

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 23-0732

STATE OF MONTANA,

Plaintiff and Appellee,

v.

JAKE KENNETH LEE BURGHDIFF,

Defendant and Appellant.

BRIEF OF APPELLEE

On Appeal from the Montana Seventh Judicial District Court,
Prairie County, The Honorable Olivia Rieger, Presiding

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ISSUE PRESENTED

Whether—in the light most favorable to the State—any rational juror could have found that Appellant was legally accountable for the underlying forcible felony for the charge of deliberate homicide via felony-murder.

CASE PRESENTED

In mid-2023, after a four-day jury trial and a three-hour deliberation, the jury unanimously found Appellant Jake Kenneth Lee Burghduff (Burghduff) guilty of deliberate homicide via felony murder, for Burghduff's accomplice role to principal Sterling Brown (Sterling)¹ regarding the assault with a weapon that caused the death of Isaac Carrier (Isaac). (Doc. 104; Trial Tr. at 689-90.)

The district court sentenced Burghduff to the Department of Corrections for 15 years with 10 years suspended pursuant to an accomplice mandatory minimum sentence exception.² (Doc. 130 at 5-6; *see* Mont. Code Ann. § 46-18-222(4).) The court ordered Burghduff to pay \$18,918.78 in joint and several restitution to Isaac's family. (Sentencing Tr. at 89, 99-100; Doc. 130 at 6; *see* Doc. 107, Pecuniary Loss Aff.)

¹ Sterling is currently awaiting trial in the Seventh Judicial District Court in Cause No. DC-40-23-1.

² Parole was granted in September 2024. (*See* 1/8/25 Burghduff's MET Aff.; Board of Pardons and Parole 09-2024-Final-Board-dispositions.pdf.)

FACTS PRESENTED

I. The offense

Issac, his wife Katie Bivens (Katie), and their son Stetson moved from the Midwest to Glendive, Montana. (Trial Tr. (hereafter “Tr.”) at 60-62.) After Isaac and Katie divorced in 2021, Isaac moved into a four-plex at 605 Whittier Lane in Fallon, Montana, and worked as a ranch hand. (*Id.* at 63.) Katie remarried to Sterling, and they lived in Camp Crook, South Dakota—a town across the border from Montana and nearby Ekalaka. (*Id.* at 63, 375-76.) Katie (usually accompanied by Sterling) and Isaac met weekly to exchange Stetson per a custody arrangement. (*Id.* at 62.) Burghduff lived in Ludlow, South Dakota, a town an approximate 45-minute drive east from Camp Crook. (*Id.* at 399, 410.)

A custody hearing for Stetson was set for January 25, 2023, and Isaac was expected to testify. (Tr. at 362, 357, 448.) Two days before the hearing—on January 23, 2023, at 6:16 p.m.—Sterling texted Burghduff:

STERLING: You around?

BURGHDUFF: Like at my place?

STERLING: Ya

BURGHDUFF: Yep

(Ex. 20, admitted and published at 419.)

Sterling next sent Burghduff a YouTube video—a clip from the movie “The Town” entitled “We’re gonna hurt some people.” (Ex. 20; Tr. at 322, 420.) The caption screen depicts two men in ski masks looking downward. (Ex. 20.)

The clip depicts a character played by Ben Affleck approaching a character played by Jeremy Renner. Affleck says, “I need your help . . . we’re gonna hurt some people.” (Ex. 17, admitted at 327, published at 420-21, timestamp 0:17-0:22.) Renner immediately responds, “Whose car are we gonna take?” (Ex. 17 at 0:22-0:26.) The scene later cuts to Renner and Affleck grabbing masks and a sledgehammer from the trunk of a vehicle, crossing a street, and entering an apartment complex. They walk down a hallway to an apartment door, don the masks, and break down the door with the sledgehammer. They beat the apartment’s occupant with fists and batons. Affleck smashes a bottle over the person’s head and presses the broken bottle into his neck. Affleck comments about the person dealing in the area and sprinkles drugs on the person. Affleck sledgehammers the person’s hand. Renner holds a pistol to the person’s head, then fires two shots into both legs. Renner and Affleck leave the apartment and drive away. (*Id.* at 1:49-4:20.)

Burghduff responded to the clip, “I’m confused lol[.]” (Ex. 20.) Sterling replied, “Listen to it again and let me know if I can come over[.]” (*Id.*) Three

minutes and 44 seconds after Sterling's instruction to listen to the video again,

(Ex. 90A, admitted at 324), Burghduff responded:

BURGHDUFF: I'm still confused, we gotta hurt someone or something? Lex and the chick that works for us are in the living room lol

STERLING: Something like that. You available for pickup??

BURGHDUFF: Yep, I can meet ya Ludlow if ya want to. Either way

STERLING: Alright can't say much else on here

BURGHDUFF: Makes sense, how far out are ya

STERLING: My house yet.

BURGHDUFF: Sounds good, lmk [let me know] when ya get close

STERLING: Just leaving

BURGHDUFF: Sounds good. I'll just meet ya at the bar so lex don't ask who's pickin me up lol

STERLING: [hang loose hand emoji]
.22 pistol if ya have one old one
Then we can duck some coins up

BURGHDUFF: All ours are new
Plus I'm actually out of 22 bullets

STERLING: You're good
Just getting to table [mountain]

BURGHDUFF: I forgot you take that way lol definitely quicker

(Tr. at 423-28; Ex. 20; Ex. 21, admitted and published at 422; Ex. 22A, admitted and published at 426; Ex. 23, admitted and published at 428.) The text conversation ended at 7:55 p.m. (Tr. at 418.)

Based on the clip, Burghduff knew they were going to fuck somebody up. (Ex. 14BB at 78-79, (portion of police interview transcript); *see* Ex. 14B, (video of interview), both admitted and published at 429.)

Sterling drove east from Camp Crook to Ludlow. (Tr. at 331-32, 410.) At 8:14 p.m., Sterling arrived in Ludlow. (*Id.* at 599, 403.) Burghduff was already waiting, and as planned, they met at the Ludlow bar. (*Id.* at 403, 599-600; *see* Exs. 22-23.) As instructed, Burghduff brought his .22 pistol. (Tr. at 427-28; *see* Ex. 23.) Burghduff had already been “drinkin’ a lot” at home, and brought a 12-pack of beer too. (Ex. 14AA at 44, (portion of interview transcript); *see* Ex. 14A (video of interview), both admitted and published at 406.)

Upon their meetup, Sterling was “pissed off about the whole deal [with Isaac],” so Burghduff “kinda probably had an idea [that Sterling wanted to harm Isaac].” (Ex. 14AA at 44.) Burghduff “knew Isaac lived in Fallon[.]” (Ex. 14BB at 79.) Before departing the Ludlow bar, they both left their respective cell phones in Burghduff’s vehicle.³ (Ex. 14AA at 48; Tr. at 403.) Sterling retrieved the beers

³ Geolocation tracking confirmed Sterling’s phone went from Camp Crook to Ludlow, and both phones stayed in Ludlow that night. (Tr. at 331-32.)

from Burghduff's vehicle and they began their journey in Sterling's truck.

(Ex. 14AA at 41; Tr. at 403.)

According to Burghduff's later account, Sterling drove the entire time. (Ex. 14AA at 45.) They went on a three-hour trip through the backroads of South Dakota and eastern Montana. (Ex. 14AA at 41, 47; Tr. at 410, 416, 456.)

They stopped at the Baker, Montana gas station at around 9:42 p.m.—an hour and half into the trip. (Exs. 24-34, admitted and published at 437-38.) Burghduff walked into the gas station, found the area where gas containers were located, and bent down and looked at the selection of gas cans. (Exs. 25, 27; Tr. at 438-40.) After a little over a minute, he walked away from the gas section with a red two-gallon gas container and a can of starter fluid. (Ex. 28; Tr. at 440.) After grabbing an 18-pack of beer, Burghduff took the gas can, starter fluid, and beer to the counter and purchased the items with cash. (Ex. 29; Tr. at 440, 624; Ex. 94, admitted at 442-43.) Next, he filled up the gas can with gasoline at the pump by Sterling's vehicle. (Ex. 30; Tr. at 441.) While Burghduff was filling the can, Sterling was inside the store. He stood at the counter waiting for Burghduff to finish pumping the gas into the can so he could pay for the gas. (Tr. at 441.) When done filling the gas can, Burghduff placed it into the back of Sterling's truck, behind the driver's side. (Tr. at 441; Ex. 31.) Burghduff entered the truck via the passenger door. (Tr. at 441; Ex. 32.)

The gas station surveillance video showed that Burghduff was wearing cowboy boots⁴ and Sterling was wearing “muck-style” boots. (Tr. at 438-39, 594; Ex. 24-25.)

The pair continued on an approximate hour and 30 minute trip from Baker to Fallon—again traveling on backroads through Ismay and Mildred. (Ex. 14AA at 45; Tr. at 432.) On the way, Sterling pulled out a .45 pistol and checked it, ensuring it contained bullets. (Ex. 14BB. at 79-80.)

Upon arrival, they parked on nearby 7th street—facing out so all that would be required to leave would be to drive off. (Ex. 14AA at 49.) Burghduff alleged that Sterling left the pickup with the gas can and the .45 ACP Colt pistol. (*Id.* at 40-41, 49-50.) Burghduff thought Sterling was going to kill Isaac because Sterling had explicitly told him “he was gonna take care of” Isaac, and “the kid [Stetson] wasn’t goin’ back to him.” (*Id.* at 52.)

Isaac was killed that night while in his apartment in his bed. He was shot in the head and the four-plex was set on fire from his apartment. (Tr. at 81-82, 293, 296, 301.) Based on later hydrocarbon and forensic testing, gasoline was discovered on Isaac’s clothes and in Isaac’s bedroom. (*Id.* at 194-97, 204-05.) Fires were started in other areas of the apartment, including a couch in Isaac’s

⁴ In his later police interview, Burghduff would admit he was wearing the same boots he wore to the interview. (Ex. 14AA at 51; *see* Ex. 14A (video).)

living room, as well as a closet across from the bathroom. (*Id.* at 178, 184, 194.) A smoke detector was removed from Isaac’s apartment and left in the common hallway. (*Id.* at 164, 174-75.) Prior to the fire, a tenant heard a loud commotion and a person “running frantically[.]” with “quick footsteps in rapid succession[.]” while wearing apparent “cowboy boots.” (*Id.* at 122-23.)

Burghduff would claim to police two weeks later that he remained in the passenger seat of Sterling’s vehicle, and only Sterling went to Isaac’s apartment. (Ex. 14AA at 51.) Burghduff nonetheless explained he thought he was “probably fucked.” (*Id.* at 52.) Sterling allegedly came “running back” and “still had the gas can and gun” and jumped back in the driver’s seat of the truck. (*Id.* at 53-54.)

The pair returned to Ludlow, retracing the same route. (Ex. 14AA at 55.) Viewing the blaze as they drove away, Burghduff thought, “I’m an accessory to this shit.” (Ex. 14BB at 81.) He “just wanted to get drunk.” (*Id.*) While he was drinking the whole night, he also “drank a lot after what happened.” (*Id.*) Burghduff told nobody about what happened that night. (*Id.*)

II. The outcome

Four tenants lived at 605 Whitter. All tenants except Isaac navigated the active fire scene through a smoky hallway and made it out safely. (Tr. at 106, 123–24, 141.) One tenant ensured the other tenants’ presence outside but noted

Isaac's absence (*id.* at 108)—and two tenants saw flames coming from Isaac's bedroom window. (*Id.* at 107-08, 125.)

Prior to the fire, all three surviving tenants heard a disturbance.

Matt Dziurdzik awoke to a “loud commotion which sounded like someone running around in their apartment or someone running back and forth down the hallway.” (Tr. at 121-22.) It seemed that someone was “running frantically[]” with “quick footsteps in rapid succession[]” while wearing “cowboy boots.” (*Id.* at 122-23.) This lasted “at least 10 minutes[.]” (*Id.* at 123.) Around 11 p.m., Del Linda Frost estimated she heard a “loud bang” and wondered what the sound was. (*Id.* at 105.) Walter Harms heard a sound “like something falling into something,” which was “pretty loud.” (*Id.* at 140-42.)

Terry City Fire extinguished the fully engulfed structure. (Tr. at 77.)

Isaac's remains were discovered in his apartment complex on his bed. (*Id.* at 81-82.) He was extremely burnt and unrecognizable. (*Id.* at 94.) His body was transferred for autopsy. (*Id.* at 87.)

Isaac was 30 years old. He left behind numerous family members, including his four-year-old son, Stetson. (Tr. at 57, 60; Sentencing Tr. at 11-34.)

III. The autopsy and investigation

Dr. Walter Kemp, Chief Medical Examiner at the DOJ Forensic Science Division, determined the cause of death as a gunshot wound to the head, with smoke inhalation and thermal injuries as contributory conditions. The manner of death was homicide. (Tr. at 293, 296, 301.)

Both Dr. Kemp and Sheriff Lewis identified an odor of gasoline upon unzipping the body bag. (Tr. at 88, 284.) Because of charring, DNA identification was conducted to positively identify Isaac. (*Id.* at 283.) Isaac was deemed facedown at his death. (*Id.* at 298.) An x-ray revealed a gunshot wound and two bullet fragments in the cranium. (Tr. at 285, 288; Ex. 10, admitted and published at 286.) The bullet entry was a bone by the ear and the exit was a bone on the left side of the forehead, thus the injury was a “non-contact range gunshot[.]” at an odd angle, in contrast to usual suicides. (Tr. at 289, 292.) Black soot discoloration was in the airway. Further blood testing revealed 56.5% carboxyhemoglobin in the heart blood. (*Id.* at 294-95.) Because the gunshot went through the temporal lobe of the brain but not the brain stem, in conjunction with the soot evidence in the lung and carboxyhemoglobin in the blood, Isaac was still alive during the fire—although the cause of death remained a gunshot wound to the head. (*Id.* at 294, 296, 301, 308.)

Investigators sifted through the scene for “20 hours” looking for any spent or fired cartridge case, but “none was located.” (Tr. at 594-95.) The crime lab “wasn’t able to conclusively say that” the weapon used in the murder “was a .45.” (*Id.* at 594.)

IV. Communications occurring before Burghduff’s interview

Bradley Tucker, Major Case Agent for the Montana Department of Justice, Division of Criminal Investigation, gleaned information about the custody dispute, and thus interviewed both Sterling and Katie. (Tr. at 379-80.) Sterling discussed his whereabouts that night and who he was with, but he did not admit to going to Fallon. (*Id.* at 382, 397.)

On January 31, 2023, Sterling promptly texted Burghduff, “ta[l]ked to investigators today” and “you’ll be getting a call.” (Ex. 90A at 3.)

Agent Tucker called Burghduff the same day. (Tr. at 383.) While Agent Tucker asked Burghduff what he did that night, he did not talk about going to Fallon either. (*Id.* at 397.) Burghduff instead claimed that “he had been out, driving around Harding County, [South Dakota] with Sterling Brown, and spotlighting.” (*Id.* at 384.) When asked if he stopped anywhere, Burghduff responded he “did not.” (*Id.* at 397.)

Agent Tucker asked Burghduff if he would be willing to participate in an interview later that day, but Burghduff said he had previous commitments.

(Tr. 398.) Agent Tucker later texted Burghduff and set an interview for February 7, 2023. (*Id.* at 399.) They met then in Spearfish, South Dakota; thus, the police interview occurred around two weeks after the offense. (*Id.* at 398-99.)

But prior to the interview, Sterling and Burghduff texted via Snapchat⁵ and got their story straight:

BURGHDUFF: What all are they gonna ask me tomorrow when I go in?

STERLING: Where were were why we went where we did asking if I had I'll [sic] intent towards him. Gonna probably ask you if you know where Isaac lived or if you've ever been there before. Ask exactly what roads went south to mizpah. Ask about our history and basically just get you to try to have a different story than me going on a drunk drive. Try to trip ya up least you know is honestly best but don't lie.

STERLING: What time is your interview and is Wyatt⁶ gonna be there as well tomorrow?

STERLING: One of them deals man just tell em we went through baker like we did trying to find a road south to the mizpah and idk how drunk you were on this trip but I was drunk don't remember some things.

STERLING: Katie said they asked what I wore that night

⁵ Snapchat is a social media platform where users can send information that “they typically can view once, and then it goes away[.]” (Tr. at 330.) Law enforcement nonetheless can later view the messages. (*Id.* at 425.)

⁶ Likely referring to Sheriff Wyatt Sabo, Harding County, South Dakota. (Tr. at 376.)

BURGHDUFF: 11 tomorrow and idk if Wyatt will be there or not

STERLING: He wasn't with us, but who knows.

BURGHDUFF: Hell i don't even remember what we shot. I wasn't even sober when you picked me up.

STERLING: Well that's the things and they're gonna try to get our times directed on where we were but I swear I forgot track of time u[n]til we got back to my house and switched to my car quit beating my pickup up. Wasn't yours about out of gas anyway in Ludlow that night?

BURGHDUFF: Yah she was pretty low. Pushing e

STERLING: Gotcha what I thought but idk if I told them that. You best.

BURGHDUFF: Yep. Out of gas and anything at home to so had to put some in out of a jug before I could even take it town to fill it up

STERLING: Gotcha that makes sense to me. But all I know is where we were man and what we did. I can't help all this happened same days we went out. Fuck dude sorry for even asking you to.

STERLING: Hangout

STERLING: Just basically tell them how I was getting g ready for court in a couple days and home wasn't fun that it's why I hit you up these ladies arguing to dam much.

STERLING: Just tell em the truth and w'ere fine. They asked what guns I took with just my AR .243 and .270 idk what you brought or if you did bring anything oh and my .20 gauge was with I remember that

BURGHDUFF: Gotcha. Hell I understand you wanting out of the house. That'd drive me fuckin nuts.

(Ex. 90A at 3-12.) The pair continued coordinating their story via Snapchat about what various times they were in towns along their path that night, although both contended that, at certain points, they were too drunk to remember times and towns along the route. (*Id.* at 12-20.) Sterling said, “Then the biggest deal is wanting to get our times straight but l[i]ke I said once we left baker I kinda quit paying attention to time but I remember getting you back to Ludlow. Idk honestly what all the roads we were on man I was getting drunk and high.” (*Id.* at 16.) Burghduff thought they got home earlier but “maybe I passed out or something[.]” (*Id.* at 17.) When Sterling asserted they got back later, Burghduff responded, “Well shit. Then I have clue [sic] when I got home. Thought I might of remember that part of the night at[]least.” (*Id.* at 18.) Sterling responded, “you’ll be good then man.” (*Id.* at 19.)

V. Burghduff’s police interview

A. The first part of the interview

Agent Tucker’s strategy for the first interview portion was to “gather information” and find out “what [Burghduff] had to say.” (Tr. at 401.)

Burghduff first claimed that, on January 23, 2023, he received a “a phone call he didn’t answer, and a text message[.]” and that he and Sterling had decided to “go out boozing and shooting things.” (Tr. at 402.) He affirmed he met Sterling at

the Ludlow bar. (*Id.* at 403.) Burghduff claimed that Sterling brought two “long guns” or “rifles[,]” but he did not mention a .45 caliber handgun. (*Id.* at 404.) Burghduff brought a .22 magnum Ruger Revolver. (*Id.*) Burghduff again “indicated that he had not gone to Fallon[.]” but provided the following route, as explained by Agent Tucker at trial:

[T]hey had met in Ludlow. That they had gone north, I think, to Rhame, and then west over to Baker where they stopped at the gas station there, the Farmer’s Union Cenex. And then, they continued west from there, and then dropped south from the highway down to the Mizpah. And then, back down through Ekalaka and over to where Sterling resides in Camp Crook.

(*Id.* at 402.)

Burghduff admitted they went to the Baker gas station but claimed the gas was for Burghduff’s own vehicle, which was “on ‘E’ and he needed to get back to town.” (Tr. at 411.) Burghduff also claimed Sterling “filled the . . . jug up.” (*Id.*) However—after reviewing the gas station surveillance video—Agent Tucker knew Burghduff purchased the gas can and filled it at the pump with gasoline. (*Id.* at 411-12.)

B. The second part of the interview

Agent Tucker’s strategy for the “second portion of the interview” was to establish a more confrontational rapport. This line of questioning began at approximately page 40 of the interview transcript. (Tr. at 401, 404; *see* Ex. 14AA at 40-55; Ex. 14BB at 78-81.) Agent Tucker directly asked Burghduff if he was

with Sterling when he committed the murder. (Def.'s Ex. B at 40, at 481; Tr. at 405.) Burghduff responded that he was waiting in the vehicle. (Def.'s Ex. B at 40; Ex. 14AA at 40-41.) Burghduff admitted they went to Fallon but claimed he stayed "in the passenger seat" of Sterling's truck while Sterling took his pistol and the gas can inside. (Ex. 14AA at 40-41.)

Burghduff admitted that, when he saw the clip, he knew the plan involved a person and that they were going to fuck somebody up. (Ex. 14BB at 78-79.) However, because the clip referenced a dispute about drug dealing, and "Sterling smokes weed and stuff," Burghduff claimed he thought it "might have somethin' to do with that." (*Id.* at 79.) But Burghduff also admitted upon the meetup in Ludlow, he began to have "an idea" the target was Isaac, and—while he denied knowledge of a planned murder at that moment—he equivocated on whether he would have assisted Sterling in carrying out such a murder if asked to do so:

AGENT TUCKER: Did he say anything about wanting to harm Isaac when you guys met in Ludlow?

BURGHDUFF: He . . . I knew he was pissed off about the whole deal, so I kinda probably had an idea. But I didn't know we had . . . he had planned on doing anything like that.

AGENT TUCKER: You didn't know he was planning on killing him?

BURGHDUFF: I had no I . . . no idea anything like that, was goin' on.

AGENT TUCKER: What if he had told you that, would you have participated?

BURGHDUFF: I . . . I don't know. I couldn't tell ya if I (unintelligible) I couldn't tell ya if I would've or not, if I'd known right then.

(Ex. 14AA at 44; Tr. at 413-15.)

Burghduff also said that, upon the Ludlow bar meeting, Sterling said “probably best not to bring a phone [with] us,” but Sterling suggested they ditch their phones because “we don't want to lose it or anything.” (Ex. AA at 47-48.)

Burghduff changed his story about Sterling only having two long guns. He admitted Sterling brought a .45 pistol. (Tr. at 410.; Ex 14BB at 79-80.)

In contrast to his earlier account about needing gas for his *own* vehicle and blaming Sterling for getting gas, Burghduff admitted that he filled the gas can, albeit under Sterling's direction. (Ex. 14AA at 42; Tr. at 411.) But he claimed they never discussed the purpose of the gas can. (Ex. 98, offered and admitted at 477; Tr. at 477-78.) Burghduff claimed, “I didn't know what the plan . . . what was goin' on really.” (Ex. 14AA at 42.) When Agent Tucker asked if he had asked Sterling any questions about filling the can, he responded, “Not really.” (*Id.*)

Burghduff claimed that—only *after* he had filled up the gas can in Baker—he realized Sterling planned to murder Isaac. Sterling then allegedly told him they were going to Fallon. (Ex. 98 at 90.) And “sometime after Baker” Burghduff claimed he saw Sterling's .45 pistol “down by his feet.” (Ex. 14BB at 79.)

Burghduff admitted that he was conversing with Sterling, but the conversation was “kinda bullshittin’” because he was “keepin’ my mind off of the . . . what he’s . . . about to do.” (Ex 14BB at 81.) Sterling told him “he was gonna take care of” Isaac, and “the kid [Stetson] wasn’t goin’ back to him.” (Ex 14AA at 52-53; Ex. 98 at 90; Ex. 14BB at 79.) Sterling said he “didn’t want . . . Isaac getting’ . . . custody back.” (Ex. 14AA at 46.) Burghduff knew Sterling was upset with the “whole custody [. . . court case[.]” (Def.’s Ex. B at 92.) He knew Sterling was going to kill Isaac. (Ex. 14BB at 81.) Burghduff nonetheless told Agent Tucker he “understood [Sterling’s] reasoning” for wanting to kill Isaac because “[Isaac] had been messin’ with the kid or stuff.”⁷ (*Id.*)

Burghduff claimed that he waited in the car and he did not hear any gunshots because Sterling’s truck windows were up and the “pickup was running.” (Def.’s Ex. B at 53.)

C. Agent Tucker’s conclusions

Agent Tucker has 24 years of law enforcement experience. (Tr. at 340.) He was formerly a Major Case Agent for the City of Billings, investigating crimes “all the way up to homicide” and is now a Major Case Agent at DCI and investigates mostly homicides. (*Id.* at 342-43.)

⁷ Agent Tucker investigated this allegation that Isaac abused his son Stetson and determined it was “unsubstantiated.” (Tr. at 435.)

At trial, Agent Tucker summarized his interview with Burghduff, recounting Burghduff's explanation he thought the whole situation had to do with drugs.

(Tr. at 433.) When asked about the "three-hour ride" and if there was any mention about drugs, Agent Tucker responded:

No. In fact, there was no mention of drugs. The only mention the—really, he had indicated the purpose for Sterling coming was because Sterling was upset about, um, an argument over the custody.

(*Id.*)

Agent Tucker also opined that the fact that both men left their phones in Burghduff's vehicle was significant because:

everybody has a cell phone device in this day and age, and those devices track everything as you're, as you're moving, you know, through a community or, or communicating with towers. So, the fact that they went on a, a 3-hour journey through back roads and rural areas without any type of a device to communicate if something you know, happened. To me, that's a significant fact that they intentionally left their phones when they left. And when they initially met up and when they left.

(Tr. at 416.)

Agent Tucker believed Burghduff was not truthful during the first part of the interview. (Tr. at 479.) And even during the second part, Burghduff was "being very vague with his answers[]" and had "a lot more information" that he was "not willing to provide." (*Id.* at 480.)

SUMMARY OF THE ARGUMENT

In the light most favorable to the State, sufficient evidence was presented that Burghduff was legally accountable for the underlying assault with a weapon for the charge of deliberate homicide via felony murder. Burghduff took several steps that showed he agreed to aid, attempted to aid, or aided Sterling in the planning or commission of the offense, including: (1) agreeing to help Sterling via text message after being sent a video of two people beating a third person with weapons and firing a gun into that person's leg; (2) volunteering to conceal their movements in the same text exchange; (3) bringing a gun to the meetup; (4) joining Sterling in leaving his cell phone in Ludlow for a three-hour trip prior to the murder; (5) in the context of the video sent by Sterling, getting into Sterling's vehicle and traveling to Montana with full knowledge that Isaac was the intended target, Isaac lived in Fallon, and Sterling was angry with Isaac about the custody arrangement; and (6) purchasing and filling the same gas can that would be used in the course of the assault and murder.

Because Burghduff had a lengthy conversation with Sterling prior to his interview with Agent Tucker, getting their respective stories straight, and Burghduff admittedly lied in the beginning of the interview, his self-serving assertion he never went into the building could have been reasonably discounted by the jury. This is particularly true given one tenant's recollection of someone

running frantically in the building with cowboy boots. However, even assuming the jury found he was not in the apartment, they properly found him accountable given all the facts and circumstances up until that point, and they were entitled to consider his presence near the scene given the prior circumstances. Accordingly, the evidence, in the light most favorable to the State, shows that Burghduff agreed to assist Sterling in assaulting Isaac, and acted in furtherance of that agreement via all his actions.

STANDARD OF REVIEW

This Court reviews the question of whether sufficient evidence supports a criminal conviction de novo. *State v. McCoy*, 2021 MT 303, ¶ 25, 406 Mont. 375, 498 P.3d 1266. It considers the evidence presented in the light most favorable to the prosecution, and it will uphold a conviction where “any rational trier of fact could have found all the essential elements of the offense beyond a reasonable doubt.” *McCoy*, ¶ 25. This Court’s “job as an appellate court [is] to probe the record for evidence to support the fact-finder’s determination.” *State v. Dineen*, 2020 MT 193, ¶ 14, 400 Mont. 461, 469 P.3d 122. The inquiry is whether sufficient evidence exists to support the verdict, not whether the evidence could have supported a different result. *State v. Sheehan*, 2017 MT 185, ¶ 17, 388 Mont. 220, 399 P.3d 314.

ARGUMENT

I. Applicable law for felony murder and the scope of Burghduff's claim

Burghduff was charged with deliberate homicide under Mont. Code Ann. § 45-5-102(1)(b), the felony murder rule. A person is guilty of deliberate homicide by felony murder if the person “is legally accountable” for the “attempt or commission of . . . assault with a weapon” and “in the course of the forcible felony or flight thereafter . . . any person legally accountable for the crime causes the death of another human being.” Mont. Code Ann. § 45-5-102(1)(b). The applicable forcible felony here was assault with a weapon. (Doc. 105.2, Instrs. # 19-21.)

“[T]he purpose of the felony-murder rule is to ensure that people who engage in dangerous acts likely to result in death are held responsible for any resulting deaths, whether or not the acts were planned or premeditated. The felony-murder rule creates an alternative means of holding one responsible for reckless actions likely to result in death. Under the felony murder rule, the prosecution does not need to prove the purposely or knowingly element of the crime of deliberate homicide. Instead, the defendant's intent to commit the underlying felony supplies the intent of all subsequent consequences, including homicide. A causal connection between the felonious act and the victim's death must be present.

Therefore the state here had to prove 1) commission or attempted commission of, or accountability for, a forcible felony, 2) the occurrence of a death during the course of or flight after the felony, and 3) a causal connection between the felony and the death.

State v. Main, 2011 MT 123, ¶¶ 27-28, 360 Mont. 470, 255 P.3d 1240 (cleaned up).

Here, Burghduff does not argue: (1) the underlying forcible felony, assault with a weapon has not occurred; (2) a death did not occur during the forcible felony; or (3) no causal connection existed between the felony and the death. Instead, Burghduff exclusively disputes the jury’s decision that he was accountable. (Appellant’s Br. at 25-39.)

II. In the light most favorable to the State, any rational juror could have concluded Burghduff was legally accountable for assault with a weapon.

Accountability “is a connection provided by our legislature that gives courts and juries a way to make people ‘accountable’ or responsible for a crime . . . [.]” *State v. Gollehon*, 262 Mont. 1, 25-26, 864 P.3d 249, 265 (1993). Indeed, “[t]he law recognizes” that “circumstances may exist in which persons other than those actually committing the offense should nonetheless be held criminally culpable.” *State v. Kline*, 2016 MT 177, ¶ 13, 384 Mont. 157, 376 P.3d 132. Thus, “[i]f a person has conspired to commit and facilitated the commission by another of a criminal act, he is no less guilty because he did not ‘pull the trigger.’” *State v. Lantis*, 1998 MT 172, ¶ 38, 289 Mont. 480, 962 P.2d 1169 (citing *Gollehon*, 262 Mont. at 26, 863 P.2d at 265-66).

The jury was instructed that “[a] person commits the offense of Deliberate Homicide if he is legally accountable for the offense of Assault with a Weapon and

the death of the victim resulted from the Assault with a Weapon.” (Doc. 105.2, Instr. # 16.) To establish Burghduff was “legally accountable” for assault with a weapon, the jury was instructed the State was required to prove:

either before or during the commission of an offense with the purpose to promote or facilitate such commission, he solicits, aids, abets, agrees, or attempts to aid such other person in the planning or commission of the offense.

Mont. Code Ann. § 45-2-302(3); (Doc. 105.2 Instrs. # 18, 23).

A. Burghduff was legally accountable because he agreed to aid, attempted to aid, and/or aided Sterling in the planning or commission of the offense.

This Court recently emphasized:

The plain language of § 45-2-302, MCA, provides that a defendant may be held accountable for the criminal acts of another person if “either *before* or *during* the commission of an offense with the purpose to promote or facilitate the commission, the person solicits, aids, abets, agrees or attempts to aid the other person in the *planning* or *commission* of the offense.”

City of Hardin v. Anthony, 2025 MT 256, ¶ 18, ___ Mont. ___, 579 P.3d 156

(emphasis in original). Not only does the statute plainly contemplate a person can be accountable “before or during” an offense and involves the “planning or commission” of the offense, but the statute also plainly encompasses a broad range of possible accomplice conduct (denoted by “or” between solicits, aids, abets, agrees, or attempts to aid)—*any* of which may independently satisfy the statute and render an accomplice legally accountable. This Court has explained, “[t]he word

‘or’ connotes a disjunctive particle, and it is used to express an alternative between two or more things . . . when a requirement contains a disjunctive, only one of the separately stated factors must exist.” *Contreras v. Fitzgerald*, 2002 MT 208, ¶ 15, 311 Mont. 257, 54 P.3d 981 (internal citations omitted). Burghduff does not argue that the jury was improperly instructed or that it incorrectly applied the plain language of the accountability statute.

Here—in the light most favorable to the State—any rational juror could have found sufficient evidence existed to prove Burghduff’s accountability for the underlying assault with a weapon. While the totality of his statements and conduct establishes accountability, the State will now break down each of Burghduff’s decision points, which independently proved he acted with the purpose to promote or facilitate assault with a weapon and agreed to aid, attempted to aid, or aided in the planning or commission of the underlying forcible felony.

1. Burghduff agreed to help Sterling, acted to conceal the plan, and arranged to meet Sterling.

Burghduff argues “[t]here was no agreement between the two.” (Appellant’s Br. at 35.) He claims the evidence is insufficient because “[n]o one testified about” Sterling’s and Burghduff’s “relationship” and “[whether] they were close or how long they knew each other.” (*Id.*) He argues he responded to Sterling’s video clip “60 seconds after receiving it, which was not even enough time to watch the clip.” (*Id.* at 33-34.)

Sterling sent Burghduff a clip with a character played by Affleck telling a character played by Renner, “I need your help” and “we’re gonna hurt some people[.]” followed by Renner immediately agreeing to help and depicting a violent beatdown of a third person with various weapons, including shooting the third person with a gun. After Sterling urged Burghduff to watch the clip again and let him know if he could come over, Burghduff responded, “we gotta hurt someone or something[?],” which Sterling confirmed by stating, “something like that.” When Sterling next asked Burghduff if he was “available for pickup” Burghduff readily agreed, stating “Yep, I can meet ya Ludlow” and further agreed with Sterling’s request to bring his gun. Thus, Burghduff communicated his understanding after his prior request for clarification of the clip and then assented to the plan in the context of the video Sterling sent communicating his intent.

But, through his texts, Burghduff also communicated a criminal mindset and intent to assist Sterling by concealing their agreed-upon plan. Burghduff immediately picked up on Sterling’s efforts to conceal the plan (“Alright can’t say much else on here”) by confirming that it “[m]akes sense” that Sterling could not say more via text messages and rejoining with his own efforts to conceal their plan, stating: “Sounds good. I’ll just meet ya at the bar so lex don’t ask who’s pickin me up[.]” Thus, Burghduff followed Sterling’s lead by suggesting concealing the fact he planned to meet Sterling from others.

Burghduff's claim on appeal that he only watched "60 seconds" of the clip thus did not have "enough time to watch" it lacks merit. Burghduff is at least correct that he initially responded to the clip 58 seconds after the clip was sent, stating "I'm confused lol[.]" (Ex. 90A.) But Sterling urged, "*Listen to it again and let me know if I can come over[.]*" (Ex. 20; Ex. 90A (emphasis added).) The clip runs approximately 4 minutes and 20 seconds. (Tr. at 575.) The scene of arriving to an apartment complex, breaking into the apartment and the extensive beatdown of the third person starts at timestamp 1:35 into the clip and ends at 4:10. (Ex. 17.) Here—3 minutes and 44 seconds *after* Sterling's instruction to watch the clip again—Burghduff essentially repeated a line from the clip, asking "we gotta hurt someone or something?" (Ex. 90A; Exs. 20-21.) Moreover, the text exchange shows that Sterling placed emphasis on the clip and wanted Burghduff to understand the plan based on the clip. After Burghduff watched it again, he understood the context and agreed to meet Sterling ("Yep, I can meet ya Ludlow").

Even so, Burghduff told Agent Tucker he did not watch the whole clip at the time—while nonetheless conceding he had watched it before. (Tr. at 601; Def.'s Ex. C at 72-73, admitted at 567-68.) But, in the same interview, Burghduff admitted to Agent Tucker that he knew from the clip the plan was to fuck somebody up. (Ex. 14BB at 78-79.) The jury was entitled to appropriately weigh

Burghduff's statements and admissions about the clip, considering the context and timing of the text messages and responses thereto.

Further, while the State disagrees with Burghduff's undeveloped assertion that there somehow needed to be more evidence about Sterling's and Burghduff's close "relationship" for sufficient evidence to exist, the text conversation and surrounding circumstances easily demonstrates a close relationship. Burghduff readily agreed to help Sterling attack someone, with no pushback. And Sterling went 45 minutes out of his way to pick up Burghduff in Ludlow and trusted him to assist him under the intended purpose for them to assault someone.

At this point, Burghduff: (1) agreed to the plan to assault someone and knew that the clip meant they were going to fuck someone up; (2) arranged to meet Sterling; and (3) made efforts to conceal their whereabouts from other people in furtherance of the agreement and plan. Therefore, "before . . . the commission of an offense with the purpose to promote or facilitate such commission," Burghduff "agree[d]" to aid Sterling "in the planning or commission of the offense." Mont. Code Ann. § 45-2-302(3).

2. In Ludlow, the pair acted in concert to execute their plan.

Burghduff insists there was no agreement because "none of the texts Sterling sent [Burghduff] mentioned Fallon or Montana," nor did they "mention[] Isaac or any custody battle." (Appellant's Br. at 33.) But when the pair were texting and

agreed to meet at the Ludlow bar, Sterling texted Burghduff, “Alright can’t say much else *on here*[,]” and Burghduff responded, “Makes sense[.]” (Exs. 21-22, emphasis added.) Thus, the jury could reasonably infer that *more information* would be given by Sterling to Burghduff—in person and without their conversation being memorialized—upon their meetup at the Ludlow bar. As Burghduff later admitted to Agent Tucker, more information was relayed. Upon the meetup, Sterling was “pissed off about the whole deal [with Isaac],” so Burghduff “kinda probably had an idea [that Sterling wanted to harm Isaac].” (Ex. 14AA at 44.) Burghduff also knew “Isaac lived in Fallon[.]” (Ex. 14BB at 79.) Burghduff thus knew the details and scope of the planned assault upon their meetup.

Moreover, both men decided to leave their cell phones in Burghduff’s vehicle at the Ludlow bar prior to taking a three-hour trip through backroads to Fallon. Burghduff told Agent Tucker that Sterling suggested they ditch their phones because Sterling said it was “probably best not to bring a phone [with] us,” because “we don’t want to lose it or anything.” (Ex. AA at 47-48.) On the other hand, Agent Tucker testified that cell phones are a ubiquitous part of daily life and commonly brought on road trips for contingencies but the men leaving their phones for a long journey was indicative of an effort to conceal their whereabouts. (Tr. at 416.)

Here, the jury appropriately rejected Burghduff's story seemingly implying an innocuous reason for leaving their cell phones and found Agent Tucker's testimony more reasonable. The jury was entitled to use their common sense and experiences in examining whether it was reasonable for both men to decide to leave their phones for a lengthy night journey through the backroads of two different states, based merely on Sterling's alleged concern about Burghduff, a grown man, losing his phone. This is particularly true given the previous text messages wherein both men evinced an intent to conceal their plan.

But the pair ditching their phones in Ludlow was also evidence that supports a reasonable inference—in line with text messages and Burghduff's admission that they discussed Isaac at the time—that more information was then relayed to Burghduff upon their meetup in Ludlow. That was not their only action outside the bar. Burghduff brought beer and his gun, Sterling loaded the beer into his truck, and they both went on a three-hour trip in Sterling's truck to Fallon. All these acts together support the reasonable inference that a plan was made and they acted in concert with that plan, rather than just silently meeting and carrying out these acts in preparation for a trip. The jury could reasonably infer that Sterling followed through with his text-message implication to fill Burghduff in at the Ludlow Bar to answer any lingering questions.

Burghduff also dubiously told Agent Tucker he thought they were going to beat someone up based on drugs because the clip referenced a drug dispute and “Sterling smokes weed and stuff[.]” But Burghduff did not allege Sterling was a drug dealer and nor did he allege any facts indicating any drug dispute. And his explanation contradicts his admission that, upon the meetup, Sterling was “pissed off about the whole deal [with Isaac],” so Burghduff “kinda probably had an idea [that Sterling wanted to harm Isaac].” (Ex. 14AA at 44.) Finally, as Agent Tucker testified, no evidence existed of any drug conversation in either Ludlow or during the trip to Fallon. Rather—as Burghduff repeatedly admitted—Sterling instead talked throughout this time about his dispute with Isaac and the custody arrangement. (Ex. 14AA at 44, 52-53; Ex. 98 at 90; Ex 14BB at 79, 81; Def.’s Ex. B at 92.)

Accordingly, even assuming *arguendo* that Burghduff’s accountability was not established by the text messages alone, it was established outside the Ludlow bar. To recap, after Burghduff had already agreed to join Sterling in assaulting someone and acted to conceal their whereabouts, and after Sterling further explained his dispute with Isaac, he: (1) left his phone along with Sterling; (2) brought his gun and some beer; and (3) entered Sterling’s truck for a three-hour trip to Fallon—with full knowledge that Sterling was angry with Isaac about the custody situation, and the plan had to do with Isaac. Burghduff was thus legally

accountable because “before . . . the commission of an offense” and “with the purpose to promote or facilitate such commission,” he “aid[ed] or . . . , attempt[ed] to aid such other person in the planning or commission of the offense.”

3. Burghduff’s was assisting and acting in concert with Sterling at the gas station.

Burghduff addresses his conduct at the Baker gas station by arguing “it is not unusual to keep extra gas while driving in rural areas[.]” (Appellant’s Br. at 36.) He argues the gas can purchase could not have been evidence of a dismissed arson charge.⁸ (*Id.*) Thus, he argues the gas can purchase was irrelevant because the actual killing occurred “solely [with] a gun.” (*Id.* at 37.)

Regarding Burghduff’s innocuous explanation for purchasing gas, he merely offers an alternative explanation for the evidence the jury reasonably rejected. (*See* Tr. at 666, “There were no gas stations in Ludlow.”) As this Court has explained, “whether the evidence could have supported a different result proves immaterial to [this Court’s] review.” *State v. Burnett*, 2022 MT 10, ¶ 15, 407 Mont. 189, 502 P.3d 703. In accordance with his prior Snapchat plan with Sterling, Burghduff initially told Agent Tucker the gas was for his own vehicle, which was on “E,” and Sterling filled the gas can. (Tr. at 411.) But Burghduff later admitted he purchased and filled the gas can, albeit under Sterling’s direction. (Ex. 14AA at

⁸ The jury was so instructed. (Doc. 105.2, Instr. # 26.)

42; Tr. at 411.) Burghduff's about-face shows he was not credible, he knew which topics to obscure or not discuss, and he possessed a guilty mind.

The jury could have reasonably concluded Burghduff's purchase and filling of the gas can was additional evidence of the prior agreement the pair was acting in concert.⁹ Burghduff went into the store, perused the gas can section for a minute, selected a two-gallon gas can, paid for it with \$26 cash, filled it up by Sterling's truck, and placed it into the driver side—all while Sterling waited inside the store for Burghduff to fill up the can and paid for the gas. The gas can was ultimately used in the course of committing the underlying assault resulting in a homicide. Burghduff was acting in concert with Sterling and as an accomplice.

4. Whatever the circumstances in Fallon, Burghduff assisted Sterling in the crime up until that point, but his admissions around this time were also properly considered by the jury.

Burghduff insists there was still no “evidence of an agreement,” based on his statements to Agent Tucker that he never left the vehicle, and argues his mere presence in Fallon “falls below what Montana law requires to prove *accountability for deliberate homicide*.” (Appellant's Br. at 35-36 (emphasis added).) Burghduff also claims he did not think their journey to Fallon involved “actually murdering

⁹ While the district court excluded evidence pertaining to a dismissed arson charge, the court ruled midtrial that the gas can purchase was admissible as “evidence of an agreement[.]” (Tr. at 557.)

somebody” and he only became aware about that plan after he bought the gas can in Baker. (*Id.* at 35.)

Burghduff thus mistakenly conflates the legal theories of accountability to deliberate homicide and deliberate homicide via felony-murder—and further mistakenly claims as relevant his knowledge or intent regarding the murder. The State never charged Burghduff with accountability for deliberate homicide. Burghduff’s mental state to engage in the murder does not matter under the felony murder rule, which does not require that the prosecution prove the “‘purposely or knowingly’ element of deliberate homicide.” *Main*, ¶ 27. Additionally, “proof that the Defendant actually committed the physical act that resulted in the death of [the victim] is not required.” *Id.* ¶ 43. It does not even matter if the act causing death was “planned or premeditated.” *Id.* ¶ 27. Indeed, “[a]ll conspirators in a plot to commit a crime are equally guilty of deliberate homicide if during the course of the commission of the crime a death results which is directly attributable to the plot to commit the crime.” *State v. Weinberger*, 206 Mont. 110, 114, 671 P.2d 567, 569 (1983). And the “defendant’s intent to commit the underlying felony supplies the intent of all subsequent consequences, including homicide.” *Main*, ¶ 27.

Here, Burghduff agreed with a plan to *assault* someone with a weapon during the text message exchange, confirmed to be Isaac upon the meetup in Ludlow. “Montana’s statute does not require the death to be ‘in furtherance’ of the

threshold crime, only that the homicide occur in the course of the enumerated forcible felony.” *State v. Burkhart*, 2004 MT 372, ¶ 38, 325 Mont. 27, 103 P.3d 1037.

But even if this Court examined Burghduff’s self-serving assertion he stayed inside the vehicle, the jury was presented with evidence a witness heard a commotion and someone in the building running with cowboy boots before the fire. Burghduff wore cowboy boots. Fires were started in at least two rooms, gasoline was poured on Isaac and in his bedroom, and a fire extinguisher was removed from Isaac’s apartment. From the beginning, Sterling asked Burghduff through a clip to hurt someone, and Burghduff agreed. Was Sterling casually bringing a buddy—a potential witness against him—on a mission to kill Isaac without expecting any assistance at the crime scene? Sterling’s ask for assistance and Burghduff’s assent resulted in Sterling going on a 45-minute diversion east to Ludlow, the opposite direction from Fallon. Sterling asked Burghduff to bring a gun, showed him a video of two people brutally beating and shooting a third person in an apartment inside an apartment complex, and asked for his help based on the video. Not only did Burghduff agree, but the pair traveled on a 3-hour journey to Fallon. Like in the clip, two people brought weapons—here, and among the weapons in the clip, guns—and arrived nearby an apartment complex. Like in

the clip, an apartment was broken into, a person was assaulted and shot by a gun,¹⁰ but here, Isaac was actually killed. Burghduff and Sterling retraced their route 3 hours back.

Burghduff's admissions gave a window into his mental state. He admitted he believed he was an "accessory" to the crime. He admitted he "understood [Sterling's] reasoning" for killing Isaac. He responded to the question of whether, if he was initially told about the planned murder, would he have helped, explaining: "I couldn't tell ya if I would've or not, if I'd known right then." Burghduff's attempt to justify the killing and agreement with the logic of Sterling's plan and suggestion he would have helped regardless supports the reasonable inference that he understood the contours of the plan and participated in the crime.

But even assuming the jury credited Burghduff's story that he did not go into the apartment, it could still validly consider his presence nearby the crime scene given all the surrounding circumstances:

[W]hile mere presence and the failure to disapprove or oppose another's commission of an offense are insufficient to sustain an accountability charge, these factors may be considered by a jury, along with other circumstances, which may indicate whether the accused in some way aided or abetted the principal in the commission of the crime.

¹⁰ Burghduff otherwise misstates the shooting evidence at trial. (*Compare* Appellant's Br. at 38 ("the evidence showed Sterling committed deliberate homicide by . . . shooting Isaac in the head with a .45.") *to* Tr. at 594 (Agent Tucker explaining he wasn't able to "conclusively say that" the weapon used in the murder "was a .45."))

State v. Chafee, 2014 MT 226, ¶ 20, 376 Mont. 267, 332 P.3d 240 (citation omitted).

Burghduff implies that a finding of accountability is only appropriate “where a defendant is involved and present at the scene of a crime.” (Appellant’s Br. at 26.) But, “[a]lthough mere presence at the scene of a crime is not enough to establish accountability, the accused need not take an active part in any overt criminal acts to be adjudged criminally liable for the acts.” *State v. Miller*, 231 Mont. 497, 511, 757 P.2d 1275, 1284 (1988); *see also Lantis*, ¶ 39; *Anthony*, ¶ 18.

This Court has further explained:

[A]n accused act of aiding or abetting under the accountability statute need not be criminal in nature; it need only promote or facilitate commission of the crime.

Anthony, ¶ 18 (citing *Lantis*, ¶ 39). Here, the jury could have found Burghduff was an accomplice under the circumstances prior to the offense—regardless of whether Burghduff was present in Isaac’s apartment or took an active part in the overt criminal act—based on the totality of his agreement and accomplice activity.

B. The jury was entitled to rely upon the given jury instructions.

The jury was instructed how to weigh statements and credibility, including assessing motive, contradictions in the record, and character for truthfulness.

(Doc. 105.2, Instr. # 5.) It was instructed how to view Burghduff’s admissions,

including “whether such statement is true in whole or in part.” (*Id.*, Instr. # 10.) It was instructed that circumstantial evidence was entitled to equal weight to direct evidence, and is “proof from which the Jury may infer other and connective facts which follow according to common experience.” (*Id.*, Instr. # 11.) It could also determine the existence of a mental state from circumstantial evidence. (*Id.*, Instr. # 12.) Finally, the accountability instruction defined the extent and scope of accountability by its plain language. (*Id.*, Instr. # 23.)

This Court “presume[s] that the jury upholds its duty and follows a district court’s instructions.” *State v. Erickson*, 2021 MT 320, ¶ 27, 406 Mont. 524, 500 P.3d 1243 (citation omitted). And when reviewing sufficiency of the evidence, this Court “will not substitute [its] judgment for that of the jury, which is able to view firsthand the evidence presented, observe the demeanor of the witnesses, and weigh the credibility of each party.” *State v. Shields*, 2005 MT 249, ¶ 20, 328 Mont. 509, 122 P.3d 421.

The jury was thus entitled to make reasonable inferences from circumstantial evidence, evaluate Agent Tucker’s testimony, and accept believable portions of Burghduff’s admissions and reject unbelievable portions. Given that Burghduff initially lied about: (1) stopping anywhere; (2) going to Fallon; (3) himself filling the gas can and the purpose of the can; and (4) Sterling bringing a .45 gun, the jury was entitled to discount his justifications in the second part of the interview. The

various explanations for his supposition of a drug dispute, his justification for leaving his phone in Ludlow, and his claim of lack of knowledge of the gas can purchase were not credible. The jury was also able to view Burghduff's demeanor since they watched the police interview itself. Finally, the jury could consider the extensive Snapchat conversation after the murder between Burghduff and Sterling detailing their attempts to hide the true nature of the evidence and to get their stories straight.

“As this Court has held many times over, the jury is the fact finding body in our system of jurisprudence, and its decision is controlling. The jury is free to consider all the evidence presented and to pick and choose which of the witnesses it wishes to believe.” *Miller*, 231 Mont. at 512, 757 P.2d at 1285. If sufficient evidence supports the jury's findings, “then its conclusions will not be disturbed unless it is apparent there was a clear misunderstanding by the jury or that there was a misrepresentation made to the jury.” *Id.* Here, sufficient evidence supports the jury's unanimous verdict finding Burghduff accountable for the underlying assault with a weapon.

Burghduff argues, unlike in *Miller* where two people blamed each other for the murder, “this case was not about co-defendants with conflicting testimony.” (Appellant's Br. at 32.) Burghduff thus claims Sterling needed to testify against him for sufficient evidence to exist. Burghduff also cites a legal principle to

support his claim that insufficient circumstantial evidence exists here, explaining that for circumstantial evidence to be valid “the facts and circumstances must not only be entirely consistent with the theory of guilt, but must be inconsistent with any other rational (reasonable) conclusion.” (*Id.* at 32, citing *Miller* at 512.) But that principle has since been disapproved of by this Court and also removed from the pattern jury instructions. *State v. Bowman*, 2004 MT 119, ¶¶ 50-55 (we caution that [the same instruction] is not a correct statement of the law . . . ; *see also* MCJI 1-117(a) (comment). The jury was thus properly instructed that when circumstantial evidence is susceptible to two interpretations, supporting either guilt or innocence, it could determine which is most reasonable. (Doc. 105.2, Instr. # 13.) Burghduff has otherwise not pointed to a given jury instruction that commanded a direct conflict of coconspirator testimony was needed for the jury to convict Burghduff. Otherwise the totality of the circumstantial evidence here supports the assertion that, in the light most favorable to the State, sufficient evidence existed for conviction.

While the State otherwise agrees that in *State v. Flatley*, 2000 MT 295, 302 Mont. 314, 14 P.3d 1195, and *State ex rel. Murphy v. McKinnon*, 171 Mont. 120, 556 P.2d 906 (1976), the defendants were merely present, that is not the circumstance here.

In *Flatley*, a confidential informant asked Flatley to facilitate a drug deal, but “Flatley only intended to connect [the CI] with one person, and that person had gone fishing. No transaction occurred.” *Flatley*, ¶ 12. Here, by contrast, there was an agreement at the outset to commit an assault.

In *Murphy*—after the defendant, Edwin Rasmussen, and Gary Smith walked into a bar and Murphy and Smith sat down—Rasmussen attacked the bar owner “three separate” times while Murphy remained at the bar. Murphy ultimately “rendered assistance” to the bar owner so he would not choke on his blood while telling the bar assistant to call an ambulance. Only “[a]fter the last attack” did Rasmussen take money from the cash register. *Murphy*, 171 Mont. at 121-22, 556 P.2d at 907. The State’s affidavit accused Murphy of taking no steps to “restrain” Rasmussen. *Id.* at 125, 909. Examining the State’s charging documents on a writ of supervisory control, this Court explained the State’s affidavit did “not state” that “Murphy went to the bar with the purpose of harming Hamann[],” nor did the allegation that Murphy did not prevent the attack render him accountable. *Id.* As to the felony murder with a predicate robbery offense, Murphy could not be accountable because the robbery occurred “after the attacks,” thus, there was no causal connection between the forcible felony and the murder either. *Id.* at 127, 910. Here, by contrast, and the evidence showed that Burghduff made an

agreement with Sterling to assault Isaac and took steps toward that agreement, and the felony did not occur after the murder.

CONCLUSION

This Court should affirm.

Respectfully submitted this 30th day of January, 2026.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionately spaced Times New Roman text 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 9,679 words, excluding cover page, table of contents, table of authorities, certificate of service, certificate of compliance, signatures, and any appendices.

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CERTIFICATE OF SERVICE

I, Roy Lindsay Brown, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 01-30-2026:

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