IN THE IOWA DISTRICT COURT, IN AND FOR WINNESHIEK COUNTY

STATE OF IOWA, **Plaintiff,** **vs.** **AARON WHITTLE,** **Defendant.**	**01961 FECR020032** **MOTION FOR NEW TRIAL AND MOTION IN ARREST OF JUDGMENT**

MOTION FOR NEW TRIAL

COMES NOW, the Defendant, by and through counsel, and in support of Defendant's Motion for New Trial, states as follows:

1. This matter was tried to a jury beginning on February 20, 2023.

2. On March 2, 2023, the jury returned a verdict of guilty on the charge of 2nd Degree Murder.

3. Of particular relevance to this case, the Court may grant a new trial when "the court has misdirected the jury in a material matter of law, or has erred in the decision of any question of law during the course of the trial, or when the prosecuting attorney has been guilty of prejudicial misconduct during the trial thereof before a jury," or "when the verdict is contrary to law or evidence," or "when from any other cause the defendant has not received a fair and impartial trial." Iowa Rules of Criminal Procedure, Rule 2.24(2)(b)(5), (6) and (9).

4. The Court erred in allowing the State to introduce inflammatory evidence regarding dead and unhealthy cattle and calves on the Whittle farm.

    a. Prior to trial, the Defendant filed a Motion in Limine asking the Court to prohibit the State from introducing evidence regarding dead and unhealthy cattle and calves on the Whittle farm, because the information was an improper character attach and not relevant to whether or not Aaron Whittle killed Larry Whittle with malice aforethought. Instead, the information was intended to inflame the passions of the jury against the Defendant. The prejudicial impact of the evidence far outweighed any probative value the evidence may have had. The Court denied and overruled this portion of the Defendant's Motion in Limine.
    b. The Defendant renewed his objection to the introduction of evidence regarding dead and unhealthy cattle and calves on the Whittle farm during trial, prior to the presentation of evidence by the State. The Court again denied and overruled the Defendant's objection.
    c. At trial, the State presented evidence regarding the high number of dead cattle and calves on the farm, along with evidence regarding the health of some of the surviving

cattle and calves, through several witnesses. However, it quickly became clear, through the testimony of Wyatt Beebe (the hired hand) and Duane Tlusty (the banker), that Larry Whittle was very aware of the condition of the cattle and the high number of dead cattle on the farm. In fact, it was clear that the main cause was Larry's business practice of intentionally purchasing or taking in sick or "no value" cattle and calves in hopes of saving some portion of them and thus producing a significant profit. This was corroborated and further explained through the testimony of Aaron Whittle, himself.

d. That evidence regarding dead and unhealthy cattle and calves on the Whittle farm had little or no probative value toward the issue of Aaron Whittle's alleged motive, and/or malice aforethought, and it was improper character evidence regarding alleged prior bad acts. The state was well aware of Beebe and Tlusty's testimony, even before trial, and the real purpose of the evidence was to inflame the jury's passions against the Defendant. The prejudicial impact of the evidence far outweighed the dubious probative value of the evidence, and the trial could easily have been presented to the jury without the evidence – it added nothing probative or relevant to the State's case. It simply led to a mini-trial on the issue, and confusion and prejudicial inflammation of the jury's passions against the Defendant. (This especially came into play because multiple jurors were involved with and/or had experience with beef cattle farming.) Iowa Rules of Evidence 5.401, 5.403 and 5.404(a)(1).

5. The Court erred in allowing the State to introduce irrelevant, confusing and potentially inflammatory evidence regarding the TMR mixer.

a. Prior to trial, the Defendant filed a Motion in Limine asking the Court to prohibit the State from introducing evidence regarding the TMR mixer, because the information was an improper character attack and not relevant to whether or not Aaron Whittle killed Larry Whittle with malice aforethought. Instead, the information was intended to inflame the passions of the jury against the Defendant. The prejudicial impact of the evidence far outweighed any probative value the evidence may have had. The Court denied and overruled this portion of the Defendant's Motion in Limine.

b. The Defendant renewed his objection to the introduction of evidence regarding the TMR mixer at trial, prior to the presentation of evidence by the State. The Court again denied and overruled the Defendant's objection.

c. At trial, the State presented evidence regarding the TMR mixer being in poor repair and being inoperable. However, witnesses testified that the TMR was no longer used. Instead, the feed mixture was purchased in pre-mixed form from third party sources. It also was clear that Larry was aware of this change in how the feed mixture was obtained (and there was no evidence to the contrary).

d. That evidence regarding the TMR Mixer had little or no probative value toward the issue of Aaron Whittle's alleged motive, and/or malice aforethought, and it was improper character evidence regarding alleged prior bad acts. The state was well aware of Beebe's testimony, even before trial, and the real purpose of the evidence was to

inflame the jury's passions against the Defendant. The prejudicial impact of the evidence far outweighed the dubious probative value of the evidence, and the trial could easily have been presented to the jury without the evidence – it added nothing probative or relevant to the State's case. It simply led to a mini-trial on the issue, and confusion and prejudicial inflammation of the jury's passions against the Defendant. Iowa Rules of Evidence 5.401, 5.403 and 5.404(a)(1).

6. The jury's verdict was contrary to the evidence.

   a. At the time of trial, the burden was on the state to prove every element of the crime beyond a reasonable doubt. *State v. Stevens*, 719 N.W.2d 547, 549 (Iowa 2006).
   b. When a defendant moves for a judgment of acquittal, the Court reviews the evidence in the light most favorable to the state to determine whether the evidence is sufficient to create a jury question. *State v. Ellis*, 578 N.W.2d 655, 658 (1998). However, when the defendant moves for a new trial, the Court's review and power is much broader. The court then weighs the evidence, both inculpatory and exculpatory, and can reach issues of witness credibility. *State v. Ellis*, 578 N.W.2d at 658-659.
   c. The state did not prove beyond a reasonable doubt that Aaron Whittle shot Larry Whittle with malice aforethought, as required to prove 2nd Degree Murder. "Malice aforethought" is a fixed purpose or design to do some physical harm to another which exists before the act is committed. It does not have to exist for any particular length of time. *State v. Lee*, 494 N.W.2d 706, (Iowa 1993); *State v. Nunn*, 356 N.W.2d 601, 603 (Iowa App. 1984); Uniform Jury Instruction 700.7. "Malice" is a state of mind which leads a person to intentionally do a wrongful act to the injury of another out of actual hatred, or by proof of a deliberate or fixed intent to do injury. It may be found from the acts and conduct of the defendant, and the means used in doing the wrongful and injurious act. Malice requires only such deliberation that would make a person appreciate and understand the nature of the act and its consequences, as distinguished from an act done in the heat of passion. *State v. Love*, 302 N.W.2d 115 (Iowa 1981); Uniform Jury Instruction 700.7.
   d. No physical, forensic, direct or circumstantial evidence of any kind introduced by the state actually proved beyond a reasonable doubt that the Defendant acted with Malice Aforethought. The vast majority of the State's case actually dealt with what the Defendant did after Larry Whittle's death. However, there were no facts introduced which actually showed that Aaron planned or intended to shoot and/or kill Larry Whittle at any time BEFORE Larry's death. Everything that happened afterwards displayed a chaotic and poorly thought out attempt to cover up the fact that Larry was dead. The State didn't even present any evidence to show how Larry Whittle's death would have benefited Aaron Whittle… because it didn't benefit him in any way.
   e. While not commendable, it is conceivable and understandable that some people will panic and attempt to cover up the fact that they were involved in the death of another person. That, by itself, is not sufficient to prove beyond a reasonable doubt that Aaron Whittle acted with Malice Aforethought at the time of Larry Whittle's death. This verdict is based upon the jury's emotional reaction to Aaron Whittle's attempt to

cover up the death of Larry Whittle. Where, as here, the verdict is contrary to the evidence, the Court should grant the Defendant a new trial. Iowa Rule of Criminal Procedure 2.24(6).

7. The Court erred in structuring the jury verdict form so that "not guilty" was the jury's last option. That structure of the jury verdict form creates a presumption of guilt, which is contrary to the law.
    a. The Defendant is presumed innocent until proven guilty beyond a reasonable doubt. That presumption of innocence remains with the Defendant throughout the trial unless he is proven guilty beyond a reasonable doubt. See *State v. Lindsey*, 302 N.W.2d 98,
    b. Where, as here, the marshalling instructions are structured so that the jury is told to first consider the greatest possible charge, and if not guilty of that then the jury should consider the next lesser charge, and if not guilty of that then the jury should consider the next lesser charge, etc… the structure basically reverses the presumption of innocence.
    c. In this case, the jury was first told to consider the elements of 1st Degree Murder, and if the state failed to prove 1st Degree Murder, then consider the elements of 2nd Degree Murder, but if the state failed to prove 2nd Degree Murder too, then consider the crime of Voluntary Manslaughter, but if the state failed to prove Voluntary Manslaughter too, then the jury should consider the elements of Involuntary Manslaughter. Finally, the jury is told that only if you have considered all of the possible crimes and the State has failed to prove any of them, then the jury should find the Defendant "not guilty." A verdict of "Not Guilty" is the last option, and by implication the least likely option.
    d. As the Supreme Court of Iowa has stated, the inclusion of lesser included offenses logically entails this formatting of the marshalling instructions. Unfortunately, this format creates this implication that "Not Guilty" is the least likely option and undermines the presumption of innocence in a jury's mind.
    e. That implication is contrary to the law, and contrary to the Defendant's Due Process rights under the Constituion of the United States and the State of Iowa.
    f. In fact, the Iowa Supreme Court jealously guards the ability to interpret the Constitution of the State of Iowa to provide even greater due process protections than those provided by the United States Constitution. See Iowa Constitution, Article I, Section 9; *Swanson v. Civil Commitment Unit for Sex Offenders*, 2007, 737 N.W.2d 300 (Iowa 2007); *State v. Feregrino*, 2008, 756 N.W.2d 700 (Iowa 2008); *In re Detention of Matlock*, 2015, 860 N.W.2d 898 (Iowa 2015); *In re Detention of Hennings*, 2008, 744 N.W.2d 333 (Iowa 2008). That should hold true here as well… and the State of Iowa should affirmatively take steps to insure that a criminal defendant's presumption of innocence and the burden of proof are protected and not undermined by mere convenience or efficiency.
    g. In order to restore the presumption of innocence in the juror's minds, at least to some small extent, the option of "Not Guilty" should be listed as the jury's first option on the verdict form. This is consistent with the presumption of innocence and burden of

proof which basically tell the jury that "Not Guilty" should be the first and most likely option.

WHEREFORE, the Defendant respectfully requests that the Court enter an order for a new trial in this matter, or in the alternative, enter an order giving the parties notice and opportunity to be heard on this Motion and that following said hearing order a new trial either for the reasons set forth in this Motion or for reasons not asserted herein pursuant to Iowa Rule of Criminal Procedure 2.24(2).

MOTION IN ARREST OF JUDGMENT

COMES NOW, the Defendant, by and through counsel, and in support of Defendant's Motion In Arrest of Judgment, states as follows:

8. When the record, as a whole, is one upon which judgment cannot be entered, a motion in arrest of judgment shall be granted. Iowa R. Cr. P. 2.24(3)(a).

9. At the time of trial, the burden was on the state to prove every element of the crime beyond a reasonable doubt. *State v. Stevens*, 719 N.W.2d 547, 549 (Iowa 2006).

10. This requirement is imposed by the defendant's right to due process. Id.

11. For the reasons set forth in paragraph 6 of Defendant's Motion for a New Trial, the State failed to prove beond a reasonable doubt that that the defendant acted with malice aforethought when he shot Larry Whittle. (The arguments set forth in paragraphs 6(a) through (e) of the Motion for New Trial are hereby incorporated herein.)

12. For the reasons set forth in paragraphs 4 and 5 of Defendant's Motion for New Trial, the Court erred in allowing the State to present evidence to the jury regarding the dead and unhealthy cattle and calves, and the condition of the TMR mixer, resulting in confusion of the issues and the prejudicing of the jury against the Defendant for reasons irrelevant to the crime for which he was convicted. (The arguments set forth in paragraphs 4(a) through (d) and 5(a) through (d) of the Motion for New Trial are hereby incorporated herein.)

13. For the reasons set forth in paragraph 7 of Defendant's Motion for New Trial, the Defendant's due process rights have been violated. (The arguments set forth in paragraphs 7(a) through (g) of the Motion for New Trial are hereby incorporated herein.)

14. For the reasons stated above, taken individually and cumulatively, Defendant's due process rights under the United States and Iowa constitutions has been violated. The Court may not enter judgment.

WHEREFORE, the Defendant respectfully requests that the Court not enter judgment, and instead enter a judgment of acquittal.

Respectfully submitted,
AARON WHITTLE, Defendant

By: /s/ *Les Blair III*

Les M. Blair III, ATP310007
ASSISTANT PUBLIC DEFENDER
590 Iowa St. Ste. 1
Dubuque, IA 52001
(563) 582-0750 (Telephone)
(563) 582-3576 (Facsimile)
lblair@spd.state.ia.us (e-mail)

/s/ Theresa Sampson Brown
Theresa Sampson Brown, ATP310005
ASSISTANT PUBLIC DEFENDER
590 Iowa St. Ste. 1
Dubuque, IA 52001
(563) 582-0750 (Telephone)
(563) 582-3576 (Facsimile)
tsampsonbrown@spd.state.ia.us (e-mail)

ATTORNEYS FOR DEFENDANT