

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 30764

STATE OF SOUTH DAKOTA,

Plaintiff and Appellant,

v.

TIMOTHY PAUL HUANTE,

Defendant and Appellee.

APPEAL FROM THE CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT
PENNINGTON COUNTY, SOUTH DAKOTA

THE HONORABLE MATTHEW M. BROWN
CIRCUIT COURT JUDGE

APPELLANT'S BRIEF

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Order Granting Petition of Intermediate Appeal entered August 16, 2024

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TIMOTHY PAUL HUANTE,

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PRELIMINARY STATEMENT

In this brief, Appellee, Timothy Paul Huante, is referred to as “Huante.” Appellant, the State of South Dakota, is referred to as “State.” References to documents are designated as follows:

Settled Record (Pennington County Criminal File
No. 22-702) SR

Evidentiary Hearing Transcript (May 17 and 21, 2024)EH

All document designations are followed by the appropriate page number(s).

JURISDICTIONAL STATEMENT

On July 9, 2024, the Honorable Matthew M. Brown, Circuit Court Judge, Seventh Judicial Circuit, signed a memorandum decision, titled Court Ruling on Offered Testimony of Dr. Manlove by Defendant. SR 370-77. It was filed with the Pennington County Clerk of Courts the following day. The Notice of Entry was filed on July 11, 2024. SR 378.

The State filed a Petition for Permission to File an Intermediate Appeal on July 19, 2024, and this Court granted permission for the intermediate appeal to proceed on August 16, 2024. SR 587-88. This Court has jurisdiction under SDCL 23A-32-12.

STATEMENT OF LEGAL ISSUE AND AUTHORITIES

WHETHER THE CIRCUIT COURT ERRED WHEN IT AUTHORIZED DR. MANLOVE TO TESTIFY AT TRIAL AS AN EXPERT ON FALSE CONFESSIONS AND POLICE INTERROGATION TECHNIQUES?

The circuit court denied the State's request to prohibit Dr. Manlove from testifying at trial as an expert in false confessions and police interrogation techniques.

Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993)

United States v. Begay, 497 F. Supp. 3d 1025 (D.N.M. 2020)

United States v. Deuman, 892 F. Supp. 2d 881 (W.D. Mich. 2012)

United States v. Jacques, 784 F. Supp. 2d 59 (D. Mass. 2011)

STATEMENT OF THE CASE

The Pennington County Grand Jury returned a Superseding Indictment alleging Huante committed one count of First-Degree Murder, a Class A felony, contrary to SDCL 22-16-4(1). SR 40.

Huante moved to suppress the statements he made to law enforcement after a polygraph examination, claiming they stemmed from improper coercion, making the statements involuntary. SR 70. The State opposed the motion, and a hearing was held on July 20, and

August 8, 2023. SR 177-86. The circuit court denied Huante's suppression motion, finding the statements he made to law enforcement, post-polygraph examination, were voluntary. SR 186-91.

Huante also moved for funds for an expert witness, Dr. Manlove, as an expert on false confessions. SR 124. The circuit court granted Huante's request. SR 139. Huante subsequently filed Defendant's Notice of Intent to Offer Expert Witness Testimony of Stephen P. Manlove, M.D. SR 149. The notice stated Dr. Manlove would testify as an expert on "false confessions, the types of persons susceptible to police interrogation tactics, and indicators of persons susceptible to police manipulation, coercion, and police tactics that may be more likely to result in false confessions." SR 149. The State requested a *Daubert* hearing on the issue. SR 162-66. After a two-day hearing, both parties briefed the issue. SR 347-58.

The circuit court found Dr. Manlove to be an expert in psychiatry – an umbrella field, which false confessions fall under. SR 373. It further found that Dr. Manlove has "scientific, technical, and/or specialized knowledge based upon his knowledge, skill, experience, training, and education in the broad field of psychiatry." SR 373. And such knowledge encompassed "various interview techniques utilized by professionals (both in the areas of psychiatry and law) and understands the benefits and pitfalls of those various techniques." SR 374. The

court ultimately denied the State's challenge¹ of Dr. Manlove's proposed testimony, stating: "[e]vidence about 'false confessions' being an actual and measurable phenomenon is reliable, relevant[,] and admissible. Dr. Manlove's testimony regarding the strengths and pitfalls of various interview techniques, including the interview techniques used to elicit the statements of [Huante's] involvement in this crime, is also reliable, relevant, and admissible." SR 386.

The State appeals the circuit court's decision to authorize Dr. Manlove to testify at trial as an expert on false confessions and police interrogation techniques.

STATEMENT OF FACTS

In the early hours of February 20, 2022, law enforcement received reports of a shooting inside Teddy's Bar and Nightclub (Teddy's), in Rapid City. SR 2. Upon arrival, officers found Dallas Quickbear with a gunshot wound to the head. SR 2. He was rushed to the hospital where he was soon pronounced dead. SR 2. Witnesses stated a white male, wearing a white sweatshirt with black writing on the front, shook Quickbear's hand just before the shooting occurred. SR 2.

About ten hours later, Huante called law enforcement, very emotional. SR 2. He had told his girlfriend, Claudia Coonce, that he was at Teddy's when the shooting happened. SR 2. He also

¹ The State argued Dr. Manlove was not an expert in false confessions or police interrogation tactics. It also argued there was no evidence Huante made a false confession. SR 3.

remembered having a gun sometime during the night. SR 2. And he was worried he had done something bad. SR 2.

Huante went to the Public Safety Building for an interview. SR 2. But he could not remember many details of the night or any names of who he was with. SR 2. Huante said he did not know Quickbear and that he did not shoot him. SR 2. He claimed he left the bar and went to the Holiday gas station, where he called Coonce for a ride. SR 2.

During the investigation, a black snub-nose revolver was found hidden on the lift gate of a delivery truck. SR 2. Video footage showed Huante alone, near that truck. SR 2. Video footage also showed Huante in a white sweatshirt and hat. SR 2. He was seen where the shooting happened. SR 2. Finally, a search near the Holiday gas station uncovered the hat and white sweatshirt Huante had been wearing at the time of the shooting. SR 2.

Law enforcement interviewed Huante a second time. SR 2. During that interview, Huante admitted he approached Quickbear, who was sitting at a high-top table. SR 2. He confessed to shaking Quickbear's hand, then pulling out a revolver from his waistband and shooting Quickbear in the head. SR 2. He then fled the scene on foot. SR 2.

STANDARD OF REVIEW

Decisions to “admit or deny an expert’s testimony [are reviewed] under the abuse of discretion standard.” *State v. Pretty Weasel*, 2023 S.D. 41, ¶ 28, 994 N.W.2d 435, 441 (quoting *State v. Janis*, 2016 S.D. 43, ¶ 13, 880 N.W.2d 76, 80). An abuse of discretion “is a fundamental error of judgment, a choice outside the range of permissible choices, a decision, which, on full consideration, is arbitrary or unreasonable.” *Pretty Weasel*, 2023 S.D. 41, ¶ 28, 994 N.W.2d at 441 (quoting *State v. Hankins*, 2022 S.D. 67, ¶ 21, 982 N.W.2d 21, 30). This Court affords “broad discretion to the [circuit] court in deciding whether to admit or exclude evidence.” *State v. Hernandez*, 2023 S.D. 17, ¶ 24, 989 N.W.2d 525, 533 (quoting *State v. Packed*, 2007 S.D. 75, ¶ 24, 736 N.W.2d 851, 859). But “[w]hen a [circuit] court misapplies a rule of evidence, as opposed to merely allowing or refusing questionable evidence, it abuses its discretion.” *Hernandez*, 2023 S.D. 17, ¶ 24, 989 N.W.2d at 533 (quoting *State v. Guthrie*, 2001 S.D. 61, ¶ 30, 627 N.W.2d 401, 415).

ARGUMENT

THE CIRCUIT COURT ERRED WHEN IT AUTHORIZED
DR. MANLOVE TO TESTIFY AT TRIAL AS AN EXPERT ON
FALSE CONFESSIONS AND POLICE INTERROGATION
TECHNIQUES.

A. *Background.*

Huante confessed to killing Quickbear. But he now claims it is a false confession. He hired a psychiatrist, Dr. Stephen L. Manlove, to

draft a report on the basis of four things: false confessions in general, certain interrogation tactics are more likely to lead to false confessions, certain people are more likely to be susceptible to making false confessions, and the hallmarks of false confessions. SR 294-95. To assist him in his report, Dr. Manlove interviewed Huante three separate times; read Detective Andrew Randazzo's narrative of the polygraph examination; reviewed Elliot Harding's polygraph report; watched the three law enforcement interviews and polygraph examination and read the transcripts from those interactions; and reviewed the discovery in the case. SR 295.

In his report, Dr. Manlove talked about false confessions in general. SR 313. He provided data and statistics but did not cite any references or note where the information came from. SR 313.

Next, he detailed how certain interrogation tactics are more likely to lead to false confessions. SR 314. He detailed the steps of a common interrogation technique called the Reid method.² SR 314-15. While detailing the different steps, he pointed out his perceived flaws with how law enforcement interrogated Huante. SR 314-15. His report then discussed an article in *Applied Cognitive Psychology*.³ SR 316. The article discussed the link between suggestibility compliance and false confessions. SR 316.

² The Reid technique is a nine-step interview technique designed by John E. Reid & Associates, Inc., used by law enforcement. *United States v. Jacques*, 784 F. Supp. 2d 59, 64 (D. Mass. 2011).

³ The name of the article was not provided. SR 316.

Dr. Manlove stated there were several things in Huante's situation that made him more susceptible to give a false confession. SR 316. He stated that because Huante claimed to not remember much of what happened at Teddy's, that led Dr. Manlove to believe the information the detectives told him was true. SR 316. And that his high level of trust in law enforcement made him more suggestible. SR 316. Thus, Dr. Manlove classified Huante's confession as a "coerced confession." SR 318. Finally, Dr. Manlove's report described the hallmarks of false confessions. SR 316. At the conclusion of his report, Dr. Manlove stated he was concerned that Huante falsely confessed to killing Quickbear. SR 317.

The circuit court has authorized Dr. Manlove to testify as an expert in false confessions and law enforcement interrogation techniques. SR 370-77. The court is allowing him to testify about false confessions in general, that certain interrogation techniques are more likely to lead to false confessions, that certain people are more susceptible to false confessions, and the hallmarks of false confessions. SR 375-76. But Huante has not shown that Dr. Manlove is an expert in false confessions or police interrogation tactics. And allowing such testimony is not only based on questionable scientific practices, but it also invades the province of the jury.

B. *Dr. Manlove's Credentials Fall Short of Him Being Qualified as An Expert in False Confessions and Police Interrogation Tactics.*

SDCL 19-19-702 lays out the parameters for expert witnesses. It requires that:

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- (a) The expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) The testimony is based on sufficient facts or data;
- (c) The testimony is the product of reliable principles and methods; and
- (d) The expert has reliably applied the principles and methods to the facts of the case.

SDCL 19-19-702. This Court has “adopted the *Daubert* test . . . to be used in determining whether expert testimony is admissible.” *State v. Yuel*, 2013 S.D. 84, ¶ 8, 840 N.W.2d 680, 683 (citing *State v. Hofer*, 512 N.W.2d 482, 484 (S.D. 1994)). The *Daubert* standard requires the circuit court to ensure that an expert's testimony both “rests on a reliable foundation and is relevant to the task at hand. Pertinent evidence based on scientifically valid principles will satisfy those demands.” *Yuel*, 2013 S.D. 84, ¶ 8, 840 N.W.2d at 683 (quoting *State v. Loftus*, 1997 S.D. 131, ¶ 21, 573 N.W.2d 167, 173).

The party offering the expert testimony “must show that the expert's theory or method qualifies as scientific, technical, or specialized knowledge under [SDCL 19-19-702].” *Guthrie*, 2001 S.D. 61, ¶ 34, 627 N.W.2d at 415-16. The circuit court must “ensure an expert's

testimony ‘rests on a reliable foundation[.]’” *State v. Huber*, 2010 S.D. 63, ¶ 19, 789 N.W.2d 283, 289 (quoting *Hofer*, 512 N.W.2d at 484). It is the court’s job to act as the gatekeeper in screening such evidence. *State v. Lemler*, 2009 S.D. 86, ¶ 23, 774 N.W.2d 272, 280 (citing *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 142, 118 S.Ct. 512, 517, 139 L.Ed.2d 508 (1997)). The circuit court must determine not only whether an expert is qualified to testify, but also whether the opinion testimony is based on reliable methodology. *United States v. Begay*, 497 F. Supp. 3d 1025, 1055 (D.N.M. 2020) (citing *United States v. Gutierrez-Castro*, 805 F. Supp. 2d 1218, 1224 (D.N.M. 2011)).

But, as the next sections show, the circuit court erroneously determined that Dr. Manlove is an expert in false confessions and police interrogations because Huante’s offer of proof fell well-short of what is required to qualify a person as an expert on such topics.

- i. Dr. Manlove does not have the necessary experience to be considered an expert in false confessions.

Before the *Daubert* hearing, Huante provided the State with Dr. Manlove’s Curriculum Vitae (CV). SR 151-55. Though Dr. Manlove has significant experience in the field of psychiatry, his CV lacks any reference to false confessions. SR 151-55. The *Daubert* hearing spanned two days, where Dr. Manlove said he had been qualified as an expert witness about 200 times, three or four of which dealt with false confessions. EH 11, 44. Yet he could not recall the false confession

cases, whether they were state or federal cases,⁴ nor could he remember if he testified at trial in those cases or just consulted. EH 44-45.

a. Dr. Manlove's opinion on false confessions is not reliable.

Daubert provides several factors, as guidance, for the circuit court to consider when determining whether to allow expert testimony.

Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 593-94, 113 S.Ct. 2786, 2796-97, 125 L.Ed.2d 469 (1993). The factors, while not exclusive, include:

“(1) whether the method is testable or falsifiable; (2) whether the method was subjected to peer review; (3) the known or potential error rate; (4) whether standards exist to control procedures for the method; (5) whether the method is generally accepted; (6) the relationship of the technique to methods that have been established as reliable; (7) the qualifications of the expert; and (8) the non-judicial uses to which the method has been put.”

Huber, 2010 S.D. 63, ¶ 25, 789 N.W.2d at 291 (quoting *Guthrie*, 2001 S.D. 61, ¶ 35, 627 N.W.2d at 416).

Dr. Manlove considers his expertise on the topic to be “better than average.” EH 44. But he has never taken any formal coursework on false confessions. EH 57. Instead, his knowledge comes from his own readings and five to ten classes⁵ he took on the topic, as well as his general education. EH 41-42, 141. He listed various published and unpublished works he read, including research studies, law review

⁴ Dr. Manlove followed up stating he believed one was most likely a federal case because he remembered the FBI was involved. EH 45.

⁵ Dr. Manlove could not recall the name of the courses he took or when he took those courses. EH 41-42.

journals, and opinion pieces. EH 18-20. Yet Dr. Manlove has never conducted his own research or published any papers on the topic. EH 41-42, 48. Nor has he taught any courses on the topic. EH 58; SR 294-318.

While Dr. Manlove has been deemed an expert in general forensic psychiatry several times, he has only been asked to work on three or four cases involving false confessions. EH 44. He did not provide any details about those cases and did not remember if they were state or federal cases but believed at least one was a federal case. EH 45. He also could not recall if he testified for any of the cases, but thought he testified at least once about false confessions. EH 46. He also did not know for certain if he was considered an expert in the case. EH 46-47.

Although Dr. Manlove provided data and statics in his report, he could not quantify any of the information he provided in his report. *See* EH 63-64. In fact, Dr. Manlove testified that he relied on the website falseconfessions.org for much of his statistical information. EH 82. But he did not know of the sources that website relied on, nor could he add any additional information to the data and statistics to quantify the information. EH 82-83. A comparison of the bullet-point list provided by Dr. Manlove in his report to the false confessions' website shows he copied the information directly from the website. *See* falseconfessions.org/fact-sheet/ (last visited September 5, 2024). And while falseconfessions.org provides links to its sources, the links are

either broken or lead to a main webpage, where the user is left sifting through the information.

When it comes to *Daubert*, “[g]enerally, an expert’s opinion is reliable if it is derived from the foundations of science rather than subjective belief.” *Guthrie*, 2001 S.D. 61, ¶ 36, 627 N.W.2d at 416–17. The research available on false confessions is not without skepticism. One point of contention is how data is gathered on the topic – there is no theory or methodology that can be tested. *United States v. Deuman*, 892 F. Supp. 2d 881, 886 (W.D. Mich. 2012).

For instance, many experiments on false confessions use fictitious scenarios to illicit false confessions from the subjects. For example, “the Alt-key Study” that required students to complete a project on the computer. They were told to press the computer’s Alt key because it would cause the computer to crash. But “researchers forced the system to crash, falsely accused the students of hitting the Alt key, and confronted them with a ‘witness’ who reported seeing them do so. Under these circumstances, some number of the students signed written confessions despite their innocence.” *United States v. Jacques*, 784 F. Supp. 2d 59, 66 (D. Mass. 2011). But the data provided limited value because the fictitious scenario did not come close to replicating real life criminal interrogations. *Jacques*, 784 F. Supp. 2d at 66. In

addition, one purported expert on false confessions, Dr. Richard Leo,⁶ and his research methods came under scrutiny in Massachusetts.

Jacques, 784 F. Supp. 2d at 66. Dr. Leo's research method included reviewing false confession cases, placing the confession in one of four objectively based criteria,⁷ and comparing the interrogation technique used to find common variables that have led to false confessions.

Jacques, 784 F. Supp. 2d at 66. The court found that while the research showed that false confessions do occur and certain techniques could lead to a false confession, that information did not provide a "useful [or] appropriate basis to assist a jury in assessing whether a particular confession, or even incriminating statement, was false."

Deuman, 892 F. Supp. 2d at 886.

⁶ Dr. Leo is a forensic psychiatrist who *has done research and written articles about false confessions*. (Emphasis added). Dr. Manlove read some of Dr. Leo's articles and used them to help further his knowledge on the subject. EH 48, 74, 77.

⁷ According to Dr. Leo,

125 confessions [were] "proven false confessions" based on four criteria providing objective confirmation that the confession was false: (1) proof that the crime did not happen, e.g., three developmentally disabled defendants confess to murdering a defendant's newborn baby but later-obtained evidence shows that such defendant was medically incapable of having a child; (2) the defendant could not have committed the crime, e.g., the defendant was incarcerated at the time the crime was committed; (3) the true perpetrator of the crime, whose guilt can be objectively verified, was subsequently apprehended; and (4) reliable scientific evidence excludes the defendant as the perpetrator, e.g., DNA testing.

Deuman, 892 F. Supp. 2d at 883.

Massachusetts is not alone in its ruling. A New Mexico federal court also found that false confession information “does not appear to be based on significant empirical data.” *Begay*, 497 F. Supp. 3d at 1074 (citing *Daubert*, 509 U.S. at 593-94, 113 S.Ct. at 2797). The court then pointed out that “a leading study in the field of false confession relies on a handpicked, statistically insignificant sample size, and the researchers drew their conclusions from unreliable sources.” *Begay*, 497 F. Supp. 3d at 1075.

Similarly, in *Coleman v. State*, the Texas Court of Appeals affirmed the decision to exclude Dr. Micheal Fuller as an expert in false confessions. 440 S.W.3d 218 (Tex. App. 2013). Dr. Fuller and Dr. Manlove share many credentials. They are both forensic psychiatrists. *Coleman*, 440 S.W.3d at 227; EH 10-11. Neither have testified in court as an expert in false confessions. *Coleman*, 440 S.W.3d at 227; EH 46-47. Both read articles by Dr. Leo. *Coleman*, 440 S.W.3d at 227; EH 48. Neither have taught courses in false confession or have written any books or articles about false confessions. *Coleman*, 440 S.W.3d at 227; EH 48. Given his credentials, there was no evidence to suggest that Dr. Fuller’s testimony properly relied on or utilized the principals involved in the field of false confessions, and it was an appropriate gatekeeping decision to exclude his testimony. *Coleman*, 440 S.W.3d at 228.

Given how strikingly similar Dr. Fuller and Dr. Manlove's qualifications are, logic says Dr. Manlove lacks the necessary credentials to be an expert in false confessions. And while Dr. Manlove has many years of experience in the field of forensic psychiatry, his "degree of specialized knowledge is simply too thin to give his testimony foundation[.]" *Jacques*, 784 F. Supp. 2d at 62.

Dr. Manlove's testimony is not based on a foundation of science. Nor does he have the knowledge or skill set required to be an expert in the field of false confessions. Consequently, the circuit court should not have qualified him as such.

b. Dr. Manlove's opinion on false confessions is not relevant.

Under *Daubert*, not only must the proposed expert testimony be reliable, but it must also be relevant. "Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action." SDCL 19-19-401. The circuit court may exclude relevant evidence "if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." SDCL 19-19-403. In the expert witness context, courts must ensure that an expert's testimony logically advances a material aspect of the case and that there is a valid

scientific connection to the disputed fact. *Begay*, 497 F. Supp. 3d at 1078.

The circuit court's order allows Dr. Manlove to help explain false confessions to the jury because, as the court determined, that topic is something some people do not understand. EH 374. But Dr. Manlove stated that most people have heard of the concept of false confessions. EH 121-22. To use his own words, its "become common knowledge." EH 121-22. He stated with cases, such as the "Central Park five," are becoming more widely known, so is the concept of false confessions. EH 121-22.

By Dr. Manlove's own testimony, he is not needed as an expert here. An expert witness uses their specialized knowledge to assist the jury to "understand the evidence or to determine a fact in issue." SDCL 19-19-702(a). But if the concept is "common knowledge" then there is no need for the expert testimony. *People v. Kowalski*, 492 Mich. 106, 123, 821 N.W.2d 14, 26 (2012).

In fact, some in the field estimate nearly seventy percent of jurors know false confessions happen but are a rare occurrence. *See Begay*, 497 F. Supp. 3d at 1078. The purpose of expert testimony is to help the jury understand the evidence or decide an issue. *See Guthrie*, 2001 S.D. 61, ¶ 32, 627 N.W.2d at 415. If the concept of false confessions is commonly known, there is no need for expert testimony to explain the concept to the jury. Therefore, Dr. Manlove's testimony is not relevant.

- ii. Dr. Manlove does not have the necessary experience to be considered an expert in police interrogation tactics.

The circuit court's decision allows Dr. Manlove to testify as an expert in police interrogation tactics. SR 375. But Dr. Manlove's credentials on the subject matter are deficient.

- a. Dr. Manlove's opinion on police interrogation tactics is not reliable.

During the evidentiary hearing, Dr. Manlove testified that his knowledge of police interrogation tactics came from his observations of interviews and speaking with law enforcement. EH 51. He does not have any training on polygraphs, the Reid technique, or any other interview techniques used by law enforcement. EH 58. Also, Dr. Manlove stated he had family members in law enforcement whom he spoke with about interrogation techniques. EH 51. But he did not state where they worked or if they have training in the Reid technique. EH 51. And he failed to name any other techniques used by law enforcement, other than the Reid technique. EH 50-51.

Dr. Manlove criticized the Reid technique as being too effective, causing not only guilty people to confess to crimes, but also causing innocent people to confess to crimes they did not do. EH 92. But Dr. Manlove has no formal training on the Reid technique. EH 58. In fact, he admitted to not reading the manual on the Reid technique until he was retained for Huante's case. EH 50. He was also unable to

provide any statistics on how many false confessions result from use of the Reid technique. EH 77.

Courts hesitate to allow expert testimony on police interrogation techniques because, while coercive techniques can lead to false confessions, those same techniques also lead to true confessions. *Deuman*, 892 F. Supp. 2d at 888. Other courts have been critical because “there does not appear to be a reliable estimate of how many confessions are false, regardless of the interrogation tactic employed.” *Begay*, 497 F. Supp. 3d at 1073. In fact, one court found,

the proffered expert testimony to the effect that the Reid technique enhanced the risk of an unreliable confession lacked any objective basis for support whatsoever. Although [the proffered false confession expert] insisted that “there [was] a wealth of information about the risks of the Reid technique,” he could point to none.

Jacques, 784 F. Supp. 2d at 66.

Dr. Manlove’s knowledge on police interrogation tactics is inadequate for him to be deemed an expert witness on the matter. The circuit court erred by qualifying him as an expert in the field of police interrogation tactics.

b. Dr. Manlove’s opinion on police interrogation tactics is not relevant.

Huante’s proffered testimony from Dr. Manlove on police interrogation tactics seems to be a second chance to attack his confession. He already tried to suppress his confession by claiming his statements “were the result of improper coercion which rendered the

statements involuntary.” SR 70. After a two-day evidentiary hearing, the circuit court found the interview was not coercive and denied the suppression request. SR 188-89. That suppression ruling remains intact and has not been altered by the circuit court in light of its ruling on Dr. Manlove’s testimony.

By allowing Dr. Manlove to testify about coercive police interview tactics, it ushers Huante through a backdoor attack of an already denied suppression motion. Thus, in front of the jury he wants to criticize legal, constitutional interrogation methods, claiming they result in unreliable confessions. *See Begay*, 497 F. Supp. 3d at 1069. This is even though the circuit court already found “Huanté’s behavior during the interview was not of a person whose will was being overcome.” SR 189. So for the circuit court to allow Dr. Manlove’s testimony that the interrogation was coercive is completely contrary to its previous ruling.

Because the circuit court already determined Huante’s confession was not obtained through coercive measures, Dr. Manlove’s testimony would be irrelevant at trial. And irrelevant evidence is inadmissible. SDCL 19-19-402.

Simply put, the circuit court improperly found Dr. Manlove is an expert on police interrogation techniques. He is only familiar with the Reid technique, and only read the Reid technique manual when retained for Huante’s case. He is unable to provide any information on

the number of false confessions resulting from the Reid technique. In addition, allowing testimony of coercive police interrogation tactics contradicts the circuit court's previous decision on the suppression issue. Therefore, the circuit court erred when it authorized Dr. Manlove to testify as an expert on police interrogation tactics.

C. *Dr. Manlove's Testimony Would Invade the Province of the Jury.*

While the court prohibited Dr. Manlove from providing the jury with his opinion that Huante actually gave a false confession, his testimony nonetheless usurps the jury's duty to resolve conflicts of evidence. It is up to the jury to determine all questions of fact, including witness credibility. *See* SDCL 23A-25-3. Even when an expert is providing testimony on false confessions in general, the jury may see that testimony with more authority than if it came out through other witnesses. *See Begay*, 497 F. Supp. 3d at 1077.

Courts have been hesitant to allow experts who do not provide their ultimate opinion on whether the defendant provided a false confession, but their testimony touches on witness credibility. *See United States v. Call*, 129 F.3d 1402, 1406 (10th Cir. 1997) (finding such testimony is often excluded "because it usurps a critical function of the jury and because it is not helpful to the jury, which is capable of making its own determination regarding credibility."); *State v. Cobb*, 43 P.3d 855, 857 (2002) (finding expert testimony on the phenomenon of false confessions invaded the province of the jury and defense attorneys

could cross-examine witnesses and make arguments to present the same theory of defense without the expert witness); *State v. Davis*, 32 S.W.3d 603, 608 (Mo. Ct. App. 2000) (finding expert testimony on interrogation techniques, how those techniques influence criminal suspects, and whether those techniques correlate to a suspect providing a false confession invaded the province of the jury).

Dr. Manlove's testimony, whether he provides an ultimate opinion or not, would send the same message to the jury: disregard Huante's confession. *United States v. Benally*, 541 F.3d 990, 995 (10th Cir. 2008) (finding that expert testimony on false confessions discredits the defendant's confession). If Huante wishes to push forward with the defense that he falsely confessed to the crime, he has other avenues to do so.

Because "[t]he jury is capable of understanding the reasons why a statement may be unreliable . . . , the introduction of expert testimony would be 'a superfluous attempt to put the gloss of expertise, like a bit of frosting, upon inferences which lay persons were equally capable of drawing from the evidence.'" *Davis*, 32 S.W.3d at 609 (quoting *State v. Lawhorn*, 762 S.W.2d 820, 823 (Mo. en banc 1988)). Dr. Manlove's testimony on false confessions and police interrogation tactics therefore should not be allowed as it invades the province of the jury.

CONCLUSION

Because Dr. Manlove's testimony is not reliable or relevant, it should not be admissible at trial. It also invades the province of the jury. Therefore, the circuit court abused its discretion when it found such testimony to be admissible. The State respectfully asks this Court to reverse the circuit court's decision.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. I certify that the Appellant's Brief is within the limitation provided for in SDCL 15-26A-66(b) using Bookman Old Style typeface in 12-point type. Appellant's Brief contains 5,019 words.

2. I certify that the word processing software used to prepare this brief is Microsoft Word 2016.

Dated this 30th day of September 2024.

/s/ Erin E. Handke

Erin E. Handke

Assistant Attorney General

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 30th day of September 2024, a true and correct copy of Appellant's Brief in the matter of *State of South Dakota v. Timothy Paul Huante* was served electronically through Odyssey File and Serve on Angela M. Colbath at angelacolbath@acolbathlaw.com and Gregory J. Sperlich at gsperlich@acolbathlaw.com.

/s/ Erin E. Handke

Erin E. Handke

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STATE OF SOUTH DAKOTA)) SS. COUNTY OF PENNINGTON)	IN CIRCUIT COURT SEVENTH JUDICIAL CIRCUIT
STATE OF SOUTH DAKOTA, Plaintiff, v. TIMOTHY HUANTE, Defendant.	51CRI22-702 COURT RULING ON OFFERED TESTIMONY OF DR. MANLOVE BY DEFENDANT

ANALYSIS

The State has made a *Daubert* motion with regard to the reliability and admissibility of the discussion regarding “false confessions”.

Dr. Manlove would testify for defense, if allowed, to the following issues:

1. False confessions in general: their prevalence, that they are counter intuitive and that subsequent DNA exonerations have revealed their existence.
2. That certain interrogation (interview) tactics are more likely to lead to false confessions; i.e., the Reid Technique which can include contamination and the police claiming or suggesting they have more evidence than they do.
3. Certain persons are more likely to be susceptible to making false confessions, and
4. The hallmarks of a false confession. The suspect's description doesn't match the other facts or is impossible in light of known facts.

See 5/22/2024 filing *Forensic Psychological Examination, Exhibit 2*.

At a hearing held on May 22, 2024 the Defense called Dr. Stephen Manlove as their proffered expert in the area of false confessions. Dr. Manlove testified and exhibits were put into the record, including a summary of his sources, qualifications, specifics of various aspects of the

life and background of the Defendant in this case, and importantly, an analysis of the polygraph given by law enforcement and the subsequent interview of the Defendant. The last pages of the report include Dr. Manlove's opinions as to the veracity of the "confession" or incriminating statements of the Defendant. *See Generally 5/22/2024 filing Forensic Psychological Examination, Exhibit 2 (Opinion section starts on page 20).* Dr. Manlove was cross-examined by the State at the hearing.

Expert testimony is governed by SDCL § 19-19-702, which provides:

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- (a) The expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) The testimony is based on sufficient facts or data;
- (c) The testimony is the product of reliable principles and methods; and
- (d) The expert has reliably applied the principles and methods to the facts of the case.

SDCL § 19-19-702.

The trial court is responsible for determining whether expert testimony will assist the finder of fact to understand the evidence, which includes a determination of "whether a particular expert has sufficient specialized knowledge to assist jurors in deciding the specific issues in the case." *Burly v. Kytect Innovative Sports Equipment, Inc.*, 2007 SD 82, ¶ 16, 737 N.W.2d 397, 404. In making this determination, South Dakota has adopted the *Daubert* standard, as set out in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 597 (1993). Pursuant to a *Daubert* determination, the trial court is tasked with "ensuring that an expert's testimony both rests on a reliable foundation and is relevant to the task at hand." *State v. Hofer*, 512 N.W.2d 482, 484 (S.D. 1994). In applying *Daubert*, "[t]he focus . . . must be solely on principles and methodology, not on the conclusions that they generate." *State v. Lemler*, 2009 S.D. 86, ¶ 25, 774 N.W.2d 272, 281 (citations omitted).

In *Lemler*, the South Dakota Supreme Court noted that four factors guide a trial court's determination regarding the reliability of scientific testimony:

(1) whether the theory or technique in question can be (and has been) tested, (2) whether it has been subjected to peer review and publication, (3) its known or potential error rate and the existence and maintenance of standards controlling its operation, and (4) whether it has attracted widespread acceptance within a relevant scientific community.

Lemler, 2009 S.D. 86, ¶ 24, 774 N.W.2d at 280 (citing *Daubert*, 509 U.S. at 593-94). "The test of reliability is [, however,] 'flexible,' and *Daubert*'s list of specific factors neither necessarily nor exclusively applies to all experts or in every case." *Id.* (quoting *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137, 141, 119 S.Ct. 1167, 1171 (1999)).

Furthermore, "it would be unreasonable to conclude that the subject of scientific testimony must be 'known' to a certainty; arguably, there are no certainties in science." *Id.* at ¶ 25, 774 N.W.2d at 281 (citations omitted). "Thus, an expert may extrapolate from existing data as long as there is an analytical connection between the known data and the expert's opinion." *Id.* at ¶ 25, 774 N.W.2d at 281 (citation omitted). "Under *Daubert*, the proponent offering expert testimony must show that the expert's theory or method qualifies as scientific, technical or specialized knowledge[.]" *State v. Guthrie*, 2001 S.D. 61, ¶ 34, 627 N.W.2d 401, 415-16. Despite its consideration, the widespread acceptance of a scientific position in the scientific community is not required. *Hofer*, 512 N.W.2d at 484.

When ruling on the admissibility of an expert's opinion, "the trial court needs to exercise its gatekeeping function." *Kuper v. Lincoln-Union Elec. Co.*, 1996 S.D. 145, ¶ 41, 557 N.W.2d 748, 760. However, in a *Daubert* determination, the trial court is "supposed to screen the jury from unreliable nonsense opinions, but not exclude opinions merely because they are impeachable." *City of Pomona v. SQM N. Am. Corp.*, 750 F.3d 1036, 1044 (9th Cir.) cert. denied

sub nom. *SQM N. Am. Corp. v. City of Pomona, Cal.*, 135 S. Ct. 870 (2014). Instead, any deficiencies in an expert's opinion or qualifications should be tested through the adversary process at trial. *Burley*, 2007 S.D. 82, ¶ 24, 737 N.W.2d at 406.

With regard to the issue of relevance, the trial court is expected to utilize the same relevancy considerations it applies in virtually any other determination. "Relevance embraces 'evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.'" *Guthrie*, 2001 S.D. 61, ¶ 32, 627 N.W.2d at 415. The proponent of the testimony must prove its admissibility by a preponderance of the evidence. *Daubert*, 509 U.S. at 592 n. 10. Furthermore, the South Dakota Supreme Court has "often stated that '[t]he basis of an expert's opinion is generally a matter going to the weight of the testimony rather than the admissibility.'" *First W. Bank Wall v. Olsen*, 2001 S.D. 16, ¶ 10, 621 N.W.2d 611, 616 (citations omitted).

CONCLUSIONS

The Court finds Dr. Manlove is an expert in the field of psychiatry. He has been qualified as an expert in the field of psychiatry on many previous occasions in both Federal and State Courts. The field of psychiatry is a large body of knowledge and contains many subsets of expertise. "False confessions" and interview techniques both fall under the broad umbrella of psychiatry as explained by Dr. Manlove at the hearing on May 22, 2024. His expert knowledge in the field of psychiatry is an umbrella under which he would testify about "false confessions" and interview techniques in this case.

Dr. Manlove has scientific, technical, and/or other specialized knowledge based upon his knowledge, skill, experience, training, and education in the broad category of psychiatry. As a subset of this knowledge, he has further training and education on the concept of "false

confessions” and the various interview techniques utilized by professionals (both in the areas of psychiatry and law) and understands the benefits and pitfalls of those various techniques. As outlined by defense counsel in their May 31, 2024 letter brief, “Juries hold confessions in high regard. The police work hard to secure them and interview suspects with a goal to obtain them. It is incredible to most people that someone would falsely confess.....[Dr. Manlove’s testimony] would aid the jury in understanding something that most people couldn’t contemplate.”

Ultimately, it will be the sole determination of the jury as to what weight to give the statements of the Defendant in this case. The Court believes that given the particular facts of this case, and the methodology used by law enforcement to obtain the statements from the Defendant, that instruction on “false confessions” and interview techniques (and their benefits and pitfalls) is particularly relevant for consideration by the jury, and is fundamental to the Defendant’s “constitutional right to a fair opportunity to present a defense.” *State v. Huber*, 789 M.W.2d 283, 294-29, citing *State v. Lamont*, 631 N.W.603, 608 (SD 2001).

Dr. Manlove has sufficient facts and data to support his conclusions. The Forensic Psychological Examination, listed herein, outlines the vast amount of information Dr. Manlove has reviewed about this specific case including a transcribed version of the post-polygraph interview where the statements of the Defendant were made to law enforcement. The testimony offered by Dr. Manlove is the product of reliable principles and methods. There were numerous studies and reports relied upon by Dr. Manlove to set foundation for his knowledge and opinions. The State clearly has avenues of effective cross examination, however, that does not foster a finding that Dr. Manlove’s testimony is entirely baseless or without merit. It is also clear that Dr. Manlove has reliably applied the principles and methods to the facts of this specific case.

As to the proposed testimony by Dr. Manlove regarding the *procedural protocols* used in eliciting statements from the Defendant, the Court finds Dr. Manlove has met the criteria under *Daubert* to testify about the interview *process* between law enforcement and the Defendant in this case and the adherence to guidelines about how to interviews are conducted and the benefits and pitfalls of various interview techniques. The record indicates Dr. Manlove is qualified as an expert in the field of interviewing individuals, and of the different types of interview techniques, including those used by law enforcement (eg. the Reid Technique). As stated in his testimony, the interview technique(s) used in the interview with the Defendant in this case is a subset/amalgamation of general interview techniques Dr. Manlove is aware of given his education, training, and experience. The record also reflects Dr. Manlove has specialized knowledge in interviewing adults, as it is his regular routine at his job or has been in the past. Dr. Manlove's testimony is based on the specific facts of this case, his proposed testimony is based on reliable principles and methods, and his proposed testimony would apply those accepted principles and methods to the facts of this case. *State v. Wills*, 2018 S.D. 21, ¶ 27.

At the trial, Dr. Manlove will be allowed under this ruling to testify as to the following:

1. False confessions in general: their prevalence, that they are counter intuitive and that subsequent DNA exonerations have revealed their existence.
2. That certain interrogation (interview) tactics are more likely to lead to false confessions; i.e., the Reid Technique which can include contamination and the police claiming or suggesting they have more evidence than they do.
3. Certain persons are more likely to be susceptible to making false confessions, and

4. The hallmarks of a false confession. The suspect's description doesn't match the other facts or is impossible in light of known facts.

Dr. Manlove is however, prohibited from outlining the *facts of this case* as it relates to whether the specific facts of this case "fit the mold" of a false confession (eg. that the police lied to the defendant, that the defendant trusted law enforcement, that the defendant had no independent recollection of the events, that the defendant failed a polygraph test, etc.) and is further prohibited from providing his ultimate opinion that this was a "coerced confession." See *Black v. Division of Criminal Investigation*, 887 N.W.2d 731 (S.D. 2016). The Court finds that this type of expert testimony invades the province of the jury. *Id.*

South Dakota has touched upon the issue of invading the province of the jury on a number of occasions. "Expert opinions that only tell a jury what conclusions they should reach are impermissible as overly intrusive on the province of the jury." *State v. Patterson*, 904 N.W.2d 43 (S.D. 2017). "Trial Courts must be careful to distinguish between expert opinion that helps the jury and expert opinion that merely endorses a witness's testimony." *State v. Buchholtz*, 841 N.W.2d 449 (S.D.2013). "One witness may not testify on the credibility of another witness because such testimony would invade the exclusive province of the jury to determine the credibility of a witness." *State v. Packed*, 736 N.W.2d 851 (S.D. 2007). "Opinion testimony on credibility is limited to character and all other opinions on credibility are for the jurors themselves to form." *State v. Raymond*, 540 N.W.2d 407 (S.D. 1995). "Expert testimony is not admissible if it merely relates to another witness' credibility since credibility of witnesses is the ultimate issue before the jury." *State v. Hill*, 463 N.W.2d 674, 677 (S.D. 1990).

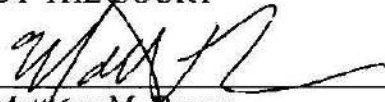
Allowing expert testimony on the proffered issues "may cause jurors to surrender their own

common sense in weighing the testimony, and instead cause them to rely too heavily upon [the expert's] testimony. *Bastow v. Gen Motors Corp.*, 844 F.2d 506, 510-11 (8th Cir. 1988). Under South Dakota law, an expert may not testify if thier testimony includes the expression of opinion regarding ultimate issues. *Hill* at 677. Any small aid the expert testimony might have provided would be outweighed by the unfair prejudice which might have resulted because of the aura of reliability and trustworthiness surrounding scientific evidence.” *Id.* at 678.


Evidence about “false confessions” being an actual and measurable phenomenon is reliable, relevant and admissible. Dr. Manlove’s testimony regarding the strengths and pitfalls of various interview techniques, including the interview techniques used to elicit the statements of the Defendant’s involvement in this crime, is also reliable, relevant, and admissible. The challenge brought forward by the State Opposing the testimony of Dr. Manlove is **DENIED**.

Dated this 27 day of July 2024

BY THE COURT



Matthew M. Brown
Circuit Court Judge

ATTEST: Amber Watkins, Clerk


By 
Deputy Clerk

FILED
Pennington County, SD
IN CIRCUIT COURT

JUL 10 2024

Amber Watkins, Clerk of Courts
By  Deputy

App 008

In the Supreme Court State of South Dakota

Appeal No. 30764

STATE OF SOUTH DAKOTA,

Plaintiff and Appellant,

v.

TIMOTHY PAUL HUANTE,,

Defendant and Appellee.

Appeal from the Circuit Court
Seventh Judicial Circuit
Pennington County, South Dakota

The Honorable Matthew M. Brown
Circuit Court Judge

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Order Granting Petition for Intermediate Appeal Entered August 16, 2024

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PRELIMINARY STATEMENT

Throughout this brief, Plaintiff and Appellant, State of South Dakota, is referred to as “State.” The circuit court is referred to as “circuit court” or “court”. Defendant and Appellee, Timothy Huante, is referred to as “Huante.” References to Pennington County Criminal file 22-702 are denoted as “SR” followed by the page number. The evidentiary hearing relevant to this appeal was held on May 17 and 21, 2024 and is denoted “EH”.

JURISDICTIONAL STATEMENT

The circuit court filed a memorandum decision on July 11, 2024. SR 378. The State filed a petition seeking intermediate review of that decision on July 19, 2024. Huante filed a response on July 22nd, 2024. This Court granted permission on August 16, 2024. SR587-88. Having granted permission, this Court has jurisdiction. SDCL§ 23A-32-12.

STATEMENT OF LEGAL ISSUES AND AUTHORITIES

WHETHER THE CIRCUIT COURT ABUSED ITS DISCRETION IN ALLOWING DR. MANLOVE TO TESTIFY AS AN EXPERT REGARDING FALSE CONFESSIONS AND POLICE INTERVIEW TACTICS.

Daubert v. Merrell Dow Pharmaceuticals Inc., 509 U.S. 579 (1993)

State v. Hill, 463 N.W.2d 674 (S.D. 1990)

Burley v. Kytac Innovative Sports Equipment Inc., 2007 S.D. 82, 737 N.W.2d

State v. Lemler, 2009 S.D. 86, 774 N.W.2d 272

STATEMENT OF THE CASE

Huante is charged with first degree murder in the death of Dallas Quick Bear. SR 10. Huante gave notice of intent to offer expert testimony. SR 149. The notice related to

Dr. Manlove's testimony regarding false confessions. The State requested a *Daubert* hearing on the issue. SR 162. The court conducted an evidentiary hearing over the course of two days and the parties submitted written briefs on the question. The court issued a memorandum opinion limiting Dr. Manlove's testimony from that sought in the notice. SR 370. After a motion to continue was denied the State brought this intermediate appeal fourteen days before trial was scheduled to begin.

FACTS

Dallas Quick Bear (hereinafter Quick Bear) was shot in the back of the neck inside a bar in Rapid City on February 20th, 2022. A multitude of witness describe the assailant, but the accounts are inconsistent, and no suspect is identified. Some witnesses tell police that the shooter shook hands with Quick Bear shortly before the shooting. Other witnesses do not describe this detail. Although the bullet exited Quick Bear's forehead, the bullet was not recovered, and no shell casings were found. One witness, Corey Janis, a close friend of Quick Bear, told police that Quick Bear was standing and facing the dance floor when he was shot. Witness interviews last late into the night and video recordings from the bar are seized. While these recordings capture a great deal of activity in the bar that night, the shooting itself is not caught on camera. Days later, after interviewing Huante, law enforcement recovers a pistol. No ballistic comparison can be done on the pistol since neither a slug nor a shell casing are recovered from the scene. The pistol recovered by law enforcement has no white tape on it.

Later that same morning, Huante arrives at the police station having been driven there by a friend. He had concerns about being present at the bar and indicated he had

gaps in his memory. He had a PBT result of .104. The police sent him away, presumably to sober up.

Huante returns on the 22nd of February and voluntarily speaks to detectives. He tells them that he remembers that someone handed him a pistol and that the gun may have had something white on it, that may have been tape. He denies shooting anyone. He submits to a polygraph and after its completion the police tell him that he failed it. Huante is told that the police are in possession of a recording from inside the bar. When Huante protests that he does not remember what happened the detectives tell him that the polygraph tells them that he does. Huante tells police "I don't remember having a gun." The detective tells Huante that he knows a lot about this shooting, Huante says "Good. Please tell me." Huante again tells detectives that he didn't shoot anyone. The detective says that they are past that; the polygraph says he did.

A detective shows Huante a photograph on his cell phone and tells Huante it was taken from the bar's security video. The detective tells Huante that the security video from the bar is phenomenal and reiterates "[t]hey know what happened." Huante persists that he doesn't remember pulling the trigger, but the detective tells him he would have passed the polygraph if he hadn't. The detective asks Huante why he shook hands with Quick Bear. Huante responds that maybe to draw attention to what was about to happen. Earlier in the interview, another detective had told Huante that some witnesses had described the shooter shaking hands with Quick Bear.

After his request for a second polygraph is declined, Huante makes some calls to family members. Afterwards he tells detectives that they told him Quick Bear needs to go but that Huante didn't know why. Huante says that's when I handed the gun to him; the

detective corrects him and says that's when they handed it to you. Huante says Dallas was seated and facing the partition wall with his back to the dance floor. Huante states he was on Quick Bear's left side. Huante tells detectives he shot Dallas under the chin. When prompted by the detectives Huante again says he shot Dallas while Dallas was seated and that he shot him under the chin. Within moments of saying this Huante says "I'm not going to shoot some random person when I'm not trying to shoot anyone. I don't know what the [expletive] I'm even talking about."

Timothy Hunate is subsequently indicted on one count of first-degree murder in violation of SDCL § 22-16-4(1) in that he did kill without authority of law, and with a premeditated design to effect the death of Dallas QuickBear. *See Appendix C.*

On July 5th, 2023, Respondent filed a notice of intent to offer expert witness testimony. *Appendix A.* The notice named Dr. Stephen Manlove and laid out the nature of his testimony. The State filed an objection and the court heard testimony from Dr. Manlove over the course of two days. Throughout the hearing, Dr. Manlove provides he has worked in the field of psychiatry since 1987 and is licensed in several states. *EH Volume I*, 10 & 13 Ln. 21; 4-5. Dr. Manlove testified he has previously been qualified as an expert in the field of forensic psychology close to 200 times. *Id.* 11. He further confirms that he continuously is undergoing continuing education as part of his practice as is required in his profession. *Id.* 12. Included within this is attending conferences and reviewing pertinent literature in psychiatry and the law, including journals such as *The American Journal of Psychiatry and the Law*. *Id.* 13.

When asked to define forensic psychiatry, Dr. Manlove defines it as "the interface between psychiatry and the law. So forensic psychiatrists are trained and study that

interface, like where there's a legal issue and there's psychiatric issue, do they overlap in some matter?" *Id.* 11-12. Dr. Manlove expands on this, stating that in the normal course of his profession he provides

Competency evaluations, competency to stand trial, and competency to do all kinds of things like make a will, to sign different kinds of documents. I also do a fair number of cases that involve mental state at the time of the crime. So like insanity cases or guilty but mentally ill, that sort of thing.

Id. 12. When asked, Dr. Manlove testified affirmatively that within forensic psychiatry, falls the field of forensic confessions and false confessions. *Id.* In preparation of hearing, Dr. Manlove reviewed a high number of documents. *Id.* 14. Included within that were law enforcement interactions with Huante, including interviews and a conducted polygraph. *Id.* Dr. Manlove also interviewed Huante 3 times. *Id.*

Dr. Manlove explained the recent uptick in literature regarding false confessions, "when it became super clear that there was no doubt that there's lots of false confessions, it just opened up the whole question, especially to researchers and to people who are trying to find out what is true, you know, like in court, why do people make false confessions." *Id.* 17. Dr. Manlove testifies that in preparation he reviewed 30 articles. *Id.* 18. Among the articles referenced came from sources Dr. Manlove indicates he regularly reviews. *Id.* 18-20. Throughout his testimony, Dr. Manlove explains the methods law enforcement applies throughout interviews and interrogations. *Id.* 27. Most specifically, Dr. Manlove addresses the utilization of the Reid Technique. *Id.* 26. Dr. Manlove explained the importance of using factual evidence to confront a person when

using the method properly. *Id.* Dr. Manlove testifies to the concern of the Reid Technique, that it is coercive in nature when the tools that are used to confront a person in an interrogation are not true. *Id.* 27.

The trial court advised the parties of its decision via email on June 21, 2024. *Appendix B.* On July 10th the court issued its memorandum decision allowing Dr. Manlove's testimony with certain limitations. *Appendix D.* More specifically, it allowed Dr. Manlove to testify regarding: 1) False confessions in general: their prevalence, that they are counter intuitive and that subsequent DNA exonerations have revealed their existence; 2) That certain interrogation (interview) tactics are more likely to lead to false confessions; i.e., the Reid Technique which can include contamination and the police claiming or suggesting they have more evidence than they do; 3) certain persons are more likely to be susceptible to making false confessions, and; 4) the hallmarks of a false confession. The suspect's description doesn't match the other facts or is impossible in light of known facts. *Appendix D.* The State moved for an intermediate appeal based upon the trial court's ruling.

STANDARD OF REVIEW

"Decisions to admit or deny evidence are reviewed under the abuse of discretion standard." *State v. Hernandez*, 2023 S.D. 17, ¶ 24, 989 N.W.2d 525, 533 (quoting *State v. Packed*, 2007 S.D. 75, ¶ 17, 736 N.W.2d 851, 856). "An abuse of discretion 'is a fundamental error of judgment, a choice outside the range of permissible choices, a decision, which, on full consideration, is arbitrary or unreasonable'. *Id.* (quoting *State v. Delehoy*, 2019 S.D. 30, ¶ 22, 929 N.W.2d 103, 109 (citations omitted)). This Court

“afford[s] broad discretion to the court in deciding whether to admit or exclude evidence.” *Id.*

ARGUMENT

I. The Circuit Court Did Not Abuse Its Discretion In Allowing Dr Manlove To Testify As An Expert Regarding False Confessions And Police Interrogation Techniques

At the outset, Appellee takes issue with the State’s recitation of facts presented to this Court. More specifically, the State presents that “[l]aw enforcement interviewed Huante a second time. During that interview, Huante admitted he approached Quickbear, who was sitting at a high-top table. He confessed to shaking Quickbear’s hand, then pulling out a revolver from his waistband and shooting Quickbear in the head. He then fled the scene on foot.” *Appellant’s Brief*, P. 5. An actual review of the facts before this Court will reveal the inaccuracy behind the State’s depiction. In *Klein v. Klein*, this Court reminded appellate counsel “of their obligation to state the facts ‘fairly, with complete candor, and as concisely as possible’... We recognize that sometimes, in the throes of zealous advocacy, the facts are inadvertently distorted. However, the facts set forth in [Appellate Brief] appear to go beyond inadvertent distortion.” 500 N.W.2d 236, 239 (S.D. 1993).

It is without dispute that an admission made by a defendant in a criminal proceeding is commonplace and has deep roots in our legal system. So much so that a defendant’s admission, where appropriate, is consistently introduced at trial pursuant to the statement against interest exception codified in SDCL § 19-19-804(b)(3). That specific exception allows hearsay statements, typically considered untrustworthy, if the statement tends to subject the declarant to criminal liability. Said another way, a reasonable person

wouldn't have made the statement unless they believed it to be true. This presumption which undergirds our evidentiary rules, that one would not make false incriminating statements, seems contrary to the idea that average juror possesses the knowledge to evaluate factors that could lead to a false confession. Indeed, our own evidentiary rules assume that a person wouldn't make false incriminating statements. Here, if this Court disallows the expert testimony of Dr. Manlove, the trier of fact will be left to the State's interpretation of events and defense counsel will be seriously prejudiced. Furthermore, the State's appellant brief fails to establish how the trial court abused its discretion in allowing Dr. Manlove to testify as an expert.

A. Dr. Manlove's Testimony is admissible to assist the trier of fact

Unquestionably, police work hard to obtain confessions because of the great weight they provide, as it is presumed that "one who is innocent will not imperil his safety or prejudice his interests by an untrue statement". *Hopt v. People of the Territory of Utah*, 110 U.S. 574, 585 (1884). As a result, a valid and unquestionable confession is usually insurmountable where a defendant goes to trial as juries hold confessions in high regard. Any rational juror undoubtedly must consider in contemplation of a verdict, "if the defendant is innocent why did he previously admit his guilt?" *Crane v. Kentucky*, 476 U.S. 683, 689 (1986) (recognizing that rational jurors attach credibility to a defendant's confession because an innocent defendant would not admit guilt).

The U.S. Supreme Court has provided "confessions are probably the most probative and damaging evidence that can be admitted". *Bruton v. United States*, 391 U.S. 123, 139 (1968) (Justice White, dissenting). Later in *Corley v. U.S.*, Justice Souter said, in dicta, "[c]ustodial police interrogation, by its very nature, isolates and pressures the

individual, and there is mounting empirical evidence that these pressures can induce a frighteningly high percentage of people to confess to crimes they never committed.” 556 U.S.303, 320-321. (2009). It was against this legal backdrop, and given the glaring factual impossibilities in the confession, that the defense sought the help of an expert.

While Appellee does not concede Huante’s statements to law enforcement is a full-fledged confession, it became necessary through the preparation of trial to seek out an expert to help guide the jury in Huante’s atypical behavior. To be clear, Appellee’s position is that but-for law enforcement’s excessive interrogation techniques, Huante would not have been able to provide any of the details the State now considers as a quasi-confession.

A purported false confession is counterintuitive behavior that is not within an ordinary person’s common understanding and expert assistance can help jurors understand that people do falsely confess. The trial court’s order limits the scope of the expert testimony, prohibiting any discussion about the facts of this case, or any opinion that the confession in this case is false leaving that question for the jury.

This Court’s long-standing jurisprudence has consistently held that trial courts have broad discretion in determining the qualifications of expert witnesses and in admitting expert testimony. *State v. Edeleman*, 1999 S.D. 52, ¶ 38, 593 N.W.2d 419, 425 (quoting *State v. Dirk*, 364 N.W.2d 117, 120 (S.D. 1985)). This Court has previously advocated for the utilization of expert witnesses, finding that “expert testimony is to assist the the jury as the trier of fact.” *Bridge v. Karl’s Inc.*, 538 N.W.2d 521, 525 (S.D. 1995). Furthermore, In *State v. Hill*, this Court rationalized how crucial expert testimony is for a trier of fact, holding that any small aid expert testimony may provide outweighs

“unfair prejudice which might have resulted because of the aura of reliability and trustworthiness surrounding scientific evidence.” 463 N.W.2d 674, 678 (S.D. 1990).

Dr. Manlove is a qualified expert and the trier of fact must hear his testimony, otherwise the jury will be prevented from making a complete and fully apprised verdict in a trial where the implications could be a sentence for life imprisonment without the possibility of parole.

SDCL § 19-19-702 provides:

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- (a) The expert’s scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) The testimony is based on sufficient facts or data;
- (c) The testimony is the product of reliable principles and methods; and
- (d) The expert has reliably applied the principles and methods to the facts of the case.

This Court regularly holds that the trial court is responsible for determining whether expert testimony will assist the finder of fact to understand the evidence, which includes a determination of “whether a particular expert has sufficient specialized knowledge to assist jurors in deciding the specific issues in the case.” *Burley v. Kytect Innovative Sports Equipment Inc.*, 2007 S.D. 82, ¶ 16, 737 N.W.2d 397, 404. This Court previously adopted the standard provided in *Daubert v. Merrell Dow Pharmaceuticals Inc.*, 509 U.S. 579, 597 (1993). Consistent with a *Daubert* determination, the trial court must ensure “that an expert’s testimony both rests on a reliable foundation and is relevant to the task at hand.” *State v. Hofer*, 512 N.W.2d 482, 484 (S.D. 1994). In applying *Daubert*, “[t]he focus... must be solely on principles and methodology, not on

the conclusions that they generate.” *State v. Lemler*, 2009 S.D. 86, ¶ 25, 774 N.W.2d 272, 281 (citations omitted).

Further, in *Lemler*, this Court highlights the four factors for which a trial court must consider in determining the reliability of scientific testimony:

(1) whether the theory or technique in question can be (and has been) tested, (2) whether it has been subjected to peer review and publication, (3) its known or potential error rate and the existence and maintenance of standards controlling its operation, and (4) whether it has attracted widespread acceptance within a relevant scientific community.

2009, S.D. 86, ¶ 24, 774 N.W.2d at 280 (citing *Daubert*, 509 U.S. at 593-94).

“The test of reliability is, [however], ‘flexible’ and *Daubert’s* specific factors neither necessarily nor exclusively applies to all experts or in every case.” *Id.* (quoting *Kumho Tire Co., Ltdv. V. Carmichael*, 526 U.S. 137, 141 (1999)).

Additionally, “it would be unreasonable to conclude that the subject of scientific testimony must be ‘known’ to a certainty; arguably, there are no certainties in science.” *Id.* at ¶ 25, 774 N.W.2d at 281 (citations omitted). “Thus, an expert may extrapolate from existing data as long as there is an analytical connection between the known data and the expert’s opinion.” *Id.* at ¶ 25, 774 N.W.2d at 281 (citations omitted). Under *Daubert*, the proponent offering expert testimony must show that the expert’s theory or method qualifies as scientific, technical or specialized knowledge[.]” *State v. Guthrie*, 2001 S.D. 61, ¶ 34, 627 N.W.2d 401, 415-16.

Further, the trial court is tasked with exercising its gatekeeping function. *Kuper v. Lincoln-Union Elec. Co.*, 1996 S.D. 145, ¶ 41, 557 N.W.2d 748, 760. Moreover, the trial court must consider relevancy. “Relevance embraces

“evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” *Guthrie*, 2001 S.D. 61, ¶ 32, 627 N.W.2d at 415. The proponent of the testimony must prove its admissibility by a preponderance of the evidence. *Daubert*, 509 U.S. at 592 n. 10. Furthermore, this has “often stated that “[t]he basis of an expert’s opinion is generally a matter going to the weight of the testimony rather than the admissibility.” *First W. Bank Wall v. Olsen*, 2001 S.D. 16, ¶ 10, 621 N.W.2d 611, 616 (citations omitted).

The Advisory Committee notes to FRE 702 state “the trial court’s role as gatekeeper in not intended to serve as a replacement for the adversary system” FED. R. EVID. 702, advisory committee note (2000 amendments). The Court in *Daubert* stated “[v]igorous cross-examination, presentation of contrary evidence and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence.” *Daubert* at 579. The final determination of the truth or falsity of the confession, under the trial court’s ruling, will be left where it should be; with the jury.

Here, it was established through a thorough analysis by the circuit court that Dr. Manlove is an expert in the field of forensic psychiatry, an area in which he had previously been qualified in both federal and state courts. Throughout Dr. Manlove’s testimony, he specifically laid out his experience as a licensed psychiatrist since 1987 and has testified in court close to 200 times. *EH Volume 1*, 11, Ln. 14. Dr. Manlove’s testimony was credible and provided 30 separate pieces of literature that assisted him in his testimony regarding false confessions. *Id.* 17. He further explained that though

forensic psychiatry, the recently new subject of coerced or false confessions is incapsulated within his expertise of forensic psychiatry. *Id.* 12.

The majority of the State's brief cites to the issues Dr. Manlove observed in Huante's case. However, these arguments are irrelevant as the trial court already ruled that defense was prohibited from outlining the facts of this case. Further, the State argues that "Huanté has not shown that Dr. Manlove is an expert in false confessions or police interrogation tactics." *Appellant's Brief*, Pg. 8. This is simply not true and the State does not cite to anything in the record to support such a contention. In fact, the State lists out that Dr. Manlove only "interviewed Huante three separate times; read Detective Andrew Randazzo's narrative of the polygraph examination; reviewed Elliot Harding's polygraph report; watched the three law enforcement interviews and polygraph examination and read the transcripts from those interactions; and reviewed discovery in the case." *Appellant's Brief*, Pg. 7. The State conveniently omits the fact that Dr. Manlove reviewed 30 articles from leading forensic psychiatric journals in his preparation on top of his more than 30 years of continuing education and experience as a licensed psychiatrist.

Dr. Manlove is more than qualified to testify as an expert. He more than meets the qualifications outlined in SDCL § 19-19-702. Huante is entitled to a full-fledged defense. Included within that must be an expert to explain to the jury that false and coerced confessions do happen.

B. The Trial Court did not abuse its discretion in allowing Dr. Manlove to testify

In coming to its determination, the trial court noted the field of psychiatry is a large body of knowledge and contains many subsets of expertise. It specifically found

that “false confessions” and law enforcement interview techniques both fall under the broad umbrella of psychiatry. The court specifically cites to Dr. Manlove’s scientific, technical, and other specialized knowledge based upon his knowledge, skill, experience, training, and education in psychiatry. *Appendix E*. Dr. Manlove further cited to his training and education on the concept of false confessions and the various interview techniques utilized by professionals. *EH, Vol 1* 18-22. The court also took into consideration the voluminous facts and data Dr. Manlove reviewed in preparation. More specifically, Dr. Manlove’s testimony was the product of reliable principles and methods. Dr. Manlove provided, at great lengths, the studies and reports to set foundation for his knowledge and opinions. *Id.* The trial court did not abuse its discretion in allowing Dr. Manlove to testify.

While this Court has never addressed the specific issue of a forensic psychiatrist testifying as an expert regarding false confessions, it has provided consistent caselaw in determining when a trial court does not abuse its discretion in allowing one to testify. This Court affords “broad discretion to the court in deciding whether to admit or exclude evidence. *State v. Packed*, 2007 S.D. 75, ¶ 24, 736 N.W.2d 851, 859. Abuse of discretion occurs where the trial court “misapplies a rule of evidence, as opposed to merely allowing or refusing questionable evidence.” *State v. Guthrie*, 2001 S.D. 61, ¶ 30, 627 N.W.2d 401, 415.

In *State v. Weaver*, this Court held that it was not an abuse of discretion to allow an expert’s testimony regarding “battered woman’s syndrome” and “cycle of violence.” 2002 S.D. 76, ¶ 28, 648 N.W.2d 355, 365. This Court specifically noted that “both concepts have been subjected to peer review, are not new concepts in the field of

domestic abuse counseling and are accepted in the field.” *Id.* (citing *State v. Burtzloff*, 493 N.W.2d 1 (S.D. 1992)).

In *State v. Johnson*, this Court similarly found that it was not an abuse of discretion to allow an expert to testify about grooming, delayed reporting, and the psychological effects of sexual abuse. 2015 S.D. 7, ¶ 34, 860 N.W.2d 235, 248. In coming to its decision, this Court noted the expert had previously testified over 50 times and that the testimony was reliable and fit the facts of the case. *Id.*

The facts of the present case are analogous to those of the experts in *Weaver* and *Johnson*. As this Court made note of, in both instances, the testifying expert had significant experience in their specific field and both had testified numerous times. Here, Dr. Manlove has been a licensed forensic psychiatrist for more than 30 years and has testified close to 200 times in open court. Dr. Manlove testified at length to the trial court about everything he reviewed in preparation for Huante’s case.

In their brief, the State cites to out of state, un-controlling authority to argue that if a similar expert in a Texas court was not allowed to testify regarding false confessions, ergo Dr. Manlove should not be allowed to testify in this case. *Appellant’s Brief page 15*. In the *Coleman* decision cited by the State, an expert was not allowed to testify that the defendant fit the profile of someone susceptible of giving a false confession. *Coleman v. Texas*, 440 S.W. 3d 218, 228 (Tx. App. 2013). The State concludes that since Dr. Fuller, the expert in the *Coleman* case, was not allowed to testify neither should Dr. Manlove be allowed to testify. The trial court in *Coleman* ruled that Dr. Fuller was qualified as a forensic psychologist and could testify generally about circumstances in which false confessions could occur. *Coleman footnote 2*. Further, on

appeal, neither party in *Coleman* disputed Dr. Fuller's qualifications as a forensic psychiatrist. *Id.* Given the Court's limitation in its order regarding the limited scope of Dr. Manlove's testimony, precluding an opinion about Mr. Huante's confession, the *Colman* opinion supports admission of Manlove's testimony.

The State points out that neither Dr. Fuller nor Manlove had testified in court before as an expert. But this Court has addressed that very issue before. In *Burley* this Court wrote: "[t]o conclude, as the [trial] court did, that because Dr. Berkhout had 'never been previously retained as an expert witness for inadequate warnings or improper instructions', he was therefore not qualified to testify means that no one could qualify as an expert for the first time in our courts without having first qualified somewhere else." *Burley v. Kytac Innovative Sports Equipment, Inc.* 2007 S.D. 82 ¶17. Moreover, Dr. Manlove has testified in court before regarding false confessions and police interrogation techniques. *United States v. Pumpkin Seed*. 2018 WL 6567258 (United States District Court, Western Division, 2018) (not reported in the Fed. Supp.). No doubt any deficiencies in Dr. Manlove's testimony or qualifications can be examined during cross.

The State later argues that the concept of false confessions is commonly known therefore there is no reason for expert testimony. *Appellant's Brief* page 16. First the State argues that there is too little empirical data or study regarding the issue of false confessions and therefore the testimony can't be admissible, on the other hand the State argues that the concept is commonly known hence no need for expert testimony. The State can't have it both ways. Over three decades ago this court first considered testimony on battered woman syndrome. *See State v. Burtzloff*, 493 N.W. 2d 1, 12 (SD

1992). No doubt, after three decades, jurors understand the concept, yet domestic violence experts still routinely testify in South Dakota trials. *See generally, State v. Peltier*, 2023 S.D. 62, 998 N.W.2d 333 (noting a domestic violence expert testified for the defense). The State advocates for a standard that sets the bar too high. If the testimony: comes from a qualified expert; addresses a subject matter on which the factfinder can be assisted by the expert; is reliable; and fits the facts of the case it is admissible. *State v. Johnson*, 2015 SD 7, ¶34 860 N.W.2d at 248. Even if the phenomenon of false confessions has reached the point where it is common knowledge, and appellant does not concede that it has, this does not mean that expert testimony is unnecessary.

The State argues that Dr. Manlove's opinion on police interrogation techniques is not reliable. *Appellant's Brief page 18*. Dr. Manlove noted that certain police interview tactics can lead to false confessions. He studied the Reid method. He personally viewed the recorded interviews, and when he had difficulty following portions of them, he directed that transcripts be prepared. In the *Pumpkin Seed* case mentioned above, he testified regarding interrogation techniques. He testified he read numerous articles and books regarding interrogation techniques.

The State notes that Dr. Manlove has no training on the Reid technique. The Reid technique was created by law enforcement for law enforcement. It is difficult to imagine a forensic psychiatrist would sign up for a training session, let alone find one that was publicly available. Training on the use of the method would not have changed his opinion regarding the interview technique used in this case. As Dr. Manlove noted, this interview did not follow the Reid method throughout the entirety of the numerous

interviews. Dr. Manlove identifies the interrogation technique used in this case as coercive and abusive. *EH Volume*, 80 ln 2. Dr. Manlove noted it was not his opinion that the Reid technique was wrong or always abusive. *Id.* p79 ln19-21.

The State posits that since the trial court had already ruled that the confession was not obtained through coercion Dr. Manlove's testimony regarding police interrogation tactics would be irrelevant. *Appellant's Brief page 19*. This argument misses the point. Certain interviews, while not legally coercive, can, through manipulation and unfair suggestion lead to a false confession from an innocent suspect. *See generally New York v. Powell*, 102 N.E.3d 1028, 1039 (New York Court of Appeals 2021) (discussing the difference between classically, inherently coercive interrogations and situations in interviews and suspect personalities that produce coercive compliant false confessions from innocent suspects). It is important to note here that Huante recanted his confession as soon as it was given.

The detective told Huante that they had security footage from the bar and that "they know what happened". Misleading a suspect is not always legally coercive. *See generally State v. Stanga*, 2000 S.D. 129, 774 N.W.2d 272 (noting that trickery is sometimes a legitimate interrogation technique). However, in certain circumstances it can lead a person with a professed lack of memory to come to believe that they must have done what the police are suggesting they have video evidence proving.

The trial court's ruling prohibits Dr. Manlove from giving an opinion that the confession here was false. Nonetheless, the state argues that Dr. Manlove's testimony will invade the province of the jury. *Appellant's Brief page 21*. South Dakota adopted § 19-15-4 in 1993. (now SDCL 19-19-704) and in doing so repealed the "ultimate issue"

rule. In *State v. Moran* a medical doctor testified in a rape case that in his opinion cuts and abrasions were inconsistent with consensual sex. 2003 S.D. 14 ¶ 42, 657 N.W.2d 319, 329. This Court affirmed, holding that SDCL § 19-19-704 simply provides that “[t]estimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.” *Id.* at ¶43. Further, an “[e]xpert can testify to the ultimate issue as long as the witness is not asked whether the defendant is innocent or guilty.” *Id.*, citing *State v. Barber* 1996 S.D. 96 ¶ 38, N.W.2d 817, 823. The circuit court’s order is consistent with this holding. The state cites authority from the Tenth Circuit Court of Appeals. *Appellant’s Brief* page 22., citing *United States v. Benally*, 54 F. 3d 990, 995 (10th Cir 2008).

Federal Courts have admitted similar testimony regarding the phenomenon of false confessions. The Fourth Circuit has allowed expert testimony to explain that false confessions occur, that certain law enforcement techniques can influence a person’s decision to falsely confess, and that the testimony may be helpful to the jury to clarify that “some people, contrary to common sense, make false inculpatory statements.” *United States v. Belyea*, 159 Fed Appx. 525, 530 (4th Cir. 2005). The Seventh Circuit held “[e]vidence bearing on the trustworthiness of a confession is generally relevant and admissible absent some specific reason to exclude it, such as unfair prejudice or juror confusion.” *United States v. West*, 813 F. 3d 619, 624 (7th Cir. 2015). The Seventh Circuit has allowed testimony from false confession experts since at least 1996. *U.S. v. Hall*, 93 F.3d 1337, 1339 (7th Cir. 1996). In *Hall* the Seventh Circuit Court of Appeals reversed the district court’s refusal to allow an expert to testify about false confessions and the defendant’s susceptibility to coercion. *Id.* The *Hall* court noted the analytical and

practical difficulties presented by social science and psychological evidence for courts considering *Daubert* and *FRE 702*. *Id.* at 1342. Just because the expert's testimony may overlap with matters within the jury's experience does not mean that the trial court should exclude it; the test under *FRE 702* is whether it will assist the jury. *Id.* at 1344.

More specifically, three district courts in the Eighth Circuit have allowed testimony regarding false confessions. In *Livers v. Schenck* a district court ruled that testimony from a social psychologist could be helpful to the jury in understanding the phenomenon of false confessions and that the psychologist could testify that false confessions occur and that certain factors make false confessions more likely. 2013 WL 567881, at *4-5 (D. Neb. Oct. 18, 2013). In *United States v. Roubideaux* the district court ruled that false confessions are counterintuitive, that it is not within the common understanding of jurors that people sometimes lie on occasion to their own detriment by falsely confessing to a crime they did not commit, nor is it within the common understanding that specific factors may correlate to false confessions. 2022 WL 16961123 (United States District Court, D. South Dakota, Southern Division, Nov.16, 2022). In *United States v. Pumpkin Seed* Dr. Manlove testified that the interrogator used tactics and techniques which coupled with certain characteristics of the defendant could lead to a false confession. 2018 WL 6985004 at *3 (D.S.D. June 21, 2018), *report and recommendations adopted*, 2018 WL 5657258 (D.S.D. Dec 13, 2018).

CONCLUSION

The trial court is within its discretion to grant Huante's motion to allow Dr. Manlove to testify as an expert. It found it necessary in allowing the jury the testimony to make a full and knowledgeable decision in a case with the most severe repercussions

if Huante were to be convicted. The trial court took everything about Dr. Manlove's testimony into consideration within his ruling and determined that he was qualified and that the testimony would assist the jury. For all the reasons provided above, Dr. Manlove is qualified to testify in regard to false confessions and this Court should hold consistent with the trial court.

REQUEST FOR ORAL ARGUMENT

Defendant/Appellee Huante respectfully requests that he be allowed to present oral argument on these issues.

Respectfully submitted this 13th day of November 2024

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CERTIFICATE OF COMPLIANCE

In accordance with SDCL § 15-26A-66(b)(4), I hereby certify that this brief complies with the requirements set forth in the South Dakota Codified Laws. This brief was prepared using Microsoft Word and contains 5,957 words from the Statement of the Case through the Conclusion. I have relied on the word count of a word processing program to prepare this certificate.

Dated this 13th day of November 2024.

/s/ Greg Sperlich
Attorney for Appellant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a true and correct copy of Appellee's Brief and all appendices upon the person herein next designated, on the date shown, by e-service through the State of South Dakota e-filing system, Odyssey, to-wit :

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Dated this 13th day of November, 2024.

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APPENDIX

Tab A- Judgment of Conviction.....	Appx. 1-2
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Tab E- Dr. Manlove's CV.....	Appx. 14-18

STATE OF SOUTH DAKOTA)	IN CIRCUIT COURT
) SS.	
COUNTY OF PENNINGTON)	SEVENTH JUDICIAL CIRCUIT
STATE OF SOUTH DAKOTA,	)	File No. 51CR122-702
)	
Plaintiff,	)	DEFENDANT'S
	)	NOTICE OF INTENT TO OFFER
vs.	)	EXPERT WITNESS TESTIMONY
	)	OF STEPHEN P. MANLOVE, MD
TIMOTHY HUANTE,)	
)	
Defendant.)	

Comes now Gregory J. Sperlich and Angela M. Colbath, Attorneys of record for the Defendant, Timothy Huante, and gives this Court notice of their intent to offer expert testimony at the time of the jury trial scheduled in this matter. Specifically, the Defense intends to offer testimony of Stephen P. Manlove, MD, 636 St. Anne Street, Rapid City, SD 57701.

The Defendant intends to call Dr. Stephen Manlove as an expert regarding false confessions, the types of persons susceptible to police interrogation tactics, and indicators of persons susceptible to police manipulation, coercion, and police tactics that may be more likely to result in false confessions.

A copy of Dr. Stephen P. Manlove's curriculum vitae is attached hereto.

. Dated this 5th day of July, 2023.

RESPECTFULLY SUBMITTED:

/s/ Gregory J. Sperlich
 GREGORY J. SPERLICH
 ANGELA M. COLBATH
 Attorneys for Defendant
 428 St. Joseph Street
 Rapid City, SD 57701
gsperlich@acolbathlaw.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a true and correct copy of Defendant's Notice of Intent to Offer Expert Witness Testimony of Stephen P. Mamlove, MD, on the person herein next designated, to-wit:

Adam Shiffermiller and Olivia Siglin
Pennington County Deputy State's Attorneys

by electronic service through Odyssey File and Serve.

Dated this 5th day of July, 2023.

/s/Gregory J. Sperlich
Gregory J. Sperlich
Angela M. Colbath
Attorneys for Defendant

Greg Sperlich

From: Brown, Judge Matt <Matt.Brown@ujs.state.sd.us>
Sent: Friday, June 21, 2024 4:00 PM
To: Greg Sperlich; Angela Colbath; Shiffermiller Adam
Subject: Huante ruling (email form)

Follow Up Flag: Follow up
Flag Status: Flagged

Counsel,

The Court will be ruling that there is/are grounds for Dr. Manlove to testify about "false confessions" and the circumstances under which they are more or less likely to occur. He will not be allowed to opine as to his opinions as to whether he considers Mr. Huante's statements to be a false confession, nor will he be allowed to testify as to the weight to be given the Defendant's statements.

If this case is not resolved in some way I will make every effort to get a written ruling out by the end of next week. My apologies for the delay here.

-MB

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	) SS.	
COUNTY OF PENNINGTON	)	SEVENTH JUDICIAL CIRCUIT
STATE OF SOUTH DAKOTA	)	File No: CRI 22-702
)	
Plaintiff,	)	C-A-FEL = DEATH/MAND.LIFE/50
)	
vs.	)	INDICTMENT FOR
)	
TIMOTHY PAUL HUANTE,	)	FIRST DEGREE MURDER
)	
Defendant.)	

THE PENNINGTON COUNTY GRAND JURY CHARGES:

That on or about the 20th day of February, 2022, in the County of Pennington, State of South Dakota, **TIMOTHY PAUL HUANTE** did commit the public offense of **FIRST DEGREE MURDER** in that (s)he did kill, without authority of law, and with a premeditated design to effect the death of Dallas Quickbear, or any other person, in violation of SDCL 22-16-4(1), and

contrary to statute in such case made and provided against the peace and dignity of the State of South Dakota.

Dated this 9th day of March, 2022, at Rapid City, Pennington County, South Dakota.

A True Bill
"A TRUE BILL"

THIS INDICTMENT IS MADE WITH THE CONCURRENCE OF AT LEAST SIX GRAND JURORS.

Rodney Z. Kanda
GRAND JURY FOREMAN

WITNESSES WHO TESTIFIED BEFORE THE GRAND JURY IN REGARD TO THIS INDICTMENT.

Sgt. Poches *RPK*

Det. Randazzo *RPK*

Dep. Olson *RPK*

Amber Lola Chev *RPK*

Pennington County, SD
FILED
IN CIRCUIT COURT
MAR -9 2022
Renee Thurner, Clerk of Courts
By *CB* Deputy

STATE OF SOUTH DAKOTA)
) SS.
COUNTY OF PENNINGTON)

NOTICE OF DEMAND FOR
ALIBI DEFENSE

I, Mark A. Vargo, Prosecuting Attorney in the above matter, hereby state that the alleged offense was committed on or about February 20, 2022, at approximately 0045 hours in Pennington County, South Dakota. I hereby request that the Defendant or his/her attorney serve upon me a written notice of his intention to offer a defense of alibi within ten (10) days as provided in SDCL 23A-9-1. Failure to provide such notice of alibi defense may result in exclusion of any testimony pertaining to an alibi defense.

Prosecuting Attorney

STATE OF SOUTH DAKOTA)
) SS.
COUNTY OF PENNINGTON)

REQUEST FOR ARREST WARRANT

I, Mark A. Vargo, Prosecuting Attorney in the above matter do hereby request an Arrest Warrant to be issued against the above Defendant, **TIMOTHY PAUL HUANTE**.

Dated this 9th day of March, 2022.

Mark A. Vargo
Prosecuting Attorney

DEFENDANT IS TO APPEAR AT AN ARRAIGNMENT AT 1:15 P. M. ON
April 1st, 2022, BEFORE THE HONORABLE
Judge Brown ON THE THIRD FLOOR OF THE PENNINGTON COUNTY
COURTHOUSE.

Pennington County, SD
FILED
IN CIRCUIT COURT
MAR - 9 2022
Rense Truman, Clerk of Courts
By CB Deputy

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
COUNTY OF PENNINGTON	) SS.	SEVENTH JUDICIAL CIRCUIT
STATE OF SOUTH DAKOTA,		51CRI22-702
Plaintiff,		
v.		COURT RULING ON OFFERED
TIMOTHY HUANTE,		TESTIMONY OF DR. MANLOVE
Defendant.		BY DEFENDANT

ANALYSIS

The State has made a *Daubert* motion with regard to the reliability and admissibility of the discussion regarding "false confessions".

Dr. Manlove would testify for defense, if allowed, to the following issues:

1. False confessions in general: their prevalence, that they are counter intuitive and that subsequent DNA exonerations have revealed their existence.
2. That certain interrogation (interview) tactics are more likely to lead to false confessions; i.e., the Reid Technique which can include contamination and the police claiming or suggesting they have more evidence than they do.
3. Certain persons are more likely to be susceptible to making false confessions, and
4. The hallmarks of a false confession. The suspect's description doesn't match the other facts or is impossible in light of known facts.

See 5/22/2024 filing *Forensic Psychological Examination, Exhibit 2*.

At a hearing held on May 22, 2024 the Defense called Dr. Stephen Manlove as their proffered expert in the area of false confessions. Dr. Manlove testified and exhibits were put into the record, including a summary of his sources, qualifications, specifics of various aspects of the

life and background of the Defendant in this case, and importantly, an analysis of the polygraph given by law enforcement and the subsequent interview of the Defendant. The last pages of the report include Dr. Manlove's opinions as to the veracity of the "confession" or incriminating statements of the Defendant. *See Generally 5/22/2024 filing Forensic Psychological Examination, Exhibit 2 (Opinion section starts on page 20).* Dr. Manlove was cross-examined by the State at the hearing.

Expert testimony is governed by SDCL § 19-19-702, which provides:

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- (a) The expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) The testimony is based on sufficient facts or data;
- (c) The testimony is the product of reliable principles and methods; and
- (d) The expert has reliably applied the principles and methods to the facts of the case.

SDCL § 19-19-702.

The trial court is responsible for determining whether expert testimony will assist the finder of fact to understand the evidence, which includes a determination of "whether a particular expert has sufficient specialized knowledge to assist jurors in deciding the specific issues in the case." *Burly v. Kytac Innovative Sports Equipment, Inc.*, 2007 SD 82, ¶ 16, 737 N.W.2d 397, 404. In making this determination, South Dakota has adopted the *Daubert* standard, as set out in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 597 (1993). Pursuant to a *Daubert* determination, the trial court is tasked with "ensuring that an expert's testimony both rests on a reliable foundation and is relevant to the task at hand." *State v. Hofer*, 512 N.W.2d 482, 484 (S.D. 1994). In applying *Daubert*, "[t]he focus . . . must be solely on principles and methodology, not on the conclusions that they generate." *State v. Lemler*, 2009 S.D. 86, ¶ 25, 774 N.W.2d 272, 281 (citations omitted).

In *Lemler*, the South Dakota Supreme Court noted that four factors guide a trial court's determination regarding the reliability of scientific testimony:

(1) whether the theory or technique in question can be (and has been) tested, (2) whether it has been subjected to peer review and publication, (3) its known or potential error rate and the existence and maintenance of standards controlling its operation, and (4) whether it has attracted widespread acceptance within a relevant scientific community.

Lemler, 2009 S.D. 86, ¶ 24, 774 N.W.2d at 280 (citing *Daubert*, 509 U.S. at 593-94). "The test of reliability is [, however,] 'flexible,' and *Daubert*'s list of specific factors neither necessarily nor exclusively applies to all experts or in every case." *Id.* (quoting *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137, 141, 119 S.Ct. 1167, 1171 (1999)).

Furthermore, "it would be unreasonable to conclude that the subject of scientific testimony must be 'known' to a certainty; arguably, there are no certainties in science." *Id.* at ¶ 25, 774 N.W.2d at 281 (citations omitted). "Thus, an expert may extrapolate from existing data as long as there is an analytical connection between the known data and the expert's opinion." *Id.* at ¶ 25, 774 N.W.2d at 281 (citation omitted). "Under *Daubert*, the proponent offering expert testimony must show that the expert's theory or method qualifies as scientific, technical or specialized knowledge[.]" *State v. Guthrie*, 2001 S.D. 61, ¶ 34, 627 N.W.2d 401, 415-16. Despite its consideration, the widespread acceptance of a scientific position in the scientific community is not required. *Hofer*, 512 N.W.2d at 484.

When ruling on the admissibility of an expert's opinion, "the trial court needs to exercise its gatekeeping function." *Kuper v. Lincoln-Union Elec. Co.*, 1996 S.D. 145, ¶ 41, 557 N.W.2d 748, 760. However, in a *Daubert* determination, the trial court is "supposed to screen the jury from unreliable nonsense opinions, but not exclude opinions merely because they are impeachable." *City of Pomona v. SQM N. Am. Corp.*, 750 F.3d 1036, 1044 (9th Cir.) cert. denied

sub nom. *SQM N. Am. Corp. v. City of Pomona, Cal.*, 135 S. Ct. 870 (2014). Instead, any deficiencies in an expert's opinion or qualifications should be tested through the adversary process at trial. *Burley*, 2007 S.D. 82, ¶ 24, 737 N.W.2d at 406.

With regard to the issue of relevance, the trial court is expected to utilize the same relevancy considerations it applies in virtually any other determination. "Relevance embraces 'evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.'" *Guthrie*, 2001 S.D. 61, ¶ 32, 627 N.W.2d at 415. The proponent of the testimony must prove its admissibility by a preponderance of the evidence. *Danbert*, 509 U.S. at 592 n. 10. Furthermore, the South Dakota Supreme Court has "often stated that '[t]he basis of an expert's opinion is generally a matter going to the weight of the testimony rather than the admissibility.'" *First W. Bank Wall v. Olsen*, 2001 S.D. 16, ¶ 10, 621 N.W.2d 611, 616 (citations omitted).

CONCLUSIONS

The Court finds Dr. Manlove is an expert in the field of psychiatry. He has been qualified as an expert in the field of psychiatry on many previous occasions in both Federal and State Courts. The field of psychiatry is a large body of knowledge and contains many subsets of expertise. "False confessions" and interview techniques both fall under the broad umbrella of psychiatry as explained by Dr. Manlove at the hearing on May 22, 2024. His expert knowledge in the field of psychiatry is an umbrella under which he would testify about "false confessions" and interview techniques in this case.

Dr. Manlove has scientific, technical, and/or other specialized knowledge based upon his knowledge, skill, experience, training, and education in the broad category of psychiatry. As a subset of this knowledge, he has further training and education on the concept of "false

confessions" and the various interview techniques utilized by professionals (both in the areas of psychiatry and law) and understands the benefits and pitfalls of those various techniques. As outlined by defense counsel in their May 31, 2024 letter brief, "Juries hold confessions in high regard. The police work hard to secure them and interview suspects with a goal to obtain them. It is incredible to most people that someone would falsely confess.....[Dr. Manlove's testimony] would aid the jury in understanding something that most people couldn't contemplate."

Ultimately, it will be the sole determination of the jury as to what weight to give the statements of the Defendant in this case. The Court believes that given the particular facts of this case, and the methodology used by law enforcement to obtain the statements from the Defendant, that instruction on "false confessions" and interview techniques (and their benefits and pitfalls) is particularly relevant for consideration by the jury, and is fundamental to the Defendant's "constitutional right to a fair opportunity to present a defense." *State v. Huber*, 789 M.W.2d 283, 294-29, citing *State v. Lamont*, 631 N.W.603, 608 (SD 2001).

Dr. Manlove has sufficient facts and data to support his conclusions. The Forensic Psychological Examination, listed herein, outlines the vast amount of information Dr. Manlove has reviewed about this specific case including a transcribed version of the post-polygraph interview where the statements of the Defendant were made to law enforcement. The testimony offered by Dr. Manlove is the product of reliable principles and methods. There were numerous studies and reports relied upon by Dr. Manlove to set foundation for his knowledge and opinions. The State clearly has avenues of effective cross examination, however, that does not foster a finding that Dr. Manlove's testimony is entirely baseless or without merit. It is also clear that Dr. Manlove has reliably applied the principles and methods to the facts of this specific case.

As to the proposed testimony by Dr. Manlove regarding the *procedural protocols* used in eliciting statements from the Defendant, the Court finds Dr. Manlove has met the criteria under *Daubert* to testify about the interview *process* between law enforcement and the Defendant in this case and the adherence to guidelines about how to interviews are conducted and the benefits and pitfalls of various interview techniques. The record indicates Dr. Manlove is qualified as an expert in the field of interviewing individuals, and of the different types of interview techniques, including those used by law enforcement (eg. the Reid Technique). As stated in his testimony, the interview technique(s) used in the interview with the Defendant in this case is a subset/amalgamation of general interview techniques Dr. Manlove is aware of given his education, training, and experience. The record also reflects Dr. Manlove has specialized knowledge in interviewing adults, as it is his regular routine at his job or has been in the past. Dr. Manlove's testimony is based on the specific facts of this case, his proposed testimony is based on reliable principles and methods, and his proposed testimony would apply those accepted principles and methods to the facts of this case. *State v. Willis*, 2018 S.D. 21, ¶ 27.

At the trial, Dr. Manlove will be allowed under this ruling to testify as to the following:

1. False confessions in general: their prevalence, that they are counter intuitive and that subsequent DNA exonerations have revealed their existence.
2. That certain interrogation (interview) tactics are more likely to lead to false confessions; i.e., the Reid Technique which can include contamination and the police claiming or suggesting they have more evidence than they do.
3. Certain persons are more likely to be susceptible to making false confessions, and

4. The hallmarks of a false confession. The suspect's description doesn't match the other facts or is impossible in light of known facts.

Dr. Marlove is however, prohibited from outlining the *facts of this case* as it relates to whether the specific facts of this case "fit the mold" of a false confession (eg. that the police lied to the defendant, that the defendant trusted law enforcement, that the defendant had no independent recollection of the events, that the defendant failed a polygraph test, etc.) and is further prohibited from providing his ultimate opinion that this was a "coerced confession." See *Black v. Division of Criminal Investigation*, 887 N.W.2d 731 (S.D. 2016). The Court finds that this type of expert testimony invades the the province of the jury. *Id.*

South Dakota has touched upon the issue of invading the province of the jury on a number of occasions. "Expert opinions that only tell a jury what conclusions they should reach are impermissible as overly intrusive on the province of the jury." *State v. Patterson*, 904 N.W.2d 43 (S.D. 2017). "Trial Courts must be careful to distinguish between expert opinion that helps the jury and expert opinion that merely endorses a witness's testimony." *State v. Buchholtz*, 841 N.W.2d 449 (S.D. 2013). "One witness may not testify on the credibility of another witness because such testimony would invade the exclusive province of the jury to determine the credibility of a witness." *State v. Packed*, 736 N.W.2d 851 (S.D. 2007). "Opinion testimony on credibility is limited to character and all other opinions on credibility are for the jurors themselves to form." *State v. Raymond*, 540 N.W.2d 407 (S.D. 1995). "Expert testimony is not admissible if it merely relates to another witness' credibility since credibility of witnesses is the ultimate issue before the jury." *State v. Hill*, 463 N.W.2d 674, 677 (S.D. 1990).

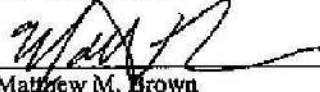
Allowing expert testimony on the proffered issues "may cause jurors to surrender their own

common sense in weighing the testimony, and instead cause them to rely too heavily upon [the expert's] testimony. *Bastow v. Gen Motors Corp.*, 844 F.2d 506, 510-11 (8th Cir. 1988). Under South Dakota law, an expert may not testify if thier testimony includes the expression of opinion regarding ultimate issues. *Hill* at 677. Any small aid the expert testimony might have provided would be outweighed by the unfair prejudice which might have resulted because of the aura of reliability and trustworthiness surrounding scientific evidence." *Id.* at 678.

Evidence about "false confessions" being an actual and measurable phenomenon is reliable, relevant and admissible. Dr. Manlove's testimony regarding the strengths and pitfalls of various interview techniques, including the interview techniques used to elicit the statements of the Defendant's involvement in this crime, is also reliable, relevant, and admissible. The challenge brought forward by the State Opposing the testimony of Dr. Manlove is **DENIED**.

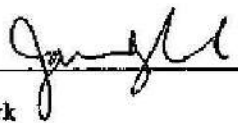
Dated this 24 day of July 2024

BY THE COURT


Matthew M. Brown
Circuit Court Judge

ATTEST: Amber Watkins, Clerk




Deputy Clerk

FILED
Pennington County, SD
IN CIRCUIT COURT

JUL 10 2024

Amber Watkins, Clerk of Courts

By  Deputy

CURRICULUM VITAE

STEPHEN P. MANLOVE, MD

PROFESSIONAL ADDRESS:

Manlove Brain and Body Health
636 St. Anne Street
Rapid City SD 57701
(605) 348-8000
(605) 348-4315 Fax #

CLINICAL EXPERIENCE:

1989 – Present	Private Practice – Manlove Psychiatric Group in Rapid City, SD (dba Manlove Brain + Body Health since 2019) and Advanced Brain and Body Clinic (since 2021) in Minnetonka, MN <i>Psychiatrist</i>	
1987 – 1989	West River Mental Health Center <i>Psychiatrist</i>	Rapid City SD

HOSPITAL AFFILIATES:

1987 – 2016	Rapid City Regional Hospital <i>Staff Privileges</i>	Rapid City SD
2016 – 2020	Rapid City Regional Hospital <i>Courtesy Privileges</i>	Rapid City SD

MEDICAL LICENSURE:

- State of SOUTH DAKOTA – License # 1887
- State of NEW MEXICO – License # MD2003-0162
- State of WYOMING – License # 10975A

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Stephen P. Manlove, M.D.
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- State of MINNESOTA -- License # 65282
- State of FLORIDA - License ME153064

EDUCATION:

1982 – 1987	University of Virginia Medical Center <i>Residency – Psychiatry and Internal Medicine</i>	Charlottesville VA
1978 – 1982	University of Minnesota Medical School <i>Medical School</i>	Minneapolis MN
1977 – 1978	Harvard University Divinity School <i>Graduate School</i>	Cambridge MA
1973 – 1977	St. Olaf College	Northfield MN

BOARD CERTIFICATIONS:

- 2016 American Board of Medical Specialties, Certification in the Subspecialty of Forensic Psychiatry (recertified 2016)
- 1992 The American Board of Psychiatry and Neurology
- 1986 The American Board of Internal Medicine

PROFESSIONAL APPOINTMENTS:

2002 – 2005	Rapid City Regional Hospital Medical Director for Behavioral Medicine	Rapid City SD
1996 - 2016	Rapid City Regional Hospital <i>Psychiatry Coordinator - Family Practice Residency Program</i>	Rapid City SD
1996 – 1998	Rapid City Regional Hospital <i>Western Providers Physician's Organization Board Member</i>	Rapid City SD
1992 – 1998	Rapid City Regional Hospital <i>Internal Medicine/Member of Quality Assurance Committee</i>	Rapid City SD

TEACHING ACTIVITIES:

- 2019 New Paradigms in Mental Healthcare. Course Director with the following lecture:
Emotional Competence, Suicide, and the Mental Illness Epidemic

Curriculum Vitae
Stephen P. Manlove, M.D.
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- 2018 South Dakota State Bar. Sioux Falls, SD
Forensic Evaluations: What a Defense Attorney Should Know
New Paradigms in Mental Healthcare. Course Director with the following lecture:
Psychiatry in the Next Decade
- 2017 New Paradigms in Mental Healthcare. Course Director with the following lectures:
Five Biomarkers You Should Probably Consider (Which Most Practitioners Neglect) When Trying to Improve Brain Health;
Confidentiality, Privilege, and the Duty to Protect;
Predicting Violence

- 1995-2016 Rapid City Regional Hospital Rapid City SD

Family Medicine Residency Program Lectures:

Rational Use of Antidepressants
Alcohol and Street Drug Withdrawal Syndromes
Bipolar Disorder
Suicide
Biology of Antidepressants
New Antidepressants
Antipsychotic Medications
Medico-Legal Issues in Psychiatry
Outpatient Management of Depression
Psychopharmacology of Neuropsychiatric Disturbances
Evaluation and Treatment of Depression
Psychiatry and Oncology
Psychopharmacology for Psychologists
Bipolar Disorder in Children
Conceptualizing Bipolar Disorder
Health Law
Mental Health Law

- 2016 Rapid City Regional Hospital Rapid City SD
Educational Forum- "Transcranial Magnetic Stimulation for Treatment Resistant Depression"
- 2014 Rapid City Regional Hospital Rapid City SD
Educational Forum - "Anatomy of Violence"
- 1988 Rapid City Regional Hospital Rapid City SD
Education Forum - "Eating Disorders"
- 1986 Western State Hospital Staunton VA
Grand Rounds - "Temporal Lobe Epilepsy"

PROFESSIONAL MEMBERSHIPS:

1995 – Present	American Association of Psychiatry and Law
1994 – 2000	Deputy Representative to the Assembly of the American Psychiatric Association
1992 – Present	American Psychiatric Association
1982 – 2015	American College of Physicians
1982 – Present	American Medical Association

PROFESSIONAL ASSOCIATIONS:

Consultant to:	Black Hills Children's Home 2000-2019
Consultant to:	Catholic Social Services 1995- present
Consultant to:	Lutheran Social Services 1990-2018

Consultant to:	Wellspring, Inc. 1995-2013
----------------	----------------------------

CIVIC ACTIVITIES:

2022	Lecture open to the public at Rapid City Public Library <i>Delusions, Delusion Like Beliefs, and Conspiracy Theories</i>
2019	Lectures open to the public at Rapid City Public Library <i>Preventing and Reversing Alzheimer's Disease;</i> <i>Emotional Competence, Suicide, and the Mental Illness Epidemic</i>
2018	Lectures open to the public at Rapid City Public Library <i>Improving Brain Health;</i> <i>Preventing and Reversing Alzheimer's Disease</i>
2017 – Present	Member West River Mental Health Alliance
1990 – 2013	Wellspring, Inc., Rapid City SD <i>Board of Directors</i>
1990 – 1996 and 2005 - 2008	Wellspring, Inc., Rapid City SD President of the Board of Directors Wellspring, Inc. Rapid City SC
1990	Co-Founder of Wellspring, Inc (A private, Non-Profit Corporation which works with adolescents and their families.)

AWARDS:

2016	The Bishop Lorenzo L. Kelly Community Service Award	Faith Temple Church of God in Christ
2009	Champions for Children Award	South Dakota Voices for Children

Curriculum Vitae
Stephen P. Manlove, M.D.

Page 5 of 5

2009

Teacher of the Year

Family Medicine Residency
Program

2009

Liberty Bell Award

Pennington County Bar Association

2005

We Believe in Kids Award

Wellspring, Inc., Rapid City SD

Created: 7/05

Revised: 06/2019

Signature: _____ Date: _____

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 30764

STATE OF SOUTH DAKOTA,

Plaintiff and Appellant,

v.

TIMOTHY PAUL HUANTE,

Defendant and Appellee.

APPEAL FROM THE CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT
PENNINGTON COUNTY, SOUTH DAKOTA

THE HONORABLE MATTHEW M. BROWN
CIRCUIT COURT JUDGE

APPELLANT'S REPLY BRIEF

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ATTORNEYS FOR DEFENDANT
AND APPELLEE

Order Granting Petition of Intermediate Appeal entered August 16, 2024

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<i>Klein v. Klein</i> , 500 N.W.2d 236, 239 (1993)	3
<i>Livers v. Schenck</i> , 2013 WL 5676881 (D. Neb. Oct. 18, 2013)	7,8
<i>State v. Guthrie</i> , 2001 S.D. 61, 627 N.W.2d 401	4
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<i>Tosh v. Schwab</i> , 2007 S.D. 132, 743 N.W.2d 422	2,5
<i>United States v. Pumpkin Seed</i> , 2018 WL 6985004 (D.S.D. June, 21, 2018)	8
 STATUTES CITED:	
SDCL 19-19-702(a)	4
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 OTHER REFERENCES:	
Dr. I Bruce Frumpkin's Full Vita, https://www.forensicclinicalpsychology.com/wp-content/uploads/2024/08/vita-05-24 (last visited December 5, 2024)	7
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IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 30764

STATE OF SOUTH DAKOTA,

Plaintiff and Appellant,

v.

TIMOTHY PAUL HUANTE,

Defendant and Appellee.

PRELIMINARY STATEMENT

In this brief, Appellee, Timothy Paul Huante, is referred to as “Huante.” Appellant, the State of South Dakota, is referred to as “State.”

References to documents are designated as follows:

Settled Record (Pennington County Criminal File
No. 22-702) SR

Evidentiary Hearing Transcript (May 17 and 21, 2024)EH

Huante’s Appellee BriefHB

All document designations are followed by the appropriate page
number(s).

JURISDICTIONAL STATEMENT

On July 9, 2024, the Honorable Matthew M. Brown, Circuit Court
Judge, Seventh Judicial Circuit, signed a memorandum decision titled
Court Ruling on Offered Testimony of Dr. Manlove by Defendant.
SR 370-77. It was filed with the Pennington County Clerk of Courts the

following day. The Notice of Entry was filed on July 11, 2024. SR 378. The State filed a Petition for Permission to File an Intermediate Appeal on July 19, 2024, and this Court granted permission for the intermediate appeal to proceed on August 16, 2024. SR 587-88. This Court has jurisdiction under SDCL 23A-32-12.

STATEMENT OF LEGAL ISSUE AND AUTHORITIES

WHETHER THE CIRCUIT COURT ERRED WHEN IT AUTHORIZED DR. MANLOVE TO TESTIFY AT TRIAL AS AN EXPERT ON FALSE CONFESSIONS AND POLICE INTERROGATION TECHNIQUES?

The circuit court denied the State's request to prohibit Dr. Manlove from testifying at trial as an expert in false confessions and police interrogation techniques.

Burley v. Kytect Innovative Sports Equip., Inc., 2007 S.D. 82, 737 N.W.2d 397

State v. Hernandez, 2023 S.D. 17, 989 N.W.2d 525

State v. Yuel, 2013 S.D. 84, 840 N.W.2d 680

Tosh v. Schwab, 2007 S.D. 132, 743 N.W.2d 422

STATEMENT OF THE CASE

The State relies on its Statement of the Case included in its Appellant's brief.

STATEMENT OF THE FACTS

The State relies on its Statement of the Case included in its Appellant's brief, which it crafted using the probable cause affidavit filed by law enforcement, found in the settled record.¹ SR 2.

STANDARD OF REVIEW

The State relies on its Standard of Review included in its Appellant's brief.

ARGUMENT

THE CIRCUIT COURT ERRED WHEN IT AUTHORIZED DR. MANLOVE TO TESTIFY AT TRIAL AS AN EXPERT ON FALSE CONFESSIONS AND POLICE INTERROGATION TECHNIQUES.

The State believes that most of the arguments raised by Huante in his brief are recitations of his argument before the circuit court or are addressed, in one respect or another, by the State's brief. The State limits this reply to the limited new matter raised in his Appellee's brief.

"The rules of evidence, including those which govern the admissibility of expert opinions, are designed to avoid placing misleading, confusing, unreliable, or inaccurate evidence before a jury." *State v. Hernandez*, 2023 S.D. 17, ¶ 32, 989 N.W.2d 525, 536. Here, the circuit court failed to properly apply to the rules of evidence to ensure

¹ Huante suggests the State's facts were drafted opposite its obligation to "state the facts 'fairly, with complete candor, and as concisely as possible[.]'" HB 7 (citing *Klein v. Klein*, 500 N.W.2d 236, 239 (1993)). The quoted portion of the State's brief that Huante called "distorted" is a near verbatim recitation of the final paragraph of Investigator Kylie Kintigh's probable cause affidavit. SR 2.

the purported expert testimony of Dr. Manlove would assist the trier of fact with the consequences of this case and that Dr. Manlove's testimony was based on sufficient facts or data. SDCL 19-19-702(a) and (b). And "[w]hen a trial court misapplies a rule of evidence, as opposed to merely allowing or refusing questionable evidence, it abuses its discretion." *State v. Guthrie*, 2001 S.D. 61, ¶ 30, 627 N.W.2d 401, 415 (internal citation omitted).

Huante correctly states that Dr. Manlove is an expert in the field of forensic psychiatry. HB 12. But Huante does not show that Dr. Manlove has the qualifications to make him an expert in false confessions or police interrogation techniques. This argument is akin to the circuit court's finding that forensic psychiatry is an umbrella topic that encompasses false confessions, and because Dr. Manlove is an expert in forensic psychiatry, he therefore is an expert in false confessions. But having knowledge in a broad topic like forensic psychiatry is not enough to meet the qualifications of an expert witness in false confessions or police interrogation techniques, which are specialized subsets of forensic psychiatry. SR 373.

Instead of relying on known qualification methods such as training, experience, and education to support his position, Huante argues Dr. Manlove read over thirty articles "from leading forensic

psychiatric journals [.]”² But as this Court has said, “reading a book alone does not make a person a qualified expert.” *Tosh v. Schwab*, 2007 S.D. 132, ¶ 21, 743 N.W.2d 422, 429. If that were the case, anyone could become an expert on a topic with little to no training. Instead, an expert witness needs to have “sufficient specialized knowledge to assist jurors in deciding the specific issues in the case.” *Burley v. Kytac Innovative Sports Equip., Inc.*, 2007 S.D. 82, ¶ 16, 737 N.W.2d 397, 404 (internal citations omitted). The trial court failed to uphold that requirement in this case.

Huante complains that the State is taking conflicting positions about false confessions by arguing two things: there is a lack of empirical data and studies to support the concept of false confessions, and that the concept of false confessions is also commonly known. HB 16. In reality, Huante, is attempting to “have it both ways.” HB 16. He is arguing that a false confession is “counterintuitive behavior that is not within an ordinary person’s common understanding and expert assistance can help jurors understand that people do falsely confess[.]” despite the fact that Dr. Manlove testified that the phenomenon is commonly known thanks to the popularity of true crime media. HB 9, EH 121-22. Contrary to Huante’s assertion, the State’s argument is

² Some of the articles referenced by Dr. Manlove were actually law review articles published by law students, which he did not realize until the State pointed it out to him. EH 58.

Dr. Manlove is not qualified to testify on false confessions or interrogation techniques and that such testimony is irrelevant.

Even so, a concept can lack proper scientific foundation and be commonly known by the public. This is the purpose behind *Daubert*, to keep out purported expert testimony that is unreliable. *State v. Yuel*, 2013 S.D. 84, ¶ 8, 840 N.W.2d 680, 683 (“The Daubert standard requires the trial court to ensure that an expert’s testimony both ‘rests on a reliable foundation and is relevant to the task at hand. Pertinent evidence based on scientifically valid principles will satisfy those demands.’” (quoting *State v. Loftus*, 1997 S.D. 131, ¶ 21, 573 N.W.2d 167, 173)). Which is the problem with the circuit court’s ruling, Dr. Manlove is simply not qualified to testify regarding false confessions and interrogation tactics.

Huante compares Dr. Manlove’s testimony to expert testimony in child sexual assault cases and battered woman syndrome. But it is not comparable. There aren’t conflicting opinions on child sexual assault or battered woman expert testimony, which is widely researched and widely recognized. False confession experts don’t meet this bar. The field is more controversial, there are conflicting opinions, and the science isn’t there. The split among jurisdictions on how this testimony is handled supports the State’s argument. In the end, Dr. Manlove can’t assist the trier of fact in understanding the evidence without specialized knowledge in the fields he purports to know about.

Courts across the country have differing opinions on how to handle false confession testimony, none of which are binding on this Court. Huante relies on three, unpublished orders from district courts within the Eighth Circuit support the circuit court's ruling. HB 20. These cases are distinguishable from Huante's case. First, in *United State v. Roubideaux*, the district court allowed testimony of Dr. I. Bruce Frumpkin as an expert on false confessions. 2022 WL 16961123, at *1 (D.S.D. Nov. 16, 2022). Dr. Frumpkin's credentials are vastly different from Dr. Manlove's. Not only has Dr. Frumpkin published several articles on false confessions, the validity of confessions, and interrogation techniques, he has also given several presentations on those same topics. Dr. I Bruce Frumpkin's Full Vita, <https://www.forensicclinicalpsychology.com/wp-content/uploads/2024/08/vita-05-24.pdf> (last visited December 5, 2024). This is a stark difference from Dr. Manlove's credentials on false confessions, where he has not published any articles nor given any presentations on false confessions or interrogation techniques.

Second, in *Livers v. Schenck*, the district court stated that Dr. Leo³ appeared "to be generally qualified."⁴ But still, "[h]is expertise must be demonstrated before his testimony will be allowed." 2013 WL 5676881

³ Dr. Leo's testimony has been called into question by other courts. See Appellant's Brief, pg. 13.

⁴ Dr. Leo's credentials include a "J.D., a Ph.D. in jurisprudence, and social policy with a specialization in social psychology and criminology and is an expert on 'false confessions, miscarriages of justice, coercive persuasion, and police interrogation.'" *Livers*, 2013 WL 5676881, at *3.

at *4 (D. Neb. Oct. 18, 2013). It is not clear that Dr. Leo was allowed to testify as a false confession expert.

Finally, Huante relies on *United States v. Pumpkin Seed*, 2018 WL 6985004 at *3 (D.S.D. June 21, 2018), *report and recommendations adopted*, 2018 WL 5657258 (D.S.D. Dec 13, 2018), where he claims Dr. Manlove testified that “the interrogator used tactics and techniques which coupled with certain characteristics of the defendant could lead to a false confession.” HB 20. But this does not explain a full or accurate picture of Dr. Manlove’s testimony. Dr. Manlove testified at a suppression hearing. His testimony⁵ suggested that law enforcement’s interrogation techniques could have led to a false confession to someone with cognitive impairment like Pumpkin Seed. The magistrate judge ultimately held Dr. Manlove’s testimony was “not dispositive of the issue” on suppression. *Pumpkin Seed*, 2018 WL 6985004 at *3 (D.S.D. June 21, 2018), *report and recommendations adopted*, 2018 WL 5657258. Even if Dr. Manlove had testified in this one instance as a qualified expert on false confessions or police interrogations, “[m]ere experience as a practiced litigation witness is a poor touchstone for measuring genuine expert qualifications.” *Burley*, 2007 S.D. 82, ¶ 17, 737 N.W.2d at 404. Huante is missing the mark by relying heavily on this one instance of testimony at a suppression hearing.

⁵ The court stated it heard testimony from “expert witness Dr. Stephen Manlove, a licensed psychiatrist.” *Pumpkin Seed*, 2018 WL 6985004 at *3. But it did not clarify whether Dr. Manlove was an expert in either false confessions or police interrogations.

Huante also argues that because the Reid technique was “created by law enforcement for law enforcement[,]” it would be difficult for Dr. Manlove to take any training courses on the subject. HB 17. But John E. Reid and Associates offers a wide array of courses and does not require individuals be in law enforcement to enroll in the classes. John E. Reid & Associates, Inc. Frequently Asked Questions; <http://archive.reid.com/faq/> (last visited December 5, 2024).

According to Huante, it does not matter that Dr. Manlove hasn’t taken any courses on the Reid technique because it’s his opinion that law enforcement did not really follow the Reid technique. HB 17-18, EH 74. The only interrogation technique Dr. Manlove read about was the Reid technique. EH 5, 53. It is the only technique he could readily identify. EH 51. So not only does he lack the specialized knowledge in police interrogation techniques, the one technique he knows wasn’t even utilized in this case. Which begs the question, how is his testimony on such topic reliable or relevant to Huante’s case?

CONCLUSION

Because Dr. Manlove is not qualified as an expert on false confessions and police interrogations, his testimony is not reliable or relevant, and it is inadmissible at trial. Therefore, the circuit court abused its discretion when it found such testimony to be admissible. The State respectfully asks this Court to reverse the circuit court's decision.

Respectfully submitted,

MARTY J. JACKLEY
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CERTIFICATE OF COMPLIANCE

1. I certify that the Appellant's Reply Brief is within the limitation provided for in SDCL 15-26A-66(b) using Bookman Old Style typeface in 12-point type. Appellant's Reply Brief contains 1,763 words.
2. I certify that the word processing software used to prepare this brief is Microsoft Word 2016.

Dated this 12th day of December 2024.

/s/ Erin E. Handke
Erin E. Handke
Assistant Attorney General

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 12th day of December 2024, a true and correct copy of Appellant's Reply Brief in the matter of *State of South Dakota v. Timothy Paul Huante* was served electronically through Odyssey File and Serve on Angela M. Colbath at angelacolbath@acolbathlaw.com, Gregory J. Sperlich at gsperlich@acolbathlaw.com, and Kyle Beauchamp at kyle@colbathlaw.com.

/s/ Erin E. Handke

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