

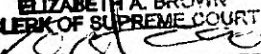
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ZANE NUCE KELLY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 87630-COA

FILED

SEP 19 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Zane Nuce Kelly appeals from a judgment of conviction, entered pursuant to a jury verdict, of battery by a prisoner, probationer, or parolee. Sixth Judicial District Court, Humboldt County; Michael Montero, Judge.

Kelly argues that his rights were violated by the admission of bad act evidence when a Humboldt County Detention Center deputy testified that he had prior physical altercations with Kelly. However, Kelly objected to the deputy's statement, and the district court sustained the objection. Any harm arising from an improper statement is generally cured when the district court sustains a contemporaneous objection. *See Hernandez v. State*, 118 Nev. 513, 525, 50 P.3d 1100, 1109 (2002); *see also Rimer v. State*, 131 Nev. 307, 330, 351 P.3d 697, 714 (2015) (“[A]ny harm arising from the prosecutor’s use of the term ‘beatings’ during his examination of the witnesses was cured when the district court sustained Rimer’s objections.”). To the extent Kelly argues the district court was required to further admonish the jury to disregard the testimony after sustaining the objection, he failed to provide any authority in support of his assertion, and so we decline to consider it. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (explaining that this court need not consider

an appellant's argument that is not cogently argued or lacks the support of relevant authority). Therefore, we conclude that Kelly is not entitled to relief.¹

Kelly also claims there was insufficient evidence to support his conviction. Evidence is sufficient to support a jury verdict if, "after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). To obtain a conviction for battery by a prisoner, probationer, or parolee, the State had to prove that Kelly committed any willful and unlawful use of force or violence upon the person of another while he was a prisoner in lawful custody or confinement. NRS 200.481(1)(a), (2)(f).

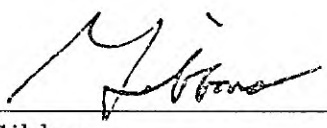
In this case, the detention deputy testified that Kelly bit him above the knee, and a detention sergeant similarly testified that he heard the deputy shout that he had been bitten when transporting Kelly. Thus, a rational trier of fact could have found beyond a reasonable doubt that Kelly committed a willful and unlawful use of force or violence upon the person of another. NRS 200.481(1)(a). Further, the deputy testified that Kelly was

¹Kelly also argues that evidence of a bad act was erroneously admitted during a detention sergeant's testimony, specifically the statement that there were "ongoing disciplinary issues" with Kelly. However, Kelly did not object to this testimony below. Although Kelly acknowledges that his claim is subject to plain error review, he does not contend that the alleged error is clear under current law from a casual inspection of the record, nor does he argue that error affected his substantial rights. See *Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48 (2018). We thus conclude he has forfeited this claim, and we decline to review it on appeal. See *Miller v. State*, 121 Nev. 92, 99, 110 P.3d 53, 58 (2005) (stating it is the appellant's burden to demonstrate plain error).


being held in the Humboldt County Detention Center for criminal conduct when the incident occurred. Kelly was repeatedly referenced throughout the trial as an “inmate,” and the sergeant testified that Kelly was housed in a unit that was separate from individuals in civil protective custody. Therefore, there was sufficient evidence for a rational trier of fact to find that Kelly was a prisoner in lawful custody or confinement, NRS 200.481(2)(f), and so we conclude that sufficient evidence supports Kelly’s conviction.

Finally, Kelly argues that cumulative error warrants reversal. As Kelly has identified no errors to cumulate, we conclude Kelly is not entitled to relief on this claim. *See Morgan v. State*, 134 Nev. 200, 201 n.1, 416 P.3d 212, 217 n.1 (2018). Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Michael Montero, District Judge
Nevada State Public Defender’s Office
Humboldt County Public Defender
Attorney General/Carson City
Humboldt County District Attorney
Humboldt County Clerk