STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0586

State of Minnesota,
Respondent,

vs.

Janell Al McCarter,
Appellant.

Filed April 21, 2025
Affirmed
Larkin, Judge

Ramsey County District Court
File No. 62-CR-21-2775

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

John J. Choi, Ramsey County Attorney, Alexandra Meyer, Assistant County Attorney, St. Paul, Minnesota (for respondent)

John Arechigo, Arechigo & Stokka, P.A., St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Johnson, Judge; and Schmidt, Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellant challenges his convictions for first-degree criminal sexual conduct, attempted first-degree criminal sexual conduct, and second-degree criminal sexual conduct, arguing that the evidence at trial was insufficient to sustain the underlying guilty

verdicts. He alternatively argues that his convictions should be reversed and remanded for a new trial because he received ineffective assistance of counsel. Because the evidence presented at trial was sufficient to support the district court's findings of guilt, and because appellant's trial counsel provided objectively reasonable representation, we affirm.

FACTS

In May 2021, respondent State of Minnesota charged appellant Janell Al McCarter with first-degree criminal sexual conduct, attempted first-degree criminal sexual conduct, and second-degree criminal sexual conduct. On August 22, 2022, McCarter waived his right to a jury trial, and a bench trial ensued.[1]

On the afternoon of May 12, 2021, 16-year-old TT was with her boyfriend TG. TG suggested that they hang out with his "brother," McCarter. TT drove to McCarter's house in St. Paul. TT, TG, and McCarter chatted and smoked marijuana. McCarter stated that he had to make a run and asked TT if he could use her car. She declined, and McCarter left.

After McCarter left, TT and TG became intimate. TT noticed that TG's "vibe was different, not typical." TT and TG disrobed from the waist down and engaged in consensual intercourse. As they were having intercourse, McCarter returned to the room and watched them. When TG stated, "what the f--k," McCarter "just stared at them." TG

[1] Our recitation of the facts is largely based on the district court's posttrial findings of fact.

walked into the bathroom and told TT to put her clothes on. TG's clothes were in the bathroom, and TT's clothes were on a chair in the room where they had intercourse.

As TT began to get dressed, McCarter tried to prevent her from putting her clothes on. McCarter whispered to TT something like, "you think you're gonna do this and not give me any?" TT understood this to mean that McCarter wanted to have sex with her, and she said no. While TT was still naked from the waist down, McCarter grabbed TT's arm, and she resisted. McCarter "grabbed her in her butt area," and TT "felt his fingers touch her private area." TT felt McCarter's "fingers or hand trying to go into her vaginal area, and she felt part of his finger enter her vaginal opening." She also "felt his finger scratch her lips in her vaginal area." At that point, TT was able to pull her pants up.

When TT tried to leave, she passed a bed and tried to grab her keys. McCarter tried to prevent TT from leaving. TT fell onto the bed, and McCarter got on top of her. McCarter told TT, "you think you gonna give him some and not me some." TT was able to fight off McCarter. Throughout the struggle, TG "was of no help." TT left the house and went to her car. When she tried to reach TG by text, both TG and McCarter approached her car. McCarter begged her not to say anything about what had happened, offered her money to keep quiet, and apologized to her. When TT returned to her home, she noticed a red area in her underwear.

The next day, TT told her mother about the sexual assault, and TT reported it to police. On May 14, 2021, TT participated in an interview with Midwest Children's Resource Center (MCRC). A video and transcript of the interview were received as evidence. They reveal that TT said that she felt something "in the inside" of her vagina:

NURSE: [W]hen you kinda look at your ear you know you can have like the outside of your ear and then you have the inside the same thing like kind of on your body you know there's a[n] outside of your vagina and your (inaudible) knows the inside, did anything touch on the inside?

TT: Yeah, I felt something like in the inside but I just don't remember like what part.

NURSE: Okay, so tell me about that, tell me what it felt like?

TT: It felt like it was just . . . like a scratch like he tried to like, like pull like his who thing an scratch cause I remember when I got back home or whatever I went to use the bathroom . . .

NURSE: Yeah.

TT: And I just like I was kind of bleeding a little bit . . .

NURSE: Okay.

TT: So, I was just like . . . yeah.

TT completed a physical examination, and no injuries were noted.

The district court found:

> That [TT] is credible. During her testimony she was tearful and embarrassed to testify in court. She is not a person who appeared to have extensive knowledge about her sexuality and was uneasy describing what had occurred to her. She used child-like words in her description, not words that an experienced person would use. That makes her more credible not less.
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> That [TT] is and was a typical teenager. She would not choose to put herself through the embarrassment of speaking to the police about the incident, go to MCRC and go through the humiliation of that examination, and come into court and testify in front of Defendant, the Court and her family, if the events she testified to had not occurred. All this bolsters her credib[ility].

> That although the defense pointed out what they argued are inconsistencies in [TT's] testimony, they are not sufficient to discredit what she said or her reliability.

The pediatric nurse practitioner who examined TT at MCRC also testified at trial. The district court found that the pediatric nurse practitioner had "significant experience" and completes between 250 and 300 examinations of children per year. The nurse practitioner testified that tissue in the genital area heals quickly and that lack of injury upon examination "does not mean that there was not an injury after the incident."

The district court found McCarter guilty of all three charges and entered judgment of conviction for each offense. [2]

McCarter filed a notice of appeal with this court, and we stayed the appeal for McCarter to pursue postconviction relief. In his postconviction petition, McCarter claimed that the evidence was insufficient to sustain his convictions and that he received ineffective assistance of counsel at trial. The postconviction court granted a hearing on McCarter's petition, and McCarter and his trial counsel testified at the hearing regarding counsel's

[2] The warrant of commitment shows that the district court entered judgment of conviction for each offense. Although the issue is not raised on appeal, we question whether it was appropriate for the district court to have done so. *See* Minn. Stat. § 609.04 (2020) ("Upon prosecution for a crime, the actor may be convicted of either the crime charged or an included offense, but not both."); *State v. Hackler*, 532 N.W.2d 559, 559 (Minn. 1995) ("If the lesser offense is a lesser degree of the same crime or a lesser degree of a multi-tier statutory scheme dealing with a particular subject, then it is an 'included offense' under section 609.04."). We note that at sentencing, the prosecutor stated that because the charges were "all part of the same course of contact . . . the adjudication would only be on count 1." On this record, it appears that the adjudications of guilt for attempted first-degree criminal sexual conduct and for second-degree criminal sexual conduct were clerical errors, which the district court may correct at any time. *See* Minn. R. Crim. P. 27.03, subd. 10 ("Clerical mistakes in a judgment, order, or in the record arising from oversight or omission may be corrected by the court at any time, or after notice if ordered by the court.").

representation. Their testimony conflicted in significant ways. The postconviction court expressly discredited McCarter's testimony and credited his trial counsel's testimony. The postconviction court denied McCarter's petition, and we reinstated his appeal.

DECISION

I.

McCarter contends that the evidence was insufficient to support the district court's findings of guilt for the charges of first-degree criminal sexual conduct, attempted first-degree criminal sexual conduct, and second-degree criminal sexual conduct.

"When a defendant initially files a direct appeal and then moves for a stay to pursue postconviction relief, we review the postconviction court's decisions using the same standard that we apply on direct appeal." *State v. Beecroft*, 813 N.W.2d 814, 836 (Minn. 2012).

"A finding of guilt can be based on direct or circumstantial evidence." *State v. Olson*, 982 N.W.2d 491, 495 (Minn. App. 2022). "Circumstantial evidence is evidence from which the fact-finder can infer whether the facts in dispute existed or did not exist." *Id.* (quotation omitted). "In contrast, direct evidence is evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption." *Id.* (quotation omitted). TT's testimony at trial and her statements during the MCRC interview describing McCarter's assault constitute direct evidence. *See State v. Huss*, 506 N.W.2d 290, 291-92 (Minn. 1993) ("At trial, the state's only direct evidence that the child was abused came from the child herself."); *State v. Coley*, 468 N.W.2d 552, 555 (Minn. App. 1991) ("The victim's uncontradicted testimony constituted direct evidence of his

crimes."). And that direct evidence addressed each of the elements of the charged offenses. Thus, we apply the standard of review that applies to a verdict based solely on direct evidence.

"When considering a sufficiency challenge to a guilty verdict based solely on direct evidence, an appellate court carefully analyzes the record to determine whether the evidence, viewed in the light most favorable to the conviction, was sufficient to permit the fact-finder to reach its verdict." *Olson*, 982 N.W.2d at 495. "The appellate court assumes that the fact-finder believed the state's witnesses and disbelieved any contrary evidence." *Id.* "The appellate court defers to the fact-finder's credibility determinations and will not reweigh the evidence on appeal." *Id.* "An appellate court will not disturb a guilty verdict if the fact-finder, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could have reasonably concluded that the state proved the defendant's guilt." *Id.* In evaluating the sufficiency of the evidence, we use the same standard of review in bench and jury trials. *Id.* at 496. In a criminal-sexual-conduct case, "the testimony of a victim need not be corroborated." Minn. Stat. § 609.347, subd. 1 (2020).

McCarter was charged with first-degree criminal sexual conduct under Minn. Stat. § 609.342, subd. 1(e)(i) (2020), which permits a conviction based on the following elements: (1) sexual penetration; (2) without the victim's consent; (3) accomplished by force or coercion; (4) resulting in personal injury to the victim; and (5) venue. "[A]ny intrusion however slight into the genital or anal openings . . . of the complainant's body by any part of the actor's body" constitutes sexual penetration. Minn. Stat. § 609.341, subd.

12(2)(i) (2020). Evidence of the actor's "fingers between the folds of skin over [the victim's] vagina" is sufficient to support a finding of penetration. *State v. Shamp*, 422 N.W.2d 520, 526 (Minn. App. 1988), *rev. denied* (Minn. June 10, 1988). Penetration does not require that the actor insert "fingers 'all the way.'" *Id.*

Personal injury means "bodily harm as defined in section 609.02, subdivision 7, or severe mental anguish or pregnancy." Minn. Stat. § 609.341, subd. 8 (2020). Bodily harm includes "physical pain or injury, illness, or any impairment of physical condition." Minn. Stat. § 609.02, subd. 7 (2020). A "minimal amount of physical pain or injury" satisfies the definition of bodily harm. *State v. Jarvis*, 665 N.W.2d 518, 522 (Minn. 2003). An abrasion or laceration constitutes a personal injury. *See State v. Bowser*, 307 N.W.2d 778, 779 (Minn. 1981) (holding that "[e]ither the pain or the minimal injury" of "the laceration of [the victim's] hymen, which resulted in bleeding" is "sufficient to establish bodily harm under section 609.02 and therefore personal injury under section 609.341, subd. 8"); *State v. Reinke*, 343 N.W.2d 660, 662 (Minn. 1984) ("Here the personal injury took the form of an abrasion in the area of the victim's pubis, pain at the time of the assault, and subsequent back pain attributable to the assault.").

McCarter was also charged with attempted first-degree criminal sexual conduct under Minn. Stat. § 609.342, subd. 1(e)(i) with reference to Minn. Stat. § 609.17, subd. 1 (2020), which states that "[w]hoever, with intent to commit a crime, does an act which is a substantial step toward, and more than preparation for, the commission of the crime is guilty of an attempt to commit that crime." In addition, McCarter was charged with second-degree criminal sexual conduct under Minn. Stat. § 609.343, subd. 1(e)(i) (2020),

which consists of the following elements: (1) sexual contact, (2) without the victim's consent, (3) accomplished with force or coercion, (4) resulting in personal injury to the victim, and (5) venue.

McCarter argues that the evidence was insufficient to support the district court's findings of guilt. He argues that the state did not present evidence of penetration and that evidence therefore was insufficient to support the finding of guilt for first-degree criminal sexual conduct. He also argues that the state did not present evidence of personal injury and that the evidence therefore was insufficient to support the findings of guilt for attempted first-degree criminal sexual conduct and second-degree criminal sexual conduct.

The district court found that McCarter "engaged in sexual penetration with [TT] when his finger entered her vaginal opening." TT testified that she "felt like a centimeter of his fingers try to come" inside of her vagina. She told the MCRC interviewer that she "felt something like in the inside." TT's testimony and MCRC interview established the penetration element.

McCarter argues that TT's testimony was vague and inconsistent and that TT described only an attempt to penetrate. We cannot reverse based on that argument. We must defer to the fact-finder's credibility determination, and we may not reweigh the evidence on appeal. *Olson*, 982 N.W.2d at 495. Here, the district court expressly found TT credible despite any vagueness or inconsistencies in her testimony and statements regarding the assault, and it explained its credibility determination. We defer to that determination and view the evidence in the light most favorable to the verdict. *Id.* Under

those standards, the evidence was sufficient to sustain the district court's finding of penetration.

The district court also found that McCarter caused TT personal injury based on evidence that TT sustained a scratch during McCarter's attack, felt pain, and noticed red in her underwear consistent with blood. TT testified that she "felt a scratch" on the "lips part" of her genital area "because he had sharp nails" and that once she was home, she noticed that the scratch had bled. She testified that she noticed a "red area" in her underwear and a scratch mark. Once again, under the standards that govern our review, TT's testimony established a personal injury. *See Jarvis*, 665 N.W.2d at 522 (stating that a "minimal amount of physical pain or injury" satisfies the definition of bodily harm and therefore personal injury); *Reinke*, 343 N.W.2d at 662 (stating that "an abrasion in the area of the victim's pubis" and pain constituted personal injury).

In sum, because the fact-finder, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could have reasonably concluded that the state proved McCarter's guilt, we do not disturb the guilty verdicts for first-degree, attempted first-degree, or second-degree criminal sexual conduct.

II.

McCarter contends that he received ineffective assistance of counsel in the district court.

A criminal defendant has a constitutional right to effective assistance of counsel. U.S. Const. amend. VI; *McMann v. Richardson*, 397 U.S. 759, 771 (1970). Generally, we analyze ineffective-assistance-of-counsel claims under *Strickland v. Washington*, 466 U.S.

668 (1984). *Brooks v. State*, 897 N.W.2d 811, 819 (Minn. App. 2017), *rev. denied* (Minn. Aug. 8, 2017). To establish ineffective assistance of counsel under *Strickland*, the defendant must prove (1) "that counsel's representation fell below an objective standard of reasonableness" and (2) "there was a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different." *State v. Taylor*, 869 N.W.2d 1, 21 (Minn. 2015) (quotations omitted). "We need not analyze both elements of the *Strickland* test if one or the other is determinative." *Sanchez v. State*, 890 N.W.2d 716, 720 (Minn. 2017).

"A determination whether a defendant received ineffective assistance of counsel involves a mixed question of law and fact that is reviewed de novo." *Brooks*, 897 N.W.2d at 819. "The district court is in the best position to evaluate witness credibility, and we defer to those determinations absent a clear error." *Griffin v. State*, 941 N.W.2d 404, 408-09 (Minn. 2020). "Appellate courts apply a strong presumption that an attorney's performance falls within the wide range of reasonable professional assistance." *Brooks*, 897 N.W.2d at 819 (quotations omitted).

McCarter argues that his trial counsel's representation was objectively unreasonable for several reasons. We address each in turn.

A.

McCarter argues that his trial counsel's representation was objectively unreasonable because his counsel failed to adequately discuss with him his right to testify at trial.

The postconviction court rejected McCarter's argument:

> Petitioner claims that his counsel provided ineffective assistance because he was not fully informed when he waived his right to testify. This Court received testimony from both Petitioner and [trial counsel] regarding whether Petitioner was fully informed when he waived his right to testify. Petitioner claims he was unaware of the implications and had minimal discussion with his attorney about it. This Court finds his testimony not credible, as it largely consisted of responses to leading questions and general denials.
>
> [Trial counsel], on the other hand, provided credible testimony based on her review of her notes from meetings with Petitioner. She detailed multiple discussions about Petitioner's right to testify and how his criminal history would be admissible if he chose to testify. [Trial counsel] stated that early on, Petitioner expressed he did not want to testify. This is corroborated by the trial record, which includes Petitioner's waiver of his right to testify.
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> [Trial counsel] admitted she did not practice Petitioner's possible testimony or prepare him for cross-examination, but this is neither unreasonable nor required at that point. [Trial counsel's] testimony supports the finding that she acted reasonably in discussing Petitioner's right to testify. Petitioner was adequately informed when he waived that right, and [trial counsel's] trial preparation was reasonable. This Court does not need to address the second *Strickland* prong, which would involve speculation based on the Petitioner's non-credible testimony.

McCarter complains that his attorney did not adequately advise him regarding his right to testify at trial, did not conduct a mock direct examination, did not provide him a copy of the discovery necessary to make an informed decision, and only had brief discussions with him before trial. He asserts that his counsel's "failure to properly explain and review [his] likely trial testimony at any point prior to trial rendered [his] waiver unknowing and unintelligent" and that without "having reviewed and prepared trial testimony," his waiver could not have been made knowingly and intelligently.

McCarter's argument relies on his testimony at the postconviction hearing. But the postconviction court explicitly found his testimony non-credible and his trial counsel's testimony credible. We defer to those credibility determinations. *See Griffin*, 941 N.W.2d at 408-09. Moreover, trial counsel is not required to "prepare a direct examination before the defendant makes the decision to testify at trial." *See Andersen v. State*, 830 N.W.2d 1, 12 (Minn. 2013) (noting a lack of any clear reason why preparation of a direct examination would be required for a waiver of the right to testify). Finally, as discussed below, counsel provided McCarter with access to discovery. On this record, McCarter has not shown that his trial counsel's advice regarding his right to testify was objectively unreasonable.

B.

McCarter argues that his trial counsel failed to adequately advise him regarding his decision to waive a jury trial and that, therefore, his counsel's representation was objectively unreasonable.

As to this issue, the postconviction court reasoned:

> Petitioner also claims his attorney did not adequately inform him about his jury trial rights. The Court finds the Petitioner's testimony lacked credibility, because it was vague and mostly elicited through leading questions. In contrast, [trial counsel's] testimony was credible. She described multiple discussions with Petitioner about his desire to avoid a jury trial, influenced by his past experiences in Illinois. She explained why a jury trial might be better for his case. Despite this, Petitioner chose to waive a jury trial. [Trial counsel] reviewed the waiver form with him line by line before the court hearing. Her testimony is supported by Petitioner's signed waiver and the Court's questions when accepting it into the record. [Trial counsel] did not act unreasonably under the [*Strickland*] performance prong. She thoroughly discussed the jury trial waiver, provided strategic advice, and reviewed the

> waiver form in detail. These actions demonstrate reasonable representation.

Once again, McCarter relies on his postconviction hearing testimony. But the postconviction court explicitly found that his testimony "lacked credibility" and that his trial counsel's testimony was credible. We defer to those credibility determinations. *See Griffin*, 941 N.W.2d at 408-09.

C.

McCarter argues that his trial counsel unreasonably failed to provide him with discovery materials and to review and discuss those materials with him.

The postconviction court found that:

> Petitioner claims that [trial counsel] failed to provide him with discovery in his case, namely [the] MCRC video containing [the witness's] testimony. Although Petitioner did not view the MCRC video before trial, this was due to his own actions. [Trial counsel] testified that she scheduled an office visit for the Petitioner to watch the video, which could not be provided to him directly due to a protective order because the victim was underage. When Petitioner missed the initial meeting, she rescheduled, but the Petitioner left the subsequent visit early without watching the video and did not attempt to reschedule. [Trial counsel's] actions were reasonable under these circumstances. Petitioner chose not to take advantage of the scheduled opportunities to view the video and did not request to view it before or during the trial. Petitioner's claim that he was never given the opportunity to view the video is not credible. [Trial counsel's] testimony, supported by her contemporaneous notes, is credible. Additionally, Petitioner cannot demonstrate that not watching the video affected the trial's outcome. [Trial counsel] was familiar with its contents, and the victim testified in detail at trial.

On appeal, McCarter claims that he was not able to view the MCRC video and therefore "was never given a fair opportunity to review or understand his case from a legal

standpoint." He does not dispute the postconviction court's findings regarding his attorney's efforts to provide him an opportunity to view the video. Instead, McCarter asserts that counsel should have made "additional efforts" to get him to view the video. McCarter does not cite any authority to support that assertion, and we discern no basis to conclude that counsel's efforts to show McCarter the video were objectively unreasonable.

D.

McCarter argues that his trial counsel failed to adequately investigate his case and to interview and call defense witnesses. Specifically, McCarter argues that his attorney should have made efforts to contact his two roommates, obtain videos from the homeowner's video security system, and subpoena TG.

The postconviction court found:

> Petitioner claims [trial counsel] failed to adequately investigate his case. [Trial counsel's] investigation was reasonable, and her decisions were strategic. There was no evidence that anyone other than Petitioner, [TG], and the victim were in Defendant's bedroom or bathroom, and Petitioner does not claim a camera was operating in his bedroom. Therefore, any additional witnesses or recordings would not have impacted the case. [Trial counsel] testified credibly that Petitioner never requested that she obtain any video or interview any roommates. She understood that Petitioner wanted her to subpoena [TG], but she was unable to locate him as he lived out of state. [Trial counsel] was fully aware of the available evidence from police reports, which indicated no other presence in Petitioner's room during the assault. Her decisions on investigation were strategic and do not constitute unreasonable representation. Even if [trial counsel] had pursued these avenues, there is no basis to believe any useful information could have been obtained or that it would have affected the trial's outcome.

"A reviewing court generally will not review attacks on counsel's trial strategy." *Brooks*, 897 N.W.2d at 819 (quotation omitted). "The extent of counsel's investigation is considered a part of trial strategy." *Id.* (quotation omitted). "It is within trial counsel's discretion to forgo investigation of leads not reasonably likely to produce favorable evidence." *Id.* (quotation omitted).

McCarter relies on *State v. Nicks*, in which the supreme court reviewed an attack on trial strategy. 831 N.W.2d 493 (Minn. 2013). The *Nicks* defendant was accused of first-degree and attempted first-degree murder. *Id.* at 495-96. The state relied primarily on circumstantial evidence, including cellphone records that "indicated that Nicks was in the vicinity of the shooting and supported the assertion by two witnesses that Nicks made threats to [the victim] during a cellphone call." *Id.* at 496. Although Nicks's cellphone records indicated that he made two calls to the victim on the night of the crime, he "consistently maintained that those two calls went to [the victim's] voicemail, that he did not speak with [her] that night, and that no threatening calls between him and [her] occurred." *Id.*

The supreme court stated that it was "evident from the record that Nicks's trial counsel was interested in obtaining [the victim's] cellphone records, wanted to obtain them, and made several partial attempts to obtain them." *Id.* at 506. Although Nicks's trial counsel "emphatically stat[ed] that he needed the information" about the victim's cellphone records, his counsel "either did not read, did not correctly interpret, or failed to understand the cellphone service provider's response to the subpoena." *Id.* at 506-07. The supreme

court reasoned that counsel's actions did not amount to an unreviewable strategic decision, explaining:

> The present case is more analogous to a trial counsel stating that he *wanted* to call a certain witness, issued a *subpoena* to get that witness to trial, implemented a strategy at trial that *relied* on that witness testifying, and then, after that witness failed to appear, inexplicably took no further action. Here, Nicks alleges that his trial counsel stated emphatically that he wanted the evidence in question, presented a defense that in large part turned on having that information available, and then failed to take the necessary steps to obtain that evidence. Such a course of conduct does not amount to trial strategy.

Id. at 507.

The supreme court held that "when counsel fails to conduct such a thorough investigation of facts that are so directly related to the defendant's theory of the case, that conduct falls below an objective standard of professional conduct that defendants are entitled to under the United States Constitution." *Id.* at 508.

The circumstances of this case are readily distinguishable from those in *Nicks*, which the supreme court described as a situation in which "the cellphone-record evidence was not obtained because trial counsel did not follow up on information received and did not perform the necessary steps to successfully execute on his main theory of the case." *Id.* at 507. Unlike *Nicks*, here there is no indication that counsel thought that the investigation McCarter proposes was necessary to successfully execute on counsel's theory of the case.

E.

Finally, McCarter argues that his trial counsel failed to competently prepare for and cross-examine TT. McCarter equates lack of cross-examination with a concession of guilt.

The postconviction court rejected that argument as follows:

> Petitioner claims that his counsel failed to adequately prepare and conduct a cross-examination of the victim, arguing that this was objectively unreasonable. However, decisions on which witnesses to call and how to question them fall under trial strategy and are not subject to review for ineffectiveness. In this case, the details of victim's physical injury were limited. [Trial counsel's] decision not to press victim further on her testimony that Petitioner's finger entered her vaginal area and scratched her was a reasonable approach to avoid reinforcing her claims. Petitioner's argument that [trial counsel's] decision not to cross-examine victim equated to conceding guilt is unfounded. [Trial counsel] believed she had successfully kept the State from introducing Petitioner's *Scales* interview, and the victim's testimony about the injury was minimal. Her strategy, as argued in closing, was to highlight inconsistencies between victim's initial interview and her trial testimony, and to argue that the injury claims were speculative and not proven beyond a reasonable doubt.
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> This case is distinct from *State v. Boykin*, which Petitioner cites. In *Boykin*, counsel explicitly conceded something happened during closing arguments, which is not the case here. Furthermore, *Boykin* is nonprecedential and does not support the claim that failing to cross-examine a witness implies a concession of guilt. Such a rule would improperly shift the burden from the State to the defense. The State must present evidence to prove every element of the crime beyond a reasonable doubt. [Trial counsel's] strategy was to hold the State to that burden, given what she believed was the limited evidence. Her decision not to cross-examine the victim was reasonable and does not meet the standard for ineffective assistance under *Strickland*.

(Emphasis added.)

As the postconviction court reasoned, McCarter's argument is unfounded.

In sum, McCarter failed to show that his trial counsel's representation was objectively unreasonable. Moreover, although McCarter asserts that there is a reasonable probability that the outcome of his trial would have been different if the alleged unreasonable representation had not occurred, he does not explain *why* the outcome would have been different. *See Gates v. State*, 398 N.W.2d 558, 562 (Minn. 1987) (stating that "the defendant must show that counsel's errors 'actually' had an adverse effect in that but for the errors the result of the proceeding probably would have been different" (quoting *Strickland*, 466 U.S. at 693-94)). Thus, McCarter has failed to meet either prong of the *Strickland* standard, and the postconviction court correctly rejected his claim of ineffective assistance of counsel.

Affirmed.