# IN THE SUPREME COURT OF THE STATE OF NEVADA

DESMOND QUINNTRAIL HAYES,
Appellant,
  vs.
THE STATE OF NEVADA,
Respondent.

No. 56301

**FILED**

APR 06 2011

## ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of robbery and burglary. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

First, appellant Desmond Quinntrail Hayes contends that the district court erred by admitting excerpts from recorded telephone calls he made while in jail. Hayes, however, has failed to identify any portion of the calls admitted that presented the risk of unfair prejudice or articulate how he was prejudiced. See Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) ("It is appellant's responsibility to present . . . cogent argument; issues not so presented need not be addressed by this court."). Therefore, we conclude that Hayes has failed to demonstrate that the district court abused its discretion by admitting the calls. See Mclellan v. State, 124 Nev. 263, 267, 182 P.3d 106, 109 (2008) (a district court's decision to admit or exclude evidence is reviewed for an abuse of discretion).

Second, Hayes contends that the prosecutor committed misconduct by referring to the recordings as "jail calls." Although defense counsel requested a bench conference after the first of two references, no objection was ever made on the record. See Valdez v. State, 124 Nev.

1172, 1190, 196 P.3d 465, 477 (2008) (challenges to unobjected-to prosecutorial misconduct are reviewed for plain error). The prosecutor later offered that the references were inadvertent and suggested providing the jury with a limiting instruction, which Hayes refused. Considering the above and that the State presented strong evidence of his guilt, we conclude that Hayes has failed to demonstrate that his substantial rights were affected requiring the reversal of his conviction. See Green v. State, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003); see also NRS 178.602.

Third, Hayes contends that the district court improperly denigrated his expert witness and therefore erred by denying his motion for a mistrial.[1] We will not reverse a district court's decision to deny a motion for a mistrial absent an abuse of discretion. Rose v. State, 123 Nev. 194, 206-07, 163 P.3d 408, 417 (2007). We review allegations of judicial misconduct de novo. Cf. Lioce v. Cohen, 124 Nev. 1, 20, 174 P.3d 970, 982 (2008) (recognizing that attorney misconduct presents a legal question subject to de novo review). Our review of the record reveals that the witness' testimony was of minimal relevance, the district court provided the jury with a curative instruction, and the State presented strong evidence of Hayes' guilt. If there was any misconduct, it was harmless beyond a reasonable doubt. See NRS 178.598; Summers v. State, 122 Nev. 1326, 1333, 148 P.3d 778, 783 (2006) (we presume that the jury follows the district court's instructions); McNair v. State, 108 Nev. 53, 63, 825 P.2d 571, 578 (1992) (judicial misconduct should be viewed against the trial as a whole "rather than the myopic perspective afforded by
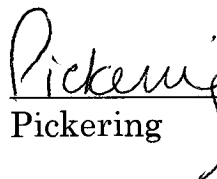
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[1]Judge Elliott did not preside over the trial.

isolated incidents"); <u>Kinna v. State</u>, 84 Nev. 642, 647, 447 P.2d 32, 35 (1968) (we will consider the evidence of guilt when determining whether judicial misconduct warrants reversal); <u>see also</u> <u>Glover v. Dist. Ct.</u>, 125 Nev. ___, ___, 220 P.3d 684, 708 (2009) (Cherry, J., dissenting) ("Curative instructions present a particularly strong alternative to a mistrial."). Therefore, we conclude that the district court did not abuse its discretion by denying Hayes' motion for a mistrial.  Accordingly, we

ORDER the judgment of conviction AFFIRMED.

_____, J.
Cherry

_____, J.
Gibbons

_____, J.
Pickering

cc:    Hon. Steven P. Elliott, District Judge
        Washoe County Public Defender
        Attorney General/Carson City
        Washoe County District Attorney
        Washoe District Court Clerk