

*This opinion is nonprecedential except as provided by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
A22-1682**

State of Minnesota,
Respondent,

vs.

Nicole Denise Longoria,
Appellant.

**Filed September 11, 2023
Affirmed
Cochran, Judge**

Clay County District Court
File No. 14-CR-21-1751

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

Brian J. Melton, Clay County Attorney, Michael D. Leeser, Assistant County Attorney,
Moorhead, Minnesota (for respondent)

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

Considered and decided by Cochran, Presiding Judge; Bjorkman, Judge; and
Klaphake, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

In this direct appeal from a judgment of conviction for third-degree sale of a controlled substance, appellant argues that she received ineffective assistance of counsel. Specifically, appellant contends that her attorney should have elicited more detailed testimony from her at trial. Because appellant has not established that her attorney's conduct fell below an objective standard of reasonableness, we affirm.

FACTS

On November 5, 2019, law enforcement worked with a confidential informant (C.I.) to conduct a controlled buy of heroin from appellant Nicole Denise Longoria. To initiate the controlled buy, the C.I. texted Longoria and arranged a time to meet. After texting with Longoria, the C.I. met with two narcotics detectives. The detectives searched the C.I.'s person and vehicle for drugs, money, and other contraband to ensure that the C.I. was not setting up Longoria. The detectives did not find anything of note. The detectives then gave the C.I. \$500 in cash, equipped the C.I. with an audio-transmitting and -recording device, and followed the C.I. to Longoria's apartment building. To avoid being seen, the detectives parked a few blocks away from Longoria's apartment and monitored the C.I. through the transmitter. Other officers were positioned at Longoria's apartment building. They saw the C.I. park, exit his vehicle, and enter the building.

When the C.I. arrived at Longoria's apartment, Longoria led him to her bedroom. According to the C.I., Longoria then retrieved the heroin from her purse and weighed it on a scale. The C.I. took the heroin from Longoria and left the apartment without paying. By

the time the C.I. got back to his vehicle, Longoria had called to tell him that he forgot to pay. The C.I. agreed to meet Longoria in front of the apartment building to complete the transaction. Longoria exited the building, approached the C.I.'s vehicle, and interacted with the C.I. through the passenger-side window. The C.I. then drove away.

The C.I. met with the detectives at a designated location immediately after the controlled buy to debrief. The C.I. gave the detectives the substance that he received from Longoria and told the detectives that he gave Longoria the buy money when she met him at his vehicle in front of her apartment building. The detectives searched the C.I.'s person and vehicle for money, other drugs, and contraband, but they did not find any. The C.I. then left. The substance field-tested positive for heroin. The Bureau of Criminal Apprehension later confirmed that the substance contained heroin.

Respondent State of Minnesota charged Longoria with third-degree sale of a controlled substance in violation of Minn. Stat. § 152.023, subd. 1(1) (2018). The state and Longoria reached a plea agreement whereby Longoria would enter an *Alford* plea to fifth-degree possession of a controlled substance.¹

On April 25, 2022, Longoria appeared in district court for a plea hearing. When the district court asked Longoria if she wanted to accept the state's plea offer, Longoria stated: "I did [want to] take it to trial, but I don't know if that's even available [because] I

¹ An *Alford* plea allows a criminal defendant to plead guilty while maintaining their innocence as long as (1) the state demonstrates "a strong factual basis for the plea" and (2) the defendant clearly expresses a desire to plead guilty based on their belief that the state has sufficient evidence to convict them. *State v. Theis*, 742 N.W.2d 643, 647 (Minn. 2007) (quoting *North Carolina v. Alford*, 400 U.S. 25, 38 (1970)).

missed my trial date.” After further discussion, Longoria indicated that she wanted to enter an *Alford* plea. The state proceeded to ask Longoria a series of questions to ensure that Longoria properly entered her *Alford* plea.

When the state asked if Longoria felt that her attorney “[had] represented [her] best interests . . . in this case,” Longoria responded, “No.” The district court indicated that it could not accept Longoria’s *Alford* plea based on that response and asked Longoria why she was dissatisfied with her attorney. Longoria responded, “I’ve kind of already let him know all the . . . things that he should know, and it kinda just feels like . . . I don’t know. Not really taken to account my side.” The district court asked Longoria if she wanted to hire her own attorney or represent herself, and Longoria stated that she could not afford to hire an attorney and that she did not want to represent herself. The district court informed Longoria that she could file a complaint with the public defender’s office and scheduled the matter for trial. The state later withdrew the plea offer.

On July 11, 2022, the day before the trial was scheduled to begin, Longoria submitted a letter to the district court expressing her dissatisfaction with her attorney. The district court construed Longoria’s letter as a request for substitution of counsel, and it denied the request based on the lack of “exceptional circumstances that would warrant a substitution of counsel.”

The case proceeded to a jury trial as planned. The jury heard testimony from the C.I., the two detectives who organized the controlled buy, and Longoria. The state also entered into evidence several exhibits, including the text messages between the C.I. and Longoria arranging a time to meet.

The C.I. testified first. The C.I. testified about the events that occurred before, during, and after the controlled buy. The C.I. testified that Longoria gave him the heroin after weighing it. He also testified that he intentionally “forgot” to pay Longoria before leaving her apartment so that the police could witness the monetary exchange. And he testified that when Longoria came out to his vehicle, he gave her the \$500 in cash that he received from the police. This testimony was consistent with the C.I.’s statements to the detectives immediately after the controlled buy. During cross-examination, Longoria’s attorney asked questions designed to undermine the C.I.’s credibility, including questions about the C.I.’s history of dealing drugs. These questions elicited testimony from the C.I. that he was a known drug-dealer and that he participated in the controlled buy in exchange for immunity from prosecution for a sale charge.

The two detectives testified next and provided additional details about the controlled buy. Regarding the C.I.’s failure to pay Longoria in the apartment, the second detective stated: “I think I heard [the C.I.] make a type of an expletive about still having the cash on him, that he didn’t complete . . . the monetary transaction.” The second detective also testified that he did not see the C.I. give the money to Longoria but that he believed that the transaction occurred based on what he heard through the audio-transmitting device. After the second detective testified, the state rested.

Lastly, Longoria testified as the sole witness for the defense. After a few preliminary questions, Longoria’s attorney stated: “[T]his is your opportunity to tell the

jury, Nicole, what happened. So, let's do that." Longoria's attorney then asked Longoria several questions about her interactions with the C.I.:

Q: So, let's start with [the C.I.]. Was [the day of the controlled buy] the first time he was at your apartment?

A: No.

Q: When did you meet him before that?

A: I don't remember if it was the day before or two days before that.

....

Q: Okay. So, you met [the C.I.] at your house the day before that?

A: Yes.

....

Q: Okay. And, so, then, [the C.I.] came to your house again the next day?

A: Yes.

Q: Okay. Can you tell me what happened when he came to your house on . . . the day of the alleged sale?

A: He just came. We just spoke briefly and then he left.

Q: Okay. What happened when he was at your house?

A: He walked in, he grabbed something, and then I walked into my room, spoke with him, and then he left.

Q: K. Do you know what it is that he grabbed?

A: I don't know what he grabbed at the time, but I do know now.

Q: Okay. You didn't give him any heroin, though—

A: No, I did not.

Q: —did you? Okay. And then he left?

A: And then he left.

Q: What did you do after he left?

A: I just went about my day.

Q: Okay. Anything stick out about that day that happened aside from [the C.I.] stopping by?

A: Not at all.

Q: Okay. What's your relationship like with [the C.I.]?

A: I don't know him very well.

Q: Okay. So, is it your testimony, then, Nicole, that . . . what [the C.I.] said happened in the apartment is not true?

A: Yeah, that's not true.

On cross-examination, Longoria confirmed her address and admitted that she and the C.I. exchanged the text messages that were entered into evidence.

During closing argument, Longoria’s attorney emphasized that the state’s case relied on testimony “from a known drug dealer” and from law enforcement officers who “didn’t see any illegal transaction take place.” Longoria’s attorney also underscored that Longoria testified that “she didn’t sell anything” and that “she [knew] that she [had] to tell the truth.”

The jury found Longoria guilty of third-degree sale of a controlled substance. The district court sentenced Longoria to a 33-month stayed prison sentence and placed Longoria on conditional probation.

Longoria appeals.

DECISION

Under the United States and Minnesota Constitutions, a criminal defendant is entitled to the assistance of counsel at trial. U.S. Const. amend. VI; Minn. Const. art. I, § 6; *see also State v. Hokanson*, 821 N.W.2d 340, 357 (Minn. 2012). This right includes the guarantee that counsel’s assistance be effective. *Dukes v. State*, 621 N.W.2d 246, 252 (Minn. 2001) (quotation omitted).

Appellate courts analyze a claim of ineffective assistance of counsel under the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668, 687 (1984). *Peltier v. State*, 946 N.W.2d 369, 372 (Minn. 2020). To prevail on a claim of ineffective assistance of counsel, the appellant must show that (1) “counsel’s performance fell below an objective standard of reasonableness” and (2) “there was a reasonable probability that,

but for counsel’s errors, the result of the proceedings would have been different.” *Id.* (quotation omitted) (relying on *Strickland*, 466 U.S. at 694). “Application of the *Strickland* test involves a mixed question of law and fact, which we review de novo.” *State v. Mouelle*, 922 N.W.2d 706, 715 (Minn. 2019). We need not address both prongs of the test if one prong is determinative. *Id.*

To satisfy the first prong, the appellant must overcome the “strong presumption that counsel’s performance fell within a wide range of reasonable assistance.” *Gail v. State*, 732 N.W.2d 243, 248 (Minn. 2007). An attorney’s conduct is reasonable when the attorney exercises “the customary skills and diligence that a reasonably competent attorney would perform under the circumstances.” *Dukes*, 621 N.W.2d at 252 (quotation omitted). “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). “Generally, we will not review an ineffective-assistance-of-counsel claim when the attorney’s conduct in question is based on trial strategy.” *Chavez-Nelson v. State*, 948 N.W.2d 665, 671 (Minn. 2020). These “strategic choices . . . are virtually unchallengeable.” *Swaney v. State*, 882 N.W.2d 207, 217 (Minn. 2016) (quotation omitted). With these guiding principles in mind, we consider whether Longoria has shown that her trial counsel’s performance fell below an objective standard of reasonableness.

Longoria contends that she received ineffective assistance of counsel because her attorney “questioned [her] in a manner that failed to allow her to tell her story.” According to Longoria, her counsel neglected to give her a chance to explain the text messages with

the C.I. or to detail what transpired at the C.I.'s car after he visited her apartment. The state counters that decisions by her attorney about what information to elicit at trial were part of a reasonable trial strategy.

We agree with the state. Deciding what testimony to elicit from a witness at trial is a matter of trial strategy. *Leake*, 737 N.W.2d at 539; *see also State v. Vick*, 632 N.W.2d 676, 689 (Minn. 2001) (explaining that an attorney's alleged failure to vigorously cross-examine or impeach witnesses were "matters of trial strategy"). And the record shows that the trial strategy of Longoria's attorney was reasonable. During cross-examination of the state's witnesses, Longoria's attorney attempted to undermine the credibility of the C.I. and underscore the fact that the officers did not directly observe the drug transaction. Longoria's attorney also directed Longoria's testimony in a strategic manner by asking relatively open-ended questions about Longoria's interactions with the C.I. leading up to and on the day of the controlled buy. This questioning gave Longoria an opportunity to tell her version of events and to dispute the C.I.'s testimony, which she did when she testified that she did not sell the C.I. heroin. In sum, Longoria has not shown that her attorney's performance fell below an objective standard of reasonableness. Longoria's attorney exercised "the customary skills and diligence that a reasonably competent attorney would exercise under the circumstances." *Dukes*, 621 N.W.2d at 252 (quotation omitted). Accordingly, Longoria's claim of ineffective assistance of counsel fails under the first prong of the *Strickland* test. We therefore do not reach the second prong of the *Strickland* test. *See Mouelle*, 922 N.W.2d at 715.

Affirmed.