IN THE SUPREME COURT OF THE STATE OF NEVADA

KEANDRE VALENTINE, Petitioner, v. THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, COUNTY OF CLARK, THE HONORABLE JACQUELINE BLUTH, DISTRICT COURT JUDGE, Respondent, THE STATE OF NEVADA, Real Party in Interest.	)	No. (Dist Ct. No. C-16-318081-1)

PETITIONER'S MOTION TO WITHDRAW WRIT OF MANDAMUS OR PROHIBITION

COMES NOW the Petitioner, KEANDRE VALENTINE, by and through his counsel, Chief Deputy Public Defenders, SHARON G. DICKINSON and TYLER GASTON, and pursuant to NRAP 27, moves to

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withdraw the writ of Mandamus or Prohibition previously filed in this case. The motion is based upon the attached Declaration of Counsel.

DATED this 23rd day of June, 2022.

DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER

By Sharon Dickinson
SHARON G. DICKINSON, #3710
Chief Deputy Public Defender

DECLARATION OF SHARON G. DICKINSON

1. That affiant is an attorney duly licensed to practice law in the State of Nevada and is the Chief Deputy Clark County Public Defender assigned to represent KEANDRE VALENTINE on his appeal in this matter.

2. I am more than 18 years of age and am competent to testify to the matters stated herein. I am familiar with the procedural history of this case and have personal knowledge of the facts stated herein or I have been informed of these facts and believe them to be true.

3. On May 27, 2022, KEANDRE VALENTINE authorized me to file a Petition for Writ of Prohibition/Mandamus now pending before this Court.

4. On June 23, 2022, KEANDRE VALENTINE authorized me to file a motion with the Nevada Supreme Court voluntarily withdrawing his Petition for a Writ of Mandamus or Prohibition.

5. The reason for the withdrawal is because KEANDRE VALENTINE finalized negotiations with the State on June 23, 2022. Under the negotiations, the State agreed that KEANDRE would receive a lower overall sentence in exchange for KEANDRE waiving the completion of the evidentiary hearing required by *Valentine v. State*, 135 Nev. 463 (2019). KEANDRE would also voluntarily agree to withdraw his Petition in the Nevada Supreme Court. A filed copy of the waiver is attached as *Exhibit A*.

6. Based on the negotiations, on June 23, 2022, the District Court accepted his waiver and sentenced KEANDRE to an aggregate sentence of 9 to 24 years as listed in the proposed Amended Judgement of Conviction. A filed copy of the Amended Judgment of Conviction is not currently available.

7. The Petitioner, KEANDRE VALENTINE, authorized me to prepare and submit this declaration on his behalf.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 23RD day of June, 2022.

By_*/SS/ Sharon G. Dickinson*_____
SHARON G. DICKINSON, #3710
Chief Deputy Public Defender

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this writ complies with the formatting requirements of NRAP 27 and 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 Times New Roman in 14 size font.

2. I further certify that this brief complies with the page or type-volume limitations of NRAP 27(d)(1): Proportionately spaced, has a typeface of 14 points or more and is less than 10 pages, minus the attached exhibits.

3. Finally, I hereby certify that I have read this motion, 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 motion complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 27. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements

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of the Nevada Rules of Appellate Procedure.

DATED this23rd day of June, 2022.

DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER

By_*/ss// Sharon Dickinson*_____
SHARON G. DICKINSON, #3710
Chief Deputy Public Defender

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 23rd day of June, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON D. FORD
ALEXANDER CHEN

SHARON G. DICKINSON

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

Honorable Jacqueline Bluth
District Court, Department VI
200 Lewis Avenue
Las Vegas, NV 89101

BY _____
Employee, Clark County Public Defender's Office

Exhibit A

DOC

DARIN F. IMLAY, PUBLIC DEFENDER
NEVADA BAR NO. 5674
TYLER C. GASTON, DEPUTY PUBLIC DEFENDER
NEVADA BAR NO. 13488
SHARON G. DICKINSON
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Attorneys for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

KEANDRE VALENTINE

Defendant.

CASE NO:
C-16-316081-1

DEPT NO: VI

AGREEMENT TO WAIVE EVIDENTIARY HEARING

On December 19, 2019, the Nevada Supreme Court decided Mr. Valentine's direct appeal from the judgment of conviction of his July 2017 jury trial. *Exhibit A: Opinion.* In the decision, the Nevada Supreme Court ruled on all issues presented except for one: the Fair Cross-Section challenge to the jury venire. The Court remanded Mr. Valentine's case back to District Court for an evidentiary hearing under Step 3 of the Fair Cross-Section challenge.

On February 7, 2022, the District Court heard testimony from Jury Commissioner, Ms. Witt, and heard the direct examination of defense expert, Mr. Jeffrey Martin. The second part of the hearing, the cross-examination of Mr. Martin, was later scheduled to be heard on June 20, 2022. On May 27, 2022, Mr. Valentine filed a Petition for a Writ of

Mandamus or Prohibition with the Nevada Supreme Court which is still pending.

At a status check hearing in District Court on June 16, 2022, the State agreed to negotiate Mr. Valentine's case. As a result of the discussions, the District Court vacated the June 20, 2022, evidentiary hearing and set the case for negotiations to be heard on June 23, 2022. The negotiations between the State and Mr. Valentine are as follows.

AGREEMENT

I, Keandre Valentine, hereby agree to waive the completion of the Fair Cross-Section evidentiary hearing in return for the State agreeing to recommend a change in the underlying sentence resulting from my convictions. Upon completion of the agreement and re-senteincing, I agree to withdraw my pending Petition for a Writ of Mandamus or Prohibition.

The State agrees to the District Court changing the structure of my original sentence as listed in the proposed Judgment of Conviction. *Exhibit B.*

CONSEQUENCES OF THE WAIVER

I understand that by WAIVING the completion of my evidentiary hearing:

(1) I will be giving up the right to further pursue the Fair Cross-Section Clause challenge from my original trial in District Court and there would be no ruling on my challenge;

(2) District court will reinstate my vacated convictions and re-sentence me; and

(3) I will withdraw my Petition for a Writ of Mandamus or Prohibition pending in the Nevada Supreme Court.

I understand that if I had continued with the evidentiary hearing and the District Court granted my challenge then I would receive a new trial. If I went to trial again the State would be required to prove the charges against me beyond a reasonable doubt and if I were convicted again then I would have the right to appeal all issues arising out of this new trial. If the District Court denied my challenge, then the District Court may reinstate the prior sentence minus the sentences on Counts 4 and 9. Additionally, if I continued with the evidentiary hearing then the Nevada Supreme Court would decide my Petition for a Writ of

Mandamus or Porhibition.

I understand that my acceptance of this waiver is conditioned on the State agreeing to an aggregate sentence of 9-24 years.

I understand that the original order for restitution and the administrative fee will stand.

I understand that I am not eligible for probation.

WAIVER OF RIGHTS

By entering into this agreement to waive the completion of my evidentiary hearing, I understand that I am waiving and giving up the following rights and privileges that would apply if, upon completion of the evidentiary hearing, the court granted a new trial based on a violation of my Fair Cross-Section guarantees:

1. The constitutional privilege against self-incrimination, including the right to refuse to testify at trial, in which event the prosecution would not be allowed to comment to the jury about my refusal to testify.

2. The constitutional right to a speedy and public trial by an impartial jury, free of excessive pretrial publicity prejudicial to the defense, at which trial I would be entitled to the assistance of an attorney, either appointed or retained. At trial the State would bear the burden of proving beyond a reasonable doubt each element of the offense charged.

3. The constitutional right to confront and cross-examine any witnesses who would testify against me.

4. The constitutional right to subpoena witnesses to testify on my behalf.

5. The constitutional right to testify in my own defense.

6. The right to appeal the jury conviction from the second trial, with the assistance of an attorney, either appointed or retained. There would be no right to appeal a second jury conviction because I am giving up the opportunity for the District Court to rule at my evidentiary hearing.

By entering into this agreement, I understand that I am also giving up the right to have the Nevada Supreme Court decide my Petition that is pending.

VOLUNTARINESS OF WAIVER

I have discussed my options with my attorney and understand that if the district court heard the entire evidentiary hearing and ruled that my Fair Cross Section guarantees were violated, the Court would grant me a new trial.

I understand that if the district court heard the entire evendentiary hearing and denied my challenge then I would have the right to appeal the order.

I understand that the Nevada Suprme Court could intervene and grant a new trial.

I am willing to waive the chance to obtain a new trial or to appeal the denial of my challenge in return for the negotiations offered.

I am also willing to waive a decision on my pending Petition before the Nevada Supreme Court.

I have discussed the elements of all of the original charge(s) against me with my attorney and I understand the nature of the charge(s) against me.

I understand that counts 4 and 9 were dismissed by the Nevada Supreme Court and the State would not be able to try me again on those charges.

I understand that if this case when back to trial for a second time then the State would have to prove each element of the charge(s) against me at trial.

I have discussed with my attorney any possible defenses, defense strategies and circumstances which might be in my favor.

All of the foregoing elements, consequences, rights, and waiver of rights have been thoroughly explained to me by my attorney.

I believe that accepting the negotiations and waiving the completion of the evidentiary hearing are in my best interest.

I am signing this agreement voluntarily, after consultation with my attorney, and I am not acting under duress or coercion or by virtue of any promises of leniency, except for those set forth in this agreement.

I am not now under the influence of any intoxicating liquor, a controlled substance or other drug which would in any manner impair my ability to comprehend or understand this

agreement or the proceedings surrounding my waiver.

My attorney has answered all my questions regarding this waiver and agreement and its consequences to my satisfaction and I am satisfied with the services provided by my attorney.

RE-SENTENCING

Upon completion of this agreement, the district court will re-sentence me as outlined in Exhbit B, the proposed Amended Judgment of Conviction. Thereafter, I will withdraw my Petition for a Writ of Mandamus or Prohibition in the Nevada Suprme Court

DATED this 27 day of June, 2022.

KEANDRE VALENTINE

Defendant

AGREED TO BY:

/s/ Alexander Chen
ALEXANDER CHEN Chief Deputy District Attorney Nevada Bar #010539
Office of the Clark County District Attorney 200 Lewis, Las Vegas, Nevada 89155-2212.

/s/ *Tyler C. Gaston*
Chief Deputy Public Defender, Nevada Bar #13488, Clark County Public Defender's Office, 309 S. Third St., Las Vegas, Nevada 89155.

/s/ Sharon G. Dickinson
Chief Deputy Public Defender, Nevada Bar #3710, Clark County Public Defender's Office, 309 S. Thirds St., Las Vegas, Nevada 89155.

CERTIFICATE OF COUNSEL:

I, the undersigned, as the attorney for the Defendant named herein and as an officer of the court hereby certify that:

1. I have fully explained to the Defendant the waiver and agreement.

2. I have advised the Defendant of the allegations within the charging document and the penalties for each charge and the restitution that the Defendant may be ordered to pay.

3. The waiver and agreement offered by the State to the Defendant, pursuant to this agreement, are consistent with the facts known to me and are made with my advice to the Defendant.

4. To the best of my knowledge and belief, the Defendant:

a. Is competent and understands the charges and the consequences of pleading guilty as provided in this agreement.

b. Executed this agreement and will enter all guilty pleas pursuant hereto voluntarily.

c. Was not under the influence of intoxicating liquor, a controlled substance or other drug at the time I consulted with the defendant as certified in paragraphs 1 and 2 above.

Dated: This 23 day of June, 2022.

ATTORNEY FOR DEFENDANT

pm

EXHIBIT A

135 Nev., Advance Opinion 62

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEANDRE VALENTINE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 74468

Appeal from a judgment of conviction, pursuant to a jury verdict, of seven counts of robbery with the use of a deadly weapon, three counts of burglary while in possession of a deadly weapon, two counts of possession of credit or debit card without cardholder's consent, and one count each of attempted robbery with the use of a deadly weapon and possession of document or personal identifying information for the purpose of establishing a false status or identity. Eighth Judicial District Court, Clark County; Richard Scotti, Judge.

Vacated and remanded.

Darin F. Imlay, Public Defender, and Sharon G. Dickinson, Deputy Public Defender, Clark County,
for Appellant.

Aaron D. Ford, Attorney General, Carson City; Steven B. Wolfson, District Attorney, Krista D. Barrie, Chief Deputy District Attorney, and Michael R. Dickerson, Deputy District Attorney, Clark County,
for Respondent.

BEFORE HARDESTY, STIGLICH and SILVER, JJ.

19-51314

OPINION

By the Court, STIGLICH, J.:

A defendant has the right to a jury chosen from a fair cross section of the community, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution. This court has addressed the showing a defendant must make to establish a prima facie violation of this right. We have said little, however, about when an evidentiary hearing may be warranted on a fair-cross-section claim. Faced with that issue in this case, we hold that an evidentiary hearing is warranted on a fair-cross-section challenge when a defendant makes specific allegations that, if true, would be sufficient to establish a prima facie violation of the fair-cross-section requirement. Because the defendant in this matter made specific factual allegations that could be sufficient to establish a prima facie violation of the fair-cross-section requirement and those allegations were not disproved, the district court abused its discretion by denying Valentine's request for an evidentiary hearing. None of Valentine's other claims warrant a new trial. We therefore vacate the judgment of conviction and remand for further proceedings as to the fair-cross-section challenge.

BACKGROUND

Appellant Keandre Valentine was convicted by a jury of multiple crimes stemming from a series of five armed robberies in Las Vegas, Nevada. Before trial, Valentine objected to the 45-person venire and claimed a violation of his right to a jury selected from a fair cross section of the community. He argued that two distinctive groups in the community—African Americans and Hispanics—were not fairly and reasonably represented in the venire when compared with their representation in the community. Valentine asserted that the underrepresentation was caused by systematic exclusion, proffering two theories as to how the system used

in Clark County excludes distinctive groups. His first theory was that the system did not enforce jury summonses; his second theory was that the system sent out an equal number of summonses to citizens located in each postal ZIP code without ascertaining the percentage of the population in each ZIP code. Valentine requested an evidentiary hearing, which was denied. The district court found that the two groups were distinctive groups in the community and that one group—Hispanics—was not fairly and reasonably represented in the venire when compared to its representation in the community. However, the district court found that the underrepresentation was not due to systematic exclusion, relying on the jury commissioner's testimony regarding the jury selection process two years earlier in another case and on this court's resolution of fair-cross-section claims in various unpublished decisions. The court thus denied the constitutional challenge.

DISCUSSION

Fair-cross-section challenge warranted an evidentiary hearing

Valentine claims the district court committed structural error by denying his fair-cross-section challenge without conducting an evidentiary hearing. We review the district court's denial of Valentine's request for an evidentiary hearing for an abuse of discretion. *See Berry v. State*, 131 Nev. 957, 969, 363 P.3d 1148, 1156 (2015) (reviewing denial of request for an evidentiary hearing on a postconviction petition for a writ of habeas corpus); *accord United States v. Schafer*, 625 F.3d 629, 635 (9th Cir. 2010) (reviewing denial of request for an evidentiary hearing on a motion to dismiss an indictment); *United States v. Terry*, 60 F.3d 1541, 1544 n.2 (11th Cir. 1995) (reviewing denial of request for an evidentiary hearing on fair-cross-section challenge to statute exempting police officers from jury service).

"Both the Fourteenth and the Sixth Amendments to the United States Constitution guarantee a defendant the right to a trial before a jury selected from a representative cross-section of the community." *Evans v. State*, 112 Nev. 1172, 1186, 926 P.2d 265, 274 (1996). While this right does not require that the jury "mirror the community and reflect the various distinctive groups in the population," it does require "that the jury wheels, pools of names, panels, or venires from which juries are drawn must not systematically exclude distinctive groups in the community and thereby fail to be reasonably representative thereof." *Id.* at 1186, 926 P.2d at 274-75 (internal quotation marks omitted). "Thus, as long as the jury selection process is designed to select jurors from a fair cross section of the community, then random variations that produce venires without a specific class of persons or with an abundance of that class are permissible." *Williams v. State*, 121 Nev. 934, 940, 125 P.3d 627, 631 (2005).

A defendant alleging a violation of the right to a jury selected from a fair cross section of the community must first establish a prima facie violation of the right by showing

> (1) that the group alleged to be excluded is a *"distinctive" group* in the community; (2) that the *representation of this group in venires* from which juries are selected *is not fair and reasonable* in relation to the number of such persons in the community; and (3) that this underrepresentation is *due to systematic exclusion* of the group *in the jury-selection process.*

Evans, 112 Nev. at 1186, 926 P.2d at 275 (quoting *Duren v. Missouri*, 439 U.S. 357, 364 (1979)). To determine "[w]hether a certain percentage is a fair representation of a group," this court uses "the absolute and comparative disparity between the actual percentage in the venire and the percentage of the group in the community." *Williams*, 121 Nev. at 940 n.9,

125 P.3d at 631 n.9. And to determine whether systematic exclusion has been shown, we consider if the underrepresentation of a distinctive group is "inherent in the particular jury-selection process utilized." *Evans*, 112 Nev. at 1186-87, 926 P.2d at 275 (internal quotation marks omitted). Only after a defendant demonstrates a prima facie violation of the right does "the burden shift[ ] to the government to show that the disparity is justified by a significant state interest." *Id.* at 1187, 926 P.2d at 275.

Here, Valentine asserted that African Americans and Hispanics were not fairly and reasonably represented in the venire. Both African Americans and Hispanics are recognized as distinctive groups. *See id.*; *see also United States v. Esquivel*, 88 F.3d 722, 726 (9th Cir. 1996). And the district court correctly used the absolute and comparative disparity between the percentage of each distinct group in the venire and the percentage in the community to determine that African Americans were fairly and reasonably represented in the venire but that Hispanics were not. *See Williams*, 121 Nev. at 940 n.9, 125 P.3d at 631 n.9 ("Comparative disparities over 50% indicate that the representation of [a distinct group] is likely not fair and reasonable."). The district court denied Valentine's challenge as to Hispanics based on the third prong—systematic exclusion.

We conclude the district court abused its discretion in denying Valentine's request for an evidentiary hearing. Although this court has not articulated the circumstances in which a district court should hold an evidentiary hearing when presented with a fair-cross-section challenge, it has done so in other contexts. For example, this court has held that an evidentiary hearing is warranted on a postconviction petition for a writ of habeas corpus when the petitioner has "assert[ed] claims supported by specific factual allegations [that are] not belied by the record [and] that, if true, would entitle him to relief." *Mann v. State*, 118 Nev. 351, 354, 46 P.3d

1228, 1230 (2002); *see also Hargrove v. State*, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). Most of those circumstances are similarly relevant when deciding whether an evidentiary hearing is warranted on a defendant's fair-cross-section challenge, given the defendant's burden of demonstrating a prima facie violation. In particular, it makes no sense to hold an evidentiary hearing if the defendant makes only general allegations that are not sufficient to demonstrate a prima facie violation or if the defendant's specific allegations are not sufficient to demonstrate a prima facie violation as a matter of law. *See Terry*, 60 F.3d at 1544 n.2 (explaining that no evidentiary hearing is warranted on a fair-cross-section challenge if no set of facts could be developed that "would be significant legally"). But unlike the postconviction context where the claims are case specific, a fair-cross-section challenge is focused on systematic exclusion and therefore is not case specific. Because of that systematic focus, it makes little sense to require an evidentiary hearing on a fair-cross-section challenge that has been disproved in another case absent a showing that the record in the prior case is not complete or reliable.[1] With these considerations in mind, we hold that an evidentiary hearing is warranted on a fair-cross-section challenge when a defendant makes specific allegations that, if true, would be sufficient to establish a prima facie violation of the fair-cross-section requirement.[2]

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[1]For the reasons stated herein, it was error for the district court to rely upon the jury commissioner's prior testimony in denying Valentine's challenge. That is not to say a district court may never rely upon prior testimony when appropriate.

[2]We note that, in order to meet the burden of demonstrating an evidentiary hearing is warranted, a defendant may subpoena supporting

Applying that standard, we conclude that Valentine was entitled to an evidentiary hearing as to his allegation of systematic exclusion of Hispanics. Valentine did more than make a general assertion of systematic exclusion. In particular, Valentine made specific allegations that the system used to select jurors in the Eighth Judicial District Court sends an equal number of jury summonses to each postal ZIP code in the jurisdiction without ascertaining the percentage of the population in each ZIP code. Those allegations, if true, could establish underrepresentation of a distinctive group based on systematic exclusion. *Cf. Garcia-Dorantes v. Warren*, 801 F.3d 584, 591-96 (6th Cir. 2015) (discussing a prima facie case of systematic exclusion where a computer used a list to determine the percentage of jurors per ZIP code, but because of a glitch, the list included a higher number of persons from certain ZIP codes that had smaller proportions of African Americans than the community at large). And those allegations were not addressed in the jury commissioner's prior testimony that the district court referenced.[3] Accordingly, the district court could not

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documents and present supporting affidavits. *See Hargrove*, 100 Nev. at 502-03, 686 P.2d at 225.

[3]Even if the jury commissioner's previous testimony addressed Valentine's specific allegations of systematic exclusion, reliance on the old testimony would have been misplaced. In particular, the prior testimony mentioned that the system was "moving towards a new improved jury selection process" and legislative amendments regarding the juror selection process were implemented close in time to Valentine's trial. *See* 2017 Nev. Stat., ch. 549, §§ 1-5, at 3880-84. While prior testimony relevant to a particular fair-cross-section challenge may obviate the need for an evidentiary hearing, a district court should be mindful that it not rely upon stale evidence in resolving such challenges.

rely on the prior testimony to resolve Valentine's allegations of systematic exclusion. Having alleged specific facts that could establish the underrepresentation of Hispanics as inherent in the jury selection process, Valentine was entitled to an evidentiary hearing.[4] Accordingly, the district court abused its discretion by denying Valentine's request for an evidentiary hearing.[5] We therefore vacate the judgment of conviction and remand to the district court for an evidentiary hearing. *Cf. State v. Ruscetta*, 123 Nev. 299, 304-05, 163 P.3d 451, 455 (2007) (vacating judgment of conviction and remanding where district court failed to make factual findings regarding motion to suppress and where record was insufficient for appellate review). Thereafter, Valentine's fair-cross-section challenge should proceed in the manner outlined in *Evans*, 112 Nev. at 1186-87, 926 P.2d at 275. If the district court determines that the challenge lacks merit, it may reinstate the judgment of conviction, except as provided below.

Sufficiency of the evidence

Valentine argues the State presented insufficient evidence to support his convictions for robbery with the use of a deadly weapon in counts 4 and 9. In considering a claim of insufficient evidence, we "view[ ] the evidence in the light most favorable to the prosecution" to determine

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[4]It is unclear that Valentine's allegations regarding the enforcement of jury summonses would, if true, tend to establish underrepresentation as a result of systematic exclusion. *See United States v. Orange*, 447 F.3d 792, 800 (10th Cir. 2006) ("Discrepancies resulting from the private choices of potential jurors do not represent the kind of constitutional infirmity contemplated by *Duren*."). Accordingly, he was not entitled to an evidentiary hearing as to those allegations.

[5]We reject Valentine's contention that the district court's failure to hold an evidentiary hearing evinced judicial bias resulting in structural error.

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)).

NRS 200.380(1) defines the crime of robbery as

> [T]he unlawful taking of personal property from the person of another, or in the person's presence, against his or her will, by means of force or violence or fear of injury, immediate or future, to his or her person or property, or the person or property of a member of his or her family, or of anyone in his or her company at the time of the robbery.[6]

Additionally, we have held that the State must show that the victim had possession of or a possessory interest in the property taken. *See Phillips v. State*, 99 Nev. 693, 695-96, 669 P.2d 706, 707 (1983).

The challenged robbery counts stem from a similar fact pattern. Beginning with count 4, Valentine was charged with robbing Deborah Faulkner of money; Valentine was also charged with robbing Darrell Faulkner, Deborah's husband, of money in count 3. Valentine was convicted of both counts. However, when viewed in a light most favorable to the prosecution, the evidence produced at trial was insufficient to support a robbery charge as it related to Deborah. While the evidence established that Valentine took $100 that Darrell removed from his own wallet, the evidence demonstrated that Valentine demanded Deborah to empty her

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[6]The Legislature amended NRS 200.380, effective October 1, 2019. 2019 Nev. Stat., ch. 76, § 1, at 408. While the amendments do not affect our analysis in this matter, we have quoted the pre-amendment version of NRS 200.380 that was in effect at the time of the events underlying this appeal. 1995 Nev. Stat., ch. 443, § 60, at 1187.

purse onto the ground but actually took nothing from it. There was no evidence that Deborah had possession of, or a possessory interest in, the money from Darrell's wallet.[7] Thus, the State presented insufficient evidence for count 4, and the conviction for that count cannot be sustained.

Similarly, in count 9, Valentine was charged with robbing Lazaro Bravo-Torres of a wallet and cellular telephone; Valentine was also charged with robbing Rosa Vasquez-Ramirez, Lazaro's wife, of a purse, wallet, and/or cellular telephone in count 11. Valentine was convicted of both counts. Yet viewing the evidence in a light most favorable to the prosecution, the evidence did not establish that Valentine robbed Lazaro. Specifically, Lazaro testified that he told Valentine he did not have cash or a wallet on him and that his phone, located in the center compartment of the truck, was not taken but was used by the couple after the incident was over. Conversely, Rosa testified that Valentine took her purse along with the items in it. The evidence presented by the State did not establish that Lazaro had possession of, or a possessory interest in, the items taken,[8] and thus the conviction for count 9 cannot be sustained.

Prosecutorial misconduct regarding DNA evidence

Valentine contends that the State engaged in prosecutorial misconduct during closing argument when discussing the deoxyribonucleic acid (DNA) evidence. In considering a claim of prosecutorial misconduct,

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[7]We are unconvinced by the State's argument that the singular fact of Darrell and Deborah being married, without more, demonstrated that the money in Darrell's wallet was community property of the marriage such that Deborah had a possessory interest in it. *See* NRS 47.230(3).

[8]We again reject the State's argument that the mere fact that Lazaro and Rosa were married demonstrated that Lazaro had a possessory interest in Rosa's purse or the items therein. *See id.*

we determine whether the conduct was improper and, if so, whether the improper conduct merits reversal. *Valdez v. State*, 124 Nev. 1172, 1188, 196 P.3d 465, 476 (2008).

During the trial, the State presented an expert witness to testify about the DNA results from a swab of the firearm found in the apartment where Valentine was discovered. The expert testified generally about the procedures her laboratory uses for DNA analysis. She explained that samples are tested at the same 15 locations, or loci, on the DNA molecule and a DNA profile results from the alleles, or numbers, obtained from each of the 15 locations.[9] When complete information from each of the 15 locations is obtained, the result is a full DNA profile; anything less produces a partial DNA profile. The results of the DNA testing process appear as peaks on a graph, and it is those peaks that the expert interprets and uses to make her determinations. In considering the information on a graph, the expert indicated that her laboratory uses a threshold of 200—anything over 200 is usable information, while anything below 200 is not used "because it's usually not reproducible dat[a]," meaning if the sample was tested again, "it's so low that [she] might get that same information, [she] might not."[10] The expert maintained that sometimes DNA information is obtained "but it's not good enough for us to make any determinations on. So in that case we call it inconclusive."

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[9]The expert added that her laboratory also looks at an additional location, the amelogenin, in order to determine the gender of the individual represented in the sample.

[10]The expert also testified that anything below 40 indicated that there was no actual DNA profile. She explained that her laboratory uses the thresholds "to make sure that when we say that there is a good, usable DNA profile, that it's actually a good, useable DNA profile."

As to the results of the swab from the firearm, the expert testified that she "did not obtain a useable profile, so there was no comparison made." She stated that the laboratory thresholds were not met and thus "the profile was inconclusive." The only conclusion the expert was able to make was that the partial DNA profile obtained from the firearm swab was consistent with a mixture of at least two persons and that at least one of the persons was male.

During the expert's testimony, the State offered three exhibits: one was a summary, side-by-side comparative table of the DNA information collected from the firearm swab and from Valentine; and two were graphs of the specific information collected from the firearm swab and Valentine, both graphs showing peaks of information alongside a scale indicating the laboratory's threshold limits. Valentine objected to the admission of the graphs, arguing that they could be confusing to the jury, that the jurors should not be drawing their own conclusions from the graphs, and that he did not want the jurors to think they could discern something from the graphs that the expert could not. The district court overruled Valentine's objection, finding the graphs relevant to the expert's methodology and reliability.[11]

Regarding the summary, side-by-side table, the expert testified that every tested location of the firearm swab, save for the location used to

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[11]Valentine argues the district court abused its discretion in admitting the graphs. We cannot say the admission of the graphs to show methodology and reliability was an abuse of discretion. But while the graphs may have been relevant for such purposes, the manner in which the information was used by the State, as discussed below, strongly undermined the district court's reasoning for admitting the evidence. *See* NRS 47.110 (discussing the limited admissibility of evidence and, upon request, the need for an instruction to restrict the jury's consideration to the proper scope).

determine gender, resulted in either an "NR," meaning no DNA profile was obtained from that particular location, or an asterisk, indicating information was present but "it was so low that [she was] not even going to do any comparisons or say anything."

Regarding the graphs, the State went through the tested locations of the firearm swab and, while continuously commenting that the results were below the laboratory's 200 threshold, asked the expert to identify the alleles for which there were peaks of information. In going through the peaks of information from the firearm swab, the State also intermittently mentioned the corresponding locations and, ostensibly matching, alleles found in Valentine's DNA profile. During cross-examination, the expert repeated the 200 threshold and explained that she does not look at information below that threshold, even if it is close, because it could be incorrect. Valentine asked the expert if she had anything she wanted to add in response to the State's line of questioning regarding each of the locations tested, and the expert reiterated the following:

> [T]he profile [from the firearm swab] was inconclusive, and we call it inconclusive because there wasn't enough DNA. . . . [A]nd we call that inconclusive . . . because if I re-ran that exact same sample, I don't know what kind of results I would come up with. It may be the same, it may be different. So that's why we're not saying that the DNA profile definitely came from the defendant, because it's inconclusive to me.
>
> . . . .
>
> [The thresholds] exist for a reason.
>
> . . . .
>
> Because we don't want to present information that may not be correct or overemphasize something, you know, saying yes, this person is there, when it may not be true because our data is

> not supporting that it's a strong DNA profile. So we want to be sure when we say there's a match, that it is, in fact, a match.
>
> We don't want to make the wrong conclusions on the item that we're looking at.
>
> . . . .

Despite the expert's testimony, the State pointed to the two graphs and argued that the jurors could assess for themselves whether Valentine's DNA profile matched the DNA profile from the firearm swap. During closing argument, the State made the following comments:

> You heard about the DNA evidence in this case. Now, the scientist came in. She told you she could not make any results. The results that she had for the swab of the gun were below the threshold. But we went through every single one. *And that's something you need to also take a look at when you go back there, just to see what you think for yourself.* When we went through and looked at the items *below the 200 threshold*, but above the 40 threshold *this is what we found*. We found that the swab of the handgun revealed a 12 and a 13 allele. Mr. Valentine, a 12 and a 13 allele. The swab also [had] a 28 allele on the next [location]. A 28 allele on that same [location] for Mr. Valentine.

(Emphases added.) Valentine objected and argued that the State's own expert said that such a comparison was improper. The district court overruled the objection, finding the prosecutor was merely arguing that some weight should be given to the evidence and stating it was up to the jury to decide the weight to give the evidence. The State continued:

> [I]t's worth taking into consideration. You are here for two weeks. Look at all the evidence. This is part of the evidence. You heard that under each [location] there is a number of alleles. And here, though, yeah, maybe the threshold is under 200,

> *there's something here. But just consider for yourself.*
>
> Next, we have the [location] on the swab of the handgun, 15 and 16. Mr. Valentine also at 15 and 16. Next [location] at 7; Mr. Valentine also at 7. Next [location] at 12 and 13; Mr. Valentine also at 12 and 13. So on and so forth, *matching*.
>
> . . . .
>
> Ladies and gentlemen, it's just worth considering. Take a look at it. *See what you think. Make your own determination.*[12]

(Emphases added.)

Without reservation, we conclude the prosecutor's closing argument was improper. "[A] prosecutor may argue inferences from the evidence and offer conclusions on contested issues" during closing argument, but "[a] prosecutor may not argue facts or inferences not supported by the evidence." *Miller v. State*, 121 Nev. 92, 100, 110 P.3d 53, 59 (2005) (internal quotation marks omitted). Here, the State presented an

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[12]In his closing argument, Valentine attempted to rebut the State's presentation of the evidence:

> The DNA analysis, she seemed to really know her stuff. State's expert. They put her on. What did she testify to? Well, she testified to a lot with the State and she looked extremely uncomfortable, which was clarified on cross that, a lot of this, well, the peaks, there's a little bit of peak that sort of matches him. She was very uncomfortable about that because as she said on cross, that's not how it works. It's not reliable under a certain level. They can't say inside—for scientific certainty that it's even possible. It's even plausible, because they might get totally different results if they run it again. That's why she was uncomfortable testifying to that.

expert witness to testify as to the DNA results obtained from the swab of the firearm. *See United States v. McCluskey*, 954 F. Supp. 2d 1224, 1253 (D.N.M. 2013) ("[J]urors can understand and evaluate many types of evidence, but DNA evidence is different and a prerequisite to its admission is technical testimony from experts to show that correct scientific procedures were followed." (internal quotation marks omitted)). The purpose of expert testimony "is to provide the trier of fact [with] a resource for ascertaining truth in relevant areas outside the ken of ordinary laity." *Townsend v. State*, 103 Nev. 113, 117, 734 P.2d 705, 708 (1987); *see also* NRS 50.275 ("If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert . . . may testify to matters within the scope of such knowledge."). But after presenting its expert to testify about a subject outside the ordinary range of knowledge for jurors, the State disregarded that testimony and invited the jury to make inferences that the expert testified were not supported by the DNA evidence. The State asked the jury to consider evidence about which the expert was emphatic she could make no conclusions, save for her overall conclusion that the evidence was consistent with a mixture of at least two persons, at least one of whom was male. The State then asked the jury to compare the unusable profile to Valentine's DNA profile. This is precisely what the expert said she could not do because it would be unreliable. *See Hallmark v. Eldridge*, 124 Nev. 492, 500, 189 P.3d 646, 651 (2008) (holding that expert witness "testimony will assist the trier of fact only when it is relevant and the product of reliable methodology" (footnote omitted)). No evidence was introduced, statistical or otherwise, regarding the significance or meaning of the data that fell below the 200 threshold. To the contrary, the only evidence presented was that such information produced an unusable profile and was not considered

by the expert. It is hard to imagine what weight could be ascribed to evidence that was described only as inconclusive, unusable, and incomparable. Rather, the State's use of the expert's testimony can better be viewed as taking advantage of the "great emphasis" or the "status of mythic infallibility" that juries place on DNA evidence. *People v. Marks*, 374 P.3d 518, 525 (Colo. App. 2015) (internal quotation marks omitted). Simply put, the prosecution argued facts not in evidence and inferences not supported by the evidence. This was improper.

We nevertheless conclude that the improper argument would not warrant reversal of Valentine's convictions because it did not substantially affect the jury's verdict. *See Valdez*, 124 Nev. at 1188-89, 196 P.3d at 476. There was evidence presented that Valentine handled the gun and multiple victims identified Valentine as the perpetrator. Thus, the error was harmless, and Valentine is not entitled to a new trial based on the prosecutorial misconduct.[13]

CONCLUSION

The district court abused its discretion in denying Valentine's request for an evidentiary hearing on his fair-cross-section challenge. We therefore vacate the judgment of conviction and remand for the district court to conduct an evidentiary hearing and resolve the fair-cross-section challenge. None of Valentine's other arguments require a new trial. Accordingly, if the district court determines on remand that the fair-cross-section challenge lacks merit, it may reinstate the judgment of conviction

[13]We have considered Valentine's remaining contentions of error and conclude no additional relief is warranted.

except as to the convictions for counts 4 and 9, which were not supported by sufficient evidence.[14]

Stiglich, J.
Stiglich

We concur:

Hardesty, J.
Hardesty

Silver, J.
Silver

[14]This opinion constitutes our final disposition of this appeal. Any future appeal following remand shall be docketed as a new matter.

EXHIBIT B

JOC

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, v. KEANDRE VALENTINE, #5090875 Defendant,	CASE NO. C-16-316081-1 DEPT. NO. VI

AMENDED JUDGMENT OF CONVICTION

(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNT 1 – ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.165; COUNT 2 – BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON (Category B Felony) in violation of NRS 205.060, COUNT 3 - ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.38, 193.165, COUNT 4 – ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.38, 193.165, COUNT 5 – BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON (Category B Felony) in violation of NRS 205.060; COUNT 6 – ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.165; COUNT 7 – ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.165; COUNT 8 – ATTEMPT

ROBBERY WITH USE OF DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.330, 193.165; COUNT 9 – ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.165; COUNT 10 - BURGLARY WHILE POSSESSION OF A DEADLY WEAPON (Category B Felony) in violation of NRS 205.060; COUNT 11 – ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.165; COUNT 12 – POSSESSION OF DOCUMENT OR PERSONAL IDENTIFYING INFORMATION (Category E Felony) in violation of NRS 205.465; COUNT 13 – POSSESSION OF CREDIT OR DEBIT CARD WITHOUT CARDHOLDER'S CONSENT (Category D Felony) in violation of NRS 205.690 and COUNT 14 – POSSESSION OF CREDIT OR DEBIT CARD WITHOUT CARDHOLDER'S CONSENT (Category D Felony) in violation of NRS 205.690; and the matter having been tried before a jury and the Defendant having been found guilty of the crimes of COUNT 1 – ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.165; COUNT 2 – BURGLARY WHILE IN POSSESSION OF DEADLY WEAPON (Category B Felony) in violation of NRS 205.060; COUNT 3 – ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.165; COUNT 4 – ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.165; COUNT 5 – BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON (Category B Felony) in violation of NRS 205.060; COUNT 6 – ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380; 193.165; COUNT 7 – ROBBERY WITH

USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.165; COUNT. 8 – ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.330, 193.165; COUNT 9 – ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.165; COUNT 10 – BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON (Category B Felony) in violation of NRS 205.060; COUNT 11 – ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.165; COUNT 12 – POSSESSION OF DOCUMENT OR PERSONAL IDENTIFYING INFORMATION (Category E Felony) in violation of NRS 205.465; COUNT 13 – POSSESSION OF CREDIT OR DEBIT CARD WITHOUT CARDHOLDER'S CONSENT (Category D Felony) in violation of NRS 205.690 and COUNT 14 – POSSESSION OF CREDIT OR DEBIT CARD WITHOUT CARDHOLDER'S CONSENT (Category D Felony) in violation of NRS 205.690; thereafter on the 28th day of September, 2017, the Defendant was present in court for sentencing with counsel Tegan Machnich, Deputy Public Defender, and good cause appearing.

THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in addition to the $25.00 Administrative Assessment Fee, $1,000.00 Restitution and $150.00 DNA Analysis Fee including testing to determine genetic markers plus $3.00 DNA Collection Fee, the Defendant is SENTENCED to the Nevada Department of Corrections (NDC) as follows: **COUNT 1** – a MAXIMUM of FIVE (5) YEARS with a MINIMUM parole eligibility of TWO (2) YEARS, plus a CONSECUTIVE term of

THREE (3) YEARS with a MINIMUM parole eligibility of ONE (1) YEAR for the Use of a Deadly Weapon, total 3-8 years; **COUNT 2** – a MAXIMUM of EIGHT (8) YEARS with a MINIMUM parole eligibility of THREE (3) YEARS, to run CONCURRENT with COUNT 1; and **COUNT 3** – a MAXIMUM of FIVE (5) YEARS with a MINIMUM parole eligibility of TWO (2) YEARS, plus a CONSECUTIVE term of THREE (3) YEARS with a MINIMUM parole eligibility of ONE (1) YEAR for the Use of a Deadly Weapon, to run CONSECUTIVE to Count 1, total 3-8 years; **COUNT 4** – a MAXIMUM of FIVE (5) YEARS with a MINIMUM parole eligibility of TWO (2) YEARS, plus a CONSECUTIVE term of THREE (3) YEARS with a MINIMUM parole eligibility of ONE (1) YEAR for the Use of a Deadly Weapon, to run CONSECUTIVE to COUNT 1 and 3, total 3-8 years; **COUNT 5** – a MAXIMUM of EIGHT (8) YEARS with a MINIMUM parole eligibility of THREE (3) YEARS, to run CONCURENT With Counts 1, 2, 3 and 4; **COUNT 6** – a MAXIMUM of FIVE (5) YEARS with a MINIMUM parole eligibility of TWO (2) YEARS plus a CONSECUTIVE term of THREE (3) YEARS with a MINIMUM parole eligibility of ONE (1) YEAR for the Use of a Deadly Weapon, to run CONSECUTIVE to Count 1, 3, and 4, total 3-8 years, **COUNT 7** – a MAXIMUM of FIVE (5) YEARS with a MINIMUM parole eligibility of TWO (2) YEARS, plus a CONSECUTIVE term of THREE (3) YEARS with a MINIMUM parole eligibility of ONE (1) YEAR for the Use of a Deadly Weapon, to run CONSECUTIVE to Counts 1, 3, 4, and 6, total 3-8 years; **COUNT 8** – a MAXIMUM of EIGHT (8) YEARS with a MINIMUM parole eligibility of THREE (3) YEARS, to run CONCURRENT with Counts 1, 2, 3, 4, 5, 6 and 7; **COUNT 9** – a MAXIMUM of

FIVE (5) YEARS with a MINIMUM parole eligibility of TWO (2) YEARS, plus a CONSECUTIVE term of THREE (3) YEARS with a MINIMUM parole eligibility of ONE (1) YEAR for the Use of a Deadly Weapon, to run CONSECUTIVE to Counts 1, 3, 4, 6, and 7, total 3-8 years; **COUNT 10** – a MAXIMUM of EIGHT (8) YEARS with a MINIMUM parole eligibility of THREE (3) YEARS, to run CONCURRENT with Counts 1, 2, 3, 4, 5, 6, 7, 8 and 9; **COUNT 11** – a MAXIMUM of FIVE (5) YEARS with a MINIMUM parole eligibility of TWO (2) YEARS, plus a CONSECUTIVE term of THREE (3) YEARS with a MINIMUM parole eligibility of ONE (1) YEAR for the Use of a Deadly Weapon; total 3-8 years to run CONCURRENT with COUNTS 1, 3, 4, 6, 7, 8, 9 and 10; **COUNT 12** – a MAXIMUM of THREE (3) YEARS with a MINIMUM parole eligibility of ONE (1) YEAR, to run CONCURRENT with COUNTS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11; **COUNT 13** – a MAXIMUM of THREE (3) YEARS with a MINIMUM parole eligibility of ONE (1) YEAR to run CONCURRENT with COUNTS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12; **COUNT 14** – a MAXIMUM of THREE (3) YEARS with a MINIMUM parole eligibility of ONE (1) YEARS to run CONCURRENT with COUNTS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13; with FOUR HUNDRED AND EIGHTY-NINE (489) DAYS credit for time served. The AGGREGATE TOTAL sentences is FORTY-EIGHT (48) YEARS MAXIMUM and a MINIMUM PAROLE ELIGIBILITY OF EIGHTEEN (18) YEARS.

Thereafter, on the 19th day of December 2019, the Nevada Supreme Court decided Mr. Valentine's direct appeal in *Valentine v. State*, 135 Nev. 463 (2019). The Nevada

Supreme Court reversed the convictions on counts 4 and 9, finding that they were not supported by sufficient evidence. The Court vacated the remaining convictions and remanded the case to the District Court for a Fair Cross-Section evidentiary hearing.

Thereafter, on the 7th day of February 2022, the District Court began the evidentiary hearing. The Court later set a second hearing date.

Thereafter, on the 23rd day of June 2022, the parties entered into an agreement allowing the District Court to re-sentence Mr. Valentine upon his agreement to waive the completion of the evidentiary hearing.

Thereafter, the District Court reinstated the judgment of convictions except for the conviction in Counts 4 and 9. The District Court sentenced the DEFNDANT to the Nevada Department of Corrects (NDC) as follows:

THE DEFENDANT IS HEREBY ADJUDGED guilty of said following offenses and, in addition to the $25.00 Administrative Assessment Fee, and $1,000.00 Restitution:

COUNT 1 – a MAXIMUM of FIVE (5) YEARS with a MINIMUM parole eligibility of TWO (2) YEARS, plus a CONSECUTIVE term of THREE (3) YEARS with a MINIMUM parole eligibility of ONE (1) YEAR for the Use of a Deadly Weapon, total 3-8 years;

COUNT 2 – a MAXIMUM of EIGHT (8) YEARS with a MINIMUM parole eligibility of THREE (3) YEARS, to run CONCURRENT with COUNT 1; and

COUNT 3 – a MAXIMUM of FIVE (5) YEARS with a MINIMUM parole eligibility of TWO (2) YEARS, plus a CONSECUTIVE term of THREE (3) YEARS with a MINIMUM parole eligibility of ONE (1) YEAR for the Use of a Deadly Weapon, to run CONSECUTIVE to COUNT 1, total 3-8 years;

COUNT 5 – a MAXIMUM of EIGHT (8) YEARS with a MINIMUM parole eligibility of THREE (3) YEARS, to run CONCURENT With COUNT 1.

COUNT 6 – a MAXIMUM of FIVE (5) YEAS with a MINIMUM parole eligibility of TWO (2) YEARS plus a CONSECUTIVE term of THREE (3) YEARS with a MINIMUM parole eligibility of ONE (1) YEAR for the Use of a Deadly Weapon, to run CONSECUTIVE to COUNT 3, total 3-8 years,

COUNT 7 – a MAXIMUM of FIVE (5) YEARS with a MINIMUM parole eligibility of TWO (2) YEARS, plus a CONSECUTIVE term of THREE (3) YEARS with a MINIMUM parole eligibility of ONE (1) YEAR for the Use of a Deadly Weapon, to run CONCONCURENT To COUNT 1, total 3-8 years;

COUNT 8 – a MAXIMUM of EIGHT (8) YEARS with a MINIMUM parole eligibility of THREE (3) YEARS, to run CONCURRENT with COUNT 1;

COUNT 10 – a MAXIMUM of EIGHT (8) YEARS with a MINIMUM parole eligibility of THREE (3) YEARS, to run CONCURRENT with COUNT 1;

COUNT 11 – a MAXIMUM of FIVE (5) YEARS with a MINIMUM parole eligibility of TWO (2) YEARS, plus a CONSECUTIVE term of THREE (3) YEARS

with a MINIMUM parole eligibility of ONE (1) YEAR for the Use of a Deadly Weapon; total 3-8 years to run CONCURRENT with COUNT 1;

COUNT 12 – a MAXIMUM of THREE (3) YEARS with a MINIMUM parole eligibility of ONE (1) YEAR, to run CONCURRENT with COUNT 1;

COUNT 13 – a MAXIMUM of THREE (3) YEARS with a MINIMUM parole eligibility of ONE (1) YEAR to run CONCURRENT with COUNT 1;

COUNT 14 – a MAXIMUM of THREE (3) YEARS with a MINIMUM parole eligibility of ONE (1) YEARS to run CONCURRENT with COUNT 1; with TWO THOUSAND TWO HUNDRED AND EIGHTEEN (2218) DAYS credit for time served and all additional credits he has received while in custody on this charge since 2016 to include, but not limited to, good time credits, work credits, and educational credits.

The AGGREGATE TOTAL sentence is TWENTY-FOURT (24) YEARS MAXIMUM and a MINIMUM PAROLE ELIGIBILITY OF NINE (9) YEARS.

DATED this _____day of _____, 2022.

_____
JACQUELINE BLUTH
DISTRICT COURT JUDGE