IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 123,100

STATE OF KANSAS,
Appellee,

v.

RONALD LEVON BUCHANAN,
Appellant.

SYLLABUS BY THE COURT

1.

A defendant charged with aggravated arson committed under K.S.A. 2022 Supp. 21-5812(b)(1)—that is, arson committed upon a property in which there is a person—does not suffer a double jeopardy violation when convicted on multiple counts arising from damage by fire to separate apartments, each with a person inside.

2.

When the sufficiency of the evidence is challenged in a criminal case, appellate courts review the evidence in a light most favorable to the State to determine whether a rational fact-finder could have found the defendant guilty beyond a reasonable doubt. Appellate courts do not reweigh evidence, resolve evidentiary conflicts, or weigh in on witness credibility.

3.

A district court judge may summarily deny an untimely motion for new trial based on dissatisfaction with counsel without appointing counsel if the judge determines from the motion, files, and records that the movant is not entitled to relief.

Review of the judgment of the Court of Appeals in an unpublished opinion filed August 26, 2022. Appeal from Johnson District Court; JAMES CHARLES DROEGE, judge. Oral argument held March 28, 2023. Opinion filed June 30, 2023. Judgment of the Court of Appeals affirming the district court is affirmed. Judgment of the district court is affirmed.

Emily Brandt, of Kansas Appellant Defender Office, argued the cause, and *Jennifer C. Bates*, of the same office, was on the briefs for appellant, and *Ronald Buchanan*, appellant, was on a supplemental brief pro se.

Jacob M. Gontesky, assistant district attorney, argued the cause, and *Stephen M. Howe*, district attorney, and *Derek Schmidt*, attorney general, were with him on the briefs for appellee.

The opinion of the court was delivered by

LUCKERT, C.J.: The State charged Ronald Levon Buchanan with several crimes after an intentionally set fire damaged several apartments. A jury convicted Buchanan of six counts of aggravated arson, three counts of attempted first-degree murder, and one count of animal cruelty. He appeals, raising three issues.

He first argues the district court judge violated his right to be free from double jeopardy by sentencing him to six counts of aggravated arson when the evidence proved the arsonist started only one fire. The State argues the single act of igniting a fire does not determine the allowable unit of prosecution for aggravated arson. Rather, the Kansas Legislature has defined the unit of prosecution for aggravated arson as each damaged building or property in which there is a person. Under the circumstances of this case, we agree with the State's argument.

Buchanan also argues the State failed to present sufficient evidence that he intended to kill and thus his convictions for attempted first-degree murder must be reversed. Contrary to his argument, the State presented evidence sufficient to convince a

rational fact-finder beyond a reasonable doubt that he intended to murder his daughter, her mother, and her brother when he ignited a fire outside their apartment door.

Finally, Buchanan argues the judge erred by failing to investigate his untimely posttrial allegation that he was denied his right to conflict-free counsel. A district court judge may summarily deny an untimely motion for new trial if the judge determines from the motion, files, and records that the movant is not entitled to relief. Here, Buchanan did not establish a basis for relief, and the judge did not err in denying the motion.

We thus affirm Buchanan's convictions.

FACTUAL AND PROCEDURAL BACKGROUND

The State told the jury that Buchanan's criminal acts were motivated by arguments between him and his daughter, Maraya, that climaxed the day Maraya graduated from high school. Several days before her graduation, Maraya told Buchanan not to come to her graduation. He came anyway. Although, according to Buchanan, Maraya "didn't lash out" and "no one got into it or anything," he perceived Maraya's conduct toward him at the graduation to be disrespectful, and he felt hurt.

After the ceremony, Maraya returned to the Overland Park apartment she shared with her brother, her mother, and their dog. Buchanan had moved out of the apartment months earlier and was living in Kansas City, Missouri.

The night of Maraya's graduation, Buchanan made a public post on Facebook in which he complained about Maraya's treatment of him. A neighbor in Maraya's apartment complex saw the Facebook post and called him to ask about it. During the conversation,

Buchanan asked the neighbor to go to his old apartment and get his belongings. The neighbor agreed to do so but did not immediately act on the promise because of the late hour.

Maraya and Buchanan also communicated, and Buchanan demanded Maraya return a key to his house. She agreed to leave it under the apartment's doormat. When Maraya's mother heard of the arrangement, she moved her car. She wanted to avoid a confrontation with Buchanan and hoped he would think she was not home.

About two hours later, around 4 a.m., Maraya and her family woke to a fire alarm. When they opened the front door of the family's second-floor apartment, fire engulfed the stairs, cutting off the family's ability to exit the apartment through the door. The mother tied bedding together in Maraya's room and used it to lower her children through a window and to the ground; she then climbed out herself.

When firefighters arrived, they found a "heavy fire" that engulfed the first and second floors. The fire lapped above the structure, invaded the attic, and spread across the building. The firefighters found residents outside who reported being awakened by fire alarms. These residents told the firefighters others were still inside, and the firefighters went into rescue mode. Ten fire companies responded to the two-alarm fire. Firefighters had to back out of the building when an exterior wall began collapsing around them. Residents of six apartments other than Maraya's testified at trial about the fire, being awakened by alarms, fleeing from their apartments, and the damage to their property.

Maraya's dog, Dash, died in the fire.

Maraya immediately suspected Buchanan of starting the fire and told him as much in a text message. Maraya and her mother told law enforcement they suspected Buchanan.

In the early morning hours after the fire, Buchanan sent a Facebook message to one of Maraya's friends he had never messaged before. In the message, he complained about Maraya's disrespectful conduct at the graduation ceremony, he denied setting the fire, and he added that he did not care about her losses. In a public Facebook message, he repeatedly called Maraya and her mother "them bitches," suggested he would urinate in the spare rooms of his house before allowing them to use them, and made other derogatory remarks directed toward them. He added that "they Got what God sent to em. Damn I wish they [*sic*] house didn't burn down but I'll be a lie [*sic*] if I said I cared."

Investigators determined the fire started in the stairwell in front of Maraya's apartment, and they eliminated accidental or natural causes. A dog trained to detect accelerants alerted on a glass bottle with liquid inside. Testing identified the bottle's contents as acetone, a flammable liquid. Investigators swabbed the bottle for DNA. Testing determined that Buchanan was 394 million times more likely to contribute the DNA found on the bottle's outside than an unknown source, and 88.1 trillion times more likely to contribute the DNA found on the bottle's mouth than an unknown source.

Investigators interviewed Buchanan, who denied involvement and told police he was at the hospital around the time of the fire. But detectives found no medical records verifying that claim.

Investigators did obtain Buchanan's cell phone records, which showed his phone was in Kansas City, Missouri, in the hours before the fire. But, around 3:30 a.m., the phone moved from Missouri into Kansas near cell towers around the family's apartment.

About 25 minutes later, it moved back into Missouri. Around the same time, traffic camera footage showed a Pontiac G6, like one owned by Buchanan, traveling into and out of Maraya's neighborhood. This timing coincided closely with the first reports about the fire.

The State charged Buchanan with several crimes, and the district court judge appointed an attorney to represent Buchanan. Within weeks, Buchanan moved for a new attorney. The judge held a hearing and appointed a second attorney after finding that Buchanan's relationship with the first attorney had become strained and the two were no longer communicating effectively.

Despite having a new attorney, Buchanan kept filing motions himself. He also filed a disciplinary complaint against his newly appointed attorney, claiming the attorney had not communicated during jail visits. Because this created a conflict between Buchanan and his counsel, the judge allowed counsel to withdraw. The judge then appointed a third attorney and ordered a competency evaluation.

Buchanan was found competent, and the judge set dates for the trial and for a scheduling conference. At the conference, Buchanan's attorney asked for time to get a report from a fire reconstruction expert. The judge continued the trial to a new date.

As the trial date approached, the judge conducted a pretrial conference. Buchanan told the judge he was not ready for trial because his attorney did not have experts to rebut the State's evidence about the fire, phone records, or DNA. He told the judge that unless his attorney had "some type of Hail Mary he's going to throw up that he hasn't made me aware of, we're nowhere ready for trial."

Speaking about the fire expert, Buchanan complained that his attorney was "telling me the building has been destroyed. There is no way a fire expert can test the building or anything to prove an arson took place." Buchanan's attorney explained the building had been torn down before he became Buchanan's attorney. He had consulted an expert who had explained "they can't look at a scene that doesn't exist and determine if it was or was not an arson."

Addressing Buchanan's request for his own DNA expert, the defense attorney explained there had been two DNA examinations, both of which confirmed a high likelihood that Buchanan's DNA was on the bottle found at the scene. He reported that Buchanan did not trust the State's expert. But he also told the judge that Buchanan was not arguing the DNA results were incorrect. Instead, he would explain the reason he had used the bottle. Buchanan would later tell the jury he had painted various things at the apartment complex, and he stored nail polish remover in the bottle and used it when cleaning up paint. Buchanan's attorney explained he was not pursuing a DNA expert as a matter of strategy and would instead rely on Buchanan's innocent explanation.

Finally, discussing Buchanan's complaint about not having a phone technology expert, Buchanan's attorney told the judge he understood the phone records and did not need an expert to interpret them. He also reported having told Buchanan that "[y]ou can't be sleeping at home in Missouri and have a cell tower in southern Johnson County pick your phone up randomly."

The judge addressed Buchanan and explained that criminal defense attorneys make most trial strategy decisions. Buchanan again explained his concerns, including his view that his attorney had not adequately investigated the case or checked out his alibi. Following this discussion, the judge asked if the defense was ready for trial, and Buchanan's attorney replied he was ready. The judge gave Buchanan and his attorney

time to visit privately. After a recess, Buchanan's attorney told the judge he had again explained why he was not hiring the various experts. The judge asked if they had talked about whether Buchanan wanted a new attorney. Buchanan replied by saying, "I apologize to the Court and my counsel. I was a little frustrated and . . . I kind of reacted over that."

The trial proceeded as scheduled. Buchanan testified and denied setting the fire. He said there had been "a little tension" at Maraya's graduation, and after the ceremony he had called Maraya's mother and had texted Maraya. A little after 2 a.m., he had texted Maraya and let her know he was going to the hospital and would not pick up his key.

Buchanan also told the jury he had experienced stomach pains in the hours before the fire. He had asked his neighbor for a ride to the hospital, but his neighbor had been drinking and could not drive. Others at his neighbor's house, who were visiting from out of town, dropped him off at the hospital around 2 a.m. Buchanan then realized he did not have his phone and must have left it in the car when he went into the emergency room. He immediately called his neighbor, who started calling Buchanan's phone to alert the driver Buchanan needed his phone. When the driver did not return, Buchanan called another friend who picked him up even though he had not received any medical attention. Buchanan told the jury he did not get his phone back until about 5 a.m. He could not explain why his phone could be tracked in Johnson County, and he denied the video showed his car.

The jury convicted Buchanan for attempted first-degree murder of Maraya, her mother, and her brother; for cruelty to animals; and for six counts of aggravated arson (one for each apartment other than the one occupied by Maraya's family).

Before sentencing, Buchanan filed an untimely motion for a new trial. He repeated the complaints he had raised at the pretrial conference—counsel had failed to procure fire and phone technology experts, conduct independent DNA testing, and adequately investigate the case. He also raised trial issues. The next day, Buchanan's counsel also filed a motion for new trial, simply citing K.S.A. 22-3501. The judge discussed the motions before sentencing but declined to consider Buchanan's own motions because counsel represented him. The judge then summarily held there was no basis for a new trial.

Buchanan appealed through counsel; he also raised additional issues in his own filings. The Court of Appeals affirmed. *State v. Buchanan*, No. 123,100, 2022 WL 3694882 (Kan. App. 2022) (unpublished opinion).

Buchanan, through counsel, then petitioned seeking this court's review of the Court of Appeals decision. We granted Buchanan's petition and have jurisdiction. *State v. Buchanan, rev. granted* 316 Kan. 759 (2022). See K.S.A. 20-3018(b) (providing for jurisdiction over petitions for review of Court of Appeals decisions); K.S.A. 60-2101(b) (Supreme Court has jurisdiction to review Court of Appeals decisions upon petition for review).

Buchanan's petition did not include all issues Buchanan had raised before the Court of Appeals, and the State did not file a cross-petition for review on points the Court of Appeals decided against it. Both Buchanan and the State have waived any issue not preserved through a petition or cross-petition for review. See *State v. Valdiviezo-Martinez*, 313 Kan. 614, 624, 486 P.3d 1256 (2021).

ANALYSIS

We turn to the three issues preserved for our consideration.

(1) Do the six counts of arson subject Buchanan to double jeopardy?

(2) Did the State present sufficient evidence that he intended to murder Maraya, her mother, and her brother? and,

(3) Did the judge err in denying Buchanan's motions for new trial?

ISSUE 1: DOUBLE JEOPARDY CLAUSE NOT VIOLATED

We begin with Buchanan's double jeopardy argument, in which he complains about being convicted and sentenced for six counts of aggravated arson—one for each damaged apartment unit other than Maraya's residence. His argument is rooted in the Double Jeopardy Clause of the Sixth Amendment to the United States Constitution and section 10 of the Kansas Constitution Bill of Rights. Double Jeopardy Clause violations can occur in many ways, including when a court imposes multiple punishments for the same offense. *State v. Schoonover*, 281 Kan. 453, 463-64, 133 P.3d 48 (2006). Buchanan asserts this type of double jeopardy argument as he argues his six convictions and resulting sentences for aggravated arson punish him multiple times for setting one fire.

When considering this type of multiplicity argument, courts apply a two-part test and determine whether a jury convicted a defendant for multiple counts charging the same offense: (1) Do the convictions arise from the same conduct? and, (2) By statutory definition are there two offenses or only one? 281 Kan. at 496.

In discussing the first step, the parties agree that the arsonist set only one fire. In other words, the damage to all the apartments arose from the same conduct. Agreement on this question means we need not discuss the test's first component. But "[t]he determination of the appropriate unit of prosecution is not necessarily dependent upon whether there is a single physical action or a single victim. Rather, the key is the nature of the conduct proscribed." 281 Kan. at 472.

In determining the proscribed conduct, our sole focus is the offense's statutory definition. Here, only one offense is at issue—aggravated arson. That means the convictions are based on a single statute. In looking at multiple convictions under a single statute, courts apply the unit of prosecution test that focuses on how the Legislature defined the scope of conduct composing a statutory violation. That definition determines the allowable unit of prosecution, and there can be only one conviction for each unit of prosecution. 281 Kan. at 497-98. As the Court of Appeals noted, defining the unit of prosecution for aggravated arson presents a question of first impression under Kansas law. *Buchanan*, 2022 WL 3694882, *6; see *State v. Coble*, 312 Kan. 615, 629, 479 P.3d 201 (2021) (declining to weigh in on potential double jeopardy issues upon remand of arson case).

The Kansas Legislature defined multiple ways to commit arson and aggravated arson in K.S.A. 2022 Supp. 21-5812. Only one way is involved here because the six counts of aggravated arson that resulted in Buchanan's convictions were charged with identical language, except for identifying six apartments by a four-digit number. For example, one aggravated arson count charged Buchanan with having "unlawfully, knowingly, and feloniously, by means of fire or explosive, damage[d] any building or property, to wit: Spring Hill Apartment 2202, in which there was a human being, which resulted in a substantial risk of bodily harm."

While the complaint referred to damage by "means of fire or explosive" to "any building or property," the jury instruction narrowed the jury's consideration to "fire" and "a property," telling the jury it needed to find:

"1. The defendant committed arson by knowingly, by means of fire, damaging a property specifically apartment 2202.
"2. At the time there was a human being in the property.
"3. The fire resulted in a substantial risk of bodily harm."

The same jury instruction was given for each aggravated arson count on which the jury returned a guilty verdict, although the apartment number changed.

These elements reflect the language in K.S.A. 2022 Supp. 21-5812 that defines aggravated arson. More specifically, the language in the complaint and in paragraph 2 of the instruction corresponds with the aggravated arson definition in K.S.A. 2022 Supp. 21-5812(b), which states: "(b) Aggravated arson is arson, as defined in subsection (a): (1) Committed upon a building or property in which there is a human being." Paragraph 1 of the instruction and corresponding language in the complaint echo the following italicized words found in K.S.A. 2022 Supp. 21-5812(a), which states: "Arson is: (1) *Knowingly, by means of fire* or explosive damaging any building or property which . . . ." And paragraph 3 of the instruction, and corresponding language in the complaint, uses statutory language from K.S.A. 2022 Supp. 21-5812(c)(2), which defines an aggravating sentencing factor that applies "if such crime results in a substantial risk of bodily harm." Buchanan makes no instructional error claim. We thus focus on the language in the instruction—the language on which the jury based its verdict.

That language was narrow and did not include many of the words and phrases discussed by the parties and the Court of Appeals, such as "building," "dwelling,"

and "any." See, e.g., *Buchanan*, 2022 WL 3694882, at * 5 (discussing K.S.A. 2022 Supp. 21-5812[a][1][A], which applies when damage by fire or explosion occurs to "a dwelling in which another person has any interest without the consent of such other person"). We will not review the Court of Appeals' discussion regarding that provision because we are not called on today to define the unit of prosecution under the arson statute's subsections. If we tried to sort those out, we would be issuing advisory opinions rather than deciding the actual controversy before us. See *State ex rel. Morrison v. Sebelius*, 285 Kan. 875, 898, 179 P.3d 366 (2008). We likewise do not reach the parties' arguments that go beyond the language at issue.

Even so, part of their arguments and the Court of Appeals' discussion remains relevant because they focus on the phrase "building or property," which is found in both (a)(1) and (b)(1). Buchanan's primary argument is that this phrase uses singular, rather than the plural, forms of "building or property" and all the apartments were part of a large building and property. He points out that the Legislature could have used these words' plural forms or added the phrase "portion thereof" in the arson statutes, but it did not.

We are not persuaded those changes are necessary for the unit of prosecution to be an individual apartment, however, because of the criminal code's definition of "[p]roperty." See K.S.A. 2022 Supp. 21-5111(w).

Before discussing that definition, we address Buchanan's misguided criticism of the Court of Appeals' reliance on that and other definitions because, among other things, they are not part of the arson statute. His argument does not account for our duty to discern legislative intent about the scope of the unit of prosecution. See *Schoonover*, 281 Kan. at 497-98. When discerning intent, we consider the words used by the Legislature. See *Valdiviezo-Martinez*, 313 Kan. at 617-18 ("[C]ourts . . . seek to determine the Legislature's intent by examining the statute's wording."). And the Legislature has

directed courts and others to use the definition section "when the words and phrases defined are used in this [criminal] code." K.S.A. 2022 Supp. 21-5111. It is thus appropriate to rely on the Legislature's stated meaning of "[p]roperty."

The criminal code definition section defines "[p]roperty" as "anything of value, tangible or intangible, real or personal." K.S.A. 2022 Supp. 21-5111(w). And it defines "[r]eal property" as "every estate, interest, and right in lands, tenements and hereditaments." K.S.A. 2022 Supp. 21-5111(bb). Apartment tenants hold interests in real property and, more specifically, possess habitation rights in their apartments that allow excluding others. See K.S.A. 58-2543(o); *State v. Bollinger*, 302 Kan. 309, 314, 352 P.3d 1003 (2015) (discussing K.S.A. 2014 Supp. 21-5812[a][1][A] and stating: "This court has held that the State is not required to establish exactly what the nature of the 'any interest' is, be it a fee simple, a rental, or a tenancy, in order to satisfy the statutory requirement.").

Applying the Legislature's definitions to aggravated arson's elements under K.S.A. 2022 Supp. 21-5812(b)(1), the focus is on a property, including an apartment, in which there is a person. In this statute's context, the singular form of property conveys that damage to each property, including each apartment in an apartment building, constitutes a unit of prosecution.

This reading of the statute adheres to the long-understood purpose of criminalizing arson, which "was to preserve the security of the habitation." Poulos, *The Metamorphosis of the Law of Arson*, 51 Mo. L. Rev. 295, 300 n.17 (1986) (citing 4 W. Blackstone, Commentaries on the Laws of England 220 [1st American ed. 1772]).

We hold the unit of prosecution that supported Buchanan's six convictions for aggravated arson committed under K.S.A. 2022 Supp. 21-5812(b)(1)—that is, arson

committed upon a property in which there is a person—reflects the unit of prosecution intended by the Legislature. Under this unit of prosecution, Buchanan could be convicted and sentenced for six counts of aggravated arson for damaging by fire six apartments in which there was a person.

Buchanan thus does not suffer a double jeopardy violation when convicted on multiple counts arising from damage by fire to separate apartments, each with a person inside.

ISSUE 2: SUFFICIENT EVIDENCE OF INTENT TO KILL

Buchanan next argues the State failed to present sufficient evidence that he specifically intended to kill Maraya, her mother, and her brother.

Our standard for reviewing this argument is well established: When the evidence's sufficiency is challenged in a criminal case, appellate courts review the evidence in a light most favorable to the State to determine whether a rational fact-finder could have found the defendant guilty beyond a reasonable doubt. Appellate courts do not reweigh evidence, resolve evidentiary conflicts, or weigh in on witness credibility. *State v. Aguirre*, 313 Kan. 189, 209, 485 P.3d 576 (2021).

As Buchanan points out, the State must present evidence proving each element of the crime. *State v. Kettler*, 299 Kan. 448, 471, 325 P.3d 1075 (2014). Here, the crime at issue is attempted first-degree murder.

> "[I]n prosecutions for an attempted crime—when the statute defining the crime does not include an attempt as a means of violating that statute—the default rule in K.S.A. 2020 Supp. 21-5301(a) requires the State to prove the defendant had the specific intent to

> commit the intended crime, even if that crime would not require specific intent as a completed crime." *State v. Mora*, 315 Kan. 537, 543, 509 P.3d 1201 (2022).

First-degree murder includes the specific intent to kill a human being with premeditation. K.S.A. 2022 Supp. 21-5402(a)(1); *State v. Mattox*, 305 Kan. 1015, 1025, 390 P.3d 514 (2017). Premeditation means thinking about killing a person before doing so. *State v. Stanley*, 312 Kan. 557, 571, 478 P.3d 324 (2020). "It requires a period, however brief, of thoughtful, conscious reflection and pondering—done before the final act of killing—that is sufficient to allow the actor to change his or her mind and abandon his or her previous impulsive intentions." 312 Kan. at 574.

The State thus had to prove that Buchanan had the specific intent to kill and that he premeditated the murder of Maraya, her mother, and her brother. "Specific intent is a question of fact for the jury which may be established by acts, circumstances, and inferences and need not be shown by direct proof." *State v. Mitchell*, 262 Kan. 434, 437, 939 P.2d 879 (1997).

Ample evidence allowed a rational juror to conclude beyond a reasonable doubt that Buchanan intended to murder Maraya, her mother, and her brother and had premeditated that murder. Buchanan asked a neighbor to remove his property from Maraya's apartment, suggesting he planned to destroy the apartment. He then drove from Missouri to Kansas bringing or otherwise obtaining a bottle of acetone. Once there, he ignited the fire in a location that blocked Maraya and her family from exiting the apartment. The fire was set just before 4 a.m. when people would be expected to be at home and asleep. And the evidence of text messages and other communications before and after the fire revealed Buchanan's anger, resentment, and lack of compassion.

Buchanan attempts to offset this evidence by pointing to testimony that Maraya's mother moved her car in the hopes Buchanan would think she was gone when he came to get his key. Buchanan uses this testimony to argue he had no way of knowing whether anyone was home, and he thus could not have had the intent to kill the apartment's occupants. But Buchanan testified he learned during the trial that the car had been moved. The absence of the car was not a matter he noticed or considered before setting the fire.

Buchanan also argues that the evidence shows only an intent to start the fire, and although intent may be proven by circumstantial evidence, just showing he intended to start a fire did not establish he intended to murder the apartment's occupants. For support, he cites *State v. Phillips*, 299 Kan. 479, 498, 325 P.3d 1095 (2014), which held that use of a deadly weapon, without more, cannot prove premeditation. Here, however, there was much more evidence of intent than just starting a fire. Buchanan's own words before and after the fire and his act of starting the fire in a location that would block the family's ability to escape reveal his intent to commit murder. His call to the neighbor raised an inference he formed the plan to destroy the apartment several hours before he drove from his place to the apartment where he started the fire in a location that would block the exit. This and other evidence would allow a reasonable juror to conclude he considered his action and formed the intent to commit murder before attempting to do so.

We hold there was sufficient evidence to support the convictions for attempted first-degree murder.

ISSUE 3: NO VIOLATION OF RIGHT TO CONFLICT-FREE COUNSEL

In his final claim, Buchanan asserts that the district court judge erred in disposing of his motion for a new trial in a cursory fashion. He contends he was denied his right to

conflict-free counsel, a right guaranteed by the Sixth Amendment to the United States Constitution and section 10 of the Kansas Constitution Bill of Rights.

When a defendant raises a timely pro se posttrial motion for a new trial, the motion is a critical stage in the proceedings during which the defendant is entitled to counsel and the correlative right that counsel have no conflicts of interest. *State v. Sharkey*, 299 Kan. 87, 95-100, 322 P.3d 325 (2014). In that situation, if the judge fails to make an adequate inquiry into the potential conflict, prejudice is presumed. 299 Kan. at 96-101.

But Buchanan's motion was untimely. A motion for new trial, other than on the ground of newly discovered evidence, must be filed within 14 days of the verdict. Buchanan filed his motion nearly two months later. K.S.A. 2022 Supp. 22-3501. Such an untimely motion is considered a postconviction collateral proceeding. As such, K.S.A. 22-4506, which governs the entitlement of counsel in postconviction proceedings, applies. 299 Kan. at 95. Under that statute, a judge "may determine that the motion, files, and records of the case conclusively show that the movant is entitled to no relief, in which case [the judge may] summarily deny the motion without appointing counsel." *Albright v. State*, 292 Kan. 193, 196, 251 P.3d 52 (2011). The determination of whether the motion presents substantial questions of law justifying the appointment of counsel rests within a district court judge's sound discretion. *State v. Kingsley*, 252 Kan. 761, 766, 851 P.2d 370 (1993); see *Albright*, 292 Kan. at 196. Judicial discretion is abused if the action is (1) arbitrary, fanciful, or unreasonable; (2) based on an error of law; or (3) based on an error of fact. *State v. Ward*, 292 Kan. 541, 550, 256 P.3d 801 (2011).

The record here shows that all posttrial issues Buchanan pursues on appeal relating to his dissatisfaction with counsel are arguments he raised before trial. He has abandoned any other arguments. See *State v. Galloway*, 316 Kan. 471, 479, 518 P.3d 399 (2022).

The judge had thoroughly considered those preserved complaints at the pretrial conference and knew they concerned strategic decisions made by counsel. Strategic choices by counsel after a thorough investigation of law and facts are generally unchallengeable. *Sola-Morales v. State*, 300 Kan. 875, 887, 335 P.3d 1162 (2014).

Given this general rule and the judge's previous exploration of counsel's investigation, the judge could summarily deny Buchanan's motion without appointing counsel. The judge's decision was not arbitrary, fanciful, or unreasonable, was not based on an error of law, and was not based on an error of fact. The district court judge thus did not err in denying the motion for a new trial or in failing to appoint new counsel.

Judgment of the Court of Appeals affirming the district court is affirmed. Judgment of the district court is affirmed.

STANDRIDGE, J., not participating.