

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARCUS LEE HILL,

Defendant-Appellant.

UNPUBLISHED

May 25, 2010

No. 289645

Wayne Circuit Court

LC No. 08-001205-FC

Before: SAAD, P.J., and HOEKSTRA and SERVITTO, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions for first-degree murder, MCL 750.316(a), burning of personal property valued at \$20,000 or more, MCL 750.74(1)(d)(i), felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. Because the trial court did not abuse its discretion in denying defendant's motion for a new trial, we affirm.

On April 30, 2008, defendant was convicted of the murder of Reginald Sturdivant. Twenty-eight days later, on May 28, 2008, defendant moved for a new trial. He argued that he had been denied a fair trial by the failure of the prosecution and police to provide immunity agreements and to correct false trial testimony. The motion was based on the affidavit of Christopher Stinson, the brother of Carla Bowers, who was the "primary witness" that connected defendant to the murder and arson. According to Stinson, Bowers, who had received information about defendant from William Ledbetter, gave "uncreditable testimony."¹ Defense counsel admitted that Stinson was listed on defendant's witness list as "Bam," but claimed that because he only had a nickname for Stinson and because defendant had been incarcerated and unable to help gather information, he was unable to locate Stinson before trial.

The trial court denied defendant's motion. It found no "substantiated proof" of the allegations of misconduct by the prosecution and police that were contained in the motion. In

¹ In the motion, defendant stated that Stinson would testify that Bowers, in exchange for her testimony, received immunity from whatever charges may or would have been filed against her. However, Stinson did not aver that Bowers received immunity for her testimony. No immunity agreements were attached to defendant's motion.

addition, it stated that defense counsel's claim that counsel could not have procured Stinson as a witness at trial was "specious at best," where, within 30 days of defendant being convicted, he obtained the names of individuals who had been listed by nickname on defendant's witness list and secured an affidavit from Stinson. It concluded that, because the exercise of due diligence could have secured Stinson's presence at trial, defendant had not met the requirements for a new trial.

On appeal, defendant argues that the trial court erred in denying his motion for a new trial. We disagree.

We review a trial court's decision to deny a motion for a new trial for an abuse of discretion. *People v Miller*, 482 Mich 540, 544; 759 NW2d 850 (2008). An abuse of discretion occurs when the trial court makes a decision that falls outside the range of principled outcomes. *Id.* To obtain a new trial based on newly discovered evidence, a defendant must show: "(1) the evidence itself, not merely its materiality, was newly discovered; (2) the newly discovered evidence was not cumulative; (3) the party could not, using reasonable diligence, have discovered and produced the evidence at trial; and (4) the new evidence makes a different result probable on retrial." *People v Cress*, 468 Mich 678, 692; 664 NW2d 174 (2003) (quotations omitted).

Defendant claims that the trial court's assumption that defendant, with the exercise of reasonable diligence, could have produced Stinson's testimony at trial is unsupported by the record. Defense counsel asserted below that he was unable to locate Stinson before trial because he only had a nickname for Stinson. Yet, as the trial court noted, within 30 days of defendant's convictions, defense counsel located, spoke with, and obtained an affidavit from Stinson. The record contains no explanation for how defense counsel located Stinson after trial. Defendant has not claimed that Stinson was located using resources or information that were not available or known before trial. Under the circumstances, defendant's claim that Stinson could not be located before trial was "specious." The trial court's determination that, with the exercise of reasonable diligence, defendant could have presented Stinson's testimony at trial did not fall outside the range of principled outcomes.

In addition, defendant would have used Stinson's testimony to challenge Bower's credibility. Newly discovered evidence that would only be used for impeachment purposes is not ground for a new trial. *People v Davis*, 199 Mich App 502, 516; 503 NW2d 457 (1993). Thus, Stinson's testimony, even if newly discovered, would not warrant a new trial.

Affirmed.

/s/ Henry William Saad

/s/ Joel P. Hoekstra

/s/ Deborah A. Servitto