

**IN THE SUPREME COURT OF THE STATE OF MONTANA**

No. DA 23-0726

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STATE OF MONTANA,  
Plaintiff and Appellee,

v.

BRANDON MICHAEL BECKMAN,  
Defendant and Appellant.

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**BRIEF OF APPELLANT**

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On Appeal from the Montana First Judicial District Court, Lewis & Clark County, the Honorable Kathy Seeley Presiding.

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## STATEMENT OF ISSUES

ISSUE 1: Did the trial court error in not having granted the motion of the Appellant for a direct verdict on all counts at the close of the State's case in chief?

## STATEMENT OF THE CASE

By motion, affidavit in support and Information filed on the 31<sup>st</sup> of January 2022, the Appellant was charged with Deliberate Homicide under Section 45-5-102(1)(a) or in the alternative Deliberate Homicide (Felony Murder) under 45-5-102(1)(b) and Tampering with or Fabricating Physical Evidence under 45-7-207(1)(a). *Dist. Ct. Doc. #4*

In his defense, the Appellant filed a formal notice of Affirmative Defenses, alleging "Alibi" and "Compulsion." *Dist. Ct. Doc. #11*

The State sought an order from the District Court ordering the testimony of another, Robert John Harvel who was also charged with the same crimes committed on the same alleged victim, as part of the act as the Appellant. In this motion the State sought a grant to witness Harvel "use immunity" in exchange for his testimony. *Dist. Ct. Doc. #23*. The motion was opposed by counsel for the Appellant on the grounds that the

County Attorney could without order of the District Court offer the terms and conditions to the witness in its own right. *Dist. Ct. Doc. #26*

The District Court granted the State's Motion and awarded "use immunity" to witness Harvel in exchange for his testimony in this matter. *Dist. Ct. Doc. #36*

The Appellant sought an order from the District Court allowing the trial jury to view the alleged scene of the crimes. *Dist. Ct. Doc. # 29* The District Court sought briefs on the issue and after the close of testimony, the Court orally ordered the view subject to the conditions outlined by the Appellant's counsel and described in *Dist. Ct. Doc. #81.5*.

At the end of 7 days of trial, the State rested its case and the Appellant sought orally at first and then following it with a written "Motion for a Directed Verdict" *Dist. Ct. Doc. #92*. The grounds for the said motion were that the testimony of one legally accountable for the same offense as defined in 45-2-301 MCA, Robert Harvel, must be corroborated by other evidence that tends to connect the Appellant to the offense. *Dist. Ct. Doc. # 92 p.1&2*. The District Court denied the motion citing what it thought was sufficient corroborating evidence. *Trl. Trns.*

*Day 7, P138* The court provides its reasoning for the denial orally from the bench. *Trl. Trns. Day7 P.139-141*

The State having rested its case on the 7<sup>th</sup>, day of trial and the Appellant, after being fully advised by the District Court of his right to remain silent or to testify, chose not to testify nor present any evidence in its defense and likewise rested its case.

At the close of both cases, the court and the parties entered into a discussion of the appropriate jury instructions that the court was to advise the jury as to the applicable law for the case. Both parties introduced separate instructions concerning the role that circumstantial evidence should play in the efforts of the jury evaluating this kind of evidence. The court after lengthy argument determined that the jury should be instructed on this issue as the more recent rulings of the Supreme Court in cases such as *State v. Sanchez 2017 MT 192* and rejected the instruction of the Appellant that was very similar to the previously held incorrect Pattern Jury Instruction that called for the jury to evaluate circumstantial evidence that was subject to two interpretations to be viewed in favor of the defendant's innocence. *Trl. Trns. Day 7 P. 136 -138.*

After being advised by the Court as to the law and other instructions given, the jury deliberated and returned a verdict on the 8<sup>th</sup>., day of trial, August 9<sup>th</sup>., 2023 of: Count One: Deliberate Homicide, NOT GUILTY and as to Count Two, Deliberate Homicide, a death occurring during the commission of a robbery, (Felony Murder) GUILTY. Count Three: Tampering with or Fabricating Physical Evidence: GUILTY. *Dist. Ct. Doc. #94.*

The Appellant was sentenced by the District Court: on Count Two to one hundred years in Montana State Prison and on Count Three, to 10 years in Montana State Prison. On neither sentence, was the Appellant granted any suspended time. Both Sentences are to run concurrently to each other. The District Court also ordered a variety of conditions. Said sentence and judgement was reduced to writing and filed with the Clerk of Court on the 24<sup>th</sup> of October 2023. *Dist. Ct. Doc. # 107* It is from this sentence and judgment that the Appellant appeals from.

### **STATEMENT OF THE FACTS**

On or about January 13<sup>th</sup>., 2022 om the neighborhood of 10:30 A.M. three citizens of Lewis and Clark County, Montana, were headed into the Lewis and Clark County Sheriff's Office for some personal business. *Trl.*

*Trns. Day 2 P.27.* As they traveled down Rimini Road in that county. While they proceeded down the road, they were flagged down by 2 individuals, whose vehicle was stuck in the snow in a parking lot of Moose Creek campground. *Trns. Day 2 P. 28.*

Both individuals were not dressed for the cold wintry conditions. They subsequently pull the vehicle back on the road and doing so did damage to front bumper of the car. *Trl. Trns. Day 2 P. 30*

Subsequently on the 14<sup>th</sup>, day of January 2022, two individuals who were snowmobiling in the same area reported discovering a body buried in snow at the Moose Creek campground. *Dist. Ct. Doc. # 2 P 2.*

Subsequent investigation by the Lewis and Clark Cunty Sherrif's Office and the Helena, Police Department discovered the identity of the victim and that he had been recently in Great Falls, Montana where he cashed a check for \$13,000 and returned to Helena, Montana. *Dist. Ct. Doc.#2 P2.*

Upon returning to Helena, the victim was seen on security video tape as gambling with the Appellant and one later identified as Robert

Harvel on the 12<sup>th</sup> and in the morning the 13<sup>th</sup> of January 2022. *Trl. Exhibit 70, 71, 75, 76.*

The Appellant in an interview with law enforcement admitted to gambling with the victim on the 12<sup>th</sup> and 13<sup>th</sup> of January and stated that they (himself, Harvel and the victim) were at the campground for the purpose of using dangerous drugs but no knowledge of any murder. *Dist. Ct. Doc. #2 P4*

Robert Harvel was arrested in Spokane Washington on a unrelated felony issue. Harvel was also charged with the murder of the victim as it was determined that he was legally accountable for the death of the victim. *Trl. Trns. Day 6 P.79 l. 2*

Harvel would testify at trial that the 3 people involved drove out to Moose Creek campground to do some dangerous drugs. *Trl. Trns. Day 6 P. 87* He further testified that the Appellant was in the back seat and the victim in the front passenger seat. Upon arriving at the campground, the Appellant asked the victim to change seats with him. *Trl. Trns. Day 6 P.87 l.22* As this was taking place and outside of the car, the Appellant allegedly shot the victim in the back of the head, killing him. *Trl. Trns. Day 6 P. 87 l. 25 – P.88 l.1* The Appellant and Harvel then moved the

body. *Trl. Trns. Day 6 P.89 l. 22* Beckman took money from the victim's lower leg sock area *Trl. Trns. Day 6 P. 94 l. 15* and shared it with Harvel. *Trl. Trns. Day 6 P.91 l.4-5*. After moving the body and covering it with snow they attempted to leave but got stuck on the icy road. *Trl. Trns. Day 6 P91 l. 10*

Harvel further testified to that a couple came by and assisted them out of the snowbank. Further that the effort resulted in his car being damaged. *Trl. Trns. Day 6 P. 92 l9-11*

Harvel also testified that after leaving the campground, they drove to Green Meadows in the Helana area and then to East Helena at Beckman's direction. *Trl. Trns. P.93 l. P. 8 &14; P.93 l.17*. Where Bechman allegedly purchased a car and got high. *Trl. Trns. Day 6 P.93 l. 23*.

## SUMMARY OF ARGUMENT

As to issue One, the Appellant's position is that this case relies heavily upon the testimony of a statutorily defined accomplice. This type of specific evidence must be corroborated by independent evidence to support a conviction. In accordance with case law, the trial court failed to identify specific facts that sufficiently met the three-part test outlined

in *State v. Burkhardt*, 2004 MT 372. *State v. Paulson* 250 Mont. 32, P46  
None of the facts pointed out by the trial court pointed to the guilt of the Appellant nor are they legally sufficient themselves to connect the Appellant to the offense. All the evidence pointed to by the trial court was a best suspicious but did not directly connect the Appellant to the crime. Numerous Supreme Court cases, clearly state that facts that create suspicion do not directly connect the Appellant to the crime.

### STANDARDS OF REVIEW

This Court reviews all motions for a directed verdict/motion for dismissal for insufficient evidence “de novo”. *State v. Kirn*, 2012 MT 69

### ARGUMENT

ISSUE 1: The question of whether the trial court erred in denying the Appellant’s motion for a directed verdict is created by the intersection of four statutes found in the Montana Code Annotated: 46-16-403 MCA, 46-16-213 MCA, and given the facts of this case, 45-2-301 MCA and 45-5-102(1)(b).

46-13-403 MCA allows upon motion of the court or the defense made at the close of evidence or the case in chief of the State to dismiss the action and discharge the defendant.

46-16-213 MCA clearly states that a defendant can not be found guilty of a crime based upon the testimony of a person responsible or legally accountable for the same crime as defined in 45-2-301 MCA unless that testimony is corroborated by other evidence that in itself and independent of and without the aid of testimony of the other person responsible for the crime tends to connect the defendant with the commission of the charged crime.

45-2-301 MCA defines what accountability for conduct of another is. A person is responsible for conduct that is an element of an offense if the conduct is either their conduct or is the conduct of another who is legally responsible for the conduct as provided for in 45-2-302 or both.

45-5-102(1)(b) is commonly called the felony murder rule. This rule/statute allows for the conviction of an individual that commits or attempts to commit a forcible felony as particularly articulated in the statute, which includes robbery, or is legally accountable for the crime and in the course of that crime a death of another human being occurs can likewise be charged as if he is responsible of the death.

In the present case the Appellant is charged with both Count 1: “Deliberate Homicide” and Count 2: Deliberate Homicide under the

generally referred to “Felony Murder Rule” and its portion of the homicide statute. A third Court Count 3: Tampering or Fabricating Physical Evidence. The Appellant was **not, (*emphasis added*)** convicted by a jury of “Deliberate Homicide” 45-5-102 (1)(a) but was convicted under the felony murder portion of the statute, 45-5-102(1)(b) MCA. He was also convicted on Count 3, which was the tampering of physical evidence. *Dist. Ct. Doc. #1 and #94*. It is interesting to note that he was charged with any forcible felony listed in 45-5-102(1)(b) including robbery.

After the State completed its case and rested, the Appellant sought from the trial court via a motion for a directed verdict/motion to dismiss, which was subsequently reduced to writing, *Dist. Ct. Doc. #92* a determination that the State had failed to prove its case.

The State’s case was centered on the testimony of the other individual legally accountable for the death, as defined by statute, *Supra* herein after referred to as the “co-defendant” charged but awaiting trial on the same charges. The use of the co-defendant’s testimony brings into play the requirements of the 46-16-213 MCA *Supra* which requires that

the co-defendant's testimony standing alone cannot be the factual basis for a conviction.

This Court in the case of *State v. Tollie, 2022 MT 59* clearly stated that under the statute 46-16-213 MCA to convict the Appellant when relying on the testimony of one legally responsible or accountable for the same crime the corroborating evidence must be such a to tend to connect the Appellant to the crime without the aid of the other legally responsible person's testimony. Further, quoting *State v. Black, 2003 MT 376* this Court has held that the corroborating evidence cannot simply describe the occurrence or circumstances of the crime. It must raise some independent connection with the Appellant that is apparent without the testimony. *State v. Kemp 182 Mont. 383* Further, this Court has taken the position that the circumstances of each case affects the application of the statutory standard. *Kemp supra*.

The opinion in *State v. Burkhart, 2004 MT 372* this Court quoted *Kemp Supra*, indicating that to be sufficient, corroborating evidence must show more than that a crime was in fact committed or the crimes surrounding circumstances of its commission. The evidence must raise more than a **suspicion** *emphasis added* of the Appellant's involvement

in or opportunity to commit the crime charged. Corroborative evidence need not be sufficient by itself to support the conviction of the Appellant or even to make out a prima facie case against the Appellant. This Court approved the use of circumstantial evidence, and it can come from either the Appellant or his witness. *See Burkhart Supra at P24. And State v. Ungaretti (1989), 239 Mont. 314.*

This Court, as far back as *State v. Paulson 250 Mont. 32, 46 (1991)* summarized all the standards stated and elaborated upon in previous and subsequent case to a 3 part test as to the evidence offered: 1, the evidence must be independent, 2, point towards the Appellant's guilt, 3, provide a legally sufficient connection between the Appellant and the offense.

The trial court in this matter addressed the Appellant's Motion For a Directed Verdict on Day 7 of the trial. The court articulates the following facts in its opinion that support the denial of the motion.

1. The court discounts all of witness Harvel, accomplice testimony.
2. The Appellant and the deceased are seen together.
3. The Appellant wearing a "Mohawk beanie".

4. The Appellant and its accomplice are the last people to be seen together with the deceased.
5. The deceased is seen with a large amount of cash on him at a casino.
6. The Appellant is seen with a stuck vehicle near the “Moose Creek Campground” by third parties about an hour after all parties are seen leaving a casino together.
7. The day after the sighting of the Appellant at the campground, the body of the deceased is found a some distance from where the Appellant was seen with the stuck vehicle.
8. Just prior to his arrest the Appellant was seen with a lot of cash on his person and had just purchased a vehicle.
9. There were statements about doing a “lick”.

*Trial Tans. Day 7, P. 138 l. 22 -P.141 l. 5*

The *Paulson* case *Supra*, has not been overturned or modified and thus the standards outline therein must be applied to this case and were applied in the *Tollie* case *Supra*.

The started facts relied upon by the trial court do meet the specific standards outlined by this Court in the cases cited herein.

This Court in *Kemp Supra* clearly states that each case has to be considered the facts of each case individually as they affect the application of the standards applicable to this case.

None of the considered facts stated by the trial court point to Appellant's guilt. None of these facts specifically meet the language in quoted in *Burkhart supra* from the *Kemp case Supra*. This Court has opined in the previous cases that the evidence must go beyond raising suspicion of the Appellant's involvement in the crime or the opportunity to commit it. *Burkhart Supra P.24* This Court places the weight of the alleged facts well above suspension but below that required to support a conviction or even probable cause.

Being with someone the day before they are found dead is suspicious, having cash in an amount to do normal everyday activities like purchase a car, being in an area days before someone discovers a body is suspicious but hardly reaches the threshold that this Court has set for this motion.

The idea of a "lick" comes from the testimony of State's witness Darcy Norris. She testified that there were statements about lick from the Appellant but that the lick involved the theft of jewelry and not

proceeds from a robbery of the deceased. *Trl. Trns. Day 5 P. 72 l. 14 -P/75 l. 2* This explains the existence of the cash involved in this matter. Given that the trial court discounted the testimony of the accomplice from its thinking and that the evidence is viewed from the perspective of what is most favorable to the State. The only implication would be the money came from an earlier theft. A theft of jewelry, which does not appear in any other testimony in this matter but that of the above named witness. A “lick” in the context of the actual testimony does not support and implication of guilt to the Appellant as to the death of the deceased or any theft from him.

The trial court’s assumption that there was a tie in with the crime when the crime happened and when the body is discovered is at best very speculative. The time and date of death could not be determined based upon the testimony of the only person qualified to testify to it and that was the medical examiner for the State of Montana, Dr. Prashar, who testified that due to the condition of the body, which was frozen when found and at the time of the autopsy. He could not set time or date of death. When asked, he specifically said “No” *Trl. Trns. Day 7 P/97 l. 3 and l.1-11*. Because of the inability to determine date and time of death

the placement of the Appellant at the alleged scene of the crime or in its proximity is at best suspicious but hardly raises it to the level necessary to meet the criteria of this motion. This is particularly true given that the body was found some time later. The placing of the Appellant at the alleged area of the crime some sometime before the discovery could be seen just as accidental or coincidental to the crime but does not go beyond that and does not point to guilt. The Conclusion that he was there in the area so must have done it, is highly speculative and at best suspicious even when seen the light of most favorable to the State.

The State does not support its theory of the case with any evidence that directly connects the Appellant to these crimes, such as there was no gun found, no DNA samples taken, or shoe prints at the alleged scene. The State did not provide any legally sufficient witnesses to either the death or the robbery. Also, for the purposes of the Motion for a Directed Verdict to the crime, there is no evidence of blood or gunshot residue on the Appellant, Its own witnesses do not support with direct evidence that the money in the hand of the Appellant is the deceased money. The Affidavit in Support of the Motion for Leave to File states clearly that the Appellant allegedly paid \$1,200 for the vehicle that he purchased and

only had \$453 on his person at the time of his arrest, and the Co-defendant had \$1,640. *Dist. Ct. Doc. #2, P 5.l. 5 and P.5 l. 5 & 9*. These amounts are hardly even close to the alleged \$13,000 that the deceased had on him a day before his alleged death and a lot less than the State argued during the trial. A close review of the casino security cam footage shows the wallet of the Appellant with money in it. *Trl. Exb.76 (video #7) 6:15-6-19*. The State has also failed to establish scientifically the date and time of death of deceased. Without that date and time established for the death, there is no evidence the death or the robbery did not occur before or after the Co-defendants were pulled from their stuck situation by the campground. The State argues that no one saw the deceased after a certain time and with the Co-defendants, so he must have died by the hands of the Co-defendants. All the State's position is argument, not connecting facts. The suspicion may be high, but the law requires evidence that connects the Appellant to the crime.

## CONCLUSION

The Appellant's Motion for a Directed Verdict should have been granted, and the case dismissed without it ever going to the jury. Based upon the above analysis of the total record, the facts drawn upon by the

trial court to conclude that the motion should be denied are not compelling evidence connecting the Appellant to the crime, robbery, which is the foundation of the conviction based upon the felony murder portion of the Deliberate Homicide Statute the Appellant was convicted on. This Court in the above cited *Kemp* case *Supra* requires that each case be viewed separately and the three prong tests outlined above be applied accordingly. Even when the evidence is viewed most favorably to the State the Appellant is not connected to this crime by independent evidence from a legally acceptable source. This conviction should be overturned, and this matter should be returned to the trial court with directions to dismiss this case and release the Appellant.

Respectfully submitted this 17<sup>th</sup>, day of September 2025.

By: /s/ Gregory E. Paskell  
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## CERTIFICATE OF COMPLAINT

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this primary brief is printed with proportional spaced Century Schoolbook typeface of 14 points: is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 3682, excluding Table of Contents, Table of Authorities, Certificate of Service, Certificate of Compliance and Appendices.

/s/ Gregory E. Paskell  
GREGORY E. PASKELL

## ADDENDUM

Written Sentence and judgement issued October 24<sup>th</sup>., 2023

## CERTIFICATE OF SERVICE

## CERTIFICATE OF SERVICE

I, Gregory E. Paskell, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 09-17-2025:

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