

IN THE SUPREME COURT OF THE STATE OF NEVADA

LEE REED,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 63791

FILED

JUL 21 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of murder with the use of a deadly weapon and stop required on signal of a police officer. Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

First, appellant Lee Reed contends that the district court erred by instructing the jury that the State bore the burden of proving beyond a reasonable doubt "every material element of the crime charged," rather than giving one of the instructions that he proposed. We conclude that the district court did not err, *see Nay v. State*, 123 Nev. 326, 330, 167 P.3d 430, 433 (2007) (reviewing whether a proffered instruction is a correct statement of the law de novo), because the instructions given in this case, when taken as a whole, sufficiently conveyed that the State had the burden of proving beyond a reasonable doubt every element of the charged offense. *See Burnside v. State*, 131 Nev., Adv. Op. 40 (2015).

Second, Reed contends that the district court abused its discretion by declining to give one of his proposed instructions regarding eyewitness identifications. We disagree. The jury was properly instructed regarding the factors it should consider when evaluating a witness' testimony. More specific instructions were not required, particularly

when the central issue in the case was the credibility of the eyewitnesses rather than their capacity to observe. *See Lee v. State*, 107 Nev. 507, 509, 813 P.2d 1010, 1011 (1991) (holding that eyewitness identification instructions "might be called for" in certain circumstances, but need not be given where the strength of an identification was overwhelming). Accordingly, we conclude that the district court did not abuse its discretion. *See Nay*, 123 Nev. at 330, 167 P.3d at 433 (reviewing a district court's refusal to give a jury instruction for an abuse of discretion).¹

Having considered Reed's contentions and concluded that no relief is warranted, we

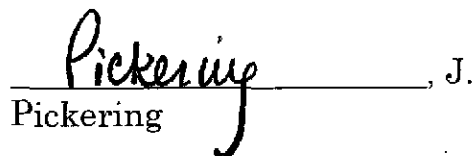
ORDER the judgment of conviction AFFIRMED.



Saitta



Gibbons



Pickering

cc: Hon. Douglas Smith, District Judge
Special Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

¹We decline Reed's request to overrule our prior decisions regarding specific eyewitness identification instructions.