

NOTICE

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NO. 5-06-0484

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Jefferson County.
)	
v.)	No. 02-CF-212
)	
JOE C. TUCKER, JR.,)	Honorable
)	Terry H. Gamber,
Defendant-Appellant.)	Judge, presiding.

JUSTICE STEWART delivered the judgment of the court.
Presiding Justice Chapman and Justice Wexstten concurred in the judgment.

R U L E 2 3 O R D E R

Held: Under the facts of this case, the circuit court did not abuse its discretion in denying the defendant's motion for funds to hire experts on the issue of false confessions. In addition, the defendant did not establish that he was entitled to a new trial due to ineffective assistance of counsel, and the circuit court did not abuse its discretion in sentencing the defendant to natural life in prison for first-degree murder.

A jury found the defendant, Joe C. Tucker, Jr., guilty of first-degree murder for the stabbing death of Jana Reynolds, and the circuit court sentenced the defendant to an extended-term sentence of natural life in prison. The defendant appeals his conviction and sentence. For the following reasons, we affirm.

BACKGROUND

Jana was a nursing student who lived with her husband, Jeff Reynolds, in Mt. Vernon, Illinois. On the night of May 5, 1988, Jeff worked an evening shift that began at 11 p.m. He left for work at approximately 10:45 p.m. that evening, and Jana was home alone after he left for work. Jeff's shift ended at 7 a.m. the next morning. When he returned home after

work, he first noticed that Jana's car was still in the carport, which he felt was unusual, and he then noticed that the door leading into the house from the carport was "all busted open." Jeff stepped into the house, called out for Jana, walked into their bedroom, and discovered Jana's body lying on their bed, saturated with blood. After touching her chest, he ran out of the house screaming.

Officer Vladetich of the Mt. Vernon police department was dispatched to the Reynolds' home that morning. When he arrived, he also noticed that the door leading from the carport into the kitchen had been forced open. The door's locks were damaged, and the door's facing had been torn off. Inside the bedroom, Officer Vladetich found Jana's body lying on her bed in a massive pool of blood. After paramedics confirmed Jana's death, he secured the crime scene.

Inside the house, Jana's body lay on her back at an angle on the top of her bed. Her thermal bottoms and underwear had been pulled off one leg and hung around the ankle on the other leg. Her top had been pulled up to her chest. She had multiple stab wounds to her abdomen, chest, and hip, and her throat and wrist were slashed. One stab wound in Jana's chest penetrated her heart. In the living room, the contents of Jana's purse were dumped onto the floor. The investigators sent Jana's clothes and sheets to the Illinois State Police crime lab. The crime lab found hair fragments that did not belong to Jana or Jeff.

The investigation focused on several individuals, including the defendant and a person named Albert McDaniels. McDaniels voluntarily gave investigators hair standards, blood and saliva samples, and his clothing, and these items were sent to the crime lab. Investigators interviewed McDaniels, and he admitted to being in the area of Jana's house and looking into her window on the night she was murdered. McDaniels told the investigators that he was in the area for the purpose of robbing a nearby drug house. He told the investigators that he had a conversation with someone he called T.C., who said he was

going into Jana's house to have sex with her. McDaniels said that he left the area before T.C. entered Jana's house. In May 1988, the crime lab determined that the hairs found on Jana's clothes and bed sheets were not McDaniels' hair. The investigators were unable to find any physical evidence linking McDaniels to the inside of Jana's house or other evidence that indicated that he was involved with Jana's death.

At that time, the investigators also had hair samples taken from the defendant's head, along with samples from other suspects. The hair fragments found at the crime scene did not match the hair standard from the defendant's head. The forensic scientist who examined the hair, however, explained that this result did not exclude the defendant as a suspect. He testified that hair fragments from different body parts are different in appearance, that he could not determine which part of the body the crime scene hair fragments had come from because they were too small, and that he only had the defendant's head hair standard for comparison. The scientist did not have hair standards from other parts of the defendant's body for comparison. The scientist could only conclude that the crime scene hair fragments did not come from the defendant's head.

In September 1988, a person found a wallet that contained Jana's identification lying in a burn pile in a wooded area in Mt. Vernon. By December 1988, investigators had followed more than 300 leads. The investigation continued for many years without being resolved, and Jana's murder became a "cold case." In August 2001, Detective McElroy of the Mt. Vernon police department began reexamining the physical evidence gathered during the investigation. He hoped that advances in forensic science since the original investigation would turn up new leads. Detective McElroy and a team of detectives used an "alternative light source" to look for stains on the thermal bottoms and gray underwear that Jana was wearing on the night she was murdered. This technology was not available to the Mt. Vernon police department in 1988. The alternative light source testing revealed previously

untested stains on Jana's clothing. At that time, there was a backlog of testing at the Illinois State Police Lab in Carbondale; therefore, Detective McElroy sent the clothing to a private DNA laboratory, Cell Mark, for further testing.

The additional testing revealed that the stains on Jana's clothing were seminal fluid stains. The DNA profile extracted from the stains did not match the DNA of Jana, Jeff, or McDaniels. Subsequent DNA tests determined that the seminal fluid found on Jana's clothing matched the defendant's DNA. The defendant was then arrested for Jana's murder.

In November 2002, the defendant was being held at the Menard Correctional Center (Menard). The State's Attorney received a letter from an inmate at Menard, Robin Gecht. Gecht stated in his letter that he had information about Jana's murder. Detective McElroy subsequently interviewed Gecht concerning this information. Detective McElroy obtained handwritten statements detailing Jana's murder and a floor plan of Jana's house, which Gecht stated were written and drawn by the defendant. A handwriting expert analyzed the documents that McElroy received from Gecht, along with a sample of the defendant's handwriting, and confirmed that the defendant handwrote the statements.

The State presented Gecht's testimony at the defendant's trial. He testified that he was not promised anything in return for his testimony but that when he wrote the State's Attorney concerning the defendant's handwritten statements, he wrote that he hoped that they could "work out some agreement that will be helpful to all concerned." Gecht testified at the trial that when he discussed Jana's murder with the defendant, the defendant told him that he entered Jana's house with the intent of raping and burglarizing and that he killed her. Gecht testified that he helped the defendant construct a defense theory that the defendant's friend, McDaniels, killed Jana and that he only observed. According to Gecht, the defendant handwrote three narratives that described how he committed the murder. Gecht read the statements to the jury.

According to Gecht, in the first handwritten account, the defendant wrote as follows: "outside, came though [*sic*] door off of the kitchen, went into the living room where she was on the couch. Took her to the bedroom, had sex. Stabbed her after sex. Looked through the house *** and saw the black bag, got the wallet out of it and left."

Gecht testified that in the second handwritten statement, the defendant wrote that he parked his car two blocks away and walked to Jana's house. He encountered McDaniels, who walked with him to the house. McDaniels looked into Jana's living room window, and the defendant looked into the kitchen window. The defendant saw Jana lying on her couch wearing gray shorts and a top. He kicked in the kitchen door, slapped her in the face, took her into the bedroom, and put her on the bed. He wrote that he pulled down her gray shorts and had sex with her. He described cutting Jana's neck and wrists and stabbing her in her stomach and heart, holding her down as he stabbed her with his knife. He wrote, "After sex, got the wallet out of the purse, left the house, walked back the way I came."

Gecht told the jury that the defendant wrote the third handwritten statement as follows:

"Early hours of May 6, 1988, I was driving down 22nd Street going over Tony Duncan's house on 22nd. I parked my car two blocks away, like I always do.

As I started walking over Tony's house, I saw someone at the side of the street. As I got closer, someone said, 'Little Joe.' This is Albert Daniels, my cousin. He's about 5' 7", light skin, around two hundred pounds.

As I came to him, he asked me where was I going. And I told him over to Tony's house. I asked him where he was going. He said just walking around. And he put his arm around my shoulder and we walked on.

As we got closer to Tony's house, he ran over to the other side of the house and looked into a window. He called me over. I looked in too. I looked in and this girl

was lying on the couch asleep.

He said, what an ass. He said, maybe we can get in and have sex with her and look for some money for drugs. Albert said, go ahead. I'll stay here. This was about 11:45 p.m.

I went to the side of the house at a door that was located at what was the carport. I pushed in the door and led to the kitchen past the bedroom door.

When I came up to her, I realized that I knew her from somewhere. Knowing this, she was waking up. I pulled the pillow over her head-face and she started to fight, but never yelling. She got up. I got the pillow off as we fell to the floor in the living room. I then punched her a few times in the face and she stopped fighting back.

I told her to get off the floor and get into the bedroom. She refused at that time and I pulled out a knife that I had with me, a pocket knife that was six inches long, and held it to her neck and said, move it.

She then started walking towards the bedroom located just off the kitchen area. Once in the bedroom, I threw her on the bed. I held a knife to her neck and pulled her top over her face and started taking off her panties, but she started to fight again. So I climbed on top, cut her neck and punched her again in the face. She said, don't hurt me. She then just laid there and said nothing and did nothing.

She was wearing a thermal bottom, gray pants. She was around 5'5" tall, red colored hair, short, had nice small titties and was red-like in color. She had a lot of freckles on her body.

As she laid there, I got undressed, pulled down her panties down around her ankles, rubbed her pussy a few times and her breasts, then I put my penis in her and had sex with her for about five minutes. And when I was ready to come, I pulled it

out and it comed [*sic*] on the sheets.

Soon after, I started getting up and then stabbed her twice in the chest area and a number of times in the abdominal area. She started moving around and I stabbed her in the right hip area. She stopped moving. I got off her.

I started looking around for cash. While doing this, I thought I heard her again moaning, so I went back to the bed room and cut her wrist to be sure she would die.

When I did that, I leaned over her body, then I went looking through the house for money. I saw her purse and I went in it and took the wallet. After taking the wallet, I went back outdoors through the door I came in."

Gecht testified that he told the defendant to rewrite the statements four times, and in one statement, the defendant wrote that McDaniels killed Jana.

At the trial, the defense called McDaniels as a witness. He testified that he was, at the time, in the custody of the Department of Corrections for an armed robbery. He remembered being in the vicinity of Jana's house on the night she was murdered because he was going to rob the house next door to Jana's house. McDaniels testified that as he passed Jana's house, he saw Jana through her window, and he thought she might have seen him because he was cutting through her yard. At that time, he knew Jana "slightly." He testified that he discussed robbing the house next door with a person known as "T.C." He testified that he falsely implied to T.C. that he and Jana had an affair. He advised T.C. that the best time to go by her house if he wanted to have sex with her was between 11 p.m. and 7 a.m., while her husband was at work. He testified that he knew the defendant and that he might be his cousin by marriage. He was not sure, however, and knew that the defendant had the nickname of "Little Joe." He was unable to identify "T.C." at the trial.

Angel Chrum testified that in May 1988, she was McDaniels' girlfriend. She knew that McDaniels shaved, but she did not know if he shaved "every bit" of his hair off. A

friend of McDaniels, Eddie Chrum, testified that he had seen McDaniels with a shaved head "back in '88," that from time to time McDaniels had a moustache, and that there were times that McDaniels shaved his arms, but he did not know the dates. Detective McElroy testified that in March 2002, the defendant's head looked like it had been shaved and was growing out.

The defendant presented the testimony of a crime scene expert who testified that he had reviewed the photographs of the crime scene. He testified that he did not see any evidence in the photographs of the crime scene that anyone rushed into the kitchen. He believed that the crime scene photographs indicated that no struggle occurred on Jana's couch. On cross-examination, he admitted that the crime scene evidence indicated that the kitchen door to the Reynolds' home had been forced open.

The defendant testified that he knew Jana from working at Wendy's restaurant in Mt. Vernon in 1982 and 1983. He testified that he was a friend of Jana's and that they had a sexual relationship beginning in 1983 and continuing over the years until she was killed. The defendant told the jury that on the night of May 5, 1988, he headed to Jana's house and parked two blocks away from the house. As he walked to Jana's house, McDaniels appeared and asked where he was going. The defendant told McDaniels that he was going to Jana's house, and McDaniels told him that he was just walking around. McDaniels walked with the defendant to Jana's house. According to the defendant, they knocked on the door, and Jana let both of them inside.

Inside, they sat on the couch and talked. The defendant testified that when Jana got up to wash her hands, he went into her bedroom and called her into the bedroom. He told the jury that they started with foreplay which led into sex. They had sex for 15 to 20 minutes. The defendant said that McDaniels came to the bedroom door and asked "was it a party," and Jana said no. McDaniels then left the bedroom door but came back and said,

"Fuck this shit." The defendant testified, "I had already come at the time and I was getting up and then he just ran into the bedroom and just started grabbing on her, pulling on her." The defendant testified that he pushed McDaniels, but McDaniels pulled out a knife and stabbed Jana. According to the defendant, McDaniels pointed the knife at him and threatened to kill him. The defendant then ran away. He claimed that when he saw McDaniels later that morning, McDaniels still had the knife and told him that if he said anything, he was going to kill him. The defendant testified that he did not say anything to the police because he was afraid.

The defendant testified that he met Gecht when he was sent to Menard. He wrote some questions for his attorney to ask certain witnesses, but he felt that his handwriting and spelling were not good enough. Therefore, he asked Gecht to type the questions for him. He testified that Gecht helped other inmates by looking over "legal work" and writing "different motions for them." He testified that Gecht told the defendant that he could help him with his defense and that he gave Gecht a copy of his discovery. He admitted that he had handwritten the statements that the State had offered into evidence and that he had written them for Gecht to help with his defense. According to the defendant, after he had written the first statement, Gecht told him that he needed to add more detail in the statement. The defendant testified that Gecht told him to "leave [McDaniels] out and put yourself there" and that he would show him how the police missed McDaniels. The defendant then testified that he took everything he knew about the case from his discovery and tried to rebuild the crime scene. The defendant testified as follows:

"I went to Robin Gecht to write out these little questions that I had for him and he told me that these questions is too wide open. *** I didn't know what he meant, you know. So I started listening to him. So he told me, he's like, okay, let me see your work. Okay. So I gave him my discovery. But when I told my lawyer what had

happened initially, I didn't have no discovery paper, you know, to go off of. So then Robin Gecht told me he's like, okay, leave [McDaniels] out and put yourself there. I'm like, uh—he's like leave [McDaniels] out. Put yourself there. I will show you how the police missed him. It sounded okay to me, you know. So, you know, in—in—and we see all of this CSI, court TV, practice, everything that they—where they rebuild a crime scene. And actually that's what I did right here. I took everything that I knew about this case and I tried to rebuild a crime scene. So I knew exactly what to tell my lawyer after I wrote this.

* * *

Like I say, I'm trying to piece every part of the papers together. I—I'm trying to take every sheet of paper it was. I think it was like 3,000 pieces of paper from 5:00 in the morning till 9:00 at night. I'm reading this paper. I'm reading every piece of these papers. So when he told me to take out [McDaniels] and put myself there, this is me putting myself there. I have to make this crime fit so he can believe me, so he can try to tell me, okay, look, Joe, this is why the police missed [McDaniels] and that's it."

The defendant denied looking into Jana's window and denied kicking in her kitchen door. He got those details from his "discovery papers." He denied putting the pillow on her face, slapping her, and taking her to the bedroom. He added all the details to the statement in an effort to rebuild the crime scene. During cross-examination, the State's Attorney asked the defendant, "[W]hat possible purpose would you have for writing a confession to murder to Robin Gecht?" The defendant responded as follows:

"Someone probably would call this a confession to murder. But, like I said, I had all of the discovery and I took my time reading all of the discovery. And I had already told my lawyer, James Henson, what had happened. So when I did get all of

the—of my discovery, I didn't want somebody saying, okay, Joe, you got your discovery. Now you know what happened. This is why I told Henson what happened before I had any type of papers. My initial purpose with Robin Gecht was to type out the questions that I had and then it went on into that I wanted him to show me what he said that he can show me so I can take back to my lawyer."

The defendant admitted that Gecht told him that if he was going to help him, he was going to have to tell the truth.

At the conclusion of the trial, the jury found the defendant guilty of first-degree murder and found that the murder had been accompanied by exceptionally brutal and heinous behavior indicative of wanton cruelty. On June 28, 2006, the trial court denied the defendant's posttrial motion and sentenced the defendant to natural life in prison. On June 30, 2006, the defendant filed a motion for a new trial due to "newly discovered evidence."

The motion alleged as follows:

"[O]n June 22, 2006, [the defendant], while meeting with co-counsel in this case, happened to find the important documents that he had previously asked undersigned counsel and Private Investigator Kevin McClain to search for in their files: namely, the list of questions that [the State's] witness Gecht had typed for [the defendant], and which supported [the defendant's] testimony that he had gone to Gecht to help getting said list of questions typed. A copy of that document is attached. The document was delivered to undersigned counsel from [the defendant] on the morning of June 23, 2006, but it was not until undersigned counsel had a chance to review the document after the conclusion of the sentencing hearing that undersigned counsel understood the evidentiary value of the document."

A typed list of questions was attached to the motion as an exhibit. On August 31, 2006, the circuit court entered a docket entry denying the defendant's motion. The defendant

subsequently appealed his conviction and sentence.

ANALYSIS

The first issue the defendant raises on appeal is that the circuit court erred in denying his pretrial request for funds to hire expert witnesses on the issue of his "false inculpatory statement." Before the trial, the defendant filed a two-page motion requesting funds to hire two expert witnesses, Dr. Richard Ofshe and Dr. Bruce Frumkin. The motion alleged that after the defendant was arrested and while he was being detained at the Menard Correctional Center, the defendant "allegedly gave an inculpatory statement to fellow inmate Robin Gecht." With respect to Dr. Ofshe's testimony, the defendant alleged as follows: "Dr. Ofshe is expected to testify that if the defendant is under stress, the defendant will make a false statement. Dr. Ofshe's fees are expected to be \$20,000." The defendant further alleged that he intended to present evidence at the trial that he sought out Gecht because "of the enormous stress involved in being charged with murder, combined with the stress he felt due to the lack of communication from his attorney." With respect to Dr. Frumkin's testimony, the defendant alleged as follows: "In order to provide a psychological profile of [the defendant] to Dr. Ofshe, the defense has located an expert psychologist on the issue of false inculpatory statements—Dr. Bruce Frumkin. Dr. Frumkin's fees are expected to be \$6,000." The defendant attached Dr. Ofshe's and Dr. Frumkin's curriculum vitae to the motion.

The circuit court denied the defendant's request for funds to hire Dr. Ofshe and Dr. Frumkin. The court noted that the defendant could challenge the inculpatory statement through cross-examination. We hold that the circuit court did not abuse its discretion in denying the defendant's motion.

"It is well established in Illinois that, under certain circumstances, an indigent defendant's constitutional protections may be violated by the denial of funds to secure an expert witness." *People v. McCoy*, 281 Ill. App. 3d 576, 582, 666 N.E.2d 805, 809 (1996).

The test for determining whether constitutional protections are triggered by a request for funds to hire an expert is not whether the expert's testimony is useful, helpful, valuable, or even important to the defense, but whether the testimony is "crucial" to the defense or goes to the "heart of the defense." *People v. Keene*, 169 Ill. 2d 1, 7-8, 660 N.E.2d 901, 905 (1995). Whether an indigent's request for funds to hire an expert raises constitutional protections will vary with the circumstances in each case. *Keene*, 169 Ill. 2d at 7, 660 N.E.2d at 905. "Where no constitutional right is implicated, the decision to appoint an expert, or to authorize funds to hire an expert, rests with the sound discretion of the circuit court." *People v. Richardson*, 189 Ill. 2d 401, 422, 727 N.E.2d 362, 375 (2000).

"Expert testimony is proper where such testimony is needed to explain matters beyond the common knowledge of ordinary citizens, and where such testimony will aid the fact finder in reaching its conclusion." *People v. Bennett*, 376 Ill. App. 3d 554, 571, 876 N.E.2d 256, 272 (2007). In the present case, therefore, if Dr. Frumkin's and Dr. Ofshe's testimony was not necessary to explain matters beyond the common knowledge of ordinary citizens, the defendant would not be entitled to funds to hire the experts. See, e.g., *United States v. Carter*, 410 F.3d 942, 949 (7th Cir. 2005) (the trial court did not abuse its discretion in denying an indigent defendant funds for an expert where the expert's testimony would have been inadmissible). We hold that under the facts of this case, the requested expert testimony was not needed to explain the circumstances of the defendant's handwritten statements.

For example, in *People v. Gilliam*, 172 Ill. 2d 484, 492, 670 N.E.2d 606, 610 (1996), a jury convicted the defendant of first-degree murder, aggravated kidnaping, and robbery. He argued on appeal that "the trial court erroneously limited the evidence that he could present to the jury on the circumstances surrounding [his] confession." *Gilliam*, 172 Ill. 2d at 512, 670 N.E.2d at 619. Specifically, the defendant sought to introduce the expert testimony from an examining psychologist who would have opined that the "defendant's

desire to protect his family made him especially susceptible to police pressures and created a form of psychological compulsion to confess." *Gilliam*, 172 Ill. 2d at 512, 670 N.E.2d at 619. Therefore, according to the psychologist, the "defendant's confession was the product of psychological coercion." *Gilliam*, 172 Ill. 2d at 512, 670 N.E.2d at 619. The circuit court granted the State's motion *in limine* and limited the psychologist's testimony to the defendant's mental state or condition; it precluded the psychologist from testifying "on the circumstances surrounding the voluntariness or competency of [the] defendant's confession." *Gilliam*, 172 Ill. 2d at 512, 670 N.E.2d at 619. The supreme court held that the circuit court did not abuse its discretion in limiting the psychologist's testimony. *Gilliam*, 172 Ill. 2d at 513, 670 N.E.2d at 620.

The supreme court explained, "[E]xpert testimony is not admissible on matters of common knowledge unless the subject is difficult to understand and explain." *Gilliam*, 172 Ill. 2d at 513, 670 N.E.2d at 619. In that case, the supreme court held, "Whether defendant falsely confessed to protect his family is not a concept beyond the understanding of ordinary citizens, and is not difficult to understand or explain." *Gilliam*, 172 Ill. 2d at 512, 670 N.E.2d at 619. The court noted that the defendant was not precluded from challenging the credibility of his confession and that the jury could have reached the same conclusion as the psychologist based on the testimony of other witnesses. *Gilliam*, 172 Ill. 2d at 513, 670 N.E.2d at 619-20. Therefore, the circuit court did not abuse its discretion. *Gilliam*, 172 Ill. 2d at 513, 670 N.E.2d at 620.

In *People v. Becker*, 239 Ill. 2d 215, 231, 940 N.E.2d 1131, 1140 (2010), a jury convicted the defendant of predatory criminal sexual assault of a child and criminal sexual assault. On appeal, the defendant argued that the circuit court abused its discretion in excluding "the expert testimony *** concerning the reliability/credibility of hearsay statements made by *** the alleged child victim of a sexual assault." *Becker*, 239 Ill. 2d at

218, 940 N.E.2d at 1133. In affirming the circuit court's ruling, the supreme court analyzed *Gilliam* and held, ["The expert's testimony,] that this young child, like any young child, might be influenced by suggestive questioning and improper investigative techniques, is not a matter beyond the ken of the average juror." *Becker*, 239 Ill. 2d at 236-37, 940 N.E.2d at 1143. "[T]he concepts involved are familiar to the average citizen and no more difficult to understand than that at issue in *Gilliam*." *Becker*, 239 Ill. 2d at 237, 940 N.E.2d at 1143.

The *Becker* court explained that the defendant's attorney had apprised the jury of the circumstances of the child's statements through the testimony of other witnesses and had "discussed, in layman's terms, the very principles [the expert] would have testified to." *Becker*, 239 Ill. 2d at 238, 940 N.E.2d at 1144. The court concluded that the expert's testimony "was not necessary to make [the] defendant's points." *Becker*, 239 Ill. 2d at 239, 940 N.E.2d at 1144.

Likewise, in the present case, the only offer the defendant made concerning the substance of the expert testimony he requested was the two-page motion requesting funds to hire the experts. With respect to Dr. Ofshe's testimony, the defendant expected him to testify "that if the defendant is under stress, the defendant will make a false statement." The defendant further added that he intended to present evidence at the trial that "the reason he sought out Robin Gecht was because of the enormous stress involved in being charged with murder, combined with the stress he felt due to the lack of communication from his attorney." The only statement the defendant made with respect to the need to hire Dr. Frumkin was as follows: "In order to provide a psychological profile of [the defendant] to Dr. Ofshe, the defense has located an expert psychologist on the issue of false inculpatory statements—Dr. Bruce Frumkin." The defendant does not state in the motion that he anticipated offering Dr. Frumkin's testimony at the trial. He alleged only that Dr. Frumkin would provide Dr. Ofshe with a psychological profile.

At the hearing on the defendant's motion, counsel for the defendant noted that much of the State's case was based on the handwritten statements that the defendant gave Gecht. Counsel argued as follows:

"There is an expert in the United States who can address the subject of false inculpatory statements and why they are given. It's been held in a different court in Illinois in the past year or two that he can't testify about a defendant unless he has a psychological profile of the Defendant. That's why I'd ask for Dr. Bruce Frumkin to *** examine [the defendant] first and then provide that evidence to *** Dr. Ofshe to gain his opinion on why [the defendant] would have made such a statement to Robin Gecht."

Defense counsel again noted that the defendant "was under a lot of stress" and did not think his court-appointed counsel "was doing enough to help him." In response, the State noted that there was "no proof in support of any inference that [the defendant's handwritten statements were] made under any duress, coercion, specific stress other than the stress that ordinarily inures to penitentiary confinement." The State argued that the circumstances in which the defendant wrote the handwritten statements ought to be tested on cross-examination, not with expert testimony. In denying the defendant's request for funds to hire Dr. Frumkin and Dr. Ofshe, the circuit court ruled that the circumstances of the defendant's statements could be raised through cross-examination.

Under the record before us, we cannot say that the circuit court's denial of funds to hire Dr. Frumkin and Dr. Ofshe violated the defendant's constitutional rights or was an abuse of discretion. At the trial, the defendant was able to explain the stress he was under and his dissatisfaction with his court-appointed lawyer at the time he approached Gecht to help him type some questions to give to his lawyer. There is nothing about the defendant's testimony concerning the circumstances in which he wrote the statements that was difficult to

understand or explain. The defendant's testimony concerning why he handwrote the confession, *i.e.*, Gecht's instructions to "leave [McDaniels] out and put yourself there," was not a concept that is "beyond the understanding of ordinary citizens." *Gilliam*, 172 Ill. 2d at 513, 670 N.E.2d at 619. In addition, although the defendant claimed that he was under stress and dissatisfied with his attorney when he approached Gecht, the defendant did not testify that he was coerced, confused, or psychologically manipulated because of his stress or dissatisfaction with his attorney. On the contrary, he testified that he purposefully wrote the statements at Gecht's request. He told the jury exactly why he wrote the statements and what was going through his mind at the time he wrote them. The concepts involved in the defendant's testimony concerning the circumstances of his statements "are familiar to the average citizen and no more difficult to understand than [those] at issue in *Gilliam*." *Becker*, 239 Ill. 2d at 237, 940 N.E.2d at 1143.

Accordingly, Dr. Frumkin's and Dr. Ofshe's testimony "was not necessary to make [the] defendant's points." *Becker*, 239 Ill. 2d at 239, 940 N.E.2d at 1144. As noted above, the test for determining whether constitutional protections are triggered by a request for funds to hire an expert is not whether the expert's testimony is useful, helpful, valuable, or even important to the defense, but whether the testimony is "crucial" to the defense or goes to the "heart of the defense." *People v. Keene*, 169 Ill. 2d 1, 7-8, 660 N.E.2d 901, 905 (1995).

In support of his argument, the defendant cites *People v. Watson*, 36 Ill. 2d 228, 221 N.E.2d 645 (1966), where a prosecution for delivery of a forged traveler's check hinged on the check's countersignature. The court held that the indigent defendant had a constitutional right to funds to hire a handwriting expert to compare the defendant's handwriting with the forged endorsement on the traveler's check. *Watson*, 36 Ill. 2d at 234, 221 N.E.2d at 649. The court reasoned that the handwriting expert "could give a professional opinion as to

whether the defendant signed the check he is accused of attempting to deliver" and that if the expert's opinion is that the defendant could not have signed it, "the jury could be permitted to draw the conclusion that defendant is innocent." *Watson*, 36 Ill. 2d at 234, 221 N.E.2d at 649. The defendant also cites *People v. Lawson*, 163 Ill. 2d 187, 228-29, 644 N.E.2d 1172, 1191-02 (1994), where the defendant was entitled to have an expert examine shoe prints where the State's "strongest piece of evidence" was shoe prints.

We find *Watson* and *Lawson* distinguishable from the present case because those cases involve experts who would testify about matters that might be unfamiliar to the average juror or difficult to explain. *Watson* involved funds for a handwriting expert, and the supreme court has long held that handwriting comparisons can be made to a jury with the aid of expert testimony. *Stitzel v. Miller*, 250 Ill. 72, 77, 95 N.E. 53, 55 (1911). *Lawson* involved funds for a shoe print expert, and such an expert's testimony is admissible for the comparison of individual characteristics and unique markings found on shoes, including nicks, cuts, and scratches. See, e.g., *People v. Campbell*, 146 Ill. 2d 363, 371, 586 N.E.2d 1261, 1264 (1992).

The facts of the present case more closely resemble the facts of *Gilliam*, where the expert testimony at issue was an examining psychologist who would have opined that the "defendant's desire to protect his family made him especially susceptible to police pressures and created a form of psychological compulsion to confess." *Gilliam*, 172 Ill. 2d at 512, 670 N.E.2d at 619. In the present case, the defendant sought funds to hire an expert to testify at the trial "that if the defendant is under stress, the defendant will make a false statement." Under the holding in *Gilliam*, the defendant was not entitled to present this type of expert testimony. The circuit court cannot be faulted for refusing to furnish funds to enable an indigent defendant to procure inadmissible expert testimony.

The defendant also argues that there is a difference between the issue of the

admissibility of expert testimony at the trial itself and the issue of whether a defendant is entitled to expert assistance to prepare his defense. The defendant maintains that he should have been allowed to retain the experts to interview the defendant, evaluate his claim, and assist in the preparation of the defense. The defendant does not explain, however, how experts are necessary to assist in the preparation of his defense outside their testimony at the trial. The motion requesting funds to hire the experts was based only on the defendant's desire to present the testimony of Dr. Ofshe at the trial. There is nothing in the record to suggest that the experts would have offered any assistance to the defendant except opinion testimony at the trial.

We are aware that cases from other jurisdictions offer support both for and against the admissibility of expert testimony on false confessions. *State v. Lamonica*, 44 So. 3d 895, 904 (La. Ct. App. 2010) (discussing the admissibility of Dr. Ofshe's opinions and citing cases from multiple jurisdictions). In affirming the circuit court in the present case, we do not hold that expert testimony on false confessions is inadmissible under all circumstances in Illinois or that the circuit courts should deny funds for those experts in all cases. Our holding is limited to the facts of this case, including the representations of defense counsel concerning the nature and purpose of the expert's opinion.

The next issue the defendant raises on appeal is that he was denied effective assistance of counsel because his attorney was unaware that an important piece of evidence was contained in counsel's case file. Specifically, the defendant maintains that his counsel had a copy of the questions that Gecht typed for him in his client file but did not introduce the document into evidence at the trial. This issue first arose in the trial court when the defendant filed a motion for a new trial the day after he was sentenced. The motion alleged as follows:

"On June 22, 2006, [the defendant], while meeting with co-counsel in this

case, happened to find the important document that he had previously asked undersigned counsel and [his] private investigator *** to search for in their files: namely, the list of questions that [the State's] witness Gecht had typed for [the defendant], and which supported [the defendant's] testimony that he had gone to Gecht for help getting said list of questions typed. *** The document was delivered to undersigned counsel from [the defendant] on the morning of June 23, 2006, but it was not until undersigned counsel had a chance to review the document after the conclusion of the sentencing hearing that undersigned counsel understood the evidentiary value of the document."

The circuit court denied the defendant's motion for a new trial, and the defendant maintains that the circuit court's ruling was incorrect because he was denied effective assistance of counsel.

To prevail on a claim of ineffective assistance of counsel, a defendant must show both that (1) counsel's representation was so deficient that it falls below an objective standard of reasonableness under prevailing professional norms and (2) the deficient performance so prejudiced defendant that it denied him a fair trial. *Strickland v. Washington*, 466 U.S. 668, 687-88, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984). "If either prong of the *Strickland* test is not met, [the] defendant's claim must fail. Thus, a reviewing court need not consider whether counsel's performance was deficient before determining whether the defendant was so prejudiced by the alleged deficiencies that he is entitled to a new trial." *People v. Perry*, 224 Ill. 2d 312, 342, 864 N.E.2d 196, 215 (2007). With respect to the prejudice prong of the *Strickland* standard, the defendant must show "a reasonable probability that, but for counsel's errors, the trial result would have been different." *People v. Johnson*, 218 Ill. 2d 125, 143-44, 842 N.E.2d 714, 725 (2005). "In emphasizing defendant's duty to show prejudice, Illinois courts have noted that the standard for judging

a claim of ineffectiveness must be whether counsel's conduct so undermined the operation of the adversarial process that the trial cannot be relied upon as having achieved justice." *People v. Modrowski*, 296 Ill. App. 3d 735, 749, 696 N.E.2d 28, 38 (1998).

In the present case, the defendant's ineffective-assistance-of-counsel claim fails to meet the prejudice prong of the *Strickland* test. We are not persuaded that the admission of the typed questions into evidence at the trial would have changed the jury's verdict. The defendant argues that the typed list of questions would have corroborated his testimony concerning why he handwrote the inculpatory statements. We disagree. At most, the typed list of questions would have corroborated the defendant's testimony concerning why he initially approached Gecht in prison, *i.e.*, for assistance in typing out proposed questions for witnesses to submit to his attorney. However, Gecht did not contradict that portion of the defendant's testimony. While Gecht did not testify that the defendant initially came to him with a request to type out questions, he did not deny that the defendant did so. At the trial, neither the prosecution nor the defense focused on the reason Gecht and the defendant initially became acquainted. The direct and cross-examinations of Gecht focused primarily on the circumstances of the handwritten statements that were made sometime after Gecht and the defendant became acquainted. The introduction of the typed statements would not contradict the State's theory of the case concerning the handwritten statements or corroborate the defendant's testimony concerning why he handwrote the statements and gave them to Gecht. Accordingly, it is highly unlikely that the jury's verdict would have been different had the typed questions been offered as evidence at the trial. Accordingly, we affirm the circuit court's denial of the defendant's request for a new trial.

Furthermore, the record does not establish that defense cocounsel actually had a copy of the typed questions during the trial. The defendant's counsel stated in the unverified motion for a new trial that the defendant had previously asked a different cocounsel to look

for the typed questions in his file. However, defense counsel does not state in the motion for a new trial that cocounsel, in fact, found the typed questions in his file and had them in his possession during the trial. Instead, the defendant's motion states that he (the defendant) found the typed statements in some undisclosed location while meeting with cocounsel. In addition, the motion was not supported by an affidavit or testimony from the defendant or cocounsel that the attorney had the copy of the questions during the trial. We cannot overturn the jury's verdict and grant the defendant a new trial with such inconclusive and uncertain allegations of ineffective assistance of counsel that are unsupported by affidavits, testimony, or evidence of record. See *People v. Brandon*, 157 Ill. App. 3d 835, 845, 510 N.E.2d 1005, 1011 (1987) ("It is generally true that where a defendant seeks a new trial on the basis of factual allegations not in the record, the motion must be accompanied by a sworn affidavit ***.").

The defendant's final argument is that the circuit court improperly considered his lack of remorse as an aggravating factor during sentencing. Specifically, the defendant argues that the circuit court improperly considered his lack of remorse because he maintained his innocence. We find that the trial court did not abuse its discretion in sentencing the defendant to natural life in prison.

At the sentencing hearing, the State presented evidence concerning the defendant's sexual assault on another victim, Dena Dahl. Dahl was sexually assaulted twice, once in 1991 and once in 1992, and the second assault was described by Detective McElroy at the sentencing hearing as "brutal." In both assaults, the perpetrator broke into Dahl's house when her husband was away at work. The perpetrator left DNA evidence behind after the second rape, but the case remained unsolved until 2001. In 2001, Mt. Vernon police investigators began to reexamine the evidence stemming from Dahl's assaults around the same time they began reexamining the evidence of Jana's murder. At the defendant's sentencing hearing, the

State presented evidence that the DNA recovered after Dahl's second rape matched the defendant's DNA and that Dahl had picked the defendant out in a photographic lineup as the perpetrator. At the defendant's sentencing hearing, Dahl described the details of her assaults and identified the defendant in court as the person who raped her twice in the early 1990s. The trial court also considered victim-impact statements from Jana's sister and Jana's husband, Jeff.

The defendant offered a statement of allocution as follows:

"I just want to say to Jeff and Alex that I am sorry for Jana's death. I did not cause it, but still the same, her life was taken [*sic*]. You know, Mr. McElroy talked about similarities, and similarities to the two cases is that both they husbands was gone. When you have another person there that was going to commit a—a robbery at the same house that Jana lived in at next door to Jana house, I think that warrants to look at something deeper than what it was looked into. I'm sorry for you-all loss, and I apologize, but I did not cause it."

After considering arguments from counsel, the circuit court sentenced the defendant to natural life in prison. The court explained its sentence as follows:

"First of all, with regards to the statutory Factors in Mitigation, the Court finds that there are none. There are no statutory Factors in Mitigation.

With regards to the statutory Factors in Aggravation, the Court finds that [the defendant's] prior criminal history is, indeed, an aggravating factor. *** I will simply summarize by saying that the record of [the defendant] reflects that his first felony conviction was January 18, 1985. From that date until he was arrested on this charge, he received six felony convictions and was sentenced to the Department of Corrections five times. This will be his seventh felony conviction and will be his sixth time that he is sentenced to the Department of Corrections.

The Court considers the statutory factor that a sentence is necessary to deter others as a Factor in Aggravation.

With regards to evidence that's been presented at this sentencing hearing, the Court does consider the evidence in aggravation that was presented with regards to the two separate attacks on Dena Dahl[,] indeed, not only psychological but, certainly, physical attacks on her.

The Court may take into account other factors that are not statutory Factors in Aggravation. One of those Factors in Aggravation that the Court is taking into consideration is the lack of remorse shown by [the defendant]. He's shown absolutely no remorse with regards to this crime. His continued protestations of innocence[–] even today when the Court afforded him an opportunity to make a statement to this Court, he claims that he is innocent. Those are Factors in Aggravation.

[The defendant] committed this offense in 1988 and was a free man for some 14 years and took no responsibility for his actions during that period of time.

This murder took place at the home of Jana Reynolds. Jana Reynolds was recently married. Her husband was employed. Her husband was at work. Jana Reynolds was at home. That is the most appropriate place that Jana Reynolds should have been when her husband was working."

The trial court is in a better position to determine the sentence to be imposed than the reviewing court, and its sentencing decision is entitled to great deference and weight. *People v. McBounds*, 182 Ill. App. 3d 1002, 1018, 536 N.E.2d 1225, 1236 (1989). "Before reversing a sentence imposed by the trial court, it must be clearly evident that the sentence was improper." *McBounds*, 182 Ill. App. 3d at 1018, 536 N.E.2d at 1236. "A trial judge's impression that a defendant who protests his innocence is lying may properly be considered along with other information about defendant, as well as the particular facts of the case, in

order to determine defendant's prospect for rehabilitation and restoration to society." *McBounds*, 182 Ill. App. 3d at 1018, 536 N.E.2d at 1236.

In the present case, the defendant claimed he was innocent, and the circuit court commented on the defendant's lack of remorse as one of the factors it considered in determining the sentence. The circuit court's sentence, however, was not based only on the defendant's claim of innocence at the sentencing hearing. The circuit court considered evidence presented at the sentencing hearing that the defendant sexually assaulted another victim, twice, a few years after murdering Jana. The circuit court also considered the defendant's past criminal conduct, the sentencing report, and the victim-impact statements. It found no factors in mitigation and found several compelling factors in aggravation. We conclude that the trial court considered all the relevant factors and exercised its discretion properly in its determination of the defendant's sentence.

CONCLUSION

For the foregoing reasons, we affirm the defendant's conviction and sentence.

Affirmed.