

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DONALD STEPHEN HAWKINS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69842

FILED

OCT 19 2016

ELIZABETH A. BROWN
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 open or gross lewdness. Eighth Judicial District Court, Clark County; Richard Scotti, Judge.

Appellant Donald Stephen Hawkins was arrested for masturbating in public.¹ On appeal, Hawkins asserts the district court abused its discretion by failing to instruct the jury on Hawkins' proposed jury instructions, the district court erred by allowing a witness to narrate video surveillance at trial, and the district court violated Hawkins' right to a fair trial by failing to record bench conferences. We disagree.

We review the district court's decision in settling jury instructions for abuse of discretion or judicial error. *Crawford v. State*, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005). The supreme court has repeatedly held that when the district court properly instructs the jury regarding reasonable doubt, the district court does not err by thereafter refusing to give an instruction on evidence susceptible to two reasonable interpretations. *See Mason v. State*, 118 Nev. 554, 559, 51 P.3d 521, 524 (2002); *see also Bails v. State*, 92 Nev. 95, 96-97, 545 P.2d 1155, 1155-56

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

(1976). Here, the district court properly instructed the jury regarding reasonable doubt by directly quoting the language in NRS 175.211.

Likewise, the district court does not err by refusing to give an instruction that is adequately covered by another instruction. *Rose v. State*, 123 Nev. 194, 205, 163 P.3d 408, 415 (2007). In this case, the district court found the State's jury instruction regarding witness credibility "broad enough to cover all of the potential factors that a juror may properly consider," including the specific factors listed in Hawkins' proposed instructions.² After reviewing the record, we conclude this finding is not arbitrary or capricious and does not exceed the bounds of law. *Crawford*, 121 Nev. at 748, 121 P.3d at 585. Accordingly, the district court did not abuse its discretion by rejecting either of Hawkins' proposed instructions.

We next consider whether the district court erred by allowing a witness to narrate surveillance video at trial. Hawkins failed to object at trial to the surveillance video's admission into evidence, as well as the narration by the witness while the video was published to the jury.³ Failure to raise an objection below generally precludes appellate review, but this court may nevertheless address an alleged error if it is plain and affected the appellant's substantial rights. *Flores v. State*, 121 Nev. 706, 722, 120 P.3d 1170, 1180-81 (2005); *see also* NRS 178.602. Here, we do not


²Hawkins specifically argues on appeal the district court should have instructed the jurors that they could consider prior inconsistent statements and any evidence corroborating a witness's testimony to evaluate a witness's credibility. But, these factors are covered by the district court's direction to the jury to consider the reasonableness of the witness's statements and the strength of the witness's recollections.

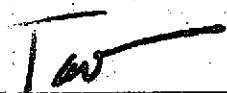
³Though Hawkins asserts he did object at trial, an objection does not appear to be recorded or memorialized, as further discussed below.

conclude the district court's allowing a witness to narrate surveillance video, previously admitted into evidence, to be plain error. Narration is appropriate if it assists the jury in making sense of the video. *Burnside v. State*, 131 Nev. ___, ___, 352 P.3d 627, 639 (2015). This witness's narration assisted the jury in understanding her testimony, including the timing of events depicted on the video. Accordingly, under these facts the district court did not err by allowing a witness to narrate surveillance video at trial.

Finally, we consider Hawkins' argument that the district court violated his right to a fair trial by failing to record bench conferences. The district court must memorialize bench conferences, but it may fulfill this responsibility by "allowing the attorneys to make a record afterward." *Preciado v. State*, 130 Nev. ___, ___, 318 P.3d 176, 178 (2014). Here, the district court informed counsel that bench conferences would not be recorded, but noted counsel could request those discussions be put on the record during a break. Hawkins failed to request his objection to the narration be put on the record. Hawkins asserts the district court has the onus of ensuring bench conferences are memorialized, but we need not consider claims that are not supported by relevant authority. *Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Richard Scotti, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk