

THE UTAH COURT OF APPEALS

STATE OF UTAH,
Appellee,

v.

MIGUEL ANGEL CANO,
Appellant.

Opinion

No. 20241115-CA

Filed October 16, 2026

Second District Court, Ogden Department
The Honorable Noel S. Hyde
No. 231902204

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Attorneys for Appellee

JUDGE DAVID N. MORTENSEN authored this Opinion, in which
JUDGES RYAN D. TENNEY and JOHN D. LUTHY concurred.

MORTENSEN, Judge:

¶1 Miguel Angel Cano was charged with one count of rape and one count of domestic violence aggravated assault resulting in a loss of consciousness. Cano's victim claimed he bit her, choked her into unconsciousness, and then raped her. Although Cano acknowledged that the two had sex, he claimed that both the rape allegation and the victim's account of the assault were fabricated. The jury rejected his defense and convicted Cano on both counts. Now on appeal, Cano claims that his trial counsel provided ineffective assistance in several respects. We reject these claims and affirm his convictions.

BACKGROUND¹

The Rape

¶2 Olivia and Cano began a romantic relationship while working at the same restaurant.² Although the relationship had ended, they remained in contact through work. Following a discussion about their relationship one day, they agreed to resume their conversation that night. Upon Olivia's arrival at Cano's house around 2:30 a.m., they went to his bedroom, sat on his bed, and talked. Olivia could tell Cano was drunk, and she had consumed a couple of beers prior to her arrival.

¶3 Cano then kissed Olivia. She initially kissed him back but then pushed him away, insisting that it was "a bad idea" and stating that she "wanted to go home." This response angered Cano, who then forced Olivia onto the bed, positioned himself on top of her, and pinned her hands above her head as he attempted to kiss her neck, touch her breasts, pull up her shirt, and remove her shorts. Olivia struggled to escape, but Cano placed his hands around her throat and squeezed until she was unable to breathe, causing her to lose consciousness. After regaining consciousness, Olivia discovered that Cano was naked and on top of her. Her shirt, bra, and shorts had been removed, and her underwear was pulled aside. Cano was biting her chin, and his penis was inside her vagina.

1. "On appeal, we review the record facts in a light most favorable to the jury's verdict and recite the facts accordingly. We present conflicting evidence only as necessary to understand issues raised on appeal." *State v. Holgate*, 2000 UT 74, ¶ 2, 10 P.3d 346 (cleaned up).

2. Except for Cano, we employ pseudonyms or otherwise anonymize all individuals referenced in this opinion.

¶4 After kicking Cano off her, Olivia began putting her shirt and shorts back on. Cano immediately started yelling, asking what her “problem was” and telling her “to calm down.” Cano then forced Olivia to the floor and sat on top of her. While pinned beneath him, Olivia pleaded with him to get off and allow her to “go home.” She eventually managed to stand up and head for the door to the bedroom, but Cano blocked her exit. In an effort to secure her escape, Olivia struck Cano, prompting Cano to punch her back, declaring that she did not “get to hit him.”

¶5 Olivia eventually escaped through the bedroom door and began making her way down a hallway. As she fled, Cano pursued her, delivering punches and pulling her hair. In an effort to attract help, Olivia began to yell, hoping Cano’s roommate would hear the commotion and intervene. Olivia managed to make her way out of the house, with a completely naked Cano in pursuit. He overtook her in the driveway, striking her in the back of the head and knocking her to the ground. Despite the fall, Olivia got back up and made her way to her car, clutching her keys and her bra, which she had grabbed as she fled the house.

¶6 A neighbor happened to be outside smoking a cigarette. He heard a “loud smack that kind of echoed through the neighborhood” accompanied by “arguing or yelling.” Although unable to see Cano’s lower body, the neighbor observed a shirtless Cano in the driveway shouting at Olivia to “get out” or “go home.” The neighbor found Olivia, who was “crying,” “in a state of panic,” and “hyperventilating pretty badly.” Olivia implored the neighbor not to leave her. He helped Olivia call 911. The neighbor told the 911 dispatcher that it appeared Cano had “hit her pretty hard” and Olivia was “really shook up.”

¶7 Responding officers arrived to find Olivia shaking and sobbing near her car. She cried out, “He took advantage of me.” She explained to one officer (Officer Winston) that Cano had hit her, pulled her hair, punched her in the face, bitten her, ripped off

her shirt and bra, pulled her “pants off,” and held her down by the wrists while on top of her. She also disclosed that Cano was naked during the assault.

¶8 After speaking with Olivia, Officer Winston spoke with Cano, who was by this time clothed. Cano claimed that Olivia had come to his house and “kind of initiated some sexual contact” with him. He asserted, however, that he told her he did not “want anything to do” with her because their relationship had ended, which prompted her to “all of a sudden [get] crazy” and strike him in the face. Cano told Officer Winston that he and Olivia had “got intimate in the sack” before she hit him. He further remarked that Olivia slapped him and that he “slapped her back” because he was “not going to let anybody slap” him. He said he then told her to leave, maintaining that he did not hit her after that.

¶9 Shortly thereafter, another officer (Officer Daley) questioned Cano. Cano reiterated to Officer Daley that he and Olivia “were getting intimate” when she struck him in the face. When asked why Olivia would hit him at that juncture, Cano responded, “Well, we were getting intimate. And it really was consensual. And she hit me in the face. . . . That’s all it was.” When questioned regarding their positions when Olivia struck him, Cano replied, “I think she was below me and stuff. . . . I don’t remember exactly, but . . . we were having, you know, intercourse. . . . [I]t was consensual because she came here.” Cano was arrested for aggravated assault, unlawful detention, intoxication, and disorderly conduct.

¶10 A few hours later, a sexual assault examination was conducted. During this exam, Olivia explicitly reported that Cano had sexually assaulted her. The sexual assault examination report (the Report) documented injuries Olivia sustained during the sexual assault and included a detailed narrative from Olivia describing the incident. The sexual assault nurse examiner

(Nurse) observed trauma to Olivia's vaginal walls and internal vaginal bleeding.

The Trial

¶11 The State charged Cano with one count of rape and one count of domestic violence aggravated assault resulting in a loss of consciousness, and the case proceeded to trial.

¶12 At trial, the State presented evidence supporting the facts summarized above. Both officers testified, and the State played the body camera footage of the on-scene interviews that the officers conducted with Olivia and Cano. The State also provided forensic evidence that identified Cano's DNA on Olivia's chin. However, the forensic evidence showed that no male DNA appeared on the vaginal swabs collected during the sexual assault examination.

¶13 Nurse also testified and read a detailed statement from Olivia that was included in the Report. *See infra* ¶ 17. This recitation spans just over two pages of the trial transcript. Nurse also testified that trauma often impacts memory:

Nurse: It's common to have fragmented memories, impaired memories coming back in pieces, where you remember things later on. They call back . . . to add to the record. It's common to have memory loss in a stressful situation.

Prosecutor: All right. And does the fact that they aren't able to remember something like immediately in the moment, does that mean they're not going to ever be able to recall what happened?

Nurse: No. Usually, from my understanding and my training, the hippocampus is often impaired during a traumatic or stressful event. And so

once that stressor is relieved, the hippocampus can go back to normal, and those memories, most of the time, return.

....

Prosecutor: So in this case, when [Olivia] was disclosing the assault to the police, she described that her memory was coming back in pieces. Is that consistent with what you'd see in patients affected by trauma?

Nurse: Yes.

The Report—copies of which were distributed to the jury—was submitted and received into evidence. The Report also accompanied the jury into deliberations.

¶14 Cano did not testify. The jury found him guilty as charged, and Cano was sentenced to prison.

ISSUES AND STANDARD OF REVIEW

¶15 Cano appeals, arguing that his trial counsel (Counsel) rendered ineffective assistance by (1) failing to lodge a hearsay objection to Olivia's statements to Nurse, (2) failing to object to the Report accompanying the jury during deliberations, and (3) failing to object to Nurse's testimony regarding the effects of trauma on memory. When raised for the first time on appeal, claims of ineffective assistance of counsel present a question of law. *See State v. Mason*, 2024 UT App 171, ¶ 28, 562 P.3d 1158, *cert. denied*, 570 P.3d 658 (Utah 2025).

ANALYSIS

¶16 To prevail on a claim of ineffective assistance, a defendant must demonstrate both (1) that counsel's performance was

deficient, meaning that it “fell below an objective standard of reasonableness,” and (2) that the deficiency prejudiced the defendant, meaning that there is a reasonable probability that the outcome would have been different absent counsel’s error. *Strickland v. Washington*, 466 U.S. 668, 687–88, 694 (1984). “Because a defendant has the burden of meeting both parts of the *Strickland* test, it is unnecessary for this court to apply both parts where our inquiry reveals that one of its parts is not satisfied.” *State v. Mecham*, 2000 UT App 247, ¶ 21, 9 P.3d 777 (cleaned up). Here, we limit our analysis to the deficient performance prong on all three of Cano’s ineffective assistance claims.

I. Failure to Object to Alleged Hearsay Testimony

¶17 Cano first argues that he received ineffective assistance when Counsel did not object on hearsay grounds to Nurse recounting “Olivia’s description of the assault by directly quoting Olivia for two pages of trial transcripts.” Cano identifies three specific categories of statements from Olivia that should have been met with objection because these statements were not related to her medical treatment: (1) Olivia’s statements that when they kissed she “pushed off of him,” said that it was “not a good idea,” “was telling him to stop,” and said that she “didn’t want to”; (2) Olivia’s statements about their state of undress, namely that Cano “was trying to take [her] shirt off, and [she] wasn’t letting him,” that Cano’s “shirt was off, and his underwear was down by his knees,” and that Cano was “completely naked” outside; and (3) Olivia’s statement as she was trying to get out from underneath him: “And I kept saying, ‘Let go. Get off me.’”

¶18 Even if we assume (without deciding) that Nurse’s recitation of Olivia’s statements constituted inadmissible hearsay, Cano has still failed to demonstrate that Counsel performed deficiently by withholding objections. This is the case because a readily discernible strategic reason supported not objecting to

Nurse's repetition of Olivia's statements made during the sexual assault examination.

¶19 "If it appears counsel's actions could have been intended to further a reasonable strategy, a defendant has necessarily failed to show unreasonable performance." *State v. Ray*, 2020 UT 12, ¶ 34, 469 P.3d 871. As our supreme court articulated in *State v. Ott*, "the question is was the failure to raise the objections before the trial court the result of a consciously chosen strategy of trial counsel rather than an oversight, and if it was a strategic decision, did the making of that choice constitute ineffective assistance of counsel?" 2010 UT 1, ¶ 34, 247 P.3d 344 (cleaned up). The mere fact that trial counsel's choice of strategy "did not produce the expected result does not constitute ineffectiveness of counsel." *Id.* (cleaned up).

¶20 An examination of Counsel's statements and questioning reveals a clear strategy of attacking Olivia's credibility by highlighting the evolution of her story that Cano raped her. This strategy involved highlighting the manner in which Olivia's account of the sexual assault developed from her initial report to what she later told Nurse.

¶21 In his opening statement, Counsel emphasized that "stories change" but "evidence is the same." In this context, Counsel noted that Olivia's "written statement" of the incident to police had "changed." He pointed out, "She submitted an updated statement days after the initial incident. And in that updated statement is the first time that we hear anything or see anything from [Olivia] about rape, about sex, days later. That's what the evidence will show." Then he continued to develop his theory of the case by asserting that DNA tests showed that Cano had not had sex with Olivia on the night of the assault and concluding, "That's consistent with [Olivia's] first story, not consistent with her second story."

¶22 On cross-examination, Counsel asked Olivia to confirm that she “never mentioned anything . . . about sexual assault or rape in any way” to the 911 dispatcher, and Olivia agreed she had not. Counsel reiterated this point in the following exchange:

Counsel: You never told Officer [Winston] that you had been raped or that you had had sex with [Cano], correct?

Olivia: No.

. . . .

Counsel: Did [the paramedics] ask you if you had been sexually assaulted or raped?

Olivia: I believe so.

Counsel: Okay. Do you remember what your answer was?

Olivia: I had told them no. . . . I didn’t want to talk to them about it.

Counsel then asked Olivia about her sexual assault examination: “And was that the first time that you had mentioned any kind of sexual contact with [Cano]?” Olivia answered that it was. Counsel also asked Olivia to confirm that she submitted an updated witness statement regarding the assault a few days later, which Olivia confirmed.

¶23 During his cross-examination of Officer Daley, Counsel continued to develop this theme. It appears, however, that Counsel either forgot or overlooked that Cano had admitted to Officer Daley that he and Olivia had engaged in consensual intercourse—as captured on body camera footage, *see supra* ¶ 9—and consequently attempted to minimize this inconvenient fact:

Counsel: So you testified that [Cano] said that him and [Olivia] had sex, but those weren't the exact words that he used, right?

Officer Daley: He did say, "intercourse," "consensual."

Counsel: Okay. He said that they were starting to get intimate, was the word that he used, correct?

Officer Daley: That he used in the video?

Counsel: Yeah.

Officer Daley: Whatever he said in the video is what he said.

Counsel: Okay. You don't recall, then?

Officer Daley: I don't remember that right now.

Counsel: Okay. He also said that it was consensual. Is that right?

Officer Daley: Yeah.

Not leaving the credibility issue behind—and perhaps trying to salvage his theory of the case—Counsel then addressed Olivia's failure to mention the rape to Officer Daley:

Counsel: Okay. How much [time] did you actually spend speaking with [Olivia]?

Officer Daley: Well, I don't know exactly, but I would say like over an hour.

Counsel: Okay. And just to be clear, during that over an hour or so that you were communicating with [Olivia], she never told you that her and [Cano] had had sex. Is that right?

Officer Daley: Well, correct. She never said that.

Counsel: Okay. And she never said that [Cano] had raped her, right?

Officer Daley: Correct.

Counsel: Okay. And you had her fill out a written statement, correct?

Officer Daley: Yep.

Counsel: And in that written statement, she never mentioned having sex with [Cano], correct?

Officer Daley: Correct.

Counsel: And she never mentioned being raped by [Cano] in that statement?

Officer Daley: No.

Counsel: Okay. And you said that as you spoke with [Olivia], she seemed to get more comfortable speaking with you?

Officer Daley: Yeah.

Counsel: And even when she was comfortable speaking with you, still no comment about sexual assault or rape or sex, right?

Officer Daley: No. Just described how her clothes were positioned.

¶24 And in closing, Counsel returned to this theme, contending that Officer Winston “got it right the first time” when he arrested Cano for “assault and intoxication.” More to the point, Counsel advanced a theory that Olivia essentially fabricated the rape, as evidenced by this argument where he revisited Olivia’s failure to mention to the police or paramedics that Cano had raped her:

One of the big holes that *I've been hanging on this whole time* is that [Olivia] told Officer [Winston] that she had not had sex. We also heard from Officer [Daley] this morning that at no point in time during any of his interaction for a two-hour period with [Olivia] did she ever say that she had sex. She never mentioned it. Paramedics came and [Olivia] told them the same thing. No report of sex. In fact, why was [Olivia] being taken to the [sexual assault examination] center? Because the allegations of the choking. That's what Officer [Daley] said. Right? Nothing to do . . . with sex or rape. [Olivia's] original written statement never mentioned sex or rape. It's very detailed, though. It has a lot of information in there. I get it. The State wants you to believe that she was traumatized, that she wasn't remembering everything, that it was a really hard situation for her. And I'm sure it was. But she had her wits about her enough to write a very detailed page-long statement that included lots of information about the assault. Nothing about sex. Nothing about rape.

(Emphasis added.) By repeatedly highlighting that Olivia had not initially reported the rape, an obvious strategic reason for Counsel's not objecting to Nurse's repetition of Olivia's statement becomes clear: to place before the jury evidence of the inconsistencies in Olivia's narrative.

¶25 Utah appellate courts have directly upheld the strategy of forgoing objections to inadmissible evidence in order to introduce inconsistencies in a victim's account. For example, in *State v. Escobar-Florez*, we noted that trial counsel's "primary strategy at trial was to undermine [the victim's] credibility by highlighting the inconsistencies in her trial testimony and other statements, several of which were included in the police reports." 2019 UT App 135, ¶ 37, 450 P.3d 98. There, trial counsel stipulated to the

admission of police reports that contained hearsay statements, allowing the jury to see that the victim's account had allegedly undergone "very significant alterations" and didn't "add up" — including her characterization of the relationship, the number of sexual encounters, and the defendant's physical location during the alleged assault. *Id.* ¶¶ 34, 37. And this court held that trial counsel's "strategy to stipulate to the admission of the police reports containing these inconsistencies was reasonable." *Id.* ¶ 37; see also *State v. de la Cruz-Diaz*, 2012 UT App 179, ¶ 11, 282 P.3d 1041 (recognizing that trial counsel made a "tactical decision" to not object to potentially inadmissible statements from certain witnesses "so that counsel could later draw out the inconsistencies in the victim's allegations").

¶26 Here, Counsel's theory of the case relied heavily on the fact that Olivia's story evolved over time—from no mention of rape during the 911 call to the initial revelation during the sexual assault exam a few hours later. By allowing Nurse to read the Report, Counsel was better able to pursue a strategy that the rape allegation was a later fabrication that emerged only gradually. But objecting to Nurse reading the Report would have hindered the presentation of this theory by depriving the jury of access to evidence demonstrating how Olivia's account allegedly evolved over time. In other words, Counsel had no reason to object to Nurse's repetition of Olivia's statement since his strategy was to convince the jury that Olivia had fabricated the rape and Nurse's repetition of Olivia's allegedly false statement clearly contributed to Counsel's strategy to highlight inconsistencies in Olivia's account. Accordingly, we have little trouble concluding that Counsel did not perform deficiently in declining to object to Nurse's testimony, because it supported the defense's reasonable strategic goals.

II. Failure to Object to the Report Accompanying the Jury

¶27 Cano next argues that Counsel provided ineffective assistance when he did not object to the Report accompanying the jury into deliberations. He asserts that “[g]iving the jurors such unfettered access to Olivia’s account of the sexual assault placed undue emphasis on her version of events, and it was ineffective for [C]ounsel to not object.” We disagree for two reasons.

¶28 First, rule 17(k) of the Utah Rules of Criminal Procedure clearly allows for most exhibits to accompany the jury in deliberation: “Upon retiring for deliberation, the jury may take with them . . . all exhibits which have been received as evidence, except exhibits that should not, in the opinion of the court, be in the possession of the jury, such as exhibits of unusual size, weapons or contraband.” As we recently observed, “rule 17(k) expressly allows the jury to take *all* exhibits back to deliberations except those which the court decides in its discretion the jury should not have.” *State v. Grundvig*, 2025 UT App 164, ¶ 21, 580 P.3d 962 (cleaned up); *accord Wyatt v. State*, 2021 UT 32, ¶ 19, 493 P.3d 621. While that rule “contemplates a cumbersome or dangerous exhibit” as “inappropriate for the jury room[,] . . . nothing in the language of the rule purports to bar testimonial exhibits from going back with the jury.” *Wyatt*, 2021 UT 32, ¶ 19. Given the clear language of rule 17(k), “we cannot conclude that Counsel performed deficiently in declining to lodge an objection that would have certainly failed.” *See Grundvig*, 2025 UT App 164, ¶ 21; *see also State v. Soto*, 2022 UT App 107, ¶ 31, 518 P.3d 157 (“A futile objection necessarily fails both the deficiency and prejudice prongs of the *Strickland* analysis because it is not unreasonable for counsel to choose not to make an objection that would not have been granted, and forgoing such an objection does not prejudice the outcome.” (cleaned up)).

¶29 Second, as we explained at some length above, Counsel likely wanted the jury to be exposed to Olivia’s statements as a

tactical measure to highlight the development of her story. And allowing the Report to accompany the jury supported this strategy. *See State v. Moore*, 2025 UT App 26, ¶ 53, 566 P.3d 69 (“Where counsel could have made the reasonable strategic decision to allow [certain] assessment forms to go back with the jury because he clearly considered many details therein as supportive of the defense’s theory of the case, counsel did not perform deficiently by failing to raise an objection under rule 17.” (cleaned up)), *cert. denied*, 570 P.3d 658 (Utah 2025); *see also State v. Flores*, 2024 UT App 195, ¶¶ 10, 36, 39, 562 P.3d 1203 (“Counsel specifically encouraged the jury three times to look at [a report taken into deliberations that contained a summary of a victim’s account of a rape]. He asked the jury to look at discrepancies between [the victim’s] statement in [the report] and her testimony in court. This reflected a specific strategy to use [the report] to [the defendant’s] benefit.”).

¶30 For these reasons, Cano’s “second claim of ineffective assistance of counsel also founders for lack of deficient performance.” *See Grundvig*, 2025 UT App 164, ¶ 23.

III. Failure to Object to Testimony About Trauma and Memory

¶31 Cano’s third claim is that Counsel provided ineffective assistance “when he did not object to Nurse’s unqualified testimony about the effect of trauma on memory.” Cano argues that because Nurse was not qualified as an “expert on memory,” her testimony that “impaired memories com[e] back in pieces” and that “the hippocampus is often impaired during a traumatic or stressful event” was inadmissible. He argues that Nurse’s “‘ongoing staff training’ and attendance at ‘crime victim conferences’ did not make her an expert on the complexities of memory” and, given the centrality of Nurse’s testimony to explain away “the inconsistency in Olivia’s descriptions of the alleged incident,” Counsel should have objected to it. But we determine

that Cano has not shown Counsel performed deficiently on this point.

¶32 Rule 702 of the Utah Rules of Evidence permits expert testimony if (1) the witness “is qualified as an expert by knowledge, skill, experience, training, or education” and (2) “there is a threshold showing that the principles or methods” underlying the testimony are reliable, based on “sufficient facts or data,” and “reliably applied to the facts.” *See* Utah R. Evid. 702(a)–(b). This reliability threshold is “satisfied if the underlying principles or methods, including the sufficiency of facts or data and the manner of their application to the facts of the case, are generally accepted by the relevant expert community.” *Id.* R. 702(c). Notably, “this threshold is not so rigorous as to be satisfied only by methodology or data that are free of controversy.” *California College Inc. v. UCN Inc.*, 2019 UT App 39, ¶ 22, 440 P.3d 825 (cleaned up). “What is required for a threshold showing of reliability will vary depending on the complexity of the particular case.” *Eskelson ex rel. Eskelson v. Davis Hosp. & Med. Center*, 2010 UT 59, ¶ 15, 242 P.3d 762. For example, “identification of a methodology is not necessary where exposure to a nearly identical situation forms the basis of the expert’s opinion.” *State v. Bowdrey*, 2024 UT App 113, ¶ 28, 555 P.3d 367 (cleaned up). And as we have made clear, expert qualification does not require a specific license or formal credential in a particular field. *See State v. Whitchurch*, 2024 UT App 108, ¶ 42, 554 P.3d 1166 (“We have routinely allowed persons to testify as experts based on the totality of their qualifications and experience, and not on licensing or formal standards alone.” (cleaned up)).

¶33 In *Whitchurch*, a defendant challenged trial counsel’s failure to object under rule 702 to a police officer’s testimony about the effect of trauma on memory. *See id.* ¶¶ 41–46. The officer testified, based on his years of law enforcement experience interviewing trauma victims, “that it is ‘very common’ for people to ‘leave out details’ when relating a traumatic event.” *Id.* ¶ 44. He

explained, “Your body reacts to everything differently. So with trauma sometimes there’s certain parts of our body that shut down. You can fight, you can flight, you can freeze. They call it traumatic for a reason. So you—there’s just a lot happening and a lot to take in all at once.” *Id.* This court recognized that the officer’s explanation “at least hinted at a medical or neurologic basis for that opinion.” *Id.* ¶ 45. Nevertheless, we concluded that trial counsel did not perform deficiently by failing to object to the officer’s testimony on memory. *See id.* ¶ 46. We reasoned that trial counsel could have been motivated by sound strategic reasons to not object. First, an objection risked drawing the jury’s focus directly to the officer’s testimony. *See id.* ¶ 45. Second, it could have prompted the prosecution to elicit a stronger explanation based on the officer’s actual field experience. *See id.* Finally, trial counsel likely wanted to avoid giving the prosecution an opportunity to highlight the officer’s specialized training, education, or career credentials. *See id.*

¶34 The same reasoning applies here, as Nurse possessed qualifications that were similar to—if not more extensive than—those of the officer in *Whitchurch*. Her credentials included a specialized certification requiring eighty hours of training focused specifically on sexual assault and trauma. On top of that, she had twenty-seven years of nursing experience, during which she had performed forty to fifty sexual assault examinations. She also participated in ongoing training and educational conferences focused on trauma. Given this background, Counsel likely realized that objecting would backfire, as it would only give the prosecution an excuse to highlight Nurse’s impressive credentials and make her testimony even more powerful to the jury.

¶35 Given the obvious strategic advantages afforded by withholding an objection, we have no reticence concluding that Cano has not rebutted the presumption of reasonable performance. His final claim of ineffective assistance therefore fails.

CONCLUSION

¶36 All three of Cano's claims of ineffective assistance fall short because he has not shown that Counsel performed deficiently.

¶37 Affirmed.
