

On November 7, 2006, Judge Saitta was elected to the Nevada Supreme Court. On December 27, 2006, Eighth Judicial District Court Chief Judge Kathy Hardcastle, in anticipation of Judge Saitta's departure, issued a written notice of reassignment and a minute order transferring the case to District Judge Elizabeth Halverson. Two days later, Judge Saitta issued a minute order granting Camp's petition in part, and directing Camp to prepare a written order in accordance with her minute order. The State objected to Camp's proposed order. The case was then reassigned to District Judge David Barker. On July 16, 2007, following a hearing on the State's objections to the proposed order, Judge Barker filed a written order granting in part and denying in part Camp's petition. The State appealed, and Camp cross-appealed.

Preliminarily, we recognize the procedural irregularities that occurred below with Judge Saitta pronouncing an oral ruling after the case had been reassigned. However, we conclude that those irregularities do not render the district court's final written order defective, and we decline to remand this case for further review in the district court.¹ Accordingly, we turn to the parties' substantive claims.

¹We note that absent another evidentiary hearing, at this point in the proceedings the district court is in no better position to review Camp's claims than this court. We have the entire record before us, and because claims of ineffective assistance of counsel present mixed questions of law and fact, any further determinations would be reviewed de novo. Rubio v. State, ___ Nev. ___, 194 P.3d 1224, 1229 (2008); State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993). Moreover, neither party alleges that the testimony presented at the previous evidentiary hearing was false or otherwise unreliable, and the resolution of the disputed issues does not appear to turn on any credibility determinations.

State's appeal

The State appeals the district court's decision to grant Camp a new trial. The district court granted Camp's petition on seven grounds. The court found that the State had withheld evidence and that trial counsel was ineffective for (1) failing to prepare for trial, (2) failing to present expert testimony about the effect of methamphetamine, (3) failing to secure an expert medical witness for sur-rebuttal, (4) failing to file discovery motions to obtain the medical records of the deceased, (5) failing to cross-examine Lain about injuries to the deceased that occurred more than six weeks prior to his death, and (6) failing to timely recognize a conflict of interest with another client represented by the public defender. We conclude that, as a matter of law, the district court erred in granting relief on these claims.

Withholding of evidence

First, the State argues that the district court erred in granting Camp's petition on the grounds that the prosecution withheld evidence favorable to the defense. We agree. This claim was raised on direct appeal and is barred by the doctrine of the law of the case. Hall v. State, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975). To the extent that the petition raises constitutional grounds to support the claim that were not previously presented, those grounds could have been raised on direct appeal and are procedurally barred absent a showing of good cause and actual prejudice. NRS 34.810(1)(b)(2). Camp failed to demonstrate good cause or prejudice. Therefore, the district court erred in granting relief on this claim.

Ineffective assistance of trial counsel

Next, the State claims that the district court erred in concluding that Camp's trial counsel was ineffective. To state a claim of

ineffective assistance of counsel sufficient to invalidate a judgment of conviction, a petitioner must demonstrate that counsel's performance fell below an objective standard of reasonableness, and that counsel's deficient performance prejudiced the defense. Strickland v. Washington, 466 U.S. 668, 687-88 (1984). To establish prejudice, a defendant must show that but for counsel's errors, there is a reasonable probability that the result of the proceeding would have been different. Id. at 694. The court may dispose of a claim if the petitioner makes an insufficient showing on either prong. Id. at 697. "The question of whether a defendant has received ineffective assistance of counsel at trial in violation of the Sixth Amendment is a mixed question of law and fact and is thus subject to independent review." State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993). However, the "purely factual findings" of the district court "are entitled to deference on . . . review." Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

The district court found that trial counsel was ineffective for (1) failing to prepare for trial, (2) failing to present expert testimony about the effects of methamphetamine, (3) failing to secure an expert medical witness for sur-rebuttal, (4) failing to file discovery motions to obtain the deceased's Child Protective Services (CPS) and medical records, (5) failing to cross-examine the State's witness about injuries to the deceased that might have occurred more than six weeks prior to his death, and (6) failing to timely recognize a conflict of interest with another client represented by the public defender's office.

Trial preparation

First, the State claims that the district court erred in concluding that trial counsel was ineffective for failing to prepare for trial.

The district court found that Camp's counsel was unprepared for trial because he stated such at the calendar call on April 12, 2000, in an apparent attempt to obtain a continuance, and because an investigator working on the case for the special public defender had resigned approximately one month prior to trial. The district court concluded that, accordingly, Camp was denied his right to effective assistance of counsel because trial counsel was "unable to conduct an adequate or proper investigation in the period immediately prior to trial." However, Camp failed to demonstrate that he was prejudiced. Camp failed to present specific evidence that would have been discovered by further investigation and that had a reasonable likelihood of changing the result of his trial. Furthermore, trial counsel testified at the evidentiary hearing that the defense investigator performed the tasks assigned to him before resigning and that a new investigator was assigned to the case prior to trial. Therefore, we conclude that the district court erred in granting relief on this claim.

Methamphetamine expert

Second, the State claims that the district court erred in concluding that Camp's trial counsel was ineffective for failing to present expert testimony regarding the effects of methamphetamine on Brook Lain, the victim's mother. We agree. Camp failed to demonstrate that he was prejudiced. Camp did not present any expert testimony on this subject at the evidentiary hearing. Therefore, he failed to meet his burden of "demonstrating the type and strength of evidence that might have been presented, and that there exists a reasonable probability that presentation of the evidence would have resulted in a different outcome at trial." Riley v. State, 110 Nev. 638, 649, 878 P.2d 272, 279 (1994). Moreover, the

record reflects that emphasis of Lain's drug use risked opening the door to testimony that Camp was also using methamphetamine. Because Camp failed to present any expert testimony about the effects of methamphetamine at the evidentiary hearing, or demonstrate that such testimony had a reasonable probability of changing the result of trial, the district court erred in granting relief on this claim.

Sur-rebuttal testimony

Third, the State claims that the district court erred in concluding that trial counsel was ineffective for failing to secure and present sur-rebuttal evidence regarding the timing of the victim's injuries. The State's witnesses opined that, based on the severity of the child's injuries, they were most likely inflicted within two hours of the child's death. Defense expert Dr. Karen Griest disagreed, stating that it could have been "four, five hours" or possibly even longer. After the defendant presented his case, the State called Dr. Ellen Clark, a forensic pathologist, as a rebuttal witness. Dr. Clark testified that, in her opinion, the final blunt force trauma that caused death occurred moments to approximately two hours prior to the child's death. The district court concluded that defense counsel was ineffective for failing to either recall Dr. Griest or to present the testimony of another expert witness to rebut Dr. Clark's findings. We disagree. Camp failed to demonstrate that trial counsel's performance was deficient or that he was prejudiced.

With respect to calling another expert as sur-rebuttal, Camp failed to demonstrate that counsel's performance was deficient. Dr. Clark was not on the State's expert witness list, and defense counsel was not given an opportunity to review Dr. Clark's findings prior to trial. Defense counsel "vehemently" objected to the testimony of Dr. Clark on those

grounds, but the district court overruled the objection. That decision was affirmed by this court on appeal. Defense counsel was given 24 hours to obtain a sur-rebuttal witness. Defense counsel met with other attorneys in his office and placed a number of phone calls trying to find another expert, but was unsuccessful. Moreover, Dr. Clark's testimony had not yet been transcribed and was unavailable for review. The record reflects that counsel put forth every effort to obtain another expert witness, but was unable to do so in the short 24-hour window that he was given. Accordingly, Camp failed to demonstrate that his counsel's performance was deficient.

With respect to recalling Dr. Griest as a sur-rebuttal expert, Dr. Griest had flown out of state by the time Dr. Clark testified. Defense counsel tried to recall her but she was unavailable to testify again on such short notice. Because defense counsel was not aware of Dr. Clark or her potential testimony, Camp failed to demonstrate that defense counsel was unreasonable in permitting Dr. Griest to leave. Moreover, Camp failed to demonstrate that counsel's inability to recall Dr. Griest was prejudicial. Recalling Dr. Griest to restate her opinion did not have a reasonable probability of leading to a different result at trial. Repetition of testimony does not make it stronger evidence. Dr. Griest's trial testimony was available for the defense and was highlighted in closing argument. Because recalling Dr. Griest had no reasonable probability of changing the result of trial, we conclude the district court erred in granting relief on this claim.

Discovery motions

Fourth, the State claims that the district court erred in concluding that trial counsel was ineffective for failing to file specific

discovery motions in an effort to obtain the victim's medical and CPS records. We agree. Camp failed to demonstrate that trial counsel's performance was deficient or that he was prejudiced. Defense counsel testified that he did not know the records existed until a pretrial hearing. In fact, Camp raised a claim on direct appeal that the State withheld the CPS and medical records from the defense, and this court held that the State was untimely in disclosing them. The record reflects that a motion to compel was filed when counsel became aware that the records existed. Therefore, Camp presented no evidence that his counsel should have discovered the records earlier or that counsel's deficient performance delayed discovery of the CPS records.

Moreover, Camp failed to demonstrate that he was prejudiced. In an order affirming Camp's convictions this court concluded that Camp was not prejudiced by the untimely disclosure. This court stated that because Camp was able to make effective use of the records, he had "made no showing that the outcome would have been different had he received the CPS records sooner." Camp v. State, Docket No. 36559 (Order of Affirmance, May 14, 2002). Thus, Camp failed to demonstrate that he was prejudiced and the district court erred in granting relief on this claim.

Cross-examination about prior injuries

Fifth, the State claims that the district court erred in concluding that trial counsel was ineffective for failing to cross-examine Brook Lain about injuries to the victim that might have occurred more than six weeks prior to the victim's death. We agree. Camp failed to demonstrate that trial counsel's performance was deficient or that he was prejudiced. At trial, Dr. Griest testified that there was granulated tissue in the victim's abdomen indicating that, in addition to the recent injuries

that resulted in his death, there were older injuries inflicted at least a week before death and possibly even weeks or months earlier. Dr. Griest did not specifically testify that the injuries were over six weeks old, merely that they could have been older than a week. This testimony did not preclude Camp from being responsible for the injuries.

Moreover, the trial record reflects that Brook Lain was cross-examined extensively about her past as a prostitute, her drug use, her abusive relationship with the victim's father (her former pimp), the environment in which her son was raised, prior involvement of CPS, and a prior incident when the child had fallen off of a step ladder. Lain specifically denied striking her child, or that her son had ever sustained a major injury before moving in with Camp. Camp failed to specify what further questions defense counsel should have asked, and therefore fails to demonstrate that defense counsel's cross-examination was deficient. And because Camp provided no evidence that there were prior injuries other than those discussed at trial, he fails to demonstrate that he was prejudiced by counsel's failure to conduct further cross-examination on this topic. Therefore, we conclude that the district court erred in granting relief on this claim.

Conflict of interest

Finally, the State claims that the district court erred in concluding that trial counsel was ineffective for failing to timely identify a conflict of interest. Camp argues that "valuable time and investigative effort were lost" because the Public Defender's Office failed to timely discover the conflict. Camp failed to demonstrate that he was prejudiced. The Public Defender's Office was confirmed as counsel on April 10, 1998. The Public Defender's Office later discovered that it was representing Lain

in an unrelated matter, and filed a motion to withdraw as counsel on June 26, 1998, about two and a half months later. The Special Public Defender's Office was then appointed on July 9, 1998. Trial commenced on April 18, 2000, over 21 months later. Camp failed to specify what evidence would have been presented at trial that was not discovered as a result of the two-month delay before the Special Public Defender's Office was appointed. Thus, he failed to demonstrate that earlier discovery of the conflict had a reasonable probability of changing the result of trial. Therefore, the district court erred in granting relief on this claim.

Camp's cross-appeal

On cross-appeal, Camp argues that all of the claims in his petition warranted relief, and that the district court erred when it failed to grant his petition in whole. Therefore, we will address each remaining claim that was denied by the district court below.

Ineffective assistance of trial counsel

First, Camp claims that the district court erred in denying his additional claims of ineffective assistance of trial counsel. The district court denied Camp's claims that his trial counsel was ineffective for (1) failing to cross-examine Detective Bingham with his preliminary hearing testimony, (2) failing to challenge a juror who had been abused as a child, and (3) failing to seek voir dire examination on an individual basis. As stated above, in order to state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, a petitioner must demonstrate that counsel's performance fell below an objective standard of reasonableness, and that counsel's deficient performance prejudiced the defense. Strickland v. Washington, 466 U.S. 668, 687-88 (1984). To establish prejudice, a defendant must show that but for counsel's errors,

there is a reasonable probability that the result of the proceeding would have been different. Id. at 694. The court may dispose of a claim if the petitioner makes an insufficient showing on either prong. Id. at 697.

Cross-examination of Detective Bingham

First, Camp argues that trial counsel was ineffective for failing to cross-examine Detective Bingham with his preliminary hearing testimony. Camp wholly fails to explain this claim. Therefore, the district court did not err in summarily denying it.

Juror No. 307

Second, Camp argues that trial counsel was ineffective for failing to challenge for cause or use a peremptory challenge on a juror who had been physically abused as a child. Camp fails to demonstrate that trial counsel's performance was deficient or that he was prejudiced. The juror in question stated on examination that she would be objective, that sitting on the case would not cause her to relive her past experiences, that she would not harbor any prejudice against the defendant because this was a totally different case, and that her decision would be based only on the evidence presented at trial. 2 AA 301-314. Thus, there was no basis to challenge her for cause. As this court has previously stated, the fact that a potential juror has been a victim of the very crime being prosecuted does not automatically disqualify her as a juror. Hall v. State, 89 Nev. 366, 370-71, 513 P.2d 1244, 1247 (1973).

With regard to peremptory challenges, the record reflects that the defense exercised all of its allowed challenges. Defense counsel testified that he was "a hundred percent positive" that he discussed with co-counsel and the defendant which potential jurors to excuse with their peremptory challenges. When defense counsel would like to exercise more

peremptory challenges than are available, it is a strategic decision of counsel which jurors to remove. Strategic or tactical decisions of counsel are “virtually unchallengeable absent extraordinary circumstances,” and Camp has not demonstrated extraordinary circumstances here. See Lara v. State, 120 Nev. 177, 180, 87 P.3d 528, 530 (2004) (quoting Doleman v. State, 112 Nev. 843, 848, 921 P.2d 278, 280-81 (1996)). Therefore, the district court did not err in denying this claim.²

Individual voir dire examination

Third, Camp argues that trial counsel was ineffective for failing to seek voir dire on an individual basis. The prospective jurors were asked whether they had been abused and were required to respond to this question in front of the venire. Camp argues that this discouraged truthful answers. Camp’s claim is speculative, and he fails to demonstrate a reasonable probability that an individual examination of each potential juror would have changed the results of trial. See Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). Therefore, the district court did not err in denying this claim.³

²Camp also claims that appellate counsel was ineffective for failing to raise this issue on direct appeal. For the reasons above we conclude that this claim had no reasonable probability of success on appeal. See Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996). Therefore, Camp fails to demonstrate that he was prejudiced and the district court did not err in denying this claim.

³Camp also claims that appellate counsel was ineffective for failing to raise this issue on direct appeal. For the reasons above we conclude that this claim had no reasonable probability of success on appeal. See Kirksey, 112 Nev. at 998, 923 P.2d at 1114. Therefore, Camp fails to demonstrate that he was prejudiced and the district court did not err in denying this claim.

Ineffective assistance of pretrial counsel

Camp also claims that pretrial counsel was ineffective. Camp originally retained James L. Buchanan, II, as his counsel. Mr. Buchanan represented Camp at his preliminary hearing. In his petition, Camp raised several claims that Mr. Buchanan was ineffective, and he appeals from the district court's denial of those claims.

First, Camp argues that his pretrial counsel was ineffective for failing to meet with him. Camp fails to demonstrate that counsel's performance was deficient or that he was prejudiced. While counsel did not go to the jail to meet with Camp, the record reflects that he communicated with Camp by telephone prior to the preliminary hearing. Moreover, the fact that Camp was later convicted demonstrates that there was sufficient probable cause to bind Camp over for trial. Thus, Camp fails to demonstrate that, had Mr. Buchanan come to the jail to meet him in person before the preliminary hearing, the results of the proceeding would have been different. Therefore, the district court did not err in denying this claim.

Second, Camp argues that pretrial counsel was ineffective for failing to seek drug testing for himself and for Brook Lain. Camp fails to demonstrate that he was prejudiced. Because the purpose of a preliminary hearing is a simple probable cause determination, and because the evidence presented at the preliminary hearing showed that Camp was the only person with the victim at the time his injuries were sustained, it is not reasonably likely that evidence of drug use would have changed the results of the hearing. Moreover, Lain admitted to previously using methamphetamine at trial, and thus Camp fails to demonstrate that drug testing would have resulted in the production of evidence with a

reasonable probability of changing the result of trial. Therefore, the district court did not err in denying this claim.

Third, Camp argues that pretrial counsel was ineffective for failing to prevent the victim's family from cremating him. Camp fails to demonstrate that trial counsel's performance was deficient. Lamar Brooks, Jr., died on the morning of Thursday, January 29, 1998, and the autopsy was conducted that same morning. The body was cremated four days later on Monday, February 2, 1998. Camp does not assert, or provide any evidence, that Mr. Buchanan was retained in this brief period of time, and thus there is no evidence that Mr. Buchanan could have prevented the cremation. Therefore, the district court did not err in denying this claim.

Fourth, Camp argues that pretrial counsel was ineffective for making confidential communications public. A letter written by Mr. Buchanan to Bar Counsel regarding a complaint filed by Camp's parents was eventually filed in the public record. Camp argues that Mr. Buchanan was ineffective for failing to keep this letter private. Camp fails to demonstrate that he was prejudiced. That letter was not presented to the jury, and thus Camp wholly fails to explain how it had any effect on the results of trial or sentencing. Therefore, the district court did not err in denying this claim.

Finally, Camp argues that pretrial counsel was ineffective for failing to prevent defense expert Dr. Robert Bucklin from making unnecessary written communications. Camp fails to demonstrate that counsel's performance was deficient or that he was prejudiced. Camp cites no case law in support of his assertion that counsel has a responsibility to direct potential expert witnesses not to communicate in writing. Thus, Camp fails to demonstrate that Mr. Buchanan's performance was

unreasonable. Moreover, at trial the contents of the letter were not presented to the jury and the State was prevented from commenting on the contents of the letter. Accordingly, Camp fails to demonstrate that, had Mr. Buchanan “kept Dr. Bucklin . . . from making unnecessary written communications,” there was a reasonable probability of a different result at trial. Therefore, the district court did not err in denying this claim.

Direct appeal claims

Next, Camp argues that the district court erred in denying the various claims of trial error included in his petition.⁴ A number of the claims in his petition were raised on direct appeal.⁵ These claims were therefore barred by the doctrine of the law of the case. See Hall v. State, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975). The remaining claims could have been raised on direct appeal and Camp fails to demonstrate good

⁴Camp claims that the trial court erred in: (1) denying a continuance of trial, (2) admitting the testimony of Dr. Clark, (3) admitting evidence of the victim’s prior injuries, (4) denying defense counsel the opportunity to independently review the victim’s CPS records, (5) precluding evidence of Lain’s prior arrests for prostitution, (6) admitting multiple autopsy photos, (7) admitting two statements that Camp made to police, (8) failing to remove a juror who had been abused as a child, (9) admitting testimony about Camp’s relationship with his deceased wife, (10) denying a Batson challenge, (11) failing to conduct individual voir dire, (12) admitting a video compilation of the victim’s life, (13) improperly instructing the jury on reasonable doubt, (14) improperly instructing the jury on implied malice, and (15) permitting the jury to be selected from a panel that did not include enough African-Americans.

⁵In Camp’s direct appeal briefs, appellate counsel raised claims 1, 2, 3, 5, 10, 13, and 15 as set forth above.

cause for failing to do so, or prejudice. See NRS 34.810(1)(b)(2). Therefore, the district court did not err in denying relief on these claims.

Ineffective assistance of appellate counsel

Next, Camp argues that his appellate counsel was ineffective for failing “to raise on appeal or completely assert all the available arguments supporting the constitutional issues asserted in [his] petition.” To state a claim of ineffective assistance of appellate counsel, a petitioner must demonstrate that counsel’s performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that the omitted issue would have had a reasonable probability of success on appeal. Kirksey v. State, 112 Nev. 980, 987, 998, 923 P.2d 1102, 1107, 1114 (1996). Appellate counsel is not required to raise every non-frivolous issue on appeal. Jones v. Barnes, 463 U.S. 745, 751 (1983). This court has held that appellate counsel will be most effective when every conceivable issue is not raised on appeal. Ford v. State, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989).

First, as explained above, a number of the claims in his petition were raised on direct appeal. Therefore, Camp failed to demonstrate that appellate counsel’s performance was deficient with regard to those claims and the district court did not err in denying them. To the extent that Camp claims appellate counsel failed to raise these claims on federal constitutional grounds, he fails to demonstrate a reasonable likelihood that the results of his direct appeal would have been different if counsel had “federalized” the issues, and we decline to opine as to what claims the federal courts may or may not review.

Second, Camp argues that appellate counsel was ineffective for failing to raise a claim that the trial court erred when it denied him the

opportunity to independently review the victim's CPS records, and instead reviewed them in camera to determine if they were relevant. Camp fails to demonstrate that appellate counsel's performance was deficient or that he was prejudiced. NRS 432B.290(1)(e) states that such records may be made available to a court "for in camera inspection only, unless the court determines that public disclosure of the information is necessary for the determination of an issue before it." Because the district court was acting pursuant to Nevada law, appellate counsel was not unreasonable in failing to raise this claim. Moreover, the claim had no reasonable probability of success on appeal. Therefore, the district court did not err in denying this claim.

Third, Camp argues that appellate counsel was ineffective for failing to raise a claim that the admitted autopsy photos were unduly prejudicial. Camp fails to demonstrate that he was prejudiced. The admission of evidence is within the trial court's sound discretion, and the court's determination will not be overturned unless it is manifestly wrong. See Byford v. State, 116 Nev. 215, 231, 994 P.2d 700, 711 (2000). Moreover, this court has stated that "[g]ruesome photos are admissible if they aid in ascertaining the truth." Id. "Despite gruesomeness, photographic evidence has been held admissible when it accurately shows the scene of the crime or when utilized to show the cause of death and when it reflects the severity of wounds and the manner of their infliction." Id. (quoting Therault v. State, 92 Nev. 185, 193, 547 P.2d 668, 674 (1976) (internal citation omitted), overruled on other grounds by Alford v. State, 111 Nev. 1409, 906 P.2d 714 (1995)). In this case, the nature and extent of the victim's internal injuries were directly relevant to the question of how long the child could have survived them, and thus when they were

inflicted. Because Camp fails to demonstrate that the district court was manifestly wrong in admitting the photographs, this claim did not have a reasonable probability of success on appeal. Therefore, the district court did not err in denying this claim.

Fourth, Camp argues that appellate counsel was ineffective for failing to challenge the district court's admission of two statements that were made to emergency response personnel. Camp failed to identify the statements or explain why it was error to admit them. Therefore, the district court did not err in denying this claim.

Fifth, Camp argues that appellate counsel was ineffective for failing to challenge the admission of testimony regarding Camp's relationship with his first wife, Kimberly Navarro, who had died of a heart attack. At the sentencing hearing, Navarro's mother described instances in which Camp physically abused her daughter. The jury asked the court why Kimberly was not present to testify herself, and was told simply that she was not available to testify. Camp argues that this permitted the jury to draw inferences and speculate that he was responsible for her absence. Camp fails to demonstrate that he was prejudiced. Camp's argument is speculative. Moreover, a "district court has broad discretion to admit evidence at a penalty hearing for first-degree murder," including evidence of uncharged crimes. Lisle v. State, 113 Nev. 540, 557-58, 937 P.2d 473, 484 (1997). There was no testimony that Camp was responsible for his wife's death, and Navarro's mother testified that Camp was never charged with any abuse. Accordingly, we conclude that this claim did not have a reasonable probability of success on appeal, and therefore the district court did not err in denying this claim.

Sixth, Camp argues that appellate counsel was ineffective for failing to challenge the district court's decision to admit a video compilation of pictures of the victim at the sentencing hearing. Camp argues that the pictures unnecessarily induced the jurors' sympathies. Camp fails to demonstrate that he was prejudiced. As stated above, a "district court has broad discretion to admit evidence at a penalty hearing for first-degree murder," including evidence of uncharged crimes. *Id.* The pictures were relevant to show the victim's appearance prior to coming in contact with Camp, as well as to rebut the defense's portrayal of Lain as an unfit mother during the victim's life. Accordingly, Camp fails to demonstrate that this claim had a reasonable probability of success on appeal, and therefore we conclude that the district court did not err in denying this claim.

Finally, Camp argues that appellate counsel was ineffective for failing to challenge the jury instruction on malice that was used at trial.⁶ Specifically, Camp asserts that the term "abandoned and malignant heart" is unconstitutionally vague, ambiguous, and archaic. Camp fails to demonstrate that appellate counsel's performance was deficient or that he was prejudiced. The exact instruction used in this case was upheld by this court in *Cordova v. State*, 116 Nev. 664, 666, 6 P.3d 481, 482-83 (2000). Therefore, it was not unreasonable for appellate

⁶Jury Instruction No. 8 read: "Malice may be express or implied. Express malice is that deliberate intention unlawfully to take away the life of a fellow creature and is manifested by external circumstances capable of proof. Malice shall be implied when no considerable provocation appears or when all the circumstances of the killing show an abandoned and malignant heart."

counsel to decline to raise this claim. Moreover, the claim had no reasonable likelihood of success on appeal, and thus Camp fails to show prejudice. Therefore, the district court did not err in denying this claim.

Dr. Ophoven

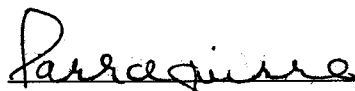
Next, Camp argues that the district court erred when it precluded Dr. Janice Jean Ophoven from testifying at the evidentiary hearing. The record does not reflect that Dr. Ophoven was prepared to testify. The motion denied by the district court was a motion to continue the hearing for the purpose of conducting further discovery. Moreover, contrary to Camp's assertions, Dr. Ophoven was not a pediatric cardiologist. She was a forensic pathologist, as were most of the experts at trial. Because the purpose of the evidentiary hearing was to determine whether trial counsel was ineffective, and not to re-examine the evidence presented at trial, we conclude that the district court did not err in denying Camp's motion to continue.

Cumulative error


Finally, Camp's petition concludes with a claim that the cumulative effect of the various claimed errors requires reversal of his convictions. First, with regard to the various claims of trial error, those claims should have been raised on direct appeal. Because Camp failed to demonstrate good cause and prejudice for his procedural deficiencies, see NRS 34.810(1)(b)(2), we do not consider those claims on the merits. With respect to Camp's claims that his pretrial, trial, and appellate counsel were ineffective, we have not found any instances of ineffective assistance of counsel. Therefore, the district court did not err in denying Camp's claim of cumulative error.

Having considered all of appellant's and cross-appellant's claims, we conclude that the district court erred in granting Camp's post-conviction petition for a writ of habeas corpus in part, but affirm the district court's denial of the remaining claims. Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART.

 _____ J.
Parraguirre

 _____ J.
Douglas

 _____ J.
Pickering

cc: Hon. David B. Barker, District Judge
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Christopher R. Oram
Eighth District Court Clerk