

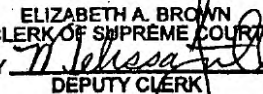
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARK PICOZZI,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 89720-COA

**FILED**

**MAR 12 2026**

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Mark Picozzi appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on June 21, 2018, and a supplement filed on May 15, 2022. Eighth Judicial District Court, Clark County; Christy L. Craig, Judge.

Picozzi was convicted in 2016, pursuant to a jury verdict, of two counts of impersonation of an officer, two counts of oppression under color of law, four counts of sexual assault, three counts of open or gross lewdness, one count of robbery, and one count of battery with the intent to commit sexual assault. For the crimes, Picozzi arranged separate meetings with two escorts, J.S. and B.W., in Las Vegas. In the encounter with J.S., Picozzi impersonated a police officer to rob her and coerce sexual contact. In the encounter with B.W., Picozzi impersonated a police officer to coerce sexual contact. At trial, the State produced other act evidence by calling, among other witnesses, an escort identified as E.E. and a massage therapist identified as N.T. Both witnesses testified that Picozzi had solicited their services in New Jersey and then impersonated a police officer to rob them and attempt to coerce them into sexual contact.

In his defense, Picozzi testified at trial that he has a distinctive birthmark on the head of his penis that is only apparent when he is erect and that both victims were lying about the sexual assaults because they testified they did not observe anything remarkable about his penis. Picozzi also testified that J.S., New Jersey witnesses E.E. and N.T., and at least one other woman were complicit in a multistate, multi-year conspiracy to extort him and his parents. Further, Picozzi alleged that he was previously acquainted with B.W., that his sexual contact with her was consensual, and that she only accused him of sexual assault after he refused her demand to transport drugs from California to Las Vegas.

On appeal, Picozzi argues the district court erred by denying his claims that trial counsel was ineffective. To demonstrate ineffective assistance of trial counsel, a petitioner must show counsel's performance was deficient in that it fell below an objective standard of reasonableness and 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*). Both components of the inquiry must be shown, *Strickland*, 466 U.S. at 687, 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, Picozzi claimed trial counsel was ineffective for failing to call numerous witnesses. He claimed trial counsel should have called four

New Jersey law enforcement officers he believed would corroborate his allegations about being the target of a multistate, multi-year extortion conspiracy. Picozzi also alleged counsel should have called the then-boyfriend of J.S. because his testimony would have highlighted inconsistencies in J.S.'s statements to Las Vegas law enforcement. Finally, he claimed counsel should have called a woman with whom he was acquainted who would have allegedly corroborated his assertion that he knew B.W. prior to the date of the incident involving her.

Picozzi asserted trial counsel's decision not to call these witnesses was predicated on counsel's misinterpretation of the trial court's pretrial order granting the State's request to introduce other act evidence. In that order, the trial court stated it "would consider prohibiting the State from introducing the prior act evidence until after the presentation of its other evidence and ruling then as to its propensity to show intent, common scheme, and knowledge" if Picozzi intended to passively defend the case. However, the trial court's order also provided the other act evidence was independently admissible on other grounds. Trial counsel incorrectly interpreted the trial court's order to mean that the other act evidence would not come in if he presented a passive defense. *See Picozzi v. State*, No. 71165, 2018 WL 3000493, at \*2 (Nev. June 8, 2018) (Order of Affirmance) (concluding that "Picozzi's interpretation of the district court's ruling was unreasonable").

The district court found that trial counsel's representation was deficient because his decision to not call the law enforcement witnesses was predicated on his "unreasonable interpretation" of the trial court's pretrial order and that his failure to call the witnesses "was a significant error" impacting the defense because they "had relevant testimony that possibly

could have corroborated [Picozzi's] complex and hard-to-follow story of harassment and extortion that predated the incidents at issue in this case." The district court further found, however, that Picozzi failed to show prejudice.

While we disagree with the district court's determination that trial counsel's representation was deficient, we nevertheless affirm the court's denial of relief on this claim. *See Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (holding that a correct result will not be reversed simply because it is based on the wrong reason).

Counsel must adequately investigate a defendant's case to satisfy the objective standard of reasonableness. *Doleman v. State*, 112 Nev. 843, 848, 921 P.2d 278, 280 (1996). "A strategy decision, such as who should be called as a witness, is a tactical decision that is virtually unchallengeable absent extraordinary circumstances." *Id.* at 848, 921 P.3d at 280-81 (internal quotation marks omitted). Although trial counsel's decision to pursue a passive defense was predicated on an incorrect interpretation of the trial court's pretrial order, the record nevertheless reflects that trial counsel conducted reasonable investigation and made a reasonable strategic decision to not call the law enforcement witnesses.

Trial counsel testified at the evidentiary hearing on Picozzi's postconviction habeas petition that he did not call the law enforcement witnesses because (1) the police reports prepared by the witnesses did not corroborate Picozzi's extortion conspiracy defense; (2) the law enforcement witnesses would be adverse to Picozzi; (3) one of the officers previously testified against Picozzi in a prior proceeding in New Jersey; and (4) counsel was able to elicit testimony at trial from a different officer involved in N.T.'s case and from N.T. herself regarding her reluctance to cooperate in law

enforcement's investigation and pursue charges against Picozzi. The record also reflects that trial counsel conducted adequate investigation regarding whether to call J.S.'s boyfriend and made a reasonable strategic decision not to call him as a witness.

Additionally, the record indicates trial counsel conducted reasonable investigation and made a reasonable strategic decision to not call the woman who Picozzi alleged would corroborate his allegation that he knew B.W. prior to the assault. Trial counsel testified that the woman refused to speak to a defense investigator. More crucially, trial counsel testified that upon reviewing recorded calls Picozzi made to the escort agency B.W. worked for, he determined that Picozzi had lied about previously knowing B.W. Therefore, we conclude Picozzi failed to demonstrate trial counsel's performance was deficient in failing to call the identified witnesses.

Furthermore, as the district court found, the law enforcement witnesses who testified at the evidentiary hearing "did not substantiate or corroborate Petitioner's rather confusing conspiracy-theory-riddled testimony and, at times, was in opposite of Petitioner's trial testimony." Picozzi also failed to demonstrate a reasonable probability of a different outcome if trial counsel had called J.S.'s boyfriend or the woman who allegedly could have corroborated that Picozzi was acquainted with B.W. Thus, Picozzi failed to demonstrate prejudice. Accordingly, we conclude the district court did not err by denying this claim.

Second, Picozzi claimed trial counsel was ineffective for eliciting harmful testimony from the detective who searched his vehicle following his arrest and from J.S. The detective testified he found a bag in Picozzi's vehicle which contained duct tape, condoms, scissors, and latex gloves, and

trial counsel elicited testimony from the detective that he would refer to the assortment of items as a "rape kit." As for J.S., she testified that, before Picozzi sexually assaulted her, he pulled her by the wrist but did not force her. On cross-examination, trial counsel impeached J.S. with testimony from the preliminary hearing and her statement to the police; in both statements, J.S. alleged Picozzi used a greater quantum of force to carry out the assault.

The district court found that trial counsel's performance was deficient because the information trial counsel elicited from the detective and J.S. suggested Picozzi was willing to use greater physical force or restraint than what the testimony showed he used to assault the victims and that eliciting testimony from the detective about a rape kit was "qualitatively different than the non-violent coercion evidence" admitted at trial. Notwithstanding this finding of deficiency, the district court found Picozzi failed to establish a reasonable probability that the result of trial would have been different given the overwhelming evidence presented at trial and Picozzi's "rambling, inconsistent versions of events."

The record supports the district court's conclusions. While the testimony trial counsel elicited from the detective and J.S. would have tended to lead the jury to believe that Picozzi used a greater quantum of force in assaulting the victims than the evidence admitted at trial, the evidence overwhelmingly established Picozzi's guilt. Accordingly, we conclude the district court did not err by denying this claim.

Third, Picozzi claimed trial counsel was ineffective for failing to have a physician examine his allegedly distinct penis. The district court noted that defense counsel is "strongly presumed to have provided adequate assistance and exercised reasonable professional judgment in all significant

decisions,” and found that Picozzi failed to establish either that trial counsel’s representation was deficient or a reasonable probability of a different outcome at trial had counsel had a physician perform an examination.

The record supports the district court’s findings. Trial counsel testified that he filed a pretrial motion for authorization to have a physician examine Picozzi in jail. Although the trial court granted the motion, trial counsel opted to go to the jail with his investigator to visually inspect Picozzi’s penis rather than retain a physician. Trial counsel testified that the investigator visually examined Picozzi’s penis and found it “unremarkable.” Picozzi argued the investigator’s visual examination of his penis was inadequate because the allegedly distinctive birthmark is only apparent when he is erect, and he was flaccid at the time of the investigator’s inspection. Picozzi’s assertion that a physician was needed to ascertain the unique characteristics of his penis contradicts his claim that the victims—neither of whom were physicians—would have noticed those characteristics if he had assaulted them. Further, beyond his own self-serving statements, Picozzi did not present additional evidence to support this claim. We conclude Picozzi failed to demonstrate counsel’s performance was deficient or a reasonable probability of a different outcome but for counsel’s purported error. Accordingly, we conclude the district court did not err by denying this claim.

Fourth, Picozzi claimed trial counsel was ineffective for failing to object to the State’s introduction of other act evidence that his car was “cold plated” (i.e., the plate on the car did not match the vehicle to which the license plate was registered). At trial, the detective who searched Picozzi’s car testified that the license plate on the back of the car did not

match the vehicle and that he found a Nevada license plate in the trunk that also was not associated with the vehicle. Picozzi contended trial counsel's failure to object to this testimony led the jury to believe that Picozzi had stolen the license plates.

The district court found that trial counsel's failure to object to the license plate evidence was a reasonable strategic decision. The district court also found Picozzi failed to establish that, but for trial counsel's errors, there was a reasonable probability of a different outcome at trial. The record supports the district court's findings. At the evidentiary hearing, trial counsel testified he did not object to this line of testimony because he wanted to avoid drawing the jury's attention to this evidence. Thus, Picozzi failed to establish trial counsel's performance was deficient. Further, during his cross-examination of the detective, trial counsel elicited an admission that there was no indication that either plate had been stolen, thereby mitigating any adverse inference that Picozzi had committed a different crime than the ones for which he was standing trial. Picozzi therefore failed to establish that, but for trial counsel's alleged error, there was a reasonable probability the result of trial would have been different. Accordingly, we conclude the district court did not err by denying this claim.

Finally, Picozzi claims the district court erred in denying his claims that trial counsel was ineffective for failing to file a motion to suppress the evidence law enforcement found in his vehicle and failing to obtain video surveillance from the hotel where his car was parked at the time of law enforcement's search. Picozzi alleged that after he was placed under arrest, he saw members of the Las Vegas Metropolitan Police Department's Criminal Apprehension Team (CAT) enter and search his vehicle before obtaining a search warrant and that he informed trial counsel

of this alleged warrantless search. Picozzi further alleged trial counsel failed to make any effort to obtain video surveillance that would have corroborated his observation of CAT members illegally searching his car.

The district court found there was no factual basis to support Picozzi's claim that CAT members illegally searched his car other than his own self-serving testimony and further found Picozzi's claim about the hotel video surveillance was belied by trial testimony that no such surveillance video existed. The district court therefore found that Picozzi failed to establish either that trial counsel's performance was deficient or that he was prejudiced by counsel's alleged failings.

We disagree in part with the district court's factual findings regarding the video surveillance but affirm the court's decision to deny this claim. *Wyatt*, 86 Nev. at 298, 468 P.2d at 341. At trial, a detective testified that she took Picozzi to her vehicle after his arrest and was with him for the entire time of his detainment outside the hotel prior to transport. The detective testified that Picozzi's car was not visible from where her vehicle was parked. The detective reiterated this testimony when trial counsel recalled her during the defense's case-in-chief, testifying that she did not have a view of any other vehicles the entire time she and Picozzi were in her vehicle. Thus, the record belies Picozzi's claim that he was able to see the CAT members searching his vehicle.

As to the district court's finding that the trial testimony indicated no such surveillance video existed, the trial testimony indicates that law enforcement was not aware of whether such surveillance video existed. The district court's finding that the record established video surveillance of the car search did not exist is therefore not supported by

substantial evidence because this determination was never made by law enforcement.

However, given the trial testimony establishing the search was lawfully conducted pursuant to a search warrant, the fact that trial counsel did not attempt to either move to suppress the evidence from the search or obtain video surveillance of the search does not support an inference that trial counsel's performance was deficient or that Picozzi was prejudiced by trial counsel's purported failures.<sup>1</sup> Thus, we conclude the district court did not err by denying this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Bulla

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Westbrook

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<sup>1</sup>Picozzi also speculates that officers may have illegally entered his car to obtain the vehicle identification number prior to obtaining a search warrant. The record below—specifically, the telephonic search warrant application and trial testimony—belies Picozzi's speculation. The record establishes that upon his arrest, Picozzi described his vehicle to the officers. After locating what they believed to be Picozzi's car, officers verified its ownership by researching the vehicle identification number that was visible through the windshield.

cc: Hon. Christy L. Craig, District Judge  
Gaffney Law  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk