

IN THE IOWA DISTRICT COURT FOR POWESHIEK COUNTY

STATE OF IOWA,)	
Plaintiff,)	
)	
vs.)	Case No. FECR010822
)	
CRISTHIAN BAHENA RIVERA,)	DEFENDANT'S MOTION FOR
Defendant.)	NEW TRIAL

COMES NOW Defendant and pursuant to Iowa Rule of Criminal Procedure 2.24(2) does hereby make motion for new trial and in support thereof states:

1. On May 28, 2021, the jury in the above-entitled cause returned a guilty verdict finding Defendant guilty of the crime of Murder, First Degree.
2. Iowa Rule of Criminal Procedure 2.24(2) provides a number of grounds upon which a court may grant a new trial. They will be discussed below and independently.
 - I. 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
3. Defendant incorporates by reference paragraphs 1 and 2 as if fully set forth herein.
4. The Defendant rested his case in chief at approximately 1:30 – 2:00 p.m. on May 26, 2021.
5. Shortly after resting his case in chief, Defendant's counsel was approached by the prosecution with information that they themselves had just been provided.
6. The information provided by the prosecution immediately following the Defendant resting his case in chief was that the Division of Criminal

Investigation had just received contact from an individual with the Iowa Department of Corrections. The individual with the Department of Corrections had received information from an inmate that morning that the inmate had spoken, at some point in time, with another individual while both the inmate and other individual was incarcerated in a local county jail.

7. It was reported that this Department of Corrections inmate was coming forward at this time because he had heard the testimony of Cristhian Bahena Rivera on television and it was at that point, he realized that the information given him by this other individual was likely true.
8. At that time, the state, through Assistant Attorney General Scott Brown, offered to track down this information with more specificity. At that point, the defendant had rested his case in chief and the information which was getting relayed third or fourth hand did not seem all that consistent with the evidence put forth at trial.
9. Mr. Brown provided the undersigned with a more detailed written report of the interview of the inmate at the department of corrections, post verdict, which sheds more light on the statement given by this inmate.
10. Following the verdict, the defense was given two reports. One report concerned the inmate described herein. The second report was unknown to the defense and concerned an independent third party witness.

a. Information provided by IDOC inmate as newly discovered evidence as grounds for a new trial.

11. Defendant repleads and restates paragraphs 1 through 10 as fully set forth herein.
12. Following the verdict, Assistant Attorney General Scott Brown, as he indicated he would, promptly delivered via email the information concerning this statement. For purposes of this motion, the identity of the individual in the Iowa Department of Corrections custody is not being divulged but the Court can be assured that this individual is known to both parties and at hearing will be offering testimony.

13. The individual who will be described as “inmate” as described above came forward on May 26, 2021 when the inmate had first contacted the chaplain at the institution where he was housed.
14. The chaplain at the institution then contacted the associate warden of security at the institution to arrange an interview of the inmate.
15. The associate warden and another officer interviewed the inmate at approximately **1:15 p.m. on May 26, 2021**. The interview took approximately 20 minutes.
16. The inmate told the associate warden that while previously in a county jail in or near Poweshiek County, he was told by another inmate information about the Mollie Tibbetts murder. This second inmate, who for this motion will not be identified personally but will be called “inmate 2”.
17. It was reported that while in the county jail, inmate 2 asked inmate if he knew about the Mollie Tibbetts case. Inmate denied knowledge of the case.
18. Inmate 2 then when on to detail that he and another individual whom he identifies by name, were staying in a “trap house” owned by an approximately 50 year old male involved in the sex trafficking trade. Inmate 2 discussed his relationship with this approximately 50 year old male and then stated that on one occasion he went to a second “trap house” owned by the male. Inmate 2 then advised inmate that at the second trap house he and the second individual saw Mollie Tibbetts bound and gagged.
19. Inmate 2 then admitted to Inmate that he and the second individual carried out a plan by this 50 year old male to kill Mollie Tibbetts. He indicated that the 50 year old male devised a plan for them to stab Mollie Tibbetts and dump her body near a Hispanic male in order to make it appear that the Hispanic male committed the crime.
20. Inmate 2 then said they did, in fact, kill Mollie Tibbetts and carry out the plan in such a way that the Hispanic man would be incriminated.

21. Inmate initially thought that Inmate 2 was bluster and exaggerating. It was not until he saw the news and heard of the testimony of Cristhian Bahena Rivera.

22. Inmate was interviewed by investigators for the defense to provide more details into his statement. Inmate provided the following details:

- a. Inmate believed that Mollie Tibbetts was going to be sex trafficked but the publicity got too big too quick and something went wrong;
- b. The approximately 50 year old male was the sex trafficker;
- c. Inmate 2 said that federal authorities were next door to the “trap house” at one point and getting too close to them;
- d. That the second individual with Inmate 2 did not speak English very well and that they knew someone local to pin it on;
- e. That Inmate gave a small amount of money to help Inmate 2 post a bail as Inmate 2 was afraid to go back home as he was facing an indictment;
- f. That Inmate again thought Inmate 2 was exaggerating initially until he watched the end of the trial and heard Cristhian Bahena Rivera’s testimony which closely matched Inmate 2’s story.

b. Information provided to Poweshiek County Sheriff on May 26, 2021

23. Defendant repleads and restates paragraphs 1 through 22 as if stated verbatim herein.

24. As state above, a second report was provided to the defense on May 29, 2021, following the verdict. This report came as a surprise to the defense as at the time of initial disclosure about new evidence by the state, all that was disclosed was the information regarding the inmate.

25. This second report came from the Poweshiek County Sheriff’s Office and was a report made a second and separate source of information from the individual described as “inmate” above.

26. The report provided indicates that on May 26, 2021 at approximately 3:10 p.m. an individual called the Poweshiek County Sheriff's Office to indicate the he/she had information on the Mollie Tibbetts case.
27. At that time, a deputy sheriff with Poweshiek County contacted the Mahaska County Sheriff who evidently had spoken with the reporting party. The Mahaska County Sheriff dismissed the information as not being credible as it appeared the reporting party may be under the influence of some intoxicant. Evidently, however, the individual did give information regarding Mollie Tibbetts' death to that department.
28. The Poweshiek County deputy asked the Mahaska County sheriff if he could make contact with the reporting party and see if he/she could come to the Poweshiek county sheriff's office to speak with him. The Mahaska County Sheriff arranged for it.
29. On May 26, 2021 at approximately 5:20 p.m. the individual appeared at the Poweshiek County Sheriff's Office to be interviewed.
30. This interview occurred within four (4) hours of the information given by "inmate" above.
31. The reporting party herein and "inmate" are unknown to each other.
32. The reporting party was described by the Poweshiek County deputy as "very emotional" and that he/she was likely under the influence.
33. The reporting party indicated that in the previous month he/she had been in contact with law enforcement with four (4) other individuals in an automobile who ultimately ended up arrested and taken to jail.
34. During the time leading up the arrest, one of the individuals in the automobile pulled a pistol on him/her and held it to his/her head and exclaimed "**that Mexican shouldn't be in jail for killing Mollie Tibbett's because I raped her and killed her.**"
35. The reporting party knew the individual who held a gun to his/her head and made this exclamation. The individual who held the gun to his/her head and made the exclamation is the same individual identified to "inmate" as the

individual who admitted to him as being the killer of Mollie Tibbetts and reported at the institution only four hours prior.

36. The statement given by this reporting party is further corroborated by the fact that when this individual and the others went to jail, it was the same county jail where “inmate” had been housed and had helped “inmate 2” post bond.
37. The district court is vested with “[u]nusually broad discretion” when “ruling on a motion for new trial on the basis of newly discovered evidence.” *State v. Miles*, 490 N.W.2d 798, 799 (Iowa 1992).
38. 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.” *State v. Smith*, 573 N.W.2d 14, 21 (Iowa 1997) (quoting *State v. Jefferson*, 545 N.W.2d 248, 249 (Iowa 1996)).
39. In this matter, a new trial should be ordered as this evidence was not known prior to the verdict and could not have been found through the exercise of due diligence. The state did provide what little information they had subsequent to the defense resting its case and based on that representation, the defense moved forward. However, the information provided post-verdict was somewhat different than what the defense understood and certainly

some of the information was not known even to the state when disclosed to the defense.

40. This evidence would certainly have made a difference in the verdict. The defendant chose to testify and spoke of two individuals who were involved in the abduction and killing of Mollie Tibbetts. The DNA from Defendant's trunk identified other individuals who were contributors to the blood mixture. It also helps explain the relative scarcity of blood in defendant's trunk. While perhaps not every bit of the account fits neatly into defendant's account of the events, enough of the facts fit to certainly question whether the state would have been able to prove their case beyond a reasonable doubt had this information been known and presented to a jury.

II. THE COURT ERRED BY DENYING DEFENDANT'S REQUEST TO GIVE THE UNIFORM JURY INSTRUCTION REGARDING "REASONABLE DOUBT" AND A NEW TRIAL SHOULD BE GRANTED ON THIS GROUND.

41. Defendant restates and repleads paragraphs 1 through 41 as set forth fully herein.

42. Defendant requested on the record that the Court give uniform instruction 100.10 regarding the definition of "reasonable doubt". Uniform criminal jury instruction 100.10 states:

100.10 Reasonable Doubt. The burden is on the State to prove (name of defendant) guilty beyond a reasonable doubt. A reasonable doubt is one that fairly and naturally arises from the evidence in the case, or from the lack or failure of evidence produced by the State. A reasonable doubt is a doubt based upon reason and common sense, and not the mere possibility of innocence. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt. If, after a

full and fair consideration of all the evidence, you are firmly convinced of the defendant's guilt, then you have no reasonable doubt and you should find the defendant guilty. But if, after a full and fair consideration of all the evidence in the case, or from the lack or failure of evidence produced by the State, you are not firmly convinced of the defendant's guilt, then you have a reasonable doubt and you should find the defendant not guilty.

43. Instead, the court gave the following instruction on “reasonable doubt”:

INSTRUCTION NO. 9

The burden is on the State to prove Cristhian Bahena Rivera guilty beyond a reasonable doubt. A reasonable doubt is one that fairly and naturally arises from the evidence or lack of evidence produced by the State.

If, after a full and fair consideration of all the evidence, you are firmly convinced of the defendant’s guilt, then you have no reasonable doubt and you should find the defendant guilty.

But if, after a full and fair consideration of all the evidence or lack of evidence produced by the State, you are not firmly convinced of the defendant’s guilt, then you have a reasonable doubt and you should find the defendant not guilty

44. The court’s rejection of the uniform instruction on “reasonable doubt” is error and prejudicial to Defendant denying him due process.

45. Although trial courts are not bound by the uniform instructions, generally the preference is for the trial courts to instruct the jury according to the uniform instructions. *State v. Weaver*, 405 N.W.2d 852, 855 (Iowa 1987). And the United States Supreme Court has approved the use of the phrase “hesitate to act” within a reasonable doubt instruction that appeared to contain several different standards. *Victor v. Nebraska*, 511 U.S. 1, 20–21, 114 S.Ct. 1239, 1250, 127 L Ed.2d 583, 599 (1994) (“[T]he instruction provided an alternative definition of reasonable doubt: a doubt that would cause a reasonable person to hesitate to act. This is a formulation we have repeatedly approved...”).

46. Defendant should be granted a new trial on this ground.

III. THE GUILTY VERDICT WAS CONTRARY TO THE WEIGHT OF THE EVIDENCE AND A NEW TRIAL SHOULD BE ORDERED

47. Defendant repleads and restates paragraphs 1 through XX as set forth verbatim herein.

48. Iowa Rule of Criminal Procedure 2.24(2)(b)(6) permits a district court to grant a motion for new trial when a verdict is contrary to the weight of the evidence.

49. 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. Shanahan*, 712 N.W.2d 121,135 (Iowa 2006).

50. The verdict in this matter is contrary to the weight of the evidence. The weight of the evidence does not support a verdict showing Defendant acted with premeditation or malice aforethought. The state was unable to prove satisfactorily beyond a reasonable doubt that Defendant had motive to kill Mollie Tibbetts. No murder weapon was found and no physical evidence connects Defendant to the death.

51. Based thereon a new trial should be ordered.

WHEREFORE, Defendant prays the court grant Defendant a new trial for the reasons set forth herein.

CRISTHIAN BAHENA RIVERA,
DEFENDANT

BY: /s/ Chad R. Frese
Chad R. Frese AT0002704

/s/ Jennifer J. Frese
Jennifer J. Frese, AT008317
KAPLAN & FRESE, LLP
111 East Church Street
Marshalltown, Iowa 50158
Phone: (641) 753-5549
Fax: (641) 753-0962
Email: chad@kaplanfrese.com

jennifer@kaplanfrese.com

ATTORNEYS FOR DEFENDANT