

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KENNETH CLAY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 88573-COA

**FILED**

NOV 01 2024

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Kenneth Clay appeals from a judgment of conviction, entered pursuant to a jury verdict, of conspiracy to commit robbery and robbery. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Clay's sole claim on appeal is that the district court improperly admitted a photograph depicting him in jail clothing (the challenged photograph). Clay contends the probative value of the challenged photograph was substantially outweighed by the danger of unfair prejudice because (1) the challenged photograph was akin to a booking photograph and suggested he was "bad," and (2) the State admitted other photographs depicting close-ups of his tattoos, including one on his hand which says "CLAY," and elicited testimony from a detective identifying Clay based on his tattoos, rendering the challenged photograph unnecessary.

We review a district court's decision to admit evidence for an abuse of discretion. *West v. State*, 119 Nev. 410, 420, 75 P.3d 808, 815 (2003). Generally, all relevant evidence is admissible. NRS 48.025(1). Relevant evidence is "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.” NRS 48.015. However, relevant evidence “is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice.” NRS 48.035(1).

During his opening statement, Clay argued that, although his car was used during the robbery, he was not involved. To establish his involvement, the State introduced video and still images taken from a coconspirator’s cell phone depicting more than one set of tattooed hands manipulating a large amount of cash after the robbery. The challenged photograph was the only photograph admitted into evidence that simultaneously showed both the tattoos on Clay’s hands and his face, and the State used the challenged photograph to prove that one set of the tattooed hands manipulating the cash belonged to Clay. The challenged photograph also supported the detective’s identification of Clay as one of the people depicted in the video and still images.

The challenged photograph was not the only evidence tending to show Clay was a participant in the robbery, but it was probative in so identifying Clay, and Clay’s claim that the challenged photograph suggested he was “bad” does not demonstrate that its probative value was substantially outweighed by the danger of unfair prejudice. *Cf. Browning v. State*, 120 Nev. 347, 358, 91 P.3d 39, 47 (2004) (providing that a booking photo from a prior criminal case “had no appreciable prejudicial effect since jurors had no reason to assume that it had been taken in any other case but the one for which [the defendant] was being tried”). Therefore, we conclude

the district court did not abuse its discretion in admitting the challenged photograph for the purpose of identification. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Bulla

  
\_\_\_\_\_, J.  
Westbrook

cc: Hon. Michelle Leavitt, District Judge  
Brian Rutledge PC  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk