



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RAUL GONZALES,
Appellant,
vs.
THE STATE OF NEVADA; WARDEN;
AND HIGH DESERT STATE PRISON,
Respondents.

No. 91347-COA

ORDER OF AFFIRMANCE

Raul Gonzales appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on June 22, 2021, and supplemental pleadings. Eighth Judicial District Court, Clark County; Hon. Tierra Danielle Jones, Chief Judge.

Gonzales argues the district court erred in denying his claim that trial counsel was ineffective for failing to retain and present a false-confessions expert. 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).

“[C]ounsel should be ‘strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.’” *Cullen v. Pinholster*, 563 U.S. 170, 189 (2011) (quoting *Strickland*, 466 U.S. at 690). Further, there is a strong presumption that the actions of counsel reflect trial tactics rather than sheer neglect. *Harrington v. Richter*, 562 U.S. 86, 109 (2011). 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).

Gonzales claimed that counsel was ineffective for failing to retain a false-confessions expert to explain how his confession to law enforcement could have been coerced, mistaken, or otherwise unreliable. Gonzales reasoned that an expert was needed to explain to the jury that false confessions are real, that they occur with some frequency, and that police interrogation techniques could have induced Gonzales to falsely confess to first-degree murder.

Following remand from this court,¹ the district court conducted an evidentiary hearing on Gonzales’ claim. Because trial counsel had passed away, the sole witness at the hearing was false confessions expert Deborah Davis, Ph.D. Dr. Davis—who also prepared a report in advance of the hearing—testified that, had trial counsel called her to testify as an expert

¹See *Gonzales v. State*, No. 86489-COA, 2024 WL 2990612 (Nev. Ct. App. June 13, 2024) (Order Affirming in Part, Reversing in Part and Remanding).

witness,² she could have explained to the jury that (1) false confessions are real and well-documented; (2) certain acute and chronic characteristics—here, drug intoxication and sleep deprivation—might make a person more likely to falsely confess; and (3) interrogation techniques and tactics used by law enforcement amplify the risk of false confessions. Based on her review of the trial transcript, Dr. Davis opined that trial counsel’s arguments and examination of witnesses at trial failed to address why people falsely confess or the circumstances that made Gonzales uniquely susceptible to falsely confessing.

Following post-hearing briefing by the parties, the district court entered an order denying Gonzales’ claim. The district court found that Gonzales failed to demonstrate trial counsel was deficient because the central theory of the defense was that Gonzales’ confession was involuntary and unreliable, and trial counsel used the opening statement, witness examinations, the defense case in chief, and closing argument to forward that theory. The district court further found that, because trial counsel presented the same issues Dr. Davis would have presented to the jury had she been called as an expert witness, Gonzales failed to demonstrate there was a reasonable probability of a different outcome at trial.

Substantial evidence supports the district court’s findings. The evidence adduced at trial shows that Gonzales—who believed the victim had a vendetta against him for being a confidential human source (i.e., a confidential informant) for the FBI—intentionally shot five bullets through the front door

²Although Dr. Davis had no specific recollection of speaking to trial counsel about Gonzales’ case, the record reflects that trial counsel listed Dr. Davis as a potential expert witness but ultimately did not retain her.

of the victim's residence in the early morning hours of January 14, 2014. Two of the bullets struck the victim, killing him. During a two-and-a-half-hour interrogation the next day, Gonzales confessed to detectives that he had shot through the victim's front door.

The record indicates trial counsel considered retaining Dr. Davis as an expert, as evidenced by the fact that he listed her in Gonzales' witness disclosure. Although it is not clear why trial counsel decided not to retain Dr. Davis, the trial record shows counsel's presentation of the defense and elicitation of evidence and testimony covered the topics Dr. Davis identified in her expert report and evidentiary hearing testimony. In his opening statement, trial counsel opined Gonzales' confession to law enforcement was the product of duress and coercion and exhorted the jury to question whether, under the circumstances, the confession was reliable. During cross-examination of the State's witnesses, trial counsel forwarded this defense theory by eliciting testimony indicating Gonzales was impaired and under duress while being questioned by detectives. The testimony established Gonzales was a methamphetamine user, was extremely intoxicated and erratic both prior to and after the shooting, and was sleep deprived by the time the interrogation started.

Trial counsel also elicited testimony highlighting the potentially coercive conditions of the interrogation during cross-examination and the defense case. In particular, trial counsel elicited testimony from one of the detectives who conducted the interrogation that Gonzales was stripped of personal effects and handcuffed to a table, that Gonzales was impaired and possibly suffering from hallucinations, and that Gonzales collapsed on the

table after the interrogation stopped. The detective also acknowledged that he and his partner opted to press forward with questioning Gonzales notwithstanding his apparent intoxication and fatigue.

Trial counsel also elicited extensive testimony from the detective about his training and experience in interrogation techniques and tactics, as well as the tactics he and his partner employed when questioning Gonzales. Further, trial counsel played a video of the interrogation in its entirety for the jury to illustrate his theory that Gonzales was under duress. In addition, trial counsel obtained a jury instruction directing the jury to assess the voluntariness of Gonzales' confession and "disregard [the] confession entirely" if jurors determined it was "the result of inducement, coercion, intimidation, threats, violence, promises or duress exercised by any officer of the law, or any other person, upon" Gonzales. These facts illustrate that, other than Dr. Davis' potential testimony that false confessions can and do happen, trial counsel addressed every issue with the interrogation and Gonzales' confession that Dr. Davis identified in her expert report and evidentiary hearing testimony.³

The district court also found that trial counsel made a reasonable strategic decision to not use Dr. Davis as an expert. This finding is premised largely on handwritten trial notes which were produced during postconviction discovery and admitted as exhibits at the evidentiary hearing. However,

³Notably, Dr. Davis' expert report acknowledged that "in some cases it might be possible to introduce some of this information during cross examination of police officers. This can be done by going through the interrogation with them and asking about things they said, whether this is part of their training, and why it is done[,] and crossing on how it might lead to the unintended consequence of false confession."

Gonzales did not include the trial notes in the record on appeal, and the portions of the record relevant to the evidentiary hearing provide no insight as to the contents of those notes. Because Gonzales did not include the trial notes in the record on appeal, we presume they support the district court's finding that trial counsel strategically chose to not use an expert at trial. *See Greene v. State*, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980) ("The burden to make a proper appellate record rests on appellant."); *see also Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) ("When an appellant fails to include necessary documentation in the record, we necessarily presume that the missing portion supports the district court's decision."). In light of the foregoing, we conclude Gonzales failed to demonstrate trial counsel's performance was deficient for failing to call Dr. Davis as an expert witness.

Moreover, Gonzales failed to demonstrate a reasonable probability of a different result at trial had counsel called Dr. Davis as a false-confessions expert given the substantial evidence demonstrating his guilt. Such evidence included (1) the testimony of an eyewitness who saw a person matching the physical description of Gonzales fleeing in a vehicle that matched the description of the vehicle Gonzales was driving when police apprehended him; (2) an item of clothing found in the vehicle that matched the eyewitness's description of the shooter's clothing; (3) a firearm found in Gonzales' vehicle that matched the type of firearm used in the shooting; (4) testimony regarding text messages between Gonzales and the victim which indicated Gonzales was at the victim's house at the time the shooting occurred; and (5) testimony from

two witnesses that Gonzales was actively seeking out the victim in the hours preceding the shooting.

The sole piece of evidence Gonzales relied on to demonstrate a reasonable probability of a different outcome at trial was a single entry in trial counsel's notes indicating that he spoke to jurors after the trial who stated "that without the confession they would have acquitted" Gonzales. As the district court noted, however, evidence of any statement by a juror "concerning the effect of anything upon the juror's or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith" is inadmissible. NRS 50.065(2)(a)-(b) Thus, Gonzales failed to demonstrate a reasonable probability of a different outcome at trial had counsel called Dr. Davis. Accordingly, we conclude the district court did not err in denying Gonzales' claim, and we

ORDER the judgment of the district court AFFIRMED.



Bulla, C.J.



Gibbons, J.



Westbrook, J.

cc: Hon. Tierra Danielle Jones, Chief Judge
Attorney General/Carson City
Clark County District Attorney
Resch Law, PLLC d/b/a Conviction Solutions
Eighth District Court Clerk