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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
) No. 45388
 Plaintiff-Respondent,)
) Canyon County Case No.
 v.) CR-2014-21060
)
 JESUS MANUEL ZUNIGA,)
)
 Defendant-Appellant.)
)
 _____)

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE THIRD JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF CANYON**

HONORABLE GENE A. PETTY
District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Jesus Manuel Zuniga appeals from the district court's order denying his motion for a new trial following his conviction for aggravated battery. On appeal, mindful that he was aware of his whereabouts when he committed the crime, Zuniga nevertheless contends that the district court abused its discretion when it rejected as newly discovered evidence affidavits confirming that his residence was in Texas at the time of the crime.

Statement Of The Facts And Course Of The Proceedings

Following a jury trial, Zuniga was found guilty of aggravated battery for stabbing his victim on or about March 2, 2013. (See R., pp.38-39, 91, 135.) The district court entered judgment against Zuniga and sentenced him to a unified term of fifteen years with ten years fixed. (R., pp.135-36.)

Zuniga filed, *pro se*, what he styled a Rule 35 motion to correct an illegal sentence, based on allegedly newly discovered evidence that, he asserted, supported his claim of innocence. (R., pp.146-62, 168-72.) The district court appointed counsel (R., p.181) who, in a supplemental filing, requested that the court consider Zuniga's *pro se* motion as a Rule 34 motion for new trial based on newly discovered evidence (R., p.202). The district court considered Zuniga's motion as both a Rule 35 motion to correct an illegal sentence and a Rule 34 motion for new trial based on newly discovered evidence, and denied both motions. (R., pp.209-18.) Zuniga filed a timely notice of appeal. (R., pp.220-22.)

ISSUE

Zuniga states the issue on appeal as:

Did the district court abuse its discretion by denying Mr. Zuniga's motion for a new trial?

(Appellant's brief, p.3.)

The state rephrases the issue as:

Has Zuniga failed to show that the district court abused its discretion when it denied his motion for a new trial?

ARGUMENT

Zuniga Has Failed To Show That The District Court Abused Its Discretion When It Denied His Motion For A New Trial

A. Introduction

Below, Zuniga filed a *pro se* Rule 35 motion to correct an illegal sentence that, after the appointment of counsel, appointed counsel asked the district court to consider as a Rule 34 motion for a new trial based on newly discovered evidence. (See R., pp.146-62, 202.) The district court denied the motion, both as a Rule 35 motion and as a Rule 34 motion. (R., pp.209-18.) On appeal, “[m]indful that [he] was aware of his whereabouts on the day of the crime,” Zuniga challenges the district court’s denial of his motion for a new trial based on newly discovered evidence. (Appellant’s brief, pp.1, 4.) Application of the correct legal standards shows no abuse of the district court’s discretion. The district court should be affirmed.

B. Standard Of Review

Granting or denying a motion for a new trial is within the district court’s discretion and will not be disturbed on appeal unless that discretion is abused. State v. Jones, 127 Idaho 478, 481, 903 P.2d 67, 70 (1995).

C. The District Court Properly Denied Zuniga’s Motion For A New Trial

“Motions for a new trial based on newly discovered evidence are disfavored and should be granted with caution, reflecting the importance accorded to considerations of repose, regularity of decision making, and conservation of scarce judicial resources.” State v. Stevens, 146 Idaho 139, 144, 191 P.3d 217, 222 (2008) (internal quotations and citations omitted). The Idaho Supreme Court has explained that, “after a man has had his day in court, and has been

fairly tried, there is a proper reluctance to give him a second trial.” State v. Drapeau, 97 Idaho 685, 691, 551 P.2d 972, 978 (1976) (citation omitted). Nevertheless, when certain conditions have been met, a new trial may be granted under Idaho Criminal Rule 34.

Idaho Code § 19-2406 provides the exclusive grounds for which a district court may grant a motion for a new trial. Among these grounds, a defendant may obtain a new trial “[w]hen new evidence is discovered material to the defendant, and which he could not with reasonable diligence have discovered and produced at the trial.” I.C. § 19-2406(7). In Drapeau, the Idaho Supreme Court articulated a four-part test a defendant must satisfy in order to be entitled to a new trial based upon newly discovered evidence. That test requires a defendant to show that the evidence offered in support of his motion for a new trial: (1) is newly discovered and was unknown to the defendant at the time of trial; (2) is material, not merely cumulative or impeaching; (3) will probably produce an acquittal; and (4) failure to learn of the evidence was due to no lack of diligence on the part of the defendant. Drapeau, 97 Idaho at 691, 551 P.2d at 978. Zuniga bore the burden of showing that each of these criteria was satisfied. See State v. Dopp, 129 Idaho 597, 605, 930 P.2d 1039, 1047 (Ct. App. 1996).

Zuniga failed to satisfy any of the criteria of the Drapeau standard in order to support his motion for a new trial. Zuniga candidly acknowledges that he knew of his whereabouts at the time of the crime (Appellant’s brief, p.4); his newly proffered evidence (affidavits confirming his residence at the time or the crime), as the district court correctly concluded, is therefore not “newly discovered” (see R., pp.216-17). Zuniga also recognizes that nothing in the affidavits gives him an explicit *alibi* for the time of the offense (Appellant’s brief, p.4); the evidence is therefore immaterial and/or it probably would not produce an acquittal. The district court properly denied Zuniga’s motion for a new trial and should be affirmed.

CONCLUSION

The state respectfully requests that this Court affirm the district court's order denying Zuniga's motion for a new trial.

DATED this 14th day of March, 2018.

/s/ Russell J. Spencer
RUSSELL J. SPENCER
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 14th day of March, 2018, served a true and correct copy of the foregoing BRIEF OF RESPONDENT by emailing an electronic copy to:

MAYA P. WALDRON
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Russell J. Spencer
RUSSELL J. SPENCER
Deputy Attorney General

RJS/dd