

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAVID OWENS HOOPER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70372

FILED

MAY 24 2017

ORDER OF AFFIRMANCE

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

David Hooper appeals from a jury verdict finding him guilty of battery by a prisoner in lawful custody. Seventh Judicial District Court, White Pine County; Steve L. Dobrescu, Judge.

A jury convicted Hooper of battery by a prisoner in lawful custody. At trial, two prison guards testified to the battery.¹ On appeal, Hooper contends the district court erred because 1) the direct and circumstantial evidence jury instruction improperly focused on guilt and omitted mention of innocence; 2) the district court abused its discretion by declining to give Hooper's proposed accident instruction; 3) the district court abused its discretion by sentencing Hooper to life with parole; and 4) the prosecutor's statements during closing argument constituted misconduct. We disagree.

We need not address Hooper's first, third, or fourth arguments, as Hooper failed to provide cogent argument or relevant authority on these points.² See *Maresca v. State*, 103 Nev. 669, 673, 748

¹We do not recount the facts except as necessary to our disposition.

²Hooper's failure to object below to the circumstantial evidence instruction further precludes our review of that issue. See *Etcheverry v. State*, 107 Nev. 782, 785, 821 P.2d 350, 351 (1991) (failure to object to the
continued on next page...

17-901095

P.2d 3, 6 (1987). As to Hooper's argument regarding his proposed accident instruction, generally a defendant "is entitled to a jury instruction on his or her theory of the case as long as there is some evidence to support it[.]" *Rosas v. State*, 122 Nev. 1258, 1269, 147 P.3d 1101, 1109 (2006). But, we need not determine whether the district court erred, as any error was harmless in light of the evidence adduced at trial, which supports the verdict beyond a reasonable doubt. *See Nay v. State*, 123 Nev. 326, 334, 167 P.3d 430, 435 (2007) (explaining jury instruction errors are "harmless when it is clear beyond a reasonable doubt that a rational jury would have found the defendant guilty absent the error"); *see also* NRS 178.598 ("Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.") (internal quotation omitted); *Guitron v. State*, 131 Nev. ___, ___, 350 P.3d 93, 102-03 (2015) (discussing the failure


...continued


instruction below limits our review on appeal). Likewise, Hooper's failure to designate which statements he believes constitute prosecutorial misconduct weigh against our consideration of his fourth argument. *See* NRAP 28(a)(10) ("the argument [] must contain [] appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies"). Even were we to consider that issue, we note that because Hooper did not object to the statements below, he must demonstrate the misconduct caused a miscarriage of justice or actual prejudice, and that is not the case here in light of the evidence adduced at trial. *See Valdez v. State*, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008).


Finally, we note that under these facts Hooper's sentence did not exceed the district court's discretion. *See* NRS 207.010; *Tanksley v. State*, 113 Nev. 997, 1004, 946 P.2d 148, 152 (1997) (holding the district court has "the broadest kind of judicial discretion" in sentencing habitual criminal defendants (quoting *Clark v. State*, 109 Nev. 426, 428, 851 P.2d 426, 427 (1993))).

to give an inverse elements instruction, and holding such error is harmless if the verdict was not attributable to the error). Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Steve L. Dobrescu, District Judge
Sears Law Firm, Ltd.
Attorney General/Carson City
White Pine County District Attorney
Attorney General/Ely
White Pine County Clerk