SUPREME COURT OF MISSOURI
en banc

CRAIG M. WOOD,	)	*Opinion issued January 13, 2026*
	)	
Appellant,	)	
	)	
v.	)	No. SC100874
	)	
STATE OF MISSOURI,	)	
	)	
Respondent.	)	

APPEAL FROM THE CIRCUIT COURT OF GREENE COUNTY
The Honorable Thomas Mountjoy, Judge

Craig M. Wood appeals a judgment overruling his Rule 29.15 motion for postconviction relief from his first-degree murder conviction and death sentence. This Court has jurisdiction. Order of June 16, 1988. The judgment is affirmed.

Factual and Procedural Background

In February 2014, Wood abducted 10-year-old Hailey Owens as she walked down a sidewalk in Springfield, Missouri. Wood forced her into his truck and drove away. Eyewitnesses called 911 and reported the license plate number.

The police traced the license plate number to Wood. They went to his home, where an officer saw Wood exit the truck and toss a roll of duct tape into the truck bed. The

officers approached. Wood was nervous, smelled of bleach, and acknowledged he knew why they were there.

Wood voluntarily accompanied the officers to police headquarters for questioning. He admitted the truck was his, but declined to answer any questions regarding Hailey's location. The police obtained a search warrant and searched Wood's home. They found Hailey's nude body in the basement, in a 35-gallon plastic tub. In Wood's bedroom, the police found a folder containing two handwritten stories detailing fantasies of sexual encounters between an adult male and 13-year-old girls. The folder also contained photographs of girls who were students at the middle school where Wood worked. An autopsy later showed Hailey had injuries consistent with sexual assault.

Following a jury trial, the circuit court entered a judgment finding Wood guilty of first-degree murder and sentencing him to death. This Court affirmed the judgment on direct appeal. *State v. Wood*, 580 S.W.3d 566, 591 (Mo. banc 2019).

Wood timely filed a Rule 29.15 motion for postconviction relief. The motion court held an evidentiary hearing and entered a judgment overruling Wood's motion. Wood appeals.[1]

Standard of Review

"Appellate review of the trial court's action on the motion filed under this Rule 29.15 shall be limited to a determination of whether the findings and conclusions of the trial court

[1] Wood raises 22 points on appeal. For organizational purposes, these points are addressed out of order.

are clearly erroneous." Rule 29.15(k). "Appellate courts presume the motion court's findings are correct and a judgment is clearly erroneous when, in light of the entire record, the court is left with the definite and firm impression that a mistake has been made." *Scott v. State*, 719 S.W.3d 723, 725 (Mo. banc 2025) (internal quotation omitted).

To show ineffective assistance of counsel, Wood must prove: (1) "counsel's performance was deficient" and (2) "the deficient performance prejudiced the defense." *Strickland v. Washington*, 466 U.S. 668, 687 (1984). To show deficient performance, Wood must identify "specific acts or omissions of counsel that, in light of all the circumstances, fell outside the wide range of professional competent assistance." *Shockley v. State*, 579 S.W.3d 881, 892 (Mo. banc 2019). This is an objective standard, and this Court employs "a strong presumption that counsel's conduct falls within the range of reasonable professional assistance[.]" *Flaherty v. State*, 694 S.W.3d 413, 421 (Mo. banc 2024) (emphasis omitted) (internal quotation omitted).

To demonstrate prejudice, Wood "must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id*. at 422. Because this is a death penalty case, Wood must show a reasonable probability that, balancing all circumstances, he would not have been sentenced to death. *McFadden v. State*, 619 S.W.3d 434, 445 (Mo. banc 2020).

Hearsay Evidence

Wood claims the motion court clearly erred by denying his claim trial counsel was ineffective for failing to object to a witness's penalty-phase testimony that "countless parents" told him they no longer allowed their children to go outside unsupervised after

Hailey's murder. Wood asserts effective counsel would have made a hearsay objection, likely resulting in the exclusion of this evidence and a life sentence.

"Hearsay is an out-of-court statement offered for the truth of the matter asserted." *State v. Taylor*, 466 S.W.3d 521, 530 (Mo. banc 2015) (internal quotation omitted). The testimony that "countless parents" said they no longer allow their children to go outside unsupervised was hearsay. Nonetheless, even if counsel should have objected, Wood cannot show prejudice. Wood was not sentenced to death because of this relatively inconsequential testimony. Wood was sentenced to death because the jury unanimously found multiple aggravating circumstances[2] and the circuit court, pursuant to § 565.030.4, RSMo 2016, resolved the jury's deadlock as to punishment by finding the mitigating circumstances did not outweigh the aggravating circumstances and that death was the

[2] The jury unanimously found the following multiple aggravating circumstance beyond a reasonable doubt:

> The murder of Hailey involved torture and depravity; that the defendant killed Hailey after she was bound or otherwise rendered helpless by the defendant, and the defendant thereby exhibited a callous disregard for the sanctity of all human life; The defendant's selection of the person he killed was random and without regard to the victim's identity and that defendant's killing of Hailey thereby exhibited a callous disregard for the sanctity of human life; The murder of Hailey was committed for the purpose of avoiding arrest; The murder of Hailey was committed while the defendant was engaged in rape; The murder of Hailey was committed while the defendant was engaged in sodomy; The murder of Hailey was committed while the defendant was engaged in kidnapping; Hailey was a witness or potential witness of a pending investigation of the kidnapping of Hailey.

Wood, 580 S.W.3d at 573-74.

appropriate sentence. *Wood*, 580 S.W.3d at 574. The hearsay testimony from a single witness stating parents no longer let their children play outside does not negate any aggravating circumstance the jury found, does not establish any mitigating circumstance, and pales in comparison with the overwhelming evidence of Wood's calculated brutality. The motion court did not clearly err in denying this claim.

Wood also claims counsel was ineffective for failing to make a hearsay objection to penalty-phase testimony from Hailey's great-grandmother, who read the following poem written by a third person:

> I was taken far too soon, my life had just begun; I did not get to see the world or watch more setting suns. I did not get to say goodbye or "I love you" one more time; I did not get to marry or have a child that's mine. The Lord saw me in a different light and wanted me with Him. I'm with Jesus and the angels; they made me one of them. I know you're asking why and how you'll get through the day; God is there to comfort you in every kind of way. I know that you will mourn for me and shed many tears; just know my love is with you throughout all your years. God gave me many blessings; the greatest ones were you, the family and friends I have are the best I know that's true. When your time on earth is done and you come to your new home, I'll be waiting with open arms by His golden throne. In loving memory of Hailey M. Owens. Thank you.

The author's poetic expression of the impact of Hailey's murder was not offered for the truth of the matter asserted. The motion court correctly concluded the poem was not hearsay and was admissible to show the impact of Hailey's murder on others. Counsel is not ineffective for not making a meritless objection. *Barton v. State*, 432 S.W.3d 741, 754 (Mo. banc 2014). The motion court did not clearly err by denying this claim.

Photos and Handwritten Stories

Wood claims the motion court clearly erred by denying trial counsel was ineffective for opening the door to evidence of the folder in Wood's bedroom containing photographs of his female students and handwritten stories detailing his sexual fantasies about young girls. During the guilt-phase opening statement, trial counsel asserted the contents of the folder demonstrated Wood acted out of compulsion, not deliberation, and his substance use unleashed his suppressed sexual attraction to young teenage girls. Wood argues counsel had no reasonable basis for opening the door to this evidence.

Trial counsel filed a motion *in limine* to exclude the folder's contents from evidence. The circuit court overruled the motion. Although this ruling was interlocutory and subject to change, reasonable trial counsel would recognize the folder's contents were likely admissible to prove motive and intent. *See State v. Primm*, 347 S.W.3d 66, 70 (Mo. banc 2011) (holding otherwise inadmissible evidence of uncharged crimes may be admissible to show motive and intent). Because the reasonableness of trial counsel's decision is assessed at the time it was made rather than "with the distorting effects of hindsight," *Strickland*, 466 U.S. at 689, this Court's analysis begins with the recognition trial counsel was faced with the prospect of navigating multiple sources of damaging evidence, including the photographs and handwritten stories. Under those circumstances, it was objectively reasonable for trial counsel to minimize the damaging effect of this evidence by putting it in front of the jury at the outset, rather than leaving it to the prosecutor to control the time and manner of presenting the jury with this evidence. Counsel's reasonable decision to pursue a particular strategy in difficult circumstances is precisely the type of strategic

choice that is "virtually unchallengeable[.]" *Strickland*, 466 U.S. at 690. The motion court did not clearly err by denying this claim.

The Container

Wood claims the motion court clearly erred by overruling his claim trial counsel was ineffective for failing to ensure the container where Wood placed Hailey's body remained outside the jury's view throughout the trial.

At trial, the container was brought into the courtroom in a box, removed from that box, and admitted into evidence without objection. Defense counsel objected to continuous display of the container. The trial judge directed the prosecutor to place the container with the state's other exhibits.

Prior to the penalty phase, defense counsel made a record of his belief the container had been in full view of the jury each time they entered and left the courtroom. The trial judge explained he had not observed jurors looking at the exhibits while they entered and left the courtroom. The trial judge also stated he had not seen "them leaning over, which is what they would actually have to do, to see any of the exhibits that are in that area." The prosecutor agreed to put the container back in its storage box.

Against this record indicating the jury did not continuously view the container, Wood offered testimony at the evidentiary hearing from the supporter of an anti-death penalty group. The witness had written a letter to a local newspaper opposing sentencing Wood to death. She testified she observed the jurors glancing back and forth at the container during the trial. The motion court found her testimony was not credible. This

Court defers to the motion court's superior ability to determine witness credibility. *Flaherty*, 694 S.W.3d at 419. The motion court did not clearly err by overruling this claim.

Evidence of Impairment

Wood claims trial counsel was ineffective for failing to object to testimony from police officers, a corrections officer, a school teacher, and a school principal expressing their opinions that Wood did not appear to be impaired by drugs or alcohol on the day of the murder. Wood argues the testimony was inadmissible because the witnesses were not qualified to offer opinions about whether he was impaired.

This Court has long recognized "a properly qualified witness" can testify regarding "his opinion as to whether one was intoxicated at a given time over an objection that the subject is not one for opinion testimony." *State v. Mayabb*, 316 S.W.2d 609, 612 (Mo. 1958). Law enforcement officers with training and experience are more qualified than lay witnesses, and generally are allowed to testify about their observations and opinions regarding whether a subject appears intoxicated. *State v. Schwarz*, 702 S.W.3d 129, 143 (Mo. App. 2024); *State v. Moffett*, 474 S.W.3d 248, 251 (Mo. App. 2015). The police officers who testified Wood did not appear to be under the influence of alcohol or drugs were properly qualified because they testified about their training and experience in dealing with intoxicated persons and how their personal observations led them to conclude Wood did not exhibit indicia of impairment. Likewise, the corrections officer testified he had experience with people under the influence of drugs while working at the jail and Wood did not appear to be under the influence of any drug. Counsel is not ineffective for foregoing a meritless objection. *Barton*, 432 S.W.3d at 754.

Wood also claims counsel should have objected to the testimony from the school teacher and school principal because they are unqualified to testify he did not appear to be impaired. A lay witness who personally observed the defendant's behavior can testify regarding whether an individual appears intoxicated. *State v. Meanor*, 863 S.W.2d 884, 888 (Mo. banc 1993) (holding lay witness testimony may be sufficient to affirm a conviction for driving while intoxicated).[3] Wood does not argue the State failed to lay a sufficient foundation that the witnesses personally observed Wood on the day of the murder. An objection asserting these lay witnesses were unqualified to testify about their personal observations of Wood's behavior would have been meritless. The motion court did not clearly err by denying relief on this claim.

Mitigation Evidence

Wood claims the motion court clearly erred by denying multiple claims trial counsel was ineffective for failing to investigate and offer additional mitigation evidence showing his substance abuse and mental health problems.

"In a death penalty case, trial counsel has an obligation to investigate and discover all reasonably available mitigating evidence." *Collings v. State*, 543 S.W.3d 1, 12-13 (Mo. banc 2018) (internal citations and quotations omitted). This does not mean counsel must present all available mitigation evidence in every case. To the contrary, trial counsel's

[3] *See also State v. Revard*, 106 S.W.2d 906, 909 (Mo. 1937) (holding a lay witness may be properly qualified to testify regarding intoxication if they had an adequate opportunity to observe "the actions and conduct of defendant").

obligation to provide effective representation presupposes counsel may make reasonable, strategic choices focusing on the evidence most relevant to the theory of the defense and the tenor of the trial. These "strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." *Strickland*, 466 U.S. at 690-91.

Wood claims the motion court clearly erred by denying his claim trial counsel and the public defender system failed to provide an adequate mitigation specialist investigation. He argues American Bar Association ("ABA") guidelines provide, in a death penalty case, the defense team should consist of a minimum of two lawyers, an investigator, and a mitigation specialist. ABA guidelines are not constitutional law; they are guidelines. *Strickland*, 466 U.S. at 688-89. Moreover, as the motion court found, Wood failed to show any additional, admissible mitigation evidence that would have resulted from more investigation. As the postconviction movant, Wood must plead and prove facts warranting relief. Conclusory allegations are insufficient. *Flaherty*, 694 S.W.3d at 422-23. The motion court did not clearly err by denying this claim.

Wood claims the motion court clearly erred by denying his claim trial counsel was ineffective for failing to present mitigation testimony from Dr. Fabian, a forensic psychologist and neuropsychologist. Dr. Fabian evaluated Wood prior to trial. During the evaluation, Wood detailed how he abducted and murdered Hailey. Dr. Fabian found Wood did not have diminished capacity. He did, however, conclude Wood had attention deficit

hyperactivity disorder, bipolar disorder with a predominant major depressive disorder, multiple substance abuse disorders, and suffered from acute methamphetamine intoxication.

At the evidentiary hearing, Dr. Fabian testified there is no objective test to determine Wood's mental state on the day of the murder and the accuracy of any opinion would depend on information Wood reported to him. Further, trial counsel testified he decided to shift the focus from Hailey's murder to Wood's difficult personal life. This was an objectively reasonable mitigation strategy, given the uncertainty of Dr. Fabian's assessment and the horrific details of Wood's crime. The decision to forego Dr. Fabian's testimony in favor of a reasonable alternative mitigation strategy is precisely the type of "virtually unchallengeable" strategic decision that will not support a claim for ineffective assistance of counsel. *Strickland,* 466 U.S. at 690.

Wood also cites *Hawkins v. State*, 512 S.W.3d 112, 116 (Mo. App. 2017), for the proposition counsel was ineffective for failing to deliver on a "promise" to present expert testimony. The record refutes this argument. In opening statements, counsel referenced Wood's mental health but never promised to present any particular evidence.[4] Instead of Dr. Fabian's testimony, counsel tried to show Wood's mental health issues through

[4] Even if counsel told the jury certain evidence would be presented, counsel is free to change course based on an objectively reasonable assessment during the course of the trial. *Midgyett v. State*, 392 S.W.3d 8, 13-14 (Mo. App. 2012) (affirming the denial of postconviction relief based on a claim counsel promised to present testimony from certain witnesses).

testimony from Wood's acquaintances regarding his history of substance abuse and personal problems. The motion court did not clearly err by denying this claim.

Wood claims the motion court clearly erred by denying his claim trial counsel was ineffective for failing investigate and call Dr. Piasecki, an addiction neurobiology expert, to provide evidence supporting a diminished capacity defense. The record does not support this claim. Trial counsel is not ineffective for making strategic choices limiting the investigation of potential defenses. *Strickland*, 466 U.S. at 690-91. Counsel reasonably limited the investigation given Dr. Fabian's conclusion Wood's substance abuse issues did not result in diminished capacity. Moreover, "[d]efense counsel is not obligated to shop for an expert witness who might provide more favorable testimony." *Johnson v. State*, 333 S.W.3d 459, 464 (Mo. banc 2011) (internal quotation omitted). Trial counsel hired two experts to review Wood's mental health. Trial counsel was not obligated to hire a third mental health expert. *Id*.

Further, the motion court found Wood provided Dr. Piasecki with an account of the murder that was not credible. Wood's unreliable account undermined Dr. Piasecki's assessment, which led the motion court to further find her diagnosis of a stimulant induced psychosis not credible. This Court defers to the motion court's credibility determinations. *Flaherty*, 694 S.W.3d at 419. The motion court did not clearly err by denying this claim.

Wood also claims the motion court clearly erred by denying his claim trial counsel was ineffective for failing to offer testimony from Dr. Piasecki or another addiction neurobiology expert to offer mitigation evidence regarding Wood's substance abuse and mental health problems. The record also refutes this claim. Trial counsel offered testimony

from Wood's acquaintances to show his substance abuse and personal problems. Counsel reasonably chose to focus on Wood's personal life rather than risking re-focusing the jury on the details of the crime. The motion court did not clearly err by denying this claim.

Wood claims trial counsel was ineffective for failing to call a jail counselor and three of his acquaintances to offer mitigation testimony. Wood argues the jail counselor would have testified Wood was depressed and had substance abuse problems. This evidence would have been cumulative to other evidence at trial. Wood's parents testified about his upbringing, education, intelligence, failure to live up to his potential, his consistent employment, lack of criminal history, and his lifelong problems with substance use and depression. Several of Wood's friends testified about his substance abuse and depression. Two jail employees testified that, other than hoarding pills for an apparent suicide attempt, Wood had not caused problems. "Failure to present evidence that is cumulative to that presented at trial does not constitute ineffective assistance of counsel." *McLaughlin v. State*, 378 S.W.3d 328, 343 (Mo. banc 2012).

Wood also asserts his friends would have testified he had a difficult breakup with his high school girlfriend, had no meaningful romantic relationships, and lived in a dirty apartment. Reasonable trial counsel could conclude that juxtaposing the graphic details of Hailey's murder with evidence of ordinary difficulties of everyday life would be unlikely to yield jury sympathy or an effective mitigation strategy.

Penalty-Phase Opening Statement

Wood claims trial counsel was ineffective for not objecting to the prosecutor's penalty-phase opening statement comparing Wood's basement to a "dungeon." The

prosecutor argued, "[t]hat's torture alone, just taking that child, driving her to an unknown place, taking her to an unknown house, then committing those unspeakable acts, binding her, taking her to his dungeon, which she would view it as certainly, where then he shoots her in the head." At trial, there was testimony describing what police found in the basement. The circuit court also admitted a photo of the concrete steps leading to Wood's basement into evidence.

Wood argues the reference to his basement as a "dungeon" is the type of inflammatory reference that, had counsel objected, would have resulted in new trial under *State v. Banks*, 215 S.W.3d 118 (Mo. banc 2007). Wood is incorrect.

In *Banks*, the defendant argued in closing that the murder of which he was accused occurred in a "crack house," and the witnesses present at the scene were unreliable. *Id*. at 119. In response, the prosecutor argued "we have to go and catch the Devil, there are no angels as witnesses. This is Hell. He is the Devil. They aren't angels. He is guilty beyond a reasonable doubt." *Id*. *Banks* held the circuit court erred by overruling the defendant's objection because "[t]he remark was pure hyperbole, an ad hominem personal attack designed to inflame the jury." *Id*. at 121. The improper argument was prejudicial because the defendant's "principal defense was the credibility and unreliability of the witnesses." *Id*.

The narrow, fact-specific holding in *Banks* is based on a century-old line of cases specifically disapproving personal attacks characterizing a criminal defendant as the

"devil." *Id*. at 120 (citing *State v. Young,* 12 S.W. 879, 884 (Mo. 1890)).[5] The prosecutor's characterization of Wood's basement as a "dungeon" was based on evidence, not hyperbole, it was not a personal attack, and it carried no express or implied reference to the "devil" or "hell." *Banks* is inapposite, and any objection would likely have been meritless. Rather than lodging a tenuous objection, counsel could make a reasonable strategic decision to stay silent and avoid focusing the jury's attention on the prosecutor's fleeting reference. The motion court did not clearly err by denying this claim.

Penalty-Phase Closing Argument

Wood claims the motion court clearly erred by denying his claim the prosecutor's penalty-phase closing argument misled the jury by stating Hailey's family wanted the death penalty. A Rule 29.15 motion for postconviction relief is not a substitute for direct appeal, so claims adjudicated on direct appeal generally cannot be the basis for postconviction relief. *Zink v. State*, 278 S.W.3d 170, 191 (Mo. banc 2009). That rule applies here. Wood's claim is premised on his assertion the prosecutor knowingly made false representations that Hailey's family wanted Wood sentenced to death. This Court rejected the factual premise of this argument on direct appeal by holding the state did not argue any of Hailey's family members wanted the death penalty and this was a permissible "send a message argument." *Wood*, 580 S.W.3d at 579-80 (internal quotation omitted). The motion court did not clearly err by denying Wood's claim of prosecutorial misconduct.

[5] *See also State v. Goodwin,* 217 S.W. 264, 266 (Mo. 1919) (reversing a judgment of conviction for running a "bawdyhouse" because the prosecutor argued the defendant "has the devil in her heart" and "is guilty of white slavery").

Section 562.076

Wood claims the motion court clearly erred by overruling his claim counsel was ineffective for failing to utilize expert testimony to challenge the constitutional validity of the voluntary intoxication statute, § 562.076, RSMo 2016,[6] and its corresponding MAI-CR jury instructions. State statutes restricting the introduction of voluntary intoxication evidence to limit criminal responsibility do not violate a criminal defendant's due process right to present a defense. *Montana v. Egelhoff*, 518 U.S. 37, 56 (1996). Based on *Egelhoff*, this Court has affirmed the constitutional validity of section 562.076, RSMo 2016. *Collings*, 543 S.W.3d at 10. Counsel is not ineffective for declining to pursue a meritless argument. *Baumruk v. State*, 364 S.W.3d 518, 529 (Mo. banc 2012).

Motion for New Trial

Wood claims the motion court clearly erred by denying his claim trial counsel was ineffective for failing to preserve a claim the circuit court erroneously overruled his objection to the state's penalty-phase closing argument. Trial counsel's objection asserted the prosecutor improperly argued Hailey's family wanted the death penalty when the prosecutor knew Hailey's mother wanted a life sentence. Wood argues he was prejudiced because, if the objection had been preserved, his direct appeal challenge to the argument would have succeeded.

[6] Section 562.076.1, RSMo 2016, provides: "A person who is in an intoxicated or drugged condition, whether from alcohol, drugs or other substance, is criminally responsible for conduct unless such condition is involuntarily produced and deprived him or her of the capacity to know or appreciate the nature, quality or wrongfulness of his or her conduct."

Postconviction relief for ineffective assistance of trial counsel is limited to prejudicial errors denying the defendant a fair trial. *Tisius v. State*, 519 S.W.3d 413, 425-426 (Mo. banc 2017). The failure to preserve an issue for direct appeal does not deprive the defendant of a fair trial and, therefore, "is not a cognizable post-conviction relief claim." *Id*. at 425. The motion court did not clearly err by denying relief for this claim.

Rule 29.08(c)

Wood claims the motion court clearly erred by denying his claim the prosecutor engaged in misconduct by submitting a post-trial report pursuant to Rule 29.08(c) criticizing defense counsel's investigation of psychiatric defenses, disclosing allegedly confidential statements from Dr. Fabian's psychological evaluation, and making generalized policy arguments for capital punishment.

Rule 29.08(c) provides:

> When there is a conviction for a crime for which a punishment provided by statute is death, the judge shall file a report in this Court not later than ten days after the final imposition of sentence regardless of the sentence actually imposed. The report shall be on a form prescribed by this Court and shall be accompanied by any presentence investigation report.

"The purpose of the [Rule 29.08(c)] report is to assist this Court in its proportionality review." *State v. Weaver*, 912 S.W.2d 499, 515 (Mo. banc 1995). Because the Rule 29.08(c) report was submitted after sentencing, it had no prejudicial effect on Wood's conviction and sentence. *Id.* (holding a prosecutor's comments offered when the judge was compiling the Rule 29.08(c) report had no prejudicial effect even if the communication was improper). The motion court did not clearly err by denying this claim.

Disqualification of Prosecutor

Wood claims the motion court clearly erred by overruling his motion to disqualify the prosecutor from representing the state in the postconviction case because the prosecutor's "knowingly false" penalty-phase closing argument and comments submitted for the circuit court's Rule 29.08(c) report created an "appearance of impropriety" requiring disqualification.

A prosecutor "must be disqualified if a reasonable person with knowledge of the facts would find an appearance of impropriety and doubt the fairness of the process." *McFadden,* 619 S.W.3d at 461 (internal quotation omitted). Aside from conclusory arguments based on undisputed generalizations that trials must be fair, Wood offers no support for his claim the prosecutor's Rule 29.08(c) comments create an appearance of impropriety. Further, the prosecutor's penalty-phase closing argument was a permissible "send a message argument." *Wood*, 580 S.W.3d at 579-80 (internal quotation omitted). The motion court did not clearly err by denying this claim.

Disqualification of Motion Court

Wood claims the motion court clearly erred by denying Wood's motion to disqualify the judge from adjudicating the Rule 29.15 motion because he also served as the trial judge and included the prosecutor's allegedly improper comments in the Rule 29.08(c) report. Rule 29.08 requires the circuit court to submit the report on a standard form prepared and supplied by this Court. Rule 29.08(c); *see also* § 565.035.1, RSMo 2016. The form this Court prescribes instructs the trial judge to check one of three boxes indicating the comments of the respective attorneys are attached, the attorneys had no comments, or the

attorneys did not respond. The judge checked the box indicating comments of counsel were attached. Contrary to Wood's argument, the judge did not adopt the prosecutor's comments. The judge followed Rule 29.08(c) and completed this Court's standardized form by acknowledging and attaching comments from both the prosecutor and defense counsel. Completing the statutorily required report pursuant to the procedure Rule 29.08 prescribes is not a basis for disqualification.

Wood also claims the judge of the motion court should have disqualified himself from adjudicating Wood's Rule 29.15 motion because, as a member of the Springfield community, he was a victim and could not fairly consider Wood's postconviction claims. The argument the judge was a "victim" rests on the judge's statement during trial that Wood's crimes resulted in not only Hailey's death, "but also death of innocence for a neighborhood, for a community, for a family." This metaphorical reference illustrates the gravity of Wood's actions. Wood's argument the judge was a "victim" who could not fairly adjudicate the Rule 29.15 motion is nothing more than an invalid attempt to infer a fact from a metaphorical illustration. The judge was not the victim; Hailey was.[7] The motion court did not clearly err by denying relief for this claim.

Wood claims the motion court clearly erred by denying his claim counsel was ineffective for failing to move to disqualify the circuit judge from sentencing Wood after the jury deadlocked on punishment. Wood claims there is a reasonable probability that a

[7] Section 565.030.4, RSMo 2016, makes this clear by providing the penalty-phase evidence in a death penalty case "may include, within the discretion of the court, evidence concerning the ***murder victim*** and the impact of the offense upon the family of ***the victim*** and others." (Emphasis added).

judge who did not have the "dual status of both judge and Springfield victim" would have imposed a life sentence. As explained above, the premise of this claim lacks merit. The judge was not a victim of Wood's crime. "Counsel is not ineffective for failing to file a meritless motion." *Baumruk*, 364 S.W.3d at 529. The motion court did not clearly err by denying relief on this claim.

Conclusion

The motion court court's findings of fact and conclusions of law are not clearly erroneous. The judgment overruling Wood's Rule 29.15 motion for postconviction relief is affirmed.

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Zel M. Fischer, Judge

All concur.