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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A25-1778**

State of Minnesota,
Respondent,

vs.

Keneisha Sharonese Gilmer,
Appellant.

**Filed August 31, 2026
Affirmed in part, reversed in part, and remanded
Connolly, Judge**

Hennepin County District Court
File No. 27-CR-23-23350

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

Andrew Draper, Maple Grove City Prosecutor, Marquelle Haviland, Assistant City
Prosecutor, Maple Grove, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Julia Q. Brady, Assistant Public
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Considered and decided by Connolly, Presiding Judge; Reyes, Judge; and
Rasmusson, Judge.

NONPRECEDENTIAL OPINION

CONNOLLY , Judge

In this direct appeal from the judgment of conviction for misdemeanor disorderly
conduct, appellant argues that she received ineffective assistance of counsel because her
attorney failed to prepare adequately for trial, that the district court erred by admitting

screenshots of Facebook posts into evidence, and that the district court erred by ordering her to pay travel fees for an out-of-state witness. Because appellant fails to demonstrate that counsel's performance prejudiced her, and because admission of the Facebook posts was not an abuse of discretion, we affirm. But because the district court improperly imposed prosecution costs, we reverse and remand that issue.

FACTS

In October 2023, a fight broke out in a Spirit Halloween store in Maple Grove. According to the criminal complaint, appellant Keneisha Sharonese Gilmer started the fight when she attacked the victim, D.P., from behind. Respondent State of Minnesota charged Gilmer with one count of disorderly conduct—brawling or fighting, in violation of Minnesota Statutes section 609.72, subdivision 1(1) (2022), and one count of fifth-degree assault in violation of Minnesota Statutes section 609.224, subdivision 1(2) (2022).

The state informed Gilmer that, if her case proceeded to trial and there was a conviction, it would request prosecution costs for the travel of an out-of-state witness—Spirit Halloween's loss-prevention manager. Gilmer's case proceeded to trial.

In August 2025, the state filed exhibit and witness lists. The state's exhibit list indicated that it intended to introduce body-worn-camera footage from two responding police officers, the surveillance video from the Spirit Halloween store, photos of the damage done to the store, and two Facebook posts, allegedly posted by Gilmer. The state's witness list indicated that it intended to call D.P., two police officers, and the loss prevention manager as witnesses. The witness list also contained a list of D.P.'s prior convictions.

Following opening statements, Gilmer objected to the admission of the two Facebook posts into evidence on the basis that the posts lacked sufficient foundation and could not be properly authenticated, even through D.P.'s testimony. The district court reserved ruling on Gilmer's objection until the exhibits were formally offered into evidence.

Gilmer then informed the district court that, while she had not filed a formal notice, she was asking the district court to admit several of D.P.'s prior convictions—two felony and one gross-misdemeanor—for impeachment purposes on cross-examination. The state objected to this request on the basis that Gilmer did not provide the state with notice or certified copies of the conviction records. The district court denied Gilmer's request, reasoning that, because she had not provided certified conviction records, there was not "sufficient proof before [the district court] to know that this person was actually convicted of what, on what date, in what court."

The state's first witness was Spirit Halloween's loss-prevention manager. He testified that the store was equipped with surveillance cameras and that he could access this footage remotely. He explained that the store contacted him regarding the fight and he pulled the video footage of the incident, which was later provided to the police. The video was played for the jury.

The state's next witness was D.P. She testified that she had been assaulted inside the Spirit Halloween store on the date in question and identified Gilmer as the individual who committed the assault. D.P. was shopping when someone approached her from behind and began hitting her. Initially, she did not know who had attacked her but later identified

Gilmer as her attacker. D.P. knew Gilmer because Gilmer was dating the father of her child. D.P. identified herself as the individual in the video wearing a “[b]londe wig,” “tan hat, tan purse, and a black jacket.” D.P. then identified Gilmer as the individual in the video wearing a “blue t-shirt with a yellow smiley face and a long jacket.” D.P. explained that, inside the store, she and Gilmer had no interaction prior to the fight. Since the assault, Gilmer had tried to contact D.P. via text and Facebook.

D.P. further testified that she had a Facebook account and that her name on Facebook was “Peaches.” D.P. had personal knowledge that Gilmer had a Facebook account, and that Gilmer’s name on Facebook was “QueenKay Jackson.” D.P. has had direct interaction with Gilmer through Facebook via Facebook Messenger and Facebook’s tagging feature. D.P. recognized the Facebook posts as images from Gilmer’s Facebook account and stated that they were accurate screenshots of the posts and messages. After this testimony, the state attempted to enter the screenshots into evidence, but Gilmer objected due to lack of foundation. The state then resumed questioning D.P. about the posts. D.P. testified that she had seen the screenshots prior to her testimony, and that she sent the screenshots to the state. D.P. had also seen several other pictures and posts on the “QueenKay” Facebook account that confirmed the account belonged to Gilmer. After this testimony, the state moved again to admit the screenshots. Over Gilmer’s objection, the district court admitted the screenshots into evidence, finding there was sufficient foundation provided through D.P.’s testimony.

The district court later explained:

[D.P.] testified that she received these text messages from a person she knew before the assault as [QueenKay Jackson]; that she received text messages, posts, and pictures from [QueenKay Jackson], who she knew as the girlfriend of her baby daddy; and she knew her name as Keneisha, but she did not know her full name.

Since [D.P.] testified Exhibits 2 and 3 were sent to her and then she provided those texts to the prosecutor, the Court found there was sufficient foundation to admit Exhibits 2 and 3.

[D.P.] was the owner of the phone or computer that she received these texts and post stories on; recognizes the messages, exhibits, as though she received; and then forwarded them and provided them to the State.

D.P. read the contents of the posts into the record, and the posts were shown to the jury. The first screenshot was a post from the “QueenKay Jackson” account, which stated:

Why I just go to court and seen the video of me whooping Peaches head in I can’t believe mfs said I jumped ha none of my cousins touch her but why my cuz Lori pushing tf outta Shanika big 4head a\$\$ 5 times cause she keep tryna to grab& kick me She got all that mouth but the scariest one You might be NEXT ho3[.]

The second screenshot had a photo of a post from a different account, with text overlaid on the photo from the “QueenKay Jackson” account, which stated: “Nobody denying they got beat up tho !! And since I’m delusional ima drop the video as soon as I get it. I gotta take a plea deal anyways [emoji] & stop tryna send ho3\$ to shop with me I’ll scrap they a\$\$ too[.]”

On cross-examination D.P. explained that, at the time of the assault, she did not know “QueenKay’s” real name. D.P. did not initially know who was attacking her because she was attacked from behind. But during the fight, D.P. recognized her attacker as

“QueenKay,” which is how she identified Gilmer to police after the assault. D.P. now knows that her attacker’s name is Keneisha Gilmer.

The final witnesses called by the state were the two police officers who were dispatched to the scene. The first officer testified that he stopped two women that had been identified by his partner and store staff and who were attempting to leave the store. The women said they had been involved in the fight but did not have identification on them. One of the women wrote her name, Keneisha Gilmer, on a notepad, and stated that her middle name was “Sharon.” The officer identified Gilmer on the record as the individual he spoke with in the store. The officer’s body-worn-camera footage was received into evidence and played for the jury.

On cross-examination, the officer testified that he compared the information he had been given, which included a date of birth, with Gilmer’s Minnesota driver’s license. He acknowledged that Gilmer’s middle name came back as “Sharonese,” and that the date of birth he had been given did not match the driver’s license.¹ Finally, the officer acknowledged that he did not conduct any follow-up with the individuals on the scene and did not ask Gilmer to give a statement.

The second officer testified that he spoke with D.P. at the scene. The officer tracked down a copy of the store’s surveillance footage that was played for the jury. After reviewing the surveillance footage, the officer was able to determine that Gilmer “was the

¹ The testimony establishes that the officer wrote down Gilmer’s date of birth as February 27, 1995. But in the body-worn-camera footage, Gilmer tells the officer her birthdate is “04-25-97.” The officer acknowledged on re-direct that it was possible he made typos in his report when recording the date of birth he had been provided.

primary and sole aggressor in the incident.” The officer did not “see anything in the video that appeared to be a mutual interaction between the two” and noted that it “appeared to be an unprovoked assault.” As a result, the officer issued a citation to Gilmer. The officer also took photos of the damage that was done to the store, which were shown to the jury.

Gilmer testified in her own defense. She stated that she does not have any nicknames, that she does not know D.P., that she has never had a Facebook account, and that she was not in the Spirit Halloween store on the day in question. She explained that her identity had been stolen on two prior occasions and that on one of these occasions, she was charged with a crime that was later dismissed due to identity theft. She explained that in this situation, someone she did not know had used her name to identify themselves to police after the assault. Finally, she denied that the individual in the video was her.

The jury returned a verdict of guilty on both counts. The district court sentenced Gilmer on the second count of fifth-degree assault to 90 days in the workhouse, suspended for one year. The district court also imposed two days of local jail time and granted the state’s motion for prosecution costs in the amount of \$806.95 to cover the out-of-state witness’s travel expenses.

Gilmer appeals.

DECISION

On appeal, Gilmer argues that she received ineffective assistance of counsel because her attorney failed to prepare adequately for trial, that the district court erred by admitting screenshots of Facebook posts into evidence without proper authentication or foundation,

and that the district court erred by ordering her to pay travel fees for an out-of-state witness for the state.

I. Gilmer’s ineffective-assistance-of-counsel claim fails on the merits.

Gilmer argues that she is entitled to a new trial because she received ineffective assistance of counsel. Gilmer asserts that her attorney “failed to adequately prepare for trial, which resulted in her not being able to impeach the state’s key witness with the witness’s prior convictions.”

“Generally, an ineffective-assistance-of-counsel claim should be raised in a postconviction petition for relief, rather than on direct appeal, because an evidentiary hearing, if granted, provides the district court with additional facts to explain the parties’ decisions.” *State v. Ellis-Strong*, 899 N.W.2d 531, 535 (Minn. App. 2017). But “[w]hen a claim of ineffective assistance of trial counsel can be determined on the basis of the trial record, the claim must be brought on direct appeal.” *Andersen v. State*, 830 N.W.2d 1, 10 (Minn. 2013).

A criminal defendant has a constitutional right to the effective assistance of counsel. U.S. Const. amend. VI; Minn. Const. art. I, § 6; *see State v. Rhodes*, 657 N.W.2d 823, 842 (Minn. 2003). When an ineffective-assistance-of-counsel claim is properly raised in a direct appeal, we examine the claim under the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668, 687 (1984). *Ellis-Strong*, 899 N.W.2d at 535 (citing *Andersen*, 830 N.W.2d at 10). Under the two-prong *Strickland* test, a defendant must show that “(1) counsel’s performance fell below an objective standard of reasonableness, and (2) that a

reasonable probability exists that the outcome would have been different but for counsel's errors." *Andersen*, 830 N.W.2d at 10.

Appellate courts "need not address both the performance and prejudice prongs if one is dispositive." *Id.* "Under the second prong, a defendant must show that, but for counsel's errors, the result of the proceeding probably would have been different. The reviewing court considers the totality of the evidence before the judge or jury in making a determination of prejudice." *Id.* (citation omitted).

Gilmer contends that her attorney's performance "was deficient because she failed to adequately prepare for trial by gathering and submitting the necessary documentation" that would have allowed her to use some of D.P.'s prior convictions for impeachment purposes. Gilmer asserts that her attorney's performance fell below an objective standard of reasonableness because this failure "was not a strategic decision, and because D.P.'s credibility was so central to the state's case, it impacted Gilmer's fundamental right to present a complete defense." Gilmer further asserts that, "[b]ut for her attorney's deficient performance, [she] would have effectively undermined D.P.'s credibility and the outcome of the trial would have been different."

Here, we need not decide whether Gilmer's attorney's performance fell below an objective standard of reasonableness because Gilmer has failed to demonstrate that, if her counsel had produced adequate documentation of D.P.'s prior convictions to impeach her, the result of Gilmer's trial would have been different. *See Berry v. State*, 33 N.W.3d 683, 694 (Minn. 2026) (noting that appellate courts may analyze the Strickland prongs "in either order," and that, if the factual allegations "do not satisfy either the performance prong or

the prejudice prong, [the court] may dispose of a claim on one prong without considering the other”) (quotation omitted). Gilmer’s ineffective-assistance-of-counsel claim appears to rest on the premise that the district court would have admitted the convictions had certified copies been produced. But the record demonstrates that the state intended to oppose admission of the convictions offered for impeachment purposes. And the district court would have needed to rule, over the state’s objection, that the convictions offered were admissible before such convictions could have been admitted. *See* Minn. R. Evid. 609. Because the district court’s admission of the convictions for impeachment purposes was speculative, Gilmer has failed to prove prejudice. *See Gates v. State*, 398 N.W.2d 558, 563 (Minn. 1987) (holding that prejudice may not be based on speculation).

Moreover, Gilmer’s claim also fails because the evidence of her guilt at trial was overwhelming. The surveillance video of the assault was played for the jury, which showed two women shopping inside the store with no interaction, when one woman suddenly begins to attack the other. Multiple state witnesses identified Gilmer (who at that time was present in court) as the perpetrator of the assault, including D.P. and both responding officers. One of the officers testified that Gilmer “was the primary and sole aggressor in the incident,” that there was not a “mutual interaction between the two [women], and that it “appeared to be an unprovoked assault.” Body-worn-camera footage from one of the responding officers was also played for the jury. In the footage, a woman identified herself as Gilmer and admitted to being involved in the fight. Furthermore, the state highlighted the physical similarities between the individual depicted in the video and Gilmer at trial. As such, the strength of the state’s evidence demonstrates that Gilmer

cannot show prejudice. *See id.* at 563 (explaining that defendant had not shown prejudice in part because the “evidence of defendant’s guilt was very strong”).

In sum, when considering the totality of the evidence, Gilmer has not shown a reasonable probability that the verdict would have been different had her attorney produced adequate documentation of D.P.’s prior convictions for impeachment purposes. Accordingly, Gilmer’s ineffective-assistance-of-counsel claim fails. Gilmer is not entitled to a new trial.

II. Admission of the Facebook posts was not an abuse of discretion.

Gilmer argues that the district court abused its discretion when it admitted two screenshots of Facebook posts into evidence. Gilmer asserts that D.P.’s testimony did not establish sufficient foundation and that the exhibits were not properly authenticated.

“Evidentiary rulings rest within the sound discretion of the [district] court and will not be reversed absent a clear abuse of discretion. On appeal, the appellant has the burden of establishing that the [district] court abused its discretion and that appellant was thereby prejudiced.” *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003) (citation omitted). An abuse of discretion occurs when a district court’s decision is based on an incorrect view of the law or is against logic and the facts in the record. *State v. Vangrevenhof*, 941 N.W.2d 730, 736 (Minn. 2020).

For evidence to be admitted at trial, it must be authenticated. Minn. R. Evid. 901(a). The evidentiary requirement for authentication as a condition precedent to admissibility is met only if the evidence is “sufficient to support a finding that the matter in question is what its proponent claims.” Minn. R. Evid. 901(a). Authentication may occur via

testimony of a witness with knowledge “that a matter is what it is claimed to be.” Minn. R. Evid. 901(b)(1).

D.P. provided extensive testimony regarding the Facebook posts before they were admitted into evidence. This testimony included that D.P. had a Facebook account, that she had personal knowledge that Gilmer had a Facebook account, that Gilmer’s name on Facebook was “QueenKay Jackson,” that D.P. had seen other pictures and posts on the “QueenKay” Facebook account that confirmed the account belonged to Gilmer, that D.P. had direct interaction with Gilmer through her “QueenKay Jackson” Facebook account, that she recognized the Facebook posts as images from Gilmer’s Facebook account, that the screenshots of the posts were accurate, that D.P. had seen the screenshots prior to her testimony, and that she sent the screenshots to the state. This testimony was sufficient to establish that the screenshots were what the state claimed them to be—screenshots of Gilmer’s Facebook posts—and satisfied the authentication requirement through D.P.’s testimony as a witness with personal knowledge. *See* Minn. R. Evid. 901(b)(1).

Moreover, to obtain relief on appeal, Gilmer “must prove there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict.” *State v. Smith*, 940 N.W.2d 497, 505 (Minn. 2020) (quotation omitted). Some of the factors that an appellate court considers to determine whether a reasonable probability exists includes: “(1) the manner in which the party presented the evidence, (2) whether the evidence was highly persuasive, (3) whether the party who offered the evidence used it in closing argument, and (4) whether the defense effectively countered the evidence.” *Id.* Strong

evidence of guilt undermines the persuasive value of wrongly admitted evidence. *State v. Matthews*, 800 N.W.2d 629, 634 (Minn. 2011).

In considering these factors, there is no reasonable possibility that the screenshots of the Facebook posts significantly affected the verdict. The two Facebook posts here were limited in significance due to the other evidence presented by the state, which included over sixteen minutes of combined footage between the store surveillance video and the officer's body-worn-camera footage. While the state discussed the Facebook posts in closing argument, Gilmer testified and denied that she had ever had a Facebook profile, or that she had a profile under a different name. Furthermore, evidence of Gilmer's guilt at trial was overwhelming, which undermines the persuasive value of the Facebook posts. *See id.* As previously discussed, the surveillance video of the assault was played for the jury. Multiple state witnesses identified Gilmer as perpetrator of the assault. One of the officers testified that Gilmer "was the primary and sole aggressor in the incident," that there was not a "mutual interaction between the two [women]," and that it "appeared to be an unprovoked assault." The body-worn-camera footage shows a woman, who identified herself as Gilmer, admitting to being involved in the fight. Finally, the state highlighted the physical similarities between the individual depicted in the video and Gilmer at trial. On this record, there is no reasonable possibility that the photos substantially affected the verdict.

To convince us otherwise, Gilmer raises a number of arguments. First, Gilmer argues that "the district court's ruling rested on a misunderstanding of what Exhibits 2 and 3 actually depicted and applied the wrong legal framework," because the district court

referenced the screenshots as “text messages” and incorrectly stated that they were sent to D.P. But as explained, any error in the admission of the Facebook posts was harmless. Second, Gilmer argues that D.P. did not present any testimony that “the pictures she saw were of Gilmer or that the chats contained any information that would otherwise indicate Gilmer was the author.” But this argument is contradicted by D.P.’s testimony. Third, Gilmer argues that it is “entirely plausible to conclude . . . that QueenKay attacked D.P., [that] Gilmer was dating the father of D.P.’s child, and that QueenKay and Gilmer are two different people.” But this theory was already presented to and rejected by the jury during Gilmer’s trial.

Accordingly, the district court did not abuse its discretion by admitting screenshots of the Facebook posts into evidence.

III. The district court improperly imposed prosecution costs.

Gilmer argues that the district court improperly imposed prosecution costs to cover the out-of-state witnesses’ travel expenses. We agree.

“Review of the criminal prosecution costs statute involves a question of law subject to de novo review.” *State v. Lopez-Solis*, 589 N.W.2d 290, 292 (Minn. 1999). “If the particular costs sought are recoverable under the criminal prosecution costs statute, a trial court’s award will not be reversed absent a clear abuse of discretion.” *Id.*

Minnesota Statutes section 631.48 (2022) provides that, “[i]n a criminal action, upon conviction of the defendant, the court may order as part of the sentence that defendant shall pay the whole or any part of the disbursements of the prosecution.” Such costs are

only allowed if they are either “expressly provided for in the statute or analogous to costs taxable to the prevailing party in a civil action.” *Lopez-Solis*, 589 N.W.2d at 293.

Minnesota Statutes section 357.22 (2022) covers the statutory reimbursement for witness testimony and travel costs. The statute provides that fees can be recovered “for travel to and from the place of attendance, to be estimated from the witness’s residence, if within the state, or from the boundary line of the state where the witness crossed it, if without the state.” Minn. Stat. § 357.22, subd. 2.

In *Lopez-Solis*, the supreme court reviewed the imposition of travel costs for the transportation of out-of-state witnesses. 589 N.W.2d at 295-96. The court observed that Minnesota Statutes section 357.22 “clearly does not authorize the payment of travel expense to a nonresident witness for travel outside the state of Minnesota.” *Id.* at 296 (quotation omitted). The supreme court explained that “[w]hile the legislature has afforded [district] courts discretion in awarding expert witness fees and costs, no such provision exists for lay witnesses.” *Id.* Thus, the supreme court reversed the imposition of travel costs for the out-of-state lay witnesses but upheld the imposition of travel costs for out-of-state expert witnesses. *Id.*

Similarly, in *State v. Alvarez*, the supreme court reviewed the imposition of travel costs for an out-of-state witness. 820 N.W.2d 601, 624 (Minn. App. 2012), *aff’d sub nom. State v. Castillo-Alvarez*, 836 N.W.2d 527 (Minn. 2013). The supreme court determined that the witness at issue “testified mainly as an expert witness,” and affirmed the district court’s imposition of out-of-state travel costs. *Id.* at 625.

Here, the witness at issue testified to the authenticity of the surveillance video from Spirit Halloween. He testified that the store where the fight occurred was equipped with surveillance cameras, that he was able to access this footage remotely, and that, after being contacted regarding the fight, he pulled the surveillance footage of the incident, which was later provided to the police. This testimony does not rise to the level of an expert witness. *See id.* (noting that “an expert witness [is] one who is admitted to testify from a peculiar knowledge of some art or science, a knowledge of which is requisite or of value in settling the point in issue”) (quotation omitted). Moreover, when discussing the final jury instructions with the district court, the state noted that it did not have any experts testify at trial and stated that the district court could remove the jury instruction on expert testimony.

Accordingly, the district court abused its discretion by imposing prosecution costs related to the out-of-state travel of the loss-prevention manager who testified as a lay witness at trial. *See Lopez-Solis*, 589 N.W.2d at 296; *Alvarez*, 820 N.W.2d at 625.

Affirmed in part, reversed in part, and remanded.