IN THE SUPREME COURT OF THE STATE OF NEVADA

LAUNCE SHOTA CLIFF,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 87910

FILED

SEP 12 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of second-degree murder with the use of a deadly weapon and carrying a concealed firearm. Eighth Judicial District Court, Clark County; Carli Lynn Kierny, Judge.

Appellant Launce Shota Cliff was convicted of offenses arising from the death of Jacob Hughey. Cliff and Hughey first encountered each other in front of a bar where Hughey had been denied entry due to erratic behavior. The two men got into an argument and exchanged insults as Cliff returned to his parked car. Cliff moved behind the open driver's side door and both Cliff and Hughey continued to antagonize one another. After briefly retreating from Cliff's car, Hughey returned and hit Cliff in the face. Within seconds, Cliff fired four shots at Hughey, killing him. Hughey recorded cell phone video of the exchange next to Cliff's car but dropped the phone during the shooting. While the dropped phone no longer captured video, it continued to record audio of Hughey's dying screams and gasps and bystanders' expressions of concern.

Cliff contends on appeal that the district court abused its discretion by admitting the audio-only segment of the cell phone recording,

arguing that the probative value of the evidence was substantially outweighed by the danger of unfair prejudice. The State disagrees on the merits but first contends that Cliff waived the evidentiary issue. We have held that a motion in limine preserves an issue, so long as "[the] objection has been fully briefed, the district court has thoroughly explored the objection during a hearing on a pretrial motion, and the district court has made a definitive ruling." *Richmond v. State*, 118 Nev. 924, 932, 59 P.3d 1249, 1254 (2002). Before presentation of evidence, Cliff moved to exclude the post-shooting audio. The district court heard the parties' arguments and denied the motion, finding the entire recording admissible. When the State subsequently offered the cell phone recording, the district court asked if Cliff had any objections. Cliff replied, "[w]e can stipulate." Generally, this court will decline to review alleged error that the appellant intentionally induced or provoked. *See Jeremias v. State*, 134 Nev. 46, 52, 412 P.3d 43, 50 (2018) (discussing doctrine of invited error). There is no indication in the record, however, that Cliff used the word stipulate to convey agreement that the full exhibit should be admitted. *Cf. Taylor v. State Indus. Ins. Sys.*, 107 Nev. 595, 599, 816 P.2d 1086, 1088 (1991) (cautioning that a stipulation generally requires "an unequivocal statement by the parties that [an agreed upon outcome] was so intended"). Considering the response in context, we conclude that Cliff intended to acknowledge the district court's ruling, and thus the futility of further objection, without invoking the evidentiary issue in the jury's presence. Mere acknowledgment does not constitute active participation in the challenged error. We therefore discern no basis for waiver of the preserved challenge and will review for an abuse of discretion. *See McLellan v. State*,

124 Nev. 263, 267, 182 P.3d 106, 109 (2008) (applying abuse-of-discretion standard for review of decisions to admit or exclude evidence).

Even relevant evidence will be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. NRS 48.035(1). While this court has repeatedly held that "gruesome [evidence] will be admitted if [it] aid[s] in ascertaining the truth," *West v. State*, 119 Nev. 410, 420, 75 P.3d 808, 815 (2003) (internal quotation marks omitted), we have also cautioned that the district court must assess such evidence on a case-by-case basis, *Harris v. State*, 134 Nev. 877, 881, 432 P.3d 207, 211 (2018). The audio in the instant case was shocking and visceral. It captured Hughey's panicked screams, distorted by the bullet wound to his face, and his struggle to draw increasingly fluid-filled breaths. In essence, the listener experienced Hughey's pain, fear, and death in real-time. This could undoubtedly lure jurors to focus on their sympathy for Hughey or desire for retribution on his behalf, rendering a verdict influenced by improper emotional considerations rather than evaluating the evidence alone. *See Old Chief v. United States*, 519 U.S. 172, 180 (1997) (characterizing unfair prejudice as "an undue tendency to suggest decision on an improper basis, commonly . . . an emotional one" (internal quotation marks omitted)).

The district court acknowledged that the post-shooting audio was disturbing and inherently carried some prejudice. Nonetheless, the court found that the recording was highly probative because it illustrated the aftermath of the conflict between Cliff and Hughey, including reactions of witnesses, and confirmed that no one "planted" evidence on Hughey's body. But, given the issues anticipated at trial, neither Hughey's final gasps nor bystanders' exclamations tended to prove any fact of consequence. *See Harris*, 134 Nev. at 881, 432 P.3d at 211 (explaining that probative value

"turns on the actual need for the evidence in light of the issues at trial and other evidence available to the State" (internal quotation marks omitted)). Here, Cliff did not dispute that he shot and killed Hughey. Rather, the primary issue at trial was whether Cliff acted deliberately or upon a sudden, irresistible impulse. *See* NRS 200.040 (defining manslaughter); NRS 200.060 (delineating when a killing should be punished as murder). The audio contributed little to the jury's assessment of this issue, particularly because Cliff fled immediately and was not captured on the audio recording. There was also no suggestion that evidence tampering would be a genuine issue or that audio alone would realistically establish its absence. Furthermore, the cell phone audio was cumulative of surveillance video that displayed the shooting and its aftermath from multiple angles. *See Harris,* 134 Nev. at 881, 432 P.3d at 211 (noting that the State's possession of "abundant, far less inflammatory evidence . . . to satisfy its burden of proof" diminishes probative value). The probative value of the audio was therefore negligible and was substantially outweighed by the danger that the jury would render a verdict based on emotion. Thus, the district court abused its discretion by admitting it.

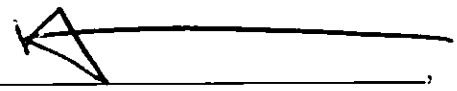
This court will not reverse a conviction due to an abuse of discretion if the error was harmless. *Knipes v. State,* 124 Nev. 927, 933, 192 P.3d 1178, 1182 (2008). Whether admission of evidence was harmless turns on whether it "had substantial and injurious effect or influence in determining the jury's verdict." *McLellan,* 124 Nev. at 270, 182 P.3d at 111 (internal quotation marks omitted). During rebuttal argument, the prosecutor encouraged jurors to embrace the emotional effect of the State's evidence:

> [Y]ou just heard [defense counsel] appeal to you to not have an emotional reaction to the evidence that

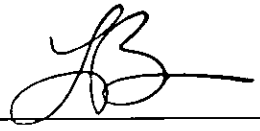
> we've been showing you. But let me ask you something; what kind of emotional response did you have to watching that video? Why are you reacting the way that you have? I submit to you the reason . . . that it's uncomfortable and emotional is because you just witnessed a first-degree murder.

The audio recording, paired with corresponding surveillance video, was then played to close rebuttal argument. As a result, the sound of Hughey's death was the last evidence the jury heard before beginning deliberations. Under the circumstances, we cannot say that the evidence of murder, as opposed to voluntary manslaughter, was so overwhelming that the district court's admission of the highly prejudicial audio recording did not influence this verdict. Accordingly, we

ORDER the judgment of conviction REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.



_____, C.J.
Herndon



_____, J.
Bell

_____, J.
Stiglich

cc: Hon. Carli Lynn Kierny, District Judge
Las Vegas Defense Group, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk