

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RYAN WILLIAMS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 88418-00A  
**FILED**

JUN 22 2022

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER AFFIRMING IN PART AND REVERSING IN PART WITH A LIMITED REMAND TO CORRECT THE JUDGMENT OF CONVICTION*

Ryan Williams appeals from a judgment of conviction, pursuant to a jury verdict, of robbery with use of a deadly weapon, burglary with possession of a firearm or deadly weapon, causing the death of another by driving a vehicle while under the influence of methamphetamine, eluding or flight from a police officer resulting in death, and reckless driving. Second Judicial District Court, Washoe County; Kathleen M. Drakulich, Judge.

At approximately 6:00 a.m. on February 22, 2020, Adrianna Norman, Zane Kelly, and Williams arrived at Bob & Lucy's tavern in Williams's truck.<sup>1</sup> Upon arrival, Kelly exited the truck and entered Bob & Lucy's. He walked in a loop around the small gambling area within the tavern wherein Steven Sims, a Bob & Lucy's regular, sat gambling at a slot machine. Kelly then walked toward the exit.

As Kelly was leaving the tavern, he briefly stopped outside the last set of mostly-glass doors, saw Williams standing just outside the doors, and made a backwards gesture with his thumb. Kelly then exited and Williams immediately entered and walked to the bathroom. After just a

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<sup>1</sup>We recite the facts only as necessary for our disposition. We note that the incidents inside the tavern were recorded and the video was played to the jury.

brief period in the bathroom, Williams walked a loop around the gambling area where Sims sat and at one point looked directly in Sims's direction. Williams then exited Bob & Lucy's and returned to the truck where Norman and Kelly had remained.

Within a minute of Williams's return, Norman left the truck and walked into Bob & Lucy's. She approached Sims and sat in the chair next to him. Norman told Sims something along the lines of "I told you I was gonna come" and then accused him of stealing her children's Xbox and tablet.<sup>2</sup> For the next several minutes, Sims tried convincing Norman that he did not do what she had accused him of and, at times, their conversation became heated. At one point, Sims noticed that Norman had a handgun on her, and Norman pulled the gun out and showed it to Sims.

Meanwhile, Kelly exited the truck, entered Bob & Lucy's, and again walked a loop around where Norman and Sims were arguing. He then exited the tavern, returned to the truck, appeared to exchange some words with Williams who remained in the truck, and proceeded to go back into Bob & Lucy's. Kelly again attempted to enter the gambling area, but this time the bartender hailed Kelly down and told him to leave, which Kelly did.

Two minutes later, Williams entered Bob & Lucy's and walked immediately toward Norman and Sims. Norman and Williams made eye contact and Williams nodded to Norman. Williams had one hand concealed in his sweatshirt pocket. Sims noticed sharp lines protruding from that pocket. Sims then turned to Williams, who he had met once before and who he knew was Norman's ex-boyfriend, and said something to the effect of "you know I wouldn't take from [Norman's] children." Williams responded by

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<sup>2</sup>Sims and Norman had lived together in Norman's home in Winnemucca, Nevada for some time before Sims left without notifying her and blocking communications from her.

immediately moving the concealed hand in his pocket while saying "You know how I roll. Let's ride" and "Let's go."

Norman got up from her chair and walked away. Williams reached past Sims, pushed the cash-out button on the slot machine, and grabbed and pocketed Sims's gaming voucher. Williams and Sims then walked together towards the exit. As they approached the exit, Williams opened the door and made gestures towards the outside. Sims, however, informed Williams and Norman that he could ask the bartender—his current roommate—to give him some cash that he could in turn give them. After some time, Williams and Norman agreed to let Sims speak to the bartender. Williams then exited Bob & Lucy's but immediately returned, reached into Norman's jacket, pulled out her concealed gun, exited Bob & Lucy's again, and got back into his truck.

Sims then spoke with the bartender, informing him that Norman and Williams were trying to rob him. The bartender called the police and, when they arrived, Williams tried evading the police by leading them on a high-speed chase in his truck. During the subsequent chase, Williams drove the wrong way on Interstate 80, striking another vehicle head on and killing the driver as a result.

The State subsequently charged Williams with robbery with the use of a deadly weapon, attempted robbery with the use of a deadly weapon, burglary with possession of a firearm or deadly weapon, murder with use of a deadly weapon, causing the death of another by driving a vehicle while under the influence of methamphetamine, eluding or flight from a police officer resulting in death, and reckless driving. After a 14-day jury trial, the jury convicted him on almost all of the charges but not for murder or the weapon's enhancement for robbery. On appeal, Williams argues that the district court improperly admitted prior bad act evidence, that the jury

lacked sufficient evidence to convict him on his robbery and burglary charges, and that the judgment of conviction contains clerical errors and/or other errors requiring this court to reverse and remand for correction. We address each argument in turn.

*The district court properly admitted prior act evidence*<sup>3</sup>

In November or December 2019, Norman introduced Williams to Sims. The three spent the entire day together eating, gambling, and shopping. Throughout the day, Sims noticed that Williams carried a gun on his person. At one point, when the parties were sitting in a car together, Williams pulled the gun out and placed it on the center console. Sims thereafter commented on the gun, and he and Williams discussed the gun.

Prior to trial, the State requested a *Petrocelli*<sup>4</sup> hearing to determine the admissibility of this evidence. In its motion, the State claimed that Williams's prior incident carrying a gun was relevant for the non-propensity purposes of (1) explaining Williams's "You know how I roll" statement, (2) showing Williams's intent in entering Bob & Lucy's, and (3) proving the "force or fear" element of robbery.<sup>5</sup> The district court held a hearing on the matter. After reviewing the relevant testimony from the preliminary hearing and hearing arguments from counsel, the court determined that the State could present the evidence at trial.

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<sup>3</sup>Williams limits this argument to his robbery charge. We will thus only consider this argument as it pertains to his robbery charge. See *Greenlaw v. United States*, 554 U.S. 237, 243 (2008) (noting that courts follow the "principle of party presentation," which requires the litigants to frame the issues).

<sup>4</sup>*Petrocelli v. State*, 101 Nev. 46, 692 P.2d 503 (1985).

<sup>5</sup>The State also sought to introduce this as rebuttal evidence, which the district court approved. But it appears the evidence was never offered for that purpose at trial, and Williams does not argue that point on appeal.

The district court found that the prior gun possession by Williams was relevant to the robbery charge. According to the court, Williams's gun possession was relevant to the "force or fear" element of robbery "because it provide[d] context" to Williams's "You know how I roll" statement that he made to Sims in Bob & Lucy's. The court further found that Williams's statement referred to his prior gun possession because he and Sims had only ever met once at which time Williams was carrying a gun.

The district court then found that the probative value of Williams's prior gun possession was not substantially outweighed by the danger of unfair prejudice. The court found that Williams's gun possession had "extremely high" probative value because it "directly explain[ed] a statement made by Mr. Williams during the alleged robbery that goes to an element of [robbery]." The court noted that Williams's prior gun possession was prejudicial because "it could be considered for the improper inference that he is violent, or that he always carries a gun on his person." This was exacerbated, the court reasoned, by the fact that officers only uncovered one gun which appeared to be the one Norman had shown Sims.<sup>6</sup> Nonetheless, the court found that, on balance, the probative value of his gun possession was not *substantially* outweighed by the danger of unfair prejudice.

The State then presented the evidence about the prior gun possession at trial. After the State finished presenting the information, the district court orally instructed the jury that evidence of Williams's prior gun possession was

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<sup>6</sup>The district court also noted that "Williams' prior handgun possession is not tied to a criminal event or act; instead, Mr. Sims' testimony only reveals that Mr. Williams carried a gun on his person on one prior occasion." It appears that the court reasoned that because Williams's gun possession itself was not wrongful or tied to any particularly bad behavior (just lawful possession), there was consequently less prejudice.

not to be considered for purposes of proving character or action in conformity therewith on February 22nd, 2020. However, such evidence may be considered in determining intent or providing conte[x]t to statements allegedly made by Mr. [Williams] on February 22nd, 2020, and in determining the element of Robbery and Attempted Robbery that the offense was committed by means of force or violence or fear of injury immediate or future. You may consider this evidence only against Mr. Williams, not against Ms. Norman.

As with all evidence, it is up to you, the jury, to decide whether to believe all, none, or part of the testimony and the weight to give it.

The court then gave this instruction again in written form to the jury prior to the jury's deliberations.<sup>7</sup>

Williams argues that the district court improperly admitted this evidence because his "You know how I roll" statement needed no context.<sup>8</sup> Furthermore, he suggests, the "onetime event" of his prior gun possession could not give that statement context, or, if it could, it would be unfairly prejudicial because "[b]asing an inference on an interaction that occurred on one day artificially inflates any one event from which an inference may be

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<sup>7</sup>The court also gave the jury a more general instruction that the jury must not consider any evidence the court said was excluded, stricken, or had instructed the jury to disregard.

<sup>8</sup>Although Williams argues that his "You know how I roll" statement did not need clarification, he does not explain why that is the case. We therefore need not consider this argument. See *Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (explaining that this court need not consider an appellant's argument that is not cogently argued or lacks the support of relevant authority). More importantly, the question is not whether his statement *needed* clarification but whether it had *some tendency* to prove a non-propensity purpose. See *Bigpond*, 128 Nev. at 117, 270 P.3d at 1250; see also NRS 48.015.

drawn.” The State argues that the district court properly admitted evidence of Williams’s prior gun possession incident to give context to the statement Williams made in Bob & Lucy’s and to satisfy the “force or fear” element of the robbery charge.

We review a district court’s decision to admit prior bad act evidence for an abuse of discretion. *Newman v. State*, 129 Nev. 222, 231, 298 P.3d 1171, 1178 (2013). We must give “great deference” to the district court’s discretionary authority to admit this type of evidence. *Braunstein v. State*, 118 Nev. 68, 72, 40 P.3d 413, 416 (2002). We will thus reverse the district court’s decision only if it constitutes manifest error. *Fields v. State*, 125 Nev. 785, 789, 220 P.3d 709, 712 (2009); *see also Manifest Error, Black’s Law Dictionary* (11th ed. 2019) (“An error that is plain and indisputable, and that amounts to a complete disregard of the controlling law or the credible evidence in the record.”).

Nevada law prohibits the admission of evidence of a person’s character, trait, or “other crimes, wrongs or acts” to show “that the person acted in conformity therewith.” NRS 48.045(1), (2). But a party can admit such evidence for any non-propensity purpose, including to show “motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” NRS 48.045(2). To ensure that prior bad act evidence is not misused, the State must request a hearing and establish that: “(1) the prior bad act is relevant to the crime charged and for a purpose other than proving the defendant’s propensity, (2) the act is proven by clear and convincing evidence, and (3) the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice.”<sup>9</sup> *Bigpond v.*

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<sup>9</sup>Williams does not argue that his prior gun possession was not proven by clear and convincing evidence and, therefore, we need not reach the issue. *See Greenlaw*, 554 U.S. at 243.

*State*, 128 Nev. 108, 117, 270 P.3d 1244, 1250 (2012). And, if admitted, the district court must give a limiting instruction to the jury when it is introduced as well as in the court's final charge to the jury.<sup>10</sup> *Tavares v. State*, 117 Nev. 725, 733, 30 P.3d 1128, 1133 (2001), *holding modified by Mclellan v. State*, 124 Nev. 263, 182 P.3d 106 (2008).

First, the district court did not manifestly err in determining that Williams's prior gun possession was relevant to his robbery charge for a non-propensity purpose. The court found that Williams's gun possession was relevant to the "force or fear" element of robbery "because it provide[d] context" to Williams's "You know how I roll" statement that he made to Sims in Bob & Lucy's. And the State was permitted to offer the evidence for *any* relevant non-propensity purpose, *see* NRS 48.045(2), and we will affirm the district court even if it reached the right conclusion using the wrong reasoning. *See Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) ("If a judgment or order of a trial court reaches the right result, although it is based on an incorrect ground, the judgment or order will be affirmed on appeal."); *see also Rhymes v. State*, 121 Nev. 17, 22, 107 P.3d 1278, 1281 (2005) (recognizing that if the record is sufficient appellate courts can determine the admissibility of bad act evidence even if a *Petrocelli* hearing was not held).

Williams's prior gun possession has some tendency to make it more probable that an objectively reasonable person would find Williams used "force or fear" to take Sims's property. *See* NRS 48.015 (defining "relevant evidence"); NRS 200.380 (defining robbery). Indeed, Williams's prior gun possession tends to make more probable that Williams intended to

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<sup>10</sup>Williams does not argue that the district court failed to give the requisite jury instructions. *See Greenlaw*, 554 U.S. at 243. Regardless, as discussed both *supra* and *infra*, the court properly instructed the jury.



threaten Sims, that an objectively reasonable person in Sims's position would know Williams was threatening Sims, and that Williams had the means to carry out that threat. See NRS 48.045(2) (listing knowledge and intent as permissible non-propensity purposes); *Mangerich v. State*, 93 Nev. 683, 685, 572 P.2d 542, 543 (1977) (defining the "force or fear" element of robbery as an objective inquiry); *Hayden v. State*, 91 Nev. 474, 476, 538 P.2d 583, 584 (1975) (noting that a "threatening word or gesture" may satisfy the force or fear element of robbery). Thus, the district court did not manifestly err in determining that the State presented this evidence for a relevant non-propensity purpose.

Second, the district court did not manifestly err in determining that the probative value of Williams's prior gun possession was not substantially outweighed by the risk of unfair prejudice. Williams's prior gun possession is highly probative because it makes it much more likely that he intended his "You know how I roll" statement as a threat and that an objective person in Sims's situation would perceive it that way, which satisfies an essential element of robbery. See *Probative Value*, *Black's Law Dictionary* (11th ed. 2019) ("The degree to which one fact tends to make probable another posited fact."). However, there is also a danger of unfair prejudice because introducing the evidence could lead the jury to assume that simply because Williams carried a gun previously, he must have carried the gun at Bob & Lucy's or was a person of questionable character. But we will not second guess the district court's determination that, on balance, the probative value of the evidence was not *substantially* outweighed by the danger of unfair prejudice. Therefore, we conclude that the district court did not manifestly err in determining that the danger of unfair prejudice did not substantially outweigh its probative value.

*The jury had sufficient evidence to convict Williams of burglary and robbery*

Williams next argues that the jury lacked sufficient evidence to convict him of burglary and robbery. When assessing such a claim, we ask only “whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Rose v. State*, 123 Nev. 194, 202, 163 P.3d 408, 414 (2007) (quoting *Origel-Candido v. State*, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998)). We will not weigh the evidence or make credibility determinations. *McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992). And circumstantial evidence alone may support a conviction. *Hernandez v. State*, 118 Nev. 513, 531, 50 P.3d 1100, 1112 (2002). Thus, there is insufficient evidence only if the State “has not produced a minimum threshold of evidence upon which a conviction may be based.” *State v. Walker*, 109 Nev. 683, 685, 857 P.2d 1, 2 (1993).

*The jury had sufficient evidence to convict Williams of burglary*

Williams claims that there was insufficient evidence to prove beyond a reasonable doubt that at the time he entered Bob & Lucy’s he had specific intent to commit robbery. He claims that the “evidence established that it was a coincidence that Mr. Sims was at Bob & Lucy’s when Mr. Williams arrived so that Mr. Kelly could attempt to locate a friend.” Thus, “[b]ecause the State did not establish any specific intent on the part of Mr. Williams,” this court, he claims, should reverse the judgment of conviction.

To convict Williams of burglary, the State had to show that Williams (1) unlawfully entered or remained (2) in a business structure (3)

with intent<sup>11</sup> to commit grand or petit larceny,<sup>12</sup> assault<sup>13</sup>, battery, or any felony. See NRS 205.060(1)(b). Burglary is a specific intent crime. *Hubbard v. State*, 134 Nev. 450, 456, 422 P.3d 1260, 1266 (2018). And the State must show that the defendant had that specific intent (to commit larceny, assault, or battery) upon entering or remaining in the building. See *Carr v. Sheriff, Clark Cty.*, 95 Nev. 688, 689-90, 601 P.2d 422, 423 (1979); see also *State v. Adams*, 94 Nev. 503, 505, 581 P.2d 868, 869 (1978). The State may prove such intent through circumstantial evidence. See *Sharma v. State*, 118 Nev. 648, 659, 56 P.3d 868, 874 (2002) (“[I]ntent can rarely be proven by direct evidence of a defendant’s state of mind, but instead is inferred by the jury from the individualized, external circumstances of the crime, which are capable of proof at trial.”).<sup>14</sup>

Here, viewing the evidence in the light most favorable to the prosecution, a rational juror could find beyond a reasonable doubt that Williams intended to commit an assault, battery or larceny when he entered or remained in Bob & Lucy’s. Williams entered the tavern—a place Sims frequented—twice that morning. The first time he entered Bob & Lucy’s,

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<sup>11</sup>As Williams only argues that the jury lacked sufficient evidence regarding his intent, we decline to consider the other elements of this offense. See *Greenlaw*, 554 U.S. at 243.

<sup>12</sup>Petit larceny requires (1) intentionally (2) stealing, taking, or carrying away, (3) another person’s property under \$650. NRS 205.240(1).

<sup>13</sup>Assault requires either (1) attempting to use physical force against another person or (2) intentionally placing another in reasonable apprehension of immediate bodily harm. NRS 200.471(1)(a).

<sup>14</sup>See also *Moore v. State*, 122 Nev. 27, 36, 126 P.3d 508, 513 (2006) (“[W]here the intent is material, the intent need not be proved by positive or direct evidence, but may be inferred from the conduct of the parties and the other facts and circumstances disclosed by the evidence.”).

Williams walked a loop around the small gambling area where Sims sat—something Kelly, who rode with Williams to the bar, had just done. And when Williams performed that loop, he looked directly at Sims. Williams then exited Bob & Lucy's and entered the truck where both Kelly and Norman had remained. The bartender testified that Williams and Kelly seemed to be canvassing the small gambling area, and a rational juror could agree.

Within a minute of Williams exiting Bob & Lucy's, Norman exited the truck and entered Bob & Lucy's. Upon entering, she walked directly towards Sims and sat down next to him. She immediately accused him of stealing her children's property and the conversation became heated. At some point, Sims noticed Norman carried a firearm, and Norman subsequently pulled it out and showed it to Sims.

Six minutes after Norman walked into Bob & Lucy's, Kelly again walked in and circled around Norman and Sims while they argued. Kelly then exited Bob & Lucy's, appeared to exchange words with Williams outside, and then again entered Bob & Lucy's.<sup>15</sup> This time, however, when Kelly walked into the gambling area, the bartender flagged Kelly down and threw him out. Kelly then went back to the truck.

Williams entered Bob & Lucy's less than two minutes later and immediately approached Sims and Norman. Sims noticed Norman and Williams make eye contact, noticed Williams nod to Norman, noticed that Williams had one hand concealed in his front pocket, and noticed sharp lines within that pocket. Sims testified that when he noticed Williams, he turned to him and said something to the effect of "you know I wouldn't take from

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<sup>15</sup>Bob & Lucy's has two sets of doors that must be opened prior to entry. Before entering the second set of doors, Kelly appeared to peer within and remain outside for a few seconds rather than immediately enter.

[Norman's] children." But Williams only responded with "You know how I roll" and "Let's go" and "Let's ride" while making movement with the hand concealed in his front pocket. Sims testified that he was afraid Williams might harm him.

Williams then reached beside Sims, pushed the button on the slot machine apparently to get Sims's cash-out voucher ticket, and grabbed and pocketed the voucher. Williams then walked with Sims towards the exit, and, once at the door, opened it and appeared to gesture for Sims to come outside. Before he could get outside, Sims convinced Norman and Williams that he could obtain some money for the Xbox from the bartender (his roommate). Williams quickly exited but just as quickly returned, approached Norman, reached within her jacket, and pulled out the gun she had concealed, and then exited Bob & Lucy's. From the moment Williams walked into the gambling area to the moment Williams reached the exit of Bob & Lucy's, only one minute passed.

In short, viewing the facts in the light most favorable to the prosecution, when Williams entered Bob & Lucy's for the second time, he would have known why Norman had entered Bob & Lucy's. He would have known that Norman entered Bob & Lucy's armed with a handgun. He would have known that Sims was still inside and likely still communicating with Norman. And once Williams entered, he made a direct path towards Sims. And his first words to Sims could have reasonably been interpreted as a threat of harm based upon Sims's testimony that Williams carried a gun on the only other occasion they had met and that on this occasion Williams had one hand concealed in a pocket in which Sims could see sharp lines protruding. Williams's language, gestures, and actions in Bob & Lucy's showed that he wanted Sims to come with him outside the tavern. But the only thing keeping that from happening was Sims's statements that he could

get them some money within 15 minutes. And Williams and Norman were charged jointly by directly committing the offenses at the tavern or by aiding and abetting each other or participating in a conspiracy. Therefore, the jury was instructed that the acts of each could be imputed to the other if certain predicates were found. Williams does not challenge the instructions as given. We also note that Williams raced away from the scene when the police were called. Viewing these facts in the light most favorable to the prosecution, as we must, a rational juror could find that Williams entered or remained in Bob & Lucy's with intent to commit assault, battery, or larceny. Accordingly, we conclude that sufficient evidence supports the burglary conviction.

*The jury had sufficient evidence to convict Williams of robbery*

William next argues that the jury lacked sufficient evidence to convict him of robbery because the State did not prove that he took Sims's gaming voucher through force or fear. To convict Williams of robbery, the State had to prove that Williams committed (1) an unlawful taking of personal property (2) from the person of another or in the person's presence (3) against his or her will (4) through "force or violence or fear of injury, immediate or future, to his or her person."<sup>16</sup> NRS 200.380. To prove "fear," the prosecution only needed to provide evidence that a reasonable person in Sims's circumstances would have feared present or future injury. See *Mangerich*, 93 Nev. at 685, 572 P.2d at 543 (stating the standard is an objective one); see also *Hayden*, 91 Nev. at 476, 538 P.2d at 584 ("If the fact be attended with circumstances of terror, such threatening word or gesture

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<sup>16</sup>As Williams only argues that the jury lacked sufficient evidence regarding the "force of fear" element of robbery, we do not consider whether the jury had sufficient evidence of the other elements of this charge. See *Greenlaw*, 554 U.S. at 243.

as in common experience is likely to create an apprehension of danger and induce a man to part with his property for the safety of his person, it is robbery. It is not necessary to prove actual fear, as the law will presume it in such a case.” (internal quotations omitted)).<sup>17</sup>

Here, when viewing the evidence in the light most favorable to the prosecution, a rational juror could find that a reasonable person in Sims’s position would have feared injury. Indeed, Norman approached Williams with a gun accusing him of stealing her children’s tablet and Xbox, and this conversation became heated. Further, Williams, who Sims recognized as Norman’s ex-boyfriend, walked directly to Norman and Sims. Sims noticed Williams make eye contact with Norman and witnessed Norman nod to Williams. When Sims tried to explain to Williams that he would never take the items he was accused of taking, Williams responded with “You know how I roll. Let’s ride.” Sims testified that Williams had one hand concealed in a pouch in his sweatshirt and that he could see sharp lines protruding from that pouch. And when Williams spoke, he made movements with his concealed hand.<sup>18</sup> Williams then reached beside Sims, pushed the button for the gaming voucher, and grabbed and pocketed the voucher. Under these circumstances, a rational juror could conclude that a reasonable

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<sup>17</sup>See also *Leonard v. State*, 117 Nev. 53, 77, 17 P.3d 397, 412 (2001) (“[A] robbery may be shown where a defendant simply takes advantage of the terrifying situation he or she created and flees with the victim’s property.” (internal quotation marks and alterations omitted)).

<sup>18</sup>Sims testified that he feared that he would be harmed at this point in part due to his prior experience with Williams. While Williams contends this is impermissible character evidence, we disagree, as noted. Moreover, the district court admitted the evidence, and when assessing a sufficiency of the evidence claim, we must consider all evidence admitted at trial, regardless of whether it was admitted erroneously. See *Stephans v. State*, 127 Nev. 712, 721, 262 P.3d 727, 734 (2011).

person in Sims's situations would have feared injury. Consequently, we conclude that the jury had sufficient evidence to convict Williams of robbery. *The judgment of conviction must be corrected*

Both Williams and the State contend that the operative judgment of conviction contains two errors that should be corrected. First, while the jury only convicted Williams of robbery, his judgment of conviction states that he was convicted of robbery with the use of a deadly weapon. Second, his judgment of conviction states that Williams was convicted of reckless driving, but it also notes that the court would not impose a sentence for that charge because it was a lesser-included offense of a crime for which he had already been sentenced.


As to the first contention, clerical mistakes in judgments of conviction can be corrected at any time. *See* NRS 176.565. Since the jury did not convict Williams of the deadly weapon enhancement for robbery, that portion of the judgment of conviction must be reversed, remanded, and corrected by the district court consistent with the jury's verdict.

Regarding the second contention, if a defendant is convicted of a crime, he or she cannot also be convicted of lesser-included or merged offenses. *See Hewitt v. State*, 113 Nev. 387, 391, 936 P.2d 330, 333 (1997), *overruled on other grounds by Martinez v. State*, 115 Nev. 9, 974 P.2d 133 (1999). If this error occurs, the proper recourse is to reverse and remand for the district court to "remove the conviction from [the defendant's] record." *Id.* at 391 n.4, 936 P.2d at 333 n.4. This is required even if the judgment merely states an erroneous conviction without imposing a sentence. *Id.* at 391, 936 P.2d at 333. Because the district court concluded that reckless driving was a lesser included offense of eluding or flight from a police officer resulting in death or merged with that offense, and the State agrees, the court erred in noting Williams's conviction for reckless driving in the



judgment of conviction. *See Kelley v. State*, 132 Nev. 348, 351, 371 P.3d 1052, 1054 (2016). Thus, this portion of the judgment of conviction must be corrected. Accordingly, we

ORDER the judgment of conviction AFFIRMED IN PART and REVERSED IN PART AND REMAND to the district court for the limited purpose of correcting the judgment of conviction.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Kathleen M. Drakulich, District Judge  
Washoe County Public Defender  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk