IN THE SUPREME COURT OF THE STATE OF NEVADA

RYAN WILLIAMS, No. 83418

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Appeal from a Judgment of Conviction in Case Number CR20-0630B
The Second Judicial District Court of the State of Nevada
The Honorable Kathleen M. Drakulich, District Judge

APPELLANT'S REPLY BRIEF

JOHN L. ARRASCADA
Washoe County Public Defender
Nevada State Bar No. 4517
JOHN REESE PETTY
Chief Deputy Public Defender
Nevada State Bar No. 10
350 South Center Street, 5th Floor
Reno, Nevada 89501
jpetty@washoecounty.gov
(775) 337-4827

Attorneys for Appellant

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ARGUMENT IN REPLY

The State asserts that "[o]n February 22, 2020, [Ryan] Williams and [Adrianna] Norman, along with a man named Zane Kelly, went to Bob & Lucy's Tavern in Sparks to confront Steven Sims, who they knew to regularly patronize the establishment." Respondent's Answering Brief (RAB) at 3. Neither of these assertions are supported by a cite reference to the record as required by NRAP 28(b) (requiring a respondent's brief to "conform to the requirements of Rule 28(a)(1)-(10) and (12), which includes NRAP 28(a)(8) (requiring "a statement of facts relevant to the issues submitted for review with appropriate references to the record (see Rule 28(e))", which in turn provides in part: "every assertion in briefs regarding matters in the record shall be supported by a reference to the page and volume number, if any, of the appendix where the matter relied on is to be found." Here the State offers no record support for either the proposition that on February 22, 2020, Mr. Williams, Ms. Norman, and Zane Kelly "went to Bob & Lucy's Tavern in Sparks" for *the purpose of* "confront[ing] Steven Sims" or that they *knew* Steven Sims "regularly patronize the establishment", *i.e.*, that particular Bob & Lucy's as opposed to others.

The record does not support either assertion. Instead, it appears that Mr. Williams, Ms. Norman, and Mr. Kelly were at that particular Bob & Lucy's because Mr. Kelly was expecting to meet a friend there. See 8JA 1554, 1556 (Mr. Kelly noting that on February 22, 2020, he went into Bob & Lucy's three times. "The first two times I went in there to see if my friend was in there, other time was to use the restroom."), 1557 (same), 1560 (agreeing that he went to Bob & Lucy's looking to meet a friend).[1] Mr. Kelly did not know either Mr. Williams or Ms. Norman well. See 8JA 1555 (stating he doesn't know Ms. Norman) and 1559 (stating that at the time "I didn't know [Mr. Williams]" and was as familiar with Mr. Williams as he was with Ms. Norman). Similarly, Mr. Kelly did not know Steven Sims. 8JA 1557. As for Mr. Sims, he was at Bob & Lucy's to gamble. He arrived at Bob & Lucy's sometime early that morning. 4JA 1579; 5JA 888 (noting his arrival time to be unclear). He knew the bartender (Mr. Cole)—in fact Mr. Sims was staying at Mr. Cole's place. 4JA 750-51. There was no evidence presented that either

[1] Mr. Kelly testified that he walked around Bob & Lucy's looking for his friend (Tanya) but did not see her in there. 8JA 1560, 1579-80. After concluding that Tanya wasn't coming, Mr. Kelly tried to enter the Tavern to get Ms. Norman (who had entered the Tavern) but was prevented from entering by the bartender because he did not have any identification. 8JA 1557-58, 1560-61.

Mr. Williams, Ms. Norman, or Mr. Kelly knew Mr. Sims was even at Bob & Lucy's before they arrived.

Because the State cannot support its assertion—one designed to cast Mr. Williams in a malevolent light—this Court should reject that image.

Mr. Williams' legal possession of a firearm.

The State notes that "on one occasion" Mr. Sims drove with Mr. Williams and Ms. Norman to get fast food. RAB at 13. "On that trip," Mr. Williams placed a gun "on the center console" of the vehicle they were in. *Id.* Notably, Mr. Sims did not testify to any threats or other possibly criminal behavior by Mr. Williams on this occasion. And Mr. Sims did not testify that he was placed in any fear based on Mr. Williams' actions. Mr. Sims' "bec[oming] aware that Williams was armed," *Id.*, on this occasion absent some cause for alarm is not relevant. And Mr. Williams' placement of a gun on a console while Mr. Sims was present did not magically become relevant when Mr. Williams uttered the words "You know how I roll" on a different occasion.[2] Yet

[2] The State claims that the phrase "You know how I roll" "was a reference to Williams' being armed." RAB at 14. But Mr. Williams was not armed at Bob & Lucy's so that connection does not exist.

the district court allowed this evidence before the jury to prove propensity[3], which constitutes unfair prejudice. *Fields v. State*, 125 Nev. 785, 790,220 P.3d 709, 713 (2009) (noting that the use of evidence to propensity is "unfair prejudice"). To be clear, the phrase "You know how I roll" was admissible and Mr. Williams does not contend otherwise. It is the coupling of Mr. Williams' prior non-threatening legal possession of a gun with the suggestion of a propensity to carry firearms that is at issue. The State thinks the complaint is that the jury would think that Mr. Williams' gun possession was illegal. See RAB at 16-17. Not so. The argument is that the phrase "You know how I roll" should have stood alone. The jury, of course, could give those words any weight it deemed worthy. As presented, it allowed the jury to think Mr. Williams was a bad person.

Even if the Court characterizes the gun evidence as "non-propensity evidence," it should not have been provided to the jury. In *Bigpond v. State*, 128 Nev. 108, 270 P.3d 1244 (2001), the Supreme

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[3] See The American Heritage Dictionary of the English Language (5th ed. 2011) at 1412 (defining "propensity" as "An innate inclination; a tendency"); and Merriam-Webster's Collegiate Dictionary (11th ed. 2012) at 996 (defining "propensity" as "an often intense natural inclination or preference").

Court enlarged the possible use of non-propensity evidence beyond those purposes identified in NRS 48.045(2). But the Court did not say that all non-propensity was automatically admissible. As it had done in previous cases, the Court in *Bigpond* emphatically cautioned that a "presumption of inadmissibility" still attached to such evidence and that the use of such evidence remained "heavily disfavored in our criminal justice system." 128 Nev. at 116, 270 P.3d at 1249 (citations omitted).

In *Randolph v. State*, 136 Nev. 659, 665, 477 P.3d 342, 348-49 (2020) (citations omitted), the Supreme Court explained that "[t]he presumption of inadmissibility guards against unfair prejudice that may undermine an accused's right to a fair trial by enticing jurors to resolve a case based on emotion, sympathy, or another improper reason disconnected from an impartial evaluation of the evidence." Continuing, the Court said, "[i]n assessing unfair prejudice, we look to the basis for the admission of prior-bad-act evidence and *the use to which the evidence was actually put*." 477 P.3d at 349 (italics added, quotations, and citation omitted).

Here the evidence of Mr. Williams' legal possession of a gun was used to improperly suggest that he was a bad person. The district

court's admission of the gun possession evidence denied Mr. Williams a fair trial. *Cf. Walker v. Fogliani*, 83 Nev. 154, 157, 425 P.2d 794, 796 (1967) (noting that "a proud tradition of our system" is that "every man, no matter who he may be, is guaranteed a fair trial.").

Mr. Williams stands on his arguments regarding the sufficiency of the evidence.

Mr. Williams stands on his arguments regarding the sufficiency of the evidence as they concern the specific intent element of burglary and the force element of robbery. As to burglary, the State argues that because Mr. Williams took Ms. Norman's gun from her and carried it outside when he left Bob & Lucy's, "[t]his demonstrate[s] that Williams knew where the gun was and entered the tavern *with the intent* of actively assisting Norman in her plan to threaten Sims with a gun." RAB at 19 (italics added). While the State is entitled to have the evidence viewed favorably, it is not entitled to construct out of whole cloth speculative conclusions. *Cf. State v. Grey*, 23 Nev. 801, 802 (1896) ("suspicions, however strong, are not sufficient to convict men of crimes. There must be evidence of every essential element of the crime"). Similarly, as to robbery, Mr. Williams' use of force was sufficient to push a button necessary to produce a cash receipt print out. Shortly

thereafter he left Bob & Lucy's while Ms. Norman and Mr. Sims remained inside. It cannot go unnoticed that Ms. Norman, who was present throughout and who had the most contact with Mr. Sims, was not convicted of robbery. See 10JA 2072 (Transcript of Proceedings: Trial—Day 14) (noting Ms. Norman's conviction for burglary only).

The State concedes that the amended judgment must be corrected

The original and the amended judgments of conviction both contain the same clerical errors. Clerical errors "may be corrected by the court at any time." NRS 176.565. The State agrees but asserts a resentencing hearing is not necessary to correct these errors. see RAB at 20-21. Mr. Williams agrees. Thus, this Court should remand this matter to the district court to correct the clerical errors in the judgment of conviction. *Ledbetter v. State*, 122 Nev. 252, 265, 129 P.3d 671, 680-81 (2006).

CONCLUSION

Assuming the Court goes beyond ordering the correction of the judgment, the Court should either (1) remand for a new trial with instructions to not admit the prior gun evidence or (2) remand for the

purpose of dismissing the burglary and / or robbery counts for insufficient evidence.

DATED this 15th day of March 2022.

JOHN L. ARRASCADA
WASHOE COUNTY PUBLIC DEFENDER

By: JOHN REESE PETTY
Chief Deputy, Nevada Bar No. 10
jpetty@washoecounty.gov

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this petition complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because: This brief has been prepared in a proportionally spaced typeface using Century in 14-point font.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, even including the parts of the brief though exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points and contains a total of 1,849 words. NRAP 32(a)(7)(A)(i), (ii).

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied upon is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 15th day of March 2022.

/s/ John Reese Petty
JOHN REESE PETTY
Chief Deputy, Nevada State Bar No.10

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 15th day of March 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Jennifer P. Noble, Chief Appellate Deputy,
Washoe County District Attorney

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

Ryan Williams (#96845)
Northern Nevada Correctional Center
P.O. Box 7000
Carson City, Nevada 89702

John Reese Petty
Washoe County Public Defender's Office