STATE OF MINNESOTA
IN COURT OF APPEALS
A14-0976

State of Minnesota,
Respondent,

vs.

Sean Patrick Brinkman,
Appellant.

Filed August 21, 2017
Affirmed
Schellhas, Judge

Carlton County District Court
File No. 09-CR-13-967

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Thomas H. Pertler, Carlton County Attorney, Jesse D. Berglund, Assistant County Attorney, Carlton, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Charles F. Clippert, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Cleary, Chief Judge; Schellhas, Judge; and Randall, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

SCHELLHAS, Judge

Appellant argues that (1) the district court abused its discretion by admitting certain witness testimony, and (2) the district court erred by denying his petition for postconviction relief based upon newly discovered evidence in the form of recanted trial testimony. We affirm.

FACTS

In November 2012, Minnesota Sex Offender Program (MSOP) resident, T.C., submitted a written report to MSOP staff, alleging that fellow MSOP resident, appellant Sean Brinkman, threatened T.C. that he would "get mess[ed] up you know how Latin Kings do it in the joint get shanked up" if T.C. did not pay Brinkman money that he owed him. In May 2013, T.C. recanted the allegations in his report by signing a notarized affidavit in which he stated that Brinkman never threatened him or forced him to pay him money, and that T.C. was "under no compulsion, coercion, or undue influence to produce this affidavit." In an interview at MSOP in July 2013, T.C. affirmed the truth and accuracy of the statements in his affidavit and maintained that no one had made any threats to him to make the statements in his affidavit. Despite T.C.'s recantation, respondent State of Minnesota charged Brinkman with making terroristic threats against T.C., in violation of Minn. Stat. § 609.713, subd. 1 (2012).

The district court conducted a jury trial on the charge against Brinkman in February 2014. T.C. testified at trial consistently with the content of his recantation affidavit, denying that he ever owed Brinkman money, that Brinkman ever threatened him, or that

he ever had any type of conflict with Brinkman. He admitted that he had submitted to MSOP staff the November 2012 report about Brinkman but claimed that he "wrote that kite to get off the unit." He testified that his May 2013 recantation affidavit was typed at his direction, although he did not know by whom, and that he created the affidavit "[t]o try to clear things up, 'cause I never wanted part of it in the first place." When asked about the specific content of the affidavit, such as statute and case numbers, T.C. testified that he did not know the meaning of those numbers but received advice about the legal aspects of the affidavit from "[p]eople I was asking, basically." MSOP residents T.B. and K.C. also testified for the state.[1]

The jury found Brinkman guilty as charged, and the district court sentenced Brinkman to 15 months' in prison, stayed for three years with an interim sanction of 90 days of local incarceration and credit of 90 days for time served. Brinkman filed a direct appeal of his conviction. This court stayed that appeal while Brinkman petitioned for postconviction relief. The postconviction court denied Brinkman's petition. This appeal follows.

D E C I S I O N

Challenge to Admission of T.B.'s Testimony

Appellate courts "review a [district] court's decision to admit evidence of other crimes, wrongs, or acts for an abuse of discretion." *State v. Campbell*, 861 N.W.2d 95, 102

[1] After a contested *Spreigl* hearing, the district court ordered that the state could offer at trial the testimony of MSOP residents J.B. (not T.B.) and K.C. about Brinkman's threatening behavior about debts owed as *Spreigl* evidence. Brinkman does not challenge on appeal the admission of either J.B.'s or K.C.'s *Spreigl* testimony at trial.

(Minn. 2015). "Such evidence, commonly known as *Spreigl* evidence, is inadmissible to prove a defendant's character, but may be admitted to show motive, intent, absence of mistake, identity, or plan." *Id.* (citing Minn. R. Evid. 404(b); *State v. Spreigl*, 272 Minn. 488, 491 139 N.W.2d 167, 169 (1965)).

On appeal, the appellant "must show that the [district] court abused its discretion by admitting the evidence and that the erroneous admission was prejudicial." *Id.* "The erroneous admission of *Spreigl* evidence is harmless unless it substantially influenced the verdict." *Id.* "In determining whether the erroneous admission of *Spreigl* evidence substantially influenced the verdict, we consider several factors, including whether the [district] court provided the jurors a cautionary instruction and whether the evidence was central to the State's case." *Id.* Appellate courts also consider "the existence of overwhelming evidence of guilt." *Id.*

After T.C. testified, MSOP resident T.B. testified that, like T.C., he also had reported to MSOP staff that Brinkman had threatened him about paying a debt and that he feared that Brinkman would assault him if he did not pay. Also like T.C., T.B. later submitted three affidavits recanting the allegations in his report to MSOP staff. T.B. testified that he signed one of the affidavits because MSOP resident E.P., one of Brinkman's alleged "associates," told him to sign it. T.B. said that he had no input into the content or creation of the first affidavit, and that he signed the other two affidavits because E.P. told him how to do it on his computer. T.B. testified that he thought E.P. asked him to submit affidavits for Brinkman because E.P. and Brinkman are "homeboys," meaning that they have the "[s]ame affiliation in gangs." T.B. further testified that he was afraid of E.P.

because E.P. was physically larger than he. But, when asked if he was afraid of Brinkman, T.B. said, "Not as much. I was afraid of his associates more than him." Finally, T.B. testified that his original report about Brinkman's threats and his fear of Brinkman were truthful, not the content of his recantation affidavits.

Initially, the state intended to offer T.B.'s testimony as *Spreigl* evidence but changed its course after the district court indicated at the *Spreigl* hearing that it did not view the proffered evidence as *Spreigl*. On appeal, Brinkman maintains his argument that T.B.'s testimony constituted *Spreigl* evidence, and that the district court abused its discretion by admitting the testimony.

The record demonstrates that the state offered T.B.'s testimony to raise the inference that Brinkman's threatening conduct toward T.C. conformed to his past threatening conduct toward T.B., who testified about his fear of Brinkman and similar response, i.e., submitting reports of fear to MSOP staff and then submitting recantation affidavits to MSOP staff. We conclude that T.B.'s testimony constituted *Spreigl* evidence because it was offered to show Brinkman's propensity to engage in threatening behavior, and we therefore conclude that the district court erred by not determining whether the evidence was admissible before allowing its admission. *See State v. Ness*, 707 N.W.2d 676, 685−86 (Minn. 2006) (discussing "a five-step process to determine whether to admit other-acts evidence"). Significantly, the court did not determine whether the probative value of the evidence was substantially outweighed by its tendency to unfairly prejudice the jury. *See id.*

But we conclude that the erroneous admission of the *Spreigl* evidence was not prejudicial because no reasonable possibility exists that the inadmissible evidence substantially influenced the verdict. *See State v. Thao*, 875 N.W.2d 834, 839 (Minn. 2016) ("An error is harmful if there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict." (quotation omitted)). T.B.'s testimony was not central to the state's case because even without T.B.'s testimony, the jury was able to view T.C.'s written report and statements and assess T.C.'s credibility when he testified. Our review of the record confirms the existence of substantial evidence in the record, aside from T.B.'s testimony, from which the jury could determine that Brinkman was guilty of making terroristic threats against T.C. Any error in the admission of the evidence therefore was harmless.

Denial of New Trial

Brinkman argues that the district court abused its discretion by denying his postconviction petition for a new trial based upon newly discovered evidence of false trial testimony. He claims that T.B. and K.C. testified falsely at trial and that the postconviction court erred by rejecting his argument. "The decision whether to grant a new trial based upon newly discovered evidence rests with the court and will not be disturbed unless there is an abuse of discretion." *Pederson v. State*, 649 N.W.2d 161, 163 (Minn. 2002). "[This court] will not reverse an order unless the postconviction court exercised its discretion in an arbitrary or capricious manner, based its ruling on an erroneous view of the law, or made clearly erroneous factual findings." *Matakis v. State*, 862 N.W.2d 33, 36 (Minn. 2015) (quotation omitted).

When assessing the merits of a claim based on false or recanted testimony, the reviewing court "follow[s] the three-prong test set forth in *Larrison v. United States*, 24 F.2d 82, 87–88 (7th Cir. 1928)." *Ortega v. State*, 856 N.W.2d 98, 103, 103 (Minn. 2014). A new trial based on false testimony may be granted where (1) the court is reasonably well satisfied the testimony was false; (2) the jury might have reached a different conclusion without the testimony; and (3) the petitioner was surprised by the testimony and was unable to counteract it or did not know it was false until after the trial. *State v. Nicks*, 831 N.W.2d 493, 511 (Minn. 2013). "The first two prongs of the *Larrison* test are compulsory. The third prong is relevant but is not an absolute condition precedent to granting relief." *Dobbins v. State*, 845 N.W.2d 148, 151 (Minn. 2013) (quotation and citation omitted). "Courts generally view recanting affidavits and testimony with suspicion." *State v. Ferguson*, 742 N.W.2d 651, 659 (Minn. 2007). Appellate courts defer to the district court's credibility determinations. *State v. Dickerson*, 481 N.W.2d 840, 843 (Minn. 1992), *aff'd*, 508 U.S. 366, 113 S. Ct. 2130 (1993).

Brinkman argues that the postconviction court should have found T.B.'s recanting testimony at the postconviction evidentiary hearing, that he made up his trial testimony because he was "mad at" Brinkman, to be persuasive because T.B. offered that testimony against his penal interest and faced prosecution for perjury by admitting that he testified falsely at trial. But the postconviction court thoroughly analyzed T.B.'s statements in "[t]he records submitted in support of and in opposition to" Brinkman's postconviction petition, continuing through T.B.'s testimony at the postconviction hearing to establish a summary of the timeline of T.B.'s statements. Based on the evidence, the court found that T.B. "has

displayed a pattern of inconsistent testimony, often claiming to do so because he was under the threat of [Brinkman]" so "[t]here is no 'newly discovered evidence' suggesting that [T.B.] will testify one way or . . . another in . . . a subsequent trial."

The postconviction court was not reasonably well-satisfied that T.B.'s testimony was false and denied Brinkman's postconviction petition for a new trial based upon newly discovered evidence because Brinkman failed to meet the first prong of the *Larrison* test. The court found that T.B.'s testimony at the postconviction evidentiary hearing was "incredible." Moreover, the court found that T.B.'s assertion that when he was off his "meds," he got "mad and lie[d] about Brinkman" was not convincing. The court noted that T.B. had testified before the court "on numerous occasions" and found that, "given the environment of coercion surrounding the events in this case, it is not clear or even reasonable to assume that [T.B.] gave false testimony during the trial."

Brinkman also argues that K.C. testified falsely at trial when he testified that Brinkman threatened him during May to June of 2013 because Brinkman was housed in a different MSOP unit at that time. The postconviction court concluded that the evidence was insufficient to support a conclusion that T.C.'s trial testimony was false because "nothing in the record suggest[s] that [T.C.] testified falsely at trial and it has not been established that [Brinkman] was unable to communicate threats, on his behalf, to people outside of his living unit." Our review of the record supports this conclusion. K.C. testified at trial that E.P. threatened him in the "chow hall" by approaching him, touching him, and telling him that he was there to collect for Brinkman because Brinkman was "in the hole" at the time and could not collect the money. And K.C. later clarified in his testimony that

both E.P. and Brinkman had threatened him in person, explaining that Brinkman had threatened him when they lived on the same unit in approximately February 2013. Beyond that incident, K.C. testified that, since he stopped paying the debt to Brinkman, his only personal encounters with him occurred "out in the hallways, in passing," when Brinkman called him a snitch even though K.C. was being escorted by guards at the time.

Because the postconviction court did not abuse its discretion in rejecting Brinkman's purported newly discovered evidence of false trial testimony of T.B. and K.C., we conclude that the district court did not abuse its discretion by denying Brinkman's requests for a new trial.

Brinkman also argues in a pro se reply brief that this court should strike a portion of the state's brief because it "misstated and assumed facts not in evidence and not argued in appellant's brief." We conclude that Brinkman's argument is without merit. Brinkman admits that "counsel correctly recited the record" and a review of the contested portions of the state's brief confirms that the contested portions contain reasonable inferences from the facts in the record.

Affirmed.