

IN THE SUPREME COURT OF THE STATE OF NEVADA

WAYNE MICHAEL CAMERON,

No. 83531

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Elizabeth A. Brown
Clerk of Supreme Court

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

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PETITION FOR EN BANC RECONSIDERATION

I. INTRODUCTION

In this case, Appellant Wayne Michael Cameron, hereafter “Cameron”, was convicted, pursuant to a jury’s verdict, of Murder With the Use of a Deadly Weapon. The information alleged two theories of first-degree murder liability: 1) that the murder was willful, unlawful, and committed with malice aforethought, deliberation, and premeditation; and 2) that the killing occurred during the perpetration or attempted perpetration of a burglary. Appellant’s Appendix, hereafter “AA,” Volume I, 1-6.

The Northern Nevada panel issued an Order of Reversal and Remand on September 28, 2022. One justice dissented. The basis for the reversal of

the first-degree murder conviction was a portion of the prosecutor's argument asserting that entry by projectile could satisfy the entry element of burglary, thereby supporting a finding of guilt based on the felony murder statute.

The State sought rehearing pursuant to Nevada Rule of Appellate Procedure ("NRAP") 40(c)(2). On October 25, 2022, this Court issued its Order Transferring Case En Banc and Directing Refiling of Panel Petition and Answer. The Order directed the State to refile its Petition for Rehearing as a Petition for En Banc Reconsideration pursuant to NRAP 40A.

The State seeks en banc reconsideration because the alleged error identified by Cameron with respect to the underlying burglary was a challenge to the sufficiency of the evidence. Therefore, the majority of the panel should have used the long-held standard of review to apply to such challenges: whether any rational trier of fact could have found the essential elements of any one of the possible bases of conviction beyond a reasonable doubt. *Gordon v. State*, 121 Nev. 504, 117 P.3d 214 (2005). Applying the appropriate standard of review, as observed in Justice Pickering's dissent, would have resulted in affirmance of the conviction.

In failing to apply the appropriate standard, the panel majority

departed from the prior decisions of this Court and the Court of Appeals regarding review of challenges to sufficiency of the evidence. *Gordon, supra*; *Mason v. State*, 118 Nev. 554, 51 P.3d 521 (2002); *Higgs v. State*, 125 Nev. 1043, 222 P.3d 648 (2010); *Rose v. State*, 123 Nev. 194, 163 P.3d 408 (2007); *Jackson v. State*, 117 Nev. 116, 17 P.3d 998 (2001); *Allred v. State*, 120 Nev. 410, 92 P.3d 1246 (2004); *Cortinas v. State*, 124 Nev. 1013, 195 P.3d 315 (2008). En banc reconsideration is therefore necessary to maintain uniformity of decisions within the Nevada Appellate Courts. Alternatively, the question of whether entry by bullet may satisfy the entry element of burglary, as raised *sua sponte* by the panel's majority, constitutes a substantial precedential issue.

II. TIMELINESS OF THE PETITION

The October 25, 2022 Order directed the State to refile its petition as one for en banc reconsideration within 14 days. Thus, this Petition is timely filed.

III. LEGAL STANDARD

En banc reconsideration of a decision of a panel of the Supreme Court is not favored and ordinarily will not be ordered except when (1) reconsideration by the full court is necessary to secure or maintain uniformity of decisions of the Supreme Court or Court of Appeals, or (2) the

proceeding involves a substantial precedential, constitutional or public policy issue. NRAP 40A (a).

IV. 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 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 p.m. 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 of 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 a consensual interview. *Id.* When asked if he 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 a 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. 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. 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 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. IV 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 parents’ 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 parents’ 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”, 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 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 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 in his

room, and determined to have been fired from the Glock. *Id.* The murder weapon was never found.

The medical examiner testified that the bullet's trajectory went slightly downward, supporting an inference that Cameron reached up into Faust's raised truck before he fired. V AA 1118-1120. The expert further testified that the absence of soot around the entrance wound did not support a conclusion that the gun was actually pressed against Faust's skin when Cameron fired it. The expert also explained that gunpowder stippling on Faust's skin indicated that the gun was "a little further back" than touching the skin when it fired. *Id.*

V. ORDER OF REVERSAL AND REMAND

Cameron challenged the sufficiency of the State's evidence establishing the entry element of burglary in the Opening Brief. Opening Brief, hereafter "OB", 22. As such, the appropriate standard of review applicable to Cameron's argument is whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt, after viewing the evidence in the light most favorable to the prosecution. Where sufficiency of the evidence is the challenge, reviewing courts do not disturb a verdict on appeal if it is supported by substantial evidence. *Gordon, supra.*

Rather than applying the standard of review contemplated by *Gordon, supra*, the panel majority's Order found, *sua sponte*, that a portion of the prosecutor's argument regarding the entry element of burglary constituted reversible error.

VI. ARGUMENT

In overturning the conviction based solely on the prosecutor's argument that entry of the bullet through the open window could satisfy the entry element of burglary, the majority based its reversal upon an assertion of error that was not raised by Cameron. Thus, it not only applied the wrong standard of review, but also reversed the first-degree murder conviction based on purported error that was not identified by Cameron, and therefore waived. *Gonzalez v. State*, 492 P.3d 556, 560, 137 Nev. Adv. Op. 40 (2021).

Critically, in his briefs, Cameron argued that there was insufficient evidence at trial to support a finding that Cameron's conduct satisfied the "entry" element of burglary pursuant NRS 193.0145.¹ Cameron's argument regarded the sufficiency of the evidence, so the applicable standard of review required this Court to consider whether any rational trier of fact

¹ (“[T]his assignment of error raises the question of whether there is sufficient evidence of an ‘entry.’” OB, 22; “The issue is not that, but rather, whether the State proved that which it charged.” OB, 29.

could have found the essential elements of any one of the possible bases of conviction beyond a reasonable doubt. *Gordon, supra*. An application of the appropriate standard of review for challenges to sufficiency of the evidence militates affirmance of the conviction rather than reversal.

Testimony at trial established that Cameron's and Faust's vehicles were side-by-side and facing the same direction at the time Cameron shot Faust. The medical examiner testified that the bullet's trajectory went slightly downward, supporting an inference that Cameron reached up into Faust's raised truck before he fired. V AA 1118-1120. The expert further testified that the absence of soot around the entrance wound did not support a conclusion that the gun was actually pressed against Faust's skin when Cameron fired it. The expert also explained that gunpowder stippling on Faust's skin indicated that the gun was "a little further back" than touching the skin when it fired. *Id.* This evidence could support a juror's conclusion that Cameron loaded his weapon, exited his vehicle, and made his way around to the driver's side of Faust's vehicle to shoot him at close range. A rational juror could have found that the State proved felony murder/burglary based on an entry established by the stippling surrounding Faust's gunshot wound, which supported an inference that Cameron fired his weapon close to Faust's head, but not touching it. The

bullet's downward trajectory from Faust's left cheekbone to his right spinal column likewise could evince Cameron's close proximity to Faust, who was elevated in his lifted pickup truck at the time of the killing; and Faust's driver's-side window was down and unbroken when police found him. *Id.* This evidence supported a rational conclusion that Cameron's hand and/or the weapon entered Faust's vehicle before or as he fired. In considering this evidence in the light most favorable to the prosecution, Cameron's sufficiency of the evidence argument fails. The Order of Reversal and Remand overlooked these facts supporting alternative paths to conviction, which supported affirmance of the conviction pursuant to *Gordon, supra*.

The evidence also supported a jury's conclusion that Cameron committed first-degree murder because he acted in a willful, premeditated, and deliberated manner. The undisputed facts established that Cameron had time and opportunity "to think upon or consider the act, and then determine to do it." *Curtis v. State*, 93 Nev. 504, 507, 568 P.2d 583, 585 (1977) (quoting *Payne v. State*, 81 Nev. 503, 509, 406 P.2d 922, 925-26 (1965)). The evidence of premeditated and deliberated murder in this case was overwhelming. By his own admission, Cameron, who had an established history of conducting himself as a traffic vigilante, followed Faust a considerable distance. He took the time to exit his car, and then

retrieved his weapon and loaded it before murdering Jarrod Faust. Following the murder, Cameron admitted to witness Colarchik via text message that he was the one who got out of the car, and that he shot the victim because “I hate when people make me mad, I don’t know why I get so angry.” III AA 548-560.

The majority opinion determined that the entry-by-projectile theory constituted instructional error pursuant to *Nay v. State*, 123 Nev. 326, 334, 167 P.3d 430, 435-36 (2007). As argued above, this claim of error was not raised by Cameron, and thus, the State did not address it in its answering brief. As observed in the dissent, the question of whether bullet entry can satisfy the element of burglary is not settled in Nevada or among other authorities from other jurisdictions. To adequately address the history of common-law burglary, and the evolution of the entry requirement, would require substantial briefing and the applicable word count limitation for a petition for en banc reconsideration does not allow for a full exploration of this issue here.

Additionally, Cameron’s argued that his conduct did not satisfy the entry element of burglary because he did not use the gun “to threaten or intimidate a person” as contemplated by NRS 193.0145. But this argument was unsupported by Cameron’s own admission that he “absolutely” wanted

to scare the victim when he loaded his gun, pointed it at Faust, and fired.
See Larsen v. State, 86 Nev. 451, 454, 470 P.2d 417, 418-19 (1970).

Any instructional error emanating from the prosecutor's argument regarding entry by projectile was waived by Cameron because he did not claim this error in the opening brief. The Order of Reversal and Remand was based exclusively on an issue raised by majority, and the State was therefore deprived of the opportunity to address the majority's concerns in the briefs. At minimum, this Court should consider allowing the parties the opportunity to brief this issue.

VII. CONCLUSION

Because the panel majority departed from long-established precedent regarding the standard of review applicable to challenges to the sufficiency of the evidence, en banc reconsideration is warranted. Additionally, the question of whether entry by bullet may satisfy the entry element of burglary, as raised *sua sponte* by the panel's majority, constitutes a substantial precedential issue. However, this Court need not reach the

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bullet-entry question if it finds that the panel majority erred in departing application of the established standard of review.

DATED: November 1, 2022.

CHRISTOPHER J. HICKS
DISTRICT ATTORNEY

By: JENNIFER P. NOBLE
Chief Appellate Deputy

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 petition has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in Georgia 14.

2. I further certify that this petition complies with the word number limitations of NRAP 40A(d) because, excluding the parts of the petition exempted by NRAP 32(a)(7)(c), it does not exceed 4,667 words (the petition contains 4,187 words).

3. Finally, I hereby certify that I have read this appellate petition, 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 petition complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the petition 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 petition is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED: November 1, 2022.

CHRISTOPHER J. HICKS
Washoe County District Attorney

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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on November 1, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Richard F. Cornell, Esq.

/s/ Tatyana Ducummon
TATYANA DUCUMMON