

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0013**

State of Minnesota,
Respondent,

vs.

Yamieyefa Goldpin Ekiyor,
Appellant.

**Filed June 29, 2020
Affirmed
Worke, Judge**

Hennepin County District Court
File No. 27-CR-17-18726

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

Michael O. Freeman, Hennepin County Attorney, Mark V. Griffin, Senior Assistant
County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Andrea Barts, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

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

UNPUBLISHED OPINION

WORKE, Judge

Appellant challenges his conviction for felony driving while impaired (DWI), arguing that the district court denied him his right to present a complete defense by excluding expert testimony about the side effects of a prescription drug. We affirm.

FACTS

On July 27, 2017, police officers arrived at the scene of a single-car accident and observed appellant Yamieyefa Goldpin Ekiyor standing near the vehicle. While speaking with Ekiyor, officers observed that he exhibited signs of impairment and detected the odor of an alcoholic beverage on his breath. Ekiyor told officers that he drank earlier in the evening. Officers soon discovered that Ekiyor had a limited driver's license prohibiting his use of alcohol and drugs and requiring the use of an ignition-interlock device. Inspection of the vehicle revealed no ignition-interlock device. Officers arrested Ekiyor for suspicion of DWI after he failed field sobriety testing and refused to take a preliminary breath test.

During the booking process, Ekiyor submitted a partial breath test indicating that his alcohol concentration was 0.20. During an interview the following morning, Ekiyor stated that he had taken zolpidem¹ as prescribed the previous evening. Ekiyor also stated that he had been involved in a similar incident two months earlier; he woke up in the

¹ Zolpidem is the generic version of the drug Ambien. While the parties and the district court referred to this drug as either zolpidem or Ambien, we refer to the drug as zolpidem.

hospital after taking zolpidem, blacking out, and driving a vehicle. Ekiyor stated that the previous incident resulted in reckless-driving charges.

Ekiyor was charged with felony DWI in violation of Minn. Stat. § 169A.20, subd. 1(1) (2016), felony driving while under the influence of a combination of alcohol and a controlled substance in violation of Minn. Stat. § 169A.20, subd. 1(4) (2016), felony test refusal in violation of Minn. Stat. § 169A.20, subd. 2(1) (2016), gross misdemeanor control of a motor vehicle with a restricted driver's license in violation of Minn. Stat. § 171.09, subd. 1(f)(1) (2016), and misdemeanor circumventing an ignition-interlock device in violation of Minn. Stat. § 171.306, subd. 6(b) (2016).

Prior to trial, Ekiyor sought to raise the affirmative defense of involuntary intoxication or temporary insanity due to his ingestion of zolpidem and moved to admit expert testimony about the drug's side effects. In support of his motion, Ekiyor submitted a report in which a forensic toxicologist opined that the ingestion of zolpidem can result in serious side effects—including sleep-driving—and that Ekiyor exhibited symptoms of intoxication due to zolpidem impairment. Ekiyor claimed that he could not present a complete defense if the jury was not provided with information about the side effects of zolpidem, which demonstrated that he lacked the general intent to drink and drive.

Ekiyor's jury trial began on September 11, 2018. Following the state's case, Ekiyor testified in his own defense. He testified that he had taken his prescription zolpidem on the evening of the accident and the next thing he remembered was waking up in a jail cell. Ekiyor confirmed that his zolpidem pill bottle contained a warning label stating that the medication could impair an individual's ability to drive and should not be combined with

alcohol. Ekiyor also admitted that he disclosed during an interview that he had crashed a vehicle after taking zolpidem and Vicodin two months prior to the accident.

Following Ekiyor's testimony, the forensic toxicologist was questioned outside of the presence of the jury. He confirmed that in preparation of his report, he relied on one article regarding zolpidem's side effect of sleep-driving, the complaint, police reports, and Ekiyor's statement to police. The forensic toxicologist also confirmed that he had not spoken with Ekiyor, obtained the prescription for Ekiyor's zolpidem, or reviewed medical records. The forensic toxicologist stated that his principal basis for concluding that Ekiyor had ingested zolpidem was from Ekiyor's statement to police.

The district court denied Ekiyor's motion to allow the forensic toxicologist to testify as an expert about the effects of zolpidem, concluding that the defenses of voluntary and involuntary intoxication were inapplicable to the case. The district court stated,

So even if [zolpidem] is in Mr. Ekiyor's system and caused the crash, he's still driving under the influence of [zolpidem] in combination with alcohol, so I don't know how this would help the trier of fact. I think it's basically aimed at some kind of jury nullification which is the argument being that somehow Mr. Ekiyor is not responsible for driving under the influence because he was in some kind of sleepwalking state.

The jury found Ekiyor guilty of driving while under the influence of a combination of alcohol and a controlled substance, and operating a motor vehicle with a driver's license restriction and without an ignition-interlock device. The district court sentenced Ekiyor to 72 months in prison. This appeal followed.

DECISION

Ekiyor argues that he was denied his constitutional right to present a complete defense when the district court excluded his expert from testifying about the effects of zolpidem.

A criminal defendant has a constitutional right to “a meaningful opportunity to present a complete defense.” *California v. Trombetta*, 467 U.S. 479, 485, 104 S. Ct. 2528, 2532 (1984). This right includes a defendant’s ability “to call . . . expert witnesses, subject to the limitations imposed by the rules of evidence.” *State v. Mosley*, 853 N.W.2d 789, 798 (Minn. 2014). Rulings about the admission of expert testimony generally rest within the sound discretion of the district court and will not be reversed absent a clear abuse of discretion. *State v. Anderson*, 789 N.W.2d 227, 234-35 (Minn. 2010). An appellate court reviews whether a district court’s evidentiary ruling violated a defendant’s constitutional rights de novo. *Id.* at 235.

“If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.” Minn. R. Evid. 702. “The basic consideration in admitting expert testimony under Rule 702 is the helpfulness test—that is, whether the testimony will assist the jury in resolving factual questions presented.” *State v. Grecinger*, 569 N.W.2d 189, 195 (Minn. 1997). Expert testimony is not helpful if the subject “is within the knowledge and experience of a lay jury and . . . will not add precision or depth to the jury’s ability to reach conclusions.” *State v. Helterbride*, 301 N.W.2d 545, 547 (Minn. 1980). The

standard for determining whether expert testimony would be helpful is an objective standard. *Mosley*, 853 N.W.2d at 800.

We determine that Ekiyor's argument that the district court erred by denying the expert's testimony about the effects of zolpidem is misplaced given that the defense that he sought to raise—intoxication due to the ingestion of zolpidem—was unavailable to him.

Ekiyor was charged with DWI and driving while under the influence of a combination of alcohol and a controlled substance. These are general-intent offenses because “[a]n unlawful intention or state of mind is not an element of a D.W.I. charge.” *State v. Duemke*, 352 N.W.2d 427, 430 (Minn. App. 1984). And the defense of voluntary intoxication is not a defense to a general-intent offense. *See City of Minneapolis v. Altimus*, 238 N.W.2d 851, 854-55 (Minn. 1976) (noting that voluntary intoxication is a defense only if a specific intent or purpose is an element of the charged offense); *see also State v. Martin*, 591 N.W.2d 481, 486 (Minn. 1999) (noting that claim of temporary insanity caused by voluntary intoxication due to defendant's use of alcohol or drugs not available as a defense). Further, the affirmative defense of involuntary intoxication was also unavailable to Ekiyor. *See* Minn. Stat. §§ 169A.46, subd. 2 (recognizing affirmative defense of involuntary intoxication available only to rebut a charge of driving while under the influence of a Schedule I or II controlled substance); 152.02, subd. 5(c)(52) (classifying zolpidem as a Schedule IV controlled substance) (2016).

Finally, even if the defense of involuntary intoxication had been available to Ekiyor, he would have been unable to make the required showing necessary to raise this defense. As outlined in *Altimus*, the defense of involuntary intoxication is available only when:

(1) “the defendant must not know, or have reason to know, that the prescribed drug is likely to have an intoxicating effect”; (2) “the prescribed drug, and not some other intoxicant, is in fact the cause of defendant’s intoxication at the time of his alleged criminal conduct”; and (3) “the defendant, due to involuntary intoxication, is temporarily insane.” 238 N.W.2d at 857.

Here, there was evidence that the label of Ekiyor’s zolpidem prescription warned about its intoxicating effects and to avoid driving after taking it. Ekiyor also testified about a prior incident when he drove after ingesting a combination of zolpidem and Vicodin. And, finally, it is unlikely that Ekiyor would have been able to prove that zolpidem was the sole cause of his impaired driving given that there was evidence of alcohol in his system.

Because we determine that the defense of zolpidem intoxication was unavailable to Ekiyor, he was not denied his right to present a complete defense. Therefore, the district court did not err by excluding the expert’s testimony on the basis that it would not be helpful to the jury.

Affirmed.