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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0336**

State of Minnesota,
Respondent,

vs.

Donald Clifton Jenkins, Jr.,
Appellant.

**Filed April 11, 2022
Affirmed
Connolly, Judge**

Hennepin County District Court
File No. 27-CR-18-30875

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

Michael O. Freeman, Hennepin County Attorney, Nicole Cornale, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Davi E. Axelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Reilly, Judge; and Smith, Tracy M., Judge.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

Appellant challenges his conviction following a bench trial on stipulated facts, challenging the district court's pretrial orders denying his motion to suppress a custodial statement for lack of probable cause and denying his motion to admit expert testimony on

false confessions. Because there was probable cause to arrest Jenkins at the time he made his custodial statement and because the district court did not abuse its discretion in denying his motion for expert testimony, we affirm.

FACTS

The conviction of appellant Donald Clifton Jenkins, Jr. resolved a “cold case” homicide from 1991. The victim was murdered in her Minneapolis apartment on December 19, 1991. She was scheduled to work at a nearby Burger King at 5:00 p.m. that day, but never arrived for her shift. She was discovered in her apartment about 11:30 p.m. by her significant other, D.S., who called 911. She had suffered multiple stab wounds and was dead when emergency responders arrived.

Police officers documented the scene shortly after arriving. They found no signs of forced entry into the apartment. They observed a smear of blood in a short hallway just inside the door. Immediately beyond the hallway was the living room, where officers found a large couch, a stereo, a key ring, a watch, a small gold ring, and a jacket drawstring. Officers discovered a large blood-stained butcher knife underneath a couch cushion. There was a partially open kitchen drawer containing a knife rack with an empty slot that matched the butcher knife. In the hallway leading to the bedrooms, officers found a gold necklace on the floor. There was another blood smear on the wall of the hallway. In the bathroom, officers found a washcloth on the sink “that appeared to contain blood.”

Officers discovered the victim lying on the floor of the main bedroom near the bed. She was wearing a blue jacket, a maroon shirt with a Burger King nametag, jeans, and black boots. There were marks on her hands “that were consistent with defensive wounds.”

There were blood smears on the corner of the bed near the victim's right arm as well as on her left leg. Officers also found a second necklace, a bag, and a set of keys in the bedroom.

Investigators quickly cleared D.S. of suspicion for the murder. He last spoke to the victim when he left the apartment the day of the murder around 11:00 a.m. He borrowed Jenkins's car, spent the day at his sister's apartment, went to a barbershop, ate at a restaurant, and did not come home to the apartment until the time he discovered the victim. A friend corroborated his whereabouts, and informed investigators that D.S. was borrowing Jenkins's vehicle and that Jenkins sent D.S. a page while they were eating at the restaurant.

Investigators first spoke to Jenkins in connection with the murder in January 1992. Jenkins admitted he knew both the victim and D.S. He stated he loaned D.S. his vehicle the day before the murder, and D.S. brought it back by 11:00 a.m. He also said he went with D.S. to Burger King in the afternoon, they returned to Jenkins's apartment, and then later Jenkins gave D.S. a ride to the barbershop. Jenkins also recalled speaking to D.S. on the phone while D.S. was at the restaurant. He stated he did not know about the murder until he heard about it the morning after.

Investigators at the time closed the case without a resolution. In 2008, the case was reopened for further investigation. Investigators submitted several of the items found at the crime scene for forensic testing. In 2009, the Bureau of Criminal Apprehension (BCA) conducted DNA testing on the washcloth found in the apartment bathroom and determined it contained a mixture of DNA from which neither the victim nor Jenkins¹ could be

¹ Jenkins's DNA profile was retrieved from the "Minnesota DNA Convicted Offender Database."

excluded, but “99.1% of the general population” could be. In addition, investigators conducted a second interview with the victim’s sister, who claimed Jenkins at times worked for D.S. and had been to the victim’s apartment ““maybe three times.”” The sister also stated the washcloth found in the bathroom was unusual, because the victim was known to be a “tidy housekeeper” who would not “have left a wet, bloody washcloth draped on the sink in the bathroom.”

Based on this information, investigators interviewed Jenkins once again in February 2010. Jenkins claimed to have never been inside the victim’s apartment. He claimed not to remember the events of December 19, 1991, whatsoever. He admitted he knew D.S., that D.S. “dealt drugs” and that they “smoked weed together,” but denied that D.S. would have let him into the victim’s apartment. Investigators did not inform Jenkins that his DNA had been found in the apartment or which items from the apartment were being tested for DNA, but Jenkins stated “Let’s find out!” when asked whether he thought his DNA would be recovered from crime scene evidence. The investigators then collected a DNA sample from Jenkins pursuant to a search warrant.

Later that same day, Jenkins called the investigators from the Ramsey County jail.² He related an incident on an unknown date³ where he was working outside an apartment building on his car. He recalled getting a cut on his knuckle and asking D.S. for something

² Jenkins was being held on a separate, unrelated offense.

³ The date was close enough to his first interview in January 1992 for him to remember being asked about it by investigators at the time.

to use to clean it up. D.S. apparently went inside the apartment, got a rag, and gave it to Jenkins. Jenkins could not recall what D.S. did with the rag after he used it.

Additional DNA testing conducted on the washcloth using the sample investigators collected confirmed that Jenkins “could not be excluded from the DNA mixture while, as they previously reported, 99.1% of the general population could be excluded.” Further DNA testing also revealed that Jenkins’s DNA was present in a mixture “of four or more individuals” found on the coat the victim was wearing at the time of death, and that Jenkins “could not be excluded as a possible contributor.”

Investigators conducted another interview with Jenkins in March 2010 after the DNA testing was completed. The investigators told Jenkins his DNA was found “near where some money was missing.” Jenkins then stated “that his DNA must be in the bathroom or the living room but had no explanation for why it would be there.” He later stated he believed “his DNA must have come from the rag” that D.S. let him use, but that he did not recognize the washcloth. Based on this second interview, investigators submitted a case against Jenkins for charging, but the prosecuting attorney did not bring charges against him at that time.

The case was reopened once again in 2018. Investigators submitted additional items for DNA testing, including additional cuttings from the washcloth. Two of these cuttings further confirmed the presence of Jenkins’s DNA—one contained a mixture of DNA from “three or more individuals” from which “99.0% of the population can be excluded,” but not Jenkins; and another contained a mixture from “four or more individuals” from which “99.4% of the population can be excluded” but not the victim or Jenkins.

Investigators arrested Jenkins on December 18, 2018. After being read his *Miranda* rights, Jenkins elected to speak to the interviewers. The interview lasted two hours and twelve minutes. Investigators informed Jenkins that “his DNA was on the washcloth and the victim’s coat.” Despite initially denying that he had ever been to the apartment, Jenkins confessed to the murder. He repeatedly referred to the DNA evidence, stating, “My DNA is there, I did it, that’s that” as well as “[Y]ou got DNA on the lady clothes and sh-t, man, how you deny that?”

When asked to describe what happened, Jenkins stated he was using a lot of drugs around that time. When he went to the apartment that day, he “was chasin’ dope.” He did not expect anyone to be home. When the victim let him into the apartment, he became frightened that D.S. would think he was “goin’ behind your boy’s back, seein’ his girl” if D.S. found out.⁴ He stated: “I saw a knife, and I grabbed it, and I hit her. And she fell. Then I blacked out.”⁵ He also stated he remembered stabbing the victim but did not think he did so more than once.

Throughout the interview, Jenkins repeatedly mentioned feeling emotional turmoil throughout the years since the murder. For example, he said: “You don’t come back from that. No matter how I try, you don’t come back, man.” He also said: “I was always sorry. But who . . . you tell that to? Ain’t nobody wanna hear that . . . you can’t tell nobody you’re sorry . . . [y]ou live with it, man.” He expressed concern about his family finding out:

⁴ Jenkins stated “[D.S.] would kill me if sh-t got outta hand, because, they didn’t do my kind,” which is a reference to gang involvement.

⁵ Investigators had not previously mentioned the types of wounds the victim had suffered during the interview.

“How . . . do you tell your daughters you killed somebody?” He stated: “I think I suffer behind the things that I did. I hurt people, so hurt gonna come back to me.” Lastly, he acknowledged that “If I had the balls, I woulda turned myself in, but I just didn’t have the balls, man.” He also requested to call and speak to his fiancée, and told her that he had been arrested about “that thing . . . we talked about” and that “they got me on it.” He also informed the investigators that he “had let her know” about the murder previously, “but she didn’t believe me.”

Jenkins was charged with second-degree murder in December 2018. He was indicted by a grand jury of first- and second-degree murder on March 14, 2019. He filed a motion to suppress his December 2018 statement a month later, arguing that investigators did not have probable cause to arrest him and speak to him about the murder. The district court denied this motion in July. The district court found that investigators had probable cause to arrest Jenkins in December 2018, citing his 1992 interview, the 2010 interviews, and the DNA testing.

Jenkins filed a motion to offer expert testimony in November 2019. He sought to offer Dr. Lawrence White as an expert to testify “about research related to police interrogations and the factors that can influence a suspect to confess to a crime they did not commit, including cognitive and psychological factors.” Dr. White would also offer a report applying this research to the Jenkins’s December 2018 statement. In this report, Dr. White states he is “neither able nor willing to offer a professional opinion about the accuracy or truthfulness of [Jenkins’s] ‘confession’ to investigators Nevertheless, there are valid reasons to be concerned about the reliability (trustworthiness) of Jenkins’

admissions and self-incriminating statements.” Dr. White’s ultimate opinion was that Jenkins’s “admission of guilt and self-incriminating statements are not reliable, that is, not trustworthy.”

The district court denied Jenkins’s motion in April 2020. The district court determined that Dr. White’s opinions would not be helpful to the jury because “nothing offered by Dr. White would help explain something that the jury cannot, on its own, understand about [Jenkins’s] confession.” Jenkins later moved to admit limited expert testimony from Dr. White solely on the evidence of risk factors for false confessions, focusing on what the interrogating officers said and the circumstances of the interrogation itself. The district court denied this motion as well.

Jenkins waived his right to trial by jury and agreed to submit the issue of his guilt as to second-degree murder on stipulated facts and evidence. Minn. R. Crim. P. 26.01, subd. 2. The district court returned a guilty verdict on December 1, 2020. The district court dismissed the first-degree murder charge, convicted him on the charge for second-degree murder, and sentenced Jenkins to a 385-month prison commitment in February 2021. Jenkins appeals.

DECISION

I. Investigators had sufficient probable cause to arrest Jenkins in 2018.

Jenkins argues his warrantless arrest in 2018 requires that his subsequent statement be suppressed. He contends officers did not have probable cause to arrest him, that his subsequent statement constitutes the “fruit of the poisonous tree” of an illegal arrest, and that the district court erred in its pretrial order when it determined otherwise. *Wong Sun v.*

United States, 371 U.S. 471, 488 (1963). Because Jenkins does not also challenge the district court’s factual findings, we apply de novo review of its probable cause determination. See *State v. Onyelobi*, 879 N.W.2d 334, 342-43 (Minn. 2016) (“Where, as here, the facts are undisputed, we review the pretrial order on a motion to suppress de novo.” (quotation omitted)); *State v. Milton*, 821 N.W.2d 789, 798 (Minn. 2012) (“We review the district court’s legal determinations, including a determination of probable cause, de novo.”).

A warrantless arrest on felony charges is valid if the police have probable cause. *State v. Cook*, 610 N.W.2d 664, 667 (Minn. App. 2000). Probable cause exists when “a person of ordinary care and prudence . . . would entertain an honest and strong suspicion that a *specific* individual has committed a crime.” *Onyelobi*, 879 N.W.2d at 343. We conduct an objective inquiry into the question of probable cause. *State v. Koppi*, 798 N.W.2d 358, 363 (Minn. 2011). It “depends on the totality of the circumstances in each case” as viewed through “the factual and practical considerations of everyday life on which reasonable and prudent people . . . act.” *State v. Lester*, 874 N.W.2d 768, 771 (Minn. 2016) (quotation omitted). The “quantum of proof” required is “more than mere suspicion but less than the evidence necessary for conviction.” *Onyelobi*, 879 N.W.2d at 343.

The circumstances present in December 2018 prior to the arrest support an honest and strong suspicion that Jenkins was the perpetrator in the 1991 murder. These circumstances demonstrate the victim was killed in her apartment without any sign of forced entry. From his interview in 1992, investigators knew that Jenkins was familiar enough with the victim and D.S. to have been to their apartment, loan his car to D.S., and

give him rides. From conversations with the victim's sister, investigators had reason to believe that Jenkins had been to the apartment a handful of times before the murder and occasionally worked for D.S. This information gave officers a strong suspicion that Jenkins was a person who was known to the victim as someone who could and occasionally did go to and from the apartment.

The other person with evident access to the apartment was D.S. But the whereabouts of D.S. were verified throughout the day of the murder, and the last time he was at the apartment prior to discovering the victim was 11:00 a.m., when the victim was still alive. The next time the victim was seen alive was around 2:20 in the afternoon that day, when her sister stopped by for a visit. At that time the victim was dressed for work and was wearing a jacket and boots. Her sister remembered seeing Jenkins pulling into the parking lot of the apartment building as she was leaving about 20 minutes later. The victim was supposed to start her shift at 5:00 p.m. but did not show up. This information provided officers with a strong suspicion that Jenkins was in the apartment building after the victim had dressed for work, but before she left.

Jenkins's previous statements also contribute to an honest and strong suspicion of his connection to the crime prior to December 2018. In the first 2010 interview, Jenkins denied loaning his car to D.S., that he had ever been to the apartment, and that he was ever involved in D.S.'s drug dealings. That same day—without having been informed that DNA testing had been conducted on the washcloth—Jenkins called the investigators and told them about a rag he had used to clean up a cut on his knuckle around the time the murder

took place. In this phone call, he also admitted that D.S. had borrowed his car the day before the murder and brought it back the day of.

In another interview conducted just over a month later, Jenkins once again related a different version of events. Jenkins now denied knowing the victim but stated he had been to the apartment “a couple times,” and remembered using the bathroom. Jenkins had still not been informed about his DNA on the washcloth found in the bathroom at the crime scene. He then stated: “If my DNA is anywhere, it’s in the bathroom and the living room, that’s it, by the front door, that’s as far as I went.” These drastic changes in his recollection regarding whether he had been to the apartment raise a strong suspicion about his connection to the murder.

Lastly, the victim’s sister pointed to the washcloth from the bathroom as suspicious. The victim was known as a tidy housekeeper who would not have left a bloody washcloth on the sink. This tends to connect the washcloth with the perpetrator. DNA testing revealed that Jenkins’s DNA was present on three separate cuttings from the washcloth. In addition, Jenkins’s DNA was present on the jacket the victim was wearing when she was discovered. Such DNA evidence leads to a strong suspicion that Jenkins was connected to the murder.

Accordingly, the totality of the circumstances known before Jenkins’s arrest included that Jenkins was someone who was known to the victim and D.S., that he had access to their apartment, that he was evasive about his connection to D.S. and the apartment when questioned, that he had been near the apartment close to when the victim had last been seen alive and before she would have left for work, and that his DNA was

present on the washcloth suspected to be tied to the perpetrator as well as the jacket the victim was wearing when she was murdered. These circumstances amount to “more than mere suspicion” that Jenkins committed the crime, and support his warrantless arrest on probable cause. *Onyelobi*, 879 N.W.2d at 343.

II. The district court did not abuse its discretion by excluding “false confession” expert testimony.

Jenkins argues that the district court abused its discretion and committed prejudicial error when it excluded proffered expert testimony on the psychology of false confessions. Specifically, Jenkins contends his expert should have been permitted to testify as to “1) ‘to educate the jury on why people may make false self-incriminating statements’; and 2) ‘the psychological factors involved in false confessions, and jurors’ intuitive tendency to consider false confession evidence even when there is compelling evidence undermining it.’”

Criminal defendants have the right to a meaningful opportunity to present a complete defense, including to call and examine expert witnesses. *State v. Mosley*, 853 N.W.2d 789, 798 (Minn. 2014); *State v. Penkaty*, 708 N.W.2d 185, 201 (Minn. 2006). Rulings on the admissibility of expert testimony rest within the district court’s discretion and will not be reversed absent an abuse of that discretion. *State v. Hanks*, 817 N.W.2d 663, 667 (Minn. 2012). A district court abuses its discretion if its decision is based on an erroneous view of the law, is arbitrary or capricious, or if its findings are clearly erroneous. *Fox v. State*, 938 N.W.2d 252, 256 (Minn. 2020). We conclude the district court did not abuse its discretion by excluding the proffered expert testimony on false confessions.

Expert testimony is permitted “[i]f scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue.” Minn. R. Evid. 702. “Under this rule, expert testimony is admissible if . . . it is helpful to the trier of fact.” *Mosley*, 853 N.W.2d at 799. Expert testimony is not helpful if it is “within the knowledge and experience of a lay jury and the testimony of the expert will not add precision or depth to the jury’s ability to reach conclusions.” *State v. Obeta*, 796 N.W.2d 282, 289 (Minn. 2011) (quotation omitted). The supreme court has made clear it is “very reluctant to allow experts to testify about matters that are generally for the jury’s determination and are susceptible to cross-examination.” *State v. Ritt*, 599 N.W.2d 802, 812 (Minn. 1999). One such matter that is “ordinarily within the understanding of a lay jury” is the “[a]ssessment of credibility.” *Id.* at 811.

The basic contention of Dr. White’s proffered expert opinion is that certain circumstances and characteristics may make a criminal suspect more likely to confess to a crime they did not commit. In effect, Dr. White’s testimony seeks to undercut the credibility of Jenkins’s confession. The assessment of credibility is within the understanding of a lay jury. *Id.* The district court determined Dr. White’s testimony regarding the psychology of making false self-incriminating statements “would not be helpful to the jury” because a jury does not “need an expert like Dr. White to explain that false confessions exist, or that someone who is tired or anxious may be more likely to falsely confess” and because “the jury will be able to watch the entire video of the confession.” Because the jury would be able to “determine for itself whether [Jenkins’s] emotional and mental state led him to falsely confess to the murder,” whether the

interrogators falsely exaggerated the strength of the evidence against Jenkins, or whether the confession contained factual inaccuracies, Dr. White's testimony would not be helpful on the issue of whether the confession is credible. Moreover, as in *Ritt*, any jurors in Jenkins's case would have been able to watch the full videotape of his confession, including "the surrounding physical environment and circumstances." *Id.* Accordingly, the district court did not abuse its discretion by excluding the proffered expert testimony as to the credibility of the confession.⁶

Affirmed.

⁶ We also note that *Ritt* appears to prohibit expert testimony on confessions as a matter of law. The *Ritt* court faced the issue of whether expert testimony may be introduced to establish that the defendant had been coerced into making a false confession through interrogation techniques allegedly "coercive enough to make an ordinary innocent person confess" to something they did not do. *Ritt*, 599 N.W.2d at 812. The *Ritt* court made plain that "the possibility that the jury may be unduly influenced by an expert's opinion mitigates against admission," and that "the credibility of witnesses in criminal trials" should not "turn on the outcome of a battle among experts." *Id.* at 811 (quotation omitted).