STATE OF MINNESOTA

IN SUPREME COURT

A22-0710
A23-0588

Anoka County

Moore, III, J.
Took no part, Hennesy, J.

State of Minnesota,

Respondent,

vs.

Filed: July 31, 2024
Office of Appellate Courts

Melissa Madelyne Zielinski,

Appellant.

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

Brad Johnson, Anoka County Attorney, Kelsey R. Kelly, Assistant County Attorney, Anoka, Minnesota, for respondent.

Cathryn Middlebrook, Chief Appellate Public Defender, Benjamin J. Butler, Assistant Public Defender, Saint Paul, Minnesota, for appellant.

S Y L L A B U S

1. We need not decide whether police questioning of appellant violated appellant's Fourth Amendment right against unreasonable searches and seizures because any claimed error was harmless beyond a reasonable doubt.

2. We need not decide whether the district court's restrictions on the cross-examination of appellant's accomplice violated the Sixth Amendment Confrontation Clause because any claimed error was harmless beyond a reasonable doubt.

3. The district court erred in entering convictions for both first-degree intentional murder and second-degree intentional murder.

4. The claims presented in appellant's pro se supplemental brief do not warrant reversal of appellant's convictions or a new trial.

5. The district court did not abuse its discretion in denying appellant's petition for postconviction relief without an evidentiary hearing on appellant's claims of ineffective assistance of counsel.

Affirmed in part, reversed in part, and remanded.

O P I N I O N

MOORE, III, Justice.

Following a jury trial, appellant Melissa Zielinski was convicted of first-degree intentional murder and second-degree intentional murder under aiding-and-abetting theories of criminal liability. Zielinski filed a direct appeal, which we stayed for her to pursue postconviction relief. The district court summarily denied Zielinski's postconviction petition without an evidentiary hearing, and Zielinski appealed. We lifted the stay of her direct appeal and consolidated the appeals for review.

Zielinski raises four claims in her principal brief. She challenges: (1) the district court's admission of evidence obtained in violation of her Fourth Amendment rights; (2) the district court's restriction of the cross-examination of her brother in violation of her

Sixth Amendment right to confrontation; (3) the district court's entering of convictions for both first-degree intentional murder and second-degree intentional murder; and (4) the district court's summary denial of her petition for postconviction relief without an evidentiary hearing on claims of ineffective assistance of counsel. In a pro se supplemental brief, Zielinski raises three additional claims.

We conclude that, even assuming the district court erred in admitting evidence obtained in violation of the Fourth Amendment, this error was harmless beyond a reasonable doubt. We likewise conclude that, assuming the district court erred in limiting the cross-examination of Zielinski's brother and accomplice in violation of the Sixth Amendment, this error was also harmless beyond a reasonable doubt. We further conclude that the district court erred in entering convictions for both first-degree intentional murder and second-degree intentional murder. In addition, we conclude that Zielinski's three pro se claims do not entitle her to any relief. Lastly, we conclude that the district court did not abuse its discretion in denying Zielinski's petition for postconviction relief without an evidentiary hearing. Accordingly, we affirm Zielinski's conviction for first-degree intentional murder and the district court's order denying postconviction relief, and we reverse Zielinski's conviction for second-degree intentional murder and remand to the district court to vacate the conviction on that count.

FACTS

This case arises out of the robbery and fatal shooting of Karl Henderson. On August 27, 2020, Henderson's father returned to his home in Lino Lakes, which he shared with Henderson. As he entered his home, a man and a woman walked upstairs from the

basement. The man was carrying a large object. Henderson's father told the man and woman to stop, but they kept walking away. The man turned to Henderson's father and said, "Your son stole on me and you need to back off or I'm going to take you out, too." Henderson's father then went down to the basement and discovered Henderson lying on the floor with an apparent gunshot wound. He called 911, and, shortly after the ambulance arrived, Henderson was pronounced dead.

The State's theory was that Zielinski planned to rob Henderson with her brother, Nicholas Zielinski,[1] participated in the robbery with Nicholas, and Henderson was killed during the commission of the robbery. The State charged Zielinski with second-degree intentional murder, Minn. Stat. § 609.19, subd. 1(1) (2022), and second-degree felony murder, Minn. Stat. § 609.19, subd. 2(1) (2022), under aiding-and-abetting theories of criminal liability. *See* Minn. Stat. § 609.05 (2022). A grand jury later indicted Zielinski with first-degree intentional murder while committing an aggravated robbery, Minn. Stat. § 609.185(a)(3) (2022), again under an aiding-and-abetting theory of criminal liability. *See* Minn. Stat. § 609.05. The following facts were established at trial.

In 2019, about a year before Henderson's murder, an acquaintance of Zielinski's gave Henderson's address and phone number to her during a conversation about marijuana. Henderson was an alleged drug dealer, and Henderson's friend testified that Henderson always kept at least $50,000 in a safe in his home.

[1] For clarity, we refer to Nicholas Zielinski as "Nicholas" and Melissa Zielinski as "Zielinski."

According to Nicholas, in late August 2020, Zielinski planned to go to Henderson's house to rob him because Zielinski needed money, or she would risk losing her housing. At that time, Nicholas lived in Duluth, and Zielinski rented a home with her mother in Sandstone. Nicholas stated that he believed Zielinski's plan was only to *rob* Henderson, but Zielinski had told him to bring a gun.

Nicholas testified that he and Zielinski went to Henderson's house, entered through a side door, and went to Henderson's bedroom, which was in the basement of the house. At gunpoint, Nicholas told Henderson to lie on the ground. Zielinski then zip-tied[2] Henderson's wrists and demanded the combination to his safe. When the zip tie unexpectedly snapped, Nicholas and Henderson began fighting for the gun. During the struggle, Nicholas fired the gun twice; the first bullet hit the wall, and the second bullet hit Henderson in the abdomen. Nicholas testified that he intended to kill Henderson when he fired the gun because he "felt like it was life or death at that moment."

After Henderson was shot, Nicholas and Zielinski grabbed a safe from Henderson's bedroom and left the home. Nicholas put the safe in the back of his truck, and Nicholas and Zielinski drove away together. The pair stopped again in Forest Lake before driving to Sandstone separately. Halfway through the drive, Nicholas threw the safe in the woods, but later told Zielinski where he thought he left it.

A 9mm pistol was recovered from Henderson's bedroom that had Nicholas's DNA on it, and unused bullets recovered from the scene were the same caliber as the pistol.

---

[2] A zip tie is a type of plastic strip that forms a loop with a one-way ratchet that can tighten but not loosen. *State v. Larson*, 787 N.W.2d 592, 595 n.3 (Minn. 2010).

Additionally, a manual for a SentrySafe brand safe was found in the bedroom, but the safe was missing.

Zielinski's friend J.P. testified that, on the day after the murder, Zielinski brought a safe to his house and he helped her open it. Later that day, Zielinski gave J.P. $3,000. Another friend of Zielinski's, J.W., testified that around the same time, Zielinski asked her to hold onto a large item covered in plastic bags. The large item was discovered to be a SentrySafe model safe with a serial number that matched the manual found in Henderson's bedroom. DNA found on the safe's keypad matched Zielinski's DNA.

Search Warrants

Five days after the murder, police applied for a search warrant to obtain T-Mobile carrier records for a phone number ending in 5424 ("T-Mobile warrant"). The T-Mobile warrant application stated that this phone number belonged to Zielinski and also identified Zielinski's address in Sandstone but did not identify the source of this information.

In describing Zielinski's alleged involvement in Henderson's murder, the T-Mobile warrant application noted that two witnesses stated that Zielinski was a "known drug user" and that "if there was a second person involved in the incident [Nicholas] was involved in, it would have been his sister, Missy." The warrant application also detailed that Nicholas's phone location records showed he stopped in Sandstone both before and after the murder and that he called Zielinski shortly before the shooting. The warrant application lastly stated that Henderson's father had viewed a photo of Zielinski on Facebook and told police that she "look[ed] similar to the female that was in his home."

The district court, finding probable cause supporting the warrant application, issued the T-Mobile warrant. Pursuant to this warrant, police were authorized to obtain: (1) all subscriber information associated with Zielinski's phone number; (2) all communications to and from her number; (3) any cloud services associated with her number; (4) historical GPS locations, handset locations, triangulation data, and any other location data; and (5) any IP addresses assigned to her phone. A similar warrant—not at issue in this case—was issued for data associated with Nicholas's phone number.

Nicholas's phone location data showed that, on the day of the murder, he drove from Duluth to Sandstone before stopping near Forest Lake and then traveling to Henderson's house in Lino Lakes. Zielinski's phone records show her driving to Lino Lakes area from the south, stopping near Forest Lake, before placing her near Henderson's house around the same time as Nicholas.

Two days after obtaining the T-Mobile warrant, police applied for an additional warrant for Zielinski's home in Sandstone ("house warrant"). The warrant application alleged the same facts supporting the warrant as the T-Mobile warrant. The house warrant authorized police to seize, in part:

> Any and all cellular phones, smart phones, mobile digital communications devices and similar devices and authority to conduct a complete forensic examination on these phones at a later date at the Anoka County Sheriff's Office in a controlled environment or other suitable lab or location.

The district court, again finding probable cause supporting the warrant application, issued the house warrant. Pursuant to this warrant, police obtained an LG cell phone, a Samsung cell phone, and drug paraphernalia. The LG cell phone was later identified as Zielinski's.

A full forensic examination was then conducted on the LG phone pursuant to the house warrant.

In the search of Zielinski's phone, investigators found relevant text messages, photos, and internet search history. The day before the robbery and murder, Zielinski texted her son that "We are going to collect some money that's owed to me hopefully." Zielinski's son responded, "So you and Nick are going to muscle some money." Zielinski responded, "Hopefully. I've waited long enough." Investigators found a photo taken inside of a pocket, apparently accidentally. The photo was geotagged as being taken about a nine-minute drive away from the crime scene and was taken around the time of the murder. In the days following the robbery and murder, Zielinski's internet search history included information on SentrySafe brand safes. Zielinski also visited a Star Tribune article titled "Charges. Shooter left murder weapon next to body in Lino Lakes home."

Police Question Zielinski

The day after obtaining the house warrant, officers executed it. Zielinski was not present when police searched her home. About a half hour after the search began, however, an officer, who recognized Zielinski, saw her about five miles away in a parking lot. After confirming that other officers wanted to speak with her, the officer pulled his squad car in front of her truck, turned on his emergency lights, and stopped her.

The officer made small talk with Zielinski while he waited for additional officers to arrive. The officer did not tell Zielinski that she was under arrest but also did not tell her that she was free to leave. After additional officers arrived, officers transported Zielinski five miles in a marked squad car to her home for questioning.

Once at Zielinski's home, officers placed her in a different squad car and questioned her. An officer read her *Miranda* rights but told her she was "not under arrest right now." The officer told Zielinski that if she wanted to request a lawyer, then they "couldn't talk about what happened," but also told her she would "not necessarily" be arrested if she asked for a lawyer or declined to talk to them. During the questioning, Zielinski repeatedly denied involvement in the robbery and murder of Henderson. Zielinski claimed she was at home in Sandstone that day, not in Lino Lakes. She told officers she had her phone with her all day and could not explain why T-Mobile carrier data showed her phone's location as being near the crime scene around the time of the murder. She denied any knowledge of Nicholas's participation in the crime.

After the questioning concluded, Zielinski stayed in the front yard of her home until police finished executing the search warrant. Police did not tell Zielinski that she was free to leave, and one officer was tasked with "watching" her. After some small talk, Zielinski consented to providing a buccal swab.

Pretrial Motions

Prior to trial, Zielinski filed a motion to suppress the evidence—the LG cell phone, buccal swab, and all statements made to the police—obtained from the house warrant and the interrogation of her at her home. Zielinski argued that the house warrant lacked probable cause and that Zielinski was unlawfully seized during police questioning. After a hearing with witness testimony, the district court denied the motion.

Seven months later, Zielinski filed a "Motion for Suppression Following Indictment," challenging the T-Mobile warrant. This motion did not provide any detail for

the basis of the challenge. The district court denied the motion, determining that the issues had been previously waived.

Nicholas's Letter to Zielinski

After Zielinski's jury trial had already begun, Nicholas wrote her a letter from prison. In this letter, Nicholas explained that he accepted a plea deal in exchange for testifying against Zielinski. Nicholas wrote that he did this because he "couldn't risk getting life and the kids all agree they would not be able to handle that."[3] Nicholas stated that, given the evidence against him, a trial would be "close to a guaranteed loss" so he "took 225 months" to "salvage some life and some time with the kids." Nicholas then apologized to Zielinski for what his testimony would do to her case but reasoned that "they can't hit you for murder when I plead to it maybe like accessory to aggr. [sic] robbery since the plan was never to hurt anyone." Nicholas ended the letter by again apologizing to Zielinski and stated, "hope you can manage less time than my 19 years."

Zielinski brought Nicholas's letter to the district court's attention before Nicholas testified at trial and sought to introduce the letter into evidence during his cross-examination. In response, the State objected to the letter being admitted. The State proposed that the district court allow both parties to discuss the percentage reduction in the sentence Nicholas received through his plea agreement but prohibit Zielinski from mentioning that Nicholas faced a potential life sentence on the charges he was facing before entry of the plea agreement.

---

[3] Nicholas has three children. At the time he was arrested, his youngest child was two months old.

The district court ruled that the defense could not question Nicholas on the specific length of his potential prison sentence with and without the plea agreement. The district court then explained that the defense could ask about the plea agreement broadly:

> To the extent there was a reduction in proportionality, you can discuss that. . . . [Y]ou're not going to elicit testimony that he was looking at life. You're not eliciting testimony that he was looking at 360 months, 367 months, and no testimony – no testimony whatsoever about life or the number of months. You can inquire about proportionality.

The district court reasoned that this limitation would not "run[] afoul of the right to confrontation" because the defense could still question Nicholas about his bias. Allowing questioning on the specific sentence Nicholas faced, according to the district court, would "invade[] the purview of the court in sentencing and . . . create[] a tremendous amount of speculation on behalf of the jurors."

The district court then read the following sanitized version of Nicholas's plea agreement immediately before he testified:

> Nicholas Zielinski is charged with Murder in the First Degree – Intentional – While Committing the Crime of Aggravated Robbery, and he is also charged with second degree intentional murder. Earlier this month the State and Mr. Zielinski entered into a plea agreement whereby Mr. Zielinski agreed to enter a plea of guilty to second degree intentional murder in exchange for dismissal of the first degree murder charge and for an agreed upon prison sentence that is shorter than what is normally imposed for second degree intentional murder.
>
> As a condition to that plea agreement, Mr. Zielinski agreed to testify at the trial of Melissa Zielinski and to do so truthfully and consistently with the facts that he provided at the time of his plea. If Mr. Zielinski fails to do so, his guilty plea will stand, but the State can withdraw their agreement to the agreed upon prison sentence for second degree murder.

At the end of direct examination, the State asked Nicholas about his plea agreement. The State asked Nicholas if he received "a reduction in [his] sentence, somewhere between 14 and 39 percent, as a condition of . . . coming to testify today." Nicholas agreed.

On cross-examination, defense counsel questioned Nicholas about his motivation for accepting the plea agreement, emphasizing the amount of time that he was in custody before taking the deal and that he had a young child at home. Defense counsel also impeached Nicholas with a different letter he had written to his girlfriend that contained prior inconsistent statements.

Defense counsel then questioned Nicholas about his plea agreement. After reiterating that Nicholas had spent seventeen months in custody before accepting the deal, the following exchange occurred:

> Q: And so you think about all of that information, the fact that you were responsible for somebody's life, you aren't seeing your family, you've been in custody, you're calibrating your own fact that you felt like you were justified at some point, and the State says they're charging you with first degree murder. That's a big deal, isn't it, Mr. Zielinski?
> A: Yeah.
> Q: And so we're not talking about months, we're not talking about sentences. We're talking about the idea that—the fact that you were charged with first degree murder scared the dickens out of you, right?
> A: Right. Of course.
> . . .
> Q: And so you're offered a plea to a lesser charge, correct?
> A: Yeah.
> . . .
> Q: And the reason why you take advantage of that plea is because it avoids the first degree murder charge, right?
> A: And trial altogether, right.

In closing argument, defense counsel emphasized that the State's case relied heavily on Nicholas's testimony, which the defense characterized as "inherently suspect" because

he "got a double deal" by pleading guilty to a lesser charge and receiving a lesser sentence. Defense counsel argued there was no evidence corroborating Nicholas's testimony, opining that "the only one who puts her in the room and says she did this and says it was a robbery *is the guy who's been given a bunch of benefits* to say that she was there." (Emphasis added.)

The jury found Zielinski guilty of first-degree intentional murder while committing an aggravated robbery, second-degree intentional murder, and second-degree felony murder, all premised on aiding and abetting theories of criminal liability. The district court entered convictions for both first-degree intentional felony murder and second-degree intentional murder. The district court then sentenced Zielinski to life in prison without the possibility of release for first-degree intentional felony murder.

Postconviction Proceedings

After Zielinski filed a direct appeal, we granted her motion to stay her direct appeal to allow for postconviction proceedings in the district court. Zielinski then filed a timely petition for postconviction relief. In her petition, Zielinski alleged that trial counsel was (1) ineffective in failing to timely challenge the T-Mobile warrant for her cell phone carrier data for lack of probable cause, and (2) ineffective in failing to challenge the portion of the house warrant that authorized police to conduct a forensic examination on any cell phone found in the house. The district court, without granting an evidentiary hearing, denied Zielinski's petition for postconviction relief. The district court concluded that the two warrants challenged by Zielinski were valid and that there was not a reasonable probability that the jury would not have convicted her had the evidence been suppressed.

We subsequently granted Zielinski's motion to reinstate her direct appeal and consolidate it with the appeal of the district court's denial of her postconviction petition.

ANALYSIS

Zielinski presents several issues for decision that relate both to her trial and conviction and to her subsequent petition for postconviction relief. We first address Zielinski's claims relating to her trial and convictions. We then turn to Zielinski's claim relating to her petition for postconviction relief.

I.

We begin with Zielinski's claim that the police violated her Fourth Amendment rights when she was stopped, transported in a squad car to her home, and questioned for around an hour. The district court denied Zielinski's motion to suppress evidence obtained as a result of this questioning, finding that police questioning of Zielinski was lawful under *Terry v. Ohio*, 392 U.S. 1 (1968). In our review of pre-trial motions to suppress, "we review the district court's factual findings for clear error and its legal determinations de novo." *State v. Leonard*, 943 N.W.2d 149, 155 (Minn. 2020) (citing *State v. Bourke*, 718 N.W.2d 922, 927 (Minn. 2006)).

The United States and Minnesota Constitutions protect persons from unreasonable searches and seizures by government officials. U.S. Const. amend. IV; Minn. Const. art. I, § 10. Under Minnesota law, a seizure by law enforcement occurs when a reasonable person in the defendant's shoes would not feel free to leave. *State v. Askerooth*, 681 N.W.2d 353, 362 (Minn. 2004). Certain temporary seizures of a person, however, may be constitutionally permissible under both the Fourth Amendment and Article I, Section 10 of

the Minnesota Constitution absent probable cause if the officer has a reasonable, articulable suspicion that the person is involved in criminal activity. *Terry*, 392 U.S. at 27; *Askerooth*, 681 N.W.2d at 363 (concluding that the *Terry* framework applies to traffic stops under art. I, § 10 of the Minnesota Constitution). Reasonable suspicion requires "at least a minimal level of objective justification for making the stop." *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008) (quoting *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000)). To be reasonable, an investigative detention must be limited in scope and duration to its initial justification. *United States v. Brignoni-Ponce*, 422 U.S 873, 881 (1975); *State v. Wiegand*, 645 N.W.2d 125, 136 (Minn. 2002).

Zielinski argues that the police detention of her based only on reasonable suspicion was an unconstitutional seizure that went beyond the limited intrusions contemplated by *Terry*. Zielinski argues the district court should have excluded the evidence obtained as a result of the unlawful detention—a buccal swab and statements that Zielinski did not leave Sandstone on the day of the crime and was not involved—and that, because the evidence was erroneously admitted, she is entitled to a new trial. We disagree.

We need not decide whether the district court's findings were erroneous because, even assuming the police questioning of Zielinski violated the Fourth Amendment and Article I, Section 10 of the Minnesota Constitution, any error in admitting evidence obtained as a result of the violation was harmless. *See State v. Juarez*, 572 N.W.2d 286, 292 (Minn. 1997) (noting that a conviction will stand if "the error is harmless beyond a reasonable doubt"). A constitutional error must be harmless beyond a reasonable doubt. *State v. McNeilly*, 6 N.W.3d 161, 189 (Minn. 2024). An error is harmless beyond a

reasonable doubt only if the verdict was "surely unattributable to the error." *State v. Horst*, 880 N.W.2d 24, 37 (Minn. 2016) (citation omitted) (internal quotation marks omitted). For the reasons below, we conclude that the jury's verdict here was "surely unattributable" to the claimed error.

Zielinski contends that admission of the buccal swab could have impacted the verdict because it matched Zielinski's DNA to the DNA found on the SentrySafe brand safe stolen from Henderson's home. There was independent evidence, however, tying Zielinski to the safe. The jury heard testimony from J.P. that Zielinski brought a SentrySafe brand safe to a friend's home and asked him to help her open it. The jury also heard testimony from J.W. that Zielinski asked another friend to hold onto a large item covered in plastic bags, which once uncovered, was a SentrySafe brand safe that matched the serial number of the safe manual found in Henderson's bedroom.

Zielinski also asserts that the statements made to police during the questioning could have impacted the jury's verdict because the State used the statements to inculpate her. Zielinski's statements to police—that she did *not* leave Sandstone on the day of the crime and was *not* involved in the crime—did not include anything directly inculpatory. Although the State did use Zielinski's statements to impeach her credibility, there was substantial evidence supporting Zielinski's guilt such that the jury's verdict was "surely unattributable" to any error in admitting these statements. The State presented testimony from Nicholas that Zielinski fully participated in the crime, location data from Nicholas's phone showing that he traveled to Sandstone before and after the crime, testimony that

Zielinski had a motive to commit robbery, and testimony that Zielinski had possession of the SentrySafe brand safe missing from Henderson's home.

On this record, we conclude that, assuming without deciding the district court erred in admitting the statements and DNA evidence, the jury's verdict was surely unattributable to the error. Thus, any claimed error was harmless beyond a reasonable doubt.

II.

We now turn to Zielinski's argument that the district court violated the Sixth Amendment when it restricted the scope of her cross-examination of Nicholas. The district court excluded a letter Nicholas had written about the circumstances surrounding his plea agreement and limited questioning regarding (1) the exact reduction in sentence Nicholas received in exchange for testifying at Zielinski's trial and (2) the possible life sentence he may have received absent his plea agreement. "[W]e apply de novo review when determining whether the admission of evidence violates a defendant's rights under the Confrontation Clause." *State v. Sutter*, 959 N.W.2d 760, 764 (Minn. 2021) (citing *State v. Caulfield*, 722 N.W.2d 304, 308 (Minn. 2006)).

The Sixth Amendment Confrontation Clause provides that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." U.S. Const. amend. VI.[4] Among the rights protected by this clause is the right to cross-examination—"a 'functional' right designed to promote reliability in the

[4] Similarly, Article I, Section 6, of the Minnesota Constitution provides that "[t]he accused shall enjoy the right . . . to be confronted with the witnesses against him." Minn. Const. art. I, § 6. We apply the same analysis to both the federal and state confrontation clauses. *State v. Holliday*, 745 N.W.2d 556, 564 (Minn. 2008).

truth-finding functions of a criminal trial." *Kentucky v. Stincer*, 482 U.S. 730, 737 (1987). But the right to cross-examination is not unlimited.

A defendant's rights under the Confrontation Clause are "not violated by limitations on cross-examination so long as the jury is presented with sufficient information from which to appropriately draw inferences as to the witness's reliability." *State v. Ferguson*, 742 N.W.2d 651, 657 (Minn. 2007). District court judges may impose reasonable limits on cross-examination based on concerns about "harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant." *Delaware v. Van Arsdall*, 475 U.S. 673, 679 (1986). And we have upheld restrictions on a defense counsel's ability to question co-defendants about the specific number of years or months by which their sentences were reduced after pleading guilty. *See, e.g.*, *State v. Yang*, 774 N.W.2d 539, 553 (Minn. 2009); *State v. Dobbins*, 725 N.W.2d 492, 505–06 (Minn. 2006).

In our recent decision, *State v. Gilleylen*, we addressed an analogous situation to the one presented here, where a defendant was prohibited from questioning a co-defendant about the fact that he faced life imprisonment before accepting a plea agreement that reduced his sentence to 5 years.[5] 993 N.W.2d 266, 279 (Minn. 2023). There, the district court allowed the defendant to describe the co-defendant's deal as a "95 percent discount" and a "significant discount or agreement" and to identify that the co-defendant was originally facing a first-degree murder charge. *Id.* And defense counsel was able to argue

[5] We note that the district court did not have the benefit of our decision in *Gilleylen*, as the opinion was not published until after the district court issued its order below.

in closing argument that it was a "[h]ell of a deal for first-degree murder." *Id.* at 280. On the facts presented, we held that the "information presented to the jury to evaluate [the co-defendant's] reliability was sufficient" and that the district court's restrictions on cross-examination of the defendant did not violate the Sixth Amendment.[6] *Id.* at 280.

In this case, the district court prohibited Zielinski from cross-examining Nicholas on his recent letter that explained his plea agreement and, consequently, prohibited her from cross-examining Nicholas on the potential prison sentences he faced with and without his plea agreement. Zielinski argues that Nicholas's letter to her contained important facts relating to his motives, biases, and credibility—namely, that he "couldn't risk getting life" and "couldn't risk never coming home." Zielinski asserts that questioning Nicholas regarding the statements in this letter would not be asking about his sentence under the plea agreement but simply his own statements regarding his reasons for testifying.

We need not decide whether the district court's restrictions on the cross-examination of Nicholas violated the Sixth Amendment right to cross-examination because, even assuming without deciding that the district court erred, any error was harmless beyond a reasonable doubt. As discussed above, "[a]n error is harmless beyond a reasonable doubt '[i]f the verdict actually rendered [is] surely unattributable to the error.' " *Yang*, 774 N.W.2d at 553 (second alteration in original) (quoting *Juarez*, 572 N.W.2d at 292). In

---

[6] We have declined to adopt a bright-line rule that a restriction on a defendant's right to cross-examine a witness about their potential prison sentences is *never* error. *See Ferguson*, 742 N.W.2d at 657–58. Rather, as we noted in *Gilleylen*, whether a limitation on a defendant's right to cross-examine a witness regarding the specifics of their plea agreement is a constitutional violation depends on the particular facts of the case. *Gilleylen*, 993 N.W.2d at 278.

analyzing harmless error when a district court has restricted a defendant's ability to cross-examine a witness, we "assum[e] that the damaging potential of the cross-examination [is] fully realized." *Van Arsdall*, 475 U.S. at 684. And we consider factors including: "the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and, of course, the overall strength of the prosecution's case." *Id*.

Assuming without deciding that the district court's restrictions on the cross-examination of Nicholas violated the Sixth Amendment, we conclude the jury's verdict was surely unattributable to the error because of the extent of cross-examination that was permitted. Notwithstanding the district court's restrictions, Zielinski was still able to cross-examine Nicholas on his state of mind and motivations for accepting the plea deal. Zielinski also effectively questioned him on prior inconsistent statements he had made to his girlfriend about the details of the crime. In addition, the district court also provided the jury a sanitized version of the plea agreement, which included information regarding the percentage reduction in the sentence for second-degree murder that Nicholas received. Importantly, Zielinski also cross-examined Nicholas on the fact he was facing a *first-degree murder* charge, a more serious charge, before accepting the plea agreement. The jury was provided meaningful information on Nicholas's plea agreement in the cross examination that was permitted. To the extent that Nicholas's letter—or a redacted version of it—would have provided more details, we conclude that the damaging potential of this cross-examination would not have been any greater because the information would have

been cumulative.[7] The jury was informed of Nicholas's bias and motivations for testifying, even though no explicit testimony was given regarding a potential life sentence. The jury had sufficient information to adequately assess Nicholas's credibility from the district court's version of the agreement and Zielinski's thorough cross-examination.

On these facts, assuming without deciding that the district court's restrictions on the cross-examination of Nicholas were error, we conclude that the jury's verdict was "surely unattributable" to the error. *See Yang*, 774 N.W.2d at 553. Therefore, we hold that any claimed error was harmless beyond a reasonable doubt.

III.

We next address Zielinski's claim that the district court erred by entering a conviction for both first-degree intentional murder and second-degree intentional murder. The State concedes that the district court erred in this respect. We agree.

Under Minnesota law, a defendant "may be convicted of either the crime charged or an included offense, but not both." Minn. Stat. § 609.04, subd. 1 (2022). Lesser-included offenses include a lesser degree of the same crime, and second-degree murder is an included offense of first-degree murder. *Id*., subd. 1(1); *Spann v. State*, 740 N.W.2d 570, 573–74 (Minn. 2007). Accordingly, "when a defendant is found guilty of both first-degree and second-degree murder, [they] may be convicted of only one or the other, but not both." *State v. Hallmark*, 927 N.W.2d 281, 300 (Minn. 2019).

[7] For instance, Zielinski was not allowed to question Nicholas about his written statement that he "couldn't risk getting life" imprisonment. Zielinski was, however, allowed to question Nicholas on the fact that he was charged with first-degree murder before he pled to second-degree murder.

Because Zielinski could not be convicted of both first-degree and second-degree murder, the district court erred by entering both convictions. *See id.* We therefore reverse Zielinski's conviction for second-degree intentional murder and remand to the district court with instructions to vacate that conviction. The jury verdict finding Zielinski guilty of second-degree intentional murder, however, remains intact. *See State v. Earl*, 702 N.W.2d 711, 724 (Minn. 2005) ("[J]ury verdicts on [vacated] counts remain in force.").

IV.

In a pro se supplemental brief, Zielinski also raises additional claims related to (1) her right to a speedy trial; (2) prosecutorial misconduct; and (3) ineffective assistance of trial counsel. We address each claim in turn.

A.

To begin, Zielinski alleges that her rights to a speedy trial under the federal and state constitutions were denied. *See* U.S. Const. amend. VI; Minn. Const. art. 1, § 6. In evaluating whether a defendant has been denied the right to a speedy trial, we utilize the four-factor balancing test announced by the United States Supreme Court in *Barker v. Wingo*, 407 U.S. 514 (1972). *State v. Osorio*, 891 N.W.2d 620, 627 (Minn. 2017). The four factors we consider are: "(1) the length of the delay; (2) the reason for the delay; (3) whether the defendant asserted his or her right to a speedy trial; and (4) whether the delay prejudiced the defendant." *Id.* (citation omitted) (internal quotation marks omitted).

After trial counsel made a speedy trial demand in October 2020, Zielinski's trial was originally set for January 2021 due to complications from the COVID-19 pandemic, a full court calendar, and the additional preparation required for a first-degree murder trial.

The district court found that good cause existed to set a trial date outside of the 60-day speedy trial deadline because of this "perfect storm" of issues. *See* Minn. R. Crim. P. 11.09. And after Zielinski retained private counsel, the trial date was continued further to allow for pretrial motions. After a second speedy trial demand on September 8, 2021, the trial date was set for January 10, 2022, after the district court again found good cause existed for extending the trial date past the 60-day deadline. The district court noted that this date was within the 120-day limit allowed under Minn. R. Crim. P. 11.09, and Zielinski's release from custody prior to trial was not required.

The trial delays in this case were caused both by the pandemic, which does not weigh against the State, and by Zielinski's pretrial motions, which weighs against finding a violation of Zielinski's speedy trial right. *See State v. Paige*, 977 N.W.2d 829, 840 (Minn. 2022) (finding trial delays caused by COVID-related orders did not weigh against the State in *Barker* analysis); *State v. DeRosier*, 695 N.W.2d 97, 109 (Minn. 2005) (finding no denial of right to speedy trial, in part, because defendant's motions were significant reason for delay). And while Zielinski did assert her right to a speedy trial, she has not demonstrated any prejudice caused by the delays in her trial over the course of a year. *See Barker*, 407 U.S. at 530–32. For these reasons, we conclude that Zielinski's claim that her right to a speedy trial was denied does not warrant reversal for a new trial.

B.

Next, Zielinski argues that the prosecution engaged in prosecutorial misconduct by (1) using "I" and "we" statements during closing arguments, (2) misstating the evidence in

opening and closing arguments, and (3) improperly giving an opinion about witness credibility during closing arguments.

Because Zielinski did not object to the prosecutor's statements at trial, we review the statements for plain error. *State v. Ramey*, 721 N.W.2d 294, 299 (Minn. 2006). An error is plain if it is clear or obvious; in other words, if the error "contravenes case law, a rule, or a standard of conduct." *Id.* at 302. Where the alleged prosecutorial misconduct occurred during a closing argument, this court "look[s] to the closing argument as a whole, rather than to selected phrases and remarks." *State v. McCray*, 753 N.W.2d 746, 751 (Minn. 2008) (citation omitted) (internal quotation marks omitted).

We first address Zielinski's argument that the prosecutor improperly used "we" and "I" statements during closing argument. The State did repeatedly use "I" and "we" statements, such as "we call this consciousness of guilt" and "I'm going to ask you to apply the evidence." While the use of "we" can improperly align the prosecutor with the jury, it is not always prosecutorial misconduct. *Nunn v. State*, 753 N.W.2d 657, 663 (Minn. 2008) (finding that prosecutor's use of "we" was not misconduct because the prosecutor was presenting all proper inferences that could be drawn from the evidence). Here, the prosecutor's use of "we" and "I" in closing arguments followed explanations of the evidence. "Although this use of 'we' may align the prosecutor with the jurors, it does not necessarily exclude the defendant because the 'we' could reasonably be interpreted" as referring to everyone in the courtroom during the trial. *Id.* We conclude that, on this record, the prosecutor's use of "we" and "I" when describing the evidence presented at trial was not misconduct.

Zielinski next asserts that the prosecutor misstated the law and facts in the opening statement and closing argument. Zielinski objects to statements such as, "if not for what Melissa Zielinski did, there would be no robbery, there would be no Nicholas Zielinski with a gun, and Karl Henderson would be alive." Zielinski also objects to the State's assertion that Zielinski was the orchestrator of the robbery and murder. "Prosecutors are allowed to argue all reasonable inferences from evidence in the record." *State v. Smith*, 876 N.W.2d 310, 335 (Minn. 2016) (citation omitted) (internal quotation marks omitted). Here, we conclude the prosecutor argued reasonable inferences from the evidence admitted, which does not constitute plain error. The statements Zielinski objects to are taken out of context and are reasonable arguments when viewed in the context of with the entire argument.

Lastly, Zielinski argues that the prosecutor improperly vouched for Nicholas's credibility during closing argument, specifically calling his testimony "credible and truthful." We have held that, "[a]lthough prosecutors may not personally endorse witnesses, the State is free to argue that a particular witness is credible." *State v. Pendleton*, 759 N.W.2d 900, 912 (Minn. 2009) (citing *State v. Fields*, 730 N.W.2d 777, 785 (Minn. 2007)). Here, the prosecutor did not personally endorse Nicholas as a witness. He simply argued that his testimony was credible. The prosecutor's statement does not constitute plain error.

We conclude that the alleged instances of prosecutorial misconduct are not plainly erroneous, and accordingly, do not entitle Zielinski to a new trial.

C.

Zielinski's final pro se claim alleges several instances of ineffective assistance of counsel, separate from those raised in her petition for postconviction relief. Zielinski supports these claims with four affidavits filed in an addendum. The State moved to strike the addendum as outside of the appellate record.

We decline to reach the merits of Zielinski's ineffective assistance of counsel claims because they rely on documents outside of the appellate record, and we grant the State's motion to strike. *See State v. Reek*, 942 N.W.2d 148, 165 (Minn. 2020); *State v. Manley*, 664 N.W.2d 275, 286 (Minn. 2003). Notwithstanding our decision, Zielinski may attempt to develop and present such claims in an additional postconviction petition, if she chooses to do so.

V.

We now turn to Zielinski's final claim that the district court abused its discretion when it summarily denied her petition for postconviction relief alleging two claims of ineffective assistance of trial counsel. She argues that, at a minimum, an evidentiary hearing was warranted based on the facts alleged in her petition. The State argues that the allegations in Zielinski's petition are insufficient to justify an evidentiary hearing.

The evidentiary hearing requirement for postconviction proceedings is set forth in Minn. Stat. § 590.04 (2022), which states, in relevant part:

> Unless the petition and the files and records of the proceeding conclusively show that the petitioner is entitled to no relief, the court shall promptly set an early hearing on the petition and response thereto, and promptly determine the issues, make findings of fact and conclusions of law with respect thereto, and either deny the petition or enter an order granting appropriate relief.

Accordingly, a district court must hold a hearing unless it conclusively determines that the facts alleged in the postconviction petition, if proved, would be legally insufficient to entitle the petitioner to any relief. *Spann*, 740 N.W.2d at 572; *Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007). In reviewing a district court's summary denial of relief without an evidentiary hearing under Minn. Stat. § 590.04, "we have an obligation to extend a broad review of both questions of law and fact." *State v. Nicks*, 831 N.W.2d 493, 503 (Minn. 2013) (citation omitted) (internal quotation marks omitted). Overall, we review a denial of a petition for postconviction relief, including a denial of relief without an evidentiary hearing, for an abuse of discretion. *Id.* A district court abuses its discretion when it "exercise[s] its discretion in an arbitrary or capricious manner, base[s] its ruling on an erroneous view of the law, or ma[kes] clearly erroneous factual findings." *Reed v. State*, 793 N.W.2d 725, 730 (Minn. 2010) (citation omitted).

To succeed on a claim of ineffective assistance of counsel, a petitioner must demonstrate that (1) counsel's performance was deficient and (2) the deficient performance prejudiced her defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Applied here, this standard places the burden on Zielinski to show "both that counsel's performance was not objectively reasonable and, but for counsel's errors, the result of the proceeding would have been different." *Wright v. State*, 765 N.W.2d 85, 91 (Minn. 2009). Accordingly, to receive an evidentiary hearing on an ineffective assistance of counsel claim, Zielinski "must allege facts that, if proven by a fair preponderance of the evidence, would satisfy the two-prong test set forth in *Strickland*." *Chavez-Nelson v. State*, 948 N.W.2d 665, 671

(Minn. 2020) (citation omitted) (internal quotation marks omitted). "A court may address the two prongs of the test in any order and may dispose of the claim on one prong without analyzing the other." *Schleicher v. State*, 718 N.W.2d 440, 447 (Minn. 2006).

Zielinski alleges that her trial counsel was ineffective because counsel (1) failed to timely challenge the T-Mobile warrant for her cell phone carrier records on probable cause grounds and (2) failed to challenge the portion of the house warrant that authorized the search of any cell phone found in the house on the additional grounds of overbreadth and a lack of particularity. The district court rejected both claims without a hearing. For the reasons stated below, we conclude that the district court did not abuse its discretion in denying Zielinski's petition for postconviction relief without an evidentiary hearing.

A.

We first address whether the district court abused its discretion by concluding Zielinski did not allege facts that, if proven at an evidentiary hearing, established that trial counsel's performance fell below an objective standard of reasonableness as to the T-Mobile warrant. In her petition, Zielinski alleged that her trial counsel failed to raise a timely probable cause challenge to the T-Mobile warrant and that her counsel's untimely motion was denied as forfeited. Zielinski argued that trial counsel's performance fell below an objective standard of reasonableness because the T-Mobile warrant lacked probable cause connecting her to the crime and establishing that the phone number listed on the warrant belonged to her. In its postconviction order, the district court concluded that the T-Mobile warrant was supported by ample probable cause sufficient to negate an inference of ineffective assistance of counsel. Zielinski's claim on appeal that the district

court's conclusion is an abuse of discretion is without merit because the warrant was supported by probable cause.

A warrant is supported by probable cause if, considering the totality of the circumstances, there is a " 'fair probability that contraband or evidence of a crime will be found in a particular place.' " *Onyelobi v. State*, 932 N.W.2d 272, 281 (quoting *Illinois v. Gates*, 462 U.S. 213, 238 (1983)). On review, we determine "whether there was a substantial basis to conclude that probable cause existed." *State v. Holland*, 865 N.W.2d 666, 673 (Minn. 2015) (citation omitted) (internal quotation marks omitted). The "inquiry is limited to the information presented in the affidavit supporting the warrant." *Id.* (citation omitted).

Here, considering the four corners of the search warrant application, the warrant contained numerous details from identifiable sources that showed Nicholas was involved in the murder, a woman resembling Zielinski was identified by Henderson's father at the crime scene, Nicholas stopped in Sandstone (where Zielinski lived) before and after the murder, two witnesses close to Nicholas stated Zielinski would have been involved in any incident he was involved in, and Nicholas called Zielinski right before the crime. The totality of the circumstances in the T-Mobile warrant also supports the reasonable inference that the officer used public records databases to identify Zielinski's phone number.

On this record, the district court did not abuse its discretion in concluding that, even if trial counsel had raised a timely challenge to the warrant, such a challenge would have

failed and, accordingly, counsel was not ineffective for failing to assert that challenge.[8] Likewise, we conclude that the district court did not abuse its discretion in denying the petition for postconviction relief without an evidentiary hearing. Because the facts alleged in her postconviction petition, even if true, conclusively show that she is not entitled to relief, Zielinski did not meet her burden to obtain an evidentiary hearing as to her ineffective assistance claim regarding the T-Mobile warrant.

B.

We next address Zielinski's ineffective assistance of counsel claim relating to the house warrant. Before trial, Zielinski's trial counsel moved to suppress the evidence obtained from the house warrant, including evidence found on her cell phone, arguing the warrant was not supported by probable cause. In her petition for postconviction relief, Zielinski alleged that counsel was deficient in failing to raise a *particularity challenge*[9] to the portion of the house warrant that authorized police to seize and search—without limitation—any mobile devices found in her home. This warrant resulted in law

---

[8] Because we conclude that the facts alleged in Zielinski's petition on this claim, if proven, conclusively show that she failed to meet the performance prong of *Strickland*, we need not address whether Zielinski was prejudiced by trial counsel's performance (*Strickland*'s second prong). *Schleicher*, 718 N.W.2d at 447.

[9] The Fourth Amendment to the United States Constitution, and its equivalent in the Minnesota Constitution, mandates that "no Warrants shall issue, but upon probable cause . . . and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. amend. IV; Minn. Const. art. 1, §10. If a search is conducted pursuant to a warrant that is not particular—in other words, does not adequately describe the places or things to be searched with specificity—the search is unconstitutional. *Massachusetts v. Sheppard*, 468 U.S. 981, 988 n.5 (1984). "[T]he particularity requirement mandates a case-by-case examination." *State v. Sardina-Padilla*, 7 N.W.3d 585, 601 (Minn. 2024).

enforcement seizing and conducting a full forensic examination on Zielinski's LG phone located in her home, which resulted in the discovery of incriminating evidence. Zielinski argued that a particularity challenge would have prevailed,[10] and important inculpatory evidence would have therefore been excluded. She argued that without this evidence there is a reasonable probability that the result of her trial would have been different. The State countered that trial counsel's decision to not raise a particularity challenge to the house warrant was a matter of trial strategy not reviewable on appeal and that the allegations in Zielinski's petition for postconviction relief did not satisfy the prejudice prong. In its postconviction order, the district court concluded that this ineffective assistance of counsel claim failed on both *Strickland* prongs. On the performance prong, without any analysis, the court stated in a conclusory fashion that trial counsel's failure to "assert additional challenges" to the house warrant was not deficient performance. On the prejudice prong, the district court detailed the extensive evidence at trial of Zielinski's guilt and concluded that there was not a reasonable probability that the outcome would have been different had the evidence been suppressed.

While we have serious concerns with the district court's implicit determination at the postconviction stage that a search warrant that authorizes the wholesale search of all

---

[10] Zielinski's particularity argument in her petition for postconviction relief relied on two nonprecedential cases from the court of appeals, as well as non-binding cases from other states, which the district court found distinguishable and unpersuasive as nonprecedential authority. Zielinski argued that some courts have found warrants allowing police to conduct full forensic examinations of cell phones—essentially allowing the police to search all data present on the phones—to violate the Fourth Amendment's particularity requirement. *See, e.g.*, *Richardson v. State*, 282 A.3d 98, 119 (Md. 2022); *People v. Coke*, 461 P.3d 508, 516 (Colo. 2020); *State v. Wilson*, 884 S.E.2d 298, 300–01 (Ga. 2023).

cell phones found in Zielinski's home without *any* temporal or substantive limitations is valid,[11] we need not decide whether Zielinski alleged facts that, if proven, establish that her trial counsel's performance was deficient because we agree with the district court that her petition conclusively failed to allege facts that would satisfy the prejudice prong. Even if we assume that counsel's performance was constitutionally deficient, the record conclusively shows that Zielinski cannot meet the second *Strickland* requirement, which requires that she show a reasonable probability that "but for [trial counsel's] errors, the result would have been different." *Leake*, 737 N.W.2d at 536 (citation omitted) (internal quotation marks omitted).

Here, the house warrant authorized and led to the search of Zielinski's cell phone, which yielded three pieces of inculpatory evidence introduced at trial: a text message exchange with her son about "going to muscle some money"; internet searches about SentrySafe brand safes and a news article about the murder; and a photo with geolocation data placing Zielinski near the crime scene around the time of the murder. Zielinski argues

---

[11] The United States Supreme Court has recognized that modern cell phones present a unique particularity concern, because cell phones contain "a digital record of nearly every aspect of [persons'] lives—from the mundane to the intimate." *Riley v. California*, 573 U.S. 373, 393–95 (2014). Although we have never had occasion to address the particularity requirement in a search of a cell phone, we recently discussed the particularity requirement in an analogous context of a search of social media records. *Sardina-Padilla*, 7 N.W.3d at 598–99. In that case, we held that the temporal limitation included in the search warrant, which limited the search to 3 months of social media activity, was sufficiently particular given "the circumstances of the case, the nature of the crimes under investigation, and whether the officers could have provided a more precise description of the evidence sought." *Id.* at 602. We note that the district court did not have the benefit of this relevant decision when deciding either the suppression motion or the petition for postconviction relief in this case.

that this evidence from her cell phone was the strongest evidence corroborating Nicholas's accomplice testimony, including her motive and location at the scene of the murder, and that without this evidence Nicholas's accomplice testimony is insufficiently corroborated.

Zielinski's argument is unavailing for three reasons: the State presented other compelling evidence of her guilt; the other evidence established the same key facts as the cell phone evidence, including motive and presence at the scene; and, even without the cell phone evidence, Nicholas's accomplice testimony would have been sufficiently corroborated.

First, overwhelming evidence showed Zielinski's active participation in the robbery and fatal shooting of Henderson at his home. This evidence included Nicholas's first-hand testimony that Zielinski asked him to help her rob Henderson and told him to bring a gun. He testified that he and Zielinski both traveled from Sandstone to Henderson's home, entered the home together, and that he shot Henderson as they attempted to rob him. Nicholas further testified that Zielinski told him to take Henderson's safe, that he later threw it into a ditch, and that he later told Zielinski where she could find it. Additionally, testimony at trial established that Zielinski needed money; her DNA was found on the safe stolen from Henderson's home; Zielinski later broke into the safe with a friend and then paid that friend $3,000 in cash; and Zielinski asked another friend to hold on to a large, concealed item that turned out to be Henderson's stolen safe.

Importantly, the State also presented independent evidence that established the same key facts that the cell phone evidence established. Even without the text message exchange Zielinski had with her son, other evidence of motive was introduced, including that

Zielinski needed money to buy a home; that she had Henderson's name and number; that Henderson regularly kept at least $50,000 in a safe in his home; and that her plan with Nicholas was to rob Henderson. Without the evidence of the internet search about SentrySafe brand safes, the State introduced even stronger evidence tying her to the safe: her DNA was found on the safe stolen from Henderson's home, and her friend helped her break into the safe. And, even if the State had not been able to introduce the photo with geolocation data placing Zielinski near the crime scene around the time of the murder, the State introduced arguably more persuasive evidence establishing her location: the cell phone location data from the T-Mobile warrant showed Zielinski's cell phone traveling *with* Nicholas's phone to the murder scene at the time of the murder and returning *together*. The State's case—even without these three pieces of evidence—overwhelmingly proved Zielinski's guilt.

Finally, a careful review of the record shows that Zielinski's contention that Nicholas's accomplice testimony would have been uncorroborated without this evidence is without merit. Nicholas's testimony was sufficiently corroborated by other strong, independent evidence that was "sufficient to restore confidence in the truthfulness of the accomplice's testimony," even without the evidence from her cell phone. *State v. Clark*, 755 N.W.2d 241, 256 (Minn. 2008). "Corroborative evidence need not, standing alone, be sufficient to support a conviction, but it must 'affirm the truth of the accomplice's testimony and point to the guilt of the defendant in some substantial degree.' " *State v. Reed,* 737 N.W.2d 572, 584 (Minn. 2007) (quoting *State v. Sorg*, 144 N.W.2d 783, 786 (1966)). Some of the corroborative evidence that points to Zielinski's guilt and affirms the

truthfulness of Nicholas's testimony includes: phone location data from Nicholas's cell phone showing that he traveled to Sandstone before and after the murder; the location data from the T-Mobile warrant that showed Zielinski's cell phone traveling with Nicholas's phone to the murder scene at the time of the murder and then returning to Sandstone; Zielinski's DNA on Henderson's safe; and the testimony from Henderson's father that he saw a man and a woman leaving his home with a safe when his son was killed.

We conclude that, had the evidence obtained in the house warrant been suppressed, there is not a reasonable probability that the result of the jury trial would have been different because of the other overwhelming evidence of Zielinski's guilt. The remaining evidence compellingly showed Zielinski's direct involvement in Henderson's robbery and murder, established the same facts as the evidence Zielinski argues should have been excluded, and sufficiently corroborated the accomplice's testimony. For these reasons, we conclude Zielinski failed to meet her burden of showing a reasonable probability that the verdict at trial would have been different but for her trial counsel's deficient performance. She did not allege facts "sufficient to undermine confidence in the [trial's] outcome." *Strickland*, 466 U.S. at 694. Because the record conclusively shows that Zielinski is entitled to no relief, the district court did not abuse its discretion in declining to hold an evidentiary hearing on Zielinski's postconviction petition.

* * *

Based on the record before us, we conclude that the facts alleged in Zielinski's petition, if proven, conclusively show that she is not entitled to postconviction relief.

Accordingly, we hold that the district court did not abuse its discretion in denying Zielinski's petition for postconviction relief without holding an evidentiary hearing.[12]

CONCLUSION

For the foregoing reasons, we affirm Zielinski's conviction for first-degree intentional murder and the district court's denial of Zielinski's petition for postconviction relief. We reverse Zielinski's conviction for second-degree intentional murder and remand to the district court to vacate the conviction on that count.

Affirmed in part, reversed in part, and remanded.

HENNESY, J., not having been a member of the court at the time of submission, took no part in the consideration or decision of this case.

---

[12] Zielinski also argues the cumulative effect of the claimed errors warrants reversal of her conviction and remand for a new trial, citing *State v. Bustos*, 861 N.W.2d 655, 665 (Minn. 2015). The circumstances presented here are distinguishable from *Bustos*, which dealt with "multiple plain errors" that were "particularly serious," including erroneous limitations of defense counsel's closing argument and improper jury instructions on the definition of an element of the offense. *Id.* The court noted that the effect of these errors "disarmed defense counsel of an indispensable tool during a critical stage of the proceedings and broadened the definition of an element of the offense to include noncriminal conduct." *Id.* These significant errors magnified each other to a degree that "seriously affected the fairness, integrity, or public reputation of the judicial proceedings." *Id.* But in this case, even when evaluating the potential Fourth Amendment and Sixth Amendment violations together, any assumed errors are harmless for the same reasons stated above and did not deny Zielinski a fair trial.