

IN THE SUPREME COURT, STATE OF WYOMING

2026 WY 112

OCTOBER TERM, A.D. 2026

October 15, 2026

JOHNNY ANGEL MUNOZ,

Appellant
(Defendant),

v.

THE STATE OF WYOMING,

Appellee
(Plaintiff).

S-24-0216, S-25-0188

*Appeal from the District Court of Laramie County
The Honorable Catherine R. Rogers, Judge*

Representing Appellant:

Lauren McLane, Pro Hac Vice, Laramie, Wyoming; Thomas Garvie, Rogers & Garvie, LLC, Laramie, Wyoming. Argument by Ms. McLane.

Representing Appellee:

Keith G. Kautz, Wyoming Attorney General; Jenny L. Craig, Deputy Attorney General; Kristen R. Jones, Senior Assistant Attorney General; John J. Woykovsky, Senior Assistant Attorney General. Argument by Mr. Woykovsky.

Before BOOMGAARDEN, C.J., and GRAY, FENN, and JAROSH, JJ., and PEASLEY, D.J.

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GRAY, Justice.

[¶1] A jury found Johnny Angel Munoz guilty of second-degree murder in the drive-by shooting death of BCC. On appeal, he contends the evidence was insufficient to sustain his conviction, the district court’s jury instruction on transferred intent was erroneous, and the district court erred when it denied his W.R.A.P. 21 (Rule 21) motions raising various claims of ineffective assistance of counsel. We affirm.

ISSUES

[¶2] We restate the issues:

1. Did the State present sufficient evidence at trial to sustain Mr. Munoz’s second-degree murder conviction?
2. Was the district court’s jury instruction on transferred intent plainly erroneous?
3. Did the district court err when it determined article 1, section 10 of the Wyoming Constitution does not provide greater protections or require a more protective prejudice standard for claims of ineffective assistance of counsel than the Sixth Amendment to the United States Constitution?
4. Did the district court err when it denied Mr. Munoz’s Rule 21 motions?

FACTS

[¶3] We provide a brief background of the facts here. Other relevant facts are included in the discussion of the issues.

[¶4] On the evening of April 29, 2023, 15-year-old BCC, her twin sister, MCC, and their friend, SV, hosted a barbecue at SV’s house on East Seventh Street in Cheyenne, Wyoming.¹ Those attending included ZCC, JO, and JCC. Around 11:30 p.m., everyone at the barbecue walked west down the street to Lincoln Park, which is two to four houses from SV’s house. The boys played basketball, and the girls sat on or near the basketball court and talked. Shortly after midnight, a black sport utility vehicle (SUV) drove slowly by the park. The SUV’s front passenger window rolled down, and shots were fired. JO took out a Glock 9 mm handgun and returned fire in a southwest direction toward the SUV

¹ Because most of the individuals were juveniles at the relevant time, we refer to them by their initials.

until he was out of bullets. The SUV sped away. After shots were fired from the SUV, MCC and SV noticed BCC lying on the ground, bleeding. SV called 911.

[¶5] Officer Robert Wingeleth with the Cheyenne Police Department was on patrol near the park and heard the gunshots. He drove toward the sound of the gunshots and saw a black Chevy Suburban SUV (Suburban) traveling without headlights. Moments later, it began flashing its headlights on and off. He stopped the Suburban at 12:23 a.m. and, upon approaching the car, observed JE in the driver's seat and Mr. Munoz in the front passenger seat. JT was in the middle row seat behind JE, JL sat in the middle row behind Mr. Munoz, and ST sat in the third row. JE told Officer Wingeleth they were headed to Lincoln Park to play basketball but left when they heard gunshots. Officer Wingeleth noticed Mr. Munoz "kept his eyes on [him] the whole time and [Mr. Munoz's] hands appeared to be moving in front of him like towards his waistband at the bottom [and under] his jacket." The Suburban did not match the color or make of the suspect vehicle described by dispatch, and Officer Wingeleth told JE and the others to go home. Officer Wingeleth then drove to Lincoln Park.

[¶6] By the time Officer Wingeleth arrived, many police officers were on the scene, and one was administering CPR to BCC. BCC was transported to the hospital, where she died from a single gunshot wound to the head. A .380 automatic (auto) caliber hollow-point bullet was recovered from her head.

[¶7] Although Officer Wingeleth had released the Suburban, it was later determined to match the suspect vehicle. Officers located the Suburban at JE's home, seized it, and searched it. The search of the Suburban and the scene produced substantial evidence. Police found a box of .380 auto caliber full-metal jacket ammunition in the Suburban. At the scene, they recovered four .380 auto shell casings—three on East Seventh Street along the path the Suburban would have traveled and one in the grass along that street. The Wyoming State Crime Lab concluded those casings were fired from a single gun. Police also found fourteen 9 mm shell casings spread in a line in the grass near the basketball court. They and the Wyoming State Crime Lab concluded the casings were fired from a single weapon while the shooter was walking or running. Officers found a bullet/slug on the ground next to a bus parked just west of the basketball court. The slug had hit the bus' rear panel and had fallen to the ground. The Wyoming State Crime Lab concluded the bullet was most likely a 9 mm and fired from either a Glock or a Heckler & Koch. In the area surrounding the park, officers discovered a bullet hole in a house located on the south side of East Seventh Street and bullet damage to two vehicles in the same vicinity.

[¶8] Additional evidence included video, audio, and witness interviews. A camera at SV's house had captured a dark SUV resembling the Suburban driving past the front of the house toward the park at approximately 12:20 a.m. Audio from a nearby doorbell camera recorded the sound of twenty gunshots in bursts of three, one, and sixteen, starting at

approximately 12:21 a.m. One minute later, SV's house camera shows some of the people who had been at the park returning to the house. JO and ZCC appeared to have guns.

[¶9] The police interviewed JL, who was sitting behind Mr. Munoz in the Suburban. JL also testified at trial. JL offered that he and the others in the Suburban were looking for a place to play basketball, but as the group drove toward Lincoln Park, they saw people were already playing basketball.² He did not see anyone in the Suburban roll down a window, but he heard 15 to 20 gunshots, covered his ears, and put his head down. Prior to hearing the gunshots, JL saw one of the males at the park turn his hat around, lift up his shirt, and reach for his waist. This person was looking at the Suburban but walking away from the Suburban toward the basketball court. He felt threatened by those actions because he thought the person was reaching for a gun. JL said if he had had a gun, he would have shot based on those actions. No one else in the Suburban said or otherwise indicated that they saw what JL described. JL told the police it was possible that Mr. Munoz fired a gun from the SUV because his ear was ringing.

[¶10] The police also interviewed Mr. Munoz, who said JE picked him, JL, JT, and ST up around 11:45 p.m. and they headed to Lincoln Park to play basketball. He said JE was the driver, he was in the front passenger seat, and JL, JT, and ST were in the second and third rows of the Suburban. At the park, he saw about 15 to 20 people on or near the basketball court, and he rolled down his window to see them more clearly. As the Suburban reached just west of half-court, shots were fired. Mr. Munoz rolled up his window and JE drove off. Mr. Munoz claimed he did not see who fired from the park and denied that anyone in the Suburban had a gun. When asked what he put under his shirt when Officer Wingleth stopped the Suburban, he said it was a vape pen. Police searched his grandparents' house, where he was living, and found a firearm and ammunition. The firearm was not linked to any of the shell casings from the scene.

[¶11] The State charged Mr. Munoz as an adult with first-degree murder in violation of Wyo. Stat. Ann. § 6-2-101(a) (Count 1) and conspiracy to commit first-degree murder in violation of Wyo. Stat. Ann. § 6-1-303(a) (Count 2). Mr. Munoz filed a motion to transfer his case to the juvenile court, which the district court denied. The matter proceeded to a jury trial. The jury was instructed on the elements of the charged crimes and on the elements of the lesser included offenses of second-degree murder, voluntary and involuntary manslaughter, and criminally negligent homicide. The jury found Mr. Munoz not guilty of first-degree murder and conspiracy to commit first-degree murder but guilty of second-degree murder. The district court sentenced him to 25–35 years in prison. Mr. Munoz appealed his conviction and sentence (Appeal No. S-24-0216).

² JL told the police the group had a basketball. At trial, he testified he did not see a basketball inside the Suburban. No basketball was found in the Suburban when it was searched by the police.

[¶12] Mr. Munoz filed two W.R.A.P. 21 motions, alleging his counsel were ineffective at the juvenile transfer hearing, at trial, and at sentencing, and their cumulative deficiencies denied him a fair trial.³ After an evidentiary hearing, the district court denied the motions. Mr. Munoz timely appealed from those denials (Appeal No. S-25-0188). We consolidated the appeals.

DISCUSSION

I. Did the State present sufficient evidence at trial to sustain Mr. Munoz’s second-degree murder conviction?

[¶13] Mr. Munoz argues the State presented insufficient evidence at trial to sustain his second-degree murder conviction. When reviewing the sufficiency of the evidence, “we determine whether a jury could have reasonably concluded each of the elements of the crime was proven beyond a reasonable doubt.” *Hultberg v. State*, 2024 WY 59, ¶ 12, 549 P.3d 759, 761 (Wyo. 2024) (quoting *Kobielusz v. State*, 2024 WY 10, ¶ 22, 541 P.3d 1101, 1107–08 (Wyo. 2024)). In making this determination, we view “the evidence in the light most favorable to the State” and “give the State’s evidence every favorable inference which can reasonably and fairly be drawn from it.” *Worley v. State*, 2017 WY 3, ¶ 17, 386 P.3d 765, 771 (Wyo. 2017) (quoting *Harnden v. State*, 2016 WY 92, ¶ 5, 378 P.3d 611, 612–13 (Wyo. 2016)). Originally, when deciding whether there was sufficient evidence to support a conviction, we stated we do not “weigh conflicting evidence” or consider witness credibility. See, e.g., *Harris v. State*, 487 P.2d 800, 801 (Wyo. 1971) (“In passing upon the sufficiency of the evidence to support a verdict of guilty, an appellate court will not weigh conflicting evidence nor consider the credibility of the witnesses[.]”). That is because those tasks belong to the jury. *Huckins v. State*, 2020 WY 21, ¶ 16, 457 P.3d 1277, 1280 (Wyo. 2020); *Baum v. State*, 745 P.2d 877, 880 (Wyo. 1987). Unfortunately, over time, the language has evolved into statements that we disregard “evidence favoring the defendant” and “evidence favorable to the [defendant which] conflicts with the State’s evidence.” *Hultberg*, ¶ 12, 549 P.3d at 761 (quoting *Kobielusz*, ¶ 22, 541 P.3d at 1107); *Worley*, ¶ 17, 386 P.3d at 771 (quoting *Harnden*, ¶ 5, 378 P.3d at 613). For clarification, we return to our original language—we will not weigh conflicting evidence or judge witness credibility when determining whether the State presented sufficient evidence to support a conviction.

[¶14] Mr. Munoz was convicted of second-degree murder in violation of Wyo. Stat. Ann. § 6-2-104. Under that statute, “whoever purposely and maliciously, but without premeditation, kills any human being is guilty of murder in the second degree” Wyo.

³ Mr. Munoz was represented by two attorneys from the Wyoming Public Defender’s Office. Mr. Munoz filed one of his Rule 21 motions as confidential because it addressed counsels’ representation at the juvenile transfer hearing. His other Rule 21 motion was not confidential and addressed counsels’ representation at trial and at sentencing.

Stat. Ann. § 6-2-104(a). “[P]urposely means that the act was intentional.” *Smith v. State*, 2009 WY 2, ¶ 23, 199 P.3d 1052, 1059 (Wyo. 2009). *See also Lopez v. State*, 2004 WY 28, ¶ 18, 86 P.3d 851, 857 (Wyo. 2004) (“When used as an element of second degree murder, ‘purposely’ means intentionally or deliberately.” (citing *State v. Keffer*, 860 P.2d 1118, 1138 (Wyo. 1993))). Maliciously “means that the act constituting the offense was done recklessly under circumstances manifesting an extreme indifference to the value of human life, and that the act was done without legal justification or excuse.” *Wilkerson v. State*, 2014 WY 136, ¶ 27, 336 P.3d 1188, 1200 (Wyo. 2014) (emphasis omitted).

[¶15] Mr. Munoz first contends the State failed to prove he killed BCC. Although he denied having a gun in his interview with the police, Mr. Munoz’s appellate arguments acknowledge the State’s evidence indicates otherwise. He points to a lack of any bullet-trajectory analysis or testimony tying a bullet he fired to BCC’s death. He argues BCC was sitting closer to where the 9 mm casings were found and that JO admitted he emptied his 9 mm Glock. Katherine Bacon, the Wyoming State Crime Lab’s firearms examiner, testified she could not tell whether the fatal bullet was a 9 mm or a .380. Defense firearms expert, Evan Garrison, identified the fatal bullet as a .380 auto, but Mr. Munoz notes a .380 auto firearm was found in ZCC’s bedroom and was never tested.

[¶16] Mr. Munoz next contends the State failed to prove he acted purposely and maliciously. He claims he did not fire recklessly into a crowd or open fire in a “rain of bullets” but instead fired three to four shots toward a threat. He relies on JL’s testimony and statement to the police that before any shots were fired, JL saw a person he thought was JCC approaching the Suburban, lifting up his shirt, and reaching for his waistband. JL took those actions as a reach for a gun and said that if he had had a gun, he would have fired because of that threat. Mr. Munoz asserts that by responding to what he believed to be a threat to himself and the others in the Suburban, he may have acted heedlessly or thoughtlessly but not recklessly with extreme indifference to human life.

[¶17] Two of Mr. Munoz’s points misstate the record. The .380 auto firearm was not found in ZCC’s bedroom. After the shooting, police searched SV’s house, where ZCC was living, and found a .380 auto firearm in SV’s parents’ bedroom. SV’s father testified it was his gun. Next, JL did not identify the person reaching for his waistband as JCC. JL thought he had seen JCC at the park that night, but he did not testify that the person who lifted his shirt and reached for his waistband was JCC or likely JCC. He also testified the person was walking away from the Suburban, not toward it.

[¶18] Giving the State every favorable inference, the evidence was sufficient for a jury to find Mr. Munoz guilty of second-degree murder.

[¶19] First, the State presented sufficient evidence by which a jury could reasonably conclude Mr. Munoz killed BCC. MCC testified she was sitting with BCC, SV, and other girls at the park when she saw a vehicle slowly drive by the park, the front passenger

window roll down, and sparks. She also heard “a lot of booms.” After seeing the sparks, she started to stand up and saw BCC lying on the ground, bleeding. Detective Mike Fernandez from the Cheyenne Police Department testified ZCC had given an account of events during his interview with the police that was similar to MCC’s testimony. ZCC said a black vehicle drove by the park, shots were fired from the front passenger window, and sparks hit the concrete. Mr. Munoz admitted during his police interview that he was in the front passenger seat of the Suburban and he rolled down his window. His position in the Suburban was confirmed by JL’s testimony and Officer Wingeleth’s body camera video of the traffic stop. JL told the police it was possible that Mr. Munoz fired from the Suburban because JL’s ear was ringing. Officer Wingeleth testified that during the traffic stop, Mr. Munoz’s hands were moving under his jacket—conduct from which the jury could reasonably infer an effort to conceal a weapon.

[¶20] The four shell casings found along the Suburban’s path were .380 auto caliber and fired from a single weapon. The fourteen 9 mm shell casings found in the grass were fired from a single weapon by someone who was moving. JO told police that after shots were fired from the Suburban, he returned fire until his 9 mm Glock was empty. Damage to the vehicles in the area was consistent with JO shooting southwest toward the Suburban. Detectives Fernandez and Damon Hall of the Cheyenne Police Department described the doorbell camera audio as an initial small burst of gunfire followed by a longer, more rapid burst. A jury could reasonably infer that Mr. Munoz fired four .380 caliber bullets from the Suburban and JO returned fire with his 9 mm Glock.

[¶21] A jury could also reasonably conclude that one of Mr. Munoz’s .380 caliber bullets killed BCC. Because police found both .380 auto and 9 mm shell casings at the scene and JO admitted he had shot a 9 mm, Detective Fernandez had to determine which caliber killed BCC. He testified that a standard 9 mm bullet weighs between 115 and 125 grains and, because it is longer, generally weighs more than a .380. The bullet removed from BBC’s head weighed approximately 90 grains, so he concluded it was “[m]ost likely” a .380 caliber. Ms. Bacon agreed. While she could not rule out that the bullet which killed BCC was a 9 mm, she too opined it was “[m]ost likely” a .380. Mr. Garrison testified the fatal bullet was a .380.

[¶22] The State also presented sufficient evidence by which a jury could reasonably conclude Mr. Munoz acted “purposely” and “maliciously.” While Mr. Munoz argues the evidence did not show he acted “purposely,” he does not claim the shots he fired were accidental or unintentional. *See Lopez*, ¶ 18, 86 P.3d at 857 (the “purposely” element of second-degree murder “means intentionally or deliberately” (quoting *Keffer*, 860 P.2d at 1138)). As for maliciousness, which requires an act done “recklessly under circumstances manifesting an extreme indifference to the value of human life” and “without legal justification or excuse,” Mr. Munoz argues he was responding to a threat. *Wilkerson*, ¶ 27, 336 P.3d at 1200. That argument is contrary to our standard of review which tasks the jury, not this Court, with weighing the conflicting evidence. The jury could have reasonably

rejected any evidence that Mr. Munoz was responding to a threat. What remains is the State's evidence. Mr. Munoz fired four shots from a moving vehicle toward a group gathered at a public park, and one of those shots killed BCC. A jury could reasonably conclude that Mr. Munoz acted maliciously.

II. Was the district court's jury instruction on transferred intent plainly erroneous?

[¶23] The investigation indicated Mr. Munoz's intended target was JCC, not BCC. The State alleged Mr. Munoz was nevertheless criminally liable for killing BCC and relied on the transferred intent doctrine. Under that doctrine, a defendant is liable for killing the actual victim even if he intended to kill someone else. *Murry v. State*, 713 P.2d 202, 205 (Wyo. 1986). At trial, Mr. Munoz argued transferred intent could not apply to Count 2 (conspiracy to commit first-degree murder) because the State charged a conspiracy to kill BCC, not JCC. If the evidence showed a conspiracy to kill JCC, Mr. Munoz claimed that was not the conspiracy charged. The district court held that transferred intent did not apply to conspiracy, but it did apply to Count 1 (first-degree murder). The State proposed the following instruction:

As applied to Count I, "transferred intent" exists when an actor intends to kill one person but kills another instead; the actor is held to . . . the same degree of culpability as if he had killed the intended victim.

Mr. Munoz objected to the wording. He argued that the first line "[a]s applied to Count I" should read "[a]s applied to homicide" to track *Murry*, 713 P.2d at 205 ("As applied to homicide, transferred intent exists when an actor intends to kill one person but kills another instead. The actor is held to the same degree of culpability as if he had killed the intended victim."). He maintained his proposed modification would be an "accurate statement[] of law from binding case law." Mr. Munoz also claimed the instruction was untimely and contrary to the charges against him. The district court overruled his objections and gave the State's proposed instruction to the jury.

[¶24] On appeal, Mr. Munoz argues the instruction was erroneous because it should not have been limited to Count 1. Relying on *Murry*, he contends the court should have instructed the jury that transferred intent—or transferred malice—also applied to the lesser included offense of second-degree murder, to which he was ultimately convicted. Because he did not object on that ground at trial, our review is for plain error.⁴ *Dobbins v. State*,

⁴ Mr. Munoz argues the district court failed to instruct on an element of second-degree murder—specifically, that malice toward JCC could transfer to BCC—and because he objected, the State has the burden of showing this error was harmless beyond a reasonable doubt. Mr. Munoz incorrectly characterizes the alleged error as a failure to instruct on an element of the offense. Transferred intent is not an element of first- or second-degree murder but rather a "theory of criminal liability for the killing of an unintended

2024 WY 108, ¶¶ 12–13, 557 P.3d 306, 310 (Wyo. 2024) (concluding plain error applied where defendant’s objection in the trial court was different than the argument raised on appeal); *Blevins v. State*, 2017 WY 43, ¶ 25, 393 P.3d 1249, 1255 (Wyo. 2017) (“[Ms. Blevins] did not object to this aspect of the jury instructions at trial; therefore, we review for plain error.” (citing *Cecil v. State*, 2015 WY 158, ¶ 10, 364 P.3d 1086, 1089 (Wyo. 2015))). “To establish plain error, [Mr. Munoz] must show: ‘(1) the record clearly reflects the alleged error; (2) a violation of a clear and unequivocal rule of law in a clear and obvious manner; and (3) the appellant was denied a substantial right which caused the appellant material prejudice.’” *Iverson v. State*, 2025 WY 19, ¶ 13, 563 P.3d 496, 499 (Wyo. 2025) (quoting *Kobielusz*, ¶ 24, 541 P.3d at 1108).

[¶25] The first prong of the plain error test is met because the record contains the instruction at issue. We need not address the second prong because Mr. Munoz cannot establish the third prong of plain error review—material prejudice. *Sullivan v. State*, 2025 WY 5, ¶ 40, 561 P.3d 780, 790 (Wyo. 2025) (“Where appropriate, we address the prejudice element of the plain error test first, without addressing whether there has been a violation of a clear and unequivocal rule of law.” (quoting *Leners v. State*, 2021 WY 67, ¶ 23, 486 P.3d 1013, 1018 (Wyo. 2021))). See also *Green v. State*, 2025 WY 20, ¶ 10, 563 P.3d 1090, 1093 (Wyo. 2025) (“Failure to establish each element [of plain error] precludes a finding of plain error.” (quoting *Lynch v. State*, 2024 WY 79, ¶ 12, 552 P.3d 392, 397 (Wyo. 2024))). “Material prejudice exists when the appellant demonstrates a reasonable probability that the jury verdict would have been more favorable in the absence of the error.” *Iverson*, ¶ 13, 563 P.3d at 499 (quoting *Lee v. State*, 2024 WY 97, ¶ 12, 555 P.3d 496, 499 (Wyo. 2024)).

[¶26] Mr. Munoz argues that because the jury instruction did not apply transferred intent to second-degree murder, the jury must have found he acted purposely and maliciously toward BCC, and the evidence was insufficient for that finding. He also contends that by requiring the jury to find he acted purposely and maliciously toward BCC, the jury never had to confront whether he acted purposely and maliciously toward JCC—despite evidence showing he was simply reacting toward JCC’s threatening behaviors—and this stripped him of his primary defense. Mr. Munoz further claims the State’s case was not particularly strong as there was very little evidence that he fired the fatal bullet.

[¶27] Those arguments fail for the reasons already given. JL never identified JCC as the person who took the threatening actions. And, as shown above, a reasonable jury could find that Mr. Munoz fired the fatal shot and acted purposely and maliciously when he fired

victim.” *Commonwealth v. Santana-Rodriguez*, 267 N.E.3d 563, 569 (Mass. 2025). See also *Murry*, 713 P.2d at 205. The jury was correctly instructed on the elements of first- and second-degree murder. Even if the alleged error could be deemed a failure to instruct on an element of the offense, our review would be for plain error because Mr. Munoz did not object. *Iverson v. State*, 2025 WY 19, ¶¶ 13, 16, 563 P.3d 496, 499–500 (Wyo. 2025) (because defendant did not object to the district court’s failure to instruct on the mens rea element, plain error review applied).

from a moving vehicle into a group of teenagers. There is no reasonable probability that the jury verdict would have been more favorable to Mr. Munoz had the transferred intent instruction applied to second-degree murder.

III. Did the district court err when it determined article 1, section 10 of the Wyoming Constitution does not provide greater protections or require a more protective prejudice standard for claims of ineffective assistance of counsel than the Sixth Amendment to the United States Constitution?

[¶28] When deciding ineffective assistance of counsel claims, this Court applies the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064 80 L.Ed.2d 674 (1984). *Galbreath v. State*, 2015 WY 49, ¶ 5, 346 P.3d 16, 18 (Wyo. 2015). To prevail, a defendant must show (1) counsel’s performance was deficient and (2) counsel’s deficient performance prejudiced him. *Strickland*, 466 U.S. at 684–87, 104 S.Ct. at 2063–64. Prejudice requires “a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Strickland*, 466 U.S. at 694, 104 S.Ct. at 2068.

[¶29] In his Rule 21 motion, Mr. Munoz asserted article 1, section 10 of the Wyoming Constitution provides greater protection than the Sixth Amendment, as interpreted in *Strickland*, and therefore requires a more protective prejudice standard. The district court rejected this argument and applied the prejudice standard from *Strickland*. Mr. Munoz contends the district court erred.

[¶30] “The United States Constitution provides minimum requirements for constitutional protections and states are required to ensure their laws do not provide less protection than the federal requirements. A state constitution can, however, provide greater protection than its federal counterpart.” *Norgaard v. State*, 2014 WY 157, ¶ 24, 339 P.3d 267, 274 (Wyo. 2014) (citations omitted). In determining whether the Wyoming Constitution goes further, the Court considers six nonexclusive criteria often referred to as the *Saldana* factors: “1) the textual language of the provisions; 2) differences in the texts; 3) constitutional history; 4) preexisting state law; 5) structural differences; and 6) matters of particular state or local concern.” *Kovach v. State*, 2013 WY 46, ¶ 45, 299 P.3d 97, 111 (Wyo. 2013) (quoting *O’Boyle v. State*, 2005 WY 83, ¶ 24, 117 P.3d 401, 408 (Wyo. 2005)). See also *Saldana v. State*, 846 P.2d 604, 622 (Wyo. 1993) (Golden, J., concurring). Mr. Munoz relies on the first, third, fifth, and sixth factors. He also points out the textual differences between article 1, section 10, and the Sixth Amendment, which implicates the second factor. We address the first, second, and fifth factors together as they are “intertwined.” *Hicks v. State*, 2025 WY 113, ¶ 59, 578 P.3d 366, 384 (Wyo. 2025) (citing *Mogard v. City of Laramie*, 2001 WY 88, ¶ 8, 32 P.3d 313, 316 (Wyo. 2001)).

A. Textual Language, Differences in the Text, and Structural Differences

[¶31] The Sixth Amendment of the United States Constitution states in relevant part: “In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence.” Article 1, section 10 of the Wyoming Constitution provides: “In all criminal prosecutions the accused shall have the right to defend . . . by counsel[.]” Mr. Munoz turns to 1889 definitions in effect when the Wyoming Constitution was ratified. He says “defend” meant “[t]o vindicate; uphold; maintain by force, argument or evidence” while the word “assistance” merely meant “help; aid; furtherance; succor; a contribution in aid, by bodily strength or other means.” The Century Dictionary 348, 1501 (1889). He argues the framers could have used “assistance” as the Sixth Amendment does, but instead they “selected the far more affirmative [defend] language.”⁵ According to Mr. Munoz, “assistance” is a broad word—help or aid—that allows for many levels of lawyer performance and is the basis for the *Strickland* prejudice standard. In contrast, “defend” is narrower—vindicate—and more demanding. From that contrast, Mr. Munoz contends article 1, section 10 requires a stricter prejudice standard than the Sixth Amendment.

[¶32] When interpreting the Wyoming Constitution, “[w]e are guided primarily by the intent of the drafters.” *Cantrell v. Sweetwater Cnty. Sch. Dist. No. 2*, 2006 WY 57, ¶ 6, 133 P.3d 983, 985 (Wyo. 2006) (citing *Cathcart v. Meyer*, 2004 WY 49, ¶ 39, 88 P.3d 1050, 1065 (Wyo. 2004)). “In determining that intent, we look first to the plain and unambiguous language used in the text of the constitution. If the language is plain and unambiguous, there is no room left for construction.” *Gordon v. State by & through Capitol Bldg. Rehab.*, 2018 WY 32, ¶ 30, 413 P.3d 1093, 1103 (Wyo. 2018), *overruled on other ground by State v. Johnson*, 2026 WY 1, 582 P.3d 380 (Wyo. 2026) (citations omitted).

[¶33] Mr. Munoz is correct that in determining the drafters’ intent, “we attempt to understand the meaning of the words at the time [article 1, section 10] was ratified [in 1889].” *Gordon*, ¶ 31, 413 P.3d at 1103 (citing *Powers v. State*, 2014 WY 15, ¶ 36, 318 P.3d 300, 313 (Wyo. 2014)). He correctly cites the 1889 definitions of “defend” and “assistance” using The Century Dictionary 348, 1501 (1889). But he ignores article 1, section 10’s “right to defend” is “**by counsel**,” and the Sixth Amendment’s right to the assistance of counsel is “**for his defence**.” In 1889, “by” meant “[t]hrough the use of; with the aid of, as means.” The Century Dictionary 741 (1889). When the United States Constitution was ratified, “defence” meant “[v]indication; justification; apology.” A Dictionary of the English Language (4th ed. 1773). In 1889, it meant “[t]he act of maintaining, supporting, or vindicating by force or argument.” The Century Dictionary

⁵ Mr. Munoz also notes that the word “defend” appears only three times in the Wyoming Constitution—twice in article 1, section 10 and once in article 6, section 20, which provides the oath judicial officers and state senators and representatives take to defend the Wyoming Constitution. He says the limited use shows us the importance of the “right to defend . . . by counsel” in article 1, section 10. The right to counsel is important, but the number of times the word “defend” appears in the Wyoming Constitution is not determinative. We look for the framers’ intent using the plain and ordinary meaning of the words used.

1501 (1889). Article 1, section 10 is plain and unambiguous. It gives defendants the right to defend—vindicate themselves—through the use of and with the aid of counsel. The Sixth Amendment is equally plain. It gives defendants the right to a “defence”—to vindicate themselves—through the use of and with the aid of counsel. Properly construed, there is no meaningful difference between the right to counsel in article 1, section 10 and the right to counsel in the Sixth Amendment.

[¶34] Mr. Munoz claims structural differences between the Wyoming and United States Constitutions support an expansive view of article 1, section 10’s “right to defend” language. Specifically, he contends “[t]he Wyoming Constitution’s Declaration of Rights boasts thirty-nine separate provisions consisting of numerous individual rights beyond the federal constitution’s original ten Bill of Rights. . . . Such a robust declaration of rights supports an expansive view of article 1, section 10’s ‘right to defend’ language.” We rejected a similar argument in *Mogard*, ¶¶ 11–12, 32 P.3d at 316–17. There, the question before us was whether article 1, section 10 gives a defendant the right to consult with an attorney before deciding whether or not to submit to chemical blood alcohol testing, even though this Court had already held that the Fifth and Sixth Amendments do not. *Mogard*, ¶¶ 2, 4, 32 P.3d at 314–15. Mr. Mogard relied on the debates of the Wyoming Constitutional Convention to demonstrate article 1, section 10 created a right to counsel before a defendant decides whether to submit to a chemical blood test. *Id.* ¶ 11, 32 P.3d at 316–17. While we noted his “effort [was] laudable,” we rejected the notion that the inclusion of individual rights in the Wyoming Constitution indicated an intent to provide greater protection of individual rights than the United States Constitution. *Id.* ¶ 11, 32 P.3d at 317. Instead, we concluded:

The most that can be definitely ascertained from the differences in the constitutional histories of the two documents may well be explained by the simple fact that it was the prevailing view that protection of individual rights was considered to be the province of the state and the federal rights acted only upon the federal government, and the Wyoming drafters acted accordingly.

Id. ¶ 12, 32 P.3d at 317 (quoting *Vasquez v. State*, 990 P.2d 476, 484 (Wyo. 1999)).⁶ The structural differences between the Wyoming and United States Constitutions do not indicate an intent for article 1, section 10 to offer greater protection to the right to counsel than the Sixth Amendment.

⁶ Mr. Munoz argues the district court erred by relying on *Mogard* because it addressed the right to counsel prior to submitting to chemical blood alcohol testing, and Mr. Mogard raised different arguments regarding the *Saldana* factors. While Mr. Munoz is correct on the differences between this case and *Mogard*, much of the discussion in *Mogard* regarding the *Saldana* factors addressed, in general, the right to counsel in article 1, section 10 and the Sixth Amendment and is applicable here.

B. Constitutional History

[¶35] Mr. Munoz argues Wyoming’s constitutional history illustrates our founders intended to provide more protections to Wyoming residents than those provided by the United States Constitution. He points to the 1889 Wyoming Constitutional Convention debates and the delegates’ focus on limiting legislative power. To that end, he notes they included 37 separate provisions in the Wyoming Constitution prohibiting local and specialized laws and created an independent judiciary as a “guardian of individual rights.” From the “expansive treatment of individual rights” and the framers’ “faith in the courts to faithfully uphold the Wyoming Constitution,” Mr. Munoz infers that article 1, section 10 was meant to be more protective of the right to counsel than the Sixth Amendment.⁷ “Constitutional history is generally not dispositive when the text of a constitutional provision is clear and unambiguous.” *Hicks*, ¶ 69, 578 P.3d at 386. As explained above, the “right to defend . . . by counsel” is not ambiguous. This argument therefore does not support a different prejudice standard. Even if history were considered, a general intent to limit the legislature and protect individual rights does not support Mr. Munoz’s argument.

C. Matters of Particular State or Local Concern

[¶36] “The [sixth] *Saldana* factor considers whether the subject matter is local in character, or whether there is a need for national uniformity.” *Hicks*, ¶ 73, 578 P.3d at 387. The right to counsel is not a matter of state or local concern. It is an individual right identified in both the United States and Wyoming Constitutions and available to all citizens. “[N]o presumption or inference arises that the state would have some particular[ized] interest in setting a different standard than did the framers of the federal constitution.” *Mogard*, ¶ 16, 32 P.3d at 318.

[¶37] Mr. Munoz does not seriously argue otherwise. Instead, he claims this Court has “explicitly recognized the unwieldiness of the Sixth Amendment’s prejudice prong.” He relies on *Shongutsie v. State*, 827 P.2d 361, 366–67 (Wyo. 1992), where—unlike the federal standard—we held prejudice is presumed when a defendant shows a violation of the right to conflict-free counsel. He cites Justice Voigt’s concurrence in *Osborne v. State* that *Strickland* prejudice is nearly impossible to prove. See *Osborne v. State*, 2012 WY 123, ¶ 28, 285 P.3d 248, 253 (Wyo. 2012) (Voigt, J., specially concurring) (“The problem is that, while it is often relatively easy to prove defense counsel’s deficient performance, it

⁷ Mr. Munoz also points out that during the 1889 Wyoming Constitutional Convention, the delegates were heavily influenced by western territories, such as the Dakotas, Montana, Washington, and Idaho, each of which adopted similar or identical language in their constitutions as Wyoming’s article 1, section 10. When determining whether our constitution provides more protection than its federal counterpart, we can compare the text of our constitution with the text of other state constitutions for “textual guidance.” *Hicks*, ¶ 65, 578 P.3d at 386. However, other than mentioning this history, Mr. Munoz fails to inform us how the constitutions of these other states lend support for a conclusion that article 1, section 10’s right to counsel is more protective than that of the Sixth Amendment.

is practically impossible to prove prejudice because it is practically impossible to prove that the outcome would have been different had the jury been allowed to hear certain evidence.”). He adds that the *Strickland* standard allows the State to defeat a claim of ineffective assistance of counsel with minimal effort, as he says it did here.

[¶38] Wyoming has generally followed *Strickland*. The presumption applied in *Shongutsie* is a narrow exception for the right to conflict-free counsel. It was not a holding that article 1, section 10 rejects *Strickland* whenever a defendant alleges ineffective assistance of counsel. Nor is *Strickland* prejudice impossible to prove. Defendants have met it. See, e.g., *Mills v. State*, 2020 WY 14, ¶ 29, 458 P.3d 1, 12 (Wyo. 2020) (counsel’s failure to file a motion to suppress challenging the traffic stop constituted deficient performance which prejudiced the defendant because the evidence against him at trial “consisted almost exclusively of evidence that would have been suppressed”); *Ortega-Araiza v. State*, 2014 WY 99, ¶ 11, 331 P.3d 1189, 1194 (Wyo. 2014) (“We find that there is ample evidence to demonstrate a reasonable probability that Mr. Ortega-Araiza would have rejected the plea and insisted on going to trial had counsel advised Mr. Ortega-Araiza of his almost assured deportation upon entering such a plea.”); *Strandlien v. State*, 2007 WY 66, ¶¶ 24, 28, 156 P.3d 986, 993–94 (Wyo. 2007) (defense counsel’s failure to retain the services of an accident reconstruction expert constituted deficient performance which prejudiced the defendant because an expert would have reinforced defendant’s version of events and discredited law enforcement’s opinion as to the cause of the accident). The district court was frustrated with the State’s limited participation in the Rule 21 proceedings. That frustration does not show that the court applied the wrong prejudice standard or that the State’s limited effort was due to its ability to rely on the allegedly hard-to-meet prejudice standard. Indeed, the State did not rest solely on prejudice but also argued counsels’ performance was not deficient.

[¶39] The district court did not err in deciding article 1, section 10 does not require a more protective prejudice standard for claims of ineffective assistance of counsel than the Sixth Amendment. It properly applied *Strickland* to Mr. Munoz’s Rule 21 motions.

IV. Did the district court err when it denied Mr. Munoz’s Rule 21 motions?

[¶40] In his Rule 21 motions, Mr. Munoz raised several claims of ineffective assistance of counsel. The district court denied his motions, concluding he was not denied effective assistance of counsel. Mr. Munoz argues the district court erred in denying his Rule 21 motions. He claims counsel was ineffective for (1) failing to call a mental health expert and his family as witnesses at the juvenile transfer hearing, (2) withdrawing his proposed self-defense instructions, (3) having the defense firearms expert clarify the caliber of the fatal bullet, and (4) failing to hire a mental health expert for trial and sentencing. He also maintains counsel’s cumulative deficiencies denied him a fair trial.

[¶41] To demonstrate ineffective assistance of counsel, a defendant must show (1) counsel’s performance was deficient and (2) counsel’s deficient performance prejudiced him. *Strickland*, 466 U.S. at 687, 104 S.Ct. at 2064. “An attorney acts deficiently when he or she ‘fail[s] to render such assistance as would have been offered by a reasonably competent attorney.’” *Galbreath*, ¶ 5, 346 P.3d at 18 (quoting *Bloomer v. State*, 2010 WY 88, ¶ 18, 233 P.3d 971, 976 (Wyo. 2010)). “Prejudice occurs when there is ‘a reasonable probability that, absent counsel’s deficient assistance, the outcome of [defendant’s] trial would have been different.’” *Id.* (quoting *Bloomer*, ¶ 18, 233 P.3d at 976). Because the test is written in the conjunctive, “[a] failure to establish one of the two prongs dooms an ineffective assistance of counsel claim.” *Winters v. State*, 2019 WY 76, ¶ 11, 446 P.3d 191, 198 (Wyo. 2019) (citing *Dettloff v. State*, 2007 WY 29, ¶ 19, 152 P.3d 376, 382 (Wyo. 2007)). As a result, “[w]e may dispose of an ineffective assistance claim solely on the prejudice prong” and “[i]f it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which we expect will often be so, that course should be followed.” *Steplock v. State*, 2022 WY 12, ¶ 22, 502 P.3d 930, 937 (Wyo. 2022) (quoting *Jendresen v. State*, 2021 WY 82, ¶ 37, 491 P.3d 273, 285 (Wyo. 2021), and *Leners*, ¶ 21, 486 P.3d at 1018).

[¶42] “Ineffective assistance of counsel claims are ‘mixed questions of law and fact.’” *Winters*, ¶ 12, 446 P.3d at 198 (quoting *Griggs v. State*, 2016 WY 16, ¶ 37, 367 P.3d 1108, 1124 (Wyo. 2016)). “We defer to a district court’s factual findings unless clearly erroneous; we review de novo the court’s legal conclusions, including whether counsel’s conduct was deficient and whether defendant was prejudiced as a result.” *Id.* ¶ 12, 446 P.3d at 198–99 (citing *Griggs*, ¶ 37, 367 P.3d at 1124).

A. Failure to Call a Mental Health Expert and Mr. Munoz’s Family at the Juvenile Transfer Hearing

[¶43] Before addressing this issue, we provide a brief background of the juvenile transfer proceedings and the Rule 21 proceedings pertaining to this issue.

1. Juvenile Transfer Proceedings

[¶44] Although Mr. Munoz was 17 years old at the time of the offense, the State charged him as an adult. *See* Wyo. Stat. Ann. § 14-6-203(f)(iii), (iv) (felony cases in which the minor has attained the age of 17 and cases in which the minor has attained the age of 14 and is charged with a violent felony, including murder, “may be originally commenced either in the juvenile court or in the district court . . .”). Mr. Munoz filed a motion to transfer his case to the juvenile court, and the district court held a hearing on the motion. *See* Wyo. Stat. Ann. § 14-6-237(g) (“If any proceeding commenced in the district court is within the concurrent jurisdiction of the juvenile court, the district court may on motion of any party or on its own motion order any proceeding transferred to the juvenile court. The district court judge may, after notice and hearing, find the matter more properly suited to

disposition under the provisions of this act.”). At the hearing, Mr. Munoz called witnesses from the Wyoming Boys’ School and the Wyoming Department of Family Services’ (DFS) juvenile probation department who described their respective programs. The DFS witness also testified that Mr. Munoz had no history with DFS, either as a delinquent or a child in need of supervision. Mr. Munoz called his investigator, who subpoenaed his school records. Those records showed Mr. Munoz was never offered or placed on an Individualized Education Program (IEP), was never provided counseling or therapy from the school district even though he was the victim of a violent assault at school, and although he engaged in “mutual” physical altercations at school, those incidents never resulted in serious bodily injury or his arrest.

[¶45] In deciding whether to transfer his case, the district court considered the “determinative factors” set forth in Wyo. Stat. Ann. § 14-6-237(b):

- (i) The seriousness of the alleged offense to the community and whether the protection of the community required waiver;
- (ii) Whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner;
- (iii) Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons especially if personal injury resulted;
- (iv) The desirability of trial and disposition of the entire offense in one (1) court when the juvenile’s associates in the alleged offense are adults who will be charged with a crime;
- (v) The sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude and pattern of living;
- (vi) The record and previous history of the juvenile, including previous contacts with the law enforcement agencies, juvenile courts and other jurisdictions, prior periods of probation to this court, or prior commitments to juvenile institutions;
- (vii) The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile (if he is found to have committed the alleged offense) by the use of procedures, services and facilities currently available to the juvenile court.

Wyo. Stat. Ann. § 14-6-237(b) (LexisNexis 2025).

[¶46] The district court weighed the first three factors—the seriousness of the alleged offense to the community; whether it was committed in an aggressive, violent, premeditated, or willful manner; and whether it was against persons or property—against transferring the case to the juvenile court because Mr. Munoz was

alleged to have conspired with [JE] to travel to a public park where [he] opened fire on a group of juveniles, shooting one in the head and killing her, all before leaving the scene, denying any involvement during a traffic stop in the immediate aftermath of the shooting, and concealing what is believed to be a firearm while actively speaking with a police officer.

The court also weighed the fourth factor—the desirability of trial and disposition of the entire offense in one court when the juvenile’s associates in the alleged offense are adults who will be charged with a crime—against transfer because JE, Mr. Munoz’s alleged co-conspirator, had been charged in the district court, as had two other occupants of the Suburban who were charged with felony accessory after the fact to first-degree murder.

[¶47] The district court weighed the fifth factor—the sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude and pattern of living—“slightly” against transfer. After reviewing our precedent, the court found evidence concerning the fifth factor traditionally comes through a counselor, psychologist, or school official who interacted with the juvenile, and it “heard no such evidence in this case.” It said that the factual allegations showed Mr. Munoz possessed enough sophistication and maturity to have allegedly endangered the lives of the people at the park, killed BCC, and then denied any involvement to law enforcement while concealing the murder weapon. The court weighed the sixth factor—the record and previous history of the juvenile, including previous contacts with law enforcement, juvenile courts and other jurisdictions, prior periods of probation, or prior commitments to juvenile institutions—in favor of transferring the case to juvenile court. While the record showed Mr. Munoz had been involved in several school fights, the court found Mr. Munoz had no law enforcement contacts, had not previously been before the juvenile court or on probation, and had never been committed to a juvenile institution.

[¶48] The district court weighed the seventh factor—the prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile (if he is found to have committed the alleged offense) by the use of procedures, services, and facilities currently available to the juvenile court—against transferring the case to the juvenile court. Based on the testimony of the witnesses from the Boys’ School and DFS juvenile probation, the court concluded that even if Mr. Munoz’s prospects for rehabilitation were

good, “the procedures, services, and facilities currently available to the [juvenile court could not] provide for adequate protection of the public and provide sufficient time to rehabilitate [Mr. Munoz] given the nature of his offense and his present age.” It noted Mr. Munoz would be 18 years old in seven months and outside the reach of DFS juvenile probation. The court found seven months was insufficient time to ensure the community is protected and Mr. Munoz sufficiently rehabilitated. Additionally, the witness from DFS juvenile probation testified DFS employees do not have the training or experience to supervise juveniles charged with violent crimes. While Wyoming statute allows the Boys’ School to house a juvenile adjudicated delinquent until he is 21 years old, the district court found the “unfortunate reality” is that “that simply does not happen.” The Boys’ School witness testified there are no programs at the school for juveniles charged with first-degree murder and conspiracy to commit first-degree murder, and the lengthiest program at the school is approximately 12 months and is designed for sexual offenders. After weighing all seven factors, the court decided Mr. Munoz’s case should remain in the district court.

2. Rule 21 Proceedings

[¶49] In his Rule 21 motions, Mr. Munoz argued counsel was ineffective at the juvenile transfer hearing for, among other reasons, failing to present testimony from a mental health expert and his family regarding the fifth factor (the juvenile’s sophistication and maturity as determined by consideration of his home, environmental situation, emotional attitude, and pattern of living) and the seventh factor (the juvenile court’s ability to adequately protect the public and reasonably rehabilitate the juvenile). With respect to the fifth factor, at the Rule 21 hearing, he called Maximillian Wachtel, a forensic psychologist who evaluated Mr. Munoz in November 2024, and Donna Sheen, an attorney and child welfare specialist, who stated they were willing and available to testify at the juvenile transfer hearing that Mr. Munoz is highly immature and lacked sophistication. Mr. Munoz also provided the testimony and affidavits of his father and grandparents, who stated they were available to testify at the juvenile transfer hearing and had they been called as witnesses, they would have described the trauma Mr. Munoz experienced as a young child due to his mother’s erratic, unstable, and often violent behavior and the physical and emotional harassment Mr. Munoz endured from JCC and his family, including being stabbed 11 times at school. With respect to the seventh factor, Dr. Wachtel and Ms. Sheen stated at the Rule 21 hearing that they would have testified at the juvenile transfer hearing that Mr. Munoz’s potential for rehabilitation was high. Ms. Sheen also stated she would have provided testimony at the juvenile transfer hearing that the Boys’ School and DFS juvenile probation are capable of providing services to juveniles charged with serious crimes. The Boys’ School was created to house serious offenders and could have incarcerated Mr. Munoz until the age of 21. And, given his borderline intellectual disability, Mr. Munoz would have qualified for a home and community-based waiver, including professional services and 24/7 supervision, after age 21.

[¶50] The district court found counsel performed deficiently only on the fifth factor in that they failed to make reasonable investigations into Mr. Munoz’s family and school life and to present evidence from a mental health professional, his family, or school personnel concerning his sophistication and maturity. It held he was not prejudiced because even if counsel had presented mitigating evidence, there was no reasonable probability the court would have weighed the fifth factor in favor of transfer given its finding Mr. Munoz was sophisticated and mature enough to commit the alleged offense. And, even if the fifth factor had been weighed in favor of transfer, five of the seven factors would still have cut against it.

3. Analysis

[¶51] Mr. Munoz asserts the district court correctly found his counsel acted deficiently with respect to the fifth factor. He contends the district court erred when it found counsel did not act deficiently with respect to the seventh factor—the prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile (if he is found to have committed the alleged offense) by the use of procedures, services, and facilities currently available to the juvenile court. Mr. Munoz points to counsels’ failure to present evidence on his potential for rehabilitation, even though Dr. Wachtel and Ms. Sheen testified at the Rule 21 hearing that his potential for rehabilitation was high. Acknowledging that counsel addressed protection of the public through the juvenile court’s procedures, services, and facilities, Mr. Munoz argues the evidence they presented actually undermined their argument. Witnesses from the Boys’ School and DFS juvenile probation testified at the juvenile transfer hearing that their programs are ill-equipped to manage juveniles charged with first-degree murder and conspiracy to commit first-degree murder. He contends Ms. Sheen could have countered these witnesses by testifying, as she did at the Rule 21 hearing, that the Boys’ School and DFS juvenile probation were not incapable of providing services to juveniles charged with serious offenses. Mr. Munoz argues the district court erred when it decided he was not prejudiced by these deficiencies. He contends that in the order denying transfer, the district court highlighted the minimal evidence offered regarding his background, sophistication, maturity, and potential for rehabilitation as well as the lack of testimony from a counselor, psychologist, or school official. He maintains that if the district court had mitigating testimony from a mental health professional and his family and knew there were options for him at the Boys’ School, there is a reasonable probability his case would have been transferred to the juvenile court.

[¶52] We decide this issue on prejudice. Even had counsel called witnesses at the juvenile transfer hearing to address his traumatic childhood, lack of sophistication and maturity, and his potential for rehabilitation, there is no reasonable probability that the district court would have transferred the case.

[¶53] We assume, for the limited purpose of analyzing Mr. Munoz’s arguments in this case, that had the district court heard testimony concerning his traumatic childhood and

lack of sophistication and maturity, it would have weighed the fifth factor in favor of transfer. We acknowledge that the district court weighed the sixth factor in favor of transfer and weighed the first four factors against transfer. Mr. Munoz does not challenge counsels' representation with respect to the first four factors. Turning to the seventh factor—prospects for adequate protection of the public and the likelihood of reasonable rehabilitation through the use of procedures, services and facilities currently available to the juvenile court—there is no reasonable probability that the district court would have weighed it in favor of transfer had it been provided evidence, like Dr. Wachtel's and Ms. Sheen's testimony, that Mr. Munoz's potential for rehabilitation was high. That is because when denying transfer, the district court assumed Mr. Munoz's prospects for rehabilitation were good. It nevertheless determined the services and facilities currently available to the juvenile court were insufficient to reasonably rehabilitate Mr. Munoz, while also protecting the public, given the nature of the alleged offenses and his age. Mr. Munoz does not allege DFS juvenile probation would have had the time and resources to reasonably rehabilitate him while protecting the public. Instead, Mr. Munoz relies on Ms. Sheen's testimony that the Boys' School could have incarcerated him until age 21 and then, due to his intellectual disability, he would have qualified for a home or community-based waiver where he would be entitled to professional services and 24/7 supervision. When denying transfer, the district court recognized Wyoming statute allows the Boys' School to house him until the age of 21 but found the "unfortunate reality" is that the Boys' School does not house juveniles until they are 21. The district court noted that the lengthiest program offered at the Boys' School is 12 months and is designed to deal with sexual offenses, and that its programs are not designed to work with juveniles charged with first-degree murder or conspiracy to commit first-degree murder. Ms. Sheen recognized this reality. She testified at the Rule 21 hearing that while the Boys' School was intended to serve juveniles like Mr. Munoz who have been adjudicated of serious offenses, it is often used to house low-level offenders who should be supervised in the community. The Boys' School was simply not "currently available" to the juvenile court to allow for adequate protection of the public and Mr. Munoz's reasonable rehabilitation.

[¶54] Even given our assumption that the fifth factor supports transfer, five of the seven factors weigh against transfer. Given the serious and violent nature of the alleged offenses, and the district court's obligation to consider adequate protection of the community and the likelihood of reasonable rehabilitation through the juvenile system, we cannot find there is a reasonable probability that the district court would have transferred the case to the juvenile court even had counsel called a mental health expert and Mr. Munoz's family at the juvenile transfer hearing.

B. Withdrawal of Mr. Munoz's Proposed Self-Defense Instructions at Trial

[¶55] Mr. Munoz's pretrial memorandum included proposed instructions on self-defense. During the jury instruction conference, counsel withdrew those instructions. Mr. Munoz argues counsel acted deficiently by withdrawing the proposed self-defense instructions

because there was “plenty of evidence” to support giving those instructions. He relies on JL’s testimony concerning JCC’s threatening gestures toward the Suburban’s occupants and JL’s statement that if he had had a gun, he would have fired based on this threat. Mr. Munoz also points to the evidence showing multiple people at the park had guns (including ZCC, JO, and JCC) and the “chaos [at the scene] with guns and bullets everywhere.” He argues the withdrawal of the self-defense instructions should be deemed per se prejudicial, similar to our treatment of the failure to give a theory of defense instruction, but that even under *Strickland*, he was prejudiced.

[¶56] The district court determined the evidence, in particular JL’s testimony, was sufficient to warrant a self-defense instruction. It did not address whether counsels’ performance in this regard was deficient but denied his Rule 21 motion because Mr. Munoz failed to show prejudice. We too reject Mr. Munoz’s claim of ineffective assistance of counsel, but for a different reason. We conclude the withdrawal of the self-defense instructions was not deficient performance but reasonable trial strategy.

[¶57] In their written responses and at the Rule 21 hearing, counsel said that before they withdrew the self-defense instructions, they discussed the pros and cons of that theory with Mr. Munoz and with their supervisors at the Wyoming Public Defender’s Office. They withdrew the self-defense instructions because they thought self-defense was a “very poor defense.” The evidence showed Mr. Munoz was looking for JCC,⁸ he was in a moving vehicle, and none of the Suburban’s passengers told Officer Wingeath during the traffic stop that anyone had shot at them. Counsel recognized Mr. Munoz did not have to testify and that self-defense could be raised without his testimony. They believed, however, that if they proceeded with self-defense, he would need to tell the jury he saw the threatening conduct and felt threatened. He would then be subject to cross-examination concerning matters they had successfully excluded. Counsel also explained that rather than give the jury two theories, they wanted the jury to focus on their primary defense—that the State could not prove whose gun fired the bullet which killed BCC, given the police never recovered any of the multiple guns known to have been carried by individuals at the park.

[¶58] It is clear that after a review of the evidence and consultation with Mr. Munoz and their supervisors, counsel made the strategic decision not to present a self-defense theory.

⁸ At the time counsel decided not to pursue self-defense and withdrew the self-defense jury instructions, Mr. Munoz stood charged with first-degree murder, which requires premeditation. Wyo. Stat. Ann. § 6-2-101(a). To show premeditation, the State presented, among other things, testimony that messages found on Mr. Munoz’s cell phone indicated he was actively looking for JCC. While the jury ultimately found Mr. Munoz not guilty of first-degree murder and therefore likely rejected the State’s evidence of premeditation, we “evaluate[] [counsel’s performance] under the circumstances existing at the time of the challenged act or omission and from the perspective available at the time of the challenged act or omission.” *Larkins v. State*, 2018 WY 122, ¶ 62, 429 P.3d 28, 43 (Wyo. 2018) (quoting *Bruckner v. State*, 2018 WY 51, ¶ 15, 417 P.3d 178, 181 (Wyo. 2018)).

“When trial counsel makes a ‘strategic decision’ in a case, that decision is ‘virtually unchallengeable.’” *Larkins v. State*, 2018 WY 122, ¶ 67, 429 P.3d 28, 44 (Wyo. 2018) (citing *Strickland*, 466 U.S. at 690–91, 104 S.Ct. at 2066). “An unfavorable verdict does not equate to ineffective assistance of counsel.” *Larkins*, ¶ 67, 429 P.3d at 44 (citing *Woods v. State*, 2017 WY 111, ¶ 15, 401 P.3d 962, 969 (Wyo. 2017)). “We invoke a strong presumption that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable judgment.” *Pickering v. State*, 2020 WY 66, ¶ 60, 464 P.3d 236, 256 (Wyo. 2020). As we have previously held, “[t]he defendant has the burden to overcome this presumption that, in light of the circumstances, the challenged action or failure of the attorney might be considered sound trial strategy.” *Mellott v. State*, 2019 WY 23, ¶ 26, 435 P.3d 376, 386 (Wyo. 2019).

Neidlinger v. State, 2021 WY 39, ¶ 56, 482 P.3d 337, 352 (Wyo. 2021). See also *Tarpey v. State*, 2023 WY 14, ¶ 58, 523 P.3d 916, 933 (Wyo. 2023) (“The fact that [trial counsel’s] strategy was ultimately unsuccessful does not require a holding of ineffective assistance of counsel.” (quoting *Owen v. State*, 902 P.2d 190, 199 (Wyo. 1995), *overruled on other grounds by Sweets v. State*, 2013 WY 98, ¶ 50, 307 P.3d 860, 876 (Wyo. 2013))); *Barkell v. State*, 2002 WY 153, ¶ 22, 55 P.3d 1239, 1244 (Wyo. 2002) (“[A] jury’s rejection of [a] defense strategy does not necessarily demonstrate ineffective assistance of counsel but merely a defense strategy that the jury did not accept.”).

[¶59] Mr. Munoz attempts to overcome the presumption of adequate representation by asserting counsels’ explanations for withdrawing the self-defense instructions were not reasonable strategy. He contends counsel feared that a video showing possible premeditation would be played if they pursued those instructions, but the video was played at trial. Counsel also said they did not want to put a gun in Mr. Munoz’s hands, yet they did so when they argued the State could not prove that a bullet he fired killed BCC. Finally, he points to closing argument, which he sees as effectively invoking self-defense:

But in order to reach a guilty verdict even on that charge, you have to determine whether or not Mr. Munoz’s behavior was somehow a deviation or a gross deviation from what’s expected. And I would refer you back to what [JL] said about [JCC] that at least [JL] perceived a threat to the occupants of the SUV. He said that when he saw that person coming towards them and lifting up his shirt, he thought that person was reaching for a gun and he said that if he would have

had a gun, he would have shot at them because they felt threatened.

[¶60] We address each of Mr. Munoz’s contentions. First, it appears Mr. Munoz’s argument about a video refers to the video from SV’s house, which was played at trial, showing the Suburban driving slowly past the house prior to the shooting. The record does not support the argument that counsels’ desire to exclude that video played a role in their decision to withdraw the self-defense instructions. Rather, counsel stated they were concerned that if Mr. Munoz testified he was acting in response to a threat, he would have been subject to cross-examination concerning matters they had successfully excluded, including his gun possession, violent cell phone content, and gang affiliations. Second, with regard to putting a gun in his hands, while counsel testified that the State “could not with 100 percent certainty put a weapon in [Mr. Munoz’s] hand [a]nd had [we] pursued self-defense, then that would have absolutely put a gun in his hand,” the primary defense theory was that the State could not prove that the bullet which killed BCC was fired by Mr. Munoz as opposed to any of the other number of individuals at the park who had guns. Finally, Mr. Munoz is incorrect that counsels’ closing was a self-defense argument. The portion of closing argument which Mr. Munoz focuses on addressed the reasonableness element of the lesser-included offense of criminally negligent homicide.

C. Use of Defense Expert to Clarify the Caliber of the Fatal Bullet

[¶61] Mr. Munoz argues counsel were ineffective for calling Mr. Garrison. Mr. Garrison testified the fatal bullet was a .380. He asserts this testimony resolved Ms. Bacon’s more equivocal opinion that it was either a .380 or 9 mm and lent strength to the State’s case because it eliminated JO as a potential alternative on the question of who fired the fatal bullet. The district court determined the decision to call Mr. Garrison was reasonable trial strategy—he testified the bullet which killed BCC was a hollow point, which disassociated it from the full-metal jacket ammunition found in the Suburban. Mr. Munoz argues this testimony was not strategic but cumulative, as Ms. Bacon had already confirmed that the bullet which killed BCC was a hollow point. Mr. Munoz claims that had Mr. Garrison not clarified that the bullet which killed BCC was a .380, the jury would have been left only with Ms. Bacon’s testimony that it was either a .380 auto or a 9 mm. On that record, JO could not be ruled out as the person who fired it. He maintains counsels’ deficient performance in calling this witness and eliciting this testimony prejudiced him.

[¶62] Mr. Munoz has not shown a reasonable probability that the outcome of his trial would have been different had Mr. Garrison not testified about the caliber of bullet that killed BCC. MCC and SV both testified that the gunshots fired from the Suburban hit the basketball court near where they and BCC were sitting and immediately afterwards they saw BCC lying on the ground, bleeding. Detective Fernandez testified that based on its weight, the bullet which killed BCC was “most likely” a .380 caliber. While Ms. Bacon

could not rule out that the bullet which killed BCC was a 9 mm, she testified it was “most likely” a .380, explaining:

We’re very conservative because we’re in a state with a lot of gun owners and a lot of reloading as well, so we go by caliber class. In this case it would be a 9 millimeter or a .380 auto. Most likely a .380 auto but I can’t exclude a 9 millimeter.

Ms. Bacon also testified that the bullet recovered from BCC’s head was most likely shot from an Astra, Tauris, or Beretta, ruling out JO’s 9 mm Glock as the source of the fatal bullet. While Mr. Munoz argues multiple individuals had guns, there was no evidence that anyone other than he and JO fired their weapons. Given the evidence, Mr. Munoz was not prejudiced by Mr. Garrison’s testimony that the fatal bullet was a .380.

D. Failure to Hire a Mental Health Expert for Trial and Sentencing

[¶63] Mr. Munoz argues counsel were ineffective and deviated from national defense standards when they failed to consult with and hire a mental health expert to evaluate Mr. Munoz or to otherwise investigate his background, traumatic early childhood, and mental health in preparation for trial and sentencing. He claims prejudice because that history would have been highly relevant to his self-defense claim, as those events kept him in a “chronic . . . fight or flight . . . response” and “paranoid that others were out to get him.” At his sentencing, the district court stated it was perplexed that Mr. Munoz—who had a loving and supportive upbringing—would join a drive-by shooting to resolve conflict. The district court imposed a term of five years above the mandatory minimum sentence. Wyo. Stat. Ann. § 6-2-104(a) (mandatory minimum sentence for second-degree murder is 20 years’ imprisonment). Mr. Munoz contends there was a reasonable probability that the court would have sentenced him to the mandatory minimum had it known about his mental health background and childhood trauma, which would have explained why he acted as he did.

[¶64] The district court resolved this argument on the prejudice prong as do we. Mr. Munoz cannot show he was prejudiced by his counsels’ failure to retain a mental health professional to testify that his childhood trauma and recent stabbing supported self-defense, given his counsel reasonably withdrew that defense. He acknowledges counsel submitted a sentencing memorandum discussing research and case law on juveniles’ underdeveloped brains and the relevant factors in juvenile sentencing, including rehabilitation. Expert testimony could have added facts specific to Mr. Munoz, but for the most part, it would have been largely redundant of the information provided in the sentencing memorandum. As for counsels’ failure to call Mr. Munoz’s family members to describe his childhood and the recent stabbing, the district court already knew about these matters. The stabbing came up at trial and in sentencing letters. Mr. Munoz’s own account of the stabbing and its effects on him physically and emotionally were in the presentence report. He also

described his childhood as “rough” due to his witnessing domestic violence between his parents, their incarceration, and his mother’s alcoholism. Even though the stabbing and his childhood may have explained his conduct, they do not show a reasonable probability that the court would have imposed the mandatory minimum sentence—especially considering that his reckless behavior resulted in the death of a 15-year-old girl.

E. Cumulative Deficiencies

[¶65] Relying on *Fennell v. State*, Mr. Munoz argues counsels’ deficiencies, when cumulated, were so egregious that they denied him the right to a fair trial. *Fennell v. State*, 2015 WY 67, ¶ 67, 350 P.3d 710, 730 (Wyo. 2015). He claims: “In this case, there are several other instances of trial counsel[s]’ deficiencies that while . . . standing alone may [not] be enough to have denied Mr. Munoz the right to a fair trial, together they cumulatively did deny him that right.” Because he does not explain the “several other” deficiencies or present cogent argument, we will not consider this issue. *Sorum v. Sikorski*, 2024 WY 124, ¶ 2, 559 P.3d 153, 157 (Wyo. 2024) (issues not supported by cogent argument on appeal will not be addressed).

CONCLUSION

[¶66] The State presented sufficient evidence at trial to sustain Mr. Munoz’s second-degree murder conviction. The district court’s transferred intent jury instruction was not plainly erroneous. Article 1, section 10 of the Wyoming Constitution does not require a more protective prejudice standard for claims of ineffective assistance of counsel than the Sixth Amendment to the United States Constitution. The district court correctly denied Mr. Munoz’s Rule 21 motions, as Mr. Munoz was not denied his right to effective assistance of counsel.

[¶67] Affirmed.