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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1892**

State of Minnesota,
Respondent,

vs.

Derrick Dandre Powell,
Appellant.

**Filed June 22, 2026
Affirmed
Bentley, Judge**

Ramsey County District Court
File No. 62-CR-21-4883

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

John J. Choi, Ramsey County Attorney, Anna R. Light, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Davi E. Axelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bentley, Presiding Judge; Ede, Judge; and Beane, Judge.

NONPRECEDENTIAL OPINION

BENTLEY, Judge

In this direct appeal, and following a stay and remand for postconviction proceedings, appellant challenges the district court's denial of his claim for relief based on ineffective assistance of counsel. Appellant maintains that his trial counsel was ineffective because she (1) failed to stipulate to appellant's prior conviction before trial, (2) failed to

object to an exhibit that referenced allegations of other bad acts, (3) failed to object to hearsay, (4) elicited hearsay during cross-examination, and (5) introduced evidence that connected appellant to an incriminating text message. We affirm.

FACTS

The following facts derive from the record of the jury trial and postconviction proceedings in this matter. In the early morning hours of August 27, 2021, L.E. asked her son, T.M., to go to appellant Derrick Dandre Powell's home on Selby Avenue in St. Paul to check on her dog. L.E. told T.M. that Powell had placed her dog outside in an open garbage can while it was raining, and L.E. was worried that her dog would drown. T.M. agreed to go to Powell's home to look for the dog.

Powell and L.E. had recently ended a romantic relationship. Prior to the breakup, L.E. lived with Powell in the Selby Avenue home along with her children. T.M. had moved out of the home because of ongoing conflict with Powell. At the time of this incident, Powell had a domestic abuse no contact order (DANCO) against T.M. that prohibited T.M. from going to the Selby Avenue home.

After receiving his mother's message, T.M. drove through the pouring rain to the Selby Avenue home with his girlfriend, T.G. They parked T.G.'s car in an alley behind the home, and T.M. got out of the car to look for the dog. As T.M. approached the home, he saw Powell outside the house in the dark. T.M. ran back to the car, and he heard a voice that he recognized as Powell's yell, "Hey!" Powell has a distinctive voice because a portion of his soft palate was surgically removed to treat oral cancer. T.M. heard a "gunshot go off,

and then it hit[] the back of the car and [went] through.” The bullet hit the car’s rearview mirror. T.M. drove away from the scene and called the police.

T.M. and T.G. both identified the shooter as Powell. T.M. told responding officers that Powell drove a silver truck and that he could be found at either the Selby Avenue home or at a home nearby on Ashland Avenue.

A responding officer visited L.E.’s home to see if she had information about the shooting. L.E. told officers, “He just shot at my son.” L.E. also alleged that “he” had sent pornographic images to her minor daughter. L.E. then read officers a text message she received from “him” that stated, “Whoever you sent over I just fired on they a--. You better check on them.” The contact that sent the message was labeled in L.E.’s phone as “Ain’t Sh-t.” L.E. did not directly name Powell in the footage.

After finding the Selby house empty, officers drove to the Ashland home mentioned by T.M., where they saw a silver truck parked in the alley behind the home. While the officers investigated the truck, a man approached the officers from near the home and identified himself as Powell. Officers arrested Powell. A canine search of the area revealed a white plastic bag containing a black handgun in a garden next to the home. Upon later review, one officer saw that his body-worn camera footage captured a white plastic bag being thrown from near the truck into the garden just before Powell approached the officers.

Respondent State of Minnesota charged Powell with two counts of unlawful possession of a firearm or ammunition, in violation of Minn. Stat. § 624.713, subds. 1(2),

2(b) (2020), and two counts of second-degree assault with a dangerous weapon, in violation of Minn. Stat. § 609.222, subd. 1 (2020).

A jury trial was held in July 2023. The state presented T.M., T.G., and six responding and investigating officers as witnesses. The state also presented numerous exhibits, including body-worn camera footage showing the white bag being thrown into the garden, body-worn camera footage of L.E. speaking with officers, photos of the white bag and the handgun, and a photo of the texts L.E. received from the “Ain’t Sh-t” contact. The defense presented L.E. and Powell as witnesses. The parties also stipulated after voir dire that Powell had been convicted of a prior offense rendering him ineligible to possess a firearm or ammunition, which satisfied one element of the unlawful possession charges.

The jury found Powell guilty on all four counts. The district court convicted Powell of one count of firearm possession and both counts of second-degree assault. The court sentenced Powell to 60 months’ imprisonment for the firearm-possession charge, a concurrent 60 months’ imprisonment for the first assault charge, and a consecutive 36 months’ imprisonment for the second assault charge.

Powell filed a direct appeal with this court and then moved to stay the appeal for postconviction proceedings. After the stay was granted and the case remanded to the district court, Powell filed a postconviction petition with the district court alleging that he received ineffective assistance of trial counsel. The court held an evidentiary hearing on the petition during which Powell’s trial counsel testified. Counsel explained that her trial strategy was “to emphasize how [T.M.] and his mother at that time were highly antagonistic

towards [Powell] and were intentionally creating an opportunity to railroad him,” but she conceded that she made several mistakes.

The district court denied Powell’s petition in a subsequent order. The district court determined that it was objectively unreasonable for Powell’s counsel to have failed to stipulate to Powell’s prior conviction that rendered him ineligible to possess a firearm or ammunition and to have failed to timely object to the body-worn camera footage of L.E. but concluded that neither error was prejudicial. The district court reasoned that two other alleged errors—trial counsel’s failure to object to T.M.’s inconsistent testimony about the gun and elicitation of hearsay about Powell’s truck—were “sound trial strategy” and “reasonable at the time.” The court further determined that counsel’s introduction of evidence connecting Powell to the “Ain’t Sh-t” number was reasonable because the mistake partially resulted from surprise testimony by an officer and “would not have changed the verdict.” The court concluded that the cumulative weight of any objectively unreasonable actions by defense counsel did not have a reasonable probability of changing the result.

Powell appeals.

DECISION

Powell seeks this court’s review of the district court’s decision on his ineffective-assistance-of-counsel claim. Effective assistance of counsel for criminal defendants is guaranteed by the United States Constitution and the Minnesota Constitution. *Crow v. State*, 923 N.W.2d 2, 14 (Minn. 2019); *see* U.S. Const. amend. VI; Minn. Const. art. I, § 6. Minnesota courts review ineffective-assistance-of-counsel claims under the two-prong test

articulated in *Strickland v. Washington*, 466 U.S. 668 (1984). *Andersen v. State*, 830 N.W.2d 1, 10 (Minn. 2013). Under the first prong, the defendant must demonstrate that their “counsel’s performance fell below an objective standard of reasonableness.” *Id.* Under the second prong, the defendant must show prejudice, meaning “a reasonable probability exists that the outcome would have been different but for counsel’s error.” *Id.* We maintain a “strong presumption that counsel’s performance was reasonable.” *Id.*

When considering ineffective-assistance-of-counsel claims, appellate courts “will generally not review” counsel’s trial strategy.¹ *Id.* Trial strategy includes “[w]hat evidence to present to the jury, what witnesses to call, and whether to object.” *State v. Bobo*, 770 N.W.2d 129, 138 (Minn. 2009).

Because Powell challenges the postconviction order, we apply a postconviction standard of review. *See State v. King*, 990 N.W.2d 406, 413, 417 (Minn. 2023) (reviewing denial of a postconviction petition following a stay of the direct appeal under the postconviction standard of review). Appellate courts review a district court’s denial of a

¹ Powell asserts that it is inaccurate to say trial strategy is “unreviewable” because strategy is “always reviewable” under *Wiggins v. Smith*, 539 U.S. 510, 521-23 (2003). We agree that it is incorrect to say that trial strategy is never reviewable under any circumstances. Even so, as the United States Supreme Court stated in *Wiggins*, “[s]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable.” *Id.* at 521 (quoting *Strickland*, 466 U.S. at 690). The Minnesota Supreme Court has also consistently echoed that it “[g]enerally . . . will not review” trial strategy when considering an ineffective-assistance-of-counsel claim. *State v. Mosley*, 895 N.W.2d 585, 592 (Minn. 2017); *see also State v. Nicks*, 831 N.W.2d 493, 506 (Minn. 2013) (“We give trial counsel wide latitude to determine the best strategy for the client.”). We understand these cases to mean that, although we may review trial strategy in some instances, we should generally abstain from reviewing tactical decisions when counsel has thoroughly investigated the law and relevant facts.

postconviction petition for an abuse of discretion, which occurs when a decision “is based on an erroneous view of the law or is against logic and the facts in the record, or exercises its discretion in an arbitrary or capricious manner.” *Id.* (quotation omitted). We review the district court’s factual findings for clear error and its legal conclusions, including the application of *Strickland*, de novo. *Id.*; *Mason-Kimmons v. State*, 26 N.W.3d 858, 869 (Minn. 2025) (reviewing the district court’s *Strickland* analysis de novo “because the performance and prejudice components of the ineffectiveness inquiry involve mixed questions of law and fact” (quotation omitted)).

A. Objective Reasonableness

Powell maintains that his trial counsel made five unreasonable errors: (1) counsel failed to stipulate to Powell’s prior conviction before trial; (2) counsel failed to object to the footage in which L.E. accused Powell of sending her daughter pornography; (3) counsel failed to object to hearsay statements about T.M.’s description of Powell’s firearm; (4) counsel elicited hearsay on cross-examination indicating that Powell’s truck was recently driven; and (5) counsel introduced evidence that definitively connected Powell to the incriminating texts L.E. received. We consider the reasonableness of each identified instance before addressing the prejudicial impact of counsel’s errors.

Failure to Stipulate to Powell’s Prior Convictions

Powell first argues that it was objectively unreasonable for his trial counsel to fail to stipulate before trial that he had a prior conviction rendering him ineligible to possess a firearm or ammunition.

This alleged error occurred at the beginning of voir dire. The district court read the complaint to the jury and instructed that the complaint was “not intended to be evidence or proof of anything at all” and the jury “should not allow [itself] to be prejudiced against [Powell] because this charge has been brought.” The complaint included the following statement: “[T]he defendant, Derrick Powell, did possess a firearm while prohibited, having been convicted or adjudicated delinquent of a crime of violence.” The parties stipulated to the prior conviction later in the trial, before evidence was introduced to prove that element of the unlawful-possession charges.

In its postconviction decision, the district court concluded that counsel’s failure to stipulate was objectively unreasonable because it was a mistake that “served no tactical purpose.” We agree with the district court that it was unreasonable for Powell’s counsel not to stipulate earlier to the prior conviction. “A defendant may agree to waive a jury determination of a particular element of [an] offense by stipulating to it.” *State v. Hinton*, 702 N.W.2d 278, 281 (Minn. App. 2005), *rev. denied* (Minn. Oct. 26, 2005). In cases involving a charge for possession of a weapon as an ineligible person, defendants may generally stipulate to the prior crime that rendered them ineligible, and “[i]n the vast majority of such cases, the potential of the evidence [of the prior crime] for unfair prejudice clearly outweighs its probative value.” *State v. Davidson*, 351 N.W.2d 8, 11 (Minn. 1984). Here, a stipulation to the prior crime was appropriate because Powell was on trial for assault. Allowing the jury to hear that Powell had a prior conviction for a crime of violence could have potentially produced unfair prejudice against Powell because of the implication

that he has a history of violence. Counsel's failure to prevent the jury from learning about the prior conviction was therefore objectively unreasonable.

Failure to Object to Footage of L.E.

Powell next argues that it was objectively unreasonable for trial counsel not to object in a timely manner to the body-worn camera footage in which L.E. alleged that the person texting her about shooting at T.M. and T.G. also sent pornographic photos to her minor daughter. Powell asserts that the statements were improper other-acts evidence that are irrelevant to the case and highly prejudicial.

The day before trial, the district court held a hearing to consider motions in limine, including the state's motion to admit the body-worn camera footage of L.E. speaking with police the night of the shooting. The footage was unredacted and included L.E.'s accusations that "he"—the person who shot at T.M. and T.G.—sent pornographic material to her minor daughter. Powell's trial counsel did not object by motion or during the hearing. Several hours later, counsel emailed the district court with an objection to the footage. The district court denied the objection as untimely.

On postconviction review, the district court determined that counsel again performed objectively unreasonably, and we reach the same conclusion. Generally, "evidence of other crimes or misconduct is not admissible" except to show "motive, intent, absence of mistake or accident, identity, or a common scheme or plan." *State v. Kennedy*, 585 N.W.2d 385, 389 (Minn. 1998); *see also* Minn. R. Evid. 404(b). "The danger in admitting such evidence is that the jury may convict because of those other crimes or misconduct, not because the defendant's guilt of the charged crime is proved." *State v.*

Ness, 707 N.W.2d 676, 685 (Minn. 2006). L.E.’s accusations were irrelevant to the charges against Powell and did not speak to his motive, intent, or a common plan. We therefore are convinced that Powell’s counsel acted unreasonably by failing to object timely.²

Failure to Object to Hearsay

Powell next asserts that his trial counsel unreasonably failed to object when two testifying officers recounted T.M. saying that Powell’s gun had a red laser. Powell argues that the out-of-court statements were inadmissible hearsay that were prejudicial because they corroborated the state’s theory that the gun found outside the Ashland house was Powell’s.

T.M. testified that Powell owned a .38-caliber silver gun with no distinctive attributes. That description was contradicted by two officers who testified that T.M. told them that Powell’s gun had a “red beam” that “was like a laser.” The gun found at the Ashland house was a black handgun with a laser-sight attachment.

Counsel stated at the postconviction evidentiary hearing that part of her strategy was to discredit T.M. by highlighting discrepancies in his story. The district court accordingly reasoned that counsel’s “forbearance in objecting . . . highlighted the inconsistency of the victim witness testimony,” and “[d]efense counsel’s performance here was not deficient, but represented trial strategy.”

² The state argues that counsel’s failure to object was part of her trial strategy to discredit L.E. We disagree. Counsel did, in fact, object to the footage, though the objection was untimely. This shows that counsel’s failure to object earlier was likely not a tactical choice.

We similarly conclude that counsel's lack of objection to the officers' testimonies was consistent with her trial strategy. Trial strategy includes decisions about whether to object to hearsay. *See Bobo*, 770 N.W.2d at 138 (including decisions about objections among examples of trial strategy); *Leake v. State*, 737 N.W.2d 531, 542 (Minn. 2007) ("Decisions about objections at trial are matters of trial strategy."). Counsel's decision not to object to T.M.'s statements was a reasonable tactic to show that T.M.'s testimony was inconsistent and to undermine his credibility. Because the lack of objection represented a strategic choice, we decline to second-guess counsel's performance. *See Andersen*, 830 N.W.2d at 10 (stating that appellate courts usually decline to review trial strategy).

Elicitation of Hearsay

Powell asserts that his trial counsel unreasonably elicited hearsay when one officer testified that another officer felt the hood of Powell's truck and it was warm when it was discovered in the alley behind the Ashland house.

While cross-examining a responding officer, Powell's trial counsel asked whether the testifying officer had touched Powell's truck to see if there was an indication that the engine was recently on. The officer replied that he "did not, but [another officer] did." He went on to testify that "[the other officer] touched it and I believe he gave us the signal that it was warm, but . . . I guess I didn't pay attention to the exhaust or anything like that." Counsel then asked again if he personally confirmed the vehicle was warm—the officer said he did not.

The district court concluded that counsel's questioning reflected her trial strategy. Noting that this exchanged happened "in real time, without the benefit of reading and re-

reading a transcript,” the district court reasoned that the officer’s “uncontrolled, unrequested interjection” was not the purpose of counsel’s questions, and counsel “followed a reasonable strategy and confirmed that [the officer] did not personally confirm whether the vehicle was warm.”

We agree with the district court that counsel’s questions constituted trial strategy. Counsel testified at the postconviction hearing that her “trial strategy was to focus on the officer’s lack of follow-through with basic investigation procedures” and to show that the truck was not operational at the time of the shooting. Her questioning did that—she elicited testimony that the officer did not touch the truck himself or otherwise determine if it could have been recently driven.

Powell argues that his trial counsel should have stopped her questioning before she elicited the hearsay statements about the other officer, and he also points out that trial counsel admitted during the postconviction hearing that eliciting hearsay was “absolutely an error.” But appellate courts have repeatedly declined to review trial tactics because doing so with the benefit of hindsight may constrain trial counsel’s flexibility to represent their client “to the fullest extent possible.” *State v. Jones*, 392 N.W.2d 224, 236 (Minn. 1986). Here, counsel testified that the line of questioning during which the hearsay was elicited was part of her trial strategy. And the record supports that this strategy stemmed from a thorough investigation of the facts. Counsel testified at the postconviction hearing that she understood the testifying officer to have never touched the truck, and her investigation had shown that the truck was inoperable at the time of the shooting. Counsel’s pursuit of this line of questioning is thus a trial tactic that we decline to review. *See State*

v. Nicks, 831 N.W.2d 493, 508 (Minn. 2013) (“[T]rial counsel’s choices made after conducting a thorough investigation of the law and the facts are ‘virtually unchallengeable.’” (quoting *Strickland*, 466 U.S. at 690)).

Moreover, “[w]e assess an attorney’s performance on the facts of the particular case, viewed as of the time of counsel’s conduct.” *State v. Mouelle*, 922 N.W.2d 706, 715 (Minn. 2019) (quotation omitted). Neither trial counsel’s post hoc assessment of the statement nor Powell’s assertion of what counsel *should* have done with the benefit of hindsight impacts our analysis.

We therefore conclude that counsel’s questions were part of her trial strategy, and we decline to review them further. *See Andersen*, 830 N.W.2d at 10.

Introducing Evidence Connecting Powell to Incriminating Texts

Powell further maintains that his trial counsel’s introduction of evidence related to the “Ain’t Sh-t” contact was objectively unreasonable and highly prejudicial because trial counsel “effectively introduced evidence that Powell admitted to the shooting.”

On the night of the shooting, L.E. showed officers a text from a contact named “Ain’t Sh-t” that read, “Whoever you sent over I just fired on they a--. You better check on them lol.” Powell was not identified explicitly as the sender. At trial, Powell’s trial counsel questioned one officer about a phone number ending in 2010. The officer answered that, while preparing for trial that morning, he had checked the 2010 number and discovered it was registered to Powell at one point. Then, during L.E.’s testimony, Powell’s trial counsel introduced exhibit 101, which was a photo of the “Ain’t Sh-t” contact in L.E.’s

phone and listed the associated number as the 2010 number she had asked the officer about.³

The district court concluded that counsel's actions were reasonable because she had "no forewarning" that the officer had investigated the 2010 number that morning. Although we agree with the district court that the officer's investigation of the 2010 number on the day of trial was a surprise, we conclude that counsel's introduction of exhibit 101 after the officer's testimony about the 2010 number was objectively unreasonable because the exhibit established that Powell likely sent the texts confessing to having "fired" at T.M. and T.G. We discern no reasonable tactical basis for introducing an exhibit that supported the state's case to the detriment of Powell.

B. Prejudice

Under the prejudice prong of the *Strickland* test, "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." *State v. Rhodes*, 657 N.W.2d 823, 842 (Minn. 2003) (quotations omitted). We consider the totality of the evidence before the jury to evaluate prejudice. *Id.* In cases involving multiple instances of alleged deficient representation by defense counsel, courts consider the overall strength of the state's evidence to determine whether counsel's errors had a reasonable probability of changing the outcome. *See Allwine v. State*, 994 N.W.2d 528, 539 (Minn. 2023) (concluding that

³ The district court stated that exhibit 101 "did not have a phone number on it." Based on our review of the record, this was an erroneous description—although exhibit 101 is blurry, it shows a number ending in 2010.

multiple alleged errors by defense counsel were not prejudicial because of “other overwhelming evidence in this case”).

The district court noted that the “weight of evidence against [Powell] is considerable.” The court concluded that, “despite any of the aforementioned errors made by defense counsel, there is no reasonable probability that the outcome of the proceeding would have been different.”

We have concluded that three out of the five incidents identified by Powell amounted to objectively unreasonable performance, and we therefore apply the prejudice prong to those three errors in turn. *See Andersen*, 830 N.W.2d at 10-13 (reaching *Strickland*’s prejudice prong with respect to some, but not all, of an appellant’s ineffective-assistance-of-counsel claims). Because we concluded that the remaining two alleged instances of ineffective assistance were reasonable trial strategy, we decline to include them in our prejudice analysis. *See State v. Smith*, 932 N.W.2d 257, 271 (Minn. 2019) (stating that, under the two-prong *Strickland* test, “[i]f one prong is not met, we need not address the other”).

Beginning with trial counsel’s unreasonable failure to stipulate to Powell’s prior conviction, Powell argues that this mistake was prejudicial because the jury learned that he had been previously convicted of a crime of violence. We conclude that error was not prejudicial for two reasons. First, the district court instructed the jurors that the complaint could not be used as evidence. We “presume that juries follow instructions given by the district court.” *State v. Segura*, 2 N.W.3d 142, 167 (Minn. 2024). And second, the complaint was read at the beginning of voir dire, prior to the swearing-in of the jury and

the presentation of any evidence. The combination of the instruction and the timing mitigate any prejudice to Powell and lead us to conclude that the jury learning about Powell's prior conviction for a crime of violence did not have a reasonable probability of changing the result. *See Rhodes*, 657 N.W.2d at 842.

We concluded that it was also unreasonable for Powell's trial counsel not to object to the footage of L.E. speaking with officers. Although we acknowledge that evidence of criminal sexual conduct in particular "can be highly prejudicial," *State v. Fardan*, 773 N.W.2d 303, 319 (Minn. 2009), we are unconvinced that this error altered the outcome of the trial. As the district court found, L.E. was not credible in the footage because she was intoxicated and she had broken up with Powell. Her accusations about sending pornography were also not referenced during trial and were irrelevant to the trial issues. We therefore conclude that, although L.E.'s accusations in the footage were inflammatory and it was unreasonable for counsel not to object in a timely manner, the lack of attention drawn to the accusations and L.E.'s lack of credibility makes it unlikely that the statements influenced the trial outcome, especially considering the weight of the evidence against Powell.

The last objectively unreasonable performance by trial counsel was the introduction of evidence connecting Powell to the incriminating texts L.E. received. But we similarly conclude that counsel's error was not prejudicial because other evidence introduced still would have led the jury to infer that Powell sent the texts to L.E. In the body-worn camera footage where L.E. read the texts to officers, she made several statements about the sender that indirectly identified him as Powell. She offered the exact addresses on Selby and

Ashland Avenues associated with Powell, stated that there was a no-contact order in place, and informed officers that the sender drove a silver truck. Also, in the text messages, the sender stated that he “left the top open so she drown,” which seemingly relates to L.E.’s dog that T.M. went to retrieve out of Powell’s trash can. The exhibit that Powell’s trial counsel introduced may have solidified the identity of the sender, but other evidence already pointed to Powell as the sender. Therefore, we conclude that counsel’s introduction of the exhibit did not have a reasonable likelihood of changing the outcome of the trial and did not amount to a violation of Powell’s right to effective assistance of counsel.

We also agree with the district court that the state presented other strong evidence of Powell’s guilt, such that any of trial counsel’s errors, together or on their own, did not likely change the trial’s result. Footage captured the white bag containing the handgun being tossed into the garden outside the Ashland house just before Powell approached officers from that area. And both T.M. and T.G., who were familiar with Powell, identified him unequivocally as the shooter based on his voice and appearance. These examples alone are strong evidence that Powell possessed the handgun and ammunition, and that he assaulted T.M. and T.G. We are convinced on a review of the totality of the evidence presented that trial counsel’s performance did not affect the outcome of the case.

It follows that Powell did not establish that he received ineffective assistance of counsel, and the district court did not abuse its discretion by denying his petition for relief.

Affirmed.