STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1567

State of Minnesota,
Respondent,

vs.

David NMN Alonzo,
Appellant.

Filed May 8, 2023
Affirmed
Bjorkman, Judge

Redwood County District Court
File No. 64-CR-19-343

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Jenna M. Peterson, Redwood County Attorney, Redwood Falls, Minnesota; and

Travis J. Smith, William C. Lundy, Special Assistant County Attorneys, Slayton, Minnesota (for respondent)

Barry S. Edwards, Max A. Keller, Keller Law Offices, Minneapolis, Minnesota (for appellant)

Considered and decided by Jesson, Presiding Judge; Bjorkman, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant was convicted of three counts of second-degree criminal sexual conduct following a jury trial. He challenges his convictions and sentence, arguing that (1) the

prosecutor committed unobjected-to misconduct; (2) the district court plainly erred by not sua sponte dismissing a juror for cause; (3) the district court plainly erred by permitting a police chief to offer expert testimony; (4) the district court abused its discretion by allowing relationship evidence without cautioning the jury on its use each time it was offered; (5) the district court erred by not sua sponte granting him a durational sentencing departure; and (6) the district court abused its discretion by denying his petition for postconviction relief without an evidentiary hearing. We affirm.

FACTS

In January 2018, 17-year-old C.A. was admitted to the hospital after attempting suicide. At the hospital, C.A. reported that, when he was in eighth grade, his father, appellant David Alonzo, struck him on the butt with a belt for "making fun of somebody" in school. In a subsequent forensic interview, C.A. disclosed that Alonzo sexually abused him starting when he was six years old and ending when he was 12. During this period of time, Alonzo regularly grabbed C.A.'s "groin" over and under his clothes.

Respondent State of Minnesota charged Alonzo with three counts of second-degree criminal sexual conduct. Before trial, the state moved to admit relationship evidence of Alonzo's domestic conduct against other family or household members. The evidence included several instances of domestic assault by Alonzo against his ex-wife (C.A.'s mother) and two of C.A.'s siblings. Over Alonzo's objection, the district court allowed the state to offer four instances of this relationship evidence. The district court advised the prosecutor to request a cautionary instruction each time they introduced this evidence.

During voir dire, the district court asked prospective juror T.Q., who was the mayor of Redwood Falls, if anything about his relationship with state witnesses from the Redwood Falls Police Department would make it difficult to evaluate their testimony. T.Q. responded that he would evaluate the testimony of both the police chief and assistant police chief "[t]o the best of [his] ability." He explained that he was not responsible for hiring them and that he did not feel that his participation on the jury would impact future negotiations with the police department. At the end of voir dire, defense counsel passed on challenging any juror for cause, including T.Q.

C.A., his sister M.A., his brother D.A., and the police chief testified for the state. C.A. testified that Alonzo "shoved a shampoo bottle up our, up my butt" but that the bottle did not penetrate him. He testified that Alonzo hit him multiple times, including on his bare butt. He also testified that Alonzo once told him "mine's bigger than yours," and made him expose his penis to "measure [it] basically." M.A. testified that she once saw Alonzo "flick" C.A.'s penis while C.A. was naked. The police chief testified about things that "trigger" memories of sexual abuse, and how they are different with each victim.

The jury found Alonzo guilty as charged. Alonzo moved for a downward dispositional sentencing departure, asserting that he was particularly amenable to probation. The district court denied the motion and imposed a 234-month guidelines sentence and 10 years of conditional release.

Alonzo appealed. At his request, this court stayed the appeal to permit him to seek postconviction relief. Alonzo's postconviction petition asserted that he received

ineffective assistance of counsel and was denied the right to an impartial jury. After the district court denied the petition, we reinstated the appeal.

DECISION

I. Alonzo is not entitled to relief based on plain error.

Alonzo makes three arguments on appeal that he did not raise in the district court. Because he did not object to the alleged errors at trial, we review his arguments for plain error. *See State v. Myhre*, 875 N.W.2d 799, 804 (Minn. 2016). Generally, "to meet the plain error standard, a criminal defendant must show that (1) there was an error, (2) the error was plain, and (3) the error affected the defendant's substantial rights." *Id.* An error is plain if it contravenes caselaw or a rule. *State v. Cao*, 788 N.W.2d 710, 715 (Minn. 2010). Even if the first three requirements are met, "an appellate court may correct the error *only* when it seriously affects the fairness, integrity, or public reputation of judicial proceedings." *Pulczinski v. State*, 972 N.W.2d 347, 356 (Minn. 2022).

A. The prosecutor did not commit prejudicial misconduct.

Prosecutors commit misconduct when they "violate[] clear or established standards of conduct, e.g., rules, laws, orders by a district court, or clear commands in this state's case law." *State v. McCray*, 753 N.W.2d 746, 751 (Minn. 2008) (quotation omitted). One of these rules is the prohibition against appealing to the passions of the jury. *State v. Mayhorn*, 720 N.W.2d 776, 786-87 (Minn. 2006). If credibility is a central issue in a case, an appellate court "pays special attention to statements that may inflame or prejudice the jury." *Id.* at 787.

Alonzo contends that the prosecutor committed misconduct by appealing to the passions of the jury during voir dire, direct examination, and closing argument. He concedes that his trial counsel did not object to any of the alleged prosecutorial misconduct. Accordingly, we apply the modified plain-error standard. *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). Under this standard, if the defendant establishes error that is plain, the burden shifts to the state to prove that there is no reasonable likelihood that the absence of the misconduct would have significantly affected the jury's verdict. *Id.* To determine whether misconduct significantly impacted a jury verdict, we consider "the pervasiveness of improper suggestions and the strength of evidence against the defendant." *State v. Parker*, 901 N.W.2d 917, 926 (Minn. 2017) (quotation omitted).

1. Voir Dire

A criminal defendant has the right to an impartial jury. U.S. Const. amends. VI, XIV; Minn. Const. art. 1, § 6; *State v. Greer*, 635 N.W.2d 82, 87 (Minn. 2001). "The purpose of voir dire is to probe the jury for bias or partiality to enable counsel to exercise informed peremptory challenges and challenges for cause." *State v. Gillespie*, 710 N.W.2d 289, 295 (Minn. App. 2006) (citing Minn. R. Crim. P. 26.02, subd. 4(1)), *rev. denied* (Minn. May 16, 2006). A prosecutor's questioning that goes beyond this purpose may constitute misconduct. *State v. Bolstad*, 686 N.W.2d 531, 543 (Minn. 2004) (expressing concern about questions implicitly asking jurors to "identify with the victim").

Alonzo challenges a series of the prosecutor's voir dire questions, including questions about "mean drunks," whether the jurors "think a child needs to say no to being sexually touched," whether a child's failure to say no "make[s] the sexual touching okay,"

and whether any of the jurors had been through a traumatic event. He cites *Bolstad*, where the jury returned a guilty verdict based on evidence that Bolstad had offered a friend money to kill his father. *Id.* at 536, 538. During voir dire, the prosecutor asked potential jurors whether they had ever paid someone to have their parents killed and immediately followed up with questions regarding the jurors' relationship with their parents. *Id*. at 543. The supreme court noted that "this type of blunt questioning could inflame the passions of jurors" but concluded that, based on the record as a whole, the questioning was not unduly prejudicial. *Id.*

We are not convinced that the challenged voir dire questions here impermissibly influenced the jury. Like in *Bolstad*, the prosecutor's questions were based on evidence the jurors would encounter during the trial. There was evidence that Alonzo was often drunk and abusive and that he had physically and sexually abused C.A. and others while drunk. Voir dire questions that reveal jurors' ability to hear and impartially weigh such evidence are critical. *See Gillespie*, 710 N.W.2d at 295 (stating a "defendant's right to an impartial jury is guaranteed, in part, by an adequate voir dire that permits the identification of unqualified jurors"); *State v. Anderson*, 603 N.W.2d 354, 356 (Minn. App. 1999) (stating that "[c]rime victim status is not one of the proper causes for challenge"), *rev. denied* (Minn. Mar. 14, 2000). The challenged statements elicited potential bias and were in line with the purposes of voir dire. *See Gillespie*, 710 N.W.2d at 295 ("The purpose of voir dire is to probe the jury for bias or partiality . . . ."). Alonzo has not demonstrated misconduct based on the prosecutor's voir dire questions.

2. Direct Examination

Alonzo next contends that the prosecutor's references to "the sexual abuse" and "the abuse" during direct examination of its witnesses, including C.A., assumed guilt, "subvert[ed] the presumption of innocence," "inflame[ed] the passions of the jury," misled the jury by presupposing abuse, presented a legal question to witnesses, and improperly led the witness. These contentions are unavailing.

Alonzo cites no Minnesota caselaw that supports his argument that a prosecutor must refrain from using the terms "abuse" or "sexual abuse." Rather, he points to *State v. Patzold*, where the district court told counsel to instruct witnesses to avoid using words the defendant identified as derogatory. 917 N.W.2d 798, 806 (Minn. App. 2018), *rev. denied* (Minn. Nov. 27, 2018). This court concluded that the prosecutor's use of the term "rape" was not misconduct, emphasizing that the victim used that term during their testimony. *Id.* at 806-07.

As in *Patzold*, the prosecutor used the same terms that C.A. used. C.A. described Alonzo's conduct as "abuse" and "sexual abuse." Only after C.A. did so did the prosecutor use the terms in follow-up questioning. We see no misconduct under these circumstances.

3. Closing Argument

Prosecutors have "considerable latitude" during closing arguments and need not "make a colorless argument." *State v. Williams*, 586 N.W.2d 123, 127 (Minn. 1998). But the argument "must be based on the evidence produced at trial, or the reasonable inferences from that evidence." *Patzold*, 917 N.W.2d at 808 (quoting *State v. Porter*, 526 N.W.2d 359, 363 (Minn. 1995)). In considering the propriety of a prosecutor's argument, we "look

to the closing argument as a whole, rather than to selected phrases and remarks." *State v. Hallmark*, 927 N.W.2d 281, 308 (Minn. 2019) (quotation omitted).

Alonzo contends that the following argument improperly appealed to and inflamed the passions of the jury:

> During storms in a child's heart are calmed by the loving waves in the sea of a father's love. Unless your father is David Alonzo. If your father is [Alonzo], he is the cause of the greatest storms you are forced to bear, there is no calm, there is no sea of love, the sea is vicious, the sea is turbulent and you're forced to swim in David Alonzo's sea without a life vest and you're trapped on a shoddy raft, alone, with no land in sight.

He also cites the prosecutor's statement that "all [C.A.] knew was a manipulative, controlling, abusive drunk."[1]

Alonzo likens these statements to those in *Porter*, where the prosecutor argued that "[t]here is no salve you can put on your conscience" and "I got time share in Santa Claus's condo at the north pole, and I will sell you some. You are not that big of suckers, and you know that," and repeatedly referred to a fictitious "James Porter School of Sex Education." 526 N.W.2d at 363. Our supreme court concluded that the prosecutor committed

[1] The state argues that Alonzo waived this argument because defense counsel affirmatively told the district court that Alonzo had no objection to the prosecutor's closing. The state cites *State v. Schill*, where we stated that "under the United States Supreme Court's development of plain-error review, when a party has instead voluntarily waived a right, there is no 'error' to be reviewed, plain or otherwise." No. A18-1872, 2019 WL 6698075, at *3 (Minn. App. Dec. 9, 2019), *rev. denied* (Minn. Feb. 26, 2020). But in *Schill*, we considered the argument because our supreme court "continues to allow for review of seemingly waived, invited errors under the plain-error standard." *Id.* (citing *State v. Carridine*, 812 N.W.2d 130, 142 (Minn. 2012)). Accordingly, we consider Alonzo's challenge to the prosecutor's argument.

misconduct because the statements went beyond mere colorful language and that the school references were not based on the evidence produced at trial. *Id.* at 363-64.

We are not convinced that the prosecutor's challenged statements implicate the concerns that were present in *Porter*. Unlike the prosecutor's references in that case to a school that did not exist, the prosecutor's characterization of Alonzo as manipulative and a drunk reflects the evidence adduced at trial. C.A. testified that Alonzo was drunk "[t]he majority of the time" and multiple witnesses testified that he abused his family while drunk. And while the prosecutor's reference to storms in C.A.'s heart may have been a bad metaphor, we are not persuaded that it was misconduct or impinged on the jurors' independence. The prosecutor's language did not suggest that the jurors would be "suckers" if they acquitted Alonzo or so out of touch with reality that they may believe Santa exists. *See id.* In short, the prosecutor's statements did not improperly appeal to the passions and prejudices of the jurors.

Even if portions of the prosecutor's closing argument did cross the line and improperly appealed to the passions and prejudices of the jury, the state has shown that any misconduct did not substantially affect the outcome of his case or implicate the fairness and integrity of the proceedings. The challenged statements comprise one paragraph of a 19-page closing argument. Indeed, the prosecutor made the statements at the beginning of the argument and did not repeat or reference them again. Moreover, the evidence against Alonzo was strong. C.A. testified consistent with his prior statements. While damaging to the defense, the challenged statements did not misstate the evidence in anyway. The state met its burden to establish that there was no prejudicial misconduct.

B. Alonzo waived his challenge to juror T.Q.

The United States and Minnesota Constitutions guarantee a criminal defendant the right to a fair trial by an impartial jury. U.S. Const. amend. VI; Minn. Const. art. I, § 6. To prevail on a claim of juror bias on appeal, a party must show that "the challenged juror was subject to challenge for cause, that actual prejudice resulted from the failure to dismiss, and that appropriate objection was made by appellant." *State v. Stufflebean*, 329 N.W.2d 314, 317 (Minn. 1983). The party challenging a juror "has the burden of proving that the juror expressed a state of mind demonstrating actual bias towards the case or either party." *State v. Munt*, 831 N.W.2d 569, 577 (Minn. 2013) (quotations omitted).

We review the denial of a for-cause challenge for an abuse of discretion. *Id.* at 576. But a district court does not have a duty to dismiss a juror for cause sua sponte. *Gillespie*, 710 N.W.2d at 296. This is because it is possible that a defendant may make a strategic decision not to object. *Id.*

Alonzo contends that the district court plainly erred by permitting juror T.Q. to serve because he was the mayor of Redwood Falls. The state urges us to conclude that Alonzo waived this argument, citing *State v. Geleneau*, 873 N.W.2d 373 (Minn. App. 2015), *rev. denied* (Minn. Mar. 29, 2016). In *Geleneau*, the defense counsel did not challenge two jurors for cause and, at the conclusion of voir dire, stated, "That's all the questions I have this afternoon. I pass for cause." 873 N.W.2d at 381. We declined to consider whether the district court abused its discretion by allowing the jurors to serve because the "trial counsel's statement relieved the district court of any obligation to dismiss any juror for cause sua sponte." *Id.*

As in *Geleneau*, it is undisputed that Alonzo's trial counsel did not challenge juror T.Q. and passed the panel for cause at the conclusion of voir dire. Alonzo does not explain why we should depart from *Geleneau*, and we see no reason to do so.[2] Simply put, Alonzo waived his right to challenge prospective juror T.Q. for cause.

C. The district court did not plainly err by permitting the police chief to testify as an expert.

Expert testimony is "scientific, technical, or other specialized knowledge" that will "assist the trier of fact to understand the evidence or to determine a fact in issue." Minn. R. Evid. 702. Expert testimony is admissible if: (1) the witness is qualified as an expert by knowledge, skill, experience, training, or education; (2) the opinion has foundational reliability; (3) the testimony helps the jury; and (4) it satisfies the *Frye-Mack* test if it involves a "novel scientific theory." *State v. Obeta*, 796 N.W.2d 282, 289 (Minn. 2011); Minn. R. Evid. 702. To determine whether expert testimony is foundationally reliable, the district court must examine whether the expert reliably applied the underlying theories and methodologies in a particular case. *State v. Garland*, 942 N.W.2d 732, 742 (Minn. 2020). Because defense counsel did not object to the police chief's testimony, we review its admission for plain error. *See Myhre*, 875 N.W.2d at 804.

The police chief testified that it is common in sexual abuse cases for a victim to suppress memories of the abuse until they are "triggered." He described that a trigger

[2] To the extent Alonzo argues that juror T.Q. was impliedly biased, that argument fails. *See State v. Fraga*, 864 N.W.2d 615, 623 (Minn. 2015) (concluding that Minn. R. Civ. P. 26.02 provides the "exclusive grounds to challenge a prospective juror for implied bias").

"typically means . . . a stimulus a sight, a sound, a smell . . . , maybe an object that a victim would see or, or take in and it would cause repressed memories to come into their conscious thought that maybe they've been pushing back." And he explained that triggers may be completely different from victim to victim. Alonzo contends that the police chief was not qualified as an expert and that his opinions lacked foundational reliability. We disagree.

As noted above, a witness may be qualified as an expert based on their training and experience. In *May v. Strecker*, we held that the district court did not abuse its discretion by permitting a police officer with 21 years of experience who had taken classes in accident investigation to opine that intoxication played a role in a motor-vehicle accident. 453 N.W.2d 549, 555 (Minn. App. 1990), *rev. denied* (Minn. June 15, 1990). Like the experience and education that qualified the police officer as an expert in *May*, the police chief testified that he was trained to investigate sex crimes and had investigated approximately 30 sexual-abuse cases. Because admission of the police chief's challenged testimony did not contravene caselaw or the rules of evidence, we discern no plain error. *See Cao*, 788 N.W.2d at 715.

But even if admission of the police chief's testimony about triggers was plain error, it did not affect Alonzo's substantial rights. *See Myhre*, 875 N.W.2d at 804. Alonzo does not articulate how any plain error affected his rights apart from the bald assertion that the challenged testimony prejudiced him "because the jury heard allegedly expert testimony from a witness who had no qualifications to provide such testimony." The record defeats this argument. Indeed, before the police chief testified, another witness—whose expert status was not contested—offered similar testimony about triggers:

> Q: And in your training and your capacity when trigger's, the word, "trigger," is used in this situation, what does that mean to you?
> A: It's an event that can bring back memories that have been suppressed, forgotten about, um, completely random.
> . . . .
> Q: And in your training and experience is every child's trigger the same?
> A: No.

In other words, the police chief's testimony was cumulative. *State v. McDonald-Richards*, 840 N.W.2d 9, 19 (Minn. 2013) (explaining that erroneously admitted evidence is harmless when it is cumulative). Both witnesses testified about what a trigger is, that triggers are common in sexual-abuse cases, and that triggers can differ from victim to victim. Under these circumstances, Alonzo has neither demonstrated an error that affects his substantial rights nor error that seriously affected "the fairness, integrity, or public reputation of judicial proceedings," and it is not clear how such testimony would do so. *Pulczinski*, 972 N.W.2d at 356. We see no plain error.

II. Alonzo was not prejudiced by the district court's failure to give a cautionary instruction every time the prosecutor introduced relationship evidence.

Evidence of domestic conduct, including sexual and physical abuse, by a defendant against the victim or other family or household members "is admissible unless the probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issue, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Minn. Stat. § 634.20 (2022). Admission of this "relationship evidence" over a defendant's objection requires the district court to "sua sponte instruct the jurors on the proper use of such evidence, unless the defendant

objects to the instruction by the court." *State v. Zinski*, 927 N.W.2d 272, 278-79 (Minn. 2019).

Alonzo does not challenge the admission of the relationship evidence. Rather, he asserts that the district court abused its discretion by not properly instructing the jury. First, he contends that the district court should have given a cautionary instruction every time a witness or the prosecutor uttered the words "sexual abuse" or "domestic violence." He specifically points to the neuropsychologist's testimony that C.A.'s mother told her "that [C.A.] had . . . witnessed domestic violence, that he had experience[d] verbal/physical abuse, and that he had recently . . . reported experiencing sexual abuse" and that her "pregnancy was notable for a few things including . . . domestic violence." We are not persuaded. None of this testimony constitutes relationship evidence because it does not describe any specific acts of "domestic conduct" as identified in Minn. Stat. § 634.20.

Second, Alonzo argues that "virtually all of [M.A.'s] testimony was [section] 634.20 evidence." But even if that were true, we see no error by the district court. The record demonstrates that the district court gave a cautionary instruction before M.A. testified about the instances of relationship evidence.

Finally, Alonzo asserts that the district court should have given a cautionary instruction before the state offered D.A.'s recorded statement to the police chief during which D.A. revealed that Alonzo (1) threw his mother down to the ground by the stairway at their home, (2) made comments to M.A. about her breasts, and (3) choked and hit D.A. after an argument about doing the dishes. The state did not request, and the district court did not provide, a cautionary instruction before playing the recording.

But even if this was error, it was harmless. "Under the harmless error standard, a defendant who alleges an error that does not implicate a constitutional right must prove there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict." *State v. Matthews*, 800 N.W.2d 629, 633 (Minn. 2011) (quotations omitted). It is undisputed that the district court instructed the jury on the proper use of relationship evidence more than ten times, including before D.A. testified in accord with the above-referenced recorded statement and in the final instructions. On this record, we conclude that the district court's failure to read the cautionary instruction immediately prior to the introduction of D.A.'s statement did not significantly affect the verdict.[3]

III. Alonzo forfeited his sentencing argument.

For the first time on appeal, Alonzo argues that he is entitled to a downward durational departure from the presumptive guidelines sentence. A district court may depart from a presumptive sentence if there are "identifiable, substantial, and compelling circumstances to support a departure." *State v. Musse*, 981 N.W.2d 216, 219-20 (Minn. App. 2022) (quoting Minn. Sent'g Guidelines 2.D.1 (2020)), *rev. denied* (Minn. Dec. 28, 2022). A downward durational departure is premised on the defendant's conduct being "significantly less serious than that typically involved in the commission of the offense." *Id.* at 220. In contrast, a dispositional departure is based on characteristics of the defendant

[3] Alonzo contends that his trial contained "so much unfairness that it is impossible to definitively untangle what would be left if the jury had only heard proper and admissible evidence." "An appellant is entitled to a new trial if . . . errors, when taken cumulatively, had the effect of denying appellant a fair trial." *State v. Jackson*, 714 N.W.2d 681, 698 (Minn. 2006) (quotation omitted). Alonzo is not entitled to a new trial on this basis because we discern no prejudicial error at trial.

that warrant placing them "in a different setting than that called for by the presumptive guidelines sentence." *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016).

District courts have broad sentencing discretion. *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014). Generally, we will not disturb a district court's imposition of a sentence that falls "within the presumptive guidelines range." *State v. Delk*, 781 N.W.2d 426, 428 (Minn. App. 2010), *rev. denied* (Minn. July 20, 2010).

Prior to sentencing, Alonzo moved for a dispositional departure to probation. He did not request a durational departure. He cites no authority to support his argument that a district court abuses its discretion when it does not—on its own accord—depart from the presumptive sentence. Nor does he persuade us that his conduct was significantly less serious than is typical of second-degree criminal sexual conduct involving a child. Indeed, Alonzo's effort to convince us otherwise is confined to the following: "The Court has the allegations in this case (*see* Statement of Facts). Assuming the jury believed the allegations . . . . Those are odd behaviors. Those are, even, criminal behaviors. It is impossible to imagine, however, how they justify almost 20 years in prison." This challenge seems better addressed to the legislature.

More importantly, Alonzo forfeited his sentencing argument by failing to raise it in the district court. *See State v. Busse*, 644 N.W.2d 79, 89 (Minn. 2002) (stating that an appellate court generally "will not decide issues that were not raised before the district court"). And even if we overlooked that failure, because he did not obtain a transcript of the sentencing hearing, we cannot review the district court's sentencing decision. *See Mesenbourg v. Mesenbourg*, 538 N.W.2d 489, 494 (Minn. App. 1995) (stating "[a]n

appellant has the burden to provide an adequate record" on appeal). On this record, Alonzo's sentencing challenge fails.

IV. The district court did not abuse its discretion by denying Alonzo's postconviction petition without an evidentiary hearing.

We review a district court's denial of a petition for postconviction relief without an evidentiary hearing for an abuse of discretion. *Caldwell v. State*, 853 N.W.2d 766, 770 (Minn. 2014). In doing so, we review the postconviction court's factual findings for clear error and its legal conclusions de novo. *Martin v. State*, 825 N.W.2d 734, 740 (Minn. 2013). A petitioner is entitled to an evidentiary hearing unless "the petition and the files and records of the proceeding conclusively show that the petitioner is entitled to no relief." Minn. Stat. § 590.04, subd. 1 (2022); *see Bobo v. State*, 820 N.W.2d 511, 516 (Minn. 2012) (discussing purpose of evidentiary hearing).

Alonzo moved for postconviction relief based on claimed ineffective assistance of trial counsel.[4] A criminal defendant has a right "to have the Assistance of Counsel for his defense." U.S. Const. amend. VI; *see also* Minn. Const. art. I, § 6. To establish a claim of ineffective assistance of counsel, a defendant "must show that (1) counsel's representation fell below an objective standard of reasonableness and (2) there is a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different." *Swaney v. State*, 882 N.W.2d 207, 217 (Minn. 2016). If a defendant does not satisfy one of these prongs, we need not consider both to determine whether the claim fails. *Id.*

[4] Alonzo also sought postconviction relief based on prosecutorial misconduct, juror bias, improper relationship evidence, and improper expert testimony but does not challenge the postconviction court's decision on these arguments on appeal.

Alonzo contends his trial counsel was ineffective because they did not object to the prosecutor's misconduct, the introduction of improper relationship evidence, and the police chief's expert testimony, and did not cross-examine M.A. about inconsistencies in her testimony. He argues that these deficiencies prejudiced him because they "set the bar impossibly high for an appeal." We are not persuaded for two reasons.

First, we are not convinced that trial counsel was ineffective. We presume that an attorney is competent and that their performance was reasonable. *Leake v. State*, 767 N.W.2d 5, 10 (Minn. 2009). And we generally do not review matters of trial strategy or tactics. *State v. Hokanson*, 821 N.W.2d 340, 358 (Minn. 2012). Decisions concerning what witnesses to call, what objections to make, and how to cross-examine opposing witnesses are matters of trial strategy left to the trial counsel's discretion. *See State v. Vick*, 632 N.W.2d 676, 689 (Minn. 2001) (declining to review for competency trial counsel's claimed failures to vigorously cross-examine a witness and to object to *Spreigl* testimony); *see also State v. Bobo*, 770 N.W.2d 129, 138 (Minn. 2009) (stating that whether to object is part of trial counsel's strategy and "will generally not be reviewed later for competence").

Second, Alonzo cites no authority to support his contention that he established prejudice because trial counsel's deficient performance resulted in him confronting the more stringent plain-error standard of review. The impact of claimed ineffectiveness on the appellate standard of review is not the standard by which prejudice is measured. To the contrary, the prejudice prong is measured by whether "there is a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different."

Swaney, 882 N.W.2d at 217. Alonzo has neither argued nor demonstrated that the outcome of his trial would have been different absent his attorney's claimed deficiencies. We discern no abuse of discretion by the district court in denying Alonzo's ineffective-assistance claim without an evidentiary hearing.

In sum, Alonzo is not entitled to a new trial or resentencing based on prosecutorial misconduct or plain error by the district court. And the district court did not abuse its discretion in its evidentiary rulings or by denying his petition for postconviction relief without an evidentiary hearing.

Affirmed.