

*This opinion is nonprecedential except as provided by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
A23-0753**

State of Minnesota,
Respondent,

vs.

Michael David Pazdernik,
Appellant.

**Filed September 22, 2025
Affirmed
Worke, Judge**

Hennepin County District Court
File No. 27-CR-19-31020

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

Mary F. Moriarty, Hennepin County Attorney, Elizabeth Scoggin, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Brockton D. Hunter, Ryan C. Else, Brockton D. Hunter, P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Johnson, Judge; and Reyes, Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant challenges his conviction for first-degree criminal sexual conduct, arguing that the district court erred by seating a juror with purported limited English proficiency and abused its discretion by denying postconviction relief because his attorney

was ineffective for failing to strike the juror and for limiting appellant's testimony. We affirm.

FACTS

In December 2019, respondent State of Minnesota charged appellant Michael David Pazdernik with two counts of first-degree criminal sexual conduct—penetrating a child under the age of 13 (his daughter). *See* Minn. Stat. § 609.342, subd. 1(a) (2014).

When the case proceeded to trial, prospective jurors received a questionnaire. Juror 15 responded “no” to whether he (1) ever witnessed a crime, was questioned by police about a crime, or was subpoenaed to testify about a crime; (2) was ever a victim of a crime (“specifically including physical or sexual assault or abuse”); (3) was ever accused of a crime; or (4) had “any other experiences related to sexual assault or abuse.”¹ During voir dire, the following exchange occurred between juror 15 and Pazdernik's attorney.

Q: So, I've talked about a lot of different things; you haven't raised your hand. Do you have any thoughts or opinions that you wanted to -- that you thought about as I was having different discussions along the way?

A: Yeah. I'm usually from Bangladesh, and then -- ten years ago. And I was born over there, everything I learned over there was a long-time experience, culture and everything, I am just learning. Just learning. I had one experience when I first time came here. I don't have any family here. I'm struggling every day, every month, every year, struggling in my life. And then I have little bit experience when I started working paying a less amount, very little money.

¹ Prospective jurors also completed qualifying questionnaires. Juror 15 responded, “Yes” to the question, “Are you able to speak and understand English and are others able to understand you?”

And then also that place, one time I was facing robbery, one person suddenly came into the store, and then they showed my gun my left side, and then my co-worker, he run away, she run away, and robber also run away. And I call the police, they take the bottle and they take the picture and two bottle. I don't get any information. After six months, I left the store. And I worked in insurance, they're also paying less amount. And then after that, I worked the post office, I worked two -- for one and a half years, two years. I have eye problem for the organizing the mailing there, so I think I -- I tell them I'm not going to work over there. I'm right now start opening the one restaurant, Indian restaurant. That's it.

Q: Where is your restaurant at?

A: This is the Burnsville . . . restaurant.

Q: All right. And so is it your own restaurant that you're starting?

A: Partnership.

Q: Congratulations. It's the American dream, right?

A: Yeah. And also all my family's back home.

Q: Okay. And so is it you and your wife here?

A: I have one daughter, and I hope they will come soon.

Q: The remainder -- your wife and daughter are back home?

A: Yeah. Back home.

Q: So you're truly here by yourself?

A: Yeah.

Q: What do you think when you got the notice to come to court to be a juror?

A: It's good. I have a new experience.

Q: Yeah. You were pretty excited?

A: Yeah.

Q: I can tell you some of your friends in the audience maybe weren't as excited as you were. Excellent. Very nice to meet you.

Juror 15 was seated on the jury.

During deliberations, the jury gave a note that was written by the foreperson to the district court that read:

We are requesting assistance regarding circumstantial evidence. One juror does not believe in using circumstantial evidence as true evidence. They do not feel that any guilty verdict is possible without tangible evidence. Therefore, we cannot make progress despite many efforts to clarify the written instructions given to us. I also feel that it should be noted that there is a language barrier that may have played a role in understanding the trial.

Pazdernik moved for a mistrial, arguing that the juror with the language barrier should not have been on the jury. The district court denied the motion, noting that the jurors were thoroughly subjected to voir dire, had been determined to be “qualified and competent” by the parties, and passed for cause. The district court also noted that it could not “invade” deliberations and conduct a “*Schwartz*-type hearing² or inquire of the jurors as to why . . . the one juror wrote that note -- or [question] what’s happening [during deliberations].” The parties and district court agreed that the district court would reread certain instructions to the jury.

The jury then found Pazdernik guilty of one count of first-degree criminal sexual conduct and not guilty of one additional count of criminal sexual conduct. Pazdernik again moved for a new trial, arguing that he was denied a fair trial because a juror did not understand English. Pazdernik also requested a *Schwartz* hearing based on the information about the juror not understanding English.

The district court denied Pazdernik’s motion for a new trial and his request for a *Schwartz* hearing, reasoning that Pazdernik sought juror testimony about something that

² A defendant may challenge a verdict through a *Schwartz* hearing to determine whether improper considerations affected the jury’s decision. *Schwartz v. Minneapolis Suburban Bus Co.*, 104 N.W.2d 301, 303 (Minn. 1960).

occurred during deliberations because the issue of the alleged language barrier arose during deliberations. The district court also determined that Pazdernik failed to establish a prima facie case of juror misconduct because the allegation that the juror may have lacked English competence was based solely on another juror's opinion.

The district court sentenced Pazdernik to 144 months in prison. Pazdernik filed a direct appeal, which this court stayed to allow Pazdernik to pursue postconviction relief.

In November 2023, Pazdernik filed a petition for postconviction relief and requested an evidentiary hearing. Pazdernik argued that his constitutional rights were violated because a juror was seated who had limited English proficiency and because he was denied effective assistance of trial counsel.

Pazdernik's ineffective-assistance-of-counsel claim included the assertion that his attorney acted unreasonably by limiting his trial testimony. The state had filed a pretrial notice of its intent to cross-examine Pazdernik about a formal reprimand he received from the United States Military for having "multiple sexual relationships with at least five female Soldiers," including four soldiers who were under his command. The reprimand noted that, during the investigation into Pazdernik's conduct, he "knowingly made false statements under oath, and . . . pressured a female Soldier to lie about [the] . . . relationship." In an affidavit attached to his postconviction petition, Pazdernik alleged that his attorney "did not seem fully alert and engaged during trial," and had failed to "walk the jury through the timeline of events [regarding the conduct explained in the letter of reprimand], cross-examine [the victim] about statements she made on the stand that

contradict[ed] her prior interviews, and gave a generic closing argument that failed to address the specifics of [his] case.”

The postconviction judge denied Pazdernik relief on his ineffective-assistance-of-counsel claim, determining that his attorney provided reasonable professional assistance. But the postconviction judge granted Pazdernik permission to have the jury foreperson explain the note. At a hearing, the postconviction judge asked the foreperson: “Can you tell me whether your concern about the juror’s ability to communicate in English [was] resolved through the further deliberations?” The foreperson replied: “Yes. It was resolved.”

In February 2025, the postconviction judge denied Pazdernik relief, stating that “the jury foreperson’s note [was] the only piece of unexamined concrete evidence to support [Pazdernik]’s argument [which] has now been explored, and any concern regarding [the juror]’s language proficiency has been resolved[; therefore,] [Pazdernik]’s remaining assertions are without factual support and without merit.” This reinstated appeal followed.

DECISION

Mistrial for juror misconduct

Pazdernik argues that the district court abused its discretion by denying his motion for a mistrial because he received an unfair trial with the seating of a juror who did not understand English well enough to understand the trial or to reach an independent conclusion. 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 defendant charged with a felony is entitled to be tried by a jury of 12 people. Minn. Const. art. I, § 6. A qualified juror must be “[a]ble to communicate in the English language.” Minn. R. Gen. Prac. 808(b)(4). “A juror should be able to understand the evidence, the arguments of counsel, and the instructions of the district court; and a juror should be able to deliberate with other jurors.” *State v. Berrios*, 788 N.W.2d 135, 140 (Minn. App. 2010), *rev. denied* (Minn. Nov. 16, 2010).

Here, juror 15 indicated that he is “able to speak and understand English and . . . others [are] able to understand [him].” The transcript of voir dire shows that juror 15 engaged in a conversation with defense counsel. Pazdernik’s counsel did not express a concern with juror 15’s English proficiency. If such a concern existed, it should have been raised when Pazdernik had the opportunity to remove juror 15. *See State v. Logan*, 535 N.W.2d 320, 324 (Minn. 1995).

Moreover, the record supports the postconviction judge’s determination that Pazdernik’s assertion that he did not receive a fair trial was “without factual support and without merit.” The jury foreperson testified that any issue had been “resolved” during deliberations. Pazdernik takes issue with the fact that juror 15 indicated on his questionnaire that he had never witnessed a crime, but during voir dire told a story about a robbery. While this is apparently inconsistent, it does not indicate that juror 15 was biased.

Pazdernik also cites caselaw that he claims is analogous, but he relies on cases in which jurors self-reported inability to proceed. *See Berrios*, 788 N.W.2d at 139-40 (concluding that district court did not abuse its discretion by excusing juror after juror indicated she did not understand some testimony because of language barrier).

Additionally, here, there is just the jury foreperson's original opinion that there could possibly be a language barrier in the understanding of the use of circumstantial evidence. The district court reread relevant instructions to the jury. And the foreperson later testified that the language-barrier issue had been resolved during further deliberations. The facts do not support the conclusion that Pazdernik is entitled to a new trial.

***Schwartz* hearing**

Although Pazdernik requests that the matter be remanded for a new trial because a *Schwartz* hearing is impractical because of the passage of time, he claims that he is entitled to a *Schwartz* hearing because the record suggests that juror 15 was not qualified to be a juror. This court reviews the denial of a *Schwartz* hearing for an abuse of discretion. *Opsahl v. State*, 677 N.W.2d 414, 421 (Minn. 2004).

To be entitled to challenge a verdict through a *Schwartz* hearing, a defendant must present a prima facie case that “standing alone and unchallenged, would warrant the conclusion of jury misconduct.” *State v. Martin*, 614 N.W.2d 214, 225-26 (Minn. 2000) (quotations omitted). At a *Schwartz* hearing, the defendant may present juror testimony about “whether extraneous prejudicial information was improperly brought to the jury’s attention or whether any outside influence was improperly brought to bear upon any juror” or “as to whether a juror gave false answers on voir dire that concealed prejudice or bias toward one of the parties.” Minn. R. Evid. 606(b).

Here, Pazdernik is not entitled to a *Schwartz* hearing because there is no allegation of jury misconduct. See *Zimmerman v. Witte Transp. Co.*, 259 N.W.2d 260, 262 (Minn. 1977) (stating that *Schwartz* hearing is appropriate only when there is suspicion jury acted

improperly). Additionally, the postconviction judge held a hearing and questioned the jury foreperson about the potential language-barrier issue. The foreperson stated that any issue had been “resolved” during deliberations. As the district court judge and postconviction judge noted, a *Schwartz* hearing would be inappropriate because a juror may not testify about statements made during deliberations or what influenced a juror to reach a verdict, unless there was an improper influence or a threat. Minn. R. Evid. 606(b). Here, there is no evidence of an improper influence or a threat. Pazdernik simply suggests that it was jury misconduct to seat a juror whom another juror at one point believed may have a language barrier impeding his understanding of circumstantial evidence. Here, Pazdernik is not entitled to a *Schwartz* hearing and there was no abuse of discretion.

Ineffective assistance of counsel

Lastly, Pazdernik argues that the postconviction judge erred by denying relief because his attorney was ineffective for failing to examine juror 15 regarding his language barrier and by advising him to limit his testimony regarding the circumstances surrounding the letter of reprimand.

To prevail on an ineffective-assistance-of-counsel claim, a petitioner must show that “counsel’s representation ‘fell below an objective standard of reasonableness’ and ‘that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.’” *Gates v. State*, 398 N.W.2d 558, 561 (Minn. 1987) (quoting *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984)). If a petitioner cannot meet one of the *Strickland* prongs, the claim fails, and this court need not address the other prong. *Peltier v. State*, 946 N.W.2d 369, 372 (Minn. 2020).

“[T]here is a strong presumption that counsel’s performance fell within a wide range of reasonable assistance.” *Bruestle v. State*, 719 N.W.2d 698, 705 (Minn. 2006) (quotations omitted). Because trial counsel enjoys “wide latitude” in making strategic decisions, *State v. Nicks*, 831 N.W.2d 493, 506 (Minn. 2013), this court will not review trial counsel’s “strategic choices made after [a] thorough investigation of law and facts.” *Strickland*, 466 U.S. at 690.

Generally, trial counsel makes strategic decisions during jury selection. *Tsipouras v. State*, 567 N.W.2d 271, 275-76 (Minn. App. 1997), *rev. denied* (Minn. Sept. 18, 1997). This court has held that an attorney’s representation falls below an objective standard of reasonableness during jury selection when the petitioner proves:

(1) that defense counsel was so inattentive or indifferent during the jury selection process that the failure to remove a prospective juror was not the product of a conscious choice or preference; (2) that a prospective juror expressed bias so strong or unequivocal that no plausible countervailing subjective preference could justify failure to remove that juror; or (3) that there is some other specific evidence clearly demonstrating that counsel’s choice was not plausibly justifiable.

Jama v. State, 756 N.W.2d 107, 114 (Minn. App. 2008).

Here, Pazdernik has failed to prove that his attorney’s performance in jury selection fell below an objective standard of reasonableness. Pazdernik’s attorney conducted thorough voir dire. She had a conversation with juror 15 about where he was from, his family, his witnessing of a robbery, and his work experience in the United States. Based on our review of the transcript we cannot discern that juror 15 was unable to engage in the exchange or that Pazdernik’s attorney had problems communicating with juror 15. There

is nothing in the record to support Pazdernik's argument that his attorney was "inattentive or indifferent." *See id.* There is also nothing in the record showing that juror 15 was biased. And Pazdernik does not show any other evidence that his counsel failed in jury selection by not striking juror 15. Regarding Pazdernik's arguments about juror 15, the postconviction judge properly denied relief on this ineffective-assistance-of-counsel claim.

Pazdernik also argues that his attorney should not have limited his testimony regarding the circumstances surrounding the reprimand letter. As previously stated, this court will not review claims challenging trial strategy, and trial strategy includes the selection of evidence presented to the jury, *White v. State*, 711 N.W.2d 106, 111 (Minn. 2006), "which witnesses to call at trial," *State v. Mems*, 708 N.W.2d 526, 534 (Minn. 2006), and counsel's advice to her client. *State v. Brocks*, 587 N.W.2d 37, 43 (Minn. 1998) (concluding that counsel's advice about what defendant should discuss at trial was reasonable trial strategy). Trial counsel's advice to Pazdernik regarding his testimony was trial strategy. Pazdernik cannot show that his attorney's performance fell below an objective standard of reasonableness. The district court did not abuse its discretion by denying postconviction relief.

Affirmed.