

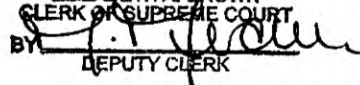
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANDREW YOUNG,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 84412-COA

**FILED**

**JAN 25 2023**

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Andrew Young appeals from a judgment of conviction, pursuant to a jury verdict, of battery with use of a deadly weapon resulting in substantial bodily harm. Eighth Judicial District Court, Clark County; Jacqueline M. Bluth, Judge.

Young was involved in an altercation with Robert Will near a bus stop bench located outside of the Paris Las Vegas hotel and casino in July 2020.<sup>1</sup> As the altercation ensued, Young left the scene and returned to the bus stop with a large rock. Will charged at Young because Young began throwing Will's food in the garbage. The two men exchanged punches. Young then hit Will in the head with the rock multiple times, causing Will to suffer a skull fracture and severe brain bleed. Young left the scene on foot.

Detectives with the Las Vegas Metropolitan Police Department (LVMPD) obtained surveillance footage from the Paris that showed the attacker leaving the scene as well as video from before, during, and after the attack. Detectives also obtained video from the LVMPD's Fusion Watch, which is a special unit employing hundreds of public safety video cameras. Some of the video showed the attacker leaving the scene, walking over the

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<sup>1</sup>We do not recount the facts except as necessary to our disposition.

bridge in front of the Planet Hollywood Las Vegas Resort & Casino, crossing over Las Vegas Boulevard, and finally entering the Cosmopolitan of Las Vegas hotel and casino. Detectives also obtained surveillance footage from the Cosmopolitan of the suspect walking inside of the casino.

Using this surveillance footage and various photographs, detectives created a critical reach flyer and distributed it to all LVMPD personnel in an effort to identify the attacker. LVMPD Detective Byrd saw the flyer and recognized the suspect as Andrew Young because Byrd had investigated theft offenses involving Young. Byrd obtained police body camera footage from a separate incident involving Young recently being issued a citation for petit larceny at a Walmart Supercenter in Las Vegas. Locating this body camera footage was an important step in identifying Young, as Byrd depended on the facts obtained from the body camera footage to author a declaration of arrest.<sup>2</sup> Soon after, a bus driver recognized Young from a wanted poster and reported it. When Young was arrested, he was wearing the same shoes and was in possession of the same jacket that he wore during the attack at the bus stop.

The State filed a criminal complaint charging Young with one count of battery with use of a deadly weapon resulting in substantial bodily harm and one count of attempt murder with use of a deadly weapon. The State then obtained an indictment against Young alleging the two identical criminal counts. Subsequently, the State obtained a separate indictment for 22 theft-related counts against Young, which resulted from a series of

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<sup>2</sup>In the declaration of arrest, Byrd referenced Young's shoes, which were white with a unique black stripe. Byrd also stated that Young walked with an irregular gait, which appeared to be a health issue with one of his legs.

theft-related incidents in the summer of 2020 unrelated to the bus stop attack. The State attempted to try Young under a 24 criminal count indictment, combining all existing charges into one indictment. Young moved to sever, and the district court granted Young's motion, finding that the acts were not so closely intertwined so as to be part of the same act, transition, or common scheme or plan. As a result of Young's motion to sever being granted, he was tried in this case after the trial of the 22 theft related counts.

Before trial, the State filed a motion in limine to admit certain evidence under the doctrine of *res gestae* or, in the alternative to admit evidence related to other crimes. The evidence the State sought to admit was for the purpose of establishing Young's appearance and identity. The evidence consisted of Detective Byrd and other LVMPD officers' testimony regarding their interactions with Young and their observations of videos showing Young during the summer months of 2020, as well as photographs and surveillance videos from the same months that showed the similarities in Young's clothing and shoes. Young filed an opposition, and a hearing was conducted. The district court granted the State's motion and concluded that the evidence should be admitted because the evidence from the severed theft offenses establishing Young's identity was the only way Detective Byrd was able to prepare the declaration of arrest. The district court found that the "State is permitted to introduce photographs and videos of the Defendant from the burglary and associated counts that were severed." The district court additionally instructed the State to edit the police body camera footage taken at Walmart that depicted Young interacting with an LVMPD officer. The State was to show this edited version to the court prior to admission. The State was also told to "sanitize[ ]" videos and photographs

from other dates and events so that the videos and photographs did not depict any criminal conduct.

Among the officers who testified during Young's trial, Detective Byrd and Detective Liske both identified Young as the attacker at the bus stop during their trial testimony. Detective Byrd testified, while being shown videos and photographs from the night of the attack and from Young's theft-related incidents, that he identified Young based on his distinct clothing and his "very distinct limp or gait to his walk," which was seen in all videos. During his investigation, Byrd noticed that Young wore the "same ear buds around his neck" and the "same jacket and same shirt" across multiple video clips from the theft-related incidents at several businesses.

Detective Liske also identified Young based on his familiarity with Young's physical characteristics. While being shown various photographs from some of the theft-related incidents involving Young, Liske testified that he identified Young based on his body shape, build, bald head, missing teeth, lazy eye, and the headphones he wore around his neck. Liske also became familiar with the shoes Young wore, testifying he had seen Young in the videos wearing the same shoes throughout the months leading up to his arrest. Liske pointed out that Young wore the same shoes in the surveillance video from the night of the attack at the bus stop.

In addition to the two detectives, Laresha Moore, who witnessed the bus stop attack incident from about two to three feet away, also testified during Young's jury trial. On the night of the attack, after witnessing the altercation between Young and Will, Moore called 9-1-1 because she observed the victim was bleeding from his head. Moore testified that she recognized the attacker and "knew exactly who it was because"



Moore and her cousin had “got into it” with Young and his girlfriend on the bus about an hour or two before the incident. Approximately one year after the incident, Moore was shown six photographs of different people by a detective and was able to make an identification of Young from the group of photographs. She chose photograph number two because she remembered his eyes being “cockeyed.” Moore was shown several photographs by the State during her testimony and testified that she recognized the attacker depicted in the photographs as Young. She testified that she remembered he had missing teeth and that his mouth and eyes helped her make the identification. When the State questioned Moore, she acknowledged that she had been adjudicated guilty of battery with substantial bodily harm in 2022 and was currently in custody when she testified during Young’s trial.<sup>3</sup> Though Moore did not want to be involved and had to be subpoenaed to testify, she confirmed the man shown in the State’s photographs was the attacker she observed during the bus stop attack.

At the conclusion of the trial, the jury found Young guilty of battery with use of a deadly weapon resulting in substantial bodily harm and not guilty as to the attempt murder charge. Young then appealed, arguing that (1) there was insufficient evidence to convict him and (2) the district court erred in granting the State’s motion in limine to admit certain evidence as *res gestae* evidence, or in the alternative, as bad act evidence, thereby allowing the State to admit prejudicial evidence. We disagree and address each argument in turn.

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<sup>3</sup>During cross-examination, Moore testified that she gave a fake name to the police when she made the 9-1-1 call on the night of the incident because she had an active warrant out for her arrest.

*The State presented sufficient evidence to support the judgment of conviction*

Young first argues that the State failed to prove beyond a reasonable doubt that Young was the individual who committed the battery against Will with the rock, thus his conviction must be reversed. Young asserts that Moore's testimony alone is not enough to support the jury's verdict because her credibility is weak, and she is not an ideal witness. Further, Young argues that the State's other witnesses and the video surveillance and photographic evidence obtained from those witnesses does not strengthen Moore's identification and falls short of establishing that Young was the attacker beyond a reasonable doubt. The State responds that the jury heard Moore's testimony and was instructed on determining credibility of witnesses, thus this court should assume the jury considered and followed the district court's instruction on credibility when it found Young guilty. The State also adds that the jury heard other testimony from LVMPD officers and custodians of record, while viewing and comparing videos and photographs of Young taken throughout the summer of 2020. Thus, based on the evidence presented during trial, a jury could reasonably decide Young was guilty of the attack, and thus, there was sufficient evidence to support its decision on appeal.

A jury's verdict will remain undisturbed when it is supported by substantial evidence. *Cunningham v. State*, 94 Nev. 128, 130, 575 P.2d 936, 937 (1978). When determining if the evidence presented during trial is sufficient to support a jury's conviction, we ask whether the jury, acting reasonably, could be convinced of the defendant's guilt beyond a reasonable doubt. *Franks v. State*, 135 Nev. 1, 7, 432 P.3d 752, 757 (2019) (citing *Edwards v. State*, 90 Nev. 255, 258-59, 524 P.2d 328, 331 (1974)). "[T]he relevant inquiry 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.” *Id.* “[I]t is the jury’s function, not that of the court, to assess the weight of the evidence and determine the credibility of witnesses.” *McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

In light of the evidence and testimony from several witnesses establishing Young’s identity as the attacker during the incident at the bus stop, we conclude that the State presented sufficient evidence to uphold the jury’s verdict. Although Young criticizes the quality and the scattered timing of the State’s video and photographic evidence, the officers who testified regarding that evidence based their identification of Young on several factors. Both Detective Byrd and Detective Liske testified that Young often wore the same shoes, clothing, and headphones around his neck in all of the videos capturing Young’s image. Additionally, the detectives identified Young only after reviewing videos and images from various incidents and piecing together Young’s characteristics, such as his physical build, teeth, eyes, bald head and distinctive walk.

Young’s criticism of Moore as the State’s only percipient witness similarly does not provide a basis for us to reverse his conviction. The jury heard Moore’s testimony about why she lied to officers about her identity and that she was currently in custody for a felony battery charge. However, the jury, not this court, was best equipped to determine Moore’s credibility after hearing her testimony. *See McNair*, 108 Nev. at 56, 825 P.2d at 573. Young’s conviction does not merit reversal simply because Moore had credibility issues. *See Burnside v. State*, 131 Nev. 371, 390, 352 P.3d 627, 641 (2015) (noting that it was for the jury to determine what weight to give the testimony of a witness even when there were alleged discrepancies in the witness’s identification testimony). Moore also identified Young a year

after the attack at the bus stop when she chose his photograph out of a six-pack lineup of photographs. She additionally identified Young during her testimony as the man depicted in several images shown to her as she testified.<sup>4</sup> Therefore, considering Moore's testimony and the other evidence, we conclude that a rational juror could have found the elements of the crime beyond a reasonable doubt.

*The district court did not abuse its discretion in granting the State's motion in limine to admit evidence*

Young next argues that the surveillance videos and photographs of Young from his theft-related offenses were erroneously admitted because none of the witnesses who testified regarding this evidence observed Young, aside from the videos they reviewed.<sup>5</sup> Young adds that he was prejudiced by the district court's granting of the State's motion in limine to admit certain evidence. Though Young alleges that the outcome at trial would not have been the same had the district court ruled differently on the State's motion, the State counters that Young never argues how or why the district court erred in granting the motion. The State maintains

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<sup>4</sup>The record does not reflect that Moore was asked to point Young out in the courtroom.

<sup>5</sup>Young, though not fully clear, also seemingly argues that the videos and photographs from the various incidents involving Young during the summer of 2020 constituted inadmissible prior bad act evidence. However, Young merely cites general rules regarding the admissibility of prior bad acts without applying the relevant authority cited to any argument in his Opening Brief. And he concedes in his brief that the videos do not show Young committing any crimes. Thus, we limit our discussion because of the lack of cogent argument. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (stating this court need not consider an appellant's argument that is not cogently argued or lacks the support of relevant authority).



that the district court did not abuse its discretion in granting its motion even if Young had offered a cogent argument.<sup>6</sup>

We review a district court's ruling on a motion in limine to admit evidence for an abuse of discretion. *Whisler v. State*, 121 Nev. 401, 406, 116 P.3d 59, 62 (2005). Similarly, "[w]e review a district court's decision to admit or exclude evidence for an abuse of discretion." *McLellan v. State*, 124 Nev. 263, 267, 182 P.3d 106, 109 (2008). "An abuse of discretion occurs when no reasonable judge could reach a similar conclusion under the same circumstances." *Harris v. State*, 134 Nev. 877, 882, 432 P.3d 207, 212 (2018) (citing to *Leavitt v. Siems*, 130 Nev. 503, 509, 330 P.3d 1, 5 (2014)). Additionally, an abuse of discretion occurs when the court's decision is "arbitrary or capricious or if it exceeds the bounds of law or reason." *Jackson v. State*, 117 Nev. 116, 120, 17 P.3d 998, 1000 (2001).

Young's opening brief fails to identify any error that the district court made in granting the State's motion in limine. Young does not argue that the evidence was inadmissible under the res gestae doctrine, or that the district court erred in its application of that doctrine. And Young fails to explain why the evidence in question was bad act evidence or otherwise inadmissible pursuant to NRS 48.045(2) to show identity. Here, the district court reasonably found the evidence relevant and crucial to Detective Byrd's identification of Young. The district court's order granting the State's

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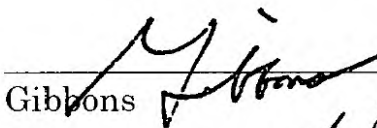

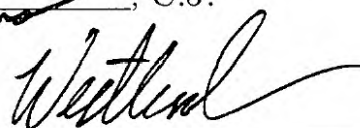
<sup>6</sup>We note that Young declined to file a reply brief and therefore we can conclude that he has conceded that the State's arguments are correct, although we still address them. *See Colton v. Murphy*, 71 Nev. 71, 72, 279 P.2d 1036, 1036 (1955) (concluding that when respondents' argument was not addressed in appellants' opening brief, and appellants declined to address the argument in a reply brief, "such lack of challenge . . . constitutes a clear concession by appellants that there is merit in respondents' position").

motion also permissibly allowed Detective Byrd and other officers to identify Young in the various photographs and videos from the summer months of 2020, regardless of whether the officers had personally observed Young, because they had a sufficient basis to do so. *See* NRS 50.265. Further, the district court ordered the State to sanitize the photographs and videos to eliminate any depiction of criminal conduct, thereby minimizing any prejudice to Young.

Because there is nothing in the record to show that the district court acted arbitrarily, capriciously, or beyond the bounds of law or reason in reaching its decision to grant the State's motion, there is an insufficient basis to conclude that no reasonable judge could reach a similar conclusion under the same circumstances. Therefore, the district court did not abuse its discretion in granting the State's motion in limine to admit certain evidence.

Accordingly, we

ORDER the judgment of conviction AFFIRMED.

	 _____, C.J. Gibbons	
 _____, J. Bulla		 _____, J. Westbrook

cc: Hon. Jacqueline M. Bluth, District Judge  
Yampolsky & Margolis  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk