COURT OF APPEALS
DECISION
DATED AND FILED

May 29, 2019

Sheila T. Reiff
Clerk of Court of Appeals

Appeal No. 2017AP1318-CR **Cir. Ct. No. 2016CF2554**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

FREDRICK RAMSEY,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County: MARK A. SANDERS, Judge. *Reversed and cause remanded*.

Before Kessler, P.J., Brash and Dugan, JJ.

¶1 DUGAN, J. Fredrick Ramsey, who is charged with one count of second-degree reckless homicide, appeals a non-final order denying his motion to admit third-party perpetrator DNA evidence.[1] Ramsey contends that the trial court

[1] This court granted leave to appeal the order. *See* WIS. STAT. RULE 809.50(3) (2017-18). All references to the Wisconsin Statutes are to the 2017-18 versions unless otherwise noted.

erred in denying the motion. He also contends that the test for the admission of third-party perpetrator evidence infringes on a defendant's constitutional right to present a defense.

¶2 We conclude that the proffered DNA evidence should be admitted at trial and that Ramsey may subpoena the alleged third-party perpetrator to testify at trial. We reject Ramsey's constitutional challenge to the test for admissibility of third-party perpetrator evidence. Therefore, we reverse and remand.

BACKGROUND

The incident

¶3 On Saturday, June 11, 2016, at approximately 4:07 a.m., Milwaukee police responded to a 911 call reporting that there was a stabbing victim, A.T., at a home in the 3600 block of North 5th Street. A.T. died at the scene from a single stab wound to her chest. She also had a stab wound above her left temple, her left eye was bruised and nearly swollen shut, her left ear lobe was torn, and her right eye area was bruised. There were no known witnesses to the stabbing.

¶4 When police arrived at the scene, they spoke to A.S. who placed the 911 call from his sister's home. He subsequently told the police that A.T. had a relationship with a person named "Rick" and that the relationship was violent. A.T. had been staying at A.S.'s sister's home to get away from "Rick," because A.T. and Rick had gotten into it "real bad." A.S. did not know "Rick."

¶5 A.S. stated that A.T. spent the day of June 10, 2016, with him and his family. Sometime after 9:00 p.m. that evening, A.T. went out on the porch of A.S.'s sister's home. Meanwhile, A.S. fell asleep on the couch inside the home. At about 4:00 a.m., A.S. was awakened by the sounds of the doorbell ringing and

banging on the front door. He opened the door and saw A.T.; her wig was off, and her face was swollen. A.T. said, "Somebody stabbed me." A.S. brought A.T. into the living room, laid her down on the floor, and called 911. He also asked A.T. who did "this" to her, but she was unable to answer.

Ramsey

¶6 The police first questioned Ramsey on June 11, 2016. He had been in a relationship with A.T. for eleven years and had two children with her. During further questioning on June 13, 2016, he confessed to the crime. Ramsey told the police that on June 11, 2016, he got into an argument with A.T. behind a gas station near Atkinson Avenue and Keefe Avenue. They were struggling over a purse. The police arrived at the gas station and separated them. Later, he looked for A.T. and found her sitting on some porch steps. When Ramsey parked and approached A.T., she tried to enter the residence, but he grabbed her arm and spun her around. A.T. then slapped Ramsey in the face and Ramsey stabbed A.T. in her chest. Then, A.T. yelled, "Rick you stabbed me!" She tried to grab the knife, but fell down the porch steps. A.T. tried to crawl up the stairs, but Ramsey stabbed her again and then left the scene.

The charges

¶7 On June 15, 2016, the State charged Ramsey with second-degree reckless homicide in the stabbing death of A.T. The factual portion of the complaint is based on Ramsey's confession. It also includes information from A.T.'s best friend, who told the police that the long-term relationship between A.T. and Ramsey involved domestic violence and that on June 10, 2016, A.T. told her that she was arguing with Ramsey and was going to leave him.

Teague

¶8 Sometime prior to October 28, 2016, the State tested DNA found on fingernail clippings obtained from A.T.'s left hand and determined that the DNA matched that of a convicted felon, Julian Teague.[2] As a result, on October 28, 2016, police interviewed Teague at his apartment on the 3900 block of North 6th Street. They showed Teague a photograph of A.T. and he said that he did not know her and had never seen her before. Police also obtained a DNA sample from Teague. The police told Teague that they would be back to show him more photographs.

¶9 When the police returned an hour later, Teague would not answer his phone or his door. However, speaking through an open window, Teague told the police that he did not have any involvement in killing anyone and that he had already cooperated with them.

¶10 On November 25, 2016, a police officer was driving on the 1000 block of West Capitol Drive and observed a subject, later identified as Teague, throwing rocks at and hitting a passing car. Police officers stopped Teague and asked him why he was throwing the rocks. Teague stated, "Those bitches have been harassing me." However, the driver of that car told police she did not know Teague. When the police tried to arrest Teague, he physically resisted arrest and refused orders to stop. He was then taken into custody.

[2] In July 2013, Teague pled guilty to a felony charge of substantial battery with intent to cause bodily harm. The trial court imposed and stayed Teague's sentence, and placed him on probation for three years.

¶11 Later that day, Teague told police that he had been drinking and that he was throwing rocks because people were harassing him. He told police that he worked at a temporary employment agency and people can get tazed there. Some people who harassed him were from the employment agency and others were from a homeless shelter. He also said that he had been harassed by people in the neighborhood making obscene gestures at him and by people at Walmart bumping into him.

¶12 After talking with Teague about the rock throwing incident, the police again questioned Teague about his DNA on A.T.'s fingernail clippings. He was shown a photograph of A.T., but did not identify her other than saying he had seen the photo before when police had showed it to him. He did not know how his DNA got under A.T.'s fingernails, but he had engaged in sex with girls in the neighborhood and he had no other explanation for his DNA under A.T.'s fingernails, except having sex with her. Teague stated that, after moving into his apartment in February 2016, he had sex with thirty different partners at the apartment. He did not want to talk about his sex partners.

¶13 On January 5, 2017, the State Crime Laboratory reported that the DNA profile from A.T.'s left hand fingernail clipping swabs was consistent with Teague's DNA profile and that the probability of randomly selecting that profile from a population of unrelated individuals was one in 300,000.

*Ramsey's **Denny** motion*[3]

¶14 On January 13, 2017, Ramsey filed a ***Denny*** motion seeking an order allowing trial counsel to argue that a third party, Teague, was responsible for the homicide. Ramsey relied on the State Crime Laboratory DNA report indicating that Teague's DNA was found under A.T.'s fingernails. Additionally, Ramsey relied on the following assertions: (1) Teague was a violent convicted criminal; (2) Teague lived within four blocks of the crime scene; and (3) the presence of Teague's DNA under A.T.'s fingernails was unexplained.[4]

¶15 In response, the State contended that the trial court should admit evidence that Ramsey's DNA was not found on A.T.'s fingernail clippings and that another person's DNA was found on A.T.'s fingernail clippings. However, the State opposed the admission of any evidence pertaining to Teague's identity or any other facts about him.

¶16 In reply, Ramsey argued that denying him the right to present a third-party perpetrator defense would deny his constitutional rights to present a complete defense.

¶17 At the start of the ***Denny*** hearing on June 9, 2017, trial counsel told the trial court that he was not asking it to make a ruling on the admissibility of Teague's past history, stating that the parties could argue about the specifics of the other acts evidence "down the road." Trial counsel explained that he wanted to

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[3] *See **State v. Denny***, 120 Wis. 2d 614, 623-25, 357 N.W.2d 12 (Ct. App. 1984).

[4] In his motion, Ramsey also asserted that Teague refused to give police a full interview. However, that assertion was refuted by the State when it filed the report of Teague's November 25, 2016 interview with its response to the motion.

subpoena the DNA analyst to testify that Teague was the source of the DNA under A.T.'s fingernails and to admit the DNA reports into evidence. He also stated that he wanted to subpoena Teague and ask him where he was on the night of the assault on A.T. Then, depending on Teague's answers, trial counsel wanted to potentially follow up by questioning one of the detectives about the "very bizarre statements" that Teague made to him in an interview regarding why Teague's DNA was under A.T.'s fingernails.

¶18 At the conclusion of the hearing, the trial court issued an oral decision denying the motion. The trial court held that the DNA evidence established an opportunity for Teague to commit the crime. However, it held that there was insufficient evidence of motive or a direct connection. The trial court memorialized its decision in a brief written order.

¶19 Ramsey filed a petition for leave to appeal the denial of his ***Denny*** motion. We granted the petition.

DISCUSSION

I. Standard of Review and Applicable Law

¶20 We generally review a trial court's decision to admit or exclude evidence under an erroneous exercise of discretion standard. *See* ***State v. Wilson***, 2015 WI 48, ¶47, 362 Wis. 2d 193, 864 N.W.2d 52. However, when a defendant's constitutional right to present a defense is implicated by the exclusion of evidence, the decision not to admit the evidence presents a question of constitutional fact that we review *de novo*. *See* ***id.***

¶21 ***State v. Denny*** established "a bright line standard" for the admissibility of third-party perpetrator evidence. *See* ***id.***, 120 Wis. 2d 614, 625,

357 N.W.2d 12 (Ct. App. 1984). ***Denny*** holds that a defendant must make a sufficient showing of a "legitimate tendency" that an alleged third-party perpetrator committed the crime. *See* ***id.*** at 623-25 (citation omitted). A "legitimate tendency" is demonstrated where the defendant can establish (1) motive, (2) opportunity to commit the charged crime, and (3) provide "some evidence to directly connect a third person to the crime charged which is not remote in time, place or circumstances." ***Id.*** at 624. To establish a "legitimate tendency," a defendant is not "required to establish the guilt of third persons with that degree of certainty requisite to sustain a conviction in order for this type of evidence to be admitted." ***Id.*** at 623.

¶22 In ***Wilson***, our supreme court reaffirmed that "the ***Denny*** test is the correct and constitutionally proper test for [trial] courts to apply when determining the admissibility of third-party perpetrator evidence." *See* ***Wilson***, 362 Wis. 2d 193, ¶52. The ***Wilson*** court emphasized that "each piece of a defendant's proffered evidence need *not* individually satisfy all three prongs of the ***Denny*** test." *See* ***Wilson***, 362 Wis. 2d 193, ¶53.

¶23 ***Wilson*** explains that, essentially, the ***Denny*** test requires the trial court to answer the following questions: (1) "did the alleged third-party perpetrator have a plausible reason to commit the crime?"—the motive prong; (2) "could the alleged third-party perpetrator have committed the crime, directly or indirectly? In other words, does the evidence create a practical possibility that the third party committed the crime?"—the opportunity prong; and (3) "is there evidence that the alleged third-party perpetrator actually committed the crime, directly or indirectly?"—the direct connection prong. *See* ***Wilson***, 362 Wis. 2d 193, ¶¶56-59.

¶24 Regarding the third prong, ***Wilson*** further states that "[l]ogically, direct connection evidence should firm up the defendant's theory of the crime and take it beyond mere speculation. It is the defendant's responsibility to show a *legitimate* tendency that the alleged third-party perpetrator committed the crime." *See* ***id.***, ¶59. Strong evidence implicating the third-party perpetrator on one prong may impact the evaluation of the other prongs, however, "the ***Denny*** test is a three-prong test; it never becomes a one- or two-prong test." ***Wilson***, 362 Wis. 2d 193, ¶64.

II. Ramsey met the *Denny* test

A. Ramsey met the motive prong—that Teague had a plausible reason to commit the homicide

¶25 Here, Ramsey asserts that there were two possible motives for Teague to kill A.T.: (1) his irrational rage and antisocial behavior; and (2) sexual gratification. Ramsey argues that Teague has a record of unexplained antisocial behavior, including throwing rocks randomly at cars because "those bitches have been harassing me" (the driver of one car stating that she had no idea who Teague was) and "he was being harassed in his neighborhood by people giving him the finger, and people at Walmart who bump into him." He further argues that it is plausible that Teague attacked A.T. with no rational motive, but "out of the same misguided, delirious motivation that led him to throw rocks randomly at cars." He asserts Teague's conduct showed that he is a person "who irrationally engages in violent behavior based only on perceived slights that 'people' are harassing him." Ramsey cites ***State v. Vollbrecht***, 2012 WI App 90, ¶27, 344 Wis. 2d 69, 820 N.W.2d 443, for the proposition that evidence of a general motive—rather than a motive directed at a particular victim—is sufficient. He also argues that the DNA

evidence corroborates the motive because it shows that Teague got close enough to A.T. for her to scratch him, so that his DNA collected under her fingernails.

¶26 Ramsey also argues that Teague told the police he did not know A.T., but he bragged about having sex with at least thirty partners in the neighborhood during the nine months that he had lived there. He argues that regardless of its truth, Teague's statement suggests that he may have made an aggressive or unwanted approach toward A.T., who may have resisted, resulting in him killing her. Ramsey also relies on Teague's statement that he had no other explanation for the presence of his DNA on A.T.'s nail clippings, except having had sex with her and argues the DNA evidence supports that possibility because Teague was close enough to A.T. that she could scratch him.

¶27 The ***Wilson*** court stated that "[a] defendant's motive to commit a homicide is widely considered to be relevant." *See* ***id.***, 362 Wis. 2d 193, ¶62. "Motive is not an element of any crime; rather, motive may be shown as a circumstance to aid in establishing a particular person's guilt." ***Id.*** (citation and one set of quotation marks omitted). "The admissibility of evidence of a third party's motive to commit the crime charged against the defendant is similar to what it would be if that third party were on trial himself." ***Id.***, ¶63. "[T]he State never needs to *prove* motive; relevant evidence of motive is generally admissible regardless of weight." ***Id.*** The court stated that "the defendant is *not* required to establish motive with *substantial certainty*." ***Id.*** (emphasis added.)

¶28 We conclude that when considered under the applicable law regarding motive, and with the opportunity evidence and the strong direct connection evidence, Ramsey has presented plausible reasons for Teague to

commit the crime. *See* ***id.***, ¶¶57, 64. Thus, we conclude that the trial court erred when it concluded that Ramsey failed to establish motive.

B. The opportunity prong—Ramsey has shown a practical possibility that Teague could have committed the homicide

¶29 The trial court concluded that based on the DNA proof, Teague had an opportunity to commit the crime. It noted that the contact causing the DNA to be on A.T. had to be "relatively recent[.]" Ramsey further points out that Teague lived only a few blocks away from where A.T. was killed.

¶30 The State argues that the only evidence of Teague's presence at the crime scene is the DNA found under A.T.'s fingernails, and that he lived within one-half mile of where she was killed. It argues that the DNA simply means that Teague's DNA directly or indirectly transferred to A.T. at some point before the homicide, but that does not necessarily place him at the crime scene, and there is nothing else to establish Teague had the opportunity to attack A.T. The State notes that Ramsey does not identify any witnesses who had seen Teague before, let alone placed him at the scene, and that Teague told the police he had never seen A.T. before. It also argues that the opportunity window of twelve to fourteen minutes between when the police separated Ramsey and A.T. at the gas station and the stabbing of A.T. was too brief for Teague to develop a motive that would lead to killing A.T.[5]

[5] Although the State indicates that the window was twelve to fourteen minutes, it cites a detective's statement that ten to twelve minutes after Ramsey and A.T. were separated by the police, she was dead.

¶31 We agree with the trial court that the opportunity prong is established by the DNA under A.T.'s fingernails and the fact that Teague lived within a few blocks of the home where A.T. was staying. We note that Teague denied knowing A.T.; that she did not live in the neighborhood; and that no other explanation, plausible or not, has been offered to explain the presence of Teague's DNA under A.T.'s fingernails. Furthermore, the short time frame would not be problematic as to Teague acting on possible irrational rage. Therefore, we conclude that the evidence establishes a practical possibility that Teague could have committed the homicide. *See* ***id.***, ¶58.

C. Ramsey has met the direct connection prong—there are facts that suggest that Teague committed the homicide

¶32 "No bright lines can be drawn as to what constitutes a third party's direct connection to a crime." *See* ***id.***, ¶71. Instead, trial courts must assess the proffered evidence in conjunction with all other evidence to determine whether under the totality of the circumstances the evidence suggests that a third party actually committed the crime. *See* ***id.*** "In sum, courts are not to look merely for a connection between the third party and the crime, they are to look for some direct connection between the third party and the *perpetration* of the crime." *See* ***id.***

¶33 Here, the DNA evidence suggests that Teague committed the crime. There were no other DNA sources found underneath A.T.'s fingernails, or anywhere else on her body. The presence of Teague's DNA on A.T. suggests recent contact between A.T. and Teague. Also significant is the location of the DNA—under A.T.'s fingernails. Additionally, A.T. stated "somebody stabbed me"—she did not identify the perpetrator. A.T.'s reference to "somebody" suggests that she did not know the person who stabbed her.

¶34 In sum, as noted in ***Wilson***, the trial court must assess the proffered evidence in conjunction with all the other evidence to determine whether, under the totality of the circumstances, the evidence suggests a third-party perpetrator actually committed the crime. "Suggests" is a rather broad term. When looking at all the facts, the DNA, Teague's antisocial behavior, his living nearby, and the fact that A.T. stated somebody stabbed her, but did not identify Ramsey as the perpetrator, are all factors to consider. There are sufficient facts that suggest that Teague could have committed the homicide. *See* ***id.***, ¶59.

¶35 We conclude that Ramsey has satisfied the three prongs of the ***Denny*** test. Therefore, we hold that the trial court erred when it excluded Ramsey's proffered third-party perpetrator evidence.

III. The *Denny* test for analyzing third-party perpetrator evidence is constitutional

¶36 Ramsey also contends that the test for the admission of third-party perpetrator evidence conflicts with a defendant's constitutional right to present a defense. The State asserts that Ramsey failed to present the claim in his petition for review. Additionally, it asserts that he did not raise it before the trial court.

¶37 To the contrary, review of the record establishes that Ramsey raised the issue in his petition for review and before the trial court. However, ***Wilson*** holds that "the ***Denny*** test is the correct and constitutionally proper test" to be applied by trial courts when they are determining the admissibility of third-party perpetrator evidence. ***Wilson***, 362 Wis. 2d 193, ¶52. ***Wilson*** is the controlling law on the issue. *See* ***Cook v. Cook***, 208 Wis. 2d 166, 189, 560 N.W.2d 246 (1997) (stating that the "supreme court is the only state court with the power to overrule, modify or withdraw language from a previous supreme court case").

Thus, we uphold the constitutionality of the ***Denny*** test for the admission of third-party perpetrator evidence.

CONCLUSION

¶38 Based on the foregoing, we reverse the trial court's order and remand.

¶39 Our decision is limited to the two concerns that Ramsey requested the trial court rule on: (1) the admissibility of the DNA results indicating that Teague is the source of the DNA found under A.T.'s fingernails; and (2) the authorization to subpoena Teague to testify about his whereabouts on the night of the assault. We have not addressed any issues regarding the admissibility of any evidence of Teague's past criminal history or other acts evidence involving Teague that Ramsey may wish to introduce at trial because they were not ruled on by the trial court. Ramsey must raise those issues with the trial court at the appropriate time. We also note that Ramsey merely states that he potentially may call a detective to testify, depending on Teague's answers to questions about where he was the night of the assault. We have not addressed the admissibility of any testimony by detectives who interviewed Teague about where he was that night.

By the Court.—Order reversed and cause remanded.

Not recommended for publication in the official reports.

¶40 BRASH, J. (*concurring in part; dissenting in part*). While I agree with the Majority's rejection of Ramsey's claim that the ***Denny*** test is unconstitutional, I disagree with the Majority's decision to reverse the order of the trial court denying Ramsey's motion to admit third-party perpetrator DNA evidence. After reviewing the record and the relevant case law—including ***Wilson***,[1] upon which both the trial court and the Majority primarily relied—I do not believe that Ramsey satisfied all of the prongs of the ***Denny*** test and, as such, the trial court was correct in rejecting his motion. Therefore, I respectfully concur in part and dissent in part.

¶41 As discussed by the Majority, the ***Denny*** test has three components: (1) motive; (2) opportunity to commit the crime charged; and (3) a direct connection to the crime that is not remote in time, place, or circumstance. ***Id.***, 120 Wis. 2d at 624. The ***Wilson*** court, in reaffirming the ***Denny*** test, noted that all three prongs must be satisfied; ***Denny*** never becomes "a one- or two-prong test." ***Wilson***, 362 Wis. 2d 193, ¶¶52, 64.

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[1] I note that in my reading of ***State v. Wilson***, 2015 WI 48, 362 Wis. 2d 193, 864 N.W.2d 52, the Majority in that case—in a quest to provide "clarity" to the ***Denny*** test—uses language that seems to alter the standards for the test. *See* ***Wilson***, 362 Wis. 2d 193, ¶54. I further note that the concurrence by Justice Ziegler, in which Chief Justice Roggensack joins, states that those justices "would not join the majority opinion if it were interpreted as doing anything other than reaffirming the longstanding application of the [***Denny***] test[.]" ***Wilson***, 362 Wis. 2d 193, ¶91 (Ziegler, J. concurring). Additionally, Justice Abrahamson, with Justice Ann Walsh Bradley joining, dissented in ***Wilson***. Therefore, if ***Wilson*** is applied in a fashion that changes the ***Denny*** test, the effect would render ***Wilson*** a plurality decision.

¶42 In its decision, the trial court found that there was sufficient evidence only to prove the opportunity prong, and not the motive and direct connection prongs. It therefore rejected Ramsey's motion. Although I agree with that outcome, I do not completely agree with the trial court's assessment of each prong.

¶43 First, the direct connection prong is clearly satisfied with the presence of Teague's DNA on the fingernail clippings from Alexandria Taylor's[2] left hand. This evidence strongly indicates that there was recent physical contact between Teague and Taylor. The trial court stated that this "recent physical connection" did not provide a sufficient connection with the commission of the crime. However, committing a homicide by stabbing generally requires close physical contact with the victim. Therefore, the direct connection prong has been met.

¶44 With regard to opportunity, the trial court found that this prong was satisfied; however, the court based its reasoning for satisfaction of this prong on the presence of Teague's DNA under Taylor's fingernails. I disagree with this assessment because, as just discussed, the DNA provides a direct connection. As the ***Wilson*** court stated, "'opportunity' and 'direct connection' have distinct meaning[s]." ***Id.***, ¶54.

¶45 The opportunity prong asks whether there is a "practical possibility" that a third-party perpetrator could have committed the crime. ***Id.***, ¶58. Teague

[2] The Majority uses the initials of Alexandria Taylor, the victim, rather than her full name; however, our general practice allows for the use of homicide victims' full names in opinions. Additionally, the parties, in their briefs for this appeal, use Taylor's full name as well.

lived in the neighborhood where Taylor was killed, but there is no evidence they had ever met. Furthermore, Teague's "'geographical location'" relative to the murder scene is not sufficient to satisfy the opportunity prong in and of itself. *See* ***Vollbrecht***, 344 Wis. 2d 69, ¶26. Indeed, it may seem an implausible scenario that Teague was out at approximately 4:00 a.m., encountered Taylor, and killed her, especially given the short time frame for the murder: the police estimated Taylor was killed in the ten to twelve minutes between the time that officers broke up a fight between Taylor and Ramsey at a gas station, and the time Airimis Spinks[3] found her after she had been stabbed.

¶46 However, the analysis of this prong is bolstered by the presence of Teague's DNA on Taylor's fingernail clippings. Based on that DNA presence, Teague very likely had physical contact with Taylor not long before she was killed. *See* ***Wilson***, 362 Wis. 2d 193, ¶64 (the "strength and proof" of one of the prongs may "affect the evaluation of the other prongs"). Thus, I conclude, as the trial court did, that the opportunity prong is satisfied.

¶47 With regard to motive, the trial court found this prong had not been satisfied. I agree. Ramsey argues Teague may have had two possible motives for killing Taylor: rejection of his sexual advances or, more generally, his antisocial behavior.

¶48 To satisfy the motive prong, it must be shown that the third-party perpetrator had a "plausible reason" to kill the victim. ***Id.***, ¶57. As noted above,

[3] The Majority also uses initials to refer to Airimis Spinks, a witness in this case, instead of his full name. Our general practice allows for the use of the full names of witnesses in opinions, unless the witness is also a victim in the case.

there is no evidence that Teague knew Taylor. Therefore, given the short time frame for the murder, Teague had a very small window in which to encounter Taylor and develop a motive for killing her.

¶49 The trial court focused on the sexual gratification motive, which was based on Teague's statement to police that he had sex with thirty different partners in his apartment building. However, Teague's statement does not establish that he had a propensity for sexual assault or murder. There is no proof whatsoever of Teague's alleged encounters, let alone any evidence that any of them were not consensual or led to violence. Thus, Teague's statement about his sexual prowess does not provide a solid foundation for a scenario in which he encountered Taylor and demanded to have sex with her, was rejected, and then became enraged about being rejected and stabbed her.

¶50 The same reasoning applies to the motive that Teague had demonstrated antisocial behavior. In support of this motive, Ramsey points to Teague's arrest for randomly throwing rocks at cars, which Teague stated was because people in the neighborhood were harassing him. However, this incident happened several months *after* Taylor's murder. Furthermore, there again is a lack of connection between randomly throwing rocks at vehicles and committing murder.

¶51 The Majority notes that Ramsey, in support of his argument, cites ***Vollbrecht*** for the proposition that "evidence of a general motive—rather than a motive directed at a particular victim—is sufficient" to prove this prong. Majority, ¶25. The proffered motive of the third party in ***Vollbrecht*** was sexual assault, and more specifically, the manner in which the victim was killed: she had been shot in the back, and her body was found partially clothed, hanging in a tree.

Id., 344 Wis. 2d 69, ¶27. The third-party perpetrator evidence being proffered involved a man who had confessed to a similar crime that had occurred six weeks after the murder at issue in ***Vollbrecht***. ***Id.***, ¶10.

¶52 The trial court in ***Vollbrecht*** found, and this court agreed, that the motive prong was satisfied because only "'a minute percentage'" of the population would desire to sexually assault and murder a woman in this manner. ***Id.***, ¶28. Thus, the evidence of a "general motive" was established because of the similarities in the crimes committed. No such similarities exist here between Teague's conduct and Taylor's murder. Thus, the motives suggested by Ramsey do not give rise to plausible scenarios of Teague committing this crime.

¶53 Therefore, I agree with the trial court that the motive prong has not been satisfied. Accordingly, because I conclude that not all three prongs of the ***Denny*** test are satisfied, I would affirm the ruling of the trial court: that Ramsey may introduce the evidence that a third party's DNA was found on Taylor's fingernail clippings, but may not name Teague as the third party. However, I agree with the Majority that the ***Denny*** test does not violate Ramsey's constitutional right to present a defense.