STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1769

State of Minnesota,
Respondent,

vs.

Tara Joette Andvik,
Appellant.

Filed July 22, 2013
Affirmed
Smith, Judge

Clay County District Court
File No. 14-CR-11-4063

Lori Swanson, Minnesota Attorney General, St. Paul, Minnesota; and

Brian J. Melton, Clay County Attorney, Heidi M.F. Davies, Assistant County Attorney, Moorhead, Minnesota (for respondent)

Eric J. Nelson, Christina Zauhar, Halberg Criminal Defense, Bloomington, Minnesota (for appellant)

Considered and decided by Smith, Presiding Judge; Schellhas, Judge; and Bjorkman, Judge.

U N P U B L I S H E D O P I N I O N

SMITH, Judge

In less than two weeks, six fires occurred on appellant's property, eventually destroying her house and barn. Appellant was suspected of setting the fires herself and

attempting to implicate a former lover. Appellant was subsequently charged with three counts of first-degree arson, in violation of Minn. Stat. § 609.561, subds. 1, 3(a) (2010). A jury found appellant guilty of all three counts, and appellant was subsequently sentenced. On appeal, appellant challenges whether the evidence was sufficient to support the jury's verdict. Appellant also asserts that she received ineffective assistance of counsel and requests that we remand for a new trial. We affirm.

FACTS

Appellant Tara Andvik (appellant) and her husband (Mr. Andvik) married in 2003 and have two minor children together. They later bought the Andvik family homestead from Mr. Andvik's grandmother. Before the fires occurred, the couple's only financial debt was their mortgage. They paid their monthly mortgage payments and credit card bills in full.

Appellant became interested in hunting, and specifically bow hunting, in 2009. Because Mr. Andvik was already a hunting enthusiast, the couple discussed becoming professional hunters. Appellant utilized a public social media page to promote hunting, but the page also garnered attention from—and threats to appellant by—anti-hunting activists.

In 2010, a television show focused on hunting requested viewer submissions, prompting Mr. Andvik and appellant to submit a hunting video. Appellant later contacted K.B., a Wisconsin resident who edits and produces hunting television shows. She initially contacted him about a video-editing question, after which the two of them maintained regular contact. In January 2011, Mr. Andvik and appellant met K.B. at a

trade show. K.B. introduced the Andviks to T.G. and J.G. for the purpose of persuading television hosts T.G. and J.G. to feature the Andviks on their television program.

Appellant and K.B. Affair

Appellant and K.B. kept in frequent contact, including several telephone calls daily, as well as texting and e-mailing. They eventually began an extramarital affair. J.G. assisted appellant and K.B. by paying for hotel visits, so that K.B. could avoid detection by his wife. Even so, appellant and K.B.'s group of friends knew that the two were in love and planned to marry. Mr. Andvik, however, was not aware of the affair. In May 2011, appellant chose an engagement ring, and in June 2011, K.B. purchased it, proposed to appellant, and appellant accepted. K.B. and his wife began divorce proceedings and, because K.B. would have difficulty accessing funds until his divorce was completed, J.G. agreed to buy K.B. and appellant a house. Those plans fell through, however, in late July 2011 because J.G. and K.B. learned that appellant, despite claiming otherwise, had not filed for divorce from Mr. Andvik. K.B. and appellant briefly reconciled, but three days later appellant lied to him about an additional matter, prompting K.B. to end the romantic relationship a final time.

Soon thereafter, appellant petitioned for a harassment restraining order (HRO) against K.B. Although she was never K.B.'s employee, in her petition appellant portrayed K.B. as an employer who was sexually harassing her. The district court granted her petition on August 3, 2011, but after receiving the HRO, appellant continued to call K.B.'s home and cellular telephones "nonstop." On August 19, K.B. was granted

an HRO against appellant, after which she called him 64 times over the next five days.[1] On October 7, 2011, appellant posted K.B.'s HRO on her social media page.

The Fires

October 7 Grass Fire

On the evening of October 7, 2011, Mr. Andvik took the children to a local football game. Appellant stayed at home. During the football game's halftime, Mr. Andvik received a phone call from his mother reporting a fire on the Andvik property. The fire was a large grass fire, with flames 20 to 30 feet high. He left the football game immediately and called appellant, who said she was outside in search of raccoons.

Law enforcement officials questioned appellant about whether she had been doing anything near the grass that would have caused the fire. She responded that she had been bow hunting beaver and that a person "can't start a fire with a bow." The comment struck the questioning officer as "kind of strange" but not "too out of the ordinary." The fire was not classified as suspicious because there had been several recent grass fires in the area. Accordingly, no cause-and-origin investigation was completed. The fire department extinguished the fire at approximately midnight.

October 8 Grass Fire

Hours after extinguishing the October 7 grass fire, the fire department was dispatched to the Andvik property. Mr. Andvik heard the family's dog whining at approximately 5:00 a.m. When he checked on the dog, he observed a grass fire on the

[1] Eventually, both HROs were dismissed.

property. Although appellant was in the couple's bed when Mr. Andvik went to bed, she was in their daughter's room when Mr. Andvik noticed the fire.

After the fire department arrived, appellant remarked to a law enforcement official, "Don't you think it's strange there's a second fire here when there had been one just the night before?" The law enforcement official responded that he did not think the second fire was suspicious because sometimes fires rekindle. However, the grass fire from October 7 and the grass fire from October 8 did not join, and the wind would have needed to blow exactly opposite from the direction it was blowing for embers from the first fire to have caused the second fire.

October 12 Deck Fire

On the night of October 12, appellant and Mr. Andvik went to bed together. During the night, Mr. Andvik awoke and heard the dog stirring. When he checked on the dog, he observed that the deck was on fire. When Mr. Andvik searched for appellant, he found her coming out of their son's bedroom. Although the fire department was dispatched, Mr. Andvik's use of a garden hose was largely successful in extinguishing the fire. Appellant assisted Mr. Andvik by filling containers of water to douse the flames. When Mr. Andvik was asked if appellant seemed "surprised or upset" that the deck was on fire, Mr. Andvik replied, "Surprised, yes."

The fire department contacted the state fire marshal to investigate the deck fire because the origin appeared man-made. When Mr. Andvik and appellant were told that the fire marshal would investigate, appellant responded, "About f---ing time. This is the

third fire." One firefighter testified that, as the fire department extinguished the deck fire, appellant seemed "cocky."

Law enforcement officials did not see any other vehicles while traveling to the secluded Andvik property. Appellant informed a law enforcement official that she believed the fires were caused by arson and mentioned receiving death threats. She also reported that neither she nor Mr. Andvik smoked, which the law enforcement official thought was "strange" because the law enforcement official had not mentioned cigarettes. The official became suspicious of appellant because of her "unusual behavior of volunteering information," prompting the official to remark that "stuff wasn't adding up."

October 12 Barn Fire

At 6:30 a.m., the firefighters left the property after extinguishing the deck fire. At 6:50 a.m. they were dispatched to the Andvik property for a barn fire. The barn fire was discovered when Mr. Andvik was in the house discussing the recent fires with authorities and appellant was in the couple's bedroom. There are three doors that exit the home, one of which is in the couple's bedroom. The distance from the bedroom outside door to the barn is approximately 100 yards. Because the bedroom outside door is damaged, the screen door frequently falls off when the bedroom outside door is opened. Mr. Andvik never saw appellant leave the house.

When the firefighters arrived, the barn was engulfed in flames, and soon thereafter, the roof collapsed. As authorities investigated the fire's cause, appellant talked to the media and took photos of the damage. Several law enforcement authorities searched the area for evidence, but none was found. The firefighters left at 3:30 p.m.

After the barn fire, the Andviks took several steps to keep their family safe. Mr. Andvik installed four game cameras and four security cameras in the yard. The cameras proved to be unreliable, turning off and on sporadically. The Andviks' children began staying overnight at a nearby relative's home. Additionally, law enforcement officials increased their patrols near the Andvik property.

October 17 Bush Fire

On October 17, while Mr. Andvik was at work and appellant was at home, a bush fired occurred. Strike-on-the-box matches with red heads were found near the bushes. The matches appeared to be the same as those in a box of matches found in the house.

When appellant and Mr. Andvik were interviewed later that day, appellant asked a law enforcement official if others were coming out to arrest her. The official wondered why she would ask such a question. After appellant learned that the matches would be sent to the Bureau of Criminal Apprehension (BCA) for DNA testing, she, unprompted, repeatedly said she did not know if she had touched the matches. She then remarked, "I'm not trying to say I'm guilty" and told Mr. Andvik, "don't look at me like that cause I seriously don't know." Throughout the remainder of the interview, she continued to volunteer that she may have touched the matches. BCA testing was unable to extract any DNA from the matches.

October 19 House Fire

On October 19, Mr. Andvik consented to law enforcement officials posting cameras on the Andvik property. The cameras were to be installed the next day. At approximately 8:00 p.m., Mr. Andvik left the house to bring the children to a relative's

home for the night. Approximately 20 minutes later, appellant called Mr. Andvik after she saw smoke and realized the house was on fire. When Mr. Andvik returned, he found the smoke pouring from the windows and appellant sobbing outside.

As law enforcement officials traveled to the Andvik property, the only vehicle they observed in the area was that of Mr. Andvik, as he returned to the property. Law enforcement officials created a perimeter around the area to monitor vehicle traffic and arranged themselves so that no traffic could travel in the area without having contact with law enforcement. They discovered no one of concern to the investigation. Two officers used a thermal imager around the area of the property, including the outer perimeter and the exterior area around the homestead, but found no one in the field and nothing else of concern.

As the house was burning, appellant walked by a law enforcement official and commented that the only bad result of the fire was that she lost some walleye mounts. A firefighter described appellant as being "pretty stable" and testified that her response "[d]idn't seem to be the type of reaction you would get from [losing] your entire house." Another law enforcement official, however, described appellant as "upset with tears."

The state fire marshal and the fire department were at the Andvik house until 4:30 a.m. The house was deemed "destroyed." The cameras again proved unreliable and did not record anything helpful to the investigation.

After the Fires

After the fires, appellant implicated others as the source of the arson, including K.B. When contacted by law enforcement officials, K.B. denied any involvement in the

fires. K.B. also denied paying anybody to start the fires. He noted being concerned when he learned of the fires because he "knew [appellant] would be the type to try to frame [him]." When he heard about the October 19 house fire, he followed his then-wife's advice and immediately made phone calls and left messages with his attorney and a law enforcement official in order to establish his presence in Wisconsin. The authorities also contacted K.B.'s then-wife and used her credit card statements, cellular telephone tower locations, and activities she attended to establish that she was not near the Andvik property when the fires occurred.

After the fires, appellant's description of K.B. proved to be inconsistent with her behavior toward him. Appellant described K.B. as a "very, very, very, very vindictive and revengeful man." She later referred to J.G. and K.B. as "the two p----d off millionaires [who] are after me." She explained that "[K.B.] is basically p----d off that I wouldn't leave [Mr. Andvik] for him." Even so, appellant continued to text T.G., telling her that "[m]y life is destroyed," and repeatedly requesting that T.G. encourage K.B. to contact appellant. On October 31, 2011, appellant e-mailed K.B., "Happy Halloween. I'm very sorry."

Appellant also said she thought a neighbor may have set the fires. Although appellant had met this neighbor, he was a "fan" of her social media page. On the evening of the house fire, law enforcement officials verified that the neighbor had been in his residence that evening.

On November 23, 2011, appellant was charged with three counts of first-degree arson. The complaint alleged two violations of Minn. Stat. § 609.561, subd. 1

(dwelling—regarding the October 12 and 19, 2011, deck and house fires), and one violation of Minn. Stat. § 609.561, subd. 3(a) (flammable material—regarding the October 12, 2011 barn fire). She pleaded not guilty.

Letters from a Hit Man

On April 3, 2012, as appellant's trial was pending, appellant, her defense attorney, and the Forum of Fargo-Moorhead newspaper received letters in which an anonymous hit man explained that K.B. had paid him or her $50,000 to kill appellant. K.B. refused to pay the hit man for his or her services after appellant did not die in the fires, which prompted the hit man to expose K.B. by writing the letters. The letter to appellant said, "HE IS GOING TO KILL YOU TARA."

The letters were postmarked in Auburn, Wyoming. Phone records revealed that appellant had recently made several telephone calls to her former boyfriend, a resident of Auburn. The former boyfriend testified that appellant contacted him and asked him to mail some letters. He agreed and completed the task by opening the envelope in which they arrived and dropping the letters in the mail. He did not look at the letters. A handwriting expert was unable to verify the identity of the letter writer because the writing was "unnaturally produced." When questioned by the police regarding the letters, appellant implicated K.B., saying he has friends in Wyoming. Appellant also said, "The only thing I'd say is take a look at this fricking [J.G.]." Appellant now admits sending the letters.

Jury Trial

A jury found appellant guilty of three counts of first-degree arson. This appeal followed.

D E C I S I O N

Appellant contends that the evidence was insufficient to support the convictions of three counts of first-degree arson. Additionally, she asserts that her trial counsel was ineffective, thereby mandating a new trial. We address each argument in turn.

I.

Appellant does not dispute the sufficiency of the evidence to establish the elements of first-degree arson. Rather, she disputes that the circumstantial evidence is sufficient to establish beyond a reasonable doubt that she was the arsonist.

When assessing the sufficiency of the evidence, we determine whether the legitimate inferences drawn from the facts in the record reasonably support the jury's conclusion that the defendant was guilty beyond a reasonable doubt. *State v. Pratt*, 813 N.W.2d 868, 874 (Minn. 2012). We view the evidence in the light most favorable to the state and assume that the jury believed the state's witnesses and disbelieved contrary evidence. *State v. Cooper*, 561 N.W.2d 175, 179 (Minn. 1997). The verdict is given due deference because a jury is in the best position to weigh the evidence and determine the credibility of the witnesses. *Id.*

A person commits first-degree arson by "unlawfully by means of fire . . . intentionally destroy[ing] or damag[ing] any building that is used as a dwelling at the time the act is committed, whether the inhabitant is present therein at the time of the act

or not." Minn. Stat. § 609.561, subd. 1. A person also commits first-degree arson by using an accelerant to destroy or damage a building not used as a dwelling. *Id.*, subd. 3(a). Arson convictions frequently rely on circumstantial evidence because typically the genesis of the fire is not witnessed. *State v. Jacobson*, 326 N.W.2d 663, 665 (Minn. 1982). Whether the accused had the motive, means, and opportunity to commit arson is important in determining guilt when the sufficiency of the evidence is challenged. *State v. Conklin*, 406 N.W.2d 84, 87 (Minn. App. 1987).

Because no direct evidence establishes that appellant caused the fires, the evidence presented at trial was solely circumstantial. On review, this court gives greater scrutiny to convictions based on circumstantial evidence than those based on direct evidence, and "[c]ircumstantial evidence must form a complete chain that, in view of the evidence as a whole, leads so directly to the guilt of the defendant as to exclude beyond a reasonable doubt any reasonable inference other than guilt." *Pratt*, 813 N.W.2d at 874 (quotation omitted). An appellant must show something more than mere conjecture to overturn a conviction based on circumstantial evidence. *State v. Lahue*, 585 N.W.2d 785, 789 (Minn. 1998). This court uses a two-part test when examining the sufficiency of circumstantial evidence. *State v. Hanson*, 800 N.W.2d 618, 622 (Minn. 2011).

Circumstances Proved

The first step in reviewing the sufficiency of circumstantial evidence is to identify the circumstances proved. *Id.* at 622. In identifying these circumstances, "we defer to the jury's acceptance of the proof of these circumstances as well as to the jury's rejection of evidence in the record that conflicted with the circumstances proved by the State." *Id.*;

see also State v. Al-Naseer, 788 N.W.2d 469, 473 (Minn. 2010) ("We recognize that the trier of fact is in the best position to determine credibility and weigh the evidence.").

Applying that standard here, the circumstances proved include the following: The fires for which appellant was charged were arson; there was never a fire when appellant was not at or near the fire; a search of the area after the barn fire did not reveal anybody hiding near or running from the area; a law enforcement perimeter created during the house fire revealed no unusual traffic, and the thermal imager did not reveal anybody hiding on or near the property; appellant sent letters to herself and others purporting to be from a hit man hired by K.B.; and all the individuals appellant implicated, including K.B., his then-wife, and a neighbor, were able to establish their whereabouts.

Reasonable Inferences

The second step in reviewing the sufficiency of circumstantial evidence is to "examine independently the reasonableness of all inferences that might be drawn from the circumstances proved, including inferences consistent with a hypothesis other than guilt." *Hanson*, 800 N.W.2d at 622 (quotation omitted). In this independent examination, we give no deference to the fact-finder's choice between reasonable inferences. *State v. Andersen*, 784 N.W.2d 320, 329-30 (Minn. 2010). Our examination is not simply whether the inferences leading to guilt are reasonable—although that must be true in order to convict—because it must also be true that there are no other reasonable, rational inferences that are inconsistent with guilt. *Id.* at 330.

Based on the circumstances presented, it is reasonable for us to conclude that the jury inferred that appellant set the various fires. This inference is reasonable because

appellant is the common party present at all the fires and nobody else was found in the area. Granted, one inference from that fact could be that appellant was the targeted victim. But there is no evidence that those whom she implicated were actually near the home, nor did the numerous searches by law enforcement officials reveal any perpetrator. Moreover, when analyzing whether appellant had means, motive, and opportunity to set the fires, the inference is also reasonable that she is guilty. *See Conklin*, 406 N.W.2d at 87. Appellant's breakup with K.B., her attempt to contact K.B. directly, as well as her attempts at indirect contact with K.B. through T.G. and her utilization of her former boyfriend to send the letters from the purported hit man all point to an effort by appellant to implicate K.B.

After carefully scrutinizing the entire record, any other inference inconsistent with appellant's guilt is not reasonable. This is particularly true because we defer to the jury's credibility determinations and ability to weigh the evidence. *See State v. Cabrera*, 700 N.W.2d 469, 475 (Minn. 2005) ("It [is] up to the jury to judge the weight and credibility of the witnesses' testimony."). The jury implicitly rejected the defense's theory that another, in particular K.B., was responsible for setting the fires.

The evidence presented at trial does not support any reasonable theory as to anybody other than appellant setting the fires. We will not reverse a conviction based on mere conjecture. *Lahue*, 585 N.W.2d at 789. Therefore, we conclude that the circumstantial evidence is sufficient to establish beyond a reasonable doubt that appellant is guilty of three counts of first-degree arson.

II.

Appellant next requests that we remand her case for a new trial because she alleges that she received ineffective assistance of counsel at trial. Both the United States and Minnesota Constitutions guarantee a defendant the assistance of counsel at trial. U.S. Const. amend. VI; Minn. Const. art. I, § 6. Typically, ineffective-assistance-of-counsel claims are analyzed as trial errors under the standard developed in *Strickland v. Washington*, 466 U.S. 668, 671, 104 S. Ct. 2052, 2056 (1984). Under *Strickland*, a defendant must show that (1) his or her counsel's representation fell below an objective standard of reasonableness and (2) as a result of this, but for counsel's error, the outcome of the trial would have been different. *Williams v. State*, 764 N.W.2d 21, 29-30 (Minn. 2009). We review claims of ineffective assistance of counsel de novo. *Opsahl v. State*, 677 N.W.2d 414, 420 (Minn. 2004).

The state contends that, although appellant claims that she received ineffective assistance of counsel, she does not elaborate on what, particularly, constituted error. But the state's assertion is unsupported. Appellant effectively identifies that the alternative perpetrator theory should have been advanced, that Mr. Andvik's testimony should have been challenged through the marital privilege, and that defense counsel failed to effectively cross-examine the witnesses. We address each of these assertions.

Alternative Perpetrator

We first review appellant's claim that her defense counsel was ineffective because he failed to raise the alternative perpetrator defense. It is established Minnesota caselaw that ineffective assistance of counsel claims that focus on trial strategy, specifically what

testimony to elicit from witnesses and what defenses to present, fail on appeal. *Schleicher v. State*, 718 N.W.2d 440, 448 (Minn. 2006); *Opsahl*, 677 N.W.2d at 421. Therefore, challenges regarding defense counsel neglecting to present a specific theory of defense fail. Consequently, appellant is unable to establish the first prong of the *Strickland* test, that her defense counsel's representation fell below an objective standard of reasonableness.

Even if appellant had satisfied the first *Strickland* prong, she would be unable to establish that, but for defense counsel's "error," the result would be different. Throughout the trial, defense counsel worked steadily to convince jurors that somebody else—specifically, K.B.—was responsible for setting the fires. In appellant's opening statement, defense counsel characterized the case as being about "revenge." The opening statement focused on the romantic relationship between appellant and K.B. and how K.B. "relentlessly pursued" appellant. During closing argument, defense counsel extensively discussed how K.B. had a motive for revenge as a result of K.B.'s affair with appellant. Defense counsel suggested that K.B. "lost his wife, he lost his job" and therefore was "going to get even." Defense counsel also highlighted that the dates of the fires were significant to K.B.

When it was established that K.B.'s then-wife was not in the area at the time of the fires, defense counsel cross-examined the investigator who verified this fact. He highlighted that a guilty person would attempt to "cover their tracks" and account for their whereabouts. Defense counsel also examined alternate ways in which people could enter the premises and set the fires. Defense counsel pushed law enforcement to testify

that, although K.B. could account for his whereabouts on certain occasions, this fact did not necessarily mean he could not have been involved in the fires. Moreover, when K.B. testified, defense counsel inquired into whether K.B. had the financial means to hire somebody to commit the arson.

Even if we were to assume the first *Strickland* prong was satisfied, her claim as to the alternative-perpetrator defense would also fail under the second prong because Minnesota law categorizes such a decision as trial strategy that we will not second-guess.

Marital Privilege

Appellant also contends that defense counsel should have raised marital privilege to prevent Mr. Andvik from testifying at her trial. At trial, the prosecutor stated: "Your Honor, just for the record, the state does take the position that Mr. Andvik is a crime victim. That's why the spousal immunity does not apply." The district court responded: "I didn't hear it being raised, so I assumed it wasn't going to be. But good enough." Defense counsel did not pursue the topic.

The marital privilege statute provides:

> A husband cannot be examined for or against his wife without her consent, nor a wife for or against her husband without his consent, nor can either, during the marriage or afterwards, without the consent of the other, be examined as to any communication made by one to the other during the marriage.

Minn. Stat. § 595.02, subd. 1(a) (2010). The statute contains several exceptions to this privilege, including the crime victim exception. This exception provides that the marital

privilege "does not apply to . . . a criminal action or proceeding for a crime committed by one against the other." *Id.*

In *State v. Zais*, the Minnesota Supreme Court discussed whether marital privilege applied to disorderly conduct cases, with Zais arguing that disorderly conduct "cannot be considered a crime committed by one spouse against the other because it is a public offense committed against the public at large and not a specific individual." 805 N.W.2d 32, 39 (Minn. 2011). The supreme court ultimately rejected Zais's argument and instead held that, to determine whether a person commits disorderly conduct against his or her spouse, "a district court should examine the elements of the offense together with the defendant-spouse's underlying conduct to determine whether the record establishes that the defendant-spouse's acts were done against the other spouse." *Id.* at 40-41.

Appellant argues that there is a "valid and reasonable argument" that arson is not a crime committed against the person. But, although Mr. Andvik may not have been the primary focus of appellant's crimes, the arson was committed to his property, he was in the house when the deck was set on fire, and he was nearby when the barn was set on fire. We find this sufficient to establish Mr. Andvik as a crime victim.

Additionally, we find the definition of "communication" informative. The supreme court has defined the word "communication" in the context of marital privilege to include "all written or spoken words, acts, and gestures which were intended by one spouse to convey a meaning or message to the other—such communication usually being denominated assertive conduct." *State v. Hannuksela*, 452 N.W.2d 668, 676 (Minn. 1990). Appellant argues that without Mr. Andvik's testimony, "the jury may not have

reached their same conclusion of guilt in this case." But our careful review of the record reveals no communication shared by Mr. Andvik that was especially harmful to appellant's defense, and appellant fails to identify any such statement. Instead, much of Mr. Andvik's testimony focused on when he learned of the various fires, to whom he spoke, his actions when firefighters were present, and other testimony based on his experiences with the fires.

Therefore, it was reasonable that appellant's defense counsel did not assert marital privilege to prevent Mr. Andvik's testimony because Mr. Andivk was a victim of the arson. Moreover, exclusion of Mr. Andvik's testimony would not have changed the outcome of the case. Appellant is unable to satisfy the *Strickland* test as to this claim.

Witnesses

Finally, appellant challenges her defense counsel's decision to call only one witness, which occurred when he recalled Mr. Andvik. But decisions about which witnesses will testify at trial and what information to present to the jury are questions of trial strategy that lie within the discretion of trial counsel. *Leake v. State*, 737 N.W.2d 531, 539 (Minn. 2007). It is well established that we are reluctant to second-guess trial counsel's strategic decisions. *Id.* Likewise, appellant's assertion that defense counsel did not effectively cross-examine witnesses fails because we do not second-guess what testimony defense counsel chooses to elicit from witnesses. *Opsahl*, 677 N.W.2d at 421. Appellant has not affirmatively shown that, had trial counsel done what she claims he should have, the outcome of her trial would have been different. Instead, a review of the record establishes that defense counsel effectively represented her during trial.

Therefore, appellant is not entitled to a new trial based on her claim of ineffective assistance of counsel.

Affirmed.