STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1808

Sheila Maurise Burski, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed July 22, 2024
Affirmed in part, reversed in part, and remanded
Connolly, Judge

Benton County District Court
File No. 05-CR-18-2496

Theresa R. Paulson, Thrive Legal Services, LLC, St. Paul, Minnesota (for appellant)

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

Kathleen L. Reuter, Benton County Attorney, Michael J.G. Schnider, Assistant County Attorney, Foley, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Larson, Judge; and Klaphake, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

Appellant challenges her convictions of wrongfully obtaining public assistance and financial exploitation of a vulnerable adult, arguing that the district court abused its discretion in summarily denying her petition for postconviction relief on her claims of discovery violations, false testimony, improper jury instructions, and ineffective assistance of counsel. We affirm in part, reverse in part, and remand.

FACTS

Appellant Sheila Burski and Norman Meinert met in the early 1990s when they were neighbors. In June 2005, appellant and her husband entered into a contract for deed to purchase Meinert's real property for $510,000. Appellant and her husband divorced in 2009, and appellant was awarded the property under contract for deed. A satisfaction of the contract for deed was later filed in August 2011, showing that the contract for deed had been paid in full.

In November 2013, Meinert was injured when he was struck by a vehicle. Shortly thereafter, appellant was appointed as guardian and conservator over Meinert. Around the same time, Benton County Human Services (BCHS) notified appellant that Meinert would need to "spend down" his financial assets to maintain his eligibility for general medical assistance. A lawful "spend down" subsequently occurred, whereas items such as funeral expenses and legal services were paid for from Meinert's assets.

On December 31, 2013, appellant completed a "Request for Payment of Long Term Care Services" application for medical assistance on behalf of Meinert. Question 12 of the

application asks: "Did you or your spouse sell, trade or give away items of income within the 60 months before the month you want [medical-assistance] payment of [long-term-care] services to begin?" In response to this question, appellant declared the following spend downs and their values: (1) Funeral—$12,188; (2) Apartment—$1,500; (3) Benton Telephone—$1,000; (4) Legal Services—$8,500; and (5) Furniture—$3,650. But appellant failed to disclose that, within the applicable 60-month period, the contract for deed had been satisfied in the amount of $510,000. Despite this omission, appellant signed the application "under penalty of perjury," representing that "all parts of [the application] are true and correct statements, to the best of [her] knowledge."

Pursuant to Meinert's application, Meinert was awarded long-term medical assistance. Appellant was later authorized to serve as the trustee of a special needs trust in which Meinert was the subject. The basis for the special needs trust was a $50,000 settlement Meinert received as a result of the accident in which he was injured. After expenses and fees were deducted from the settlement, approximately $16,780.58 funded the trust.

Meinert passed away on August 1, 2017. Appellant was subsequently contacted by BCHS, informing her that she needed to compete a final accounting for Meinert's estate and assets. But after appellant sent the necessary documents to BCHS, a collections officer noticed that appellant was listed as the owner of property that was previously listed as Meinert's address. Further investigation revealed that Meinert had sold the property to appellant and her husband on a contract for deed, and that, when appellant filed the application for long-term care on behalf of Meinert, she failed to disclose that the contract

for deed had been satisfied within the 60-month required look-back period to disclose assets.

Respondent State of Minnesota charged appellant with wrongfully obtaining public assistance, and two counts of financial exploitation of a vulnerable adult. At trial, evidence was presented that, in the long-term care application appellant filed on behalf of Meinert, appellant failed to disclose the satisfaction of the contract for deed. Respondent also presented evidence that appellant acknowledged that she failed to disclose the satisfaction of the contract for deed; that, because of this omission, Meinert was awarded long-term benefits to which he was not entitled; and that Meinert was overpaid benefits in excess of $5,000. And respondent presented evidence that transfers were regularly made between December 2013, and November 2017, from a bank account linked to Meinert's special needs trust into a personal bank account linked to appellant.

A jury found appellant guilty as charged. The district court then sentenced appellant to stays of imposition with supervised probation for ten years, and ten days in the county jail, for the wrongfully-obtaining-public-assistance count, and one count of financial exploitation of a vulnerable adult. The district court also ordered restitution in the amount of $122,197.39, plus fines and fees.

Appellant filed a notice of appeal, which was later dismissed at appellant's request. Appellant then filed a petition for postconviction relief, arguing that her convictions must be reversed or, in the alternative, she should be granted a new trial, because, among other things: (1) she obtained newly discovered evidence that was withheld from her by respondent in violation of *Brady v. Maryland*, 373 U.S. 83 (1963); (2) respondent's

witnesses provided false testimony which took appellant by surprise; (3) the district court committed plain error in instructing the jury; and (4) her trial counsel was ineffective. The district court summarily denied appellant's petition. This appeal follows.

DECISION

Appellant challenges the district court's denial of her petition for postconviction relief. This court reviews the district court's denial of a petition for postconviction relief for an abuse of discretion; the court's factual findings are reviewed for clear error and its legal conclusions are reviewed de novo. *Peltier v. State*, 946 N.W.2d 369, 372 (Minn. 2020). A postconviction court "abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record." *State v. Nicks*, 831 N.W.2d 493, 503 (Minn. 2013) (quotation omitted).

I.

Appellant argues that the district court erred in determining that respondent's failure to disclose the following two items of evidence did not constitute *Brady* violations: (A) the entirety of the Health Care Programs Manual; and (B) an interview with one of Meinert's previous landlords.

In *Brady*, the United States Supreme Court held "that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." 373 U.S. at 87. For a *Brady* violation to exist, three elements must be present:

> (1) the evidence must be favorable to the defendant because it would have been either exculpatory or impeaching; (2) the evidence must have been suppressed by the prosecution, intentionally or otherwise; and (3) the evidence must be material—in other words, the absence of the evidence must have caused prejudice to the defendant.

Walen v. State, 777 N.W.2d 213, 216 (Minn. 2010).

"Evidence is material under *Brady* if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *Zornes v. State*, 903 N.W.2d 411, 418 (Minn. 2017) (quotations omitted). "A reasonable probability is one that is sufficient to undermine confidence in the outcome." *Id.* (quotations omitted). "[A] new trial is not required simply because a defendant uncovers previously undisclosed evidence that would have been possibly useful to the defendant but unlikely to have changed the verdict." *Walen*, 777 N.W.2d at 216. Because the materiality analysis involves a mixed issue of fact and law, we review a district court's materiality determination de novo. *Id.*

A. Entirety of the Health Care Programs Manual

Appellant argues that the district court abused its discretion in determining that the failure to disclose the entire Health Care Programs Manual did not constitute a *Brady* violation. To support her position, appellant refers to the Health Care Programs Manual, which provides that "[s]ome uncompensated transfers meet an exception, which means there is no penalty even though the transfers were uncompensated." She argues that, "[w]hen the prosecutor limited the disclosure, defense counsel could have not been prepared to accurately articulate or cross-examine the areas that were not disclosed," and

that without all of this information, her trial counsel "would not have been able to argue . . . that the information provided to the jury was the complete information available for consideration." We are not persuaded.

In *Zornes*, the supreme court determined that "allegedly suppressed evidence was not material because it was readily available in other documents." 903 N.W.2d at 418. The supreme court concluded that "no reasonable probability existed that, had the evidence been disclosed to the defense, the result of the trial would have been different." *Id.*

Here, *Zornes* begs a similar conclusion. A review of the record indicates that respondent provided an abundance of information related to "transfers." For example, in the chapter entitled "Transfers," the second paragraph states: "Transfers can result in a period of ineligibility, known as a transfer penalty, if the client: • did not receive adequate compensation; and • there is no transfer penalty exception. (Emphasis in original.) Moreover, the next paragraph refers the reader to different chapters "for information on how a client can prove that a transfer was not done to obtain or maintain eligibility" and "for information on uncompensated transfers that are exempt from a transfer penalty." And later, the document provides the steps for processing a transfer, one of which states: "Determine if the transfer meets a transfer exception. Stop here if the transfer meets a transfer exception. Continue to the next step if the transfer does not meet a transfer exception." (Emphasis in original.) As the district court found, this information "makes it abundantly clear that exceptions exist." The information also directs the individual where such information can be found. Appellant fails to identify how or why this information was unavailable to her. Therefore, appellant cannot show that the district court abused its

discretion in determining that the failure to disclose the entire Health Care Programs Manual did not constitute a *Brady* violation. *See Zornes*, 903 N.W.2d at 418.

B. Interview with Meinert's previous landlord

Appellant argues that the district court abused its discretion in determining that the failure to disclose an interview between an investigator and Meinert's former landlord was not a *Brady* violation because the interview provided evidence that she financially supported Meinert, which pertained to the two counts of financial exploitation of a vulnerable adult. But again, this evidence is not material because the record indicates that the information in the interview was readily available to appellant. *See id.* The district court found that appellant had corresponded with the landlord since 2009 when she applied for housing with the landlord's property on behalf of Meinert. The district court also found that the landlord stated that appellant "provided him with information surrounding the contract for deed and informed [the landlord] that she was financially supporting Meinert." The district court further noted that "Meinert resided in this facility from 2009 until his passing in 2017; his tenancy required him to recertify his income each year, which [appellant] completed on his behalf." The district court's findings are supported by the record and demonstrate that appellant "undoubtedly knew that [the landlord] had information regarding [appellant's] financial support of . . . Meinert." Appellant has not challenged any of the district court's findings, nor has she otherwise articulated how the district court's application of the law on this issue is erroneous. Accordingly, appellant has not met her burden to show that the district court abused its discretion in determining that there was no *Brady* violation.

II.

Appellant also argues that the following instances of false testimony took her by surprise: (A) respondent's expert testimony that no penalty exceptions exist in the Health Care Programs Manual; and (B) testimony that appellant breached a fiduciary duty to the special needs trust.[1] Thus, she argues that we "should reverse the district court and find [that respondent] submitted false evidence to the jury."

Minnesota courts apply a three-prong test when evaluating false-testimony claims. *Opsahl v. State*, 677 N.W.2d 414, 422 (Minn. 2004) (citing *Larrison v. United States*, 24 F.2d 82, 87-88 (7th Cir. 1928)). Under the *Larrison* test, a petitioner is entitled to a new trial if: (1) the court is "reasonably well-satisfied that the testimony in question was false; (2) without that testimony the [fact-finder] might have reached a different conclusion; and (3) the petitioner was taken by surprise at trial or did not know of the falsity until after trial." *Opsahl*, 677 N.W.2d at 422-23. The first two prongs are "compulsory." *Martin v. State*, 825 N.W.2d 734, 740 (Minn. 2013). If a petitioner fails to satisfy the first or second prong, he is not entitled to relief. *Reed v. State*, 925 N.W.2d 11, 19 (Minn. 2019).

A. Expert-witness testimony

At trial, respondent offered the testimony of a lawyer and accountant as an expert witness, who testified that she is familiar with guardianships, conservatorships, and trusts, as well as their corresponding duties. She also testified that she is familiar with long-term-

[1] As respondent points out, appellant also appears to raise an issue related to a homestead exemption. But "[i]t is well settled that a party may not raise issues for the first time on appeal from denial of postconviction relief." *Azure v. State*, 700 N.W.2d 443, 447 (Minn. 2005) (quotation omitted).

care eligibility, and explained that, when spending down assets to qualify for long-term care, an applicant cannot "do what's called an 'uncompensated transfer,'" which means that an applicant cannot give away assets while receiving nothing in exchange. The expert, however, did not testify further regarding uncompensated transfers.

Appellant appears to argue that the expert witness misled the jury and presented false testimony related to the wrongfully-obtaining-public-assistance offense because she did not testify that transfer exceptions are permitted when they are done for purposes other than obtaining medical assistance. But "a witness's failure to give a full explanation of her trial testimony [is] insufficient to establish false trial testimony." *Gilbert v. State*, 982 N.W.2d 763, 770 (Minn. App. 2022), *aff'd on other grounds*, 2 N.W.3d 483 (Minn. 2024).

Here, appellant fails to identify any testimony of the expert witness that was false, nor does she identify any motive for the witness to fabricate her testimony. Moreover, the expert witness was never asked on direct examination whether transfer-penalty exceptions existed—she simply answered the questions posed to her. In fact, appellant had the opportunity to ask the witness about transfer-penalty exceptions on cross-examination, and she declined to do so. As the district court determined, "[e]ven when taken as true, [appellant's] claim fails under the first [*Larrison*] prong." Therefore, appellant is unable to show that the district court's decision on this issue was an abuse of discretion.

B. Testimony related to the special needs trust

Appellant also argues at length that false or misleading testimony was presented related to the financial-exploitation-of-a-vulnerable-adult charges. More specifically, she argues that misleading testimony was elicited from the expert witness related to the special

needs trust because "Meinert was 70 years old, and was not legally eligible for a special needs trust at that time" "[s]ince he was over the age of 65 when the trust was attempted to be created."[2] As such, appellant appears to contend that any testimony that she breached a fiduciary duty was false because she could not breach a duty related to her appointment as trustee to a trust that was improperly formed and, therefore, never existed. We disagree.

Under Minnesota law, transfers into a special needs trust for the benefit of a disabled person under the age of 65 are automatically exempt from a transfer penalty. *Pfoser v. Harpstead*, 953 N.W.2d 507, 515 (Minn. 2021). In contrast, "a transfer for the benefit of a disabled person age 65 or older is not exempt," unless certain exceptions apply. *Id.* (emphasis omitted). Thus, as the district court found, "the only significance of . . . Meinert's age at the time the special needs trust was created was whether the transfer into the trust was exempt from a penalty," not whether the trust was valid. The record reflects that the formation of the special needs trust on behalf of Meinert was authorized in September 2014, and appellant is unable to show that Meinert's age at the time of the trust's formation invalidated the trust. Because appellant is unable to show that the special needs

[2] Appellant appears to argue that the prosecutor misstated the law and evidence in opening and closing remarks. But this argument relates to alleged prosecutorial misconduct, not whether false testimony was submitted. Appellant does not argue that the prosecutor committed misconduct at trial, nor does she cite any legal authority in support of such an argument. Consequently, any argument related to prosecutorial misconduct is not properly before us. *See Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996) (stating that this court generally considers only those issues that were presented to the district court); *see also Brooks v. State*, 897 N.W.2d 811, 818-19 (Minn. App. 2017) (declining to consider arguments "based on mere assertion and not supported by legal authority or argument").

trust was invalid, the testimony related to appellant's fiduciary duties as trustee was not false or misleading to the jury.

Appellant further argues that, because she "was appointed by the trustee and the conservator, she had a right under the law to reimburse herself." To support her position, appellant refers to Minn. Stat. § 501C.0816(20) (2022), which provides that a trustee may:

> pay an amount distributable to a beneficiary who is under a legal disability or who the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or applying it for the beneficiary's benefit, or by:
>
> (i) paying it to the beneficiary's conservator or, if the beneficiary does not have a conservator, the beneficiary's guardian.

Appellant contends that, because respondent "did not disclose this information to the [jury], and prevented disclosure of exculpatory evidence as to the funds [she] was paying to . . . Meinert," false testimony was created that a conservator is not permitted to reimburse themselves. Again, we disagree.

The record reflects that appellant had the opportunity to testify and present evidence related to the funds she was paying to Meinert. In fact, appellant testified that she kept ledgers of expenses that she would pay and reimburse herself from the trust account, and that she had "[t]wo dressers full" of documents related to her care of Meinert. But these ledgers were never disclosed to respondent and appellant never attempted to offer them as an exhibit. As such, appellant is unable to demonstrate that she was denied the opportunity to prove that she was permitted reimbursement as a conservator.

Moreover, respondent's expert witness testified that there are circumstances in which a trustee can pay themselves from the trust funds, but it "has to be for their actual work as a trustee. So it is highly recommended that the trustee keeps a log of their time they've worked on it." This concept articulated by respondent's witness also applies to conservators. *See* Minn. Stat. § 524.5-502(c) (2022). Under these circumstances, appellant cannot show that false or misleading testimony was submitted at trial related to the special needs trust. The district court did not abuse its discretion in concluding that respondent did not submit false or misleading testimony to the jury that took appellant by surprise.

III.

Appellant argues that a new trial is warranted because the jury instructions related to the financial-exploitation-of-a-vulnerable-adult charges misstated the law. "While district courts have broad discretion to formulate appropriate jury instructions, a district court abuses its discretion if the jury instructions confuse, mislead, or materially misstate the law." *State v. Lampkin*, 994 N.W.2d 280, 285 (Minn. 2023) (quotation omitted). But when, as here, the defendant does not object to jury instructions, we review the jury instructions for plain error. *See State v. Beganovic*, 991 N.W.2d 638, 655 (Minn. 2023).

"To establish plain error warranting reversal of a conviction based on an unobjected-to error, an appellant must show (1) an error (2) that is plain (3) that affects a defendant's substantial rights." *Id.* "An error is plain if it 'contravenes case law, a rule, or a standard of conduct.'" *State v. Simion*, 745 N.W.2d 830, 843 (Minn. 2008) (quoting *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006)). But "even when these three prongs are established, a plain error does not justify granting a new trial unless [the appellate court's] failure to do

so will cause the public to seriously question the fairness and integrity of our judicial system." *State v. Bey*, 975 N.W.2d 511, 521 (Minn. 2022) (quotation omitted).

Here, appellant was charged with financial exploitation of a vulnerable adult under Minn. Stat. § 609.2335 (2016), for alleged conduct occurring between December 2013, and November 2017. Subdivision 4 of that statute provides: "In any prosecution under this section, the value of the money or property or services received by the defendant within any six-month period may be aggregated and the defendant charged accordingly in applying the provisions of subdivision 3 . . . ." Minn. Stat. § 609.2335, subd. 4.

At trial, the jury was instructed that, to find appellant guilty of financial exploitation of a vulnerable adult, it must find that appellant "intentionally used, managed, or took either temporarily or permanently the real or personal property or other financial resources of . . . Meinert, whether held in the name of . . . Meinert or a third party, for the benefit of someone other than the vulnerable adult," and that appellant's "act took place between December 31, 2013 and November 20, 2017."

Appellant argues that the jury instructions were plainly erroneous because section 609.2335, subdivision 4 "does not permit [respondent] to aggregate alleged offenses for more than a six-month period." We agree. The pertinent statute provides that "the value of money or property or services received by the defendant *within any six-month period* may be aggregated." Minn. Stat. § 609.2335, subd. 4 (emphasis added). This language limits the offenses that can be aggregated to form a more serious charge to those occurring within a six-month period. *See id.*; *see also State v. Anderson*, No. A23-0613, 2024 WL 1613914, at *3 (Minn. App. Apr. 15, 2024) (stating that section 609.2335, subdivision 4,

"limits the offenses that can be aggregated to form a more serious charge to those occurring within a six-month period").[3] Therefore, the district court erred by instructing the jury that it could find appellant guilty if the aggregated alleged offenses occurred over a 47-month period, which is more than the six-month period allowed by Minn. Stat. § 609.2335, subd. 4. And because the instruction contravenes the statute, the error is plain. *See Simion*, 745 N.W.2d at 843 ("An error is plain if it contravenes case law, a rule, or a standard of conduct." (quotation omitted)).

Nevertheless, to be entitled to relief, appellant must show that the plain error affected her substantial rights. *See Beganovic*, 991 N.W.2d at 655. "An erroneous jury instruction affects a defendant's substantial rights if the error was prejudicial and affected the outcome of the case." *State v. Huber*, 877 N.W.2d 519, 525 (Minn. 2016). The appellant "bears the burden of establishing that there is a reasonable likelihood that the absence of the error would have had a significant effect on the jury's verdict." *State v. Horst*, 880 N.W.2d 24, 38 (Minn. 2016) (quotation omitted).

Here, respondent presented evidence that appellant withdrew money directly from Meinert's special needs trust account and deposited this money into appellant's small business account. These transactions occurred in at least two distinct, six-month periods, and the aggregated amount of the transactions in each of these six-month periods exceeded $5,000. For example, the record reflects that, between February 2, 2016, and July 8, 2016, over $5,000 was transferred from the special needs trust account to appellant's small

[3] We cite this nonprecedential opinion for its persuasive value. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c).

business account. And from April 3, 2017, to June 30, 2017, over $5,000 was transferred from the trust account into appellant's small business account. Appellant fails to demonstrate that any of the funds transferred to her small business account were used in connection with her care of Meinert. *See id.* (stating that an appellant "bears the burden of establishing that there is a reasonable likelihood that the absence of the error would have had a significant effect on the jury's verdict"). Therefore, even if the jury had been properly instructed to consider aggregation of amounts spanning only six-month time-frames, appellant is unable to show that the result of the proceedings would have been different.

Appellant further argues that the jury instructions were plainly erroneous because they "did not make it clear that [appellant] was entitled to transfer money to her account if the money was spent for the benefit of [Meinert]." But this argument was not raised below and, therefore, it is not properly before us. *See Roby*, 547 N.W.2d at 357. Moreover, appellant fails to point to any authority supporting her position. Nor has appellant pointed to any caselaw, rule, or standard of conduct stating that it is error to fail to instruct a jury on how to evaluate lawful reimbursements. Consequently, appellant has failed to establish that the district court plainly erred by failing to instruct the jury on how to evaluate lawful reimbursements. *See Simion*, 745 N.W.2d at 843 (stating that an error is plain if it contravenes case law, a rule, or a standard of conduct).

IV.

Appellant argues that she was denied the effective assistance of counsel. Whether a defendant received ineffective assistance of counsel involves a mixed question of law

and fact, and this court reviews a postconviction court's decision on the issue de novo. *Dereje v. State*, 837 N.W.2d 714, 721 (Minn. 2013).

To demonstrate ineffective assistance of counsel, a defendant must satisfy the two-part test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *Peltier*, 946 N.W.2d at 372 (citing *Strickland*, 466 U.S. at 687). To prevail under *Strickland*, a defendant "must show that counsel's representation fell below an objective standard of reasonableness" and that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." 466 U.S. at 687-88, 694; *see also State v. Rhodes*, 657 N.W.2d 823, 842 (Minn. 2003) (applying *Strickland* to a claim of ineffective assistance of counsel). Both parts of the *Strickland* test need not be analyzed if either one is determinative. *Leake v. State*, 767 N.W.2d 5, 10 (Minn. 2009).

Under the first prong of *Strickland*, an objective standard of reasonableness is "representation by an attorney exercising the customary skills and diligence that a reasonably competent attorney would perform under similar circumstances." *State v. Jones*, 977 N.W.2d 177, 193 (Minn. 2022). We apply "a strong presumption that [an attorney's] performance falls within the wide range of 'reasonable professional assistance.'" *State v. Jones*, 392 N.W.2d 224, 236 (Minn. 1986).

Appellant argues that her trial counsel's representation fell below an objective standard of reasonableness because a reasonably competent attorney would have reviewed discovery and prevented the false and misleading testimony related to the transfers of property, and caught the error related to "the issue of the age limit as to the [special needs] trust." But as we determined above, appellant failed to show that false or misleading

testimony was presented at trial, and that Meinert's age affected the validity of the trust. Thus, appellant's argument fails under the first *Strickland* prong.

Appellant also argues that her counsel was ineffective because he failed to challenge restitution under Minn. Stat. § 256.98 (2022). But "[a] party may not 'obtain review by raising the same general issue litigated below but under a different theory.'" *State v. McMurray*, 860 N.W.2d 686, 689 n.2 (Minn. 2015) (quoting *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988)). Here, although appellant argued in her postconviction petition that her trial counsel was ineffective for failing to challenge restitution, her challenge was not based on section 256.98. As such, appellant's ineffective-assistance claim, as it relates to restitution, is not properly before us because it is being raised under a different theory than was argued below.

Appellant further argues that her counsel's performance was deficient because he failed to (1) investigate the law as to transfers, fiduciary compensation, and appellant's transactions; (2) hire an expert attorney and forensic accountant; (3) cross-examine witnesses regarding the laws of eligibility; (4) attend continuing legal education as to medical assistance, trusts, guardianships, and conservatorships; (5) object to misstatements of the law and the jury instructions; and (6) file discovery motions. Because most of these arguments relate to trial strategy, we do not address them. *See State v. Bobo*, 770 N.W.2d 129, 138 (Minn. 2009) ("What evidence to present to the jury, what witnesses to call, and whether to object are part of an attorney's trial strategy which lie within the proper discretion of trial counsel and will generally not be reviewed later for competence.").

However, appellant's ineffective-assistance-of-counsel claim has merit as it relates to ledgers she allegedly kept on behalf of Meinert. Specifically, appellant claims that she kept ledgers accounting for her use of the special needs trust funds, which she alleges demonstrate that the trust funds were used for Meinert's needs and care. Appellant argues that a reasonable, competent attorney would have presented these ledgers to the jury in defense of the financial-exploitation-of-a-vulnerable-adult charges.

To be entitled to an evidentiary hearing based on a claim of ineffective assistance of counsel, "an appellant 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) (quotation omitted). And "[i]n determining whether an evidentiary hearing is required, a postconviction court considers the facts alleged in the petition as true and construes them in the light most favorable to the petitioner." *Andersen v. State*, 913 N.W.2d 417, 422-23 (Minn. 2018) (quotation omitted).

Here, appellant has alleged facts related to the ledgers that, if true, would potentially be exculpatory on the financial-exploitation-of-a-vulnerable-adult charges. Based on this record, appellant is entitled to an evidentiary hearing on her ineffective-assistance-of-counsel claim because she has satisfied the *Strickland* test. Accordingly, we reverse and remand for an evidentiary hearing solely on appellant's claim that her counsel was ineffective for failing to investigate and offer the ledgers in defense of the financial-exploitation-of-a-vulnerable-adult charges.

Affirmed in part, reversed in part, and remanded.