

*This opinion is nonprecedential except as provided by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
A24-0530**

State of Minnesota,
Respondent,

vs.

Jerrold Richard Lewis Ash,
Appellant.

**Filed March 3, 2025
Affirmed
Ross, Judge**

Red Lake County District Court
File No. 63-CR-23-21

Keith Ellison, Attorney General, Lisa Lodin, Assistant Attorney General, St. Paul, Minnesota; and

Tanner Holten, Red Lake County Attorney, Red Lake Falls, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jessica Merz Godes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Harris, Presiding Judge; Ross, Judge; and Cochran, Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

Jerrold Ash broke into his girlfriend's home after a night of drinking, pushed his way into her bedroom where she and her daughter had taken shelter, and shoved her to the floor, breaking her arm. A jury found Ash guilty of burglary, kidnapping, assault, threats of

violence, and domestic assault. He now challenges his consequent convictions, arguing on appeal that he was denied effective assistance of counsel because his trial attorney failed to object when the prosecutor offered evidence of his prior convictions to impeach his testimony. We affirm because Ash's counsel's decision not to object is a matter of unreviewable trial strategy and because, even if this were not so, Ash's assertion of ineffective assistance of counsel fails on its merits.

FACTS

Ash and his girlfriend, whom we refer to as Jane to maintain her privacy, argued at Jane's home in February 2023, leading them to separate to re-evaluate their relationship. Ash agreed not to stay at Jane's house that night, and he left. But later that evening, as Ash left a bar he began sending Jane a series of texts that announced, "I'm so f---ed up." Jane was concerned that he would return to her home, so after text exchanges in which Ash exhibited his anger, she turned off her phone and locked her doors.

Ash arrived at Jane's home just after 10:30 p.m. and started calling for her and banging on her door so forcefully that she felt her walls tremble. Jane took her daughter into a bedroom and tried to barricade the door with a dresser. Ash broke through the front door and forced his way inside the bedroom. Jane tried to call for help, but Ash snatched her phone from her hand. Jane began yelling for help. Ash pushed her onto a bed and covered her mouth to muffle her screams, making it difficult for her to breathe. The melee migrated outside the bedroom, where Jane urged Ash to leave. Ash shoved Jane, and she fell backward. She landed on her arm, which began to swell. Ash eventually left, and Jane went to the hospital. A physician told her she had a broken arm. Police arrested Ash the

next day, and the state charged him with seven criminal counts: burglary, kidnapping, assault, threats of violence, felony domestic assault, domestic assault by strangulation, and interference with a 9-1-1 call.

Ash testified in his own defense at his jury trial. Before he testified, the district court informed him of his rights and warned him that the state could question him about his prior convictions. The prosecutor confirmed that he intended “to ask about all the felony convictions in the past ten years.” Ash’s attorney responded, “[W]e have no objections to that.” Before the state questioned Ash about his convictions, the district court instructed the jury not to use the convictions as improper character evidence. The prosecutor then questioned Ash about eight of his prior convictions, four of which (two controlled-substance convictions, a threats-of-violence conviction, and an escape-from-custody conviction) the state used to impeach Ash’s trial testimony.

The district court’s final instructions again cautioned the jury not to use the prior criminal convictions as improper character evidence. The prosecutor did not mention Ash’s prior convictions in his closing. The jury found Ash guilty of burglary, kidnapping, assault, threats of violence, and felony domestic assault. Ash appeals.

DECISION

Ash argues that his attorney’s failure to object to the admission of his prior convictions violated his right to effective assistance of counsel. Criminal defendants have a constitutional right to effective legal representation. U.S. Const. amend. VI; *Strickland v. Washington*, 466 U.S. 668, 685–86 (1984). We review *de novo* whether a defendant received effective assistance by counsel at trial. *State v. Mouelle*, 922 N.W.2d 706, 710,

715 (Minn. 2019). Our review of the record leads us to conclude that Ash's ineffective-assistance claim fails for two independent reasons.

The first reason Ash's ineffective-assistance claim fails is that his attorney's decision not to object was a matter of trial strategy, which is not reviewable on appeal. An attorney's trial strategy is generally unreviewable because public policy favors allowing attorneys flexibility to represent a defendant as fully as possible. *Opsahl v. State*, 677 N.W.2d 414, 421 (Minn. 2004). Whether to object to impeachment evidence is typically a matter of trial strategy. *See State v. Mosley*, 895 N.W.2d 585, 591–92 (Minn. 2017). Ash's attorney told the district court before Ash testified that he and Ash had considered the possibility that, if Ash took the stand, the prosecutor would cross-examine him using his prior felony convictions. This demonstrates both that the attorney considered the possibility that Ash would be cross-examined using his convictions and that his decision not to object was the product of his reasoned, strategic judgment. Because Ash's attorney's decision not to object was part of unreviewable trial strategy, Ash's claim of ineffective assistance of counsel fails.

The second and independent reason the claim cannot prevail is that, even if his attorney's trial performance were reviewable, Ash has not shown that failing to object to the conviction evidence affected the verdict. To prevail on an ineffective-assistance claim, an appellant must show both that his attorney's performance was deficient and that the deficient performance prejudiced his defense. *Strickland*, 466 U.S. at 687. But the district court acts within its discretion by admitting prior convictions to impeach a defendant's trial testimony, *see* Minnesota Rule of Evidence 609, and Ash does not convincingly argue that

the district court should have or would have excluded any of the impeachment evidence had his attorney objected. And his misdemeanor domestic-assault conviction was admissible to prove the prior-conviction element in Ash's felony domestic-assault charge. *See* Minn. Stat. §§ 609.2242, subd. 4, 609.02, subd. 16 (2022). Because the district court would have likely overruled any objection to the evidence, Ash has not shown that, but for his attorney's alleged trial error, there is a reasonable possibility that the outcome would have been different.

Affirmed.