

STATE OF MINNESOTA

IN SUPREME COURT

A25-0973

Hennepin County

Hudson, C.J.

State of Minnesota,

Respondent,

vs.

Filed: September 30, 2026
Office of Appellate Courts

Johnny Leroy Brown,

Appellant.

Keith Ellison, Attorney General, Saint Paul, Minnesota; and

Mary F. Moriarty, Hennepin County Attorney, Nicole Cornale, Assistant County Attorney, Minneapolis, Minnesota, for respondent.

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

S Y L L A B U S

1. The district court did not clearly err in denying appellant's *Batson* challenge to the State's exercise of a peremptory strike against the only remaining Black venire member.
2. The district court did not abuse its discretion in admitting expert testimony about domestic violence.

3. The prosecutor's statements during closing argument did not amount to prosecutorial misconduct.

4. The district court's unobjected-to failure to instruct the jury that it had to unanimously agree on the domestic abuse element of the first-degree murder charge did not affect appellant's substantial rights.

5. Any claims raised in appellant's pro se supplemental brief are forfeited.

Affirmed.

O P I N I O N

HUDSON, Chief Justice.

Following appellant Johnny Brown's fatal shooting of Kesha Moore, a Hennepin County jury found Brown guilty of first-degree murder while committing domestic abuse with a past pattern of domestic abuse under Minn. Stat. § 609.185(a)(6) and being a prohibited person in possession of a firearm under Minn. Stat. § 624.713, subd. 1(2). In the brief filed by his lawyer, Brown challenges his convictions based on four alleged errors. First, Brown argues the district court clearly erred by denying his *Batson* challenge to the State's use of a peremptory strike against the only remaining Black venire member. Second, Brown argues the expert testimony about domestic abuse was unhelpful, amounted to character evidence, and invited the jury to make impermissible inferences, and therefore the district court abused its discretion by admitting it. Third, Brown argues the prosecutor committed prosecutorial misconduct in closing argument by vouching for the credibility of a witness, disparaging the defense, arguing facts not in evidence, and attacking Brown's character. Lastly, Brown argues the district court

committed plain error by failing to instruct the jury they had to unanimously agree on the domestic abuse element of the first-degree murder charge. Brown also filed a pro se supplemental brief.

Based on the errors alleged above, Brown asks us to reverse his convictions and remand for a new trial. Because we conclude that Brown has not shown reversible error, we affirm Brown's convictions.

FACTS

The following facts are based on the State's evidence at trial. On December 17, 2023, Brown fatally shot Moore in their shared apartment ("the apartment") in Minneapolis. Brown met Moore in March 2021, and the two began dating. In 2022, Moore hired Brown to do administrative office work at a home healthcare business owned by Moore. That same year, Brown and Moore moved in together. In fall 2023, while still living with Moore, Brown began a romantic relationship with J.K.-F.

On the day of Moore's death, Moore had an appointment to get her hair done at K.B.'s salon. While getting her hair done, Moore told K.B. that she had asked Brown to move out because he had started to not come home. Moore also told K.B. that Brown seemed to understand, planned to leave, and she was not worried about him because Brown had not shown her any aggression in the past.

On the same day, Moore also spoke to her sister, K.J., on the phone. Moore told K.J. that she wanted to end her relationship with Brown because "he was smothering her" and "[s]he felt like she couldn't do anything without him breathing down her nape." Although Moore told K.J. that she did not want to go back to the apartment, she said she

would make a quick stop at the apartment before meeting up with K.J. to talk about Moore's relationship with Brown.

While Moore was at the hair salon, Brown returned to the apartment after spending the night at J.K.-F.'s apartment. After her hair appointment, which ended around 2:00 p.m., Moore also returned to the apartment. Upon Moore's return, the two began arguing. Around 3:30 p.m.,¹ Brown filmed a video of Moore urinating on the toilet in the apartment while Brown said, "Yeah, dis my queen, Kesha Moore, y'all see her ... she been f***** on me with a young n****, so guess what, I'm about to treat dis b****, and y'all already know me, so I don't even go for that bull****."

At 8:19 p.m., Brown called 911 and told the dispatcher that he and his girlfriend had a physical altercation, she pulled a gun on him, and the gun went off. Brown ended the call abruptly. Dispatch's attempts to return Brown's call were unsuccessful. Dispatch traced the call, and Brown's location did not match the address he had given.

At 8:42 p.m., Brown made a second call to 911 from a different phone number. In the second 911 call, Brown told the dispatcher that he had been involved in a physical altercation, that his girlfriend pulled out a gun, the gun went off, and his girlfriend was shot. Brown also stated that he had called 911 earlier and that he was ready to turn himself in. Dispatch traced the location of the call, but again, it was different from the address Brown had given.

¹ The time and date of the video is based on embedded iCloud metadata. At trial, Brown disputed that the video was filmed on December 17, 2023.

Before Brown's second 911 call, at around 8:29 p.m., officers were dispatched to the apartment to a report of a domestic with possible weapons. On arrival at the apartment, officers knocked on the door and announced themselves. When no one answered, the officers kicked the door down. Immediately, officers saw a streak of blood in the hallway leading to Moore, who was lying on the ground with an apparent gunshot wound to the head. At 9:09 p.m., first responders pronounced Moore dead at the scene.

A grand jury indicted Brown on four counts—first-degree murder while committing domestic abuse with a past pattern of domestic abuse (Minn. Stat. § 609.185(a)(6)), second-degree intentional murder (Minn. Stat. § 609.19, subd. 1(1)), second-degree unintentional murder (Minn. Stat. § 609.19, subd. 2(1)), and being a prohibited person in possession of a firearm (Minn. Stat. § 624.713, subd. 1(2)).

Jury Selection

The venire panel in Brown's trial comprised 60 prospective jurors. The jurors were asked to complete a questionnaire before voir dire. Of the 60 prospective jurors, only three identified as Black—Juror 9, Juror 10, and Juror 26. In addition to the three Black jurors, the venire included six other jurors of color—Juror 3, Juror 17, Juror 36, Juror 37, Juror 52, and Juror 60. Ultimately, one juror of color—Juror 3, an Asian man—and 11 white jurors were sworn to serve as jurors in Brown's case. The jurors were questioned in order of their juror numbers.

The district court, sua sponte, struck Juror 9 for cause because of substantial hardship. Neither party objected. The State moved to strike Juror 10 for cause. The basis for the motion was that Juror 10 expressed significant hesitation in following the law,

following the jury instructions, abiding by the burden of proof, and reaching a guilty verdict if the State met its burden. Juror 10 stated that because of her race and lived experiences, she would have trouble setting her bias aside. Juror 10 also indicated that although she had not met Brown personally, she may have seen him around, and she was hesitant to serve as a juror in a case in which he was a defendant. The district court granted the State's motion to strike Juror 10 over Brown's objection.

Juror 26, the subject of the *Batson* challenge in this case, was the 26th juror to be questioned during voir dire. Juror 26 described himself as a controls engineer who works with software. At the time of Juror 26's questioning, both Juror 9 and Juror 10 had already been struck for cause and Juror 26 was thus the only remaining Black venire member. The questioning included inquiries about his questionnaire responses. In his questionnaire, Juror 26 indicated that neither he nor anyone close to him had "any experiences with domestic violence." He also stated that it would be "somewhat difficult" for him to evaluate "graphic photographs, including of the deceased victim in [the] case," and he "would approach the study as scientific."

Despite his questionnaire responses, during Juror 26's questioning, he described two experiences with domestic violence—the first involved his mother and her ex-boyfriend, and the second involved his father-in-law and mother-in-law.

The first domestic violence experience surfaced when Brown's counsel asked whether the fact that the case had allegations of domestic violence would impact his ability to be fair and impartial. In response, Juror 26 stated that on further reflection, after completing the questionnaire, he recalled an incident from when he was around 12 years

old in which he witnessed his mother's boyfriend pull a gun on his mother during an argument. Police were involved, and the boyfriend was taken to a psychiatric unit after the incident. No charges stemmed from the incident. Juror 26 explained that the incident left an "impression" and "imprint" on him.

Juror 26 indicated that he later spoke with his mother's boyfriend about the incident and had since forgiven him. Juror 26 explained that following the incident, he learned the "importance of being able to forgive someone for those types of things," and he did not "want to judge a person on the worst day of their life ... for the rest of their life." He also stated that he thinks "everyone has a chance for redemption because we all make mistakes." Juror 26 stated that the incident is not one he "care[d] to recall," but he did "think about it" "every once in a while."

The second domestic violence experience emerged when the State inquired further regarding "family stories" mentioned by Juror 26 in his response to an earlier question by Brown's counsel. Juror 26 shared that his wife had told him about an incident in which her father "had a fight ... with her [mother] and then punched her [mother]."

The State also followed up on Juror 26's questionnaire response that in evaluating evidence in the case "he would approach the study as scientific." Juror 26 clarified that the question and his response specifically related to disturbing evidence and that he would not be offended by such evidence because he would look at it as scientific evidence about something and judge it on that particular aspect alone.

After the State exercised a peremptory strike against Juror 26, Brown raised a *Batson* challenge. The basis for the challenge was that Juror 26 was the only remaining

Black venire member, and although he had experiences with domestic violence, that was also true for other jurors who had not been struck by the State—Juror 18 and Juror 21. Juror 18 indicated in his questionnaire that he or someone close to him had prior experiences with domestic violence. During voir dire, Juror 18 disclosed that he hit his wife on one occasion early in their relationship. As a result of the incident, Juror 18 voluntarily participated in anger management programming to “fix” himself. Juror 18 acknowledged that his response to the incident was not typical of people who engage in acts of domestic violence. Similarly, Juror 21 indicated in his questionnaire that he had experiences with domestic violence. During voir dire, Juror 21 disclosed that his father was an alcoholic and he would get aggressive when drunk. Juror 21 clarified that his father never threatened or got physical with anyone.

The State argued that Brown failed to make a prima facie case based solely on the State’s exclusion of a member of a racial minority. In addition, the State argued that nothing in the case or the State’s actions raised an inference that the exclusion was based on race or demonstrated a pattern of the State exercising its peremptory strikes with respect to racial minorities. The district court concluded that Brown had not made a prima facie showing and denied his *Batson* challenge.

The State expressed concern about potential appellate review and asked to put its reasons for striking Juror 26 on the record. The district court permitted the State to do so, and the State gave the following reasons: Juror 26’s failure to disclose his domestic violence experiences in his questionnaire; his scientific approach to evaluating the evidence; his background as an engineer; and his delay in responding to questions during

voir dire. The district court reiterated its ruling, noting that even if Brown had made a prima facie showing, the State's reasons were not pretextual. After the district court's ruling, Brown noted that other jurors with an engineering background had been selected for the jury.²

Domestic Violence Expert Testimony

Before trial, the State filed a motion to permit domestic violence expert testimony, stating the testimony would include:

battering and its effects, the power and control dynamics at play in domestic violence, the cycle of domestic violence within a relationship, the frequency with which victims of domestic violence do not report the abuse to others and the reasons why, counterintuitive victim behaviors, and common characteristics of domestic violence victims.

Brown moved to exclude the testimony, arguing it would not be useful to the trier of fact and would be substantially more prejudicial than probative.

At a hearing on the motion, Brown explained that he was objecting to the expert testimony because there was no history of domestic violence between Brown and Moore.³ In response, the State explained that count one of the indictment required the State to establish a past pattern of domestic abuse. To do so, it intended to call 14 witnesses who were prior domestic abuse victims of Brown. According to the State,

² Juror 3, a graduate student who was an engineering major as an undergraduate, and Juror 7, an engineer, were questioned and selected to serve on the jury before Juror 26 was struck.

³ It is undisputed that Brown had no history of domestic violence against Moore. The State did not introduce any evidence or make any arguments that Brown had abused Moore at any other time except on the day of the shooting.

understanding power and control dynamics and common counterintuitive victim behaviors would help the jury in assessing the witnesses' credibility and evaluating their testimony. The district court granted the State's motion and denied Brown's motion in limine. In doing so, the district court reasoned that the proffered expert testimony would be helpful to the jury in assessing the credibility of the alleged "prior victims." The district court did not limit the scope of the expert testimony but reserved the right to change its ruling depending on how the "prior victim" witnesses testified.

At trial, the State's expert witness, Melissa Scaia, testified about the dynamics of domestic violence relationships and her experience working with both victims and perpetrators. Scaia testified that she did not review or make findings about Brown's case. Much of Scaia's testimony focused on battering. She explained that battering is a defined term describing one type of domestic violence that is not a single isolated incident of abuse, but a pattern of abuse over time. Using a demonstrative graphic called "The Power and Control Wheel,"⁴ Scaia testified about tactics abusers use to gain power and control over their victims, including intimidation, name-calling, threats, physical and sexual violence, minimizing, and blaming. Scaia clarified that not all batterers use the same tactics all the time in all settings and not all victims experience physical or sexual violence.

⁴ "The Power and Control Wheel" was offered and accepted as an exhibit. Scaia described it as the most commonly used graphic around the world for describing battering, which is a type of domestic violence. According to Scaia, the wheel was developed in 1984 by the Domestic Abuse Intervention Programs in Duluth, Minnesota.

Scaia also testified that it is common for victims not to report domestic violence to law enforcement because victims may not trust law enforcement, may not want the relationship to end, may blame themselves for the abuse, or may believe the abuse will get worse as a result. She also testified that it is very common for victims to deny that domestic abuse is occurring, even when confronted with or encountering someone like police or hospital personnel after an incident of violence. If a victim does alert law enforcement, Scaia testified that recantation is common. Finally, she provided various reasons for why some victims choose to return to the abusive relationship. Brown did not object at any point to Scaia's testimony.

The State also introduced evidence of abusive conduct committed by Brown against eight of his past girlfriends over a period of about thirty years. This included evidence of controlling, retaliatory, and violent behavior that resulted in Brown being convicted of several assault offenses, disorderly conduct, and a federal weapons offense. Two of the victims were granted respectively an order for protection and a harassment restraining order against Brown.

Closing Arguments

During the prosecutor's closing and rebuttal arguments, Brown objected seven times: once for facts not in evidence, three times for improper vouching, and three times for improper argument. The district court overruled all but one of Brown's objections for improper vouching.⁵

⁵ On appeal, Brown does not challenge the district court's ruling on the facts-not-in-evidence objection.

The district court overruled Brown's first improper argument objection, which focused on the prosecutor's statement that Moore's demeanor in a video taken while she was using the toilet a few hours before the shooting "prove[d] that ... he already had control of her gun." The district court again overruled Brown's objection when the prosecutor argued that Moore did not leave the apartment "because the Defendant had control of that apartment. He had control over her, and he had control over her firearm." The district court also overruled Brown's objection to the prosecutor's statement that the reason Brown delayed calling 911 was that "he had to come up with a story" to explain Moore's death.

The court sustained the first of Brown's improper vouching objections after the prosecutor said, in reference to a past pattern witness, "it took a lot of courage to be that vulnerable, to sit up there and describe what the Defendant had done to her years before." The prosecutor rephrased stating, "Consider the courage it may have taken to sit in this courtroom, in front of the man who abused her years before She is a strong woman. You could see that when she testified." The prosecutor further stated, "it would take a lot of courage to be that vulnerable and tell a group of strangers what the Defendant did to her." Again, Brown objected for improper vouching. The district court overruled the objection.

The prosecutor also made the following statements and arguments in closing to which Brown did not object but now challenges on appeal as prosecutorial misconduct. The prosecutor argued:

- Revenge, threats, and violence constitute “the nature of [Brown’s] relationships with his romantic partners.”
- Brown intentionally killed Moore because “when he loses power and control of his partner, he loses all control of himself. He becomes violent, threatening, physically abusive. And he uses guns to do it. The ultimate way a batterer exerts power and control over their victim is killing them.”
- In reference to a threat Brown made to a past pattern witness, “[t]hat’s the threat he makes when he’s losing control and a woman is leaving him.”
- Brown “committed the ultimate act of power and control and killed [Moore] by shooting her in the head because he was mad she was ending the relationship and moving on from him.”
- “It’s just as Melissa Scaia told you about those coercive control tactics and how violence enters a relationship. And the manner in which he commits the acts of domestic abuse is so similar—threatening to shoot or—or kill, shooting at, or shooting his romantic partners.”

In his closing argument, Brown reminded the jury that Scaia did not review any records in Brown’s case or interview anyone in relation to Brown’s case and thus knew nothing about Brown’s case.

Jury Instructions

Before instructing the jury on the charges and elements, the district court defined certain words and phrases, including the term “domestic abuse.” In defining domestic abuse, the district court instructed the jury that the crimes of “domestic assault, assault

with a dangerous weapon, and threats of violence all constitute domestic abuse under Minnesota law when committed against a family or household member.” The district court then instructed the jury on the elements of the crimes of domestic assault, assault with a dangerous weapon, and threats of violence.

For the charge of first-degree murder while committing domestic abuse with a past pattern of domestic abuse, the district court instructed the jury that its elements were as follows: (1) the death of Moore must be proven; (2) Brown caused the death of Moore; (3) at the time of the act causing the death of Moore, Brown was committing domestic abuse; (4) Brown engaged in a past pattern of domestic abuse against Moore or another family or household member; (5) the death of Moore occurred under circumstances manifesting an extreme indifference to human life; and (6) Brown’s act took place on or about December 17, 2023 in Hennepin County.

As to the third element, the district court did not instruct the jury that they had to unanimously agree as to which underlying domestic abuse offense Brown had committed at the time he caused Moore’s death. Brown did not object to this omission.

The jury found Brown guilty on all counts. The district court entered convictions for the first-degree murder count and the ineligible possession count and sentenced Brown to life with the possibility of release after 30 years for the former and 15 years for the latter, to be run concurrently.

Brown appealed.

ANALYSIS

In his appellant's brief, Brown raises four issues: first, whether the district court clearly erred in denying his *Batson* challenge to the State's use of a peremptory strike against the only remaining Black venire member; second, whether the district court abused its discretion in admitting expert testimony about domestic abuse; third, whether the prosecutor's statements during closing argument amounted to prosecutorial misconduct; and finally, whether the district court committed plain error by failing to instruct the jury that it had to unanimously agree on the domestic abuse element of the first-degree murder charge. Brown also raised additional issues in a *pro se* supplemental brief. We address these issues in turn.

I.

At trial, Brown raised a *Batson* challenge after the State exercised a peremptory strike against the only remaining Black venire member, Juror 26. The district court denied Brown's *Batson* challenge because it found that Brown did not make a *prima facie* showing that the strike was based on race. And even if Brown had made a *prima facie* showing, the district court found that the State's proffered reasons for striking Juror 26 were not pretextual. On appeal, Brown argues that the district court's findings were clearly erroneous because he made a *prima facie* showing and the State's proffered race-neutral reasons were pretextual.

A.

Whether racial discrimination exists in the exercise of a peremptory strike is a factual determination to be made by the district court, and we will not reverse unless the

district court's determination is clearly erroneous. *State v. Martin*, 773 N.W.2d 89, 101 (Minn. 2009). A factual finding is clearly erroneous if it is manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole. *In re Kenney*, 963 N.W.2d 214, 221 (Minn. 2021). Great deference to the district court's factual determination on *Batson* challenges is warranted because "the record may not accurately reflect all relevant circumstances that may properly be considered." *State v. White*, 684 N.W.2d 500, 506 (Minn. 2004).

B.

The Rules of Criminal Procedure provide the State nine peremptory challenges in a case punishable by life imprisonment. Minn. R. Crim. P. 26.02, subd. 6. "Peremptory challenges allow a party to strike a prospective juror that the party believes will be less fair than some others and, by this process, to select as final jurors the persons they believe will be most fair." *State v. Reiners*, 664 N.W.2d 826, 833 (Minn. 2003).

The use of a peremptory strike to exclude a person from a jury solely on the basis of race is prohibited by the Equal Protection Clause of the Fourteenth Amendment, U.S. Const. amend. XIV, § 1. *Batson v. Kentucky*, 476 U.S. 79, 89 (1986); *see also State v. Harvey*, 932 N.W.2d 792, 810–11 (Minn. 2019). *Batson* established a three-step process for determining whether a party purposefully discriminated on the basis of race in its peremptory strikes. *Batson*, 476 U.S. at 96–98. Minnesota codified this process via rule. Minn. R. Crim. P. 26.02, subd. 7(3)(a)–(c).⁶

⁶ Although Rule 26.02 was amended before Brown's trial, the amendments did not become effective until March 1, 2025, about a month *after* Brown's February 2025 trial.

“At step one, the party objecting to a peremptory strike has the burden to make a prima facie showing of racial discrimination.” *State v. Lufkins*, 963 N.W.2d 205, 209 (Minn. 2021) (citing Minn. R. Crim. P. 26.02, subd. 7(3)(a)). The objecting party must establish that “one or more members of a racial group have been peremptorily excluded from a jury and that the circumstances of the case raise an inference that the exclusion was based on race.” *State v. Diggins*, 836 N.W.2d 349, 354 (Minn. 2013) (citation modified).

At step two, if the objecting party makes the required showing, the burden shifts to the striking party “to ‘articulate a race-neutral explanation’ for exercising the peremptory challenge.” *Id.* (quoting *Hernandez v. New York*, 500 U.S. 352, 358–59 (1991)). “This step ‘does not demand an explanation that is persuasive, or even plausible.’ ” *Lufkins*, 963 N.W.2d at 210 (quoting *Purkett v. Elem*, 514 U.S. 765, 768 (1995)). The explanation offered “will be deemed race-neutral unless ‘a discriminatory intent is inherent in the prosecutor’s explanation.’ ” *Id.* (quoting *Hernandez*, 500 U.S. at 360). However, the explanation must be “related to the particular case to be tried.” *Batson*, 476 U.S. at 98.

See Promulgation of Amendments to the Minn. Rules of Crim. Proc., No. ADM10-8049, Order at 4 (Minn. filed Dec. 20, 2024). Accordingly, our analysis is based on the version of Rule 26.02 in place before the March 1, 2025, amendment.

Under the amended rule, the objecting party is not required to make a prima facie showing of racial discrimination before the party exercising the peremptory strike is required to articulate a race-neutral reason for exercising the strike. *See* Minn. R. Crim. P. 26.02, subd. 7(3). The amendments require the district court to consider the totality of the circumstances in determining whether the proffered reasons for exercising a peremptory strike are pretextual. *Id.*, subd. 7(3)(c) (including a non-exhaustive list of factors which the district court must consider in making its determination).

At step three, the district court must determine whether the objecting party has carried its “burden of proving purposeful discrimination,” meaning that the objecting party “has shown that the peremptory challenge was motivated by racial discrimination” and that the “[striking party’s] proffered explanation was merely a pretext for the discriminatory motive.” *Diggins*, 836 N.W.2d at 355 (citation modified).

C.

We assume without deciding that Brown met his burden of making a prima facie showing of racial discrimination at step one. Accordingly, we proceed to steps two and three of the *Batson* analysis.

At step two, the State proffered the following as race-neutral reasons for exercising its peremptory challenge against Juror 26: his failure to disclose his prior experiences with domestic violence in his jury questionnaire; his scientific approach to evaluating disturbing evidence; his background as an engineer; and the long periods it took him to respond to voir dire questions. Brown concedes that the record shows the State met its burden under the second step. Because we agree, we move on to the third step.

The third step requires the district court to decide whether the objecting party has carried its “burden of proving purposeful discrimination” by showing that “the peremptory challenge was motivated by racial discrimination” and that the “proffered explanation was merely a pretext for the discriminatory motive.” *Diggins*, 836 N.W.2d at 355 (citation modified).

Here, after the State articulated its reasons, but before Brown had an opportunity to rebut the State's proffered reasons, the district court denied Brown's *Batson* challenge, noting that even if Brown had met his burden at step one, the State's reasons were not pretextual. Immediately after the district court reiterated its denial of Brown's *Batson* challenge, Brown's counsel supplemented his position by stating that "there were several other individuals with engineering backgrounds" that had been selected for the jury that "were not African-American" and that "the two other African-American jurors that were struck from th[e] panel were struck for cause." Brown's counsel concluded by stating "that's all I have to say on that." Although the district court did not revisit its ruling, by allowing the State's peremptory strike to stand, it implicitly decided that there was no purposeful discrimination.⁷

Brown's rebuttal was not sufficient to meet his burden at step three of the *Batson* analysis because he did not address most of the State's proffered reasons for its peremptory challenge. Brown said nothing of Juror 26's failure to disclose his prior domestic violence experiences in his questionnaire, his stated scientific approach to evaluating disturbing evidence, or the long periods it took him to respond to voir dire questions. Brown had an opportunity to address all these reasons, but he failed to do so.

⁷ We take this opportunity to reiterate what we stated in *State v. Stewart*, 514 N.W.2d 559, 563 (Minn. 1994): in evaluating a *Batson* challenge, district courts have a duty to decide if there has been purposeful discrimination, and this duty should be carried out explicitly. However, the failure of the district court to explicitly rule on pretext after Brown's rebuttal does not require a new trial.

On the record before us, there is no evidence that the prosecutor's use of the peremptory challenge against Juror 26 was racially motivated.

On appeal Brown argues that the State's proffered reasons were pretextual because of its disparate treatment of Juror 26 in relation to non-Black jurors. Brown identifies two white jurors—Juror 18 and Juror 21—that he argues were similarly situated to Juror 26 but were allowed to serve on the jury. Brown also argues that at least four non-Black jurors—Juror 3, Juror 4, Juror 7, and Juror 8—had similar scientific backgrounds as Juror 26 and yet they were allowed to serve on the jury. We address these arguments in turn.

Juror 18 and Juror 21 were not similarly situated to Juror 26. Unlike Juror 18 and Juror 21, Juror 26's responses to questions during voir dire contradicted his response to a question in the jury questionnaire. In response to the questionnaire question asking whether Juror 26 or anyone close to him had any experiences with domestic violence, Juror 26 checked "No." Despite checking "No," Juror 26 extensively discussed prior experiences with domestic violence. In contrast, both of the identified white jurors checked "Yes" and provided a brief description of their domestic violence experiences in their questionnaire responses. Juror 26's failure to disclose his domestic violence experiences in his questionnaire is especially significant given that, during voir dire, he indicated that the experience involving his mother and her boyfriend left an "impression" and "imprint" on him. Because Juror 26 was not similarly situated to Juror 18 and Juror 21, the district court's finding that this reason was not pretextual was not clearly erroneous.

Although Juror 26’s engineering background alone did not distinguish him from Juror 3, Juror 4, Juror 7, and Juror 8, his statement that he “would look at [disturbing evidence] as ... scientific evidence about something and ... judge it on that particular aspect alone” did distinguish him from Juror 3, Juror 4, Juror 7, and Juror 8. No other jurors stated they would use a scientific approach in evaluating the evidence.

In sum, the “similarly-situated” argument Brown raises on appeal fails to satisfy his step-three burden because Juror 26 was not similarly situated to the other jurors. The district court did not clearly err when it denied Brown’s *Batson* challenge, and thus Brown is not entitled to a new trial.

II.

Brown argues that the domestic abuse expert’s testimony was inadmissible because it was unhelpful and akin to character evidence. Citing *State v. Heller*, 12 N.W.3d 452 (Minn. 2024), Brown further argues that the testimony was inadmissible because it invited the jury to infer that Brown fits the profile of a domestic abuser and was thus a domestic abuser who likely killed Moore while committing domestic abuse. We disagree.

A.

We review evidentiary rulings, including rulings on the admissibility of expert testimony, for an abuse of discretion. *State v. Thao*, 875 N.W.2d 834, 840 (Minn. 2016). “Admitting expert testimony is an abuse of discretion if the district court’s decision to admit is based on an erroneous view of the law or is against logic and the facts in the record.” *Heller*, 12 N.W.3d at 466 (citation modified). If a district court abused its

discretion in admitting expert testimony, the appellant must also show that he was prejudiced by the error. *See State v. Vang*, 774 N.W.2d 566, 576 (Minn. 2009). An error is prejudicial when “there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict.” *State v. Peltier*, 874 N.W.2d 792, 802 (Minn. 2016) (citation modified).

B.

When considering the admission of expert testimony, a district court must determine whether the testimony will aid the jury in resolving factual questions presented at trial. Minn. R. Evid. 702; *State v. Grecinger*, 569 N.W.2d 189, 195 (Minn. 1997). Expert testimony on experiences and reactions of victims of certain crimes may be admissible if it helps the jury evaluate the facts by explaining counterintuitive victim behaviors that may lie outside the common understanding of an average juror, or by dispelling common misconceptions about how victims of certain crimes are supposed to behave. *See State v. Obeta*, 796 N.W.2d 282, 293 (Minn. 2011); *State v. Hennum*, 441 N.W.2d 793, 798 (Minn. 1989) (finding battered woman syndrome expert testimony admissible). A district court must also balance the relevance and probative value of the testimony against the danger of creating unfair prejudice and the potential for confusing or misleading the jury. Minn. R. Evid. 403. To ensure that a defendant is not unfairly prejudiced by domestic violence expert testimony, the expert may not express an opinion on whether the defendant is a domestic abuser. *Grecinger*, 569 N.W.2d at 197.

C.

As was the case at trial, Brown challenges the expert testimony in its entirety on appeal. The district court admitted the expert testimony based on its conclusion that the testimony would be helpful to the jury because the credibility of the alleged prior domestic abuse victims was going to be at issue and was central to the elements of the first-degree murder while committing domestic abuse with past pattern of domestic abuse count. The district court's conclusion is supported by our precedent affirming the admission of expert testimony on experiences and reactions of victims to help the jury evaluate the facts and understand behavior that might otherwise undermine a victim's credibility. *E.g.*, *Grecinger*, 569 N.W.2d at 195; *Hennum*, 441 N.W.2d at 798.

Brown's argument that the expert testimony was akin to character evidence misses the mark. Under the Rules of Evidence, a person's character or character trait is generally not admissible to prove that on a particular occasion the person acted in accordance with that character or trait. Minn. R. Evid. 404(a). In *State v. Williams*, we acknowledged that evidence that a defendant has traits shared by those who in the past have acted as drug couriers seems akin to character evidence. 525 N.W.2d 538, 547 (Minn. 1994).

Normally proof of character involves witnesses who generalize on the basis of past acts of the defendant and this generalization is used to support an inference as to the conduct in issue. The drug courier profile involves a generalization based on the past acts of third persons. The jury is asked to infer from the fact that the defendant shares some of the characteristics of these third persons that he shares their guilt of drug smuggling.

Id. at 547–48 (quoting 22 Charles A. Wright & Kenneth W. Graham, Jr., *Federal Practice and Procedure—Evidence* § 5233 (Interim ed. 1992 & Supp. 1994)). Our reasoning as to

drug couriers is just as applicable to domestic abusers. Therefore, a generalization based on the past acts of other domestic abusers is akin to character evidence for the same reasons we outlined in *Williams*. However, the facts here are distinguishable. Our reasoning in *Williams* notwithstanding, evidence is not improper character evidence if it is not offered to prove that on a particular occasion the person acted in accordance with the character or trait. The expert testimony in Brown’s case was offered and admitted to help the trier of fact in assessing “the credibility of the alleged prior victims,” which was “going to be at issue and [wa]s central to the elements of the case.” The district court reserved the right to change its ruling if needed, but Brown did not object at any point during the expert’s testimony. Accordingly, the expert testimony was not improper character evidence.

Citing *Williams* and *Heller*, Brown argues that the expert testimony was inadmissible because it invited the jury to infer that Brown fits the profile of a domestic abuser and was thus a domestic abuser who likely killed Moore while committing domestic abuse.

In *Williams*, where the defendant was an accused drug courier, we observed that “evidence that a defendant has traits shared by those who in the past have acted as drug couriers ‘seems akin to [inadmissible] character evidence.’ ” 525 N.W.2d at 547 (quoting *Wright & Miller, supra*, § 5233); see also Minn. R. Evid. 404(a). Such profiles are not “ ‘scientific’ in any sense of the word,” and the evidence was improper because “the jury was impliedly urged to infer that since defendant’s conduct fit the profile” of a drug courier, she must have been a drug courier. *Williams*, 525 N.W.2d at 547–48.

Similarly, in *Heller*, a first-degree domestic abuse murder case, a police officer testified about “lethality factors” that help “professionals assess a domestic abuse victim’s risk of being killed by their abuser.” 12 N.W.3d at 460. But as we noted, “In the jury’s eyes, an expert listing factors indicating a high probability an abuser *would* kill their domestic partner may be indistinguishable from an expert listing factors indicating that the defendant *did* kill his domestic partner.” *Id.* at 467. This “may have signaled to the jury—albeit implicitly—that Heller was likely to kill” the victim, and “although the officer did not testify that Heller met the profile of an abuser, the purpose of the lethality factors evidence was to ‘demonstrate that appellant fit within the [domestic abuser] profile.’ ” *Id.* (alteration in original) (quoting *State v. Loebach*, 310 N.W.2d 58, 63 (Minn. 1981)).

We conclude that *Williams* and *Heller* are distinguishable for two reasons. First, the expert testimony in *Williams* and *Heller*, unlike the expert testimony in Brown’s case, was not offered for any other legitimate purpose. As discussed above, the evidence here was not offered to prove that Brown acted in accordance with his character or trait of being a domestic abuser when he killed Moore, but rather it was offered to explain counterintuitive victim behaviors to help the jury assess the credibility of the State’s past pattern witnesses. Second, both the drug courier profile and the lethality factors have a predictive element that is absent in “The Power and Control Wheel.” Put differently, “The Power and Control Wheel” is not a tool developed to predict whether someone is likely to be a domestic abuser. Instead, it is a commonly used graphic for describing battering in heterosexual relationships, and it was developed as part of a domestic violence

curriculum for victims and abusers. Therefore, the risk of inviting the jury to infer that Brown was a domestic abuser is diminished in comparison to the expert testimony in *Heller* and *Williams*.

Brown concedes that Scaia's testimony about counterintuitive behaviors may have been admissible but argues that the extensive testimony about the stereotypical behaviors of alleged male perpetrators was not. But counterintuitive behaviors do not exist in a vacuum. To the extent that the power and control dynamics in an abusive relationship are necessary to understand counterintuitive behaviors, the two often cannot be divorced. Here, Scaia spoke generally about the power and control dynamics in abusive relationships and how those dynamics shape the experiences and responses of victims in those relationships. This was likely helpful to the jury in assessing the counterintuitive behavior of some of the State's witnesses. Indeed, the only reference to Brown during Scaia's testimony was to clarify that Scaia did not interview anyone in Brown's case or make any findings about Brown's case.⁸

The district court's admission of the domestic violence testimony was not an abuse of discretion because the district court's decision was not based on an erroneous view of the law or against the logic and the facts in the record.

⁸ While we acknowledge that domestic abuse cases often pose unique challenges that necessitate the admission of expert testimony to explain counterintuitive victim behaviors, we note that district courts must balance the admission of such testimony against a defendant's constitutional rights. Therefore, district courts should be cautious in admitting evidence such as "The Power and Control Wheel," where there is a high risk that the evidence will be used as propensity evidence and relieve the State of its burden to prove all elements of the crime beyond a reasonable doubt.

III.

Brown has identified four objected-to and five unobjected-to instances of alleged prosecutorial misconduct. The alleged misconduct includes vouching for the credibility of a witness, disparaging the defense, and attacking Brown's character. Brown argues that the identified statements by the prosecutor constitute prosecutorial misconduct, and they deprived him of his right to a fair trial. We disagree.

A.

A prosecutor commits misconduct by making arguments that “have the effect of materially undermining the fairness of a trial” or by violating “clear or established standards of conduct.” *State v. Fields*, 730 N.W.2d 777, 782 (Minn. 2007). When assessing alleged prosecutorial misconduct in closing arguments, we consider the closing argument as a whole. *State v. Powers*, 654 N.W.2d 667, 678 (Minn. 2003). We “will reverse only if the misconduct, when considered in light of the whole trial, impaired the defendant's right to a fair trial.” *Id.*

When a defendant fails to object to prosecutorial misconduct, the defendant ordinarily forfeits appellate consideration of the issue. *State v. Ramey*, 721 N.W.2d 294, 297 (Minn. 2006). But under the modified plain error doctrine, a defendant can obtain appellate review based on unobjected-to prosecutorial misconduct if the defendant shows that the prosecutor committed an error that was plain. *Id.* at 302. Once the defendant establishes a plain error, the burden shifts to the State “to demonstrate lack of prejudice; that is, the misconduct did not affect substantial rights.” *Id.* To demonstrate lack of prejudice, the State needs “to show that there is no reasonable likelihood that the absence

of the misconduct in question would have had a significant effect on the verdict of the jury.” *Id.* (citation modified). Finally, if all three prongs are met, we must determine whether to address the error in order to “ensure the fairness and integrity of judicial proceedings.” *State v. Portillo*, 998 N.W.2d 242, 248 (Minn. 2023).

B.

In light of the different legal principles that apply to objected-to and unobjected-to misconduct, we will address the two kinds of alleged misconduct separately.

1.

Brown alleges four instances of objected-to misconduct. He argues that the State committed prosecutorial misconduct when it argued:

- Moore’s demeanor in a video taken a few hours before the shooting “prove[d] that ... he already had control of her gun.”
- Moore did not leave the apartment “because the Defendant had control of that apartment. He had control over her, and he had control over her firearm.”
- In reference to V.O., a past pattern witness, “Consider the courage it may have taken to sit in this courtroom, in front of the man who abused her years before, and describe for you all being pushed down the stairs. She is a strong woman. You could see that when she testified. It ... would take a lot of courage to be that vulnerable and tell a group of strangers what the Defendant did to her.”

- The reason Brown delayed in calling 911 was because “he had to come up with a story” to explain Moore’s death.

We will address each instance of the alleged misconduct in turn.

The first two statements were not misconduct because the State was presenting legitimate inferences to be drawn from the evidence. *See State v. Williams*, 586 N.W.2d 123, 127 (Minn. 1998) (stating the prosecutor is not required to make a colorless argument and has the right to present all legitimate arguments on the evidence, to analyze and explain the evidence, and to present all proper inferences to be drawn from the evidence). The following evidence in the record supports the State’s argument and the inferences drawn: (1) Brown’s accusations and threatening language—“Yeah, dis my queen, [Moore], y’all see her ... she been f***** on me with a young n****, so guess what, I’m about to treat dis b****, and y’all already know me, so I don’t even go for that bull*****”; (2) Moore’s despondent and compliant demeanor in the video; (3) Moore’s vulnerable position of urinating on a toilet while Brown filmed her; (4) that the video was filmed inside the apartment four hours before Brown shot Moore; and (5) that Moore never left the apartment despite plans to meet her sister.

The question for us on the third statement is whether the State vouched for V.O., a past pattern witness. Vouching occurs when the State implies a guarantee of a witness’s truthfulness, refers to facts outside the record, or expresses a personal opinion as to a witness’s credibility. *State v. Gail*, 713 N.W.2d 851, 866 (Minn. 2006). Unlike the initial statement made by the State, the rephrased statement encouraged the jury to consider for themselves the vulnerability and courage that might be involved in testifying and then

reach their own conclusions as to credibility. The State's rephrased statement did not constitute vouching.

Finally, the last statement requires us to decide whether the State disparaged Brown's defense. The State is prohibited from disparaging the defense. *State v. Griesse*, 565 N.W.2d 419, 427 (Minn. 1997). Disparaging the defense occurs when the State belittles the defendant or argues that his theory of defense is "the sort of defense that defendants raise when nothing else will work." *Williams*, 525 N.W.2d at 549. Here, the State did not belittle Brown. Furthermore, the statement was not a general attack on Brown's defense. Instead, it was in the specific context of Brown's delay in calling 911. The State's argument was tailored to show that Brown had the time and opportunity to craft his version of events to fit what he believed the evidence would show.

None of the alleged misconduct that Brown objected to constituted prosecutorial misconduct.

2.

Brown alleges five instances of unobjected-to misconduct. He alleges that the State committed misconduct when it argued:

- Revenge, threats, and violence constitute "the nature of [Brown's] relationships with his romantic partners."
- Brown intentionally killed Moore because "when he loses power and control of his partner, he loses all control of himself. He becomes violent, threatening, physically abusive. And he uses guns to do it. The ultimate way a batterer exerts power and control over their victim is killing them."

- In reference to a threat Brown made to a past pattern witness, “[t]hat’s the threat he makes when he’s losing control and a woman is leaving him.”
- Brown “committed the ultimate act of power and control and killed [Moore] by shooting her in the head because he was mad she was ending the relationship and moving on from him.”
- “It’s just as Melissa Scaia told you about those coercive control tactics and how violence enters a relationship. And the manner in which he commits the acts of domestic abuse is so similar—threatening to shoot or—or kill, shooting at, or shooting his romantic partners.”

Brown’s general argument as to the unobjected-to misconduct is that the State portrayed him as an abuser with “a propensity to engage in criminal actions to assert power and control over his romantic partners.” Because of the similarity in the alleged unobjected-to misconduct, we will address the arguments collectively.

In light of the charges in this case, the identified statements did not constitute misconduct. For the first-degree domestic abuse murder charge, the State was required to prove beyond a reasonable doubt that Brown “has engaged in a past pattern of domestic abuse.” *See* Minn. Stat. § 609.185(a)(6). For purposes of section 609.185(a)(6), we have defined the phrase “past pattern” as “conduct consisting of two or more prior acts that are proximate in time to each other and reflect a regular way of acting.” *State v. Bustos*, 861 N.W.2d 655, 661 (Minn. 2015) (citation modified). Brown’s argument on appeal ignores the State’s burden to prove that his domestic abuse conduct reflected “a regular way of acting.” The State necessarily, and appropriately, referenced evidence of Brown’s

pattern within his domestic relationships, which sometimes but not always led to physical violence. None of the alleged unobjected-to misconduct constituted prosecutorial misconduct.

Because neither the objected-to nor the unobjected-to alleged prosecutorial misconduct constituted prosecutorial misconduct, we do not need to reach the issue of prejudice.

IV.

Brown argues that the district court's failure to give a specific-unanimity instruction as to the domestic abuse element of the first-degree murder charge was plain error. Specifically, Brown argues that by not instructing the jury to unanimously agree on which of the three options—domestic assault, threats of violence, or assault with a dangerous weapon—served as the element of domestic abuse, the jury instructions allowed the jury to disagree as to which offense was proven and yet still find that the State had met its burden. We disagree.

A.

When a defendant fails to object to a jury instruction, he forfeits appellate relief based on that instruction. *State v. Gilleylen*, 993 N.W.2d 266, 280 (Minn. 2023). Under the plain-error exception to the forfeiture doctrine, a defendant must show: (1) error; (2) the error was plain; and (3) his substantial rights were affected. *Id.* If these three prongs are met, the appellate court can provide relief only if the error “ ‘seriously affects the fairness, integrity, or public reputation of judicial proceedings.’ ” *Id.* (quoting *State v. Mouelle*, 922 N.W.2d 706, 718 (Minn. 2019)).

B.

A jury’s verdict must be unanimous in all criminal cases. Minn. R. Crim. P. 26.01, subd. 1(5). A jury is required to agree unanimously on the elements of an offense. *Richardson v. United States*, 526 U.S. 813, 817 (1999); *State v. Pendleton*, 725 N.W.2d 717, 730–31 (Minn. 2007). But the jury is not required to agree unanimously on all facts underlying the elements, such as alternative means or methods of committing the offense. *Schad v. Arizona*, 501 U.S. 624, 631–32 (1991) (plurality opinion), *abrogated on other grounds by Ramos v. Louisiana*, 590 U.S. 83 (2020), and *Richardson v. United States*, 526 U.S. 813 (1999); *Pendleton*, 725 N.W.2d at 731.

To determine whether a specific-unanimity instruction is required, a court must first interpret the statute defining the offense to identify the elements of the offense and then determine whether the State has alleged more than one distinct act to prove those elements. *State v. Keyes*, 38 N.W.3d 21, 41 (Minn. 2026). When the State charges one count of criminal conduct but presents evidence of more than one distinct act to prove the elements of the charged offense, a defendant is entitled to a specific-unanimity instruction, which advises the jury that it must unanimously agree as to the specific act that proves the elements of the charged offense. *Id.* at 39.

C.

A defendant is guilty of first-degree domestic abuse murder if they “cause[] the death of a human being while committing domestic abuse, when the perpetrator has engaged in a past pattern of domestic abuse upon the victim or upon another family or household member and the death occurs under circumstances manifesting an extreme

indifference to human life.” Minn. Stat. § 609.185(a)(6). The elements of the offense are as follows: (1) the death of a human being; (2) caused by the defendant; (3) while committing domestic abuse; (4) with a past pattern of domestic abuse; and (5) the death occurred under circumstances manifesting an extreme indifference to human life. *Id.*; see also 10 Minn. Dist. Judges Ass’n, *Minnesota Practice—Jury Instruction Guides, Criminal*, CRIMJIG 7.07 (7th ed. 2024). The element at issue here is the third element—while committing domestic abuse.

We do not need to decide whether an error that was plain occurred here because even if such an error occurred, Brown is not entitled to relief because he cannot show that the error affected his substantial rights.

At trial, the State did not allege more than one distinct act to prove the third element. Although the district court provided three examples of offenses that constitute domestic abuse—domestic assault, assault with a dangerous weapon, and threats of violence—the State only alleged assault with a dangerous weapon for the third element. When discussing the third element in closing, the State singled out the assault with a dangerous weapon offense and only discussed that offense. Similarly, Brown’s closing argument only focused on that offense for the third element. Put differently, the jury was never asked to decide whether Brown committed domestic assault or threats of violence while he caused the death of Moore, only whether he committed assault with a dangerous weapon. In addition, because the jury also found Brown guilty of second-degree unintentional murder (Minn. Stat. § 609.19, subd. 2(1)), it necessarily unanimously agreed that Brown committed assault with a dangerous weapon. The third element of the

second-degree unintentional murder charge expressly required the jury to find that at the time of the act causing the death of Moore, Brown was committing the felony offense of assault with a dangerous weapon. Therefore, Brown’s substantial rights were not affected because the jury unanimously agreed that he was committing domestic abuse at the time he caused the death of Moore.

V.

Brown submitted a 33-page handwritten pro se supplemental brief with a 10-page handwritten addendum. These filings contained no arguments or citations to legal authority. Pro se litigants are generally held to the same standards as attorneys. *Francis v. State*, 781 N.W.2d 892, 896–97 (Minn. 2010). “Claims in a pro se supplemental brief that are unsupported by either arguments or citation to legal authority are forfeited.” *State v. Nyonteh*, 24 N.W.3d 271, 287 (Minn. 2025) (citation omitted) (internal quotation marks omitted). Accordingly, claims raised in Brown’s pro se supplemental brief, if any, are forfeited.

* * *

We conclude that the district court did not clearly err in denying Brown’s *Batson* challenge; the district court did not abuse its discretion in admitting domestic violence expert testimony; the prosecutor did not commit prosecutorial misconduct in her closing argument; the district court’s failure to give a specific-unanimity instruction on the first-degree murder charge did not affect Brown’s substantial rights; and the claims raised in Brown’s pro se supplemental brief, if any, are forfeited.

CONCLUSION

For the foregoing reasons, we affirm the decision of the district court.

Affirmed.