

IN THE SUPREME COURT OF THE STATE OF NEVADA

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JECORY KEMP,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Electronically Filed  
Dec 30 2021 03:33 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

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Docket No. 83383

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Direct Appeal From A Judgment of Conviction  
Eighth Judicial District Court  
The Honorable Michael P. Villani, District Judge  
District Court No. C-20-346920-1

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**APPELLANT'S OPENING BRIEF**

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## NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed pursuant to that rule. These representations are made so that the justices of this Court may evaluate any potential conflicts warranting disqualification or recusal.

1. Attorney of Record for Appellant:

a. Michael W. Sanft, Esq.

2. Publicly-held Companies Associated:

a. N/A

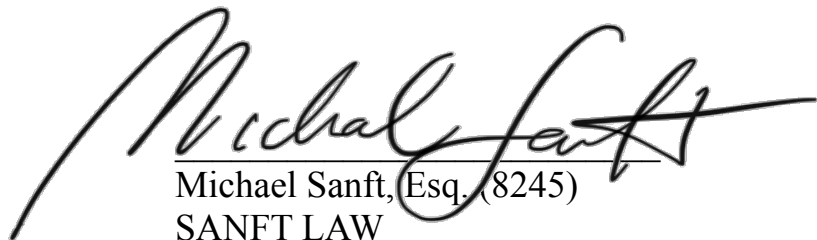
3. Law Firm(s) Appearing in the Court(s) Below:

a. Clark County District Attorney

b. Clark County Public Defender

c. Sanft Law

DATED this 30th day of December, 2021.

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## **JURISDICTIONAL STATEMENT**

This is an appeal from a judgment of conviction after a jury trial, finding Appellant Jecory Kemp (“Kemp”) guilty of Conspiracy to Commit Robbery, Murder with Use of Deadly Weapon, First Degree Kidnapping with Use of Deadly Weapon Resulting in Substantial Bodily Harm, and Robbery with Use of Deadly Weapon. (AA575-576). The Judgment of Conviction was filed on July 16, 2021. (AA611). The Notice of Appeal was filed on August 15, 2021. (AA615). This Court has jurisdiction over this appeal under NRS 177.015, which provides for the right to appeal a final judgment in a criminal case.

## **ROUTING STATEMENT**

This appeal is presumptively assigned to the Supreme Court because it relates to convictions for Category A and B felonies. NRAP 17(b)(1).

## **STATEMENT OF THE ISSUES PRESENTED FOR REVIEW**

There was insufficient evidence to support the jury’s verdict of guilty on the charges of conspiracy to commit robbery, murder with the use of a deadly weapon, first degree kidnapping with use of a deadly weapon resulting in substantial bodily harm, and robbery with the use of a deadly weapon.

## **STATEMENT OF THE CASE**

On February 14, 2020, Kemp was indicted with conspiracy to commit robbery, murder with the use of a deadly weapon, first degree kidnapping with use of a deadly weapon resulting in substantial bodily harm and robbery with use of a

deadly weapon. AA001-004. A Superseding Indictment on March 19, 2020 added co-defendant Arleo Earl Davis. AA005-AA008. A Second Superseding Indictment on October 9, 2020 added co-defendant Anthony Woods. AA009-AA013. A Third Superseding Indictment on November 6, 2020 added co-defendant Davon Hickman. AA014-018. On January 21, 2021, Hickman filed a Motion to Sever. AA019-032. After argument on February 5, 2021, the Court ruled to sever Kemp. AA033-034.

Trial commenced on April 5, 2021. AA035. Kemp was found guilty of conspiracy to commit robbery, murder with the use of a deadly weapon, first degree kidnapping with use of a deadly weapon resulting in substantial bodily harm and robbery with the use of a deadly weapon. AA575-576. Kemp was sentenced to an aggregate total of 39 to 100 years. AA611-614.

This appeal now follows.

### **STATEMENT OF THE FACTS**

The State provided the following evidence at trial: Kemp, along with four other individuals, attempted to rob Marion B. Jabbar Anderson (“Anderson”) by luring Anderson into Kemp’s Siena Suites apartment. Kemp opened the door to allow Anderson into the apartment. During the robbery Anderson was shot and killed.

Kemp moved Anderson’s body out of the apartment, placed it in the trunk of Anderson’s car. He drove the car into San Bernadino county, California, and set it

and Anderson's body on fire. Members of the Marine Corps Logistics Base Barstow Fire Department arrived to distinguish the fire and found the body. AA218. San Bernardino homicide detectives eventually learned of Anderson's name upon running the car's Vehicle Identification Number and finding out its license plate. AA247. They learned that Anderson was a porter at Siena Suites. Id. They discovered a blood trail at Siena Suites that led from the ground level up three flights of stairs to Kemp's apartment. AA250; see also AA349-352. They developed Kemp and his girlfriend, Tyeshia James ("James"), as suspects, and handed their investigation over to the Las Vegas Metropolitan Police Department. AA253.

Kemp and James were subsequently arrested. Kemp admitted to detectives his role in the robbery, and identified the other individuals who were also involved. AA412; *see also* AA489-492. He testified to the same at trial. AA505-518. James also testified at trial as to the creation of a plan to rob Anderson before the shooting (AA367-369), as well as her and Kemp's actions after to clean up the scene and move Anderson's body. AA375-385.

### **ARGUMENT SUMMARY**

Opening the door to one's own residence to allow someone to enter is not sufficient to establish a conspiracy to commit robbery beyond a reasonable doubt.

## ARGUMENT

### **I. The Evidence Adduced at Trial was Insufficient to Sustain a Finding of Guilty on the Charges of Conspiracy to Commit Robbery, Murder with the Use of a Deadly Weapon, First Degree Kidnapping with the Use of a Deadly Weapon resulting in Substantial Bodily Harm and Robbery with the Use of a Deadly Weapon.**

The only evidence the State provided at trial to connect Kemp to the conspiracy to commit robbery was that Kemp opened the door to allow Anderson into his apartment.

A defendant in a criminal action is entitled to due process of law as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution. The Constitution prohibits the criminal conviction of any person except upon proof of guilt beyond a reasonable doubt. *In re Winship*, 397 U.S. 358, 364 (1970); *Edwards v. State*, 90 Nev. 255, 258-59, 524 P.2d 328, 331 (1974). In reviewing a sufficiency of the evidence claim, a court must determine whether, viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could find the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). A verdict will be upheld only if supported by “substantial evidence.” *Cunningham v. State*, 94 Nev. 128, 130, 575 P.2d 936, 937 (1978). The burden in a criminal case is always on the prosecution to prove that the accused has committed an act in violation of a criminal statute. See, e.g., *Johnson v. Florida*, 391 U.S. 596, 598 (1968).

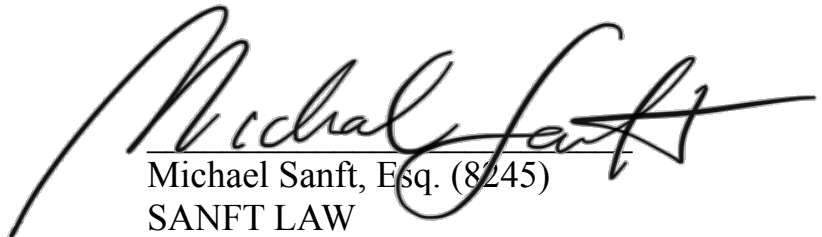


The State failed to establish beyond a reasonable doubt that Kemp did anything more than open the door to his own home. Merely opening a door does not in and of itself mean that the State had proven beyond a reasonable doubt that Kemp was part of a conspiracy to commit robbery, and thereby liable for Anderson's murder under the Felony Murder Rule. As such, the jury's verdict is untenable. For that reason, Kemp petitions this Court to reverse the jury's verdict and vacate his sentence.

### **CONCLUSION**

For these reasons, Kemp would argue that the evidence in support of these convictions was insubstantial. The dearth of evidence calls for reversal of the verdict and sentence from the court below.

DATED this 30th day of December, 2021.

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## CERTIFICATE OF COMPLIANCE

1. I hereby certify this brief does comply with the formatting requirements of NRAP 32(a)(4).

2. I certify that this brief does comply with the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point font of the Times New Roman style.

3. I certify that this brief does comply with the word limitation requirement of NRAP 32(a)(7)(A)(ii). The relevant portions of the brief are 1,783 words.

4. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular, NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanction in the event that the

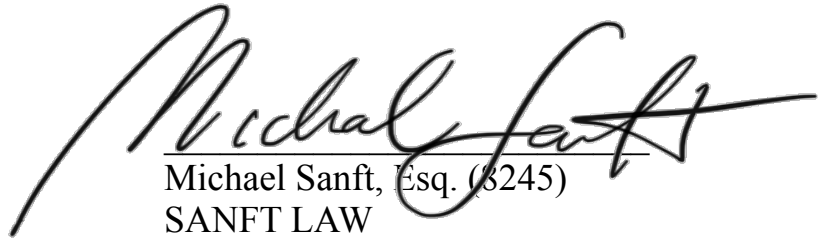
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accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 30th day of December, 2021.

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## CERTIFICATE OF SERVICE

The undersigned does hereby certify that on the 29th day of December, 2021, a copy of the foregoing Appellant's Opening Brief was served by electronic filing as follows:

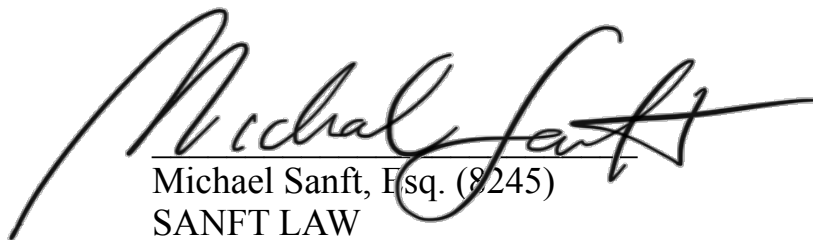
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