

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0223**

James Lamar Davis, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed October 11, 2021
Reversed and remanded
Johnson, Judge**

Hennepin County District Court
File No. 27-CR-14-11916

Seth Leventhal, Leventhal P.L.L.C., Edina, Minnesota; and

Peter Wold, Wold Morrison Law, Minneapolis, Minnesota (for appellant)

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

Michael O. Freeman, Hennepin County Attorney, Adam E. Petras, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Johnson, Presiding Judge; Bryan, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

In 2015, James Lamar Davis was convicted of two counts of attempted second-degree intentional murder for the benefit of a gang, and he was sentenced to a total of 339

months of imprisonment. In 2020, Davis's convictions were vacated on post-conviction review on the ground that he received ineffective assistance of counsel, both at trial and on direct appeal. The state did not re-try Davis. Davis then petitioned the post-conviction court for compensation on the ground that he is exonerated. The post-conviction court denied Davis's exoneration-compensation petition on the ground that Davis is not "exonerated," as that term is used in the relevant statute, because his convictions were not vacated "on grounds consistent with innocence" because there is no "evidence of factual innocence." We conclude that the post-conviction court erred by concluding that Davis is not exonerated. Therefore, we reverse and remand for further proceedings on Davis's exoneration-compensation petition.

FACTS

At 2:57 a.m. on April 12, 2014, two men—K.W. and C.D.B.—were shot during an altercation with three other men near Target Field in Minneapolis. K.W. and C.D.B. were injured but survived, though C.D.B. now is paralyzed. During the subsequent investigation, K.W. initially stated that he could not identify any of the three men who attacked him and C.D.B. But he later told police officers that the shooter was Davis. K.W. also told police that J.M. was one of the three other men involved in the altercation.

On April 29, 2014, the state charged Davis with two counts of attempted second-degree intentional murder for the benefit of a gang, in violation of Minn. Stat. § 609.19, subd. 1(1) (2014). Two months later, Davis executed and filed with the district court administrator an affidavit stating that he was not present at Target Field at the time of the

shooting, that he was at a particular restaurant with friends at that time, and that he first learned of the shooting several hours after it occurred.

The case was tried to a jury over five days in February 2015. The primary issue at trial was the identity of the person who shot K.W. and C.D.B., *i.e.*, whether Davis did so. The state called 11 witnesses, including K.W., who recanted his pre-trial identification of Davis as the person who shot him and C.D.B. To discredit K.W.’s recantation, the state played for the jury a video-recording of a police interview, conducted only two days after the shooting, in which K.W. had identified Davis as the shooter. In the video-recorded interview, the police officers referred to Davis as the shooter multiple times, stated that Davis posed a danger to public safety, and emphasized the need to convict Davis to send a message to other gang members. Davis’s trial attorney did not object to the admission or playing of the video-recording. After the video-recording was played, the district court excused the jury and noted on the record that the video-recording “contained . . . leading questions, speculation, conclusions, hearsay, maybe lack of foundation on some things like Facebook, and possibly things like 403 unfair prejudice” but that “nothing was objected to so there was nothing for me to rule on.”

The state also called witnesses who testified that, in 2010, someone who resembled Davis was present at the scene of a shooting near Lake Calhoun (now known as Bde Maka Ska), that K.W. also was present there, and that a member of K.W.’s gang was killed. The district court had previously ruled that testimony about the Lake Calhoun incident was admissible after conducting a *Spreigl* hearing and finding by clear and convincing evidence that Davis was involved in the Lake Calhoun incident.

The state also called J.M., who gave testimony that directly contradicted Davis's alibi defense. J.M. testified that, on the night of the shooting, he left a downtown bar at closing time and caught a ride with two other men, J.B. and C.B., who drove to the parking lot of a restaurant in a nearby suburb. J.M. testified that Davis then appeared, entered the back seat of the car, and said: "I just did that sh-t. It's time to celebrate. Hurry up and get me to my car so I can watch the news." J.M. testified that they drove Davis to his car in south Minneapolis. J.M. testified that he was not at Target Field that night and did not have anything to do with the shooting.

Davis called three witnesses for the purpose of proving that he was not at Target Field at the time of the shooting and to discredit J.M.'s testimony. The primary alibi witness was J.B., who testified that he, C.B., and Davis went to a downtown bar at approximately midnight, left at closing time, and offered J.M. a ride while waiting at a valet parking lot. J.B. testified further that the group of four, including Davis, drove for approximately 15 to 20 minutes to a suburban restaurant, arrived there between 2:45 and 3:00 a.m., left at approximately 3:30 a.m., and drove to south Minneapolis, where they dropped off Davis and J.M. at Davis's car. M.P. testified that she was at the same bar that evening, that she talked to Davis there, and that she and Davis exchanged multiple telephone calls between 2:32 and 3:32 a.m. D.B. testified that Davis tried to call her multiple times that night between 3:42 and 3:52 a.m., while she was sleeping, and left her one or more voice-mail messages in which she recognized both Davis's voice and J.M.'s voice.

The jury found Davis guilty on both counts. Davis filed a post-trial motion for judgment of acquittal or, in the alternative, a new trial. In support of the motion, Davis submitted two affidavits of persons who stated that, after charges against J.M. were dismissed, J.M. said to them that he would lie in his trial testimony to help secure a conviction against Davis. One of the affiants stated that she had a conversation with J.M. after the charges against him were dismissed and that he told her “that he would ‘say anything’ so that he would not have to go back to jail” and that he was unconcerned about lying on the witness stand because “he had seen ‘innocent people go to jail before so what does it matter[?]’” The other affiant stated that she also spoke with J.M. after the charges against him were dismissed, that she asked him why he would testify against Davis, and that he said: “A lie is what got us in this right . . . so I don’t give a f--k. Ima do what I gotta do for my kids . . . [Davis] not my friend. He yo friend . . . F--k him, f--k you, and f--k all of y’all.” (Ellipses in original.) The district court denied Davis’s motion. The district court imposed consecutive prison sentences of 186 months and 153 months.

On direct appeal, this court affirmed Davis’s convictions and sentences, and the supreme court denied Davis’s petition for review. *State v. Davis*, No. A15-0821, 2016 WL 3042580 (Minn. App. May 31, 2016), *rev. denied* (Minn. Aug. 23, 2016). In 2017, Davis filed a *pro se* petition for post-conviction relief. The post-conviction court denied relief. Davis did not appeal from the denial of post-conviction relief.

In 2018, Davis filed a second petition for post-conviction relief, with the assistance of counsel. He argued that he had received ineffective assistance of counsel from both his trial attorney and from the attorney who represented him on direct appeal. The post-

conviction court conducted a three-day evidentiary hearing in March and April of 2019. In March 2020, the post-conviction court filed a 142-page order and memorandum in which it granted Davis's second post-conviction petition and vacated his convictions. In the introduction to the lengthy memorandum, the post-conviction court stated that it was granting post-conviction relief because the deficient performance of Davis's trial attorney "undermine[d] confidence in the fairness of the trial" but not because of "any determination on this court's part that Davis is actually innocent." The post-conviction court concluded that the performance of Davis's trial attorney was deficient for three reasons:

- (1) his failure to object to introduction of the [K.W.] April, 14, 2014 interview, allowing that video interview to be admitted as substantive evidence, which contained the sole affirmative substantive evidence in the trial in which Davis was identified as the Target Field shooter as well as including voluminous amounts of inadmissible and highly prejudicial other statements;
- (2) his failure to seek to strike the testimony offered at trial by MPD Sgt. Wallerich and [N.P.] regarding the *Spreigl* incident—the May 2010 shooting at Lake Calhoun targeting [K.W.] and in which the State claimed Davis had also been the shooter; and
- (3) his failure to call two witnesses . . . to attack the credibility of [J.M.], the State's key witness who undermined Davis's alibi defense.

The post-conviction court also concluded that Davis received ineffective assistance of counsel because his appellate attorney did not investigate or present an argument that Davis's trial attorney was ineffective. The post-conviction court ordered the department of corrections to transfer Davis to the custody of the Hennepin County Sheriff for detention

pending further proceedings. The county attorney decided not to re-try Davis, and he was released.

In May 2020, Davis petitioned the post-conviction court for compensation as an exonerated person pursuant to section 590.11 of the Minnesota Statutes. The state opposed Davis's petition. In February 2021, the post-conviction court filed a seven-page order in which it denied Davis's exoneration-compensation petition on the ground that Davis is not "exonerated" because his convictions were vacated for reasons other than "grounds consistent with innocence" because there is no "evidence of factual innocence." Davis appeals.

DECISION

Davis argues that the post-conviction court erred by denying his exoneration-compensation petition on the ground that he is not "exonerated."

A.

The Minnesota Incarceration and Exoneration Remedies Act provides for awards of damages, to be paid by the state through special appropriations, to some persons who were convicted of criminal offenses but later were exonerated. *See Minn. Stat. §§ 611.362-.368* (2020). A person may file a claim for exoneration damages only if the person has "receive[d] an order under section 590.11 determining that the person is entitled to compensation based on exoneration." Minn. Stat. § 611.362, subd. 1.

Section 590.11 contains both substantive and procedural provisions relevant to exoneration compensation. This court has described four steps in the process of determining whether a person is entitled to compensation based on exoneration. *See Back*

v. State, ____ N.W.2d ____, ____, 2021 WL 2306726, at *2-3 (Minn. App. June 7, 2021) (*Back V*), *rev. granted & stayed* (Minn. Aug. 24, 2021). First, the post-conviction court must determine whether the petitioner is “exonerated,” as that term is defined by statute. *Id.* at *2 (citing Minn. Stat. § 590.11, subd. 1 (2020)). Second, if the petitioner is exonerated, the post-conviction court “shall determine” whether the petitioner “is eligible for compensation based on the *establishment of innocence*,” *id.* (quoting Minn. Stat. § 590.11, subd. 3(b) (Supp. 2019)), which is true “if the petitioner establishes that a crime was not committed or that the crime was not committed by the petitioner,” Minn. Stat. § 590.11, subd. 3(b). Third, if the petitioner establishes that a crime was not committed or was not committed by the petitioner, the post-conviction court “must determine whether the exonerated petitioner meets the elements described in subdivision 5” of section 590.11, which states the four elements of an exoneration-compensation claim. *Id.* at *3 (citing Minn. Stat. § 590.11, subd. 5). And fourth, if the petitioner satisfies the four elements of an exoneration-compensation claim, the post-conviction court must “exercise its discretion to determine whether the exonerated petitioner is eligible for compensation” after considering the evidence described in subdivision 4 of section 590.11, *id.* (citing Minn. Stat. § 590.11, subd. 4), including “acts by the petitioner that may have contributed to bringing about the conviction and any other offenses that may have been committed by the petitioner in the same behavioral incident,” Minn. Stat. § 590.11, subd. 4.

This appeal is concerned only with the first step of the four-step process described in *Back V*. The only question before this court is whether Davis is “exonerated,” as that term is used in section 590.11.

B.

The term “exonerated” is defined in section 590.11 to mean that:

(1) a court:

(i) vacated, reversed, or set aside a judgment of conviction *on grounds consistent with innocence* and there are no remaining felony charges in effect against the petitioner from the same behavioral incident, or if there are remaining felony charges against the petitioner from the same behavioral incident, the prosecutor dismisses those remaining felony charges; or

(ii) ordered a new trial on grounds consistent with innocence and the prosecutor dismissed all felony charges against the petitioner arising from the same behavioral incident or the petitioner was found not guilty of all felony charges arising from the same behavioral incident at the new trial;

(2) the time for appeal of the order resulting in exoneration has expired or the order has been affirmed and is final; and

(3) 60 days have passed since the judgment of conviction was reversed or vacated, and the prosecutor has not filed any felony charges against the petitioner from the same behavioral incident, or if the prosecutor did file felony charges against the petitioner from the same behavioral incident, those felony charges were dismissed or the defendant was found not guilty of those charges at the new trial.

Minn. Stat. § 590.11, subd. 1(b) (emphasis added).

The phrase “on grounds consistent with innocence,” which is italicized above in paragraph (1)(i) of the definition of “exonerated,” is defined in section 590.11 to mean either:

(1) exonerated, through a pardon or sentence commutation, based on factual innocence; or

(2) exonerated because the judgment of conviction was vacated or reversed, or a new trial was ordered, *and there is any evidence of factual innocence* whether it was available at the time of investigation or trial or is newly discovered evidence.

Id., subd. 1(c) (emphasis added). The phrase “any evidence of factual innocence,” which is italicized above in paragraph (2) of the definition of “on grounds consistent with innocence,” is the disputed issue in this appeal.

In *Freeman v. State*, 944 N.W.2d 488 (Minn. App. 2020), this court applied the statutory definition of “on grounds consistent with innocence.” Freeman was convicted of criminal sexual conduct but later was granted post-conviction relief on the ground he had received ineffective assistance of counsel from his trial attorney. *Id.* at 489-90. The state declined to re-try the case and dismissed the charges. *Id.* at 490. Freeman petitioned for an order declaring his eligibility for exoneration compensation. *Id.* The post-conviction court denied the exoneration-compensation petition on the ground that Freeman was not “exonerated.” *Id.* On appeal, this court affirmed. *Id.* at 493. We noted that, as a general matter, a petitioner can establish an ineffective-assistance claim without establishing actual innocence. *Id.* at 492. We further noted that Freeman’s trial attorney was found to be ineffective because he “failed to conduct a reasonable pretrial investigation by not requesting helpful documents and not contacting witnesses who could have offered opinion testimony about the victim’s character for untruthfulness.” *Id.* We reasoned that Freeman’s impeachment evidence showed only “the victim’s pattern of past dishonesty” but did not “show appellant’s lack of guilt for the charged offenses.” *Id.* Accordingly, the

impeachment evidence was not “evidence of factual innocence.” *Id.* at 493. However, we stated in *dicta* that impeachment evidence may be evidence of factual innocence if the victim had fabricated evidence of the alleged crime, which would “tend[] to show [a petitioner’s] lack of guilt from the charged offenses.” *Id.* We further stated, again in *dicta*: “Other evidence of factual innocence would include DNA evidence establishing someone else committed the charged offense or *an alibi witness who testified that a petitioner did not commit the charged offense.*” *Id.* at 493 n.5 (emphasis added).

C.

In this case, the post-conviction court vacated Davis’s convictions because he received ineffective assistance of counsel from his trial attorney and from the attorney who represented him on direct appeal. The post-conviction court’s March 2020 order granting post-conviction relief satisfies the first clause of paragraph 2 of the definition of “on grounds consistent with innocence.” *See* Minn. Stat. § 590.11, subd. 1(c)(2). The key question is whether Davis has satisfied the second clause of that paragraph: that “there is any evidence of factual innocence whether it was available at the time of investigation or trial or is newly discovered evidence.” *See id.*

As stated above, Davis introduced alibi evidence at trial. Specifically, J.B. testified that he was with Davis continuously from approximately 11:00 p.m. to approximately 4:00 a.m.—at a friend’s home, at a downtown bar, in a car driving to a suburban restaurant, at the restaurant, and in the same car driving to south Minneapolis. If J.B.’s testimony is truthful, Davis did not shoot K.W. and C.D.B. at Target Field at 2:57 a.m. The testimony of “an alibi witness . . . that a petitioner did not commit the charged offense” may be

evidence of factual innocence. *See Freeman*, 944 N.W.2d at 493 n.5. Davis also has evidence in the form of two affidavits of persons who spoke to J.M., a witness who testified for the state to facts that are inconsistent with the testimony of J.B., Davis's alibi witness. The two affiants' statements tend to undermine the credibility of J.M., thereby supporting Davis's alibi defense. Thus, there is "evidence of factual innocence."

D.

The state argues that "evidence of factual innocence" may exist only if a post-conviction court vacated a conviction based on that evidence. The state leans heavily on one sentence in *Freeman* in which we stated, "To determine whether appellant satisfied the threshold exoneration requirement, we analyze the basis for the order vacating his convictions and granting him a new trial." 944 N.W.2d at 491. The state continues by contending that the post-conviction court in this case "made plain that the basis for vacating Appellant's convictions was to ensure that Appellant received the effective assistance of counsel and thus a fair trial, and *not* because Appellant was innocent or exonerated."

The *Freeman* opinion does not constrain the factual-innocence analysis in the manner suggested by the state. The quoted sentence in *Freeman* is not a comprehensive statement of the means by which courts may determine the existence of factual innocence; the quoted sentence is simply a prefatory statement preceding the court's analysis of the evidence in that case. Furthermore, the state's argument is inconsistent with the plain language of the statutory definition of the phrase "on grounds consistent with innocence," which provides that "evidence of factual innocence" may exist regardless of "whether it was available at the time of investigation or trial or is newly discovered evidence." Minn.

Stat. § 590.11, subd. 1(c)(2). There is no requirement of a causal connection between the first clause and the second clause of paragraph 2 of that statutory definition. In other words, an exoneration-compensation petitioner need not show that his conviction or convictions were vacated *because of* evidence of factual innocence.

In sum, Davis is “exonerated” because his convictions were vacated “on grounds consistent with innocence” because there is “evidence of factual innocence.” Therefore, the post-conviction court erred by concluding that he is not exonerated and by denying his exoneration-compensation petition without an evidentiary hearing. Accordingly, we reverse and remand for further consideration of Davis’s exoneration-compensation petition. *See Back V*, ____ N.W.2d at ____, 2021 WL 2306726, at *2-3.

Reversed and remanded.

A handwritten signature in black ink, appearing to read "Matthew E. Johnson".