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State of Nebraska, appellee, v. Christopher C. Ansell, appellant.

___ N.W.3d ___

Filed August 21, 2026. No. S-24-850.

1. **Statutes.** Statutory interpretation is a question of law.
2. **Judgments: Appeal and Error.** When reviewing questions of law, an appellate court has an obligation to resolve the questions independently of the conclusion reached by the trial court.
3. **Statutes.** Statutory interpretation begins with the text, and the text is to be given its plain and ordinary meaning.
4. **Statutes: Appeal and Error.** An appellate court will not resort to interpretation of statutory language to ascertain the meaning of words which are plain, direct, and unambiguous.
5. **Sexual Assault: Minors.** First degree sexual assault of a child has three essential elements: (1) the defendant's subjecting a victim to sexual penetration, (2) the age of the defendant when the sexual penetration occurred, and (3) the age of the victim when the sexual penetration occurred.
6. **Words and Phrases.** The word "or," when used properly, is disjunctive.
7. **Statutes.** It is not within the province of the courts to read meaning into a statute that is not there or to read anything direct and plain out of a statute.
8. **Criminal Law: Sexual Assault: Minors.** To determine whether one has committed first degree sexual assault of a child, one of the two alternatives set forth in Neb. Rev. Stat. § 28-319.01(1) (Reissue 2016) must be shown. That is, it must be shown that either (1) the defendant subjected a victim under 12 years old to sexual penetration when the defendant was at least 19 years old or (2) the defendant subjected a victim who was at least 12 years old but less than 16 years old to sexual penetration when the defendant was at least 25 years old.
9. **Indictments and Informations: Appeal and Error.** A ruling on whether to allow a criminal information to be amended is made by the

trial court in its discretion and will not be disturbed on appeal absent an abuse of discretion.

10. **Judges: Words and Phrases.** 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 just results in matters submitted for disposition.
11. **Indictments and Informations.** A trial court, in its discretion, may permit a criminal information to be amended at any time before verdict or findings if no additional or different offense is charged and the substantial rights of the defendant are not prejudiced.
12. **Appeal and Error.** An appellate court is not obligated to engage in an analysis that is not necessary to adjudicate the case and controversy before it.
13. **Trial: Waiver.** Whether a defendant could and, in fact, did waive his or her right to attend all stages of his or her trial presents a question of law.
14. **Due Process.** The presence of a defendant is a condition of due process to the extent that a fair and just hearing would be thwarted by his or her absence, and to that extent only.
15. **Appeal and Error.** Absent plain error, an appellate court will not consider an issue not raised to the trial court.
16. ____. Plain error may be found on appeal when an error unasserted or uncomplained of below, but plainly evident from the record, prejudicially affects a litigant's substantial right and, if uncorrected, would result in damage to the integrity, reputation, and fairness of the judicial process.
17. ____. Consideration of plain error occurs at the discretion of an appellate court.
18. **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.
19. **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.
20. ____: ____. 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.

21. **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.
22. ____: ____. To show that counsel's performance was deficient, a defendant must show that counsel's performance did not equal that of a lawyer with ordinary training and skill in criminal law.
23. ____: ____. To show prejudice in a claim of ineffective assistance of counsel, the defendant must demonstrate a reasonable probability that but for counsel's deficient performance, the result of the proceeding would have been different.
24. **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.
25. **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.
26. **Effectiveness of Counsel: Records: Appeal and Error.** Once raised, an appellate court will determine whether the record on appeal is sufficient to review the merits of the ineffective performance claims. The record is sufficient if it establishes either that trial counsel's performance was not deficient, that the appellant will not be able to establish prejudice as a matter of law, or that trial counsel's actions could not be justified as a part of any plausible trial strategy.
27. **Effectiveness of Counsel: Appeal and Error.** Assignments of error on direct appeal regarding ineffective assistance of trial counsel must specifically allege deficient performance, and an appellate court will not scour the remainder of the brief in search of such specificity.
28. **Trial: Attorney and Client.** The decision to object or not to object is part of trial strategy.
29. **Trial: Attorneys at Law: Effectiveness of Counsel: Presumptions: Appeal and Error.** Trial counsel is afforded due deference to formulate trial strategy and tactics and, in considering a claim of ineffective assistance of counsel, there is a strong presumption that counsel acted reasonably.

30. **Trial: Attorneys at Law: Effectiveness of Counsel: Appeal and Error.** An appellate court will not second-guess the reasonable strategic decisions of trial counsel.
31. **Effectiveness of Counsel.** A court judges the challenged conduct of counsel on the facts of the particular case, viewed at the time of counsel's conduct.
32. **Verdicts: Juries: Jury Instructions: Presumptions.** Absent evidence to the contrary, it is presumed that a jury followed the instructions given in arriving at its verdict.

Appeal from the District Court for Douglas County: KIMBERLY MILLER PANKONIN, Judge. Affirmed.

Ryan S. Crnkovich, of Dornan, Howard, Breitkreutz, Dahlquist & Klein, P.C., L.L.O., for appellant.

Michael T. Hilgers, Attorney General, and Nathan A. Liss for appellee.

FUNKE, C.J., CASSEL, STACY, PAPIK, FREUDENBERG, and BERGEVIN, JJ.

CASSEL, J.

I. INTRODUCTION

Christopher C. Ansell appeals from convictions, pursuant to a jury's verdicts, and sentences for first and third degree sexual assault of a child.[1] A novel issue is whether the first degree sexual assault of a child statute[2] defines two separate offenses or a single offense that can be committed in two distinct ways. We conclude that it is the latter. Finding no reversible error, we affirm the district court's judgment.

II. BACKGROUND

We begin with a brief background. Additional facts relevant to Ansell's assignments of error will appear in the analysis section below.

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[1] See, Neb. Rev. Stat. § 28-319.01 (Reissue 2016); Neb. Rev. Stat. § 28-320.01 (Reissue 2016).

[2] See § 28-319.01.

The State's theory of this case was that Ansell sexually abused his stepson, J.M. (born in October 2007), on at least three occasions between 2019 and 2022. The State filed a second amended information charging Ansell with two counts of first degree sexual assault of a child[3] and one count of third degree sexual assault of a child.[4] Ansell, who was born in November 1984, was over the ages of 19[5] and 25[6] at all relevant times.

Count 1 of the State's second amended information is particularly relevant here. It alleged first degree sexual assault of a child between the ages of 12 and 15,[7] which, ultimately, was inconsistent with J.M.'s testimony regarding his age when that incident occurred. At trial, J.M. testified that it happened before his 12th birthday.

Following J.M.'s testimony, the State moved to file a third amended information to "comport with the evidence that was presented at trial." Over Ansell's objection, the district court sustained the motion. The State then amended count 1 to a charge of first degree sexual assault of a child under 12 years old.[8]

The jury found Ansell guilty of each of the three charged counts. The court accepted the jury's verdicts and convicted him.

The court later sentenced Ansell to terms of imprisonment. As relevant here, it concluded that he committed an aggravated offense[9] requiring lifetime sex offender registration.

Represented by new counsel, Ansell filed a timely appeal, which we moved to our docket.[10]

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[3] See *id.*

[4] See § 28-320.01.

[5] See § 28-319.01(1)(a).

[6] See § 28-319.01(1)(b).

[7] See *id.*

[8] See § 28-319.01(1)(a).

[9] See Neb. Rev. Stat. § 29-4001.01(1) (Reissue 2016).

[10] See Neb. Rev. Stat. § 24-1106(3) (Cum. Supp. 2024).

III. ASSIGNMENTS OF ERROR

In four of Ansell's nine assignments of error, he alleges error by the trial court. He assigns, condensed and reordered, that the district court erred in (1) granting the State leave to file a third amended information during its case in chief that "fundamentally changed and inverted an essential element of the offense alleged in [c]ount 1"; (2) finding Ansell committed an aggravated offense under Nebraska's Sex Offender Registration Act; (3) proceeding with "critical portions" of trial in Ansell's absence, including a jury instruction conference and the State's motion to file a third amended information; and (4) prohibiting the defense, in violation of the Confrontation Clause, from asking J.M. about prior specific acts bearing on his credibility.

Ansell's remaining assignments allege ineffective assistance of trial counsel. He asserts, renumbered and reordered, that his trial counsel were ineffective in (1) "failing to request a lesser-included offense instruction"; (2) failing to object to inadmissible character evidence or, in the alternative, failing to seek reconsideration of a ruling prohibiting inquiry into J.M.'s prior bad acts after the State opened the door to such questioning; (3) "opening the door to testimony [that defense counsel] successfully excluded through their motion in limine"; (4) failing to impeach J.M. on his assertion that Ansell was always in the room with him during therapy sessions; and (5) failing to poll the jury.

IV. STANDARD OF REVIEW

[1,2] Statutory interpretation is a question of law.[11] When reviewing questions of law, an appellate court has an obligation to resolve the questions independently of the conclusion reached by the trial court.[12]

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[11] *State v. Brooks*, 319 Neb. 377, 22 N.W.3d 640 (2025).

[12] *State v. Figures*, 308 Neb. 801, 957 N.W.2d 161 (2021).

We set forth additional standards at appropriate points in our analysis.

V. ANALYSIS

1. Elements of § 28-319.01

We begin with the novel question. Several of Ansell's arguments are premised upon his interpretation of the elements of first degree sexual assault of a child under § 28-319.01.

(a) Statutory Text

Section 28-319.01 provides, in pertinent part:

> (1) A person commits sexual assault of a child in the first degree:
>
> (a) When he or she subjects another person under twelve years of age to sexual penetration and the actor is at least nineteen years of age or older; or
>
> (b) When he or she subjects another person who is at least twelve years of age but less than sixteen years of age to sexual penetration and the actor is twenty-five years of age or older.
>
> (2) Sexual assault of a child in the first degree is a Class IB felony with a mandatory minimum sentence of fifteen years in prison for the first offense.
>
> . . . .
>
> (4) In any prosecution under this section, the age of the actor shall be an essential element of the offense that must be proved beyond a reasonable doubt.

(b) Parties' Rationales

Ansell's interpretation focuses on the language specifying the age of the victim. Subsection (1)(a) requires "another person under twelve years of age,"[13] whereas subsection (1)(b) requires "another person who is at least twelve years of age

[13] § 28-319.01(1)(a).

but less than sixteen years of age."[14] Ansell contends that these subsections are two separate crimes, such that the State charged him with an "altogether different offense"[15] when it amended count 1 following J.M.'s testimony.

The State characterizes the third amended information as "merely chang[ing] the underlying theory from a violation of § 28-319.01(1)(b) to a violation of § 28-319.01(1)(a), which are alternative ways of committing the same 'single offense.'"[16] The State highlights that at all relevant times, count 1 fell under the same charging statute and carried the same penalty. The State further argues that Ansell was not prejudiced by the amendment.

(c) Essential Element of Single Offense

[3,4] To determine whether § 28-319.01(1)(a) and (1)(b) are two separate offenses, we first examine the text. Statutory interpretation begins with the text, and the text is to be given its plain and ordinary meaning.[17] An appellate court will not resort to interpretation of statutory language to ascertain the meaning of words which are plain, direct, and unambiguous.[18] That applies here.

[5] Based on the statutory text, we agree with Ansell that J.M.'s age is an essential element. First degree sexual assault of a child has three essential elements[19]: (1) the defendant's subjecting a victim to sexual penetration,[20] (2) the age of the

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[14] § 28-319.01(1)(b).

[15] Brief for appellant at 32.

[16] Brief for appellee at 22.

[17] *State v. Jones*, 317 Neb. 559, 10 N.W.3d 747 (2024).

[18] *State v. Jackson*, 320 Neb. 609, 29 N.W.3d 232 (2026).

[19] See § 28-319.01(1).

[20] See, also, Neb. Rev. Stat. § 28-318(6) (Supp. 2025) (defining phrase "[s]exual penetration").

defendant when the sexual penetration occurred,[21] and (3) the age of the victim when the sexual penetration occurred.

But we disagree that there are two separate offenses.

Here, the key language is the word "or." Under § 28-319.01(1), a person commits sexual assault of a child in the first degree by subjecting another person under 12 years old to sexual penetration when the actor is at least 19 years old "*or*" by subjecting another person who is at least 12 years old but less than 16 years old to sexual penetration when the actor is at least 25 years old. (Emphasis supplied.)

[6] Our cases recognize that the word "or," when used properly, is disjunctive.[22] The parties do not suggest that it is used improperly here, and we see no reason to conclude otherwise. As Ansell correctly points out, the two subsections are mutually exclusive. The ultimate question, then, is whether the two subsections are two separate offenses or distinct ways of committing a single offense.

[7] From the text, we can discern that § 28-319.01(1)(a) and (1)(b) are two distinct ways of committing a single offense. This fundamental principle controls: It is not within the province of the courts to read meaning into a statute that is not there or to read anything direct and plain out of a statute.[23] Under § 28-319.01, first degree sexual assault of a child under 12 years old and first degree sexual assault of a child who is at least 12 years old but less than 16 years old are not denominated as separate and independent offenses, but only as ways in which criminal liability for first degree sexual assault of a child may be charged and prosecuted. Section 28-319.01

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[21] See, also, § 28-319.01(4) (age of actor shall be essential element of offense that must be proved beyond reasonable doubt); § 28-318(1) (word "[a]ctor" means "person accused of sexual assault").

[22] *State v. Rask*, 294 Neb. 612, 883 N.W.2d 688 (2016).

[23] *State v. Perry*, 318 Neb. 613, 17 N.W.3d 504 (2025).

defines "sexual assault of a child in the first degree,"[24] which it refers to as "the offense."[25] Ansell reads meaning into the statute that is not there.

[8] We hold that to determine whether one has committed first degree sexual assault of a child, one of the two alternatives set forth in § 28-319.01(1) must be shown. That is, it must be shown that either (1) the defendant subjected a victim under 12 years old to sexual penetration when the defendant was at least 19 years old or (2) the defendant subjected a victim who was at least 12 years old but less than 16 years old to sexual penetration when the defendant was at least 25 years old.

Several reasons support our holding. Most important, it faithfully implements the text. It achieves consistency with our previous determination that first degree sexual assault[26] is a single offense that may be committed in multiple distinct ways.[27] "It also recognizes and accommodates the unique circumstances surrounding young victims, who 'are often unsure of the date on which the assault or assaults occurred' and 'may have no meaningful reference point of time or detail by which to distinguish one specific act from another.'"[28]

Having determined the elements of § 28-319.01 and that first degree sexual assault of a child is a single offense, we turn to Ansell's assignments of error.

(d) Related Assignments of Error Fail

Because we have rejected Ansell's statutory elements argument, his two assignments premised on that argument fail.

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[24] § 28-319.01(1).

[25] § 28-319.01(4).

[26] See Neb. Rev. Stat. § 28-319 (Reissue 2016).

[27] See, e.g., *State v. Npimnee*, 316 Neb. 1, 2 N.W.3d 620 (2024); *State v. McCurdy*, 301 Neb. 343, 918 N.W.2d 292 (2018).

[28] *State v. Samayoa*, 292 Neb. 334, 343, 873 N.W.2d 449, 456 (2015).

(i) No Abuse of Discretion in Granting Leave to File Third Amended Information

Based on his elements argument, Ansell contends that the district court erred in sustaining the State's motion for leave to file a third amended information.

[9,10] A ruling on whether to allow a criminal information to be amended is made by the trial court in its discretion and will not be disturbed on appeal absent an abuse of discretion.[29] 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 just results in matters submitted for disposition.[30]

[11] We have previously held that a trial court, in its discretion, may permit a criminal information to be amended at any time before verdict or findings if no additional or different offense is charged and the substantial rights of the defendant are not prejudiced.[31]

Here, both criteria were met. Because the third amended information changed only the distinct way in which Ansell committed the single offense, it did not charge him with an additional or different offense. Nor can we say that Ansell's substantial rights were prejudiced in these circumstances. Because count 1 in each instance alleged the same offense, we disagree with Ansell that the State "'abandon[ed]'"[32] the charge by filing the second amended information. Likewise, we disagree that the filing of the third amended information triggered additional procedural protections.

We reject Ansell's contention that he was completely deprived of presenting a defense. The State filed the second amended information 3 days before trial. There, it alleged for

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[29] See *State v. Johnson*, 290 Neb. 369, 859 N.W.2d 877 (2015).

[30] *State v. Price*, 320 Neb. 1, 26 N.W.3d 70 (2025).

[31] *State v. Collins*, 281 Neb. 927, 799 N.W.2d 693 (2011).

[32] Brief for appellant at 33.

the first time that J.M. was 12 to 15 years old when count 1 occurred. Beginning with the original charges, count 1 had alleged first degree sexual assault of a child under 12 years old. The record shows that Ansell was aware that he was being charged with the offense of first degree sexual assault of a child.[33] This is not a situation where the State failed to advise the defendant with reasonable certainty of the crime charged against him.[34]

Finally, Ansell's argument premised upon *Blockburger v. United States*[35] fares no better. In his reply brief, he asserts that under the *Blockburger* test, § 28-319.01(1)(a) and (1)(b) are "different 'offenses.'"[36] In *Blockburger*, the U.S. Supreme Court held that "where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not."[37] But *Blockburger* is a double jeopardy case and has no application here.

In these circumstances, we cannot say that the court's allowing the amendment constituted an abuse of discretion.

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[33] Cf. *State v. Banks*, 278 Neb. 342, 771 N.W.2d 75 (2009) (holding no abuse of discretion in allowing State to amend information regarding use of deadly weapon to commit felony charge at close of evidence to specify that weapon was firearm rather than knife or any other deadly weapon).

[34] Cf., e.g., *State v. Beermann*, 231 Neb. 380, 436 N.W.2d 499 (1989). See, also, *State v. Antillon*, 229 Neb. 348, 358, 426 N.W.2d 533, 540 (1988) (consideration in determining propriety of amendment and whether defendant was prejudiced thereby is whether amendment "'surprised'" defense) (superseded by statute on other grounds as stated in *State v. Andersen*, 232 Neb. 187, 440 N.W.2d 203 (1989)).

[35] *Blockburger v. United States*, 284 U.S. 299, 52 S. Ct 180, 76 L. Ed. 306 (1932).

[36] Reply brief for appellant at 9.

[37] *Blockburger v. United States, supra* note 35, 284 U.S. at 304.

At the outset, the State could have charged Ansell in the alternative,[38] but it was not required to do so.[39]

(ii) Evidence Sufficient to Support Aggravated Offense

Ansell assigns error to the court's determination that he committed an aggravated offense under the Sex Offender Registration Act. This assignment begins, "To the extent [the appellate court] agrees that the relief [Ansell] seeks in his first assignment of error is appropriate . . . ."

[12] Having already rejected his first assignment, we need not consider this assignment further. An appellate court is not obligated to engage in an analysis that is not necessary to adjudicate the case and controversy before it.[40]

2. No Violation of Right to Attend Trial

Ansell asserts that in proceeding in his absence with a jury instruction conference and arguments on the State's motion to file a third amended information, the court committed reversible error.

(a) Standard of Review

[13] Whether a defendant could and, in fact, did waive his or her right to attend all stages of his or her trial presents a question of law.[41]

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[38] Cf., *State v. Npimnee, supra* note 27 (in first degree sexual assault case, information alleged two theories: either defendant knew victim was incapable of resisting or victim did not consent); *State v. McCurdy, supra* note 27 (same).

[39] See *State v. Brouillette*, 265 Neb. 214, 655 N.W.2d 876 (2003) (holding certain crimes are single crimes that can be proved under different theories, and because each alternative theory is not separate crime, alternative theories do not require that crime be charged as separate alternative counts).

[40] *State v. Brennauer*, 314 Neb. 782, 993 N.W.2d 305 (2023).

[41] *State v. Figures, supra* note 12.

(b) Additional Facts

At 8:34 a.m. on the third day of trial, the court held a jury instruction conference. Ansell was not personally present. The following exchange took place on the record:

> THE COURT: And the record will reflect we're outside the presence of the jury for a jury instruction conference. And are you — how do you wish to proceed with your client?
>
> [Defense counsel:] Your Honor, at this time, I would waive my client's presence for the jury instruction conference.
>
> THE COURT: All right. And we did state that on the record, that we were having that at 8:30, so he knew about it, and he was fine with —
>
> [Defense counsel:] He knew about it, but I don't think I told him that he needed to be here.
>
> THE COURT: Right. So — but he had the option. He knew it was going to be at 8:30; correct?
>
> [Defense counsel:] Correct.
>
> THE COURT: Okay. So you're comfortable proceeding without your client?
>
> [Defense counsel:] I am.
>
> THE COURT: Okay.

The bill of exceptions does not include a statement on the record regarding a jury instruction conference taking place at 8:30 a.m. that morning. However, counsel for both parties affirmed that "at the end of the day yesterday," they each received a copy of the court's proposed instructions and reviewed them.

Defense counsel then asked to "clarify which set [of jury instructions] we're going to be working off of," explaining that after the court sent its proposed instructions, the State sent an "amended set." The court responded to defense counsel's question by asking the State whether it had a "motion."

At that point, the State made its oral motion for leave to file a third amended information. Defense counsel objected. The court heard the parties' arguments and sustained the motion.

(c) Discussion

Ansell argues that the court erred by failing to follow certain procedures to ensure that he knowingly and intelligently waived his constitutional and statutory right to be present at his trial. He contends that his right to be present could not be waived by his trial counsel and that the court made no effort to secure his presence.

The Confrontation Clause of the Sixth Amendment to the U.S. Constitution and Neb. Const. art. I, § 11, provide for the accused's right to be present in the courtroom at every stage of the trial.[42] Neb. Rev. Stat. § 29-2001 (Cum. Supp. 2024), the Nebraska statutory right to be present during trial, provides, in part: "No person indicted for a felony shall be tried unless personally present during the trial."

A defendant's right to be present at trial may be waived, but any waiver of this right must be knowing and voluntary.[43] "'[I]t being a personal right to the defendant, the waiver thereof, if permitted, must be by him personally, and not by his attorneys.'"[44] "[D]oubtless, the court should, and generally will, make reasonable effort to secure the presence of [the] defendant at any proceeding during the trial."[45]

[14] But the presence of a defendant is a condition of due process to the extent that a fair and just hearing would be thwarted by his or her absence, and to that extent only.[46] Neither instance here rose to that level.

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[42] *State v. Warlick*, 308 Neb. 656, 956 N.W.2d 269 (2021).

[43] *State v. Figures, supra* note 12.

[44] *Strasheim v. State*, 138 Neb. 651, 654, 294 N.W. 433, 435 (1940).

[45] *Scott v. State*, 113 Neb. 657, 660-61, 204 N.W. 381, 382 (1925). See, also, *State v. Warlick, supra* note 42.

[46] See *State v. Lotter*, 266 Neb. 758, 669 N.W.2d 438 (2003).

Although Ansell was not present during the instruction conference, his trial counsel represented that Ansell "knew about it," "had the option" to attend, and "knew it was going to be at 8:30." His counsel reviewed each proposed instruction and had the opportunity to lodge any objections of the defense. Ansell does not appear to quarrel with his counsel's performance in that regard. On this record, we see no reversible error.

Ansell next argues that he was denied his right to attend trial when the court heard and ruled upon the State's motion to file the third amended information. Much of this argument is premised upon Ansell's statutory elements argument, which we have already rejected. Moreover, we cannot say that a fair and just hearing was thwarted by Ansell's absence, particularly when his trial counsel objected to the motion on his behalf. On this issue, we find instructive an opinion of the U.S. Court of Appeals for the 10th Circuit, *U.S. v. Beierle*.[47] In *Beierle*, the 10th Circuit explained that when a defendant claims his or her right to due process is violated because he or she was absent for a trial proceeding not involving the presentation of evidence, what matters under U.S. Supreme Court precedent is whether the defendant's presence would have contributed to the fairness of the "procedure not attended by the defendant."[48] Here, Ansell does not and cannot explain how his presence would have affected what occurred when the district court heard and ruled on the State's motion to file the third amended information.

We express no opinion whether the result would differ if the third amended information had charged Ansell with a new or different offense. Here, it did not do so.

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[47] *U.S. v. Beierle*, 810 F.3d 1193 (10th Cir. 2016).

[48] *Id.* at 1199.

3. No Plain Error in Exclusion of Specific Bad Acts Evidence

Relying upon the Confrontation Clause, Ansell contends that the court erred in prohibiting the defense from asking J.M. about prior specific acts bearing on J.M.'s credibility.

(a) Standard of Review

The parties disagree regarding the applicable standard of appellate review. The State would have us apply this familiar standard: The admission or exclusion of evidence is a matter left largely to the sound discretion of the trial court, whose ruling will be upheld absent an abuse of discretion.[49] Ansell argues that Confrontation Clause violations are subject to harmless-error review.[50] He further argues that "although evidentiary rulings regarding the scope of cross-examination are reviewed for an abuse of discretion, an exception applies where the Sixth Amendment's Confrontation Clause is implicated and—in those situations—the scope of review is *de novo*."[51]

[15,16] We determine that the applicable standard is plain error review. As discussed below, Ansell raises a Confrontation Clause issue for the first time on appeal. Absent plain error, an appellate court will not consider an issue not raised to the trial court.[52] Plain error may be found on appeal when an error unasserted or uncomplained of below, but plainly evident from the record, prejudicially affects a litigant's substantial right and, if uncorrected, would result in damage to the integrity, reputation, and fairness of the judicial process.[53]

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[49] *State v. Clausen*, 307 Neb. 968, 951 N.W.2d 764 (2020).

[50] See *U.S. v. Jones*, 728 F.3d 763 (8th Cir. 2013) (citing *Delaware v. Van Arsdall*, 475 U.S. 673, 106 S. Ct. 1431, 89 L. Ed. 2d 674 (1986)).

[51] Brief for appellant at 27 (emphasis in original) (citing *U.S. v. Frederick*, 683 F.3d 913 (8th Cir. 2012)).

[52] *State v. Glazebrook*, 282 Neb. 412, 803 N.W.2d 767 (2011).

[53] *State v. Dale*, 320 Neb. 861, 31 N.W.3d 127 (2026).

(b) Additional Facts

Before trial, the State filed a motion to exclude any evidence of J.M.'s "sneaking a girl into his residence and/or school" and "possessing blank credit cards." It asserted that "such matters [we]re irrelevant pursuant to *Neb. Rev. Stat.* §§ [2]7-404 and [2]7-608." (Emphasis in original.)

The court held a hearing on the motion, during which the State argued that those specific acts were not relevant to J.M.'s overall character for truthfulness or untruthfulness. It characterized them as "normal typical teenage boy behavior" and asserted that any evidence of them should not be allowed "unless the door is opened in some way." Ansell opposed the motion, arguing that "608(b)" allowed impeachment of J.M. on cross-examination regarding these specific instances of conduct bearing on his credibility. The court sustained the State's motion.

At trial, the State adduced testimony from an intake juvenile probation officer regarding a conversation she had with Ansell as part of her interview process. She said that Ansell told her, among other things, that "[J.M.] was a good kid." The State then asked, "So he called [J.M.] a good kid?" She responded affirmatively. Defense counsel did not object to this testimony or seek reconsideration, at that point, of the court's ruling prohibiting inquiry into J.M.'s specific bad acts.

(c) Discussion

Ansell's argument—which he raises for the first time on appeal—revolves around the Confrontation Clause. He relies upon the proposition that "'[a] Confrontation Clause violation is shown when a defendant demonstrates a reasonable jury might have received a significantly different impression of a witness's credibility had counsel been allowed to pursue the proposed line of cross-examination.'"[54]

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[54] *U.S. v. Jones, supra* note 50, 728 F.3d at 766 (quoting *U.S. v. Oaks*, 606 F.3d 530 (8th Cir. 2010)).

[17] We exercise our discretion to review for plain error only. Consideration of plain error occurs at the discretion of an appellate court.[55] On this record, we see none.

Although Ansell does not directly say so, he essentially challenges the district court's ruling sustaining the State's motion to exclude any evidence of J.M.'s prior bad acts. We have previously held that because a ruling on a motion in limine is not a final ruling on the admissibility of evidence and does not present a question for appellate review, a question concerning the admissibility of evidence which is the subject of a motion in limine is raised and preserved for appellate review by an appropriate objection or offer of proof during trial.[56]

Pointing to the "'good kid'" testimony, Ansell argues that it was "all the more important"[57] that the defense be allowed to question J.M. regarding J.M.'s specific acts bearing on his credibility. But Ansell did not object to that testimony and did not, at any point during trial, make an offer of proof. We agree with the State that Ansell failed to preserve this issue for appeal.

4. Ineffective Assistance of Trial Counsel

[18] Through different counsel on appeal, Ansell contends that his trial counsel provided ineffective assistance in various ways. 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.[58]

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[55] *State v. Logan*, 320 Neb. 554, 28 N.W.3d 510 (2025).

[56] *State v. King*, 316 Neb. 991, 7 N.W.3d 884 (2024).

[57] Brief for appellant at 41.

[58] *State v. Hagens*, 320 Neb. 65, 26 N.W.3d 174 (2025).

(a) Standard of Review

[19,20] Whether a claim of ineffective assistance of counsel may be determined on direct appeal is a question of law.[59] 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.[60]

(b) General Principles

[21-23] To prevail on a claim of ineffective assistance of counsel under *Strickland v. Washington*,[61] the defendant must show that his or her counsel's performance was deficient and that this deficient performance actually prejudiced the defendant's defense.[62] To show that counsel's performance was deficient, a defendant must show that counsel's performance did not equal that of a lawyer with ordinary training and skill in criminal law.[63] To show prejudice in a claim of ineffective assistance of counsel, the defendant must demonstrate a reasonable probability that but for counsel's deficient performance, the result of the proceeding would have been different.[64]

[24,25] 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

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[59] *State v. Vazquez*, 319 Neb. 192, 21 N.W.3d 615 (2025).

[60] *State v. Hagens, supra* note 58.

[61] *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).

[62] *State v. Vazquez, supra* note 59.

[63] *State v. Hagens, supra* note 58.

[64] *Id.*

for postconviction relief to recognize whether the claim was brought before the appellate court.[65] 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.[66]

[26] Once raised, an appellate court will determine whether the record on appeal is sufficient to review the merits of the ineffective performance claims. The record is sufficient if it establishes either that trial counsel's performance was not deficient, that the appellant will not be able to establish prejudice as a matter of law, or that trial counsel's actions could not be justified as a part of any plausible trial strategy.[67]

(c) Claims Assigned

Ansell asserts five instances of ineffective assistance. One lacks specificity. The record is sufficient to address the others, but they lack merit.

(i) Failure to Request "[*L*]*esser-*[*I*]*ncluded* [*O*]*ffense* [*I*]*nstruction"*

Ansell assigns that "[t]rial defense counsel provided ineffective assistance of counsel by failing to request a lesser-included offense instruction." The assignment does not specify the lesser-included offense to which Ansell is referring.

[27] Assignments of error on direct appeal regarding ineffective assistance of trial counsel must specifically allege deficient performance, and an appellate court will not scour the remainder of the brief in search of such specificity.[68]

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[65] *Id.*

[66] *State v. Vazquez, supra* note 59.

[67] *State v. Dat*, 318 Neb. 311, 15 N.W.3d 410 (2025).

[68] *State v. Hagens, supra* note 58.

Because this assignment lacks the specificity we demand on direct appeal, we do not address it.

(ii) Failure to Object to Character Evidence or Seek Reconsideration of Prior Ruling

Ansell claims that his trial counsel were ineffective in failing to respond to the intake juvenile probation officer's testimony that Ansell told her that "[J.M.] was a good kid." Ansell asserts that there were two potential "strategic responses."[69] One was objecting to the testimony as impermissible bolstering. The other was seeking reconsideration of the court's ruling that prohibited inquiry into J.M.'s prior bad acts. We see no merit to this argument.

[28-30] It is well settled that the decision to object or not to object is part of trial strategy.[70] Trial counsel is afforded due deference to formulate trial strategy and tactics and, in considering a claim of ineffective assistance of counsel, there is a strong presumption that counsel acted reasonably.[71] An appellate court will not second-guess the reasonable strategic decisions of trial counsel.[72]

Although Ansell claims that this testimony was prohibited under rules governing character evidence, the record does not support his argument. Viewed in context, the intake juvenile probation officer's testimony that "[J.M.] was a good kid" did not reflect any opinion of the probation officer regarding J.M.'s character. Nor was it offered to bolster J.M.'s credibility. It merely recounted a comment made by Ansell in response to the State's question, "And what did . . . Ansell say about [J.M.] being at home?" For the same reasons, we cannot say that this testimony opened the door to evidence of

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[69] Brief for appellant at 45.

[70] *State v. Rush*, 317 Neb. 622, 11 N.W.3d 394 (2024), *modified on denial of rehearing* 317 Neb. 917, 12 N.W.3d 787, *disapproved on other grounds, State v. Rupp*, 320 Neb. 502, 28 N.W.3d 74 (2025).

[71] *State v. Lopez*, 321 Neb. 118, 32 N.W.3d 868 (2026).

[72] *Id.*

prior bad acts of J.M. As a matter of law, counsel cannot be ineffective for failing to raise a meritless argument.[73]

Even assuming, without deciding, that this evidence could be viewed as impermissible bolstering, Ansell will not be able to establish prejudice as a matter of law. The entire ineffective assistance of counsel analysis is viewed with a strong presumption that counsel's actions were reasonable and that even if they are found unreasonable, the error justifies setting aside the judgment only if there was prejudice.[74] In an ineffective assistance of counsel claim, to prove prejudice, the defendant must show that there is a reasonable probability that but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.[75] Viewed in context, the "good kid" testimony fell far short of undermining confidence in the outcome.

(iii) Opening Door to Testimony Successfully Excluded Through Motion in Limine

a. Additional Background

Before trial, the court sustained Ansell's motion to exclude any evidence regarding allegations of "physical discipline." Ansell largely focused on a purported incident where he "pushed [J.M.] up against a wall." He sought to exclude testimony from the State's witnesses that J.M. suffered a hand injury as a result.

During the trial, defense counsel questioned a witness regarding the incident and the hand injury. Later, the State suggested that the defense had "opened the door" and sought permission to ask questions about the physical abuse allegations that had previously been excluded. The court agreed and allowed the State to do so.

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[73] *State v. Rezac*, 318 Neb. 352, 15 N.W.3d 705 (2025).

[74] See *State v. Ramirez*, 274 Neb. 873, 745 N.W.2d 214 (2008).

[75] See *State v. Wabashaw*, 274 Neb. 394, 740 N.W.2d 583 (2007).

b. Discussion

Ansell assigns that he received ineffective assistance of counsel, because his trial counsel "open[ed] the door to testimony [that defense counsel] successfully excluded through their motion in limine." We assume, without deciding, that this assignment of error is sufficiency specific. Regardless, it fails.

This assignment seems to suggest that a trial counsel's conduct that opens the door to previously excluded evidence is presumptively deficient. Although we have not previously addressed this precise issue, we have rejected similar arguments.[76] We do so here as well. Once again, the strong presumption that counsel acted reasonably applies.

(iv) Failure to Impeach Assertion That Ansell Was Present During Therapy

a. Additional Background

On direct examination, J.M. confirmed that he consulted a therapist after his biological father's death. When the State asked why he did not disclose the sexual abuse to his therapist, J.M. responded that "[Ansell] was always in the room with [him]" during his therapy sessions.

Defense counsel made no attempt to impeach J.M.'s assertion, though the defense argued in closing that J.M.'s statement "lack[ed] an element of truthfulness and ma[de] no sense."

b. Discussion

Ansell asserts that his trial counsel were deficient in failing to impeach J.M.'s testimony that Ansell was "always in the room with [him]" during therapy. Ansell recognizes that in closing argument, his counsel attacked this testimony.

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[76] See, e.g., *State v. Turner*, 315 Neb. 661, 998 N.W.2d 783 (2024) (rejecting per se determination of ineffective assistance of counsel in other context); *State v. Vanderpool*, 286 Neb. 111, 835 N.W.2d 52 (2013) (same); *State v. McCroy*, 259 Neb. 709, 613 N.W.2d 1 (2000) (same).

According to Ansell, the argument "would have been far stronger"[77] if his trial counsel had challenged the testimony by impeaching J.M.

[31] We decline Ansell's invitation to weigh the potential strength of the two strategies. A court judges the challenged conduct of counsel on the facts of the particular case, viewed at the time of counsel's conduct.[78] Here, it is not difficult to conceive possible advantages from his trial counsel's decision not to impeach J.M. before the jury. Without knowing how J.M. would react or respond, defense counsel, in closing argument, attempted to cast doubt on J.M.'s testimony to the jury. We cannot say that this was unreasonable trial strategy.

(v) Failure to Poll Jury

Ansell contends that his trial counsel were deficient in failing to poll the jury. Following the verdicts, the court inquired whether Ansell wished to poll the jury. Counsel declined. In this regard, Ansell seems to be relying to some degree upon a jury question about "downgrad[ing]" count 1. But his argument does not flesh this out.

[32] Ansell has failed to show that his trial counsel's performance did not equal that of a lawyer with ordinary training and skill in criminal law and thus was deficient. This court has held that absent evidence to the contrary, it is presumed that a jury followed the instructions given in arriving at its verdict.[79] Here, the district court instructed the jury that any verdict it reached must be unanimous. Nothing in the record suggests that counsel could not reasonably rely on the jurors' presumed compliance with the instructions. When deciding ineffective assistance of counsel claims for failure to poll the

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[77] Brief for appellant at 48.

[78] *State v. Sidzyik*, 292 Neb. 263, 871 N.W.2d 803 (2015).

[79] *State v. White*, 321 Neb. 1, 32 N.W.3d 256 (2026).

jury, other courts have reached a similar conclusion.[80] This assignment lacks merit.

VI. CONCLUSION

As set forth in our analysis, we conclude:

- Ansell's argument that § 28-319.01(1) creates two offenses lacks merit; rather, it creates a single offense that can be committed in two distinct ways.
- We have identified the three essential elements of first degree sexual assault of a child and the two distinct ways in which the crime can be committed.
- Ansell's other assignments of trial court error fail, and his assignments of ineffective assistance of trial counsel either lack specificity or fail on the merits.

Finding no reversible error, we affirm the district court's judgment.

Affirmed.

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[80] See, e.g., *Sharpe v. State*, 310 Ga. 254, 850 S.E.2d 54 (2020); *Robinson v. State*, 356 Mont. 282, 232 P.3d 403 (2010); *Green v. State*, 351 S.C. 184, 569 S.E.2d 318 (2002).