying to frame another person conceal Mollie's body in a very remote location over 400 feet from any roadway?* Jones and others

associated with him would have no reason to hide Mollie's body if they had a plan to blame another individual. The opposite would be true. Mollie's body would have been placed in a spot where she could be found so the blame could be put in place. And they would have left her in a location nearer the defendant's home.

f. *Why aren't plastic and bindings, as described by Maki, found with Mollie in the cornfield?* Maki reports to the defense investigator that Mollie was wrapped in plastic when she was removed from the "trap house". Jones and others would have no reason to dispose of a plastic covering of the body or remove bindings from Mollie's hands or feet. None were found and there is no evidence that she was ever bound or wrapped in any covering.

g. *Why are Mollie's shorts and underwear removed and why is she found with her legs apart if the motivation to kill her related to placing her in a location to blame another person?* The defendant admitted to finding Mollie sexually attractive. There is reason to believe that she was sexually assaulted since her lower clothing was removed and she was found with her legs apart. These circumstances and physical findings corroborate the sexual motive admitted by the defendant and argued to the jury at his trial. The information provided by Maki and Voss suggests no sexual motive by Jones and therefore no reason to remove Mollie's clothing or part her legs.

13. If a new trial is granted it will be impossible for the defense to present the evidence from Maki and Voss in any coherent manner without completely contradicting and undermining the defendant's testimony. The only way this could play out would be for the defendant to testify to his version and then offer a second nearly completely contradictory statement from Jones and others or if the defendant did not testify in a second trial, the State would offer his prior testimony that would surely be followed by the defense offering the same nearly contradictory statements from Jones and others.

14. The court should consider this claimed newly discovered evidence in the context of the trial where the defense attempted to cast blame for Mollie's death on Dalton Jack and Ron Pexa, among several others during trial. Although adding yet another unsubstantiated theory involving Jones and others to the long list of persons the defendant attempted to associate with Mollie's death fits within their scattered approach

of blame in this case, it hardly represents any credible evidence that would have any hope of changing the verdict. In fact, offering it in a new trial would further diminish the testimony of the defendant since it contradicts him in many respects.

15. The overwhelming amount of evidence points to the guilt of the defendant. The defendant's car that he exclusively operated was observed on multiple occasions in the area at and around the time a jogger believed to be Mollie Tibbetts ran through the same area. The defendant confessed to encountering Mollie on 385th Avenue and becoming angry when she rebuked his advances. The defendant made statements that established he attacked Mollie and placed her bleeding body in the trunk of his Malibu. Blood evidence found in the Malibu by investigators confirmed Mollie's presence in the Malibu. In the context of the testimony and evidence presented in the case, the physical injuries to Mollie established that she was stabbed to death by the defendant. The defendant confessed to transporting Mollie to a corn field and hiding her under corn stalks. Later, in the dark and without difficulty, the defendant led law enforcement to the location of Mollie Tibbetts' body. He did this after law enforcement had searched for weeks for Mollie. The defendant was able to lead law enforcement directly to her body in the dark and without difficulty. While at the trial he made numerous statements that amounted to confessing to killing Mollie.

16. There should be no doubt that the defendant is the sole perpetrator of Mollie Tibbetts' murder. There is no other credible evidence that suggests any other conclusion.

The Reasonable Doubt Instruction Was Proper

17. The Defendant claims that the Court should have given the reasonable doubt instruction proposed by them at trial.

18. The instruction provided was a correct statement of the law and has been authorized by *State v. Frej*, 831 N.W.2d 70 (Iowa 2013)

The Verdict was Not Contrary to the Weight of Evidence

19. The defendant claims that the verdict was contrary to the weight of the evidence.

20. Iowa law is clear that a trial court may grant a new trial pursuant to Iowa Rule of Criminal Procedure 2.24(2)(b)(6) when “the verdict is contrary to law or evidence.” The Iowa Supreme Court has held that a verdict is contrary to the evidence under this rule if it is “contrary to the weight of the evidence.” *State v. Ellis*, 578 N.W.2d 655, 659 (Iowa 1998).

21. Iowa law is also clear that a motion for new trial is addressed to the discretion of the court, which discretion should be exercised with caution. The power to grant a new trial on the ground that the verdict is contrary to the weight of the evidence and that a miscarriage of justice may have resulted should be invoked only in exceptional cases in which the evidence preponderates heavily against the verdict. *State v. Ellis*, 578 N.W.2d 655, 659 (Iowa 1998).

22. The evidence in this case simply does not preponderate heavily against the verdict and no miscarriage of justice has resulted from the jury's verdict in this case.

WHEREFORE, the State of Iowa requests that the Defendant's Motion for New Trial be overruled and denied.

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