

Nos. 89723 & 90213

In the Supreme Court of The State of Nevada

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Clerk of Supreme Court

KEVIN PHILLIP RASPPERRY
an individual,
Appellant,

v.

NIMFA ESCOBIA,
individually and as special administrator
of the estate of Marcial Escobido Escobia,
Respondent.

On Appeal from the Eighth Judicial District Court, Clark County
Hon. Mark R Denton, Case No. A-20-842834-C

RESPONDENT'S OPENING BRIEF

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal. Gupta Wessler LLP and Bighorn Law are the only law firms that have appeared on behalf of the respondent, Nimfa Escobia, in this matter or are expected to appear in this Court. Neither Ms. Escobia nor her attorneys of record are publicly held or traded companies.

Dated: September 23, 2026

/s/ Deepak Gupta
Deepak Gupta

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INTRODUCTION

Kevin Raspperry described his own conduct as “despicable” and “reckless.” His attorneys went further, telling the jury that Raspperry’s “reprehensible” actions had “horrific” consequences—just “awful, awful, awful.” When the time came for the jury to decide whether to award punitive damages, Raspperry’s counsel didn’t even resist them: “His actions were horrible, so you do what you’ve got to do.”

These admissions by Raspperry and his lawyers at trial, if anything, understated Raspperry’s deplorable conduct and the tragic results. After a night of excess—eight liquor drinks, ecstasy, and “a few buds” of marijuana—Raspperry got into his car and raced through the streets of Las Vegas. Blowing a red light at 107 miles per hour, Raspperry slammed into Nimfa and Marcial Escobia’s car as they drove to church, killing Marcial and leaving Nimfa struggling to walk for years. Even worse was Nimfa’s psychological damage. Marcial was Nimfa’s “crutch,” her husband of decades, partner in raising children, and center of her world. She cannot eat, go to the movies, sing, or attend family gatherings without being reminded of his absence or breaking down in tears.

At trial, Raspperry didn’t bother to contest liability. And he offered no evidence beyond a history of his employment and his DUI conviction. On this one-sided record, the jury awarded Nimfa \$37.5 million in compensatory damages and,

after a post-trial reduction, three times as much in punitive damages, \$112.5 million—a verdict four times greater than an offer of judgment Rasperry rejected pretrial.

Now on appeal, Rasperry asks this Court to rescue him from the decision to take a terrible case to trial. On compensatory damages, Rasperry does not even contest that sufficient evidence supports the jury’s award, but, in a truly kitchen-sink approach, he offers six purported bases to overturn it (on top of six additional issues he raises about other portions of the judgment). Many are unpreserved, and none has merit. Rasperry’s lead argument is that the district court abused its discretion in not ordering a mistrial when the voir dire panel learned of a prior DUI conviction. But Rasperry never moved for a mistrial and, regardless, he cannot show prejudice—a necessary element of a juror-misconduct claim—because the jurors learned the same (arguably *more* damning) information when he admitted to “typically” driving while high.

Rasperry’s other challenges are just as flawed. He claims, for instance, that Nimfa’s counsel asked improper questions during voir dire. But below, he told the district court that he was “okay with” questions designed to uncover whether prospective jurors were biased against the award Nimfa sought, and he admits that questions about insurance-related biases have “historically been permitted.” His limited evidentiary challenges do not even mention the standard of review or, in one case, the rule of evidence that he claims was violated. And his claim of improper

damages “anchoring” lacks any doctrinal foundation—the only case he cites in support was about the type of sufficiency challenge Raspperry has conspicuously declined to make—and doesn’t make sense on its own terms, as Raspperry accuses counsel of supposedly anchoring the jury at \$50 million, then \$180 billion, then \$220 million. The reality is that there was no “anchoring” at all.

Raspperry’s attack on the punitive damages award fares no better. His primary argument is that the award should be reduced to \$37.5 million under federal due-process principles. But Raspperry admits that his conduct was reprehensible—the most important element of federal due-process review—and this Court has previously refused to impose the rigid one-to-one cap that Raspperry seeks. If that weren’t enough, his claim that the need for a punitive award is “diminished” because he faced criminal consequences is directly contrary to the legislature’s judgment, codified in NRS 42.010, that punitive damages should be easier to obtain in DUI cases. Then, as a *backup*, Raspperry asks the Court to wipe out the punitive damages award *entirely* on state-law grounds because (he claims) the jury lacked evidence of his poverty. Raspperry relegated this argument to a backup because this Court long ago stopped conducting a separate state-law excessiveness review.

As for the fee award under NRCP 68, a remand is necessary because this Court overturned binding precedent governing contingency-based awards like the one here in *Clark v. Marin*, 142 Nev. Adv. Op. 47, 592 P.3d 417, 432 (2026), while this

appeal was pending. But the Court should reject Rasperry's additional claim that no award can be given because two of the *Beattie* factors favor him. Rasperry calls that result "arbitrary," but this Court has endorsed it in two published opinions in the past three years. It should not change course now.

STATEMENT OF ISSUES

- I. ***Purported juror misconduct:*** Whether, under the plain error doctrine, Rasperry has shown sufficient prejudice from the disclosure of his prior DUI conviction when he also admitted at trial to "typically" driving while intoxicated.
- II. ***Voir dire:*** Whether counsel improperly "indoctrinated" prospective jurors by asking, as this Court has previously allowed, questions designed to uncover bias against large compensatory damages awards and questions about jurors' relationships with insurance companies.
- III. ***Evidentiary challenges:*** Whether the district court abused its discretion in admitting testimony from Nimfa's family members about Marcial's character and impact on others (used to prove compensatory damages) or in admitting Rasperry's testimony about his misconduct (used to prove punitive damages).
- IV. ***Closing argument:*** Whether counsel engaged in prejudicial misconduct by accurately stating he represented multiple victims or using an analogy to guide the jury in the difficult task of awarding pain-and-suffering damages.
- V. ***Punitive damages:*** Whether punitive damages must be reduced under federal law to a one-to-one ratio that this Court has previously refused to impose or eliminated entirely under a form of state-law excessiveness review that this Court no longer engages in..
- VI. ***Attorneys' fees:*** Whether this Court should overturn its precedent allowing district courts discretion to award fees when certain *Beattie* factors favor the offeree.

STATEMENT OF THE CASE

I. Factual background

The crash. Early on a Sunday morning in October 2019, Marcial Escobia stepped outside his Las Vegas home to ready his car to drive to the St. Therese Church in Tecopa, California. 7AA1644. The car was already parked at the side of the house, but Marcial wanted to move it a little closer so his wife of 37 years, Nimfa, “didn’t have to walk out too far”—“being a gentleman,” that was just how he treated her. 7AA1618, 1644. The church was far away, nearly two hours, but the drive was worth it to the deeply religious couple because they wanted to be present at an event honoring its namesake saint. 7AA1591, 1598, 1620, 1644–45. So Nimfa “pray[ed] the rosary for safe travels,” and the “dynamic duo,” as their children viewed them, were off. 7AA1612, 1621.

But they would never make it outside Vegas. Around the same time the Escobias stepped into their car, Kevin Rasperry stumbled into his. Rasperry would often drive while intoxicated; he “typically” drove after getting high on marijuana. JAVS video [12.58.57.946], at 06:03. And this morning, he was at the tail end of an all-night drug-and-alcohol fueled bender: five margaritas, three shots of jaeger, “a few buds” of marijuana, and ecstasy. *Id.* at 05:36–06:12. Rasperry, a bartender, had apparently been searching for any reason to celebrate, and he found it in having his “first time . . . off [work] on a weekend in a while.” *Id.* at 06:20.

As he approached the intersection of West Tropicana and South Rainbow, Raspperry sped through a red light at 107 miles per hour—twice the speed limit—and rammed into the Escobias. *Id.* at 03:37–55; 5AA1182. The impact, Nimfa’s doctor would later explain, was as if “[t]he Hulk picked up a car and hit [them] with it.” 7AA1529. The car crumpled to the point that it took 20 minutes “for Clark County Fire to extricate [them] from the vehicle.” 7AA1530.

Nimfa’s immediate injuries. When Nimfa came-to in the hospital, the first thing she did was call for Marcial, “her best friend.” 7AA1611. She shouted “Chow,” her nickname for Marcial, and “kept calling.” *Id.* In the days after, she persisted, “looking around,” “looking for him” until “she passed out again.” 7AA1651. No answer ever came. Marcial did not survive the crash.

Nimfa’s life was spared, but her body wasn’t. A blood vessel that carried blood from her heart was “torn off by the forces” of the crash, and blood spilled out into the area around her lungs. 7AA11523, 1526. She needed both blood to be drained from internal areas where it was not supposed to be and a transfusion to make up for the blood she had lost. 7AA1526, 1651. The doctors had to insert a chest tube that, even with an anesthetic, still “hurt[] like hell.” 7AA1655. She suffered “comminuted fractures” in five ribs, meaning each damaged rib was fractured in multiple places, making “simply breathing or moving . . . very painful.” 7AA1522–23, 1527, 1623. And

the crash inflicted irreparable damage to her kidney, which stopped receiving blood in certain areas. 7AA1523–24.

For three nights, Nimfa remained in the trauma ICU. 7AA1652. And it would be two weeks before doctors discharged her from the hospital. *Id.*

The long-term consequences. Nimfa’s pain continued well after she left the hospital. She remained in a wheelchair for a year after the crash. 7AA1528. For a long time, she struggled to sleep because of the severe pain. 7AA1623. And five years later, at the time of trial, Nimfa remained unable to walk in the same way as she could before the crash and experienced daily pain in her hips. 7AA1623.

But the greatest damage was psychological. Nimfa had moved at a young age from the Philippines with Marcial, and they had been side by side for decades—relocating to a new country together, raising children together, and enjoying the growth of grandchildren together. 7AA1592, 1608, 1620. Family was everything to them, and they bounced back and forth between Las Vegas and Texas to make sure they lived close to their children. 7AA1607–08. With Marcial having recently retired from his career in healthcare, they looked forward to spending even more time together, including going back to the Philippines “to go on a mission” to help “poor people.” 7AA1627. And they had also decided to celebrate their 40th wedding anniversary, now just around the corner, by renewing their vows in the country of

their youth. 7AA1618–19. Nimfa even picked out a garnet-colored dress in anticipation. 7AA1619.

Now, Marcial was gone. Nimfa was “a very strong woman,” but not so strong that she could withstand losing her life partner. 7AA1584. Long after the crash, she would “keep[] on crying and keep[] on expressing her grief.” 7AA1589. In a close friend from church’s words, Nimfa “has the sadness.” *Id.* To her doctor, it was “very significant depression.” 7AA1529.

To everyone, it was a transformation. Before the crash, Nimfa and Marcial had been “very outgoing . . . they were hardly home” and “always . . . mak[ing] each other laugh.” 7AA1591. After, Nimfa became “very quiet” and she “doesn’t make jokes.” 7AA1660–61. For “30 plus years” before the crash, Nimfa and Marcial had frequented the movies. 7AA1614. After, she resisted it because “it’s something mom and dad would do.” *Id.* Before the crash, she “love[d] to karaoke.” 7AA1661. After, she either “won’t sing” or “when she does sing, she’s crying because . . . your dad used to always want me to sing this song.” *Id.* At times she wouldn’t eat because “I used to split my meals with your dad” and “when I look at it, I’m just reminded of what’s not there anymore.” 7AA1653. She became “isolated,” like she was “in a box,” “lonely,” “always staying in her room praying,” and stuck reliving “the things that had happened” and the “shocking moments.” 7AA1584, 1593, 1612.

When family does get her out, “she [doesn’t] feel right.” 7AA1613. “[J]ust having an empty seat next to her,” the “noises outside [a] vehicle,” all those unavoidable parts of leaving the house “trigger her.” 7AA1613. “Whenever [they] have a gathering,” Nimfa will “start crying.” 7AA1661. “[C]lose to five years” after the crash, and she would still instinctively “close her eyes” and go “back to that time when she lost her best friend.” 7AA1613.

Nimfa’s devastation was no surprise to her close-knit family. In part, that was because she and Marcial “were always together. You would never see one without the other.” 7AA1643. She was “always dependent” on Marcial; he “was always her crutch.” 7AA1653.

But it was also because her family knew from first-hand experience what type of person Marcial was—how he supported those around him and what kind of damage losing him inflicted. When Marcial’s son Nimar moved to Houston, Marcial followed and bought “his dream home.” 7AA1607. And when Nimar moved back to Vegas, Marcial, with “no hesitation,” gave up his dream home and moved back, too. 7AA1607. For his daughter, Misha, Marcial “was so understanding,” “always so willing to help,” and “more than [a] dad,” leaving her “[r]eally lost without him.” 7AA1660.

Marcial was a constant presence for his son- and daughter-in-law and grandchildren, too. Marcial was “always checking up on” his daughter-in-law,

calling her more frequently than his own son to make sure she had the support she needed. 7AA1637. When his son-in-law was having health problems, Marcial was the person he would go to. 7AA1592. And Marcial “showed so much attention” to his grandchildren, frequently taking them to Disneyland—something their father never had the time to do—“to make sure that they have a great time during the summer.” 7AA1592, 1607, 1609–10. After his death, one grandchild would “just stare[]” at Marcial’s picture and “cr[y] for nothing . . . just looking at the picture.” 7AA1595.

That was the man that Nimfa lost—“selfless, generous, kind,” and always “think[ing] about others before himself.” 7AA1636.

Meanwhile, Rasperry had earned a criminal sentence but had not learned his lesson. Years after the crash, he acknowledged that the behavior of the driver who killed Marcial and wrecked Nimfa’s life was “despicable” and “reckless.” JAVS video [12.58.57.946], 02:16, 04:27. But he refused to admit fault for the crash. *Id.* at 03:02–32. Even though it was his car and first responders had extracted him from the driver’s seat, Rasperry steadfastly denied that he had been the one driving. *Id.* at 04:40. He claimed, “I don’t drive fast like that.” *Id.* at 04:56.

II. Procedural background

Nimfa and Marcial’s estate initiated this lawsuit to recover the damages that Rasperry’s drug- and alcohol-fueled escapade inflicted on them. To streamline the trial, the Escobias moved for summary judgment on liability, certain medical and

funeral expenses, and a determination that punitive damages were warranted under NRS 42.010 because Rasperry's drunken driving caused a death. 1AA024. Rasperry did not dispute his liability or the expenses, but argued that, although NRS 42.010 makes punitive damages available when drunk driving results in a fatality, punitive damages are "never awarded as of right" and the jury ultimately had discretion to decline to award them. 2AA267. The district court agreed with Rasperry. 2AA393.

The parties then proceeded to a trial about Marcial's pre-death pain and suffering, Nimfa's pain and suffering, Nimfa's loss of consortium, and punitive damages. The Escobias put on six witnesses—Nimfa's doctor, four family members, and a friend—who all testified to their damages. They also played video excerpts of Rasperry's deposition, where he detailed the drugs and alcohol he consumed before the crash, recounted some of his history of driving while intoxicated, and refused to accept responsibility for the crash.

Rasperry put on no live witnesses. His sole evidence at trial consisted of excerpts of his own deposition, which recounted his history of low-wage employment, and the judgment of his conviction. JAVS video [13.06.37.431], at 00:44–1:03, 04:14–05:01; 7AA1737.

The jury returned a verdict for Nimfa and Marcial's estate. On compensatory damages, the Escobias had asked for \$65 million for Nimfa and \$20 million for

Marcial's pre-death damages. 7AA1773. Rasperry countered with \$7 million and \$2 million, respectively. 8AA1785, 1791. The jury, essentially splitting the difference, awarded \$37.5 million to Nimfa and \$12.5 to Marcial's estate. 7AA1731. The jury also decided that punitive damages were warranted, 7AA1731, and, after additional argument, awarded \$500 million. 7AA1730, 8AA1815.

Rasperry then moved for post-trial relief, and the Escobias moved for attorneys' fees. On Rasperry's motion, the district court agreed that there was insufficient evidence that Marcial had suffered any pre-death pain and suffering. 16AA3893. The Escobias' medical witness testified that he presumed Marcial survived the crash since first responders had attempted life-saving techniques, but he declined to state that he had a reasonable degree of medical certainty that Marcial "conscious[ly]" suffered. 7AA1532–34. The district court also found the punitive damages excessive, reducing them to a three-to-one ratio totaling \$112.5 million. 16AA3893. The court otherwise denied Rasperry's post-trial motions. Finally, the district court granted the Escobias' fee motion, awarding their contingency fee because Rasperry had rejected a reasonable offer of judgment and then suffered a worse outcome at trial. 16AA3902.

SUMMARY OF ARGUMENT

Rasperry's arguments have little to do with the evidence presented at trial. He does not contest liability or challenge the sufficiency of the evidence underlying

compensatory damages, and he concedes that punitive damages were warranted. Instead, he raises a grab bag of arguments concerning tangential issues that arose at trial and (legitimate) comments from counsel. Many are unpreserved, all are meritless, and Rasperry cannot show prejudice anyway.

I. *Purported juror misconduct.* Rasperry’s lead argument—that the district court should have ordered a mistrial after jurors learned that he had previously been convicted of driving intoxicated—is waived. As Rasperry concedes, he never expressly sought a mistrial.

Regardless, whether reviewed for plain error or abuse of discretion, the argument fails. A claim of juror misconduct requires proof that the disclosure prejudiced the proceedings, a determination that requires assessing all the information in front of the jurors, including whether the at-issue disclosure was “cumulative” of admissible evidence. *Meyer v. State*, 119 Nev. 554, 566, 80 P.3d 447, 456 (2003).¹ That’s the case here. Rasperry admitted that he had a history of driving under the influence, so the disclosure added nothing new. Plus, even if there were some marginal difference between Rasperry’s admission and the juror’s disclosure, the district court instructed the jury to disregard the latter, and the jury is presumed to have heeded that directive.

¹ Unless otherwise noted, all internal quotation marks, citations, and alterations have been omitted from quotations throughout this brief.

II. *Voir dire*. Raspperry next complains about questions asked to the voir dire panel, but there was nothing improper. First, Raspperry asserts that the Escobias “indoctrinated” prospective jurors by questioning them about their ability to award a large amount of damages. But this Court has allowed questioning about jurors’ views on damages because it is a legitimate method of uncovering improper “biases towards large verdicts.” *Khoury v. Seastrand*, 132 Nev. 520, 528, 377 P.3d 81, 87 (2016). In fact, Raspperry told the district court he was “okay with” most of the questioning he complains of on appeal. 5AA1088.

Second, Raspperry asserts that questions about jurors’ relationship to the insurance industry were improper. He admits, however, that binding precedent allows the questions, and he does not even claim that the questions prejudiced the verdict.

III. *Evidentiary challenges*. Raspperry’s limited challenge to the actual evidence at trial is confined to the admissibility of testimony from family members and Raspperry’s own recounting of his misconduct. As to the testimony of family members, Raspperry appears to argue (he never actually cites a rule of evidence) that it should have been excluded as substantially more confusing than probative. Yet he never raised that objection at trial, so it is waived. At any rate, this was a trial about loss-of-consortium damages, and the testimony went directly to proving that Marcial was—and Nifma lost the companionship and support of—a devoted, affectionate,

and caring man. The evidence thus had substantial probative value and no risk of injecting a confusing side issue into the case.

Raspperry's challenge to the admission of his own deposition testimony is no better. He claims (at 49) the evidence was irrelevant because the Escobias were already "entitle[d] to punitive damages as a matter of law." But Raspperry persuaded the Court before trial that was not true by successfully opposing summary judgment on that exact issue. He thus forced the jury to decide entitlement to punitive damages and, as a result, made his testimony about his history of driving while intoxicated and his refusal to accept responsibility highly relevant.

IV. Closing argument. Raspperry's final flawed attack on the compensatory-damages verdict strains to characterize statements made at closing argument as misconduct. But counsel only "cross[] the line between advocacy and misconduct" when they "ask[] the jury to step outside the relevant facts" and reach a verdict divorced from the evidence and jury instructions. *Cox v. Copperfield*, 138 Nev. 235, 246, 507 P.3d 1216, 1227 (2022). None of the targeted comments here—accurately stating that the case involved multiple victims; urging the jury to send a message based on the evidence; and offering guidance, expressly grounded in the court's instructions, about how to award damages—breached that line.

V. Punitive damages. Raspperry also provides no grounds to amend the punitive-damages verdict. Raspperry first contends that the federal Due Process

Clause requires reducing the punitive award to a one-to-one ratio with compensatory damages. But his conduct (as he admits) was extremely reprehensible; this Court has previously declined to adopt the rigid ratio limit for which he advocates; and while he claims that the need for punishment is reduced because he faced criminal penalties, the legislature concluded that the extreme danger posed by intoxicated driving (that tragically materialized here) warrants making punitive damages easier, not harder, to obtain in cases like this.

Raspperry also asks this Court to completely erase the punitive award under state law as excessive compared to his wealth. Nearly all of his arguments fail for the simple reason that this Court does not conduct a state-law excessiveness review separate from what the Due Process Clause requires. What's left is a claim that the jury should have been instructed that it could consider his wealth. But Raspperry's proposed instructions did not correctly state the law, so the district court did not err in rejecting them. At any rate, the district court allowed Raspperry to argue about his financial condition, which he did. The jury simply didn't think it excused his conduct.

VI. Attorneys' fees. Raspperry finally argues that Nimfa cannot recover *any* attorneys' fees in this case. This Court has already rejected his main argument: that fees should be unavailable under NRCP 68 if a district court does not find a majority of the *Beattie* factors weigh in favor of the offeror. Raspperry also offers a backup

argument—that he could not afford to pay the fees—but that has no foundation in this Court’s case law, which asks only whether the offer of judgment was reasonable in view of the likelihood of recovery and the information available to the offeree. The only state that Rasperry claims has endorsed his proposed ability-to-pay test (Florida) has, in fact, squarely rejected it.

ARGUMENT

I. Rasperry forfeited his juror misconduct claim and cannot show any prejudice from the disclosure of cumulative information.

At the close of voir dire, the courtroom marshal reported that he had learned that an already dismissed prospective juror had done independent research. Rasperry’s counsel then asked the rest of the panel whether any dismissed juror had shared anything with them. One juror answered, “not to me.” 6AA1441. When another indicated that she had learned something, Rasperry’s counsel did not seek to question her separately; instead, he asked the juror, in open court, what she had learned—ensuring that any information would now reach the entire panel. *Id.* The juror then reported that the dismissed juror had shared that this “was not [Rasperry’s] first DUI.” *Id.*

Rasperry’s counsel had already told the voir dire panel that Rasperry had done “a reprehensible” thing, made an “awful decision” with “horrific” consequences, and was driving 107 miles per hour at the time of the crash. 5AA1169, 1182. Still, he complained that this new disclosure, which his own counsel elicited, had

“tainted” the jury panel. 6AA1442. The district court disagreed and Rasperry’s counsel did not request any specific relief. *Id.* So the parties moved on.

Rasperry now claims that his assertion that the panel was “tainted” constituted a motion for a mistrial that the district court abused its discretion in denying. A comment, however, is not a motion of any kind, let alone a motion for a mistrial. And in any event, the disclosure could not have caused prejudice given Rasperry’s admission that he had a history of driving intoxicated.²

1. As Rasperry acknowledges (at 25), for his juror-misconduct claim to be preserved, he had to move for a mistrial *before* trial began. When a party has “knowledge of [alleged] misconduct” occurring during voir dire, “he must assert his right to a mistrial immediately or be deemed to have waived any alleged error.” *Maxey v. State*, 94 Nev. 255, 256, 578 P.2d 751, 752 (1978). Were it otherwise, a party could “gamble on the jury’s verdict and then later, when displeased with the verdict,” raise the alleged juror misconduct post-trial to secure a do-over—to the detriment of

² Rasperry tries to pin the blame for this information reaching the entire voir dire panel on the district court, accusing it (at 23) of “inexplicably” not conducting private questioning. But before beginning any questioning, Rasperry merely said that “maybe” it should be done privately and when the district court suggested he use the voir dire process to begin investigating, Rasperry responded, “that’s fine.” 6AA1270–71. Then, once it became clear that *some* information had been shared, Rasperry never requested to question the jurors separately about *what* had been shared.

judicial resources and jurors' time. *Zhang v. Barnes*, 132 Nev. 1049, 382 P.3d 878, at *2 (2016).

Raspperry failed to satisfy this threshold requirement. He admits that he never expressly moved for a mistrial. Instead, he claims (at 25) that his request for a mistrial was “necessarily implied” from his “tainted” comment. But Raspperry cites nothing to show that the district court understood there to be, and acted on, an “implied” motion at the time of the comment. Rather, he points (at 25) to a *later* exchange when his counsel requested that the jury be admonished to disregard the information, which the district court agreed to do. While making that request, Raspperry’s counsel asserted in passing (without anyone correcting him) that a mistrial motion had been made.

But that exchange undermines Raspperry’s claim. Because a mistrial is a “drastic” remedy, a district court must examine whether lesser remedies, like an admonishment, would be sufficient. *Abram v. State*, 95 Nev. 352, 355, 594 P.2d 1143, 1144 (1979). If the district court had understood Raspperry to be making a so-called “implied” motion for a mistrial, then it would have considered (and given) a curative instruction, just as it did when Raspperry actually asked for one. The mere fact that no one corrected Raspperry’s offhand assertion that he had made a motion does not prove otherwise; that assertion was sandwiched within the request for an

admonishment that commanded the district court’s attention and required it to make a ruling.

It was not for the judge to speculate what Rasperry’s counsel meant. That’s especially true given that Rasperry’s counsel took an abnormally contentious approach to voir dire that included haranguing the Escobias’ attorney as an “idiot” and “absolute moron” without any requested relief to go along with the insults. 6AA1320. If Rasperry intended to make a motion, he had to clearly voice it. He failed to do so.

2. Because Rasperry did not preserve his motion for a mistrial, he must show plain error. That requires proof of an error “so unmistakable that it reveals itself by a casual inspection of the record.” *Williams v. Zellhoefer*, 89 Nev. 579, 580, 517 P.2d 789, 789 (1973). “Relief under the plain error standard is rarely granted in civil cases and is reserved for those situations where it has been demonstrated that the failure to grant relief will result in a manifest injustice or a miscarriage of justice.” *In re J.D.N.*, 128 Nev. 462, 469, 283 P.3d 842, 847 (2012).

Rasperry cannot meet this demanding standard. For a claim of juror misconduct based on improper research to succeed, the objecting party must establish that “there is a reasonable probability or likelihood that the [information] affected the verdict.” *Jeffries v. State*, 133 Nev. 331, 335, 397 P.3d 21, 26 (2017). That requires a holistic evaluation of how the information could have affected jurors,

including whether it “was cumulative of other evidence adduced at trial,” *Meyer*, 119 Nev. at 566, 80 P.3d at 456, and whether a curative instruction was given, *Jeffries*, 133 Nev. at 336, 397 P.3d at 27. This Court reviews a district court’s assessment of whether misconduct was prejudicial for abuse of discretion. *Nevins v. Martyn*, 140 Nev. Adv. Op. 66, 557 P.3d 965, 974 (2024).³

Raspperry cannot show any prejudice at all, let alone the patently obvious type that plain-error review requires. To begin, the disclosure was cumulative of the trial evidence. Raspperry admitted that he “typically” drove after smoking marijuana, JAVS video [12.58.57.946], at 06:03, revealing he had a history of driving intoxicated—exactly what the dismissed juror’s statement about his prior conviction revealed. And the information was also cumulative of the abundant other evidence of reprehensible behavior likely already saturating the jury’s desire to punish. The jury learned that, before the fatal crash, Raspperry had consumed a shocking amount of intoxicating substances: five margaritas, three additional shots of liquor, ecstasy, and marijuana. *Id.* at 05:36–06:12. It heard that he drove over double the speed limit and ran a red light. 6AA1500. It learned that he had the weakest of justifications for his conduct (having a “night off”). *Id.* at 06:20. It watched as he bafflingly refused to admit fault despite having been extracted from the driver’s

³ In criminal cases, because the inclusion of extra-record information implicates the Confrontation Clause, this Court evaluates prejudice de novo. *Meyer*, 119 Nev. at 562, 80 P.3d at 453. It has not extended that standard to civil cases.

seat after the crash. *Id.* at 03:02–32. And it heard Raspperry and his counsel describe his conduct as a “despicable” and “horrible” act that deserved to be “punished.” *Id.* at 04:18–26; 8AA1794. Whatever marginal theoretical difference there may be between Raspperry’s admitted conduct (“typically” driving while intoxicated) and the extraneous information (being convicted of that) was surely overshadowed by this overwhelming evidence of deplorable conduct that Raspperry’s counsel labeled “awful, awful, awful.” 8AA1781.

The lack of prejudice is further confirmed by the district court’s curative instruction. At Raspperry’s request, the court admonished the jury not to consider the information. 6AA1490. The jury is presumed to have followed that instruction. *Krause Inc. v. Little*, 117 Nev. 929, 937, 34 P.3d 566, 571 (2001). While Raspperry’s appellate counsel now belatedly complains (at 24) that this admonishment was “cryptic[],” his trial counsel in the courtroom told the district court he was satisfied with the admonishment, which the jury made clear that it understood when it reminded the district court of the name of the prospective juror who shared the information. 6AA1490–91. Any challenge that the admonishment was insufficient was forfeited.

3. Raspperry’s contrary argument (at 21–22) primarily relies on a series of cases that have held that jurors’ exposure to a prior conviction warrants a new trial. But every one of these cases is distinguishable for the same reason: Unlike here,

liability was contested. The concern in each case was “the human tendency to draw a conclusion which is impermissible in law: because he did it before, he must have done it again.” *United States v. Bagley*, 772 F.2d 482, 488 (9th Cir. 1985). Here, by contrast, Rasperry’s counsel admitted that he had “done it” and disclosed Rasperry’s conviction for driving under the influence during the crash to the jury. 7AA1508–09.

Rasperry also points to this Court’s unpublished decision in *Steele v. State* to argue that there is a difference between his admissions and the disclosure of a conviction. 582 P.3d 169, 2026 WL 122827 (Nev. 2026). But in *Steele*, the defendant admitted to neither the prior crime nor the crime for which he was on trial. *Id.* at *3. The erroneous disclosure of the prior conviction thus “removed any doubt about the [prior] victim’s credibility” at trial and lent support to the prosecution’s attempt to show a “propensity” toward sexual assault. *Id.* at *2–3. Nimfa didn’t need to prove prior intoxicated driving or intoxication during the crash because Rasperry admitted both. Plus, the disclosure in *Steele* also revealed a prior robbery conviction, that the defendant had to register as a sex offender, and that the prior judge had imposed a lengthy sentence, risking the jury putting weight on the “seriousness” of the prior conduct. *Id.* The disclosure here, by contrast, neither removed any critical credibility questions nor introduced any distinct prejudicial information.

Nor does Raspperry gain anything in observing (at 24) that the district court excluded the convictions pretrial. The court did so because it erroneously accepted the only argument that Raspperry developed: that misdemeanors convictions are inadmissible under NRS 50.095 (a mistake because NRS 50.095 only applies to convictions used for impeachment purposes, not, as here, to prove that punitive damages are warranted). 2AA409; *cf. Little*, 117 Nev. at 937, 34 P.3d at 571 (no basis for reversal where testimony that the district court ruled inadmissible, but the jury heard, “probably should have been admitted”). There is zero indication that the court excluded the convictions because it perceived some risk of prejudice distinct from whatever legitimate prejudice flowed from Raspperry’s separate admission to “typically” driving while intoxicated.

Regardless, even assuming that the district court did perceive, *before* the trial, some unfair risk of prejudice from convictions distinct from the legitimate prejudice that flowed from Raspperry’s admission, that would not warrant reversal. Raspperry must show that, *after* the complete trial record was developed—including Raspperry’s counsel repeatedly denigrating him—the prejudice from the disclosure of a prior conviction was so great that reversal is required. *Meyer*, 119 Nev. at 566, 80 P.3d at 456. The damning trial record is incompatible with that conclusion.

II. Rasperry’s complaints of indoctrination and improper questioning during voir dire, to the extent they are preserved, are meritless.

Rasperry next takes aim at the Escobias’ counsel, claiming that he “indoctrinated” the jury during voir dire by asking questions about jurors’ ability to award damages in the range the Escobias sought and that he improperly asked questions about insurance. But Rasperry’s counsel told the district court that, if the Escobias “want[ed] to talk about [the damages] numbers” they would request, he was “ok with that.” 5AA1088. He also acknowledges that the insurance questions are permissible under current law. And his additional scattershot complaints about voir dire are meritless, too.

There was no indoctrination. Voir dire exists to enable parties “to discover whether a juror will consider and decide the facts impartially and conscientiously apply the law as charged by the court.” *Lamb v. State*, 127 Nev. 26, 37, 251 P.3d 700, 707 (2011). Consistent with this purpose, district courts have discretion to “allow[] a party to [question] the jury panel regarding a specific verdict amount” because doing so can uncover “biases towards large verdicts.” *Khoury*, 132 Nev. at 528, 377 P.3d at 87. And it is permissible, in attempting to ferret out those biases, to raise specific figures with the jurors: “Simply asking jurors about their feelings regarding ‘large’ awards or some similarly vague adjective,” this Court has explained, “may be insufficient to determine if a juror has a preconceived damages

threshold for a certain type of case.” *Id.* Only if the questioning crosses the line from “acquisition of information” to “indoctrination” does it cease to be permissible—a line this Court declined to find violated in *Khoury* even though the attorney there questioned every single witness about his proposed verdict in a “badgering” manner that one juror described as “bullying” and that “almost reduced another juror to tears.” *Id.* at 529, 377 P.3d at 87.

The brief and respectful questioning here does not come close to indoctrination. Counsel mentioned at the start of voir dire that the Escobias planned to seek “over \$50 million” and then followed up with questioning about whether any jurors are “opposed to an award in that range” of “\$55 and \$85 million” even “if the evidence” supports it. 4AA936, 5AA1094–95 This was squarely aimed at the “acquisition of information,” not indoctrination. That is why Rasperry’s counsel not only never objected, but twice stated that he was “okay with” this questioning. 5AA1088.

Rasperry tries to avoid that straightforward conclusion by tacking on a complaint about additional questioning aimed at uncovering biases against large verdicts. Specifically, counsel gave jurors a fact pattern (a government contractor commits fraud) and then asked the prospective jurors if they would award \$180 billion if the government “fully proved” its damages. 5AA1090–91. The purpose of these questions, too, was to determine whether jurors would apply the law to the

facts or whether they had impermissible biases. That is why, when one juror stated that he would not award that much money because the question involved “the government,” counsel changed the fact pattern to exclude a type of bias (anti-government) that was irrelevant to this case. *Id.*

Raspperry claims that the three-Justice plurality opinion in *Gregory v. Chohan*, 670 S.W.3d 546 (Tex. 2023), condemns this type of questioning as impermissible “anchoring,” but he misunderstands the case. *Gregory* had nothing to do with voir dire or indoctrination. Instead, it concerned a challenge to the sufficiency of the evidence underlying a compensatory damages award. In that context, the plurality explained that a plaintiff could not “establish the required connection between an emotional injury and an amount of damages” solely by analogizing to the cost of a fighter jet because that cost had “nothing to do with the emotional injuries suffered” in the case—a tactic the *Gregory* plurality referred to as “anchoring.” *Id.* at 557–58. The plurality thus cautioned that plaintiffs must present actual evidence, not rely on “flawed analogies” designed “to get jurors to think about the appropriate damages award on a magnitude similar to the numbers offered.” *Id.* at 558.

Other than a reference to a “fighter jet,” *Gregory* has nothing in common with this case. There is no sufficiency challenge here, and the questioning was used not as an analogy to justify the Escobias’ damages request but to understand whether prospective jurors would apply the law to the facts. And given that *Gregory*’s

“anchoring” concern was with counsel offering figures at closing argument on a “magnitude similar” to the damages sought (rather than pointing to evidence), it is confounding for Raspperry to claim that the Escobias’ counsel attempted that maneuver (during voir dire) by mentioning “\$180 billion”—a figure many, many magnitudes greater than what was eventually sought at closing.⁴

Finally, Raspperry takes two last stabs at indoctrination by claiming that the Escobias’ counsel crossed the line when he told prospective jurors that its evaluation of punitive damages would be independent from criminal penalties and that he thought the case was important. Raspperry never explains how briefly misstating the law could amount to impermissible “indoctrination.” Regardless, counsel got the law right. Raspperry’s observation (at 33) that “the amount of a criminal fine is directly relevant to [the] constitutionality of [a] punitive damages award” neglects to mention that the Court, not the jury, determines constitutionality. The jury does not peruse the criminal code when determining what punitive damages to award.

⁴ Raspperry also briefly asserts (at 29) that the questions violated EDCR 7.70, but he raised no contemporaneous objection on that ground, so this argument is waived. Regardless, the Rule exists to address open-ended questions about what verdict a juror may return on hypothetical facts to preclude attempts to identify whether the juror is generally “pro plaintiff” or “pro defendant.” It is not aimed at questions (like the ones here) about whether a juror would return a specific verdict mandated by the facts and the law that are designed to determine jurors’ willingness to follow a court’s instructions.

Nor is counsel's comment about the importance of the case—in a single sentence during introductions at the start of a two-day voir dire—a basis for reversal. Here, too, Raspperry does not explain how this unobjected-to comment could have “indoctrinated” the jury. Indeed, the comment was so generic and untethered from anything specific in the trial that it likely did nothing but meet the prospective jurors' expectations about what any lawyer would feel about any case. At any rate, Raspperry acknowledges (at 30 n.3) that, because he failed to object, plain-error review applies, and he must therefore show “no other reasonable explanation for the verdict exists.” *Lioce v. Cohen*, 124 Nev. 1, 17, 174 P.3d 970, 980 (2008). Having declined to challenge the sufficiency of the evidence underlying the compensatory verdict, he has tacitly admitted that the evidence provides a reasonable (and exponentially more likely) explanation.

Questions about insurance are permissible. Raspperry's final complaint about voir dire is that counsel asked jurors about any employment history with insurance companies. This was designed to ferret out any insurance-related bias, as, in a car-crash case, it is a safe bet that jurors might suspect that insurance plays a role in the litigation. Indeed, one juror did so out loud. 5AA1035.

Raspperry admits (at 35–36) this type of bias-related questioning is “permitted” under *Silver State Disposal Co. v. Shelley*, 105 Nev. 309, 312–313, 774 P.2d

1044, 10446–47 (1989). And before trial, he told the district court that he had “no issue with” it and “certainly understand[s] that’s allowed.” 3AA676.

Nonetheless, he now asks (at 36) this Court to “revisit[]” *Silver State* and throw out the verdict as a result. This Court, however, does not “lightly” overturn precedent. *State v. Lloyd*, 129 Nev. 739, 750, 312 P.3d 467, 474 (2013). And there’s no occasion to do so here: Rasperry stops short of making the difficult-to-believe claim that this unobjected-to questioning was so prejudicial that it tainted the entire proceeding.⁵

III. The district court did not abuse its discretion in admitting evidence about Marcial’s impact on family members, Rasperry’s misconduct, or his refusal to accept responsibility.

In his sole challenge to the actual evidence at trial, Rasperry seeks reversal based on the district court’s admission of testimony from Marcial and Nimfa’s family members about the type of person Marcial was and from Rasperry about his wrongdoing and refusal to take responsibility. But Rasperry conveniently fails to mention that this question is reviewed for a “clear abuse” of discretion. *Crowley v. State*, 120 Nev. 30, 34, 83 P.3d 282, 286 (2004). His failure to mention the standard

⁵ Rasperry also asserts (at 35) that the district court should have “admonished the jury” to not consider insurance after the Escobias’ counsel declined to discuss it in response to a juror’s question. Rasperry does not claim that counsel’s impromptu, honest, and correct response to the question was improper. And he never requested an admonishment. 5AA1036. So to the extent he presents this exchange as a basis for reversal, it is meritless.

of review does not merely violate this Court's rules, *see* Nev. R. App. P. 28(a)(9)(B); it also precludes Rasperry from meeting his "burden [to] demonstrat[e] reversible error," *Fairman v. State*, 87 Nev. 627, 629, 491 P.2d 1283, 1284 (1971). A party cannot satisfy that burden without even attempting to engage with the district court's discretion over the admission of evidence at all.

But even if the Court overlooks that threshold flaw, Rasperry's arguments, to the extent they were preserved below and adequately presented here, are meritless. This testimony went to the heart of the claims at trial. Learning about the profound impact Marcial had on the people around him allowed the jury to evaluate the damage that Nimfa now suffers from having Marcial taken from her. And hearing the details of Rasperry's misconduct and his shocking persistence in denying he was at fault enabled the jury to determine whether to award punitive damages and how much.

Family member testimony. Rasperry cites neither a rule of evidence nor a case in his argument challenging the admission of family members' testimony. But it appears from his assertion (at 37) that the testimony should have been excluded "to preclude the prejudicial confusion that would ensue" that Rasperry thinks that the evidence should have been excluded under NRS 48.035(1). To prevail on that ground on appeal, Rasperry had to preserve an objection below, demonstrate that the testimony's "probative value is *substantially* outweighed by the danger of . . .

confusion,” NRS 48.035(1) (emphasis added), and establish that the district court abused its “considerable discretion” in concluding otherwise, *Crowley*, 120 Nev. at 34, 83 P.3d at 286. His argument fails at each step.

First, Raspperry never objected under NRS 48.035 at trial. Rather, he twice objected that Nimfa’s son and daughter could not testify about the impact of losing Marcial because “[t]he only heir in this case” is Nimfa. 7AA1594, 1659. He never asked the district court to balance the probative value of the testimony against any potential to confuse jurors. And he never even objected to the testimony of two other family member witnesses at all.⁶ His argument on appeal is therefore waived.

Second, waiver aside, the testimony was highly probative of a central issue in the case. One of the three categories of damages for which Nimfa could recover was for the “grief, sorrow, and loss of companionship, society, comfort, and consortium” caused by Marcial’s death. 7AA1731. And Raspperry agreed to jury instructions telling the jury that, to evaluate those damages, it should consider whether Marcial was “kindly, affectionate, or otherwise” and “what benefits [Nimfa] might reasonably have been expected to receive” had Raspperry not killed him. 7AA1702.

⁶ Raspperry cannot lean on his motion in limine either. It offered a single conclusory sentence on the comparative exercise that NRS 48.035 requires, and the district court deferred ruling on any aspect of the motion until a contemporaneous objection was raised at trial. 2AA492, 3AA749.

The family member testimony—as Rasperry’s own summary (at 37–40) illustrates—directly answered those questions. A man who takes care to cultivate a relationship with his grandchildren, 7AA1606-09, is “affectionate.” A man who commits himself to developing and maintaining a close relationship with his daughter-in-law, 7AA1637, is not merely “kindly” but proven to be devoted to family—a key insight in evaluating loss-of-consortium damages. A man who is shown to be the “go-to person” for *multiple* people in his life, 7AA1651, can “reasonably have been expected” to provide meaningful support for the most important person in his life, Nimfa, for years to come. This is why the district court (correctly) observed that family member testimony “goes to . . . how [Marcial’s death] affected” Nimfa. 7AA1659; *cf. Velarde v. Illinois Cent. R.R. Co.*, 820 N.E.2d 37, 59 (Ill. App. Ct. 2004) (argument that non-party “won’t get her [injured] sister back” was permissible because it went to “permanent nature of [sister’s] injuries”).

In addition to squarely proving these attributes, the family-member testimony also had substantial probative value because it corroborated testimony about the impact that Marcial’s death had on Nimfa. *Cf. Chavez v. State*, 125 Nev. 328, 344 n.3, 213 P.3d 476, 487 n.3 (2009) (describing evidence that “helped corroborate” key testimony as “highly probative”). Nimfa testified that she “miss[ed] him” and that her “heart is really hurting” in his absence. 7AA1627. Her family members likewise testified that it seemed like “there is a big part of [Nimfa] missing” and that “[s]he’s

not herself.” 7AA1660. But Rasperry tried to cast doubt on the severity of her grief, telling the jury during opening that she has “not ever pursued any kind of like psychiatric or psychological care,” 7AA1512, and repeatedly questioned witnesses about the absence of such treatment, *see e.g.*, 7AA1534, 1596, 1664.

Hearing directly from other family members thus not only established the kind of person Marcial was—devoted to family, affectionate, and selfless—but also corroborated testimony about how Nimfa experienced the loss. That others were similarly devastated helped prove that Nimfa’s loss was real, not (as Rasperry claimed) embellished. *See* 8AA1790 (Rasperry arguing in closing that the damages “may not be as much as they’re . . . claiming” because “[s]he’s had no professional help”). Indeed, the questioning expressly drew this corroborative connection. 7AA1660 (asking, after Nimfa’s daughter testified to her pain, whether Marcial “played a similar role in your mom’s life”).

Third, Rasperry’s failure to engage with the probative value of this testimony also demonstrates why his claim of potential juror confusion is flawed. Evidence runs a risk of “confusion of the issues” under NRS 48.035 when it “inject[s] collateral issues” that “divert the jury from the real issues in the case,” such as a “trial within a trial” about whether a prior conviction was wrongful. *Reed v. State*, 582 P.3d 622, 2026 WL 113021, at *3 (Nev. 2026). The testimony here does not fit that description. It went to the core of Nimfa’s damages in a trial about damages.

Rasperry’s assertion (at 40–41) that the Escobias’ reference to other “victims” in closing argument exacerbated (nonexistent) juror confusion is no better. Counsel referenced the other victims of the crash (passengers in a nearby bus) specifically to state that whatever injuries they suffered have “*no part*” in this case. 8AA1764 (emphasis added). That was not a reference to Marcial and Nimfa’s other family members, let alone a request to award damages for their injuries. Moreover, the jury instructions—to which Rasperry agreed without ever requesting any limiting instruction based on purported potential for confusion—asked the jury to consider only Marcial’s and Nimfa’s damages. 7AA1702–05. There was no actual risk of juror confusion.

Finally, some juror confusion, if it were real, would not be enough. On appeal, Rasperry needs to demonstrate that the confusion was so great that it “substantially” outweighed the testimony’s probative value *and* that “no reasonable judge” could disagree. *Leavitt v. Siems*, 130 Nev. 503, 509, 330 P.3d 1, 5 (2014). He has not come close to showing that this evidence, which the district court deferred ruling on until it could be evaluated in the context of trial, meets that standard.⁷

⁷ To the extent Rasperry means to argue that this testimony should have been excluded under NRS 48.035 as unfairly prejudicial, he has failed to develop that argument. Rasperry does briefly assert (at 38) that a few lines of testimony about how Nimfa and Marcial’s son learned of Marcial’s death was “inflammatory,” but he never lodged a contemporaneous objection to this testimony at trial and his motion in limine sought only to exclude testimony about “how Mr. Escobia’s death

Raspperry's deposition. Raspperry's other evidentiary challenge—to the admission of excerpts of his deposition—is just as flawed. That testimony informed the jury of the facts of the accident, that Raspperry stubbornly refused to admit fault, and that he had an admitted history of driving while high. According to Raspperry (at 49), none of this was relevant, and all of it was unfairly prejudicial, because NRS 42.010, which allows a jury to award punitive damages for intoxicated driving, “established [Nimfa's] entitlement to punitive damages as a matter of law.”

Raspperry said the exact opposite below. When the Escobias sought summary judgment entitling them to punitive damages, Raspperry successfully argued that “a plaintiff is *never entitled* to punitive damages as a matter of right” and that the jury had discretion not to award damages. 2AA267 (emphasis added). The jury instructions reflected his success at summary judgment: They told the jury to decide not just whether Raspperry had violated NRS 42.010's terms, but also to exercise its “discretion” to determine whether punitive damages should be awarded at all. 7AA1707. That inquiry, which Raspperry fought to have the jury make, put the full scope of his misconduct and refusal to take responsibility at issue. Raspperry, in other

affected them,” 2AA492—not brief scene-setting testimony about how they learned of his death. Regardless, Marcial's son's testimony was not just about how he learned of Marcial's death, but also about how he came in to find his “mom there laying by herself,” which was probative of her damages. 7AA1611.

words, made sure this evidence was relevant, and his argument on appeal is no more than a complaint that he got what he asked for.

In addition to the evidence being highly probative to decide *whether* to award punitive damages, it was also probative of *how much* to award. The reprehensibility of a defendant's conduct is central to that inquiry—"the most important" factor. *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 409 (2003). So it was highly relevant that Raspperry drove under the influence of multiple substances and "repeatedly engaged in [this] prohibited conduct." *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 577 (1996). And because a refusal to admit any wrongdoing in the face of overwhelming evidence can inform what constitutes appropriate punishment (just as in the criminal context), it was probative that Raspperry insisted he was not at fault, too. *See, e.g. Campbell v. State Farm Mut. Auto. Ins. Co.*, 98 P.3d 409, 417 (Utah 2004).

The centrality of this evidence also demonstrates why Raspperry's conclusory claim (at 49) that his testimony was "highly prejudicial and confusing" is wrong. "[A]ll probative evidence is by its very nature prejudicial." *United States v. Jefferson*, 751 F.3d 314, 320 (5th Cir. 2014). NRS 48.035 is only concerned with "unfair" prejudice, and there is nothing improper about testimony that directly advances the plaintiff's claim. *Id.* Nor, for that matter, is there any risk of confusion of the issues generated by introducing evidence that allowed the jury to make the determination that Raspperry, in opposing summary judgment, demanded the jury make.

Finally, Raspperry's critiques (at 45–46) of aspects of the district court's rationale for admitting the evidence cannot make up for his inability to identify anything improper about the testimony. Raspperry takes issue primarily with the district court finding that the evidence was admissible because it showed Raspperry's conscious disregard of the dangers of his conduct. According to Raspperry, because the Escobias sought punitive damages under NRS 42.010 rather than NRS 42.005, the district court was wrong to consider conscious disregard relevant. But even if conscious disregard was not an element of the Escobias' claim, as it would be under NRS 42.005, Raspperry's complete lack of regard for the dangers of driving while intoxicated remains relevant to the jury's discretionary punitive damages award.⁸ And the district court was correct as well in considering Raspperry's "credibility" relevant when allowing the jury to hear that Raspperry denied being the driver on the ground that he was "not a reckless person." JAVS video [12.58.57.946], at 05:02; 5AA1244; 7AA1563. Raspperry's willingness to give such improbable testimony was probative of whether the jury should exercise its discretion to award punitive damages.

⁸ Raspperry also asserts (at 47) that his inability to recall the accident does not demonstrate conscious disregard. As his attorney acknowledged at trial, however, the reason he couldn't remember was because he was "so drunk" and in the state of an "alcoholic blackout." 7AA1554–55, 1563. To drink to the point of complete memory loss and then get behind the wheel does show conscious disregard.

The district court carefully pored over Rasperry's testimony, going line by line with counsel, before admitting any of it. *See* 7AA1553–1576. It excluded much of what the Escobias sought to play for the jury, including substantial evidence of Rasperry's history of reckless behavior. *Id.* What it ultimately did allow went to the heart of punitive damages. The court did not abuse its discretion.

IV. There was no attorney misconduct during closing argument.

In a final swipe at the compensatory-damages verdict, Rasperry claims that it should be set aside based on supposedly improper statements made during closing argument. Rasperry's challenge, in large part, simply mischaracterizes the closing argument. But it also misapprehends the law. Counsel are permitted "wide latitude" during closing argument. *Jain v. McFarland*, 109 Nev. 465, 476, 851 P.2d 450, 457 (1993). So long as the argument is based on "the evidence," there is no misconduct. *Id.* With the mischaracterizations stripped from the analysis, the comments about which Rasperry now complains were all grounded in the evidence at trial and the district court's instructions. And regardless, Rasperry cannot show the requisite level of prejudice to warrant reversal for any of them.

It was not improper to refer to "victims." Rasperry's main target (at 51) is that counsel argued that Rasperry, "[i]n many ways," took "more than one life" of the "victims" that counsel "represent[ed]." 8AA1762. According to Rasperry,

this improperly suggested to the jury that it should award damages for Nimfa’s other family members as heirs.

Counsel’s comment was not misconduct because it was accurate. The trial did involve two victims—Nimfa and Marcial—and Rasperry’s counsel represented both. The verdict form, as well, recognized that there were two separate victims for whom the jury had to award damages. 7AA1731.

Rasperry suggests (at 41) that the Escobias’ counsel acknowledged that referring to victims would be improper because, Rasperry says, counsel “false[ly]” denied using the “plural” word “victims.” That is mistaken. Counsel fully stood by his reference to “victims,” explaining that he had a right to “talk about Nimfa and about Marcial.” 7AA1763.⁹ But in response to Rasperry’s counsel’s protestation that he would “object again if [the Escobias’ counsel] keeps talking about *heirs* plural,” 8AA1762–64 (emphasis added), the Escobias’ counsel accurately stated that he “didn’t even say *heirs* plural.” 8AA1763–64 (emphasis added). So counsel not only “reasonably believe[d]” the comments to be relevant under the rules of professional conduct, RPC 3.4(e), he correctly believed them to be so.

Finally, even if there was misconduct, Rasperry cannot show prejudice. When the district court overrules an objection to (alleged) misconduct, the

⁹ He also correctly noted that there were other victims who he did not represent, as Rasperry’s counsel himself acknowledged during his opening statement. 8AA1763; 7AA1516.

complaining party is only entitled to a new trial if “an admonition to the jury would likely have affected the verdict in favor of the moving party.” *Gunderson v. D.R. Horton, Inc.*, 130 Nev. 67, 75, 319 P.3d 606, 612 (2014). Beyond a conclusory assertion (at 53) that this comment was “exceedingly prejudicial,” Rasperry has not tried to meet that standard. He couldn’t. Counsel only ever requested damages for Marcial and Nimfa, 8AA1773, and the jury instructions and verdict form left the jury no room to award otherwise.

Counsel appropriately asked the jury to send a message. Rasperry next complains (at 52) that the Escobias’ counsel inappropriately asked the jurors to “send a message based on the evidence in this case” during the compensatory damages phase of the trial. 8AA1775–76. Rasperry’s counsel never objected below, however, 8AA1776, likely because this Court has made clear that counsel can ask the jury to send a message so long as the request is based in the evidence, rather than asking the jury to disregard it. *Gunderson*, 130 Nev. at 78, 319 P.3d at 614.

Nor is Rasperry correct that saying this in the first phase of trial was improper. This Court has allowed “send a message” comments in cases with no punitive damages at all. *Id.* Regardless, during phase one here, the jury was also deciding *whether* to award punitive damages.

There was no improper “anchoring.” Rasperry’s final complaint of misconduct during closing argument recycles his argument about “anchoring.”

Whereas Raspperry’s earlier arguments claimed that counsel “indoctrinated” the jury by “anchoring” it at \$50 million and \$180 billion, his second attempt (at 54–55) claims that counsel engaged in misconduct by “anchoring” the jury at \$222 million when he referred to a painting that sold for that much.

This framing fails, too. The analogy to the painting was in service of helping the jury understand *how* to evaluate damages. Counsel explained that assessing the value of pain and suffering is *unlike* assessing the value of a painting, which can be “appraised” and where, if “somebody destroyed” it, “[e]verybody would know that the amount” to be paid is the appraised figure. 8AA1771. Instead, the jury had to look at “the law,” which “gives you kind of a mandate of what you have to take into consideration.” 8AA1771–72 (walking the jury through those factors). This argument device is permissible because it “indicat[es] that the jurors should rely” on the evidence to award an “amount justified by the law and facts.” *See, e.g., Velarde*, 820 N.E.2d at 60. And thus counsel never impermissibly crossed the line to misconduct by “ask[ing] the jury to step outside the relevant facts.” *Cox*, 138 Nev. at 246, 507 P.3d at 1227.

Raspperry invokes *Gregory* again, but, for a second time, the comparison is flawed. Again, *Gregory* was a case about the sufficiency of the evidence—not a case, as Raspperry tries to make this, about attorney misconduct (or juror indoctrination). The problem that the three-Justice plurality of the Texas Supreme Court identified

in *Gregory* was that counsel used the price of a painting as a basis for the jury to award a similar value for the plaintiff’s damages. *Gregory*, 670 S.W.3d at 558. The difference between the arguments in *Gregory* and here is highlighted by a key fact in *Gregory* that Rasperry never mentions: The plaintiff’s counsel there “urged the jury” to award two cents “for every one of the 650 million miles that [the defendant’s] trucks drove during the year of the accident.” *Id.* The Escobias’ counsel never similarly asked the jury to base its verdict on the price of a painting or any other object.¹⁰ Instead, he discussed the methodology by which paintings are valued to help the jury understand the task in front of it in evaluating the Escobias’ damages.

In any event—and once more—Rasperry cannot show prejudice. Unlike in *Gregory*, the evidence of Nimfa’s damages is overwhelming, and Rasperry never challenges that there is sufficient evidence to support the jury’s award. Courts have declined to find prejudice in similar circumstances. *Stonerock v. Miller Bros. Paving, Inc.*, 594 N.E.2d 94, 103–04 (Ohio Ct. App. 1991) (attorney argument referencing a painting

¹⁰ Because *Gregory* is distinguishable, this Court need not embrace or reject it. But it bears noting that other courts and commentators have approved of the argument that human suffering is more valuable than the cost of a painting or other highly priced objects. *See, e.g., Valenzuela v. City of Anaheim*, 2020 WL 10574794, at *11–12 (C.D. Cal. Mar. 2020), *aff’d*, 6 F.4th 1098 (9th Cir. 2021); *Burris v. McKiver*, 1992 WL 9166, at *3 (Del. Super. Ct. Apr. 1992); Craig Lee Montz, *Why Lawyers Continue to Cross the Line in Closing Argument: An Examination of Federal and State Cases*, 28 Ohio N.U. L. Rev. 67, 87 (2001) (contrasting permissible “injury analogies” that emphasize the “gravity of the loss by noting that horses, paintings, and computers are bought and sold for millions of dollars” with different, improper arguments).

was not prejudicial); *Valenzuela*, 2020 WL 10574794, at *12 (holding that no prejudice resulted from comparison to painting). And given that the jury awarded \$35 million less than Nimfa’s top-end request, \$5 million less than her low-end request, and \$172 million less than the cost of the painting, Rasperry’s claim of prejudice amounts to little more than speculation. *See, e.g., Capanna v. Orth*, 134 Nev. 888, 892, 432 P.2d 726, 732 (2018) (jury’s decision not to award “all requested” evinces “thoughtful contemplation of the evidence” rather than a verdict based on “emotions and sympathies”).¹¹

Finally, Rasperry protests (at 53–54) that the district court should have sustained an objection to counsel referencing that his family likes to paint. 8AA1770. But the district court *did* sustain the objection, directing the Escobias’ counsel to “focus.” 8AA1771. Because Rasperry did not then request an admonishment, he now needs to show that the conduct was “so extreme that the objection and sustainment could not have removed” its effect. *Gunderson*, 130 Nev. at 77, 319 P.3d at 613. He has not tried and could not do so. Indeed, even if the court had overruled the objection, Rasperry would not be able to show that the statement “likely” affected the verdict.

¹¹ Nor is there any merit to Rasperry’s complaint (at 55) that the value of the painting was not in evidence. This Court (like others) has long held that it is not misconduct to discuss “[m]atters of common knowledge.” *State v. Lewis*, 59 Nev. 262, 91 P.2d 820, 824 (1939); *see also, e.g., State v. Riley*, 459 P.3d 66, 104 (Ariz. 2020) (“[U]nflattering analogies during closing arguments that are supported by facts in common knowledge are permissible.”). It is common knowledge that paintings sell for large amounts.

Id. In a trial where the defendant killed one person, maimed another, and admitted to “despicable” conduct, it is implausible that an innocuous comment about a family hobby made a difference.

The one case that Rasperry cites demonstrates the weakness of his argument. *See Canterino v. The Mirage Casino-Hotel*, 117 Nev. 19, 16 P.3d 415 (2001). In *Canterino* this Court did find a discussion of “personal experiences” improper, but counsel used his personal experience to bolster the evidence: “My father died when I was a small boy. I know what it is to be raised by your mother. I can imagine what Mr. Canterino felt not being able to go out and shovel snow and to watch his mother slip and fall and hurt herself.” *Id.* at 31, 16 P.3d at 423 (Rose, J., concurring in part and dissenting in part). Even still, this Court did not reverse based on those comments because of the “overwhelming evidence supporting the jury verdict.” *Id.* at 25, 16 P.3d at 419. The only similarity with *Canterino* here is that overwhelming evidence justifies the verdict.

V. There is no basis to reduce or set aside the jury’s punitive damages verdict.

By the time the parties presented closing arguments on punitive damages, Rasperry had essentially thrown in the towel. When it came to whether to award punitive damages, Rasperry’s counsel said merely, “His actions were horrible, so you do what you’ve got to do.” 8AA1794. And when it came to the amount, Rasperry offered an argument that spanned only one transcript page and never grappled with the evidence of his wrongdoing. Rasperry merely asked the jury to

award “zero or if anything, 500,000” because he was in prison, he was just a “bartender,” and Nimfa had already received a compensatory award. 8AA1816–17. The jury, no surprise, was unmoved.

Raspperry now asks this Court to save him from the consequences of that apathetic trial strategy. The district court already dramatically reduced the punitive damages to \$112 million (a three-to-one ratio with Nimfa’s damages), but Raspperry seeks more: He asks this Court to reduce the punitive damages to \$37.5 million under federal law or wipe them out entirely under state law. None of his arguments has merit.

A. The federal Constitution does not require this Court to further revise the jury’s award.

States have a “legitimate interest[] in punishing unlawful conduct and deterring its repetition.” *Gore*, 517 U.S. at 568. This case concerns a particularly salient expression of that interest: Nevada’s focus on eradicating driving while intoxicated, embodied, in part, in a specific provision governing punitive awards for that life-threatening behavior. NRS 42.010.

The federal Due Process Clause does not mandate that courts interfere with that “legitimate interest” by exercising freewheeling authority to reduce awards. Instead, it requires judicial revision of a jury’s judgment only when an award is so “grossly excessive” that the defendant can be said to have lacked “fair notice” of the potential penalty. *State Farm*, 538 U.S. at 417.

Raspperry was on more than sufficient notice here that he could face a punitive damages award three times the size of the compensatory damages award. Nevada law generally limits punitive damages to a three-to-one ratio, NRS 42.005, so Raspperry cannot claim that he lacked noticed of that possibility. Indeed, because that ratio limit does not apply under NRS 42.010, reflecting the state’s strong interest in rooting out drunk driving, Raspperry was specifically on notice that he may be subject to an even *larger* award.

That the award is constitutional is confirmed by an examination of the three guideposts that the United States Supreme Court has directed courts to apply when evaluating due process challenges: the reprehensibility of the misconduct, the ratio, and comparable available penalties.¹²

Reprehensibility. The “most important” factor in evaluating the constitutionality of a punitive damages award is the reprehensibility of the misconduct. *State Farm*, 538 U.S. at 419. Raspperry tries to avoid the import of this inquiry by simply conceding that his conduct was “reprehensible.”

But the details matter. Raspperry’s conduct matches nearly every criteria that courts consider in evaluating reprehensibility. The harm he caused was “physical as

¹² Raspperry additionally makes a passing reference (at 57) to the Eighth Amendment but develops no argument. It wouldn’t matter if he did: The Excessive Fines Clause “does not apply to awards of punitive damages in cases between private parties.” *Browning-Ferris Indus, Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 260 (1989).

opposed to economic.” *Riley v. Volkswagen Grp. of Am., Inc.*, 51 F.4th 896, 900 (9th Cir. 2022). His conduct—speeding through a red light under the influence of multiple drugs and alcohol—“evinced an indifference to or a reckless disregard of the health or safety of others.” *Id.* This was not an “isolated incident”; Rasperry “repeated[ly]” drove while under the influence. *Id.* And given that history, the crash cannot be written off as “mere accident” or “negligence.” *Id.* It rarely gets worse than this.

Ratio. The second due-process guidepost looks to the ratio between harm to the plaintiff and the punitive damages award. *State Farm*, 538 U.S. at 424. Although there are no “rigid benchmark[s], “[s]ingle-digit multipliers are more likely to comport with due process,” reflecting the “history, dating back over 700 years and going forward to today, providing for sanctions of double, treble, or quadruple damages to deter and punish.” *Id.* at 425. The three-to-one ratio here fits comfortably within that history.

Rasperry nonetheless claims that the ratio should be reduced to one-to-one. He bases this argument on *State Farm*’s dicta that, when compensatory damages are “substantial,” then “perhaps” the punitive damages should be no greater. 538 U.S. at 425.

But “the very next sentence of *State Farm* says the precise award in each case must be based upon the facts and circumstances of the defendant’s conduct and the harm to the plaintiff.” *Cote v. Philip Morris USA, Inc.*, 985 F.3d 840, 849 (11th Cir. 2021).

This Court’s case law reflects that case-specific approach. *See, e.g., Wyeth v. Rowatt*, 126 Nev. 446, 475, 244 P.3d 765, 785 (2010) (upholding 2.5:1 ratio); *Sierra Health & Life Ins. Co., Inc. v. Eskew*, 553 P.3d 441, 2024 WL 2665442 at *3 & n.2 (Nev. 2024) (upholding 4:1 ratio). And more broadly, courts generally recognize that, even when there are “significant” compensatory awards, a greater than one-to-one ratio is appropriate when, as here, the conduct is particularly “egregious,” *see, e.g., Planned Parenthood of Columbia/Willamette Inc. v. Am. Coal. of Life Activists*, 422 F.3d 949, 962 (9th Cir. 2005) (upholding 9:1 ratio), or “it is difficult to determine the monetary value of an injury,” *UnitedHealthCare Ins. Co. v. Fremont Emergency Servs. (Mandavia), Ltd*, 141 Nev. Adv. Op. 29, 570 P.3d 107, 126 (2025); *see also, e.g., Cote*, 985 F.3d at 849 (\$20.7 million award at 3.3:1 ratio); *Ingham v. Johnson & Johnson*, 608 S.W.3d 663, 722 (Mo. Ct. App. 2020) (\$715 million award at 5.72:1 ratio).

Raspperry’s sole Nevada case, *UnitedHealthCare*, is not to the contrary. This Court reduced the award in that business-versus-business dispute because of the “economic nature of the harm,” the “sophistication” of the plaintiff, and concern that issues relating to spoliation affected the award. 570 P.3d at 127. None of those factors is present here.

Comparable penalties. The final guidepost looks to “penalties authorized or imposed in comparable cases.” *Gore*, 517 U.S. at 575. The “fundamental question” this guidepost is trying to answer goes back to the purpose of the due process analysis:

“reasonable notice.” *Cont’l Trend Res. v. OXY USA*, 101 F.3d 634, 641 (10th Cir. 1996). Thus, the legislative decision to exempt DUI cases from the standard three-to-one cap provides Rasperry with ample notice of the potential for an award *greater* than the one here. *See Planned Parenthood*, 422 F.3d at 963 (“[The federal Freedom of Access to Clinic Entrances Act’s] provision for punitive damages is uncapped, so [the defendant] would have known that its exposure to penalties in a civil action for violating that Act could be significant.”).

Rasperry responds (at 62–63) that this factor favors a reduction because, he says, the availability of criminal penalties “diminish[es]” the need for punitive damages. This argument departs from the Due Process Clause’s focus on notice. Equally important, it substitutes his policy views for the legislature’s. The legislature knew criminal penalties were available and nonetheless made it *easier* for victims of intoxicated driving to recover punitive damages. *See* NRS 42.010. Whatever Rasperry thinks about a “diminished” need, the legislature thought the opposite: It recognized the “extremely strong public sentiment to keep drunk drivers off the roads. Criminal penalties are not enough. People who elect to drink and drive must also realize they will be punished financially, without regard to limitations.” *Assembly Daily Journal on AB 307*, 65th Sess., 981 (May 8, 1989) (statement of Assemblyman Sader).

This case shows exactly why the legislature, and Nevadans, felt that way. There is no basis to reduce the award under the Due Process Clause.

B. State law does not require Nimfa to offer evidence of Rasperry's financial condition to recover punitive damages, but the jury had that evidence anyway.

Raspperry next goes even further and asks the Court to wipe out the award entirely under state law. He claims (at 65) that this Court will reverse a punitive damages award if it is “excessive in relation to a defendant’s net worth.” From that premise, he urges the Court to adopt a new rule that, to recover punitive damages, the plaintiff must introduce evidence of the defendant’s “financial condition.” And because Nimfa (he says) never introduced this evidence that would have benefited *him*, the jury’s verdict in *her* favor should be wiped out in its entirety. That Raspperry leaves this argument for *after* his constitutional claim that seeks a mere reduction of the award says everything the Court needs to know about its merit.

First, this Court no longer conducts any separate state-law excessiveness review. Two decades ago, this Court held that “Nevada’s standard for excessiveness should be replaced with the federal standard for excessiveness.” *Bongiovi v. Sullivan*, 122 Nev. 556, 583, 138 P.3d 433, 452 (2006). Because the foundation of Raspperry’s claim (at 64) that the plaintiff must establish the defendant’s financial worth is that “Nevada law places [this] additional limit[] on punitive damages awards,” the argument fails at the threshold for this reason alone.

Second, Rasperry’s invocation of this Court’s now-defunct test for excessiveness also focuses on the wrong statute. This Court’s case law applying the old test addressed NRS 42.005, the general punitive damages statute. This case, however, is about NRS 42.010, which allows a plaintiff to recover punitive damages if a person drives under the influence. There is no additional requirement that a plaintiff must also prove a defendant’s financial position. Adding such a requirement—presumably on the theory that certain financial positions are not deserving of punishment—would usurp the legislature’s judgment that a jury may always punish driving under the influence in circumstances like those here.

Third, even if this Court’s old test applied, requiring a plaintiff to prove the defendant’s financial position would be incompatible with it. Before switching to the federal standard, this Court rejected an approach (for awards under NRS 42.005) that would turn on “basically factual questions of financial annihilation or the supposed passion or prejudice indulged in by the fact finder.” *Ace Truck & Equip. Rentals, Inc. v. Kahn*, 103 Nev. 503, 510, 746 P.2d 132, 137 (1987). Instead, it adopted an excessiveness test that allowed for a more “reliable moral judgment” that “can legitimately take into account *any* circumstances which relate to the limits of punishment and deterrence.” *Id.* (emphasis added). Although those circumstances could include the defendant’s “financial position,” they could also include anything else that went to the “culpability and blameworthiness of the tortfeasor.” *Id.* So if (as

Raspperry urges) a *plaintiff* must prove the defendant’s financial position because it can theoretically inform the appropriate level of punishment and deterrence, then by that logic, the plaintiff must prove every other mitigating factor as well—a troubled upbringing in a case against an individual or change in corporate policy in against a company. In other words, the failure to put in evidence of *any* mitigating factor that could inform excessiveness would be grounds to wipe out a verdict entirely.

Recognizing that approach turns the parties’ responsibilities upside down, the vast majority of courts have rejected Raspperry’s proposed rule that a plaintiff must offer evidence of the defendant’s financial position.¹³ *See, e.g., Kemezy v. Peters*, 79 F.3d 33, 33–34 (7th Cir. 1996); *see also, e.g., C & C Trucking Co. v. Smith*, 612 So. 2d 1092, 1105 (Miss. 1992); *Smith v. Lightning Bolt Prods., Inc.*, 861 F.2d 363, 373 (2d Cir. 1988); *Rinaldi v. Aaron*, 314 So. 2d 762, 765 (Fla. 1975); *Barnes v. Logan*, 122 F.3d 820, 824 (9th Cir. 1997) (applying Minnesota law); *Woods-Drake v. Lundy*, 667 F.2d 1198, 1203 n.9 (5th Cir. 1982); *Fishman v. Clancy*, 763 F.2d 485, 490 (1st Cir. 1985); *Castellucci v. Battista*, 847 A.2d 243, 247 (R.I. 2004). As the Seventh Circuit put it, “[a] plea of poverty is a classic appeal to the mercy of the judge or jury, and why the plaintiff

¹³ This Court, in an unpublished opinion, has as well. *See Prestige of Beverly Hills, Inc. v. Weber*, 128 Nev. 927, 381 P.3d 652 (2012)

should be required to make the plea on behalf of his opponent eludes us.” *Kemezy*, 79 F.3d at 36.

Against this weight of authority, Raspperry asks this Court to follow *Adams v. Murakami*, 813 P.2d 1348 (Cal. 1991). He first argues (at 68) that a reviewing court must know a defendant’s financial position to make a “fully informed determination” of excessiveness. *Id.* at 1351. But again, that same rationale applies to *every* mitigating (and exacerbating) factor. And it doesn’t explain why the *plaintiff* should bear the burden. The *Adams* court filled that gap by reasoning that it would be “unfair” to require the defendant to prove its financial condition because, when it is large, it could “taint the jury’s decision *whether* to impose punitive damages in the first instance” by being misinterpreted as a “tacit admission that some award of punitive damages is appropriate.” *Id.* at 1358 (emphasis added). As the Seventh Circuit observed, that gives jurors too little credit: They are capable of “understand[ing] the structure of an argument to the effect that the defendant does not concede liability . . . but that if the jury disagrees it should award only a nominal amount of punitive damages because the defendant is a person of limited means.” *Kemezy*, 79 F.3d at 36. *Adams*’ contrary assessment reflects a view of jurors’ capacities inconsistent with the trust that Nevada places in them.

Raspperry also argues (at 69–70) that this Court should follow *Adams* because “the Nevada punitive damages statute was based on California’s punitive damages

statute.” But *Adams* did not ground its holding in statutory interpretation. And regardless, the drunk-driving statute at issue here, NRS 42.010 has no California equivalent and expressly carves out as inapplicable the requirements of NRS 42.005, *i.e.*, the statute that was based on California law.

Finally, the jury *did* have evidence of Rasperry’s financial condition: It learned that he was a bartender who held jobs for only months at a time and wanted to celebrate finally having a weekend off. JAVS video [13.06.37.431], at 04:18–05:01. The district court told Rasperry that he “can certainly argue” that his financial condition warranted a reduced award, 8AA1808, and he did, 8AA1816. It’s safe to say that the jury understood he was not a wealthy man.¹⁴ It simply refused to let him off the hook on that basis.

C. The district court did not abuse its discretion in refusing to give Rasperry’s proposed instructions on punitive damages.

Rasperry’s last attack on the punitive damages award challenges the district court’s decision to give the pattern instruction for punitive damages under NRS 42.010. *Compare* 7AA1701, *with* Nevada Jury Instructions: Civil, Pattern Instruction

¹⁴ The Escobias’ argument to the jury that it had not been shown evidence of Rasperry’s “financial condition,” 8AA1769, does not undermine this conclusion. It is true there was no direct evidence of his overall financial position, and Ms. Escobia was entitled to tell that the jury that it should not base its decision about *whether* to award punitive damages on inferences from Rasperry’s employment. That argument does not change that those inferences remained available for the jury to draw.

§ 12.3. Trying his “financial conditions” theory from another angle, Raspperry complains (at 72) that this was error because the district court should have also given two proposed instructions about the relationship between a defendant’s financial condition and punitive damages. 7AA1728–29.

The district court did not abuse its “broad discretion” in rejecting these instructions. *Newell v. State*, 131 Nev. 974, 977, 364 P.3d 602, 603 (2015). A threshold requirement for any instruction is that it accurately state the law and not “confuse or mislead” the jury. *Duckket v. State*, 142 Nev. Adv. Op. 9, 583 P.3d 241, 251 (2026). Neither proposed instruction passed this test.

Consider first Raspperry’s proposed instruction that punitive damages should not have the effect of “financially annihilating the defendant.” 7AA1728. By Raspperry’s admission, this is based on this Courts now-defunct state law excessiveness test. *See* Raspperry Br. at 71 (citing *Ace Truck*, 103 Nev. at 508, 746 P.2d at 136). That is reason enough to reject it. But it also gets that test wrong. As explained above, this Court rejected an approach that focused myopically on “factual questions of annihilation” in favor of a holistic one that looked to all relevant factors. *Id.* at 510, 746 P.3d at 137. Defendants like Raspperry show the wisdom of that distinction. Because Raspperry has virtually no assets, 14AA3341, any punitive damages award—even the \$500,000 his counsel suggested—would be prohibitively expensive for him to personally satisfy. The result would be that his poverty immunizes him from

punitive damages—contrary to the legislature’s judgment that juries are entitled to use punitive damages to make an “example” of and “punish[]” people who kill someone while driving under the influence. NRS 42.010.

Under the particular facts of this case, Rasperry’s proposed instruction would also mislead the jury because the award may not “annihilate” him financially. He has filed a bad-faith insurance action, and if he prevails, he will not be the one to pay the judgment here. *See Rasperry v. USAA*, No. A-24-898522-C (Nev. Dist. Ct. 2024). Rasperry cannot have it both ways—shielding the jurors from the existence of the bad-faith lawsuit while also suggesting they give a smaller award because he would be financially ruined—and the district court did not abuse its discretion in refusing to allow Rasperry to exploit the jury’s limited knowledge.

Rasperry’s second proposed instruction was no better. He urged the district court to tell the jury that his “wealth” is “directly relevant to the size of an award.” 7AA1729. But that instruction omits that many other factors are also “directly relevant,” including the defendant’s culpability, the reprehensibility of the conduct, whether it was repeated, and so on. *Bongiovi*, 122 Nev. at 582–83, 138 P.3d at 452. The proposed instruction was thus “incomplete” and risked misleading the jury that financial circumstances should be given more weight than other considerations. *See Countrywide Home Loans, Inc. v. Thitchener*, 124 Nev. 725, 737, 192 P.3d 243, 251 (2008) (no abuse of discretion in refusing to give an incomplete instruction).

And once more, Raspperry cannot show prejudice. He argued, with the district court’s express permission, that the jury should consider his financial circumstances. They did—and awarded punitive damages anyway.

D. Raspperry’s claim of attorney misconduct affecting the punitive damages award is both forfeited and meritless.

As a last gasp, Raspperry accuses the Escobias’ counsel of engaging in misconduct that tainted the jury’s assessment of punitive damages. Here, too, Raspperry’s arguments are waived, meritless, or both.

Raspperry’s first complaint is puzzling. During phase-one closing arguments, when the jury was deciding *whether* to award punitive damages, the Escobias’ counsel argued to the jury that Raspperry’s financial position should not play a role in that decision.¹⁵ 8AA1769. Raspperry bizarrely claims (at 73–74) that this was “premature” and improper because “a defendant’s wealth has nothing do with the phase one issue of whether a plaintiff is entitled to recover any punitive damages.” That is exactly what the Escobias’ counsel said. It is not misconduct to agree with the defendant’s view of the law.

Raspperry’s second complaint—that it was improper for the Escobias’ counsel to engage in the routine practice of thanking the jury and expressing appreciation—

¹⁵ Nimfa made this point because, earlier that day, Raspperry had filed a brief arguing that Nimfa should be precluded from recovering any punitive damages because there was (purportedly) not evidence of his financial position, 7AA1675, and Nimfa anticipated that Raspperry would make the same argument in closing.

is also misguided. Raspperry’s counsel never objected to these statements during trial, “strongly indicat[ing]” that he “did not consider the arguments objectionable at the time they were delivered,” but now makes the claim “as an afterthought.” *Ringle v. Bruton*, 120 Nev. 82, 95, 86 P.3d 1032, 1040 (2004). Raspperry cites no case in support of his claim that it is misconduct for trial counsel to briefly express appreciation, and his counsel did the same thing. 8AA1793 (“[Y]ou guys get it and you were awesome.”); 8AA1816 (“I still like you.”); 8AA1817 (“I appreciate you guys all being here. Thank you so much.”). This party-neutral commentary is far afield from the inflammatory criticisms this Court has condemned. *Cf., e.g., Born v. Eisenman*, 114 Nev. 854, 861, 962 P.2d 1227, 1232 (1998) (misconduct to refer to opposing counsel as “lying sons of bitches”); *Butler v. State*, 120 Nev. 879, 898, 102 P.3d 71, 84 (2004) (misconduct to accuse opposing counsel of trying to “fool” the jury). And even if this were somehow misconduct, Raspperry again cannot show it was the only “reasonable explanation” for the jury’s punitive damages award. *Lioce*, 124 Nev. at 19, 174 P.3d at 982. The award is easily explained by Raspperry’s “horrible” conduct.¹⁶

¹⁶ This Court should also reject Raspperry’s invocation (at 75–76) of the cumulative error doctrine. Because there was no error below, the doctrine is inapplicable.

VI. The Court should remand for the district court to reconsider the amount of attorneys’ fees to be awarded under NRCP 68.

Under NRCP 68, when a party rejects an offer of judgment pretrial and then fails to secure a better outcome at trial, the district court has discretion to award the prevailing party its attorneys’ fees incurred post-offer. Until recently, this Court interpreted this rule to allow plaintiffs to recover their full contingency fee as post-offer fees, irrespective of the timing of the work. *See Capriati Constr. Corp. v. Yahyavi*, 137 Nev. 675, 680, 498 P.3d 226, 231 (2021). Following that rule, Nimfa sought, and the district court awarded, the full contingency fee she owes her attorneys. But this Court overturned *Capriati* during the pendency of the appeal. *See Clark v. Marin*, 142 Nev. Adv. Op. 47, 592 P.3d 417, 432 (2026). A remand is therefore warranted to allow Nimfa to propose a new fee award and for the district court to evaluate it.

Raspperry instead asks this Court to hold that fees cannot be recovered at all in this case. Both of his arguments fail.

1. Raspperry principally claims (at 85) that “[w]hen two of the three good faith *Beattie* factors weigh in favor of the offeree, the remedy is no fees as a matter of law, not reduced fees.” According to Raspperry, “[n]o authority supports the district court’s arbitrary analysis” that awarded fees in that scenario.

But this Court has repeatedly endorsed that supposedly “arbitrary” result. *See Nevins*, 140 Nev. Adv. Op. 66, 557 P.3d at 976; *Golden Gate/S.E.T. Retail of Nevada, LLC v. Mod. Welding Co. of California, Inc.*, 141 Nev. Adv. Op. 12, 565 P.3d 1, 6 (2025). It has

refused to “impos[e] a rigid requirement that a party prevail on a majority of the *Beattie* factors,” explaining that such a rule, far from being arbitrary, avoids “weakening the punitive incentive to accept reasonable settlements and undercutting the entire policy goal of the rule.” *Golden Gate/S.E.T.*, 141 Nev. Adv. Op. 12, 565 P.3d at 7. Raspperry’s argument ignores that binding precedent.

2. Falling back, Raspperry suggests (at 82–83) the district court’s finding that the second *Beattie* factor—requiring that an offer under NRCP 68 must be “reasonable and in good faith in both its timing and amount”—was satisfied was improper. *Golden Gate/S.E.T.*, 141 Nev. Adv. Op. 12, 565 P.3d at 6. This Court reviews that determination for abuse of discretion. *Id.* But Raspperry does not claim that the district court abused its discretion in finding that the amount was reasonable in view of Raspperry’s exposure—in a case involving one death, a ruined life, and an exceedingly high likelihood of an uncapped punitive damages award. Nor does Raspperry claim that the district court abused its discretion in finding the offer was made at a time that he lacked sufficient information to evaluate the strength of the Escobias’ claims. *See, e.g., Nevins*, 140 Nev. Adv. Op. 66, 557 P.3d at 976 (offer was reasonable because it was made “when the parties had an opportunity to consider the strength of the claims and the defenses—and the evidence indicated that the damages at issue were substantial”). Instead, Raspperry asserts that the offer was per se unreasonable and in bad faith because he could not afford to pay it.

Neither case Raspperry cites for his novel and rigid rules supports it. One merely commented that an offer being within insurance limits was indicative of it being reasonable, not that exceeding the limits makes it per se unreasonable. *See Bellomo v. Roybal*, No. 86412, 2025 Nev. Unpub. LEXIS 642 at *10 (2025). The other, from a Florida appellate court, held that an offer was unreasonable because its terms obligated an insurance company that was not a party to the litigation or the recipient of the offer to tender a check. *Gonzalez v. Claywell*, 82 So. 3d 1000, 1001 & n.1 (Fla. Dist. Ct. App. 2011). It was thus “impossible” to perform not because the offeree couldn’t afford it, but because it required the offeree to bind a non-party and therefore “divested him of independent control of the decision” to accept. *Id.* The same is not true here.

Indeed, Florida courts have rejected Raspperry’s argument. An offer can still be reasonable and “made in good faith” when greater than insurance limits or the recipient’s assets because there is no requirement of “either ability to pay or payment in order to accept a demand for judgment.” *Alexandre v. Meyer*, 732 So. 2d 44, 45 (Fla. Dist. Ct. App. 1999). Defendants can “agree[] to [a] plaintiff’s demand for judgment even if they d[o] not have the ability to pay.” *Id.*

That makes sense, and Raspperry’s contrary approach would yield bizarre results. It would mean that, even if the Escobias had served a \$1 million offer (in a case where Raspperry himself suggested to the jury that it award Nimfa \$7 million),

the offer would still be per se unreasonable. And it would mean that, in a contract case with certainty about damages, anything above what the defendant can pay—even if it is just a fraction of total damages—is per se unreasonable. That cannot be right.

Finally, Raspperry's argument ignores that, whatever may be said about an ordinary case where the defendant lacks the ability to pay, this case has an insurance company with exposure to a bad-faith claim. A reputable firm tried the case below and a 1,000-plus attorney law firm is prosecuting this appeal not because Raspperry can afford to pay either, but because the insurance company is involved. So while Raspperry may not have the personal assets to pay, the Escobias did not know—and could not learn through discovery—what the insurance company defending this litigation would have been willing to do. Their offer was made with the good faith belief that the company may have been willing to voluntarily encourage Raspperry to accept the offer and then pay on his behalf to limit its own exposure.

The district court did not abuse its discretion in finding the second *Beattie* factor satisfied under these circumstances.

CONCLUSION

The jury's verdict should be affirmed. This Court should remand for a redetermination of attorneys' fees under NRCP 68. And Nimfa does not dispute that the judgment may be amended to reflect proper interest calculations.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4)-(6), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in Baskerville 14-point font.
2. I further certify that this brief complies with the page- or type volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, and contains 15,670 words.
3. I hereby certify that I have read this brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 23rd day of September, 2026

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5 (b), I hereby certify that I am an employee of Gupta Wessler LLP, and that on this 23rd day of September 2026, I did cause a true copy of the foregoing Respondent's combined opening & answering brief to be served via the Court's electronic filing and service system to all parties on the current service list.

/s/ Benita K. Kitembo

Benita K. Kitembo

An Employee of Gupta Wessler LLP