

IN THE SUPREME COURT OF THE STATE OF NEVADA

DALE COOPER, AN INDIVIDUAL,
Appellant,
vs.
XPERTES, LLC, A DOMESTIC
LIMITED LIABILITY COMPANY;
ENCORE EVENT TECHNOLOGIES,
LLC, A DOMESTIC LIMITED
LIABILITY COMPANY; AND CLARION
UX, D/B/A URBAN EXPOSITION, LLC,
A FOREIGN LIMITED LIABILITY
COMPANY,
Respondents.

No. 88941

FILED

MAY 06 2026

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment on a defense verdict and an order denying a motion for new trial in a tort action. Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.

Facts

Respondent Urban Exposition, LLC, hosted the Womenswear in Nevada fashion showcase at the Rio Hotel and Casino in Las Vegas. Urban hired respondent Xpertes, LLC, as a general services contractor, in part to provide temporary exhibition booths made from aluminum and foam core. Urban also contracted with respondent Encore Event Technologies, LLC, to provide electricity for vendors, including setting up and removing electrical cords, which were taped to the floor and powered the exhibition booths.

At the close of the convention, while vendors were packing up and booths were being dismantled, someone—the parties contest who—pulled on an electrical cord, destabilizing an exhibition booth wall. The wall

fell onto appellant Dale Cooper, a 63-year-old Black woman who was working for a vendor. The contemporaneous incident report Xpertes filed indicated that nobody required medical attention at the scene, nor did Cooper initially report any injury or loss.

Sixteen months later, Cooper sued Xpertes for negligence, alleging that she suffered brain damage from the wall falling onto the back of her head. She later added Urban and Encore as defendants after learning about their respective roles. Cooper also sent a preservation of evidence letter to Xpertes regarding the exhibition booth. After discovering that Xpertes had disassembled the booth and sold its parts, Cooper moved for an order establishing liability or, alternatively, for an adverse inference instruction based on spoliation of evidence. The district court denied the motion to establish liability and deferred ruling on the adverse inference instruction until all evidence had been presented.

A 23-day jury trial followed. Cooper's negligence argument, boiled down, was that Urban, Xpertes, and Encore did not properly coordinate the installation of the exhibition booths and electrical components, making it foreseeable that the booths could fall and injure attendees. She sought \$15 million in compensatory damages for the brain injury she allegedly suffered. The defendants countered that Cooper failed to carry her burden of proof to show that the defendants were at fault. Regarding damages, the defense emphasized expert testimony that Cooper's alleged injuries lacked key indicators of brain trauma. Cooper made numerous objections at trial that now form the basis of this appeal.

The jury returned a defense verdict, finding none of the defendants negligent. Cooper filed a motion for a new trial, which the district court denied, concluding that "[t]he trial was fundamentally fair." Cooper timely appeals.

Discussion

Cooper challenges the district court's rulings on (1) her *Batson* objection to one of the defense's peremptory strikes, (2) several for-cause challenges during voir dire, (3) attorney misconduct by defense counsel, (4) Xpertes's failure to timely disclose its excess insurance policy, (5) the treatment of certain evidence by the defense and the permissibility of defense counsel's questioning of Cooper's experts, and (6) Cooper's request for an adverse inference instruction. She argues that these errors, taken individually or collectively, warrant a new trial.

A party moving for a new trial must establish both (a) adequate grounds pursuant to NRCP 59(a)(1), and (b) prejudice "materially affecting the substantial rights of the moving party." *Cox v. Copperfield*, 138 Nev. 235, 239, 507 P.3d 1216, 1222 (2022) (quoting NRCP 59(a)(1)). The district court's ruling on a motion for a new trial is reviewed for abuse of discretion and will not be overturned "absent 'palpable abuse,'" *Nelson v. Heer*, 123 Nev. 217, 223, 163 P.3d 420, 424-25 (2007) (quoting *Edwards Indus. v. DTE/BTE, Inc.*, 112 Nev. 1025, 1036, 923 P.2d 569, 576 (1996)), though some issues raised in this appeal are subject to different standards, as indicated below where necessary.

The district court appropriately rejected Cooper's Batson challenge

A district court's *Batson* ruling "represents a finding of fact of the sort accorded great deference on appeal" and is reviewed for clear error. *Diomampo v. State*, 124 Nev. 414, 422-23, 185 P.3d 1031, 1036-37 (2008) (quoting *Walker v. State*, 113 Nev. 853, 867-68, 944 P.2d 762, 771-72 (1997)). At trial, Cooper objected to the defense's exercise of a peremptory challenge against the sole remaining Black juror in the venire. She argues that the district court erred by rejecting her *Batson* challenge, specifically by failing to proceed past step one of the *Batson* analysis despite Cooper making a

prima facie showing of racial discrimination. Respondents counter that because they provided race-neutral justifications for striking the juror in question, step one became moot and the district court properly overruled Cooper's challenge at step three.

Batson challenges are subject to a three-step analysis: first, the challenger must make a prima facie showing of racial discrimination; second, the proponent of the strike has the burden to provide race-neutral justification(s) for the strike; and third, the district court decides whether the challenger has proven intentional discrimination. *Williams v. State*, 134 Nev. 687, 689, 429 P.3d 301, 305-06 (2018). The burden imposed at step one "is not onerous" and merely requires that the challenger provide sufficient evidence for the factfinder to draw an inference of discrimination. *Watson v. State*, 130 Nev. 764, 775, 335 P.3d 157, 166 (2014). However, the challenger "must do more than point out that a member of a cognizable group was struck." *Williams*, 134 Nev. at 690, 429 P.3d at 306. Where there is no pattern of allegedly discriminatory strikes, an inference of discrimination may arise from the totality of relevant facts, including "the disproportionate effect of peremptory strikes, the nature of the proponent's questions and statements during voir dire, disparate treatment of members of the targeted group, and . . . the case [being] sensitive to bias." *Watson*, 130 Nev. at 776, 335 P.3d at 166-67. The burden at step two is similarly light: the striking party must provide a race-neutral explanation for their strike, but it need not be "persuasive, or even plausible." *Diomampo*, 124 Nev. at 422, 185 P.3d at 1036 (citation modified). An explanation is deemed race-neutral so long as it does not betray inherent discriminatory intent. *Ford v. State*, 122 Nev. 398, 403, 132 P.3d 574, 578 (2006). Its persuasiveness only becomes relevant at step three, when the district court weighs each side's arguments and other relevant circumstances, and at

which point “[a]n implausible or fantastic justification [for a strike] may, and probably will, be found to be pretext for intentional discrimination.” *Id.* at 404, 132 P.3d at 578.

Cooper based her prima facie showing of race-based discrimination on the fact that she is Black and that defense counsel used their first peremptory strike against Juror #8, the only Black veniremember remaining after for-cause challenges were exercised.¹ She contends that this was sufficient to raise an inference of discrimination, thereby satisfying her burden at step one, and that the district court erred by rejecting her challenge at that step. But the contention that the district court ended its analysis at step one is not supported by the record. Although when the district court orally overruled the challenge, it stated that, “[a]ll things considered, I’m not persuaded there’s an inference,” it did so after defense counsel provided three race-neutral explanations for striking Juror #8. And in its written order denying the motion for a new trial, the district court clarified that it overruled the *Batson* challenge after considering those race-neutral justifications. This indicates that the district court conducted a full *Batson* analysis. *Cf. United States v. Novaton*, 271 F.3d 968, 1003 (11th Cir. 2001) (assuming that a ruling made after race-neutral justifications were provided was the product of a full *Batson* analysis); *Kaczmarek v. State*, 120 Nev. 314, 332, 91 P.3d 16, 29 (2004) (concluding that where race-neutral explanations are provided before the district court rules on step one, the analysis moves to step three).

Looking to the merits, Cooper fails to show that the district court abused its discretion by denying the *Batson* challenge. At step two,

¹Cooper’s briefing refers to Sparks as Juror #9, but the record indicates that the juror in question is Juror #8.

defense counsel provided three reasons for the strike. Those reasons included the juror's response to a hypothetical involving a car accident and his comments about his COVID-induced memory loss and brain fog; the latter gave rise to concerns about Juror #8's ability to participate in the long trial ahead and the potential overlap between his disabilities and Cooper's brain injuries, which were in sharp dispute. Discriminatory intent is not inherent in these explanations for the peremptory challenge. *See Ford*, 122 Nev. at 403, 132 P.3d at 578. And Cooper makes no argument regarding pretext or differential treatment of non-Black jurors who gave responses similar to Juror #8's, and she "has not explained . . . what evidence or arguments [she] wanted to proffer to show pretext that [she] was unable to present" at trial. *Perez v. Talley*, No. 79094, 2021 WL 5629280, at *2 (Nev., Nov. 30, 2021) (Order of Affirmance) (finding that the denial of a *Batson* challenge was not a "miscarriage of justice" where the pretext argument was not developed); *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining we may decline to consider points that are not cogently argued).

Cooper fails to show that she was prejudiced by the district court's resolution of the parties' for-cause challenges

Cooper contests the district court's rulings on two for-cause challenges, arguing that it improperly excused Juror #49 while improperly retaining Juror #7. Respondents counter that the challenge to Juror #7 was appropriately denied because he was more equivocal about his bias than Juror #49, and that even if the district court did err, Cooper failed to demonstrate that she was prejudiced by the district court's denial of her for-cause challenge to Juror #7.

A district court's resolution of a for-cause challenge is entitled to considerable deference because these challenges turn on facts the district

court is best situated to evaluate. See *Boonsong Jitnan v. Oliver*, 127 Nev. 424, 431-32, 254 P.3d 623, 628-29 (2011) (recognizing the district court's ability to assess a prospective juror's demeanor and other details not observable on appeal). But "'deferential review is not no review' and 'does not automatically mandate adherence to the district court's decision.'" *Id.* at 433, 254 P.3d at 629 (quoting *McDonald v. W.-S. Life Ins. Co.*, 347 F.3d 161, 172 (6th Cir. 2003)) (citation modified). The "relevant inquiry focuses on whether the juror's views would prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath." *Id.* at 431, 254 P.3d at 628-29 (citation modified). A prospective juror's bias will not be disqualifying if the record shows that juror can put aside that bias and "render a verdict based on the evidence presented in court." *Id.* at 432, 254 P.3d at 629 (citation modified). But "[d]etached language considered alone is not sufficient to establish that a juror can be fair." *Weber v. State*, 121 Nev. 554, 581, 119 P.3d 107, 125 (2005). Instead, the challenged juror's statements must be evaluated in light of the record as a whole. *Jitnan*, 127 Nev. at 432, 254 P.3d at 629.

Both sides argue that *Jitnan* supports their position. In *Jitnan*, the challenged juror first admitted that he would not be able to set aside his opinion that many personal injury lawsuits are frivolous. *Id.* at 427-28, 254 P.3d at 626. When counsel sought to rehabilitate him, he retreated from this stance, assuring that he could fairly evaluate the facts and apply the law. *Id.* at 429-30, 254 P.3d at 627-28. Persuaded, the district court then denied the for-cause challenge, *id.* at 430, 254 P.3d at 628, but this court reversed on appeal, explaining that "despite [the juror's] ever-changing position when questioned by counsel, the record as a whole demonstrates that [he] had a fixed opinion and bias toward plaintiffs in personal injury cases" that warranted excusal, *id.* at 432; 254 P.3d at 629.

The challenges here are indeed factually analogous to the one in *Jitnan*. Juror #49 was on the initial presumptive jury panel and, in several responses, repeatedly suggested possible bias in Cooper's favor: for example, he shared his personal history with concussions and head trauma, expressed sympathy for people experiencing the repercussions of such injuries, and stated his understanding that the extent of these harms can be difficult to diagnose. He candidly admitted that "I don't think I'm good for this because I'm definitely going to be biased" toward Cooper and that, according to the footrace metaphor counsel deployed to facilitate discussion of bias, the defense had "almost got lapped." In light of these comments, the district court sustained the defense's for-cause challenge, despite Juror #49's consistent assertions that he would follow court instructions and do his best to be fair.

Juror #7 was called to fill a vacant seat on the fourth day of voir dire after numerous prospective jurors had been excused. He immediately expressed skepticism toward Cooper's claims and stated that "I know that I am biased" against her based on prior ownership in a limited partnership and his ex-wife's frivolous personal injury lawsuits. Although Juror #7 assured counsel that he would weigh the evidence neutrally and try to be fair, he also admitted to feeling that the defendants were starting the case from a more favorable position, that Cooper had a "huge mountain to climb" to prove her case to him, and that he struggled to see how Cooper could be entitled to millions of dollars in damages, all points he reiterated throughout his questioning. Cooper raised a for-cause challenge, comparing Juror #7's responses to Juror #49's, but it was overruled.

On this record, like in *Jitnan*, both Juror #49 and Juror #7 admitted to holding a bias toward one party, for one reason or another, and when pushed, doubled down on that bias. Both also promised to decide the

case based on the evidence, but without unequivocally stating that they could set aside their already-expressed bias. Because the record as a whole shows that they could not set aside their plainly expressed opinions consistent with excusable bias, both prospective jurors should have been excused. As such, while the district court did not err by excusing Juror #49, it did err by declining to excuse Juror #7 on the same grounds.

But beyond showing that the district court erroneously failed to excuse a challenged juror, a party seeking a new trial on these grounds must also show that they were prejudiced by the error. *Id.* at 434, 254 P.3d at 630 (requiring parties to show that the denial of a for-cause challenge led to an unfair or partial venireperson serving on the jury). Cooper neglected to meaningfully address prejudice until her reply brief, and we therefore decline to consider the argument. *Khoury v. Seastrand*, 132 Nev. 520, 530 n.2, 377 P.3d 81, 88 n.2 (2016) (stating that an argument made for the first time in a reply brief is deemed waived). Because Cooper has thus failed to show prejudice stemming from Juror #7's inclusion on the jury, a new trial is not required on these grounds.

Emerson repeatedly committed misconduct, but none that requires a new trial

Cooper argues that defense attorneys Phillip Emerson and George Ranalli engaged in pervasive attorney misconduct, demonstrated through seven examples, that requires new trial. Respondents counter that Cooper cherry-picks and mischaracterizes comments that were benign when considered in context, and that any error was harmless.

Under *Lioce v. Cohen*, whether attorney misconduct warrants a new trial turns on whether the misconduct was objected to and admonished at trial, unobjected to, or objected to yet repeated despite admonishment. 124 Nev. 1, 17-19, 174 P.3d 970, 980-82 (2008). The district court's decision

on whether what occurred amounted to misconduct presents a question of law reviewed de novo, with deference given to the district court's factual findings, while the decision on whether that misconduct warrants a new trial is reviewed for abuse of discretion. *Id.* at 20, 174 P.3d at 982. A new trial is generally warranted where the prevailing party's misconduct affects the aggrieved party's substantial rights. *Gunderson v. D.R. Horton, Inc.*, 130 Nev. 67, 74-75, 319 P.3d 606, 611 (2014); see NRCP 59(a)(1)(B) (authorizing courts to order a new trial where the prevailing party commits misconduct).

Most of the attorney misconduct Cooper asserts was objected to and admonished at trial. As such, under *Lioce*, Cooper bears the burden of "demonstrating that the misconduct is so extreme that the objection and admonishment could not remove the misconduct's effect." 124 Nev. at 17, 174 P.3d at 981. Admonishment may not be able to cure repeated or persistent misconduct, *id.* at 18-19, 174 P.3d at 981, and in such circumstances, courts consider "[t]he severity and frequency" of the repeated misconduct and "whether the jury verdict is well supported by [other] evidence," *Cox*, 138 Nev. at 247, 507 P.3d at 1227. Separately, if misconduct is objected to but that objection is overruled, the appellant must show that the district court erred and that the error affected the appellant's substantial rights. *Lioce*, 124 Nev. at 18, 174 P.3d at 981.

Cooper does not establish that the misconduct she identifies drove the trial outcome or impacted her substantial rights. Of the seven instances of misconduct raised, only three warrant discussion. First, Cooper alleges that Emerson improperly alluded to a recreation of the exhibition booth after the district court excluded that evidence. Cooper objected to this reference at the next recess and her objection was overruled. Second, she alleges that Emerson continued his tactic of implying that

Cooper was withholding evidence from the jury when he later exclaimed, "What are you trying to hide? What are you trying to hide?" after Cooper objected to a line of questioning from the defense about Cooper's deposition testimony. Cooper's counsel immediately moved to strike these comments, and the court granted the motion and instructed the jury to disregard them. Third, Cooper challenges Emerson's behavior in relation to certain social media videos. After the defense sought to introduce undisclosed social media videos to impeach Cooper's claims about the severity of her injuries, the district court ruled that it could only play one such video for the jury and would otherwise have to play the rest for Cooper alone on the stand and then question her about them for the jury to hear. One video was played for the jury. After later playing another for Cooper alone, Emerson asked her: "You wouldn't have a problem with this jury seeing this video, in context, in full context, you wouldn't have a problem with that, would you?" Cooper's counsel immediately objected, but not before Cooper twice stated that she *would* have a problem with the jury seeing the video. The district court instructed the jury to disregard this exchange and later ruled that it had no prejudicial effect.

Emerson committed misconduct in each of these instances. Nevada Rule of Professional Conduct (NRPC) 3.4 instructs that a lawyer shall not "allude to any matter . . . that will not be supported by admissible evidence." NRPC 3.4(e). Emerson violated this rule by repeatedly disregarding evidentiary rulings to needle Cooper and her counsel in front of the jury. The third instance is of particular concern because Emerson's non-compliance with the district court's ruling caused the jury to hear Cooper directly assert that she did not want them to see certain evidence, undermining her credibility. Respondents' reliance on *Cox v. Copperfield* to justify these actions fails: *Cox* stands for the principle that district courts

may admit videos as impeachment evidence, 138 Nev. at 239-41, 507 P.3d at 1222-23; in no way does it permit counsel to unilaterally ask an opposing party's witness on the stand for permission to show excluded video evidence as a means of circumventing a district court's contrary ruling.

Ultimately, however, the district court was best positioned to evaluate the impact of Emerson's misconduct, and the record does not call into question its conclusion that there was no prejudicial effect. *Lioce*, 124 Nev. at 20; 174 P.3d at 982. The comments suggesting the existence of a model wall and that Cooper's counsel was hiding evidence are counteracted by the volumes of evidence and expert testimony presented over 23 days of trial. Further, it appears that Cooper introduced images of the wall or a replica of it, such that the jury was already able to visualize it. And while the exchange over the social media posts is more consequential, defense counsel provided over 800 admissible social media posts, such that refusing to show the jury a few more likely had minimal effect, especially in a trial of this length. And the video at issue targeted Cooper's credibility as to the severity of her injury, implicating the damages question that was never reached given that the jury returned a verdict finding that none of the defendants were negligent to begin with. A new trial is thus not required based on these infractions.

Xpertes's failure to timely disclose its excess insurance policy was harmless

Cooper next asserts that she was prejudiced by Xpertes's late disclosure of its \$4 million excess insurance policy. Xpertes should have disclosed the policy earlier than it did, NRCp 16.1(a)(1)(A)(v) (requiring initial disclosure of insurance policies that may be used to satisfy a potential judgment), but Cooper provides no authority for why the delay requires a new trial, nor does she explain how she was prejudiced beyond vaguely asserting that she would have considered different litigation strategies had

she known of the excess coverage sooner. We therefore affirm the district court's decision that the late disclosure was harmless and does not warrant a new trial. *Emperor's Garden*, 122 Nev. at 330 n. 38, 130 P.3d at 1288 n.38 (requiring cogent argument).

Cooper fails to show that the district court's evidentiary rulings call for a new trial

Cooper next argues that the district court abused its discretion in rulings that permitted defense counsel to (a) introduce undisclosed social media videos, and (b) question Cooper's expert witnesses beyond the scope of their expertise and about undisclosed and inadmissible information.

District court rulings on the admissibility of evidence, as well as on the scope of witness testimony, are reviewed for abuse of discretion and "will not be disturbed 'absent a showing of palpable abuse.'" *Cox*, 138 Nev. at 239, 507 P.3d at 1222 (on evidence admissibility) (quoting *M.C. Multi-Family Dev., LLC v. Crestdale Assocs., Ltd.*, 124 Nev. 901, 913, 193 P.3d 536, 544 (2008)); *Johnson v. Egtegar*, 112 Nev. 428, 436, 915 P.2d 271, 276 (1996) (on the scope of witness testimony). Parties are typically prohibited from using evidence they failed to disclose "unless the failure was substantially justified or is harmless." NRCP 37(c)(1); *see also Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010) ("When an error is harmless, reversal is not warranted."). But district courts also maintain discretion to admit undisclosed evidence so long as doing so does not create a trial by ambush that prejudices the non-introducing party. *See, e.g., Acosta v. State*, 141 Nev., Adv. Op. 40, 573 P.3d 1258, 1268-69 (2025) (finding no abuse of discretion in admitting undisclosed expert testimony absent bad faith and prejudice); *Turner v. State*, 136 Nev. 545, 554-55, 473 P.3d 438, 448 (2020) (characterizing surprise evidence as creating a trial by ambush but concluding that it was harmless).

First, Cooper argues that the district court abused its discretion by admitting undisclosed social media videos and, where the jury was not permitted to see certain videos, by permitting defense counsel to act out the videos' contents. Respondents answer that these videos were properly admitted for impeachment purposes, that earlier disclosure was not possible because they were discovered just before the disclosure deadline, and that counsel did not act them out. At trial, over Cooper's objection, the district court admitted a video that Cooper's daughter had posted four days before the pretrial disclosure deadline and continued to allow similar evidence. The district court stated that Cooper should have been prepared for this type of impeachment by video given that the defense had disclosed hundreds of pages of social media posts, even if not the specific videos at issue, and it later ruled that the late disclosure of the additional videos was harmless. Moreover, the district court attempted to minimize any disadvantage posed by these videos by clarifying that if they were shown to witnesses but not the jury, defense counsel could not act out their contents.

Cooper's record citations do not support her contention that defense counsel violated the ruling not to act out the videos, so this argument fails. *Cf. Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 997, 860 P.2d 720, 725 (1993) ("This court need not consider the contentions of an appellant where the appellant's opening brief fails to cite to the record on appeal."). Further, the failure to disclose impeachment evidence does not on its own require ordering a new trial. *Dyrhaug v. Black*, No. 85979, 2024 WL 2795693, at *2-3 (Nev., May 30, 2024) (Order of Affirmance).

That said, allowing the jury to observe Cooper as she watched the videos and was questioned about them problematically "created a situation in which the jury knew that allegedly damaging evidence relating to [the plaintiff's] physical condition existed, but was prohibited from

viewing it.” *Coe v. Centeno-Alvares*, No. 51216, 2009 WL 3189341, at *2 (Nev., Sept. 28, 2009) (Order of Affirmance). Combined with Emerson’s misconduct discussed above, this sequence of events raises the impression that Emerson was badgering witnesses about evidence he knew was inadmissible as a means of sneaking in inferences he wanted the jury to draw from the inadmissible evidence. Indeed, these videos were intended to do more than just impeach Cooper’s daughters as witnesses, as respondents argue; rather, they were used to damage Cooper’s credibility, as these videos focused on *her* demeanor, not her daughters’. Given that Cooper’s credibility was before the jury to decide, *see Cox*, 138 Nev. at 244-45, 507 P.3d at 1226 (recognizing the plaintiff’s credibility as a “central defensive issue” as to both liability and damages), we conclude that it was an abuse of discretion for the district court to permit undisclosed evidence to be used in this compromised manner. *Cf. Coe*, 2009 WL 3189341, at *2 (noting the district court there had acknowledged “it would have been better had the video actually been shown, as the content likely would not have had nearly the devastating impact on the jury as the mystique and curiosity that was caused by keeping the video from them”). But given the broader context of the 23-day trial, this error did not give rise to the degree of prejudice necessary to justify ordering a new trial.

Second, Cooper argues that the district court impermissibly let defense counsel question Cooper’s experts beyond the scope of their expertise, thereby confusing the jury as to the issues at hand and undermining the experts’ credibility. But Cooper fails to develop her argument that she was prejudiced by a handful of questions—objections to which were largely sustained—scattered across this lengthy trial. *Emperor’s Garden*, 122 Nev. at 330 n. 38, 130 P.3d at 1288 n.38 (declining to address issues not cogently argued). And while she more thoroughly

argues that the district court improperly permitted Ranalli to impeach her expert, Dr. Fazzini, by asking him about an unrelated and undisclosed settlement, this was not error. *See Hill v. Parker*, Nos. 80451, 81138, 2021 WL 2911508, at *1 (Nev., July 9, 2021) (Order of Affirmance) (permitting impeachment of an expert using undisclosed public documents relevant to the expert's credibility).

The district court did not abuse its discretion by denying Cooper's proposed spoliation instruction

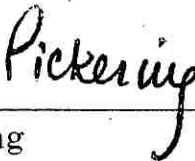
Finally, Cooper argues that the district court's offering of a generic spoliation instruction was an abuse of discretion. She claims that the stock adverse inference instruction, which she chose to forgo after her preferred fact-specific instruction was rejected, was prejudicial and possibly confusing because the jury may have interpreted the instruction to mean that *Cooper*, rather than the defense, had failed to produce evidence. Respondents assert that Cooper is not entitled to a fact-specific instruction and note that Cooper chose to reject the adverse inference instruction that the district court did offer.

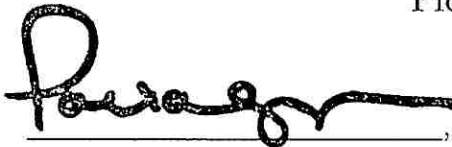
District courts have broad discretion to settle jury instructions, including adverse inference instructions. *Bass-Davis v. Davis*, 122 Nev. 442, 447, 134 P.3d 103, 106 (2006). And Cooper's only authority for her argument that it was an abuse of discretion not to grant her fact-specific instruction does not go so far as to *require* such instructions. *Banks ex rel. Banks v. Sunrise Hospital*, 120 Nev. 822, 831, 102 P.3d 52, 59 (2004) (stating that the decision allowing a fact-specific adverse inference instruction was limited to the facts of this case and should be narrowly construed). Our review of the record reveals no error, and regardless, Cooper fails to demonstrate a miscarriage of justice in view of the case as a whole. *Cf. Carver v. El-Sabawi*, 121 Nev. 11, 14-15, 107 P.3d 1283, 1285 (2005)

(providing the standard for reversal); *Cook v. Sunrise Hosp. & Med. Ctr., LLC*, 124 Nev. 997, 1007, 194 P.3d 1214, 1220 (2008) (clarifying *Carver* and explaining that the appellant must provide "sufficient-record evidence showing that, but for the error, a different result might have been reached").

In light of the above, the district court did not abuse its discretion by denying Cooper's motion for a new trial. *See Nelson*, 123 Nev. at 223, 163 P.3d at 424-25 ("[T]his court will not disturb that decision absent palpable abuse." (citation modified)). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Pickering

_____, J.
Parraguirre

_____, J.
Bell

cc: Hon. Mark R. Denton, District Judge
Larry J. Cohen, Settlement Judge
H&P Law, PLLC
Lemons, Grundy & Eisenberg
Clark McCourt, LLC
Ranalli Zaniel Fowler & Moran, LLC/Henderson
Emerson Law Group
Eighth District Court Clerk