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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0745**

State of Minnesota,
Respondent,

vs.

Cortez Deon Banks,
Appellant.

**Filed July 31, 2023
Affirmed
Smith, Tracy M., Judge**

Hennepin County District Court
File No. 27-CR-21-17568

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

Mary F. Moriarty, Hennepin County Attorney, Peter R. Marker, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sara L. Martin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Bryan, Judge; and Larson, Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

Appellant Cortez Deon Banks appeals from judgments of conviction for second-degree attempted murder, second-degree assault with a dangerous weapon, and violating an order for protection (OFP). He argues that (1) the district court erred by

allowing a sexual-assault nurse examiner (SANE) to testify as to what one of the victims—who did not testify at trial—said to her because the testimony was hearsay and its admission violated his rights under the Confrontation Clause and (2) the district court erred by sentencing him for both attempted murder and violating an OFP because the offenses arose out of a single behavioral incident. In a pro se supplemental brief, Banks additionally argues that (3) the district court abused its discretion by denying his request for a mistrial after an alleged discovery violation by the state and (4) he received ineffective assistance of counsel.

We conclude that (1) especially given the strength of evidence against Banks, any error by the district court in allowing the SANE nurse to testify was harmless; (2) the record supports the determination that the attempted murder and the OFP violation did not share the same criminal objective and thus were separate behavioral incidents; (3) the district court acted within its discretion in denying Banks's request for a mistrial; and (4) Banks's claim of ineffective assistance of counsel fails. We therefore affirm.

FACTS

In a criminal complaint, respondent State of Minnesota alleged that Banks stabbed K.A., the mother of his two-year-old child, and K.A.'s mother, G.W., and strangled, suffocated, and sexually assaulted K.A. The attack took place at K.A. and G.W.'s apartment, most of it in the presence of the child. The state charged Banks with second-degree attempted murder, first-degree criminal sexual conduct, first-degree assault,

second-degree assault with a dangerous weapon, and violating an OFP.¹ Banks pleaded not guilty and, in the alternative, with respect to some of the charges, asserted self-defense.

A jury trial was held. K.A. did not testify. Among the witnesses for the state were G.W., the officers who responded to the incident, the main investigator, and K.A.'s SANE nurse. Body-worn-camera footage from the officers was also admitted into evidence and viewed by the jury. Banks testified in his defense. The following is a summary of this trial evidence.

On September 21, 2021—the day of the incident—K.A. was living in an apartment with her mother, G.W., who is paraplegic. Earlier that month, K.A. had obtained a protective order that generally prohibited contact between K.A. and Banks but allowed text messages for the purpose of parenting their daughter.

Around 1:43 a.m., officers responded to K.A. and G.W.'s apartment after four 911 calls. Three calls were from G.W., and one was from a neighbor who heard screams coming from the apartment. When officers entered the apartment, they approached one of the apartment's two bedrooms because they heard screaming and crying coming from the room. The door to the bedroom was broken, indicating a forced entry. In the bedroom, the officers saw K.A., G.W., and Banks in the bed and the child crying next to the bed. Blood was covering the bed, headboard, walls, and floor. The child was also covered in

¹ The charges alleged violations of Minnesota Statutes sections 609.19, subdivision 1(1) (2020), with reference to sections 609.17, 609.342, subdivision 1(c)(ii), 609.221, subdivision 1, 609.222, subdivision 1, and 518B.01, subdivision 14(d)(1) (2020).

blood. G.W. was screaming, “He killed her,” while K.A. was lying in the bed unresponsive, without a pulse and with a pillow covering her face.

While one of the officers placed Banks—who was naked—in handcuffs, the other officers moved K.A. from the bed to the floor to conduct cardiopulmonary resuscitation (CPR) and were able to regain a pulse. K.A. had been stabbed over 15 times and had a large wound on her abdomen. G.W. had been stabbed in her hand and arm. Three knives were collected from the scene—two from the bedroom, which had both Banks’s and K.A.’s blood on them, and one from the kitchen, which did not have either of their blood on it.

G.W. testified that Banks broke through her bedroom door after K.A. ran in, quickly shut the door, and got into bed with her. G.W. said that, once Banks got into the bedroom, he got on top of K.A. and stabbed her several times while saying, “Die, you’re going to die, b----h.” She said that the child entered the room after Banks did. G.W. also testified that Banks spat on K.A.’s face, raped her, strangled her, and then suffocated her with a pillow. G.W. stated that her injuries to her left arm and hand were due to her attempt to intervene.

The SANE nurse who interviewed and evaluated K.A. at around 4:00 a.m. after the incident testified about her evaluation, including what K.A. told her about the events leading to her injuries. Banks objected to some of that testimony as hearsay and, at the close of the state’s case when K.A. had not testified, also moved to dismiss the case for violation of his Confrontation Clause rights. The district court allowed the challenged testimony and denied the motion to dismiss.

The SANE nurse testified that K.A. told her that she had been in a relationship with Banks for about five years, but they had recently broken up. K.A. said that she invited Banks to her apartment that night and that they had consensual sex. But, when Banks tried to have sex with her again, K.A. pushed him away, so Banks started choking her. K.A. threw a candle at Banks and ran into G.W.'s room and shut the door, but Banks forced the door open and had a knife in his hand. Then Banks started stabbing K.A., telling her, "Die, why won't you die already," in front of their child.

When Banks testified, he agreed that K.A. invited him over to her apartment and said that, after hanging out with their child and putting her to bed, he and K.A. had consensual sex. From there, his account of that night varied from G.W.'s testimony and the SANE nurse's testimony regarding K.A.'s account. He testified that, after he had sex with K.A., his phone rang, and a disagreement ensued between him and K.A. over who had called him. He said that K.A. went to the kitchen, grabbed a knife, and stabbed him in the face. He said that he then grabbed a knife from the kitchen and ended up in G.W.'s bedroom fighting over the knives with K.A. Banks testified that, during this altercation, K.A. stabbed him in the hand while he was trying to grab her knife and that, once he was able to gain control of the knife, he stabbed K.A. in self-defense.

The jury found Banks guilty of second-degree attempted murder, second-degree assault with a dangerous weapon, violating an OFP, and third-degree assault.² But the jury found Banks not guilty of first-degree criminal sexual conduct and first-degree assault.

² Although Banks was not initially charged with third-degree assault, he requested the charge be added at trial.

After Banks waived his right to a jury determination on the issue, the district court found that two aggravating factors were present for the second-degree attempted murder and the second-degree assault—the offense occurred in the victims’ zone of privacy and the offense occurred in the presence of a child. Banks was sentenced to imprisonment of 200 months for second-degree attempted murder, 21 months for second-degree assault with a dangerous weapon, and 32 months for violating an OFP, to be served consecutively.

Banks appeals.

DECISION

I. Any error by the district court in allowing the SANE nurse’s testimony about K.A.’s statements was harmless.

Banks asserts that the district court erred by allowing the SANE nurse to testify regarding some of K.A.’s statements to her because (1) the statements did not satisfy the medical-diagnosis hearsay exception and were inadmissible and (2) since K.A. did not testify at trial, the statements were admitted in violation of his rights under the Confrontation Clause, *see* U.S. Const. amend. VI. He argues that admission of the evidence was prejudicial because, without it, there is a reasonable probability the jury would have acquitted Banks of second-degree attempted murder. He contends that the asserted prejudicial error deprived him of a fair trial and that, therefore, all his convictions must be reversed.

Generally, we review evidentiary rulings by the district court for an abuse of discretion. *See State v. Ali*, 855 N.W.2d 235, 249 (Minn. 2014). We apply that same standard of review to a district court’s determination that a statement meets the

foundational requirements of a hearsay exception. *See Holt v. State*, 772 N.W.2d 470, 483 (Minn. 2009). But we apply a de novo standard of review to whether an evidentiary decision by the district court violated a defendant’s rights under the Confrontation Clause. *See State v. Caulfield*, 722 N.W.2d 304, 308 (Minn. 2006).

Even if the admission of evidence was an abuse of discretion under the rules of evidence or erroneous under the Confrontation Clause, reversal is not mandated if the error was harmless. *Id.* at 314. An evidentiary error is harmless if the wrongly admitted evidence did not “significantly affect[] the verdict.” *State v. Peltier*, 874 N.W.2d 792, 802 (Minn. 2016). A constitutional error, on the other hand, is subject to a higher standard—it must be harmless beyond a reasonable doubt, meaning the verdict must have been “surely unattributable to the error.” *Caulfield*, 722 N.W.2d at 314. We need not decide whether the admission of K.A.’s statements via the SANE nurse’s testimony was erroneous if the error was harmless. *See Hawes v. State*, 826 N.W.2d 775, 786 (Minn. 2013) (evaluating only harmless error). We therefore turn to that question.

We begin with the more stringent constitutional test because harmless error under that test will satisfy both tests. The Minnesota Supreme Court has explained that, when making a harmless-error determination under the constitutional standard, an appellate court considers several factors: (1) “the manner in which the evidence was presented,” (2) “whether it was highly persuasive,” (3) “whether it was used in closing argument,” (4) “whether it was effectively countered by the defendant,” and (5) whether there is “overwhelming evidence of guilt.” *Caulfield*, 722 N.W.2d at 314 (quoting *State v. Al-Naseer*, 690 N.W.2d 744, 748 (Minn. 2005)).

Banks challenges the admission of the following statements by K.A., as testified to by the SANE nurse:

- “I fought back by throwing a candle at him, and he ran out of the room.”
- “I went to my mother’s room and shut the door. I thought he was going to leave.”
- “He then came to my mother’s bedroom door, forced it open, and he had a knife. And I jumped on my mom’s bed.”
- “She’s a paraplegic.”
- “I need help.”
- “He [was] saying, die already, why won’t you die already.”
- “And my daughter had gone into the room before I shut the door, so she witnessed all of this.”
- “I remember seeing lights . . . I was fading . . . I couldn’t breathe. It seemed like forever. I don’t remember anything else. I just knew I was dying.”
- “The next thing I remember, I was aware of the fact that I was in the hospital and I was alive. I can’t remember much.”

Applying the five factors outlined above, we conclude that the jury’s guilty verdict for attempted second-degree murder was surely unattributable to any erroneous admission of this evidence.

First, the evidence was not presented in a manner that gave it such a significant focus at trial that it prejudiced Banks. The statements were part of the SANE nurse’s broader testimony about her evaluation of K.A., and the SANE nurse was one of 20 witnesses at trial.

Second, the testimony was not highly persuasive of Banks's guilt. The statements merely corroborated the material facts about the incident that G.W. had already testified to. And, because G.W., who witnessed the brutal assault, was present to testify in front of the jury and K.A. was not, G.W.'s testimony was more likely persuasive than the SANE nurse's testimony merely reporting what she had been told. Also, the SANE nurse's testimony regarding her medical evaluation of K.A. was more persuasive of Banks's guilt than her testimony about what K.A. told her because the medical-evaluation testimony showed how K.A.'s symptoms and injuries were consistent with strangulation and stabbing.

Third, the state minimally used the challenged testimony in its closing argument. The state mentioned the SANE nurse's account from K.A. three times. Two of those times were limited to stating that Banks's testimony was different from what K.A. told the nurse and reminding the jury that K.A. did not testify. And the third was a short restatement of that testimony—that Banks started choking K.A., she threw a candle at him, ran into G.W.'s room, and Banks stabbed her while saying, "Die already, why won't you die already." The key details in that account were already testified to by G.W.

Fourth, Banks had the opportunity to counter the SANE nurse's testimony as to what K.A. said. Banks was able to cross-examine the nurse, and he testified as to his version of events. It was up to the jury to determine which witness was more credible. *See State v. Dickerson*, 481 N.W.2d 840, 843 (Minn. 1992) ("The credibility of witnesses and the weight to be given their testimony are determinations to be made by the factfinder." (quotation omitted)).

Finally, the evidence of Banks's guilt—apart from the challenged statements—is overwhelming. Body-worn-camera footage shows Banks covered in blood on top of K.A.'s unconscious body when police arrived, with G.W. and the child in the room. The footage shows K.A. with a pillow over her face and the officers then performing lifesaving efforts after discovering that K.A. did not have a pulse. Officer testimony establishes that the bedroom door had been forced open. G.W.'s testimony identifies Banks as the perpetrator, explains largely the same sequence of events that K.A. told the SANE nurse, and establishes that G.W. is paraplegic. And Banks admitted to stabbing both K.A. and G.W. in his own testimony.

Although Banks acknowledges that he “likely would have been convicted of some offense without [K.A.'s] statement to [the SANE nurse],” he argues that “it is not clear that he would have been convicted of attempted murder absent the dramatic statement wherein [K.A.] described seeing lights and fading, Banks saying, ‘[D]ie already, why won’t you die already,’ and that she knew she was dying.” The argument is unconvincing. K.A. suffered grievous injuries—when the police arrived, she lacked a pulse and needed to be revived by CPR. Moreover, G.W. testified that Banks stabbed, strangled, and suffocated K.A. while telling her she was going to “die.” Therefore, the evidence that Banks had the requisite intent for attempted murder is overwhelming even without K.A.'s statements.

In sum, even if there was any evidentiary or constitutional error in allowing the SANE nurse to testify as to K.A.'s statements, it was harmless because the jury's guilty verdict on attempted murder was surely unattributable to any such error. Banks was therefore not deprived of a fair trial.

II. The district court did not err by imposing two separate sentences for Banks’s convictions of violating an OFP and second-degree attempted murder.

Banks argues that the district court erred by sentencing him for both violating an OFP and second-degree attempted murder.

Minnesota Statutes section 609.035, subdivision 1 (2020), prohibits multiple sentences for two or more offenses if the offenses were committed as part of a single behavioral incident. *See State v. Bakken*, 883 N.W.2d 264, 270 (Minn. 2016). When the crimes contain an intent element, courts determine whether they were part of a single behavioral incident by considering (1) “whether the offenses occurred at substantially the same time and place” and (2) “whether the conduct involved was motivated by an effort to obtain a single criminal objective.” *Id.* (quotations omitted). The state bears the burden of proving that the offenses were not part of a single behavioral incident. *Id.*

Whether the offenses occurred as part of a single behavioral incident is a mixed question of law and fact. *Id.* We review the district court’s factual findings for clear error and its application of the law to those facts de novo. *Id.*

The offenses here occurred at the same place and close in time; the question is whether the other factor—a single criminal objective—was met. The record supports the determination that Banks’s criminal objective changed as the night progressed. His criminal objective began as an objective to have contact with K.A. notwithstanding the OFP. Testimony by Banks and the SANE nurse established that Banks came to the apartment, at K.A.’s invitation, for a consensual sexual encounter and to spend time with his daughter. Thereafter, Banks’s criminal objective changed. Once K.A. did not want to

continue having sex or—according to Banks—once K.A. and he got into an argument over who called his cellphone, Banks’s criminal objective changed to attacking and attempting to kill K.A. Banks’s criminal objective when violating the OFP was therefore different from his criminal objective when attacking K.A.

This conclusion is supported by caselaw. In *State v. Bookwalter*, the defendant’s two offenses of criminal sexual conduct and attempted murder lacked a single criminal objective in part because the offenses required different criminal intents and were not part of “prearranged program of events.” 541 N.W.2d 290, 295-96 (Minn. 1995). Like in *Bookwalter*, here, the record supports that there was a change in Banks’s criminal objective during the course of the night from wanting to see K.A. and his child to stabbing and suffocating K.A. to the point of death.

Banks points to *State v. Rivers* to support a contrary conclusion. 787 N.W.2d 206 (Minn. App. 2010). In *Rivers*, we concluded that the district court erred by imposing separate sentences for convictions of violating an OFP and assault because the OFP violation “was the means by which Rivers was able to assault [the victim].” *Id.* at 213-14. But *Rivers* is distinguishable from this case. Rivers’s criminal objective—to assault the victim—was consistent throughout the commission of both the OFP violation and the assault. Here, as discussed above, Banks’s criminal objective was not the same during the commission of the two offenses.

In sum, the district court did not err by imposing multiple sentences for violating an OFP and second-degree attempted murder, because the offenses did not occur as part of a single behavioral incident.

III. The district court acted within its discretion when it denied Banks's request for a mistrial after an alleged discovery violation by the state.

In his pro se supplemental brief, Banks argues that the district court abused its discretion by denying his request for a mistrial in response to the state providing to the defense—during trial—a witness statement of the doctor who treated Banks's hand injuries. According to the statement, the doctor was going to testify that the injuries to Banks's hand came from his hand slipping down the blade of a knife from stabbing. The district court allowed the doctor to testify but limited his testimony regarding the cause of Banks's injuries.

Appellate courts 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 district court should grant a mistrial only if there is a reasonable probability, in light of the entirety of the trial, that the outcome of the trial would be different if the incident resulting in the motion had 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.*

On this record, the district court acted within its discretion in denying Banks's request for a mistrial. Banks argued at trial that the doctor's newly proposed testimony undermined Banks's claim that his hand injuries were defensive wounds and that he would have sought his own expert witness had he known about the proposed testimony. But the district court did not permit the doctor to give testimony that ruled out defensive wounds. Instead, it allowed the doctor to testify that he did not know how the injuries occurred or that there are many possibilities for how they occurred, but he could not offer details to

support a particular theory. This limitation was an appropriate remedy to the alleged late disclosure and mitigated any prejudice to Banks. When he testified, the doctor described in medical terms the injuries to Banks's hand. He explained that he could not tell the court exactly how the injuries occurred but that they were consistent with (1) grabbing a knife's blade, (2) closing the fingers over the blade, and (3) slipping of the hand from the handle of the knife down to the blade. These three explanations supported both the state's and Banks's respective theories of the case—the injuries could have resulted from Banks's hand slipping down a blood-covered knife while he was stabbing the victim, or they could have been defensive wounds from grabbing a knife or closing fingers around the blade of a knife wielded against him.

In sum, the district court's decision to deny Banks's request for a mistrial was not an abuse of its discretion because the doctor's testimony—even if not timely disclosed—was not sufficiently prejudicial to Banks's self-defense claim.³

³ Banks further argues that the district court abused its discretion by not granting a continuance during trial in order for him to find an expert witness to reconstruct his hand injury. But because neither Banks nor his counsel requested a continuance at trial, we do not address that argument here. *See Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996) (explaining that appellate courts “generally will not decide issues which were not raised before the district court, including constitutional questions of criminal procedure”). Moreover, a continuance to seek an injury reconstructionist would not have changed the outcome of the case, as described below, and appellant thus has not shown that any denial of a continuance was reversible error. *See State v. Turnipseed*, 297 N.W.2d 308, 311 (Minn. 1980) (explaining that a reviewing court must consider whether denial of a continuance request “prejudiced [the] defendant by materially affecting the outcome of the trial”).

IV. Banks’s ineffective-assistance-of-counsel claims fail.

In his pro se supplemental brief, Banks also asserts three claims of ineffective assistance of counsel. When an ineffective-assistance-of-counsel claim can be determined on the basis of the trial record, it can be decided on direct appeal. *See Sanchez-Diaz v. State*, 758 N.W.2d 843, 847 (Minn. 2008). The record here is sufficient to decide the three claims that Banks advances.

Ineffective-assistance-of-counsel claims are evaluated according to the two-prong *Strickland* test. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *see also Peltier v. State*, 946 N.W.2d 369, 372 (Minn. 2020) (applying the *Strickland* test). To meet this test, an appellant must show that (1) the 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.” *Peltier*, 946 N.W.2d at 372 (quotation omitted). If one prong is not satisfied, we may dispose of the claim without considering the other prong. *Id.* Generally, we will 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).

A. Banks's attorney's decision not to object to or move to suppress the inspector's testimony did not prejudice Banks.

First, Banks argues that his attorney was ineffective because she neither moved to suppress nor objected to the investigator's rebuttal testimony relaying what Banks told him during his custodial interrogation. He contends that, had his attorney acted, the testimony about Banks's custodial statements would have been excluded because the interrogation of Banks, although recorded, did not produce a sufficient recording to be played at trial.

Minnesota law requires that all custodial interrogations be recorded. *State v. Scales*, 518 N.W.2d 587, 592 (Minn. 1994). Suppression of a custodial statement is required if the violation of the *Scales* rule is "substantial." *Id.* A "substantial" violation is one that creates a significant risk that an incriminating statement may have been untrue, considering the extent to which the violation prejudices the defendant's ability to defend himself. *Id.* at 592 n.5 (quoting Model Code of Pre-Arrest Procedure § 150.3(2)-(3)).

We do not have to address whether there was a substantial violation of the *Scales* rule or whether Banks's attorney's conduct was unreasonable because, even if either or both were true, Banks has failed to satisfy the second *Strickland* prong—that the outcome of his case would have been different with the exclusion of the investigator's testimony. Without the investigator's statements, the jury would still have been left with a credibility determination between Banks's statement on self-defense versus G.W.'s statement that Banks forced his way into her bedroom and began stabbing K.A.

Further, the investigator's testimony as to what was said by Banks in his interrogation largely mirrored Banks's trial testimony on his use of self-defense during the

incident. For example, the investigator testified that Banks told him that K.A. grabbed a knife from the kitchen first, that K.A. stabbed his hand while he was trying to get the knife from her, and that he ran away from K.A. into G.W.'s room. Banks similarly testified that K.A. grabbed a knife from the kitchen after a disagreement, K.A. stabbed him in the face and hand, he backpedaled away from her into G.W.'s room, and K.A. cut his hand after Banks tried to get the knife from her. Although there were some inconsistencies between Banks's two accounts, the investigator's testimony showed that Banks had a consistent narrative throughout the case. Accordingly, the investigator's testimony about Banks's custodial statements without the recording did not prejudice Banks, and exclusion of the testimony likely would not have led to his acquittal.⁴

B. Banks's attorney's decision not to hire an expert witness did not prejudice Banks.

Second, Banks asserts that his attorney was ineffective because she did not retain an expert witness to reconstruct Banks's hand injuries at trial to support his self-defense claim.

Again, we begin with the second *Strickland* prong. The trial record shows that Banks's attorney did not consider seeking out an injury reconstructionist until she received the state's witness statement of the doctor who treated Banks's hand injuries. But even if Banks's attorney's decision not to seek an injury reconstructionist until a few days into trial fell below an objective standard of reasonableness, Banks still has not satisfied the

⁴ Although Banks also maintains that the recorded statement contained exculpatory evidence that would have impacted the jury's verdict, he does not identify what that evidence is. As such, this argument is not persuasive.

prejudice prong. Banks has not explained how an injury reconstructionist would have changed the outcome of the case, especially given that the state's witness testified that his hand injuries could have been caused by grabbing a knife or wrapping his fingers around knife—in other words, the injuries could have been defensive, as Banks contended.

C. Banks's attorney was not ineffective at sentencing.

Finally, Banks asserts that his attorney was ineffective at sentencing because it was unreasonable for her not to investigate his background or argue for mitigating factors based on information from his presentence-investigation report (PSI). Particularly, he contends that his attorney should have interviewed his family and sought experts to further analyze his mental state because “the expert would’ve determined [he] acted under the influence of mental and emotional disturbance.”

Banks's attorney's decisions whether to interview his family members and seek experts to analyze his mental state were matters of trial strategy falling within the wide range of reasonableness. *See Andersen*, 830 N.W.2d at 10, 13 (explaining that the extent of trial counsel's investigation and which witnesses to interview are considered part of trial strategy). Based on this court's thorough review of all the information within Banks's PSI, not just the information cited by Banks, we conclude that it was not unreasonable for Banks's attorney to not further investigate his alleged mental-health concerns as a mitigating factor for sentencing.

Moreover, even if the first prong of *Strickland* were satisfied, the second prong is not. The district court found two aggravating factors—the offense occurred in the victims' zone of privacy and in the presence of a child—and it had access to Banks's PSI and could

have drawn any mitigating factors from the circumstances explained within it, and it chose not to. Even assuming that potential mitigating factors existed that could have been argued by Banks's attorney at sentencing, we are not persuaded that there is a reasonable probability that the result of the proceedings would have been different.

In conclusion, we reject all of Banks's challenges to his conviction and his sentence.

Affirmed.