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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0996**

State of Minnesota,
Respondent,

vs.

Nathan Sims,
Appellant.

**Filed June 20, 2022
Affirmed
Cochran, Judge**

Ramsey County District Court
File No. 62-CR-20-3568

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

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

Cathryn Middlebrook, Chief Appellate Public Defender, Jessica Merz Godes, Assistant
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Considered and decided by Cochran, Presiding Judge; Bryan, Judge; and
Gaïtas, Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

In this direct appeal from his conviction of unintentional second-degree murder, appellant argues that the district court abused its discretion by admitting expert testimony regarding gunshot-residue-testing evidence. We affirm.

FACTS

This case involves the shooting death of J.C. The following is a summary of the evidence presented at trial.

Late one night in May 2020, J.C. and his girlfriend, A.J., were riding their bikes in St. Paul. Both homeless, J.C. and A.J. headed toward the home of A.J.'s friend, hoping to spend the night. The couple was arguing and arrived separately at the house—A.J. arrived at approximately 12:15 a.m., and J.C. arrived about four minutes later. Several other people were present at the house that night, including appellant Nathan Sims. Sims had recently been staying at the house and sleeping on the couch in the front room.

After A.J. arrived, she agreed to go to the garage with her friend, the homeowner, to smoke a cigarette. As they walked toward the garage, A.J. and the homeowner heard a loud noise. Next they heard J.C. yelling that he had been shot. Scared by the shooting, the homeowner went inside the house. There, he saw Sims standing in the front room of the house. The homeowner asked Sims “if it was him that shot” J.C., and Sims said “no.” Meanwhile, A.J. went to the front yard to see if “[J.C.] was okay” and saw J.C. running down the street. A.J. followed J.C. down the street. She caught up to him after he sat down in a driveway. He was holding his chest and crying. A.J. saw that J.C. had been shot. After a neighbor called 911, the police arrived and rendered first aid until medics transported J.C. to the hospital. Doctors attempted emergency surgery, but J.C. was pronounced dead approximately an hour after arriving at the hospital. The medical examiner ruled J.C.'s death a homicide from blood loss due to a gunshot wound to the chest.

After the shooting and before police arrived on the scene, some of the people who were at the house where the shooting occurred left. Other individuals, including Sims, stayed and were detained by police. Police brought Sims to the St. Paul police headquarters and interviewed him around 8:00 a.m. that morning. During the interview, police swabbed Sims's hands for gunshot residue. Officers had not "bagged" Sims's hands following his arrest, meaning they had not covered his hands to preserve any potential evidence on them. Sims's hands therefore remained uncovered during the time between his arrest and the collection of the gunshot-residue evidence. The swabs were sent to a criminal forensics laboratory for testing.

Police also searched the house and the surrounding area. They found a spent shell casing on the ground near the front steps of the home, a 9mm Glock handgun and magazine in the bushes in the backyard, and a 9mm bullet underneath the couch on which Sims had been sleeping. The serial numbers on the handgun had been ground off. Forensic testing determined that the shell casing found next to the front steps was fired from the handgun. A single DNA profile matching Sims was found on the grips, slide, and muzzle of the gun.

A number of weeks after the shooting, police made contact with one of the people who had left the house after the shooting on March 29. That individual, N.D., told police that he saw Sims shoot J.C., and he identified Sims in a photo lineup.

Respondent State of Minnesota charged Sims with second-degree intentional murder under Minn. Stat. § 609.19, subd. 1(1) (2018), and second-degree unintentional felony murder under Minn. Stat. § 609.19, subd. 2(1) (2018). Before trial, Sims moved to suppress evidence of the "gunshot residue test" and "any expert testimony regarding said

tests” on the basis that expert testimony on the topic would not “assist the jury” under Minnesota Rule of Evidence 702 and any evidence of the gunshot-residue testing would be unfairly prejudicial under Minnesota Rule of Evidence 403. The state opposed the motion. After hearing oral argument on the motion, the district court denied Sims’s request to exclude the evidence.

The case then proceeded to a jury trial. A central issue at trial was the identity of the person who shot J.C. The state introduced video clips from surveillance cameras belonging to the homeowner’s next-door neighbor. One clip depicted the shooting of J.C., but the camera was angled in such a way that the shooter could not be seen. The state presented the testimony of N.D., among other witnesses. N.D. stated that he saw Sims shoot J.C. from the front steps of the house. The surveillance video showed that N.D. was standing near the driveway of the house at the time of the shooting. A.J. and the homeowner, who did not see the shooting, each testified that they saw Sims with a handgun in the days preceding the shooting. The homeowner stated that he saw Sims grinding the serial numbers off a handgun in the homeowner’s garage a day or two before the shooting. A.J. testified that she and J.C. had stopped over at the house a few nights before the shooting and saw Sims at the house with a “Glock” in his hand.

The state also presented the expert testimony of a forensic scientist, Tarah Helsel, who conducted the gunshot-residue testing of the swabs from Sims’s hands. Helsel explained generally that scientists performing gunshot-residue testing look for two different types of particles. The first type is three-component particles, which are particles containing three metals—lead, barium, and antimony—together in a single particle.

Three-component particles are considered “characteristic” of gunshot residue because they “are highly specific to the discharge of a firearm” and “there are very few other sources of those particles.” The second type of particle that scientists look for is two-component particles. Two-component particles are those that contain just two of the three metals—lead/antimony, lead/barium, or barium/antimony. Those particles are considered “consistent” with gunshot residue, rather than characteristic of it, because they may “come from the discharge of a firearm” but may also come from other sources such as “brake pads and fireworks.”

Regarding the gunshot-residue testing in this case, Helsel testified that she did not identify any three-component particles on the samples from Sims’s hands. However, she did find multiple two-component particles in the samples. In the sample from Sims’s right hand, Helsel identified three lead/antimony particles. In the sample from Sims’s left hand, Helsel identified two lead/antimony particles and one barium/antimony particle. She also testified that the samples from both of Sims’s hands “contained one particle that was barium with high amounts of aluminum” and that those types of particles are also “consistent” with gunshot residue. Helsel opined that, because the particles from Sims’s hands were two-component particles rather than three-component particles, “they could be gunshot residue, but they also could be from another source.” After the state rested, Sims waived his right to testify.

At the conclusion of the trial, the jury acquitted Sims of second-degree intentional murder but found him guilty of second-degree unintentional murder. This appeal follows.

DECISION

Sims contends that the district court abused its discretion by admitting the expert testimony concerning the gunshot-residue-testing evidence. This court reviews a district court's evidentiary rulings, including the decision to admit expert testimony, for an abuse of discretion. *State v. Garland*, 942 N.W.2d 732, 742 (Minn. 2020). "A district court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record." *Id.* (quotation omitted). Appellant "bears the burden of showing that an abuse of discretion occurred and that he was prejudiced by it." *Dolo v. State*, 942 N.W.2d 357, 362-63 (Minn. 2020).

Sims challenges the decision to admit the expert testimony on two grounds. He argues that the testimony was inadmissible because (1) it was not "helpful" to the jury as required under rule 702, and alternatively (2) it should have been excluded under rule 403 because its probative value "if any" was substantially outweighed by the danger of unfair prejudice, confusion of the issues, and misleading the jury. The state counters that the expert testimony was admissible under both rules of evidence and that, even if the evidence was inadmissible, any error was harmless. For the reasons set forth below, we agree with the state.

Rule 702

Rule 702 governs the admissibility of expert testimony. It states:

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. The

opinion must have foundational reliability. In addition, if the opinion or evidence involves novel scientific theory, the proponent must establish that the underlying scientific evidence is generally accepted in the relevant scientific community.

Minn. R. Evid. 702 (emphasis added). The supreme court has held that for expert testimony to be admissible under rule 702 it must satisfy a four-part test: “(1) [t]he witness must qualify as an expert; (2) the expert’s opinion must have foundational reliability; (3) the expert testimony must be helpful to the trier of fact; and (4) if the testimony involves a novel scientific theory, it must satisfy the *Frye-Mack* standard.” *Doe v. Archdiocese of St. Paul*, 817 N.W.2d 150, 164 (Minn. 2012); *see also* Minn. R. Evid. 702.

Sims’s argument under rule 702 relates solely to the third requirement—that the expert testimony must be helpful to the trier of fact. Expert testimony meets the helpfulness requirement if it “will assist the trier of fact to understand the evidence or to determine a fact in issue.” Minn. R. Evid. 702; *see State v. Vang*, 774 N.W.2d 566, 576 (Minn. 2009) (“The ultimate question of admissibility under Rule 702 is whether the expert’s testimony will help the jury evaluate evidence or resolve factual issues.” (quotation omitted)). But “[e]xpert testimony is not helpful if the expert opinion 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.” *Garland*, 942 N.W.2d at 746 (quotation omitted).

Sims asserts that Helsel’s testimony was not helpful to the jury because the evidence demonstrated only that his hands contained two-component particles, rather than three-component particles. He argues that the presence of two-component particles does not make it more likely that he fired a gun on the day of the shooting, and that “[i]t is only

the combination of all three elements (antimony, barium, and lead) in one particle . . . that makes ‘the possibility appear more likely’ that a person fired a gun.” On this basis, he contends that the district court abused its discretion when it concluded that the expert testimony was admissible under rule 702. We are not persuaded.

In *State v. Loving*, the supreme court addressed the admissibility of expert testimony regarding gunshot-residue testing. 775 N.W.2d 872, 877-79 (Minn. 2009). There, Loving challenged the district court’s decision to admit expert testimony about gunshot-residue testing of a coat found in his car after a shooting. *Id.* at 876-77. Loving argued that the expert testimony was not helpful to the jury under rule 702 because the import of the evidence “was merely that Loving *may or may not* have discharged or handled a gun, *may or may not* have been in close proximity to a discharging gun, or the coat *may or may not* have touched or been touched by something or someone with [gunshot residue].” *Id.* at 878. The supreme court rejected Loving’s argument, concluding that the expert testimony was helpful because, although the evidence “did not definitively establish that Loving fired a gun, the evidence made that possibility appear more likely than if the test had been negative.” *Id.* at 879.

Applying the same reasoning here, Helsel’s expert testimony was helpful to the jury based on a combination of two reasons. First, the testimony about gunshot-residue testing was helpful to the jury because gunshot-residue testing is not within the knowledge and experience of a lay jury. *See Garland*, 942 N.W.2d at 746 (explaining that “[e]xpert testimony is not helpful if the expert opinion is within the knowledge and experience of a lay jury.” (quotation omitted)). Second, Helsel’s testimony assisted the jury in determining

an important fact at issue in the case: whether Sims fired a gun on the day of the shooting. Although the evidence indicated that Sims's hands contained only two-component particles, rather than three-component particles—and did not conclusively demonstrate that Sims fired a gun on that day—the evidence of two-component particles nonetheless makes that possibility appear more likely than if the test had been negative. *See id.* It was therefore helpful to the jury to know the results of the gunshot-residue tests, and it was up to the jury to determine the weight of that evidence. *See Behlke v. Conwed Corp.*, 474 N.W.2d 351, 357 (Minn. App. 1991) (“Where an expert is qualified and his or her opinion has a relevant basis, the credibility and weight of the testimony is to be decided by the jury.”), *rev. denied* (Minn. Oct. 11, 1991).

Sims argues that *Loving* is inapposite to the present case because *Loving* involved only the admission of three-component particles, not two-component particles. This argument misses the mark. A close reading of *Loving* indicates that the gunshot-residue evidence at issue in that case consisted of both two- *and* three-component particles. *See Loving*, 775 N.W.2d at 876 (noting that two- and three-component particles were found on Loving's coat and addressing whether “the district court abused its discretion when . . . it ruled that testimony about gunshot residue found on the coat from Loving's car was admissible”). In any event, the supreme court's reasoning in *Loving* applies equally to two- and three-component particles because both types of test results make it appear more likely that the defendant fired a gun “than if the test had been negative.” *Id.* at 879. In other words, *Loving* provides guidance in this case because it delineates when expert testimony

about gunshot-residue-testing evidence will assist the trier of fact. As explained above, the evidence in this case meets the *Loving* standard.

We therefore conclude that the district court did not abuse its discretion by determining that Helsel's expert testimony was admissible under rule 702.

Rule 403

Sims next argues that rule 403 provides an alternative basis for reversal. He contends that the district court abused its discretion by not excluding Helsel's expert testimony under rule 403. Rule 403 provides that "[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Minn. R. Evid. 403. Expert testimony may be excluded under rule 403 even if it is otherwise admissible under rule 702. *See Doe*, 817 N.W.2d at 164 (stating that expert testimony must satisfy both rule 702 and rule 403).

Sims contends that Helsel's expert testimony had "minimal to no probative value" and "any probative value was substantially outweighed by the danger of unfair prejudice, confusion of the issues, and misleading the jury." On this basis, he contends that the district court should have excluded the testimony.

Regarding the probative value or lack thereof, Sims raises two arguments. First, similar to his argument concerning rule 702, Sims emphasizes that the evidence demonstrated that his hands contained only two-component particles, which could have come from a source other than the discharge of a firearm such as brake pads or fireworks.

Second, Sims argues that the probative value of the evidence was “further reduced” by the risk that the two-component particles found on his hands were the product of contamination from the law enforcement environment. He notes that police did not “bag” his hands following his arrest to prevent the possibility of contamination and that his hands were not swabbed for gunshot residue until “several hours” after his arrest. He asserts that the two-component particles could have transferred to his hands from handcuffs, police officers, the back seat of the squad car in which he was transported, or various surfaces at the police station.

Sims next argues that the risk of unfair prejudice, confusion of the issues, and the jury being misled was high because Helsel’s testimony “obscured the distinction between gunshot residue and what was actually found on Sims’[s] hands.” He asserts that Helsel’s testimony “fluctuated between using the words ‘two’ and ‘three’ when testifying about ‘metals,’ ‘elements,’ ‘particles,’ and ‘hands’” and that “[a]ny lay jury hearing scientific testimony about gunshot residue analysis for the first time would be confused by Helsel’s various statements that sounded similar but in fact were extremely nuanced and meant critically different things.” We are not persuaded by any of his arguments.

The expert testimony concerning the gunshot-residue testing had probative value because it was relevant to determining whether Sims fired a gun on the day of the shooting. Although the evidence of two-component particles was not conclusive proof that Sims fired a gun, and although the police’s failure to “bag” Sims’s hands upon his arrest may have increased the risk of contamination, the expert testimony that two-component particles

were found on Sims's hands still makes it more likely that Sims fired a gun on the day in question.

Further, our review of the record convinces us that the probative value of the expert testimony was not substantially outweighed by the potential for unfair prejudice, confusion of the issues, or misleading the jury. The record belies Sims's contention that Helsel's testimony "obscured" the distinction between two-component particles and three-component particles. At trial, Helsel explained generally that three-component particles are considered "characteristic" of gunshot residue because there are "very few other sources of those particles," while two-component particles are considered "consistent" with gunshot residue because they may come from other sources such as brake pads and fireworks. Helsel then explained that all of the particles found on the samples from Sims's hands were two-component particles, and she stated both on direct and cross-examination that she did not find any three-component particles on the samples. She further clarified that the particles from Sims's hands "could be gunshot residue, but they also could be from another source" and she "[could not] say for certain that they are gunshot residue because they are lacking that third element." Considered as a whole, Helsel's testimony clearly explained that the particles found on the samples from Sims's hands were two-component particles which are "consistent" with gunshot residue and may have come from a source other than a firearm. We are not persuaded that Helsel's testimony confused or misled the jury.

Moreover, Sims's attorney took advantage of the opportunity on cross-examination to ask both Helsel and a police officer involved in swabbing Sims's hands about the

possibility of contamination. This additional testimony aided the jury in determining the weight to assign to the gunshot-residue evidence in light of the potential for contamination.

In sum, the record reflects that Helsel's expert testimony was probative of whether Sims fired a gun on the day in question, and that probative value was not substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. The district court did not abuse its discretion when it admitted the expert testimony.

Harmless Error

The state also argues that, even if Helsel's expert testimony was inadmissible under either rule 702 or 403, reversal is not warranted because any error was harmless. We need not address this argument because we have already concluded that the district court did not abuse its discretion when it admitted the challenged expert testimony. But, even assuming error by the district court in admitting the testimony, Sims has not demonstrated grounds for reversal. *See Dolo*, 942 N.W.2d at 362-63.

An evidentiary error is harmless unless it "substantially influenced the jury's decision." *Vang*, 774 N.W.2d at 576 (quotation omitted). Here, even without the expert testimony, other substantial and compelling evidence of Sims's guilt was presented at trial. The jury heard eyewitness testimony from N.D., who stated that he saw Sims shoot J.C. from the front steps of the house. Ballistic evidence connected a shell casing found near the front steps of the house to a handgun recovered from the bushes in the backyard. And forensic analysis revealed a single DNA profile matching Sims on the grips, slide, and muzzle of the gun. Two witnesses further testified that they saw Sims with a gun matching the description of that weapon in the days preceding the shooting. Given the substantial

record evidence of Sims's guilt even without the challenged testimony, there is no basis to conclude that admission of the expert testimony substantially influenced the jury's decision.

Conclusion

The district court acted well within its discretion when it concluded that Helsel's expert testimony was admissible. Sims has failed to demonstrate grounds for reversal under either rule 702 or rule 403. Moreover, even assuming an abuse of discretion in admitting the expert testimony, any error was harmless in light of the other substantial evidence of Sims's guilt presented at trial.

Affirmed.