IN THE SUPREME COURT OF THE STATE OF NEVADA

LARRY DECORLEON BROWN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 88860

FILED

AUG 19 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge. The district court denied appellant Larry Decorleon Brown's petition after conducting an evidentiary hearing. We affirm.

Brown argues that the district court erred in rejecting several claims of ineffective assistance by trial and appellate counsel. To demonstrate ineffective assistance of counsel, a petitioner must show that counsel's performance was deficient in that it fell below an objective standard of reasonableness and that prejudice resulted in that there was a reasonable probability of a different outcome absent counsel's errors. *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*); *see also Kirksey v. State*, 112 Nev. 980, 998, 923 P.2d 1102, 1113 (1996) (applying *Strickland* to claims of ineffective assistance of appellate counsel). 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), and both components of the inquiry must be shown, *Strickland*, 466 U.S. at 697. For purposes of the deficiency prong, counsel

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is strongly presumed to have provided adequate assistance and exercised reasonable professional judgment in all significant decisions. *Id.* at 690. We give deference to the district court's factual findings supported by substantial evidence and not clearly wrong but review its application of the law to those facts de novo. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

Brown first argues that trial counsel should have introduced reports of evidence-processing errors by the police crime lab in other cases because these errors would undermine the State's DNA evidence linking Brown to the crime scene. We acknowledge that substantial evidence does not support the district court's finding that declining to introduce these reports was a strategic decision by counsel. In particular, trial counsel testified at the evidentiary hearing and could not recall why the reports were not offered. And no other evidence supported that the omission resulted from a strategic choice. Nevertheless, Brown has not shown prejudice. Brown presented evidence that the DNA of a crime-scene analyst who was not assigned to this murder investigation was found on the brake pedal of the victim's car, demonstrating cross-contamination of that DNA sample. Brown was able to elicit this testimony at trial and use it to impeach the State's evidence and support the defense theory that Brown's DNA was transferred to gloves worn by an unknown perpetrator who purportedly battered Brown before leaving pieces of the gloves at the murder scene. Moreover, only two of the reports Brown attached to the habeas petition involved testing of DNA samples, and neither involved an analogous cross-contamination error. Therefore, we are unconvinced that introducing the reports from other cases at trial would have led to a reasonable probability of a different outcome. *See Strickland*, 466 U.S. at

694 ("A reasonable probability is a probability sufficient to undermine confidence in the outcome."). Brown thus has failed to show that relief is warranted as to this ineffective-assistance claim.

Brown next argues that trial counsel should have presented expert testimony on DNA, cell phone data, and footwear impressions. Counsel noticed experts on DNA and cell phone data but did not call the experts at trial. Substantial evidence does not support the district court's finding that counsel strategically decided not to present such expert testimony. In particular, counsel testified at the evidentiary hearing and could not recall specifically why the experts were not called to testify at trial. And no other evidence reflects a strategic decision in this regard. Brown, however, has not shown prejudice because Brown has not shown how an expert on these matters would repudiate the State's DNA and cell-phone-data evidence. Simply bolstering the defense arguments about the reliability of State's evidence is insufficient to undermine our confidence in the jury's verdict. Nor has Brown identified a specific footwear-impression expert who would have testified or that expert testimony on this matter would have benefited the defense theory of the case. *See Moore v. State*, 134 Nev. 262, 268, 417 P.3d 356, 362 (2018) (recognizing that "bare assertions are insufficient to warrant relief"). We therefore conclude that Brown has not shown that relief is warranted as to this ineffective-assistance claim.

Brown next argues that trial counsel should have argued and requested a jury instruction on afterthought robbery. According to Brown, the jury would not have convicted under a theory of felony murder if presented with the option of determining that the killing preceded the intent to rob the victim. Strategic decisions, such as what defenses to develop, witnesses to call, or objections to raise, rest with counsel, *Rhyne v.*

State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002), and "will be virtually unchallengeable absent extraordinary circumstances," *Lara v. State*, 120 Nev. 177, 180, 87 P.3d 528, 530 (2004) (internal quotation marks omitted). Brown has not shown such circumstances. Counsel testified that an afterthought-robbery theory was inconsistent with the defense strategy of denying any involvement. That assessment is not objectively unreasonable. Further, Brown has not shown prejudice, in light of the guilty verdict for conspiracy to commit robbery. In convicting Brown of that offense, the jury found that Brown had agreed to rob the victim beforehand and therefore entered the altercation with the necessary intent to support a conviction for felony murder. *See* NRS 200.030(1)(b) (murder committed in the perpetration or attempted perpetration of a robbery is first-degree felony murder); *Nay v. State*, 123 Nev. 326, 333, 167 P.3d 430, 435 (2007) ("Robbery does not support felony murder where the evidence shows that the accused kills a person and only later forms the intent to rob that person."). We therefore conclude that Brown has failed to show that relief is warranted on this ineffective-assistance claim.

Brown next argues that trial counsel should have objected to testimony from the victim's girlfriend as irrelevant, inflammatory, and unfairly prejudicial. In describing the course of events that occurred the day the victim was killed, the victim's then-pregnant girlfriend noted two doctor's appointments and that her infant son was with her that day. The medical-appointment and infant-son comments did not tend to establish any material fact. Accordingly, they were irrelevant and thus inadmissible. *See* NRS 48.015 ("'[R]elevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence."):

NRS 48.025(2) (providing that irrelevant evidence is inadmissible). But the comments were fleeting, at the beginning of an eight-day guilt phase, and neither materially inflammatory nor prejudicial. And an objection would have only called the jury's attention to the irrelevant evidence. In these circumstances, Brown has not shown that trial counsel's failure to object was objectively unreasonable or prejudiced the defense. We therefore conclude that Brown has failed to show that relief is warranted on this ineffective-assistance claim.

Brown next argues that trial counsel should have objected to evidence of cannabis found in his residence as inadmissible other-act evidence. Consistent with its theory that Brown and the coconspirator arranged to purchase a large quantity of cannabis from the victim with the intent of robbing the victim, the State implied that the cannabis located at Brown's residence was part of the proceeds of the crime and thus constituted res gestae. We disagree that the evidence was res gestae, given that the State could "present a full and accurate account of the crime" without it. *See Bellon v. State*, 121 Nev. 436, 444, 117 P.3d 176, 181 (2005). The small quantity of cannabis, scale, and packaging materials found in Brown's residence were of little probative value in light of the State's theory of the case and where the State elicited testimony at trial that a large quantity of cannabis in very large bags had been stolen from the victim. We thus conclude that Brown demonstrated deficient performance.

But we are not convinced that excluding this evidence would have led to a reasonable probability of a different outcome in light of the other evidence connecting Brown to the killing. Thus, Brown failed to demonstrate prejudice. We therefore conclude that Brown has failed to show that relief is warranted as to this ineffective-assistance claim.

Brown next argues that trial counsel should have presented eyewitness testimony that would offer a different account of events than the State's witnesses. Brown identifies police reports by witnesses Kohler, Wallace, and Reed that differed from the State's witnesses' accounts as to the killer's appearance and the direction the killer went after shooting the victim. In closing argument, however, counsel highlighted the State's failure to call more than two eyewitnesses and the investigating detective's failure to follow up on discrepancies in the witnesses' reports. Counsel thus made a strategic decision to emphasize these shortcomings. Brown has not shown extraordinary circumstances justifying a challenge to that decision, particularly as contesting the minor discrepancies between the accounts would merely distract from and not strengthen the defense theory that Brown was not at the scene. Further, Brown has not shown prejudice, as neither the State's witnesses nor Brown's other eyewitnesses saw the killer well enough to identify him. The possibility that the defense could further attack the State's evidence to a minor degree in this regard does not undermine our confidence in the jury's verdict. We therefore conclude that Brown has failed to show that relief is warranted as to this ineffective-assistance claim.

Brown next argues that appellate counsel should have challenged the jury instruction on flight. Evidence was presented that Brown went to Georgia after the killing, engaged in a car chase while pursued by an unmarked police car, and attempted to hide in a residence before being arrested. The evidence thus supported an inference of flight. *See Rosky v. State*, 121 Nev. 184, 199, 111 P.3d 690, 699-700 (2005) ("[U]nder Nevada law, a district court may properly give a flight instruction if the State presents evidence of flight and the record supports the

conclusion that the defendant fled with consciousness of guilt and to evade arrest."). Although Brown offered another explanation for his conduct that was inconsistent with flight, that gave rise to a credibility determination for the jury and did not preclude a flight instruction. *See McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) ("[I]t is the jury's function, not that of the court, to assess the weight of the evidence and determine the credibility of witnesses."). We therefore conclude that Brown has failed to show that relief is warranted as to this ineffective-assistance claim.

Brown next argues that appellate counsel should have challenged emotional outbursts by the victim's family. On separate occasions, the victim's family cried audibly, commented in endorsement of the detective's testimony, audibly moved in and out of the courtroom, and discussed the case among themselves while riding in an elevator with a juror who did not engage with them. Court staff and the prosecutor admonished the family to be quieter in the courtroom after the in-court instances. The court questioned the juror who was in the elevator and concluded that the juror credibly represented that the family's comments would not affect her verdict but reassigned the juror to serve as an alternate. The defense later requested that the family be excluded from the courtroom to avoid prejudicing Brown. In rejecting this request, the trial court found that the expressions of emotion did not rise to that threshold, did not prejudice Brown, and were not deliberate, egregious, or overly distracting. In light of the trial court's findings that the family members' conduct did not impede the fairness of the trial, Brown has failed to show that an appellate claim on this ground would have succeeded because the conduct was not egregious enough to be prejudicial. *See Pressley v. State*, 770 So. 2d 115, 141 (Ala. Crim. App. 1999) (recognizing that the trial judge

was better situated than an appellate court to determine whether weeping spectators impaired the defendant's right to a fair and impartial trial); *State v. Madrid*, 259 P.2d 1044, 1046 (Idaho 1953) (recognizing that a trial court must ensure "that public sentiment is not expressed in the presence of the jury in such a manner that it might influence the verdict and thus operate to deny the accused his right to a fair and impartial trial"), *abrogated on other grounds by State v. Smoot*, 590 P.2d 1001, 1009 (Idaho 1978); *see also Johnson v. State*, 122 Nev. 1344, 1358-59, 148 P.3d 767, 777 (2006) (concluding that relief on appeal was unwarranted where the victim's brother passed out during the trial when the crime scene was depicted and the court admonished the jury). As Brown has failed to show that an appellate challenge would have succeeded, he has failed to show that appellate counsel performed deficiently in omitting it or that he was prejudiced by its absence. We therefore conclude that Brown has failed to show that relief is warranted as to this ineffective-assistance claim.

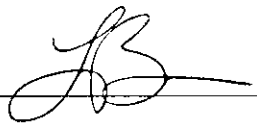
Lastly, Brown argues that appellate counsel should have raised a claim of prosecutorial misconduct because the prosecutor disparaged the defense. Brown highlights several comments to which counsel objected in the State's closing and rebuttal arguments. The trial court sustained counsel's objections to most of the instances Brown identifies. An appellate challenge to any of those instances of prosecutorial misconduct would not have been successful given that this court would have presumed that the jury followed the trial court's instructions to disregard any matter to which an objection was sustained. *See Summers v. State*, 122 Nev. 1326, 1333, 148 P.3d 778, 783 (2006) (stating presumption that a jury follows the court's instructions); *Valdez v. State*, 124 Nev. 1172, 1192, 196 P.3d 465, 478 (2008) (concluding that a defendant was not prejudiced by an improper comment

where the district court sustained an objection to it "and instructed the jury to disregard the comment"). The trial court overruled counsel's objection to the prosecutor's characterization of Brown's testimony as a "wild story." But an appellate challenge to that comment also would have failed. The comment was a permissible inference from the evidence that Brown's account was not credible, and the comment did not disparage Brown or defense counsel and did not shift the jury's focus from its role of evaluating the credibility of the trial evidence to the prosecutor's personal views. *See Klein v. State*, 105 Nev. 880, 882 n.1, 883-84, 784 P.2d 970, 972 & n.1, 973 (1989) (concluding that argument regarding the veracity of witness testimony was a permissible inference from the evidence where the case required the jury to determine whether the State's witnesses or the defendant's alibi witnesses were more credible). Brown thus failed to show deficient performance or prejudice. We therefore conclude that Brown has failed to show that relief is warranted as to this ineffective-assistance claim.

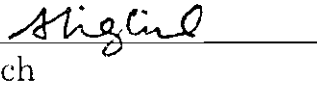
Having concluded that Brown has failed to show that relief is warranted, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Herndon



_____, J.
Bell



_____, J.
Stiglich

cc: Hon. Tierra Danielle Jones, District Judge
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Eighth District Court Clerk