

IN THE SUPREME COURT OF THE STATE OF NEVADA

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JECORY KEMP,  
Appellant,  
v.  
THE STATE OF NEVADA,  
Respondent.

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Case No. 83383

**RESPONDENT'S ANSWERING BRIEF**

**Appeal From Judgment of Conviction  
Eighth Judicial District Court, Clark County**

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**ROUTING STATEMENT**

This appeal is presumptively assigned to the Court of Appeals because it is a direct appeal from a judgment of conviction based on a jury verdict that challenges only the sufficiency of the evidence. NRAP 17(b)(2)(B).

**STATEMENT OF THE ISSUE**

Whether any reasonable trier of fact could have found Kemp guilty of the crimes of which he was convicted.

**STATEMENT OF THE CASE**

On February 14, 2020, Je’cory Eles Kemp (“Kemp”) and Tyeshia Evan James were 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. 1 Appellant's Appendix ("AA") 1. The murder charge relied on theories of "directly committing this crime," "aiding or abetting in the commission of the crime," or "pursuant to a conspiracy to commit this crime." 1 AA 2.

Superseding Indictments added additional co-defendants. 1 AA 5, 9, 14. A co-defendant filed a Motion to Sever. 1 AA 19. After argument on February 5, 2021, the Court ruled to sever Kemp. 1 AA 33-34. A four-day jury trial began on April 5, 2021. 1 AA 35. On April 8, 2021, the jury returned with a verdict of 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. 3 AA 575-76. Kemp was sentenced to an aggregate total of 39 to 100 years. 3 AA 611-14. The Judgment of Conviction was filed on July 16, 2021. 3 AA 611-14.

Kemp filed a Notice of Appeal on August 15, 2021. 3 AA 615-16.

## **STATEMENT OF THE FACTS**

### **Kemp's Trial Testimony**

Kemp, together with three other individuals, planned to rob with Marion B. Jabbar Anderson (aka "AJ", hereinafter "Anderson"). 3 AA 514. Kemp lived in Sienna Suites apartments with Davon Hickman (aka "Little," aka "Payso," hereinafter "Hickman"), his girlfriend Tyeshia James (hereinafter "James"), and

Hickman's girlfriend Mackeisha Murphy (hereinafter "Murphy"). 1 AA 204-05, 3 AA 509. The two women were sisters. 2 AA 355. Kemp and Hickman supported themselves by selling weed from the apartment. 3 AA 509. When the conspirators sold marijuana from their apartment, Kemp was the person who "always" opened the door. 3 AA 506. Two friends also sold weed, Arleo Davis (aka "Sayso," hereinafter "Davis") and Davis' brother Anthony Woods (hereinafter "Woods").

Kemp did not want to appear weak in front of James and Murphy by not participating in the robbery. 3 AA 507. He also did not want to be a "snitch" by thwarting the plan. 3 AA 508. Kemp's group had problems with Anderson because Davis owed Anderson \$2,000 that Davis did not wish to repay, Anderson called Murphy a prostitute, and Anderson sold marijuana for less than Kemp's group. 2 AA 366, 3 AA 510-11.

The location of the robbery was Kemp's apartment. 3 AA 506. The plan was to have Davis and Woods hiding in a bedroom while Kemp and Hickman waited in the front room. 3 AA 514. Although he testified that he had not been instructed on a specific role in the robbery, Kemp knew he would have to open the door to the victim. 3 AA 506. He also knew he "would have to kind of block his path or the doorway or something" if the victim "were to try to take off and run or something." 3 AA 508. The endeavor was supposed to be "a simple little robbery." 3 AA 512. Kemp knew Hickman had access to a gun, since they kept one in case anything went

wrong during their drug sales. 2 AA 375. Kemp figured four men would be able to rob Anderson without incident. 3 AA 514.

According to plan, when Anderson came to Kemp's apartment, Kemp opened the door. 3 AA 507. Kemp knew Anderson was about to be robbed of drugs by drug dealers. 3 AA 512. Sensing trouble, Anderson drew his weapon. 3 AA 512. Kemp told Anderson to put his gun away. 3 AA 513. Hickman also drew his weapon, but Kemp did not ask him to deescalate. 3 AA 513. Woods shoved Anderson to prevent his escape. 3 AA 519.

Hickman shot and killed Anderson. 3 AA 513-14. After Anderson's death, Kemp decided to take his car, his marijuana cartridges, and his hat, since Anderson no longer needed them. 3 AA 515-16. Kemp lied to detectives during their investigation. 3 AA 516. Kemp thought Hickman intended to keep Anderson's car. 3 AA 517. Kemp and Hickman drove Anderson's corpse to the desert to burn it. 3 AA 517. When they got to the desert, Kemp, Hickman, and Preston Huteson (aka "Flacco," hereinafter "Huteson") burned Anderson's dead body, together with his car. 3 AA 517-18.

### **Other Trial Testimony**

On December 31, 2019, in San Bernardino, California, homicide detectives investigated a dead body found in the desert near a car fire. 1 AA 240-41. The Marine Corps Logistics Base Barstow Fire Department arrived to distinguish the fire and

found the victim's burnt body lying outside the burning car. 1 AA 213, 218. The car was completely burned. 1 AA 227. The fire department detected accelerants had been used inside the vehicle and on the body. 2 AA 257. Anderson died of homicide via a gunshot wound to his aorta. 1 AA 233, 235, 237.

San Bernardino homicide detectives learned the victim was Anderson by running the car's Vehicle Identification Number. 1 AA 244. Automatic license plate readers showed the burned car frequented Kemp's apartment complex. 1 AA 244. Police learned Anderson worked at the complex and had been reported missing on the day of the homicide. 1 AA 247. His tools were located in a dumpster in the complex. 1 AA 247. Detectives discovered blood on the concrete in the complex. 1 AA 250. A trail of blood led up two flights of stairs to Kemp's front door. 1 AA 250, 2 AA 349-52. In Kemp's apartment, police found spots of blood, even though an attempt had been made to clean up the blood. 2 AA 311, 319.

James testified that Hickman, Davis, Kemp, and Murphy were in the kitchen with James, discussing Anderson. Davis said he would not repay the money he owed Anderson and they would take Anderson's drugs from him. 2 AA 368. The group ironed out their plan in two conversations. 2 AA 368-69. On the day of the murder, early in the morning, James served four bottles of liquor to Hickman, Kemp, Davis, and Woods. 2 AA 372. James and her sister Murphy leave according to the plan. 2

AA 372-73. The men did not want the women present as they would be witnesses to the robbery. 2 AA 500.

Afterwards, Kemp told James that during the robbery, Anderson pulled a gun out of a bag so Hickman shot him. 2 AA 374. Kemp and Hickman kept a gun under the sofa cushion in the apartment in case anything went wrong. 2 AA 375. Kemp and James returned to the liquor store to buy another bottle. 2 AA 375. While buying the bottle, Kemp was “dancing, smiling, having a good time.” 2 AA 391.

Kemp drove to the store to buy trash bags to make it easier to move the body. 2 AA 376. Kemp then moved Anderson’s car so it would not be near the apartment. 2 AA 376. Huteson was to drive Hickman and Kemp back to Las Vegas after they dumped Anderson’s car. 2 AA 377.

Hickman was unable to help move the body because he did not want to hurt his pacemaker, so Kemp, James, and Murphy had to move it themselves. 2 AA 378. After sliding the body downstairs on a table did not work, they rolled the body onto a grocery cart. 2 AA 378-81. The cart began to warp and the trash bags ripped. 2 AA 381-82. James and Kemp wrestled Anderson into the trunk of his own car. 2 AA 382. They returned to the apartment to clean up. 2 AA 383.

Kemp and Hickman planned to take Anderson and his car far away so it would appear he had left the state. 2 AA 383. They would burn the car and body to get rid of the evidence. 2 AA 383. When Anderson’s car broke down in California, Kemp

poured gasoline on the car and body and lit a fire. 2 AA 384. Huteson drove the party back to the apartment. 2 AA 384.

The group next made plans to vacate the apartment. 2 AA 385. Kemp gave Hickman the murder weapon so that Hickman could break it into pieces and toss the pieces from a Greyhound bus during his trip to California. 2 AA 385. After her arrest, James pled guilty to accessory to murder after the fact in exchange for her testimony. 2 AA 387.

A bullet casing was found under Kemp's stove. 2 AA 418. Kemp's cellphone communicated with Anderson's at one pm on the day of the murder. 2 AA 421. Anderson's phone pinged near Kemp's apartment at the time of the call. 2 AA 423. Kemp's phone was at his apartment at 12:45 pm that day. 2 AA 425. Hickman's phone was near the apartment at the time of the murder and near the burning car at the time of the arson. 2 AA 427. Huteson's phone was near the apartment shortly after the murder and near the burning car at the time of the arson. 2 AA 428.

Kemp knew the plan before the robbery occurred. 3 AA 506. Kemp admitted his role in the robbery to detectives and identified the other people involved. 2 AA 470-71. Kemp educated the police about the robbery plan. 2 AA 473. Kemp said James and Murphy knew the robbery was going to happen. 2 AA 478. Kemp told police the men were going to take Anderson's marijuana. 2 AA 480. He said his role was to let Anderson in and keep him from leaving. 2 AA 481. Kemp said he opened

the door for the victim and tried to persuade him to put away his weapon. 2 AA 498-99.

### **SUMMARY OF THE ARGUMENT**

Appellant was not convicted of conspiracy because he happened to “open the door” for the victim. Appellant’s Opening Brief (hereinafter “AOB”) at 3. As Kemp himself testified, he did much, much more to fulfill his role in this conspiracy. Kemp fails to demonstrate no rational jury could have convicted him on the evidence presented.

### **ARGUMENT**

#### **AMPLE EVIDENCE SUPPORTED KEMP’S ROLE IN THE CONSPIRACY**

Kemp argues the jury heard insufficient evidence to support his conviction 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. AOB at 4. In the body of his opening brief, Kemp focusses only on the single conviction of conspiracy to commit robbery, arguing that for this count alone there exists insufficient evidence presented at trial. AOB at 4. Kemp also appears to be under the impression that conviction on the conspiracy to commit burglary charge is the only charge that makes him eligible for felony murder. AOB at 5 (“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 therefore liable for Anderson’s murder under the Felony Murder Rule.”) AOB at 5.

As an initial matter, Kemp’s convictions for kidnapping and robbery also entitle him to his conviction for felony murder. NRS 200.030. Even if Kemp were somehow found not guilty of conspiracy to commit robbery, his participation in the actual robbery and the kidnapping of his victim make him responsible for the victim’s death under the felony murder rule.

When reviewing a sufficiency of the evidence claim, the relevant inquiry is *not* whether the reviewing court is convinced of the defendant’s guilt beyond a reasonable doubt. Wilkins v. State, 96 Nev. 367, 374, 609 P.2d 309, 313 (1980). Rather, the proper standard is “whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (quoting Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789 (1979)).

“The rule is well established that it is the function of the jury, not the appellate court, to weigh the evidence and pass upon the credibility of the witness.” Walker v. State, 91 Nev. 724, 726, 542 P.2d 438, 438–39 (1975). “[I]t is exclusively within the province of the trier of fact to weigh evidence and pass on the credibility of witness and their testimony.” Lay v. State, 110 Nev. 1189, 1192, 886 P.2d 448, 450 (1994).

This familiar standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. Once a defendant has been found guilty of the crime charged, the factfinder's role as weigher of the evidence is preserved through a legal conclusion that upon judicial review all of the evidence is to be considered in the light most favorable to the prosecution. The criterion thus impinges upon “jury” discretion only to the extent necessary to guarantee the fundamental protection of due process of law.

Jackson, 443 U.S. at 318–19, 99 S. Ct. at 2788–89.

The evidence presented is only insufficient when “the prosecution has not produced a minimum threshold of evidence upon which a conviction may be based, even if such evidence were believed by the jury.” Evans v. State, 112 Nev. 1172, 1193, 926 P.2d 265, 279 (1996) (internal citations removed). When there is substantial evidence in support of a jury’s verdict, it will not be disturbed on appeal. Brass v. State, 128 Nev. 748, 291 P.3d 145 (2012). Further, circumstantial evidence alone may support a conviction. Collman v. State, 116 Nev. 687, 711, 7 P.3d 426, 441 (2000) (citing Deveroux v. State, 96 Nev. 388, 391, 610 P.2d 722, 724 (1980)).

Here, the jury experienced the testimony of the State’s witnesses. The jury heard Kemp admit to most of the elements of his crimes through his own testimony. The jury evaluated the credibility of the witnesses in light of the other evidence presented. That judgment call is the very definition of the credibility determination

reserved exclusively to the jury. Given Kemp's in-court confession, the jury only required two hours to adjudicate him guilty of these crimes. 3 AA 575-76.

### **A. Conspiracy to Commit Robbery**

To support this conviction, the State had to prove Kemp conspired with others to commit a robbery. NRS 200.380, NRS 199.480. "[W]henver two or more persons conspire to commit ... robbery ..., each person is guilty of a category B felony." NRS 199.480(1).

"A conspiracy is an agreement between two or more persons for an unlawful purpose." Doyle v. State, 112 Nev. 879, 894, 921 P.2d 901, 911 (1996), overruled on other grounds by Kaczmarek v. State, 120 Nev. 314, 91 P.3d 16 (2004). Conspiracy is a separate offense from the completed offense. Gordon v. Eighth Jud. Dist. Ct. of State of Nev. In & For Cty. of Clark, 112 Nev. 216, 230, 913 P.2d 240, 249 (1996). No overt act to further the conspiracy is necessary. NRS 199.490. "Once there is proof of a conspiracy, the prosecution need only show a slight connection between the defendant and the conspiracy." United States v. Alonso, 48 F.3d 1536, 1543 (9th Cir. 1995). Even a minor player in the scheme is liable. Sabari v. United States, 333 F.2d 1019, 1021 (9th Cir. 1964).

A conspiracy can continue even after the principal crime is committed, so that the concealment of the crime is also included. Foss v. State, 92 Nev. 163, 167, 547 P.2d 688, 691 (1976). To withdraw from a conspiracy, a person must do so before

any of the conspirators commits an overt act in furtherance of the conspiracy. United States v. Sarault, 840 F.2d 1479, 1487 (9th Cir. 1988).

Defense counsel argued Kemp did not intend to participate in a robbery. Counsel said “[t]he intent with which an act is done is shown by the facts and circumstances surrounding the case.” 3 AA 556. Counsel defined a conspiracy by saying if he wanted to assault Ben, and Jess offered to call Ben and have him come over, Jess would be part of the conspiracy to assault Ben. 3 AA 558. Counsel asked the jury to decide if Kemp did anything in furtherance of the conspiracy because his mere presence would not be enough. 3 AA 547. Counsel said there was no conspiracy, so Kemp was not responsible for kidnapping or murder. 3 AA 558.

Kemp’s intent to participate in a robbery was shown by the facts and circumstances surrounding the robbery. The State need not employ a mind-reader to show Kemp conspired before the robbery to commit the robbery.

Kemp said his co-defendants wanted to commit a “simple little robbery” that “four” men could easily accomplish without violence. 3 AA 506, 512, 514. The four men in the apartment, and therefore the four participants in the planned robbery, were Davis, Woods, Hickman, and Kemp himself. 3 AA 514. The “crew” was four men, including Kemp. Kemp did not think the robbery would be violent:

Because, like I said, with the fact that we had Sayso and his brother hiding out in the room and me and Payso was sitting in the front, Paysi was going to talk to [the victim] about the week and Sayso and his brother was supposed to come out, and I was figuring that they was

supposed to just come and snatch up the weed and kind of push him out or whatever or anything, but no, no guns period.”

3 AA 514.

Kemp figured his presence, along with the other men, would be enough to frighten the victim into compliance:

Q: You figured four guys was enough to take [Anderson’s] weed, you wouldn’t have to worry about it?

A: Right, right.

3 AA 514.

Since Anderson was a rival drug dealer who undercut Kemp’s prices and therefore his profits, Kemp and his friends wanted Anderson gone. 2 AA 366, 3 AA 510-11. Kemp did not want to appear weak in front of his friends, so he did not refuse to participate, did not withdraw from the conspiracy, and worked to further the conspiracy. 3 AA 506-08. Before the robbery began, Kemp knew Anderson was to be robbed of drugs by drug dealers. 3 AA 512.

Kemp’s role in the robbery would be to open the door as normal to lure the victim and to prevent the victim from running away. 3 AA 506-08. All four men were needed to rob the victim without incident. 3 AA 514. After the victim died, Kemp robbed the body. 3 AA 515-16. Kemp never withdrew from the conspiracy, and after the victim’s murder, he labored harder than the alleged principal to cover up the crime. 2 AA 378, 3 AA 517-18.

Kemp was not a bystander sitting on the sofa and watching as three friends carried out a robbery of Kemp's rival. He accomplished a great deal in furtherance of the conspiracy. By viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found the essential elements of conspiracy to commit robbery beyond a reasonable doubt. See McNair, 108 Nev. at 56, 825 P.2d at 573.

### **B. First Degree Kidnapping with Use of a Deadly Weapon**

To support the conviction for first degree kidnapping, the State had to prove Kemp kidnapped Anderson either directly, by aiding and abetting the kidnapping, or under a conspiracy to commit this kidnapping. NRS 200.310(1).

A person who willfully seizes, confines, **inveigles, entices, decoys**, abducts, conceals, kidnaps or carries away a person by any means whatsoever with the intent to hold or detain, or who holds or detains, the person for ransom, or reward, or for the purpose of committing sexual assault, extortion or robbery upon or from the person, or for the purpose of killing the person or inflicting substantial bodily harm upon the person, or to exact from relatives, friends, or any other person any money or valuable thing for the return or disposition of the kidnapped person, ... is guilty of kidnapping in the first degree which is a category A felony.

NRS 200.310(1) (emphasis added).

Further, the State needed to show that Kemp or one of his co-defendants used a deadly weapon, here a firearm, in committing this crime. An unarmed offender "uses" a deadly weapon and therefore is subject to a sentence enhancement when the unarmed offender is liable as a principal for the offense that is sought to be

enhanced, another principal to the offense is armed with and uses a deadly weapon in the commission of the offense, and the unarmed offender had knowledge of the use of the deadly weapon. Brooks v. State, 180 P.3d 657, 124 Nev. 203 (2008).

Here, Kemp is a principal in the kidnapping offense because he kidnapped Anderson by inveigling Anderson into the apartment. 3 AA 507. Once Anderson was inside, Hickman brandished the gun to overcome Anderson's resistance to the kidnapping. Hickman killed Anderson by shooting him in the course of the kidnapping. 1 AA 233, 235, 237, 2 AA 374. Kemp knew Hickman had a gun, because the two men habitually kept a gun in the apartment to facilitate the drug dealing business. 2 AA 375, 3 AA 514.

Anderson needed to be detained so that the men could rob him. NRS 200.310(1). They wanted him cornered in a location that created such a distinct advantage for the criminals that the risk of harm to the victim was greatly increased. Robbing Anderson in the apartment rather than on the street increased the danger to Anderson, as shown by Anderson's death.

Kemp habitually opened the door for customers of his drug operation. 3 AA 506. The conspirators invited Anderson to their apartment so they could purchase two pounds of marijuana from him. 3 AA 506. So that Anderson would not become suspicious of the group's intent while he was still outside the apartment and had some chance at escape, Kemp opened the door for Anderson on the fatal day as

Anderson would have expected. 3 AA 507. If Kemp had not participated in the robbery plan, another person would have had to lure Anderson into the apartment so he could be robbed in privacy. This deviation from the norm might have been enough to alert Anderson that something was afoot. Kemp willfully inveigled, enticed, and decoyed Anderson with the intent to detain Anderson for the robbery. NRS 200.310(1).

Kemp was not required to brandish a firearm at Anderson to kidnap him. Kemp was guilty because he lured Anderson into the apartment “by any means whatsoever.” NRS 200.310(1). Kemp described his role as one in which he “would have to kind of block his path or the doorway or something” if the victim “were to try to take off and run or something.” 3 AA 508. Kemp directly participated in the kidnapping by luring the victim and confining him to prevent his escape.

Once Anderson was inside the apartment, Woods shoved him into the kitchen to prevent his escape. 3 AA 519. Kemp also aided and abetted in Woods’ efforts to keep Anderson captive. A rational jury could also find Kemp responsible under a conspiracy to kidnap theory, as Anderson had to be lured into the apartment for the robbery plan to unfold.

Since the robbers did not wear masks, the victim knew the robbers personally, and the robbery occurred in one of the criminal’s home, the jury could also have

used their common sense to infer that Anderson was never going to be allowed to escape.

By viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found the essential elements of first degree kidnapping with use of a deadly weapon beyond a reasonable doubt under any of the theories of the crime. See McNair, 108 Nev. at 56, 825 P.2d at 573.

### **C. Robbery with Use of a Deadly Weapon**

To support the conviction for robbery, the State had to prove Kemp took personal property from Anderson either directly, by aiding and abetting the kidnapping, or under a conspiracy to commit this robbery. NRS 200.380(1).

Robbery is the unlawful taking of personal property from the person of another, or in the person's presence, against his or her will, by means of force or violence or fear of injury, immediate or future, to his or her person, or the person of a member of his or her family, or of anyone in his or her company at the time of the robbery. A taking is by means of force or fear if force or fear is used to:

- (a) Obtain or retain possession of the property;
- (b) Prevent or overcome resistance to the taking; or
- (c) Facilitate escape.

The degree of force used is immaterial if it is used to compel acquiescence to the taking of or escaping with the property.

NRS 200.380(1).

Further, the State needed to show that Kemp or one of his co-defendants used a deadly weapon in committing this crime. Brooks, 180 P.3d 657, 124 Nev. 203. Kemp's role in the robbery was to lure Anderson inside, then prevent his escape. 2

AA 481, 3 AA 506-08. The deadly weapon was used to provide an additional element of force, beyond that provided by the presence of four men. Hickman shot Anderson during the robbery when he resisted. 1 AA 233, 235, 237, 2 AA 374. Kemp knew there would be a robbery and that a gun was available to the robbers. 3 AA 514.

Kemp and his friends robbed Anderson of marijuana, money, and Anderson's car, in addition to a few smaller items, via deadly force. Kemp did this directly, by aiding and abetting his friends, and via conspiracy. Kemp admitted his role in the robbery to detectives and identified the other people involved. 2 AA 470-71. Before the robbery, the conspirators made James and Murphy leave because they did not want witnesses to the robbery. 2 AA 500, 372-73. The other conspirators did not make Kemp leave, showing he was a participant, not a witness. Kemp educated the police about the robbery plan, saying they planned to take Anderson's marijuana. 2 AA 473, 480.

Kemp spoke with the victim shortly before the robbery, when Anderson was nearly at the apartment. 2 AA 421, 423, 425. When the victim became alarmed during the robbery, Kemp attempted to lower his resistance by reassuring him "Hey, it's not like that." 3 AA 513. According to Kemp's story, when guns were drawn, he sided with the robbers by trying to convince the victim to put his weapon away. 2 AA 498-99, 3 AA 513. Kemp did not ask the other defendant to deescalate and put

his gun away. 3 AA 513. Kemp thought the victim would comply, given the presence of four robbers. 3 AA 514.

After Anderson's death, Kemp robbed the corpse:

Q: Well, all right, so A.J.'s dead, you decide to take his car?

A: After I was told to, yes.

3 AA 515.

Q: When you take his car, you also take his marijuana cartridges?

A: Yes.

Q: You even take his hat and his power cord as well, don't you?

A: Not sure about the power cord, but I do remember I did take the hat.

Q: Were you thinking, hey, he doesn't need these anymore, I'll just help myself?

A: Kinda, yes.

Q: You recognize that taking advantage of a dead guy's property is still a robbery, right?

A: At the time; no, I did not.

3 AA 515-16.

Half an hour after the robbery and murder, Kemp celebrated with a victory dance at the liquor store with his girlfriend. 2 AA 375, 391. A rational juror could infer Kemp was satisfied with the events that had just unfolded. Kemp worked after the robbery to ensure the crime would not be detected. 2 AA 382-83. A rational juror

could conclude that Kemp's behavior after the robbery inferred his intention to participate in the robbery.

The evidence of Kemp's participation in the robbery comes primarily through Kemp's own testimony during the trial. By viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found the essential elements of robbery with use of a deadly weapon beyond a reasonable doubt. See McNair, 108 Nev. at 56, 825 P.2d at 573.

#### **D. Murder with Use of a Deadly Weapon**

Kemp is responsible for the murder of Anderson under a felony murder theory due to his convictions either for kidnapping or for robbery. NRS 200.030(1)(b). Specifically, the charging document said the murder was either willful, deliberate, and premeditated or committed during the perpetration or attempted perpetration of a kidnapping and/or robbery. 1 AA 15. Kemp was charged with liability by either directly committing the crime, by aiding or abetting in the commission of the crime with the intent the crime be committed, or by conspiracy to commit the crime with the intent the crime be committed. 1 AA 15. Because Anderson died when Kemp and his co-conspirators robbed and kidnapped him, Kemp is liable for his murder.

The State alleged Kemp and his associates:

Defendants formulating a plan to lure Marion B. Jabbar Anderson to an apartment at 6555 S. Boulder Highway under the pretext of a drug deal wherein the Defendants planned to rob Marion B. Jabbar Anderson; thereafter, Defendants executing the plan and when Marion B. Jabbar

Anderson arrived at the apartment, one of the Defendants/Co-Conspirators shot and killed Marion B. Jabbar Anderson

1 AA 15.

Further, the State needed to show that Kemp or one of his co-defendants used a deadly weapon in committing this crime. Brooks, 180 P.3d 657, 124 Nev. 203. Kemp was a principal in both the robbery and the kidnapping, as discussed above. His cohort used the deadly weapon when he shot Anderson during the crimes. 1 AA 233, 235, 237, 2 AA 374. Kemp knew Hickman had a gun. 3 AA 514. Kemp aided and abetted the murder when he urged Anderson to put his gun away and allow himself to be robbed peacefully. 3 AA 513. After the murder, Kemp continued his involvement by disposing of the murder weapon, cleaning the scene, and burning the corpse and other evidence. 2 AA 376, 378-85.

During the robbery, Hickman shot and killed Anderson. 3 AA 513-14. Detectives found a blood trail leading from the parking lot to Kemp's apartment. 1 AA 250, 2 AA 349-52. Police found Anderson's blood inside Kemp's apartment. 2 AA 311, 319. They also found a bullet casing under his stove. 2 AA 418. By viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found the essential elements of felony murder with use of a deadly weapon beyond a reasonable doubt. See McNair, 108 Nev. at 56, 825 P.2d at 573.

Kemp's opening brief is unclear as to whether he is challenging all the convictions or only the conspiracy one. See AOB at 1, 4-5. Kemp argues the State

proved nothing at trial other than that Kemp opened the door to his own apartment. AOB at 4. This assertion is belied and repelled by the record and must be dismissed. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

The jury, as trier of fact in this case, was privileged to apply its common sense to deduce Kemp was a willing participant in all the crimes for which he was convicted. He planned the robbery in advance with his friends, participated in the robbery, kidnapped the victim by luring him to the apartment and keeping him from leaving, and was responsible for the victim's murder during the commission of these felonies. The deadly weapon in the hands of Kemp's fellow criminals was properly attributed to Kemp.

### **CONCLUSION**

Based on the foregoing, the State respectfully requests that this Court AFFIRM Appellant's conviction.

Dated this 31<sup>st</sup> day of January, 2022.

Respectfully submitted,

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BY */s/ John T. Afshar*

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## CERTIFICATE OF COMPLIANCE

1. **I hereby certify** that this brief complies with the formatting requirements of NRAP 32(a)(4), 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 2003 in 14 point font of the Times New Roman style.
2. **I further certify** that this brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either proportionately spaced, has a typeface of 14 points or more, contains 5,367 words and 22 pages.
3. **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 and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 31<sup>st</sup> day of January, 2022.

Respectfully submitted

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**CERTIFICATE OF SERVICE**

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on 31<sup>st</sup> day of January, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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