IN THE SUPREME COURT OF THE STATE OF NEVADA

WAYNE MICHAEL CAMERON,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

_____/

No. 83531

RESPONDENT'S ANSWERING BRIEF

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RESPONDENT'S ANSWERING BRIEF

I. STATEMENT OF THE CASE

This is an appeal from a judgment of conviction following a jury verdict. The State charged Wayne Michael Cameron, hereafter "Cameron," via information with a single count of Murder With the Use of a Deadly Weapon. Appellant's Appendix, hereafter "AA", Volume I, 1-4. He was sentenced to a term of life without the possibility of parole, and a consecutive eight to twenty years for the deadly weapon enhancement. VII AA 1614-1615. This appeal followed.

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II. ROUTING STATEMENT

Because this is an appeal from a conviction following a jury verdict of a Category A felony, this appeal is not subject to presumptive assignment to the Court of Appeals. NRAP 17 (b)(2)(A).

III. STATEMENT OF THE FACTS

On February 11, 2020, Cameron murdered 29-year-old Jarrod Faust, hereafter "Faust," by shooting him in the face in a Reno cul-de-sac. The bullet traveled through Faust's cheek, the left side of his neck, the horn of the hyoid bone, and portions of his cervical vertebrae, resulting in his death. V AA 1120-1122. At about 8:30 that night, neighbors heard two pops, and saw two cars side by side. II AA 330-348. One of the vehicles roared off at a high rate of speed. *Id.* The police were called. *Id.* The victim's mother, Karen Faust, testified that the last time she saw her son alive was at about 8:15 p.m. the night of the murder. He told her he was going for a quick workout at the gym. She never saw him alive again. III AA 540-541.

When Faust was found by a sheriff's deputies, he was still sitting in the driver's seat of his Chevy truck. II AA 259-292. The vehicle was in gear, the engine was still running, and he had his seatbelt on. *Id.* His foot was near the brake pedal, as if it had just slipped off. *Id.* The driver's side

window was down, and the doors were locked. *Id.* Country music was still playing in the car, and there was slight body damage to the front driver's side bumper. *Id.* A vape pen was in Faust's right hand, and his left hand rested on his lap. *Id.* No weapons were in the vehicle. *Id.*

Detective Michael Almaraz was involved in a video canvass of the neighborhood surrounding the murder. II AA 379-385. He obtained surveillance footage from nearby Rock Haven Drive, about four houses down from the victim's home. Footage from 8:44 p.m. showed a light-colored, lifted pickup, consistent with Faust's vehicle, and a smaller light-colored SUV sedan. *Id.* Detective Brian Atkinson testified that a brass colored .40 caliber Smith and Wesson cartridge was found near the crime scene, as well as skid marks on the asphalt. *Id.*, 415-416.

Police had no leads, until they were contacted by Dave Colarchik, a friend of Cameron's. Colarchik related that at 9:40 pm on the night of the murder, Cameron texted him, asking if he was awake. III AA 548-560. After responding to the text, Colarchik called Cameron. *Id.* After making Colarchik promise not to tell anyone, Cameron made several incriminating statements including, "I think I just shot someone," "I hate when people make me mad, I don't know why I get so angry," and "I hate that I know the law" and "I'm the one who got out of the car." *Id.* Cameron told Colarchik

"I'm the one that went up to him" and urged Colarchik to tell no one, not even his own wife. *Id.* Later, Cameron left Colarchik a voice mail asking Colarchik to take care of his children. III AA 559. Detective Josh Watson of the Reno Police Department's Computer Crimes Unit later testified that he examined Cameron's cell phone. His forensic examination of text messages on the phone was consistent with Colarchik's account. *Id.*

Examination of location tracking software on Cameron's phone revealed that at 8:42 p.m. on the night of the murder, Cameron was in the area of Ventana Parkway and West Zolezzi. V AA 1001-1026. Examination of Faust's cell phone revealed that he was in the same location at 8:42 p.m. *Id.* On the night the shooting, nine specific Ring Camera videos were deleted from the Ring application on Cameron's phone, shortly before he called Colarchik. III AA 734-747.

Colarchik also advised police that Cameron had several friends in high positions at the Washoe County Sheriff's Office. Because of this, the Reno Police Department conducted the investigation. Colarchik told the authorities that Cameron had left town, but that he was flying back home to the Reno airport that night. Detectives spotted Cameron's vehicle at the airport, and followed him to Pinocchio's, a local restaurant, where they

determined Cameron was having dinner with members of the sheriff's office. III AA 656-659.

When detectives arrived at his home, Cameron's first statement was, "What's your badge number?" IV AA 948-950. Cameron agreed to come to the police station for consensual interview. *Id.* When he was asked if owned guns, Cameron stated "I don't know what I have, I have long guns." When asked if he had any .40 caliber guns, he stated "I'm not sure." Without knowing the target of the warrant, he volunteered to open his safes. *Id.*

Detectives talked to Cameron's son, Ethan, who advised that his father had various guns that used .22 caliber and 9-millimeter ammunition. Ethan further advised that his father always carried a pistol under the seat of his car. Cameron's ex-wife, former girlfriend, and brother also remembered that he kept a small semi-automatic pistol under the driver's seat of his vehicle. III AA 620-621, 625, 631. Sean Elliott, who knew Cameron through youth sports, also testified that he saw a 9-millimeter firearm in Cameron's vehicle glove box. At that time, Cameron told Elliott he also carried a .40 caliber semi-automatic gun, which was his favorite. *Id.*, 643-647.

Ethan's trial testimony was consistent with his statements to police. III AA 586. He testified that his father kept several firearms at home, and one under the driver's seat of his vehicle, which Ethan believed to be a small .40 caliber pistol. *Id.* When detectives rang their doorbell, Ethan thought they were Mormon missionaries. *Id.* He recalled that his father had been following news about the neighborhood shooting, and when detectives mentioned it, Cameron stated, "It's the shooting you told me about, Ethan." *Id.* But Ethan remembered that it was Cameron who had told him about the shooting. *Id.* He recalled that Cameron's arms and voice were shaking, and that he was sweating. *Id.*

After Cameron was arrested, Ethan was going through his father's things and found a "Safety & Instruction Manual" for Smith & Wesson pistol models "SD9VE" and "SD40VE." III AA 600. A hand-written receipt dated "12-22-12" from "NV Guns N Ammo" in the name of "Wayne Michael Cameron" for one "S&W SD40" was located with the manual. *Id.*

In searching Cameron's house pursuant to a warrant, police found a number of firearms, including 9-millimeter Glock, a .22 revolver, and a 9-millimeter Smith and Wesson. III AA 662-696. No .40 caliber weapon or ammunition was found in Cameron's house. *Id.* But one 9-millimeter casing and two fired .40 caliber casings were found underneath the driver's

seat of his car. *Id.*, 694; IV AA 906. Forensic examination revealed that the .40 casings matched those found at the scene, and that the casings had been fired from the same gun. Later, a manual for a Smith & Wesson .40 caliber was discovered by Ethan in Cameron's home. Inside was a receipt, showing that Cameron had purchased it. III AA 599-600. Detectives later confirmed that Cameron had purchased a .40 caliber Smith & Wesson in 2012. IV AA 921-922.

When detectives again made contact with Cameron, he was sweating and shaking on a 61-degree day. IV AA 782. He agreed to come to the police station for a consensual interview. *Id.* During the ride to the station, Cameron informed Detective Nevills that he knew people working for the Reno Police Department. *Id.*, 829-839; Exhibit 20.[1] It was established that Cameron had gotten his concealed weapons permit in January of 2018. *Id.* Cameron made a series of incriminating statements, but stopped short of admitting that he shot Faust. *Id.* He claimed that as he was driving home from Murrieta's, another local restaurant, he saw a motorcycle and a truck "going at it" and that the motorcycle was "annoying the truck." *Id.* Initially, Cameron claimed he went home after seeing the vehicles, but later

[1] The State has filed a motion to transmit Exhibit 20, which is an audiovisual recording of Cameron's police interview.

admitted that he followed the truck into a cul-de-sac and spoke to the driver, and then left. *Id.* He claimed that he followed the driver to check and see if he was alright, but also indicated he followed the truck "because I am stupid." *Id.* Once police confronted him with the murder, Cameron stated, "I can tell you there was no rage on my part, yep, none whatsoever." *Id.*

Gary Miner, a former police officer, testified that he owned a wine store called Vino 100, and that Cameron was a frequent customer. III AA 768-770. On February 24th, 2020, Cameron came in and told Miner that he was under investigation for murder. *Id.* Miner was in disbelief. Cameron told Miner that he had called a friend and told him he might have shot somebody. *Id.* The next day, Cameron returned and told Miner that police had searched his home and taken all his guns. *Id.* Cameron whispered, "But they're not going to find that gun." *Id.* Miner asked him, "You didn't do this, did you?" *Id.* Cameron replied, "You know I can't tell you that." *Id.*

Leah Mazza testified that on October 30, 2018, she was on her way home and driving on Zolezzi Lane. IV AA 954-969. A car in front of her pulled over to the side, and she passed it. The vehicle began driving behind her very closely, with its brights on. Concerned, she decided to drive past

her parent's house because she did not want the vehicle following her home. *Id.* Mazza was scared. *Id.* The vehicle continued to follow her throughout the neighborhood. *Id.* Finally, she decided to drive to her parent's house, and hurried inside. *Id.* Mazza looked out the window and saw someone taking pictures of her car. *Id.*

Cameron's daughter, Aspen, testified that she recalled an evening when she and her father were driving on Zolezzi when a vehicle was tailgating them. IV AA 982-987. She recalled that Cameron pulled over, and then began to follow the vehicle into a cul-de-sac. *Id.* Cameron exited the vehicle and got close to the teenage occupants, "yelling at them, and just being really loud and aggressive with them." *Id.* She was scared and embarrassed. Eventually, Cameron got back in the car and drove home. *Id.*

Cameron testified at trial, and his testimony contrasted sharply with his police interview. At trial, Cameron changed his story. He stated that on the night of the murder, he went to Murrieta's restaurant. V AA 1151-1164. He claimed that he observed a truck and motorcycle. *Id.* The motorcycle attempted to go around the truck, and the truck almost hit the motorcycle. *Id.* Cameron maintained that he decided to follow the truck into a cul-de-sac, believing the driver might be intoxicated. *Id.* He also claimed that he stopped to ask the driver if he was all right. *Id.* Cameron further testified

that the driver answered, "Yeah, I'm okay. Why the fuck are you following me?" *Id.* He claimed that he responded, "Why are you trying to kill people?" *Id.* Cameron stated that "some words went on," and that the driver stated, "I will kill you, motherfucker" and called Cameron a "panty-wearing motherfucker." *Id.* He claimed that the driver "flinched" and raised his hand up. *Id.* Cameron claimed that he thought the driver had a gun in his hand, and that he decided to reach under his seat for his gun and took the time to load it. *Id.* He further testified that he was scared, and that when he suggested "let's just call it a night" and the driver responded with epithets. *Id.* Cameron claimed that he told the driver to "relax" and that "I have a gun, too." *Id.* According to Cameron, the driver began to drive toward him "like he was going to kill me with his vehicle." *Id.* He claimed he fired his weapon at that point, and the truck "took off." *Id.*

Cameron also disputed the nature of his phone conversation with Colarchik, saying that he never said "I hate it that I know the law," or admitted he was angry. *Id.*, 1168. He admitted that he never told police this version of the incident during the interview, and had lied to the police several times during the investigation. *Id.*, 1171-1178. He also he admitted that he lied to his friend, Detective Greg Herrera of the Washoe County Sheriff's Office. *Id.* He admitted to following Leah Mazza, but said it was

because she "bumped" his vehicle from behind. He also admitted to following her home. *Id.* Cameron also acknowledged to the incident described by his daughter Aspen, wherein he followed a group of teenagers home for tailgating him, and raised his voice at them. *Id.*

On cross-examination, Cameron admitted that it had taken him 30 minutes to testify to the events leading up to the shooting, and that he did not provide any of the same information to detectives during an 8-hour police interview. *Id.*, 1179-1233. He conceded that he first decided to follow Faust because he believed he was a teenage driver. *Id.* He admitted that he shot Faust with a .40-caliber weapon he had purchased, and that he lied to the police about owning the weapon. *Id.* Cameron testified that he was "doing a public service" by following Faust that night. *Id.* Cameron further admitted that he lied to police when he stated he did not get a gun from his car. *Id.* He also conceded that during the police interview, he asked for "one my buddies, you know, Balaam" referring to the Washoe County Sheriff. *Id.* He further admitted that he asked his friend, Detective Greg Herrera, also from the Washoe County Sheriff's Office, for advice during the interview, and that Herrera told him not to lie. *Id.* He disagreed that he told his friend Colarchik, "I hate that I know the law," but conceded that he also told police that Colarchik was a trustworthy person. *Id.* He

admitted that he threw the murder weapon in a trash can, but that he did not recall where. *Id.*

A .40 caliber bullet was found in the body of Faust and submitted for testing. V AA 1059-1060. The .40 caliber casing found at the murder scene was found to be fired from the same gun as the two .40 caliber casings found in Cameron's vehicle. V AA 1097-1103. These casings matched the bullet recovered from the victim's body. *Id.* The State's firearms expert determined that the bullet and casings were consistent with five models of Smith & Wesson firearms. *Id.* Additionally, a 9mm fired cartridge found in Cameron's vehicle and was compared to a 9mm Glock pistol found his room, and determined to have been fired from the Glock. *Id.* The murder weapon was never found.

IV. STATEMENT OF THE ISSUES

A. Where the information alleged a theory of felony murder, and the State elicited evidence supporting that theory, whether the district court committed reversible error by giving juroy instructions regarding felony murder.

B. Whether jury instructions constituted a constructive amendment to the information that deprived Cameron of notice regarding the State's felony murder theory.

C. Whether the district court committed reversible error by allowing the State to introduce evidence of Cameron's prior aggressive conduct with other motorists.

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D. Whether the district court committed plain error by permitting the victims to make sentencing recommendations during their victim impact statements.

E. Whether the district court erred by admitting evidence of prior shootings committed by Cameron during the sentencing hearing.

F. Whether this Court should declare NRS 200.030(4) to be unconstitutional.

V. SUMMARY OF ARGUMENT

In this case, Cameron followed the victim, Jarrod Faust, and confronted him because he did not like the victim's driving. Cameron had a lot of friends in law enforcement, and fancied himself as some kind of traffic enforcer. He had a history of following other drivers home and exhibiting confrontational behavior. Cameron was quick to remind people he had friends in law enforcement. He also loved guns, and had a substantial collection of them.

The evidence at trial showed that during the confrontation with Faust, Cameron took the time to load his gun before exiting the vehicle and shooting the unarmed victim in the face while he was still seat belted in his vehicle. This was not the first time Cameron had engaged in similar conduct. The district court properly admitted evidence of two highly probative, relevant prior incidents in which Cameron had followed other area drivers to confront them.

In this appeal, Cameron maintains that the State was unfairly permitted to pursue a felony murder theory at trial, and that he had insufficient notice that this would occur. But the information charged Cameron with murder and included a theory of felony murder liability premised upon an attempted burglary. Evidence adduced at trial could have led a jury to reasonably find Cameron guilty of felony murder, or, alternatively, of first-degree murder based upon a theory of a deliberate, premeditated homicide.

Cameron also alleges errors with respect to sentencing. With no supporting authority, he contends that the victims should not have been permitted to make sentencing recommendations to the jury. He also takes issue with information admitted through jail phone calls, and with evidence of prior area shootings reliably connected to Cameron that was heard during the sentencing hearing. But this evidence was properly admitted. Finally, Cameron urges this Court to find that NRS 200.030(4) is unconstitutional. It should decline that invitation and affirm the conviction.

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VI. ARGUMENT

A. The District Court Did Not Err in Permitting the State to Argue that Cameron Was Guilty of Felony Murder.

1. Standard of Review

The district court has broad discretion to settle jury instructions.

Crawford v. State, 121 Nev. 744, 121 P.3d 582 (2005).

2. Discussion

At trial, the district court gave Jury Instruction 34, which provided as follows:

> In regard to Count I of the Information the State has alleged alternative theories of murder as allowed by law. Specifically, the State has alleged:
>
> 1. willful, deliberated, premeditated murder, or
> 2. felony murder.
>
> You must unanimously agree that the defendant is guilty of murder based upon one or more of the alternative theories. However, it is not necessary that you unanimously agree upon the specific theory by which the murder was committed.
>
> In other words, if six of you agree that a defendant is guilty of willful, deliberate, and premeditated murder, and six of you agree that a defendant committed felony murder, then you may properly find a defendant guilty of murder.
>
> The elements of each of these alternative theories of murder are set forth elsewhere in these instructions.

VI AA 1477.

The district court also gave Jury Instructions 42 and 43. Both were correct statements of law, which Cameron does not dispute. Jury Instruction 42 read:

> Whenever death occurs during the perpetration or attempted perpetration of certain felonies, the killing constitutes Murder of the First Degree. The offense of Burglary is such a felony, and therefore a killing which is committed in the perpetration or attempted perpetration of a burglary is First Degree Murder. This is the felony murder rule.
>
> In regard to the felony murder alternative, the State is not required to prove that the killing was committed with malice, premeditation, or deliberation. An unlawful killing of a human being, whether intentional, unintentional, or accidental, which is committed in the perpetration or attempted perpetration of Burglary is first degree murder.
>
> Therefore, the elements of felony murder of the first degree, as alleged in this case are:
>
> 1) The defendant did willfully and unlawfully;
> 2) perpetrate or attempt to perpetrate the crime of burglary; and
> 3) the killing of Jarrod Faust occurred during the perpetration or attempted perpetration of the burglary.
>
> VI AA 1487.

Jury Instruction 43 read:

> For purposes of the felony murder alternative, the elements of the crime of Burglary are:
>
> 1) The defendant did willfully and unlawfully;
> 2) enter into the vehicle of Jarrod Faust;
> 3) with the intent to commit assault or battery or any felony.
>
> VI AA 1488.

Jury instruction 45 read:

> Entry by breaking or other force is not an element of the offense of burglary. Burglary occurs and is complete when any vehicle is entered with the intent to commit assault, battery or any felony therein, even if entry is made with the consent of the owner, and even if the assault, battery or felony is not committed thereafter.
>
> "Entry" of a vehicle includes the entrance of the intruder, or the insertion of any part of his body or of any instrument or weapon held in his hand and used or intended to be used to threaten or intimidate a person, or to detach or remove property. An entry is complete when any portion of the intruder's body, or any instrument or weapon held by the intruder and used or intended to intimidate a person or remove property, penetrates the space within the vehicle's outer boundary. Even the slightest penetration into a vehicle will suffice to support a burglary.
>
> "Assault" means:
>
> 1) Intentionally placing another person in reasonable apprehension of immediate bodily harm; or
>
> 2) Unlawfully attempting to use physical force against another person.
>
> "Battery" consists of any willful and unlawful use of force or violence upon the person of another.
>
> VI AA 1490.
>
> Jury Instruction 46 read:
>
> As applied to Felony Murder, the term 'perpetration' includes not only the acts that constitute the elements of Burglary, but also encompasses acts beyond the statutory elements of that felony to include all acts following and

connected to the crimes that form in Burglary apart of the same occurrence. Thus, the 'perpetration' of a burglary does not end the moment all of the statutory elements of the felony are complete. Instead, the duration of felony murder liability can extend beyond the termination of the felony itself if the killing and the felony are part of one continuous transaction.

Therefore, when a killing takes place in the course of an unbroken chain of events flowing from the initial attempted or completed Burglary, it has been committed in the perpetration of the Burglary.

VI AA 1491.

Jury Instruction 47 read:

An "attempt" is an act done with the intent to commit a crime, intending, but failing to accomplish it. As it pertains to felony murder, the elements of attempted burglary are the following:

1) The defendant intended to commit burglary;

2) The defendant performed some act toward the commission of burglary; and

3) The defendant failed to consummate commission of burglary.

Mere preparation to commit a crime, such as by devising or arranging the means necessary for the commission of the offense, is insufficient to constitute an attempt. The act done must be a direct step or movement toward the present commission of the crime, although it need not amount to the commission of an actual element of the crime. When the intent to commit the crime is clearly shown, there need only be slight acts in furtherance of the crime to constitute an attempt.

VI AA 1492.

Cameron does not appear to argue that any of these instructions were an incorrect statement of law. Moreover, he concedes that the State can lawfully charge alternate theories of first-degree murder. He frames the issue as "whether the State proved that which it charged." Opening Brief, hereafter "OB," 21. Cameron appears to contend that a verdict of guilty based on a felony murder theory would have been "impossible" given the evidence elicited at trial. *Id*. Essentially, his argument is that the above instructions should not have been given because there was insufficient evidence to support the element of entry as it pertained to the State's burglary-based felony murder theory. *Id*. Without a citation to the record, he alleges that Faust was not at point-blank range when he was shot, and that therefore the jury could not have reasonably found that Cameron or Cameron's gun crossed over the window into Faust's vehicle. This is tantamount to a sufficiency of the evidence argument. In evaluating such an argument, this Court reviews the evidence in the light most favorable to the prosecution to determine whether "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Mitchell v. State*, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008).

The State's felony murder theory was argued in the alternative, premised upon its contention that entry to Faust's vehicle occurred when Cameron put his hand and/or the gun through the window, with the intent to assault or batter Faust. VI AA 1362-1364. Cameron argues on appeal that "this case was not an 'entry.'" OB, 24. In support of this contention, he first cites *Smith v. First Judicial District*, 75 Nev. 526, 347 P.2d 526 (1959). In that case, the defendant was charged with burglary for entering the open part of a pickup with the intent to commit larceny. The State conceded that as charged in the information, the portion of the pickup would include the platform body. *Id.* at 528. It was in this context that the Nevada Supreme Court agreed that under the burglary statute in effect at the time, a flat platform body portion of a pickup did not fall within the definition of a vehicle. The Court explained, "[W]e are compelled to reject respondents' contention that to hold one's hand over the platform body of a truck with intent to commit larceny is the entry of a vehicle." *Id.*

Cameron's reliance on *Smith* is misplaced. Here, evidence adduced at trial could reasonably support a jury's conclusion that Cameron reached either his gun or his hand into Faust's open driver-side window, thus satisfying the "entry" element of burglary. "Entry" of a vehicle includes the entrance of the intruder, or the insertion of any part of his body or of any

instrument or weapon held in his hand and used or intended to be used to threaten or intimidate a person, or to detach or remove property. NRS 193.0145. An entry is complete when any portion of the intruder's body, or any instrument or weapon held by the intruder and used or intended to intimidate a person or remove property, penetrates the space within the vehicle's outer boundary. *Merlino v. State*, 131 Nev. 652, 357 P.3d 379 (Nev. App. 2015). Where a defendant's hand or an extension thereof enters a vehicle, the entry element of burglary is satisfied. Forcible entry is not necessary. *Hernandez v. State*, 118 Nev. 513, 50 P.3d 1100 (2002).

Relying on NRS 202.285, which prohibits discharging a firearm into an occupied vehicle or structure, he argues that the State's theory of entry would operate to make any violations of that statute a burglary. This ill-conceived, quasi-academic argument ignores the jury instruction given, as well as the evidence in this case. The jury heard that Cameron admitted to exiting his vehicle with his gun. It heard that Faust was found with the driver's side window rolled down, his seatbelt on, and the engine running. From this evidence, it could have reasonably concluded that Cameron exited his vehicle, approached the open window, and reached his hand and/or the gun into the truck before pulling the trigger. When viewed in the light most favorable to the prosecution, this evidence amply supported

a verdict of first-degree murder based on a felony murder theory of liability. Cameron also argues "…'felony murder' took away the jury's ability to return a verdict of second-degree murder." This argument is without merit. The jury was properly instructed on second-degree murder, voluntary manslaughter, and involuntary manslaughter. VI AA 1471-1475. It had the opportunity to return a verdict of second-degree murder, but after evaluating the evidence, rejected such a verdict.

The district court did not abuse its discretion in giving the State's proposed instructions. Moreover, when viewed in the light most favorable to the prosecution, there was sufficient evidence upon which a jury could premise a verdict of first-degree murder premised upon a felony murder theory.

B. Jury Instruction 47 Was Not a Constructive Amendment to the Information, and Cameron Had Ample Notice of the State's Felony Murder Theory.

1. Standard of Review

The district court has broad discretion to settle jury instructions. *Crawford v. State*, 121 Nev. 744, 121 P.3d 582 (2005).

2. Discussion

One alternative theory of liability argued by the State is that Cameron reached his gun into Faust's vehicle in order to scare him, thereby entering

the vehicle with the intent to assault Faust. He argues that Jury Instruction 47 was a "constructive amendment" to the information, but concedes this argument was never made in the trial court. OB, 27-28. He argues that the word "attempt" does not appear in the charging document. *Id.*, 29. This is false. The second page of the information set forth a theory of felony murder liability, and specifically set forth an allegation of attempted burglary:

> That the said defendant WAYNE MICHAEL CAMERON, on or about the 11th day of February, 2020, within the County of Washoe, State of Nevada, killed JARROD FAUST in the perpetration of **attempted perpetration of a burglary by entering a vehicle with the intent to commit assault or battery or any felony therein**, in that the killing occurred when the defendant followed a vehicle driven JARROD FAUST on Welcome Way, the defendant stopped his vehicle, exited his vehicle with a firearm, approached the driver's side of the Chevrolet Silverado occupied by JARROD FAUST, and shot JARROD FAUST in the face, thereby inflicting mortal injuries...

I AA 2.

The State is required to give adequate notice to the accused of the various theories of prosecution." *State v. Dist. Ct.*, 116 Nev. 374, 377, 997 P.2d 126, 129 (2000). However, an inaccurate information does not prejudice a defendant's substantial rights if the defendant had notice of the State's theory of prosecution. *Viray v. State*, 121 Nev. 159, 111 P.3d 1079 (2005). Cameron postulates "how could the Appellant have 'failed to

complete the burglary' when he successfully fired the gunshot?" *Id.*, 29. This ignores the information's clearly expressed theory that Cameron attempted to commit burglary by exiting his vehicle with the firearm in order to assault Faust.

Although Cameron argues that this case is "indistinguishable" from *Jennings v. State,* 116 Nev. 488, 490, 998 P.2d 557, 559 (2000), this assertion is not supported by the substance of the *Jennings* opinion. In *Jennings*, the defendant killed a former co-worker by beckoning to the victim and then firing two bullets into his head. *Id.*, 489. He was charged with first-degree murder with the use of a deadly weapon. *Id.* After the defendant's trial testimony, the State amended the information to include a felony-murder theory alleging that the defendant kidnapped the victim before shooting him. *Id.* It was in this context that the Nevada Supreme Court concluded that the defendant's substantial rights were violated. *Id.*, 490.

Cameron also cites *Alford v. State*, 111 Nev. 1, 906 P.2d 714 (1995) in support of his contention that he did not receive adequate notice that the State intended to argue felony murder based upon a theory that Cameron committed a burglary or attempted burglary. In *Alford*, the defendant was charged with open murder, with no specific charge of first-degree murder,

and no allegation that the homicide occurred during the commission of a felony. *Alford*, 111 Nev. 1409 at 1411. The defendant did not learn until after the close of the evidence that the State was pursuing a felony murder theory, when it proffered a felony murder instruction. *Id.*, 1412. Because the prosecution had never charged Alford with felony murder, or even referred to such a theory in its opening statement, the Court appropriately found that he did not have adequate notice of the charges against him.

This case is readily distinguishable from *Jennings* and *Alford*, *supra*. The information contained a theory of felony murder liability premised upon attempted burglary. Therefore, there was no lack of notice. Because Cameron received adequate notice of the State's felony murder theory, the district court did not abuse its discretion by giving the companion instructions.

C. The Trial Court Did Not Abuse Its Discretion By Admitting Prior Instances Wherein Cameron Followed Other Drivers.

1. Standard of Review

A trial court's evaluation of the probative value and potential prejudice of evidence "will not be reversed unless it is manifestly erroneous." *Lucas v. State*, 96 Nev. 428, 432-433, 610 P.2d 727, 730 (1980); *see also Holmes v. State*, 129 Nev. 567, 571-572, 306 P.3d 415, 418 (2013). Put differently, "[a]n abuse of discretion occurs if the district

court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason." *Crawford v. State*, 121 Nev. 744, 121 P.3d 582 (2005) (citation omitted).

2. Discussion

Cameron asserts that the district court abused its discretion by admitting the testimony of Leah Mazza and Aspen C. Leah Mazza testified that Cameron followed her home from Zolezzi Lane with his brights on, despite her attempts to get away from him by driving past her parent's house and through the neighborhood. IV AA 954-969. Mazza was frightened, and she hurried inside. When she looked at the window, she saw someone taking pictures of her car. *Id.* Cameron admitted at trial that he had followed the woman home and taken pictures of her vehicle. IV AA 1171-1178. He also admitted to another incident described by his daughter Aspen as "aggressive," wherein he followed a group of teenagers home from Zolezzi Lane because they tailgated him, and raised his voice at them. *Id.* Importantly, neither incident necessary implicates criminal activity, but was relevant to show that Cameron liked to follow fellow motorists with the intent of confronting them.

Under NRS 48.045(2) evidence of other crimes, wrongs or acts is not admissible to show the character of the person in order to prove the person

acted in conformity therewith. But such crimes, wrongs or acts may be admissible "for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." NRS 45.045(2). Under *Bigpond* "evidence of 'other crimes, wrongs or acts' may be admitted under NRS 48.045(2) for a relevant nonpropensity purpose other than those listed in the statute." *Bigpond v. State*, 128 Nev. 108, 116 (2012), *see also, Tinch v. State*, 113 Nev. 1170 (1997). Before admission of such evidence, the Court must hold a hearing to determine whether: (1) the prior bad act is relevant to the crime charged and for a purpose other than proving the defendant's propensity, (2) the act is proven by clear and convincing evidence, and (3) the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice. *Bigpond v. State*, 128 Nev. 108, 117, 270 P.3d 1244, 1250 (2012). Importantly, *Bigpond* acknowledges that other act evidence is not limited only to motive, intent, lack of mistake, common scheme or plan, but also may be admissible for any other nonpropensity purpose. *Bigpond* at 116, 1249.

With specific intent crimes, the intent is "automatically at issue" and other act evidence may be admissible to prove intent. *Hubbard v. State*, 134 Nev. 450, 456, 422 P.3d 1260, 1265 (2018). In sum, other act evidence

"must be relevant without relying on a propensity inference, and its probative value must not be substantially outweighed by the risk of unfair prejudice." *Id.*

The jury was entitled to know that Cameron's claimed innocent purpose in following Faust was inconsistent with his habit of following other drivers on the road when they made him angry. The testimony of Mazza and Cameron's daughter were relevant to motive, intent, or absence of mistake or accident. This testimony was also probative of his true intent or motive: to confront Faust the same way he did in the prior two incidents.

In all the three instances, the location was distinctly similar: Zolezzi Lane, which was on Cameron's drive home. The drivers were all youthful, and Cameron followed them all at night to confront them. Motive or intent was especially important in this case because there were no eyewitnesses to the shooting, or the minutes leading up to it. Cameron was the only remaining witness and his statements to police were self-serving and unreliable.

The prior acts were evidence of motive, and so similar that it could reasonably be inferred that the defendant harbored the same intent in all three instances. Cameron's history of getting out of the car to confront fellow motorists was probative. The prior acts showed that his motive was

to conduct himself like some sort of civilian traffic enforcer and was direct and circumstantial evidence of his motive and intent that night in the cul-de-sac with Faust.

The Nevada Supreme Court has defined "unfair prejudice" as an appeal to "the emotional and sympathetic tendencies of a jury, rather than the jury's intellectual ability to evaluate evidence." *State v. Dist. Ct. (Armstrong)*, 127 Nev. 927, 933, 267 P.3d 777, 781 (2011) (*citing Krause Inc. v. Little*, 117 Nev. 929, 935, 34 P.3d 566, 570 (2001)); *Schlotfeldt v. Charter Hosp. of Las Vegas*, 112 Nev. 42, 46, 910 P.2d 271, 273 (1996)).

With respect to Federal Rule of Evidence 403, the United States Supreme Court has explained, "[t]he term 'unfair prejudice,' as to a criminal defendant, speaks to the capacity of some concededly relevant evidence to lure the factfinder into declaring guilt on a ground different from proof specific to the offense charged." *Old Chief v. United States*, 519 U.S. 172, 180, 117 S. Ct. 644, 136 L.Ed.2d 574 (1997).

"All evidence offered by the prosecutor is prejudicial to the defendant; there would be no point in offering it if it were not." *Holmes v. State*, 129 Nev. 567, 575, 306 P.3d 415, 420 (2013) (*citing United States v. Foster*, 939 F.2d 445, 456 (7th Cir.1991)). The real question is whether the probative value is substantially outweighed by the danger of unfair prejudice. *Id.*

(emphasis in original, *citing Schlotfeldt v. Charter Hosp. of Las Vegas*, 112 Nev. 42, 46, 910 P.2d 271, 273 (1996) (the "substantially outweigh" requirement "implies a favoritism toward admissibility")).

In finding the prior road rage incidents with Mazza and his own daughter admissible, the district court applied the appropriate authorities and found that the prior acts were relevant and admissible of Cameron's intent and motive when he approached Faust: to engage in confrontation with a fellow motorist. I AA 143-147. It carefully considered the probative value of the evidence versus the danger of unfair prejudice. *Id.* The district court did not abuse its discretion as to this issue, and Cameron's arguments should be rejected.

D. The Court Did Not Commit Error in Allowing Victim Impact Testimony.

1. Standard of Review

Cameron concedes that this issue was not raised below, and is subject to plain error review. OB, 34; *LaChance v. State*, 130 Nev. 263, 271 n.1, 272-73, 321 P.3d 919 (2014).

2. Discussion

Cameron appears to contend that the victim's family was improperly permitted to ask the jury for a penalty of life without the possibility of parole. OB, 35. He cites no authority that actually supports this novel

proposition. Astonishingly, he even goes so far as to dismiss the victim impact testimony from grieving family members as nothing more than a "revenge fest." OB, 38. This is a patently unfair characterization of the victim impact testimony.

At the sentencing hearing, the jury heard from Faust's uncle, Jeffrey Ardito, who also happened to know Cameron through youth sports. VII AA 1526-1532. He spoke of his shock in learning that Cameron, whom he considered a friend, murdered his nephew. *Id.* He spoke of Faust's love of sports and his sense of humor. The defense declined to cross-examine him.

Jordyn Faust testified about how much she missed her older brother. *Id.*, 1546-1550. She told the jury about Christmas memories, pranks with her brother, and his favorite breakfast. *Id.* She spoke of the traumatic impact of his death on her parents. *Id.* At the conclusion of her testimony, she asked for a sentence of life without parole. *Id.* The defense declined to cross-examine her. *Id.*

Ashley Faust, another of the victim's sisters, spoke about how her brother protected her growing up. *Id.*, 1552-1559. She spoke of his love of sports, and the trauma suffered by the family. *Id.* Ashley told the jury that Faust was would frequently play with her children and was the "world's best uncle." *Id.* She spoke of her 6-year-old son, who missed his uncle. *Id.*

She also requested a sentence of life without parole. *Id.* Again, the defense declined to cross-examine the witness. *Id.*

The victim's mother, Karen Faust, also testified. *Id.*, 1560-1574. She spoke of her son's protective nature, and their tightly knit family. *Id.* She read notes from his friends and family about how much they loved Faust and would miss him. *Id.* She spoke of missing her son at every family celebration, and her devastation at the prospect of never seeing him grow into a father. *Id.* She recalled that on the day of his death, Faust was excited to show her the Valentine's Day present he had purchased for his girlfriend. *Id.* Karen also spoke of the horror of knowing that the last thing her son saw was a gun pointed at his face, and of having to identify a picture of just half of his face due to his injuries. *Id.* She asked for a sentence of life without parole. *Id.* Again, the defense waived cross-examination. *Id.*

This was not a "revenge fest," as Cameron so crudely terms it. Moreover, Cameron's argument ignores Article I, Section 8A (h) of the Nevada Constitution, which provides that victims of crime have a right to be reasonably heard, at any public proceeding, including sentencing. Cameron provides not a single supporting authority for the proposition that this family was not entitled to express their grief to the jury or could not

appropriately speak to sentencing during their impact testimony.

Cameron also takes issue with Detective Nevills' testimony regarding a recorded jail call in which Ethan Cameron urged his father to take responsibility for his actions. VII AA 1522. He characterizes this as a prejudicial "slap" at him through his son. There was no objection to this testimony. Moreover, although Cameron alleges discussion of the jail call violated the 8th Amendment, he provides no cogent argument to support this bare allegation. OB, 38. The jail call evidence was not highly suspect or impalpable; to the contrary, it was documented by a recording, and properly heard at sentencing.

E. The District Court Did Not Err in Admitting Evidence of Prior Shootings Connected to Cameron at the Sentencing Hearing.

1. Standard of Review

The decision to admit particular evidence during the penalty phase of a murder trial is within the sound discretion of the trial court. *Milligan v. State*, 101 Nev. 627, 636, 708 P.2d 289, 295 (1985); NRS 48.035.

2. Discussion

During the sentencing phase, the jury heard testimony regarding prior shootings in the area connected to Cameron. VII AA 1516-1519. The shootings were distinct in that they all involved houses being shot at during nighttime hours. *Id.* Detective Dave Nevills testified that on June 22, 2017

at about 11:08 p.m., the Lange residence at 17010 Mountain Blue Bird was shot at least three times. *Id.* Responding deputies were able to locate three bullet holes in the residence and eight .40 Smith & Wesson casings in the street in front of the house. Deputies learned that one of the Lange children, then aged 16, lived at the residence with his parents. *Id.* The child told deputies that he used to be friends with Ethan Cameron, but they recently had a falling out and therefore suspected him. *Id.*

Forensic testing later confirmed that the casings found at the Lange residence matched the single casing from the murder scene as well as the two casings recovered in the defendant's Acura. *Id.* In January 2021, Ethan Cameron contacted investigators and told them he had some information about the shooting. *Id.* In a recorded interview, Ethan told detectives that on the night of the shooting, Brooks Lange had contacted him and asked him if he had shot his house up. Ethan denied committing the shooting. *Id.* During that time, the Cameron family all shared and tracked each other's locations using the Life360 app. *Id.* After Brooks accused Ethan, Ethan sent a screenshot of his location to Brooks to show that he did not commit the crime. *Id.* Ethan also saw that Life360 showed his father was near the Lange residence at the time the shooting occurred. *Id.*

Detective Nevills also testified that on October 18, 2018, at 9:30 p.m. the exterior of the Tait residence, located about two minutes away from Cameron's house, was struck by a bullet. *Id.*, 1519-1520. Investigators recovered the bullet from a wall of the house. *Id.* They also located a single 9mm casing in the street in front of the residence. *Id.* Forensic analysis matched the 9mm casing on scene to the 9mm casing recovered from Cameron's Acura. *Id.* In turn, both casings were identified as having been fired from a Glock 17 recovered from the defendant's bedroom. *Id.*

Evidence of unrelated offenses for which a defendant has not been convicted may be admitted unless the evidence is dubious or tenuous or its probative value is substantially outweighed by the danger of unfair prejudice or the other concerns set forth in NRS 48.035. *Jones v. State*, 107 Nev. 632, 635–36, 817 P.2d 1179, 1181 (1991).

Cameron contends that the district court erred in admitting this information during the sentencing hearing. He relies in part on *Mason v. State*, 118 Nev. 554, 51 P.3d 521 (2002). This reliance is misplaced. In that case, the State was seeking the death penalty. The State did not provide prior notice of the specific aggravating circumstances it intended to introduce at the penalty hearing, as required by Supreme Court Rule 250. *Mason*, 118 Nev. 554, 560-561. Nonetheless, the State elicited testimony

from two witnesses with no notice to the defense. *Id.* One witness testified that the defendant threw a Molotov cocktail at his house. Another testified that the four years prior to the murder, that he had shot a man in the back because the man had hit the defendant's girlfriend. *Id.*, 526. The Nevada Supreme Court erred because it did not find good cause for the lack of notice pursuant to Supreme Court Rule 50. *Id.* Nonetheless, it found no reversible error occurred, because Mason was not sentenced to death. *Id.*

Next, Cameron cites *Allen v. State*, 99 Nev. 485, 665 P.2d 238 (1983). That case also involved a death penalty hearing. During the hearing, the jury heard testimony that the defendant had previously violated the terms of probation by moving without permission and failing to get a job. *Allen*, 99 Nev. 485 at 488. The jury also heard from a jail employee regarding records reflecting that the defendant had had disciplinary problems in jail prior to trial. *Id.* The Nevada Supreme Court reasoned that this evidence should have been arguably excluded because its probative value was outweighed by his prejudicial effect. *Id.*, 489. In reversing the sentencing on other grounds, it remarked that "the district court should be most cautious about admitting such 'character evidence.'" *Id.*

Additionally, Cameron cites *Glipsey v. Sheriff*, 89 Nev. 221, 510 P.2d 623 (1973) in support of his contention that the evidence admitted at

sentencing was "speculative." In that case, prison officials were trying to ascertain how drugs were being smuggled into the prison. *Glipsey*, 89 Nev. 221, 223. Marijuana was found in a paper towel dispenser of the women's restroom. At the preliminary hearing, testimony established that the defendant was the last person to use the restroom during a surveillance period. Additional testimony established that two other women had also accessed that same restroom. *Id.*, 223. In reviewing the pre-trial habeas petition, the Nevada Supreme Court found that the defendant was bound over in error because her access to the restroom was not exclusive. *Id.*, 224.

Casings recovered in front of the Lange residence matched the single casing from the murder scene as well as the two casings recovered in the defendant's Acura. The Life360 application showed that Ethan Cameron was nowhere near the residence at the time of the shooting, but his father was. VII AA 1516-1519.

Cameron's comparison of his case to *Glipsey* is ill-conceived. Here, during the penalty phase, the jury heard evidence from Detective Nevills about the two shooting incidents. This evidence included forensic analysis of casings and firearms that connected Cameron directly to the incidents. Investigators recovered the bullet from a wall of the Tait residence, and a casing near the home. VII AA 1519-1520. They also located a single 9mm

casing in the street in front of the residence. *Id.* Forensic analysis matched the 9mm casing on scene to the 9mm casing recovered from Cameron's Acura, and both casings were identified as having been fired from a Glock 17 recovered from Cameron's bedroom. *Id.*

Contrary to Cameron's insistence, the evidence admitted at the penalty hearing was not tenuous or dubious. The assertion that he was involved in the other shootings was well supported by forensic evidence. The district court did not abuse its discretion.

F. This Court Should Decline to Hold NRS 200.030(4) Unconstitutional.

1. Standard of Review

Cameron concedes that this issue was not raised below, it is subject to plain error review. OB, 42; *LaChance v. State*, 130 Nev. 263, 271 n.1, 272-73, 321 P.3d 919 (2014).

2. Discussion

Cameron argues that this Court should find the last sentence of NRS 200.030(4) unconstitutional. He asserts that it renders non-capital sentencings "free-for-alls" in violation of the Eighth Amendment. OB, 42. In support of this assertion, he references the Pardons Board's inability to commute sentences of life without the possibility of parole, but then concedes in a footnote that such sentences can be commuted to a term of

years. *Id*., 43. Absent from the Opening Brief is any analysis or cogent argument about why Cameron believes the statute fails to pass constitutional muster.

He then waxes philosophical about death row inmates and the infrequency of executions in Nevada. *Id*. It is unclear as to how this discussion promotes Cameron's constitutionality argument. Finally, he quotes a dissenting opinion from Justice Sotomayor in *Campbell v. Ohio*, ___ U.S. ___, 138 S. Ct. 1059-60 (2018). In that dissent, Justice Sotomayor examined an Ohio statute that shields life without parole sentences in murder cases from appellate review. Nevada has no such statute. Here, this Court can review the sentence imposed to ascertain whether it was based on highly impalpable or suspect evidence, and examine whether it shocks the conscience. *Silks v. State*, 92 Nev. 91, 545 P.2d 1159 (1976).

As Cameron provides no constitutional analysis, it is difficult for the State to meaningfully respond to his argument regarding constitutionality of NRS 200.030(4). To the extent that he urges this Court to "follow the lead" of Justice Sotomayor in her *Campbell* dissent, this Court should decline to do so, especially because the dissent's discussion regards a specific Ohio statute for which there is no Nevada equivalent.

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VII. CONCLUSION

Based on the foregoing, the State respectfully asserts that the appeal should denied.

DATED: April 25, 2022.

CHRISTOPHER J. HICKS
DISTRICT ATTORNEY

By: Jennifer Noble
Chief Appellate Deputy

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief 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 Microsoft Word 2013 in Georgia 14.

2. I further certify that this brief complies with the page or type volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(c), it does not exceed 14,000 words, it contains 8,691 words.

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 and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in

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the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED: April 25, 2022.

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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on April 25, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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/s/ Tatyana Kazantseva
TATYANA KAZANTSEVA