

IN THE DISTRICT COURT OF IOWA IN AND FOR LINN COUNTY

THE STATE OF IOWA,)	
)	
Plaintiff,)	Number FECR129718
)	
v.)	MOTION FOR NEW TRIAL
)	
JERRY LYNN BURNS,)	
)	
Defendant.)	

In accordance with the Fifth, Sixth and Fourteenth Amendments to the United States Constitution, Article I, Sections 9 and 10 of the Constitution of the State of Iowa, and Rule 2.24(2), Iowa Rules of Criminal Procedure, the Defendant moves that the court grant him a new trial.

1. On February 24, 2020, the Defendant was found guilty by a jury verdict of the crime of murder in the first degree, in violation of § 707.2 of the Iowa Criminal Code. Judgment has not yet been entered by the court in this case.

2. A transcript of the proceedings in this case is not yet available to aid the Defendant in the preparation of this motion, and the Defendant preserves all errors and reasserts all objections raised in the trial court, whether or not specifically included in this motion.

3. The trial court erred in overruling the Defendant’s motion to suppress evidence. More specifically, the court erred in rejecting the Defendant’s claim that

the searches and seizures leading to the discovery of his DNA profile and that of his family violated his rights to be free from unreasonable searches and seizures, as guaranteed by Fourth and Fourteenth Amendments to the United States Constitution and Article I, Section 8 of the Constitution of the State of Iowa. Additionally, the court erred in finding admissible portions of the Defendant's statements to investigators on December 19, 2018. Admission at trial of the challenged statements violated the Defendant's privilege against self-incrimination, and his rights to the assistance of counsel and due process of law, as guaranteed by the Fifth, Sixth and Fourteenth Amendments to the United States Constitution, and Article I, Sections 9 and 10 of the Constitution of the State of Iowa.

4. The trial court erred in overruling the Defendant's motions for judgment of acquittal made at the close of the prosecution's evidence and again at the close of all of the evidence, for the reason that there was insufficient evidence to warrant the submission of this cause to a jury. The evidence and inferences arising from the evidence, even viewed in the light most favorable to the prosecution, were insufficient to warrant a rational trier of fact finding the Defendant guilty of murder in the first degree.

5. The jury's verdict in this case was contrary to the weight of the evidence. The evidence preponderates sufficiently heavily against the verdict so as

to lead to the conclusion that a serious miscarriage of justice has occurred.

6. The trial court erred in overruling the Defendant's challenge pursuant to *Batson v. Kentucky*, 476 U.S. 79 (1986), and *J.E.B. v. Alabama*, 511 U.S. 127 (1994), to the prosecution's improper exercise of strikes and its purposeful discrimination against male jury panelists.

7. The trial court erred in overruling the Defendant's objection to the questioning of State's witness Paul Bush seeking an explanation for the "blood" of Jerry Burns on the dress of Michelle Martinko, and in overruling the Defendant's motion for a mistrial. Although the court found that the question mischaracterized the character of the biologic specimen identified as F5 on the Martinko dress, and admonished the prosecution to rephrase its question, the Defendant contends that the court's curative efforts were insufficient to purge the prejudice resulting from the prosecution's misconduct or error.

8. The testimony of State's witness Michael Allison on a critical matter involving his interaction with and motivation for testifying against the Defendant was either false or made with reckless disregard for the truth. The prosecution or its agents were aware or should have been aware of the misleading nature of Allison's testimony and failed to correct it.

9. The court erred in overruling the Defendant's objections to the court's Instruction No. 13 governing the jury's consideration of alternative theories, for all

the reasons urged by the Defendant during the court's instruction conference at trial.

10. The court erred in refusing to instruct the jury as requested in the Defendant's Proposed Instruction No. 3 concerning the presumption of innocence, for all the reasons urged by the Defendant during the court's instruction conference at trial.

11. The court erred in refusing to instruct the jury as requested in the Defendant's Proposed Instruction No. 8 regarding the manner in which the jury should consider the weight and quality of DNA evidence, for all the reasons urged by the Defendant during the court's instruction conference at trial.

12. The Defendant's rights under the Constitutions of the United States and the State of Iowa to a fair trial and due process of law were violated for all the reasons urged above.

13. This motion will be supplemented by a memorandum of law prior to the court's hearing on the motion.

WHEREFORE Defendant Jerry Lynn Burns respectfully moves that the court grant his request for a new trial.

/s/ Leon F. Spies

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NOTICE OF ELECTRONIC FILING

The undersigned certifies that the foregoing instrument was electronically filed and served, through the EDMS system or mail, upon all parties as they may respectively appear on the date of filing.

By: /s/ Leon F. Spies