

IN THE SUPREME COURT OF IOWA

No. 19-1259

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STATE OF IOWA

Plaintiff-Appellee,

vs.

HOWARD J. THOMPSON

Defendant-Appellant.

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APPEAL FROM THE SCOTT COUNTY DISTRICT COURT

THE HONORABLE HENRY W. LATHAM

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**APPELLANT'S *PRO SE* BRIEF**

Mr. Howard J. Thompson 6378332  
Anamosa State Penitentiary  
406 N. High Street  
Anamosa, IA 52205

## CERTIFICATE OF RECEIPT, FILING, COMPLIANCE AND SERVICE

I hereby certify that I received the attached *Pro Se* brief by US Mail on December 4, 2019, in an envelope bearing Appellant Thompson's correct name, number and address, and that the envelope and brief are written in handwriting that I recognize as Appellant's. On December 12, 2019, I filed this brief by EDMS to assist Mr. Thompson as required by Rule 6.901(2). On this date, I have also filed a motion for Appellant requesting the Court file the brief as submitted. The brief is in compliance with word limitation set out in Rule 903(2)(g), as it is less than 50 pages, at 5 pages in length. Upon receipt of file-stamped copies of the motion and the brief, I will serve them upon Mr. Thompson by US Mail at the address below.

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Appellee  
State of Iowa  
v.

Sup. Ct. NO. 19-1259

Appellant  
Howard J. Thompson

Pro-Se Brief

Appellants Pro-Se Brief  
In The Supreme Court Of Iowa

Please Forward Response To The Addresses

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## Argument In Support Of Appellants Appeal

I. The State Failed To Prove Beyond a Reasonable Doubt as Required by law and By Jury Instruction No. 21).

II. The evidence to sustain this conviction is Insufficient

1.) Statement Of The Case: I adopt Counsels Facts

2.) Nature Of The Case: I accept Counsels Outline

3.) Course Of Proceedings: See underlying Record

4.) Preservation Of Error: Error was preserved by a timely filing of a motion for new trial and the exercise of due diligence in regards to all relevant post-trial motions

5.) Standard Of Review: Challenges as to the sufficiency of the evidence are reviewed for corrections of error at law State vs. Hearn. 797 NW 2d 577, 579 (Iowa 2011)

Appellant, Before the reviewing court moves to invoke the federal plausibility standard. See Hughes v. Rowe, 449 U.S. 5, 9, (1980); Haines v. Kerner, 404 U.S. 519, 520, (1972) (Percuriam) Smith v. St Bernards Reg med Ctr 19 F.3D 1254, 1255 (8<sup>th</sup> Cir 1994) See also Stone v. Harry, F.3D 912 (8<sup>th</sup> Cir 2004).

Appellant moves to Asserts that by complained errors raised herein, that state and federal rights in their entirety has been violated.

Therefore, Before this court and beyond the appellant moves to invoke the 1<sup>st</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 13<sup>th</sup>, and 14<sup>th</sup> amendments of the bill of Rights of the American Constitution.

In the same motion appellant moves to invoke article 1 section 6, 8, 9, 10, and 17 of the Iowa Constitution as well all local codes, Rules, statutes and available case law authority.

Discussion: The United States Constitution and the Iowa Constitution Guarantee that the prosecution In a Criminal Case has the Burden of Proof, And the accused must be found guilty only beyond a reasonable doubt. See the 5<sup>th</sup> and 14<sup>th</sup> amendments of the Bill of Rights of the American Constitution and that of Article #1 section 6, 9. of Iowa's Constitution. If the prosecution fails to meet it's burden then the defendant's rights is violated. See In Re Winship, 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed. 2D 368. See Also State V. Scott slip copy WL 272, 2786 (IA 2018) See also State V. Pierce, 8 IA 231, (1859) State V. Pierce 86 NW 2D (IA 2015). Moreover the state has the burden of proving of every act necessary to constitute the offense with which a defendant has been charged State V. Gibbs, 239 NW 2D 866, -67 (IA 1976). In the instant case the State's finding is not in compliance with law in regards to jury instruction No. 7. Substantial evidence means evidence that would convince a rational trier of fact that the defendant is guilty only beyond a reasonable doubt State V. Allen, 348 NW 2D at 247, (IA).

However in this instant case the state failed to meet this requirement of, nothing in the record can reflect and be corroborated that this appellant had guilty knowledge of the crime spoken of. It cannot be ruled out that the appellant was finessed into making unauthorized transactions after the appellant's witness/alleged accomplice testified that said appellant had no knowledge that his transactions led to the elements of the charged offense. Even though

The guilty knowledge spoke of is a Mens Rea = As an element of criminal responsibility; A guilty mind, a guilty or wrongful purpose; A criminal intent. Guilty knowledge and willfulness, United States v Green Baum C. C. A. N. J. 138 F. 2D 437; 38. See Model Penal Code 202, See also criminal intent knowingly, Premeditation, Specific Intent (Black's Law 8<sup>th</sup> E.D) Moreover the object spoken of is the foundation of charging this appellant.

In evaluating these claims court reviews evidence in light most favorable to the state but consider all the evidence presented at trial and not just evidence supporting the verdict. State Vs Robinson, 288 NW 2D 337, 340 (IA 1980). Reason being is because a Rational fact finder cannot render a verdict without taking into consideration all of the record of evidence, (ID) to suffice, the evidence at trial must raise a fair inference of every element. In the instant case the record is void in this aspect, the record does not present not even a scintilla evidence that the defendant knew that he was passing counterfeit prescriptions. Here lies an undisputed fact; However the defendant appellant has adopted a verdict of innocence based on the testimony of the actual culprit. The states evidence must do more than mere speculation, suspicion, or conjecture State V Casady, 491 NW 2D 728, 187 IA 1992). Moreover when two reasonable inferences can be drawn from a piece of evidence and such evidence only give rise to a suspicion, without additional evidence it is insufficient to sustain guilt State V Truesdell, 679 NW 2D 611, 218 IA 9 (IA 2004). If there is not sufficient evidence to support any of the theories then the conviction must be reversed. The reversal results in a dismissal of the charge, as a retrial would violate Double Jeopardy Lockhart V Nelson, 488 U.S. 33. (10 1988).

M... over insufficient to warrant a conviction, by letting the conviction stand  
viol... res due process, United States V Coyle 63 F. 3B, 1239, 1243 3B Cir (1995)  
I... ) Federal courts view motions for denial of a new trial under Fed. R. C.V.  
59... A) for abuse of discretion which I now hereby invoke. Moliski U. MTJ Cable Inc  
181... F. 3B 1183, 1189, 9th Cir (2005) And Under Fed. C.V. R. 59, 28 U.S.C. A.  
the... istrict courts denial of motion for a new trial is REVERSIBLE only if the record  
on... ins no evidence to support the verdict Molisk at P. 729; citing Farely transp  
can... fe trial transp. co. 786 F. 2D 1342, 1347 (9th Cir 1985). Having laid  
the... acts the appellants attack on the prosecution's failure to establish guilt on the  
cler... nt spoken of, the states case unravels.

II... ee facts As Set forth In Ground Number One, Herein

(Relief Sought)

The... the Case Be Remanded with Instructions To Dismiss.

Respectfully Submitted