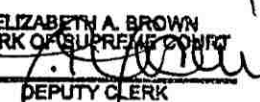


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MONTRELL RUSSUM,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85562-COA

FILED
FEB 23 2024
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Montrell Russum appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on May 17, 2021, and a supplemental petition filed on December 31, 2021. Eighth Judicial District Court, Clark County; Carli Lynn Kierny, Judge.

Russum argues the district court erred by denying his claims that counsel were 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, Russum claimed counsel were ineffective for failing to object to the SnapChat messages as unauthenticated. The district court found that the issue of whether the SnapChat messages were properly authenticated was decided on direct appeal and, therefore, the claim was barred by the doctrine of law of the case. On appeal, Russum argues that the law of the case doctrine did not apply because the Nevada Supreme Court determined the authentication issue on a plain error standard of review since counsel failed to properly object to the authentication of the SnapChat messages. While the supreme court determined that plain error was the appropriate standard of review, the supreme court concluded that the messages were properly authenticated and “Russum has not demonstrated *any* error.” *Russum v. State*, No. 79416, 2020 WL 5652127 (Nev. Sep. 18, 2020) (Order of Affirmance) (emphasis added). Thus, the record supports the district court’s determination that the law of the case is that the Snapchat messages were properly authenticated. *See Hall v. State*, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99 (1975). Accordingly, Russum failed to demonstrate counsel were deficient or a reasonable probability of a different outcome at trial had counsel objected. Therefore, we conclude that the district court did not err by denying this claim without first conducting an evidentiary hearing.

Second, Russum claimed that counsel were ineffective for failing to file a motion for a judgment of acquittal. Specifically, Russum argued that there was insufficient evidence presented that he was at the scene of the crime and there was insufficient evidence to corroborate his codefendant's testimony.

A judge may set aside the verdict and enter a judgment of acquittal if the evidence is insufficient to sustain a conviction. NRS 175.381(2). “[I]nsufficiency of the evidence occurs where the prosecution has not produced a minimum threshold of evidence upon which a conviction may be based, *even if such evidence were believed by the jury.*” *Evans v. State*, 112 Nev. 1172, 1193, 926 P.2d 265, 279 (1996) (quotation marks omitted); *see also Kassa v. State*, 137 Nev. 150, 152, 485 P.3d 750, 755 (2021) (stating “the district court decides a motion for a judgment of acquittal under NRS 175.381(2) based on a sufficiency of the evidence standard”). When reviewing a challenge to the sufficiency of the evidence, we review the evidence in the light most favorable to the prosecution and determine whether “*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *accord Mitchell v. State*, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008). “Corroborating evidence . . . must independently connect the defendant with the offense; evidence does not suffice as corroborative if it merely supports the accomplice’s testimony.” *Heglemeier v. State*, 111 Nev. 1244, 1250, 903 P.2d 799, 803 (1995).

Russum was charged with conspiracy to commit robbery, robbery with the use of a deadly weapon, and first-degree murder with the use of a deadly weapon. The State presented evidence that Russum

contacted the victim through SnapChat and agreed to sell to the victim \$14,000 worth of cough syrup for \$11,000. Through the messages, Russum told the victim to meet him at an apartment complex. Parra, one of Russum's two codefendants, provided Russum with a gun, and Russum and his two codefendants went to the apartment complex. The victim and his friend arrived at the apartment with a bag containing the money for the cough syrup, and they contacted Russum outside and shook hands with him. Shortly thereafter, the victim, with the bag of money, went around the corner from where his friend was to complete the transaction, the friend heard a gunshot, and he ran around the corner to find the victim bleeding. Russum, the bag, and the money were gone. The friend accessed the victim's SnapChat and saved the messages from Russum. The victim died at the scene. Cell phone location data placed Russum near the scene of the crimes around the time of their commission. Further, the day after the killing, Russum's girlfriend searched the victim's name prior to the name being released by the police, and one of the codefendants attempted to sell the victim's bag. Russum also fled to Texas the day after the shooting. Finally, the victim's friend and Parra identified Russum at trial.

The evidence presented at trial was sufficient to demonstrate Russum was present at the scene of the crime and sufficiently corroborated Russum's codefendant's testimony. Thus, the evidence presented at trial was sufficient to convict Russum of conspiracy to commit robbery, robbery with the use of a deadly weapon, and murder with the use of a deadly weapon. See NRS 193.165(1) (providing for an enhancement of a sentence for "any person who uses a firearm or other deadly weapon . . . in the commission of a crime"); NRS 200.010 (defining murder); NRS 200.030(1)

(defining the ways to commit first-degree murder); NRS 200.380(1) (defining robbery); *Nunnery v. Eighth Jud. Dist. Ct.*, 124 Nev. 477, 480, 186 P.3d 886, 888 (2008) (defining conspiracy). Because the State presented sufficient evidence at trial, Russum failed to demonstrate counsel were deficient or a reasonable probability of a different outcome had counsel filed a motion for judgment of acquittal. Accordingly, we conclude that the district court did not err by denying this claim without first conducting an evidentiary hearing.

Third, Russum claimed that counsel were ineffective for stipulating to the admission of phone records. He claimed that the stipulation improperly waived his confrontation rights. Four detectives each created a phone-records report related to the crime, but only one of the detectives, who was noticed as an expert, testified at trial as to all four reports. The district court found that Russum failed to demonstrate a reasonable probability of a different outcome at trial because had counsel not stipulated, the State would have brought in all four detectives to testify. This claim is supported by the record because at a sidebar held outside the presence of the jury, the State explained it would bring in the other detectives who prepared reports if necessary. Further, Russum did not allege that the remaining detectives were unavailable or that the records would not have been admissible if they testified at trial, such that he failed to demonstrate 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.

Fourth, Russum claimed that counsel were ineffective for proceeding to trial without an expert. Specifically, he claimed that one of

his trial counsel noted she would be ineffective if she did not have an expert review a 14,000-page report that was prepared regarding phone records.¹ Russum failed to specifically explain what an expert would have testified to regarding the phone records or how the result of the trial would have been different if counsel had obtained an expert. *See Chappell v. State*, 137 Nev. 780, 788, 501 P.3d 935, 950 (2021) (stating a petitioner “must *specifically explain* how his attorney’s performance was objectively unreasonable” (quotation marks omitted)). Russum thus failed to demonstrate counsel were deficient or a reasonable probability of a different outcome. Therefore, we conclude that the district court did not err by denying this claim without first conducting an evidentiary hearing.

Finally, Russum claimed that counsel were ineffective for failing to communicate with him prior to trial. On appeal, Russum states, “There is a reasonable probability that the result of the trial would have been different had trial counsel communicated with Russum with respect to how to proceed.” However, Russum does not provide any argument as to how the result of the trial would have been different or how the district

¹Russum fails to provide this court with a copy of the transcript where he claims trial counsel made this statement and instead cites to his supplemental petition. This was improper because “[p]arties shall not incorporate by reference briefs or memoranda of law submitted to the district court or refer the Supreme Court or Court of Appeals to such briefs or memoranda for the arguments on the merits of the appeal.” NRAP 28(e)(2); *see also* NRAP 28(a)(10)(A) (stating that the argument must contain citations to the record and the parts of the record on which the appellant relies); NRAP 30(b)(1) (requiring the appendix to contain all transcripts that are necessary for this court’s review).

court erred. To the extent Russum's claim on appeal could be construed as incorporating his claim from below, parties are not allowed to incorporate their claims by reference. *See* NRAP 28(e)(2). Russum thus failed to demonstrate counsel were deficient or a reasonable probability of a different outcome. Therefore, we conclude that Russum fails to demonstrate the district court erred by denying this claim without first conducting an evidentiary hearing, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Carli Lynn Kierny, District Judge
Legal Resource Group
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk