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STATE OF NEBRASKA, APPELLEE, V. ASHLEY L. GONZALEZ, APPELLANT.

___ N.W.3d ___

Filed April 2, 2024. No. A-23-475.

1. **Appeal and Error.** In the absence of plain error, where an issue is raised for the first time in an appellate court, it will be disregarded inasmuch as a lower court cannot commit error in resolving an issue never presented and submitted to it for disposition.
2. **Jury Instructions: Appeal and Error.** Whether jury instructions are correct is a question of law, which an appellate court resolves independently of the lower court's decision.
3. ____: ____. All the jury instructions must be read together, and if, taken as a whole, they correctly state the law, are not misleading, and adequately cover the issues supported by the pleadings and the evidence, there is no prejudicial error necessitating reversal.
4. **Trial: Jury Instructions: Pleadings: Evidence: Appeal and Error.** Failure to object to a jury instruction after it has been submitted to counsel for review precludes raising an objection on appeal absent plain error indicative of a probable miscarriage of justice. Nonetheless, whether requested to do so or not, a trial court has the duty to instruct the jury on issues presented by the pleadings and the evidence. Because of this duty, the trial court, on its own motion, must correctly instruct on the law.
5. **Jury Instructions.** Whenever an applicable instruction may be taken from the Nebraska Jury Instructions, that instruction is the one which should usually be given to the jury in a criminal case.
6. **Criminal Law: Convictions: Evidence: Appeal and Error.** When reviewing a criminal conviction for sufficiency of the evidence to sustain the conviction, the relevant question for an appellate court is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.

7. **Criminal Law: Motions for New Trial: Appeal and Error.** In a criminal case, a motion for new trial is addressed to the discretion of the trial court, and unless an abuse of discretion is shown, the trial court's determination will not be disturbed.
8. **Effectiveness of Counsel: Postconviction: Records: Appeal and Error.** When a defendant's trial counsel is different from his or her counsel on direct appeal, the defendant must raise on direct appeal any issue of trial counsel's ineffective performance which is known to the defendant or is apparent from the record; otherwise, the issue will be procedurally barred in a subsequent postconviction proceeding.
9. **Effectiveness of Counsel: Appeal and Error.** Whether a claim of ineffective assistance of counsel may be determined on direct appeal is a question of law.
10. ____: ____. 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.
11. **Effectiveness of Counsel: Postconviction: Records: Appeal and Error.** An ineffective assistance of counsel claim is raised on direct appeal when the claim alleges deficient performance with enough particularity for (1) an appellate court to make a determination of whether the claim can be decided upon the trial record and (2) a district court later reviewing a petition for postconviction relief to recognize whether the claim was brought before the appellate court.
12. **Effectiveness of Counsel: Proof: Appeal and Error.** When a claim of ineffective assistance of counsel is raised in a direct appeal, the appellant is not required to allege prejudice; however, an appellant must make specific allegations of the conduct that he or she claims constitutes deficient performance by trial counsel.
13. **Effectiveness of Counsel: Proof.** To prevail on a claim of ineffective assistance of counsel under *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984), the defendant must show that his or her counsel's performance was deficient and that this deficient performance actually prejudiced the defendant's defense.
14. ____: ____. To show that counsel's performance was deficient, the defendant must show counsel's performance did not equal that of a lawyer with ordinary training and skill in criminal law.
15. ____: ____. To show prejudice from counsel's deficient performance, the defendant must demonstrate a reasonable probability that but for

counsel's deficient performance, the result of the proceeding would have been different.

16. **Effectiveness of Counsel: Speedy Trial.** When a defendant alleges he or she was prejudiced by trial counsel's failure to properly assert the defendant's speedy trial rights, the court must consider the merits of the defendant's speedy trial rights under *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).
17. **Effectiveness of Counsel.** Counsel is not ineffective for failing to make an objection that has no merit.
18. **Effectiveness of Counsel: Appeal and Error.** General allegations that trial counsel performed deficiently or that trial counsel was ineffective are insufficient to raise an ineffective assistance claim on direct appeal and thereby preserve the issue for later review.

Appeal from the District Court for Scotts Bluff County: Leo P. Dobrovolny, Judge. Affirmed.

Sterling T. Huff, P.C., L.L.O., for appellant.

Michael T. Hilgers, Attorney General, and Teryn Blessin for appellee.

Pirtle, Chief Judge, and Riedmann and Welch, Judges.

Riedmann, Judge.

I. INTRODUCTION

Ashley L. Gonzalez appeals from her convictions and sentences following a jury trial in Scotts Bluff County District Court. On appeal, Gonzalez challenges her right to a speedy trial, the jury instructions, the sufficiency of the evidence, and the effectiveness of her trial counsel. Following our review, we affirm the judgment of the district court.

II. BACKGROUND

1. Procedural History

On August 5, 2022, Gonzalez was charged with possession of a firearm by a prohibited person, a Class ID felony; possession of a controlled substance (methamphetamine), a Class IV felony; possession of marijuana, 1 ounce or less, an infraction; and possession of drug paraphernalia, an infraction. The

court scheduled the pretrial conference for November 16 and scheduled trial for the jury term beginning December 5. On November 4, the State filed a motion to continue because it had not received drug test results from the Nebraska State Patrol Crime Laboratory and did not anticipate receiving them before the pretrial conference date. No hearing date was included in the motion.

At the hearing on November 16, 2022, Gonzalez' counsel orally requested a continuance because Gonzalez' codefendant was scheduled for trial in the same jury term, and counsel believed it would be prejudicial to Gonzalez to have the same jury panel questioned twice, especially if the codefendant went to trial first. The court granted the continuance, and as a result, trial did not begin until April 24, 2023. Because the court granted Gonzalez' motion, it did not rule on the State's motion for a continuance.

Following the jury trial, Gonzalez was convicted of all charges. She was sentenced as follows: possession of a firearm by a prohibited person—3 to 3 years' imprisonment, with credit for 24 days' time served; possession of a controlled substance (methamphetamine)—0 to 1 year's imprisonment; possession of marijuana, less than 1 ounce—$300 fine; and possession of drug paraphernalia—$100 fine. The evidence presented at trial, as relevant to the assigned errors on appeal, is as follows.

2. Trial Evidence

On July 23, 2022, Gonzalez was at her residence with her children and the codefendant, who is her son's father. He did not live at the residence with her but would sometimes spend the night. Officer William Howton, a member of the Scottsbluff Police Department, was working with a drug task force that day and was the lead investigator of the group that served a search warrant on Gonzalez' residence. Officers knocked multiple times and announced they were police officers serving a search warrant; after receiving no response,

they entered the residence. Officers secured the residence and located Gonzalez on the stairs; she was detained. The father of Gonzalez' son was in the upstairs bathroom, and after he refused to exit, police entered the bathroom and detained him. A baggie with a "crystal-like substance" was found on his person, and this was placed into evidence and later sent to be tested at the crime laboratory.

In a closet in the upstairs hallway, officers found a mirror that had a debit card in Gonzalez' name and a "white crystalline substance" on it. This substance was also sent to be tested by the crime laboratory. In the same closet, officers found a revolver handgun. The closet also contained a box of shotgun shells. In another closet, officers located a shotgun in a soft case. The shotgun was located behind some clothes in the closet. Throughout the house, the officers also found a glass pipe with white residue that appeared to be a methamphetamine pipe; a baggie with a green leafy substance that appeared to be marijuana; another methamphetamine pipe; two small, self-sealed baggies with white residue; and a glass, multicolored smoking device believed to be used for smoking methamphetamine.

Gonzalez was arrested, placed in the back of a patrol car, and interviewed by Howton after waiving her *Miranda* rights. During the interview, Gonzalez stated that she was storing the firearms for her father, that he used to stay with her, and that she should not have stored them but forgot they were there. She also stated that she had smoked methamphetamine that day.

When asked at trial if Gonzalez' son's father had claimed ownership of any of the drugs seized, Howton testified that he did not. Howton also confirmed that neither of the guns, nor the box of shotgun shells, were tested for fingerprints or DNA to determine who had handled them. However, Howton entered the serial numbers from the guns into the "ATF database," but he could not recall if he received any results.

Gonzalez testified that when Howton interviewed her, she was "confused and scared" and did not know why she was being arrested. At trial, she denied having ever seen the firearms in her house prior to the search and stated she first saw them when the police carried them down the stairs to place them into evidence; she just assumed they belonged to her father because he had been staying in her home. Gonzalez testified that she had not spoken with her father about the firearms and that he had not brought firearms to her home before. Gonzalez also testified that at the time, she did not know that as a convicted felon, she could not possess firearms. She confirmed that when Howton interviewed her, she told him that she had smoked methamphetamine that day, specifically in the upstairs bathroom; she confirmed this is where her son's father was found. Gonzalez also stated that the debit card found on the mirror was a card that she no longer used. She denied ownership of the methamphetamine pipes found in the home.

Gonzalez' father testified that the firearms belonged to him and that he had placed them in the closets sometime in October 2021 when Gonzalez was not at home. He stated that while he was in the process of moving, his then 5-year-old child was very curious about them, so he took them to Gonzalez' home to prevent his child from accessing them. He testified that he "forgot" that the firearms were still there. Gonzalez' father testified that he never spoke with Gonzalez about the firearms being in her home. He confirmed that the gun cases found with the firearms were both from a company where he had previously worked and both had that company's logo on them. He testified that he did not know that Gonzalez was a felon and could not have firearms. Gonzalez was found guilty of all charges.

3. Motion for New Trial

After retaining new counsel, Gonzalez filed a motion for new trial and motion to set aside judgment. At a hearing on June 16, 2023, Gonzalez asserted she was entitled to a new

trial because the jury should have been instructed that "a defendant's mere presence is not enough" to prove possession, that the jury should have been instructed on attempted possession of a firearm by a prohibited person and attempted possession of methamphetamine, and that her son's father, who was in her home that day, should have been called as a witness, as requested by Gonzalez. In an affidavit in support of the motion, Gonzalez also averred that she was unaware the State had requested a trial continuance due to the delayed drug test results and that she was unaware that she was waiving her right to a speedy trial when her trial counsel requested a continuance. The district court denied the motion.

Gonzalez appeals.

III. ASSIGNMENTS OF ERROR

Gonzalez assigns, consolidated, reordered, and restated, that (1) her statutory speedy trial rights were violated; (2) the district court erred in failing to properly instruct the jury; (3) the evidence was insufficient to convict her of possession of a firearm by a prohibited person; (4) the district court erred in denying her motion for new trial and motion to set aside judgment; and (5) she received ineffective assistance of counsel by trial counsel's (a) requesting an improper and unnecessary continuance and failing to file a motion for absolute discharge, (b) failing to file, request, and offer appropriate jury instructions and failing to object to the instructions given, (c) failing to make a motion for directed verdict at the close of the State's case and renew the motion at the end of the case, (d) failing to conduct witness examinations of defense witnesses in a clear and concise manner, and (e) failing to make a logical and informative closing argument on the issue of constructive possession.

IV. ANALYSIS

1. Statutory Speedy Trial Right

[1] Gonzalez argues her case should not have gone to trial because the trial occurred outside the 6-month period

provided by Neb. Rev. Stat. § 29-1207 (Reissue 2016). She argues she was not advised that the continuance requested by trial counsel in November 2022 would result in a waiver of her statutory speedy trial rights. However, no motion for absolute discharge based upon a violation of speedy trial rights was ever filed with the district court. In the absence of plain error, where an issue is raised for the first time in an appellate court, it will be disregarded inasmuch as a lower court cannot commit error in resolving an issue never presented and submitted to it for disposition. *State v. Munoz*, 303 Neb. 69, 927 N.W.2d 25 (2019). Because Gonzalez' counsel requested the continuance, the delay did not count against the speedy trial clock, and a motion for absolute discharge would have been futile. The district court did not err in failing to dismiss the information against Gonzalez for a violation of her speedy trial rights because the issue was never raised; therefore, no plain error exists.

Gonzalez also assigns that her trial counsel was ineffective in failing to file a motion for absolute discharge; we will address that issue below in connection with her other ineffective assistance of counsel claims.

2. Jury Instructions

(a) Standard of Review

[2,3] Whether jury instructions are correct is a question of law, which an appellate court resolves independently of the lower court's decision. *State v. Esch*, 315 Neb. 482, 997 N.W.2d 569 (2023). All the jury instructions must be read together, and if, taken as a whole, they correctly state the law, are not misleading, and adequately cover the issues supported by the pleadings and the evidence, there is no prejudicial error necessitating reversal. *Id*.

(b) Analysis

[4] Gonzalez assigns that the district court erred in failing to properly instruct the jury. At trial, Gonzalez made no

objection to the jury instructions, nor did she propose any alternate instructions. Failure to object to a jury instruction after it has been submitted to counsel for review precludes raising an objection on appeal absent plain error indicative of a probable miscarriage of justice. *State v. Brooks*, 23 Neb. App. 560, 873 N.W.2d 460 (2016). Nonetheless, whether requested to do so or not, a trial court has the duty to instruct the jury on issues presented by the pleadings and the evidence. *Id*. Because of this duty, the trial court, on its own motion, must correctly instruct on the law. *Id*.

Gonzalez argues the district court erred in its instruction defining the word "possession." The instruction given by the district court stated, "Possession of an object means either knowingly having it on one's person or knowing the object is present and having control over the object. Proximity standing alone is insufficient to prove possession." (Emphasis omitted.) Gonzalez argues the district court should have also included the statement "'A defendant's mere presence is not enough.'" Brief for appellant at 28. We disagree.

[5] The language utilized by the district court is taken in part from the Nebraska pattern jury instructions, which provide the definition for the term "possession" as "either knowingly having it on one's person or knowing of the object's presence and having control over the object." NJI2d Crim. 4.2. Whenever an applicable instruction may be taken from the Nebraska Jury Instructions, that instruction is the one which should usually be given to the jury in a criminal case. *State v. Valentine*, 27 Neb. App. 725, 936 N.W.2d 16 (2019). In addition to the language of the pattern instruction, the district court further included the statement that "[p]roximity standing alone is insufficient to prove possession."

In *State v. Valentine*, 27 Neb. App. at 746, 936 N.W.2d at 31, the defendant requested that the jury instruction regarding possession include the statement that "'[p]roximity, standing alone, is insufficient.'" The district court refused to give the proffered instruction and instead used the language of the

pattern instruction. On appeal, we affirmed, finding that the district court properly instructed the jury on the definition of the term "possession" by using the pattern instruction.

Here, the district court included language that informed the jury that proximity to an object alone was not sufficient to prove possession. Gonzalez argues that it should have also informed the jury that "'[a] defendant's mere presence is not enough.'" Brief for appellant at 28. To the extent there is any distinction between the two, we find no error. The district court was not required to instruct beyond the language of the pattern instruction. Gonzalez cannot show she was prejudiced by the court's refusal to further instruct that mere presence is not enough, especially when it included the additional language regarding proximity. See, also, *State v. Castellanos*, 26 Neb. App. 310, 918 N.W.2d 345 (2018) (affirming trial court's use of pattern instruction and its refusal to include language that defendant's mere presence was insufficient to prove possession).

The jury instructions, read together and taken as a whole, correctly stated the law, were not misleading, and adequately covered the issues supported by the pleadings and the evidence. The district court did not err in instructing the jury.

3. Sufficiency of Evidence

(a) Standard of Review

[6] When reviewing a criminal conviction for sufficiency of the evidence to sustain the conviction, the relevant question for an appellate court is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *State v. Allen*, 314 Neb. 663, 992 N.W.2d 712 (2023), *modified on denial of rehearing* 315 Neb. 255, 995 N.W.2d 446.

(b) Analysis

Gonzalez argues the evidence was insufficient to sustain her conviction of possession of a firearm by a prohibited person

because there was no testimony that the firearms seized could expel a projectile. She relies upon the statutory definition of firearm, which states: "Firearm means any weapon which is designed to or may readily be converted to expel any projectile by the action of an explosive or frame or receiver of any such weapon." Neb. Rev. Stat. § 28-1201 (Reissue 2016). She implies that because there was no evidence that a "test fire" was done by any crime laboratory technician, nor was there testimony from anyone that the items seized were assembled and in good enough condition to expel a projectile, the State failed to prove that the items were firearms. Brief for appellant at 36. We disagree.

Photographs of the shotgun and the revolver were entered into evidence. Howton testified that he entered the serial numbers of both firearms into the "ATF database," from which it could be inferred that both were manufactured firearms with serial numbers. A box of shotgun shells was found in the home, though admittedly not in the same closet as the shotgun itself. Gonzalez' father testified that the reason he moved the firearms to Gonzalez' home was that he was worried about the level of interest his young child was showing in the firearms. From this, the jury could conclude that the items seized were designed, or could be readily converted, to expel projectiles.

Furthermore, to be convicted of possession of a firearm by a prohibited person, the State need not prove that the firearm is operable. See *State v. Lee*, 195 Neb. 348, 237 N.W.2d 880 (1976). The Nebraska Supreme Court stated:

> [E]vidence of possession of a revolver or gun of prohibited description, which is in apparently good condition and has the characteristics and appearance commonly understood to be those of the firearm it purports to be, is prima facie evidence sufficient to go to the jury in a prosecution [for unlawful possession of a firearm by a felon].

Id. at 350, 237 N.W.2d at 882.

The evidence presented, when viewed in the light most favorable to the State, was such that a rational trier of fact could conclude that the items seized from Gonzalez' house were firearms. Because Gonzalez does not argue the evidence was insufficient to find that she possessed the firearms or that she was a felon, we do not address the remaining elements of the crime. See Neb. Rev. Stat. § 28-1206 (Cum. Supp. 2022). The evidence was sufficient to support the conviction.

4. Motion for New Trial

(a) Standard of Review

[7] In a criminal case, a motion for new trial is addressed to the discretion of the trial court, and unless an abuse of discretion is shown, the trial court's determination will not be disturbed. *State v. Allen*, 314 Neb. 663, 992 N.W.2d 712 (2023), *modified on denial of rehearing* 315 Neb. 255, 995 N.W.2d 446.

(b) Analysis

Gonzalez assigns that the district court erred in denying her motion for new trial and motion to set aside judgment. Her assigned error on this issue states:

> This appeal is largely restricted to the issues regarding Count I, being a Prohibited Person in Possession of a Firearm and the conviction for that offense. The Court erred in failing to grant [Gonzalez'] Motion for New Trial and Motion to Set Aside Judgment. Counts II, III, and IV are preserved for violations of speedy trial and for ineffective assistance of counsel for failure to protect [Gonzalez'] rights to a speedy trial.

However, her argument is limited to the jury instruction regarding the definition of the word "possession." As previously discussed, we find no error in the jury instruction given; therefore, the district court did not err in denying the motion for new trial and motion to set aside judgment on this issue. Because Gonzalez does not argue any of the other bases contained in her motion, we need not discuss them.

5. Ineffective Assistance of Counsel

[8] Gonzalez enumerates several ways in which she believes her trial counsel was ineffective. We first set forth the general framework for our analysis and then address each claim. When a defendant's trial counsel is different from his or her counsel on direct appeal, the defendant must raise on direct appeal any issue of trial counsel's ineffective performance which is known to the defendant or is apparent from the record; otherwise, the issue will be procedurally barred in a subsequent postconviction proceeding. *State v. Turner*, 315 Neb. 661, 998 N.W.2d 783 (2024).

(a) Standard of Review

[9,10] Whether a claim of ineffective assistance of counsel may be determined on direct appeal is a question of law. *Id*. 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. *Id*.

[11,12] An ineffective assistance of counsel claim is raised on direct appeal when the claim alleges deficient performance with enough particularity for (1) an appellate court to make a determination of whether the claim can be decided upon the trial record and (2) a district court later reviewing a petition for postconviction relief to recognize whether the claim was brought before the appellate court. *Id*. When a claim of ineffective assistance of counsel is raised in a direct appeal, the appellant is not required to allege prejudice; however, an appellant must make specific allegations of the conduct that he or she claims constitutes deficient performance by trial counsel. *Id*.

(b) Analysis

[13-15] To prevail on a claim of ineffective assistance of counsel under *Strickland v. Washington*, 466 U.S. 668, 104 S.

Ct. 2052, 80 L. Ed. 2d 674 (1984), the defendant must show that his or her counsel's performance was deficient and that this deficient performance actually prejudiced the defendant's defense. *State v. Turner, supra*. To show that counsel's performance was deficient, the defendant must show counsel's performance did not equal that of a lawyer with ordinary training and skill in criminal law. *Id*. To show prejudice from counsel's deficient performance, the defendant must demonstrate a reasonable probability that but for counsel's deficient performance, the result of the proceeding would have been different. *Id*.

(i) Continuance and Speedy Trial

[16] Gonzalez assigns that trial counsel was ineffective in requesting an unnecessary continuance and in failing to protect her speedy trial rights. When a defendant alleges he or she was prejudiced by trial counsel's failure to properly assert the defendant's speedy trial rights, the court must consider the merits of the defendant's speedy trial rights under *Strickland v. Washington, supra*. *State v. Davis*, 31 Neb. App. 445, 982 N.W.2d 261 (2022).

Gonzalez argues that trial counsel was ineffective in requesting the November 16, 2022, continuance. The State had filed a motion to continue trial on November 4 because it had not yet received the results of the drug testing of the substances seized. The testing results utilized at trial were not issued until December 21. Gonzalez argues that if trial counsel had not filed a motion to continue and had instead objected to the State's motion to continue, the speedy trial timeline would have continued to run against the State. While not specifically framed in this manner, Gonzalez also appears to argue that because the test results were not received until December 21, after the trial had originally been scheduled, the State would not have had evidence to support the conviction for possession of a controlled substance. For the reasons set forth below, even if counsel had not requested a continuance,

there is not a reasonable probability that the outcome would have been different.

First, § 29-1207(4)(c)(i) provides that the period of delay from a continuance granted at the request of the prosecuting attorney shall be excluded in computing the time for trial if the continuance is granted because of the unavailability of evidence material to the State's case, when the prosecuting attorney has exercised due diligence to obtain such evidence and there are reasonable grounds to believe that such evidence will be available at a later date. The district court could have granted the State's continuance and found that it fell within the provisions of § 29-1207(4)(c)(i); thus, the time may not have counted against the State. Additionally, although the test results were not available until December 21, 2022, for the April 2023 trial, this does not mean they could not have been expedited had trial not been continued. At the hearing on Gonzalez' motion for new trial, the State said that if its continuance had not been granted, it would have requested that the crime laboratory have the results by the necessary deadline, which it had done at least "a half dozen times" in the past. Therefore, the State may have been able to obtain the results prior to the start of the original December 2022 trial date. Because Gonzalez cannot establish prejudice as a result of her trial counsel's request for a continuance, this claim fails.

Gonzalez also assigns that trial counsel did not need to request the continuance for the reason he stated, specifically that he did not want her to go to trial with the same jury panel as her codefendant. She argues that counsel could have requested that a special jury panel be summoned or that the existing panel be divided into two groups. However, because we have already determined that Gonzalez cannot establish that she was prejudiced by trial counsel's request for a continuance, the reasons for his request do not change our evaluation of this claim.

Gonzalez argues that because the information against her was filed on August 5, 2022, the speedy trial clock ran on

February 4, 2023 (calculated by adding 6 months and subtracting 1 day). And because jury selection did not begin until April 24, 2023, she argues she never should have gone to trial. However, this argument is premised on the exclusion of the time period due to trial counsel's request for a continuance. But exclusion of this time period is inappropriate because it was requested by her counsel.

Recognizing that the continuance time period was properly excluded, Gonzalez argues that her "trial counsel caused the error." Brief for appellant at 23. As we explained above, however, the court could have granted the State's motion, which was based on the unavailability of material evidence, and still excluded that time period, or the laboratory results may have been expedited. Had that occurred, and Gonzalez went to trial in December 2022 as originally planned, based on this record, we cannot say the result would have been different.

We find the record is sufficient to address this claim on direct appeal and conclude that Gonzalez cannot show a reasonable probability that had counsel not requested the November 16, 2022, continuance, or had he filed a motion for absolute discharge, the result of the proceeding would have been different. This claim fails.

(ii) Jury Instructions

Gonzalez assigns that trial counsel was ineffective in failing to file, request, and offer appropriate jury instructions. As previously discussed, the district court did not err in instructing the jury on possession. All that was required was the pattern jury instruction, which the court gave, and the court added language to convey that mere proximity was insufficient to prove possession. We find the record is sufficient to address this claim on direct appeal and conclude that trial counsel did not perform deficiently in not filing, requesting, or offering the additional sentence to be added to the possession instruction.

Gonzalez assigns that trial counsel was ineffective in failing to request a step instruction be given on the charge of

possession of a firearm by a prohibited person so that the jury would have had the option of convicting her of attempted possession. Gonzalez' allegation of deficient conduct is that the proposed attempt instruction comes from the Nebraska pattern jury instructions, is commonly used by defense counsel, and in addition to the proposed possession instruction, would have made a difference. However, Gonzalez makes no argument that the evidence supports an instruction on attempted possession of a firearm by a prohibited person. In fact, it runs contrary to her defense that she did not possess the firearms because she did not know they were present in her house. As explained by the Nebraska Supreme Court in relation to possession of a controlled substance:

> To be guilty of an attempt, a person must *intentionally* engage in conduct constituting a substantial step toward the completion of the underlying crime. An attempted crime involves intent, the mens rea, and conduct that is a substantial step toward the completed crime, the actus reus. But if [the defendant] had the intent to possess or the intent to attempt to possess the methamphetamine, then he would be guilty of actual possession, not just attempted possession, because the methamphetamine was under his control. The facts in this case do not support the conclusion that [the defendant] could be guilty of attempted possession but not possession.

State v. Rocha, 295 Neb. 716, 762, 890 N.W.2d 178, 211 (2017) (emphasis in original).

Based on the evidence presented at trial, an attempt instruction was not warranted; therefore, trial counsel was not ineffective in failing to offer one.

[17] Gonzalez also assigns that trial counsel was ineffective in failing to object to the jury instructions given. As previously discussed, the district court correctly instructed the jury, and an objection would have had no merit. Counsel is not ineffective for failing to make an objection that has no merit. *State v. Allen*, 314 Neb. 663, 992 N.W.2d 712 (2023),

modified on denial of rehearing 315 Neb. 255, 995 N.W.2d 446. We find the record sufficient to address this claim on direct appeal and conclude that Gonzalez has failed to show deficient performance.

(iii) Motion for Directed Verdict

Gonzalez assigns that trial counsel was ineffective in failing to make a motion for directed verdict at the close of the State's case. Specifically, she states that there was no testimony as to the design or functional capability of the firearms at issue to expel projectiles. We have already discussed that the evidence was sufficient to support the conviction, and neither a motion for directed verdict nor a motion to renew such a motion would have had merit. We find the record is sufficient to address this claim on direct appeal and conclude that trial counsel was not ineffective in failing to make such motions.

(iv) Examination of Witnesses

[18] Gonzalez assigns that trial counsel failed to conduct witness examinations in a clear and concise manner. She makes one specific allegation of deficient performance, arguing that defense counsel did not know the proper names of the individuals involved. Aside from this, she makes no specific citation to the record of trial counsel's questioning of a witness that was deficient. She does not specify questions that were not asked, but should have been, or that were asked, but should not have been. When making an ineffective assistance of counsel claim on direct appeal, allegations of prejudice are not required. *State v. Bedford*, 31 Neb. App. 339, 980 N.W.2d 451 (2022). However, a defendant must make specific allegations of the conduct that he or she claims constitutes deficient performance. *Id*. General allegations that trial counsel performed deficiently or that trial counsel was ineffective are insufficient to raise an ineffective assistance claim on direct appeal and thereby preserve the issue for later review. *Id*.

Gonzalez has failed to make specific allegations of deficient performance, and we will not further address this allegation.

(v) Closing Argument

Gonzalez assigns that trial counsel failed to make a logical and informative closing argument on the issue of constructive possession. She argues that counsel did not have a logical and consistent theory of defense, vacillating among differing themes. However, as discussed above, the evidence presented, viewed in the light most favorable to the State, showed that Gonzalez knowingly possessed firearms. The jury heard both Gonzalez and her father testify that Gonzalez did not know the weapons were in her home. However, they also heard Gonzalez' admission made in the back of the patrol car in which she admitted that she was storing the firearms for her father, implying that she knew of their presence in her home. As evidenced by the verdicts, the jury believed her admission made on the day the search warrant was executed. Gonzalez cannot show a reasonable probability that if trial counsel had a different theory in closing arguments, the result of the proceeding would have been different. The record is sufficient to address this claim on direct appeal, and we conclude that Gonzalez cannot show prejudice.

V. CONCLUSION

We affirm the convictions and sentences of the district court and reject Gonzalez' claims of ineffective assistance of trial counsel as either insufficiently pled or without merit.

AFFIRMED.