

*This opinion is nonprecedential except as provided by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
A20-1115**

State of Minnesota,
Respondent,

vs.

Abdifetah Ali Kalif,
Appellant.

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

Hennepin County District Court
File No. 27-CR-19-15076

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

Michael O. Freeman, Hennepin County Attorney, Brittany D. Lawonn, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Amber S. Johnson, Johnson Criminal Defense, Minneapolis, Minnesota (for appellant)

Considered and decided by Frisch, Presiding Judge; Reilly, Judge; and Florey, Judge.

NONPRECEDENTIAL OPINION

FRISCH, Judge

Appellant argues that the district court abused its discretion by excluding a purported birth certificate from evidence and by denying a motion to dismiss for lack of

subject-matter jurisdiction based on its determination that appellant was at least 18 years old on the date of the charged offense. We affirm.

FACTS

The state charged appellant Abdifetah Ali Kalif with first-degree criminal sexual conduct in violation of Minn. Stat. § 609.342, subd. 1(e)(i) (2018). The basis for the criminal charge originated from allegations that on April 23, 2019, Kalif attempted to undress a 14-year-old girl in the backseat of a moving vehicle, grabbed her by the throat, threatened to stab her, attempted to penetrate her vaginally with his penis, and punched her repeatedly in the face. Kalif filed a motion to dismiss the complaint for lack of subject-matter jurisdiction, arguing that he was younger than 18 years old at the time of the alleged offense and that the juvenile court therefore had exclusive jurisdiction over the case. The matter proceeded to a contested hearing. We summarize the evidence and proceedings relevant to the issues on appeal as follows.

Sergeant Testimony

A sergeant with the Minneapolis Police Department testified that in April 2019, he began investigating the allegations against Kalif. The sergeant obtained information from the Minnesota Department of Public Safety, Driver and Vehicle Services (DVS), indicating that Kalif was born on January 1, 2001. On June 25, 2019, law enforcement arrested Kalif. The sergeant conducted a recorded interview of Kalif, during which Kalif claimed his birthdate was January 1, 2001, and that he had already turned 18. The sergeant also testified that he requested a forensic examination of Kalif's cell phone, which revealed chat logs containing photographs of immigration documents and a Social Security card. Kalif's

permanent resident card indicated a birthdate of January 1, 2001. The sergeant testified that he also contacted a special agent with the United States Department of Homeland Security, who provided documentation from Immigrations and Customs Enforcement (ICE) that listed Kalif's date of birth as January 1, 2001.

Associate Principal Testimony

An associate principal from Kalif's high school testified and produced school-registration records. Kalif's father signed a middle-school registration form dated February 24, 2015, indicating that Kalif's birthdate was January 1, 2001. Kalif's father also signed a high-school registration form dated August 24, 2015, indicating that Kalif's birthdate was January 1, 2000. The associate principal also testified that in February 2020, she spoke with Kalif when he inquired about competing on the track team for another year. The associate principal advised him at that time that "once you have your four years of eligibility through the state high school league, there's nothing anybody can do about it." Kalif then told the principal that his birthday was not correct in the system, so he should still be eligible to participate. The associate principal testified that, over the span of her career, she had become "pretty good" at estimating the age of students based on observation. She also testified that she never had the suspicion that a student was younger than their reported birthdate.

Kalif's Mother's Testimony

Kalif's mother testified that she and her family fled from Somalia to Ethiopia in 1992 to escape violence. She lived in a refugee camp in Ethiopia until she, her husband, and many of her children immigrated to the United States. At that time, Kalif's mother

received an immigration document listing biographical information about her, Kalif's father, Kalif, and eight of his siblings. Eight family members' birthdays were listed as January 1, including Kalif's birthdate of January 1, 2001. The mother testified that many of those birthdates did not match her recollection. She also testified that Kalif was born on October 8, 2002, and she remembered that date because the community gathered to pray for the birth two days prior, on October 6.

Neighbors' Testimony

A woman who was Kalif's neighbor (Neighbor H.A.) at the Ethiopian refugee camp testified that she had a son (Neighbor F.M.) in 2002 who was, at the time of the hearing, 18 years old. Neighbor H.A. claimed her son was older than Kalif by a few months. Neighbor F.M. also testified that he thought he was older than Kalif because he had been told so growing up and because he would "beat [Kalif] up all the time" when they fought as children.

The Purported Birth Certificate

Kalif attempted to introduce his purported birth certificate into evidence through his mother's testimony. The document was typewritten in Somali. The document's contents were translated to English and included the caption "Birth Certificate" and an agency title—"The Agency of Registering the Important Phases of the Federal Democratic Republic of Ethiopia." It included various information, including Kalif's name, gender, birthplace, nationality, parents' names, and a birthdate of October 8, 2002. The document also indicated a "Birth Registration Month" and "Issued Month" of November 23, 2019, along with a registering officer's name. The front of the document bore a stamp with

Somali words. The back of the certificate included other stamps with English words, including: (1) “Federal Democratic Republic Ethiopia Ministry of Foreign Affairs Document Authentication Service”; (2) “SRS Vital Events Registration Agency”; (3) “Tariku . . . Dadi Document Authorization Officer”; (4) “Federal Democratic Republic of Ethiopia Ministry of Foreign Affairs”; and (5) “Signature and Seal Authenticated.” There was no signature visible on the provided line for the signature and seal, but there were markings below and outside the provided box.

Kalif’s mother testified that she spoke with former neighbors from Ethiopia, informed them that she needed Kalif’s birth certificate, and sent them pictures of Kalif. She claimed that another woman traveled from Minnesota to Ethiopia, received the purported birth certificate from the neighbors, and returned to Minnesota with the document. The mother did not identify these parties by name.

The state objected to the admission of the document as containing hearsay and lacking foundation. When asked by the district court whether defense counsel had “something to back up” the assertion that the document “isn’t just a made-up document,” defense counsel stated:

I do have an offer of proof, although it’s not what I have. But I did receive a report from the investigator in this matter for this county, and it says that the investigator received an email from U.S. Immigration. They had looked into the birth record and that the office informed them that a copy appears to be [the] newer form of Ethiopian birth certificate. The representative observed the authenticated stamp on the second page, and it appeared to be a valid stamp and authenticated by the Ministry of Foreign Affairs.

Order Excluding Purported Birth Certificate

The district court sustained the state's objection and excluded the purported birth certificate from evidence. It concluded that the document was not authenticated through extrinsic evidence pursuant to Minn. R. Evid. 901, noting that Kalif's mother had "no personal knowledge about how the former neighbor obtained the document, what information was needed to obtain the document, who provided it to her, or how it was created." The district court also concluded that the document was not self-authenticating pursuant to Minn. R. Evid. 902(3) given the absence of a verifiable signature and a final certification of genuineness. It also declined to find good cause to treat the document as presumptively authentic because Kalif did not explain why he failed to acquire a final certification or detail his efforts to do so.

Order Denying Motion to Dismiss

The district court determined that the state proved by a preponderance of the evidence that Kalif was at least 18 years old at the time of the alleged offense. It found that (1) Kalif's government-issued documents and related documents listed his date of birth as January 1, 2001; (2) Kalif told the investigating sergeant that he was 18 with a birthdate of January 1, 2001; (3) Kalif's father represented Kalif's birthdate as January 1, 2001, when enrolling Kalif in middle school; and (4) the associate principal "expressed her opinion that [Kalif's] age is consistent with a date of birth of January 1, 2001." The district court also noted that the associate principal would have noticed had Kalif been two years younger than his reported age.

The district court discredited most of Kalif’s evidence. It reasoned that Kalif personally raised issues about his birthdate with the associate principal only after he filed a motion to dismiss and only in relation to his “self-serving effort to obtain another year of eligibility for high school sports.” It found that Kalif’s mother’s testimony was not credible because (1) she was unable to recall her other children’s specific birthdates but was able to identify a specific date for Kalif’s birth; (2) she failed to explain how she recalled the specific date of the religious gathering preceding Kalif’s birth; and (3) she did not record important dates in any form. The district court discredited Neighbor H.A.’s testimony that her son was born on January 1, 2002, noting that the fact would have been inconsistent with her testimony that her son was born only a “few months” before Kalif, who claimed a birthdate of October 8, 2002. And the district court rejected Neighbor N.A.’s testimony for lack of first-hand knowledge.

The district court acknowledged the fact that Kalif’s birthday might not have been January 1 specifically, but it explained that “[t]he state need only prove . . . that [Kalif] was 18 years old as of the day of the alleged offense.” The district court found that the state met its burden “because the only credible evidence shows that [Kalif’s] birth date is January 1, 2001.” Accordingly, the district court denied the motion to dismiss for lack of subject-matter jurisdiction. This pretrial appeal follows.¹

¹ An order denying a motion to dismiss for lack of subject-matter jurisdiction is immediately appealable pursuant to *State v. Ali*, 806 N.W.2d 45, 50 (Minn. 2011).

DECISION

I. The district court did not abuse its discretion by excluding the purported birth certificate from evidence.

Kalif contends that the district court abused its discretion by excluding the purported birth certificate from evidence because the document (A) was authenticated by extrinsic evidence or (B) should have been treated as a self-authenticating document. The state urges us to affirm because the extrinsic evidence was insufficient and because Kalif failed to establish a basis to admit the document as self-authenticating. We review the district court's evidentiary decisions for an abuse of discretion. *Turnage v. State*, 708 N.W.2d 535, 542 (Minn. 2006). “[W]e may reverse the district court when the district court’s ruling is based on an erroneous view of the law or is against logic and the facts in the record.” *State v. Bustos*, 861 N.W.2d 655, 666 (Minn. 2015).

A declarant’s out-of-court statement is typically hearsay if it is “offered in evidence to prove the truth of the matter asserted.” Minn. R. Evid. 801(c). Certain types of evidence are not excluded by the hearsay rule, including “[r]ecords or data compilations, in any form, of births, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirements of law.” Minn. R. Evid. 803(9); *see also* Minn. R. Evid. 803(8) (records of public offices and agencies regarding activities and matters observed). But “[t]he requirement of authentication or identification” (“that the matter in question is what its proponent claims”) is a condition precedent to the admissibility of such evidence. Minn. R. Evid. 901(a). “Foundation can be established in either of two ways: through extrinsic evidence, as contemplated by Minn. R. Evid. 901 . . . ; or by a finding that the evidence is

‘self-authenticating’ under Minn. R. Evid. 902” *State v. Ali*, 855 N.W.2d 235, 244-45 (Minn. 2014).

A. The district court did not abuse its discretion by concluding that the document was not authenticated through extrinsic evidence.

“The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.” Minn. R. Evid. 901(a). “[T]he authenticity of proffered evidence may be established through extrinsic evidence.” *Ali*, 855 N.W.2d at 245; *see also* Minn. R. Evid. 901(b)(1)-(10) (providing illustrations of conforming methods of authentication).

Kalif argues that testimony from his mother, Neighbor H.A., and Neighbor N.A. authenticated the document, generally because they clarified the bases for their respective claims that Kalif was younger than his reported January 1, 2001 birthdate would suggest. But as the district court explained, those witnesses’ claims regarding Kalif’s age and date of birth do not demonstrate that the purported birth certificate is *actually* a birth certificate. As the district court noted, neither Neighbor H.A. nor Neighbor N.A. testified about the document. The district court meanwhile rejected Kalif’s mother’s testimony based on its findings that she had “no personal knowledge about how the former neighbor obtained the document, what information was needed to obtain the document, who provided it to her, or how it was created.” Those findings are supported by the record.

Kalif also argues that he offered “reliable hearsay” based on a disclosed report “that the [s]tate[’]s investigator had received an email from U.S. Immigration [indicating] they

have contacted a representative from the Ethiopian Embassy to look at the Birth Certificate,” and that the embassy “told them that the document appears to be the newer form of Ethiopian birth certificates” with a valid, authenticated stamp. The district court made no findings regarding these communications. But Kalif fails to demonstrate why the multi-layered hearsay was reliable, and he cites no authority for the proposition that the district court abused its discretion by failing to credit such layered hearsay.

In sum, Kalif offered insufficient extrinsic evidence “to support a finding that the matter in question is what its proponent claims.” Minn. R. Evid. 901(a). The individuals who supposedly obtained the document did not testify, leaving the district court with no evidence as to exactly when, how, where, and from whom the document was obtained. Kalif’s mother lacked firsthand knowledge of such details. Accordingly, the district court did not abuse its discretion by concluding that the document was not authenticated pursuant to Minn. R. Evid. 901(a).

B. The district court did not abuse its discretion by declining to treat the document as self-authenticating.

Pursuant to Minn. R. Evid. 902(3), “[e]xtrinsic evidence of authenticity” is not required with respect to foreign public documents as follows:

A document purporting to be executed or attested in an official capacity by a person authorized by the laws of a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position (A) of the executing or attesting person, or (B) of any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution or attestation. A final certification may be made by a secretary of

embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may, for good cause shown, order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification.

The district court determined that Kalif failed to satisfy either requirement. Kalif does not challenge the finding that he failed to provide a final certificate of genuineness.

Even so, Kalif argues that the district court abused its discretion by finding no “good cause” to treat the document as presumptively authentic. The district court concluded that Kalif failed to establish good cause because he did not explain his failure to obtain a final certification or describe the efforts he undertook. Rather than challenging the district court’s reasoning, Kalif emphasizes that good cause existed because the state had ample opportunity to investigate the authenticity of the birth certificate but did not produce evidence refuting its authenticity. Kalif misstates the state’s burden. The state bore the burden of proving that Kalif was at least 18 years old on the date of the alleged offense, *see Ali*, 855 N.W.2d at 243, but Kalif bore the burden of authenticating the document as the proponent of the purported birth certificate. *See State v. Lopez-Ramos*, 913 N.W.2d 695, 708 (Minn. App. 2018), *aff’d*, 929 N.W.2d 414 (Minn. 2019). The district court did not abuse its discretion by declining to treat the document as self-authenticating.

Because the document was not authenticated pursuant to Minn. R. Evid. 901(a) or 902(3), we conclude that the district court did not abuse its discretion by excluding the purported birth certificate from evidence.

II. The district court did not abuse its discretion by denying Kalif's motion to dismiss for lack of subject-matter jurisdiction.

Kalif challenges the district court's denial of his motion to dismiss for lack of subject-matter jurisdiction, arguing that the district court erroneously ignored evidence, discredited certain testimony, declined to find Kalif's witnesses credible on the basis of cultural bias, and misconstrued certain testimony. The state contends that the district court's decision rested on its credibility determinations and that it correctly applied the law.

We typically review a district court's denial of a pretrial motion to dismiss for an abuse of discretion. *See State v. Olson*, 884 N.W.2d 395, 398-99 (Minn. 2016). We review factual findings for clear error. *Id.* at 399. Subject-matter jurisdiction is meanwhile a question of law that we review de novo. *Ali*, 806 N.W.2d at 54.

Generally, district courts have original jurisdiction over "all cases of crime committed or triable therein." Minn. Stat. § 484.01, subd. 1(2) (2018). But subject to certain exceptions, "the juvenile court has original and exclusive jurisdiction in proceedings concerning any child who is alleged to be delinquent . . . prior to having become 18 years of age." Minn. Stat. § 260B.101, subd. 1 (2018); *see also* Minn. Stat. § 260B.103, subd. 1 (2018); *Ali*, 806 N.W.2d at 50. "[W]hen the age of the defendant determines the jurisdiction of the court, the [s]tate has the burden of proving, by a preponderance of the evidence, the defendant's age on the date of the alleged offense." *Ali*, 806 N.W.2d at 54.

A. The district court did not ignore evidence regarding the exact birthdate.

Kalif argues that the evidence “supports the position . . . that the [s]tate cannot say with any degree of certainty that [Kalif] was actually born on January 1, 2001,” and that the district court erred by ignoring this fact. Contrary to Kalif’s argument, the district court acknowledged potential uncertainty regarding the specific birthdate of January 1, explaining: “The state . . . does not need to prove that January 1, 2001, is [Kalif’s] actual birthdate. The state need only prove . . . that Defendant was 18 years old as of the day of the alleged offense”

Although most of Kalif’s arguments focus on the district court’s rejection of the evidence he submitted, we emphasize that the state presented ample evidence supporting the district court’s findings and conclusions. Multiple government-issued documents indicated that Kalif’s birthdate was January 1, 2001. Kalif admitted to the sergeant that he was 18 years old. Kalif’s father twice represented January 1 birthdates in school-enrollment forms (one for 2001 and one for 2000). Kalif suggests that these representations merely repeated erroneous information from government documents, but we cannot say that the district court erred by assigning greater weight to that evidence, all of which demonstrate that Kalif was at least 18 years old at the time of the charged offense.

B. The district court did not clearly err by discrediting the testimony of Kalif’s mother, Neighbor H.A., and Neighbor N.A.

Kalif argues that the district court erred by failing to “properly consider” the testimony of Kalif’s mother, Neighbor H.A., and Neighbor N.A. “and the cumulative effect of the testimony” claiming that Kalif was born in October 2002. We review a district

court’s credibility determinations for clear error. *See Andersen v. State*, 940 N.W.2d 172, 177 (Minn. 2020).

The district court set forth in detail the reasons why it discredited the three witnesses’ claims. It noted that Kalif’s mother did not explain “how she recalled the date of the community gathering” and emphasized that she did not record or remember other important dates. It rejected Neighbor H.A.’s testimony based on her inability to recall any specific details regarding Kalif’s birthdate and her testimony’s inconsistency with Kalif’s claim that he was born in October 2002. And the district court rejected Neighbor N.A.’s claim for lack of first-hand knowledge.² The district court’s credibility determinations were supported by the record and explained thoroughly.³

C. Kalif’s claim of cultural bias is unsupported.

Kalif argues that the district court’s credibility determinations and its rejection of Kalif’s witnesses’ testimony resulted from the district court’s cultural biases. He contends that “[t]he witnesses’ testimony must be viewed and assessed from the lens of their culture, living situation, and limitations. What may not make sense as an explanation for an average

² With regard to Neighbor N.A.’s testimony, Kalif argues that no one could have personal knowledge of his own birthdate nor the birthdates of others born close in time. But the district court was able to hear testimony directly from Neighbor H.A.—the person who allegedly told Neighbor N.A. that he was older than Kalif—and the district court rejected Neighbor H.A.’s testimony as not credible.

³ Kalif also argues that an advisory given to Kalif’s mother regarding perjury penalties “undeniably influenced the court in [its] determination of [the] credibility of [Kalif’s mother] and [Kalif’s] other witnesses.” Kalif does not explain how the proceedings affected the district court’s findings regarding Neighbor H.A. and Neighbor N.A. And we cannot discern how the mother’s awareness of perjury consequences would persuade the district court that she gave knowingly false testimony.

person who grew up in the United States may be very logical for an illiterate person living in a hut in a refugee camp in Ethiopia.”

Kalif cites no authority requiring the district court to assess testimony in such a manner. Even so, our review of the record shows that the district court made numerous findings regarding the witnesses’ backgrounds, especially concerning Kalif’s family’s refugee status and the circumstances of their immigration. The district court’s reasons for rejecting witness testimony were premised on imprecise recollections and inconsistencies. Nothing in the record suggests that the district court was biased in its role as a fact-finder.

D. Any misconstruction of the associate principal’s testimony was harmless.

The district court found that the associate principal “expressed her opinion that [Kalif’s] age is consistent with a date of birth of January 1, 2001.” Kalif correctly argues that the associate principal did not testify to that fact. But in light of the district court’s other findings crediting the state’s evidence and discrediting Kalif’s evidence, we are confident that this single error was harmless. *See* Minn. R. Crim. P. 31.01 (“Any error that does not affect substantial rights must be disregarded.”).

Because the district court’s findings are not clearly erroneous and because it did not misapply the law, we discern no abuse of discretion by the district court. Accordingly, we affirm the order denying the motion to dismiss for lack of subject-matter jurisdiction.

Affirmed.