

*This opinion is nonprecedential except as provided by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
A21-1494**

State of Minnesota,
Respondent,

vs.

Franklin Xavier Johnson,
Appellant.

**Filed November 21, 2022
Affirmed
Worke, Judge**

Hennepin County District Court
File No. 27-CR-20-11477

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

Michael O. Freeman, Hennepin County Attorney, Kelly O'Neill Moller, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer Workman Jesness, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Gaïtas, Presiding Judge; Worke, Judge; and Jesson, Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant challenges his first-degree assault conviction, arguing that the jury pool was not representative of a fair cross-section of the community. We affirm.

FACTS

In July 2021, appellant Franklin Xavier Johnson went to trial on charges of first- and second-degree assault. During jury selection, the parties were given a list of the prospective jurors. Each of the jurors self-identified their date of birth, race, gender, and marital status.¹ The panel was comprised of jurors from four racial categories: 21 White, 1 Other race, 2 Multiple races, and 2 Asian. Two of the 26 potential jurors were dismissed for cause. Johnson, who identifies as Black, informed the district court that he did not “feel comfortable with the jury,” because it was not “a jury of [his] peers.” The district court gave Johnson a detailed explanation of the jury-selection process in Hennepin County before ordering the release of the “summary data regarding the racial composition of the jury pool.”

The district court provided the jury-composition statistics from January 2019 through July 2021 for both parties to review and submit arguments. Johnson moved the district court to strike the venire, arguing that his constitutional right to a representative jury was violated. The district court denied the motion.

The jury found Johnson guilty of aiding and abetting first- and second-degree assault. The district court adjudicated Johnson’s guilt for first-degree assault but did not adjudicate his guilt for second-degree assault as an included offense. The district court sentenced Johnson to 140 months in prison. This appeal followed.

¹ A prospective juror in Hennepin County may self-identify as one of the following categories: American Indian or Alaskan, Asian, Black, Hawaiian Pacific, White, Hispanic, Other, Multiple, or Unknown. The racial-composition data is kept and maintained by the Hennepin County Court Administration.

DECISION

Johnson argues that he is entitled to a new trial because the jury pool did not reflect a fair cross-section of the community.

The United States and Minnesota Constitutions require that a criminal defendant receive a fair trial. U.S. Const. amend. VI; Minn. Const. art. I, § 6. Within this requirement is a criminal defendant's right to a jury pool that "reflect[s] a fair cross-section of the community." *State v. Griffin*, 846 N.W.2d 93, 99 (Minn. App. 2014) (quotation omitted), *rev. denied* (Minn. Aug. 5, 2014). However, a criminal defendant is not guaranteed "a jury of a particular composition or one that mirrors the community." *Id.* (quotation omitted). This court reviews a fair-cross-section claim de novo. *See id.* at 99.

To make a prima facie showing that the jury venire failed to reflect a fair cross-section of the community, Johnson must meet the three prongs of the *Williams* test. *See State v. Williams*, 525 N.W.2d 538, 542 (Minn. 1994). To do this, he "must show that the group allegedly excluded is a 'distinctive' group in the community, that the group in question was not fairly represented in the venire, and that the underrepresentation was the result of a 'systematic' exclusion of the group in question from the jury selection process." *Id.* If Johnson makes "a prima facie showing of a violation, the government may rebut the showing by establishing that the system used manifestly and primarily advances a significant state interest that is incompatible with the fair cross-section requirement." *See id.*

Here, in denying Johnson’s motion to strike the venire, the district court determined that Johnson had failed to satisfy the third prong of the *Williams* test. We consider each prong of the *Williams* test individually.

Distinctive group

The parties agree with the district court’s determination that a “person self-identifying as [B]lack . . . including those who identify as two or more races would be considered a distinctive group in the community.” We also agree. *See Griffin*, 846 N.W.2d at 100 (concluding that when “parties agree that persons self-identifying as [B]lack are a distinctive group in the community . . . the first element of the *Williams* test” has been satisfied). Therefore, Johnson has satisfied prong one of the *Williams* test.

Fairly represented

To satisfy the second prong of the *Williams* test, Johnson must show “that the group in question was not fairly represented in the venire.” *See* 525 N.W.2d at 542. Here, the district court did not expressly determine that Johnson made a prima facie showing that Black jurors were unfairly represented; instead, the district court concluded that even if Johnson satisfied the second prong of the *Williams* test, “he has not satisfied the third.”

Johnson argues that “the number of Black jurors was not just lower [than in the years 2018 through 2020], it was unfair.” According to Johnson, “three years of analysis . . . is long enough to establish a credible trend and to provide a solid basis for statistical interpretation.” In district court, Johnson supported this argument by relying on a 2009 report from the Minnesota State Demographic Center (the report). According to the report, in 2005, Hennepin County had a total of 1,133,350 residents, with 118,190 of those

residents identified as Black—10.4%. The report projected that by 2020, the county’s total population would be 1,180,080, with 169,490 residents identifying as Black—14.4%. We note that the report includes residents that are both eligible and ineligible for jury service.²

The district court ordered the release of jury-pool data of the racial compositions of juries from January 2019 through July 2021.³ The table below represents the year-end totals for juries in 2019 and 2020, the year-to-date total for 2021 ending in July, and the racial composition of Johnson’s jury pool.

Race	2019	2020	2021	Johnson’s jury pool
Black	8.2%	6.2%	5.5%	0%
White	77.4%	80%	81.7%	80.8%
Other	2.1%	1.3%	0.6%	3.9%
Multiple	3%	3%	2.3%	7.7%
Asian	5.3%	5.4%	5.2%	7.7%

The district court noted that “the numbers of jurors in the jury panel self-identifying as [B]lack as well as those identifying as two or more races is lower than it has been in recent years, primarily years prior to the pandemic.”

² A resident is considered ineligible for jury service if the resident: is not a citizen of the United States; is under 18 years old; is unable to communicate in the English language; is not physically or mentally capable of rendering satisfactory jury service; has been convicted of a felony and has not had their civil rights restored; has served as a state or federal juror in the past four years; or is a judge serving in the judicial branch of the government. Minn. R. Gen. Prac. 808(b), (c).

³ The jury statistics provided information until July 6, 2021, the day before Johnson’s jury trial began.

The record shows that in 2021, jury pools in Hennepin County had an average of 5.5% of prospective jurors self-identifying as Black. Assuming the report's projections of Hennepin County residents are accurate, and further assuming the report's projected population growth rate is accurate, in 2021, 14.5% of the county's residents would have identified as Black. Johnson's panel of prospective jurors had zero jurors that self-identified as Black. Had one of the 26 prospective jurors self-identified as Black, Johnson's prospective jury would have statistically met the average amount of Black jurors between January and July 2021. For Johnson's prospective jury to mirror the projected 14.5% residents from Hennepin County in 2021 identifying as Black, four of the 26 prospective jurors would have had to self-identify as Black.

Assuming the report upon which Johnson relies is accurate, he has made a prima facie showing that Black jurors were unfairly represented in this jury pool from which the jury venire was selected. Therefore, the second prong of the *Williams* test has been satisfied.

Systematic exclusion

To satisfy the third prong of the *Williams* test, Johnson "must show that over a significant period of time—panel after panel, month after month—the group of eligible jurors in question has been significantly underrepresented on the panels and that this results from systematic exclusion." See *Griffin*, 846 N.W.2d at 101 (quotation & quotation marks omitted). Systematic exclusion is defined as "unfair or inadequate selection procedures used by the state rather than, *e.g.*, a higher percentage of 'no shows' on the part of people belonging to the group in question." *Williams*, 525 N.W.2d at 543. Johnson must show

“that the underrepresentation was not the result of reasonable and plausible alternative possibilities shown by the statistical data.” *See Griffin*, 846 N.W.2d at 102.

Johnson argues that Hennepin County’s use of “voter-registration, driver’s license, and identification-card information” in its jury-selection process systematically excludes Black jurors. But those sources must be used when creating a master jury list for each county. Minn. R. Gen. Prac. 806(b) (stating that “voter registration and drivers’ license list[s] for the county must serve as [venire] source list”). And the supreme court has repeatedly held that a “jury selection system that use[d] registered voters, driver’s licenses, and registered Minnesota identification card holders d[oes] not systematically exclude people of color.” *Andersen v. State*, 940 N.W.2d 172, 181-82 (Minn. 2020) (quoting *State v. Roan*, 532 N.W.2d 563, 569 (Minn. 1995)).

Here, the jury-selection process is the same that was used in *Andersen* and *Roan*. The table below shows the percentage of prospective jurors in Hennepin County that self-identified as Black from January 2019 through July 2021:

Months⁴	2019	2020	2021
January	7%	7.9%	5.3%
February	6.9%	5.775%	7.7%
March	6.65%	15.13%	4.9%
April	7.16%	<i>Not applicable</i>	6.7%

⁴ The jury-selection process in Hennepin County was suspended in April and May 2020 due to the COVID-19 pandemic.

Months⁴	2019	2020	2021
May	8.4%	<i>Not applicable</i>	4.675%
June	7.95%	2.72%	5.18%
July	9.06%	5.775%	6.1%
August	9.05%	7.8%	<i>Not available at the time of trial</i>
September	8.74%	5.125%	<i>Not available at the time of trial</i>
October	9.025%	4.95%	<i>Not available at the time of trial</i>
November	10.65%	7.08%	<i>Not available at the time of trial</i>
December	10.775%	5.3%	<i>Not available at the time of trial</i>
Year-end total	8.2%	6.2%	5.5%

The district court noted that Johnson’s systematic-exclusion argument failed “[b]ecause Hennepin County currently employs the same system [used in *Roan*], its jury selection procedures are not unfair or unjust.” Also, the record shows that there could be a “reasonable and plausible alternative” to the statistical drop in Black jurors, including voluntary “no shows,” persons ineligible for jury service, and the global COVID-19 pandemic. *See Griffin*, 846 N.W.2d at 102. And there is not enough data to show any systemic exclusion currently. Therefore, Johnson has failed to satisfy the third prong of the *Williams* test. Thus, Johnson’s claim that the jury pool was not representative of a fair cross-section of the community fails.

Affirmed.