This opinion is nonprecedential except as provided by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
A21-0789

Pierre Scott Glass, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed March 14, 2022
Affirmed
Cochran, Judge

Ramsey County District Court
File No. 62-CR-13-9348

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, Alexandra Meyer, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Considered and decided by Johnson, Presiding Judge; Reyes, Judge; and Cochran, Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

This appeal follows the district court's denial of appellant's second petition for postconviction relief. Appellant argues that the district court erred by determining that he was not entitled to a new trial based on a witness's alleged recantation of trial testimony.

Because the district court did not abuse its discretion by determining that appellant failed to meet the requirements for a new trial based on witness recantation, we affirm.

FACTS

The state charged appellant Pierre Glass in December 2013 with attempted second-degree murder and second-degree assault. The state later amended the complaint to add additional attempted-murder and assault charges, bringing the total number of counts to ten. The charges in the complaint stemmed from allegations that Glass fired a gun multiple times into a crowd, striking and injuring a 15-year-old girl. The complaint further alleged that the injured girl was not the intended target.

Jury Trial and Convictions

The case proceeded to a jury trial. Several witnesses testified about the circumstances surrounding the shooting. On the night of November 30, 2013, a large group of teenagers attended a house party in St. Paul. At one point, several people arrived at the party, including Glass. One person who was already at the party identified Glass as an "opp," meaning a member of a different gang. Glass and the newcomers looked around and then left the party almost immediately.

When the party ended around 11:30 p.m., a group of 20 to 30 people left and walked to a bus stop. A car with four or five occupants pulled up alongside the group. The car was playing loud music, and some people in the group started dancing. The song contained the lyric "Shoot the whole crowd for one specific person." At that point in the song, a person stepped out of the car and said, "Ha. Ha. Ha. Y'all ready?" The person then ran toward the group and fired multiple shots, one of which struck the victim in the abdomen.

As the victim's friends tried to help her, a different person ran up and said, "I'm sorry. We didn't mean to hit you," and then ran away. The victim later identified Glass as the shooter. She also identified the person who said that they did not mean to shoot her as a member of Glass's gang.

Other witnesses also identified Glass as the shooter. One witness testified that she saw Glass in the passenger seat of the car that pulled up to the group. That witness said that Glass then got out of the car and started shooting toward the group, though he appeared to be "trying to get to one person." The witness told the jury that she saw that Glass had a gun before he even got out of the car and that she could see him lift the gun as he started running.

The jury also heard testimony from L.K.-H., who was believed to be the intended target of the shooting. L.K.-H. testified that he had known Glass for four or five years and had been a member of Glass's gang, but that he was no longer associated with that gang. According to L.K.-H., Glass got out of the car and called L.K.-H.'s name, at which point L.K.-H. started running away. L.K.-H. heard multiple gunshots as he ran. Importantly for this appeal, L.K.-H. testified that he did not see whether Glass had a gun. He told the jury, "I'm not going to sit there and stare at the man and let him shoot at me. So I ran when I [saw] him hop out [of] the car."

The jury found Glass guilty on all ten counts. The district court imposed a sentence of 165 months' imprisonment on one count and a concurrent sentence of 200 months' imprisonment on another count. This court affirmed Glass's convictions on direct appeal. *State v. Glass*, No. A14-2003, 2015 WL 9263956, at *1, *5 (Minn. App. Dec. 21, 2015),

rev. denied (Minn. Mar. 15, 2016). Glass later petitioned for postconviction relief based on ineffective assistance of counsel, which the district court denied.

Current Postconviction Proceedings

In August 2020, Glass filed a second postconviction petition, which is the subject of this appeal. The petition alleged that Glass had "obtained newly discovered evidence showing his innocence."

Glass's postconviction petition was accompanied by an affidavit by L.K.-H. In the affidavit, L.K.-H. offered a somewhat different version of events about the shooting than he had testified to at trial. L.K.-H. stated that, when he left the party, he saw a car pull up and Glass get out. He "then saw Pierre Glass fire his gun into the air *and* then get back into the car." (Emphasis added.) L.K.-H. asserted that he "[did] not know who shot [the victim], but [he knew] that it could not have been Pierre Glass." L.K.-H. explained that, "when [he] was called to testify at trial, [he] said that [he] had seen Pierre Glass get out of the car, but did not see him with a gun." L.K.-H. asserted that in reality, "[he] did see Pierre Glass with a gun, and [he] watched him fire into the air, so [L.K.-H. knew] that [Glass] cannot be the person who shot [the victim]."

The district court held an evidentiary hearing on Glass's postconviction petition in January 2021. L.K.-H. testified at the hearing but his testimony was not consistent with his affidavit. When Glass's attorney questioned L.K.-H. about the night of the shooting, L.K.-H. initially claimed not to remember many details. L.K.-H. then denied seeing Glass get out of the car that pulled up immediately before the shooting. The attorney reminded L.K.-H. that he had previously told the attorney that he *did* see Glass exit the car. The

attorney eventually asked L.K.-H. to explain his version of what happened. L.K.-H. responded:

> I [saw] the car pull up to the side of the crowd where I was at. And I [saw] [Glass] hop[] out and he shot in the air. But before I even heard any other shots I started running. So I don't know if he stopped shooting in the air. I mean I was worried about my life. I started running. I don't know who else was shooting.

L.K.-H. acknowledged that he did not see Glass shoot the gun other than the shot he fired into the air. He also said that he did not know who shot the victim. When asked how he knew (as he claimed in his affidavit) that Glass could not have been the person who shot the victim, L.K.-H. said, "Because he shot in the air. . . . If I'm shooting at somebody I'm not going to shoot in the air and then shoot at somebody after."

After the hearing, the district court denied Glass's postconviction petition. The district court determined that Glass was not entitled to a new trial based on witness recantation because the district court was "not satisfied that [L.K.-H.'s] recantation is genuine," and because it determined that L.K.-H.'s testimony at the evidentiary hearing would not produce a more favorable result for Glass. In support of its determination, the district court noted that L.K.-H.'s testimony at the evidentiary hearing was inconsistent with the assertions in his affidavit because at the evidentiary hearing L.K.-H. did not say that he saw Glass get back into the car like he did in his affidavit. The district court also found that, at the time L.K.-H. signed the affidavit, he had an active warrant for his arrest and therefore faced potential prison time. Conversely, when he testified at the postconviction hearing, the warrant was no longer in effect, and he no longer faced prison

time. And, as emphasized by the district court in its order, L.K.-H.'s testimony at the postconviction hearing was "almost completely consistent with what [L.K.-H.] testified to at trial." Regarding L.K.-H.'s basis for believing that Glass could not have been the shooter, the district court rejected his testimony as not "useful or credible" because L.K.-H.'s "opinion about how he would shoot a gun under these circumstances is not relevant evidence." Finally, the district court determined that L.K.-H.'s testimony did not exculpate Glass "in any meaningful way" and "arguably inculpates [Glass] even further because unlike his testimony at trial, he identifie[d] [Glass] as having a gun" at the time of the shooting. Thus, the district court concluded that Glass was not entitled to a new trial on the basis of L.K.-H.'s alleged recantation.

Glass appeals.

DECISION

Glass challenges the district court's denial of his petition for postconviction relief. We review the denial of a postconviction petition for an abuse of discretion. *Miles v. State*, 840 N.W.2d 195, 200 (Minn. 2013). A district court abuses its discretion "when its decision is based on an erroneous view of the law or is against logic and the facts in the record." *Bobo v. State*, 860 N.W.2d 681, 684 (Minn. 2015). We review factual determinations for clear error and legal conclusions de novo. *Miles*, 840 N.W.2d at 200.

A person convicted of a crime may seek postconviction relief by filing a petition with the district court. Minn. Stat. § 590.01, subd. 1 (2020). At an evidentiary hearing on a postconviction petition, the petitioner bears the burden of proof to establish the facts

alleged in the petition "by a fair preponderance of the evidence." Minn. Stat. § 590.04, subd. 3 (2020).

When a defendant seeks a new trial based on a claim of witness recantation, Minnesota courts apply the three-prong *Larrison* test. *Sutherlin v. State*, 574 N.W.2d 428, 433 (Minn. 1998) (applying test for false witness testimony adopted by federal courts in *Larrison v. United States*, 24 F.2d 82, 87-88 (7th Cir. 1928)).[1] The three prongs of the *Larrison* test are: (1) the district court "is reasonably well-satisfied that the testimony given [at trial] by a material witness was false"; (2) "without the testimony, the jury might have reached a different conclusion"; and (3) the defendant "was taken by surprise when the false testimony was given and was unable to meet it or did not know of its falsity until after trial." *Martin v. State*, 825 N.W.2d 734, 740 (Minn. 2013). A defendant must establish the first two prongs of the *Larrison* test, but the third prong is not required. *State v. Turnage*, 729 N.W.2d 593, 597 (Minn. 2007).

Here, the district court determined that Glass's claim failed under the first and second prongs of the *Larrison* test.[2] Because the record supports the district court's

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[1] While the Seventh Circuit has since overruled *Larrison*, *see United States v. Mitrione*, 357 F.3d 712, 718 (7th Cir. 2004) (replacing *Larrison* test with four-part reasonable-probability test), Minnesota courts continue to apply the *Larrison* test to claims of false witness testimony. *See Andersen v. State*, 940 N.W.2d 172, 178 (Minn. 2020) ("We have adopted the *Larrison* test for determining whether to grant a new trial based on falsified or recanted witness testimony.").

[2] In addition to applying the *Larrison* test, the district court analyzed Glass's claim under the four-prong *Rainer* test for newly discovered evidence. *See Rainer v. State*, 566 N.W.2d 692, 695 (Minn. 1997) (recognizing that a defendant may be entitled to a new trial based on newly discovered evidence if he proves that (1) the evidence was not known to him at the time of trial; (2) the evidence could not have been discovered before trial through due diligence; (3) the new evidence "is not cumulative, impeaching, or doubtful"; and (4) the

determination that Glass failed to meet the first prong of the *Larrison* test, we limit our analysis to that prong and do not reach the second prong. *See id.* at 598-600 (concluding that appellant failed to meet one of the first two prongs of the *Larrison* test and therefore declining to address the other prong).

Under the first prong of the *Larrison* test, the district court must be "reasonably well-satisfied that the [trial] testimony given by a material witness was false." *Martin*, 825 N.W.2d at 740. The district court determined that Glass failed to meet this prong of the *Larrison* test based on its finding that L.K.-H.'s recantation of his trial testimony was not genuine.

Glass argues that the district court abused its discretion when it determined that the first prong was not met because the district court did not adequately consider L.K.-H.'s affidavit in determining whether L.K.-H.'s trial testimony was false. He maintains that the district court should not have made an "off-hand determination" to "dismiss the affidavit of [L.K.-H.] outright, without applying the necessary tests to evaluate the sufficiency of the newly presented evidence." The record belies Glass's argument. The record shows that the district court did *not* dismiss L.K.-H.'s affidavit as an off-hand determination.

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evidence likely would have resulted in an acquittal or more favorable result). Although Minnesota courts have sometimes framed claims of witness recantation as newly discovered evidence, *see, e.g.*, *Sutherlin*, 574 N.W.2d at 433 (addressing "newly discovered evidence" of witnesses' false testimony), the supreme court has declined to analyze such claims under the *Rainer* test when the defendant relies solely on the witness recantation and does not present facts constituting exculpatory evidence. *Turnage*, 729 N.W.2d at 599-600. Because the only evidence that Glass presented in support of his postconviction claim was L.K.-H.'s recantation, we need not apply the *Rainer* test for newly discovered evidence and instead apply just the *Larrison* test.

Instead, the district court appropriately applied the *Larrison* test and fully considered the affidavit, but found L.K.-H.'s statements in his affidavit were not credible based on their inconsistency with his testimony at the evidentiary hearing.

The record supports the district court's reasoning and its ultimate conclusion that the affidavit and postconviction testimony did not provide grounds for finding that L.K.-H.'s trial testimony was false. At trial, L.K.-H. testified that he saw Glass get out of the car, Glass said L.K.-H.'s name, and L.K.-H. immediately ran down the street. L.K.-H. testified that he did not see whether Glass had a gun and that he heard the gunshots as he was running away from the scene. L.K.-H.'s affidavit contradicted his trial testimony because, in his affidavit, L.K.-H. stated that he saw Glass fire his gun into the air *and* then get back into the car. But, as the district court observed, L.K.-H. did not testify to that version of events at the postconviction evidentiary hearing. Instead, L.K.-H. first testified that he did not see *anyone* exit the car before he started running. L.K.-H. later testified that he saw Glass get out of the car and shoot in the air, and that L.K.-H. then started running before he heard the next shots. L.K.-H. refused to confirm the assertion in his affidavit that he saw Glass get back in the car after he fired the shot into the air. The district court did not err in finding that L.K.-H.'s affidavit was not credible.

We similarly conclude that the district court did not err in finding that L.K.-H.'s testimony at the postconviction evidentiary hearing was not credible toward determining Glass's guilt or innocence. The only basis for L.K.-H.'s conclusion that Glass could not have been the person who shot the victim was that he saw Glass shoot the gun in the air. L.K.-H. testified, "If I'm shooting at somebody I'm not going to shoot in the air and then

shoot at somebody after." This statement is not evidence that Glass did not shoot the victim. At best, it is an inference that L.K.-H. made based on his observations. But L.K.-H. admitted that he did not see whether Glass continued to fire shots after L.K.-H. started running away, and that he did not see whether a different person shot the victim. Because L.K.-H.'s testimony at the postconviction evidentiary hearing did not substantiate his assertion that Glass was not the shooter, the district court did not err by rejecting the testimony as not useful or credible.

In sum, neither L.K.-H.'s affidavit nor his testimony at the postconviction evidentiary hearing provided a basis for the district court to conclude that L.K.-H.'s trial testimony was false. Given L.K.-H.'s unwillingness to confirm the allegations in his affidavit and the failure of his postconviction testimony to support his contention that Glass was not the shooter, we discern no abuse of discretion in the district court's rejection of L.K.-H.'s affidavit and postconviction testimony as not credible.[3] "When a district court determines that postconviction testimony that challenges trial testimony is not credible, it is not an abuse of discretion to conclude that the postconviction testimony was insufficient

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[3] As part of its discussion of L.K.-H.'s credibility, the district court also noted that L.K.-H. had an active warrant for his arrest at the time he signed the affidavit, but he no longer faced prison time at the time of the postconviction evidentiary hearing. At oral argument before this court, Glass argued that the record was insufficient to support the district court's suggestion that L.K.-H. might have had an incentive to lie based on his active warrant. We disagree and conclude that the record supports the district court's findings. At the evidentiary hearing, the state's attorney cross-examined L.K.-H. about his active warrant, and L.K.-H. admitted that the warrant was active when he first visited Glass's attorney and signed the affidavit and that he faced the possibility of prison time. Moreover, in reaching its credibility determination, the district court did not rely solely on the active warrant and reached its determination based on the reasons discussed above.

to show that trial testimony was false." *Andersen*, 940 N.W.2d at 178. Thus, the district court did not err in determining that it was not reasonably well-satisfied that L.K.-H.'s trial testimony was false, as required under the first prong of the *Larrison* test.

Because the district court did not abuse its discretion when it found that Glass did not satisfy the first prong of the *Larrison* test, we need not consider the second prong. *See Martin*, 825 N.W.2d at 740 (recognizing that the first two prongs of the *Larrison* test are "compulsory" for a defendant to be entitled to a new trial). The district court therefore did not abuse its discretion by concluding that Glass was not entitled to a new trial, and it appropriately denied his postconviction petition.

Affirmed.