COURT OF APPEALS
DECISION
DATED AND FILED

February 2, 2016

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2014AP2622-CR **Cir. Ct. No. 2009CF2497**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

RAYMOND E. WOODS,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: KEVIN E. MARTENS and JEFFREY A. WAGNER, Judges. *Affirmed*.

Before Curley, P.J., Kessler and Brennan, JJ.

¶1 PER CURIAM. Raymond E. Woods appeals a judgment convicting him of first-degree reckless homicide, with use of a dangerous weapon, and felon in possession of a firearm. He also appeals an order denying his postconviction

motion.[1] Woods argues that he is entitled to a new trial based on newly discovered evidence. In the alternative, Woods seeks a new trial in the interests of justice. *See* WIS. STAT. § 752.35 (2013-14).[2] We affirm.

¶2 A defendant seeking a trial on the basis of newly discovered evidence "must prove: (1) the evidence was discovered after conviction; (2) the defendant was not negligent in seeking the evidence; (3) the evidence is material to an issue in the case; and (4) the evidence is not merely cumulative." ***State v. Plude***, 2008 WI 58, ¶32, 310 Wis. 2d 28, 750 N.W.2d 42 (citation and one set of quotation marks omitted). If the defendant proves all four criteria, then the circuit court must determine whether a reasonable probability exists that had the jury heard the newly discovered evidence, it would have had a reasonable doubt about the defendant's guilt. ***Id.***

¶3 To obtain a hearing on a motion seeking a new trial on the basis of newly discovered evidence, a defendant must allege "'sufficient material facts that, if true, would entitle the defendant to relief.'" ***State v. Love***, 2005 WI 116, ¶26, 284 Wis. 2d 111, 700 N.W.2d 62 (citation omitted). This is a question of law. ***Id.*** "'If the motion raises such facts, the circuit court must hold an evidentiary hearing.'" ***Id.*** (citation omitted). "'However, if the motion does not raise facts sufficient to entitle the movant to relief, or presents only conclusory allegations, or if the record conclusively demonstrates that the defendant is not entitled to relief, the circuit court has the discretion to grant or deny a hearing.'"

[1] The Honorable Kevin E. Martens entered the judgment convicting Woods. The Honorable Jeffrey A. Wagner denied the postconviction motion.

[2] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

Id. (citation omitted). "'We review a circuit court's discretionary decisions under the deferential erroneous exercise of discretion standard.'" ***Id.*** (citation omitted).

¶4 Woods argues that he is entitled to a new trial because Julius Burton has taken responsibility for killing the victim, Johnnie Chapman. Woods presents an affidavit from Burton, in which Burton states that he purchased drugs from a person he knew by the nickname of J.B. over several months in early 2009, but they had disagreements over the quality and quantity of the pills.[3] Burton states that during one of the arguments, J.B. threatened him, so he shot him at least twice and drove away. Burton avers that the shooting occurred on or about May 3, 2009, in the area of North 28th Street and West Hadley. He also avers that he was driving a Pontiac Bonneville, and J.B. had a brown 1993-94 model Chevy. Burton states that he got rid of the weapon and the vehicle and never told anyone about the murder until he met Woods in prison. He then realized that Woods was serving time for the crime he committed.

¶5 Woods also presents an affidavit from Robert Allen, Jr., another inmate, who states that he is Burton's friend, and Burton confessed to him that he committed a homicide at 28th Street and Hadley in 2009. Allen also states that Burton told him he recently learned that a person named Raymond Woods had been found guilty at trial for that homicide.

¶6 The two affidavits meet the criteria for newly discovered evidence under ***Plude***. Even so, Woods is not entitled to a new trial. There is not a

[3] According to a police report, one of the witnesses said that the victim Johnnie Chapman had a nickname of J.B.

reasonable probability that a jury considering the newly discovered evidence would have a reasonable doubt about his guilt.

¶7 At trial, April Pope testified that she had four children with Chapman, and she was dating Woods at the time of the murder. She testified that shortly before Chapman was killed, he was at her house with the children. As he was leaving, she saw him drive past Woods, who was on the sidewalk walking toward her house. Pope testified that she could not hear what the men said but that Woods turned around suddenly and ran back toward her house. Pope testified that she then heard the sound of her car, a burgundy Pontiac Bonneville, starting and driving away. Pope testified that she believed that Woods took her car because she had given him the car keys earlier in the day. Pope testified that she learned that Chapman had been shot five to ten minutes later.

¶8 Belinda Huddleston testified that she met Chapman, her cousin, at the place where he was staying on 28th Street right before he was killed. She was with her son, O.S., who was ten years old at the time, and her brother, Rickey Grant. She testified that they were all standing on the sidewalk talking when a burgundy Pontiac Bonneville with one person in it drove by at a very slow speed. Huddleston testified that she recognized the car because Chapman and Pope used to have possession of the car when they were a couple. Huddleston testified that the Bonneville returned about five minutes later, by which time she had gotten into her car with her son and brother, and Chapman had gotten into his car. She testified that the Bonneville pulled up parallel to Chapman's parked car. She was across the street, so she made a u-turn so that she was directly behind the two cars. Huddleston testified that Chapman got out of his car and began talking to the man in the Bonneville. She testified that the driver then pulled out a gun, shot

Chapman several times, and drove away. Huddleston identified Woods as the shooter in a lineup at the police station and in court.

¶9 O.S. testified that he was with his mother in front of Chapman's house when he saw a burgundy car drive past him two times. He testified that he then saw the car pull up and stop next to Chapman's car. He testified that he saw Chapman talking to the driver, and then saw the driver shoot Chapman and drive away. O.S. identified Woods in court.

¶10 Carrington Martin testified that he was across the street with his cousin when Chapman was shot. Martin testified that he knew Chapman from around the neighborhood. Martin testified that he saw a car pull up, saw Chapman leaning over the front passenger side of the car talking to the driver, heard shots, and then saw the car drive away. Martin testified that he did not want to be involved in the investigation so he avoided the police who wanted to question him. He also testified that when he went to the police station to view photos, he purposefully misled the police by identifying two people, one of whom was the shooter, Woods, and one of whom was not, because he did not want to be involved. He also testified at trial that Woods was in fact the person who shot Chapman.

¶11 Daniel White testified that he had known Woods for about five years before the murder because Woods was a cousin of one of White's cousins. White testified that he was with his cousin and Woods when information about Chapman's shooting was broadcast on the news. White testified that Woods told him that he and Chapman had been having disagreements about a woman. White testified that Woods told him that Chapman threatened him, so he got a gun and went to talk with Chapman, hoping to resolve matters. White testified that Woods

said when he was talking with Chapman, he thought he saw Chapman reaching for a gun, so Woods shot him and drove away.

¶12 Woods testified on his own behalf at trial. He said that he borrowed Pope's car right before Chapman was shot, but he did not go to Chapman's house. He testified that he went to check on his nephew in a different location because his nephew was having some problems. Woods also testified that he went to various other places after checking on his nephew, where he interacted with many different people. However, he did not present a single witness to corroborate his story.

¶13 In sum, then, Woods admitted that he was driving Pope's burgundy Pontiac Bonneville at the time Chapman was shot by a person driving a burgundy Pontiac Bonneville. Three witnesses, Huddleston, O.S., and Martin, identified Woods as the person who shot Chapman and none of them had any reason to be dishonest about Woods' involvement. A fourth witness, White, testified that Woods admitted to him that he killed Chapman some time after the shooting occurred. Although Woods testified that he was with multiple people the evening of the shooting, he did not offer a single witness to corroborate his alibi.

¶14 Against this backdrop, there is not a reasonable probability that a jury would have a reasonable doubt about Woods' guilt based on the information Woods now proffers. In evaluating the reliability or credibility of a confession, the finder of fact would usually consider whether the confessor exposes himself to liability by confessing. Here, Burton is serving a one hundred-year sentence for two counts of attempted first-degree intentional homicide because he tried to kill two police officers. He will therefore not spend additional time in prison if he takes responsibility for Chapman's murder because his sentence already exceeds

his life expectancy. This circumstance undermines the credibility of Burton's confession. As for Allen's affidavit, he simply corroborates that Burton said he committed the crime. He provides no information that independently substantiates Burton's claim. The new evidence is not substantial enough to give rise to a reasonable probability that a jury considering it would have a reasonable doubt about Woods' guilt in light of the overwhelming evidence adduced at trial supporting Woods' conviction. Because the record conclusively demonstrates that Woods is not entitled to relief based on the new evidence, the circuit court properly denied Woods' postconviction motion without a hearing.

¶15 Woods next argues that he is entitled to a new trial in the interests of justice because the real controversy was not fully tried. *See* WIS. STAT. § 752.35. We conclude that the real controversy was fully tried. Woods is not entitled to a new trial in the interests of justice.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.