IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL
(Memorandum Web Opinion)

STATE V. MILLER

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STATE OF NEBRASKA, APPELLEE,

V.

COREY R. MILLER, APPELLANT.

Filed November 17, 2026. No. A-25-910.

Appeal from the District Court for Lancaster County: RYAN S. POST, Judge. Affirmed.

Brett McArthur, of the Law Office of Brett McArthur, for appellant.

Michael T. Hilgers, Attorney General, and Jacob M. Waggoner for appellee.

RIEDMANN, Chief Judge, and BISHOP and WELCH, Judges.

WELCH, Judge.

INTRODUCTION

Corey R. Miller appeals his conviction for violation of a domestic abuse protection order with a prior offense. On appeal, he assigns as error that the district court erred in denying his motion to suppress, allowing Rule 404 evidence of his prior bad acts into evidence, failing to allow him to provide a complete defense of his choosing, imposing an excessive sentence, and that his trial counsel was deficient. For the reasons set forth herein, we affirm.

STATEMENT OF FACTS

In November 2023, Miller, who was incarcerated, sent a letter to his ex-girlfriend's father, with a portion of the letter directed to her. Because a protection order had previously been issued in favor of the ex-girlfriend and was still in effect, the State charged Miller with violation of a domestic abuse protection order.

A jury trial was held in May 2025. At the conclusion of the trial, the jury was deadlocked and unable to reach a verdict and the court declared a mistrial. Following a second jury trial in September 2025, Miller was convicted of the charged offense.

As relevant to this appeal, prior to trial, Miller filed a motion to suppress evidence of statements he made to officers while he was incarcerated; the State filed a Rule 404 motion seeking to introduce evidence that Miller previously violated the protection order against him; and the State asserted motions in limine to exclude certain details governing Miller's prior relationship with his ex-girlfriend and "any mention of . . . Miller not having any further communication with the protected party in this case after the letter was sent" on the basis that all such information was not relevant to the present charge. The court denied Miller's motion to suppress and, at trial, allowed evidence of prior protection order violations but not the convictions thereon. The court also granted the State's motions in limine on the basis that certain details governing Miller's prior relationship and his proposed assertion that he did not communicate with her after issuing the letter was not relevant to the charged offense.

Following Miller's conviction, and an enhancement hearing regarding Miller's prior convictions, the district court sentenced Miller to a term of 2 years' imprisonment. This appeal followed.

ASSIGNMENTS OF ERROR

On appeal, Miller assigns as error that the district court erred in (1) denying his motion to suppress; (2) allowing Rule 404 evidence of his prior bad acts in as evidence in front of the jury as it was propensity evidence and was more prejudicial than probative; (3) failing to allow him to provide a complete defense of his choosing; and (4) imposing an excessive sentence. He also contends that his trial counsel was deficient.

STANDARD OF REVIEW

When reviewing a trial court's ruling on a motion to suppress based on a claimed violation of the Fourth Amendment, an appellate court applies a two-part standard of review. *State v. Perry*, 318 Neb. 613, 17 N.W.3d 504 (2025). Regarding historical facts, an appellate court reviews the trial court's findings for clear error, but whether those facts trigger or violate Fourth Amendment protections is a question of law that an appellate court reviews independently of the trial court's determination. *Id*.

Where the Nebraska Evidence Rules commit the evidentiary question at issue to the discretion of the trial court, an appellate court reviews the admissibility of evidence for an abuse of discretion. *State v. Ramos*, 319 Neb. 511, 23 N.W.3d 640 (2025). A judicial abuse of discretion exists only when the reasons or rulings of a trial judge are clearly untenable, unfairly depriving a litigant of a substantial right and denying a just result in matters submitted for disposition. *Id*.

The determination of whether procedures afforded an individual comport with constitutional requirements for procedural due process presents a question of law. *State v. McCurry*, 296 Neb. 40, 891 N.W.2d 663 (2017).

An appellate court will not disturb a sentence imposed within the statutory limits absent an abuse of discretion by the trial court. *State v. Rejai*, 320 Neb. 599, 29 N.W.3d 225 (2026). An

abuse of discretion occurs when a trial court's decision is based upon reasons that are untenable or unreasonable or if its action is clearly against justice or conscience, reason, and evidence. *Id*.

Whether a claim of ineffective assistance of trial counsel may be determined on direct appeal is a question of law. In reviewing claims of ineffective assistance of counsel on direct appeal, an appellate court decides only whether the undisputed facts contained within the record are sufficient to conclusively determine whether counsel did or did not provide effective assistance and whether the defendant was or was not prejudiced by counsel's alleged deficient performance. *State v. Delgado*, 322 Neb. 364, 39 N.W.3d 476 (2026).

ANALYSIS

DENIAL OF MOTION TO SUPPRESS

Miller first assigns and argues that the district court erred in denying his motion to suppress certain statements he made to officers while he was incarcerated. But although the district court denied Miller's motion to suppress certain statements, Miller failed to object during trial or renew his motion when the statements were testified to at trial.

Where there has been a pretrial ruling regarding the admissibility of evidence, a party must make a timely and specific objection to the evidence when it is offered at trial in order to preserve any error for appellate review. *State v. Lowman*, 308 Neb. 482, 954 N.W.2d 905 (2021). And more specifically as to a ruling on a pretrial motion to suppress, "[t]he failure to object to evidence at trial, even though the evidence was the subject of a previous motion to suppress, waives the objection, and a party will not be heard to complain of the alleged error on appeal." *Id*. at 490, 954 N.W.2d at 915.

Having failed to object or renew his motion at the time of trial to the testimony that was the subject of Miller's motion to suppress, Miller has failed to preserve the suppression issue for appellate review.

RULE 404 EVIDENCE

Miller next argues that the district court erred in granting the State's Rule 404 motion governing the admissibility of testimony about Miller's prior violations of the protection order. Miller argues that the court erred in allowing testimony about his prior violations because it constituted propensity evidence of prior bad acts and did not fall under any exceptions stated within Rule 404 which would allow its admission. But a more thorough examination of Rule 404 and its exceptions is not warranted on this record.

During Miller's case-in-chief, Miller himself testified to having violated the protection order in the past, and that his intent in issuing the letter on this occasion was to provide some closure to his relationship with his ex-girlfriend. During this line of testimony, Miller acknowledged having tried to get around the protection order in the past including by sending his ex-girlfriend a letter with someone else's name on it and using another inmate's phone account to call her.

But as the Nebraska Supreme Court held in *State v. Surber*, 311 Neb. 320, 333, 972 N.W.2d 64, 74 (2022), "[t]he introduction of evidence by the defense waives any objection to the earlier introduction of evidence on the same subject by the State." Because Miller introduced evidence in

his case-in-chief on the same subject matter offered by the State which he claims was erroneously allowed into evidence by the district court, Miller waived this assignment of error.

PREVENTION OF PRESENTING COMPLETE DEFENSE

Miller next contends that the district court erred in sustaining the State's motions in limine, which prohibited the introduction of evidence from Miller governing certain details about his relationship with his ex-girlfriend prior to the issuance of his letter, and that, after sending the letter, he no longer violated the protection order.

Miller's entire argument in support of this assignment is that

> First, [he] was not allowed to adduce any evidence or testimony about the nature and circumstances of his relationship with the protected party. This was necessary to show why he sent a letter to [his ex-girlfriend's father] giving [Miller] closure. Second, the fact that there had not been any additional alleged protection order violations since the time the letter was written to [his ex-girlfriend's father,] goes to show the intent that [Miller] had when he sent that letter.

Brief for appellant at 13. Miller argues that these pretrial rulings denied him the opportunity to present a complete defense.

"Whether rooted directly in the Due Process Clause of the 14th Amendment or in the Compulsory Process or Confrontation Clauses of the 6th Amendment, the federal Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense." *State v. Ramos*, 319 Neb. 511, 547, 23 N.W.3d 640, 668 (2025), *cert. denied* ___ U.S. ___, 146 S. Ct. 1477, 223 L. Ed. 2d 539 (2026). However, this general rule is not without limitation. As the Nebraska Supreme Court further noted in *Ramos*, "[d]efendants have a constitutional right to a meaningful opportunity to present a complete defense, but this right is not without evidentiary limits." *State v. Ramos*, 319 Neb. at 548-49, 23 N.W.3d at 669. "[T]he accused does not have an unfettered right to offer testimony that is incompetent, privileged, or otherwise inadmissible under standard rules of evidence." *Id*. at 549, 23 N.W.3d at 669.

Prior to trial, the district court granted the State's motions in limine requesting that the court prohibit Miller from mentioning:

> 1. Any reference or mention of the birth certificate[s] for any of the children of [Miller's ex-girlfriend;]
>
> 2. Any reference or mention of the reason for the end of [Miller's ex-girlfriend] and "Amber's" friendship[;]
>
> 3. Any reference or mention of [Miller's ex-girlfriend's] husband's or ex-husband's knowledge of [the ex-girlfriend's] relationship with [Miller] or to the same's reaction or response to the relationship of [the ex-girlfriend's] relationship with [Miller;]
>
> 4. Any reference or mention of [Miller] proposing marriage to [his ex-girlfriend] or her response to any such proposal[; and]
>
> 5. Any reference or mention of any communication or photograph [Miller's ex-girlfriend] made to [Miller] indicating her desire to harm herself or commit suicide.

Additionally, the court granted the State's oral motion to prohibit Miller from adducing evidence that he did not attempt to contact his ex-girlfriend after he sent the letter which led to the current charge.

Notwithstanding these rulings, at trial, Miller argued that the purpose of his letter was to gain "closure" with his ex-girlfriend. So, as it relates to his specific assignment that he was denied the opportunity to make a complete defense as to his rationale for violating the domestic abuse protection order, we reject that contention. But more importantly, assuming that Miller is arguing that he was legally entitled to elicit all of the information that was the subject of the State's motions in limine, we disagree. Miller was charged with violating a protection order which he had previously violated. And regardless of the details raised by the State in its motions in limine governing his prior relationship at the time he sent the letter, or regardless of whether this was the last time he intended to violate the order, that information did not make his violation any less of a crime. As such, the additional information Miller sought to elicit was not relevant and the court did not err in excluding it. And because the right to a complete defense does not include the right to offer evidence otherwise in violation of the rules of evidence, we reject Miller's assignment of error.

EXCESSIVE SENTENCE

Miller next contends that the district court imposed an excessive sentence. He contends that the district court "abused its discretion by overemphasizing the nature of the offense while ignoring the possibility of rehabilitation" and failed to take into account his limited drug history "or the lack of credible evidence on the amount of drugs [he] had previously possessed or sold." Brief for appellant at 15.

Miller was convicted of violation of a domestic abuse protection order with a prior offense, which is a Class IV felony. See Neb. Rev. Stat. § 42-924(4) (Cum. Supp. 2024). We note that this section was transferred to Neb. Rev. Stat. § 26-103 (Supp. 2025) effective September 3, 2025. Miller's sentence of 2 years' imprisonment is within the statutory sentencing range for Class IV felonies which are punishable by a minimum of no imprisonment and a maximum of 2 years' imprisonment and 0 to 12 months' post-release supervision, a fine of $10,000, or both. See Neb. Rev. Stat. § 28-105 (Cum. Supp. 2024).

Where a sentence imposed within the statutory limits is alleged on appeal to be excessive, the appellate court must determine whether a sentencing court abused its discretion in considering and applying the relevant factors, as well as any applicable legal principles in determining the sentence to be imposed. *State v. Jones*, 318 Neb. 840, 19 N.W.3d 499 (2025).

When imposing a sentence, the sentencing court is to consider the defendant's (1) age, (2) mentality, (3) education and experience, (4) social and cultural background, (5) past criminal record or record of law-abiding conduct, and (6) motivation for the offense, as well as (7) the nature of the offense, and (8) the amount of violence involved in the commission of the crime. *Id*. However, the sentencing court is not limited to any mathematically applied set of factors. *Id*. The appropriateness of a sentence is necessarily a subjective judgment that includes the sentencing judge's observations of the defendant's demeanor and attitude and all the facts and circumstances surrounding the defendant's life. *Id*.

We note that Miller's claim that the court failed to properly weigh the relevant factors relating to sentencing is merely a request for this court to conduct its own de novo review of those factors. It is not the proper function of an appellate court to conduct a de novo review of the record to determine what sentence it would impose. *State v. Hagens*, 320 Neb. 65, 26 N.W.3d 174 (2025).

According to the presentence investigation report, Miller was 36 years old, single and had one dependent. He had obtained a GED and an associate's degree and he served in the Army Reserves from 2019 to 2021, at which time he was discharged after being incarcerated. Miller's criminal history includes eight convictions for violating a protection order and one conviction each for disorderly conduct, criminal mischief ($500-$1,500), and injuring or destroying the property of another. The level of service/case management inventory assessed Miller as a high risk to reoffend. He admitted to using alcohol, marijuana, cocaine, and mushrooms. The victim submitted a victim impact statement that stated that she believed that the letters sent by Miller to her family members "were sent with the intent to bring emotional harm. And indeed, they have." The victim stated that "Miller's continued contact has resulted in distress that I must continue to work through to maintain a healthy life not only for myself, but for that of my family." She further stated that, during the last 5 years, she has expended more than $50,000 in psychological care. The victim further stated that the worst part of Miller's offenses "is living in a chronic state of fear."

Based on factors including that the sentence imposed is within the statutory sentencing range, Miller's criminal history including multiple violations of protection orders, his high risk to reoffend, and the distress Miller's actions have caused the victim, we find that the district court did not abuse its discretion in the sentence imposed.

INEFFECTIVE ASSISTANCE OF COUNSEL

Miller's final assignment of error is that "[t]rial counsel was deficient." Brief for appellant at 6. This general assignment of ineffective assistance that does not specify counsel's deficiency is insufficient to raise the claim on direct appeal, and we do not address it further. See *State v. Mrza*, 302 Neb. 931, 926 N.W.2d 79 (2019), *disapproved on other grounds*, *State v. Hagens, supra* (assignments of error on direct appeal regarding ineffective assistance of trial counsel must specifically allege deficient performance, and appellate court will not scour remainder of brief in search of such specificity).

CONCLUSION

For the reasons set forth herein, we affirm Miller's conviction and sentence.

AFFIRMED.