MISSOURI COURT OF APPEALS
WESTERN DISTRICT

WD88297

RODGER L. GANNAN,
Appellant,

v.

STATE OF MISSOURI,
Respondent.

Opinion Filed: November 10, 2026

Appeal from the Circuit Court of Sullivan County, Missouri
The Honorable Terry A. Tschannen, Judge

Before Division Two Judges: Mark D. Pfeiffer, Presiding Judge,
Cynthia L. Martin, Judge, and W. Douglas Thomson, Judge

Mr. Rodger Gannan ("Gannan") appeals from the judgment of the Circuit Court of Sullivan County, Missouri ("motion court"), denying, after an evidentiary hearing, his motion for post-conviction relief ("PCR motion") pursuant to Rule 29.15,[1] which asserted that his trial counsel's assistance was constitutionally ineffective. We affirm.

[1] All rule references are to I MISSOURI COURT RULES – STATE 2025. All statutory references are to THE REVISED STATUTES OF MISSOURI (2016), as supplemented through May 23, 2023, unless otherwise indicated.

Factual and Procedural History[2]

E.H. ("Victim"),[3] a female, was born in 2005, to S.B. ("Mother") and J.H. ("Father"). Mother and Father separated in 2006 and divorced in 2012. Mother and Father shared custody of Victim and her older sister ("Sister"), and the girls traveled back and forth between their parents' residences. In 2010 or 2011, Mother began dating Gannan, and Mother married Gannan in 2012. During their relationship, Mother and Gannan lived in several houses located in Brookfield, Missouri. The final house was on Courtland Street and was close to the house where Gannan's niece ("Aunt") lived. Aunt is Gannan's niece, but Victim referred to her as "Aunt."

On September 15, 2018, Victim spent the night at Aunt's house. Early on September 16, Victim confided in Aunt that Gannan had been touching Victim inappropriately since they lived in their first Brookfield house. Victim told Aunt that Gannan "makes me touch his" while motioning to the genital area and made references to

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[2] "On appeal from the motion court's denial of a Rule 29.15 motion, we view the facts in the light most favorable to the underlying criminal conviction as those facts bear upon the motion court's judgment." *Tatham v. State*, 715 S.W.3d 235, 237 n.1 (Mo. App. W.D. 2025) (quoting *Morrison v. State*, 619 S.W.3d 605, 607 n.1 (Mo. App. W.D. 2021)).

We affirmed Gannan's underlying convictions in *State v. Gannan*, 658 S.W.3d 103 (Mo. App. W.D. 2022). Within our ruling on Gannan's direct appeal, we detailed the overwhelming evidence of Gannan's guilt associated with his sexual crimes against the minor victim, his thirteen-year-old stepdaughter. *Id.* at 105-08. Though we will not repeat the entirety of the details of Gannan's underlying crimes in today's ruling, we recite the following factual background taken from *State v. Gannan* without further attribution.

[3] Pursuant to the directive of section 509.520.1 (Supp. IV 2025), we do not use the names of any victim, minor, or witness information in this opinion.

performing oral sex on Gannan. Aunt told Victim that they needed to tell Mother or Father. Victim, with the help of Aunt, told Father. Aunt then asked Mother to come to her house without Gannan. Victim told Mother that Gannan "had been touching her[,] making her do stuff with him[,] had been hurting her, and having sex with her."

Mother and Father took Victim to the Brookfield Police Department. Victim told Officer that Gannan had been molesting her since 2012, and that he had done so in each of the houses she and Mother had lived in with Gannan. Victim also gave a written statement at the police station. In her written statement, Victim said that Gannan began touching her in the vagina and in the "but[t] area" when she was eight years old. Victim's statement generally indicated that Gannan bribed her with money, cigarettes, and time with her friends, and that Gannan threatened that she would "never see anyone ever again" if she told anyone about the sexual abuse.

On September 21, 2018, Victim participated in a forensic interview at the Children's Advocacy Center ("CAC") in Trenton, Missouri. Victim told Interviewer that Gannan had touched her more than one time in places that should not be touched, particularly her breasts, genitals, and buttocks.

During a two-day jury trial in March 2021, Victim, among others, testified, and a video of Victim's CAC interview was admitted into evidence and viewed by the jury. During her trial testimony, Victim detailed the years of sexual abuse Gannan subjected her to.

Furthermore, Victim's family testified on her behalf. Victim's father testified that, after Victim disclosed Gannan's abuse, Victim experienced depression, anxiety, suicidal thoughts, self-harm, fights at school, and hospitalization for mental health. He testified that she went to monthly counseling.

Victim's sister testified that, after Victim disclosed the abuse, Victim had "lots of depression, anxiety, lots of anger," and had been to a "mental hospital" five times. Victim's sister testified that Victim would also have trouble sleeping.

Victim's biological mother testified that, after Victim disclosed the abuse, Victim was angry, withdrawn, anxious, self-harming, and suffering from terrible nightmares, in which she would "swing her arms like she's fighting somebody off" and say things like, "Mommy, he's here." Victim had to be hospitalized "several times."

Gannan testified in his own defense at trial. He denied ever touching Victim inappropriately, denied having sexual relations with her, and denied paying her for sex.

At the conclusion of the evidence and closing argument, the jury found Gannan guilty of the sex crimes he was charged with after deliberating for only 30 minutes.

After Gannan's convictions were affirmed in his direct appeal to this Court, Gannan filed his *pro se* Rule 29.15 PCR motion, and his appointed counsel subsequently filed an amended motion. In the amended motion, Gannan argued that his trial counsel provided ineffective assistance when failing to object to the admission of testimony from Victim and Victim's family members.

On April 9, 2025, an evidentiary hearing ("PCR hearing") was held before the motion court. At the PCR hearing, Gannan's trial counsel testified. Trial counsel testified that it was a matter of trial strategy to not object to the testimony that Gannan complained about because he had hoped to use testimony of Victim's fragile mental status to bolster the defense theory that Victim was lying. Trial counsel also testified that he believed any relevancy objection likely would have been overruled.

On July 29, 2025, the motion court entered its judgment denying Gannan's PCR motion for failure to satisfy both the *Strickland*[4] performance prong and the *Strickland* prejudice prong.

Gannan timely appealed the motion court's judgment.

Standard of Review

"Appellate review of the trial court's action on the motion filed under . . . Rule 29.15 [is] limited to a determination of whether the findings and conclusions of the trial court are clearly erroneous." *Flaherty v. State*, 694 S.W.3d 413, 416 (Mo. banc 2024) (quoting Rule 29.15(k)). "In applying this standard, appellate courts should defer to the motion court's superior opportunity to judge the credibility of witnesses and recognize the 'circuit court is entitled to believe all, part, or none of the evidence presented at the post-conviction hearing.'" *Id.* at 419 (quoting *Driskill v. State*, 626 S.W.3d 212, 220 (Mo. banc 2021)). To find that a motion court's decision was clearly

[4] *Strickland v. Washington*, 466 U.S. 668 (1984).

erroneous, this Court must form a "definite and firm impression that a mistake has been made" after a review of the entire record. *Id.* at 416 (quoting *Davis v. State*, 486 S.W.3d 898, 905 (Mo. banc 2016)). "The motion court's findings are presumed correct." *Shockley v. State*, 579 S.W.3d 881, 892 (Mo. banc 2019). "We defer to the motion court's factual findings and credibility determinations, . . . accept[ing] the motion court's findings as to trial counsel's knowledge and strategic decisions." *Ellis v. State*, 709 S.W.3d 459, 465 (Mo. App. W.D. 2025) (citation modified).

Analysis

"In ineffective assistance of counsel cases, the burden is on the movant to overcome the strong presumption that counsel was competent[.]" *Powell v. State*, 717 S.W.3d 290, 299 (Mo. App. W.D. 2025). "To be entitled to post-conviction relief for ineffective assistance of counsel, [Gannan] must show by a preponderance of the evidence his . . . trial counsel failed to meet the *Strickland* test to prove his . . . claims." *Shockley*, 579 S.W.3d at 892 (citing *Strickland v. Washington*, 466 U.S. 668 (1984)); *accord Flaherty*, 694 S.W.3d at 420. "Under *Strickland*, [Gannan] must demonstrate: (1) trial counsel failed to exercise the level of skill and diligence reasonably competent trial counsel would in a similar situation, and (2) he was prejudiced by that failure." *Shockley*, 579 S.W.3d at 892.

To establish deficient performance, Gannan "must overcome the strong presumption trial counsel's conduct was reasonable and effective." *Id.* "To overcome this presumption, [Gannan] must identify 'specific acts or omissions of counsel that, in

light of all the circumstances, fell outside the wide range of professional competent assistance.'" *Id.* (quoting *Zink v. State*, 278 S.W.3d 170, 176 (Mo. banc 2009)). "This is an objective standard, and this Court employs a strong presumption that counsel's conduct falls within the range of reasonable professional assistance." *Wood v. State*, 728 S.W.3d 416, 423 (Mo. banc 2026) (citation modified).

To establish prejudice, Gannan "must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* "Simply showing that the alleged error had a conceivable effect on the trial outcome is not sufficient; instead the movant must show that, absent the error, there is a reasonable probability that he would have been found not guilty." *Ellis*, 709 S.W.3d at 466 (citation modified). In making its prejudice determination, this Court "considers the totality of the evidence as to whether a reasonable probability exists and in so doing, we can consider the strength of the evidence of guilt in evaluating any prejudice to a defendant as a result of counsel's alleged ineffectiveness." *Stewart v. State*, 387 S.W.3d 424, 429 (Mo. App. S.D. 2012) (citation modified).

"If the movant fails to prove either prong, relief cannot be granted." *Rouner v. State*, 735 S.W.3d 640, 646 (Mo. App. W.D. 2026). "And if the movant fails to satisfy one prong, we need not address the other." *Id.*

In Point I, Gannan argues that trial counsel should have objected when the State asked Victim's father, mother, and sister questions regarding Victim's behavior and personality changes after the September 2018 disclosures. In Point II, Gannan makes a similar argument about Victim's testimony on the same topics. Because the same legal issue is raised in both points on appeal, we address the points together.

"Counsel will not be held ineffective for failing to make a nonmeritorious objection." *Powell*, 717 S.W.3d at 299 (quoting *Shockley*, 579 S.W.3d at 909). Any such objection in this instance would have been nonmeritorious.

"Evidence is logically relevant if it tends to make the existence of a material fact more or less probable." *State v. Anderson*, 76 S.W.3d 275, 276 (Mo. banc 2002). "Logically relevant evidence is admissible only if legally relevant." *Id.* "Legal relevance weighs the probative value of the evidence against its costs—unfair prejudice, confusion of the issues, misleading the jury, undue delay, waste of time, or cumulativeness." *Id.*

Here, the testimony from Victim's family members regarding how she behaved following her disclosures was logically relevant because "common experience teaches us a sexual offense can cause behavioral and personality changes in the [victim]." *Cusumano v. State*, 495 S.W.3d 231, 237 (Mo. App. E.D. 2016). The Victim and Victim's family members offered testimony regarding Victim's behavioral, social, and emotional changes including her sleeping problems, mood changes, and self-harm. All these changes make it more probable that each sexual offense that Victim described in detail in her disclosures to family members, police reports, and the CAC interview did happen.

Additionally, the testimony was legally relevant as "evidence of physical and psychological changes in the victim is relevant to prove the elements of the sexual offense itself and thus may be admitted to show the offense did in fact occur." *Id.*; *see also State v. Phillips*, 670 S.W.2d 28, 32 (Mo. App. W.D. 1984) ("The testimony of the victim as to mental trauma and the receipt of therapy therefor (the nature of which and its results not being in evidence) was certainly relevant to the brutality of the assaults, the elements of force involved, and the lack of consent thereof, all elements of the state's case.").

When Gannan's defense at trial was that he did not commit the acts, the testimony was highly probative of the elements of the State's charged sexual offenses and relevant to refute his defense. Moreover, like in *Phillips*, Victim's testimony regarding her hospitalizations was certainly relevant to the pervasiveness, severity, and non-consensualness of sexual abuse.

The motion court, in these circumstances, did not clearly err in concluding that a legal relevance objection would have been meritless and overruled.[5]

[5] We also reiterate that "[a] trial counsel's failure to object is ordinarily trial strategy and therefore afforded considerable deference." *Powell v. State*, 717 S.W.3d 290, 299 (Mo. App. W.D. 2025) (citation modified). "In many instances seasoned trial counsel do not object to otherwise improper questions or arguments for strategic purposes." *Hosier v. State*, 593 S.W.3d 75, 92 (Mo. banc 2019) (quoting *State v. Clay*, 975 S.W.2d 121, 135 (Mo. banc 1998)). "It is feared that frequent objections irritate the jury and highlight the statements complained of, resulting in more harm than good." *Id.* Here, not only was the testimony not objectionable, Gannan's trial counsel hoped to use some of the testimony to strategically promote the defense that Victim was mentally unstable and was lying.

Gannan cannot meet his burden of establishing the *Strickland* performance prong and, thus, we need not discuss the *Strickland* prejudice prong.[6]

Points I and II are denied.

Conclusion

The judgment of the motion court is affirmed.



Mark D. Pfeiffer, Presiding Judge

Cynthia L. Martin, Judge, and W. Douglas Thomson, Judge, concur.

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[6] *Ex gratia*, we note that it is no coincidence that Gannan was convicted by the jury after only 30 minutes of deliberation. Simply put, the evidence of Gannan's guilt that we documented at length in Gannan's direct appeal, was overwhelming, even when the evidence he complains of is not considered. *See Dawson v. State*, 315 S.W.3d 726, 733 (Mo. App. W.D. 2010) ("Where there is overwhelming evidence of guilt, such that it cannot be reasonably said that, but for the challenged actions of trial counsel, the jury would have found the movant not guilty[,] the movant suffers no prejudice." (citation modified)).

Further, the motion court judge also served as the judge presiding over Gannan's criminal trial and he expressly noted that, absent the complained-of evidence, there simply was an overwhelming amount of additional evidence that led the motion court to believe that Gannan simply could not meet his burden of demonstrating *Strickland* prejudice. "Where the judge finding no prejudice in a postconviction relief proceeding was also the presiding judge at trial, as here, our Supreme Court has recently concluded, 'this vantage can give the motion court powerful insight into the issues raised in a postconviction proceeding.'" *Ellis v. State*, 709 S.W.3d 459, 465 (Mo. App. W.D. 2025) (quoting *Flaherty v. State*, 694 S.W.3d 413, 423 (Mo. banc 2024)). "The additional deference due a judge who also presided over the criminal trial weighs strongly in favor of affirming the motion court's finding that the movant in a postconviction relief proceeding was not prejudiced by counsel's deficient performance." *Id.* (citation modified).