

*This opinion is nonprecedential except as provided by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
A23-1763**

Isaac Alonzo Cryer, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed August 19, 2024
Affirmed
Reilly, Judge***

Ramsey County District Court
File No. 62-CR-19-6820

Tyler Bliss, Minneapolis, Minnesota (for appellant)

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

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

Considered and decided by Larson, Presiding Judge; Connolly, Judge; and Reilly,
Judge.

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

NONPRECEDENTIAL OPINION

REILLY, Judge

Appellant-petitioner Isaac Alonzo Cryer seeks review of his convictions of second-degree attempted murder, drive-by shooting, and second-degree assault with a dangerous weapon, arguing that he received ineffective assistance of counsel. In a first review of his conviction by petition for postconviction relief, Cryer claimed that his trial counsel's performance was deficient because counsel did not raise an alternative-perpetrator defense even though the evidence showed that a second shooter had been present during the incident.¹ Following an evidentiary hearing, the district court, acting in its postconviction capacity, determined that trial counsel's performance was not deficient, and that, even if it had been, Cryer did not suffer any prejudice. On appeal, Cryer argues the district court abused its discretion by denying his petition for these reasons. Because Cryer's counsel's alleged error was a matter of trial strategy—and therefore unreviewable—we affirm.

FACTS

Cryer's convictions arose out of a familial dispute. On September 1, 2019, V.C. and C.L. received notice from their landlord that they needed to move out of their apartment. Their landlord was C.L.'s brother. Following news of the eviction, family members and acquaintances of V.C. and C.L. gathered outside the apartment, but the meeting quickly devolved into an argument. Sometime during the argument, C.L.'s other brother, T.R.,

¹ Cryer raised other issues in his petition for postconviction relief, including other ways in which he believed counsel's performance was deficient, but he did not reassert these other issues on appeal.

drove up in his SUV. T.R., who had come over to help C.L. move, brought his four-year-old daughter with him. When T.R. arrived and saw the group arguing, he got out of his SUV and joined the fray.

Cryer, who is C.L. and T.R.'s cousin, then arrived on scene in a gold sedan. Cryer and T.R. started yelling at each other as soon as Cryer got out of his car. A short while later, Cryer "ran to his car[,] got a gun, . . . put [a bullet] in the chamber[,] and told [T.R.] he would kill [him]." Cryer then told V.C.—who had grabbed a taser during the argument—that if she "didn't drop the taser" he would "shoot [her] in [the] stomach." Seeing Cryer's gun, T.R. got back into his SUV and drove away. But when T.R. glanced at his rearview mirror, he saw Cryer get into the gold sedan and start following him. Cryer drove up behind T.R.'s SUV and "started shooting." One of Cryer's shots hit and shattered the SUV's back window. T.R.'s four-year-old daughter, who was sitting in the SUV's backseat, was hit by a bullet, but was later treated and survived.

As T.R. was driving away, a red jeep emerged from a side street and pulled in front of his SUV. The occupants of the jeep shot at T.R.'s car before speeding off. After the red jeep drove off, Cryer made a U-turn and drove back towards the apartment. He pulled in front of the apartment and started shooting, aiming at those family members and acquaintances still gathered outside. V.C. was hit by a bullet but survived.

A police investigation turned up casings from two guns, but no firearms were ever recovered. The jeep, which had been reported stolen, was found abandoned a few days after the shooting with its rear and front windows broken in a manner [that was] consistent with a shooting. The occupants of the jeep were never identified.

Cryer was arrested and charged with two counts of second-degree attempted murder, Minn. Stat. § 609.19, subd. 1(1) (2018), two counts of drive-by shooting, Minn. Stat. § 609.66, subd. 1e(b) (2018), one count of second-degree assault with a dangerous weapon and inflicting substantial bodily harm, Minn. Stat. § 609.222, subd. 2 (2018) and four counts of second-degree assault with a dangerous weapon, Minn. Stat. § 609.222, subd. 1 (2018). Cryer's trial counsel did not file any pretrial motions and did not give notice of any specific defenses.

The district court conducted a five-day jury trial. Witness testimony given at trial was consistent with the above facts. Additionally, photographs and videos from the scene were introduced as exhibits. The videos show Cryer walking away from the argument and heading to his car. He can then be seen reaching into his car to retrieve an object. According to witness testimony, the object he retrieved from his car was a gun. Video also shows T.R.'s SUV driving away and followed by Cryer's gold sedan a short time later. A few minutes after that, the gold sedan can be seen driving back towards the apartment. As the gold sedan approached the apartment, the people still standing outside can be seen running away. Witness testimony explained that people were running away because Cryer was shooting at them. Finally, a separate video shows a red jeep and SUV driving down the street. Before the cars entered the video frame, gun shots can be heard on the video. The cars then enter the video frame, and the jeep can be seen driving in front of the SUV.

The jury found Cryer guilty on all counts. Cryer did not file a direct appeal but did petition for postconviction relief. His petition argued that he received ineffective assistance of counsel because his trial counsel did not give notice or present an alternative-perpetrator

defense. The district court granted Cryer's request for an evidentiary hearing on his postconviction claim.

Trial counsel testified at the evidentiary hearing. He stated that he was familiar with the basic case law about what is necessary to present an alternative perpetrator defense and that he did not raise the defense because he did not think there was enough evidence to support it. Trial counsel explained that, while he had reasonable grounds to believe the jeep was firing shots at T.R. that day, everything else about the jeep—including the identity of its occupants—"was pretty much a mystery." He then testified that his strategy at trial was to instead use the fact that law enforcement could not determine who the occupants of the jeep were as "one of the arguments . . . for reasonable doubt." According to trial counsel, it was obvious that "there was some type of shooting . . . [but] the lack of . . . a thorough investigation," combined with the fact that there was another vehicle at the scene whose occupants also seemed to be shooting, was enough for grounds for reasonable doubt.

The prosecutor from Cryer's trial also testified at the postconviction hearing. He discussed respondent State of Minnesota's theory of the case. According to the prosecutor, the state viewed the incident as two separate shootings. The first was when T.R. started driving away and Cryer followed and shot out his SUV's rear window. The second occurred after Cryer made a U-turn, drove back to the apartment, and shot at people still gathered outside. The prosecutor then summarized the evidence submitted at trial and explained why it did not support a finding that the occupants of the jeep were the shooters for either incident.

After the hearing, the district court denied Cryer's petition for postconviction relief. Cryer appeals.

DECISION

Cryer argues that the district court abused its discretion by denying his petition for postconviction relief because he claims that his trial counsel provided ineffective assistance by not raising an alternative-perpetrator defense. The right to effective assistance of counsel is guaranteed to all criminal defendants by the United States and Minnesota Constitutions. U.S. Const. amend. VI; Minn. Const. art. I, § 6. To establish a claim that counsel provided ineffective assistance of counsel in violation of this constitutional right, a defendant must satisfy both prongs of the test laid out in *Strickland v. Washington*, 466 U.S. 668, 687 (1984). The *Strickland* test requires the petitioner to show (1) that "counsel's representation 'fell below an objective standard of reasonableness'; and (2) 'there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" *Nissalke v. State*, 861 N.W.2d 88, 94 (Minn. 2015) (quoting *Strickland*, 466 U.S. at 694). It is the defendant's burden to establish both *Strickland* elements. *State v. Nowels*, 941 N.W.2d 430, 443 (Minn. App. 2020), *rev. denied* (Minn. June 16, 2020). "If a claim fails to satisfy one of the *Strickland* requirements, we need not consider the other requirement." *State v. Mosley*, 895 N.W.2d 585, 591 (Minn. 2017).

When an appellate court reviews a postconviction court's denial of relief on a claim of ineffective assistance of counsel, it considers only "the court's factual findings that are supported in the record." *State v. Nicks*, 831 N.W.2d 493, 503-04 (Minn. 2013). The legal implication of those facts on the ineffective-assistance claim is reviewed de novo. *Id.* at

504. Appellate courts then “either affirm the court’s decision or conclude that the court abused its discretion because postconviction relief is warranted.” *Id.*

A. Trial counsel’s performance was not deficient.

We first address trial counsel’s performance. When applying the first prong of *Strickland*, “there is a strong presumption that counsel’s performance was reasonable.” *Andersen v. State*, 830 N.W.2d 1, 10 (Minn. 2013). An attorney provides reasonable assistance when they exercise “the customary skills and diligence that a reasonably competent attorney would perform under the circumstances.” *Dukes v. State*, 621 N.W.2d 246, 252 (Minn. 2001) (quotation omitted). Counsel’s performance need not be perfect. *Strickland*, 466 U.S. at 688. It must “simply [be] reasonable[] under prevailing professional norms.” *Id.* Mistakes alone thus do not rise to the level of ineffective assistance if counsel’s performance, taken as a whole, was objectively reasonable. *See State v. Bailey*, 132 N.W.2d 720, 724 (Minn. 1965) (“Mere improvident strategy, bad tactics, mistake, carelessness, or inexperience do not necessarily amount to ineffective assistance of counsel unless taken as a whole the trial was a mockery of justice.” (quotation omitted)); *Yarborough v. Gentry*, 540 U.S. 1, 6 (2003) (“[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.”).

Cryer argues that he received ineffective assistance because reasonable doubt existed “as to whether [the] shots were fired by an alternative perpetrator in a red Jeep,” so his trial counsel should have asserted an alternative-perpetrator defense. Due process requires that a defendant is “afforded a meaningful opportunity to present a complete defense,” *State v. Richards*, 495 N.W.2d 187, 191 (Minn.

1992) (quotation omitted), including the right to “present evidence that a third party . . . committed the crime for which the defendant was charged,” *State v. Woodard*, 942 N.W.2d 137, 141 (Minn. 2020) (quoting *Troxel v. State*, 875 N.W.2d 302, 307 (Minn. 2016)). But the right to present an alternative-perpetrator defense is not absolute. *Woodard*, 942 N.W.2d at 141. District courts must go through a two-step process to determine whether alternative-perpetrator evidence is admissible. *State v. Hawkins*, 260 N.W.2d 150, 159 (Minn. 1977). First, the court must consider “whether the proffered evidence has ‘an inherent tendency’ to connect the alleged alternative perpetrator with the ‘actual commission of the crime.’” *Woodard*, 942 N.W.2d at 142 (quoting *Hawkins*, 260 N.W.2d at 159). “In considering whether the defendant has established the required foundation, a court must focus on the evidence, not the assertions, contained in the proffer.” *Id.* at 142 (quotation omitted). If a defendant cannot establish this foundation, “the alternative perpetrator evidence is not admissible[,] and the trial court need not consider any of the alternative perpetrator evidence further.” *State v. Palubicki*, 700 N.W.2d 476, 485 (Minn. 2005). If proper foundation for the defense has been laid, the district court must then review if the alternative-perpetrator evidence is admissible under the rules of evidence. *Woodard*, 942 N.W.2d at 142.

The district court rejected Cryer’s ineffective-assistance claim because it determined that trial counsel’s decision not to raise an alternative-perpetrator defense was a matter of trial strategy and was therefore not subject to scrutiny. We agree with the district court’s reasoning. Appellate courts usually do not “review attacks on counsel’s trial strategy.” *Opsahl v. State*, 677 N.W.2d 414, 421 (Minn. 2004); *see also Nicks*, 831 N.W.2d

at 508 (stating that matters of trial strategy are “virtually unchallengeable”). “What evidence to present and which witnesses to call at trial are tactical decisions properly left to the discretion of trial counsel.” *State v. Mems*, 708 N.W.2d 526, 534 (Minn. 2006). The same can be said for “[t]he extent of counsel’s investigation.” *Opsahl*, 677 N.W.2d at 421. And the Minnesota Supreme Court has declared that the decision about whether to assert an alternative-perpetrator defense is a matter of trial strategy. *State v. Allwine*, 963 N.W.2d 178, 190 n.19 (Minn. 2021); *see also Hodgson v. State*, 540 N.W.2d 515, 518 (Minn. 1995) (concluding that “trial counsel’s performance was professionally reasonable” because the “alleged error[] include[d] failure to present to the jury evidence that someone else committed the murders,” which “relate[s] to matters of trial strategy, not errors in professional performance”). According to the supreme court, appellate courts “are in no position to second-guess counsel’s decision to focus his strategy on other defenses” and to not raise an alternative-perpetrator defense. *Opsahl*, 677 N.W.2d at 421.

Cryer, citing *Nicks*, 831 N.W.2d at 505, disputes that trial counsel’s decision not to raise an alternative-perpetrator defense was mere trial strategy. The petitioner in *Nicks* alleged ineffective assistance of counsel due to his lawyer’s failure to obtain and review cellphone records. 831 N.W.2d at 505. The cellphone records were a central part of the state’s case against the petitioner. *Id.* According to the petitioner, his counsel’s failure was not a strategic decision, but was instead due to his counsel’s inattention and misunderstanding. *Id.* The supreme court concluded that the petitioner’s case was unlike “earlier cases where counsel elected not to pursue a given line of investigation[.]” *Id.* at 506. Instead, trial counsel in *Nicks* was “interested in obtaining [the] cellphone records,

wanted to obtain them, and made several partial attempts to obtain them,” but “either did not read, did not correctly interpret, or failed to understand the cellphone service provider’s response to the subpoena.” *Id.* at 506-07. Thus, petitioner’s counsel’s failure to obtain the records was not a strategic decision, but an objectively unreasonable performance. *Id.* at 508.

The same cannot be said about Cryer’s trial counsel’s performance. Unlike in *Nicks*, Cryer’s trial counsel obtained and reviewed the information available regarding the jeep. He then elected not to pursue an alternative-perpetrator defense because, in his professional opinion, there was not enough evidence to support it. Trial counsel instead chose to try to use the lack of information about the jeep to create reasonable doubt as to the identity of the shooter. The record supports that this decision was not unreasonable because of trial counsel’s misunderstanding or inattention but rather was a strategic decision. Therefore, because Cryer’s trial counsel’s choice not to raise an alternative-perpetrator defense was unreviewable trial strategy, we conclude that the district court did not abuse its discretion by holding that Cryer failed to establish that trial counsel’s performance was deficient.

B. Trial counsel’s decision to forgo an alternative-perpetrator defense did not prejudice Cryer.

Although it is not necessary to address the prejudice prong of *Strickland* given that counsel’s performance was not deficient, we choose to do so. *See Mosley*, 895 N.W.2d at 591 (“If a claim fails to satisfy one of the *Strickland* requirements, we need not consider the other requirement.”). Even if Cryer’s trial counsel’s performance was deficient, his ineffective-assistance claim still fails as he cannot show this deficient performance

prejudiced him. *See Strickland*, 466 U.S. at 694. To prove prejudice, a defendant must show that, but for counsel's deficient performance, there is a reasonable probability that the outcome of the proceeding would have been different. *Andersen*, 830 N.W.2d at 10. A reasonable probability is "a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. And when determining whether an attorney's deficient performance was prejudicial, appellate courts evaluate "the totality of the evidence before the judge or jury." *Andersen*, 830 N.W.2d at 10.

The district court determined that Cryer could not establish prejudice, and we discern no abuse of discretion in the court's conclusion on this issue. If Cryer had been able to assert an alternative-perpetrator defense, the outcome would have been the same for two reasons. First, there was ample evidence presented at trial establishing Cryer as the shooter. Multiple witnesses testified that they saw Cryer with a gun before the shooting, heard him threaten to shoot multiple people, saw him shooting at T.R.'s SUV as T.R. drove off, and then saw him shoot at those standing outside the apartment. The video evidence submitted at trial corroborates this witness testimony.

Second, all available evidence about the jeep was introduced at trial. That evidence does not support a finding that those in the jeep committed the shootings. Photos of T.R.'s SUV show that a bullet hit the SUV's rear window, went through the back seat, and hit T.R.'s child's car seat. But video evidence and T.R.'s testimony places the jeep *in front* of the SUV for the entire encounter. And eyewitness testimony and video evidence established that Cryer was the only one who drove back toward the apartment that day after T.R. left. No evidence was presented that tied the jeep to the shooting in front of the

apartment. Ultimately, the jeep's role in the shootings was never hidden from the jury. By finding Cryer guilty on all counts, the jury concluded that the existence of the jeep did not create reasonable doubt. Formally asserting an alternative-perpetrator defense would not have changed the evidence admitted at trial and therefore we conclude it would not have swayed the jury's verdict.

Accordingly, we affirm the district court's denial of postconviction relief based on Cryer's failure to show that he received ineffective assistance of counsel.

Affirmed.