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**IN THE SUPREME COURT OF THE STATE OF NEVADA**

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

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**APPELLANT'S OPENING BRIEF**

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THE STATE OF NEVADA

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**DISCLOSURE STATEMENT PURSUANT TO NRAP 26.1**

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 Justices of this Court may evaluate possible disqualification or recusal.

1. Jason R. Margolis, Esq., of Yampolsky & Margolis. There are no parent corporations.

**ISSUES PRESENTED FOR REVIEW**

1. That there was insufficient evidence to convict Mr. Young of the crime of Battery with a Deadly Weapon Resulting in Substantial Bodily Harm beyond a reasonable doubt.
2. That, following the granting of Mr. Young’s Motion to Sever the theft charges from the battery and attempt murder charges, Judge Bluth committed reversible error in granting the State’s Res Gestae Motion and admitting surveillance videos and photographs which caused insurmountable unfair prejudice to Mr. Young.

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**JURISDICTIONAL STATEMENT**

This is a direct appeal from a conviction following a jury trial in Department VI of the Eighth Judicial District Court, Clark County, Nevada. The Amended Judgment of Conviction was filed on March 8, 2022. AA Vol. I at 001-008. The Notice of Appeal was filed March 15, 2022. AA Vol. I at 023-024. This Court has appellate jurisdiction pursuant to NRAP 4(b)(1)(a) and NRS 177.015(3).

**ROUTING STATEMENT**

This appeal is not presumptively assigned to the Court of Appeals pursuant to NRAP 17(b)(1) because it is a post-conviction appeal in a case involving a conviction for a Category A felony offense.

**STATEMENT OF THE CASE**

On February 22, 2022, a Third Amended Superseding Indictment was filed against the Defendant charging him with Battery with use of a Deadly Weapon Resulting in Substantial Bodily Harm and Attempt Murder with use of a Deadly Weapon. AA Vol. I at 739-747.

**STATEMENT OF THE FACTS**

Appellant Andrew Young was convicted of the crime of Battery with a Deadly weapon Resulting in Substantial Bodily Harm due to an alleged attack of victim Robert Will with a large rock. Mr. Young was convicted of striking Mr. Will about the head multiple times with this rock, leaving him with significant

1 injuries. Mr. Will suffered a traumatic brain injury (hereinafter “TBI”) and was  
2 unable to identify Mr. Young as the assailant.  
3

4 Surveillance video that appears to depict the attack—which occurred late at  
5 night at a bus stop in front of the Paris Hotel—is very grainy and it is  
6 exceptionally difficult to see the assailant clearly. The State, by necessity, based its  
7 entire case upon the eyewitness identification provided by witness Laresha Moore  
8 and a collection of surveillance videos that constituted the bulk of the evidence  
9 used to convict Mr. Young of the severed theft charges, which were originally  
10 joined with the battery offense(s). Ms. Moore testified at trial and withstood cross  
11 examination well but acknowledged her identification had limitations. (AA Vol. II  
12 at 333-335). Corroboration of her account comes exclusively from the surveillance  
13 videos and images which undergirded the theft trial which preceded this one.  
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18 These surveillance videos and still images—which were admitted following  
19 severance of counts pursuant to the State’s Motion in Limine to admit the same by  
20 Res Gestae, effectively rendered the victory in severing counts a Pyrrhic one—it  
21 no longer was of any meaningful consequence. The State presented its case simply  
22 and succinctly—the man in the surveillance videos and stills is Mr. Young—this  
23 has been established. If the jury was convinced by the State’s presentation of  
24 evidence that the man Laresha Moore saw and testified to was one and the same as  
25 the man depicted in the various surveillance videos and images which  
26 affirmatively showed Mr. Young (admittedly doing nothing illegal), then the jury  
27  
28

1 could convict Mr. Young of Battery with a Deadly Weapon Resulting in  
2 Substantial Bodily Harm.

3  
4 Ultimately, following a two-plus day trial, the jury convicted Mr. Young of  
5 Battery with a Deadly Weapon Resulting in Substantial Bodily Harm but acquitted  
6 him of the corresponding Attempt Murder with Use of a Deadly Weapon charge.  
7  
8 (AA Vol. I at 748-749).

9  
10 Polling of the jury following rendering of the verdict established that the  
11 jury was convinced that Mr. Young was the person depicted in the surveillance  
12 videos and images—but remained unconvinced of any evidence put forth by the  
13 State of Nevada which demonstrated his intent to kill the victim Mr. Will, and  
14 certainly did not find an intention to kill proven beyond a reasonable doubt that  
15 would enable them to convict Mr. Young of that count. This split-decision, while  
16 favorable to Mr. Young, is also somewhat odd given the nature and state of the  
17 evidence the jurors heard.  
18  
19

20  
21 The jury convicted Mr. Young primarily based on identifying him as the  
22 man in surveillance videos from Walgreens, Walmart, and various other casinos  
23 and retail establishments. This identification was borrowed and bootstrapped by  
24 the prosecution given the difficulty in identifying Mr. Will's assailant from the  
25 existing Paris surveillance and the available Fusion Watch images of the  
26 contemporaneous attack itself.  
27  
28



1 As such, the admission of these clearer, sharper surveillance images of Mr.  
2 Young, images which depicted him innocently moving about the Strip, engaged in  
3 no criminal activity, waiting in elevators, entering retail establishments, etc.,  
4 enabled the jury to convict Mr. Young by proxy. This is insufficient to prove his  
5 identity as Robert Will's assailant beyond a reasonable doubt as is demanded by  
6 Nevada and federal law.  
7

8  
9 **LEGAL STANDARD**

10 **ARGUMENT**

11  
12 The Nevada Supreme Court should reverse Andrew Young's conviction for  
13 Battery with Use of a Deadly Weapon Resulting in Substantial Bodily Harm  
14 because the State failed to prove beyond a reasonable doubt that it was, in fact,  
15 Andrew Young that struck victim Robert Will with a rock following a  
16 disagreement at the bus stop. The Nevada Supreme Court should rule this way  
17 because the State of Nevada failed to prove the identity of Mr. Will's attacker at  
18 trial. Mr. Will was unable to identify Mr. Young and consequently did not testify  
19 at trial.  
20  
21

22  
23 The legal standard of an insufficient evidence direct appeal can be daunting  
24 and difficult to clear. That said, each and every element of the crime of conviction  
25 must be proven beyond a reasonable doubt by competent and admissible evidence.  
26 Here, even assuming that the State of Nevada effectively proved that the rock, due  
27 to its size, was a deadly weapon, and conceding that victim Robert Will did, in  
28

1 fact, sustain substantial bodily harm, the State still must prove beyond a reasonable  
2 doubt that Andrew Young was the man wielding the rock.  
3

4 The evidence presented to the jury on that element of the offense consisted  
5 of one percipient witness—Laresha Moore—and a collection of videos from  
6 different days during the summer of the attack, oftentimes several weeks separate  
7 from the event involving Mr. Will, which purported to show a man believed to be  
8 Mr. Young. (Appellant has filed a Motion for this Court to enter an Order directing  
9 the district court to produce Trial Exhibits 1-34, 36, 37 and 44). These videos and  
10 still photos depicting images of an individual known to be Andrew Young at or  
11 around this time were testified to by security personnel and custodians of record  
12 from the various retail establishments and casinos. (Appellant has filed a Motion  
13 for this Court to enter an Order directing the district court to produce Trial  
14 Exhibits 1-34, 36, 37 and 44). This was the very same evidence utilized by the  
15 State of Nevada in its prosecution of Mr. Young for the financial crimes (i.e., the  
16 separated counts) which were severed from the counts of violence involving Mr.  
17 Will. (Appellant has filed a Motion for this Court to enter an Order directing the  
18 district court to produce Trial Exhibits 1-34, 36, 37 and 44).  
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25 Pursuant to a Motion in Limine to Admit Photos, the State was permitted to  
26 use this evidence, which was critical in the State's conviction of Mr. Young for a  
27 host of theft offenses, to demonstrate his identity. (AA Vol. IV at 710-730).  
28 Implicit in the State's argument is the admission that the video of the attack on Mr.

1 Will is grainy, of poor quality, and from a distance which makes the clear and  
2 confident identification of Mr. Young nearly impossible, if not inarguably  
3 improbable. (AA Vol. IV at 710-730). But for the admission of these images,  
4 none of which depict Mr. Young doing anything illegal or untoward, the State  
5 would be unable to corroborate the lone percipient witness, Laresha Moore, in her  
6 identification of Mr. Young as Mr. Will's assailant. (AA Vol. II at 319-320).  
7 Without these photos, the State of Nevada would be in utterly complete reliance  
8 upon the identification of Mr. Young within the testimony of Laresha Moore. (AA  
9 Vol. II at 319-320). Ms. Moore was not and is not to be believed.

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12  
13 **I. That there was insufficient evidence to convict Mr. Young of the**  
14 **crime of Battery with a Deadly Weapon Resulting in Substantial**  
15 **Bodily Harm beyond a reasonable doubt.**

16 The standard of review when analyzing the sufficiency of evidence in a  
17 criminal case is whether, after viewing the evidence in the light most favorable to  
18 the prosecution, any rational trier of fact could have found the essential elements  
19 of the crime beyond a reasonable doubt. *Grey v. State*, \_\_ Nev. \_\_, 178 P.3d 154,  
20 162 (2008) (citing *Nolan v. State*, 122 Nev. 363, 377, 132 P.3d 564, 573 (2006)).

21  
22  
23 The Due Process Clause of the United States Constitution "protects the  
24 accused against conviction except upon proof beyond a reasonable doubt of every  
25 fact necessary to constitute the crime with which he is charged." *In re Winship*,  
26 397 U.S. 358, 364 (1970). "[T]he relevant question is whether, after viewing the  
27 evidence in the light most favorable to the prosecution, any rational trier of fact  
28

1 could have found the essential elements of the crime beyond a reasonable doubt.”  
2 *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (emphasis in original); see also  
3 *Payne v. Borg*, 982 F.2d 335, 338 (9th Cir. 1992). “[F]aced with a record of  
4 historical facts that supports conflicting inferences, ” the court “must presume-  
5 even if it does not affirmatively appear in the record-that the trier of fact resolved  
6 any such conflicts in favor of the prosecution, and must defer to that resolution.”  
7 *Jackson*, 443 U.S. at 326; see also *McDaniel v. Brown*, 558 U.S. 120, 133 (2010)  
8 (reaffirming *Jackson* standard).

9  
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11  
12 Ms. Moore, a single witness, is enough to sustain a conviction, including  
13 this one. Undersigned counsel has certainly been privy to convictions premised  
14 upon a lone witness identification. Of course, this is not a position any prosecutor  
15 would envy and, most pertinently for Mr. Young, the credibility of the percipient  
16 eyewitness becomes paramount in the jury evaluating the evidence and rendering a  
17 just verdict. Here, however, Ms. Moore was not an ideal witness.

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20  
21 Ms. Moore lied about several things to investigating officers, including her  
22 name, identifying herself as one of her family members. (AA Vol. II at 325). She  
23 refused to identify the person she was with on the Strip of the night of the attack  
24 (thereby eliminating the possibility of obtaining corroboration of her account or  
25 contradiction). (AA Vol. II at 327). Ms. Moore is a convicted felon and was  
26 actually serving time in custody at the time she was called to the stand to testify to  
27 the identification of Mr. Young. (AA Vol. II at 325). Furthermore, Ms. Moore was  
28

1 forthright about the limitations of her identification on the stand, acknowledging  
2 she had been drinking, it was late, it was dark, and so forth, albeit reiterating that  
3 she felt confident enough to testify in Court as to Mr. Young being the person that  
4 struck Mr. Will. (AA Vol. II at 332).

5  
6 Even with the complained of still images and video surveillance clips from  
7 retail establishments, Appellant avers the State failed to prove beyond a reasonable  
8 doubt an essential element of the crime. Namely the State of Nevada failed to  
9 prove beyond a reasonable doubt that Mr. Young was the individual that battered  
10 Mr. Will with a deadly weapon, the rock. In the absence of this proof no  
11 reasonable jury could have convicted Mr. Young and his conviction must be  
12 overturned in the interest of avoiding a miscarriage of justice.

13  
14 The only evidence which corroborates Ms. Moore's timely and  
15 contemporaneous identification of Mr. Young as Mr. Will's assailant consists of  
16 the testimony of a handful of custodians of record that had assembled surveillance  
17 images of Mr. Young from retail establishments and casinos along the Strip  
18 corridor earlier that summer. (Appellant has filed a Motion for this Court to enter  
19 an Order directing the district court to produce Trial Exhibits 1-34, 36, 37 and 44).  
20  
21 In some cases, the images were weeks and even months prior to the event  
22 involving Mr. Will at the bus stop. (Appellant has filed a Motion for this Court to  
23 enter an Order directing the district court to produce Trial Exhibits 1-34, 36, 37  
24 and 44). These are not contemporaneous images of Mr. Young, captured on the

1 same day or preceding day, that were being compared to the grainy Fusion video  
2 allegedly showing the attack.  
3

4 This corroborative evidence fails to strengthen the identification made by  
5 Ms. Moore, which standing alone, Mr. Young submits falls short of the standard of  
6 proof beyond a reasonable doubt. Ms. Moore's identification is impacted by the  
7 series of lies she told officers in her initial report of the incident. (AA Vol. II at  
8 326-329). Each and every element of the crime of conviction needs to be proven  
9 beyond a reasonable doubt, including the identity of the alleged perpetrator.  
10  
11

12 The evidence put forth by the State of Nevada to identify Mr. Young as the  
13 person responsible for Mr. Will's injuries consisted of the following witnesses:  
14 Security Supervisor Francisco Alemar (AA Vol. II at 277-294); eyewitness  
15 Laresha Moore (AA Vol. II at 309-339); Amber Stringer with the LVMPD Fusion  
16 Watch Section (AA Vol. II at 339-365); William Roed, Security Investigator for  
17 Cosmopolitan Las Vegas (AA Vol. II at 365-376); Detective Sandeep Liske,  
18 LVMPD (AA Vol. II at 377-389); and Detective Byrd, LVMPD (AA Vol. III at  
19 404-474). All of these witnesses with the exception of Laresha Moore identified  
20 Mr. Young solely from surveillance images from days or weeks prior to the  
21 alleged attack, leaving Ms. Moore the sole percipient witness. (Appellant has filed  
22 a Motion for this Court to enter an Order directing the district court to produce  
23 Trial Exhibits 1-34, 36, 37 and 44).  
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1 Each of these witnesses and the substance of their testimony regarding Mr.  
2 Young's identity is critical in evaluating the credibility of the State's evidence of  
3 the identification and determining whether a reasonable jury should have found  
4 Mr. Young guilty.

5  
6 Security Supervisor Francisco Alemar  
7

8 Mr. Alemar testified that, as a function of his employment as a security  
9 supervisor, he would routinely review surveillance video footage of incidents  
10 occurring on or adjacent to Paris Casino. (AA Vol. II at 278-281). Mr. Alemar  
11 said that he was given an approximate time for the incident by an investigating  
12 detective, *as well as a description of the subject involved* (emphasis added), and  
13 that he started going back from the arrival of medical on the scene to attempt to  
14 identify the subject. (AA Vol. II at 278-285).  
15  
16

17  
18 Mr. Alemar continued by stating that he then requested surveillance footage  
19 from the neighboring Planet Hollywood Casino, telling the jury that he did so in an  
20 attempt to see if he could follow the subject as he left the bus stop. (AA Vol. II at  
21 285-286). Mr. Alemar further testified that the subject never entered the Paris  
22 Casino. (AA Vol. II at 286). As such, the images obtained from the exterior  
23 surveillance cameras outside the Paris provided the clearest photographs he  
24 possessed. (AA Vol. II at 287). The images are grainy, nonspecific, and facial  
25 features are very difficult to discern from the distance the cameras are situated, in  
26 the middle of the night.  
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1 Finally, Mr. Alemar testified that he was able to follow the subject believed  
2 to be Mr. Young to the area in front of the entrance to a nearby CVS—but there  
3 were no cameras pointed at the vicinity of the entrance to the CVS, and Mr.  
4 Alemar admitted he did not have access to corresponding CVS surveillance  
5 footage. (AA Vol. II at 287-288). Effectively, Mr. Alemar’s testimony in sum  
6 advanced the notion that a black man at the bus stop—alleged to be Andrew  
7 Young by Detective Trent Byrd—is the same black man that ambles near the Paris  
8 and outside the CVS entrance in the ten to twenty minutes afterward. (AA Vol. II  
9 at 292-294). This is insufficient and ineffective corroboration of Laresha Moore’s  
10 eyewitness account and identification of Mr. Young, if it can be considered  
11 corroborative at all by this Court.  
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15

16 Eyewitness Laresha Moore  
17

18 The State of Nevada is extremely reliant upon the credibility and accuracy  
19 of the eyewitness identification provided by percipient witness Laresha Moore. At  
20 one point during the taking of her voluntary statement, investigating detectives  
21 make plain just how important Ms. Moore is to the case by stating affirmatively  
22 that she is “the only witness to this incident.” (AA Vol. II at 326). As the only  
23 percipient witness to the assault of Mr. Will at the bus stop, each and every  
24 subsequent witness called by the State to “identify” Mr. Young is called in large  
25 part to buttress and strengthen Ms. Moore’s account and to make the jury more  
26 comfortable in looking past the credibility concerns raised by Mr. Young at trial.  
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1 First and foremost, Ms. Moore's credibility is suspect and there are a host of  
2 reasons why the jury should have viewed her testimony with skepticism. Ms.  
3 Moore is a convicted felon. (AA Vol. II at 325). Ms. Moore identified herself as  
4 someone else when she called 911 to report the incident involving Mr. Will. (AA  
5 Vol. II at 327-328). Ms. Moore testified under oath before the jury that she  
6 purposely misidentified herself because she had an active warrant out for her arrest  
7 on the evening of the incident. (AA Vol. II at 325).  
8

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11 Moreover, on many issues related to the substance of the attack, Ms. Moore  
12 was unable (or unwilling) to provide crucially relevant information, despite  
13 testifying that she was two to three feet from the attack when it occurred. (AA Vol.  
14 II at 327-328). Ms. Moore could not identify which hand the attacker wielded the  
15 rock with. (AA Vol. II at 327-328). Ms. Moore repeatedly refused to identify her  
16 companion she with, despite repeatedly being asked for this information by  
17 investigators. (AA Vol. II at 327-328). Ms. Moore was unclear about what the  
18 rock-wielding assailant was wearing as well, surmising they could have been pants  
19 or shorts, before finally settling on shorts. (AA Vol. II at 329).  
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23 Despite allegedly seeing Mr. Young earlier that same day on the city bus,  
24 Ms. Moore testified she could not remember what he was wearing specifically;  
25 whether it was the same thing he had been wearing on the bus earlier that day; or  
26 what kind of shoes the assailant had on. Ms. Moore seemed to have missed more  
27 than she saw and to have forgotten more than she remembered. (AA Vol. II at 329-  
28

1 330). Pertinently, she did distinctly recall Detective Byrd telling her she was the  
2 only witness to the event, but felt this had no impact on her testimony. (AA Vol.  
3 II at 331).  
4

5 Amber Stringer, LVMPD Fusion Watch Section

6 Ms. Stringer is employed with LVMPD in the Fusion Watch section and she  
7 is responsible for managing and assembling as needed much of the real-time  
8 footage captured by Las Vegas Strip Fusion Watch surveillance cameras  
9 positioned at heavily trafficked area along the Las Vegas Strip. (AA Vol. II at 339-  
10 340). There are more than 400 Fusion Watch cameras in the Las Vegas Valley  
11 today, and more than 200 of those are strategically placed along the tourist  
12 corridor on the Las Vegas Strip. (AA Vol. II at 341-342).  
13  
14

15 For the purposes of this appeal, Ms. Stringer was asked by the State to  
16 retrace the steps of Mr. Will's assailant on the evening of July 26, 2020. (AA Vol.  
17 II at 343-347). Ms. Stringer testified under oath that the camera that captured the  
18 actual incident or attack—a high altitude camera placed atop one of the nearby  
19 casino properties—shows what appears to be “like a disturbance or a scuffle, but  
20 we don't have a camera that faces default where the incident occurred.” (AA Vol.  
21 II at 343-345). Given the poor quality of the video actually depicting the incident,  
22 investigators asked Ms. Stringer to review nearby cameras to trace the path of an  
23 individual fitting a given description. (AA Vol. II at 344-349). She believed she  
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1 was told to look for a “heavy—medium build to heavy set BMA, tall with a gray  
2 shirt, ... .” (AA Vol. II at 344).

3  
4 While not given to her in the initial description, Ms. Stringer opined on the  
5 stand that there were other features which actually brought the so-called “suspect  
6 to her attention—namely, “[T]he person that I identified that also matched the  
7 descriptions was in a hurry. A few different times they were looking behind them.  
8 They just stood out. They weren’t going with the normal flow of foot traffic at the  
9 time.” (AA Vol. II 348).

10  
11  
12 Ms. Stringer further testified that the person she tracked seemed to be  
13 carrying a black jacket, odd, given the heat in Las Vegas in July 2020. (AA Vol. II  
14 at 355). Ms. Stringer did not and could not identify Mr. Young as Mr. Will’s  
15 assailant—her testimony, if found credible by the jury, only led inexorably to the  
16 conclusion that he may have been on or around the Strip at the time, which cannot  
17 be dispositive given Mr. Young’s experiencing homelessness during the time  
18 period.  
19  
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21

22 William Roed, Security Investigator for Cosmopolitan Las Vegas

23 Mr. Roed testified as the security investigator for the Cosmopolitan Las  
24 Vegas. (AA Vol. II at 366-367). Much like Ms. Stringer, Mr. Roed was tasked  
25 with finding surveillance footage from his property depicting a man believed to be  
26 Mr. Young. (AA Vol. II at 367). Mr. Roed was given the “description of a black  
27  
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1 male adult, about five-foot-seven to five-foot-ten, wearing a gray shirt, black  
2 shorts, unknown shoes, and bald headed.” (AA Vol. II at 367).

3  
4 Mr. Roed further testified that he was able to spot an individual meeting that  
5 general physical description entering (Cosmopolitan’s) skybridge doors, which are  
6 located on the pedestrian bridge adjacent to the Planet Hollywood and Aria, but  
7 are part of the Cosmopolitan property. The individual depicted in the video  
8 entered the skybridge doors at 12:52 a.m.—and was the same individual Mr. Roed  
9 had been following. (AA Vol. II at 367-368).

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12 Finally, Mr. Roed testified that he believed from the vantage point occupied  
13 by the subject that the subject could view the scene outside the Paris Hotel that had  
14 grown in the wake of the attack. In sum, Mr. Roed speculated that the individual  
15 he identified was likely the same individual because he was watching the scene  
16 unfold—of course, the individual Mr. Roed saw could just as easily have been a  
17 curious bystander akin to a rubbernecker on a highway near an accident scene.  
18 (AA Vol. II at 371).

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21 Detective Sandeep Liske, LVMPD

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23 Detective Liske was called to the stand to identify Mr. Young as the man  
24 depicted in the various surveillance photographs compiled by the State of Nevada.  
25 (AA Vol. II at 382). In order to establish Mr. Young’s identification, the State was  
26 permitted to use a series of photographs which depicted Mr. Young engaged in  
27 mundane, routine, and ultimately legal conduct. (AA Vol. II at 383-387). Prior to  
28

1 his testimony a cautionary instruction was read to the jury indicating that the still  
2 images and surveillance snippets being shown were to be considered only for  
3 identification purposes and not for the casting of aspersions on Mr. Young's  
4 character. (AA Vol. II 377).

5  
6         Detective Liske testified that Mr. Young commonly wore a Bluetooth  
7 headset; has a lazy eye; a bald head; and is missing some teeth. (AA Vol. II at  
8 382). Detective Liske testified that the images depicted what Mr. Young looked  
9 like at various points during the summer of 2020, and specifically during the  
10 month of July 2020. (AA Vol. II at 382-385). While instructive, none of these in  
11 isolation or even in combination should be considered to rise to the level of an  
12 identification of Mr. Young beyond a reasonable doubt.

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15         Finally, Detective Liske testified that he came to be able to identify Mr.  
16 Young during that time period he was investigating him because he has a  
17 particular gait—or unique style of walk. (AA Vol. II at 386). The cadence and  
18 rhythm of the walk of the subject was probably more readily discernible than the  
19 facial features from the considerable distance. Despite these observational  
20 limitations, Detective Liske testified that the small, grainy, scarcely  
21 distinguishable figure walking away from the Paris and toward (and ultimately  
22 entering) the skybridge doors of the Cosmopolitan at 12:52 a.m. was the same  
23 Andrew Young that he had observed on the 20<sup>th</sup> and 29<sup>th</sup> of July 2020, as well as  
24 on August 1, 2020. (AA Vol. II at 386-387).

1           Detective Trent Byrd, LVMPD

2           Detective Byrd made this case against Mr. Young. (AA Vol. III at 405-  
3  
4 406). Detective Byrd had been investigating Mr. Young for some time and saw an  
5 opportunity to put Mr. Young away for good—he was not dissuaded by the fact  
6 that he would have to rely heavily upon a convicted felon and admitted liar in  
7 Laresha Moore in order to clear the high evidentiary burden the State of Nevada  
8 needed to surpass. (AA Vol. III at 408-409). Ms. Moore initially gave Detective  
9 Byrd a false name and multiple administrative subpoenas needed to be issued to  
10 bring her to court to testify. (AA Vol. III at 409-410).

13           Of course, once Detective Byrd saw the body cam and Fusion Watch  
14 camera footage/coverage, he recognized the black male depicted in the videos to  
15 be Andrew Young—clad in white shoes, a black jacket, dark shorts and lighter  
16 colored shoes. (AA Vol. III at 425-426). On April 24, 2021, Detective Byrd met  
17 with lone witness Laresha Moore and showed her a “six-pack” of photographs—  
18 nearly a year after the bus stop attack of Robert Will—and Ms. Moore identified  
19 Mr. Young. (AA Vol. III at 440). She added that she was able to recognize Mr.  
20 Young based upon his “jacked up teeth,” which she had recognized that evening  
21 and had recalled prior to making the identification. (AA Vol. III at 441-442).

22           Without Laresha Moore, the State of Nevada could not identify Mr. Young  
23 and with her the State still fails to meet the burden of proof beyond a reasonable  
24 doubt. Mr. Will could not identify his attacker.  
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1 Another seemingly percipient witness, Sergei, was contacted but was too  
2 intoxicated to identify anyone. (AA Vol. III at 411-413). Detective Byrd generally,  
3  
4 and Detective Byrd's investigation of the financial crimes that were severed from  
5 the Attempt Murder and Battery with a Deadly Weapon and the surveillance  
6 collected more specifically, were essential to the jury's determination of identity  
7 and that evidence should have been precluded from admission due to the danger of  
8 unfair prejudice it presented to Mr. Young.  
9

10  
11 In this case, the State failed to prove beyond a reasonable doubt that the  
12 alleged batterer of victim Robert Will was Andrew Young. Therefore, Mr.  
13 Young's conviction for Battery with Use of a Deadly Weapon resulting in  
14 Substantial Bodily Harm should be reversed. *Batin v. State*, 118 Nev. 61, 64-65,  
15 38 P.3d 880, 883 (2002) (State must prove every element of the crime beyond a  
16 reasonable doubt, and the court cannot sustain a conviction where the record is  
17 wholly devoid of evidence of an element of a crime); see also, *Watson v. State*,  
18 110 Nev. 43, 45-46, 867 P.2d 400, 402 (1994) (same).  
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23 **II. That, following the granting of Mr. Young's Motion to Sever the**  
24 **theft charges from the battery and attempt murder charges,**  
25 **Judge Bluth committed reversible error in granting the State's**  
26 **Res Gestae Motion and admitting surveillance videos and**  
27 **photographs which caused insurmountable unfair prejudice to**  
28 **Mr. Young.**

"A district court's decision to admit or exclude evidence under NRS  
48.045(2) rests within its sound discretion and will not be reversed on appeal

1 absent manifest error," *Ledbetter v. State*, 122 Nev. 252, 259, 129 P.3d 671, 676  
2 (2006). "NRS 48.045(2) forbids the admission of prior bad acts to show that a  
3 person acted in conformity with charged conduct." *Carter v. State*, 121 Nev. 759,  
4 769, 121 P.3d 592, 598 (2005). There is a "general presumption that uncharged  
5 bad acts are inadmissible." *Tavares v. State*, 117 Nev. 725, 731, 30 P.3d 1128,  
6 1131 (2001), *holding modified by Mclellan v. State*, 124 Nev. 263, 182 P.3d 106  
7 (2008). However, when a witness makes a spontaneous or inadvertent reference to  
8 an otherwise inadmissible prior bad act, not solicited by the prosecution, the error  
9 can be cured by an immediate admonishment directing the jury to disregard the  
10 statement. *Carter*, 121 Nev. at 770, 121 P.3d at 599.

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16 Further, "[e]rrors in the admission of evidence under NRS 48.045(2) are  
17 subject to a harmless error review." *Rosky v. State*, 121 Nev. 184, 198, 111 P.3d  
18 690, 699 (2005). "An error is harmless and not reversible if it did not have a  
19 substantial and injurious effect or influence in determining the jury's verdict."  
20 *Hubbard v. State*, 134 Nev. 450, 459, 422 P.3d 1260, 1267 (2018). Admission of  
21 prior bad act evidence in violation of an order in limine is harmless error when  
22 overwhelming evidence supports the conviction. *See Sherman v. State*, 114 Nev.  
23 998, 1010, 965 P.2d 903, 911 (1998) (concluding that the State's reference to a  
24 defendant's uncharged acts of domestic abuse, in violation of the district court's  
25 order in limine, was error, but harmless because the evidence of defendant's guilt  
26 as to the charged crimes was overwhelming and the single reference to the  
27  
28



1 uncharged acts did not unduly influence the jury's verdict). *Walker v. State*, No.  
2 82140-COA, 2 (Nev. App. Sep. 22, 2021).  
3

4           When the district court improperly admits uncharged bad act evidence over  
5 a defendant's objection, a new trial is warranted if the error was not harmless.

6 *Fields v. State*, 125 Nev. 776, 784, 220 P.3d 724, 729 (2009); cf. NRS 178.598.

7  
8  
9           3n considering "whether the error had substantial and injurious effect or influence  
10 in determining the jury's verdict" and thus was not harmless, see *Fields*, 125 Nev.  
11 at 784-85, 220 P.3d at 729 (internal quotation marks omitted), this court looks to  
12 "whether the issue of innocence or guilt is close, the quantity and character of the  
13 error, and the gravity of the crime charged," *Big Pond v. State*, 101 Nev. 1, 3, 692  
14 P.2d 1288, 1289 (1985).  
15  
16

17           Appellant would submit that the surveillance videos and images of Mr.  
18 Young from that summer played an outsized role in the State's case in large part  
19 because *they had to*. Appellant would point out that almost every witness that took  
20 the stand was a custodian of records for the various surveillance images culled to  
21 identify Mr. Young and that *none of these witnesses had occasion to see Mr.*  
22 *Young aside from on the recording(s)* within their purview. The significance of  
23 these images, in Appellant's view, cannot really be overstated in the jury's  
24 determination of Mr. Young as the assailant herein.  
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1 **CERTIFICATE OF COMPLIANCE**

2  
3  
4 1. I hereby certify that this motion complies with the formatting  
5 requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and  
6 the type style requirements of NRAP 32(a)(6) because this brief has been prepared  
7 in a proportionally spaced typeface using Word in 14-point font of Times New  
8 Roman.  
9

10  
11 2. I further certify that this motion complies with the page-or type-volume  
12 limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted  
13 by NRAP 32(a)(7)( c), it is proportionately spaced, has a typeface of 14 points or  
14 more, and contains 5785 words.  
15

16 3. Finally, I hereby certify that I have read this motion, and to the best of my  
17 knowledge, information, and belief, it is not frivolous or interposed for any  
18 improper purpose. I further certify that this brief complies with all applicable  
19 Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which  
20 requires every assertion in the brief regarding matters in the record to be supported  
21 by a reference to the page and volume number, if any, of the transcript or appendix  
22 where the matter relied on is to be found. I understand that I may be subject to  
23

24  
25  
26 ///

27  
28 ///

1 sanctions in the event that the accompanying motion is not in conformity with the  
2 requirements of the Nevada Rules of Appellate Procedure.  
3

4 DATED this 1<sup>st</sup> day of September, 2022.  
5

6 /s/ Jason R. Margolis, Esq.

7 MACE J. YAMPOLSKY, ESQ.

8 Nevada Bar No. 001945

9 JASON R. MARGOLIS, ESQ.

10 Nevada Bar No. 012439

11 Attorney for Appellant

12 **CERTIFICATE OF SERVICE**

13 I hereby certify that this document was filed electronically with the  
14 Nevada Supreme Court on the 1<sup>st</sup> day of September, 2022. Electronic Service of  
15 the foregoing document shall be made in accordance with the Master Service List.  
16

17  
18 /s/ Theresa J. Muzgay

19 An employee of

20 YAMPOLSKY & MARGOLIS  
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