

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANDREW YOUNG,
Appellant,

v.

THE STATE OF NEVADA,
Respondent.

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Case No. 84412

RESPONDENT'S ANSWERING BRIEF

**Appeal From Judgment of Conviction
Eighth Judicial District Court, Clark County**

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ROUTING STATEMENT

This appeal is 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 ISSUES

1. Whether there was sufficient evidence to convict Andrew Young.
2. Whether the district court correctly granted the res gestae motion.

STATEMENT OF THE CASE

Andrew Young (hereinafter “Young”) was charged by way of Superseding Indictment filed on October 1, 2020 with two (2) counts of Burglary (Category B Felony), ten (10) counts Burglary (Category C Felony), four (4) counts Larceny from

the Person, Victim 60 Years of Age or Older, one (1) count Grand Larceny, five (5) counts Fraudulent Use of a Credit or Debit Card, one (1) count Battery with Use of Deadly Weapon Resulting in Substantial Bodily Harm, and one (1) count Attempt Murder with Use of a Deadly Weapon. 4 AA 731-738.

Young filed a Motion to Sever Counts on February 28, 2021, resulting in the continuance of his jury trial. 1 AA 12-22. On March 17, 2021, Young's Motion to Sever Counts was granted. 1 AA 38-41.

Given the severance order, the State filed an Amended Superseding Indictment moving Count 17- Battery with Use of a Deadly Weapon Resulting in Substantially Bodily Harm and Count 18 - Attempt Murder with Use of a Deadly Weapon to the end of the charging document. 4 AA 739-744. Now, the counts appear as Count 23 and Count 24, respectively. Id.

On March 29, 2021, the State filed a Motion in Limine to Admit Evidence Under Res Gestae or Evidence Related to Other Crimes. 4 AA 710-730. On April 8, 2021, Young filed his Opposition to State's Motion. 1 AA 25-37. The Court granted State's Motion on April 23, 2021. 1 AA 42-45.

On February 8, 2022, trial began. 1 AA 46. On February 10, 2022, the jury reached a verdict and found Young GUILTY of Battery with Use of a Deadly Weapon Resulting in Substantial Bodily Harm and NOT GUILTY of Attempt Murder with Use of a Deadly Weapon. 4 AA 748-749. The Judgement of Conviction

(hereinafter “JOC”) was filed March 8, 2022. 1 AA 001-008.

On March 15, 2020, Young filed his Notice of Appeal. 2 AA 23-24. On September 1, 2022, Young filed his Opening Brief (hereinafter “AOB”). AOB, at 1-25. The State now responds.

STATEMENT OF THE FACTS

1. Battery with Use of a Deadly Weapon at the Bus Stop

On July 26, 2020, Robert Will (hereinafter “Will”) was seated at a bus stop in front of the Paris Hotel and Casino when he got into an altercation with a black male suspect wearing a gray shirt, later identified as Young. 2 AA 313-314, 380. Young walked away from the bus stop and returned with a large rock and bludgeoned Will over the head with the rock several times before walking south toward the Planet Hollywood Hotel and Casino. 2 AA 313. Will suffered a skull fracture and severe brain bleed from the attack. 4 AA 684.

Initially, there was very limited information as to who the attacker was. 2 AA 267. Neither the victim nor any of the witnesses knew Young, so detectives began to canvass the surrounding area for the suspect. 2 AA 269. Eventually, officers were able to locate surveillance footage of the attack. 2 AA 284.

2. Francisco Alemar’s Testimony

On July 26, 2020, Francisco Alemar (hereinafter “Alemar”), a security supervisor for Paris Hotel, pulled video surveillance from Planet Hollywood. 2 AA 277.

Surveillance video shows Young at Planet Hollywood, walking north towards Paris. 2 AA 292. Surveillance video also shows the attack and Young leaving the scene going back down south in front of Planet Hollywood. 2 AA 284.

3. Amber Stringer's Testimony

On July 26, 2020, Amber Stringer (hereinafter "Stringer"), an employee with Las Vegas Metropolitan Police Department (hereinafter "LVMPD") stationed at the Fusion Watch, was able to locate footage of Young as he fled after the attack. 2 AA 344. Surveillance video shows Young crossing over the pedestrian bridge, heading towards The Cosmopolitan Hotel. 2 AA 353.

4. William Roed's Testimony

William Roed (hereinafter, "Roed"), a security investigator at The Cosmopolitan, located surveillance footage of Young entering The Cosmopolitan. 2 AA 371.

5. Detective Sandeep Liske's Testimony

Detective Sandeep Liske (hereinafter, "Detective Liske"), a detective with LVMPD, was able to identify Young as Will's attacker based Detective Liske's familiarity with Young's body shape, bald head, teeth, and his lazy eye. 2 AA 380, 382. Detective Liske also frequently saw Young with Bluetooth headphones and Nike shoes. 2 AA 382, 387. Finally, Detective Liske testified that he was also familiar with Young's unique walk. 2 AA 386.

6. Detective Trent Byrd's Testimony

On July 29, 2020, Detective Trent Byrd (hereinafter, "Detective Byrd"), a detective with LVMPD, was assigned to the case. 3 AA 405. Based on the clothes Young was wearing in the attack and his very distinct walk, Detective Byrd looked through other surveillance videos from the summer of 2020. 3 AA 425-426. Detective Byrd found video surveillance from July 8th, 2020, where Young self identifies. 3 AA 426. In that video, Young was wearing identical clothing and wearing the same ear buds around his neck. Id. This video surveillance was the only way detectives were able to identify Young. 3 AA 428. Detective Byrd also testified that Young had the same distinctive walk in all the videos that he reviewed from the summer of 2020. Id.

7. Leisha Moore's Testimony

On July 26, 2020, after witnessing Young attack Will, Leisha Moore (hereinafter "Ms. Moore") called 911. 2 AA 314. Ms. Moore recognized Young from seeing him on the bus a few hours before the attack and was able to give officers a description. 2 AA 315. About a year after the attack, Ms. Moore was able to pick Young out of a six-pack lineup. 2 AA 318.

SUMMARY OF THE ARGUMENT

This Court should affirm Young's JOC. Young alleges two grounds for which he believes his conviction should be overturned.

First, Young alleges that the State failed to prove that Young committed the crime beyond a reasonable doubt. However, the jury convicted Young of Battery with Use of a Deadly Weapon Resulting in Substantial Bodily Harm after watching the surveillance videos of the case, listening to all the evidence presented at trial, and applying the law to the facts of this case. Thus, Young's argument is without merit.

Second, Young alleges that the district court committed reversible error in granting the State's Res Gestae Motion. However, Young fails to explain why the district court erred in granting this motion. Further, even if Young asserted any error, the district court correctly granted the State's Motion. Therefore, this Court should affirm Young's JOC.

ARGUMENT

I. THERE WAS SUFFICIENT EVIDENCE TO CONVICT YOUNG

Young alleges that his conviction was based on insufficient evidence and that the State failed to prove that Young committed the crime beyond a reasonable doubt. AOB, at 8.

The standard of review for sufficiency of the evidence upon appeal is whether the jury, acting reasonably, could have been convinced of the defendant's guilt beyond a reasonable doubt. Edwards v. State, 90 Nev. 255, 258-259, 524 P.2d 328, 331 (1974). In reviewing a claim of insufficient evidence, the relevant inquiry is

“whether, after reviewing 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.” Origel-Candid v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998), (quoting Koza v. State, 100 Nev. 245, 250, 681 P.2d 44, 47 (1984)); See also Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979). “Where there is substantial evidence to support a jury verdict, it [the verdict] will not be disturbed on appeal.” Smith v. State, 112 Nev. 1269, 927 P.2d 14, 20 (1996); Kazalyn v. State, 108 Nev. 67, 71, 825 P.2d 578, 581 (1992); Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981).

Moreover, “it is the jury’s function, not that of the court, to assess the weight of the evidence and determine the credibility of the witnesses.” Origel-Candido, 114 Nev. at 381, 956 P.2d at 1380 (quoting McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992)); see also Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221 (1979) (the Court held it is the function of the jury to weigh the credibility of the identifying witnesses); Azbill v. Stet, 88 Nev. 240, 252, 495 P.2d 1064, 1072 (1972) cert. denied, 429 U.S. 895, 97 S. Ct. 257 (1976) (In all criminal proceedings, the weight and sufficiency of the evidence are questions for the jury; its verdict will not be disturbed if there is evidence to support it and the evidence will not be weighed by an Appellate Court). This does not require this Court to decide whether “it believes that the evidence at the trial established guilt beyond a reasonable doubt.”

Jackson v. Virginia, 443 U.S. at 319-20, 99 S. Ct. at 2789 (quoting Woodby v. INS, 385 U.S. 895, 87 S. Ct. 483, 486 (1966)). This standard thus preserves the fact finder's role and responsibility "[to fairly] resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." Id. at 319, 99 S. Ct. at 2789.

A jury is free to rely on both direct and circumstantial evidence in returning its verdict. Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980). This Court has consistently held that circumstantial evidence alone may sustain a conviction. Deveroux v. State, 96 Nev. 388, 391, 610 P.2d 722, 724 (1980) (citing Crawford v. State, 92 Nev. 456, 552 P.2d 1378 (1976); see also Mulder v. State, 116 Nev. 1, 15, 992 P.2d 845, 853 (2000) ("The trier of fact determines the weight and credibility to give conflicting testimony.")).

Here, Young claims that the evidence supporting his identification was insufficient. AOB, at 10. He argues Ms. Moore's credibility is suspect and therefore, she was not to be believed. AOB, at 14. He further argues that all other witnesses the State called were only there to buttress and strengthen Ms. Moore's credibility. AOB, at 13. Finally, he argues that even with Ms. Moore's testimony and the surveillance videos and photos, the State still failed to prove that Young was the individual that attacked Will beyond a reasonable doubt. AOB, at 10.

At trial, it was up to the jury to assess Ms. Moore's credibility. The jury heard

Ms. Moore explain how Young became angry with Will and ultimately picked up a rock and hit Will with it. 2 AA 309. Ms. Moore testified that she had seen Young earlier that night on the bus. 2 AA 315. Ms. Moore was able to assess Young's physical characteristics and remembered Young having missing teeth and being cockeyed. 2 AA 316, 321. Ultimately, Ms. Moore was able to identify Young out of a lineup as the man who attacked Will. 2 AA 330. At trial, Ms. Moore was also able to identify Young in other photographs. 2 AA 332.

Young attempts to argue that Ms. Moore is not to be believed based on a "series of lies" she told to police and because she is a convicted felon. AOB, at 11, 14. However, when Ms. Moore testified at trial, Young had the ability to cross-examine her about these lies. The jury heard that Ms. Moore lied about her name because she had an active warrant and was made aware that she is a convicted felon. 2 AA 325. However, the jury also heard that Ms. Moore did not feel pressured to make an identification at the lineup. 2 AA 331. During jury instructions, the court instructed the jury on credibility. The instruction read:

The credibility or believability of a witness should be determined by his manner upon the stand, his relationship to the parties, his fears, motives, interests, or feelings, his opportunity to observe the matter to which he testified, the reasonableness of his statements and the strength or weakness of his recollections. If you believe that a witness has lied about any material fact in the case, you may disregard the entire testimony of that witness or any portion of his testimony, which is not proved by other evidence.

3 AA 496. All of Young's claims regarding Ms. Moore's credibility were addressed

during the trial and the jury was able to consider her credibility when reaching its decision. This court “generally presumes that juries follow the district court orders and instructions.” Summers v. State, 122 Nev. 1326, 133, 148 P.3d 778, 783 (2006). Therefore, this court should assume that the jury followed those instructions when they found Young guilty.

In addition to Ms. Moore’s testimony, the jury also relied on other witnesses to identify that Young was the person who attacked Will. Mr. Alemar, security supervisor at Paris, was able to pull surveillance footage of the attack. 2 AA 280. Further, Stringer and William Roed, Security Investigator for The Cosmopolitan, were able to pull surveillance footage that shows Young before and after the attack. 2 AA 345, 367. Finally, the jury was able to compare the footage from the attack to other photos of Young through Detective Liske and Detective Byrd. 2 AA 380, 428.

Credibility regarding identification is precisely the type of determination that a jury is in the best position to make. See Burnside, 131 Nev. At 390-91, 352 P.3d at 641 (explaining the jury evaluates the weight of a witness’s identification testimony). Both the State and Young provided the jury with different explanations of the perpetrator’s identity. When considering this evidence and left to make the ultimate determination, the jury decided the State met its burden and established

Young's identity beyond a reasonable doubt.¹ Based on the evidence presented at trial, a jury could reasonably decide Young was the perpetrator of the offense. Therefore, this Court should find that there was sufficient evidence to support the jury's decision.

II. THE DISTRICT COURT DID NOT COMMIT REVERSIBLE ERROR IN GRANTING THE STATE'S RES GESTAE MOTION.

Young alleges that, had the district court not granted the State's Res Gestae Motion, the outcome of the trial would have been different.²

A. Young never makes any arguments that the district court actually erred in granting the States Res Gestae Motion.

Young alleges that if the court had ruled differently, the outcome at trial would have been different. AOB, at 23. However, Young never argues why the district court erred in granting the State's Motion. It is the "appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court." Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987). Instead, Young argues that if the court had not granted the State's Motion, the State would have had to rely on Ms. Moore's testimony and credibility. AOB, at 23.

¹ Young's only allegation is that the State failed to prove that Young was the person who attacked Will. AOB, at 6. Young seems to concede that there was a battery, the rock used was a deadly weapon, and Will did suffer substantial bodily harm. *Id.*

² Young alleges that Judge Bluth was the one to commit error, however, Judge Trujillo ruled on both the Motion to Sever and the Motion to Admit Evidence Under Res Gestae. 1 AA 38-39. 1 AA 42-44. Judge Bluth presided over this trial. 1 AA 46.

Therefore, because Young never addresses any arguments as to why the court erred, this Court should not address this issue.

B. The district court did not err in granting State’s Res Gestae Motion.

Even if Young did make a cogent argument, the district court still did not abuse its discretion when granting the State’s motion. The decision to admit or exclude evidence is within the sound discretion of the trial court and will not be disturbed unless manifestly wrong. Wesley v. State, 112 Nev. 503, 512, 916 P.2d 793, 799 (1996). Generally, evidence of other acts is inadmissible where it is used to show that a defendant has the propensity to commit the crime charged. NRS 48.045(2). However, evidence of an uncharged crime “which is so closely related to an act in controversy or a crime charged that an ordinary witness cannot describe the act in controversy or the crime charged without referring to the other act or crime” is admissible. NRS 48.035(3).

NRS 48.035 provides as follows:

NRS 48.035 Exclusion of relevant evidence on grounds of prejudice, confusion or waste of time.

1. Although relevant, evidence is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues or of misleading the jury.

2. Although relevant, evidence may be excluded if its probative value is substantially outweighed by considerations of undue delay, waste of time or needless presentation of cumulative evidence.

3. Evidence of another act or crime which is so closely related to an act in controversy or a crime charged that an ordinary witness cannot describe the act in controversy or the crime charged without referring to the other act or crime shall not be excluded, but at the request of an interested party, a cautionary instruction shall be given

explaining the reason for its admission.

This long-standing principle of res gestae provides that the State is entitled to present, and the jury is entitled to hear, “the complete story of the crime.” Allen v. State, 92 Nev. 318, 549 P.2d 1402 (1976).

The Nevada Supreme Court has explained that, where the doctrine of res gestae is invoked:

[The] determinative analysis is not a weighing of the prejudicial effect of evidence of other bad acts against the probative value of that evidence...the controlling question is whether witnesses can describe the crime charged without referring to related uncharged acts. If the court determines that testimony relevant to the charged crime cannot be introduced without reference to uncharged acts, it must not exclude the evidence of the uncharged acts.

State v. Shade, 111 Nev. 887, 894, 900 P.2d 327, 331 (1995) (emphasis added).

Indeed, res gestae evidence cannot be excluded solely because of its prejudicial nature. Shade, 111 Nev. at 894 n.1, 900 P.2d at 331 n.1.

The district court granted the State’s Motion to Admit Certain Evidence Under the Doctrine of Res Gestae, or in the Alternative, State’s Motion to Admit Evidence Related to Other Crimes. The court reasoned that these were to be admitted because they were the only way Detective Byrd was able to prepare a Declaration of Arrest for Young. 1 AA 43. Specially, the court pointed to the surveillance footage and body cam footage from the Walmart on July 8, 2020, as being crucial to confirming the identity of Young. Id. Therefore, the court allowed the State to introduce photos

or videos from the summer months of 2020 so that Detective Byrd and other officers could identify Young. Id.

The court was aware of potential prejudicial effects of utilizing certain angles of the surveillance and body cam footage. Id. Therefore, the court instructed the State to sanitize each photo and video to ensure that no criminal conduct was shown at trial. Id. Further, the court required that witnesses were only permitted to discuss identity without reference to criminal conduct. 1 AA 44. The court believed that this sanitation of the photos and videos would remove any prejudice against Young. Id.

The introduction of these videos and photos of Young during the summer of 2020 were necessary to this case. As the district court found, these videos and photos were necessary to show how detectives ultimately identified Young as the suspect. Further, these videos and photos did not prejudice Young in any way since they never depicted him engaging in any criminal conduct. Therefore, the district court properly granted the State's Motion to Admit Certain Evidence Under the Doctrine of Res Gestae, or in the Alternative, State's Motion to Admit Evidence Related to Other Crimes.

C. The photos and videos admitted should not be considered “bad acts” under NRS 48.045(2).

Young references the inadmissibility of prior bad acts to show propensity under 48.045(2). AOB, at 21. However, the State disagrees that these photos and videos fall under NRS 48.045(2).

NRS 48.045(2) provides as follows:

Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

Here, these photos and videos do not portray Young engaging in any crime, wrongs, or acts. Young does not contest he is doing anything illegal in these videos and photos. AOB, at 4 & 8. Further, Young concedes that he is engaged in “mundane, routine, and ultimately legal conduct” in these videos. AOB, at 17. The State ensured that these videos and photos complied with the court’s order to eliminate prejudice. Further, the court issued a limiting instruction before these witnesses testified regarding the videos that read:

Evidence such as video surveillance and photographs of the Defendant, other than that for which he is on trial for, if believed, are not to be received and may not be considered by you to be prove that he is a person of bad character or to prove that he has a disposition to commit crimes. Such evidence is received and may be considered by you only to for the limited purpose of proving the Defendant’s identity, appearance or likeness during the summer of 2020. You must weigh this evidence in the same manner as you do all other evidence in the case.

s377. As such, the jury was aware that they were only to use these videos and photos for identity purposes. As previously discussed, it is presumed that juries follow those instructions. Summers, 122 Nev. at 783. Therefore, this court should assume that the jury followed this instruction when deciding their verdict.

Even if this Court feels that the images constitute those described in NRS 48.045(2), the evidence still should have been admitted. Admission of Young's identification and photos is precisely the type of non-propensity use of prior acts contemplated by NRS 48.045(2). The evidence was simply Young engaging in regular everyday activities. All the video and photos come from locations that the jurors would expect to have cameras. Therefore, even if viewed under NRS 48.045(2), the evidence would still be admissible.

CONCLUSION

Wherefore, the State respectfully requests that Young's Judgment of Conviction be AFFIRMED.

Dated this 29th day of September, 2022.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. **I hereby certify** that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in 14 point font of the Times New Roman style.
2. **I further certify** that this brief complies with the page and type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points, contains 3,735 words and does not exceed 30 pages.
3. **Finally, I hereby certify** that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 29th day of September, 2022.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on September 29, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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