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# STATE OF NEBRASKA, APPELLEE, V. TYRICE J. COLEMAN, APPELLANT.

___ N.W.3d ___

Filed October 30, 2026. No. S-25-759.

1. **Rules of Evidence: Appeal and Error.** In proceedings where the Nebraska Evidence Rules apply, the admissibility of evidence is controlled by the Nebraska Evidence Rules; judicial discretion is involved only when the rules make discretion a factor in determining admissibility. Where the Nebraska Evidence Rules commit the evidentiary question at issue to the discretion of the trial court, an appellate court reviews the admissibility of evidence for an abuse of discretion.
2. ____: ____. Because the exercise of judicial discretion is implicit in determinations of admissibility under Neb. Rev. Stat. § 27-403 (Reissue 2016), the trial court's decision will not be reversed absent an abuse of discretion.
3. **Convictions: Evidence: Appeal and Error.** In reviewing a criminal conviction for sufficiency of the evidence, whether the evidence is direct, circumstantial, or a combination thereof, the standard is the same: An appellate court does not resolve conflicts in the evidence, pass on the credibility of witnesses, or reweigh the evidence; such matters are for the finder of fact. The relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.
4. **Judgments: Sentences: Words and Phrases: Appeal and Error.** An appellate court will not disturb a sentence imposed within the statutory limits absent an abuse of discretion by the trial court. An abuse of discretion occurs when a trial court's decision is based upon reasons that are untenable or unreasonable or if its action is clearly against justice or conscience, reason, and evidence.

5. **Evidence: Proof.** The bar for establishing evidentiary relevance is not a high one; it requires only that the probative value of the evidence be something more than nothing.
6. **Evidence: Words and Phrases.** Evidence is relevant if it tends in any degree to alter the probability of a material fact.
7. ____: ____. Unfair prejudice means an undue tendency to suggest a decision based on an improper basis.
8. ____: ____. Unfair prejudice speaks to the capacity of some concededly relevant evidence to lure the fact finder into declaring guilt on a ground different from proof specific to the offense charged, commonly on an emotional basis.
9. **DNA Testing: Evidence.** The relevance of DNA evidence depends on whether it tends to include or exclude an individual as the source of a biological sample.
10. ____: ____. Nebraska case law generally requires that DNA testing results be accompanied by statistical evidence or a probability assessment that explains whether the results tend to include or exclude the individual as a potential source.
11. **Sentences: Appeal and Error.** Where a sentence imposed within the statutory limits is alleged on appeal to be excessive, the appellate court must determine whether the sentencing court abused its discretion in considering and applying the relevant factors, as well as any applicable legal principles in determining the sentence to be imposed.
12. **Sentences.** When imposing a sentence, the sentencing court is to consider the defendant's (1) age, (2) mentality, (3) education and experience, (4) social and cultural background, (5) past criminal record or record of law-abiding conduct, and (6) motivation for the offense, as well as (7) the nature of the offense and (8) the amount of violence involved in the commission of the crime.
13. ____. A sentencing court is not limited to any mathematically applied set of factors, but the appropriateness of the sentence is necessarily a subjective judgment that includes the sentencing judge's observations of the defendant's demeanor and attitude and all the facts and circumstances surrounding the defendant's life.
14. ____. A sentence should be tailored and based on factors that fit the offender and not merely the crime.
15. **Constitutional Law: Minors: Sentences.** So long as the sentencing judge has discretion to consider a juvenile offender's youth and impose a lesser sentence, there is no constitutional violation if a court imposes what may amount to a de facto life sentence.

Appeal from the District Court for Douglas County: Todd O. Engleman, Judge. Affirmed.

Thomas C. Riley, Douglas County Public Defender, Kylie O. McDonald, Douglas A. Johnson, and Cassandra J. Harper, Senior Certified Law Student, for appellant.

Michael T. Hilgers, Attorney General, and Melissa R. Vincent for appellee.

Funke, C.J., Cassel, Stacy, Papik, Bergevin, and Vaughn, JJ., and Lee, District Judge.

Bergevin, J.

## INTRODUCTION

Tyrice J. Coleman appeals his convictions and sentences in the district court for Douglas County for first degree murder and use of a deadly weapon (firearm) to commit a felony. Coleman challenges certain evidentiary rulings, and he assigns that there was not sufficient evidence to support his convictions and that the court imposed excessive sentences. We affirm Coleman's convictions and sentences.

## BACKGROUND

### Factual Background

On February 7, 2024, the State filed an information in the district court charging Coleman with first degree murder and use of a deadly weapon (firearm) to commit a felony. The charges arose from the November 8, 2023, shooting death of Messiah Holley. A jury trial was held in July 2025.

As discussed further below, the evidence at trial indicated that Coleman and several other individuals attacked Holley in a small park located near 18th and Spencer Streets in Omaha, Nebraska. One of the other individuals who took part in the attack testified that Coleman shot Holley. Another witness testified that when Coleman was in prison on the charges in this case, Coleman admitted that he had shot Holley.

Police investigating the shooting found six fired shell casings at the scene, and they found a handgun at a house across the street from the park. The State presented forensics evidence that indicated that the shell casings had been ejected from the handgun, and it presented other evidence that purportedly tied Coleman to the handgun, including DNA evidence and a video found on Coleman's cell phone that purportedly showed him holding a similar handgun.

Coleman filed several motions prior to trial. Relevant on appeal are motions in limine to exclude evidence related to the video and DNA evidence.

### Evidence Regarding Cell Phone Video and Handgun Comparison

Prior to trial, Coleman filed a motion in limine in which he sought to preclude the State from presenting testimony by Jordan Walther, a forensic video technician employed by the Omaha Police Department (OPD), regarding his examination of the video purported to have been recovered from Coleman's cell phone and to show Coleman with a handgun. Coleman sought to preclude Walther's testimony and other evidence regarding Walther's comparison of the handgun depicted in the video to the handgun that investigators believed to be the weapon used to kill Holley. He also filed a separate motion in limine in which he sought to preclude the State from presenting "evidence purporting to be a video of [Coleman] with a firearm." In both motions in limine, Coleman alleged the evidence was irrelevant and unfairly prejudicial.

At a hearing on the motions in limine, the district court received Walther's report into evidence for purposes of the hearing. In the report, Walther compared still photographs from the video to photographs of the handgun that had been collected as evidence in this case. Walther stated in the report that "[t]he ability to view critical detail within the video files was found to be limited in nature, as the video quality showed visible compression resulting in images that were

compromised from a compare/contrast standpoint." The report included various photographs showing similarities between the handgun shown in the video and the handgun in evidence. Walther concluded in the report that although there was "a lack of individual characteristics due to quality of the submitted firearm video segment," there was "limited support that the firearm of interest is the same as the known" firearm. He explained that there was limited support based on a "relatively clear view of marked characteristics," "some class characteristics that allow for a surface comparison," and "no gross dissimilarities or unexplained differences." Coleman argued that because Walther found similarities but could not say it was the same gun, the evidence had no probative value and was unfairly prejudicial. He also argued that the video was not relevant because although the State alleged that the video was created a week before the shooting of Holley, based on a date indicated on the cell phone, there was no foundation to prove whether the video was created on that date or at some earlier date.

After the hearing, the district court overruled the motions in limine related to Walther's testimony and to the cell phone video. The court found that Walther qualified as an expert and that his testimony would help the trier of fact to understand the evidence. The court also found that the video was relevant evidence and that its probative value was not outweighed by the danger of unfair prejudice.

The cell phone video was admitted into evidence at the trial during testimony by Nathan Meisinger, an OPD officer who found the video on Coleman's cell phone. The district court overruled Coleman's objections to the video based on relevance and foundation. Meisinger testified that data from the cell phone indicated that the video was "taken on Snapchat" and "saved from Snapchat" on October 31, 2023. Before the State played the video for the jury, Coleman renewed his motion in limine and the court overruled the objection. During cross-examination, Coleman asked Meisinger whether

a "Snapchat video" could be made on one date and then saved on a later date. Meisinger replied that he was "unaware of that," and he later testified that he had not subpoenaed Snapchat to get more information.

Walther testified at the trial regarding his comparison of the handgun in the cell phone video to the handgun in evidence. Prior to Walther's testimony, Coleman renewed his motion in limine, and in addition to the arguments he made prior to trial, he noted that earlier in the trial, a firearms examiner had testified that without examining serial numbers, one could not definitively say that a gun shown in a photograph was the same gun that was in evidence. Coleman again renewed his motion in limine when the State offered Walther's report into evidence. The district court overruled Coleman's objection at both times. Walther thereafter testified regarding his comparison, and he testified that while he could not say for certain that the handgun in the video was the same handgun that was in evidence, he had found no dissimilarities. On cross-examination, Coleman elicited testimony by Walther that his conclusions were limited based in part on the quality of the video and visible compression of the images.

### Evidence Regarding DNA Testing

Prior to trial, Coleman filed a motion in limine in which he sought to prohibit the State from introducing evidence or testimony related to a DNA report produced by the University of Nebraska Medical Center (UNMC). Coleman stated that the UNMC laboratory had used probabilistic genotyping software entitled "STRmix" to analyze DNA samples related to his case. He alleged that the STRmix software could produce misleading results and that therefore, the DNA report prepared using STRmix was irrelevant and unfairly prejudicial.

The district court held a hearing on Coleman's motion in limine related to the DNA report, and the State presented testimony by Joseph Choquette, a DNA analyst employed by the UNMC laboratory. Choquette testified regarding the process

by which DNA is extracted and analyzed in the laboratory. He also testified regarding STRmix, which he described as a program used in the laboratory "to help generate a statistical calculation in the form of a likelihood ratio" comparing the scenario that a DNA profile originated from a known suspect to the scenario that it originated from an unknown, unrelated individual. Choquette testified that use of STRmix was a standard and accepted scientific practice in DNA laboratories.

Choquette analyzed three DNA samples taken from items related to this case: (1) the six fired shell casings that were found at the scene of the shooting, (2) the textured surfaces of the handgun found in the search of the house near the park, and (3) an extended magazine and several live rounds that were removed from the handgun. Choquette compared the DNA samples to known DNA profiles of 11 individuals, including Coleman, who were suspects in the investigation. The district court received a copy of Choquette's DNA report as evidence for purposes of the hearing, and Choquette referred to the report for his testimony regarding the DNA testing results.

Regarding the DNA sample from the six fired shell casings, Choquette testified that the sample generated a partial DNA profile consistent with originating from a mixture of two individuals and that Coleman was not excluded as a contributor to the DNA profile. Choquette determined that the DNA profile was at least 28 times more likely to have originated from Coleman and one unknown, unrelated individual than from two unknown, unrelated individuals, which Choquette testified was support that Coleman could be included as a contributor to the DNA mixture. Choquette testified that the testing did not support inclusion for any of the 10 other individuals whose DNA was part of the comparison.

Regarding the DNA sample from the exterior surface of the handgun, Choquette testified that the sample generated a DNA profile consistent with originating from a mixture of four individuals and that no conclusions could be made

regarding Coleman as a contributor to the mixture. Choquette testified that two of the other individuals—Zynelle Carter and Markezz Carter—were not excluded as contributors and that there was support that both could be included as contributors to the DNA mixture because it was at least 390,000 times more likely that the DNA profile originated from Zynelle Carter and three unknown, unrelated individuals than from four unknown, unrelated individuals and at least 29,600 times more likely that the DNA profile originated from Markezz Carter and three unknown, unrelated individuals than from four unknown, unrelated individuals. Choquette's report indicated that it was 4.65 billion times more likely that the DNA profile originated from Zynelle Carter, Markezz Carter, and two unknown, unrelated individuals than from four unknown, unrelated individuals. Choquette testified that none of the remaining individuals who were part of the comparison could be included.

Regarding the DNA sample from the magazine and live rounds, Choquette testified that the sample generated a partial DNA profile that was consistent with originating from a mixture of two individuals and that Coleman was not excluded as a contributor to the DNA profile. Choquette determined that the DNA profile was at least 8,000 times more likely to have originated from Coleman and one unknown, unrelated individual than from two unknown, unrelated individuals, which Choquette testified was support that Coleman could be included as a contributor to the DNA mixture. Choquette testified that the testing did not support inclusion for any of the 10 other individuals whose DNA was part of the comparison.

Coleman cross-examined Choquette regarding DNA testing procedures and his testing related to this case. Among other information elicited during the cross-examination, Choquette testified that the partial DNA profile for the sample from the six shell casings included genetic information from 8 of 24 loci and that the partial DNA profile for the sample from the

magazine and live rounds included genetic information from 12 of 24 loci.

After the hearing, the district court overruled Coleman's motion in limine related to the DNA evidence.

Choquette testified at the trial. Prior to Choquette's testimony, Coleman renewed his motion in limine and the district court overruled the renewed motion. Coleman again renewed the motion in limine after Choquette's direct testimony and prior to his cross-examination, and the court again overruled the renewed motion in limine. Coleman did not object when the DNA report was offered into evidence. The court ultimately determined that a redacted version of the DNA report would go back to the jury. The redacted DNA report did not include a sentence that had been included in the DNA report admitted at the motion in limine hearing. That sentence stated that no conclusions could be made regarding Coleman as a contributor to the DNA mixture in the sample from the exterior surface of the handgun. Choquette's testimony regarding the contents of the report was generally consistent with his testimony at the hearing on the motion in limine, except that Choquette did not testify that no conclusions could be made regarding Coleman as a contributor to the DNA mixture in the sample from the exterior surface of the handgun.[1] Additional portions of Choquette's testimony are set forth as relevant to our analysis below.

## Other Evidence at Trial

In addition to the evidence discussed above related to Coleman's motions in limine, the State presented evidence at trial, including testimony by law enforcement investigators and other witnesses.

Holley's mother testified that Holley was 17 years old at the time he died on November 8, 2023. Holley had been

[1] See *State v. Johnson*, 290 Neb. 862, 862 N.W.2d 757 (2015) (testimony that no conclusion could be drawn regarding DNA testing is irrelevant and inadmissible).

diagnosed with psychosis and was being treated with medications. Because of his mental condition, "[H]e would just wander around and wouldn't know where he was." At around 6 p.m. on November 8, Holley's mother was contacted by an acquaintance who told her she had seen Holley wandering in her neighborhood. Holley's mother later learned that Holley had been shot and that he died at the hospital. A forensic pathologist testified that she had performed an autopsy on Holley and that she determined the cause of death to be gunshot wounds to the head and neck.

An OPD officer testified that on November 8, 2023, he and his partner were patrolling an area near 18th and Spencer Streets when they heard gunshots. While traveling toward the direction of the gunshots, they received additional information that led them to a small park near 18th and Spencer Streets. Upon arriving at the park, the officers located a male on the ground near a gazebo and determined that he was a gunshot victim, based on blood near his shoulder and shell casings on the ground near him. After the victim was taken away by ambulance, the officers stayed at the park to secure the scene. They also worked to secure a house at 1816 Spencer Street, which was across the street from the park to the north, based on information that suspects had run to the house.

An OPD forensic technician testified that on November 8, 2023, she worked on the investigation of the scene at 18th and Spencer Streets. While waiting to enter the park, she collected surveillance video from a house located near the park at 1824 Spencer Street. The video from 1824 Spencer Street was received into evidence. The forensic technician collected evidence from the park, including six spent shell casings that were found in the same general area of the park. The shell casings were received into evidence.

A criminalist employed in the OPD forensics unit testified that she took part in the investigation around 18th and Spencer Streets on November 8, 2023. In addition to investigating the scene in the park, she took photographs of both the exterior

and the interior of the house at 1816 Spencer Street, which was of interest because suspects had been seen running there after the shooting. The photographs she took inside the house included several photographs showing bedrooms on the upper level and evidence collected from the bedrooms. The photographs were received into evidence. In the east bedroom, the criminalist photographed a backpack, a tablet computer that was inside the backpack, and a school schedule for Coleman that was inside a pocket attached to the tablet computer. Inside a small crawl space in the southwest bedroom, she photographed a shirt that had a handgun wrapped inside of it. The criminalist photographed the handgun after it was unwrapped from the shirt, and she also photographed an extended magazine that was removed from the handgun. The handgun, which was labeled as a "Glock 30," and the magazine, which contained live rounds, were received into evidence.

A forensic technician employed by OPD who specialized in firearms examination testified that she performed ballistics testing and comparisons related to the Holley shooting investigation. She compared test firings of the handgun found at 1816 Spencer Street to the shell casings found in the park, and she concluded that all six shell casings had been ejected from the handgun.

Ronald Harlan testified that he was at the park at 18th and Spencer Streets when Holley was shot on November 8, 2023. Harlan knew Coleman because they had gone to high school and played football together. On November 8, Harlan and two others went to a yellow house where Markezz Carter and Zynelle Carter lived near 18th and Spencer Streets. When Harlan pulled up to the house, he saw two men running from the park across the street, and he saw Holley in the park. Harlan heard some people yelling at Holley. Harlan drove around the park and then parked behind the "yellow house." After Harlan parked, he and a group of eight others, including Coleman and Markezz Carter, walked to the park. Harlan testified that their purpose in walking to the park was to confront Holley.

Harlan testified that he and the others "jump[ed]" Holley and fought him as a group. The fight stopped and Harlan began running, after Coleman yelled either "'[b]ack up, back up, or watch out, watch out.'" Harlan testified that he "believe[d]" Coleman shot Holley and that he saw it out of the corner of his eye as he was running. When asked again whom he saw shoot Holley, Harlan testified that it was "T.C.," whom he confirmed to be Coleman. The group next ran back toward the yellow house, and Harlan and a few others ran to his vehicle.

Harlan testified that he was interviewed by police a couple of times after the incident and that he was not truthful in his first interview and was partially truthful in his second interview. Harlan had been charged as an accessory in this case because he had originally lied to the police that he was not at the park and that he was at another location at the time Holley was shot. An OPD investigator testified that in Harlan's second interview, he identified a person other than Coleman as the person who shot Holley, but Harlan laughed after he identified that person, and the investigator testified that he did not take the identification as being serious, believing instead that Harlan was joking. Harlan testified that although he was hopeful his testimony in Coleman's case would be helpful to his own case, he had not been promised any help in his case for his testimony against Coleman.

Rashad Thorpe testified that he had known Coleman since they were children. Although Thorpe and Coleman had not been in contact at the time, in December 2023, Coleman reached out to Thorpe over the phone for a brief call and told Thorpe that he felt guilty about something he had done and that he had "messed up." Thorpe next encountered Coleman in May 2024 when Thorpe was in jail on charges of robbery and burglary. An OPD investigator testified that he had obtained documentation from "Douglas County Corrections" that Thorpe and Coleman had been in the same housing unit from May 23 to 27, 2024. Thorpe testified that when he and Coleman were in the same jail unit, Coleman told Thorpe that

he and some others had fought Holley and that he had shot Holley multiple times. Thorpe testified that Coleman said that he and the others had recognized Holley as the brother of "Fat Kai," who was a member of a gang, and that the attack on Holley "was get back" for a person who had been shot and killed. Thorpe testified Coleman said that Holley was not "a big gang member" and that "[Coleman] only did it because it was Fat Kai's brother." Thorpe told law enforcement what Coleman had said because he "couldn't sleep," and he testified that he had not been promised anything regarding his testimony.

One of the State's final witnesses was Thomas Ewin, OPD's lead detective on the investigation of Holley's shooting death. Ewin testified that as part of the investigation at the scene, he and other investigators reviewed surveillance video obtained from the house at 1824 Spencer Street. From the video, they "[saw] that numerous individuals went into the park, . . . heard the shots, and then [saw that] from there numerous individuals ran to the north." They next saw "th[o]se individuals run towards the direction of 1816 Spencer Street," which drew the investigators' attention to that address. During Ewin's testimony, the State played the surveillance video from 1824 Spencer Street that had been admitted during the forensic technician's testimony. Ewin testified regarding what was shown and heard on the video related to the investigation, including that the video showed Holley walking past 1824 Spencer Street and going toward a gazebo in the park approximately 10 minutes before the shooting, that it showed Harlan's vehicle arriving at the scene, and that it showed people running across the street between 1816 Spencer Street and the park.

Ewin testified that after viewing the video, investigators' "interest was focused on the house" at 1816 Spencer Street. Officers secured the house and received permission from an occupant, Natisha Carter, to perform a "protective sweep" of the house. Ewin testified that Natisha Carter lived in the house with others, including Markezz Carter and Zynelle Carter.

Markezz Carter and three others who were in the house were considered persons of interest and were taken in for questioning. Zynelle Carter was not one of the people taken for questioning. Ewin took part in a search of the house after a search warrant was obtained. Ewin testified that in the upstairs portion of the house, the east bedroom belonged to Markezz Carter and the southwest bedroom belonged to Zynelle Carter. In the east bedroom, investigators found a backpack that contained a "school tablet with a schedule on the back of it, with the name of . . . Coleman affixed to the school student schedule, along with an additional student schedule as well to . . . Coleman inside that backpack." Ewin testified that the "Glock 30 firearm with a high-capacity magazine attached to it or inserted into it" was found in a crawl space in the southwest bedroom.

Ewin testified that investigators collected DNA swabs from 11 persons of interest in the case, including Coleman, Harlan, Markezz Carter, and Zynelle Carter, and delivered the swabs for testing at UNMC. When collecting the DNA swab from Coleman, investigators also collected Coleman's cell phone, and the cell phone was given to Meisinger, who found the video that was received into evidence during Meisinger's testimony. Ewin testified that the video showed Coleman "holding an apparent firearm with an apparent high-capacity magazine" and that he provided the video to Walther to compare the firearm in the video to the handgun that was in evidence.

After the State rested its case, Coleman informed the district court that he would not testify in his defense and that he had no other evidence to present in his defense. After jury instructions and closing arguments, the case was submitted to the jury.

### Convictions and Sentencing

The jury found Coleman guilty of first degree murder and use of a deadly weapon (firearm) to commit a felony. The district court accepted the verdicts and found Coleman guilty of the charges.

At the sentencing hearing, the district court stated that it had ordered and reviewed the presentence investigation report. The court heard arguments from Coleman and the State. At the beginning of his argument, Coleman's attorney noted that the presentence investigation report was "pretty thin . . . because [he] advised [Coleman] not to participate" so that Coleman would not "say anything that would affect his appeal in any way." Coleman's argument focused on his being age 17 at the time of the offense and the potential for rehabilitation. The State's argument focused on the brutality and senselessness of the shooting and the impact on the victim's family. Holley's father also addressed the court.

The district court began its comments by speaking generally regarding the prevalence of gun violence among young people, and the court stated, "[T]he people in these kids' lives are gonna have to stand up and start calling police and telling them my kid[']s got a gun, come over." The court also referenced specifics of this case, stating, "I just can't fathom what goes through your mind when you have 8 to 10 of your buddies assaulting this special needs kid because he's in your park" and "when you shoo everybody back to shooting six times in the face." The court described the shooting in this case as "the most cowardly act [it had] ever seen . . . [t]o shoot a kid who's being beaten on the ground because he's in the wrong park."

The district court referenced Coleman's age, stating, "[H]ad you committed this crime less than one month later[,] your sentence would be life without parole," and "[i]t would be the easiest sentence I ever give." The court then stated that because "you did it three weeks before you turned 18, I'm required to give you a sentence the minimum of 40 years to life." The court stated that it considered mitigating factors, including Coleman's age, and that it considered the specific mitigating factors contained in Neb. Rev. Stat. § 28-105.02 (Reissue 2016), which a court must consider when a person is "convicted of a Class IA felony for an offense committed

when such person was under the age of eighteen years." The court stated that it also considered the factors set forth in Neb. Rev. Stat. § 29-2260 (Supp. 2025), "as well as [Coleman's] age, mentality, education, experience, social and cultural background[, and] [p]ast criminal record or record of law-abiding conduct[;] [t]he motivation for the offense[;] [t]he nature of the offense[; and] [t]he amount, if any, [of] violence involved in the commission of the offense."

The district court stated that in determining Coleman's sentences, it considered "the pre-sentence report, police reports, and probation's investigation." The court thereafter sentenced Coleman to imprisonment for 80 years to life for first degree murder and for 40 to 50 years for use of a deadly weapon (firearm) to commit a felony, and it ordered the sentences to run consecutively.

Coleman appeals his convictions and sentences.

## ASSIGNMENTS OF ERROR

Coleman assigns that the district court erred in overruling his motions in limine and in admitting into evidence (1) "testimony involving . . . a video of Coleman holding the alleged murder weapon" and (2) the "DNA report, along with the testimony around the report." Coleman also assigns that there was not sufficient evidence to support his convictions and that the district court imposed excessive sentences.

## STANDARD OF REVIEW

[1,2] In proceedings where the Nebraska Evidence Rules apply, the admissibility of evidence is controlled by the Nebraska Evidence Rules; judicial discretion is involved only when the rules make discretion a factor in determining admissibility.[2] Where the Nebraska Evidence Rules commit the evidentiary question at issue to the discretion of the trial court, an appellate court reviews the admissibility of evidence for an

[2] *State v. Kruger*, 320 Neb. 361, 27 N.W.3d 398 (2025).

abuse of discretion.[3] Because the exercise of judicial discretion is implicit in determinations of admissibility under Neb. Rev. Stat. § 27-403 (Reissue 2016), the trial court's decision will not be reversed absent an abuse of discretion.[4]

[3] In reviewing a criminal conviction for sufficiency of the evidence, whether the evidence is direct, circumstantial, or a combination thereof, the standard is the same: An appellate court does not resolve conflicts in the evidence, pass on the credibility of witnesses, or reweigh the evidence; such matters are for the finder of fact.[5] The relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.[6]

[4] An appellate court will not disturb a sentence imposed within the statutory limits absent an abuse of discretion by the trial court.[7] An abuse of discretion occurs when a trial court's decision is based upon reasons that are untenable or unreasonable or if its action is clearly against justice or conscience, reason, and evidence.[8]

## ANALYSIS

### Evidentiary Rulings on Cell Phone Video and Handgun Comparison

Coleman first assigns error to the admission of "testimony involving . . . a video of Coleman holding the alleged murder weapon." Coleman's assignment of error refers to testimony, which we understand to be Walther's testimony regarding his comparison of the handgun in the cell phone video to the

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[3] *Id.*

[4] *Id.*

[5] *State v. Evans*, 321 Neb. 841, 37 N.W.3d 641 (2026).

[6] *Id.*

[7] *State v. Flores*, 321 Neb. 284, 34 N.W.3d 106 (2026).

[8] *Id.*

handgun in evidence in this case. While Coleman's assignment of error refers specifically to testimony about the video, Coleman's objections at trial and his arguments on appeal also challenge the admission of the cell phone video itself, which was admitted and played for the jury during Meisinger's testimony.

Coleman argues that the cell phone video and Walther's comparison of the handgun in the video to the handgun in evidence was irrelevant and was unfairly prejudicial. Under Neb. Rev. Stat. § 27-401 (Reissue 2016), "[r]elevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." But relevant evidence is subject to § 27-403, which provides that "[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."

[5-8] The bar for establishing evidentiary relevance is not a high one; it requires only that the probative value of the evidence be something more than nothing.[9] Evidence is relevant if it tends in any degree to alter the probability of a material fact.[10] Regarding unfair prejudice, most, if not all, evidence offered by a party is calculated to be prejudicial to the opposing party; unfair prejudice means an undue tendency to suggest a decision based on an improper basis.[11] Unfair prejudice speaks to the capacity of some concededly relevant evidence to lure the fact finder into declaring guilt on a ground different from proof specific to the offense charged, commonly on an emotional basis.[12]

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[9] *State v. Price*, 320 Neb. 1, 26 N.W.3d 70 (2025).

[10] *Id.*

[11] *Id.*

[12] *Id.*

Coleman argues that the cell phone video was not relevant because the State could not show that the video was created on a date relevant to this case. Coleman argues that Meisinger could testify only to when the video was saved on the cell phone, not when it was created. Coleman notes Meisinger's testimony that he was unaware whether a video could be created on Snapchat and then saved to a cell phone on a later date and that he had not subpoenaed Snapchat to get more information.

However, Meisinger testified that data from the cell phone indicated that the video was "taken on Snapchat" and "saved from Snapchat" on October 31, 2023, which was approximately 1 week prior to the shooting of Holley on November 8. To the extent Coleman is arguing that the State did not properly authenticate the date that the cell phone video was created, we note that the possibility of an alteration or misuse goes to weight, not admissibility.[13] Through his cross-examination of Meisinger, Coleman was able to raise the question whether the cell phone data accurately identified the date the video was created. But Coleman's argument on appeal is focused on the relevance of the video, rather than its authentication. In that regard, Meisinger's testimony that the cell phone data showed that the Snapchat video was "taken" on October 31 was sufficient to show that the video was relevant.

Coleman further argues that because Walther could not definitively state that the handgun in the cell phone video was the same handgun that was in evidence, both the cell phone video and Walther's testimony regarding his comparison lacked probative value. Coleman notes the testimony of the firearms examiner that without examining serial numbers, one could not definitively say that a gun shown in a photograph was the same gun that was in evidence. He argues that because the cell phone video and Walther's comparison had no probative value, the evidence was not relevant, and

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[13] See *State v. Savage*, 301 Neb. 873, 920 N.W.2d 692 (2018).

that the evidence was unduly prejudicial because the jury would be led to believe that in the weeks prior to the shooting, he was in possession of the handgun that was used to shoot Holley.

Although Walther testified that he could not definitively state that the handgun in the video was the handgun used to shoot Holley, the probative value of the evidence was something more than nothing and to some degree it altered the probability that Coleman used the handgun shown in the video to shoot Holley. Walther noted similarities between the handgun in the video and the handgun in evidence, and he testified that he had found no dissimilarities. Because the video and the handgun were in evidence, the jury could make its own comparison and determine the credibility of Walther's comparison. The video and Walther's testimony had relevance and probative value.

Regarding unfair prejudice, we have previously rejected an argument that admission of photographs that depicted a defendant with a rifle that resembled the rifle used in a shooting was unfairly prejudicial.[14] We similarly reject Coleman's argument that any probative value of the cell phone video and Walther's testimony was substantially outweighed by the risk of unfair prejudice. We conclude that the district court did not abuse its discretion when it admitted the cell phone video and Walther's testimony.

### Evidentiary Rulings on DNA Report

Coleman next assigns error to the admission of the "DNA report, along with the testimony around the report." At the trial, Coleman renewed his motion in limine related to the DNA report in connection with Choquette's testimony, and the district court overruled the renewed motion.

Coleman argues that although the DNA report and Choquette's testimony indicated that he could be included

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[14] See *State v. Castillas*, 285 Neb. 174, 826 N.W.2d 255 (2013), *disapproved on other grounds, State v. Lantz*, 290 Neb. 757, 861 N.W.2d 728 (2015).

as a contributor to the DNA profiles of the samples from the spent shell casings and from the magazine and live rounds, the DNA evidence was irrelevant because the likelihood ratios supporting his inclusion were "too low to consider the statistics as relevant."[15] He further argues that even if the evidence was relevant, under § 27-403, whatever probative value the evidence might have was substantially outweighed by the danger of unfair prejudice.

[9,10] The relevance of DNA evidence depends on whether it tends to include or exclude an individual as the source of a biological sample.[16] Our case law generally requires that DNA testing results be accompanied by statistical evidence or a probability assessment that explains whether the results tend to include or exclude the individual as a potential source.[17]

In this case, Choquette testified that the likelihood ratios were support that Coleman could be included as a contributor to the DNA mixtures from the six fired shell casings and from the magazine and live rounds. Choquette testified that the DNA profile from the six fired shell casings was at least 28 times more likely to have originated from Coleman and one unknown, unrelated individual than from two unknown, unrelated individuals, and that the DNA profile from the magazine and live rounds was at least 8,000 times more likely to have originated from Coleman and one unknown, unrelated individual than from two unknown, unrelated individuals. This contrasted with Choquette's testimony that the DNA profile from the exterior of the handgun was 4.65 billion times more likely to have originated from Zynelle Carter, Markezz Carter, and two unknown, unrelated individuals than from four unknown, unrelated individuals.

Coleman argues that the likelihood ratios that supported his inclusion were too low to be relevant and admissible. But we

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[15] Brief for appellant at 31.

[16] *State v. Johnson, supra* note 1.

[17] *Id.*

have previously recognized that DNA analysis is not subject to exclusion simply because the probability of a match falls below a certain threshold.[18] Instead, we have emphasized the need for DNA analysis to be accompanied by evidence of the statistical significance of the findings, and we have rejected arguments that jurors are not capable of assigning appropriate weight to those statistics.[19]

At issue in *State v. Simmer*[20] was the admission of DNA analysis that was performed using TrueAllele probabilistic genotyping software. We rejected the argument that TrueAllele could not be reliably applied to the particular facts of the case because a low mixture weight of minor contributor DNA found on an object resulted in a lower probability than might have been found under different circumstances. We reasoned that "[t]he fact that a lower mixture weight makes a match statistic less certain is not a basis for exclusion of the evidence," and we determined that "the evidence furnished the jury with the statistical context to carry out its duty" and that the reduced certainty of a noncoincidental match "was an issue of weight for the jury to consider and not a bar to admissibility."[21] Although the STRmix software used in this case was not at issue in *State v. Simmer*, the forensic DNA analyst in that case noted that STRmix was "a similar program"[22] to the TrueAllele program and that STRmix was "'being highly touted by the FBI and the national government' and 'has kind of taken off to where lots of laboratories have those.'"[23]

Coleman's argument is focused on the lower likelihood ratios that Choquette generated using STRmix software when testing

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[18] *State v. Simmer*, 304 Neb. 369, 935 N.W.2d 167 (2019).

[19] *Id.*

[20] *Id.*

[21] *Id.* at 393, 935 N.W.2d at 184.

[22] *Id.* at 374, 935 N.W.2d at 173.

[23] *Id.* at 374-75, 935 N.W.2d at 173.

DNA samples that provided only a partial profile as compared to testing DNA samples that provided a full profile. As we reasoned in *State v. Simmer*, the lower likelihood ratios are not a basis for exclusion of the DNA evidence when the likelihood ratios still support inclusion. But we consider whether the evidence presented in this case furnished the jury with the statistical context to carry out its duty and to determine the weight to be given to the DNA evidence. We determine that the evidence set forth below provided that context.

At the trial, before testifying regarding the results of his DNA testing and analysis, Choquette extensively described the procedures used to generate the results, including the use of the STRmix software. Choquette testified that "we use a statistical program called STRmix," which "generates a statistic that forms a likelihood ratio, so it's a program that considers all of the data and determines all the explanations or combinations of alleles using mathematical calculations." He testified that STRmix "considers all of those combinations [of alleles], and it provides a weight to those combinations [indicating] what's more likely to combine together." He testified that STRmix "allows us to use all of the data generated because there's statistical calculations or mathematical calculations that can account for multiple different things." He described the calculation of a likelihood ratio as "a division problem" comparing two scenarios. Relevant to his analysis in this case, Choquette described an example in which the DNA profile contains a mixture of two individuals and "this division problem would have [a] suspect, or person of interest, plus an unknown individual, over two unknown individuals." He stated that "after all the mathematical calculations," the scenario that "is best supported by the data . . . would have a higher number."

Choquette thereafter testified that a full profile would generate a DNA profile at all 24 locations on the DNA being tested. Turning to his analysis in this case, Choquette testified that the DNA sample from the six fired shell casings generated a partial profile, including 8 of 24 loci, and that

the DNA sample from the magazine and live rounds generated a partial profile, including 12 of 24 loci. Choquette further testified that the DNA profile of the sample from the six fired shell casings was at least 28 times more likely to have originated from Coleman and one unknown, unrelated individual than from two unknown individuals and that the DNA profile of the sample from the magazine and live rounds was at least 8,000 times more likely to have originated from Coleman and one unknown, unrelated individual than from two unknown individuals.

By comparison, Choquette testified that the DNA profile of the sample from the exterior of the handgun was at least 4.65 billion times more likely to have originated from Markezz Carter, Zynelle Carter, and two unknown, unrelated individuals than from four unknown individuals. Therefore, there was evidence from which the jury could compare the 28 times and 8,000 times likelihood ratios for Coleman and the partial DNA profiles from the six fired shell casings and the magazine and live rounds, respectively, to the 4.65 billion times likelihood ratio for the Carters and the exterior of the handgun.

Coleman cross-examined Choquette regarding various aspects of his DNA analysis, including the likelihood ratios generated using STRmix. When Coleman asked whether the likelihood ratio for Coleman as a contributor to the DNA profile from the six fired shell casings was a "low" or "extremely low" ratio, Choquette did not characterize the ratio and instead, again, testified that the DNA profile was 28 times more likely to have originated from Coleman and one unknown, unrelated individual than from two unknown individuals. When Coleman asked for an example of a high likelihood ratio, Choquette acknowledged that he had seen "very high numbers, . . . depending on how unique the profile" was, including "some that are in the octillions, which is 27 zeros," and "some a lot higher than that."

The DNA evidence in this case was relevant because Choquette testified that the likelihood ratios were support that

Coleman could be included in the DNA profiles from the six fired shell casings and from the magazine and live rounds. As in *State v. Simmer*, the DNA analysis in this case should not be subject to exclusion as irrelevant simply because the likelihood ratios were lower than might be expected under other circumstances.[24] We further reject Coleman's argument that any probative value was outweighed by unfair prejudice because the results would mislead the jury. Choquette's testimony described above furnished the jury with the statistical context to carry out its duty and to determine the weight to be given to the DNA evidence. Choquette's testimony provided "'evidence of the statistical significance of the findings,'" and with this evidence, the jurors were "capable of assigning appropriate weight to those statistics."[25] We conclude that the district court did not abuse its discretion when it admitted the DNA report and Choquette's testimony regarding the DNA analysis.

## SUFFICIENCY OF EVIDENCE

Coleman next assigns that there was not sufficient evidence to support his convictions.

Coleman's arguments regarding sufficiency of the evidence focus on three key parts of the State's evidence: (1) Harlan's testimony that he saw Coleman shoot Holley, (2) Thorpe's testimony that Coleman told him that he had shot Holley, and (3) Walther's testimony comparing the handgun in Coleman's cell phone video to the handgun used to shoot Holley. Coleman generally attacks the credibility of each of these witnesses and of their testimony. He argues Harlan's testimony is not credible because he did not directly see the shooting and because he told inconsistent stories in earlier interviews with investigators. Coleman argues that Thorpe's testimony was inconsistent and inaccurate and was given to gain favor in his own prosecution. Coleman argues that Walther's testimony

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[24] See *State v. Simmer, supra* note 18.

[25] See *id.* at 393, 935 N.W.2d at 184.

could not support his convictions because Walther could not definitively say that the handgun in the video was the handgun used to shoot Holley.

However, when reviewing a criminal conviction for sufficiency of the evidence, we do not resolve conflicts in the evidence, pass on the credibility of witnesses, or reweigh the evidence.[26] In this case, the jury heard the testimony by Harlan, Thorpe, Walther, and the other witnesses, and it was for the jury to determine the credibility of each witness' testimony and the weight to be given the testimony. The jury was also presented with evidence of the factors that Coleman cites to attack the credibility of each witness, and therefore, the jury could consider those factors when making its assessments of the credibility of those witnesses and the weight to be given to their testimony.

The relevant question before us on appeal is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.[27] When all the evidence set forth above that was presented at the trial, including the DNA evidence and the testimony of the witnesses challenged by Coleman, is viewed in the light most favorable to the prosecution, a rational trier of fact could have found that Coleman shot and killed Holley with the required intent and that he used a firearm to do so. We conclude that the State presented sufficient evidence at trial to sustain Coleman's convictions for first degree murder and for use of a deadly weapon (firearm) to commit a felony.

## Excessive Sentences

Coleman lastly assigns that the district court imposed excessive sentences.

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[26] See *State v. Evans, supra* note 5.

[27] See *id.*

The district court sentenced Coleman to imprisonment for 80 years to life for first degree murder and for 40 to 50 years for use of a deadly weapon (firearm) to commit a felony. Because Coleman was under the age of 18 at the time of the offense, first degree murder was punished as a Class IA felony, and under § 28-105.02(1), the sentencing range for that crime was a maximum sentence of not greater than life imprisonment and a minimum sentence of not less than 40 years' imprisonment. Use of a deadly weapon (firearm) to commit a felony is a Class IC felony under Neb. Rev. Stat. § 28-1205(1)(c) (Cum. Supp. 2024), and the sentencing range for a Class IC felony under Neb. Rev. Stat. § 28-105(1) (Cum. Supp. 2024) is a maximum sentence of 50 years' imprisonment and a mandatory minimum sentence of 5 years' imprisonment. The individual sentences imposed by the district court were within the respective statutory limits.

[11-14] Where a sentence imposed within the statutory limits is alleged on appeal to be excessive, the appellate court must determine whether the sentencing court abused its discretion in considering and applying the relevant factors, as well as any applicable legal principles in determining the sentence to be imposed.[28] When imposing a sentence, the sentencing court is to consider the defendant's (1) age, (2) mentality, (3) education and experience, (4) social and cultural background, (5) past criminal record or record of law-abiding conduct, and (6) motivation for the offense, as well as (7) the nature of the offense and (8) the amount of violence involved in the commission of the crime.[29] A sentencing court is not limited to any mathematically applied set of factors, but the appropriateness of the sentence is necessarily a subjective judgment that includes the sentencing judge's observations of the defendant's demeanor and attitude and all the facts and

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[28] *State v. Flores, supra* note 7.

[29] *Id.*

circumstances surrounding the defendant's life.[30] A sentence should be tailored and based on factors that fit the offender and not merely the crime.[31]

Coleman does not dispute that the individual sentences were within statutory limits, but he contends that the aggregate sentence was excessive. Coleman argues that the district court did not tailor the aggregate sentence to him as an individual. He notes that at the sentencing hearing, the court made several references to "kids" generally and their access to guns. He argues that these references showed that the court was "preoccupied with making a stance to the public rather than tailoring the sentence to Coleman himself."[32] While the court made some general comments regarding young people and their access to guns, the court also made references to the specific facts of this case and the actions taken by Coleman. We do not read the court's comments to indicate that the court improperly based Coleman's aggregate sentence on a general societal problem, rather than on Coleman's own actions in this case, or that the court failed to tailor the aggregate sentence to Coleman as an individual.

Coleman further argues that the district court failed to adequately consider Coleman's age when it sentenced him. He argues that the court imposed an aggregate sentence that would not provide a meaningful opportunity for release because he would not be eligible for parole "until after he has hit the average life expectancy age in the United States."[33] He asserts that due process required the court to make specific findings on the record before it imposed what was effectively a life sentence and that the court violated the U.S. Constitution when it failed to make explicit findings.

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[30] *Id.*

[31] *Id.*

[32] Brief for appellant at 39.

[33] *Id.* at 41.

[15] The U.S. Supreme Court has held that there is not a formal factfinding requirement and that "[i]n a case involving an individual who was under 18 when he or she committed a homicide, a State's discretionary sentencing system is both constitutionally necessary and constitutionally sufficient."[34] We have read *Jones v. Mississippi* to hold that a sentencing court may constitutionally impose a life-without-parole sentence, so long as the sentencing court retains discretion to impose a lesser penalty, and that "[i]t follows that, so long as the sentencing judge has discretion to consider a juvenile offender's youth and impose a lesser sentence, there is no [constitutional] violation if a court imposes what may amount to a de facto life sentence."[35]

In this case, when referencing Coleman's age, the district court stated that the offenses occurred "three weeks before [Coleman] turned 18" and that if Coleman had "committed this crime less than one month later," the sentence would have been "life without parole." These comments indicated that the court may not have considered Coleman's age to be as strong a mitigating factor as it might have been if he had not been close to turning 18 years old at the time of the offenses. But the comments also indicated that the court knew that it had discretion to consider Coleman's youth and to impose lesser sentences than life imprisonment.

Because Coleman was convicted of a Class IA felony, first degree murder, and he was under the age of 18 at the time of that offense, the district court was required to consider the additional mitigating factors set forth in § 28-105.02(2), which focus on the defendant's age and related considerations. At the sentencing hearing, the court stated that it had considered mitigating factors, including Coleman's age, and that

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[34] *Jones v. Mississippi*, 593 U.S. 98, 105, 141 S. Ct. 1307, 209 L. Ed. 2d 390 (2021).

[35] *State v. Dejaynes-Beaman*, 317 Neb. 131, 137, 8 N.W.3d 779, 785 (2024). See, also, *State v. Flores, supra* note 7.

it had considered the specific mitigating factors set forth in § 28-105.02(2), as well as the factors set forth in § 29-2260. The court further stated that it had considered information from the presentence investigation report and police reports. The court's comments indicate that it considered Coleman's age and other mitigating circumstances and that it considered other relevant factors specific to Coleman and to the facts of this case, and we see no indication that the court considered improper factors. We find no abuse of discretion in the court's sentencing of Coleman.

## CONCLUSION

The district court did not abuse its discretion in admitting evidence and testimony regarding the cell phone video or in admitting the DNA evidence. There was sufficient evidence to support Coleman's convictions, and the district court did not abuse its discretion in sentencing Coleman. We therefore affirm Coleman's convictions and sentences for first degree murder and use of a deadly weapon (firearm) to commit a felony.

AFFIRMED.

FREUDENBERG, J., not participating.