

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0293**

State of Minnesota,
Respondent,

vs.

Katherine Leona Collins,
Appellant.

**Filed March 6, 2023
Affirmed
Reyes, Judge**

Hennepin County District Court
File No. 27-CR-19-5420

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

Mary F. Moriarty, Hennepin County Attorney, Zachary Stephenson, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Julie Loftus Nelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Frisch, Presiding Judge; Reyes, Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

Appellant argues on appeal from her convictions of attempted murder and second-degree assault that (1) the district court abused its discretion by admitting as recorded

recollection the victim's video-recorded statement interview with a detective following the shooting incident and (2) appellant's trial counsel provided ineffective assistance by failing to object to the video-recorded statement on proper grounds. We affirm.

FACTS¹

On March 5, 2019, at approximately 10:29 p.m., Brooklyn Center police officers were dispatched to an apartment complex in Hennepin County, Minnesota, after responding to eight 911 calls about shots being fired in the parking lot. When officer W. arrived, he observed the victim, M.H., "walking or almost running towards" him. M.H. appeared to be out of breath and in shock. M.H. told officer W. that appellant Katherine Leona Collins had fired shots at him but that he was not injured.

M.H. only knew appellant for about a week or two and drove to appellant's apartment earlier in the day to pick her up for a lunch date. After lunch, appellant told M.H. to drop her off because she felt "his attitude was too negative for [her]." They continued to text throughout the day, and it appeared that they were arguing back and forth. That evening, M.H. returned to see appellant and waited outside in the parking lot for her. Appellant came outside and entered M.H.'s vehicle with one hand in her purse. The parties agree that appellant slapped M.H. across the face but disagree on why the slap occurred and what happened after that. Appellant claimed she was provoked by M.H. after he insulted her and spit on her for wanting to end the relationship. Following the slap, she claimed that M.H. threatened to stab and punch her in the head and face.

¹ These facts are based on testimony and evidence received at the jury trial held from October 6-12, 2021, and are viewed in light most favorable to the verdict.

Conversely, M.H. stated that once she slapped him, he did not get physical with her and exited the vehicle to go around the passenger side and told appellant to get out. Instead, appellant climbed into the driver's seat. He immediately thought appellant was trying to steal his vehicle and rushed back to the driver's seat. M.H. repeatedly yelled at appellant to exit the vehicle. At some point, appellant exited the vehicle, and M.H. got into the driver's seat. M.H. was trying to drive away when appellant fired shots at him. Because the car did not start, he fled by foot, and appellant continued to fire shots at him.

Respondent State of Minnesota charged appellant in an amended complaint with one count of assault in the second degree in violation of Minn. Stat. § 609.222, subd.1 (2018), and one count of attempted murder in the second degree in violation of Minn. Stat. § 609.19, subd. 1(1) (2018). Before trial, the state requested admission of the video-recorded statements that M.H. made to law enforcement on March 5, 2019, and March 6, 2019, as prior consistent statements and under the residual exception to the hearsay rule. The state also asserted that M.H. had “no memory of the incident and [could not] testify fully as to what happened.”² It then provided the district court with nine video-recorded statements to review, not to introduce them all, but to “show that the victim was consistent.”

The state also informed the district court that appellant did not object to two of the nine video-recorded statements, specifically, M.H.'s 911 call and the video-recorded

² While the state did not include the recorded-recollection exception to the hearsay rule in its motion, it argued it extensively when the district court addressed M.H.'s prior statements at the jury trial. Further, the district court determined that they were admissible under this exception.

statement of M.H. and officer W.’s initial encounter when officer W. arrived at the scene.³ The district court noted that it reviewed all nine video-recorded statements and that they were consistent with one another.

The district determined that the nine video-recorded statements were admissible under the recorded-recollection exception but found that playing all the video-recorded statements to the jury would be cumulative. Because appellant did not object to M.H.’s 911 call and the video of M.H. and officer W.’s initial encounter, the district court admitted those two recordings. The district court then allowed the state to introduce one more video from the remaining video-recorded statements. The state chose detective V.’s interview with M.H. in which M.H. recounted to detective V. everything preceding the shooting. The jury found appellant guilty of both counts, and the district court sentenced appellant to 131 months in prison on the attempted-murder conviction. This appeal follows.

DECISION

I. The district court did not abuse its discretion when it admitted the video of detective V.’s interview with M.H.

Appellant argues that the video-recorded statement did not meet the requirements under the recorded-recollection exception. We are not convinced.

“Evidentiary rulings rest within the sound discretion of the district court, and we will not reverse an evidentiary ruling absent a clear abuse of discretion.” *State v. Ali*, 855 N.W.2d 235, 249 (Minn. 2014). “A district court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record.” *State*

³ M.H.’s 911 call was the only audio recording that was not a video-recorded statement.

v. Hallmark, 927 N.W.2d 281, 291 (Minn. 2019) (quotation omitted). “A defendant claiming error in the [district] court’s reception of evidence has the burden of showing both the error and the prejudice resulting from the error.” *State v. Loebach*, 310 N.W.2d 58, 64 (Minn. 1981). “Even whe[n] the district court abuses its discretion, the court’s evidentiary ruling will not be reversed unless the error substantially influenced the jury’s verdict.” *State v. Stone*, 784 N.W.2d 367, 370 (Minn. 2010).

Hearsay “is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Minn. R. Evid. 801(c). Hearsay is inadmissible unless an exception to the hearsay rule applies. Minn. R. Evid. 802; *State v. Manthey*, 711 N.W.2d 498, 504 (Minn. 2006). The district court may admit a hearsay statement under the recorded-recollection exception. Minn. R. Evid. 803(5). A recorded recollection is:

A memorandum or record concerning a matter about which a witness once had knowledge *but now has insufficient recollection to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness’ memory and to reflect that knowledge correctly.* If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.

Id.

Because M.H. had no memory of the incident and could not testify fully as to what happened, the district court undertook a three-part analysis of M.H.’s video-recorded statements to law enforcement under the recorded-recollection exception. *Stone*, 784 N.W.2d at 370 (Minn. 2010). It found that (1) M.H. had insufficient memory to testify

fully; (2) within hours of the incident, M.H. gave several interviews which were videotaped and made when the matter was still fresh in M.H.'s mind; and (3) the video-recorded statements accurately reflect M.H.'s recollection of the incident. The record supports these findings. The district court correctly applied the recorded-recollection exception and therefore did not abuse its discretion by allowing the video-recorded statements to be played for the jury.

Appellant argues that the district court abused its discretion by admitting the video-recorded statement of M.H.'s interview with detective V. as an exhibit, which allowed the jury to play the video-recorded statement during their deliberations. When the state raised the issue of admitting the video additionally under the residual exception, the district court deferred its decision and stated that "[it] [would] address that at another time." But the district court did not address it, and the video was admitted as an exhibit. Assuming error on the part of the district court, we must then consider if the error substantially influenced the jury's verdict.

The record here shows that other evidence was presented to support appellant's conviction. First, the district court admitted M.H.'s 911 call in which he told the operator that appellant shot at him. Second, the district court admitted the bodycam-video-recorded statement of M.H.'s initial encounter with law enforcement in which he told officer W. that appellant shot at him. Third, the jury saw a surveillance video of appellant shooting at M.H. Fourth, the jury saw pictures of M.H.'s jacket from the incident that shows bullet holes through his hood. Fifth, the jury heard M.H.'s testimony that it is hard for him to be in a romantic relationship because he gets nervous arguing with a woman and that he

struggles to sleep because of the incident. Sixth, the jury heard testimony from appellant admitting that she did not see M.H. carrying a knife at any point and that she aimed and shot at M.H.

Based on the ample evidence and testimony provided to the jury, we conclude that admitting detective V.'s interview with M.H. as an exhibit did not "substantially influence[] the jury's verdict." *Stone*, 784 N.W.2d at 370.

II. Appellant's claim of ineffective assistance of trial counsel fails.

Appellant argues that she received ineffective assistance of trial counsel when her attorney failed to object a second time to the admission of the video-recorded statement of M.H.'s interview with detective V. We are not persuaded.

When an ineffective-assistance-of-counsel claim is properly raised on direct appeal, we examine the claim under the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668, 687 (1984). *State v. Ellis-Strong*, 899 N.W.2d 531, 535 (Minn. App. 2017). Under that test, appellant must show "(1) that his counsel's representation fell below an objective standard of reasonableness; and (2) there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Nissalke v. State*, 861 N.W.2d 88, 94 (Minn. 2015) (quotation omitted). "We review a district court's application of the *Strickland* test de novo because it involves a mixed question of law and fact. *Falgren v. State, Bd. of Teaching*, 545 N.W.2d 901, 905 (Minn. 1996). "If a claim fails to satisfy one of the *Strickland* requirements, we need not consider the other requirement." *State v. Mosley*, 895 N.W.2d 585, 591 (Minn. 2017) (citation omitted).

Generally, matters of trial strategy, such as whether to object, “lie within the discretion of trial counsel and will not be second-guessed by appellate courts.” *Leake v. State*, 737 N.W.2d 531, 536 (Minn. 2007). As a result, “we presume that trial counsel’s performance was reasonable and we give particular deference to trial strategy.” *Schneider v. State*, 725 N.W.2d 516, 521 (Minn. 2007).

Here, appellant’s trial counsel objected when the state offered various video-recorded statements of M.H. as cumulative and requested that the district court only allow one video-recorded statement. Further, appellant’s trial counsel objected a second time when the state requested to have the video-recorded statements be admitted as an exhibit under the residual exception. Appellant’s trial counsel acted within her discretion by reasoning that, because M.H. lacked the sufficient memory to testify to the incident, the recorded-recollection exception applied in this situation. As a result, she used her best judgment and instead requested that the district court limit the admissibility to only one more video-recorded statement, which the district court agreed to do. Therefore, appellant’s trial counsel acted well within her discretion with respect to trial strategy, and her representation did not fall below an objective standard of reasonableness.

Affirmed.