No. 25-

IN THE

# Supreme Court of the United States

MATTHEW WOOD,

*Petitioner,*

*v.*

STATE OF NEW MEXICO,

*Respondent.*

**ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW MEXICO**

# PETITION FOR A WRIT OF CERTIORARI

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## QUESTIONS PRESENTED FOR REVIEW

Where a defendant is not convicted of the predicate offense, does a conviction for first-degree felony murder comport with due process under the Fourteenth Amendment?

Where there is no evidence that the defendant intended to kill and he is not convicted of the predicate offense, does life imprisonment for a 20-year-old under the felony murder doctrine offend the proportionality principle of the Eighth Amendment?

## RELATED PROCEEDINGS

The related proceedings are as follows:

(1) the trial proceedings: *State v. Wood*, No. D-202-CR-2020-00847, Second Judicial District Court, Bernalillo County, New Mexico

(2) the appellate proceedings: *State v. Wood*, No. S-1-SC-40305, Supreme Court of New Mexico

## TABLE OF CONTENTS

*Table of Contents*

## TABLE OF APPENDICES

## TABLE OF CITED AUTHORITIES

*Page*

**Cases**

*Page*

*Cited Authorities*

*Page*

Petitioner Matthew H. Wood, by and through counsel of record, Scott M. Davidson, hereby respectfully submits this petition for a writ of certiorari to the New Mexico Supreme Court.

## OPINIONS BELOW

The New Mexico trial court convicted Petitioner Wood of felony murder and several lesser offenses. *See* Appendix A at 1a, 25a-28a. The New Mexico trial court issued an order addressing, *inter alia*, post-trial issues regarding the felony murder count. *See* Appendix at 30a-62a. The Supreme Court of New Mexico affirmed Petitioner Wood's conviction in an unpublished decision. *See* Appendix A at 1a-24a.

## STATEMENT OF JURISDICTION

The New Mexico Supreme Court issued its decision affirming Petitioner Wood's conviction on June 9, 2025. *See* Appendix A at 1-24a. A timely petition for writ of certiorari must be filed in this Court on or before September 8, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. § 1252(1).

## CONSTITUTIONAL PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution precludes States from "depriv[ing] any person of life, liberty, or property, without due process of law."

The Eighth Amendment to the United States Constitution prohibits cruel and unusual punishments.

## STATEMENT OF THE CASE

Under New Mexico's felony-murder statute, Petitioner Wood was convicted of first-degree murder, a capital felony offense, and sentenced to life in prison. *See* Appendix B 26a-27a. He was also convicted of several other offenses for which he was sentenced to an additional period of 14½ years, to be served consecutively to the life sentence. *See id.* 26a-28a.

Petitioner Wood was not yet 21 years of age at the time of the offenses at issue. As mandated by New Mexico law, he "will not be eligible for parole for these crimes until he has served thirty (30) years in prison." *Id.* 27a.

The life sentence and first-degree murder conviction were the result of a jury trial in a New Mexico state court on charges of armed robbery, conspiracy to commit armed robbery, shooting at or from a motor vehicle, aggravated battery, and aggravated assault. *See id.* 26a. Insofar as Petitioner Wood's certiorari petition focuses on the first-degree murder count, he provides the following summary of facts relevant to this issue alone. The facts deemed to have been found by the jury under applicable appellate standards of review and legal standards for post-trial motions are set forth in detail in the appendices. *See* Appendix A 2a-5a; Appendix C 33a-60a. Although Petitioner Wood disputes many of the facts relied on by the trial court and the state supreme court, they are assumed to be true for purposes of this certiorari petition.

On September 12, 2019, Noah Tafoya, a 17-year-old, met Everton McNab and Petitioner, who was 20 years old, to illegally sell over social media a firearm he illegally

possessed. Tafoya's friend, Jorden Chavez, accompanied him. Tafoya was killed during a botched robbery by McNab.

At dusk, Petitioner and McNab drove in Petitioner's Toyota Camry to an apartment complex in Albuquerque; they parked facing out. Petitioner got out of the Camry, McNab got in the driver's seat, and Petitioner walked away from it briefly. Soon thereafter, Chavez drove Tafoya in his Mercedes Benz to meet McNab; they parked adjacent to the Camry, also facing out. Tafoya got out of the Mercedes and got into the front passenger seat of the Camry.

After a few minutes, while seated in the driver's seat of the Mercedes, Chavez noticed Tafoya's hands were up, facing out; he suspected that Tafoya was being robbed. Then Chavez's driver-side door was opened and he felt the sharp edge of a knife against his neck; he could only identify the knife-holder as being white, with a scruffy beard. At trial, Chavez was unable to identify Petitioner as being the person who held him at knife point; but the jury's verdict is presumed to indicate that it was Petitioner who held a knife to his neck.

Chavez felt his pockets being patted down by Petitioner. Chavez then told him to just take his Mercedes. When Petitioner backed away from the open car door, Chavez fired two gunshots at Petitioner.

Chavez then felt several gunshots, one of which knocked him out of the driver's seat. It was not clear which direction Chavez was being shot from or who shot him. He climbed back in his car and sped away. As he drove away, he heard gunshots, several of which struck his Mercedes.

McNab was also shot, and Tafoya was killed during the chaos. The medical examiner testified that Tafoya was shot in the abdomen from several inches away and was also shot in the thigh from an intermediate distance. The medical examiner was not able to determine the order of the gunshot wounds to Tafoya. The abdomen gunshots hit Tafoya's bowel and kidney, which caused a large loss of blood. The bullet to his thigh hit his femur, split, and exited the thigh. The medical examiner testified that it was easy to determine that the cause of Tafoya's death was homicide because he was "shot right in the stomach," which was "more immediately fatal" than the shot to the leg.

The jury was instructed that it could find Petitioner Wood guilty of first-degree murder, under New Mexico's felony-murder law, "even though [Petitioner Wood] did not commit the murder," if the State proved the following beyond a reasonable doubt:

> 1. [Petitioner Wood] intended that another person commit the felony of armed robbery;
>
> 2. Another person committed or attempted to commit the felony of armed robbery under circumstances or in a manner dangerous to human life;
>
> 3. [Petitioner Wood] helped, encouraged, or caused the felony of armed robbery to be committed or attempted;
>
> 4. During the commission or attempted commission of the felony, Noah Tafoya was killed;

> 5. [Petitioner Wood] helped, encouraged, or caused the killing to be committed;
>
> 6. [Petitioner Wood] intended the killing to occur or knew that [he] was helping to create a strong probability of death or great bodily harm; and
>
> 7. This happened in New Mexico on or about the 12th day of September 2019.

The jury returned a guilty verdict on the first-degree murder count and several lesser offenses.

On the armed robbery count, the jury was instructed that it could not return a guilty verdict unless the prosecution proved beyond a reasonable doubt that Petitioner Wood "took and carried away a firearm from Noah Tafoya or from his immediate control intending to permanently deprive Noah Tafoya of that item." It was also instructed that a guilty verdict on this count would also require a finding that the prosecution proved beyond a reasonable doubt that Petitioner Wood was "armed with a firearm" and took Noah Tafoya's firearm "by force or violence."

The jury deadlocked on the armed robbery count. But it also answered "yes" on a special verdict form asking whether it found unanimously "beyond a reasonable doubt that a firearm was used in the commission of armed robbery, as charged in Count 2." Count 2 charged Petitioner Wood with armed robbery.

The jury was instructed that it could find Petitioner Wood guilty of a crime even though he did not do the acts

constituting the crime if it found beyond a reasonable doubt that he "intended that another person commit the crime," "another person committed the crime," and Petitioner Wood "helped, encouraged, or caused the crime to be committed." The jury was instructed that this instruction did not apply to the first-degree felony murder charge.

After the jury trial, Petitioner Wood was convicted of first-degree murder, conspiracy to commit armed robbery, shooting at or from a motor vehicle, and aggravated assault. *See* Appendix B at 25a-28a.

McNab was charged with second-degree murder, manslaughter, first-degree murder, armed robbery, conspiracy to commit armed robbery, shooting at or from a motor vehicle, and aggravated battery. *See State v. McNab*, No. D-202-CR-2020-846 (2nd Jud. Dist. Ct., March 16, 2020) (Grand Jury Indictment).

McNab pled no contest to second-degree murder under an agreement in which the parties agreed "based on this plea agreement, the Court has total jurisdiction of 16 years," and all remaining charges were dismissed. *State v. McNab*, No. D-202-CR-2020-846 (2nd Jud. Dist. Ct., March 4, 2022) (Plea and Disposition Agreement). McNab was sentenced to 16 years in prison, based on second-degree murder, a firearm enhancement, and a finding that it was a serious violent offense. *State v. McNab*, No. D-202-CR-2020-846 (2nd Jud. Dist. Ct., March 4, 2022) (Judgment).

## REASONS FOR GRANTING THE PETITION

Three inter-related reasons support issuance of a writ of certiorari in Petitioner Wood's case.

### 1. The jury did not convict Petitioner Wood of the predicate felony required for first-degree felony murder.

The state's theory in support of its prosecution of Petitioner Wood for first-degree murder was not that Petitioner Wood committed "willful, deliberate and premeditated killing" of Tafoya. Instead, the State's theory was that Tafoya was killed in the commission of armed robbery, and that Petitioner Wood is punishable for killing Tafoya under the felony-murder doctrine.

New Mexico law defines first-degree felony murder as "the killing of one human being by another without lawful justification or excuse, by any of the means by which death may be caused . . . *in the commission of or attempt to commit any felony*." NMSA 1978, § 30-2-1 (emphasis added). Under Section 30-2-1, a conviction of armed robbery could constitute a predicate for felony murder.

But Petitioner Wood was not convicted of armed robbery. The jury deadlocked on armed robbery, the only felony of which he was charged that could have served as a legitimate predicate for felony murder.

Under the collateral-felony rule, Petitioner Wood's convictions for aggravated battery and aggravated assault could not permissibly be the predicate for felony murder. *See Campos v. Bravo*, 2007-NMSC-021, ¶10, 141 N.M.

801 ("[I]t is clearly not possible to commit second-degree murder without also committing *some form* of aggravated assault or aggravated battery. Thus, aggravated assault and aggravated battery may never be used as predicate felonies to felony murder even though some statutory elements of those two crimes differ from second-degree murder.").

In addition, but for different reasons, his conviction for conspiracy to commit armed robbery could not form the basis for a felony murder conviction. Felony murder in New Mexico law "serves to elevate second-degree murder to first degree when the murder occurs *during the commission of a dangerous felony*," *Campos*, 2007-NMSC-021, ¶9, and conspiracy to commit armed robbery does not satisfy this requirement.

New Mexico case law makes it abundantly clear that liability for felony murder is predicated on proof of the underlying felony. Decades ago, when the New Mexico Supreme Court examined the constitutionality of New Mexico's felony murder statute, it held that the New Mexico Legislature permissibly determined that "a killing *in the commission or attempted commission of a felony* is deserving of more serious punishment than other killings in which the killer's mental state might be similar but the circumstances of the killing are not as grave." *State v. Ortega*, 1991-NMSC-084, ¶33, 817 P.2d 1196 (emphasis added). Because New Mexico's felony-murder statute requires

> both causation attributable to the defendant (who may be acting through an accomplice) and an intent to kill (or to do an act greatly

> dangerous to the lives of others or with knowledge that the act creates a strong probability of death or great bodily harm), [it] is a valid exercise of the legislature's authority to prescribe serious punishment for killings committed with the requisite criminal intent *and that occur during the commission or attempted commission of a first degree or other inherently dangerous felony.*

*Ortega*, 1991-NMSC-084, ¶35 (emphasis added).

In a lengthy and thoughtful partial dissent/partial concurrence in *Ortega*, New Mexico Supreme Court Justice Joseph Baca clarified that a valid application of the felony-murder doctrine requires that the defendant commit or attempt to commit the predicate felony: "The perpetrator must intend to commit the underlying felony; that felony must be serious . . . and *the state must carry its burden to prove that felony.*" *Id.*, ¶84 (Baca, J., partial dissent/partial concurrence) (emphasis added).

Justice Baca's defense of the constitutionality of New Mexico's felony-murder doctrine leans heavily on the requirement that there be proof of the underlying predicate felony:

> In that sense felony murder is not a strict liability crime. The legislature has decided that an individual *who attempts to commit a felony* and who takes a life *during the commission of that felony* has committed first-degree murder. The statute provides notice to such an individual that, should he choose *to participate*

> *in a serious felony*, and should someone be killed, the felon will be subject to criminal liability for first degree murder.

*Ortega*, 1991-NMSC-084, ¶84 (Baca, J., partially dissent/partial concurrence) (emphases added). Justice Baca again noted, "[w]hen the gravity of a killing committed *during a first degree or inherently dangerous felony* is considered, I believe it is beyond doubt that serious punishment is within the legislature's prerogative and passes eighth amendment scrutiny." *Id.* 86 (emphasis added). Moreover, Justice Baca's approving discussion of Iowa precedent further corroborates the necessity of proof of the underlying predicate offense:

> [Iowa courts] have determined that felony murder *requires proof of a defendant's participation in an underlying felony* and of a murder, with malice, committed during the felony. *State v. Ragland*, 420 N.W.2d 791, 793 (Iowa 1988). The state does not have to prove, however, that the accused possessed malice aforethought, *as long as he participated in the felony* and the cofelon possessed malice.

*Ortega*, 1991-NMSC-084, ¶91 (Baca, J., partially dissent/partial concurrence) (emphases added).

More recently, the New Mexico Court of Appeals' discussion of felony murder emphasized requirements related to the predicate felony. *See State v. O'Kelly*, 2004-NMCA-013, ¶24, 84 P.3d 88. Felony murder requires, *inter alia*, that the "predicate felony must be the actual and proximate cause of the death," the "predicate felony

must be inherently dangerous," and that the "predicate felony may not be a lesser included offense of second degree murder." *Id.*

New Mexico case law predicates the constitutionality of its felony murder statute on the conviction of the predicate. It necessarily follows that where there is no finding by the jury that the prosecution proved the predicate offense beyond a reasonable doubt, there can be no conviction for felony murder. *See In re Winship*, 397 U.S. 358, 364 (1970) (the Due Process Clause requires proof beyond a reasonable doubt of every fact necessary to constitute the crime with which an accused is charged).

In Colorado, the state supreme court noted that a conviction on the predicate offense is a prerequisite for a conviction for felony murder. *See, e.g., Doubleday v. People*, 364 P.3d 193, 197 (Colo. 2016) ("[I]f the defendant did not commit the predicate offense of attempted aggravated robbery, then he cannot be convicted of felony murder because the commission or attempt to commit the predicate offense is an essential element of felony murder."); *Meads v. People*, 78 P.3d 2390, 295 (Colo. 2003) ("[A] defendant cannot be convicted of felony murder unless is guilty of an underlying felony offense.").

Indeed, to show that New Mexico felony murder is not a strict-liability crime for which *mens rea* is required, the state supreme court emphasized that "the requisite malice aforethought can be inferred *from the commission or attempted commission of the felony*." *Ortega*, 1991-NMSC-084, ¶21 (quoting *State v. Pierce*, 1990-NMSC-027, ¶20, 109 N.M. 596 (quoting *State v. Price*, 1986-NMCA-036, ¶5, 104 N.M. 703)) (emphasis added).

Because Petitioner Wood was not convicted of a predicate felony that would support a conviction for felony murder, his felony murder conviction and sentence of imprisonment for life violate the guarantees in the Due Process Clause of the Fourteenth Amendment.

**2. The jury's deadlock on armed robbery is logically inconsistent with a conviction for felony murder.**

The jury returned a verdict of guilty on the felony murder charge but deadlocked on armed robbery. *See* Appendix A at 16a. The state supreme court treated this essentially as an issue of factually inconsistent verdicts. *See id.* The state supreme court reasoned that examining "the jury's failure to convict [Petitioner Wood] of armed robbery" would require the reviewing court to "speculate as to why the jury acquitted a defendant of other charges—even if the conviction and acquittal are allegedly inconsistent because to examine the verdict of acquittal would require us to rule based on pure speculation or else would require an inquiry into the jury's deliberations." *Id.* at 17a (internal quotations and brackets omitted). It opined that "[i]nconsistent verdicts may arise for many reasons that are unsuited to appellate review," and Petitioner Wood is "adequately protected against unlawful conviction by the availability of sufficiency review." Appendix 17a.

The state supreme court mis-applied and misunderstood this Court's opinions from the 1930s and 1980s. *See United States v. Powell*, 469 U.S. 57 (1984); *Dunn v. United States*, 284 U.S. 390 (1932).

Nearly a century ago, this Court examined a conviction under the National Prohibition Act, 27 U.S.C. §§ 12 &

33, where the defendant was indicted on three counts: "first, for maintaining a common nuisance by keeping for sale at a specified place intoxicating liquor, second, for unlawful possession of intoxicating liquor and third, for the unlawful sale of such liquor." *Dunn*, 52 U.S. at 190.

The government highlighted a range of factual scenarios under which the verdicts might not necessarily be inconsistent: "even though the jury seems to have believed that the defendant was elsewhere at the time of the alleged sale and did not make it, the verdict is not inconsistent, for some third person, with defendant's knowledge, may have been doing business on the premises, and if so they were a nuisance, and the defendant was guilty although he never possessed nor sold intoxicating liquors upon them." *Dunn*, 52 U.S. at 190. Apparently persuaded about these alternative factual scenarios, the *Dunn* Court noted that the verdict "may have been the result of compromise, or of a mistake on the part of the jury," and "verdicts cannot be upset by speculation or inquiry into such matters." *Dunn*, 52 U.S. at 191.

Approximately fifty years later, in 1984, this Court examined whether the United States Court of Appeals for the Ninth Circuit, and other circuits, acted inconsistently with *Dunn* "in recognizing exceptions to the rule of that case." *Powell*, 469 U.S. at 475. The Court reversed the Ninth Circuit, holding that acquittal on charges of conspiracy to possess cocaine and possession of cocaine did not require that convictions of using a telephone to facilitate those offenses be vacated on the basis of inconsistency of verdicts. *See id.* at 478-79.

But the *Powell* Court also noted that "[n]othing in this opinion is intended to decide the proper resolution of a situation where a defendant is convicted of two crimes, where a guilty verdict on one count logically excludes a finding of guilt on the other." 469 U.S. at 479 n.8. The distinction between factually inconsistent verdicts and logically (or legally) inconsistent verdicts is important in Petitioner Wood's case.

The problem of one verdict logically excluding another was recently addressed by the Utah Supreme Court. *See Pleasant Grove City v. Terry*, 478 P.3d 1026 (Utah 2020). It distinguished between two very different types of "inconsistent verdicts." *Id.* at 1029. It noted that this term "encompasses at least two different types of verdicts: factually inconsistent verdicts and legally impossible verdicts (sometimes known as legally inconsistent verdicts)." *Id.*

Petitioner Wood's case presents the problem of legally impossible verdicts. Or, more precisely, the jury's deadlock on armed robbery makes its conviction for felony murder a legally impossible or legally inconsistent verdict.

As noted above, a finding that Petitioner Wood committed armed robbery is an essential element of the offense of felony murder. Not only is the conviction for felony murder a violation of due process because an essential element was not found to have been proved beyond a reasonable doubt, *see Winship*, 397 U.S. at 364, it is also logically incompatible with the jury's deadlock on armed robbery.

The state supreme court's refusal to disturb the "inconsistent verdicts" is based on a false equivalence between factually inconsistent verdicts and legally or logically inconsistent verdicts. Appendix A at 16a-17a.

The state supreme court reviewed the inconsistent verdicts in this case only for sufficiency of the evidence. *See* Appendix A at 17a ("A defendant is adequately protected against unlawful conviction by the availability of sufficiency review. As we have held there was sufficient evidence supporting [Petitioner's] conviction for felony murder, we further hold there was no error arising from the jury's failure to convict [him] of armed robbery."). One of the reasons for doing so is that the defendant receives the benefit of the acquitted count and accepts the burden of the conviction on the other count. *See Terry*, 478 P.3d at 1029 (citing *United States v. Petit Frere*, 334 F. App'x 231, 238 (11th Cir. 2009) (quoting *Powell*, 469 U.S. at 69)).

But this premise makes no sense "when it comes to legally impossible verdicts in which a defendant is acquitted on the predicate offense but convicted on the compound offense." 478 P.3d at 1029. It is illogical because it requires the reviewing court to "pretend that the same jury, looking at the same evidence, acquitted the defendant of the predicate offense standing alone, but simultaneously found the defendant guilty of the compound offense—essentially asking an appellate court to conclude that 'the same . . . element or elements of each crime were found both to exist and not to exist.'" 478 P.3d at 1029 (quoting *Price v. State*, 949 A.2d 619, 636 (Md. 2008) (Harrell, J., concurring)).

In this case, the jury's deadlock on armed robbery necessarily means Petitioner Wood was not convicted on that count. Since he is presumed innocent until proven guilty, *see Winship*, 397 U.S. at 364, Petitioner Wood remains legally innocent of armed robbery as a matter of law (unless and until he is tried and convicted on that count).

Due to his innocence of armed robbery, the guilty verdict on the felony murder count is logically inconsistent with, legally incompatible with, and irreconcilable with the jury's deadlock on armed robbery. *Cf. State v. Halstead*, 791 N.W.2d 805, 807 (Iowa 2010) (noting legally impossible verdicts are inconsistent "as a matter of law because it is impossible" to reconcile the underlying jury determinations).

Petitioner Wood's non-conviction on armed robbery is irreconcilable as a matter of law with the guilty verdict on felony murder because the absence of a conviction on armed robbery negates an element that is necessary for a conviction of felony murder. *Cf. Shavers v. State*, 86 So. 3d 1218, 1221 (Fla. Dist. Ct. App. 2012) (observing that a finding of not guilty on armed robbery "negates an element of another count that is necessary for conviction").

The state supreme court's emphasis on the distinction between the jury's having deadlocked on armed robbery versus an acquittal on that count fails to give proper weight to the presumption of innocence. *See* Appendix A at 16a. In general, the principal difference between a deadlock and an acquittal is that re-trial is barred after an acquittal, whereas retrial on a deadlocked count is allowed unless there was prosecutorial misconduct

barring retrial. *See State v. Breit*, 1996-NMSC-067, ¶16, 930 P.2d 792. But due to the presumption of innocence, in Petitioner Wood's case, the jury's deadlock on armed robbery provides no greater basis for felony murder than would an acquittal; for purposes of felony murder, the two results are indistinguishable. There is no logical or legal basis for the state supreme court's suggestion that the deadlock somehow created less of an inconsistency with the felony murder conviction than an acquittal.

The prosecution chose to intertwine the armed robbery count with the felony murder count, making its homicide count dependent on the outcome of the armed robbery count. In the indictment, the prosecution alleged first degree murder on the theory that Petitioner Wood "did intentionally cause the death of Noah Tafoya, during the commission or attempted commission of an armed robbery, a felony offense, under circumstances or in a manner dangerous to human life and the defendant intended to kill or knew that his acts created a strong probability of death or great bodily harm." *State v. Wood*, No. D-202-CR-2020-00847 (2nd Jud. Dist. Ct. March 16, 2020) (Grand Jury Indictment). The court in *Terry* noted that "[i]f the State chose to intertwine the offenses, it cannot then disentangle them at-will when it's convenient. . . . Its prosecutorial choices show that the jury was presented with the compound offense *predicated* on the occurrence of the predicate offense." 478 P.3d at 1032 (emphasis in original).

The legally impossible verdict in which Petitioner Wood was convicted of felony murder while not being convicted of armed robbery eviscerates confidence in the trial's outcome. This outcome is not only "inconsistent

with justice, but is repugnant to it." *Terry*, 478 P.3d at 1032 (quoting *People v. Tucker*, 431 N.E.2d 617, 619 (N.Y. 1981)). When a jury reached a legally impossible verdict, it "necessarily overstepped its historic role as fact-finder, and has taken the law into its own hands, by presumably engaging in some . . . process that is inconsistent with the notion of guilt beyond a reasonable doubt." *Terry*, 478 P.3d at 1032 (internal quotation marks and citations omitted).

In addition, the Court should be deeply concerned about the perceptions of a criminal justice system that upholds such legally impossible verdicts. The Iowa Supreme Court aptly stated the essence of the problem:

> When liberty is at stake, we do not think a shrug of the judicial shoulders is a sufficient response to an irrational conclusion. We are not playing legal horseshoes where close enough is sufficient. It is difficult to understand why we have a detailed trial procedure, where the forum is elaborate and carefully regulated, and hen simply give up when the jury confounds us.

*Halstead*, 791 N.W.2d at 815. Endorsing this reasoning, the Utah Supreme Court observed that "[i]f we affirm the ability of a jury to render such a legally impossible verdict, we sanction the lengthy (perhaps lifelong) incarceration of a defendant for a murder although the jury acquitted him from the underlying felony that allowed the felony murder charge. We cannot stand by legally impossible verdicts and call our system a justice system." *Terry*, 478 P.3d at 1033.

The nightmare scenario envisioned in *Terry* is almost identical to Petitioner Wood's case. He was sentenced to

life in prison even though the jury failed to convict on the predicate offense for felony murder.

There is no basis for the state supreme court's worry that reviewing the legally inconsistent verdicts in Petitioner Wood's case would entail impermissibly inquiring into the jury's intent. Even if one assumes that reviewing factually inconsistent verdicts might require such an examination, it does not follow that such an inquiry would be necessary where the jury renders a verdict that is irreconcilable with the law—*i.e.*, is legally inconsistent as a matter of law. "Discerning whether a verdict is legally impossible . . . focuses solely on the legal impossibility of convicting a defendant of a compound crime while at the same time acquitting the defendant of predicate crimes." *Terry*, 478 P.3d at 1034 (quoting *Halstead*, 791 N.W.2d at 815). The reviewing court's inquiry is simple: "determine whether the conviction on the compound offense is possible in the face of an acquittal on a predicate offense. If it is not, then the verdict is legally impossible and should be overturned." *Terry*, 478 P.3d at 1034. No speculation or inquiry into the jury's reasons are needed: "Once a jury has reached a legally impossible verdict, its reasons for doing so matter not. We do not peer into the jury's black box. Instead, much like we view an error of law as an automatic abuse of discretion, so too we should view legally impossible verdicts . . . as an automatically invalid legal error." *Id.* at 1036.

A number of other states have adopted the sound reasoning of Utah and Iowa. *See, e.g., Brown v. State*, 959 So. 2d 218, 220-23 (Fla. 2007); *McNeal v. State*, 44 A.3d 982, 984 (Md. 2012); *Commonwealth v. Gonzalez*, 892 N.E.2d 255, 262 n.8 (Mass. 2008).

The difficulty underlying the nearly-century-old decision in *Dunn* has been criticized as paving "a one-way street" in which the reviewing court "will always construe a legally impossible verdict as an unworthy windfall for the defendant, and never as an injustice. Thus, by this rationale, the [reviewing court] endorses a de facto 'irrebuttable presumption that the jury . . . engage[s] in an act of lenity when it acquit[s] the defendant' of a predicate offense but convicts the defendant of the compound one." *Terry*, 478 P.3d at 1036 (quoting *Halstead*, 791 N.W.2d at 809). But where the jury fails to convict on armed robbery but convicts on first-degree murder, the presumption of lenity seems particularly doubtful. If lenity had been the jury's guide, why not acquit of the greater offense and convict on the lesser offense?

In Petitioner Wood's case, the state supreme court's affirmance of the legally impossible verdict of guilty on felony murder where the predicate offense of armed robbery was not unanimously found offends fundamental principles of due process. *See Winship*, 397 U.S. at 364.

**3. The principle of proportionality precludes a life sentence for a 20-year-old youth under the felony murder doctrine, where the jury did not find him guilty of the underlying predicate offense of armed robbery.**

Petitioner Wood was sentenced to life imprisonment as a result of the felony murder conviction. *See* Appendix B at 26a-28a. The state supreme court attempted to justify the conviction and sentence on the theory that he helped, encouraged, or caused the armed robbery carried out by McNab with knowledge that this created a strong probability of death or great bodily harm.

Under the state supreme court's reasoning, a 20-year-old young man can be convicted of first-degree murder and sentenced to life in prison even where he is not convicted of armed robbery, based on the theory that he knew that his cofelon's actions created a strong probability of great bodily harm.

Great bodily harm includes "an injury to a person which . . . results in serious disfigurement or results in loss of any member or organ of the body or results in permanent or prolonged impairment of the use of any member or organ of the body." *State v. Wood*, No. D-202-CR-2020-00847 (2nd Jud. Dist. Ct. Aug. 10, 2023) (Jury Instruction No. 16). When extraneous disjuncts are excised from the jury instructions, a young person in New Mexico can be sentenced to life imprisonment if they encouraged a predicate felony for felony murder—but did not commit or attempt the predicate felony—if they knew there was a strong probability that the person would sustain a prolonged impairment of an organ of the body by the acts of another.

The felony murder doctrine is a legal fiction that has been called "astonishing," "monstrous," "an unsightly wart on the skin of the criminal law," and an "anachronistic remnant" that has "no logical or practical basis for existence in modern law." *Ortega*, 1991-NMSC-084 (internal quotation marks and citations omitted). *See also* Annotation, *Judicial Abrogation of Felony-Murder Doctrine*, 13 A.L.R. 4th 1226 (1982) ("The general discomfort of the courts with felony-murder has led to the creation of many restrictions upon, or exceptions to, the doctrine, the application of which has called for so much involuted reasoning that it is difficult to discern any consistent pattern in the decisions.").

But in Petitioner Wood's case, felony murder is not applied in a restrictive or narrow manner. On the contrary, this antiquated legal fiction was stretched in Petitioner Wood's case in ways that defy logic. *See* discussion *infra*. And given his youth at the time of the events that led to his conviction, it is particularly monstrous that he is condemned to a life in prison on such thin evidence of conduct that is largely tangential to the killing of Tafoya. Under these circumstances, holding Petitioner Wood accountable for Tafoya's death to the same degree as one who commits first-degree deliberate and premeditated murder is unconscionable, particularly when one takes into account his youth at the time of the events.

Legal scholars and commentators have criticized the application of lengthy sentences to felony murder convictions, particularly for youths. *See, e.g., Felony Murder: An On-Ramp for Extreme Sentencing*, The Sentencing Project (May 2024). It has been observed that lengthy sentences "keep people imprisoned long after they pose a public safety risk, do little to deter future crimes, and divert resources from more effective investments in public safety." *Id.* at 7. It is well-known that people generally age out of crime, and "those who have been imprisoned for violent crimes and have served lengthy sentences are among the least likely to recidivate when released from prison." *Id.* (citing Alper, M., Durose, M., & Markman, J. (2018), *2018 update on prisoner recidivism: A 9-year follow-up period (2005-2014),* Bureau of Justice Statistics, http://www.bjs.gov/content/pub/pdf/18upr9yfup0514.pdf).

It offends the Eighth Amendment's principle of proportionality to imprison Petitioner Wood for at least

thirty (30) years on the legal fiction that he is responsible for the death of Tafoya, in spite of the fact that he did not bring about the death of Tafoya, he did not intend to kill Tafoya, and he was not convicted of the predicate offense of armed robbery. This is supported by this Court's recent reaffirmation of the centrality of the proportionality principle in criminal sentencing. *See Graham v. Florida*, 560 U.S. 48 (2010) (noting that application of the Eighth Amendment requires that "punishment for crime should be graduated and proportioned to [the] offense." *Id.* at 48 (citing *Weems v. United States*, 217 U.S. 349, 367 (1910))).

It must be emphasized that the tragic events that senselessly led to Tafoya's death occurred when Petitioner Wood was not yet 21 years old. Applying the felony murder rule against youth such as Petitioner Wood results in lengthy sentences that fail to account for the significant differences in neurobiology, psychology, and maturity between young people and adults. Young people up to age 25 often act impulsively, viewing the negative consequences of their actions as accidental, whereas adults can more easily foresee the impact of their conduct. *See id.* at 12 (citing Beyer, M. (2000), Immaturity, culpability and competency in juveniles: A study of 17 cases, *Criminal Justice Magazine,* 15(2), 1-15).

The imposition of a life sentence is disproportionate to Petitioner Wood's conduct. The acts that are properly attributable to him do not warrant imposition of a life sentence. The imposition of a draconian punishment of life in prison for a young man is cruel and unusual where the jury deadlocked on the predicate felony of armed robbery, but rendered a legally impossible verdict of guilty of felony murder.

The miscarriage of justice in this case cries out for judicial relief by this Court.

## CONCLUSION

For these reasons, Petitioner Wood respectfully requests this Court to issue a writ of certiorari to the New Mexico Supreme Court.

Respectfully submitted,

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# APPENDIX

## TABLE OF APPENDICES

**APPENDIX A — DECISION OF THE SUPREME COURT OF NEW MEXICO, FILED JUNE 9, 2025**

IN THE SUPREME COURT OF NEW MEXICO

No. S-1-SC-40305

STATE OF NEW MEXICO,

*Plaintiff-Appellee,*

v.

MATTHEW WOOD,

*Defendant-Appellant.*

Filing Date: June 9, 2025

**DECISION**

**ZAMORA, Justice**.

Defendant Matthew Wood challenges his convictions for first-degree felony murder and shooting at a motor vehicle resulting in great bodily harm. Defendant argues on appeal that: (1) the evidence was insufficient to support the convictions; (2) the State engaged in prosecutorial misconduct in its closing argument; (3) his due process rights were violated when the jury convicted him of felony murder without convicting him of the predicate offense; (4) the jury instructions failed to properly instruct the jury as to the felony murder charge; and (5) there was

cumulative error sufficient to warrant reversal. We affirm and exercise our discretion to resolve this case by nonprecedential decision and thus limit our discussion of the law and the facts to that necessary to decide the merits of this appeal. *See* Rule 12-405(B) NMRA; *State v. Gonzales*, 1990-NMCA-040, ¶ 48, 110 N.M. 218, 794 P.2d 361 (explaining nonprecedential decisions are written solely for the benefit of the parties, who know the details of the case).

## I. BACKGROUND

In September 2019, Noah Tafoya ("Victim") posted on social media advertising a handgun for sale. A friend of Defendant, Everton McNab, agreed to meet Victim at Victim's apartment complex to purchase the gun. Defendant drove McNab to the meeting.

Upon arriving at the apartment complex, Defendant backed his Toyota Camry into a parking spot close to the entrance of the complex. Defendant exited the car and walked away. After Defendant exited the vehicle, McNab moved from the passenger seat to the driver's seat.

Victim, who lived in the complex, told his friend Jorden Chavez that he was meeting someone to sell the person a gun. Victim asked Chavez to drive him there in Chavez's car. Chavez backed his car, a white Mercedes Benz, into a spot next to Defendant's car. Victim got out of Chavez's car (the Mercedes) and entered the passenger seat of Defendant's Camry. Chavez remained in the driver's seat of his Mercedes and began scrolling on his

phone. Defendant's car—the Camry—was parked so that its driver's side was facing the passenger side of the Mercedes.

According to the testimony at trial, Chavez's Mercedes was parked adjacent to Defendant's Camry, with both vehicles facing outward toward the roadway leading to the entrance of the apartment complex. Chavez was seated in the driver's seat of his Mercedes, McNab was seated in the driver's seat of Defendant's Camry, and Victim was seated in the passenger seat of Defendant's Camry. Defendant testified that he was approximately 50 yards away from his Camry.

What happened next was contested at trial. The State's version of events was that McNab attempted to rob Victim at gunpoint in Defendant's Camry and shot Victim after the two struggled over McNab's gun. According to the State, prior to Victim being shot, Defendant approached Chavez's Mercedes from the driver's side of the vehicle and held a knife to Chavez's throat. Chavez, who was armed with his own gun, testified that he looked up from his phone and saw Victim in the passenger seat of Defendant's Camry with his hands up, while McNab, who was in the driver's seat of the Camry, said "Don't move. Don't fuckin' do it." Chavez heard the driver's side door of his car open and felt the knife. Chavez's testimony indicated that the man with the knife was white with a scruffy beard. Chavez offered to give Defendant his car and then shot at Defendant when Defendant briefly stepped backwards. Chavez then felt a gunshot and was thrown onto the pavement from the driver's side of his

vehicle. Chavez got up off the ground, climbed back into his car and drove out of the parking lot. He turned to the right in front of the Camry, hearing additional gunshots as he fled. Chavez suffered several gunshot wounds, including one in his right side, two or three in his left side, and one in the lower left side of his back. According to the State, it was Defendant who shot at Chavez's Mercedes while Chavez attempted to flee.

Finally, the State argued that, after firing at the Mercedes, Defendant walked back over to the passenger side of his Camry and shot Victim in the leg after Defendant heard and saw McNab and Victim struggling over McNab's gun. The State presented evidence that Victim was shot in his abdomen from the left at close range and in his thigh from the right, at a slightly longer range. The State's expert testified that Victim died as a result of these wounds.

Defendant testified that he was unaware of McNab's plan to rob Victim, that he never spoke to or threatened Chavez, that he did not carry a gun, and that he did not have or shoot a .40 caliber Glock that night. He admitted to having a knife in his hand as he approached Chavez, testifying that he approached the car to defend his vehicle.

All four men were seriously wounded by gunfire. Victim died on the way to the hospital. Before dying, Victim told a witness on the scene that he had been robbed.

Defendant was subsequently charged. Following a trial, Defendant was convicted of felony murder, conspiracy

to commit armed robbery, shooting at a motor vehicle resulting in great bodily harm, aggravated battery, and aggravated assault. The jury deadlocked on the charge of armed robbery. Defendant was sentenced to a term of life in prison for felony murder, and the remaining sentence of fourteen and a half years was set to run concurrently with the life sentence. Defendant timely appealed to this Court.

## II. DISCUSSION

### A. Sufficiency of the Evidence

#### 1. Standard of review

Evidence is sufficient to sustain a conviction if substantial evidence of either a direct or circumstantial nature exists to support a verdict of guilt beyond a reasonable doubt as to every element of the offense. *State v. Montoya*, 2015-NMSC-010, ¶ 52, 345 P.3d 1056. "In reviewing the sufficiency of the evidence, the reviewing court views the evidence in the light most favorable to the guilty verdict, indulging all reasonable inferences and resolving all conflicts in the evidence in favor of the verdict." *Id.* (internal quotation marks, brackets, and citation omitted). "Contrary evidence supporting acquittal does not provide a basis for reversal because the jury is free to reject Defendant's version of the facts." *State v. Duran*, 2006-NMSC-035, ¶ 5, 140 N.M. 94, 140 P.3d 515 (internal quotation marks and citation omitted). The "[j]ury instructions become the law of the case against which the sufficiency of the evidence is to be measured." *State v. Arrendondo*, 2012-NMSC-013, ¶ 18, 278 P.3d 517 (internal quotation marks and citation omitted).

**2. Felony murder**

To find Defendant guilty of felony murder based on aiding and abetting, the State was required to prove beyond a reasonable doubt that: (1) Defendant intended that McNab commit the felony of armed robbery; (2) McNab committed or attempted to commit the felony of armed robbery under circumstances or in a manner dangerous to human life; (3) Defendant helped, encouraged, or caused the felony of armed robbery to be committed or attempted; (4) during the commission or attempted commission of the felony, Victim was killed; (5) Defendant helped, encouraged, or caused the killing to be committed; (6) Defendant intended the killing to occur or knew that he was helping to create a strong probability of death or great bodily harm; and (7) this happened in New Mexico on or about the 12th day of September 2019.

Defendant contests the sufficiency of the evidence only as to the fifth and sixth elements of the offense. Defendant argues the evidence adduced at trial was not sufficient to prove he aided and abetted the killing of Victim because the jury was required to draw impermissible inferences from the evidence to sustain the conviction. We disagree.

"The evidence of aiding and abetting may be as broad and varied as are the means of communicating thought from one individual to another; by acts, conduct, words, signs, or by any means sufficient to incite, encourage or instigate commission of the offense or calculated to make known that commission of an offense already undertaken has the aider's support or approval." *State v. Salazar*,

1967-NMSC-187, ¶ 4, 78 N.M. 329, 431 P.2d 62 (internal quotation marks and citation omitted); *see also* UJI 14-2821 NMRA (stating aiding and abetting in a killing requires the jury to find that the defendant "helped, encouraged, or caused the killing to be committed" (use note omitted)). Here, there was both testimonial and physical evidence that Defendant helped, encouraged, or caused the killing to be committed by holding Chavez at knifepoint in the Mercedes as McNab robbed and shot Victim in the nearby Camry, and by shooting at Chavez as Chavez attempted to flee. Evidence that a defendant held a third party at bay while the defendant's associates committed a killing nearby is sufficient to establish aiding and abetting of the killing. *State v. Nieto*, 2000-NMSC-031, ¶ 28, 129 N.M. 688, 12 P.3d 442.

There was ample evidence from which the jury could reasonably infer that Defendant held Chavez at knifepoint and thereby helped McNab rob and shoot Victim. Specifically, Chavez testified that he observed Victim being robbed in the vehicle next to him, he then felt a knife against his neck, and he was shot at as he attempted to flee in his car. Although Chavez did not get a good look at the man who held the knife to him, an investigator testified at trial that he believed Chavez described the man as white with a "scraggly" beard in an interview conducted shortly after the shooting and Chavez's testimony at trial was consistent with this description. McNab is African American and Defendant is white. A video of Defendant in the hospital played at trial showed that, immediately after the shooting, Defendant had a beard. Based on this evidence, a reasonable jury could have determined that

Defendant aided and abetted McNab's killing of Victim. *See Nieto*, 2000-NMSC-031, ¶ 28; *see also State v. Ochoa*, 1937-NMSC-051, ¶ 39, 41 N.M. 589, 72 P.2d 609 (concluding a jury could find two defendants guilty of aiding and abetting the killing of a sheriff when the defendants assaulted the sheriff's deputy who "would be expected to come to the aid of his chief in peril" after the sheriff's party had been fired upon).

We further conclude there was sufficient evidence from which a reasonable jury could find that Defendant "intended the killing to occur or knew that he was helping to create a strong probability of death or great bodily harm" by holding Chavez at knifepoint while McNab robbed and shot victim in the Camry. *See* UJI 14-2821 (requiring proof that the defendant "intended the killing to occur or knew that the defendant was helping to create a strong probability of death or great bodily harm"). "The felony-murder intent requirement is satisfied if there is proof that the defendant intended to kill, knew that his actions created a strong probability of death or great bodily harm to the victim or another person . . . or acted in a manner greatly dangerous to the lives of others." *State v. Griffin*, 1993-NMSC-071, ¶ 23, 116 N.M. 689, 866 P.2d 1156.

Based on the evidence at trial, a jury could reasonably have found that Defendant's holding of a knife to Chavez evinced at least the knowledge that he was creating a strong probability of Victim's death or great bodily harm. In *Nieto*, we held that sufficient evidence supported accessory liability for murder where the defendant held

a third party at gunpoint while the principals killed two people inside a nearby cabin. 2000-NMSC-031, ¶ 28. Although the defendant in that case claimed he never agreed to participate in the murder and only acted out of fear for his life, we concluded his outward actions in accompanying the principals to the place of the murder and incapacitating a third party while the killings took place was sufficient evidence of the defendant's intent that the principals commit the murders. *Id.* ¶¶ 6-8, 28.

In this case, Defendant willingly accompanied McNab to the site of the crime and held Chavez at bay while McNab robbed Victim at gunpoint. Additionally, a witness for the State testified that he had overheard McNab and Defendant discuss their plans to commit robberies in the past, and, at some point during the week before the robbery and killing, he overheard McNab describe to Defendant an "easy come up" of a young person selling a gun. The witness further testified that McNab and Defendant regularly carried .40 caliber handguns, and Defendant admitted in a pretrial interview played for the jury that he saw McNab with a gun the day of the murder.

A jury could therefore reasonably conclude that Defendant, who was aware that McNab was likely armed, knew his actions in assisting McNab rob Victim would create a strong probability that Victim would suffer death or great bodily harm. *See State v. Baca*, 1997-NMSC-059, ¶¶ 20-21, 124 N.M. 333, 950 P.2d 776 (concluding that a reasonable jury could find that an accessory's knowledge that the principal had a gun supported an inference that the accessory's subsequent action in positioning

his vehicle near the victim's car constituted assistance in carrying out an act "greatly dangerous to the lives of others"), *abrogated on other grounds by State v. Revels*, _-NMSC_, ¶ 37, _ P.3d _, 2025 N.M. LEXIS 58 (S-1-SC-39841, April 7, 2025).

Accordingly, we conclude the evidence was sufficient to support Defendant's conviction for felony murder.

**3. Shooting at a motor vehicle**

Defendant argues the evidence that he shot at a motor vehicle was insufficient because the State never demonstrated that he had or used a gun that night. Evidence is sufficient to sustain a conviction if substantial evidence of either a direct or circumstantial nature exists to support a verdict of guilt beyond a reasonable doubt as to every element of the offense. *Montoya*, 2015-NMSC-010, ¶ 52. While no direct evidence was presented at trial tying Defendant to any gun found at the scene, the circumstantial evidence that Defendant possessed and fired a gun at Chavez's Mercedes was substantial. "Just because the evidence supporting the conviction was circumstantial does not mean it was not substantial evidence." *Id.* ¶ 53 (internal quotation marks and citation omitted).

First, Chavez testified that there was an extended magazine sticking out of Defendant's hoodie pocket when he approached Chavez's car, and Defendant admitted in a pretrial statement played for the jury that he had a magazine in his jacket that night. Also, a .40 caliber

handgun was found on the passenger side floorboard of Defendant's Camry next to one of Defendant's knives, and Defendant admitted to holding a knife when he approached Chavez in the Mercedes. Defendant testified at trial that he got into the passenger seat of the Camry after the shooting, and the State presented evidence that the other .40 caliber handgun found in the Camry was wedged under the driver's seat, where McNab was sitting. Based on these facts, it was not unreasonable for the jury to conclude that Defendant possessed a gun that night. *See State v. Garcia*, 2005-NMSC-017, ¶¶ 22, 35, 138 N.M. 1, 116 P.3d 72 (concluding that evidence of the defendant's possession of a gun was sufficient where the defendant was sitting on a clip that matched the gun under the defendant's seat, and the clip was "easily accessible to [him] and arguably more accessible to him than to anyone else").

Second, there was circumstantial evidence that Defendant was the only person who could have shot at Chavez's Mercedes as Chavez attempted to flee the parking lot. Forensic evidence showed that Chavez's Mercedes was struck from outside of the rear of the driver's side of the vehicle. In a pretrial statement played for the jury, Defendant stated that McNab was in Defendant's Camry "the whole time"—that is, positioned on the passenger side of Chavez's vehicle. By contrast, there was evidence presented at trial that Defendant was on the driver's side of the Mercedes during and after the time when the first shots were exchanged.

Additionally, a resident of the complex observed Chavez's Mercedes drive out of the parking lot before the

Camry, which required the Mercedes to turn to the right in front of the Camry as it exited, exposing only its passenger side to the Camry. Because McNab never exited the Camry, had he fired at the Mercedes, the bullets from his gun would have struck the passenger side of the Mercedes. Viewing the evidence in its entirety, a reasonable jury could have found that it was Defendant who fired at the Mercedes from the driver's side of the vehicle as Chavez attempted to flee. *See State v. Cunningham*, 2000-NMSC-009, ¶ 28, 128 N.M. 711, 998 P.2d 176 (holding that a reasonable jury could have found defendant intentionally shot at victim based on testimonial and forensic evidence establishing location of the defendant and characteristics of firearms used in the shooting). We conclude sufficient evidence supports Defendant's conviction for shooting at a motor vehicle.

### B. Prosecutorial Misconduct

Conceding the issue was not preserved, Defendant next argues the State committed fundamental error when the prosecutor made arguments unsupported by the evidence in her closing argument, inviting the jury to speculate. We review unpreserved issues for fundamental error. Rule 12-321(B)(2) NMRA. "Prosecutorial misconduct rises to the level of fundamental error when it is so egregious and had such a persuasive and prejudicial effect on the jury's verdict that the defendant was deprived of a fair trial." *State v. Trujillo*, 2002-NMSC-005, ¶ 52, 131 N.M. 709, 42 P.3d 814 (internal quotation marks and citation omitted).

Defendant points to three instances of alleged misconduct. First, Defendant argues the State "made an improper argument when it claims [sic] that the evidence supported the inference that [Defendant], after being shot by Mr. Chavez, managed to stand up, shoot at Mr. Chavez's car, walk back to the passenger side of the vehicle, shoot [Victim] in the thigh, and then remove [Victim] from the vehicle to flee" when "[t]here was simply no evidence that would allow such inferences." Defendant does not identify where, in the State's closing arguments, the prosecutor made such assertions and our review of the transcript reveals that she never stated that Defendant "managed to stand up" after being shot by Chavez. "We will not search the record for facts, arguments, and rulings in order to support generalized arguments." *Muse v. Muse*, 2009-NMCA-003, ¶ 72, 145 N.M. 451, 200 P.3d 104; *see also* Rule 12-318(A)(3) NMRA (requiring an appellant's brief in chief to contain "a summary of the facts relevant to the issues presented for review" which "shall contain *citations to the record proper*, transcript of proceedings or exhibits supporting each factual representation" (emphasis added)).

The prosecutor did argue that the evidence showed Defendant shot Victim in the thigh from the passenger side of the Camry (and therefore to the right of Victim), but this assertion was supported by the testimony at trial. Because there was evidence that McNab never left the driver's seat of the Camry until after he and Defendant fled the scene, the prosecutor's statement that Defendant shot Victim and "that's how you get a right-to-left impact into [Victim]'s leg" because "there is no way for [Victim]

to have gotten shot in the leg from the position he was sitting from right to left if it was from Mr. McNab's gun" amounted to a single reasonable inference derived from the evidence presented at trial. No error arises where the prosecutor's remarks in closing are based on the evidence and "the fair and reasonable inferences to be drawn therefrom." *State v. Duffy*, 1998-NMSC-014, ¶ 56, 126 N.M. 132, 967 P.2d 807 (internal quotation marks and citation omitted), *overruled on other grounds by State v. Tollardo*, 2012-NMSC-008, 275 P.3d 110.

Second, Defendant argues the prosecutor engaged in misconduct when she "argued to the jury that the statement that [Defendant] could not be included or excluded as a contributor meant that [Defendant]'s DNA *could have* been on [the firearm found on the passenger floormat of the Camry]." According to Defendant, this was an improper argument because "[Defendant]'s DNA being on that firearm was no more likely than anybody's DNA being on it because the State's expert witness could not come to *any* conclusion."

Again, our review of the transcript reveals no such argument. "It is not our practice to rely on assertions of counsel unaccompanied by support in the record. The mere assertions and arguments of counsel are not evidence." *Chan v. Montoya*, 2011-NMCA-072, ¶ 9, 150 N.M. 44, 256 P.3d 987 (internal quotation marks and citation omitted). The prosecutor argued that "when defense counsel gets up here and says that [Defendant]'s DNA was not located on any of the firearms, it's only half-true" because "[w]e cannot determine if [Defendant]'s DNA was located on [the

gun on the Camry's floorboard] or not." The prosecutor then noted that the knife on the floorboard, which Defendant admitted to having handled, did not contain DNA sufficient to identify Defendant, demonstrating that "just because you've touched something, doesn't mean there's 100 percent certainty that we're going to find your DNA."

The prosecutor's explanation of the DNA evidence at trial was consistent with the testimony of the State's forensic expert and therefore gave rise to no error. *See Duffy*, 1998-NMSC-014, ¶ 56. The expert witness testified that, due to technical limitations of the testing equipment at the Albuquerque Police Department's laboratory, whenever three or more profiles are detected in a sample, investigators do not attempt to "tease them apart and develop a major or a partial minor or anything like that." When asked if this meant Defendant could not be excluded from contributing to the sample from the trigger of the gun on the floorboard, the expert testified that she "didn't do any comparisons" so she could not "include or exclude anybody." Accordingly, the State's argument in closing was consistent with the expert's testimony that the presence of a sufficient quantity of DNA on an item is not always sufficient to include or exclude a particular contributor.

Finally, Defendant argues the presence of $800 in cash found on the floorboard of the Camry "does not allow, as the State argued, that Mr. McNab attempted to steal cash from [Victim]" and, instead, points to the opposite conclusion: that "McNab brought cash with him to buy a firearm." The prosecutor stated during closing

argument that "[a]ll of that money in the vehicle" belonged to Victim and "[t]here was no intention that . . . McNab was going to buy a firearm on that day." The prosecutor then referred to Defendant's testimony that "he never saw [McNab] with any money." At trial, the State presented no evidence directly establishing the money belonged to Victim. However, Chavez testified that Victim "always" carried a "flash roll" (or large wad) of cash with him. The prosecutor's argument was therefore based on the evidence at trial as well as reasonable inferences that might be drawn from that evidence. *See id.* Defendant has failed to establish any misconduct arising from the State's closing arguments, much less misconduct sufficient to cast doubt on the fairness of the proceedings. *See Trujillo*, 2002-NMSC-005, ¶ 52.

### C. Jury's Failure to Convict on the Predicate Felony for Felony Murder

Armed robbery was the predicate felony establishing that Defendant was guilty of felony murder. The jury deadlocked on the charge of armed robbery. Defendant contends his due process rights were violated because he was convicted of felony murder in the absence of a conviction for armed robbery. In essence, Defendant complains the jury returned inconsistent verdicts.

As a preliminary matter, we note that Defendant was not acquitted of the armed robbery charge; rather, the jury could not return a verdict on that count of the indictment. To the extent the verdicts might be deemed inconsistent, we disagree with Defendant that such an outcome violated

his right to due process. The Supreme Court has held that "where truly inconsistent verdicts have been reached, '[t]he most that can be said . . . is that the verdict shows that either in the acquittal or the conviction the jury did not speak their real conclusions, but that does not show that they were not convinced of the defendant's guilt.'" *United States v. Powell*, 469 U.S. 57, 64-65, 105 S. Ct. 471, 83 L. Ed. 2d 461 (1984) (quoting *Dunn v. United States*, 284 U.S. 390, 393, 52 S. Ct. 189, 76 L. Ed. 356 (1932). The rule is the same in New Mexico. "When the evidence is sufficient to support the verdict of conviction, we will not speculate as to why the jury acquitted a defendant of other charges—even if the conviction and acquittal are allegedly inconsistent" because "[t]o examine the verdict of acquittal would require us to rule based on pure speculation or else would require an inquiry into the jury's deliberations." *State v. Veleta*, 2023-NMSC-024, ¶ 32, 538 P.3d 51 (citing *Powell*, 469 U.S. at 66). Inconsistent verdicts may arise for many reasons that are unsuited to appellate review. *Veleta*, 2023-NMSC-024, ¶ 34. A defendant is adequately protected against unlawful conviction by the availability of sufficiency review. *Id.* ¶¶ 34-35. As we have held there was sufficient evidence supporting Defendant's conviction for felony murder, we further hold there was no error arising from the jury's failure to convict Defendant of armed robbery.

### D. Jury Instructions

Defendant argues the jury was improperly instructed because the felony murder instruction included only an aiding and abetting theory of Defendant's culpability

for armed robbery while the armed robbery instruction included both an aiding and abetting theory and a "completed" robbery theory. According to Defendant, this resulted in juror confusion. Defendant contends "the aiding and abetting and completed robbery were not merely different theories, they were also separate elements of the offense because it changed the legal definition of the offense."

Defendant appears to concede he did not object to the jury instructions below, and that he must therefore demonstrate fundamental error. *State v. Benally*, 2001-NMSC-033, ¶ 12, 131 N.M. 258, 34 P.3d 1134 (stating that unpreserved errors in jury instructions are reviewed for fundamental error).

The relevant portion of the felony murder instruction provided:

> For you to find the defendant guilty of felony murder, as charged in Count 1, even though the defendant did not commit the murder, the state must prove to your satisfaction beyond a reasonable doubt each of the following elements:
>
> 1. The defendant, Matthew Wood, intended that another person commit the felony of armed robbery;
>
> 2. Another person committed or attempted to commit the felony of armed robbery under circumstances or in a manner dangerous to human life;

> 3. The defendant, Matthew Wood, helped, encouraged, or caused the felony of armed robbery to be committed or attempted . . . .

The armed robbery instruction provided in relevant part:

> For you to find the defendant guilty of armed robbery as charged in Count 2, the State must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:
>
> 1. The defendant took and carried away a firearm from Noah Tafoya or from his immediate control intending to permanently deprive Noah Tafoya of that item;
>
> 2. The defendant was armed with a firearm;
>
> 3. The defendant took the item by force or violence . . . .

The jury was also provided a standalone instruction on accessory liability instructing:

> The defendant may be found guilty of a crime even though the defendant did not do the acts constituting the crime if the State proves to your satisfaction beyond a reasonable doubt [that] (1) the defendant intended that another

> person commit the crime; (2) another person committed the crime; and (3) the defendant helped, encouraged, or caused the crime to be committed . . . .

The standalone instruction expressly stated that it did not apply to the charge of felony murder.

"[I]n a fundamental error analysis jury instructions should be considered as a whole." *Cunningham*, 2000-NMSC-009, ¶ 21. Here, the felony murder instruction clearly asserted an aiding and abetting theory of the crime. The armed robbery instruction, considered together with the accessory liability instruction, may be read as (1) providing two paths toward conviction of armed robbery (direct or accessory) or (2) an aiding and abetting theory of armed robbery divided into two instructions. Even assuming the armed robbery instruction offered two theories of liability while the felony murder instruction offered only one, Defendant has failed to demonstrate how such a construction was error, much less error resulting in "the existence of circumstances that 'shock the conscience' or implicate a fundamental unfairness within the system." *Id.* (citation omitted).

Defendant seeks to fit his claim of error within "[t]he general rule . . . that fundamental error occurs when the trial court fails to instruct the jury on an essential element." *State v. Sutphin*, 2007-NMSC-045, ¶ 16, 142 N.M. 191, 164 P.3d 72. Defendant argues that aiding and abetting in the commission of the crime and directly committing the crime are not different means of

committing the same offense but, instead, are comprised of different elements, all of which should have been included in the felony murder instruction.

We disagree. Aiding and abetting a robbery and committing a robbery as the principal are not legally distinct offenses. *State v. Nance*, 1966-NMSC-207, ¶ 18, 77 N.M. 39, 419 P.2d 242, *abrogated on other grounds by State v. Wilson*, 2011-NMSC-001, 149 N.M. 273, 248 P.3d 315; *State v. Carrasco*, 1997-NMSC-047, ¶ 6, 124 N.M. 64, 946 P.2d 1075 (recognizing that the distinction between liability as a principal and liability as an accessory has been abrogated in New Mexico). The State's theory of the case was that Defendant aided and abetted the armed robbery, during which Victim was killed, and Defendant possessed the requisite intent for felony murder. The felony murder instruction reflected this theory of the case and included all the elements necessary to establish it. *See* UJI 14-2821 (providing the elements for felony murder as an accessory).

Defendant next argues the instructions were confusing, noting the jury failed to convict Defendant of armed robbery when presented with two theories of liability while convicting him of felony murder when presented with only one theory of liability for armed robbery. Fundamental error can occur when a reasonable juror is confused or misdirected by a jury instruction. *Benally*, 2001-NMSC-033, ¶ 12. However, juries may reach inconsistent verdicts for many reasons, including mistake, compromise and lenity, and we will not speculate as to how or why a jury reached its decisions. *Veleta*,

2023-NMSC-024, ¶¶ 34-35. "For fundamental error to exist, the instruction given must differ materially from the uniform jury instruction, omit essential elements, or be so confusing and incomprehensible that a court cannot be certain that the jury found the essential elements under the facts of the case." *State v. Candelaria*, 2019-NMSC-004, ¶ 31, 434 P.3d 297 (internal quotation marks and citation omitted). Even if the jury was confused by the instructions on felony murder and armed robbery, Defendant has failed to identify the kind of confusion that would call into question the soundness of his conviction. *See e.g., State v. Mascarenas*, 2000-NMSC-017, ¶¶ 13, 20-21, 129 N.M. 230, 4 P.3d 1221 (holding that fundamental error occurred where the jury was improperly instructed on the legal standard and there is a distinct possibility that the defendant was convicted of criminal negligence under a civil negligence standard); *State v. Anderson*, 2016-NMCA-007, ¶¶ 8, 15-16, 364 P.3d 306 (finding fundamental error where the jury was not instructed on the right to stand one's ground because the court could not "determine that the jury delivered its verdict on a legally sound basis").

If Defendant's construal of the instructions is correct, the jury was offered one, instead of two, legally valid pathways to finding him guilty of felony murder. We fail to see how this could have prejudiced Defendant. *See State v. Wilson*, 1990-NMSC-019, ¶¶ 17-18, 33, 109 N.M. 541, 787 P.2d 821 (declining to find fundamental error where it could be argued that the trial court's "rejection of the instruction on aiding and abetting, in conjunction with the court's slight alteration of the instruction on first degree murder, was helpful to [the defendant]").

### E. Cumulative Error

No error having been established, Defendant's claim of cumulative error fails as well. *State v. Samora*, 2013-NMSC-038, ¶ 28, 307 P.3d 328 (stating that "where there is no error to accumulate, there can be no cumulative error" (internal quotation marks, brackets, and citation omitted).

## III. CONCLUSION

We hold (1) sufficient evidence supported Defendant's convictions for felony murder and shooting at a motor vehicle; (2) the State did not engage in prosecutorial misconduct in delivering its closing argument to the jury; (3) the jury's failure to convict Defendant of the predicate felony of armed robbery while convicting him of felony murder did not violate his right to due process; (4) Defendant has failed to demonstrate fundamental error arising from the jury instructions issued in this case; and (5) there was no cumulative error in the proceedings. We therefore affirm Defendant's convictions for felony murder and shooting at a motor vehicle.

**IT IS SO ORDERED**.

**/s/ Briana H. Zamora**
**BRIANA H. ZAMORA, Justice**

**WE CONCUR**:

**/s/ David Thomson**
**DAVID K. THOMSON, Chief Justice**

**/s/ Michael Vigil**
**MICHAEL E. VIGIL, Justice**

**/s/ C. Shannon Bacon**
**C. SHANNON BACON, Justice**

**/s/ Julie J. Vargas**
**JULIE J. VARGAS, Justice**

**APPENDIX B — JUDGMENT, SENTENCE AND ORDER OF THE SECOND JUDICIAL DISTRICT COURT, COUNTY OF BERNALILLO, STATE OF NEW MEXICO, FILED JANUARY 23, 2024**

SECOND JUDICIAL DISTRICT COURT
COUNTY OF BERNALILLO
STATE OF NEW MEXICO

Case No. D-202-CR-2020-00847

STATE OF NEW MEXICO,

*Plaintiff,*

vs.

MATTHEW H. WOOD;
DOB: 10/24/1998
SSN: xxx-xx-5338
ADDRESS: MDC/NMDOC

*Defendant.*

Filed January 23, 2024

**JUDGMENT, SENTENCE AND ORDER OF COMMITMENT TO THE NEW MEXICO DEPARTMENT OF CORRECTIONS**

On January 22, 2024 this case came before the Honorable David Murphy, District Court Judge, for sentencing. The State was represented by Assistant

District Attorney, Christine Jablonsky. The Defendant, appearing in person, was represented by counsel of record, Robert J. Gorence. The Defendant, having been convicted on August 1, 2023 pursuant to Guilty verdicts, accepted and recorded by the Court, of the offenses of:

1. FIRST DEGREE MURDER (FELONY MURDER), a first degree capital felony offense, occurring on or about the 12th day of September 2019, as charged in Count 1 of Indictment D-202-CR-2020-00847, pursuant to §30-2-1(A)(2), NMSA 1978.

2. CONSPIRACY TO COMMIT ARMED ROBBERY, a third degree felony offense, occurring on or about the 12th day of September 2019, as charged in Count 3 of Indictment D-202-CR-2020-00847, pursuant to §30-28-2 and §30-16-2, NMSA 1978.

3. SHOOTING AT OR FROM A MOTOR VEHICLE (GREAT BODILY HARM) (FIREARM ENHANCEMENT), a second degree felony offense and serious violent offense pursuant to §33-2-32 NMSA 1978, occurring on or about the 12th day of September 2019, as charged in Count 4 of lndictment D-202-CR-2020-00847, pursuant to §30-3-8(B), NMSA 1978. A mandatory one (1) year firearm enhancement shall be

assessed pursuant to §31-18-16 NMSA 1978 based on the jury's special verdict form for Count 4.

4. AGGRAVATED BATTERY (DEADLY WEAPON)(FIREARMENHANCEMENT), a third degree felony offense and serious violent offense pursuant to §33-2-32 NMSA 1978, occurring on or about the 12th day of September 2019, as charged in Count 5 of Indictment D-202-CR-2020-00847, pursuant to §30-3-5(C), NMSA 1978. A mandatory one (1) year firearm enhancement shall be assessed pursuant to §31-18-16 NMSA 1978 based on the jury's special verdict form for Count 5.

5. AGGRAVATED ASSAULT (DEADLY WEAPON), a fourth degree felony offense, occurring on or about the 12th day of September 2019, as charged in Count 6 of Indictment D-202-CR-2020-00847, pursuant to §30-3-2(A), NMSA 1978.

The Defendant is hereby found and adjudicated guilty and convicted of said crimes, and is sentenced to the custody of the New Mexico Corrections Department to be imprisoned for the term of "LIFE" in prison for First Degree Murder by Guilty verdict on Count 1. It is understood that the term "LIFE" in prison means that the defendant will NOT be eligible for parole for these crimes until he has served thirty (30) years in prison pursuant to §31-21-10, NMSA.

*Appendix B*

Pursuant to the order filed on December 26, 2023, the sentence for Count 5 merges with the sentence imposed in Count 4.

The sentences for Count 3 (3 years), Count 4 (9 years + 1 year FE), and Count 6 (18 months) shall run consecutively to one another for a total jurisdiction of fourteen and a half (14 ½) years. Counts 3, 4, and 6 shall run concurrently to Count 1. Therefore, the defendant must serve thirty (30) years in prison before he becomes eligible for parole. HOWEVER, this is not a guarantee that the defendant will be released from prison or paroled on these charges after serving thirty (30) years.

THEREFORE, the Department of Corrections of the State of New Mexico [is] hereby commanded to take the above-named Defendant in custody and confine for a term of "LIFE."

Defendant is to receive credit for 184 days of pre-sentence confinement towards his sentence.

IT IS FURTHER ORDERED that the Defendant be placed on parole for a minimum of five (5) years as to Count 1 and two (2) years as to Counts 3, 4, and 6 after release and be required to pay parole costs.

/s/ David Murphy 1/23/24
David Murphy
District Judge

*Appendix B*

Approved by:

*/s/ Christine Jablonsky*
Christine Jablonsky
Assistant District Attorney

*Approved via email on 1/23/2024*
Robert J. Gorence
Attorney for Defendant

## APPENDIX C — ORDER OF THE STATE OF NEW MEXICO IN THE COUNTY OF BERNALILLO, SECOND JUDICIAL DISTRICT COURT, FILED DECEMBER 26, 2023

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

D-202-CR-2020-00847

STATE OF NEW MEXICO,

*Plaintiff,*

v.

MATTHEW WOOD,

*Defendant.*

### ORDER

THIS MATTER having come before the Court on **Defendant Matthew Wood's Motion to Set Aside the Count 1 Conviction, First Degree Murder (Felony Murder), and for the Court to Direct a Verdict of Not Guilty on the Basis That the Evidence is Insufficient** (Motion 1) filed September 28, 2023, and **Defendant Matthew Wood's Motion to Dismiss Counts 5 and 6 at the Time of Sentencing Due to Conviction on Count 4 Triggers Double Jeopardy Analysis** (Motion 2). The Court reviewed Defendant's Motions, the State's Responses, and Defendant's Reply. The Court heard arguments of

Counsel. As part of this decision, the Court reviewed the audio record and exhibits from the Trial.

After a review of the evidence, relevant case law, and considering the arguments of Counsel, the Court hereby denies Motion 1, and denies in part and grants in part Motion 2, pursuant to the following findings.

**Motion 1:**

1. Wood asks the Court to set aside his felony murder conviction in the instant case because the jury hung on the count formed by his armed robbery charge that constituted the predicate for his charge of felony murder. The State persuasively responds that Wood erroneously relies upon a theory of inconsistent verdicts to justify setting aside his conviction.

2. Under *United States v. Powell,* 469 U.S. 57, 64-65 (1984), the rationale of which the New Mexico Supreme Court adopted in *State v. Veleta,* 2023-NMSC-024, ¶ 35, a jury acquitting on a predicate charge for felony murder does not bar a conviction on the felony murder charge itself *See Powell,* 469 U.S. at 64-65. Consequently, the jury not being able to reach a verdict on Wood's armed robbery charge in itself does not invalidate the jury convicting him for felony murder. The proper check on the felony murder conviction is whether sufficient evidence supports it. *See Veleta,* 2023-NMSC-024, ¶¶ 32-33.

a. Wood also asks this Court to diverge from what *Powell* provides: an acquittal or hung jury on a separate

predicate charge for a compound felony does not bar a conviction on the compound felony. *See Defendant's Reply.* More particularly, Wood argues due process under the New Mexico Constitution merits divergence from *Powell.* [*Id.*] His argument is not persuasive for two reasons.

b. Under the approach that New Mexico Constitution due process provides greater protection than its federal counterpart, Wood asserts *Powell* rests upon a flawed federal analysis. [Reply 6-7] The *Powell* Court did not rely upon the Federal Constitution. *See Veleta,* 2023-NMSC-024, ¶ 35 (citing *e.g. State v. Halstead,* 791 N.W.2d 805, 810 (Iowa 2010) (explaining the *Powell* Court did not base its decision on constitutional considerations, and states consequently are free to address inconsistent verdicts as they see fit in state criminal proceedings). An analysis of whether the New Mexico due process requires diverging from *Powell* is therefore misplaced.

c. Next, Wood does not cite authority supporting his assertion that *Powell's* reasoning is flawed in light of due process under the New Mexico Constitution. He cites authority that does not discuss whether New Mexico due process would bar a felony murder conviction if the jury acquitted or hung on the separate charge for the predicate felony. *See* [Reply 7 (citing authority not analyzing or even mentioning whether such a bar would occur)]. Consequently, in the face of the *Veleta* Court adopting the reasoning of *Powell,* this Court declines to indulge Wood's assertion. *Cf In re Adoption of Doe, 1984-NMSC-024,* ¶ 2. (An appellate court may assume

no authority exists supporting an argument when a party cites no such authority.).

3. Moreover, the trial record provides sufficient evidence supporting Wood's felony murder conviction under the elements instruction the jury received and in particular the elements that Wood disputes, *see* [Motion l], (a) causation of death and (b) the intent to kill or the knowledge that his acts helped to create a strong probability of death or great bodily harm. In review for sufficient evidence, this Court views the trial evidence in the light most favorable to the State, indulging all reasonable inferences and resolving all conflicts in the State's favor. *See State v. Martinez,* 2022-NMSC-004, ¶ 12 (noting proper standard of review for sufficiency of the evidence). The jury moreover was free to reject Wood's version of events. *See State v. Montoya,* 2015-NMSC-010, ¶ 52.

a. Regarding causation, evidence showed such through facts substantially indicating Wood helped, encouraged, or caused the killing of the murder victim, Noah Tafoya, during the commission or attempted commission of the felony of armed robbery. *See* [*Jury Instructions Given* (1-25) (filed Aug. 10, 2023) (No. 11, felony murder elements instruction)]. More particularly, evidence showed Wood helped in the killing of or caused the killing of Noah during an armed robbery that Wood and Trey McNab committed upon Noah over a gun, and McNab fatally shot Noah.

b. Similarly, the same evidence showing causation also showed the felony murder element, *see* [*id*], that Wood knew that his acts helped to create a strong probability of death or great bodily harm to Noah. More particularly, in sum, the evidence provided the following.

1) Testimony indicated that Wood had a conversation with McNab (who alternatively went by the first name of Everton apparently, in addition to Trey) about robbing Noah in the week prior to it, and they had discussed a couple of other robberies previously. Additionally, testimony and physical evidence indicated that during the robbery Wood held at knifepoint the person who accompanied Noah to the robbery scene, Jorden Chavez, and subsequently shot Chavez after Chavez shot Wood when Wood backed away from Chavez. As a result of the shots between Wood and Chavez, Trey mortally wounded Noah. Trey shot Noah in the abdomen while he robbed Noah. Wood helped Trey to be free of interference from Chavez if Noah resisted Trey by Wood holding a knife to Chavez' neck. Wood's holding the knife to Chavez commenced events leading to their gunshot exchange that led to Trey mortally shooting Noah.

2) Moreover, evidence indicated Noah and Trey struggled over the gun Trey pointed at Noah, upon the gunshots between Wood and Chavez. In turn, Wood moved to Noah and Trey and shot Noah in the thigh, a wound that could not be ruled as being non-fatal although less severe than the mortal gunshot by Trey to Noah's abdomen. Wood's shooting Noah enabled Everton to gain the upper hand in his struggle with Noah and shoot Noah in the abdomen.

4. In relevant part, the voluminous trial evidence provided the following.

a. Jordan Chavez testified he and Noah, in Chavez' car on September 12, 2019, at Noah's direction, parked at the front of Noah's apartment complex, at 1919 Ladera NW in Albuquerque, whereupon Noah hopped out and said, "I'll be right back." [Trial Audio Recording (Tr. Audio) 7-24-2023, 3:12:00 – 3:24:20] The time was around sunset, it was getting dark but some light was still present so Chavez could see around him without the help of lights. Chavez thought Noah's hopping out had something to do with a gun that Noah earlier spoke about to Chavez. Chavez testified that Noah might have mentioned something about selling a gun that night, and Chavez thought Noah had a gun when he got into Chavez' car right before they drove to the front of the complex. *See* [Tr. Audio 7-24-2023, 3:18:10 – 3:21:00, 3:23:55 – 3:24:20] Chavez subsequently observed Noah in the passenger seat of a dark colored sedan adjacent to the right of Chavez' car, both cars were backed into their parking spots, with an African American male, appearing to be in his twenties in age, that is, close to Chavez' age, in the driver's seat. *See* [*Id.* 3:24:20 – 3:27:19] Noah had his hands up with his palms facing away from him, which led Chavez to think a robbery was happening between the African American and Noah. *See* [*Id.* 3:27:10 – 3:29:30]

b. Chavez' car door then opened and someone put a knife to Chavez' neck. *See* [*Id.,* 3:33:17 – 3:37:38] The person holding the knife appeared to check Chavez' pockets by patting them. Chavez thought the

person would rob him. Chavez told the person, "I don't have anything." [*Id.*] Chavez told the person to take his car, which Chavez said apparently in an attempt to get the knife removed from his neck. *See* [*Id.,* 3:37:38 – 3:39:05] Chavez noticed the person appeared to have a gun in the front pouch pocket of the hoodie he wore because Chavez noticed what looked like an extended gun magazine sticking out of the pouch pocket. *See* [*Id.,* 3:39:18 – 3:41:53] The person, after patting Chavez' pockets, backed up a step or two away from Chavez' car. [*Id.,* 3:41:53 – 3:42:05, 4:05:53 – 4:08:01] The person who backed up was a "white guy." [*Id.*]

c. Chavez then brought up his gun he had been holding down at his right hip. *See* [*Id.,* 3:30:49 – 3:31:55, 3:37:38 – 3:38:29, 3:37:18 – 3:41:19] Chavez' gun was a Glock handgun in .380 caliber. [*Id.,* 3:09:00 – 3:09:30] Chavez "let off a few rounds," shooting at the person who had put the knife to his neck, whereupon Chavez' gun jammed. *See* [*Id.* 4:09:22 – 4:12:38] Chavez was then shot which led to his falling out of his car, he got back into his car and drove away while hearing shots fired and hitting his car windows. *See* [*Id.* 4:12:33 – 4:16:25] Chavez could not tell what direction the shots that hit him came from. The entire time from when Chavez saw Noah with his hands up to when Chavez drove away took apparently only seconds. *See* [*Id.,* 4:16:30 – 4:17:40] Leaving the complex, Chavez turned right onto Ladera. Chavez then headed toward the Walmart store on Coors. At the Walmart, Chavez parked in front of the store where he got help by asking a security guard, subsequently emergency medical help came and Chavez later awoke in a hospital where he learned he had

three or four gunshot wounds and some broken ribs. *See* [*Id.,* 4:14:11 – 4:30:24] After asking the guard for help, Chavez returned to his car to wait for help to arrive and threw his jammed gun out of his car. [*Id.,* 4:23:00 – 4:26:46]

d. On cross-examination, Chavez indicated he heard the sound of shots fired coming from the car adjacent to his in which Noah was with the African American male. *See* [Trial Audio, 7-25-2023, 11:06:36 – 11:07:11, 11:10:48 – 11:11:25] Chavez heard those shots fired after he shot the person who held the knife to his neck. [*Id.*] Chavez said he was not sure that the person who held the knife did not fire some of the shots he heard after he shot that person. Chavez also heard shots fired as he drove away from the apartment complex until he got out of the parking lot. [*Id.,* 11:13:05 – 11:13:35]

e. Crime scene investigation showed the car Chavez drove, a white Mercedes-Benz sedan, had blood on the driver's seat and that six shots had been fired at the sedan all of which appeared to be directed at the driver's side, from signs of bullet impacts on that side and bullets or fragments of them that were recovered from the sedan. *See* [Tr. Audio 7-25-2023, 4:35:10 – 4:53:45 (Crime Scene Detective testifying about such and identifying photographs of portions of the sedan depicting the same)] The investigation found, apparently near the sedan, a handgun on the ground of the parking lot at the Walmart at 2550 Coors Boulevard where police found the sedan. *See* [*Id.,* 3:03:45 – 3:08:40] The handgun had blood on it and an extended magazine not originally of the handgun. The handgun was jammed as it had a spent casing stuck in it such that it could not fire.

f. Elizabeth Jaramillo, who lived at the same apartment complex as Noah, testified that on September 12, 2019, at approximately 8:30 or 8:45 p.m., she heard a "lotta gunshots" very close to her apartment near the front of the complex. [*Id.,* l:57:10 – 2:04:20] Looking out her apartment window, Elizabeth observed two cars "squeal out" of the complex, a white car going right as it left the complex and the other, a dark colored small car, going left as it exited the parking lot. [*Id.,* 2:05:40 – 2:07:40] Leaving her apartment, Elizabeth found a young man she did not recognize, approximately twenty years of age, who said three times, "I've been robbed," and said his name was Noah. [*Id.,* 2:08:50 – 2:16:40] Noah was not "breathing that good," and he gave his apartment number to Elizabeth. [*Id.,* 2:14:10 – 2:16:40] At Noah's apartment, Elizabeth found Noah's mother and led her to her son who Elizabeth had found lying near the mailboxes at the front of the apartment complex. *See* [*Id.,* 2:16:40 – 2:20:20] Elizabeth then noticed blood on Noah, his breathing was "really low," and he could not talk. An ambulance had arrived at the scene.

g. Two 911 calls on September 12, 2019, made from the scene at 1919 Ladera NW were admitted into evidence and played for the jury. The first call, made by a woman, indicated she heard gunshots and observed a dark blue sedan (with its lights off) speeding out of the apartment complex parking lot. *See* [Tr. Audio 7-26-2023, 11:42:15 – 11:47:15 (playing 911 call recording for the jury)] The sedan headed west on Ladera and it had a turquoise colored license plate. The second call, made by a man, indicated the man found a young man in his early twenties lying in

the complex parking lot apparently near the front of the complex near mailboxes. [*Id.,* 11:47:30 – 11:52:25 (playing the second 911 call)] The young man said he had been robbed and he appeared to have been shot in his stomach and his leg. The caller indicated the person who shot the young man had left in a car.

h. Brett Warth, a Rio Rancho Police Officer at the time of Wood's trial, was an Albuquerque Police Department (APD) Officer on September 12, 2019, and on duty as an APD patrol officer. He testified that on September 12 police dispatch sent him to the scene of a "shots fired call," at approximately 8:00 p.m., at 1919 Ladera NW, where he found a male lying on the ground. [Tr. Audio 7-26-2023, 1:35:20 – 1:39:00] The male's mother and stepfather were with the male. [*Id.,* l:48:30 – 1:50:25] Warth testified the male lying on the ground was Noah Tafoya who died from wounds he suffered in the shooting incident there at 1919 Ladera. *See* [*Id.,* l:54:10 – 1:55:00 (cross-examination)] Warth's video lapel camera recording of his approaching the male, which included another officer who arrived at the scene ahead of Warth, and other people in addition to the mother and stepfather, was admitted into evidence and played for the jury. On cross, Warth testified he arrived at the scene at approximately 8:46 p.m. [*Id.*]

i. APD Officer Anthony Guerra testified that on September 12, 2019, police dispatch sent him to Presbyterian Hospital (Pres-H) about two people who walked into Pres-H with gunshot wounds. [*Id.,* 2:25:00 – 2:37:25] One of the two, who had the more serious wounds, had been taken to University of New Mexico Hospital

(UNMH). The other person, who was still at Pres-H, was Wood. Wood identified himself in a lapel video cam recording, which was admitted into evidence and that Officer Guerra made while speaking to Wood at Pres-H. Wood had wounds to his torso and thigh area. Officer Guerra learned from Wood that the other person with gunshot wounds was Trey McNab. [*Id.,* 2:40:20 – 2:49:00] Officer Guerra arrived at Pres-H at approximately 9 p.m. [*Id.,* 2:53:44] The car in which Wood and McNab drove to Pres-H, a Toyota Camry, was in the Pres-H parking lot. *See* [*Id.,* 2:50:10 – 2:55:10] Officer Guerra insured that the Camry was secured until crime scene investigators could process it. [*Id.,* 3:01:30 – 3:04:11] When sent to Pres-H, Officer Guerra was aware of a shooting incident at 1919 Ladera that same night and Officer Guerra asked Wood about where he was shot in order to see if Wood and McNab were related in some fashion to the Ladera incident. Wood said he was shot at a gas station near Central and Unser. *See* [*Id.,* 2:43:05 – 2:43:55]

j. Crime scene investigation of the Toyota Camry that Wood and McNab drove to Pres-H revealed cash and a number of spent bullet casings in the Camry. [Tr. Audio 7-25-2023, 3:50:15 – 4:09:40 (crime scene detective testifying about such)] All of the spent casings were of .40 caliber. Additionally, signs of bullet impacts inside the Camry indicated a gun was fired within the Camry, [*Id.,* 4:19:15 – 4:21:40]

1) Investigation revealed three firearms in the Camry. *See* [*Id.,* 4:18:25 – 4:19:00] One .40 caliber Glock handgun was under the driver's seat, the gun appeared

to be jammed, and a spent bullet casing was stuck in it with six shells still in the magazine that could hold twelve shells. *See* [*Id.,* 4:16:35 – 4:18:15] Another .40 caliber Glock handgun was on the passenger side floorboard, and the gun had an empty magazine in it with the gun in a "lock back" fashion that indicated the gun had been fired until the magazine was empty. *See* [*Id.,* 3:59:00 – 3:59:51, 4:18:25 – 4:19:00] The third firearm was a Glock 9 mm caliber handgun found in a Glock gun case on the center portion of the rear floorboard area of the Camry. *See* [*Id.,* 4:12:55 – 4:13:53, 4:18:25 – 4:19:00]

2) Physical evidence corroborating that Wood and Everton had been in the Camry was the following. A wallet in the pocket of the driver's door had an identification card for the Matthew Wood. [Tr. Audio 7-26-2023, 4:03:55 – 4:04:20] A backpack on the rear seat on the driver's side contained a wallet and marijuana. [*Id.,* 4:11:25 – 4:12:55] The wallet in the backpack had an identification card for Everton McNab. Issac Cutrer's testimony noted below indicated Wood and Everton substantially dealt in marijuana. The Camry also had marijuana in baggies found in its center console and on the rear seat floorboard in addition to the marijuana found in the backpack, plus a scale apparently of a type typical for weighing out narcotics for distribution, that is, for sale. *See* [*Id.,* 4:09:55 – 4:12:55] The backpack also had cash in it. Cash was in the Camry, on the driver's floorboard and the front passenger's floorboard, in addition to cash found in the backpack. [*Id.,* 3:56:10 – 3:56:42, 3:59:01 – 3:59:11] The total amount of cash found in the Camry, on the floor alone, totaled approximately $800.00, mostly in twenty-dollar bills and some fifty dollar bills. *See* [*Id.,* 4:23:07 – 4:23:30]

3) Two pocketknives were in the Camry, one in the center console between the front seats and another one on the front passenger floorboard. [*Id.,* 4:06:14 – 4:06:55, 4:08:00 – 4:08:30] The one in the center console had an emblem on it with the name "Old Timer." [*Id.,* 4:06:14 – 4: – 6:55] This knife evidence supports the inference Wood was the person who held a knife to Chavez as Wood left the Ladera scene in the Camry.

4) Underneath the front passenger floorboard, there were a watch, a ring, and a bracelet. [*Id.,* 4:15:00 – 4:16:15] Noah's DNA was on the bracelet. [Trial Audio, 7-27-2023, 2:36:40 – 2:39:36] No DNA from Everton, Wood, and Chavez, was on the bracelet DNA sample. DNA samples from the ring and watch were insufficient for determining whether Everton, Wood, Chavez, or Noah, were contributors to that DNA The watch and bracelet, compared with a watch and bracelet appearing on Noah in photographs provided by Noah's family, appeared to be the same ones that Noah wore in the photographs. *See* [Tr. Audio, 7-28-2023, 11:42:49 – 11:44:35]

5) Signs of bullet impacts were found inside the Camry on the B pillar on the driver's side, through the steering column, and on the dash. [*Id.,* 4:19:14 – 4:21:20] A bullet was lodged in the B pillar. The bullet impacts appeared to be such that they resulted from a firearm shot within the Camry.

k. Jay Stuart, APD forensic scientist, testified as an expert in firearms and tool examinations to the following.

*Appendix C*

1) Regarding a Glock Model 17 Generation IV handgun collected from the rear floorboard area of Wood's Toyota Camry, he found the handgun had not fired any of the bullet casings collected into evidence for the September 12, 2019, shooting incident at 1919 Ladera. [Tr. Audio 7-27-2023, 9:45:00 – 9:46:25, 10:52:06, 10:44:45 – 10:46:35] The Model 17 was of 9mm caliber, the collected casings were .40 caliber.

2) A bullet recovered from Wood's body (presumably from hospital treatment of his gunshot wounds) was fired by the Glock Model 43 handgun, caliber of .380, that police found at a Walmart parking lot, the same Walmart to which Jordan Chavez drove his Mercedes-Benz sedan. *See* [*Id.,* 10:47:40 – 10:52:57 (direct examination), 11:35:25 – 11:37:00 (cross-examination)]

a) As noted above, Chavez testified he threw his gun from his sedan while parked at Walmart. Additionally, the Glock Model 43 apparently had malfunctioned, that is, a spent bullet casing was in the handgun such that the handgun could not be fired in the state in which the police found it. *See* [*Id.,* 10:47:40 – 10:55:11] Chavez testified his gun jammed after he fired it.

b) Additionally, DNA expert Nicole Sambol testified Chavez' DNA was on the Glock Model 43 but not DNA from Wood, Everton, or Noah. [Tr. Audio, 7-27-2023, 2:25:43 – 2:29:25]

c) All of the above evidence about the Glock Model 43 indicated it to be Chavez' gun that fired a bullet

into Wood, which supports the fact of Wood being the person who held a knife to Chavez.

3) A Glock Model 27, Generation IV, .40 caliber, found under the driver's seat of the Camry was the handgun that Stuart found to have fired six bullet casings the police found in the Camry. [*Id.,* 10:56:46 – 10:59:10, 11:10:15 – 11:12:55] Sambol testified DNA from Everton and Noah was on the trigger of the Model 17, and Noah's DNA but not Everton's DNA was on the slide of the Model 17. [Tr. Audio, 7-27-2023, 1:53:05 – 2:12:32, 2:13:42 – 2:15:30] A Glock Model 23, .40 caliber, found under the front passenger seat of the Camry, was found to have fired eight bullet casings that police found in the parking lot at the apartment complex at 1919 Ladera NW. *See* [*Id.,* 10:59:10 – 11:00:30, 11:12:55 – 11:18:16 (testimony about the handgun and the casings that Stuart matched to it); Tr. Audio 7-25-2023, 2:42:25 – 2:43:25 (testimony about collection of the casings)] Sambol testified the DNA samples from the Model 23 could not be compared for whether the DNA was from Wood, Everton, Chavez, or Noah, either because the samples were insufficient or had too many DNA profiles for purposes of meaningful comparison to profiles for Wood, Everton, Chavez, and Noah. *See* [Tr. Audio, 7-27-2023, 2:34:39 – 2:36:40] Additionally, the Model 23 fired two bullet casings found in the Camry. *See* [Tr. Audio 7-27-2019, 10:59:10 – 11:00:40]

4) The police found a total of sixteen projectile (bullet) fragments on the parking lot of the apartment complex at 1919 Ladera NW, and inside the Camry and the Mercedes Benz sedans. [*Id.,* 11:01:01 – 11:04:15]

Additionally, one projectile was taken from the body of Noah Tafoya during his autopsy. [*Id.,* 11:04:15 – 11:04:25] Stuart identified all seventeen of these projectile fragments as being of .40 caliber bullets, and he could not rule out that either of the .40 caliber Glock handguns found in the Camry had fired those bullets. Stuart could not identify whether or not either of the handguns actually fired any of those bullet fragments due their being without discernible markings from the gun that fired them for Stuart to compare with the markings that either of the Glock handguns make on bullets they fired.

l. DNA expert Sambol testified Wood could not be excluded as the source of two blood DNA samples that police took apparently from the asphalt of the parking lot at the apartment complex at 1919 Ladera, but Noah, Chavez, and Everton were excluded as being sources of the blood DNA. *See* [Tr. Audio 7-27-2023, 2:17:55 – 2:25:15, 2:23:23 – 2:25:43]

m. Isaac Cutrer testified he had been dating Everton McNab's sister, Britanya McNab, from October 2018 until the beginning of 2021. [Tr. Audio 7-26-2023, 3:32:35 – 3:35:10] In September 2019, Britanya lived with Everton at a trailer off Prospect Street, apparently in Albuquerque. Everton's girlfriend Amelia also lived in the trailer plus Britanya's daughter, Bridonya who was six years old at that time. Everton also went by the name of Trey, which was what Cutrer mostly called him. Cutrer observed that the walls of the trailer were so thin that a conversation in the area of the living room and kitchen, a single room area, could be heard clearly in the bedrooms of the trailer. [*Id.,* 3:35:45 – 3:36:10]

*Appendix C*

1) Britanya and Everton were only a couple of years' difference in age, as of September 2019 Everton was twenty-one years old. [*Id.*, 3:36:17 – 3:38:09] They were close with Britanya feeling responsible for Everton because she was the older of the two. Cutrer himself was twenty-six or twenty-seven at the time. Cutrer was spending approximately sixty percent of the time hanging out at Britanya's trailer and they spent forty percent of the time at Cutrer's home. Britanya and Everton were originally from Jamaica and their only family member in the United States was their father to whom they were not close. Everton liked basketball and video games, he regularly went to a gym, apparently to play basketball, and he was approximately six feet tall. [*Id.*, 3:38:09 – 3:40:12] Everton and Cutrer did not do things together. Everton mostly played video games and smoked in the living room area of the trailer. Everton smoked cigarettes and marijuana. Initially, when Cutrer first started spending time at the trailer he would not see any drugs or firearms.

2) As Cutrer became a regular fixture at the trailer, he would observe in the trailer marijuana in leaf and wax forms, marijuana in trash bags (apparently not small but kitchen sized trash bags) along with sandwich bags full of drug pills. [*Id.* 3:40:20 – 3:44:00] The drugs were on the kitchen table, in cabinets, and some in the freezer or the refrigerator.

3) During the first year Cutrer dated Britanya, he regularly saw Matthew Wood at the trailer. [*Id.*, 3:44:00 – 3:45:55] Wood was at the trailer "almost all the time." Wood and Everton were a pair, that is, if you

saw one of them you probably saw the other too. Their friendship started in high school. They would play video games together at the trailer, go get food together, or play basketball together which was a "big thing" for them to do. Cutrer, during his testimony, identified Wood in the courtroom. [*Id.,* 3:46:15 – 3:46:40]

4) Cutrer would overhear conversations between Everton and Wood about their selling drugs, how they would divide the drugs for each of them to sell. [*Id.,* 3:47:25 – 3:50:00] They would sell marijuana and pills. As a result of their sales, there would be large amounts of money on the kitchen table all the time, several thousands of dollars. Cutrer only saw Everton handling the money so Cutrer presumed the money belonged to Everton. [*Id.,* 3:50:00 – 3:53:30] Cutrer also overheard conversations of Everton and Wood about selling firearms on a weekly basis and Cutrer observed a variety of firearms at the trailer each week. The most common firearms that he observed were .40 caliber handguns. Everton and Wood also discussed on weekly basis the selling of marijuana and other drugs. Notably, Cutrer noticed Wood nearly always had a .40 caliber firearm with him in his pocket, and sometimes he would put the firearm on the kitchen table but, if he left, he would always take the firearm with him.

5) Within a week's time leading up to September 12, 2019, Cutrer overheard, at the trailer, Everton and Wood discussing robbing somebody which they said would be an "easy come up" because the person was young whom they would rob. [*Id.,* 3:53:38 – 3:56:26] Cutrer was

in Britanya's bedroom next to the living and kitchen area in which were Everton and Wood when he overheard the robbery discussion. Everton apparently suggested that they pretend to purchase something (it was not clear to Cutrer what was that something) but would not do so and instead take the item from the person. *See* [*Id.*] The reference to "easy come up" meant, to Cutrer, that the robbery would be without resistance. Cutrer had heard Everton and Wood discussing robberies a couple of times previously.

6) On the evening of September 12, 2019, Cutrer arrived at the trailer at approximately 5:00 p.m. right after he got off work. [*Id.,* 3:56:26 – 3:58:25] Britanya, Everton, and Wood were at the trailer. Cutrer was going to go out with Britanya. Cutrer did not notice any firearms at the trailer that day. Everton and Wood were smoking marijuana and getting ready to leave to go play basketball. Everton and Wood left the trailer after 5:00 p.m., after Cutrer and Britanya had left. Everton did not come back home that night, and his not doing so made Cutrer concerned because Everton's girlfriend Amelia on the next morning knocked on Britanya's bedroom door and asked if Cutrer and Britanya had heard from Everton. Britanya tried to call Everton, apparently without success, and Amelia was concerned because Everton had texted her the previous evening, asking her to get the bath water ready and she thus was expecting him, but he never came home. *See* [*Id.,* 3:58:25 – 3:59:30] Everton would usually come back to the trailer, and if he was not going to return he would let Amelia know. Consequently, Cutrer filed a missing person report.

7) Subsequently, Cutrer, Britanya, and Amelia left the trailer to look for Everton. [*Id.,* 4:00:00 – 4:02:00] By "default" they ended up at Pres-H because of (a) the robbery conversation that Cutrer had overheard earlier in the week, (b) their hearing of shooting incidents across Albuquerque the previous night, and (c) Cutrer consequently believed Everton "might have gotten involved in something." [*Id.*] They knew Everton and Wood had left the trailer in Wood's car so they looked unsuccessfully for the car at Pres-H. They also called Pres-H and were told no one was at Pres-H who matched the description they gave for Everton. Cutrer remembered that Wood's car was a dark blue Toyota, either a Camry or a Corolla, he could not recall which one it was.

8) Cutrer, Britanya, and Amelia, next went to the UNMH trauma center. [*Id.,* 4:02:30 – 4:03:45] Initially, upon Cutrer's query, they were told there was no Everton McNab there. Sometime later, Cutrer called back to the same number to which he made the missing person report and asked if there was any information about Everton. He learned that a detective would come out to talk to them. APD Detective Jeff Jones came out and spoke [with] them, and they related to him about their looking for Everton, including their visits to Pres-H and UNMH.

9) At some point in approximately a week's time from September 12, Cutrer learned Everton was indeed at UNMH. Everton left UNMH maybe a week or so after the night of September 12. [*Id.,* 4:03:45 – 4:05:10] Following September 12, Cutrer never saw Wood at the trailer again, nor did he ever speak with Wood again.

Cutrer learned Everton sustained gunshot wounds on the night of September 12 and Wood did too. Everton had wounds to his stomach.

10) Cutrer observed that Wood never seemed uncomfortable about his conversations with Everton about robbing people or selling marijuana. [*Id.,* 4:05:10 – 4:06:23] Wood also never shied away from the firearms they would have on the kitchen table. *See* [*Id.*]

n. APD Detective Jeff Jones testified that on September 12, 2019, he responded to Dispatch at approximately 9:45 p.m. for a call for the homicide unit from 1919 Ladera NW. [Tr. Audio, 7-27-2023, 3:48:25 – 3:49:00] Jones learned that four people who had gunshot wounds in connection with the incident at 1919 Ladera had been taken to UNMH. [*Id.,* 3:55:39 – 3:56:07] In particular, Jones learned that Noah Tafoya died on the way to UNMH. The other three people, Everton Trey McNab, Matthew Wood, and Jordan Chavez, were at UNMH.

1) Noah's parents told Jones that they last saw Noah at the parking lot, apparently referring to 1919 Ladera, where he was bleeding and dying. [*Id.,* 3:58:10 – 3:58:35] The parents recalled that Noah said, in explaining what had happened, "Some guy named Trey had burned me." or "Some guy named Trey had robbed me." [*Id.,* 3:59:37 – 4:00:25]

2) The jury heard a lapel video recording of Jones interviewing Wood at UNMH on September 17, 2019, that the Court admitted into evidence. In relevant

part, Wood related that he and Everton were at 1919 Ladera for Everton to buy a gun. [Tr. Audio 7-27-2023, 4:55:15 – 4:59:45] After they arrived at 1919 Ladera in Wood's car, Wood got out of the car to smoke a cigarette and talk on his phone. The guy who was selling the gun got into the car. Subsequently, Wood, only a few feet from the car, heard gunshots. [Tr. Audio, 7-28-2023, 8:44:00 – 8:58:10] Everton was in the car in the driver's seat and the other person was in the front passenger seat. Wood then went to a white car that was next to his car and he was shot. [*Id.,* 9:06:10 – 9:11:45] Wood denied that he had a gun or a knife at the time and denied that he shot anyone. Wood, however, indicated that he found a gun at the parking lot before he heard the gunshots. [*Id.,* 8:58:10 8:59:00] He also said Everton had a Glock .40 caliber gun at the time. [*Id.,* 9:20:50 – 9:25:10] When Everton and Wood left 1919 Ladera, they both had been shot and they drove to a hospital.

3) The jury heard the lapel video recording of Jones interviewing Wood at UNMH on September 18, 2019, that the Court admitted into evidence. In relevant part, Wood related that the other car that he went to after hearing gunshots, a white car, was the other guy's car, apparently referring to the person who got into Wood's car. [*Id.,* 9:43:17 – 9:44:20] Wood related that when he heard gunshots and Everton screaming he then pulled out a knife and walked up to the other guy's car. [*Id.,* 9:56:30 – 10:00:45] Wood related such after Detective Jones confronted Wood about a knife found in Wood's car, the Camry. Wood was shot when he got to the white car and said, apparently to a person in the car, "What's going

on?" [*Id.,* 10:00:45 – 10:01:25]

4) Detective Jones testified his investigation never revealed any evidence supporting Wood's testimony there was screaming when gunshots occurred at 1919 Ladera NW. [*Id.,* 10:50:00 – 10:50:50]

5) A search of Facebook messages for September 12, 2019 revealed that Noah posted early that day he had a Glock 17, Gen IV, for sale for $540.00. [*Id.,* 11:09:30 – 11:13:00] Messages after that Facebook post by Noah, specifically between the Snapchat accounts of Everton and Noah on September 12, 2019, were as follows. [Tr. Audio 7-28-2023, 11:29:18 – 11:32:15, 11:32:55 – 11:33:56] At approximately 7:30 p.m., Everton sent the message of "Hit me up."; followed by Noah sending to Everton, "1919 Ladera Northwest." Subsequently, Everton sent to Noah, "You by the mailboxes G;" followed at approximately 8:12 and 8:15 p.m. respectively by Everton to Noah: "Black Camry in front," and "Black Camry." [*Id.,* 11:28:50 – 11:34:55] Dispatch sent police to 1919 Ladera NW at approximately 8:45 p.m. [*Id.,* 8:33:55 – 8:34:09] Detective Jones believed that the above social media messages considered together indicated Noah and Everton were making a deal for a Glock handgun. [*Id.,* 11:34:38 – 11:34:50]

o. A medical investigator, Lauren Decker, supervised and was present herself the entire time of the autopsy of Noah. [Tr. Audio 7-28-2023, 1:03:10 – 1:03:50, 1:10:07 – 1:11:10, 1:25:40 – 1:26:30] Decker testified that the cause of death for Noah was gunshot wounds, one to

the thigh and one to his abdomen, and Noah's manner of death was homicide.

1) Additionally, on cross, Decker testified the thigh wound appeared to be from a gun fired from approximately six to twelve inches and up to two feet away from Noah, the abdomen wound appeared to be from a gun fired only a couple of inches from him. [*Id.,* l:53:20 – 1:53:50]

2) Decker also testified the tracks for the bullets causing the wounds were from front to back and left to right for the bullet in the abdomen, and front to back and right to left and downward for the bullet in the thigh. [*Id.,* l:26:29 – 1:27:05]

3) The tracks in Noah's body for the bullets that hit Noah combined with evidence regarding the Glock .40 caliber handgun found in the Camry under the front passenger's seat, arguably supports the State's theory in closing argument, *see* [Tr. Audio, 7-31-2019, 4:12:21 – 4:13:28], that Wood used that .40 caliber gun to shoot Noah at one point.

a) DNA evidence did not eliminate the possibility that Wood handled the .40 caliber Glock Model 23 handgun under the front passenger's seat but did eliminate him as someone who handled the .40 caliber gun under the driver's seat of the Camry. As other evidence noted above plainly indicated Wood and Everton were at 1919 Ladera on the night Noah was shot, and evidence indicated Wood to be the person who held Chavez at

knifepoint, a reasonable inference is that Wood used the Model 23 handgun that night at 1919 Ladera.

b) The DNA evidence also indicated Everton and Noah both handled the Glock Model 27 .40 caliber gun under the driver's seat. Everton's DNA was on the trigger. Noah's DNA was on the trigger and the slide of the gun. Additionally, the medical examiner testified Noah had scrape or abrasions on his nose and cheek, and a bruise to his right eye, all of which the examiner at her "best guess" estimated as being incurred around the time of his death. *See* [*Id.*, 1:16:18 – 1:17:25] This evidence about Noah's facial injuries coupled with the DNA evidence about Everton and Noah handling the gun, reasonably supported the State's theory in closing argument, *see* [Tr. Audio, 7-31-2019, 3:59:06 – 3:59:55, 4:12:21 – 4:13:28], they struggled over the Model 27 gun upon the shots occurring between Chavez and Wood.

c) The State argued Wood moved over to the Camry on the side opposite of Everton, who as indicated by Chavez' testimony would have been in the driver's seat, after Wood fired at Chavez who fled in his Mercedes-Benz. *See* [*Id.*] The eight .40 caliber casings found in the parking lot supported the inference Wood fired at Chavez and Chavez' Mercedes from a position in the parking lot, considering the bullet impacts on the driver's side of the Mercedes, and the location of the casings in the parking lot.

d) At the Camry, Wood fired two shots at Noah with both bullet casings ejecting into the Camry where police found them, and one of the shots struck Noah in his thigh. *See* [*Id.*] The State reasonably argued such based upon the right to left track for the bullet that hit the thigh would not result from Everton shooting Noah from his position in the driver's seat, to Noah's left. The bullet Everton fired at Noah's abdomen tracked in a fashion opposite of the thigh bullet, that is, the bullet tracked left to right in Noah's body. *See* [*Id.*] In other words, the bullet track for the thigh wound, if fired by Everton, required Everton to be in a position relative to Noah opposite of Everton being the driver's seat of the Camry, that is, outside the front passenger door. *See* [*Id.*]

p. Lastly, Wood testified in his defense. In sum, he testified that he and Everton had gone out on the evening of September 12, 2019, to play basketball, and after doing so, sometime between 7:40 and 8:00 p.m. they went to get something to eat after which Wood drove his Camry with Everton as his passenger to 1919 Ladera NW at Everton's direction. [Tr. Audio, 7-31-2023, 9:46:00 – 10:02:10] During the drive to 1919 Ladera, Everton apparently told Wood that he had to make a stop to buy a gun. At the apartment complex at 1919 Ladera, Everton told Wood to park at the front of the complex and to take a walk. Wood got out and walked over behind some mailboxes at a distance from his Camry.

1) At the mailboxes, Wood smoked a cigarette and then heard gunshots from within the complex parking lot. *See* [*Id.,* 10:12:05 – 10:36:10] Wood appeared to testify

that he ran and then walked over to his car, and noticed a white car parked next to his Camry, which he had not seen earlier. Wood denied he had a gun with him but he did have a knife. As Wood walked up to the white car on its passenger side, he was shot. Wood then ran away and heard more gunshots. Wood hid behind the mailboxes. After not hearing additional gunshots, Wood walked back to his Camry and noticed the white car speeding away.

2) Subsequently, Wood saw that Everton had been shot, and they drove to Pres-H. [*Id.,* 11:24:15 – 11:28:50] Everton initially drove the Camry but along the way, apparently Everton experienced difficulty driving due to his being shot, so Wood took over driving and drove the remainder of the way to Pres-H.

5. From the trial evidence, the jury could infer Wood caused Noah's death by his participation in Everton robbing Noah of the Glock Model 17, 9 mm caliber, handgun found in Wood's Camry.

a. Supporting the inference Wood planned to participate in the robbery, Cutrer testified about Wood and Everton having conversations about robberies, particularly the conversation in the week prior to September 12, 2019, that apparently had the September 12 robbery as its subject.

1) Cutrer also testified of what he observed of Everton and Wood on September 12 prior to and after the events at 1919 Ladera. Everton and Wood were going out to play basketball that evening but they never returned

to the trailer and ended up in the hospital with gunshot wounds.

2) Additionally, the following indicated Everton and Wood went to 1919 Ladera and robbed Noah: The testimony outlined above of Chavez, Jaramillo, Officers Warth and Guerrera about the events at 1919 Ladera. The physical evidence discussed by Stuart (the guns that police found and the bullet casings matched to them) and DNA tying Everton and Wood to the guns found in the Camry. The watch and bracelet found in the Camry apparently were from Noah. Lastly, the social media messaging between Everton and Noah for September 12 indicated Noah would be selling a Glock 9mm caliber handgun to Everton at 1919 Ladera that evening, and police found such a handgun in the Camry.

b. Additionally, the following supports inferring Wood participated in the September 12 robbery, beyond Cutrer's testimony about Wood and Everton talking about robbing someone young within a week of September 12. Chavez testified about the robbery of Noah while a person held Chavez at knifepoint, whom Chavez shot. Chavez' gun fired a .380 caliber bullet taken from Wood's body in Wood's being treated for his gunshot wounds. DNA evidence indicated blood at the Ladera parking lot scene came from Wood. Wood admitted in his video recorded interview with Detective Jones at UNMH, and in his trial testimony, he was at 1919 Ladera with Everton, and in the parking lot. The jury was free to discard Wood's denying that he himself had a gun, participated in Everton robbing Noah, or knew beforehand of a gun deal between Everton and Noah.

c. Jaramillo and Detective Jones testified about Noah saying he had been robbed. The statements the Detective mentioned directly provided Everton robbed Noah -- Noah said a person named Trey (a name Everton used) had robbed him. Noah's statements, in light of the evidence indicating that Everton and Wood were together that September 12 evening at 1919 Ladera, supports the inference Wood was at 1919 Ladera too.

d. Evidence indicated Noah died from gunshot wounds he sustained in his being robbed at 1919 Ladera on September 12, 2019. Chavez testified about shots fired at 1919 Ladera. Elizabeth Jaramillo testified about her encountering Noah there after the events Chavez described, including Noah's statement he was robbed and Jaramillo describing his apparently fading physical state. Detective Jones testified about facts he learned regarding Noah's death in connection with 1919 Ladera, including statements that Noah made to his parents about his being robbed, and that Noah had gunshot wounds which he did not survive. The medical examiner's testimony, and the testimony and lapel camera video recording of Officer Warth of what he encountered at the Ladera scene, show that Noah died from gunshot wounds he sustained at 1919 Ladera.

e. Based upon the inference Wood is the person who held Chavez at knifepoint, the evidence supports the inference Noah's gunshot wounds resulted from Everton and Wood shooting him after gunshots between Chavez and Wood.

*Appendix C*

1) Per Chavez' testimony, he shot Wood after Wood backed away. Importantly, Chavez did not hear gunshots beyond his own shots at Wood until after he shot Wood.

2) In line with the version of events the State argued in closing, *see* [Tr. Audio, 7-31-2019, 3:59:06 – 3:59:55, 4:12:21 – 4:13:28 (State's version)], the evidence reasonably provides the following.

a) The DNA evidence that Everton and Noah handled the .40 caliber gun Everton wielded and the medical examiner's testimony of Noah's facial injuries support the fact they struggled over the gun with Noah being struck in the face during the struggle. The struggle commenced after Chavez shot Wood, and a reasonable inference is the struggle culminated with Everton shooting Noah in the abdomen, presuming that Everton shooting so would cease the struggle.

b) Chavez testified the time span from when he saw Noah with his hands up until Chavez fled the parking was a matter of seconds. Consequently, a reasonable inference is that Wood fired at Chavez immediately prior to or simultaneously when Everton fired his gun in the struggle with Noah. Consequently, the jury could infer Wood's holding Chavez at knifepoint commenced the series of events that resulted in Everton shooting Noah, and thus Wood's holding Chavez so caused Noah's death.

c) Alternatively, the jury could infer, based upon what the medical examiner testified about the bullet tracks in Noah's body, that as Chavez fled Wood went over to the Camry and shot Noah in the thigh, as Wood saw Everton and Noah were struggling over Everton's gun.

d) Additionally, a reasonable inference is that Wood shot Noah prior to Everson shooting Noah in the abdomen, presuming a shot to Noah's abdomen would cease or substantially diminish his struggling with Everton. That is, Wood shot Noah to help Everton because he saw them struggling over Everton's gun. Wood's shooting Noah enabled Everton to shoot Noah, essentially causing Noah's death from two gunshot wounds, Wood shooting Noah's thigh and Everton shooting Noah's abdomen.

6. Similarly, the evidence showing Wood helped cause Noah's death supports a reasonable inference of knowledge on the part of Wood that his acts helped to create a strong probability of death or great bodily harm. Wood's firing at Chavez created such a strong probability regarding Chavez along with Everton and Noah because all three were in the general direction of Wood's line of fire- Wood's Camry with Everton and Noah was behind Chavez who was in his Mercedes. Additionally, the jury could infer Wood's moving over to the Camry and shooting Noah to help Everton created that same strong probability either by: (a) enabling Wood to shoot Noah, or (b) Wood's shooting Noah alone in itself, as the medical examiner could not rule Noah's thigh gunshot wound as being non-fatal in itself

*Appendix C*

**Motion 2:**

7. Wood asks for his convictions on Count 5 (aggravated battery with a deadly weapon (firearm) and in the alternative aggravated battery with great bodily harm) and Count 6 (aggravated assault with a deadly weapon (knife) to be set aside. Specifically, he claims they violate double jeopardy regarding his Count 4 conviction for shooting at a motor vehicle resulting in great bodily harm. *See* [Motion 2] A double jeopardy bar merits dismissing the Count 5 conviction but not the conviction for Count 6.

a. The State concedes the Count 5 conviction violates double jeopardy. The Court agrees. Under a double-description analysis, the underlying conduct for Counts 4 and 5 is unitary, Wood shooting at Chavez who was in his Mercedes-Benz. Subsequently, applying the modified *Blockburger* construction of the relevant criminal statutes, as required in the analysis, indicates the statute for each of the crimes could be violated in ways that are not subsumed by the other statute. *See State v. Porter,* 2020-NMSC-020, ¶¶ 20-21.

b. Consequently, the double-description analysis requires viewing the State's theories for Count 4 and Count 5, as reflected in the trial evidence and jury instructions. The evidence and instructions indicate that Count 5 in the first form or in the alternative subsumes Count 4. Thus, the Legislature did not authorize multiple punishments for the two crimes based upon unitary conduct. *See Porter,* 2020-NMSC-020, ¶¶ 20-21. The Court consequently vacates the conviction on the

lesser of the two crimes, Count 5, a third-degree felony, as Count 4 is a second degree felony. *See, e.g., State v. Montoya,* 2013-NlVlSC-020, ¶ 55.

Regarding Count 6, the conduct forming the crime is Wood holding a knife to Chavez' neck. This conduct is not unitary with respect to Count 4 because the shooting conduct of Count 4 is distinguishable from the Count 6 knife conduct. The convictions for Count 4 and Count 6 consequently do not violate double jeopardy. *See State v. Torres,* 2018-NMSC-013, ¶ 18.

**THEREFORE,** the Court denies Motion 1. Additionally, the Court grants Motion 2 in part, dismissing Wood's Count 5 conviction, and denies in part Motion 2 because Wood's Count 6 conviction remains valid as outlined above.

**lT IS SO ORDERED**

December 26, 2023
**Hon. David A. Murphy,**
**District Court Judge**