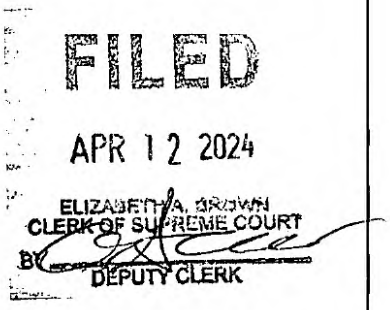
IN THE SUPREME COURT OF THE STATE OF NEVADA

WAYNE MICHAEL CAMERON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83531



ORDER OF AFFIRMANCE

Appellant Wayne Michael Cameron appeals from a judgment of conviction, pursuant to a jury verdict, of first-degree murder with the use of a deadly weapon. Second Judicial District Court, Washoe County; Barry L. Breslow, Judge.

Facts and Procedural History

On February 11, 2020, Jarrod Faust was found dead in his pickup truck, shot in the left side of the face, in a cul-de-sac near Zolezzi Lane in Reno. When law enforcement arrived, they found Faust slumped in the driver's seat with his seat belt on and a light-silver vape pen in his right hand. The truck was running, the driver's side window was down, the passenger's side window was up, and the doors were locked. There was no weapon in the truck. Law enforcement recovered a fired cartridge casing from a .40-caliber Smith and Wesson about 50 yards away from the truck.

Approximately ten days later, law enforcement interviewed Cameron about the shooting. Initially, Cameron denied any involvement with or knowledge of Faust or his truck. Later, Cameron stated that, driving home from a restaurant, he had seen a truck and a motorcycle "going at it" and that he followed the truck and ended up in the cul-de-sac where Faust was discovered. Cameron asserted he was checking on the

driver's condition because he believed the driver was either intoxicated or texting and that he drove home after the driver said he was okay. Cameron denied removing a gun from his car during the interaction but also said that, if he did, he did not recall it. He was equivocal with police about whether he owned a .40-caliber gun but did identify other firearms he owned. Police later learned that Cameron purchased a .40-caliber Smith and Wesson in 2012 but were unable to locate the gun while searching his residence.

The State charged Cameron with murder with the use of a deadly weapon, alleging that the murder was willful, deliberate, and premeditated (premeditated murder) and that the murder was committed during a burglary or attempted burglary (felony murder). At trial, and in addition to a video recording of Cameron's interview with the police, the State introduced testimony from a resident of the street where Faust was discovered. The resident testified that he heard gunshots, looked out his window, and saw two vehicles side by side, facing his home, with both pairs of headlights facing his residence.

The State also introduced testimony from Cameron's friend, David Colarchik. The two spoke by phone the night the shooting occurred, and Cameron told Colarchik "I think I just shot someone." When Colarchik asked why, Cameron responded, "I hate when people make me mad. I don't know why I get so angry." Cameron also told Colarchik, "I hate that I know the law" and "I'm the one that got out of the car and went up to him." Another one of Cameron's friends testified to conversations he had with Cameron, in which Cameron relayed that he was under investigation for murder and that the police had searched his residence and seized multiple

guns. Cameron said to the friend "[t]hey took all my guns," then added "[b]ut they're not going to find that gun."

Cameron's son testified that Cameron kept a gun, possibly a .40-caliber, under the driver's seat of his car. The son also testified about a phone application he, his sister, and Cameron used as a group—Life360. The application allowed the members of the group to track each other and know each other's locations. At some point after Faust was shot, the son got an invitation from Life360 to join a new group with his sister and Cameron. The previous group had been deleted, and historical data was unavailable because of the deletion. Cameron's son also testified about multiple surveillance cameras located outside their home. When law enforcement attempted to look at the data for the cameras on Cameron's phone, they found no recording before February 15, 2020—four days after Faust's death. Approximately 300 videos had been deleted in the five days following Faust's death, several of which were deleted in the 20 minutes before Cameron's call with Colarchik.

The State introduced evidence that the .40-caliber Smith and Wesson fired cartridge casing collected from the crime scene and two .40-caliber Smith and Wesson fired cartridge casings collected from Cameron's vehicle were fired from the same gun. Additionally, the bullet recovered from Faust was consistent with five models of Smith and Wesson firearms, including the .40 caliber Smith and Wesson model purchased by Cameron in 2012. The medical examiner testified that Faust had been shot in the left cheek and that the bullet traveled at a slightly downward trajectory. Because of gunpowder stippling abrasions near the entrance wound on Faust's face, the medical examiner concluded the shot was fired at close

range, within several feet of Faust, but not with the muzzle touching Faust's cheek.

The State also introduced evidence of two previous traffic encounters involving Cameron. The first occurred on the evening of October 30, 2018, when L.M. was driving on Zolezzi Lane toward her parents' house. The vehicle in front of her pulled over to let her pass but then turned its bright lights on and followed her closely, swerving and flashing its lights. The vehicle got so close to L.M.'s rear bumper that she could not see its headlights; the vehicle was "aggressively harassing [L.M.'s] car." L.M. sped up, but the vehicle stayed with her. The vehicle followed L.M. into a residential neighborhood. L.M. was scared and did not want to lead the car to where she was living. She unsuccessfully tried to lose the vehicle in the neighborhood and ultimately sped to her parents' house. She parked on the street and rushed into the residence, only to look out the window and see the vehicle was parked behind her car with its bright lights still on. L.M. saw a person get out of the vehicle, stand behind her car, and take pictures of it. L.M. was terrified and shaking. She immediately sent text messages to her friend about the incident. A picture of L.M.'s license plate was found on Cameron's cell phone, taken on October 30, 2018, in the area of her parents' house.

Cameron's daughter testified about the second incident, which occurred a year or two before Faust's death. The daughter was in the car with Cameron one evening, at the top of Zolezzi Lane, when a vehicle came up close behind their vehicle and tailgated them. Cameron slowed down, pulled over, and let the vehicle pass. Cameron then followed the vehicle to a residence instead of driving to his home. The daughter testified that Cameron "seemed really irritated and just angry that somebody did that to

him." When the vehicle stopped, Cameron got out and yelled at the occupants of the vehicle, all of whom appeared to be teenagers. Cameron got up close to the occupants and was very loud and aggressive. Ultimately, Cameron returned to his vehicle and drove home.

Cameron testified at trial. He stated that, on the night of Faust's death, he saw a truck almost hit a motorcycle. Cameron assumed the truck driver was either intoxicated or a teenager texting. He decided to follow the truck. After two to three minutes, through several turns and stop signs, Cameron and the truck he was following stopped in a cul-de-sac. Cameron testified that, with the vehicles facing each other, he initiated a conversation, asking the truck driver if he was okay, and the driver responded by asking why Cameron was following him. The conversation continued, and at some point, the tone changed. According to Cameron, the driver got mad, flinched, and threatened to kill Cameron. Cameron saw the driver was holding his hands up and thought the driver had a gun in his hand. Cameron retrieved the gun from under his seat, put in a clip, and loaded a cartridge before placing the gun on his seat. Cameron told the driver they should call it a night, but the driver reacted with profanities and name-calling. Cameron told the driver he had a gun. The driver turned the truck toward Cameron and drove at him. Cameron, who was standing behind the driver's side door, grabbed his gun from the seat and fired the weapon as he tried to get away. Cameron held the gun out to his side with one hand and could not see where he was aiming. The truck did not hit Cameron's vehicle but changed directions and drove 60 to 70 yards down the road before coming to a standstill. Cameron left the cul-de-sac, stopping on his way home to empty the gun, put it in a bag, and place the bag in

someone else's garbage. He thought he put the clip and unchambered bullet in his own trash can.

The State argued in closing that Cameron committed premeditated murder. It also argued, in the alternative, that Cameron committed felony murder based on a burglary or an attempted burglary of Faust's truck. With respect to the burglary, the State maintained that Cameron "entered" the truck either by sticking his hand or the gun in his hand through Faust's open window or by shooting the bullet through the window from outside the truck. The jury convicted Cameron of first-degree murder with the use of a deadly weapon by general verdict and sentenced him to life in prison without the possibility of parole.

Cameron appealed, and a divided panel of this court reversed the judgment of conviction after concluding the State presented an invalid felony-murder theory when it argued that a discharged bullet crossing the plane of a vehicle satisfied the entry element for burglary. *Cameron v. State*, No. 83531, 2022 WL 4543849 (Nev. Sept. 28, 2022) (Order of Reversal and Remand) (2-1). The court granted en banc reconsideration and ordered supplemental briefing and oral argument. We now affirm Cameron's judgment of conviction.

Sufficiency of the evidence

Cameron first challenges the sufficiency of evidence supporting the State's felony-murder theory. The basis of his challenge, however, has not always been clear, and the court invited supplemental briefing to, among other things, clarify Cameron's arguments on appeal. At oral argument and in the supplemental brief, Cameron's appellate counsel maintained that his challenge is to the sufficiency of the evidence presented. And although the parties at trial disputed whether a discharged bullet

satisfied the entry element for burglary, appellate counsel acknowledged he did not raise the issue on appeal. But even assuming the State presented an invalid theory of entry by bullet, we conclude there is sufficient evidence to support other theories, as outlined below, and therefore the verdict stands.

In his original and supplemental brief, and at oral argument, Cameron argues the State presented insufficient evidence to support its theory of felony murder because it did not prove he used or intended to use his weapon to intimidate or threaten Faust. *See* NRS 193.0145 (defining entry as the insertion of "any instrument or weapon held in the offender's hand and used or intended to be used to threaten or intimidate a person"). Where the prosecution alleges alternative theories of liability and the conviction rests on a general verdict, this court will not reverse the conviction based on a showing that one theory lacked evidentiary support so long as another theory is factually supported by the evidence. *See Gordon v. State*, 121 Nev. 504, 508, 117 P.3d 214, 217 (2005) (noting defendant's claim of insufficient evidence as to two of three theories offered at trial and stating "the jury's general guilty verdict may stand if there is sufficient evidence to support [one] theory"); *Rhyne v. State*, 118 Nev. 1, 10, 38 P.3d 163, 169 (2002) ("[A] jury may return a general guilty verdict on an indictment charging several acts in the alternative even if one of the possible bases of conviction is unsupported by sufficient evidence."). Although Cameron posits that this court's precedent should be overruled and that a harmless-error standard should be used to assess such a claim, we discern no compelling reason to do so. *See Armenta-Carpio v. State*, 129 Nev. 531, 535, 306 P.3d 395, 398 (2013) (recognizing that "[u]nder the doctrine of *stare decisis*, [this court] will not overturn precedent absent

compelling reasons for so doing" (internal alterations and quotation marks omitted)). Instead, we reiterate that the standard of review for a claim of factual insufficiency as to one theory of liability is whether there is sufficient evidence for any theory of liability. And in determining whether there is sufficient evidence to support a theory of liability, we consider the evidence in the light most favorable to the State to determine whether "*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). We will not reweigh the evidence on appeal.[1] *Clancy v. State*, 129 Nev. 840, 848, 313 P.3d 226, 231 (2013).

The State's theory that Cameron committed felony murder by burglary or attempted burglary rested on the allegation that he entered or attempted to enter Faust's truck with the intent to commit an assault or a battery. The evidence established that only the driver's side window of the truck was down and no windows were broken. The truck's window was approximately four feet, nine inches off the ground; both Faust and Cameron were five feet, nine inches tall. Faust had stippling on his face showing that, although the gun was not in contact with Faust's skin, it was just "a little further back" when discharged, at a height greater than Faust to attain the slightly downward angle the bullet traveled.

A rational juror could reasonably infer from the evidence presented that Cameron's hand, or the gun in his hand, entered the truck through the open window to achieve the required angle and proximity of the

[1]Because Cameron does not argue there was insufficient evidence of the use of a deadly weapon, we do not consider that part of the conviction in our analysis.

shot, either before or when he fired the gun. A rational juror could also reasonably infer that Cameron used or intended to use the gun to intimidate or threaten Faust given Cameron's admissions in his testimony at trial that he followed Faust through several stops and turns, that he initiated the confrontation in the cul-de-sac, that he told Faust he had a gun, and that he "[a]bsolutely" wanted to scare Faust. *Cf. Larsen v. State*, 86 Nev. 451, 454, 470 P.2d 417, 418-19 (1970) (reasoning under Nevada's burglary statute that "the jury could certainly infer that the man at the door of the motel intended to enter unlawfully and that the simulation of a gun, coupled with the words he would shoot if the door was not opened, strongly inferred an intent to commit larceny had he gained the entrance he sought"). This same evidence likewise supports the requisite intent to commit an assault or battery at the time of entry: Cameron intended to place Faust in reasonable apprehension of immediate bodily harm or intended to use force or violence against Faust when he entered the truck with a gun. *See* NRS 200.471(1)(a) (defining assault); NRS 200.481(1)(a) (defining battery); *see also* 2013 Nev. Stat., ch. 488, § 1, at 2987 (defining burglary). Therefore, the State presented sufficient evidence to support its theory that Cameron committed felony murder by burglary or attempted burglary.

Separate and apart from felony murder, the State presented sufficient evidence that Cameron committed premeditated murder. The evidence established that Cameron followed Faust for some time before getting out of his car and confronting Faust in the cul-de-sac. Cameron admitted that he had time to retrieve his gun and the magazine from under his seat, load it, and chamber a round. While Cameron testified that Faust drove his truck at Cameron, who shot in self-defense, the jury did not have to accept his testimony as true, given that his trial testimony conflicted with

his prior statements to Colarchik and the police and with the physical evidence. The shot was fired within close proximity of Faust, and the bullet entered Faust's left cheek at a downward trajectory as he sat buckled in the driver's seat of his truck, which is substantial evidence indicating an intentional shot at Faust and not, as Cameron argued, an aimless shot in the general direction of the truck. There was also evidence that the two vehicles were side-by-side and facing the same direction, supporting an inference that Cameron had to walk around a vehicle to get to the driver's side of Faust's truck to shoot him. The time taken to retrieve the gun from under the driver's side seat, load it, and go to the driver's side window of the truck and shoot Faust at close range suggests that Cameron had a sufficient period of time to "think upon or consider the act" of shooting Faust "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)); *see also Byford v. State*, 116 Nev. 215, 236-37, 994 P.2d 700, 714-15 (2000) (recognizing that "[a] deliberate determination may be arrived at in a short period of time" and that premeditation "may be as instantaneous as successive thoughts of the mind" before stating that "[t]he true test is not the duration of time, but rather the extent of the reflection"). Accordingly, a rational juror could conclude that Cameron committed premeditated murder. Sufficient evidence supports both premeditated murder and, in addition, at least one theory of felony murder predicated on burglary or attempt burglary. We therefore reject Cameron's challenge to the sufficiency of the evidence to support his conviction of first-degree murder. *See Gordon*, 121 Nev. at 509, 117 P.3d at 218 (electing not to consider the defendant's challenge to the sufficiency of evidence for two theories because there was sufficient evidence to support the conviction under a third

theory); *Rhyne*, 118 Nev. at 10, 38 P.3d at 169 (allowing the verdict to stand where one theory of first-degree murder was supported by sufficient evidence).

Prior bad acts

Cameron next argues that evidence of the two prior traffic incidents should not have been introduced during the guilt phase of the trial. He contends the evidence was irrelevant because neither incident shed light on his intent to kill (for premeditated murder) or on his intent to enter Faust's vehicle (for felony murder).

The prosecution may not use prior bad acts to establish the accused's character to show that the accused acted in accordance with that character, but such evidence may be admitted "for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident."[2] NRS 48.045(2). There is "a presumption of inadmissibility [that] attaches to all prior bad act evidence," *Bigpond v. State*, 128 Nev. 108, 116, 270 P.3d 1244, 1249 (2012) (alteration and quotation marks omitted), but "the court may find the presumption rebutted and admit other act evidence if the act is (1) relevant, (2) proven by clear and convincing evidence, and (3) not substantially more prejudicial than probative," *Dickey v. State*, 140 Nev., Adv. Op. 2, 540 P.3d 442, 448 (2024). If the three-part test is satisfied, "the evidence may be admitted for limited nonpropensity purposes as found by the court." *Id.*

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[2]We disagree with Cameron's contention that the prior act must be a chargeable offense to be admissible under NRS 48.045(2) because the statute contemplates admission "of other crimes, *wrongs or acts*." (Emphasis added.)

Here, the district court allowed the State to introduce the previous incidents after conducting a pretrial hearing in which it heard evidence concerning the incidents and determined that they were relevant to demonstrate Cameron's intent and motive, that they were proven by clear and convincing evidence, and that their probative value was not substantially outweighed by the danger of unfair prejudice. "The trial court's determination to admit or exclude evidence of prior bad acts is a decision within its discretionary authority and is to be given great deference[;] [i]t will not be reversed absent manifest error." *Braunstein v. State*, 118 Nev. 68, 72, 40 P.3d 413, 416 (2002).

Beginning with the relevance of the previous incidents, the State alleged Cameron committed felony murder by burglary or attempted burglary. Burglary is a specific intent crime, and the defense does not have to put intent at issue before the prosecution may offer prior act evidence to prove specific intent. *Hubbard v. State*, 134 Nev. 450, 450, 422 P.3d 1260, 1262 (2018). Based on the charging document, the State had to prove Cameron intended to assault Faust when entering or attempting to enter Faust's truck, *see id.* at 456, 422 P.3d at 1265-66 ("The prosecution had the burden of proving a specific intent upon entering the residence."), and thus evidence tending to show Cameron's intent to assault Faust was relevant for a nonpropensity purpose.

The previous incidents involved Cameron assaulting others he followed on the road at night in the area of Zolezzi Lane in Reno. As to the incident with L.M., which occurred about 16 months before Faust's death, Cameron pulled over to let L.M. pass but then tailgated her with his bright lights on, followed her through a residential neighborhood as L.M. tried to lose him, stopped behind L.M.'s car when she arrived at her parents' house,

and got out to take pictures of L.M.'s license plate. L.M. testified that she was so scared of what Cameron might do when he started following her that she sped to her destination and ran inside. As to the incident Cameron's daughter witnessed, which occurred a year or two before Faust's death, Cameron pulled over to let a vehicle pass but then tailgated it, followed it through a residential neighborhood instead of driving home, stopped at the vehicle's destination, got out of his car, went up to the occupants, and yelled at them loudly and aggressively for three to five minutes.

The similarities between these assaultive incidents—Cameron encountered a vehicle at night on or near Zolezzi Lane, followed it through residential streets, and eventually exited his own vehicle—and the incident with Faust—Cameron encountered Faust's truck at night on Zolezzi Lane, followed it through residential streets, and ultimately got out of his vehicle—permitted a reasonable inference of Cameron's criminal intent in his interaction with Faust. *See United States v. Cadet*, 664 F.3d 27, 32-33 (2d Cir. 2011) ("Evidence of other acts need not be identical to the charged conduct to show . . . intent pursuant to [the federal analog to NRS 48.045(2)], so long as the evidence is relevant in that it provides a reasonable basis for inferring . . . intent."); *United States v. Landrau-Lopez*, 444 F.3d 19, 24 (1st Cir. 2006) ("The other bad act need not be identical to the crime charged so long as it is sufficiently similar to allow a juror to draw a reasonable inference probative of . . . intent."); *United States v. Long*, 328 F.3d 655, 661 (D.C. Cir. 2003) (concluding bad-act evidence must "be relevant 'to show a pattern of operation that would suggest intent' and that tends to undermine the defendant's innocent explanation" (quoting 2 *Weinstein's Federal Evidence* § 404.22[1][a] (2d ed. 2003))), *abrogated on other grounds as recognized by United States v. Mohammed*, 89 F.4th 158

(D.C. Cir. 2023); *United States v. Benton*, 852 F.2d 1456, 1468 (6th Cir. 1988) ("[W]here evidence of prior bad acts is admitted for the purpose of showing intent, the prior acts need not duplicate exactly the instant charge, but need only be sufficiently analogous to support an inference of criminal intent."); *People v. Jones*, 275 P.3d 496, 532 (Cal. 2012) ("To be admissible to show intent, the prior conduct and the charged offense need only be sufficiently similar to support the inference that defendant probably harbored the same intent in each instance." (quotation marks omitted)); *State v. Bassett*, 659 A.2d 891, 896 (N.H. 1995) ("We will find sufficient support for a reliable inference of intent only if the defendant's intent in committing other bad acts and the defendant's intent in the charged offenses is closely connected by logically significant factors."). Therefore, we conclude the previous incidents were relevant for the nonpropensity purpose of showing Cameron's intent to assault Faust.

The district court also determined the previous incidents demonstrated motive. At the time of the determination, the evidence before the district court included (1) the testimony from L.M. and Cameron's daughter about the previous incidents, and (2) Cameron's statement to police about encountering Faust's truck "going at it" with a motorcycle on the road and following the truck. The previous incidents showed that Cameron was motivated by a traffic infraction or slight, real or perceived, to follow and aggressively confront other drivers and suggested the same motive for Cameron's interaction with Faust. Thus, the previous incidents were relevant for the nonpropensity purpose of showing Cameron's motive for assaulting Faust as a fellow driver. *See Chadwick v. State*, 140 Nev., Adv. Op. 10, ___ P.3d ___ (Ct. App. Feb. 29, 2024) (recognizing that motive "is not an element of a crime" but "has virtually always been an integral

element of proof in a criminal trial" and noting that "[m]otive has been described as the reason that nudges the will and prods the mind to indulge the criminal intent" (quotation marks omitted)).

Next, we consider whether the previous incidents were proven by clear and convincing evidence. The district court credited the testimony given by L.M., who sent contemporaneous text messages that supported her testimony, and Cameron's daughter, who witnessed the second incident as a passenger in Cameron's vehicle. Additionally, a picture of L.M.'s license plate was found on Cameron's phone, taken on the day she said the incident occurred and in the area of her parents' house. We conclude the State proved the acts by clear and convincing evidence.

The last consideration is whether the probative value of the previous incidents was substantially outweighed by the danger of unfair prejudice. "When balancing probative value against the danger of unfair prejudice, courts consider a variety of factors," such as the similarities between the previous acts and the charged crime, the strength of the evidence establishing the previous acts, the need for the previous acts and the effectiveness of alternative proof, the extent to which the evidence will provoke the jury's hostility, and the amount of time that has passed between the previous acts and charged crime. *Randolph v. State*, 136 Nev. 659, 665, 477 P.3d 342, 349 (2020). As mentioned, there are important similarities between the prior incidents and the incident with Faust, and the evidence establishing the prior bad acts was strong. The prior incidents countered Cameron's assertion to police, as they tended to show Cameron's intent in following and engaging with Faust, and ultimately in his entering or attempting to enter the truck, was not the welfare-check he professed. The prior-bad-act evidence was highly relevant in establishing a disputed issue

and thus of probative value to the State's theory of felony murder. Alternative proof of Cameron's intent was minimal given that there were no other witnesses to their interaction, which only highlights the indispensable nature of the previous incidents. *See Huddleston v. United States*, 485 U.S. 681, 685 (1988) ("Extrinsic acts evidence may be critical to the establishment of the truth as to a disputed issue, especially when that issue involves the actor's state of mind and the only means of ascertaining that mental state is by drawing inferences from conduct.").

We acknowledge the potential for the jury to resent Cameron for his past conduct and the fact that the previous incidents occurred one-and-a-half to two years before Faust's death, but we conclude the danger of unfair prejudice did not substantially outweigh the probative value of the evidence in this case. *See State v. Eighth Judicial Dist. Court (Armstrong)*, 127 Nev. 927, 933, 267 P.3d 777, 781 (2011) (discussing unfair prejudice and noting the Supreme Court's explanation that the term "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" (quotation marks omitted)). Further, given the substantial deference afforded district courts when admitting this type of evidence, we cannot conclude the district court's decision constitutes manifest error warranting relief under the record facts. *See Braunstein*, 118 Nev. at 72, 40 P.3d at 416.

Constructive amendment of the information

Cameron's last argument about the guilt phase of his trial is that the district court erroneously allowed the State to constructively amend the information by giving jury instructions that added the word "attempted" to the underlying felony of burglary. To the extent Cameron

changes his assignment of error in his reply brief, "the Nevada Rules of Appellate Procedure do not allow litigants to raise new issues for the first time in a reply brief," and we decline to consider any such changes to the claim. *LaChance v. State*, 130 Nev. 263, 277 n.7, 321 P.3d 919, 929 n.7 (2014). Because the information clearly included an allegation of felony murder by attempted burglary when it said that Cameron killed Faust "in the perpetration o[r] attempted perpetration of a burglary by entering a vehicle with the intent to commit assault or battery," the information was not constructively amended by the jury instructions and Cameron has not shown any error.

Sentencing opinions

Regarding the penalty phase, Cameron first takes issue with the recommendation made by multiple victims that he be sentenced to life without the possibility of parole. Cameron asks the court to modify its precedent allowing a victim to express an opinion regarding sentencing in noncapital cases and to instead treat such an opinion as error reviewed for harmlessness where, as here, a jury sentences the defendant.

Our precedent, *Randell v. State*, 109 Nev. 5, 8, 846 P.2d 278, 280 (1993), involved a sentencing judge, not a jury, and made note of a judge's ability to listen to victim impact statements without being overwhelmingly influenced. The statute *Randell* interpreted, however, does not differentiate between sentencing bodies, and we are unwilling to infer such a distinction. *See* NRS 176.015(3). Further, Cameron has not presented compelling reason to alter this court's precedent, as he has not identified authority supporting his position that sentencing opinions by victims in noncapital cases are improper but instead relies primarily on caselaw that was mentioned in *Randell* or that reaffirmed *Randell*'s

holding. *See Armenta-Carpio v. State*, 129 Nev. 531, 535, 306 P.3d 395, 398 (2013) (declining to overturn precedent absent a compelling reason). And Cameron's requested modification of *Randell* goes against our observations that "NRS 176.015(3) is similar in scope to statutes enacted in Arizona and California" and that "[c]ourts in both states take expansive views of their victim impact statutes, concluding that they are designed to grant victims expanded rights, rather than to limit the rights of victims." *Randell*, 109 Nev. at 7, 846 P.2d at 280. We therefore decline to alter the holding in *Randell* and discern no error by the district court in allowing the victims to testify as to their opinions about Cameron's sentence.[3]

Prior shootings

Cameron next argues the district court abused its discretion by admitting testimony about two prior residential shootings because the evidence was impalpable. Evidence may be presented at the penalty phase for first-degree murder "on any other matter which the court deems relevant to the sentence, whether or not the evidence is ordinarily admissible." NRS 175.552(3); *see also Silks v. State*, 92 Nev. 91, 93-94, 545 P.2d 1159, 1161 (1976) ("The sentencing proceeding is not a second trial and the [sentencer] is privileged to consider facts and circumstances which clearly would not be admissible at trial."). The defendant's sentence, however, cannot be "prejudiced from consideration of information or accusations founded on impalpable or highly suspect evidence." *Goodson v. State*, 98 Nev. 493, 495-96, 654 P.2d 1006, 1007 (1982).

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[3]Although we do not rely on it in denying Cameron's request to modify caselaw, we note that Nevada's Constitution was amended in 2017 to afford victims the right "[t]o be reasonably heard . . . at any public proceeding . . . in any court involving release or sentencing." Nev. Const. art. 1, § 8A(1)(h).

Over Cameron's objection, a detective testified about an incident in 2017, when two residents heard shots and realized their home was being shot at while they were inside. Law enforcement responded and recovered eight .40-caliber fired cartridge casings. Subsequent testing matched the fired cartridge casings from the residence to the two .40-caliber fired casings law enforcement discovered in Cameron's car during the investigation into Faust's death as well as to the fired casing from the cul-de-sac. During the investigation into Faust's death, Cameron's son was asked about this 2017 incident, and he said he thought he saw Cameron in the area of the residence near the time of the shooting, ostensibly on the Life360 application.

The detective also testified about an incident in 2018, when two residents were in their home, approximately two minutes from Cameron's home, and heard a loud bang. The next morning, the residents found a projectile in the window frame of a living-room window and a 9-millimeter fired cartridge casing in the street in front of their house. The casing on the street matched a fired casing discovered under the third-row seat of Cameron's car during the investigation into Faust's death. Both casings were fired from a 9-millimeter gun that was recovered from Cameron's residence.

The State presented evidence linking Cameron to the two prior residential shootings. Regarding the first shooting, the fired casings at the scene were connected to casings found in Cameron's car and to the casing recovered in the cul-de-sac where Faust died. Evidence also suggested that Cameron was in the area when the shooting occurred. Regarding the second shooting, the fired casing found on the street outside the residence was connected to another of Cameron's guns and to a casing found in his car. To

demonstrate this evidence was impalpable, Cameron relies on authority and argument about the sufficiency of evidence in establishing guilt or probable cause or the admissibility of evidence during the guilt phase. But the penalty phase is different than the guilt phase or the preliminary examination, and the "evidentiary rules are less stringent in the penalty phase of trial."[4] *Evans v. State*, 112 Nev. 1172, 1198, 926 P.2d 265, 282 (1996). And Cameron has not shown the evidence was impalpable given the connections made between the shootings and Cameron. Accordingly, the district court did not abuse its discretion in admitting the evidence.

NRS 200.030(4)

As for his final contention about the penalty phase, Cameron asks this court to declare the last sentence of NRS 200.030(4), the statute that outlines the possible penalties for first-degree murder, unconstitutional. Cameron contends the statute's language—"[a] determination of whether aggravating circumstances exist is not necessary to fix the penalty at imprisonment for life with or without the possibility of parole"—violates the prohibition against cruel and unusual punishment because it implies the sentencing body, whether judge or jury, does not have to consider aggravating or mitigating circumstances at a noncapital murder penalty hearing and thus does not have to be instructed on such circumstances.

Cameron does not make a clear showing that the statute is invalid. *See State v. Castaneda*, 126 Nev. 478, 481, 245 P.3d 550, 552 (2010). Nevada's "requirement to weigh aggravating and mitigating circumstances"

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[4]We disagree with Cameron's assertion that *Allen v. State*, 99 Nev. 485, 489, 665 P.2d 238, 240 (1983), suggests the admissibility standard for prior bad acts under NRS 48.045(2) should apply at the penalty phase.

is "part of the individual consideration that is the hallmark of what the Supreme Court has referred to as the selection phase *of the capital sentencing process*." *Lisle v. State*, 131 Nev. 356, 366, 351 P.3d 725, 732 (2015) (emphasis added). Cameron does not identify any controlling authority that requires the same process in a noncapital case. Furthermore, Cameron does not identify mitigating evidence the jury was precluded from considering; rather, testimony was introduced through Cameron's aunt and through his friend that Cameron was of good character, civic-minded, charitable, kind, and caring. And as the jury sat through the guilt phase, it was acutely aware of the circumstances of the crime and could consider them when determining the sentence. For all these reasons, we conclude Cameron's constitutional challenge to NRS 200.030(4) is without merit.

Cumulative error

Finally, Cameron asserts he is entitled to relief based on cumulative error. As we have found no error, there is nothing to cumulate. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

Pickering, J.
Pickering

Herndon, J.
Herndon

Lee, J.
Lee

Parraguirre, J.
Parraguirre

CADISH, C.J., with whom STIGLICH and BELL, JJ., agree, dissenting:

I dissent from the court's decision to affirm the judgment of conviction in this matter. Although I disagree with the majority as to the disposition of this case because I conclude the district court erred by admitting other act evidence, discussed below, I also write separately because I do not just "assum[e] the State presented an invalid theory of entry by bullet." Majority opinion *ante* at 7. In my opinion, it is abundantly clear the State presented an invalid theory to the jury when it argued that a bullet crossing the plane of Faust's truck would satisfy the entry element of burglary.

NRS 193.0145 defines the word "enter" for purposes of burglary and states that it "includes the entrance of the offender, or *the insertion of* any part of the body of the offender, or of *any instrument or weapon held in the offender's hand*." (Emphases added.) The statute's language is clear—the instrument or weapon accomplishing the entry must be held in the offender's hand. A fired bullet, entering a vehicle after being discharged, is not held in the offender's hand when it enters the vehicle. *Id.* To the extent other states have concluded a bullet may satisfy the entry element for a burglary, such conclusions are easily disregarded as our statutory definition of "enter" differs from the statutes in those states. *See, e.g., State v. Decker*, 365 P.3d 954, 957 (Ariz. Ct. App. 2016) (considering an entry statute that does not require the instrument or weapon be held in the offender's hand); *State v. Williams*, 873 P.2d 471, 472 n.3 (Or. Ct. App. 1994) (referencing an entry statute that encompasses an offender who "enters or remains unlawfully," without mention of the insertion of an instrument or weapon).

Based on the plain language of NRS 193.0145, the State's theory was improper. But, as acknowledged by the majority, this point was

not urged by appellate counsel. Instead, counsel argued that insufficient evidence supported the theory of felony murder. Even if this argument is credited, I agree with the majority that, per *Gordon v. State*, 121 Nev. 504, 508, 117 P.3d 214, 217 (2005), and *Rhyne v. State*, 118 Nev. 1, 10, 38 P.3d 163, 169 (2002), no relief is warranted because there is sufficient evidence to support the alternative theory of premeditated murder.

The chief point on which I disagree with the majority is the admission of the other act evidence. Of course, the admission of other act evidence is within the district court's discretion and this type of evidence can be properly admitted, but it is worth repeating that there is a presumption of inadmissibility that follows such evidence. *See Dickey v. State*, 140 Nev., Adv. Op. 2, 540 P.3d 442, 447-48 (2024). In fact, this court has recognized that "the use of uncharged bad act evidence to convict a defendant is *heavily disfavored* in our criminal justice system because bad acts are often irrelevant and prejudicial and force the accused to defend against vague and unsubstantiated charges." *Tavares v. State*, 117 Nev. 725, 730, 30 P.3d 1128, 1131 (2001) (emphasis added). The court has also noted "*[t]he principal concern* with admitting such acts is that the jury will be unduly influenced by the evidence, and thus *convict the accused because it believes the accused is a bad person*." *Id.* (emphases added). I believe it is this concern that comes to fruition in Cameron's case. As there is no disagreement about the applicable law, I jump right into the three-step analysis. *See Dickey*, 140 Nev., Adv. Op. 2, 540 P.3d at 448.

First, the other act evidence must be relevant for a nonpropensity purpose, such as "motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." NRS 48.045(2). The majority concludes the two previous incidents were relevant

to show Cameron's intent. This case is filled with layers of intent. For felony murder based on burglary, the State had to prove that Cameron entered (or attempted to enter) Faust's truck with the intent to commit a battery or assault. And, as applicable here, an assault required proof of intent to "place another person in reasonable apprehension of immediate bodily harm." NRS 200.471(1)(a)(2). For premeditated murder, the State had to prove that Cameron "actually intend[ed] to kill." *Byford v. State*, 116 Nev. 215, 234, 994 P.2d 700, 713 (2000). The majority does not analyze the relevance of the other act evidence to Cameron's intent to kill for premeditated murder, and indeed I cannot find any relevance to Cameron's intent when he pulled the trigger. Instead, the majority relies only on relevance as to Cameron's assaultive intent when entering or attempting to enter the truck.

I do not view the other acts as probative of Cameron's intent to assault Faust. The majority's conclusion otherwise is a strained reading of intent. The similarities between this case and the other incidents, for example, are not so striking as to demonstrate Cameron's intent to assault Faust. There is no evidence that Cameron threatened anyone with physical violence or brandished a weapon of any sort during the two other incidents. And the fact that L.M. said she was scared does not necessarily show Cameron's intent to cause her reasonable apprehension of immediate bodily harm. At best, the other act evidence shows that Cameron followed two vehicles on the road and that he got mad and yelled at the occupants of one vehicle and took a picture of another vehicle. This is not evidence of Cameron's intent to threaten Faust with bodily harm. Instead, the other acts did exactly what is prohibited by NRS 48.045(1) and NRS 45.045(2): they demonstrated that Cameron was a bad guy who got angry at, and

followed, other drivers to prove he acted in conformity with that character on the night of Faust's death. In closing argument, the State capitalized on this characterization by painting Cameron as "the traffic vigilante" and the "[r]age guy, road rage guy." But portraying Cameron as a bad person, as an angry, road-rage driver, was not relevant to any intent at issue.

The majority also concludes the two previous incidents were relevant to show Cameron's motive, namely, to follow and confront other drivers because of a traffic slight. That logic, however, does not comport with motive evidence allowed by NRS 48.045(2), which is evidence that shows "whatever might motivate one to commit a criminal act." *Ledbetter v. State*, 122 Nev. 252, 262, 129 P.3d 671, 678 (2006) (internal quotation marks omitted). The other act evidence did not establish a motive for Cameron to assault or kill Faust. *Cf. Butler v. State*, 120 Nev. 879, 889, 102 P.3d 71, 79 (2004) (concluding evidence of the defendant's gang affiliation was relevant to prove the defendant's motive to murder members of a rival gang). Instead, the evidence was propensity evidence: he followed people on the road before and therefore he must have done that with Faust. I am unable to discern a nonpropensity purpose for admitting the other act evidence.

As to the second consideration, I agree with the majority that the other acts were proven by clear and convincing evidence.

Even were I to find some permissive relevance for the other act evidence, the third step—the balancing of any probative value against the danger of unfair prejudice—demands my dissent. As listed by the majority, there are factors to consider when weighing the probative value against the danger of unfair prejudice. *See Randolph v. State*, 136 Nev. 659, 665, 477 P.3d 342, 349 (2020). And I acknowledge that the strength of the evidence

establishing the other acts was strong, including testimony from Cameron's own daughter and from L.M., along with pictures of L.M.'s license plate on Cameron's phone. The remainder of the factors, however, weigh heavily against any limited probative value.

First, as mentioned, there were significant differences between the instant matter and the other incidents. Cameron did not brandish a weapon, commit any violence, or threaten any harm in either previous incident. The evidence was that he followed cars, yelled at some occupants, and took pictures of another's vehicle. The instant matter involves Cameron using his gun to shoot Faust at close range. The other act evidence is not at all similar to the instant matter for purposes of Cameron's intent when burglarizing Faust's truck.

Second, the time between the other act evidence and the instant matter was substantial. The incident with Cameron's daughter occurred at least 12 months before Faust's death but could have occurred up to 24 months before. The incident with L.M. occurred nearly 16 months before Faust's death. These were not incidents so close in time to the instant matter to be highly probative of any purported intent.

Third, I disagree with the majority about the need for the evidence and the efficacy of alternative proof. The State presented evidence that Faust was shot at close range. The State also posited that Cameron's hand, or the gun in his hand, crossed the plane of Faust's truck. How much more evidence of an intent to assault or batter is needed if the State alleged Cameron entered (or attempted to enter) Faust's truck with a gun in his hand? Is not the very fact that Cameron brandished his gun indicative of an assaultive intent? What, then, did the other act evidence add? The evidence provoked the jury's hostility toward Cameron by showing him as a

bad person who follows people on the road and yells at them. And the evidence could have influenced the jurors to convict Cameron of first-degree murder simply because they concluded he was a bad person. This danger, that the jury convicted Cameron because it viewed him as a bad person, is too great when weighed against the very minimal relevance of the other act evidence. Therefore, the court abused its discretion in admitting the other act evidence.

When other act evidence is erroneously admitted, the burden is on the State to demonstrate that the error was harmless. *See id.* Here, the State failed to argue that the admission of this evidence was harmless. Although there are occasions where the court will conduct sua sponte review for harmlessness, *see id.* at 669, 477 P.3d at 351 (listing factors to consider when deciding whether to conduct sua sponte review for harmlessness), I do not believe this case presents such an occasion in light of my view that the evidence supporting a first-degree murder conviction was not overwhelming here, and given the presentation of the invalid burglary-by-bullet theory to the jury. Accordingly, I would reverse the judgment of conviction and remand for a new trial.

_____, C.J.
Cadish

We concur:

_____, J.
Stiglich

_____, J.
Bell

STIGLICH, J., with whom BELL, J. agrees, dissenting:

I agree with my dissenting colleagues that the other act evidence should not have been admitted and that the judgment of conviction should be reversed based on this error. But I feel compelled to further discuss the invalid theory presented by the State that a discharged bullet crossing the plane of Faust's truck satisfied the entry element for burglary. *Cf. Bradley v. Romeo*, 102 Nev. 103, 105, 716 P.2d 227, 228 (1986) ("The ability of this court to consider relevant issues *sua sponte* in order to prevent plain error is well established."); *W. Indus., Inc. v. General Ins. Co.*, 91 Nev. 222, 229-30, 533 P.2d 473, 478 (1975) (electing to *sua sponte* consider plain error). As outlined, this theory was *clearly* against the relevant statute's plain language and was thus advanced by the State in error. The effect of that error, however, has been overlooked.

In arguing its invalid theory, the State told the jury it could convict Cameron of felony murder if it found that a bullet crossed the threshold of the truck, so long as Cameron had the requisite intent. Putting aside the fact that assaultive intent is reasonably proven when one brandishes a gun, aims it, and fires it, the jury was told that a burglary was proven if the bullet entered Faust's truck. The uncontested evidence was that Faust was shot while in his truck. In essence, the jury was told that felony murder was a foregone conclusion based on a theory that conflicted with the statute's plain language: if the bullet went into the truck—clearly it did—then there was a burglary; and if there was a death—clearly there was—then there was felony murder. The jury was able to hang its verdict for first-degree murder on this unassailable logic without having to consider (1) whether any part of Cameron's body, or whether any instrument or weapon in his hand, crossed the plane of Faust's truck such that there was

entry under the statute; or (2) whether Cameron committed premeditated murder.

To exacerbate the situation, when Cameron promptly objected to the State's argument about this invalid theory, the district court overruled the objection. Such an action, in front of the jury, could have been taken as validation of a theory that was fundamentally at odds with the statute.[1]

Without a special verdict form, there is no way to assess whether the jury considered, and found, premeditated murder independent of the tainted felony-murder theory. Rather, I am left to wonder if the jury took the path of least resistance to its verdict and found Cameron guilty of first-degree murder based on the fact that the bullet crossed the plane of Faust's truck, a fact that unquestionably does not satisfy felony murder as alleged in this matter. Therefore, in addition to the reversal recommended by my dissenting colleagues, I would also reverse the judgment of conviction based on this error.

Stiglich, J.

Stiglich

I concur:

Bell, J.

Bell

[1]Bolstered by the district court's ruling, the State then repeated its logic: "[a]nother reasonable inference is, a bullet from that weapon, an implement of the defendant's intent, flew through that window from a bit farther. . . . [T]his instruction tells you that is an entry for purposes of burglary." The State did not recede from this erroneous theory but instead emphasized it to the jury in closing argument.

cc: Hon. Barry L. Breslow, District Judge
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Clark County District Attorney
Washoe County Public Defender
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