

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN JOHNSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 48888

**FILED**

**JUN 08 2007**

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. R. [Signature]*  
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count each of sexual assault, battery resulting in substantial bodily harm, and burglary. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge. The district court sentenced appellant Kevin Johnson to serve a prison term of 10 to 25 years for the sexual assault, a concurrent prison term of 12 to 48 months for the battery, and a concurrent prison term of 12 to 30 months for the burglary.

Johnson's sole contention is that the district court abused its discretion by admitting evidence supporting an inference that a knife may have been used in the commission of the crimes. Johnson contends that the evidence was irrelevant because the knife had no connection to him and he was not charged with a crime involving the knife. Additionally, Johnson argues that the evidence of the knife was highly prejudicial because "it is highly possible that the jury may have convicted Mr. Johnson solely on the fact that a knife was present at the scene, a knife attributed to him." We conclude that Johnson's contentions lack merit.

NRS 48.015 defines relevant evidence as 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 and admissibility of evidence, and this court will not disturb the trial court's decision to admit evidence absent manifest error.<sup>2</sup>

We conclude that the district court did not commit manifest error in admitting evidence involving the knife. It was relevant to prove that Johnson intended to use unlawful force and sexually assault the victim.<sup>3</sup> It was also relevant to show a full and accurate account of the circumstances surrounding the commission of the crime under the doctrine of the complete story of the crime, codified in NRS 48.035(3).<sup>4</sup> Although the State did not charge in the information that Johnson committed the crimes with the use of a knife, this court has recognized that the State may present all the facts surrounding the commission of a crime “even if it implicates the accused in the commission of other crimes for which he has not been charged.”<sup>5</sup> The evidence that Johnson may have brought a knife with him to the victim's house and used it to cut her neck

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

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

<sup>3</sup>See NRS 200.481; NRS 200.400; NRS 200.366(1).

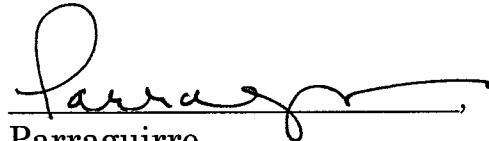
<sup>4</sup>Brackeen v. State, 104 Nev. 547, 553, 763 P.2d 59, 63 (1988).

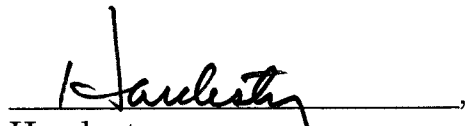
<sup>5</sup>Id.


is "so closely related to the act[s] in controversy that the witness cannot describe the act without referring to the other uncharged act or crime."<sup>6</sup>

Having considered Johnson's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.

 J.  
Parraguirre

 J.  
Hardesty

 J.  
Saitta

cc: Hon. Lee A. Gates, District Judge  
James A. Oronoz  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk

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<sup>6</sup>Bellon v. State, 121 Nev. 436, 444, 117 P.3d 176, 181 (2005).