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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A25-0231**

State of Minnesota,
Respondent,

vs.

William Robert Sathre,
Appellant.

**Filed September 21, 2026
Affirmed
Harris, Judge**

Hennepin County District Court
File No. 27-CR-23-20852

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

Mary F. Moriarty, Hennepin County Attorney, Kara S. Bovee, Assistant County Attorney,
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Considered and decided by Harris, Presiding Judge; Wheelock, Judge; and
Smith, John, Judge.*

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

NONPRECEDENTIAL OPINION

HARRIS, Judge

In this direct appeal from the judgment of conviction for first-degree criminal sexual conduct, and following a remand for postconviction proceedings, appellant argues that (1) the district court abused its discretion by excluding his expert witness and admitting testimony from the state's expert witness, (2) the prosecutor committed misconduct during closing argument, warranting a new trial, (3) the evidence was insufficient to prove identity, (4) the district court abused its discretion by denying his petition for postconviction relief because he received ineffective assistance of trial counsel, and (5) the district court abused its discretion by summarily denying his petition without an evidentiary hearing. We conclude that the district court acted within its discretion, the prosecutor's statements during closing argument did not affect appellant's substantial rights, there was sufficient evidence to prove identity, trial counsel's performance did not fall below an objective standard of reasonableness, and the district court did not abuse its discretion by summarily denying his petition without an evidentiary hearing. We affirm.

FACTS

Respondent State of Minnesota charged appellant William Robert Sathre by amended complaint with two counts of first-degree criminal sexual conduct under Minnesota Statutes section 609.342, subdivisions 1(a), 1(g) (2018), and one count of second-degree criminal sexual conduct under Minnesota Statutes section 609.343, subdivision 1(a) (2018). The facts below derive from the evidence presented at trial.

The state called several witnesses at trial, including the victim D.L., D.L.’s mother A.D., the child-protection investigator, a criminal investigator, and the forensic interviewer. In January 2019, D.L. was removed from his home and placed temporarily with Sathre and his wife, N.S. Sathre and N.S. lived in a split-level home, which had two designated bedrooms for the foster children located on the lower level. The boys shared one bedroom, and the girls shared the other. The lower level also had a bathroom located next to the boys’ bedroom.

D.L. testified that Sathre would often “help [him] take a shower” by washing his whole body, including his “front private part and [his] back private part.” D.L. stated that this made him uncomfortable because he knew how to bathe himself, “it just didn’t feel right,” and Sathre would see him undressed. D.L. testified that when he was in bed, Sathre would “play” with D.L.’s penis. D.L. also stated that Sathre put his penis in D.L.’s anus.

D.L. later moved to a different placement before reuniting with his mother, A.D., in August 2019. D.L. told A.D. about the abuse, and A.D. reported the incident to the local authorities. According to the child-protection investigator, the report stated that a man living with N.S. sexually abused D.L. several times while D.L. was in their care. Authorities also conducted a forensic interview of D.L. at CornerHouse.¹

¹ CornerHouse is a child advocacy center that conducts forensic interviews of children who are alleged victims of sexual abuse. *State v. Wembley*, 728 N.W.2d 243, 244 (Minn. 2007). CornerHouse interviewers are trained in forensic-interviewing techniques. *State v. Morales-Mulato*, 744 N.W.2d 679, 682 (Minn. App. 2008), *rev. denied* (Minn. Apr. 29, 2008).

N.S. testified on behalf of Sathre and denied having any knowledge of inappropriate behavior between Sathre and D.L. N.S. testified that, at times, she or Sathre had to show a child how to shower. N.S. explained that they would turn the water on and provide the child with a washcloth, soap, and a towel, and demonstrate where to wash using their own bodies, before shutting the door and waiting outside.

Sathre also intended to call an expert witness to “critique . . . the interviewing process” that was used by the forensic interviewer at CornerHouse. The district court expressed concern over whether the witness’s testimony would have foundational reliability. The district court determined that the witness lacked the necessary training and experience to testify as an expert as it related to forensic interviewing of child sexual abuse victims. The district court therefore excluded the expert-witness testimony.

During closing argument, the prosecutor made multiple “we” statements, Sathre’s attorney objected to the prosecutor’s use of the word “we”, and the district court sustained the objection. The jury found Sathre guilty of first-degree and second-degree criminal sexual conduct. Sathre was found guilty of the first count of first-degree criminal sexual conduct (victim under 13) under Minnesota Statutes section 609.342, subdivision 1(a). The district court later granted Sathre’s motion for judgment of acquittal on the second count of first-degree criminal sexual conduct (significant relationship) under Minnesota Statutes section 609.342, subdivision 1(g).

In December 2024, Sathre moved for a new trial based on prosecutorial misconduct and the district court’s exclusion of his expert witness. The district court denied Sathre’s motion for a new trial. The district court concluded that the prosecutor did not inflame the

passions and prejudices of the jury because the prosecutor sufficiently tailored the facts and the evidence presented at trial in her closing argument. It also determined that although the prosecutor improperly used the phrase “we” to align herself with the jury, Sathre’s attorney promptly objected, and the district court sustained the objection.

As it relates to the exclusion of Sathre’s proffered expert witness, the district court concluded that “the brevity of [the witness’s] forensic interview training, which was a portion of a one-day seminar, coupled with the staleness of her work experience with CornerHouse, indicated that she would not be qualified to speak about the current CornerHouse practices.” The district court convicted Sathre of first-degree criminal sexual conduct under Minnesota Statutes section 609.342, subdivision 1(a), and second-degree criminal sexual conduct under Minnesota Statutes section 609.343, subdivision 1(a), and sentenced Sathre to 144 months in prison.

Sathre filed a direct appeal of his conviction for first-degree criminal sexual conduct. Sathre did not appeal his conviction for second-degree criminal sexual conduct. In July 2025, Sathre filed a motion to stay his direct appeal to allow him to pursue postconviction relief before the district court, which this court granted. Sathre filed a petition for postconviction relief on the ground that he received ineffective assistance of counsel. Specifically, he argued that trial counsel (1) failed to interview or call exculpatory fact witnesses to testify at trial, (2) failed to object to the admission of the CornerHouse video, and (3) failed to secure a qualified expert witness or to seek a continuance when the defense’s original expert was excluded. After reviewing the record, the postconviction court summarily dismissed Sathre’s petition without an evidentiary

hearing. The postconviction court concluded that the issues Sathre raised involved matters of trial strategy and that Sathre failed to demonstrate that counsel's performance fell below an objective standard of reasonableness or that he was prejudiced by counsel's performance. This reinstated appeal follows.

DECISION

I. The district court acted within its discretion by excluding Sathre's proffered expert witness and admitting the state's expert witness.

Sathre challenges the district court's decision to exclude his proffered expert witness for lack of the necessary training and expertise to opine on the forensic-interview techniques used by CornerHouse to interview D.L.

"We review evidentiary rulings, including those related to the admissibility of expert testimony, for an abuse of discretion." *State v. Thao*, 875 N.W.2d 834, 840 (Minn. 2016). A district court abuses its discretion in excluding expert testimony when its ruling is "based on an erroneous view of the law or is against logic and the facts in the record." *State v. Heller*, 12 N.W.3d 452, 466 (Minn. 2024) (quotation omitted). Expert opinion testimony "must have foundational reliability." Minn. R. Evid. 702. "To have the requisite foundation to testify, the [expert] witness must have both the necessary schooling and training in the subject matter involved, plus practical or occupational experience with the subject." *Marquardt v. Schaffhausen*, 941 N.W.2d 715, 719 (Minn. 2020) (quotation omitted). An expert may offer their opinion if the "scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue." Minn. R. Evid. 702. "[E]xpert testimony is admissible under Minn. R. Evid. 702

when it is helpful to the jury.” *State v. Obeta*, 796 N.W.2d 282, 289 (Minn. 2011). “Expert testimony is not helpful if the expert opinion is within the knowledge and experience of a lay jury and the testimony of the expert will not add precision or depth to the jury’s ability to reach conclusions.” *Id.* (quotations omitted).

The district court determined that Sathre’s witness was not qualified to critique CornerHouse’s forensic-interview techniques. It found that the witness briefly worked as a forensic interviewer over 30 years ago. It also found that the witness “attended a one-day seminar involving content on forensic interviewing,” which was only “one of four topics covered.” The district court reasoned that “the brevity of [the witness’s] forensic training, which was a portion of [a] one-day seminar, coupled with the staleness of her work experience at CornerHouse, indicated that she would not be qualified to speak about current CornerHouse practices.” And although the witness attended “numerous meetings involving CornerHouse” and worked for the Hennepin County Attorney’s Office (HCAO) Victim Advocacy division, the district court found no evidence related to the context of those meetings. The district court concluded that the witness’s work experience demonstrated expertise in child-abuse advocacy generally, but that she lacked the necessary training and experience to testify as to CornerHouse’s forensic-interviewing techniques.

The district court’s decision is supported by the record. According to the proffered expert witness’s curriculum vitae (CV), she served as a forensic interviewer at CornerHouse between 1989 and 1990. During that year, the witness “conduct[ed] forensic interviews with children who have reported abuse.” After 1990, the witness worked in a

supervisory role reviewing and assigning sexual-abuse cases “to appropriate advocates for victim follow up.” It does not appear that the witness engaged in forensic interviewing after 1990. As it relates to training, the witness stated she attended “hundreds of hours and trainings, seminars and conferences over the course of [her] 35 year career in the area of crime victim rights, child sexual abuse, child development, domestic and sexual assault advocacy.” However, the witness’s only relevant forensic-interviewing experience was a one-day interviewing-technique seminar. Furthermore, the CV provides that the witness “attended monthly CornerHouse consult meetings representing the HCAO victim services division.” The CV also lists “Training CornerHouse Staff for HCAO staff and attorneys” in 2017. However, it is unclear from those descriptions whether the meetings and trainings involved forensic-interviewing techniques. Accordingly, the district court acted within its discretion by excluding Sathre’s proffered expert witness.

Sathre also challenges the district court’s decision to allow the state’s expert witness, a forensic interviewer at CornerHouse, to testify at trial. Sathre argues that the forensic interviewer lacked the necessary qualifications to be considered an expert witness.

At trial, the district court determined that the state’s expert witness had more recent and extensive experience as a forensic interviewer. It also found that the state’s expert witness had received more training on forensic interviewing. This determination is also supported by the record. According to her CV, the state’s expert witness has been employed with CornerHouse since 2022 and is currently a project manager. The expert witness first worked as a forensic interviewer at CornerHouse from 2022 to 2023 conducting forensic interviews. The expert witness also served as a forensic-interview

manager overseeing the forensic-interview team and developed standards of practice to increase interview efficiency. Since 2023, the expert witness “[p]articipate[d] in forensic-interview peer reviews to stay current on the best practices and advancements in the field of forensic interviewing.” The expert witness also attended more recent forensic-interview trainings in 2022 and 2023.

Additionally, relying on *State v. Hakala*, 763 N.W.2d 346, 352 (Minn. App. 2009), *vacated mem.* (Minn. June 1, 2010), Sathre argues that the district court abused its discretion by allowing only the state’s expert to testify, which created an uneven playing field and prevented a fair trial. Sathre’s reliance on *Hakala* is misplaced for two reasons.

First, the Minnesota Supreme Court granted further review, dismissed Hakala’s appeal as moot, and vacated his conviction ab initio. Second *Hakala* is readily distinguishable on its facts. In *Hakala*, the defendant was convicted of three counts of criminal sexual conduct after a jury trial. 763 N.W.2d at 348. The state presented testimony from a social worker regarding the proper protocol for interviewing children who have allegedly been sexually abused. *Id.* In response, Hakala attempted to call an expert witness to testify about the interview techniques employed by the social worker. *Id.* The district court excluded the expert testimony, reasoning that the probative value substantially outweighed the danger of unfair prejudice. *Id.* Specifically, the district court reasoned that by “attacking the interviewing techniques used by the interviewer, the defendant’s expert would have . . . implicitly asserted that the children were not telling the truth.” *Id.*

Hakala appealed, arguing that the district court abused its discretion when it excluded the testimony of his expert witness. *Id.* at 350. This court reversed Hakala’s convictions and ordered a new trial. *Id.* We concluded that the proffered expert testimony “met the helpfulness requirement in that it would have further explained proper interview techniques of sexual-abuse victims, thereby (1) aiding the jury in understanding the evidence presented at trial and (2) potentially adding depth and precision to the jury’s credibility determinations.” *Id.* at 352. In determining that the error was not harmless, we explained that our “chief concern [was] that the legal playing field was not level” because the state was permitted to introduce testimony from the social worker that implicitly, if not directly, bolstered the victims’ credibility. *Id.* We further concluded that, in the absence of contrary testimony from Hakala’s expert witness, “[Hakala] was denied an opportunity to fully present his defense and, ultimately, his right to a fair trial.” *Id.*

As in *Hakala*, Sathre was accused of criminal sexual conduct against a child and sought to introduce expert testimony to challenge the interviewing techniques of the child victim. However, unlike in *Hakala*, where we concluded that the district court erred in excluding the defendant’s proffered expert witness from providing limited testimony on “interview protocols and techniques,” the district court here did not preclude Sathre from providing limited testimony on interviewing protocol. Rather, the district court found that the proffered expert witness was not qualified to provide such testimony because his testimony lacked foundational reliability. As such, we discern no abuse of discretion by the district court in admitting the state’s expert witness.

Accordingly, the district court acted within its discretion by excluding Sathre's proffered expert witness and admitting the state's expert witness.

II. The prosecutor's improper statements during closing argument did not affect Sathre's substantial rights.

Sathre contends that he is entitled to a new trial because the prosecutor engaged in multiple instances of prosecutorial misconduct during closing argument.

"Where [prosecutorial] misconduct is alleged, the standard of review depends on whether the defendant objected at trial." *State v. Whitson*, 876 N.W.2d 297, 304 (Minn. 2016). If the defendant does not object to the alleged misconduct, "[w]e review the prosecutor's statements under a modified plain error analysis." *State v. Davis*, 982 N.W.2d 716, 726 (Minn. 2022) (citing *State v. Ramey*, 721 N.W.2d 294, 299-300 (Minn. 2006)). Under the modified plain-error analysis, the appellant bears the burden to show that the prosecutor committed error and that the error is plain. *Ramey*, 721 N.W.2d at 302. An error is plain if it "contravenes case law, a rule, or a standard of conduct." *Id.* If a defendant establishes plain error, the burden shifts to the state to show that "the misconduct *did not* affect [the defendant's] substantial rights." *Id.* (emphasis added). The state must show that there was "no reasonable likelihood that the absence of the misconduct in question would have had a significant effect on the verdict of the jury." *Id.* (quotations omitted).

If a defendant objects to alleged misconduct, we apply "a two-tiered harmless-error test under which the standard of review varies based on the seriousness of the misconduct." *Whitson*, 876 N.W.2d 297 at 304. Under this test, we consider whether the alleged misconduct was harmless beyond a reasonable doubt for serious misconduct, or "whether

the misconduct likely played a substantial part in influencing the jury to convict” for less serious misconduct. *State v. Carridine*, 812 N.W.2d 130, 150 (Minn. 2012). “Prosecutorial misconduct is harmless beyond a reasonable doubt if the jury’s verdict was surely unattributable to the error.” *Whitson*, 876 N.W.2d at 304 (quotation omitted). When assessing objected-to alleged misconduct in a prosecutor’s closing argument, “we consider the closing argument as a whole rather than focus on particular phrases or remarks that may be taken out of context or given undue prominence.” *State v. Johnson*, 616 N.W.2d 720, 728 (Minn. 2000) (quotation omitted).

Sathre argues that the prosecutor committed misconduct during closing argument by (1) inflaming the passions of the jury and (2) improperly aligning herself with the jury. We address each argument in turn.

A. Inflaming The Passions of The Jury

Sathre asserts that the prosecutor inflamed the passions of the jury by stating that he “preyed upon D.L.”

In a closing argument, a prosecutor may “present all legitimate arguments on the evidence and all proper inferences that can be drawn from that evidence” but may not “speculate without a factual basis” or “misstate the evidence.” *State v. Peltier*, 874 N.W.2d 792, 804-05 (Minn. 2016) (quotation and citation omitted). But a “prosecutor must refrain from making statements that will inflame the passions or prejudices of the jury.” *State v. Duncan*, 608 N.W.2d 551, 556 (Minn. App. 2000), *rev. denied* (Minn. May 16, 2000). A prosecutor in a sexual-abuse case must exhibit the utmost professionalism and adhere to the highest ethical standards because these cases can invoke an emotional reaction, and any

emotional appeal to the jury is therefore likely to be prejudicial. *State v. Jahnke*, 353 N.W.2d 606, 611 (Minn. App. 1984). “It is improper for the prosecutor to make statements urging the jury to protect society or to send a message with its verdict.” *Duncan*, 608 N.W.2d. at 556.

During closing argument, the prosecutor stated:

[D.L.] spoke quietly; so we have to listen. We have to listen because the Defendant preyed upon [D.L.], counting on his silence. That’s why he picked him. Defendant thought he could get away with it, that [D.L.] could be easily dismissed as an inconsistent storyteller, that [D.L.] didn’t have a sequential or linear presentation, and that he was to mix up details.

It’s so easy to dismiss the word of [D.L.] because he’s just a child. He doesn’t think, act, or talk like you or I would. It’s easy to say he’s just confused or influenced or making this up. But that’s why the Defendant picked him. And -- make no mistake about it -- that’s why William Robert Sathre preyed upon [D.L.].

[D.L.] was vulnerable in every way. He was alone, without his mom. He had behavioral issues. Defendant never thought [D.L.] would tell anyone. And, if he did, [Sathre] didn’t think that anyone would believe [D.L.]. But he underestimated [D.L.]. He didn’t know [D.L.] and his strength. And we cannot, now, in the eleventh hour, overlook [D.L.]. We can’t ignore him, dismiss him. We have to listen closely to what he had to say.

Because Sathre did not specifically object to the prosecutor’s statement that he “preyed” upon D.L. during closing argument, we apply the modified plain-error test. Under the first step, the defendant must establish that the alleged misconduct constitutes an error. *Ramey*, 721 N.W.2d at 302. For an error to be plain, it must be “clear or obvious.” *Id.* (quotations omitted).

Sathre argues that by referring to him as a “predator” during closing argument, the prosecutor improperly appealed to the passions of the jury. Sathre argues that the prosecutor’s statements during closing argument were similar to scripted closing arguments that the HCAO made in other child sexual-abuse cases, which this court deemed to be improper. *See Garcia v. State*, No. A18-1907, 2019 WL 3545814, at *2-4 (Minn. App. Aug. 5, 2019) (concluding that prosecutor’s statements during closing argument that “men who prey on children” and that “we really need to listen to children” constituted plain error), *rev. denied* (Minn. Oct. 29, 2019); *State v. Danquah*, No. A18-1581, 2019 WL 3293790, at *4-7 (Minn. App. July 22, 2019) (holding that prosecutor’s general statements during closing argument “about men who sexually assault children because they can be frightened into silence, are confused about their caregiver’s role, are uncomfortable speaking about [sexual assault], are disorganized in the presentation of their stories, and can be disbelieved” and referring to appellant as “a predator” were intended to inflame the passions of the jury and constituted plain error), *rev. denied* (Minn. Oct. 15, 2019); *State v. Ciriaco-Martinez*, No. A18-1415, 2019 WL 2999783, at *2 (Minn. App. July 1, 2019) (concluding that prosecutor’s statement’s during closing argument about appellant’s motives, including that defendant preyed upon the victim, constituted plain error because statements did not have a factual basis and inflamed the passions of the jury).²

The state asserts that *Garcia*, *Danquah*, and *Ciriaco-Martinez* are distinguishable from this case because the prosecutor did not refer generally to men accused of sexual

² Minn. R. Civ. App. P. 136.01, subd. 1(c) (“Nonprecedential opinions . . . are not binding authority . . . but nonprecedential opinions may be cited as persuasive authority.”).

abuse. Instead, the state contends that the prosecutor “specifically argued that [Sathre] preyed on D.L. because he was separated from his mother and thus vulnerable.” We are not persuaded.

The case before us is factually similar to *Ciriaco-Martinez*. There, during closing argument, the prosecutor said, “We have to listen because the men who prey upon them are counting upon their silence, that is why they pick them. Men who prey upon children do so because they think they can get away with it.” *Ciriaco-Martinez*, 2019 WL 2999783, at *2. The prosecutor there also stated that victim “was vulnerable in every way. She was alone without her family The defendant *never thought* she would tell someone.” *Id.* We reasoned that the prosecutor’s generalized statement was not confined to the evidence because there was no evidence in the record revealing *why* the defendant chose his victim. *Id.*

Here, the prosecutor’s closing remarks are nearly identical to those made in *Ciriaco-Martinez*. And while the prosecutor may not have made general assertions about men who prey on children, the prosecutor’s statement about Sathre preying on D.L. was also not factually supported—directly or through reasonable inference—by the evidence presented at trial. *See State v. Bauer*, 776 N.W.2d 462, 476 (Minn. App. 2009) (stating that “a prosecutor may not disparage the defendant or attack the defendant’s character unless the prosecutor’s comment is carefully confined to the evidence”). The state cannot point to evidence in the record suggesting *why* Sathre chose D.L. Thus, Sathre demonstrated that the prosecutor’s statement constituted plain error.

The next step under the modified plain-error test is to analyze whether the state demonstrated that the plain error did not affect Sathre’s substantial rights. *Ramey*, 721 N.W.2d at 302. The state must show that there was “no reasonable likelihood that the absence of the misconduct in question would have had a significant effect on the verdict of the jury.” *Id.* (quotations omitted). “[W]e consider the strength of the evidence against the defendant, the pervasiveness of the improper suggestions, and whether the defendant had an opportunity to (or made efforts to) rebut the improper suggestions.” *State v. Portillo*, 998 N.W.2d 242, 251-52 (Minn. 2023) (quotation omitted).

The state presented compelling evidence of Sathre’s guilt. The jury heard testimony from D.L. himself describing the abuse, as well as testimony from A.D., a child-protection investigator, a criminal investigator, and the forensic interviewer. The jury also watched D.L.’s CornerHouse interview in which he recounted a consistent version of events. Furthermore, the prosecutor’s statements comprised only two pages of a 22-page closing argument, and both remarks were made at the very beginning of the argument. *See Peltier*, 874 N.W.2d at 806 (stating that isolated incidents of alleged misconduct comprising about one page of a 39-page closing argument did not affect appellant’s substantial rights); *see also Portillo*, 998 N.W.2d at 254 (holding that a defendant’s substantial rights were affected where prosecutor’s improper remarks occurred at the end of closing argument before jury instructions and deliberations).

Accordingly, we conclude that the state demonstrated that Sathre’s substantial rights were not affected by the prosecutor’s plain error.

B. Improper Alignment with The Jury

Sathre also argues that the prosecutor improperly aligned herself with the jury by using the word “we” during closing argument. The district court sustained Sathre’s objection to prosecutor’s use of the word “we.”

When an error implicates a constitutional right, appellate courts “employ a heightened standard and ask whether the error was harmless beyond a reasonable doubt.” *State v. McNeilly*, 6. N.W.3d 161, 189 (Minn. 2024). We assume without concluding that the alleged misconduct arising from the state’s closing argument was “more serious” for purposes of applying the harmless-beyond-a-reasonable-doubt standard. Prosecutorial misconduct is harmless beyond a reasonable doubt if the jury’s guilty verdict was “surely unattributable” due to the misconduct. *Whitson*, 876 N.W.2d at 304 (quotation omitted). In applying that standard, we consider how the improper argument was presented, whether the state emphasized it, whether it was highly persuasive, and whether the defendant countered it. *See State v. Wren*, 738 N.W.2d 378, 394 (Minn. 2007).

Generally, a prosecutor’s use of the term “we” in closing arguments is considered “inappropriate and may be an effect to appeal to the jury’s passions.” *State v. Mayhorn*, 720 N.W.2d 776, 790 (Minn. 2006). “While use of the word ‘we’ can improperly align the prosecutor with the jury, it is not always prosecutorial misconduct.” *State v. Zielinski*, 10 N.W.3d 1, 18 (Minn. 2024) (stating that the prosecutor’s use of “we” during closing argument could be interpreted as “referring to everyone in the courtroom during the trial”); *Nunn v. State*, 753 N.W.2d 657, 663 (Minn. 2008) (finding that prosecutor’s use of “we” was not misconduct because the prosecutor was presenting all proper inferences that could

be drawn from the evidence and *Mayhorn* was not decided until ten years after trial in this case, so prosecutor could not have violated any standard of conduct established in *Mayhorn*).

At closing argument, the prosecutor used the word “we” when urging the jury to listen to D.L.’s testimony, not overlook D.L.’s testimony, not ignore or dismiss D.L., and when referencing the elements of sexual penetration. Sathre promptly objected to the prosecutor’s use of “we,” which the district court sustained.

We are not convinced that the prosecutor’s use of “we” to explain the elements of sexual penetration amounted to misconduct because the prosecutor referred to everyone in the courtroom when she described the evidence presented at trial. *See Nunn*, 753 N.W.2d at 663 (“Although this use of ‘we’ may align the prosecutor with the jurors, it does not necessarily exclude the defendant because the ‘we’ could reasonably be interpreted in this context to refer to everybody who was in court when the evidence was presented.”). The prosecutor’s use of “we” to explain the elements of sexual penetration was not an attempt by the prosecutor to “describe [the prosecutor] and the jury as a group of which the defendant is not a part.” *See Mayhorn*, 720 N.W.2d at 790. Nor does the prosecutor’s use of “we” to explain the elements of sexual penetration constitute an inappropriate attempt “to appeal to the jury’s passions.” *See id.* at 789-90. However, the prosecutor’s “we” statements urging the jury to “listen” to D.L. is a closer call. These statements had no factual basis and impermissibly excluded Sathre. Assuming without deciding that the prosecutor committed misconduct, we turn to whether the misconduct is harmless beyond a reasonable doubt.

When viewing the closing argument as a whole, we conclude that the jury's guilty verdict was "surely unattributable" to the misconduct. *Whitson*, 876 N.W.2d at 304. As stated above, the state presented strong evidence of Sathre's guilt. Moreover, the prosecutor's improper use of "we" comprised only two pages of the prosecutor's 22-page closing argument. And Sathre promptly objected to the prosecutor's improper use of the term "we," which the district court sustained.

Therefore, even if we assume that these statements by the prosecutor were serious misconduct, it was harmless beyond a reasonable doubt, and Sathre is not entitled to a new trial.

III. The evidence was sufficient to prove identity.

Sathre maintains that evidence presented at trial was insufficient to identify him as the perpetrator because D.L. never identified Sathre as his abuser.

The standard of review for evaluating the sufficiency of the evidence depends on whether direct or circumstantial evidence supports the conviction. *State v. Jones*, 4 N.W.3d 498, 500 (Minn. 2024). "Direct evidence is evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption." *Jones*, 4 N.W.3d. at 501 (quotations omitted). The parties agree that D.L.'s testimony provides direct evidence of the challenged element and the direct evidence standard of review applies. Under the direct evidence standard of review, "we 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." *State v. Segura*, 2 N.W.3d 142, 155 (Minn. 2024) (quotation omitted).

“The testimony of an eyewitness that the accused is the person who committed the crime is a legitimate means of proving a defendant’s guilt.” *State v. Mosley*, 853 N.W.2d 789, 798 (Minn. 2014). “An identification need not be positive and certain to support a conviction—it is sufficient if a witness testifies that in his belief, opinion, and judgment the defendant is the one he saw commit the crime.” *State v. Johnson*, 811 N.W.2d 136, 149 (Minn. App. 2012) (quotation omitted), *rev. denied* (Minn. Mar. 28, 2012). Witness testimony may serve as direct evidence “when it reflects a witness’s personal observations and allows the jury to find the defendant guilty without having to draw any inferences.” *State v. Horst*, 880 N.W.2d 24, 40 (Minn. 2016). “Any details affecting the reliability of the testimony . . . go to the weight the trier of fact should give to the testimony, not to its admissibility.” *Mosley*, 853 N.W.2d at 420.

Sathre contends that D.L. merely referred to his abuser as “the man.” Sathre’s argument is unavailing. At trial, the state asked D.L. if he recognized Sathre in the courtroom:

Q: And do you recognize the gentleman that is wearing a grey sweater?

A: Yes.

Q: Okay. And do you know his name?

A: No.

Q: Okay. How do you know him?

A: From foster care.

. . . .

Q: Did you ever live with this man in foster care?

A: Yes.

The trial transcript reflected that the man D.L. identified was Sathre. D.L. also described the layout of Sathre's split-level home, his bedroom on the lower level, and the bathroom. D.L. also explained that Sathre lived with a blonde woman, who he later identified as N.S. D.L. then recounted how he was sexually abused. A.D. testified that when she and D.L. initially discussed the abuse, they would refer to Sathre as "the man" because "D.L. was little" and "he didn't know [Sathre's] name." Although D.L. did not explicitly say Sathre's name, D.L.'s testimony and personal observations were enough to establish Sathre as "the man" who sexually abused him.

Sathre nevertheless contends that D.L.'s testimony was insufficient because, during D.L.'s CornerHouse interview, D.L. referred to Sathre as N.S.'s boyfriend. And he stated that the perpetrator had "brown or black hair," and that he was not around for meals. Sathre asserts that N.S. directly contradicted D.L.'s statement in the interview by testifying that Sathre was her husband, that he had gray hair, and that he was present during meals. But Sathre's argument relies on the details affecting the reliability of D.L.'s testimony. And the jury "is responsible for weighing the credibility of eyewitness testimony." *State v. Thomas*, 890 N.W.2d 413, 420 (Minn. App. 2017), *rev. denied* (Minn. Mar. 28, 2017). And we must assume that the jury disbelieved any evidence that conflicted with Sathre's guilty verdict. *See Segura*, 2 N.W.3d at 155.

We conclude that the evidence sufficiently identified Sathre as the perpetrator.

IV. Sathre did not receive ineffective assistance of counsel.

Sathre contends that the district court should have granted postconviction relief because his trial counsel was ineffective. When reviewing the postconviction court's

denial of a claim of relief based on ineffective assistance of counsel, “we will consider the court’s factual findings that are supported in the record, conduct a de novo review of the legal implication of those facts on the ineffective assistance claim, and either affirm the court’s decision or conclude that the court abused its discretion because postconviction relief is warranted.” *State v. Nicks*, 831 N.W.2d 493, 503-04 (Minn. 2013). “[T]o receive an evidentiary hearing on a postconviction claim of ineffective assistance of counsel, a defendant is required to allege facts that, if proven by a fair preponderance of the evidence, would satisfy the two-prong test announced in *Strickland v. Washington*, 466 U.S. 668, 687 (1984).” *Id.* at 504 (quotation and citation omitted).

Under this test, “(1) [Sathre] must prove that counsel’s representation fell below an objective standard of reasonableness, and (2) [Sathre] must prove there was a reasonable probability that, but for counsel’s errors, the result of the proceeding would have been different.” *Id.* Counsel’s performance falls below an objective standard of reasonableness when counsel “does not exercise the customary skills and diligence that a reasonably competent attorney would exercise under the circumstances.” *Leake v. State*, 737 N.W.2d 531, 536 (Minn. 2007) (quotation omitted). The appellant bears the burden to overcome the “strong presumption that counsel’s performance fell within a wide range of reasonable assistance.” *Gail v. State*, 732 N.W.2d 243, 248 (Minn. 2007). We can address the *Strickland* prongs in any order, and a claim may be disposed of on one prong without analyzing the other. *Eason v. State*, 950 N.W.2d 258, 268 (Minn. 2020).

Sathre argues that his trial counsel was ineffective because he (1) failed to call an exculpatory witness, (2) failed to object to the forensic interview of D.L., and (3) failed to seek another qualified expert. We address each argument in turn.

A. Failure to Call an Exculpatory Witness

Sathre first asserts that trial counsel failed to call several available witnesses “whose testimony would have directly undercut the [sexual abuse] allegation[s].” His argument is unavailing.

“Decisions about which witnesses to call at trial and what information to present to the jury are questions of trial strategy that lie within the discretion of trial counsel.” *Leake*, 737 N.W.2d at 539. As a reviewing court, we will not second-guess the trial-strategy decisions related to which witnesses to call. *Id.*; *see also Andersen v. State*, 830 N.W.2d 1, 13 (Minn. 2013) (noting that the decision to call exculpatory witnesses falls within trial strategy and is not reviewable on appeal); *Scruggs v. State*, 484 N.W.2d 21, 26-27 (Minn. 1992) (finding no merit in claim that a defendant received ineffective assistance of counsel because trial counsel failed to call three potential defense witnesses).

Relying on *Nicks*, Sathre asserts that counsel’s conduct was a failure to conduct a thorough investigation rather than trial strategy. *See Nicks*, 831 N.W.2d at 508 (stating that “when counsel fails to conduct such a thorough investigation of facts that are so directly related to the defendant’s theory of the case, that conduct falls below an objective standard of professional conduct that defendants are entitled to under the United States Constitution”).

In *Nicks*, defense counsel sought to obtain evidence of the victim's cellphone records to support Nicks's defense at trial. *Id.* at 500-01. A subpoena was submitted to the cellphone service provider to obtain the records. *Id.* at 501. Nicks's counsel never obtained the cellphone records. *Id.* The supreme court reasoned that this case was different from cases where trial counsel chooses not to call certain witnesses because Nicks's counsel "stated emphatically that he wanted the evidence in question, presented a defense that in large part turned on having that information available, and then failed to take the necessary steps to obtain that evidence." *Id.* The supreme court concluded that reviewing the facts in the light most favorable to Nicks's counsel's conduct did not amount to trial strategy and that Nicks showed that he was entitled to an evidentiary hearing on his claim of ineffective assistance of counsel. *Id.*

Sathre's reliance on *Nicks* is misplaced. *Nicks* expressly provides that counsel's failure to obtain necessary evidence prior to trial and conduct a thorough investigation of the facts was sufficient to warrant an evidentiary hearing on Nick's ineffective assistance of counsel claim. But those facts are not present here. Here, the district court's determination that Sathre's trial counsel did not fail to conduct a thorough investigation or obtain necessary evidence to support Sathre's defense is supported by the record. As such, trial counsel made a decision on whether to call certain witnesses, which is trial strategy and is not reviewable on appeal. *See Leake*, 737 N.W.2d at 539 (holding that "decisions about which witnesses to call at trial . . . are questions of trial strategy").

B. Failure to Object to the CornerHouse Interview

Sathre next argues that trial counsel was ineffective because he failed to object to the admission of the CornerHouse forensic interview of D.L. We are not persuaded.

“Decisions about objections at trial are a matter of trial strategy.” *Leake*, 737 N.W.2d at 542. “[W]e give particular deference to matters of trial strategy, such as whether to object to evidence.” *Zumberge v. State*, 937 N.W.2d 406, 413 (Minn. 2019) (citation omitted) (holding that trial counsel’s decision not to object to properly admitted evidence was a matter of trial strategy and was not unreasonable). Counsel’s performance is “not unreasonable when counsel does not object to properly admitted evidence.” *State v. Blanche*, 696 N.W.2d 351, 376 (Minn. 2005); *see also Zumberge*, 937 N.W.2d at 414.

The state provided notice that it would seek to admit the forensic interview as evidence of the victim’s prior statements under Minnesota Rules of Evidence 807 and 801(d)(1)(B). Trial counsel did not object to the admission of the interview. Instead, trial counsel and the state stipulated to redact certain portions of the forensic interview before presenting it to the jury. Because counsel’s decision to not object to the admission of the forensic interview was a matter of trial strategy, we conclude that trial counsel’s performance did not fall below the objective standard of reasonableness. *See Zumberge*, 937 N.W.2d at 414; *Leake*, 737 N.W.2d at 542.

C. Failure to Secure a Qualified Expert

Sathre also maintains that his trial counsel was ineffective because his trial counsel knew that his proposed expert witness had a significant relationship with Sathre but did not disclose that information to the state. Sathre argues that trial counsel “erred by not

anticipating that his expert would be disqualified since he knew of but did not tell the prosecution or the court [about the relationship]” and should have “secured an unimpeachable expert.”

“What evidence to present to the jury, including which witnesses to call,” is a tactical decision that “lies within the proper discretion of trial counsel.” *State v. Doppler*, 590 N.W.2d 627, 633 (Minn. 1999). Claims based on trial counsel’s failure to “elicit favorable testimony from a witness” and “retain necessary experts” are generally unreviewable trial strategy. *Chavez-Nelson v. State*, 948 N.W.2d 665, 674 n.6 (Minn. 2020); *see also State v. Jones*, 977 N.W.2d 177, 194 (Minn. 2022).

Sathre maintains that counsel’s failure to anticipate the disqualification and decision not to obtain another qualified expert witness were not matters of legitimate trial strategy but instead constituted objectively unreasonable conduct. The record does not support this position. Sathre’s trial attorney attempted to call an expert witness to rebut the state’s CornerHouse forensic-interview expert. After the district court excluded the witness, counsel challenged the state’s expert testimony through cross-examination and closing argument. Counsel likewise challenged D.L.’s credibility through cross-examination and closing argument. The record therefore reflects that counsel pursued alternative means of challenging both the state’s expert testimony and the victim’s credibility after the witness was excluded. Because the record demonstrates that counsel’s decision not to obtain another witness was part of counsel’s trial strategy, we decline to second-guess that decision on appeal. *See Leake*, 737 N.W.2d. at 536. We likewise decline to consider counsel’s decision not to request an additional continuance to secure a replacement witness.

Reviewing the record as a whole, we are not persuaded that this case warrants deviation from our general practice of refraining from reviewing matters of trial strategy on appeal. Even if this decision were reviewable, Sathre has not shown a reasonable probability that, but for counsel’s alleged error, “the result of the proceeding would have been different.” *Chavez-Nelson*, 948 N.W.2d at 671 (quotations omitted).

In sum, Sathre has not alleged facts that show that his trial counsel’s performance was objectively unreasonable or that the asserted errors in trial counsel’s performance reasonably affected the outcome.

V. The district court did not abuse its discretion by summarily denying Sathre’s petition for postconviction relief without a hearing.

Sathre lastly argues that the district court abused its discretion by denying his petition for postconviction relief without an evidentiary hearing because his “defense counsel failed to investigate, object, or secure a competent expert” to challenge the “highly prejudicial, hearsay-laden CornerHouse video.”

“The postconviction court must hold an evidentiary hearing to resolve factual disputes that are material to determining the legal issues raised in the postconviction petition when those factual disputes were not resolved in the proceedings resulting in a conviction.” *Thoresen v. State*, 965 N.W.2d 295, 303 (Minn. 2021). “Although doubts about whether to conduct an evidentiary hearing are resolved in favor of the petitioner, a district court may summarily deny the petition without holding an evidentiary hearing when the petitioner alleges facts that, if true, are legally insufficient to grant the requested relief.” *Ezeka v. State*, 16 N.W.3d 768, 776 (Minn. 2025) (quotations omitted); *see also*

Minn. Stat. § 590.04, subd. 1 (2024) (requiring an evidentiary hearing unless “the files and records of the proceedings conclusively show that the petition is entitled to no relief”). “[T]he burden is on a petitioner to show facts entitling the petitioner to relief.” *Allwine v. State*, 994 N.W.2d 528, 541 (Minn. 2023).

“We review the ultimate decision by the postconviction court to grant or deny an evidentiary hearing for an abuse of discretion.” *Caldwell v. State*, 853 N.W.2d 766, 770 (Minn. 2014). “A district 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.” *El-Shabazz v. State*, 984 N.W.2d 569, 573 (Minn. 2023) (quotation omitted). The district court’s factual findings are reviewed for clear error, and its legal conclusions are reviewed de novo. *Id.*

In denying his postconviction petition requesting an evidentiary hearing, the district court concluded that, considering the facts in the light most favorable to Sathre, he failed to present “more than argumentative assertions without factual support” to receive a hearing. The court determined that Sathre failed to demonstrate that his trial counsel’s decisions fell below an objective standard of reasonableness.

The district court’s decision is adequately supported by the record. Counsel’s decisions regarding which witnesses to call at trial, whether to object, and what evidence to present are all matters of trial strategy. And while the district court excluded Sathre’s proffered expert witness, trial counsel pursued alternative means of challenging the state’s expert testimony, as well as the victim’s credibility.

In sum, Sathre has failed to allege facts that “if proven by a fair preponderance of the evidence, would entitle him to postconviction relief.” *Chavez-Nelson*, 948 N.W.2d at 671 (quotation omitted). Accordingly, the district court properly denied Sathre’s request for an evidentiary hearing.

Affirmed.