

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0759**

State of Minnesota,
Respondent,

vs.

Keijuan Jarqaway Antonio Brown,
Appellant.

**Filed April 19, 2021
Affirmed
Halbrooks, Judge***

Scott County District Court
File No. 70-CR-18-4617

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Ronald Hovevar, Scott County Attorney, Todd P. Zettler, Assistant County Attorney,
Shakopee, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Suzanne M. Senecal-Hill,
Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bryan, Presiding Judge; Frisch, Judge; and Halbrooks,
Judge.

*Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

HALBROOKS, Judge

Appellant challenges his theft conviction, arguing that the district court (1) erred by denying his challenge to the prosecutor's peremptory strike of the only minority juror and (2) abused its discretion by admitting surveillance footage without proper authentication. We affirm.

FACTS

In 2017, appellant Keijuan Jarqaway Antonio Brown was a service manager at a Chipotle restaurant in Shakopee. In that capacity, he had access to the restaurant's office, where the safe was located, and had codes for opening the safe and cash registers. Policy dictated that employees were not allowed to be in the restaurant by themselves, the office light was supposed to "stay on" at all times, and the office door was supposed to be kept closed. Policy also required managers to collect cash at the end of each shift, count it and place it into sealed and labeled bags, and place the bags into the safe. Security cameras monitored and recorded several areas of the restaurant, including the office, and the district manager was able to view live or recorded surveillance footage at any time on her cell phone.

After "a lot of cash" disappeared in October, Chipotle investigated. The district manager and the restaurant manager began by reviewing surveillance footage for days the bank reported missing cash from deposits. They found footage of Brown coming into the office "after hours" by himself, opening the safe, and turning off the light. Thereafter, the district manager worked with Chipotle's "safety, security, and risk" staff to recover footage

of three times—late evening on October 10, and very early morning on October 23 and 27—when Brown entered the office and turned the lights off. All three corresponded to dates for which Chipotle was missing cash—\$770 from the October 10 deposit, \$622 from the October 22 deposit, and \$540 from the October 26 deposit. They also discovered that the deposit bag for October 31 exhibited signs of tampering and was missing \$122, and records confirmed Brown was in the restaurant after hours that night.

The district manager and the store manager asked Brown about the surveillance footage. He indicated that he entered the office on October 10 to change his pants because they had gotten wet washing dishes, but the video showed him to be wearing the same pants before and after he turned out the light. And he said he entered the office another time to get trash bags for cleaning out his car, but there were no trash bags or cleaning supplies kept in the office.

Brown was charged with theft of more than \$1,000 but less than \$5,000. During jury selection, the prosecutor exercised a peremptory strike to remove Juror 15, the only non-White person on the jury panel. Brown challenged the removal, claiming racial bias. The district court denied the challenge. At trial, the prosecutor presented the testimony of the district manager, the restaurant manager, and the investigating police officer, as well as the surveillance footage for October 10, 23, and 27. Brown testified that he was working three jobs in October 2017 and sometimes kept personal items at Chipotle to facilitate transitions between jobs but did not remember specifically why he would have been in the store after hours; that period of his life was “a blur.” He acknowledged being in the restaurant after hours at the times indicated in the surveillance footage but denied

tampering with any deposit bags or taking any money from Chipotle. The jury found him guilty of theft of between \$500 and \$1,000. The district court convicted Brown of that gross-misdemeanor offense, stayed imposition of sentence, and placed Brown on probation. Brown appeals.

DECISION

I. The district court did not clearly err by finding that the prosecutor's peremptory strike of the only minority juror was not discriminatory.

The existence of discrimination in the exercise of a peremptory strike is a factual determination, and we will not reverse the district court's ruling unless it is clearly erroneous. *State v. Seaver*, 820 N.W.2d 627, 632 (Minn. App. 2012). This deferential review “is warranted because the record may not accurately reflect all relevant circumstances that may properly be considered.” *State v. Adams*, 936 N.W.2d 326, 329 (Minn. 2019) (quotation omitted).

The Equal Protection Clause of the Fourteenth Amendment prohibits using a peremptory strike to remove a prospective juror based on race. *Id.* (citing U.S. Const. amend XIV, § 1; *Batson v. Kentucky*, 476 U.S. 79, 89, 106 S. Ct. 1712, 1719 (1986)). Minnesota courts follow the three-step *Batson* framework for determining whether a peremptory strike was motivated by racial discrimination. *State v. Wilson*, 900 N.W.2d 373, 378 (Minn. 2017).

First, the opponent of the strike bears the initial burden of making a prima facie showing that the strike was based on racial discrimination. *Id.* To do so, he “must show that a member of a protected racial class has been excluded from the jury *and* that the

circumstances of the case raise an inference that the exclusion was based on race.” *Adams*, 936 N.W.2d at 329 (emphasis added); see *State v. Onyelobi*, 879 N.W.2d 334, 345 (Minn. 2016) (“It is well-settled that mere removal of a member of a racial minority does not necessarily establish a prima facie case of discrimination.” (quotation omitted)). Failure to make such a showing may be dispositive. *State v. Diggins*, 836 N.W.2d 349, 356 (Minn. 2013).

Upon a prima facie showing of discrimination, the district court considers the second step: the party who exercised the peremptory strike must present a race-neutral reason. *Wilson*, 900 N.W.2d at 378. The reason need not be persuasive or plausible, just not inherently discriminatory. *Id.* Third, the opponent must persuade the district court that the proffered reason was pretextual and the “true motive” was purposeful discrimination. *Id.* The court can assess the credibility of the prosecutor’s explanation from various factors, including his demeanor and the reasonableness of his explanation. *Miller-El v. Cockrell*, 537 U.S. 322, 339, 123 S. Ct. 1029, 1040 (2003). If the district court addresses the second and third *Batson* steps, we will also address them. *Diggins*, 836 N.W.2d at 356.

Brown claimed racial discrimination in the prosecutor’s strike of Juror 15 on the ground that he “was the only person on the jury that was not a [W]hite person.”¹ The prosecutor responded that he struck Juror 15 because of the juror’s recent criminal record,

¹ The record does not clearly identify Juror 15’s racial background—his juror profile indicates “Other” for race and that he is of “Hispanic Origin”—but it is undisputed that he was the only minority member of the jury pool. Brown did not argue to the district court that his own race bears on the *Batson* analysis, but he notes in his appellate brief that he is Black.

explaining that the other two prospective jurors with criminal records, Juror 2 and Juror 6, were decades removed from that conduct. The district court denied Brown's claim, explaining that Brown failed to establish a prima facie case of racial discrimination because mere removal of a member of a racial minority is insufficient; even if Brown made a prima facie case, the prosecutor's proffered reason for the strike—Juror 15's criminal history—was race neutral; and that reason was not pretextual because the prosecutor reasonably distinguished Juror 15 from the two prospective jurors with more remote and less violent criminal histories.

Brown does not dispute that a prospective juror's criminal record may constitute a race-neutral reason for removal. *See State v. Martin*, 614 N.W.2d 214, 222 (Minn. 2000) ("A family member's involvement with a criminal investigation is a race-neutral reason for striking a juror."); *see also Adams*, 936 N.W.2d at 330 (concluding that a juror's misrepresentations about her criminal history is a legitimate race-neutral reason for a strike). He contends only that it was not race neutral here because the prosecutor did not remove two White prospective jurors with criminal pasts. The district court rejected this contention because the prosecutor provided a reasonable explanation for the distinction. The record supports that finding.

Juror 15, who was 45 years old, acknowledged that he had been arrested three times, "[f]irst for domestic, the second one, DUI, and then domestic." When asked about the timing of the arrests, he explained the first was "about 14 years ago," the second "[I] [t]hink 12 years ago," and the third "about seven years ago." He said he was "charged" for the first one and "went to court, like, three times." By contrast, Juror 6, who was 62, disclosed

that, when he was “about 15,” he and a group of friends were drinking and illegally entered somebody’s house, then ran away when the police arrived. And Juror 2, who was 66, disclosed that he “had a DWI” around 1980.² In short, Juror 6 and Juror 2 each admitted a decades-old offense with mitigating factors (Juror 6 was a juvenile and Juror 2’s DWI was, as the district court observed, “nonviolent” or “nonpersonal”), while Juror 15 admitted multiple arrests, some for violent offenses, in his 30s, the most recent of which was only seven years earlier.

Brown nonetheless argues that two aspects of the prosecutor’s conduct indicate racial prejudice. This argument is unavailing in each respect. First, Brown contends the prosecutor “took the time to ask the two [W]hite jurors about their criminal past” but asked Juror 15 only about the timing of his arrests. But the district court questioned the prospective jurors first, then the prosecutor questioned them, overall eliciting the same information from each—the nature and timing of his criminal past. Second, Brown contends the prosecutor mischaracterized Juror 15’s responses by stating that he was (1) “[f]or sure convicted on one [of his arrests],” and (2) “unsure about when exactly the time frame happened.” Brown is correct that these statements are not precisely accurate; Juror 15 did not indicate he was convicted, and he provided the approximate timing of each

² Brown notes that Juror 2 also separately disclosed an incident in which he was a victim of a hit-and-run accident and attributed his failure to note the other driver’s license plate to being “intoxicated.” The juror did not expressly indicate when the accident occurred, but the prosecutor said, “I could tell, like, that was quite a while ago when—your hit-and-run.” Brown noted the apparent incident of impaired driving during his *Batson* challenge but did not identify a reason to discredit the prosecutor’s assessment that the incident, like the juror’s DWI conviction, was “quite a while ago.”

arrest. But the difference between the juror’s responses and the prosecutor’s descriptions are minimal, and the district court was in the best position to assess whether the prosecutor’s statements undermined the credibility of his explanation. On this record, we conclude the district court did not clearly err by finding that the prosecutor reasonably and neutrally struck Juror 15 while accepting Juror 6 and Juror 2.

II. The district court did not abuse its discretion by admitting the surveillance footage based on the district manager’s authentication.

We review a district court’s evidentiary rulings for an abuse of discretion. *Dolo v. State*, 942 N.W.2d 357, 362 (Minn. 2020). To obtain reversal, the appellant must demonstrate both error and resulting prejudice. *State v. Griffin*, 846 N.W.2d 93, 103 (Minn. App. 2014), *review denied* (Minn. Aug. 5, 2014).

The proponent of evidence must authenticate or identify it “by evidence sufficient to support a finding that the matter in question is what its proponent claims.” Minn. R. Evid. 901(a). Rule 901 provides an expressly nonexclusive list of “examples” of how to do so. *Id.*(b). Video recordings may be authenticated in two ways, using the pictorial-witness theory or the silent-witness theory. *In re Welfare of S.A.M.*, 570 N.W.2d 162, 164-65 (Minn. App. 1997). The first method calls for a witness to describe what she saw; the video serves as a pictorial representation of her observations. *Id.* at 164; *see* Minn. R. Evid. 901(b)(1) (permitting authentication by a knowledgeable witness that the “matter is what it is claimed to be”). Under the second method, the video acts as a “silent witness” to events that no person directly observed, and witness testimony describes the process or system of recording and verifies that this process produces an accurate video. *S.A.M.*, 570

N.W.2d at 165; *see* Minn. R. Evid. 901(b)(9) (permitting authentication by “[e]vidence describing a process or system used to produce a result and showing that the process or system produces an accurate result”).

Brown contends the prosecutor failed to authenticate the surveillance videos because no witness testified to observing the events depicted in the videos and no witness described the recording process or verified that it produces an accurate video. He is correct that none of the witnesses identified the videos under the precise requirements of the pictorial-witness theory or the silent-witness theory. But the purpose of authentication is to demonstrate that the matter in question is what its proponent claims. Minn. R. Evid. 901(a). The district manager’s testimony, which the prosecutor offered as authentication, satisfies this purpose.

The district manager explained that Chipotle maintained security cameras in multiple locations in the restaurant, including in the office, and that she was able to view live surveillance footage from any of the cameras or call up recordings for any camera at a given date and time. She did so regularly as part of her work, viewing locations in the restaurant, including the office, that she was also personally familiar with as part of her work. She explained that Chipotle’s safety, security, and risk team maintained the recordings and likewise was able to access recorded surveillance footage. When she learned of missing cash, she personally accessed recordings for the dates when deposits indicated shortfalls and watched footage showing Brown in the office after hours, opening the safe and turning off the light. She requested additional footage from the safety, security, and risk team, which also showed Brown in the office after hours, turning off the light. She

reviewed the videos before and after attempts were made to “lighten” them, and they were the same. Most important, when the district manager asked Brown about the recordings, he did not deny that he was at the restaurant at the indicated times or that he was the person depicted in the videos. Overall, this testimony provided sufficient evidence to demonstrate that the videos were what the prosecutor claimed they were—surveillance footage of Brown entering the office alone after hours on three occasions and turning the light off.

Moreover, Brown has not demonstrated prejudice from the admission of the videos. He is correct that the substance of the videos was important to the prosecutor’s case; they established a crucial circumstantial link between Brown and the missing cash. But the videos themselves were not the only such evidence. The district manager testified, without objection, that she watched surveillance footage from October 10 and saw Brown enter the office after closing at 10:30 p.m.; he opened the safe and turned off the light, and when he turned the light back on the safe was closed. Also without objection, she testified that she watched surveillance footage from October 23 and saw Brown enter the store after midnight, go into the office and turn off the light, then turn the light back on. And again without objection, she testified that she watched surveillance footage from October 27 and saw Brown engaged in the same conduct around 1:50 a.m. In short, the videos may have provided a more compelling illustration of Brown’s conduct, but they were substantially cumulative of the regional manager’s unobjected-to testimony about what she saw Brown do. On this record, Brown has not demonstrated that he is entitled to relief based on the admission of the surveillance videos.

Affirmed.