STATE OF MINNESOTA
IN COURT OF APPEALS
A16-0956

State of Minnesota,
Respondent,

vs.

James Richard Jerome Cochran,
Appellant.

Filed May 15, 2017
Affirmed
Reyes, Judge

Winona County District Court
File No. 85-CR-15-10

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

Karin L. Sonneman, Winona County Attorney, Christina Marie Davenport, Rebecca Church, Assistant County Attorneys, Winona, Minnesota (for respondent)

Jed J. Hammell, Hammell & Murphy, P.L.L.P., Caledonia, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Connolly, Judge; and Larkin, Judge.

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

REYES, Judge

Appellant challenges his conviction of three counts of first-degree criminal sexual conduct, arguing that (1) the district court abused its discretion by denying his request for a continuance; (2) the court erred by allowing a medical doctor to testify on the

prosecution's behalf as an expert; (3) the court violated appellant's right to a fair trial by allowing an expert witness to vouch for the complainant; (4) the court erred by denying his motion for a mistrial; (5) the court abused its discretion by admitting the complainant's forensic interview into evidence; (6) the court erred by preventing appellant from attacking the credibility of complainant's mother; (7) insufficient evidence supports the convictions; (8) appellant's trial counsel was ineffective; and (9) the cumulative effect of these errors deprived appellant of his right to a fair trial. We affirm.

FACTS

Appellant James Richard Jerome Cochran is J.P.'s biological father. During the time period in question, J.P. lived with his biological mother J.K. and his step-father T.K. He would spend approximately every other weekend at appellant's residence in Winona, Minnesota. In December 2014, around the time of J.P.'s sixth birthday, J.P. returned from a weekend with appellant and made comments to J.K. and T.K. regarding "special time" with appellant. Following these comments, J.K. and T.K. grew suspicious that appellant was sexually abusing J.P.

Based on their suspicions, J.K. and T.K. took J.P. to CornerHouse, a child-abuse evaluation center, where a trained social worker conducted a forensic interview of J.P. A multidisciplinary team observed the social worker conduct her first forensic interview. The interview was conducted in a child-friendly room using age-appropriate language and questioning methods recommended by the National Child Protection Training Center (NCPTC).

During the interview, J.P. used the words and terms familiar to a six-year-old to describe appellant's acts of sexual abuse. J.P. stated that these acts occurred at appellant's residence, where appellant lived with his then-girlfriend, when he was four and five years old. When asked about "special time," J.P. described being subjected to acts of sexual touching, oral sex, and penetration by appellant that involved ejaculation and the use of mint-flavored sexual aids. J.P. further described at least one instance where appellant sexually abused J.P. while the two played video games. Two subsequent medical examinations of J.P. did not reveal any physical signs of sexual abuse.

Respondent State of Minnesota charged appellant with three counts of first-degree criminal sexual conduct: (1) penetration of a victim under the age of 13; (2) penetration of a person under the age of 16 where there is a significant relationship; and (3) multiple acts of penetration over time of a victim under the age of 16 where there is a significant relationship. *See* Minn. Stat. § 609.342, subd. 1(a), (g), (h)(iii) (2014). Appellant pleaded not guilty to all charges and a jury trial was held from February 29, 2016, until March 4, 2016. The prosecution's trial witnesses included J.P.; the CornerHouse social worker; the three medical professionals who examined J.P., including Dr. Ann Budzak; T.K.; J.K.; investigating officers; and Victor Vieth, a senior director and founder of the NCPTC. The defense also called a number of witnesses, including appellant who denied sexually abusing J.P. The jury found appellant guilty of all three counts of first-degree criminal sexual conduct. The district court sentenced appellant to 172 months in prison. This appeal follows.

D E C I S I O N

I. The district court did not abuse its discretion by denying appellant's request for a continuance.

Appellant argues that the district court abused its discretion by denying his request for a continuance on the day trial was scheduled to begin based upon the absence of one of his attorneys. We are not persuaded.

The United States and the Minnesota Constitutions guarantee a criminal defendant the right to the assistance of counsel. U.S. Const. amend. VI; Minn. Const. art. I, § 6. "This right includes a fair opportunity to secure counsel of [the defendant's] choice." *State v. Vance*, 254 N.W.2d 353, 358 (Minn. 1977). While a defendant may request a continuance for substitution of counsel, such a request will only be granted if, based on all the surrounding facts and circumstances, exceptional circumstances exist and the demand is timely and reasonable. *Id.* The question is whether the defendant has been prejudiced in preparing his defense so as to materially affect the outcome of the trial. *State v. Huber*, 275 Minn. 475, 481, 148 N.W.2d 137, 142 (1967). This court will not reverse the decision to deny a motion to continue a trial unless the denial shows a clear abuse of discretion. *State v. Rainer*, 411 N.W.2d 490, 495 (Minn. 1987).

On the first day of trial, appellant's trial counsel, A.S., requested a continuance because C.D., an attorney admitted pro hac vice to represent appellant, was absent due to a family medical emergency. A.S. explained to appellant that she prepared the case for trial and was ready to try it, but appellant insisted that C.D. be present for trial.

The district court denied appellant's motion for a continuance, noting that C.D. had not previously appeared in court on appellant's behalf and that A.S. "is extremely experienced and capable [and] has made all the appearances and prepared this case for trial." In denying appellant's request, the district court also cited concerns regarding rescheduling for the parties' numerous witnesses and avoiding a scenario where J.P. would need to re-prepare to testify for a delayed trial date. In addition, the district court postponed jury selection until the following morning to allow C.D. an opportunity to make necessary arrangements before trial began.

Appellant argues that the denial of his continuance request denied him the opportunity to be represented by the attorney of his choosing. However, appellant does not articulate how C.D.'s absence prejudiced him in preparing his defense so as to materially affect the outcome of his trial. *See Huber*, 275 Minn. at 481, 148 N.W.2d at 142. Instead, the record establishes that A.S. was experienced and capable of representing appellant at trial. This determination is bolstered by the fact that she had appeared alone at each of appellant's pretrial hearings from the time her firm was retained. Moreover, in an effort to accommodate C.D., the district court postponed jury selection to provide him an opportunity to make necessary arrangements. Therefore, we conclude that the district court did not clearly abuse its discretion by denying appellant's motion for a continuance.

II. The district court's admission of Dr. Budzak's expert testimony was harmless error.

Appellant argues that the district court erred by allowing Dr. Budzak, a medical doctor who examined J.P. on January 5, 2015, to testify as an expert because the prosecution did not comply with the expert-disclosure requirements established in Minn. R. Crim. P. 9.01, subd. 1(4)(c). While we agree that allowing Dr. Budzak to testify as an expert was erroneous, we conclude that the error was harmless.

"Whether a discovery violation occurred is an issue of law which this court reviews de novo." *State v. Palubicki*, 700 N.W.2d 476, 489 (Minn. 2005). A district court's erroneous admission or exclusion of expert testimony is subject to harmless-error analysis. *See State v. Bird*, 734 N.W.2d 664, 672 (Minn. 2007).

Prior to trial, and at the defense's request, the prosecution is required to make a series of disclosures to a criminal defendant. Minn. R. Crim. P. 9.01, subd. 1. Such disclosures include the name of "[a] person who will testify as an expert but who created no results or reports in connection with the case" and "a written summary of the subject matter of the expert's testimony, along with any findings, opinions, or conclusions the expert will give, the basis for them, and the expert's qualifications." *Id.*, subd. 1(4)(c).

While Dr. Budzak testified at trial that she did not discover any physical signs of sexual abuse during her examination of J.P., she stated that "it is exceedingly rare that [a child will] disclose an acute sexual assault immediately. It is often a delayed disclosure of weeks, months, even years until they tell someone what's happened to them." She further explained, "And so when we are seeing children for sexual abuse at least 95% of

those that we know for certain that have been sexually abused will have an absolutely normal physical exam with no findings of trauma whatsoever." The defense objected to Dr. Budzak testifying as an expert beyond the scope of her examination findings because the prosecution had not previously disclosed her as an expert witness for purposes of testimony regarding common behaviors exhibited by abuse victims. The district court overruled the objection.

On appeal, the parties agree that Dr. Budzak's testimony was limited to her expert opinions concerning sexual assault. The record indicates, and the prosecution acknowledged, that Dr. Budzak was not identified as an expert witness, with respect to common behaviors, prior to trial. Moreover, there is no indication that the prosecution's "witness summary" document, which is not in the record before this court, addressed Dr. Budzak's expert conclusions or the basis for such conclusions. Rather, based on the parties' descriptions to the district court, this document merely outlined Dr. Budzak's experience and the findings derived from her examination of J.P. Accordingly, the state did not comply with its discovery obligations under Minn. R. Crim. P. 9.01, subd. 1(4)(c), and the district court erred in allowing Dr. Budzak to offer her expert opinions.

Appellant argues that the erroneous admission of Dr. Budzak's expert testimony was prejudicial and entitles him to a new trial. "Prejudice warrants a new trial only if a reasonable probability exists that the outcome of the trial would have been different if the evidence" had not been admitted. *State v. Jackson*, 770 N.W.2d 470, 479 (Minn. 2009) (quotation omitted). Here, Dr. Budzak's erroneously admitted expert opinions are ones that are commonly included in a medical doctor's testimony in a sexual-assault case.

When considered within the broader context of the prosecution's voluminous case against appellant, Dr. Budzak's expert testimony was very limited. Appellant also had the opportunity to challenge Dr. Budzak's credibility regarding her expert opinions through cross-examination. Given these considerations, appellant has failed to establish a reasonable probability that the jury would not have reached its verdict without taking into account Dr. Budzak's expert opinions. Therefore, because we conclude that there is no danger that Dr. Budzak's expert opinions affected the jury's verdict, the district court's erroneous admission of Dr. Budzak's expert testimony was harmless.

III. The invited-error doctrine precludes appellant's fair-trial argument.

Appellant argues that his right to a fair trial was violated by improper vouching testimony. We disagree.

During cross-examination, Dr. Budzak answered, "I believe [J.P.] was telling the truth" when appellant's trial counsel asked whether she knew that J.P.'s report of sexual abuse was truthful. The defense did not object to Dr. Budzak's reply until the next day of trial, which the district court denied as untimely and without merit.

Because the testimony was elicited through appellant's cross-examination of Dr. Budzak, we must determine whether the invited-error doctrine precludes appellant's argument. "Under the invited error doctrine, a party cannot assert on appeal an error that he invited or that could have been prevented at the district court." *State v. Carridine*, 812 N.W.2d 130, 142 (Minn. 2012). However, the invited-error doctrine does not apply if an error satisfies the plain-error test. *Id.* "The plain error test gives us discretion to review . . . errors if: (1) there is error, (2) the error is plain, and (3) the error affects substantial

rights." *Id.* "If the defendant establishes all three factors, we consider a fourth: 'whether the error should be addressed to ensure fairness and the integrity of the judicial proceedings.'" *Id.* (quoting *State v. Goelz*, 743 N.W.2d 249, 258 (Minn. 2007)). When assessing the third factor, this court must determine whether the defendant has met the heavy burden of showing that the error was prejudicial and affected the trial's outcome. *Id.* at 142-43.

Vouching testimony is generally inadmissible. *See State v. Ferguson*, 581 N.W.2d 824, 835 (Minn. 1998). However, as the Minnesota Supreme Court has noted, this general rule is not without exceptions: "Expert testimony concerning the credibility of a witness should be received only in unusual cases. An example of such an unusual case is a sexual assault case where the alleged victim is a child . . . ." *State v. Saldana*, 324 N.W.2d 227, 231 (Minn. 1982).

Moreover, the line of questioning immediately leading up to the testimony-at-issue calls into question whether Dr. Budzak's statement even constituted vouching. The preceding questions addressed Dr. Budzak's past experiences regarding the truthfulness of reports from child victims of sexual assault. This context implies that the question and testimony at issue were not intended to elicit testimony regarding the veracity of J.P.'s allegations; rather, the line of questioning suggests that appellant's trial counsel was attempting to emphasize Dr. Budzak's bias as a medical professional specializing in sexual abuse.

Therefore, based on the exception recognized in *Saldana* and the context surrounding the testimony at issue, which strongly suggests Dr. Budzak's answer was not

impermissible vouching testimony, we conclude that appellant has failed to demonstrate any error. Accordingly, the invited-error doctrine applies and precludes appellant's fair-trial argument.[1]

IV. The district court did not abuse its discretion by admitting J.P.'s forensic interview into evidence.

Appellant argues that the district court erred by admitting the forensic interview under the prior-consistent-statement and residual exceptions to the hearsay rule as well as the statutory exception for a child victim's out-of-court statements. *See* Minn. Stat. § 595.02, subd. 3 (2014); Minn. R. Evid. 801(d)(1)(B), 807. We disagree.

A prior consistent statement is not hearsay and is admissible as substantive evidence where the declarant testifies at trial and is subject to cross-examination concerning the statement, and the statement is consistent with the declarant's testimony and helpful to the trier of fact in evaluating the declarant's credibility. Minn. R. Evid. 801(d)(1)(B). Prior to admission "'the witness'[s] credibility must have been challenged, and the statement must bolster the witness'[s] credibility with respect to that aspect of the witness'[s] credibility that was challenged.'" *In re Welfare of K.A.S.*, 585 N.W.2d 71, 75 (Minn. App. 1998) (quoting *State v. Nunn*, 561 N.W.2d 902, 909 (Minn. 1997)). The prior statement need not be identical to the trial testimony but rather "reasonably consistent" to be admissible. *State v. Zulu*, 706 N.W.2d 919, 924 (Minn. App. 2005)

[1] At the time she objected to Dr. Budzak's testimony, appellant's trial counsel also moved for a mistrial, which the district court denied. A district court's denial of a motion for a mistrial is reviewed for an abuse of discretion. *State v. Manthey*, 711 N.W.2d 498, 506 (Minn. 2006). For the reasons discussed above, we conclude that the district court did not abuse its discretion by denying appellant's motion for a mistrial.

(citing *State v. Bakken*, 604 N.W.2d 106, 109 (Minn. App. 2000), *review denied* (Minn. Feb. 24, 2000); *K.A.S.*, 585 N.W.2d at 76). Evidentiary rulings are generally reviewed for an abuse of discretion, but construction of the rules of evidence is a question of law subject to de novo review. *State v. McCurry*, 770 N.W.2d 553, 559 (Minn. App. 2009), *review denied* (Minn. Oct. 28, 2009).

Relying on *State v. Bakken*, appellant argues that inconsistencies exist in J.P.'s forensic interview and testimony, rendering Minn. R. Evid. 801(d)(1)(B) inapplicable. There, the complainant's interview reported that Bakken's act of criminal sexual conduct involved him ripping off the complainant's clothes, using a butcher knife to threaten and cut the complainant, and threatening death if the complainant told anyone about the incident. 604 N.W.2d at 108. At trial, the complainant testified that Bakken told him to undress and that he was afraid of Bakken and complied. *Id.* On appeal, this court stated that these discrepancies were significant because, "if the jury believed the inconsistent videotaped statements, the criminal conduct would legally escalate from third-degree to first-degree. Thus, where inconsistencies directly affect the elements of the criminal charge, the Rule 801(d)(1)(B) requirement of consistency is not satisfied." *Id.* at 110.

In this case, J.P.'s trial testimony included the following: J.P. would stay at appellant's residence in Winona; appellant did bad stuff with his privates; appellant was the only one to touch J.P. with his privates; it hurt the "inside" of J.P.'s butt; and J.P. was four or five when this occurred. J.P.'s testimony also included details regarding the videogames J.P. played while being sexually assaulted and the layout of appellant's residence. In comparison, during the forensic interview, J.P. described in greater detail

being subjected to acts of sexual touching, oral sex, and penetration with appellant, which occurred at appellant's residence when J.P. was four or five years old. After reviewing the forensic interview and J.P.'s testimony, the district court determined that J.P.'s statements in these two instances were reasonably consistent. The district court acknowledged that J.P. provided more detail in the forensic interview, which was conducted more than one year before the trial. The district court further described J.P.'s hesitancy to discuss "the really bad information" in the courtroom setting.

Unlike *Bakken*, any differences between J.P.'s statements in these two instances do not directly affect the elements of the criminal charges of first-degree criminal sexual conduct under Minn. Stat. § 609.342, subd. 1(a), (g), (h)(iii). Moreover, this court has previously rejected similar arguments regarding the admission of a child-victim's prior statement where the prior statement was much more detailed than the child's trial testimony. *See K.A.S.*, 585 N.W.2d at 75. Accordingly, we conclude that the district court did not abuse its discretion by admitting the forensic interview under rule 801(d)(1)(B), and need not address the additional arguments relating to admissibility under rule 807 and Minn. Stat. § 595.02, subd. 3.

V. The district court did not violate appellant's confrontation rights.

Appellant argues that the district court violated his confrontation rights by precluding his attorney from attacking J.K.'s credibility on cross-examination "by asking [J.K.] questions about her father's criminal sexual conduct and how that affected the child custody dispute between [J.K.'s] mother and father." We are not persuaded.

The Sixth Amendment to the United States Constitution provides a defendant the right to confront witnesses who testify against him and limits the district court's authority to control the scope of cross-examination. *State v. Lanz-Terry*, 535 N.W.2d 635, 640 (Minn. 1995). But the right to cross-examine witnesses may be limited "so long as the jury is presented with sufficient information from which to draw inferences as to the witness's reliability." *State v. Yang*, 774 N.W.2d 539, 552 (Minn. 2009) (quotation omitted). "The scope of cross-examination is left largely to the district court's discretion and will not be reversed absent a clear abuse of discretion." *State v. Parker*, 585 N.W.2d 398, 406 (Minn. 1998).

Here, the defense asked questions regarding discrepancies surrounding how J.P. reported special time to J.K. and whether J.K. knew about appellant's sexual preferences and use of sexual aids. The defense further engaged in extensive questioning relating to J.K.'s relationship and interactions with appellant before and after the birth of J.P. These questions were relevant to the theory that J.K. was motivated by her desire to obtain sole custody of J.P.

In addition, the defense sought to further question J.K. on matters related to J.K.'s parents' divorce, an ensuing custody dispute between J.K.'s parents, and how J.K.'s father's conviction of criminal sexual conduct impacted that custody dispute. Following the prosecution's objection and a bench conference, the district court reaffirmed its prior determination that information regarding J.K.'s father's criminal-sexual-conduct conviction was inadmissible, but allowed the defense to ask J.K. questions "about her parents getting divorced, the date of the divorce, and the fact that there was a custody

issue assuming in fact she was old enough to even understand or appreciate there was even a custody issue because she may not have even known about it."

The defense was afforded ample opportunity to question J.K. on a number of subjects that implicated its theory. Therefore, we conclude that the district court's limitations on the scope of cross-examination did not constitute an abuse of discretion.

VI. Sufficient evidence supports the jury's guilty verdict.

Appellant argues that the evidence was insufficient to prove beyond a reasonable doubt that he committed criminal sexual conduct crimes against J.P. We disagree.

Our review of a sufficiency-of-the-evidence challenge is "limited to a painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which they did." *State v. DeRosier*, 695 N.W.2d 97, 108 (Minn. 2005) (quotation omitted). "A defendant bears a heavy burden to overturn a jury verdict." *State v. Vick*, 632 N.W.2d 676, 690 (Minn. 2001). A reviewing court must assume that "the jury believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Caldwell*, 803 N.W.2d 373, 384 (Minn. 2011). "[W]eighing the credibility of witnesses is the exclusive function of the jury." *State v. Pieschke*, 295 N.W.2d 580, 584 (Minn. 1980). The verdict will not be disturbed "if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offense." *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012).

To support appellant's conviction of three counts of first-degree criminal sexual conduct, the prosecution had to prove beyond a reasonable doubt that appellant engaged in sexual penetration or sexual contact with J.P. and that the following circumstances existed:

> (a) [T]he complainant is under 13 years of age and the actor is more than 36 months older than the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;
> . . . .
> (g) [T]he actor has a significant relationship to the complainant and the complainant was under 16 years of age at the time of the sexual penetration. . . .
> (h) [T]he actor has a significant relationship with the complainant, the complainant was under 16 years of age at the time of the sexual penetration, and . . . the sexual abuse involved multiple acts committed over an extended period of time.

Minn. Stat. § 609.342, subd. 1(a), (g), (h)(iii). In a prosecution for a first-degree criminal-sexual-conduct crime, "the testimony of a victim need not be corroborated." Minn. Stat. § 609.347, subd. 1 (2014).

The record establishes that J.P. was four and five years old during the relevant time frame. Appellant is J.P.'s biological father, which constitutes a significant relationship. *See* Minn. Stat. § 609.341, subd. 15(1) (2014). The record further establishes that appellant used sexual aids and subjected J.P. to acts of sexual contact and sexual penetration over an extended period of time when J.P. would visit appellant's residence in Winona. Based on the evidence presented at trial, the jury could reasonably conclude that appellant was guilty of the charged crimes.

Appellant argues that: (1) J.P. did not sufficiently identify appellant as the potential sexual abuser; (2) no testimony established any dates that appellant sexually abused J.P.; (3) appellant's expert testified that, in his expert opinion, the forensic interview was flawed in all respects; and (4) J.P. may have based his allegations on previous instances unrelated to sexual abuse where J.P. had encountered appellant's sexual aids and witnessed appellant and his then-girlfriend, as well as J.K. and T.K., having sexual intercourse. Contrary to appellant's first and second arguments, J.P.'s forensic interview and trial testimony included statements identifying appellant as the one who sexually abused J.P. when J.P. was four or five years old. As to the third and fourth arguments, despite hearing evidence from several defense witnesses, including appellant and appellant's expert, the jury chose to credit J.P.'s statements and the prosecution's other witnesses. *See Caldwell*, 803 N.W.2d at 384.

Based on this evidence, the jury could reasonably conclude that appellant was guilty of the charged crimes. *See State v. Franks*, 765 N.W.2d 68, 73 (Minn. 2009) ("Our precedent does not permit us to re-weigh the evidence."). Appellant's arguments to the contrary do not meet the heavy burden required to overturn a jury verdict. *Vick*, 632 N.W.2d at 690. Accordingly, we conclude that appellant's conviction of three counts of first-degree criminal sexual conduct is supported by sufficient evidence.

VII. Appellant did not receive ineffective assistance of trial counsel.

Appellant argues that he received ineffective assistance of trial counsel. We disagree.

To prevail on a claim of ineffective assistance of counsel, a defendant must demonstrate by a preponderance of evidence that (1) counsel's performance was deficient, such that counsel "made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment" and (2) the defendant was prejudiced by counsel's performance. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064 (1984); *Gates v. State*, 398 N.W.2d 558, 561 (Minn. 1987). An insufficient showing on one of these requirements defeats a claim of ineffective assistance of counsel. *Gates*, 398 N.W.2d at 561. An attorney provides reasonable assistance upon exercising the customary skills and diligence that a reasonably competent attorney would exercise under the circumstances. *Dukes v. State*, 621 N.W.2d 246, 252 (Minn. 2001). There is a strong presumption that an attorney acts competently. *Id.* As a general rule, matters of trial strategy do not provide a basis for an ineffective-assistance-of-counsel claim. *State v. Doppler*, 590 N.W.2d 627, 633 (Minn. 1999).

First, appellant argues that his trial counsel failed to properly utilize her peremptory challenges during the jury selection process, which resulted in four "unfavorable jurors" sitting on the final jury. In addition, appellant asserts that trial counsel's mistake in filling out the jury selection sheet, which was remedied by the district court "whit[ing] out" the mistake, and subsequent failure to raise an objection constituted ineffective assistance. However, "Minnesota courts have recognized that '[a]ttorneys must make tactical decisions during jury selection, and a claim of ineffective assistance of counsel cannot be established by merely complaining about counsel's failure to challenge certain jurors or his failure to make proper objections.'" *Jama v.*

State, 756 N.W.2d 107, 113-14 (Minn. App. 2008) (quoting *Tsipouras v. State*, 567 N.W.2d 271, 276 (Minn. App. 1997), *review denied* (Minn. Sept. 18, 1997)).

Second, appellant argues that his trial counsel provided ineffective assistance after failing to object to the district court conducting a competency hearing of J.P. in front of the jury. Appellant further asserts that the district court's comments regarding J.P.'s competency amounted to vouching for J.P.'s credibility. Minn. R. Evid. 601 provides that "the competency of a witness to give testimony shall be determined in accordance with law." Under Minnesota law, "[w]hen a person is produced as a witness, the court may examine the person to ascertain capacity, and whether the person understands the nature and obligations of an oath." Minn. Stat. § 595.06 (2014). While it is atypical for a district court to conduct a competency hearing in the presence of the jury, appellant cites no rule or law indicating that proceeding as such is improper. Moreover, the district court's comment's only concerned J.P.'s competency to testify and that he understood the difference between the truth and a lie. The district court made no comment as to whether J.P. would tell the truth.

Third, appellant argues that his trial counsel was ineffective in failing to object to leading questions during the prosecution's direct examination of J.P. The record directly contradicts this argument as appellant's trial counsel raised eight objections during J.P.'s direct examination. In addition, appellant's trial counsel raised a concern that the prosecution was asking leading questions that referenced facts outside the scope of J.P.'s prior testimony.

Finally, appellant argues that his trial counsel provided ineffective assistance through her cross-examination of Dr. Budzak. As noted above in section II, a careful review of the record supports the conclusion that appellant's trial counsel intended to shed light on Dr. Budzak's bias as a medical professional specializing in sexual abuse. When viewed in this light, the decision to ask such a question constitutes a matter of trial strategy, which does not provide the basis for an ineffective-assistance-of-counsel claim. *See Doppler*, 590 N.W.2d at 633.

Accordingly, because appellant is unable to demonstrate by a preponderance of evidence that his trial counsel's performance was deficient, we conclude that appellant is not entitled to relief under his ineffective-assistance-of-counsel claim, and we need not consider the second *Strickland* prong.

VIII. Appellant's cumulative-effect argument is without merit.

Appellant argues that the cumulative effect of the errors discussed above deprived him of his right to a fair trial. "[I]n rare cases, . . . the cumulative effect of trial errors can deprive a defendant of his constitutional right to a fair trial. *State v. Davis*, 820 N.W.2d 525, 538 (Minn. 2012). "The test is whether the effect of the errors considered together denied appellant a fair trial." *State v. Valentine*, 787 N.W.2d 630, 642 (Minn. App. 2010). Despite appellant's numerous arguments on appeal, he has only sufficiently demonstrated one error, the admission of Dr. Budzak's expert testimony, which we have determined was harmless. Accordingly, we conclude that appellant was not denied his right to a fair trial.

Affirmed.