

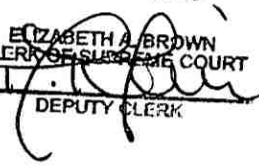
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARK CHRISTOPHER CONTI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86048-COA

FILED

MAY 24 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Mark Christopher Conti appeals from a judgment of conviction, entered pursuant to a jury verdict, of possessing or receiving forged instruments or bills and uttering a forged instrument. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

Conti argues the district court erred by allowing the State to show photographs of Conti to a witness before asking the witness to make an in-court identification. Because Conti did not object below, he is not entitled to relief absent a demonstration of plain error. *See Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48-49 (2018). To demonstrate plain error, an appellant must show that: “(1) there was an ‘error’; (2) the error is ‘plain,’ meaning that it is clear under current law from a casual inspection of the record; and (3) the error affected the defendant’s substantial rights.” *Id.* at 50, 412 P.3d at 48.

“The Constitution prohibits . . . suggestive and mistaken identifications whether they occurred outside of the courtroom before trial or during a criminal trial itself when a witness identifies the defendant from the witness stand.” *Johnson v. State*, 131 Nev. 567, 575, 354 P.3d 667, 673 (Nev. Ct. App. 2015). “[A]n in-court identification of the defendant during

23-116333

trial can be challenged in two ways, either because the in-court identification is itself improper, or because it was contaminated by an improper out-of-court identification that occurred before trial.” *Id.*

Conti does not argue that the in-court identification was contaminated by an improper *pretrial* identification procedure. Rather, Conti argues the in-court identification was improper because, during the State’s case-in-chief, the State first had the witness identify him in photographs before it had the witness identify him in court. However, “the State is usually entitled to present its case in the manner it believes will be most effective,” *Harris v. State*, 134 Nev. 877, 882, 432 P.3d 207, 212 (2018), and Conti does not provide any authority for the proposition that an in-court identification is improper if the witness has already identified the defendant in another medium, such as photographs. Therefore, Conti fails to demonstrate any error was plain or clear under current law from a casual inspection of the record.

Moreover, there is no indication the in-court identification was, itself, unreliable. The witness, a supervisor at Moneytree, testified that Conti was “really, really close” to her during the transaction, Conti gave her an ID that contained his name and information, and she had no question that the person before her matched the photograph on the ID even though Conti was wearing a mask consistent with COVID-19 precautions that partially obscured the lower part of his face. The witness also testified that Conti had a verified account with Moneytree and that the address on Conti’s account matched the address on the ID she was given. Moreover, Conti does not contend the witness’s initial identification of him in photographs was tainted by unnecessarily suggestive identification procedures. Finally, Conti was moved to the gallery before the witness entered the courtroom,

and the witness testified that she had no question regarding her in-court identification of Conti. Therefore, Conti fails to demonstrate any error affected his substantial rights. Accordingly, we

ORDER the judgment of conviction AFFIRMED.¹


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Connie J. Steinheimer, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

¹The Honorable Michael Gibbons, Chief Judge, did not participate in the decision in this matter.