

IN THE IOWA DISTRICT COURT FOR O'BRIEN COUNTY

STATE OF IOWA,)	Criminal Number FECR010558
)	
Plaintiff,)	
)	BRIEF IN SUPPORT OF
vs.)	DEFENDANT'S COMBINED
)	MOTION FOR NEW TRIAL
KRISTINA ANN MANASIL,)	AND
)	MOTION IN ARREST OF JUDGMENT
Defendant,)	

COMES NOW Kristina Ann Manasil, Defendant in the above titled cause, pursuant to Iowa Rule 2.24 and in support of the motion states as follows:

I. MOTION FOR NEW TRIAL

1. Defendant was convicted of Arson in the First Degree, in violation of Iowa Code §§ 712.1(1) and 712.2 and Fraudulent Submission to Insurer in violation of Iowa Code § 507E.3(2)(a, b and c), after trial by jury in this matter. A verdict was returned on May 6, 2015

2. Defendant moves for a new trial pursuant to Iowa Rule 2.24(2)(b)(5 & 7), in that the Trial Court has misdirected the jury in a material question of law in instructing the jury in Instruction Number 12 that they may find alternate factual theories of guilt. The instruction allowed for a non unanimous jury verdict in violation of Sixth and Fourteenth Amendments of the United States Constitution and Article 1, Section 9 of the Iowa Constitution.

3. Defendant moves for a new trial pursuant to Iowa Rule 2.24(2)(b)(5 & 7), in that the Trial Court has misdirected the jury in a material question of law in refusing to give Defendant's proposed Instruction Number 12, concerning the hope of leniency for the testimony of Adam Sickles. *United States v. Tremusini*, 688 F.3d 547, 557 (8th Cir. 2012)

4. Defendant moves for a new trial pursuant to Iowa Rule 2.24(2)(b)(5 & 7), in that the

Trial Court has misdirected the jury in a material question of law in refusing to instruct the jury in Instruction Number 17-A that they should consider the testimony “with greater care and caution” as proposed in Defendant’s Proposed Instruction 11

5. Defendant moves for a new trial pursuant to Iowa Rule 2.24(2)(b)(5), in that the Trial Court has erred in the decision of a question of law during the course of the trial in ruling that Counsel was prohibited during the cross examination of Adam Sickels from introducing evidence that he was subject to imprisonment on the original charge of Arson in the First Degree for a period of twenty-five years. Defendant further moves for a new trial on this basis as the ruling denied him the right to cross-examine witnesses contravention of the Sixth and Fourteenth Amendments of the United States Constitution and Article I, Section 10 of the Iowa Constitution. *State v. Runyan*, 599 N.W.2d 474, 476-477 (Iowa Ct. App. 1999); *State v. Donelson*, 302 N.W.2d 125, 130 (Iowa 1981).

6. Defendant moves for a new trial pursuant to Iowa Rule 2.24(2)(b)(5), in that the Trial Court has erred in the decision of a question of law during the course of the trial in ruling that Counsel was prohibited during the cross examination of Terry Johnson and Adam Sickels from introducing evidence Defendant’s proposed exhibit D-14 that he was subject to imprisonment for a period of twenty-five years. Defendant further moves for a new trial on this basis as the ruling denied him the right to cross-examine witnesses contravention of the Sixth and Fourteenth Amendments of the United States Constitution and Article I, Section 10 of the Iowa Constitution. *State v. Runyan*, 599 N.W.2d 474, 476-477 (Iowa Ct. App. 1999); *State v. Donelson*, 302 N.W.2d 125, 130 (Iowa 1981).

8. Defendant moves for a new trial pursuant to Iowa Rule 2.24(2)(b)(5), in that the Trial Court has erred in the decision of a question of law during the course of the trial in overruling

the Defendant's motion for judgment of acquittal at the end of the State's case and chief and again at the close of evidence and finding that there was sufficient evidence to submit the case to the jury.

9. That, pursuant to Iowa Rule of Criminal Procedure 2.24(2)(b)(9), the cumulative effect of such errors is to deny the Defendant a fair and impartial trial.

10. Defendant moves for a new trial pursuant to Iowa Rule of Criminal Procedure 2.24(2)(b)(6), as the verdict is contrary to the weight of the evidence and that a miscarriage of justice may have resulted as to both counts of conviction. *State v. Ellis*, 578 N.W.2d 655, 658 (Iowa 1998); *State v. Maxwell*, 743 N.W.2d 185, 192 (Iowa 2008). In particular, the evidence produced by the State included an opinion that the fire in this matter was intentionally set as an accelerate was used, in contradiction with accepted guidelines that do not allow for this type of conclusion in the absence of supporting evidence. The evidence in this case showed that witness Thomas Hanson repeatedly told inconsistent versions of the events and was subject to inappropriate questioning by investigators. The testimony of Adam Sickles was suspect both because of the inconsistent prior statement and the impact of the plea agreement in this case. Finally, the finding of Arson in the First Degree is not supported as both customers did not see Defendant or Mr. Sickles at the restaurant and did not see any cars in the parking lot when they left. There was no evidence to support the finding that the presence of a person on the property could be reasonably anticipated.

II. MOTION IN ARREST OF JUDGMENT

11. Defendant further moves in Arrest of Judgment, pursuant to Iowa Rule of Criminal Procedure 2.24(3)(a), in that upon the whole record no legal judgment can be pronounced for the reasons set forth in Division I of this motion.

WHEREFORE, the Defendant prays that a new trial be granted in this matter, or in the alternative that Judgment be arrested in his favor.

Respectfully submitted,



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ATTORNEY FOR DEFENDANT

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record at their respective addresses disclosed on the pleadings on June 15, 2015 by Efile through the EDMS system.

Signature:

