

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TREVOR JAY SARNOWSKI,  
Appellant,  
vs.  
JEREMY BEAN, WARDEN; JAMES  
DZURENDA, WARDEN AND THE  
STATE OF NEVADA,  
Respondents.

No. 89850-COA

FILED

JUN 03 2026

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *Elizabeth A. Brown*  
DEPUTY CLERK

*ORDER AFFIRMING IN PART, REVERSING IN PART AND  
REMANDING*

Trevor Jay Sarnowski appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on June 10, 2021, and supplement postconviction habeas petition filed on January 10, 2024. Eighth Judicial District Court, Clark County; Mary Kay Holthus, Judge.

Sarnowski was convicted of sexual crimes against his daughter, V.S., and her friend, K.B. Sarnowski was convicted, pursuant to a jury verdict, of two counts of lewdness with a minor under the age of 14, one count of sexual assault of a child under the age of 14, two counts of use of a minor in the production of pornography, four counts of statutory sexual seduction, three counts of sexual assault of a child under the age of 16, eight counts of open or gross lewdness, one count of incest, and one count of child abuse and neglect.

Sarnowski filed a timely postconviction habeas petition and was appointed counsel, who filed a supplement petition. The district court denied the petition and supplement. On appeal, Sarnowski argues the district court erred by denying his claims that trial counsel was ineffective without first conducting an evidentiary hearing. 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. 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). To warrant an evidentiary hearing, a petitioner must raise claims supported by specific factual allegations that are not belied by the record and, if true, would entitle the petitioner to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

First, Sarnowski claimed counsel was ineffective for arguing a defense that was inconsistent with Sarnowski's desire to maintain his innocence. Relying in part on *McCoy v. Louisiana*, 584 U.S. 414 (2018), he claimed counsel conceded the statutory sexual seduction counts and argued consent as a defense to the sexual assault charges rather than arguing Sarnowski was innocent. *McCoy* holds that an attorney may not concede a

defendant's guilt of a charged crime where the defendant expressly objects or insists on maintaining his or her innocence. *Id.* at 425. "Courts generally find a concession of guilt only when it is explicit." *State v. Watson*, No. 78780, 2021 WL 5903950, at \*1 (Nev. Dec. 13, 2021) (Order of Reversal and Remand). In *Watson*, the supreme court did not find an explicit concession where counsel stated, "At most – at most, though I don't agree entirely, at most, perhaps you have second-degree murder . . ." and made other similar statements during closing. *Id.* at \*2. The supreme court determined this was not an explicit concession because counsel did not opine that Watson was guilty or implore the jury to find him guilty; rather, counsel acknowledged the state of the evidence and attacked the credibility of the witnesses, challenged the State's theory of the killing, and maintained that the nature and amount of evidence recovered did not support a conviction for first-degree murder. *Id.* Thus, because there was no concession, Watson was not entitled to relief based on *McCoy*. *Id.*

Similarly, here, counsel did not opine that the jury should find Sarnowski guilty of statutory sexual seduction. Instead, counsel stated, "I would submit to you what it adds up to is at most Count 7 and Count 9, statutory sexual seduction." Counsel further argued that the State did not prove V.S. did not consent to the sexual activity, that V.S. did not appear at trial, and that the State did not demonstrate where and when the videos and photographs were made. Thus, counsel attacked the quantum of evidence rather than exclusively arguing consent or conceding Sarnowski's guilt. Because counsel did not explicitly concede Sarnowski's guilt, we conclude Sarnowski failed to demonstrate counsel's performance was

deficient. Accordingly, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Second, Sarnowski claimed counsel was ineffective for failing to object to the State's amended indictment because the State unnecessarily changed the timeline for some of the charges. Time is not an essential element of the charges of sexual assault of a minor and lewdness with a minor, and the State was not required to allege an exact date. *See Cunningham v. State*, 100 Nev. 396, 400, 683 P.2d 500, 502 (1984). Further, the State reduced numerous charges regarding V.S., and the date ranges for the resulting amended indictment conformed to the original date ranges alleged in the numerous charges that were dismissed. Thus, Sarnowski failed to demonstrate counsel's performance was deficient or a reasonable probability of a different outcome had counsel objected. Therefore, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.<sup>1</sup>

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<sup>1</sup>Sarnowski also appears to allege the jury instructions should not have included age information in them because sexual assault only has two elements and neither of them relate to age. While Sarnowski generally alleged that counsel "failed to ensure the jury was instructed on elements of all the crimes," Sarnowski failed to allege specific facts not belied by the record that, if true, would entitle him to relief. And we decline to consider the more specific facts alleged on appeal. *Cf. See State v. Wade*, 105 Nev. 206, 209 n.3, 772 P.2d 1291, 1293 n.3 (1989) (declining to consider claims raised for the first time on appeal). Further, to the extent Sarnowski raised this claim independent from his ineffective assistance of counsel claim, this claim was procedurally barred because it could have been raised on direct appeal. *See* NRS 34.810(1)(b)(2). Sarnowski failed to allege good cause or prejudice to overcome the procedural bar. *See* NRS 34.810(1)(b), (4). Thus,

Third, Sarnowski claimed counsel was ineffective for failing to object to the State's amended indictment because the State's amendments to the indictment caused the offenses to be different than those charged in the original indictment and those changes affected his substantial rights.<sup>2</sup> Sarnowski argues counsel should have objected to the amendments to counts 4, 5, 7, 8, 9, 10, 11, 23, 24, 25, and 27.<sup>3</sup>

The trial court may permit an indictment or information to be amended at any time before a verdict or finding if no additional or different offense is charged and if the substantial rights of the defendant are not prejudiced. *Shannon v. State*, 105 Nev. 782, 785, 783 P.2d 942, 944 (1989); *see also* NRS 173.095(1). The substantial rights of the defendant may be prejudiced where amending the information alters the State's theory of prosecution. *See State v. Eighth Jud. Dist. Ct. (Taylor)*, 116 Nev. 374, 378, 997 P.2d 126, 129 (2000) (concluding that the State's delay in amending the information to include an additional theory that the defendant aided and abetted the murder of the victim prejudiced the defendant's substantial

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we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

<sup>2</sup>Sarnowski was originally charged with 61 offenses; the amended indictment contained 27 charges.

<sup>3</sup>On appeal, Sarnowski includes count 16 in his argument. However, Sarnowski did not challenge the amendment to count 16 below and fails to provide any argument regarding count 16 on appeal. Thus, we decline to consider this claim on appeal. *See Wade*, 105 Nev. at 209 n.3, 772 P.2d at 1293 n.3.

rights). Amending the information prejudices a defendant's substantial rights where it negates the defendant's theory of defense, *Green v. State*, 94 Nev. 176, 177, 576 P.2d 1123, 1123 (1978), or where the defendant did not have notice of the State's theory of prosecution, *Viray v. State*, 121 Nev. 159, 162-63, 111 P.3d 1079, 1082 (2005). However, small alterations in the indictment relating to the State's theory of prosecution do not charge a new or different offense and do not affect a defendant's substantial rights. *Shannon*, 105 Nev. at 785, 783 P.2d at 944.

In amended counts 4 (use of a minor in the production of pornography), 8 (sexual assault of a child under the age of 16), and 9 (statutory sexual seduction), the State alleged Sarnowski committed the crimes by digital penetration or rubbing while the original charges alleged penile penetration or rubbing. We conclude these changes were similar to the allowable change discussed in *Shannon*. In *Shannon*, the original information stated that the sexual assault occurred by the victim performing fellatio on the defendant. *Id.* The amended information alleged the defendant performed fellatio on the victim. *Id.* (holding that no additional offense was charged because the offense remained sexual assault accomplished by fellatio and, thus, the defendant's substantial rights were not prejudiced). Further, we conclude Sarnowski failed to demonstrate the alteration affected his substantial rights because his defense was that he was not the perpetrator or that the State did not prove that V.S. did not consent. Thus, we conclude Sarnowski failed to demonstrate counsel's performance was deficient or a reasonable probability of a different outcome had counsel objected.

In amended count 7 (statutory sexual seduction), the State alleged Sarnowski committed the crime by “sexual intercourse, digital penetration, by placing his penis into the vaginal opening of the said [V.S.]” Further, in amended count 27 (open or gross lewdness), the State alleged Sarnowski committed the crime by “attempting to put his mouth into the mouth of the said [K.B.]” The “digital penetration” in count 7 and the first “mouth” in count 27 were typos. Had counsel objected, they would have been fixed; thus, Sarnowski cannot demonstrate a reasonable probability of a different outcome had counsel objected.

In amended count 10 (open or gross lewdness), the State alleged Sarnowski committed the crime by touching and or rubbing the genital area of the victim while the original related count alleged Sarnowski touched the victim’s genital area with a vibrator. This change did not charge a new or different offense. Further, Sarnowski failed to demonstrate the change affected his substantial rights. Thus, we conclude Sarnowski failed to demonstrate counsel’s performance was deficient or a reasonable probability of a different outcome had counsel objected.

In amended count 11 (open or gross lewdness), the State alleged Sarnowski committed the crime by having V.S. masturbate Sarnowski while the original charge alleged that both victims participated and used the words touch and/or rub rather than masturbate. This change was only a slight alteration and did not charge a new or different offense. Sarnowski also failed to demonstrate the change affected his substantial rights. Thus, we conclude Sarnowski failed to demonstrate counsel’s performance was

deficient or a reasonable probability of a different outcome had counsel objected.

In amended count 24 (statutory sexual seduction), the State alleged Sarnowski committed the crime by placing his penis into K.B. while V.S. used a vibrator. The added language was that it occurred "while [V.S.] used a vibrator." The language in the amended indictment did not alter the elements of the offense or charge a new or different offense. Sarnowski also failed to demonstrate the change affected his substantial rights. Thus, we conclude Sarnowski failed to demonstrate counsel's performance was deficient or a reasonable probability of a different outcome had counsel objected.

Amended counts 23 and 25 alleged Sarnowski committed open or gross lewdness by causing the victims to rub a vibrator on their genitals. In the original counts, it was alleged Sarnowski rubbed the vibrator on the victims' genitals. The change did not charge a new or different offense. Sarnowski also failed to demonstrate the change affected his substantial rights as he failed to demonstrate the change negated his theory of defense. Thus, we conclude Sarnowski failed to demonstrate counsel's performance was deficient or a reasonable probability of a different outcome had counsel objected.

The amendment to count 5 appears to have combined two original charges, lewdness with a minor under the age of 14 and possession of visual presentation depicting sexual conduct of a child. All the lewdness charges in the original indictment alleged Sarnowski committed the lewdness by rubbing V.S.'s genital area. The amended count 5 alleged

lewdness by V.S. holding Sarnowski's penis. The State argued the amendment was based on a photograph that was provided in support of a dismissed count of possession of visual presentation depicting sexual conduct of a child.<sup>4</sup> It does not appear Sarnowski was originally charged with lewdness with regard to this photograph. Thus, Sarnowski was not placed on notice that he would have to defend against the actions depicted in the picture. Consequently, it appears the offense charged in the amended count 5 was a new or different count than was alleged in the original indictment. Therefore, we conclude Sarnowski presented specific factual allegations that counsel should have objected to this amended count and the district court erred by not holding an evidentiary hearing on this claim. Accordingly, we reverse the district court's order as to counsel's ineffectiveness for not objecting to this amended count and remand for an evidentiary hearing on this limited claim. We affirm the district court's decision that counsel was not ineffective for failing to object to the other amended counts.

Fourth, Sarnowski claimed counsel was ineffective for waiving his presence at the readback of K.B.'s testimony. Sarnowski failed to demonstrate he was prejudiced by counsel's waiving of his presence because Sarnowski failed to demonstrate a reasonable probability of a different outcome at trial had he been present at the readback of testimony.

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<sup>4</sup>We note the picture does not show whose penis V.S. is holding in the picture.

Therefore, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Fifth, Sarnowski claimed counsel was ineffective for failing to inform Sarnowski of the *Marcum*<sup>5</sup> notice regarding the grand jury proceedings. Sarnowski failed to demonstrate he was prejudiced by counsel's failure to inform him of the *Marcum* notice because Sarnowski failed to demonstrate a reasonable probability of a different outcome at the grand jury proceedings or at trial had he been informed of the notice. Therefore, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Sixth, Sarnowski claimed counsel was ineffective for failing to challenge all the defects of the search warrant. Counsel challenged a defect in the search warrant prior to trial where the warrant was incorrectly dated. Counsel did not prevail on that challenge. Sarnowski argues counsel should have also challenged the search warrant as defective because the search warrant said it was based on the search warrant affidavit prepared by "Detective NAME" rather than naming the specific detective.

NRS 179.045(6)(b) provides that "[t]he [search] warrant must . . . [s]tate the grounds or probable cause for its issuance and the names of the person whose affidavits have been taken in support thereof, or incorporate by reference the affidavit or oral statement upon which it is based." While the warrant did not specifically name the detective, the warrant had the affidavit attached to it, and the detective was named in the

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<sup>5</sup>*Sheriff v. Marcum*, 105 Nev. 824, 783 P.2d 1389 (1989).

affidavit. The warrant incorporated the affidavit by reference; thus, any objection would have been futile. *See Ennis v. State*, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006) (holding counsel is not ineffective for failing to make futile objections). Therefore, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Next, Sarnowski argues the district court erred by denying his claims that appellate counsel was ineffective. To demonstrate ineffective assistance of appellate counsel, a petitioner must show that counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in that the omitted issue would have a reasonable probability of success on appeal. *Kirksey v. State*, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996). Appellate counsel is not required to raise every non-frivolous issue on appeal. *Jones v. Barnes*, 463 U.S. 745, 751 (1983). Rather, appellate counsel will be most effective when every conceivable issue is not raised on appeal. *Ford v. State*, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989).

Sarnowski claimed appellate counsel was ineffective for failing to argue that his confrontation rights were violated when V.S. did not testify at trial. Sarnowski argued his confrontation rights were violated because he was unable to cross-examine V.S. regarding consent, credibility, and prior false allegations. He also identifies five instances where he alleges V.S.'s testimonial statements were improperly admitted at trial in violation of his confrontation rights. The Sixth Amendment's Confrontation Clause provides an accused with the right to confront all witnesses against them. *See Chavez v. State*, 125 Nev. 328, 337, 213 P.3d 476, 483 (2009). To that

end, “the Confrontation Clause bars ‘admission of testimonial statements of a witness who did not appear at trial unless he was unavailable to testify, and the defendant had had a prior opportunity for cross-examination.’” *Id.* (quoting *Crawford v. Washington*, 541 U.S. 36, 53-54 (2004)). “The threshold question in the *Crawford v. Washington* framework is whether the statement at issue is ‘testimonial’ hearsay.” *Chavez*, 125 Nev. at 339, 213 P.3d at 484. “Hearsay’ means a statement offered in evidence to prove the truth of the matter asserted.” NRS 51.035.

As to Sarnowski’s general claim that his rights were violated simply because V.S. did not testify at trial and he was unable to cross-examine her, the confrontation clause protects a defendant from having a non-testifying witness’s testimonial statements used at trial. Sarnowski failed to demonstrate it protects the defendant’s right to cross-examine a non-testifying witness in general. Thus, we conclude the district court did not err by denying this portion of the claim without first conducting an evidentiary hearing.

As to the five specific instances referenced above where Sarnowski alleged V.S.’s testimonial statements were introduced at trial without her testifying, we conclude Sarnowski is not entitled to relief. While Sarnowski objected generally on confrontation grounds at trial, Sarnowski did not object to four of the five alleged testimonial statements on confrontation grounds. Thus, appellate review would have been limited to plain error review. To demonstrate plain error, an appellant must show there was an error, the error is plain or clear under current law from a casual inspection of the record, and the error affected the appellant’s

substantial rights. *Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48 (2018). “[A] plain error affects a defendant’s substantial rights when it causes actual prejudice or a miscarriage of justice (defined as a ‘grossly unfair’ outcome).” *Id.* at 51, 412 P.3d at 49.

Sarnowski failed to demonstrate the four unobjected-to statements were clearly testimonial statements. The first unobjected-to statement was testified to by D.B., a friend of the victims. D.B. was asked whether the victims told her about the “sexual abuse,” and D.B. stated, “Yes.” D.B. did not testify specifically as to what V.S. told her about the sexual abuse, and the statement was made to a friend and not in anticipation of being used at trial. *See Medina v. State*, 122 Nev. 346, 354, 143 P.3d 471, 476 (2006) (holding that statement to a friend about a sexual assault was not testimonial because it was not a statement “reasonably expect[ed] to be used prosecutorially”). Therefore, the statement was not testimonial and Sarnowski failed to demonstrate error plain from the record. Thus, he failed to demonstrate that appellate counsel’s performance was deficient or that this claim had a reasonable probability of success on appeal.

In the second unobjected-to statement, V.S.’s mother testified that V.S. asked if she could remain in Las Vegas rather than going back to Michigan. Again, this statement was not testimonial in nature because it was not made in anticipation of being used at trial. *See id.* Further, the testimony was not presented for the truth of the matter asserted and thus was not hearsay. *See* NRS 51.035. Therefore, the statement was not clearly testimonial and Sarnowski fails to demonstrate error plain from the record.

Thus, he failed to demonstrate that appellate counsel's performance was deficient or that this claim had a reasonable probability of success on appeal.

In the third unobjected-to statement, Sarnowski argued V.S.'s mother testified that V.S. told her that this time "there is evidence." However, in context, we conclude the statement referenced by V.S.'s mother was not made by V.S. Rather, V.S.'s mother was testifying about a phone call she had with "DHS," and it appears that the person she was talking to from "DHS" told her there was evidence this time. Thus, Sarnowski failed to demonstrate error plain from the record. Therefore, he failed to demonstrate appellate counsel's performance was deficient or that this claim had a reasonable probability of success on appeal.

In the fourth unobjected-to statement, a detective testified she learned that the father of one of the victims was the suspect. No statement from V.S. was specifically relayed by the detective. Therefore, Sarnowski failed to demonstrate a testimonial statement was relayed at trial and, thus, failed to demonstrate error plain from the record. Accordingly, he failed to demonstrate that appellate counsel's performance was deficient or that this claim had a reasonable probability of success on appeal.

As to the fifth statement, counsel objected to testimony by V.S.'s boyfriend that he asked V.S. whether her ongoing situation was similar to his mother's situation when she was younger and was sexually assaulted by her father and uncles. The boyfriend testified that, in response to his question, V.S. "put her head in my chest, basically, kind of, just, like, accepting the fact, and she—body language, like kind of just assurance."

Counsel objected based on hearsay. While the district court did not specifically sustain the objection, the district court ordered the State to re-ask the question without asking what the body language indicated. The State then asked the boyfriend, “she put her head on your chest, correct?” The State then clarified that V.S. never answered the boyfriend’s question.

Sarnowski failed to demonstrate that V.S. placing her head on her boyfriend’s chest was a nonverbal communication that was intended as an assertion. *See* NRS 51.045(2). Even assuming this was a statement by the non-testifying witness, Sarnowski failed to demonstrate it was testimonial in nature because it was not made in anticipation of being used at trial. Further, given the overwhelming evidence introduced at trial, including the videos, pictures, K.B.’s testimony, and Sarnowski’s letters from jail wherein he appeared to blame V.S., we conclude the alleged error was harmless beyond a reasonable doubt. *Belcher v. State*, 136 Nev. 261, 267, 464 P.3d 1013, 1023 (2020) (stating the harmless error standard for constitutional errors). Accordingly, Sarnowski failed to demonstrate that appellate counsel’s performance was deficient or that this claim had a reasonable probability of success on appeal. Thus, we conclude the district court did not err by denying Sarnowski’s claim that appellate counsel was ineffective for failing to raise a confrontation clause claim on appeal without first conducting an evidentiary hearing.

Sarnowski also claimed appellate counsel was ineffective for failing to appeal the denial of his motion for psychological examinations of the victims. The district court had discretion to order an independent psychological examination if the “defendant present[ed] a compelling reason

for such an examination.” *Koersehner v. State*, 116 Nev. 1111, 1116, 13 P.3d 451, 455 (2000) (quoting *Washington v. State*, 96 Nev. 305, 307, 608 P.2d 1101, 1102 (1980)); see *Abbott v. State*, 122 Nev. 715, 727, 138 P.3d 462, 470 (2006). Whether the defendant presents a compelling reason for an examination depends on three factors: (1) whether the State will call or obtain some benefit from a psychological or psychiatric expert, (2) whether the evidence of the crime “is supported by little or no corroboration beyond the testimony of the victim,” and (3) whether there is a reasonable basis to believe that the victim’s mental or emotional state may have affected his or her veracity. *Koerschner*, 116 Nev. at 1116-17, 13 P.3d at 455.

Here, the State did not benefit from a psychological expert, there was corroborating evidence beyond the testimony of the victims, and Sarnowski failed to demonstrate there was a reasonable basis for believing the victims’ mental or emotional states affected their veracity. Therefore, Sarnowski failed to demonstrate that appellate counsel’s performance was deficient or that this claim had a reasonable probability of success on appeal. Thus, we conclude the district court did not err by denying Sarnowski’s claim that appellate counsel was ineffective for failing to challenge the denial of the motion for psychological examinations of the victims without first conducting an evidentiary hearing.

Next, Sarnowski argued the State violated *Brady*<sup>6</sup> with regard to two memory cards. He claimed the State collected six flash cards or memory sticks from his residence but only turned over four for analysis.

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<sup>6</sup>*Brady v. Maryland*, 373 U.S. 83 (1963).

First, we note that this claim could have been raised on direct appeal because all of the facts to make the claim were known; thus, absent a showing of good cause and prejudice, this claim was procedurally barred. See NRS 34.810(1)(b). A valid *Brady* claim can constitute good cause and prejudice to excuse the procedural bars. See *State v. Bennett*, 119 Nev. 589, 599, 81 P.3d 1, 8 (2003). Generally, showing that the State withheld exculpatory evidence in violation of *Brady* parallels the good cause showing required to overcome procedural bars, and establishing that the evidence was material under *Brady* can demonstrate prejudice. *Mazzan v. Warden*, 116 Nev. 48, 67, 993 P.2d 25, 37 (2000).

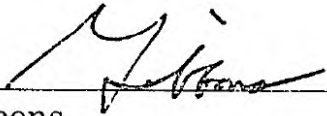
Sarnowski failed to demonstrate the State withheld the other two memory cards. The memory cards were listed in the inventory of the incident report created after the search of Sarnowski's home. Sarnowski failed to allege he requested the memory cards and the State failed to turn them over. Rather, he merely alleged the evidence was withheld because the two memory cards were not submitted for analysis. Further, other than speculation that the memory cards would contain videos of V.S. having sex with her boyfriend, Sarnowski did not demonstrate that the memory cards were material. Therefore, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

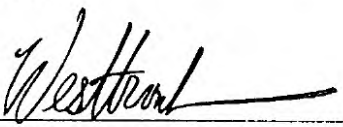
Finally, Sarnowski argues the district court erred by denying his claim that the cumulative errors of counsel warrant relief. Even if multiple instances of deficient performance could be cumulated for purposes of demonstrating prejudice, *McConnell v. State*, 125 Nev. 243, 259 n.17, 212 P.3d 307, 318 & n.17 (2009), we conclude Sarnowski failed to demonstrate

the cumulative errors of counsel entitled him to relief, *see Mulder v. State*, 116 Nev. 1, 17, 992 P.2d 845,854-55 (2000) (stating the relevant factors to consider in evaluating a claim of cumulative error). We conclude Sarnowski is only entitled to relief as stated above, and we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.

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

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

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

cc: Hon. Mary Kay Holthus, District Judge  
Law Office of Rachael E. Stewart  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk