

STATE OF MINNESOTA

IN SUPREME COURT

A18-0846

A20-1588

Washington County

McKeig, J.

State of Minnesota,

Respondent,

vs.

Filed: August 18, 2021
Office of Appellate Courts

Stephen Carl Allwine,

Appellant.

Christa J. Groshek, Anna E. Tobia, Groshek Law, P.A., Minneapolis, Minnesota, for appellant.

Keith Ellison, Attorney General, Saint Paul, Minnesota; and

Pete Orput, Washington County Attorney, Nicholas A. Hydukovich, Assistant County Attorney, Stillwater, Minnesota, for respondent.

S Y L L A B U S

1. Sufficient evidence supports the jury's verdict that appellant is guilty of first-degree premeditated murder.

2. The district court did not abuse its discretion by denying appellant's claim of prosecutorial misconduct without an evidentiary hearing because, even if the alleged facts

were proven by a preponderance of the evidence, appellant is conclusively entitled to no relief on that claim.

3. Based on the information before the district court when it denied appellant's claim of ineffective assistance of trial counsel without an evidentiary hearing, the district court did not abuse its discretion because, even if the then-alleged facts were proven by a preponderance of the evidence, appellant is conclusively entitled to no relief on that claim.

4. A motion for reconsideration of a postconviction order that denies relief cannot introduce new evidence.

Affirmed.

OPINION

McKEIG, Justice.

After being convicted of first-degree premeditated murder for killing his wife, appellant Stephen Allwine¹ appeals from his conviction and from the district court's denial of his petition for postconviction relief. Allwine presents four issues on appeal. First, he argues his conviction must be reversed because the evidence presented at trial was insufficient to support the jury's verdict that he is guilty. Second, he claims his conviction must be reversed, or alternatively, a postconviction evidentiary hearing must be held, because the State committed prosecutorial misconduct. Third, he argues he is entitled to a new trial because his trial counsel provided ineffective assistance of counsel. Last, he contends an evidentiary hearing must be held to review the opinions of two experts to

¹ Because we reference multiple members of the Allwine family in this opinion, we will refer to appellant as "Stephen" or "Allwine" to eliminate confusion.

determine if a new trial is warranted. Because we conclude that these claims have no merit, we affirm the judgment of conviction and the decision of the district court that denied postconviction relief.

FACTS

Stephen and Amy Allwine married in 1998. Stephen worked in information technology. Amy ran a dog training business from the Allwine family residence. Stephen and Amy had a son, J.A. Stephen and Amy were very involved in their church, which does not condone infidelity or divorce. Stephen was a church elder who gave sermons and counseled others in the congregation. If a church elder is found to have committed adultery, that person could no longer serve as an elder and may be asked to leave the congregation. Beginning in 2014, Stephen engaged in multiple extramarital affairs.

In February 2016, a person using the online screen name “dogdayGod” sent a message to Besa Mafia² on the dark web,³ seeking to hire a person to kill Amy. Soon after, dogdayGod sent a second message to Besa Mafia requesting that Amy be killed while she was on a business trip in Moline, Illinois. DogdayGod provided Besa Mafia with the address of the hotel where Amy would be staying, a physical description of Amy, a

² The record shows that “Besa Mafia” is a store on the dark web that advertises itself as a forum for individuals to hire a hitman.

³ The record shows the “dark web” is a part of the internet that masks a user’s identity, making the user virtually anonymous. The dark web can only be accessed using a specialized web browser called “TOR.”

description of Amy's vehicle, and a photograph of Amy. DogdayGod paid Besa Mafia in Bitcoin⁴ to kill Amy.

In May 2016, the Federal Bureau of Investigation (FBI) learned through an anonymous source that dogdayGod was trying to hire a hitman to kill Amy. An FBI agent and a Cottage Grove police detective notified Amy of the threat against her life. Law enforcement advised Amy to take security precautions and to report any suspicious activity to police. The next month, Amy notified the FBI that she had received two anonymous emails threatening to harm her and her family unless she committed suicide. In response to the threats, the FBI began an investigation. Investigators interviewed Stephen and Amy's work colleagues, and searched Stephen and Amy's two HP Notebook laptop computers.⁵ The investigation did not result in any leads.

November 13, 2016: The Day Amy Allwine Was Killed

Stephen awoke shortly before 6:00 a.m. and went to his basement office to work. Around 12:00 p.m., Stephen went upstairs to have lunch with Amy and J.A. Soon after, Amy told Stephen that she was feeling dizzy, lightheaded, and that she was going to bed to rest. Around 1:00 p.m., C.Z., Amy's father, arrived at the Allwine residence to finish a home project that he had started a few days earlier. Stephen told C.Z. that Amy was in bed and not feeling well. C.Z. did not see his daughter while he was at the Allwine residence.

⁴ The record shows "Bitcoin" is an online digital currency.

⁵ For clarity, these HP laptop computers are not the same as the MacBook Pro laptop computer discussed below.

Around 2:00 p.m., C.Z. left. Minutes later, Stephen called C.Z. and asked him to return and pick up J.A., so that he could take Amy to the clinic for medical attention. C.Z. returned to the Allwine residence, picked up J.A., and the two left.

Around 5:30 p.m., Stephen arrived at C.Z.'s residence to pick up J.A. C.Z. asked Stephen what he learned about Amy's illness at the clinic. Stephen told C.Z. that Amy decided not to go to the clinic. Following a brief conversation, Stephen and J.A. left. Stephen and J.A. returned to the Allwine residence at approximately 6:52 p.m. Upon entering their home, J.A. saw his mother lying on the floor with a pool of blood around her head. At approximately 7:00 p.m., Stephen called 911. On the 911 call, Stephen told the emergency dispatcher: "I think my wife shot herself. There's blood all over." Minutes later, Cottage Grove police arrived at the Allwine residence. Officers went into the master bedroom and saw Amy lying face up on the floor with her pants unbuttoned and unzipped, her hands at her sides, blood on the floor, and a handgun laying on Amy's left forearm. Officers discovered Amy suffered a gunshot wound to the right side of her head.

Stephen Allwine's Trial

Following an investigation, a grand jury indicted Stephen Allwine on the charge of first-degree premeditated murder. Minn. Stat. § 609.185(a)(1) (2020). Allwine retained private defense counsel. On January 23, 2018, the case proceeded to trial. The State presented several witnesses and experts, including law enforcement officials, the medical examiner who conducted the autopsy on Amy's body, and a computer forensic expert who analyzed over 60 electronic devices that were seized from the Allwine residence—

including a MacBook Pro laptop computer with the username “S Allwine” and an iPhone 6S named “S Allwine’s iPhone.”

A retired officer testified that Allwine reported to police that he had been scammed out of \$6,000 while trying to purchase Bitcoin in March 2016. Another officer testified that the crime scene was “strange” and not consistent with a suicide. The medical examiner testified that she discovered a nontherapeutic amount of scopolamine⁶ in Amy’s system. Based on the level of scopolamine, the medical examiner agreed with law enforcement’s assessment that Amy died at 3:15 p.m. or earlier on November 13, 2016. The medical examiner also agreed with law enforcement’s assessment that the evidence was not consistent with a suicide.

The computer forensic expert testified that the user S Allwine downloaded TOR—a web browser needed to access the dark web—on the MacBook Pro laptop computer.⁷ The expert testified that he found a “note” on the MacBook Pro laptop computer with an email address “sharklasers.com,” which allows users to send anonymous emails. The expert testified that the user S Allwine composed an anonymous email on the MacBook Pro laptop computer. The expert testified that minutes before dogdayGod sent a message

⁶ The record shows that “scopolamine” is a prescription drug that is commonly used to prevent motion sickness. Scopolamine can cause a person to experience blurred vision, a dry mouth and throat, confusion, hallucinations, dilated pupils, flushing of the skin, drowsiness, or insomnia. Further, the record shows Amy never had a prescription for scopolamine.

⁷ The record shows that Allwine told FBI investigators in August 2016 that he had never used the dark web.

to Besa Mafia, requesting that Amy be killed while traveling to Moline, Illinois, the user S Allwine ran a Google search of Moline, Illinois on the MacBook Pro laptop computer. The expert testified that the user S Allwine used the MacBook Pro laptop computer to view Amy’s Facebook account and browsed her photographs the day before dogdayGod sent a photo of Amy to Besa Mafia. The expert testified that dogdayGod sought to buy the drug scopolamine online. Last, the expert testified that the same unique 34-digit alphanumeric code that dogdayGod used to pay Besa Mafia in Bitcoin was found on the MacBook Pro laptop computer with the username S Allwine.

The defense argued that Stephen could not have murdered Amy because he was not home at the time Amy was murdered. The defense presented several witnesses⁸ who all testified to either seeing Amy sometime in the afternoon in her driveway or to hearing an anonymous vehicle speed off quickly around the Allwine residence. On January 31, 2018, the jury found Stephen Allwine guilty of first-degree premeditated murder. The district court sentenced him to life without the possibility of release.

Postconviction History

In May 2018, Allwine filed a direct appeal with our court. On September 28, 2018, while his direct appeal was pending, CBS News aired an episode of *48 Hours*—titled “Click for a Killer: Part I.” The episode featured the Allwine case, and included interviews

⁸ The record shows that Allwine’s trial counsel hired multiple experts, but none testified at trial because trial counsel believed that their testimony would have been consistent with the State’s experts, or because they were not relevant to the defense’s theory of the case—that Allwine was not at home at the time Amy was murdered.

with lawyers and law enforcement officials involved in the case. In the episode, an unidentifiable man named “Yura” claimed that a Besa Mafia hitman killed Amy. Subsequently, we granted Allwine’s motion to stay his direct appeal to allow him to pursue postconviction relief in district court. *State v. Allwine*, A18-0846, Order at 1–2 (Minn. filed Apr. 2, 2019).

On August 1, 2019, Allwine filed a petition for postconviction relief.⁹ Three weeks later, on August 20, 2019, Allwine made a request for funds under Minn. Stat. § 611.21(a) (2020)¹⁰ to hire a digital forensic expert in support of his petition. The district court denied Allwine’s request for funds on September 5, 2019, because he did not establish he was “indigent” as is statutorily required.¹¹ On May 4, 2020, the State filed a response to Allwine’s petition for postconviction relief. In support of its response, the State submitted an affidavit of Allwine’s trial counsel, explaining the decisions he made during trial. On

⁹ Seven months later, on March 2, 2020, clarifying language was added to the petition under Minn. Stat. § 590.03 (2020), which allows a district court to “permit amendments” to the petition. *See Rossberg v. State*, 874 N.W.2d 786, 791 (Minn. 2016). Although Allwine captioned the amended document as a “second petition for postconviction relief,” we refer to the two documents as Allwine’s “petition for postconviction relief,” for ease of reference.

¹⁰ Minnesota Statutes § 611.21(a) allows a district court, after making the appropriate inquiry and findings, to authorize counsel for an indigent defendant or a defendant whose annual income at the outset of the prosecution is below a certain level, to obtain “investigative, expert, or other services necessary to an adequate defense in the case.”

¹¹ This was not Allwine’s first request for funds. On July 8, 2019, Allwine filed a motion for funds to hire an expert, which the district court granted on July 16, 2019.

June 3, 2020, the district court issued an order amending the briefing schedule and closing the record as of June 12, 2020.

On July 8, 2020, Allwine filed another motion for funds under Minn. Stat. § 611.21(a). Before ruling on this additional motion for funds, the district court directed Allwine to provide an affidavit listing his income “at the outset of the prosecution” to determine his eligibility.¹² On August 12, 2020, Allwine’s postconviction counsel informed the district court that she was “working with [Allwine’s] family to determine his assets at the outset of the case,” and anticipated receiving that information “in the next two weeks.” The record contains no indication that Allwine or his counsel ever provided the district court with his income at the outset of the prosecution.

On September 21, 2020, the district court issued Findings of Fact, Conclusions of Law, and an Order denying Allwine’s petition for postconviction relief.¹³ Four days later, on September 25, 2020, Allwine filed a motion to set aside the district court’s findings of fact and filed a third motion for funds under Minn. Stat. § 611.21(a), with the district court.

On October 16, 2020, the district court denied Allwine’s motion, which it construed as a motion to reconsider its order denying postconviction relief. It also denied Allwine’s July 8, 2020 and September 25, 2020 motions for funds. The court concluded that Allwine

¹² The record shows Allwine’s counsel claimed that the “relevant timeframe” when interpreting the statutory phrase “at the outset of the prosecution” contained in Minn. Stat. § 611.21(a), was “when [Allwine] began prosecuting his post-conviction action” in 2019.

¹³ Since the court had not received Allwine’s proof of income affidavit, it had not ruled on his July 8, 2020 motion for funds when it issued its postconviction order denying relief.

had not established that he was indigent “at the outset of the prosecution” and, therefore, he did not qualify for funds under Minn. Stat. § 611.21(a).

On November 9, 2020, Allwine filed a second motion to reconsider the district court’s findings of fact in the September 2020 order denying postconviction relief. In support of this motion, Allwine submitted an affidavit from a medical expert, challenging parts of the testimony the State’s medical examiner provided during Allwine’s trial. On November 23, 2020, the district court denied Allwine’s second motion to reconsider its order denying his petition for postconviction relief. On December 3, 2020, Allwine filed a third motion to reconsider the postconviction order denying relief. In support of this third motion, Allwine submitted an affidavit from a digital forensic expert, challenging some of the statements made in the affidavit submitted by Allwine’s trial counsel.¹⁴ On December 17, 2020, before the district court ruled on his third reconsideration motion, Allwine filed an appeal with our court from the district court’s September 2020 order denying postconviction relief. The next day, the district court denied Allwine’s third motion to reconsider, reasoning that the case was before our court and, consequently, its “authority is suspended due to an appeal.”

On December 22, 2020, we consolidated Allwine’s stayed direct appeal with his postconviction appeal. *State v. Allwine*, Nos. A18-0846, A20-1588, Order at 2–3 (Minn. filed Dec. 22, 2020).

¹⁴ As explained below, the affidavits Allwine submitted on November 9, 2020 and December 3, 2020 with his motions to reconsider were submitted to the district court *after* the scheduling order closed the record, and after the district court issued its order denying Allwine’s petition for postconviction relief.

ANALYSIS

On appeal, Allwine presents four arguments. He argues (1) the evidence is insufficient to sustain the jury's verdict that he is guilty of first-degree premeditated murder; (2) the State committed prosecutorial misconduct; (3) his trial counsel provided ineffective assistance of counsel; and (4) an evidentiary hearing must be held to review the opinions of the two experts whose affidavits were submitted with the motions to reconsider to determine whether a new trial is warranted. We consider each in turn.

I.

The first issue we address is whether sufficient evidence supports the jury's verdict that Allwine is guilty of first-degree premeditated murder. In assessing the sufficiency of the evidence, we determine "whether the facts in the record and the legitimate inferences drawn from them would permit the jury to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense of which he was convicted." *State v. Moore*, 481 N.W.2d 355, 360 (Minn. 1992).

"A conviction based on circumstantial evidence, however, warrants heightened scrutiny." *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010). This heightened scrutiny requires us to consider whether the reasonable inferences that can be drawn from the circumstances proved support a rational hypothesis other than guilt. *See State v. Taylor*, 650 N.W.2d 190, 206 (Minn. 2002). "Circumstantial 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." *Id.*

When “reviewing the sufficiency of circumstantial evidence, our first task is to identify the circumstances proved.” *Al-Nasser*, 788 N.W.2d at 473 (quoting *State v. Anderson*, 784 N.W.2d 320, 329 (Minn. 2010)) (internal quotation marks omitted). In identifying the circumstances proved, we defer “to the jury’s acceptance of the proof of these circumstances and rejection of evidence in the record that conflicted with the circumstances proved by the State.” *Id.* (citation omitted) (internal quotation marks omitted). In simpler terms, we “winnow down the evidence presented at trial” to a “subset of facts” that are consistent with the jury’s verdict and “disregard evidence that is inconsistent with the jury’s verdict.” *State v. Harris*, 895 N.W.2d 592, 600–01 (Minn. 2017). Second, we independently examine the reasonableness of any inferences that can be drawn from the circumstances proved, as a whole, including an inference consistent with rational hypotheses other than guilt. *Al-Nasser*, 788 N.W.2d at 473-74. In considering the reasonable inferences drawn from the circumstances proved, we “give no deference to the fact finder’s choice between reasonable inferences.” *State v. Stein*, 776 N.W.2d 709, 716 (Minn. 2010) (plurality opinion).

To sustain a conviction based on circumstantial evidence, “the reasonable inferences that can be drawn from the circumstances proved *as a whole* must be consistent with the hypothesis that the accused is guilty” and must also be “inconsistent with any rational hypothesis except that of guilt.” *State v. Fox*, 868 N.W.2d 206, 223 (Minn. 2015) (emphasis added). The State was required to prove at trial that Stephen acted with premeditation and intent when he caused Amy’s death. Minn. Stat. § 609.185(a)(1); *see*

also State v. Leake, 699 N.W.2d 312, 326 n.10 (Minn. 2005) (explaining the elements of first-degree premeditated murder).

Allwine claims only four facts are consistent with the hypothesis of his guilt: (1) He was married to Amy, (2) Amy was found dead at the home she shared with him, (3) he could not be excluded as a contributor to the DNA found on the gun at the scene, and (4) he was home with Amy for much of the day on which she was killed. Allwine also argues there are many circumstances proved that are inconsistent with the hypothesis of his guilt. The State counters that Allwine's characterization of the circumstances proved is "woefully inadequate" and ignores many facts in record that are consistent with the jury's verdict. We agree with the State here. Both of Allwine's claims are incorrect.

First, the circumstances proved in this case are as follows. On November 13, 2016, the day Amy was killed, Stephen awoke at the Allwine residence at approximately 6 a.m. and did not leave the residence until approximately 5 p.m. Stephen began working from his basement office that morning. At approximately 12:15–12:30 p.m., Amy told Stephen that she was experiencing dizziness, lightheadedness, and dry mouth. Amy then told Stephen she was going to bed to rest. Stephen's last employment activity was at approximately 12:51 p.m. Amy's father picked J.A. up from the Allwine residence at 2 p.m., leaving Stephen and Amy in the home. Based on the level of scopolamine found in Amy's system, the medical examiner agreed with the assessment that Amy died at 3:15 p.m. or earlier that day. Police also discovered a particle of gunshot residue on Stephen's right hand.

Computer forensic analysis of the MacBook Pro laptop computer with the username S Allwine established the following facts. The analysis found that the TOR browser—needed to access the dark web—was installed on the MacBook Pro laptop computer. Stephen previously told law enforcement that he had never used the dark web before. Forensic analysis also discovered that the same computer searched for a service that allows users to send anonymous emails, and that the user clicked the “compose” button to create an anonymous email. Seven minutes before dogdayGod sent an email to Besa Mafia seeking to hire a person to kill Amy while she was on a business trip to Moline, Illinois, a user of the same MacBook Pro laptop computer ran a Google search for Moline, Illinois. The MacBook Pro laptop computer was used to search for the drug “scopolamine,” the same drug found in Amy’s system. Amy never had a prescription for scopolamine. Lastly, the analysis found that the MacBook Pro laptop computer contained the same unique 34-digit alphanumeric Bitcoin code as the code that dogdayGod used to communicate with Besa Mafia. The computer forensic expert also opined that the person using “S Allwine’s iPhone” on March 22, 2016 was the person who paid Besa Mafia in Bitcoin to kill Amy.

Second, Allwine’s claim that there are many circumstances inconsistent with the hypothesis of his guilt misunderstands our circumstantial evidence analysis on review. As noted above, rather than consider circumstances inconsistent with guilt, as he asks us to do, we are bound to *disregard* evidence that is inconsistent with the jury’s verdict when identifying the circumstances proved. *See Harris*, 895 N.W.2d at 601.

Next, we independently examine the reasonableness of all inferences that can be drawn from the circumstances proved. The circumstances proved support three reasonable

inferences in favor of the jury's verdict. First, the circumstances proved support the reasonable inference that the person plotting to kill Amy and using the online screen name dogdayGod was Stephen Allwine. The computer forensic expert provided extensive testimony establishing a chronological and digital nexus between dogdayGod's messages to Besa Mafia and actions taken by the user of the MacBook Pro laptop with the username S Allwine. Particularly, the fact that the same 34-digit alphanumeric Bitcoin code that dogdayGod sent to Besa Mafia was found on the S Allwine MacBook Pro laptop provides a strong inference that Allwine was the person using the online screen name dogdayGod.

Second, the circumstances proved support the reasonable inference that Stephen drugged Amy with scopolamine. Because Amy did not have a prescription for scopolamine, because Stephen—as dogdayGod—was searching the dark web for scopolamine on the MacBook Pro laptop computer, and because a nontherapeutic amount of scopolamine was found in Amy's system after death, a reasonable inference arises that Stephen drugged Amy with scopolamine the day she died.

Last, the circumstances proved support the reasonable inference that Stephen was the person who used the handgun to shoot and kill Amy. The medical examiner testified that Amy died at 3:15 p.m. or earlier. Stephen told investigators he was the only person with Amy at that time, and even claimed he talked to her over an hour after her time of death. Law enforcement testified that the crime scene was inconsistent with a suicide, and Stephen's right hand tested positive for gunshot residue. These inferences are reasonable based on the circumstances proved.

The reasonable inferences are also *inconsistent* with a rational hypothesis other than guilt. When viewed *as a whole*, the circumstances proved do not support a reasonable inference that someone else killed Amy, especially when Allwine’s right hand tested positive for gunshot residue, Allwine—as dogdayGod—searched for scopolamine to purchase on the dark web, a nontherapeutic amount of scopolamine was found in Amy’s system after death, and Amy did not have a prescription for scopolamine. Accordingly, there is no rational hypothesis other than guilt. Therefore, we conclude that the circumstantial evidence is sufficient to support the jury’s verdict that Stephen Allwine is guilty of first-degree premeditated murder.

II.

Second, we consider whether the facts alleged in the petition for postconviction relief, if proven by a preponderance of the evidence, support a claim that the State committed prosecutorial misconduct. The district court concluded that the State did not and therefore denied Allwine’s claim without an evidentiary hearing. We review the district court’s denial of postconviction relief, including a denial of relief without an evidentiary hearing, for an abuse of discretion. *State v. Nicks*, 831 N.W.2d 493, 503 (Minn. 2013). A district court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record. *Id.*

Allwine argues the prosecution committed misconduct by failing to disclose the third-party Yura confession, in violation of Minnesota’s “very broad discovery rules” and Rule 3.8(g)–(h) of the American Bar Association’s (ABA) Rules of Professional

Conduct.¹⁵ Because the Minnesota Rules of Criminal Procedure only require prosecutors to disclose exculpatory evidence before or during a trial, and because Allwine’s trial was complete before the prosecution was aware of or had possession of the Yura confession, the State argues it did not commit prosecutorial misconduct. We agree with the State here as well.

Rule 9 of the Minnesota Rules of Criminal Procedure governs evidentiary disclosure requirements. The rule requires the State to disclose exculpatory evidence at the defense’s request and before the Rule 11 omnibus hearing. Minn. R. Crim. P. 9.01, subd. 1(6). Further, the rule imposes a continuing duty on the State to disclose exculpatory evidence “before and during trial.” Minn. R. Crim. P. 9.03, subd. 2(c). By the plain language of these Rule 9 provisions, the State had a duty to disclose exculpatory evidence—such as a third-party confession—to the defense from the filing of charges until the trial has ended.

Here, the record shows prosecutors exchanged several email communications with CBS News staff from January 2018 to September 2018, but none of the communications included exculpatory evidence.¹⁶ Allwine’s claim that the State violated “broad discovery

¹⁵ Without providing a substantive argument, Allwine also asserts in connection with this claim that he “was not charged with Aiding and Abetting so his conviction must be reversed.” Because Stephen does not go beyond this conclusory statement in his briefs, we deem the argument waived. *State v. Morrow*, 834 N.W.2d 715, 724 n.4 (Minn. 2013). Even if we reached this argument, however, we would reject it because “aiding and abetting is *not* a separate substantive offense, but rather is a theory of criminal liability.” *State v. Ezeka*, 946 N.W.2d 393, 400 n.1 (Minn. 2020) (citation omitted) (internal quotation marks omitted).

¹⁶ An email exchange on May 7, 2018, mentions Yura, but in no way suggests that he had confessed to the murder of Amy.

rules” and the ABA Rules of Professional Conduct is without merit. As mentioned, our discovery rules expressly place a duty on the State to disclose exculpatory evidence to the defense before or during trial—not *after* trial. Nothing establishes that the State had undisclosed exculpatory evidence regarding an alternative perpetrator before or during the trial. Accordingly, there is no disclosure violation. Further, Allwine’s reliance on the ABA’s Rules of Professional Conduct is misplaced because those rules concern *attorney discipline*, not the criminal evidentiary matters at issue here.

Accordingly, even if the facts Allwine alleges in his petition for postconviction relief were proven at an evidentiary hearing, Allwine’s prosecutorial misconduct claim fails as a matter of law. Consequently, the district court did not abuse its discretion when it denied Allwine’s prosecutorial misconduct claim without an evidentiary hearing.

III.

Third, we determine whether the facts Allwine alleged in his petition for postconviction relief, if proven by a preponderance of the evidence, support a claim that his trial counsel provided ineffective assistance of counsel. “Because claims of ineffective assistance of counsel involve mixed questions of law and fact, our review of decisions by the postconviction court is *de novo*.” *Opsahl v. State*, 677 N.W.2d 414, 420 (Minn. 2004). Ineffective assistance of counsel claims are governed by “the two-prong test announced in *Strickland v. Washington*, 466 U.S. 668 (1984).” *Nicks*, 831 N.W.2d at 504 (applying *Strickland* in the context of a postconviction petition seeking a new trial based on an ineffective assistance of counsel claim). *Strickland* requires a petitioner to show that (1)

trial counsel’s representation fell below an objective standard of reasonableness¹⁷ and (2) there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. *Peltier v. State*, 946 N.W.2d 369, 372 (Minn. 2020).

Allwine provides three reasons why his counsel was ineffective.¹⁸ First, he argues his trial counsel was ineffective because he failed “to use an expert to develop alternative perpetrator theory and to present alternative perpetrator evidence” against two persons. He also argues his trial counsel was ineffective because his trial counsel “did not consult with a medical examiner nor did he present the testimony of a medical examiner.” Last, he contends his trial counsel was ineffective because his trial counsel failed “to use [a] computer forensic expert.” In arguing that the district court erred when it failed to order a

¹⁷ The objective standard of reasonableness means “representation by an attorney exercising the customary skills and diligence that a reasonably competent attorney would perform under similar circumstances.” *White v. State*, 248 N.W.2d 281, 285 (Minn. 1976).

¹⁸ Allwine also argues that the district court’s decision to issue its findings of fact, conclusions of law, and order denying his postconviction petition before he submitted the two affidavits “violated [his] right of due process” by “not allowing [him] to submit expert information as to his claim of ineffective assistance of counsel[.]” Accordingly, he claims that “this Court must reverse and remand for an evidentiary hearing.” We disagree. On June 3, 2020, the district court issued an order amending the briefing schedule. In it, the district court stated that the “record will close on June 12, 2020 and the Court will take the matter under advisement on that date.” Such an order rests within the district court’s discretion. *See Matakis v. State*, 862 N.W.2d 33, 40–41 (2015); *cf.* Minn. R. Crim. P. 9.03, subd. 3 (allowing the district court to impose “reasonable terms and conditions” on discovery); Minn. R. Civ. P. 16.02(c) (similar authority for civil cases). Consequently, the district court did not abuse its discretion in ordering that the record close on June 12, 2020. *See Matakis*, 862 N.W.2d at 41.

new trial on his claims of ineffective assistance of counsel, Allwine primarily relies on the two expert affidavits submitted with his motions to reconsider.¹⁹

In reviewing whether the district court abused its discretion here, we consider the information available to the district court *at the time* the court issued its order denying postconviction relief. *Cf. State v. Jenkins*, 782 N.W.2d 211, 231 (Minn. 2010) (rejecting a police misconduct argument that “was not made to the district court at the time it was considering admission of the motive evidence.”). When the district court issued its September 2020 order denying Allwine’s petition for postconviction relief, the two affidavits had not yet been presented to it. Allwine’s reliance on the affidavits is misplaced and, therefore, his ineffective assistance of counsel argument on appeal cannot prevail. Therefore, the district court did not err when it denied Allwine’s petition for post-conviction relief.

In addition, the district court did not abuse its discretion when it denied Allwine’s three reconsideration motions because such motions *cannot* introduce new evidence into the record. *See Sullivan v. Spot Weld, Inc.*, 560 N.W.2d 712, 715–16 (Minn. App. 1997) (rejecting attempt to supplement record with affidavit submitted in support of motion to reconsider), *rev. denied* (Minn. Apr. 27, 1997). Although we have never squarely considered whether a motion for reconsideration can introduce new evidence into the

¹⁹ Allwine’s argument regarding alternative perpetrators does not rest on the two expert affidavits. Assuming, without deciding, that Allwine’s trial counsel did not pursue an alternative perpetrator theory, such an omission fails to state a claim of ineffective assistance of trial counsel as a matter of law. Under well-established law, the decision to pursue alternative perpetrators is a matter of trial strategy that we do not scrutinize. *Opsahl*, 677 N.W.2d at 421.

record, the court of appeals' analysis in *Sullivan* is sound and consistent with the advisory committee's comment to the rule that authorizes motions for reconsideration. *See* Minn. Gen. R. Prac. 115.11 advisory comm. cmt.—1997 amendment (“Motions for reconsideration are not opportunities for presentation of facts or arguments available when the prior motion was considered.”). We therefore hold that a motion for reconsideration cannot introduce new evidence. Because Allwine’s motions for reconsideration introduced two affidavits as new evidence, the district court did not err when it denied the motions.²⁰ For the foregoing reasons, the district court did not err when it denied the petition for postconviction relief and the motions for reconsideration.

²⁰ In effect, the State argues that we should not consider the affidavits in determining any of the issues on appeal because an order denying a motion for reconsideration is not an appealable order. *See Hohenwald v. State*, 875 N.W.2d 843, 846 (Minn. 2016). The State’s argument is unsound because it conflates two distinct questions. The first question is whether an appeal may be taken from a particular order. The State is correct that a defendant cannot appeal *from* an order denying a motion for reconsideration. The second question is which orders may an appellate court review when a defendant files an appeal *from* a judgment. As Minn. R. Crim. P. 28.02, subd. 11, makes clear, in an appeal from a judgment, “the court may review any order . . . as the interests of justice may require.” Here, Allwine filed a timely appeal from his judgment of conviction. *See* Minn. R. Crim. P. 29.02, subd. 1(a) (authorizing an appeal in a first-degree murder case from the judgment). Consequently, we may review the district court’s October, November, and December 2020 orders denying Allwine’s motions for reconsideration based on the supporting affidavits presented to the district court at the time it decided each order. But as previously stated, we cannot consider the affidavits in determining whether the court abused its discretion when it made the decision in September 2020 to deny Allwine’s claim of ineffective assistance of counsel without an evidentiary hearing because those affidavits were filed *after* that decision was made.

IV.

Finally, we determine whether an evidentiary hearing must be held to review the opinions of two experts²¹ to determine if a new trial is warranted.²² As previously mentioned, Allwine improperly submitted the affidavits from the two experts with his motions for reconsideration. Accordingly, Allwine is not entitled to an evidentiary hearing to consider the opinions of the two experts.

CONCLUSION

For the foregoing reasons, we affirm the judgment of conviction and the decision of the district court that denied Allwine's petition for postconviction relief.

Affirmed.

²¹ One of these experts is the digital forensic expert previously mentioned that Allwine's trial counsel chose not to have testify during his trial.

²² Allwine also argues the district court erred when it denied his motion for funding, as authorized under Minn. Stat. § 611.21(a), for him to hire an expert. This assertion is incorrect, however. Section 611.21(a) distinguishes between two categories of defendants: (1) those with "counsel appointed by the court for an indigent defendant" and (2) those with private counsel who have an annual income not greater than 125 percent of the poverty line "at the outset of the prosecution." Because Allwine has a private attorney, he is not entitled to funds for experts unless he established that his annual income was not greater than 125 percent of the poverty line at the outset of the prosecution. Allwine did not do that before the district court. Accordingly, the district court did not err in denying him additional funding. The fact that Allwine has private counsel also dooms his claim that, under Minn. Stat. § 590.05, he is entitled to funding to hire an expert without a showing that his income was not greater than 125 percent of poverty line at the outset of the prosecution.