No. S-24-422

IN THE NEBRASKA SUPREME COURT

STATE OF NEBRASKA,
Appellee,

v.

ALDRICK SCOTT,
Appellant.

On Appeal from the District Court of Douglas County
The Honorable Kimberly M. Pankonin

BRIEF OF APPELLEE

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TABLE OF CONTENTS

Table of Authorities

Page(s)

Cases

Cases—continued

Cases—continued

Cases—continued

Statutes

Statutes—continued

Other Authorities

STATEMENT OF THE CASE

Nature of the Case. Aldrick Scott was convicted by a Nebraska jury of first-degree murder, use of a deadly weapon to commit a felony, and tampering with physical evidence.

Issues Presented in the District Court. Scott moved the district court to suppress evidence obtained from the Belizean government's search, arrest, and deportation of Scott on grounds that the search and seizure violated Belizean law and extradition provisions in a treaty between the United States and Belize.

Resolution of the Issues Presented. The district court denied Scott's motion to suppress, holding the Fourth Amendment and the exclusionary rule did not apply to the Belizean government's search and seizure of Scott in Belize. A jury later found Scott guilty on all three counts.

Scope of Review. In reviewing a district court's ruling on a motion to suppress under the Fourth Amendment, this Court "reviews the trial court's [factual] findings for clear error, but whether those facts trigger or violate Fourth Amendment protections is a question of law that an appellate court reviews independently of the trial court's determination." *State v. Ferguson*, 301 Neb. 697, 709 (2018). The finding of guilty by the trier of fact will not be overturned on appeal unless, "after viewing the evidence in the light most favorable to the prosecution," this Court determines that no "rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *State v. Kalita*, 317 Neb. 906, 910–11 (2024).

PROPOSITIONS OF LAW

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

2. "[T]he exclusionary rule, as a deterrent sanction, is not applicable where . . . a foreign government commits the offending act." *United States v. Janis,* 428 U.S. 433, 455 (1976).

3. The exclusionary rule applies even to foreign searches and seizures if U.S. law enforcement "so substantially participated in the [searches and seizures] so as to convert them into joint ventures between the United States and the foreign officials." *State v. Barajas*, 195 Neb. 502, 506 (1976).

4. An error is harmless if the "guilty verdict rendered in the questioned trial was surely unattributable to the error." *State v. Surber*, 311 Neb. 320, 334 (2022).

5. The finding of guilty by the trier of fact will not be overturned on appeal unless, "after viewing the evidence in the light most favorable to the prosecution," this Court determines that no "rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *State v. Kalita*, 317 Neb. 906, 910–11 (2024).

6. A person commits first-degree murder if he kills another person "purposely and with deliberate and premeditated malice." Neb. Rev. Stat. § 28-303 (Cum. Supp. 2022).

7. "One kills with premeditated malice if, before the act causing death occurs, one has formed the intent or determined to kill the victim without legal justification." *State v. Golyar*, 301 Neb. 488, 505 (2018).

8. A conviction for use of a deadly weapon to commit a felony requires the State to prove that the defendant intentionally used a firearm to commit a felony. Neb. Rev. Stat. § 28-1205(1)(a), (c) (Reissue 2016); *see State v. Pruett*, 263 Neb. 99, 105 (2002).

9. A person is guilty of tampering with physical evidence if, "believing that an official proceeding is pending or about to be instituted and acting without legal right or authority, he . . . [d]estroys, mutilates, conceals, removes, or alters physical evidence with the intent to impair its verity or availability in the pending or prospective official proceeding[.]" Neb. Rev. Stat. § 28-922(1)(a) (Cum. Sup. 2022).

STATEMENT OF FACTS

I. On February 3, 2023, the State charged Aldrick Scott with first-degree murder, use of a deadly weapon to commit a felony, and tampering with physical evidence. (T1–2). The State alleged that Scott intentionally shot and killed Cari Allen with premeditated malice on or around November 20, 2022, and tampered with physical evidence to cover up her death. (*Id.*). Scott pleaded not guilty on February 6, 2023, (T3), and the district court scheduled a 10-day jury trial beginning March 18, 2024. (T82–83).

II. The State's investigation that led to this prosecution began on November 20, 2022, when the Douglas County Sheriff's Office received a report that Cari Allen was missing. (364:13–25). The report came from Allen's ex-husband, Brett Allen, who became concerned about Allen after she did not contact Brett or their son Brennan that day as she ordinarily did. (369:8–14). Concerned for Allen, Brett visited her home to find the front door not fully closed, Allen's car still parked in the garage, and holes

in the walls that were roughly patched. (369:23–371:13). Allen's son told a Douglas County deputy sheriff that he had not seen the holes the week before when he last stayed with his mom. (371:18–21). Multiple officers testified that the holes appeared consistent with a gunshot from a handgun, but there were no casings found at the scene. (585:2–4, 594:22–23, 618:17–19, 635:22–24, 752:1–11).

Police then spoke with Taji Loehr, a friend of Allen's. (373:6–8). Loehr notified police that Allen had been on a date the night before. (373:8–12). Police learned from texts between Loehr and Allen that Scott, Allen's ex-boyfriend, kept calling Allen during the date, so much so that Allen had to turn her phone off. (374:5–15). Police also learned that Allen's Snapchat location tracker, which Brett was usually able to see, had disappeared, indicating that Allen's phone and other devices were turned off. (386:9–14). At that time, Deputy Blackwell issued a missing person report for Allen. (386:17–19).

A Douglas County sergeant attempted to call Scott on November 20, and Scott called back shortly after midnight of November 21. (619:21–620:5). Scott said he did not know where Allen was and denied being in Omaha on November 19 or 20. (620:21–621:4). Investigators later received video camera footage from outside the bar in which Allen had gone on her date on November 19 and from nearby residents' video doorbells. (698:21–700:16, 705:8–12). The videos showed Scott's vehicle driving near the bar and circling its parking lot for seven minutes while Allen was inside on her date. (734:21–735:6). The videos showed Scott then driving toward Allen's house before Allen's vehicle ultimately would be seen driving toward her house. (709:20–724:23).

Investigators marked Scott as a person of interest, and two Douglas County deputies traveled to Topeka, Kansas, where

Scott lived, to speak with Scott. (752:19–23). After arriving in Topeka, while conferencing with the Topeka Police Department, the Douglas County deputies received information that Angie Larralde, a friend of Scott's, had received a call from Scott in which he said he had killed his girlfriend. (758:10–759:21). Police visited Scott's address, but he was not present, and his home was in a state of disarray. (760:12–761:1, 764:15–24). Larralde informed police officers that Scott was likely in Cancún, Mexico, which police later confirmed. (761:15–18, 765:10–24). The Kansas City International Airport confirmed that Scott's vehicle was parked at the airport. (766:1–9). Police seized the vehicle and brought it to Omaha. (770:8–19). Investigators also discovered that Scott had purchased an airline ticket for November 23 from Cancún to Los Angeles and a subsequent ticket from Los Angeles to Fiji. (774:1–9). Investigators traveled to Los Angeles to intercept Scott, but Scott was not on the manifest of the flight he had purchased to Los Angeles. (774:9–12, 775:5–15).

On November 23, 2022, the State charged Scott with kidnapping and accessory to a felony arising from the State's allegations that Scott abducted Cari Allen on or about November 20, 2022. (E2, E3). On December 3, 2022, the Diplomatic Security Service of the U.S. Embassy in Belize received information from a Belizean citizen that Scott was residing in Belize as a wanted fugitive. (E4, p. 3). The informant said Scott was renting a room at his home. (*Id.* at 2). Federal investigators contacted Belizean law enforcement to inform them that a U.S. fugitive was in Caye Caulker, Belize. (*Id.*). Federal investigators also contacted the Belize Immigration Department and verified that Scott had entered Belize illegally. (*Id.*). On December 6, 2022, Belizean law enforcement arrested Scott and initiated his deportation process. (*Id.* at 2–3). Belizean authorities also seized Scott's cell phone.

(40:24–41:7). On December 7, 2022, Scott was issued an "Order to Leave Belize" immediately because he was a "prohibited immigrant" under the Belize Immigration Ordinance. (E5). That same day, Scott was deported from Belize to Houston, Texas. (E4, 3). Scott's custody and Scott's phone's custody was transferred to Houston police and ultimately back to Nebraska local authorities. (41:17–21, 1126:22–25; 1127:5–7).

Douglas County law enforcement also obtained location data from Scott's vehicle. (850:20–852:9). The location data showed that on November 20, 2022, Scott traveled to an abandoned farmhouse in Topeka. (859:14–25). Topeka police searched the location and found buried in the ground on the property the remains of a body later identified as the body of Allen. (862:7–17, 863:2–9). The State then charged Scott with first-degree murder, use of a deadly weapon to commit a felony, and tampering with physical evidence.

III. A few months before Scott's trial, Scott moved to suppress all evidence gained by the State as a result of Belizean law enforcement's arrest and search of Scott. (T85–T86). Scott claimed the arrest and search violated Belizean law and procedural provisions of the Extradition Treaty Between the Government of the United States of America and the Government of Belize (the "Extradition Treaty"). (T85). Scott specifically requested that "the cell phone seized from his person, [] be suppressed." (T100). The State resisted the motion. (T103).

At the hearing on the motion to suppress, the State called Douglas County Deputy Sheriff Brian O'Malley. (32:17–33:6). O'Malley testified that after investigators learned Scott was out of the country, they contacted U.S. Marshals to assist in tracking him. (36:24–37:1). O'Malley testified that he was notified by U.S. Marshals on December 6, 2022, that Scott had been apprehended

in Belize. (39:3–10). O'Malley testified that neither he nor his department had anything to do with Scott's arrest in Belize. (42:23–43:8).

U.S. Marshals advised O'Malley that Scott was scheduled to be deported and flown back to the United States by Belize police officers the next day. (39:18–21). Custody of Scott and his cell phone was transferred from Belizean police to Border Patrol, then to the Houston Police Department. (39:19–41:10). O'Malley flew to Houston where he interviewed Scott and took custody of Scott's cell phone and returned home. (40:13–14, 41:10–42:8). O'Malley testified that he returned to Texas a few days later and retrieved Scott after Scott waived his interstate extradition hearing. (42:10–17).

The district court denied Scott's motion to suppress, reasoning that the exclusionary rule under the Fourth Amendment did not apply to the search because it was primarily conducted by Belizean authorities. (T120–21). The court also held that the search did not shock the conscience and that the Extradition Treaty did not apply because Scott was deported from Belize, not extradited. (T118–119).

IV.A. The district court held a multi-day trial beginning March 18, 2024. (T82–83). In opening statements, Scott made his defense theory clear—self-defense. (361:19–22). When called as a witness, Scott testified that he began his relationship with Allen after they met on an online dating application in October 2021. (1168:19–24). Scott and Allen met in person for the first time in November 2021, and Scott began traveling from Topeka where he lived up to Omaha where Allen lived every two weeks to see her. (1169:11–1170:20). On those trips, Scott would stay with Allen for the weekend and sleep in her bedroom. (1174:13–15). Scott testified that around October 2022, their relationship started to

"drift[] apart" and there were discussions of a break up. (1181:21–24, 1182:3–6). Witnesses testified and admitted text messages showed Allen broke off the relationship with Scott. (538:17–539:2, 548:12, 879:5–7). But while Scott said he was discouraged by the conversation about breaking up, "[t]o an extent, [Scott] thought [they] were still together." (1182:8–9, 1183:2–3). Scott testified that a couple of weeks later, on November 4, he came back up to Omaha in hopes of seeing Allen. He claims she ended up inviting him to her house where they "were intimate," and Scott stayed the night. (1183:5–1185:1). Scott claims he thought they were getting back together after the visit. (1185:8–11).

Scott then went back up to Omaha on November 19. (1186:4–20). Scott testified that he went up in hopes that it would be like the previous weekend and that they would be intimate with each other. (1187:21–23). That same night, Allen went on a date at the Good Life Lounge with another man. (539:13–15). Snapchat data indicates that Scott did not leave Topeka for Omaha until approximately 15 minutes after Allen's Snapchat first showed her at the lounge. (792:23–793:4, 799:18–22). Scott admits he went to the Good Life Lounge when he arrived in Omaha because Allen's Snapchat location tracker pinned her at the lounge. (1188:15–16). During the date, Scott was calling Allen "all night." (548:7–8). So much to the point that Allen texted Loehr (her friend) that she "shut [her] phone off because Aldrick kept fucking ringing in." (E218, p. 17; 548:23–24). Scott eventually ended up driving to Allen's house where location data showed that he parked not in her driveway, but in an abandoned area with construction near Allen's house. (855:4–6; *see also* 569:2–5). Scott said around that time he called Allen three times with no answer and on the fourth time she answered and said she was having drinks with Loehr, and they were "kind of upset with each

other" in the conversation. (1191:8–25). So, Scott testified that he waited at Allen's house until she came home. (1191:4–6, 1192:3–6). Scott admitted that he thought Allen would be coming back from a date with someone else and he wanted to "catch her in the lie." (1192:12–1193:15). Location data and video evidence showed Scott waited near Allen's house for approximately an hour before she arrived home. (724:14–17, 807:7–12, 891:3–7).

Scott testified that after Allen came home, he knocked on the door, and she let him in. (1194:1–4). Investigators testified that Allen's phone data showed she made several unanswered calls to Scott and the two messaged each other on Facebook for at least 45 minutes after Allen had arrived home. (817:7–22, 826:23–835:10; 904:22–24). In the messages, it did not appear Allen was aware Scott was in Omaha, let alone at her house. (835:11–14; *see* E419).

Scott claims that after she let him in the house, Scott accused her of cheating on him and the two had an argument. (1194:1–25). Scott testified that after the two verbally argued for 10 to 15 minutes, Allen went upstairs where he followed her to her bedroom. (1195:1–14). Scott claims that in her bedroom, Allen pulled a gun on him, and he rushed her, and the gun went off, fatally wounding Allen. (1196:1–1198:6).

Friends and family of Allen, including Allen's ex-husband and son and Scott himself, all testified that they never knew Allen to have owned a gun. (447:2–8, 500:16–21, 534:13–19, 1177:12–13). And investigators testified that they found no evidence at Allen's house that would indicate she possessed a gun—no gun, no bullets, no magazines, no registration, no ownership papers, no cases, no boxes. (619:3–12, 750:11–22). Scott, on the other hand, served in the Marine Corps for ten years, was skilled with guns, and admitted to owning multiple guns, including one

that he had in the back of his car the night of the incident. (1163:24, 1213:4–18).

Dr. Hossain, a forensic pathologist who performed Allen's autopsy, testified that the gunshot, which went through her right breast, was not likely at close range or at "contact" range (i.e., the end of the barrel was not in direct contact with Allen's body when the gun fired) based the lack of stippling (tiny lesions around the wound) and the lack of a muzzle burn near Allen's gunshot wound. (1100:18–21, 1108:9–20, 1109:5–9). Dr. Hossain also testified that there were no "defense wounds" or other injuries to Allen's body, (1101:2–5, 1116:6–1117:1), and officers and Loehr testified there was no sign of a physical struggle in Allen's room nor did anything look abnormal in Allen's room besides the patched holes. (556:9–24, 598:20–599:3, 628:4–5).

Scott testified that after Allen was fatally wounded, he put her body in the back of her car (without wrapping her in anything) before he went back to her house where he patched up bullet holes in the wall. (1199:10–1201:6). Scott also collected the gun and bullet casings and put them in a white trash bag. (1201:19–21). Then he transferred her body to the trunk of his car after taking her phone. (1202:8–13). Scott then drove back to Topeka where he admitted to wrapping her body in plastic bags and burying her on an abandoned farm. (1202:22–23, 1204:3–1205:11). As part of his cover up, Scott texted and Snapchatted Allen's phone from his phone to make it appear as if he did not know she was dead. (1213:21–1214:2).

After receiving the phone call from Deputy O'Malley following up on Allen's missing person report, Scott drove to the Kansas City airport where he claims to have discarded in a trashcan the gun and casings that he collected at Allen's house. (1206:25–1207:1, 1208:3–5, 1208:11–16). Scott then flew to Cancún,

Mexico, and then he traveled to Belize in a self-admitted attempt to "escape" law enforcement. (1208:3–5, 1211:6–8). He was eventually arrested by Belizean authorities and deported back to the United States. *See* pp. 12–13, *supra*.

The jury also heard testimony from Larralde, a friend of Scott's who lived in Columbia, who testified that Scott called her when he was in Mexico and said that after an argument with Allen, "I killed her." (1037:23–24). Larralde thought Scott was joking until he elaborated, "I need you to be serious. This isn't a joke." (1038:4). And when asked whether Scott "ever sa[id] that he shot her in self-defense," Larralde testified, "No." (1045:25–1046:3).

B. After a multi-day trial, the jury found Scott guilty on all three counts—first-degree murder, use of a weapon to commit a felony, and tampering with physical evidence. (1360:19–1361:15, T169–171). Scott was sentenced to imprisonment for a term of life for his first-degree murder conviction, 30 to 40 years for use of a weapon to commit a felony, and 15 to 20 years for tampering with the physical evidence (1374:20–1375:8, T178–179).

C. Scott timely appealed his conviction, and this Court moved the appeal to its docket on June 6, 2024.

SUMMARY OF THE ARGUMENT

The district court did not err in denying Scott's motion to suppress evidence obtained from the Belizean government's seizure of Scott's cell phone. The Fourth Amendment does not apply to searches and seizures in other countries conducted by foreign governments applying their own laws. And Scott's argument that the district court should have excluded the evidence under the

joint-venture exception to this general rule is also not persuasive. This Court has held that U.S. law enforcement must do something more than merely provide information and make requests to foreign governments, as occurred here, to trigger the joint-venture exception. Scott's argument that his removal violated the Extradition Treaty is also to no avail because Scott was deported; the United States made no formal demand of Belize to return him. But even if Scott was extradited in violation of the Extradition Treaty, federal case law makes clear that evidence is not made inadmissible because it was obtained in violation of a treaty. In any event, the admission of Scott's cell phone was harmless error because the evidence obtained from it was cumulative of other evidence admitted at trial.

Sufficient evidence supports each of Scott's three convictions. The State introduced competent evidence tending to show that Scott had motive to kill Allen after she broke up with him and after he found her on a date with another man. The State also introduced evidence undermining Scott's argument that Allen's own gun accidently went off as Scott was attempting to wrestle it from her in self-defense. Several witnesses close to Allen testified that they never knew her to own a gun, and the State's autopsy witness testified that the shot that killed Allen was not fired at close range or contact range. Scott's cover-up also demonstrated a guilty conscience inconsistent with his self-defense theory.

Finally, Scott's assignment of error that there was insufficient evidence for his tampering conviction fails. Scott's argument that his disposal of evidence happened before official proceedings began ignores the plain language of the statute, which requires only that the defendant believed a proceeding was "about to be instituted."

ARGUMENT

I. The District Court Did Not Err in Denying Scott's Motion to Suppress.

Scott argues that the district court erred by failing to exclude all evidence obtained because of his arrest in and deportation from Belize—specifically, evidence obtained from Scott's cell phone. Scott asserts that his deportation violated Belize's immigration laws and procedural provisions in the Extradition Treaty. He thus argues the Belize police's search, arrest, and deportation of him was illegal and that evidence obtained as a result thereof is fruit of an illegal seizure that the court should not have admitted at trial. Scott Br. 4.

Scott is wrong for four reasons. *First*, the general rule is that the Fourth Amendment does not apply to searches and seizures performed by foreign officials in their own country enforcing their own laws. *Second*, Scott's arrest and deportation does not fall within an exception to this general rule. *Third*, Scott's reliance on the Extradition Treaty fails because his deportation was not an extradition and because the exclusionary rule does not apply to evidence obtained in violation of a treaty. And, *fourth*, Scott was not harmed by admission of his cell phone.

A. The Fourth Amendment does not apply to the Belizean government's search and seizure.

Scott's argument fails because the Fourth Amendment does not require the exclusion of evidence obtained in a foreign search by a foreign government, even if that search violated either foreign or U.S. law.

Evidence obtained from an illegal search or seizure is generally "inadmissible in a state prosecution and must be excluded." *State v. Montoya*, 305 Neb. 581, 597 (2020). This is known as the exclusionary rule. The primary purpose of the exclusionary rule "is to deter future unlawful police conduct and thereby effectuate the guarantee of the Fourth Amendment against unreasonable searches and seizures." *Illinois v. Krull*, 480 U.S. 340, 347 (1987) (quoting *United States v. Calandra,* 414 U.S. 338, 347 (1974)). But "[i]t is well established, of course, that the exclusionary rule, as a deterrent sanction, is not applicable where . . . a foreign government commits the offending act." *United States v. Janis,* 428 U.S. 433, 455 n.31 (1976); *see also United States v. Lee*, 723 F.3d 134, 139 (2d Cir. 2013); *Birdsell v. United States*, 346 F.2d 775, 782 (5th Cir. 1965). The exclusionary rule does not apply to a seizure by foreign officials, even if the seizure violates "United States law *or* the law of the foreign country." *United States v. Emmanuel*, 565 F.3d 1324, 1330 (11th Cir. 2009) (emphasis added).

State v. Barajas, 195 Neb. 502 (1976), forecloses Scott's argument. The defendant in *Barajas* shot and killed a man who made advances on his girlfriend. *Id.* at 504. Barajas fled to Juarez, Mexico, to stay with his sister. *Id.* Barajas then attempted to cross the border back into America to visit his girlfriend and was arrested by U.S. customs officials. *Id.* The Scotts Bluff County Sheriff, who was investigating the murder, was informed by the El Paso police that Barajas was in custody but that a search of his person failed to uncover the suspected murder weapon. *Id.* The Sheriff then shared Barajas's sister's address with Mexican authorities and requested Mexican authorities visit the address and look for a .22 pistol, the suspected murder weapon. *Id.* The

Mexican authorities searched the address and found a .22 pistol that matched the suspected murder weapon. *Id.*

Barajas argued that the Mexican authority's search and seizure of the gun was illegal and thus subject to the exclusionary rule. *Id.* The central issue before this Court was "whether the Fourth Amendment and its accompanying exclusionary rule can be invoked by an American citizen to protect himself from a search and seizure by foreign authorities in a foreign land." *Id.* This Court held it could not. The Court noted that "[t]he general rule" is that "the Fourth Amendment does not apply to arrests and searches made by Mexican officials in Mexico for violation of Mexican law, even if the persons arrested are Americans and American police officers gave information leading to the arrest and search." *Id.* at 505. The Court observed that even though the Fourth Amendment's protections extend to actions by U.S. and State officials beyond U.S. borders, the exclusionary rule "is inapplicable to an action by a foreign sovereign in its own territory in enforcing its own laws, even though American officials were present and cooperated in some degree." *Id.*

The Court reasoned that the exclusionary rule serves a "prophylactic purpose"—that is, to deter law enforcement from violating constitutional rights; but because the decisions of U.S. courts do not control foreign governments, "no prophylactic purpose is served by applying an exclusionary rule" to foreign searches and seizures. *Id.* at 505 (quoting *Brulay v. United States*, 383 F.2d 345, 348 (9th Cir. 1967)). Thus, the Court held that the exclusionary rule did not apply to any unlawful seizure.

Likewise, here, the exclusionary rule is not applicable to the Belizean government's search and seizure of Scott and his cell phone. Just as no prophylactic purpose was served by excluding evidence obtained by Mexican officials, "no prophylactic purpose

is served by applying an exclusionary rule" to Belizean authorities, who are also not bound by U.S. courts. *Id.* at 505 (quoting *Brulay*, 383 F.2d at 348). And like *Barajas*, it makes no difference that "American police officers gave information leading to the arrest and search." *Id.* The Fourth Amendment simply does not apply to foreign governments and thus did not require the district court to exclude evidence seized by Belizean officials.

B. Scott's arrest and deportation do not fall within the joint-venture exception.

Scott acknowledges the general rule that the Fourth Amendment does not require exclusion of evidence obtained by foreign governments. *See* Scott Br. 14. But Scott argues that the district court should have excluded the evidence under the exception to the rule for evidence obtained because of a joint venture between U.S. and foreign officials. The exception does not apply here.

This Court has said the exclusionary rule applies even to foreign searches and seizures if U.S. law enforcement "so substantially participated in the [searches and seizures] so as to convert them into joint ventures between the United States and the foreign officials." *Barajas*, 195 Neb. at 506; *accord United States v. Pierson*, 73 F.4th 582, 589 (8th Cir. 2023), *cert. denied*, 144 S. Ct. 626 (2024) (recognizing exception where "U.S. agents substantially participate in an extraterritorial search of a U.S. citizen and the foreign officials were essentially acting as agents for their American counterparts or the search amounted to a joint operation between American and foreign authorities") (quoting *United States v. Stokes*, 726 F.3d 880, 890 (7th Cir. 2013)). Scott argues this exception applies because U.S. law enforcement

officers were engaged in a joint venture with Belizean officials to arrest and deport Scott.

The district court disagreed, finding "no evidence that United States law enforcement agents substantially participated in Defendant's arrest, nor did Belizean authorities act as their agents." (T121). Because the district court's joint-venture finding required the district court "to 'scrutinize the attendant facts,'" the Court should "not disturb such a finding unless it is clearly erroneous." *United States v. Barona*, 56 F.3d 1087, 1090 (9th Cir. 1995) (quoting *United States v. Rose*, 570 F.2d 1358, 1362 (9th Cir. 1978)). The district court did not clearly err; it was correct.

Scott was arrested by Belizean law enforcement for violating Belizean immigration law. Deputy O'Malley testified at the suppression hearing that neither he nor his department participated in any way with Scott's arrest in Belize. (42:23–43:8). Nor does Scott suggest so. Instead, Scott argues that federal law enforcement formed a joint venture with the Belizean government by helping Belizean authorities identify and locate Scott and by funding his removal to the United States. Scott Br. 15. Scott does not cite a single case to support his argument that helping a foreign government identify and locate a fugitive and then funding his deportation turns a foreign arrest into a joint venture. And, once again, *Barajas* is fatal to Scott's argument.

In *Barajas*, this Court denied Barajas's attempt to invoke the joint-venture exception where U.S. law enforcement was similarly (if not more) involved in a search and seizure. In *Barajas*, the Scotts Bluff County Sheriff and the El Paso Police Department gave Mexican officials a specific address, requesting Mexican officials search the address for a weapon the sheriff suspected Barajas used to commit a murder in Nebraska. 195 Neb. at 504. And, unlike this case, there was no indication in *Barajas* that the

Mexican authorities performed the search for any reason other than assisting the State of Nebraska with its murder investigation. Thus, in that case, there was a far stronger argument that Mexican authorities were acting merely as "agents for their American counterparts." *Pierson*, 73 F.4th at 589 (quoting *Stokes*, 726 F.3d at 890). Yet this Court held that "greater activity by the American police is required before there is a joint venture which will trigger the application of the exclusionary rule." *Barajas*, 195 Neb. at 506.

Examples of such "greater activity" include when U.S. officials physically search or seize evidence alongside foreign authorities, *see Stonehill v. United States*, 405 F.2d 738, 743–45 (9th Cir. 1968) (discussing *Byars v. United States*, 273 U.S. 28 (1927), *and Corngold v. United States*, 367 F.2d 1 (9th Cir. 1966)); *Powell v. Zuckert*, 366 F.2d 634, 639 (D.C. Cir. 1966), when U.S. officials effectively borrow illegal wiretaps of other governments and collect, decode, translate, and analyze transmissions therefrom, *see Barona*, 56 F.3d at 1094; *United States v. Peterson*, 812 F.2d 486, 490 (9th Cir. 1987), or when U.S. officials *control* or *direct* the conduct of a foreign parallel investigation, *see Pierson*, 73 F.4th at 589–90.

No such "greater activity" occurred in this case. For one, it was a Belizean citizen who first notified American officials that Scott was in Belize. (E4). U.S. officials relayed to Belizean authorities that Scott was in Belize. (E4). But "[i]dentification and notification of a suspect in a foreign country does not rise to the level of a joint venture." *Pierson*, 73 F.4th at 589. Then, similar to *Barajas*, U.S. officials "requested assistance in apprehending [Scott]." (E4, at 2; E9). But, again, "[i]t is not enough that the foreign government undertook its investigation pursuant to an American . . . request." *Pierson*, 73 F.4th at 590 (quoting *United*

States v. Aleem, 641 F. App'x 96, 97 (2d Cir. 2016)). It was then local Belizean authorities who conducted the search and arrest of Scott. Scott Br. 15; (E8, E9, 57:19–23). Belizean authorities seized Scott's cell phone (50:6–9), and Scott has not cited anything in the record showing that U.S. authorities asked Belizean authorities to seize his cellphone. And, unlike in *Barajas*, local authorities arrested, searched, and deported Scott for violating *Belizean* law by illegally entering the country. (E5). "Clearly," Belizean officials "were not mere instruments of United States officials." *United States v. Mundt*, 508 F.2d 904, 907 (10th Cir. 1974).

To be sure, federal authorities provided valuable information to Belizean authorities throughout the process, including relaying information from their local source to assist with the Belizean police's search for Scott. (E4, E8, E9). But "the law is clear that providing information to a foreign functionary is not sufficient involvement for the Government to be considered a participant in acts the foreign functionary takes based on that information." *United States v. Marzano*, 537 F.2d 257, 270 (7th Cir. 1976). "[R]obust information-sharing and cooperation across parallel investigations" do not create a joint venture. *United States v. Getto*, 729 F.3d 221, 231 (2d Cir. 2013).

Like the Eighth Circuit observed in *Pierson*, "the most that the evidence demonstrates is that United States authorities helped [Belizean] law enforcement to locate and identify [Scott], solicited [Scott's arrest] . . . , and requested that he be turned over to United States authorities." 73 F.4th at 589. "Precedent . . . requires more." *Id.*

The Fourth Amendment simply "does not apply to arrests and searches made by [Belizean] officials in [Belize] for violation of [Belizean] law, even if the persons arrested are Americans and American police officers gave information leading to the arrest

and search." *Birdsell*, 346 F.2d at 782; *accord United States v. Benedict*, 647 F.2d 928, 931 (9th Cir. 1981). The district court did not err in finding the joint-venture exception does not apply.

C. Scott's extradition argument fails.

Scott also argues that evidence obtained from his arrest and deportation should be excluded because his deportation violated the Extradition Treaty's extradition procedures. Scott Br. 13–14. Scott points to the Extradition Treaty's requirements that extradition requests must be accompanied by supporting documents, including the arrest warrant, and that a person who is subject to a provisional arrest is afforded the right of access to the courts for remedy. Scott Br. 13. But this argument is unpersuasive for two reasons. *First*, these extradition procedures do not apply in this case because Scott was not extradited. *Second*, even if Scott was extradited without the procedural protections of the Extradition Treaty, the district court still did not err because the exclusionary rule does not apply to evidence obtained as a result of a violation of a treaty.

1. Scott simply was not extradited; thus, the Extradition Treaty did not apply to his removal. Scott says that the district court should have excluded evidence resulting from the Belizean police's search and seizure of him because United States and Belizean officials did not follow proper extradition procedures. But these officials did not follow extradition procedures because he was deported, not extradited.

Extradition involves "a demand in some form by the one country upon the other" which is distinguished "from the unilateral act of one country, for its own purposes, deporting or otherwise unilaterally removing unwelcome aliens." *United States v. Struckman*, 611 F.3d 560, 571–72 (9th Cir. 2010) (quoting

Stevenson v. United States, 381 F.2d 142, 144 (9th Cir. 1967)). The United States made no such demand on Belize. Instead, Belizean officials voluntarily removed Scott as an unwelcomed alien.

The Belizean Director of Immigration and Nationality issued on Scott an Order to Leave Belize on December 7, 2022. (E5). The reason for this order was not that the U.S. had made an extradition demand but because Scott was a "prohibited immigrant" under Belizean law. (*Id.*). Scott was ordered to leave Belize "immediately." (*Id.*). The Diplomatic Security Service's report on Scott's removal recognized that he was "deport[ed] back to the United States." (E4). As Deputy O'Malley affirmed, "there was no extradition that took place [in Belize]. They simply deported him to where he came from . . . based on his illegal entry into Belize[.]" (49:19–22).

Federal case law further bolsters that Scott was deported and not extradited. In *United States v. McVicker*, 979 F.Supp.2d 1154, 1178 (D. Or. 2013), the District of Oregon considered a similar claim of improper extradition from a defendant who was ordered to leave Belize as a prohibited immigrant. But the court explained that Belize's deportation or surrendering of a fugitive does not constitute extradition. *Id.* at 1179 (citing *Oen Yin-Choy v. Robinson*, 858 F.2d 1400, 1404 (9th Cir. 1988)). In *United States v. Herbert*, 313 F. Supp. 2d 324, 329 (S.D.N.Y. 2004), the Southern District of New York made clear that "[t]he [Extradition Treaty] is not the exclusive method by which the United States can gain custody over a Belizian national." Indeed, the Extradition Treaty only serves to "provide[] a mechanism which would not otherwise exist, requiring, under certain circumstances, the [signatory countries] to extradite individuals to the other country, and establishes procedures to be followed when the

Treaty is invoked." *Id.* at 329–30 (alterations in original) (quoting *United States v. Alvarez–Machain*, 504 U.S. 655, 664–65 (1992)). But the Extradition Treaty does not limit the United States and Belize from agreeing "to obtain custody of the defendant through other channels without invoking or violating an extradition treaty." *Id.* at 330. And "that circumvention [of the Extradition Treaty] does not invalidate" Scott's seizure. *Id.* In other words, the Extradition Treaty creates obligations between the United States and Belize to *each other*; it does not give fugitives a right to be removed only in the ways provided in the Extradition Treaty.

The fact that U.S. officials helped arrange Scott's travel back to the United States also does not convert his deportation to an extradition. Scott fails to cite any authority suggesting so. On the other hand, federal immigration law provides that an alien that has been deported from the United States "shall be considered to have been deported . . . in pursuance of law, irrespective of the source from which the expenses of his transportation were defrayed or of the place to which he departed." 8 U.S.C. § 1101(g). There is thus no reason to think that Belize's deportation of Scott became an extradition when U.S. funds were used to cover transportation expenses.

2. Even if Scott was extradited (he was not), the exclusionary rule does not apply to violations of extradition provisions in a treaty. In *United States v. Lombera-Camorlinga*, 206 F.3d 882, 883 (9th Cir. 2000), the Ninth Circuit sitting *en banc* decided "whether the suppression of evidence is an appropriate remedy for violation of the Vienna Convention." *Id.* The court "h[e]ld that it is not," because "there is nothing in the language or operation of the treaty . . . intended to create an exclusionary rule with protections similar to those . . . in *Miranda v. Arizona*[.]" *Id.* at 883–

84. Other circuits have similarly held that the exclusionary rule is reserved for constitutional violations, not violations of a treaty or a statute. *See United States v. Ware*, 161 F.3d 414, 424 (6th Cir. 1998); *United States v. Mason*, 52 F.3d 1286, 1289 n. 5 (4th Cir. 1995); *United States v. Thompson*, 936 F.2d 1249, 1251 (11th Cir. 1991); *United States v. Benevento*, 836 F.2d 60, 69 (2d Cir. 1987); *United States v. Kington*, 801 F.2d 733, 737 (5th Cir. 1986); *United States v. Hensel*, 699 F.2d 18, 29 (1st Cir.1983).

Like in *Lombera-Camorlinga*, Scott fails to point to any provision of the Extradition Treaty that provides for an exclusionary rule for evidence gathered in violation of the Treaty's extradition procedures. Nor can he. Nothing in the Treaty provides such a rule. (*See* E10). Thus, even if Scott was extradited, he has not shown that the district court erred by admitting evidence obtained from his arrest and deportation.

D. Admission of Scott's cell phone was harmless.

Even if the district court erred in admitting evidence from Scott's cell phone (it did not), the error was harmless. An error is harmless if the "guilty verdict rendered in the questioned trial was surely unattributable to the error." *State v. Surber*, 311 Neb. 320, 334 (2022). To conduct harmless error review, this Court "look[s] to the entire record and view[s] the erroneously admitted evidence relative to the rest of the untainted, relevant evidence of guilt." *Id.* "Erroneous admission of evidence is harmless error and does not require reversal if the evidence is cumulative and other relevant evidence, properly admitted, supports the finding by the trier of fact." *Id.* The evidence admitted at trial from Scott's phone was cumulative and thus does not require reversal.

Scott argues that his arrest "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 into evidence." Scott Br. 11. Specifically, Scott complains about the admission of Exhibits 404 and 421—his phone and photographs documenting the examination of his phone. *Id.* Scott's conviction cannot be attributed to either.

Exhibit 404 is a picture of an evidence envelope containing Scott's phone. (E404). Exhibit 404 was important in establishing the chain of custody of Scott's phone. (*See* 1131:13–23). But Scott admits the phone admitted at trial is his, Scott Br. 11, and he does not suggest that the phone was tampered with or altered in any way. Scott fails to even speculate what material findings, if any, can be attributed to the admission of Exhibit 404.

Exhibit 421 includes various images captured from Scott's phone. (E421). Exhibit 421 (along with Exhibit 422, which is excerpts from Exhibit 421) was used at trial to show Scott's downloads and internet browser history after Allen's death, which revealed how Scott searched for an escape and how he was tracking news about Allen's death. (*See* 1140:12–11:49:24; E421, pp. 25–99). But Scott testified to these matters, explaining that after Allen's death, he searched the internet to learn about the investigation into her death and for purposes of "looking up everything possible to escape." (1210:24–1211:5). Scott also explained details of how he fled to Mexico and then to Belize to escape. *See* pp. 17–18, *supra*. Thus, the internet history from Scott's phone was cumulative of Scott's own testimony. And, finally, a "myriad [of] other evidence suggest[s]" that Scott purposely killed Allen with premeditated malice. *Surber*, 311 Neb. at 334; *see* Section II.A, *infra*. Scott's guilty verdict cannot be attributed to admission of evidence from Scott's cell phone.

II. Sufficient Evidence Supports Scott's Convictions.

Scott argues the State did not produce sufficient evidence to support his convictions. Specifically, he asserts "there was insufficient evidence to support a finding of the requisite intent necessary to prove Mr. Scott guilty beyond a reasonable doubt" of first-degree murder, use of a weapon to commit a felony, and tampering with physical evidence. Scott Br. 17. Not so.

The finding of guilty by the trier of fact will not be overturned on appeal unless, "after viewing the evidence in the light most favorable to the prosecution," this Court determines that no "rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *State v. Kalita*, 317 Neb. 906, 910–11 (2024). "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." *Id.* at 910. With respect to elements of intent, this Court has said that "the requisite state of mind is a question of fact and may be proved by circumstantial evidence." *State v. Peterson*, 236 Neb. 450, 453 (1990).

Here, there was more than sufficient evidence for a rational jury to conclude beyond a reasonable doubt that Scott had the requisite intent for each of his convictions.

A. Plenty of evidence shows that Scott had the necessary intent to commit first-degree murder. A person commits first-degree murder in one of three ways. *See* Neb. Rev. Stat. § 28-303 (Cum. Supp. 2022). The State advanced its prosecution under the first way, which requires the defendant to have killed another person "purposely and with deliberate and premeditated malice." *Id.* "One kills with premeditated malice if, before the act causing death occurs, one has formed the intent or determined to

kill the victim without legal justification." *State v. Golyar*, 301 Neb. 488, 505 (2018). "[N]o particular length of time for premeditation is required, provided that the intent to kill is formed before the act is committed and not simultaneously with the act that caused the death." *State v. Escamilla*, 291 Neb. 181, 194 (2015). In fact, "the time required to establish premeditation . . . may be so short that it is instantaneous." *Id.*

Scott argues that insufficient evidence shows he acted with premeditated malice. Specifically, he asserts that the evidence shows he acted in self-defense. But the State produced more than enough evidence for a rational jury to conclude that he did not act in self-defense but that he acted with premeditated malice.

For one, the State presented evidence that Scott had motive to kill Allen. Allen and Scott had been romantically involved for about a year when Allen broke up with Scott. *See* pp. 14–15, *supra*. A few weeks after the break-up, Scott claims he travelled from Topeka, where he lived, to Omaha, where Allen lived, where the two were intimate. *See* p. 15, *supra*. The next weekend, Scott again drove three hours to Omaha. *See id.* He claims he hoped they would be intimate again and get back together. *See id.* Snapchat location data, however, shows that Scott did not leave his house in Topeka until approximately 15 minutes after Allen's Snapchat location showed her at the Good Life Lounge where she was on a date with another man. *See id.* Scott drove straight to the bar where Allen was on a date with another man. *See id.* Cameras near the bar captured him driving slowly back and forth near the bar and in the parking lot of the bar. *See* p. 11, *supra*. Allen texted her friend during the date that Scott was calling Allen "all night," (548:7–8), so much so that Allen "shut [her] phone off because [Scott] kept fucking ringing in." (548:23–24; E218, p. 17). A defendant's obsessive attempts to contact the victim are

evidence of motive. *See Golyar*, 301 Neb. at 505. Scott testified that he suspected that Allen had been on a date, and he wanted to "catch her in the lie." (1192:12–1193:15).

Circumstances also show that Scott devised a plan to kill Allen. The State introduced evidence showing that after visiting the bar, Scott drove to Allen's house, but instead of parking in front of her house, he parked near a construction zone away from her house where his car would not be seen from her house. *See* p. 15, *supra.* Scott also testified that he had a weapon in his vehicle at the time. *See* pp. 16–17, *supra.* Evidence shows that Scott then waited at her house at least an hour before she arrived home. *See* p. 16, *supra*. Scott then messaged back-and-forth with Allen for at least another 45 minutes after she arrived home, never disclosing to her that he was at her house. *See id.*

Scott testified that after Allen let him in her house, Scott confronted Allen and accused her of cheating on him. *See id.* Allen was soon shot and killed. Scott's only defense is his claim that Allen pulled a gun on him and the gun accidently went off after Scott rushed Allen to take the gun from her. But every person who testified to the fact, including Scott himself, testified that they never knew Allen to own a gun. *See id.* Nor was there any evidence that she had one. *See id.* While Scott had been in the military, was skilled with guns, and admitted to having a firearm with him the night Allen was killed. *See* pp. 16–17, *supra.* Further undermining Scott's theory is the fact that Scott threw away the gun and the casings from the scene. *See* p. 17, *supra*. Scott's story could have been corroborated if the subject firearm was registered to Allen. But Scott got rid of this evidence.

Dr. Hossain's testimony also undermines Scott's story and credibility. Dr. Hossain testified that based on the entry wound, which was through her right breast, the gun was not likely shot

at close range or contact range. *See id.* The placement of the gun and trajectory of the shot through vital areas of the body are evidence of premeditated killing with malice. *Escamilla*, 291 Neb. at 194–95. Dr. Hossain also testified that Allen's body showed no "defense wounds" or other injuries. *See* p. 17, *supra*. And the room in which Scott claims the altercation occurred had no signs of a physical struggle. *See id.* These facts cut against Scott's claim that there was a scramble for control over the gun.

The jury also heard from Larralde who testified that Scott called her and told her that he killed Allen. *See* p. 18, *supra*. Scott emphasized to Larralde that he was not joking. *See id.* Larralde testified that Scott did not at any point in their conversation say that he shot Allen in self-defense. *See id.* And while Scott makes much of Sergeant Klein's testimony that Larralde told him that Scott said that Allen produced the weapon that ultimately killed her, (*see* 1161:2–6), Larralde testified under oath that Scott was not clear about who produced the gun, (*see* 1052:14–19). And it was the jury's prerogative to credit Larralde's testimony that Scott was not clear about who produced the gun and never mentioned self-defense. *See Kalita*, 317 Neb. at 910. Larralde's purported statements to Klein also do not contradict her testimony on the matter of self-defense. Klein testified to the alleged fact that Allen produced the firearm, "and [Scott] took it from [Allen]." (1161:5–6). Even assuming this is true, this does not support Scott's story that the gun happened to go off while he wrestled it away from Allen. Indeed, he could have "t[aken] it from her" first and then formed the premediated malice to intentionally kill her before he shot her.

Scott's cover-up and attempt to escape also support that Scott killed Allen with premeditated malice. Scott put drywall patching over bullet holes in the room, put Allen's body in the

trunk of his car, drove three hours to Topeka where he eventually buried her in plastic bags on a farm, and discarded the gun and bullet casings. *See* p. 17, *supra*. During this time, he also texted and Snapchatted Allen's phone to make it appear he did not know she was dead. *See id.* After being contacted by law enforcement and lying about whether he knew Allen and whether he was in Omaha on the weekend Allen went missing, Scott fled the country, traveling to Mexico and then to Belize. *See* pp. 17–18, *supra*. He admitted this was an effort to "escape." *See id.* The massive cover-up and attempt to flee show that he knew he was guilty of a terrible crime. "'[G]uilty consciousness' is perhaps the strongest evidence . . . that the person is indeed the guilty doer; nothing but an hallucination or a most extraordinary mistake will otherwise explain its presence." *State v. Oldson*, 293 Neb. 718, 772 (2016) (quoting *State v. Clancy*, 224 Neb. 492, 499 (1987)).

All this evidence painted a picture of guilt for the jury. Angry about Allen's break up with him and after seeing Allen was at a bar, Scott drove up to Omaha where he went straight to the bar and spent several minutes scoping the bar out to see what Allen was up to. At some point, Scott himself admits, he suspected Allen was on a date with another man. So, Scott goes to Allen's house, parks where he cannot be seen, and waits there for an hour until she arrives home and for at least another 45 minutes after she arrives home, messaging her and pretending he is not there. These are not the actions of a man seeking honest reconciliation with his ex-girlfriend, but of a man deciding and devising whether and how to exact revenge on his "cheating" lover. Then, Scott took his own firearm and shot Allen from at least a few feet away, intending to kill her in revenge. He then preceded to put her body in plastic bags and buried it on abandoned farmland and tried to escape the consequences for his crime. The jury was

imminently rational in finding Scott killed Allen with premeditated malice.

B. Sufficient evidence also showed Scott had the necessary intent for use of a deadly weapon to commit a felony. A conviction for use of a deadly weapon to commit a felony requires the State to prove that Scott intentionally used a firearm to commit a felony. Neb. Rev. Stat. § 28-1205(1)(a), (c) (Reissue 2016); (T153); *see also State v. Pruett*, 263 Neb. 99, 105 (2002) (interpreting "to commit any felony" under § 28–1205 to mean "*for the purpose* of committing any felony" (emphasis added)). Scott's argument with respect to this charge is based entirely on Scott's argument that there was insufficient evidence to support the jury's finding that he committed first-degree murder. *See* Scott Br. 18. But, as shown, there was more than enough evidence to support his murder conviction. *See* Section II.A, *supra*. The above evidence is thus also sufficient for a rational jury to find Scott intentionally used a firearm to commit first-degree murder, a felony. *See id.*

C. Finally, sufficient evidence supports Scott's conviction for tampering with physical evidence. A person is guilty of tampering with physical evidence if, "believing that an official proceeding is pending or about to be instituted and acting without legal right or authority, he . . . [d]estroys, mutilates, conceals, removes, or alters physical evidence with the intent to impair its verity or availability in the pending or prospective official proceeding[.]" Neb. Rev. Stat. § 28-922(1)(a) (Cum. Sup. 2022). Scott suggests that because his "actions in disposing of or concealing evidence took place before official proceedings began," "no rational finder of fact could conclude that the evidence was sufficient to prove that [Scott] took those actions with the belief that an official proceeding was pending or was about to be instituted." Scott Br. 18–19.

In other words, Scott suggests that if the destruction of evidence occurs before any official proceedings occur, a person cannot be guilty of tampering. Scott cites no case in support of this argument. And the plain language of the statute undermines his argument. "Statutory language is to be given its plain and ordinary meaning[.]" *State v. Wilson*, 306 Neb. 875, 880–81 (2020). The term "about to be instituted" indicates that a thing that is close to being instituted has not yet actually been instituted. *See About*, The American Heritage College Dictionary (3d ed. 2000) ("Ready or prepared to do something"). And Scott ignores that a person can "believe[] that an official proceeding is . . . about to be instituted" before any warrant has been issued or other proceeding has been initiated. Scott also ignores that the statute contemplates a "*prospective* official proceeding." Neb. Rev. Stat. § 28-922(1)(a) (emphasis added). "Prospective" means "[e]ffective or operative *in the future*." *Prospective*, Black's Law Dictionary (11th ed.) (emphasis added). The plain language of the statute embraces a person, like Scott, who tampers with evidence believing charges not yet filed could soon be filed against him.

Scott's argument would also render the phrase "believe[] that an official proceeding is . . . about to be instituted" entirely superfluous. Once an official proceeding begins, it is "pending." *See Pending*, Black's Law Dictionary (11th ed.) ("Remaining undecided; awaiting decision <a pending case>"). Thus, under Scott's theory that a person cannot be guilty of tampering before a proceeding begins, the language "or *about to be* instituted" would criminalize nothing not already captured underneath the language "believing that an official proceeding is *pending*." This Court has said that it "must attempt to give effect to all parts of a statute, and if it can be avoided, no word, clause, or sentence will

be rejected as superfluous or meaningless." *Wilson*, 306 Neb. at 881.

Here, the jury rationally concluded that Scott buried Allen's body, disposed of her phone and the murder weapon, and covered bullet holes because he did not want such evidence to be discovered by investigators and used against him in a murder prosecution. In other words, the evidence shows he wanted "to impair [the evidence's] . . . availability in the . . . prospective official proceeding." Neb. Rev. Stat. § 28-922(1)(a). The jury had more than enough to convict Scott on all three counts.

CONCLUSION

The Court should affirm Scott's convictions.

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Respectfully submitted.

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface and word-count requirements of Neb. Ct. R. App. P. § 2-103 because it contains 10,286 words excluding this certificate. This brief was prepared using Microsoft Word 365.

/s/ Lincoln J. Korell
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Certificate of Service

I hereby certify that on Monday, November 25, 2024 I provided a true and correct copy of this *Brief of Appellee State* to the following:

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