

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DARREN GABRIEL LACHANCE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69106

FILED

SEP 20 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Tracie K. Lindeman*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying a postconviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

Appellant Darren Gabriel LaChance argues the district court erred in denying his claims of ineffective assistance of counsel raised in his June 19, 2004, petition. To prove ineffective assistance of 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 there is a reasonable probability that, but for counsel's errors, the outcome of the proceedings would have been different. *Strickland 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*). Both components of the inquiry must be shown, *Strickland*, 466 U.S. at 697, and the petitioner must demonstrate the underlying facts by a preponderance of the evidence, *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). We give deference to the district court's factual findings if supported by substantial evidence and not clearly erroneous but

review the court's application of the law to those facts de novo. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

First, LaChance argues his trial counsel was ineffective for failing to request a jury instruction on misdemeanor battery constituting domestic violence as a lesser-included offense for the charges of battery by strangulation constituting domestic violence and battery constituting domestic violence causing substantial bodily harm. LaChance failed to demonstrate he was prejudiced. Given the jury's verdict, the jury necessarily found beyond a reasonable doubt LaChance strangled the victim and caused her to sustain substantial bodily harm. Further, our review of the record reveals substantial evidence to support these findings. Under these circumstances, LaChance failed to demonstrate a reasonable probability the jury would have convicted him of misdemeanor battery constituting domestic violence, rather than the greater offenses, had his trial counsel sought and the jury been instructed on such lesser-included-offense instructions. *See Harrington v. Richter*, 112 U.S. 86, 112 (2011) (explaining that under the *Strickland* prejudice standard, "[t]he likelihood of a different result must be substantial, not just conceivable."); *Crace v. Herzog*, 798 F.3d 840, 851 (9th Cir. 2015). Therefore, we conclude the district court did not err in denying this claim.

Second, LaChance argues his trial counsel was ineffective for failing to investigate and discover inconsistent statements the victim made on Facebook regarding the incidents at issue in this matter. During trial, counsel advised the court she had recently received documents from LaChance's mother which purportedly contained retyped statements made by the victim on Facebook regarding the incidents at issue. The district court conducted a hearing regarding the documents and concluded they

were inadmissible because they could not be authenticated as statements made by the victim. See NRS 52.015(1). LaChance argues counsel should have performed actions to discover these statements at an earlier time and therefore could have been prepared to properly present them at trial. LaChance failed to demonstrate his counsel's performance was deficient or resulting prejudice.


At the evidentiary hearing, counsel testified she first learned of the actual Facebook statements during trial. The district court concluded counsel was credible and substantial evidence supports this conclusion. LaChance fails to demonstrate objectively reasonable counsel could have undertaken further investigation given these circumstances. See *Strickland*, 466 U.S. at 691 (explaining that a decision not to investigate must be assessed for reasonableness considering the circumstances in which the decision was made and "[c]ounsel's actions are usually based, quite properly . . . on information supplied by the defendant.").


The district court further concluded the Facebook statements were mostly consistent with the victim's trial testimony and also contained "damning evidence" of additional improper conduct committed by LaChance. Substantial evidence supports the district court's conclusions. Given the nature of the Facebook statements, LaChance did not demonstrate a reasonable probability of a different outcome had counsel investigated and presented those statements at trial. Therefore, the district court did not err in denying this claim.


Third, LaChance argues the cumulative errors of counsel amount to ineffective assistance of counsel and should warrant vacating the judgment of conviction. LaChance failed to demonstrate there were

multiple errors which may be cumulated. *See United States v. Sager*, 227 F.3d 1138, 1149 (9th Cir. 2000). Therefore, we conclude the district court did not err in denying this claim.

Having concluded LaChance is not entitled to relief, we
ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Patrick Flanagan, District Judge
Richard F. Cornell
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk