

FILED

October 24, 2024

IMAGE ID N24298VCHNSC, FILING ID 0000036968

**CLERK
NEBRASKA SUPREME COURT
COURT OF APPEALS**

S-24-422

IN THE SUPREME COURT OF THE STATE OF NEBRASKA

THE STATE OF NEBRASKA,

Appellee,

vs.

ALDRICK SCOTT,

Appellant,

APPEAL FROM THE DISTRICT COURT OF
DOUGLAS COUNTY, NEBRASKA

Honorable Kimberly Miller Pankonin, District Court Judge

BRIEF OF APPELLANT

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STATEMENT OF JURISDICTION OF APPELLATE COURT

This is an appeal by Aldrick L. Scott (hereinafter “Mr. Scott”) from his conviction at trial by jury. Trial commenced on March 18, 2024, and the jury delivered guilty verdicts on all counts on March 25, 2024. (T175; T169-171). A presentence investigation (hereinafter “PSI”) was ordered, and sentencing was set for May 30, 2024. (T172). On May 30, 2024, the district court sentenced Mr. Scott to the following: count 1, murder in the first degree: life imprisonment; count 2, use of deadly weapon (firearm) to commit a felony: thirty to forty years’ imprisonment; and Count 3, tampering with physical evidence: fifteen to twenty years’ imprisonment, to be served consecutively. (T178). Mr. Scott was credited for 532 days served. (T178).

On June 6, 2024, Mr. Scott filed a Notice of Appeal. (T190). On June 6, 2024, the district court signed an order allowing Mr. Scott to proceed *in forma pauperis*. (T188). This appeal is authorized by the Constitution of the State of Nebraska, Article I, Section 23 and Neb. Rev. Stat. §§ 25-1912 (Reissue 2016), 29-2301 (Reissue 2016), 29-2306 (Reissue 2016), and 29-2308 (Reissue 2016).

STATEMENT OF THE CASE

(A) Nature of the Case

This is a criminal case where the State of Nebraska filed an Amended Information charging Mr. Scott with murder in the first degree, use of a deadly weapon (firearm) to commit a felony, and tampering with physical evidence. (T143).

(B) Issues Tried in the Court Below

The issue presented to the court below was whether Mr. Scott was guilty of the offenses charged beyond a reasonable doubt.

(C) How the Issues Were Decided

On March 18, 2024, the district court commenced a jury trial, and on March 25, 2024 the jury returned verdicts of guilty on all counts. (T175; T169-171). On May 30, 2024, the district court sentenced Mr. Scott to serve a term of life imprisonment for murder in

the first degree, thirty to forty years' imprisonment for use of a deadly weapon (firearm) to commit a felony, and fifteen to twenty years' imprisonment for tampering with physical evidence, all to run consecutively. Mr. Scott was credited for 532 days served. (T178).

(D) The Scope of Review

A two-part standard of review applies to a trial court's ruling on a motion to suppress evidence based on a claimed violation of the Fourth Amendment. Regarding historical facts, an appellate court reviews the trial court's findings for clear error, but whether those facts violate Fourth Amendment protections is a question of law that an appellate court reviews independently of the trial court's determination. *State v. Gilliam*, 292 Neb. 770, 776 (2016).

In reviewing a sufficiency of the evidence claim, whether the evidence is direct, circumstantial, or a combination thereof, the standard is the same: An appellate court does not resolve conflicts in the evidence, pass on the credibility of witnesses, or reweigh the evidence; such matters are for the finder of fact. The relevant question for an appellate court 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. *State v. Elseman*, 287 Neb. 134, 142 (2014).

ASSIGNMENTS OF ERROR

- I. THE DISTRICT COURT ERRED BY DENYING THE MOTION TO SUPPRESS THE ARREST OF ALDRICK SCOTT IN BELIZE, BECAUSE SAID ARREST VIOLATED BELIZEAN IMMIGRATION LAW AND AMERICAN EXTRADITION PROCEDURE; AND AS A RESULT, THE EVIDENCE GAINED FROM THAT ARREST AND DETENTION MUST BE EXCLUDED AS FRUIT OF THE POISONOUS TREE.**

II. THERE WAS INSUFFICIENT EVIDENCE PRESENTED AT TRIAL TO SUSTAIN MR. SCOTT'S CONVICTIONS SUCH THAT NO RATIONAL TRIER OF FACT COULD HAVE FOUND MR. SCOTT GUILTY OF THE CRIMES CHARGED.

PROPOSITIONS OF LAW

I.

Evidence obtained as the fruit of an illegal search or seizure is inadmissible in a state prosecution and must be excluded. *State v. Montoya*, 305 Neb. 581, 597 (2020).

II.

Evidence obtained from foreign searches is subject to the exclusionary rule pursuant to the Fourth Amendment "if American law enforcement officials substantially participated in the search or if the foreign officials conducting the search were actually acting as agents for their American counterparts." *States v. Marimuthu*, 2009 WL 4729043 (D. Neb. 2009); *State v. Barajas*, 195 Neb. 502 (1976).

III.

In reviewing a sufficiency of the evidence claim, an appellate court does not resolve conflicts in the evidence, pass on the credibility of witnesses, or reweigh the evidence. Such matters are for the finder of fact, and conviction will be affirmed, in the absence of prejudicial error, if the properly admitted evidence, viewed and construed most favorably to the State, is sufficient to support the conviction. *State v. Olbricht*, 294 Neb. 974 (2016).

STATEMENT OF FACTS

On November 20, 2022, Douglas County Sheriff's deputies were called to a home in Omaha with a potential missing persons report. (364:13-25). Deputies met with Brett and Brennan Allen, the ex-husband and son of the missing party, Cari Allen. (366:18-369:4). They observed defects through the door and walls of Cari Allen's

bedroom and adjacent rooms, which appeared to be from a gunshot through the door. (577:5-8). The defects appeared to have been hastily patched with some kind of compound. (577:12-14; 602:17-24). Family and friends of Ms. Allen were interviewed, which led investigators to learn that Ms. Allen had been on a date the night before, on November 19, 2022, at the Good Life Bar in Omaha. (575:6-8). Ms. Allen had reported being contacted multiple times during the date by her ex-boyfriend, Aldrick Scott. (576:11-22). Sergeant McFarland spoke with Aldrick Scott over the phone in the early morning hours of November 21, 2022. (620:1-18). During that conversation, Mr. Scott denied knowing where Cari Allen was and denied having been in Omaha on November 19th or 20th. (620:24-621:4).

Deputy O'Malley conducted follow-up investigation at Ms. Allen's home, at scenes in Topeka, Kansas, and with digital evidence. A search warrant was executed on Cari Allen's house on Monday, November 21, 2022. (749:16-20). Later that day, O'Malley and another deputy traveled to Topeka, Kansas, to attempt to interview Mr. Scott, who resided there. (754:19-758:2). While there, officers received notice of a 911 call that had come in from a third party, reporting a phone call between Mr. Scott and his friend Angie Larralde in which he admitted to some incidents that had happened with Ms. Allen. (758:16-22). Officers drove to Mr. Scott's address in Topeka, but no one was home. (760:12-23). As officers prepared to execute a search warrant on Mr. Scott's home, they learned that he had flown to Cancun, Mexico on November 21, 2022. (765:10-14). Mr. Scott's vehicle was located at the Kansas City International Airport, impounded, and later searched pursuant to a warrant. (766:1-9).

Deputies obtained a warrant for Mr. Scott's Snapchat account and examined the account's location data on the evening of November 19, 2022. (795:8-12). The data showed that Mr. Scott started at his residence in Topeka and drove to Omaha, arriving in the area of the Good Life Bar. (795:13-24). Mr. Scott soon left that area and traveled towards Ms. Allen's neighborhood. (803:2-8). By around 11:30 p.m., the

data showed Mr. Scott in the general area of Ms. Allen's home. (807:7-12). The data location remained in that area until leaving around approximately 2:27 a.m. on November 20, 2022. (838:4-10). On November 23, 2022, the State filed an information charging Mr. Scott with kidnapping and accessory to a felony, and a warrant was issued for his arrest. (4:20-5:4; E2).

On December 3, 2022, Deputy O'Malley was contacted by the Diplomatic Security Service of the United States Embassy in Belize, who stated that Mr. Scott was located in Caye Caulker in Belize. (1121:12-19). Mr. Scott was arrested by Belizean police on December 6, 2022, and an order to leave the country was issued the next day. (1121:24-25; 1122:2-5; E5). Mr. Scott was transported back to the United States on December 7, 2022, accompanied by two Belizean police officers. (1122:8-10). Belizean authorities seized clothing and a cell phone that were found in Mr. Scott's possession at the time of his arrest. (40:24-41:7). Mr. Scott's phone was transferred from Belizean police, to Customs and Border Patrol, to the Houston Police, and then finally to Deputy O'Malley. (41:17-21). O'Malley met Mr. Scott and the two Belizean police officers at the Houston International Airport on December 7, 2022. (1122:14-20). Mr. Scott was transferred to the custody of Houston Police Department and was processed as a fugitive from justice. (1123:2-4). After Mr. Scott waived extradition, O'Malley and another deputy took custody of Mr. Scott from Houston police and brought him back to Nebraska. (1126:22-25; 1127:5-7).

Deputies also obtained location data from an OnStar system in Mr. Scott's vehicle. The data was obtained pursuant to a search warrant, and was received on December 20, 2022. (857:8-14). The OnStar location data showed that on the morning of November 20, 2022, Mr. Scott's vehicle traveled from his residence to the location of an abandoned farmhouse in Topeka. (859:14-25). On December 21, 2022, local law enforcement searched the location and found a female deceased body buried in the ground. (862:7-17). An autopsy was conducted which identified the remains as those of Cari Allen. (863:2-

5). The cell phone that had been seized from Mr. Scott was physically examined, and found to contain evidence of internet searches regarding obtaining false identification in Belize, avoiding law enforcement detection in Belize, and the status of the investigation into Cari Allen's disappearance. (1138:17-1149:23).

On January 3, 2023, the State of Nebraska filed an information alleging that Aldrick Scott committed three felony charges: murder in the first degree; use of a deadly weapon (firearm) to commit a felony; and tampering with physical evidence. (T1). Mr. Scott filed a pretrial motion to suppress evidence gained by the State as a result of the arrest and search of Mr. Scott by Belizean law enforcement on or about December 6 or 7, 2022. (T85). The district court denied Mr. Scott's motion to suppress. (T116-121).

A jury trial began on March 18, 2024. (T175). Mr. Scott testified in his defense. He testified that he first met Ms. Allen on a dating app in October 2021. (1168:18-21). After a while of communicating online, the two met in person in November 2021. (1169:11-15). They began a relationship that progressed to seeing each other every other weekend. (1170:11-14). Mr. Scott described that he would drive from Kansas to Omaha to see Ms. Allen every two weeks for the weekend. (1170:15-20). At the end of October to early November of 2022, Mr. Scott described his relationship with Ms. Allen as drifting apart. (1181:21-24). There were email discussions about ending their relationship, although the two still communicated and had contact after these emails. (1182:3-13). Mr. Scott testified that he drove to Omaha on November 4, 2022, in hopes of seeing Ms. Allen. (1183:5-12). The next night, Ms. Allen called Mr. Scott and asked him to come over. (1184:7-15). Mr. Scott stated that after that night, he believed that he and Ms. Allen were back together. (1185:8-11). Mr. Scott reported driving to Omaha again two weeks later, on the weekend of November 19, 2022. (1186:17-23). He stated that he left Kansas later than normal because he was not sure if Ms. Allen wanted to see him. (1187:4-8). Mr. Scott testified that he did not talk to Ms. Allen before he left for Omaha, but

that the two had been communicating on Snapchat. (1188:3-7). Ms. Allen had not informed Mr. Scott that she was going on a date, so he looked at her location on Snapchat and tried to find her. (1188:14-20). Mr. Scott was unable to find her car, so he left and drove to her house. (1189:16-20).

At Ms. Allen's house, he knocked but there was no answer. (1189:22-25). Mr. Scott then parked his car down the road and walked back to Ms. Allen's house. (1190:2-13). At some point, after Ms. Allen was home, Mr. Scott knocked on the door. (1194:1-3). Ms. Allen opened the door and let him in, where the two had an argument by the staircase. (1194:9-22). Mr. Scott testified that after 10 or 15 minutes, Ms. Allen said she needed to go upstairs and he followed her. (1195:1-16). Ms. Allen then came out of the closet with a gun, and stated that she was going to hurt Mr. Scott, and he was not going to hurt her. (1196:12-23). Mr. Scott testified that he then rushed Ms. Allen to try to get the gun away from her, the two fumbled with the gun, and it went off. (1197:1-11). At this point, Mr. Scott was not aware that Ms. Allen had been shot because he did not see any blood. (1197:19-24).

Mr. Scott related that Ms. Allen sat on the steps and fell over backwards. (1198:7-9). He went to see if Ms. Allen was breathing, but she was dead. (1198:13-16). After that, Mr. Scott panicked and put Ms. Allen's body in the back of her Ford Fusion. (1199:4-18). Mr. Scott then drove to his car, put Ms. Allen in his vehicle, and drove the Ford Fusion back to her house. (1200:3-17). He then fixed the holes in the wall. (1200:20-23). Mr. Scott took the casing and the gun before he left the house. (1201:14-25). Mr. Scott testified to driving home to Topeka scared, frustrated, and shocked. (1202:18-23). He stated that he had not planned to argue with Ms. Allen or kill her on the night in question. (1211:9-23).

Once at home, Mr. Scott wrapped Ms. Allen's body in military gauze and plastic bags. (1204:3-8). He drove Ms. Allen's body to a property and buried it. (1204:14-25). That night, he spoke with Sergeant McFarland about Ms. Allen's whereabouts and where he had

been that weekend. (1206:25-1207:7). Mr. Scott reported that he lied to Sergeant McFarland because he was afraid. (1207:8-11). After the phone call, he searched for and purchased a plane ticket to Cancun that left the same morning. (1207:15-25). Mr. Scott disposed of the gun and the casing he had taken from Ms. Allen's home in a garbage can at the airport parking garage. (1208:9-15). Mr. Scott then got on a flight and traveled to Cancun. (1209:1-10). Once in Cancun, Mr. Scott traveled to Belize. (1210:22-23).

On March 25, 2024, the case was submitted to the jury. (T168). On the same day, Aldrick Scott was found guilty on count 1, murder in the first degree; guilty on count 2, use of a deadly weapon (firearm) to commit a felony; and guilty on count 3, tampering with physical evidence. (T169-171). On May 30, 2024, Mr. Scott was sentenced to life imprisonment on count 1, 30 to 40 years' imprisonment on count 2, and 15 to 20 years' imprisonment on count 3. (T178). The sentences were ordered to run consecutively to each other and credit was given for 532 days previously served. (T178).

SUMMARY OF ARGUMENT

The district court erred in failing to suppress evidence obtained as a direct result of Mr. Scott's unlawful arrest and detention by Belizean authorities. Additionally, the district court erred in denying Mr. Scott's motion to dismiss because the State failed to produce sufficient evidence to support a finding of guilt beyond a reasonable doubt for murder in the first degree, use of a weapon (firearm) to commit a felony, and tampering with physical evidence.

ARGUMENT

- I. THE DISTRICT COURT ERRED BY DENYING THE MOTION TO SUPPRESS THE ARREST OF ALDRICK SCOTT IN BELIZE, BECAUSE SAID ARREST VIOLATED BELIZEAN IMMIGRATION LAW AND AMERICAN EXTRADITION PROCEDURE; AND AS A**

**RESULT, THE EVIDENCE GAINED FROM THAT
ARREST AND DETENTION MUST BE EXCLUDED AS
FRUIT OF THE POISONOUS TREE.**

The district court erred by failing to suppress the fruits of Mr. Scott's arrest in Belize because the arrest was unlawfully effectuated. Both the Fourth Amendment to the U.S. Constitution and article I, § 7, of the Nebraska Constitution guarantee against unreasonable searches and seizures. Evidence obtained as the fruit of an illegal search or seizure is inadmissible in a state prosecution and must be excluded. *State v. Montoya*, 305 Neb. 581, 597 (2020). The unlawful arrest and detention of Mr. Scott resulted in the seizure of his cell phone, and as such, any evidence corresponding to the phone found at the time of the arrest and detention were fruit of his unlawful arrest and improperly admitted as evidence. The district court's refusal to grant Mr. Scott's motion to suppress resulted in reversible error, in that the phone was searched pursuant to a warrant, and the phone, as well as photographs documenting its physical examination, were admitted into evidence at trial against Mr. Scott. (E404; E421).

Mr. Scott and his property were seized on December 6, 2022, the day before the Belizean government issued an Order to Leave. (40:9-12, E5, p. 1). He was detained overnight in a Belizean jail before being deported to the United States on December 7, 2022, as a "prohibited immigrant", pursuant to the Order to Leave. (E5, p.1; 39:18-24; 49:18-22). At all relevant times, the evidence suggests that his property, specifically a ZTE Blade 9 cell phone, was in the custody of Belizean authorities. (41:4-7). The Belizean authorities transferred custody of the phone to U.S. authorities upon Mr. Scott's arrival in Houston. (41:4-16).

The Belizean Order to Leave did not authorize Mr. Scott's overnight detention in Belizean custody or the seizure of his property. (E5, p. 1). The Order to Leave was issued under the authority of Chapter 156 of the Belize Immigration Act. (E5, p. 1, E11, p. 26).

Section 27 of that provision authorizes an immigration officer to take a number of actions towards a “prohibited immigrant.” It states:
An immigration officer who decides that a person is a prohibited immigrant may –

- (a) order him to leave Belize and proceed immediately in the same vessel in which he arrived; or
- (b) order him to leave Belize within sixty days of entering Belize, and, if the immigration officer thinks fit, by a specified vessel; or
- (c) cause him to be arrested and brought before a magistrate’s court with a view to an order being made for his removal.

(E11, p. 25-26)

In this case, the immigration officer found Mr. Scott to be a “prohibited immigrant” and ordered him to leave immediately. (E5, p. 1).

However, Section 27 (a) does not authorize the immigration officer to order a prohibited immigrant to leave immediately, other than in the same vessel in which he arrived. Presumably, subsection (a) applies to prohibited immigrants who arrive on a particular vessel and are determined to be prohibited immigrants at a port of entry, perhaps even before disembarking from the vessel. This subsection does not apply to Mr. Scott, who had entered Belize under unknown means and who had been in Belize for several days or weeks. Subsection (b) does not apply, in that the Order to Leave ordered Mr. Scott to leave immediately, rather than in 60 days. Subsection (c) would appear to apply to Mr. Scott, in that an immigration officer may cause a prohibited immigrant to be arrested. Importantly, however, if the officer proceeds under subsection (c), the prohibited immigrant must be brought before a magistrate’s court to effectuate the order for removal.

As a party detained or arrested as a prohibited immigrant, Mr. Scott should have been afforded several rights under the Belize Immigration Act, including right to notice, the right to appeal to a summary jurisdiction court, and the right to a hearing in front of a magistrate regarding whether he should be detained in custody until

his immigration proceeding has concluded. (E11 p. 26-7) Mr. Scott was denied all of these procedural rights when he was detained in Belize. As such, the district court should have suppressed the fruits of the unlawful detention for failure to comply with the Belize Immigration Act of 2000.

Furthermore, Mr. Scott's unlawful detention and removal from Belize denied him the procedural safeguards of the extradition process. The district court's failure to suppress evidence obtained in violation of United States and Belize's extradition procedure resulted in the admission of prejudicial evidence and constitutes reversible error by the district court.

Belize and the United States are parties to a treaty that governs extradition of wanted persons sought for prosecution in the requesting state. (E10, p. 9, Article 6). The treaty sets forth extradition procedures that must be followed by the requesting state. (*Id.*) These procedures include that requests for extradition must be accompanied by supporting documents, including the arrest warrant. (*Id.*) In addition, a nation's request of a "provisional arrest" of a person pending presentation of the request for extradition must be supported by additional documentation, and a person who is subject to a provisional arrest is afforded the right of access to the courts for remedy. (*Id.*)

When Mr. Scott was arrested on December 6, 2022 in Belize, there was an active warrant for his arrest in Nebraska. (E3, p. 3). Thus, on December 6, 2022, Mr. Scott was a "person sought for prosecution" by the authorities of the United States. (E10, p. 9). Therefore, the extradition treaty between Belize and the United States applied, and the procedural safeguards delineated in the treaty should have been followed. The fact that Belize simultaneously processed Mr. Scott as a "prohibited immigrant" and tried to expedite his removal by deporting him immediately does not excuse the failure to comply with the applicable extradition treaty. Not all "prohibited immigrants" have an active out-of-country warrant; those that do, such as Mr. Scott, must be

processed in accordance with *all* applicable procedures. Particularly, the overnight detention of Mr. Scott in a Belizean jail, and the fact that he was in custody, that his property was confiscated, and that he was accompanied during his deportation flight by Belizean police officers, make it apparent that Mr. Scott was not simply a “prohibited immigrant” who was being immediately deported. He was in custody, and in detention, and being sent to the United States for the purpose of prosecution, and yet he was afforded none of the procedural safeguards that are legally required for detention under those circumstances. As his detention was improper under the applicable extradition treaty, the seizure of Mr. Scott and his property violated the Fourth Amendment, and the district court erred in allowing the fruits of his unlawful detention, specifically his phone and its contents, to be admitted into evidence.

Additionally, the exclusionary rule applies in the instant matter because the arrest of Mr. Scott was a joint venture between the United States and Belize. The general rule is that evidence obtained from searches carried out by foreign officials in their own countries is admissible in United States courts, even if the search violates United States law or the law of the foreign country. *United States v. Marimuthu*, 2009 WL 4729043 (D. Neb. 2009). However, courts, including those in Nebraska, have recognized exceptions to this general rule. One exception provides that evidence from foreign searches is inadmissible if the conduct of the foreign officials during the search “shocks the judicial conscience.” *Id.* Another exception provides that evidence obtained from foreign searches is subject to the exclusionary rule pursuant to the Fourth Amendment “if American law enforcement officials substantially participated in the search or if the foreign officials conducting the search were actually acting as agents for their American counterparts.” *Id.*; *State v. Barajas*, 195 Neb. 502 (1976). The Nebraska Supreme Court has recognized this exception, observing that the exclusionary rule could apply to raids by foreign officials if United States agents so substantially participated in the

raids so as to convert them into joint ventures between the United States and the foreign officials. *Barajas*, 195 Neb. at 506.

The circumstances of Mr. Scott's arrest in Belize, and the seizure of his property, meet the criteria for the exclusionary rule to apply because the Belizean law enforcement officers were working as agents for United States law enforcement officers to the extent that they formed a joint venture between the two entities. Additionally, several aspects of Mr. Scott's arrest, detention, and transportation were directly performed by a United States agent, U.S. Department of State, Diplomatic Security Service Special Agent Jon-Paul Bernard. (E4, p. 1-3). In preparation for Mr. Scott's arrest, U.S. Embassy officials confirmed his identity and the details of the arrest warrant. (E4, p. 1). Bernard described that his "team," i.e., United States agents, talked to the "source," i.e. the Belizean citizen who had first contacted authorities regarding Mr. Scott's whereabouts. (E9, p. 1-2). After Mr. Scott was physically arrested by Belizean police officers, he was transferred to Belize City, where he was processed and identified by United States special agent Bernard. (E4, p. 1). Importantly, Bernard worked with the United States Marshall Service "to fund his removal," and "got the Director of Immigration to issue an order to leave." (E9, p. 2). In other words, a United States agent – Bernard – was responsible for arranging for United States' funds to pay for Mr. Scott's flight from Belize City to Houston, Texas. Moreover, Bernard's statements indicate that he or his office played a role in obtaining the Order to Leave that was used to return Mr. Scott to the United States. Through special agent Bernard and his office, the United States worked with Belize in a joint venture to arrest Mr. Scott, seize his property, detain him overnight, and remove him from the country. The involvement of United States agents in Mr. Scott's arrest and detention was sufficient to invoke the exception allowing the exclusionary rule to apply. This further underscores the error made by the district court regarding fruit of the unlawful arrest and detention of Mr. Scott by agents of the United States operating under Belizean

authority. Therefore, the trial court erred in denying the motion to suppress the fruits of Mr. Scott's unlawful arrest.

II. THERE WAS INSUFFICIENT EVIDENCE PRESENTED AT TRIAL TO SUSTAIN MR. SCOTT'S CONVICTIONS SUCH THAT NO RATIONAL TRIER OF FACT COULD HAVE FOUND MR. SCOTT GUILTY OF THE CRIMES CHARGED.

There was insufficient evidence to support a finding of guilt for the charges of murder in the first degree, use of a deadly weapon (firearm) to commit a felony, and tampering with physical evidence. Even viewing the evidence in a light most favorable to the State, there was insufficient evidence to establish that Mr. Scott possessed the requisite intent necessary for a conviction of murder in the first degree and use of a weapon (firearm) to commit a felony, as well as tampering with physical evidence. As such, the record is clear that no reasonable fact-finder could have arrived at a decision of guilt, and Mr. Scott's convictions are untenable.

"In reviewing a sufficiency of the evidence claim, an appellate court does not resolve conflicts in the evidence, pass on the credibility of witnesses, or reweigh the evidence." *State v. Olbricht*, 294 Neb. 974 (2016). "Such matters are for the finder of fact, and conviction will be affirmed, in the absence of prejudicial error, if the properly admitted evidence, viewed and construed most favorably to the State, is sufficient to support the conviction." *Id.* This Court has noted this standard remains the same regardless of whether the evidence is "direct, circumstantial, or a combination thereof." *State v. Elseman*, 287 Neb. 134, 142 (2014). "The relevant question for an appellate court 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." *Id.* Notably, "a conviction cannot be based upon suspicion, speculation, the weakness of the status of the accused, the embarrassing position in

which the accused finds himself or herself, or the mere fact that some unfavorable circumstances are not satisfactorily explained.” *State v. Hulshizer*, 245 Neb. 244 (1994). “When the evidence adduced at trial is legally insufficient to sustain the conviction, a criminal charge may not be retried, but must be dismissed.” *State v. Garza*, 256 Neb. 752, 766 (1999).

In the present case, there was insufficient evidence to support a finding of the requisite intent necessary to prove Mr. Scott guilty beyond a reasonable doubt. To prove first degree murder, the state needed to show that Mr. Scott killed Cari Allen with premeditated malice; in other words, that he formed the intent to act before acting. But Mr. Scott’s testimony, as well as his own actions and the electronic records, establish that he did not intend to kill Ms. Allen in the time leading up to her death. Instead, they show that his intent was to spend time with Ms. Allen on a weekend consistent with their usual visiting schedule, and reconcile with her following their recent breakup. There was no evidence adduced that Ms. Allen had told Mr. Scott that she was going on a date with someone else on the evening of November 19, 2022. The digital evidence establishes that Mr. Scott left Topeka for Omaha around 7:30 p.m. that night, but that Mr. Scott and Ms. Allen did not have a phone call until 11:21 p.m. after Mr. Scott had already arrived in Omaha and was in the vicinity of her house. (799:18-22; 816:13-16; 846:3-847:5). In other words, there was no apparent motive for Mr. Scott to leave Topeka with the intent to kill Ms. Allen – they had not even spoken yet at the time he made that decision. Nor had they had a phone call at the time Mr. Scott parked his car and approached her house, so there was similarly no evidence of a motive for him to kill her at that point. Without such a motive, there is no support for the State’s theory that Mr. Scott brought his handgun with him from Topeka with a premeditated intent to kill Ms. Allen. Accordingly, no rational finder of fact could have found that Mr. Scott acted with premeditated malice at that time.

The evidence presented regarding Mr. Scott's actions after Ms. Allen was shot also supports the conclusion that the evidence presented was insufficient for a rational fact-finder to determine that Mr. Scott formed the requisite intent, and acted upon it, to establish first degree murder and use of a weapon (firearm) to commit a felony. Mr. Scott testified, and the state's undisputed evidence showed, that Mr. Scott acted afterwards without a clearly thought-out plan. All of Mr. Scott's efforts to flee or to cover up evidence occurred after Ms. Allen's death, not before. There was no evidence in the digital records that he purchased a flight beforehand; researched a destination beforehand; made financial plans or other arrangements beforehand. Rather, all of the evidence following Ms. Allen's death points to Mr. Scott reacting in a panic to a set of unforeseen circumstances. As such, no rational fact-finder could have concluded that Mr. Scott acted with the requisite intent to support convictions on counts 1 and 2.

Mr. Scott's testimony on this point fits the physical and electronic evidence and provides further support for this position. Mr. Scott testified that Ms. Allen was shot after she pointed a firearm at him and he attempted to disarm her; he did not intend to kill her. He testified, and his actions demonstrated, that he wanted to see her that weekend, and reconcile. Moreover, there was no evidence in the electronic communications leading up to November 19, 2022 that suggested that Mr. Scott was angry with her or planning to become violent. Mr. Scott told his close friend Angie Larralde an account that mirrored this testimony. (1161:2-6). This affirmative evidence, combined with the lack of evidence provided by the State regarding premeditation and intent, supports the conclusion that no rational fact-finder could have found guilt on counts 1 and 2.

Finally, the evidence presented at trial was insufficient to establish guilt on count 3, tampering with physical evidence. The first element of that count requires proof that Mr. Scott believed that an official proceeding was pending or was about to be instituted. (T154). All of the State's evidence regarding Mr. Scott's actions in disposing of

or concealing evidence took place before official proceedings began. An arrest warrant was not issued until November 23, 2022, and Mr. Scott was not arrested until December 6, 2022. (774:3-21; 1121:24-25). Meanwhile, the state's evidence regarding disposing of Ms. Allen's body and other evidence all took place before November 23, 2022, by which time Mr. Scott had left the country. On November 21, 2022, Mr. Scott had already arrived in Cancun, Mexico. (765:10-18). By that time, the removal or concealment of all the physical evidence in question – Ms. Allen's body, her phone, gun, casing, and patching material – had already occurred several days prior. Accordingly, no rational finder of fact could conclude that the evidence was sufficient to prove that Mr. Scott took those actions with the belief that an official proceeding was pending or was about to be instituted. Thus, this Court should reverse each of the three convictions for insufficient evidence.

CONCLUSION

For the aforementioned reasons, the district court erred when it overruled the motion to suppress evidence obtained as a result of Mr. Scott's unlawful arrest and detention by Belizean authorities. Additionally, the district court erred in denying Mr. Scott's motion to dismiss because the State failed to produce sufficient evidence to support a finding of guilt beyond a reasonable doubt for the crimes charged. For these reasons, Mr. Scott respectfully requests this Court reverse his convictions and remand for new trial or for dismissal.

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CERTIFICATE OF WORD COUNT

I certify that the accompanying brief complies with Neb. Ct. R. § 2-103(C), in that it was prepared using Century Schoolbook 12-point typeface and contains 5910 words, excluding this certificate. This certificate was prepared in reliance on the word-count function of Microsoft Word, part of Microsoft Office Professional Plus 2016.

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Certificate of Service

I hereby certify that on Thursday, October 24, 2024 I provided a true and correct copy of this *Brief of Appellant Scott* to the following:

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