

IN THE SUPREME COURT OF THE STATE OF NEVADA

ERIC CHU,  
Appellant,  
vs.  
WILLIAM GITTERE, WARDEN OF ELY  
STATE PRISON, AND THE STATE OF  
NEVADA,  
Respondents.

No. 89978

**FILED**

JAN 15 2026

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.

Appellant Eric Chu was convicted of first-degree murder for killing his 10-month-old daughter, J.C. This court affirmed the judgment of conviction on direct appeal. *Chu v. State*, No. 83824, 2023 WL 3053110 (Nev. Apr. 21, 2023) (Order of Affirmance). Chu argues that the district court erred in denying the postconviction habeas petition, which alleged numerous claims of ineffective assistance of trial and appellate counsel, without conducting an evidentiary hearing. We disagree and affirm.

To demonstrate ineffective assistance of counsel, a petitioner must show that counsel's deficient performance fell below an objective standard of reasonableness, and that the prejudice from the deficient performance creates a reasonable probability that there would have been a different outcome absent counsel's errors. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *see also Warden v. Lyons*, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the *Strickland* test); *Kirksey v. State*, 112

Nev. 980, 998, 923 P.2d 1102, 1113-14 (1996) (applying the *Strickland* test to claims of ineffective assistance of appellate counsel). For purposes of the deficiency prong, counsel is strongly presumed to have provided adequate assistance and exercised reasonable professional judgment in all significant decisions. *Strickland*, 466 U.S. at 690. “With respect to the prejudice prong, [a] reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Johnson v. State*, 133 Nev. 571, 576, 402 P.3d 1266, 1273 (2017) (quoting *Strickland*, 466 U.S. at 694). Both components of the inquiry must be shown, *Strickland*, 466 U.S. at 697, and the petitioner must demonstrate the underlying facts of his or her claims by a preponderance of the evidence, *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004).

An evidentiary hearing is required when the petitioner raises claims supported by specific facts that are not belied by the record and that, if true, would entitle the petitioner to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). We defer to the district court’s factual findings that are 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).

*Failure to retain expert medical witness*

Chu first argues that trial counsel should have retained and presented evidence by a medical expert to rebut the State’s multiple witnesses regarding the cause of J.C.’s injuries. Chu contends that an expert witness was necessary to challenge the State’s characterization of a rib fracture J.C. sustained weeks to months before her death as indicative of child abuse. In support of this argument, Chu provided a report by Dr.

Robert Rothfeder, an emergency physician who evaluated the age of the rib fracture and opined that it did not contribute to J.C.'s death.

Contrary to Chu's arguments, trial counsel was not obligated to introduce expert evidence simply because the State presented multiple expert witnesses. *See Harrington v. Richter*, 562 U.S. 86, 111 (2011) ("*Strickland* does not enact Newton's third law for the presentation of evidence, requiring for every prosecution expert an equal and opposite expert from the defense. In many instances cross-examination will be sufficient to expose defects in an expert's presentation."). Dr. Rothfeder's findings were generally consistent with the testimony counsel elicited from the State's experts on cross-examination, including that the rib fracture did not cause J.C.'s death. It is therefore unlikely that testimony from a defense expert would have impacted the outcome of the trial. Because Chu failed to demonstrate deficient performance or prejudice, the district court did not err in denying this claim without conducting an evidentiary hearing.

*Failure to challenge admission of other act evidence*

Chu argues that trial and appellate counsel failed to adequately challenge testimony about the preexisting rib fracture as improperly admitted other-act evidence under NRS 48.045(2). We disagree because the rib fracture is evidence of the continuing offense of child abuse. *See Rimer v. State*, 131 Nev. 307, 319, 352 P.3d 697, 707 (2015) (recognizing that child abuse frequently occurs as a pattern of behavior, rather than a single incident, and is thus a continuing crime).

The State here alleged two theories of first-degree murder, including that Chu killed J.C. during the commission of child abuse. *See* NRS 200.030(1)(b) (child-abuse felony murder). Expert testimony established that J.C.'s rib injury was the type of fracture usually associated

with a child being grabbed or shaken. After J.C.'s death, medical providers identified signs of both old and new bleeding in her brain. Within this context, the rib fracture was evidence of a pattern of abuse relevant to whether Chu was engaged in felony child abuse when J.C. suffered the injuries that killed her. Because the rib fracture was not evidence of "other crimes, wrongs[,] or acts," NRS 48.045(2), Chu thus failed to demonstrate deficient performance or a reasonable probability of a different outcome had counsel challenged the rib fracture evidence on this basis. *See Ennis v. State*, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006) (stating that counsel is not ineffective for failing to make futile objections). We therefore conclude that the district court did not err in denying this claim without conducting an evidentiary hearing.

*Failure to challenge charging timeframe in indictment*

Chu asserts that trial counsel should have moved to dismiss the indictment because it contained an overbroad charging timeframe. On direct appeal, we addressed the issue of whether the indictment provided sufficient notice, concluding that it "clearly charge[d] the offense for which Chu was convicted." *Chu*, 2023 WL 3053110, at \*1. Nonetheless, Chu asserts that the standard of review would have been less demanding had trial counsel challenged the indictment before trial.

An indictment "must be a plain, concise and definite written statement of the essential facts constituting the offense charged." NRS 173.075(1). Unless time is an element of the charged offense, the State is not required to charge an exact date and may provide a date range for when the alleged crime occurred. *Wilson v. State*, 121 Nev. 345, 368-69, 114 P.3d 285, 301 (2005). Here, the indictment alleged that Chu committed first-degree murder "on or between March 18, 2017[,] and January 23, 2018,"

encompassing all but one day of J.C.'s lifespan. The State alleged in part that Chu committed felony murder during the commission of child abuse. Medical analysis of J.C.'s body after her death indicated signs of both new and old brain bleeding. Given the possibility that child abuse occurred on multiple occasions over a period of months, the State had reason not to narrow the charging timeframe to the period of days just before J.C.'s death. *Cf. Cunningham v. State*, 100 Nev. 396, 400-01, 683 P.2d 500, 502 (1984) (affirming conviction for sexual assault and lewdness charged within a two-year window due to child victim's inability to provide more specific offense dates).

Furthermore, Chu had notice of the factual allegations against him and has not shown he was prevented from defending himself against the charged offenses. Therefore, Chu has not demonstrated deficient performance or prejudice, and the district court did not err in denying this claim without conducting an evidentiary hearing.

*Failure to challenge venire members for bias*

Chu argues that trial and appellate counsel should have challenged the impaneling of two jurors due to their statements evincing bias during voir dire. A potential juror will be dismissed pursuant to a challenge for cause when "[c]onduct, responses, state of mind, or other circumstances reasonably lead the court to conclude the juror's views would prevent or substantially impair the performance of his or her duties as a juror in accordance with his or her instruction and oath." NRCrP 17(6)(N); *see also* NRS 175.036. Removal for cause is not required, however, when a potential juror "unequivocally state[s] that they [can] put aside their previous opinions and impartially reach a verdict." *Thompson v. State*, 111 Nev. 439, 442, 894 P.2d 375, 377 (1995). When reviewing whether a juror

showed bias, the juror's statements must be considered as a whole. See *Weber v. State*, 121 Nev. 554, 581, 119 P.3d 107, 125 (2005), *overruled on other grounds by Farmer v. State*, 133 Nev. 693, 405 P.3d 114 (2017).

Chu argues that counsel should have challenged Juror 589, who informed the court that he grew up in an abusive household and would have a difficult time treating an abuser fairly. But during individual voir dire, Juror 589 confirmed that he would be able to follow the law provided by the court, be fair to both sides, and base his verdict solely on the evidence presented. Despite this background of abuse, the totality of Juror 589's responses demonstrate that he was not biased and there was no basis for dismissal for cause. See *United States v. Daly*, 716 F.2d 1499, 1507 (9th Cir. 1983) (acknowledging that prospective juror's initial indication of uncertainty as to ability to be impartial did not indicate bias where juror ultimately concluded he could decide the case on the evidence), *abrogated on other ground by, United States v. Rojas-Contreras*, 474 U.S. 231 (1985). We therefore conclude that Chu has failed to demonstrate deficient performance by trial or appellate counsel with respect to this juror.

Additionally, Chu asserts that trial and appellate counsel were ineffective for failing to challenge Juror 459 because this juror had a personal friendship with the Clark County Sheriff and indicated he would probably deem members of law enforcement to be more credible than other witnesses. Chu further argues that Juror 459 never unequivocally confirmed his impartiality. After considering the entire context of Juror 459's responses, we conclude Chu has not demonstrated that this juror's answers would have supported removal for cause. Juror 459 affirmed that he could base his verdict solely on the evidence presented; he would wait to form an opinion until he heard all evidence; he would hold the State to its

burden; and he could be fair to both sides. Furthermore, the record shows that the law enforcement testimony in this case was procedural in nature and contributed little to the central issue of whether J.C. could have been injured by accidental means. Because Chu failed to demonstrate deficient performance or prejudice, the district court did not err in denying this claim without conducting an evidentiary hearing.

*Failure to challenge prosecutorial misconduct*

Chu argues that trial and appellate counsel should have challenged prosecutorial misconduct. Specifically, during rebuttal argument, the prosecutor stated that the jury should “tell the Defendant . . . that the ladies and gentlemen of Clark County are not going to allow a child to be murdered under any circumstances.” Even if counsel’s performance was deficient, Chu has failed to demonstrate that this single comment during a five-day trial impacted the jury’s decision or that such a challenge would have been successful on appeal. *See Coleman v. State*, 111 Nev. 657, 665, 895 P.2d 653, 658 (1995) (considering the frequency and intensity of a prosecutor’s improper statements when determining prejudicial effect). Additionally, Chu has failed to demonstrate prejudice given the overwhelming evidence of his guilt. *See King v. State*, 116 Nev. 349, 356, 998 P.2d 1172, 1176 (2000) (noting that prosecutorial misconduct may be harmless when there is overwhelming evidence of guilt). Therefore, the district court did not err in denying this claim without conducting an evidentiary hearing.


*Cumulative error*

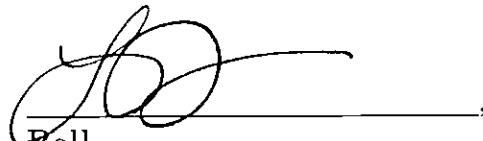
Finally, Chu argues that cumulative errors by trial and appellate counsel warrant relief. Even assuming that multiple instances of deficient performance can be considered cumulatively for purposes of

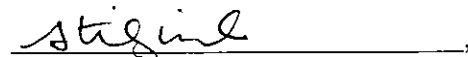
proving prejudice, *see McConnell v. State*, 125 Nev. 243, 259 n.17, 212 P.3d 307, 318 n.17 (2009), Chu demonstrated, at most, a single instance of deficient performance in trial counsel's failure to object to the prosecutor's comment during rebuttal. Thus, the district court did not err in denying this claim. *See United States v. Allen*, 269 F.3d 842, 847 (7th Cir. 2001) ("If there are no errors or a single error, there can be no cumulative error.").

Having concluded that Chu failed to demonstrate relief is warranted, we

ORDER the judgment of the district court AFFIRMED.

  
Parraguirre, J.

  
Bell, J.

  
Stiglich, J.

cc: Hon. Tierra Danielle Jones, District Judge  
Attorney General/Carson City  
Clark County District Attorney  
Nevada State Public Defender's Office  
Eighth District Court Clerk