

*This opinion is nonprecedential except as provided by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
A23-1751**

State of Minnesota,
Respondent,

vs.

Larry Dusaun Gray,
Appellant.

**Filed November 4, 2024
Affirmed
Larson, Judge**

Ramsey County District Court
File No. 62-CR-22-513

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

John J. Choi, Ramsey County Attorney, Anna R. Light, Assistant County Attorney,
St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Steven P. Russett, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larson, Presiding Judge; Worke, Judge; and Bjorkman,
Judge.

NONPRECEDENTIAL OPINION

LARSON, Judge

In this direct appeal, appellant Larry Dusaun Gray challenges his conviction for first-degree aggravated robbery pursuant to Minn. Stat. § 609.245, subd. 1 (2022). Gray argues that: (1) respondent State of Minnesota denied him the right to a speedy trial and

(2) the district court abused its discretion when it admitted certain identification evidence.¹
We affirm.

FACTS

On January 26, 2022, at 4:27 p.m., a black Jeep traveling southbound on Highway 280 crossed all the lanes of traffic and collided with a pole at Broadway Street NE, in St. Paul, Minnesota. An F-250 truck, driven by J.W., was stopped at a red light at the same intersection. The Jeep's driver, wearing a white or light grey sweatsuit, exited the Jeep, walked toward the F-250, and entered the F-250's passenger door. Soon thereafter, J.W. exited the F-250, and the Jeep's driver left the scene in the F-250.

Two separate law-enforcement agencies were dispatched to the intersection. Dispatch informed the responding sheriff's deputy that: (1) an F-250 had been "carjacked"; (2) the suspect was a "[b]lack male in his 30s with a heavy build"; (3) the suspect was wearing "all black clothing"; (4) the suspect possessed a gun; and (5) the suspect had abandoned the Jeep. Shortly thereafter, a state trooper arrived at the scene and questioned

¹ Gray also submitted a pro se brief raising largely the same issues. Gray additionally argued that he received ineffective assistance of counsel and attached correspondence not in the record on appeal. We conclude Gray's ineffective-assistance-of-counsel claim requires us to consider evidence outside the record. Where an ineffective-assistance-of-counsel claim requires consideration of matters outside the record, we generally conclude that a direct appeal is not the appropriate forum to raise the issue. *See Andersen v. State*, 830 N.W.2d 1, 10 (Minn. 2013); *see also State v. Gustafson*, 610 N.W.2d 314, 321 (Minn. 2000) ("Generally, an ineffective assistance of counsel claim should be raised in a postconviction petition for relief, rather than on direct appeal."). Therefore, we decline to reach the issue and Gray's "right to pursue an ineffective assistance of counsel claim in a petition for postconviction relief is preserved." *See Gustafson*, 610 N.W.2d at 321.

J.W. J.W. informed the trooper that an individual exited the Jeep, pulled a gun on J.W., forced J.W. out of the F-250, and drove away in the F-250.

At roughly 4:50 p.m., the trooper found Gray's Minnesota identification card inside the Jeep, which provided his height (5 feet, 10 inches), weight (250 pounds), and race (African American). The trooper showed the identification card to J.W. and asked whether J.W. recognized Gray. Within seconds, J.W. identified Gray as the Jeep's driver and confirmed that statement a few seconds later (hereinafter, "J.W.'s out-of-court identification").

Sheriff's deputies eventually located the F-250 in St. Paul and turned the case over to local police. Later that evening, law enforcement found Gray at the hospital, but they were unable to interview him.

The state charged Gray with first-degree aggravated robbery on January 31, 2022, and arrested him on September 23, 2022.² At a hearing on October 26, 2022, Gray pleaded not guilty, demanded a speedy trial, and gave notice that he would challenge the admissibility of J.W.'s out-of-court identification. The district court set a pretrial conference for November 16, 2022, a trial-management conference for December 14, 2022, and a trial date for the two-week period beginning December 14, 2022.

At the pretrial conference, the district court set an evidentiary hearing for December 8, 2022, to hear Gray's motion to suppress J.W.'s out-of-court identification.

² The reason for the delay in Gray's arrest is not clear from the record.

The district court left the trial date on the calendar. For reasons not apparent from the record, Gray's counsel did not file the motion to suppress until December 28, 2022.

At a hearing to address Gray's speedy-trial demand on December 29, 2022, the district court found good cause to extend the 60-day standard set forth in Minn. R. Crim. P. 11.09(b) to allow Gray to pursue his suppression motion. On January 17, 2023, the district court held an evidentiary hearing on Gray's suppression motion and set a briefing schedule. On May 25, 2023, the district court issued an order denying the motion to suppress. The district court determined that the trooper's identification procedure was unnecessarily suggestive, but J.W.'s out-of-court identification had an adequate independent origin under the totality of the circumstances.

On June 22, 2023, the parties appeared for trial, and the district court granted an extension to July 11, 2023, to accommodate unavailable state witnesses. On July 11, 2023, Gray waived his right to a jury trial. At the bench trial, the state called several witnesses, including J.W., the trooper, and the sheriff's deputy, and submitted a number of exhibits, including traffic-camera footage of the incident. The district court found Gray guilty of first-degree aggravated robbery and sentenced Gray to 108 months in prison with credit for 334 days.

Gray appeals.

DECISION

On appeal, Gray challenges his conviction on two grounds. First, Gray argues that he was deprived of his right to a speedy trial when his trial occurred eight months after he pleaded not guilty.³ Second, Gray argues the district court abused its discretion when it admitted J.W.’s out-of-court identification, challenging the determination that the identification had an adequate independent origin. We address each argument in turn.

I.

Gray argues that he was deprived of his right to a speedy trial because his trial occurred eight months after he pleaded not guilty. We review this issue de novo. *State v. Osorio*, 891 N.W.2d 620, 627 (Minn. 2017).

The United States and Minnesota Constitutions guarantee a criminal defendant the right to a speedy trial. U.S. Const. amend. VI; Minn. Const. art. I, § 6. In Minnesota, “trial is to commence within 60 days from the date of the demand unless good cause is shown . . . why the defendant should not be brought to trial within that period.” *State v. Hahn*, 799 N.W.2d 25, 29-30 (Minn. App. 2011) (quotation omitted), *rev. denied* (Minn. Aug. 24, 2011); *see also* Minn. R. Crim. P. 11.09(b) (requiring trial within 60 days of demand “unless the court finds good cause for a later trial date”). “When a defendant’s speedy trial

³ Gray argues the state’s pre-arrest delay supports a conclusion that his speedy-trial right was violated. Because Gray did not raise this issue in district court, all arguments made in relation to the pre-arrest delay are forfeited, and we decline to consider them. *See Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996); *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

right is violated, the only possible remedy is dismissal of the indictment.” *State v. Jones*, 977 N.W.2d 177, 190 (Minn. 2022) (quotation omitted).

Minnesota courts use a four-factor balancing test to determine whether a delay in a case violates a defendant’s speedy-trial right. *State v. Windish*, 590 N.W.2d 311, 315 (Minn. 1999). We must evaluate “(1) the length of the delay; (2) the reason for the delay; (3) whether the defendant asserted his . . . right to a speedy trial; and (4) whether the delay prejudiced the defendant.” *Id.* (citing *Barker v. Wingo*, 407 U.S. 514 (1972)). “None of these factors is either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial. Rather, they are related factors and must be considered together with such other circumstances as may be relevant.” *State v. Taylor*, 869 N.W.2d 1, 19 (Minn. 2015) (quotation omitted); *see also State v. Mikell*, 960 N.W.2d 230, 244 (Minn. 2021) (explaining that “the central question” is whether the state brought “the accused to trial quickly enough so as not to endanger the values that the right to a speedy trial protects”).

Here, as the state concedes, Gray’s trial began over 60 days from the date of the speedy-trial demand. In Minnesota, delays beyond 60 days from the speedy-trial demand presumptively satisfy the first factor. *See Windish*, 590 N.W.2d at 315-16. We, therefore, evaluate the remaining three factors. *See State v. Johnson*, 811 N.W.2d 136, 144 (Minn. App. 2012) (“Under Minnesota law, a delay of more than 60 days from the date of the speedy-trial demand is presumptively prejudicial, triggering review of the remaining three factors.”), *rev. denied* (Minn. Mar. 28, 2012).

A. Reason for the Delay

Gray first argues the reason-for-the-delay factor weighs in favor of concluding a speedy-trial violation occurred. Generally, the burden of protecting speedy-trial rights rests with the state. *Windish*, 590 N.W.2d at 317. But “[w]hen the overall delay in bringing a case to trial is the result of the defendant’s actions, there is no speedy trial violation.” *Taylor*, 869 N.W.2d at 20 (quotation omitted); *see also State v. Ray*, 659 N.W.2d 736, 748 (Minn. 2003) (concluding no violation when “the procedural history of the case makes clear that the delays were the result of [the defendant’s actions]”).

When evaluating the reason-for-the-delay factor, “the key question is whether the government or the criminal defendant is more to blame for the delay.” *Taylor*, 869 N.W.2d at 19 (quotation omitted). To make this determination, we first consider which party caused the delay. *See id.* at 19-20; *Osorio*, 891 N.W.2d at 629. Thereafter, we evaluate the reason for that delay because “different weights should be assigned to different reasons.” *Taylor*, 869 N.W.2d at 20 (quoting *Barker*, 407 U.S. at 531). “For instance, a [d]eliberate delay to hamper the defense weighs heavily against the prosecution, while neutral reason[s] such as negligence or overcrowded courts weigh less heavily.” *Id.* (quotation omitted).

The record documents four distinct delays in the pretrial schedule that caused Gray’s trial to occur eight months after his speedy-trial demand. According to Gray, these delays were largely attributable to the state and, therefore, this factor weighs in favor of finding a speedy-trial violation. We are not persuaded.

The first delay occurred when the district court moved the evidentiary hearing regarding Gray's motion to suppress from December 8, 2022, to January 17, 2023. The record shows the district court offered to set the evidentiary hearing in November 2022, but Gray's counsel asked for a later date. Also, for reasons not apparent from the record, Gray's counsel filed the motion to suppress on December 28, 2022, 20 days after the originally scheduled evidentiary hearing on December 8, 2022. The only explanation in the record is that the original "date did not work" and that the January 17, 2023 date "was picked by the agreement of counsel." We, therefore, conclude that the first delay was attributable to setting a mutually agreeable hearing date and Gray's decision to file the motion to suppress on December 28, 2022, making it neutral in our analysis.

The second delay occurred between the January 17, 2023 evidentiary hearing and the district court's order on May 25, 2023, to facilitate briefing and decisionmaking on Gray's motion to suppress. "Delays caused by defense motions generally weigh against the defendant." *Hahn*, 799 N.W.2d at 32. Here, the district court informed Gray before he filed the motion to suppress that the motion may require moving the trial date to facilitate that process. And filing the motion to suppress did, in fact, require moving the trial date. Thus, we conclude the second delay weighs against Gray.

The third delay occurred between the May 25, 2023 resolution of the suppression proceedings and the June 22, 2023 trial date, the earliest trial block available after the district court decided the motion to suppress. Generally, an administrative delay is not sufficient to show a violation of "a defendant's speedy-trial right in the absence of a deliberate attempt to delay trial." *Id.*; see also *Mikell*, 960 N.W.2d at 251 (stating that

delay will not be held against the state where it is the result of routine court scheduling). And, here, the record shows the state specifically asked for an earlier date to respect Gray's speedy-trial demand. Thus, there is no evidence of deliberate delay by the state, and the administrative delay is viewed more neutrally and not weighed heavily against the state.

The final delay occurred between June 22, 2023, and July 11, 2023, because state witnesses were unavailable for the June trial date. When delays are for good cause, they are not weighed against the state. *See Mikell*, 960 N.W.2d at 251. The unavailability of witnesses can constitute good cause for delay when the delay was not avoidable and the state is "diligent in attempting to make witnesses available." *Windish*, 590 N.W.2d at 317; *see also Mikell*, 960 N.W.2d at 251 (describing as good cause for delay situations wherein key witness of the state is unavoidably unavailable). Here, the district court set the June trial date "without consultation with whether the witnesses were available." The state's witnesses were unavailable for the June date, and the state asked for a continuance. We conclude that the record shows the state was diligent in attempting to make its witnesses available for trial and, therefore, the continuance does not weigh against the state.

Viewing these circumstances in their totality, we conclude that Gray is "more to blame for the delay." *See Taylor*, 869 N.W.2d at 19 (quotation omitted). The district court originally set a trial date within the required 60 days following Gray's speedy-trial demand, but moved the trial date to accommodate Gray's motion to suppress. While subsequent delays precipitated from that motion process, neither weighs heavily against the state. Therefore, the reason-for-the-delay factor weighs against concluding a speedy-trial violation occurred.

B. Assertion of Speedy-Trial Right

Gray next argues the assertion-of-speedy-trial-right factor weighs in favor of concluding a speedy-trial violation occurred because he repeatedly asserted his right. Under this factor, a defendant's assertion of the speedy-trial right "is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right." *Barker*, 407 U.S. at 531-32. We consider "the frequency and intensity of a defendant's assertion" as evidence of the seriousness and potential prejudice at play. *Hahn*, 799 N.W.2d at 32 (quoting *Windish*, 590 N.W.2d at 318); *see also State v. Paige*, 977 N.W.2d 829, 840 (Minn. 2022) ("[T]he strength of the demand is likely to reflect the seriousness and extent of the prejudice which has resulted." (quotation omitted)). However, these assertions "must be viewed in the light of [the defendant's] other conduct." *United States v. Loud Hawk*, 474 U.S. 302, 314 (1986).

We agree with Gray that this factor weighs slightly in his favor. Gray made a speedy-trial demand on October 26, 2022, and reasserted that demand at later hearings. Gray also filed a pro-se motion to dismiss for violating his speedy-trial right at the beginning of trial and renewed that motion at sentencing. Despite this, our conclusion that Gray's decision to file the motion to suppress primarily caused the delay means we give this factor less weight. *See Paige*, 977 N.W.2d at 841 (explaining assessment "focuses on whether the speedy-trial demands are accompanied by actions that undermine the ability for the trial to occur"); *see also Loud Hawk*, 474 U.S. at 314-15 (stating that defendant who repeatedly filed frivolous petitions and motions delaying his trial undermined seriousness

of his speedy-trial right demands). Therefore, we conclude the assertion-of-speedy-trial-right factor only weighs slightly in favor of concluding a speedy-trial violation occurred.

C. Prejudice

Gray finally argues that the prejudice factor weighs in favor of concluding a speedy-trial violation occurred because: (1) he was incarcerated during the delay; (2) he lost “his apartment, car, job, and livelihood”; (3) he “missed holidays with his family and his daughter’s graduation”; and (4) his defense may have been impacted due to J.W. not remembering the incident accurately.

We assess prejudice by considering the interests the speedy-trial right was designed to protect, namely “(i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired.” *Barker*, 407 U.S. at 532. The third interest is the “most serious,” as “the inability of a defendant adequately to prepare his case skews the fairness of the entire system.” *Id.* Prejudice to a defendant’s case is “obvious” if a witness dies or disappears during the delay, or if defense witnesses “are unable to recall accurately events of the distant past.” *Id.* A defendant need not prove that the delay actually impaired their defense. *See Mikell*, 960 N.W.2d at 254 (explaining that court may consider speculative harm to defendant because “excessive delay presumptively compromises the reliability of a trial in ways that neither party can prove or, for that matter, identify” (quotation omitted)).

Beginning with Gray’s arguments regarding the consequences of a lengthy pretrial incarceration, we conclude that Gray has failed to show prejudice because most of the delay is attributable to Gray. *See State v. Johnson*, 498 N.W.2d 10, 16 (Minn. 1993) (“[A]lthough

defendant's incarceration might have been unfortunate, the fact that much of the responsibility for that situation was his own weighs against his claim."").

And with regard to the impact to his defense, the record does not support Gray's contention that J.W.'s potential memory loss prejudiced his case. To the extent that J.W. failed to recall certain events, that testimony was minimal and immaterial to the elements the state needed to prove to support a conviction. Further, the state presented additional identification evidence beyond J.W.'s in-court identification. And Gray's defense counsel explicitly used J.W. failing to remember specific details as impeachment evidence to undermine his in-court identification.

For these reasons, the prejudice factor weighs against concluding Gray was deprived of his right to a speedy trial.

D. Balancing the Factors

After balancing the relevant factors, we conclude Gray was not deprived of his right to a speedy trial. While trial occurred eight months after Gray's speedy-trial demand, the record shows the delay was most attributable to Gray's motion to suppress. Additionally, while Gray did assert his speedy-trial right early and often, the record indicates that Gray did not suffer any prejudice from the delay. Instead, the delay likely assisted his defense in providing a basis on which to attack J.W.'s in-court identification. Therefore, we conclude that Gray was not deprived of his constitutional right to a speedy trial.

II.

Gray argues the district court abused its discretion when it admitted J.W.'s out-of-court identification. Gray contends the district court correctly determined that the trooper's

identification procedure was unnecessarily suggestive, but abused its discretion when it determined J.W.'s out-of-court identification had an adequate independent origin.

Generally, we review the district court's evidentiary decisions for an abuse of discretion. *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). But we review de novo whether an individual has been denied due process. *Spann v. State*, 704 N.W.2d 486, 489 (Minn. 2005). "The admission of pretrial identification evidence violates due process if the procedure 'was so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification.'" *State v. Hooks*, 752 N.W.2d 79, 83-84 (Minn. App. 2008) (quoting *Simmons v. United States*, 390 U.S. 377, 384 (1968)).

Minnesota courts apply a two-part test to determine whether a defendant's police-procured pretrial identification must be suppressed. *State v. Ostrem*, 535 N.W.2d 916, 921 (Minn. 1995). The test is "designed to measure whether *police influence* rather than *the witness's own reasoning and recollection* led to the witness's identification of the defendant." *Hooks*, 752 N.W.2d at 84 (citing *State v. Taylor*, 594 N.W.2d 158, 161 (Minn. 1999)).

Under the test, we first assess "whether the [identification] procedure was unnecessarily suggestive." *Ostrem*, 535 N.W.2d at 921. Here, the state concedes, and we agree, that the trooper used an unnecessarily suggestive identification procedure. We therefore move to the second part of the test.

Under the second part of the test, we evaluate whether "the totality of the circumstances establishes that the evidence was reliable." *Id.* To do so, we consider five factors: (1) the opportunity of the witness to view the criminal at the time of the crime;

(2) the witness's degree of attention; (3) the accuracy of the witness's prior description of the criminal; (4) the level of certainty demonstrated by the witness; and (5) the time between the crime and the confrontation. *Id.* We review each factor in turn.

A. Opportunity to View

Gray argues the district court's determination that J.W. had an opportunity to view the individual who took the F-250 is not supported by evidence available at the time of the hearing. We disagree.

The video footage of the incident indicates that J.W. had the opportunity to view the individual who took the F-250. The accident occurred near the F-250, allowing J.W. to see the individual as he exited the Jeep and approached the F-250 during daylight hours. J.W. was only a few feet away from the individual when he opened the F-250's passenger door and spoke with J.W. before J.W. exited the F-250. Approximately 26 seconds elapsed from the time the individual exited the Jeep to J.W. exiting the F-250. Based on this evidence, we conclude J.W.'s opportunity to view the individual weighs in favor of admission.

B. Degree of Attention

Gray next argues the presence of a gun negatively impacted J.W.'s attention on the individual who took the F-250 and should weigh against admission. To support his argument, Gray cites *State v. Gluff* where an identification did not satisfy the five-factor test, in part, because the victim testified "her eyes were riveted on the gun." 172 N.W.2d 63, 65 (Minn. 1969).

While this case has some factual similarities to *Gluff*, we are not aware of any case that establishes that the presence of a weapon, by itself, reduces a victim's degree of

attention. Rather, caselaw indicates a victim's identification is reliable if the evidence shows they were "coherent, aware, and attentive" during the incident. *State v. Adkins*, 706 N.W.2d 59, 63 (Minn. App. 2005).

Here, unlike *Gluff*, J.W. testified that the presence of a gun caused him to be "frightened," but his testimony does not suggest the gun impacted his view of the individual who took the F-250. *See* 172 N.W.2d at 65. Instead, J.W.'s initial description to police is consistent with a high degree of observation and attention to detail. The evidence suggests that J.W. had a detailed and consistent recollection of the events that transpired, which support a finding that he was "coherent, aware, and attentive." *See Adkins*, 706 N.W.2d at 63. For these reasons, we conclude the degree-of-attention factor weighs in favor of admitting J.W.'s out-of-court identification.

C. Accuracy of Prior Description

Gray next argues that J.W. provided an inaccurate description of the individual who stole the F-250. Gray highlights that J.W. reported that the individual was in his 30s and "wearing all black clothing," while the video footage plainly shows the individual in white or light grey clothing and Gray was over forty.

Here, we agree with Gray that J.W. inaccurately reported the color of the clothing the individual was wearing. But one inaccurate clothing detail does not make the description unreliable as a whole. *See Seelye v. State*, 429 N.W.2d 669, 673 (Minn. App. 1988) (classifying description as "on the whole, accurate" even though "[t]he height was off, and [the witness] did not notice a mustache"). Further, we disagree that J.W.'s report

that the individual was in their “30s” *inaccurately* described a 41-year-old person given the subjective nature of evaluating a person’s age.

Given the slight inaccuracy, we conclude that this factor is neutral in evaluating whether J.W.’s out-of-court identification was admissible.

D. Level of Certainty

Gray asserts that J.W.’s certainty when he identified Gray on January 26, 2022, was likely the result of the suggestive identification procedure and should not support the identification’s reliability. To support his argument, Gray cites a Massachusetts Supreme Court case noting that “[s]ocial science research has shown that a witness’s level of confidence in an identification is not a reliable predictor of the accuracy of the identification, especially where the level of confidence is inflated by its suggestiveness.” *See Commonwealth v. Crayton*, 21 N.E.2d 157, 168 (Mass. 2014). We are not persuaded.

“[W]e are an error-correcting court and it is not [our role] to abolish established judicial precedent.” *Adkins*, 706 N.W.2d at 63. Regardless of the development of social-science research, we cannot alter the test the supreme court established. And here the record plainly shows that J.W. expressed certainty in his identification and his subsequent confirmations occurred without hesitation. For these reasons, this factor weighs in favor of admissibility.

E. Length of Time

Lastly, Gray emphasizes that the identification was not “instantaneous and certain.” Instead, Gray observes that the identification occurred roughly 20 minutes after the

incident. The state argues 20 minutes is minimal and shows the identification is reliable. We agree with the state.

We have repeatedly concluded that short gaps in time, like the one that occurred in this case, support concluding an identification is reliable. *Id.* at 61, 63 (a show-up conducted 25 minutes after burglary was “minimal” time between crime and confrontation); *State v. Navarro*, No. A22-1246, 2023 WL 5522185, at *3 (Minn. App. Aug. 28, 2023) (“Generally, when less than 48 hours have elapsed between the witness’s observation and the identification of the perpetrator, the identification evidence is considered reliable.” (citing *Ostrem*, 535 N.W.2d at 922)).⁴ Applying this caselaw, the 20 minutes between the incident and first identification, and subsequent confirmation a few seconds later, was a relatively short gap in time and weighs in favor of finding J.W.’s out-of-court identification admissible.

F. Balancing the Factors

Balancing the relevant factors, we conclude that the totality of the circumstances demonstrates that J.W.’s statement had an independent reliable origin. Four of the factors support that J.W.’s out-of-court identification had an independent reliable origin, and one

⁴ This case is nonprecedential and, therefore, not binding. We cite *Navarro* as persuasive authority only. See Minn. R. Civ. App. P. 136.01, subd. 1(c).

factor is neutral. Therefore, we conclude the district court did not abuse its discretion when it denied Gray's motion to suppress.⁵

Affirmed.

⁵ Even if the district court had abused its discretion, we conclude the error is harmless beyond a reasonable doubt. *State v. Jones*, 556 N.W.2d 903, 913 (Minn. 1996) (“Looking to the whole of the evidence on which the jury based its verdict, we [conclude] that the verdict was surely unattributable to [the witness’s] pre-trial identification.”). There was ample evidence submitted at trial that identified Gray as the individual who took the F-250, including: a woman identifying Gray as driving a Jeep with the same license-plate number; video footage from a mall depicting a man with similar physical features committing theft prior to the incident; a mall-asset-protection manager’s testimony that the theft suspect had the same physical features and subsequently escaped in a Jeep with the same license-plate number; traffic-camera footage of the incident; the trooper’s testimony that the contents found in the Jeep were similar to those held by the mall shoplifter; the trooper’s testimony that Gray’s identification card was found in the Jeep; and the identification card’s description and picture matching the same general descriptions provided by the other sources above.