

*This opinion is nonprecedential except as provided by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
A22-0307**

State of Minnesota,
Respondent,

vs.

Hatem Amin Younis,
Appellant.

**Filed September 18, 2023
Affirmed
Frisch, Judge**

Washington County District Court
File No. 82-CR-18-296

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

Kevin Magnuson, Washington County Attorney, Nicholas A. Hydukovich, Assistant
County Attorney, Stillwater, Minnesota (for respondent)

Michael B. Padden, Padden Law Firm, P.L.L.C., Lake Elmo, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Frisch, Judge; and Wheelock,
Judge.

NONPRECEDENTIAL OPINION

FRISCH, Judge

Following his conviction for third-degree criminal sexual conduct, appellant
challenges the denial of his motion for mistrial and petition for postconviction relief

alleging ineffective assistance of counsel. Because we discern no abuse of discretion, we affirm.

FACTS

Respondent State of Minnesota charged appellant Hatem Amin Younis with one count of third-degree criminal sexual conduct in violation of Minn. Stat. § 609.344, subd. 1(c) (2016) (force or coercion). The matter proceeded to a jury trial.

During voir dire, a prospective juror referenced a suspected groping incident and tax evasion occurring at Smokedale, a tobacco shop owned by Younis. The district court removed the juror for cause, and Younis moved for a mistrial. The district court denied the motion and issued a curative instruction to the remaining prospective jurors.

On the fourth day of trial, the state moved to exclude certain witness testimony because Younis did not disclose a summary of the witness's statements as required by the district court's scheduling order. Younis opposed the motion, arguing that the witness would only testify for limited impeachment purposes. The district court permitted the witness to provide limited impeachment testimony with respect to two issues: whether the victim gave her phone number to the witness to give to Younis and whether the victim interviewed with the witness for a job at Smokedale. The witness testified to these issues.

The jury found Younis guilty of third-degree criminal sexual conduct. The district court sentenced Younis to 57 months' imprisonment. Younis filed a direct appeal and moved to stay the proceedings to seek postconviction relief, which we granted. Younis then petitioned for postconviction relief, arguing that his trial counsel was ineffective for not pursuing witness testimony corroborating a prior consensual, sexual relationship with

the victim. The postconviction court denied Younis's petition, and we then reinstated Younis's appeal.

DECISION

Younis argues that the district court abused its discretion by denying his motion for mistrial based on a prospective juror's statement during voir dire and that the postconviction court abused its discretion by denying his petition on the basis that he received ineffective assistance of counsel. We address each argument in turn.

I. The district court did not abuse its discretion by denying Younis's motion for mistrial.

Younis argues that the district court abused its discretion by denying his motion for mistrial because the district court's curative instruction did not cure the damaging effects of the prospective juror's statement that she had heard of a groping incident and a tax-evasion problem at Smokedale, and the prospective juror's statement substantially influenced the jury's decision. We disagree.

We review the denial of a motion for a mistrial for an abuse of discretion. *State v. Griffin*, 887 N.W.2d 257, 262 (Minn. 2016). "A mistrial should be granted only if there is a reasonable probability, in light of the entirety of the trial including the mitigating effects of a curative instruction, that the outcome of the trial would have been different had the incident resulting in the motion not occurred." *Id.* The district court "is in the best position to determine whether an error is sufficiently prejudicial to require a mistrial or whether another remedy is appropriate." *Id.* We presume that jurors follow the district court's instructions. *State v. Miller*, 573 N.W.2d 661, 675 (Minn. 1998).

Based on our review of the record on appeal, we are satisfied that there was no reasonable probability that the outcome of the trial would have been different had the incident not occurred. As a threshold matter, we note that we do not have in the appellate record a verbatim record of voir dire, including the prospective juror's objectionable statement, and our review on appeal is therefore necessarily limited to references in the record summarizing those proceedings. Younis's counsel summarized the prospective juror's statement as follows:

[The juror] indicated that she had some connection or association or knowledge of Smokedale shop. She further expounded on that and said that she had a—I think her daughter's friend or some lady that she knows works there and has worked there for two years and that she was aware based upon some conversation either with that person or others that the Smokedale shop had a tax evasion problem and also the sexual—some allegations of sexual harassment. I asked her what were the specifics, and she indicated that she had heard that the owner of the store had groped this particular lady outside her clothes. She didn't say on how many occasions, but clearly one.

Younis's counsel also indicated that the prospective juror made this statement in front of the other prospective jurors. The district court denied the motion for mistrial and determined that a curative instruction was an appropriate remedy. It reasoned that the prospective juror's statement was based on hearsay, and it therefore lacked validity. Before the completion of jury selection, the district court issued the following curative instruction:

Before you were all excused for the break you will recall there was one juror who was excused for cause, and she had made some remarks about something that her daughter had told her about something that a friend of her daughter's had told her about, something that may or may not have happened at Smokedale and may or may not have involved this gentleman.

And I want you to know that that is not evidence. It's like hearsay; it's not proved. She heard it from a friend of a friend, so you're going to be instructed to disregard that, it's not evidence, but I do have to follow up with you now. And having been instructed to disregard it because it's hearsay, it's not evidence, can all of you follow that instruction and keep that information in a separate box and not let it affect what's going to be coming in front of you for the next few days, or have you been so poisoned or tainted in your thinking that you wouldn't feel comfortable continuing? So you can follow my instruction?

The transcript that does exist in the appellate record reflects that the jurors “nod[ded] affirmatively” in response to the district court’s instruction. Based on this record, the attenuated and hearsay nature of the prospective juror’s comment, the substance of the curative instruction, and the affirmative agreement by the remaining jurors to follow the district court’s curative instruction ensured that the prospective juror’s objectionable statement had no effect on the outcome of the proceedings.

In addition, our review of the record shows that the evidence in support of the conviction was strong and that there was no reasonable probability that the prospective juror’s statement affected the outcome of Younis’s trial. The state presented direct evidence about the offense from the victim, law enforcement, and a medical professional. The state also introduced evidence that Younis’s DNA matched the major DNA profile found in cervical swabs of the victim. In addition, the state presented *Spreigl* evidence of a 2020 incident of alleged criminal sexual conduct by Younis,¹ which was generally

¹ Evidence of other crimes or bad acts is known in Minnesota as “*Spreigl* evidence.” *State v. Kennedy*, 585 N.W.2d 385, 389 (Minn. 1998) (citing *State v. Spreigl*, 139 N.W.2d 167 (Minn. 1965)).

consistent with the prospective juror's objectionable statement, and also subject to cross-examination. Given the strength of the state's case and Younis's ability to cross-examine the *Spreigl* witness about other bad acts, we cannot reach the conclusion that the outcome of the trial would have been different because of the prospective juror's objectionable statement.

Because (1) the prospective juror disclosed their attenuated connection to the source of the information, (2) the district court struck the juror for cause, (3) the state's case was strong and included *Spreigl* evidence similar to the prospective juror's objectionable statement, (4) the district court timely issued a curative instruction addressing the prospective juror's statement and directing the jurors to disregard the statement, and (5) the prospective jurors agreed to disregard the statement and follow the district court's curative instruction in evaluating the evidence at trial, we conclude there was no reasonable probability that the verdict would have been different but for the prospective juror's objectionable statement. *See State v. Cox*, 322 N.W.2d 555, 558-60 (Minn. 1982) (reasoning that the district court did not err by denying a motion for mistrial after the jury heard a sheriff say that they believed the defendant was guilty because there was "no reasonable possibility that the sheriff's remark would affect the verdict of an average jury given the nature of the remark, the weight of evidence supporting conviction and the probable curative effect of the trial court's voir dire and instructions"); *State v. Marchbanks*, 632 N.W.2d 725, 729 (Minn. App. 2001) (affirming the denial of a motion for mistrial after a juror asked a potentially prejudicial question because the question was not answered, the juror was removed, the district court provided a curative instruction, and

the district court noted the minor impact of the question). We see no abuse of discretion in the district court's denial of Younis's motion for mistrial.

II. The postconviction court did not abuse its discretion by denying Younis's petition for postconviction relief.

Younis argues that his trial counsel was ineffective because trial counsel failed to properly investigate and disclose a witness, which resulted in the limitation of that witness's testimony to impeachment of discrete issues. Younis specifically asserts that this witness could have testified that Younis and the victim had a prior consensual, sexual relationship and that the outcome of trial would have been different if the witness would have been allowed to testify as to this prior sexual relationship because consent was the primary issue at trial.

We evaluate ineffective-assistance-of-counsel claims under the two-part test set forth in *Strickland v. Washington*, 466 U.S. 668, 687 (1984). See *Peltier v. State*, 946 N.W.2d 369, 372 (Minn. 2020) (applying the *Strickland* test). Under *Strickland*, an appellant must show both that (1) their attorney's representation "fell below an objective standard of reasonableness" and (2) "there was a reasonable probability that, but for [the attorney's] errors, the result of the proceedings would have been different." *Id.* (quotation omitted). We generally do not review attacks on counsel's trial strategy. *Andersen v. State*, 830 N.W.2d 1, 10 (Minn. 2013); see also *State v. Nicks*, 831 N.W.2d 493, 506 (Minn. 2013) ("We give trial counsel wide latitude to determine the best strategy for the client."). And we apply a strong presumption that an attorney's "performance falls within the wide range

of reasonable professional assistance.” *State v. Jones*, 392 N.W.2d 224, 236 (Minn. 1986) (quotation omitted).

“We review postconviction decisions for an abuse of discretion.” *Peltier*, 946 N.W.2d at 372. “Factual determinations are upheld if they are supported by sufficient evidence, and issues of law are reviewed de novo.” *Id.*

The postconviction court determined that Younis’s claim was based on his counsel’s trial strategy and that trial counsel’s decision to call the witness only for impeachment purposes was reasonable. “Decisions about which witnesses to call at trial and what information to present to the jury are questions of trial strategy that lie within the discretion of trial counsel.” *Leake v. State*, 737 N.W.2d 531, 539 (Minn. 2007); *see also Andersen*, 830 N.W.2d at 10 (stating that trial strategy includes decisions about the extent of trial counsel’s investigation and what evidence is presented to the jury); *Scruggs v. State*, 484 N.W.2d 21, 26-27 (Minn. 1992) (finding no merit in the claim that a defendant received ineffective assistance of counsel because trial counsel failed to call three potential defense witnesses). Failure to provide notice under Minn. R. Crim. P. 9.02 may also be considered trial strategy. *See State v. Gedatus*, No. A12-0349, 2013 WL 6722885, at *4 (Minn. App. Dec. 23, 2013) (reasoning that a failure to provide notice of a defense of self-defense was “embedded in long-term strategy” and therefore unreviewable), *rev. denied* (Minn. Feb. 26, 2014).²

² We cite nonprecedential opinions for their persuasive authority. Minn. R. Civ. App. P. 136.01, subd. 1(c).

We agree that trial counsel's choices in this case are unreviewable trial strategy. The state moved to exclude the witness's testimony for failure to provide a summary of the witness's statements, as required under Minn. R. Crim. P. 9.02, subd. 1(4)(c). In response to the state's motion, trial counsel repeatedly asserted that he disclosed the name of the witness only as a courtesy to the state and that he intended to call that witness only for impeachment purposes. Trial counsel repeated in his affidavit in support of the state's opposition to Younis's postconviction petition that:

Affiant's strategy was to use [the witness] as an impeachment witness in the event the victim provided inconsistent statements regarding giving her phone number to [the witness] as well as who interviewed the victim for a potential job. Therefore, any investigative report was not discoverable by the State, and the Trial Court so ruled.

This is precisely the type of trial strategy that is unreviewable.

Even so, we agree that trial counsel's choice to call the witness for the limited purpose of impeachment did not fall below an objective standard of reasonableness. Trial counsel's affidavit sets forth his belief that any substantive evidence that the witness purportedly could have offered about a prior sexual relationship would have been inadmissible. This belief was reasonable. *See* Minn. R. Evid. 412 (permitting evidence of the victim's prior sexual conduct with the accused when consent is a defense "*only if* the probative value of the evidence is not substantially outweighed by its inflammatory or prejudicial nature" (emphasis added)), 602 (requiring a witness to have personal knowledge of a matter to testify to that matter), 701 (permitting a lay witness to testify to

an opinion, but requiring the testimony to be “helpful” to the understanding of that witness’s testimony or a fact determination).

Independently, Younis also failed to establish the second requirement of *Strickland* because he did not meet his burden to establish that the purportedly excluded testimony would have affected the outcome of the trial.

We therefore conclude that Younis did not meet his burden to establish ineffective assistance of counsel, and the postconviction court did not abuse its discretion by denying Younis’s petition for relief.

Affirmed.