STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1144

Frank Timothy Newton, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed June 29, 2020
Affirmed
Cochran, Judge

Ramsey County District Court
File No. 62-CR-15-8189

Beau D. McGraw, McGraw Law Firm, P.A., Lake Elmo, Minnesota (for appellant)

Keith Ellison, Attorney General, St. Paul, Minnesota; and

John J. Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Larkin, Judge; and Cochran, Judge.

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

COCHRAN, Judge

Appellant Frank Timothy Newton appeals from the denial of his petition for postconviction relief following an evidentiary hearing. Appellant argues that the postconviction court abused its discretion when it denied his request for a new trial on the

basis of newly discovered evidence. Because the postconviction court did not abuse its discretion, we affirm.

FACTS

Respondent State of Minnesota charged Newton with second-degree attempted murder, first-degree assault, and second-degree assault, in connection with a near-fatal stabbing of R.W. At trial, Newton testified that he acted in self-defense. Newton explained that on the day of the incident, he and R.W. engaged in a series of heated text messages. After numerous text messages, R.W. called Newton and told Newton to "come across the bridge." Newton then walked several blocks from his apartment, across a bridge, to R.W.'s house. As Newton crossed the bridge, Newton saw R.W. and told him "here I come." At the time, R.W. was outside of his house with his roommate and his roommate's son.

According to Newton, the three men attacked him when he arrived at R.W.'s house. Newton pulled a knife to "intimidate" the men because they had bricks and hockey sticks. He further testified that he hid behind a tree, but R.W. started "pushing [him] in the face." Newton testified that, at that point, he used the knife against R.W. because R.W. was assaulting him. R.W. sustained two stab wounds—one of which punctured his heart. Newton testified that, after he used the knife, he ran away when he saw R.W.'s roommate attempting to pick up a "big brick" to throw at him.

The state presented the testimony of R.W. and his roommate, among other witnesses. The roommate testified that following a series of text messages, Newton approached R.W.'s house hollering "Whoo!" and "I'm coming to kill you." When Newton

arrived, he "straight lined" to R.W. and the two men exchanged punches until R.W. fell on his back. After R.W. fell, the roommate heard R.W. yelling that Newton was stabbing him.

R.W. also testified. He stated that he was texting with Newton for a period of two hours and the text messages escalated over that time. R.W. saw Newton coming across the bridge and heard Newton "screaming" that he was going to kill him. R.W. did not recall much, but remembered fighting Newton. At one point, Newton jumped around a tree and sliced R.W.'s head. The next thing R.W. remembered was Newton stabbing him with a knife on his side.

An officer who responded to Newton's apartment after the altercation also testified. The officer stated that Newton claimed he had been assaulted but when the officer looked for injuries, he did not find any injuries other than minor scratches on Newton's face. The jury rejected Newton's self-defense theory and found him guilty of all counts.

At the sentencing hearing, Newton argued for a departure, claiming that his mental health and alcohol use explained his behaviors that night. He stated that he was self-medicating with alcohol, "very, very heavily, very heavily," and did not fully understand what he was doing. The district court did not find his argument persuasive and denied his request for a departure. The district court sentenced Newton to 156 months' imprisonment.

Approximately two years after sentencing, Newton filed a petition for postconviction relief on the basis of newly discovered evidence and ineffective assistance of counsel. In support of his petition, Newton claimed that he recently learned that one of his friends had saved a voicemail that Newton left on the night of the incident and that

Newton sounded intoxicated on the voicemail. Newton argued that he was entitled to a new trial because the voicemail showed that he lacked the requisite intent to commit the crimes and because his counsel failed to bring an intoxication defense.

The postconviction court held an evidentiary hearing on Newton's claims. At the hearing, Newton's friend testified that Newton called her in the afternoon on the day of the incident and his "voice" sounded like he had been drinking. She further testified that Newton called her again at "approximately 10:00 p.m." and left a voicemail. She was certain that the voice on the voicemail was that of Newton, and that the call came from Newton's phone. However, Newton had already been in custody for an hour by 10:00 p.m. on the day of the incident.

Newton also testified at the hearing. He stated that he started drinking at 10:30 a.m. on the incident date and did not remember making either call to his friend. He estimated having 30 alcoholic beverages that day. Newton testified that he told his trial attorney that he was intoxicated on the incident night, but he "didn't want to bring it up because [he] had a DWI" and he did not want to lose his license. Shortly after making this statement, Newton waived the ineffective-assistance-of-counsel claim.

In addition to the testimony, Newton presented two pieces of evidence: the voicemail and a squad car video. The voicemail is muffled and nearly impossible to understand.[1] The squad car video and its audio, on the other hand, are clear. The video shows Newton over a period of approximately 30 minutes, sitting in the back of the car,

[1] The muffled voicemail sounds like a pocket dial.

talking, and occasionally coughing. The video also shows Newton getting out briefly on two occasions at the request of a police officer and then getting back into the car. On the squad car audio, Newton is heard talking in detail about the incident, joking with the officer, and using excessive racial profanities. The postconviction court reviewed both pieces of evidence.

With respect to the squad car video, which was recorded shortly after Newton's arrest, the postconviction court found that Newton was "clearly understandable" and "very articulate." Newton clearly states that he was the victim and "this" was a "three against one" situation. The court further found that the video showed that when Newton got out of the squad car at the request of the officer—which happened more than once—Newton never stumbled. Regarding the voicemail, the postconviction court was "struck by" the fact that in the squad car video Newton had "very little slurred speech" whereas in the voicemail the person speaking is "incomprehensible."

Ultimately, the postconviction court concluded that Newton did not meet his burden of establishing that he was entitled to a new trial based on the voicemail and denied his petition for postconviction relief. The court expressed concern about the credibility of the voicemail because there was little ability to determine whether it was actually Newton who made the call. And the court questioned whether the voicemail evidence was really new evidence of intoxication given that Newton was well aware of his intoxication prior to trial. Finally, the court found that if the voicemail evidence were to be admitted for the purposes of a new trial, it would be given "minimal" evidentiary weight "at the most."

Newton appeals.

D E C I S I O N

To obtain a new trial based on newly discovered evidence, the petitioner must demonstrate:

> (1) that the evidence was not known to the defendant or his/her counsel at the time of the trial; (2) that the evidence could not have been discovered through due diligence before trial; (3) that the evidence is not cumulative, impeaching, or doubtful; and (4) that the evidence would probably produce an acquittal or a more favorable result.

Pearson v. State, 891 N.W.2d 590, 596 (Minn. 2017) (emphasis omitted) (quoting *Rainer v. State*, 566 N.W.2d 692, 695 (Minn. 1997)). The petitioner bears the burden of establishing *all* four prongs of this test, commonly known as the *Rainer* test, to be entitled to a new trial. *Miles v. State*, 840 N.W.2d 195, 201 (Minn. 2013).

We review the district court's denial of a petition for postconviction relief for an abuse of discretion. *Pearson*, 891 N.W.2d at 596. We review legal issues de novo, but our review of factual issues is "limited to whether there is sufficient evidence in the record to sustain the postconviction court's findings." *Matakis v. State*, 862 N.W.2d 33, 36 (Minn. 2015) (quotation omitted). "We 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." *Id.* (quotation omitted).

Newton argues that the postconviction court abused its discretion when it denied his request for a new trial because the voicemail is sufficient to require a new trial under the *Rainer* test. He argues that the voicemail is newly discovered evidence of intoxication, not

known at the time of trial, which would negate the element of intent for his crimes. We are not persuaded.

We need only consider the fourth prong of the *Rainer* test because our analysis of that prong is dispositive. *See Miles*, 840 N.W.2d at 201 (stating that analysis of the other prongs of the *Rainer* test is not necessary where analysis of one of the prongs is dispositive). In order to meet the fourth prong, the petitioner is required to show "that the evidence would probably produce an acquittal or a more favorable result." *Pearson*, 891 N.W.2d at 596 (quotation omitted). "We analyze whether new evidence is likely to produce an acquittal or a more favorable result by examining the admissibility and weight of the evidence at issue and considering it in light of the evidence the State admitted at trial." *Miles*, 840 N.W.2d at 202 (quotation omitted).

Here, the postconviction court found that the weight of the voicemail evidence would be "minimal at the most." The record fully supports the postconviction court's conclusion. The voicemail is muffled and not understandable. And, the only evidence in the record authenticating the voicemail is the testimony of Newton's friend, provided years after the voicemail was allegedly received. These facts support the postconviction court's determination that "there is very little ability to determine that . . . [Newton] is the individual who made that call." And even accepting that the voicemail was left by Newton, the voicemail itself is so muffled that it would be of little value to the jury in determining whether Newton was intoxicated at the time that he made the call. *See id.* (giving witness testimony little weight where the testimony did not indicate the fact that needed to be proven).

Further, the voicemail evidence does not outweigh the evidence presented at trial demonstrating that Newton understood the nature of his actions at the time of the incident. As the state points out, Newton's own trial testimony establishes that he vividly remembered what happened. Newton provided detailed testimony of the incident night—including content of conversations he had with R.W. and specific locations as to where the fighting occurred. And the squad car footage negates Newton's contention that he was too intoxicated to know what he was doing. As the postconviction court found, Newton was understandable and articulate in the squad car, making his position very clear that he was the victim. And the video shows that Newton exited the car multiple times without a single stumble. Moreover, Newton told the arresting officers about the text messages sent by R.W. He also told them that, because of the text messages, he went across the bridge and engaged in a fight with R.W. This abundance of evidence refutes Newton's contention that he did not know what he was doing. *See State v. Dinneen*, 184 N.W.2d 16, 19-20 (Minn. 1971) (concluding that the defendant was not so intoxicated to not know what he was doing where he described in detail the events that occurred while committing the crime).

In sum, the record supports the postconviction court's determination that the voicemail would have been given minimal weight, if any, by a jury and that it would not have been likely to produce an acquittal or more favorable result for Newton. Consequently, we hold that the postconviction court acted well within its discretion when it concluded that Newton was not entitled to a new trial based on the voicemail.

Affirmed.