

IN THE SUPREME COURT OF THE STATE OF NEVADA

FREDERIC K. DIXON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50455

FILED

DEC 16 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

On February 11, 2005, the district court convicted appellant, pursuant to a jury verdict, of second-degree murder with the use of a deadly weapon. The district court sentenced appellant to serve two equal and consecutive terms of life in the Nevada State Prison with the possibility of parole after ten years. This court affirmed appellant's conviction on appeal.¹ The remittitur issued on January 24, 2007.

On June 15, 2007, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The

¹Dixon v. State, Docket No. 44688 (Order of Affirmance, November 15, 2006).

State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On October 29, 2007, the district court denied appellant's petition. This appeal followed.

In his petition, appellant contended that the district court erred in instructing the jury, the indictment was vague, the State committed prosecutorial misconduct, and the district court abused its discretion in admitting several pieces of evidence. These claims should have been raised on appellant's direct appeal, and appellant failed to demonstrate good cause for his failure to do so.² Therefore, the district court did not err in denying these claims.

Next, appellant claimed that the district court erred in admitting an edited videotape of the shooting, a witness made an improper prejudicial statement during his testimony, and the district court erred in denying his counsel of choice. This court rejected these claims on direct appeal. The doctrine of the law of the case prevents further litigation of these issues and "cannot be avoided by a more detailed and focused argument."³ Therefore, the district court did not err in denying these claims.

Next, appellant claimed that this court erred in analyzing appellant's claim regarding Instruction 19 under harmless error analysis.

²NRS 34.810(1)(b)(2).

³Hall v. State, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975).

This claim is improperly raised in his petition for a writ of habeas corpus, and appellant failed to demonstrate good cause for failing to raise the claim earlier.⁴ Therefore, the district court did not err in denying this claim.

Next, appellant claimed that his 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 was deficient in that it fell below an objective standard of reasonableness, and prejudice such that counsel's errors were so severe that they rendered the jury's verdict unreliable.⁵ The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one.⁶

First, appellant claimed that his trial counsel was ineffective for failing to subpoena the original, unedited videotape of the shooting that was sold to Channel 3. Appellant failed to demonstrate that he was prejudiced. The uncontested evidence introduced at trial showed that appellant killed the victim; the only contested issue was whether appellant's actions were justified as self-defense or his culpability lessened because the victim attempted to commit a serious personal injury on

⁴NRS 34.810(b)(3); see NRAP 40(c)(2).

⁵Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in Strickland).

⁶Strickland, 466 U.S. at 697.

appellant and appellant did not have a sufficient "interval between the provocation and the killing sufficient for the passion to cool and the voice of reason to be heard."⁷ Numerous witnesses testified at trial that appellant and the victim engaged in a physical fight during which the victim brandished a box-cutter. They separated shortly thereafter and each walked to their respective cars which were some distance apart. Appellant then retrieved a pistol from his vehicle, ran to the victim's car, and discharged the pistol into the car where the victim was seated. Appellant admitted to the police that he was "angry" and acknowledged that the victim had disengaged from the fight before appellant shot him. Appellant never indicated that he saw any firearms in his statements to the police. Thus, in light of the testimony from those at the scene and appellant's comments to the police, appellant did not meet his burden of demonstrating that the introduction of the unedited videotape would have

⁷Allen v. State, 98 Nev. 354, 356, 647 P.2d 389, 391 (1982); see NRS 200.050(1) (providing that "there must be a serious and highly provoking injury inflicted upon the person killing, sufficient to excite an irresistible passion in a reasonable person, or an attempt by the person killed to commit a serious personal injury on the person killing," in order to reduce a murder to voluntary manslaughter); see also Runion v. State, 116 Nev. 1041, 1051, 13 P.3d 52, 59 (2000) (acknowledging that the killing of another in self-defense is justified where the person who does the killing "actually and reasonably believes" that he is in imminent danger of death or great bodily injury from the assailant and the use of force that might cause the death of the assailant is "absolutely necessary under the circumstances . . . for the purpose of avoiding death or great bodily injury to himself").

conveyed sufficient insight into his intent at the time of the killing, to conclude there was a reasonable probability of a different result at trial. Therefore, the district court did not err in denying this claim.

Second, appellant claimed that his trial counsel was ineffective for failing to call Rosemary Jones to testify on appellant's behalf. He claimed that Jones would testify to the damage sustained to her car and injuries received when she was assaulted at Club Seven. Appellant failed to demonstrate that he was prejudiced. The jury heard evidence that there was an altercation at a nightclub prior to the shooting involving Jones during which the victim kicked Jones's car. Further, another witness testified that Jones had been punched during a scuffle at Club Seven. Thus, as the jury was aware of the facts which appellant sought to introduce through Jones's potential testimony, appellant failed to demonstrate that the introduction of the testimony would have led to a reasonable probability of a different result at trial. Therefore, the district court did not err in denying this claim.

Third, appellant claimed that his trial counsel was ineffective for failing to call Marcus Anderson to testify. He claimed that his brother would have testified that the victim stalked appellant and his brothers to the Palms casino, there was not a long interval to reflect between the victim assaulting appellant with a knife and appellant shooting the victim, and that he owned the gun used in the incident for protection and did not want to use it. Appellant failed to demonstrate that he was prejudiced. The jury had heard testimony from appellant's other brother that he was frightened by the manner in which the victim and his associates followed them to the Palms casino and testimony from several other witnesses that,

immediately after the assault with the box-cutter, appellant went to his car, retrieved a firearm, ran to the victim's car, and began firing into it. Moreover, the mere assertion that they did not intend to use the firearm that evening did not foreclose the possibility that the intent to use it could have arisen later. Thus, appellant failed to demonstrate that the introduction of his brother's testimony would have led to a reasonable probability of a different result at trial. Therefore, the district court did not err in denying this claim.

Fourth, appellant claimed that his trial counsel was ineffective for failing to object to instruction 31. He asserted that instructing the jury that its verdict must be unanimous did not inform the jury of its right to disagree. He further asserted that the instruction was particularly damaging in his case in that one of the jurors had made travel plans that may have interfered with deliberations had the jury continued to deliberate longer. Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. The district court instructed the jury that the "verdict must be unanimous." This was a correct statement of Nevada law.⁸ Further, the trial court was prepared to employ an alternate juror if deliberations ran into the time that the juror would have been traveling. Thus, appellant did not demonstrate that the jury was under undue pressure to reach a verdict prior to the juror's departure. Therefore, the district court did not err in denying this claim.

⁸NRS 175.481.

Fifth, appellant claimed that his trial counsel was ineffective for failing to object to instruction 7. He asserted that the instruction lessened the State's burden of proving every element of the crime by instructing the jury that they may presume that appellant had the intent to kill because he used a deadly weapon. Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. Instruction 7 provided as follows:

If a person, without legal justification or excuse, intentionally uses a deadly weapon upon the person of another at a vital part, and inflicts a mortal wound, under circumstances showing no considerable provocation, then intent to kill may be implied as an inference of fact from the act itself.

This was a correct statement of Nevada law.⁹ Therefore, the district court did not err in denying this claim.

Sixth, appellant claimed that his trial counsel was ineffective for failing to object to instruction 9, which defined willfulness, deliberateness, and premeditation as those terms related to the charge of first-degree murder. He asserted that the instruction confused the jury. Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. Appellant did not explain how the instruction was incorrect or confused the jury.¹⁰ Moreover, appellant could not show a

⁹Sharma v. State, 118 Nev. 648, 659, 56 P.3d 868, 874-75 (2002).

¹⁰Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

reasonable probability of a different result as the jury did not even convict him of first-degree murder pursuant to the instruction. Therefore, the district court did not err in denying this claim.

Seventh, appellant claimed that his trial counsel was ineffective for failing to object to the felony murder instruction because appellant was not charged with an underlying felony. Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. This court has recognized “that the State may seek a conviction for murder based on a theory of felony-murder without even charging the underlying predicate felony.”¹¹ Therefore, the district court did not err in denying this claim.

Eighth, appellant claimed that his trial counsel was ineffective for failing to object to instruction 15. He claimed that the instruction relieved the burden of proving every element of involuntary manslaughter, specifically whether the appellant acted with extreme recklessness or wantonness. Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. The district court instructed the jury that “the degree of negligence required to be shown on a charge on [sic] Involuntary Manslaughter, where an unintentional killing is established, is such recklessness or carelessness that is incompatible with proper regard for human life.” Further, the court stated that “[t]he State need not prove that the defendant acted with extreme recklessness and

¹¹Holmes v. State, 114 Nev. 1357, 1364, 972 P.2d 337, 341 (1998).

wantonness.” The instruction correctly stated Nevada law.¹² Moreover, appellant failed to demonstrate that there was a reasonable probability of a different result as he was not convicted of involuntary manslaughter based on this standard. Therefore, the district court did not err in denying this claim.

Ninth, appellant claimed that his trial counsel was ineffective for failing to object to the introduction of autopsy photographs that inflamed the passions of the jurors. Appellant failed to demonstrate that he was prejudiced. This court has held that “even gruesome photographs are admissible if they aid in ascertaining the truth, such as when used to show the cause of death, the severity of wounds and the manner of injury”¹³ The autopsy photographs were admitted during the medical examiner’s testimony and used to illustrate his testimony. Appellant did not identify which photographs were so gruesome that his counsel should have objected to their admission. Thus, he did not meet his burden of demonstrating that, but for the admission of the photographs, there was a reasonable probability of a different result at trial. Therefore, the district court did not err in denying this claim.

¹²See State v. Lewis, 59 Nev. 262, 273-74, 91 P.2d 820, 824 (1939).

¹³See Doyle v. State, 116 Nev. 148, 160, 995 P.2d 465, 473 (2000); Turpen v. State, 94 Nev. 576, 577, 583 P.2d 1083, 1084 (1978) (holding that the admissibility of autopsy photographs lies within the sound discretion of the district court and will not be overturned absent an abuse of discretion).

Tenth, appellant claimed that his trial counsel was ineffective for failing to object to prosecutorial misconduct. Specifically, he claimed that the State improperly: (1) commented on appellant's failure to testify; (2) commented on a defense witness's failure to comply with the State's subpoenas and questioned him about his whereabouts during the time the State was trying to locate him; (3) objected and argued what appellant's motive and intent was after the shooting; (4) commented on a defense witness's veracity; (5) referred to appellant's expert witness as a "paid defense psychiatrist" that was hired to substantiate a self-defense claim; (6) appealed to the emotional passions of the jury; (7) informed the jury as to what conduct constitutes self-defense; and (8) sought the introduction of autopsy photographs of the victim in order to inflame the passions of the jury. Even assuming that the challenged comments and conduct were improper, such prosecutorial misconduct may constitute harmless error where there is overwhelming evidence of guilt.¹⁴ Here, there was overwhelming evidence of guilt. The jury heard evidence that appellant and the victim had engaged in a fight during which the victim brandished and swung a box-cutter at appellant. The victim then put the box-cutter

¹⁴See King v. State, 116 Nev. 349, 356, 998 P.2d 1172, 1176 (2000) (providing that prosecutorial misconduct may be harmless where there is overwhelming evidence of guilt); Ross v. State, 106 Nev. 924, 928, 803 P.2d 1104, 1106 (1990) (providing that to be reversible prosecutorial misconduct "must be prejudicial and not merely harmless"); see also NRS 178.598 ("Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.").

away and walked toward his car. Appellant's statements to the police indicated that he understood that the victim was disengaging from the fight at this time. Appellant then walked toward his automobile, retrieved a firearm, ran toward the victim who was seated in his car, and fired into the car. He acknowledged to police that he was angry when he ran to the car. Appellant then began discharging his weapon through the windshield of the car and moved around to the passenger side of the vehicle while he was firing. Moreover, the evidence indicated that his weapon jammed during the assault and he was able to clear it and continue firing. Therefore, the district court did not err in denying this claim.

Next, appellant claimed that his appellate counsel was ineffective. 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 a reasonable probability of success on appeal."¹⁵ Where trial counsel failed to preserve the omitted issue with an objection, we review the issue for plain error in considering the probability of success for that issue on appeal.¹⁶ Appellate counsel is

¹⁵Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996).

¹⁶See Mitchell v. State, 124 Nev. ___, ___, 192 P.3d 721, 727 (2008) (providing that "this court may review a claim of error that was not objected to below for plain error that affected the defendant's substantial rights").

not required to raise every non-frivolous issue on appeal.¹⁷ This court has held that appellate counsel will be most effective when every conceivable issue is not raised on appeal.¹⁸

First, appellant claimed that his appellate counsel was ineffective for failing to argue that the district court plainly erred in issuing instruction 7, instruction 15, and instruction 31. Appellant did not object to the instructions at trial. Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. As discussed above, these instructions were correct statements of Nevada law. Therefore, the district court did not err in denying these claims.

Second, appellant claimed that his appellate counsel was ineffective for failing to argue that the district court plainly erred in permitting the State to proceed on a theory of felony murder where appellant was not charged with an underlying felony. Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. As discussed above, this court has recognized “that the State may seek a conviction for murder based on a theory of felony-murder without even charging the underlying predicate felony.”¹⁹ Therefore, the district court did not err in denying this claim.

¹⁷Jones v. Barnes, 463 U.S. 745, 751 (1983).

¹⁸Ford v. State, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989).

¹⁹Holmes v. State, 114 Nev. 1357, 1364, 972 P.2d 337, 341 (1998).

Third, appellant claimed that his appellate counsel was ineffective for failing to argue that the plain error related to instruction 14 was structural error. Appellant did not object to the instruction at trial. Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. Instruction 14 read as follows:

Involuntary manslaughter is the killing of a human being, without any intent to do so, in the commission of an unlawful act or a lawful act which probably might produce such a consequence in an unlawful manner; but where the involuntary killing occurs in the commission of an unlawful act, which, in its consequences, naturally tends to destroy the life of a human being, or is committed in the prosecution of a felonious intent, the offense is Murder.

This was a correct statement of Nevada law.²⁰ As the instruction was correct, appellant failed to demonstrate that any claim of error regarding the instruction would have been successful on appeal. Therefore, the district court did not err in denying this claim.

Fourth, appellant claimed that his appellate counsel was ineffective for failing to argue that the State failed to prove the elements of premeditation, deliberation, and malice aforethought beyond a reasonable doubt. Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. As appellant was not convicted of first-degree murder, he failed to demonstrate that any challenge to the

²⁰See NRS 200.070(1).

sufficiency of the evidence of the elements premeditation and deliberation would have been successful on appeal. Moreover, as discussed above, there was overwhelming evidence of appellant's guilt with respect to all the elements of second-degree murder, including the element of malice aforethought. Therefore, the district court did not err in denying this claim.

Fifth, appellant claimed that his appellate counsel was ineffective for failing to argue that the district court plainly erred in issuing instruction number 3. Appellant did not object to the instruction at trial. Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. Instruction 3 merely stated the charge of first-degree murder as set forth in the indictment. It read as follows:

In this case, it is charged in an Indictment that on or about the 14th day of November, 2003, the Defendant committed the offense of MURDER WITH THE USE OF A DEADLY WEAPON (Felony - NRS 200.010, 200.030, 193.165), committed at and within the County of Clark, State of Nevada, as follows: did then and there willfully, feloniously, without authority of law, and with premeditation and deliberation, and with malice aforethought, kill DERRICK NUNLEY, a human being, by the said Defendant shooting at and into the body of the said DERRICK NUNLEY, with a deadly weapon, to-wit: a firearm.

The charge was correct under Nevada law.²¹ Therefore, the district court did not err in denying this claim.

Sixth, appellant claimed that his appellate counsel was ineffective for failing to argue that the district court plainly erred in issuing instruction number 5. Appellant did not object to the instruction at trial. Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. Instruction 5 provided as follows:

Malice aforethought, as used in the definition of Murder, means the intentional doing of a wrongful act without legal cause or excuse or what the law considers adequate provocation. The condition of mind described as malice aforethought may arise, not only from anger, hatred, revenge, or from particular ill will, spite, or grudge toward the person killed, but also may result from any unjustifiable or unlawful motive or purpose to injure another.

The instruction correctly stated Nevada law.²² Therefore, the district court did not err in denying this claim.

Seventh, appellant claimed that his appellate counsel was ineffective for failing to argue, under federal constitutional law, that the district court abused its discretion in denying appellant's motion for counsel of choice. Appellant failed to demonstrate that he was prejudiced.

²¹See NRS 200.010; NRS 200.030; NRS 193.165.

²²See Crawford v. State, 121 Nev. 744, 752, 121 P.3d 582, 587 (2005); Guy v. State, 108 Nev. 770, 776, 839 P.2d 578, 582 (1992).

On direct appeal, this court held that the district court did not err in denying appellant's claim for counsel of choice. Appellant did not indicate what federal authority his counsel should have argued that would have altered the outcome of the appeal.²³ Therefore, the district court did not err in denying this claim.

Eighth, appellant claimed that his appellate counsel was ineffective for failing to argue that the district court plainly erred in permitting the State to commit prosecutorial misconduct. Appellant did not object to the State's arguments at trial. Appellant failed to demonstrate that he was prejudiced. As discussed above, there was overwhelming evidence of guilt that rendered any purported prosecutorial misconduct harmless. Therefore, the district court did not err in denying this claim.

Ninth, appellant claimed that his appellate counsel was ineffective for failing to argue that the district court abused its discretion in admitting evidence without ruling on an objection to that evidence based on the chain of custody. Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. Appellant did not identify the specific evidence that was admitted or when the objection occurred.²⁴ Therefore, the district court did not err in denying this claim.

²³Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

²⁴Id.

Tenth, appellant claimed that his appellate counsel was ineffective for failing to argue that the district court erred in admitting a redacted videotape of the shooting. Appellant's claim is belied by the record.²⁵ On appeal, appellant's counsel argued that the district court erred in permitting the introduction of the videotape of the shooting. Therefore, the district court did not err in denying this claim.

Eleventh, appellant claimed that his appellate counsel was ineffective for failing to argue that the district court abused its discretion in overruling trial counsel's objection and not striking the testimony of the victim's mother because the testimony was unresponsive to the questions asked and inflamed the passions of the jury. Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. The line of questioning of which appellant contends was improper concerned the victim and his mother's background. He did not demonstrate that the district court abused its discretion in permitting the testimony. Moreover, as discussed above, there was overwhelming evidence of guilt based on the testimony of witnesses at the scene and appellant's statement to the police, thus, any error in admitting the evidence was harmless. Therefore, the district court did not err in denying this claim.

Twelfth, appellant claimed that his appellate counsel was ineffective for failing to argue that the district court abused its discretion in denying appellant's motion for a mistrial based on Detective Messinar's

²⁵Id. at 503, 686 P.2d at 225.

comments. Appellant's claim is belied by the record.²⁶ On appeal, appellant's counsel argued that the district court erred in failing to grant a mistrial based on Detective Messinar's comment. Therefore, the district court did not err in denying this claim.

Thirteenth, appellant claimed that his appellate counsel was ineffective for failing to argue that the district court plainly erred in berating Jermaine Clay in front of the jury and threatening him with contempt charges. Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. During his testimony, Clay engaged in disruptive behavior that consisted of answering questions to which counsel had lodged objections prior to the court's ruling on the objection, interrupting counsel, and talking over other speakers. The district court personally addressed him several times and attempted to correct his behavior during his testimony. When the behavior persisted, the district court took a recess and addressed Clay outside of the presence of the jury during which it warned him of the sanction of contempt for his continued disruption. Trial counsel did not object to the colloquy. Thus, as the district court attempted several times to address the behavior in the least disruptive fashion and only threatened Clay with contempt outside the presence of the jury, appellant did not demonstrate that his appellate counsel would have been able to show that the district court plainly erred and that error affected his substantial rights. Therefore, the district court did not err in denying this claim.

²⁶Id.

Fourteenth, appellant claimed that his appellate counsel was ineffective for failing to argue that the district court abused its discretion in overruling defense counsel's objection to questions by the State of Jermaine Clay. He claimed that the court's action led the jury to conclude that the witness's statement about the box cutter at the club was false and the remainder of his testimony was false. Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. The district court did not overrule appellant's trial counsel's objections to the State's questions. Further, even if the court's actions did improperly undermine confidence in Clay's testimony, the error was harmless. As stated above, there was overwhelming evidence of guilt based on witnesses that testified that appellant shot the victim and appellant's statements to the police that indicated that he was not in fear of his life at the time he shot the victim. Moreover, Clay's testimony was consistent with appellant's statement to the police that the victim disengaged from the fight prior to appellant retrieving the pistol; thus, Clay's testimony did not support a theory of self-defense or reduced culpability for the killing. Therefore, the district court did not err in denying this claim.

Fifteenth, appellant claimed that his appellate counsel was ineffective for failing to argue that the district court erred in sustaining an objection on the grounds of non-responsiveness during Clay's testimony. He claimed that the district court plainly erred in striking the answer where the State did not move for the answer to be stricken. Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. During his cross-examination, Clay tried to explain why his statement to the police was different from his testimony, the State

objected, and the district court sustained the objection as non-responsive to the question posed and struck the answer from the record. Trial counsel did not object to the district court's decision to strike the testimony. However, during redirect questioning, appellant's counsel invited Clay to explain why his answer differed from a prior statement. Thus, as Clay was able to eventually answer the question, appellant failed to demonstrate that his counsel would have been able to show on appeal that any error of the district court affected his substantial rights. Therefore, the district court did not err in denying this claim.

Sixteenth, appellant claimed that his appellate counsel failed to argue that the district court abused its discretion in permitting the State to impeach appellant's brother's testimony with other statements that he did not make. Further, the trial court failed to rule on an objection concerning the attempted impeachment. Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. Appellant did not identify the specific instance where the prosecution improperly impeached appellant's brother.²⁷ Therefore, the district court did not err in denying this claim.

Seventeenth, appellant claimed that his appellate counsel failed to argue that the trial court abused its discretion in admitting Jermaine Clay's taped statement. Appellant's claim is belied by the record.²⁸ On appeal, appellant's counsel argued that the district court

²⁷Id. at 502, 686 P.2d at 225.

²⁸Id. at 503, 686 P.2d at 225.

abused its discretion in admitting Clay's statement. Therefore, the district court did not err in denying this claim.

Eighteenth, appellant claimed that his appellate counsel failed to argue that the trial court lost control of the proceedings and permitted witnesses to answer questions to which objections had been lodged. The court further employed imprecise language to rule on objections without specifically stating whether the objections were overruled or sustained. Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. Appellant did not identify the specific instances where the district court lost control of the court proceedings.²⁹ Therefore, the district court did not err in denying this claim.


Nineteenth, appellant claimed that his appellate counsel failed to argue that the district court plainly erred in admitting autopsy photographs to inflame the passions of the jury. Appellant did not object to the introduction of the photographs at trial. Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. As discussed above, the district court properly admitted the photographs during the medical examiner's testimony and appellant failed to demonstrate that the introduction of the photographs improperly prejudiced him. Therefore, the district court did not err in denying this claim.

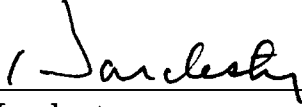
²⁹Id. at 502, 686 P.2d at 225.

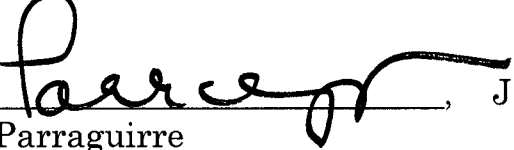
Twentieth, appellant claimed that his counsel was ineffective for failing to argue cumulative error on appeal. As appellant failed to adequately support many of his claims or otherwise show error, we conclude that he did not demonstrate cumulative error. Therefore, the district court did not err in denying this claim.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.³⁰ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C. J.
Maupin


_____, J.
Hardesty


_____, J.
Parraguirre

³⁰See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Michelle Leavitt, District Judge
Frederic K. Dixon
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk