

*This opinion is nonprecedential except as provided by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
A23-1947**

State of Minnesota,
Respondent,

vs.

Perry Karnell Coleman,
Appellant.

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

Ramsey County District Court
File No. 62-CR-23-2986

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

John J. Choi, Ramsey County Attorney, Alexandra Meyer, Assistant County Attorney,
St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, John Patrick Monnens, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Frisch, Presiding Judge; Connolly, Judge; and
Cochran, Judge.

NONPRECEDENTIAL OPINION

FRISCH, Judge

In this direct appeal following his convictions for domestic assault by strangulation
and violation of a domestic-abuse no-contact order, appellant argues he is entitled to a new

trial because the jury venire did not represent a fair cross-section of Black residents of Ramsey County. In a pro se supplemental brief, appellant argues that he is entitled to relief because a witness was not truthful during testimony, the prosecutor committed misconduct, and appellant received ineffective assistance of counsel. Because appellant has not met his burden under existing caselaw to demonstrate that systematic exclusion caused the underrepresentation of Black jurors in the jury venire and has not shown that he is otherwise entitled to relief, we affirm.

FACTS

Respondent State of Minnesota charged appellant Perry Karnell Coleman with domestic assault by strangulation pursuant to Minn. Stat. § 609.2247, subd. 2 (2022), and violation of a domestic-abuse no-contact order (DANCO) pursuant to Minn. Stat. § 629.75, subd. 2(d)(1) (2022). The following facts were elicited at trial.

Coleman and A.C. began a romantic relationship during the summer of 2021 and moved in together in January 2022. After the relationship ended, Coleman would “show up” at A.C.’s house without permission. On March 28, 2023, the district court issued a DANCO prohibiting Coleman from contacting A.C.

On May 23, Coleman showed up at A.C.’s home, and A.C. confronted him. Coleman hit, pushed, kicked, and strangled A.C. A.C. then ran from her home to a nearby gas station and asked an employee to call 911. Police officers arrived at the gas station, took a statement from A.C., and photographed scratches and red marks on A.C.’s neck, bruising on her face, and marks on her arms.

During voir dire, Coleman “[c]halleng[ed] the construction” of the jury venire,¹ noting that of 31 jurors who appeared during voir dire, only one juror identified as Black and one identified as multiracial. Coleman noted that 12% of Ramsey County’s population identifies as Black but only 6% of jurors summoned for jury duty in Ramsey County identified as Black. In response, the state referenced an order previously decided by the Ramsey County chief judge “determining that the [jury] pool is fair” (the consolidated order). The district court stated it was familiar with the consolidated order and that this order provided that other judges in Ramsey County “may, in their discretion, utilize this memorandum [and] order in future fair cross selection jury challenges.” The district court then summarily incorporated the consolidated order and “the decision and reasons for it” “by reference” and denied Coleman’s challenge “on the substance.” But the district court also noted that Coleman had not filed a written motion challenging the composition of the jury and stated an expectation that Coleman would file such a written challenge. *See* Minn. R. Crim. P. 26.02, subd. 3 (requiring a challenge to a jury panel in writing). The district

¹ Jury “venire” is defined as “[a] panel of persons selected for jury duty and from among whom the jurors are to be chosen.” *Black’s Law Dictionary* 1875 (12th ed. 2024). We have, at times, applied interchangeably the terms “jury pool,” “jury venire,” and “jury panel.” *See, e.g., State v. Griffin*, 846 N.W.2d 93, 100-01 (Minn. App. 2014) (quotation omitted), *rev. denied* (Minn. Aug. 5, 2014). And the rules of criminal procedure appear to use “jury list” in place of “jury pool” and use “jury panel” in place of “jury venire.” *See* Minn. R. Crim. P. 26.02, subds. 1-2. Based on a review of caselaw, we conclude that “jury pool” describes the group of jurors summoned for jury service during a given week, “jury venire” describes the group of prospective jurors drawn from the jury pool for voir dire in a particular case, and “jury panel” describes the jurors seated in that case. *See State v. Boyce*, No. A22-1808, 2024 WL 220409, at *1 n.1 (Minn. App. Jan. 22, 2024), *rev. denied* (Minn. Apr. 16, 2024); *see also State v. Smith*, 9 N.W.3d 543, 557 n.6 (Minn. 2024) (noting that “[a] jury pool” is the group “summoned for jury service and from among whom jurors will be chosen for a specific case”). We refer to each group with these definitions in mind.

court also directed Coleman to specify if “there’s anything more that [the district court] should look at.”

Coleman filed a written motion the following day. In that motion, Coleman reiterated his challenge to the composition of the jury venire, arguing it was not fairly representative because only one of the 31 jurors in the venire identified as Black and one identified as multiracial. The representation of Black and multiracial jurors in the venire was therefore 6.4%. In addition, Coleman submitted jury-pool demographics in Ramsey County for 2018 through 2021, population data for Ramsey County from the 2020 U.S. Census, and data reflecting a racial breakdown of Ramsey County citizens eligible for jury service in 2021 based on 2010 U.S. Census Data. Upon receipt of these written materials, the district court reiterated its decision denying the motion, stating that the motion was “on all four corners the same” as the fair-representation challenges at issue in the consolidated order and that the statistics in Coleman’s motion “mirror the statistics” considered in the consolidated order.

The matter proceeded to trial, and the jury found Coleman guilty of both charges. The district court entered convictions for both offenses and sentenced Coleman to 30 months’ imprisonment.

Coleman appeals.

DECISION

I. Under existing caselaw, Coleman did not satisfy his burden to make a prima facie case that the jury venire did not represent a fair cross-section of Ramsey County citizens eligible for jury service.

Coleman argues that he is entitled to a new trial because the district court erred by denying his motion to strike the jury venire. We review Coleman’s claim that the jury venire did not represent a fair cross-section of the community de novo.² *Smith*, 9 N.W.3d at 557.

A criminal defendant has the right to a “jury venire” that “reflect[s] a fair cross-section of the community.” *Griffin*, 846 N.W.2d at 99-100 (quotation omitted); *see also* U.S. Const. amend. VI (“In all criminal prosecutions, the accused shall enjoy the right to . . . an impartial jury of the . . . district wherein the crime shall have been committed”); Minn. Const. art. I, § 6 (same); Minn. R. Crim. P. 26.02, subd. 1 (“The jury list must be composed of persons randomly selected from a fair cross-section of qualified county residents.”). But neither federal nor state constitutional law “guarantee[s]

² We note that our review on appeal is frustrated by the district court’s failure to consider and evaluate the specific evidence presented by Coleman. The record reflects that the district court summarily rejected the challenge to the jury venire and then reiterated its rejection to that challenge after Coleman submitted his motion and supporting evidence in writing, noting that Coleman’s motion was “on all four corners the same” as the motion at issue in the consolidated order. But the record reflects that Coleman’s motion was not “on all four corners the same” as the consolidated order because Coleman submitted eligibility data that was not considered by the chief judge in determining the fair-representation challenges addressed in the consolidated order. Notwithstanding this clear error, we review Coleman’s fair-representation challenge de novo based on the evidence he produced in support of his motion. *See Smith*, 9 N.W.3d at 557. In so doing, we emphasize that while the consolidated order provides the option for other district court judges in Ramsey County to “utilize” the consolidated order’s reasoning, a district court must still consider each fair-representation challenge based on the evidence presented in support of the challenge.

a criminal defendant a jury of a particular composition or one that mirrors the community.” *State v. Williams*, 525 N.W.2d 538, 542 (Minn. 1994).

To make a prima facie showing that a jury venire did not reflect a fair cross-section of the community, Coleman bears the burden to show that (1) “the group allegedly excluded is a ‘distinctive’ group in the community,” (2) “the group in question was not fairly represented in the venire,” and (3) “the underrepresentation was the result of a ‘systematic’ exclusion of the group in question from the jury selection process.” *Id.* (quoting *Duren v. Missouri*, 439 U.S. 357, 364-67 (1979)). If Coleman meets this burden, the state may rebut the prima facie showing by establishing that the jury-selection process advanced a significant state interest.³ *Hennepin County v. Perry*, 561 N.W.2d 889, 896 (Minn. 1997).

Regarding the first two *Williams* elements, Coleman has met his prima facie burden. First, Black individuals are a distinctive group in Ramsey County. *See Williams*, 525 N.W.2d at 542 (identifying Black people as a distinctive group in the context of a fair-representation challenge). Second, Coleman submitted data showing underrepresentation of Black individuals in the venire. Coleman’s jury venire consisted of 31 jurors, including one juror who identified as Black and one juror who identified as multiracial, reflecting 6.4% of Black and multiracial individuals in the venire. The 2020 U.S. Census data

³ Coleman challenges the representativeness of the jury venire only on Sixth Amendment grounds and does not raise an equal-protection claim. *See State v. Willis*, 559 N.W.2d 693, 700 (Minn. 1997) (differentiating between the appellant’s challenge to the jury venire on these grounds); *Castaneda v. Partida*, 430 U.S. 482, 493-94 (1977) (addressing an equal-protection challenge to grand-jury-selection process).

provided by Coleman indicates that 12.9% of the population in Ramsey County identifies as Black, and 2010 U.S. Census data indicates that 9.34% of jury-service-eligible Ramsey County citizens identify as Black. *See Smith*, 9 N.W.3d at 558 (considering the jury-eligible population rather than the general population of a county in assessing the second *Williams* element). Because the percentage of individuals who identified as Black in Coleman’s venire is lower than both the respective population and jury-eligible population of Black residents, Coleman met his burden to establish that Black individuals were not fairly represented in the venire.

We conclude, however, that Coleman failed to meet his burden to establish that systematic exclusion produced the underrepresentation of Black jurors in the venire. To satisfy the third *Williams* element, Coleman 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.” *Williams*, 525 N.W.2d at 543. “Systematic exclusion” refers to “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.” *Griffin*, 846 N.W.2d at 102 (quoting *Williams*, 525 N.W.2d at 543). In other words, our existing caselaw requires Coleman to establish systematic exclusion by proving that (1) Black individuals have been consistently underrepresented in Ramsey County jury venires *because of* the procedures used to identify and summon individuals for jury duty, and (2) that this underrepresentation cannot be explained by “reasonable and plausible alternative possibilities shown by the statistical data.” *Id.*; *see also Smith*, 9 N.W.3d at 559 n.10

(stating that fair-representation challengers are “not required to disprove all other plausible and alternative explanations for racial imbalance in a jury pool; instead, to make a prima facie fair cross-section claim, they must at least facially show the presence of underrepresentation and the lack of possible and alternative explanations for racial imbalance in a jury pool”).

The supreme court’s fair-representation caselaw guides our analysis of the third *Williams* element. In *Williams*, the supreme court considered a challenge to a Ramsey County jury venire drawn from a jury pool summoned using a source list of registered voters, licensed drivers, and state-identification-card holders. 525 N.W.2d at 541. The challenger provided 1990 census data showing that Ramsey County had an African American population of 3.7% of its total population while only two prospective jurors of the 102-member jury pool self-identified as African American. *Id.* at 541-42. The supreme court rejected the claim, concluding that “the evidence fail[ed] to establish systematic exclusion” where the data provided by the challenger showed weeks where African Americans were overrepresented in the jury pool and that “in the last two years overall they were not nearly as underrepresented” as on the challenger’s jury venire. *Id.* at 543-44.

Similarly, in *State v. Roan*, the supreme court concluded that a fair-representation challenge to a jury venire containing 5.3% ethnically or racially diverse jurors failed on the third *Williams* element. 532 N.W.2d 563, 569 (Minn. 1995). The supreme court determined that while the challenger “may have shown that over a period of time the group of eligible jurors of color has been underrepresented, [he] failed to demonstrate the underrepresentation result[ed] from systematic exclusion.” *Id.* (quotation omitted). The

supreme court relied in part on the “Hennepin County Grand Jury Task Force Report,” which estimated that the county “reaches over 98 percent of its citizens” by using a source list derived from registered voters, licensed drivers, and state-identification-card holders. *Id.*; see also *Andersen v. State*, 940 N.W.2d 172, 182 (Minn. 2020) (concluding that the fair-representation challenge failed on the third *Williams* element in part because the challenger “adduced no historical or contemporaneous evidence or statistical analysis to factually support his argument that the jury selection as conducted . . . systematically excluded” the distinctive group identified).

Most recently, in *Smith*, the supreme court considered a fair-representation challenge to grand jury panels in Hennepin County. 9 N.W.3d at 556-57. The supreme court concluded that the challenger’s claim failed on the second and third elements of the *Williams* test. *Id.* In analyzing the second element, the court concluded that the challenger’s claim failed because his statistical evidence did not show that the jury pools in question underrepresented the county’s *jury-eligible* Black population. *Id.* at 558-59. The court then considered the third element and concluded that the data did not show consistent underrepresentation of the Black population of Hennepin County on grand juries, and that the challenger’s “supporting documents cannot rule out the impact of alternative and plausible explanations for the existence of underrepresentation in the jury pool, such as failure to appear for jury duty, non-responsiveness to jury summons, hardship excusals, and disqualification from jury duty because of ineligibility.” *Id.* at 559-60.

Our application of the *Williams* test further illuminates our analysis of Coleman’s fair-representation challenge. In *Griffin*, we concluded that a challenger failed to make a

prima facie showing that the jury venire violated his right to a fairly representative jury. 846 N.W.2d at 103. With respect to the third *Williams* element, we noted that the challenged jury-selection process was the same system challenged in *Roan* and noted that the challenger’s county statistics suggested that much of the population were likely ineligible for jury service. *Id.* at 101-02. We concluded that because the challenger could not “facially demonstrate the absence of alternative explanations for the underrepresentation” of Black jurors, the challenger had not met their burden to demonstrate a prima facie case. *Id.* at 103; *see also State v. Brown*, 937 N.W.2d 146, 158 (Minn. App. 2019) (declining to consider an appellant’s fair-representation challenge where they “provide[d] no legal arguments and point[ed] only to the racial composition” of the jury panel), *rev. denied* (Minn. Feb. 18, 2020).

Against the backdrop of this binding precedent, we conclude that the data submitted by Coleman in this motion does not satisfy the third *Williams* element. While the evidence submitted by Coleman captures two important data points to support his claim of underrepresentation—the percentage of individuals who identify as Black in Ramsey County jury pools between 2018 and 2021 and those who identified as Black or multiracial in Coleman’s venire—our caselaw makes clear that the fact of underrepresentation in the jury pool is not the end of the fair-representation inquiry. Coleman did not request or submit any data showing the percentage of individuals who identified as Black who were contacted for jury duty or data reflecting the historical racial make-up of jury venires in Ramsey County. Without one or both data points, we cannot conclude that Coleman has met his burden to demonstrate that *the procedures* used to identify and summon individuals

for jury duty in Ramsey County are the *systemic cause* of the underrepresentation of Black individuals as shown in the jury pool data and Coleman’s jury venire.

Coleman argues that the data he provided sufficiently demonstrates systematic exclusion. We disagree. We cannot infer from the data submitted by Coleman that the same underrepresentation problem in Coleman’s venire exists in “panel after panel” in Ramsey County. *Williams*, 525 N.W.2d at 543. We also are unable to infer from the data submitted by Coleman that selection procedures used by the state to create the prospective juror lists are “unfair or inadequate.” *Griffin*, 846 N.W.2d at 102. And because our caselaw is clear that Coleman bears the burden to demonstrate systematic exclusion, we decline to conclude that Coleman met his burden. *See Smith*, 9 N.W.3d at 566 (Thissen, J., concurring).

Because Coleman has not met his burden to establish systematic exclusion, we conclude that he has failed to demonstrate a *prima facie* case under *Williams*. But we take this opportunity to emphasize that the data Coleman submitted reflecting the racial breakdown of eligible residents in Ramsey County addresses a previously identified shortcoming in earlier challenges to the fair representation of a jury venire. In *Griffin*, we rejected a fair-representation challenge in part because the statistics provided by the challenger reflected that much of the county population was under 18 and was “foreign-born.” *Griffin*, 846 N.W.2d at 103. Unlike the data in *Griffin*, the data provided by Coleman does not indicate an “alternative explanation” for the underrepresentation of Black individuals in Ramsey County jury pools. *See id.* As discussed, Coleman provided data reflecting the proportion of the *jury-eligible* population that identify as Black thus

eliminating eligibility as an “alternative explanation” for the underrepresentation of Black residents on Ramsey County juries.

In sum, because Coleman has not shown that the procedure used to identify and summon individuals for jury duty in Ramsey County is the systematic cause of the underrepresentation of Black individuals, he has not met his *prima facie* burden to demonstrate that the jury venire did not reflect a fair cross-section of the Ramsey County community.

II. The issues raised in Coleman’s pro se supplemental brief do not merit relief.

Coleman raises three issues in his pro se supplemental brief: (1) that A.C. was not truthful in her testimony, (2) that the prosecutor committed misconduct, and (3) that he received ineffective assistance of counsel. We conclude that none of these issues entitle him to relief.

First, we decline to disturb the jury’s reliance on A.C.’s testimony given that Coleman cross-examined A.C. about inconsistent statements, and the jury nevertheless credited her testimony. *See State v. Dickerson*, 481 N.W.2d 840, 843 (Minn. 1992) (“The credibility of witnesses and the weight to be given their testimony are determinations to be made by the factfinder.” (quotation omitted)).

Second, Coleman has not shown that the prosecutor committed misconduct by “coaching” a witness from the gallery. The record reflects that the district court addressed perceived coaching of A.C. during the beginning of her testimony and asked the prosecutor to instruct the person to stop. The record also reflects that the district court did so

immediately after noting the potential coaching. Coleman’s trial attorney did not object or make any further record when the district court addressed this issue.

We apply the modified plain-error test to unobjected-to claims of prosecutorial misconduct. Coleman bears the burden to “demonstrate that the misconduct constitutes (1) error, (2) that was plain.” *State v. Portillo*, 998 N.W.2d 242, 248 (Minn. 2023) (quotation omitted). If Coleman establishes plain error, “the burden then shifts to the State to demonstrate that the error did not affect the defendant’s substantial rights.” *Id.* (quotation omitted). Coleman fails to meet this burden because he has not connected the coaching of the witness from the person in the gallery to the prosecutor. And even assuming that Coleman demonstrated plain error, the state has met its burden to demonstrate that the error did not affect Coleman’s substantial rights because the coaching was addressed swiftly and clearly by the district court and occurred before A.C. began substantively testifying. *See id.*

Third, we decline to reach Coleman’s argument that he received ineffective assistance of counsel because counsel commented that he was unprepared to proceed to trial, failed to offer relationship evidence from Coleman to rebut the state’s relationship evidence, and did not make a record of coaching during A.C.’s testimony. “Generally, an ineffective assistance of counsel claim should be raised in a postconviction petition for relief, rather than on direct appeal.” *State v. Gustafson*, 610 N.W.2d 314, 321 (Minn. 2000). But we may address an ineffective-assistance claim in a direct appeal if “there is no need for additional facts to explain the attorney’s decisions.” *Black v. State*, 560 N.W.2d 83, 85 n.1 (Minn. 1997).

The record is not sufficiently developed to determine whether Coleman’s trial attorney provided ineffective assistance. There is no evidence in the record, for example, as to the effect of counsel’s performance on the verdict or whether counsel’s choices were tied to trial strategy. *See State v. Vang*, 847 N.W.2d 248, 267 (Minn. 2014) (“Generally, we will not review an ineffective-assistance-of-counsel claim that is based on trial strategy.”). We therefore decline to address Coleman’s claims of ineffective assistance of counsel on direct appeal.⁴

Affirmed.

⁴ We note that because the record is inadequate and we decline to consider the ineffective-assistance-of-counsel claim on the merits, our opinion does not affect Coleman’s ability to pursue such a claim in postconviction proceedings.