

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM FRANKLIN HUBBARD,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 43343

FILED

DEC 02 2004

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Bloom*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE AND LIMITED REMAND TO CORRECT  
THE JUDGMENT OF CONVICTION

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of arson. Eighth Judicial District Court, Clark County; Nancy M. Saitta, Judge. The district court sentenced appellant William Franklin Hubbard to serve a prison term of 26 to 120 months to run consecutively to the sentence imposed in an unrelated case.

Hubbard first contends that the district court erred in admitting a letter allegedly written by him, as well as evidence that the victim's cat died in the fire. Hubbard alleges that the evidence should have been excluded because its probative value was weak and was substantially outweighed by the danger of unfair prejudice. We conclude that Hubbard's contention lacks merit.

NRS 48.015 allows for the admission of evidence "having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence." Nevertheless, even if evidence is relevant, it 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."<sup>1</sup> The district court has considerable discretion in determining the relevance

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<sup>1</sup>NRS 48.035(1).

and admissibility of evidence, and this court will not disturb the trial court's decision to admit evidence absent manifest error.<sup>2</sup>

After hearing arguments from counsel, the district court balanced the probative value of the evidence against its potential for undue prejudice and ruled that the evidence was admissible. We conclude that the district court did not commit manifest error in so ruling. The letter was relevant as an admission, to show Hubbard committed the charged offense, and the testimony regarding the death of the cat was relevant to show a full and accurate account of the circumstances surrounding the commission of the crime.<sup>3</sup> Nonetheless, even assuming the district court erred in admitting the evidence, we conclude that any error was harmless beyond a reasonable doubt.<sup>4</sup>

Hubbard also contends that he was deprived of his constitutional right to a fair trial because he was unfairly surprised by the victim's testimony describing a phone call she received from Hubbard the day after the fire. Hubbard alleges that the district court abused its discretion in admitting the testimony, or alternatively, in refusing his request for a 30-minute continuance so he could interview the victim about the phone call. We conclude that Hubbard's contention lacks merit. The district court correctly ruled that the State had no affirmative duty to apprise defense counsel of the victim's oral testimony because it was not

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<sup>2</sup>See Lucas v. State, 96 Nev. 428, 431-32, 610 P.2d 727, 730 (1980).


<sup>3</sup>See NRS 48.035(3); Brackeen v. State, 104 Nev. 547, 553, 763 P.2d 59, 63 (1988).


<sup>4</sup>See Qualls v. State, 114 Nev. 900, 903, 961 P.2d 765, 767 (1998) ("We have routinely treated the erroneous admission of evidence of other bad acts as subject to review for harmless or prejudicial error.").

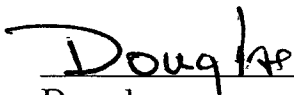
exculpatory or impeachment evidence.<sup>5</sup> Additionally, we note that the district court did not deny the oral motion for a continuance and, in fact, granted Hubbard a 10-minute continuance of the trial, allowing him the opportunity to re-interview the victim. Hubbard has failed to show that the district court abused its discretion in not granting a longer continuance or that he was deprived of the opportunity to present evidence material to his defense.<sup>6</sup>

Having considered Hubbard's contentions and concluded that they lack merit, we affirm the judgment of conviction. However, our review of the judgment of conviction reveals a clerical error. The judgment of conviction states that Hubbard was convicted pursuant to a guilty plea when, in fact, he was convicted pursuant to a jury verdict. Accordingly, we

ORDER the judgment of the district court AFFIRMED and REMAND this matter to the district court for the limited purpose of correcting the clerical error in the judgment of conviction.

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Douglas

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<sup>5</sup>See generally NRS 174.235 (defining prosecutor's duty to disclose); see also Brady v. Maryland, 373 U.S. 83 (1963).

<sup>6</sup>Cf. Banks v. State, 101 Nev. 771, 710 P.2d 723 (1985).

cc: Hon. Nancy M. Saitta, District Judge  
Clark County Public Defender Philip J. Kohn  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk