STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0598

State of Minnesota,
Respondent,

vs.

Ty'ron Louis Collins,
Appellant.

Filed July 1, 2013
Affirmed
Chutich, Judge

Jackson County District Court
File No. 32-CR-10-197

Lori Swanson, Attorney General, John B. Galus, Assistant Attorney General, St. Paul, Minnesota; and

Robert C. O'Connor, Jackson County Attorney, Jackson, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Leslie J. Rosenberg, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Chutich, Presiding Judge; Smith, Judge; and Klaphake, Judge.*

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

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

CHUTICH, Judge

A jury convicted appellant Ty'ron Louis Collins of second-degree intentional murder and second-degree felony murder for the stabbing death of his brother. Collins now appeals, contending that (1) the district court should have suppressed statements he made to law enforcement because they were obtained in violation of his constitutional rights, (2) the prosecutor committed misconduct when he asked Collins "were they lying" questions about the testimony of certain trial witnesses, and (3) the district court abused its discretion in its sentencing decision. Collins also makes several pro se arguments. Because Collins's arguments are either without merit or involve an error that did not affect his substantial rights, we affirm.

FACTS

In spring of 2010, Collins and his brother, K.C., traded vehicles. Collins later wanted to get his truck back from K.C. On June 10, 2010, K.C. told Collins that he was going to drive the truck to his work at Colonial Manor Nursing Home, and that Collins could pick it up there. Collins drove to Colonial Manor but did not see his truck in the parking lot. He went into the nursing home and argued with K.C.

A short time later, K.C. and another nursing-home employee, S.C., went to assist a resident in her room. As soon as K.C. closed the door, Collins, who was waiting in the room, punched K.C. in the face. K.C. tried unsuccessfully to fight Collins off. The brothers then moved towards the door of the room, still fighting, and, according to S.C., "that's when [Collins] was on top of [K.C.] punching him and all of a sudden he stopped

and [K.C.] said you stabbed me and that's when I [saw] an object in [Collins's] hand." S.C. testified that Collins had a closed fist and that he could not see the object very well, but it appeared to be one inch long and was possibly clear. Collins then fled the nursing home.

Bleeding profusely and drifting in and out of consciousness, K.C. told one nursing-home employee that "the f---er stabbed me." Despite the medical efforts of the nursing-home staff and ambulance personnel, K.C. died from multiple stab wounds to his neck, chest, and back.

After a short automobile chase ending in a minor crash, law enforcement officers arrested Collins. The officers were unsure whether Collins needed medical attention, so they placed him in an ambulance that transported him to the hospital. Officers found a pocket knife and a steak knife in Collins's car, and blood on the driver's seat.

Officers placed a recording device on Collins's chest while he was being medically treated in the ambulance and at the hospital. Because he was restrained, Collins could not see the recorder. The recorder remained activated for about three hours, but the deputy accompanying Collins did not ask him any questions during that time.

Special Agent Derek Woodford of the Bureau of Criminal Apprehension conducted a recorded, custodial interrogation of Collins at the hospital that lasted about one hour. At the beginning of the interview, Collins was distraught, crying to himself and repeatedly asking for forgiveness. When Special Agent Woodford asked Collins if he could talk with him, Collins said "yeah," but asked the agent twice whether his brother

was "OK." Special Agent Woodford told Collins that his brother was not okay and that he would call the Jackson hospital after they were finished talking to get an update on K.C.'s condition. Collins was upset, but quickly calmed down.

Special Agent Woodford read Collins his *Miranda* rights, and Collins responded "yeah" when asked if he understood his rights. Collins again asked the agent if he could find out K.C.'s condition before they talked, but Special Agent Woodford again stated that he wanted to talk to Collins first. Collins said that he would talk to Special Agent Woodford, but said "and [because] then if I say no, I'd rather have an attorney with, where do we go from here?" Special Agent Woodford told Collins he had an opportunity to get an attorney and asked him again if he would talk. Collins said yes.

Special Agent Woodford proceeded to question Collins about what occurred between him and K.C. Collins admitted fighting with K.C. at the nursing home, but denied having a knife or stabbing K.C. He claimed that he drove home and got the knife after he left the nursing home. He said, "I did not stab my brother, especially with the knife that was in [the car]." Collins was calm and lucid through most of the interview.

Towards the end of the interview, Collins asked "Is it too late to ask for an attorney?" Special Agent Woodford told him he could access an attorney at any time, and asked him if he wanted to stop talking. Collins seemed to say that he wanted to stop answering questions, but still consented to a DNA swab and signed a medical release. After obtaining the consent and the swab, Special Agent Woodford ended the interview without asking any further questions.

A grand jury indicted Collins on three counts: (1) second-degree intentional murder; (2) second-degree felony murder (while committing second-degree assault); and (3) first-degree murder (while committing domestic abuse). The district court denied Collins's motion to suppress the June 10 hospital interview with Special Agent Woodford.

During a 10-day jury trial, members of Collins's family testified about Collins's interactions with K.C. and other family members. Collins's ex-wife and daughter testified that Collins had physically abused them in the past. Collins's sister testified that she received several voice messages from Collins on the afternoon of K.C.'s death. In one message, Collins said that "if [K.C.] didn't give him his mother f[---]ing truck—if [K.C.] didn't give him his mother f[---]ing truck he was going to stab his mother f[---]ing neck right now." In a later message to his sister, Collins was crying and said "[K.C.]—I'm sorry, please forgive me, I hurt [K.C.] bad."

The state also introduced the testimony of a jail employee who testified that Collins told her that "I know I am guilty but I am not First Degree guilty." Law-enforcement personnel also testified concerning the investigation. The steak knife found in Collins's car matched a knife missing from a set belonging to his girlfriend.

Several Bureau of Criminal Apprehension employees who performed forensic testing also testified. The steak knife found in Collins's car was bloody, but the predominant DNA profile found on the knife matched that of Collins, not K.C. A minor DNA profile was also found, however, from which K.C. could not be excluded. Another expert opined that all seven cuts in K.C.'s shirt could have been made by the steak knife.

K.C.'s DNA was found in blood on Collins's clothing and in blood found on Collins's finger. The medical examiner who conducted K.C.'s autopsy opined that the steak knife found in Collins's car could have caused K.C.'s injuries.

Collins testified in his own defense and spoke extensively about his childhood, his family, and his relationship with K.C. He testified that he did not go to the nursing home intending to kill K.C. and that he did not remember stabbing him. Collins ultimately confessed to the murder, but said that he was very upset and did not intend to kill K.C.

The district court granted a defense motion to instruct the jury on the lesser-included offense of first-degree manslaughter (heat of passion). The jury convicted Collins of second-degree intentional murder and second-degree felony murder, but returned verdicts of not guilty on the first-degree murder (domestic abuse) and first-degree manslaughter (heat of passion) counts.

The sentencing guidelines prescribed a presumptive range of 261–367 months for the convictions, and the district court imposed a 306-month sentence. Collins appealed.

D E C I S I O N

I. Admission of Statements

Collins first argues that the district court should have suppressed the statements he made while at the hospital because he did not voluntarily, knowingly, and intelligently waive his constitutional rights and because his statements were coerced.[1]

[1] The district court also determined that statements made by Collins during a June 11 jailhouse interview were admissible. Because Collins does not argue that admission of the jailhouse statements was erroneous, we decline to assess their admissibility on appeal. *See Rickert v. State*, 795 N.W.2d 236, 244 (Minn. 2011) ("It is our longstanding rule that

Recording Device on Chest

Collins contends that law enforcement officers violated his rights by placing recording devices on his chest while he was in the ambulance and at the hospital without first reading him his *Miranda* rights. The state agrees that Collins was in custody in the ambulance and at the hospital, but Collins does not identify any recorded statements made before the formal hospital interview. Nor did the state introduce any statements he made in the ambulance or at the hospital before the formal interrogation. Because law enforcement officials did not interrogate Collins before the formal interview, no *Miranda* warning was necessary. *See State v. Miller*, 659 N.W.2d 275, 280 (Minn. App. 2003) (stating no *Miranda* warning is necessary if no interrogation occurred), *review denied* (Minn. July 15, 2003).

HIPAA

Collins next argues that any recorded statements he made in the ambulance or at the hospital should have been suppressed under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub.L. 104-191, 110 Stat. 1936. Because the law-enforcement organizations involved in Collins's investigation are not "covered entities" under HIPAA and because the federal law was not intended to regulate law enforcement officials, this argument is meritless. *See U.S. v. Prentice*, 683 F. Supp. 2d 991, 1001 (D. Minn. 2010) (recognizing that law enforcement agencies are not covered entities under HIPAA); 45 C.F.R. §§ 160.103, 164.502(a) (2013) (defining "covered entities").

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issues that are not argued or briefed on appeal are deemed waived, unless prejudicial errors are obvious from the record." (quotation omitted)).

Waiver of Rights

Collins next contends that he did not knowingly, voluntarily, and intelligently waive his *Miranda* rights because Special Agent Woodford coerced him into waiving those rights. Under the Fifth Amendment, the admissibility of statements made during a custodial interrogation turns on whether the defendant was informed of and validly waived his right to remain silent and his right to speak with an attorney. *Miranda v. Arizona*, 384 U.S. 436, 479, 86 S. Ct. 1602, 1630 (1966). The defendant must be informed of these rights and may waive them if he does so knowingly, intelligently, and voluntarily. *State v. Anderson*, 789 N.W.2d 227, 233 (Minn. 2010). The state must establish by a preponderance of the evidence that the waiver was knowing, voluntary, and intelligent. *Id.*

To determine whether a waiver is valid, courts must

> look at the totality of the circumstances, and consider factors such as the defendant's age, maturity, intelligence, education, experience, ability to comprehend, lack of or adequacy of warnings, the length and legality of the detention, the nature of the interrogation, any physical deprivations, and limits on access to counsel and friends.

Id. at 233–34. Collins does not challenge the district court's factual findings, so we conduct a de novo review of the court's "legal conclusions based on those facts to determine whether the waiver was knowing, intelligent, and voluntary." *Id.* at 233.

Collins contends that his waiver was not knowing because he was not aware of the recording device placed on his chest. He further contends that the waiver was not

voluntary or intelligent because he was traumatized and because he was forced to waive his rights to receive information about his brother's condition.

Collins's argument that his waiver was not knowingly made because he was unaware of the recording devices is unpersuasive. Special Agent Woodford clearly told Collins at the beginning of the formal interview that it was being recorded and read him his *Miranda* rights. Further, as discussed above, no statements from the earlier ambulance or hospital recordings were admitted at trial.

Next, Collins contends that his waiver was not voluntary. To determine whether a waiver of rights was voluntary, we must decide whether, "considering the totality of the circumstances, the police actions were so coercive, so manipulative, or so over powering that defendant's will was overborne." *State v. Mills*, 562 N.W.2d 276, 283 (Minn. 1997) (quotation omitted).

After carefully reviewing the interview, we conclude that Collins's waiver was voluntary. While Special Agent Woodford repeatedly told Collins that he would check on K.C.'s condition *after* the interview, the agent never conditioned obtaining the information on Collins's consent to answer questions. As the district court found, Collins was in some emotional distress, but "was not desperate or hysterical." Further, Agent Woodford maintained a professional demeanor while obtaining the waiver and "consistently spoke in a steady, even, matter-of-fact manner and did not raise his voice or express disbelief or anger."

The recording also shows that Collins understood his rights and the nature of the interrogation that Special Agent Woodford was conducting, and therefore the waiver was intelligent. Because Collins's waiver of rights was knowing, intelligent, and voluntary, the district court properly admitted the statements.

Invocation of Right to Counsel

Collins next asserts that he invoked his right to counsel and that Special Agent Woodford improperly continued to interrogate him after the invocation. "If a suspect invokes his right to counsel during a custodial interrogation, all questioning must cease . . . ." *State v. Ortega*, 813 N.W.2d 86, 94 (Minn. 2012). To invoke the right to counsel, however, a suspect's request must be unambiguous, *State v. Borg*, 806 N.W.2d 535, 546 (Minn. 2011), and he or she "must do more than make reference to an attorney," *State v. Ortega*, 798 N.W.2d 59, 71 (Minn. 2011). If a suspect's statement is ambiguous but could be construed as a request for an attorney, "investigators must cease questioning the suspect except as to narrow questions designed to clarify the accused's true desires respecting counsel." *Id.* (quotations omitted). We review the district court's factual determination that Collins did not invoke his right to counsel for clear error. *See State v. Risk*, 598 N.W.2d 642, 647 (Minn. 1999).

Collins first arguably invoked his right to an attorney when he said "if I say no [to the interview], I'd rather have an attorney with, where do we go from here?" Special Agent Woodford responded, "Well then . . . you have an opportunity to get an attorney." The agent then asked "Is that okay to talk to [you]?" and Collins said "yeah."

The second reference to an attorney occurred towards the end of the interview, when the formal questioning had ended and Special Agent Woodford sought Collins's consent to the medical release and DNA swab. The following exchange occurred:

> COLLINS: Is it too late to ask for an attorney?
> . . . .
> WOODFORD: Oh, do you want to stop talkin[g]?
> COLLINS: I mean I don't know, I mean.
> . . . .
> WOODFORD: Well you have any—you can access this attorney privilege any time you want, your rights. So you can say to me well I'm done talkin[g], I've talked enough . . .

Collins stopped talking at this point but consented to the medical release and the DNA swab.

Neither of these exchanges reflects Collins's unequivocal invocation of his right to contact an attorney. At best, the statements are ambiguous and Special Agent Woodford properly asked only clarifying questions after the statements. *See Ortega*, 798 N.W.2d at 71. Given the totality of the circumstances, the district court correctly found that Collins did not unequivocally invoke his right to counsel.

Voluntariness of Statement

We also independently review whether a statement was given voluntarily. *State v. Thompson*, 788 N.W.2d 485, 491 (Minn. 2010). "In addition to the consideration of other factors, a [statement] is not involuntary unless there is evidence that the suspect's will was overborne by coercive police conduct." *State v. Edwards*, 589 N.W.2d 807, 813 (Minn. App. 1999), *review denied* (Minn. May 18, 1999). We consider the same factors as when determining whether a waiver of rights was voluntary; that is, we look to the

totality of the circumstances, including the defendant's background and his ability to comprehend the situation, the adequacy of warnings, and the nature of the interrogation. *State v. Farnsworth*, 738 N.W.2d 364, 373 (Minn. 2007).

Collins was emotionally distraught at points in the interview and agreed to talk to Special Agent Woodford only after the agent told Collins that he would check on K.C.'s condition after the interview. Considering all of the circumstances, however, we conclude that Collins's statements were voluntary. Nothing suggests that Collins was unable to comprehend the nature of the questions; he was a 38-year-old man with seemingly normal intelligence and maturity levels. The interview took place in a hospital room and Collins was not handcuffed or otherwise restrained. Special Agent Woodford read Collins his *Miranda* rights and Collins knew that he did not have to say anything. Further, Collins calmed down considerably as the interview started and the recording does not reflect that his will was "overborne" by anything that Special Agent Woodford said or did. Thus, Collins's statements were voluntary. The district court properly denied the suppression motion.

II. "Were They Lying" Questions

Collins next argues that the prosecutor engaged in misconduct when he asked Collins on cross-examination several "were they lying" questions about the testimony of other witnesses. Collins did not object to these questions at trial, and we therefore apply the plain-error standard of review. *State v. Hayes*, 826 N.W.2d 799, 807 (Minn. 2013). "In applying plain-error review, we will reverse only if (1) there is error, (2) the error is plain, and (3) the error affected the defendant's substantial rights." *Id.* An error is plain

if it "contravenes case law, a rule, or a standard of conduct." *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). Only if these first three prongs are satisfied will we "assess whether the error should be addressed to ensure fairness and the integrity of the judicial proceedings." *Id.*

Plain Error

"As a general rule, 'were they lying' questions have no probative value and are improper and argumentative because they do nothing to assist the jury in assessing witness credibility in its fact-finding mission and in determining the ultimate issue of guilt or innocence." *State v. Pilot*, 595 N.W.2d 511, 518 (Minn. 1999). This general rule is inapplicable, however, if "the defense [holds] the issue of the credibility of the state's witnesses in central focus." *Id.* The district court "should allow 'were they lying' questions only when the defense expressly or by unmistakable insinuation accuses a witness of a falsehood." *State v. Leutschaft*, 759 N.W.2d 414, 423 (Minn. App. 2009), *review denied* (Minn. Mar. 17, 2009).

Collins challenges the prosecutor's questions to him about whether the following witnesses were lying: (1) his daughter and his ex-wife, who testified about incidents of past domestic abuse; (2) his sister, who testified that Collins told her he did not care if he killed his brother; (3) various nursing-home employees, who testified that Collins acted strangely on the day of the stabbing and did not greet them as he normally would; and (4) S.C. and nursing-home resident M.F., who testified that Collins threw the first punch in the fight with K.C.

On his direct examination and in defense counsel's closing argument, Collins expressly challenged the truthfulness of the testimony of his ex-wife and daughter, testifying that their "allegations" of domestic abuse were untrue. Collins clearly placed the credibility of his ex-wife and daughter in central focus as it related to the truth or falsity of the incidents of domestic abuse; the prosecutor's questions about whether they were lying were therefore not improper and do not amount to plain error. *See Pilot*, 595 N.W.2d at 518; *Leutschaft*, 759 N.W.2d at 423. Moreover, the jury acquitted Collins of the charge of first-degree murder—domestic abuse, and therefore any misconduct in asking these questions is harmless.

Concerning the prosecutor's other "were they lying" questions to Collins, our review of the transcripts shows that Collins did not expressly accuse his sister or the nursing-home employees or residents of being untruthful. Even though this testimony concerned matters ultimately collateral to the issue of Collins's guilt or innocence, the "were they lying" questions were improper and amounted to prosecutorial misconduct.

Substantial Rights

Even though some of the prosecutor's questions were plainly erroneous, we need not further inquire into the misconduct if it did not affect Collins's substantial rights. *See Hayes*, 826 N.W.2d at 807. This third plain-error factor essentially requires us to apply a harmless-error analysis: "an error affects substantial rights where there is a 'reasonable likelihood' that the absence of the error would have had a 'significant effect' on the jury's verdict." *State v. Reed*, 737 N.W.2d 572, 583 (Minn. 2007).

Any error caused by the prosecutor's improper "were they lying" questions about the testimony of Collins's sister and the nursing-home employees and residents clearly did not affect Collins's substantial rights. Evidence of Collins's guilt was overwhelming, especially considering his confession at trial that he did indeed kill his brother. The prosecutor's few improper questions to Collins about whether certain witnesses were lying had no reasonable likelihood of affecting the verdict.[2] *See State v. Morton*, 701 N.W.2d 225, 235–36 (Minn. 2005) (holding that plainly erroneous "were they lying" questions did not prejudice the defendant's substantial rights because testimony and physical evidence introduced at trial strongly pointed to the defendant's guilt). Any plain error resulting from the prosecutorial misconduct, therefore, was harmless and did not affect Collins's substantial rights.

III. Sentencing

Finally, Collins contends that the district court abused its discretion by imposing a sentence in the middle of the presumptive statutory guidelines range rather than sentencing him to the minimum guidelines sentence. The presumptive statutory guidelines range for Collins's offense is 261–367 months, and the district court imposed a sentence of 306 months. Collins did not argue to either the district court or this court that the district court should have departed from the guidelines range.

[2] Our conclusion is limited to the facts of this case and we do not condone the use of such improper techniques. *See Leutschaft*, 759 N.W.2d at 423 ("Because of the fundamental unfairness that can result from 'were they lying' questions juxtaposed against the virtual absence of probative value they carry, such questions should rarely be allowed.").

The district court enjoys discretion in sentencing matters. *State v. Ford*, 539 N.W.2d 214, 229 (Minn. 1995). Appellate courts "will not generally review a district court's exercise of its discretion to sentence a defendant when the sentence imposed is within the presumptive guidelines range," and "[p]resumptive sentences are seldom overturned." *State v. Delk*, 781 N.W.2d 426, 428 (Minn. App. 2010) (quotation omitted), *review denied* (Minn. July 20, 2010). Only in the "rare" case will we reverse a district court's imposition of a presumptive sentence. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

Collins contends that the 306-month sentence "unfairly exaggerated [his] criminality." *See State v. McLaughlin*, 725 N.W.2d 703, 715 (Minn. 2007) ("Generally, we will not interfere with a [district] court's discretion in sentencing unless the sentence is disproportionate to the offense or unfairly exaggerates the criminality of the defendant's conduct." (quotation omitted)).

We conclude that the district court did not abuse its discretion in declining to sentence Collins to the minimum presumptive sentence. Collins committed a serious and violent crime in the presence of two elderly women. While his troubled childhood and mental-health issues are unfortunate, they do not excuse or mitigate the seriousness of the murder under these circumstances; the sentence in the presumptive range imposed by the district court does not unfairly exaggerate the criminality of Collins's conduct.

IV. Pro Se Arguments

Grand Jury Proceedings

Collins makes several arguments concerning the grand-jury proceedings, including claims of juror bias, witness perjury, prosecutorial misconduct, errors in presenting evidence, and ineffective assistance of counsel. Because Collins did not object to the grand-jury proceedings before the district court or identify any reasons showing good cause for his failure to do so, his grand-jury arguments are waived.[3] *See State v. Sontoya*, 788 N.W.2d 868, 875 (Minn. 2010) (declining to address an untimely grand-jury challenge where the defendant did not "identif[y] any reasons that would constitute good cause" to grant relief from the waiver); *White v. State*, 711 N.W.2d 106, 111 (Minn. 2006) (stating that "an alleged error in the composition of the grand jury is not properly and timely raised on direct appeal absent an objection to the indictment to the district court"); Minn. R. Crim. P. 17.06, subd. 3.

Speedy Trial

Collins contends that his right to a speedy trial was violated because a 16-month delay occurred between his arrest and his trial. Our review of the record does not reflect

[3] Collins contends that he received ineffective assistance of counsel because his attorney did not challenge the indictment before the district court. He argues that his counsel's failure to challenge the indictment "prevent[ed] a lesser degree of manslaughter to be included in the charges." Because the district court did allow a manslaughter charge to go to the jury, however, any error from counsel's failure to challenge the indictment on this basis is harmless.

that Collins ever demanded a speedy trial,[4] and therefore this argument fails on the merits. *See* Minn. R. Crim. P. 11.09(b); *State v. Hurd*, 763 N.W.2d 17, 28 (Minn. 2009) (stating that a defendant cannot prevail on the merits of a speedy-trial argument when he made no speedy-trial demand).

Juror Prejudice

Collins also asserts that his rights were violated "due to prejudice[d] jurors during his trial." We cannot consider this argument, however, because the district court file does not contain a transcript of voir dire and no adequate record otherwise exists for us to analyze Collins's claims of juror bias. *See State v. Berrios*, 788 N.W.2d 135, 141 (Minn. App. 2010) (stating that we cannot consider an argument on the merits "in the absence of an adequate record"), *review denied* (Minn. Nov. 16, 2010). Moreover, Collins does not provide any explanation of the alleged voir dire errors beyond his brief assertion, nor does the record reflect his purported challenges, and therefore the argument is waived. *See State v. Wembley*, 712 N.W.2d 783, 795 (Minn. App. 2006) (stating that "[a]n assignment of error in a brief based on mere assertion and not supported by argument or authority is waived unless prejudicial error is obvious on mere inspection" (quotation omitted)), *aff'd on other grounds*, 728 N.W.2d 243 (Minn. 2007).

Admission of Evidence

Collins also asserts that the district court erred in admitting "inadmissible character evidence," but fails to identify the objectionable evidence. The argument is

[4] Defense counsel agreed at a pretrial hearing to a trial date outside of the 60-day period required when a demand is made, further demonstrating that Collins did not assert his right to a speedy trial.

therefore waived for purposes of review on appeal. *See State v. Butcher*, 563 N.W.2d 776, 780 (Minn. App. 1997) (stating that issues not briefed on appeal are waived), *review denied* (Minn. Aug. 5, 1997).

Ineffective Assistance of Counsel

Collins next contends that his trial counsel was ineffective because counsel failed to investigate evidence related to Collins's mental health and potentially helpful witnesses. Because attorneys have discretion concerning which witnesses to call and what evidence to present, Collins's argument is without merit. *See State v. Davis*, 820 N.W.2d 525, 539 n.10 (Minn. 2012) (noting that we will not review counsel's decisions about which witnesses to interview because they are matters of trial strategy); *State v. Voorhees*, 596 N.W.2d 241, 255 (Minn. 1999) (stating that a trial counsel's decision regarding trial tactics lies within counsel's discretion "and will not be reviewed later for competence").

Sufficiency of Evidence

Collins contends that the evidence was insufficient to support his convictions. In assessing the sufficiency of the evidence, we carefully review the record to determine whether the evidence and reasonable inferences to be drawn from that evidence, when viewed in the light most favorable to the conviction, "were sufficient to allow the jury to reach its verdict." *Hayes*, 826 N.W.2d at 805 (quotation omitted). "[W]e assume that the jury believed the State's witnesses and disbelieved any evidence to the contrary." *Id.* Our review of the record shows that the testimony and evidence introduced at trial, including Collins's confession to the murder, overwhelmingly support the jury's verdict.

Prosecutorial Misconduct

Finally, Collins contends that the prosecutor engaged in misconduct when he asked Collins several allegedly "argumentative" and "badgering" questions on cross-examination about his father burning him as a child. Like the "were they lying" questions, defense counsel did not object to the prosecutor's questions about the burn and we therefore review the questions for plain error. *Id.* at 807. Our review of the record shows that the prosecutor was simply trying to clarify Collins's direct testimony, and the questions were not improperly argumentative. Thus, no misconduct occurred.

Affirmed.