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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1498**

State of Minnesota,
Respondent,

vs.

Pharoah Gerald Ashley,
Appellant.

**Filed October 20, 2025
Affirmed; motion to strike granted
Ede, Judge**

Ramsey County District Court
File No. 62-CR-22-7019

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

John Choi, Ramsey County Attorney, Alexandra Meyer, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Anders J. Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Ede, Judge; and
Reilly, Judge.*

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

NONPRECEDENTIAL OPINION

EDE, Judge

This appeal follows a jury trial, stay, and remand for postconviction proceedings. Appellant asserts that the district court abused its discretion by rejecting his ineffective-assistance-of-trial-counsel claim in denying his petition for postconviction relief and that the trial evidence is insufficient to support his conviction of attempted second-degree murder. In a self-represented brief, appellant also makes several arguments for reversal and remand; respondent moves to strike portions of that brief. We affirm and grant respondent's motion to strike.

FACTS

Respondent State of Minnesota charged appellant Pharoah Gerald Ashley with: possession of a firearm by an ineligible person, in violation of Minnesota Statutes section 624.713, subdivision 2(b) (2022) (Count I); possession of ammunition by an ineligible person, in violation of Minnesota Statutes section 624.713, subdivision 2(b) (Count II); second-degree assault with a dangerous weapon, in violation of Minnesota Statutes section 609.222, subdivision 1 (2022) (Count III); and attempted second-degree murder, in violation of Minnesota Statutes section 609.19, subdivision 1(1) (2022) (Count IV). According to the probable cause statement in the complaint, in the early morning hours of October 4, 2022, Ashley came to the apartment door of the victim (R.T.), knocked, and fired a gun through the door as R.T. grabbed the doorknob on the other side. The matter proceeded to a jury trial resulting in Ashley's conviction of all four counts. Ashley

petitioned for postconviction relief, which the district court denied after an evidentiary hearing.

Below, we summarize relevant facts that are set forth in the record of the pretrial, jury trial, and postconviction proceedings.

Pretrial Proceedings and Jury Trial

In discussing motions in limine during a pretrial conference, Ashley's trial counsel asserted that R.T. "was a friend of . . . Ashley's," "that [R.T.] was concerned about . . . Ashley's alcohol and drug use," and that "the argument and the nature of any problem that [R.T. and Ashley] were having" related in part to the fact that R.T. "was counseling [Ashley] on . . . [his] alcohol and drug use." The district court ordered the state to instruct its witnesses to refrain from testifying about Ashley's purported substance use issues. Although the district court also ordered that "sanitized" evidence of R.T.'s 2008 felony controlled-substance conviction was admissible for impeachment purposes, the court otherwise ordered that the parties were not to "get into alcohol and drug use" by R.T. and that R.T.'s gross misdemeanor convictions of driving while impaired and a separate controlled substance offense were inadmissible.

During the jury trial, R.T. testified. He stated that, on the evening of October 3, 2022, he and two other friends met at one bar in St. Paul before later visiting another. At the second bar, R.T. encountered Ashley, whom R.T. had known for seven or eight years. Ashley and R.T. got into a verbal altercation. Although he did not recall what the argument was about, R.T. testified that he and Ashley often argued about their "lifestyles." When Ashley's trial counsel asked R.T. to explain further, the trial prosecutor interjected and

asked the district court if the parties could approach for a sidebar conference. The trial prosecutor later explained that the concern prompting his request for a sidebar was that the pending question by the defense might have invited R.T. to provide an answer that would violate the district court's pretrial order precluding evidence about Ashley's drug and alcohol use.

The district court paused the proceedings and discussed the issue at sidebar with the attorneys. At that time, Ashley and R.T. engaged in a contentious exchange while the jury was present:

R.T.: What if my babies was in there, man? What if you shot one of my kids?

ASHLEY: It wasn't me, brother. I don't know. It wasn't me.

R.T.: All right.

THE COURT: Whoa, whoa.

....

R.T.: B--ch a-- n-gga.

ASHLEY: Hey, man.

R.T.: Coward.

ASHLEY: You the police now, huh?

R.T.: Yeah. I'm the police, yeah. I'm here.

....

R.T.: Coward a-- n-gga. B--ch. Shooting -- can't look at me; like a coward now, a coward then. Coward a-- n-gga.

Trial counsel resumed questioning R.T. and asked if R.T. had consumed any alcohol on the night of October 3, 2022. R.T. responded that he had not. R.T. also claimed: that he had been "on probation for 13 years," during which he could not drink; that he had "successfully passed probation"; that he did not use drugs "or anything of that sort"; and that his "abstinence . . . [was] important to [him]." As trial counsel continued to ask about

what happened when R.T. encountered Ashley at the second bar, R.T. again directly addressed Ashley in front of the jury:

R.T.: How we get there, P?^[1]

THE COURT: . . . [R.T.], don't talk directly to . . . Ashley.

R.T.: This my brother, man. I don't feel good sitting here.

THE COURT: I know you don't.

R.T.: This hurting me.

THE COURT: I know.

R.T.: I want to break down in tears. This is killing me, fam.

THE COURT: I know. But we've got the rules of the court.

R.T.: This somebody I loved, man. Laid on my couch and cried. Shot up my house.

ASHLEY: It wasn't me.

PROSECUTOR: Judge, could we maybe take a recess?

THE COURT: Yes.

R.T.: I don't need no recess. Cause when I leave, I leave and I'm not coming back.

As to the charged conduct, R.T. testified that, after he and Ashley argued at the second bar, Ashley eventually drove away in his green Camaro. R.T. said that on October 4, 2022, at around 2 a.m., an individual knocked on the door of his St. Paul apartment. R.T. looked through the peephole in the door and saw Ashley. Before R.T. could open the door, Ashley fired multiple gunshots through the door into the residence. After hearing the gunshots, R.T. ducked down. Neither R.T. nor the other occupants of his apartment were struck by the gunfire. The bullets damaged R.T.'s door, window, and ceiling. R.T. opened the door after the shooting stopped and saw "nothing but bullet casings and holes in [the] door." After R.T. called the police and they arrived at the apartment, Ashley continuously

¹ During his testimony, R.T. referred to Ashley by his first initial, "P."

called R.T.'s phone. At this point in R.T.'s testimony, Ashley and R.T. engaged in yet another exchange of words before the jury:

ASHLEY: I didn't call him at all.

R.T.: While the police were standing there. It's in the report. I gave the police the phone. They answered it and talked to them.

....

R.T.: Yes. They did. It's in the report.

ASHLEY: You're a liar.

THE COURT: . . . Ashley, I'm gonna warn you one more time.

R.T.: No, don't warn him.

THE COURT: Don't say anything.

R.T.: I'm gonna leave so you can get out of jail. And you know what's next.

THE COURT: Don't volunteer anything else, [R.T.] . . .

And another such outburst occurred as the district court dismissed R.T. from the witness stand:

R.T.: God bless you, brother.

ASHLEY: (Unintelligible speaking.)

R.T.: No, I'm gonna stay –

THE COURT: Stop talking to each other.

R.T.: Ho-a--, n-gga. You gonna get what you go – you deserve coward.

THE COURT: [R.T.], stop talking.

R.T.: F--king coward. My kids was in there, you coward.

After the district court excused R.T., the court asked the parties outside the jury's presence if they would like to make a record about the preceding sidebar. The district court also admonished Ashley not to speak again unless testifying under oath and warned trial counsel that she had been "dangerously close to opening the door" by asking R.T. to explain what he meant when he referred to his and Ashley's "lifestyles." Trial counsel agreed with the district court's statement that she had been "dangerously close to opening

the door” but expressed her belief that she “walked it so that it was not actually doing so.” And trial counsel neither objected nor asked the district court to take any action regarding R.T.’s comments in front of the jury.

Following R.T.’s testimony, St. Paul police officer M.B. testified. Officer M.B. said that he was dispatched to R.T.’s apartment on the morning of the incident, that he observed brass bullet casings outside the front door,² and that R.T. did not slur any of his words when officer M.B. spoke with him after the shooting. And officer M.B. did not recall that R.T.’s apartment smelled of alcohol at that time.

Another St. Paul police officer, M.C., testified that, while law enforcement was attempting to locate and arrest Ashley, officer M.C. had obtained certain cell-tower location data via search warrant. The data concerned the period of October 1 to November 14, 2022, and it provided the general location of Ashley’s cell phone before and after the time of the shooting. Neither trial counsel nor the trial prosecutor was aware of the data before this testimony. The parties further discussed the matter outside the presence of the jury during a lunch recess. Officer M.C. revealed that, although the data included the period of October 1 to 4, 2022, he had not reviewed that portion of it, had not provided it to the trial prosecutor, and had believed the overall data was only relevant to law enforcement’s attempts to locate Ashley after the crime occurred. The district court directed officer M.C. to provide the data to the parties during the lunch recess.

² Although officer M.B. testified that the casings were “40mm,” a St. Paul police sergeant later clarified that the casings collected by officer M.B. and received into evidence were “40 caliber.”

After the recess, trial counsel introduced cell-tower location data from October 4, 2022 into evidence through officer M.C.'s testimony. Officer M.C. explained that the data showed that a cell-phone tower located in St. Paul had connected with Ashley's phone at 12:51 a.m. on October 4. The next time that Ashley's phone connected with a cell-phone tower on October 4 was at 1:22 a.m.; that tower was in Minneapolis. There were no further connections between Ashley's phone and any cell-phone tower until 8:58 a.m. on October 4, when Ashley's phone once again connected with a tower in Minneapolis.

Other relevant evidence admitted at trial included the following. A St. Paul police sergeant testified that, in January 2023, law enforcement searched a bedroom in the home where Ashley resided and found a high-capacity, .40-caliber drum magazine and Ashley's Minnesota identification card. And the state introduced: testimony about the brass .40-caliber casings that were found at the scene of the shooting; surveillance video taken near R.T.'s home around the time the crime occurred, which depicted a "dark vehicle leaving the area that appear[ed] to be consistent with a dark Chevy Camaro"; and evidence that Ashley drove a green Camaro at the time of the incident.

Before closing arguments, the district court provided instructions to the jury that included the following charge regarding nontestimonial statements:

You might have heard statements made by individuals present in the courtroom during the proceedings this week which were not testimony. You are reminded that [the] only statements you are to consider as evidence in this matter must come from witnesses called to testify under oath, and in response to questions from the attorneys. Any other statement or statements made by someone present in the courtroom must be disregarded.

During her closing argument, trial counsel referenced the cell-tower location data and contended that it exonerated Ashley by establishing that he went home to Minneapolis and slept after he left the bar where he had encountered R.T. She also referenced R.T.'s behavior while testifying, stating that, "on the stand, [R.T.] obviously wasn't pleased with . . . Ashley[,] . . . [b]ut that doesn't mean that [R.T.] is a reliable testifier to an identification."

The jury found Ashley guilty of all four charged counts.

Postconviction Proceedings

Ashley filed a notice of appeal. We stayed appellate proceedings to allow Ashley to petition the district court for postconviction relief. Ashley did so, raising claims of ineffective assistance of his trial counsel. The district court held an evidentiary hearing on Ashley's postconviction petition.

Trial counsel testified that she only began representing Ashley about one month before trial, which she did not feel was sufficient time to prepare. She also stated that, although she would have liked more preparation time, Ashley "wanted a speedy trial because he believed . . . that he was not there, he did not commit this [crime], and that he needed to be out of jail as quickly as possible." And trial counsel stated that she believed the same.

Ashley's postconviction counsel questioned trial counsel about her decision to not impeach R.T.'s credibility after R.T. testified that he had abstained from substance use during his 13 years of probation and had successfully completed that term of supervision. More specifically, postconviction counsel confronted trial counsel with records showing

that a district court had revoked R.T.'s probation for driving while impaired, failing to submit to court-ordered drug testing, and failing to abstain from mood-altering chemicals. In response, trial counsel conceded that there was no reason she did not impeach R.T. with this probation violation, that it was not a strategic decision, and that "[i]t was an error on [her] part." Moreover, trial counsel testified that R.T.'s credibility was important in this case "[b]ecause his testimony was a primary factor in [Ashley's] conviction"—a conviction that trial counsel believed was "erroneous."

Postconviction counsel also questioned trial counsel about how she handled the mid-trial disclosure of the cell-tower location data by officer M.C. After explaining her prior litigation experience with cell-tower location data, trial counsel testified that she did not object to the evidence and instead conveyed that she was "seeking" it. She also stated that she did not ask for a mistrial because "[i]t was [her] understanding, in [her] conversations with . . . Ashley, that he wanted to proceed with the trial." And trial counsel said that she "[a]bsolutely" would have asked for a mistrial and that it would have been her trial strategy to do so if she had not had those conversations with Ashley.

But trial counsel also testified that Ashley did not have the right to decide whether to request a mistrial, that he was not a lawyer, that he had never tried a case, that he had no experience analyzing cell-tower location data, and that whether to ask for a mistrial "[u]ltimately . . . [was her] decision." On cross-examination by the postconviction prosecutor, trial counsel elaborated that she had discussed with Ashley that the cell-tower location data "was a very critical piece of information" and "that it was important whether or not [they] went forward with the trial." Trial counsel further expressed her

“understanding . . . that [the] evidence showed, in correlation to [her] speaking with . . . Ashley, that . . . [Ashley was] in a different location than where he was alleged to have been during the incident.” And she explained that, during the trial, she “attempted to get the jury to understand that the data for the specific dates and time showed that . . . Ashley was in Minneapolis and not in St. Paul during the timeframe of this incident.”

When asked about R.T.’s statement to Ashley during trial that R.T. was going to leave so Ashley could get out of jail and that Ashley knew “what’s next,” trial counsel said that she did not interpret R.T.’s remark as a threat. Trial counsel could not recall R.T. calling Ashley a “coward” and saying that Ashley was going to “get what . . . [he] deserve[d],” but she nonetheless acknowledged that such statements were “inappropriate in front of a jury” and would “usually [be] objected to.” And trial counsel admitted both that she did not object to R.T.’s outburst and that her failure to object was not a strategic decision that benefitted Ashley’s case. Under questioning by the postconviction prosecutor, trial counsel recalled that R.T.’s testimony was “extremely adversarial” and that she had advised Ashley to remain calm after the exchanges with R.T. occurred. And in his testimony at the evidentiary hearing, the trial prosecutor pointed out that, while Ashley did not testify at trial, his exchanges with R.T. allowed Ashley “to make statements proclaiming his innocence, [which] he repeated . . . over and over again.”

At the end of her testimony, trial counsel said “that [she had] failed [her] client . . . in not making sure that . . . evidence [of the cell-tower location data] was part of the trial from the beginning.” She also stated her belief that, “if [she had] had more time, prior to the beginning of trial, [she] would have been able to get that evidence as part of the pretrial

discovery,” but she “was not able to do that.” And trial counsel said that “not moving for a mistrial[] severely hampered . . . Ashley’s case.” At the same time, when asked whether she had “work[ed] to do the best [she] could for [her] client” throughout the trial, trial counsel responded: “One hundred percent.”

Determining that Ashley was not entitled to a new trial because he did not receive ineffective assistance of counsel, the district court filed an order denying Ashley’s petition for postconviction relief. The district court reasoned that trial counsel made a strategic decision to not request a mistrial after the state’s late disclosure of cell-tower location data, that trial counsel’s failure to impeach R.T.’s credibility did not so prejudice Ashley that a different outcome would have resulted but for that error, and that trial counsel made a strategic decision to not highlight the nontestimonial exchanges between R.T. and Ashley, which did not prejudice Ashley in any event.

After we granted Ashley’s motion to dissolve the stay of his direct appeal, this appeal proceeded.

DECISION

In challenging his convictions and the district court’s order denying his petition for postconviction relief, Ashley maintains that the district court abused its discretion by rejecting his ineffective-assistance-of-trial-counsel claim in denying his postconviction petition and that the trial evidence is insufficient to support his conviction of attempted second-degree murder. Ashley also makes several arguments in a self-represented brief, portions of which the state moves to strike. We address each issue in turn.

I. The district court acted within its discretion in denying Ashley’s petition for postconviction relief.

Ashley argues that the district court abused its discretion in denying his postconviction petition, claiming that trial counsel rendered ineffective assistance by: (A) failing to request a mistrial based on the mid-trial disclosure of the cell-tower location data; (B) neglecting to impeach R.T.’s testimony about his sobriety and compliance with probation; and (C) declining to request a mistrial based on R.T.’s nontestimonial statements before the jury.

Appellate courts review a district court’s denial of postconviction relief for an abuse of discretion. *Pearson v. State*, 891 N.W.2d 590, 596 (Minn. 2017). “A postconviction court abuses its discretion when it has exercised its discretion in an arbitrary or capricious manner, based its ruling on an erroneous view of the law, or made clearly erroneous factual findings.” *Ries v. State*, 920 N.W.2d 620, 627 (Minn. 2018) (quotation omitted). “Because claims of ineffective assistance of counsel are mixed questions of law and fact, [appellate courts] review the postconviction court’s legal conclusions on such questions de novo.” *State v. Nicks*, 831 N.W.2d 493, 503 (Minn. 2013).

“The Sixth Amendment to the United States Constitution and Article I, section 6, of the Minnesota Constitution guarantee a criminal defendant ‘the right to the effective assistance of counsel.’” *Taylor v. State*, 887 N.W.2d 821, 823 (Minn. 2016) (quoting *Strickland v. Washington*, 466 U.S. 668, 686 (1984)). To establish that counsel was ineffective under the two-prong *Strickland* test, a defendant must show (1) that his trial counsel’s performance “fell below an objective standard of reasonableness” and (2) that,

but for counsel’s unreasonable performance, there is a reasonable probability that the result of the proceeding would have been different. *Strickland*, 466 U.S. at 687–88, 694. If an appellant cannot meet one of the *Strickland* prongs, the claim fails, and appellate courts need not address the other prong. *Peltier v. State*, 946 N.W.2d 369, 372 (Minn. 2020).

A. The district court did not err in determining that trial counsel made a strategic decision to not request a mistrial after the state belatedly disclosed the cell-tower location data.

Ashley contends that trial counsel was ineffective because she did not request a mistrial when the state disclosed the cell-tower location data mid-trial. On the first *Strickland* prong, Ashley has failed to establish error in the district court’s determination that trial counsel’s performance did not fall “below an objective standard of reasonableness.” *White v. State*, 711 N.W.2d 106, 110 (Minn. 2006) (quotation omitted); *see also Peltier*, 946 N.W.2d at 372.

In reviewing a claim of ineffective assistance of counsel, our “scrutiny of counsel’s performance must be highly deferential.” *State v. Rhodes*, 657 N.W.2d 823, 844 (Minn. 2003) (quotation omitted). “To allow counsel flexibility to represent a client to the fullest extent possible, [an appellate court’s] review of trial counsel’s performance does not include reviewing attacks on trial strategy.” *White*, 711 N.W.2d at 110 (quotation omitted). Indeed, the Minnesota Supreme Court has “rejected ineffective assistance of counsel claims where counsel failed to move for a mistrial or object to alleged errors at trial because these actions are trial strategy decisions.” *Id.* “Matters of trial strategy 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).

Trial counsel testified that she had prior litigation experience with cell-tower location data and that she did not object to the evidence because she was instead “seeking” it. She discussed with Ashley that the cell-tower location data “was a very critical piece of information” and “that it was important whether or not [they] went forward with the trial.” Trial counsel assessed the evidence as showing “that . . . [Ashley was] in a different location than where he was alleged to have been during the incident.” And she “attempted to get the jury to understand that the data for the specific dates and time showed that . . . Ashley was in Minneapolis and not in St. Paul during the timeframe of this incident.”

We acknowledge that trial counsel stated that she did not ask for a mistrial because, after discussing the matter with Ashley, she understood “that he wanted to proceed with the trial.” Moreover, we are mindful that trial counsel said that she “[a]bsolutely” would have asked for a mistrial and that it would have been her trial strategy to do so if she had not had those conversations with Ashley. But trial counsel also acknowledged that Ashley had neither legal training nor experience with cell-tower location data. In addition, she testified that Ashley did not have the right to decide whether to request a mistrial and that whether to make that request “[u]ltimately . . . [was her] decision.” And notwithstanding trial counsel’s concern that she had “failed [her] client . . . in not making sure that . . . evidence [of the cell-tower location data] was part of the trial from the beginning” and that “not moving for a mistrial[] severely hampered . . . Ashley’s case,” she “[o]ne hundred percent” agreed that she had done the best she could for Ashley throughout the trial.

Based on this testimony, the district court neither exercised its discretion in an arbitrary or capricious manner, nor based its ruling on an erroneous view of the law, nor made clearly erroneous factual findings in determining that trial counsel made a strategic decision to not request a mistrial after the state's late disclosure of cell-tower location data. *See Ries*, 920 N.W.2d at 627. And we discern no error in the district court's determination that, after consulting her client, trial counsel made a strategic decision to not request a mistrial that did not fall below an objective standard of reasonableness. *See Nicks*, 831 N.W.2d at 503; *see also White*, 711 N.W.2d at 110. As the district court explained in its order denying Ashley's petition for postconviction relief, trial counsel "convinced the state to let her introduce the evidence, without laying the requisite foundation, and then talked the state into making an exhibit for her." And trial counsel then used the evidence of the cell-tower location data both in cross-examining officer M.C. and in her summation to argue that it exonerated Ashley.

We therefore conclude that the district court did not err in determining that trial counsel made a strategic decision to not request a mistrial after the state's late disclosure of cell-tower location data.

B. The district court did not err in determining that trial counsel's failure to impeach R.T.'s credibility did not prejudice Ashley.

Ashley maintains that trial counsel was ineffective because she failed to impeach R.T.'s testimony about his sobriety and compliance with probation. On the second *Strickland* prong, Ashley has failed to establish error in the district court's determination

that he was not “prejudiced as a result” of trial counsel’s performance. *See White*, 711 N.W.2d at 110 (quotation omitted); *see also Peltier*, 946 N.W.2d at 372.

The Minnesota Supreme Court has explained that, “under the prejudice prong, a defendant must show that counsel’s errors actually had an adverse effect in that but for the errors the result of the proceeding probably would have been different.” *Rhodes*, 657 N.W.2d at 842 (quotation omitted). “The reviewing court considers the totality of the evidence before the judge or jury in making this determination.” *Id.*

Although trial counsel conceded that there was no reason she did not impeach R.T., that it was not a strategic decision, and that “[i]t was an error on [her] part,”³ the district court determined that “the decision not to impeach R.T. with his behavior 5 or 6 years before this incident did not prejudice . . . Ashley to the extent that but for this error the result of the trial would have been different.” The totality of the evidence shows that the district court did not err in this determination. *See id.* Officer M.C. testified that R.T. did not slur any of his words when the officer spoke with him after the shooting, and officer M.B. stated that he did not recall R.T.’s apartment smelling of alcohol at that time. And the evidence also established: that R.T. immediately told responding officers that he had seen Ashley through the peephole before the gunshots were fired; that Ashley repeatedly

³ Despite her concessions during the postconviction evidentiary hearing, we note that trial counsel agreed with the district court’s statement at trial that she had been “dangerously close to opening the door” vis-à-vis the court’s pretrial ruling that the parties were not to “get into alcohol and drug use” by R.T. and her statement that she thought she “walked it so that it was not actually doing so.” Trial counsel’s contemporaneous characterization of her treatment of R.T.’s testimony therefore suggests that her decision to not impeach R.T. was within her strategic discretion. *See White*, 711 N.W.2d at 110; *see also Leake*, 737 N.W.2d at 536.

called R.T.'s cell phone while officers were inside R.T.'s apartment; that surveillance video showed Ashley's distinctive Camaro was near R.T.'s apartment around the time of the shooting; that .40-caliber brass bullet casings were left outside the front door of R.T.'s apartment; and that law enforcement found a .40-caliber drum magazine and Ashley's Minnesota identification card in a bedroom of the home where Ashley resided after the incident.

We therefore discern no error in the district court's determination that, "[w]hether or not R.T. was impeached . . . [as to] his claims of sobriety, this admitted 'error' on [trial counsel's] part did not so prejudice . . . Ashley as to alter the outcome of the trial."

C. The district court did not err in determining that trial counsel made a strategic decision to not draw attention to the interactions between R.T. and Ashley during the trial and that R.T.'s nontestimonial outbursts did not prejudice Ashley.

Ashley argues that trial counsel should have requested a mistrial because R.T.'s nontestimonial statements were highly prejudicial. This contention is unavailing on both *Strickland* prongs. Ashley has failed to establish error in the district court's determination that trial counsel's performance did not fall "below an objective standard of reasonableness" and that Ashley was not "prejudiced as a result." *White*, 711 N.W.2d at 110 (quotation omitted).

As mentioned above, our review of trial counsel's performance excludes challenges to trial strategy, which encompasses the decision whether to move for a mistrial. *See id.*; *see also Leake*, 737 N.W.2d at 536. And we must consider the trial record in its totality before deciding whether Ashley was prejudiced. *See Rhodes*, 657 N.W.2d at 842.

Trial counsel cited R.T.'s behavior while testifying in arguing to the jury that R.T. was not credible. She asserted that, "on the stand, [R.T.] obviously wasn't pleased with . . . Ashley[,] . . . [b]ut that doesn't mean that [R.T.] is a reliable testifier to an identification." Furthermore, trial counsel testified at the postconviction evidentiary hearing that she did not consider it a threat when R.T. stated that he was going to leave so Ashley could get out of jail and that Ashley knew "what's next." She recalled that R.T.'s testimony was "extremely adversarial" and that she had advised Ashley to remain calm after the exchanges with R.T. occurred. As the trial prosecutor explained in his testimony at the evidentiary hearing, Ashley did not testify at trial, but his exchanges with R.T. allowed Ashley "to make statements proclaiming his innocence, [which] he repeated . . . over and over again." Based on this record, we cannot say that the district court erred in its determination that "[t]rial counsel's decision to not request a mistrial in this instance was not so outside the norm that no other reasonable attorney would have opted to continue with the trial and use the situation to her client's advantage." *See White*, 711 N.W.2d at 110.

That said, trial counsel did acknowledge that her failure to object to some of R.T.'s statements was not a strategic decision that advanced her case. But even assuming without deciding that trial counsel's decision to not request a mistrial based on R.T.'s nontestimonial statements fell below an objective standard of reasonableness, we discern no error in the district court's determination that "the outbursts between the two men did not create sufficient prejudice that denied . . . Ashley a fair trial." As the district court noted in its order denying Ashley's postconviction petition, the court admonished both R.T. and

Ashley about their conduct and specifically instructed the jury that the “only statements [it was] to consider as evidence in this matter must [have] come from witnesses called to testify under oath, and in response to questions from the attorneys,” and that the jury must disregard “[a]ny other statement or statements made by someone present in the courtroom.” And appellate courts “presume that juries follow instructions given by the district court.” *State v. Segura*, 2 N.W.3d 142, 167 (Minn. 2024).

Thus, we conclude that the district court did not err in determining that trial counsel made a strategic decision to not emphasize the interactions between R.T. and Ashley during the trial and that R.T.’s nontestimonial outbursts did not prejudice Ashley.

II. Sufficient circumstantial evidence supports Ashley’s conviction of attempted second-degree murder.

Ashley contends that the circumstantial evidence is insufficient to support his conviction of attempted second-degree murder because it is consistent with a rational hypothesis other than guilt. More specifically, Ashley maintains that the state did not disprove the reasonable theory that he intended to cause fear rather than to kill R.T. when he fired a gun at R.T.’s apartment door. The record defeats this claim.

Due process requires the state to prove each element of the charged offense beyond a reasonable doubt. *State v. Beganovic*, 991 N.W.2d 638, 654 (Minn. 2023). When analyzing a sufficiency-of-the-evidence claim, “[t]he applicable standard of review depends on whether the conviction—or . . . the specific element at issue—is supported by direct evidence or circumstantial evidence.” *State v. Nyonteh*, 24 N.W.3d 271, 283 (Minn. 2025). “[D]irect evidence is evidence that is based on personal knowledge or observation

and that, if true, proves a fact without inference or presumption.” *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation omitted). Circumstantial evidence is “evidence from which the factfinder can infer whether the facts in dispute existed or did not exist.” *Id.* (quotation omitted).

“When reviewing the sufficiency of direct evidence, [appellate courts] painstakingly review the record to determine whether that evidence, viewed in the light most favorable to the verdict, was sufficient to permit the jurors to reach the verdict that they did.” *Segura*, 2 N.W.3d at 155 (quotation omitted). But “[w]hen the direct evidence of guilt on a particular element is not alone sufficient to sustain the verdict, . . . [appellate courts] apply a heightened two-step standard . . . called the circumstantial-evidence standard of review.” *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017). This “two-step process” requires appellate courts to first identify the circumstances proved. *State v. Gilleylen*, 993 N.W.2d 266, 275 (Minn. 2023). At this step, appellate courts “winnow down the evidence presented at trial to a subset of facts that is consistent with the jury’s verdict and disregard evidence that is inconsistent with the jury’s verdict.” *Id.* (quotations omitted). At the second step, appellate courts must analyze “whether the circumstances proved are consistent with the hypothesis that the accused is guilty and inconsistent with any rational hypothesis other than guilt.” *Id.* (quotations omitted).

Here, the charged offense at issue is attempted second-degree murder, in violation of Minnesota Statutes section 609.19, subdivision 1(1). Minnesota law defines an attempt as occurring when a person, “with intent to commit a crime, does an act which is a substantial step toward, and more than preparation for, the commission of the crime.”

Minn. Stat. § 609.17, subd. 1 (2022). Thus, attempted second-degree murder is a specific-intent crime. *See State v. Bakdash*, 830 N.W.2d 906, 912 (Minn. App. 2013), *rev. denied* (Minn. Aug. 6, 2013); *see also State v. Alladin*, 408 N.W.2d 642, 648 (Minn. App. 1987) (“An essential element of the crime of attempted second degree murder is that appellant acted with intent to kill.”), *rev. denied* (Minn. Aug. 12, 1987). Specific intent requires “an intent to cause a particular result.” *State v. Fleck*, 810 N.W.2d 303, 308 (Minn. 2012) (quotation omitted).

To prove the intent element of attempted second-degree murder, the state must establish that a defendant intended to cause the death of another person as provided by subdivision 1(1) of section 609.19, which defines this crime as causing the death of a human being “with intent to effect the death of that person or another, but without premeditation.” A person’s intent “is inferred from words and acts of the actor both before and after the incident.” *State v. Balandin*, 944 N.W.2d 204, 216 (Minn. 2020) (quotation omitted). Intent is rarely proved by direct evidence; in general, it must be proved by drawing inferences from circumstantial evidence. *State v. McAllister*, 862 N.W.2d 49, 53 (Minn. 2015). And “the fact-finder may infer that a person intends the natural and probable consequences of that person’s actions.” *State v. Bilbro*, 24 N.W.3d 827, 835 (Minn. 2025) (quotation omitted).

Here, the circumstances proved are as follows:

- Ashley and R.T. argued at a bar in St. Paul on October 3, 2022;
- Ashley left the bar driving his green Camaro;
- R.T. returned home to his apartment in St. Paul;

- R.T. heard a knock on his front door around 2 a.m. on October 4, 2022;
- R.T. saw Ashley through the peephole;
- Before R.T. could open the door, Ashley fired shots through it;
- Four .40-caliber casings were recovered at the scene;
- Ashley called R.T. after the police had responded to R.T.'s apartment on October 4, 2022;
- Surveillance video from a nearby business captured images of a vehicle matching the description of Ashley's distinctive Camaro in the area when the shooting occurred;
- Evidence showed that Ashley drove a green Camaro at the time of the incident; and
- Law enforcement later found a .40-caliber magazine and Ashley's Minnesota identification card in a bedroom at the home where Ashley resided.

Ashley maintains that, based on the jury's determination that he had the specific intent to cause fear to support his guilt of second-degree assault with a dangerous weapon, "it is reasonable to conclude that [he] *only* had the specific intent to cause fear and not to kill." Under Minnesota law, a conviction of second-degree assault with a dangerous weapon requires the defendant to have the specific intent "to cause fear in another of immediate bodily harm or death" while committing an act using a dangerous weapon. *See* Minn. Stat §§ 609.02, subd. 10(1), .222, subd. 1 (2022).

Given the specific facts of this case, the intent elements of second-degree assault and attempted second-degree murder are not mutually exclusive because the circumstances proved show that Ashley had the intent both to cause R.T. fear of immediate bodily harm or death and to take a substantial step toward effecting R.T.'s death. *Cf. State v. Cole*, 542

N.W.2d 43, 51–52 (Minn. 1996) (affirming the denial of a postconviction petition challenging the defendant’s convictions of second-degree assault and reckless handling and use or intentional pointing of a gun based on the conclusions that “[i]ntent to commit assault and intent to point a gun are not inconsistent mental states” and that the defendant “certainly could have intended to cause fear of immediate bodily harm at the same time he was aware of and consciously disregarded a substantial risk that fear of immediate bodily harm would result from the manner in which he handled a gun” because “the terms ‘recklessness’ and ‘intent’ are not mutually exclusive”).

In particular, the circumstances proved establish that Ashley only fired the shots after R.T. heard a knock at his apartment door and R.T. saw Ashley through the peephole. Because the natural and probable consequences of Ashley’s discharge of multiple gunshots through R.T.’s door after the knock show that Ashley took a substantial step toward intentionally causing R.T.’s death, we conclude that the circumstances proved are consistent with the hypothesis that Ashley had the requisite intent to support his conviction of attempted second-degree murder and are inconsistent with any rational hypothesis other than his guilt of that crime. *See Bilbro*, 24 N.W.3d 827, 835; *see also Gilleylen*, 993 N.W.2d at 275; *State v. Berg*, 358 N.W.2d 443, 446 (Minn. App. 1984) (affirming the defendant’s convictions of second-degree attempted murder and second-degree assault, concluding that “[t]he evidence was sufficient for the jury to reasonably conclude that appellant was guilty of the offenses charged[,]” and reasoning that “intention to kill was easily inferable from appellant’s threats, his pointing the gun at [one of the victims], and his shots through the door”), *rev. denied* (Minn. Feb. 5, 1985).

III. The arguments set forth in Ashley’s self-represented brief do not merit relief.

Ashley also asserts five arguments in a self-represented brief, none of which warrant reversal.

First, Ashley contends that the district court erred by allowing a “50 round drum style magazine to be admitted into evidence.” “Evidentiary rulings rest within the sound discretion of the district court, and [appellate courts] 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 v. Guzman*, 892 N.W.2d 801, 810 (Minn. 2017). “[P]hysical objects connected with a crime or which are the subject matter of an investigation are admissible, as are objects that connect the defendant to the crime scene.” *State v. Zornes*, 831 N.W.2d 609, 624 (Minn. 2013) (quotation omitted). And “the fact that the objects are not directly tied to a defendant only affects the weight of the evidence.” *Id.* Given these legal principles, the district court acted within its discretion in determining that the .40-caliber drum magazine was “relevant based on the fact that the allegation [was] that a [.]40-caliber weapon was used in this offense” and that, despite the defense’s argument that “there was no forensic evidence linking [Ashley] to [the magazine],”⁴ that issue went “to the weight [of the evidence], not the admissibility.”

⁴ Notwithstanding this acknowledgement by the district court, we reiterate the record evidence that Ashley’s Minnesota identification card was found in the same room as the magazine.

Second, Ashley maintains that “[t]he state[’]s inaction to correct [R.T.’s] testimony[,] which was known . . . to be perjured[,] is without due process of law.” But the testimony that Ashley challenges was elicited by his own trial counsel. When trial counsel asked R.T. about whether he had consumed alcohol on the night of the shooting, R.T. volunteered: “I’ve been on probation for 13 years. I have successfully passed probation. I don’t do no drugs, anything of that sort.” Ashley cites no caselaw holding that the state had to correct R.T.’s testimony under these circumstances—particularly in light of the district court’s pretrial ruling that the parties were not to “get into alcohol and drug use” by R.T.—and we are aware of none. We therefore conclude that this argument does not warrant reversal.

Third, Ashley asserts that R.T.’s comments “made in front of the [j]ury were [inflammatory], inadmissible, and [h]ighly prejudicial.” For the same reasons set forth above, R.T.’s nontestimonial outbursts did not prejudice Ashley.

Fourth, Ashley cites *Brady v. Maryland*, 373 U.S. 83 (1963), asserting that his due process rights were violated by the state’s failure to timely disclose the cell-tower location data. “A *Brady* violation occurs when the State suppresses material evidence favorable to the defendant despite a request for production by the defense.” *Griffin v. State*, 941 N.W.2d 404, 410 n.2 (Minn. 2020) (citing *Brady*, 373 U.S. at 87). “The State violates the constitutional guarantees of due process when, whether intentionally or unintentionally, it suppresses ‘material evidence favorable to the defendant.’” *Thoresen v. State*, 965 N.W.2d 295, 304 (Minn. 2021) (quoting *Walen v. State*, 777 N.W.2d 213, 216 (Minn. 2010)). Because alleged *Brady* violations present mixed questions of law and fact, appellate courts

apply de novo review. *Walen*, 777 N.W.2d at 216. Minnesota courts employ a three-prong test to determine whether a *Brady* violation has occurred:

(1) the evidence must be favorable to the defendant because it would have been either exculpatory or impeaching; (2) the evidence must have been suppressed by the prosecution, intentionally or otherwise; and (3) the evidence must be material—in other words, the absence of the evidence must have caused prejudice to the defendant.

Id. “The facts . . . must meet all three requirements to establish a *Brady* violation.” *Zornes v. State*, 903 N.W.2d 411, 417 (Minn. 2017). We discern no *Brady* violation here. The state ultimately did disclose the cell-tower location data, albeit belatedly during trial. And trial counsel used that evidence to argue that Ashley could not have committed the charged crimes. Given that evidence of the cell-tower location data was admitted at trial, Ashley has failed to show prejudice from the late disclosure and has therefore not established a violation of his due process rights under *Brady*.⁵

⁵ The third and fourth arguments set forth in Ashley’s self-represented brief include descriptions of his feelings about R.T.’s nontestimonial statements and the cell-tower location data. In offering these descriptions, Ashley does not rely on evidence that is part of the record before us. *See* Minn. R. Crim. P. 28.02, subd. 8 (providing that “[t]he record on appeal consists of the documents filed in the district court, the offered exhibits, and the transcript of the proceedings, if any.”). Instead, Ashley describes his version of events through statements that lack support in the record. Because we cannot consider such extra-record references and because the state has properly moved to strike them, we grant the state’s motion and order such descriptions stricken from pages 4 through 9, 21, and 26 through 28 of Ashley’s self-represented brief. *See State v. Breaux*, 620 N.W.2d 326, 334 (Minn. App. 2001) (explaining that “[t]he general rule is that this court will not consider evidence outside the record” and that “[a] reviewing court cannot base its decision on matters outside the record on appeal and any matters not part of the record must be stricken” (citation and quotation omitted)).

Finally, Ashley argues that the cumulative effect of these errors rendered his trial fundamentally unfair and violated his right to a fair trial. But we are mindful of “the well-established principle that a defendant is entitled to a fair trial, not a perfect trial,” *Danforth v. State*, 761 N.W.2d 493, 499 (Minn. 2009), and we have identified no prejudicial error based on Ashley’s arguments. We therefore conclude that Ashley is not entitled to relief based on his cumulative-error argument. *See State v. Zielinski*, 10 N.W.3d 1, 24 n.12 (Minn. 2024) (rejecting a cumulative-error argument when “any assumed errors [were] harmless . . . and did not deny [the defendant] a fair trial”).

Affirmed; motion to strike granted.